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OPERATION OF ARTICLE VII, NATO STATUS OF FORCES TREATY

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HEARING
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OF THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
NINETY-FIRST CONGRESS

SECOND SESSION

ON

TO REVIEW FOR THE PERIOD DECEMBER 1, 1968, THROUGH
NOVEMBER 30, 1969, THE OPERATION OF ARTICLE VII OF
THE AGREEMENT BETWEEN THE PARTIES TO THE NORTH
ATLANTIC TREATY, TOGETHER WITH THE OTHER CRIM-
INAL JURISDICTIONAL ARRANGEMENTS THROUGHOUT
THE WORLD

OCTOBER 2, 1970

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(II)

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(III)

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CONFIDENTIAL - SECURITY INFORMATION

OPERATION OF ARTICLE VII OF THE NATO STATUS OF FORCES TREATY

FRIDAY, OCTOBER 2, 1970

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

The subcommittee, composed of Senators Ervin (chairman), McIntyre, Byrd of Virginia, Murphy, and Schweiker, 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 10:30 a.m., in room 212, Old Senate Office Building.

Present: Senator Ervin (presiding).

Also present: Labre R. Garcia, professional staff member; and Herbert S. Atkinson, acting chief clerk.

Senator ERVIN. The subcommittee will come to order.

The Status of Forces Subcommittee meets today to consider the operation of article VII of the NATO Status of Forces Treaty and other similar arrangements worldwide.

The provisions of article VII recognize the criminal jurisdiction of the host nations operating under the NATO Status of Forces Agreement over members of U.S. military and civilian components and their dependents with respect to nonduty offenses committed within the territory of the host nation which are punishable by law.

The period to be covered in this hearing is the year December 1, 1968, through November 30, 1969.

We are glad to have with us Mr. Benjamin Forman, Assistant General Counsel for International Affairs, Department of Defense, and Brig. Gen. Harold E. Parker, Assistant Judge Advocate General for Military Law, U.S. Army.

Following the open session, the committee will have a brief executive meeting to discuss any classified matters which the departmental witnesses may wish to present.

I regret that Senator McIntyre, Senator Byrd, and Senator Murphy, who are members of this subcommittee, are necessarily absent from Washington at this time. I trust, however, that Senator Schweiker, another member of the subcommittee, will probably be able to attend a part of the hearing, at least.

Mr. Forman, you may proceed.

STATEMENT OF BENJAMIN FORMAN, ASSISTANT GENERAL
COUNSEL, DEPARTMENT OF DEFENSE

Mr. FORMAN. Mr. Chairman, this presentation, the 17th of an annual series, reviews the operation of our criminal jurisdiction arrangements in NATO countries and throughout the world for the period December 1, 1968, through November 30, 1969. We appreciate the opportunity to appear before you for this purpose.

The operation of our criminal jurisdiction arrangements continues to be generally satisfactory, and our commanders in the field advise that the accomplishment of their missions during the reporting period has not been adversely affected. With the exception of the Philippines and Turkey—which are the same two countries referred to in the past three presentations—the field commanders also report that morale has not been adversely affected. In those two countries, there again is a division of opinion among the Army, Navy, and Air Force commanders as to whether morale has been adversely affected by delays in processing charges and protracted trials.

The overall rate at which foreign authorities granted waivers of their primary right to exercise jurisdiction over U.S. military personnel remained high and did not change significantly.

The waiver rate worldwide for the reporting period was 81 percent as compared to 83.5 percent for the prior reporting period. The waiver rate of the NATO countries was 92.4 percent as compared to 94.8 percent for the preceding period.

During our last appearance before this committee, we called your attention to the problem which had arisen with the Philippine Government as to whether criminal jurisdiction matters were governed by the 1947 Bases Agreement or by the 1965 amendments to that agreement. As you will recall, the Philippine Government took the unexpected position several years after the fact that the 1965 amendments could not be applied because they had not been ratified by the Philippine Senate.

In October of 1969, we and the Philippine Government mutually agreed to resume negotiations on revision of the Military Bases Agreement. In March of 1970, the Philippine Government notified us that they would consider the 1965 amendments to be effective during the interim period of these negotiations to update the Military Bases Agreement.

Another matter brought to your attention during our last presentation was the possible scope of the Supreme Court's decision in the case of *O'Callahan v. Parker*, decided on June 2, 1969. We predicted last year that a test case would be brought relying upon the O'Callahan decision to challenge the constitutional authority of the Armed Forces to court-martial servicemen for civilian type offenses committed overseas.

Such a test case was, in fact, brought in the Court of Claims by a former soldier, Robert G. Gallagher, who had been convicted by a court-martial in Germany of robbing and assaulting a German civilian while Gallagher was on leave. The Court of Claims unanimously held in April of this year that off-duty, off-post crimes against foreign civilians are subject to U.S. court-martial jurisdiction. A petition for a writ of certiorari has been filed by Gallagher in the Supreme Court.

The problem of court-martial jurisdiction over civilians in Vietnam, which was similarly adverted to by us during last year's presentation, was also disposed of in April of this year. In the case of *United States v. Averette*, the Court of Military Appeals overturned the court-martial of a civilian employee of an Army contractor in Vietnam for conspiracy to commit larceny and attempted larceny of U.S.-owned property.

The court held in a 2-to-1 decision that the words "in time of war" as used in article 2(10) of the Uniform Code of Military Justice mean a time of war formally declared by the Congress. The court subsequently denied the Government's request for a rehearing. As you know, there is no provision under which we could obtain direct review in the Supreme Court of a decision of the Court of Military Appeals. Accordingly, until such time as this issue reaches the Supreme Court by going up there through one of the circuit courts of appeals in some other litigation, and is decided otherwise by the Supreme Court, the opinion rendered by the Court of Military Appeals is binding on us. The Armed Forces have not, therefore, court-martialed any civilians in Vietnam since the *Averette* decision.

In this general connection, I would also like to note that, after many years of study, we have finally proposed legislation to the Congress to deal with the jurisdictional voids resulting from the decisions of the Supreme Court in 1955 in *Toth v. Quarles*, 350 U.S. 11, and in 1960 in *Kinsella v. Singleton*, 361 U.S. 234; *Grisham v. Hagan*, 361 U.S. 278; and *McElroy v. Guagliardo*, 361 U.S. 281.

Our legislative proposals were submitted on July 24, 1970, to the chairman of the House Committee on Armed Services and to the chairman of the Senate Committee on the Judiciary as recommended substitutes for H.R. 4225 and S. 3188 and S. 3189. Our substitute proposals have since been introduced in the House as H.R. 18547 and H.R. 18857.

In view of this committee's prior expression of interest in this problem, and since one of the two bills proposed by us would amend title 10 of the United States Code—the provisions of which come under the jurisdiction of this committee's parent committee—I think it appropriate to furnish you a copy of our letter of July 24 to the chairman of the Judiciary Committee and to suggest that it be printed in the record of this hearing.

Brig. Gen. Harold E. Parker will now present a more detailed statistical account for the reporting period.

Senator ERVIN. Before General Parker proceeds, we would be delighted to have a copy of the July 24 letter to the chairman of the Judiciary Committee and we will have it printed in the record of these hearings.

(The letter of July 24, 1970, to the Judiciary Committee, follows:)



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

24 July 1970

Honorable James O. Eastland
Chairman, Committee on the Judiciary
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Reference is made to your requests for the views of the Department of Defense on S. 3188, a bill "To provide for compliance with constitutional requirements in the trials of persons who are charged with having committed certain offenses while subject to trial by court-martial, who have not been tried for such offenses, and who are no longer subject to trial by court-martial," and S. 3189, a bill "To provide for compliance with constitutional requirements in the trials of persons who, while accompanying the armed forces outside the United States, commit certain offenses against the United States."

The two bills contain proposals designed to fill jurisdictional voids resulting from decisions of the Supreme Court by conferring jurisdiction on United States district courts to try certain civilians who are or have been connected with the armed forces. S. 3188 relates to trial of former service members (to obviate the difficulties caused by *Toth v. Quarles*, 350 U.S. 11 (1955)) and S. 3189 relates to civilians who accompany the armed forces outside the United States.

While the Department of Defense generally favors the objectives of both bills, they are not favored in their present form because of deficiencies therein which will be discussed below in connection with the discussion of proposed substitute measures. The proposed substitutes submitted herewith consist of two proposed bills:

- (1) "To amend title 18, United States Code, to subject certain nationals or citizens of the United States to the jurisdiction of the United States district courts for their crimes committed outside the

United States" (Enclosure 1), and (2) "To amend title 10, United States Code, to provide for the apprehension, restraint, removal, and delivery of certain persons serving with, employed by, or accompanying the armed forces outside the United States, and for other purposes" (Enclosure 2).

Until 1960 the United States exercised court-martial jurisdiction over civilians serving with, employed by, or accompanying the armed forces outside the United States. In that year, decisions of the Supreme Court (Kinsella v. Singleton, 361 U.S. 234; Grisham v. Hagan, 261 U.S. 278; McElroy v. Guagliardo, 361 U.S. 281) declared this exercise of criminal jurisdiction unconstitutional during peacetime.

The exercise of jurisdiction by foreign courts over offenses committed by United States civilians overseas is not a wholly adequate substitute for United States jurisdiction. This is so because foreign tribunals occasionally do not wish to accept jurisdiction of cases involving offenses in which the parties involved are exclusively members of the American military establishment in the foreign country.

At present, except for certain offenses against the United States itself such as treason, espionage, fraud against the Government, and larceny of Government property, wrongful acts committed by civilian employees and dependents in foreign countries which would be crimes if committed in the United States do not violate any laws of the United States and cannot be punished by the United States. Favorable Congressional action on the enclosed substitute proposals would permit United States district courts to exercise jurisdiction over serious cases which foreign countries choose not to try because local interests are not considered sufficiently involved (for example, an offense involving another American as the victim) or where foreign countries cannot act effectively. In addition some cases may arise where the offender is no longer amenable to trial by a foreign tribunal because he is no longer present in the territory of the host country concerned and the offense allegedly committed by him is not subject to extradition either because the offense is not covered by the applicable extradition treaty or no extradition treaty exists with the host country concerned.

The competence of a nation to exercise jurisdiction over offenses committed abroad by its nationals is recognized in international law. Many nations exercise some penal jurisdiction on the basis of the nationality of the accused, and a large number provide for the

punishment of all or many offenses which are committed by their nationals abroad. As noted above, certain offenses against the United States Government itself are punishable by the United States. The United States also exercises jurisdiction outside the actual territory of the United States in the case of offenses committed within the special maritime and territorial jurisdiction of the United States. Accordingly, it appears clear that the Congress may constitutionally proscribe serious offenses committed by civilians overseas who are United States nationals. Indeed, the United States Supreme Court in Kinsella v. Singleton, supra (361 U.S. 246), invited the Congress to do just that. Such legislation could take several forms, such as the assimilation of the District of Columbia penal statutes, the enumeration of specified federal penal statutes, or the extension to all locations overseas of those federal penal statutes which now apply to acts committed within the special maritime and territorial jurisdiction of the United States. The Department of Defense is of the opinion that the last is the most desirable. The first legislative proposal forwarded with this report (Enclosure 1), which amends title 18, United States Code, accordingly follows that approach.

S. 3189, if enacted, would grant jurisdiction to district courts of the United States to try persons for a limited number of offenses specified in the Uniform Code of Military Justice, most of which are not serious and do not involve moral turpitude. It would not grant jurisdiction to those courts to try persons for the commission of such serious offenses as murder, manslaughter, rape, robbery and burglary. It is also noted that S. 3189 provides for an additional chapter to title 10 of the United States Code, which contains only legislation dealing with the armed forces. A statute granting jurisdiction to United States district courts for the trial of criminal cases would fit more appropriately in title 18 of the Code, which contains legislation dealing generally with crimes and criminal procedures and the jurisdiction of United States district courts. Accordingly, the proposed substitute bill would amend title 18 of the United States Code.

S. 3189 provides that the maximum punishment which may be imposed by a United States district court acting under its grant of jurisdiction shall be the same as that which may be imposed by a court-martial for the same offense. This provision, if enacted, would result in discrimination among classes of defendants within the jurisdiction of United States district courts when the crimes involved arise out of

identical acts. Persons over whom the courts would exercise jurisdiction by virtue of S. 3189, if enacted, would be subject to punishments that could be imposed by a court-martial, while persons over whom the courts exercise jurisdiction by virtue of other provisions of law for the same offense are subject to a narrower range of punishment. This discrimination may involve questions of constitutionality. The bill proposed by the Department of Defense provides that punishment shall be the same as that provided by title 18 of the Code for offenses occurring within the special maritime and territorial jurisdiction of the United States. The table appended to this report (Enclosure 3) lists the offenses committed overseas which could be prosecuted under the first proposed bill (Enclosure 1).

The only persons who would be affected by the substitute bill would be members of the United States armed forces and persons serving with, employed by, or accompanying the armed forces of the United States who are nationals or citizens of the United States. Members of the United States armed forces have been included within the provisions of the proposed substitute bill to fill the jurisdictional void created by the holding of the United States Supreme Court in the case of Toth v. Quarles, 350 U.S. 11 (1955), with respect to serious offenses of a civil nature which are committed by United States military personnel abroad who are not tried by court-martial for those offenses prior to their separation from the military service. In the Toth case, the Supreme Court held that so much of Article 3(a) of the Uniform Code of Military Justice which seeks to extend the jurisdiction of courts-martial to persons who are no longer members of the military service is unconstitutional. S. 3188 is designed to fill the void created by the Toth decision. However, by supplanting rather than amending Article 3(a) of the Uniform Code of Military Justice, S. 3188 divests courts-martial of jurisdiction to try military personnel for serious offenses committed by them during a former period of military service which was followed by a period during which they were not amenable to court-martial jurisdiction. Under the first bill (Enclosure 1) being proposed by the Department of Defense, the present extent of the jurisdiction of courts-martial, military commissions, provost courts, or other military tribunals would be fully preserved.

Enactment of the proposed bill (Enclosure 1) amending title 18, United States Code would, however, be a futile measure unless the Congress

also provided the means to implement it. The authority of the United States officials to perform an arrest, other than in a "citizen arrest" situation, is conferred by statute. Any arrest or apprehension in a foreign country, unless conducted in accordance with the laws of the United States and of the foreign country concerned, might subject the arresting person to legal action for assault, false imprisonment, or kidnapping, depending upon the circumstances. As a result of the Supreme Court decisions in 1960 cited above, there is now no law authorizing United States officials in foreign countries to apprehend or restrain civilians who are serving with, employed by, or accompanying the armed forces in time of peace. Accordingly, if the Congress enacts the first proposed bill (Enclosure 1), it should also provide the necessary authority to enable United States officials in foreign countries to apprehend a person serving with, employed by, or accompanying the armed forces and to provide for his return to the United States to stand trial when there is probable cause to believe that he has committed an offense against the laws of the United States. In addition, such authority is needed in the following circumstances: (1) when there is probable cause to believe that such a person has committed an offense against the laws of the foreign country concerned; and (2) when competent officials of the foreign country request the assistance of United States officials in effecting the apprehension of such a person and his delivery to them for proceedings in accordance with Status of Forces Arrangements by which they have the right to exercise jurisdiction over both the person and the offense. Without such authority, the Department of Defense has been handicapped in discharging the obligations of the United States under the Status of Forces Agreements in reliance upon which foreign countries permit military personnel and civilians serving with, employed by, or accompanying the armed forces of the United States to enter their territory. S. 3189 makes no provision for such authority.

In accordance with the foregoing, the second proposed bill (Enclosure 2) would empower United States military authorities to apprehend any person serving with, employed by, or accompanying the United States armed forces abroad if he has committed, or if there is probable cause to believe he has committed, an offense against the laws of the United States as specified in the first proposed bill (Enclosure 1) amending title 18, United States Code, or against the laws of the foreign country concerned. It would also authorize the military authorities of the

United States to remove, with the consent of the host country, any such person from a foreign country when he is accused of an offense triable in a Federal district court of the United States and to deliver such person to the competent authorities of the foreign country in which he is present with the armed forces when the authorities of that country request that he be delivered to them for trial for an offense against their laws.

Any evaluation of the need for retroactive legislation in this area will necessarily be closely related to the possibility and desirability of asserting jurisdiction under present law over former servicemen involved in the Son My incident. At present, the possibility and desirability of invoking articles 18 and 21 of the Uniform Code of Military Justice to allow trial of such persons is still under review. Difficult constitutional questions under a number of recent Supreme Court decisions are involved. Once a final decision on this question is reached, it will be possible to evaluate the need for separate legislation to confer retroactive jurisdiction on the civilian courts. If such legislation is necessary, it should be in a separate bill.

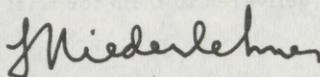
For the foregoing reasons, the Department of Defense is of the view that the enactment of legislation to (1) bestow upon Federal district courts of the United States jurisdiction over certain serious offenses abroad of which those civilians and members of the United States armed forces are accused, and (2) authorize military authorities to apprehend, restrain, remove, and deliver any person serving with, employed by, or accompanying the armed forces of the United States abroad in the circumstances discussed above, is in the best interests of the United States. Accordingly, the Department of Defense recommends that the enclosed draft bills be substituted for S. 3188 and S. 3189 and that the substitutions be favorably considered.

Subject to the foregoing substantive comments, a list of suggested technical and conforming amendments which would improve the accuracy and completeness of S. 3188 and S. 3189 is submitted as a separate enclosure (Enclosure 4).

The fiscal effects of this legislation are not known to the Department of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,



L. Niederlehner
Acting General Counsel

Enclosures

A BILL

amend title 18, United States Code, to subject certain nationals or citizens of the United States to the jurisdiction of the United States district courts for their crimes committed outside the United States

1 Be it enacted by the Senate and House of Representatives of the
 2 United States of America in Congress assembled, That chapter 1 of
 3 title 18, United States Code, is amended--

4 (1) by adding the following new section:

5 "§ 16. Criminal offenses committed by any member of the
United States armed forces or by any person
serving with, employed by, or accompanying
the armed forces who is a national or citizen of
the United States outside the United States, the
Canal Zone, and the special maritime and terri-
torial jurisdiction of the United States.

6 "Any national or citizen of the United States who, while
 7 serving as a member of the United States armed forces or
 8 serving with, employed by, or accompanying the United States
 9 armed forces, is guilty of an act or omission committed
 10 or omitted outside the United States, the Canal Zone and the
 11 special maritime and territorial jurisdiction of the United
 12 States ---

13 (1) While engaged in the performance of official duties; or

14 (2) Within armed forces installations or the area of
 15 operations of a unit in the field; or,

16 (3) Against any member of the United States armed forces
 17 or any national or citizen of the United States serving with,
 18 employed by, or accompanying the United States armed forces ---

1 which this title expressly declares to be an offense if
2 committed or omitted within the special maritime and
3 territorial jurisdiction of the United States, shall, other
4 than for petty offenses, be guilty of a like offense against
5 the United States and subject to a like punishment as that
6 provided by this title for offenses occurring within the special
7 maritime and territorial jurisdiction of the United States.

8 "§ 17. Jurisdiction not exclusive

9 "Nothing contained in this title deprives courts-martial,
10 military commissions, provost courts, or other military
11 tribunals of concurrent jurisdiction with respect to offenders
12 or offenses that by statute or by the law of war may be tried
13 by courts-martial, military commissions, provost courts,
14 or other military tribunals."; and

15 (2) by adding the following items at the end of the analysis.

16 "16. Criminal offenses committed by any member of the United States
 armed forces or by any person serving with, employed by,
 or accompanying the armed forces who is a national or citizen
 of the United States outside the United States, the Canal Zone,
 and the special maritime and territorial jurisdiction of the
 United States.

17 "17. Jurisdiction not exclusive."

A BILL

To amend title 10, United States Code, to provide for the apprehension, restraint, removal, and delivery of certain persons serving with, employed by, or accompanying the armed forces outside the United States, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the
 2 United States of America in Congress assembled, That subtitle A
 3 of title 10, United States Code, is amended as follows:

4 (1) A new chapter is inserted after chapter 49 to read:

5 "CHAPTER 50 -- PERSONS SERVING WITH, EMPLOYED
 BY, OR ACCOMPANYING THE ARMED
 FORCES OUTSIDE THE UNITED STATES

"Sec

"981 Apprehension, restraint

"982 Removal

"983 Hearing on Removal for Trial in District Court

"984 Delivery to authorities of foreign countries

"985 Search and seizure

"986 Warrants; orders

"987 Counsel

"988 Release

"989 Time limitations

"990 Applicability of treaties

7 "§ 981. Apprehension, restraint

8 "(a) A warrant may be issued for the apprehension of any national
 9 or citizen of the United States serving with, employed by, or

1 accompanying the armed forces outside the United States if --

2 "(1) there is probable cause to believe that he has committed
3 an offense against the laws of the United States;

4 "(2) there is probable cause to believe that he has committed
5 an offense against the laws of the foreign country in which he is
6 physically present and in which he is serving with, employed by,
7 or accompanying the armed forces; or

8 "(3) the competent authorities of the foreign country in which
9 he is physically present and in which he is serving with, employed
10 by, or accompanying the armed forces request that he be apprehended
11 and delivered to them to be tried for an offense against the laws of
12 that country.

13 "(b) Any national or citizen of the United States serving with,
14 employed by, or accompanying the armed forces outside the United
15 States may be apprehended without a warrant if --

16 "(1) he commits an offense against the laws of the United States
17 in the presence of the person making the apprehension;

18 "(2) the person making the apprehension has reasonable grounds
19 to believe that the person to be apprehended has committed or is
20 committing a felony cognizable under the laws of the United States; or

21 "(3) the person making the apprehension has reasonable grounds
22 to believe that the person to be apprehended has committed or is
23 committing an offense against the laws of the country in which he is

1 serving with, employed by, or accompanying the armed forces.

2 "(c) Subject to Section 989 of this title, any person apprehended
3 under this section may be restrained under arrest or confinement
4 pending his removal under Section 982 of this title or his delivery
5 to competent foreign authorities for trial.

6 "(d) The warrant shall be signed by a military judge, shall issue
7 to a person specified in Section 986(b) and shall contain the name of
8 the defendant or, if his name is unknown, any name or description
9 by which he can be identified with reasonable certainty. It shall
10 describe the offense charged or the request of the competent
11 authorities of the foreign country. It shall command that the defendant
12 be arrested and brought before the nearest available military judge
13 within the time limits prescribed in Section 989 of this title.

14 "(e) The person executing a warrant shall make return thereof to
15 the military judge before whom the defendant is brought.

16 "§ 982 Removal

17 Any national or citizen of the United States serving with, employed
18 by, or accompanying the armed forces outside the United States may
19 be removed from a foreign country to any place subject to the
20 jurisdiction of the United States if after he has been given opportunity
21 for a hearing pursuant to Section 983 it is found that there is
22 probable cause to believe that he has committed an offense against
23 the laws of the United States. Upon such a finding, an order may be

1 issued for his removal. Subject to Section 989 of this title, the
2 person may thereupon be apprehended and restrained under arrest
3 or confinement, or, if he is in arrest or confinement under
4 Section 981 of this title, be continued in arrest or confinement,
5 pending his removal.

6 "§ 983 Hearing on removal for trial in District Court

7 The military judge shall inform the defendant of the charges
8 against him, of his right to retain counsel, of his right to request
9 the assignment of counsel if he is unable to obtain counsel, and of
10 his right to have a hearing or to waive a hearing by signing a waiver
11 before the military judge. The military judge shall also inform the
12 defendant that he is not required to make a statement and that any
13 statement made by him may be used against him, shall allow him
14 reasonable opportunity to consult counsel and shall admit him to
15 bail as provided in Section 988 of this title. The defendant shall
16 not be called upon to plead. If the defendant waives hearing, the
17 military judge shall issue an order of removal. If the defendant
18 does not waive hearing, the military judge shall hear the evidence.
19 At the hearing the defendant may cross examine witnesses against
20 him and may introduce evidence in his own behalf. If it appears
21 from the evidence adduced before the military judge that sufficient
22 ground has been shown for ordering the removal of the defendant,
23 the military judge shall issue an order of removal. Otherwise he

1 shall discharge the defendant. If an order of removal is issued,
2 the defendant shall be admitted to bail as provided in Section 988
3 of this title. If a defendant is held for removal the papers in the
4 proceedings and any bail taken shall be submitted to the clerk of
5 the district court to which the defendant is ordered.

6 "§ 984. Delivery to authorities of foreign countries

7 "(a) Any national or citizen of the United States serving with,
8 employed by, or accompanying the armed forces outside the
9 United States may be delivered to the competent authorities of the
10 foreign country in which he is physically present and in which he is
11 serving with, employed by, or accompanying the armed forces, if
12 the competent authorities of that country request that he be delivered
13 to them to be tried for an offense against the laws of that country.

14 "(b) Notwithstanding Section 989 of this title, a person subject
15 to delivery under subsection (a) of this section may be restrained
16 under arrest or confinement until the completion of the trial or other
17 final disposition of the action against him.

18 "§ 985. Search and seizure

19 "(a) A search warrant authorized by this section may be issued
20 by a military judge.

21 "(b) A warrant may be issued under this section to search for
22 and seize any property which is

23 "(1) Stolen or embezzled in violation of the law of the

1 United States by a national or citizen of the United States serving
2 with, employed by, or accompanying the armed forces outside
3 the United States; or which is

4 "(2) Designed or intended for use or which is or has
5 been used as the means of committing a criminal offense by a
6 national or citizen of the United States serving with, employed by,
7 or accompanying the armed forces outside the United States.

8 "(c) A warrant shall issue only on affidavit sworn to before a
9 military judge and establishing the grounds for issuing the warrant.
10 If the military judge is satisfied that grounds for the application
11 exist or that there is probable cause to believe that they exist,
12 he shall issue a warrant identifying the property and naming or
13 describing the person or place to be searched. The warrant shall
14 be directed to a person specified in Section 986(b) of this title. It
15 shall state the grounds or probable cause for its issuance and the
16 names of the persons whose affidavits have been taken in support
17 thereof. It shall command the person specified to search forthwith
18 the person or place named for the property specified. The warrant
19 shall direct that it be served in the daytime, but if the affidavits
20 are positive that the property is on the person or in the place to be
21 searched, the warrant may direct that it be served at any time.
22 It shall designate the military judge to whom it shall be returned.

1 "(d) The warrant may be executed and returned only within
2 10 days after its date. The person taking property under the
3 warrant shall give to the person from whom or from whose premises
4 the property was taken a copy of the warrant and a receipt for the
5 property taken or shall leave the copy and receipt at the place from
6 which the property was taken. The return shall be made promptly
7 and shall be accompanied by a written inventory of any property
8 taken. The inventory shall be made in the presence of the
9 applicant for the warrant and the person from whose possession
10 or premises the property was taken, if they are present, or in
11 the presence of at least one credible person other than the
12 applicant for the warrant or the person from whose possession or
13 premise the property was taken, and shall be verified by the
14 person seizing the property. The military judge shall upon
15 request deliver a copy of the inventory to the person from whom
16 or from whose premises the property was taken and to the
17 applicant for the warrant.

1 "(e) The military judge who has issued a search warrant
2 shall attach to the warrant a copy of the return, inventory and
3 all other papers in connection therewith and file them with the
4 clerk of the district court for the district to which the defendant
5 is ordered.

6 "§ 986. Warrants; orders

7 "(a) Only a military judge may under this chapter--

8 "(1) issue warrants for the apprehension of persons and
9 search warrants;

10 "(2) issue orders for the removal or delivery of persons
11 or for confinement or restraint pending trial by a foreign
12 country.

13 "(b) Any provost marshal, military or air policeman, shore
14 patrolman, or other member of the armed services assigned or
15 detailed principally to like duties, may under this chapter--

16 "(1) serve warrants for the apprehension of persons;

17 "(2) apprehend persons without a warrant;

18 "(3) execute a search warrant.

19 "§ 987. Counsel

20 "Any person subject to proceedings under Section 982 of this
21 title may be represented by counsel at his own expense. However,
22 at his request, he shall be furnished counsel, who may be a Judge

1 Advocate as defined in 10 U.S.C. § 827(b), at any hearing held
2 under Section 982(a) of this title at no expense to himself.

3 "§ 988 Release

4 "Any person restrained under the provisions of Sections 981
5 or 982 of this title may be released by a military judge in conformity
6 with the provisions of Chapter 207 of this title.

7 "§ 989 Time limitations

8 "Subject to Section 984(b) of this title, no person shall be
9 restrained under arrest or confinement under Sections 981 or 982
10 of this title for more than 72 hours, except that a person with respect
11 to whom a finding under Section 982(a) of this title has been made may
12 be restrained for the period of time reasonably necessary to accomplish
13 his departure, but not for more than 10 days from the date the finding
14 is made. The period of restraint authorized in the preceding sentence
15 is in addition to the time required on route to remove him from the
16 country in which he is serving with, employed by, or accompanying
17 the armed forces to the place to which he is to be removed.

18 "§ 990. Applicability of treaties

19 "The powers of apprehension, restraint, removal, delivery
20 and search and seizure authorized by Sections 981, 982, 984 and
21 985 of this title shall, when exercised in a foreign country, be
22 subject to any treaty or agreement to which the United States is or
23 may be a party or to any accepted rule of customary international law.

1 "(2) The chapter analysis, and the chapter analysis
2 of part II are each amended by inserting the following new
3 item:

4 "50. Persons Serving with, Employed by, or
5 Accompanying the Armed Forces outside
6 the United States 981."

7 "SEC. 2. Section 814(a) of title 10, United States Code
8 is amended by adding the following sentence:

9 "A member of an armed force who is in a foreign
10 country may, upon the request of competent authority of
11 that country, be apprehended and delivered to that authority
12 to be tried for an offense against the laws of that country
13 and pending such delivery may be restrained under arrest
14 or confinement."

TABLE OF CRIMES

Table of crimes which would be made applicable to members of the United States Armed Forces or to nationals or citizens of the United States who are serving with, employed by, or accompanying the Armed Forces of the United States outside the United States and the Canal Zone by the passage of the proposed bill to amend title 18 of the United States Code:

Arson (18 U.S.C. 81)

Assault (18 U.S.C. 113) (other than petty offenses)

Maiming (18 U.S.C. 114)

Stealing (18 U.S.C. 661)

Receiving stolen property (18 U.S.C. 662)

Murder (18 U.S.C. 1111)

Manslaughter (18 U.S.C. 1112)

Attempting to commit murder or manslaughter (18 U.S.C. 1113)

Malicious injury to property (18 U.S.C. 1363)

Rape (18 U.S.C. 2031)

Carnal knowledge of a minor female (18 U.S.C. 2032)

Robbery (18 U.S.C. 2111)

TECHNICAL AND CONFORMING AMENDMENTS
TO

S. 3188

Page	Line		Amendment
1	3	Line should read:	"That section 803(a) (article 3(a) of title 10,"
2	20 & 21	Line should read:	"and punishable under the provisions of title 18."

TECHNICAL AND CONFORMING AMENDMENTS
TO

S. 3189

1	3 & 4		A new chapter 48 of title 10, United States Code, was enacted by Pub. L. 90-377 (82 Stat. 287), 5 July 1968. It is recommended that the new Chapter 48 proposed by the bill be renumbered Chapter 50 and inserted after the present Chapter 49 and that the section numbers be changed sequentially beginning with 981.
2	9, 16	Strike:	"of this section"
3	20	Strike:	"of this subsection"
4	5	Line should read:	"under the provisions of title 18."
4	14	Line should read:	"wealth of Puerto Rico, Virgin Islands, Guam, Canal Zone, and the"

Senator ERVIN. We are happy to have you with us, General.

**STATEMENT OF BRIG. GEN. HAROLD E. PARKER, ASSISTANT JUDGE
ADVOCATE GENERAL FOR MILITARY LAW, DEPARTMENT OF
THE ARMY**

General PARKER. Mr. Chairman, I have submitted a lengthy report to the committee and with your permission I would like to summarize this report.

Senator ERVIN. That will be entirely satisfactory to the committee and the complete report will be printed.

(The prepared report of General Parker follows:)

STATEMENT BY BRIGADIER GENERAL HAROLD E. PARKER, ASSISTANT
JUDGE ADVOCATE GENERAL FOR MILITARY LAW, U.S. ARMY.

Mr. Chairman:

I will begin my report by giving you a statistical analysis of the exercise of criminal jurisdiction by foreign tribunals over United States defense personnel and their dependents during the period 1 December 1968 - 30 November 1969.

WORLD

Chart A - Exercise of Criminal Jurisdiction by Foreign
Tribunals Over United States Personnel, 1 December 1968 -
30 November 1969.

To help you visualize our statistics, we have prepared several charts and tables. Chart A is designed to give you an overall picture of the exercise of foreign criminal jurisdiction during the reporting period. The NATO Status of Forces figures shown in the lower columns are also included in the world-wide figures shown above. For the time being I would like to direct your attention to the world-wide figures.

You will note that, during the current reporting period,

a total of 31,567 United States personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals. 29,488 of these offenses were charged against military personnel. 11,883 of the charges against military personnel were subject to exclusive foreign jurisdiction because they involved only violations of foreign law. Nonetheless, foreign authorities released 2,718 of the exclusive foreign jurisdiction offenses to United States military authorities for administrative or other appropriate disposition.

The rest of the military offenses subject to foreign jurisdiction, 17,605 of them, were concurrent jurisdiction offenses involving alleged violations of both United States military law and foreign law, over which the foreign country had the primary right to exercise jurisdiction. United States military authorities obtained a waiver of primary foreign jurisdiction in 14,252 of these incidents, for a waiver rate of 81%.

Thus, during the current reporting period foreign authorities reserved for their disposition a total of 12,518 offenses allegedly committed by military personnel. 9,165 of these offenses were relatively minor charges which were not punishable under United States military law, and were therefore subject to the exclusive jurisdiction of foreign authorities. 9,823 of the military offenses reserved for disposition by

foreign authorities involved traffic violations.

Before continuing with an explanation of the balance of Chart A, I will briefly summarize the exercise of foreign criminal jurisdiction over our civilian employees and dependents during the reporting period.

A total of 2,079 civilian employees and dependents were charged with offenses subject to foreign jurisdiction. Since civilians are not subject to trial by court-martial in peacetime, the United States had no effective jurisdiction over these offenses. Nonetheless, foreign authorities released 504 of these offenses, or over 24% of the total, to United States military authorities for administrative or other appropriate disposition.

Returning now to Chart A, the balance of the figures shown there include both military and civilian offenders. First, you will see that during the current reporting period, there were 11,794 final results of trials (i.e., final acquittals and final convictions). 172 or about 1.5% of the final results were acquittals. The vast majority of United States personnel who were convicted--11,321 of them or 96% of the total final results of trials received only a sentence to fine or reprimand. The remainder of the final results of trials consisted of 143 suspended sentences to confinement and 158 unsuspended sentences to confinement.

Chart B - Comparison of Waiver Rates in SOFA and Non-SOFA Countries.

As I mentioned before, during the current period foreign authorities waived jurisdiction over 81% of the offenses subject to their primary jurisdiction. Chart B provides a breakdown of this worldwide waiver rate. It shows that in NATO-SOFA countries the overall waiver rate was 92.4%. The composite waiver rate for all countries where we have SOFAs, including NATO-SOFA countries, Korea, Japan, the Philippines, etc., was 87.7%. On the other hand, the waiver rate for those countries where we have no SOFA was only 4%. These figures illustrate how SOFAs inure to the benefit of the United States and its service members in the form of higher waiver rates.

Chart C - Types of Offenses Subject to Foreign Jurisdiction.

Chart C depicts the number and types of offenses subject to foreign jurisdiction during the current reporting period.

There were 31,567 offenses subject to foreign jurisdiction. Foreign authorities retained jurisdiction over 14,093 of these offenses, of which 11,019 were traffic offenses. Only 672 of the offenses reserved for disposition by foreign authorities involved serious offenses, i.e., murder, rape, manslaughter, arson, robbery, larceny, burglary, forgery, and aggravated assault.

Chart D - Unsuspended Sentences to Confinement Imposed on United States Personnel by Foreign Courts.

Chart D shows the number and lengths of unsuspended sentences to confinement during the current and immediately previous reporting periods. As I mentioned before, there were 158 unsuspended sentences to confinement during the current reporting period. This represents an increase from the 135 such sentences reported for the previous period. 82 of the unsuspended sentences to confinement during the current period were less than one year in length. The longest sentence was life imprisonment, and was imposed by a German court against a serviceman for murder. No sentence to confinement adjudged against a civilian or dependent exceeded one year.

Chart E - United States Personnel in Post-Trial Confinement in Foreign Penal Institutions as of 30 November Stated Year.

Chart E illustrates the number of United States personnel confined in foreign prisons as of 30 November of the past ten years. The 114 individuals in confinement at the end of the current reporting period is the highest number during the ten year period.

Table I provides for each country a breakdown by offense and length of sentence for all unsuspended sentences to confinement adjudged by foreign courts against United States

military and civilian personnel.

EXERCISE OF CRIMINAL JURISDICTION IN NATO-SOFA COUNTRIES

I will now give you a statistical analysis of the exercise of criminal jurisdiction over United States defense personnel and their dependents by the thirteen countries party to the NATO Status of Forces Agreement.

Returning to Chart A, you will note that during the current reporting period, a total of 24,666 United States personnel, military and civilian, were charged with offenses subject to the primary or exclusive jurisdiction of NATO-SOFA countries. 23,263 of these offenses were charged against military personnel. 12,079 of the charges against military personnel were concurrent jurisdiction offenses over which the NATO-SOFA country had the primary right to exercise jurisdiction. United States military authorities obtained a waiver of primary foreign jurisdiction in 11,157 of these incidents, for a waiver rate of 92.4%.

The balance of the figures shown on Chart A include both military and civilian offenders. They show that during the current reporting period, there were 9,388 final results of trials in NATO-SOFA countries. 115 of these final results were acquittals, for an acquittal rate of 1.3%. Most of the United States personnel who were convicted in NATO-SOFA countries--9,110 of them or 97% of the total final results of

trials received only a sentence to fine or reprimand. The remainder of the final results of trials were 62 suspended sentences to confinement and 101 unsuspended sentences to confinement.

Table II shows statistical highlights for each NATO-SOFA country during the current reporting period. This table discloses that Germany accounted for 21,619 of the 24,666 total offenses subject to the jurisdiction of NATO-SOFA countries. I will now discuss Germany and some of the other NATO-SOFA countries in more detail.

GERMANY

Our jurisdictional arrangements with the Federal Republic of Germany provide for advance waiver to the United States of all concurrent jurisdiction offenses over which Germany has the primary right to exercise jurisdiction. This waiver is subject to recall if German authorities, within three weeks after notification of an offense falling within the waiver, decide that, because of special circumstances in the case, "major interests of German administration of justice make imperative the exercise of German jurisdiction."

During the current reporting period, 10,811 of the 21,619 offenses subject to German jurisdiction were concurrent jurisdiction offenses allegedly committed by United States military personnel over which Germany had the primary right to exercise

jurisdiction. These offenses were subject to the advance waiver to the United States discussed above. German authorities recalled their waiver of jurisdiction over only 112 of those 10,811 offenses, for a waiver rate of 99%. German authorities also reserved for their disposition 7,463 minor offenses allegedly committed by United States military personnel which were punishable only under German law, and were therefore subject to exclusive German jurisdiction. German authorities reserved for their disposition 1,147 offenses allegedly committed by civilian employees and dependents.

There were 7,588 final results of trials in Germany, consisting of 37 acquittals, 7,485 sentences to fine or reprimand, 22 suspended sentences to confinement, and 44 unsuspended sentences to confinement.

GREECE AND THE NETHERLANDS

In Greece and in The Netherlands the United States operates under supplemental agreements to the NATO Status of Forces Agreement whereby each country has agreed to waive its primary right to exercise jurisdiction upon request, except in cases of particular importance. During the current reporting period The Netherlands waived its jurisdiction over all such offenses allegedly committed by United States military personnel. The Netherlands has tried only three United States military

personnel in over 3,200 cases that have arisen since NATO-SOFA became effective.

Greek authorities retained jurisdiction over 10 of 40 offenses allegedly committed by United States personnel. There were nine final results of trial, consisting of two acquittals, one sentence to fine or reprimand, two suspended sentences to confinement, and four unsuspended sentences to confinement.

TURKEY

In NATO-SOFA countries other than Germany, Greece and The Netherlands, waivers of jurisdiction are governed by a provision under which requests for waiver are to be given "sympathetic consideration." Operating under this provision, Turkey seldom grants requests for waivers. During the current reporting period, 85 cases involving military and civilian personnel were reserved for disposition by Turkish authorities. Final dispositions, however, were comparatively lenient. Charges were dropped in 7 cases. Of the 80 completed trials, 14 resulted in acquittal. Among the 66 convictions, there was only one unsuspended sentence to confinement.

EXERCISE OF CRIMINAL JURISDICTION IN NON-NATO COUNTRIES WHERE THE UNITED STATES HAS A JURISDICTIONAL AGREEMENT

Table III illustrates the experience of the Armed Services in each of the non-NATO countries where the United States has a jurisdictional agreement. Japan and Korea accounted for most

of the total offenses subject to the jurisdiction of the countries listed in Table III.

JAPAN

Our jurisdictional arrangements with Japan continue to operate effectively. Japanese authorities waived their primary right to exercise jurisdiction over 1,710 or 82% of the 2,079 offenses allegedly committed by United States military personnel. Japan retained jurisdiction over only 60 of 424 offenses charged against United States civilian employees and dependents. There were 434 final results of trials, consisting of 358 sentences to a fine or reprimand only, 58 suspended sentences to confinement, and 18 unsuspended sentences to confinement.

KOREA

The Status of Forces Agreement between the United States and Korea entered into force on 9 February 1967. During the current reporting period, United States military personnel were charged with 1,137 offenses subject to the primary jurisdiction of the Republic of Korea. Korean authorities waived their primary right to exercise jurisdiction over 1,127 of these offenses, for a waiver rate of 99%. There were 27 final results of trials during the current period--2 acquittals, 18 sentences to a fine or reprimand, 3 suspended sentences to confinement, and 4 unsuspended sentences to confinement.

VIETNAM

In Vietnam the United States retains jurisdiction over its military personnel in all cases.

As a result of the decision of the U.S. Court of Military Appeals in United States v. Averette, which was rendered on 3 April 1970, civilians serving with or accompanying our military forces in the field in Vietnam may not be tried by United States courts-martial. Such persons can now be tried only in the Vietnamese courts, except when the offense of which they are accused is punishable in a District Court of the United States.

During the current reporting period, six employees of United States defense contractors were charged by the Government of Vietnam. The charge against one was dismissed without trial. One was convicted, fined and given a suspended sentence. The charges against two were pending at the end of the reporting period. Two departed from Vietnam before trial. The case pending at the end of the last reporting period resulted in a conviction. The accused served his sentence and was released.

EXERCISE OF CRIMINAL JURISDICTION IN COUNTRIES WHERE THE UNITED STATES DOES NOT HAVE A JURISDICTIONAL AGREEMENT

Table IV summarizes the exercise of foreign criminal jurisdiction in countries where the United States does not have a jurisdictional agreement.

MEXICO AND PANAMA

Mexico and Panama accounted for the great majority of offenses charged against United States personnel in countries where no jurisdictional agreement is in force. In Mexico there were no offenses charged against civilian employees or dependents.

Mexican authorities charged United States military personnel with 1,112 offenses. Charges against 122 military personnel were dropped. There were 977 sentences to a fine or reprimand, 4 suspended sentences to confinement, and 11 unsuspended sentences to confinement.

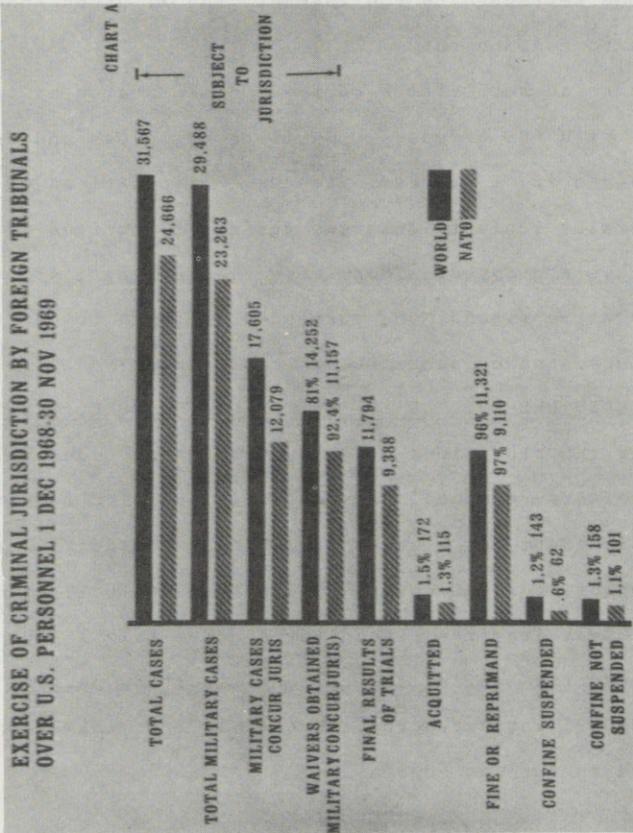
Panamanian authorities charged United States military personnel with 669 offenses. Civilian employees and dependents were involved in 52 alleged offenses. Dispositions of offenses were generally lenient. Charges against 231 United States personnel were dropped. There were 7 acquittals, 475 sentences to a fine or reprimand, one suspended sentence to confinement, and five unsuspended sentences to confinement.

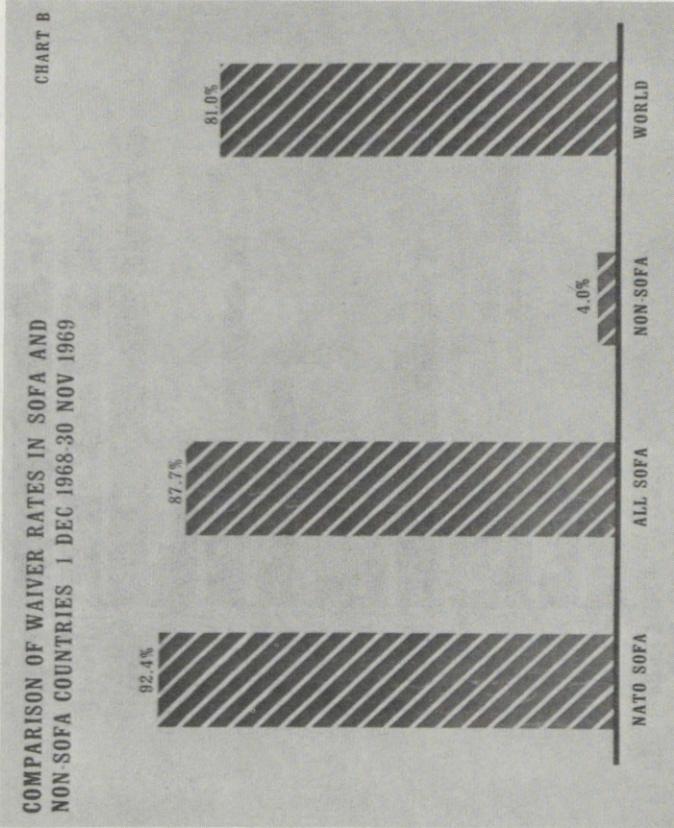
EXPENDITURES UNDER TITLE 10, UNITED STATES CODE, SECTION 1037

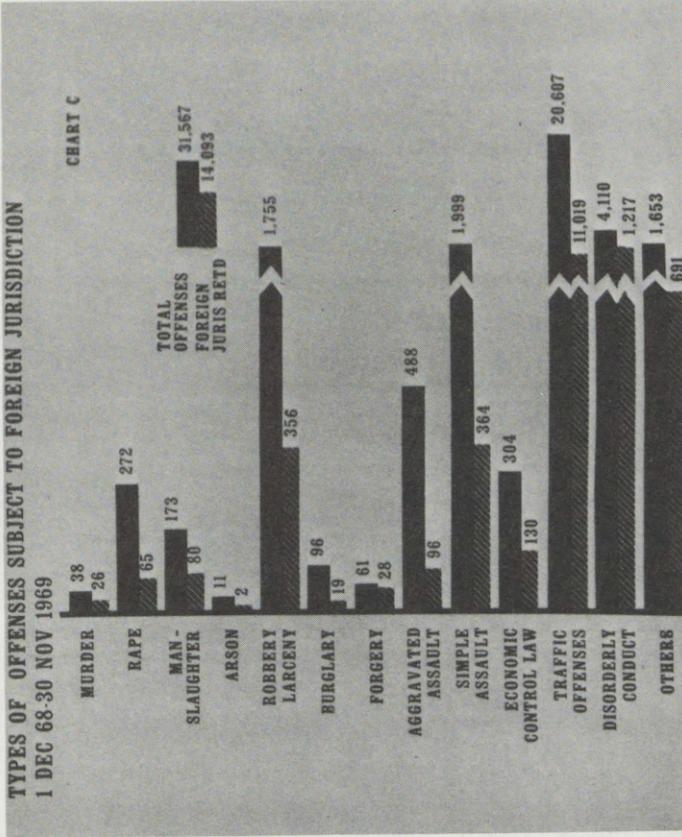
Under the provisions of 10 United States Code 1037, United States military personnel are generally entitled to have counsel fees, bail, court costs and other expenses incident to their defense before foreign courts paid by the United States Government. Table V itemizes expenditures under this statute in the various countries during the current reporting period. A total of \$140,880.91 was expended on behalf of 354 military personnel prosecuted in foreign courts.

CONCLUSION

No United States commander has reported that jurisdictional arrangements have had a significant impact on the accomplishment of his mission. The Department of Defense considers present status of forces arrangements to be quite workable and satisfactory.







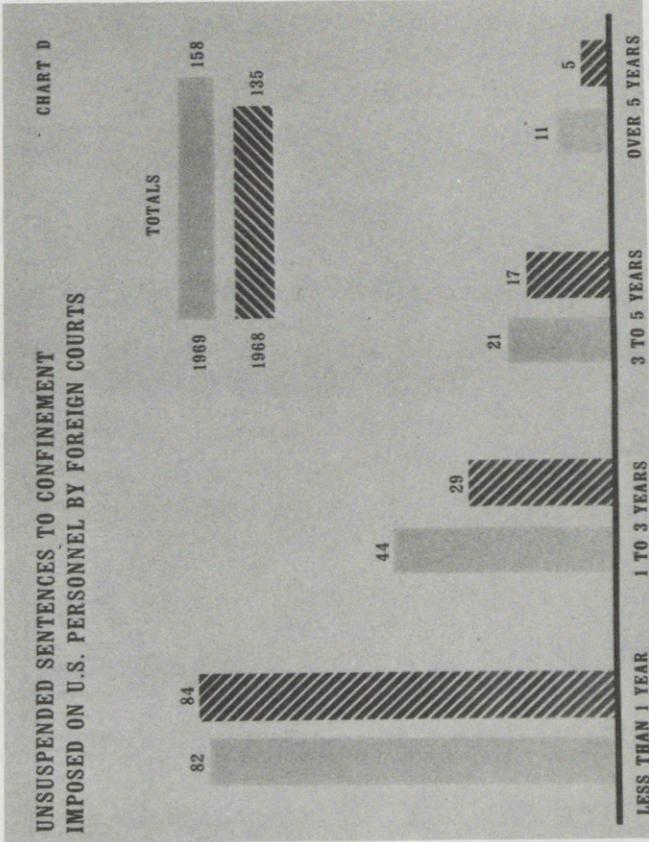


CHART E
U.S. PERSONNEL IN POST-TRIAL CONFINEMENT IN
FOREIGN PENAL INSTITUTIONS AS OF 30 NOV STATED YEAR

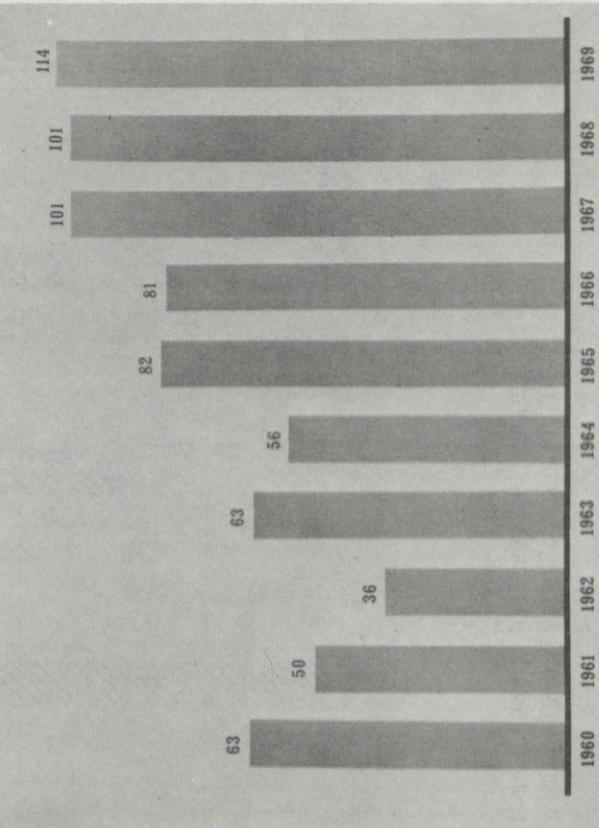


TABLE I
COUNTRY, OFFENSE AND LENGTH OF UNSUSPENDED
SENTENCES TO CONFINEMENT

1 December 1968 - 30 November 1969

Country	OFFENSE AND LENGTH OF UNSUSPENDED SENTENCE TO CONFINEMENT			
	Under 1 Year	1-3 Years	Over 3-5 Years	Over 5 Years
AUSTRALIA	1 (robbery or larceny)	1 (other)		1 (manslaughter)
BELGIUM		1 (forgery)		
CANADA	17 (5 robbery or larceny, 2 burglary, 1 assault, 9 other)	6 (4 burglary, 1 forgery, 1 other)		1 (manslaughter)
CHINA (TAIWAN)	1 (other)			
DENMARK	1 (offense against economic control law)			
FRANCE	20 (9 robbery or larceny, 3 offenses against economic control laws, 1 traffic offense, 7 other)	1 (other)		
GERMANY	5 (1 rape, 1 manslaughter, 1 traffic offense, 2 other)	23 (14 rape, 2 manslaughter, 7 robbery or larceny)	12 (1 murder, 11 rape)	4 (3 murder, 1 rape)
GREECE	2 (manslaughter)	2 (1 manslaughter, 1 other)		
HONG KONG	5 (other)	1 (other)		
ITALY		1 (manslaughter)		
JAPAN	2 (1 manslaughter, 1 traffic offense)	6 (2 manslaughter, 2 robbery or larceny, 1 aggravated assault, 1 other)	6 (1 rape, 5 robbery or larceny)	4 (1 murder, 3 robbery or larceny)
KOREA		1 (rape)	3 (1 murder, 2 rape)	
MEXICO	11 (2 robbery or larceny, 1 burglary, 8 disorderly conduct)			
MOROCCO	2 (other)			
NETHERLANDS	3 (robbery or larceny)			
PANAMA	5 (1 aggravated assault, 4 disorderly conduct)			
PHILIPPINES	5 (1 forgery, 1 aggravated assault, 2 assault, 1 disorderly conduct)			
SPAIN	1 (assault)			1 (other)
TURKEY	1 (offense against economic control law)			
UNITED KINGDOM		1 (robbery or larceny)		
TOTALS	82	44	21	11

TABLE II.—STATISTICAL HIGHLIGHTS FOR NATO-SOFA COUNTRIES, DEC. 1, 1968—NOV. 30, 1969

Country	Cases subject to local jurisdiction	Concurrent jurisdiction cases	Cases waived, released, or dropped	Acquittals	Final convictions	Unuspended sentences to confinement
Belgium.....	212	68	204	0	5	1
Canada.....	265	45	59	1	196	24
Denmark.....	1	0	0	0	1	1
France.....	51	28	27	0	26	21
Germany.....	21,619	10,811	13,726	37	7,551	44
Greece.....	40	38	30	2	7	4
Italy.....	237	206	89	30	58	1
Luxembourg.....	5	0	0	0	7	0
Netherlands.....	579	134	567	0	11	3
Norway.....	4	1	0	0	3	0
Portugal.....	0	0	0	0	0	0
Turkey.....	85	69	7	14	66	1
United Kingdom.....	1,568	679	227	31	1,341	1

TABLE III.—STATISTICAL HIGHLIGHTS FOR NON-NATO COUNTRIES WHERE A JURISDICTIONAL AGREEMENT IS IN FORCE, DEC. 1, 1968, TO NOV. 30, 1969

Country	Cases subject to local Jurisdiction	Concurrent jurisdiction cases	Cases waived, released, or dropped	Acquittals	Final convictions	Unuspended sentences to confinement
Australia.....	63	60	5	1	54	3
Azores.....	18	18	18	0	0	0
Bermuda.....	91	40	3	3	88	0
China (Taiwan).....	23	21	6	0	19	1
Colombia.....	1	1	1	0	0	0
Iceland ¹	176	3	5	0	173	0
Japan.....	2,503	2,079	2,074	0	434	18
Korea.....	1,225	1,137	1,170	2	25	4
Morocco.....	5	3	5	1	3	2
New Zealand.....	18	1	16	0	0	0
Philippines.....	618	580	528	31	26	5
Spain.....	211	159	179	8	19	2

¹ While Iceland is signatory to NATO-SOFA, the effective agreement governing the status of U.S. forces in Iceland is TIAS 2295.

TABLE IV.—STATISTICAL HIGHLIGHTS FOR COUNTRIES WHERE NO JURISDICTIONAL AGREEMENT IS IN FORCE, DEC. 1, 1968—NOV. 30, 1969

Country	Cases subject to local Jurisdiction	Concurrent Jurisdiction cases	Cases waived released, or dropped	Acquittals	Final convictions	Unuspended sentences to confinement
Hong Kong.....	23	23	11	3	11	6
Mexico.....	1,112	1,040	122	1	992	11
Panama.....	721	268	249	7	481	4
Switzerland.....	2	2	0	0	2	0
Thailand.....	91	91	50	0	22	0

TABLE V.—EXPENDITURES UNDER THE AUTHORITY OF 10 U.S.C. 1037, DEC. 1, 1968 TO NOV. 30, 1969

Country	Number of cases	Counsel fees	Bail	Court costs and other expenses	Net total paid during period
Australia:					
Army	14	\$1,597.00			\$1,597.00
Navy	3	8,702.00			8,702.00
Belgium: Army	2	49.48			49.48
Columbia: Air Force	1	1,000.00			1,000.00
China (Taiwan):					
Army	2	1,200.00			1,200.00
Navy	11	5,400.00			5,400.00
Air Force	16	4,350.00			4,350.00
France:					
Army	9	837.58		233.26	1,070.84
Air Force	1	254.08			254.08
Germany:					
Army	79	21,397.97		6,199.28	27,597.25
Air Force	10	3,137.91		756.85	3,894.76
Greece:					
Army	3	1,066.67			1,066.67
Air Force	4	1,633.33		150.83	1,784.16
Hong Kong: Army	10	2,897.68			2,897.68
Italy:					
Army	32	3,020.95			3,020.95
Navy	27	10,200.00			10,200.00
Air Force	2	599.23			599.23
Japan:					
Army	36	14,000.00		1,050.49	15,050.49
Navy	24	7,900.00		328.06	8,228.06
Air Force	11	5,200.00		325.85	5,525.85
Korea: Army	14	13,509.59			13,509.59
Mexico: Army	1	500.00			500.00
Morocco:					
Army	1	50.00			50.00
Navy	1	50.00			50.00
Panama:					
Army	3	950.00	1 (1,000.00)	12.80	962.80
Navy	3	3,500.00			3,500.00
Air Force	2	350.00	1 (500.00)	2.80	352.80
Spain:					
Army	1	300.00			300.00
Air Force	1	100.00			100.00
Switzerland: Army	2	396.72		153.20	549.92
Philippines:					
Navy	1	1,500.00	1 (765.66)	12.00	1,512.00
Air Force	1	1,275.69		5,433.66	6,708.75
Thailand:					
Army	3	200.00	1 (9,500.00)		200.00
Air Force	2		1 (24,303.84)		
Turkey:					
Army	2	724.11	1 (1,944.33)		724.11
Air Force	9	2,944.44	1 (555.55)		2,944.44
United Kingdom: Air Force	8	4,421.05			4,421.05
Vietnam: Air Force	2	1,016.95			1,016.95
Total	354	126,222.43	1 (38,569.38)	14,658.48	140,880.91

¹ Bail posted but not forfeited.

General PARKER. I will summarize my report by briefly reviewing the statistical data contained in the various charts and tables we have submitted today.

Chart A provides an overall picture of the exercise of foreign criminal jurisdiction over U.S. defense personnel and their dependents during the current reporting period, December 1, 1968, through November 30, 1969. The chart contains worldwide figures and parallel figures for NATO-SOFA countries. It shows that during the current period 31,567 U.S. military and civilian personnel and their dependents were charged with offenses subject to the primary or exclusive jurisdiction of foreign tribunals.

Of these offenses, 29,488 were charged against military personnel; 17,605 of the charges against military personnel were concurrent jurisdiction offenses over which the host country had the primary right

to exercise jurisdiction. U.S. military authorities obtained a waiver of primary foreign jurisdiction in 14,252 of these incidents, for a waiver rate of 81 percent.

The balance of the figures shown on chart A reflect final dispositions by foreign authorities of offenses charged against military and civilian personnel during the current period. There were 11,794 final results of trials; 172 or about 1.5 percent of the final results were acquittals.

The vast majority of U.S. personnel who were convicted—11,321 of them or 96 percent of the total final results of trial—received only a sentence to fine or reprimand. There were 143 suspended sentences to confinement during the current and immediately previous reporting

Chart B provides a breakdown of the worldwide primary foreign jurisdiction waiver rate of 81 percent. It shows that in NATO-SOFA countries the overall waiver rate was 92.4 percent. The composite waiver rate for all countries where we have SOFA's, including NATO-SOFA countries, Korea, Japan, Philippines, et cetera, was 87.7 percent. On the other hand, the waiver rate in non-SOFA countries was only 4 percent.

Chart C depicts the number and types of offenses subject to foreign jurisdiction during the current reporting period. 31,567 offenses were subject to foreign jurisdiction. Foreign authorities retained jurisdiction over 14,093 of these offenses, of which 11,019 were traffic offenses.

Chart D shows the number and lengths of unsuspended sentences to confinement during the current and immediately previous reporting periods. Unsuspended sentences to confinement increased from 135 to 158; 82 of them were less than 1 year in length. The longest sentence was life imprisonment and was imposed by a German court for murder.

Chart E illustrates the number of U.S. personnel confined in foreign prisons as of November 31, of the past 10 years; 114 individuals were in confinement as of November 30, 1969, which is the highest number confined during the past 10 years.

Military personnel are generally entitled to have counsel fees, bail, court costs, and other expenses incident to their defense before foreign courts paid by the U.S. Government. During the current reporting period, \$140,880.91 was expended on behalf of 354 military personnel prosecuted in foreign courts.

No U.S. commander has reported that jurisdictional arrangements have had a significant impact on the accomplishment of his mission. The Department of Defense considers present status of forces arrangements to be quite workable and satisfactory.

Senator ERVIN. I am somewhat intrigued by the decision of the Court of Military Appeals that there is no formal declaration of war by the United States in respect to South Vietnam. I must confess I have reached a different conclusion in arguing about the Cambodian situation, because my study convinced me that you don't have to have any precise words to say, "We declare war," and that the Gulf of Tonkin Resolution gave the President the power to employ the Armed Forces of the United States in combat over there.

To my mind, that is tantamount to a declaration of war. However, this is not the first time that the court and myself have reached different conclusion in respect to a question of law.

General PARKER. As you may remember, the court itself reached a different conclusion in interpreting different sections of the Uniform

Code of Military Justice. When they interpreted article 43(a) of the UCMJ, they held that it was a time of war for the purpose of that portion of the code, but they distinguished article 2(10).

Senator ERVIN. I would like to ask either one of you gentlemen whether you think it would be advisable for Congress to enact a law permitting a direct review of decisions of the U.S. Court of Military Appeals by the Supreme Court?

Mr. FORMAN. I will defer to General Parker on that.

General PARKER. Such a provision is incorporated in one of the legislative proposals now before the Senate—I believe it is one of Senator Bayh's proposals, perhaps both Senator Bayh's and Senator Hatfield's. It will be subject to comment by the Department of Defense. I can say that the last annual report of the Judge Advocate General of the Army to Congress, indicated a general approval of the concept of being able to take or, at least, to bring before the Supreme Court, if they chose to hear it, some important cases, rather than requiring that, after the Court of Military Appeals acts, they have to go all the way back to the district court and work up through the whole chain. But, the Department of Defense position has not yet been established.

Senator ERVIN. Yes. I would think that such a power should exist, although it should be exercised only in very rare occasions.

I tried to follow the decisions of the U.S. Court of Military Appeals and I think they are doing an exceedingly fine job on the whole. I take it from your testimony that these status of forces agreements and similar agreements on the whole are operating in a very satisfactory manner?

General PARKER. Yes, sir.

Mr. FORMAN. Yes, sir.

General PARKER. I would say, looking back over some of the earlier reports we have made, this has been true consistently, and the figures which we supply each year seem to be remarkably steady in nearly all categories.

Senator ERVIN. I certainly have reached the conclusion myself on previous hearings and the evidence this time indicates that the same conclusion should be made, that the American servicemen are certainly not being given unjust treatment when they are tried in the foreign courts, that their rights have been fully protected. In fact, I think as far as punishment is concerned that they probably are somewhat lighter than they would receive in the American courts for the same offenses. Also, I think that these agreements and arrangements are certainly well calculated as well as intended to promote good relationships between the United States and our Armed Forces in the host countries.

We will now go into executive session. Everyone who is not authorized to remain in executive session will please retire.

(Whereupon, at 10:50 a.m., the committee moved into executive session and proceeded to other business.)

