

CECC-J Regulation No. 550-1-1	Department of the Army U.S. Army Corps of Engineers Washington, DC 20314-1000	ER 550-1-1 1 Oct 84
	Foreign Countries and Nationals INTERNATIONAL AGREEMENTS	
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DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, DC 20314-1000

DAEN-CCZ-A

Regulation
No. 550-1-1

1 October 1984

Foreign Countries and Nationals
INTERNATIONAL AGREEMENTS

Issue of supplements to this regulation is prohibited except upon approval of HQDA (DAEN-CCZ-A) WASH DC 20314-1000.

1. Purpose. This regulation prescribes policy, responsibilities, and procedures for the negotiation, conclusion, forwarding, and depositing of international agreements entered into on behalf of USACE pursuant to the authority of the Chief of Engineers.

2. Applicability. This regulation applies to all HQUSACE/OCE elements and all field operating activities.

3. References.

a. 1 U.S.C. 112b (the "Case Act");

b. 22 C.F.R. 181.1 et seq., "Coordination and Reporting of International Agreements," 1 April 1983 (State Department Regulations Implementing the Case Act);

c. DoD Directive 5530.3, "International Agreements," 6 December 1979;

d. DoD Instruction 2050.1, "Delegated Approval Authority to Negotiate and Conclude International Agreements," 1 March 1977; and

e. AR 550-51, "Authority and Responsibility for Negotiating, Concluding, Forwarding, and Depositing of International Agreements," 1 March 1981.

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4. Definitions. For the purposes of this regulation, the following definitions apply:

a. International Agreement.

(1) Any agreement that is concluded with one or more foreign governments (including their agencies, instrumentalities, or political subdivisions) or with an international organization and:

(a) Is signed or agreed to by a civilian or military officer or employee of any organizational element of USACE, or by a representative of the Department of State or other agency of the U.S. Government on behalf of USACE; and

(b) Signifies the intention of the parties to be bound by international law. In the absence of any provision in the agreement with respect to governing law, it is presumed to be governed by international law.

(2) The title of the agreement is not controlling. It may be identified as an international agreement, memorandum of understanding, exchange of notes, exchange of letters, technical arrangement, protocol, note verbale, aide memoire, agreed minute, plan, contract, arrangement, or any other name having a similar legal consequence.

(3) If an undertaking constitutes an international agreement within the meaning of paragraph 4.a.(1), then a subsequent extension or modification of the undertaking will itself constitute an international agreement for purposes of this regulation.

(4) Any oral agreement that meets the criteria in paragraph 4.a.(1) is an international agreement and must be reduced to writing by the USACE representative who enters into the agreement.

(5) The following are not normally international agreements:

(a) Contracts made under the Defense Acquisition Regulations or Federal Acquisition Regulations;

(b) Foreign military sales credit agreements;

(c) Foreign military sales letters of intent executed on DD Form 1513 (US DOD Offer and Acceptance);

(d) NATO Standardization Agreements (STANAGS) and ABCA Quadripartite Standardization Agreements (QSTAGS) that record the adoption of (i) like or similar military equipment, ammunition, supplies, and stores, or (ii) operational, logistic, or administrative procedures;

(e) Leases under 10 U.S.C. 2667; and

(f) Agreements that establish only administrative procedures.

(6) This regulation does not apply to international agreements negotiated or concluded by USACE personnel on behalf of other DA or DoD agencies such as agreements implementing pre-existing Status of Forces Agreements (SOFAs) and agreements concerning cooperative research conducted under NATO or ABCA research panels and study groups. Such agreements will continue to be governed by applicable DA and DoD regulations. However, an information copy of the agreements will be forwarded to the Chief Counsel, HQUSACE (Attn. DAEN-CCZ-B) WASH DC 20314-1000.

(7) Any question as to whether an oral undertaking or written document constitutes an international agreement, as defined in this paragraph, shall be referred to the Chief Counsel, HQUSACE, for resolution.

b. Negotiation.

(1) Communication by any means of a position or an offer on behalf of the United States, USACE, DA, or DoD to an agent or representative of an international organization or a foreign government (including an agency, instrumentality, or political subdivision thereof) in such detail that its acceptance would result in an international agreement.

(2) The term "negotiation" also includes any communication conditional on later approval by higher authority, but it excludes preliminary and exploratory discussions or routine meetings that are not binding on any side.

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c. Conclusion.

(1) An act of signing, initialing, responding, or otherwise indicating the acceptance of an international agreement, as then negotiated, by the United States side.

(2) The authority to conclude an international agreement should be distinguished from the authority to negotiate such an agreement.

5. Authority to Negotiate and Conclude International Agreements. The Corps' authority to negotiate and conclude international agreements is vested with the Chief of Engineers. The Chief of Engineers has not granted any general delegation of this authority.

a. AR 550-51. Under AR 550-51, the Chief of Engineers is authorized to negotiate and conclude the following types of international agreements:

(1) Technical, operational, working, or similar agreements or arrangements concluded pursuant to a treaty or pre-existing international agreement that entails implementing arrangements.

(2) Agreements with allied and friendly countries and organizations for cooperative or reciprocal operational, logistical, or other military support, including arrangements for shared use or licensing of military equipment, facilities, services, and nonphysical resources.

(3) Agreements relating to combined military planning, command relationships, military exercises and operations, minor and emergency force deployment, and exchange programs.

(4) Agreements for the collection or exchange of military information and data.

(5) Cooperative research, development, data exchange, and related licensed production and standardization agreements concerning health and medical matters.

b. Additional Authority. In addition, the Chief of Engineers may be authorized to negotiate and conclude other types of international agreements. Inquiries concerning the Chief's additional authority will be examined on a case-by-case basis and should be addressed to the Chief Counsel, HQUSACE (Attn. DAEN-CCZ-B) WASH DC 20314-1000.

c. Restriction. USACE may not enter into an international agreement unless USACE possesses both procedural authority to negotiate and conclude the agreement and substantive authority to carry out each obligation that USACE proposes to assume under the agreement. This paragraph addresses only the Chief's procedural authority to negotiate and conclude international agreements. The substantive authority to enter into an international agreement must be stated in the legal memorandum required by paragraph 6.b.(2).

6. Delegation of Negotiating Authority.

a. Written Approval Required. USACE personnel shall neither negotiate an international agreement nor request another U.S. Government department or agency to negotiate an international agreement on behalf of USACE without the prior written approval of the Chief of Engineers.

b. Request for Negotiating Authority. A HQUSACE office or directorate or a field operating activity that desires to negotiate an international agreement shall submit a request for delegation of procedural authority to negotiate the agreement to the Chief of Engineers, Commander, HQUSACE (DAEN-ZA) WASH DC 20314-1000. A field operating activity shall submit the request through the head of the HQUSACE office or directorate that has the primary interest in the negotiation of the agreement. In the case of international agreements concerning non-military matters, the International Affairs Division, Directorate of Civil Works, HQUSACE, will help prepare and coordinate the request. The request shall include:

(1) A general outline or preliminary draft text of the proposed international agreement;

(2) A legal memorandum stating the constitutional, statutory, or other legal authority available to carry out each obligation

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proposed to be assumed by USACE in the agreement and an explanation of any other relevant legal considerations;

(3) A fiscal memorandum setting forth the items below--

(a) Estimated cost, if any, of each obligation proposed to be assumed by USACE in the agreement;

(b) Source of funds to be obligated, or a statement that additional funds will be requested for a specified fiscal year(s);

(4) An estimate of the USACE manpower requirements involved; and

(5) A fact sheet containing any supplementary information that would facilitate the Chief's decision.

c. Coordination within HQUSACE. The Chief Counsel and the heads of other appropriate offices and directorates within HQUSACE shall review requests for negotiating authority before they are submitted to the Chief of Engineers.

d. External Coordination. Once the Chief of Engineers grants a request for negotiating authority to a HQUSACE office or directorate or a field operating activity:

(1) The head of the HQUSACE office or directorate or field operating activity shall, in coordination with the Chief Counsel and the heads of other appropriate offices and directorates within HQUSACE, consult fully with DoD and DA organizational elements that have an interest in the subject matter of the proposed agreement before proceeding with the negotiations (In particular, all proposed international agreements having policy significance will be coordinated with the Office of the Under Secretary of Defense for Policy);

(2) If the proposed international agreement would require USACE to furnish or expend funds beyond or in addition to those authorized in an approved budget, the head of the HQUSACE office or directorate or field operating activity shall, in coordination with the Chief Counsel and the heads of other appropriate offices and directorates within HQUSACE, seek the approval of the

Director of the Office of Management and Budget before proceeding with the negotiations; and

(3) The Chief Counsel, HQUSACE, shall immediately forward the information outlined in paragraph 6.b. to the Office of the Legal Advisor of the Department of State and to other interested bureaus and offices within that Department, as required by 22 C.F.R. 181.4(d). The proposed international agreement may not be concluded until at least 50 days after such transmittals have been made.

7. Conclusion of International Agreements.

a. General. The Corps' authority to conclude international agreements is vested in the Chief of Engineers and will not be delegated except in exceptional circumstances upon prior written approval of the Chief of Engineers.

b. Conclusion by the Chief of Engineers.

(1) Once an international agreement has been successfully negotiated, the HQUSACE office or directorate or the field operating activity that has conducted the negotiations on behalf of USACE shall request the Chief of Engineers to conclude the agreement. The request shall be submitted to the Chief of Engineers: Commander, HQUSACE (DAEN-ZA) WASH DC 20314-1000. A field operating activity shall submit the request through the head of the HQUSACE office or directorate that has the primary interest in the conclusion of the agreement. In the case of international agreements concerning non-military matters, the International Affairs Division, Directorate of Civil Works, HQUSACE, will help prepare and coordinate the request. The request shall include:

(a) The full text of the agreement and all accompanying papers, including any agreed minutes, exchanges of notes, side letters, and, where appropriate, the certifying foreign language text memorandum described in paragraph 8.b.; and

(b) A memorandum describing any changes in the information submitted pursuant to paragraphs 6.b.(2), 6.b.(3) and 6.b.(4).

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(2) The Chief Counsel and the heads of other appropriate offices and directorates within HQUSACE shall review requests that the Chief of Engineers conclude an international agreement before the requests are submitted to the Chief of Engineers.

c. Delegation of Concluding Authority. When exceptional circumstances are present, the head of the HQUSACE office or directorate or the field operating activity that has negotiated an international agreement on behalf of USACE may request the Chief of Engineers to delegate the Chief's authority to conclude the international agreement. The request shall be submitted to the Chief of Engineers: Commander, HQUSACE (DAEN-ZA) WASH DC 20314-1000. The head of a field operating activity shall submit such a request through the head of the HQUSACE office or directorate that has the primary interest in the conclusion of the agreement. In the case of international agreements concerning non-military matters, the International Affairs Division, Directorate of Civil Works, HQUSACE, will help prepare and coordinate the request. This request shall include all the materials required for submission in paragraph 7.b., in addition to a statement describing in full the exceptional circumstances which require delegation of the Chief's authority to conclude international agreements.

8. Language Requirements. International agreements will not be concluded by USACE personnel in a foreign language text (i.e., in a text other than English) unless all of the requirements below are met:

a. Governing Language Provision. The agreement shall expressly provide that:

(1) The English language text shall be considered by the parties as the governing text in the event of a conflict between the different language texts; or

(2) The English language text and foreign language text(s) are equally authentic.

b. Certifying Foreign Language Text Memorandum. Before conclusion of the agreement, each foreign language text of the agreement shall be accompanied by a memorandum certifying that

the foreign language text and the English language text agree with each other and that both texts have the same meaning in all substantive respects. This memorandum must be signed and dated by a civilian, military, or local translator who has been designated as qualified, consistent with local practices, by the USACE official authorized to negotiate the agreement.

c. Transmittal of the Certifying Foreign Language Text Memorandum. The certifying memorandum described in paragraph 8.b. shall be transmitted with each of the copies of the agreement to the central repository identified in paragraph 10 and with each of the copies transmitted to any other office pursuant to this regulation.

9. Case Act Implementation.

a. Transmittal to the Chief Counsel. The head of a HQUSACE office or directorate or a field operating activity that has negotiated an international agreement on behalf of USACE shall transmit the agreement to the Chief Counsel, HQUSACE (Attn. DAEN-CCZ-B) WASH DC 20314-1000, as soon as possible after it has been concluded and in any event not later than 10 days after the agreement has been signed.

b. Transmittal to DA, DoD, and the State Department. In order to comply with the requirements of the Case Act and applicable regulations, the Chief Counsel (in coordination with appropriate USACE organizational elements) shall transmit the text of agreements concluded pursuant to this regulation to the offices shown below within 20 days after the agreement has been signed:

(1) The original text to the Assistant Legal Advisor for Treaty Affairs, Department of State (If the original text of a concluded agreement is not available, certified copies must be transmitted in the same manner as original texts);

(2) Two reproducible certified copies to the General Counsel, Department of Defense; and

(3) One reproducible certified copy to any other appropriate office within DA or DoD.

c. Special Requirements for State Department Transmittals. Transmittals of concluded agreements to the Assistant Legal Advisor for Treaty Affairs pursuant to this paragraph shall include the signed or initialed original texts, together with all accompanying papers, such as agreed minutes, exchanges of notes, and side letters. If an international agreement has been concluded in more than one language, the transmittal shall include the texts of all languages in which the agreement was signed or initialed, as well as the certifying foreign language text memorandum required by paragraph 8.b. The texts must be accurate, legible, and complete. Names and identities of the individuals signing or initialing the agreements, for the foreign government as well as for the United States, must be separately provided unless clearly evident in the texts transmitted.

d. Certification Requirements. A certified copy must be an exact copy of the signed original and must be accompanied by a memorandum briefly describing the document certified. In addition, the memorandum should state, "I certify that the text is a true copy of the original signed or initialed by (insert full name of signing officer) on (insert date of signing) at (insert location of signing)," and must be signed by the certifying officer.

e. Late Transmittals. Heads of HQUSACE offices and directorates and field operating activities will ensure that agreements concluded pursuant to this regulation are transmitted to the Chief Counsel within the 10 day time period stated in paragraph 9.a. If the text of the agreement is sent more than 10 days after it has been signed, the transmittal document forwarding the text of the agreement will fully and completely describe the reasons for the late transmittal. Any such statements will be used, as necessary, in the preparation of the annual report on late transmittals to be signed by the President and transmitted to the Congress by the State Department, as required by subsection (b) of the Case Act.

f. Transmittals to Congress. The Secretary of State determines for and within the executive branch whether an international agreement, as defined in this regulation, is required by the Case Act to be transmitted to Congress and makes the required transmittals. These questions are resolved in the first instance

by the Assistant Legal Advisor for Treaty Affairs, Department of State.

10. Central Repository. In order to implement the legal requirements set out in this regulation, relevant DA regulations, DoD directives and any other applicable statutory or regulatory provisions, the Chief Counsel, HQUSACE, shall maintain the central repository for all international agreements that are coordinated, negotiated, or concluded by USACE personnel.

a. Agreements Concluded After 1 October 1984. The following documents shall be forwarded to the Chief Counsel, HQUSACE (Attn. DAEN-CCZ-B) WASH DC 20314-1000, in conjunction with the conclusion of an international agreement:

(1) The original text and two certified copies of the agreement and all accompanying papers, as specified in paragraph 9;

(2) The certifying foreign language text memorandum required by paragraph 8.b. for foreign language texts;

(3) Any documents related to (a) the request for authority to negotiate the agreement, and (b) the request that the Chief of Engineers conclude or authorize the conclusion of the agreement;

(4) Any State Department, DoD, DA or USACE instructions regarding the negotiation or conclusion of the agreement; and

(5) The complete negotiating history file for each agreement, including coordination with the Department of State, DoD, DA, and appropriate USACE organizational elements.

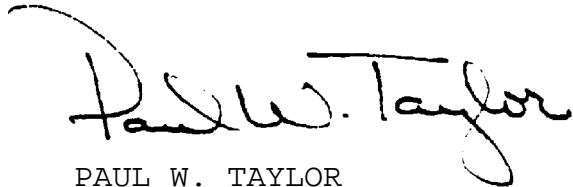
b. Agreements Concluded Before 1 October 1984. USACE elements in possession of international agreements or copies of international agreements that were concluded before 16 July 1984, shall:

(1) Notify the Chief Counsel of the existence of the agreements; and

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(2) Provide copies of the international agreements to the Chief Counsel and, as requested by the Chief Counsel, any additional documents and information about the agreements that is in their possession.

FOR THE COMMANDER:

A handwritten signature in black ink that reads "Paul W. Taylor". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke under the "T".

PAUL W. TAYLOR
Colonel, Corps of Engineers
Chief of Staff