Audit Report

OFFICE OF THE INSPECTOR GENERAL

MANAGEMENT AND ADMINISTRATION OF INTERNATIONAL AGREEMENTS IN THE DEPARTMENT OF DEFENSE

Report No. 98-025 November 19, 1997

Department of Defense

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Acronyms

CINCPACFLT	Commander in Chief, Pacific Fleet
DLA	Defense Logistics Agency
OASD(ISA)	Office of the Assistant Secretary of Defense (International Security Affairs)
USCENTCOM	U.S. Central Command

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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November 19, 1997

MEMORANDUM FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE FOR POLICY
UNDER SECRETARY OF DEFENSE (COMPTROLLER)
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Audit Report on the Management and Administration of International Agreements in the Department of Defense (Report No. 98-025)

We are providing this report for review and comment. This report is the second in a series of reports on the management and administration of international agreements within the Department of Defense. Management comments on a draft of this report were considered in preparing the final report. The Joint Staff comments were responsive and additional comments are not required. The Under Secretary of Defense for Policy comments were nonresponsive and the General Counsel of the Department of Defense did not provide comments as of November 14, 1997.

DoD Directive 7650.3 requires that all unresolved issues be resolved promptly. As a result of unsolicited management comments, we also added Recommendation 4. to the Office of the Under Secretary of Defense (Comptroller). Therefore, we request that the Under Secretary of Defense for Policy, the Under Secretary of Defense (Comptroller), and the General Counsel of the Department of Defense provide comments on this report by January 19, 1998. See Part I for the required responses.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to Mr. Harlan M. Geyer, Audit Program Director, at (703) 604-9594 (DSN 664-9594) or Mr. Donald A. Bloomer, Audit Project Manager, at (703) 604-9477 (DSN 664-9477). See Appendix E for the report distribution. The audit team members are listed inside the back cover.

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Report No. 98-025 **November 19, 1997**
(Project No. 6RA-0085.01)

Management and Administration of International Agreements in the Department of Defense

Executive Summary

Introduction. The DoD, in the course of daily operations, enters into international agreements* with other countries on a variety of topics. The agreements may relate to issues such as access to airports and seaports in the event of an operational requirement, or the jurisdiction over members of the U.S. Armed Forces while they are stationed or deployed within a particular foreign country. This report is the second in a series of reports addressing the management and administration of international agreements in DoD, based on observations and information available within the Office of the Secretary of Defense, the Joint Staff, the U.S. Pacific Command, and the U.S. Central Command.

Audit Objectives. The overall audit objective was to evaluate whether the management and administration of international agreements between the United States and the countries in Southwest Asia and the Pacific Region support joint operations. We also evaluated whether the international agreements effectively meet the requirements of U.S. Forces in support of U.S. national interests. The audit also evaluated the management control program related to the overall audit objective.

Audit Results. The DoD is not adequately overseeing the management and administration of international agreements. DoD elements have not effectively addressed the continued requirement for existing international agreements and the incorporation of international agreements into the deliberate planning process. As a result, DoD has no assurance that existing international agreements continue to satisfy requirements. Please see Appendix A for the results of our review of the management control program.

Summary of Recommendations. We recommend issuing new guidance and clarifying existing guidance for authorizing the negotiation and conclusion of international agreements. We recommend enforcing existing guidance for the management and administration of international agreements. We also recommend clarifying existing guidance for tracking and reporting financial obligations and other fiscal implications of international agreements.

Management Comments. The Director, Foreign Military Rights Affairs, Office of the Assistant Secretary of Defense (International Security Affairs), replying for the Under Secretary of Defense for Policy, responded to the finding and recommendations in general terms. The Director stated that because of the constantly changing

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*This report discusses various types of international agreements, including verbal agreements, memorandums of understanding, memorandums of agreement, and contracts.

environment that constitutes international relations, international agreements are inherently not susceptible to being managed in the same manner normally applied to domestic programs with the U.S. Government. The Director further stated that, in his opinion, the benefits to be gained by implementing the recommendations were marginal in most cases. The Director also stated that he has a fundamental reservation regarding any attempt to apply management control criteria to international agreements *per se*. The Vice Director, Joint Staff, acknowledged the findings and concurred that work was needed to correct problems. The Vice Director stated that the recommendations to ensure compliance with DoD Directive 5530.3, identify all agreements that exist in an area of responsibility, validate the requirements, incorporate them into operation and exercise plans, and advise the Military Departments and DoD elements before their negotiation and conclusion; review unified commands' operation plans to ensure that applicable international agreements are included; include pertinent international agreements in Joint Staff sponsored exercises; and disseminate the annual consolidated list of joint agreements among the unified commands would be addressed with a change to Chairman of the Joint Chiefs of Staff Instruction 2300.1, scheduled for the first quarter of FY 1999. The Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), provided unsolicited comments to the draft report. The Deputy Chief Financial Officer stated that the authority for DoD Components' comptrollers to conduct financial reviews of international agreements is included in financial management regulations and that disbursements and receipts are accounted for at the DoD Component level at which they are executed. The Deputy Chief Financial Officer also stated that DoD Components are required to perform a price analysis of services or material contributed by foreign participants under an international agreement, that the analysis is both monetary and nonmonetary, and that the analysis is also used for evaluating the equitableness of the international agreement. The Chief, Armaments Cooperation Division, Deputy Under Secretary of the Air Force International Affairs, and the Chief, International and Operations Law Division, Office of the Judge Advocate General, Department of the Air Force, provided unsolicited comments to the draft report. The Air Force stated that it does maintain repositories of international agreements as required by DoD Directive 5530.3. The Air Force acknowledged that it was late in providing a listing of international agreements to the Office of the General Counsel of the Department of Defense and was not aware of the reason for the delay. The Staff Judge Advocate, U.S. Forces, Japan, also provided unsolicited comments to the draft report. The Staff Judge Advocate stated that rephrasing of proposed international agreements to be procedural or administrative agreements was merely the intelligent application of an attorney's drafting skills and was not an attempt to circumvent reporting requirements. As of November 6, 1997, the General Counsel of the Department of Defense had not provided comments on the draft of this report. See Part I and Appendix D for summaries of management comments and Part III for the complete texts of the comments.

Audit Response. This report portrays questionably effective controls in a program that can have a significant effect on warfighting capabilities. We disagree with the comments provided by the Director, Foreign Military Rights Affairs, and we request that he reconsider his position and provide additional comments, and we ask that the General Counsel of the Department of Defense provide comments on the report by January 19, 1998.

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Part I - Audit Results

Audit Background

The collapse of the Soviet Union and the Warsaw Pact have allowed DoD to focus its efforts on regional threats and increase its involvement in coalition operations. In the course of daily operations, DoD enters into international agreements[1] with other countries on a variety of topics. The agreements may permit access to airports and seaports in the event of an operational requirement, or define jurisdiction over members of the U.S. Armed Forces while they are stationed or deployed within a foreign country. Recent changes in legislation have also allowed DoD to expand the use of acquisition and cross servicing arrangements outside the participating member nations of the North Atlantic Treaty Organization. Inherent in the conclusion of an international agreement is a responsibility for DoD to ensure that both parties to the agreement fully satisfy their obligations under the terms of the agreement. To be able to monitor the execution of international agreements, DoD (at all levels) must have sufficient policies and procedures in effect to ensure that the United States is able to enjoy all of the benefits of established international agreements, while not spending more resources than required under the terms of the agreements. In other words, an effective and comprehensive management control program must be in place, active, and enforced. This report is the second in a series of reports addressing the management and administration of international agreements in DoD, based on observations and information available within the Office of the Secretary of Defense, the Joint Staff, the U.S. Pacific Command, and the U.S. Central Command (USCENTCOM).

DoD Criteria

DoD Directive 5530.3, "International Agreements," June 11, 1987, is the overarching guidance that has been promulgated by DoD for international agreements. The directive delegates authority to the Chairman of the Joint Chiefs of Staff to negotiate and conclude international agreements concerning operational command of joint forces, and agreements for other than uni-Service matters. DoD Directive 5530.3 also delegates to the Secretaries of the Military Departments the authority to negotiate and conclude international agreements

[1]This report discusses various types of international agreements, including verbal agreements, memorandums of understanding, memorandums of agreement, and contracts.

for uni-Service issues. Although other organizational elements of DoD are delegated authority to negotiate and conclude international agreements, the Defense agencies are not among them. Chairman of the Joint Chiefs of Staff Instruction 2300.01, "International Agreements," September 15, 1994, further delegates to the commanders in chief of the unified commands the authority to negotiate and conclude agreements for which approval authority has been delegated to the Chairman of the Joint Chiefs of Staff.

Audit Objectives

The overall objective of the audit was to evaluate whether the management and administration of international agreements between the United States and the countries in Southwest Asia and the Pacific Region support joint operations. We also evaluated whether the international agreements effectively meet the requirements of U.S. Forces in support of U.S. national interests. Additionally, we evaluated the management control program related to the overall audit objective. See Appendix A for a discussion of the scope and methodology and the review of the management control program. See Appendix B for a summary of the prior audit coverage related to the audit objectives.

Management of International Agreements

The DoD is not adequately overseeing international agreements. International agreements are not sufficiently incorporated into the deliberate planning process. DoD elements did not validate the continuing requirement for existing international agreements. International agreements did not receive adequate oversight because the Service, Joint, or DoD level did not have an effective management control program for international agreements. As a result, DoD has no assurance that existing international agreements continue to satisfy requirements, that the negotiating and conclusion of international agreements are being conducted in accordance with established policies and procedures, that DoD has identified all existing international agreements, and that DoD is receiving all the benefits of existing international agreements.

Variations of International Agreements

International agreements can take a variety of forms. An agreement can be the result of formal, protracted negotiations between the representatives of two countries, or it can be the result of an installation commander verbally agreeing on an issue with the mayor of a local community overseas. Intent of both (or all) parties to bind participants under international law is the defining factor. All DoD personnel must comply with the management controls governing international agreements in all instances because of the effects that they can have on DoD operations. The misapplication of a rule or omission of a procedure can have unintended consequences.

Application of the International Agreement Definition. DoD elements[2] have selectively applied the definition of international agreements. DoD elements also inconsistently applied the criteria for determining whether an arrangement is an international agreement. For example, a legal representative of U.S. Forces, Japan, stated that his office reviews all international agreements or proposals before negotiation of the agreements. The official stated that in many

[2]For purposes of this report, DoD elements will include the unified commands, Service Component commands, Defense Agencies, Military Departments, the Joint Staff, and the Office of the Secretary of Defense.

situations, the proposed agreement can be rephrased, making it appear to be a procedural arrangement instead of an international agreement. By rephrasing the agreement, U.S. Forces, Japan, can avoid the legal, financial, and reporting requirements that apply to international agreements under DoD Directive 5530.3.

DoD Directive 5530.3 states that verbal agreements can qualify as international agreements. The directive requires that all verbal agreements be reduced to written documentation, even if the foreign party does not sign the document. A USCENTCOM official stated that the custom of the countries in its area of responsibility is to establish "gentleman's agreements." That type of an agreement is usually a verbal agreement between a USCENTCOM representative and a member of an allied country. The USCENTCOM official stated that asking the foreign representative to sign an agreement would be considered offensive because the United States would appear to be questioning the integrity of the foreign official and his country. The USCENTCOM official stated, however, that it was also customary for an allied country to "never say no" to a request for assistance. As a result, no international agreement or written record documents the verbal agreement between the two parties as required by DoD Directive 5530.3, and USCENTCOM does not know whether the host country intends to provide the support or not. The importance of documenting verbal agreements was demonstrated when a USCENTCOM official stated that he could not remember the volume of laundry service to be provided by Saudi Arabian personnel under the assistance-in-kind program. The official stated that the Saudi Arabian representative was also unable to remember the quantity agreed upon and that neither party had documented the verbal agreement. Documenting verbal agreements, as required by DoD Directive 5530.3, ensures that situations like that are limited.

DoD Directive 5530.3 also defines contracts as international agreements with the exception of contracts executed under the Federal Acquisition Regulation. On March 1, 1992, the Navy Regional Contracting Center, Naples, Detachment Bahrain, entered into an agreement with the Dubai Ports Authority. The agreement was for port services, cargo handling, and related support to U.S. Navy personnel operating within the boundaries of the Dubai Ports Authority, Jebel Ali Port (a government-owned port). The legal counsel at the Navy Regional Contracting Center, Naples, Detachment Bahrain, stated that the agreement did not meet the conditions of being either a contract or an international agreement. The legal counsel stated that the Dubai representative specifically requested that certain phrases (required of all contracts executed under the Federal Acquisition Regulation) be omitted from the agreement. The

legal counsel stated that a common practice was that if an agreement is silent on Federal Acquisition Regulation phrases, the phrases are assumed to be included. Additionally, the legal counsel determined that the paragraph of the agreement dealing with disputes disclaims any legal action under international law. The paragraph states:

> . . . if any dispute arises from this agreement or any order placed under this agreement, the parties agree that the issue should be resolved on the part of the U.S. Government by the U.S. Representative and on the part of the Supplying Party by its representative. If a dispute remains unresolved at this level, the parties agree to raise the issue to succeedingly higher levels until the issue is resolved.

The agreement terminated on February 28, 1997. As of April 8, 1997, the agreement was being renegotiated by the Navy Regional Contracting Center, Naples, Detachment Bahrain, under the auspices that the agreement was neither a contract or an international agreement. However, a representative of the Office of the General Counsel of the Department of Defense stated that for a contract to be excluded from qualifying as an international agreement under DoD Directive 5530.3, the contract should contain all Federal Acquisition Regulation-required phrases.

For DoD to be able to effectively manage international agreements, all organizations must understand, and enforce, the criteria established in the DoD directive for identifying international agreements. The selective application of established criteria does not assist DoD in receiving support for the U.S. Armed Forces.

Policy Significance. DoD Directive 5530.3 reserves the right to negotiate and conclude international agreements that have policy significance within the Office of the Under Secretary of Defense for Policy. The Directive's criteria for determining whether an agreement has policy significance are very broad (see Glossary in Appendix C). As a result, the Services and the unified commands have selectively applied the criteria for defining policy significance. For example, a USCENTCOM legal officer stated that the Office of the Assistant Secretary of Defense (International Security Affairs), an office subordinate to the Under Secretary of Defense for Policy, has issued verbal guidance that all issues relating to military operations in the Kingdom of Saudi Arabia are considered policy significant. The issues can range in complexity from developing of a host nation support agreement to the mundane issue of what size bottle will be used to issue water to military personnel stationed in the country. An Office of the Assistant Secretary of Defense (International Security Affairs) official stated that no official document defines the criteria relating to issues having policy significance while operating in Saudi Arabia. However, the

official stated that USCENTCOM officials understand that all issues dealing with the Kingdom of Saudi Arabia will be approved through the Office of the Assistant Secretary of Defense (International Security Affairs) before a U.S. commitment. A USCENTCOM official stated that the Office of the Assistant Secretary of Defense (International Security Affairs) has not issued similar guidance related to policy significance for any other country in the USCENTCOM area of responsibility. Additionally, Joint Staff officials were unaware of the policy significance criteria being applied to the Kingdom of Saudi Arabia and stated that no requests for clarification concerning policy significance have been forwarded to the Joint Staff from the unified commands in the last 3 years. In contrast, officials at the U.S. Pacific Command had requested clarification of the definition and examples of "policy significance." The current information available concerning policy significance provides too much latitude in the interpretation and application. The Under Secretary of Defense for Policy should issue guidance clarifying the definition of policy significance and provide a range of potential examples.

Criteria for Joint Versus Service-Specific International Agreements. The Military Departments are authorized under DoD Directive 5530.3 to negotiate and conclude international agreements when the subject of the agreement is Service-specific. However, the directive does not make a distinction between what constitutes a joint agreement and a Service-specific agreement. The directive also does not address reporting requirements for Service-specific agreements. For example, the 7th Air Force at Osan Air Base, Korea, delegated authority to negotiate and conclude a technical arrangement implementing a memorandum of understanding with the Republic of Korea Air Force. The technical agreement concerned the disposition and maintenance of material, equipment, communications, facilities, and areas at Taegu Air Base. The legal memorandum accompanying the technical arrangement cited the authority to negotiate and conclude international agreements that had been delegated to the Secretary of the Air Force under DoD Directive 5530.3. Although the agreement was negotiated and concluded under the delegation of authority provided for in DoD Directive 5530.3, the subject of the agreement significantly affected the operations of the unified command, the U.S. Pacific Command, and the subordinate unified command, U.S. Forces, Korea. That type of agreement, involving facilities and areas at a key air base, should have been negotiated by the staff of U.S. Forces, Korea. The U.S. Pacific Command Air Forces, as the air component command of U.S. Pacific Command, should have been the proponent in negotiating an agreement involving Taegu Air Base. The agreement also demonstrated that the

U.S. Pacific Command was not receiving copies of Service-specific agreements and, therefore, did not have oversight of all international agreements negotiated in that manner.

Because guidance differentiating joint agreements from service-specific agreements has not been clearly defined in DoD, Joint, or Military Department guidance, a dual-tasked Military organization (as both a unified command element and as a Service command element) has the flexibility to enter into international agreements under either command structure. Under those circumstances, the Component commands will choose the path of least resistance. For example, under the Air Mobility Command Instruction 151-701, "Negotiating, Concluding, Reporting, and Maintaining International Agreements," May 8, 1995, the Air Mobility Command is authorized to negotiate and conclude international agreements by "Air Force Headquarters, USCINCTRANS [Commander in Chief, U.S. Transportation Command] or other appropriate authority." According to Air Mobility Command Mission Directive 701, "Air Mobility Command," March 20, 1995, the Air Mobility Command has the authority to negotiate and conclude "treaties." However, treaties with foreign countries are usually negotiated and concluded by the Department of State and the President of the United States. As DoD institutionalizes joint operations, the role of the geographic unified commands becomes larger. The Under Secretary of Defense for Policy needs to establish specific guidelines for identifying situations under which service-specific agreements can be negotiated and concluded.

The International Agreements Process

The authority to negotiate and conclude international agreements has been so decentralized that many DoD Components believe that they have an unrestricted authorization to enter into agreements. DoD Directive 5530.3 assigns oversight responsibility of international agreements to both the Under Secretary of Defense for Policy and the General Counsel of the Department of Defense. The Under Secretary of Defense for Policy is responsible for ensuring that DoD has issued policy and guidance to establish international agreements. However, the General Counsel of the Department of Defense and the Under Secretary of Defense for Policy have not established a program or process to oversee the implementation of international agreements. DoD Directive 5530.3 states that the Under Secretary of Defense for Policy will designate a single office of record responsible for performing the functions of a program manager. Those

functions would include: receiving requests to negotiate and conclude international agreements, receiving proposals submitted for redelegations of authority to negotiate and conclude international agreements, and forwarding copies of the international agreements to the General Counsel of the Department of Defense. The directive further states that the Under Secretary of Defense for Policy is responsible for authorizing the negotiation and conclusion of all categories of international agreements unless specified in the directive or other authorizing regulation. Additionally, the directive states that the Under Secretary of Defense for Policy will monitor the implementation of existing agreements and provide appropriate guidance, advice, and assistance to other DoD elements in the exercise of their responsibilities under such agreements. We were unable to identify a central office of record anywhere within the Office of the Under Secretary of Defense for Policy that performed those functions.

The General Counsel of the Department of Defense is responsible for ensuring that the authority to negotiate and conclude international agreements was requested and granted, that legal and financial reviews were conducted, and that agreements are appropriately reported to the Office of the General Counsel of the Department of Defense and the Department of State. The Office of the General Counsel of the Department of Defense, however, must rely on the DoD elements (that have the authority to negotiate and conclude international agreements) to follow DoD Directive 5530.3 and provide the Office of the General Counsel of the Department of Defense a copy of all agreements. Accordingly, the Office of the General Counsel of the Department of Defense can account only for those international agreements that are provided to them. We determined that not all DoD elements were reporting international agreements to the Office of the General Counsel of the Department of Defense. For example, the official responsible for international agreements within Headquarters, Air Staff, stated that he was unaware of the annual reporting requirement to the General Counsel of the Department of Defense of existing international agreements, and for the reporting period 1996, Headquarters, Air Staff, did not provide a report to the Office of the General Counsel of the Department of Defense. The Under Secretary of Defense for Policy should provide a list each year to the Office of the General Counsel of the Department of Defense. The list should comprise the Defense organizations delegated authority to negotiate and conclude international agreements.

Authority to Negotiate and Conclude International Agreements

DoD elements are entering into international agreements without being granted the authority to negotiate and conclude such agreements. Also, no coordination takes place between the unified commands, the Military Departments, and other DoD organizations to identify existing international agreements or to consolidate requirements.

Guidance Granting Authority to Negotiate and Conclude Agreements. DoD Directive 5530.3 was issued June 11, 1987, with interim guidance issued July 11, 1996, until an upcoming revision is made. The Chairman of the Joint Chiefs of Staff Instruction 2300.01 was issued September 15, 1994. DoD Directive 5530.3 is specific in its delegation of authority to negotiate and conclude international agreements and does not delegate the authority to negotiate and conclude international agreements to any Defense agencies. However, DoD Directive 4140.25, "DoD Bulk Petroleum Management Policy," January 8, 1993, grants the Defense Logistics Agency (DLA) the authority to negotiate and conclude international agreements to provide bulk petroleum products, additives, laboratory testing, facilities, pipelines, and any related services in accordance with DoD Directive 5530.3. A DLA official stated that on a case by case basis, DLA will redelegate its authority to negotiate and conclude international agreements under DoD Directive 4140.25 to the Defense Fuel Supply Center. We could not determine whether the Office of the Under Secretary of Defense for Policy had granted DLA a one-time authority or unrestricted authority to negotiate and conclude international agreements as established in DoD Directive 4140.25. An official of the Office of the General Counsel of the Department of Defense stated that DoD Directive 5530.3 does not delegate the authority to negotiate and conclude international agreements to DLA. The official was not aware of DoD Directive 4140.25 having been coordinated with the Office of the General Counsel of the Department of Defense before issuance. The official also stated that no system is in place to identify or track the individual DoD directives and DoD Component guidance independently granting the authority to negotiate and conclude international agreements.

Authority to Negotiate or Conclude Agreements. DoD Components were unaware of DoD Directive 5530.3 requirements to obtain the authority to negotiate and conclude agreements. Additionally, DoD Components were unfamiliar with the reporting requirements of an international agreement. For example, the Commander, Joint Task Force - Southwest Asia, established a

memorandum of understanding with the commanders of the British and French coalition forces regarding the authority of the security forces providing law enforcement and security to coalition assets. According to a USCENTCOM official, the memorandum of understanding constitutes an international agreement and should be reported. Furthermore, the USCENTCOM official stated that the Commander, Joint Task Force - Southwest Asia, never requested the authority to negotiate and conclude the agreement from USCENTCOM.

International Agreements for Specific Exercises. International agreements are established to fulfill peacetime and contingency plan requirements. The unified commands or Service Component commands usually exercised the concept of a contingency plan during an exercise. To understand whether an international agreement meets the needs of the plan, the Joint Staff should include the agreement into exercises. Additionally, it would seem beneficial to determine whether international agreements relating specifically to an exercise could also fulfill contingency requirements. For example, the U.S. Army Forces, U.S. Central Command, as the executive agent for Exercise Bright Star, requested and received authority from Headquarters, USCENTCOM, to negotiate a one-time acquisition and cross servicing arrangement with Egypt to support USCENTCOM requirements during the exercise. However, the United States does not have a higher-level umbrella acquisition and cross servicing arrangement with Egypt. The authority to negotiate an umbrella acquisition and cross servicing arrangement lies at the Secretary of Defense or Secretary of State level, and the USCENTCOM had not requested the authority to negotiate such an agreement from the General Counsel of the Department of Defense. An upcoming report will address this issue.

Notification of International Agreements Among DoD Components

DoD Directive 5530.3 requires DoD Components assigned to or located within the areas of responsibility of the geographic unified commands to advise the appropriate unified commands of any international negotiations that might have a significant impact on the plans and programs of the commands and to furnish the geographic unified commands with a copy of each agreement.

Unified Commands Notifying Each Other. Just as organizations external to the unified commands should notify the geographic unified commands about international agreements, the community of unified commands should also

notify each other about international agreements. The unified commands are not notifying each other or the Services. For example, during Operation Desert Focus, USCENTCOM was responsible for relocating the British and French military forces from Khobar Towers to Al Kharj and Eskan Village. USCENTCOM initiated an international agreement with the French representatives for reimbursement of the cost of the movement of the French force. The French representatives questioned the cost of the movement of the forces and informed the USCENTCOM that the French government already had an existing international agreement with the U.S. Government, which included the movement of forces. However, the U.S. European Command maintained the agreement as a North Atlantic Treaty Organization Mutual Support Agreement. The unified commands annually provide lists of international agreements to the Joint Staff. The Joint Staff then consolidates the unified commands' lists for its annual reporting requirement to the General Counsel of the Department of Defense. However, the unified commands do not distribute their consolidated list of international agreements among themselves. A Joint Staff official stated that no unified command has ever requested a copy of the consolidated list of all unified command international agreements, nor has the Joint Staff ever distributed the consolidated list back to the unified commands. With military units transiting through or operating in different geographic unified commands worldwide, the Joint Staff should distribute the consolidated list of the unified commands' international agreements among unified commands to assist military units operating outside their normal area of responsibility.

Service Component Commands Notifying Each Other. The Service Component commands of the unified commands are not notifying each other of international agreement requirements to determine whether an international agreement already exists to meet the requirements. For example, the defense logistics support agreement between the United States and Australia, signed in 1989, states that logistics support will be provided on a joint basis between the two governments. The agreement further states that the countries will ensure that the logistics support will be maintained throughout the life of the equipment and services. Under the terms of the 1989 agreement, U.S. Pacific Command Air Forces; Commander in Chief, U.S. Pacific Fleet (CINCPACFLT); and Fleet Marine Forces, Pacific, have each entered into implementing agreements with the government of Australia for military exercises. As the executive agent for Exercise Tandem Thrust 97, CINCPACFLT personnel entered into a Mutual Logistics Support Agreement with Australia for the exercise. However, the CINCPACFLT personnel were unaware of the existing mutual support agreements that both the Marine Corps and the Air Force maintained. Because

CINCPACFLT personnel were not aware of the existing agreements, they could not determine whether those agreements were applicable to requirements of Exercise Tandem Thrust 97.

Other DoD Organizations Notifying the Unified Command Elements. DoD organizations are not notifying the unified commands or the Service Components of international agreement requirements or negotiations when operating in a unified commander's area of responsibility. Additionally, DoD organizations may be entering into international agreements without the proper authority. As previously discussed, DoD Directive 4140.25 grants DLA the authority to negotiate and conclude international agreements to provide fuel related services. DoD Directive 4140.25 does not, however, state that DLA has the ability to redelegate its authority to a DLA Component. Notwithstanding, DLA has redelegated its authority to negotiate and conclude international agreements to the Defense Fuel Supply Center on a case by case basis. As a result, if the Defense Fuel Region Middle East requires an international agreement to be established, it must request authority from DLA to negotiate and conclude an international agreement. The Under Secretary of Defense for Policy should establish criteria for redelegation of authority for negotiating and concluding international agreements.

However, U.S. Central Command Air Forces personnel have independently negotiated and concluded an agreement with the Royal Jordanian Air Force of the Kingdom of Jordan for fuel support for U.S. Air Force units participating in the Airpower Expeditionary Force. The agreement was signed by a U.S. Air Force contracting officer. U.S. Central Command Air Forces did not obtain the authority to negotiate and conclude this international agreement from the USCENTCOM. U.S. Central Command Air Forces also did not request, nor was it granted, the authority to negotiate and conclude international agreements under either DoD Directive 5530.3 or 4140.25. As a result, the Defense Fuel Region Middle East has a proposed draft agreement with the Royal Jordanian Air Force to provide fuel support to any DoD Component operating in the country of Jordan. As of May 29, 1997, the Defense Fuel Region Middle East had not requested the authority to conduct negotiations with the Royal Jordanian Air Force from DLA.

Notification is an activity that occurs everyday in DoD. It is institutionalized in almost every activity. The negotiation and conclusion of international agreements need to be incorporated into the notification process to a much greater extent than it has been to date. The notification must occur at all levels, not just locally or within the same command. Once the notification is increased, instances like those identified during the audit will be avoided. The

Joint Staff and unified commands should advise the Military Departments and DoD elements before negotiation and conclusion of proposed international agreements, and the Military Departments and DoD elements should likewise advise the Joint Staff and unified commands before negotiation and conclusion of proposed international agreements.

International Agreements and Deliberate Planning

The Joint Staff, the U.S. Pacific Command, and the USCENTCOM had not validated operation plan requirements to determine whether any international agreement should be established. Similarly, the requirements for existing international agreements had not been validated by the commands against existing operation or exercise plans. The commands had not reviewed the international agreements established to meet exercise requirements to determine whether the international agreements could be used for unresourced operation plan requirements.

Incorporation of International Agreements into the Planning Progress. To be effectively used during operations, international agreements must be integrated into the operation plans. The U.S. Pacific Command and the USCENTCOM operation plans did not identify the available international agreements and the conditions under which the agreements could be implemented. However, some of the subordinate operation plans did provide a "laundry list" of international agreements related to logistical support. However, the list did not detail what support the international agreements would provide, who would provide it, when it would be provided, or who would make any required arrangements.

Exercising International Agreements During Exercises and Operations. The U.S. Pacific Command and the USCENTCOM had not sufficiently incorporated international agreements into any military exercises. The military exercises conducted to date in both commands do not identify, test, or evaluate specific existing international agreements to determine their applicability to the operation plans during the execution of the exercises. For example, U.S. Pacific Command officials stated that exercises test operational concepts, but they do not address international agreement requirements because international agreements cover support requirements instead of operational requirements. As

a result, in most exercise plans covered by international agreements, for example, the requirements for host nation support are assumed to be provided, and the international agreements for host nation support are not exercised.

International Agreements Oversight

DoD does not oversee the international agreements process as it exists today. We could not determine the universe of international agreements because DoD Components were not complying with the requirements of DoD Directive 5530.3. Additionally, DoD Components responsible for maintaining international agreements were not reporting annually to the Office of the General Counsel of the Department of Defense.

Database of International Agreements. Currently, no single database exists for international agreements. The Office of the General Counsel of the Department of Defense is in the process of developing a computerized database of all reported international agreements. DoD Directive 5530.3 requires that an annual report of international agreements be submitted to the General Counsel of the Department of Defense. As of May 28, 1997, the Office of the General Counsel of the Department of Defense had received reports from only four DoD organizations: the Joint Staff (including all unified commands), the Defense Intelligence Agency, the National Imagery and Mapping Agency, and Headquarters, U.S. Army. However, the Office of the General Counsel of the Department of Defense does not know what other DoD organizations have the authority to enter into international agreements. Additionally, the Office of the General Counsel of the Department of Defense does not receive notification from the Office of the Under Secretary of Defense for Policy concerning special negotiation and conclusion authorities granted. As a result, the Office of the General Counsel of the Department of Defense has no way to determine who is delinquent in reporting negotiated agreements.

Also, DoD has no common database or automated program for tracking and managing international agreements. Each of the four DoD organizations provided a hard copy of their lists of the agreements to the Office of the General Counsel of the Department of Defense. However, we identified several DoD organizations that have developed their own unique databases of international agreements. Because each database is unique, the capability to easily exchange data between international agreement databases does not currently exist.

The U.S. Pacific Command Database. The U.S. Pacific Command maintains the International Agreements Control System, which contains about 2,100 international agreements concluded within the U.S. Pacific Command area of responsibility. The Logistics Directorate, U.S. Pacific Command Air Forces, maintains a database of 113 international agreements. However, the CINCPACFLT and the U.S. Army Forces, U.S. Pacific Command, do not maintain a database of international agreements. Additionally, neither the CINCPACFLT nor the U.S. Army Forces, U.S. Pacific Command, maintain a central repository of international agreements. CINCPACFLT officials stated that the command is following Navy instructions when preparing and monitoring international agreements and that Navy instructions do not require the command to maintain a central repository of agreements. Similarly, Headquarters, U.S. Forces, Japan, also does not maintain a central repository or a list of all international agreements concluded by U.S. Forces, Japan, personnel. U.S. Forces, Japan, officials stated that the Office of the Secretary of the Joint Committee maintains a central repository of about 5,000 agreements for the joint use of facilities negotiated during Joint Committee meetings between the United States and Japan. As of November 23, 1996, U.S. Forces, Korea, was attempting to prepare a Korea-wide database of international agreements. U.S. Forces, Korea, had identified about 700 international agreements that exist throughout the Republic of Korea. However, we could not determine whether any of the Service Component command's identified international agreements were listed in the U.S. Pacific Command database, or that the total universe of international agreements did not contain duplicative agreements. The lack of a common database among the DoD Components could potentially hinder the effectiveness of a military unit when deploying to a new geographical location. Additionally, the planning elements of the commands are unable to determine whether an existing international agreement or arrangement is capable of fulfilling an identified shortfall or reducing a unit's lift requirements.

The USCENTCOM Database. In contrast, the USCENTCOM database of international agreements is maintained on a word processing system. USCENTCOM officials stated that the USCENTCOM list reflects only the "high-level international agreements." The USCENTCOM official stated that the Service Component commands or lower level commands would have the implementing agreements or memorandums of understanding (if any existed). The USCENTCOM does not require its Service Component commands to provide an annual list of agreements because the USCENTCOM has not delegated to the Components the authority to negotiate international agreements.

However, as previously discussed, both the U.S. Central Command Air Forces and the U.S. Naval Forces, U.S. Central Command, were entering into international agreements.

Military Departments' Databases. The International and Operations Law Division, Office of the Judge Advocate General, Headquarters, U.S. Air Force, is the designated repository of international agreements that were negotiated and concluded under Air Force Instruction 51-701, "Negotiating, Concluding, Reporting, and Maintaining International Agreements," May 6, 1994. However, Headquarters, U.S. Air Force, has not provided an annual list of agreements to the Office of the General Counsel of the Department of Defense. The situation was rectified when the 1996 annual Air Force report was provided to the Office of the General Counsel of the Department of Defense on September 3, 1997. The Office of the Staff Judge Advocate, Headquarters, U.S. Navy, also maintains a list and repository of international agreements, but has never provided an annual list to the Office of the General Counsel of the Department of Defense. In contrast, Headquarters, U.S. Army, not only maintains a central repository of international agreements, but also submits an annual report of international agreements to the Office of the General Counsel of the Department of Defense.

Index of International Agreements. The ability to easily identify and refer to existing international agreements would not only enable users to easily identify existing agreements, but would also prevent users from needlessly negotiating similar agreements. DoD has no established indexing system for international agreements used by the various organizations. We were unable to determine whether an agreement identified on the Office of the Secretary of the Joint Committee list in Japan was on the U.S. Pacific Command, the Joint Staff, or the General Counsel of the Department of Defense lists of international agreements. We were also unable to reverse the validation process using the General Counsel of the Department of Defense list of agreements to the lower command levels. Additionally, we were unable to cross reference the U.S. Pacific Command numbering system with its Service Component commands or subordinate commands lists. The Under Secretary of Defense for Policy should establish a uniform indexing system for identifying and negotiating international agreements.

Financial Transactions Relating to International Agreements

DoD Directive 5530.3 states that, notwithstanding the delegation of authority, no international agreement should be negotiated or entered into without the concurrence of the Under Secretary of Defense (Comptroller/Chief Financial Officer). No written delegation of authority to the DoD elements' comptrollers exists to review international agreements. However, it is assumed that, with the delegation to negotiate and conclude an international agreement, the responsibilities of the financial review are also delegated. For example, Chairman of the Joint Chiefs of Staff Instruction 2300.01 states that all proposals for negotiating or concluding international agreements that have United States financial obligations or any other fiscal implications will be submitted to the comptroller of the combatant command or Joint Staff, as appropriate. However, we could not determine whether the disbursements or receipts associated with an international agreement were being accounted for at the DoD Component level or the Office of the Secretary of Defense level. We also could not determine who within the Office of the Under Secretary of Defense (Comptroller) was responsible for the oversight of nonmonetary contributions. The Office of the Under Secretary of Defense (Comptroller) should issue additional guidance clarifying existing guidance for tracking and reporting financial obligations and other fiscal implications of international agreements.

Summary

The importance of identifying and having access to existing international agreements is becoming increasingly essential. The demise of the Soviet Union and international trends have shifted focus away from the European central front and increased the importance of support that the United States expects to receive from allied countries in the event of contingencies or hostilities. Recent deployments of U.S. Forces to activities such as Operation Southern Watch and Exercise Tandem Thrust 97 have demonstrated the importance of the support by allied countries. To operate with other allied military forces, the U.S. military have had to identify existing international agreements or enter into new international agreements. Additionally, the reduced military force structure of the United States is resulting in more and more U.S. Forces having to transition through or operate in one or more geographic unified commander's area of responsibility.

Recommendations, Management Comments and Audit Response

Added Recommendation. As a result of unsolicited management comments, we added Recommendation 4. to the Under Secretary of Defense (Comptroller) to issue additional guidance clarifying existing guidance for tracking and reporting financial obligations and other fiscal implications of international agreements.

1. We recommend that the Under Secretary of Defense for Policy:

a. Identify a single office of record for international agreements.

Management Comments. The Director, Foreign Military Rights Affairs, Office of the Assistant Secretary of Defense (International Security Affairs), responding for the Under Secretary of Defense for Policy, did not provide any comments on this recommendation. Although not required to comment, the Vice Director, Joint Staff, stated that he believed that a single office of record for international agreements would be beneficial and that the single office could also orchestrate the necessary funding requirements between the unified commands, Military Departments, and other DoD organizations.

Audit Response. We agree with the Vice Director, Joint Staff, and believe that a single office of record is the essential first step to increasing management controls over international agreements. Accordingly, we request that the Under Secretary of Defense for Policy provide comments on this recommendation, including concurrence or nonconcurrence, in response to the final report.

b. Issue guidance clarifying the definition of "policy significance."

Management Comments. The Director, Foreign Military Rights Affairs, neither concurred nor nonconcurred with the recommendation but stated that a Secretary of Defense message to the Joint Staff, all the Services, and the unified commands on December 6, 1993, addressed the issue of policy significance, as well as other issues raised in the draft version of this report.

Audit Response. The audit staff received a copy of the message from the Office of the Assistant Secretary of Defense (International Security Affairs). However, the message merely states that any subject that has reached the Assistant Secretary or higher level in either government should be considered to have "policy significance," which is not a clarification of a phrase. Under the

guidelines established in the message, any subject, no matter how mundane, is considered to have policy significance simply because of the position of the parties interested in the topic. In the 4 years since the message from the Secretary of Defense, numerous situations highlighted the need for a clarification of the definition contained in DoD Directive 5530.3. For example, USCENTCOM officials cited the extensive involvement of the Office of the Assistant Secretary of Defense (International Security Affairs) in all matters dealing with the Kingdom of Saudi Arabia. We agree with the Director, Foreign Military Rights Affairs, that matters with the Kingdom of Saudi Arabia are sensitive. However, all matters relating to the Kingdom of Saudi Arabia are not as sensitive as others. Matters such as the size of a bottle to be used to issue water to U.S. forces is an example. Many issues are best resolved by the operational or unified command level. Therefore, policy significance is a phrase that the Under Secretary of Defense for Policy should clarify to prevent unnecessary delays in U.S. forces receiving support. Accordingly, we request that the Under Secretary of Defense for Policy provide additional comments on this recommendation, including concurrence or nonconcurrence, in response to the final report.

c. Clarify the difference between service-specific agreements and joint agreements, and enforce Military Departments' and DoD elements' requirement to advise geographic unified commanders about agreements being negotiated in their areas of responsibility.

Management Comments. The Director, Foreign Military Rights Affairs, neither concurred nor nonconcurred with the recommendation but stated that no substantive difference exists between a single-service agreement and a joint agreement, and he views all agreements, whatever the level of the negotiating parties, as DoD agreements. The Director also stated that no purpose would be served in making a distinction between a single-service agreement and a joint agreement.

Audit Response. We agree that, in a larger sense, all agreements are DoD agreements. However, the unified and sub-unified commanders must be apprised of all negotiations that occur in their respective areas of responsibility. The results of the audit demonstrated that agreements were being negotiated through Service channels that the unified and sub-unified commands were not aware of. The intent of the clarification is not to restrict parties from negotiating and concluding international agreements, but rather to ensure that the unified and sub-unified commands are aware of negotiations of all proposed agreements impacting their areas of responsibility. One of the purposes of the Goldwater-Nichols Reorganization Act of 1986 was to instill more authority in

the unified commanders. The position of the Director, Foreign Military Rights Affairs, that no purpose is served by distinguishing between single-service and joint agreements is contrary to the intent of the Goldwater-Nichols Reorganization Act of 1986. Accordingly, we request that the Under Secretary of Defense for Policy provide additional comments on this recommendation, including concurrence or nonconcurrence, in response to the final report.

d. Establish criteria for redelegation of authority for negotiating and concluding international agreements.

Management Comments. The Director, Foreign Military Rights Affairs, neither concurred nor nonconcurred with the recommendation but stated that the establishment of criteria for redelegation of authority to negotiate and conclude international agreements is essentially a judgment call for each level of command. The Director also stated that making such a determination on a case by case basis would be better than establishing general criteria for all situations.

Audit Response. We disagree with the position of the Director, Foreign Military Rights Affairs. The unrestricted redelegation of authority to negotiate and conclude international agreements is largely responsible for the situations identified in this report. We believe that the redelegation of authority needs to be clearly identified at all levels of command. Unless a clear discussion of the authority of DoD elements to negotiate and conclude international agreements is conducted, agreements will continue to exist that are not identified on indexes or processed in accordance with existing directives. Accordingly, we request that the Under Secretary of Defense for Policy provide additional comments on this recommendation, including concurrence or nonconcurrence, in response to the final report.

e. Identify all authorized Office of the Secretary of Defense, Military Department, and DoD organizations with the authority to negotiate and conclude international agreements, and validate the requirement for each organization to have the authority to negotiate and conclude international agreements.

Management Comments. The Director, Foreign Military Rights Affairs, neither concurred nor nonconcurred with the recommendation but stated that all Office of the Secretary of Defense elements, the Military Departments, and DoD organizations with the authority to negotiate and conclude international agreements are already identified and listed in paragraph M of DoD Directive 5530.3.

Audit Response. We disagree with the position of the Director, Foreign Military Rights Affairs. The unrestricted delegation and redelegation of authority to negotiate and conclude international agreements calls for more detailed information than that which is currently contained in paragraph M of DoD Directive 5530.3. Accordingly, we request that the Under Secretary of Defense for Policy provide additional comments on this recommendation, including concurrence or nonconcurrence, in response to the final report.

f. Provide an annual list of Office of the Secretary Defense, Military Department, and DoD organizations delegated authority to negotiate and conclude international agreements to the Office of the General Counsel of the Department of Defense.

Management Comments. The Director, Foreign Military Rights Affairs, neither concurred nor nonconcurred with the recommendation but stated that the Office of the Under Secretary of Defense for Policy coordinates all proposed agreements and authorizations to negotiate with the Office of the General Counsel of the Department of Defense and that another notification would be redundant.

Audit Response. We disagree with the position of the Director, Foreign Military Rights Affairs. If proposed international agreements are negotiated under authorizations already in existence, any additional coordination would certainly be duplicative. However, not all international agreements are negotiated in that manner. As cited in the report, the U.S. Army Forces, U.S. Central Command, as the executive agent for Exercise Bright Star, requested and received authority from Headquarters, USCENTCOM, to negotiate a one-time acquisition and cross servicing implementing arrangement with Egypt to support USCENTCOM requirements during the exercise. Coordination with either the Office of the General Counsel of the Department of Defense or the Office of the Assistant Secretary of Defense (International Security Affairs) would have identified the fact that the United States does not have an acquisition cross servicing arrangement with Egypt, and as a result, the U.S. Army Forces, U.S. Central Command, could not legally negotiate an implementing arrangement. Negotiating an implementing arrangement to an agreement that does not exist is not possible. Accordingly, we request that the Under Secretary of Defense for Policy provide additional comments on this recommendation, including concurrence or nonconcurrence, in response to the final report.

g. Together with the Office of the General Counsel of the Department of Defense, and in consultation with the Chairman of the Joint

Chiefs of Staff, the Military Departments, and the unified commanders, establish a uniform indexing system for use by all DoD entities negotiating and concluding international agreements to allow easy identification and referral for all interested users.

Management Comments. The Director, Foreign Military Rights Affairs, neither concurred nor nonconcurred with the recommendation but made a general statement that some recommendations contained in the draft audit report would require a considerable amount of funds for a marginal benefit. As an example, he cited this recommendation to establish a uniform indexing system for use by all DoD entities. The Director also questioned the value of such a system. Although not required to comment, the Vice Director, Joint Staff, stated that he believed that a standardized international agreements database would be beneficial to serve as a centralized automated data processing center. Although not required to comment, the Staff Judge Advocate, U.S. Forces, Japan, suggested that the system be divided into regions of the world, and within each region, one office should be aware of all international agreements within that region, and any Service or DoD agency with activities in that region would be precluded from negotiating, concluding, or implementing any international agreements until it has properly advised that office of their activities.

Audit Response. We disagree with the position of the Director, Foreign Military Rights Affairs. As stated in the report, DoD Directive 5530.3 assigns to the Office of the Under Secretary of Defense for Policy the responsibility to monitor the implementation of existing agreements and provide appropriate guidance, advice, and assistance to other DoD elements in the exercise of their responsibilities under such agreements. A uniform indexing system would allow different elements of DoD to easily identify whether an agreement that they might be considering negotiating with a particular country already exists. The Director, Foreign Military Rights Affairs, views the need to establish a uniform indexing system as being tantamount to wasting time. This audit, as well as others conducted by the Inspector General, DoD, have highlighted the inability of the various DoD elements to identify and use existing international agreements in part because of different indexing systems in each part of DoD. In addition to the Joint Staff comments, U.S. Forces, Korea, in responding to Inspector General, DoD, Report No. 97-173, "Management and Administration of International Agreements in the U.S. Pacific Command," June 23, 1997, cited that an indexing system for international agreements negotiated and concluded by the various elements of DoD should be established at the Office of the Secretary of Defense level rather than at a unified command. We agree with

the Vice Director, Joint Staff, and U.S. Forces, Korea, and believe that a single, uniform indexing system is the essential second step to increasing management controls over international agreements. Accordingly, we request that the Under Secretary of Defense for Policy provide additional comments on this recommendation, including concurrence or nonconcurrence, in response to the final report.

2. We recommend that the Office of the General Counsel of the Department of Defense provide interim guidance defining the degree of compliance with Federal Acquisition Regulation criteria necessary for a contract to not qualify as an international agreement.

Management Comments. The General Counsel of the Department of Defense did not provide comments on the recommendation. We request that the General Counsel of the Department of Defense provide comments in response to the report.

3. We recommend that the Chairman of the Joint Chiefs of Staff:

a. Issue guidance that the unified commanders comply with DoD Directive 5530.3, "International Agreements," June 11, 1987, and that at a minimum they:

(1) Identify all international agreements that exist in their area of responsibility.

(2) Validate the requirements for all international agreements existing in their area of responsibility.

(3) Incorporate international agreements into the unified commander's operation and exercise plans, where appropriate.

(4) Advise the Military Departments and DoD elements before their negotiation and conclusion of proposed international agreements in the geographic unified commanders' areas of responsibility.

b. Review unified commands' operation plans to ensure that applicable international agreements are included, where appropriate.

c. Include pertinent international agreements in Joint Staff sponsored exercises.

d. Disseminate the annual consolidated list of joint agreements among the unified commands.

Management Comments. The Vice Director, Joint Staff, neither concurred nor nonconcurred with the recommendation, but stated that the Joint Staff would address the recommendations with a change to Chairman of the Joint Chiefs of Staff Instruction 2300.01, scheduled for the first quarter of FY 1999. Although not required to comment, the Director, Foreign Military Rights Affairs, questioned the difficulty and viability of incorporating international agreements into the unified commander's operation and exercise plans. The Director cited the wide range of agreements that may be applicable and stated that, if the list were accurate, it would simply be a repeat of the index of international agreements existing in that region. The Director also stated that the incorporation would require considerable time and expertise, which may not be available to the planner at the unified command. The Director also stated that when a need for an agreement is identified during an exercise or operation, the agreement is negotiated by an exchange of diplomatic notes if it does not already exist. Although also not required to comment, the Staff Judge Advocate, U.S. Forces, Japan, suggested that a contingency procurement annex could be developed that incorporates references to any international agreements that planners determine could be useful to the warfighting commands.

Audit Response. The action taken satisfies the intent of the recommendation. In response to the comments for the Director, Foreign Military Rights Affairs, we disagree with his position. Not all agreements negotiated between the United States and another country are applicable to an operation or exercise plan. For example, an agreement between the United States and a country for waiver of customs fees may not apply to an operation or exercise plan, based on the situation. Until the agreements are reviewed and a determination is made whether they apply to the operation or the exercise plan, the planners have no way to know its applicability. We also disagree with the position of the Director regarding the time and expertise required to make that determination. The unified commands operate in a joint environment with all elements of the command contributing to the development of the operation plan. During the audit, we repeatedly observed the close interaction between the planners and the Office of the Staff Judge Advocate of the various unified commands. Suggesting that the expertise is not available to the unified command's planners is unrealistic. We also disagree with the statement of the Director that when a need for an agreement is identified during an exercise or operation, the agreement is accomplished through an exchange of diplomatic notes if it does not already exist. Although diplomatic notes qualify as international agreements

under the definition contained in DoD Directive 5530.3, we identified many agreements during the audit that had been negotiated and concluded at the subordinate (or lower) command level. Although the instruments used to obtain the support were international agreements, the support was obtained through formal agreements, not through diplomatic notes.

4. We recommend that the Under Secretary of Defense (Comptroller):

a. Issue guidance that the DoD Component comptrollers (senior financial managers) comply with Chapter 9, "International Agreements," Volume 12 of the DoD Financial Management Regulation (DoD 7000.14-R), and that at a minimum they:

(1) Identify all international agreements that exist in their areas of responsibility.

(2) Validate that senior financial managers conducted financial reviews, both monetary and nonmonetary, for all international agreements existing in their areas of responsibility.

(3) Confirm that the information from those financial reviews were reported up their appropriate chain of command.

(4) Advise their organizational elements that before negotiation and conclusion of proposed international agreements, Chapter 9, Volume 12, of the DoD Financial Management Regulation (DoD 7000.14-R) requires that they conduct a financial review.

b. Identify the office responsible for accumulating and reporting nonmonetary contributions from international agreements.

Management Comments. Although not required to comment, the Deputy Chief Financial Officer, Office of the Under Secretary of Defense (Comptroller), disagreed with the statements in the draft version of this report concerning financial transactions relating to international agreements. The Deputy Chief Financial Officer stated that the authority of the DoD Components' comptrollers (senior financial managers) to conduct a financial review of international agreements is included in Chapter 9, Volume 12, of DoD 7000.14-R. The Deputy Chief Financial Officer stated that disbursements and receipts for international agreements are accounted for at the DoD level at which they are executed and that it was not clear whether the auditors reviewed the accounting transactions at the level of execution to determine the

accountability of the disbursements and receipts. The Deputy Chief Financial Officer also stated that the DoD Components are required to perform a price analysis of services or material contributed by the foreign participant under an international agreement, and that the analysis is for both monetary and nonmonetary contributions and is used by the Office of the Under Secretary of Defense (Comptroller) or the DoD Component senior financial manager for evaluating the equitableness of the international agreement.

Audit Response. None of the DoD Component comptroller personnel interviewed during the audit within either the U.S. Pacific Command or the USCENTCOM were aware of the cited guidance. In both commands, comptroller personnel cited unified command regulations as the guidance that they followed for financial reviews of international agreements. Additionally, financial transaction data were reviewed at the execution component level. In fact, the lack of accountability of transactions at Misawa Air Base, Japan, was identified as having a direct adverse impact on the operations of the 35th Fighter Wing. In addition, DoD must report annually to Congress on the amount of assistance-in-kind provided by foreign governments to U.S. Forces. Regarding who within the Office of the Under Secretary of Defense (Comptroller) was responsible for oversight of nonmonetary contributions, Office of the Under Secretary of Defense (Comptroller) personnel stated that Defense Finance and Accounting Service Denver had the responsibility. However, the Defense Finance and Accounting Service Denver official stated that he was just beginning the function and that he was only handling monetary contributions, not nonmonetary contributions. As a result of the apparent conflicts cited, we have added Recommendation 4. to the report, and we request that the Under Secretary of Defense (Comptroller) provide comments on the recommendations in response to the final report.

Part II - Additional Information

Appendix A. Audit Process

Scope and Methodology

We evaluated the management and administration of international agreements to support joint operations. The review included international agreements, such as defense cooperation agreements, logistics agreements, and facilities agreements. We did not review intelligence agreements, inter-Service support agreements, or security assistance agreements. We reviewed the applicable policies and procedures of DoD, the Joint Staff, Military Departments, U.S. Pacific Command and its Component and sub-unified commands, and U.S. Central Command and its Component commands for the negotiation, conclusion, and reporting of international agreements. We also reviewed and analyzed operation plans and exercise scenarios for the U.S. Pacific Command; U.S. Forces, Korea; U.S. Forces, Japan; and the U.S. Central Command. Finally, we reviewed and analyzed accounting policies and procedures for reporting international agreements.

Use of Computer-Processed Data. We did not rely on computer-processed data for the execution of this audit.

Universe and Sample. We judgmentally selected international agreements from the country files at USCENTCOM and the U.S. Pacific Command. The international agreements were selected to provide the greatest range of topics covered by the international agreements maintained by the Office of the Staff Judge Advocate at USCENTCOM and the Office of the Staff Judge Advocate, U.S. Pacific Command.

Audit Period, Standards, and Locations. We performed this program audit from August 1996 through July 1997 in accordance with auditing standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD. Accordingly, we included tests of management controls considered necessary.

Contacts During the Audit. We visited or contacted individuals and organizations within the DoD. Further details are available upon request.

Management Control Program

DoD Directive 5010.38, "Management Control (MC) Program," August 26, 1996, requires DoD organizations to implement a comprehensive system of management controls that provide reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of Review of the Management Control Program. We reviewed the adequacy of controls over the management and administration of international agreements for support of joint operations at the Services, U.S. Pacific Command, USCENTCOM, their sub-unified and Component commands, and the Office of the Secretary of Defense. Specifically, we reviewed the controls over defense cooperation agreements, host nation support agreements, acquisition and cross-servicing agreements, and facilities agreements. We also reviewed the results of management's self-evaluation of those controls.

Adequacy of Management Controls. We identified a material management control weakness, as defined by DoD Directive 5010.38, for DoD, U.S. Pacific Command, USCENTCOM, and their Components. Management controls for DoD, U.S. Pacific Command, USCENTCOM, and their Components were not adequate to identify the total number of international agreements negotiated and concluded. In fact, U.S. Central Command Air Forces representatives were totally unaware of the requirement and existence of a management control program. Recommendations 1.g. and 3. should rectify that situation. The senior official in charge of management controls at DoD, the Joint Staff, the Military Departments, and the unified commands will receive a copy of the report.

Adequacy of Management's Self-Evaluation. The DoD, U.S. Pacific Command, and USCENTCOM did not identify the management and administration of international agreements as an assessable unit and, therefore, did not perform a vulnerability assessment of the process or report the material management control weakness identified by the audit.

Appendix B. Prior Audits and Other Reviews

The Office of the Inspector General, DoD, issued three reports in the last 5 years that relate to international agreements.

Inspector General, DoD, Report No. 97-173, "Management and Administration of International Agreements in the U.S. Pacific Command," June 23, 1997, states that the U.S. Pacific Command management controls governing international agreements were neither effective nor adequate. The report recommended that the Commander in Chief, U.S. Pacific Command, establish a management control program for international agreements. The report also recommended that the Commander in Chief, U.S. Pacific Command; the Commander, U.S. Forces, Korea; and the Commander, U.S. Forces, Japan, incorporate international agreements into the appropriate exercise and operational plans, review and terminate duplicative agreements, and coordinate operational plan requirements with geographically separated commands to avoid duplicative agreements. Finally, the report recommended that the General Counsel of the Department of Defense revise DoD Directive 5530.3, "International Agreements," June 11, 1987. The Assistant Deputy Chief of Staff, U.S. Forces, Korea, concurred with the recommendations to identify and evaluate existing international agreements against operation and exercise plan requirements, to terminate duplicative international agreements, to initiate international agreements for requirements that are not supported, to exercise the host nation support concept during exercises, to exercise international agreements identified in the operational plan, and to coordinate operational plan requirements with geographically separated commands. The Assistant Deputy Chief of Staff, U.S. Forces, Korea, nonconcurred with the recommendation to incorporate international agreements negotiated during exercises into the appropriate operational plans. The General Counsel of the Department of Defense concurred with the recommendation to revise DoD Directive 5530.3. The Staff Judge Advocate, U.S. Pacific Command concurred with the finding and the majority of the recommendations, but nonconcurred with the recommendations involving establishing a uniform indexing system and allocating ceilings for acquisition and cross servicing arrangements. The Staff Judge Advocate, U.S. Pacific Command, nonconcurred with the recommendation to establish a uniform indexing system because of activities operating in their area of responsibility which were not subject to U.S. Pacific Command directive authority and because of the increased possibility of forces flowing from another theater into their theater during a regional contingency, and effective uniform indexing system requires worldwide applicability. The

Staff Judge Advocate, U.S. Pacific Command also nonconcurred with the recommendation to allocate ceilings because the Joint Staff must allocate ceilings to each Unified Command first. The Staff Judge Advocate, U.S. Forces, Japan, neither concurred nor nonconcurred but stated that while they were aware that international agreements in support of contingencies were desirable, and that they have been negotiation for contingency mutual support agreements for several years, the Government of Japan has been unwilling to go beyond studying the issues.

Inspector General, DoD, Report No. 96-045, "Host Nation Support in Southwest Asia," December 14, 1995, states that the U.S. Central Command needed to improve management of its host nation support program. The report recommended establishing a host nation support office in the area of responsibility and assigning host nation support responsibilities to the U.S. Central Command. The report also recommended validating the assumptions of host nation support availability and directing Component commands to fully identify their host nation support requirements. Management concurred with the findings and recommendations and implemented recommended actions.

Inspector General, DoD, Report No. 93-119, "Agreements with North Atlantic Treaty Organization Allies," June 21, 1993, states that the records for managing and administering international agreements were so deficient that they could not be audited. The report recommended that DoD Directive 5530.3, "International Agreement," be amended to include a management system for the administration and control of international agreements, that the DoD Comptroller establish a system to reconcile international agreements to their financial records, and that the DoD Comptroller establish procedures for the unified commands to prepare an annual report on the disbursements, reimbursements, or collections of international agreements. The DoD Comptroller nonconcurred with the recommendations because the Comptroller believed that a need or use for the information that would be generated had not been identified.

Appendix C. Glossary

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

- is signed or agreed to by personnel of any DoD Component, or by representatives of the Department of State or any other Department or agency of the U.S. Government;

- signifies the intention of its parties to be bound in international law; and

- is denominated 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.

Any oral agreement that meets the criteria stated above is an international agreement. The DoD representative who enters into the agreement shall cause such agreement to be reduced to writing.

Policy Significance. Policy significance includes agreements that:

- specifically discuss 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;

- because of their intrinsic importance or sensitivity, would directly and significantly affect foreign or defense relations between the United States and another government;

- by their nature, would require approval, negotiation, or signature at the Office of the Secretary of Defense or the diplomatic level; or

- 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.

Acquisition and Cross Servicing Arrangement. Acquisition and cross servicing arrangements are also referred to as mutual logistics support between the United States and governments of eligible countries and North Atlantic Treaty Organization Subsidiary bodies. Title 10, United States Code, Chapter 138, authorizes the use of support agreements for certain mutual logistics support among the United States and governments of other eligible foreign countries. Section 2341 authorizes the procurement of logistics support, supplies, and services from a foreign country. Section 2342 authorizes the sale to or exchange of logistics support, supplies, and services with a foreign country or organization. Section 2344, as amended by the National Defense Authorization Act for FYs 1990 and 1991, authorizes logistics exchanges to be of equal value.

Appendix D. Audit Response to Specific Management Comments

The Office of the Assistant Secretary of Defense (International Security Affairs)(OASD[ISA]); the Department of the Air Force; and U.S. Forces, Japan, provided detailed comments on the finding in the draft report. Those comments and our audit responses follow.

OASD(ISA) Comments and Audit Responses

Overall OASD(ISA) Comments. The Director, Foreign Military Rights Affairs, OASD(ISA), responding for the Under Secretary of Defense for Policy, stated that because of the constantly changing environment that constitutes international relations, international agreements are inherently not susceptible to being "managed" in the same manner normally applied to domestic programs within the U.S. Government. The Director also stated that he and his office "have a fundamental reservation regarding your endeavor to apply management control criteria to international agreements *per se*." The Director stated that at times DoD and State Department representatives must meet and debate to decide how to process an agreement. Indeed, the Director stated that "If those leading experts in the U.S. Government have difficulty, and sometimes differ, in deciding how to process an agreement, then it is unfair to criticize a line officer in the field, who is inexperienced and untrained in international agreements, on the manner in which he or she does so."

Audit Response. The Director, Foreign Military Rights Affairs, has elected to define management controls as a strictly defined area that is not applicable to international agreements. We disagree with that position. Management controls are applicable to all aspects of the operations of the Department of Defense. The findings of the audit demonstrate the results when an area is deemed to be outside the realm of management controls. For the Director to state that international agreements are not susceptible to being managed is to view those agreements from a myopic viewpoint. Unless management control criteria are applied to international agreements, situations such as those identified during the audit will continue to exist. The constantly changing environment that the Director cited is the very reason why the international agreement process needs to be managed. The Director takes the viewpoint that an international

agreement, once it has been negotiated and concluded, is the end result of interaction between the United States and another country. In fact it is the very beginning of interaction between the United States and another country. Agreements such as acquisition and cross servicing arrangements serve as overarching agreements for other implementing agreements that will be negotiated at a later time. Unless management controls are applied to the acquisition and cross servicing arrangement, DoD has no way to ensure that the ensuing purchases and sales attributable to the acquisition and cross servicing arrangement will be offset or that transactions between the two countries are in fact provided for under the acquisition and cross servicing arrangement.

We also disagree with the position taken by the Director, Foreign Military Rights Affairs, that the international agreements require a great deal of discourse in deciding how to process them. The unified commands, as well as the Services, have attorneys trained in the international agreements process. For the Director to infer that the proper processing of international agreements is too much to expect of the personnel of the Staff Judge Advocate of the Services and the unified commands does a disservice to the individuals in those organizations.

Air Force Comments and Audit Response

Comments. The Chief, International and Operations Law Division, Office of the Judge Advocate General, Department of the Air Force, provided comments to the draft version of the report. The comments were included as an enclosure to those of the OASD(ISA). The comments addressed the report's assertion of the lack of a list or repository of international agreements. In his comments, the Chief, International and Operations Law Division, stated that the International and Operations Law Division of the Office of the Judge Advocate General has been designated as the office responsible for the maintenance of the Air Force repository of international agreements. The Chief, International and Operations Law Division also identified that they maintain two repositories, one for classified agreements and one for unclassified agreements. The Chief, International and Operations Law Division, also stated that his office provided a copy of the 1996 annual Air Force report of international agreements to the Office of the General Counsel, DoD, on September 3, 1997. The Chief, International and Operations Law Division, stated that to the best of his knowledge, no member of the audit team ever visited his office.

Audit Response. The Chief, International and Operations Law Division, was contacted on May 6, 1997, by the audit team. The purpose of the contact was to establish a time at which the Inspector General, DoD, representatives could meet with Air Force personnel and discuss the role of the Office of the Judge Advocate General as it related to international agreements. During the course of the conversation, the Chief, International and Operations Law Division, stated that the office did not maintain a repository of international agreements nor was anyone aware of either the reporting requirement or the Air Force instruction governing international agreements. The Air Force official stated that a meeting would be pointless as there was nothing else to discuss. Before the issuance of the draft version of the report, the audit team contacted the Air Force again to be sure that the information provided earlier was correct. The same information was reiterated to the audit team. Accordingly, it was included in the draft version of the report as an example of the current state of the management and administration of international agreements in the Department of Defense. The section has since been revised to accurately reflect the information provided in the comments.

U.S. Forces, Japan, Comments and Audit Response

Comments. The Staff Judge Advocate, U.S. Forces, Japan, provided unsolicited comments to the draft version of this report. In his comments, the Staff Judge Advocate stated that the discussion of how a proposed agreement can be rephrased to make it appear to be a procedural arrangement instead of an international agreement suggested that some sort of subterfuge was taking place, when in fact, the process that was being referred to was a legitimate application of an attorney's drafting skills. When an attorney can draft a procedural or administrative agreement that will accomplish the needs and purposes of the parties, it would be wasteful of U.S. Government time and resources to do otherwise. The practice was not an inconsistent application of the criteria for determining whether an arrangement is an international agreement, but instead, the process was intelligent legal counsel.

Audit Response. The discussion in the report does not state, either by innuendo or overtly, that the command was committing some sort of subterfuge. The discussion provided a clear example of how different organizations within DoD view international agreements, even though the criteria for determining what exactly constitutes an international agreement are defined in DoD Directive 5530.3. Unless the criteria laid out in the DoD Directive are

uniformly and consistently applied, the DoD, and to a larger degree the United States, is provided no legal recourse should the other party to the international agreement not carry out its obligations completely. The Office of the General Counsel of the Department of Defense has been consistent in its opinion that if the intent of the proposed agreement is to commit the U.S. Government to an action, then the provisions of the DoD Directive should be applied. The provisions include the legal, financial, and reporting requirements discussed in the report. To refer to this rephrasing as an intelligent application of an attorney's drafting skills is to circumvent the requirements of the DoD Directive entirely.

Appendix E. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Policy
  Assistant Secretary of Defense (International Security Affairs)
  Assistant Secretary of Defense (International Security Policy)
Under Secretary of Defense (Comptroller)
  Deputy Chief Financial Officer
  Deputy Comptroller (Program/Budget)
Under Secretary of Defense for Personnel and Readiness
Assistant Secretary of Defense (Public Affairs)
General Counsel of the Department of Defense
Director, Defense Logistics Studies Information Exchange

Joint Staff

Chairman of the Joint Chiefs of Staff
Director, Joint Staff

Department of the Army

Auditor General, Department of the Army

Department of the Navy

Commander in Chief, Pacific Fleet
Commander, U.S. Naval Forces, U.S. Central Command
Assistant Secretary of the Navy (Financial Management and Comptroller)
Auditor General, Department of the Navy

Department of the Air Force

Commander in Chief, U.S. Pacific Air Forces
Commander, U.S. Central Command Air Forces
Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Unified Commands

Commander in Chief, U.S. European Command
Commander in Chief, U.S. Pacific Command
Commander in Chief, U.S. Atlantic Command
Commander in Chief, U.S. Southern Command
Commander in Chief, U.S. Central Command
Commander in Chief, U.S. Transportation Command
Commander, U.S. Forces, Korea
Commander, U.S. Forces, Japan

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Director, National Security Agency
  Inspector General, National Security Agency
Inspector General, Central Imagery Office
Inspector General, Defense Intelligence Agency

Non-Defense Federal Organizations and Individuals

Office of Management and Budget
Technical Information Center, National Security and International Affairs Division, General Accounting Office

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

  Senate Committee on Appropriations
  Senate Subcommittee on Defense, Committee on Appropriations
  Senate Committee on Armed Services
  Senate Committee on Governmental Affairs
  House Committee on Appropriations
  House Subcommittee on National Security, Committee on Appropriations
  House Committee on Government Reform and Oversight
  House Subcommittee on Government Management, Information, and Technology, Committee on Government Reform and Oversight
  House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight
  House Committee on National Security

Part III - Management Comments

Assistant Secretary of Defense (International Security Affairs) Comments

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

2400 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2400

INTERNATIONAL SECURITY AFFAIRS

25 September 1997

MEMORANDUM FOR MR. HARLAN M. GEYER, AUDIT PROGRAM DIRECTOR
OFFICE OF THE INSPECTOR GENERAL, DOD

SUBJECT: Draft Proposed Audit Report Project No. 6RA-0085.01, Audit Report on the Management of International Agreements in the Department of Defense, dated 15 August 1997.

Background:

Relationships between independent sovereign nations are constantly subject to change in light of new developments, both external and internal. The purpose of an international agreement is to establish one aspect of those relations between its signatories for a fixed period of time, after which the agreement either expires or is renewed.

Because of this constantly changing environment, international agreements are inherently not susceptible to being "managed" in the manner in which that term is normally applied to domestic programs within the U.S. Government. From the standpoint of this office, we therefore have a fundamental reservation regarding your endeavor to apply management control criteria to international agreements *per se*.

Discussion:

Accordingly, we concur in the Air Force views expressed in USAF/JAI memorandum of 5 September, copy attached, regarding the maintenance of depositories of international agreements applicable to various elements of the Department of Defense. Another example is the statement on page 14 of your report that "the Office of the General Counsel, DoD, does not receive notification from the Office of the Under Secretary of Defense for Policy concerning special negotiation and conclusion authorities granted." In fact, the Office of the Under Secretary of Defense for Policy (OUSDP) coordinates all proposed agreement and authorization to negotiate them with the Office of the DoD General Counsel. Another notification would therefore be unnecessary.

On page 7, the draft report states that "the Under Secretary of Defense for Policy should issue guidance clarifying the definition of policy significance and provide a range of potential examples." A SecDef message (DTG 061400Z Dec 93) to JCS, all the

Services and unified commands addressed that issue, as well as others raised in the draft report. A copy of the message was provided to the auditors, but was not mentioned in the draft report.

Some recommendations of the report would involve an expenditure of a considerable amount of funds for a marginal benefit. One example is the recommendation to establish a uniform indexing system for use by all DoD entities. If the auditors have a concept of such a system that would be manageable and effective for thousands of agreements of a vast variety of subjects, scope, level of command, etc., they should provide a detailed description of how to administer the system. Moreover, the value of such a system is questionable.

In our view, the recommendation to incorporate international agreements into the unified commander's operation and exercise plans would also be very difficult. There is such a wide range of agreements that may potentially be applicable in an operation or exercise plan that, if it were to be accurate, it would simply repeat of the index of international agreements existing in the region. Further, it would require considerable time and expertise which may not be available to the planner at the unified command, and agreements periodically change so it would be a constant process of updating the plans. Its utility would be questionable, because when a requirement arises for an agreement during an operation or exercise, one is negotiated by an exchange of diplomatic notes if such an agreement does not already exist.

With regard to the recommendation to clarify the difference between single-service agreements and joint agreements, there is no substantive difference. Although an agency such as the Army Corps of Engineers or USAFE may negotiate a military-to-military agreement with its counterpart in foreign military forces, it is still a DoD agreement. Such an agreement may therefore be used by other DoD agencies if amended to broaden its scope, such as by applying it to CINCUSNAVEUR. If such an approach were to be taken, how would agreements negotiated by DoD agencies, such as Defense Logistics Agency, and those signed by the Secretary of Defense personally be categorized? Accordingly, no purpose would be served in making a distinction between a single-service agreement and a joint agreement.

The establishment of criteria for redelegation of authority for negotiating and concluding international agreements is essentially a judgment call for each level of command. If it is deemed advisable to place a restriction on the ability to redelegate authority to negotiate agreements, that restriction is normally included in the initial grant of authority. If no such a restriction is considered necessary, the authority to redelegate is left to the judgment of the parent command. It would be better to make such a determination on a case-by-case basis, rather than establishing general criteria for all situations.

All OSD elements, the Military Departments, and DoD activities with the authority to negotiate and conclude international agreements are already identified. Those delegations are listed in paragraph M of DoD Directive 5530.3.

DoD personnel who work with international agreements recognize that the system needs to be improved. There have been numerous efforts by leading experts in the field during the last 30 years to make such improvements, but the issues are far more complex than those reflected in the draft report, and there are competing sensitivities for responsibilities by various agencies. In 1976, the Department of State Legal Adviser issued a memorandum on criteria and the U.S. Government policy on international agreements. That document was very helpful and is widely used today as a reference; however, it did not resolve all of the issues. In the mid-1980's leading experts from this office, DoD General Counsel, JCS and the Services, who work with international agreements on a daily basis, met monthly over a four-year period to develop policies, criteria and guidance on the negotiation and administration of such agreements. Those meetings were quite lengthy and vigorously debated by DoD's best experts in the subject. The June 11, 1987 edition of DoD Directive 5530.3 reflects the results of those meetings. In our view, the recommendations in the draft report will not make any substantive improvement in the system devised by those experts.

There are two fundamental problems with administration of a system of international agreements, both of which are only briefly alluded to in the draft report. The first, and most significant, one is defining what constitutes an international agreement which is subject to the procedures in DoD Directive 5530.3. International agreements have a wide range of scope, such as:

- -- A U.S. Army platoon leader reaching an agreement on his lines of fire and patrol with his German counterpart;
- -- Minor details of a three day exercise by a 12-man special forces team;
- -- V Corps negotiating procedures for the processing of traffic offenses with the Hessen state authorities;
- -- USAFE negotiating procedures for landing of aircraft at Rhine/Main Airport;
- -- USAREUR negotiating an implementing arrangement to the NATO SOFA for administrative processing of claims;
- -- DoD and the State Department negotiating a defense cooperation agreement with Greece;
- -- The Strategic Arms Limitation Treaty, and
- -- The Chemical Weapons Convention.

If DoD attempted to manage all of these agreements, it would be extremely expensive, and the thousands of agreements and implementing arrangements thereunder entered into the system would make it unmanageable. Some agreements simply are not of interest to anyone except the specialized DoD technicians involved in the immediate area where the agreement is effective.

The problem is how to describe to untrained personnel in the field which agreements must be processed in accordance with DoD Directive 5530.3. The same problem also exists between DoD and the State Department as to which agreements must be processed in accordance with their regulations and the Case Act. There are times when there must be a meeting and debate between DoD General Counsel and FMRA representatives with State Department lawyers in Treaty Affairs, the Regional Bureau and Political-Military Affairs to decide how an agreement should be processed. If those leading experts in the U.S. Government have difficulty, and sometimes differ, in deciding how to process an agreement, then it is unfair to criticize a line officer in the field, who is inexperienced and untrained in international agreements, on the manner in which he or she does so.

The other major problem that inhibits establishment of an effective management system for international agreements is that the computers in the various DoD agencies do not communicate with one another. The USDP computers cannot send or receive data to or from DoD General Counsel, JCS, any of the Services or the unified commands. If all of the computers could operate on the same system, a contract could be awarded to a commercial computer company to develop software on which every DoD element could enter data concerning agreements it negotiates into the system and it would be immediately registered on the index of every other DoD agency. This solution would address the point made in the draft report that one unified command is not aware of agreements negotiated by another unified command.

We have raised with the Director of Policy Automation within OUSDP the development of such a system, if only for USDP. Although he has been considering it, he has not developed a solution. Even the State Department, which has the overall responsibility for international agreements in the U.S. Government, has only recently begun to develop an automated system, and previously relied upon a manual card index system.

There are several other less severe problems with developing a system for management of international agreements. One is that processing and administering classified agreements presents special problems because of security clearances for the personnel involved, classified storage areas, developing a means to transport the classified data, and most significant, some of the computers are not cleared for classified data. Another problem is that the system can never be applied retroactively to all of the old agreements which will not be entered into the new system. In addition, all of the agreements applicable to and used by DoD such as tax relief agreements, judicial assistance agreements and air navigation agreements do not originate within DoD. Some originate from other U.S. Government agencies, such as Departments of State, Justice, Transportation, Interior and Energy. Accordingly, a question arises as to whether and how those agreements should be entered into the system.

Conclusion:

Based on the foregoing considerations, it is our judgment that present arrangements under DoD Directive 5530.3 for supervising the negotiation of international agreements are adequate. However, the implementation and administration of these arrangements should be more carefully observed by all elements of the Department of Defense.

We appreciate the opportunity to review and comment on this draft proposed audit report, and welcome any suggestions that may be useful in making international agreements available to all personnel who need to use them in carrying out their responsibilities. We believe that it would be valuable to several DoD agencies to receive a formal briefing on the results of the audit and provide an opportunity to discuss the recommendations.

Philip E. Barringer
Director
Foreign Military Rights Affairs

5

Final Report Reference

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE

5 September 1997

MEMORANDUM FOR MR. HARLAN M. GEYER, AUDIT PROGRAM DIRECTOR, OFFICE OF THE INSPECTOR GENERAL, DoD

FROM: HQ USAF/JAI

SUBJECT: Draft Proposed Audit Report Project No. 6RA-0085.01, Audit Report on the Management of International Agreements in the Department of Defense, dated 15 August 1997

These comments are directed, in particular, to the portion of the draft report at page 16 which reads as follows, "**Military Department's Databases**. Headquarters, U.S. Air Force did not maintain a list or repository of international agreements that were negotiated and concluded under Air Force Instruction 51-701, "Negotiating, Concluding, Reporting, and Maintaining International Agreements," May 6, 1994. In addition, Headquarters, U.S. Air Force has not provided an annual list of agreements to the Office of the General Counsel, DoD. The International Operations Law Office, Headquarters, U.S. Air Force, was not aware that its own regulation identified it as the central repository for all Air Force international agreements." Revised

Few will disagree that much needs to be accomplished in order to improve the international agreements reporting and management system within the Department of Defense. However, in order to have creditability respecting any recommendations made it is essential that one's facts be accurate. The above quoted statement contains information which is inaccurate. To the best of our knowledge, no member of your audit team has ever visited our office. The former Chief of this Division, who rotated in July 1997, indicates he recalls a telephone call which he believes was from the DoD/IG asking if we were aware of an 11 July 1996 DoD/GC letter providing "Interim Guidance on DoD Directive 5530.3 (International Agreements)." We were not aware of the letter but promptly obtained a copy of it and have since complied with its instruction.

In order to set the record straight we offer the following clarifications:

◆ The International and Operations Law Division, Office of The Judge Advocate General, Headquarters United States Air Force (HQ USAF/JAI) is designated by AFI 51-701, paragraph 9, as the office responsible for the maintenance of the Air Force repository of international agreements.

◆ The Air Force office of primary responsibility (OPR) for AFI 51-701 is HQ USAF/JAI. We author the instruction and are responsible for insuring it is current. The instruction was last revised on 6 May 1994.

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Reference

◆ We maintain two separate repository systems, one of classified and one of unclassified agreements. The two repositories constitute the Air Force international agreements repository.

◆ When the Deputy Chief (GS-15) position in the Division became vacant in 1995, expertise in the area of international agreements was a key criterion in the Job Vacancy Announcement. As a result, Dr. Richard J. Erickson, a recognized authority in the area was employed, with the objective of improving the Air Force system. His article, "The Making of Executive Agreements By the United States Department of Defense: An Agenda For Progress," **13 Boston University International Law Journal** 45 (1995) is attached for your information. Your attention is especially invited to his recommendation at page 83.

*

◆ Beginning in the summer 1995, this Division began a concerted effort to devise an electronic index of the agreements in its repository. Thus far, we have nearly completed the index of all of our unclassified agreements, more than 1700. Sequencing of entries by country and date of agreement has not been fully perfected. This is an on-going project. An index of classified agreements is yet to be produced. A classified index presents special problems, for example, a secure electronic storage system and the need for programmers with security clearances. Preparation of the unclassified index has been funded through summer hire and internship programs. A hard copy of the electronic index containing all unclassified agreements through the end of calendar year 1996 is attached for your information.

*

◆ Since a large part of day-to-day international agreements work in the Air Force concerns status of forces agreements (SOFAs), this Division inaugurated a special project of assembling the full text of all SOFAs in force between the US and other countries. At present there are 92 such agreements. In 1996 we prepared an electronic database with the ability to word search each agreement. This data base has been placed on FLITE (Federal Legal Information Through Electronics) and on the Air Force Judge Advocate General's Internet. It has been reproduced in a CD-ROM version and made available to select Air Force offices, OSD/GC, OSD/ISA/FMRA, JCS/LC and select unified commands. The database has also been included in JAG deployment kits for use by Air Expeditionary Forces (AEFs). A hard copy of the entire database is maintained in the Division as a special repository. A 1997 update has been completed. A list of SOFA countries is attached for your information.

*

◆ Because of a growing interest in comparing provisions of various agreements in order to assess the "best" model provisions for future negotiations, this Division has produced two comparative studies. These are **A Study and Comparison of Custody Provisions in Current Status of Forces Agreements, With Texts and Commentaries**, dated 22 September 1995, for use in negotiations with Japan and Korea and **Rights and Obligations of Contractors Under Current Status of Forces Agreements to Which the United States is a Party**, dated July 1997, for use in support

*Attachments omitted because of length.

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Reference

of outsourcing and privatization initiatives. Copies of these studies can be obtained from our office.

◆The 1996 annual Air Force report to the General Counsel, DoD, was filed on 3 September 1997. A copy of that report is attached for your information. The report was delayed in filing because of the need to locate the 11 July 1996 DoD/GC letter, discussed above, which established additional reporting requirements regarding each agreement. Although an annual report is required by DoD Directive 5530.3, we did not file one prior to the 11 July 1996 instruction letter. We have no corporate memory as to why this report was not previously filed. *

From the foregoing, I trust you understand why we were surprised to read the words in your draft report. Over the last few years we have invested considerable time, money and energy to improve the Air Force repository. No one will dispute that much remains to be done, but we sincerely believe some of your remarks about this office are inaccurate. We would be pleased to speak with any of your audit team members. Dr. Erickson and I are both available to meet with them. We can be reached at 695-9631, and are located in Pentagon 5E313. Thank you.

MICHAEL W. SCHLABS, Colonel, USAF
Chief, International and Operations
Law Division
Office of The Judge Advocate General

Encls
a/s

cc:
HQ USAF/JA
SAF/IA
SAF/GCI
SAF/FMPF

*Attachments omitted because of length.

Joint Staff Comments

THE JOINT STAFF
WASHINGTON, DC

Reply ZIP Code:
20318-0300

DJSM-902-97
27 October 1997

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Subject: Draft Proposed Audit Report Project No. 6RA-0085.01, "Audit Report on the Management of International Agreements in the Department of Defense," 15 August 1997 (U)

1. The Joint Staff acknowledges the findings of the subject audit report[1] and concurs that work is needed to correct these findings. The Enclosure addresses corrective measures taken by the Joint Staff and highlights considerations that will better assist the Services and Unified Commanders in carrying out their responsibilities in managing international agreements.

2. We welcome further suggestions for improving the management of those agreements. The Joint Staff point of contact is Commander Ted Guillory, USN, (703) 614-9134.

STEPHEN T. RIPPE
Major General, USA
Vice Director, Joint Staff

Enclosure

Reference:
1 ODODIG, 15 August 1997, "Audit Report on the Management and Administration of International Agreements in the Department of Defense (Project No. 6RA-0085.01"

ENCLOSURE

JOINT STAFF COMMENTS ON THE DRAFT AUDIT REPORT ON THE MANAGEMENT AND ADMINISTRATION OF INTERNATIONAL AGREEMENTS IN THE DEPARTMENT OF DEFENSE (U)

1. General Comments

(a) The subject report focused primarily on the process and mechanics of managing international agreements. However, useful information could also have been derived had the audit gone one step further by looking at the utility of the output and by validating the process used to determine requirements. Clearly, in the macro, shared knowledge of all international agreements reduces duplication of efforts, creates cost savings, and provides tools that aid in the planning process. On the other hand, there are some agreements that are of short duration and provide only limited benefit to supported parties. Nevertheless, the same approval and reporting requirements exist in both cases. Agreements that do not have far reaching implications should be approved and documented at the lowest possible level.

(b) The draft audit report discusses the Memorandum of Understanding (MOU) between the 7th Air Force and the Republic of Korea Air Force in regard to disposition and maintenance of material, communications equipment, facilities, and areas at Taegu Air Base. The report concluded that the unified commander should have negotiated the agreement vice the Air Force (the service that provides support) because of the joint implications of the MOU. In those cases where there is overlap between a Service and a unified commander's requirements, the unified commander has the authority to delegate authority to negotiate and conclude international agreements to the commanders of subordinate combatant commands and component commanders. One obvious benefit of such an approach is that the quality of the agreement would be enhanced by giving the organization most familiar with the requirements the authority to negotiate and conclude the agreement as well as execute it. Another benefit is that it negates the requirement to increase unified commanders' staffs to manage agreements that could more easily be managed at the Service level.

(c) We believe it would be beneficial for a standardize international agreements database to be developed that serves as a centralized automated data processing center. This single office could also orchestrate the necessary funding requirements between the unified commands, Military Departments and other DOD activities.

2

Final Report Reference

2. Recommended Inclusions

Page 22 Added

(a) Page 19, paragraph 3a(3). Change to read: "Incorporate international agreements into the unified commander's operation exercise plans, where appropriate."

Reason: For clarification.

Page 23 Added

(b) Page 19, paragraph 3b. Change to read: "Review unified commands' operation plans to ensure that applicable international agreements are included, where appropriate."

Reason: For clarification.

Page 23 Revised

(c). Page 19, paragraph 3c. Change to read: "Ensure that pertinent international agreements are included in Joint Staff sponsored exercises."

Reason: For clarification.

Page 22

3. Joint Staff Action. The recommendation for the Joint Staff on page 19 will be addressed with a change to CJCSI 2300.01, scheduled for the first quarter of 1999.

3

Department of the Air Force Comments

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1000

OFFICE OF THE UNDER SECRETARY

14 OCT 1997

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

FROM: SAF/IAQ
1745 Jefferson Davis Hwy
Crystal Square 4, Suite 302
Arlington, VA 22202

SUBJECT: Draft Proposed Audit Report Project No. 6RA-0085.01, Audit Report on the Management of International Agreements in the Department of Defense, dated 15 August 1997

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Financial Management and Comptroller) to provide Air Force comments on subject report.

We do not challenge your reports findings concerning the management and oversight of operational related agreements, which is the focus of your report, because our office is responsible for managing the international agreement process for international cooperative research, development, and acquisition (ICRD&A) activities between the USAF and friendly and allied governments and not those supporting joint operations. However, we do take exception to the implication that your findings are applicable across all categories of international agreements managed by DoD agencies, including ICRD&A agreements. Our specific comments are attached.

As a general comment, over the last several years we have experienced a significant surge in proposals to enter into ICRD&A agreements. To better manage this increased volume, the USAF has undertaken several significant initiatives. The number of personnel assigned to our office has approximately doubled, as we hired civilian personnel to complement our military personnel and to provide better continuity and institutional memory concerning the policies and procedures elaborated in DoDD 5530.3 and its supporting USAF Instructions. We also have worked closely with OSD and our sister services to streamline the international agreement process and ensure the appropriate amount of coordination among DoD agencies. We have numerous ongoing DoD-wide fora that focus on enhancing our

coordination processes. Finally, we have worked closely with our field organizations to ensure that the appropriate procedures are followed in processing international agreements.

In summary, we think that your report should make clear in both its title and content that it is only an analysis of DoD oversight of international agreements that support joint operations.

We would be happy to discuss this issue further with you in detail. If you have any questions about this matter, please contact Mr. Robert Ciarrocchi at 604-6745.

Mauro Farinelli

MAURO FARINELLI, Col, USAF
Chief, Armaments Cooperation Division
Deputy Under Secretary of the Air Force
International Affairs

Attachment
Comments to Draft Audit Report

COMMENTS TO DRAFT AUDIT REPORT

(1) "DoD elements are entering into international agreements without being granted the authority to negotiate and conclude such agreements. There is also no coordination between the unified commands, the Military Departments, and other DoD activities to identify exisiting international agreements or to consolidate requirements."

COMMENTS: We strongly non-concur with this statement. The services routinely coordinate proposed agreements, such as data exchange annexes (DEAs), among themselves prior to proposing an agreement to a foreign government. In addition, certain categories of agreements are staffed to the services by OSD, once a service has requested authority to conclude the agreement.

(2) "DoD Components were unaware of DoD Directive 5530.3 requirements to obtain the authority to negotiate and conclude agreements. Additionally, DoD Components are unfamiliar with the reporting requirements of an international agreement."

COMMENTS: We non-concur with this blanket statement. We are intimately aware of the requirements of DoDD 5530.3, and other applicable policy memoranda. Our staffing and reporting processes reflect these requirements.

(3) "There is currently no oversight of the international agreements process as it exists today. We could not determine the universe of international agreements because DoD Components were not complying with the requirements of DoD Directive 5530.3." and "However, we identified several DoD organizations that have developed their own unique database of international agreements. Because each database is unique, the capability to easily exchange data between international agreement databases does not currently exist."

COMMENT: We non-concur with both of these statements. We have for nearly 10 years maintained a data base of all ICRD&A agreements and have provided this information to OSD both in electronic and hardcopy formats. What started out as a simple data base has, over the intervening years, developed into a data base and tracking system. We have worked with our sister services and OSD to develop a DoD Tri-Service Data Exchange Data Base that includes the status of all international cooperative research, development and acquisition (ICRD&A) agreements within the military departments and the DoD. Access to the DEA data base is provided world-wide to US activities, such as the Offices of Defense Cooperation. Additional DoD Initiatives involve a Tri-Service Notional Data Base concerning research and development programs, which will go on-line in Dec 97.

U.S. Forces, Japan, Comments

HEADQUARTERS
UNITED STATES FORCES, JAPAN
APO AREA PACIFIC 96328-5068

14 October 1997

MEMORANDUM FOR OAIG-AUD
ATTN: MESSRS DON BLOOMER AND HARLAN GEYER

FROM: OFFICE OF THE STAFF JUDGE ADVOCATE
HQ USFJ/J06
UNIT 5068
APO AP 96328-5068

SUBJECT: Draft Audit Report on Management of International Agreements in the Department of Defense (Your Project #6RA-0085.01)

1. We have reviewed the 15 Aug 97 draft of this Report, in accordance with your request.

2. We provide the following comments:

a. The final paragraph on page 4 indicates that within USFJ an international agreement may be rephrased to "make it appear to be a procedural arrangement instead of an international agreement." The innuendo in this appears to suggest some sort of subterfuge, when in fact, the process which is being referred to is a legitimate application of an attorney's drafting skills. Agreements which meet the criteria in DoD Dir 5530.3 as procedural and administrative need not be treated as international agreements. When an attorney can draft a procedural or administrative agreement that will accomplish the needs and purposes of the parties, it would be wasteful of government time and resources to do otherwise. This is not an inconsistent application of the criteria for determining if an arrangement is an international agreement, but, instead, intelligent legal counsel. We believe the Report should be amended to more thoroughly explain this topic and remove any suggestion of subterfuge.

b. In the discussion on criteria for joint versus single service international agreements, the most needed criteria is not clearly articulated. The issue of who has the authority to decide a proposed agreement affects only one service, or whether it affects other services and should be treated as a joint agreement, should be clearly resolved. We recommend that services operating in the AOR of a unified or subunified command be required to coordinate with that command for <u>all</u> proposed international agreements and that the unified commander have the ultimate authority to determine

whether or not an agreement has joint effects such that it should be treated as a joint agreement.

c. As an office that deals with international agreements on a daily basis, we would opt for a system whereby the world is divided into regions, and within each region there would be one Point-of-Contact (POC) office that is aware of all international agreements applicable within that region. Any service or DoD agency with activities in that region would be precluded from negotiating, concluding or implementing any international agreements until it has coordinated with the POC. The POC, in turn, should have procedures by which it knows with whom it must coordinate such information in order to assure all affected commands are notified. This will require personnel dedicated to these tasks.

d. Referring to your suggestion that oplans and exercise plans contain references to applicable international agreements which could be used for unresourced operational plan requirements, we suggest that all such plans have a contingency procurement annex. The developers of such annexes should incorporate references to any international agreements that the planners determine could be useful to the war fighting commands.

e. On page 14 you make the observation that "there is currently no oversight of the international agreement process as it exists today." Although your report did not directly address intelligence related international agreements, you may wish to consider including them in the scope of your suggestion. It is our experience within the Asian theater that people dealing with intelligence related agreements often have little experience or training in the legal aspects of international agreements, and improved oversight over such agreements would also be useful.

f. We concur in principle with the recommendations beginning on page 18, but have to ask who will provide the manpower and other resources necessary to fulfill these tasks.

3. POC for this office is Mr. Perham, DSN 225-7695.

JAMES R. VAN ORSDOL Colonel, USAF
Staff Judge Advocate

Deputy Chief Financial Officer Comments

OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

OCT 31 1997

MEMORANDUM FOR DIRECTOR, READINESS AND OPERATIONAL SUPPORT, OFFICE OF THE DOD INSPECTOR GENERAL

SUBJECT: Audit Report on the Management and Administration of International Agreements in the Department of Defense (Project No. 6RA-0085.01)

This office reviewed the subject draft audit report and disagrees with the finding concerning financial transactions relating to international agreements. Primarily, it appears that the draft audit report does not recognize guidance prescribed in Volume 12 of the "DoD Financial Management Regulation." Recommend the draft report be revised to delete this finding. Specific comments are attached.

My point of contact on this matter is Ms. Kay O'Brien. She may be contacted by e-mail: obrienm@ousdc.osd.mil or by telephone at (703) 697-0586.

Nelson Toye
Deputy Chief Financial Officer

Attachment

OFFICE OF THE UNDER SECRETARY OF DEFENSE (COMPTROLLER) (OUSD(C)) COMMENTS ON THE DRAFT OFFICE OF THE INSPECTOR GENERAL (OIG) REPORT "MANAGEMENT AND ADMINISTRATION OF INTERNATIONAL AGREEMENTS IN THE DEPARTMENT OF DEFENSE" DATED AUGUST 15, 1997 (PROJECT NO. 6RA-0085-01)

FINDING: **Financial Transactions Relating to International Agreements**

OIG Statement: There exists no written delegation of authority to the Department of Defense (DoD) elements' comptrollers to review international agreements.

OUSD(C) Comment: The authority of the DoD Components' comptrollers (senior financial manager) to conduct a financial review of international agreements is included in paragraph 090205, Chapter 9, "International Agreements," Volume 12 of the DoD Financial Management Regulation (DoDFMR) (DoD 7000.14-R). Specifically, the DoDFMR states that "In the case of a proposed international agreement within the approval authority of a DoD Component outside the Office of the Secretary of Defense, concurrence shall be obtained from the DoD Component senior financial manager."

OIG Statement: The OIG could not determine if the disbursements or receipts associated with an international agreement were being accounted for at the DoD Component level or the Office of the Secretary of Defense level.

OUSD(C) Comment: Disbursements and receipts for international agreements are accounted for at the DoD Component level at which they are executed--similar to other DoD financial transactions. It is not clear whether the OIG reviewed the accounting transactions at the level of execution to determine the accountability of the disbursements and receipts.

OIG Statement: The OIG could not determine who within the OUSD(C) was responsible for the oversight of nonmonetary contributions.

OUSD(C) Comment: The DoD Components are required to perform a price analysis of services or material contributed by the foreign participant(s) under an international agreement with the DoD. This analysis is for both monetary and nonmonetary contributions and is to be used by the OUSD(C) or the DoD Component senior financial manager for evaluating the equitableness of the international agreement. These requirements are included in paragraphs 090405 and 090406, Chapter 9, "International Agreements," Volume 12 of the DoDFMR.

Attachment

Audit Team Members

This report was prepared by the Readiness and Logistics Support Directorate, Office of the Assistant Inspector General for Auditing, DoD.

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