

**BY ORDER OF THE COMMANDER  
UNITED STATES AIR FORCES IN  
EUROPE-UNITED STATES AIR FORCES  
AFRICA**

**UNITED STATES AIR FORCES IN EUROPE  
INSTRUCTION 51-701**

**27 JANUARY 2016**



**Law**

**NEGOTIATING, CONCLUDING,  
AMENDING, TERMINATING, REPORTING  
AND MAINTAINING INTERNATIONAL  
AGREEMENTS**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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This instruction implements AFPD 51-7, *International Law*. Additionally, this document is in compliance with policies issued in AFI 51-701, *Negotiating, Concluding, Reporting and Maintaining International Agreements*, Department of Defense (DoD) Directive 5530.3, *International Agreements*, EUCOM Directive (ED) 5-13, *International Agreements, Authority and Responsibilities*, and AFRICOM Instruction (ACI) 5800.05, *International Agreements*.

This is the only USAFE-AFAFRICA instruction concerning International Agreements and is applicable to all USAFE-AFAFRICA staff agencies, commands, units, and activities. It establishes procedures for negotiating, concluding, amending, terminating, reporting and maintaining International Agreements within USAFE-AFAFRICA's area of responsibility. This document delegates the authority to negotiate and conclude certain types of International Agreements but does not create substantive authority for this purpose. **Do not enter into any negotiations with Host Nations without first coordinating with USAFE-AFAFRICA/A8Z.** USAFE-AFAFRICA 51-701 does not apply to United States Air Force Reserve Command (ARFC) or Air National Guard (ANG) units. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using Air Force (AF) Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field through the appropriate functional's chain of command. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 33-363, *Management of Records*, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS). See Attachment 1 for a glossary of references and supporting information.

**SUMMARY OF CHANGES**

This publication has been substantially revised and must be completely reviewed. This version reflects the Headquarters’ reorganization and inclusion of the AFRICOM AOR. This version clarifies the coordination procedures required for international agreements and the need for proponents of agreements to remain the office of primary responsibility (OPR) for the agreement, to participate in the negotiation process, and to manage and maintain the obligations within agreements with the support and oversight of USAFE-AFAFRICA/A8Z.

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**1. Scope.** The Commander of USAFE-AFAFRICA has delegated authority to USAFE-AFAFRICA/A5/8/9 as the OPR for negotiating, concluding, amending, terminating, reporting and maintaining international agreements (IA) command-wide, and to redelegate this authority to subordinate units. All USAFE-AFAFRICA staff agencies, commands, units, and activities will comply with this instruction.

**2. Basic Requirements in IA Development. USAFE-AFAFRICA personnel shall:**

**2.1. Not negotiate, conclude, amend or terminate an IA without specifically obtaining prior written approval from USAFE-AFAFRICA/A5/8/9 (through USAFE-AFAFRICA/A8Z).**

**2.2. Not negotiate or conclude verbal agreements.**

2.3. Obtain a statement of nonapplicability of AFI 51-701 and ED 5-13 or ACI 5800.05 from USAFE-AFAFRICA/A5/8/9 (through USAFE-AFAFRICA/A8Z) before negotiating with foreign nations of any agreement that is not normally considered an IA as described in

paragraph 8 of this instruction. This avoids the need for a formal legal memorandum, fiscal memorandum and the mandatory reporting requirements of Title 1 United States Code (USC) Section 112b (Case-Zablocki Act or Case Act).

2.4. If the proposed IA is not exempt from AFI 51-701, coordinate the proposed IA by submitting a Task Management Tool (TMT) tasker or similar tracking program used by the command. Coordinate with the following USAFE-AFAFRICA staff: A8Z, JAI, FM (if the IA involves expenditure of US funds/resources or receipt of foreign funds/resources), FDO (if releasing classified and controlled unclassified military information to foreign representatives), and other relevant staff directorates or subordinate units directly affected by or who have equity in the proposed IA.

2.5. Fully comply with this instruction and the procedures for developing an IA as outlined in Paragraph 4, notwithstanding receipt of any delegated authority to negotiate from a Combatant Command (CCMD).

### **3. Responsibilities at USAFE-AFAFRICA Level.**

3.1. The Bases and Forces Division (USAFE-AFAFRICA/A8Z) is the OPR for monitoring all IAs for the command and will:

3.1.1. After consultation and when appropriate, delegate authority to USAFE-AFAFRICA staff agencies and subordinate units to negotiate, conclude, amend or terminate IAs.

3.1.2. Assist proponent units and organizations in preparing draft agreements and negotiating positions, and as appropriate lead negotiating teams when requested to assist.

3.1.3. Provide advice and assistance, clarify or forward for higher-level attention questions or problems that cannot be resolved at MAJCOM level.

3.1.4. Determine the status of IAs submitted for review, i.e., if an IA is within COMUSAFE-AFAFRICA's negotiating authority.

3.1.5. Issue statements of nonapplicability if, after review, a document is exempt from the procedural and reporting requirements of the Case Act, as directed by AFI 51-701 and ED 5-13 or ACI 5800.05.

3.1.6. Maintain a written and electronic central repository of all IAs negotiated and concluded by USAFE-AFAFRICA staff, including the negotiating history of concluded IAs for the duration of the agreement or until they have no further legal significance.

3.1.7. To the extent possible, maintain treaties and other government-level agreements, as well as, USEUCOM and USAFRICOM and their components' agreements that relate to or affect USAFE-AFAFRICA operations.

3.1.8. Maintain a command-wide master index of USAFE-AFAFRICA IAs.

3.1.9. Report all concluded IAs to the State Department and higher headquarters in accordance with the Case Act (Attachment 4).

3.2. The Office of the Staff Judge Advocate, International Law Division (USAFE-AFAFRICA/JAI) will:

3.2.1. Coordinate with USAFE-AFAFRICA/A8Z during review of proposed agreements submitted for approval.

3.2.2. Review and determine if agreements conform to international law and U.S. domestic law, and other applicable regulations and directives.

3.2.3. Assist in drafting agreements and as required, participate in negotiations as the legal representative.

3.2.4. Prepare and provide legal memoranda for IAs that will be concluded at USAFE-AFAFRICA level. These legal memoranda will specify the legal authority that authorizes USAFE-AFAFRICA to enter into and carry out the agreement, specifying both the procedural authority and the substantive legal authority for each obligation undertaken on behalf of the U.S. under the agreement.

3.3. Director of Financial Management and Comptroller (USAFE-AFAFRICA/FM) will:

3.3.1. Advise and assist in formulating and coordinating agreement provisions which pertain to funding, billing, and payment procedures for agreements involving financial commitments and cost-sharing arrangements.

3.3.2. Provide fiscal memoranda for IAs that involves expenditure of US funds/resources or receipt of foreign funds/resources. USAFE-AFAFRICA/FM or Wing FM offices will provide the appropriate level of financial review for all proposed agreements. The financial review will include an examination of financial accounting procedures and budgetary impact. If no funds are expended, a no-cost financial review/fiscal memorandum as required will be provided, stating expenditure of United States funds is not required.

3.3.3. Provide an evaluation of the financial review performed by the base level comptroller for agreements designated in paragraph 7.

3.4. Foreign Disclosure Office (USAFE-AFAFRICA/A2N) will review and certify agreements releasing classified and controlled unclassified military information to foreign representatives.

3.5. Logistics Readiness Division (USAFE-AFAFRICA/A4R) will:

3.5.1. Assist USAFE-AFAFRICA/A8Z by acting as Office of Coordinating Responsibility (OCR) for the drafting, negotiating and concluding of all Implementing Arrangements that are written to implement MSAs/ACSAs.

3.5.2. Assist proponents of agreements comply with all procedures identified in paragraph 7.8 when developing IAs written to implement the NATO Mutual Support Act, as amended.

3.6. International Affairs Division (USAFE-AFAFRICA/A5I) will:

3.6.1. Assist proponents of agreements in engaging with US Embassy country teams and in coordinating with CCMD country desk officers.

3.6.2. Provide a memorandum certifying IAs concluded in both foreign language text and English text are in conformity with each other and that both texts have the same meaning in all substantive respects. See Attachment 5.

3.7. Base Legal Offices will:

3.7.1. Provide initial review of base-level IAs to determine legal sufficiency and conformity with IA authorities.

3.7.2. Provide legal memoranda for IAs that will be concluded at base-level. These legal memoranda will specify the legal authority that authorizes the base to enter into and carry out the agreement, specifying both the procedural authority and the substantive legal authority for each obligation undertaken on behalf of the United States under the agreement.

3.7.3. Coordinate with USAFE-AFAFRICA/JAI during review of IAs.

3.7.4. Brief all commanders and proponents of agreements on authorities and approvals required to enter into IAs.

#### **4. Procedures.**

4.1. Planning. Proper staffing will ensure agreements contain sufficient detail, including procedures to be followed, which will preclude later conflict in interpretation or implementation. The agreement process can be, and often is, lengthy and time-consuming, primarily driven by the Host Nations' timeline and not by the U.S. Responsible planning leading to the negotiation and conclusion of an agreement should include allowing adequate lead time based upon the urgency of the agreement objectives.

4.2. Preliminary Coordination. The proponent of the agreement who is the functional/organizational element responsible for the subject matter of a proposed IA will accomplish the following:

4.2.1. Submit all proposed IAs for coordination via TMT.

4.2.2. Before initial contacts with foreign nations or with international commands and organizations, the proponent seeking to negotiate an agreement will initially consult with USAFE-AFAFRICA/A8Z with a proposed draft agreement (see Attachment 2 for IA format example). If necessary, USAFE-AFAFRICA/A8Z will assist in providing sample IAs to help the proponent develop a draft agreement.

4.2.3. USAFE-AFAFRICA/A8Z will determine if a proposed IA is exempt from the requirements of AFI 51-701 and ED 5-13 or ACI 5800.05 and if as such will issue a "nonapplicability statement" and clearance to proceed to negotiate and conclude the IA. (Note: Exercise Support Agreements or ESAs normally fall into this category).

4.2.4. If a proposed IA is subject to AFI 51-701 and ED 5-13 or ACI 5800.05, the proponent of the agreement will coordinate the draft IA via TMT with USAFE-AFAFRICA/A8Z, JAI, FM (when necessary), FDO (when necessary), Base Legal Office (for units below the Headquarters) and all affected staff agencies, higher-level commands, and other relevant agencies outside of USAFE-AFAFRICA, e.g., AFCEC, IMSC, ODC, State Dept., etc..

4.2.5. Request assistance from USAFE-AFAFRICA/A5/8/9 to submit requests to USEUCOM/ECJ5/8 or USAFRICOM/ACJ5 and higher headquarters for negotiating

authority for policy significant agreements or agreements above COMUSAFE-AFAFRICA negotiating authority. A working draft agreement, legal memorandum, and fiscal memorandum will be provided for inclusion in the request.

4.3. Clearance to Conduct Preliminary Nonbinding Discussions. USAFE-AFAFRICA/A8Z will provide the proponent of an agreement clearance to engage host nation officials to conduct preliminary nonbinding discussion. This discussion is not negotiation, but merely to explore the scope of the intended agreement and to create a final draft to be coordinated by relevant USAFE-AFAFRICA staff before final negotiation.

4.3.1. Prior to conducting preliminary nonbinding discussions, contact the Foreign Disclosure Office, USAFE-AFAFRICA/A2N, when releasing classified and controlled unclassified military information to foreign representatives.

4.3.2. Conduct preliminary nonbinding discussions with foreign representatives as necessary to determine which party will draft the proposed agreement, the general issues to be included, and the scope of the proposals. Note: It is highly encouraged the U.S. presents a working draft agreement in advance of the host nations' draft. These discussions help formulate a final draft agreement that will be submitted for final coordination via TMT.

4.4. Clearance to Negotiate. Before initiating negotiations (binding discussions) with host nation representatives obtain clearance to negotiate from USAFE-AFAFRICA/A8Z via TMT (Note: You may reutilize the initial TMT used for Preliminary Coordination). Coordinate the TMT request with the following USAFE-AFAFRICA staff agencies: A8Z, JAI, FDO (when necessary), FM (when necessary), and other relevant staff directorates or subordinate units directly affected by or have equity in the proposed IA. The TMT request should include the following:

4.4.1. Submit a final draft of the proposed agreement developed during the preliminary nonbinding discussions. To the extent possible, the final draft agreement will adhere to the format at Attachment 2. Use the checklist at Attachment 3 in developing and standardizing IAs to ensure the requirements are fulfilled.

4.4.2. Request a preliminary legal memorandum from USAFE-AFAFRICA/JAI. The legal memorandum will specify the legal authority that authorizes COMUSAFE-AFAFRICA to enter into and carry out the agreement, specifying both the procedural authority and the substantive legal authority for each obligation undertaken on behalf of the United States under the agreement, and an explanation of other relevant legal considerations.

4.4.3. Request a financial review and a preliminary fiscal memorandum from USAFE-AFAFRICA/FM for those agreements involving the expenditure of US funds/resources or receipt of foreign funds/resources.

4.4.4. If necessary, request the Foreign Disclosure Office (FDO), USAFE-AFAFRICA/A2N, to certify disclosure of classified and controlled unclassified military information to foreign representatives.

4.4.5. If both English and a foreign nation language are used, obtain a memorandum stating the foreign language text and the English text conform to each other and that both

have the same meaning in all substantive respects (see example at Attachment 5 and language requirements at paragraph 4.7). Seek assistance from USAFE-AFAFRICA/A5I in obtaining this memorandum.

4.4.6. If relevant to the proposed agreement, a statement of environmental impact (see E.O. 12114, 4 Jan 79, Environmental Effects Abroad of Major Federal Actions and AFI 32-7061, *The Environmental Impact Analysis Process* for guidance) if necessary. The Air Force Civil Engineer Center (AFCEC) will determine requirements for environmental review. If the agreement has no environmental impact, the organization sponsoring the agreement will state there is no environmental impact in their request to negotiate.

4.4.7. Ensure sufficient information is contained in the background/supporting documents of the TMT request. Otherwise, provide a BBP on the proposed IA to assist headquarters staff in the review of the request.

4.4.8. USAFE-AFAFRICA/A5/8/9 will provide memorandum re-delegating COMUSAFE-AFAFRICA negotiating authority in appropriate cases.

4.5. Negotiating History. The functional OPR who negotiated an IA will forward all correspondence, documents, emails, draft agreements internal working papers, minutes of meetings, etc., that record the entire history of the negotiation process to USAFE-AFAFRICA/A8Z by loading them in the TMT Public Workspace.

4.6. Clearance to Conclude the Agreement via TMT. **When agreement has been reached, and prior to signature of the agreement by either party, the proponent of the agreement will accomplish final staffing, if necessary, and will submit a TMT request to USAFE-AFAFRICA/A8Z, requesting authority to conclude (Note: You may reutilize the initial TMT used during Preliminary Coordination).** The following procedures for concluding an agreement are established to ensure that lawful agreements are concluded and reported within the strict time limits established in paragraph 4.10. At a minimum, the request will contain:

4.6.1. A negotiated agreement ready for signature.

4.6.2. A final fiscal memorandum.

4.6.3. A final legal memorandum.

4.6.4. Specify the agency/organization designated as OPR for execution and maintenance of the agreement throughout its duration.

4.6.5. Foreign language text certification memorandum if both English and foreign language are used (see example at Attachment 5 and language requirements at paragraph 4.7).

4.7. Language. Agreements will be concluded in the English text only, or contain a provision that the English language is accepted as the governing text of the parties in the event there is conflict between the English language and foreign language texts. If this is not possible and an agreement is concluded in both English and a foreign language, a person certified in that foreign language will certify by memorandum (Attachment 5) that the foreign language text and the English text conform to each other and that both have the same meaning in all substantive respects. The memorandum will be dated and signed by an approved translator or certified proficient in that foreign language or dialect and is considered qualified by United States DoD/State Department. The memorandum will accompany the request to conclude the

agreement. In this case, wording will be included in the agreement stating that the agreement is concluded in both languages and each version is equally authentic.

4.8. Concluding the Agreement. After authority to conclude the agreement has been obtained, the USAFE-AFAFRICA negotiator will submit the approved final text to the foreign representative for agreement or comment/counterproposal. If the agreement is accepted without change, signature on behalf of the other party will be requested. If changes result from further negotiations after conclusion authority is granted, the changes must be approved by USAFE-AFAFRICA/A5/8/9 prior to signature. During negotiating sessions, the USAFE-AFAFRICA negotiator may agree in principle to changes in the draft agreement provided it is made clear to the other party that agreement is conditional upon final staff approval.

4.9. Signature. Ideally, the United States signature will be the last signature affixed to the agreement as United States reporting time requirements begin with date of the last signature. If the agreement must be signed last by a foreign representative, the organization responsible for the agreement will request approval from USAFE-AFAFRICA/A5/8/9 explaining the requirements for the foreign representative to sign the agreement last and how they will ensure the reporting time requirements in paragraph 4.10 are met.

4.10. Reporting the Agreement. The USAFE-AFAFRICA representative responsible for concluding an agreement will deliver the original agreement (in both languages if applicable), the final legal memorandum, and the final fiscal memorandum to USAFE-AFAFRICA/A8Z within 3 working days after the last signature (Attachment 3, paragraph A3.4). USAFE-AFAFRICA/A8Z will accomplish a letter of transmittal (Attachment 4) and ensure the agreement is reported in time to arrive at the Office of the Assistant Legal Advisor for Treaty Affairs, Department of State, not more than 20 calendar days after the last signature. To ensure this strict time requirement is met, the agreement must be mailed no later than 15 days after the last signature. NOTE: Prompt reporting is critical. If an agreement is reported late, the Executive Office must explain to Congress why it is late. If an agreement is reported more than 15 days after the last signature, the transmittal document will fully and completely describe and justify the reasons for the late transmittal.

4.11. Amendment of Agreements. Amendments or additions to an existing agreement must follow the same procedures as those for establishing new agreements.

4.12. Termination of Agreements. Authorization from USAFE-AFAFRICA/A5/8/9 is required prior to terminating an agreement whether or not a termination clause is in place in the agreement to be terminated. Proponents of agreements obtain authorization by submitting a TMT request to USAFE-AFAFRICA/A8Z to terminate an agreement. When drafting a new agreement, include specific provisions in the agreement on terminating the agreement to avoid doubt as to whether and when an agreement is terminated. When a new agreement replaces an existing agreement, the new agreement will contain a statement to the effect that the old agreement is terminated.

## **5. Definitions and Guidance.**

5.1. International Agreement (IA). An agreement concluded with one or more foreign governments (including their agencies, instrumentalities, or political subdivisions) or with an international organization which signifies the intention of the parties to be bound in

international law and is characterized by those elements that give it recognition as an IA by the community of nations (see paragraph 7 for specific categories and examples of IAs). Most agreements concluded with a foreign government constitute an IA and are reportable as such under the Case Act. Therefore, treat all proposed agreements with foreign governments as IAs and coordinate through USAFE-AFAFRICA/A8Z prior to any negotiations.

5.2. Concept of Negotiations. USAFE-AFAFRICA/A8Z determines who will negotiate and may act as the lead negotiator at the request of the proponent or OPR of an agreement. However, the basic policy for negotiating and concluding IAs is one of centralized direction and decentralized execution. Therefore, the conduct of negotiations is normally accomplished by the functional or organizational elements that are most knowledgeable of matters pertinent to the subject of the negotiation. In any case, the proponent (the sponsoring or participating command or unit, or the pertinent functional or organizational element) will participate fully in the negotiating process and shall remain the OPR for the IA. For example, USAFE-AFAFRICA/A4R negotiates WRM agreements and ACSA related IAs; USAFE-AFAFRICA/A3C negotiates RPA agreements; USAFE-AFAFRICA/A3T or Deploying Units negotiates FTD and other training deployment agreements; Wing-level units negotiate support agreements for foreign tenants, and so forth.

5.3. Preliminary or Exploratory Nonbinding Discussions. Preliminary or exploratory discussions or routine meetings, 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. Contact the Foreign Disclosure Office (USAFE-AFAFRICA/A2N) prior to conducting preliminary discussions when disclosing classified and controlled unclassified military information to foreign representatives.

5.4. Negotiations. Communication by any means of a position or an offer, on behalf of the United States, the Department of Defense, or on behalf of any officer or an organizational element thereof, to an agent or representative of a foreign government, including an agency, instrumentality, or political subdivision thereof, or of an international organization, in such detail that the acceptance in substance of such position or offer would result in an international agreement. The term "negotiation" includes any such communication even if it is conditioned on later approval by higher authority. The term "negotiation" also includes provision of a draft agreement or other document, the acceptance of which would constitute an agreement, as well as discussions concerning any US or foreign government or international organization draft document whether or not titled "agreement." Procedural authority is required to prior to negotiating an IA.

5.5. Procedural Authority. The authority necessary to begin the negotiations according to AFI 51-701, ED 5-13 or ACI 5800.05, and this instruction. Only COMUSAFE- AFAFRICA (as delegated to USAFE-AFAFRICA/A5/8/9) and Combatant Commanders can grant procedural authority, when appropriate.

5.6. Substantive Legal Authority. The specific legal authority that authorized the DoD to enter into and carry out the agreement. Sources include the United States Constitution, federal statutes, or higher-level IAs.

5.7. Conclusion. The act of signing, initialing, responding, or otherwise indicating the acceptance of an IA by the United States.

**6. Format and Nomenclature.** Format, as such, is not normally an important factor; however, it is beneficial to use a standard format under customary international law and Department of Defense practice. As a minimum, all agreements will contain the information listed in Attachment 2.

6.1. Terms used in the development of international agreements such as memorandum of understanding (MOU), memorandum of agreement (MOA), memorandum of arrangement (MOA), exchange of notes, exchange of letters, technical agreement (TA), technical arrangement (TA), protocol, diplomatic note (DIPNOTE), note verbal, aide memoire, agreed minutes, contract, arrangement, statement of intent (SOI), letter of intent (LOI), statement of understanding (SOU), terms of reference (TOR) or any other name connoting a similar legal consequence do not carry an independent meaning outside the content of such agreement. For example, a request by a proponent to develop an “MOU” with a host nation is devoid of any meaning outside the intended substance of such MOU and may carry a totally different meaning to a host nation.

**7. Categories of IAs within USAFE-AFAFRICA Negotiating Authority.**

**7.1. Units may not negotiate or conclude any of the following types of agreements without prior written approval from USAFE-AFAFRICA/A5/8/9.** USAFE-AFAFRICA/A8Z will coordinate and submit requests as required to the appropriate higher or lateral organization, as necessary. All requests to initiate intelligence agreements will be forwarded to the Director of Intelligence (USAFE-AFAFRICA/A2).

7.2. Implementing Agreements falling under a higher-level agreement or umbrella agreement. Technical, operational, working, or similar agreements or arrangements that are predominantly Air Force matters, concluded pursuant to a treaty or executive agreement that entails implementing agreements.

7.3. Arrangements with allied or friendly countries or international organizations involving predominantly Air Force matters for cooperative or reciprocal operational, logistical, or other military support. These include arrangements for the shared use or licensing of military equipment, facilities, services, and nonphysical resources.

7.4. Agreements that involve predominantly Air Force matters related to combined military planning, command relationships, military exercises and operations, minor and emergency force deployment, and exchange programs with air forces of other governments.

7.5. Agreements that involve predominantly Air Force matters related to the collection and exchange of military information or data, other than military intelligence.

7.6. Agreements that involve predominantly Air Force health and medical matters, provided such agreements are not implemented through the Security Assistance program. These health and medical activities include cooperative research, development, testing, evaluation, technical data exchange, and related standardization agreements.

7.7. Agreements that involve predominantly Air Force matters related to the sharing or exchange of DoD communications equipment, facilities, support, services, or other communications resources with a foreign country or alliance organization such as North Atlantic Treaty Organization (NATO) (including agreements pursuant to 10 USC §2350f, *Procurement of Communications Support and Related Supplies and Services*), the use of US

military frequencies or frequency bands, and the use of US communications facilities and systems by foreign organizations, whether overseas or in the United States. Coordinate with EUCOM or AFRICOM if such agreement does not consist mainly of Air Force matters and involves other CCMD components.

7.8. When delegated by United States European Command, Logistics Directorate (USEUCOM/ECJ4) or United States Africa Command, Logistics Directorate (USAFRICOM/ACJ4), Mutual Support Agreements (MSA), Acquisition and Cross-Servicing Agreements (ACSA) and their sub-tier Implementing Arrangements that allow for the execution of transactions under the NATO Mutual Support Act (NMSA), as amended, and which are accomplished according to AFI 25-301, *Acquisition and Cross-Servicing Agreements (ACSA)*.

7.9. For purposes of this instruction, an amendment or addition (including appendix, annex, etc.) to an IA is itself an IA and must be treated as such.

## **8. Agreements Not Normally Considered Reportable IAs under the Case Act.**

8.1. Contracts concluded under authority of United States procurement statutes and the Federal Acquisition Regulation (FAR).

8.2. Foreign military sales (FMS) cases, leases, and other transactions covered under the Arms Export Control Act.

8.3. NATO Standardization Agreements (STANAGs) or other multilateral or bilateral agreements that merely record the adoption of like or similar military equipment, ammunition, supplies and stores, or operational, logistical, and administrative procedures. However, a STANAG that provides for mutual support or cross-servicing (MSA or ACSA and their Implementing Arrangements) of military equipment, ammunition, supplies and stores, or for mutual rendering of defense services, including training, is an IA. ACSA orders or transactions pursuant to those agreements are not considered IAs.

8.4. Arrangements for the acquisition of real estate or installations and facilities according to procedures prescribed in existing treaties or agreements, such as accommodation program requests. Leases under 10 USC §2667, Non-excess Property; 10 USC §2675, Leases: foreign countries; and 22 USC §2796, Leasing Authority

8.5. Agreements concluded solely to define administrative procedures (e.g., an agreement that simply identifies the appropriate office to contact for a particular matter, specifies format, or provides an estimate of processing time).

8.6. Acquisitions or orders pursuant to cross-servicing agreements made under the authority of the NATO Mutual Support Act (10 USC §2341 et seq.) and DoD Directive 2010.9, Acquisition and Cross-Servicing Agreements. Umbrella agreements, implementing arrangements and cross-servicing agreements under these authorities are international agreements. Contact USAFE-AFAFRICA/A4RI (International Logistics) for implementation guidance.

**9. Advance Payment Terms. Any agreement involving advance payments is strongly discouraged.** Advance payments are the least desirable method of financing. It is highly discouraged and should be used only in those rare instances in order to comply with a foreign country's laws and ministerial directives. Advance payments to foreign governments and

international organizations are authorized under Title 10 U.S.C. §2396, *Advances for payment for compliance with foreign laws, rent in foreign countries, tuition, and pay and supplies of armed forces of friendly foreign countries and advance payments*, or Title 10 U.S.C. 2307, *Contract Financing*. In those cases where USAFE-AFAFRICA/A5/8/9 concurs with a proposal to include advance payment terms in an international agreement, the unit will obtain authorization to include such provisions by requesting, through the Director of Financial Management and Comptroller (USAFE-AFAFRICA/FM), approval from Secretary of the Air Force, Directorate of Accounting, Policy, and Reporting (SAF/FMPR). Consult AFI 51-701, for the required minimum information (NOTE: because circumstances vary, SAF/FMPB may require additional information). At a minimum the following information must be collected:

- 9.1. The foreign law or ministerial directive that requires payment in advance.
- 9.2. Location and description of project being financed.
- 9.3. Cost of the project and amount of advance needed.
- 9.4. Name and location of the organization designated as recipient of the advance.
- 9.5. Scheduled dates for the advance payments and the start of the project.
- 9.6. Detailed description of the payment and recoupment/reconciliation procedures.
- 9.7. Provisions of interest, if any, to be accrued from the funds advanced.
- 9.8. Name and address of the organization negotiating the advance.
- 9.9. Appropriation funding the project.
- 9.10. Statement indicating project funding status (that is, fully, partially, or not funded).

MARK D. CAMERER, Brigadier General, USAF  
Director of Plans, Programs and Analyses

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Title 1 United States Code, Section 112b, *United States international agreements; transmission to Congress*

Title 10 United States Code, Section 2304 (c) (4), *Contracts: competition and requirements*

Title 10 United States Code, Section 2307, *Contract financing*

Title 10 United States Code, Section 2396, *Advances for payments for compliance with foreign laws, rent in foreign countries, tuition, public utility services, and pay and supplies of armed forces of friendly foreign countries*

Title 10 United States Code, Section 2667, *Leases: non-excess property of military departments and Defense Agencies*

Title 10 United States Code, Section 2675, *Leases: foreign countries* E.O. 12114, *Environmental Effects Abroad of Major Federal Actions* DoDD 2010.9, *Acquisition and Cross-Servicing Agreements*

DoDD 5230.11, *Disclosure of Classified Military Information to Foreign Governments and International Organizations*

DoDD 5530.3, *International Agreements*

DoDI 7000.14, *DoD Financial Management Policy and Procedures*

AFI 25-301, *Acquisition and Cross-servicing Agreements (ACSA)*, 5 May 2011

AFI 32-7061, *The Environmental Impact Analysis Process*, 12 Mar 2003

AFPD 51-7, *International Law*, 5 Feb 2009

AFI 51-701, *Negotiating, Concluding, Reporting, and Maintaining International Agreements*, 6 May 1994

ED 5-13, *International Agreements; Authority and Responsibilities*

ACI 5800.05, *International Agreements*.

**Prescribed Forms**

None

**Adopted Forms**

AF 847, *Recommendation For Change Of Publication*<sup>9</sup>

## Attachment 2

### SAMPLE INTERNATIONAL AGREEMENT FORMAT

**A2.1. The following example (with sample clauses) provides guidance for the format of an IA.** The sample clauses are guidelines and may be adapted to meet individual functional requirements.

TITLE PAGE (Agreement) Between  
[United States Air Forces in Europe-Air Forces Africa (USAFE-AFAFRICA)]

and  
(Host Nation)  
[Request at Air Force organizational level or below MOD Level]

Concerning [Title of Agreement]

#### Article I Purpose

This agreement establishes the terms and conditions for (describe purpose of agreement) between the (list full name of parties), henceforth referred to as "the parties."

#### Article II Authority

The Commander, United States Air Forces in Europe-Air Forces Africa (COMUSAFE-AFAFRICA), represented by (name applicable office), and (title of other party) pursuant to (cite applicable legal authority, e.g., The North Atlantic Treaty of April 4, 1949, NATO Status of Forces Agreement of 19 June 1951, etc.) enter into this agreement.

#### Article III Responsibility

The parties agree to abide by the following terms and conditions; (list terms and conditions for both parties). Be specific about time, quantity, and methods of performance. (For NATO Mutual Support Act arrangements see AF1 25-301.)

Article IV  
Financial Responsibilities

Either:

Neither party shall incur any financial obligations as a result of this agreement.

Or:

Financial obligations will accrue to (list applicable party) upon (list all acts, dates, or other conditions necessary to give rise to financial obligation, e.g., completion of performance as signified by presentation of appropriate documentation). The financial obligation of (party) will be satisfied by payment to (list name, address, and phone number of applicable agency) in (specify currency) within (specify time period) of receipt of (specify documentation). The parties agree to the following method of pricing:

(Specify method of pricing, e.g., price lists.)

(List other applicable financial conditions and remedies, i.e., foreign currency payment provisions.) An Anti-Deficiency act clause according to national laws/appropriation procedures is suggested for all agreements (e.g., All financial obligations assumed by the participants are conditioned upon authorization and appropriation of funds in accordance with applicable national laws).

Article V  
Settlement of Disputes

Disputes will be resolved by negotiations between the parties at the lowest level possible. Disputes that cannot be resolved at lower levels will be referred to higher-levels within their governments (or organizations, as appropriate) for resolution. Disputes will not be referred to arbitration, litigation, or other resolution by a third party. Inconsistencies between the present agreement and other existing agreements will be resolved through consultation between the parties.

Article VI  
Modification of Agreement

This agreement may be amended or supplemented at any time upon mutual consent of both parties. Amendments and supplements must be in writing and will include full title and date of conclusion of the agreement being amended.

Article VII  
Inception, Duration, and Termination

This agreement will become effective upon the date of the last signature. It will remain in effect for (e.g., 5 years). This agreement may be terminated immediately if both parties consent in writing to immediate termination or by either party giving (e.g., 6, 9, 12) months written notice to the other party. This agreement may be extended upon mutual written consent of the parties.

This agreement is done in (number) original copies; (number) in the English language (and number in the foreign language, if applicable). In the event of conflict, the English text is the governing text (or, each text is equally authentic).

FOR UNITED STATES AIR FORCES IN  
EUROPE-AIR FORCES AFRICA

FOR (LIST AGENCY AND HOST  
NATION)

\_\_\_\_\_  
Signed by: (Typed Name/Title/ Office  
Symbol)

\_\_\_\_\_  
Signed by: (Typed Name/Title/ Office  
Symbol)

at: (Location)  
on: (Day/Month/Year)

at: (Location)  
on: (Day/Month/Year)

Annex A  
Definitions

(List definitions of appropriate terms and acronyms).

Annex B  
Instructions

(Include detailed instructions not included in basic agreement.)

Annex C  
Form or forms (specify by name)

(Attach relevant forms)

**Attachment 3****INTERNATIONAL AGREEMENT CHECKLIST****A3.1. Phase 1—Prenegotiation (Non-Binding Discussion).**

- A3.1.1. Define the objective and determine requirements to attain the objective.
- A3.1.2. Determine releasability to foreign nationals of classified and controlled unclassified military information to foreign representatives with USAFE-AFAFRICA/A2N.
- A3.1.3. If necessary, prepare a background bullet paper on the proposed agreement.
- A3.1.4. Conduct preliminary nonbinding discussions with counterparts and determine who will draft the proposed agreement, issues to be covered, and scope of the agreement.
- A3.1.5. Prepare a working draft agreement.
- A3.1.6. Request a financial review and a preliminary fiscal memorandum agreements from FM.
- A3.1.7. Request a legal review and preliminary legal memorandum from JA.
- A3.1.8. If necessary and with assistance from AFCEC, determine environmental impact of any action that will result from implementing the agreement.
- A3.1.9. Request authority to negotiate from USAFE-AFAFRICA/A8Z via TMT.

**A3.2. Phase 2—Negotiation (Binding Discussion).**

- A3.2.1. Provide a copy of the final draft agreement to your foreign nation counterpart for their approval. Retain all other documents, e.g., background papers, legal memorandum, financial review.
- A3.2.2. Negotiate for final agreement.
- A3.2.3. Coordinate any changes/revisions to the agreement with appropriate USAFE-AFAFRICA staff.

**A3.3. Phase 3—Concluding an Agreement (Signing of Agreement).**

- A3.3.1. Ensure English is the governing language (so stated in the text) if the agreement is to be signed in two or more languages. If this is not possible, have the foreign language text of the agreement compared to the English language text and attach a language certification memorandum.
- A3.3.2. Once the agreement is acceptable to all parties, request authority to conclude from USAFE-AFAFRICA/A8Z.
- A3.3.3. After receiving authority to conclude, have the other party sign two originals, in both languages as applicable, and return them to the designated USAFE-AFAFRICA signatory for countersignature. Note: Case Act reporting time limit begins on the date of the last signature and the agreement must be received by the Office of the Assistant Legal Advisor for Treaty Affairs, Department of State not later than 20 calendar days.

A3.3.4. Return one original (for each language if applicable) of the signed agreement to the other party. Retain one signed original (in each language if applicable) for the US. This original agreement will be provided to USAFE-AFAFRICA/A8Z during Phase 4 - Reporting.

**A3.4. Phase 4—Reporting.**

A3.4.1. Deliver the original agreement to USAFE-AFAFRICA/A8Z within 3 days after the last signature.

A3.4.2. USAFE-AFAFRICA/A8Z will report the agreement according to Attachment 4.

## Attachment 4

**REPORTING INTERNATIONAL AGREEMENTS**

**A4.1. Reporting.** All IAs concluded by USAFE-AFAFRICA will be reported by either USAFE-AFAFRICA/A8Z. The agreement must arrive at the Office of the Assistant Legal Advisor for Treaty Affairs, Department of State, not later than 20 calendar days after signature of the agreement. The letter of transmittal will be prepared in the following format:

**Table A4.1. Addressees.**

Department of State Attn: Assistant Legal Advisor Treaty Affairs Washington D.C. 20520	Original letter of transmittal and 2 certified copies of the agreement.
DoD General Counsel 1600 Defense Pentagon Washington D.C. 20301-1600	1 copy of the letter of transmittal and 2 certified copies of the agreement
Office of the General Counsel Secretary of the Air Force 1740 Air Force Pentagon Washington D.C. 20330-1740	1 copy of the letter of transmittal and 1 certified copy of the agreement.
International and Operations Law Division Office of The Judge Advocate General 1420 Air Force Pentagon Washington D.C. 20330-1420	1 copy of the letter of transmittal and 1 certified copy of the agreement.
HQ USEUCOM/ECJA Unit 30400 APO AE 09131	1 copy of the letter of transmittal and 1 certified copy of the agreement.
HQ USEUCOM/ECJ5 Unit 30400 APO AE 09131	1 copy of the letter of transmittal only.
HQ USAFRICOM/ACJ05-OLC Unit 29951 APO AE 09751	1 copy of the letter of transmittal and 1 certified copy of the agreement.
HQ USAFRICOM/ACJ5 Unit 29951 APO AE 09751	1 copy of the letter of transmittal and 1 certified copy of the agreement.

**A4.2. Letter of Transmittal.** The letter of transmittal will include the following:

A4.2.1. Identifies type of agreement: bilateral or multilateral.

A4.2.2. Specifies the countries or international organization(s) that are party to the agreement.

A4.2.3. Lists all US and foreign governmental agencies or units or international organizations responsible for carrying out the agreement.

A4.2.4. Specifies the full title and security classification of the agreement.

- A4.2.5. Specifies the subject of the agreement and summarizes the agreement.
- A4.2.6. Explains why the agreement was concluded now and what the effect of the agreement is likely to be, including benefits to each party.
- A4.2.7. Indicates geographic location where the agreement was signed.
- A4.2.8. Specifies the legal authority that authorized the DoD to enter into and carry out the agreement (specifying both the procedural authority under this regulation and the substantive legal authority for each obligation undertaken on behalf of the United States under the agreement).
- A4.2.9. States the date of entry into force.
- A4.2.10. States the date of termination.
- A4.2.11. Prints the names of all signing officials, their titles and the offices they represent, and their countries or international organization.
- A4.2.12. States the full titles and dates of any agreements, if any, upon which this agreement is based or amends.
- A4.2.13. States the date of signature of this agreement.
- A4.2.14. States any conditions for entry into force.
- A4.2.15. Specifies the organizational element responsible for maintaining the negotiating history.

**Attachment 5**

**SAMPLE MEMORANDUM FOR FOREIGN LANGUAGE AGREEMENT**

**A5.1. Memorandum.** To be attached to translation of foreign language Text of Agreement.

Date

I certify that the (foreign language) text and the English language text of the (title of agreement) are in conformity with each other and that both texts have the same meaning in all substantive respects.

Signed, (Title)