



UNITED STATES FORCES KOREA INSTRUCTION

FKJA

USFKI 2300.01

DISTRIBUTION: A, B

21 June 2022

INTERNATIONAL AGREEMENTS

References: See Enclosure E.

1. Purpose.

a. This instruction provides information to implement and supplement references a, b, and c of Enclosure E. It lays out policy and procedure regarding the negotiation, conclusion, and reporting of international agreements proposed by the United States (U.S.) or a foreign entity; to include amendment, renewal (i.e. extension), or termination of existing agreements involving United States Forces Korea (USFK) or its subordinate organizations.

b. This instruction serves only as procedural authority. Substantive legal authority for each obligation the United States assumes through an international agreement must reside in Constitutional, statutory, or other legal authority applicable to the subject matter of the proposed agreement.

2. Superseded/Cancellation. This instruction replaces USFK Regulation 550-51, dated 1 March 2010, which is hereby canceled.

3. Applicability.

a. This instruction applies to all U.S. Department of Defense (DoD) military/civilian personnel assigned to USFK elements or activities seeking to negotiate or conclude any agreement on behalf of the United States, oral or written, with any representative of a foreign government or organization, including that entity's agencies, instrumentalities, or political subdivisions regardless of title or level of the agreement.

b. This instruction applies to both headquarters (HQ) USFK special staff and joint directorates as well as subordinate component commands (referred to collectively in this issuance as "USFK components"). In addition to HQ USFK, the USFK components include: Seventh Air Force/Air Forces Korea, U.S. Marine Corps Forces, Korea, U.S. Naval Forces, Korea, Eighth U.S. Army, Special Operations Command, Korea, and U.S. Special Operations Command, Korea.

c. International agreements falling into any of the special categories outlined in Enclosure A are not “international agreements” as used in this instruction and are exempt from strict adherence to the processes outlined in Enclosure B. USFK components will negotiate and conclude such agreements using specified abbreviated or alternative procedures. If a USFK component is unsure whether a proposed agreement falls into one of these special categories, they should consult with the Office of the Judge Advocate, USFK (FKJA) or the proponent for the special category (e.g., Services, USFK J4, or SOFA Secretariat).

4. Policy.

a. It is USFK policy to comply with all U.S. laws, regulations, policies, and procedures regarding the negotiation, conclusion, and reporting of international agreements, and to maintain awareness of, and comply with, the terms of applicable international agreements.

b. Any agreement, written or oral, between a USFK component, at any level, and a representative of a foreign government (including military and local government officials) or an international organization is potentially an international agreement. Therefore, all personnel wishing to enter into any such agreement must follow the procedures enclosed to ensure that all international agreements are properly negotiated, concluded, reported, and are consistent with U.S. law and policy.

c. Pursuant to references d and e, a legally binding international agreement may not be signed or otherwise concluded on behalf of the U.S. without prior consultation with the Secretary of State. The consultation requirement is met through an interagency process managed by the Department of State (DoS) commonly known as the Circular 175 (C-175) Procedure (see reference f).

d. When determined by FKJA or a higher authority to be necessary, USFK components will comply with the C-175 Procedure to obtain approval from the DoS, through the appropriate Under Secretary of Defense, to negotiate and/or conclude legally binding international agreements. When DoS approval is not required, USFK components will obtain authority to negotiate and conclude an international agreement through the appropriate authority within the DoD.

e. Negotiation and conclusion of an international agreement must be explicitly authorized. USFK components will not begin negotiations, present a draft text of a proposed agreement, or make a unilateral commitment to any foreign government or international organization without first obtaining specific authority to do so.

5. Definitions. The terms defined in section G.2. of reference a are incorporated into this instruction.

a. Procedural Authority. The authority to negotiate and conclude an international agreement on behalf of the United States. The Executive Branch of the U.S. Government possesses procedural authority to negotiate international agreements within the President's Constitutional authorities. This authority is vested in the DoS, which may authorize other Executive Branch agencies to negotiate and conclude certain agreements or classes of agreements.

b. Substantive Authority. The authority to carry out all obligations in an international agreement. Substantive authority is derived from Constitutional, statutory, or other legal authority applicable to the subject matter of the proposed agreement.

6. Responsibilities.

a. The Chief of Staff (CoS), USFK:

(1) Authorizes USFK components to negotiate and conclude international agreements where USFK is the appropriate approval authority, or seeks authority from Commander, USINDOPACOM, or higher authority, as appropriate, to negotiate and conclude such agreements.

(2) Designates the Office of Primary Responsibility (OPR) for the negotiation, conclusion, and maintenance of an international agreement.

b. The Office of the Judge Advocate, USFK (FKJA):

(1) Manages the USFK International Agreements Program and serves as the office responsible for administration and control of international agreements involving USFK components.

(2) Advises USFK components on law, policy, and procedure applicable to negotiating and concluding international agreements.

(3) Reviews proposed international agreements for legal sufficiency.

(4) Where appropriate, provides the legal memorandum, as described in paragraph 5.2.b.(2) of reference a, to support a request to negotiate and to conclude a proposed international agreement.

(5) Designates attorneys to assist the OPR in negotiation sessions as part of the USFK component negotiating team.

(6) Transmits requests for authority to negotiate and conclude international agreements from the USFK CoS to USINDOPACOM or higher authority, as appropriate.

(7) Maintains a central repository and index of all current and terminated agreements concluded by USFK.

(8) Compiles a list of all USFK international agreements concluded and terminated within the prior year and submits this list to the Staff Judge Advocate, USINDOPACOM, no later than 31 January annually or as otherwise instructed.

c. The Assistant Chief of Staff (ACofS), J5, USFK:

(1) Advises USFK components concerning overall policy for international agreements.

(2) Reviews all proposed international agreements with policy significance as defined in paragraph 5.1.d. of reference a and Enclosure A, paragraph 4.a of reference b.

(3) Prepares the policy memorandum, as described in paragraph 5.2.b.(4) of reference a, for all proposed international agreements.

d. ACofS, J8, USFK:

(1) Reviews all proposed international agreements for fiscal impact to the U.S. and determines whether U.S. fiscal obligations can be met.

(2) Prepares the fiscal memorandum, as described in paragraph 5.2.b.(3) of reference a, for all proposed international agreements.

e. ACofS, J2, USFK: Reviews all proposed international agreements that call for the generation or disclosure of classified information to ensure compliance with references a, g, and other applicable guidance.

f. USFK Components:


(1) Are responsible for oversight of implementation and compliance with executed international agreements for which they have responsibility.

(2) Must have authority delegated from the Chairman of the Joint Chiefs of Staff (CJCS), DoD, USINDOPACOM, or other requisite authority to negotiate and conclude international agreements. USFK components may not enter negotiations or amend, conclude, or terminate an international agreement without delegated authority to do so.

(3) Will comply with the procedures at Enclosures A or B, depending on the nature of the agreement, when seeking to negotiate, amend, conclude, or terminate any agreement, oral or written, with any representative of a foreign government or organization, including that entity's agencies, instrumentalities, or political subdivisions, regardless of the title or level of the agreement.

(4) Shall comply with the reporting procedures in Enclosure C.

7. Records Management. Records must be dispositioned in accordance with the CJCSM 5760.01A Volume II, Joint Staff and Combatant Commands Records Management Manual-Disposition Schedule.
8. Procedures. See Enclosure B
9. Summary of Changes. This instruction significantly revises prior guidance and should be reviewed in its entirety.
10. Releasability. This instruction is approved for public release; distribution is unlimited. DoD components, other federal agencies, and the public may obtain copies of this instruction through the internet from the USFK home page <https://www.usfk.mil/Resources/USFK-Publications/> or on NIPRNET at https://Pacom.deps.mil/cmds/usfk/USFK_Publications/Pages/Home.aspx.
11. Effective Date. This instruction is effective upon receipt.


BRAD SULLIVAN
Major General, USAF
Chief of Staff

JUN 21 2022

Enclosures:

- A – Special Categories
- B – Procedures
- C – Reporting Requirements
- D – Templates
- E – References

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ENCLOSURE A
SPECIAL CATEGORIES

1. Agreements falling into any of the below special categories are exempt from strict adherence to the processes outlined in Enclosure B of this instruction. USFK components will negotiate and conclude such agreements using specified abbreviated or alternative procedures as determined by agreement type.

2. If a USFK component is unsure whether a proposed agreement falls into one of these special categories or what alternative procedures to implement, they should consult with FKJA or the proponent for the special category (e.g., USFK J4, SOFA Secretariat, or the Service component Staff Judge Advocate).

3. Single Service Agreements.

a. Single Service agreements are international agreements that apply to only one USFK Service component (e.g., a reciprocal fire-fighting assistance agreement between an Army installation and a local Republic of Korea (ROK) emergency services authority). These agreements must not impact any joint equities. USFK components will process single Service agreements in accordance with appropriate Service specific policies, such as:

(1) U.S. Army: Army Regulation 550-51;

(2) U.S. Air Force & U.S. Space Force: Air Force Instruction 51-403; or

(3) U.S. Navy & U.S. Marine Corps: Secretary of the Navy Instruction 5710.32.

b. USFK components processing Single Service agreements will coordinate with all relevant USFK staff directorates before engaging in negotiations in order to ensure that the proposed agreement does not adversely impact any USFK equities as the sub-unified combatant command. In addition, the component legal advisor or Staff Judge Advocate (or designee) will coordinate the proposed agreement with FKJA to ensure that it does not present any unanticipated joint legal issues prior to conclusion.

c. Upon conclusion or amendment of Single Service agreements, the USFK component will provide FKJA with a courtesy copy of the completed agreement for inclusion in the central repository. USFK components will notify FKJA whenever Single Service agreements are terminated.

4. U.S.- ROK Status of Forces Agreement (SOFA) Agreements.

a. The U.S.-ROK SOFA, full title at reference h, is a comprehensive treaty-level agreement outlining the terms and conditions of the U.S. presence in the ROK. Article XXVIII of the U.S.-ROK SOFA establishes a Joint Committee to negotiate and conclude subordinate agreements concerning the SOFA's subject matter.

b. USFK components seeking an agreement with the ROK on a matter within the SOFA's scope will process the agreement through the USFK SOFA Secretariat in accordance with procedures in USFK Regulation 10-10 (reference i) or its successor.

c. USFK components will use the SOFA agreements process to the maximum extent possible.

5. Wartime Host Nation Support (WHNS) Technical Arrangements.

a. The WHNS Umbrella Agreement, full title at reference j, provides the basis for the provision of enhanced ROK support to the U.S. in the event that hostilities resume on the Korean peninsula. The WHNS Umbrella Agreement authorizes the conclusion of subordinate technical arrangements (TAs) concerning specific categories of support.

b. USFK components seeking a TA with the ROK on a matter within the scope of the WHNS Umbrella Agreement will process such proposed agreements through the ACofS, J4, USFK in accordance with USFK Regulation 550-52 (reference k) or its successor.

6. Mutual Logistics Support Agreement (MLSA) Orders.

a. The U.S.-ROK MLSA, full title at reference l, is an international agreement which authorizes the reimbursable exchange of various forms of logistical support between the two governments. The U.S. has also entered into a number of Acquisition and Cross-Servicing Agreements (ACSAs) with other foreign nations to permit the reciprocal exchange of logistical support.

b. Acquisitions or orders pursuant to a MLSA or ACSA, made in accordance with the authority of reference m and in compliance with reference n, are not international agreements and should be processed in accordance with the applicable agreement, implementing arrangement, and USFK Regulation 12-16 (reference o) or its successor.

c. ACSAs, to include the U.S.-ROK MLSA, and implementing arrangements associated with a MLSA or ACSA are international agreements and authority to negotiate and conclude such agreements must be coordinated in accordance with references n and p.

7. Administrative Agreements (AAs).

a. AAs are agreements that state mutual intentions, establish standard operating procedures, or define working relationships. This section applies only to AAs with a foreign nation and not internal, or U.S.-to-U.S., AAs. By entering into an AA, the participants do not intend to be bound under international law.

b. AAs are exempt from the procedures in this instruction only when they do not:

- (1) Impose any new binding obligations on the participants (financial or otherwise);

- (2) Require any new expenditure of funds by the participants;
- (3) Involve accounting for movement of funds to or from participants; or
- (4) Contain matters of policy significance as laid out in paragraph 5.1.d(1) of reference a.

c. USFK components should utilize the Memorandum of Understanding (MOU) format from reference q when drafting a proposed AA.

d. USFK components will secure a legal review from their servicing legal advisor before seeking to negotiate and conclude a proposed AA to ensure the AA does not meet the criteria for an international agreement in subparagraph b., above, and the USFK component has sufficient authority over the AA's subject matter to conclude the agreement without higher approval.

e. USFK components will provide copies of all completed or amended AAs to FKJA for inclusion in the central repository. USFK components will notify FKJA when AAs with a foreign nation are terminated.

8. Subsidiary Agreements.

a. Subsidiary agreements (e.g. implementing or technical arrangements, annexes, project agreements, etc.) are generally non-binding agreements negotiated and concluded under the authority of a binding umbrella or chapeau agreement.

b. USFK components will obtain a legal review from FKJA or their servicing legal advisor, providing an analysis of why the proposed subsidiary agreement is authorized within the scope of the umbrella or chapeau agreement and may be concluded under the terms of that agreement. The legal review will also ensure the proposed subsidiary agreement is otherwise legally sufficient.

c. FKJA will coordinate review of the subsidiary agreements in accordance with reference a.

9. Other Agreements. Also excluded as international agreements for the purpose of this guidance and in accordance with reference a are:

- a. Contracts made under the Federal Acquisition Regulation (FAR);
- b. Foreign military sales (FMS) credit agreements and FMS letters of offer and acceptance executed in the format managed by Defense Security Cooperation Agency;
- c. Standardization Agreements (STANAG); and
- d. Leases with foreign governments/commercial entities pursuant to 10 U.S.C. § 2675 and with foreign governments or international organizations pursuant to 22 U.S.C. § 2796.

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ENCLOSURE B
PROCEDURES

1. General Considerations.

a. USFK components are responsible for identifying whether entering into a new international agreement, amending an existing agreement, or terminating an agreement is necessary in order to execute their respective missions.

b. USFK components may engage in exploratory discussions or routine meetings with foreign government or international organization representatives to determine the necessity and scope of a proposed international agreement, provided no draft documents are exchanged and no obligatory promises are made. The non-binding nature of these discussions must be communicated to the foreign entity.

c. The international agreements process can be lengthy. Proper planning is essential to ensure there is adequate lead time relative to the urgency of the agreement objectives. The international agreement process generally consists of five phases:

- (1) Phase I – Initial Coordination
- (2) Phase II – Request for Authority
- (3) Phase III – Negotiation and Conclusion
- (4) Phase IV – Reporting
- (5) Phase V – Termination

d. Amendments to an existing agreement must follow the same procedures as those for establishing new agreements. Termination of an agreement must follow the steps in paragraph 6 of this enclosure.

2. Phase I - Initial Coordination.

a. The responsible organizational/functional element seeking the international agreement, or OPR, will prepare a draft text or outline of the proposed agreement or amendment to an existing agreement. The proposed draft should reflect the desired U.S. position and will serve as a starting point for negotiations. If no specific format for the agreement is required, the responsible organizational element should use the Memorandum of Agreement (MOA) format at Figure 1 of Enclosure D.

b. The OPR will coordinate the proposed international agreement with:

(1) FKJA. FKJA will advise on legal matters relevant to the procedural authority for the agreement, and will prepare, or coordinate preparation with USFK component legal offices, a legal memorandum relating to the agreement consistent with paragraph 3.d.

below. USFK components are strongly encouraged to coordinate proposed agreements with FKJA as early as possible in the agreement development process.

(2) ACofS, J5, USFK. The ACofS, J5, USFK will advise on policy issues relevant to the agreement and will prepare, as required, a policy memorandum relating to the agreement consistent with paragraph 3.e. below.

(3) ACofS, J8, USFK. The ACofS, J8, USFK will advise on fiscal issues relevant to the agreement and will prepare a fiscal memorandum relating to the agreement consistent with paragraph 3.f. below.

(4) Other USFK staff directorates affected by the agreement, such as:

(a) The ACofS, J2, USFK: Intelligence gathering, sharing, or dissemination matters.

(b) The ACofS, J3, USFK: Operations, training, or training facilities, areas, or ranges matters.

(c) The ACofS, J4, USFK: Supply, maintenance, munitions, POL, or other logistics matters.

(d) The ACofS, J6, USFK: Communications or communications security matters.

(e) SOFA Secretariat: Agreements that cite the SOFA as authority for the agreement, in full or in part.

(f) Command Engineers: Agreements that involve the use of a facility or other real estate, or potentially may have environmental impacts.

(5) Any other agency or subordinate HQ if the agreement in any way affects, or could affect, the agency or subordinate HQ's area of responsibility.

c. USFK components will attempt to reconcile recommendations or objections arising from the coordination process in consultation with FKJA before staffing the final agreement to the CoS, USFK. If reconciliation of a recommendation or objection is not possible, the originating USFK component will provide a written explanation as to why those recommendations or objections could not be reconciled.

3. Phase II - Request for Authority. In order to request authority to negotiate and/or conclude the proposed international agreement, the USFK components will coordinate the preparation of the following documents to be staffed to the CoS, USFK:

a. A staff summary sheet (USFK Form 108-E or successor), prepared by the responsible organizational element, providing:

(1) Evidence that the OPR accomplished all required initial coordination to include an explanation of any recommendations or objections that those involved could not reconcile.

(2) A request that the CoS approve negotiation and conclusion of the agreement by the USFK component or other appropriate entity, or seek authority to negotiate and conclude the agreement from USINDOPACOM or other higher authority, as appropriate.

(3) Enclosure of the required documents listed in paragraphs b-g below.

b. A copy of the proposed text or an outline of the agreement representing the U.S. position prepared by the responsible organizational element and coordinated with the appropriate staff agencies.

c. A memorandum for the CoS's signature, prepared by the OPR, requesting authority to negotiate and conclude the international agreement, addressed to USINDOPACOM, Undersecretary of Defense for Policy (USD(P)), Undersecretary of Defense for Acquisition and Sustainment (USD(A&S)), and/or other appropriate approval authority. A sample memorandum is located at Figure 2 of Enclosure D.

d. A legal memorandum prepared by FKJA or the USFK component legal office stating and explaining:

(1) The proposed agreement is an international agreement under reference a;

(2) The purpose of the agreement;

(3) The agreement is legally sufficient;

(4) The procedural legal authority for the agreement;

(5) The substantive legal authority for the agreement; and

(6) Any unique legal issues presented by the terms of the agreement.

e. A policy memorandum prepared by the ACofS, J5, USFK, stating and explaining:

(1) The necessity or reason for an international agreement, including any particular policy issues, the meaning of particular provisions, and a summary of the risks and benefits relevant to any transfer of technology or disclosure of information in the agreement.

(2) The ACofS, J5, USFK's recommendation whether the CoS, USFK should grant or seek authority to negotiate and conclude the agreement.

(3) FKJA will advise the OPR if the legal and policy memorandum may be combined into a single document.

f. A fiscal memorandum prepared by the ACoS, J8, USFK or USFK component resource manager stating and explaining:

- (1) The financial obligations the agreement imposes upon the foreign government.
- (2) The financial obligations the agreement imposes upon the United States.
- (3) How the United States will fund its financial obligations under the agreement.

g. A memorandum containing a background statement on the agreement following the format in Figure 4 of Enclosure D.

h. Other relevant supporting documents, if needed.

4. Phase III - Negotiation and Conclusion.

a. Written approval from the appropriate authority is required prior to negotiating or concluding any international agreement.

b. If the CoS, USFK possesses the inherent authority to authorize the negotiation and conclusion of an agreement, the responsible USFK component may begin negotiations immediately upon approval. If authority to approve the negotiation and conclusion of an agreement resides above the USFK level, FKJA will transmit the agreement through JA channels to the USINDOPACOM Staff Judge Advocate for approval or for coordination and transmittal to a higher-level approval authority, as appropriate.

c. The negotiating USFK component will include FKJA on its negotiating team. FKJA will designate an attorney to serve on the team or delegate that responsibility to a component legal advisor or Judge Advocate's office. The negotiating team will keep the assigned legal advisor informed of all negotiation activities.

d. During negotiating sessions, the negotiating team may agree in principle to changes in the draft agreement provided it clarifies the agreement is conditional upon final staff approval. The negotiating team will seek the advice of its servicing legal advisor regarding any changes to the draft text to determine whether it is within the USFK component's granted authority to make the change(s), or whether it must seek additional authority.

e. In accordance with reference a, USFK components seeking to conclude an agreement in English and a foreign language must attach a memorandum certifying that the English language text and foreign language text conform to each other and have the same meaning in all substantive respects, signed by a translator designated by the CoS, USFK as qualified for the purpose. This memorandum is not necessary if the terms of the agreement state that the English language text will control in case of conflict.

f. When a fully negotiated agreement has been reached, prior to signature of the agreement by either party, the OPR will accomplish final staffing of the agreement in the same manner as the initial coordination phase.

g. In order to request authority to conclude the international agreement, the OPR will coordinate the preparation of the following documents to be staffed to the CoS, USFK:

(1) A staff summary sheet (USFK Form 108-E or successor), providing evidence that the final agreement has been reviewed by all impacted staff agencies and organizations;

(2) A request that the CoS approve conclusion of the agreement by the USFK component or other appropriate entity, or seek authority to conclude the agreement from USINDOPACOM or other higher authority, if not granted concurrently with the authority to negotiate;

(3) A copy of the agreement ready for signature; and

(4) A written legal review from the negotiating team's servicing legal advisor specifying that procedural and substantive authority exists to conclude the agreement is legally sufficient in all other respects.

h. After authority to conclude the agreement has been obtained, the OPR will submit the approved final text to the foreign representative. If the agreement is accepted without change, signature on behalf of the other party will be requested and a signing ceremony coordinated if desired. If changes result from further negotiations after conclusion authority is granted, the changes must be approved by FKJA prior to signature.

i. The OPR will maintain a history of the negotiations that is 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. This history will include, but not be limited to:

(1) The minutes (summaries) of all negotiating sessions.

(2) Any memoranda for record documenting U.S. or foreign positions on specific terms.

(3) Comments, recommendations, or objections received during staff coordination.

(4) All interim drafts of the agreement.

j. Once negotiations are complete, the OPR will move its negotiating history into its permanent (historical) records. The OPR will maintain the records for 10 years or for the life of the agreement and any successor agreements, whichever is later. These records must not be destroyed or transferred to records holding areas where they are not readily available.

5. Phase IV – Reporting. Reporting requirements are outlined in Enclosure C of this instruction.

6. Phase V – Termination.

a. USFK components seeking to terminate or temporarily suspend an existing international agreement, or responding to a request from a foreign government to terminate or suspend an agreement, will do so in accordance with the terms of the agreement.

b. Requests to terminate or suspend an international agreement must first be submitted to FKJA and include the following information:

- (1) Desired date of the termination or date and duration of the suspension;
- (2) Special requirements or stipulations of the termination or suspension;
- (3) Reasons for the termination or suspension;

(4) A copy of the document that granted authority to negotiate and conclude the agreement, if available.

c. After legal review, the request to terminate or suspend will be routed to the entity that authorized negotiating and concluding the underlying agreement for approval.

(1) For agreements allowing only termination upon mutual consent, the USFK component will seek authority to negotiate and conclude the termination of the agreement.

(2) For agreements allowing unilateral termination upon notification, the USFK component concerned will seek authority to submit a notice of termination. Upon receipt of authorization, the USFK component will draft and transmit its notice of intent to terminate the agreement in consultation with FKJA.

(3) For agreements that, by their terms, terminate on a specific date, USFK components will, no later than six (6) months prior to the agreement's scheduled termination date, seek the advice of FKJA on whether to seek a renewal of the agreement. USFK components will request authority to negotiate and conclude a renewal from the same entity that provided authority to negotiate and conclude the agreement.

ENCLOSURE C
REPORTING REQUIREMENTS

1. In order to meet the Congressional reporting requirements of reference d and comply with reference e, USFK components will follow the procedures in this enclosure for reporting and publishing international agreements.

2. Reporting Concluded International Agreements.

a. Within 3 days after an international agreement enters into force or effect, the USFK component responsible for concluding the agreement will electronically forward to FKJA:

(1) A copy of the concluded agreement with all accompanying papers, to include: any amendments, implementing agreements or arrangements, annexes, project agreements or arrangements, other subsidiary agreements or arrangements, or other associated papers concluded under the international agreement.

(2) A copy of the document that granted authority to negotiate and conclude the agreement.

(3) If the agreement is concluded in more than one language, a copy of the foreign language version of the agreement and a copy of the memorandum certifying the equivalence of the English language text.

(4) A Letter of Transmittal. A sample memorandum is located at Figure 5 of Enclosure D.

b. If the materials in 2.a.(1)-(4) are not forwarded within the time period described above, a memorandum fully and completely describing the reasons for the late transmittal must be included.

c. FKJA will transmit the documents listed in 2.a.(1)-(4) to:

(1) International Affairs Division, Office of the General Counsel, Department of Defense;

(2) Assistant Legal Advisor for Treaty Affairs, Department of State;

(3) Secretary of the Joint Staff, Office of the Chairman of the Joint Chiefs of Staff;

(4) Office of the Staff Judge Advocate, USINDOPACOM; and,

(5) Defense Intelligence Agency or designee (only required for international intelligence agreements).

3. Annual Reporting Requirements.

a. No later than 20 January of each year, FKJA will compile a report of agreements concluded or terminated during the prior calendar year. This report will include the following information for each agreement:

- (1) The title of the agreement;
- (2) The name of the specific governmental entity with which the agreement was made;
- (3) The general purpose of the agreement;
- (4) The substantive legal authority for the agreement;
- (5) The classification of the agreement;
- (6) The date of final signature;
- (7) The date the agreement entered into force (if different than the date of final signature);
- (8) The date of termination (if applicable); and
- (9) The location and POC for the original signed text.

b. FKJA will forward this report to the Office of the Staff Judge Advocate (J06), USINDOPACOM, no later than 31 January or as otherwise directed.

ENCLOSURE D
TEMPLATES

Figure 1 - International Agreement Format

MEMORANDUM OF AGREEMENT BETWEEN UNITED STATES FORCES KOREA
AND (name of foreign nation)* †

I. AUTHORITY. (Cite to the SOFA, treaty, statute, or other authority; if this agreement supersedes a prior agreement, so state and identify prior agreement.)

II. PURPOSE. (State the general purpose of the agreement.)

III. MUTUAL RESPONSIBILITIES OF PARTIES. (List the responsibilities of both parties)

IV. SPECIFIC RESPONSIBILITIES OF USFK. (List the responsibilities of the U.S. and/or its subsidiary)

V. SPECIFIC RESPONSIBILITIES OF OTHER PARTY. (List the responsibilities of the other party or its subsidiary)

VI. FINANCIAL ARRANGEMENTS. (Explain how each side will execute its financial obligations, to include cost-sharing.)

VII. CLAIMS. (Reference the SOFA, if applicable, or any other specific claims language, if required.)

VIII. DISAGREEMENTS. (Discuss resolution of disagreements arising under the agreement.)

IX. LANGUAGE. (Discuss equivalency of English and any foreign language texts.)

X. AMENDMENTS AND REVIEW. (Outline how amendments are to be accomplished, periodic reviews of the agreement for currency, and so forth.)

XI. ENTRY INTO FORCE AND DURATION. (State entry into force date conditions, the term of the agreement, conditions of termination mutual and unilateral, and conditions of extension.)

XII. SIGNATORIES. (Must show typed/printed name and title/position of each signatory as well as date and place of signature.)

* Or name of the specific governmental entity or military organization of the foreign nation concerned.

† The substance of Articles I, II, and VIII through XII of the agreement should be included in every agreement. The content of the other articles will vary depending on the nature of the agreement.

Figure 2 - CoS, USFK Memo Requesting Authority to Negotiate and Conclude an International Agreement (SAMPLE)

FKCS

Day/Month/Year

MEMORANDUM FOR Under Secretary of Defense for Policy (USD(P)) [or Undersecretary of Defense for Acquisition and Sustainment (USD(A&S)), or other appropriate approval authority]

THRU:

Commander, United States Indo-Pacific Command
Director, Joint Staff

SUBJECT: Request for Authorization to Negotiate and Conclude an International Agreement

1. In accordance with DoD Instruction 5530.03, *International Agreements*, dated 4 December 2019, on behalf of U.S. Forces Korea (USFK), I request authorization to negotiate and conclude (name of agreement).
2. A proposed draft of this agreement is enclosed at Tab A; a background statement on the agreement is at Tab B. This agreement provides for (state general purpose of agreement). Legal, policy, and fiscal reviews are enclosed at Tabs C, D, and E, respectively.
3. If authorized, USFK will accomplish the negotiation and conclusion of this agreement through (name of USFK component). If negotiations result in any mutually agreed-upon changes to the draft text, USFK will consult with the Office of the USD(P) [or USD(A&S), or other appropriate approval authority] to determine if further coordination is required prior to conclusion.

{USFK CoS Signature Block}

Enclosures:
As stated

Figure 3 - CoS, USFK Memo Approving Negotiation and Conclusion of an International Agreement (SAMPLE)

FKCS

Day/Month/Year

MEMORANDUM FOR (Name of USFK component)

SUBJECT: Approval to Negotiate and Conclude an International Agreement

1. In accordance with DoD Instruction 5530.03, *International Agreements*, dated 4 December 2019, on behalf of U.S. Forces Korea (USFK), I approve negotiation and conclusion of (name of agreement), subject to the following conditions: (outline any limitations on authority).
2. Conduct your negotiations in accordance with USFK Regulation 550-51 in coordination with the Office of the Judge Advocate, USFK (FKJA), which will designate a legal advisor for the negotiations. Coordinate all negotiation activities with your servicing legal advisor, to include any proposed changes to the text. FKJA will determine whether the proposed changes comport with U.S. law and policy, and whether such changes require additional authority to effectuate.
3. Once this agreement is concluded, provide a copy of the concluded agreement to FKJA. You may not negotiate and conclude any amendment, renewal, extension, or termination to this agreement without a further grant of authority unless specifically authorized.

{USFK CoS Signature Block}

Figure 4 – Background Statement

- I. Type of Agreement:
bilateral _____ multilateral _____
- II. Classification of the agreement.
- III. Specify whether the agreement is binding or non-binding under international law.
- IV. Specify the parties or participants (normally ministries, agencies, or departments of governments).
- V. List all U.S. and foreign governmental ministries, agencies, or departments identified as responsible for carrying out the agreement.
- VI. Specify the full title of the agreement.
- VII. Specify the subject matter of the agreement.
- VIII. Provide a statement of the legal authority under which the Department of Defense is authorized to enter into, conclude, and implement the agreement.
- IX. Provide a statement of any provisions raising particular legal issues, including any understanding regarding the meaning of particular provisions.
- X. Provide a statement of provisions that significantly deviate from the template contained in the blanket Circular-175 authorization, if applicable.
- XI. Identify the applicable Circular-175 authorization and attach a copy of such authorization, if possible.
- XII. Provide a statement confirming that the legal analysis in the memorandum of law in the Circular-175 authorization applies to the proposed agreement, and a discussion of new legal issues raised by the request, if applicable.
- XIII. For implementing agreements, include a copy of the agreement under which the implementing agreement is being concluded.
- XIV. State the date of entry into force or entry in effect. Spell the month.
- XV. State the date of termination, if applicable. Spell the month.
- XVI. Print the names of each signing official, his or her title and the office represented, and the ministry, agency, or department or international organization represented.
- XVII. State the full title(s) and date(s) of agreement(s), if any, upon which this agreement is based or that this agreement amends.
- XVIII. State the date or dates of signature of this agreement. Spell the month.

Figure 5 – Sample Letter of Transmittal

Day/Month/Year

From: United States Forces Korea

To: Department of State, Attn: Assistant Legal Advisor for Treaty Affairs, Washington
D.C., 20520

Department of Defense, General Counsel, Washington D.C., 20301-1600

Office of the Secretary, Joint Staff, Washington D.C., 20301

Commander, U.S. Indo-Pacific Command, Office of the Judge Advocate (J06), Camp H.M.
Smith, HI 96861-4022

Subject: Transmittal of an International Agreement

1. Type of Agreement: [Bilateral or Multilateral].
2. Classification of the agreement: [Unclassified or Classified].
3. Binding: [Specify whether the agreement is binding or non-binding under international law.]
4. Parties to the Agreement: United States of America and [may be another country or an international organization].
5. Agencies responsible for carrying out the provisions of the Agreement: [Normally ministries, agencies, or departments of governments; List both U.S. and foreign].
6. Full title of the Agreement:
7. Summary: [A brief summary of the subject matter of the agreement.]
8. Legal Authority: [A statement of the legal authority for the Department of Defense or its agencies to enter into, conclude, and implement the agreement.]
9. Legal Issues: [Provide a statement of any provisions raising particular legal issues, including any understanding regarding the meaning of particular provisions.]
10. C-175 Authorization:
 - a. [Identify the applicable Circular-175 authorization and attach a copy of such authorization, if possible.]
 - b. [Provide a statement of provisions that significantly deviate from the template contained in the blanket Circular-175 authorization, if applicable.]

c. [Provide a statement confirming that the legal analysis in the memorandum of law in the Circular-175 authorization applies to the proposed agreement, and a discussion of new legal issues raised by the request, if applicable.]

11. Related Agreements: [State the full title(s) and date(s) of agreement(s), if any, upon which this agreement is based or that this agreement amends. For implementing agreements or other subsidiary agreements, include a copy of the agreement under which the implementing agreement is being concluded.]
12. Entry into Force: [State the date of entry into force or entry in effect. Spell the month.]
13. Date of Termination: [State the date of termination, if applicable. Spell the month.]
14. Signatories: [Print the names of each signing official, his or her title and the office represented, and the ministry, agency, or department or international organization represented.]
15. Date of Signature: [State the date or dates of signature of this agreement. Spell the month.]
16. Reason for Late Submission: [If applicable, completely describe the reasons for the late submission.]
17. The attachments are certified to be true and complete copies of the originals.

ENCLOSURE E
REFERENCES

- a. DoD Instruction 5530.03, 4 December 2019, "International Agreements."
- b. CJCSI 2300.01D, 5 October 2007, "International Agreements."
- c. USINDOPACOM Instruction 5711.6E, 30 September 2020, "Negotiation, Conclusion, and Reporting of International Agreements."
- d. Title 10, United States Code, Section 112b, *The Case Act*.
- e. Title 22, Section 181, Code of Federal Regulations, *Coordination, Reporting and Publication of International Agreements*.
- f. U.S. Department of State Foreign Affairs Manual, Volume 11, Section 720, *Negotiation and Conclusion (Circular 175 Procedure)*.
- g. National Disclosure Policy-1, 14 February 2017, "National Policy and Procedures for the Disclosure of Classified Military Information to Foreign Governments and International Organizations."
- h. *Agreement Under Article IV of the Mutual Defense Treaty Between the United States of America and the Republic of Korea, Regarding the Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea (U.S.-ROK SOFA)*, entered into force on 5 February 1967.
- i. USFK Regulation 10-10, 13 December 2017, "Joint Committee and Subcommittees under the United States of America – Republic of Korea Status of Forces Agreement (SOFA)."
- j. *The Umbrella Agreement between the Government of the United States of America and the Government of the Republic of Korea Concerning Wartime Host Nation Support (WHNS Umbrella Agreement)*, entered into force on 21 November 1991.
- k. USFK Regulation 550-52, 2 December 2008, "Wartime Host Nation Support Program."
- l. *Mutual Logistics Support Agreement between the Government of the United States of America and the Government of the Republic of Korea*, entered into force 8 June 1988.
- m. Title 10, United States Code, Section 2341 *et seq.*, *North Atlantic Treaty Organization Mutual Support Act of 1979*.
- n. DoD Directive 2010.9, 23 April 2003, incorporating change 2, 31 August 2018, "Acquisition and Cross-Servicing Agreements."

- o. USFK Regulation 12-16, 11 June 1010, "Mutual Logistics Support between the United States Forces and the Republic of Korea Forces."
- p. CJCSI 2120.01D, 21 May 2015, "Acquisition and Cross-Servicing Agreements."
- q. DoD Instruction 4000.19, 16 December 2020, "Support Agreements."