

Legal Services

# **Status of Forces Policies, Procedures, and Information**

Headquarters  
Departments of the Army,  
and the Navy  
Washington, DC  
15 December 1989

**Unclassified**

Effective 14 January 1990

Legal Services

## Status of Forces Policies, Procedures, and Information

---

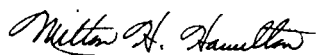
By Order of the Secretary of the Army:

CARL E. VUONO  
General, United States Army  
Chief of Staff

By Order of the Secretary of the Navy:

J. DANIEL HOWARD  
Acting Secretary of the Navy

Official:



MILTON H. HAMILTON  
Administrative Assistant to the  
Secretary of the Army

**History.** This publication has been reorganized to make it compatible with the Army electronic publishing database. No content has been changed.

**Summary.** This regulation covers policies, procedures, and responsibilities for the protection of United States (U.S.) personnel who may be subject to foreign jurisdiction, proceedings, or imprisonment. It implements Department of Defense Directive (DODD) 5525.1, 7 August 1979 (including change 1, dated 9 April 1985), and 10 USC 1037 (as amended by section 681 of Public Law (PL) 99-145). It deletes certain minor offenses from reporting requirements on DD Form 838 and the annual report and updates Appendix C, Designated Commanding Officers and U.S. Country Representatives. It also updates policies, procedures, and responsibilities on the subject.

**Applicability.** This regulation applies to all active and reserve Components of the Army, Navy, Air Force, and Marine Corps.

**Proponent and exception authority.** Not applicable

**Army management control process.**

This regulation is not subject to the requirements of AR 11-2. It does not contain internal control provisions.

**Committee Continuance Approval.** Not used.

**Supplementation.** Supplementation of this regulation and establishment of command and local forms is prohibited without prior approval from HQDA (DAJA-IA), WASH DC 20310-2214, AV 225-3170. Supplementation will normally be approved for unified commands, component commands, designated commanding officers (DCOs), defense attaches performing duties of DCOs, and those commands responsible for effecting the support set forth in this regulation for Mexico. (See para 1-5.) One copy of supplemental publications will be forwarded to each of the following offices: HQDA (DAJA-IA), WASH DC 20310-2214; HQ USAF/JACI, WASH DC 20330-5120; NAVJAG (Code 10), 200 Stovall St., Alexandria, VA 22332-2400.

**Interim changes.** Interim changes to this regulation are not official unless they are authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy

interim changes on their expiration dates unless sooner superseded or rescinded.

**Suggested Improvements.** The proponent agencies of this joint regulation are the Office of The Judge Advocate General (TJAG), Army; the Office of The Judge Advocate General (TJAG), Navy; and the Office of The Judge Advocate General (TJAG), Air Force. Army users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to HQDA (DAJA-IA), WASH DC 20310-2214. Navy and Marine Corps users should send comments to NAVJAG (Code 10), 200 Stovall St., Alexandria, VA 22332-2400. Air Force users should send comments to HQ USAF/JACI, WASH DC 20330-5120.

**Distribution.** *Army:* Distribution of this publication is made in accordance with the requirements on DA Form 12-09-E, block number 3231, intended for command levels C and D for Active Army, ARNG, and USAR. *Navy:* NAVPUBFORMCEN, 5801 Tabor Avenue, Philadelphia, PA 19120 (10 copies).

---

### Contents (Listed by paragraph and page number)

#### Chapter 1

#### Protection of U.S. Personnel Subject to Foreign

##### Jurisdiction, page 1

Purpose • 1-1, page 1

References • 1-2, page 1

Explanation of abbreviations and terms • 1-3, page 1

Application of the Senate Resolution on the status of forces • 1-4, page 1

Responsibilities of designated commanding officer (DCO), defense attache, and commands • 1-5, page 1

Country criminal law studies • 1-6, page 1

Custody, waiver of local jurisdiction, and fair trial • 1-7, page 1

Trial observers • 1-8, page 2

Legal advisor • 1-9, page 3

---

\*This regulation supersedes AR 27-50/SECNAVINST 5820.4F/AFR 110-12, 1 December 1984

## Contents—Continued

In absentia trials • 1–10, *page 3*

### Chapter 2

#### **Counsel Fees and Other Expenses in Foreign Tribunals,** *page 3*

General • 2–1, *page 3*

Statutory authority • 2–2, *page 3*

Responsibility • 2–3, *page 3*

Criteria for the provision of counsel and payment of expenses in criminal cases • 2–4, *page 4*

Provision of bail in criminal cases • 2–5, *page 4*

Criteria for the provision of counsel and payment of expenses in civil cases • 2–6, *page 4*

Procedure for hiring counsel and obligating funds • 2–7, *page 4*

Payment of counsel fees and other expenses • 2–8, *page 5*

Appropriated funds chargeable • 2–9, *page 5*

Reimbursement • 2–10, *page 5*

Correspondence • 2–11, *page 5*

### Chapter 3

#### **Care and Treatment of U.S. Personnel Confined in Foreign Penal Institutions,** *page 5*

Policy • 3–1, *page 5*

Responsibility • 3–2, *page 5*

Arrangements • 3–3, *page 5*

Action • 3–4, *page 5*

Property accountability • 3–5, *page 6*

Support • 3–6, *page 6*

Treatment and support of civilians and dependents • 3–7, *page 6*

Discharge • 3–8, *page 6*

Transfer of military personnel • 3–9, *page 6*

### Chapter 4

#### **Reports,** *page 6*

General • 4–1, *page 6*

Reporting agencies • 4–2, *page 6*

Reporting procedures • 4–3, *page 6*

Annual Report (Exercise of Criminal Jurisdiction by Foreign Tribunals Over U.S. Personnel) (DD Form 838)(RCS DD-GC(A) 705) • 4–4, *page 6*

Confinement Report (Report of U.S. Personnel in Post-trial Confinement in Foreign Penal Institutions)(RCS DD-GC(Q) 706) • 4–5, *page 7*

Trial Observer Report and Trial Observer Report on Appeal (RCS HAF-JAC (AR)7105(DD) for the Air Force, JAG-58 for the Army NAVJAG 5820-1 for the Navy) • 4–6, *page 7*

Monthly Visitation Report (Report of Visit—U.S. Personnel in Foreign Penal Institution) (DD Form 1602) (RCS HAF-JAC(M) 7104(DD) for the Air Force, JAG-59 for the Army, NAVJAG 5820-2 for the Navy) • 4–7, *page 7*

Serious or Unusual Incident Reports (RCS CSGPA-1340(R2), NAVJAG 5820-3) • 4–8, *page 7*

Individual Case Report (Individual Case Report—Exercise of Criminal Jurisdiction by Foreign Tribunals Over U.S. Personnel) (DD Form 1936) • 4–9, *page 8*

### Appendixes

**A.** References, *page 9*

**B.** Senate Resolution of July 15, 1953, Advising and Consenting to Ratification of the NATO SOFA, *page 9*

**C.** Designated Commanding Officers and U.S. Country Representatives, *page 10*

**D.** Fair Trial Guarantees, *page 14*

**E.** Sample Format for Agreement With Selected Counsel, *page 14*

**F.** Sample Format for the Appointment of a Contracting Officer, *page 15*

**G.** Responsibility for Preparing Reports, *page 15*

### Glossary

## **Chapter 1**

### **Protection of U.S. Personnel Subject to Foreign Jurisdiction**

#### **1-1. Purpose**

This joint regulation prescribes policies, procedures, and responsibilities for the protection of U.S. personnel who may become subject to foreign jurisdiction, proceedings, or imprisonment. It also provides uniform reporting procedures on the exercise of foreign criminal jurisdiction.

#### **1-2. References**

Required publications are listed in appendix A.

#### **1-3. Explanation of abbreviations and terms**

Abbreviations and special terms used in this regulation are explained in the glossary.

#### **1-4. Application of the Senate Resolution on the status of forces**

a. This regulation provides for the implementation of the Resolution accompanying the Senate's consent to ratify the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA). (See app. B.) Although the Senate Resolution applies only to countries in which the NATO SOFA is currently in effect, the same procedures for safeguarding the interests of U.S. personnel subject to foreign jurisdiction will be applied, insofar as practicable, to all foreign countries.

b. National Guard and Reserve personnel who are in the active Federal service, or temporarily assigned or attached to active duty units, are affected by this regulation if their duties include foreign travel.

#### **1-5. Responsibilities of designated commanding officer (DCO), defense attache, and commands**

The DCO in each foreign country is responsible for implementing the policies and procedures set forth in this regulation.

a. In countries within the geographic area of responsibility of a unified command, the unified commander will appoint, for each country in which U.S. military forces are regularly stationed, the DCO referred to in the Senate Resolution. (See apps B and C.)-Attache personnel and other military personnel serving under the direction of a diplomatic mission are not considered "U.S. military forces" for this purpose.

b. In countries within the geographic area of responsibility of a unified command where no U.S. military forces are regularly stationed, the provisions below, extracted from Department of Defense Memorandum date 15 March 1967 (Status of Forces Duties of Defense Attaches), will apply.

"Defense attaches in all countries where U.S. forces not regularly stationed, and to the extent contrary provision has not been made by service regulations, will, therefore, perform the duties of a designated commanding officer in connection with the exercise of criminal jurisdiction over U.S. personnel by foreign authorities and submit required administrative reports. For both of these purposes, U.S. forces shall not be considered regularly stationed solely because of the presence, for example, of a MAAG or mission of the United States. The appointment made herein of Defense attaches as designated commanding officers may be changed in those areas for which a U.S. unified command exists, by the commander thereof."

c. In Canada and Greenland, the Commander, Space Command (Space Comm/JA), Peterson AFB, CO 80914 is the DCO.

d. In Mexico—

(1) The Commander, Air Training Command, (ATC/JA), Randolph AFB, TX 78150, is the DCO for Air Force personnel.

(2) The Commander, Naval Base, San Diego, CA 92132, is the DCO for Navy and Marine Corps personnel.

(3) The U.S. Defense Attache, Mexico, is the DCO for Army personnel. The Army commands listed in paragraphs (a) through (d) below will also provide support as set forth in this regulation for Army personnel.

(a) The Commander, U.S. Army Garrison, (AFZG-JA), Fort Sam Houston, TX 78234, will support Army cases in the Mexican States of Coahuila, Zacatecas, Jalisco, and all of the territory in Mexico east and south of these States.

(b) The Commander, U.S. Army Air Defense Center, (ATZC-JA), Fort Bliss, TX 79916, will support Army cases in the Mexican States of Chihuahua, Durango, Mayarit, and Sinaloa.

(c) The Commander, Fort Huachuca, (CCH-SJA), AZ 85614, will support Army cases in the Mexican State of Sonora.

(d) The Commander, 7th Infantry Division, and Fort Ord, (AFZW-JA), CA 93941, will support Army cases arising in Baja California.

(4) The commanders of responsible commands will coordinate with the U.S. Defense Attache, Mexico, and local U.S. Consul to effect support set forth in this regulation.

e. In countries outside the area of responsibility of a unified command, the following will apply:

(1) If U.S. military forces are regularly stationed, the DCO will be nominated according to DOD Directive 5525.1, paragraph D.3b.

(2) If no U.S. military forces are regularly stationed, the provision of the 15 March 1967 DOD Memorandum will apply (para 1-5b above) (implemented by Defense Intelligence Agency Manual (DIAM) 100-1, chap. 1).

#### **1-6. Country criminal law studies**

a. For each country in which U.S. military forces are regularly stationed and are subject to the criminal jurisdiction of foreign authorities, the DCO for such country will—

(1) Make a study of the criminal laws and procedures in effect.

(2) Ensure that such studies are kept current.

(3) Make studies of the criminal laws and procedures of other countries, as directed.

(4) Ensure that these studies are reviewed periodically.

b. Country criminal law studies will consist of an examination of the substantive and procedural criminal law of the foreign country. They will make a comparison with the procedural safeguards required for a fair trial in the State courts of the United States. Emphasis will be placed on safeguards that are of such a fundamental nature that they are guaranteed by the Constitution of the United States in all criminal trials in state courts of the United States. (appendix D enumerates important safeguards.)

c. The DCO will forward copies of these studies to TJAG of each Service. The DCO will also forward any significant change in the criminal law of the foreign country to TJAG of each Service.

#### **1-7. Custody, waiver of local jurisdiction, and fair trial**

DCOs will ensure that effective liaison is developed and maintained at all levels with appropriate officials of the foreign country concerned and that prompt reports of cases involving the possible exercise of jurisdiction over U.S. personnel be received.

a. *Military personnel.* Constant efforts will be made to establish relationships and methods of operation with host country authorities that will maximize U.S. jurisdiction to the extent permitted by applicable agreements. In particular, the DCO or DCO's representative should maintain direct liaison with the judicial authorities who have cognizance over cases involving U.S. forces in the host country. Also, efforts will be made in all cases, unless the circumstances of a case dictate otherwise, to secure the release of an accused to the custody of U.S. authorities pending completion of all foreign judicial proceedings. (See AR 27-10, chap 17, or AFR 110-25 for further guidance on Army or Air Force custody policy.) When the officer exercising general court-martial (GCM) jurisdiction over an accused determines that U.S. custody may not be adequate to ensure presence at trial, the DCO may make arrangements with the host country authorities to take or maintain custody over such accused. Such arrangements will be consistent with applicable status of forces SOFA agreements. In cases where the GCM