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CJCSI 2410.01H
7 June 2024

GUIDANCE FOR THE EXERCISE OF ASSISTANCE ENTRY

References:

- a. Department of State policy statement, "Statement of Policy by the Department of State, the Department of Defense, and the United States Coast Guard Concerning Exercise of the Right of Assistance Entry," 8 August 1986
- b. Chairman of the Joint Chiefs of Staff (CJCS) Instruction (CJCSI) 3121.01B, "Standing Rules of Engagement/Standing Rules for the Use of Force for US Forces (U)," 13 June 2005 (directive current as of 18 June 2008)
- c. United Nations Convention on the Law of the Sea, 10 December 1982, 1833 United Nations Treaty Series (UNTS) 3, 21 International Legal Materials (ILM) 1261 (1982); and implementation of Part XI of United Nations Convention on the Law of the Sea, 28 July 1994, 1836 UNTS 3, 33 ILM 1311 (1994)
- d. Department of Defense (DoD) manual, "Maritime Claims Reference Manual (U)," available online at <<https://www.jag.navy.mil/national-security/mcrm/>> (Non-classified Internet Protocol Router Network (NIPRNET)—accessed 24 April 2024)
- e. CJCS Manual 3150.03E, "Joint Reporting Structure Event and Incident Reports," 22 February 2022

1. Purpose. This instruction establishes uniform policy for the exercise of assistance entry (AE) by U.S. military ships and aircraft within the U.S.-recognized territorial seas or archipelagic waters of foreign states.

2. Superseded/Cancellation. CJCSI 2410.01G, "Guidance for the Exercise of Right-of-Assistance Entry," 11 April 2022, is hereby superseded.

3. Applicability. This instruction applies to all personnel assigned or attached to the Joint Staff, and to the Combatant Commands (including assigned or attached subordinate units). Copies are provided to the Services for training on AE operations, coordination, and communications procedures, as appropriate.

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4. Policy

a. All ship and aircraft commanders have a duty to render assistance to those in danger or distress at sea. This long-recognized duty of mariners permits assistance entry into the territorial sea by ships or, under certain circumstances, aircraft without permission of the coastal nation to engage in legitimate efforts to render immediate rescue assistance to those in danger or distress at sea. AE applies only to rescues in which the location of the persons, vessels, or aircraft in danger or distress is reasonably well known.

b. AE, however, does not extend to conducting area searches when the danger or distress location is not yet reasonably well known (reference (a)). U.S. forces will conduct area searches within U.S.-recognized foreign territorial seas or archipelagic waters only with the permission of the coastal state. When considering conducting area searches within claimed or U.S.-recognized foreign territorial seas or archipelagic waters, commanders must comply with the provisions of reference (b) for search and rescue (SAR).

c. AE into the territorial sea or archipelagic waters of a foreign state involves two conflicting principles that must be considered: (1) the limited right of nations to regulate entry into, and the operations within, territorial seas or archipelagic waters subject to their sovereignty; and (2) the time-honored mariners' duty under customary international law of rendering rapid and effective assistance to persons, ships, or aircraft in danger or distress at sea without regard to nationality or location.

d. The customary international law of AE is more fully developed for vessels than for aircraft. Moreover, while the right of innocent passage exists for vessels through territorial seas, no such right exists for aircraft in the airspace above the territorial seas—that airspace is considered “national airspace.” Unauthorized entry into national airspace could be considered a breach of that state's sovereignty. Therefore, if an operational commander intends to employ military aircraft into national airspace, the operational commander should consider the possible reaction of that coastal or archipelagic state. The U.S. position is that aircraft engaged in AE are an extension of the vessels conducting rescue operations and, as such, those flights are consistent with the customary international law duty to render assistance and with reference (c). Nonetheless, in accordance with reference (a), there are additional coordination steps that may be required for use of military aircraft, as discussed below.

e. AE and SAR actions should comply with any applicable international agreements. An up-to-date listing of international agreements may be obtained by contacting U.S. Coast Guard Headquarters through <https://cglink.uscg.mil/NSARC>.

f. Reference (d) is the DoD source document for determining the scope of a particular maritime claim (e.g., extent of a claimed territorial sea) and whether the United States recognizes that particular maritime claim. Reference (d) may be supplemented by fleet directives that contain updated information on foreign claims.

5. Definitions

a. Danger or distress. For purposes of this instruction, danger or distress is a clearly apparent risk of death, disabling injury, loss, or significant damage.

b. Operational commander. The operational commander is the senior officer on the scene and in tactical command of the unit(s) capable of rendering meaningful and timely assistance. This operational commander is responsible for coordinating rescue efforts at the site.

6. Responsibilities

a. The Director for Operations, Joint Staff (DJ-3) will ensure that the National Joint Operations and Intelligence Center (NJOIC) immediately informs, upon receipt of a report of the exercise of AE, the Department of State Operations Center and Headquarters, U.S. Coast Guard National Command Center, which will notify foreign state rescue authorities of the AE operation, as appropriate.

b. The Director for Strategy, Plans, and Policy, Joint Staff (DJ-5) will serve as the Joint Staff primary point of contact for AE issues.

c. Combatant Commanders will ensure that operational units follow the guidance below:

(1) Exercising AE and Entering the U.S.-recognized Territorial Sea or Archipelagic Waters of a Foreign State. The operational commander of a U.S. military ship should exercise AE and immediately enter a foreign state's U.S.-recognized territorial sea or archipelagic waters when all three of the following conditions are met:

(a) A person, ship, or aircraft within the foreign territorial sea or archipelagic waters is in danger or distress and requires immediate rescue assistance;

(b) The danger or distress location is reasonably well known; and

(c) The U.S. military ship is in a position to render timely and effective assistance.

(2) Use of Military Aircraft to Conduct AE. An operational commander may render immediate rescue assistance by deploying a U.S. military aircraft (including aircraft embarked aboard military ships conducting AE operations) into the national airspace above U.S.-recognized foreign territorial seas or archipelagic waters when all four of the following conditions are met:

(a) A person, ship, or aircraft within the foreign territorial sea or archipelagic waters is in danger or distress and requires immediate rescue assistance;

(b) The danger or distress location is reasonably well known;

(c) The U.S. military aircraft is in a position to render timely and effective assistance; and

(d) Any delay in rendering assistance could be life threatening. If the situation is not life threatening, then, pursuant to reference (a), the operational commander must request guidance from higher authority via the operational chain of command using the fastest means available. In this situation, the Combatant Commander shall notify the NJOIC, which must consult with the Department of State (through its operations center) before the Combatant Commander or other appropriate authority may authorize such use of military aircraft in the national airspace above territorial seas or archipelagic waters.

(3) Additional Considerations Before Exercising AE. When the above conditions to exercise AE are met, operational commanders should consider the safety of the crews, military ships, and military aircraft they command, as well as the safety of persons, ships, and aircraft in danger or distress, before exercising AE. Operational commanders, as part of their safety evaluation for crew, ships, and aircraft, should also assess force protection considerations based on all available information. These considerations should be weighed against the long-standing duty to render aid to those in danger or distress at sea. Although not required, operational commanders may also consider whether other rescue units, capable and willing to render timely and effective assistance, are on the scene or immediately en route.

(4) Notification to the Foreign State. Although exercise of AE does not require foreign coastal or archipelagic state permission, operational commanders should notify that state's authorities before the entry into U.S.-recognized foreign territorial sea or archipelagic waters, if possible, to promote international comity, avoid misunderstanding, and alert local rescue and medical assets. Such notification will not include a request for consent for entry. If the operational unit cannot provide notification before entry, the operational unit must notify the coastal or archipelagic state, as soon as possible, of the location, unit(s) involved, nature of the emergency, and government assistance required as well as an estimated time of departure from the territorial sea or archipelagic waters. Contact will normally be with the Rescue Coordination Center of the foreign state involved or the U.S. Embassy. If the entry is into a foreign-claimed territorial sea or archipelagic waters that the United States does not recognize, then notification is not required, but it may be made if necessary to obtain coastal state assistance. Any such notification, however, will not indicate that an entry was made into the foreign state's territorial seas or archipelagic waters and will not include a request for consent for such entry.

(5) Notification to Higher Authorities. Because of the implications for international relations and for U.S. security, whenever an operational commander enters or authorizes entry into the claimed or U.S.-recognized territorial sea or archipelagic waters of a foreign state under AE, the operational commander will immediately notify appropriate authorities (Department of State, Office of the Secretary of Defense, the Joint Staff, the U.S. Coast Guard, and the cognizant U.S. Embassy and U.S. Defense Attaché Office) with an Operations Report-3 (OPREP-3) PINNACLE in accordance with reference (e). The OPREP-3 PINNACLE will describe location; unit(s) involved; nature of the rescue assistance; whether the coastal or archipelagic state was notified before entry; reaction by the coastal or archipelagic state, including efforts to deny entry or offers of assistance; and estimated time to complete the mission.

7. Summary of Changes. This revision updates references and includes other administrative changes.

8. Releasability. UNRESTRICTED. This directive is approved for public release; distribution is unlimited on NIPRNET. DoD Components (including the Combatant Commands), other Federal agencies, and the public may obtain copies of this directive through the internet from the CJCS Directives Electronic Library at <<http://www.jcs.mil/library>>. Joint Staff activities may also obtain access via the SECRET Internet Protocol Router Network (SIPRNET) Directives Electronic Library websites.

9. Effective Date. This INSTRUCTION is effective upon signature.

For the Chairman of the Joint Chiefs of Staff:



MICHAEL L. DOWNS, Maj Gen, USAF
Vice Director, Joint Staff

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