

Legal Services

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

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SUMMARY of CHANGE

AR 27-51

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

Legal Services

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

By Order of the Secretary of the Army:

FRED C. WEYAND
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

force concerned. Reimbursement documents relative to service furnished under this regulation will be processed in accordance with AT 37–84.

Section IV Reports and Records

12. Special Reports.

a. The commander concerned will submit a Serious Incident Report (AR 190–40) (RCS CSG PA–1340) in an incident involving the apprehension or confinement of a member of a friendly foreign force or the escape, death, serious injury or other unusual occurrence involving a friendly foreign force prisoner. The DCS PER will provide TJAG a copy of such Serious Incident Report. The provost marshal concerned will immediately notify the commander of the friendly foreign force of the details relating to the incident.

b. The command staff judge advocated will immediately notify the General Counsel, Department of Defense, through the General Counsel, Department of the Army, with informational copy to the Judge Advocate General, of any interpretation of the Act that he renders and of any assistance provided with respect to requests by the authorities of a friendly foreign force for waivers of the primary jurisdiction of Federal and States courts. (Exempt report, para 7–2o, AR 335–15).

13. Other reports.

Reports required by paragraph 12 do not replace nor render inapplicable reports that may be required by other regulations and directives pertaining to foreign nationals who are present in the United States for purposes of military training in US Army facilities.

Appendix A
22 U.S.C. 701–706
Section 701. Definitions

As used in this chapter, unless the context clearly requires a different meaning—

a. “Friendly foreign force” means any military, naval, or air force of any foreign state with respect to which this chapter is operative by virtue of a Presidential declaration as provided in section 706 of this title.

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

c. “United States” means the United States, its Territories, its insular possessions, the Canal Zone, and any other place subject to the jurisdiction of the United States.</para0>

Section 702. Arrest of offender Upon a specific or general request of the officer commanding any friendly foreign force, having Service courts of appropriate jurisdiction within the United States, it shall be lawful for any person in the civil, military, or naval establishments of the United States having authority to arrest, summarily to arrest any member of such force designated in such request and to deliver him to the custody of any officer of such force or to the custody of the military or naval authorities of the United States who shall deliver him forthwith to the custody of an officer of such force, for trial in such service courts within the United States for such offenses as shall lie within the jurisdiction of the service courts of such friendly foreign force: Provided, That the trial of any member of such friendly foreign force for an offense against a member of the civilian population shall be in open court (except where security consideration forbids), shall take place promptly in the United States and within a reasonable distance from the place where the offense is alleged to have been committed, for the convenience of witnesses.</para0>

Section 703. Attendance of witnesses a. Any district court of the United States, or the United States courts of any territory or possession, within the jurisdiction of which proceedings are had before any service court of a friendly foreign force, or within the jurisdiction of which any person is found, shall have jurisdiction, upon application made by service court of a friendly foreign force, to issue to such person an order requiring him to appear before the service court or an officer designated to take deposition for use before the service court and there to produce evidence or give testimony if so ordered. Any failure to obey such order of the court may be punished by said court as a contempt thereof: Provided, That the fees of such witnesses and the mileage at the rate allowed to witnesses attending the courts of the United States should be duly paid or tendered in advance to such witnesses, with funds to be supplied by the friendly foreign force. Except as expressly permitted by the court, in its discretion, no such order shall run into any other district.

b. Attendance of witnesses in the Armed Services of the United States shall be obtained by request addressed to the discretion of the commanding officer of the person whose testimony is required.

c. Persons subject to the jurisdiction of the United States, who are not members of a friendly foreign force, who shall give false testimony or shall commit any act in the presence of a service court of a friendly foreign force which, if committed before a court of the United States be fined not more than \$2,000 or imprisoned for not more than six months, or both.</para0>

Section 704. Immunities of courts and witnesses Members of any service court of a friendly foreign force lawfully exercising jurisdiction in the United States in relation to members of such force, and ally witnesses appearing before such service court, shall enjoy the same immunities and privileges as are enjoyed by members of a court martial of the United States and by witnesses appearing before such a court martial.</para0>

Section 705. Imprisonment Persons sentenced to imprisonment by a service court of a friendly foreign force may be confined in disciplinary barracks, guardhouses, or other places of detention of the United States Armed Forces or in penitentiaries or other institutions employed by the United States for the detention or treatment of

prisoners, at the expense of the state on whose behalf the prisoner is detained.</para0>

706. Operative effect dependent upon Presidential finding This chapter shall be operative with respect to the military, naval, or air forces of any foreign state only after a finding and declaration by the President that the powers and privileges provided in this chapter are necessary for the maintenance of discipline. The President may at any time revoke such finding and declaration.</para0>

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