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AGREEMENTS RELATING TO THE STATUS OF THE NORTH ATLANTIC TREATY ORGANIZATION, ARMED FORCES, AND MILITARY HEADQUARTERS

APRIL 28, 1953.—Ordered to be printed

Mr. WILEY, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Executives T and U, 82d Congress, 2d session, and Executive B, 83d Congress, 1st session]

The Committee on Foreign Relations, to whom was referred the agreement regarding the status of forces of parties of the North Atlantic Treaty (Ex. T, 82d Cong., 2d sess.), signed at London on June 19, 1951; the agreement relating to the status of the North Atlantic Treaty Organization (Ex. U, 82d Cong., 2d sess.), signed at Ottawa on September 20, 1951; and the protocol on the status of international military headquarters set up pursuant to the North Atlantic Treaty (Ex. B, 83d Cong., 1st sess.), signed at Paris on August 28, 1952, reports the treaties to the Senate and recommends that advice and consent to ratification be given at an early date.

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I. PURPOSE OF THE AGREEMENTS

The main purpose of the agreements is to define the legal status of the civilian organs and international military headquarters of the North Atlantic Treaty Organization and of the military forces and their civilian components of one NATO power stationed in the territory of another.

To this end, the status-of-forces agreement provides for such matters as passport and visa regulations, immigration inspections, the carrying of arms, criminal and civil jurisdiction, the settlement of claims, local procurement and local civilian labor requirements, and import, customs, and foreign exchange regulations.

The protocol to the status-of-forces agreement applies most of the provisions of that agreement to international military headquarters under NATO. In addition, the protocol gives such international

headquarters juridical personality and confers limited privileges and immunities.

The civilian counterpart of the status-of-forces agreement gives juridical personality to the North Atlantic Treaty Organization and confers upon it the privileges and immunities normally accorded international organizations. It also defines the privileges and immunities of the national representatives and the international staff.

II. Committee Action

The Consultative Subcommittee on European Affairs of the Foreign Relations Committee was consulted about the agreements several times by officials of the executive branch during the 82d Congress and was kept informed of the main issues involved in the negotiations.

The full committee held 2 days of open hearings on April 7 and 8, 1953, at which testimony was taken from Undersecretary of State Walter Bedell Smith, Secretary of Defense Charles E. Wilson, General of the Army Omar N. Bradley, Chairman of the Joint Chiefs of Staff, Mr. Herman Phleger, legal adviser of the Department of State, and other Government experts.

The committee considered the agreements in executive session April 10 and again on April 21. On April 22, Mr. Phleger returned for further questioning in executive session and, on April 23, the committee voted to report the agreements favorably with an understanding making it clear that the status-of-forces agreement does not interfere with the right of the United States to exclude or remove persons whose presence in the country is deemed prejudicial to its safety or security.

III. Background and Negotiation of Agreements

The necessity for arrangements of the kind contained in these agreements arises from the developing integration of the defense of Western Europe under the North Atlantic Treaty Organization. Military forces of many different nations are participating in this defense and are stationed in countries other than their own. This is a situation which is wholly unprecedented in peacetime and which requires unprecedented measures to deal with it. In the absence of a general NATO agreement, the status of these forces is a matter of some confusion and is often no different from that of a private citizen who is subject to all the laws and regulations of the country in question.

During World War II, United States forces in the United Kingdom were granted complete extraterritoriality by the British Parliament in the United States Visiting Forces Act of 1942. That law is still in effect, but an act to repeal it has passed Parliament and awaits only an order in Council to become effective. Under the new law, American troops in the United Kingdom will have a status similar to that provided in the NATO agreements.

Everywhere on the Continent of Europe, however, United States forces entered during World War II by force, either as liberators or conquerors, and made their own laws.

After the end of the war, interim arrangements in the form of executive agreements covering the status of United States troops were negotiated with the new governments of the countries concerned.

The provisions of these bilateral arrangements, which do not have the force of treaties, vary considerably from country to country, and the committee received testimony that difficulties have been encountered in their application.

With the coming into force of the North Atlantic Treaty and the beginning of the integrated defense buildup, it became apparent that some more formal and more nearly permanent definition of status was necessary and that it should be arrived at on a multilateral basis so as to provide uniformity.

Accordingly, in February 1950, the Secretary of Defense initiated studies to achieve this purpose. The Brussels agreement of 1949, governing the status of forces of the Western Union Powers of Europe was taken as a model. Negotiation of the NATO agreement was carried out in the North Atlantic Council of Deputies in 1951. The status-of-forces agreement was signed by the NATO powers in June 1951, the organization agreement in September of that year, and the headquarters protocol in August 1952.

The status-of-forces agreement provides that it will come into force, for the states that have ratified it, 30 days after 4 signatory states have deposited their instruments of ratification with the United States Government. It has been ratified by France (September 29, 1952), Norway (February 24, 1953), and Belgium (February 27, 1953).

The protocol on the status of international military headquarters contains the same provisions for coming into force. It has been ratified by Norway (February 24, 1953).

The agreement relating to the civilian organs of NATO will come into force, as between the states that have ratified it, as soon as six instruments of ratification have been deposited with the United States. This agreement has been ratified by Denmark (May 7, 1952), the Netherlands (July 14, 1952), and Norway (February 24, 1953).

IV. General Effect of the Agreements

The United States is affected by the agreements both as a sending state, with substantial numbers of troops stationed in other NATO countries, and as a receiving state, in whose territory some troops of other NATO countries are stationed.

Because there are many more United States troops abroad than there are foreign troops in the United States, American interest in the agreements is primarily that of a sending state. The interests of the United States as a receiving state cannot be overlooked, but it must be remembered that the agreements are reciprocal, and the United States cannot expect to obtain more treaty rights as a sending state than it is willing to give as a receiving state.

The most important rights accruing to the United States as a sending state are freedom from passport and visa regulations and immigration inspection for its troops; the right for its troops to carry arms under orders; new, firm, and uniform criminal and civil claims procedures; and certain tax and customs concessions.

These are also the most important rights given up by the United States as a receiving state.

These rights are discussed in detail from the point of view of both the sending and receiving state in the sections that follow, but it should be noted at the outset that the United States concessions

amount to little more than what is already the practice under either existing law or administrative procedures.

It should also be noted that certain new rights are also established for the citizens of the receiving state. The most important of these are in the civil-claims procedures for the recovery of damages inflicted by troops or civilian employees of the sending state.

With few exceptions, the organization agreement and the headquarters protocol relate to NATO organizations located in Europe.

V. Principal Provisions of the Agreements

A. STATUS OF FORCES AGREEMENT

1. Conduct in the receiving state

Members of a military force, its civilian component, and their dependents have the duty to respect the law of the receiving state and in particular to refrain from any political activity in the receiving state (art. II).

2. Immigration

Subject to formalities established by the receiving state, members of a force (but not of a civilian component, or dependents) are exempt from passport and visa regulations, immigration inspection, and regulations on the registration and control of aliens. They are, however, required to have personal identity cards and individual or collective movement orders. Provision is made for removal of individuals on request of the receiving state and for notification to the receiving state of persons who leave the service of the sending state or who absent themselves (art. III).

3. Driving licenses

The receiving state is required to accept driving licenses issued by the sending state, or its subdivisions, or to issue its own licenses, without a test (art. IV).

4. Military uniforms

Members of a force shall normally wear a uniform, with civilian dress allowed on the same conditions as for members of the military forces of the receiving state; but special arrangements can be made by bilateral agreements (art. V).

5. Vehicles

Service vehicles shall carry a distinctive nationality mark (art. V).

6. Carrying of arms

Members of a force may carry arms when authorized to do so by their orders (art. VI).

7. Criminal jurisdiction (art. VII)

The sending state has exclusive jurisdiction over persons subject to its military law with respect to offenses punishable by the law of the sending state but not by the law of the receiving state.

The sending state has primary jurisdiction over a member of a force or civilian component in relation to—

(*a*) Offenses solely against the property or security of the sending state.

(*b*) Offenses solely against the person or property of another member of the force or civilian component or dependent.

(*c*) Offenses arising out of any act or omission done in the performance of duty.

The receiving state has exclusive jurisdiction in the case of offenses punishable by its law but not by the law of the sending state. (It should be noted that, as a practical matter, no such case is likely to arise respecting United States troops, because the Uniform Code of Military Justice, which Congress enacted for United States Armed Forces, permits any offense against the law of the country where the troops are stationed to be treated as an offense also against the code.)

The receiving state has primary jurisdiction over offenses not committed against the property or security of the sending state; or against the person or property of a member of the force, civilian component, or dependent of the sending state; or not in the performance of duty. The receiving state is committed to give "sympathetic consideration" to requests to waive its jurisdiction in cases which the sending state considers of particular importance.

Whenever a member of the force, civilian component, or dependent of the sending state is prosecuted in the courts of the receiving state, he shall be entitled—

(*a*) To a prompt and speedy trial.

(*b*) To be informed, in advance of the trial, of the specific charge or charges against him.

(*c*) To be confronted with the witnesses against him.

(*d*) To have compulsory process for obtaining witnesses in his favor, if they are within the jurisdiction of the receiving state.

(*e*) To have legal representation of his own choice for his defense, or to have free or assisted legal representation under the conditions prevailing for the time being in the receiving state.

(*f*) If he considers it necessary, to have the services of a competent interpreter.

(*g*) To communicate with a representative of the government of the sending state and, when the rules of the court permit, to have such a representative present at his trial.

Safeguards against double jeopardy in cases of concurrent jurisdiction are also included, and provision is made for cooperation between the authorities of the sending and receiving states in seeing that justice is done.

8. Civil claims (art. VIII)

The agreement waives intergovernmental claims for damages to government property used by the armed forces in connection with operations under the North Atlantic Treaty.

Provision is made for arbitration of claims arising from damage to other government property. Small claims of this nature are waived where the damage is less than the equivalent of 1,400 United States dollars.

The agreement waives intergovernmental claims based on the injury or death of members of the armed services while engaged in the performance of duty.

The receiving state will settle private claims which arise out of acts or omissions of members of a force or civilian component done in

the performance of duty, or which arise out of any other act, omission, or occurrence for which a force or civilian component is legally responsible. The procedure will be the same as for claims arising from activities of the armed forces of the receiving state. The receiving state will pay 25 percent of the cost of settling the claims and the sending state 75 percent. In cases of serious hardship, the North Atlantic Council may be requested to arrange a different settlement. Individual members of a force or civilian component are protected against execution of judgments in cases arising out of the performance of duty.

Individual members of a force or civilian component may be sued for claims arising out of their tortious acts or omissions in the receiving state not done in the performance of duty. When such claims arise, the authorities of the receiving state will assess compensation and report to the authorities of the sending state who will then decide whether or not to offer an ex gratia payment in settlement of the claim, and if so, of what amount. Thus the claimant is given an option of remedies.

Arbitration procedures are provided where there is dispute as to whether or not the tortious act or omission was done in the performance of duty.

9. Local procurement of supplies and services

Requirements of a force and its civilian component for local subsistence items are normally to be met through the agency of the receiving state providing these items for its own forces. Local labor requirements are to be fulfilled on the same basis as those of the forces of the receiving state. The receiving state also undertakes the responsibility of arranging to make available the buildings and grounds required by the force of the sending state (art. IX).

10. Taxes on individuals

Members of a force or of a civilian component are exempt from taxes by the receiving state on their salaries and from other taxes based on residence or domicile (art. X).

11. Customs and other taxes

Members of a force or a component may import duty-free their private automobiles, and on first arrival, their personal effects and furniture.

A force may import duty-free its equipment and reasonable quantities of supplies.

Special arrangements will be made for the free crossing of frontiers by regularly constituted units or formations.

Service vehicles of a force or civilian component are exempt from taxes for use of the roads. Fuel, oil, and lubricants for the vehicles, aircraft, and vessels of a force or civilian component will be delivered tax-free.

Official documents under seal are exempt from customs inspection (art. XI).

12. Termination of agreement

The agreement may be denounced by any party on 1 year's notice, 4 years after the agreement comes into force (art. XIX). In the event of hostilities, any party may suspend application of any provision so far as it is concerned on 60 days' notice (art. XV).

B. HEADQUARTERS PROTOCOL

1. Scope

The international military headquarters covered by the protocol are defined as the Supreme Headquarters Allied Powers in Europe, the Headquarters of the Supreme Allied Commander, Atlantic--

> any equivalent international military headquarters set up pursuant to the North Atlantic Treaty * * * any international military headquarters set up pursuant to the North Atlantic Treaty which is immediately subordinate to a supreme headquarters (art. 1).

In addition, the North Atlantic Council may apply the protocol to any other international headquarters or organization not included in these definitions (art. 14).

The only headquarters in the United States covered by the protocol are those of the Supreme Allied Commander, Atlantic, and the Commander in Chief, Western Atlantic Area, both of which use the same facilities in Norfolk.

2. Applicability of status-of-forces agreement

The protocol extends most of the applicable provisions of the status-of-forces agreement to international military headquarters established pursuant to the North Atlantic Treaty. For most purposes, the headquarters is given the status of a sending state. The principal exceptions have to do with criminal jurisdiction and with civil claims arising out of acts not done in the performance of duty. In these cases the sending state will be not the headquarters but the state to whose armed forces or civilian components the individuals in question belong (art. 4).

3. Income taxes

Employees of an international headquarters are exempt from income taxes on their salaries. However, special agreements may be made between a government and a headquarters, whereby the government will employ and pay its own nationals assigned to the headquarters. In this way, the United States can be assured that Americans will not be exempt from United States income taxes (art. 7).

4. Other taxes

Each receiving state is obligated to relieve each headquarters "so far as practicable," from duties and taxes affecting expenditures in the interest of the common defense (art. 8).

5. Headquarters property

Provision is made for division of a headquarters' property and assets, which it no longer requires, among the parties to the North Atlantic Treaty in proportion to their contributions to the capital costs of the headquarters. The North Atlantic Council, however, is given authority to decide otherwise (art. 9).

6. Legal rights

Each supreme headquarters is given juridical personality, with the right to make contracts, to acquire and dispose of property (art. 10), and to sue and be sued (art. 11).

7. Currency

Headquarters may hold accounts in any currency, and parties to the protocol will facilitate transfers of headquarters funds from one currency to another (art. 12).

8. Immunity for records

The archives and other official documents of a headquarters are inviolable (art. 13).

C. ORGANIZATION AGREEMENT

1. Legal Rights of NATO

The North Atlantic Treaty Organization, consisting of the North Atlantic Council, the Council Deputies, and subsidiary bodies, is given juridical personality, with the capacity to make contracts, to acquire and dispose of property, and to institute legal proceedings (art. 4). The Organization, its property, and assets are given immunity from every form of legal process (art. 5). The Organization's premises (art. 6) and documents (art. 7) are made inviolable. Its correspondence and communications are exempt from censorship, and it is given the right to use codes and diplomatic couriers (art. 11).

2. Currency

The Organization may hold currency in any form and transfer its funds from one currency to another (art. 8).

3. Taxes

The Organization is exempt from all direct taxes and from all customs duties and quantitative restrictions on imports or exports for its official use (art. 9). Member states undertake "whenever possible" to arrange for the remission of taxes which form a part of the price paid for property (art. 10).

4. National representatives

Representatives of member states to the Organization and their official staff are given generally the same immunities and privileges as those accorded to diplomatic representatives and their official staff of comparable rank (arts. 12–16).

5. International staff

Officials of the Organization and experts on missions for it are given similar privileges and immunities (arts. 17, 18, 20–23).

6. Taxes

Officials of the Organization are exempt from taxation on their salaries from the Organization, but any member state may conclude an agreement with the Organization whereby it will employ and pay its own nationals, so that they will not be immune from taxation (art. 19).

VI. Immigration Provisions

The committee was concerned about the effect of article III of the status-of-forces agreement on United States immigration laws. This article provides that under certain conditions members of a military force shall be exempt from passport and visa regulations, from immigration inspection, and from regulations on the registration and control of aliens. The conditions under which the exemption applies are that the members each have an identity card, that they are traveling under orders, and that any formalities established by the receiving state are complied with. "Formalities" in this case means "regulations." The article requires the sending state to remove any person against whom the receiving state issues an expulsion order. It also

requires notification to the receiving state of any person who ceases to be a member of the force and of any person who absents himself from the force for 21 days.

The exemption is limited to military personnel; it does not apply to dependents or to members of a civilian component.

From the point of view of NATO operations in Europe, and from the point of view of the United States as a sending state, the freedom from the red tape of immigration procedures which this exemption provides is extremely important to assure the rapid movement of forces across international boundaries in Europe.

From the point of view of the United States as a receiving state, the total number of troops of other NATO powers entering the country in a year is only about 12,000, and there are no more than 3,000 or 4,000 in the United States at any one time. Those that are here come only on invitation or with the consent of the United States.

The exemption from passport, visa, and other regulations does not preclude measures which the United States may want to take to protect its security. Nor does the exemption preclude the setting of any standards the United States desires for admissibility to this country.

During negotiation of the agreement, it was understood and minuted that the exemption was—

> subject to the explanation and the fact that every country would be free to apply special measures if it desired thereby to exercise stricter control over the entry of personnel.

In order to remove all doubt about the matter, the committee adopted the following language as a part of the resolution of ratification of the status-of-forces agreement:

> It is the understanding of the Senate, which understanding inheres in its advice and consent to the ratification of the agreement, that nothing in the agreement diminishes, abridges, or alters the right of the United States of America to safeguard its own security by excluding or removing persons whose presence in the United States is deemed prejudicial to its safety or security and that no person whose presence in the United States is deemed prejudicial to its safety or security shall be permitted to enter or remain in the United States.

This language makes it clear that the Senate's advice and consent to ratification of the agreement is based on its understanding that the agreement does not, in fact, diminish or alter United States rights in the areas mentioned. The committee is convinced that this is the meaning of the agreement. The adoption of the understanding is an additional safeguard.

VII. Privileges and Immunities

The Organization agreement (Ex. U) provides various privileges and immunities for the North Atlantic Treaty Organization, its subsidiary bodies, the national representatives to the Organization and its bodies, and the international staff.

The immunities of the Organization are those normally accorded international bodies—that is, immunity from legal process; inviolability of its premises, archives, and communications; and freedom from taxation and from currency controls. The necessity of these provisions from the point of view of security and of effective international operations seems obvious.

The national representatives to the Organization or its subsidiary bodies are given the privileges and immunities of diplomatic representatives of comparable rank. The official clerical staffs of national representatives are given a lower scale of privileges.

These provisions are customary in connection with the status of national representatives to international organizations. They seem to the committee to be necessary for the efficient functioning of the representatives and thoroughly justified. It should also be pointed out again that there are many more American officials connected with NATO abroad than there are foreign officials in the United States.

A third group of privileges and immunities is granted the international staff of the Organization—again in line with established procedure. The categories of officials receiving these privileges and immunities must be agreed on by the Chairman of the Council Deputies and each of the member states concerned. These privileges and immunities are limited to certain tax and customs exemptions, to immunity from legal process in respect of acts done in their official capacity and in the scope of their authority, to the same freedom from immigration inspection, aliens' registration, and currency controls as diplomatic personnel of comparable rank, and to the same right to repatriation as diplomatic personnel of comparable rank.

Finally, experts employed on missions on behalf of the Organization are given the following limited privileges and immunities—

so far as is necessary for the effective exercise of their functions while present in the territory of a member state for the discharge of their duties—

(*a*) Immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) In respect of words spoken or written or acts done by them in the performance of their official functions for the Organization, immunity from legal process;

(*c*) The same facilities in respect of currency or exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign governments on temporary official missions;

(*d*) Inviolability for all papers and documents relating to the work on which they are engaged for the Organization (art. 21).

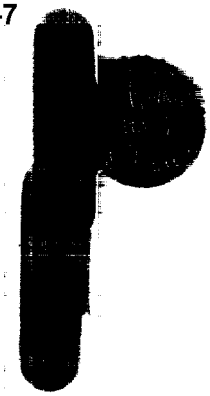
It is expressly provided that the privileges and immunities granted are in the interests of the Organization and not for the personal benefit of the individuals themselves. It is the duty of a member state (in the case of national representatives) and of the Chairman of the Council Deputies (in the case of the international staff) to waive the immunity in any case where the immunity would impede the course of justice and can be waived without prejudice to the purposes for which it is accorded.

The committee gave the closest scrutiny to these provisions, particularly the immunity of experts from personal arrest, to make sure that they did not in any way create an immunity from arrest or prosecution for violation of any United States laws relating to espionage, sabotage, or other subversive activity.

After careful study and after consultation with the legal adviser of the Department of State, the committee is convinced that the provisions do not create such an immunity.

NATO experts are given immunity from personal arrest or detention and from seizure of their personal baggage only—

so far as is necessary for the effective exercise of their functions while present in the territory of a member state for the discharge of their duties.



By definition, they would not be exercising their functions or discharging their duties if they engaged in espionage, sabotage, or subversion against the United States, and thus the immunity would not apply.

Further, the Chairman of the Council Deputies is specifically directed in article 22 to waive the immunity if it is abused. And article 3 provides that—

> the Organization and member states shall cooperate at all times to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the immunities and privileges set out in the present agreement.

The committee is convinced that there is nothing in the agreement to prevent the arrest and prosecution of any NATO expert who is charged with violating the laws of the United States relating to espionage, sabotage, or other subversive activity. Nor is there anything in the agreement to prevent the United States from excluding any person deemed undesirable.

VIII. Criminal Jurisdiction Provisions

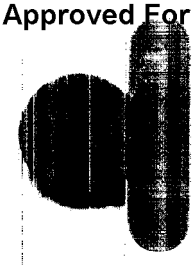
The committee gave particular attention to the provisions of the status-of-forces agreement governing criminal jurisdiction of American servicemen abroad. Under these provisions, the servicemen will be subjected to trials in foreign courts when charged with offenses committed off duty and not against another American. The committee, therefore, was anxious to insure a fair trial and to protect the rights of our troops in every way possible.

In considering the criminal jurisdiction provisions, it is important to remember that—

1. As a practical matter, in the absence of agreement guaranteeing rights to American troops in NATO countries, the receiving state could specify, as a condition of their entry, the rights which it is willing to grant and which it can similarly take away. Inasmuch as the privileges and benefits sought by us in connection with our troops abroad are not guaranteed by international law generally recognized by the NATO nations, it has been necessary to work out in NATO countries operating arrangements which are generally unsatisfactory in that they lack uniformity, are temporary in nature, may be limited to local situations, and do not generally provide for all the important rights which are provided for in the status-of-forces treaty. These operating arrangements do not, in most cases, provide for exclusive criminal jurisdiction, and, to this extent, the United States is not giving up in the treaties something which it now possesses.

2. The United States cannot legitimately demand treaty rights for its troops abroad that it is not willing to accord to foreign troops here. The committee would not look with favor upon a complete surrender of criminal jurisdiction over foreign troops in the United States to a foreign power. The committee therefore believes that the United States should not expect such a surrender by a foreign power over United States troops on its soil.

Exclusive criminal jurisdiction, amounting to extraterritoriality, itself creates difficult problems. In the eyes of the local population,



it sets Americans apart as a special, privileged class, and this fact acts as a constant irritant. If American courts martial return verdicts of acquittal, or if they impose sentences which seem lenient to the aggrieved parties, they are open to charges of favoritism. If, on the other hand—as has sometimes happened—they impose sentences substantially greater than those provided by local law for the same crime, they can be accused of flouting local customs and sensibilities. Regardless of how fair and just American courts-martial may be, the existence of exclusive criminal jurisdiction seems to the other country to be an infringement of its sovereignty.

The jurisdiction which foreign courts will have over Americans under this agreement is limited, as pointed out above, to offenses committed off duty and not against another American in the armed forces or civilian component. American jurisdiction is retained for offenses against the property or security of the United States and against the person or property of another member or dependent of the United States force, or civilian component.

Further, the American on trial in a foreign court will have all the rights to which a citizen of the country in question is entitled, and he must specifically be accorded such rights as those to a prompt and speedy trial, to be confronted with the charges and witnesses against him, to subpena witnesses in his own behalf, to be represented by counsel, to have an interpreter, and to communicate with his Government.

The committee is convinced that there are adequate safeguards in the agreement so that there need be no concern. The committee also desires to make it clear that the criminal-jurisdiction provisions of the status-of-forces agreement in no way constitute a precedent for agreements covering the same subjects which may conceivably be negotiated in the future with other countries. If negotiations for such agreements should be entered into, the committee would expect the executive branch to give due consideration to the circumstances prevailing at the time and in the area in question, with particular reference to differences in customs, legal codes, and the administration of justice. The committee has received assurances to this effect from the executive branch.

In determining whether the criminal-jurisdiction provisions are in the interests of the United States, it is necessary to compare what the situation would be under the treaty not only with what the situation now is but also with what it could reasonably be expected to be if the treaty were not ratified. The following letter from the Acting Secretary of State to the chairman of the Foreign Relations Committee makes it clear that the situation under the treaty would be an improvement over what now exists and over what could be anticipated in the future without the treaty:

DEPARTMENT OF STATE,
Washington, April 22, 1953.

The Honorable ALEXANDER WILEY,
Chairman, Senate Foreign Relations Committee,
United States Senate.

MY DEAR SENATOR WILEY: I understand that the question has been raised as to the relation of the NATO status treaties with present arrangements which we now have governing the criminal jurisdiction of our forces abroad.

I think that the following points are controlling:

1. As appears on page 28 of the record of the hearings before the Committee on Foreign Relations on April 7 and 8, "With respect to criminal jurisdiction,

we will have generally better rights under these treaties than under the interim arrangements. The sole exception is the situation in the United Kingdom" where the NATO formula will shortly become applicable in any event. For example, in one case, we have an interim arrangement where some of our personnel can be tried by our authorities, while the remainder are entirely subject to local law. This arrangement is an informal one and lacks legal standing.

In another case we do not even have exclusive jurisdiction of our personnel for offenses committed in performance of official duty.

In a third case it is agreed that we will have exclusive jurisdiction until the NATO status-of-forces treaty becomes effective; should it not become effective, we anticipate that this agreement would have to be renegotiated.

In still another case we now have no jurisdiction over offenses of our personnel against local law.

Other arrangements incorporate the terms of the NATO status-of-forces agreement. In some cases we have no arrangements whatsoever.

All of the foregoing arrangements are informal ad hoc interim arrangements providing a confusing and varying pattern of rights and responsibilities. The arrangements have perforce been limited by the existing legislation in each country, which in most cases is not as favorable as that of the NATO status-of-forces formula. The present arrangement therefore lacks operational uniformity as well as legal sanction, and does not provide adequate protection of our forces abroad.

2. Under the present interim arrangements, we have been working out our problems solely by reason of the cooperative spirit of the other countries and their authorities. It is not easy for the authorities of these other governments to cooperate with us in every case, as their present legal structure in most cases does not provide for as favorable treatment as that established by the treaties. The treaties would clarify, codify, and authorize on a firm legal basis the treatment which has been extended to us solely as a matter of grace and good will.

The treaties would provide a legal basis which would permit our military authorities and local authorities, both civil and military, greater opportunity to cooperate in resolving problems on a mutually satisfactory basis. Particularly in the area of criminal jurisdiction, the treaties contemplate close collaboration and cooperation. Article 7, paragraph 3 (c) of the status-of-forces treaty specifically provides that sympathetic consideration shall be given to requests for waiver of primary jurisdiction in cases deemed to be of particular importance, and close cooperation in investigations is contemplated by paragraph 6 of that article.

3. Even more importantly, and as indicated at page 30 of the hearings, it would almost certainly follow, if the multilateral treaties should not become effective, that less favorable terms than those of these treaties would result from separate negotiations with the respective countries. Clearly, sovereign governments are able to extend greater rights on a reciprocal basis founded upon a treaty.

4. Finally, it is considered that there would be serious effects on our relations with the NATO nations were the United States to attempt to substitute other arrangements for these treaties. As appears at page 30 of the hearings, the other nations have looked upon these reciprocal agreements as evidence of the good-faith partnership nature of the North Atlantic Treaty Alliance. They attach considerable importance to these agreements. Several countries have already ratified them; several others have either obtained necessary legislative consent to ratification or are well on the way to do so.

The sincere good faith and willingness of the United States to cooperate on a reasonable basis of equality could be questioned if other formulas were to be followed. Opponents to the ratification of the EDC treaties might seek to make the most of a rejection by the United States of these treaties, which NATO nations look upon as a cooperative step toward a common objective in the same way as we consider the EDC to be such a step.

Sincerely yours,

WALTER B. SMITH, *Acting Secretary.*

IX. CLAIMS PROCEDURES

The procedures for settling civil claims seem to the committee to be fair and just and calculated to reduce to a minimum the friction that almost inevitably arises from torts committed by members of the force or civilian component against members of the local population. In the case of torts committed in the performance of duty,

the local citizen who is injured proceeds against his own government exactly as he would if the injury had been caused by a member of his own government's armed forces. His own government settles the claim and is committed to pay 25 percent of the damages (thus safeguarding against excessive settlements) while the sending state whose national is at fault pays the other 75 percent. There is some reason to expect that such a procedure will result in smaller settlements than adjudication by American claims officers, with greater satisfaction of the claimants. Experience has shown that local officials are likely to take a more moderate view than Americans of monetary damage.

In the case of tortious acts or omissions not done in line of duty, the person damaged can sue the person responsible. But, because it was felt that most soldiers would not be able financially to pay substantial damages, the person wronged also is given an additional remedy through his own government.

It is important to note that these protections for local populations are reciprocally available to American citizens who may be injured by foreign troops in the United States.

X. Effect of Agreements on Foreign Taxation of United States Expenditures for Common Defense

The agreements have no direct bearing on the question of general tax relief for United States expenditures abroad for the common defense.

The status-of-forces agreement does provide in paragraph 4 of article XI that a force may import duty free its equipment as well as reasonable quantities of provisions, supplies, and other goods for its use.

Paragraph 2 (c) of article XI provides that service vehicles of a force or civilian component shall be exempt from the payment of any tax in connection with use of the roads. Paragraph 11 of the same article provides for tax-free delivery of fuel, oil, and lubricants for vehicles, aircraft, and vessels.

The headquarters protocol and the civilian agreement also provide for tax exemption so far as practicable of expenditures made by the international bodies of NATO for the common defense. While these provisions do not directly affect United States expenditures, the United States has a close interest in the matter inasmuch as it is one of the largest contributors to NATO.

Since the agreements now before the Senate have been under negotiation, the United States has also negotiated tax-relief agreements with most of the NATO countries: Portugal, United Kingdom, Luxembourg, France, Belgium, Norway, Denmark, the Netherlands, Italy, Iceland, and Greece. These bilateral executive agreements are not before the Senate for ratification, but they were submitted to the Foreign Relations Committee for its information. In general, they provide tax exemption for United States expenditures for the common defense.

The committee expresses the hope that the executive branch will continue to give attention to this question so that the money appropriated for the common defense will be spent for that purpose and will not be dissipated in the payment of foreign taxes.

XI. United States Federal-State Relationships and State Laws

The agreements have no direct effect on Federal-State relationships within the United States. They in no way enlarge the powers of the Federal Government at the expense of the States.

The agreements will supersede State laws in some instances:

1. Driving licenses

Article IV of the status-of-forces agreement requires States to accept driving licenses issued by the sending state or to issue their own driving licenses, without requiring a driving test, to any member of a force who holds a license from his own state. Reciprocal recognition of driving licenses, however, has already been provided for by the convention on road traffic of 1949, ratified by the Senate in 1950, so that this provision does not create a new situation in the United States. Article VIII of the status-of-forces agreement makes the sending state financially responsible for automobile accidents occurring in line of duty, and this should tend to insure care in issuing drivers licenses.

2. Carrying arms

Some State laws on the carrying of arms might be contravened by article VI of the status-of-forces agreement which provides that members of a force—

> may possess and carry arms, on condition that they are authorized to do so by their orders.

The necessity for an armed force to be armed is obvious. The article also provides, however, that—

> the authorities of the sending state shall give sympathetic consideration to requests from the receiving state concerning this matter.

3. Criminal jurisdiction

The criminal jurisdiction of State courts might in a few cases be restricted by the provisions of article VII of the status-of-forces agreement which gives the authorities of the sending state primary jurisdiction over offenses by their troops committed in the performance of duty. State courts would also be deprived of jurisdiction in cases where a foreign soldier committed an offense against another member of his force, but these are cases in which no American interests are involved.

4. Income and property taxes

Some State tax laws might be superseded by article X of the status-of-forces agreement which provides that—

> members of a force or civilian component shall be exempt from taxation in the receiving state on the salary or emoluments paid to them as such members by the sending state or on any tangible movable property the presence of which in the receiving state is due solely to their temporary presence there.

The article also provides that the presence of such members in the receiving state shall not count toward any time period necessary for establishing residence in the state.

5. Other taxes

Under paragraph 4 of article XI of the status-of-forces agreement, service vehicles are exempt from taxes payable in respect to use of

the roads. Under paragraph 11 of article XI, fuel, oil, and lubricants for use in the vehicles, aircraft, and vessels of a force or civilian component are to be delivered free of all duties and taxes.

Two other tax exemptions will have little, if any, practical effect on State laws:

Article 9 of the civilian agreement exempts the assets, income, and property of the North Atlantic Treaty Organization from all direct taxes. The only organs of NATO covered by this agreement and now located in the United States are in the District of Columbia.

Article 8 of the headquarters protocol provides that headquarters—

> shall be relieved, so far as practicable, from duties and taxes affecting expenditures by them in the interest of common defense and for their official and exclusive benefit.

The only such headquarters in the United States are those of the Supreme Allied Commander, Atlantic, and the Commander in Chief, Western Atlantic Area, in Norfolk. These headquarters are located on Federal property and use facilities owned by the Federal Government.

6. Immunities

All three agreements provide immunity from search and seizure of official documents and property. The security needs impelling this provision are obvious.

XII. Effect on Federal Laws

Aside from the Federal income- and excise-tax laws affected by the provisions cited above, Federal customs laws will be superseded to the extent provided in article XI of the status-of-forces agreement, articles 9, 13, 14, and 18 of the civilian agreement, and article 8, of the headquarters protocol.

These articles provide for the duty-free importation of goods for the official use of a force, a civlian component, a civilian organ of NATO, or an international headquarters. They also allow duty-free importation of the personal effects of individuals assigned to these bodies. United States law already provides for most of these privileges.

The exemption from the immigration laws provided in the status-of-forces agreement is discussed in section VI, above, and privileges and immunities conferred by the civilian agreement are treated in section VII.

XIII. Tax Status of United States Citizens

Great care was taken in negotiating the agreements to make sure that no United States citizen was exempt from United States income taxes.

There is an exemption (art. 19 of the civilian agreement and art. 7 of the headquarters protocol) for the salaries paid by the North Atlantic Treaty Organization, its subsidiary bodies, and its international military headquarters. The same articles, however, provide for arrangements whereby any member state may itself employ and pay any of its own nationals assigned to such bodies. The United States does employ and pay Americans assigned to these bodies, and it taxes them on their salaries.

The provisions of the status-of-forces agreement exempting members of forces from income taxes of the receiving state do not apply to nationals of that state. Thus, no exemption from United States income taxes is accorded Americans who may be employed by the military force of a foreign power in the United States.

XIV. Implementing Legislation

The treaties are self-executing except for the claims provisions of the status-of-forces agreement and the headquarters protocol. Legislation to implement those provisions has been submitted to the Congress by the executive branch.

The draft legislation authorizes the Secretary of Defense to pay the claims adjudicated under the provisions of the agreements, and establishes the procedure to be used in settling claims which arise under the agreements in the United States. It is now pending before the Committee on Foreign Relations which intends to give it early consideration after ratification of the treaties.

XV. Special Areas

A. JAPAN

The United States security treaty with Japan, which the Senate ratified in 1952, provides for the negotiation of an administrative agreement between the two countries governing the status of United States forces in Japan. The administrative agreement negotiated under the treaty in turn provides in article XVII that upon the coming into force of the NATO status-of-forces agreement—

> the United States will immediately conclude with Japan, at the option of Japan, an agreement on criminal jurisdiction similar to the corresponding provisions of that agreement.

The administrative agreement further provides in paragraph 5 of the same article that—

> in the event the said North Atlantic Treaty agreement has not come into effect within one year from the effective date of this agreement, the United States will, at the request of the Japanese Government, reconsider the subject of jurisdiction over offenses committed in Japan by members of the United States armed forces, the civilian component, and their dependents.

The effective date of the administrative agreement was April 28, 1952. The Japanese have indicated that they will request reconsideration of the criminal jurisdiction provisions on April 28, 1953. The committee deems it desirable, therefore, that the Senate act on the status-of-forces agreement as soon as possible, even though under a strict construction of the terms of that agreement it would not come into force for the United States until 30 days after completion of the ratification process.

At the present, under the interim terms of the administrative agreement with Japan, the United States retains exclusive criminal jurisdiction over all offenses committed by American military personnel, civilian employees, and their dependents in Japan. This situation is the cause of much unrest and bad feeling toward the United States in Japan, and the committee believes that our relations with the Japanese would be improved if criminal jurisdiction over our troops in Japan were put on the same basis as in the NATO countries.

In any event, the United States is already committed to reconsidering its exclusive jurisdiction at the request of Japan on April 28, 1953. In view of the fact that Japan is now a fully sovereign, independent nation, it can hardly be expected to continue to grant what amounts to extraterritoriality to a foreign power. It seems in the interests of the United States, therefore, to take prompt action on the status-of-forces agreement so that American personnel in Japan may be assured of the rights provided by that agreement.

B. GREENLAND

Under the terms of the 1951 agreement between the United States and Denmark for the defense of Greenland, the provisions of the status-of-forces agreement with respect to criminal jurisdiction, right of entry, and taxation become applicable to Greenland upon the coming into force of the treaty.

The other provisions of the treaty may also be extended to Greenland at the option of Denmark.

XVI. Why the Agreements Are in the Interest of the United States

Ratification of the agreements is in the national interest of the United States from a number of points of view.

The agreements will replace the present hodgepodge of interim arrangements in Europe with a permanent, uniform system. Difficulties have arisen under the present arrangements, and the fact that these interim arrangements have worked as well as they have has been due in large part to the good will of all concerned. However, while good will is an indispensable ingredient of all fruitful international relations, it is not a satisfactory substitute for binding treaty relationships. The absence of such relationships, moreover, frequently leads to irritations and friction between troops and local populations and these in turn are destructive of good will.

The agreements will reduce the paperwork and administrative burdens now falling on American commanders in Europe.

They will also insure the international mobility of forces in Europe. The military advantages of such mobility are obvious.

All of these advantages will be enhanced by the multilateral character of the agreements. The status of troops and civilian personnel will be the same in all NATO countries, and they may be transferred from one country to another without the administrative complications which would otherwise be met. This uniformity among all members of NATO is not only desirable from the point of view of integrating the defense of the area; it also furthers the concepts of mutuality and sovereign equality embodied in the North Atlantic Treaty.

Under the agreements the United States will acquire a number of new rights in the fields of criminal jurisdiction, civil claims, the carrying of arms, free movement of personnel, and tax and customs treatment. In some instances, these rights conform to the present practice; but under the agreements the rights will be firm and authoritative, whereas those which we now have are exercised only by the good will of a foreign power.

The United States gives up no rights as a receiving state which it does not acquire as a sending state. The advantages accruing to the United States as a sending state far outweigh whatever disadvantages it may feel as a receiving state.

It should be kept clearly in mind that the United States gives up no rights over our troops in Europe which we now have, in respect to criminal jurisdiction or to any other matter. On the contrary, all of the rights of the sending state written into the agreements represent net gains for the United States.

The committee believes that the agreements will improve the present position of United States forces in Europe. This position, as noted above, is not entirely satisfactory. It is doubtful, however, that even the existing status quo could be maintained if the agreements should not be ratified.

Many of the present interim arrangements have been continued on the expectation that they would shortly be replaced by the pending agreements. If this expectation should not be borne out, a breakdown of the present arrangements could reasonably be anticipated.

XVII. Conclusion

In view of the considerations set forth above, the Committee on Foreign Relations is of the opinion that the agreements provide ample safeguards for the rights of the United States and its citizens, that on balance these rights will be increased rather than decreased by the agreements, and that prompt ratification is in the national interest.

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