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Snee & Pye: Status of Forces Agreement: Criminal Jurisdiction

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RECENT BOOKS

STATUS OF FORCES AGREEMENT: Criminal Jurisdiction. By *Joseph M. Snee*, S.J. and *Kenneth A. Pye*, New York: Oceana Publications, Inc. 1957. Pp. 167. \$6.

This volume can best be termed a field survey report, since it represents the conclusions of the authors about the current applicability of national criminal laws to foreign military personnel stationed in host countries, based on the authors' personal observations in France, Italy, Turkey and the United Kingdom. In another sense it is an annotation of Article VII of the NATO Status of Forces Agreement, supplemented by references to experience in Japan under the Administrative Agreement and Security Treaty of April 28, 1952. After a brief introduction to the study, the authors discuss such matters as classes of persons covered by the Agreement, exclusive jurisdiction over subject matter, concurrent jurisdiction, procedural cooperation and procedural rights of accused persons in the nature of protection against multiple trials, process, confrontation and counsel.

To a casual reader one of the more immediate drawbacks of the book is its organization. In general it follows the pattern of a section heading chosen by the authors, a quotation of all or part of a section of Article VII and a discussion. Sometimes the section headings are lifted from the language of the Agreement, but at other times they represent an organizational concept chosen by the authors.¹ Though in most instances a portion of the Agreement prefaces the discussion, at least four sections bear no primary relationship to the text of the Agreement.² The content of the sections ranges rather widely. Sometimes it is a discussion of the implication of the language of the Agreement itself, as in the area of "Definition of 'Dependents.'" Usually the authors refer to the Working Papers of the drafters of the Agreement, to the compatibility of the Agreement and the laws of the host country, to parallel problems of federal law and to the attitudes of military personnel who administer the treaty for the respective countries. But in the case of waiver of the primary right of jurisdiction,³ under Article VII, paragraph 3(c), the discussion is solely of the *Girard* case,⁴ which, of course,

¹ For example, the section on "Jurisdiction of Foreign Military Courts," pp. 21-23, is followed by a quotation of Art. VII, §1(b) which refers only to "the authorities of the receiving State." "Exclusive Jurisdiction of the Receiving State and Article 134 UCMJ," pp. 24-33, rests on Art. VII, §2(b) which makes no reference to military law, but only to "the law of the sending State."

² "Criminal Jurisdiction Over Dependents," pp. 34-40; "Exclusive Jurisdiction of Receiving State and Articles 2-3 UCMJ," pp. 41-45; "The Meaning of the Senate Resolution," pp. 117-119, and "The United States as a Receiving State," pp. 120-123.

³ Pp. 58-62.

⁴ *Girard v. Wilson*, 354 U.S. 524 (1957).

arose under the Administrative Agreement with Japan and not under the NATO Agreement.

It is also unfortunate that the authors did not carry their field survey to Japan, to compare the daily administration of the Japanese-American agreement with that in Europe. All their references to Japanese experience rest on federal cases or secondary authorities. Though Article VII of NATO SOF Agreement is reproduced in an appendix, the Administrative Agreement with Japan is nowhere set out for comparison except as quoted in the opinion of the *Girard* case set out in another appendix. For that matter, there is no discussion of the jurisdictional relationship between military and civilian authorities in West Germany, a belated entry into NATO. Surely there must be interesting jurisdictional and policy questions in the case of a once hostile nation which later enters a treaty organization composed for the most part of its former adversaries. Much of the interest of the book lies in the description of cases not formerly reported elsewhere and in the comments of military administrators which disclose their interpretive position on the coverage of the Agreement. The volume would be much the richer for similar information from West Germany and Japan, since thereby experiences in treaty relations among former wartime allies, between such allies and a former enemy nation and between two individual former adversaries could be compared.

These deficiencies are probably the result of an arbitrary, unfortunate and unworkable limitation on the scope of the work. The authors could have limited their attention to military regulations and case decisions invoking particular sections of the NATO SOF Agreement, ignoring all materials dealing primarily with the Japanese-American Administrative Agreement, the Uniform Code of Military Justice, the United States Constitution and congressional legislation. They could, on the other hand, have written a treatise on the problems of troops stationed abroad, to include the historical status under international law of military forces present in friendly foreign nations, the inception of status of forces agreements, classes of persons included in such agreements, exclusive jurisdiction, concurrent jurisdiction, the character of an act as a jurisdictional matter, requirements of international "due process," procedural safeguards provided by treaty, and domestic constitutional problems raised by the stationing of troops abroad, to mention most of the points raised at least in passing in the present book. Instead, the authors have attempted to do a little of both and have fallen between two stools. They place great emphasis on the NATO Agreement, but refer to military law as they deem it appropriate, to case law arising out of the Japanese experience and to congressional activity as it tends to implement functions of the treaty. They specifically exclude from consideration international law problems based on the fact of stationing troops abroad. They discuss some procedural safeguards in the main body of the work, but

refer certain others to an appendix entitled "Miscellaneous Problems Under NATO SOF."⁵ In their conclusion they refer to a developing jurisprudence, or conjurisprudence,⁶ under these treaties, to the basic desirability of such agreements and to the fundamental fairness of the proceedings under them. Such matters demand more extensive treatment than the authors have accorded them. This is not to say the volume is without merit. On the contrary, it is an extremely useful reference volume for the person interested in military law, international law, or comparative criminal procedure. It embodies information not otherwise available and it gives useful insight into the way in which jurisdictional conflicts between the military authority of one country and the civil authority of another are being resolved. But with the unique fund of experience which the authors apparently possess in this area, it will be unfortunate if they do not carry on with an adequate textual treatment of the complete field.

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⁵ Appendix II, pp. 129-143, discussing burden of proof, presumption of innocence, right against self-incrimination and trials in absentia.

⁶ A term borrowed by the authors from Professor Julius Stone of the University of Sydney. P. 10, note 19.