

Appendix

(excerpt from Draft AR 550-51 (as of 25 May 2005))

(6) *Policy Significant*. Any issue identified during the Agreement Process³⁹ which, if the subject of an international agreement, in whole or in part, would result in application of the rules in paragraph 8.4.1 of *DOD Directive 5530.3* regarding agreements “having policy significance”. Under *DOD Directive 5530.3* agreements “having policy significance” include agreements that:

- (a) specify national disclosure, technology-sharing or work-sharing arrangements, coproduction 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; or
- (d) would create security commitments currently not assumed by the United States in existing mutual security or other defense agreements and arrangements, or which would increase U.S. obligations with respect to the defense of a foreign government or area.

There is no comprehensive list of subjects that fall within this category. In the event of uncertainty as to the applicability of this definition to a specific issue or agreement, Army elements should seek guidance from the supported Combatant Command Legal Advisor. However, any agreement provision related to any of the following subjects should be regarded as presumptively “policy significant”:

- (a) 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);
- (b) 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 Army policies related to environmental stewardship);
- (c) provisions that would impose a new obligation on the United States to respect or obey foreign law;
- (d) provisions that would compromise the ability of U.S. forces to comply with all applicable force protection and security directives, regulations, and policies, *e.g.*, by limiting the ability of U.S. forces to carry weapons or ammunition;
- (e) provisions that create, modify, restrict or terminate permanent basing arrangements for U.S. forces in any country;
- (f) provisions imposing new obligations related to the payment of foreign taxes or granting immunity from foreign taxes;
- (g) provisions that are inconsistent with any existing policy of the DOD or the applicable Combatant Command; or
- (h) provisions that address in any fashion the jurisdiction of the International Criminal Court or any similar international tribunal *vis-à-vis* U.S. forces.

³⁹ Note: In the current draft, the “Agreement Process” is defined as “[t]he process by which an arrangement between the Army or an Army element and a foreign nation or international organization is conceived, proposed, negotiated, concluded, and implemented. The Agreement Process begins at the concept development phase, and continues through implementation of the ultimate arrangement.”