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United States Army Installation Management Command
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Heidelberg, Germany

Headquarters
U.S. Naval Forces Europe/U.S. Sixth Fleet
Naples, Italy

Headquarters
United States Air Forces in Europe
Ramstein, Germany

Army in Europe
Regulation 550-50*

CNE-C6F
Instruction 5820.8K*

USAFE
Instruction 51-706*
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Foreign Countries

Exercise of Foreign Criminal Jurisdiction Over United States Personnel

***This publication supersedes USAREUR Regulation 550-50/USNAVEUR Instruction 5820.8J/ USAFE Instruction 51-706, 31 January 2001.**

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Summary. This publication defines policy, responsibilities, and procedures for protecting the rights of U.S. personnel subject to foreign criminal jurisdiction.

Applicability. This publication applies to U.S. personnel stationed in, on temporary duty in, or passing through the USEUCOM geographic area of responsibility.

Supplementation. Organizations will not supplement this publication without Office of the Judge Advocate (OJA), HQ USAREUR/7A (AEAJA-ILOD), approval.

Forms. This publication prescribes AE Form 550-50A. AE and higher level forms are available through the Army in Europe Publishing System (AEPUBS).

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● Army in Europe units according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information Management System website at *https://www.arims.army.mil*.

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SECTION I
GENERAL PROVISIONS

1. PURPOSE
This publication—

a. Defines responsibilities for protecting the rights of U.S. personnel subject to foreign criminal jurisdiction, and prescribes policy and procedures for performing these responsibilities.

b. Provides a uniform reporting system for matters involving the exercise of foreign criminal jurisdiction over U.S. personnel.

c. Implements and supplements procedures in AR 27-50/SECNAVINST 5820.4G/AFJI 51-706 (referred to in this publication as the Joint Service Regulation).

2. SCOPE
This publication applies to countries in the USEUCOM geographic area of responsibility (AOR), including Germany. The policy in AE Regulation 550-56/USNAVEUR Instruction 5820.13F/USAFE Instruction 51-705 will take precedence over the policy in this publication for Germany.

3. REFERENCES

a. International Agreements.

(1) NATO Status of Forces Agreement (SOFA). Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces of 19 June 1951 (4 UST 1792). (Articles I and VII are reproduced in appendix A.)

(2) Germany. Agreement to Supplement the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces Stationed in the Federal Republic of Germany of 3 August 1959, amended by the Agreements of 21 October 1971, 18 May 1981, and 18 March 1993; the Protocol of Signature to the Supplementary Agreement (14 UST 531); Revised NATO SOFA Supplementary Agreement effective 29 March 1998; Treaty on the Final Settlement with Respect to Germany (2 Plus 4 Agreement) of 12 September 1990; and 2 Plus 4 Implementing Notes, dated 12 September 1994.

(3) Greece. The Mutual Defense Cooperation Agreement of 8 July 1990 and the Comprehensive Technical Agreement of 13 June 2001, which became effective on 8 April 2003.

(4) Italy. Bilateral Infrastructure Agreement (BIA) between the United States and Italy (unclassified version of classified title) of 20 October 1954; Technical Agreement to the Memorandum of Understanding Concerning the Use of Aviano Air Base in the Implementation of the NATO Decision on the Deployment of the F-16 in Italy, signed 30 November 1993; Memorandum of Understanding Concerning Use of Installation/Infrastructure by United States Forces in Italy of 2 February 1995; and the U.S./Italy Acquisition and Cross Servicing Agreement, which became effective on 15 April 2001.

(5) Spain. Agreement on Defense Cooperation Between the United States of America and the Kingdom of Spain, signed 1 December 1988, as amended by the Protocol of Amendment to the ADC, dated 10 April 2002, which became effective on 12 February 2003.

(6) The Netherlands. Agreement, with annex, Between the United States and the Netherlands Regarding Stationing of United States Armed Forces in the Netherlands of 13 August 1954 (6 UST 103).

(7) Turkey. Agreement Between the United States and the Republic of Turkey Relative to the Implementation of NATO SOFA of 23 June 1954 (5 UST 1465); Agreement Amending the Minute of Understanding of 23 June 1954, entered into force on 21 July 1955 (6 UST 2917); Status of United States Forces in Turkey Relative to Duty Certificates, entered into force on 24 September 1968; and Cooperation on Defense and Economy (DEFA), entered into force on 29 March 1980 (32 UST 3323).

(8) Iceland. Iceland is not a signatory of the NATO SOFA. The U.S.-Iceland Defense Agreement, Basic Agreement, Pursuant to the North Atlantic Treaty Between the United States and the Republic of Iceland of 5 May 1951, and the annex entitled Agreement Concerning the Status of United States Personnel and Property of 8 May 1951, constitute the SOFA between the United States and Iceland.

(9) Partnership for Peace SOFA. Agreement Among the States Parties to the North Atlantic Treaty and Other States Participating in the Partnership for Peace Regarding the Status of their Forces, 19 June 1995.

b. Department of Defense Directive. DOD Directive 5525.1, Status of Forces Policies and Information. (This directive is available at *http://www.dtic.mil/whs/directives/corres/pdf/552501p.pdf*.)

c. Joint-Service Publications.

(1) Defense Intelligence Agency Manual, Volume 100-1 (17 March 1997), subject: Foreign Criminal Jurisdiction—Duties and Responsibilities of Defense Attachés as Designated Commanding Officer (DCO) (reproduced in app B).

(2) AR 27-50/SECNAVINST 5820.4G/AFJI 51-706, Status of Forces Policies, Procedures, and Information.

(3) AE Regulation 550-56/USNAVEUR Instruction 5820.13F/USAFE Instruction 51-705, Exercise of Jurisdiction by German Courts and Authorities Over U.S. Personnel.

d. Unified Command Publication. USEUCOM Directive 45-3, Foreign Criminal Jurisdiction Over U.S. Personnel.

e. Army Regulations.

(1) AR 25-400-2, The Army Records Information Management System (ARIMS).

(2) AR 27-10, Military Justice.

(3) AR 635-200, Active Duty Enlisted Administrative Separations.

f. Air Force Instructions.

(1) Air Force Instruction 36-3208, Administrative Separation of Airmen.

(2) Air Force Instruction 51-703, Foreign Criminal Jurisdiction.

(3) 16 Air Force Instruction 51-711, Service of United Kingdom Legal Process Within United States Force Installations in the UK.

g. Army in Europe Regulations.

(1) AE Regulation 27-10, Military Justice.

(2) AE Regulation 550-56/USNAVEUR Instruction 5820.13F/USAFE Instruction 51-705, Exercise of Jurisdiction by German Courts and Authorities Over U.S. Personnel.

h. Forms.

(1) DD Form 838, Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel.

(2) DD Form 1173, United States Uniform Services Identification and Privilege Card.

(3) DD Form 1602, Report of Visit - U.S. Personnel in Foreign Penal Institution.

(4) DD Form 1936, Individual Case Report - Exercise of Criminal Jurisdiction by Foreign Tribunals Over U.S. Personnel.

(5) DA Form 2028, Recommended Changes to Publications and Blank Forms.

(6) Air Force Form 9, Request for Purchase.

(6) AE Form 550-50A, Status of Forces Incident Report.

(7) AE Form 550-56A, Exercise of Criminal Jurisdiction by Foreign Tribunals Over U.S. Personnel Feeder Report.

4. EXPLANATION OF ABBREVIATIONS AND TERMS

The glossary defines abbreviations and terms.

5. BACKGROUND

a. NATO SOFA.

(1) The NATO SOFA was created in 1951 to define the rights and responsibilities of NATO personnel stationed in NATO countries. However, it does not apply to NATO personnel stationed in Iceland, because Iceland is not a signatory. Today the treaty is in effect in Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, the United Kingdom, and the United States. The NATO SOFA also applies to countries that have ratified the NATO Partnership for Peace SOFA.

(2) Article VII of the NATO SOFA prescribes the conditions under which the respective criminal jurisdiction rights of U.S. authorities and host nations are determined and exercised (para 12).

b. The Senate Resolution. The U.S. Senate ratified the NATO SOFA by the Resolution of 15 July 1953. The Senate Resolution required the Executive Branch to ensure that a person subject to U.S. military jurisdiction tried in a foreign court would be offered the same U.S. constitutional safeguards available if the trial took place in a U.S. State court. Although the Senate Resolution applies only in countries where the NATO SOFA is in effect, the same procedure for safeguarding the interests of U.S. personnel subject to foreign jurisdiction applies, as far as practicable, in overseas areas where U.S. Forces are stationed. This uniformity is established in DOD Directive 5525.1.

c. DOD Directive 5525.1. This directive assigns the overall responsibility for implementing U.S. policy pertaining to the Senate Resolution of 15 July 1953 to a single military commander (the DCO) for each foreign country in which U.S. military forces are regularly stationed. This responsibility includes—

(1) Preparing required country-law studies.

(2) Securing waivers of custody and jurisdiction.

(3) Maintaining liaison with U.S. diplomatic missions.

(4) Maintaining liaison with appropriate legal authorities of host countries.

(5) Providing trial observers.

(6) Initiating the procedure for State Department action in matters pertaining to foreign criminal jurisdiction.

d. Joint Guidance. In addition to DOD Directive 5525.1, the other directives and agreements in paragraph 3 provide basic guidance for the Services.

6. APPOINTMENT OF DESIGNATED COMMANDING OFFICERS

a. Unified Commander. For many countries in the USEUCOM AOR, the unified commander assigns one component commander the responsibility for implementing DOD and USEUCOM policy and procedures for the following:

(1) The exercise of foreign criminal jurisdiction over U.S. personnel.

(2) The initiation of procedures set forth in the Senate Resolution for each country in the USEUCOM AOR (app C). In executing these responsibilities, the component commander officially serves and is known as the "Designated Commanding Officer, *name of the country concerned*."

b. DCOs. The following component commanders have been appointed by the Commander, USEUCOM, as DCOs for the countries indicated (USEUCOM Dir 45-3, para 7b):

(1) The CG, USAREUR/7A, for Austria, Belgium, Bulgaria, the Czech Republic, Germany, the Netherlands, Poland, Romania, and Switzerland.

(2) The Deputy COMUSNAVEUR for Greece, Iceland, Israel, Italy, Mozambique, South Africa, Spain, Tanzania, and Tunisia.

(3) The Commander, USAFE, for Cyprus, Denmark, France, Luxembourg, Morocco, Norway, Portugal (including the Azores), Turkey, and the United Kingdom.

c. Defense Attachés. In countries other than those specified in subparagraph b above, and in accordance with pertinent provisions of references 3c(1) and (2) and 3d, U.S. defense attachés perform the duties of DCOs in connection with the exercise of criminal jurisdiction over U.S. personnel by foreign authorities and submit required administrative reports. In a country for which a component commander has not been appointed as the DCO, HQ USEUCOM may appoint a DCO on a case-by-case basis. In these cases, the U.S. defense attaché who would normally be responsible will be relieved of the responsibility.

7. UNITED STATES COUNTRY REPRESENTATIVES

a. Appointment. The DCO will appoint for each country under his or her responsibility (para 6) a senior U.S. officer who will act as the U.S. country representative (USCR) of the DCO (USEUCOM Dir 45-3, para 5). (In Germany, the DCO also carries out the functions of the USCR.)

(1) Except when the authority has been delegated by the USCR, the USCR will serve as the single POC with the host country and the U.S. diplomatic mission in the country concerning criminal jurisdiction over U.S. personnel by the host country.

(2) Unless previously delegated to the USCR, the DCO makes the final decision whether or not to request formal U.S. State Department action through diplomatic channels in order to obtain a waiver or to relinquish criminal jurisdiction. In executing this delegated function, the USCR officially serves and is known as the "U.S. Country Representative, *name of the country concerned*."

(3) Appendix C lists USCR appointments made according to USEUCOM Directive 45-3, paragraph 7c. When a component commander appoints a USCR, a copy of the memorandum of appointment should be sent to the unified commander and each of the component commanders listed in the glossary.

b. Responsibilities. Unless otherwise directed by the DCO, each USCR will—

(1) Act as the POC for U.S. military Services with the U.S. diplomatic mission and the appropriate national legal or administrative authorities of the foreign country concerned in matters of criminal jurisdiction over U.S. personnel.

(2) Coordinate with the national authorities of the host country through the U.S. diplomatic mission in that country.

(3) Implement this publication, when possible, uniformly for all Services.

(4) Provide copies of implementing directives to the unified commander and component commanders.

(5) Ensure that information and education programs are established for the U.S. personnel orientation on host-nation laws and customs and the NATO SOFA, Article VII, as applicable.

(6) Perform duties assigned to the DCO within the host country, except as specifically reserved for the DCO.

(7) Prepare and transmit reports required by this publication, section V.

(8) Perform other duties as prescribed by this publication or as otherwise assigned by the DCO.

c. Assistance Available. USCRs, country liaison agents (para 8), and other officers responsible for the requirements in this publication may seek technical assistance from the nearest U.S. military command with a judge advocate or attorney advisor. Direct communication across command and Service lines with respect to these matters is authorized. USCRs may refer problems about the exercise of foreign criminal jurisdiction to the legal staff of the DCO with a request for review and appropriate action.

8. COUNTRY LIAISON AGENTS

a. Appointment. In host nations where they are not the DCO, component commanders will appoint a senior commander to act as the country liaison agent for their respective branches of Service. The component commander will appoint another agency not under his or her command, with its concurrence, to act as the country liaison agent for personnel of his or her Service if any of the following applies:

(1) A unit of his or her branch of Service is not regularly stationed in the country.

(2) The USCR is of a different Service.

(3) The USCR is the head of an agency not normally exercising command responsibilities over units stationed in the country (for example, U.S. defense attaché, Office of Defense Cooperation). Appendix C lists currently appointed country liaison agents.

b. Responsibilities. Unless otherwise directed by the DCO or USCR, country liaison agents will—

(1) Act as the central POC between units and personnel of their Service (or the Service that they are appointed to represent) and the USCR and other U.S. authorities regarding the exercise of foreign criminal jurisdiction over members of that Service in the host country.

(2) Monitor incidents of foreign criminal jurisdiction involving personnel of the Service they represent to ensure units and personnel comply with applicable regulations and international agreements.

(3) Ensure that the component commander of the Service they represent is informed of incidents and their processing.

(4) Perform other functions of foreign criminal-jurisdiction matters that may be required by the component commander of the Service they represent, subject to limits imposed by the DCO or USCR.

9. BASIC POLICY

a. U.S. military authorities must maintain order and enforce discipline among U.S. personnel. This responsibility extends to offenses committed by U.S. personnel and offenses against foreign law. U.S. military authorities will dispose of offenses by U.S. personnel according to applicable U.S. laws and directives, including the Uniform Code of Military Justice (UCMJ), and pertinent international agreements.

b. U.S. authorities will attempt, if feasible, to obtain a waiver of foreign jurisdiction, or a decision by foreign authorities not to exercise such jurisdiction, when the primary or exclusive right to exercise jurisdiction is vested in the host country. If foreign authorities exercise jurisdiction, U.S. military authorities will ensure that the accused receives a fair trial and fair treatment.

c. If U.S. military authorities have the primary or exclusive right to exercise jurisdiction, or foreign authorities waive or relinquish their primary or exclusive jurisdictional rights, U.S. military authorities will dispose of the case promptly and appropriately.

10. INFORMATION POLICY

a. General. U.S. military authorities will give the general public and Congress information on status of forces matters. Military authorities will coordinate and provide information to the public and Congress according to procedures established by Service directives.

b. Foreign Authorities. When U.S. authorities dispose of a case, advance notification of the time and place of the trial or results of action taken will be provided on request to the authorities of the receiving state.

SECTION II
PROCEDURE IN INDIVIDUAL CASES

11. INITIAL NOTIFICATION OF INCIDENT

a. Unit commanders will immediately report incidents (glossary) to the USCR or his or her designee (in Germany, the local legal liaison authority) for the country in which the incident occurred and to the involved Servicemember's country liaison agent for that country (app C). For Navy and Air Force personnel, commanders also will give information copies of the report to their chain of command. For Air Force Reserve personnel, commanders will provide information to the reserve chain of command and to the Judge Advocate, Headquarters, Air Force Reserve Command, at Robins Air Force Base, Georgia. For serious or unusual incidents, the report will be transmitted electronically as a feeder report for the serious or unusual incident report required by paragraph 28. For minor offenses (glossary) involving Army or Navy personnel, the report will be submitted using AE Form 550-50A (app D) unless the USCR has prescribed a different reporting format in USCR instructions.

b. USCRs (in Germany, the local legal liaison authority) will—

(1) Ensure that they or their designees are informed promptly of incidents within their AOR that involve the exercise of foreign criminal jurisdiction or custody over U.S. personnel, regardless of the branch of Service of the individual.

(2) Try to obtain the release of U.S. personnel held in foreign custody (para 14).

(3) Make informal applications for waiver or the relinquishment of criminal jurisdiction at the local level when the foreign government has the exclusive or primary right to exercise jurisdiction. (Formal application may be made if authorized by the DCO.) A request for waiver of jurisdiction is authorized in cases when the request is considered appropriate.

(4) Ensure that the reports required by section V of this publication are prepared and submitted.

12. INITIAL ACTION ON DETERMINATION OF JURISDICTION

a. Exclusive Jurisdiction in the Host Country. USCRs will ensure that they are informed immediately when the host-nation government intends to prosecute a case against U.S. personnel in which the host nation has exclusive jurisdiction. If the unit commander determines that he or she can take suitable administrative actions as described in paragraph 13, he or she should notify the USCR, who will request that local foreign authorities relinquish their jurisdictional rights.

b. U.S. Primary Right (Concurrent Jurisdiction). When it has primary right (concurrent jurisdiction), the United States will take appropriate disciplinary or administrative action without delay.

c. Host Country Primary Right (Concurrent Jurisdiction).

(1) Disposition by U.S. Military Authorities. With the approval of the USCR or the appropriate local legal liaison authority (AE Reg 550-56/USNAVEUR Inst 5820.13F/USAFE Inst 51-705; applicable only in Germany), U.S. military authorities will take appropriate disciplinary or other action without delay. The USCR will ensure that foreign authorities are promptly notified of the U.S. action when requested.

(2) Initial Action on Denial of Waiver Requests. If foreign authorities deny the request for waiver of their primary right to exercise jurisdiction, the USCR or his or her designee will prepare the report prescribed by paragraph 29.

13. ADMINISTRATIVE ACTION

a. Transfer.

(1) U.S. military authorities may not take the following actions without the approval of the DCO or USCR:

(a) Permit the transfer, reassignment, or removal of U.S. military personnel accused of or suspected of being involved in incidents involving the possible exercise of foreign criminal jurisdiction.

(b) Provide transportation at Government expense outside the host country for civilians or Family members accused of or suspected of being involved in incidents involving the possible exercise of foreign criminal jurisdiction.

(2) Unit commanders will inform the DCO or USCR when unusual circumstances or Service directives urgently require the individual's transfer (for example, expiration term of service, grave personal hardship, medical reasons, the interests of justice).

(3) In cases involving serious offenses, Army military personnel are not permitted to be sent to the continental United States without authorization by HQDA (DAJA-IA) (AR 27-10, para 17-3b).

(4) Air Force personnel are governed by Air Force Instruction 51-703.

b. Pretrial Action. When U.S. personnel are accused of or suspected of being involved in a criminal incident involving a possible violation of foreign law, the commander will ensure that appropriate administrative action is taken (for example, flagging action to ensure the individual is available pending disposition of proceedings; suspension of exchange, commissary, or driving privileges, as may be authorized).

(1) Administrative action should have a direct relation to the alleged offense (for example, the drivers license of an individual suspected of vehicular negligent homicide may be suspended; the coffee or cigarette ration of an individual suspected of selling rationed coffee or cigarettes illegally may be suspended).

(2) Even if a foreign authority may invoke jurisdiction, U.S. military commanders will ensure that pretrial action (for example, investigation, preferral of charges, referral of charges to trial, as appropriate) is accomplished quickly and not delayed over jurisdictional issues in cases where disciplinary action under the UCMJ is appropriate.

(3) U.S. authorities will not bring an individual to trial, impose nonjudicial punishment, or make other final disposition of a case until foreign authorities indicate they will waive or relinquish jurisdiction or the approval of the component commander of the accused has been obtained.

(4) Commanders may impose nonjudicial punishment to the extent permitted by their Service regulations without applying to the DCO when it is unlikely that the offender will be punished by the host country or if the imposition of nonjudicial punishment would substantially increase the likelihood that the host country will waive its primary right to jurisdiction. Imposing nonjudicial punishment before foreign authorities act is not prohibited by this publication. The following are situations in which punishment by foreign authorities is unlikely:

(a) The offense is of the type against which local host-country authorities usually take no action or grant a waiver request.

(b) The offense is subject to host-country amnesty.

(c) Punishment is ordinarily suspended by the host-country court involved.

(d) The offense is not subject to criminal punishment in the host country according to the probable interpretation of the court involved.

c. Serving Foreign Criminal Process. U.S. military authorities will help foreign courts and authorities serve criminal process in foreign criminal matters. The USCR will request that foreign authorities serve criminal process on U.S. personnel through the U.S. authorities. When U.S. involvement is unnecessary or inappropriate, the U.S. authorities will request a copy of documents served on U.S. personnel. In each case, U.S. military authorities will examine the documents, determine whether foreign authorities are properly exercising jurisdiction in the case, and, if necessary, give an English translation of the documents to the U.S. personnel concerned.

14. RELEASE FROM FOREIGN CUSTODY

a. U.S. Military Personnel. U.S. military authorities will try to secure custody of accused military personnel until foreign judicial proceedings are complete. When foreign authorities intend to exercise jurisdiction, U.S. military authorities may give assurance that the accused will not be removed from the host nation without giving due notice to the foreign authorities and adequate opportunity for them to object. (Paragraph 17 covers *in absentia* trial procedures.)

(1) In cases that fall under the UCMJ, Articles 9 through 11, U.S. military authorities may order pretrial confinement of the accused in a U.S. facility pending disposition of the court-martial charges. The probable exercise of foreign jurisdiction should not normally bar consideration of pretrial confinement.

(2) When the branch of Service and component-commander policy permits, and in the absence of pending court-martial charges, U.S. military authorities of that Service may impose pretrial confinement of military personnel accused if deemed necessary to ensure the accused's presence at the trial or other proceedings on foreign charges.

b. Civilian Personnel and Family Members. U.S. authorities should try to secure the release of U.S. civilian employees and Family members from foreign pretrial confinement. U.S. authorities—

(1) Should inform the foreign authorities that the United States has no authority to restrain the liberty of civilian employees and Family members or guarantee their presence at the trial.

(2) May assure foreign authorities that the United States will not transfer the accused from the host country at U.S. expense without prior approval of the host government. (Paragraph 17 covers *in absentia* trial procedures.)

15. DANGER OF UNFAIR TRIAL

a. Action by Local Commanders. If U.S. authorities cannot obtain release from custody or waiver of jurisdiction and the accused may not receive a fair trial or fair treatment before, during, or after the trial, the local commander will give the USCR all the facts of the case and recommendations. The local commander will give a copy of this communication to the DCO and the component commander of the accused.

b. Action by U.S. Country Representative. After considering the country's procedures, the USCR will determine whether or not there is danger that the accused will not receive a fair trial or fair treatment. If the USCR determines that there is danger of an unfair trial and further action at the local level is ineffective or not feasible, the USCR will consult with the chief of the U.S. diplomatic mission and report the facts and recommendations by electronic message to the DCO. This report will include the informal views of the chief of the U.S. diplomatic mission and the USCR. The USCR will give copies of this communication and follow-up reports on later developments to the chief of the U.S. diplomatic mission, the unified commander, the DCO, and the component commander of the accused.

16. PRIOR JEOPARDY

a. Prior Disposition by U.S. Authorities.

(1) When U.S. authorities have exercised jurisdiction for an offense, the USCR will promptly notify host-nation authorities of the U.S. action and ensure that he or she is notified if the host-nation authorities subsequently attempt to exercise jurisdiction over U.S. personnel for the same offense. The USCR will make every effort to prevent these attempts through local or diplomatic channels and will report to the DCO the facts, including details of contacts with host-nation authorities.

(2) To avoid diplomatic conflicts, unit commanders and trial counsel will verify before taking punitive action that release of jurisdiction is obtained from foreign authorities in concurrent primary foreign jurisdiction cases.

b. Prior Trial by Foreign Authorities. U.S. military authorities will not, without the approval of the component commander of the accused, institute disciplinary measures (other than nonjudicial punishment) when the host country previously has exercised jurisdiction in the case. The determination whether or not to impose nonjudicial punishment in such cases will be governed by separate Service regulations. This policy does not bar appropriate administrative action (for example, suspension of exchange, commissary, or driving privileges; reduction in grade; discharge from the Service).

17. TRIALS *IN ABSENTIA*

a. Definition. A trial *in absentia* is a criminal proceeding before a foreign tribunal in which the accused is not present.

b. Policy. The provisions of the Joint Service Regulation, paragraph 1-7, apply to trials *in absentia*. When the right to try *in absentia* is not waived by appropriate foreign authorities and permanent removal of U.S. personnel from a foreign country before trial is a recognized customary procedure, "tacit consent" of such foreign authorities must exist. The tacit consent in such instances is considered to have been obtained after (1) through (3) below have been implemented:

(1) Due notice of the proposed removal is given to the appropriate foreign authorities.

(2) No objection by the foreign authorities is interposed after a reasonable time.

(3) The accused agrees in writing to a trial *in absentia* and to the appointment of a representative to receive service of process relating to the trial on behalf of the accused. The requirement for a written agreement and appointment of a representative also will apply when the foreign country, while not waiving trial *in absentia*, has expressly consented to removal.

c. Procedures. The individual, whether or not in the military at the time of trial, will be informed of the results of a trial *in absentia*. At the time of the trial, the individual will provide an address at which he or she will be notified of the results of trial. The individual will be advised that he or she is responsible for providing address changes to the official monitoring his or her case.

18. COUNSEL FEES AND RELATED ASSISTANCE

a. General. The Joint Service Regulation, chapter 2, establishes criteria and assigns responsibility for the provision of counsel and bail, the payment of court costs, and other necessary and reasonable expenses associated with representation in foreign criminal and civil proceedings.

b. Appointment of Approval Authority. The officers listed in (1) through (3) below have authority to approve requests for the provision of counsel and bail or payment of expenses under the provisions of the Joint Service Regulation, chapter 2. They also have authority to determine whether the criteria prescribed by the Joint Service Regulation, paragraphs 2-4 and 2-5 (for criminal cases) and paragraph 2-6 (for civil cases), are met for members of their respective branch of Service within the host nation indicated.

(1) Army. To obtain prompt and effective legal service according to the Joint Service Regulation, paragraph 2-3b, authority to approve counsel fees in the USEUCOM area of operation is assigned according to geographic area rather than to the chain of command. The approval authorities listed in (a) through (e) below are responsible for budgeting and funding counsel fees in their respective areas of authority without regard to the Army command to which the accused is assigned. Army approval authorities will not request reimbursement of funds expended to provide counsel for Army personnel from other commands without the express written consent of HQ USAREUR/7A (AEAJA-IL-FL), Unit 29351, APO AE 09014-9351.

(a) Austria, Denmark, Norway, Portugal (including the Azores), Spain, Switzerland, and the United Kingdom: Staff Judge Advocate (SJA), 21st Theater Sustainment Command, Unit 23203, APO AE 09263-3203. (For Austria and Switzerland, this authority has been delegated to the Officer in Charge, Legal Service Center - Stuttgart, 21st Theater Sustainment Command, CMR 423, APO AE 09107.)

(b) Belgium, France, Luxembourg, and the Netherlands: Judge Advocate, Northern Law Center, 21st Theater Sustainment Command, Unit 21420, APO AE 09705-1420.

(c) Cyprus, Greece, Israel, Italy, Morocco, Tunisia, and Turkey: SJA, United States Army Southern European Task Force, Unit 31401, Box 5, APO AE 09630-0005.

(d) Germany: With regard to cases arising in their legal liaison AOR, SJAs and (when so designated by their SJA) officers in charge who act as local legal liaison authorities designated in AE Regulation 550-56/USNAVEUR Instruction 5820.13F/USAFE Instruction 51-705, appendix B; or other designees of the SJA.

(e) Any other country in Africa, Europe, and the Middle East not included in (a) through (d) above: Judge Advocate, USAREUR (AEAJA-IL-FL), Unit 29351, APO AE 09014-9351.

(2) Navy.

(a) Greece: Commander, Navy Region Europe, PSC 817, Box 108, FPO AE 09622-1018.

(b) Iceland: Commander, Iceland Defense Force/Commander, Fleet Air Keflavik, PSC 1003, Box 1, FPO AE 09728-0001.

(c) Italy: Commanding Officer, Region Legal Service Office, Europe and Southwest Asia, PSC 817, Box 8, FPO AE 09622-0008.

(d) Spain: Commander, Navy Region Europe, PSC 817, Box 108, FPO AE 09622-0108.

(e) United Kingdom: Commander, Navy Region Europe, PSC 817, Box 108, FPO AE 09622-1018.

(f) All other countries in the USEUCOM AOR not included in (a) through (e) above: Commander, Navy Region Europe, PSC 817, Box 108, FPO AE 09622-0108. The Commander, Navy Region Europe, may modify the exercise of approval authority in individual cases as appropriate.

(3) Air Force.

(a) The following agencies have approval authority for the countries indicated:

1. Cyprus and Morocco: HQ USAFE/JAI, Unit 3050, Box 100, APO AE 09094-0100.

2. Denmark and Norway: 426 ABS/JA, Unit 6655, APO AE 09706-6655.

3. France and Luxembourg: 52 FW/JA Unit 3680, Box 205, APO AE 09126-0205.

4. Portugal: 65 ABW/JA, Unit 7710, APO AE 09720-7710.

5. Turkey: 39 ABW/JA, Unit 3090, Box 125, APO AE 09824-0125.

6. United Kingdom: 3 AF-UK, Unit 4840, APO AE 09459-4840.

(b) The USAFE SJA may delegate approval authority to other Air Force agencies not listed in (a) above on a case-by-case basis, or may expand or restrict the scope of authority exercised by Air Force agencies.

(c) The USAFE SJA may authorize Air Force legal agencies to approve (but not disapprove) the payment of counsel fees, bail, court costs, and other necessary and reasonable expenses. Notification of approval of counsel fees, bail, court costs, or other expenses by Air Force legal agencies will be made to the USAFE SJA. When a base SJA recommends denial of counsel fees, bail, court costs, or other expenses, a package should be forwarded to the USAFE SJA for determination. The package must include the recommendation and reasons for denial.

c. Procedure.

(1) Except in Germany, if the approval authority determines that the prescribed criteria have been met, the approval authority will advise the USCR that the request is approved, authorize the USCR or an officer who is the designee of the USCR to execute the necessary documents (for example, agreement for hiring of counsel, bail agreement), and provide the USCR the appropriate fund cite.

(2) If the USCR and the approval authority disagree, the DCO will make the final determination in coordination with the Service component commander concerned.

(3) Communications between the USCR and the approval authority under this paragraph will be by electronic message. The DCO and the component commander of the Service of the accused will, as a minimum, be included as information addressees. For cases involving Navy personnel, requests for provisions of counsel fees, bail, and payment of expenses will be submitted by electronic message directly to the approval authorities listed in b(2) above. The DCO, USCR, and the Commander, CNE-C6F, will be included as information addressees.

(4) For Army cases in Germany, the approval authorities or their designees are appointed contracting officers and will consequently enter into a written contract with the selected counsel on behalf of the United States.

SECTION III
TRIAL OBSERVERS

19. APPOINTMENT OF TRIAL OBSERVER

As the appointed representative of the DCO, the USCR will fulfill the responsibilities of the DCO according to the Joint Service Regulation, paragraph 1-5a. The USCR will ensure, in coordination with component commanders and the chief of the U.S. diplomatic mission, that suitable procedures are established for the appointment of persons qualified to serve as U.S. trial observers at criminal proceedings before courts of the host country. In criminal proceedings involving minor offenses, the trial observer need not be a lawyer. In addition, the USCR may waive the requirement that a trial observer be a lawyer in cases involving trials to be held *in absentia*.

20. FUNCTION OF TRIAL OBSERVER

The trial observer will comply with the Joint Service Regulation, paragraph 1-5, and will act as prescribed in subparagraphs a through d below unless instructed otherwise.

a. Attend all hearings of trial and appellate proceedings involving U.S. personnel unless the USCR or the appropriate local legal liaison authority (AE Reg 550-56/USNAVEUR Inst 5820.13F/USAFE Inst 51-705, applicable only in Germany) determines that the case involves a minor offense and a trial observer is not required.

b. Take appropriate measures to advise the defense counsel of the rights of the accused under applicable treaties and agreements.

c. Help identify and secure witnesses or evidence on request of a foreign court or its officers. The trial observer will not testify in connection with issues of fact or law before the court.

d. Prepare and submit a report of the proceedings (para 25).

21. UNFAIR TRIAL

a. If a trial observer concludes that an accused has not received a fair trial, the USCR will evaluate the conclusion and act accordingly if further action at local or intermediate level is needed. After consulting with the chief of the diplomatic mission, if the USCR determines that the circumstances of the case warrant referral to the minister of justice or other appropriate representative of the host nation, the USCR will coordinate with the diplomatic mission without delay and make appropriate representation.

b. If representation proves unsuccessful and the matter is important enough that the DCO should initiate action at the diplomatic level (U.S. Senate Resolution of 15 July 1953), the USCR will report the facts and details of contacts with the foreign authorities to the DCO for necessary action according to the Joint Service Regulation, paragraph 1-5e. The DCO will submit his or her recommendations on appropriate action to rectify the rights or interests of the accused to the Office of the Secretary of Defense through the unified commander and the judge advocate general of the Service concerned. Copies will be sent to the component commander of the accused, the country liaison agent, and the immediate commanding officer of the accused.

SECTION IV
UNITED STATES PERSONNEL CONFINED IN FOREIGN PENAL INSTITUTIONS

22. DUTIES OF UNITED STATES COUNTRY REPRESENTATIVE

USCRs will fulfill the responsibilities and duties of the DCO according to the Joint Service Regulation, chapter 3.

23. VISITATION OF UNITED STATES PERSONNEL CONFINED IN FOREIGN PENAL INSTITUTIONS

a. Within 30 days after initial confinement in a foreign penal institution (including pretrial and post-trial confinement facilities and medical facilities), U.S. personnel will be visited by a judge advocate (or legal officer) and a chaplain. At least once every 30 days after the initial visit, U.S. personnel confined in foreign penal institutions will be visited by a command representative and a chaplain.

b. Not less than 30 days after initial confinement and at least once every 90 days after initial confinement, U.S. personnel confined in a foreign penal institution will be visited by a medical officer, physician's assistant, or nursing personnel.

c. Normally, personnel making visits according to this paragraph will be of the same Service as the confined person. When the confinee is a member of a Service different than that of the USCR, personnel for the visiting team will be provided by the country liaison agent of the Service of the accused.

d. Requests for exceptions to the composition of the visitation teams must be made to, and may be approved only by, the DCO. If the DCO has trouble obtaining a visitation team from another Service, the DCO may request assistance from the confinee's respective component commander, who will direct that the visitation team be provided by an appropriate commander of the component commander's Service.

SECTION V
REPORTS ON THE EXERCISE OF FOREIGN CRIMINAL JURISDICTION

24. ANNUAL REPORTS (EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL)

The USCR (except as provided in appendix E) will prepare and submit through the DCO to the judge advocate general of the Service concerned the annual report required by the Joint Service Regulation, paragraphs 4-3a and 4-4, covering the reporting period from 1 December through 30 November of each year. Appendix E provides detailed instructions concerning preparation of the report. Army reports will be submitted in duplicate through the Army component commander and will be dispatched by the preparing agency not later than 5 workdays after 30 November each year. Navy reports will be dispatched directly to the Judge Advocate General of the Navy not later than 15 days after 30 November each year. Air Force reports will be submitted according to appendix F. A copy of each report will be provided to the DCO and to the Commander, USEUCOM (ECJA), Unit 30400, APO AE 09131-0400. The component commander (unless the component commander is also the DCO) will be provided a copy of the report pertaining to the Service of the component commander.

25. TRIAL OBSERVER REPORTS AND TRIAL OBSERVER REPORTS ON APPEAL

a. When Required. The trial observer will prepare a formal report for trials and appellate proceedings covered by this publication (as required by the Joint Service Reg, paras 1-8b through d, 4-3c, and 4-6), except for cases involving minor offenses. In cases involving minor offenses, the trial observer will prepare a formal report only if he or she determines that the accused did not receive a fair trial or fair treatment. The trial observer will prepare and dispatch DD Form 1936 (para 29b) for Army and Navy personnel. The trial observer will complete and submit the report within 14 days after the conclusion of the trial or appellate proceeding. The trial observer will not delay the report because of the possibility of subsequent proceedings (for example, new trial, rehearing, appeal on the merits or on the sentence).

b. Format. The report will be in the format prescribed by the Joint Service Regulation, paragraph 4-6a (trial observer report) or paragraph 4-6b (trial observer report on appeal), and prepared on 8½- by 11-inch paper on one side only. When a series of hearings is held, each succeeding report should use the specified format, with appropriate notations under the paragraph headings if no change has occurred since the previous report.

c. Content.

(1) The trial observer report must include a factual description or summary of the criminal proceedings. The trial observer should prepare the report to permit an informed judgment to be made regarding (a) and (b) below:

(a) Whether there was failure to comply with the procedural safeguards secured by a pertinent SOFA.

(b) Whether the accused received a fair trial.

(2) The report will specify the conclusions of the trial observer with respect to the requirement in (1)(a) above and will state in detail the basis for those conclusions. The report will not include the trial observer's conclusions with respect to (1)(b) above. The trial observer will indicate his or her conclusion as to the fairness of the trial in a separate memorandum forwarding the report to the USCR (d below). A trial will not be deemed unfair solely because its conduct was not identical to trials held in the United States. These reports need not be classified but will be marked *Personal Data—Privacy Act of 1974 (5 USC 552a)*. If the report includes classified information, the trial observer will classify and handle the report accordingly. Reports in cases that were not observed by a U.S. trial observer will be based on the best information available and prepared by an SJA. SJAs will review all trial observer reports and will approve or disapprove the conclusions of the trial observer included in the reports.

d. Distribution. The trial observer will submit the report and required additional copies to the USCR under a separate forwarding memorandum. The USCR will provide six copies of a memorandum of endorsement for the report to the DCO. The DCO, by separate transmittal memorandum to the judge advocate general of the Service concerned, will approve or disapprove the report and make conclusions as to compliance with procedural safeguards and fairness of the trial (Joint Service Reg, para 1-5e). The DCO will provide information copies of the report and the transmittal memorandum to the chief of the U.S. diplomatic mission; the Commander, USEUCOM (ECJA), Unit 30400, APO AE 09131-0400; the component commander of the accused; the country liaison agent; and the immediate commander of the accused. The trial observer's memorandum to the USCR will not be included.

26. CONFINEMENT REPORTS (UNITED STATES PERSONNEL IN POST-TRIAL CONFINEMENT IN FOREIGN PENAL INSTITUTIONS)

a. USCRs (except as provided in app F for Air Force personnel) will prepare and submit semiannual confinement reports on November 30 and May 31. Reports must include a separate list of U.S. personnel imprisoned and released during the reporting period as required by the Joint Service Regulation, paragraphs 4-3b and 4-5, and other pertinent Service directives.

b. The preparing agency will transmit the report by separate messages to the judge advocates general of the Services of the personnel covered in the report. Information copies of the report will be sent to the DCO, component commanders of the prisoners concerned, the unified commander, and the chief of the U.S. diplomatic mission. Negative reports are required.

27. VISITATION REPORTS (VISITS TO UNITED STATES PERSONNEL CONFINED IN FOREIGN PENAL INSTITUTIONS)

a. When a visitation team visits U.S. personnel confined in a foreign penal institution, the head of the visitation team will prepare a report as prescribed by the Joint Service Regulation, paragraphs 4-3d and 4-7, and other pertinent Service directives. If a deficiency is noted that endangers the physical, mental, or moral well-being of a prisoner or group of prisoners, the team will make a follow-up visit within 15 days after noting the deficiency. The team will continue to make follow-up visits at least every 15 days after the initial follow-up visit until the deficiency is corrected.

b. Except as provided in appendix F, four copies of the report will be submitted to the USCR. The USCR will forward the report in duplicate to the DCO with a report of action taken to correct adverse conditions. The USCR will provide an information copy of the report and the corrective action taken to the component commander of the prisoner.

c. If the report lists conditions that are in violation of international agreements, if the treatment of U.S. personnel is unfair, or if U.S. personnel are not afforded substantially the same rights, privileges, and protection as personnel confined in U.S. military facilities, the DCO will send copies of the report to the chief of the diplomatic mission, the unified commander, and the judge advocate general of the Service concerned. If U.S. personnel are not afforded substantially the same rights, privileges, and protection as personnel confined in U.S. military facilities, the preparing agency will submit three additional copies of the report.

28. SERIOUS OR UNUSUAL INCIDENT REPORTS

Country liaison agents (except as provided in app F) will prepare and submit the report required by the Joint Service Regulation, paragraph 4-8. The preparing command or activity will use the format prescribed by the reporting directive of its own Service. As a minimum, the following agencies will be information addressees of the message report:

a. The judge advocate general of the Service of the individual concerned (if not the action addressee).

b. The Commander, USEUCOM (ECJA).

c. The component commander of the individual concerned.

d. The DCO.

e. The USCR (if not the preparing agency).

f. The country liaison agent for the Service of the individual concerned (if not the preparing agency).

g. For Navy personnel, the chain of command.

29. INDIVIDUAL CASE REPORTS (EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL)

a. General.

(1) For Army and Navy personnel, the USCR will prepare and submit the report required by the Joint Service Regulation, paragraph 4-9. For Army personnel, the report will be submitted for incidents for which a serious or unusual incident report must be submitted according to the Joint Service Regulation, paragraph 4-9, even when the incident would be considered minor within the meaning of this regulation (for example, the report will be submitted when an individual has been placed in pretrial confinement).

(2) For Air Force personnel, the USCR will prepare and submit the report required by the Joint Service Regulation, paragraph 4-9, unless the USCR has already reported the outcome of the case according to the Joint Service Regulation, paragraph 4-6 or 4-8. Air Force offices reporting on Air Force personnel will follow the procedures in the Joint Service Regulation, paragraph 4-6 or 4-8, as appropriate, rather than the procedures in the Joint Service Regulation, paragraph 4-9.

(3) The initial report will be submitted as soon as the information required by parts I and II of the report is available, but no later than 10 days after the incident. Supplemental reports will be submitted as soon as the information required by parts III, IV, and V of the report become available. The report will be submitted directly to the judge advocate general of the Service of the individual concerned, with information copies to the DCO, the component commander of the individual concerned, the USCR (if not the preparing agency), and the country liaison agent for the Service of the individual concerned (if not the preparing agency).

b. In Place of the Trial Observer Report (for Army and Navy Personnel). For trials of minor offenses in which the observer concluded that the accused received a fair trial and fair treatment, a trial observer report or trial observer report on appeal need not be submitted. In place of one of these reports, the trial observer will prepare and submit DD Form 1936 reporting on the result of trial (para 25).

SECTION VI
COUNTRY REPRESENTATIVE INSTRUCTIONS AND COUNTRY LAW STUDIES

30. UNITED STATES COUNTRY REPRESENTATIVE INSTRUCTIONS

a. Each USCR designated in appendix C has the authority to publish or modify instructions governing the procedural implementation of (1) or (2) below:

(1) The NATO SOFA and supplementary agreements to the NATO SOFA.

(2) Any SOFA-type agreement in effect within the USCR's country. Such instructions are applicable to all U.S. personnel stationed in, on temporary duty in, or passing through the respective country. Commanders will comply with USCR instructions in effect in any country where a member of their command is involved in an incident.

b. Each USCR has the option to publish its instructions as an appendix to this publication. Incorporating USCR instructions in this publication is not a prerequisite to their enforceability or legal effectiveness. Accordingly, publishing USCR instructions in this publication is not essential. USCR instructions currently in effect in several NATO and non-NATO countries are identified in appendixes G through Q. AE Regulation 550-56/USNAVEUR Instruction 5820.13F/USAFE Instruction 51-705 is the USCR's instruction for Germany.

c. USCRs are encouraged to send a copy of each USCR instruction or change as soon as possible after publication to the Office of the Judge Advocate, HQ USAREUR/7A (AEAJA-IL-I), Unit 29351, APO AE 09403-9351, for inclusion as an appendix to this publication. USCRs must send copies to the chief of the U.S. diplomatic mission in the country concerned; the judge advocate general of each Service; the Commander, USEUCOM (ECJA), Unit 30400, APO AE 09131-0400; each component commander; and each USCR in appendix C.

31. COUNTRY LAW STUDY

a. Content. The USCR will prepare and maintain a current study of the laws and legal procedures in effect for the country for which the USCR is responsible. This study will be a general examination of the substantive and procedural criminal law of the country and will be prepared in accordance with pertinent Service directives. The study will be updated whenever significant changes in the law or legal procedures of the country have occurred, or, as a minimum, every 10 years.

b. Distribution. The USCR will distribute copies of the country law study (a above) to—

(1) The DCO. The USCR will send enough copies so that the study may be forwarded to the judge advocate general of each Service, the unified commander, and the other component commanders.

(2) Each general court-martial convening authority in the country concerned (app R).

(3) The chief of the U.S. diplomatic mission in the country concerned.

APPENDIX A
PERTINENT PROVISIONS OF THE NATO STATUS OF FORCES AGREEMENT

The following provisions extracted from the NATO Status of Forces Agreement (NATO SOFA) pertain to the exercise of criminal jurisdiction by foreign courts over U.S. personnel:

1. The following is an excerpt from Article I, NATO SOFA:

"1. In this Agreement the expression—

(a) "force" means the personnel belonging to the land, sea, or air armed services of one Contracting Party when in the territory of another Contracting Party in the North Atlantic Treaty area in connection with their official duties, provided that the two Contracting Parties concerned may agree that certain individuals, units, or formations shall not be regarded as constituting or included in a "force" for the purpose of the present Agreement;

(b) "civilian component" means the civilian personnel accompanying a force of a Contracting Party who are in the employ of an armed service of that Contracting Party, and who are not stateless persons, nor nationals of any State which is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, the State in which the force is located;

(c) "dependent" means the spouse of a member of a force or of a civilian component, or a child of such member depending on him or her for support.

* * *"

2. The following is an excerpt from Article VII, NATO SOFA:

"1. Subject to the provisions of this Article,

(a) the military authorities of the sending State shall have the right to exercise within the receiving State all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State;

(b) the authorities of the receiving State shall have jurisdiction over the members of a force or civilian component and their dependents with respect to offenses committed within the territory of the receiving State and punishable by the law of that State.

2.

(a) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offenses, including offenses relating to its security, punishable by the law of the sending State, but not by the law of the receiving State.

(b) The authorities of the receiving State shall have the right to exercise exclusive jurisdiction over members of a force or civilian component and their dependents with respect to offenses, including offenses relating to the security of that State, punishable by its law but not by the law of the sending State.

(c) For the purposes of this paragraph and of paragraph 3 of this Article a security offense against a State shall include

(i) treason against the State;

(ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defense of that State.

3. In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

(a) The military authorities of the sending State shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to

(i) offenses solely against the property or security of that State, or offenses solely against the person or property of another member of the force or civilian component of that State or of a dependent;

(ii) offenses arising out of any act or omission done in the performance of official duty.

(b) In the case of any other offense the authorities of the receiving State shall have the primary right to exercise jurisdiction.

(c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.

4. The foregoing provisions of this Article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in the receiving State, unless they are members of the force of the sending State.

5.

(a) The authorities of the receiving and sending States shall assist each other in the arrest of members of a force or civilian component or their dependents in the territory of the receiving State and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

(b) The authorities of the receiving State shall notify promptly the military authorities of the sending State of the arrest of any member of a force or civilian component or a dependent.

(c) The custody of an accused member of a force or civilian component over whom the receiving State is to exercise jurisdiction shall, if he is in the hands of the sending State, remain with that State until he is charged by the receiving State.

6.

(a) The authorities of the receiving and sending States shall assist each other in the carrying out of 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. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

(b) The authorities of the Contracting Parties shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

7.

(a) A death sentence shall not be carried out in the receiving State by the authorities of the sending State if the legislation of the receiving State does not provide for such punishment in a similar case.

(b) The authorities of the receiving State shall give sympathetic consideration to a request from the authorities of the sending State for assistance in carrying out a sentence of imprisonment pronounced by the authorities of the sending State under the provision of this Article within the territory of the receiving State.

8. Where an accused has been tried in accordance with the provisions of this Article by the authorities of one Contracting Party and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offense within the same territory by the authorities of another Contracting Party. However, nothing in this paragraph shall prevent the military authorities of the sending State from trying a member of its force for any violation of rules of discipline arising from an act or omission which constituted an offense for which he was tried by the authorities of another Contracting Party.

9. Whenever a member of a force or civilian component or a dependent is prosecuted under the jurisdiction of a receiving State he shall be entitled—

(a) to a prompt and speedy trial;

(b) to be informed, in advance of trial, of the specific charge or charges made against him;

(c) to be confronted with the witnesses against him;

(d) to have compulsory process for obtaining witnesses in his favor, if they are within the jurisdiction of the receiving State;

(e) to have legal representation of his own for his defense or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving State;

(f) if he considers it necessary, to have the services of a competent interpreter; and

(g) to communicate with a representative of the Government of the sending State and, when the rules of the court permit, to have such a representative present at this trial.

* * *”

APPENDIX B
DUTIES AND RESPONSIBILITIES OF DEFENSE ATTACHÉS AS RELATED TO FOREIGN CRIMINAL JURISDICTION

This appendix is a reproduction of Defense Intelligence Agency Manual 100-1, volume I.

1. REFERENCES

a. Defense Intelligence Agency Manual 100-1, Volume I, chapter 2, Duties and Responsibilities of Defense Attaches as Related to Foreign Criminal Jurisdiction.

b. DOD Directive 5525.1, Status of Forces Policies and Information.

c. Joint Regulation, AR 27-50/SECNAVINST 5820.4G/AFJI 51-706, Status of Forces Policies, Procedures, and Information.

2. DESIGNATED COMMANDING OFFICER (DCO)

In all countries where U.S. Forces are not regularly stationed and to the extent contrary provision has not been made by individual services or unified commanders, defense attachés (DATTs) will perform the duties of the DCO in connection with the exercising of criminal jurisdiction over U.S. personnel by foreign authorities. For this purpose, the presence of a military assistance advisory group or military mission will not constitute regularly stationed U.S. Forces.

3. U.S. COUNTRY REPRESENTATIVE

When a unified commander has appointed a DCO who is not physically present in the country concerned, the appointed DCO may keep the position of designated commanding officer, but may appoint the DATT as U.S. country representative to act as the single POC for the services with the respective U.S. diplomatic mission and with the national authorities of the country regarding the exercise of foreign criminal jurisdiction over U.S. personnel.

4. RESPONSIBILITIES

a. The DATT will ensure that the references cited above, the applicable service regulations and forms listed therein and unified command directives applicable to DATT or DCO or U.S. country representative are maintained on a current basis.

b. DATT or DCO or U.S. country representative will submit the reports required by reference 1c above. The DIA will be provided a copy of all reports.

5. COUNTRY LAW STUDIES

Country law studies are ordinarily required for those countries where U.S. Forces are regularly stationed or are present on leave in significant numbers. When a DATT or DCO believes a country law study is required, his proposal should be coordinated with the mission consular before forwarding to the Staff Judge Advocate of the appropriate unified command for evaluation.

6. COUNSEL FEES AND OTHER EXPENSES IN FOREIGN TRIBUNALS

Information on payment of counsel fees, court costs, bail, and other items of expense incident to representation of U.S. military personnel tried before foreign tribunals is provided in the Joint Service Regulation. The individual should be advised of his or her rights to counsel at Government expense and immediate action taken to notify the responsible military commander of such requirements. The DATT should cooperate and offer every reasonable form of assistance including acting as liaison between mission consular and service representatives.

7. WAIVERS OF LOCAL JURISDICTION

In countries where the DATT is DCO or U.S. country representative, a Status of Forces Agreement seldom exists. In some cases, however, an agreement may be in place which grants military and civilian personnel of the United States Department of Defense present in that country in connection with their official duties, or in relation to a specific exercise, operation, training mission, or other activity, privileges and immunities equivalent to those g ranted the administrative and technical staff of the United States Embassy under the Vienna Convention on Diplomatic Relations of April 18, 1961. These agreements, which may be through an exchange of diplomatic notes, are sometimes referred to as A&T Agreements. If an individual is covered by such an agreement, the individual may not be detained, confined, or prosecuted by the authorities of the host nation. Where such an agreement is not in place, or does not cover the individual, the DATT should obtain through diplomatic channels waivers of local jurisdiction over offenses allegedly committed by U.S. personnel. Settlement may be expedited by immediate payment of claims. The DATT should contact the nearest military installation or major command headquarters to obtain assistance on claims and other matters arising from the incident.

8. TRIAL OBSERVERS

Legally trained U.S. representatives will attend foreign trials of U.S. personnel. An individual who is not a lawyer may attend the trials in minor cases. The DATT, in coordination with the mission consular, makes arrangements for attendance of observers from nearby major commands through special arrangement with the host nation authorities.

9. CONFINEMENT OF PERSONNEL

The DATT or DCO is responsible for safeguarding the interests of U.S. personnel confined in foreign penal institutions. The DATT will ensure that confined U.S. military personnel are given the same treatment, privileges, and protection as personnel confined in U.S. military facilities (for example, legal assistance, visitation rights, medical attention, food, bedding, clothing, other health and comfort items). Confined individuals will be visited at least every 30 days by the DCO or his representative.

10. ASSISTANCE

DATT and DCO are encouraged to make maximum use of experienced mission consular service personnel in handling criminal cases involving U.S. military personnel. Interpretation of procedures should be referred to the legal office of the nearest overseas command of the service of the individual or to the unified commander. Any problems may be referred directly to the Judge Advocate General of the service concerned when the DATT feels that such action would be in the best interest of the individual or the U.S. Government.

APPENDIX C
DESIGNATED COMMANDING OFFICERS, U.S. COUNTRY REPRESENTATIVES, AND COUNTRY LIAISON AGENCIES IN USEUCOM

COUNTRY LIAISON AGENTS					
Country	**Designated Commanding Officer**	**U.S. Country Representative**	**USAFE Liaison Agent**	**USAREUR Liaison Agent**	**CNE-C6F Liaison Agent**
Austria	CG, USAREUR/7A APO AE 09014	Army Attaché USDAO Vienna Department of State Pouch Room Washington, DC 20520			
Belgium	CG, USAREUR/7A APO AE 09014	Commander, USAG Benelux (NSSG) APO AE 09708	52 FW/JA Unit 3680, Box 205 APO AE 09126		Naval Attaché American Embassy Brussels APO AE 09724
Bulgaria	CG, USAREUR/7A APO AE 09014	TBD	TBD		
Cyprus	COMUSAFE APO AE 09094	U.S. Defense Attaché American Embassy Nicosia, Cyprus FPO AE 09836	HQ USAFE/JAI Unit 3050, Box 100 APO AE 09094	Army Attaché American Embassy Nicosia APO AE 09530	
Czech Republic	CG, USAREUR/7A APO AE 09014	TBD	TBD		
Denmark	COMUSAFE APO AE 09094	Defense and ALUSNA American Embassy Copenhagen APO AE 09716	Air Force Attaché American Embassy Copenhagen APO AE 09716	Army Attaché American Embassy Copenhagen APO AE 09716	Defense and ALUSNA American Embassy Copenhagen APO AE 09716
France	COMUSAFE APO AE 09094	Commander 52d Fighter Wing APO AE 09126	52 FW/JA Unit 3680, Box 205 APO AE 09126	U.S. Defense Attaché Office American Embassy Paris PSC 116, Box B- 210, APO AE 09777-5000	Naval Attaché American Embassy Paris APO AE 09777
Germany	CG, USAREUR/7A APO AE 09014	(functions performed by DCO)	HQ USAFE/JAI Unit 3050, Box 100 APO AE 09094		Commander Military Sealift Command Office Northern Europe APO AE 09069
Greece	Director, NEPRS CNE-C6F FPO AE 09622 (Naples, Italy)	Chief Office of Defense Cooperation PSC 108, Box 42 APO AE 09842	Legal Advisor Office of Defense Cooperation PSC 108, Box 42 APO AE 09842	Legal Advisor Office of Defense Cooperation PSC 108, Box 42 APO AE 09842	Commanding Officer Naval Support Activity Souda Bay PSC 814, Box 1 FPO AE 09865
Iceland	Director, NEPRS CNE-C6F FPO AE 09622 (Naples, Italy)	Commander Iceland Defense Force FPO AE 09728			Commander Fleet Air Keflavik, PSC 1003, Box 1 FPO AE 09728
Israel	Director, NEPRS CNE-C6F FPO AE 09622 (Naples, Italy)	Naval Attaché American Embassy Tel Aviv APO AE 09830	HQ USAFE/JAI Unit 3050, Box 100 APO AE 09094	Army Attaché American Embassy Tel Aviv APO AE 09830	Naval Attaché American Embassy Tel Aviv APO AE 09830

COUNTRY LIAISON AGENTS					
Country	**Designated Commanding Officer**	**U.S. Country Representative**	**USAFE Liaison Agent**	**USAREUR Liaison Agent**	**CNE-C6F Liaison Agent**
Italy	Director, NEPRS CNE-C6F FPO AE 09622 (Naples, Italy)	Commanding Officer Region Legal Office FPO AE 09622	31 FW/JA Unit 6140, Box 115 APO AE 09604-0115	Commander USASETAF APO AE 09630	Commanding Officer Region Legal Service Office FPO AE 09622
Luxembourg	COMUSAFE APO AE 09094	Commander 52d Fighter Wing APO AE 09126	52 FW/JA Unit 3680, Box 205 APO AE 09126	Commander 52d Fighter Wing APO AE 09126	Commander 52d Fighter Wing APO AE 09126
Morocco	COMUSAFE APO AE 09094	USDAO Rabat Morocco PSC 74, Box 016 APO AE 09718	HQ USAFE/JAI Unit 3050, Box 100 APO AE 09094	Army Attaché American Embassy Rabat APO AE 09718	Naval Attaché American Embassy Rabat APO AE 09718
Mozambique	Director, NEPRS CNE-C6F FPO AE 09622 (Naples, Italy)	USDAO Maputo 2330 Maputo Place Washington, DC 20521-2330			
Netherlands	CG, USAREUR/7A APO AE 09014	Commander USAG Schinnen Unit 21602 APO AE 09703	52 FW/JA Unit 3680, Box 205 APO AE 09126		Naval Attaché American Embassy The Hague APO AE 09715
Norway	COMUSAFE APO AE 09094	Senior U.S. Military Officer Joint Warfare Centre APO AE 09706-6650 (Stavanger, Norway)	426 ABS/JA Unit 6655 APO AE 09706		
Poland	CG, USAREUR/7A APO AE 09014	TBD	TBD		
Portugal	COMUSAFE APO AE 09094	Commander 65 Air Base Wing APO AE 09720	65 ABW/JA Unit 7710 APO AE 09720	Chief, MAAG American Embassy Lisbon APO AE 09647	Commanding Officer Naval Station Rota FPO AE 09645
Romania	CG, USAREUR/7A APO AE 09014	TBD	TBD		
South Africa	Director, NEPRS CNE-C6F FPO AE 09622 (Naples, Italy)	USDAO-Pretoria Department of State Washington, DC 20521-9300			
Spain	Director, NEPRS CNE-C6F FPO AE 09622 (Naples, Italy)	Office of Defense Cooperation Spain APO AE 09642	HQ USAFE/JAI Unit 3050, Box 100 APO AE 09094	Chief Office of Defense Cooperation APO AE 09642	Commanding Officer Naval Station Rota FPO AE 09645
Switzerland	CG, USAREUR/7A APO AE 09014	Army Attaché USDAO Bern Department of State Pouch Room Washington, DC 20520			
Tanzania	Director, NEPRS CNE-C6F FPO AE 09622 (Naples, Italy)	USDAO Dar es Salaam Department of State Pouch Room Washington, DC 20521-2140			

COUNTRY LIAISON AGENTS					
Country	**Designated Commanding Officer**	**U.S. Country Representative**	**USAFE Liaison Agent**	**USAREUR Liaison Agent**	**CNE-C6F Liaison Agent**
Tunisia	Director, NEPRS CNE-C6F FPO AE 09622 (Naples, Italy)	Chief USDAO Tunis Department of State Pouch Room Washington, DC 20520		Army Attaché USDAO Tunis Department of State Pouch Room Washington, DC 20520	
Turkey	COMUSAFE APO AE 09094	Chief Office of Defense Cooperation APO AE 09822	39 ABW/JA Unit 7090, Box 125 APO AE 09824	Chief Army Element Office of Defense Cooperation APO AE 09822	Chief Naval Element Office of Defense Cooperation APO AE 09822
United Kingdom	COMUSAFE APO AE 09094	3 AF/CV Unit 4840 APO AE 09459-4840	3 AF-UK/JA Unit 4840 APO AE 09459-4840	Commander Burtonwood Army Depot APO AE 09448	Commander Naval Activities United Kingdom FPO AE 09499
Zimbabwe		USDAO Harare Department of State 2180 Harare Place Washington, DC 20521-2180			

APPENDIX D
SAMPLE AE FORM 550-50A

Figure D-1 shows the front and back of a sample completed AE Form 550-50A.

STATUS OF FORCES INCIDENT REPORT
(AE Reg 550-50/CNE-C6F Inst 5820.8K/USAFE Inst 51-706)

Date 20071023

Data required by the Privacy Act of 1974

Authority: Art VII, NATO SOFA; Art 19, NATO SOFA Supplementary Agreement; 10 USC 3012.

Principal purpose(s): To notify appropriate U.S. Forces agencies of a concurrent jurisdiction offense (an offense subject to the criminal jurisdiction of the U.S. Forces and the host state) in order that a request for waiver of jurisdiction may be sent to appropriate host-country authorities.

Routine uses: This form is used in USEUCOM for the above-described purpose. It is completed by the unit commander on first learning of an incident that may result in the exercise of foreign criminal jurisdiction over a member of his or her command. The completed report is sent to the appropriate legal liaison authority (Germany) or U.S. country representative (other countries). Information from this form is the basis for the commander's request to host-country legal authorities for waiver of jurisdiction. See routine uses set forth at 40 Federal Register 35151.

Mandatory or voluntary disclosure and effect on individual not providing information: Disclosure by individual is not mandatory due to protection against self-incrimination. If the individual does not volunteer information, the individual's commanding officer or the liaison officer must obtain the information from U.S. or foreign police files.

To	From
Staff Judge Advocate 2d Armored Division Unit 12345 APO AE 09000-2345	Commander Company A, 88th Signal Battalion Unit 23456 APO AE 09090-3456

Identity of subject (Submit separate report for each subject.)

Name (last, first, MI)	Rank and pay grade	SSN	Organization and APO
SMITH, Kevin R.	PFC/E3	123-45-6789	Company A, 88th Signal Battalion APO AE 09090-3456

Duty status of subject

☐ Leave ☒ Pass ☐ AWOL ☐ Official duty

Investigated by	Security aspects
Local police: ☒ Yes ☐ No Military police: ☐ Yes ☒ No	☐ Yes ☒ No

Rotation date *(DEROS)*	Separation date *(ETS)*	Date and place of birth	Home of record *(Complete address)*
20081106	20081130	19921028	130 Forrest Street Norfolk, Virginia 23450

Incident

Nature *(Describe what happened in general, including a description of personal injuries and/or property damage.)*

On 22 October 2007, while driving his POV, license number AD-CC-123, on autobahn 6 near Mannheim, he lost control of his vehicle and hit a car driven by Herr Friedrich Kraus, license number MA-SH466. The accident completely demolished the latter vehicle and caused severe injuries to its owner/occupant. A blood-alcohol test given by the Mannheim City Police showed a BAC of 0.15g/100 mil.

Place *(Street and city or town where incident occurred.)*

Autobahn 6, Mannheim, Germany

Property damage *(Estimated total amount.)*	Time and date *(When incident occurred.)*
$25,000	2215, 20071022

Complete this section if incident is a traffic accident

	Vehicle 1	Vehicle 2
Traffic accident Military vehicle	☐ Yes ☒ No	☐ Yes ☒ No
Military vehicle on official dispatch	☐ Yes ☒ No	☐ Yes ☒ No
POV license number	(USAREUR) AD-CC-123	MA-SH466
Insurance company	Geico	Neckura
Owner	PFC Kevin R. Smith	Herr Friedrich Krauss
Driver	Same	Same

AE FORM 550-50A, NOV 07 Previous editions are obsolete. *Vers. 01.00* ***Page 1 of 2***

Figure D-1. Sample AE Form 550-50A

Identity of victims *(Name, address, nationality, injuries, if any.)*

Friedrich Krauss; Hebelstrasse 22, 68799 Mannheim; German; fractured skull, broken ribs.

Alcohol involved

No	Yes	Blood and alcohol test %	Observations	Name of offender, victim, other
☐	☒	0.15 g	drunk	PFC Kevin R. Smith
☐	☐			
☐	☐			

Remarks

Typed name, grade, title, organization, and telephone no. of individual preparing report	Signature	Date
Lucius B. Clay, Captain Commanding DSN 234-5678	CLAY.LUCIUS.1030497941	20071023

Instructions *(Read carefully.)*

1. This form will be used to report all incidents (AE Reg 550-50/CNE-C6F Inst 5820.8K/USAFE Inst 51-706) involving U.S. personnel, except those involving a purely military offense (for example, AWOL, disrespect to superior officer).

2. Reporting responsibility (AE Reg 550-50/CNE-C6F Inst 5820.8K/USAFE Inst 51-706 and AE Reg 550-56/USNAVEUR Inst 5820.13F/USAFE Inst 51-705) in the case of military personnel and their Family members rests with the commander of the individual's unit or unit assigned for TDY. In the case of members of the civilian component and their Family members, reporting responsibility rests with the commanding officer of the installation where the individual is employed.

3. **This report must be submitted by the unit commander immediately on notice of a violation of law** except when information concerning an incident is obtained from the U.S. country representative or local legal liaison authority.

AE FORM 550-50A, NOV 07 *Vers. 01.00* ***Page 2 of 2***

Figure D-1. Sample AE Form 550-50A—Continued

APPENDIX E
GUIDE FOR PREPARING ANNUAL REPORTS USING DD FORM 838

E-1. FORMAT
Annual reports will be prepared on DD Form 838. This appendix provides general instructions for completing this report. Figure E-1 is a sample DD Form 838. In the instructions in this appendix, the first designation will be for the DD Form 838 block number, followed by the card number. For example, *(14/15/16)(1)* indicates blocks 14, 15, and 16 of card 1 of DD Form 838.

E-2. GENERAL

a. Cases to be Reported. DD Form 838 will show the status and disposition of cases processed during the reporting period, including holdover cases from a previous annual reporting period. A holdover case is one that arose in a previous reporting period but was not finally adjudicated (trial was pending or appellate rights had not been exhausted or expired). Blocks (17/18/19)(1), (20/21/22)(1), or (23/24/25)(1) will include cases that arose in a previous reporting period and were finally adjudicated in the current reporting period. Army legal offices in Germany will enter information about cases into the Army Foreign Criminal Jurisdiction Database.

b. Interpretation of "Case."

(1) A case is an alleged violation of the laws of the country concerned that, under applicable international agreements, is not subject to the exclusive or primary U.S. jurisdiction.

(2) Each individual accused constitutes a case (for example, if three persons are involved in the same offense of larceny, this constitutes three cases).

(3) When one accused individual commits several offenses, the most serious offense is the case.

c. No Action on Waiver Request. When no action has been taken on a request for waiver of jurisdiction and trial proceedings by a foreign court have not commenced during the reporting period, no case has been processed within the meaning of this report, and no entry should be made in any block.

E-3. CASES IN THE EXCLUSIVE JURISDICTION OF THE RECEIVING STATE (BLOCK (6/7/8)(1))
Minor traffic offenses and civilian and dependent cases are subject to the exclusive jurisdiction of the receiving state and will be reported in block (6/7/8)(1). Local offenses (for example, failure to have receiving state game, pet, radio, or television licenses) normally are subject to the exclusive jurisdiction of the receiving state and will be shown in block (6/7/8)(1).

E-4. EXCLUSIVE HOST-COUNTRY JURISDICTION CASES RELEASED TO THE UNITED STATES FOR ADMINISTRATIVE ACTION (BLOCK (9/10/11)(1))
Exclusive jurisdiction cases that the receiving state authorities permit the United States to handle administratively will be reported in blocks (6/7/8)(1) and (9/10/11)(1).

E-5. PRIMARY FOREIGN JURISDICTION CASES (BLOCK (12)(1))
Cases in which the right to exercise jurisdiction is concurrent but in which the receiving state has the primary right to exercise such jurisdiction should be shown in block (12)(1). Examples of such cases are reckless driving, drunken driving, and negligent homicide when the offender is a member of the Armed Forces.

E-6. ACTION TO BE TREATED AS WAIVER (BLOCK (13)(1))
If the receiving state has by formal or informal agreement or practice generally waived its primary right to exercise jurisdiction, and has not withdrawn such waiver, the case will be reported as a waiver of jurisdiction and shown in blocks (12)(1) and (13)(1). If receiving state authorities advise that no action under foreign laws is proposed for any reason other than lack of evidence, the case will be treated as a waiver and reported in blocks (12)(1) and (13)(1).

E-7. TOTAL NEW CASES RESERVED BY FOREIGN JURISDICTION (BLOCK (14/15/16)(1))
Any trial by a foreign court constitutes a reservation of foreign jurisdiction. If the case was not previously reported (is not a holdover case), it will be reported in blocks (14/15/16)(1) and (6/7/8)(1) or (12)(1), as appropriate, and in other applicable blocks of the current report. This is true even if there was no formal request for a waiver or no action by the receiving state on a request for waiver.

E-8. HOLDOVER CASES
Current report formats include no provision for reporting holdover cases from previous reports. Previous reports must always be checked to ensure that holdover cases are properly accounted for in the current report or, if not finally disposed of in the current reporting period, are included in a subsequent report. When it is ascertained that the foreign authorities do not intend to prosecute an alleged violation reported in a previous reporting period, the case will be reported in a subsequent periodic report under block (17/18/19)(1) as *Charges Dropped*. If a case that arose during a previous reporting period is reported in block (17/18/19)(1), (20/21/22)(1), or (23/24/25)(1) of the current report, it should already have been shown in block (6/7/8)(1) or (12)(1) and (14/15/16)(1) of the previous report, and will not appear in block (6/7/8)(1) or (12)(1) and (14/15/16)(1) of the current report. In order to more clearly show holdover cases, the following items will be added to the *Notes* block of the AE Form 550-56A feeder report: last name, date of case initiation, and status (*holdover*).

E-9. CHARGES DROPPED (BLOCK (17/18/19)(1))
In addition to the circumstances indicated in paragraph E-8, a case arising in the current reporting period in which foreign authorities indicate that they do not intend to prosecute after previously indicating that they would exercise jurisdiction will be reported in block (6/7/8)(1) or (12)(1), as appropriate, and block (14/15/16)(1), and will be closed out by an entry in block (17/18/19)(1). A case will be reported in block (17/18/19)(1) only if no appeal has been taken against the decision to drop charges or, if an appeal has been taken, final appellate action sustaining the decision to drop charges has been taken.

E-10. FINAL ACQUITTAL OR FINAL CONVICTION AND SENTENCE (BLOCKS (20/21/22)(1), (23/24/25)(1), (6)(2), (7)(2), AND (8/11/13)(2)

a. Cases will be entered in block (20/21/22)(1) only if there has been a final acquittal, and in block (23/24/25)(1) only if there has been a final conviction and sentence. An acquittal or conviction and sentence is final only if the period during which an appeal of the acquittal or conviction and sentence may be made has expired and no appeal has been filed within the prescribed period, or all appeals and rehearings have been completely adjudicated. Trials resulting in a finding of *guilty but insane* will be reported as acquittals. If a case is reported in block (23/24/25)(1), an entry must be made in block (6)(2), (7)(2), or (8/11/13)(2). No case will be reported in block (6)(2), (7)(2), or (8/11/13)(2) unless the case has been reported in block (23/24/25)(1).

b. Only the most serious portion of a sentence is reported (for example, *confinement not suspended*, *confinement suspended*, *fine*, or *reprimand*, in that order). The length of confinement not suspended over 5 years will be itemized in blocks (10/12/14)(2) of the new DD Form 838. Blocks 10, 12, and 14 of card 2 of the new DD Form 838 allow space for reporting 10 military, 5 civilian, and 5 dependent cases of unsuspended confinement of 5 years or more, respectively. If more cases must be itemized, an additional copy of card 2 of the new DD Form 838 must be used for the excess.

E-11. APPEALS PENDING

Current report formats include no provision for reporting cases in which appeals are pending or in which the appeal period has not expired at the end of the current reporting period. If the case arose in a previous reporting period (a holdover case), it will have been reported in that period and will not be reported in the current report. A case that arose in the current reporting period but for which an appeal is pending will be reported only in block (6/7/8)(1) or (17)(1), as appropriate, and block (14/15/16)(1). Paragraph E-8 applies to these cases.

E-12. BALANCING OF ENTRIES

In a properly prepared report, block and line entries will balance out. Paragraph E-15c provides formulas to be used in confirming arithmetical accuracy of the entries on cards 1 and 2 of DD Form 838.

E-13. EXPLANATION OF DISCREPANCIES

When an individual is finally convicted of an offense (for example, manslaughter) different from the one he or she was previously reported as being charged with (for example, murder), the conviction will be reported for the offense originally charged (in this example, murder). This discrepancy will be explained in an enclosure to the correspondence forwarding the report to the appropriate service judge advocate general.

E-14. CATEGORIZATION OF OFFENSES

All offenses relating to block 5 of card 1 of DD Form 838 will be categorized according to tables E-1 and E-2. An attempt or conspiracy to commit an offense will be categorized as a completed offense. When an individual is charged with several offenses, only the most serious offense will be reported. In determining what constitutes traffic offenses, disorderly conduct, and “other” offenses, the following guidance is provided:

a. Traffic Offenses.

(1) Drivers-license offenses.

(2) Privately owned vehicle registration offenses.

(3) Other traffic offenses.

b. Disorderly Conduct.

(1) Destruction of private or public property.

(2) Dishonorable failure to pay just debts.

(3) Disorderly conduct.

(4) Dumping trash.

(5) Explosion of ammunition.

(6) Indecent exposure.

(7) Pandering.

(8) Other types of disorderly conduct.

c. Other Offenses. Offices using the USAREUR Foreign Criminal Jurisdiction Database must use the list of offenses provided in the database.

(1) Abortion.

(2) Bigamy.

(3) Carnal knowledge.

(4) Child neglect or mistreatment.

(5) Fraud.

(6) Fishing and hunting violations.

(7) Illegal possession of firearms.

(8) Indecent acts with another person.

(9) Indecent assault.

(10) Sodomy.

(11) Other sex offenses not otherwise listed.

(12) All other types of offenses not otherwise listed.

E-15. GENERAL INSTRUCTIONS FOR SUBMISSION OF DATA (DD FORM 838)

a. DD Form 838 is a single sheet that includes three separate offense reports. Cards 1 and 2 must be completed for each offense.

b. Number entries (in all blocks except 10, 12, and 14 of card 2) must be right-justified and zero-filled (for example, the number 7 entered in a two-block space must be entered as 07; in a three-block space it must be entered as 007).

c. The data on file must be accurate. Certain checks have been established to prevent erroneous information. Data will be checked automatically by the computer and will be rejected if in error. A list of checks to be made by the computer follows:

(1) On card 1 (see table E-1):

(a) Block 6 - block 9 + block 12 - block 13 = block 14.

(b) Block 7 - block 10 = block 15.

(c) Block 8 - block 11 = block 16.

(d) Entries are required in all blocks 1 through 25.

(2) On card 2 (see table E-2):

(a) The entry under block 8 (over 5 years) must show the number of entries recorded under column 10.

(b) The entry under block 11 (over 5) must show the number of entries recorded under block 14.

(c) Entries are required in all blocks except 10, 12, and 14.

(3) On cards 1 and 2 combined:

(a) Block 23 of card 1 must equal the sum of the following on card 2: 6(mil) + 7(mil) + 8(under 1 year) + 8(1-3 years) + 8(3-5 years) + 8(over 5 years).

(b) Block 24 of card 1 must equal the sum of the following on card 2: 6(civilian) + 7(civ) + 11(under 1 year) + 11(1-3 years) + 11(3-5 years) + 11(over 5 years).

(c) Block 25 of card 1 must equal the sum of the following on card 2: 6(dep) + 7(dep) + 13(under 1 year) + 13(1-3) + 13(3-5) + 13(over 5).

d. Descriptions of specific entries to be completed are provided in tables E-1 and E-2.

EXERCISE OF CRIMINAL JURISDICTION BY FOREIGN TRIBUNALS OVER UNITED STATES PERSONNEL

(KEY-PUNCH)

REPORT CONTROL SYMBOL

TYPE OF OFFENSE: Murder

REPORTING OFFICE: 3 AF/CV

CARD NO	SERVICE	COUNTRY	REPT YEAR	OFFENSE	EXCLUSIVE FOREIGN JURISDICTION CASES: 6. MILITARY	7. CIVILIAN	8. DEP	EXCLUSIVE FOREIGN JURISDICTION CASES RELEASED TO U.S. FOR DISPOSITION: 9. MILITARY	10. CIVILIAN	11. DEP	12. PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY	13. WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD: 14. MILITARY	15. CIVILIAN	16. DEP	CHARGES DROPPED: 17. MILITARY	18. CIVILIAN	19. DEP	FINAL ACQUITTAL: 20. MIL	21. CIV	22. DEP	FINAL CONVICTION: 23. MILITARY	24. CIVILIAN	25. DEP
1	F	U	K	0 8	A	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 7	0 0 0 0	6 0 0 0	0 1 0 0	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 0	0 0 0 1	0 0 0 0	0 0 0 3

CARD NO	SERVICE	COUNTRY	REPT YEAR	OFFENSE	TYPE AGRMT	6. FINE, REPRIMAND, ETC. ONLY: MILITARY	CIVILIAN	DEP	7. CONFINEMENT SUSPENDED: MIL	CIV	DEP	8. MILITARY CONFINEMENT NOT SUSPENDED: <1 YR	1-3 YRS	3-5 YRS	>5 YRS	10. MILITARY CONFINEMENT NOT SUSPENDED OVER 5 YEARS (ITEMIZE): SENT	SENT	SENT	SENT	SENT	SENT	SENT	SENT	SENT	SENT	CONFINEMENT NOT SUSPENDED: 11. CIVILIAN: <1 YR	1-3	3-5	>5	12. CIVILIAN CONFINEMENT NOT SUSPENDED OVER 5 YEARS (ITEMIZE): SENT	SENT	SENT	SENT	SENT	13. DEPENDENT: <1 YR	1-3	3-5	>5	14. DEPENDENT CONFINEMENT NOT SUSPENDED OVER 5 YEARS (ITEMIZE): SENT	SENT	SENT	SENT	SENT
2	F	U	K	0 8	A	2	0 0 0 0	0	0 0 0	0 0	0 0	0 0 0 0	0 0	0 0	0 0											0 0 0 0										0 0 1 2										

TYPE OF OFFENSE: Rape

CARD NO	SERVICE	COUNTRY	REPT YEAR	OFFENSE	EXCLUSIVE FOREIGN JURISDICTION CASES: 6. MILITARY	7. CIVILIAN	8. DEP	EXCLUSIVE FOREIGN JURISDICTION CASES RELEASED TO U.S. FOR DISPOSITION: 9. MILITARY	10. CIVILIAN	11. DEP	12. PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY	13. WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD: 14. MILITARY	15. CIVILIAN	16. DEP	CHARGES DROPPED: 17. MILITARY	18. CIVILIAN	19. DEP	FINAL ACQUITTAL: 20. MIL	21. CIV	22. DEP	FINAL CONVICTION: 23. MILITARY	24. CIVILIAN	25. DEP
1	F	U	K	0 8	B	0 0 0 0	0 0 0 0	0 0 0 1	0 0 0 0	0 0 0 0	0 0 0 8	6 0 0 0	8 4 0 0	0 0	2 0 0 0	1 0 0 0	1 0 0 0	0 0 0 0	0 0 0 0	0 0 0 1	0 0 0 0	0 0 0 1

CARD NO	SERVICE	COUNTRY	REPT YEAR	OFFENSE	TYPE AGRMT	6. FINE, REPRIMAND, ETC. ONLY: MILITARY	CIVILIAN	DEP	7. CONFINEMENT SUSPENDED: MIL	CIV	DEP	8. MILITARY CONFINEMENT NOT SUSPENDED: <1 YR	1-3 YRS	3-5 YRS	>5 YRS	10. MILITARY CONFINEMENT NOT SUSPENDED OVER 5 YEARS (ITEMIZE): SENT	SENT	SENT	SENT	SENT	SENT	SENT	SENT	SENT	SENT	CONFINEMENT NOT SUSPENDED: 11. CIVILIAN: <1 YR	1-3	3-5	>5	12. CIVILIAN CONFINEMENT NOT SUSPENDED OVER 5 YEARS (ITEMIZE): SENT	SENT	SENT	SENT	SENT	13. DEPENDENT: <1 YR	1-3	3-5	>5	14. DEPENDENT CONFINEMENT NOT SUSPENDED OVER 5 YEARS (ITEMIZE): SENT	SENT	SENT	SENT	SENT
2	F	U	K	0 8	B	2	0 0 0 0	0 0 0 0	0 1	0 0	0 0	0 0 0 0	0 1	0 0												0 0 0 0										0 0 0 0										

TYPE OF OFFENSE: Manslaughter + Negligent Homicide

CARD NO	SERVICE	COUNTRY	REPT YEAR	OFFENSE	EXCLUSIVE FOREIGN JURISDICTION CASES: 6. MILITARY	7. CIVILIAN	8. DEP	EXCLUSIVE FOREIGN JURISDICTION CASES RELEASED TO U.S. FOR DISPOSITION: 9. MILITARY	10. CIVILIAN	11. DEP	12. PRIMARY FOREIGN CONCURRENT JURISDICTION CASES INVOLVING MILITARY	13. WAIVER OF PRIMARY FOREIGN JURISDICTION OVER MILITARY OBTAINED	TOTAL CASES RESERVED BY FOREIGN JURISDICTION DURING PERIOD: 14. MILITARY	15. CIVILIAN	16. DEP	CHARGES DROPPED: 17. MILITARY	18. CIVILIAN	19. DEP	FINAL ACQUITTAL: 20. MIL	21. CIV	22. DEP	FINAL CONVICTION: 23. MILITARY	24. CIVILIAN	25. DEP
1	F	U	K	0 8	C	0 0 0 0	0 0 0 0	0 0 0 2	0 0 0 0	0 0 0 0	0 0 0 3	2 0 0 0	3 2 0 0	0 0	0 0 0 0	0 0 0 0	0 0 0 2	0 0 0 0	0 0 0 0	0 0 0 1	0 0 0 0	0 0 0 1

CARD NO	SERVICE	COUNTRY	REPT YEAR	OFFENSE	TYPE AGRMT	6. FINE, REPRIMAND, ETC. ONLY: MILITARY	CIVILIAN	DEP	7. CONFINEMENT SUSPENDED: MIL	CIV	DEP	8. MILITARY CONFINEMENT NOT SUSPENDED: <1 YR	1-3 YRS	3-5 YRS	>5 YRS	10. MILITARY CONFINEMENT NOT SUSPENDED OVER 5 YEARS (ITEMIZE): SENT	SENT	SENT	SENT	SENT	SENT	SENT	SENT	SENT	SENT	CONFINEMENT NOT SUSPENDED: 11. CIVILIAN: <1 YR	1-3	3-5	>5	12. CIVILIAN CONFINEMENT NOT SUSPENDED OVER 5 YEARS (ITEMIZE): SENT	SENT	SENT	SENT	SENT	13. DEPENDENT: <1 YR	1-3	3-5	>5	14. DEPENDENT CONFINEMENT NOT SUSPENDED OVER 5 YEARS (ITEMIZE): SENT	SENT	SENT	SENT	SENT
2	F	U	K	0 8	C	2	0 0 0 0	0 0 0 0	0 0	0 0	0 0	0 0 0 0	0 0	0 0												0 0 0 0										0 1 0 0										

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80

DD Form 838, SEP 78 (EG) EDITION OF 1 AUG 71 IS OBSOLETE. WHS/DIOR, Dec 97

Figure E-1. Sample DD Form 838

Table E-1 **Description of Specific Entries (Card 1)**	
Block #	**Item Description**
1	**Card No.** The number *1* is preprinted on the form.
2	**Service.** Enter the Service code: A = Army, N = Navy, F = Air Force, M = Marine Corps.
3 - 4	**Country.** Enter the country code: AU Austria BE Belgium CY Cyprus DA Denmark FR France GE Germany GR Greece IC Iceland IT Italy LU Luxembourg NL Netherlands NO Norway PO Portugal (not including the Azores) AZ Azores SA Saudi Arabia SP Spain SW Sweden SZ Switzerland TU Turkey UK United Kingdom **NOTE:** If the country code is not shown above, write the name of the country in the left margin.
5 - 6	**Rept Year.** Enter the last two digits of year of the reporting period.
7	**Offense.** Enter the type of offense code: A Murder B Rape C Manslaughter and negligent homicide D Arson E Robbery, larceny, and related offenses F Burglary and related offenses G Forgery and related offenses H Aggravated assault I Simple assault J Drug abuse K Offenses against economic control laws L Traffic offenses (including drunken driving and fleeing the scene of an accident) M Disorderly conduct, drunkenness, breach of peace, and similar offenses N Other

Table E-1 **Description of Specific Entries (Card 1)**	
Block #	**Item Description**
8 - 20 **(items 6 - 8)**	**Exclusive Foreign Jurisdiction Cases.** Enter the number of exclusive foreign jurisdiction cases (including cases involving U.S. personnel who were subject to the exclusive jurisdiction of the host state) for each category: 6. Military: 7. Civilian: 8. Dep (dependents):
21 - 30 **(items 9 - 11)**	**Exclusive Foreign Jurisdiction Cases Released to U.S. for Disposition.** Enter the number of exclusive foreign jurisdiction cases released to the United States for disposition for each category: 9. Military: 10. Civilian: 11. Dep:
31 - 35 **(item 12)**	**Primary Foreign Concurrent Jurisdiction Cases Involving Military.** Enter the total number of primary foreign concurrent jurisdiction cases involving military personnel (exclusive jurisdiction and cases subject to exclusive jurisdiction of the host state).
36 - 40 **(item 13)**	**Waiver of Primary Foreign Concurrent Jurisdiction Over Military Personnel Obtained.** Enter the number of primary foreign concurrent jurisdiction cases involving military personnel for which a waiver has been obtained.
41 - 53 **(items 14 - 16)**	**Total Cases Reserved by Foreign Jurisdiction During Period.** Enter the number of cases reserved by foreign jurisdiction for each category: 14. Military: (block 6 - block 9 + block 12 - block 13) 15. Civilian: (block 7 - block 10) 16. Dep: (block 8 - block 11)
54 - 63 **(items 17 - 19)** (note)	**Charges Dropped.** Enter the number of charges dropped for each category: 17. Military: 18. Civilian: 19. Dep:
64 - 69 **(items 20 - 22)** (note)	**Final Acquittal.** Enter the number of acquittals for each category: 20. Military: 21. Civilian: 22. Dep:
70 - 80 **(items 23 - 25)** (note)	**Final Conviction.** Enter the number of convictions for each category: 23. Military: 24. Civilian: 25. Dep:
NOTE: Include all cases finally adjudicated (all appellate rights exhausted or expired) during this period, including cases that were pending trial or appeal at the end of the previous reporting period and were finally adjudicated during the current reporting period.	

Table E-2 **Description of Specific Entries (Card 2)**	
Block #	**Item Description**
1	**Card No.** The number *2* is preprinted on the form.
2	**Service.** Entry must be same as on card 1.
3 - 4	**Country Code.** Entry must be same as on card 1.
5 - 6	**Rept Year.** Entry must be same as on card 1.
7	**Offense.** Entry must be same as on card 1.
8	**Type Agrmt.** Enter the Status of Forces Agreement code: 1 No Status of Forces Agreement. 2 NATO Status of Forces Agreement. 3 Non-NATO Status of Forces Agreement.
9 - 32	**Sentences imposed in cases reported in final convictions on card 1** (10 entries (2 spaces each))
9 - 19 **(item 6)**	Military: Number sentenced by fine, reprimand, and so on (only). Civilian: Number sentenced by fine, reprimand, and so on (only). Dependent: Number sentenced by fine, reprimand, and so on (only).
20 - 24 **(item 7)**	Military: Number sentenced, with confinement suspended. Civilian: Number sentenced, with confinement suspended. Dependent: Number sentenced, with confinement suspended.
25 - 32 **(item 8)**	Military: Number sentenced (not suspended) for under 1 year. Military: Number sentenced (not suspended) from 1 to 3 years. Military: Number sentenced (not suspended) from over 3 to 5 years. Military: Number sentenced (not suspended) from over 5 years.
33 - 52 **(item 10)**	**Military confinement not suspended for over 5 years (*itemize*)** Enter each sentence separately, beginning at the left. For example, five 6-year sentences are coded 0606060606. Unneeded spaces must be left blank. Code each sentence as follows:
Code	**Term of confinement**
06	6 years
07	7 years
- through -	
99	Life imprisonment
DS	Death sentence
53 - 56 **(item 11)**	Civilian: Number sentenced (not suspended) for under 1 year. Civilian: Number sentenced (not suspended) from 1 to 3 years. Civilian: Number sentenced (not suspended) from over 3 to 5 years. Civilian: Number sentenced (not suspended) for over 5 years.
57 - 66 **(item 12)**	**Civilian confinement not suspended for over 5 years (*itemize*)** Enter each separate sentence, beginning at the left, and leave unneeded spaces blank. Coding is the same as for item 10 described above (five entries (two spaces each)).
67 - 70 **(item 13)**	Dependent: Number sentenced (not suspended) for under 1 year. Dependent: Number sentenced (not suspended) from 1 to 3 years. Dependent: Number sentenced (not suspended) from over 3 to 5 years. Dependent: Number sentenced (not suspended) for over 5 years.
71 - 80 **(item 14)**	**Dependent confinement not suspended for over 5 years (*itemize*)** Enter each separate sentence, beginning at the left, and leave unneeded spaces blank. Coding is the same as for item 10 described above (five entries (two spaces each)).

APPENDIX F
REPORTING PROCEDURES FOR USAFE

The six reports required by the Joint Service Regulation will be prepared and submitted as indicated below. The reports are keyed to the appropriate paragraphs of the Joint Service Regulation.

F-1. ANNUAL REPORT (PARAGRAPHS 4-3A AND 4-4)

a. The annual report will be prepared according to appendix E and transmitted through the designated commanding officer (DCO) to the judge advocate general of the service concerned:

(1) Army: HQDA (DAJA-IA), 2200 Army Pentagon, Washington, DC 20310.

(2) Navy: Navy TJAG Code 10, 1322 Patterson Avenue, SE Suite 3000, Washington, DC 20374.

(3) Air Force: HQ USAF/JAO, 1420 Air Force Pentagon 5C269, Washington, DC 20330-1420.

b. An information copy of each annual report will be sent to—

(1) USEUCOM/ECLA, APO AE 09128.

(2) HQ USAREUR/7A (AEAJA-IL-T), Unit 29351, APO AE 09014-9351.

(3) CNE-C6F, PSC 802, Box 2, FPO AE 09499-0002.

(4) HQ USAFE/JAI, Unit 3050, Box 100, APO AE 09094-0100.

c. In the following counties for which the Commander, USAFE (COMUSAFE), is the DCO, the following offices, listed by country, are responsible for preparing the report, which will be submitted to the senior commander for approval and signature before forwarding:

(1) Cyprus: USDAO, American Embassy Nicosia, Cyprus, FPO AE 09836 (all services).

(2) Denmark: 426 ABS/JA, Unit 6655, APO AE 09706-6655 (all services).

(3) France: 52 FW/JA, Unit 3680, Box 205, APO AE 09126-0205.

(4) Luxembourg: 52 FW/JA, Unit 3680, Box 205, APO AE 09126-0205 (all services).

(5) Morocco: Chief, U.S. Military Liaison Office, American Embassy Rabat, APO AE 09718 (all services).

(6) Norway: 426 ABS/JA, Unit 6655, APO AE 09706-6655 (all services).

(7) Portugal: 65 ABW/JA, Unit 7710, APO AE 09720.

(8) Turkey: Chief, Office of Defense Cooperation/TJA, PSC 90, Unit 7025, APO AE 09822 (all services).

(9) United Kingdom: 3 AF-UK/JA, Unit 4840, APO AE 09459-4840 (for Army and Air Force); and Commander, Naval Activities, UK (COMNAVACTUK), PSC 802, Box 60, FPO AE 09499 (for Navy).

d. In the following countries for which the COMUSAFE is not the DCO, the following offices, listed by country, are responsible for preparing the Air Force report, which will be submitted to the senior Air Force commander for approval and signature before forwarding:

(1) Belgium: Judge Advocate, Northern Law Center, 21st Theater Sustainment Command, APO AE 09705. (The annual report is not submitted to the senior Air Force commander, but is submitted directly through the DCO to the Judge Advocate General of the Air Force with an information copy to USEUCOM (ECJA), APO AE 09128; HQ USAFE/JAI, Unit 3050, Box 100, APO AE 09094-0100, and HQ, 21st TSC/AERJA-ILO, APO AE 09263.)

(2) Germany: HQ USAFE/JAI, Unit 3050, Box 100, APO AE 09094-0100. Other reporting requirements by Air Force legal offices as local legal liaison authorities in Germany are set forth in AE Regulation 550-56/USNAVEUR Instruction 5820.13F/USAFE Instruction 51-705.

(3) Greece: Chief, Office of Defense Cooperation, PSC 108, Box 42, APO AE 09842.

(4) Italy: 31 FW/JA, Unit 6140, Box 115 APO AE 09604-0115.

(5) The Netherlands: the Netherlands Law Center, Unit 21602, APO AE 09703-1602 (all services).

(6) Spain: Office of Defense Cooperation/SJA, PSC 61, Box 2000, APO AE 09642-2000.

F-2. QUARTERLY CONFINEMENT REPORT (PARAGRAPHS 4-3B AND 4-5)
The quarterly confinement report will be submitted by the United States country representative (USCR) for all services as prescribed in paragraph 26 of the basic publication. USAFE agencies should provide necessary information to the USCR to assist in preparing the report.

F-3. TRIAL OBSERVER REPORT (PARAGRAPHS 4-3C AND 4-6)
The trial observer will send his or her report to the USCR, who will review it and forward the original and two copies to HQ USAFE/JAI, Unit 3050, Box 100, APO AE 09094-0100, for all countries for which the COMUSAFE is the DCO (para F-1c). The USCR will send copies to USEUCOM (ECJA), APO AE 09128; to the component command of the accused; and, when appropriate, to the chief of the U.S. diplomatic mission, the country liaison agent, and the immediate commander of the accused. HQ USAFE/JAI will make appropriate comments and transmit the original report and one copy to the judge advocate general of the service concerned.

F-4. VISIT TO U.S. PERSONNEL CONFINED IN FOREIGN PENAL INSTITUTION (PARAGRAPHS 4-3D AND 4-7)
The senior officer of the visitation team will send reports to the USCR. In countries where the COMUSAFE is the DCO (para F-1c), the USCR will send reports directly to HQ USAFE/JAI, Unit 3050, Box 100, APO AE 09094-0100. An information copy of the report will be provided to Commander, USEUCOM (ECJA), APO AE 09128, and to the component command of the member concerned when reports indicate that conditions violate international agreements, the treatment of U.S. personnel is unfair, or U.S. personnel are not given the same rights, privileges, and protections of personnel confined in U.S. military facilities.

F-5. SERIOUS OR UNUSUAL INCIDENT REPORT (JOINT SERVICE REG, PARA 4-8)

a. The list of criteria for identifying reportable incidents is not necessarily inclusive. A liberal interpretation of *serious or unusual incident* is often required to meet the information needs of higher headquarters. Good judgment at community legal offices regarding which incidents to report is essential.

b. Some incidents must be reported even though they do not exactly match the listed criteria. Cases involving minor offenses should be reported if it is foreseeable that high-level inquiries may be received.

c. Reports will normally be prepared without delay by the staff judge advocate of the unit or command nearest or most closely connected to the incident. Reports will be transmitted electronically to HQ USAFE/JAI with information copies to—

(1) The Commander, USEUCOM (ECJA).

(2) The DCO.

(3) The USCR (if not the preparing agency).

(4) The country liaison agent of the individual concerned (if not the action addressee).

(5) The component command of the individual concerned.

(6) (In Air Force cases) the numbered Air Force judge advocate.

d. Timely supplementary reports will be made, as appropriate, to keep higher headquarters advised of the case's status. The initial and each supplementary report should concisely answer the basic questions of who, what, when, and where, and should be written clearly.

F-6. INDIVIDUAL CASE REPORT (DD FORM 1936) (JOINT SERVICE REG, PARA 4-9)

Air Force offices reporting on Air Force personnel will follow the reporting procedures of the Joint Service Regulation, paragraph 4-6 or 4-8, instead of the separate procedure in paragraph 4-9. In USAFE, DD Form 1936 is used only to complete reports, as appropriate, on Army and Navy personnel and to receive reports from Army and Navy offices regarding USAF personnel.

APPENDIX G
COUNTRY REPRESENTATIVE INSTRUCTION—BELGIUM

1 May 1999 (updated September 2007)

U.S. COUNTRY REPRESENTATIVE INSTRUCTION FOR BELGIUM

G-1. AUTHORITY
This instruction is issued by the Commander, United States Army Garrison (USAG) Benelux, NATO/Supreme Headquarters Allied Powers Europe (SHAPE) Support Group (NSSG), in the capacity as the U.S. Country Representative, Belgium, and according to the authority granted by AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706 (hereafter referred to as the Tri-Service Regulation), paragraph 7.

G-2. APPLICABILITY AND SCOPE
This instruction applies to all U.S. personnel (as defined in the glossary of the Tri-Service Regulation) stationed in or passing through Belgium.

G-3. DELEGATION OF AUTHORITY

a. The Commander, USAG Benelux (NSSG), delegates to the Judge Advocate, Northern Law Center, 21st Theater Sustainment Command, the authority to act as the single POC with the legal and administrative authorities of Belgium in matters relating to the exercise of criminal jurisdiction over U.S. personnel.

b. In this appendix, the term *Liaison Authority* refers to the Judge Advocate, Northern Law Center, 21st Theater Sustainment Command.

G-4. CNE-C6F AND USAFE LIAISON AGENTS
Pursuant to paragraph 8 and appendix C of the Tri-Service Regulation, the Naval Attaché, American Embassy, Brussels, Belgium; and the Commanding General, 52d Fighter Wing, Spangdahlem, Germany, are appointed CNE-C6F and USAFE liaison agents, respectively. These liaison agents will assist personnel in their branches of service as requested by the Liaison Authority.

G-5. RESPONSIBILITY OF COMMANDERS

a. Orientation. Commanders will advise U.S. personnel in their respective commands on their arrival in Belgium of their rights and duties under the NATO Status of Forces Agreement. During orientation, personnel will be advised of at least the following:

(1) Their obligation under the NATO Status of Forces Agreement, Article II, to respect the laws of Belgium and other NATO countries in which they may be present in connection with their official duties, and particularly of their obligation not to take part in political activities in the host country.

(2) Their liability to the criminal jurisdiction of Belgium according to the NATO Status of Forces Agreement, Article VII.

b. Limits on Transferring Personnel. U.S. military authorities will not permit U.S. personnel to be transferred or reassigned outside Belgium without first notifying the Liaison Authority if these personnel are accused or suspected of incidents likely to result in the exercise of Belgian criminal jurisdiction. This notification is required to enable the Liaison Authority to take the action prescribed by AR 635-200, paragraph 1-27.

c. Reports.

(1) Incidents. Unit commanders will immediately report all incidents (Tri-Service Reg, glossary) to the Liaison Authority.

(2) Criminal Process. Unit commanders or supervisors will notify the Liaison Authority by telephone (DSN 423-4910/4604, civ (32) 65-44-4910/4604) or fax (DSN 423-3862, civ (32) 65-44-3862) if a member of their command or a person under their supervision receives foreign criminal process (for example, summons, subpoena, request to appear before a judicial tribunal or police authority) that was not forwarded by the Liaison Authority.

d. Limits on Contacting Host-Country Authorities. In Belgium, unit commanders and other U.S. authorities are prohibited from contacting local police or judicial authorities to obtain a release from custody or a waiver of jurisdiction. If a unit member, a DOD civilian employee, or a Family member is in the custody of Belgian authorities, the unit commander or other U.S. authority will advise the Liaison Authority by telephone (DSN 423-4910/4604, civ (32) 65-44-4910/4604).

G-6. ARMED FORCES POLICE REPORTS

For offenses over which Belgian authorities hold exclusive or concurrent jurisdiction (including traffic offenses), the appropriate U.S. military police or criminal-investigation authority immediately will—

a. Inform the Liaison Authority of the known facts of the case.

b. Give the Liaison Authority one copy of reports from the military police, shore patrol, or security police; or incident reports from the United States Army Criminal Investigation Command, the Naval Investigative Service, or the Office of Special Investigations, as applicable.

G-7. TRIAL *IN ABSENTIA*

a. Under Belgian law, an individual may be tried *in absentia* for violations of the Belgian Penal Code. An accused person may be tried in a Belgian court even if he or she is not present and not represented by an attorney. (The Tri-Service Regulation, paragraph 17, provides U.S. policy on trials *in absentia*.)

(1) Under U.S. policy, a trial *in absentia* is a trial in which the accused person is not present at the trial. Under U.S. regulations, an accused person may be considered as tried *in absentia* in a Belgian court, even if an attorney represents him or her in the court (which would make the trial *in presentia* under Belgian law).

(2) Until the Liaison Authority has determined that Belgian authorities have given their express or tacit consent to the departure of an individual from Belgium pending trial before a Belgian court according to the policy in the Tri-Service Regulation, unit commanders or other U.S. authorities will not allow the individual to leave Belgium.

b. If Belgian authorities give express or tacit consent to the departure of an individual from Belgium, but do not waive their right to try the individual *in absentia*, the removal, transfer, or reassignment of the individual from Belgium (except in case of expiration term of service (ETS)) will be permitted only if the individual provides a statement as shown in figure G-1.

(1) In case of ETS, service regulations pertaining to voluntary retention beyond ETS (Army) or voluntary extension of term of service (Navy and Air Force) are applicable (Army personnel: see AR 635-200, paragraph 1-29; Navy personnel: see Naval Military Personnel Manual 1900-1999; Air Force personnel: see Air Force Instruction 36-3208).

(2) If an individual does not choose to request voluntary extension of term of service or voluntary retention beyond ETS, as appropriate, he or she will be advised of the contents of figure G-1 and be requested to provide this statement voluntarily.

AERJA-NLC Date

MEMORANDUM FOR Judge Advocate, Northern Law Center, 21st Theater Sustainment Command, Unit 21420, APO AE 09705

SUBJECT: Advice on Trial *in Absentia*

1. It has been explained to me, and I understand that—

a. Should I depart Belgium at this time, I may still be tried *in absentia* in a Belgian court for the alleged offense(s) of _____.

b. Should I be convicted of the alleged offense(s) stated in subparagraph a above, a maximum punishment of _____ could be adjudged against me.

c. Settlement of civil damages that may have resulted from the above-alleged offense(s) before referral will not necessarily preclude prosecution in a Belgian criminal court.

d. If I am not eligible for a Belgian attorney at U.S. Government expense under the provisions of AR 27-50/SECNAVINST 5820.4G/AFJI 51-706, I may retain such counsel at my own expense. Further, I understand that such a lawyer may represent me before the Police Court. I also understand that a lawyer may represent me before all other criminal courts (for example, correctional court, court of appeal) only with the express permission of those courts.

e. Any judgment rendered against me in an *in absentia* hearing would be legal and binding in Belgium.

f. If an attorney represents me in my absence at a court hearing, I would be legally considered as being present at my trial under Belgian law.

g. In case of a conviction, I have a right to request a trial *de novo* (new trial).

Figure G-1. Memorandum for Providing Advice on Trials *in Absentia*

h. If neither I nor my defense counsel appear at the trial, I have 15 days after the date I learn of the conviction to appeal the judgment. However, if I appear through counsel, I understand that I have 15 days after the date that judgment is rendered in which to appeal.

i. I have the option to appoint a representative for service of process. I hereby request that the Judge Advocate, Northern Law Center, serve as my representative for service of process for my trial for the alleged offense(s) stated earlier. I understand that this request is an election of domicile in Belgium for my trial and as such makes any judgment rendered against me valid over any later objection of improper service of process. I also understand that notification to my designated representative is effectively notification to me personally and that my right to request a trial *de novo* or to appeal an *in absentia* conviction is limited to a 15-day period beginning at the time that my designated representative was notified of the trial result. I realize that due to the limited time allowed for filing an appeal that my designated representative may be unable to contact me to determine if I desire to arrange for an appeal to be filed on my behalf. In consideration of this, I authorize my designated representative to act in my place and file an appeal on my behalf when, in his or her best judgment, such an appeal would be appropriate under the circumstances.

j. I may request to remain in Belgium until my case is disposed of; however, I do not wish to submit such a request.

k. Should a trial occur, an official U.S. trial observer may attend the trial and render a report on it according to applicable U.S. Government regulations.

l. I may be contacted at the following address: _____.

2. I agree to notify the Judge Advocate, Northern Law Center, of any subsequent change of address or telephone number.

_____ (Signature)

Figure G-1. Memorandum for Providing Advice on Trials *in Absentia*—Continued

APPENDIX H
COUNTRY REPRESENTATIVE INSTRUCTION—DENMARK

25 January 1983 (updated September 2007)

H-1. PURPOSE
This instruction is intended to clarify the duties and responsibilities of U.S. authorities in Denmark, relative to matters involving the exercise of foreign criminal jurisdiction over U.S. personnel in Denmark.

H-2. AUTHORITY
This instruction is issued by the Naval Attaché, U.S. Embassy, Copenhagen, Denmark, in his or her position as the U.S. Country Representative for Denmark, and according to the authority granted by AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706.

H-3. APPLICABILITY AND SCOPE
This instruction applies to all personnel as defined in paragraph H-4a of this instruction who are stationed in or passing through the Kingdom of Denmark.

H-4. EXPLANATION OF TERMS

a. U.S. Personnel. As used in this instruction, all U.S. military and civilian personnel and their dependents in Denmark who are subject to the provisions of the NATO Status of Forces Agreement.

b. Legal Advisor. The Staff Judge Advocate, 426 ABS/JA (USAFE), Unit 6655, APO AE 09706.

H-5. RESPONSIBILITIES

a. U.S. Country Representative, Denmark. The U.S. Country Representative, Denmark, or the Legal Advisor at his or her discretion and on his or her own behalf, acts as the single POC with Danish authorities and the U.S. Embassy, Copenhagen, for matters relating to the exercise of criminal jurisdiction over U.S. personnel in Denmark.

b. Commanders.

(1) Commanders will establish procedures to ensure that personnel under their command are advised of their rights and obligations under the NATO Status of Forces Agreement, including respecting the laws of Denmark, refraining from engaging in political activities in Denmark, their amenability to the criminal jurisdiction of Denmark, and their rights and duties relating to customs privileges in Denmark. This advice will be given to personnel as soon as practical after their arrival in Denmark. Commanders should avail themselves of the Legal Advisor's briefing program for incoming personnel on this matter.

(2) Commanders will promptly inform the U.S. Country Representative, Denmark, and the Legal Advisor of any act or omission by U.S. personnel under their command that involves Danish interest and that in their opinion would result in any of the following:

(a) Criminal proceedings by Danish courts.

(b) A claim against the U.S. Government.

(c) Creating or arousing substantial public interest.

(d) Adverse public relations that would be detrimental to the United States.

(3) Without prior approval of the U.S. Country Representative, Denmark, U.S. military authorities will not permit the transfer or reassignment of U.S. military personnel or provide transportation at Government expense outside of Denmark for civilian or dependent personnel involved as accused or suspected persons in incidents likely to result in the exercise of foreign criminal jurisdiction by Denmark. However, commanders will inform the U.S. Country Representative when unusual circumstances or Service directives urgently require the individual's transfer.

(a) Commanders will ensure that an administrative hold is placed on all U.S. military personnel under their command and those U.S. personnel not assigned or attached falling within their custody responsibility who are involved as accused or suspected persons in incidents likely to result in the exercise of foreign criminal jurisdiction by Denmark, in order to preclude personnel action that would authorize the departure of such persons from Denmark without the prior approval of the U.S. Country Representative, Denmark.

(b) Commanders accepting custody of such personnel will notify the individual's unit, the servicing personnel office, and the appropriate transportation authorities that custody responsibility has been assumed and that an administrative hold is required. Furthermore, commanders will impound, where appropriate, all documents relating to the individual that might assist his or her unauthorized departure from Denmark by any means, and will establish other appropriate controls to enhance effectiveness of the custody.

(c) Commanders will advise such personnel, by memorandum with acknowledgment required, that an administrative hold has been instituted and that they are not to depart Denmark until such departure is personally approved by the U.S. Country Representative, Denmark.

(d) Commanders will notify by memorandum the appropriate traffic management office (TMO) that such personnel must not be afforded Government transportation of any type from Denmark without the prior approval of the U.S. Country Representative, Denmark, and to rescind any TMO actions that have been completed permitting such transportation.

(e) Commanders will not approve permanent change of station, temporary duty, pass, or leave of such personnel without the specific approval of the U.S. Country Representative if their unapproved departure from Denmark is anticipated.

(4) Commanders are authorized to communicate directly with the U.S. Country Representative, Denmark, and the Legal Advisor with respect to all matters involving the exercise of criminal jurisdiction over personnel under their command.

c. Legal Advisor.

(1) The Legal Advisor will establish procedures to ensure that he or she is immediately notified by Danish police of the arrest, detention, or apprehension of U.S. personnel by Danish authorities, and will, as appropriate, advise such U.S. personnel of their rights relative thereto.

(2) The Legal Advisor will immediately notify the U.S. Country Representative, Denmark; the commander of the individual concerned or his or her designee; and the U.S. Consul, Denmark, or his or her designee, of the involvement of any U.S. personnel in incidents resulting in their arrest, detention, or apprehension by Danish authorities.

(3) The Legal Advisor will assist the U.S. Country Representative, Denmark, in preparing and submitting reports required under the provisions of AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706.

APPENDIX I
COUNTRY REPRESENTATIVE INSTRUCTION—FRANCE

10 August 2005 (updated September 2007)

U.S. COUNTRY REPRESENTATIVE INSTRUCTION FOR FRANCE

I-1. PURPOSE
The purpose of these instructions is to define procedures and to outline certain responsibilities in the exercise of criminal jurisdiction in France over U.S. personnel. The instructions implement and procedurally supplement AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706 (hereinafter referred to as the Tri-Service Regulation).

I-2. APPLICABILITY
These instructions are applicable to all U.S. personnel as defined in the Tri-Service Regulation. In as much as there are few U.S. personnel assigned at present to duties in France, these instructions apply largely to U.S. Army, Navy, and Air Force personnel who are stationed outside of France but who enter France with appropriate orders or permission from U.S. commanders.

I-3. RESPONSIBILITY FOR CRIMINAL JURISDICTION MATTERS

a. The U.S. Country Representative for France, the Commander of the 52d Fighter Wing, is the single POC for military services with the Government of France and with the U.S. Diplomatic Mission in France for all matters relating to the exercise of French criminal jurisdiction over U.S. personnel. All foreign criminal jurisdiction functions are performed for the U.S. Country Representative by the 52d Staff Judge Advocate.

b. The address of the 52d Staff Judge Advocate is as follows:

52 FW/JA
PSC 9, Box 205
APO AE 09126-0205

Telephone: DSN 452-6796/6797, civilian: (0049) (0) 6565 44 45
Fax: DSN 452-7500, civilian: (0049) (0)6565 49 91

e-mail: 52fw.jaadm@spangdahlem.af.mil

I-4. ORIENTATION OF PERSONNEL BEFORE ENTERING FRANCE
U.S. military personnel intending to enter France will be advised by their commanders of the provisions of Articles II and VII of the NATO Status of Forces Agreement (SOFA) and will be instructed that it is their duty to respect the laws of France and to abstain from any activity inconsistent with the Agreement and, in particular, from any domestic political activity in France. Commanders will further instruct their personnel that the French authorities have jurisdiction to prosecute U.S. personnel and their Family members with respect to offenses committed within the territory of France. The individual responsibilities of U.S. personnel as set forth in paragraph I-5 should be fully explained by commanders. In September 1986, the French Government imposed visa requirements applicable to Americans. The following rules apply as follows:

a. Official Travel. Military personnel on temporary duty or temporary additional duty in France must travel with a valid ID card and NATO travel orders. U.S. military personnel coming into France on leave must carry an ID card. U.S. Government civilians require a no-fee passport to enter France for official travel. For updated information, see the Foreign Clearance Guide.

b. Leave Requirements. Active-duty military personnel assigned to the USEUCOM theater traveling to France on leave require a copy of leave orders and a valid military ID card. Military personnel not stationed in the USEUCOM theater require a tourist passport. U.S. DOD civilians and military and civilian Family members must carry a tourist passport with the appropriate French visa to enter France. A visa is not required for stays of up to 90 days within any 180-day period. Stays of more than 90 days require a visa. Foreign national DOD and military Family members with non-U.S. passports should check with a French Embassy or consulate to determine which credentials they require for entry.

I-5. INDIVIDUAL RESPONSIBILITIES

An individual will report to his or her commander immediately after his or her return to the unit any incident, motor vehicle accident, or traffic offense involving him- or herself or his or her dependents, irrespective of whether such incident or accident involves or may involve a violation of French law; and the receipt of any summons, subpoena, or request to appear before a French judicial tribunal or police official.

I-6. REPORTING BY COMMANDERS

The commander who first receives notice, regardless of the source, of an incident, accident, summons, or other document indicating that French law has been or may have been violated will contact the 52d Staff Judge Advocate. U.S. Army commanders may confirm the information by using AE Form 550-50A (Tri-Service Regulation, app D) (for incidents).

I-7. JURISDICTIONAL MATTERS

According to the responsibilities described in paragraph I-3, requests for waiver of the French primary right to exercise criminal jurisdiction over U.S. personnel, assertions of U.S. primary right, or any other determination concerning the exercise of criminal jurisdiction under Article VII, NATO SOFA, will be performed by the 52d Staff Judge Advocate. No other command, office, or individual will make requests of or commitments to, or negotiate with French authorities concerning criminal jurisdiction matters.

I-8. FRENCH TRIALS

Trials of U.S. personnel before French courts will be attended by a qualified lawyer trial observer. A report of the trial will be prepared and sent to appropriate addressees in accordance with the Tri-Service Regulation.

I-9. BAIL

Bail in criminal cases in France will not be provided for U.S. personnel by the U.S. Government. Obtaining money for bail to secure release, or provisional liberty as it is called in France, is therefore the responsibility of the individual. Under French law (Art 142, Code of Penal Procedure), the money provided for bail is used to guarantee the execution of the judgment (including penal fines and civil damages) and thus bail at Government expense is not authorized by the Joint Service Regulation, which specifies that bail will be provided only to guarantee the presence of the accused and not for the payment of fines or civil damages.

I-10. COUNSEL FEES AND COURT COSTS

Counsel fees and court costs will be provided at U.S. Government expense in appropriate cases. Funding of these items of expense is the responsibility of the military service of which the accused is a member. The general court-martial convening authority is the designated approving authority (for requests for payment of these costs) and the 52d Staff Judge Advocate is the contracting officer for the retention of French attorneys. In case of Army and Navy personnel, the 52d Staff Judge Advocate will make initial arrangements subject to coordination with and approval by the appropriate representatives of those services for attorneys' fees and court costs.

I-11. UNIFORM CODE OF MILITARY JUSTICE DISCIPLINARY ACTION

No person who is or may be the subject of French criminal jurisdiction shall be the subject of military judicial or nonjudicial punishment or discipline under the Uniform Code of Military Justice for the incident or accident giving rise to the French jurisdiction until clearance is obtained from the 52d Staff Judge Advocate, following resolution of jurisdictional matters. Army commanders will comply with the provisions of AE Regulation 27-10 and AE Regulation 550-56/USNAVEUR Instruction 5820.13F/USAFE Instruction 51-705, paragraph 4. Commanders may also take such immediate administrative (nonpunitive) action as may be deemed appropriate.

I-12. TREATMENT OF PERSONNEL CONFINED IN FRENCH PRISONS

a. Visits to U.S. personnel confined in French prisons will be made by members of the 52d Staff Judge Advocate Office, and by military doctors or chaplains in appropriate cases, in accordance with the Joint Service Regulation. Unit commanders may also make visits. No visit should be made without coordination with the 52d Staff Judge Advocate, who will arrange for the issue of permits from the appropriate French authorities.

b. Any inquiries about prisoners should be directed immediately to the 52d Staff Judge Advocate for consideration and reply.

c. French prisons normally permit two American magazines (Time and Life) to be read by prisoners. Units may send copies of these magazines directly to the individual prisoner or to the 52d Staff Judge Advocate for delivery to the prison.

I-13. REPORTS

The 52d Staff Judge Advocate is responsible for all reports relating to the exercise of French criminal jurisdiction, including the annual report, quarterly confinement reports, trial observer reports, and prison-visit reports required by the Joint Service Regulation and the Tri-Service Regulation.

I-14. ABSENTEE SERVICEMEMBERS IN FRANCE

a. Shortly after the departure in 1967 of U.S. Forces troops stationed in France, official French policy regarding criminal jurisdiction was modified in an important respect. Thereafter, Servicemembers stationed outside of France who were in an absentee status at the time that an alleged offense was committed in France were not considered by the French authorities to be within the purview of the NATO SOFA. Consequently, absentees arrested in France by French authorities are treated like any other foreigner would be and are not turned over to U.S. authorities. In effect, France has exclusive jurisdiction over these absentees and requests for waivers of jurisdiction are uniformly denied and are considered inappropriate.

b. The nonapplicability of the NATO SOFA to absentees in France has not precluded assistance to absentees by the 52d Staff Judge Advocate unless the absentee either declines to ask for or refuses to accept assistance. If an absentee expresses a sincere intent to return to U.S. military control (outside of France) on disposition of his or her case by French authorities, all assistance normally extended to Servicemembers in a regular status (valid leave or pass, temporary duty, or permanent change of station) is offered to him or her. If an absentee declines to request contact with American authorities, the French will not issue permits for a prison visit. Trials of all absentees will be attended by the 52d Staff Judge Advocate and the appropriate trial-observer report will be prepared and forwarded as in other cases.

APPENDIX J
COUNTRY REPRESENTATIVE INSTRUCTION—GREECE

(updated September 2007)

U.S. COUNTRY REPRESENTATIVE INSTRUCTION FOR GREECE

J-1. PURPOSE
This instruction implements AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706. It establishes policy and procedures to be followed by U.S. authorities in respect to the exercise of criminal jurisdiction by Greek authorities over U.S. military and civilian personnel in Greece.

J-2. APPLICABILITY
This instruction applies to U.S. military personnel and civilians who are nationals of the United States and who are serving with, employed by, or accompanying the U.S. military forces; and their Family members in Greece.

J-3. DESIGNATED COMMANDING OFFICER AND COUNTRY REPRESENTATIVE
The Deputy Commander, United States Naval Forces Europe (USNAVEUR), is the designated commanding officer for Greece according to USEUCOM Directive 45-3. The Chief, Office of Defense Cooperation (ODC), is the country representative for Greece and, accordingly, acts as the single POC for the U.S. military services with the U.S. Diplomatic Mission and the national authorities of Greece regarding the exercise of foreign criminal jurisdiction over U.S. personnel.

J-4. INFORMATION AND EDUCATION PROGRAMS
Unit commanders in Greece are required to inform all U.S. personnel in country of the laws and customs of Greece and the basic jurisdictional provisions of Article VII of the NATO Status of Forces Agreement (SOFA). Particular emphasis should be placed on these subjects at newcomers orientations, Family service orientations, and commanders calls. The assistance of servicing staff judge advocates should be sought whenever appropriate to discuss Greek laws and the NATO SOFA.

J-5. WAIVERS OF JURISDICTION

a. The Annex in Implementation of the Mutual Defense Cooperation Agreement (MDCA) and the Comprehensive Technical Agreement (CTA) must be read together to understand waiver procedures in Greece.

b. Requests by U.S. authorities for a waiver by Greece of its criminal jurisdiction will be processed in accordance with the following procedures:

(1) The Navy Support Activity (NSA) Souda Bay Staff Judge Advocate (SJA) will prepare initial requests for jurisdiction for all U.S. Forces personnel under the command of the Commanding Officer, NSA Souda Bay, involved in a criminal investigation in Greece. The requests may follow the format shown in figure J-1 and should include the following information:

(a) Name, grade, service, organization, and mailing address of the accused.

(b) A brief description of the incident that formed the basis of the complaint. The description should include the time, date, geographic location, and circumstances surrounding the incident.

(c) The offense allegedly committed.

(d) The name and location of the court that will hear the case.

(e) The scheduled trial date for the case.

(f) The status of any claim submitted by the alleged victim.

c. The ODC Legal Advisor's office prepares documents required to formally request waivers of jurisdiction from the Greek Government. The documents consist of an information memorandum from the United States country representative (USCR) and a *note verbale* signed by the Deputy Chief of Mission (DCM), who acts as co-chair of the Joint Commission. The documents are coordinated with the political/military affairs officer at the U.S. embassy. According to the MDCA, requests for jurisdiction must be presented within 30 days after the date the U.S. military authorities become aware of the initiation of criminal proceedings against an accused to the Joint Commission established under Article V of the MDCA (MDCA Annex, Art II(2)(b)(1)). Once signed, the waiver request is delivered to the Greek Ministry of Foreign Affairs (MFA).

(1) In all cases, the waiver will be considered granted if, within 45 days after the date on which the request is received by the Joint Commission, the competent Greek authority has not notified the U.S. military authorities that the request has been rejected, or has not solicited a clarification of the request. In the latter case, the 45-day period is suspended until the clarification is sent through the same channel as the waiver request (CTA, Art 4(1)).

(2) If Greek authorities do not waive jurisdiction, the case will likely proceed to trial. U.S. authorities will request that the MFA ensure a trial date is scheduled as quickly as possible in accordance with Article VII, paragraph 9(a), of the NATO SOFA.

J-6. ASSERTATIONS OF JURISDICTION IN OFFICIAL DUTY CASES

a. NATO SOFA.

(1) Paragraph 3(a)(ii), Article VII, of the NATO SOFA states the following:

> The military authorities of the sending state shall have the primary right to exercise jurisdiction over a member of a force or of a civilian component in relation to offenses arising out of any act or omissions done in the performance of official duty or done in connection with the performance of official duty.

(2) In general, an act or omission is done "in the performance of official duty" if it is done pursuant to or in accordance with competent authority or directive, whether expressed or implied, and is reasonably related to the performance by the individual concerned of required or permissive official functions in his or her capacity as a member of the U.S. Forces. Competent authority or directive includes but is not limited to statute, regulation, the order of superior, or military use commensurate with the specific factual situation and the circumstances involved.

b. Procedures.

(1) Actions by the Commander. When a member of the force or civilian component has been involved in an accident that is possibly connected with official duty and that has become or is likely to become a basis for a trial in the Greek courts, the local commander will take the following actions:

(a) Consult with the servicing staff judge advocate or ODC Legal Advisor, as appropriate.

(b) If appropriate, immediately appoint an investigating officer to investigate the circumstances surrounding the incident. The investigating officer may be the servicing staff judge advocate.

(c) Review the findings and recommendation of the investigating officer and send the report to the servicing staff judge advocate or ODC Legal Advisor for action.

(2) Actions by the Investigating Officer.

(a) Before beginning the investigation, the investigating officer should seek the advice of the servicing staff judge advocate or ODC Legal Advisor. In appropriate cases, either the NSA Souda Bay Staff Judge Advocate or the ODC Legal Advisor may investigate the circumstances surrounding an incident and make appropriate judgments concerning the official duty status of the U.S. Forces personnel involved.

(b) Witnesses should be interviewed and sworn statements should be obtained, as deemed necessary, from—

1. Persons who were present at the time of the incident. Extreme tact must be exercised when dealing with Greek nationals to avoid allegations of misconduct on the part of the investigating officer.

2. Other individuals who may have knowledge relevant to whether or not the act or omission giving rise to the alleged offense was done in the performance of official duty or done in connection with the performance of official duty, even though they were not present at the time of the incident.

3. The subject, if the subject consents to giving a statement after being advised of his or her rights under Article 31 of the Uniform Code of Military Justice.

(c) The investigating officer should obtain copies of police reports and documents related to the case. Documents in Greek should be translated into English.

(3) Report of Investigation. Reports of investigation should substantially conform with the model in figure J-1 and should include—

(a) A concise factual account of the facts and circumstances of the incident, including the following:

1. The name, grade, and organization of the subject.

2. The mission of the subject.

3. The source and substance of any relevant orders or instructions given the subject.

4. The sobriety of the subject, including the degree of intoxication, if intoxicated, and the results of any sobriety or blood alcohol test administered.

5. Whether the subject was in duty uniform. If the subject was attired in other than duty uniform, the reason why other clothing was worn should be included.

6. If the incident arose out of an automobile accident, the investigating officer should provide identifying information on the vehicle. If a privately owned vehicle (POV) was being used, a detailed statement as to why the POV was being used should be provided.

7. The circumstances of the incident, including the nature and extent of personal injuries.

8. The scheduled trial date and court for any judicial hearings on the matter.

(b) Copies of all investigative reports prepared by U.S. or Greek officials.

(c) An analysis of the facts as they relate to duty status.

(4) Actions by the ODC Legal Advisor and USCR.

(a) The ODC Legal Advisor will review the report of the investigating officer and make a determination of the official duty status of the subject of the investigation.

(b) If the ODC Legal Advisor determines the act or omission was done while in the performance of official duty or in connection with the performance of official duty, he or she will draft an official duty certificate and a cover memorandum and coordinate the package with the USCR. If the USCR agrees with the Legal Advisor's conclusions, the entire package will be sent to the political/military affairs officer at the U.S. Embassy, Athens. (Figure J-2 is an example of the cover memorandum and duty certificate.) A copy of the duty certificate will be forwarded to the NSA Souda Bay Staff Judge Advocate for personnel assigned to that facility.

(c) Ensure the Chief, ODC, is kept advised of all developments in the matter.

(5) Actions by the Political/Military Affairs Officer and DCM. The political/military affairs officer will review the package and forward it to the DCM. The documents are then delivered to the MFA advising the Government of Greece of the U.S. Forces' assertion of jurisdiction in the matter due to the official duty nature of the case. (Figure J-3 is an example of the correspondence.)

c. Automobile Accidents. Most requests for determination of official duty arise from offenses involving the operation of motor vehicles. Since it is often difficult to determine when a POV is being driven on official business and when it is being driven on a personal mission, it is imperative that the investigating officer conduct an extensive and detailed investigation. The investigation should affirmatively establish the reason why a POV, rather than a Government vehicle, was being used.

(1) Travel from home to work and vice versa, in either a Government or privately owned vehicle, is considered in the performance of an official duty as long as no material deviations are made from a direct and normally traveled route. Matters to be considered with regard to a material deviation may include the following:

(a) The intent of the driver when the deviation from a direct route occurred.

(b) Where the deviation took the driver, in a geographic sense, from a direct route.

(c) The time that elapsed during the deviation.

(d) Where the accident occurred.

(2) The use of POVs for any military duty, including travel incident to temporary duty, is likewise considered in the performance of official duty.

(3) When U.S. Government vehicles are made available to groups of military personnel for rest and recreation purposes, the operator of the vehicle will generally be considered as in the performance of official duty.

d. Departure From Greece. Subjects of investigations should not be allowed to depart Greece until an official duty certificate has been issued or oral authorization has been obtained from the Chief, ODC, or the ODC Legal Advisor. International administrative hold procedures do not apply to official duty cases.

J-7. INTERNATIONAL ADMINISTRATIVE HOLD PROCEDURES

a. Purpose. This paragraph implements Article II, paragraph 2, of the Mutual Defense Cooperation Agreement; Article 4 of the Comprehensive Technical Agreement; Air Force Instruction 51-703, Foreign Criminal Jurisdiction; and paragraph 14 of AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706, Exercise of Foreign Criminal Jurisdiction Over United States Personnel. It establishes procedures designed to ensure that U.S. personnel charged or likely to be charged in Greek criminal proceedings (with the exception of minor traffic offenses) are present for trial and not transferred out of the country or provided U.S. Government transportation out of the country without the permission of the servicing staff judge advocate.

b. Applicability. This paragraph applies to all U.S. personnel. The term *U.S. personnel* includes all military personnel and civilians who are nationals of the United States and who are serving with, employed by, or accompanying the U.S. military forces in Greece, and their dependents.

c. Policy. Commanders and their servicing staff judge advocates are responsible for ensuring that the purposes of this memorandum are carried out.

(1) International Administrative Hold. U.S. military personnel against whom Greek criminal charges have been filed or are likely to be instituted (with the exception of minor traffic offenses) will be placed on international administrative hold except in cases where the continuous presence of the individual in Greece is not required by either Greek or U.S. authorities and would serve no useful purpose. The Legal Advisor, Office of Defense Cooperation, in consultation with the appropriate servicing staff judge advocate and country representative, will determine when it is appropriate to place U.S. military personnel on international administrative hold.

(2) Withholding Transportation. Members of the civilian component and dependents against whom criminal charges have been filed or are likely to be filed (with the exception of minor traffic offenses) may have reassignment orders and transportation at Government expense withheld. The Legal Advisor and servicing staff judge advocate will determine when these measures are appropriate. No other restraint may be placed on civilians or dependents by U.S. military authorities. Furthermore, no additional measures may be taken to guarantee that a civilian under or pending Greek criminal charges will remain in the country.

d. Procedures.

(1) The servicing staff judge advocate at Naval Support Activity Souda Bay will maintain close liaison with unit commanders, security police, the Naval Criminal Investigative Service, the Office of Special Investigations, and other agencies and establish procedures to ensure that they are informed of incidents that may result in the exercise of Greek criminal jurisdiction over U.S. personnel.

(2) Commanders of installations at which staff judge advocates are not assigned will promptly inform the Legal Advisor, Office of Defense Cooperation, of any incident involving U.S. personnel that may result in Greek criminal charges.

(3) The Legal Advisor and servicing staff judge advocate will determine from the facts whether international administrative hold or withholding transportation is required. If the facts indicate the incident arose while the accused was in the performance of official duty, the procedures established in this instruction should be followed.

(4) If international administrative hold is required for a military member, the Legal Advisor or servicing staff judge advocate will advise the member's commander of this requirement in writing using a memorandum similar to the one in figures J-1 and J-2. The member's commander will then advise the member of the international administrative hold, order the member not to depart Greece without the specific written authority of the Legal Advisor, and have the member execute an acknowledgment of the order. The commander will complete a memorandum of endorsement to the memorandum and return both memorandums and the acknowledgment to the servicing staff judge advocate. The commander, servicing staff judge advocate, and Legal Advisor will send copies of the memorandums and acknowledgment to the following:

(a) The member.

(b) The servicing security or military police unit.

(c) The servicing personnel office.

(d) The servicing traffic management office.

(e) The servicing hospital registrar.

(f) The servicing administrative office.

(5) If a member of the civilian component or a dependent is charged or is likely to be charged with a criminal offense by the Greek authorities, the servicing staff judge advocate will advise the individual in writing that reassignment orders and transportation at Government expense will be withheld until further notice. Copies of the memorandum of notification will be forwarded to the following:

(a) The local commander.

(b) The servicing security or military police unit.

(c) The servicing personnel office.

(d) The servicing traffic management office.

(e) The servicing hospital registrar.

(f) The servicing administrative office.

(6) Air Force personnel should be placed on international administrative hold (Code 13) for 90 days. The military personnel flight (MPF) will consult the monthly international hold reports for the current status of these Air Force members. The Legal Advisor will consult with the servicing Air Force Staff Judge Advocate at the individual's home station to monitor the Code status and ensure that the individual is not allowed to separate from the Air Force before the disposition of the case.

(7) In the following cases, U.S. personnel in international hold status may be removed from international administrative hold or allowed to use Government transportation out of the country:

(a) Before the trial, U.S. personnel may be removed from international administrative hold or allowed Government transportation out of the country only with the express written consent of the Legal Advisor.

(b) After the trial, but before final disposition of the case while on appeal, U.S. personnel may be removed from international hold status with the express, written approval of the Legal Advisor, Office of Defense Cooperation, after consultation with the appropriate service judge advocate.

(c) On final disposition of their criminal case.

Information Memorandum from Navy Support Activity Souda Bay

Request for Waiver of Jurisdiction - Chester E. Smith, Specialist, USA

1. I request your assistance in obtaining a waiver of Greek primary jurisdiction under the provisions of Article II, paragraph 2, of the Mutual Defense Cooperation Agreement of 9 July 1990.

2. The following information is provided in support of this request:

a. Name: Chester E. Smith

b. Grade: Specialist.

c. Service: Army.

d. Organization: 558th U.S. Army Artillery Group, APO AE 09253.

e. Facts:

(1) Time and date: 2030, 22 October 2007.

(2) Location: Vassileos Georgiou Street, Glyfada.

(3) Description: Specialist Smith was observed by Greek police officers vandalizing a parked automobile owned by a Greek national. The damage to the vehicle was estimated by the owner's mechanic at about €500.

f. Charge: Vandalism in violation of Article 203 of the Greek Penal Code.

g. Court: First Three-Member Court of Misdemeanors, Athens, Greece.

h. Trial Date: 22 January 2008.

i. Status of Claim: A claim for €500 has been approved for Mr. Voula, the owner of the vehicle, by the Foreign Claims Commission. He will be paid that amount after he signs the appropriate release.

RICHARD A. BARRON
Captain, USN
Staff Judge Advocate

Figure J-1. Document Samples for Requesting Waivers of Jurisdiction

U.S. Country Representative Memorandum to Joint Commission

SUBJECT: Request for Waiver of Jurisdiction - FC3 James Jones, USN

1. I have the honor to refer to the Comprehensive Technical Agreement (CTA) between the United States of America and the Hellenic Republic in requesting a waiver of Greek primary criminal jurisdiction in the matter of FC3 James Jones, United States Navy.

2. The evidence indicates that at about 2335 on 11 March 2007 in downtown Hania, Crete, FC3 Jones, while under the influence of alcohol, allegedly smashed a window of a car belonging Ioannis Broubakisus, a Greek national. At approximately 0005 on 12 March 2007, FC3 Jones attempted to flee but was apprehended. While being apprehended, the subject resisted arrest and struck a police officer, Dimitrios Trilirakis, in the mouth. Mr. Broubakisus and Officer Trilirakis suffered minor injuries.

3. Charges: FC3 Jones is charged with the following violations of the Greek Penal Code: resisting Greek authorities (Art 167); simple bodily injury without cause (Art 308); simple property damage without cause (Art 381).

4. A criminal trial is currently scheduled to begin in the Three Members First-Instance Criminal Court of Hania on 21 May 2007. U.S. authorities have begun *ex gratia* claims procedures in this case under Article VIII, paragraph 6, of the NATO SOFA. Liberty privileges of FC3 Jones have been suspended and he has been restricted to the limits of Navy Support Activity Souda Bay since the date of the incident. If Greek jurisdiction is waived, U.S. military authorities will be able to immediately begin administering disciplinary action against FC3 Jones. Such actions could include punishment under Article 15 of the Uniform Code of Military Justice for assault and property damage. Under Article 15, punishments could include permanent reduction in grade and pay, a fine of up to 2 months' salary, and other punishments. These punishments would be administered immediately following completion of the Article 15 action. Additionally, should U.S. commanders believe it advisable, FC3 Jones could face court-martial.

5. Accordingly, to proceed with such actions, United States authorities respectfully request a waiver of Greek jurisdiction pursuant to Article 4 of the CTA.

JOHN M. DOE
Colonel, USAF
U.S. Country Representative

Figure J-1. Document Samples for Requesting Waivers of Jurisdiction—Continued

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DOD UNIT REQUESTING A CERTIFICATE

SUBJECT: Investigation for Determination of Official Duty Status (Lieutenant William E. Doe)

Office of Defense Cooperation, Athens
Legal Advisor
APO AE 09842

1. Facts and Circumstances: Lieutenant William E. Doe, USN, on 13 June 2007 at 1700, while proceeding in his POV from his place of duty to his residence, was involved in an automobile accident with a taxi on Athens Avenue, Chania, Crete. The circumstances that led up to this accident are as follows:

a. On Friday, 13 June 2007, at 1700, Lieutenant Doe was on his way home from work. The normal duty hours for Lieutenant Doe are 0730 to 1645, Monday through Friday.

b. On the way to his residence, Lieutenant Doe briefly departed from his most direct route to check his mail at the post office. This departure took him about three blocks north of the most direct route and was about 3 minutes in duration. After checking his mail, he proceeded toward his residence.

c. After proceeding about two blocks on Athens Avenue, an oncoming taxi crossed the solid center line and collided with Lieutenant Doe's vehicle.

d. Damage to Lieutenant Doe's vehicle was $400. The taxi sustained damage of $250. There was no other property damage. The driver of the taxi sustained a broken arm as a result of the collision.

e. Lieutenant Doe is scheduled to rotate from his present assignment in November 2007.

2. Analysis: Travel by military personnel in a privately owned vehicle from their place of duty to their residence is considered to be performance of official duty. It is true that Lieutenant Doe did depart from the direct route; however, it was only three blocks to check his mail and he was back on the direct route when the accident occurred. I do not think that the departure was a material deviation.

3. Findings: After review of all the evidence and applicable directives, I conclude that Lieutenant William E. Doe was performing official duty when the accident in question occurred.

5 Encls
1. Statement - Lieutenant Doe
2. Statement - Major Black
3. Statement - George Matsoukis

PETER PAUL
Colonel, USAF
Commander

Figure J-2. Document Samples for Official Duty Cases

SAMPLE INVESTIGATION

STATEMENT

I, WILLIAM E. DOE, Lieutenant, USN, 123-45-6789, Navy Support Activity Souda Bay, at 1700 on 13 June 2007, was involved in an automobile accident while proceeding from my place of duty to my residence in Iraklion, Crete.

I departed the headquarters building at 1645 and proceeded down Athens Avenue, which is the normal direct route I travel to go home. I live 2 miles from the headquarters building. About halfway home and three blocks north of Athens Avenue is the post office where my mailbox is located. On the way home that night, I decided to check my mailbox and then got back in my car and drove back onto Athens Avenue. This errand took me about 3 minutes. I had not gone more than two blocks when an oncoming taxi crossed the solid white line struck my vehicle head-on. The damage to my car was $400. The damage to the taxi was about $250. The driver was the only occupant of the taxi. I was alone in my car. The taxi driver suffered a broken arm in the crash. I had not been drinking before the accident. My normal duty hours are 0730 to 1645 daily, Monday through Friday.

WILLIAM E. DOE, LT, USN

SWORN AND SUBSCRIBED BEFORE ME ON THIS 16TH DAY OF JUNE 2007.

T. R. AMSTAG
Lieutenant, USN
Staff Judge Advocate

Figure J-2. Document Samples for Official Duty Cases—Continued

OFFICE OF DEFENSE COOPERATION
U.S. EMBASSY GREECE

ODCCH 23 June 2007

MEMORANDUM FOR RECORD

SUBJECT: OFFICIAL DUTY STATUS OF MAJOR ANDREW S. WILLIAMS

I certify that LIEUTENANT WILLIAM E. DOE (O3), USN, a member of the U.S. Forces, was in an official duty status when he damaged a rental car while returning from is residence from Navy Support Activity Souda Bay.

JOHN MERROW
Colonel, USAF
Chief

Figure J-2. Document Samples for Official Duty Cases—Continued

EMBASSY OF THE UNITED STATES OF AMERICA
ATHENS, GREECE

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Hellenic Republic and wishes to refer to the case of Mrs. Jane Jones, Chief, Personnel Management Section, 7206th Air Base Group, Hellenikon Air Base.

The District Attorney of Athens, Court of Misdemeanors, has issued Criminal Summons No. 302686, alleging that Mrs. Jones criminally withheld wages from Vassiliki Kalpenidou and Dimitrios Gouskos from 1 through 30 May 2007. Ms. Kalpenidou and Mr. Gouskos were formerly employed by the Hellenic Office of Administration.

The Embassy wishes to point out that the case involves alleged offenses arising out of acts done in the performance of an official duty. Further, the defendant was in an official duty status at the time of the alleged offenses. Primary criminal jurisdiction over these offenses rests with the United States in accordance with Article VII, paragraph 3(a)(ii), of the NATO Status of Forces Agreement; and the 1983 Defense and Economic Cooperation Agreement, Article III.

Mrs. Jones has been summoned to appear before the Aftoforon One-Member Court on 16 September 2007. The Embassy requests that the Ministry advise the appropriate authorities that the United States has exercised its jurisdiction.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Hellenic Republic the assurance of its highest consideration.

Embassy of the United States of America
Athens, 3 September 2007

Figure J-3. Sample Correspondence Asserting U.S. Jurisdiction Due to Official Duty

APPENDIX K
COUNTRY REPRESENTATIVE INSTRUCTION—ITALY

U.S. Sending State Office (USSSO) for Italy Instruction 5820.1D
24 October 2003 (updated September 2007)

SUBJECT: Operating Procedures in Italy Under Article VII, NATO Status of Forces Agreement

K-1. REFERENCES

a. NATO Status of Forces Agreement (NATO SOFA), June 19, 1951, 4 UST 1792, TIAS 2846, 199 UNTS 67.

b. Treaty Between the United States of America and the Italian Republic on Mutual Assistance in Criminal Matters, signed 9 November 1982, entered into force 13 November 1985.

c. Memorandum of Understanding Between the Ministry of Defense of the Republic of Italy and the Department of Defense of the United States of America Concerning Use of Installations/Infrastructure by U.S. Forces in Italy, 2 February 1995 (Shell Agreement).

d. DOD Directive 5525.1, Status of Forces Policies and Information.

e. AR 27-50/SECNAVINST 5820.4G/AFJI 51-706, Status of Forces Policies, Procedures, and Information.

f. AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706, Exercise of Foreign Criminal Jurisdiction Over United States Personnel.

g. Italian Code of Penal Procedure (*Codice di Procedura Penale*) (*CPP*), D.P.R. No. 447, 22 September 1988, and subsequent amendments.[1]

K-2. ENCLOSURES

a. Translation: *Circolare* issued by the Italian Government on 25 March 1957 (Ministry of Grace and Justice Circular No. 786/357, Application of Article VII of the Convention of London, of June 19, 1951, Concerning the Status of NATO Forces) (with 1981 amendments).

b. Translation: *Regolamento* issued by the Italian Government on 16 March 1957 (Presidential Decree 1666 of 2 December 1956, reprinted in No. 70 *Gazzetta Ufficiale della Republica Italiana*, 16 March 1957, Approving the Regulations for the Implementation of Article VII of the NATO Status of Forces Agreement Signed in London on June 19, 1951).

c. USSSO Rome, IT 141432Z February 2003 (Italy - Submissions of Assertions of Primary Right to Exercise Jurisdiction and Requests for Waiver of Foreign Criminal Jurisdiction).

[1] An unofficial English translation of the 1990 version of Italian Code of Penal Procedure, "USEUCOM Unofficial Translation, Italian Code of Criminal Procedure, 24 May 1990," is at tab 6 of the USSSO Deskbook.

d. *Circolare* issued by the Italian Government on 1 June 1993 (Ministry of Grace and Justice Circular No. VV/649/91/AR-2988, Article VII of the Agreement Regarding the Status of Forces of the Parties to the North Atlantic Treaty, Signed in Strasburg [sic] on 19 June 1951 and Relative Implementing *Regolamento*, Approved by Presidential Decree of 2 December 1956, No. 1666; Complaints Filed to This Ministry by the U.S. Sending State Office for Italy, Care of U.S. Embassy, Rome).

K-3. CANCELLATION
This instruction supersedes USSSO for Italy Instruction 5820.1C, 2 July 1998.

K-4. PURPOSE
This instruction prescribes the operating procedures in Italy implementing Article VII of the NATO SOFA. Article VII addresses criminal jurisdiction over U.S. personnel.

K-5. APPLICABILITY
This instruction applies to all U.S. personnel stationed, on temporary duty, or transient in Italy.

K-6. BACKGROUND
The NATO SOFA defines the legal status of U.S. personnel in Italy. The U.S. Senate limited the United States' participation in the NATO SOFA by the reservations set forth in enclosure 1 to reference K-1d. These reservations include—

a. Imposing on commanding officers a duty to—

(1) Request a waiver of jurisdiction from the Italian Government when there is a danger that Italian penal proceedings will deny the accused the constitutional rights he or she would enjoy in the United States and the denial of those rights will prejudice the accused.

(2) Take specified action if such a waiver is refused.

b. Providing for the appointment of trial observers.

K-7. EXPLANATION OF TERMS

a. U.S. Personnel. The term "U.S. personnel" includes—

(1) Members of the "Force" as defined in Article I, paragraph 1(a), of reference K-1a. Included are all active-duty U.S. Servicemembers present in Italy pursuant to official orders and all active-duty U.S. Servicemembers granted liberty or shore leave during a vessel's port call to an Italian port.

(2) Members of the "civilian component" as defined in Article I, paragraph 1(b), of reference K-1a. Included are civilian nationals of the United States, or another NATO state other than Italy, who are employed by the U.S. Forces in Italy.

(3) "Civilian personnel" as the term is defined in annex A to the Shell Agreement (ref K-1c). This includes civilian nationals of the United States, or another NATO state other than Italy, who are closely affiliated with, but not employed by, the U.S. Forces. Unless otherwise specified herein, the term includes DOD contractor employees.

(4) “Dependents” of (1) and (2) above as the term is defined in Article I, paragraph 1(c), of reference K-1a, and Family members of the personnel listed in (1) through (3) above who are entitled to DD Form 1173.

(5) All U.S. Servicemembers assigned to duty in another NATO country or assigned to a NATO mission in a non-NATO country and who are present in Italy pursuant to properly authorized leave, liberty, or pass.

b. Designated Commanding Officer (DCO).

(1) The DCO is the Deputy Commander, U.S. Naval Forces, Europe (Deputy COMUSNAVEUR).

(2) The DCO is appointed by the Commander, USEUCOM, as the Commander’s representative in Italy and is responsible for implementing DOD and USEUCOM policy and procedures on the exercise of foreign criminal jurisdiction (FCJ) over U.S. personnel in Italy.

c. U.S. Country Representative, Italy (USCR).

(1) The USCR, Italy, is the Officer in Charge, U.S. Sending State Office (OIC, USSSO).

(2) The USCR is the only authorized POC with the U.S. diplomatic mission in Italy and with Italian national authorities regarding the exercise of Italian criminal jurisdiction over U.S. personnel.

d. Country Liaison Agent (CLA). The CLA is a senior commander appointed by the component commander to act as the liaison agent for his or her respective branch of service in Italy. Reference K-1f applies.

(1) CLAs—

(a) Serve as the central POCs for their services with the USCR and DCO.

(b) Monitor FCJ cases and issues involving personnel of their respective services.

(c) Ensure their component commanders are kept informed of FCJ cases and issues.

(d) Arrange for the retention of defense counsel and payment of expenses in FCJ cases.

(e) Perform other FCJ functions as required.

(2) CLAs for Italy are as follows:

(a) Army: Commander, United States Army Southern European Task Force (USASETAF) (AESE-JA), Unit 31401, Box 7, APO AE 09630-0007; DSN 634-7717/7818, civilian (0444) 51-7717/7818, message address: CDRUSASETAF(A) VICENZA IT//AESE-JA//.

(b) Navy and Marine Corps: Commanding Officer, U.S. Regional Legal Service Office, Europe and Southwest Asia (RLSO EURSWA), PSC 8107, Box 8, FPO AE 09622-0008; DSN 625-4716/4409/4770, civilian (081) 724-5684499/4716/4409/4770, message address: TRISVCOFF EURSWA NAPLES IT//.

(c) Air Force: Commander, 31st Fighter Wing (Staff Judge Advocate), Unit 6140, Box 115, APO AE 09601-0115; DSN 632-7843/7844, civilian (0434) 66-7843/7844, message address: 31 FW AVIANO AB IT//JA//.

e. Cognizant Military Authority (CMA).

(1) CMAs and their area of responsibilities are listed in (2) and (3) below.

(2) CMAs are authorized to—

(a) Submit requests for waiver of criminal jurisdiction.

(b) Receive communications from Italian judicial officials.

(c) Issue formal statements and certifications as to official duty status.

(d) Receive notices of arrests of U.S. personnel.

(3) Areas of responsibility for the CMAs are as follows:

(a) Commander, 31st Fighter Wing, Aviano: the region of Friuli-Venezia Giulia and the province of Belluno in the region of Veneto.

(b) Commanding General, USASETAF, Vicenza: the regions of Val D'Aosta, Piemonte, Lombardia, Emilia Romagna, Trentino Alto Adige, Liguria, Toscana, Umbria, and Marche, and all provinces in the region of Veneto, except Belluno.

(c) Commanding Officer, RLSO EURSWA: the regions of Lazio, Abruzzi, Molise, Campania, Puglia, and Basilicata, and the province of Cosenza in the region of Calabria.

(d) Commanding Officer, NAS, Sigonella: all provinces of the region of Calabria except Cosenza, and all provinces in the region of Sicilia.

(e) Commanding Officer, Navy Support Activity, La Maddalena: the region of Sardinia.

(4) By separate agreement, CMAs may make specific exceptions to the geographic areas of authority described in (3) above and notify the USSSO of any exceptions.

(5) CMAs should maintain close communication with local Italian officials concerned with the exercise of FCJ to facilitate compliance with this instruction.

(6) When the CMA is responsible for a case of an individual for whom the CMA is not the CLA, the CMA will keep the CLA updated on all case developments. The CLA will meet the reporting requirements in this instruction and references K-1e and f.

f. Component Commanders. Component commanders (the theater-level commander for each service) are as follows: CG, USAREUR/7A, for Army personnel; Commander, USNAVEUR, for Navy and Marine Corps personnel; and Commander, USAFE, for Air Force personnel.

K-8. POLICY

DOD policy is to protect, to the maximum extent possible, the rights of U.S. personnel who may be subject to the exercise of criminal jurisdiction by foreign courts and imprisonment in foreign prisons. At the same time, our FCJ policy must promote friendly relations, encourage mutual cooperation, and maintain a climate favorable to the accomplishment of our mission. CMAs should seek to maximize criminal jurisdiction over U.S. personnel in a manner that is least disruptive to relations with Italy.

a. In keeping with this policy, U.S. military authorities should, whenever possible and appropriate, discipline personnel who have violated the laws of Italy.

b. U.S. military authorities must take prompt and appropriate action when Italian authorities release criminal jurisdiction back to the United States as a result of a request for waiver of jurisdiction.

K-9. TRAINING

Immediately on arrival in Italy, U.S. personnel will receive training by their commands on the following provisions of the NATO SOFA:

a. Article VII, which provides the right of Italian authorities to exercise criminal jurisdiction over U.S. personnel in many instances.

(1) Remind U.S. personnel that they are not immune from Italian prosecution solely because of their status under the NATO SOFA or separate bilateral agreements.

(2) Inform U.S. personnel of their rights and duties under the NATO SOFA and the possible consequences of their failure to obey Italian laws.

b. The requirement for U.S. personnel to report immediately to their commanders any incident involving foreign nationals, Italian police, or judicial authorities.

c. The requirement for U.S. personnel to immediately report to their commanders the receipt of any summons, subpoena, or request to appear before an Italian criminal tribunal, police official, or investigative magistrate.

K-10. TERMS AND DEFINITIONS

a. An *incident* is any act or omission by U.S. personnel that affects Italian interests and could result in any involvement with Italian criminal proceedings.

b. The term *proceeding* includes apprehension, arrest, detention, confinement, service of criminal process, pretrial investigation, trial, post-trial proceedings, appeal, service of sentence, and any order of an Italian authority related to such criminal proceedings.

c. Events that are considered *serious* or *unusual incidents* include the following:

(1) Italian authorities place U.S. personnel in pretrial confinement.

(2) U.S. personnel commit an offense for which an Italian court would normally impose a sentence of unsuspended imprisonment.

(3) Italian authorities actually or allegedly mistreat U.S. personnel.

(4) Actions of U.S. personnel have generated or may generate publicity adverse to the United States.

(5) Actions of U.S. personnel have aroused or may arouse congressional or other U.S. domestic or foreign public interest.

(6) Actions of U.S. personnel have resulted in death, serious personal injury, or extensive property damage.

K-11. REPORTING REQUIREMENTS FOR SERIOUS AND UNUSUAL INCIDENTS

a. Unit Commanders. Unit commander have the primary responsibility to safeguard the legal rights of persons in their command when such persons are involved in incidents. Unit commanders (or CMAs acting on their behalf) will immediately report serious or unusual incidents to the CLA responsible for the accused.

(1) Reports will be submitted by the fastest electronic means following the format prescribed by service and component directives. Telephonic and e-mail reports are strongly encouraged.

(2) Electronic copies of reports will be sent to the following:

(a) The USSSO (USSSO ROME IT//OIC//).

(b) The CMA.

(c) For Navy and Air Force personnel: the chain of command.

(d) For Air Force personnel: the Staff Judge Advocate, USAFE.

(3) As new developments arise, complete supplemental reports must be submitted in a timely manner. Navy commanders should submit supplemental reports each month.

b. CLAs.

(1) CLAs will report all serious or unusual incidents to the judge advocate general of the service concerned following references K-1e and f, this instruction, and service directives.

(2) CLAs will provide copies of these reports to the following:

(a) USSSO.

(b) DCO.

(c) USEUCOM.

(d) Component commander of the individual concerned.

(e) CLA for the service of the individual concerned (if different from the reporting CLA).

(f) For Navy personnel: the chain of command.

c. Reporting Requirements for Minor Incidents.

(1) Incidents that are not described in paragraph K-10c are minor incidents.

(2) Unit commanders will report the following to the USSSO:

(a) Minor incidents to the extent required by service or command policy.

(b) Incidents that, in the opinion of the CLA or CMA, the USSSO or other Embassy office should be aware of.

(c) Minor incidents will be reported to the USSSO when required by USSSO claims instructions.

d. TDY and TAD Personnel and Personnel From Geographically Separated Commands.

(1) For incidents involving U.S. personnel who are geographically separated from their commands, and this separation prevents the individual's command from complying with this instruction, the CMA of the unit closest to the incident will assume responsibility for the case.

(2) The CMA will notify the parent or sponsoring commander of the incident and inform the commander that the CMA has assumed responsibility for the purposes of this instruction.

(3) When the incident comes to the attention of the parent or sponsoring commander first, the commander will contact the CMA of the unit closest to the incident and the CMA will assume responsibility for the case.

e. Afloat Personnel. When operational requirements of a ship affect compliance with this instruction, the commanding officer of the ship should refer the matter to the CMA and the U.S. Trial Service Office (TSO), EURSWA.

K-12. SERVICE OF FOREIGN CRIMINAL PROCESS

a. Unit commanders and CMAs should assist and cooperate with Italian authorities attempting to serve criminal process on U.S. personnel.

b. Unit commanders and CMAs may not serve process on an accused.

c. Italian authorities must provide a copy of the process to the unit commander. The unit commander will notify his or her CMA to determine whether Italian authorities are properly exercising jurisdiction.

d. CMAs and unit commanders will provide the accused an English translation of the document.

K-13. DETERMINING CRIMINAL JURISDICTION

a. Responsibility.

(1) When an incident occurs, unit commanders will refer the matter to the CMA.

(2) The CMA will determine whether the United States or the Government of Italy has exclusive jurisdiction or the primary right of jurisdiction in a concurrent jurisdiction case.

b. U.S. or Italian Jurisdiction.

(1) The United States has exclusive jurisdiction when only U.S. law (the Uniform Code of Military Justice (UCMJ) or an extraterritorial provision of the United States Code not covered by Italian law) is violated.

(2) The United States has the primary right of jurisdiction in concurrent jurisdiction cases over offenses committed by U.S. military personnel if any of the following applies:

(a) The offense was committed solely against the property or security of the United States.

(b) The offense was committed solely against the property or person of U.S. personnel.

(c) The offense was committed during the performance of official duty.

(3) Italy has exclusive or primary right of jurisdiction in concurrent jurisdiction cases over all other offenses against Italian law committed by U.S. personnel.

K-14. PROCEDURAL REQUIREMENTS

a. U.S. Jurisdiction.

(1) The CMA will send all assertions of jurisdiction and requests for waiver of jurisdiction to the USSSO OIC for review and approval before such assertions and requests are filed with Italian authorities.

(a) Assertions. After USSSO OIC approval, the CMA will immediately file the assertion through the appropriate *Procura Distrettuale della Repubblica* and address it to the Italian Ministry of Justice (MOJ). A "blind" copy will be sent to the accused's Italian defense attorney for information only. The assertion will include the court docket number or, if a court docket number has not been assigned to the case, the criminal investigation number.

(b) Requests for Waiver of Jurisdiction. Filing procedures for requests for waiver of jurisdiction are the same as for assertions; however, requests are to be filed only after a court docket number has been assigned to the case. The Italian MOJ may not consider a request for waiver if it has been filed after the accused has been served a summons to trial.

(2) CMAs will send copies of all filed assertions and waiver requests to the USSSO within 2 business days after filing with local Italian authorities.

(3) If the Italian prosecutor neither questions the U.S. assertion of jurisdiction nor requests a waiver of primary jurisdiction, the unit commander should take appropriate disciplinary action without delay.

b. Italian Jurisdiction.

(1) U.S. authorities will not make any criminal disposition of a case in which Italy has the primary right of jurisdiction until either Italian authorities waive such right or the OIC, USSSO, approves such action.

(2) Unit commanders of U.S. military personnel pending the exercise of Italian criminal jurisdiction may, however, without application to the USSSO, exercise nonjudicial punishment authority to the extent permitted by their service regulations.

(a) Nonjudicial punishment is appropriate when—

1. It is unlikely that the offender will be subjected to actual punishment by the Government of Italy.[2]

2. The needs of military discipline are not otherwise met under the circumstances of the case.[3]

(b) If an accused declines nonjudicial punishment, commanders must obtain approval from the OIC, USSSO, before preferring court-martial charges.

c. When Jurisdiction is Disputed.

(1) The CMA must contact the USSSO immediately when Italy claims exclusive or primary jurisdiction and the CMA disagrees.

(2) If Italian authorities seek to request a waiver of the U.S. right to jurisdiction, the CMA will report that fact, together with all pertinent details, to the USSSO for determination of appropriate action.

(3) In the interim, the Servicemember's chain of command will suspend all judicial or nonjudicial proceedings until the matter of jurisdiction or waiver is resolved. This does not preclude investigation of charges or other appropriate administrative action.

K-15. AVAILABILITY OF PERSONNEL IN U.S. CUSTODY OR CONTROL

a. In the absence of an overriding operational necessity, U.S. personnel in the Italian territory must be available to Italian authorities for noncustodial interrogation on the request of the prosecutor, preliminary investigating judge, preliminary-hearing judge, or competent Italian police authorities.

b. U.S. officials will not deliver U.S. personnel who are in their custody or control to Italian custody unless the prosecutor or judge makes a specific request for such custody. The request must follow—

(1) The preferral of formal charges.

(2) The prosecutor's investigation.

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[2] These are situations where punishment by Italian authorities is unlikely: (a) When the offense is one for which MOJ routinely grants waiver requests, (b) When the offense is subject to an Italian amnesty (granted from time to time by the Government of Italy through legislation), or (c) When the offense is one for which, under the circumstances of the case, the Italian court involved normally suspends all punishment.

[3] Unit commanders should consider whether the following meets the needs of military discipline in a particular case:

a. Confinement awaiting disposition of the case by Italian authorities.

b. Voluntary payment of damages by the accused.

c. Involuntary payment of damages pursuant to Article 139, UCMJ.

d. Loss of some other appreciable right or benefit sufficient to indicate that the accused has already been "punished" for the offense.

c. U.S. personnel must refrain from any official action that would initiate a situation that might result in confinement of U.S. personnel in Italian jails or adversely affect command disciplinary action. This does not preclude the following:

(1) An individual acting in a personal capacity who seeks the assistance of Italian authorities.

(2) Official actions such as military criminal investigations or crime-prevention programs conducted unilaterally or in conjunction with Italian authorities in accordance with the Article VII, paragraph (6), of reference K-1a.

K-16. RELEASE OF MILITARY PERSONNEL FROM ITALIAN CUSTODY

a. Outright Release. The CMA will attempt, at the local level, to secure the release of all accused military personnel from Italian custody until completion of Italian judicial proceedings, including appeals.

b. Transfer of Military Personnel to U.S. Authorities in Italy. If Italian officials deny outright release without restriction, the CMA should request that the accused be transferred to U.S. authorities. The CMA or a member of the chain of command may assure Italian prosecutors or other appropriate judicial and police authorities that the accused will not be removed from Italy without notice and an adequate opportunity for Italian authorities to object.

c. Removal of U.S. Military Personnel From Italy. After the United States has formally assumed the custody of a U.S. Servicemember and has agreed to make the Servicemember available for trial, the United States will not remove the Servicemember from Italy without first providing—

(1) The USSSO with telephonic notice of the potential transfer.

(2) The Italian prosecutor written notice and an adequate opportunity to object to the removal.[4]

d. Pretrial Restraint. A commander may impose pretrial restraint on an accused Servicemember to ensure the accused's presence at trial or other proceedings on Italian charges.

(1) Statutory and Regulatory Compliance. Pretrial restraints must comply with the Manual for Courts-Martial, United States (2005 edition); and command policy. Usually, however, restriction to the limits of a military installation will meet the command's needs and be acceptable to the cognizant Italian officials.

(2) Status of Military Personnel. The commander must ensure that the Servicemember does not remain under pretrial restraint beyond the end of his or her term of obligated service. If the Servicemember is approaching the end of obligated service—

(a) The CMA should inform the Italian prosecutor of that fact and request permission for the Servicemember to leave Italy.

(b) If the request in (a) above is denied, the unit commander should, in accordance with service regulations, seek the Servicemember's consent to a voluntary extension of military service.

[4] U.S. military commands are not required to notify prosecutors of the departure from Italy of Servicemembers who are criminally charged but not subject to pretrial confinement or restriction of their liberty.

(c) If the Servicemember's refuses to consent to a voluntary extension of military service, the CMA should notify the Italian prosecutor of that fact and take steps to have the Servicemember involuntarily extended.

(d) If an involuntary extension is not possible, the CMA must notify the Italian prosecutor that a transfer and removal from Italy is imminent.

K-17. RELEASE OF CIVILIAN COMPONENT PERSONNEL, U.S. CIVILIAN PERSONNEL, AND DEPENDENTS FROM ITALIAN CUSTODY

a. CMAs should attempt to secure the release of U.S. civilian employees and dependent Family members from Italian pretrial confinement.

b. The CMA should inform the Italian prosecutor and other appropriate Italian officials that the United States can neither restrain the liberty of civilian employees and dependent Family members nor guarantee their presence at trial.

c. The CMA may make a pledge that the United States will not remove the accused from Italy at U.S. Government expense without the prior approval of the Italian Government.

d. When seeking removal of restrictions on the accused's liberties, the accused may voluntarily surrender his or her passport to the local *Questura* as evidence of the intent to remain in Italy pending disposition of charges or action by Italian officials.

K-18. BAIL

a. Appropriated funds may be used for bail; however, reference K-1e precludes using such funds for the payment of fines or civil penalties.

b. CMAs or unit commanders must obtain assurances from Italian officials before using appropriated funds to post bail that any bail paid will not be used to guarantee the payment of fines or civil penalties.

K-19. DANGER OF UNFAIR TRIAL

a. Action by CMAs and CLAs. When it appears probable that the United States will not obtain release from custody or waiver of jurisdiction, and the accused may not receive a fair trial or fair treatment before, during, or after the trial, the CMA or the CLA will contact the USSSO and provide—

(1) The complete facts of the case with recommendations.

(2) Any written communications provided to the DCO, the CLA, and the component commander of the accused.

b. Unfair Trial Defined. An unfair trial in criminal judicial proceeding in an Italian court is one in which any of the following occurs:

(1) The accused is not afforded the procedural rights, privileges, and protections that are guaranteed by applicable international agreements (for example, Article VII, paragraph (9), of reference K-1a).

(2) The accused is prejudicially denied any of the substantive rights, procedural safeguards, or both guaranteed by the U.S. Constitution in criminal proceedings in State courts of the United States, including the fair-trial rights listed at enclosure 1 to reference K-1d.

(3) The accused is not afforded the substantive rights or procedural safeguards to which local nationals are entitled under local law or practice.

NOTE: A trial is not considered unfair solely because it is not conducted in the same manner as trials held in the United States.

c. Fair Treatment Defined. Fair treatment is treatment in which rights, privileges, and protections are substantially equivalent to those afforded persons in the custody of U.S. military authorities and not less than those afforded local nationals under local law and practice.

K-20. PRIOR JEOPARDY

a. Prior Disposition by U.S. Authorities. CMAs will notify the USSSO immediately if Italian judicial authorities attempt to exercise criminal jurisdiction over offenses by U.S. personnel for which U.S. military or civil authorities have already exercised criminal jurisdiction.

b. Prior Trial by Italian Authorities. Unit commanders will not, without the prior approval of the CMA and the component commander of the accused, institute disciplinary measures other than nonjudicial punishment when Italian authorities have previously exercised criminal jurisdiction.

K-21. TRANSFER ON RELEASE OR WHEN NOT IN ITALIAN CUSTODY

a. Military Personnel.

(1) Military personnel who are released from Italian custody pending completion of Italian proceedings against them, or who are accused but have not been placed in Italian custody, may be transferred out of Italy provided that—

(a) The release from Italian custody has not been obtained on the basis of a U.S. commitment to produce the accused for a personal appearance at some future time.

(b) The Servicemember has been advised that he or she may be tried *in absentia*, has signed a written acknowledgment of trial rights, and has elected domicile (*elezione di domicilio*) for service-of-process purposes.

1. The Servicemember will be advised in writing of his or her obligation to inform the legal office responsible for monitoring the case of any subsequent change of address for notification purposes.

2. If the Servicemember will be represented at U.S. Government expense, all necessary powers of attorney must be completed before the Servicemember's departure from Italy, including a special power of attorney in favor of the retained Italian attorney.

(2) Army military personnel involved in serious offenses will not return to the continental United States without prior authorization of HQDA (DAJA-IO).

b. Civilian Component, Civilian Personnel, and Dependents.

(1) If otherwise authorized by U.S. statute and regulations, the United States may provide transportation to a member of the civilian component, civilian personnel, and dependents under the same criteria as in paragraph K-11a.

(2) If the case does not meet the criteria in (1) above, but the accused intends to leave Italy before final action by Italian authorities, the CMA or CLA will notify the USSSO immediately.

c. Inadvertent Departures. If personnel transfer before military authorities know of an alleged offense, and if Italian authorities intend to prosecute the offense, the CMA will notify the following immediately:

(1) The accused.

(2) The USSSO.

(3) The CLA.

d. Legal Hold. The use of legal hold is not justified unless a personal precautionary measure is imposed in accordance with reference K-1g. Generally, Italian authorities do not place restrictions on the removal of an accused from Italy.

K-22. EXCLUSIVE U.S. JURISDICTION CASES

a. CMAs will notify in writing the appropriate Italian prosecutor of an exclusive U.S. jurisdiction case only if the prosecutor has inadvertently opened an investigation into the case. Copies of the notification may be given to other Italian judicial and police officials as required by the circumstances.

b. Article VII, paragraph (6)(b), of reference K-1a provides authority for Italian judicial and police officials to transfer Italian investigative and judicial records to U.S. military authorities in exclusive U.S. jurisdiction cases.

K-23. U.S. PRIMARY RIGHT (CONCURRENT JURISDICTION) CASES

Procedures for submitting assertions of primary right to exercise jurisdiction and requests for waiver of foreign criminal jurisdiction are as follows:

a. Notification. The CMA will send all assertions of jurisdiction and requests for waiver of jurisdiction to the USSSO OIC for review and approval before such assertions and requests are filed with Italian authorities.

(1) Assertions. After USSSO OIC approval, the CMA will immediately file the assertion through the appropriate *Procura Distrettuale della Repubblica* and address it to the Italian MOJ. A “blind” copy will be sent to the accused’s Italian defense attorney for information only. The assertion will include the court docket number or, if a court docket number has not been assigned to the case, the criminal investigation number.

(2) Requests for Waiver of Jurisdiction. Filing procedures for requests for waiver of jurisdiction are the same as for assertions; however, requests are to be filed only after a court docket number has been assigned to the case. The Italian MOJ may not consider a request for waiver if it has been filed after the accused has been served a summons to trial.CMAs will send copies of all filed assertions and waiver requests to the USSSO within 2 business days after filing with local Italian authorities.

b. Transfer of Records. Article VII, paragraph (6)(b), of reference K-1a and paragraph III of reference K-1g authorize Italian judicial and police officials to transfer Italian investigative and judicial records to U.S. military authorities in U.S. primary right (concurrent jurisdiction) cases.

c. Official Duty Cases.

(1) It is U.S. policy not to waive the U.S. primary right to exercise criminal jurisdiction in a concurrent jurisdiction case under Article VII, paragraph (3)(a)(ii), of reference K-1a when a Servicemember's official duty status is clear.

(2) Guidance on official duty determinations from the USSSO is required.

d. Administrative Traffic Offenses.

(1) CMAs are not authorized to assert U.S. primary jurisdiction for administrative traffic offenses punished through fines when a Servicemember, through his or her own negligence or willful misconduct, violated an Italian traffic law for which no penal sentence is possible.

(2) CMAs may assert primary jurisdiction if the offense was based on the actions of another individual and the driver was otherwise in the performance of official duty.

e. Civilian Component, Civilian Personnel, and Dependents. Because the United States does not exercise military jurisdiction over civilians, assertions of U.S. primary criminal jurisdiction in concurrent jurisdiction cases for offenses allegedly committed by civilians will not be made.

K-24. U.S. REQUESTS FOR WAIVER OF ITALIAN CRIMINAL JURISDICTION

a. When to Request. CMAs generally will file requests for waiver of Italian jurisdiction in cases involving U.S. military personnel in which the primary right to exercise jurisdiction in concurrent cases is vested in the Italian Government.

b. When Not to Request a Waiver. CMAs should not file requests for waivers if any of the following applies:

(1) The offense is within the exclusive jurisdiction of Italy, unless prior express written approval is granted by the OIC, USSSO.

(2) Italian authorities have not yet initiated criminal charges.

(3) The case could go to trial immediately under Italian law if no waiver is requested, use of immediate trial procedure (for example, *giudizio direttissimo*, *giudizio immediato*) is probable, the sentence adjudged could not or probably will not include confinement, and such a procedure would be in the best interest of the United States.

(4) The offense is within the exclusive or primary jurisdiction of the United States as defined in paragraph K-13b.

c. Civilians. The United States does not exercise military criminal jurisdiction over civilians; therefore, requests for waivers will not be made.

d. Procedure for Requesting Waivers. Procedures for submitting requests for waiver of foreign criminal jurisdiction are as follows:

(1) Notification. The CMA will send all requests for waiver of jurisdiction to the USSSO OIC for review and approval before such requests are filed with Italian authorities.

(2) Filing. After USSSO OIC approval, the CMA will immediately file the request for waiver through the appropriate *Procura Distrettuale della Repubblica* and addressed to the Italian MOJ. A "blind" copy will be sent to the accused's Italian defense attorney for information only. Requests are to be filed only after a court docket number has been assigned to the case.[5]

(3) Copies. CMAs will send copies of all filed assertions and waiver requests to the USSSO within 2 business days after filing with local Italian authorities.

e. Timely Filing of Requests by U.S. Authorities.

(1) If a request for waiver of jurisdiction is filed in a timely manner and the court schedules a hearing before action by the Italian MOJ, the defense attorney for the accused should be notified.

(2) The Italian MOJ may not accept requests for waiver of jurisdiction after the accused has been served a summons to court for the first hearing. Therefore, CMAs must submit such requests promptly.

(3) Since implementation of the new Italian CPP (ref K-1g), some commands have not received notification of investigation or notification of charges until after the summons to court for the first hearing has been served.[6] Lack of timely information may result in the Servicemembers being tried in Italian courts, even in cases where the Italian MOJ routinely grants waiver requests.[7]

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[5] In cases involving death, serious injury, or significant property loss, local prosecutors and senior MOJ officials have repeatedly expressed concerns that the granting of U.S. waiver requests leaves injured parties without the ability to obtain timely, adequate compensation through the filing, or the threat of filing, parallel civil claims. The USSSO recommends that in such cases an appropriate CMA representative deliver a copy of the filed waiver request in person to the local prosecutor. At that time, the CMA representative should explain all compensation schemes that may be available in the case, including the following:

a. An *ex gratia* award under Article VIII, paragraph 6, of the NATO SOFA.

b. A claim under Article 139, UCMJ.

c. Direct compensation by the Servicemember if any payments or offers of payment have already been made by the Servicemember.

d. Compensation available from the Servicemember's third-party liability insurer or other third-party payer as part of a pretrial settlement.

The MOJ is more likely to grant U.S. waiver requests in cases involving personal injury or loss of or damage to property where Italian national victims have formally indicated no interest in the alleged crimes being prosecuted in Italian courts and no interest in bringing civil actions against the alleged wrongdoers in Italian courts. To this end, when possible, the CMA should approach the injured party or, if represented by counsel, his or her attorney, and explain the potential advantages of proceeding with his or her monetary claims outside the Italian court system. If the injured party no longer wishes for the case to proceed in Italian court, the CMA should have the injured party sign the following statement: "Dichiaro di NON avere interesse a constituirmi parte civile e sono indifferente alla rinuncia della giurisdizione da parte delle Autorità italiane." (Translation: I hereby state I am NOT interested in starting a legal action and that I am indifferent if jurisdiction is renounced by Italian authorities.) This statement should then be filed along with the U.S. waiver request at the time the waiver request is delivered to the cognizant Italian prosecutor or as soon as possible thereafter.

[6] Depending on the type of violation allegedly committed, a preliminary hearing may be held before the summons to court for the first hearing is issued. Under Article 424, et seq., of the Italian CPP, a preliminary hearing ends with the judge's decision to either acquit (for example, non luogo a procedere) or hold the accused over for trial (for example, rinvio a guidizio). The decision is read at the end of the hearing and is equivalent to the summons to court. The accused must then still be served, but service may be made up to 20 days before the trial date. Consequently, a waiver request, if not filed previously, should be filed at the preliminary hearing.

[7] On 1 June 1993, the MOJ issued a circolare (ref K-1g) to all prosecutors of the courts of appeal reminding them to follow the provisions of the NATO SOFA that pertain to criminal jurisdiction.

f. Obtaining Information from Italian Authorities. CMAs will take the following action when Italian judicial authorities do not provide information in a timely manner:

(1) Review the general register (*registro generale delle notizie di reato*) at the prosecutor's office for notice of offense recordings (*iscrizione nel registro delle notizie di reato*).

(2) If a penal action may be forthcoming, check with local police authorities who have investigative jurisdiction over the incident. The inquiry should refer to any complaints filed and include a request for information concerning which prosecutor's office is handling the case.

(3) The CMA should file the request for waiver of jurisdiction (*iscrizione nel registro delle notizie di reato* or *iscrizione nel registro degli indagati*) with the prosecutor as soon as penal proceedings are underway.

(4) To obtain a timely notice of charges, CMAs must establish, cultivate, and maintain strong working relationships with prosecutors and clerks at the *Procura della Repubblica*. At the same time, military law-enforcement offices should promote and sustain strong working relationships with local law-enforcement authorities.

g. Action When a Waiver Request is Granted. When a waiver request is granted—

(1) The USSSO will notify the CMA when the General Directorate Penal Affairs of the Italian MOJ issues the waiver of jurisdiction.

(2) Military commanders will then take whatever disciplinary or other action is appropriate without delay.

(3) CMAs will report case-disposition information to the USSSO when the Italian MOJ requests it and when the Italian MOJ grants a U.S. waiver request against the recommendations of the prosecutor, the Ministry of Foreign Affairs, or both. Reports of case disposition will include the following:

(a) The date and type of proceeding.

(b) A summary of the offenses or misconduct considered by the proceeding.

(c) A summary of the findings of the proceeding.

(d) Administrative or disciplinary action ordered.

K-25. ACTION WHEN A WAIVER REQUEST IS DENIED

If the Italian MOJ denies a U.S. request for waiver of jurisdiction, the CMA will inform the USSSO of the developments and conclusion of the case. DD Form 1936 may be used to provide this information, although no particular format is required for the report.

K-26. REQUESTS FOR PAYMENT OF ATTORNEY FEES AND TRIAL EXPENSES BY MILITARY PERSONNEL

The United States may pay attorney fees and trial expenses in Italian criminal cases at the trial and appellate levels if the accused is subject to the UCMJ at the time he or she requests this.

a. The United States may pay fees and expenses in any of the following circumstances:

(1) If the accused committed the alleged offense during the performance of official duty.

(2) If the sentence for the alleged offense normally includes confinement, but is suspended.

(3) If the case is on appeal from any proceeding in which it appears that the substantial rights of the accused have been denied.

(4) If a conviction for the alleged offense could later be used as a basis for administrative-discharge proceedings for misconduct as a result of the civil-court disposition.

(5) If the case may substantially affect relations between the U.S. Forces and the Government of Italy or may otherwise adversely affect U.S. interests.

b. CMAs and unit commanders should direct requests for counsel and payment of defense expenses resulting from Italian criminal prosecutions to the appropriate CLA.

c. The requirement in reference K-1f for coordination with and approval by the USCR (OIC, USSSO) before private defense counsel may be retained on behalf of U.S. Servicemembers is hereby waived.

d. The DCO and USSSO will be information addressees on any electronic messages requesting counsel and payment of defense expenses, and will be given copies of any other written requests.

K-27. REQUESTS FOR PAYMENT OF ATTORNEY FEES AND TRIAL EXPENSES BY U.S. CIVILIANS

a. The United States may pay attorney fees and trial expenses for members of the civilian component in either criminal or civil Italian court cases arising out of the performance of official duties.

b. For all other cases involving U.S. civilian personnel, including command-sponsored dependents of U.S. Servicemembers and U.S. civilian personnel, the United States may, pursuant to 10 USC 1037, pay attorney fees and expenses. Requests must be processed according to references K-1e and f and service regulations.

c. The United States will not pay attorney fees and trial expenses for DOD contractors (technical representatives) and their employees, and for noncommand-sponsored dependents.

d. The requirement in reference K-1f for coordination with and approval by the USCR before retention of private defense counsel on behalf of U.S. civilian personnel is hereby waived.

K-28. REQUESTS FOR PAYMENT OF ATTORNEY FEES AND TRIAL EXPENSES OF EXPENSES FOR ITALIAN EMPLOYEES

a. An Italian employee of the U.S. Forces acting within the scope of employment at the time of the incident is entitled to request free legal defense by the State Attorney's Office (*Avvocatura dello Stato*) in criminal or civil actions.

b. Supervisors should advise the employee to request this representation. Requests must be written on plain paper and sent to Avvocatura Generale dello Stato, Via dei Portoghesi, 12, 00186 Roma.

c. The employee's supervisor and commander of the activity where the employee is assigned should endorse the request.

d. The request and original writ of summons should be sent to the USSSO.

e. If the Italian employee retains private counsel, the USSSO must be notified of the employee's decision.

K-29. RIGHTS UNDER THE NATO SOFA

The NATO SOFA provides that whenever a member of a force or civilian component or one of their dependents is prosecuted under the jurisdiction of a receiving State, the defendant is entitled to the following:

a. A prompt and speedy trial.

b. To be informed before the trial of the specific charge or charges made against him or her.

c. To be confronted with the witnesses against him or her.

d. Compulsory process for obtaining witnesses in his or her favor, if he or she is within the jurisdiction of the receiving State.

e. Legal representation of his or her own choice for his or her defense or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving State.

f. Services of a competent interpreter, if the accused considers it necessary.

g. To communicate with a representative of the Government of the sending State and, when the rules of the court permit, to have such a representative present at his or her trial.

K-30. INTERPRETERS

a. Article 143 of reference K-1g requires Italian courts to appoint interpreters at no cost for an accused who does not "know the Italian language."

b. CMAs, CLAs, and unit commanders may provide interpreters and translation services to the extent permitted by service regulations, command policy, and applicable Italian law when not provided by Italian authorities.

K-31. TRIAL OBSERVERS

a. Appointment. The OIC, USSSO, appoints trial observers under authority delegated from the U.S. Ambassador to Italy. CMAs and CLAs will send recommendations to the USSSO to obtain such appointments.

b. Assignment.

(1) Lawyer Trial Observers. The CMA, CLA, or unit commander will ensure that one or more lawyer trial observers, previously appointed by the OIC, USSSO, attend Italian court proceedings when U.S. personnel are tried in the following circumstances:

(a) For an offense that involves serious personal injuries or extensive property damage.

(b) For an offense that usually results in a sentence to confinement (suspended or not).

(2) Prior Representation. Under no circumstances may a lawyer who has previously served in the capacity of trial counsel or counsel for an accused in a matter arising out of the same circumstances subsequently act as trial observer at a foreign trial of the same accused.

(3) Preliminary Hearing Attendees.

(a) U.S. military trial observers are prohibited under reference K-1g from attending preliminary hearings.

(b) The accused's Italian defense counsel must attend the hearing.

(c) The CMA's Italian bar-member legal advisor should also attend, if permitted by the court.

(4) Non-Lawyer Trial Observers.

(a) In circumstances other than those listed in paragraph K-31b(1), the CMA, CLA, or the accused's unit commander may assign a non-lawyer as a trial observer.

(b) Non-lawyer trial observers are permitted for trials *in absentia*.

(5) Referrals. Pursuant to reference K-1f, unit commanders may request that CMAs provide trial observers in their designated areas.

c. Trial Observer Functions. The functions of a trial observer are as follows:

(1) Review the police reports and supporting documents to become thoroughly familiar with the facts in the case before the trial.

(2) Attend the trial and all proceedings associated with it, note the progress of the trial, and complete a formal report as provided in paragraph K-31d.

(3) Immediately report by telephone or fax to the USSSO and the CMA any violations of trial safeguards as well as any discrimination against the accused based on race, creed, sex, color, or national origin.

(4) Remind defense counsel before the hearing to request the court to note the presence of the trial observer in the hearing minutes.

(5) On request, the trial observer will help the court and defense counsel obtain witnesses and evidence available from U.S. Government sources.

(6) The trial observer is not a member of the defense team. He or she does not sit at the defense counsel's table and is not to interject him- or herself into the trial proceedings.

(7) If the occasion necessitates and circumstances permit, the trial observer will advise the defense counsel of the rights of the accused under references K-1a and g.

(8) The trial advisor will inform the defense counsel should a U.S. request for waiver of jurisdiction still be outstanding.

(9) Neither the trial observer nor other command representatives will perform translation services during Italian court hearings (para K-30).

d. Trial Observer Report. The trial observer will prepare a formal report of the trial and all appellate proceedings in accordance with the requirements set forth in reference K-1f. The report will assess whether there was any failure to comply with the procedural safeguards secured by the NATO SOFA and its implementing agreements, and whether the accused received a fair trial under all the circumstances.

(1) Due Date. The trial observer will complete and send the report to the USSSO not later than 14 days after the conclusion of the trial or appellate proceeding. The trial observer will not delay the report because of the possibility of subsequent proceedings.

(2) Postponements.

(a) No report is required when a court, either on motion of counsel or *sua sponte*, orders a delay in further proceedings as long as no other substantive business is conducted during the hearing.

(b) An account of the hearing and the reasons for the postponement will be included in the next submitted trial observer's report.

(c) Coordination should be made with the USSSO whenever clarification of this policy is required.

(3) Distribution. The trial observer, staff judge advocate, or (when applicable) the Commanding Officer, TSO EURSWA, will submit an original and six copies of the report to the USSSO through appropriate command or technical channels.

K-32. CONFINEMENT POLICY

DOD seeks to ensure that foreign authorities treat U.S. military personnel fairly when in their custody. When U.S. military personnel are confined (pretrial, during trial, and post-trial) in foreign penal institutions, DOD seeks to ensure that the prisoners experience the same treatment and receive the same rights, privileges, and protections as personnel confined in U.S. military facilities. These rights include legal assistance, visitation, medical attention, food, bedding, clothing, and other health and comfort supplies. If it is neither practical nor economical for the prisoner to arrange for supplies of food, the unit commander may arrange for purchases on behalf of the prisoner from institution commissaries or other suitable sources. Service regulations may also authorize cash allowances (health and comfort pay) to Servicemembers for such purchases.

a. Command Responsibilities.

(1) The unit commander is responsible for implementing DOD and service policy on the confinement of U.S. personnel in foreign institutions.

(2) The unit commander should contact the CLA for assistance.

(3) The CLA will either provide the required services or have such services provided by the CMA closest to the place of confinement.

b. Visiting and Examining Prisoners.

(1) Judge Advocates and Chaplains.

(a) Judge advocates and chaplains will visit U.S. personnel confined in an Italian penal institution—

1. Within 48 hours after initial confinement (or soon thereafter if Italian authorities do not allow visitation within the first 48 hours).

2. At least once every 30 days thereafter.

(b) CMAs will provide a judge advocate or legal officer visitor within their areas of responsibility. Reference K-1f applies.

(c) These visits do not substitute for command-representative visits required by other directives.

(2) Medical Personnel.

(a) A physical examination will be given to Servicemembers within 48 hours before they are surrendered to foreign authorities for confinement (pretrial, during trial, or post-trial). Reference K-1e applies.

(b) If a physical examination cannot be made before confinement, arrangements will be made to make the examination at the earliest possible time after confinement.

(c) A medical officer (physician, physician's assistant, or staff nurse) will visit U.S. personnel confined in a foreign penal institution—

1. Within 30 days after initial confinement.

2. At least once every 90 days thereafter.

(3) Service Affiliation. Judge advocates, chaplains, and medical personnel visiting incarcerated Servicemembers normally will be of the same military service as the confinee.

(4) Exceptions.

(a) Only the DCO may approve requests for exceptions to the requirements in (1) through (3) above.

(b) Requests for exceptions must be sent to the DCO through appropriate command channels; the OIC, USSSO; and the Fleet Judge Advocate, USNAVEUR.

c. Permission to Visit Prisoners. Visitors must obtain permission from Italian authorities before visiting prisoners.

(1) Visits by Family Members.

(a) Pretrial Custody. The presiding judicial authority is the deciding official for requests to visit prisoners in pretrial custody.

(b) Post-Trial Confinement. The prison director is the deciding official for visitation requests.

(2) Visits by Non-Family Members. Before a prison visit, requests by Family members to visit prisoners may need to be submitted in advance to the prison's district inspector.

d. Report of Prison Visitation.

(1) An official visitor will prepare a report of each visit using DD Form 1602. The report will be submitted in duplicate to the USSSO.

(2) When a judge advocate makes a visit together with a chaplain, medical officer, or both, the judge advocate will submit the required report of the visit on behalf of the visiting team.

e. Prison Deficiencies.

(1) If a visitor notes any deficiency that endangers the physical, mental, or moral well-being of any prisoner, the deficiency will be reported immediately to both the CMA and the USSSO.

(2) Follow-up visits will take place not more than 15 days after noting the deficiency and not less frequently than every 15 days thereafter until Italian authorities correct the deficiency.

f. Release from Italian Confinement.

(1) The CMA will obtain from Italian authorities the anticipated date of release of a prisoner. The CMA will arrange with Italian authorities for the delivery of the released prisoner to the appropriate command.

(2) When a military prisoner is released, the unit commander will—

(a) Direct the released prisoner to undergo a complete physical examination. The commander will place one copy of the examination report in the individual's service record and send one copy to the USSSO.

(b) Obtain a sworn statement, signed by the released prisoner, describing in detail the treatment he or she received during confinement, and send a copy of the sworn statement through the CMA to the USSSO within 48 hours after the prisoner's release from confinement.

(3) Except as otherwise provided for by reference K-1e, Servicemembers serving posttrial confinement in Italian prisons will not be discharged or separated from the military until they complete their confinement and return to the United States.

g. Civilian Confinees.

(1) Whenever possible, and even when other civilian confinees are not entitled to the same, commanders will ensure that all U.S. personnel in foreign custody or confinement receive the same treatment, rights, and support that are extended to U.S. Servicemembers.

(2) Commanders should contact U.S. consular officials to notify them of confinements.

K-33. REPORTING REQUIREMENTS

a. Status Reports. The CMA will immediately notify the USSSO of any change in the status of any case previously reported to the USSSO. This requirement is in addition to any other reporting requirements set out in this instruction or in reference K-1f.

b. Annual Reports.

(1) The CLA will prepare the annual report as required in reference K-1f.

(a) The TSO EURSWA will prepare the report for Navy and Marine Corps personnel.

(b) OSJA, USASETAF, will prepare the report for Army personnel.

(c) 31st Fighter Wing/JA will prepare the report for Air Force personnel.

(2) These reports will be sent to the USSSO for transmittal through the DCO (and, where appropriate, Army and Air Force component commands) to the respective judge advocates general.

K-34. CROSS-SERVICING

With the exception of defense-counsel and other associated fees, FCJ support (for example, trial observers, prison visitations) will be provided on a nonreimbursable basis, even when the accused or confinee is not affiliated with the service that provides the support.

K-35. U.S. EXTRADITION REQUESTS

a. Requests by U.S. Federal and State authorities for the extradition of U.S. personnel from Italy to the United States are not considered FCJ matters under the purview of this instruction.

b. A CMA, CLA, or servicing staff judge advocate may afford prisoner visitation and other assistance to individuals awaiting extradition to the United States to the extent allowed by 10 USC 1037, Federal statutes, and service regulations.

c. Advice on U.S. extradition requests should be obtained through the component service's legal technical channels.

K-36. RELEASE OF EVIDENCE BY ITALIAN AUTHORITIES

a. When U.S. commands require evidence in the possession of Italian officials to successfully prosecute U.S. personnel, the CMA and military law-enforcement authorities should try to obtain the release of the evidence from Italian officials. If such attempts fail, the matter should be referred to the USSSO.

b. The U.S. Department of Justice (DOJ) may formally request the Italian MOJ to render assistance in criminal investigations and procedures, and to obtain needed assistance in courts-martial and other criminal prosecutions heard by U.S. courts.

c. The responsible agency at the U.S. Embassy for filing requests is the DOJ Attaché's Office at civilian (06) 4674-2680. All potential requests for assistance to the DOJ must first be coordinated with the USSSO.

K-37. COMMUNICATION WITH THE USSSO

All commanders, judge advocates, and legal advisors are authorized to communicate directly with USSSO personnel by using the following contact information:

a. Civilian telephone: (0039) 06-4674-2303/2153/2354.

b. Civilian fax: (0039) 06-4674-2653.

e. Electronic message address: USSSO ROME IT//OIC//.

f. Military address: USSSO PSC 59, Box 65, APO AE 09624.

g. Italian address: USSSO, c/o Ambasciata Americana, Via Vittorio Veneto, 119/A, 00187 Roma.

APPENDIX L
COUNTRY REPRESENTATIVE INSTRUCTION—LUXEMBOURG

10 August 2005 (updated September 2007)

U.S. COUNTRY REPRESENTATIVE INSTRUCTION FOR LUXEMBOURG

L-1. PURPOSE
These instructions establish procedures for exercising criminal jurisdiction in the Grand Duchy of Luxembourg over U.S. personnel.

L-2. APPLICABILITY
These instructions apply to all U.S. personnel as defined in the Tri-Service Regulation who are stationed in, on temporary duty in, or traveling in Luxembourg.

L-3. RESPONSIBILITY FOR CRIMINAL JURISDICTION MATTERS
The U.S. Country Representative, the Commander of the 52d Fighter Wing, is the single POC for military services with the Luxembourg Government in all matters relating to Luxembourg criminal jurisdiction over U.S. personnel. Criminal-jurisdiction functions are performed for the 52d Fighter Wing Commander by the Staff Judge Advocate of the 52d Fighter Wing. The Staff Judge Advocate may be contacted as follows:

52 FW/JA
PSC 9, Box 205
APO AE 09126-0205
DSN: 452-6796/6797
Civilian: (0049) (0) 6565-4445
Fax: DSN 452-7500
Civilian: (0049) (0) 6565-4991
e-mail: 52fw.jaadm@spangdahlem.af.mil

L-4. ORIENTATION OF PERSONNEL ENTERING LUXEMBOURG
Commanders of U.S. personnel intending to enter Luxembourg will advise their personnel of the provisions of Articles II and VII of the NATO Status of Forces Agreement (SOFA). Commanders will do this by instructing personnel that it is their duty to respect the laws of Luxembourg and to abstain from activity inconsistent with the NATO SOFA and, in particular, from political activity in Luxembourg. Commanders will further instruct personnel that the Luxembourg authorities have jurisdiction to prosecute U.S. personnel and their Family members with respect to offenses committed in the territory of Luxembourg. Commanders will also advise personnel of their individual reporting responsibilities in paragraph L-7.

L-5. REPORTING BY COMMANDERS
Commanders will notify immediately the Staff Judge Advocate of the 52d Fighter Wing of—

a. Any incident by personnel in their command that will or may result in criminal proceedings in Luxembourg. The initial telephone report will be confirmed using AE Form 550-50A.

b. The receipt by a member of their command of a summons, subpoena, or request to appear before a Luxembourg court or police official.

c. Information that an individual in their command has been taken into custody by the Luxembourg authorities. Only the 52d Fighter Wing Staff Judge Advocate is authorized to negotiate with the Luxembourg authorities for the release from custody of U.S. personnel.

L-6. JURISDICTIONAL MATTERS
Requests for waiver of the right of Luxembourg to exercise criminal jurisdiction over U.S. personnel will be made by the Staff Judge Advocate of the 52d Fighter Wing. No other individual or office will make requests to, or negotiate with, the Luxembourg authorities.

L-7. INDIVIDUAL'S RESPONSIBILITY
Individuals will immediately report to their commander—

a. Any incident, motor-vehicle accident, or traffic offense involving themselves or their dependents if it involves, or may involve, a violation of Luxembourg law.

b. The receipt of a summons, subpoena, or request to appear before a Luxembourg judicial tribunal or police authority.

L-8. LIMIT ON TRANSFER
U.S. military authorities will notify the Staff Judge Advocate of the 52d Fighter Wing before U.S. personnel involved in or suspected of incidents that may result in the exercise of Luxembourg criminal jurisdiction are transferred or reassigned.

L-9. MILITARY POLICE REPORTS
U.S. military police or criminal investigation authorities will immediately notify the Staff Judge Advocate of the 52d Fighter Wing of all known facts and provide all reports concerning incidents involving personnel over which Luxembourg has criminal jurisdiction.

L-10. REPORTS
The Staff Judge Advocate of the 52d Fighter Wing is responsible for reports relating to the exercise of Luxembourg criminal jurisdiction, including annual reports, quarterly confinement reports, trial observer reports, and prison-visit reports required by the Tri-Service Regulation.

L-11. LUXEMBOURG TRIALS
Trials of U.S. personnel and dependents before Luxembourg courts will be attended by a qualified lawyer trial observer of the Staff Judge Advocate Office, 52d Fighter Wing. A report of the trial will be prepared and sent to the appropriate addressees in accordance with the Tri-Service Regulation.

L-12. COURT COSTS AND COUNSEL FEES
Court costs and counsel fees will be provided at U.S. Government expense in appropriate cases. Funding of these expenses is the responsibility of the military service of which the accused is a member. The Staff Judge Advocate Office, 52d Fighter Wing, will make the initial arrangements, subject to coordination with and approval by the appropriate representatives of the three services, for attorney fees and court costs.

APPENDIX M
COUNTRY REPRESENTATIVE INSTRUCTION—THE NETHERLANDS

30 August 1996 (updated September 2007)

U.S. COUNTRY REPRESENTATIVE INSTRUCTION FOR THE NETHERLANDS

M-1. PURPOSE

The purpose of this instruction is to establish procedures for processing criminal cases involving U.S. military personnel arrested in the Netherlands for violations of Dutch law.

M-2. PROCEDURES FOR U.S. ARMY PERSONNEL

a. In most cases where a U.S. Army Soldier is arrested by Dutch authorities, he or she is taken by them to the United States Army Garrison (USAG) Schinnen where he or she is held by U.S. Army authorities until receipt of the message from the CG, USAREUR/7A, described in subparagraph c below. In minor cases (for example, traffic offenses, possession of small amounts of contraband), the Soldier is simply released and U.S. authorities are notified.

b. In other than minor cases, the USAG Schinnen (action office: the Netherlands Law Center) notifies the Office of the Judge Advocate (OJA), HQ USAREUR/7A (AEAJA-IL), that Dutch authorities have released a Soldier (not stationed in the Netherlands) to U.S. Army custody. The OJA, HQ USAREUR/7A (AEAJA-IL), then sends a message to the Soldier's unit describing the case and directing verification of personal data, flagging of records, and dispatch of return message indicating these acts. A return message will be sent directly from the unit to the OJA, HQ USAREUR/7A (AEAJA-IL), Unit 29351, APO AE 09014-9351, without delay.

c. When the OJA, HQ USAREUR/7A, informs the Netherlands Law Center by message that a Soldier's records have been flagged by his or her unit outside the Netherlands, the Soldier will be taken to the border by the USAG Schinnen military police (MP) and transferred to the USAREUR MP, or will be returned to his or her unit by train. If the return is effected by air police-MP channels, the MP will normally escort the Soldier to Frankfurt/Main, Germany, or another airport for pickup by his or her unit.

d. On return of the Soldier to his or her unit, U.S. Army authorities will ensure that the Soldier remains in the receiving state until a waiver by the Dutch authorities of their primary right to exercise jurisdiction is received, and will commence disciplinary or administrative action or both, as appropriate (AE Reg 27-10). Such action will not be delayed pending receipt of the waiver, and the unit commander will immediately begin an informal investigation of the incident in accordance with paragraph 32, Manual for Courts-Martial, United States (2005 edition), using all available evidence. Final disciplinary action (including imposition of nonjudicial punishment), however, will not be taken until the waiver of Dutch jurisdiction has been received.

e. According to the Dutch interpretation of Article VII of the NATO Status of Forces Agreement, the right to exercise jurisdiction does not include the right to investigate. The Dutch *Koninklijke Marechaussee* (Dutch Royal MP) has the primary right to investigate offenses committed in the Netherlands involving the U.S. military, members of the civilian component, and their dependents. If requested, the Dutch Royal MP will cooperate with U.S. military investigative authorities. A criminal investigation will not be conducted by U.S. authorities without prior coordination with the host nation. Assistance in coordination can be obtained through the Netherlands Law Center.

f. According to a Dutch Ministry of Justice (MOJ) Directive, 19 February 1981, for NATO military personnel stationed in the Netherlands, in concurrent jurisdiction cases involving general crimes; drug offenses; offenses against the public order; specific traffic offenses such as driving under the influence (first offenders only), fleeing the scene of an accident, and accidents with injuries; a waiver is usually granted. The same directive considers traffic offenses in general as being exclusive Dutch jurisdiction cases and are taken care of by the host-nation judiciary by means of fines.

g. The Dutch authorities will continue their investigation and prepare a report of investigation (known as a *proces verbaal*). On completion, the *proces verbaal* is sent to the district public prosecutor for his or her recommendation. The *proces verbaal* is then forwarded to the Dutch MOJ. The Dutch authorities then decide whether or not to waive their primary right to exercise jurisdiction. If a waiver is granted, which is usually the case, the Dutch MOJ forwards the *proces verbaal* to the Netherlands Law Center.

h. Issuance of the *proces verbaal* by the Dutch MOJ ordinarily coincides with and signifies a waiver of the primary right to exercise jurisdiction to U.S. authorities within the meaning of paragraph 3(c), Article VII, NATO SOFA. This waiver can be granted by the Dutch MOJ before the *proces verbaal* is issued, or vice versa. On being advised of a waiver by the Netherlands Law Center, the OJA, HQ USAREUR/7A (AEAJA-IL), will promptly inform the accused's command regarding these developments. If action is deemed appropriate in a particular case, the U.S. authorities, on notification of the waiver, should respond appropriately in order to maintain the Government's diligence with a view toward eventual court-martial proceedings. The period of time between the arrest and the waiver is usually 60 to 120 days, depending on the case.

i. On receipt of the *proces verbaal* from Dutch authorities, the Netherlands Law Center will translate it into English. The documents are then mailed to the OJA, HQ USAREUR/7A (AEAJA-IL), Unit 29351, APO AE 09014-9351. On receipt, the OJA, HQ USAREUR/7A, will forward the documents to the Soldier's general court-martial convening authority (SJA-IA) for appropriate action (for example, preparation of charges, Article 32 investigation).

j. The Soldier's general court-martial (GCM) SJA will inform the OJA, HQ USAREUR/7A (AEAJA-IL), regarding the action taken. Suspense dates assigned by the OJA, HQ USAREUR/7A (AEAJA-IL), will be strictly observed. From that point on, the OJA, HQ USAREUR/7A (AEAJA-IL), will inform the Netherlands Law Center of actions taken.

k. If a case is brought to trial, the presence of one or more of the Dutch arresting officers or other persons may be required as witnesses at the Article 32 investigation or the trial. To obtain the required Dutch witnesses, the GCM SJA should communicate directly with the Netherlands Law Center to make the necessary arrangements with the Dutch authorities. Such requests will be honored only if made by a message that has been personally approved by the GCM SJA and has the OJA, HQ USAREUR/7A (AEAJA-IL), listed as the information addressee. Coordination with the Dutch MOJ may be made solely by the Netherlands Law Center acting for the U.S. country representative. At least 4 weeks of lead time is recommended in order for this coordination to be completed. The SJA should examine the *proces verbaal* immediately on receipt and request the required Dutch witnesses. Messages to the Netherlands Law Center must include the following information:

(1) The full identification of the accused.

(2) The date and place of the incident.

(3) The full name, date of birth, and address of the witnesses, if known. (This information is normally stated in the *proces verbaal*.)

(4) The date and place of the Article 32 investigation or trial.

(5) The anticipated length of time the witnesses' presence will be required.

(6) The date and time, specific address, and specific person to whom the witnesses are to report and any specific travel arrangements.

(7) The rate and travel pay and witness fees to be paid to the witnesses. (If subsequent developments make use of a Dutch witness unnecessary, the GCM SJA will promptly notify the Netherlands Law Center by message.)

l. If requested, the Netherlands Law Center can provide interpreter services for witnesses. Invitational travel orders will be arranged and per diem paid by the GCM SJA.

m. A separate message is required to obtain witnesses for each stage of the proceedings (to obtain witnesses for the Article 32 investigation and to obtain witnesses for the trial itself).

n. Except for the message described in k(7) above and subsequent communications relating to the same request, no communication will be had with U.S. legal liaison authorities in the Netherlands without prior approval of the OJA, HQ USAREUR/7A (AEAJA-IL). Under no circumstances will U.S. authorities communicate directly with Dutch authorities or make visits or arrangements in the Netherlands without prior approval of the OJA, HQ USAREUR/7A (AEAJA-IL). Requests for interrogation before the Article 32 investigation or trial will be processed in the same manner as requests for appearance of witnesses at the Article 32 investigation or trial.

o. No military authority, either trial or defense counsel, is authorized direct contact with any Dutch witness without a prior request to, and approval by, the Netherlands Law Center as prescribed in subparagraph k above.

M-3. PROCEDURES FOR AIR FORCE AND NAVY PERSONNEL

The procedures in paragraph M-2 apply to cases involving Navy and Air Force personnel, except that notifications will be made to the HQ USAFE/JAI or COMUSNAVEUR/JA, as appropriate.

APPENDIX N
COUNTRY REPRESENTATIVE INSTRUCTION—NORWAY

4 March 2001 (updated September 2007)

N-1. PURPOSE
These instructions are issued to implement subject regulations and directives on the exercise of foreign criminal jurisdiction over U.S. personnel. The contents are intended to clarify the duties and responsibilities of U.S. authorities in Norway relative to matters involving the exercise of foreign criminal jurisdiction over U.S. personnel in Norway.

N-2. AUTHORITY
This instruction is issued by the U.S. Country Representative, Norway (Joint Warfare Centre, Stavanger, Norway), in accordance with the authority granted in AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706. This instruction supersedes the previous Norway Country Representative Instruction dated 29 October 1985. Changes were made to identify the appropriate legal advisor, clarify that the authority to contact Norwegian authorities regarding criminal jurisdiction is exclusively vested in the USCR Norway, and make minor administrative changes.

N-3. APPLICABILITY AND SCOPE
This instruction applies to all U.S. personnel, as defined in paragraph N-4a, stationed in or passing through the Kingdom of Norway.

N-4. EXPLANATION OF TERMS

a. U.S. Personnel. As used in this instruction, U.S. military and civilian personnel and their dependents in Norway who are subject to the provisions of the NATO Status of Forces Agreement (SOFA).

b. Legal Advisor. The Staff Judge Advocate, 426th Air Base Squadron (USAFE), Unit 6655, APO AE 09706-6655, APO AE 09706-6655; DSN 224-0532; civilian (47) 51 95 05 32.

N-5. RESPONSIBILITIES

a. U.S. Country Representative, Norway. The U.S. Country Representative, Norway, or the Legal Advisor at his or her discretion and on his or her behalf, acts as the single POC with Norwegian authorities and the U.S. Embassy, Oslo, for matters relating to the exercise of criminal jurisdiction over U.S. personnel in Norway.

b. Commanders.

(1) Commanders will establish procedures to ensure that personnel under their command are advised of their rights and obligations under the NATO SOFA, including respecting the laws of Norway, refraining from engaging in political activities in Norway, their amenability to the criminal jurisdiction of Norway, and their rights and duties relating to customs privileges in Norway. This advice will be given to personnel as soon after their arrival in Norway as practicable. Commanders should avail themselves of the Legal Advisor's briefing program for incoming personnel on this matter.

(2) Commanders will promptly inform the U.S. Country Representative, Norway, and the Legal Advisor of any act or omission by U.S. personnel under their command that involves Norwegian interest and could result in one of the following:

(a) Criminal proceedings by Norwegian courts.

(b) A claim against the U.S. Government.

(c) Substantial public interest.

(d) Adverse public relations that would be detrimental to the United States.

(3) Without prior approval of the U.S. Country Representative, Norway, U.S. military authorities will not permit the transfer or reassignment of U.S. military personnel or provide transportation at Government expense outside of Norway for civilian employees or Family members accused of or suspected to be invovled in incidents likely to result in the exercise of foreign criminal jurisdiction by Norway. However, commanders will inform the U.S. Country Representative when unusual circumstances or service directives urgently require the individual's transfer.

(a) Commanders will ensure that an administrative hold is placed on U.S. military personnel under their command, and on U.S. personnel who are not assigned or attached but fall under their custodial responsibility, who are accused of or suspected to be involved in incidents likely to result in the exercise of foreign criminal jurisdiction by Norway. This is necessary to prevent personnel actions that would authorize the departure of these persons from Norway without the prior approval of the U.S. Country Representative, Norway.

(b) Commanders accepting custody of such personnel will notify the individual's unit, the servicing personnel office, and the appropriate transportation authorities that custodial responsibility has been assumed and that an administrative hold is required. Furthermore, commanders will impound, where appropriate, all documents relating to the individual that might assist in his or her unauthorized departure from Norway by any means, and will establish other appropriate controls to enhance the effectiveness of the custody.

(c) Commanders will advise such personnel, by a memorandum with acknowledgment required, that an administrative hold has been instituted and that they are not to depart Norway until such departure is personally approved by the U.S. Country Representative, Norway.

(d) Commanders will notify the appropriate traffic management office (TMO) by memorandum that the TMO must not provide such personnel any type of Government transportation from Norway without the prior approval of the U.S. Country Representative, Norway, and must rescind any TMO actions that may have been completed permitting such transportation.

(e) Commanders will not approve the permanent change of station (PCS), temporary duty (TDY), pass, or leave for these individuals without the specific approval of the U.S. Country Representative, Norway, if their unapproved departure from Norway is anticipated.

(4) Contact with local police or judicial authorities by unit commanders or other U.S. military authorities to obtain release from custody or waiver of jurisdiction is prohibited. Commanders are to communicate directly with the U.S. Country Representative, Norway, and the Legal Advisor about matters involving the exercise of criminal jurisdiction over personnel under their command.

c. Legal Advisor.

(1) The Legal Advisor will establish procedures to ensure that he or she is notified immediately by the Norwegian police of the arrest, detention, or apprehension of U.S. personnel by Norwegian authorities and will, as appropriate, advise such U.S. personnel of their rights relative thereto.

(2) The Legal Advisor will immediately notify the U.S. Country Representative, Norway; the commander of the individual concerned or his or her designee; and the U.S. Consul, Norway, or his or her designee; of the involvement of U.S. personnel in incidents resulting in their arrest, detention, or apprehension by Norwegian authorities.

(3) The Legal Advisor will help the U.S. Country Representative, Norway, prepare and submit reports required under the provisions of AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706.

APPENDIX O
COUNTRY REPRESENTATIVE INSTRUCTION—SPAIN

Office of Defense Cooperation (ODC) Policy Directive
No. 110.5
21 May 2002 (updated September 2007)

EXERCISE OF FOREIGN CRIMINAL JURISDICTION

NOTE: The U.S. Country Representative Instruction for Spain is included in ODC Policy Directive Number 110.5, subject: Exercise of Foreign Criminal Jurisdiction, dated May 21, 2002, the text of which is reproduced here in its entirety.

OFFICE OF DEFENSE COOPERATION, SPAIN
APO AE 09642

ODC POLICY DIRECTIVE
(This PD supersedes ODC PD 110.5, 10 September 1999)
No. 110.5

EXERCISE OF FOREIGN CRIMINAL JURISDICTION

O-1. PURPOSE
This directive implements DOD Directive 5525.1, AR 27-50/SECNAVINST 5820.4G/AFJI 51-706, USEUCOM Directive 45-3, AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706, Air Force Instruction 51-703, and the 1989 Agreement on Defense Cooperation between America and the Kingdom of Spain. It establishes policy and procedures for U.S. authorities with respect to the exercise of criminal jurisdiction by Spanish authorities over U.S. military and civilian personnel in Spain.

O-2. SCOPE
This directive is applicable to members of the U.S. Armed Forces, military tourist personnel, the civilian component, and dependents.

O-3. DEFINITIONS

a. Member of the United States Armed Forces or Force: A person belonging to the land, sea, or air armed services of the United States in the territory of Spain in connection with his or official duties, except where the United States and Spain have mutually agreed that certain individuals, units, or formations will not be regarded as constituting or included in a *force* for the purposes of the 1989 Agreement.

b. Civilian Component: Civilian personnel accompanying a force of the United States who are in the employ of an armed service of the United States and who are not stateless persons, nor nationals of any state that is not a Party to the North Atlantic Treaty, nor nationals of, nor ordinarily resident in, Spain. The term *Civilian Component* will also mean employees of a non-Spanish, noncommercial organization agreed on by the Permanent Committee who are nationals or ordinarily resident.

c. Dependent: The spouse of a member of the U.S. Forces, of military tourist personnel, or of a civilian component; or a child of such individual depending on him or her for support. The term *dependent* will also include a parent of a member of the force or its civilian component, or of the spouse of such a member, who is financially or for reasons of health dependent on and supported by such a member, who shares the quarters occupied by such a member, and who is present in Spain with the consent of the military authorities of the United States. On approval by the Permanent Committee, other Family members may be included in this provision as dependents when warranted by special circumstances.

d. Military Tourist Personnel: Military personnel of the land, sea, and air armed services of the United States who enter Spanish territory on leave or other authorized non-duty status.

e. Military Authorities of the United States: Authorities that are empowered by law to enforce the military laws or administrative regulations of the United States with respect to members of its forces or civilian components.

f. Commander: All references to *Commander* are intended to include the commander or his or her designated representative, the deputy or vice commander, or the commissioned officer authorized to be in command.

O-4. OUTLINE OF EXERCISE OF JURISDICTION

The military authorities of the United States exercise exclusive jurisdiction over members of the U.S. Armed Forces and military tourist personnel in Spain with respect to offenses punishable by the law of the United States but not by the law of Spain. Spanish authorities exercise exclusive jurisdiction over U.S. military personnel and U.S. civilians in Spain with respect to offenses punishable by Spanish law but not punishable by the law of the United States.

a. Where an act or omission is punishable under the laws of both countries, there is a concurrent right to exercise jurisdiction. Where the right is concurrent, the military authorities of the United States have the primary right to exercise jurisdiction over a member of its forces, military tourist personnel, or a civilian component in relation to the following:

(1) Offenses solely against the property or security of the United States.

(2) Offenses solely against the person or property of another member of the force or civilian component or of a dependent.

(3) When the offense arises out of an act or omission done in the performance of official duty.

b. In all other cases of concurrent jurisdiction, the authorities of Spain will have the primary right to exercise jurisdiction.

O-5. POLICY

a. The Chief, ODC, Spain, acts as the country representative for foreign criminal jurisdiction (FCJ) matters in Spain and as the single POC for processing all criminal cases involving U.S. personnel in Spain. On behalf of the Chief, ODC, Spain, the Staff Judge Advocate, ODC (ODC/SJA), acts as the single POC with the Spanish Group of Jurisdiction in the Permanent Committee in processing all criminal cases involving personnel of the U.S. Armed Forces in Spain.

b. All cases where the United States exercises exclusive jurisdiction, primary jurisdiction, or jurisdiction as a result of a waiver of the primary right by the authorities of Spain will be processed by the U.S. military authorities in accordance with applicable U.S. laws or directives, including the Uniform Code of Military Justice.

c. In all cases in which members of the U.S. Armed Forces or the civilian component, dependents, or military tourist personnel are tried by Spanish authorities, all necessary steps will be taken to ensure that the individual receives a fair trial and is afforded the procedural rights, privileges, and protection provided by Article VII, paragraph 9, of the NATO Status of Forces Agreement (SOFA).

O-6. CUSTODY

a. Personnel who have knowledge of the arrest or detention by Spanish authorities of a member of the U.S. Armed Forces, military tourist personnel, dependent, or member of the civilian component will immediately report this information to the nearest U.S. consulate or the nearest military base, station, or unit commander. When informed that Spanish authorities have apprehended a member of the U.S. Armed Forces or a military tourist for the alleged commission of an offense that may result in detention or confinement, U.S. military authorities will notify the ODC/SJA by the most expeditious means available.

(1) The ODC/SJA telephone number is civilian 34-91-543-2803 (within Spain but outside Madrid: 91-543-2803). The ODC/SJA fax number is civilian 34-91-543-3207 (or 91-543-3207).

(2) The notification must include all available information on the status of the individual, the alleged offense, and the name of the court and prison.

b. The custody of a member of the U.S. Armed Forces or military tourist personnel over whom Spanish jurisdiction is being exercised will be requested by the military authorities of the United States in accordance with Article 41 of the 1989 Agreement. Where such a request is granted, the U.S. military authorities will give full consideration to the decision of the Spanish judicial authorities regarding conditions of custody.

c. U.S. military authorities will guarantee the appearance of a member of the U.S. Armed Forces or military tourist personnel in the custody of the U.S. military authorities and over whom Spanish jurisdiction is being exercised before the competent Spanish judicial authorities at their request. The criminal proceedings in these cases will be subject to preferential treatment in accordance with the provisions of Article VII of the NATO SOFA providing for a prompt and speedy trial. In any case, the duration of provisional confinement provided under Spanish law will not be exceeded. Where custody and control of the accused is entrusted to U.S. military authorities, it is the responsibility of those authorities to inform the Spanish court (through the ODC/SJA) in advance of any situation in which military jurisdiction over the accused will terminate. (For example, if the member's term of service will expire and the member will not voluntarily extend, the Spanish court must receive enough advance notification to allow either a bail to be set or to permit arrangements for confinement of the accused in Spain (e below).)

SPECIAL NOTE—Implications of the U.S. Guaranteeing Presence: When a Spanish court relinquishes physical custody to U.S. military authorities for any reason at any stage of the judicial proceedings, the responsibility the United States undertakes is great. Special care must be taken to monitor the whereabouts of the accused and ensure the accused's presence at all hearings. Every superior of the accused must understand that failure to maintain control over the accused could lead to the extremely serious case where the United States cannot live up to its international obligations.

d. In criminal proceedings in Spanish courts against a member of the force or a military tourist, the following rules will apply:

(1) If the court decrees provisional liberty without bail, the guarantee of subparagraph c above will meet the obligation of periodic reporting required by Spanish laws.

(2) If the court accepts bail from the member, the military authorities will be relieved of all responsibility for custody.

(3) If the court decrees provisional confinement without bail or the bail is not provided, the U.S. military authorities may, if they have the appropriate powers, maintain the custody with restriction of movements and effective vigilance. In this event, the time served in custody may be credited against any sentence to confinement eventually adjudged.

e. When assuming custody of a member of the force or a military tourist, the U.S. military authorities will, when appropriate, inform the Spanish judge if the accused is going to ask to separate from service before the trial is scheduled. This should be done at least 30 days before the expiration of the member's enlistment and after coordination with the ODC/SJA.

f. Additional action to be taken includes the following:

(1) Members of the U.S. Forces.

(a) Whenever U.S. military authorities receive notification that a member of the U.S. Forces is being detained or confined by Spanish authorities because of the commission of an offense, this information will be communicated to the member's military commander by the most expeditious means available.

(b) The member's commander or his or her designated representative will immediately take whatever action is deemed necessary, on as informal a basis as possible, to secure the release of the individual involved to the custody of the U.S. military authorities. This should include providing a written certification that the individual is a member of the U.S. Armed Forces and assurance that the individual involved will be made available when required for any proceedings in connection with the case in accordance with the 1989 Agreement.

(2) Members of the Civilian Component and Dependents.

(a) Whenever U.S. military authorities receive notification from Spanish authorities that a member of the civilian component or a dependent is being detained or confined by Spanish authorities, this information will be communicated to the military supervisor of the individual or the commander of the dependent's sponsor by the most expeditious means available.

(b) The military supervisor or commander is responsible for ensuring that the ODC/SJA and the appropriate American consul are notified of the pertinent facts by the most expeditious means available.

(c) The military supervisor or commander will take all possible action within his or her authority and through designated representatives (for example, the Commander, U.S. Naval Activities, Spain, Foreign Criminal Jurisdiction Officer (CNA/FCJ)) on as informal a basis as possible to secure the release of the civilian involved to the U.S. military authorities. This may include providing a written statement of the individual's status. Because civilians are not subject to trial by court-martial during peacetime, the statement must not include any guarantee that the individual will be kept in military custody. However, the military supervisor or commander may assure the local authorities that the United States will not transfer the accused at U.S. expense and, when appropriate, in cases of civilians that the military authorities will use all reasonable means at their disposal to help ensure that claims for damages to property or claims for personal injuries arising out of the incident are promptly settled.

(3) Military Tourist Personnel.

(a) Whenever U.S. military authorities receive notification that military tourist personnel are being detained or confined by any Spanish authority, this information will be communicated immediately by the most expeditious means available to the commander of the base or station nearest to the court or authority detaining the individual and to the ODC/SJA, who will notify the member's commanding officer.

(b) The base or station commander or his or her designated representative will immediately take whatever action is deemed necessary on as informal a basis as possible to secure the release of the individual to the custody of U.S. military authorities. This may include (if requested) providing certification that the individual is a member of the U.S. Armed Forces and giving assurance that the individual will be made available when required for any proceedings in connection with the case in accordance with the 1989 Agreement.

g. Action to obtain the release or transfer of custody of detained persons, whether formal or informal, must be taken immediately and will continue as long as a reasonable possibility of success exists.

h. Base and station commanders will implement local procedures to ensure that—

(1) Local Spanish authorities have a U.S. military POC for providing arrest information at all times.

(2) Contact with the detained individual will be made by a U.S. representative.

(3) The U.S. representative has available funds and items of personal hygiene and comfort to give the detained individual when necessary and appropriate.

O-7. CRIMINAL JURISDICTION AND PROCESSING OF CASES

a. Spain has recognized the particular importance of disciplinary control by the U.S. military authorities over members of the force. Spanish authorities will give expeditious and sympathetic consideration to requests for waivers of criminal jurisdiction made by the authorities of the United States. Requests for waivers of this right will be in accordance with the following procedures:

(1) A request for waiver of jurisdiction will be presented by the ODC/SJA to the Group of Jurisdiction of the Permanent Committee within 30 days after the date the U.S. authorities become aware of the initiation of proceedings against an accused.

(2) The request will be reviewed by the Group of Jurisdiction of the Permanent Committee, which, except in cases of particular significance to Spain, will recommend a waiver of criminal jurisdiction to the appropriate Spanish authorities within 15 days.

b. Immediately on being informed that a member of the U.S. Forces or civilian component has been accused of or charged with a Spanish criminal offense, the Staff Judge Advocate, U.S. Naval Activities, Spain (CNA/SJA), on behalf of the Commander, U.S. Naval Activities, Spain, will determine if the act or omission occurred in the performance of official duties. The CNA/SJA will send to the ODC/SJA by electronic message the full name, grade, and organization of each of the alleged offenders, and complete factual information. A duty certificate, in triplicate and in English and Spanish, signed by the person's commander, and including all facts, must also be sent to the ODC/SJA.

c. On receipt of information from the CNA/SJA, the ODC/SJA will certify the status of the individual and do either of the following, as appropriate:

(1) Inform the appropriate Spanish authorities that the act or omission is within the exclusive jurisdiction of the United States or that the United States has primary right to exercise jurisdiction and the reason why.

(2) Request a waiver of the primary right to exercise jurisdiction from the Spanish authorities.

d. Pending receipt of notification with respect to the jurisdiction in the case, U.S. military authorities may take any preliminary action warranted, such as conducting a formal or informal investigation, preferring charges, or otherwise preparing to dispose of the case. However, no final disciplinary action will be taken unless and until the question of jurisdiction has been resolved in favor of the United States.

e. Where the primary right of the United States to exercise jurisdiction is determined after an investigation by Spanish authorities, or a waiver of the Spanish primary right to exercise jurisdiction is granted, the ODC/SJA will notify the CNA/SJA and will provide the original Spanish-language proceedings and investigative report for temporary use by U.S. military authorities.

(1) The CNA/SJA will forward the proceedings to the commander of the individual concerned. The command investigating officer will use the Spanish proceedings, along with any statements included therein, in conjunction with a separate command investigation to determine which disciplinary or administrative action may be appropriate and to record any information necessary to settle any actual or potential claims arising out of the incident.

(2) After taking appropriate action, the commander of the individual concerned will send a detailed, final disposition report to the ODC through the CNA/SJA. The report must include the following as a minimum:

(a) A summary of the findings of the command's investigation.

(b) A full description of any disciplinary or administrative action taken or reasons why none was taken or appropriate.

(c) The status and amount of any claims.

(d) Information as to the existence of insurance and the amount or status of any insurance settlement.

(3) As an official judicial document, the Spanish proceedings must be carefully preserved for return to Spanish authorities. In forwarding the final disposition report, the proceedings must be enclosed by the commander having temporary custody. Information from the final disposition report is submitted by the ODC, Spain, to the Spanish authorities. Favorable Spanish responses to future requests for waivers of jurisdiction will depend to some degree on the type of action taken by the U.S. military authorities in past cases where jurisdiction has been waived in favor of the United States. Consequently, the necessity for appropriate disciplinary or administrative action, and for a detailed final disposition report cannot be overly emphasized.

f. If the servicing SJA concerned believes that the preparation of a case by Spanish authorities or their jurisdictional decision is being unduly delayed, or when other circumstances warrant, the SJA may send a request by memorandum or electronic message to the ODC/SJA to expedite the processing of the case. The request should include the following information:

(1) The name, grade, and unit of the individual involved.

(2) The date of the accident or incident.

(3) The name and location of the court responsible for action on the case.

O-8. REVERSE FCJ WAIVERS

Though rare, the Government of Spain may seek to invoke the reciprocal FCJ provisions found in Chapter V of the Agreement on Defense Cooperation. This would occur if a Spanish military member training in the United States faced criminal charges in a U.S. court. In such cases, the following procedures would be invoked:

a. A formal request for jurisdiction is presented to the U.S. Section by the Spanish Section following the guidelines found in Article 55 of the Agreement and using the U.S. format for such requests.

b. This request and a legal memorandum by the ODC/SJA are presented to the Chief, ODC, Spain, who makes a written recommendation on the case. The Chief's recommendation is addressed to the designated commanding officer (COMUSNAVEUR).

c. The entire case file (Spanish request for jurisdiction, the ODC/SJA memorandum, and the Chief's recommendation) is forwarded to the designated commanding officer (COMUSNAVEUR, through the Fleet Judge Advocate).

d. The USNAVEUR/SJA, on behalf of the designated commanding officer, forwards the file to Department of the Navy, Office of the Judge Advocate General, 200 Stovall Street, Alexandria, VA 22332-2400, with a recommendation. This office then obtains a DOD request for waiver addressed to the U.S. court that has jurisdiction over the case.

e. Once a waiver of U.S. jurisdiction is obtained, the ODC, Spain, should obtain a case-disposition report from the Spanish authorities and forward it to the U.S. court that waived jurisdiction.

O-9. POLICY ON TRIAL OBSERVERS

a. The Chief of the Diplomatic Mission appoints individuals qualified to serve as trial observers at trials before Spanish tribunals.

b. The trial observer will be given a memorandum of appointment by the CNA/SJA outlining his or her duties and referring him or her to pertinent regulations for guidance and assistance.

c. If the trial observer is not fluent in Spanish, a capable interpreter will be provided by the service command concerned to accompany and assist the observer.

d. On completion of the trial, observers will submit seven copies of their reports within 7 days through the CNA/SJA to the ODC/SJA. The ODC/SJA, after review and action thereon, will keep a copy and send six copies of the report with a memorandum of endorsement to the designated commanding officer (COMUSNAVEUR, through the Fleet Judge Advocate).

e. If the official sentence, status as to appeals, or other trial information is not known within 7 days, the trial observer should send an interim report and send a supplementary report when the missing information is obtained.

O-10. INTERNATIONAL HOLD PROCEDURES

a. The CNA/SJA and the ODC/SJA for U.S. Army personnel in Spain establish international hold procedures to ensure that personnel are not transferred or otherwise allowed to depart Spain without written permission.

b. The following individuals will be placed on international hold:

(1) Personnel accused in cases over which Spain has retained jurisdiction, whether in Spanish or U.S. custody, or on provisional liberty without bail, but not longer than the period established under Spanish law for provisional confinement.

(2) Personnel whom Spanish officials request to remain within the jurisdiction to testify as a witness in a pending criminal case or for other valid reasons, including their being the subject of active criminal investigation. Such requests will not be denied without prior approval from the ODC/SJA.

c. The minimum administrative hold procedures to be followed are as follows:

(1) Military personnel will be ordered in writing not to depart Spain except on the specific approval of their immediate commander and will be required to acknowledge the order in writing.

(2) Members of the civilian component will be notified in writing and required to acknowledge in writing that they will not be transferred, reassigned, or authorized U.S. Government-paid transportation from Spain except on the specific approval of the military commander to whom they are responsible.

(3) Adult dependents of military and civilian personnel will be notified in writing and requested to acknowledge that they will not be transferred from Spain on military orders or provided transportation except on the approval of their sponsor's immediate commander. The sponsor of the dependent will also be required to acknowledge the statement. In cases of dependents under the age of 16, the sponsor alone will be required to make the acknowledgement.

(4) The personnel records of military personnel on hold will be appropriately annotated to show their hold status.

d. International hold may be terminated (in misdemeanor cases) on receiving a recommendation from the Group of Jurisdiction Committee recommending approval of the waiver request.

e. International hold will be terminated on final disposition of the charges or expiration of terms established by Spanish law for provisional prison, which count from the date of the incident, and when approved by the ODC/SJA.

O-11. CONTRABAND CASES

a. Contraband cases involving a value of 18,000 euros or more are classified as felonies (*delitos*) and accorded punishments of 6 months to 6 years imprisonment and fines up to double the value of the contraband. Jurisdiction in these cases lies with Spanish authorities. Contraband cases involving a value of less than 18,000 euros are considered administrative infractions under the competence of administrative officials.

b. Base or station commanders will implement local procedures to ensure that—

(1) Members of the U.S. personnel in Spain report their involvements in administrative contraband cases.

(2) Such cases are reported to the CNA/SJA, as appropriate.

O-12. COURT OF SOCIAL REHABILITATION (*JUZGADO DE PELIGROSIDAD Y REHABILITACION SOCIAL*)

The authority of the Courts of Social Rehabilitation is limited to issuing deportation orders or orders for hospitalization for drug rehabilitation and treatment. These orders are usually issued without a hearing or trial. Therefore, international hold procedures (para O-10) based solely on cases pending in Courts of Social Rehabilitation are not required. However, the incident giving rise to such cases may result in the initiation of normal criminal proceedings in a Court of Instruction. Reasonable efforts should be made to determine whether a related criminal case is pending before any decision is made to not use international hold procedures.

O-13. CIVIL COURTS

a. A recent modification of the Spanish Criminal Code established that many cases formerly considered as offenses or misdemeanors are now to be processed as civil litigation cases.

b. In accordance with the recent modification, all traffic accidents committed through simple negligence that do not involve infractions of regulations and that result in damages but no injuries are excluded from criminal proceedings. Therefore, it is not possible to request a waiver of jurisdiction or assert the U.S. primary right of jurisdiction in these cases.

c. Traffic violations labeled as *serious* or *very serious* are subject to prosecution in criminal courts.

d. If the CNA/SJA is aware of circumstances that would warrant seeking a waiver of jurisdiction, the circumstances and a request for waiver to be sought should be submitted in accordance with paragraph O-7.

O-14. ADVANCE NOTIFICATION OF CASES

When the Group of Jurisdiction of the Permanent Committee receives advance notification from a Spanish court of the existence of proceedings involving a member of the U.S. Forces or military tourist personnel, the Group of Jurisdiction will provide the ODC, Spain, with this information and request that the individual be kept in Spain until the proceedings are completed.

a. On receipt of such notification, the ODC/SJA will notify the appropriate command and request verification of the individual's status and whether or not the incident arose from the performance of official duty.

b. On receipt of the request, the CNA/SJA will provide the information requested and ensure that the individual is placed on administrative hold.

O-15. REPORTS

a. Annual Reports. The annual report on the Exercise of Foreign Criminal Jurisdiction by Foreign Tribunals over United States Personnel, covering the period 1 December through 30 November, will be prepared by the CNA/FCJ for all Navy and Marine Corps personnel. The ODC/SJA will prepare these reports for all Army and Air Force personnel. Pursuant to DOD Directive 5525.1, annual reports on the exercise of FCJ will report only criminal cases brought against U.S. personnel that are punishable by incarceration. This report will be prepared and submitted as required by the Joint Service Regulation (AE Reg 550-50/CNE-C6F Inst 5820.8K/USAFE Inst 51-706).

b. Semiannual Confinement Reports. The procedures for annual reports (a above) also apply to semiannual confinement reports, which must be submitted twice a year on 30 November and 31 May.

NOTE: Commanders holding personnel of another service pending trial by the Spanish authorities will immediately notify the reporting commander of the facts of the case in order to help complete required service reports.

c. Visitation Reports.

(1) The CNA/SJA for Navy, Marine Corps, and Air Force personnel; and the ODC/SJA for Army personnel; will ensure that monthly visits to U.S. personnel confined in foreign penal institutions are made as required by joint-service directives.

(2) The original and three copies of visitation reports will be sent to the ODC/SJA in enough time to arrive at least 10 workdays after the end of the month.

(3) In individual cases where the location of the prison or other circumstances make it advisable for a commander of another service to assume responsibility for visits, the Chief, ODC, Spain, in coordination with the commanders concerned, will reassign such responsibility.

(4) If possible, regular visits will be made by the individual's commanding officer or his or her representative at least every 30 days. In addition, periodic visits should be made by a chaplain, medical officer, and legal officer. Arrangements for each visit should be made with the prison director at least 2 weeks before the visit. The initial visit should be made within 15 days after the date of confinement. Preconfinement physicals must be done as required by the Joint Service Regulation, paragraph 3-4.

O-16. IMPLEMENTATION

Implementing directives for Army, Navy, Marine Corps, and Air Force personnel will be issued by the CNA/SJA. One copy of each implementing directive will be provided to the ODC/SJA.

APPENDIX P
COUNTRY REPRESENTATIVE INSTRUCTION—TURKEY

27 October 2004 (updated September 2007)

LEGAL SERVICES
EXERCISE OF FOREIGN CRIMINAL JURISDICTION

SECTION I
GENERAL

P-1. PURPOSE

This instruction implements the references in paragraph P-2 and establishes the policy and procedures concerning the exercise of criminal jurisdiction by Turkish authorities over U.S. personnel in Turkey. It establishes procedures for processing official duty cases. It provides procedures for placing U.S. Forces personnel who may be charged with violations of Turkish criminal laws on international administrative hold. It also outlines procedures for cooperating with Turkish officials during criminal investigations.

P-2. REFERENCES

a. NATO Status of Forces Agreement (NATO SOFA) (Turkish Law No. 6375) and bilateral implementing arrangements.

b. AR 27-50/SECNAVINST 5820.4G/AFJI 51-706, Status of Forces Policies, Procedures, and Information.

c. USEUCOM Directive 45-3, Foreign Criminal Jurisdiction Over U.S. Personnel.

d. AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706, Exercise of Foreign Criminal Jurisdiction Over United States Personnel.

e. Air Force Instruction 51-703, Foreign Criminal Jurisdiction.

f. Ministry of Foreign Affairs Note No. 6302/5399, 24 September 1968 (fig P-1).

g. Ministry of Foreign Affairs Note No. 6302/5400, 24 September 1968 (fig P-2).

P-3. RESPONSIBILITIES

a. The Chief, Office of Defense Cooperation, Turkey (ODC Turkey/TCH), as the United States country representative for Turkey, serves as the single POC with national authorities and U.S. diplomatic personnel in Turkey concerning the exercise of criminal jurisdiction over U.S. Forces personnel by the Government of Turkey (GOT). The Staff Judge Advocate (ODC Turkey/TJA), on behalf of the ODC Turkey/TCH, acts as the single POC with the Legal Advisor for the Turkish General Staff in processing official duty cases involving U.S. Forces personnel in Turkey.

b. Unit commanders in Turkey will inform U.S. personnel of relevant Turkish criminal laws and the provisions of Article VII, NATO SOFA. Unit commanders will ensure U.S. personnel are reminded on a recurring basis of their responsibility to report all vehicle accidents and involvement with Turkish police authorities to their commander.

c. Servicing staff judge advocates will ensure when U.S. personnel are tried by Turkish authorities that all necessary steps are taken to guarantee they receive fair trials and are afforded the procedural rights, privileges, and protections provided by Article VII, paragraph 9, of the NATO SOFA.

P-4. USES
This instruction will be consulted any time Turkish authorities exercise criminal jurisdiction over U.S. Forces personnel in Turkey. The term *U.S. Forces personnel* includes U.S. military personnel, regardless of nationality and place of assignment (members of the force); civilians employed by the U.S. Forces in Turkey (members of the civilian component); and their Family members (dependents).

P-5. RESTRICTIONS ON USES
This instruction may not be used in any manner inconsistent with the policy and guidance set forth in the references in paragraph P-2.

SECTION II
GUIDELINES

P-6. EXERCISE OF JURISDICTION
U.S. military authorities exercise exclusive jurisdiction over U.S. military personnel for violations of U.S. law that are not also violations of Turkish law. Turkish authorities exercise exclusive jurisdiction over U.S. personnel in Turkey for violations of Turkish law that are not also violations of U.S. law. When acts or omissions violate the laws of both countries, each country has a concurrent right to exercise jurisdiction.

a. U.S. military authorities have the primary right to exercise concurrent jurisdiction over military personnel (and in certain cases members of the civilian component) when offenses are either of the following:

(1) Solely against the person, security, or property of the U.S. Government, other members of the force or the civilian component, or dependents (*inter se* cases).

(2) Acts or omissions done in the performance of official duties (official duty cases).

b. In all other concurrent jurisdiction cases, Turkey has the primary right to exercise jurisdiction.

P-7. POLICY

a. Unit commanders must maintain order and enforce discipline among U.S. personnel. This responsibility includes offenses committed by U.S. personnel in violation of Turkish laws. U.S military authorities will deal with offenses by U.S. personnel according to applicable U.S. laws and directives, including the Uniform Code of Military Justice (UCMJ), and pertinent international agreements.

b. Unit commanders will attempt, when appropriate, to obtain waivers of Turkish jurisdiction or an understanding with Turkish officials not to exercise such jurisdiction when the primary or exclusive right to exercise jurisdiction is vested in Turkey. If the Turkish authorities exercise jurisdiction, unit commanders will ensure the accused receives fair trials and fair treatment.

c. When unit commanders have the primary or exclusive right to exercise jurisdiction, or Turkish authorities waive or relinquish their primary or exclusive right to jurisdiction, unit commanders will take prompt and appropriate action.

P-8. REQUESTS FOR WAIVERS OF JURISDICTION

a. General. In accordance with Article VII, paragraph 3(c), NATO SOFA, the United States may request Turkey to waive the primary right to exercise jurisdiction in significant cases involving U.S. military personnel where U.S. authorities consider such waivers of particular importance.

b. Procedures.

(1) Requests for waivers of jurisdiction for U.S. military personnel may be made by unit commanders or servicing staff judge advocates. They will be directed to local police authorities or public prosecutors. The ODC Turkey/TJA will be notified of any such requests and the results.

(2) If the local police or public prosecutors reject a request, it may be forwarded to the ODC Turkey/TCH, who will determine the best manner in which to present the request to the GOT. Requests forwarded to the ODC Turkey/TCH must include the following:

(a) The identification of the accused and the alleged offenses.

(b) The name and description of the court in which the cases are being heard.

(c) Translated copies of court documents with case-file numbers.

(d) Important facts concerning the case, including the nature and extent of any involvement on the part of Turkish nationals.

P-9. REQUESTS FOR RELEASE FROM CUSTODY

a. General. Unit commanders will try to secure U.S. custody of accused U.S. military personnel until foreign judicial proceedings are completed. Unit commanders should also try to secure the release of U.S. civilian employees and dependents from foreign pretrial confinement.

b. U.S. Military Personnel. Unit commanders may give assurances that accused U.S. military personnel will not be removed from Turkey, except on due notice and with an adequate opportunity for Turkish authorities to object. On release, individuals will be given direct written orders not to depart Turkey without the specific consent of their unit commanders. They will acknowledge these orders in writing.

c. Civilian Personnel and Dependents. Unit commanders should inform Turkish authorities that the U.S. Government has no authority to restrain civilian employees and dependents or guarantee their presence at trial. Commanders may assure Turkish authorities that the United States will not transport these accused individuals from Turkey at U.S. expense without prior approval of the Turkish Government.

P-10. PROCESSING OFFICIAL DUTY CASES

a. When U.S. military members (and in some cases, members of the civilian component) are involved in incidents while performing official duties that may subject them to Turkish prosecution, their unit commanders will consult with their servicing staff judge advocates. Figure P-3 provides information on official duty status.

b. If unit commanders or servicing staff judge advocates determine the incidents may have occurred in the performance of official duties and that the U.S. Government may have concurrent jurisdiction, they will assert to appropriate Turkish officials the U.S. primary right to exercise jurisdiction. If the officials are unaware of the NATO SOFA and its implementing arrangements or fail to take necessary actions within a reasonable time, servicing staff judge advocates will notify the ODC Turkey/TJA.

c. Unit commanders will appoint investigating officers (IOs) to determine the facts and circumstances surrounding incidents. Figure P-4 provides sample reports. Reports will be reviewed for legal sufficiency by servicing staff judge advocates before they are submitted to unit commanders. IOs will complete their investigation as soon as possible after the incident and not wait until Turkish criminal charges are filed.

d. If unit commanders, after reading reports and legal reviews, conclude the incidents occurred "in the performance of official duties," they will submit requests for official duty certificates to the ODC Turkey/TJA. Requests will be accompanied by the reports and legal reviews.

e. If the ODC Turkey/TCH issues official duty certificates, copies will be forwarded to unit commanders. If official duty certificates will not be issued, unit commanders will also be notified.

f. If the Turkish authorities accept the official duty certificates and relinquish jurisdiction to U.S. authorities, unit commanders will be notified. Unit commanders will take appropriate administrative or disciplinary action and inform the ODC Turkey/TJA.

P-11. INTERNATIONAL ADMINISTRATIVE HOLD PROCEDURES

a. Unit commanders will place U.S. military personnel who may be prosecuted by Turkish authorities on international administrative hold in accordance with applicable service regulations and this instruction. Members of the civilian component and dependents who may be prosecuted by Turkish authorities will have reassignment orders and transportation out of Turkey at U.S. Government expense withheld. No other restraints may be placed on civilians by U.S. military authorities. No additional measures may be taken to guarantee civilians will remain in country.

b. Unit commanders will advise servicing staff judge advocates, personnel offices, traffic management offices, medical treatment facilities, and the ODC Turkey/TJA when individuals have been placed on administrative hold.

c. Each month, unit commanders will give the ODC Turkey/TJA a list of all personnel in their units who are placed on, remain on, and are released from international administrative hold.

d. U.S. military personnel may, with the express approval of the ODC Turkey/TCH, be placed on international administrative hold if the GOT specifically requests their presence as witnesses in pending criminal cases of particular importance to the GOT or for other valid reasons.

e. U.S. military personnel may be removed from international administrative hold and civilian personnel and dependents may receive Government transportation out of Turkey as follows:

(1) On final disposition of their criminal case.

(2) Three months after the date of the incident if no charges have been initiated against them.

(3) If the judge grants a trial *in absentia* (f below).

(4) With the specific approval of the ODC Turkey/TCH.

f. Individuals may be released from international administrative hold if the judge grants a trial *in absentia* and permission for the accused to depart Turkey. Accused individuals must be fully advised that they may be tried and convicted *in absentia*. Consent and agreement to trial *in absentia* will be given by the accused in writing.

g. Specific requests for approval for temporary or permanent release from administrative hold must be forwarded to the ODC Turkey/TJA in sufficient time to allow at least 5 workdays to process the request and coordinate with the U.S. Embassy in Ankara.

(1) Emergency Leave. If the accused submits a valid emergency leave request, unit commanders will request approval through the ODC Turkey/TJA for the accused to temporarily leave the country. Requests may be made by telephone. If it is likely the accused will still be on leave at the time of the next scheduled hearing, the servicing staff judge advocate will attempt to obtain delays or the court's consent to the temporary absence of the accused. If emergency leave is granted, the accused will be advised in writing and provide signed acknowledgments of their obligation to return for such hearings as may be required. Emergency leave orders will state that the holder has been temporarily released from international administrative hold and will not be permanently reassigned without the concurrence of the ODC Turkey/TCH.

(2) Medical Evacuation. If a medical emergency require medical evacuation, unit commanders or medical personnel will request approval through the ODC Turkey/TJA for the accused to temporarily leave the country. Requests may be made by telephone. In emergencies requiring immediate evacuation, attending physicians may approve the evacuation. If it is likely that the accused will still be out of the country at the time of the next scheduled hearing date, the servicing staff judge advocate will attempt to obtain delays or the court's consent to the temporary absence of the accused. Orders will state that the holder has been temporarily released from international administrative hold and will not be permanently reassigned without the concurrence of the ODC Turkey/TCH.

P-12. APPOINTMENT OF TRIAL OBSERVERS

The ODC Turkey/TCH has been delegated authority by the U.S. Ambassador to Turkey to appoint trial observers. Requests for the appointment of trial observers will be prepared by servicing staff judge advocates and sent to the ODC Turkey/TJA.

P-13. TURKISH CRIMINAL INVESTIGATIONS

a. Command Responsibilities. In all locations where U.S. Forces personnel are located, unit commanders will provide local police authority POCs to be called if U.S. Forces personnel become involved with Turkish police authorities. When notified of incidents, assistance will be dispatched to the location of the U.S. Forces personnel as soon as possible. On arrival, U.S. representatives should try to ascertain the facts and interview the U.S. Forces personnel involved. U.S. representatives will advise detained U.S. Forces personnel that they are there to ensure their legal rights are protected. They may not assist in Turkish interrogations. Legal officers should be contacted as soon as possible to obtain legal advice.

b. Criminal Investigations.

(1) Turkish investigators may compel the accused to appear for interrogations. However, before any interrogations, accused personnel must be advised of the nature of the charges against them and asked to answer such charges.

(2) Turkish criminal investigations are conducted by the police, public prosecutors, and interrogating judges. At all stages of investigations, accused personnel are protected from being coerced into incriminating themselves. Turkish law provides for punishment of public officials who coerce accused individuals. In addition, coerced statements may be excluded from Turkish court hearings.

(3) Experience indicates that Turkish officials expect the accused to make statements and suspect the worst if they do not. If the accused makes statements that are untrue, the accused will not be subject to prosecution for perjury. However, incriminating statements may be used against them.

c. Access to and Legal Advice for Accused Persons.

(1) U.S. representatives are generally permitted to see and talk with U.S. Forces personnel under investigation. If they are denied access, they should politely press their requests to the responsible Turkish officials at the scene. If access is still denied, attempts should be made to contact higher ranking Turkish officials. Assistance of the local American Consul may also be sought. Care should be exercised to avoid unnecessarily antagonizing Turkish officials.

(2) U.S. representatives will advise U.S. Forces personnel under investigation that they have the following rights:

(a) Allegations against them must be explained before interrogations.

(b) They may have retained or appointed lawyers present at every phase of an investigation.

(c) They may remain silent.

(d) They may inform anyone of their arrest.

(e) They may demand the collection of favorable information.

(f) Their spouse may attend all court hearings.

(g) They may attempt to have unlawfully obtained evidence excluded from their trials.

(3) U.S. representatives will be respectful and courteous to Turkish officials and will caution personnel under investigation to act with respect and courtesy.

d. Interpreters. U.S.-provided interpreters are frequently used by Turkish officials conducting investigations. Their only function is to interpret. They may not assume the role of investigator or legal advisor.

e. Mistreatment and Use of Coercion.

(1) U.S. representatives who observe mistreatment or coercion of U.S. Forces personnel must make immediate verbal protests. The protests should include an assertion that coercion is contrary to the rights of the accused under Turkish law and Article VII of the NATO SOFA. Protesting officials should clearly state that all observed misconduct will be documented and reported immediately.

(2) Although verbal protests are mandatory, U.S. representatives will not interfere with Turkish authorities by physical actions. Such actions would subject U.S. representatives to arrest and may result in the permanent removal of U.S. representatives from Turkish interrogations.

f. Reporting Requirements.

(1) U.S. Forces personnel subject to this instruction who observe mistreatment will immediately report the facts to their unit commanders. Commanders will advise the nearest American Consul and prepare and send reports in accordance with this instruction.

(2) Unit commanders will also obtain signed, sworn statements from all witnesses and send them to the ODC Turkey/TJA.

P-14. JOINT CRIMINAL INVESTIGATIONS

a. Policy. Joint U.S.-Turkish criminal investigations are permissible when U.S. Forces personnel are involved in criminal activities with Turkish nationals, or when criminal activities by U.S. Forces personnel are carried out in a manner or place that requires Turkish cooperation.

(1) The goal of such cooperative efforts is twofold: to combat criminal activity by U.S. Forces personnel in Turkey and to secure U.S. jurisdiction over U.S. Forces personnel whenever possible. In considering the second goal, it is recognized that unit commanders may not exercise judicial authority over civilians. However, certain administrative sanctions are available for unit commanders to use, and such sanctions may, in particular cases, be enough to encourage Turkish authorities to waive jurisdiction.

(2) For the purposes of this paragraph, the term *U.S. Forces personnel* includes DOD military personnel, U.S. civilian personnel, U.S. contractor personnel, and their dependents.

b. Responsibilities.

(1) Cooperation With Host-Nation Police. Commanders exercising special court-martial convening authority will decide when and how to cooperate with Turkish police agencies on criminal investigations that may result in U.S. Forces personnel being placed in confinement. This decision authority does not depend on actual courts-martial jurisdiction over these individuals. The commander will personally examine the facts and circumstances of each case. Factors to be considered in making a decision to cooperate with host-country police are as follows:

(a) The seriousness of the alleged offense.

(b) The likelihood of effective U.S. investigations and prosecutions without the cooperation of Turkish authorities.

(c) The effect on the U.S. military mission, the base community, and relationships with the GOT if the alleged offenses continue.

(d) The possibility of retaining primary criminal jurisdiction over U.S. Forces personnel involved if a decision to cooperate appears appropriate.

(2) Unit Commanders. In cases that will likely not result in U.S. Forces personnel being placed in confinement, unit commanders are authorized to request assistance from Turkish police agencies. In cases that may result in personnel being placed in confinement, unit commanders will prepare recommendations and summaries of the facts and circumstances of the cases and send them to their special court-martial convening authorities for decision.

(3) Investigative and Law-Enforcement Agencies and Staff Judge Advocates. Personnel from the Air Force Office of Special Investigations (AFOSI), security and military police, and judge advocate offices will provide advice to commanders on joint criminal investigations. Coordination with higher AFOSI, police, or judge advocate authorities may be necessary.

c. Relationships with American Embassy Personnel and American Consuls. When joint criminal investigations may result in U.S. Forces personnel being investigated by Turkish law-enforcement authorities, the appropriate local U.S. military commander will decide whether and how much information to share with the Turkish authorities. The ODC Turkey/TJA will be notified of this decision and the rationale for it, and will notify the consul or embassy officer before the information is passed to the Turkish authorities.

Ankara, September 24, 1968

Ministry of Foreign Affairs
Note No. 6302/5399

Excellency:

I have the honor to refer to discussions between representatives of our two Governments concerning duty certificates in implementation of Article VII, paragraph 3(a)(ii), of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces and have the honor to propose the following:

ARTICLE 1

In case of offenses arising out of any act or omission done in the performance of official duty, the duty certificates will, in conformity with the spirit and the letter of the Agreement between the Parties of the North Atlantic Treaty regarding the Status of Their Forces and according to the practices in the other NATO countries, be issued by the authorities of the Government of Turkey in conformity with the spirit and the letter of the Agreement between the Parties of the North Atlantic Treaty regarding the Status of Their Forces, and according to the practices in the other NATO countries.

ARTICLE 2

In implementation of Article 1, the following procedures will apply:

(A) On being informed that the accused is entitled to benefit from the provisions of the aforesaid Agreement, the public prosecutor of the locality where the offense has been committed will inquire of the Turkish General Staff, through the Ministry of Justice, whether the offense arose out of any act or omission done in the performance of official duty. The Turkish General Staff will then inquire of the concerned authorities of the Sending State about this matter. (If the Sending State is the United States, the concerned authority will be the highest ranking commanding officer of the U.S. Forces in Turkey.)

(B) If after investigation, the concerned authorities of the Sending State deem that a certificate attesting that the alleged offense arose out of any act or omission done in the performance of official duty should be issued in conformity with the provisions of Article l above, one copy of that certificate will be forwarded immediately to the Turkish General Staff and another to the commander of the unit to which the accused is assigned or attached.

(C) If accepted by the Turkish General Staff, the duty certificate will be sent through the Ministry of Justice to the public prosecutor of the locality where the offense has been committed. On receipt of the duty certificate from the Ministry of Justice, the action against the accused will be suspended by the competent judicial authorities and the file of the accused will be sent to the Turkish General Staff.

Figure P-1. Ministry of Foreign Affairs Note No. 6302/5399

Ministry of Foreign Affairs
Note No. 6302/5399

The Turkish General Staff will then, except in cases covered by paragraphs (D) and (E), forward the file to the concerned authorities of the Sending State. The case against the accused will then be dismissed. The concerned authorities of the Sending State will officially inform the Turkish General Staff of the outcome of the case.

(D) If not found acceptable by the Turkish General Staff and withdrawn by the concerned authorities of the Sending State, the Turkish General Staff will, through the Ministry of Justice, so notify the public prosecutor of the locality where the offense has been committed. The public prosecutor of the said locality will, through the Ministry of Justice, inform the Turkish General Staff of the outcome of the case. The latter will in turn send this information to the concerned authorities of the Sending State.

(E) If the duty certificate is not found acceptable by the Turkish General Staff and not withdrawn by the concerned authorities of the Sending State, the Ministry of Foreign Affairs will be informed with a view to reaching an agreement through negotiations with the diplomatic representative of the Sending State with the participation of the Turkish General Staff and a military representative of the Sending State, and in consultation with other concerned Turkish authorities. In the meantime, the duty certificates as well as the legal action against the accused will be suspended without affecting the availability of the accused for trial by Turkish courts if the duty certificate is not found acceptable. The outcome of these negotiations, such as the acceptance of' the duty certificate or its withdrawal by the concerned military authorities of the Sending State, will be communicated to the public prosecutor of the locality where the offense has been committed in the same manner as foreseen in paragraphs (C) and (D) for appropriate actions.

I have the honor to propose that, if the foregoing is acceptable to the Government of Turkey, this note and Your Excellency's reply concurring therein will constitute an agreement between our two Governments that will enter into force on the date of Your Excellency's reply. It is the understanding of my Government that the agreement concerning duty certificates included in the aide-memoir that were exchanged on 28 July 1956 will be considered terminated on that same date.

Accept, "Excellency, the renewed assurances of my highest consideration."

In reply, I have the honor to inform you that my Government is in agreement with the foregoing.

Accept, Excellency, the assurances of my highest consideration.

/s/ I. S. CAGLAYANGIL
Ihsan Sabri Caglayangil
Minister of Foreign Affairs

Figure P-1. Ministry of Foreign Affairs Note No. 6302/5399—Continued

Ankara, 24 September 1968

Ministry of Foreign Affairs
Note No. 6302/S400

Excellency:

I have the honor to acknowledge the receipt of your note of 24 September 1968, which reads as follows:

"Excellency:

I have the honor to refer to my note to you of this date, referring to discussion between representatives of our two Governments, concerning duty certificates in implementation of Article VII, paragraph 3(a)(ii), of the Agreement between the Parties to the North Atlantic Treaty regarding the Status of Their Forces and wish to propose the following agreed minute:

The U.S. negotiators have indicated that the practices in other NATO countries are to accept the U.S.-issued duty certificate with provision for discussion of exceptional cases.

The Turkish negotiators have indicated that the phrase *put into effect* corresponds to *islem gorecektir* in Turkish.

In the interest of fulfilling the provisions of the NATO SOFA, which require that an accused person of the Sending State will receive a prompt and speedy trial, and in the interest of the proper and effective administration of justice, the Government of Turkey will permit the Sending State to take appropriate action under its own laws in the case at hand when negotiations have not resulted in an agreement within 2 months. The Turkish General Staff will forward the duty certificate through the Ministry of Justice to the public prosecutor concerned. The case against the accused will then be dismissed. The file of the accused will be forwarded to the concerned authorities of the Sending State. The Government of Turkey will take the necessary steps with the appropriate authorities to give effect to this provision. The issues on which the agreement had been reached will continue to be the subject of discussion with a view to achieving a resolution to be applied in future cases involving similar issues.

I would appreciate being informed of the concurrence of Your Excellency's Government in the foregoing agreed minute.

Accept, Excellency, the renewed assurances of my highest consideration."

In reply, I have the honor to inform you that my Government is in concurrence with the foregoing agreed minute.

Acceptance, Excellency, the assurances of my highest consideration.

/s/ I.S. CAGLAYANGIL
Ihsan Sabri Caglayangil
Ministry of Foreign Affairs

Figure P-2. Ministry of Foreign Affairs Note No. 6302/5400

OFFICIAL DUTY STATUS

1. Applicable Principles.

a. In general, an act or omission is done "in the performance of official duty" if it is done in response to competent authority or directive, whether expressed or implied, and is reasonably related to the performance of required or permissive official functions of U.S. Forces personnel. Competent authority or directive includes but is not limited to statute, regulation, the order of a superior, or military use commensurate with the specific factual situation and the circumstances involved.

b. Most requests for determinations of official duty status arise from offenses involving the operation of motor vehicles.

(1) Travel to and from work in either a Government or privately owned vehicle (POV) is considered in the performance of official duty as long as no material deviations are made from a direct and normally traveled route.

(2) Matters to be considered with regard to a material deviation may include the intent of the driver when the deviation from a direct route occurred; where the deviation took the driver, in a geographic sense, from a direct route; the time elapsed during the deviation; and where the accident occurred.

(3) The use of POVs for any military duty, including travel incident to temporary duty, is likewise considered in the performance of official duty. Since it is often difficult to determine when a POV is being driven on official business and when it is being driven on a personal mission, it is imperative the investigating officer conduct an extensive and detailed investigation. The investigation should affirmatively establish the reason why a POV rather than a Government vehicle was used.

(4) When U.S. Government vehicles are made available to groups of military personnel for recreational purposes, operators of the Government vehicles may be considered acting in the performance of official duties. For the purposes of strengthening requests for determinations of official duty status, commanders, when planning and authorizing recreational trips, should place the drivers on duty through the use of written memorandums designating them as drivers for the trips.

2. Investigating Officers. Before beginning investigations, investigating officers should seek the advice of servicing staff judge advocates. It is important that investigating officers understand the concept of official duty status. Their thoroughness in securing supporting documentation and preparing reports may affect the substantive rights of U.S. military personnel in Turkey.

3. Evidence. Investigating officers should obtain all material evidence bearing on the incident and the question of whether the subjects were in the performance of official duties. Such evidence should include, whenever possible, sworn statements of witnesses, military and civilian police reports, and other items such as photographs and relevant local directives.

Figure P-3. Official Duty Status

a. Witnesses who should be interviewed and whose sworn statements should be taken include the following:

(1) The authority directing the activity.

(2) Persons who were present at the time of the incident. (Extreme tact must be exercised when dealing with Turkish and third-country nationals so as to preclude allegations of misconduct on the part of investigating officers.)

(3) The subjects (if they consent to giving statements after being advised of their rights under Article 31 of the Uniform Code of Military Justice and their right to counsel).

b. Translations of Turkish-language police reports and other Turkish language documents should be obtained for submission with the report of investigation.

4. Reports of Investigation. Reports of investigation should be in substantial conformity with the model in appendix D and should include—

a. Concise factual accounts of the facts and circumstances of the incidents, including the following:

(1) The time, place, nature, and purpose of the acts or omissions.

(2) The circumstances of the incidents, including the nature and extent of personal injuries and property damage as well as the status of any claims that may have been filed.

(3) The sobriety of the subjects, including the degree of intoxication (if intoxicated) and the results of any sobriety or blood alcohol tests administered.

(4) The source and substance of any relevant orders or instructions.

(5) A detailed statement as to why a POV was being used (if a POV was involved).

b. The date that the subject is scheduled to rotate from his or her current overseas assignment. The servicing staff judge advocate will advise the ODC Turkey/TJA of any changes in this date.

c. An analysis of the facts as they relate to duty status.

d. A finding that the subject was or was not in the performance of official duty.

e. Maps, diagrams, and other items prepared by the investigating officer that graphically present the facts and circumstances of the incident when such items assist in comprehending those facts and circumstances.

5. Staff Judge Advocate. The servicing staff judge advocate will be responsible for providing legal support to investigating officers and for reviewing reports of investigation for legal sufficiency before the report is submitted to the local commander.

Figure P-3. Official Duty Status—Continued

MEMORANDUM FOR COMMANDER, DETACHMENT 1, 39 ABW

SUBJECT: Legal Review—Official Duty Case: Captain Doe

1. Enclosed is an investigation into the duty status of Captain William E. Doe, Detachment 1, 39 ABW, who, on 13 June 2007, at approximately 1830, was involved in a vehicle accident in Ankara, Turkey, while operating his POV on Abi Boulevard.

2. The investigation establishes that on the day in question, Captain Doe reported to his place of duty at 0800, as directed by his commander, to participate in the preparation of a briefing scheduled for visiting officials. At approximately 1815 he completed his performance of duty and departed for his place of residence. On his way to his residence, he deviated three blocks from the most direct route to purchase groceries. The duration of this deviation was approximately 3 minutes. After returning to the most direct route to his place of residence, an oncoming taxi crossed over the centerline and collided with Captain Doe's vehicle. There were no personal injuries; however, Captain Doe's vehicle sustained damage estimated at $400 and the taxi sustained damages estimated at $250. Turkish authorities assessed half of the fault against Captain Doe.

3. Because of security concerns, Captain Doe was not in uniform at the time of the accident. Neither alcohol nor drugs were a factor in the accident.

4. In my opinion, the facts established by the investigating officer support his conclusion that Captain Doe was in the performance of official duties at the time of the alleged offense. The time and distance of the deviation were not sufficient to categorize the deviation as material, and it was clear that Captain Doe had completed the deviation and had returned to the most direct route at the time of the accident. Accordingly, I recommend a request for a duty certificate be initiated.

Enclosure
Report of investigation w/attachment

LIBERTINE JUSTICE
Captain, USAF
Staff Judge Advocate

Figure P-4. Sample Investigation

MEMORANDUM FOR COMMANDER, DETACHMENT 1, 39 ABW

SUBJECT: Investigation for Determination of Official Duty Status (Captain William E. Doe)

1. Facts and Circumstances. Captain William E. Doe, USAF, FV00000000, Detachment 1, 39 ABW, on 13 June 2007 at 1830, while proceeding in his POV from his place of duty to his residence, was involved in an automobile accident with a taxi on Abi Boulevard, Ankara, Turkey. The circumstances that led up to this accident are as follows:

a. On Friday, 11 June 2007, Captain Doe's Commander, Major George P. Black, ordered Captain Doe to report to his place of duty on Sunday, 13 June 2007, to participate in the preparation of a briefing. Captain Doe was in civilian clothes for security reasons (encl 3). The normal duty hours for Captain Doe are 0730 to 1645, Monday through Friday (encl 1).

b. Captain Doe obeyed that order and remained at his place of duty until 1815 when he departed for his residence in his POV.

c. On the way to his residence, Captain Doe briefly departed from the most direct route (Abi Boulevard) to purchase groceries. This departure took him approximately three blocks north off the most direct route and was approximately 3 minutes in duration. On completion of his purchase, he returned to Abi Boulevard and proceeded toward his residence.

d. After proceeding about two blocks on Abi Boulevard, an oncoming taxi crossed over the solid centerline and collided with Captain Doe's vehicle.

e. Damage to Captain Doe's vehicle was $400. The taxi sustained damage of $250. There was no other property damage. There were no personal injuries.

f. Captain Doe was not in uniform because of security concerns and had not consumed alcoholic beverages before the accident. The judicial doctor administered a blood test, which proved negative.

g. Captain Doe is scheduled to rotate from his present assignment in November 2008.

2. Analysis. Although Captain Doe was not at his place of duty during normal duty hours, he was present as a result of a lawful order of his commander. Travel by military personnel in a POV from place of duty to place of residence is considered to be in the performance of official duty. It is true Captain Doe departed from the direct route. However, it was merely three blocks and he was back on the direct route when the accident occurred. I do not think the departure was a material deviation.

3. Findings. After review of all the evidence and applicable directives, I conclude Captain William E. Doe was in the performance of official duty when the accident in question occurred.

3 Encls
1. Statement - Captain Doe
2. Statement - Major Black
3. Statement - Mehmet Zuri

PETER PAUL
Captain, USAF
Investigating Officer

Figure P-4. Sample Investigation—Continued

I, WILLIAM E. DOE, Captain, USAF, FV00000000, Detachment 1, 39 ABW, was, at 1830 on 13 June 2007, involved in an automobile accident while proceeding from my place of duty to my residence in Ankara, Turkey.

I departed the headquarters building at 1815 and proceeded down Abi Boulevard, which is the normal direct route I travel to go home. I live 2 miles from the headquarters building. About halfway home and three blocks north on Abi Boulevard is a local grocery store. On the way home that night, I drove off Abi Boulevard and purchased a few groceries and then got back in my car and drove back onto Abi Boulevard. This errand took me about 3 minutes. I hadn't gone more than two blocks when an oncoming taxi, which had crossed a solid white line, struck my vehicle head-on. The damage to my car was $400. The damage to the taxi was about $250. The driver was the only occupant of the taxi. I was alone in my car. There were no personal injuries. I had been ordered to work that day by my Commander, Major Black, to help prepare a briefing. I had not been drinking before the accident. My normal duty hours are 0730 to 1645 daily, Monday through Friday.

WILLIAM E. DOE
Captain, USAF

SWORN AND SUBSCRIBED BEFORE ME ON THIS 16TH DAY OF JUNE 2007.

T. R. AMSTAG
Captain, USAF
Assistant Staff Judge Advocate

Encl 1

Figure P-4. Sample Investigation—Continued

STATEMENT

I, George P. Black, Major, USAF, Branch Chief, Detachment 1, 39 ABW, did, on 11 June 2007, order one of my subordinates, Captain William E. Doe, to report to the headquarters building on Sunday, 13 June 2007, at 0800 to participate in the preparation of a briefing for visiting dignitaries. He was not in uniform due to the terrorist threat to U.S. military personnel in the Ankara area. Captain Doe reported as ordered and departed the headquarters building about 1815 on 13 June 2007.

GEORGE P. BLACK
Major, USAF

SWORN AND SUBSCRIBED BEFORE ME THIS 17TH DAY OF JUNE 2007.

JOHN ZINZSKI
1LT, USA
Administrative Officer

Encl 2

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APPENDIX Q
COUNTRY REPRESENTATIVE INSTRUCTION—UNITED KINGDOM

3 AF-UK Legal Services, 25 June 2007

UNITED STATES COUNTRY REPRESENTATIVE INSTRUCTION FOR THE UNITED KINGDOM

Q-1. BACKGROUND

a. Under USEUCOM Directive 45-3, the Commander, USAFE, is assigned responsibility as the designated commanding officer (DCO) for the United Kingdom (UK) to implement the provisions of the Joint Service Regulation concerning the protection of the rights of U.S. personnel who may be subject to UK criminal law. Pursuant to those directives and AE Regulation 550-50/CNE-C6F Instruction 5820.8K/USAFE Instruction 51-706, paragraph 7, the 3 AF/CV in the UK has been appointed as the U.S. country representative (USCR) for the UK and acts on behalf of the Commander, USAFE, in implementing the Joint Service Regulation and as the POC with UK authorities and the U.S. diplomatic mission in all matters relating to the exercise of UK criminal jurisdiction over all U.S. personnel.

b. The Commander, Naval Activities, UK (COMNAVACTUK), is the liaison agent with respect to USMC and USN personnel for the COMUSNAVEUR.

c. Within this framework, commanders, staff judge advocates (SJAs), and legal officers are delegated authority to deal directly with local UK law-enforcement agencies and establish local procedures to simplify or expedite the handling of foreign criminal jurisdiction (FCJ) matters as long as these procedures comply with the spirit of this instruction.

Q-2. PURPOSE

The publications referenced in paragraph Q-1a establish the policy and procedures of the USCR for providing the maximum protection of the rights of all U.S. personnel under the NATO Status of Forces Agreement (SOFA) and for establishing a uniform reporting system in matters involving the exercise of UK criminal jurisdiction over U.S. personnel. While 3 AF/CV in the UK is appointed as the USCR, the administration of the FCJ program is conducted by the 3 AF-UK Legal Services on behalf of the USCR. The 3 AF-UK Legal Services is therefore the appropriate POC for most FCJ matters.

Q-3. RESPONSIBILITY OF COMMANDING OFFICERS

a. Commanding officers will use orientation periods, commander's calls, formations, and all other appropriate means to notify U.S. personnel of their rights and obligations in the UK and of their susceptibility to UK criminal law. When possible, judge advocates should help plan and present these programs.

b. Commanding officers will establish, with the assistance of their SJAs or legal officers, procedures with local UK law-enforcement authorities so that all UK criminal proceedings involving U.S. personnel are promptly reported to the appropriate U.S. military authorities.

c. Commanding officers will ensure that the USCR (3 AF-UK Legal Services) and, in the case of USMC and USN personnel, the Navy Liaison Agent (COMNAVACTUK SJA), are made action or information addressees, as appropriate, on all reports required by chapter 4 of the Joint Service Regulation. For Army personnel, an information copy of all reports will be given to HQ USAREUR/7A (AEAJA-IL). Paragraph Q-15 provides specific requirements on the numbers of copies and addressees.

d. It is an essential command responsibility to keep the USCR fully advised of all matters concerning the exercise of FCJ over U.S. personnel. In all cases when U.S. personnel are confined or released from confinement by UK authorities, the USCR will be notified of the facts by telephone as soon as possible (3 AF-UK Legal Services, Royal Air Force Base Mildenhall, DSN 238-3278/3531/3533).

e. Army and Air Force commands will deal directly with the USCR (3 AF-UK Legal Services). USMC and USN commands with attorneys assigned may deal directly with the USCR (keeping the COMUSNAVEUR and the COMNAVACTUK advised). Other USMC and USN commands should coordinate through the COMNAVACTUK.

Q-4. JURISDICTION OVER OFFENSES

a. Article VII of the North Atlantic Treaty Regarding the Status of their Forces (NATO SOFA) determines whether UK or U.S. authorities have jurisdiction over offenses (and, in concurrent jurisdiction cases, who has the primary right to exercise jurisdiction). U.S. military authorities have exclusive jurisdiction over persons subject to U.S. military law for offenses punishable by U.S. law but not by British law. UK authorities have exclusive jurisdiction over offenses punishable by British law but not by U.S. law. In all other cases, the United States and the UK have concurrent jurisdiction.

b. U.S. civilians are not subject to U.S. military law during times of peace. For this reason, offenses committed by U.S. civilian employees and dependents in the UK (with the exception of extraterritorial offenses under Title 18 and offenses that fall under the Military Extraterritorial Jurisdiction Act) are within the exclusive jurisdiction of British authorities. Civilian employees and dependents are provided protection by the NATO SOFA, and U.S. military authorities will protect their rights as required and permitted by DOD Directive 5525.1 and the Joint Service Regulation.

c. In cases where the United States and the UK have concurrent jurisdiction, Article VII of the NATO SOFA provides that the United States has the primary right to exercise that jurisdiction (to try the military offender for the alleged offense) in cases where the offense is solely against U.S. security, or against the person of a member of the force (a military member), a member of the civilian component, or a dependent of either. The United States will also have the primary right to exercise jurisdiction when the offense is against the property of the United States, or the property of a member of the force, civilian component, or a dependent of either. Finally, the United States will have the primary right to exercise jurisdiction when the offense arises out of an act or omission done in the performance of official duty. In all other cases of concurrent jurisdiction, the British authorities have the primary right to exercise that jurisdiction.

d. It is the policy of the United States that U.S. authorities will—

(1) Exercise their jurisdiction in every case where they have the primary right and when it is legally possible to do so. In any case where British authorities do not recognize and accede to assertion of the U.S. primary right to exercise jurisdiction, the USCR (3 AF-UK Legal Services) must be notified immediately for guidance and appropriate action.

(2) Maximize U.S. jurisdiction by securing waivers (either formally or informally) from the British authorities of their primary right to exercise jurisdiction wherever possible.

(3) Request that the British authorities withhold action in cases where they have exclusive jurisdiction when it appears that the commander concerned can take suitable corrective action and it appears otherwise possible under all the circumstances.

Q-5. WAIVERS OF JURISDICTION

a. When the United States has the primary right to exercise jurisdiction, a waiver will not be granted without the approval of higher authority in accordance with paragraph 1-7c of the Joint Service Regulation. All requests for such waivers in the UK will be referred to the USCR (3 AF-UK Legal Services) for advice and guidance.

b. When the UK has the primary right to exercise jurisdiction, British authorities rarely waive that right. In cases where the UK does waive its right to exercise jurisdiction, the Director of Public Prosecutions in England and the Lord Advocate in Scotland are authorized to issue formal waivers of jurisdiction. In addition, formal waivers of jurisdiction may be provided by the Chief, Crown Prosecutor, of the Crown Prosecution Service for the area involved.

(1) It has been informally agreed with local constabularies near U.S. bases in England and with local procurators fiscal in Scotland that UK authorities will not prosecute drug-use offenses occurring on U.S. installations. These cases should be handled by U.S. authorities whenever possible.

(2) British authorities (usually the police) occasionally indicate that they do not wish to deal with a case. These cases also should be handled by U.S. authorities, if possible. When dealing with British police in these matters, the term *waiver of jurisdiction* should be avoided. Negotiations should be informal and refer to *handing over* the case to U.S. authorities. In serious cases where a waiver of British jurisdiction is of particular importance to the United States, and local authorities are reluctant to hand over the case, the full facts will be reported to the USCR (3 AF-UK Legal Services). The USCR will take up the matter directly with the Director of Public Prosecutions, Lord Advocate, or Chief, Crown Prosecutor, as appropriate, and advise the command concerned.

c. All questions involving waivers of jurisdiction must be referred in the first instance to the servicing SJA or legal officer of the local command concerned.

Q-6. THE VISITING FORCES ACT OF 1952

The basic agreements in the NATO SOFA concerning the exercise of criminal jurisdiction over U.S. personnel in the UK have been enacted into British municipal law by the Visiting Forces Act (VFA) of 1952.

a. British police and judicial officers will usually be unfamiliar with the NATO SOFA but will be aware of the VFA. All SJAs and legal officers should have the VFA available and should use the precise language of, and cite applicable references from, the VFA in addition to the NATO SOFA when corresponding with British authorities. This is particularly important to cases where the United States is asserting the primary right to exercise jurisdiction, when providing certification that an alleged offense arose in the course of official duty, and when providing certification that a named and described person is a deserter or absentee without leave from the U.S. Forces.

b. The VFA conflicts with the terms of the NATO SOFA in some respects and there are cases when a literal reading of the VFA would give the primary right to exercise jurisdiction to UK authorities (usually with cases involving UK “dependent” victims). Any case in which British authorities insist on an interpretation of the VFA that appears to contravene the plain language of the NATO SOFA should be referred to the USCR (3 AF-UK Legal Services) for advice and guidance.

Q-7. DUTY STATUS CERTIFICATES IN MOTOR VEHICLE CASES

a. The United States has the primary right to exercise jurisdiction over members of the U.S. Forces in the case of offenses arising during the performance of duty. British authorities usually agree that traffic and motor vehicle offenses committed by U.S. military personnel proceeding directly to or from their places of duty arise during the performance of duty. On receipt of certification by an appropriate authority (from the SJA legal officer of the command concerned) stated in the language of section 11(4) of the VFA, British authorities will concede that U.S. authorities have the primary right to deal with the case. In some areas, local police officials will accept verbal notification.

CAVEAT: If the alleged offense is not punishable under U.S. law, the U.S. authorities have no jurisdiction and the British authorities may not accede. Usually, however, administrative action of a disciplinary nature will satisfy British authorities that the offense is punishable under U.S. law. This is a difficult issue and such cases should be handled with care depending on local practice. The USCR (3 AF-UK Legal Services) should be contacted for advice in these cases.

b. It is the policy of the USCR that, with respect to cases of duty performance involving motor vehicles, the following rules be followed:

(1) Duty certificates should be issued when the following applies:

(a) The Servicemember was driving an official vehicle within the scope of his or her employment and no material deviation is evident.

(b) The Servicemember was driving a privately owned vehicle (POV) to or from his or her place of duty from or to his or her residence and the alleged offense was mainly attributable to his or her need to arrive at either place.

(2) Duty certificates should not be issued for the following:

(a) POV cases where the alleged violation is due to failure to observe prerequisite conditions for driving, such as driving without a drivers license or failure to have a current vehicle safety test ("MOT" certificate) or insurance.

(b) When the alleged offense is due to failure to have a POV in safe or roadworthy condition.

(c) POV cases where the Servicemember was originally stopped by civil police for a driving violation that leads to the discovery that he or she has not complied with prerequisite conditions or that his or her vehicle is unsafe or not roadworthy so that he or she is charged with the two types of offenses.

(3) In all cases in which duty certificates are not issued, no suggestion must be made that U.S. authorities are waiving the primary right to exercise jurisdiction.

(a) There usually will be no need to correspond with UK officials. If there is a need to correspond, the appropriate British authority will be notified only that the offense has not arisen out of the performance of duty and that the command does not intend to deal with the case under the laws of the United States.

(b) In cases where a duty certificate has been issued, the appropriate command will take immediate action to properly dispose of the alleged offense. At the conclusion, the British authorities should be notified that appropriate disciplinary action has been taken unless, as in the London area, the local practice is to notify them only on request.

c. Duty certificates will usually be issued by the USCR (3 AF-UK Legal Services) and will include the information in section 11 of the VFA. Figure Q-1 is an example of an official duty certificate.

O F F I C I A L D U T Y C E R T I F I C A T E

This is to certify that (*grade, name, unit, location, civilian address, and military postal address*) was in an official duty status under the provisions of Article VII, paragraph 3(a)(ii), of the NATO Status of Forces Agreement; and section 11(4) of the Visiting Forces Act 1952; at the time of the accident in which (*he* or *she*) was involved ((*location/description of accident*) on (*date*)). The alleged offense arose out of or in the course of (*his* or *her*) duty and will be dealt with by U.S. military authorities under U.S. law.

FOR THE COUNTRY REPRESENTATIVE:

(3 AF-UK Legal Services)

cf:
(*local unit SJA*)
USAFE/SJA

Figure Q-1. Sample Official Duty Certificate

Q-8. SERVICE OF PROCESS

The service of UK criminal process will be effected on U.S. military installations in accordance with the Joint Service Regulation. In the case of USAF personnel, 16 Air Force Instruction (AFI) 51-711 (which will soon be republished as a 3 AF-UK AFI) applies. SJAs and legal officers should be aware that U.S. personnel are sometimes arrested for offenses and charged by the police at that time. Unless there is close liaison with both the local police and U.S. investigators (Office of Special Investigations and the Naval Criminal Investigative Service), some of these cases may go unnoted. It is therefore important to closely liaise with UK police officials and continue to remind them of their obligations to report cases involving the arrest of U.S. personnel in accordance with Article VII, paragraph 5(b), of the NATO SOFA.

Q-9. CUSTOMS AND REVENUE OFFENSES

a. Local UK authorities have no power to waive or hand over customs and revenue cases informally. For this reason, applications for waivers of UK jurisdiction will be made only by the USCR (3 AF-UK Legal Services) pursuant to the recommendations of the commander concerned.

(1) SJAs and legal officers should take necessary steps to ensure that local police or revenue and customs process servers serve criminal process on U.S. military installations at the office of the servicing SJA or legal office instead of by mail. The procedures in 16 AFI 51-711 should be followed to the extent possible.

(2) Her Majesty's Revenue and Customs (HMRC) has agreed to send copies of the notices of intent to prosecute by mail to the local SJA or legal officer and to provide the service of summons at the office of the servicing SJA or legal officer. At that time, the servicing SJA or legal officer will give the date eligible for return from overseas (DEROS) or rotation date of the accused to the HMRC.

b. The HMRC may "compound" certain offenses by dealing with them as administrative matters instead of through criminal charges. This procedure (which is usually at the request of the accused) involves an out-of-court settlement and payment of an administrative penalty. Individuals who are accused of committing customs offenses should be informed of this procedure and the consequences. The HMRC has agreed to notify the appropriate legal office of these cases. The SJA, legal officer, or commander concerned should advise the HMRC of the member's rotation or discharge date and should monitor the case so that the HMRC can be notified if it appears that the member will leave the UK before the penalty has been paid.

Q-10. ROTATION AND REASSIGNMENT OF U.S. PERSONNEL SUBJECT TO UK CRIMINAL JURISDICTION

a. When U.S. authorities have been notified that U.S. personnel are under investigation pending criminal charges (including customs offenses) by UK authorities, or when U.S. personnel have been served with criminal process, these personnel will be placed on "international hold" status to prevent their inadvertent departure from the UK pending the completion of court proceedings. Applicable Service directives will be followed. In the case of USAF personnel, AFI 51-703 applies. Special procedures apply to cases of personnel scheduled for return to the continental United States for discharge. The USCR (3 AF-UK Legal Services) should be consulted for guidance and advice in these cases.

b. As soon as a member, dependent, or civilian is identified as being under investigation for a serious offense in the UK (as defined in AR 27-50/SECNAVINST 5820.4G/AFJI 51-706, paragraph 1-8), the following procedures should be followed:

(1) Ensure that the DEROS or separation date of the individual (if a member of a military service) is not imminent. If the member is about to separate, work with the member's unit to see if the individual will voluntarily extend past his or her separation date. If the individual refuses, inform the police authorities handling the case of the date the individual is expected to leave military service and will no longer be subject to military control. In either event, the member must be placed on international hold until his or her separation date.

(2) The local legal office should ensure that the commander of the individual's unit places the individual on international hold by issuing a letter to that effect. The commander will serve this letter to the individual and require the individual to acknowledge and sign the order. The legal office will then correspond with the outbound assignments office and request that the individual be placed on international hold. The individual's records will be annotated with a "Code 13" to indicate that he or she is on hold.

(3) If the individual is a dependent or member of the civilian component, the legal office will draft a letter for the commander or supervisor to send to the individual informing that person that he or she is being placed on international hold and may not leave the country at U.S. Government expense or be reassigned (if a civilian employee) until he or she is released from international hold. In cases involving dependents of military sponsors, the sponsor must sign a letter acknowledging that he or she is aware of the international hold. In cases involving dependents of civilian employees, the employee will also sign. A copy of this letter will be sent to the military personnel flight (MPF) (or appropriate personnel office).

(4) If the individual is a minor, the international hold letter will be served on the sponsor.

(5) After the court action has been concluded or the individual is released from further criminal proceedings, legal offices should correspond with the MPF and request the individual's removal from international hold. Individuals will not be kept on international hold in order to complete their sentence. The courts or the applicable probation service should be notified if the person is due to leave the country before completing his or her sentence (such as community service). The courts may then consider whether an amended order or further action is necessary. Commanders should try to keep the individual in the country to complete his or her sentence if possible. In all cases where a Servicemember is scheduled to depart the country before completing his or her sentence, 3 AF-UK Legal Services should be contacted for advice and guidance.

c. In general, personnel rotation, reassignment, or discharge will not be delayed in order to give an individual time to pay a fine imposed by a British court (or an administrative penalty). In addition, no commitment will be made to UK authorities that these persons will be kept in the UK to permit such payment. When appropriate, local UK authorities should be advised that the accused member will be departing the UK on a certain date. Any case in which difficulty is encountered because of a convicted person's imminent departure must be reported to 3 AF-UK Legal Services or the COMNAVACTUK/SJA, as appropriate.

d. Figures Q-2 and Q-3 are examples of international hold letters.

M I L I T A R Y I N T E R N A T I O N A L H O L D L E T T E R

MEMORANDUM FOR (*Member's Grade and Name*)

SUBJECT: International Hold

1. You have been arrested by the British Police and suspected of committing (*list offenses*). Accordingly, there is criminal action now pending against you. In accordance with Air Force Instruction 51-703, paragraph 4.2.1, you are being placed on international hold. You are hereby ordered not to depart the host country (United Kingdom) until all criminal proceedings against you have been concluded and you are released from international hold. You are required to acknowledge in writing the restrictions being placed on your travel.

2. Please sign and return the following statement.

Commander's signature block

I, (*member's name*), acknowledge the order issued to me, and that I will not depart the host country until all pending criminal proceedings against me have been concluded and I am released from international hold.

ACKNOWLEDGED: (____*date*____) at (_____*location*_____).

Member's signature block
Social security number

Figure Q-2. Military International Hold Letter

C I V I L I A N (*or* D E P E N D E N T, *as applicable*)
I N T E R N A T I O N A L H O L D L E T T E R

Name
Unit or Civilian Address

Dear (*Civilian's Name*):

You have been arrested by the British Police and suspected of committing (*list offenses*). As a result, you may face criminal prosecution. In accordance with Air Force Instruction 51-703, paragraphs 4.2.2 and 4.2.3, you are being placed on international hold.

[As applicable]:

As a civilian employee, you will not be transferred, reassigned, or allowed to use any type of U.S.-funded transportation to leave the host country (United Kingdom) until all criminal proceedings against you have been concluded and you have been properly released from international hold.

- - - -

Q-11. BAIL

a. In England, cash bail is not posted. Bail consists of a personal promise by accused personnel that if they fail to appear to answer to their bail, they will personally pay a certain sum to the court. In addition, sureties may be required. These are other persons who will promise to personally pay a certain sum to the court if the accused does not appear. Sureties must be private individuals, not corporations, and contracts to indemnify sureties are illegal. Under the Bail Act, an accused is entitled to bail unless good cause is shown why bail should be denied. Grounds to deny bail include belief that a defendant would do one of the following:

(1) Fail to surrender to custody.

(2) Commit an offense while on bail.

(3) Interfere with witnesses or otherwise obstruct the course of justice.

b. Furthermore, a defendant may not be granted bail if the court believes that the defendant should be kept in custody for his or her own protection; he or she is in custody already for other reasons; there was not enough time to investigate the circumstances to enable a decision to be made as to bail; or the defendant has been arrested or convicted of a breach of bail offense. Further conditions may be attached to a grant of bail such as curfew or a requirement that the accused report at set times to a police station, be required to live at a specific address, or remain within a specific area.

c. Courts are frequently more willing to grant bail in circumstances when an accused will be released to U.S. military custody or where military restrictions will be placed on the accused while on bail. If a court requires a surety, it may agree to accept a commissioned officer as the surety. This officer is personally responsible to the court. If provision of bail by the U.S. Government is properly approved in accordance with the applicable directives, arrangements can be made to provide the necessary sum to the officer acting as surety in case the accused fails to appear. In Scotland, cash bail is posted. The USCR (3 AF-UK Legal Services) has authority to approve the provision of bail in the case of USAF personnel. The COMNAVACTUK (SJA), APO AE 09510, has authority to approve the provision of bail for USMC and USN personnel. The Commanding General, 21st Theater Sustainment Command (21st TSC), APO AE 09325 (message address: CDR 21ST TSC CMD KAISERSLAUTERN GERMANY //AERJA-BD//), has authority to approve the provision of bail for Army personnel.

Q-12. COUNSEL FEES

The Commanding General, 21st TSC, in the case of Army personnel; the COMNAVACTUK UK (SJA) in the case of USMC and USN personnel; and the USCR (3 AF-UK Legal Services) in the case of USAF personnel have the authority to approve the payment of counsel fees and other necessary and reasonable expenses incident to representation in civil and criminal proceedings in the UK. In addition, all U.S. personnel in the UK have the right to apply for various types of legal aid in the form of “advice and assistance, advocacy assistance, and representation for criminal offenses.” In Scotland, the legal aid scheme is administered by the Scottish Legal Aid Board. Applications will be considered under the same terms as those applicable to UK citizens. Legal representation will be granted in most criminal cases when the solicitor is contracted with the Legal Services Commission and the court decides that it is in the interest of justice that the individual is legally represented. If the person receives representation in Crown Court, the judge may require a contribution to pay for the fees. The following procedures will be followed in respect to requests for provision of counsel fees in the absence of legal aid or advice provided by UK authorities:

a. Requests for counsel fees must be submitted in writing by the accused to his or her immediate commander, who will refer the request to the servicing SJA. Requests must include the following information:

(1) Name, grade, social security number, and organization of the accused.

(2) A summary of criminal charges of the complaint, including a citation of pertinent sections of local law and a brief statement of the substance of the allegations against the accused.

(3) In criminal cases, the maximum punishment if the accused is convicted.

(4) Factual justification for approval within the established criteria under paragraph 2-4 of the Joint Service Regulation.

(5) The expected date of trial or hearing and the name and location of the court or administrative agency that will consider the case.

(6) The name, address, and qualifications of selected counsel.

(7) The scope and extent of anticipated services to be rendered by the selected counsel.

(8) The estimated amount of the fee and other expenses and a comparison of the proposed fee with fees paid in comparable cases by local national civilians, including a statement of hourly and other charging rates applied by the selected counsel.

(9) If British legal aid has been refused, the reasons for refusal.

(10) If British legal aid has not been applied for, a statement of the reasons for not applying.

(11) If British legal aid has been granted subject to a contribution, the details of the calculation of the contribution.

(12) If appropriate and reasonably available, a statement of insurance coverage indicating the type and amount of coverage, name and address of the insured, and availability of counsel service under the insurance contract.

b. The SJA will make recommendations and consult with the commander on requests for counsel fees and other expenses. If the SJA believes that the accused's request does not fall within the established criteria for the provision of counsel fees, he or she will advise the installation commander, who will forward the request with his or her recommendation to the USCR (3 AF-UK Legal Services); Commanding General, 21st TSC; or COMNAVACTUK UK (SJA); as appropriate. If the SJA determines that the accused's request for counsel fees falls within the established criteria, he or she will—

(1) Prepare a request for purchase (Air Force Form 9 for USAF activities) summarizing the proposed procurement of services of legal counsel. The purchase request must cite section 1037, Title 10, United States Code; and the applicable directives as authority.

(2) In consultation with the accused, decide on a counsel who is satisfactory to the accused. The military legal advisor may be used in this decision. Then contact the counsel to negotiate an agreement for the provision of his or her services and ascertain the total estimated costs for the service to be provided. While these costs should be estimated liberally to avoid overruns, due and proper regard should be made to the charging rates submitted in accordance with a(8) above.

(3) Obtain a citation and certificate of funds over the signature of the local accounting and finance officer in the space provided on the procurement request.

(4) Obtain the approval of the appropriate commander in the space provided on the procurement request. The appropriate commander is usually the commander of the base where the accused is stationed.

(5) Arrange for the execution of the counsel-fee agreement and its schedule. SJAs may be appointed as contracting officers for the purpose of hiring counsel in accordance with paragraph 2-7e of the Joint Service Regulation (see f below for USAF). The agreement must include a clause stating that it is not binding on the U.S. Government until approved by the USCR (3 AF-UK Legal Services); Commanding General, 21st TSC; or COMNAVACTUK UK (SJA); as appropriate. It must also include the following clause exempting payment of value-added tax in connection with the services rendered:

C E R T I F I C A T E

The services rendered on behalf of (*name*) are delivered at a price exclusive of value-added tax under arrangements made with Her Majesty's Revenue and Customs pursuant to an agreement between the Governments of the United Kingdom and the United States of America dated March 1952. I hereby certify that these services were purchased from United States appropriated funds for the United States' official purposes only. Invoices or vouchers for payment hereunder will be itemized so as to provide the same information as is required for the time being on application for payment of fees under the Legal Aid scheme. Vouchers for any disbursements claimed must be attached to the invoice. The solicitor will provide all such case papers or documents as may be requested by the Government in support of the invoice.

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(6) Submit two copies of the file (one of which will be returned) indicating the final action to be taken by the appropriate approval authority. In the UK, the approval of counsel fees is delegated to installation SJAs (but no lower). The authority to deny counsel fees has not been delegated and remains with the DCO for the UK (Commander, USAFE). The appropriate authority will take final action approving or disapproving the request for counsel fees and other expenses. (The local finance office will need additional copies of all documents in the file except the contract.)

(7) When a contribution is ordered by the court, SJAs will satisfy themselves that the solicitor or counsel in the case was contracted with the Legal Services Commission and that the unusual circumstances are recorded in accordance with the Joint Service Regulation, paragraph 2-7c.

c. When immediate retention of counsel is required, the local SJA may provide approval by telephone or message. In such cases, a certificate by the local SJA indicating the date the approving authority approved the request in an amount specified will be included in the file. Local SJAs should, when considering the immediate retention of counsel, take account of the possible subsequent availability of British legal aid and make provision for only those services necessary before granting legally aided representation.

d. In proceedings where the established criteria under the Joint Service Regulation appear to the SJA to exist but confirmation of their existence is subject to legal investigations by selected counsel, consideration will be given to approve the payment of counsel fees limited to the investigation (for example, approval for expert advice or a legal opinion from a barrister).

e. The SJA is responsible for ensuring that the accused is advised of his or her right to request counsel at U.S. Government expense as well as the availability of British legal aid. If the accused declines to avail him- or herself of these rights, a written notation of the refusal will be included in the case file.

f. All USAF base SJAs in the UK are designated contracting officers for the purpose of paragraph 2-7 of the Joint Service Regulation. Each USAF base SJA may designate a lawyer on his or her staff using a memorandum of appointment (app E of the Joint Service Reg), a copy of which will be filed with the USCR (3 AF-UK Legal Services).

Q-13. TRIAL OBSERVERS

a. In August of each year, the USCR (3 AF-UK Legal Services) will submit a list of proposed trial observers to the U.S. defense attaché at the U.S. Embassy for formal appointment as UK trial observers in accordance with paragraph 1-5a of the Joint Service Regulation. Commands in the UK with assigned U.S. lawyers will provide updated lists of nominees to the 3 AF-UK Legal Services for the upcoming year in July. If qualified U.S. lawyers join commands after the appointment date, their names should be submitted to the USCR for interim appointment.

b. Trials will be observed and reported in accordance with paragraph 1-8 of the Joint Service Regulation. Trial observers may attend trials for minor offenses at the discretion of the servicing SJA or legal officer but are not required to submit a formal report. Trial observer reports should indicate whether or not accused persons have been advised of their rights with respect to the provision of counsel fees and the payment of other costs by the U.S. Government, as well as British legal aid. The report should also indicate whether or not the accused was advised of his or her right to jury trial (if applicable), representation by counsel in general, and with respect to pleas. In addition, the maximum possible sentence should be stated.

c. In all cases involving U.S. personnel, regardless of whether or not a trial observer is assigned, a unit observer in or above the grade of E7 should attend and be prepared to give the court personal information about the accused if the court requests. The unit observer will give an informal report of the proceedings to the servicing SJA or legal officer. The unit observer will also inform the accused's immediate commander of the disposition of the case.

d. Certain trials in the UK are held in private (for example, juvenile courts, wardship proceedings, childcare proceedings, applications in chambers). Under normal circumstances, trial observers would not be permitted to be present during the hearing. However, the courts have inherent discretion to permit any person to be present during the trial. If any hearings are to be held in private, local judge advocates should contact the clerk of the relevant court and ask permission for a trial observer to attend. If approval is not given, trial observers should be prepared to attend court on the day of the hearing and apply to the court directly for consent to be present during the trial.

Q-14. PRISON VISITS

U.S. personnel in UK prisons will be visited each month in accordance with chapter 3 of the Joint Service Regulation. All prison visit reports must be signed or endorsed by the appropriate SJA or legal officer. Comments should be comprehensive enough to give reviewers an accurate picture of conditions. Action taken or considered as a result of prison visits should be noted on DD Form 1602. Copies of visit reports by chaplains should also be referred to the servicing SJA or legal officer. Problems involving access to prisoners or prison conditions in the UK should be referred promptly to the USCR (3 AF-UK Legal Services).

Q-15. REPORTS

a. Annual reports (Joint Service Reg, para 4-4) will be prepared by the USCR for all U.S. Army and USAF personnel in the UK. U.S. Army and USAF commands will be requested to provide local feeder reports to the USCR at the close of the reporting period. The annual report for USMC and USN personnel will be prepared by COMNAVACTUK with additional copies to the USCR (3 AF-UK Legal Services), USAFE/JAI, and USEUCOM (ECJA).

b. The USCR will submit confinement reports twice a year for all U.S. personnel confined in the UK.

c. Trial observer reports (Joint Service Reg, para 4-6) will be submitted to the USCR (3 AF-UK Legal Services) (one original and three copies). In addition, one copy of the USMC and USN reports will be submitted to COMNAVACTUK.

d. Monthly prison visitation reports (Joint Service Reg, para 4-7) will be submitted to the USCR (3 AF-UK Legal Services) (one original and two copies). In addition, one copy of USMC and USN reports will be submitted to COMNAVACTUK.

e. Reports of serious or unusual incidents will be submitted in accordance with paragraph 4-8 of the Joint Service Regulation, with information copies to the USCR (3 AF-UK Legal Services), USAFE/JAI, USEUCOM (ECJA), and, for USMC and USN reports cases, to COMNAVACTUK. For USAF cases, base offices will use the Foreign Criminal Jurisdiction Management System to submit reports. Base offices should also provide direct communication of incidents to the USCR (3 AF-UK Legal Services). For USAF cases only, the report must include the race of the personnel involved.

f. For Army personnel, a copy of all reports (a through e above) will be sent to the 21st TSC SJA and to HQ USAREUR/7A (AEAJA-IA).

APPENDIX R
GENERAL COURT-MARTIAL CONVENING AUTHORITIES IN USEUCOM

R-1. ARMY

a. CG, USAREUR/7A, APO AE 09014.

b. Commanding General, V Corps, APO AE 09014.

c. Commanding General, 21st Theater Sustainment Command, APO AE 09325.

d. Commanding General, United States Army Southern European Task Force, APO AE 09630.

e. Commanding General, Seventh United States Army Joint Multinational Training Command, APO AE 09036.

R-2. NAVY

a. Commander, USNAVEUR, PSC 802, Box 2, FPO AE 09499-0002.

b. Commander, CNE-C6F, Unit 50148, FPO AE 09501-6002.

c. Commander, Navy Region, Europe, PSC 8802, Box 20, FPO AE 09499-0020.

d. Commander, Submarine Group Eight, PSC 817, Box 16, FPO AE 09622.

e. Commander, Naval Support Activity Naples, PSC 817, Box 1, FPO AE 09622.

f. Commanding Officer, Naval Air Station, Sigonella, PSC 812, Box 1000, FPO AE 09627.

g. Commander, Naval Activities Spain, PSC 819, Box 1, FPO AE 09545.

h. Commander, Naval Activities United Kingdom, PSC 821, Box 60, FPO AE 09421.

i. Director, Navy Europe Programs, Resources and Support, FPO AE 09622.

R-3. AIR FORCE
Commander, USAFE, APO AE 09094.

GLOSSARY

SECTION I
ABBREVIATIONS

3 AF/CV	Vice Commander, Third Air Force
3 AF-UK	Third Air Force
3 AF-UK/JA	Staff Judge Advocate, Third Air Force
21st TSC	21st Theater Sustainment Command
31 FW/JA	Staff Judge Advocate, 31st Fighter Wing
39 ABW/JA	Staff Judge Advocate, 39th Air Base Wing
52 FW/JA	Staff Judge Advocate, 52d Fighter Wing
65 ABW/JA	Staff Judge Advocate, 65th Air Base Wing
426 ABS/JA	Staff Judge Advocate, 426th Air Base Squadron
AFJI	Air Force joint instruction
AFOSI	Air Force Office of Special Investigations
ALUSNA	American Legation, United States Naval Attaché
AOR	area of responsibility
AWOL	absent without leave
cf	copy forwarded
CG, USAREUR/7A	Commanding General, United States Army Europe and Seventh Army
CMA	cognizant military authority
CNA/FCJ	Commander, U.S. Naval Activities, Spain, Foreign Criminal Jurisdiction Officer
CNA/SJA	Staff Judge Advocate, Commander, U.S. Naval Activities, Spain
CNE-C6F	Commander, U.S. Naval Forces Europe/Commander, U.S. Sixth Fleet
COMNAVACTUK	Commander, Naval Activities, United Kingdom
COMUSAFE	Commander, United States Air Forces in Europe
COMUSNAVEUR	Commander, United States Naval Forces, Europe
CONUS	continental United States
CPP	*Codice di Procedura Penale*
CTA	Comprehensive Technical Agreement
DATT	defense attaché
DCM	Deputy Chief of Mission
DCO	designated commanding officer
DEROS	date eligible for return from overseas
DOD	Department of Defense
DOJ	Department of Justice
E7	sergeant first class (*Army*); chief petty officer (*Navy*); master sergeant (*Air Force*)
ECJA	Judge Advocate, United States European Command
ETS	expiration term of service
EURSWA	Europe and Southwest Asia
FCJ	foreign criminal jurisdiction
HQ USAREUR/7A	Headquarters, United States Army Europe and Seventh Army
HMRC	Her Majesty's Revenue and Customs
ID	identification
JA	judge advocate
JAI	Office of the Staff Judge Advocate General/International Law, United States Air Forces in Europe
MAAG	military assistance advisory group

MDCA	Mutual Defense Cooperation Agreement
MFA	ministry of foreign affairs
MOJ	ministry of justice
MP	military police
MPF	military personnel flight
NATO	North Atlantic Treaty Organization
NATO SOFA	North Atlantic Treaty Organization Status of Forces Agreement
NEPRS	Navy Europe Programs, Resources and Support
NSA	navy support activity
ODC	office of defense cooperation
ODC/SJA	Staff Judge Advocate, Office of Defense Cooperation, Spain
ODC Turkey/TCH	Chief, Office of Defense Cooperation, Turkey
ODC Turkey/TJA	Staff Judge Advocate, Office of Defense Cooperation, Turkey
OIC	officer in charge
OJA	Office of the Judge Advocate, Headquarters, United States Army Europe and Seventh Army
OPR	office of primary responsibility
PD	policy directive
POC	point of contact
POV	privately owned vehicle
SECNAVINST	Secretary of the Navy instruction
SJA	staff judge advocate
SOFA	Status of Forces Agreement
SSN	social security number
TBD	to be determined
TIAS	United States Treaties and Other International Acts Series
TMO	transportation management office
UCMJ	Uniform Code of Military Justice
UNTS	United Nations Treaty Series
USAF	United States Air Force
USAFE	United States Air Forces in Europe
USAREUR	United States Army Europe
USASETAF	United States Army Southern European Task Force
USC	United States Code
USCR	United States country representative
USDAO	United States defense attaché office
USEUCOM	United States European Command
USMC	United States Marine Corps
USN	United States Navy
USNAVEUR	United States Naval Forces, Europe
U.S.	United States
USSSO	United States Sending State Office
UST	United States Treaties and Other International Agreements
VFA	Visiting Forces Act

SECTION II
TERMS

component commander
For the purpose of this publication, component commanders are as follows:

● CG, USAREUR/7A (AEAJA-IL-I), APO AE 09014-9351.

● Commander, USNAVEUR (FJA), PSC 802, Box 2, FPO AE 09499-0002.

● Commander, USAFE (JAI), APO AE 09094-0100.

country liaison agent
The officer appointed by a component commander to act as POC for units and personnel of the Service in foreign criminal jurisdiction matters, to perform certain other delegated responsibilities of the component commander in a country for which the component commander is not the designated commanding officer, or for other circumstances as indicated in the basic publication, paragraph 8.

designated commanding officer
The component commander assigned single-Service responsibility within a particular country or countries for protecting the rights of U.S. personnel who may be subject to criminal trial in foreign courts.

fair treatment
Treatment in which rights, privileges, and protection are substantially equivalent to rights given to persons in custody of U.S. military authorities, and not less than those given to local national citizens under local law and practice.

fair trial
A foreign criminal judicial proceeding in which the accused is—

● Given the procedural rights, privileges, and protections that are guaranteed by applicable international agreements (for example, NATO SOFA, Article VII, paragraph 9 (this pub, app A)).

● Not prejudicially denied substantial rights and procedural safeguards guaranteed by the U.S. Constitution in criminal proceedings in the various U.S. State courts. (Fair trial rights are at *http://www.dtic.mil/whs/directives/corres/pdf/d55251wch2_080779/d55251p.pdf*.)

● Given the same substantive rights and procedural safeguards as local nationals. A trial is not considered to be unfair solely because it is not conducted in the same way as trials are conducted in the United States.

incident
Any act or omission by U.S. personnel that involves foreign interests and could result in criminal proceedings by a foreign court or authority. The term *proceedings* includes but is not limited to arrest, detention, confinement, service of criminal process, pretrial investigation, interim proceedings, trial, post trial proceedings, and service of sentence.

Joint Service Regulation
The term used in this publication to refer to AR 27-50/SECNAVINST 5820.4G/AFJI 51-706.

minor offense
An incident that does not result in serious personal injury, death, or extensive property damage, and for which a foreign court would not normally impose a prison sentence.

receiving state
The foreign country in which a visiting force is stationed or through which it is passing in transit.

sending state
The country to which the visiting force belongs.

tacit consent
Consent that is given inadvertently or that is not expressly stated in writing.

unified commander
For the purpose of this publication, the Commander, USEUCOM (ECLA), APO AE 09128.

U.S. country representative
The senior officer appointed by the designated commanding officer to act as the POC for the Services with the respective U.S. diplomatic mission and with the national authorities of a particular foreign country regarding the exercise of foreign criminal jurisdiction over U.S. personnel.

U.S. Forces personnel
Military personnel of the U.S. Armed Forces, regardless of nationality; civilians who are U.S. nationals and are serving with, employed by, or accompanying the U.S. Armed Forces; and their Family members.

U.S. personnel
U.S. military personnel, regardless of nationality; civilians who are U.S. nationals and are serving with, employed by, or accompanying the U.S. military forces; and their Family members. Although attaché personnel and other military personnel serving under the direction of a chief of a U.S. diplomatic mission may enjoy diplomatic status and are not considered U.S. personnel for the purpose of this publication, commanders and senior military officers will ensure, in coordination with and on approval of the chief of the respective U.S. diplomatic mission, that such personnel are provided the benefits and protection of this publication.

visiting force
The military forces of one country stationed temporarily in the geographic area of another country with the latter's consent.