

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 51-705

9 OCTOBER 2014



Law

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

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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RELEASABILITY: There are no releasability restrictions on this publication.

OPR: AF/JAO

Certified by: AF/JA
(Maj Gen Jeffrey Rockwell)

Supersedes: AFI 51-705, 5 February 2009

Pages: 8

This instruction implements AFPD 51-7, *International Law*. It provides guidance and procedures for assisting friendly foreign forces and the forces of a sending state in interpreting and complying with Title 22, United States Code (U.S.C.), Sections 701-706, *Service Courts of Friendly Foreign Forces* ("the Act"), as implemented by DoD Instruction 5525.03, *Criminal Jurisdiction of Service Courts of Friendly Foreign Forces and Sending States in the United States*. This policy applies to Air Force Reserve Command (AFRC) units and the Air National Guard (ANG). Ensure that all records created as a result of processes prescribed in this publication are maintained IAW AFMAN 33-363, *Management of Records*, and disposed of IAW the Air Force Records Disposition Schedule (RDS). Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field through Major Command (MAJCOM) publications/forms managers. This publication may not be supplemented or further implemented/extended. The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See AFI 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the Publication OPR for non-tiered compliance items.

SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed. The revised instruction removes the authority to supplement this publication, implements additional requirements from DoD Instruction 5525.03 and includes Tier waiver approval authority.

1. Policy. The Air Force will implement DoD policy to facilitate the exercise of criminal jurisdiction by service courts of friendly foreign forces or sending states in the United States when authorized or as directed, subject to the following:

1.1. **Service Court Jurisdiction.** A friendly foreign force or the force of a sending state has the right to exercise jurisdiction in the United States over offenses committed by its members that are punishable by its laws, but not by the laws of the United States or its political subdivisions.

1.2. **Concurrent Jurisdiction.** The United States, including its political subdivisions, and a friendly foreign force or the force of a sending state have concurrent jurisdiction over offenses cognizable under the laws of both countries. Subject to the limitations below, the Air Force may request the United States exercise jurisdiction if the offense occurred on an Air Force installation or when directed by higher authority.

1.2.1. Authorities of the United States and its political subdivisions, including the Air Force, have the primary right to exercise jurisdiction in any particular case, unless an international agreement governing the status of the friendly foreign force or the force of a sending state in the United States provides otherwise.

1.2.1.1. The North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) grants a sending state the primary right to exercise jurisdiction in two instances:

1.2.1.1.1. The offense is solely against the property or security of the sending state or solely against the person or property of another member of the sending state, its civilian component, or a dependent.

1.2.1.1.2. The offense arises out of any act or omission done in the performance of official duty.

1.2.2. The commander or designated representative of a friendly foreign force or the force of a sending state may request a waiver of the primary right of the United States, or its political subdivisions, to exercise jurisdiction.

1.3. **United States Exclusive Jurisdiction.** A member of a friendly foreign force or the force of a sending state may commit an offense not punishable by its laws, but punishable by the laws of the or one of its political subdivisions. Staff judge advocates (SJAs) will report these cases expeditiously through major command (MAJCOM) channels to the Headquarters United States Air Force Operations and International Law Division (AF/JAO) to coordinate potential legal and political issues before United States exclusive jurisdiction is exercised.
(T-0)

2. Responsibilities.

2.1. The Judge Advocate General (TJAG), United States Air Force, is the Air Force designated agent to assist friendly foreign forces and the forces of a sending state in

exercising criminal jurisdiction over their personnel under the provisions of the Act or applicable international agreements. The directorate which carries out TJAG's responsibilities is AF/JAO.

2.2. To assist AF/JAO in carrying out these responsibilities, MAJCOM SJAs will:

2.2.1. Establish appropriate channels and procedures for receiving and forwarding friendly foreign forces' and sending states' requests for assistance, interpretation, and waivers.

2.2.2. Assist the friendly foreign forces and sending states in their contacts with authorities of the United States and its political subdivisions.

2.3. Friendly foreign force or sending state commanders will submit assistance requests to the commander of the installation which serves as the host installation for the friendly foreign force or force of a sending state. The host installation commander will provide all necessary assistance consistent with this instruction and within capability. **(T-0)** When it is impractical to give assistance (for example, the apprehension of a friendly foreign force or sending state member not in the local area), the host installation commander may communicate directly with the appropriate United States Armed Forces installation commander in fulfilling the request.

3. Apprehension.

3.1. When the friendly foreign force or sending state commander makes a specific request for apprehension and when the installation commander concerned approves the apprehension, any member or civilian employee of the Air Force Security Forces or Air Force Office of Special Investigations who is authorized to apprehend United States military personnel may also apprehend a friendly foreign force or sending state member..

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

3.2.1. A full description of the person to be apprehended, along with a statement that the person is a member of a friendly foreign force or force of a sending state and is subject to the jurisdiction of its service court for the offense allegedly committed;

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

3.2.3. The name, address, and telephone numbers of the friendly foreign force or sending state officer to be contacted if the person is apprehended.

3.2.4. Citation to the provisions of the Act or international agreement authorizing the apprehension.

3.3. The SJA will seek guidance promptly from AF/JAO when compliance with the request for apprehension is considered inadvisable or when the person to be apprehended is a United States national or ordinarily resident in the United States. **(T-0)**

3.4. The host installation commander will coordinate the apprehension with appropriate civilian authorities, if the friendly foreign force or sending state member's alleged offense involves substantial local interest, or if the assistance of civilian authorities is advisable. **(T-0)**

4. Confinement.

4.1. Pretrial Confinement.

4.1.1. A friendly foreign force or sending state commander may request in writing the confinement of one of its members prior to trial. All detention or confinement shall be at the sole expense of the friendly foreign force or the force of the sending state concerned. Address the request to the host installation commander and include the same information required by paragraph 3.2. If the installation commander approves the request, the installation commander or designated representative will authorize the pretrial confinement by signing a DD Form 2707, **Confinement Order**. See AFI 31-205, *The Air Force Corrections System*, for further information on confinement orders.

4.1.2. The installation commander, upon advice of the SJA, will release the prisoner if the friendly foreign force or force of a sending state does not take immediate steps to investigate the alleged offense and provide a prompt and speedy trial. **(T-0)** 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 AF/JAO any pretrial confinement which reaches the 30th day. **(T-0)**

4.2. Post-Trial Confinement.

4.2.1. Prisoners sentenced to a term of imprisonment by a friendly foreign force or sending state service court may be confined in an Air Force corrections facility at the expense of the sending state. The friendly foreign force or sending state 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.

4.2.2. The Secretary of the Air Force (or designee) must authorize and designate a suitable place of confinement when a friendly foreign force or sending state prisoner is sentenced to a term of confinement exceeding 6 months.

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

4.3.1. Carry out the confinement of friendly foreign force or sending state prisoners in accordance with the rules and policies of AFI 31-205. **(T-0)**

4.3.2. Not confine friendly foreign force or sending state prisoners in immediate association with United States armed forces prisoners, although both kinds of prisoners may be confined in the same facility. **(T-0)**

4.3.3. Follow the requirements in AFI 31-205 for segregating male and female prisoners. **(T-0)**

4.3.4. Accommodate requests for visitation by friendly foreign force or sending state representatives whenever feasible. If a visit does not occur for 30 days, contact friendly foreign force or sending state representatives and recommend a visit. To the extent consistent with facility security and available resources, accommodate efforts of friendly foreign force or sending state representatives to provide prisoners with culture-specific items, such as religious materials, reading materials, and food. **(T-0)**

4.3.5. Refer requests for legal counsel to the friendly foreign force or sending state requesting the incarceration and to the servicing installation SJA. **(T-0)** United States military forces do not provide counsel or legal assistance to foreign prisoners. The friendly foreign force or force of a sending state provides counsel and legal assistance to any of its members in United States custody.

4.4. **Release From Confinement.** Normally, the friendly foreign force or sending state 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 2718, **Inmate's Release Order**. See AFI 31-205. **(T-0)**

5. Assistance to Friendly Foreign Force or Sending State Service Courts.

5.1. The installation commander should make available the base courtroom or other suitable venue for the trial on the same basis as other base facilities are made available for friendly foreign force or sending state use. The United States and friendly foreign force or sending state commanders concerned should coordinate closely on security requirements for the trial. The friendly foreign force or sending state shall provide or pay for court reporting, interpreting, defense counsel, and any other trial-related services.

5.2. The installation commander's SJA will provide a copy of the Act, this instruction, and any implementing directives to the friendly foreign force or sending state commander. The SJA will specifically advise concerning the assistance available to a friendly foreign force or sending state service court from a United States district court or equivalent United States court in a territory or possession (see 22 U.S.C. §§ 703 and 704). **(T-0)**

5.3. Any trial by a friendly foreign force or sending state service court of an offense against a member of the civilian population of the United States shall be open to the public (unless security considerations require otherwise) and shall take place promptly in the United States within a reasonable distance from the place where the offense is alleged to have been committed, for the convenience of the witnesses.

6. Financial Responsibility. The requesting friendly foreign force or sending state is responsible for all expenses incident to apprehension, confinement, trial, and attendance of witnesses.

7. Reports.

7.1. **Responsibility for Reporting Incidents** (*Foreign Criminal Jurisdiction Report*, in JAGUARS). If a friendly foreign force or sending state member is involved in an incident under this instruction, the SJA for the first Air Force unit or organization who becomes aware of the incident will report the member's involvement immediately to AF/JAO, with information copies to the SJA at MAJCOM and any intermediate headquarters. **(T-0)** The reporting SJA will retain reporting responsibility, unless AF/JAO 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 friendly foreign force or sending state member's unit.

Exceptions are permissible when:

7.1.1. The incident to be reported occurs at a significant distance from the home installation;

7.1.2. The escape, death, or serious injury of the friendly foreign force or sending state member occurs at a corrections facility not at the home installation; or,

7.1.3. Unusual circumstances dictate deviation.

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

7.2.1. Name, rank, and organization of the friendly foreign force or sending state member; (T-1)

7.2.2. Identity of the friendly foreign force or sending state concerned; (T-1)

7.2.3. Brief account of circumstances; (T-1)

7.2.4. Identity and authority of person requesting apprehension or confinement; (T-1)

7.2.5. Date, time, and place of member's apprehension and confinement; (T-1)

7.2.6. If pretrial confinement, nature of the charges, date member was informed of charges, and expected release date; (T-1)

7.2.7. 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; (T-1)

7.2.8. Identity and authority of person requesting release from detention or confinement;

7.2.9. Identity and authority of person to whom prisoner is released; (T-1)

7.2.10. Whether substantial local interest is involved or expected; and, (T-1)

7.2.11. Any other pertinent information. (T-1)

7.3. **Frequency of Reports.** Submit reports immediately after significant events. Examples of significant events include commission of offense, request for apprehension, apprehension, request for waiver, trial, confinement, escape, and release. Continue reports until the case is considered closed.

CHRISTOPHER F. BURNE, Lt Gen, USAF
The Judge Advocate General

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFPD 51-7, *International Law*, certified current 23 April 2014

AFI 31-205, *The Air Force Corrections System*, 7 April 2004

AFI 33-360, *Publications and Forms Management*, 25 September 2013

AFMAN 33-363, *Management of Records*, 1 March 2008, incorporating changes through AFGM2014-01, 28 May 2014

DoDI 5525.03, *Criminal Jurisdiction of Service Courts of Friendly Foreign Forces and Sending States*, 30 March 2006

Title 22, United States Code, Sections 701-706, *Service Courts of Friendly Foreign Forces*

Presidential Proclamation No. 3681, 30 Fed. Reg. 13049, 10 October 1965

Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces [NATO SOFA], 19 June 1951, 4 United States Treaties 1792

Agreement Among the State Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace Regarding the Status of Their Forces [Partnership for Peace SOFA], 19 June 1995, Treaties and Other International Acts Series 12666

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

DD Form 2707, *Confinement Order*

DD Form 2718, *Inmate's Release Order*

Abbreviations and Acronyms

AF—Air Force

AFI—Air Force Instruction

AFMAN—Air Force Manual

AFPD—Air Force Policy Directive

AFRC—Air Force Reserve Command

ANG—Air National Guard

DD—Department of Defense (for forms)

DoD—Department of Defense

JAGUARS—Judge Advocate General Unified Automated Reporting System

MAJCOM—Major Command

NATO—North Atlantic Treaty Organization

OPR—Office of Primary Responsibility

RDS—Records Disposition Schedule

SJA—Staff Judge Advocate

SOFA—Status of Forces Agreement

TJAG—The Judge Advocate General

U.S.C.—United States Code

Terms

The Act. Title 22, Code, Sections 701—706, *Service Courts of Friendly Foreign Forces.*

Applicable International Agreement—. An agreement that authorizes a sending state to exercise criminal jurisdiction within the and imposes obligations on the United States that are similar to those imposed under the Act. Foreign states which are parties to the NATO SOFA are authorized to exercise service court jurisdiction pursuant to Article VII of that treaty, as are parties to the Partnership for Peace SOFA.

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. On October 10, 1965, the President declared to be a friendly foreign force.

Sending State.—The party to an applicable international agreement to which the force belongs.

Service Court. Any military, naval, or air force court, court—martial, or similar tribunal of any friendly foreign force or sending state within the .

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

United States Political Subdivision.—Any state, territory, insular possession, county, parish, city, municipality, or other political jurisdiction within a state, territory, or insular possession.