

**UNDERSTANDINGS TO 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, AS AMENDED**

The United States of America and the Republic of Korea have agreed to the following Understandings:

**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 that 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 United States and the Republic of Korea 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 for the use specified in the original acquisition document at the time of the grant or future programmed use. This does not preclude the Republic of Korea 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.

2. Whenever there is a change in the use of granted facilities and areas as originally listed on the acquisition documents recording the grant, the United States will notify and consult with the Republic of Korea.

(a) In a case in which the United States expresses a need to continue to use the granted area and facility, the Facilities and Areas Subcommittee will conduct a survey of the granted area. The survey results and the new use of the granted area will be properly recorded on the acquisition documents.

(b) In a case in which the granted area and facility is programmed for use, such as for major military construction or unit realignment, by the United States, the Facilities and Areas Subcommittee will conduct a survey of the granted area. The programmed use will be properly recorded on the acquisition documents with the expected program start date, not to exceed three years. If the programmed use is expected to exceed three years due to internal legislative constraints, the Joint Committee shall be notified and determine if an extension of the program start date is warranted.

(c) In a case in which the Facilities and Areas Subcommittee determines that there is no existing use or programmed use for an area or facility, the Facilities and Area Subcommittee will report the results of its review to the Joint Committee with a recommendation that the area be returned. The Joint Committee shall review the recommendation and direct the return of the area or facility. The United States will return the area or facility under terms and conditions approved by the Joint Committee.

3. In order to assist an accurate annual review of granted facilities and areas as envisaged in paragraph 1 of this Understanding, the Joint Committee will develop procedures to jointly survey existing facilities and areas. Joint survey procedures should result in a determination of the boundaries and size (area) of granted area(s), the numbers of buildings and structures on granted areas, the size and area of those structures and buildings, and verification of the general category of use of each granted facility and area. The results of joint surveys will be used to ensure that properly executed acquisition documents exist and are properly filed with the real estate representatives and offices of record of both Parties, and to determine whether there is a need to return the facility or area.

4. If a case is reported to the Joint Committee that use of a granted area or facility is impaired due to constraints, such as encroachment, the Facilities and Areas Subcommittee shall report the constraint to the Joint Committee and immediately engage in consultations with a view toward removing the constraint. The Republic of Korea will promptly initiate steps to eliminate the constraint including taking administrative measures acceptable to both sides. The United States armed forces will also take necessary measures to properly manage and prevent encroachment to the extent possible of granted areas and facilities of which the United States has full rights of use, and the Republic of Korea will provide administrative support upon request of the United States armed forces.

### ARTICLE III

#### **Paragraph 1**

Consistent with the right of the United States to take "all the measures necessary for their establishment, operation, safeguarding and control" within granted facilities and areas, the United States shall notify and consult with the Government of the Republic of Korea on a timely basis about planned (1) modification or demolition (removal) of indigenous buildings and (2) new construction or alteration as defined by the Joint Committee that may affect the ability of local Korean providers or communities to provide relevant utilities and services, or may affect health and public safety in local communities. The United States shall notify and consult, which may include providing an initial planning document, with the Government of the Republic of Korea in sufficient time to allow a coordinated review of planned construction with local governments. The Joint Committee will develop the format of the "initial planning document." The Government of the Republic of Korea shall consult with the United States armed forces on the results of any local coordination. The United States will give due consideration to the views expressed by the Republic of Korea. This procedure does not preclude the United States armed forces from making direct coordination with a local government for planning purposes.

### 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 that are satisfactory to the Government of the Republic of Korea and that 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 United States-Republic of Korea 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. When there is an issue as to whether conditions of employment, compensation, and labor-management relations are in substantial agreement, either government may refer such matters to the Joint Committee in accordance with the procedures stipulated in Agreed Minute 4.
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. The term covers such circumstances as war, a state of emergency equivalent to war, and situations that affect the ability of the United States armed forces to maintain a state of readiness to address such circumstances, such as mission changes and resource constraints imposed by U.S. law.
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)(i)**

Whereas the process for labor-management dispute resolution and the role of the Office of Labor Affairs referenced in Article XVII, Paragraph 4(a)(i) have changed, the parties concerned will submit disputes for mediation to the Labor Relations Commission (LRC) of the Republic of Korea, which will oversee the mediation of disputes.

The process will be as follows:

1. The LRC will create a committee to mediate each dispute.
2. A committee will consist of three members.
3. The parties to the dispute will select the three members by alternately deleting names from a standing list of public service mediators maintained by the National LRC.
4. Mediation will be completed within 15 days after the LRC has received the request for mediation.
5. The parties concerned may agree to extend a period of LRC review an additional 15 days.
6. Details of the mediation process will be as agreed upon by the Joint Committee.
7. The intervention of the LRC mediation committee is advisory and non-binding on the parties to the dispute.
8. If the mediation committee does not reach agreement, the matter will be referred to the Joint Committee.

**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 that administrative due process has not been followed.

The United States armed forces will respond to the referral request by the Ministry of Labor in a timely fashion.

(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.

**Paragraph 4(a)(v)**

In regard to Article XVII (4)(a)(v) and in light of changed labor practices, it is understood that neither employee organizations nor employees shall engage in any practices disruptive of normal work requirements for a period of at least 45 days from the date the application for mediation has been received by the Labor Relations Commission, at the end of which time, and consistent with the SOFA, the matter will be referred to the Joint Committee.

**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 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.

2. Requests for the transfer of "pretrial custody" (which means "custody before final conviction") of a member of the United States armed forces or the civilian component, or of a dependent, with respect to a case over which the Republic of Korea has the primary right to exercise jurisdiction, at the time of indictment or thereafter, may be made in those categories of cases as set out in the Agreed Minute re Article XXII Paragraph 5(c) or thereafter agreed by the Joint Committee, where there is adequate cause and necessity for such custody.

3. In cases where custody has not been transferred to or retained by the Republic of Korea authorities under paragraphs 2, 3, 10 or 11 of the Agreed Minute re Article XXII, Paragraph 5(c), the custody of an accused member of the United States armed forces or the civilian component, or of a dependent, with respect to a case over which the Republic of Korea has the primary right to exercise jurisdiction, shall, if he is in the hands of the military authorities of the United States, remain with the military authorities of the United States pending the conclusion of all judicial proceedings and until custody is requested by the authorities of the Republic of Korea.

4. The military authorities of the United States will give full account to any request by the Republic of Korea authorities for "pretrial confinement" (which means "confinement before final conviction") by the United States military authorities of an accused with respect to a serious case over which the Republic of Korea has the primary right to exercise jurisdiction.

5. The authorities of the Republic of Korea will give sympathetic consideration to a request from the military authorities of the United States for assistance in maintaining custody of an accused member of the United States armed forces, the civilian component or a dependent. This 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.

6. The Republic of Korea authorities shall not question an accused who is in the custody of the Republic of Korea, after indictment, about the facts, circumstances or events that form the basis for the offenses for which the accused has been indicted or could have been charged based on the same set of events for which the accused was indicted. The Republic of Korea authorities may question such an accused about totally unrelated facts, circumstances or events that form or may form the basis for unrelated offenses. In such an event the Republic of Korea authorities shall notify the Judge Advocate, United States Forces Korea. A previous request for counsel shall be deemed to apply to any questioning.

7. In cases where custody has been retained by the Republic of Korea authorities under paragraph 2 of the Agreed Minute re Article XXII, Paragraph 5(c), the Republic of Korea authorities shall forgo all questioning of an accused who wants to have counsel present beyond that required to ascertain the status and identity of an accused until counsel is retained and



present for the preliminary investigation along with the United States representative. In such cases, the requirement under Korean law to apply for a detention warrant within 48 hours of arrest shall be suspended until counsel is available.

8. The presence of counsel at any interview or interrogation while an accused is in the custody of the Republic of Korea authorities shall not be waived without a written waiver signed by the accused after being advised of his rights. The United States representative shall also sign the written waiver, attesting to the fact that the accused signed the written waiver knowingly and voluntarily after being advised of his rights. In such cases, the authorities of the Republic of Korea shall ensure that no statement taken or received in the absence of counsel and no evidence derived from any such statement, shall be admissible in any subsequent proceeding unless the presence of counsel was properly waived in accordance with this paragraph.

9. The privacy and presumption of innocence of the accused will be respected throughout the investigative and judicial proceedings, especially during reenactments. All such proceedings shall be conducted in a manner that does not prejudice the right of the accused to a fair trial. This paragraph shall not be a basis to limit any line of questioning by the investigative authorities of the Republic of Korea.

10. 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 shall be approved in advance by the Joint Committee. The accused shall be permitted regular communication with, and visitation by, appropriate representatives of the United States and by legal counsel and family members, shall not be commingled with convicted prisoners, and shall not be made to perform penal servitude or labor prior to final conviction. The Republic of Korea shall give sympathetic consideration to any special requests regarding the frequency and duration of family visitation. Counsel for the accused shall have the right to visit the accused and consult confidentially at any time during normal duty hours and for such duration as counsel and the accused deem necessary.

11. In consonance with the requirements of Article XXII, Paragraph 9(a):

(a) an accused must be indicted or released from Korean confinement within thirty (30) days, or such shorter period as may be established under the law of the Republic of Korea, of the date the accused is first placed in pretrial confinement by the authorities of the Republic of Korea;

(b) the detention of an accused shall not exceed six months before the completion of the initial trial or such shorter period as may be established under the law of the Republic of Korea, or the accused must be released from confinement by the authorities of the Republic of Korea;

(c) the detention of an accused during the initial appeal shall not exceed four months from the date of expiration of the detention by the decision of the trial court or such shorter period as may be established under the law of the Republic of Korea, or the accused must be released from confinement by the authorities of the Republic of Korea; and,

(d) the detention of an accused during the second appeal shall not exceed four months from the date of expiration of the detention by the decision of the initial appellate court or such shorter period as may be established under the law of the Republic of Korea, or the accused must be released from confinement by the authorities of the Republic of Korea.

12. The period of suspension of the trial procedure shall not be included into the period under subparagraphs (b), (c) and (d) of the preceding paragraph, if the suspension is

- (a) caused by the request for disqualification of the judge made by the accused,
- (b) for the benefit of the accused in preparation of the defense in case of addition, withdrawal or amendment of charges or applicable provisions, or
- (c) due to the mental or physical incapacity of the accused.

**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 United States and Republic of Korea 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 XXIII**

**Paragraphs 5 and 6**

1. The Joint Committee shall establish procedures for the exercise of civil jurisdiction by the courts of the Republic of Korea.
2. The claims processing authorities of the United States and the Republic of Korea will mutually endeavor to expedite the adjudication and payment of claims arising from traffic accidents, including when appropriate, the consideration of advance payments to accommodate medical treatment costs.

**ARTICLE XXVI**

1. United States military authorities will present to the Republic of Korea Ministry of Health and Welfare 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. In order to prevent the entry of animal and plant pests and diseases into Korea, and to assure supplies of food without undue interruption for members of the United States armed forces, civilian component and their dependents, authorities of the two Governments agree to joint inspections to be conducted in accordance with procedures to be established by the Joint Committee.
3. 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.

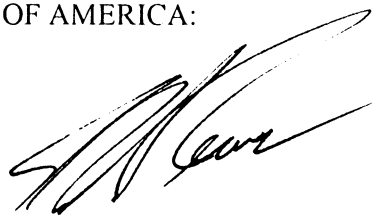
Both the Republic of Korea and the United States agree that as new issues relating to implementation of the SOFA arise in the future, they should continue to be assigned to the Joint Committee or its Subcommittees for resolution.

These Understandings shall enter into force one month after the date of a written notification from the Government of the Republic of Korea to the Government of the United States of America that it has approved these Understandings in accordance with its legal procedures.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed these Understandings.

DONE at Seoul this *18th* day of January, 2001, in duplicate, in the English and Korean languages, both texts being equally authentic, and in the case of divergence, the English text shall prevail.

FOR THE UNITED STATES  
OF AMERICA:



FOR THE REPUBLIC  
OF KOREA:

