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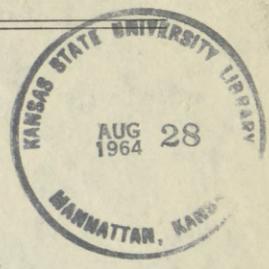
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OPERATION OF ARTICLE VII, NATO STATUS OF FORCES TREATY

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HEARING BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON ARMED SERVICES UNITED STATES SENATE EIGHTY-EIGHTH CONGRESS SECOND SESSION

TO REVIEW, FOR THE PERIOD DECEMBER 1, 1962, THROUGH NOVEMBER 30, 1963, THE OPERATION OF ARTICLE VII OF THE AGREEMENT BETWEEN THE PARTIES TO THE NORTH ATLANTIC TREATY, TOGETHER WITH THE OTHER CRIMINAL JURISDICTIONAL ARRANGEMENTS THROUGHOUT THE WORLD

AUGUST 7, 1964

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OPERATION OF ARTICLE VII NATO STATUS OF FORCES TREATY

FRIDAY, AUGUST 7, 1964

U.S. SENATE,
STATUS OF FORCES SUBCOMMITTEE OF THE
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The Status of Forces Subcommittee (composed of Senators Ervin (chairman), Thurmond, and Beall), appointed to maintain familiarity with the operation of article VII of the NATO Status of Forces Treaty to the extent that it relates to criminal jurisdiction not waived by host countries in which U.S. forces are stationed, met, pursuant to notice, at 10:40 a.m., in room 212, Old Senate Office Building, Senator Sam J. Ervin, Jr., presiding.

Present: Senators Ervin (chairman of the subcommittee) and Thurmond.

Also present: Charles Kirbow, chief clerk; T. Edward Braswell, Jr., of the committee staff; and Herbert Atkinson, assistant chief clerk.

Senator ERVIN. The subcommittee will come to order.

The subcommittee will hold its annual meeting today to consider the operation of article VII of the NATO Status of Forces Treaty, together with the other jurisdictional arrangements which subject American servicemen to the criminal jurisdiction of foreign courts. The Department of Defense witnesses will cover the 1-year period ending November 30, 1963.

As the subcommittee has previously stated on several occasions, our function is limited to a review of the operation of these arrangements. We do not make a judgment on whether the treaty arrangements are wise or unwise, since the jurisdiction of treaties is within the prerogative of the Committee on Foreign Relations, rather than the Committee on Armed Services.

Our witnesses today are Benjamin Forman, Assistant General Counsel of the Department of Defense, and Brig. Gen. Kenneth J. Hodson, Assistant Judge Advocate General of the Department of the Army.

Mr. Forman, you may proceed.

STATEMENT OF BENJAMIN FORMAN, ASSISTANT GENERAL COUNSEL, DEPARTMENT OF DEFENSE, AND BRIG. GEN. KENNETH J. HODSON, ASSISTANT JUDGE ADVOCATE GENERAL FOR MILITARY JUSTICE, OFFICE OF THE JUDGE ADVOCATE GENERAL, DEPARTMENT OF DEFENSE; ACCOMPANIED BY ALBERT ESGAIN, CIVILIAN ATTORNEY, ADVISER TO THE JUDGE ADVOCATE GENERAL, ACTING CHIEF, INTERNATIONAL AFFAIRS DIVISION, U.S. ARMY, JAGC; CAPT. MURRAY GREASON, INTERNATIONAL AFFAIRS DIVISION, AND LT. ROBERT LETENDRE, INTERNATIONAL AFFAIRS DIVISION, DEPARTMENT OF DEFENSE

Mr. FORMAN. Mr. Chairman, we appreciate the opportunity to appear before you to report on the operation of the criminal jurisdictional provision of the NATO Status of Forces Agreement and similar arrangements throughout the world. This presentation, which is the 11th of an annual series, reviews the operation of these jurisdictional arrangements for the period December 1, 1962, through November 30, 1963.

The operation of these arrangements continues to remain generally satisfactory. As mentioned last year, trial delays in some countries have had some adverse effects upon morale. Our efforts to alleviate these situations are continuing and some progress has been made.

The rate at which foreign authorities granted waivers of their primary right to exercise jurisdiction over U.S. military personnel increased from that of the preceding reporting period—from 59.93 to 70.45 percent. The rate among NATO countries increased from 58.64 to 71.47 percent. A great portion—although not all—of these percentage increases is due to the coming into force on July 1, 1963, of the German Supplementary Agreement to the NATO Status of Forces Agreement. The German agreement provides for an automatic waiver of jurisdiction in all cases, subject only to a recall in cases of exceptional importance to the German Government.

In May 1963 a new status of forces agreement entered into force with Australia. Its criminal jurisdictional provisions are similar to those of the NATO Status of Forces Agreement.

Negotiations on a status of forces agreement with the Republic of Korea are continuing. Negotiations are also in progress with the Republic of China.

As you know, civilian employees and dependents overseas are not amenable to trial by U.S. courts for most offenses. Some commanders have reported that this situation has produced adverse effects upon morale and discipline. We do, of course, retain the right to impose administrative and disciplinary sanctions upon civilians. These include dismissal or suspension from employment, withholding or denial of privileges, and return to the United States. The fact that foreign authorities continue to grant waivers in many cases involving civilians indicates that these sanctions are frequently adequate. However, there is often a reluctance by foreign authorities to concern themselves with offenses in which only Americans are involved.

Brigadier General Hodson will now present a more detailed account for the reporting period.

Senator ERVIN. Before the general does so, I note with much interest the fact that the number of waivers in NATO countries has increased by 12.83 percent and in all countries where we have jurisdictional agreements by over 10½ percent, which is quite a remarkable advance, I think.

General, will you proceed?

General HODSON. I will briefly summarize my report.

I refer to chart A, which includes worldwide figures including NATO-SOF countries, as well as a separate breakout for NATO-SOF. During the period December 1, 1962, through November 30, 1963, 19,017 U.S. military and civilian personnel and their dependents were charged with offenses subject to the primary or exclusive jurisdiction of foreign courts throughout the world (12,713, or more than 63 percent, were traffic offenses).

Of the 19,017 persons so charged, 17,861 were military persons. In these military cases foreign authorities waived their right to exercise jurisdiction in 12,584 cases, for a worldwide waiver rate of 70.45 percent. This figure, as you have noted, is 14.94 percent greater than that of the previous reporting period and is the highest waiver rate ever obtained. The waiver percentages in this report pertain solely to military personnel because, as a result of the 1960 Supreme Court decisions concerning the lack of court-martial jurisdiction over civilians in time of peace, we normally do not request waivers in cases involving civilian personnel or dependents.

Chart A also reflects that of the 19,017 cases subject to foreign jurisdiction, 4,652 were tried by foreign courts (3,068, or more than 65 percent, were traffic offenses). Foreign courts acquitted 196 accused, an overall acquittal rate of 4.21 percent. Reprimands or fines were imposed in 4,138 cases and confinement in 306, of which 199 sentences were suspended and 107 were not suspended. Appeals were pending in 104 cases at the end of the reporting period. These figures include completed trials of cases which were pending at the close of the previous reporting period.

Chart B indicates the number and types of offenses subject to foreign jurisdiction for the current reporting period. The figures for the previous reporting period are shown for the comparison purposes. This chart shows that the number of offenses subject to foreign jurisdiction increased from 12,291 in the preceding period to 19,017 for the current reporting period. This sharp increase resulted from the inclusion for the first time of offenses committed by military personnel in the Federal Republic of Germany, where the NATO-SOFA, as modified by the German supplementary agreement, became effective on July 1, 1963. Prior to this date the United States had exclusive jurisdiction over military personnel in Germany.

Chart C discloses the number and length of unsuspended sentences to confinement. Again, last year's figures are shown for comparison. The longest unsuspended sentence to confinement reported during the current period was a 10-year sentence adjudged by a Japanese court against a marine for the offense of arson, robbery causing injury, and larceny.

Chart D illustrates the number of individuals confined in foreign prisons. The report of 63 individuals in confinement at the close of the current reporting period is in line with previous years although

higher than the record low reported at the close of the previous reporting period. Unlike the increase in number of offenses subject to foreign jurisdiction, the increased number of persons confined was not brought about by the assumption of jurisdiction by the Federal Republic of Germany.

Under title 10, United States Code, section 1037, appropriated funds may be used to pay certain expenses incurred in the defense of qualified U.S. personnel before foreign courts, i.e., those amenable to court-martial jurisdiction under the Uniform Code of Military Justice. During the current period, a total of \$59,266.84 was expended in 296 cases as compared with \$63,769.47 in 284 cases during the previous reporting period. The average cost per case decreased from \$224.54 to \$200.22.

It has been previously reported to the committee that the *Kinsella v. Singleton* series of Supreme Court decisions had the effect of removing civilian employees and dependents from the category of personnel who may benefit under title 10, United States Code, section 1037, and that legislation to broaden the scope of existing law to reinstate the coverage for such persons has not yet been enacted by Congress.

In conclusion, no U.S. commander has reported that jurisdictional arrangements have measurably affected the accomplishment of his mission. Accordingly, the Department of Defense considers present status-of-forces arrangements to be workable and satisfactory.

Senator ERVIN. General, that is a most illuminating report, and I am agreeably surprised to learn that you have such a small number in confinement out of such a tremendous number. The chart indicates a little over 100 cases of confinement out of a total number of cases of 19,000. That shows a great deal of forbearance, does it not, plus the fact that most of these offenses are traffic or minor offenses?

General HODSON. Approximately, as I indicated, about 65 percent are traffic offenses.

Senator ERVIN. And the cases would indicate that still the foreign tribunals if anything, are leaning a little backward in their punishment. In other words, making the punishment lighter than the punishment would probably be for similar offenses in the criminal courts of the United States.

Don't you feel that is a fair inference to be drawn from the figures?

General HODSON. I believe that is a fair inference to be drawn as a conclusion.

Senator ERVIN. Mr. Forman, you made a statement about the problems we have been confronted with ever since the Supreme Court held that the military courts could not have jurisdiction over civilians accompanying the Armed Forces. You spoke of resort being had to administrative and disciplinary action in respect to civilians abroad with our Armed Forces.

I just wondered if you could indicate something as to the nature of the administrative and disciplinary actions taken.

Mr. FORMAN. Those include, Mr. Chairman, a case of civilian employees, dismissal or suspension of employment, withholding or denial of certain privileges on the base, such as PX privileges, the right to drive an automobile, and so forth.

In the case of dependents to some extent there may be some withholding or denial of privileges or possibly the sending of the serviceman involved—or rather the serviceman of the dependent involved home with his dependent.

Senator ERVIN. Maybe the general should answer this question.

General HODSON. I might add that in the case of dependents some oversea commanders have a policy that if a dependent becomes involved in difficulties of the type we are discussing, the commander has a policy of returning the dependents to the United States while requiring the serviceman to complete his tour unaccompanied by his dependents.

This has a rather salutary effect when the command knows that this is what will happen if the dependents become involved in difficulty.

Senator ERVIN. I would think that that would perhaps be the most effective thing that can be done in the absence of jurisdiction to fix some kind of criminal punishment.

General HODSON. This is particularly true in the case of juveniles.

Mr. FORMAN. Mr. Chairman, I think I might point out that incidents of offenses by employees and dependents has not really changed very much since the cases involved. Perhaps I should put these figures in the record.

First let me recall for the record that the date of the first Supreme Court decision, *Reid v. Covert*, was June 10, 1957, the case holding that civilians could not be tried for capital offenses by court-martial.

The other four cases, the *Kinsella v. Singleton*, *McElroy v. Guagliardo*, *Grisham v. Hagen*, and *Wilson v. Bohlender*, were decided on January 18, 1960.

So the critical dates are 1957 and 1960, with respect to changes in our jurisdiction.

Let me read into the record the annual figures for offenses by civilians and dependents beginning in 1956 and going through the current reporting period. I will first give them for the civilian employees, and then the dependents.

In 1959: 707, 731, 769, and 838.

In 1960, 517, which is the first year after the decision.

Then 524, 433, and 507.

If anything, the figures for employees are much lower than they were prior to the decision.

Senator ERVIN. Yes; they are.

Mr. FORMAN. Now, for dependents the figures are 417, 526, 666, 650, in 1959, the last year prior to the 4 decisions.

Then beginning in 1960, 499, 498, 572, and 649.

So, for the current year we are back up to where we were on dependents prior to the Supreme Court's decisions. So certainly the indications are that we are not having any more offenses committed by civilian employees or dependents after the Supreme Court's decision than were committed before the decisions. It has not encouraged such offenses to be committed.

Senator ERVIN. That sustains the theory I have always had: It is not criminal sanctions that restrain people so much as the people themselves.

Would I be correct in assuming that a substantial percentage of the offenses against employees and dependents would be traffic violations, as in the case of servicemen?

Mr. FORMAN. That is correct. For the current year of the 507 cases of civilian employees, 467 were traffic offenses.

Of the 649 of dependents in the current year, 479 were traffic offenses.

I might add that combining the two, we have a total of about a little over 1,100, and this is a very low percentage when one considers the total number of civilian dependents and employees overseas, which I assume is about the same level now as it was at about the time of the Supreme Court cases, and the record in those cases shows that at that time there were about 400,000.

Senator ERVIN. Do the foreign courts show a reluctance to try cases against employees and dependents where they do not involve crimes against their nationals?

Mr. FORMAN. I think this is basically true in the case of juveniles, and to some extent in the case of adults. The basic problem is on juveniles, but we have the same situation here in this country as to how you handle juveniles.

Would you care to amplify on that?

General HODSON. I would concur with Mr. Forman there, that the problem of juveniles is a difficult one, because of the manner in which you handle juveniles. You normally put them on probation, or you assign them to a home, something of that nature.

Well, with foreign language being involved, this is just not appropriate for a U.S. juvenile to be assigned, say, to a home in Japan, because of the language barrier. So it makes it difficult to know what to do with juveniles.

Senator ERVIN. Do we have any cases that you know of where there have been rather aggravated offenses committed by civilians that Foreign courts have not dealt with, during this reporting period.

General HODSON. I couldn't cite you an instance where I felt that they were extraordinarily lenient, or that they did not exercise jurisdiction where we felt that they probably should. I think that during the last reporting period we have had no untoward incidents in this respect.

Senator ERVIN. I introduced a bill to try to do something about the civilian problem. I am frank to state that it was introduced more as a blueprint for discussion than with any conviction that it ought to pass in the form in which it was introduced, because I have difficulty on account of being trained to practice law in a common law jurisdiction with the old common law conception that jurisdiction ought to be based on jurisdiction over the place where a crime is committed, plus the fact that we have some serious constitutional questions involved in addition. It is a very interesting problem to a lawyer, but one for which I can find no ready solution.

You may proceed, General, with the other section.

General HODSON. Mr. Chairman, I would like to attach the complete statement, together with various other charts and data, to the record.

Senator ERVIN. We will insert in the record at this point the complete statement of General Hodson, and any other data which he may care to submit.

(The documents referred to follow:)

**STATEMENT OF BRIG. GEN. KENNETH J. HODSON, ASSISTANT JUDGE
ADVOCATE GENERAL FOR MILITARY JUSTICE**

EXERCISE OF CRIMINAL JURISDICTION—WORLD

Mr. Chairman, before I discuss specific statistics pertaining to the exercise of criminal jurisdiction over U.S. personnel by foreign tribunals throughout the world, I wish to call your attention to the fact that the percentage of military waivers obtained both worldwide and in NATO countries has increased from an average of 59 percent in the previous four reporting periods to 70.45 percent for the current period. In other words, in more than 7 out of every 10 incidents, foreign authorities deferred their primary right of jurisdiction to the exercise of jurisdiction by U.S. military authorities. The majority of cases which were tried by foreign tribunals involved traffic offenses.

My remarks concerning the exercise of jurisdiction over U.S. personnel in each individual country will, for the most part, consist of tables reflecting the statistical highlights for that country. These highlights have been extracted from the detailed, country-by-country, statistical analysis of the exercise of foreign jurisdiction which is appended to the Department of Defense report.

I now refer to chart A. Note that the NATO-SOF figures shown in the right-hand columns are included in the worldwide figures shown on the left. During the period December 1, 1962, through November 30, 1963, 19,017 U.S. military and civilian personnel and their dependents were charged with offenses subject to the primary or exclusive jurisdiction of foreign courts throughout the world (12,713 of these offenses were traffic offenses).

Of the 19,017 persons so charged, 17,861 were military persons. In the military cases foreign authorities waived their primary right to exercise jurisdiction in 12,584 cases for a worldwide waiver rate of 70.45 percent. Throughout this report the waiver percentages given pertain solely to military personnel because, as a result of the 1960 Supreme Court decisions concerning the lack of court-martial jurisdiction over civilians in time of peace, we no longer request waivers in cases involving civilian personnel or dependents. However, in the 1,156 cases in which civilians and dependents were charged with offenses, 742 accused were released to the United States for disposition.

In addition to the 5,277 cases involving military personnel and 414 cases involving civilian personnel (including dependents) in which jurisdiction was reserved by foreign governments, there were 581 military and 58 civilian cases pending trial at the end of the previous reporting period. In these 6,330 reserved cases charges were dropped in 716 military and 65 civilian cases (total 781), trial remained pending at the close of the current reporting period in 823 military and 72 civilian cases (total 895), and in 1 civilian case, bond was forfeited and no trial was held. Waiver of jurisdiction was obtained in one case which has been pending trial at the close of the previous reporting period.

Foreign courts tried 4,652 offenses (3,068 were traffic offenses) and acquitted 196 accused, an overall acquittal rate of 4.21 percent compared to 4.57 percent for the previous reporting period. Of the 4,652 cases, 334 trials were of civilians or dependents and resulted in 311 final convictions, 27 acquittals, and 12 appeals from conviction or acquittal. (These figures also include the final disposition of appeals pending at the end of the previous reporting period.) Fines were adjudged in 259 of these 311 cases (214 traffic offenses). In 16 cases the punishment involved only a reprimand. Suspended sentences to confinement were given 27 civilian offenders while 9 received unsuspended sentences to confinement.

Military personnel were tried in 4,318 cases with 4,133 resulting in conviction and 169 in acquittal. Appeals were pending in 92 cases at the close of the current reporting period. Fines were adjudged in 3,837 cases (2,658 traffic offenses) while in 26 offenses only a reprimand was imposed. Suspended sentences to confinement were given 172 offenders while 98 received unsuspended sentences ranging in length from 1 day to 10 years. It should be noted that these figures reflect results of trials during the period and include cases in which appeals were pending at the close of the previous period.

CHART A

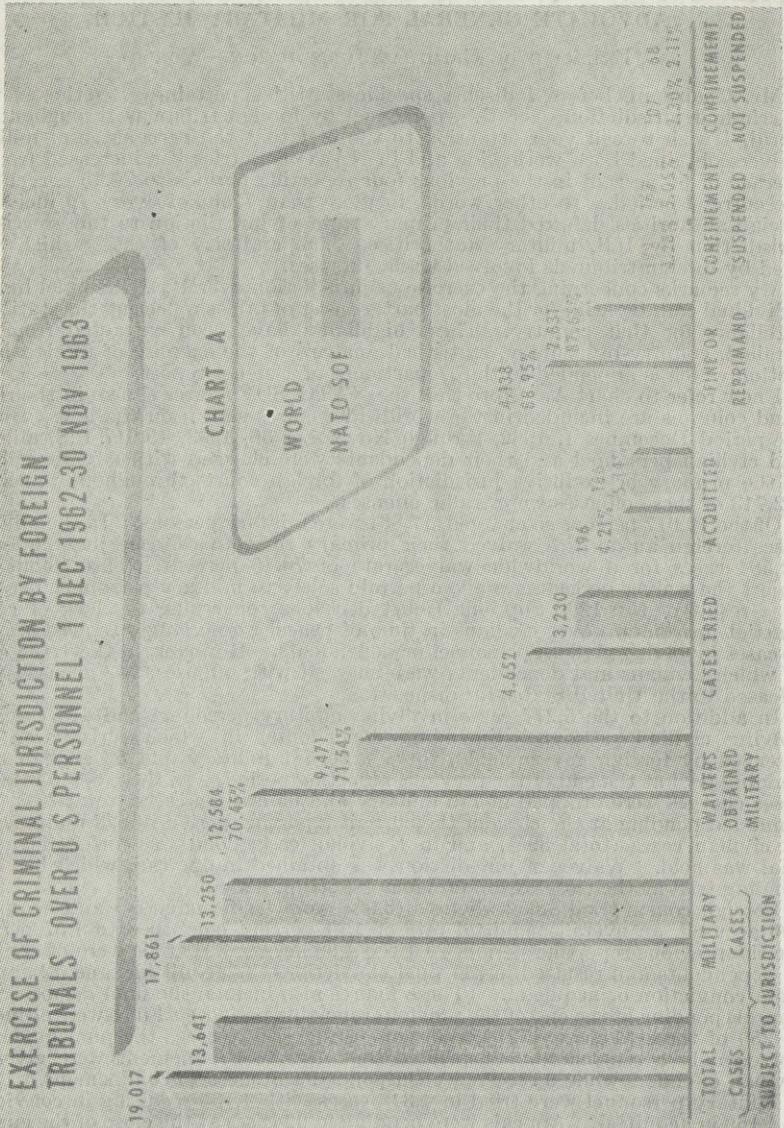
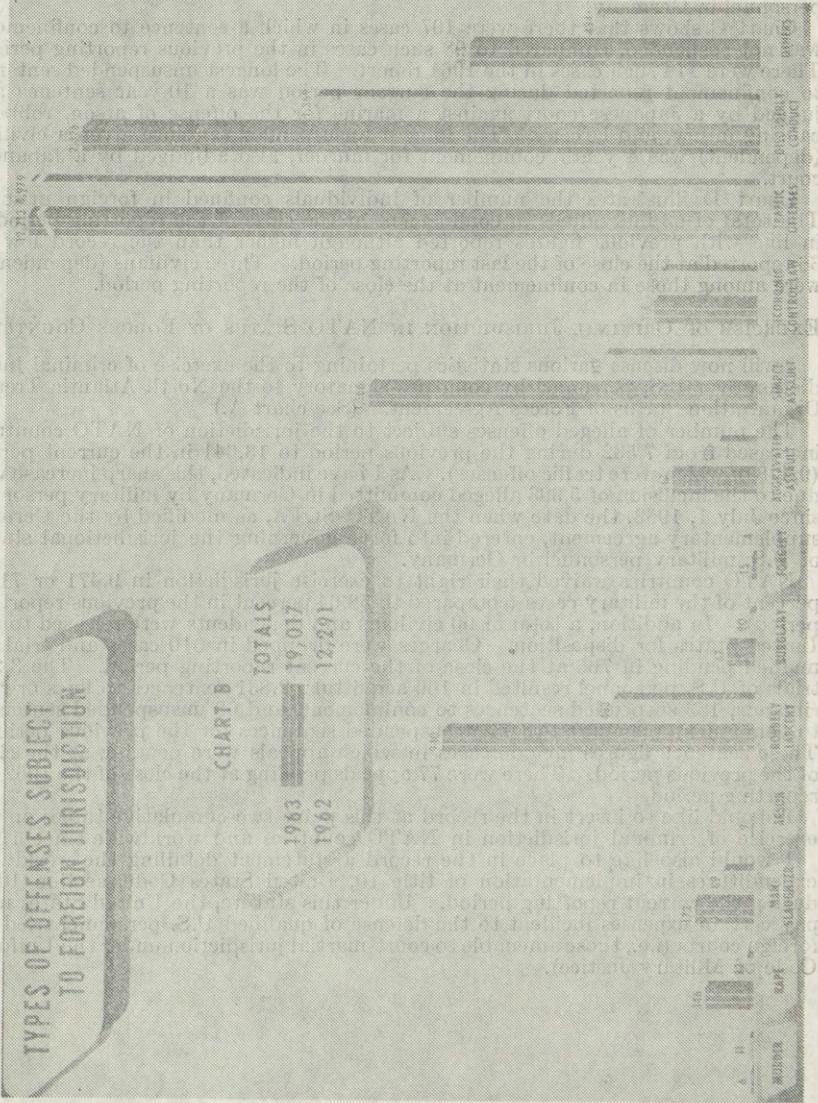


Chart B shows that the total number of offenses subject to foreign jurisdiction increased from 12,291 in the previous period to 19,017 for the current reporting period. This increase is the result of the inclusion for the first time of offenses committed by military personnel in the Federal Republic of Germany after the transitional provisions of NATO-ROTA, as modified by the Convention on the Status of the Forces of NATO, became effective on July 1, 1968. Prior to this date the United States had signed certain provisions of military

CHART B



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Chart B shows that the total number of alleged offenses subject to foreign jurisdiction increased from 12,291 in the preceding period to 19,017 for the current reporting period. This sharp increase is the result of the inclusion for the first time of offenses committed by military personnel in the Federal Republic of Germany, where the jurisdictional provisions of NATO-SOFA, as modified by the German supplementary agreement, became effective on July 1, 1963. Prior to this date the United States had retained exclusive jurisdiction over military personnel in Germany.

Chart C shows that there were 107 cases in which a sentence to confinement was not suspended, compared to 98 such cases in the previous reporting period. There were 114 such cases in the 1961 report. The longest unsuspended sentence to confinement reported during the current period was a 10-year sentence adjudged by a Japanese court against a marine for the offense of arson, robbery causing injury, and larceny. The longest unsuspended sentence given a civilian (dependent) was 4 years' confinement for murder, also adjudged by a Japanese court.

Chart D illustrates the number of individuals confined in foreign prisons. The total of 63 individuals in confinement at the close of the reporting period is in line with previous figures reported although higher than the record low of 36 reported at the close of the last reporting period. Three civilians (dependents) were among those in confinement at the close of the reporting period.

EXERCISE OF CRIMINAL JURISDICTION IN NATO STATUS OF FORCES COUNTRIES

I will now discuss various statistics pertaining to the exercise of criminal jurisdiction over U.S. personnel by countries signatory to the North Atlantic Treaty Organization Status of Forces Agreement. (See chart A.)

The number of alleged offenses subject to the jurisdiction of NATO countries increased from 7,532 during the previous period to 13,641 in the current period (9,428 of which were traffic offenses). As I have indicated, this sharp increase was due to the inclusion of 5,993 alleged committed in Germany by military personnel since July 1, 1963, the date when the NATO-SOFA, as modified by the German supplementary agreement, entered into force governing the jurisdictional status of U.S. military personnel in Germany.

NATO countries waived their right to exercise jurisdiction in 9,471 or 71.47 percent of the military cases (compared to 58.64 percent in the previous reporting period). In addition, a total of 90 civilians and dependents were released to the United States for disposition. Charges were dropped in 610 cases and trial remained pending in 766 at the close of the current reporting period. The 3,230 trials of U.S. personnel resulted in 166 acquittals, 2,831 sentences to fines or reprimands, 163 suspended sentences to confinement, and 68 unsuspended sentences to confinement (compared to 71 unsuspended sentences for the previous period). These sentence figures include cases in which appeals were pending at the close of the previous period. There were 77 appeals pending at the close of the 1962-63 reporting period.

I should like to insert in the record at this point two cumulative tables on the exercise of criminal jurisdiction in NATO countries and worldwide since 1953.

I would also like to place in the record a statement detailing the worldwide expenditures in implementation of title 10, United States Code, section 1037, during the current reporting period. Under this statute, the United States may pay certain expenses incident to the defense of qualified U.S. personnel tried by foreign courts (i.e., those amenable to court-martial jurisdiction under the Uniform Code of Military Justice).

CHART C

UNSPENDED SENTENCES TO CONFINEMENT IMPOSED ON
UNITED STATES PERSONNEL BY FOREIGN COURTS

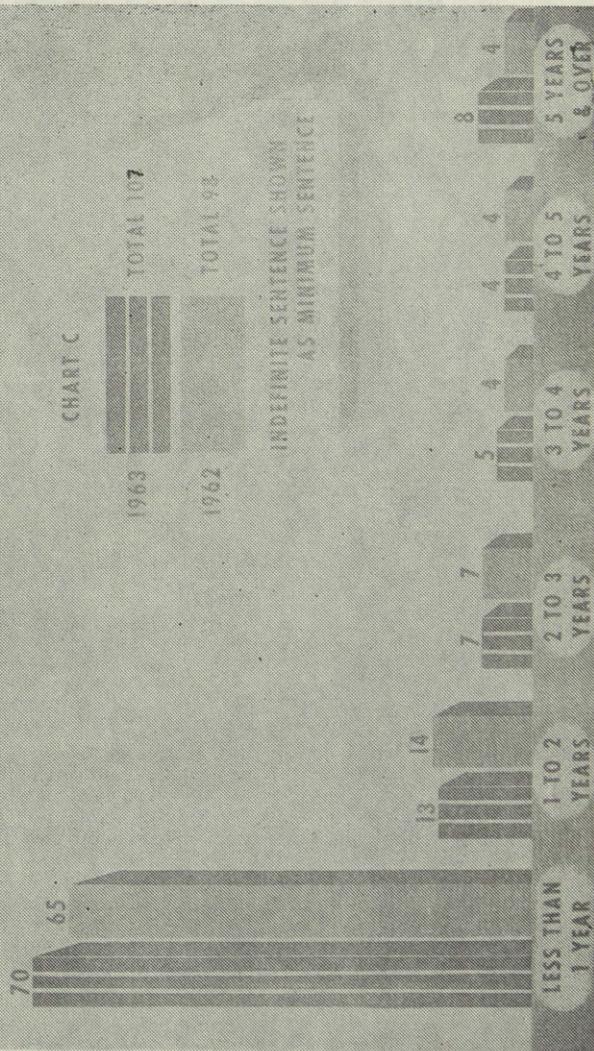
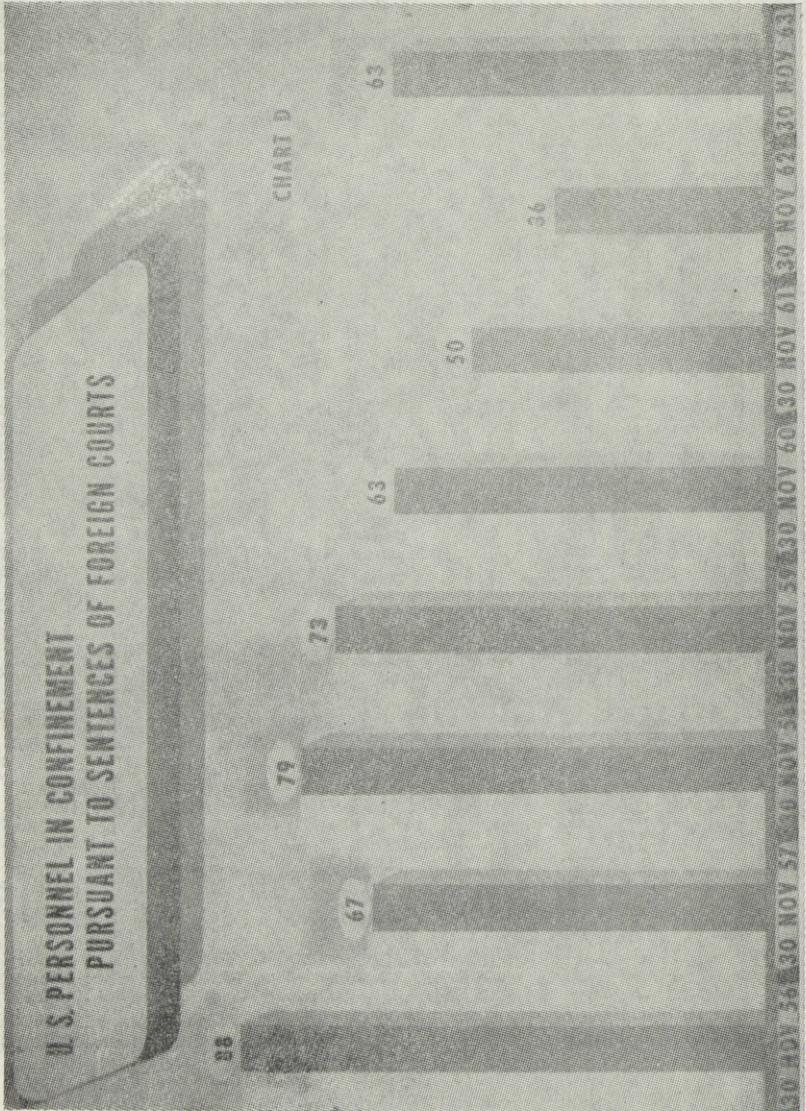


CHART D



OPERATION OF ARTICLE VII, NATO STATUS OF FORCES TREATY 15

TABLE III.—Expenditures in implementation of 10 U.S.C. 1037, Dec. 1, 1962, to Nov. 30, 1963

Country	Number of cases	Counsel fees	Bail	Court costs and other expenses	Net total paid during period
Bermuda: Air Force.....	2	\$6,655.32	-----	-----	\$6,655.32
Canada: Air Force.....	1	231.97	-----	\$10.52	242.49
Ecuador: Army.....	1	100.00	-----	10.00	110.00
France:					
Army.....	66	5,863.96	-----	659.66	6,523.62
Air Force.....	4	915.94	-----	-----	915.94
Germany: Army.....	2	554.16	-----	-----	554.16
Greece: Air Force.....	1	250.00	-----	50.00	300.00
Hong Kong: Navy.....	1	175.25	(\$87.63)	-----	175.25
Iceland: Navy.....	1	145.00	-----	-----	145.00
Iran: Army.....	1	664.00	-----	-----	664.00
Italy:					
Army.....	27	2,680.63	-----	-----	2,680.63
Navy.....	5	1,811.19	-----	-----	1,811.19
Air Force.....	1	40.26	-----	-----	40.26
Japan:					
Army.....	6	600.00	-----	295.22	895.22
Navy.....	19	4,838.89	-----	1,100.51	5,939.40
Air Force.....	54	8,300.00	-----	283.22	8,583.22
Mexico: Army.....	5	2,000.00	-----	40.00	2,040.00
Panama: Army.....	27	500.00	(9,400.00)	762.36	1,262.36
Philippines:					
Navy.....	2	567.01	-----	-----	567.01
Air Force.....	5	713.90	-----	414.40	1,128.30
Spain: Army.....	3	272.17	-----	-----	272.17
Switzerland: Army.....	2	-----	-----	115.90	115.90
Turkey:					
Army.....	17	5,166.67	-----	267.28	5,433.95
Navy.....	1	1,333.33	-----	-----	1,333.33
Air Force.....	28	7,365.43	(333.33)	171.57	7,537.00
United Kingdom: Air Force.....	14	4,341.12	-----	-----	4,341.12
Total.....	296	55,086.20	² (9,820.96)	4,180.64	59,266.84

¹ Includes expenditure in 1 civil case.
² No bail forfeited during reporting period.

During the current period, \$59,266.84 was expended in 296 cases, compared to \$63,769.47 in 284 cases during the previous reporting period. The average cost per case decreased from \$224.54 to \$200.22.

In previous years it has been reported to the committee that the *Kinsella v. Singleton* series of Supreme Court decisions had the effect of removing civilian employees and dependents from the category of personnel who may benefit under title 10, United States Code, section 1037, and that legislation to broaden the scope of existing law to reinstate the coverage for such persons was before the Congress. This legislation has not been enacted. At the present time such legislation is not included in the Department of Defense legislative program.

To demonstrate our experience in each of the countries in which the NATO Status of Forces Agreement is in effect, I shall place in the record a table (table IV) which contains statistical highlights.

TABLE IV.—Statistical highlights for NATO-SOFA countries

Country	Cases subject to local jurisdiction	Cases waived or dropped	Cases pending from previous year	Cases tried	Acquittals
Belgium.....	56 (42)	56 (20)	9 (6)	7 (2)	0 (2)
Canada.....	401 (415)	19 (21)	0 (3)	382 (397)	0 (2)
Denmark.....	5 (2)	3 (1)	0 (0)	2 (1)	0 (0)
France.....	4,625 (4,454)	3,928 (3,841)	134 (138)	733 (617)	39 (19)
Germany ¹	6,188	5,512	14	349	9
Greece.....	45 (36)	36 (35)	1 (3)	5 (3)	4 (1)
Italy.....	271 (305)	163 (100)	203 (122)	103 (124)	37 (33)
Luxembourg.....	43 (26)	10 (3)	16 (7)	41 (14)	5 (2)
Netherlands.....	247 (119)	247 (119)	0 (0)	0 (0)	0 (0)
Norway.....	4 (1)	0 (1)	0 (3)	2 (3)	0 (0)
Portugal.....	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
Turkey.....	116 (95)	54 (6)	39 (46)	87 (96)	41 (47)
United Kingdom.....	1,640 (2,037)	144 (345)	110 (90)	1,519 (1,672)	31 (55)

¹ Became a party to NATO-SOFA on July 1, 1963.

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For comparison, the figures in parenthesis are for the reporting period, December 1, 1961, to November 30, 1962.

The two NATO countries where the largest number of offenses occurred were France and the Federal Republic of Germany.

FRANCE

During the reporting period France continued to waive jurisdiction in most of the cases involving military personnel. There were 4,625 cases subject to French jurisdiction (3,818 traffic offenses) compared to 4,454 cases during the last reporting period. There were also 134 cases carried over for the previous reporting period. Waivers of jurisdiction were obtained in 3,869 or 85.84 percent of the 4,507 military cases subject to French jurisdiction. Of the 733 persons tried, 39 were acquitted, 576 were fined or reprimanded, 91 received suspended sentences to confinement, and 33 received unsuspended sentences to confinement, ranging from 15 days to 1 sentence of 3 years. There were 20 appeals pending at the end of the current reporting period.

GERMANY

Until July 1, 1963, when the NATO-SOFA, as modified by the German supplementary agreement, became effective between the United States and Germany, U.S. military presence in the Federal Republic of Germany was governed by the Bonn conventions. The Bonn conventions gave the United States exclusive criminal jurisdiction over its military personnel. When the new agreement came into effect, article VII of the NATO Status of Forces Agreement, supplemented by an automatic waiver arrangement, became the controlling agreement. In all concurrent jurisdiction cases in which Germany has the primary right to exercise jurisdiction, Germany has granted an automatic waiver of that primary right. This waiver is subject to recall if German authorities, within a 3-week period, decide that by reason of the circumstances of the case "major considerations of German administration of justice make imperative the exercise of German jurisdiction." During the period July 1, to November 30, 1963, 6,188 offenses were subject to German jurisdiction (3,530 were traffic offenses). German authorities recalled their waiver of jurisdiction in 20 of the 5,105 cases involving concurrent jurisdiction offenses. No waivers were received in 888 other cases involving military personnel as these cases consisted for the most part of minor traffic offenses over which Germany has exclusive jurisdiction; e.g., parking offenses. These latter cases resulted in charges being dropped in 366 cases, while 208 convictions resulted in the same number of fines. There were 312 of these minor offense cases awaiting trial at the close of the reporting period.

GREECE AND THE NETHERLANDS

In Greece and the Netherlands the United States operates under supplemental agreements to the NATO Status of Forces Agreement whereby both countries have agreed to waive their primary right to exercise jurisdiction at the request of the United States except in cases of particular importance to the host country. The Netherlands did not reserve jurisdiction in any of 247 cases which arose during the reporting period; Greece reserved jurisdiction in 10 of 45 cases in which they had primary jurisdiction. In other NATO countries, the waiver of jurisdiction is governed by the NATO Status of Forces Agreement under which requests for waiver are given "sympathetic consideration."

ICELAND

The NATO Status of Forces Agreement does not control the jurisdictional status of U.S. personnel stationed in Iceland; however, a bilateral treaty with Iceland (TIAS 2295, signed May 8, 1950) contains similar provisions. During the current reporting period U.S. personnel were charged with 105 offenses (44 traffic violations). No waivers of jurisdiction were granted. Charges were dropped in nine cases. All of the cases tried resulted in fines or reprimands only.

EXERCISE OF CRIMINAL JURISDICTION IN NON-NATO COUNTRIES WHERE WE HAVE A JURISDICTIONAL AGREEMENT

To relate to you our experiences in each of the non-NATO countries where we have a jurisdictional agreement, I shall place in the record a table (table V) which contains statistical highlights.

TABLE V.—Summary of data on the exercise of criminal jurisdiction by foreign tribunals in non-NATO countries where a jurisdictional agreement exists, for period Dec. 1, 1962, to Nov. 30, 1963

Country	Cases subject to local jurisdiction	Cases waived or dropped	Cases pending from previous year	Cases tried	Acquittals
Australia	1 (0)	0 (0)	0 (0)	1 (0)	0 (0)
Azores	74 (97)	73 (98)	0 (4)	1 (3)	0 (1)
Ecuador ¹	1 (0)	1 (0)	0 (0)	0 (0)	0 (0)
Greenland	0 (1)	0 (0)	1 (0)	0 (0)	0 (0)
Iceland ²	105 (0)	9 (0)	11 (0)	97 (0)	0 (0)
Japan	3,433 (3,191)	3,090 (2,906)	48 (46)	340 (283)	0 (1)
Morocco	42 (33)	20 (18)	11 (14)	17 (18)	4 (5)
New Zealand	29 (23)	28 (22)	0 (0)	1 (1)	0 (0)
Nicaragua	0 (1)	0 (0)	0 (0)	0 (1)	0 (1)
Philippines	67 (85)	52 (77)	20 (16)	13 (4)	7 (2)
Spain	122 (16)	99 (38)	5 (34)	13 (7)	1 (0)
West Indies (Antigua, Bermuda, Eleuthera, and the Bahama Islands)	227 (172)	7 (4)	2 (2)	219 (170)	9 (6)
West Pakistan	1 (0)	1 (0)	0 (0)	0 (0)	0 (0)

¹ MAAG and mission agreement, not of general application.

² While Iceland is signatory to NATO-SOFA, the effective agreement governing the status of U.S. forces in Iceland is TIAS 2295.

For comparison, the figures in parenthesis are for the prior reporting period, December 1, 1961, to November 30, 1962. A Status of Forces Agreement with Australia went into effect on May 9, 1963. Its criminal jurisdiction provisions are similar to the criminal jurisdiction provisions of the NATO-SOFA. Only one case, a traffic offense, was reported from Australia where U.S. military presence involves relatively small forces.

JAPAN

Of the non-NATO countries, the largest number of cases arose in Japan. There were 3,433 cases subject to Japanese jurisdiction of which 2,775 were traffic offenses.

Our jurisdictional arrangements with Japan continue to operate effectively. The waiver rate remains exceptionally high, waivers having been granted in 2,448 (89.11 percent) of the 2,747 alleged offenses by military personnel subject to Japanese jurisdiction. Of the total of 340 cases tried, 274 trials resulted in fines, 29 resulted in suspended sentences to confinement, and 29 resulted in unsuspended sentences to confinement.

SPAIN

During the reporting period, 122 cases involving U.S. personnel occurred in Spain, and there were 5 pending from the previous period. Waiver of jurisdiction was asked and granted in 94 cases. There were 13 trials which resulted in 1 acquittal and 12 fines.

Last year it was reported that U.S. Army Private James B. Wagner, RA12588064, had confessed to the murder and robbery of a Spanish national in November 1962. Because he was not stationed in Spain a waiver request was denied. At the close of the reporting period no trial had taken place because of delays obtained by defense counsel.

NON-NATO COUNTRIES WHERE WE DO NOT HAVE A JURISDICTIONAL AGREEMENT

To show you our experience in countries where we do not have a jurisdictional agreement, I shall place in the record a table (table VI) which contains statistical highlights.

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TABLE VI.—Summary of data on the exercise of criminal jurisdiction by foreign tribunals in countries where no jurisdictional agreement exists, for period Dec. 1, 1962, to Nov. 30, 1963

Country	Cases subject to local jurisdiction	Cases waived or dropped	Cases pending from previous year	Cases tried	Acquittals
Ascension.....	1 (0)	0 (0)	0 (0)	1 (0)	0 (0)
Hong Kong.....	13 (12)	2 (0)	0 (0)	11 (12)	0 (0)
Iran.....	1 (4)	3 (9)	3 (11)	1 (3)	1 (0)
Mexico.....	1,213 (772)	549 (143)	3 (3)	665 (628)	6 (0)
Panama.....	46 (140)	2 (22)	6 (6)	39 (118)	1 (12)
South Africa.....	0 (2)	0 (0)	0 (0)	0 (2)	1 (0)
Switzerland.....	0 (3)	0 (0)	3 (0)	3 (0)	0 (0)

For comparison, the figures in parentheses are for the prior reporting period December 1, 1961, to November 30, 1962.

MEXICO AND PANAMA

In the countries where we have no jurisdictional agreements, the largest number of offenses were committed in Mexico and Panama. Of the 665 trials in Mexico all but 26 were for such minor offenses as drunk and disorderly, breach of the peace, and traffic violations. In Panama, of the 39 cases tried, 1 resulted in acquittal, 31 resulted in fines, 2 resulted in suspended sentences to confinement, and 4 resulted in unsuspended sentences to confinement, 1 for 8 months and the others for 6 months each.

CONCLUSION

In conclusion, no U.S. commander has reported that jurisdictional arrangements have measurably affected the accomplishment of his mission. Accordingly, the Department of Defense considers present status of forces arrangements to be workable and satisfactory.

Senator ERVIN. It may be, General, that you would prefer to go into a country-by-country discussion in executive session rather than going into it now, since we have put your general statement into the record.

General HODSON. That is all I have, Mr. Chairman.

Senator ERVIN. I would just like to ask one other general question, which results from your statement, Mr. Forman, about there still being some trouble with the impact upon the morale of servicemen charged with crimes in foreign courts by reason of delay in the trial.

I recall from previous reporting that the main country in this field has been Turkey, which sort of tries cases over a considerable period of time. Has the situation been bettered in that respect there?

Mr. FORMAN. The situation has improved, sir, in that country, and I will be happy to expand upon that answer in executive session.

(Discussion off the record.)

Senator ERVIN. Gentlemen, as a man who abhors governmental secrecy of all kinds, I feel constrained at this time to ask everybody who is not entitled to remain for executive session, which will be classified, to retire.

(Whereupon, at 11:05 a.m., the subcommittee recessed, to reconvene in executive session.)



