



DoD INSTRUCTION 5525.01

FOREIGN CRIMINAL AND CIVIL JURISDICTION

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Approved by: Paul C. Ney, Jr., General Counsel of the Department of Defense

Purpose: In accordance with the authority in DoD Directive 5145.01, this issuance establishes policy, assigns responsibilities, and prescribes procedures concerning trial by foreign criminal courts of, treatment in foreign prisons of, and the payment of counsel fees in certain criminal and civil cases for DoD personnel.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD.

1.2. POLICY.

a. It is DoD policy to apply, when practicable, procedures similar to those called for in the U.S. Senate Resolution of Ratification, with reservations, to the North Atlantic Treaty Organization Status of Forces Agreement, in all areas outside the United States where DoD personnel are present in connection with official duties, even in those areas where the North Atlantic Treaty Organization Status of Forces Agreement is not applicable.

b. DoD will, for DoD personnel present in all areas outside the United States in connection with official duties:

(1) Maximize the exercise of U.S. jurisdiction over such DoD personnel to the extent permissible under applicable status of forces agreements or other forms of jurisdiction arrangements.

(2) Protect, to the maximum extent possible, the rights of such DoD personnel who may be subject to criminal trial by foreign courts and imprisonment in foreign prisons.

(3) If arrested, secure, where possible, the release of such DoD personnel to the custody of U.S. authorities pending completion of all foreign judicial proceedings.

c. Trial by foreign criminal courts, treatment in foreign prisons, and payment of counsel fees in certain criminal and civil cases for command-sponsored and non-command-sponsored dependents of Service members and non-military DoD personnel outside the United States will follow the requirements in Part 151 of Title 32, Code of Federal Regulations (CFR).

1.3. INFORMATION COLLECTIONS.

a. The collection and study of relevant laws and legal procedures in effect for a foreign country, referred to in Paragraph 4.1., are exempt from licensing requirements in accordance with Paragraph 1.b.(15), Enclosure 3 of Volume 1 of DoD Manual 8910.01.

b. The Trial Observers' Formal Reports, referred to in Paragraph 4.4., are exempt from licensing requirements in accordance with Paragraph 1.b.(1), Enclosure 3 of Volume 1 of DoD Manual 8910.01.

c. The reports of individuals confined in foreign penal institutions, referred to in Paragraph 4.7., are exempt from licensing requirements in accordance with Paragraph 1.b.(1), Enclosure 3 of Volume 1 of DoD Manual 8910.01.

SECTION 2: RESPONSIBILITIES

2.1. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments provide for attorney’s fees in appropriate cases, and ensure awareness of laws and customs of the host country for DoD personnel assigned to foreign areas, and in accordance with Part 151 of Title 32, CFR, for their dependents.

2.2. GEOGRAPHIC COMBATANT COMMANDERS. For each country in their respective assigned areas of responsibility, the geographic Combatant Commanders will:

a. Ensure the adequacy of regulations that establish an information and education policy on the laws and customs of the host country for DoD personnel assigned to the geographic Combatant Commander’s area of responsibility.

b. Prepare a study of the relevant laws and legal procedures in effect for each foreign country in their area of responsibility where DoD personnel or their dependents are regularly stationed or are subject to its criminal jurisdiction, as outlined in Paragraph 4.1.

c. Designate a commanding officer (referred to in this issuance as a “designated commanding officer” (DCO)) as described in the U.S. Senate Resolution of Ratification, with reservations, to the North Atlantic Treaty Organization Status of Forces Agreement.

d. Ensure command implementation of the procedures in this issuance and Part 151 of Title 32, CFR.

e. Oversee the DCO in fulfilling the DCO’s responsibilities, in accordance with Section 3 of this issuance and Part 151 of Title 32, CFR.

SECTION 3: DCO PROCEDURES

3.1. FORMAL INVOCATION. The DCOs are responsible for formal invocation of procedures, where applicable, consistent with the U.S. Senate Resolution of Ratification, with reservations, to the North Atlantic Treaty Organization Status of Forces Agreement, in each foreign country where DoD personnel are present.

3.2. SERVICE MEMBERS CONFINED IN FOREIGN PENAL INSTITUTIONS. The DCOs ensure that Service members confined in foreign penal institutions are visited in accordance with Paragraphs 4.7.b. through 4.7.f.

3.3. NON-MILITARY DOD PERSONNEL IN FOREIGN PENAL INSTITUTIONS. In cooperation with the appropriate U.S. chief of mission (COM), in coordination with the senior defense official/defense attaché (SDO/DATT), and to the maximum extent possible, the DCOs ensure non-military DoD personnel receive the same treatment, rights, and support as Service members when in the custody of foreign authorities, or when confined (pre-trial and post-trial) in foreign penal institutions. DCOs will work with the appropriate U.S. COM, in coordination with the SDO/DATT, to make appropriate diplomatic contacts for non-military DoD personnel who are not U.S. nationals.

3.4. REPORTING TO THE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC DOD). The DCOs will report informally and immediately about important new cases or important developments in pending cases, including, but not limited to, instances of denial of the procedural safeguards under any applicable agreement; deficiency in the treatment or conditions of confinement in foreign penal institutions; and arbitrary denial of permission to visit DoD personnel. Such reports are made to:

- a. The GC DoD.
- b. The applicable geographic Combatant Commander.
- c. The general counsel (GC) and the judge advocate general (JAG) of the respective Military Department, or if the case involves the Marine Corps or the Coast Guard:

(1) **Marine Corps.** To the GC of the Navy and the Staff Judge Advocate (SJA) to the Commandant of the Marine Corps.

(2) **Coast Guard.** To the JAG of the Coast Guard.

3.5. INTERNATIONAL AGREEMENTS. The DCOs will take additional steps that may be authorized or required under relevant international agreements with the host nation to implement the policy of this issuance.

SECTION 4: PROCEDURES

4.1. COUNTRY LAW STUDIES.

a. Geographic Combatant Commands (GCCs) will prepare a study of the relevant laws and legal procedures in effect for each foreign country in their area of responsibility where DoD personnel or their dependents are regularly stationed or are subject to its criminal jurisdiction. The GCCs will update these studies as reasonably required to ensure they reflect developments in the country's law. Each study must include, at a minimum:

(1) A general review of the relevant substantive and procedural criminal laws of the foreign country.

(2) A comparison of such laws with the procedural safeguards of a fair trial in the federal courts of the United States, as described in Section 5.

b. Whenever a country law study is prepared, the GCC must forward copies to:

(1) GC DoD.

(2) The Legal Counsel to the Chairman of the Joint Chiefs of Staff.

(3) The GCs and the JAGs of the Military Departments and to:

(a) **Marine Corps.** The GC of the Navy and the SJA to the Commandant of the Marine Corps.

(b) **Coast Guard.** The JAG of the Coast Guard.

c. There is no standard format or length for a country law study.

(1) Principal emphasis should be on those safeguards that are of such a fundamental nature as to be guaranteed by the Constitution of the United States in all criminal trials in federal courts of the United States.

(2) See Section 5 for safeguards considered particularly important.

d. GCCs should consider developing a by-country list of relevant source materials, statutes, and websites to help with developing a country law study, should the need arise.

e. If the authorities of a foreign country intend to try DoD personnel or their dependents, but there is no existing country law study on that foreign country, the GCC concerned will examine the foreign country's laws with particular reference to the procedural safeguards contained in Section 5.

4.2. FOREIGN CRIMINAL JURISDICTION CASES INVOLVING SERVICE

MEMBERS. Commanders exercising general court-martial jurisdiction over Service members will make consistent efforts with appropriate officials of a foreign country to maximize U.S. jurisdiction to the extent practicable and consistent with applicable agreements.

a. In cases where it appears probable that the release of jurisdiction over Service members will not be obtained, and the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the accused must:

(1) Promptly communicate directly with the DCO, reporting the full facts of the case.

(2) Provide the DCO with a recommendation as to whether to request jurisdiction formally.

b. The DCO will determine, in light of legal procedures in effect in that country, whether the accused is likely to receive a fair trial.

(1) A trial will not be considered unfair merely because it is not conducted in a manner identical to trials held in the United States.

(2) In determining whether a trial will be unfair, due regard must be given to those U.S. trial rights, listed in Section 5, that are relevant to the facts and circumstances of the trial in question.

c. If the DCO determines there is risk of an unfair trial, he or she will decide, after consultation with the U.S. COM, in coordination with the SDO/DATT, whether to submit a request through diplomatic channels for the host nation to waive its jurisdiction.

(1) The objective in each case is to maximize U.S. court-martial jurisdiction over Service members or to see that Service members obtain a fair trial in the host country under all circumstances.

(2) If the DCO decides to submit a request for the host nation to waive its jurisdiction, the recommendation will be submitted to the Secretary of Defense (with an advance copy to the GC DoD), through the geographic Combatant Commander, the Chairman of the Joint Chiefs of Staff, and the Secretary of the Military Department concerned or the Secretary of Homeland Security. Copies of the recommendation must be provided to:

(a) The Under Secretary of Defense for Policy.

(b) The JAG of the accused's Military Department or, in the case of the Marine Corps or Coast Guard:

1. Marine Corps. To the GC of the Navy and the SJA to the Commandant of the Marine Corps.

2. Coast Guard. To the JAG of the Coast Guard.

- (c) The Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff.

4.3. FOREIGN CRIMINAL JURISDICTION CASES INVOLVING NON-MILITARY DOD PERSONNEL When it appears that foreign authorities may exercise criminal jurisdiction over non-military DoD personnel:

- a. The DCO may request that local foreign authorities waive the exercise of host nation criminal jurisdiction if, after a careful consideration of all the circumstances, he or she determines that suitable action can be taken under existing U.S. laws or administrative regulations.

- b. If it appears possible that the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the command to which such non-military DoD personnel are attached or with which they are associated will communicate directly with the DCO, reporting the full facts of the case. The DCO will:

- (1) Determine, in the light of legal procedures in effect in that country, if there is a risk that the accused will not receive a fair trial.

- (2) If such a risk exists, decide, after consultation with the U.S. COM, in coordination with the SDO/DATT, whether to:

- (a) Submit, through diplomatic channels, a request to foreign authorities for assurances of a fair trial; or

- (b) In appropriate circumstances, request that the foreign authorities waive the exercise of jurisdiction over the accused.

- c. The DCO will submit the recommendation determined in Paragraph 4.3.b.(2) through the geographic Combatant Commander and the Chairman of the Joint Chiefs of Staff to the Secretary of Defense (with an advance copy to the GC DoD). Copies must be provided to:

- (a) The Under Secretary of Defense for Policy.

- (b) The JAG of the accused's Military Department or, in the case of the Marine Corps or Coast Guard:

- 1. Marine Corps. To the GC of the Navy and the SJA to the Commandant of the Marine Corps.

- 2. Coast Guard. To the JAG of the Coast Guard.

- (c) The Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff.

4.4. TRIAL OBSERVERS AND TRIAL OBSERVERS' REPORTS.

a. The DCO must maintain and submit, to the U.S. COM, in coordination with the SDO/DATT, a list of qualified people to serve as U.S. observers at trials before courts of the receiving country.

(1) Nominees must be lawyers and must be selected for maturity of judgment. The requirement that nominees must be lawyers may be waived in cases of minor offenses; incidents that result in serious personal injury or that would normally result in sentences of confinement, whether or not suspended, will not be considered minor offenses.

(2) The list should include representatives of all Military Services whose members are stationed in that country to enable the U.S. COM, in coordination with the SDO/DATT, to appoint an observer from the same Military Service as the accused, whenever possible.

b. Trial observers must attend and prepare formal reports in all cases of trials of DoD personnel by foreign courts or tribunals, except for minor offenses. In cases of minor offenses, the observer will attend the trial at the discretion of the DCO, but will not be required to make a formal report.

(1) Unless directed by the DCO, trial observers are not required to attend all preliminary proceedings, such as scheduling hearings, but will attend the trial on the merits and other pre- and post-trial proceedings where significant procedural or substantive matters are decided.

(2) Trial observer reports need not be classified, but must be treated as "FOR OFFICIAL USE ONLY" documents, in accordance with Volume 4 of DoD Manual 5200.01.

(3) Trial observers will forward their reports to the DCO. The DCO will forward those reports, intact, along with any appropriate comments from the DCO, to the geographic Combatant Commander, the U.S. COM, and to the GC and the JAG of the accused's Military Department, or in the case of the Marine Corps or Coast Guard:

(a) **Marine Corps.** To the GC of the Navy and the SJA to the Commandant of the Marine Corps.

(b) **Coast Guard.** To the JAG of the Coast Guard.

(4) These reports must be forwarded immediately upon the completion of the trial in the lower court, and will not be delayed because of the possibility of a new trial, rehearing, or appeal.

(5) Trial observers must forward reports of a new trial, rehearing, or appeal in the same manner as the original trial observer reports.

c. The trial observer report must contain a factual description or summary of the trial proceedings. It should enable those reading the report to make an informed judgment if:

(1) There was any failure to comply with the procedural safeguards secured by a pertinent status of forces agreement.

(2) The accused received a fair trial under all the circumstances. The report must specify the conclusions of the trial observer with respect to Paragraph 4.4.c.(1), and must state in detail the basis for the conclusions.

d. The trial observer must fulfill duties regarding the dependents of DoD personnel established by Part 151 of Title 32, CFR.

e. The DCO, upon receipt of a trial observer report, will be responsible for determining if:

(1) There was any failure to comply with the procedural safeguards secured by the pertinent status of forces agreement.

(2) The accused received a fair trial under all the circumstances. Due regard should be given to those fair trial rights listed in Section 5 that are relevant to the particular facts and circumstances of the trial. A trial will not be determined to be unfair merely because it is not conducted in a manner identical to trials held in the United States.

(a) If the DCO believes that the procedural safeguards specified in pertinent agreements were denied or that the trial was otherwise unfair, the DCO will submit a recommendation as to appropriate action to rectify the trial deficiencies and otherwise to protect the rights or interests of the accused. This recommendation must include a statement of efforts taken or to be taken at the local level to protect the rights of the accused.

(b) The DCO will submit the recommendation to the Secretary of Defense, through the geographic Combatant Commander concerned, the Chairman of the Joint Chiefs of Staff, and the Secretary of the Military Department concerned or the Secretary of Homeland Security (with an advance copy to the GC DoD). Copies must be provided to:

1. The Under Secretary of Defense for Policy.

2. The JAG of the accused's Military Department or, in the case of the Marine Corps or Coast Guard:

a. Marine Corps. To the GC of the Navy and the SJA to the Commandant of the Marine Corps.

b. Coast Guard. To the JAG of the Coast Guard.

3. The Office of the Legal Counsel to the Chairman of the Joint Chiefs of Staff

4.5. COUNSEL FEES AND RELATED ASSISTANCE FOR DOD PERSONNEL SUBJECT TO THE UNIFORM CODE OF MILITARY JUSTICE (UCMJ).

The Secretary of a Military Department or the Secretary of Homeland Security may employ counsel and pay counsel and other fees and costs for those subject to Chapter 47 of Title 10, United States Code

(U.S.C.), known in this issuance as the UCMJ, and who must appear before a foreign judicial tribunal or administrative agency, in accordance with Section 1037 of Title 10, U.S.C. The Secretary concerned may authorize the payment of such fees under the following circumstances:

a. Criminal Cases. Requests for the provision of counsel fees and payment of expenses in criminal cases may be approved in pre-trial, trial, appellate, and post-trial proceedings in any criminal case where:

- (1) The criminal act occurred in the performance of official duty;
- (2) The sentence that is normally imposed includes confinement, whether or not such sentence is suspended;
- (3) Capital punishment might be imposed;
- (4) An appeal is made from any proceeding in which there appears to have been a denial of the substantial rights of the accused;
- (5) Conviction of the alleged offense could later form the basis for administrative discharge proceedings for misconduct as a result of civil court disposition; or
- (6) The case, although not within the criteria established in Paragraphs 5.a.(1) through 5.a.(5), is considered to have significant impact on U.S. interests, including upon the relations of the Military Services with the host country.

b. Civil Cases. Requests for provision of counsel fees and payment of expenses in civil cases may be granted in trial and appellate proceedings in civil cases where:

- (1) The act complained of occurred in the performance of official duty by eligible DoD personnel, or was directed against eligible DoD personnel engaged in the performance of official duty; or
- (2) The case is considered to have a significant impact on the relations of the DoD or the Military Services with the host country; or in cases brought against eligible DoD personnel (and in exceptional cases, by such personnel) if the case is considered to involve any other U.S. interest.

c. Funding Restrictions.

(1) No funds will be provided in accordance with this instruction in cases where the U.S. Government is – in actuality or in legal effect – the plaintiff or the defendant; all such cases will be referred to the Department of Justice, Office of Foreign Litigation. No funds will be provided under this instruction, in accordance with Section 1037 of Title 10, United States Code, in cases where the Service member is a plaintiff without prior authorization of the Secretary of the Military Department concerned or the Secretary of Homeland Security.

(a) The provisions of Paragraph 4.5.c.(1) are applicable to proceedings with civil aspects that are brought by eligible personnel as criminal cases in accordance with local law.

(b) Funds for the posting of bail or bond to secure the release of personnel from confinement will be used as provided by applicable Service regulations.

(2) As provided for in Section 1037 of Title 10, U.S.C., no funds will be provided under Paragraph 4.5.b. to a plaintiff who, if successful, would receive an award, in whole or in part, from the United States.

(3) As provided for in Section 1037 of Title 10, U.S.C., a person on whose behalf a payment is made under this provision is not liable to reimburse the United States for that payment, unless he or she is responsible for the forfeiture of bail provided for him or her under this provision.

4.6. COUNSEL FEES AND RELATED ASSISTANCE FOR DOD PERSONNEL OR DEPARTMENT OF HOMELAND SECURITY PERSONNEL NOT SUBJECT TO THE UCMJ. In cases of exceptional interest to the Military Departments or the Department of Homeland Security involving DoD personnel or Department of Homeland Security personnel not subject to the UCMJ, the Secretary concerned may approve, in accordance with Section 1037 of Title 10, U.S.C., the provision of counsel fees and payment of expenses under the same conditions and circumstances outlined in Paragraph 4.5.

4.7. TREATMENT OF SERVICE MEMBERS CONFINED IN FOREIGN PENAL INSTITUTIONS.

a. To the maximum extent practicable and subject to the laws and regulations of the country concerned and the provisions of any applicable agreement, the DoD will seek to maintain custody of an accused, or endeavor to secure the release of an accused to the custody of U.S. authorities, pending completion of all foreign judicial proceedings, including appeals. The DoD seeks to ensure that Service members:

(1) When in the custody of foreign authorities, are fairly treated at all times.

(2) When confined (pretrial and post-trial) in foreign penal institutions, are treated appropriately and are entitled to all the rights, privileges, and protections of personnel confined in U.S. military facilities. Such rights, privileges, and protections are identified in this issuance and in Military Department or Department of Homeland Security directives and regulations, and include, but are not limited to, legal assistance, visitation, medical attention, food, bedding, clothing, and health and comfort supplies.

b. Service members confined in foreign penal institutions must be visited at least every 30 days, at which time the conditions of confinement and other matters relating to their health and welfare must be observed. The Military Departments, and the Department of Homeland Security by agreement, must maintain current records of these visits as reports by their respective commands. Records of each visit, which must be maintained consistent with DoD Instructions 5400.11 and 5015.02, should contain:

(1) Names of personnel conducting the visit and date of the visit.

- (2) Name of each prisoner visited, DoD identification number, and sentence.
 - (3) Name and location of the prison.
 - (4) Treatment of the individual prisoner by the prison warden and other personnel (include a short description of the rehabilitation program, if any, as applied to the prisoner).
 - (5) Conditions existing in the prison, such as light, heat, sanitation, food, recreation, and religious accommodations.
 - (6) Change in the status of the prisoner or conditions of confinement, including any transfer to another institution.
 - (7) Condition of the prisoner (e.g., physical and mental).
 - (8) Assistance given to the prisoner (e.g., legal, medical, food, bedding, clothing, and health and comfort supplies).
 - (9) Action taken to have any deficiencies corrected, either by the local commander or through the U.S COM in coordination with the SDO/DATT.
 - (10) Designation of the command responsible for the prisoner's welfare and reporting of visits.
 - (11) Information as to discharge of a prisoner from the Military Service or termination of confinement.
- c. When it is impracticable for the individual's commanding officer or unit representative to make visits, the DCO should arrange for another entity to be responsible for such visits or request, in coordination with the SDO/DATT, that the appropriate U.S. COM assume such responsibility.
- (1) When necessary, a medical officer should participate in the visits and record the results of medical examinations.
 - (2) If reasonable requests for permission to visit Service members are arbitrarily denied, or it is determined that the individual is being mistreated or that the conditions of custody or confinement are substandard, the case should be reported to the U.S. COM concerned, in coordination with the SDO/DATT, for appropriate action.
- d. When a DCO has arranged with the appropriate U.S. COM to assume responsibility for such visits, and when it is the practice of the U.S. COM to make such visits less frequently than once every 30 days, the DCO must inform the immediate higher headquarters in the individual's Service chain of command.
- (1) The DCO must:
 - (a) Report all circumstances and conditions of confinement.

(b) Provide a description of arrangements made regarding visitation, and the frequency of such visits.

(c) Request a waiver of the 30-day requirement in Paragraph 4.7.b. from the higher headquarters commander.

(2) The higher headquarters commander will determine, with advice from his or her SJA, whether the proposed arrangement affords sufficient protection for the individual in accordance with the guidance prescribed in this instruction, and whether to waive the 30-day requirement.

(3) An informational copy of the waiver request and responsive correspondence must be provided to the relevant Military Department Secretary or the Secretary of Homeland Security, to the responsible geographic Combatant Commander, to the GC DoD, and to the relevant U.S. COM.

e. To the extent possible, military commanders should seek to develop arrangements with local authorities whereby U.S. military authorities may be permitted to provide Service members who are confined in foreign institutions with the treatment, rights, privileges, and protections similar to those accorded such personnel confined in U.S. military facilities. The details of such arrangements should be submitted to the JAG of the accused's Military Department or, in the case of the Marine Corps or the Coast Guard:

(1) **Marine Corps.** To the SJA to the Commandant of the Marine Corps.

(2) **Coast Guard.** To the JAG of the Coast Guard.

f. Military commanders will arrange with appropriate foreign authorities for Service members to be turned over to U.S. military authorities when they are released from confinement. In appropriate cases, military authorities should ask the U.S. COM, in coordination with the SDO/DATT, to provide updates on the anticipated date of the release of such persons from foreign authorities.

4.8. TREATMENT OF NON-MILITARY DOD PERSONNEL CONFINED IN FOREIGN PENAL INSTITUTIONS. In cooperation with the appropriate U.S. COM, in coordination with the SDO/DATT, and to the maximum extent possible, the DCO will ensure that non-military DoD personnel receive the same treatment, rights, and support as would be extended to Service members when in the custody of foreign authorities, or when confined (pretrial and post-trial) in foreign penal institutions. The DCO will work with the appropriate U.S. COM, in coordination with the SDO/DATT, to make appropriate diplomatic contacts for the categories of personnel described in this section who are not U.S. nationals.

4.9. DISCHARGE. The Military Services will not approve administrative discharge of Service members from the Military Service concerned while the member is confined in a foreign prison.

a. The Military Service concerned will only approve a discharge when the accused Service member completes the term of imprisonment and returns to the United States.

b. In exceptional cases, the Military Department Secretary concerned may authorize such discharges before the term of imprisonment is complete.

4.10. INFORMATION POLICY. The general public and the Congress must be provided promptly with the maximum information concerning status of forces matters that are consistent with the national interest. Information will be coordinated with the appropriate offices and provided to the public and the Congress in accordance with established procedures, including those in DoD Directives 5122.05, 5400.07, and 5400.11, and DoD Instruction 5400.04.

SECTION 5: FAIR TRIAL GUARANTEES

5.1. COUNTRY LAW STUDIES PREPARATIONS. The list at Table 1 serves as a guide for the preparation of country law studies prescribed by Paragraph 4.1.a.

Table 1. Guide for the Preparation of Country Laws

Criminal statute alleged to be violated must set specific and definite standards of guilt.
Accused will not be prosecuted under an <i>ex post facto</i> law.
Accused will not be punished by bills of attainder.
Accused must be informed of the nature and cause of the accusation and have a reasonable time to prepare a defense.
Accused is entitled to have the assistance of defense counsel.
Accused is entitled to be present at the trial.
Accused is entitled to confront hostile witnesses.
Accused is entitled to have a compulsory process for obtaining favorable witnesses.
Use of evidence against the accused obtained through unreasonable search or seizure or other illegal means is prohibited.
Burden of proof is on the government in all criminal trials.
Accused is entitled to be tried by an impartial court.
Accused may not be compelled to be a witness against him or herself; and will be protected from the use of a confession obtained by torture, threats, violence, or the exertion of any improper influence.
Accused will not be subjected to cruel and unusual punishment.
Accused is entitled to be tried without unreasonable (prejudicial) delay.
Accused is entitled to a competent interpreter when the accused does not understand the language in which the trial is conducted and does not have counsel proficient in the language both of the court and of the accused.
Accused is entitled to a public trial.
Accused may not be subjected to consecutive trials for the same offense in a manner indicative of fundamental unfairness.

5.2. DCO DETERMINATIONS. This list also serves as a guide for the DCO in making determinations in accordance with the procedures in Paragraphs 4.2. through 4.4. and guidance in Part 151 of Title 32, CFR. This list is not exhaustive; when evaluating foreign trial processes, DCOs should consider other factors that could result in a violation of due process of law in federal court proceedings in the United States.

GLOSSARY

G.1. ACRONYMS.

CFR	Code of Federal Regulations
COM	chief of mission
DCO	designated commanding officer
GC	general counsel
GC DoD	General Counsel of the Department of Defense
GCC	geographic Commandant Command
JAG	judge advocate general
SDO/DATT	senior defense official/defense attaché
SJA	staff judge advocate
U.S.C.	United States Code
UCMJ	Uniform Code of Military Justice

G.2. DEFINITIONS. These terms and their definitions are for the purpose of this issuance.

area outside the United States. Any area outside the United States and its territories and possessions, the northern Mariana Islands, and the Commonwealth of Puerto Rico.

DCO. The military officer who is designated by the appropriate geographic Combatant Commander to fulfill the duties outlined in this instruction.

non-military DoD personnel. Nationals and non-nationals of the United States who are serving with or accompanying the Military Services in an area outside the United States.

DoD personnel. Service members and non-military DoD personnel, when those personnel are in an area outside the United States in connection with official duties. Service members and non-military DoD personnel serving under a U.S. COM are not considered to be “DoD personnel” as defined in this instruction.

Service. Includes all Armed Forces, including the U.S. Army, U.S. Navy, U.S. Air Force, U.S. Marine Corps, and U.S. Coast Guard.

REFERENCES

- Code of Federal Regulations, Title 32
- DoD Directive 5122.05, “Assistant to the Secretary of Defense for Public Affairs (ATSD(PA)),” August 7, 2017
- DoD Directive 5145.01, “General Counsel of the Department of Defense (GC DoD),” December 2, 2013, as amended
- DoD Directive 5400.07, “DoD Freedom of Information Act (FOIA) Program,” April 5, 2019
- DoD Instruction 5015.02, “DoD Records Management Program,” February 24, 2015, as amended
- DoD Instruction 5400.04, “Provision of Information to Congress,” March 17, 2009
- DoD Instruction 5400.11, “DoD Privacy Program,” January 29, 2019
- DoD Manual 5200.01, Volume 4, “DoD Information Security Program: Controlled Unclassified Information (CUI),” February 24, 2012, as amended
- DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014, as amended
- United States Code, Title 10
- U.S. Senate Resolution of Ratification, With Reservations, to the North Atlantic Treaty Organization Status of Forces Agreement, as agreed to by the Senate on July 15, 1953¹

¹ Available at <http://photos.state.gov/libraries/italy/217417/pdf/sofa-en.pdf>