



# Department of Defense INSTRUCTION

NUMBER 5525.03

March 30, 2006

*Certified Current as of December 3, 2010*

---

---

GC, DoD

**SUBJECT:** Criminal Jurisdiction of Service Courts of Friendly Foreign Forces and Sending States in the United States

- References:**
- (a) DoD Directive 5525.3, "Jurisdiction of Service Courts of Friendly Foreign Forces in the United States," August 18, 1966 (hereby canceled)
  - (b) Deputy Secretary of Defense Memorandum, "DoD Directives Review – Phase II," July 13, 2005
  - (c) DoD Directive 5145.01, "General Counsel of the Department of Defense," May 2, 2001
  - (d) Sections 701-706 of title 22, United States Code
  - (e) Agreement between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67
  - (f) Proclamation No. 3681, 30 Fed. Reg. 13049 (October 10, 1965)

## 1. REISSUANCE AND PURPOSE

This Instruction:

1.1. Reissues Reference (a) as a DoD Instruction according to the guidance in Reference (b) and the authority in Reference (c).

1.2. Updates DoD policy and guidance and implements Reference (d) (hereinafter referred to as "the Act"), the NATO Status of Forces Agreement (SOFA) (Reference (e)), and other international agreements providing authority for service courts of sending states to exercise criminal jurisdiction in the United States.

## 2. APPLICABILITY

2.1. This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereafter referred to collectively as the "DoD Components").

2.2. The provisions of this Instruction govern the exercise of jurisdiction in the United States over offenses committed by members of friendly foreign forces or the forces of sending states.

### 3. DEFINITIONS.

3.1. Applicable International Agreement. An agreement that authorizes a sending state to exercise criminal jurisdiction within the United States and imposes obligations on the United States that are similar to those imposed under the Act (Reference (d)).

3.2. Friendly Foreign Force. Any military, naval, or air force of any friendly foreign state with respect to which chapter 13 of title 22, United States Code, is made operative by virtue of a Presidential declaration as provided in section 706 of title 22, United States Code (Reference (d)). On October 10, 1965, the President declared Australia to be a friendly foreign force. See Reference (f).

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

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

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

4. POLICY. It is DoD Policy that the Department will facilitate the exercise of criminal jurisdiction by service courts of friendly foreign forces or sending states in the United States, subject to the limitations stated below:

4.1. Service Court Jurisdiction. A friendly foreign force or the force of a sending state has the right to exercise jurisdiction in the United States over offenses committed by its members that are punishable by its law, but not by the law of the United States or by the law of any political subdivision thereof.

4.2. Concurrent Jurisdiction. The United States, including political subdivisions thereof, and a friendly foreign force or the force of a sending state have concurrent jurisdiction over offenses cognizable under the laws of both countries.

4.2.1. The Act does not accord to a friendly foreign force or the force of a sending state the primary right to exercise its jurisdiction over matters subject to concurrent jurisdiction. Authorities of the United States and its political subdivisions have the primary right to exercise jurisdiction in any particular case unless an international agreement governing the status of the friendly foreign force in the United States or the force of a sending state provides otherwise.

4.2.2. Pursuant to an applicable international agreement, or in the absence of such an agreement as a matter of comity, the authorities of a friendly foreign force or the force of a sending

state may request a waiver of the primary right of the United States and its political subdivisions to exercise jurisdiction.

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

4.2.4. Any conflicts between the statutory requirements of the Act (Reference (d)) as implemented in this Instruction and applicable international agreements, including Reference (e), that are raised by the force of a sending state shall be resolved through diplomatic channels.

## 5. RESPONSIBILITIES

5.1. The General Counsel of the Department of Defense shall oversee the exercise of criminal jurisdiction of service courts of friendly foreign forces or sending states in the United States.

5.2. The Secretaries of the Military Departments shall:

5.2.1. Each designate an agent to assist a friendly foreign force or the force of a sending state in the exercise of criminal jurisdiction over its personnel under the provisions of the Act or applicable international agreement and this Instruction. The agent shall:

5.2.1.1. Establish appropriate channels and procedures for receipt and forwarding of requests;

5.2.1.2. Assist the friendly foreign force or the force of a sending state in contacts with authorities of the United States, including political subdivisions thereof, in matters arising under the provisions of this Instruction; and

5.2.1.3. Notify the General Counsel of the Department of Defense, the Under Secretary of Defense for Policy, the Assistant Secretary of Defense for Public Affairs, and the Chairman of the Joint Chiefs of Staff of the intent to exercise the criminal jurisdiction of service courts of a *friendly* foreign force or sending state in the United States.

5.2.2. Authorize military police of the respective Military Department to apprehend any member of a friendly foreign force or the force of a sending state having service courts of appropriate jurisdiction within the United States, when the commanding officer of that *friendly foreign* force or the force of a sending state or his or her designated representative specifically requests such apprehension. Such requests shall include:

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

5.2.2.2. A description of the offense allegedly committed by the person to be apprehended.

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

5.2.2.4. Citation to the provisions of the Act (Reference (d)) or international agreement authorizing the apprehension.

5.2.3. Seek guidance through appropriate channels of the Military Department concerned whenever it is considered inadvisable to carry out the request for apprehension or the person to be apprehended is a U.S. national or ordinarily resident in the United States. If the offense allegedly committed by the member whose apprehension is requested involves substantial local interest, apprehension shall be coordinated with appropriate civilian authorities.

5.2.4. Act upon a request by a friendly foreign force or a force of a sending state to confine persons sentenced to imprisonment by a service court in disciplinary barracks, guard houses, or other places of detention in the United States. Upon approval of such request, the place of detention shall be as prescribed by the Military Department or the Department of Justice.

5.2.4.1. Use of a DoD detention facility for pretrial confinement, or for confinement prior to execution of a sentence adjudged by a service court, may be approved when a friendly foreign force or a force of a sending state requests apprehension in accordance with the provisions of paragraph 5.2.2. and its subparagraphs. If the detention period is to exceed 45 days, the authorization must be approved by the Secretary of the Military Department concerned.

5.2.4.2. Confinement in a Federal penal or correctional institution shall be in conformity with Department of Justice regulations.

5.2.4.3. All detention or confinement shall be at the sole expense of the friendly foreign force or the force of the sending state concerned.

5.2.5. Report all cases arising under the provisions of this Instruction and all detentions authorized pursuant to subparagraph 5.2.4. to the General Counsel of the Department of Defense.

## 6. EFFECTIVE DATE.

This Instruction is effective immediately.



Daniel J. Dell'Orto  
Acting General Counsel