
Security Assistance: Ethics, Standards of Conduct, and Legal Status

By

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and

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While stationed in Bandaria, the Minister of Defense presents you with an ornate, gold-plated ceremonial sword in honor and appreciation of your hard work in supporting the sale of the M1A2 tank to Bandaria. Are you authorized to keep the sword?

You are returning to your duty station after a short TDY in Bandaria and arrive at JFK only to find that you have been bumped involuntarily from your connecting flight home. To make up for the hardship, the airline company gives you two free tickets to Hawaii. Can you keep the tickets and use them as you desire?

As an advisor to the Bandarian Land Forces, you are expected to observe their summer exercise and report on their strengths and weaknesses. In the course of your observations, you are driving through the desert, come over a sand dune, and run head-on into a camel. After you have pulled yourself out of the wreckage, you determine that the camel is now deceased. What are your obligations? For what are you liable?

In the course of this article, we hope to answer these questions and others which are relevant to U.S. government personnel in the course of conducting business in the security assistance arena. From the outset, let us be clear: this article is not about the annual requirement to reread your applicable service regulation on ethics and standards of conduct. It is about the policies and procedures which govern the conduct of our work with foreign governments and civilian contractors. We have all heard anecdotal stories about individuals who have gotten into trouble because they did not know the requirements or chose to ignore them. The purpose of this article is to present these requirements in the most forthright manner possible to alleviate any past confusion. Additionally, as of press time, these are believed to be the most current and applicable policies and rules.

Those of us who work for the United States Government, military and civilian alike, have a special responsibility of maintaining the public trust and confidence. Therefore, we must make every effort to adhere to both the letter and spirit of the law. According to DoD Directive 5500.7, *Standards of Conduct*, we must avoid the following: any action, or even the appearance of any action, of using our public office for personal gain; losing impartiality in our business dealings with foreign agencies and others outside the federal government; giving preferential treatment; and acting in a way adversely affecting the public confidence in the integrity of the USG. Above all, we must remember to do the right thing and keep the best interests of the United States uppermost in all our dealings with foreign governments and civilian contractors.

Another important responsibility is to make no promise or commitment of USG action or expenditure of US funds for any purpose, without proper authority (see DoD Directive 2100.3, *United States Policy Relative to Commitment to Foreign Governments Under Foreign Assistance Programs*).

In relation to the spirit of the law, remember something called "perception." What we are perceived of doing, or not doing, can often be as critical as what we actually do. For instance, you are travelling TDY and have accrued enough official travel mileage to allow you to fly First Class. You are authorized to upgrade your tickets accordingly and you do so. Once settled comfortably into that big wide seat enjoying the cold one the flight attendant brought to you gratis, you look forward to that flight home after a gruelling TDY. Only one problem though, you are still in uniform; there was no time to change after your last meeting and you just barely caught this flight. Now on the surface, everything is fine and in accordance with established procedure. Except that some "Joe Six-Pack" sitting in the cheap seats in Economy starts grumbling about spending tax-payers' dollars so the military can ride First Class. The next thing you know, there is an article on the third page of *The Washington Post* with the headline: "MILITARY FLY FIRST CLASS ON US AIRLINES! IS IT A TAXPAYER'S RIP-OFF?" This is a matter of perception. You have not done anything wrong, but it is perceived to be wrong by an uninformed person. To avoid the appearance problem, you might want to ensure you change into civilian clothes next time!

Let us begin our discussion with a look at what is acceptable in dealing with foreign governments by answering the first question asked above: can you accept the ceremonial sword? In the best of all circumstances, you should try to decline any gift from a foreign government. But is that really practicable? In a word, no. The last thing you need to do is to offend a foreign government and embarrass the USG. After politely trying to decline once, you should graciously accept the gift. Upon return to the United States, you should take it to a reputable dealer for an appraisal. If the item is valued in US dollars at less than \$200, you are authorized to keep it, in accordance with DoD Directive 1005.13, *Gifts from Foreign Governments*. The directive states that if the gift is valued at greater than \$200, you can do one of two things: put it on the unit property books or turn it in for property disposal by the General Accounting Office. By putting the sword on your unit property books, it now becomes the property of the USG and can be displayed in your office or in the unit's display case in a place of honor. Most importantly, should the Minister of Defense visit your organization, the sword will be right there, displayed in a position of prominence.

If you turn it in, there are two options: one, you fill out the appropriate paper work, through your servicing legal office, and you never see the sword again; or two, if the gift is personally significant or of some sentimental nature, you fill out additional forms which will allow you to purchase it. At this point, you should talk with your legal office on the specific details required to effect this transaction. But know up front, you will have to pay the fair market value of the item; if it is appraised at \$237 or \$2037, that is what you will pay—if you want it. As a final word, remember that these provisions are also applicable to gifts presented to your family members.

Additionally, you are authorized to attend certain social activities of a representational nature hosted by the foreign government. Attendance would be both allowable and expected in the pursuit of your official duties in the best interests of the USG (see DoD Directive 5500.7).

Now, let us look at your dealings with civilian contractors. As we all know, there is an increasing emphasis on the part of the USG to encourage foreign governments to buy American products. Competition among the defense industries is especially keen. This places some extra pressures and responsibilities on security assistance organizations to ensure that American businesses are afforded every opportunity to market their products and obtain foreign sales. To this end, you will have a lot of contact with civilian contractors trying to get their foot in the door to make such sales. Your relations with contractors must again be tempered with what is best for the USG and, since your mission is to assist your host government, you also have to take their needs and requirements into consideration. Therefore, in the conduct of your business dealings

with defense representatives, what types of gifts are you allowed to accept? Basically, you may accept unsolicited, promotional items of nominal value. The value should not exceed \$20 per item and must not exceed a total of \$50 per company per calendar year. The types of items which are acceptable are t-shirts, coffee mugs, caps, pen and pencil sets, and the like; monetary gifts are not acceptable. Additionally, you are allowed to accept refreshments, such as coffee, doughnuts, and soft drinks, in the course of a meeting; presentation items of little intrinsic value, such as a plaque or a certificate; and benefits available to the general public.

Now let us turn to the second question dealing with official government travel and the acceptance of any benefits which may be associated with it. Generally speaking, benefits derived from official government travel belong to the USG in accordance with the Federal Travel Regulation for Federal civilian employees (41 CFR, Chapter 301) and the newly completed "Joint Ethics Regulation" (JER) for military and DoD civilian employees. Individuals participating in airline frequent flyer mileage programs may use these accrued benefits only for upgrades on official travel or for additional official travel. They are not to be used for personal, non-official travel.

So you are now stranded at JFK, involuntarily bumped by the airline from your flight, but happily dreaming of your winter vacation on the beach at Waikiki sipping a mai-tai, compliments of "Joe's Airlines." But can you keep the tickets? Sorry to burst your bubble, but no, you cannot. In a situation where a carrier fails to fulfill its obligation to carry USG passengers with confirmed reserved spaces, any form of compensation, due to an involuntary bump, belongs to the the USG. Therefore, you must turn the tickets in to your servicing travel office upon return to duty. As an exception, you may be able to use those tickets for additional official travel. Check with your travel office for the specific details. Just so it is not a total loss, you are authorized to continue to draw per diem until the airline company finally gets you home!

Now what about a complementary situation in which you volunteer to give up your seat? You arrived at JFK to find that the airline company has over-booked the flight and offers to give the first five volunteers to relinquish their seats two free tickets apiece to beautiful, scenic Bandaria. And you volunteer. Do you get to keep the tickets this time? According to the FTR for Federal civilian employees (41 CFR, Section 301-35(c)), you are authorized to keep the benefits under the following conditions: it must not interfere with the performance of your official duties; you will be charged annual leave; your per diem will be stopped ; and you will be responsible for any additional expenses. But, you get to keep the tickets. (As a reminder, all DoD civilian and military personnel should check the new Joint Ethics Regulation, available in your servicing legal office, for the latest direction.) Bon voyage!

The next area of concern deals with your legal status while in a foreign country. Generally speaking, the USG has some type of legal agreement providing for the status of US personnel with the countries with which we do business. Most of us are familiar with the Status of Forces Agreement (SOFA), most commonly associated with our European NATO partners. In short, this type of document outlines your legal rights and responsibilities in the areas of criminal and civil law, injury or property damage, taxes, import duties, mail, and passports, to name several. With some other countries, we have bilateral agreements outlining the rights and responsibilities of both parties. As an example, we have a non-SOFA agreement with the Kingdom of Saudi Arabia called the "1977 Accords," which is derived from the initial US-Saudi agreement signed in 1953 establishing the United States Military Training Mission to Saudi Arabia. This bilateral agreement facilitated much of the support provided to the deployed US forces during Operations Desert Shield and Storm. In the absence of a SOFA or bilateral agreement, security assistance personnel are covered by certain conditions of the Vienna Convention on Diplomatic Relations of 1961. If in doubt about what your status is or should be, contact your Unified Command or the Consular Affairs Section in your US Embassy.

For those of you who are getting ready to go to Bandaria, either on a permanent duty assignment or on TDY, one question you may have relates to the type passport you should carry and what privileges it entails. In accordance with agreed-upon State Department and Defense Security Assistance Agency directives, all permanent party security assistance personnel and their family members are authorized the Diplomatic Passport. Although this has been a firm requirement for several years, some servicing personnel offices and assignment managers are not aware of this authorization. Publicizing this authorization and need for the Diplomatic Passport is incumbent upon us all.

So now that you have your Diplomatic Passport, what is it good for? Basically, it affords you and your family members complete immunity from the criminal jurisdiction of the host country and from the country's civil and administrative jurisdiction in conjunction with your official duties. Most SAO personnel are afforded this privilege as members of the Administrative and Technical Staff of the US Embassy. SAO Chiefs are accorded full diplomatic immunity as diplomatic agents of the USG, accredited to the host country.

Does having this diplomatic privilege give you a license to run amuck? No, not at all. Basically, you can use that Diplomatic Passport to facilitate processing through Customs and Immigration and possibly to ease your way out of any difficulties involved with minor traffic accidents. But it does not provide immunity from most daily transactions and occurrences, such as paying traffic parking or speeding tickets.

For TDY personnel, you will most likely carry the Official Passport which does not afford you any diplomatic privilege. Your legal status in the country will be dependent upon the SOFA, the bilateral agreement, or any specific terms which may have been written into a FMS case. To be sure what your status is, check with your legal office or the Unified Command responsible for your country.

Now to answer the last question posed at the beginning of this article. Did you just buy a slightly used camel? As a permanent party member of the US Embassy or the security assistance organization assigned to Bandaria, you will be covered by the country-to-country arrangements and will not have to pay for the camel. Your servicing legal office will make provisions for compensating the owner of the camel. If you were visiting TDY, your status is different. But again, the servicing legal office would become involved in the case and make arrangements to pay for the camel. Understand that this is a general assessment and it may vary according to the circumstances and severity of the situation.

That about wraps up the important points we wanted to make about ethics, standards of conduct, and legal status associated with security assistance. Remember that this article is not all inclusive and that some aspects are in flux. Also check the Joint Ethics Regulation as questions arise. It is supposed to supercede the Service directives. However, supplemental instructions may be issued by DoD components with the approval of the DoD General Counsel. In addition, the Federal Office of Government Ethics issued new standards of conduct applicable to all DoD civilian and military personnel, effective 3 February 1993. There may be further work on some of the issues addressed above and changes may be forthcoming.

It is wise to seek the advice of your servicing legal office and officials responsible for ethics and standards of conduct. As significant changes arise, we will make every effort to keep you informed through future *DISAM Journal* articles.

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