

USFK REGULATION 550-51

FOREIGN COUNTRIES AND NATIONALS (550)

International Agreement

1 March 2010

UNCLASSIFIED

HEADQUARTERS
UNITED STATES FORCES, KOREA
UNIT #15237
APO AP 96205-0010

USFK Regulation
No. 550-51

1 March 2010

(Effective: 1 April 2002)
Foreign Countries and Nationals

INTERNATIONAL AGREEMENTS

SUPPLEMENTATION: Supplementation of this regulation and issuance of command and local forms is prohibited unless prior approval is obtained from HQ USFK (FKJA-IA), Unit #15237, APO AP 96205-0010.

INTERNAL CONTROLS. This regulation does not contain management control checklists.

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*This regulation supersedes USFK Reg 550-51, 1 October 1992.

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1. PURPOSE. This regulation implements all aspects of international agreements within United States Forces Korea (USFK), defines an international agreement for purposes of this regulation, and implements exceptions and limitations covered under other regulations. It outlines the various command levels with the corresponding statutory authority to negotiate and/or conclude an international agreement, including restrictions on assistance to foreign governments. It provides sample formats and processing procedures. Next, this regulation covers the duties of the action agency conducting negotiations, language requirements, as well as forwarding, depositing, and reporting specific categories of international agreements to Congress through the USFK JA – International Affairs (FKJA-IA).

2. APPLICABILITY. This regulation applies to any international agreement, written or oral, regardless of title, between any USFK element, at any level to include component commands, and any representative of a foreign government including its agencies, instrumentalities, or political subdivisions, or an international organization. Under international law, all such agreements are potentially binding on the U.S. (See Glossary, Section II-Terms).

3. REFERENCES. Required and related publications are listed in Appendix A.

4. ABBREVIATIONS AND TERMS. Abbreviations and terms used in this regulation are explained in the Glossary.

5. EXCEPTIONS. Some U.S.-ROK agreements do not require full staffing or authority as otherwise required by this regulation. Nevertheless, such agreements must still be reviewed for legal sufficiency by the appropriate JA office, staffed with concerned command elements, and properly authorized. For purposes of this regulation, the following are NOT considered international agreements under this regulation and are not required to be reported to Congress in accordance with (IAW) the Case-Zablocki Act (1 USC 112b):

a. Contracts made under the Federal Acquisition Regulations (FAR).

b. Foreign Military Sales (FMS) Credit Agreements.

c. FMS Letters of Offer and Acceptance and Letters of Intent executed on a DD Form 2012 (U.S. Department of Defense Letter of Intent). (**NOTE:** IAW the 1993 U.S.-ROK Communication Security (COMSEC) Memorandum of Understanding (MOU), the U.S. and ROK must agree to a corresponding COMSEC Memorandum of Agreement (MOA) in order to authorize the release of specific COMSEC equipment transferred through an FMS case. This MOA is an allied paper to the FMS case and is not an international agreement under the Case-Zablocki Act).

d. Standardization Agreements (STANAGs), Quadripartite STANAGS (QSTAGs), Air Standardization Coordinating Committee (ASCC) Air Standards, and Navy STANAGS (NAVSTAGs). These agreements are executed when both parties adopt similar military equipment, ammunition, supplies, and stores, or operational, logistic, and administrative procedures. (**NOTE:** However, a STANAG providing for mutual support or cross-servicing of military equipment, ammunition, supplies, and stores, or for mutual rendering of defense services, including training, is considered an international agreement).

e. Leases under 10 USC 2667, 10 USC 2675, 22 USC 2796, and 10 USC 2828.

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f. Administrative Agreement(s) (AA(s)). These are agreements solely to establish administrative procedures. These agreements DO NOT impose any new obligation on the U.S. (financial or otherwise), require new expenditure of funds, or involve accounting for a flow of funds to/from either the U.S. or ROK. An AA is not legally binding as it merely states U.S.-ROK mutual intentions and/or establishes U.S.-ROK standard operating procedures (SOPs) or other U.S.-ROK working relationships. A proposed AA still requires a JA legal review and a JA specific finding that it is an AA and is therefore not legally required to be reported to Congress under the Case-Zablocki Act.

g. Acquisitions or orders under the NATO Mutual Support Act (10 USC 2341 *et seq.* and DOD Directive 2010.9) for Acquisition and Cross-Servicing Agreements (ASCA) (in USFK, the applicable ACSA is the U.S.-ROK Mutual Logistics Support Agreement - MLSA). (**NOTE:** Umbrella agreements, implementing arrangements, and cross-servicing agreements under the NATO Mutual Support Act are international agreements.).

h. Rate or tariff changes for utilities and services provided under Article VI of the U.S.-ROK SOFA.

i. Routine real estate acquisitions and releases processed IAW USFK Reg 405-7 and established U.S.-ROK SOFA Joint Committee procedures. (See paragraph 17c below). Examples include acquisitions and releases not involving the transfer of funds between governments, not involving long-term U.S. commitments, and where U.S. participation is essentially passive.

6. LIMITATIONS. This regulation has limited applicability in the following circumstances:

a. Uniservice Agreements. Uniservice international agreements are uncommon in USFK and the ROK. However, if the international agreement applies to one service component only (for example, a reciprocal fire-fighting assistance agreement with a local ROK fire station), that component will comply with its own service regulations. However, the service component must still submit the proposed agreement to the local servicing JA for review and concurrence prior to participating in any negotiations, meetings, or discussions. The local servicing JA will, as appropriate, coordinate with FKJA-IA. The initiating component will coordinate the agreement prior to conclusion with all applicable USFK staff agencies or other service components, and, after conclusion, furnish copies of the completed agreement to them. (See paragraph 8 below).

b. Combined Forces Command (CFC) Agreements. When HQ, U.S.-ROK CFC is a party, or more than an incidental beneficiary, international agreements will be coordinated with the Deputy JA (DJA), CFC, before beginning negotiations.

c. SOFA Matters. SOFA matters are international agreements falling within the U.S.-ROK SOFA which are negotiated or concluded through the U.S.-ROK SOFA Joint Committee (see Appendix E, Recommendation to U.S.-ROK SOFA Joint Committee). SOFA Agreements include real estate actions, specifically actions involving the receipt or expenditure of funds by the U.S., and other agreements structured under the SOFA: e.g., foreign criminal jurisdiction procedures; claims procedures; joint town patrols; black market suppression team establishment and procedures; drivers' licensing and vehicle registration agreements, entry

and exit agreements; etc. All such SOFA matters will comply with paragraphs 12, 13, 14, 15, 16 and 17 of this regulation, and the restrictions on U.S. assistance to foreign governments contained in Appendix B. Additionally, all real estate actions will comply with established U.S.-ROK SOFA Joint Committee procedures, USFK Reg 405-7, and SECDEF Message 142159Z Dec 93, DOD Policy and Procedures for the Realignment of Overseas Sites (see Appendix C, paragraph C-1).

d. **Wartime Host Nation Support (WHNS) - Related Agreements.** In addition to complying with USFK Reg 550-51, WHNS agreements, peacetime agreements that require the host nation to continue to provide support during time of contingency and any other agreement that requires the host nation to provide some form of service or support during time of contingency, will be staffed with the Assistant Chief of Staff (ACofS), J4. ACofS, J4, will review the proposed WHNS agreement for possible inclusion into the WHNS program, as well as to determine whether an applicable contingency support agreement is already in place and/or whether the proposed agreement could be combined with one that is under negotiation or planned for negotiation. International agreements associated with, or resulting from WHNS projects will be processed IAW USFK Reg 550-52 and the restrictions in Appendix B.

7. AUTHORITY.

a. Except as set out in paragraph 9, the Commander, USFK, has the authority to negotiate and conclude all international agreements within the geographical USFK Area of Responsibility (AOR) and which concern the operational command of USFK forces in the following categories:

(1) Technical, operational, working, or similar agreements or arrangements regarding implementing arrangements made under a treaty or executive agreement (e.g., U.S.-ROK Mutual Defense Treaty and the U.S.-ROK SOFA). This authority only applies to agreements that do not require supplemental appropriations or authorizations.

(2) Agreements for cooperative or reciprocal operational, logistical, training, or other military support. These include arrangements for shared use or licensing of military equipment, facilities, services, and nonphysical resources.

(3) Agreements for collecting and exchanging military information and data (other than military intelligence).

(4) Agreements that concern sharing or exchanging DOD communications equipment, support, services, military frequency bands or other communication resources.

b. USFK officials act on behalf of the Commander, USFK, exercising their authority as part of the normal commander-staff relationship, and on behalf of the U.S. Department of State (DOS), as follows:

(1) The Chief of Staff (CofS), USFK, approves the negotiation and conclusion of all international agreements within the approval authority of the Commander, USFK.

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(2) The U.S. Representative to the U.S.-ROK SOFA Joint Committee (historically, the Deputy Commander, USFK, IAW USFK Reg 10-10) approves the negotiation and conclusion of agreements intended as recommendations for approval by the U.S.-ROK SOFA Joint Committee. The U.S. Representative to the U.S.-ROK SOFA Joint Committee is a DOS official and is appointed as such by the U.S. Chief of Mission, the U.S. Ambassador to the ROK.

8. PROCEDURAL REQUIREMENTS FOR UNITED STATES FORCES KOREA (USFK) SUBORDINATE COMMANDERS.

a. Component commands and U.S. defense representatives may use summary procedures IAW their respective single-service international agreement regulations for any international agreements within their respective approval authority. JA and Resource Management (RM) review and concurrence with any proposed agreement is still required.

b. Commands and organizational elements shall ensure that a complete negotiating history file is compiled, retained, and maintained in retrievable form by a designated office of primary responsibility (OPR).

c. Component commands will designate an official to review all agreements involving disclosure of classified information to ensure compliance with DOD Directive 5530.3 and National Disclosure Policy-1 (NDP-1). The official will also be responsible for reviewing technology assessment control plans and issuing delegation of authority letters.

d. Commanders will comply with service regulations applicable to single-service international intelligence agreements.

9. INTERNATIONAL AGREEMENTS REQUIRING AUTHORITY ABOVE THE USFK LEVEL.

a. The Chairman of the Joint Chiefs of Staff (CJCS); the Office of the Under Secretary of Defense for Policy (OUSD-P); the Director, National Security Agency (NSA); the Director, Defense Intelligence Agency (DIA); the Director, Defense Security Cooperation Agency (DSCA); and the Commander in Chief, Pacific Command (CINCPAC) reserve the authority to approve negotiation and conclusion of certain categories of international agreements. Other proposed agreements, because of their content, may require approval at levels above USFK. These agreement categories are listed in Appendix C. A legal review is necessary to determine if a request for higher HQ authority is required.

b. U.S. Policy-Related Agreements. All proposed agreements that have policy significance requiring Circular 175 authority IAW 11 Foreign Service Manual 720 or that require approval by the Secretary of Defense (SECDEF) or the OUSD-P, must be reviewed by the ACofS, J5. The ACofS, J5, will assess if the proposed international agreement impacts US strategy and policy issues addressed through the Military Committee Meeting and Security Consultative Meeting Process. The authority delegated to component commands does not apply to international agreements having policy significance (see Appendix C, paragraph C-2). The Commander, through the CofS, forwards the proposed agreement through the chain of command to the Secretary, Joint Staff, with a recommendation for further action. FKJA, in conjunction with ACofS, J5, determines whether a proposed agreement has policy significance.

10. REQUESTS FOR AUTHORITY ABOVE THE USFK LEVEL. FKJA will determine whether a proposed agreement, with a request for negotiating authority, must be forwarded above the USFK level IAW DOD Directive 5530.3 Section 8. Additionally, note that--

a. The U.S. HQ office that approved the original agreement must also approve the negotiation and conclusion of any amendment or extension, unless another HQ or office has been expressly delegated that authority.

b. For international military telecommunications agreements, the request shall also include an estimate of the impact on U.S. military telecommunications. This estimate should include a statement of traffic forecast (mode, volume, channel requirements, security classifications, procedures, and addresses), and the technical characteristics and arrangements of any interconnections with other telecommunication systems.

11. RESTRICTIONS ON ASSISTANCE TO FOREIGN GOVERNMENTAL AND PRIVATE ENTITIES AND INDIVIDUALS. Federal law restricts the authority of DOD agencies, employees, military personnel, and contract employees to provide security or military assistance to foreign governments (for example, the ROK) and international organizations (for example CFC). Federal law also restricts the provision of nonmilitary assistance to foreign governments, foreign governmental entities, private entities, and individuals. (See Appendix B).

12. AGREEMENT FORMAT. International agreements will be drafted using the MOA format in Appendix D unless otherwise required by regulatory authority. Draft recommendations to the U.S.-ROK SOFA Joint Committee using the Recommendation format in Appendix E.

13. PROCEDURES APPLICABLE TO ALL INTERNATIONAL AGREEMENTS.

a. Financial. If U.S. funds will be used to support obligations under an agreement, the specific source of the funds must be identified. The staff agency or other DOD entity controlling the funds must provide written assurance that the funds are available. This written assurance must be obtained prior to requesting authority to negotiate from higher HQ.

b. Environmental Impact. All agreements with a potential environmental impact must be reviewed by the ACofS Engineer (FKEN-EPO). Additionally, the following procedures apply:

(1) If the U.S. negotiates an agreement with environmental consequences, commands will ensure compliance with Executive Order 12114, 44 F.R. 1957 (4 Jan 79), DOD Dir 6050.7 and USFK Pam 200-1. FKEN-EPO must be informed of all reasonably foreseeable, adverse environmental aspects of the agreement. In any such agreement, USFK should consider alternatives to fulfill the purpose of the agreement and reasonably available methods to mitigate adverse environmental impacts.

(2) If the agreement has policy significance and requires Circular 175 authority IAW 11 Foreign Service Manual 720, the request for such authority should include a brief analysis of the environmental considerations.

c. SOFA-Related Agreements. All SOFA-related agreements must be reviewed by the U.S. SOFA Secretariat (Office of the Special Assistant for International Relations/SOFA (FKDC-SA), Unit #15237, APO AP 96205-0010). Additionally, the following procedures apply:

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(1) If the proposed agreement obligates the U.S. to render some performance, or to receive or expend funds, the proposal or a description of its material provisions will be reviewed by RM and FKJA-IA. Additionally, see paragraph 17c below.

(2) Agreements involving acquisition, use, or release of SOFA-granted real estate must be submitted to ACofS, Engineer, USFK, IAW USFK Reg 405-7.

(3) After completion of the above actions, the agreement will be negotiated as an Agreed Recommendation to the U.S.-ROK SOFA Joint Committee. A U.S.-ROK SOFA Joint Committee tasking constitutes authority for the U.S. and ROK to negotiate an Agreed Recommendation. Such a negotiated Agreed Recommendation will be concluded and enter into force only upon approval by the U.S.-ROK SOFA Joint Committee.

d. Initiating and Staffing International Agreements. The USFK element initiating action to draft a proposed international agreement will comply with the general procedures concerning monetary and environmental issues contained in paragraph 13. The initiating element will then--

(1) Prepare a USFK statement of the substantive authority that permits the U.S. to undertake the obligations proposed in the agreement. This statement will cite prior agreements, statutory authority, and regulations as applicable. It will also indicate whether the proposed agreement falls within one of the categories listed in Appendix C, requiring coordination or approval above the USFK level.

(2) Prepare a draft text, concept plan, or other similar document that clearly describes the terms of the proposed agreement. Seek guidance and assistance from FKJA-IA as to the propriety of the drafted agreement, determination as to the required level of approval or coordination (see Appendix C), and as to whether or not funding source documentation and environmental impact statements are needed (if so, obtain these documents).

(3) Following completion of the draft agreement:

(a) Coordinate the initial draft agreement with applicable USFK staff agencies to include FKJA-IA; ACofS, J5 (J5); ACofS, Resource Management (RM); and any other agencies affected by the proposed agreement. These agencies will review all proposed international agreements to assess legal, operational, war planning, U.S. policy, and fiscal implications. In particular--

((i)) Staff the draft agreement with ACofS, J2, if it in any way involves intelligence gathering, sharing, or dissemination;

((ii)) Staff the draft agreement with ACofS, J3, if it in any way involves operations, training, or training facilities, areas, or ranges;

((iii)) Staff the draft agreement with ACofS, J4, if it in any way involves supply, maintenance, munitions, POL, the cross-servicing of logistics or impacts or involves the WHNS program (see paragraph 6d above);

((iv)) Staff the agreement with ACofS, J6, if it in any way involves communications or COMSEC;

((v)) Staff the draft agreement with the SOFA Secretariat, if it is in any way SOFA-related (i.e.: the proposed agreement cites the SOFA as authority, in full or in part, for the agreement) or if the concluded agreement will be submitted for recording in the official minutes of the U.S.-ROK SOFA Joint Committee (see paragraphs 6c and 13c above);

((vi)) Staff the draft agreement with ACoS, Engineer (EN), if it in any way involves the use, return, or obtaining of a facility and/or real estate or, potentially might have environmental impact (see paragraphs 6c, 13b, and 13c(2) above); and

((vii)) Staff the draft agreement with any other applicable agency or subordinate HQs, if the agreement in any way affects, or could affect, the agency or subordinate HQs' area of responsibility.

(4) Following the initial staffing, review and when appropriate, resolve differences expressed by staff agencies. If unable to resolve differences, prepare a "Consideration of Concurrence with Comments" or "Consideration of Non-Concurrence", stating why the "Concurrence with Comments" or "Non-Concurrence" is unacceptable. Following this, revise or modify the draft based upon acceptable comments received.

(5) Staff the draft agreement using a USFK Form 108 (USFK Staff Summary Sheet) and explain the results of the initial coordination. The USFK Form 108 is available electronically at: <https://www-eusa.korea.army.mil>

(a) Obtain guidance from FKJA-IA as to the level of authority necessary to negotiate and/or conclude the agreement. Prepare a Memorandum under USFK letterhead in the appropriate format prescribed in Figure 1 and attach it to the USFK Form 108 at TAB X.

(b) Attach the coordinated draft agreement in TAB A and other documents under subsequent TABs. These include the results of the initial coordination with USFK staff agencies and others affected by the draft agreement and, if applicable: funding source(s) documentation and environmental impact statement.

(c) At a minimum, the draft agreement will be re-staffed through FKJA-IA, RM, and J5 based upon possible changes in legal, war-planning, U.S. policy, and fiscal implications resulting from the initial coordination of the draft agreement.

(6) Following this re-staffing, and in preparation for Command Group Staffing, review and revise the staffed draft agreement based upon comments received. Also, resolve any differences expressed by staff agencies, and if unable, prepare a "Consideration of Concurrence with Comments" or "Consideration of Non-Concurrence", stating why the "Concurrence with Comments" or "Non-Concurrence" is unacceptable.

e. JA Review. Except for uniservice agreements (see paragraph 6a), all DOD elements in USFK shall submit proposed international agreements to USFK (FKJA-IA) for review and concurrence before negotiating and before entering into any agreement with any representative of a foreign government. This legal review will determine whether--

(1) The proposed agreement is an international agreement;

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- (2) The authority to negotiate and/or conclude the agreement exists;
 - (3) The authority to negotiate and/or conclude the agreement resides at the USFK level, or at higher HQ;
 - (4) The proposed agreement must be coordinated with CINCPAC;
 - (5) The proposed agreement is consistent with U.S. law, regulation, and policy;
 - (6) The text of the agreement is legally sufficient to accomplish the desired objective;
- and
- (7) The requirements of DOD Dir 5530.3, CJCSI 2300.01A, and Executive Order 12114 are met.

f. Command Group Staffing. After staffing is complete, take the following actions as applicable:

(1) For agreements within the approval authority of Commander, USFK (including those requiring CINCPAC coordination)(see Appendix C-8), submit a USFK Form 108 to the CofS, USFK. On the USFK Form 108, request approval for authority to negotiate, or to negotiate and conclude the proposed agreement. Designate the applicable USFK staff agency as the action agency for the agreement. Attach a copy of the proposed agreement and the concept plan or similar document. Attach the appropriate approval authority memorandum shown in Figure 1 at TAB X. If CINCPAC coordination is required--

(a) Recommend that the CofS, USFK, approve such coordination and sign the transmittal letter to CINCPAC.

(b) Attach a copy of the proposed agreement and the concept plan or similar document as revised or modified based on the last coordination at TAB A. In addition, attach funding source(s) documentation, environmental impact statements (if any), results of the initial staffing, and the results of the last staffing.

(2) For agreements above the approval authority of Commander, USFK, (see paragraph 9 and Appendix C), and agreements requiring CINCPAC coordination (see Appendix C, para C-8), forward a complete package to CofS, USFK. The package should include the proposed transmittal letter, funds expenditure and environmental paperwork (if applicable), the USFK statement of authority, the draft proposed agreement, and any other documentation required by applicable regulations. The USFK Form 108 should recommend that the CofS, USFK, approve the proposed agreement, informally designate the USFK action agency, and sign the transmittal letter addressed to CINCPAC and/or other higher HQ, as identified by FKJA-IA.

(3) For agreements that require approval by the U.S.-ROK SOFA Joint Committee, prepare a complete staff package requesting authority from the U.S. Representative (Deputy Commander, USFK) to the U.S.-ROK SOFA Joint Committee to negotiate, and if applicable sign, the proposed Agreed Recommendation to the Joint Committee. The USFK staff principal

(who is also the U.S. Chairman of the tasked Joint Committee subcommittee) will submit the staff package through the U.S. SOFA Secretariat. This USFK Form 108 should also include coordination with any affected command group staff elements.

g. Command Group Action (USFK Form 108). The CofS, USFK, will either approve or disapprove the action agency's recommendations on the USFK Form 108. If approved, the CofS, USFK, will--

(1) For agreements within the approval authority of the Commander, USFK (including those requiring CINCPAC coordination), approve negotiation only or negotiation and conclusion. The CofS will also designate the USFK action agency using the appropriate memorandum format shown in Figure 1. Authority to conclude (sign) the agreement may be reserved by the CofS, USFK, or higher authority in appropriate circumstances.

(2) For agreements requiring approval at a level above USFK, informally designate the USFK action agency and sign the transmittal letter. The CofS, USFK, will not approve negotiation or conclusion of the agreement, until the higher HQ having the authority to negotiate and conclude the agreement first delegates it to USFK. The USFK action agency will prepare and the CofS will forward the transmittal letter and required documentation through CINCPAC to the appropriate higher HQ to obtain authority to negotiate and/or conclude the agreement.

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(Not requiring CINCPAC coordination)

Under the provisions of USFK Reg 550-51, negotiation (and conclusion)* of (identify agreement) is approved. (Staff agency) is designated the primary action agency for this agreement.

If any changes are proposed to the enclosed draft agreement, coordination must first be made with USFK Judge Advocate (FKJA) in accordance with the above-referenced regulation, prior to the presentation of those proposed changes, formally or informally, to the Republic of Korea (ROK). FKJA will determine whether the proposed changes comport with U.S. law and policy, and whether re-staffing of the draft is required. FKJA must also review the proposed final version prior to signing to ensure compliance with U.S. law and policy.

(signed)
Chief of Staff, USFK

(Requiring CINCPAC coordination)

Under the provisions of USFK Reg 550-51, negotiation (and conclusion)* of (identify agreement) is approved. Negotiation/conclusion of this agreement shall not be accomplished until the required CINCPAC coordination has been made. (Staff agency) is designated the primary action agency for this agreement.

(signed)
Chief of Staff, USFK

*Authority may be given to negotiate and conclude, or only to negotiate.

Figure 1. Approval formats for agreements.

(3) For recommendations made to the U.S.-ROK SOFA Joint Committee, the U.S. Representative to the U.S.-ROK SOFA Joint Committee (Deputy Commander, USFK) will indicate by signature approval or disapproval of the recommendations contained on the USFK Form 108. The signed USFK Form 108 will act as formal authority to negotiate and/or conclude the proposed agreement and must be maintained in the negotiating files by the U.S. Component to the appropriate subcommittee. A copy of the approved USFK Form 108 will be provided to the U.S. SOFA Secretariat and USFK JA.

h. JA as part of the negotiating team. If U.S.-ROK international agreement negotiations might be potentially sensitive or involve significant legal issues, either the USFK JA or the designated staff/action agency may determine that an attorney is needed as part of the U.S. Negotiating Team. When the JA determines that an attorney is needed, the JA will appoint an appropriately qualified individual and notify the staff/action agency. When the staff/action agency determines that an attorney is needed, submit a request to the FKJA (FKJA-IA). Legal advice is always available, regardless of whether or not an attorney is part of the negotiating team. The attorney may, if necessary, be designated as chief negotiator. If FKJA-IA determines it is a routine negotiation, an attorney need not be included on the team.

14. COORDINATION WITH THE REPUBLIC OF KOREA (ROK) MINISTRY OF FOREIGN AFFAIRS AND TRADE (MOFAT). Sometimes certain agreements, although outside the direct purview or authority of the SOFA, may still be submitted to the U.S.-ROK SOFA Joint Committee for approval or for recording in the official minutes of the U.S.-ROK SOFA Joint Committee. In such cases, the USFK Office of the Special Assistant for International Relations/SOFA and the U.S. SOFA Secretariat will coordinate with MOFAT prior to the conclusion of the agreement.

15. THE CONDUCT OF NEGOTIATIONS - DUTIES OF THE ACTION AGENCY.

a. The U.S. must not become a party to an international agreement that is contrary to U.S. law or policy. Words and actions in the international arena can have far-reaching consequences. Something as simple as making a well-intentioned proposal can raise expectations that may negatively affect negotiations and relationships with other nations. To avoid such problems, DOD regulations preclude talking about, negotiating, or concluding agreements that violate US law and policy. The DOD international agreement process requires explicit command approval prior to negotiating or concluding an agreement. Every proposal must undergo a legal review before it is tendered or accepted by the U.S. side. The purpose of FKJA-IA involvement is not to dictate the terms of the agreement, but rather to ensure that all proposals are IAW U.S. law and policy.

(1) Negotiation (including the passing of drafts or discussion of possible future agreements) with any official of the ROK is prohibited unless advance written authority to do so is received from the Commander, Deputy Commander, or CofS, USFK, depending on the type of agreement (see paragraph 7 above). Authorization to negotiate or conclude agreements is solely a command prerogative, not a staff function.

(2) No draft document may be passed to any official of the ROK unless FKJA-IA has reviewed the draft and found no legal objection. While a U.S. negotiator may ask questions to a ROK negotiator for clarification, the U.S. negotiator may not in any manner indicate agreement or acceptance. An appropriate reply to a new ROK proposal is: "We will consider the proposal and I hope to have a response for you at our next meeting."

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(3) Oral promises and agreements are prohibited because these assertions may constitute international agreements which bind the U.S. and USFK under U.S. and international law. Any oral promise or agreement must be reduced to writing and submitted to FKJA for determination of the legal status of the exchange.

(4) Acceptance, whether verbal or written, of any agreement proposed by any official of the ROK requires the prior review and concurrence of FKJA.

b. During negotiations, the action agency will prepare a history of the negotiations. The negotiating history should include the minutes of negotiating sessions, memoranda for record, staffing comments, and successive drafts of the agreement. It will be sufficiently complete to allow a reader to trace the evolution of the final agreement and determine the meaning intended by the negotiators for each provision.

c. Once negotiations are complete, the action agency will move the negotiating history into its permanent (historical) records. The action agency will maintain the records for the life of the agreement and any successor agreements. These records must not be destroyed or transferred to records holding areas where they are not readily available.

16. LANGUAGE REQUIREMENTS. IAW DOD Directive 5530.3, an international agreement containing text in a foreign language will comply with one of the following:

a. The agreement will expressly state that the English language text is the governing text if there is conflict between the different language texts; or

b. The agreement will expressly state that the English language text and the foreign language text are equally authentic.

(1) Before the agreement is concluded, a memorandum certifying that the foreign language text and the English language text conform to each other and have the same meaning in all substantive respects must accompany each foreign language text.

(2) The DOD official authorized to negotiate and conclude the agreement will designate a civilian, military, or local national translator as qualified, consistent with local practices, and date and sign the certifying memorandum.

(3) The certifying memorandum will accompany the agreement when the agreement is transmitted for reporting IAW the provisions of paragraph 17 below.

17. TRANSMISSION AND DEPOSITING OF COPIES OF INTERNATIONAL AGREEMENTS.

a. All international agreements involving the expenditure or receipt of U.S. funds, or funds and in-kind assistance provided by a host nation for U.S. expenditure or use, must be reported to Congress. Accordingly, within 10 days of concluding/signing of an international agreement, the official or designated action agency concluding the agreement must forward six reproducible copies to the USFK Judge Advocate (FKJA-IA), Unit #15237, APO AP 96205-0010. The official or action agency concluding the agreement will certify all six copies of the concluded agreement as "true copies". A copy of the document granting authority to negotiate and

conclude the agreement, and a copy of the memorandum certifying the accuracy of the translation, if applicable, will accompany each copy of the concluded agreement. A letter of transmittal, in the format at Appendix F is also required. Additionally, if a foreign language version of the agreement was signed simultaneously with an English version, include a statement of textual conformity (see 22 C.F.R. Section 181.4(h) and paragraph 16 above).

b. If the text of the agreement and the accompanying documents are not transmitted within the 10-day time limit, the letter of transmittal will fully and completely justify the late transmittal.

c. U.S.-ROK SOFA Joint Committee Agreements, in most cases, may be included in the Joint Committee minutes to satisfy the intent of the Case-Zablocki Act, which is notification to Congress. DOS has the Joint Committee minutes and, when necessary, can notify Congress. This abbreviated notification process outside Case-Zablocki Act procedures only applies to routine house-keeping matters under the SOFA, such as a simple grant/return of land, which has received a FASC tasking and does not include the payment/receipt of U.S. funds or which does not envision a continuing relation or extended time for completion. However, if an agreement, even a U.S.-ROK SOFA Joint Committee tasking, includes non-routine matters such as a money transfer or a continuing relationship, it must be reported under the Case-Zablocki Act.

d. FKJA-IA will distribute the international agreement as follows:

(1) Two copies to the General Counsel, Department of Defense, Washington, DC 20301-1600.

(2) One copy to the Assistant Legal Adviser for Treaty Affairs, Department of State, Washington, DC 20520-5000.

(3) One copy to the Secretary, Joint Staff, Washington, DC 20301-5000.

(4) Copies to any other offices and agencies prescribed by the combatant commands or other competent authority.

(5) One copy to the Office of the Staff Judge Advocate (J06L), Commander in Chief, US Pacific Command, Box 64022, Camp H. M. Smith, HI 96861-4022.

(6) One copy will be retained in the USFK international agreements repository and recorded in the international agreements data base.

18. TERMINATION OF AGREEMENTS. The terms of an international agreement determine how it may be terminated. Usually, an international agreement terminates through mutual agreement of both parties, unilateral notification by one party to terminate at a specific future time, or by passage of time as specified in the agreement (e.g., "this agreement shall remain in force for five years"). The same authority that authorized the negotiation and conclusion of the original agreement is also the authority that may authorize the U.S. to mutually agree with the other party to terminate an agreement or unilaterally notify the other party that the U.S. no longer intends to be bound by the agreement.

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a. Mutual agreement. When both the U.S. and the ROK mutually agree to terminate an international agreement, the mutual agreement to terminate will state the terms of the termination. The action agency designated to negotiate the mutual agreement termination will coordinate with FKJA.

b. Unilateral notification. All proposed unilateral notifications to the ROK by the U.S. that it no longer will be bound by an international agreement after a specific future date IAW the agreement terms will be coordinated with FKJA. Action agencies will notify FKJA immediately in all cases when the ROK unilaterally notifies the U.S. that it no longer intends to be bound by an international agreement.

c. Passage of time. If an international agreement terminates after a period of time (e.g. five years), the applicable action agency will coordinate with FKJA-IA at least 6 months before the termination date. In such cases, it might not be necessary to negotiate and conclude a new agreement. Instead, it might be beneficial to extend, by mutual consent, the original agreement. The same initial authority that authorized the original negotiation and conclusion may authorize the U.S. to agree to extend the original agreement.

19. JUDGE ADVOCATE (JA) RESPONSIBILITIES. FKJA-IA is the single office of record and depository for administration and control of all agreements concluded in USFK, except SOFA-related agreements. The USFK Office of the Special Assistant to the Deputy Commander for International Relations/SOFA and the U.S. SOFA Secretariat maintains SOFA-related agreements. FKJA-IA will--

a. Review requests for authorization to negotiate and conclude international agreements.

b. Provide and maintain the International Agreements Control System (IACS), the single repository (database) for international agreements negotiated and concluded under the re-delegated authority of USCINCPAC.

c. Provide a list of terminated international agreements annually to USCINCPAC, Staff Judge Advocate, J06L, NLT 31 January each year.

d. Reconcile the master indices of international agreements with subordinate commands and organizational elements.

e. Forward a hard copy and electronic copy of the complete, reconciled and updated index, which includes all international agreements concluded in the previous calendar year, to the USCINCPAC Staff Judge Advocate, J06L, not later than 31 January. The index will include the following information for each international agreement:

- (1) general purpose;
- (2) entry into force date;
- (3) termination date;
- (4) location and POC for original signed text;

- (5) classification;
- (6) country or governmental entity with which the agreement was made;
- (7) title of the agreement;
- (8) date of signature;
- (9) specific statutory and legal authority allowing DOD to enter into the agreement and expend funds to implement the agreement; and
- (10) annotations of agreements made and/or terminated in the previous calendar year.

20. GUIDANCE. Questions regarding the interpretation or application of this regulation will be directed to USFK (FKJA-IA), Unit #15237, APO AP 96205-0010.

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-IA), Unit #15237, APO AP 96205-0010. This publication is available only electronically at: <https://www-eusa.korea.army.mil>

FOR THE COMMANDER:



F. W. MORRIS
Assistant Adjutant General

OFFICIAL:
DANIEL R. ZANINI
Lieutenant General, USA
Chief of Staff

DISTRIBUTION:
Electronic Media Only

APPENDIX A

REFERENCES

Section I. REQUIRED PUBLICATIONS

AR 420-90 (Fire and Emergency Services). Cited in appendix B.

AR 500-60 (Disaster Relief). Cited in appendix B.

AR 700-131 (Loan and Lease of Army Materiel). Cited in appendix B.

Case-Zablocki Act (1 USC 112b). Cited in paragraphs 5, 5c, 5f, 17c and appendix B.

CINCPACINST 3050.1G (Foreign Disaster Relief). Cited in appendix B.

CINCPACINST 5711.6D (Negotiation, Conclusion and Reporting of International Agreements). Cited in appendix C.

CJCSI 2300.01A (12 Feb 1999)(International Agreements). Cited in paragraph 13e(7) and appendix C.

DFAS IN Reg 37-1 (Accounting and Funds Control). Cited in appendix B.

DIA Reg 60-28 (International Military Intelligence Relationship). Cited in appendix C.

DOD Financial Management Regulation (FMR) 7000.14, Vol 11A, Ch 9 (Support of International Activities). Cited in appendix B.

DOD Dir 2010.9-D (Mutual Logistic Support Agreement Between the United States and Governments of Eligible Countries and NATO Subsidiary Bodies). Cited in paragraph 5g and appendix B.

DOD Dir 5100.46-D (Foreign Disaster Relief). Cited in appendix B.

DOD Dir 5530.3 (International Agreements). Cited in paragraphs 8c, 10, 13e(7), 16, appendix C and the Glossary.

DOD Dir 6050.7 (Environmental Effects Abroad of Major Department of Defense Actions). Cited in paragraph 13b(1).

DOD 5105.38-M (Defense Security Assistance Agency). Cited in appendix B and C.

Executive Order 12114 (Environmental Effects Abroad of Major Federal Action, 44 F.R. 1979. Cited in paragraphs 13b(1) and 13e(7).

National Disclosure Policy. Cited in paragraph 8c.

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SECDEF Message 142159Z Dec 93 (DOD Policy and Procedures for the Realignment of Overseas Sites). Cited in paragraph 6c and appendix C.

USFK Pam 200-1 (Environmental Governing Standards). Cited in paragraph 13b(1).

USFK Reg 10-10 (Organization and Mission of the US-ROK SOFA Joint Committee). Cited in paragraph 7b(2).

USFK Reg 12-16 (Mutual Logistics Support Between the United States Forces and the Republic of Korea Forces). Cited in appendix B.

USFK Reg 405-7 (Facilities and Areas [Real Estate] Policies and Procedures in Korea). Cited in paragraphs 5i, 6c, 13c(2) and appendix C.

USFK Reg 550-52 (Wartime Host Nation Support Program). Cited in paragraph 6d.

USFK Reg 700-16 (Logistics Support of United States Nongovernmental Nonmilitary Agencies/Organizations/Individuals and Non-United States Agencies/Organizations/Individuals in the Republic of Korea). Cited in appendix B.

10 USC 401. Cited in appendix B.

10 USC 421. Cited in appendix B.

10 USC 2304 (c)(4). Cited in appendix C.

10 USC 2341. Cited in paragraph 5g and appendix B.

10 USC 2547. Cited in appendix B.

10 USC 2667. Cited in paragraph 5e.

10 USC 2675. Cited in paragraph 5e.

10 USC 2828. Cited in paragraph 5e.

11 Foreign Service Manual 720 (Circular 175 Authority Procedures). Cited in paragraphs 9b, 13b(2) and appendix C.

22 C.F.R. Section 181 (Coordination and Reporting of International Agreements). Cited in paragraph 17a.

22 USC 2301. Cited in appendix B.

22 USC 2347. Cited in appendix B.

22 USC 2349. Cited in appendix B.

22 USC 2751. Cited in appendix B.

22 USC 2796. Cited in paragraph 5e and appendix B.

42 USC 1856. Cited in appendixes B and D.

Section II. RELATED PUBLICATIONS

Agreement Under Article IV of the Mutual Defense Treaty Between the United States of America and the Republic of Korea Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea with its Agreed Minutes and Understandings on Implementation (U.S.-ROK SOFA), as amended.

AFI 51-701 (Negotiating, Concluding, Reporting and Maintaining International Agreements).

AR 380-10 (Foreign Disclosure, Technology Transfer, and Contacts with Foreign Representatives).

AR 550-51 (International Agreements).

CINCPACFLTINST 5710.1A (Negotiations and Conclusion of International Agreements).

CJCSI 6740.01 (Military Telecommunications Agreements and Arrangements between the United States and Regional Defense Organizations or Friendly Foreign Nations).

DOD Dir 5200.1 (DOD Information Security Program).

DOD Dir 5200.1-R (Information Security Program Regulation).

DOD Dir 5230.11 (Disclosure of Classified Military Information to Foreign Governments and International Organizations).

OPNAVINST 5710.24 (International Agreements Navy Procedures).

UNC/CFC/USFK Memo 550-51 (Administrative Processing of International Agreements Involving HQ, ROK/US Combined Forces Command).

USFK Reg 380-7 (Disclosure and Release of U.S. Classified Military Information to Foreign Governments and International Organizations(U)).

APPENDIX B**LEGAL RESTRICTIONS ON UNITED STATES (U.S.) ASSISTANCE TO
FOREIGN GOVERNMENTS, INTERNATIONAL ORGANIZATIONS,
AND FOREIGN PRIVATE ENTITIES AND INDIVIDUALS**

B-1. GENERAL. U.S. statutes and regulations greatly restrict what assistance the U.S. may provide to ROK government entities (such as the ROK armed forces), international organizations (such as HQ, CFC), private entities, and individuals. Questions regarding provision of such assistance should be directed to the FKJA-IA, Unit #15237, APO AP 96205-0010.

B-2. MILITARY ASSISTANCE TO ROK GOVERNMENTAL ENTITIES AND INTERNATIONAL ORGANIZATIONS.

a. Security Assistance. The Foreign Assistance Act (FAA) (22 USC 2301 *et seq.*) and the Arms Export Control Act (AECA) (22 USC 2751 *et seq.*) constitute the principal limitations on US military assistance to foreign governments and international organizations. These Acts regulate transfers of defense articles and services to other governments and international organizations. Such transfers, generally known as "security assistance", are governed by procedures in DOD Manual 5105.38M. The Joint United States Military Affairs Group - Korea (JUSMAG-K) is the primary source of information and assistance concerning transfers under the security assistance statutes. Under these statutes, the following types of transfers of defense articles and defense services are recognized:

(1) Sales. Sales of defense articles or defense services are governed by the AECA and generally require the use of FMS procedures.

(2) Grants. The FAA governs grants (transfers without reimbursement from the recipient) of defense articles and defense services. Grants are limited to those countries authorized financial assistance by the Military Assistance Program (MAP) or Foreign Military Financing Programs (FMFP). The ROK is not such a country; therefore, grant aid assistance is not authorized. Occasionally, an action that primarily benefits the U.S. provides an unavoidable incidental benefit to the ROK. These exceptional cases, depending upon the circumstances, might not be considered to be "grants" prohibited under this section. Action officials/agencies should consult with the servicing staff JA or legal advisor about these exceptional cases.

(3) Loans. Generally, loans of defense articles are also governed by the FAA and, like grants, are limited to those countries authorized financial assistance under the MAP or FMFP. Again, since the ROK is not an authorized country, loans are generally prohibited. The Arms Export Control Act, 22 USC 2796d, provides a limited exception that allows DOD to loan certain materials, supplies and equipment for cooperative research, development, testing or evaluation purposes. Under this limited exception, DOD may authorize the loan of certain types of defense articles to the ROK. Additionally, as noted in paragraph B-2b, the U.S. may be able to loan logistic support, supplies, and services to the ROK under the U.S.-ROK MLSA, or what is commonly referred to in other countries as an ACSA (should the U.S. and ROK eventually agree to this); however, there is currently no authority to loan other defense articles to the ROK without prior DOD approval.

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(4) Leases. Subchapter IV of the Arms Export Control Act, specifically 22 USC 2796 *et seq.*, authorizes lease of defense articles to foreign governments and international organizations. Leases of defense articles are limited to exceptional situations, might require reporting to Congress, must have advance DOD approval, and usually require use of FMS procedures. See also AR 700-131. While currently prohibited, U.S. may be able to lease to the ROK, on a reimbursable basis, logistic support, supplies, and services if subsequent U.S.-ROK agreements so authorize, as noted in paragraph B-2b.

b. Mutual Logistics Support Agreements (MLSA). The North Atlantic Treaty Organization (NATO) Mutual Support Act of 1979 (10 USC 2341 *et seq.*) permits the U.S. to transfer (sell, lease or loan) to, or acquire from the host nation, certain logistic support, supplies, or services under an MLSA (DOD Directive 2010.9). The Act requires that sale of logistic support, supplies and services be on a reimbursable basis, by replacement-in-kind, or exchange of equal value. Additionally, the loan of logistic support, supplies and services includes the temporary use of general-purpose vehicles and other non-lethal military equipment not designated as significant military equipment by the AECA.

(1) The U.S.-ROK MLSA, signed in June 1988, permits the transfer of logistic support, supplies and services only on a reimbursable basis or by replacement-in-kind. While it would be lawful under an MLSA for the U.S. to exchange supplies or services of an equal value (i.e., U.S. provides field rations to a ROK unit in return for the ROK providing aviation fuel to a U.S. unit) or to lease or loan vehicles and certain other non-lethal end items, the two governments have not yet implemented this portion of the law, and therefore such exchanges, leases, and loans are not yet authorized.

(2) All MLSA acquisitions or transfers must be approved in advance at the USFK level. ACofS, J4 has responsibility for MLSA transactions. See USFK Reg 12-16.

c. U.S.-ROK combined undertakings. The foreign assistance laws do not prohibit activities such as combined exercises, joint use of facilities, or joint staffing of a combined HQ, provided there is a legitimate U.S. mission that justifies U.S. participation. If each country pays its own support costs and a proportional share of the combined costs, the U.S. can participate in exercises such as Ulchi Focus Lens (UFL), can staff a HQ such as CFC, and can share occupancy of a facility such as CFC HQ Building (The "White House").

(1) *International Organization (CFC) budget costs shall be computed IAW DOD Financial Management Reg 7000.14R, Vol 11A, Chapter 9.* Careful planning, clear and supportable expense-sharing arrangements, and continual monitoring are necessary to prevent unlawful support.

(2) The critical issue is whether the project can honestly be characterized as a combined undertaking. For example, a ROK unit and a U.S. unit may exercise together to develop, test, and evaluate mutual capability and interoperability. However, the U.S. unit cannot participate to train the ROK unit. Nor can the U.S. unit generally provide support (for example, tents, fuel, blank ammunition, or transportation for the ROK unit) except on a reimbursable basis, such as an FMS case or MLSA transaction.

d. Training. The International Military Education and Training Program (IMET) (22 USC 2347 *et seq.*), a part of the FAA, provides limited authority for U.S. training of ROK personnel. However, ROK participation in IMET is very limited. The IMET program permits ROK military personnel to attend U.S. professional military education institutions and flight training schools and programs on a non-reimbursable basis only in CONUS, provided attendance is pursuant to reciprocal (i.e., student exchange) agreement. Otherwise, ROK IMET training is on a fully reimbursable basis. 22 USC 2347(e) prohibits DOD from providing the ROK grant/no-cost military education. IMET cannot be used to support non-reimbursable training conducted in the ROK. Pursuant to the Anti-terrorism Assistance Program (22 USC 2349a *et seq.*), that is also a part of the FAA, the U.S. may provide anti-terrorist training to ROK law enforcement personnel provided the ROK pays for the services in advance in U.S. dollars. The only other avenues for training are through an FMS case or, in limited circumstances, an MLSA transaction.

B-3. NONMILITARY ASSISTANCE TO ROK GOVERNMENTAL AND PRIVATE ENTITIES AND INDIVIDUALS.

a. Civic action/community relations projects. The use of U.S. Government resources for the benefit of foreign entities and individuals is greatly restricted. Generally, U.S. Government assets may be employed only for officially approved purposes. USFK Reg 700-16 and DFAS IN Reg 37-1, contain detailed guidelines concerning logistical support to private entities and individuals. Community relations regulations authorize participation by USFK members and elements in certain types of public events. However, civic action projects are generally outside the scope of these community relations regulations. Under 10 USC 2547, SECDEF can furnish any nonlethal excess DOD supplies, other than real property, for humanitarian relief purposes. However, the excess DOD supplies must be transferred to the Secretary of State, who shall ensure their distribution. 10 USC 401 permits the Secretary of a military department, with the approval of the Secretary of State, to carry out humanitarian and civic assistance activities in conjunction with overseas military operations. In short, civic assistance activities nearly always require prior approval above USFK. All proposals for such activities must be coordinated in advance with FKJA.

b. Reciprocal Fire Protection Agreements. DOD, and each military department, can enter into reciprocal agreements with local fire organizations for mutual fire protection assistance (see 42 USC 1856 *et seq.*). The local fire organization may be a governmental entity or a private or public corporation or association, such as a volunteer or private fire company. The agreement must include a special waiver-of-claims provision. It may also provide for reimbursement for all or part of the cost incurred in furnishing fire protection to the other party. The U.S. may use current appropriations to reimburse the fire organization, but any funds received from the fire organization for fire protection must be deposited into the Treasury as a miscellaneous receipt (see 42 USC 1856a). The installation or area commander usually executes these agreements. Component regulations (e.g., AR 420-90) should be consulted for guidance. Reciprocal fire protection agreements are international agreements and must be reported IAW the 1972 Case-Zablocki Act.

c. Disaster Relief. Military resources may be committed to disaster relief operations in the ROK only when certain conditions exist and when certain defined prerequisites are met. These conditions and prerequisites, as well as approval authority for such disaster relief, are described in DOD Directive 5100.46 and CINCPACINST 3050.1G (see also AR 500-60).

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d. COMSEC equipment. 10 USC 421 provides that SECDEF may use appropriated funds to pay for the expenses of arrangements with foreign countries for cryptologic support. All such support must be reported through the Chain of Command to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

APPENDIX C

AGREEMENTS REQUIRING APPROVAL OR COORDINATION
ABOVE USFK LEVEL

C-1. RETURN OF FACILITIES OVERSEAS. IAW SECDEF Message 142159Z Dec 93, all returns of overseas sites and facilities to a host-nation (including individual buildings in the ROK, given that the U.S.-ROK SOFA does not authorize USFK to recover the residual value of capitol improvements) which have potential political/economic/social impact and/or returns which are considered a major release of an entire site or a large portion of an entire site must be approved in advance by SECDEF or the Deputy Secretary of Defense. DOD personnel are permitted to initiate contact with host governments concerning the possibility of return of facilities only with the advance approval of the OUSD-P. This does not apply to the routine return and/or exchange of small parcels of land (without buildings) at sites when the majority of the remaining land is retained for U.S. use. It also does not apply to the termination of leases from private parties or to the routine releases of easements, right-of-ways, or permits. See also USFK 405-7.

C-2. POLICY SIGNIFICANCE. IAW DOD Directive 5530.3, paragraph 8.4, the following categories of international agreements have policy significance and require Circular 175 authority IAW 11 Foreign Service Manual 720. These agreements require prior approval by the OUSD-P before initiation of negotiations--

a. Agreements which specify national disclosure, technology-sharing or work-sharing arrangements, co-production of military equipment or offset commitments as part of an agreement for international cooperation in the research, development, test, evaluation, or production of defense articles, services, or technology.

b. Agreements which, because of their intrinsic importance or sensitivity, would directly and significantly affect foreign or defense relations between the U.S. and another government.

c. Agreements which, by their nature, would require approval, negotiation, or signature at the Office of the Secretary of Defense or the diplomatic level.

d. Agreements which would create security commitments currently not assumed by the U.S. in existing mutual security or other defense agreements and arrangements, or which would increase U.S. obligations with respect to the defense of a foreign government or area.

C-3. JOINT CHIEFS (JS). IAW CJCSI 2300.01A (12 Feb 99) Enclosure A, paragraphs 3a and 4, the following categories of agreements require prior approval by the CJCS:

a. Agreements concerning specific subcategories of military communications equipment, systems, or procedures as follows:

(1) U.S. communications security equipment (see also C-4 below – NSA also has authority over U.S. COMSEC; in fact, NSA authority regarding COMSEC is more broad than JS authority. The JS mainly focuses on the release of COMSEC equipment, whereupon NSA is concerned with all aspects of COMSEC);

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(2) The U.S. Defense Communications System (including automatic digital network, the Defense Message System, Defense Information Systems Network, Defense Switched Network, the Defense Red Switch Network and their successor systems), except for agreements to transfer record or voice traffic for a period of 120 days or less;

(3) CJCS-controlled telecommunications and command and control equipment;

(4) Military satellite communications; or

(5) Configuration Management - Procedural Interface Standards (Message Text Formats/Tactical Digital Information Links) and Technical Interface Standards (Spread Spectrum Communications Systems).

b. Communications-electronics agreements under the purview of the U.S. Military Communications-Electronics Board.

c. Agreements having policy significance within the meaning of DOD Directive 5530.3, paragraph 8.4.1 shall be forwarded with recommendations through channels to the Director, Joint Staff, if they:

(1) Involve any subject that has been formally raised for discussion at the Assistant Secretary of Defense (ASD) level, or its equivalent in a foreign government or in an international organization;

(2) Involve major non-programmed fiscal obligations;

(3) Affect U.S. security commitments; or

(4) Are otherwise restricted by DOD Directive 5530.3.

C-4. ELECTRONIC SECURITY. IAW DOD Directive 5530.3, paragraphs 13.11 and 13.12, approval authority is reserved to the Director, NSA, to negotiate and conclude the following types of agreements:

a. Agreements relating to communications security technology, services, support, research, or equipment development and production.

b. Military-related signals intelligence agreements.

C-5. INTELLIGENCE. IAW DOD Directive 5530.3, paragraph 13.4 and DIA Reg 60-28, approval authority is reserved to the Director, DIA, to negotiate and conclude all agreements for the collection and exchange of military intelligence information, except signals intelligence agreements. Questions concerning the disclosure or release of classified military information (CMI) and/or controlled unclassified information (CUI) to foreign governments and/or international organizations should be directed to the USFK Foreign Disclosure Officer, ACofS, J2.

C-6. SECURITY ASSISTANCE. IAW DOD 5105.38M and DOD Directive 5530.3, paragraphs 13.1.3 and 13.2.4, approval authority is reserved to the Director, DSCA, to negotiate and conclude agreements pertaining to the security assistance program.

C-7. OTHER THAN COMPETITIVE CONTRACTING PROCEDURES. 10 USC 2304(c)(4) says, in pertinent part: "The head of an agency may use procedures other than competitive procedures only when the terms of an international agreement or a treaty between the United States and a foreign government or international organization ... have the effect of requiring the use of procedures other than competitive procedures." IAW DOD Directive 5530.3, paragraph 8.5, no international agreement which relies on the authority of 10 USC 2304(c)(4) for use of other than competitive contracting procedures shall be negotiated or concluded without the prior approval of the Under Secretary of Defense for Acquisition (USD-A).

C-8. USCINCPAC IMPACT. IAW CINCPACINST 5711.6D, paragraph 10, the following categories of agreements are considered to have a significant impact on USCINCPAC plans and programs and require coordination with CINCPAC prior to negotiation/conclusion:

- a. Naval control of shipping.
- b. Military support in contiguous and exclusive economic zones.
- c. Reduction of incidents at sea.
- d. Air traffic control procedures for military aircraft which change air space rights.
- e. Loan of material.
- f. Transfer of excess defense articles.
- g. Property disposal.
- h. Stockpiling arrangements.
- i. Grant aid.
- j. Non-U.S. citizen civilian labor matters.
- k. SOFA changes.
- l. Agreements for joint/combined operations.
- m. Agreements which substantially alter the nature of existing bilateral commitments.
- n. Military telecommunications agreements.
- o. Data exchange agreements.
- p. Annexes to data exchange agreements.
- q. Technology transfer agreements.

APPENDIX D

INTERNATIONAL AGREEMENT FORMAT (GENERAL)

**MEMORANDUM OF AGREEMENT BETWEEN UNITED STATES FORCES KOREA
AND THE REPUBLIC OF KOREA*†**

- I. AUTHORITY.** (SOFA, treaty, statute, and so forth; if this agreement supersedes a prior agreement, so state and identify prior agreement.)
- II. PURPOSE.** (General purpose of the agreement.)
- III. MUTUAL RESPONSIBILITIES OF PARTIES.** (Liaison groups, functions, and so forth.)
- IV. SPECIFIC RESPONSIBILITIES OF USFK.**
- V. SPECIFIC RESPONSIBILITIES OF OTHER PARTY.**
- VI. PROPERTY INVOLVED.** (If appropriate.) (Ownership, maintenance, replacement, removal, accounting. Omit what is covered in IV and V.)
- VII. FUNDING.** (Each party to bear own costs, cost sharing, and so forth.)
- VIII. CLAIMS.** (Include only if SOFA claims article is not sufficient and a special provision is required. For example, fire fighting assistance agreements must comply with 42 USC 1856a.)
- IX. DISAGREEMENTS.** (Resolution of disagreements arising under the agreement.)
- X. LANGUAGE.** (See paragraph 16.)
- XI. AMENDMENTS AND REVIEW.** (Amendments to be in writing, agreement to be reviewed for currency each year, and so forth.)
- XII. ENTRY INTO FORCE AND DURATION.** (Entry into force date of last signature and term of agreement, conditions of termination mutual and unilateral, conditions of extension.)
- XIII. SIGNATORIES.** (Must show typed/printed name and title/position of each signatory as well as date and place of signature.)

*Or name of ROK governmental entity or military organization.

†The substance of Articles I, II, and IX through XIII of the agreement should be included in every agreement. The content of the other articles will vary depending on the nature of the agreement. Construction projects may require an appendix or appendices on equipment, materials, supplies and services, real property facilities, construction management, construction, and operations and maintenance.

APPENDIX E

INTERNATIONAL AGREEMENT FORMAT

(Recommendation to U.S.-ROK SOFA Joint Committee)

MEMORANDUM FOR Chairmen, SOFA _____ Subcommittee

SUBJECT: Recommendation of the Joint Working Group Concerning *(title of task)*

1. This Recommendation is submitted in response to a task from the _____ Subcommittee requesting a recommendation concerning the [ROK]/[US] *(select one)* request.

2. Joint Working Group (JWG) Members:

U.S. Component
(List all U.S. JWG members)

ROK Component
(List all ROK JWG members)

3. The JWG, having considered the matter, submits this recommendation for consideration by the _____ Subcommittee.

4. Recommendation.

a. Mutually Agreed Conditions *(as determined by the JWG)*:

b. Republic of Korea *(and/or ROK entity)*:

c. United States Forces Korea *(and/or USFK entity)*

5. Miscellaneous.

a. Implementing Appendices *(If appropriate; not required for all recommendations)*. All Appendices and Annexes to this recommendation are integral parts of this recommendation.

b. Joint Administrative Committee (JAC) *(If appropriate; not required for all recommendations)*. A JAC shall be established to coordinate implementation of U.S. and ROK responsibilities specified above. The JAC shall be composed as follows:

(1) *(Name of U.S. co-chair)*, or his designee, shall be the chairman of the U.S. component of the JAC.

(2) *(Name of ROK co-chair)*, or his designee, shall be the chairman of the ROK component of the JAC.

(3) Additional members appointed by the U.S. and the ROK to their respective components.

c. Points of Contact (POC) *(If appropriate; not required for all recommendations)*. POC for these matters shall be: *(the two chairmen of the JAC as listed above, or as determined by the subcommittee or JWG.)*

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d. Disagreements (*If appropriate; not required for all recommendations*). Disagreements concerning implementation of this recommendation that cannot be resolved by the JAC will be referred to the _____ Subcommittee for resolution.

e. This recommendation shall not become effective unless approved by the U.S.-ROK SOFA Joint Committee, and may be revised or amended by the Joint Committee. Proposed changes may be submitted to the Joint Committee for consideration.

ROK Chairman, JWG

Date: _____
Place: _____, Korea

U.S. Chairman, JWG

Date: _____
Place: _____, Korea

APPENDIX F
FORMAT FOR TRANSMITTAL DOCUMENT

Date: _____

From: _____

To: _____

Subject: Transmittal of an International Agreement

F-1. Type of agreement: Bilateral _____ Multilateral _____

F-2. Parties to the agreement.

F-3. All agencies, U.S. and foreign, responsible for carrying out the provisions of the agreement.

F-4. Title and subtitle, if one.

F-5. Subject of the agreement.

F-6. Brief summary of the terms of the agreement.

F-7. Any interpretive statements or side letters that may have been signed at the time the agreement was concluded.

F-8. Background information, including reference to any treaty or other agreement it implements and the circumstances under which it was negotiated. Include the title(s) and date(s) of the agreement(s), if any, on which the agreement is based or which the agreement amends.

F-9. If classified, who the classifying agencies are and the downgrading or declassification instructions.

F-10. The effect of the agreement, including the costs and benefits to the parties.

F-11. The domestic legal authority authorizing the DOD or its agencies to enter into the agreement.

F-12. Date of signature and date the agreement will enter into force.

F-13. Period of the agreement and the expected date of termination.

F-14. Printed names of all signing officials, their titles and/or the offices they represent, and their countries or international organizations.

F-15. Geographic location where the agreement was signed.

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F-16. Organizational element (office of primary responsibility) responsible for maintaining the negotiating history for the agreement.

Note: All copies must be certified to be true copies of the original as signed.

GLOSSARY**Section I. ABBREVIATIONS**

AA	Administrative Agreement
ACofS	Assistant Chief of Staff
ACSA	Acquisition and Cross-Servicing Agreement
AECA	Arms Export Control Act
AOR	Area of Responsibility
CofS	Chief of Staff
CFC	Combined Forces Command
CINCPAC	Commander in Chief Pacific Command
CJCS	Chairman of the Joint Chiefs of Staff
COMSEC	Communications Security
DIA	Defense Intelligence Agency
DOD	Department of Defense
DOS	Department of State
DSCA	Defense Security Cooperation Agency
<i>"et seq."</i>	<i>"and the sequential statutes that follow it within the Act"</i>
FAA	Foreign Assistance Act
FKJA	United States Forces Korea, Office of the Judge Advocate
FKJA-IA	United States Forces Korea, Office of the Judge Advocate International Agreements Division
FMFP	Foreign Military Financing Program
FMS	Foreign Military Sales
IACS	International Agreements Control System
IAW	in accordance with
IMET	International Military Education and Training Program

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JAC	Joint Administrative Committee
JCS	Joint Chiefs of Staff
JS	Joint Staff
JUSMAG-K	Joint United States Military Affairs Group - Korea
JWG	Joint Working Group
MAP	Military Assistance Program
MLSA	Mutual Logistics Support Agreement
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NLT	no later than
NSA	National Security Agency
OUSDP	Office of the Under Secretary of Defense for Policy
RM	Resource Management
ROK	Republic of Korea
SECDEF	Secretary of Defense
SOFA	U.S.-ROK Status of Forces Agreement
SOP	Standard Operating Procedure
U.S.	United States (of America)
U.S.-ROK	United States – Republic of Korea
USC	United States Code
USFK	United States Forces, Korea
WHNS	Wartime Host Nation Support

Section II. TERMS

International Agreement.

a. Any agreement concluded with one or more foreign governments (including their agencies, instrumentalities, or political subdivisions) or with an international organization, that--

(1) Is signed or agreed to by personnel of any DOD component, or by representatives of the Department of State or any other Department or Agency of the U.S. Government;

(2) Signifies the intention of its parties to be bound in international law.

(3) Is denominated as an international agreement or as a memorandum of understanding, memorandum of agreement, memorandum of arrangements, exchange of notes, exchange of letters, technical arrangement, protocol, note verbale, aide memoire, agreed minute, contract, arrangement, statement of intent, letter of intent, statement of understanding or any other name connoting a similar legal consequence.

b. Any oral agreement that meets the criteria of subparagraph a, above, is an international agreement. The DOD representative who enters into the agreement shall cause such agreement to be reduced to writing. In written form, the agreement is subject to the requirements of DOD Directive 5530.3 sections 5 and 7.

c. See paragraph 5 above for agreements that are NOT considered to be international agreements for the purposes of this regulation.

Negotiation. Communication by any means of a position or an offer, on behalf of the U.S., the DOD, or on behalf of any officer or organizational element thereof, to an agent or representative of a foreign government, including an agency, instrumentality, or political subdivision thereof, or of an international organization, in such detail that the acceptance in substance of such position or offer would result in an international agreement. The term "negotiation" includes any such communication even though conditioned on later approval by the responsible authority. The term "negotiation" also includes provision of a draft agreement or other document, the acceptance of which would constitute an agreement, as well as discussions concerning any U.S. or foreign government or international organization draft document whether or not titled "agreement." The term "negotiation" does not include preliminary or exploratory discussions or routine meetings where no draft documents are discussed, so long as such discussions or meetings are conducted with the understanding that the views communicated do not and shall not bind or commit any side, legally or otherwise.

Conclusion. The act of signing, initialing, responding, or otherwise indicating the acceptance of an international agreement by the U.S.