



DoD INSTRUCTION 5525.03

CRIMINAL JURISDICTION OF SERVICE COURTS OF FRIENDLY FOREIGN FORCES AND SENDING STATES IN THE UNITED STATES

Originating Component:	Office of the General Counsel of the Department of Defense
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Reissues and Cancels:	DoD Instruction 5525.03, "Criminal Jurisdiction of Service Courts of Friendly Foreign Forces and Sending States in the United States," March 30, 2006
Approved by:	Robert S. Taylor, Acting General Counsel

Purpose: In accordance with the authority in DoD Directive 5145.01, this issuance:

- Establishes DoD policy and guidance to implement Chapter 13 of Title 22, United States Code (referred to in this issuance as "the Act"), the North Atlantic Treaty Organization Status of Forces Agreement, and other international agreements providing authority for service courts of sending states to exercise criminal jurisdiction in the United States.
- Governs the exercise of criminal jurisdiction in the United States over offenses committed by members of friendly foreign forces or the forces of sending states.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

1.2. POLICY. DoD will facilitate the exercise of criminal jurisdiction by service courts of friendly foreign forces or sending states in the United States, subject to these limitations:

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

b. Pursuant to an applicable international agreement, or in the absence of such an agreement as a matter of comity, the authorities of a friendly foreign or sending state force may request a waiver of the primary right of the United States and its political subdivisions to exercise jurisdiction.

c. Any trial by a service court of a friendly foreign or sending state force of an offense committed against a member of the civilian population of the United States will be open to the public (unless security considerations require otherwise). It will take place promptly in the United States within a reasonable distance from the place where the offense is alleged to have been committed, for the convenience of witnesses.

d. Any conflicts between the requirements of the Act as implemented in this issuance and applicable international agreements, including the North Atlantic Treaty Organization Status of Forces Agreement, that are raised by the sending state force will be resolved through diplomatic channels.

SECTION 2: RESPONSIBILITIES

2.1. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE. The General Counsel of the Department of Defense oversees the exercise of criminal jurisdiction of service courts of friendly foreign forces or sending states in the United States.

2.2. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments will:

- a. Each designate an agent to assist a friendly foreign or sending state force in the exercise of criminal jurisdiction over its personnel in accordance with the provisions of the Act or applicable international agreement and this issuance.
- b. Serve as the final approval authority for situations identified in Section 3.

SECTION 3: SECRETARY OF A MILITARY DEPARTMENT-DESIGNATED AGENT

Each agent designated by a Secretary of a Military Department will:

a. Establish appropriate channels and procedures for receipt and forwarding of requests related to the exercise of criminal jurisdiction of service courts of friendly forces and sending states in the United States.

b. Help friendly foreign or sending state force representatives contact U.S. authorities, including political subdivisions thereof, as those representatives carry out their duties in matters related to this issuance.

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

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

(1) A full description of the person to be apprehended and a statement that the person:

(a) Is a member of the friendly foreign or sending state force concerned; and

(b) Is subject to the jurisdiction of its service court for the offense allegedly committed.

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

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

(4) Citation to the provisions of the Act or international agreement authorizing the apprehension.

e. Seek guidance through appropriate channels of the Military Department concerned whenever it is considered inadvisable to carry out the request for apprehension or the person to be apprehended is a national of the United States or ordinarily resides in the United States. If the offense allegedly committed involves substantial local interest, apprehension will be coordinated with appropriate civilian authorities.

f. Act upon a request by a friendly foreign or sending state force to confine persons sentenced to imprisonment by a service court in military correctional facilities or other places of

detention in the United States. Upon approval of such a request, the detention location will be as prescribed by the Military Department or the Department of Justice.

(1) Use of a DoD detention facility for pretrial confinement, or for confinement before execution of a sentence adjudged by a service court, may be approved when a friendly foreign or sending state force requests apprehension in accordance with the provisions of Paragraphs 3.1.d.(1) through 3.1.d.(4). If the detention period is to exceed 45 days, the Secretary of the Military Department concerned must approve the authorization. Friendly foreign force individuals may not be placed in a military confinement facility in immediate association with Service members.

(2) Confinement in a federal penal or correctional institution must be in conformity with Department of Justice regulations.

(3) All detention or confinement will be at the sole expense of the friendly foreign or sending state force concerned.

g. Pursuant to Paragraph 3.1.f., report all cases arising under the provisions of this issuance and all detentions authorized to the General Counsel of the Department of Defense.

GLOSSARY

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

concurrent jurisdiction. A situation in which an offense committed by a member of a friendly foreign force or the force of a sending state is punishable by both its laws and the laws of the United States or any political subdivisions thereof.

friendly foreign force. Any military, naval, or air force of any friendly foreign state with respect to which the President of the United States has made a declaration as provided in Section 706 of Title 22, United States Code.

sending state. A foreign state that, at the invitation of the United States, has any of its military, naval, or air forces in the United States.

service court. Any military, naval, or air force court, or court-martial or similar tribunal, of any friendly foreign force or the force of a sending state.

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

REFERENCES

Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951 (referred to in this issuance as “the North Atlantic Treaty Organization Status of Forces Agreement”)

DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),”
December 2, 2013, as amended

United States Code, Title 22