

Legal Services

Jurisdiction of Service Courts of Friendly Foreign Forces in the United States

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Unclassified

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Jurisdiction of Service Courts of Friendly Foreign Forces in the United States

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:

PAUL T. SMITH
Major General, United States Army
The Adjutant General

History. Not applicable.

Summary. This revision is necessary to reflect the elimination of responsibility of the

Provost Marshal General and transfer of the regulatory functions concerned to DCSPER.

Applicability. This regulation applies only to those friendly foreign States to which the Act has been made operative by Presidential Proclamation. At present the only such State is Australia. This regulation is not applicable to the Army National Guard or Army reserve.

Proponent and exception authority. Not applicable.

Army management control process. Not applicable.

Supplementation. Local supplementation of this regulations is permitted but is not required. If supplements are issued, one copy

of each will be furnished to HQDA (DAJA–IA) WAH DC 20310

Interim changes. Not applicable.

Suggested Improvements. The proponent agency of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028

Distribution. To be distributed in accordance with DA Form 12–9A requirements for AR, Legal Services.

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*This regulation supersedes AR 27–51, 20 May 1967, and rescinds RCS OSD–1429 and RCS OSD–1430.

RESERVED

Section I General

1. Purpose

This regulation implements Public Law 384, 78th Congress, entitled “An Act to implement the jurisdiction of service courts of friendly forces within the United States, and for other purpose” (hereinafter referred to as “the Act”) and Department of Defense Directive 5525.3, 18 August 1966, entitled “Jurisdiction of Service Courts of Friendly Foreign Forces in the United States.” The Act is reprinted in full in the appendix.

2. Applicability

This regulation applies only to those friendly foreign States to which the Act has been made operative by Presidential Proclamation. At present the only such State is Australia. This regulation is not applicable to the Army National Guard or Army reserve.

3. Definitions

a. *Friendly foreign force* means any military, or air force of any friendly foreign State with respect to which the Act is made operative.

b. *Service court* means any military, naval, or air force court, court-martial or similar tribunal of any friendly foreign force within the United States.

4. Service court jurisdiction.

A friendly foreign force has the right to exercise jurisdiction in the United States over offenses committed by its members which are punishable by its law but not by the law of the United States or by the law of any political subdivision thereof.

a. *Concurrent jurisdiction.* A friendly foreign force has concurrent jurisdiction over offenses which are cognizable under its law and under the laws of the United States or its political subdivisions.

b. *Primary jurisdiction.* The Act does not accord to a friendly foreign force the primary right to exercise jurisdiction with respect to offenses over which to has concurrent jurisdiction. The authorities of the United States and its political subdivisions have the primary right to exercise jurisdiction over any offense committed by a member or a friendly foreign force that is cognizable under the laws of the United States or the political subdivisions thereof, unless provisions of an international agreement governing status of the friendly foreign force in the United States (for example, NATO Status of Forces Agreement, T.I.A.S.2846) provide otherwise.

c. *Waiver of primary jurisdiction.* The authorities of a friendly foreign force may in any case request a waiver of the primary right of the United States and its political subdivisions to exercise jurisdiction over offenses committed by its personnel.

d. *Public trials.* Any trial by a service court of an alleged offense not solely against another member of a friendly foreign force will be open to the public unless security considerations require otherwise.

Section II Responsibilities of US Army Agents

5. The Judge Advocate General.

The Judge Advocated General is designated the US Army Agent to assist, upon request, a friendly foreign force in the interpretation and use of the Act and in channeling to appropriate US officials requests of a friendly foreign force for waivers of the primary right of courts of the United States, including political subdivisions thereof, to exercise jurisdiction in criminal cases. Duties of the Judge Advocated General under this regulation may be performed by command staff judge advocates.

6. The Deputy Chief of Staff for Personnel.

The Deputy Chief of Staff for Personnel is the US Army Agent to assist a friendly foreign force with respect to matters set out in section III.

Section III Apprehension and Confinement

7. Apprehension.

a. Military police of the Army are authorized to apprehend any member of a friendly foreign force upon the request of the commanding officer of that force or his designated representative.

b. The commanding officer of a friendly foreign force or his designated representative will address requests for assistance in the apprehension of personnel of his command to the commanding officer of the US Army installation at which the subject is located, ATTN: Provost Marshal. Such requests will include—

(1) A full description of the person to be apprehended, and a statement that the person is a member of the friendly foreign force concerned, and as such is subject to the jurisdiction of its service court in the United States for the offense allegedly committed.

(2) A description of the offense allegedly committed by the person to be appended.

(3) The name, address, and telephone number of an officer if the friendly foreign force to be contacted if the person is apprehended.

8. Pretrial confinement.

a. Military police of the Army are authorized to confine any member of a friendly foreign force upon written request of the commanding officer of that force or his designated representative.

b. Use of DOD detention facilities, including pretrial confinement, prior to execution of a sentence adjudged by a service court, may be authorized only on receipt of a specific written request for such use from the commanding officer of a friendly foreign force or his designated representative. If a detention period is to exceed 45 days, authorization must be approved by the Secretary of the Army.

c. The commanding officer of a friendly foreign force or his designated representative will address requests for assistance in the confinement of personnel of his command to the commanding officer of the US Army installation at which the subject is located, ATTN: Provost Marshal. Such requests will include the information required under paragraph 7b(1) through (3), and, in addition, such requests will cite the statute, 22 U.S.C. 701–706, authorizing the confinement.

9. Post-trial.

a. *Designation of places of confinement.* Prisoners sentenced to imprisonment by a friendly foreign force’s service court may be confined in a US Army confinement facility upon specific written request supported by documents evidencing the sentence of such court.

b. *Release from confinement.* Friendly foreign force prisoners will be released from confinement upon order of appropriate authorities of the friendly foreign force concerned.

10. General.

a. Guidance will be sought from the command staff judge advocate whenever it is considered inadvisable to carry out a request for apprehension of confinement, or the person to be apprehended or confined is a US National or ordinarily resident in the United States.

b. Apprehension will be coordinated with appropriate civil authorities whenever the offense allegedly committed involves substantial local interest, e.g., local civil authorities have indicated an intention to exercise jurisdiction in the case.

c. Friendly foreign force prisoners will not be placed in confinement in immediate association with members of the Armed Forces of the United States, although they may be confined in the same confinement facility.

d. Female prisoners will be confined in a facility used for confinement of male prisoners.

e. Provisions of Army confinement regulations have applicability to a friendly foreign force confined in a US Army confinement facility.

11. Expense.

All confinement will be at the sole expense of the friendly foreign