
MISUSE OF THE DD FORM 1513-2

By

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Security assistance personnel are sometimes tempted to make substantive changes to Letters of Offer and Acceptance (LOAs) by means of a mere DD Form 1513-2 Notice rather than the prescribed DD Form 1513-1 Amendment. This substitution of forms can often significantly increase the speed and ease with which LOA changes may be "accomplished," but its legal sufficiency and validity cannot be assured. Perhaps the quickest test of legal sufficiency for a proposed use of the DD Form 1513-2 (other than uses clearly authorized by the Military Assistance and Sales Manual) is to ask oneself the following question. Would the USG have the unilateral right to make the change in question after being notified by the foreign purchaser that it does not want the change? If the answer to this question is no, use the DD Form 1513-1, even if the foreign purchaser has indicated that it desires the change.

Paragraph 11 of the Military Assistance and Sales Manual (MASM), Part III, Chapter D, specifies use of DD Form 1513-1, not DD Form 1513-2, for substantive LOA changes such as revisions to terms or conditions. The DD Form 1513-1, like the DD Form 1513 itself, requires agreement by both governments. The DD Form 1513-2 does not. Paragraphs 11 and 13 of MASM III.D are abundantly clear that the DD Form 1513-2 may be used to alter only those terms and conditions which the USG has the right to change unilaterally (e.g., certain price increases) and not changes which require the acceptance or agreement of the foreign purchaser. The MASM is available to foreign purchasers, and the meaning and effect of FMS agreements and documents must be assessed in its light. In addition, as numerous judicial opinions have reminded us, DoD is required to comply with its own regulations.

Moreover, independently of what the MASM and DSAA have enunciated on the subject, the DD Form 1513-2 itself provides that the foreign government merely acknowledges receipt and does not necessarily agree with or accept anything stated on it. This salient feature of the DD Form 1513-2 is emphasized by paragraphs 11.b.9, 11.d and 13.b of MASM III.D. Hence, a DD Form 1513-2 cannot be relied upon to embody a binding international agreement (including an agreement to amend another binding international agreement). If a DD Form 1513-2 were to be employed for this purpose, the foreign purchaser would be free subsequently to challenge any portion of its content which was not within the USG's unilateral modification rights reserved in the DD Form 1513.* In such a case the foreign purchaser's position would be supported by the plain meaning of the DD Form 1513-2 itself, provisions of

*Note: The foreign purchaser might one day wish to deny that it is bound by certain provisions of the 1513-2 for a variety of reasons including international disagreements among its officials, a change of requirements, priorities,
(Footnote Continued)

applicable DoD regulations, such as the MASM, established intergovernmental procedures for conducting FMS and venerable maxims of construction such as contra proferentem (by which documents are construed against their drafter or originator). The USG, by contrast, would be left clutching at straws such as messages or letters from individuals in the purchasing country or local US Security Assistance Organization purporting to authorize the change.

Among the reasons why such messages or letters are not an authorized means of amending LOAs is the fact that they may not be signed at the appropriate level within the foreign purchaser's government and may not have received the requisite review, coordination and approval therein. For example, they may reflect the positions of only one military department within the foreign purchaser's government, or of one project office or individual within that department, and therefore may not constitute the authoritative, final position of the purchasing government or even of the military department involved. In addition, such messages or letters may be unintentionally altered in transmission (when related by message) and, more seriously, may be contradicted, reversed or modified, in whole or in part, by other letters or messages (previously, concurrently or subsequently issued by the same or different offices within the purchaser's government to the same or different offices within the USG). Such messages or letters may also suffer intrinsic deficiencies, such as ambiguities or impermissible qualifications or conditions. Furthermore, any attempt to use such documents to create or amend FMS cases would be contrary to detailed special procedures established by the USG and foreign governments which require use of specific forms (1513 series) to conclude or change this particular variety of international agreement (i.e., LOAs).

None of the foregoing shortcomings would be remedied by referencing the message or letter in, and attaching it to, a DD Form 1513-2 since, as explained above, this is a unilateral US notification which need not entail foreign purchaser review, authorization, approval or agreement. A valid amendment cannot be "bootstrapped" into existence by tacking one inadequate document on top of another.

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policies or simply a change of heart, a desire to evade particularly onerous provisions, or the clarity of retrospective vision (i.e., "20-20 hindsight") which is invariably experienced after initial plans turn sour. It is incumbent upon the USG to avoid actions, such as misuse of prescribed forms, which might undermine the dependability of a foreign government's statutorily mandated dependable undertaking and give that government grounds for alleging a USG breach of fiduciary duty.

ADDITIONAL PERSPECTIVES/READINGS

Following is a list of sources which may be of interest to our readers in the security assistance community:

"Can Europe and the US Find Happiness in a New Fighter Marriage?"
Defense and Foreign Affairs, Vol. XI, No. 9 (September 1983), pp. 14-17, 40.

Defense 83, Almanac, September 1983.

Ikle, Fred C. "The Three Elements of Our Caribbean Strategy." Defense 83 (December 1983), pp. 10-15.

Meron, Theodor. "On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument." American Journal of International Law, Vol. 77, No. 3 (July 1983), pp. 589-606.

Morris, Curtis S., Jr., Lt Col, USAF. The United States-Caribbean Basin Military Connection: A Perspective on Regional Military-to-Military Relationships. The Center for Hemispheric Studies, Occasional Papers Series No. 7. Washington, DC: American Enterprise Institute, August 1983.

Nutting, Wallace H. "A World in Conflict." Defense 83 (December 1983), pp. 2-9.

Stallings, Barbara. "Latin American Debt: What Kind of Crisis?" Sais Review, Vol. 3, No. 2 (Summer-Fall 1983), pp. 27-39.

Sundquist, James L. "The Legislative Veto: A Bounced Check." The Brookings Review, Vol. 2, No. 1 (Fall 1983), pp. 13-16.

Ullman, Richard H. "At War with Nicaragua." Foreign Affairs, Vol. 62, No. 1 (Fall 1983), pp. 39-58.