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Law

**JURISDICTION OF SERVICE COURTS OF
FRIENDLY FOREIGN FORCES IN THE
UNITED STATES**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction implements AFPD 51-7, *International Law*. It provides guidance and procedures for assisting friendly foreign forces in interpreting and complying with Title 22, United States Code, Chapter 13, *Service Courts of Friendly Foreign Forces* ("the Act"), as implemented by DoD Directive 5525.3, *Jurisdiction of Service Courts of Friendly Foreign Forces in the United States*, August 18, 1966.

SUMMARY OF REVISIONS

This revision aligns the instruction with AFPD 51-7. It identifies the North Atlantic Treaty Organization (NATO) countries as authorized foreign states, requires mutual assistance in the arrest of foreign service members and investigation of offenses, adds a reporting requirement for pretrial confinement cases of 30 days or more, and requires installation commanders to provide certain resource assistance to foreign service courts.

1. Court Jurisdiction and Trial:

1.1. Service Court Exclusive Jurisdiction. A friendly foreign force (FFF) has the exclusive right to exercise jurisdiction in the United States over offenses committed by its members which are punishable by its laws, but not by the laws of the United States or any US political subdivision.

1.2. Concurrent Jurisdiction. The United States, including any US political subdivision, and a FFF have concurrent jurisdiction over offenses punishable under the laws of both.

1.2.1. Authorities of the United States and any US political subdivision have the primary right to exercise jurisdiction in any particular case, unless an international agreement governing the status of the FFF in the United States provides otherwise.

1.2.2. The commander or designated representative of a FFF may request in writing a waiver of the primary right of the United States or any US political subdivision to exercise jurisdiction. No particular format is required.

1.3. FFF Exclusive Jurisdiction. The NATO Status of Forces Agreement (SOFA) grants a FFF the primary right to exercise jurisdiction in two instances:

- The offense is solely against the property or security of the FFF, or solely against the person or property of another member of the FFF, or its civilian component or a dependent.
- The offense arises out of any act or omission done in the performance of official duty.

1.4. US Exclusive Jurisdiction. A FFF member may commit an offense not punishable by FFF laws, but punishable by the laws of the United States or a US political subdivision. Staff judge advocates (SJA) will report these cases expeditiously through major command (MAJCOM) channels to HQ USAF International and Operations Law Division (HQ USAF/JAI) to resolve the potential legal and political issues, if possible, before US exclusive jurisdiction is exercised.

1.5. Responsibilities. The Judge Advocate General (TJAG), USAF, is the designated agent to assist FFFs in interpreting and complying with the provisions of the Act. The directorate which carries out TJAG's responsibilities is HQ USAF/JAI. To assist in carrying out these responsibilities, MAJCOM SJAs will:

1.5.1. Establish appropriate channels and procedures for receiving and forwarding FFF requests for assistance, interpretation, and waivers.

1.5.2. Assist the FFFs in their contacts with authorities of the United States and any US political subdivisions.

1.5.3. Ensure uniformity of policy and procedure among installations of their respective MAJCOMs.

1.6. Requests for Assistance. FFF commanders will submit assistance requests to the commander of the installation which serves as the host installation for the FFF. The host installation commander will provide all necessary assistance consistent with this instruction and within capability. When it is impractical to give assistance (for example, the apprehension of a FFF member not in the local area), the host installation commander may communicate directly with the appropriate US Armed Forces installation commander in fulfilling the request.

1.7. Apprehension:

1.7.1. US and FFF authorities will assist each other in the arrest of members of the FFF and in handing them over to the authority which is to exercise criminal jurisdiction. The authorities will also assist each other in carrying out all necessary investigations into offenses and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense.

1.7.1.1. Apprehension of FFF Member. (22 U.S.C. 702) Any member or civilian employee of the Air Force Security Police or Air Force Office of Special Investigations who is authorized to apprehend US military personnel may also apprehend a FFF member when the FFF commander makes a specific request for apprehension and when the installation commander concerned approves the apprehension.

1.7.2. Requests for apprehension before trial will contain the following information and be addressed to the host installation commander:

1.7.2.1. A full description of the person to be apprehended, along with a statement that the person is a member of a FFF and is subject to the jurisdiction of its service court for the offense allegedly committed.

1.7.2.2. A factual description of the offense allegedly committed by the person to be apprehended.

1.7.2.3. The name, address, and telephone numbers (work, cellular, fax, and home, as applicable) of the FFF officer to be contacted if the person is apprehended.

1.7.3. Seek guidance promptly from HQ USAF/JAI when compliance with the request for apprehension is considered inadvisable, or when the person to be apprehended is a US national or ordinarily resident in the United States.

1.7.4. The host installation commander will coordinate the apprehension with appropriate civilian authorities, if the FFF member's alleged offense involves substantial local interest, or if the assistance of civilian authorities is advisable.

1.8. Requests for Counsel. US military forces do not provide counsel or legal assistance to foreign prisoners. Whoever receives such a request will forward it to the FFF requesting the incarceration and to the servicing installation SJA. The FFF provides counsel and legal assistance to any FFF member in US custody.

1.9. Pretrial Confinement:

1.9.1. A FFF commander may request in writing the confinement of a FFF member prior to trial. Address the request to the host installation commander and include the same information required by paragraph 1.7.1.2. If the installation commander approves the request, the installation commander or designated representative will authorize the pretrial confinement by signing a DD Form 497, **Confinement Order**. See AFI 31-205, *The Air Force Corrections Program*, for further information on confinement orders.

1.9.2. The installation commander will release the prisoner, if the FFF does not take immediate steps to investigate the alleged offense and provide a prompt and speedy trial. The Secretary of the Air Force (or designee) must approve any pretrial confinement exceeding 45 days. The installation commander's SJA will report through MAJCOM channels to HQ USAF/JAI any pretrial confinement which reaches the 30th day.

1.10. Assistance to FFF Service Courts:

1.10.1. The installation commander will make available the base courtroom or other suitable venue for the trial on the same basis as other base facilities are made available for FFF use. The US and FFF commanders concerned will coordinate closely on security requirements for the trial. The FFF will provide or pay for court reporting, interpreting, defense counsel, and any other trial-related services.

1.10.2. The installation commander's SJA will provide a copy of the Act, this instruction, and any implementing directives to the FFF commander. The SJA will specifically advise of the provisions of 22 U.S.C. 703 and 704 concerning the assistance available to a FFF service court from a US district court or equivalent US court in a territory or possession.

1.11. Post-Trial Confinement:

1.11.1. Prisoners sentenced to a term of imprisonment by a FFF service court may be confined in an Air Force corrections facility (22 U.S.C. 705). The FFF commander will submit a written request for post-trial confinement to the installation commander who has authority over the corrections facility. The request will attach documentary evidence, translated into English if necessary, of the service court's sentence.

1.11.2. The Secretary of the Air Force (or designee) must authorize and designate a suitable place of confinement when a FFF prisoner is sentenced to a term of confinement exceeding 6 months.

1.12. Rules and Policies for Confinement. The installation commander who has authority over the corrections facility will:

1.12.1. Carry out the confinement of FFF prisoners in accordance with the rules and policies of AFI 31-205.

1.12.2. Not confine FFF prisoners in immediate association with US Armed Forces prisoners, although both kinds of prisoners may be confined in the same facility.

1.12.3. Follow the requirements in AFI 31-205 for segregating male and female prisoners.

1.12.4. Accommodate requests for visitation by FFF representatives whenever feasible. If a visit does not occur for 30 days, contact FFF representatives and recommend a visit. To the extent consistent with facility security and available resources, accommodate efforts of FFF representatives to provide prisoners with culture-specific items, such as religious materials, reading materials, and food.

1.13. Release From Confinement. Normally, the FFF commander will initiate the request for release from confinement by submitting a written request to the installation commander who has authority over the corrections facility. Only the installation commander or designated representative will release the prisoner by signing a DD Form 367, **Prisoner's Release Order**. See AFI 31-205.

1.14. Financial Responsibility (22 U.S.C. 703 & 705). The requesting FFF is responsible for all expenses incident to apprehension, confinement, trial, and attendance of witnesses. See Section 703 concerning mileage rates and witness fees.

1.15. Responsibility for Reporting Incidents (*Friendly Foreign Forces Incident Report*, RCS: HAF-JAI [AR] 9381).

1.15.1. If a FFF member is involved in an incident under this instruction, the SJA for the first Air Force installation commander who becomes aware of the incident will report the member's involvement immediately by message or fax to HQ USAF/JAI, with information copies to the SJA at MAJCOM and any intermediate headquarters. The reporting SJA will retain reporting responsibility, unless HQ USAF/JAI determines that another installation commander's SJA is better situated to obtain and submit information. Normally, the reporting will come from the installation which provides host support to the FFF member's unit. Exceptions are permissible when:

- The incident to be reported occurs at a significant distance from the home installation.
- The escape, death, or serious injury of the FFF member occurs at a corrections facility not at the home installation.
- Unusual circumstances dictate deviation.

1.16. Reports:

1.16.1. Contents of Reports. Reports will contain the following information as appropriate to the stage of the proceedings.

- Name, rank, and organization of FFF member.
- Identity of FFF concerned.
- Brief account of circumstances.
- Identity and authority of person requesting apprehension or confinement.
- Date, time, and place of member's apprehension and confinement.
- If pretrial confinement, nature of the charges, date member was informed of charges, and expected release date.
- If post-trial confinement, charges of which the member was convicted, date of trial, sentence of the court, anticipated corrections facility, and expected release date.
- Identity and authority of person requesting release from detention or confinement.
- Identity and authority of person to whom prisoner is released.
- Whether substantial local interest is involved or expected.
- Any other pertinent information.

1.16.2. Frequency of Reports. The installation commander concerned submits reports immediately after significant events. Examples include commission of offense, request for apprehension, apprehension, request for waiver, trial, confinement, escape, and release. Continue reports until the case is considered closed.

1.16.3. Discontinue reporting during emergency conditions. Do not send by message during MINIMIZE.

NOLAN SKLUTE, Maj General, USAF
The Judge Advocate General

Attachment 1

BASIC TERMS AND RESPONSIBILITIES

A1.1. The Act. Title 22, United States Code, Chapter 13, *Service Courts of Friendly Foreign Forces*.

A1.2. Authorized Foreign States:

A1.2.1. Foreign states which are parties to the NATO SOFA are authorized to exercise service court jurisdiction pursuant to Article VII of that treaty. The NATO SOFA is published in volume 4 of *United States Treaties and Other International Agreements* (4 UST 1792; TIAS 2846; 199 UNTS 67).

A1.2.2. To date, the President has designated only one other friendly foreign state, Australia, to which the Act is applicable. The finding and declaration are in Presidential Proclamation No. 3681, October 10, 1965. A recently concluded agreement with Singapore will require similar Presidential action, if the Government of Singapore so requests.

A1.3. Friendly Foreign Force. Any military, naval, or air force of any friendly foreign state to which the Act is made applicable by Presidential finding and declaration.

A1.4. Service Court. Any military, naval, or air force court, court-martial, or similar tribunal of any FFF within the United States.

A1.5. United States. The United States, its territories, its insular possessions, and any other place subject to the jurisdiction of the United States.

A1.6. US Political Subdivision. Any state, territory, insular possession, county, parish, city, municipality, or other political jurisdiction within any state, territory, or insular possession.