

**UNDERSTANDINGS ON IMPLEMENTATION OF THE AGREEMENT
UNDER ARTICLE IV OF THE MUTUAL DEFENSE TREATY
BETWEEN THE UNITED STATES OF AMERICA AND
THE REPUBLIC OF KOREA
REGARDING FACILITIES AND AREAS AND THE STATUS OF
UNITED STATES ARMED FORCES IN THE REPUBLIC OF KOREA
AND RELATED AGREED MINUTES**

The Republic of Korea-United States of America Joint Committee, having completed a special review of the provisions and operation of the Status of Forces Agreement (SOFA), and related Agreed Minutes, records the following understandings with respect to implementation of these documents:

Article II

Paragraph 1 (b)

The Republic of Korea, through the Joint Committee or its Facilities and Areas Subcommittee, may request the United States armed forces to waive the reserved right of re-entry on those facilities and areas which have been returned with the reserved right of re-entry, and the United States armed forces shall give sympathetic consideration to such request if such facilities and areas are not deemed to be re-entered in the foreseeable future.

Paragraph 3

1. The Facilities and Areas Subcommittee shall review, on at least an annual basis, all facilities and areas granted under Article II of the Status of Forces Agreement with a view to returning the facilities and areas no longer needed.
2. This does not preclude the Republic of Korea Government from requesting the United States armed forces through the Joint Committee or its Facilities and Areas Subcommittee for return of specific facilities and areas at any time.

Article IX

Paragraph 5

1. Detailed procedures relating to examination by Republic of Korea customs inspectors of mail delivered through United States military post office channels will be specified in a separate implementing agreement.

2. Republic of Korea customs authorities may be present at inspections by United States authorities, of household goods or hold baggage shipments upon delivery to individual members of the armed forces or the civilian component or their dependents, at their quarters and in their presence. Such customs authorities of the Republic of Korea may observe any such inspections scheduled to be performed by United States authorities. Unscheduled inspections will be arranged by United States authorities upon adequate advance notice by Republic of Korea customs authorities of serious suspicion that contraband or items in unreasonable quantities may be contained in specific shipments. Customs authorities of the Republic of Korea shall be accorded the opportunity to observe such unscheduled inspections at the quarters, and in the presence, of the individual member, dependent or authorized agent.

3. Republic of Korea customs authorities shall not make customs examination on military cargo consigned to the United States armed forces including their authorized procurement agencies and their non-appropriated fund organizations provided for in Article XIII. As for the cargo consigned to non-appropriated fund organizations, the United States authorities will furnish on a routine basis to the Republic of Korea authorities pertinent information including cargo manifests and shipping documents. Other pertinent information will be provided on request through the Joint committee or its Ad Hoc Subcommittee on Illegal Transactions in Duty-Free Goods.

Paragraph 6

Authorities of the United States will confer with authorities of the Republic of Korea on implementation procedures which are satisfactory to the Government of the Republic of Korea and which comply with all applicable

Republic of Korea government customs regulations. Authorities of the United States may at any time impose more but not less stringent restrictions on their military personnel, members of the civilian component, invited contractor employees, and dependents of the foregoing, than are required by the Republic of Korea.

Agreed Minute, Paragraph 4

Appropriate Republic of Korea officials may be present as observers during inspections by United States officials of members of the United States armed forces under orders entering the Republic of Korea.

Article XIII

The United States authorities will make reasonable and practical efforts to control access of unqualified persons to the United States armed forces Non-Appropriated Fund (NAF) organizations. The United States authorities will review biannually all Korean civilian memberships in United States armed forces NAF organizations and their reporting procedures to ensure compliance with applicable SOFA provisions.

Article XV

Paragraph 1

1. If the United States armed forces determine that there would be a significant advantage for Republic of Korea-United States mutual defense to utilize one or more third-country corporations as United States armed forces invited contractors, the authorities of the Government of the Republic of Korea shall give sympathetic consideration to a United States request to extend the benefits of this Agreement to such non-United States corporations.
2. The United States armed forces may bring into the Republic of Korea, without privileges, third-country contractor employees possessing special skills not available from the Korean labor force.

Article XVI

1. United States armed forces contracting activities shall respect Republic of Korea Government administrative requirements for registration of local contractor firms. No special requirements will be imposed solely upon contractors doing business with the United States armed forces. Contractors awarded contracts with United States armed forces will not be required to join any military supply associations or similar organizations.

2. "Administrative requirements for registration of local contractor firms" refers to Korean government legal criteria and procedures for registration and licensing of local firms.

Article XVII

Paragraph 3 and Agreed Minute 2 and 4

1. The term "the United states armed forces," used in paragraph 3, shall be understood as to include the persons referred to in the first paragraph of Article XV.

2. The term "conform," used in paragraph 3, means that conditions of employment, compensation and labor-management relations shall, unless otherwise agreed upon in this Article or by the Joint Committee in accordance with the procedures stipulated in Agreed Minute 4, be in substantial agreement with those conditions laid down by the labor laws of the Republic of Korea.

3. It is understood that the term "military requirements," used in Paragraph 3 and Agreed Minutes 2 and 4, refers to such cases, wherein solutions are urgently needed for the United States armed forces to accomplish its military mission.

4. It is understood that the deviation from labor legislation of the Republic of Korea provided for in Agreed Minute 4 need not be referred to the Joint Committee in cases when such referral would seriously hamper military operations in an emergency.

Paragraph 4 (a)

1. The Republic of Korea and United States armed forces will exert utmost efforts to expedite a just and fair resolution of labor disputes arising under this paragraph.
2. The United States armed forces will notify appropriate officials of the Republic of Korea Ministry of Labor, prior to adverse action by United States armed forces against an official of the Korean Employees Union.

Paragraph 4 (a) (ii)

1. To facilitate its conciliation efforts, the special committee shall, in conducting investigation into the dispute in question, have access to all relevant information and all persons having knowledge of the dispute, including management representatives.

2. (a) It is understood that disputes referred to a special committee under this paragraph primarily involve collective action issues. However, the Republic of Korea Ministry of Labor may refer certain individual cases to this committee, through the Joint Committee or its Labor Subcommittee, if notice of its petition for further review is received within sixty (60) days of receipt by the employee of management's final decision in the case and if it finds, after reviewing the United States armed forces files related to the case, that:

(i) Management has rendered a final decision after exhaustion of the normal appeal process; and

(ii) The employee concerned concurs in the petition and agrees in writing to accept the decision of the special committee as final; and

(iii) There is reason to believe that there has been a gross miscarriage of justice or a denial of administrative due process.

(b) In such proceedings, the employee may be represented by counsel or a personal representative of his or her choice. Because of the binding effect of the committee's decisions in individual cases referred to it, the committee must arrive at a final decision and such

cases will not be elevated to the Joint Committee for further resolution as provided for by paragraph 4 (a) (iii). The special committee's review of individual cases will be limited to the administrative record of the case and any written briefs or oral arguments submitted by the employee or by management. The special committee shall have full power to order appropriate relief, up to and including reinstatement and back pay.

(c) The special committee will be composed of not more than six members, with equal representation from the Republic of Korea Government and the United States armed forces. All members must be able to render a fair and impartial decision; accordingly, they must not have previously participated in the case under review. All cases will be resolved by a majority decision.

Article XXII

Agreed Minute Re Paragraph 1 (a)

1. The Government of the Republic of Korea agrees that, upon notification under the second sentence of the Agreed Minute Re Paragraph 1(a), the military authorities of the United States may exercise jurisdiction over such persons in accordance with the terms of the Criminal Jurisdiction Article.

2. In order to avoid instances when, because of the existence of martial law in the Republic of Korea, neither nation may exercise jurisdiction over United States civilians and dependents for offenses normally punishable by Korean civilian courts, and at the same time to guarantee to such persons the right to a fair trial, the United States armed forces will sympathetically consider requests by the Republic of Korea to exercise jurisdiction over United States civilians and dependents for such offenses if the Republic of Korea ensures that such persons will be tried in regularly constituted civilian courts with normal SOFA safeguards.

Paragraph 1 (b)

The civil authorities of the Republic of Korea will retain full control over the arrest, investigation and trial of a member of the United States armed forces or civilian component or a dependent.

Agreed Minute Re Paragraph 2

It is understood that the United States authorities shall exercise utmost restraint in requesting waivers of exclusive jurisdiction.

Agreed Minute Re Paragraph 3 (a)

1. A substantial departure from the acts a person is required to perform in a particular duty will usually indicate an act outside of the person's "official duty."
2. A duty certificate shall be issued only upon the advice of a Staff Judge Advocate, and the competent authority issuing the duty certificate shall be a general grade officer.
3. (a) The certificate will be conclusive unless modification is agreed upon. However, the Republic of Korea authorities may discuss, question or object to any United States armed forces official duty certificate. The United States authorities shall give due consideration to any opinion which may be raised by the Republic of Korea authorities in this regard.

(b) With respect to the right of lower level authorities of the Republic of Korea to discuss, question, or object to any United States armed forces official duty certificate, the appropriate branch, district, or similar level prosecutor may discuss any questionable official duty certificate with the Staff Judge Advocate or appropriate legal officer within ten (10) days of receipt. If satisfactory resolution is not reached within ten (10) days of the prosecutor's receipt of such certificate, appropriate officials of the Ministry of Justice may then discuss any remaining disagreement with the Judge Advocate, United States Forces, Korea, or a designee of the Judge Advocate. If an agreement cannot be reached within twenty(20) days after the official duty certificate was originally filed with the local prosecutor, the remaining disagreement may be referred to the Joint Committee or its Criminal Jurisdiction Subcommittee. If the Joint Committee or its Criminal Jurisdiction Subcommittee cannot resolve any remaining disagreement within such time as it deems reasonable, the matter may be referred for resolution through diplomatic channels. To ensure that the accused is not deprived of the right to a prompt and speedy trial as a

result of protracted reconsideration of the duty certificate, if mutual agreement is not reached within thirty (30) days after an official duty certificate is first filed, the military authorities of the United States may proceed to trial by court-martial, impose nonjudicial punishment, or make other appropriate disposition of the charges despite any continuing discussions.

Paragraph 3 (b) of the Agreed Minute Re Paragraph 3 (b)

The recitation therein of the right of representatives of the Republic of Korea to attend trials of members of the armed forces, civilian component, or their dependents when held outside the Republic of Korea shall not be construed to deprive such representatives of the opportunity to attend such trials when held within the Republic of Korea.

Paragraph 3 (c)

1. If a State desires to ask the other State for a waiver of its primary right to exercise jurisdiction, it shall present a written request as soon as practicable but not later than twenty-one (21) days after it is notified or otherwise apprised of the commission of an alleged offense.
2. Upon receipt of the written request, the State having the primary jurisdiction shall make a decision on the request and inform the other State of such decision within twenty-eight (28) days.
3. When there are special reasons, the State having the primary jurisdiction may, identifying the case and prior to the expiration of the original twenty-eight (28) day period, request an extension for a specific period of days normally not exceeding an additional fourteen (14) days.
4. When the State having the primary jurisdiction makes a decision not to exercise jurisdiction or when it does not inform the other State of its decision within the prescribed period, with any extension, the requesting State may exercise its concurrent jurisdiction.

Paragraph 5 (c)

1. The United States Government agrees that the last sentence of Article XXII, Paragraph 5(c) does not obligate the authorities of the Republic of Korea to provide any assistance to the military authorities of the United States in maintaining military custody of an accused member of the United States armed forces, the civilian component, or a dependent. Rather, it is to provide a procedure for transfer of custody to the authorities of the Republic of Korea when the military authorities of the United States believe they will be unable to make any such accused available to the authorities of the Republic of Korea upon their request for purposes of investigation and trial.

2. The authorities of the Republic of Korea can question members of the United States armed forces or civilian component or dependents in the presence of a duly appointed United States representative and make preliminary investigation into the case after their arrest and before transferring them to the military authorities of the United States. The right to legal representation exists from the moment of arrest or detention and includes the right to have counsel present, and to consult confidentially with such counsel at all preliminary investigations, examinations, pretrial hearings, the trial itself, and subsequent proceedings at which the accused is present. The United States representative is to be an impartial observer and neither the United States representative nor the counsel shall interfere with any questioning.

3. The authorities of the Republic of Korea shall guarantee that any facilities for pretrial confinement or restriction meet or exceed the standards established by the Joint Committee, and that the accused is permitted regular communication with, and visitation by, appropriate representatives of the United States and by legal counsel, is not commingled with convicted prisoners, and is not made to perform penal servitude or labor prior to final conviction. In consonance with the requirements of Article XXII, Paragraph 9(a), an accused must be indicted or released within thirty (30) days, or such shorter period as may be established under Korean domestic law, of the date the accused is first placed in pretrial confinement: and, the initial trial of an accused must be completed or the suspect must be released within six (6) months, or such shorter period as may be established under Korean domestic law, from the date the accused is first placed in confinement.

Paragraph 5 (d)

With regard to the custody of the accused in the hands of the authorities of the Republic of Korea in connection with security offenses there must be mutual Republic of Korea and United States agreement as to the circumstances in which such custody is appropriate.

Agreed Minute Re Paragraph 9, Subparagraph (a) of Second Unnumbered Paragraph

Under the appellate procedure of the courts of the Republic of Korea, the accused may request a re-examination of the evidence, including new evidence and witnesses, as a basis for new findings of fact by the appellate court.

Article XXVI

1. United States military authorities will present to the Republic of Korea Ministry of Health and Social Affairs on a quarterly basis, certification that no quarantinable diseases have been detected at any ports of entry authorized pursuant to the Status of Forces Agreement. However, if any such diseases are detected, it is understood that United States armed forces will impose appropriate quarantine measures, and immediately notify appropriate Republic of Korea public health authorities.

2. United States military authorities will immediately provide appropriate health authorities of the Republic of Korea with appropriate information concerning at-risk Korean national contacts of United States armed forces personnel detected as suffering from Acquired Immune Deficiency Syndrome (AIDS) or infected with Human Immunodeficiency Virus (HIV). United States military authorities will also continue to provide appropriate Republic of Korea health authorities with quarterly statistical information concerning detection of AIDS or HIV among its personnel. Furthermore, United States military authorities will provide the Republic of Korea Government with epidemiological information periodically and on an ad hoc basis, with direct contacts through the staff of the Preventive Medicine Unit of the 18th Medical Command or appropriate successor unit.

Both the Republic of Korea and the United States Chairmen agree that, in view of the successful resolution of the aforementioned issues, as new issues relating to the SOFA arise in the future, they should continue to be assigned to the Joint Committee or its Subcommittees for resolution.

Signed at Seoul, Korea, this first day of February, 1991.

Done in duplicate, in the English and Korean languages. Both texts shall have equal authenticity. All differences between the two States relating to the interpretation or application of this agreement shall be settled through the Joint Committee. In the event an agreement cannot be reached on this question in the Joint Committee, the matter will be referred to the diplomatic channels between the two Governments.

/s/
RONALD R. FOGLEMAN
Lieutenant General
United States Air Force
United States Representative
Representative

/s/
BAN KI MOON
Director General
Ministry of Foreign Affairs
Republic of Korea