



The SOFA and You

Why YOU need to know about the SOFA? Each member of USFK is responsible for being informed about individual responsibilities and rights under the SOFA in order to protect those rights, perform effectively on the job and enjoy a trouble free tour in Korea. Sponsors are responsible for seeing that their dependents know their responsibilities and rights under the SOFA. All commanders and supervisors have a special responsibility to periodically hold education programs for their personnel to ensure that those in their command know about their responsibilities and rights under the SOFA and the importance of acting in accordance with the laws and regulations of the Republic of Korea and the United States of America. The US-ROK SOFA is a means to promote friendship and understanding between the peoples of the United States and Korea, and it is a means for closer and more effective government cooperation.

This pamphlet explains principal features of the SOFA in non-technical terms so that you may have an understanding of your rights and obligations. The information contained here will not make you a SOFA expert, but it will inform you about things you may not have thought about up to now. Knowing about your SOFA rights and obligations will help make your tour in Korea more productive, enjoyable and trouble free.

History. As a military or civilian member of the United States Forces Korea (USFK), you play an essential part in accomplishing the defense mission of our country in Northeast Asia. The Korean peninsula occupies a strategically important location where the vital interests of four great powers-- China, Japan, Russia and the United States--converge. A brief and general review of the historical facts underlying the presence of American forces in Korea may help to put your presence here in perspective.

At the conclusion of World War II in 1945, the Korean peninsula was divided into two parts along the 38th parallel solely for the purpose of facilitating the surrender of the defeated Japanese forces. However, this temporary dividing line hardened into a political boundary due to the refusal of the Soviet authorities in the northern part to comply with provisions of certain wartime agreements reached at Cairo and Potsdam that promised the restoration of a free and independent Korea after the war. Efforts by the allied powers to resolve the differences failed. The United Nations (UN) also tried in 1947 to achieve a united Korea by directing that free elections be held in all parts of Korea. Elections were held in the southern half of Korea, but the Soviets again refused to cooperate. Following the UN elections, the Republic of Korea (ROK) was established, while Soviet and north Korean communists fashioned a state under the banner of the Democratic People's Republic of Korea (DPRK). Then on June 25th, 1950, north Korean forces invaded the ROK in defiance of international law and the UN Charter. At the call of the US, the UN Security

Council immediately convened and demanded that the north Korean forces cease the aggression and that peace be restored on the peninsula. To enforce the UN mandate, the Security Council established the United Nations Command (UNC) comprised of armed forces from the US and 15 other UN member nations. The UNC, assisted by the ROK armed forces, successfully repulsed the aggression. In 1953, the belligerents signed the Korean Armistice Agreement, terminating the hostilities, pending a final peace settlement. Also signed in 1953 was the US-ROK Mutual Defense Treaty, an agreement that obligated the parties to assist each other in collective self-defense should either party be threatened by an external armed attack in the Pacific area. Article IV of the treaty provided for the stationing of US armed forces in and about the territory of the Republic of Korea.

After a long series of negotiations, the US-ROK Status of Forces Agreement (SOFA) was signed in 1966 and went into force in 1967. The SOFA defines the status of US personnel and contains articles, minutes and understandings concerning the rights and obligations of the two parties.

What is the SOFA? The US has a SOFA or similar agreement with countries around the world where US armed forces are stationed. The US-ROK SOFA is an international agreement designed to serve the mutual interests of the US and the ROK and to protect the basic rights of US citizens who are subject to its provisions. The US-ROK SOFA recognizes US sovereign immunities and balances the American citizen's individual rights with obligations to the host government and to local laws.

International agreements like the US-ROK SOFA are based on the principal of mutual respect. Americans living in Korea under SOFA protections are expected to behave just as we would expect Koreans to behave, if they were stationed in our hometowns in the US.

Status -- Who is covered by the SOFA? Personnel of the US armed forces on active duty in Korea and their dependents are covered by the US-ROK SOFA. US civilians employed by, serving with or accompanying US armed forces and their dependents are also covered by the US-ROK SOFA. Persons in Korea to perform contracts or render services exclusively for the US armed forces are designated invited contractors or technical representatives. They and their dependents are afforded SOFA protections. Those who are not covered by the US-ROK SOFA include members of the military and civilian components of the US armed forces and their dependents who are attached or assigned to the American Embassy or the Joint United States Military Affairs Group, Korea (JUSMAG-K).

Do USFK personnel have to obey Korean laws? Yes. SOFA status personnel must abide by Korean laws except where the SOFA explicitly supersedes or abridges Korean laws. Examples are the waiver of passport and visa requirements for active duty military personnel and exemptions from Korean taxes on wages and salaries paid to SOFA status personnel by the US Government. SOFA Article VII established the principal that SOFA status personnel are obliged to respect the laws of the Republic of Korea and to abstain from any activity inconsistent with the spirit of the agreement and, in

particular, from any political activity in the ROK.

How do USFK personnel enter/exit Korea? The entry/exit port most frequently used by SOFA status personnel is Incheon International Airport. Other authorized ports of entry/exit for SOFA status personnel include Osan Air Base, Busan, Gimhae, Daegu, Kunsan Air Base, Gimpo, Gwangju and Cheju City. Active duty military personnel are required to present their PCS/TDY/Leave orders and military identification card. SOFA status civilians (i.e. members of the civilian component, invited contractors, technical representatives, dependents) are required to have a valid United States passport and Korean visa. Persons who neglect to have their passport and/or visa renewed may be detained or subject to fines by Korean authorities.

What should USFK personnel know about Korean visas? SOFA personnel, besides active duty military, arriving in the Republic of Korea can enter without a visa. They will in turn receive a 90 day tourist visa when they process through Korean Immigration at the airport. SOFA personnel should get their "tourist" visa changed to an A-3 within 30 days after arrival. If possible, SOFA personnel should have an A-3 visa stamped in their US passport by officials of a Korean Embassy or consulate nearest their duty station prior to coming to Korea. Korea's embassy to the United States is in Washington, DC, and Korean consulates are located in New York City, Los Angeles, Honolulu and other cities. The A-3 visa identifies persons residing (sojourning) in Korea pursuant to the terms of an international agreement like the SOFA; therefore, it's common for

people to refer to A-3 as the "SOFA visa." Within 30 days of arrival in Korea, you are required to present your passport and other pertinent documents to Korean authorities so they can verify your status: a "Verified Under ROK-US SOFA" stamp will be affixed in your passport by Korean immigrations authorities next to the A-3 visa stamp. If your passport and/or visa should expire before your tour in Korea ends, you must apply at the American Embassy for a new US passport and/or to the Korean immigrations office for a Korean visa. Civilian component members and their dependents should contact their servicing civilian personnel office. Invited contractors and technical representatives should contact their USFK sponsor.

Are USFK personnel subject to customs laws? The Republic of Korea, like all sovereign nations, has customs laws and regulations that apply to Korean citizens, visitors and alien residents. US military personnel entering Korea under government orders are exempt from ROK customs duties but must fill out customs declarations and must undergo customs examination conducted by US military customs inspectors, but not by ROK customs authorities. ROK authorities will conduct customs examinations on US military personnel under leave orders and all SOFA status civilian personnel entering or exiting Korea.

USFK personnel are permitted to import, during a period of six months from the date of first arrival in Korea, free from Korean customs duties, reasonable quantities of personal effects, household goods and furniture for their private use. Certain items are afforded duty free

import any time during one's tour: privately-owned vehicles (POVs), vehicle spare parts (regardless of shipping mode); and reasonable quantities of personal effects and household goods may be received through the US military mail system.

What restrictions apply to the military postal system? Certain classes of mail delivered through the United States military postal system are subject to customs examination, including visual, x-ray and physical inspection, by ROK customs officials. Other classes of mail, however, are not subject to examination: first class letter mail, US Government official mail, parcels and envelopes identified as containing photographic film, audio or video tape recorded messages, computer media messages or similar magnetic or radiation sensitive items and mail addressed to personnel of the US Embassy and the Joint United States Military Advisory Group-Korea.

Korean customs inspections are conducted on a sample basis at United States military postal facilities in the presence of US military postal personnel. Korean customs officials are obligated to exercise utmost care in the examination and repackaging of parcels and to ensure that there is no disruption that would delay scheduled loading or onward movement of the mail.

Is USFK afforded other duty-free privileges? Non-appropriated fund (NAF) organizations like exchanges, clubs, theaters, newspapers and the commissaries are authorized to import materials, supplies and equipment free of customs duties. USFK personnel may purchase NAF and commissary goods provided they comply with the provisions

of USFK Regulation 60-1 which prohibit their transfer to persons not authorized duty-free privileges.

How can USFK personnel dispose of duty-free goods? USFK personnel may sell duty-free goods according to prescribed procedures. For sales to persons entitled to duty-free privileges, USFK Regulation 643-2, Transfer of Duty-Free Items, explains steps you must follow and sales records you should keep. USFK personnel may also sell duty-free goods to persons ordinarily not entitled to import goods duty-free into Korea. Details concerning the sale of duty-free goods to persons not entitled duty-free import privileges are also set forth in USFK Regulation 643-2.

USFK Personnel may give articles of limited value as bona fide gifts. When using personal funds, gifts of duty free goods to persons not entitled to duty free import privileges may not exceed \$50 in value. However, certain items, regardless of value, are prohibited: cigarettes, duty free goods purchased from a DOD commissary, alcoholic beverages and subsistence items purchased from AAFES outlets may not be given as gifts. These gift restrictions do not apply to prepared food and beverages you would ordinarily serve guests at a social function. Refer to USFK Regulation 643-2 for information about disposal of articles as gifts.

Finally, USFK personnel may provide clothing and personal items to their domestic employees such as housemaids to maintain standards of appearance and cleanliness in the performance of their domestic duties.

What tax liabilities apply to USFK personnel? SOFA status personnel pay taxes to the US Government but are exempt from Korean taxes, on income they receive as a result of service to the US Government or from sources outside Korea. SOFA status personnel are not exempt from Korean taxes on real property owned in Korea or from sales and other taxes when making individual purchases of goods and services. Individuals may face Korean tax liabilities if they take jobs on the Korean economy or receive income from investments such as local real estate or Korean securities. US military personnel and civilian component members are prohibited from working on the Korean economy, but family members may do so if they obtain a proper work visa in addition to their A-3 SOFA visa.

What is the "SOFA Card"? All USFK personnel should carry a HQ United States Forces, Korea, SOFA Card (USFK FL 1EK) at all times. The SOFA Card is designed to assist USFK personnel in the event they become involved with Korean law enforcement officials. The ROK authorities have agreed in cases of apprehension, to promptly notify the USFK authorities in order for the apprehended person to communicate with a representative of the US Government. Information contained on the SOFA Card include instructions to USFK personnel, a request for assistance in Korean as well as English, a statement of SOFA status in Korean and a list of emergency telephone numbers.

What should USFK personnel know about criminal jurisdiction in Korea?

Korea has exclusive or primary jurisdiction over almost all offenses

committed in Korea by US service members. The US has exclusive jurisdiction only when no crime has been committed under Korean law; the US has primary jurisdiction only in those limited instances when the alleged offense is solely against the property or security of the US, is solely against the person or property of another person covered by the SOFA or arises out of any act or omission done in the performance of official duty. Unless an alleged offense falls within one of these exceptions, Korea has exclusive or primary jurisdiction even where the offense occurs on a military installation. The Korean prosecutor is made aware of all alleged offenses investigated by US authorities because the provost marshal is required to report all such incidents. The US always requests the Korean Government to waive jurisdiction in cases involving US military members where Korea has primary jurisdiction; the Korean Government then has 28 days, with an additional extension of 14 days, in which to respond. If Korea elects not to exercise jurisdiction or does not respond within the time period the US military may exercise jurisdiction. If Korea exercises jurisdiction over an offense, the US may not try the soldier for the same offense within the Republic of Korea. The soldier may be prosecuted by both Korea and the US for different offenses arising out of the same incident. Korea is most likely to exercise jurisdiction over serious violent crimes (murder, rape, robbery, etc.), serious black-marketing offenses, hit-and-run driving, and attempts to commit such offenses.

Criminal procedures.

1. Apprehension and custody. Service members should not resist apprehension by Korean law enforcement officials, and they should present their military identification card and SOFA card upon being apprehended. US constitutional law and Article 31, UCMJ do not apply to the interrogation of service members by Korean officials. Specifically, although a suspect has a right to have an attorney present during questioning, the Korean Government need not provide an attorney for the suspect during questioning, nor must a suspect be advised of his 5th Amendment or Article 31, UCMJ rights. During questioning, service members are entitled to the presence of a US representative appointed by USFK. Service members have an absolute right to refuse to make a statement; and they should be highly discouraged against signing any purported statement unless it has been translated into English.

2. Pretrial custody and confinement.

A. The US retained custody until the completion of all judicial proceedings, including appeals prior to 2001. Under the revised SOFA, the ROK may now receive custody upon indictment if it requests in any one of twelve categories of serious cases. Such cases include murder, rape, kidnapping, arson, drug trafficking or manufacturing, robbery with a dangerous weapon, and cases of assaults, drunk driving or fleeing the scene of an accident that result in death. In very serious cases of murder or rape, if the Korean police arrest a SOFA accused in the act, in hot pursuit, or before he or she returns to military control, they may retain custody.

B. However, SOFA personnel are protected by a very strong package of “due process” rights while in Korean pretrial custody and confinement, including the right to release on bail. A person subject to custody upon arrest (e.g., caught in the act for murder) may not be interrogated until both a US representative and a lawyer representing the accused is present. Statements taken without their presence are not admissible in court. Korean authorities may not question an accused in their custody after indictment, except about totally unrelated matters; even then, a US representative must be present during the interrogation.

C. In addition, SOFA personnel are entitled to a pretrial confinement hearing with a lawyer present and will not be confined by the ROK without a judge’s determination that confinement is warranted because there is reasonable cause to believe that he/she committed the offense; **and** (1) that he/she may flee, or (2) that he/she has destroyed or may destroy evidence, or (3) that he/she may cause harm to a victim, witness or family member of a witness or victim. This is very similar to the due process procedures in US law.

D. When suspected of a criminal act, the service member is placed in an international hold status. He/She is issued an over-stamped ID card and is not permitted to leave Korea even if his/her unit redeploys. If the service member's ETS date is reached, he/she would be allowed to choose between extending enlistment or allowing the Koreans to take over his/her custody. If the US decides to impose pretrial confinement, the service member will be confined at a US confinement facility.

3. Trial. As with other aspects of criminal procedure in the Korean criminal justice system, US constitutional rights do not apply to Korean criminal trials. A US service member in a Korean court has the right to a prompt and speedy trial, to be informed in advance of trial of the charges, to confront adverse witnesses, to compel the presence of favorable witnesses and to choose their own counsel. All of the rights, however, are interpreted in light of Korean law and practice. A service member is not entitled to representation by a JAG attorney. The US Government will pay for the services of an English-speaking Korean attorney. The court will appoint an interpreter. A US official will act as a trial observer to ensure that the service member receives all the procedural safeguards to which he/she is entitled. The Department of Defense and the Department of State will be notified where it appears that the service member's SOFA rights are not being granted.

4. Post-trial. Post-trial confinement will be served in a Korean confinement facility in Chonan, Korea, which meets certain agreed minimum standards of space, heat, health, etc. If confined, the service member will be visited monthly by a US representative.

Special issues.

1. Black-marketing. US regulations and Korean customs laws prohibit US personnel from transferring duty-free goods to persons not entitled to duty-free privileges except under limited circumstances. Duty-free goods are those imported into Korea by a SOFA-status person, brought in through the

APO or obtained at post exchanges, commissaries, shoppettes and Class VI stores. Transferring includes selling, bartering, pawning, loaning and giving a gift; however, gifts of duty-free goods are permitted, if the gift is under \$50.00 and is not alcohol or tobacco, was not purchased from a commissary and is not a subsistence item. Service members may also be required to show continued possession or lawful disposition of high-value duty-free purchases. If there is a question about a proposed transfer, prior approval from the command should be obtained.

2. Drug stores. Korean drug stores and similar establishments are off-limits to US personnel. This restriction is imposed because some controlled substances under US law can be purchased without prescription in Korean drug stores.

3. Drunk driving. Korean law concerning driving under the influence of alcohol is much stricter than US law. A blood alcohol percentage of 0.05% is a violation of Korean law. This is much stricter than the usual standard of 0.10% under most US jurisdictions.

4. Traffic accidents. Traffic in Korea is different than in the US. It is not uncommon for children to play in the streets, people to cross the street outside a crosswalk without looking and drivers to do the unexpected. Under Korean law, drivers are responsible for the safety of pedestrians and other drivers. If a driver is involved in an accident, it will almost always be considered his/her "fault" and may be treated as a criminal offense. In case of an accident not involving a fatality where the damage or injury is paid for, the Korean Government

will usually not press charges unless alcohol, fleeing the scene, gross negligence (extreme carelessness or recklessness) or another major traffic offense is involved. The command can assist the service member in making a settlement; and no action should be taken which could aggravate the Koreans. If an accident occurs, the driver should stop immediately and not attempt to flee the scene. If the Koreans believe a driver has attempted to flee the scene, they are more likely to begin criminal proceedings. Anyone who is injured or may be injured should be transported to a hospital. The military police (MPs) should be notified immediately so that they can conduct their own investigation. If the driver cannot gain access to a telephone, he/she should ask the Korean police to call the MPs.

5. Assaults. In Korea, verbal altercations (shouting matches) are not unusual, but shoving is not tolerated. Service members should not be provoked into pushing a Korean. Under Korean law this is an assault.

6. Elderly people. Elderly people in Korea are treated with great respect and service members should make sure to treat them likewise. Violence or abuse of the elderly is a serious crime in Korea.

7. Counterfeit Products. Many "brand name" items can be purchased cheaply in Korea, but they may be counterfeit; and if so, they may be confiscated when taken or mailed back to the US. Personnel on leave to China or Southeast Asian countries may be tempted to purchase "bargain" goods that may be seized by Korean customs officials if they are determined to be

counterfeit upon re-entry to Korea. There have been cases of Korean prosecutors seeking criminal indictment for smuggling when large quantities of counterfeit goods were involved.

What should USFK personnel know about Korean civil jurisdiction? The Korean courts have civil jurisdiction over all USFK personnel regardless of nationality. USFK military and civilian employees and their dependents can sue and be sued in Korean civil courts in cases concerning breach of a lease, support of illegitimate children, failure to pay just debts and damages and injuries from an accident. A Korean civil court judgment generally can be enforced against the money and personal property of USFK personnel while in Korea or when relocated in the US. However, Korean civil court judgments cannot be enforced if the cause of action arises out of the official duties of USFK personnel or if a claim was paid in settlement. Whenever an official Korean judicial document is received by USFK personnel on any civil action, they should immediately consult with a USFK legal assistance officer.

Do USFK personnel need a Korean license to drive a vehicle? Under the SOFA, the Korean Government accepts as valid, a driving permit or license issued by the US Government, the fifty states or US territories. Invited contractor personnel and their dependents are required to obtain a ROK driving license. All USFK personnel (including family members) who operate privately owned vehicles (POVs) must obtain a USFK Motor Vehicle Operator's Permit (USFK Form 134EK) through one of the USFK driver testing facilities. Applicants must complete two written

tests in English: one on Korean traffic control devices and another on Korean laws and regulations. (Reference USFK Regulation 190-1).

What should USFK personnel know about importing, licensing and operating a privately owned vehicle (POV)? For authorized USFK personnel, POVs may be imported duty free. Licensing procedures begin at the Provost Marshal/Security Police office by submitting an application along with proof of ownership, insurance and import clearance documents. A safety inspection is also required and can be done at AAFES garages on most USFK installations. When the license plate is issued, you are required to affix it with a long bolt that is then sealed by a Korean official. The Korean Government charges a small fee to cover the manufacturing cost of the license plate. Details about these procedures may be obtained from your local military police authorities or USFK Regulation 190-1, Motor Vehicle Traffic Supervision. USFK personnel who register POVs are not required to pay quarterly road use taxes, but they must pay expressway tolls, airport parking fees and similar usage fees.

What is the status of USFK's Korean work force? Korean civilian employees contribute a wide range of skills essential to the USFK's mission. Approximately 14,500 are classified direct hire employees who are paid by the US Government. In recent years, the Korean Government has contributed to the costs for Korean civilian employees as part of their host country burden sharing. Additional direct hire Korean civilians work for USFK's invited contractors. Finally, approximately 2,500

direct hire Korean civilian employees make up the Korean Service Corps (KSC). The KSC is a paramilitary labor force, the origin of which dates to the Korean War when Korean laborers provided support services to US military forces.

The SOFA contains provisions for maintaining effective labor relations between the USFK and the Korean civilian workforce. SOFA Article XVII provides a framework to resolve labor disputes that cannot be settled through the ordinary grievance or labor relations procedures in the USFK's Labor-Management Agreement. All supervisors of Korean civilian employees - military, civilian or invited contractor - should be familiar with the provisions of SOFA Article XVII, Labor, and related agreements and regulations.

Are personal hire employees of USFK personnel affected by SOFA provisions? The SOFA does not apply to domestics employed by individual members of USFK. However, USFK personnel are expected to abide by prevailing local customs in such matters as holiday bonuses and severance pay.

How are US invited contractors affected by the SOFA? SOFA Article XV established the basis for entitlements for US invited contractors and their dependents. USFK Regulation 700-19 contains the policies and procedures pertaining to invited contractors and describes authorized privileges and exemptions. In consultation with the ROK Government, USFK confers invited contractor status. The Korean Government has the right to exercise jurisdiction over US invited contractor personnel for offenses committed and

punishable by Korean law. However, invited contractor personnel are guaranteed the right of US pre-trial custody and other important safeguards which apply to USFK civilian employees.

What other USFK operations are affected by the SOFA? The SOFA is concerned with many subjects that influence USFK operations. For example, SOFA Articles II, III, IV, and V concern grant, security measures, cost & maintenance and return of land and facilities occupied by US forces. These lands and facilities are provided to the USFK without charge as part of the ROK Government's contribution for the joint defense of Korea. SOFA Article XXIII concerns the important subject of claims by Korean nationals against the US Government, as well as other types of claims. In the event SOFA status personnel become involved in claims questions, they should immediately seek advice from the Judge Advocate. Other SOFA articles concern USFK's use of ROK utilities, meteorological services, airspace, airports, harbors and port facilities. Still other SOFA articles establish procedures for local procurement by USFK in Korea and for US-ROK cooperation in implementing joint security, health, food inspection and quarantine and sanitation measures. Taken together, these SOFA articles assist in the effective implementation of the US-ROK Mutual Defense Treaty and safeguard the security and convenience of USFK personnel in Korea.

How does the SOFA, a document signed in 1966, accommodate changes of circumstances in the US-ROK relationship? The SOFA contains provisions for a Joint Committee to hold consultations and work out

understandings to deal with problems relating to the agreement. The Joint Committee is co-chaired by a US Representative, the USFK Deputy Commander who is appointed by the US Ambassador, and a ROK Representative, the Director General for North American Affairs (a senior Foreign Ministry official) who is appointed by the Minister of Foreign Affairs. The US Representative is supported by the Alternate US Representative, the USFK Deputy Chief of Staff, Plans, and a permanent SOFA Secretariat consisting of a US Secretary, two Assistant Secretaries, and a Korean translator/interpreter. The Secretariat maintains the official records of Joint Committee and Subcommittee meetings and is the liaison with ROK Government ministries in carrying out SOFA business.

Work of the Joint Committee is carried out when the US and ROK Representatives assign "tasks" to one or more of Joint Committee's subcommittees or to special working groups established especially to deal with a problem. These subcommittees and special working groups have representatives from both sides that are functional experts for the matter in question. After the subcommittees or working groups have completed their work, their findings and recommendations are reported to the Joint Committee. Recommendations that are accepted by the US and ROK Representatives are recorded in the Joint Committee minutes and become part of the SOFA.