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Law

**CRIMINAL AND DISCIPLINARY
JURISDICTION UNDER THE STATUS OF
FORCES AGREEMENT**

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This instruction provides instructions pertaining to criminal and disciplinary jurisdiction under the Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Between the United States (US) of America and Japan, Regarding Facilities and Areas and the Status of United States Forces in Japan (hereinafter referred to as Status of Forces Agreement [SOFA]). It implements USFJINST 51-1, *Criminal and Disciplinary Jurisdiction Under the Status of Forces Agreement with Japan*.

SUMMARY OF REVISIONS

This revision adds new transfer of custody procedures to paragraph **17**. Updates references. Substantially rewritten to improve clarity and changed to new format. A bar (|) indicates revision from the previous edition.

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1. References:

- 1.1. AFI 31-201, *Security Police Standards and Procedures*
- 1.2. AFI 36-2503, *Administrative Demotion of Airmen*
- 1.3. AFI 36-2907, *Unfavorable Information File (UIF) Program*
- 1.4. AFI 36-3206, *Administrative Discharge Procedures for Commissioned Officers*
- 1.5. AFI 36-3208, *Administrative Separation of Airmen*
- 1.6. AFI 51-703, *Foreign Criminal*
- 1.7. AFJI 51-706, *Status of Forces Policies, Procedures, and Information*
- 1.8. USFJINST 51-1, *Criminal and Disciplinary Jurisdiction Under the Status of Forces Agreement with Japan*
- 1.9. USFJPL 30-2, *Condolence Procedures*
- 1.10. USFJPL 110-7, *Signing of Statements Written in Japanese*
- 1.11. USFJPAM 125-1, *Criminal Jurisdiction in Japan*
- 1.12. 5 AFJI 31-202, *Treatment and Disposition of US Forces Personnel Confined in Japanese Prisons*
- 1.13. 5 AFI 65-201, *Solatium Payments*
- 1.14. 5 AFR 125-13, *(Joint Pub) Law Enforcement Procedures in Japan (PA)*
- 1.15. MCM, US, 1984
- 1.16. UCMJ
- 1.17. Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan.
- 1.18. Agreed Official Minutes to the Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan, Regarding Facilities and Areas and the Status of United States Armed Forces in Japan. (Official Minutes.)
- 1.19. Agreed Views on Criminal Jurisdiction (Agreed Views).

2. Applicability. This instruction is applicable to all members of the US armed forces on active duty with the Air Force (AF), the civilian component, and their dependents, as defined in Article I, SOFA, and all persons and their employees as defined in Article XIV, SOFA, who are assigned or attached to Fifth Air Force (5 AF), any of its subordinate or attached units, or any other AF activities while in Japan (hereinafter referred to as 5 AF personnel).

3. Policy:

- 3.1. It is the policy of 5 AF to protect, to the maximum extent possible, the rights of 5 AF personnel who may be subject to criminal trial by Japanese courts and imprisonment in Japanese prisons. Com-

manders at all levels of command will institute effective programs to ensure that a maximum number of waivers of jurisdiction and releases from Japanese custody are granted in appropriate cases.

3.2. It is the policy of 5 AF that in all cases where a waiver of Japanese jurisdiction is obtained, a careful review of all available investigative reports will be made by commanders and staff judge advocates (SJA) concerned. A determination will be made whether sufficient evidence exists to warrant punitive, or administrative action by US authorities. If punitive or administrative action is warranted, appropriate action will be initiated by the commander concerned.

3.3. Each commander within 5 AF has a continuing responsibility to assure that appropriate punitive and/or administrative action is taken when 5 AF personnel are guilty of misconduct or criminal activities.

3.4. To preclude occurrence of incidents of lawlessness by 5 AF personnel which reflect unfavorably upon the US and tend to impair the friendly relations between the US and Japan, it is the policy of 5 AF that each commander take aggressive action to identify potential lawbreakers as quickly as possible and process them for separation or removal from Japan, where appropriate, in accordance with (IAW) applicable directives before they become involved in incidents which are detrimental both to the individual involved and to the best interests of the US.

3.5. In those cases where 5 AF personnel have committed offenses and where the Government of Japan (GOJ) has taken jurisdiction of only a portion of such offenses, the commander concerned may initiate punitive and/or administrative action, where appropriate, against the offenders for those offenses which are not being tried by the GOJ.

3.6. Paragraph 8., Article XVII, SOFA, provides that when an accused has been tried by the GOJ, the individual cannot be tried again for the same offense within the territories of Japan. Nothing in that paragraph precludes trial by US authorities for any violation of the rules of discipline arising from an act or omission which constitutes an offense for which the individual was tried by the GOJ. To assure that appropriate punitive, and/or administrative action is taken in such cases, commanders and SJAs concerned will carefully evaluate each case where a 5 AF personnel is tried by the GOJ considering all the facts and circumstances, including the sentence imposed by the Japanese. If, after a thorough evaluation, it is determined that a violation of military discipline has occurred in connection with the offense for which the member was tried by the GOJ, then the member can be subjected to punitive or administrative action for that violation IAW paragraph 8., Article XVII, SOFA.

4. Responsibility. Unit commanders are responsible for compliance with the policies and procedures contained in this instruction in all cases involving 5 AF personnel assigned, attached, or under the administrative jurisdiction of their units. This responsibility is delegated to HQ 5 AF chiefs of staff offices for so much as pertains to 5 AF personnel assigned or attached to their staff offices, or under their administrative jurisdiction. The term "unit commander," as used hereinafter in this instruction, will include HQ 5 AF chiefs of staff offices when 5 AF personnel assigned, attached, or under the direct administrative jurisdiction of HQ 5 AF are involved.

5. Jurisdiction:

5.1. The documents listed in references 1.16., 1.17., and 1.18., set forth in detail the extent to which Japanese authorities may exercise criminal jurisdiction over members of the US armed forces, the civilian component, and their dependents.

5.2. The military authorities of the US have the primary right to exercise criminal jurisdiction over members of the US armed forces in relation to:

5.2.1. Offenses solely against the property or security of the US or offenses solely against the person or property of another member of the US armed forces, or the civilian component, or of a dependent.

5.2.2. Offenses arising out of any act or omission in the performance of official duty (paragraph 3a, Article XVII, SOFA).

5.3. Japanese authorities have the primary right to exercise criminal jurisdiction in relation to all other offenses, including offense committed by dependents of members of the US armed forces and the civilian component, unless the nature of the offense is such as to vest exclusive jurisdiction in US authorities. The Japanese authorities also have the right to exercise exclusive criminal jurisdiction with respect to offenses, including offenses relating to the security of Japan, punishable by the laws of Japan, but not by the laws of the US.

5.4. No civilians in any category (including US citizen civilian employees; non-Japanese national civilian employees of the military establishment or its agencies and their dependents; dependents of US military personnel; and Article XIV contractors and their employees) are subject to trial by court-martial or action under Article 15, UCMJ in time of peace. However, such civilians are subject to appropriate administrative action by US military authorities in cases in which facts and circumstances warrant such action.

6. Law Enforcement Procedures. Law enforcement procedures in Japan relating to Article XVII, SOFA, are contained separately in 5 AFR 125-13.

7. Orientation of Personnel. Subordinate commanders will:

7.1. Establish information and orientation programs to fully acquaint all 5 AF personnel under their administrative jurisdiction with pertinent laws and customs of Japan.

7.2. Issue instructions to 5 AF personnel under their jurisdiction or control not later than two weeks after the arrival of such personnel in Japan and annually thereafter which emphatically direct all 5 AF personnel to familiarize themselves with, and obey the laws of Japan and the instructions and directions of the Japanese police.

8. Security Questions. The opinion required from the US armed forces in Agreed View 19, Article XVII, SOFA, with respect to USAF security information will, in all cases, be made by HQ 5 AF. Upon receipt of such inquiry from the Japanese authorities, the inquiry, together with such additional information as is considered appropriate, will be transmitted immediately to HQ 5 AF International Law Division (5 AF/JAI).

9. Legal Advice. Paragraph 6a, Article XVII, SOFA, requires the military authorities of the US to assist and cooperate with the Japanese authorities in carrying out necessary investigations of offenses, and in collecting and producing evidence. When unit commanders receive information that an individual under their jurisdiction or control is the subject of an investigation being conducted by the Japanese authorities who desire that the individual be interrogated, they will:

9.1. Advise the military member of the right to have a military legal adviser (MLA) appointed to act as a legal counselor in all matters arising out of the criminal charges pending against the subject in the Japanese court. Section B, AFI 51-703. However, the MLA cannot represent the subject before the Japanese courts, but if indicted by the Japanese authorities, the military member may be provided with a Japanese lawyer of his own choice.

9.2. Act as a liaison officer or ensure that an officer or noncommissioned officer (NCO) is designated for the purpose of accompanying the subject to the Japanese authorities for interrogation. If an investigation of the alleged offense is being conducted concurrently by security forces or Air Force Office of Special Investigations (AFOSI), the unit commander will request the chief of security forces concerned to furnish a representative, in lieu of the liaison officer, to accompany the individual when he appears before Japanese authorities for interrogation. The provisions of USFJPL 110-7 will be carefully studied by the liaison officer. Such representative will ensure that the person called for interrogation is not improperly detained or taken into custody by the Japanese authorities.

9.3. In more serious cases, provide an interpreter to accompany the accused to the place of interrogation by Japanese authorities to insure accuracy of interpretation by the official Japanese interpreter.

9.4. Consult the base SJA when doubt arises as to action required in a particular case.

10. Liaison. Commanders, SJAs, and security forces officials at all levels of command will develop and maintain effective liaison programs with appropriate officials of the GOJ in order that a maximum number of waivers of jurisdiction and releases from Japanese custody will be granted in appropriate cases involving US personnel and to ensure that their rights are fully protected. Responsibility for such liaison programs is delegated as follows:

10.1. With Japanese Police and Investigative Agencies at the National Level. On behalf of the Commander, United States Forces, Japan (USFJ/CC), and the 5 AF/CC, the Director Security Forces, HQ 5 AF, will establish and maintain direct liaison with the Japanese National Police Agency and other law enforcement and investigative agencies of the GOJ at the national level.

10.2. With Judicial, Ministry of Justice, and Prosecutorial Officials:

10.2.1. At the National Level. On behalf of the USFJ/CC and the 5 AF/CC, HQ 5 AF/SJA, will establish and maintain liaison with the national level of the Japanese Judiciary, Ministry of Justice, and Office of the Prosecutor-General.

10.2.2. At the Local Level. The SJA of each subordinate command will establish and maintain similar direct liaison with local Japanese judicial and prosecutorial officials.

11. Initial Actions by Unit Commander:

11.1. Investigation. When information concerning commission of an offense by a 5 AF person is received by USAF authorities, it will be forwarded immediately to the unit commander of the individual or of the sponsor of the dependent concerned.

11.1.1. Military Personnel. If the alleged offender is a member of the USAF, the commander concerned will initiate administrative action, non-judicial punishment under Article 15, UCMJ or judicial action, if appropriate and not in contravention of the SOFA.

11.1.2. Civilian Personnel, Including Dependents. If the offender is a member of the civilian component, a dependent of a member of the civilian component, a dependent of a member of the US

armed forces, or a person or employee designated under Article XIV, SOFA, the unit commander will conduct a preliminary investigation and submit an interim report, through the base SJA, to the officer exercising special court-martial jurisdiction for appropriate action. The services of appropriate investigative agencies may be used in making the investigation, if necessary. The report will contain, as a minimum, a comprehensive synopsis of the facts of the incident and recommendations concerning final action to be taken. Any action against a civilian employee will be initiated through the civilian personnel office or any other agency that maintains the records of such individuals. A report of the final action taken will be furnished to HQ 5 AF/JAI.

11.2. Condolence Procedures and Solatium Payments. In the event that the information received concerning the incident indicates that death or serious injury to a Japanese national occurred, the condolence procedures prescribed in USFJPL 30-2, will be promptly initiated. In addition, the procedures for making solatium payments prescribed in 5 AFI 65-201 will be promptly followed. The base SJA concerned will be advised of the action taken.

12. Determination of Jurisdiction. Information concerning offenses committed by 5 AF personnel will be promptly and carefully considered by the unit commander concerned. A determination will be made by the unit commander based upon the advice of the base SJA, whether US or Japanese authorities have the right to exercise exclusive or primary jurisdiction over the offenses.

13. Acts or Omissions Arising from Official Duty:

13.1. General. The term "official duty" as used in paragraph 3(a)(ii), Article XVII, SOFA, the Official Minutes, and the Agreed Views, is not intended to include all acts by members of the US armed forces during periods while on duty, but is limited to those acts or omissions which are related to the performance of official duty. The term "official duty" includes travel by a member of the US armed forces from his authorized quarters or residence direct to his place of duty, and from his place of duty direct to his authorized quarters or residence, provided that drinking intoxicating beverages, with certain exceptions, will remove such person from his official duty status. Prompt notification must be given to the GOJ that the US will exercise its primary right to exercise jurisdiction in all cases involving 5 AF personnel which occur while they are in the performance of official duty over which the US and Japan have concurrent right to exercise jurisdiction (Agreed View 39).

13.2. Certificate as to Official Duty.

13.2.1. Immediately after receipt of information concerning an offense committed by a member of the US armed forces subject to the concurrent jurisdiction of the US and Japan, the unit commander, based upon the advice of the base SJA, will make a determination as to the official duty status of the accused. If the unit commander determines that the alleged offense arose out of an act, or omission of an act, in the performance of official duty, he will complete and forward the certificate as to official duty (see [Attachment 1](#)). The official duty certificate should be addressed to the chief prosecutor of the district in which the offense occurred, and forwarded to the base SJA for approval. In the event the base SJA approves the official duty certificate, it will be delivered to the chief prosecutor of the district in which the offense occurred so as to be received by him within ten calendar days after the official written notification of the offense was received by either state from the other IAW Agreed View 40, without awaiting a formal request therefor (see paragraph [17.2.](#)). The base SJA will retain one copy of the certificate as to official duty showing the name of the Japanese official receiving such certificate, his signature, if possible, and the date received

indicated thereon. One copy of the certificate as to official duty will be forwarded promptly, without a letter of transmittal, to HQ 5 AF/JAI.

13.2.2. In those cases in which a question arises as to the official duty status of the individual involved, the base SJA will communicate telephonically with HQ 5 AF/JAI for final determination.

13.2.3. The certificate as to official duty should include a description of the incident in full detail. Such description should include those facts which establish that the act or omission was related to the performance of official duty. When the incident concerns the driver of a vehicle, the description of the incident contained in the certificate as to official duty should include, when possible, a statement substantially as follows:

Figure 1. Example of Statement for Official Duty Certificate.

“While driving a ([US Government 2 1/2-ton truck] [civilian sedan]) ([while on official dispatch] [while performing official travel essential to his duty, for example, returning to his quarters at _____ from his place of duty at _____]) by the most direct route, subject ([EM] [Officer]) “

NOTE: A description too lengthy to be included in the first page of the certificate may be completed on the reverse side or on additional pages.

13.3. Disciplinary Action in Official Duty Cases:

13.3.1. Deferring Action. After a certificate as to official duty has been submitted, trial by courts-martial or punishment under Article 15, UCMJ, will be deferred for ten days after the date the certificate was received by the chief prosecutor, pending possible receipt of notification from Japanese authorities that proof to the contrary exists (Agreed View 43).

13.3.2. Taking Action. When ten calendar days have passed since the date the chief prosecutor received the official duty certificate, and no notice has been received from Japanese authorities contesting the official duty certificate, the unit commander concerned will initiate such punitive or administrative action as may be appropriate under the circumstances. A report of the action taken will be furnished to the base SJA concerned within five calendar days. The base SJA will forward two copies of the report to HQ 5 AF/JAI.

13.4. Contested Certificate - Action of Unit Commander. In the event the unit commander concerned receives a notice from the chief prosecutor of the district contesting the official duty determination, such notice, with a complete investigation of the circumstances of the incident (including evidence as to the alleged official duties) will be forwarded by the most expeditious means to HQ 5 AF/JAI. Thereafter, trial by court-martial or punishment under Article 15, UCMJ, will be deferred pending lapse of the ten calendar day period (Agreed View 43) for subsequent notification by Japanese authorities to the commander who issued the certificate as to whether or not the issue will be submitted to the Joint Committee. If such notice is not received within ten calendar days, appropriate punitive action may be initiated. If such notice is received, HQ 5 AF/JAI will be promptly advised and punitive or administrative action will be stayed pending approval by HQ 5 AF/JAI.

14. Flagging Actions and International Holds:

14.1. Immediate flagging action by telephone, if deemed appropriate, will be taken by the base SJA when there are indications that a 5 AF person may have committed an offense, excluding minor traffic offenses, and that Japanese authorities may desire to exercise criminal jurisdiction over him.

14.2. Nature of Flagging Action. Flagging action will consist of the submission of a written notice of the pending action to the appropriate unit commander and base personnel officer by the base SJA. Whenever deemed advisable, written notice will be preceded by telephonic notice. This notice will include a statement to the effect that the individual named is placed on international hold and will not be permitted to go on leave, temporary duty (TDY), or be transferred out of Japan without authority from the base SJA.

14.2.1. The unit commander will immediately interview the individual and advise him of these restrictions and the purpose of the hold. Similar notifications will be made promptly by the unit commander to the local traffic management office, base operations office, registrar of the base medical facility, immigration section of the security forces, mobilization processing unit, and border clearance personnel at Air Mobility Command (AMC) terminal facilities. If the individual is serving a sentence of confinement adjudged by a court-martial, an additional copy will be placed in the prisoner's personnel file. A copy of all notifications will be furnished to HQ 5 AF/JAI. Appropriate personnel measures will be taken to ensure the presence of the individual in Japan during the pendency of the action.

14.2.2. Members on leave or TDY in Japan who are not assigned to an in-country unit will normally be processed by the AF installation nearest the scene of the offense. The base SJA will ensure that an international hold is placed on the member and the parent organization is notified. He will further ensure that personnel actions are taken to attach the member to a holding organization pending disposition of the case. All TDY orders, travel requests, Military Transportation Authorizations, and leave orders will be confiscated and invalidated.

14.3. Transfer of Individual within Japan. Transfer within Japan of the individual concerned after flagging action has been taken is authorized when required by exigencies of the service. A report of such transfer within Japan will be submitted to HQ 5 AF/JAI. The report will indicate the date of transfer, the designation of the gaining unit, and, if confined in a military confinement facility, the designation of such facility.

14.4. Retaining Military Jurisdiction Over the Accused. Any accused who are due to be separated from the AF before the completion of any judicial action by the Japanese authorities will be asked to extend their tour of duty voluntarily. Should any such person refuse to extend, then the appropriate GOJ authorities will be so notified and advised of the possible departure of the member from Japan.

14.5. Treatment of US Civilian Personnel - Voluntary Surrender of Passports. The term "civilian" shall include members of the civilian component, their dependents, dependents of active duty military members, and employees covered under Article XIV, SOFA, excluding dependents with Japanese nationality.

14.5.1. In the event that US civilian personnel are in GOJ custody pending investigation or awaiting trial, custody should be requested and accepted by the US authorities. However, due to limitations under current US law on the jurisdiction of the US Government to confine or otherwise restrain the liberty of US civilian personnel, no form of custody receipt should be used, or promises made, which guarantee the presence of an accused for investigation, trial, or execution of a sentence. If such is required by GOJ authorities, the base SJA concerned will ensure that the

appropriate GOJ officials are fully aware of and understand the limited scope of the measures which may be lawfully taken by the US to assure their continued presence in Japan. In particular, it must be emphasized to GOJ officials that US authorities are not legally able to compel the return of US civilian personnel who succeed in departing from Japan in violation of their undertakings and instructions not to depart. Before custody of US civilian personnel is received, a signed, written request for such custody will be obtained from the individual concerned (see [Attachment 4](#)).

14.5.2. In emergencies, or in cases where GOJ officials will not relinquish custody of US civilian personnel, reliance must be placed on normal bail procedures and other appropriate measures to resolve each individual case.

14.5.3. In those situations where US civilian personnel have committed offenses over which GOJ has the right to exercise jurisdiction and may exercise that jurisdiction, but the individual concerned is not in GOJ custody, similar procedures as described above, with appropriate modifications, will be utilized.

14.5.4. The base SJA will ensure that these procedures are followed, and will notify HQ 5 AF/JAI of either the surrender of, or the refusal to surrender the passport. Similarly, HQ 5 AF/JAI will be notified if the individual fails to abide by the terms of his request, or fails to cooperate with US authorities.

14.6. Removal of Flagging Action. A flagging action will only be removed after it has been clearly determined by the base SJA that the Japanese authorities have waived their jurisdiction, finally concluded the trial, or released the individual from confinement after the sentence to confinement has been served, and written authorization has been received by the appropriate unit commander and personnel officer from the base SJA concerned.

15. Processing for Trial. In every case in which US authorities have concurrent jurisdiction, all steps preliminary to trial by court-martial or action under Article 15, UCMJ, over all individuals subject thereto, will be taken when such a course is warranted.

16. Where US has Exclusive Jurisdiction or the Primary Right to Exercise Jurisdiction. When the US authorities have exclusive jurisdiction, or concurrent jurisdiction with the primary right to exercise jurisdiction, the case against individuals who are members of the USAF may proceed to trial, if appropriate, except when GOJ authorities have requested that US waive its jurisdiction in the latter type of case. In the event such waiver is requested, procedures in paragraph [18](#). will apply.

17. Procedures When Japanese Authorities Have Exclusive Jurisdiction or the Primary Right to Exercise Criminal Jurisdiction:

17.1. Custody. Ordinarily, an accused remains in the custody of US authorities until indictment by the Japanese authorities. Thereafter, upon request, the accused may be released to the Japanese authorities. The following principles will be observed:

17.1.1. Apprehension, Custody and Restraint:

17.1.1.1. When the military suspect is apprehended by US authorities. As a general rule, a suspect's command shall not relinquish custody of the suspect to the Japanese authorities until indictment by the Japanese prosecutor in the district in which the incident occurred and official request for custody by the Japanese authorities is made. Prior to relinquishing custody of a sus-

pect, Commanders must consult the base SJA concerned. The Base SJA shall coordinate all such requests by Japanese authorities with HQ 5 AF/SJA and 5 AF/JAI.

17.1.1.2. When the military suspect is apprehended by Japanese authorities. The military person may be retained in Japanese custody if the Japanese authorities determine that there is adequate cause and necessity for retention. The appropriate chief of security forces will, nevertheless, immediately request the accused's release (5 AFR 125-13). The appropriate chief of security forces will also determine the substance of the charge against the military person held, whether the Japanese authorities intend to hold the person for further investigation or whether the member will be released; and if the member is to be released, the time and place of release. If, after apprehension, the Japanese authorities release the accused to the US authorities, the accused will remain in US control IAW the terms and conditions of the release until an indictment has been filed and the Japanese authorities have requested custody. A determination will also be made as to whether an official duty certificate is appropriate. If it is appropriate, the official duty certificate will be delivered to the Japanese authorities at the same time as the request for release from custody.

17.1.1.3. When the military suspect is not immediately apprehended by Japanese or US authorities. Generally a military suspect will remain in the control of US authorities. Commanders will cooperate during the course of investigations and shall at reasonable times and places make military members under their command available to the Japanese authorities for interrogation, line-ups, searches for fruits of the crime and other police investigative techniques.

17.1.1.4. When the military suspect is apprehended Jointly by Japanese and US authorities. The military suspect shall generally remain in US control until an indictment has been filed and the Japanese authorities have requested custody.

17.1.2. Request by Japan for Pre-Indictment Custody. At any time an accused is in US custody or control, GOJ may request a transfer of custody. Consideration will be given to any request for transfer custody prior to indictment of the accused. Such requests will not be accepted at the local level. Japanese authorities must submit such requests directly to the Joint Committee. US will consider the special circumstances of the cases as put forth by the Japanese in such cases when considering relinquishing custody of a military member.

17.1.3. Request for Release from Japanese Custody. If a 5 AF person is detained by the Japanese authorities, the unit commander responsible for such an individual will take immediate steps to obtain his release to US control. This is normally accomplished by a request, submitted to the chief of security forces of the installation to which the individual is assigned or attached, for action IAW 5 AFR 125-13, paragraph 11.

17.1.3.1. If the individual is held in pretrial detention by the Japanese authorities, the unit commander of the accused will promptly notify the base SJA concerned by telephone.

17.1.3.2. The unit commander concerned, in cases where it appears probable that release of custody may not be obtained and that the accused may not obtain fair treatment, will promptly prepare a written report including all facts of the case and submit it, together with his/her recommendations, through the base SJA to the commander exercising special court-martial jurisdiction. Upon receipt of such a report, the base SJA will promptly notify HQ 5 AF/JAI of the circumstances, by phone. The report will be forwarded, by indorsement, to HQ 5 AF/JAI.

Each commander forwarding such a report will include the comments and recommendations in the forwarding indorsement.

17.1.4. Rights of an Accused to Bail When Detained in Japanese Custody:

17.1.4.1. General. As provided in Agreed View 42, 5 AF personnel detained in the custody of Japanese authorities will have all the rights and privileges provided by Japanese law with respect to release from detention and bail.

17.1.4.2. Release Discretionary with Japanese Court. An accused in Japanese confinement may not be released on bail until after indictment. After indictment, the court in which the indictment has been filed will determine whether the accused will be released pending trial. The conditions and amount of bail will be entirely at the discretion of the court.

17.1.4.3. Entitlement to Consideration for Release. An individual may be detained by Japanese police authorities for a maximum of 48 hours, after which the person will be released or the case referred to the district prosecutor. The prosecutor will, within an additional 24 hours, direct release of the individual, request a judge to issue an order to detain him up to 10 days, or take action seeking an indictment in the case. When an indictment has not been instituted within 10 calendar days after the request for detention has been approved by a judge, the prosecutor must release the individual; however, upon request of the prosecutor, a judge may, if deemed necessary, issue an order to extend the period of detention an additional 10 calendar days (15 calendar days in case of riot, rebellion, or insurrection).

17.1.4.4. Responsibility of unit commanders. Unit commanders of individuals who have been released on bail pending trial will take necessary and reasonable measures to ensure that the person concerned does not "jump bail" by fleeing or attempting to flee from Japan, or departing from the limits established by the releasing authority. In these instances, the unit commander concerned will verify that the procedures set forth in paragraph 14. are strictly followed.

17.1.4.5. Release without bail. Japanese police officials, prosecutors, and judges have authority to release accused persons, conditionally, without bail. In such cases, the conditions of the release will be complied with pending final determination and disposition. Unit commanders will, to the extent of their authority, ensure compliance with such conditions.

17.2. Notification of Offenses Subject to the Primary Jurisdiction of Japan:

17.2.1. Specific periods in which Japan, through the Ministry of Justice, must advise the HQ 5 AF/SJA, whether it will exercise jurisdiction over 5 AF personnel who allegedly have committed offenses over which Japan has the primary right to exercise jurisdiction, by bringing an indictment in the case, are set forth in Agreed Views 40, 49, 50, and 52. If the advice is not received by the HQ 5 AF/SJA, within the periods specified, the US may exercise jurisdiction in the case. Depending upon the seriousness of the alleged offenses, Japanese authorities normally have 10 or 20 calendar days after notification of the offense (for economic violations, such as black marketing, 30 or 38 calendar days; for certain traffic offenses, 50 days) in which to decide whether they will exercise jurisdiction over the offenses. This period may be extended for an additional 5 or 10 calendar days, respectively, upon notice from the Japanese authorities concerned. Authority to exercise court-martial jurisdiction, or impose non-judicial punishment under Article 15, UCMJ, over individuals subject thereto, or exercise administrative authority over other personnel, depends on

whether written notification of the offense has been given by either side followed by a lapse of the specified time or the receipt of an express waiver of jurisdiction from proper Japanese authorities.

17.2.2. The periods in which advice will be given by Japan of its intention to exercise its jurisdiction by bringing an indictment in any such case, are computed from the date original notification of the alleged offense was made to either US or Japanese authorities by authorities of the other state. To protect the rights of the accused to prompt disposition of his/her case and to ensure that the period during which Japan may elect to exercise its jurisdiction, provided in Agreed Views 40, 49, 50, and 52, passes as rapidly as possible, it is imperative that 5 AF authorities promptly submit to the Japanese authorities a written notice of the alleged commission of offenses by 5 AF personnel, over which Japan has the primary right to exercise jurisdiction. Such written notice will be made by using DD Form 1569, **Incident/Complaint Report**, as provided in AFI 31-201. Usually such written notices can be submitted to the Japanese authorities within 24 hours after the alleged offense was committed by a 5 AF person, particularly in cases such as traffic offenses which are normally investigated at the scene by security forces investigators. Reasonable delays in issuing the notification are authorized. Delays in excess of 30 days must be reported to 5 AF/JAI with the rationale for the delay.

17.2.3. One copy of the following will be furnished to the base SJA of the installation to which the 5 AF person concerned is assigned or attached:

17.2.3.1. Each DD Form 1569, forwarded to the appropriate local Japanese law enforcement agency IAW AFI 31-201, with the name of the Japanese authority receiving such notice, his signature if possible, and the date on which it was received by him indicated thereon.

17.2.3.2. English translation of each written notification received from Japanese authorities of the commission of an alleged offense by 5 AF personnel over which Japan has the primary right to exercise jurisdiction, with the name of the 5 AF authority receiving such notice and the date it was received by him/her indicated thereon.

17.2.4. Upon determination by the unit commander from the initial data or facts, that Japanese authorities have the primary right to exercise criminal jurisdiction in the case, the unit commander will promptly consult the base SJA and the chief of the security forces of the installation to which the individual is assigned or attached, to ensure that both officials are aware of the offense. The commander must also ensure that formal written notification of the offense has been made by the base chief of security forces to the local Japanese authorities in the manner prescribed in AFI 31-201, or that formal written notification has been received by the chief of security forces concerned from the Japanese authorities. Although the liaison office responsible for coordination with local Japanese law enforcement activities is the office of the chief of security forces of the installation concerned, the unit commander is directly responsible for determining that proper written notification of an offense is made.

17.3. Notice by Japan of Extension of Time to Determine Whether It will Exercise Jurisdiction. Upon receipt of a notice by the HQ 5 AF/SJA, from the Ministry of Justice, during the periods set out in Agreed View 40, 49, 50, or 52, that for special reasons it desires to reserve decision with respect to Japan's exercise of jurisdiction by bringing an indictment over an offense for which it has primary jurisdiction, HQ 5 AF/JAI will promptly notify the base SJA concerned by telephone. This telephoned notice will be confirmed by written communication, using 5 AF Form 90, **Memorandum of Telephoned Notification Concerning Exercise of Japanese Criminal Jurisdiction**. The base SJA will

ascertain whether the notice was received by the HQ 5 AF/SJA, within the periods set out in Agreed Views 40, 49, 50, and 52, by checking the date notice of the offense was first received by either Japanese or US authorities from authorities of the other state (see paragraph 17.2.3.). If the notice was not received within the periods prescribed, prompt notification will be given by telephone to HQ 5 AF/JAI, and will be confirmed by written communication submitted directly to HQ 5 AF/JAI.

17.4. Notification by Japan of its Intention to Exercise Jurisdiction. In every case involving 5 AF personnel in which the Japanese authorities have the primary right to exercise jurisdiction and desire to do so, Japan will, through the Ministry of Justice notify the HQ 5 AF/SJA, of its intention to exercise jurisdiction by bringing an indictment in the case (Agreed View 40). HQ 5 AF/JAI will promptly transmit such notification by telephone directly to the base SJA concerned. This telephone notice will be confirmed in writing, using 5 AF Form 90. The base SJA will promptly ascertain whether the advice that Japan will exercise jurisdiction was received by the HQ 5 AF/SJA, within the period set out in Agreed Views 40, 49, 50, and 52, by checking the date written notice of the offense was received by either Japanese authorities or US authorities, from authorities of the other state. If the advice was not received within the period prescribed, prompt notification will be given by telephone to HQ 5 AF/JAI, and will be confirmed by written communication submitted directly to HQ 5 AF/JAI. The base SJA, upon receipt of the telephone notification that Japanese authorities intend to indict, will transmit such information by the most expeditious means to the unit commander concerned, who will ensure that the accused has been advised of his right to have an MLA appointed to advise him of his rights under Japanese law and the SOFA.

17.5. Disciplinary Action by USAF Authorities:

17.5.1. Military Offender. When the case is one over which the Japanese authorities have the primary right to exercise criminal jurisdiction and the accused is a member of the USAF, the following action will be taken:

17.5.1.1. Disciplinary Action Delayed. Trial or non-judicial punishment of an accused will not be initiated until the applicable period (Agreed Views 40 and 49) has elapsed, or notification has been received from the appropriate Japanese authority, or HQ 5 AF, that Japanese authorities have waived their right to exercise jurisdiction in the case. If notification that Japanese authorities intend to exercise jurisdiction is received, the accused will not be punished under Article 15, UCMJ, or tried by courts-martial for the offense or offenses over which the Japanese authorities will exercise jurisdiction, except as may be authorized by Article XVII, SOFA, after completion of trial or other disposition of the case by the Japanese authorities.

17.5.1.2. Disciplinary Action Proper. If the applicable period (Agreed Views 40 and 49) elapses without proper notification that the Japanese authorities desire to exercise jurisdiction over the accused, or proper notification is received from the Japanese authorities that they will not exercise jurisdiction over the accused, the unit commander concerned, IAW the policies set forth in paragraph 3. of this instruction, will promptly initiate punitive and/or administrative action, as appropriate.

17.5.1.3. Japanese Representation at Trials by Courts-Martial:

17.5.1.3.1. Notice of Trial by Courts-Martial. In all trials by general courts-martial in which the Japanese authorities have given notice on non-exercise of jurisdiction or have waived their primary right to exercise jurisdiction and those trials of offenses for which official duty certificates were submitted to the chief prosecutor concerned which were

committed against the state or nationals of Japan, the chief prosecutor of the district in which such trial by court-martial is to be held will be notified in writing, by the base level chief of international law, of the time, date, and place where the courts-martial is to be held. The notice will be submitted sufficiently in advance so as to be received, by the chief prosecutor of the district in which the trial is to be held, a minimum of 5 calendar days before the trial begins. Such notice will be delivered by personal messenger and a receipt will be obtained. Copies of the notice, receipt, and reply from the prosecutor will be subsequently incorporated in the papers accompanying the record of trial and one copy of each will be furnished to HQ 5 AF/JAI.

17.5.1.3.2. Observation of Summary and Special Courts-Martial. A request under the provisions of Agreed View 45 from the chief prosecutor of the district for attendance of Japanese representatives at a trial by summary or special courts-martial will be forwarded by the base SJA to the summary court officer or the trial counsel of the court which is to try the case.

17.5.2. Civilian Offender. When the case is one over which Japan has the right to exercise primary criminal jurisdiction and the accused is a member of the civilian component, a dependent of a member of the civilian component or a dependent of a member of the US armed forces in Japan, or a person or employee designated IAW Article XIV, SOFA, the following action will be taken:

17.5.2.1. Disciplinary Action Delayed. Disciplinary action will not be initiated until the applicable period (Agreed Views 40 and 49) has elapsed, or notification has been received from the appropriate Japanese authority or HQ 5 AF, that the Japanese authorities have waived their right to exercise jurisdiction in the case.

17.5.2.2. Disciplinary Action Proper. If the applicable period (Agreed Views 40 and 49) elapses without proper notification that the Japanese authorities desire to exercise jurisdiction over the accused, or proper notification is received from the Japanese authorities that they will not exercise jurisdiction over the accused, the unit commander concerned, IAW the policies set forth in paragraph 3. of this instruction, will promptly initiate disciplinary and/or administrative action as may be appropriate.

17.6. Request to Japanese Authorities Not to Exercise Their Right to Criminal Jurisdiction:

17.6.1. Military Offenders. In all cases involving alleged offenses in violation of Japanese laws over which Japan has the primary right to exercise jurisdiction under the provisions of paragraph 3(b), Article XVII, SOFA, and notification is given the Japanese authorities pursuant to the procedures contained in AFI 31-201, the DD Form 1569 will contain a written request that an indictment not be made in this case.

17.6.2. Members of the Civilian Component and Dependents:

17.6.2.1. Upon determination by the appropriate unit commander, in coordination with the base SJA, that available administrative sanctions are adequate and appropriate, he may submit a written request to the chief prosecutor of the district in which the offense occurred that the Japanese authorities refrain from exercising their criminal jurisdiction. Submit such written request to the base SJA for his approval, who, in turn, will cause the request to be delivered to the chief prosecutor concerned. This procedure will normally be followed in those instances where notice of the alleged offense is given by the Japanese authorities. In those instances where notice of the alleged offense is given to the Japanese authorities pursuant to the proce-

dures contained in AFI 31-201, the DD Form 1569 will contain the request that an indictment not be made in this case.

17.6.2.2. Upon determination by the appropriate unit commander, in coordination with the base SJA, that available administrative and disciplinary actions are inadequate and inappropriate, take the following action:

17.6.2.2.1. The base SJA will promptly report the case by telephone to the HQ 5 AF/SJA and 5 AF/JAI.

17.6.2.2.2. If the HQ 5 AF/SJA, determines that available administrative and disciplinary sanctions are adequate and appropriate, the notice (DD Form 1569) will be promptly furnished the Japanese authorities and will contain a written request that an indictment not be made in this case.

17.6.2.2.3. If, after careful review, it is determined by the HQ 5 AF, with the approval of the 5 AF/CC, that available administrative and disciplinary sanctions are inadequate and inappropriate, and that the ends of justice indicate that action should be taken under Japanese law, HQ 5 AF/SJA will notify the Japanese Ministry of Justice by telephone and request that appropriate action be taken by the Japanese authorities. This telephone notification will be confirmed in writing and an information copy furnished HQ USFJ/J06. This will constitute written notification to the Japanese authorities by US authorities as provided in Agreed View 40.

17.7. Request for Waiver of Japanese Jurisdiction.

17.7.1. If notification is received by the unit commander concerned that the Japanese authorities intend to exercise jurisdiction in a case involving a 5 AF person, and it appears probable that the accused may not obtain a fair trial or it is considered that a waiver of jurisdiction by Japan is of particular importance to the US, the unit commander will forward a complete report, including all facts of the case, together with recommendations, through the base SJA to the commander exercising special court-martial jurisdiction. The base SJA, upon receipt of such a report, will promptly notify HQ 5 AF/JAI of the circumstances by telephone. The report will be forwarded by indorsement, through the commander exercising general courts-martial jurisdiction, to HQ 5 AF/JAI. Each commander forwarding such a report will include his comments and recommendations in his forwarding indorsement. The report will be forwarded by the most expeditious means so as to reach HQ 5 AF/JAI not later than 7 calendar days after receipt of such notification.

17.7.2. In cases in which a waiver by Japan of its jurisdiction is considered to be of particular importance to the US, the 5 AF/CC will ensure that a written request for such waiver is made to the Ministry of Justice of Japan within 10 calendar days after the date the Ministry of Justice of Japan has notified the Office of the HQ 5 AF/SJA, of its intention to indict. In cases where the 5 AF/CC concurs that it appears probable that the accused may not obtain a fair trial, he will forward the report, together with recommendations, to HQ USFJ/J06. Trial by courts-martial, action under Article 15, UCMJ, or other administrative action, in any such case will not be initiated until receipt of official notification that Japan has waived its jurisdiction in the case.

17.8. Exercise of Jurisdiction by Japan. 5 AF personnel who are notified that they will be tried by the Japanese authorities should report to the office of the SJA if they desire to have an MLA appointed to advise them. The office of the SJA will also assist them in obtaining a civilian counsel of their own choice to defend them before the Japanese courts.

17.8.1. Cases Disposed of by Summary Procedures. Upon receipt of a notice from the Japanese authorities stating that the case will be disposed of by summary procedures, less he requests a public trial within 14 calendar days, the 5 AF person concerned will promptly advise the base SJA. The accused will advise the base SJA, prior to the expiration of the 14 calendar days, of his decision either to accept disposition of the case by summary procedures or to request public trial. In the event that the accused accepts disposition of the case by summary procedures and pays such fine as may be imposed, he/she will show the base SJA the receipt establishing payment of such fine which is furnished by the Japanese authorities.

17.8.2. Cases Disposed of by Public Trial. Upon receipt of a notice from the Japanese authorities that the accused is to be tried by a public trial, the base SJA will promptly notify the accused. The accused will keep the base SJA advised of all further notices received concerning the trial by Japanese court.

18. Waiver of Jurisdiction by the US. In a case in which the US authorities have the primary right to exercise jurisdiction and in which the Japanese authorities have requested a waiver IAW Agreed View 40, the HQ 5 AF/SJA, will promptly notify the base SJA concerned. The base SJA, in turn, will notify the accused's unit commander. The commander will forward his recommendations for approval or disapproval of the requested waiver, with detailed reasons in support thereof, by the most expeditious means through the base SJA to HQ 5 AF/JAI so as to be received not later than 5 calendar days after receipt of such notification. If the individual is a member of the USAF, trial by courts-martial or action under Article 15, UCMJ, for the offense or offenses for which the Japanese authorities have requested a waiver, will not be initiated until authorization has been received from HQ 5 AF/JAI.

19. Multiple Offenses Subject to Concurrent US and Japanese Jurisdiction.

19.1. US Primary Jurisdiction Offenses. As indicated by Agreed View 44, if investigation reveals that an accused has committed several different offenses during one incident, some of which are under the exclusive or primary jurisdiction of the US and others which are under the exclusive or primary jurisdiction of Japan and for which no waiver has been granted, the unit commander concerned will immediately submit a notice of all the offenses under the exclusive or primary jurisdiction of the US, through the base SJA concerned, to the chief prosecutor of the district wherein the offenses allegedly occurred. At same time, information copies of such notice will be forwarded to HQ 5 AF/JAI. With respect to members of the USAF, such notification will also include information concerning the maximum permissible punishment in the event of conviction by court-martial, as set forth in the table of maximum punishment, Appendix 12, MCM, 1984.

19.2. Order of Trials. The US will first proceed to trial, except when the Japanese authorities notify the US authorities that Japan desires to proceed to trial first, in view of the particular importance to Japan to first proceed to trial. After such notice is received from the Japanese authorities, if the commander concerned believes it to be of particular importance to the US to proceed to trial first, he may submit his recommendations, through special court-martial channels, to HQ 5 AF/JAI. Complete justification will be included. Thereafter, trial of a member of the USAF by courts-martial or imposition of non-judicial punishment will be held in abeyance pending receipt of notice from HQ 5 AF.

20. Administrative Action to Be Taken Against 5 AF Personnel Convicted in Japanese Courts:

20.1. Military Personnel. Upon conviction by a Japanese court, serious consideration should be given, when possible, to have the individual transferred out of Japan. In addition, the following administrative action will be taken:

20.1.1. Officer Personnel. Action will be considered under AFI 36-3206.

20.1.2. Enlisted Personnel:

20.1.2.1. Enlisted members who are convicted by a Japanese court for the commission of an offense, which is determined by the unit commander to warrant administrative reduction, will be considered for reduction under the provisions of AFI 36-2503 within 30 days after the receipt of the notice of conviction.

20.1.2.2. Enlisted members who are convicted by a Japanese court of an offense for which the maximum penalty under the UCMJ is death or confinement in excess of one year, or of an offense which involves moral turpitude (regardless of the maximum penalty permissible under the Code) will be considered for discharge as required by AFI 36-3208.

20.2. Civilian Personnel. When civilian personnel are convicted in a Japanese court, action to terminate their employment or removal from Japan may be initiated if warranted under all the circumstances of the case. Termination prior to conviction which will result in loss of SOFA status, should be avoided, if possible.

20.3. Dependents. When dependents (excluding dependents of Japanese nationality) are convicted in a Japanese court, action to remove them from Japan may be initiated, if warranted under all the circumstances of the case.

20.4. Removal or Suspension of Privileges. If the unit commander concerned, after a careful review of the case, determines such action to be appropriate, he will initiate action to remove or suspend the privileges afforded the accused as may be warranted under the circumstances. Such privileges include but are not limited to the following:

20.4.1. Entitlement to government housing.

20.4.2. Commissary privileges.

20.4.3. Base exchange privileges.

20.4.4. Theater privileges.

20.4.5. USFJ driving permit.

21. Specific Duties of the Base SJA with Respect to Retention of Custody or the Exercise of Criminal Jurisdiction by Japanese Authorities. When the Japanese authorities have taken custody of a 5 AF person or have indicated their intent to exercise jurisdiction in a particular case, the base SJA concerned will closely monitor the case to ensure that the 5 AF person concerned receives proper treatment and that his/her rights are fully protected.

21.1. Suspending Disciplinary Action. Notification will be sent to the accused's unit commander and to the officer exercising special or summary court-martial jurisdiction over the accused, advising that the Japanese authorities intend to exercise criminal jurisdiction in the case and that any disciplinary action for the offenses to be tried by the Japanese authorities will be withheld.

21.2. Ensuring Availability of Accused and Witnesses. Notification will be sent to unit commanders concerned advising that the accused and all known witnesses will not be transferred from Japan prior to the completion of the case unless specific authorization is granted therefor.

21.3. Maintaining Liaison with Japanese Authorities. Close coordination will be established and maintained with Japanese judicial and prosecutorial authorities in order to ensure constant availability of current, reliable information with respect to any development in the case.

21.4. Maintaining Rights of the Accused. Upon receipt of information that the accused has been formally indicted by the Japanese authorities, verification will be made of the following:

21.4.1. That the indictment has been properly served upon the accused and that a translation has been completed and furnished the accused.

21.4.2. That the accused fully understands his/her rights with respect to obtaining defense counsel.

21.4.3. That the Japanese authorities have taken steps to furnish defense counsel when the accused has indicated that he/she desires court-appointed defense counsel.

21.4.4. That the accused, other than contractor personnel, is fully advised of rights under AFJI 51-706 to payment of counsel fees and other expenses in foreign courts.

21.4.5. That the accused has had the opportunity to consult with his defense counsel and to confer privately with witnesses in his/her behalf, and,

21.4.6. That the accused's rights, prior to trial, are adequately protected.

21.5. Taking Post-Judgment Action:

21.5.1. The accused's unit commander and the confinement officer of the US facility, if the accused is confined, will be informed by the base SJA upon receipt of a report from the US trial observer at the trial of the following:

21.5.1.1. That the court has rendered judgment in the case,

21.5.1.2. Of the nature of the judgment,

21.5.1.3. Of the necessary follow-up action, including the final disposition of any pending court-martial charges or other proceedings,

21.5.1.4. Of the necessity for the retention of the accused within Japan, if confinement unsuspended has been adjudged by the Japanese court, and,

21.5.1.5. The necessity for the subsequent delivery of the accused to the Japanese authorities upon their request if the accused has been sentenced to imprisonment.

21.5.2. Records will be maintained, indicating the name of each of the following:

21.5.2.1. An Accused whose case has been disposed of by summary procedure, date of the summary procedure order, name of the court, amount of the fine, date of payment of fine, and/or data as to arrangements made to pay the fine.

21.5.2.2. An Accused who has been delivered to the Japanese authorities for the purpose of serving the sentence to confinement, date of such delivery, and the name of the Japanese confinement facility.

21.6. Reviewing Cases Where a Waiver of Japanese Jurisdiction is Obtained:

21.6.1. Each case where a written notice has been made to either US or Japanese authorities by authorities of the other state of the commission of an alleged offense by a 5 AF person over whom Japan has the primary right to exercise jurisdiction, will be submitted to the appropriate base SJA for review.

21.6.2. In all cases where a waiver of Japanese jurisdiction is obtained, the base SJA, after careful review of all available investigative reports prepared by security forces, AFOSI, Japanese police, and other investigative agencies, will determine whether sufficient evidence exists to warrant punitive or administrative action by US authorities. If punitive or administrative action is warranted, the base SJA will submit his recommendations to the appropriate commander.

21.6.3. The base SJA will monitor the action taken in each case in order that the report required by AFJI 51-706, as supplemented, may be properly prepared.

21.7. Maintaining Statistical Data and Detailed Information. With respect to cases in which Japan has a primary right to exercise criminal jurisdiction, statistical data and detailed information will be maintained.

22. US Representation at Japanese Trials of US Personnel:

22.1. Purpose of Trial Observers. Trial observers are required for all Japanese trials of 5 AF personnel, including appellate actions. Their purpose is to note the progress of the case and to impartially report their observations concerning the conduct of the trials. To preclude misunderstanding by spectators and others, trial observers are encouraged to wear civilian clothing when attending trials. Trial observers are not members of defense panels in any case, nor will they inject themselves into trial proceedings. Trial observers will, however, if the occasion necessitates and circumstances permit, take measures to advise defense counsel of the rights of the accused under applicable treaties or agreements.

22.2. Appointment of Trial Observers:

22.2.1. When notified by HQ 5 AF/SJA that Japan has advised that it will exercise jurisdiction by bringing an indictment against an accused subject to its jurisdiction, the base SJA will submit the names of two trial observers (a principal and an alternate) to HQ 5 AF/JAI within 5 calendar days. Those nominated will be selected for maturity of judgment and must:

22.2.1.1. Be either judge advocates of the AF or US civilian employees who are fully qualified lawyers, and,

22.2.1.2. Have a minimum of 6 months remaining to be served in Japan.

22.2.2. Trial observers are appointed by the American Ambassador to Japan. Formal letters of appointment will be sent directly to the appointees by HQ 5 AF. An information copy of the letter transmitting such formal letters of appointment will be sent to the base SJA. HQ 5 AF/JAI, IAW Agreed View 45(b), will send a written notice to the chief prosecutor concerned of the names of the US representatives designated to attend the trial.

22.3. Duties of Trial Observers:

22.3.1. Upon appointment as trial observers, this duty will take precedence over all other duties.

22.3.2. Upon notification of their appointment as trial observers, the principal observer or the alternate will:

22.3.2.1. Contact the prosecutor of the jurisdiction processing the case and inform the prosecutor of the appointment and the place where the trial observers may be contacted.

22.3.2.2. Contact the accused and the defense counsel and advise them of the appointment.

22.3.2.3. Obtain the services of a qualified interpreter to accompany the trial observer to the trial.

22.3.2.4. Ensure that the unit commander of the accused is advised of the time and place of each session of the trial and ensure that appropriate arrangements have been made for the accused's attendance at each session of the trial.

22.3.3. Only one of the appointed trial observers need attend each session of the trial.

22.3.4. At the first session of the trial, present the ambassadorial appointment for examination by the court. The trial observer may provide the court with a copy of the ambassadorial appointment, but will retain the original for use in subsequent trials which the trial observer may be required to attend.

22.3.5. Trial observers will keep the base SJA concerned advised of the progress of each case by informal verbal reports. HQ 5 AF/JAI will be advised of any unusual developments in the case. Telephonic reports may be utilized.

22.3.6. Prepare a formal report of the trial. The report will be prepared on letter-size paper IAW **Attachment 2** or **Attachment 3** of this instruction, as appropriate. The report will not be delayed because of the possibility of a new trial, rehearing, or appeal. Thirteen (13) copies of the trial observers report will be submitted so as to be received by HQ 5AF/JAI within 25 calendar days after the completion of each trial or appeal.

23. Reports:

23.1. Reports of Disposition of Cases. Upon request of local Japanese police or court officials, unit commanders, based upon the advice of the base SJA concerned, are authorized to furnish informal reports of the disposition of specific cases involving alleged offenses committed by 5 AF personnel in violation of Japanese law, or involving Japanese nationals or their property, unless such reports would be contrary to US military security or US policies. If the requested information is not furnished, material facts bearing on the request and reasons for refusal will be forwarded to HQ 5 AF/JAI. The requesting Japanese officials will be informed that further inquiry may be addressed to HQ 5 AF/JAI.

23.2. Report of Courts-Martial Disposition of Offenses Punishable by the Laws of Japan (RCS: USJ-EJ-15):

23.2.1. General. Under the SOFA, the Governments of the US and Japan mutually agreed to notify each other of the disposition of all cases in which there are concurrent rights to exercise jurisdiction and final appellate review has been completed. This is accomplished by the submission of reciprocal monthly reports through the Joint Committee. Final appellate review is defined as the mandatory review required by either Article 66, 67, or 69 (UCMJ, or the review prescribed by Article 64(b), UCMJ). (See Agreed View 46.)

23.2.2. Procedures:

23.2.2.1. The 5 AF Military Justice Division (5 AF/JAJ) will render a monthly report, in letter form, together with a separate USFJ Form 2, **Report of Courts-Martial Disposition of Offenses Punishable by the Laws of Japan**, for each case, in quadruplicate and submit directly to USFJ/J06, as to arrive not later than the 20th day of each month subsequent to the period reported. Reports will be unclassified. Negative reports will be submitted when applicable.

23.2.2.2. The number of trials by court-martial for offenses over which Japan has waived its primary right to exercise jurisdiction, and in which final disposition has been made (last appellate review completed and action taken) as follows:

23.2.2.2.1. Number of trials concluded: SUMMARY SPECIAL GENERAL

23.2.2.2.2. Number of accused involved:

23.2.2.2.2.1. Convictions:

23.2.2.2.2.2. Acquittals:

23.2.2.2.3. Details as to each trial:

23.2.2.2.3.1. Name, SSN, and organization of accused:

23.2.2.2.3.2. Location where offense or offenses were committed:

23.2.2.2.3.3. Name of victims and/or description of property involved.

23.2.2.2.3.4. Nature of the charge and specifications.

23.2.2.2.3.5. Type of court-martial and description of convening authority.

23.2.2.2.3.6. Sentence adjudged by the court-martial.

23.2.2.2.3.7. Sentence finally approved after appellate review.

23.2.2.2.3.8. Date of final approval on appellate review and designation of final appellate reviewing authority.

23.2.2.2.3.9. Any other pertinent information in the case.

23.2.2.3. The number of trials by courts-martial for offenses punishable by the laws of Japan, but over which the US has the primary right to exercise jurisdiction, and in which final disposition has been made (last appellate review completed), where such offenses involve injury or damage to Japanese persons or property. The same reporting method and subheading will be used as in paragraph [23.2.2.2.](#)

23.2.2.4. Reports of details as to each trial, required by paragraph [23.2.2.2.3.](#), will be submitted on USFJ Form 2.

24. Departure of Persons Convicted by Japanese Courts:

24.1. General: Upon receipt of a request for information from the Japanese Immigration Bureau, HQ USFJ/J06 will provide information concerning departure of persons convicted for any offenses in any Japanese courts (excluding traffic offenses resulting only in fine). (See USFJPL 4-3 and 17 JC-Inc 13, 23 March 1961)

24.2. Procedures: The base SJA, in coordination with the base personnel office responsible for processing of departure actions, will submit the following information to HQ 5 AF/JAI by the last day of the month during which such departure occurred. Report will be limited to those persons (other than Japanese nationals) who received confinement sentences but the executions therefor have been suspended.

24.2.1. Name, Rank, and SSN.

24.2.2. Organization.

24.2.3. Date of Departure.

24.2.4. Port of Departure.

24.2.5. Means of Transportation (Airline and Flight No.).

24.2.6. Destination.

25. Forms Prescribed:

25.1. 5 AF Form 90 (see paragraphs [17.3.](#) and [17.4.](#)) and USFJ Form 2 (see paragraph [23.2.2.1.](#)).

JOHN B. HALL, Jr., Lieutenant General, USAF
Commander

Attachment 1

LETTER TO PROSECUTOR

(LETTERHEAD)

Date

MEMORANDUM FOR Chief Prosecutor

_____ District
_____, Japan

FROM: _____

SUBJECT: Certificate as to Official Duty

Dear Sir

1. Pursuant to the Provisions of the Official Minutes Relating to Paragraph 3(a)(ii) of Article XVII of the Agreement Under Article VI of the Treaty of Mutual Cooperation and Security Between the United States of America and Japan Regarding Facilities and Areas and the Status of United States Armed Forces in Japan, and Agreed View Number 40 of the Criminal Panel, Jurisdiction Subcommittee With Respect to Article XVII of the Status of Forces Agreement, I certify that
(Name) _____ (SSN) _____ (Grade) _____ (Unit of Assignment) _____ (Base) _____ was in the performance of his official duty at (time) _____ (Date) _____ (Place) _____ when he was involved in the following incident:

Describe the incident in full detail. Include those facts which establish that the act or omission was related to the performance of official duty. When the incident concerns the driver of a vehicle, include, when possible, a statement substantially as follows: "While driving a (US Government 2-1/2 ton truck) [civilian sedan] ([while on official dispatch] [while performing official travel essential to his or her duty, for example, returning to his or her quarters at _____ from his or her place of duty at _____]) by the most direct route, subject ([enlisted member][officer]}. . . ." A description too lengthy to be included in the first page of the certificate may be completed on the reverse side or on additional pages.

2. The United States will exercise its primary jurisdiction in this case, unless notification is given immediately in accordance with Agreed View No. 43 that proof to the contrary exists.

3. Should this incident result in trial of the above individual by general court-martial, you will be notified of the date of the trial in accordance with provisions of Agreed View No. 45(a).

Sincerely yours

Signed by Individual's Immediate Commander
Name, Grade, USAF
Commander

cc:

HQ 5 AF/JAI

Base SJA

Base CSP

(Preprinted formats will not used)

Attachment 2**TRIAL OBSERVER REPORT**

PERSONAL DATA - PRIVACY ACT OF 1974 (5 U.S.C. 552a)

TRIAL OBSERVER REPORT
FOR THE TRIAL OF
Sgt John Q. Doe

1. Name

Grade:

SSN:

Organization:

U.S. Address:

(Note: In cases involving dependents, include the foregoing information pertaining to sponsor as well.)

2. Offense(s) charged; date and place of alleged offense. Include a brief summary of details concerning the incident.

3. Text of allegations of complaint. If available, insert text of indictment.

4. Citation and text of statutes primarily involved. Include statutes concerning maximum sentence for the offense(s).

5. Name, location, and type of court; date(s) and place of trial.

6. Result of trial. If convicted, offense(s) of which convicted; date rendered.

7. Sentence. Whether or not suspended, or stayed pending appeal.

8. Appeal. By accused or prosecution, if known in time for a timely submission of the observer report; if not, a later separate report on whether an appeal has been taken should be sent.

9. Defense counsel. Whether employed by accused, appointed by court, or US Government supplied; state qualification; whether English speaking and whether interpreter was used for communicating with accused; opinion of adequacy of overall representation in the case.

10. Court interpreter. Whether employed by accused, appointed by the court, or US Government supplied; opinion of adequacy of interpretation of the proceedings.

11. Resume of trial proceedings. Include narrative summary of trial proceedings for each session; including parties present, pertinent evidence introduced by prosecutor and accused, significant procedural steps, and closing arguments. Include all significant or unusual occurrences.

12. Fairness of trial. State whether procedural safeguards guaranteed by Article XVII of the Status of Forces Agreement between the United States America and Japan were observed and whether the accused received a fair trial under all the circumstances.

Date:

Signature of Principal Trial Observer/Signature of Alternate Trial Observer

Attachment 3

TRIAL OBSERVER REPORT ON APPEAL

PERSONAL DATA - PRIVACY ACT OF 1974 (5 U.S.C. 552a)

TRIAL OBSERVER REPORT
FOR THE APPEAL OF
Sgt John Q. Doe

1. Name

Grade:

SSN:

Organization:

U.S. Address:

(Note: In cases involving dependents, include the foregoing information pertaining to sponsor as well.)

2. Offense(s) of which convicted. Sentence imposed by lower court, and date of previous report.

3. Name, location, and type of appellate court, and date(s) and place of appeal.

4. Grounds of appeal.

5. Result of appeal. Include holding of court concerning grounds of appeal; whether any charges were dropped or dismissed; whether any portion of sentence was dropped, dismissed, increased, or suspended or otherwise mitigated; date judgment rendered.

6. Further appeal. If any, and court to which taken if known for a timely submission of the observer report; if not, a later report on whether an appeal has been taken should be sent.

7. Citation and text of statutes primarily involved.

8. Defense counsel. Whether employed by accused, appointed by court, or US Government supplied; state qualifications, whether English speaking and whether interpreter was used for communicating with accused; opinion of adequacy of overall representation in the case.

9. Court interpreter. Whether employed by accused, appointed by the court, or US Government supplied; opinion of adequacy of interpretation of the proceedings.

10. Resume of trial proceedings. Include summary of argument for the prosecution and for the defense, as well as pertinent evidence introduced and significant procedural steps taken.

11. Fairness of trial. State whether procedural safeguards guaranteed by Article XVII of the Status of Forces Agreements between the United States of America and Japan were observed and whether the accused received a fair trial under all the circumstances.

Date:

Signature of Principal Trial Observer/Signature of Alternate Trial Observer

Attachment 4

REQUEST FOR CUSTODY OF PASSPORT

MEMORANDUM FOR _____/JA

FROM: (Requester's Name and SSN)

SUBJECT: Request for Custody of Passport

1. I understand that I will be placed on international hold, that I voluntarily extends my tour of stay in Japan, that transfer orders will not be promulgated, and that I will not be transferred or provided transportation for departure from Japan until proceedings against me are completed;
2. Under these circumstances, I voluntarily, and without coercion, surrender my US passport and agree not to depart from Japan until it is returned to me;
3. I agree that his passport will not I returned until a final determination have been made in my case by the GOJ authorities and they have relinquished their jurisdiction over me;
4. I agree to hold myself available in the immediate area for any investigation and/or trial by GOJ authorities and will keep the US military authorities advised of my whereabouts;
5. After release, I understand that if I fail to abide by the terms of my request, or fail to cooperate with the US military authorities, I may be relinquished to the custody of Japanese authorities; and that
6. I have been advised of, and understand the contents of pertinent SOFA articles, minutes and Agreed Views, and have had a copy thereof made available to me.

(Signed by Requester)