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Criminal Jurisdiction Over Visiting Armed Forces

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CRIMINAL JURISDICTION OVER VISITING ARMED FORCES

by

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FOREWORD

Since the Naval War College was founded in 1884, the study of International Law has been an important part of the curriculum. From 1894 to 1900, certain lectures given on International Law and the situations studied were compiled and printed, but with a very limited distribution. Commencing in 1901, however, the first formal volume of the Naval War College's "Blue Book" series was published.

This book represents the fifty-second volume in the series as numbered for cataloging and reference purposes. This present volume is written by Professor Roland J. Stanger of the College of Law, The Ohio State University, who was the occupant of the Chair of International Law at the Naval War College during the 1958–1959 school term. This volume by Professor Stanger represents a valuable and complete compilation of reference material on Status of Forces Agreements, with particular emphasis on the field of criminal jurisdiction.

The opinions expressed in this volume are those of the author and are not necessarily those of the United States Navy or of the Naval War College.

C. L. MELSON
Vice Admiral, U.S. Navy
President, Naval War College

PREFACE

The American people seemingly now recognize that when a member of our armed forces stationed in a foreign country is accused of crime, there are circumstances in which it is both proper and appropriate that he be tried by a court of the host country. Countries in which our troops are stationed seemingly likewise recognize that there are circumstances in which it is proper and appropriate that the accused be tried by an American court-martial rather than by a court of the host country. Drawing the line has not been, and will never be, easy. The purpose of this book is twofold. One is to point out where the not always bright line is drawn in the various arrangements which now govern the status of our forces abroad, and the considerations which have led to those arrangements. The other is to suggest the possible bases on which those arrangements could be refined the better to accommodate the conflicting interests at stake and to minimize the possibility of international misunderstanding.

I wish to thank Vice Admirals S. H. Ingersoll, B. L. Austin, and C. L. Melson, Presidents of the Naval War College, and their staffs, for their help and cooperation. I acknowledge also a debt of gratitude to Professor Joseph M. Snee, S. J. of Georgetown University Law Center for his generosity in opening his invaluable files on status of forces problems to me; and to Professors John P. Dawson of the Harvard Law School and Richard A. Falk of Princeton University for reading the manuscript and for their helpful suggestions. A special debt is likewise owed to the Office of the Judge Advocate General, Department of the Navy, particularly the International Law Division, for their assistance in the preparation of this manuscript. For what is here offered I accept full responsibility.

ROLAND J. STANGER
Columbus, Ohio
March 9, 1965

INTRODUCTION

To meet world-wide threats of aggression, obligations between Free World nations presently require that their Armed Forces, together with civilian employees of these forces, and military and civilian dependents, be stationed in foreign territory. In fulfillment of its treaty responsibilities, the United States has about 633,000 members of its Armed Forces, accompanied by some 25,000 civilian employees, and almost one-half million dependents, presently stationed in more than sixty foreign states. With such large numbers of people involved, it is inevitable that some individuals in these groups will become involved in matters relating to the criminal jurisdiction of receiving states.

In particular situations and for various reasons, receiving states may want to prosecute foreign nationals, including military personnel, who allegedly have violated their laws. At the same time, and for other reasons, sending states may resist these efforts by receiving states to assert jurisdiction. Since misunderstanding and tension can develop to varying degrees in this environment, any appraisal of what has come to be known as the Status of Forces problem should be in terms of the means by which friction can be minimized.

The Status of Forces problem is only one area of criminal jurisdiction that produces international misunderstanding. Jurisdiction over crime has always involved such primary interests as the requirement for public order and the rights of the individual. In situations in which more than one state has a significant interest in an allegedly criminal act the problem can become acute.

When the alleged offender is a member of the Armed Forces of a sending state, there can be a potential for serious misunderstanding. In a given set of circumstances, the sending state may quite properly feel that its military security interests are threatened if the receiving state claims jurisdiction over a member of its Armed Forces. At the same time, the receiving state may take the position that its public order is peculiarly

threatened, and that its own interests require an effective assertion of jurisdiction.

In an examination of the jurisdictional aspects of these problems, it should always be borne in mind that the issue is that of jurisdiction, not the guilt or innocence of the accused. If competing jurisdictional claims exist, a decision on this issue determines only which state will try the accused.

Since a balanced view must be maintained, it is useful to consider those situations involving jurisdiction over crimes in which states have reached an acceptable accommodation of conflicting interests. The framework of ideas so developed may be useful in at least two ways: (a) To point up various determinative considerations which must be taken into account; and (b) to suggest permissible solutions which will accommodate the interests of both sending and receiving states.

This study will begin with a relatively brief discussion of the bases of jurisdiction, of immunity from jurisdiction and of the allocation of jurisdiction over the crews of merchant ships and of warships. There will follow a survey of the varied circumstances in which armed forces have been stationed in friendly foreign states, the interests of the sending and receiving states which have led them to claim jurisdiction over such forces, the rules of international law which are said to have been established in this area, and the manner in which jurisdiction has in fact been allocated between the sending and receiving states. Particular emphasis will be placed on the international agreements now governing the status of United States forces abroad. Since the most important of these is the NATO Agreement, the arrangements it establishes will be analyzed in detail and compared with those established in other agreements. From this comparison, a pattern of practices emerges with respect to the allocation of jurisdiction over visiting forces.