

Headquarters
United States Forces Korea
Unit #15237
APO AP 96271-5237

United States Forces Korea
Regulation 1-44

26 April 2021

Administration

CRIMINAL JURISDICTION UNDER ARTICLE XXII,
STATUS OF FORCES AGREEMENT

***This regulation supersedes USFK Regulation 1-44, dated 2 October 2017.**

FOR THE COMMANDER:

BRAD M. SULLIVAN
Major General, USAF
Chief of Staff

OFFICIAL:



ROCKSON M. ROSARIO
Chief, Publications and
Records Management

Summary. This regulation provides policies and procedures for implementing Article XXII, Criminal Jurisdiction, of the United States-Republic of Korea Status of Forces Agreement (U.S.-ROK SOFA); the corresponding Agreed Minutes and Understandings on Implementation of the SOFA; the Joint Committee Criminal Jurisdiction Agreed Views in appendix B; and references, listed in appendix A.

Summary of Change.

- Updates addresses and contact numbers resulting from relocation of United States Forces Korea to United States Army Garrison Humphreys.
- Reflects changes of responsibilities resulting from separation of the Office of the Judge Advocate, USFK from the Office of the Staff Judge Advocate, Eighth Army.

- Reflects the current practice of each general court-martial authority funding counsel fees for Korean attorneys representing personnel under their command since FY20.
- Deletes the addresses and phone numbers for the Republic of Korea (ROK) district prosecutors' offices in appendix C as they are no longer useful and subject to frequent changes.

Applicability.

a. This regulation applies to all commands, elements, personnel, and dependents of United States (U.S.) Forces present in the ROK. This includes members of the military and civilian component and their dependents as defined in Article I of the SOFA. Included also are invited contractor employees having status under Article XV of the SOFA (normally, only employees ordinarily resident in the U.S. and dependents of such employees). However, as individuals not covered by the SOFA, this regulation is not applicable to Joint United States Military Affairs Group, Korea (JUSMAG-K) personnel, American Embassy personnel, or non-US members of the United Nations Command (UNC).

b. This regulation does not modify service directives concerning required actions or submission of reports with respect to foreign criminal jurisdiction.

Supplementation. Supplementation of this regulation and issuance of command and local forms by subordinate commands are prohibited unless prior approval is obtained from Headquarter USFK (FKJA-IL), Unit #15237, APO AP 96271-5237.

Forms. USFK forms are available at <http://www.usfk.mil>.

Records Management. Records must be dispositioned in accordance with all applicable federal laws that are contained in the Basic Laws and Authorities of the National Archives and Records Administration Book – 2016, <https://www.archives.gov/files/about/laws/basic-laws-book-2016.pdf>; the National Archives and Records Administration (NARA) General Records Schedules, and CJCSM 5760.01A Volume II, Joint Staff and Combatant Commands Records Management Manual-Disposition Schedule.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the Commander, USFK (FKJA-IL), Unit #15237, APO AP 96271-5237.

Distribution. Electronic Media Only (EMO).

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Chapter 1

Introduction

1-1. Purpose

This regulation provides policies and procedures for implementing Article XXII, Criminal Jurisdiction, of the United States-Republic of Korea Status of Forces Agreement (U.S.-ROK SOFA); the corresponding Agreed Minutes and Understandings on Implementation of the SOFA; the Joint Committee Criminal Jurisdiction Agreed Views, appendix B; and references, listed in appendix A.

1-2. References

Required and related publications and required form are listed in appendix A.

1-3. Explanation of abbreviations and terms

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

1-4. Responsibilities

a. Commanders will take the necessary action to minimize violations of ROK law and other incidents reflecting unfavorably on the U.S. Commanders will ensure that all personnel and their dependents are sufficiently familiar with the U.S.-ROK SOFA and with the laws, customs, and sensitivities of the ROK and its people. Commanders will ensure that USFK FL 1EK (Headquarter (HQ), United States Forces Korea (USFK), SOFA Card) is issued to all persons having SOFA status within their commands. The SOFA Card has useful bilingual phrases and emergency contact numbers and can be found at <https://8tharmy.korea.army.mil/sja/assets/doc/visa/SOFA-Card-2019-v2.pdf>. Unit and installation commanders are also responsible for ensuring immediate availability of U.S. representatives on a 24-hour-a-day basis, as detailed in paragraph 2-11.

b. Commanders and responsible staff agencies must protect the rights of personnel having SOFA status subject to possible criminal trial by ROK courts and imprisonment in ROK prisons. Commanders must maintain effective liaison with appropriate ROK authorities. U.S. policy is to maximize U.S. jurisdiction over foreign criminal cases; to obtain custody of U.S. personnel held by ROK authorities as soon as possible, wherever appropriate; and to provide appropriate legal assistance beginning with apprehension or the initial investigation.

c. Local U.S. Army and Marine Provost Marshals and local U.S. Air Force (USAF) Chiefs of Security Forces, US Navy Security Offices are responsible for ensuring that alleged violations of ROK criminal law committed within their respective areas of responsibility are properly and promptly reported to the proper ROK authorities and to the Office of the Judge Advocate, USFK (FKJA-IL), Unit #15237, APO AP 96271-5237. They are also responsible for securing release of suspects to U.S. custody when appropriate.

d. The USFK Judge Advocate (JA) has overall responsibility for administration of all criminal jurisdiction matters under the provisions of Article XXII, U.S.-ROK SOFA. This includes, but is not limited to, advising the accused of their rights under the U.S.-ROK SOFA, securing counsel, monitoring trial proceedings, and visiting Korean confinement facilities. The Staff Judge Advocate (SJA) for the respective general court-martial authority has the authority to approve funds for counsel, bail, and other costs for personnel within the command.

Chapter 2 Procedures

2-1. Pretrial procedures

a. Anyone knowledgeable of an offense involving a possible violation of ROK law will take steps to ensure that the area U.S. Army, U.S. Marine Provost Marshals, USAF Chiefs of Security Forces, or U.S. Navy Security Offices receives the necessary information as soon as possible.

b. The local U.S. Army provost marshal or the local USAF chief of security forces responsible for the area in which an alleged offense in violation of ROK law has been committed will promptly notify the ROK branch or district prosecutor responsible for the area. All alleged offenses must be reported, regardless of whether they are alleged to have occurred inside or outside a U.S. military installation. (Exceptions: Authorities need not report offenses committed solely by U.S. military personnel solely against U.S. Government (USG), USG property, persons having SOFA status, or their property).

c. The local provost marshal and the local chief of security forces will notify appropriate authorities in accordance with (IAW) paragraph 2-1b by close of business the following duty day. If an alleged offense occurs on the weekend or holidays, notification of the alleged offense to appropriate authorities will not exceed 72 hours, after having received information that such an alleged offense has occurred. The appropriate prosecutor's office (see appendix C for addresses) will be furnished an original and five copies of USFK SOFA CJ Form 1EK-E (U.S. Notice of Incident, Arrest and Receipt) (appendix D). USFK SOFA CJ Form 1A-R-E (Supplemental Information to U.S. Notice of Incident, Arrest and Receipt) which will be locally reproduced on 8-1/2 by 11-inch paper) (appendix E) also will be furnished to the ROK prosecutor in appropriate cases as directed by the instructions in appendix E. Consult the chart in appendix F for guidance concerning whether USFK SOFA CJ Form 1EK should be submitted. Questions concerning whether an offense or an incident is reportable should be referred to the SJA of the reporting command in the area where the incident is alleged to have occurred. If that reporting command does not have a SJA, such questions may be referred directly to the SJA of the command exercising general court-martial (GCM) jurisdiction over such reporting command.

(1) Upon furnishing USFK SOFA CJ Form 1EK-E to the appropriate prosecutor's office, a copy of the form shall be transmitted to the Office of the Judge Advocate, USFK (FKJA-IL), through the fastest means available. The preferred method is to email a scanned copy. Pursuant to Agreed View #19, the USFK JA is the authorized representative for processing all waiver requests. Upon receiving a copy of USFK SOFA CJ Form 1EK-E, FKJA-IL will submit a request for waiver, utilizing HQ USFK FL 32EK (U.S. Request for Waiver of Jurisdiction), through the fastest means available, but not later than 21 days after receipt of USFK SOFA CJ Form 1EK-E.

(2) The request will be submitted to the authorized representative of the ROK Government (ROKG), the Director, International Criminal Affairs Division, Ministry of Justice. The filing of a request for waiver will normally be limited to cases involving military personnel as USFK has no effective criminal jurisdiction over civilians in peacetime.

d. In preparing USFK SOFA CJ Form 1EK-E and CJ Form 1A-R-E, the local provost marshal and security forces personnel will use objective and conservative language to avoid overstating the case against the subject or the seriousness of the allegations. Avoid the use of subjective conclusion on this form. Words such as "alleged" and "allegedly" should be used liberally.

e. Major subordinate commands of USFK will report serious incidents through their local U.S. Army Provost Marshal or USAF Chief of Security Forces to the USFK Provost Marshal, IAW AR 190-45 and USFK Regulation (Reg) 190-50. Major subordinate commands (Air Force, Navy & Marine Corps) will also report to the USFK Provost Marshal those special interest incidents reportable to USINDOPACOM IAW USINDOPACOMINST 0410.1. The USFK Provost Marshal will report those serious incidents involving violations of ROK law to the office of the Judge Advocate, USFK (FKJA-IL).

f. If U.S. Embassy or Advisory Group personnel or their dependents commit an alleged offense on a U.S. military installation, ROK authorities will not be notified. With respect to embassy or advisory group personnel or dependents, the offender will be identified and detained if warranted by the seriousness of the offense. Report this incident immediately, as applicable, to the U.S. Embassy Regional Security Officer or JUSMAG-K Staff Duty Officer, respectively. No CJ Form action will be taken nor will custody be accepted by U.S. military law enforcement agencies resulting from criminal acts allegedly committed by U.S. Embassy or Advisory Group civilians outside a U.S. military installation. However, Embassy and Advisory Group military personnel are subject to the Uniform Code of Military Justice (UCMJ) and may be processed accordingly.

g. If a suspect having SOFA status is in ROK custody, send a copy of USFK SOFA CJ Form 2 (Custody Request and Receipt) (appendix G) to the ROK custodial authority or to the nearest branch of district prosecutor. Submitting a custody request (see paragraph 2-1i for civilians) is the responsibility of the local U.S. Army Provost Marshal or the local USAF Chief of Security Forces responsible for the area where the offense was allegedly committed. In the absence of the provost marshal or chief of security forces, a designated commissioned officer must perform this responsibility. If the ROK authorities refuse to transfer custody, the person signing the custody request form will notify, by the most expeditious means, the FKJA-IL. Also, notify the USFK Provost Marshal in all cases.

h. As an exception to the requirement of a custody request described in paragraph g above, in circumstances in which a suspect with SOFA status is arrested by ROK authorities for murder or rape, a custody request (USFK SOFA CJ Form 2) will not be presented to ROK authorities without prior approval of the USFK JA. The USFK JA will not approve a custody request if the suspect has been arrested by the ROK authorities for a heinous crime of murder or egregious rape at the scene of the crime, in immediate flight therefrom or prior to the suspect's return to U.S. control unless legitimate cause exists to believe that a failure to request custody would result in prejudice to the suspect's right to a fair trial.

i. USFK SOFA CJ Form 2 is never used for civilians having SOFA status in ROK custody without first taking mandatory steps set forth in the instructions on USFK SOFA CJ Form 3-E (Civilian Request to be Taken into Custody by U.S. Military Authorities) (Appendix H).

j. When U.S. military authorities determine that an alleged offense arose out of official duty of a military member (never civilians), a USFK SOFA CJ Form 4-R-E (Official Duty Certification and Receipt) (appendix I) (which will be locally reproduced on 8-1/2 by 11-inch bond) should be issued to the appropriate ROK branch or district prosecutor. This form will be signed by a general or flag officer of the command where the duty was performed or by other appointed general or flag officer designated to make the determination. This certificate may be issued only after an SJA has been consulted. The certificate will be prepared as directed in the instructions for USFK SOFA CJ Form 4-R-E, in appendix I. Issuance of an official duty certificate must be expeditiously considered in the following cases and will be issued where warranted.

- (1) When a case may be one "of particular importance" to the ROK.
- (2) Where an incident resulted in the death of, or serious injuries to, a Korean national, or other non-SOFA person.
- (3) Where an incident has generated wide-spread adverse publicity in the ROK news media.
- (4) In all other cases where it is determined that an official duty certificate should be issued.
- (5) A duty certificate will be conclusive unless modification is agreed upon. However, the ROK authorities may discuss, question or object to any official duty certificate. The SJA who has been consulted in issuing a certificate should be prepared to respond to any objections or questions which may be raised by ROK authorities. A branch, district, or similar level prosecutor may discuss any questionable official duty certificate with the SJA or legal officer within 10 days of receipt. Appropriate officials of the ROK Ministry of Justice may then discuss any remaining disagreement with the USFK JA or his designee. The SJA will send all materials pertaining to an unresolved duty certificate to the Office of the Judge Advocate, USFK (FKJA-IL), Unit #15237, APO AP 96271-5237, immediately if a satisfactory resolution is not reached within 10 days of receipt. When an official duty determination has been made in the case of a civilian, the major subordinate commander should forward directly to the district prosecutor, after coordination with the USFK (FKJA-IL), a statement explaining that the alleged offense occurred in the performance of official duty. The statement will request that the prosecutor give that fact consideration as deemed appropriate. Official duty certificates will not be used for civilians without prior approval of the USFK JA.

k. In some cases, local commanders may determine whether they can take appropriate administrative corrective actions, which would adequately resolve allegations against alleged civilian offenders. In such cases, commanders will consider sending the branch or district prosecutor a request that ROK authorities refrain from exercising jurisdiction over the civilian. Such requests will be coordinated in advance with the USFK JA.

I. U.S. Representatives Requirements.

(1) ROK authorities may question SOFA personnel in the presence of a duly appointed U.S. representative immediately after their arrest and before transferring them to U.S. military authorities. A U.S. representative must be present whenever persons having SOFA status, accused or suspected of an offense, are questioned by ROK authorities. U.S. representatives represent the command, not suspects. Representatives serve as impartial observers, not as advisors for suspects. However, prior to questioning, U.S. representatives should ensure that suspects understand the following:

- (a) They have the right to not make oral or written statements which could incriminate them.
- (b) Any oral or written statements may be used against them.
- (c) They have the right to legal counsel.
- (d) U.S. representatives must be present during all questioning.

(e) They have the right to the services of a competent interpreter if they consider such services necessary.

(f) They should not sign any statement(s) written in any language they cannot understand.

(2) U.S. representatives will neither advise the accused nor attempt to interject themselves into or interfere with the proceedings, except to the extent necessary to ensure that suspects are aware of their rights and are able to exercise them.

(3) A U.S. representative must be a mature military member with the rank of E-6 or above or a mature civilian rated GS-6 or higher, and when feasible, normally be from the same assigned or attached unit of the suspect or the suspect's sponsor. However, local commanders may also authorize designation of U.S. representatives on an installation, area, or other appropriate basis. The U.S. representative must not be related to the suspect by blood or marriage. Law enforcement personnel involved in the criminal investigation of the accused's actions should not be appointed as a U.S. representative. The local JA offices may use USFK SOFA CJ Form 5-R-E (Appointment of U.S. Representative), which will be locally reproduced on 8-1/2 by 11-inch bond paper (appendix J, J-1, for command and USFK-wide, and J-2 for unit's use), when necessary. During the time when an individual is performing duties as a U.S. representative (to include travel to and from the place where such duties are to be performed), the individual will be deemed to be in an on-duty status.

(4) Commanders must ensure their units have an adequate number of persons designated as U.S. representatives to ensure prompt, 24 hour-a-day response to ROK authorities' requests for questioning of suspects having SOFA status. The designated U.S. representatives must be previously briefed on their duties by the servicing legal office and must possess a completed USFK SOFA CJ Form 5-R. Lists of names and telephone numbers of the pre-designated U.S. representatives will be compiled by servicing legal offices and furnished to the local area Provost Marshal, Air Force Chief of Security Forces, or Navy Security Office Desks, appropriate local command posts, and USFK JA. The list shall be brought up-to-date at least semi-annually. Commanders will ensure that a qualified U.S. representative is enroute to the designated place within one hour after notification by ROK authorities.

(5) There may be situations where a suspect is to be questioned in an area distant from the suspect's unit or installation or where the suspect's unit or installation is unable to provide a U.S. representative without delay. In such situations, the commander of the nearest U.S. military installation will immediately appoint a U.S. representative on an interim basis, regardless of the suspect's or sponsor's unit, installation, or service affiliation. A U.S. representative from the suspect's own unit or installation will be detailed to the U.S. representative duties as soon as practical, should further questioning or similar proceedings be desired by ROK authorities.

(6) The intent of the foregoing provisions is to fully protect the rights of suspects having SOFA status and, at the same time, maximize prompt cooperation with ROK authorities desiring to question suspects having SOFA status. These provisions apply equally with respect to military members, civilian component members, invited contractor employees, and dependents.

m. Legal Representation.

(1) The right to legal representation exists from the moment of arrest or detention and includes the right to have counsel present, and to consult confidentially with such counsel at all

preliminary investigations and subsequent judicial proceedings. If the accused requests and the criteria indicated in AR 27-50/SECNAVINST 5820.4G/AFI 51-706 are met, the attorney may be retained at USG expense. When necessary, an attorney licensed in Korea will be made available and present at preliminary investigations, examinations, pretrial hearings, the trial itself, and any subsequent proceedings at which the accused is present. After a Korean attorney has been retained, any U.S. military legal advisor appointed to advise the military accused will do so in conjunction with the Korean attorney.

(2) Civilians having SOFA status (including dependents), with the exception of contractor employees or their dependents, may qualify for payment at U.S. expense for Korean counsel of their choice in certain cases. If the accused requests and the criteria indicated in AR 27-50/SECNAVINST 5820.4G/AFI 51-706, are met, the attorney may be retained at USG expense. Generally, these are serious offenses which may result in a prison sentence or official duty cases. In less serious non-duty cases, civilians having SOFA status will generally retain Korean counsel at their own expense, unless they qualify for appointment of counsel at ROK expense.

(3) U.S. law prohibits providing legal counsel at U.S. expense for contractor employees or their dependents; however, Korean lawyer selection assistance is available in the form of lawyer referral lists. Contractor employees or dependents who cannot afford a Korean lawyer may be appointed a Korean lawyer free of charge by the ROKG, under currently applicable provisions of ROK domestic law.

n. Flagging Action.

(1) Upon receipt of the USFK SOFA CJ Form 1EK-E (Appendix D) or CJ Form 2 (Appendix G), unit commanders will take appropriate action (i.e., flagging action/involuntary extension of date of eligible for return from overseas) to retain in Korea members of their command suspected of offenses involving possible violation of ROK law. Individuals will remain in Korea until it is determined whether jurisdiction will be exercised by U.S. or ROK authorities and until the proper authorities have taken all warranted judicial, disciplinary, or administrative action. In unusual situations (e.g., planned unit deployment prior to the expiration of the period during which the ROK may exercise jurisdiction), commanders will contact the USFK JA for instructions and assistance. However, criminal allegations against individuals will result in those individuals remaining in Korea until the matter is resolved to the satisfaction of Korean authorities.

(2) If it appears jurisdiction will be exercised by ROK authorities, the individual's servicing SJA may impose international hold on the suspect. Upon determining that international hold is necessary, the individual's servicing SJA will notify the individual's unit commander to place the individual in an international hold status. The SJA will also notify all U.S. embarkation transportation authorities of the individual's status.

(3) International hold is an administrative status used to prevent premature departure of any suspect having SOFA status. Reporting commands will institute international hold implementing procedures to include at least the following:

(a) Military members will be advised that they are in an international hold status and will be given a direct verbal order not to leave the ROK until the international hold has been removed. They will acknowledge receipt of the order by signing an Acknowledgment of International Hold - Military Personnel using the format found at appendix K. A copy of the completed acknowledgment will be forwarded to the Office of the Judge Advocate, USFK (FKJA-IL), Unit# 15237, APO AP 96271-5237, as soon as possible.

(b) Civilians will be advised that they are in an international hold status and that they may not leave the ROK until international hold has been removed. Civilians will be further informed that, in the interest of fulfilling the U.S. custody requirement, they are expected to comply with the procedures established by the office maintaining custody of their passports and that failure to do so may constitute grounds for release of custody to the ROK authorities. Civilians will acknowledge receipt of these instructions by signing an Acknowledgment of International Hold - Civilian Personnel, using the format shown at appendix L. A copy of the complete acknowledgment will be forwarded to the individual's servicing SJA Office as soon as possible. Civilians who surrender their passports to USFK authorities, either as a part of the transfer of their custody from ROK to USFK authorities (USFK SOFA CJ Form 3-E) (appendix H) or as a part of fulfilling the U.S. custody requirement, will make such surrender voluntarily. Passports will be released only with coordination of the USFK JA or local SJA.

(c) All temporary duty (TDY), permanent change of station (PCS), leave, or other travel orders will be confiscated and revoked. This does not necessarily preclude otherwise-authorized in-country leave or in-country TDY, provided the leave or TDY does not conflict with questioning, trial, or other requirements of ROK authorities. Coordinate questions concerning such leaves and TDYs with the USFK (FKJA-IL).

(4) International hold may be removed only by the USFK JA or the individual's servicing SJA by written notice to the reporting command.

(5) Unit commanders will notify the USFK JA or the servicing SJA at least 14 days in advance, if possible, that a U.S. military witness to a SOFA incident is due to depart Korea. The USFK JA or the servicing SJA will then notify proper ROK authorities. ROK authorities have agreed to notify U.S. authorities at least two days in advance of the scheduled departure, if they consider it necessary to take a statement/deposition or to obtain evidence in the witness' possession. Unit commanders must ensure cooperation with any such requests by ROK authorities.

(6) If the ROK criminal investigation or proceeding being conducted against a military member of the U.S. Armed Forces is likely to continue past the member's date of separation from the service, the commander of the reporting command will take appropriate action to secure the suspect's retention as outlined in governing service regulations. If the suspect declines voluntary retention and involuntary retention is not authorized under then existing law and regulations, notify the USFK JA or the individual's servicing SJA immediately. Transfer of custody to the ROK may be necessary in such cases.

(7) In the case of a U.S. civilian suspect or accused, the commander of the reporting command or the component activity (where the civilian is employed) will notify the ROK district or branch prosecutor and the USFK JA if such civilian's scheduled date of departure from Korea is approaching. The reporting command or the component activity (where the civilian is employed) will provide this information at the earliest possible date. In the case of a dependent, the command where the sponsor is assigned will provide information on the impending transfer of the sponsor at the earliest possible date. Regardless of the scheduled transfer dates, no suspect in U.S. custody will be permitted to leave the ROK without the consent of appropriate ROK authorities. In cases when a civilian suspect or accused is removed or terminated from employment, the USFK JA or the servicing SJA will review the case involved and normally will transfer custody to ROKG authorities.

(8) Upon determining that U.S. custody over a suspect or accused may not be adequate

to ensure the presence at the trial, the unit commander will immediately notify the appropriate GCM convening authority or SJA. If the GCM convening authority concurs with that determination, the GCM SJA will immediately notify the USFK JA by the most expeditious means and provide all available pertinent data. The USFK JA will then consider transferring custody of the individual to ROK authorities.

2-2. Jurisdiction

a. The U.S. has exclusive jurisdiction over those offenses which violate only the laws of the U.S. but not the laws of the ROK.

b. The ROK has exclusive jurisdiction over those offenses which violate only the laws of the ROK but not the laws of the U.S.

c. The U.S. has the primary right to exercise jurisdiction over those offenses committed by SOFA persons solely against the property or security of the U.S., those committed against the person or property of another member of the U. S. Armed Forces or civilian component or a dependent, or those which arise out of an act or omission in the performance of official duty.

d. The ROK has the primary right to exercise jurisdiction over offenses other than those which the U.S. has the primary or exclusive right to exercise jurisdiction. The U.S. must submit a written request to the ROK Ministry of Justice for waiver of its primary jurisdiction as soon as practicable but not later than 21 days after it (represented by the USFK JA) is notified or otherwise apprised of the commission of an alleged offense. The ROK Ministry of Justice has 28 days upon receipt of the U.S. request in which to notify the U.S. of its decision to exercise its primary jurisdiction. The ROK Ministry of Justice may also request an extension for a specific period of days normally not exceeding an additional 14 days.

e. Upon receiving information of the commission of any offense by a military member of the U.S. Armed Forces, the appropriate commander will, if warranted, initiate action pursuant to the Manual for Courts-Martial. Commanders may initiate administrative actions, non-judicial punishment under Article 15, UCMJ, or prefer charges and conduct a pretrial investigation under Article 32 of UCMJ, prior to receiving notice of the ROKG's determination. However, no case shall be referred to trial by court-martial nor will non-judicial punishment be imposed until either paragraphs 2-2e(1) or 2-2e(2) has occurred. If the ROKG exercises jurisdiction, any cases pending disposition by court-martial or non-judicial punishment should be reviewed with respect to termination of proceedings. Administrative actions likewise should be examined with regard to appropriateness.

(1) Regarding U.S. exclusive or primary jurisdiction cases, it must be determined by the USFK JA that the offense is one over which the U.S. has primary or exclusive jurisdiction. The authority to make such determinations is hereby delegated to SJAs (and their deputies and chiefs of military justice) of GCM convening authorities and to SJAs (and their deputies and chiefs of military justice) of special court-martial convening authorities who have a Korean legal advisor or paralegal on their staff.

(2) In cases where the ROK has primary jurisdiction, either the ROK authorities have stated they will not exercise jurisdiction in the particular case or 28 days (plus any extension) has elapsed since the ROKG has been requested in writing to waive its primary jurisdiction and it has not responded.

(3) The USFK JA will also send to the reporting commands, on a weekly basis, written

confirmation of cases in which the ROKG has specifically waived its jurisdiction or the 28-day period (plus any extension) has elapsed, in order to assist the units in monitoring the status of their cases.

(4) The purpose of this paragraph is to ensure U.S. compliance with an international agreement between the U.S. and the ROK. Nothing herein will be construed to confer any direct or indirect benefit, right, or privilege upon any individual military member who is the subject of U.S. disciplinary action. This regulation will not be usable in any court-martial or non-judicial punishment proceeding under Article 15, UCMJ, to defeat, delay, or otherwise interfere with the exercise of U.S. disciplinary action.

f. Commanders having information indicating a substantial possibility that the accused will not receive a fair trial before a Korean court will report that information immediately to the USFK JA. If the Commander, United States Forces Korea (COMUSFK) determines that there is a substantial possibility that an accused will not receive a fair trial before any ROK criminal court, COMUSFK will consult with the U.S. Ambassador to Korea and recommend whether to pursue a request for waiver of ROK jurisdiction or other relief through diplomatic channels. If such a recommendation is made, it will be submitted through the JAG of the accused's branch of service to the Office of the Secretary of Defense.

g. COMUSFK will not grant a waiver of U.S. jurisdiction without prior approval from the JAG of the accused's branch of service. Any recommendation that such a request be approved will be forwarded through the JAG of the appropriate branch of service to the Office of the Secretary of Defense for action. COMUSFK may deny the request from ROK authorities for a waiver of U.S. primary right to exercise jurisdiction in any case, when such denial is in the overall best interests of the U.S.

h. If an accused has been tried by ROK courts, the accused normally will not be tried by the U.S. for the same offense. Those cases wherein the ROK does not assume jurisdiction will be carefully reviewed by commanders to determine if action will be taken administratively or pursuant to the UCMJ. Commanders and supervisors of a civilian employee or sponsor of a dependent who was convicted of an offense by a ROK court or over whom the ROKG has waived jurisdiction will consider and initiate, if warranted, appropriate administrative action.

2-3. Custody

a. Custody of military members of the U.S. Armed Forces over whom the ROK has exercised jurisdiction normally will be maintained by the appropriate U.S. commander until completion of all judicial proceedings and until receipt of a formal request for custody. (Exceptions: First, in ROK security offense cases, the ROK normally maintains custody. Second, in a heinous crime of murder or egregious rape case, the ROK may keep custody as noted in paragraph 2-1h above. Third, in certain serious cases, the ROK may obtain custody upon indictment as explained in paragraph 2-3e below). The nature of the custody imposed by the U.S. commander over the accused will be to ensure:

(1) The member is available to appropriate ROK authorities upon reasonable request for presence at any pretrial investigation, at the trial itself, and at any appellate proceedings.

(2) The member's whereabouts are known at all times.

(3) The member will not interfere with the orderly administration of justice (e.g., intimidation or subornation of witnesses, or interference with the collection or preservation of

evidence).

b. Any member of the U.S. Armed Forces whose ROK sentence to confinement has become final, either through appeal or the running of time, should be considered for confinement in a U.S. confinement facility until such time as the member is turned over to the ROK authorities, upon their request, to begin serving the sentence of the ROK court.

c. Any request by ROK authorities for transfer of custody of U.S. personnel to the ROK either prior to, or after completion of, all judicial proceedings will immediately be referred for determination to the USFK JA.

d. Custody of civilians may be maintained only with their written consent (See appendix H for consent form). In the event a civilian does not consent to custody by the U.S. commander concerned, the civilian will be released to, or remain in, the custody of appropriate ROK authorities. If a civilian is released to the custody of the ROK authorities, the releasing agency will transmit notification by the most expeditious means to the USFK JA.

e. The U.S. is obligated to transfer custody to the ROK if the offense is one over which the ROK has primary jurisdiction, the ROK has requested the transfer of custody at the time of indictment or thereafter, and it falls within the following categories of offenses:

- (1) Murder.
- (2) Rape (including quasi-rape and sexual intercourse with a minor under thirteen years of age).
- (3) Kidnapping for ransom.
- (4) Trafficking of illegal drugs.
- (5) Manufacturing illegal drugs for the purpose of distribution.
- (6) Arson.
- (7) Robbery with a dangerous weapon.
- (8) Attempts to commit the foregoing offenses.
- (9) Assault resulting in death.
- (10) Driving under the influence of alcohol resulting in death.
- (11) Fleeing the crime scene after committing a traffic offense resulting in death.
- (12) Offenses which include one or more of the above-referenced offenses as lesser included offenses.

f. The USFK JA will receive any and all ROK requests for the transfer of custody and determine their compliance with the SOFA. The USFK JA then forwards the request to the USFK PM for the actual transfer of custody to the ROK. Upon receipt of the request from the USFK JA, the USFK PM will accomplish the transfer in coordination with the unit and the U.S. Army Correctional Facility-Korea, USAG Humphreys.

2-4. Trial Procedure

a. Persons with SOFA status are entitled to select qualified Korean civilian attorneys to represent them at all stages of the proceedings. Counsel fees of U.S. military and civilian personnel and their dependents may be paid by the USG as provided in section 1037, title 10, United States Code, in certain serious or official duty cases according to the criteria set forth in AR 27-50/SECNAVINST 5820.4G/AFI 51-706. Present U.S. law prohibits USG payment of counsel fees for invited contractor employees or their dependents.

b. The Office of the Judge Advocate, USFK, will provide assistance in the selection and employment of counsel as provided in AR 27-50/SECNAVINST 5820.4G/AFI 51-706, chapter 2.

c. Upon receipt of information concerning serious incidents (i.e., homicide, rape, robbery, aggravated assault, arson, leaving the scene of a serious accident, and other such incidents wherein the services of a Korean attorney for a suspect are advisable), the SJA of the suspect's command will in all cases immediately notify the USFK JA and obtain assistance in the selection and employment of counsel.

d. Trial Observers.

(1) The USFK JA will provide or coordinate provision of necessary trial observers. Upon request by the USFK JA, additional trial observers will be provided by the Commanding General, Eighth Army; the Commander, 7th Air Force; and the Commander, U.S. Naval Forces, Korea.

(2) Trial observers will be U.S. Judge Advocates or civilian attorneys employed by the U.S. Government. They will not have served previously in the capacity of trial counsel or counsel for the accused in a matter arising out of the same circumstances that resulted in the trial by the ROK.

(3) Trial observers will be appointed formally by the Chief of the U.S. Diplomatic Mission to Korea and will present to the ROK court one copy of the official letter of appointment. The appointment may be for a specific case or for an indefinite period.

(4) The trial observer will review police reports and supporting documents to become thoroughly familiar with the facts in the case. Upon request, the observer will assist the court and defense counsel in obtaining witnesses and evidence available from USG sources. Trial observers will not be a member of the defense team and will not attempt to interject themselves into the trial proceedings. However, if the trial observer detects violations of trial safeguards during the trial, the observer will notify COMUSFK immediately through appropriate channels. Similarly, the trial observer will note and report any acts of discrimination based on race, religion, sex, or color.

(5) Except as otherwise provided in AR 27-50/SECNAVINST 5820.4G/AFI 51-706, trial observers will attend all trials of persons with SOFA status in ROK courts and in each case will prepare a formal report marked PERSONAL DATA-PRIVACY ACT OF 1974 (P.L 93-579). Trial observer reports will be distributed as soon as possible following the original trial and will not be delayed because of the possibility of a new trial, an appeal, or other post-trial action. Reports of appellate proceedings in a case will be made and distributed in the same manner as the original report. The USFK JA will make the following distribution of trial observer reports: One copy to the JAG of the accused's branch of service; one copy to USINDOPACOM, SJA; one copy to the U.S. Ambassador to Korea; and one copy to the staff or command JA servicing the reporting

command concerned. Requests from sources outside the Executive Branch of the U.S. for information contained in a trial observer report will be transmitted with a copy of the report and the recommendation of the USFK JA to the JAG of the service concerned.

(6) Trial observer reports and trial observer reports on appeal (RCS HAF-JAC (AR) 7105(DD) for the Air Force, JAG-58 for the Army, NAVJAG 5820-1 for the Navy) will be prepared IAW AR 27-50/SECNAVINST 5820.4G/AFI 51-706, paragraph 4-6.

(7) COMUSFK will review all trial observer reports. If it is determined that a trial was unfair or that essential safeguards were lacking, a recommendation of appropriate action will be submitted through U.S. PACOM and the JAG of the accused's branch of service to the Office of the Secretary of Defense. An information copy of such recommendation will be furnished to the U.S. Ambassador to Korea and the appropriate Pacific Command component commander. In cases involving harmless error not prejudicial to the accused, COMUSFK may bring such error to the attention of the appropriate ROK officials if deemed warranted.

e. The USFK JA is designated as the agent to receive a copy of all criminal writs, including warrants, summonses, indictments, and subpoenas issued by the judicial authorities of the ROK in connection with criminal cases. Normally, the ROK authorities will serve the original documents personally on the individual concerned. Where such individual is inside a military installation or area, the commanding officer of the installation or area will take all measures necessary to enable the ROK authorities to effect service. Commanders of reporting commands will establish within their commands a procedure whereby their unit commanders notify them when an individual is served with the original process. Individuals upon whom process is served will consult the JAs of their commands regarding the legal significance of such documents. Procedures for obtaining witnesses or suspects for ROK investigative authorities are set forth at Agreed View No. 14 (appendix B). Assistance may also be obtained from the USFK JA.

f. If the occasion warrants and circumstances permit, the SJA of the officer exercising GCM convening authority over an accused pending ROK judicial proceedings may assign a JA officer as military legal advisor to assist the accused. This advisor will also ensure that the accused is aware of applicable rights and obligations under the U.S.-ROK SOFA and applicable regulations. If the GCM convening authority is in a country other than Korea, the assignment of the military legal advisor may be made by another officer empowered with such authority. In the case of Army units, the assignment of a military advisor should be coordinated with the Regional Defense Counsel.

2-5. Post-Trial Procedure

a. COMUSKOREA has the primary responsibility for the welfare of persons with SOFA status confined in ROK penal institutions and will ensure that confinement conditions are IAW appropriate U.S.-ROK agreements (Agreed View No. 13, appendix A). (For specific responsibilities, see USFK Reg 190-3).

b. The accused's commanding officer will ensure that a physical examination IAW governing service regulations is administered within 48 hours prior to the time a service member is surrendered to ROK authorities for confinement. If a physical examination is not possible within 48 hours prior to surrender of custody, the accused's commanding officer will make arrangements to accomplish a physical examination at the earliest possible time subsequent to initial incarceration by the ROK. This requirement applies to military personnel only.

c. Persons with SOFA status confined in ROK facilities will be visited at least monthly by the

individual's commander or a designee. The USFK Provost Marshal, or a designee and such medical or other specialists as required by AR 27-50/SECNAVINST 5820.4G/AFI 51-706, paragraph 3-4b and USFK Reg 190-3 will visit as necessary. Coordinate all visits to ROK penal institutions, other than regular support visits by U.S. Army Correctional Facility-Korea personnel, with the USFK JA. Report all visits on DD Form 1602 (Report of Visit U.S. Personnel in Foreign Penal Institution (LRA)). Include a short description of any applicable rehabilitation program in section 16 (Remarks) on DD Form 1602. Any instance of suspected mistreatment or substandard confinement conditions will be reported to and investigated by the USFK Provost Marshal, with corrective action taken, if warranted, by COMUSFK. This applies to military personnel and civilians, including dependents.

d. If reasonable requests for permission of U.S. officials to visit prisoners having SOFA status are denied without apparent good cause, or if it appears that a prisoner having SOFA status is being mistreated, or that conditions of confinement are substandard and prompt corrective action cannot be obtained from appropriate local ROK authorities, the case will be reported immediately to the USFK JA. The JA will report the matter to the diplomatic mission and immediately notify the JAG of the service concerned. This requirement applies to military personnel and civilians, including dependents.

e. Component commanders will make arrangements with ROK prison authorities to ensure that military members are returned to U.S. custody upon termination of confinement. Custody of non-Korean civilians, including dependents, is received by the appropriate ROK immigration office upon termination of confinement. The USFK JA will remove international hold status before such individuals leave the ROK.

f. Upon notification that a service member has been convicted of an offense at the trial court level, the individual's commander will promptly consider elimination action. If deemed appropriate, the commander will promptly initiate such action IAW appropriate service regulations. In addition, in the case of an enlisted member of the Army or Air Force, the individual's commander will consider initiation of administrative reduction action under appropriate service regulations. Commanders of all reporting commands will submit a report of status on every pending administrative separation action not later than the 10th day of the succeeding month utilizing the format contained in appendix N. Any action not instituted within five working days after receipt of the Trial Observer Report, or completed within 60 days thereafter, will include justification detailing the reasons for the delay.

g. Once judicial proceedings against a military member charged with a serious violation of a ROK law have been completed and the member's presence is no longer required by ROK authorities, immediate steps will be taken to remove the service member from the ROK and to preclude assignment to the ROK.

2-6. Reports

a. In any case (other than a clearly minor offense) where the ROK exercises criminal jurisdiction over U.S. military personnel, civilian employees, or dependents, the USFK JA will notify the JAG of the service concerned IAW AR 27-50/SECNAVINST 5820.4G/AFI 51-706, paragraph 4-9 (RCS DD-GC (AR) 708 (5820) (DD Form 1936) (Individual Case Report Exercise of Criminal Jurisdiction by Foreign Tribunals over US Personnel)).

b. The USFK JA will prepare an annual criminal jurisdictional report on DD Form 838 (Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel) (RCS DD GC(A)705) for all services IAW AR 27-50/SECNAVINST 5820.4G/AFI 51-706, paragraph 4-4.

c. Commanders of reporting commands will--

(1) Submit a report of disposition of offenses in all reported incidents. This includes those in which the ROK had the primary right to exercise jurisdiction but did not exercise it, and those in which an official duty certificate was filed.

(2) Submit reports of disposition of offenses to the Office of the Judge Advocate, USFK (FKJA-IL) Unit #15237, APO AP 96271-5237, not later than the 10th day of the succeeding month. Use the format in appendix M (RCS JAJ-3K(R 1)). This report must indicate all levels of disposition, from minor administrative measures to disciplinary action under the UCMJ. This report must also indicate disposition by means of "no action" for those cases in which such disposition was deemed appropriate (e.g., "insufficient evidence" or "subject innocent").

d. Component commanders will submit Serious or Unusual Incident Reports (RCS CSGPA-1340(R2)) for the Air Force and the Army and NAVJAG 5820-3 for the Navy) (see AR 27-50/SECNAVINST 5820.4G/AFI 51-706, paragraph 4-8) by electrical means to the JAG of their respective services without delay. The USFK JA will be listed as an information addressee on initial and supplemental reports.

e. Dispatch all monthly reports of visits to the ROK confinement facilities prepared by the component service concerned IAW AR 27-50/SECNAVINST 5820.4G/AFI 51-706, paragraph 4-7 to the Office of the Judge Advocate, USFK (FKJA-IL), Unit #15237, APO AP 96271-5237, not later than five working days following the visit. The USFK JA has overall responsibility for monthly visitation reports (DD Form 1602). Submit reports to the USFK JA for review not later than 10 working days following the visit. Should review of the report disclose failure by the ROKG to comply with minimum standards established for the confinement facility or similar detrimental matters, the USFK JA will immediately notify COMUSFK.

f. If in doubt how to apply or interpret any part of this regulation, consult directly with the USFK JA (International Law Division). In such cases, the intermediate headquarters will be notified of the action taken.

Appendix A References

Section I. Required Publications

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

AR 190-45, Law Enforcement Reporting.

AR 190-50, Physical Security for Storage of Controlled Medical Substances and Other Medically Sensitive Items

DODI 5525.01, Foreign Criminal and Civil Jurisdiction

Privacy Act.

ROK Code of Criminal Procedure.

Title 10, US Code, Section 1037.

Uniform Code of Military Justice.

United States - Republic of Korea Status of Forces Agreement, with Agreed Minutes, and Understandings on Implementation.

USFK Reg 190-3, Administrative and Logistical Support for SOFA Personnel Confined in the Republic of Korea Correctional Institutions.

Section II. Related Publications

CINCPACINST 5820.1M Series, Status of Forces Policies and Information.

USFK Reg 190-50, Law Enforcement Procedures in Korea.

Manual for Courts Martial, United States.

Section III. Required Forms

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

DD Form 1602, Report of Visit - US Personnel in Foreign Penal Institution (LRA).

DD Form 1936, Individual Case Report - Exercise of Criminal Jurisdiction by Foreign Tribunals over US Personnel.

HQ USFK FL 32EK, U.S. Request for Waiver of Jurisdiction.

HQ USFK Form 67, Disposition of Offense Punishable by the Laws of Korea.

USFK FL 1EK, HQ, United States Forces Korea (USFK), SOFA Card.

USFK SOFA CJ Form 1EK-E, US Notice of Incident, Arrest and Receipt.

USFK SOFA CJ Form 1A-R-E, Supplemental Information US Notice of Incident, Arrest and Receipt.

USFK SOFA CJ Form 2, Custody Request and Receipt.

USFK SOFA CJ Form 3-E, Civilian Request to be taken into Custody by US Military Authorities.

USFK SOFA CJ Form 4-R-E, Official Duty Certification and Receipt.

USFK SOFA CJ Form 5-R-E, Appointment of US Representative.

Appendix B
Criminal Jurisdiction, Agreed Views Nos. 1 through 26

CRIMINAL JURISDICTION

Agreed View No. 1

23 June 1967

APPROPRIATE MEANS OF IDENTIFICATION OF USFK PERSONNEL

Pursuant to paragraphs 3 and 4, Article VIII and paragraphs 2 and 3, Agreed Minutes regarding Article VIII, ROK-US Status of Forces Agreement, the identity card will be the standard English language identity card issued by the United States Armed Forces. This card will contain the name, signature, date of birth, date of issue, date of expiration, service number if a member of the US military, identity card number and will contain the holder's picture. No identification will be required for persons under twelve years of age. Pursuant to paragraph 1 of the Agreed Minutes regarding paragraph 3(a), Article VIII, ROK-US Status of Forces Agreement, the identity card will be a bilingual card containing the bearer's name, position, and the fact that he is a member of a law enforcement agency.

CRIMINAL JURISDICTION

Agreed View No. 2

23 June 1967

FEES AND OTHER PAYMENTS FOR WITNESSES

Pursuant to the 6th unnumbered subparagraph of paragraph 1 of the Agreed Minutes regarding paragraph 6, Article XXII, ROK-US Status of Forces Agreement, the following fees and other payments shall be utilized: In Korean courts and before official Korean investigative agencies the rates and pay scales for members of the United States Armed Forces, the civilian component, of their dependents as witnesses shall be those used by Korean courts for witnesses. When the US Armed Forces desire the presence of Korean witnesses before US courts and official US investigative agencies, the rates and pay scales for witnesses set out in directives of the United States Forces and as authorized by US law will be utilized.

CRIMINAL JURISDICTION

Agreed View No. 3

23 June 1967

(Amended 22 May 2012)

PROCEDURES FOR OBTAINING CITIZENS OR RESIDENTS OF THE REPUBLIC OF KOREA AS WITNESSES AT US MILITARY COURTS-MARTIAL

Pursuant to the 5th unnumbered subparagraph of paragraph I of the Agreed Minutes regarding paragraph 6, Article XXII, ROK-US Status of Forces Agreement, the following procedures are adopted for obtaining citizens or residents of the Republic of Korea as witnesses at US military courts-martial: When the United States Armed Forces require a citizen or resident of the Republic of Korea as a witness before a military court of the United States, the commander convening the court or his designee will submit a written request stating the time and place the witness is required to appear, either to the branch or district prosecutor or to the ROK police authority who has jurisdiction over the area wherein the requested witness was last known to reside. It will be the responsibility of the branch or district prosecutor or the local police authority to secure the attendance of such person at the requested time and place. The Ministry of Justice of the Republic of Korea will make efforts to secure the attendance of an essential witness before the military court of the United States.

CRIMINAL JURISDICTION

Agreed View No. 4

23 February 1967

DESIGNATION OF US AGENT TO RECEIVE COPIES OF ALL CRIMINAL WRITS

Pursuant to 4th unnumbered paragraph of paragraph 1 of the Agreed Minutes regarding paragraph 6, Article XXII, ROK-US Status of Forces Agreement, the agent designated by US military authorities to receive copies of all criminal writs issued to members of the US Armed Forces, civilian component and dependents is the Commander, United States Forces Korea. Such copies should be addressed to Commander, United States Forces Korea (ATTN: JA).

CRIMINAL JURISDICTION

Agreed View No. 5

11 April 1967

NOTIFICATION OF DISPOSITION OF CASES

The notification required by paragraph 6(b), Article XXII, ROK-US Status of Forces Agreement shall be deemed satisfied by the following:

a. Reciprocal monthly reports through the Joint Committee by United States Armed Forces and Korean authorities of the final disposition of those cases tried by the party not having the primary jurisdiction over the case as defined in paragraph 3, Article XXII, ROK-US Status of Forces Agreement.

b. Reciprocal monthly reports through the Joint Committee by United States Armed Forces and Korean authorities of the final disposition of the cases tried by either State under its primary right to exercise jurisdiction which involve offenses committed against the other State or nationals of the other State.

c. The reports mentioned in (a) and (b) above shall contain the name and organization of the accused, name of offense, brief description of offense, substance and date of disposition, and name of the authorities which made the disposition.

d. Nothing herein shall prohibit informal reports at the local level by United States or Korean authorities to the authorities of the other States, upon request, of the disposition of any cases either by trial or otherwise.

CRIMINAL JURISDICTION

Agreed View No. 6

11 April 1967

PROTECTION OF US PROPERTY OUTSIDE US INSTALLATIONS AND AREAS

Pursuant to paragraph 1, Article III and to Article XXV, ROK-US Status of Forces Agreement, it is agreed that:

The United States military personnel may, in the vicinity of vital US military property, such as vessels, aircraft bridges, major weapons, ammunition and classified material, wherever situated in Korea, take into custody without warrant any flagrant offender against the security of that property, or prevent him from the commission of such offense, when they have no reasonable opportunity to request the assistance of Korean law enforcement authorities. The US authorities shall transfer the custody of any person so arrested to the appropriate authorities of the Republic of Korea without delay.

The term "flagrant offender" used in the above paragraph has a meaning as defined in Article 211 of the ROK Code of Criminal Procedure on the date this agreed view is approved.

CRIMINAL JURISDICTION

Agreed View No. 7

11 April 1967

SECURITY OF US PROPERTY IN THE EVENT OF AN ARREST BY ROK AUTHORITIES

Pursuant to the second sentence of Article XXV, ROK-US Status of Forces Agreement, it is agreed that:

In the event a ROK arresting agency arrests a member of the US Armed Forces, civilian component, Korean employee of such forces, or dependent who at the time is in the possession of or has the responsibility for US property or personal property of US forces personnel, such property will be secured by such arresting agency and turned over to US authorities upon request of such authorities. In the event such property is thereafter required by the ROK authorities in connection with an offense, the provisions of paragraph 6(a), Article XXII will apply.

CRIMINAL JURISDICTION

Agreed View No. 8

22 June 1967

DEPARTURE FROM KOREA OF WITNESSES AT INVESTIGATIONS

Pursuant to paragraph 6(a), Article XXII and Agreed Minutes thereto of the ROK-US Status of Forces Agreement, it is agreed that US authorities will notify the local investigative authorities, at least ten days in advance whenever possible, if a US witness to a SOFA incident is due to depart Korea in the near future. The ROK authorities will then notify the US authorities at least two days before the witness' scheduled departure if they consider it necessary to preserve any evidence he may possess.

Such preservation of evidence may consist of the examination of the witness before a judge in accordance with Article 184 of the ROK Code of Criminal Procedure or the inspection of documents or other real evidence in his possession in accordance with Article 185 of the ROK Code of Criminal Procedure, or the examination of the witness and inspection of documents or other real evidence by the prosecutor or by the judicial police.

The US authorities will ensure the witness' attendance at such proceedings and the ROK authorities will ensure that such proceedings are conducted in such a manner as not to interfere with the scheduled date of departure of the witness.

CRIMINAL JURISDICTION

Agreed View No. 9

22 June 1967

INVESTIGATION OF INCIDENTS OUTSIDE US FACILITIES AND AREAS

Pursuant to paragraph 5(a) and Agreed Minutes re paragraph 10(a) and 10(b), and paragraph 6(a), Article XXII, ROK-US Status of Forces Agreement, it is agreed that:

In incidents occurring outside US facilities or areas wherein the initial information indicates that a member or members of the United States Armed Forces, civilian component, or dependents thereof, have been involved in an incident which would fall within the exclusive jurisdiction of the United States, the nearest United States Armed Forces law enforcement agency will be notified immediately. United States law enforcement personnel have the responsibility for the investigation of such incidents.

Whenever an incident occurs outside US facilities involving a member or members of the United States Armed Forces, civilian component, or dependents thereof, which would fall within the concurrent jurisdiction, investigations by both US and Korean law enforcement personnel shall be conducted in mutual cooperation and assistance as far as possible, provided that obtaining such cooperation and assistance will not preclude the taking of investigative steps by either side.

In recognition of the right and obligation of United States law enforcement agencies to conduct investigations in cases of offenses against United States Government property and/or personnel, and their private property, Republic of Korea law enforcement authorities will render all possible assistance in investigations initiated by United States law enforcement agencies.

CRIMINAL JURISDICTION

Agreed View No. 10

2 June 1967

(Amended 11 December 2013)

USFK-KNP JOINT PATROLS

Pursuant to paragraph 5(a) and 10(b) and Agreed Minutes re paragraph 10(a) and 10(b), Article XXII, ROK-US Status of Forces Agreement, it is agreed that:

The establishment and operation of the patrols shall be in cooperation and coordination with the appropriate authorities of the United States Armed Forces and the Republic of Korea.

The United States Armed Forces Military Police shall patrol jointly with Korean National Police (KNP) officers outside United States Military installations in Republic of Korea. The KNP will provide officers for these joint patrols.

If after coordination, KNP officers are unavailable for joint patrol, these military police may patrol independently.

United States armed forces patrols will be led by non-commissioned officers or officers.

It is understood that while patrolling USFK law enforcement authorities have no authority or responsibility to enforce the laws of the Republic of Korea against anyone other than members of United States Armed Forces.

While patrolling, and in coordination with KNP, the United States Armed Forces Military Police will carry non-lethal weapons for self-defense. Under routine circumstances, they will not carry firearms. However, in coordination with KNP, they may carry firearms during emergency situations for the safety of the United States Armed Forces Patrols.

CRIMINAL JURISDICTION

Agreed View No. 11

31 August 1967

MUTUAL SECURITY OF FIRING RANGES

Pursuant to paragraph 1, Article III, and Article XXV, ROK-US Status of Forces Agreement, the following plan is adopted for mutual security of the US firing ranges:

1. Types and locations of firing ranges do not lend themselves to identical rules and regulations which provide mutual security. The security plan must therefore be jointly developed between the local Republic of Korea officials and the responsible US military commanders for each range.
2. Plan will be effected as follows:
 - a. Upon request of the Commander, USFK; the Minister of Home Affairs, ROK, and the Commander, USFK, will mutually exchange the names and titles of the appropriate local Republic of Korea officials and the responsible US military commander in the area where a firing range is located.
 - b. These officials and commanders will prepare jointly a security plan for the particular range. Such a security plan may reflect arrangements already in effect or may consist of an entirely new procedure.
 - c. When the plan is prepared, the preparing agencies will then forward for review two copies to the Commander, USFK, ATTN: J5 and to the Minister of Home Affairs, ROK, ATTN: Director of National Police Headquarters.
 - d. Upon review one copy will be returned to each preparing agency and one copy retained by the Commander, USFK, and the Minister of Home Affairs.

CRIMINAL JURISDICTION

Agreed View No. 12

9 November 1967

ACCESS OF MILITARY POLICE OF US FORCES TO PUBLIC AREAS

Pursuant to paragraph 5(a) and 10(b) and Agreed Minutes re paragraphs 10(a) and 10(b), Article XXII, ROK-US Status of Forces Agreement, it is agreed that:

The general maintenance of public order outside facilities and areas in use by the United States Armed Forces is the primary responsibility of the ROK authorities. The maintenance of proper order and discipline among US Armed Forces personnel outside such facilities and areas continues to be a function of military police of US Armed Forces. In the course of maintaining order and discipline over such persons, these military police, in liaison with the authorities of the Republic of Korea, will have access to such public areas, public recreation areas, and public entertainment buildings as are frequented mainly by the US Armed Forces personnel, provided that they shall not substantially interfere with performance of legitimate business.

[**Note:** Agreed View No. 13 applies to both military and civilians, including dependents. There is no charge to the prisoner for support provided by the US.]

CRIMINAL JURISDICTION

Agreed View No. 13

4 April 1968

MINIMUM STANDARDS FOR CONFINEMENT FACILITIES

PART 1 - PHYSICAL PLANT

1. Location.

- a. The confinement facility shall be located at some distance from perimeter fences, public thoroughfares, main gates and other congested areas.
- b. It shall be accessible to areas where prisoners will be employed or utilized.
- c. Area shall provide an exercise field for use by prisoners.
- d. Area shall be even terrain without abrupt breaks in contour but shall have an overall slope to ensure proper surface drainage.

2. Space Requirements.

- a. At least 72 square feet of sleeping space shall be provided for each prisoner.
- b. Cells constructed for use as close-confinement cells, such as administrative and disciplinary segregation cells, shall not be less than 8 feet long by 6 feet wide by 8 feet high (48 square feet of floor space).

3. Buildings. In general, buildings should be constructed and arranged to provide for control and safety of all prisoners confined therein. Specific requirements which shall be met include the following:

- a. Cells and Compartments.
 - (1) Large cells or rooms shall be divided into compartments.
 - (2) Separate accommodations shall be provided for officers, including warrant officers.
 - (3) Administrative segregation cells shall have closed sides, open secure fronts, and open-type front doors.
 - (4) Disciplinary segregation cells shall have closed sides, closed fronts, and open-type front doors.
 - (5) All individual cells shall:
 - (a) Be adequately heated, lighted and ventilated.
 - (b) Afford a maximum amount of natural light and observation consistent with custodial requirements.

(c) Be lighted during periods when other areas of the confinement facility are lighted.

(d) Be provided with a flush-type toilet and lavatory.

(6) The floors, walls and ceilings of all cells shall be of smooth surface with no exposed water or heating pipes or any objects that would aid a prisoner in self-injury.

(7) Rooms or buildings in which group and individual cells are located shall have, in addition to the entrance door, another door leading outside for use in case of fire or emergency.

b. Classroom and Chapel. A minimum of one large room shall be provided to serve as a classroom for training and, when necessary, for use as a chapel.

c. Visitor's Room. A separate room shall be provided for use by visitors and shall be arranged and equipped to provide comfortable surroundings and a desirable atmosphere for both visitors and prisoners. Visitors and prisoners shall not be separated by wire screens or other types of barriers.

d. Bathing Facilities. Indoor bathing and shower facilities shall be provided.

e. Laundry Facilities. There shall be provided a laundry room containing tubs, water, and drying facilities to allow prisoners to maintain their clothing in an acceptable standard of cleanliness.

f. Kitchen Facilities. The kitchen facilities will be constructed in one part of the existing Korean kitchen facilities and will be partitioned off from it.

(1) Plumbing. The partitioned facilities will be served by running water by extending the existing plumbing to the partitioned area. Manhole and underground drain pipes will be installed in such area to provide a sewer system. A sink with running water will be provided for cleaning hands, food, eating utensils, and other equipment.

(2) Floors. Floors will be constructed of cement or other impervious material.

(3) Walls and Ceilings. Walls and ceilings will be built of bricks, covered with cement, and painted with latex.

(4) Screening. Screens will be provided on all doors and windows against insects.

(5) Lighting. The partitioned portion of the kitchen will be lighted by two 30-Watt glow lamps, such number to be increased whenever the lighting is deemed to be inadequate for the proper functioning of the kitchen. The storage room will also be lighted by a 30-Watt glow lamp.

(6) Ventilation. An exhaust ventilator fan will be installed at the most effective location in order to remove cooking odors from the partitioned area and to provide fresh air from the outside.

(7) Design and construction of utensils and equipment. All kitchen utensils and equipment will be of aluminum make.

(8) Refrigerators. Refrigerators will be provided for food and drink which require

refrigeration for preservation.

(9) Storage. Adequate storage facilities will be provided in order to protect the food from dirt, insects, and rodents.

(10) Stove. Adequate facilities for heating water and for cooking American food for the number of inmates to be served will be provided.

(11) Dining Room. Either a small separate dining room will be provided, or the prisoners will be permitted to eat on tables in their cells.

g. Equipment.

(1) Sufficient fire protection devices, to include an alarm system and fire extinguishers, shall be installed and maintained in an operational condition throughout the confinement facility.

(2) Recreation equipment, including cards, games, and sporting gear, shall be readily available for use by the prisoners.

(3) Prisoners shall be provided adequate sleeping accommodations with sufficient covering during sleeping hours. Such accommodations shall consist of one bed, one mattress, one pillow, two sheets, one pillow case, two blankets (or more as required), and one comforter per prisoner.

PART II - TREATMENT OF US PRISONERS

1. Visitor's room. There shall be no direct exchange of items between prisoners and visitors. Item to be exchanged shall be delivered through prison officials.

2. Bathing facilities. Each prisoner shall be afforded an opportunity to bathe/shower, no less frequently than once every five days, in order to maintain an acceptable standard of cleanliness.

3. Food preparation. US prisoners shall be given wholesome and sufficient food from US-issued rations of the same type, quality, and quantity as furnished to other US Forces personnel. This may be accomplished by:

a. US forces shall be permitted to furnish cooked meals for US prisoners.

b. Prisoners shall be authorized to prepare their own meals from food supplies furnished by the nearest US military installation. In this event, kitchen facilities shall be provided to store and to cook the food as outlined in Part I, paragraph 3f.

4. Health and welfare of prisoners.

a. Prisoners are authorized to wear underclothing, shoes, and socks provided by the US forces.

b. The individual's commander, medical officer, legal officer, provost marshal or other officials are authorized to make periodic visits, and the commander is authorized to purchase, with the prisoner's personal funds, personal items needed by the prisoner. Items generally needed are safety razor blades, shaving brush, tooth brush, comb, toilet soap, bath towel, handkerchief, tooth paste, shaving cream and other items.

c. Prisoners shall be barbered every week and shall shave no less frequently than every two days. Razors and blades may be secured by the detention facility authorities when not in actual use by the prisoners.

d. Prisoners shall be allowed to send and receive mail through US forces APO channels and a representative of the US forces shall have the option to censor mail in coordination with prison officials.

e. Medical care may be furnished by US forces as required.

f. Prisoners will not be required to perform labor/work details in excess of 12 hours total per day.

PART III - IMPLEMENTATION

When necessary, rules and regulations implementing the above standards will be evolved by joint agreement of Eighth Army Provost Marshal and the Correctional Authority of the Ministry of Justice, Republic of Korea.

PART IV - APPLICABILITY

The above standards apply to facilities utilized for members of US Armed Forces, civilian component, invited contractors and their dependents finally sentenced to death, confinement imprisonment or penal servitude.

CRIMINAL JURISDICTION

Agreed View No. 14

14 August 1968

PROCEDURES FOR OBTAINING WITNESSES OR SUSPECTS FOR ROK INVESTIGATIVE AUTHORITIES

Pursuant to the provisions of paragraph 6(a), Article XXII, and paragraph 2 of the Agreed Understanding of the Agreed Minutes re paragraph 3(b), Article XXII, ROK-US Status of Forces Agreement, the following procedure will apply when the cooperation of US authorities is necessary to obtain a member of the United States Armed Forces or civilian component, a dependent, or a US invited contractor as a witness or as a suspect at an investigation by ROK authorities:

1. The request for such witness or suspect will be in writing and delivered to the nearest area provost marshal/security police officer. The request will contain the individual's name, organization, and the place and time that the ROK authorities desire the individual.
2. The area provost marshal/security police officer or his designee will contact the commanding officer, supervisor, or employer of the individual, or the individual's sponsor.
3. The commanding officer, supervisor or employer will make the necessary arrangement, including transportation, to comply with the ROK request.
4. If the individual is not available at the requested time because of imperative military duties, illness or other similar reason; the commanding officer, supervisor or employer will propose to the ROK authorities, either directly or through the provost marshal/security police officer, a time when the witness or suspect will be available.

Note: Procedures for obtaining witnesses and defendants at ROK trial proceedings are set forth in unnumbered paragraphs 2, 3 and 4 of paragraph 1 of the Agreed Minutes re paragraph 6, Article XXII, US-ROK Status of Forces Agreement.

CRIMINAL JURISDICTION

Agreed View No. 15

14 August 1968

PROCEDURES FOR THE RESOLUTION OF QUESTIONS OF EXCLUSIVE AND PRIMARY JURISDICTION

1. When a question of the existence of exclusive jurisdiction is raised in any particular case by ROK or US authorities, the matter will be referred to the US and ROK chairman of the Criminal Jurisdiction Subcommittee for consultation and resolution.
2. If agreement cannot be reached by mutual consultation between the Chairmen of the Criminal Jurisdiction Subcommittee, either Chairman may refer the matter to the SOFA Joint Committee for resolution in the Joint Committee.
3. During the course of the foregoing procedures, neither the ROK nor the US will exercise its jurisdiction over the specific incident, and it is considered that the period for the notification by the ROK of a decision to exercise its primary jurisdiction, as set forth in the exchange of letters of 9 July 1966, does not commence until it is determined, either by the Chairmen of the Criminal Jurisdiction Subcommittee or by the Joint Committee, that the incident falls within the primary jurisdiction of the ROK.
4. When mutual agreement cannot be reached through the procedures outlined in paragraphs 1 and 2 above, the State which claims exclusive jurisdiction may exercise its jurisdiction over the specific offense in accordance with the US-ROK Status of Forces Agreement and its laws, until a mutual agreement, if possible, is reached through other channels. The above procedure does not prohibit earlier consultation through the Joint Committee, informal consultation between officials of both States at any time, or a solution through diplomatic channels if the Joint Committee is unable to resolve the matter.

CRIMINAL JURISDICTION

Agreed View No. 16

5 December 1968

METHOD OF COUNTING THE 15-DAY PERIOD FOR
THE REPUBLIC OF KOREA TO EXERCISE ITS CRIMINAL JURISDICTION

(INTENTIONALLY LEFT BLANK, AS THIS AGREED VIEW IS NO LONGER OPERATIVE.)

CRIMINAL JURISDICTION

Agreed View No. 17

5 December 1968

PROCEDURES FOR THE TRANSFER OF CUSTODY

(INTENTIONALLY LEFT BLANK, AS THIS AGREED VIEW IS SUPERSEDED BY
AGREED VIEW NO. 21, PARAGRAPH 6.)

CRIMINAL JURISDICTION

Agreed View No. 18

24 July 1969

DISPOSITION AND PROCEDURES FOR PAROLE OF USFK PERSONNEL

The disposal and procedures for the parole by ROK authorities of a member of the United States Armed Forces, or civilian component, or a dependent who is serving a sentence in a ROK confinement facility are prescribed as follows:

1. The Minister of Justice, in case he permits the parole, shall immediately notify the Commander, US Forces Korea (ATTN: FKJA) of the name, rank and organization of the parolee, and of the place and time of the release.
2. The Commander, US Forces Korea shall take over the parolee at the designated time and arrange for the transportation of the individual concerned and his property to his unit, his sponsor or his supervisor.
3. While on parole, the supervision and protection of the parolee shall be performed by the US authorities, and the US authorities shall report to the competent police chief the parolee's activities on the last day of each month, while the parolee remains in Korea.
4. When the US authorities desire to remove a parolee from the territory of the ROK, the Judge Advocate of US Forces Korea, on behalf of the Commander, US Forces Korea shall notify the Minister of Justice, ATTN: Director, Bureau of Prosecution, of the date, time and destination of the parolee at least 72 hours in advance. Unless the ROK prohibits the parolee's departure, US authorities may remove the parolee from the territory of the ROK at no cost to the Republic of Korea.
5. If, before the parolee has departed the territory of the Republic of Korea, the parole is nullified in accordance with Article 74 of the ROK Criminal Code or it is revoked in the context of Article 75 of such code. The US authorities shall transfer the parolee to a confinement facility which meets the agreed minimum standards designated by ROK authorities without delay.
6. During the time the parolee remains in the territory of the Republic of Korea, the competent authorities of the ROK may contact him through the US authorities at any time and inquire about his behavior.

CRIMINAL JURISDICTION

Agreed View No. 19

1 February 1991

PROCEDURE FOR REQUESTS FOR WAIVER OF JURISDICTION

Pursuant to the provisions of the Understandings on Implementation of Paragraph 3(c), Article XXII, US-ROK Status of Forces Agreement, the following procedure will apply to any requests for waiver of primary jurisdiction:

1. Any request by the United States will be submitted in writing to the Ministry of Justice, Republic of Korea. The Republic of Korea will send its response to the Office of the Judge Advocate, United States Forces Korea within twenty-eight (28) days (plus any authorized extension) from the date of its receipt of the request. Any decision to deny the request will be in writing by the Director-General Prosecution Bureau, Ministry of Justice or his designated representative. Any decision to grant the request will be transmitted through the fastest means available at the time.
2. Any request by the Republic of Korea will be submitted in writing to the office of the Judge Advocate, United States Forces Korea. The United States will send its response to the Ministry of Justice, Republic of Korea within twenty-eight (28) days (plus any authorized extension) from the date of its receipt of the request. Any decision to deny the request will be in writing by the Judge Advocate, United States Forces Korea or his designated representative. Any decision to grant the request will be transmitted through the fastest means available at the time.
3. In processing waiver requests, the authorized representative of the United States Armed Forces is the Judge Advocate, United States Forces Korea. The authorized representative of the Republic of Korea is the Director-General, Prosecution Bureau, Ministry of Justice for the Republic of Korea.
4. The following method of counting the twenty-one (21) day period for the requesting State to submit the request for waiver is adopted:
 - a. The twenty-one (21) day period shall commence the day after the authorized representative of the requesting State is notified or is otherwise apprised of the commission of an offense falling within the primary jurisdiction of the other State.
 - b. When the identity of the suspect is uncertain, the twenty-one (21) day period shall commence the day after the authorized representative of the requesting State is notified or is otherwise apprised of the exact identity of the suspect.
5. The twenty-eight (28) day period commences the day after the authorized representative receives a written request for waiver. The authorized representative of the State receiving the request may request an extension for a specific period of days normally not exceeding fourteen (14) days. The request must contain sufficient information to identify the case, explain the reasons why the extension is necessary, and be received by the authorized representative of the State requesting the waiver prior to the expiration of the original twenty-eight (28) day period.

CRIMINAL JURISDICTION

RIGHT OF CONFRONTATION

1. Article XXII, Paragraph 9(c) of the US-ROK Status of Forces Agreement (SOFA) provides that whenever a member of the United States armed forces or civilian component or a dependent is prosecuted under the jurisdiction of the Republic of Korea, he has the right to be confronted with the witnesses against him. The Agreed Minute Re Paragraph 9(c) and (d) further provides that such a SOFA-status person has the right to be present throughout the testimony of all witnesses, for and against him, in all judicial examinations, pretrial hearings, the trial itself, and subsequent proceedings, and shall be permitted full opportunity to examine the witnesses.
2. The rights of a SOFA-status person provided under Article XXII, Paragraph 9(c) of the SOFA and Agreed Minute thereto are those protected under the United States Constitution. The United States Supreme Court has held in this respect that no out-of-court statement of a witness may be admitted as evidence over the accused's objection unless the witness is available for cross-examination by the accused in court. However, Article 314 of the Code of Criminal Procedure of the Republic of Korea provides that if a witness is not available to testify in court because of death, sickness or other reasons, his previous statement or other document may be admitted as evidence if they were made under credible circumstances. The Republic of Korea Supreme Court held in ROK v. Trumble (1987) that the right of confrontation under the SOFA did not preclude application of Article 314 of the Code of Criminal Procedure. The US Representative of the US-ROK SOFA Joint Committee protested, and the ROK Representative assured that the ROK Court's decision would not be used as a precedent to deny the right of confrontation.
3. The difference between the Republic of Korea and the United States in interpretation concerning the admissibility of an out-of-court statement is due to the lack of an express provision in the US-ROK SOFA. As the Korean legal system is based on the statutory system, the current interpretation cannot be changed in the absence of an express provision in the US-ROK SOFA.
4. Thus, as a practical solution at this point, the ROK Ministry of Justice has issued a directive (Enclosure) to all the prosecutors' offices in Korea to ensure that all SOFA-status accused are accorded the right of confrontation.

(Enclosure)

Extract of Ministry of Justice Directive

In recent SOFA cases, our courts admitted into evidence investigative reports containing the statements of those witnesses who were not available to testify in court because their whereabouts could not be ascertained. The US military authorities contend that such admission violates the right of confrontation provided in Paragraph (c), Article XXII of the US-ROK SOFA. In this respect, ensure that each level of the prosecutor's office takes the following measures:

1. In those exclusive jurisdiction cases where indictments are expected, and in those primary jurisdiction cases where exercise of jurisdiction is expected, verify the identifications and addresses of the essential witnesses from the beginning of the investigation so that they can be subpoenaed if necessary.
2. When an indictment is filed in an exclusive jurisdiction case, or when primary jurisdiction is exercised against a military member, be sure to take a deposition pursuant to Article 184 of the Code of Criminal Procedures and thus accord the accused an opportunity to confront the witness in order to prevent a situation in which the accused is unable to confront a witness because the witness cannot be located after the indictment.
3. When submitting a recommendation for disposition of a case or approval of an indictment, include a report on the disposition.

CRIMINAL JURISDICTION

Agreed View No. 21

18 January 2001

(amended 22 May 2012)

Pursuant to US-ROK SOFA, Article XXII, Paragraph 5(c)

1. Categories of cases to be defined as a heinous crime of murder or an egregious rape, under Paragraph 5(c), will be determined by the Joint Committee. If a case within that purview arises prior to such determination by the Joint Committee, it shall be handled by the two governments on a case by case basis.
2. When the authorities of the Republic of Korea intend to request the transfer of custody at the time of indictment:
 - a. The Director of the 4th Prosecution Division of the Prosecution Bureau, Ministry of Justice, shall submit a standard form noting such intent to the Judge Advocate, United States Forces Korea. The form shall be filled out and contain the name of the person whose custody is to be sought and the offense for which the person will be indicted. The form will also state, if possible, the date, time, and place at which the detention hearing following the prosecutor's request for detention warrant will be conducted in accordance with the law of the Republic of Korea. A copy of the request for detention warrant shall accompany the form.
 - b. If, following such hearing, the authorities of the Republic of Korea decide to request the transfer of custody of the accused; the Director shall submit a standard form containing the request to the Judge Advocate, United States Forces Korea. The form shall contain the name of the person whose custody is being sought, and the offense for which the person will be indicted. The form shall also contain a brief explanation of how the case qualifies as being eligible for pretrial transfer of custody, and an assurance to indict the person within 24 hours of transfer of custody, or otherwise, to release him. The form will also state the requested date for the transfer of custody, such date to be not less than five (5) calendar days from the date the request for transfer is received by the Judge Advocate. A copy of the detention warrant issued by the judge at the detention hearing shall accompany the request form.
 - c. Upon receipt of the form, the Judge Advocate, United States Forces Korea, shall notify the Provost Marshal, United States Forces Korea, who shall arrange for the physical transfer of the person. The authorities of the Republic of Korea shall provide to the Judge Advocate, United States Forces Korea, a copy of the prepared indictment approved for filing. The Provost Marshal shall transfer the person to authorities of the Republic of Korea by the above requested date. The indictment must be filed within 24 hours of transfer of custody or the person must be released.
3. During the trial, the judge in charge of the trial of the accused can issue a detention warrant at any time, upon which the military authorities of the United States shall transfer custody to the Republic of Korea authorities. After issuance of the detention warrant, the Director of the 4th Prosecution Division of the Prosecution Bureau, Ministry of Justice, shall submit a standard form containing the request for the transfer of custody to the Judge Advocate, United States Forces Korea. The form shall contain the name of the person whose custody is being sought and the offense for which the person was indicted. The form shall contain a brief explanation of how the case qualifies as being eligible for the transfer of custody. The form will also state the requested date for the transfer of custody, such date to be not less than five (5) calendar days from the date the request for transfer of custody is received by the Judge Advocate. Copies of the

indictment and the detention warrant shall accompany the request form. Upon receipt of the form, the Judge Advocate shall notify the Provost Marshal, United States Forces Korea, who shall arrange for the physical transfer of the person. The Provost Marshal shall transfer him to the authorities of the Republic of Korea by the above requested date.

4. When the authorities of the Republic of Korea intend to request the transfer of pretrial custody:

a. Under Paragraph 11 of the Agreed Minute re Article XXII, Paragraph 5(c), the authorities of the Republic of Korea may submit requests for the transfer of pretrial custody to the Judge Advocate, United States Forces Korea in cases not otherwise covered when it has a material interest in such cases. The request shall contain the name of the person whose custody is being sought and the offense for which the person will be detained or indicted. The request shall also contain a brief explanation of the adequate cause and necessity for such transfer/detention, and a summary of the evidence against the individual. The request shall also state the requested date for transfer of custody. Copies of the detention warrant shall accompany the request form.

b. Pursuant to Paragraph 5 of the Understanding re Article XXII, Paragraph 5(c), United States military authorities will give sympathetic consideration to requests that the custody of a civilian component member or dependent is transferred to Republic of Korea authorities are unable to confine such a person and the Republic of Korea has requested the individual be placed in "pretrial confinement" by United States military authorities, based upon adequate cause and necessity for such confinement

5. When a member of the United States armed forces, of the civilian component or a dependent is arrested, detained or otherwise taken into custody by the authorities of the Republic of Korea, the arresting Republic of Korea law enforcement authorities will immediately notify the nearest Provost Marshal, United States Forces Korea, that such apprehension has been made and will, upon request, hand the person over:

a. In cases where the Republic of Korea authorities have arrested a suspect for an offense which falls within the categories of cases enumerated in Paragraph 3 of Agreed Minute re Paragraph 5(c), Article XXII and the Republic of Korea authorities have adequate cause to believe that he has committed such a crime, and there is necessity to detain him for the reason that he may destroy evidence; he may escape; or he may cause harm to the life, person or property of a victim or a potential witness, the United States military authorities will give sympathetic consideration to Republic of Korea requests to exercise restraint in requesting transfer of custody.

b. When the military authorities of the United States intend to request the transfer of custody of the person, the Provost Marshal shall prepare a standard form containing the request and provide it to the law enforcement authorities of the Republic of Korea maintaining the custody of the person. The form shall contain the name of the person whose custody is being sought, and the requested date for the transfer of custody.

6. When the authorities of the Republic of Korea intend to request the transfer of custody of a person in the custody of the military authorities of the United States, who has been sentenced to a term of confinement which sentence is not suspended, and where all judicial proceedings in the case have been concluded, the Director of the 4th Prosecution Division of the Prosecution Bureau, Ministry of Justice, shall submit a standard form containing the request to the Judge Advocate, United States Forces Korea. The form shall contain the name of the person whose custody is being sought, the offense of which he was convicted, the approved sentence and the

length of confinement. The form will also state the requested date for the transfer of custody, such date to be not less than five (5) calendar days from the date the request for transfer of custody is received by the Judge Advocate. Upon receipt of the form, the Judge Advocate shall notify the Provost Marshal, United States Forces Korea, who shall arrange for the physical transfer of the person. The Provost Marshal shall transfer him to the authorities of the Republic of Korea by the above requested date.

CRIMINAL JURISDICTION

Agreed View No. 22

18 January 2001

Pursuant to the Understanding, Paragraph 10, re US-ROK SOFA, Article XXII, Paragraph 5(c)

The standards for any facilities for pretrial confinement or restriction provided under Paragraph 10 of the Understanding re Article XXII, Paragraph 5(c) shall meet or exceed the standards established by the Joint Committee, for post-trial confinement facilities as set forth in Agreed View 13. Prompt notice of any transfer between facilities shall be given to the Judge Advocate, United States Forces Korea.

CRIMINAL JURISDICTION

Agreed View No. 23

23 December 2002

MUTUAL COOPERATION IN CRIMINAL JURISDICTION MATTERS

1. Paragraph 6, Article XXII of the Republic of Korea-United States Status of Forces Agreement (US-ROK SOFA) provides that the authorities of the ROK and the military authorities of the US shall assist each other in the carrying out of all necessary investigations into offenses.

2. Regarding these provisions and intending to improve mutual cooperation at the initial stage of criminal investigations, the Joint Committee agrees upon the following procedures applicable to the incidents of concurrent jurisdiction, as set forth below:

a. When both ROK and US authorities are present at the scene of an incident, both will cooperate to assure access to the scene and to the suspects and witnesses that may be present for purposes of preliminary investigations in accordance with Agreed View No. 9. Requests for access to facilities and areas in use by the U.S. armed forces or property of the United States by ROK authorities shall be considered in accordance with Paragraph 2 of the Agreed Minute Re Paragraph 10(a) and (b) of Article XXII.

b. If ROK authorities wish to question a suspect immediately prior to transfer of custody to US military authorities, US military authorities will provide a US representative as soon as practicable and make all reasonable efforts to ensure that the US representative arrives at the scene of other mutually agreed place within one hour of notification. To facilitate prompt questioning by ROK authorities, US military authorities will ensure that qualified US representatives are available on a 24-hour-a-day basis. The US representative is to be an impartial observer and neither the US representative nor the counsel shall interfere with any questioning; however, a suspect has the right to consult confidentially at any time with his or her counsel at all preliminary investigations and examinations.

c. If ROK authorities or US military authorities desire to question suspects or witnesses pertinent to a concurrent jurisdiction incident at a subsequent time, but before waiver or assertion of a State's right of primary jurisdiction, both will cooperate and make such suspects or witnesses available in accordance with the SOFA.

d. No suspect or witness will be compelled to sign any statement that he or she cannot read and understand. Neither will any witness or suspect, while in the custody of ROK or US law enforcement authorities or within the facilities of ROK or US law enforcement agencies, be made accessible to the media or any person not officially involved with the investigation.

3. Nothing in this agreement shall be construed to implement a change contrary to, or in derogation of the SOFA, as amended, or previously agreed Minutes, Understandings, and Views that implement the SOFA.

4. These procedures will take effect upon approval of the Joint Committee.

CRIMINAL JURISDICTION

Agreed View No. 24

23 December 2002

MUTUAL COOPERATION REGARDING CRIMINAL JURISDICTION

1. Paragraph 6, Article XXII of the United States-Republic of Korea Status of Forces Agreement (SOFA) provides that the military authorities of the United States and the authorities of the Republic of Korea shall assist each other in carrying out of all necessary investigations into offenses.
2. Regarding these provisions and intending to generally improve mutual cooperation in criminal investigations, the Joint Committee agrees upon the following procedures:
 - a. Whenever non-SOFA persons perpetrate offenses that concern the security and protection of US installations, property, the US armed forces, the members thereof, the civilian component, their dependents, and the persons who are present in the Republic of Korea pursuant to Article XV, ROK authorities will investigate offenses, prosecute offenders in accordance with the applicable criminal laws and regulations of the ROK and shall give sympathetic consideration to a request from the US authorities for notification of the disposition of such offenses.
 - b. The US military authorities shall give sympathetic consideration to a request by ROK authorities for reports, documents, or materials relevant to the investigation of concurrent jurisdiction offenses.
3. Nothing in this agreement shall be construed to implement a change contrary to, or in derogation of the Status of Forces Agreement (SOFA), as amended, or the previously adopted Agreed Minutes, Understandings, and Views that implement the SOFA.
4. These procedures will take effect upon approval of the Joint Committee.

CRIMINAL JURISDICTION

Agreed View No. 25

22 May 2012

CUSTODY PROCEDURES

1. Pursuant to Paragraph 1 of the Understanding re Article XXII, Paragraph 5(c), ROK authorities can detain a suspect until ROK authorities conduct initial questioning of the suspect in the presence of a United States representative along with a counsel, unless the presence of counsel is properly waived in accordance with Paragraph 8 of the Understanding re Article XXII, Paragraph 5(c) and make preliminary investigation into the case. The period of initial questioning and preliminary investigation starts when a United States representative is made available at the place of questioning. In no case will the period of initial questioning and preliminary investigation exceed a reasonable time. If the US military authorities raise any concerns regarding “reasonable time”, the ROK authorities shall give due consideration to such concerns.
2. Pursuant to Paragraph 4 of the Understanding re Article XXII, Paragraph 5(c), in cases where Republic of Korea authorities notify United States military authorities at the time of transfer of custody that they believe the suspect should be confined, placed on restriction, or restraints placed on the suspect’s liberty to prevent destruction of evidence, escape of the suspect or harm to the life, person or property of a victim or a potential witness, the United States military authorities will inform Republic of Korea authorities of confinement, restriction, or restraints placed on the suspect’s liberty, including custody status, and the reasons thereof. If the US military authorities decide not to confine, restrict, or place restraints on the suspect’s liberty, they will inform the ROK authorities of the reasons for their decision.

CRIMINAL JURISDICTION

Agreed View No. 26

22 May 2012

INTERPRETERS

Pursuant to Paragraph 9, Article XXII, the authorities of the Republic of Korea agree to provide interpreters at all investigative, pretrial, trial and post trial proceedings, who are determined to be qualified by ROK authorities. Such translators will provide adequate translation so the suspect/accused, the US Representative, and/or the Trial Observer can have a thorough understanding of any question or content of a proceeding. If the suspect/accused, the US Representative, and/or the Trial Observer objects to a specific interpreter based on incompetency or prejudice, the Republic of Korea authorities will consider using any qualified interpreter. Further, the Republic of Korea authorities will consider using qualified interpreters provided by the United States military authorities. The preceding statement will not prejudice any power or discretion of Korean judges in pretrial, trial and post-trial proceedings.

Appendix C
List of District and Branch Prosecutors' Offices in Korea

<u>PROSECUTOR'S OFFICE</u>	<u>JURISDICTION</u>
1. Seoul Central District	Seoul
a. Eastern District	
b. Western District	
c. Southern District	
d. Northern District	
2. Uijeongbu District	Northern part of Gyeonggi-do
*Goyang Branch	
3. Incheon District	Inchon
*Bucheon Branch	
4. Suwon District	Southern part of Gyeonggi-do
a. Seongnam Branch	
b. Yeosu Branch	
c. Pyeongtaek Branch	
5. Chuncheon District	Gangwon-do
a. Gangneung Branch	
b. Sokcho Branch	
c. Weonju Branch	
d. Yeongweol Branch	
6. Cheongju District	Chungcheong Buk-do
a. Chungju Branch	
b. Jecheon Branch	
c. Yeongdong Branch	
7. Daejeon District	ChungcheongNam-do
a. Hongseong Branch	

- b. Gongju Branch
 - c. Nonsan Branch
 - d. Seosan Branch
 - e. Cheonan Branch
8. Daegu District Daegu City and Gyeongsang Buk-do
- a. Andong Branch
 - b. Gyeongju Branch
 - c. Gimcheon Branch
 - d. Sanju Branch
 - e. Uiseong Branch
 - f. Yeongdeok Branch
 - g. Pohang Branch
9. Busan District Busan
- *Dongbu Branch
10. Ulsan District Ulsan City
11. Changweon District Gyongsang Nam-do
- a. Jinju Branch
 - b. Tongyeong
 - c. Milyang Branch
 - d. Geochang Branch
11. Jeonju District Jeolla Buk-do
- a. Gunsan Branch
 - b. Jeongeup Branch
 - c. Namweon Branch
12. Gwangju District Gwangju City and Jeolla Nam-do

- a. Mokpo Branch
- b. Jangheung Branch
- c. Suncheon Branch
- d. Haenam Branch

13. Jeju District

Jeju-do

Appendix D

Sample U.S. Notice of Incident, Arrest and Receipt (USFK SOFA CJ Form 1EK-E) with Instructions

(BILINGUAL FORM)

U.S. NOTICE OF INCIDENT, ARREST AND RECEIPT (USFK REG 1-44) 사건 발생, 체포 통지서 및 접수증		DATE 일자 :	MPR NO.: 헌병보고서번호
TO 수신: _____	District Prosecutor Korea, 지방 검찰청 검사장 Branch, Prosecutor 지청장	FROM 발신:	
Pursuant to Para 5b, Article XXII, ROK/US SOFA, this is to notify you that on _____ at about _____ 한미 행정협정 제22조 5(나)항에 의거하여 귀하에게 다음과 같이 통지합니다. DATE 일자 _____ at _____ an incident allegedly occurred TIME 시간 LOCATION 위치 발생된 사건으로 관련자 involving _____ and NAME OF INDIVIDUAL(S), GRADE, SSN & UNIT 관련자의 성명, 계급, 사회보장번호, 소속 및 기타 _____ OTHER PARTY (PARTIES) 타방 당사자 및 주소			
DESCRIPTION OF INCIDENT: (Continue on reverse side if necessary) 사건 내용 : (필요시 뒷면을 사용 하시오)			
This notification does not imply any finding or opinion by U.S. authorities as to the nature or extent of the involvement 본 통지서는 상기인의 본 사건 관련내용 및 관련범위에 관한 미국 당국의 사실인정이나 의견을 뜻하는 것이 아니며 또한 In this incident of the individual(s) named or described above, nor does it imply the U.S. has made an official duty 미국 당국이 공무집행중임을 결정 통보하는 것도 아닙니다.			
Determination. Date of Arrest _____		by ROK/US Law Enforcement.	
Suspect(s) is (are) presently at _____		한국 또는 미국 법집행기관의 체포 일자	
_____		피의자의 현 소재지	
TYPED NAME, RANK, AND TEL NO. OF AREA PM/CHIEF SCTY OR HIS DESIGNEE:		SIGNATURE:	
Receipt of the notification of the above described incident and arrest involving the named individual(s) is acknowledged. 상술한 내용의 사건 및 관련자 체포 통지서를 접수 하였습니다.			
SIGNATURE, DISTRICT OR BRANCH PROSECUTOR 지방검찰청 검사장 또는 지청장 서명:			DATE 일자:
COPY TO: HQ, USFK, ATTN: FKJA-IA, Cdr and Major Subordinate Cdr of Indiv, MPR File.			

USFK SOFA CJ FORM 1EK, INSTRUCTION

1. Prepare this form in an original and five copies.
2. Deliver the original and the first copy to the ROK branch or district prosecutor. (See Appendix C for list of offices.)
3. Have either the prosecutor or someone the prosecutor designates sign the receipt on the bottom of the second, third, fourth, and fifth copies.
4. Send the second receipted copy to the USFK (FKJA-IL), APO AP 96271-5237, through the fastest means available.
5. Send the third receipted copy immediately to the Staff Judge Advocate of the reporting command of the individual. Such commands are Eighth Army (Military Justice Division); 2d Infantry Division; 19th Expeditionary Sustainment Command; USAG Humphreys and Area III; US Naval Forces, Korea; 51st Fighter Wing; and 8th Fighter Wing.
6. Send the fourth receipted copy immediately to the unit commander of the individual concerned.
7. Retain the fifth receipted copy.

Appendix E
Supplemental Information to US Notice of Incident, Arrest and Receipt (USFK SOFA CJ
Form 1A-R-E) with Instructions

(BILINGUAL FORM)
SUPPLEMENTAL INFORMATION
TO
US NOTICE OF INCIDENT, ARREST AND RECEIPT
 (USFK REG 1-44)
 사건 발생 통고, 체포 및 인수증의 보충 통고서

_____, District/Branch Prosecutor
 지방 검찰청 검사장/지검장
 _____, Korea _____ (DATE) 연월

This is to inform you that in regard to an incident which was reported to you on _____ (DATE) 연월
 concerning _____ (BRIEF DESCRIPTION OF INCIDENT)

The following additional information is provided.

_____년 _____월 _____일에 귀하에게 통보된 바 있는 사건의 보충 사항을 다음과 같이 통보합니다.

_____ (NAME OF INDIVIDUAL (S)) 개인(들)의 성명	_____ (RANK) 계급	_____ (SSN) 사회보장번호
_____ (UNIT) 소속	_____ (DATE OF ARREST (IF ANY) OF INDIVIDUAL) 체포일자	
_____ (NAME OF AREA PM/CH SCTY) 작구 헌병대장 성명		
_____ (RANK) 계급	_____ (PHONE NO.) 전화번호	
_____ (UNIT) 소속	_____ (SIGNATURE) 식명	

Receipt of the notification of the above described incident (and arrest) involving the named individual(s) is acknowledged.

상술한 자가 관련된 사건 발생 (및 체포) 통지서를 접수하였습니다.

(SIGNATURE OF DISTRICT OR BRANCH PROSECUTOR)
지방 검찰청 검사장 또는 지검장 이석명
_____ (DATE) 연월

Copy to: Cdr, USFK, ATTN: FKJA, Cdr & Rpt Cmdr of Indiv, Local KNP, MPR File

USFK SOFA CJ FORM 1A-R-E, 1 FEB 91

USFK SOFA CJ FORM 1A-R-E, INSTRUCTIONS

1. Prepare this form only when information was omitted from the USFK SOFA CJ Form 1EK-E.
2. Deliver the original and the first copy to the ROK branch or district prosecutor. (See appendix C for list of offices.)
3. Have either the prosecutor or someone the prosecutor designates sign the receipt on the bottom of the second, third, fourth and fifth copies.
4. Send the second receipted copy to the USFK (FKJA-IL), APO AP 96271-5237 through the fastest means available.
5. Send the third receipted copy immediately to the Staff Judge Advocate of the reporting command of the individual. Such commands are Eighth Army (Military Justice Division); 2d Infantry Division; 19th Expeditionary Sustainment Command; US Naval Forces, Korea; 51st Fighter Wing, and 8th Fighter Wing.
6. Send the fourth receipted copy immediately to the unit commander of the individual concerned.
7. Retain the fifth receipted copy.

Appendix F
Requirement for Submission of USFK SOFA CJ Form 1EK-E

SUBJECT \ VICTIM	US Military	US Civilian	Dependent
US Military	No	Yes	Yes
US Civilian	No	Yes	Yes
Dependent	No	Yes	Yes
US Government	No	Yes	Yes
KATUSA	Yes	Yes	Yes
ROK Military	Yes	Yes	Yes
KN Civilian	Yes	Yes	Yes
ROK Government	Yes	Yes	Yes
Non-USFK US Person (e.g., Tourist)	Yes	Yes	Yes
Non-USFK 3d Country National	Yes	Yes	Yes

Appendix G

Sample Custody Request and Receipt (USFK SOFA CJ Form 2) with Instructions

(BILINGUAL FORM)

CUSTODY REQUEST AND RECEIPT (USFK REG 1-44) 구금 인도 요청서 및 인수증		MPR NO. 헌병보고서 번호 :	DATE 일자 :
TO 수신 :		FROM 발신 :	
<p>Pursuant to the provisions of Article XXII, Para 5c of the ROK/US Status of Forces Agreement, request 한미 행정 협정 제 22조 5(다)항에의거 구금된 의 신병을 미국당국에인도 is hereby made to the prosecutor, or through the arresting agency to the prosecutor for the transfer of 하여 주시기를 검사에게 혹은 체포관서를 경유하여 검사에게 요청합니다. custody to the U.S. authorities of _____ <i>(NAME, RANK, AND UNIT OF THE SUSPECT/SPONSOR)</i></p> <p>In accordance with Article XXII, Para 5c of the ROK/US Status of Forces Agreement, the said 한미 행정 협정 제 22조 5(다)항에 따라, 상기 은 (는) 법적 절차에 의한 _____ will be held ready for appearance during an official investigation or before _____ <i>(NAME OF SUSPECT)</i></p> <p>요청이 있으면 언제 어느 곳에든지 대한민국의 관할 수사기관이나 법원에 출두할 수 있도록 구금하여 a competent court of the Republic of Korea at such times and places as required by legal process. 두겠습니다.</p>			
TYPED NAME OF COMMISSIONED OFFICER 장교 (사관)의 성명	RANK 계급	SIGNATURE 서명	AREA PM PHONE NO. 지구 헌병대 전화번호
CUSTODY RECEIPT 구금 인수증			DATE 일자
<p>I hereby certify that I have this date received custody of the person of _____ <i>(NAME OF THE INDIVIDUAL)</i></p> <p>본인은 규일 (사건의 내용) (으)로 인하여 앞으로 있을지도 모르는 수사 stationed at _____, from the _____ <i>(INEAREST KOREAN TOWN OR CITY) (APPROPRIATE KOREAN AUTHORITY)</i></p> <p>혹은 재판에 대비하여 (가까운 도시나 동 리명)에 구금 되었던 pending possible investigation and/or trial resulting from _____ (성명)의 신병을 (한국 기관) 당국으로부터 _____ <i>(BRIEF DESCRIPTION OF THE ALLEGED OFFENSE)</i></p> <p>인도 받았음을 확인함.</p>			
TYPED NAME 성명	RANK 계급	SIGNATURE 서명	ORGANIZATION 소속 기관
Copy to: ROK Authorities; USFK, ATTN: FKJA-IA; Cdr & Major Subordinate Cdr of Indiv/Sponsor; MPR File.			

USFK SOFA CJ FORM 2, 1 DEC 88

Edition of 23 Feb 67 is obsolete.

USFK SOFA CJ FORM 2, INSTRUCTIONS

1. Prepare this form in an original and five copies. Address it to the local Korean authority who is the arresting agency, or to the nearest ROK branch or district prosecutor's office. (See Appendix C, for list of offices.)
2. The request will be signed by the area provost marshal (or the chief of security police) or in the absence of the provost marshal (or chief of security police) by the designee who is a commissioned officer.
3. Leave the original and one copy with local authorities, who arrested the suspect or at the nearest ROK branch, or district prosecutor's office.
4. Send one copy immediately to the Staff Judge Advocate of the individual's/sponsor's reporting command. Such commands are Eighth Army (Military Justice Division); 2d Infantry Division; 19th Expeditionary Sustainment Command; US Naval Forces, Korea: 51st Fighter Wing; and 8th Fighter Wing.
5. Send one copy immediately to the immediate commander of the accused (or the sponsor's unit).
6. Send one copy to the USFK (FKJA-IL), APO AP 96271-5237.
7. Retain one copy.
8. Special instructions for civilian suspects:
 - a. Do not sign USFK SOFA CJ Form 2 or make any written or oral guarantee to a ROK official that a civilian suspect (including the driver involved in an accident) will make himself/herself available unless a USFK SOFA CJ Form 3-E (Civilian Request to be Taken into Custody by US Military Authorities) is first executed.
 - b. USFK SOFA CJ Form 3-E will not be executed until the suspect's passports (official and tourist) are voluntarily surrendered to the US military or to the custody of the US security police.
 - c. If USFK SOFA CJ Form 2 has inadvertently been executed without execution of USFK SOFA CJ Form 3-E and surrender of all passports, execute USFK SOFA CJ Form 3-E including surrender of passports.
 - d. Do not use USFK SOFA CJ Form 2 alone for civilians. USFK SOFA CJ Form 3-E and voluntary surrender of all passports must be accomplished first.

(THESE INSTRUCTIONS SHOULD BE PRINTED ON THE REVERSE SIDE OF CJ FORM 2)

**Appendix H
Civilian Request to be taken into Custody by U.S. Military Authorities (USFK SOFA CJ Form 3) with Instructions**

CIVILIAN REQUEST TO BE TAKEN INTO CUSTODY BY U.S. MILITARY AUTHORITIES
(USFK REG 1-44)

1. I, _____, present in the Republic of Korea(ROK) as a
(Name and Nationality)
_____, having been charged with
(Status and Unit/or Sponsor's Unit)
_____ by the authorities of the ROK, hereby request that I be taken into
(Alleged Charge)
custody by the US military authorities pending ultimate disposition of my case, in accordance with the US-ROK Status of Forces Agreement, Article XXII, Subparagraph 5c.

2. In consideration of the foregoing, I hereby agree to observe the following terms and conditions.

a. I understand that I will be placed on administrative hold, that I voluntarily extend my tour of stay in ROK, that my transfer orders will not be promulgated, and that I will not be transferred or provided transportation for departure from the ROK until proceedings against me are completed.

b. I voluntarily, and without coercion, herewith surrender all my passport(s) with the intent that this will preclude my departure from the ROK until all my passport(s) is(are) returned to me after ultimate disposition of my case by the ROK authorities.

c. I hereby voluntarily agree to make myself available in the immediate area for investigation/possible subsequent trial by the ROK authorities and will keep US military authorities advised of my whereabouts.

d. I do hereby understand that if I fail to abide by the terms of my request, or fail to cooperate with US military authorities, or attempt to circumvent this request, US military authorities may relinquish my custody to the ROK authorities.

DATE

Witness (MP or SP accepting custody)

Signature (Name and telephone number)

Copies Furnished:
COMUSKOREA, ATTN: FKJA-IA, Unit #15237, APO AP 96205-0010
Commander of the individual's reporting command
Immediate supervisor or sponsor of the individual
AMEMB, ATTN: American Citizen Services, APO AP 96205-0001
Am Consulate, Pusan, ATTN: American Citizen Svcs, APO AP 96259-0002

USFK SOFA CJ FORM 3-E, INSTRUCTIONS

1. Prepare this form in an original and six copies.
2. Send one copy immediately to the Staff Judge Advocate of the individual's/sponsor's reporting command. Such commands are Eighth Army; 2d Infantry Division; 19th Expeditionary Sustainment Command; US Naval Forces, Korea; 51st Fighter Wing; and 8th Fighter Wing.
3. Send one copy immediately to the USFK (FKJA-IL), Unit #15237, APO AP 96271-5237.
4. Send one copy immediately to the immediate supervisor or sponsor of the individual or sponsor.
5. Retain one copy.
6. The terms and conditions set forth in USFK SOFA CJ Form 3-E, paragraphs 2a through 2d, are mandatory and may not be waived. All passports must be surrendered voluntarily prior to execution of this form or a USFK SOFA CJ Form 2 (for civilians).
7. This form, including voluntary surrender of all passports, must be executed prior to the execution of a USFK SOFA CJ Form 2 (in respect to a civilian).

THESE INSTRUCTIONS SHOULD BE PRINTED ON THE REVERSE SIDE OF CJ FORM 3-E

**Appendix I
USFK SOFA CJ Form 4-R-E and USFK SOFA CJ Form 4A-R-E with Instructions (Official
Duty Certificate)**

주한미군 사령부

FKJA-IA 행협

DATE 일 자

_____ District Prosecutor
지방 검찰청 검사장 귀하
_____ Branch Prosecutor
지청장 귀하

Dear Sir:

근 계:

Pursuant to the provisions of the Agreed Minutes and related agreement
한미 행정 협정 제 22조 제 3항 (가) 에 관한 합의 의사록 및 그 시행에 관한
regarding Paragraph 3(a) of Article XXII of the ROK-US Status of Forces Agreement
합의 양해 사항에 규정된 바에 의하여 법무 참모 _____ 의
and after receiving the advice of _____ , a staff
권고를 듣고 본인은 _____ 이
judge advocate, I certify that _____ was
사건 발생 _____ 년 _____ 월 _____ 일 _____ 시경에
당시인 _____
In the performance of the official duty _____ at
of _____

_____ 부근에서 별지에 기재한 사건에 관련되었을 당시에
on _____ In the vicinity _____ when
of _____

공무 집행 중이었음을 증명합니다.

he was involved in an incident/accident described in the attached sheet.

Sincerely.

Copies to:
CDR, USFK, ATTN: FKJA-IA
CDR of the reporting command
CDR of individual concerned File

USFK SOFA CJ FORM 4-R-E, 23 FEB 67

주한미군 법무감실

FKJA-IA 행협

(DATE 일자)

SUBJECT: Official Duty Certificate

제 목 : 공무 집행 증명서

District Prosecutor
지방 검찰청 검사장 귀하
Branch Prosecutor
지청장 귀하

1. Attached as Enclosure 1 is the Official Duty Certificate in the case
별첨 서류는 _____ 사건에
of _____
대한 공무 집행 증명서 입니다.
2. Request acknowledgement of receipt by endorsement hereon.
아래 접수 확인서에 영수하여 주시기 바랍니다

(SIGNATURE 서명)

(NAME, RANK & BRANCH 성명, 계급, 병과)
STAFF JUDGE ADVOCATE 법무 참모

ACKNOWLEDGEMENT OF RECEIPT

접수 확인서

Receipt of the Official Duty Certificate pertaining to the above case involving
위의 사건에 관련된 상기자에 대한 공무 집행 증명서를 접수하였음을 확인합니다.
the named individual is acknowledged.

(DATE 일자)

(SIGNATURE & TITLE OF RECEIVING OFFICIAL)
(접수자의 서명 및 직책)

USFK SOFA CJ FORM 4A-R-E, 23 FEB 67

USFK SOFA CJ FORMS 4-R-E AND 4A-R-E, INSTRUCTIONS

1. Prepare these forms each in an original and five copies.
2. Deliver the original and the first copy to the ROK branch or district prosecutor. (See appendix C for list of offices.)
3. Have either the prosecutor or the prosecutor's designee sign the receipt on the bottom of the second, third, fourth, and fifth copies of the letter of transmittal (USFK SOFA CJ Form 4A-R-E).
4. Send the second receipted copy immediately to the USFK (FKJA-IL), Unit #15237, APO AP 96271-5237.
5. Send the third receipted copy immediately to the Staff Judge Advocate of the reporting command of the individual. Such commands are 8th Army; 2d Infantry Division; 19th Expeditionary Sustainment Command; US Naval Forces, Korea; 51st Fighter Wing; and 8th Fighter Wing.
6. Send the fourth receipted copy immediately to the unit commander of the individual concerned.
7. Retain the fifth copy.

Appendix J
USFK SOFA CJ Form 5-R (Appointment of US Representative)

FKJA-IA
주한미군사령부 법무감실

(DATE 일자)

MEMORANDUM FOR
수 신 :

SUBJECT: Appointment of US Representative
제 목 : 미 합중국 대표 임명

Pursuant to Article XXII, Paragraph 9(g), ROK-US Status of Forces Agreement, 한미 행정 협정 제 22조 제 9(사)항과 그에 관한 합의 의사록에 and the Agreed Minutes thereto, you are appointed the representative of the 의거하여 대한민국 정부가 아래 사람의 출석을 필요로 하는 모든 United States Government to ensure that all rights to which the following 예비 수사, 조사, 재판전 심리, 또는 여하한 법적 절차에 있어서 named individual is entitled are protected during all preliminary 그에게 부여된 모든 권리가 보호되는 지를 보증하기 위하여 investigation, examinations, pre-trial hearing, or any other proceedings 귀하를 미 합중국 정부 대표로 임명한다 at which the Government of the Republic of Korea requires the presence of:

Any military or civilian personnel assigned or attached to HHC, 17th Aviation Brigade, and their family members.

미 제 17 항공연대 본부중대 소속 장병, 군속, 또는그들의 가족.

FOR THE JUDGE ADVOCATE:

USFK SOFA CJ FORM 5-R-E, INSTRUCTIONS

1. Complete letter in two copies with letterhead and office symbol of appointing official.
2. Type in name, rank, and organization of the US representative as addressee.
3. Type in the name and rank of the suspect, accused, or witness as the last line of the letter. Alternatively, the following sentence may be substituted: "Any military or civilian personnel assigned or attached to (unit or installation), and their dependents."
4. Add the signature block of the local judge advocate or the designated appointing official, and sign the form.
5. Give the original to the US representative, who will give it to the ROKG official in charge of the questioning.
6. Retain the copy.

Appendix K

Format: Acknowledgment of International Hold - Military Personnel (Order Not to Leave the ROK)

I (name, grade, DoD ID Number and unit) _____
hereby acknowledge that on (date) _____, I was advised by
(commanding officer) _____ that because of currently
pending criminal proceedings instituted against me by the Government of the Republic of Korea,
I have been ordered not to leave the Republic of Korea until the International Hold has been
removed.

(Typed Name and Signature)

Witness _____
(Commanding Officer)

Appendix L

Format: Acknowledgment of International Hold - Civilian personnel

I (name, grade, DoD ID Number and unit) _____ hereby acknowledge that on (date) _____, I was advised by (supervisor or commander of sponsor) that because of currently pending criminal proceedings instituted against me by the Government of the Republic of Korea, I have been placed in an International Hold status, and I am not to leave the Republic of Korea until the International Hold has been removed, I agree that, in the interest of fulfilling the United States custody requirement, I will comply with the established procedures, and I understand that failure to do so may constitute grounds for release of my custody to the Republic of Korea authorities.

(Typed Name and Signature)

Witness _____
(Supervisor or Commanding Officer of Sponsor)

Appendix M

Format: Report of Disposition of Offenses and Status of Elimination/Reduction Action

(Unit Heading)

(Office Symbol) (27-50c)

(Date)

MEMORANDUM FOR COMMANDER, USFK (FKJA-IL), Unit #15237, APO AP 96271-5237

SUBJECT: Report of Disposition of Offenses and Status of Elimination/Reduction Actions
(RCS: FKJA-3K (R 1))

1. The following statistics are submitted for the month of _____ 20__.

a. Number of Courts-Martial or Article 15's:

General _____ Special _____ Summary _____ Article 15's _____

b. Number of incidents disposed of by administrative actions:

c. Number of incidents in which no action was taken by military authorities:

2. A summary of the details of the disposition of each SOFA incident is attached as enclosure 1.

3. A report concerning the number of elimination/reduction actions ending in the command and their status is attached as enclosure 2.

FOR THE COMMANDER:

(Signature Block)

2 Encls

1. Details of disposition of SOFA incidents
2. Status of elimination/reduction actions

HEADQUARTERS, UNITED STATES FORCES, KOREA
UNIT #15237
APO AP 96271-5237

DISPOSITION OF OFFENSE PUNISHABLE BY THE LAWS OF KOREA		FOR THE MONTH OF
LAST NAME, FIRST NAME, AND MIDDLE INITIAL	DOD ID Number	GRADE
DOE, John A	123-45-6789	PFC
ORGANIZATION		
HHC, 19th Expeditionary Sustainment Command		
NAME OF OFFENSE		
Assault		
DESCRIPTION OF OFFENSE (To Include name of victim, if any, time, date, place of incident, value of property involved and specification of the charge.)		
On 24 October 1993, adjacent to Apsan Apartment complex, Taegu City, DOE assaulted Yi, Chui Soo by striking him with a fist.		
TYPE OF COURT-MARTIAL OR DISCIPLINARY PROCEEDING		
Article 15		
FINDING AND SENTENCE AS ADJUDGED BY THE COURT-MARTIAL OR IMPOSED UNDER ARTICLE 15		
Reduction to PV2 Forfeiture of \$240.00 Restriction for 15 days Extra duty for 14 days		
DATE OF PUNISHMENT	AUTHORITY WHICH IMPOSED PUNISHMENT	
22 December 1993	Commander, HHC, 19 ESC	
SENTENCE AS APPROVED BY CONVENING OR IMMEDIATE REVIEWING AUTHORITY		
ADDITIONAL REMARKS		

HQ, USFK FORM 67, 1 MAR 92 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE

**Appendix N
Status of Elimination/Reduction Action**

Name and rank: _____

Unit: _____

Offense and date:

Name of civil court:

Sentence and date:

Date Trial Observer Report received:

Reduced grade and date:

Date elimination action initiated:

Date hearing demanded/waived:

Date of board hearing:

Type of discharge recommended:

Date of discharge approved:

Justification detailing the reasons for the delay (if any action is not instituted within five working days after receipt of the Trial observer Report, or completed within 60 days thereafter, USFK Reg 1-44, subparagraph 2-5f):

Glossary

Section I. Abbreviations

GCM	General Court-Martial
IAW	In Accordance With
JA(s)	Judge Advocate(s)
JAG	Judge Advocate General
JUSMAG-K	Joint United States Military Advisory Group-Korea
ROK	Republic of Korea
ROKG	Republic of Korea Government
SJA	Staff Judge Advocate
SOFA	Status of Forces Agreement
TDY	Temporary Duty
UCMJ	Uniform Code of Military Justice
U.S.	United States (of America)
USAF	United States Air Force
USAISC	United States Army Information System Command
USINDOPACOM	United States Indo Pacific Command
USFK	United States Forces, Korea
USG	United States Government

Section II. Terms

Civilian. Members of the U.S. civilian component (including U.S. national technical representatives) and their dependents; U.S. residents, who are employees of invited contractors and their dependents; and dependents of U.S. military personnel.

Official Duty. Not meant to include all acts by SOFA members when they are on duty, but is meant to apply only to acts which require completion as a function of those duties which the individuals are performing.

Reporting Command. Includes Eighth Army; 2d Infantry Division; 19th Expeditionary Sustainment Command; U.S. Naval Forces, Korea; 51st Fighter Wing; and 8th Fighter Wing.

SOFA Persons. U.S. military personnel, members of the U.S. civilian component (including U.S. national technical representatives) and their dependents, U.S. residents who are employees of invited contractors, and their dependents, regardless of the dependents' nationality.
EXCEPTIONS: The term does not include U.S. Embassy or advisory group personnel or their dependents, third country United Nations Command personnel or their dependents, Korean national employees, members of the Korea Service Corps, or Korean Augmentation to United States Army or their dependents.