

International Law Studies – Volume 52

Criminal Jurisdiction Over Visiting Armed Forces

Roland J. Stanger (Editor)

The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. government, the U.S. Department of the Navy or the Naval War College.

## APPENDIX VIII

### GERMANY. PROTOCOL OF SIGNATURE TO SUPPLEMENTARY AGREEMENT

Protocol of Signature to the Supplementary Agreement, August 3, 1959. TIAS 5351.

#### PART I

##### *Agreed Minutes and Declarations concerning the NATO Status of Forces Agreement*

Re Article I, paragraph 1, sub-paragraph (a)

1. In view of the definition of a "force," the Federal Republic regards the NATO Status of Forces Agreement and the Supplementary Agreement as being applicable also to such forces of a sending State as are temporarily in the Federal territory in accordance with paragraph 3 of Article 1 of the Convention on the Presence of Foreign Forces in the Federal Republic of Germany of 23 October 1954.

2. Service attachés of a sending State in the Federal Republic, the members of their staffs and any other service personnel enjoying diplomatic or other special status in the Federal Republic shall not be regarded as constituting or included in a "force" for the purpose of the NATO Status of Forces Agreement and the Supplementary Agreement.

3. Except in cases of military exigency, the Governments of the sending States will make every effort not to station in the territory of the Federal Republic as members of a force persons who are solely Germans.

4. (a) The following non-appropriated fund organizations and activities are integral parts of the United States force:

- (i) European Exchange System (EES)
- (ii) Air Forces Europe Exchange (AFEX)
- (iii) USAREUR Class VI Agency
- (iv) USAFE Class VI Agency
- (v) European Motion Picture Service

- (vi) USAFE Motion Picture Service
- (vii) USAREUR Special Services Fund
- (viii) USAREUR Special Service Reimbursable Fund
- (ix) American Forces Network
- (x) Dependent Education Group (including Dependent Schools)
- (xi) Armed Forces Recreation Center Fund
- (xii) Association of American Rod and Gun Clubs in Europe
- (xiii) Stars and Stripes
- (xiv) Other non-appropriated fund organizations, including authorized clubs and messes

5. Members of the Armed Forces of a sending State stationed in Berlin, of their civilian components and dependents shall be considered to be, and treated as, members of the force, of the civilian component or dependents while on leave in the Federal territory.

\* \* \* \* \*

#### Re Article VII

1. The Federal Republic regards offences dealt with under administrative penal procedure (Verwaltungsstrafverfahren) and offences subject to a fine only (ordnungswidrigkeiten) as offences punishable by the law of the receiving State within the meaning of Article VII and the provisions of the Supplementary Agreement directly relating thereto.

2. (a) In view of sub-paragraph (b) of paragraph 1 of Article VII, the Federal Republic does not consider it to be within its competence to decide on requests for extradition of members of a force, of a civilian component or dependents.

(b) The sending States will not act upon requests for extradition of Germans who are present in the Federal territory as members of a force or as dependents.

\* \* \* \* \*

## PART II

### *Agreed Minutes and Declarations concerning Supplementary Agreement*

\* \* \* \* \*

#### Re Article 2

The authorities of the forces shall limit as far as possible the number of close relatives, within the meaning of sub-paragraph

(a) of paragraph 2 of Article 2, to be admitted to the Federal territory.

\* \* \* \* \*

#### Re Article 19

1. The request for a waiver of the primary right of the Federal Republic to exercise criminal jurisdiction provided for in paragraph 1 of Article 19 shall be made at the time of the entry into force of the Supplementary Agreement by those of the sending States which have decided to make use of the waiver. The Federal Republic shall grant the waiver to these sending States when the Supplementary Agreement enters into force. If a sending State decides, after the entry into force of the Supplementary Agreement, to make use of the waiver, the State concerned shall not request such waiver until agreement has been reached with the Federal Government on the necessary transitional arrangements.

2. (a) Subject to a careful examination of each specific case and to the results of such examination, major interests of German administration of justice within the meaning of paragraph 3 of Article 19 may make imperative the exercise of German jurisdiction, in particular in the following cases:

(i) offences within the competence of the Federal High Court of Justice (Bundesgerichtshof) in first and last instance or offences which may be prosecuted by the Chief Federal Prosecutor (Generalbundesanwalt) at the Federal High Court of Justice;

(ii) offences causing the death of a human being, robbery, rape, except where these offences are directed against a member of a force or of a civilian component or a dependent;

(iii) attempt to commit such offences or participation therein.

(b) In respect of the offences referred to in sub-paragraph (a) of this paragraph the authorities concerned shall proceed in particularly close cooperation from the beginning of the preliminary investigations in order to provide the mutual assistance envisaged in paragraph 6 of Article VII of the NATO Status of Forces Agreement.

#### Re Article 22

The sending States shall retain the right to keep in custody the arrested person either in a detention institution of their own or with their force. In order to ensure smooth implementation of the obligations imposed by the second sentence of paragraph 3

of Article 22, the authorities of the sending States shall keep the arrested person, where possible, in the vicinity of the seat of the German authority dealing with the case; this, however, shall not constitute an obligation on their part to keep the arrested person outside the area of the force.

Re Article 26, paragraph 1, subparagraph (b)

The term "military exigency" may also apply to cases in which the offence was committed by a person temporarily present in the Federal territory for the purpose of training exercises or manoeuvres.

\* \* \* \* \*

Re Article 71

1. Unless otherwise agreed with the German authorities, the total number of civilian employees within the meaning of Article 56 of the Supplementary Agreement, who, on the entry into force of that Agreement, are permanently employed in sales agencies and clubs serving a force, may not be increased by more than 25 percent.

\* \* \* \* \*

3. Non-German non-commercial organizations within the meaning of paragraph 2 of Article 71:

(a) American organizations:

(i) American Red Cross

Purpose:

Welfare and other assistance services for members of the force or of the civilian component and dependents.

(ii) University of Maryland

Purpose:

University courses for members of the force or of the civilian component and dependents

\* \* \* \* \*