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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Some Criminal Offenses Committed Overseas By DOD Civilians Are Not Being Prosecuted: Legislation Is Needed

The United States has virtually no criminal jurisdiction over the more than 340,000 DOD civilians accompanying the Armed Forces overseas Alleged offenses, some serious, are not tried when foreign countries choose not to prosecute Administrative sanctions are inadequate for punishment and deterrency and do not safeguard individual rights

The United States has jurisdiction over many offenses committed by service members overseas, but DOD does not routinely account for the disposition of these cases GAO analyses indicate actions taken may be inadequate

GAO recommends that the

--Congress enact legislation extending criminal jurisdiction over DOD civilians accompanying the Armed Forces overseas and

--Secretary of Defense modify the annual report to the Congress to provide more information about the number, type, and disposition of offenses committed overseas

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COMPTROLLER GENERAL OF THE UNITED STATES
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To the President of the Senate and the
Speaker of the House of Representatives

Some criminal offenses committed by civilians accompanying the military forces overseas are not being prosecuted. Since 1960 a void in U.S. criminal jurisdiction has prevented the United States from prosecuting these civilians. While they are subject to foreign country jurisdiction, it is not always exercised. As a result, some serious offenses and many less serious and petty offenses are not brought before a judicial forum. Military commanders may take no action or dispose of these offenses through administrative sanctions which are inadequate in terms of punishment and deterrency and do not safeguard an individual's rights.

The Department of Defense does not report to the Congress the full extent of crimes committed by civilians nor does it routinely accumulate information about criminal cases involving service members released by foreign countries for U.S. disposition. Without a detailed analysis and an appraisal of the facts, the effects of the jurisdictional void or how effectively jurisdiction agreements with foreign countries are being implemented cannot be evaluated.

Copies of this report are being sent to the Directors, Office of Personnel Management and Office of Management and Budget; the Attorney General of the United States; the Secretaries of Defense, State, Transportation (Coast Guard), Army, Navy, and Air Force; and other interested parties.

Elmer B. Staats
Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

SOME CRIMINAL OFFENSES COMMITTED OVERSEAS BY DOD CIVILIANS ARE NOT BEING PROSECUTED: LEGISLATION IS NEEDED

D I G E S T

The Supreme Court ruled in 1960 that during peacetime it is unconstitutional to subject civilians to military law. Since then, the United States has had virtually no criminal jurisdiction over the 343,000 civilian personnel and dependents accompanying the Armed Forces overseas. As a result, alleged offenses, including rape, arson, and robbery are not brought before a judicial forum if the host country chooses not to prosecute. Military officials believe a disregard for the law exists, effective discipline and control over civilian personnel and dependents are lacking, and the rights of individuals are not always safeguarded. (See pp. 1 and 4 to 6.)

International law recognizes that the host country has criminal jurisdiction over U.S. military personnel stationed there. However, the United States has negotiated agreements that allow it to exercise criminal jurisdiction over the 407,000 service members stationed overseas. (See pp. 1, 23, and 24.)

These agreements give the United States criminal jurisdiction over many offenses committed by service members that otherwise would have been prosecuted by the foreign country or not prosecuted at all. However, GAO analyses indicate that the actions taken by the Department of Defense in these cases may be inadequate. (See pp. 23 to 25.)

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LEGISLATION IS NEEDED TO EXTEND U.S. CRIMINAL JURISDICTION

While civilian personnel and dependents accompanying the forces overseas are subject to foreign criminal jurisdiction, it is not always exercised. (See pp. 4 and 5.) For example, in the 12 months ended November 30, 1977, 113 offenses (excluding traffic offenses) were released to the United States for disposition even though the United States has no criminal jurisdiction to prosecute them. Of the 113 cases, 59 were serious offenses (including rape, robbery, and aggravated assault) and 54 were less serious offenses (including simple assault, drugs, and disorderly conduct). (See pp. 8 and 9.) If these offenses had been committed in the United States they could have been prosecuted. (See pp. 4, 11, and 12.)

Military officials believe the knowledge that the United States does not have criminal jurisdiction is an encouragement to offenders. Many military commanders dispose of these offenses through administrative sanctions which are inadequate in terms of punishment and deterrency and safeguarding an individual's rights. Furthermore, the strongest administrative sanctions are often directed against the military member/sponsor; not the civilian offender. (See pp. 6, 13, and 14.)

RECOMMENDATIONS

The Congress should enact legislation to extend criminal jurisdiction over U.S. citizen civilians accompanying the military forces overseas. The extraterritorial jurisdiction should extend to petty as well as serious offenses because the less serious offenses appear to be the greatest disciplinary problem. (See p. 19.)

The Secretary of Defense and the Attorney General should prepare provisions for implementing the extraterritorial extension

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of laws and report their findings to the Congress by September 1980. The Secretary and Attorney General should consider provisions for

--apprehending, restraining, and delivering these civilians to trial;

--bringing offenders back to the United States for trial; and

--establishing courts and/or magistrates overseas.

The Secretary of Defense should direct the services to provide more information to the Congress about the number, type, and disposition of criminal offenses committed by civilians accompanying the military forces overseas. (See p. 19.)

U.S. DISPOSITION OF CASES RELEASED BY HOST COUNTRIES MAY BE INADEQUATE

Because U.S. service personnel stationed overseas are representatives of the United States their conduct is highly visible and subject to the laws of the foreign country. Improper conduct by these personnel can affect relations between the United States and the host country. (See p. 23.)

Throughout the world the Department of Defense attempts to obtain jurisdiction over criminal cases involving military personnel. (See p. 23.) In the 12-month period ended November 30, 1977, 17,946 offenses committed by service members were released by the host country to U.S. authorities for disposition. Of the total cases released, 7,246 were traffic offenses, but others were more serious, including murder, rape, manslaughter, and assault. (See pp. 24 and 25.)

GAO analyses indicate that when the United States obtains jurisdiction over cases released by the host country, the Department of Defense may be lax in prosecuting these

cases and may not be exhibiting sufficient concern over cases involving the life and property of host country nationals. (See pp. 27 and 28.) Several foreign countries have recently expressed concern over this matter. As a result, foreign countries could start prosecuting more cases involving service members. (See p. 29.)

RECOMMENDATION

The Secretary of Defense should improve the present reporting system to accumulate and track information on the disposition of all overseas cases involving service members released to U.S. authorities and include it in the annual report to the Senate Committee on Armed Services. ~~Such information is needed~~ to

--meet the requirements in some criminal jurisdiction agreements,

--help assure the host country that appropriate action is being taken, and

--provide the Congress with more complete information on the implementation of criminal jurisdiction arrangements throughout the world. (See p. 30.)

AGENCY COMMENTS

The Departments of Defense, Justice, and State were given an opportunity to study GAO's preliminary report, verify the accuracy of the data presented, and discuss it with GAO. Their comments and observations have been considered in the report's final preparation. (See app. VI.)

The three Departments agreed that criminal jurisdiction over civilians should be extended overseas and have provided testimony supporting past proposals. However, because of possible problems with implementation the Departments disagreed that jurisdiction can be extended to less

serious offenses. While GAO did not recommend how to implement extraterritorial criminal jurisdiction, it believes specific arrangements can be worked out.

The Department of Defense recognized the need to account for cases released to U.S. military authorities for disposition, but it disagreed that the statistics it prepares on offenses committed by civilians are incomplete. GAO believes the report to the Senate Armed Services Committee needs to be modified to inform the Congress of the full extent offenses are committed by civilians accompanying the military forces overseas and the treatment of all cases waived to the United States for disposition.

Tear Sheet

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ABBREVIATIONS

DOD	Department of Defense
GAO	General Accounting Office

CHAPTER 1

INTRODUCTION

The United States has virtually no criminal jurisdiction over the 343,000 civilian personnel and dependents accompanying the Armed Forces overseas. (See app. I.) In 1960 the Supreme Court ruled that during peacetime it is unconstitutional to subject civilians to military law--the Uniform Code of Military Justice (10 U.S.C. 801-940). As a result, alleged offenses, including rape, arson, and robbery by civilian employees and dependents are not brought before a judicial forum when the host country chooses not to prosecute.

The United States has criminal jurisdiction over the 407,000 service members stationed overseas through international agreements. (See app. I.) Except where U.S. forces are granted permission to pass through a country, international law recognizes that the host country has jurisdiction over U.S. military personnel. However, the United States has negotiated criminal jurisdiction agreements with 21 countries. The agreements allow the United States to exercise criminal jurisdiction over service members if the offense is committed

--in the performance of official duties,

--solely against the property or security of the United States, or

--solely against the person or property of other U.S. personnel or their dependents.

The agreements also provide that in many of the cases when the host country has criminal jurisdiction, the United States may request the host country to waive jurisdiction. In the 12 months ended November 30, 1977, about 80 percent of such cases were returned to U.S. authorities for disposition. However, our analyses indicate that the final disposition of these cases is not routinely accounted for and the United States may be lax in the prosecution of cases released by the host country. Recent actions by several foreign countries show they are also concerned about the lack of appropriate actions by U.S. authorities.

SAFEGUARDING THE RIGHTS OF SERVICE MEMBERS

Department of Defense (DOD) policy is "to protect, to the maximum extent possible, the rights of United States personnel who may be subject to criminal trial by foreign

courts and imprisonment in foreign prisons." To implement this policy, the services have prepared a tri-service regulation 1/ establishing procedures which require the designated commanding officer for each country to

--make constant efforts to establish relationships and methods of operation which will maximize U.S. jurisdiction;

--prepare a study of the laws and legal procedures in effect within the country;

--provide military legal assistance, trial observers, and certain other U.S. personnel to assist the service member if confined; and

--provide defense counsel and payment of court costs and other expenses incident to representation in court.

In carrying out the tri-service regulation and through practices which have evolved over the years, the services have (1) attempted to obtain criminal jurisdiction in criminal matters involving service members whenever possible and (2) selectively obtained control or influence in criminal matters involving civilian employees and dependents accompanying the Armed Forces even though the United States has no criminal jurisdiction to prosecute these persons.

While we found problems with some cases, the services have been successful in obtaining U.S. jurisdiction over most cases involving U.S. service personnel. The variations in success between countries and the particular problems we found depended on the host country's extent of cooperation, the nature of its laws and judicial system, and the importance attached by the host country to any particular case.

SCOPE OF REVIEW

This review examined the implementation of the criminal jurisdiction provisions contained in the various status of forces agreements and other arrangements the United States has negotiated. Previous work indicated that the implementation of these provisions varied from country to country

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1/Legal Services: Status of Forces Policies, Procedures, and Information; AR 27-50, SECNAV INST 5820.4E, AFR 110-12; Dec. 1, 1978.

based on the host country's interpretations of the language in the arrangements and the relationship between the United States and the host country.

Between January and June 1978, we visited the international law offices in each of the military services in Washington, D.C., and U.S. defense installations in seven foreign countries--Germany, Japan, Korea, the Philippines, Spain, Turkey, and the United Kingdom--and met with officials of DOD and the Department of State. We examined each service's implementing documentation and the criminal jurisdiction provisions in the agreements for the seven countries we visited.

In each country we (1) met with the U.S. officials responsible for carrying out the provisions in the criminal jurisdiction arrangements and (2) examined available documentation addressing offenses committed by service members, civilian employees, or dependents and subject to the laws and judicial system of the host country.

CHAPTER 2

LEGISLATION NEEDED TO FILL THE VOID IN U.S. CRIMINAL JURISDICTION OVER CIVILIAN EMPLOYEES AND DEPENDENTS ACCOMPANYING THE U.S. FORCES OVERSEAS

There is virtually no U.S. civilian or military criminal jurisdiction over the 343,000 U.S. citizen civilian employees and dependents accompanying the U.S. military forces overseas. Although they are subject to foreign criminal jurisdiction, it is not always exercised.

During the 12 months ended November 30, 1977, DOD reported the release by host countries of 59 serious, 1/ 54 less serious, 2/ and 361 traffic offenses 3/ allegedly committed by U.S. civilian employees and dependents and released to the United States for disposition. (See app. II.) Based on our review of a sample of police records in a large European military community, we believe these statistics are understated by DOD. 4/

The criminal jurisdiction void arose during the period 1956 to 1960. In a series of cases, the Supreme Court ruled that it is unconstitutional for U.S. civilians to be prosecuted by military law in peacetime. As a result, alleged offenses are not always brought before a judicial forum for prosecution even though they probably would be if the offense were committed in the United States.

1/Serious offenses include murder, rape, manslaughter and negligent homicide, arson, robbery and related offenses, forgery and related offenses, and aggravated assault.

2/Less serious offenses include simple assault, drug abuse, offenses against economic control laws, disorderly conduct, drunkenness, breach of peace, and others.

3/Including drunken driving and reckless driving and fleeing the scene of an accident.

4/"Report of Statistics on the Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel, 1 December 1976 - 30 November 1977," prepared by the Office of the Judge Advocate General, Department of the Army, as executive agent for DOD. These statistics are the most current ones readily available and they are used throughout this report unless otherwise noted.

In these cases justice is not served. Military officials believe a disregard for the law exists, effective discipline and control over civilian personnel are lacking, and the rights of individuals are not always being safeguarded. To fill this void, legislation is needed to extend U.S. criminal jurisdiction overseas for all types of offenses.

U.S. EXTRATERRITORIAL CRIMINAL JURISDICTION IS LIMITED

U.S. citizens are held responsible for their conduct outside the United States and its territories through various jurisdictions depending on their status. Department of State personnel are normally given diplomatic immunity from foreign jurisdiction. This immunity can be waived by the United States.

Tourists, private business employees, and other U.S. citizens are subject to the laws of the foreign country they are in. For the most part, tourists are only temporarily visiting or residing in foreign countries. Some business or industry employees may be residing permanently abroad; however, usually not in large concentrations. For both tourists and business employees, the purpose of being in the foreign country is private and not directly related to official U.S. Government matters.

U.S. service personnel, civilian employees, and dependents are residing abroad in large numbers and sometimes in high concentrations. Military family tours overseas are normally 3 or more years and considered permanent assignments. There are currently about 407,000 U.S. military personnel and 343,000 DOD civilians stationed abroad. In three of the countries we visited--the Philippines, Spain, and the United Kingdom--more dependents are stationed there than service members.

Although the criminal jurisdiction agreements we examined permit the exercise of U.S. military law over civilians accompanying the Armed Forces overseas, the Supreme Court ruled this jurisdiction unconstitutional. However, no constitutional impediment prevents exercising jurisdiction if the Congress specifically provides for it in law, such as has been done for treason and income tax evasion. The Special Maritime and Territorial Jurisdiction of the United States (18 U.S.C. 7) extends U.S. jurisdiction for certain major crimes committed aboard American ships and planes and in Federal lands enclaves (consulates and embassies). The special territorial jurisdiction does not apply, however, to foreign military bases reserved or acquired for the use of the United States.

THE VOID IN JURISDICTION OVER CIVILIANS ACCOMPANYING THE MILITARY

When the Congress enacted the Uniform Code of Military Justice in 1950 it was intended to apply to overseas service personnel, civilian employees, and dependents with the forces. In 1957, however, the U.S. Supreme Court held that the military did not have jurisdiction to try civilian employees for capital offenses committed overseas (Reid v. Covert 1/). In 1960, the U.S. Supreme Court in Kinsella v. Singleton 2/ and Grisham v. Hagan 3/ declared that civilian employees and dependents are also not subject to the Code during peacetime for noncapital offenses. The Supreme Court did not address the applicability of the Code in time of war; however, other Federal courts have upheld military jurisdiction in such cases. As a result of the Supreme Court decisions, the United States now has virtually no criminal jurisdiction to prosecute civilian personnel and dependents who have committed criminal acts overseas. These persons fall almost exclusively under the criminal jurisdiction of the host country.

The exercise of criminal jurisdiction by foreign courts over offenses committed by DOD civilians overseas is not an adequate substitute for U.S. jurisdiction because foreign courts do not (1) guarantee all the protections and safeguards of the U.S. Constitution and (2) always exercise their jurisdiction over these offenses.

In spite of the jurisdictional void, DOD attempts to have foreign authorities release criminal cases involving civilian members of the U.S. community to them. DOD, however, does not have an adequate mechanism to deal with the offenses. Remedies available to U.S. authorities consist solely of administrative actions such as restriction of privileges, reprimands, curtailment of tours, and, if an employee, dismissal. While the administrative actions available may be adequate for some less serious offenses, they are inadequate for more serious offenses.

RELUCTANCE OF HOST COUNTRIES TO PROSECUTE CRIMES IN THE U.S. COMMUNITY

Crimes involving civilians overseas frequently include offenses of shoplifting, blackmarketing, simple assault, or

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1/354 U.S. 1 (1957).

2/361 U.S. 234 (1960).

3/361 U.S. 278 (1960).

traffic violations. Generally, if the offense is considered minor by the DOD command and occurs solely within the U.S. community, the United States will attempt to settle the case through administrative remedies without involving the host country. If a more serious crime occurs, host country officials are notified and asked to exercise jurisdiction, otherwise, the crime is not prosecuted. Host countries, however, do not always want to investigate or adjudicate crimes not affecting their citizens or property. For example:

--In one Asian country a dependent wife stabbed her military husband causing serious injury. No charges were brought against the wife by local authorities.

--In another Asian country a dependent wife and a serviceman were believed to have acted as co-conspirators in a robbery and murder of another serviceman. The serviceman who committed the offense was found guilty under military law and sentenced to life imprisonment. His wife was returned to the United States without being prosecuted because the host country did not exercise jurisdiction.

--In another recent case in a European country, a dependent wife shot and killed her service member husband. The country's authorities arrested the wife and from witnesses and other evidence the police report concluded that no other perpetrator could have committed the murder. Nevertheless, the cognizant judge ruled that because "* * * the case, which involves for practical purposes only American citizens, to whom the [host country] legal community cannot be expected to grant priority, * * * the detention of the defendent should be ended." The woman was subsequently released and she returned to the United States without being prosecuted.

The Catlow/Russo 1/ decisions of the U.S. Court of Military Appeals had the effect of voiding service member enlistments under certain conditions. The void enlistments have been used as a defense to avoid trial by a military court for serious offenses. This has increased jurisdictional void problems overseas because the United States has virtually no remedies available, either administrative or judicial, to deal with criminal activities by these service

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1/The United States v. Catlow (23 USCMA 142, 48 CMR 758 (1974)) and the United States v. Russo (23 USCMA 511, 50 CMR 630 (1975)).

members. In one Asian country during the period December 1976 through November 1977, at least 42 Catlow/Russo void enlistments occurred among personnel in one service.

Offenses charged among these 42 cases included the acts of homicide, larceny, unlawful entry, aggravated assault, simple assault, attempted arson, destruction of government property, and numerous military offenses such as disrespect, dereliction of duties, and disobeying orders. In two of the most serious cases, homicide and theft combined with aggravated assault, the United States requested the host country to prosecute the cases. In both of these instances the individuals were tried and convicted in the foreign country's court. We were told the host country was not requested to prosecute any of the other cases because of its reluctance to become involved. Thus, the alleged offenders were not prosecuted and the crimes went unresolved.

THE UNITED STATES DOES NOT ALWAYS REQUEST HOST COUNTRY ASSISTANCE

Depending on the country where the offense occurs, U.S. authorities are sometimes reluctant to voluntarily subject the U.S. citizen to the foreign criminal system, especially for alleged offenses committed while on official duty, because the country's fair trial protections are not considered sufficient. For example, in one Asian country we visited, the United States is unable to assure a prompt and speedy trial and certain other safeguards. Also, confinement facilities in the country are far below U.S. standards.

Even if property of the host country or a host country national is involved, DOD may still request the host country to release the case for U.S. disposition. The host country may release the case depending on the seriousness of the alleged offense and whether the host country believes U.S. administrative actions would be sufficient under the circumstances.

THE NUMBER OF OFFENSES COMMITTED BY CIVILIANS ACCOMPANYING THE MILITARY FORCE

Our review showed that the number of criminal offenses committed by civilians accompanying the Armed Forces overseas is significantly higher than is being reported in DOD's

annual report to the Senate Committee on Armed Services (see footnote 4 on p. 4) and warrants concern. The offenses cover the range of those which may be committed in the average American community, from traffic offenses to murder. For example, the number and type of offenses committed by U.S. civilians reported by DOD for the 12 months ended November 30, 1977, were:

Type of offense	Total cases	Released to United States for disposition	Reserved by foreign jurisdiction
Murder	2	-	2
Rape	7	1	6
Manslaughter and negligent homicide	17	-	17
Arson	2	1	1
Robbery, larceny, and related offenses	199	54	145
Burglary and related offenses	17	1	16
Aggravated assault	15	2	13
Simple assault	38	7	31
Drug abuse	88	14	74
Offenses against economic control law	70	-	70
Traffic offenses	4,354	361	3,993
Disorderly conduct, drunkenness, breach of peace, etc.	33	7	26
Others	100	26	74
Total	4,942	474	4,468

At one large Army community in Europe we reviewed records available at offices of the military police, criminal investigators, and customs officials and tabulated all offenses which the officials believed were founded. 1/ Military authorities told us that most reported offenses would come to the attention of these offices. The Army community records for 1977 showed that Army civilians committed 24 offenses. However, our review revealed 228 founded offenses. Thus, the offenses reported for this Army community were about 10 percent of the number of offenses we found in available records.

1/A founded offense is defined as a criminal offense adequately substantiated by police investigation; this determination does not depend on a judicial decision.

Indications are that our schedules may also be incomplete because

--many offenses are not reported by the victims,

--investigations are less thorough because of the jurisdictional void which results in many offenses not being adequately substantiated, and

--offenses discovered by local authorities are not always reported to U.S. military authorities.

Military officials' estimates of the number of offenses not reported ranged as high as 50 percent. They believe more offenses would be reported if the United States had criminal jurisdiction over them.

Several military investigative officials told us they are well aware that the United States has no jurisdiction over its civilians overseas. Because of limited resources, they can only afford to investigate cases which can be prosecuted. Therefore, in many instances, cases which could be developed are not. Other investigators said they fully investigate all incidents because they are required to do so. However, regulations and U.S. law governing U.S. military police authority over its civilians severely limits the services' investigative powers in criminal activity occurring off military installations.

We were also told by military law enforcement officials that local authorities sometimes make arrests, hold trial, and dispose of offenses without notifying military authorities because civilian employees and dependents present nonmilitary identification, such as a tourist passport. The frequency of this happening is not known, but is suspected to be fairly low.

JUSTICE NOT BEING SERVED

Military justice officials expressed a deep concern that justice is not being served because persons accused of committing serious offenses are not brought before a judicial forum. At two military communities where we examined detailed records, 82 serious offenses were allegedly committed by DOD civilians in 1977 for which there was no disposition. (See app. IV and V.)

Officials at other locations we visited told us about incidents of alleged murders which they believed would have been prosecuted had there been U.S. jurisdiction. For example, a U.S. dependent shot and killed her service member

husband. According to Army Criminal Investigations officials, she fled to the United States and was able to avoid the possibility of prosecution in a foreign country court because the United States did not have an extradition treaty with them, nor did the host country ask for her return.

In addition, many alleged crimes involving DOD civilians which were discovered or investigated solely by military authorities were never brought to the attention of the local foreign authorities, thereby precluding any potential prosecution of these individuals. In our work at the two military communities, we found 245 instances of alleged offenses which military officials did not bring to the attention of the local foreign authorities during calendar year 1977. Offenses which occurred five times or more were:

Offense	Number of incidents
Shoplifting	49
Breaking and entering, theft	18
Vandalism	18
Domestic disturbance	13
Drug violation (minor)	12
Affray	10
Breach of peace	10
Blackmarketing	9
Simple assault	8
Malicious mischief	8
Petty theft	8
Drunk in public	7
Grand theft	7
Fraud	7
Driving while intoxicated	5

The host country authorities with criminal jurisdiction over these individuals should decide whether or not to prosecute them. A U.S. authority whose only possible sanctions are administrative is not adequately empowered to deal with many of these offenses nor able to decide whether or not prosecution should take place. In addition, individuals should be allowed to maintain and prove their innocence before a judicial proceeding. This is not possible when alleged offenses are not disclosed to the local authorities.

A problem also exists in cases where military members are prosecuted and punished while civilian participants in the offense are only given administrative restrictions or no punishment at all. For example, two dependent sons were apprehended for housebreaking and larceny of firearms. A soldier, an accessory after the fact and not involved in

the actual break-in, was given a reduction in pay of $220 and reduced two paygrades--from E-4 to E-2. No judicial action was taken against the dependent sons. We were also told about several examples of drug related offenses where the military offender was prosecuted and given a substantial punishment, while the U.S. civilians who, according to military officials, were suspected of a greater degree of culpability in the offense, were not prosecuted.

U.S. military law enforcement officials believe that if the United States had jurisdiction over these offenses, the alleged offenders would have been prosecuted. Several of these officials were concerned about justice not being properly served by such grossly uneven administrations of punishment.

DISREGARD FOR THE LAW

Military commanders, military police, investigators, and military lawyers believe that many crimes, both serious and petty, are committed by civilian employees and dependents with the full knowledge that there is no U.S. criminal jurisdiction. They consider this a matter of serious concern. For example, U.S. military officials stated that the murder of a U.S. serviceman in Berlin was committed by the wife of another U.S. serviceman. The husband and wife conspired on the basis that neither U.S. nor foreign jurisdiction applied to the wife. Indications are that the conspirators researched the question of jurisdiction through legal channels before committing the murder.

We also found examples of frequent repeat offenses by U.S. civilian offenders at the two locations where we examined military police records. In the two military communities, we found 55 recidivist examples. In some cases three or more founded offenses were committed by the same person in less than a 1-year period. For example, in a 4-month period one individual was a subject in six incidents including two incidents of housebreaking and destruction to government property, larceny of a privately-owned vehicle, and leaving the scene of an accident.

Most military police, lawyers, and commanders we interviewed told us that it is commonly known that they cannot prosecute alleged offenses committed by civilian employees and dependents accompanying the Armed Forces. These officials believe that the punishment and deterrent effect of limited administrative action is inadequate.

INEFFECTIVE CONTROL OVER DISCIPLINE

Military commanders were concerned that the criminal jurisdiction void limits their ability to fulfill their responsibility to maintain discipline. Several of the commanders we contacted expressed the need for a judicial process to deal with alleged offenses committed by U.S. civilians under their control. Most said that the current practice of administrative sanctions is both inadequate for the offense committed and ineffective as a deterrent to crime.

Several military law enforcement officials believe that drug use among U.S. civilians with the forces is an area of great concern because of the frequency and the affect this offense has on the force's overall discipline. We saw examples and were told of cases where dependents, both adult and juvenile, were involved in selling drugs with military personnel. According to military law enforcement officials, generally only the military offender received punishment. These officials believe that the inability to adequately deal with the civilian drug offenders contributes to the difficulty in handling the overall drug problem of the military.

Probably the most commonly reported offense committed by civilian employees and dependents is shoplifting in the military exchange service stores. Although most incidents involve items which are fairly inexpensive, there were several instances in which the amounts taken were substantial. In Europe during 1977, we were told that over 1,600 shoplifters were apprehended. (It is believed only 1 out of 10 shoplifters are discovered.) Regardless of the amounts taken, the action taken is generally always the same, i.e., administrative suspension of privileges for 6 months or more. Neither exchange nor military officials believe that this is an effective deterrent in all cases and that a judicial disposition for some of these offenders is required.

Recently, German authorities have started prosecuting some dependents caught shoplifting merchandise worth $50 or more. Shoplifters have been fined up to $550, but not all cases are prosecuted. Store operators and detectives told us that U.S. jurisdiction over these cases would lessen the number of thefts.

ADMINISTRATIVE SANCTIONS ARE INADEQUATE

The current administrative actions which can be taken against alleged offenders--restriction to base, revocation of certain privileges, and other actions--are considered

by many officials to be time consuming, inappropriate for many offenses, ineffective as a deterrent, and lacking the judicial forum which would guarantee that the rights of the accused are adequately safeguarded.

Military officials, including commanders, lawyers, and police, stated that the ultimate "punishment" of being sent home may in fact not be a punishment at all. Many officials believe that this is an incentive for some individuals to commit repeated offenses until the decision is made to transfer them. Also, without U.S. jurisdiction, the opportunity for an independent judicial acquittal is lacking. We were told by one military official that the military reports constitute "prima facie" evidence of an offender's guilt and, as such, all offenses reported by police are considered founded and require an administrative sanction.

The more severe sanctions imposed by the administrative process are directed at the sponsor, rather than at the offender, because sponsors are considered responsible for the actions of their dependents. In the more severe cases of discipline problems, the action taken directly affects the sponsor. For example, instructions issued by the U.S. Air Force-Europe, Commander in Chief, to subordinate commands regarding dependent misconduct states

> "* * * it will be a matter of permanent record in the individual's next efficiency rating. If the sponsor is returned to the United States as a result of dependent misconduct, you will insure that a letter is forwarded to the gaining commander outlining the circumstances of the reassignment."

In one instance a sponsor objected to the way allegations had been turned into indictments concerning the behavior of his two dependents. He wrote to the military community commander:

> "Your letter citing unfounded accusations has been forwarded through my various commanders/ supervisors indicating that I cannot or will not control my family. This is entirely false, but it has seriously jeopardized my career."

We found that a number of military officials believe it improper to punish a sponsor for the acts of dependents. However, these officials said that administrative sanctions, although inequitable and inadequate, were the only means available to exert some control and discipline over the civilians under their command.

NO FORUM AVAILABLE FOR CIVIL ACTIONS

Crime victims do not have access to a U.S. court to protect their rights from actions arising out of criminal conduct or to pursue civil matters. We were told by U.S military legal officials that, in most instances and for all practical purposes, these victims lack a court to protect their interests in civil matters and that a foreign court may not be available. For instance, a U.S. military lawyer in one European country stated that the host country "authorities do not like to assume jurisdiction in civil cases involving Americans." Other host countries' courts are also reluctant to become involved in matters involving American military families.

We were told of incidents of child abuse, where it was believed that the immediate solution to the problem was removal of the child from parental custody until a more permanent solution could be found. However, because U.S. military officials lack access to a U.S. court, this is seldom done. U.S. military officials are reluctant to ask the host country to take action because the American children cannot adapt to child care facilities where English is not spoken.

As a result, the military hospitals, which discover cases of child abuse, are not able to insure the safety of an identified victim. The usual course of action is to send the family back to the United States and hope that proper court and social rehabilitative processes take their course. Hospital officials said that U.S. criminal jurisdiction, to deal with these and other family type disputes, would enhance the welfare of abused children and other family members.

BERLIN--A SPECIAL CASE WHICH WARRANTS EXTRA CONCERN

In Berlin, no court, United States or foreign, exercises jurisdiction over U.S. civilians accompanying the Armed Forces. Because of our occupation status in Berlin any civilian accused of a crime is immune from criminal prosecution unless the U.S. Commander of Forces in Berlin decides to make a special exception to request that the German court try a case. This process has only been exercised once in over 30 years of our presence in Berlin and then only after approval by the U.S. Secretary of State.

U.S. civilians commit the same or similar type of offenses in Berlin that they do in other locations, yet they are not prosecuted. Military officials in Berlin say that

"we keep our fingers crossed" hoping no serious incidents will develop because of the inevitable resulting complications.

An American couple stationed in Berlin premeditated the murder of an American soldier. Military officials told us that the wife, a U.S. civilian, was suspected of committing the murder but because of her status, she and her husband assumed that no court could try them. The husband, a service member subject to military law, was tried and found guilty by a court-martial. He was sentenced to life imprisonment for complicity and conspiracy. Her conviction by a German court which resulted in a 9-year prison sentence was set aside on appeal and a new trial ordered. DOD and State Department officials in Berlin believe that this case, more than any other, demonstrates the need for a U.S. court jurisdiction over U.S. civilians.

A U.S. State Department official in Berlin also told us that the British use a military court and the French use a civilian court established in Berlin to prosecute civilians. The United States is empowered to set up its own court in Berlin as an occupying power. This court has been constituted only once since 1955 and has not tried a case involving an American citizen. However, it could be used to try an American citizen including a DOD civilian employee or dependent accused of a criminal offense in Berlin.

PROPOSED BILLS TO EXTEND JURISDICTION TO DOD CIVILIANS

There is a long history of bills introduced in the Congress to extend criminal jurisdiction to DOD civilians overseas. In 1962 the Department of the Army and the Senate Subcommittee on Constitutional Rights prepared draft legislation which would have given Federal district courts jurisdiction over all serious offenses and certain other offenses committed abroad by U.S. citizens, nationals, and other persons owing allegiance to the United States.

The Air Force, through DOD, drafted alternative proposals to meet the problem:

--A constitutional amendment authorizing the exercise of court-martial jurisdiction over persons serving with, employed by, or accompanying the Armed Forces outside the United States.

--Legislation subjecting persons owing allegiance to the United States to the jurisdiction of U.S. district courts for crimes committed outside the United States and the Canal Zone.

--Legislation providing for the apprehension, detention, and disposition of certain persons serving with, employed by, or accompanying the U.S. Armed Forces outside the United States and the Canal Zone.

In the 95th Congress S. 1437 was introduced and designed to codify, revise, and reform title 18 of the U.S. Code and extend its authority extraterritorially to cover persons accompanying the military forces of the United States. The offenses covered were generally serious and the bill did not specifically provide for how an offender should be dealt with and by whom.

H.R. 763 was also introduced in the 95th Congress and was designed to amend title 18 of the U.S. Code by subjecting certain U.S. citizens to the jurisdiction of the U.S. district courts for crimes committed outside the United States. It provided for the apprehension, restraint, removal, and delivery of such persons. However, the bill is limited to serious offenses which are committed

"(1) while engaged in the performance of official duties; or

(2) within Armed Forces installations or the area of operations of a unit in the field; or

(3) against any member of the United States Armed Forces or any national citizen of the United States serving with, employed by, or accompanying the United States Armed Forces * * *"

Passage of H.R. 763 would have filled much of the criminal jurisdiction void that is discussed in this report, but it would not have covered offenses the host country chooses not to prosecute which were committed off an installation and against a non-American victim. It also did not cover less serious or petty offenses.

In July 1977 a subcommittee of the House Committee on the Judiciary held hearings on H.R. 763 and two other bills related to extraterritorial criminal jurisdiction. Representatives from the Departments of Justice and State and DOD testified in support of the legislation. No opposition to the bill surfaced and members of the subcommittee expressed

optimism that the House would act. However, the bill was not reported to the full House and no further action took place.

OTHER NATIONS HAVE EXTRATERRITORIAL JURISDICTION

Other nations exercise extraterritorial jurisdiction over their civilians. For instance, we were told that British and French civilians attached to their respective military forces stationed outside their own territory are fully subject to their national laws.

The British Armed Forces Act of 1976 amended the military law legislation to set up a standing civilian court with jurisdiction to deal with members of the "civilian component and dependents." Members of the civilian component were, with respect to minor offenses, put under the jurisdiction of a national commanding officer who can impose fines and sentences up to 60 days detention. In particular, juvenile offenders can now be dealt with through a range of punishments similar to those in civilian courts in the United Kingdom.

CONCLUSIONS

The Congress has considered various legislative proposals to extend U.S. laws extraterritorially to civilians accompanying the Armed Forces since 1962. Extending criminal jurisdiction over U.S. citizens accompanying the U.S. military forces overseas is needed because:

--Over 340,000 U.S. citizens accompanying the Armed Forces reside overseas on a permanent basis.

--The number of offenses committed by these civilians is large.

--Justice is not being served when cases are not brought before a judicial forum.

--Military officials believe the knowledge that the United States lacks criminal jurisdiction is an encouragement to offenders. The lack of a U.S. criminal jurisdiction over the more frequently committed but less serious and petty offenses appears to be the greatest disciplinary problem.

--The law is being disregarded and commanders do not have an appropriate means to maintain control and discipline over civilians under their responsibility.

Military commanders often dispose of offenses committed by these civilians through administrative actions which are inadequate in terms of punishment or deterrency. The strongest administrative actions for offenses committed by dependents are directed against the sponsor.

--The rights of individuals are not safeguarded because the protections of a U.S. court are not available.

DOD and its service components--Army, Navy, Air Force, and Marine Corps--the Department of State, and the Department of Justice have been involved in developing legislation to fill the void. But, no specific agency or office has been assigned responsibility for developing a comprehensive approach.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress enact legislation to extend criminal jurisdiction over U.S. citizen civilian employees and dependents accompanying the Armed Forces overseas. Extraterritorial jurisdiction should cover petty and less serious offenses as well as serious offenses.

RECOMMENDATIONS TO THE SECRETARY OF DEFENSE AND THE ATTORNEY GENERAL

To extend U.S. criminal jurisdiction to U.S. citizen civilian personnel and dependents accompanying the Armed Forces overseas, we recommend that the Secretary of Defense and the Attorney General prepare provisions for implementing the extraterritorial extension of laws covering the range of offenses from petty to serious and report their findings to the Congress by September 1980. The Secretary of Defense and the Attorney General should consider provisions for

--apprehending, restraining, and delivering these civilians to trial;

--bringing offenders back to the United States for trial; and

--establishing courts and/or magistrates overseas.

We also recommend that the Secretary of Defense direct the services to provide more information to the Congress about the number, type, and disposition of criminal offenses committed by this class of civilians overseas.

AGENCY COMMENTS AND OUR EVALUATION

Extraterritorial criminal jurisdiction

The Departments of Justice and State and DOD agreed that criminal jurisdiction over civilians accompanying the Armed Forces should be extended overseas. But they felt extending jurisdiction to cover the less serious offenses would require civilian courts or magistrates overseas which, they contend, is not possible without renegotiating current criminal jurisdiction agreements. The Department of Justice goes on to say "the punishment for petty offenses does not warrant the expense and effort of removal [back to the United States]. A petty offense can most likely be punished adequately by administrative sanctions."

We are not persuaded by the Departments' comments. We believe that criminal jurisdiction and the protections of the U.S. Constitution should be extended to DOD civilians for all offenses. We agree that having a civilian judicial system overseas may be the most cost effective and practical way to implement jurisdiction over less serious offenses. But, while establishing such systems overseas may require that some agreements be renegotiated, we do not believe this is an insurmountable problem.

The criminal jurisdiction void prevents the United States from prosecuting some serious and a large number of less serious and petty offenses. As the Department of State recognizes in their comments

> "in most cases of ordinary crimes current United States law does not permit the exercise of criminal jurisdiction abroad over civilian personnel and dependents, and that such administrative remedies as [may] be available are oftentimes a poor substitute for criminal sanctions."

According to commanders overseas, serious morale and discipline problems occur in military communities when civilian offenders are not prosecuted for offenses. The only actions available to commanders in these cases are administrative sanctions, which are inadequate in terms of punishment and deterrency. Additionally, the most severe administrative punishments--adverse efficiency reports--stigmatize the individual's sponsor. Most importantly, administrative remedies do not safeguard an individual's rights or provide the legal protections and due process of a judicial forum.

Until 1960, DOD exercised criminal jurisdiction over civilians accompanying the forces overseas based on current criminal jurisdiction agreements. Since (1) the void was created unilaterally--the U.S. Supreme Court ruled that civilians cannot be subjected to military law--and (2) foreign countries have already agreed to allow the United States to prosecute DOD civilians under military law, they may not be opposed to implementing extraterritorial civilian jurisdiction now. Any United States' initiative to prosecute offenses committed by DOD civilians should emphasize that U.S. jurisdiction would lessen the host country's courts' caseload and release them of responsibility for prosecuting offenses it has no interest in. We are not suggesting the United States attempt to gain jurisdiction over all offenses committed by DOD civilians, rather only those cases the foreign country chooses not to prosecute.

Reporting offenses committed by civilian personnel and dependents

DOD disagreed that its report to the Senate Armed Services Committee reporting offenses committed by civilian personnel and dependents understates the number of offenses committed. DOD states that

> "each factual situation must be considered on its own merits by persons trained in the law to determine an appropriate disposition of that case. Only those cases which contain sufficient evidence of criminality * * * are included in the Annual Report to the Senate Armed Services Committee."

We were unable to reconcile local records of offenses committed by civilian personnel and dependents with the statistics reported to the Senate Committee. We examined the local records and agree with DOD that they do not constitute cases actually referred to trial, but in our analysis, we specifically excluded those incidents which obviously did not constitute offenses.

Although DOD is satisfied with their reconciliation, we believe the statistics are inaccurate and incomplete because of the circumstances and the way in which offenses are disposed of. Many cases never reach persons trained in law because the United States lacks jurisdiction. Some offenses which otherwise would be fully investigated are disposed of administratively and do not receive the same consideration as those for which an adequate judicial remedy is available. Records do not identify all of these

situations so that even if all cases were considered by those trained in the law, it is unlikely to contain sufficient evidence for them to appear on DOD's report.

The important point is that the reporting method needs to be revised so the Congress can be apprised of the full extent of offenses related to civilians overseas with which police and legal authorities are confronted. The decision whether to extend criminal jurisdiction over less serious and petty offenses is up to the Congress but cannot be made until all the facts are known. Only then can the Congress decide whether to provide over 340,000 U.S. citizens the protections of a U.S. court which they do not now enjoy through no fault of their own.

CHAPTER 3

U.S. DISPOSITION OF CASES RELEASED BY HOST COUNTRIES MAY BE INADEQUATE

U.S. service personnel stationed overseas are representatives of the United States and their conduct is highly visible and subject to the laws of the foreign country. Improper conduct by these personnel may affect relations between the United States and the host country and discredit the United States. To demonstrate genuine concern for the overall good conduct of U.S. Armed Forces, DOD must take prompt and appropriate disciplinary action when a service member overseas commits an illegal offense.

DOD follows a policy throughout the world of attempting to obtain criminal jurisdiction over criminal cases involving military personnel. When military authorities obtain jurisdiction, commanders are responsible for investigating the circumstances of the alleged crime. From the investigation, the commander determines whether administrative, nonjudicial, or judicial action is appropriate. Our analyses indicate the United States appears lax in the prosecution of these cases and may not be showing enough concern over cases involving the life and property of host country nationals. Recent actions by several foreign countries about the actions taken to dispose of cases released show they are also concerned.

DETERMINING CRIMINAL JURISDICTION

The criminal jurisdiction agreements we examined provide exclusive or concurrent jurisdiction over offenses committed by U.S. service personnel. The host country has exclusive jurisdiction over offenses committed by service members that are not violations of the Uniform Code of Military Justice. However, the great majority of offenses committed by U.S. service members other than traffic offenses are concurrent jurisdiction--offenses against the laws of both countries--with the host country having the primary right to prosecute. The host country has the primary right to prosecute unless the service member commits an offense

--in the performance of official duties,

--solely against the property or security of the United States, or

--solely against the person or property of other U.S. personnel or their dependents.

The agreements also provide that the country having primary jurisdiction in concurrent cases give "sympathetic consideration" to a request from the other country to waive jurisdiction when the latter considers a case of particular importance.

SUCCESS IN OBTAINING U.S. JURISDICTION VARIES FROM COUNTRY TO COUNTRY

DOD representatives have been successful in obtaining jurisdiction over concurrent jurisdiction cases involving service members. In most cases, the U.S. authorities routinely request waivers of the host government's right to exercise jurisdiction over U.S. service personnel or have supplementary agreements giving automatic waiver.

We did not find any instances where the United States waived jurisdiction to a host country. Instead, the waiver provision has worked to give the United States jurisdiction over many cases that the host country may have prosecuted. For example, in the 12-month period ended November 30, 1977, 16,451 (80 percent) of the offenses considered host country primary concurrent jurisdiction were released to the United States for disposition. An additional 1,495 offenses involving service members and considered host country exclusive jurisdiction were also released to the United States for disposition. Of the total cases released, 7,246 were traffic offenses, but others were more serious, including murder, rape, manslaughter, and assault. (See app. III.)

Primary Foreign Concurrent Jurisdiction
12 months ended November 30, 1977

All offenses except traffic:

Country	Offenses	Waived	Percent
Germany (note a)	8,425	8,370	99.4
Korea (note a)	1,163	1,150	98.9
Japan (note a)	1,002	577	57.6
United Kingdom	487	149	30.6
Spain	127	23	18.1
Philippines	701	65	9.3
Turkey	31	-	-
Others	561	221	39.4
Total	12,497	10,555	84.5

All serious offenses:

Country	Offenses	Waived	Percent
Germany (note a)	2,372	2,328	98.1
Korea (note a)	263	251	95.4
Japan (note a)	296	154	52.0
Spain	27	7	25.9
United Kingdom	51	10	19.6
Philippines	103	3	2.9
Turkey	4	-	-
Others	191	118	61.8
Total	3,307	2,871	86.8

a/Countries with automatic waiver provisions when the offense is host country primary concurrent jurisdiction.

The above schedules illustrate the wide variances in waiver rates among the countries we visited. The automatic waiver provisions agreed to with Germany, Japan, and Korea provide automatic release to the United States for disposition all concurrent jurisdiction cases unless the host country determines a case is of particular importance to them. These agreements have allowed the United States to obtain jurisdiction over a great majority of offenses.

THE INFORMATION SYSTEM IN ONE ASIAN COUNTRY DEMONSTRATES THE NEED FOR FURTHER OVERSIGHT

Of the seven countries we visited, only one major command in an Asian country has a system for gathering information on cases released for U.S. disposition by the host country. The system was developed because the criminal jurisdiction agreement with the country requires the United States to report any actions taken on concurrent jurisdiction cases released to the United States. Information available through this system permitted us to analyze U.S. actions. Commanders are supposed to report the actions taken to the judge advocate. He in turn reports to the host country government. Our test of these reports for a 4-month period during 1977 showed that in 139 of the 389 cases excluding traffic offenses (36 percent), commanders either did not report a disposition to the judge advocate or, through faulty recordkeeping, the actions taken were not recorded and thus were not reported to the host government as required by the agreement. We also found that in 176 cases (45 percent) where the disposition was reported, it was "no action." Some administrative action may have been taken, such as revoking off base passes or counseling the service member, but we were unable to estimate how frequent this type of action occurred. In other cases, the commanders cited lack of evidence as a reason for not taking action. Often, no reason was given.

In July 1977 the commander of a major Army element in the Asian country emphasized the importance of complying with the existing system and reporting all actions taken, including minor administrative action. In February 1978, the judge advocate wrote to subordinate major commanders that only a fraction of the required reports were being received. He cited that the reports are necessary to assure the host government "* * * that U.S. authorities are taking action after the [host] Government has waived its jurisdiction."

As shown by the following table, few cases released to the United States resulted in judicial or nonjudicial actions under the Uniform Code of Military Justice.

	Total offenses	Action taken under the Code	Percent
Manslaughter	8	-	-
Larceny/robbery	44	5	11.4
Aggravated assault	24	5	20.8
Assault	191	29	15.2
Economic offenses (blackmarketing, etc.)	51	23	45.1
Distruction of property	47	3	6.4
Drugs	26	11	42.3
Total	391	76	19.4

From our analysis, the United States appears to more frequently prosecute offenses that affect its interests rather than those affecting the life and property of host country nationals. One factor which may account for the situation is that many of the offenses are difficult to prosecute because witnesses are reluctant to testify after they have received a civil settlement, such as, a cash payment to the offended party.

NEED FOR AN INFORMATION SYSTEM IN OTHER COUNTRIES

In another Asian country the waiver rates over the most recent 6 years information is available have declined from 91.9 percent to 54.6 percent of criminal cases involving service members. Based on information provided by DOD, the following chart illustrates the trend.

Year	Total number of concurrent jurisdiction cases (note a)	Percent of cases waived (note a)
1972	not available	91.5
1973	not available	81.1
1974	783	81.6
1975	520	68.7
1976	520	55.6
1977	639	54.6

a/Figures do not include traffic or drug offenses.

Under the criminal jurisdiction agreement with this Asian country the host government is permitted to request informal reports on any concurrent jurisdiction case released

to U.S. authorities. We were told the host country authorities have recently received pressure from their legislative body to determine the disposition of official duty cases. Although we do not know the reason for their concern, we know the host country's chief prosecutor has placed a reporting requirement on his subordinate prosecutors to request the disposition of every future official duty case. We did a limited followup on 37 cases which appeared serious and were released by host country authorities. DOD took no action in 22 of the cases (59 percent) including one incident of robbery and assault. We were unable to determine the reasons for the lack of action.

U.S. authorities in this particular country only accumulate data on cases disposed of in a military court, which is in agreement with the criminal jurisdiction reporting requirements. However, with the recent interest shown by host government authorities in official duty cases, DOD should maintain a system to collect the data on disposition of all concurrent jurisdiction cases released to the United States and periodically provide it to the host country.

The criminal jurisdiction provisions agreed to with a third Asian county requires the United States to report the disposition of incidents in which the United States has concurrent jurisdiction. But DOD had not, until recently, been making the reports because they were not formally requested by host country officials. In early 1978, DOD, in response to a request from the foreign authorities, began accumulating data on U.S. actions taken in cases released.

U.S. military commanders face a unique problem in this country because few cases are waived for DOD disposition and many incidents are settled through out-of-court settlements by a cash payment. Based on our discussions with military commanders in this country, there are mixed feelings as to the appropriate actions to be taken once a service member has negotiated an out-of-court settlement. Some commanders felt the service member had been punished sufficently through monetary payments which could be considered a fine. Commanders told us they normally examine the case to determine if action under military law is warranted; however, they also indicated charges brought in the foreign country's courts are often, in their opinion, "trumped-up." In cases settled out of court we believe military commanders still have a responsibility to insure that justice is appropriately administered, even though the United States does not have primary jurisdiction.

CONCERN BY HOST GOVERNMENTS OVER U.S. ACTION ON CONCURRENT JURISDICTION INCIDENTS

The requests from the two Asian countries for U.S. authorities to furnish them information on the disposition of all official duty incidents represent a major change from past policies and show an increased level of concern over DOD actions.

Officials in two European countries have also questioned the suitability of the actions taken on some cases that were released to DOD for disposition. Authorities in one country complained to the Staff Judge Advocate Office in one large military community when the actions taken on some cases did not seem appropriate.

A U.S. official in the other European country felt that similar problems had occurred there. He stated that in many instances where the host country waived jurisdiction, the military authorities are not able to prosecute and that this has created repercussions for the United States, especially when requesting waiver of jurisdiction in other cases. The host country authorities have requested that the United States tell them of the disposition of concurrent jurisdiction cases and, according to the U.S. official, they expected the case to be prosecuted. He estimated that 85 percent of the cases waived to U.S. jurisdiction in that country result in nonjudicial punishment or administrative action.

As a result of their expressed concern over U.S. treatment of cases waived, foreign countries could start prosecuting more cases involving service members unless DOD shows it is taking appropriate actions.

CONCLUSIONS

In six of the seven countries visited, U.S. military authorities do not routinely account for actions taken in concurrent jurisdiction cases waived to DOD for disposition. In the country with a system, military commanders were not always reporting what actions were taken. Accumulating information on cases waived to DOD would make U.S. actions visible at management levels and would help assure host countries that DOD seriously views their obligation to prosecute service members who commit crimes against the persons and property of host country nationals. In addition, a genuine attempt on DOD's part to show they are taking action on cases involving host country citizens could encourage countries to continue favorable waiver policies.

RECOMMENDATION TO THE SECRETARY OF DEFENSE

We recommend the Secretary of Defense improve the present reporting system to accumulate and track information on the disposition of all overseas cases involving service members released to U.S. authorities and include it in the annual report to the Senate Committee on Armed Services. Such information is needed to

--meet the requirements in some criminal jurisdiction agreements,

--help assure the host country that appropriate action is being taken, and

--provide the Congress with more complete information on the implementation of criminal jurisdiction agreements throughout the world.

AGENCY COMMENTS AND OUR EVALUATION

DOD disagreed that U.S. military authorities may be lax in the prosecution of criminal offenses affecting the life and property of host country nationals. DOD points to the high criminal jurisdiction waiver rates in many host countries as evidence of satisfaction in the U.S. treatment of released cases. Although DOD recognizes the need to account for cases released to U.S. military authorities for disposition, they state that nothing has been brought to their attention to indicate they are not already clearly and promptly meeting all requests for information by host countries.

High waiver rates do not necessarily indicate a host country's satisfaction with U.S. disposition but could indicate the host country has a high caseload of its own or that they want to maintain friendly relations with the United States. DOD reports that waiver rates vary considerably from country to country. The waiver rate in one Asian country has declined over the last 6 years. The waiver rate in another Asian country has never been high and is now less than 10 percent--this one country alone reserves about one-third of all the serious offenses involving U.S. service members prosecuted by host countries worldwide, even though only about 3 percent of the U.S. service members overseas are stationed there.

We do not say that the United States is not responding to requests for information about cases waived to the United States for disposition. Our work indicates that, except on a case-by-case basis, DOD does not know what

action is taken on cases waived to the United States by a host country. Only one country we visited had a system to accumulate such information, but it was incomplete. Cases waived for U.S. disposition are not identified separately from other cases prosecuted under the Uniform Code of Military Justice. Based on our analysis of records in two Asian countries, we believe the United States is lax in prosecuting some of these cases. As we stated in this report, some host countries have recently expressed concern over the treatment of particular cases. Once a case is waived to the United States for disposition, we recognize that a case may not be prosecuted or may appear to be treated lightly for a number of reasons, such as, lack of evidence or witnesses not willing to appear. However, this should be noted and reported.

We believe that more complete information on cases released to the United States for disposition is needed to assure foreign countries that appropriate actions are being taken in cases where they have waived jurisdiction. This information should also be provided to the Congress as part of the report already prepared by DOD so that the Congress can evaluate the operation of criminal jurisdiction agreements and their effects on U.S. relationships with other countries and the morale, discipline, and welfare of U.S. Armed Forces stationed overseas.

DOD PERSONNEL AND DEPENDENTS SUBJECT TO FOREIGN CRIMINAL JURISDICTION (note a)

	Military personnel (note b)	U.S. civilian employees (note c)	Dependents (note d)	Total
Germany	239,508	19,150	156,744	415,402
Japan	44,144	3,194	35,341	82,679
Korea	40,700	1,328	7,650	49,678
Philippines	13,413	963	20,831	35,207
Spain	8,746	853	13,665	23,264
Turkey	4,584	247	3,953	8,784
United Kingdom	22,201	1,607	31,540	55,348
Other	33,708	3,830	42,375	79,913
Total worldwide	407,004	31,172	312,099	750,275

a/Statistics compiled by DOD, Washington Headquarters Services, Directorate for Information, Operations, and Reports.

b/As of December 31, 1978.

c/As of March 31, 1979.

d/As of September 30, 1978.

CASES INVOLVING U S CIVILIAN EMPLOYEES AND DEPENDENTS RELEASED TO THE UNITED STATES FOR DISPOSITION, DECEMBER 1, 1976, TO NOVEMBER 30, 1977 (note a)

Type of offense	Belgium	Germany	Japan	Netherlands	United Kingdom	Total
Serious offenses						
Murder	-	-	-	-	-	-
Rape	-	1	-	-	-	1
Manslaughter and negligent homicide	-	-	-	-	-	-
Arson	-	-	1	-	-	1
Robbery, larceny, and related offenses	-	6	47	-	1	54
Burglary and related offenses	1	-	-	-	-	1
Forgery and related offenses	-	-	-	-	-	-
Aggravated assault	-	-	2	-	-	2
Total serious offenses	1	7	50	-	1	59
Less Serious Offenses						
Simple assault	1	3	3	-	-	7
Drug abuse	-	1	11	2	-	14
Offenses against economic control laws	-	-	-	-	-	-
Disorderly conduct, drunkenness, breach of peace, etc	4	3	-	-	-	7
Other	12	-	11	3	-	26
Total less serious offenses	17	7	25	5	-	54
Traffic offenses (note b)	85	17	117	142	-	361
Total all offenses	103	31	192	147	1	474

a/Statistics extracted from the "Report of Statistics on the Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel," December 1, 1976, to November 30, 1977, prepared by the Office of the Judge Advocate General, Department of the Army as executive agent for DOD

b/Includes drunken and reckless driving and fleeing the scene of an accident

APPENDIX II

CASES INVOLVING U S CIVILIAN EMPLOYEES AND

DEPENDENTS RESERVED BY THE FOREIGN COUNTRY

DECEMBER 1, 1976, to NOVEMBER 30, 1977 (note a)

Type of offense	Germany	Japan	Korea	Philippines	Spain	Turkey	United Kingdom	Other countries	Worldwide
Serious offenses									
Murder	2	-	-	-	-	-	-	-	2
Rape	5	-	-	-	1	-	-	-	6
Manslaughter and negligent homicide	8	1	5	-	-	-	-	3	17
Arson	-	-	-	-	-	-	-	1	1
Robbery, larceny, and related offenses	110	1	-	1	1	-	17	15	145
Burglary and related offenses	9	-	-	-	-	-	-	7	16
Forgery and related offenses	-	-	-	-	-	-	-	-	-
Aggravated assault	3	-	-	-	-	-	1	9	13
Total serious offenses	137	2	5	1	2	-	18	35	200
Less serious offenses									
Simple assault	12	-	11	1	2	-	1	4	31
Drug abuse	37	1	4	1	-	-	13	18	74
Offenses against economic control laws	11	18	36	-	-	-	1	4	70
Disorderly conduct, drunkenness, breach of peace, etc	16	-	-	-	10	-	-	-	26
Other	17	1	3	46	3	-	2	2	74
Total less serious offenses	93	20	54	48	15	-	17	28	275
Traffic offenses (note b)	3,240	471	121	4	30	4	65	58	3,993
Total all offenses	3,470	493	180	53	47	4	100	121	4,468

a/Statistics extracted from the "Report of Statistics on the Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel," December 1, 1976, to November 30, 1977, prepared by the Office of the Judge Advocate General, Department of the Army as executive agent for DOD

b/Includes drunken and reckless driving and fleeing the scene of an accident

APPENDIX II

CASE SUBJECT TO FOREIGN JURISDICTION INVOLVING

SERVICE MEMBERS RELEASED TO THE UNITED STATES

FOR DISPOSITION, DECEMBER 1, 1976, TO NOVEMBER 30, 1977 (note a)

Type of offense	Germany	Japan	Korea	Philippines	Spain	Turkey	United Kingdom	Other countries	Worldwide
Serious offenses									
Murder	12	-	-	-	-	-	-	-	12
Rape	230	5	10	-	-	-	-	-	245
Manslaughter and negligent homicide	61	2	19	-	-	-	-	-	82
Arson	18	-	7	-	-	-	-	-	25
Robbery, Larceny, and related offenses	1,387	137	121	2	6	-	7	31	1,691
Burglary and related offenses	124	1	-	-	1	-	-	7	133
Forgery and related offenses	75	-	-	-	-	-	-	2	77
Aggravated assault	421	9	94	1	-	-	3	78	606
Total serious offenses	2,328	154	251	3	7	-	10	118	2,871
Less Serious Offenses									
Simple assault	781	66	498	25	3	-	2	3	1,378
Drug abuse	2,251	228	107	-	4	-	133	68	2,791
Offense against economic control laws	267	6	156	2	-	-	67	2	500
Disorderly conduct, drunkenness, breach of peace, etc	1,774	87	138	1	6	-	18	32	2,056
Other	973	36	-	34	3	-	1	57	1,104
Total less serious offenses	6,046	423	899	62	16	-	221	162	7,829
Traffic offenses (note b)	4,637	485	798	2	28	-	99	1,197	7,246
Total all offenses	13,011	1,062	1,948	67	51	-	330	1,477	17,946

a/Statistics extracted from the "Report of Statistics on the Exercise of Criminal Jurisdiction by Foreign Tribunals Over United States Personnel," December 1, 1976, to November 30, 1977, prepared by the Office of the Judge Advocate General, Department of the Army as executive agent for DOD

b/Includes drunken and reckless driving and fleeing the scene of an accident

APPENDIX III

CASES SUBJECT TO FOREIGN JURISDICTION INVOLVING SERVICE MEMBERS RESER

BY THE FOREIGN COUNTRY DECEMBER 1, 1976, to NOVEMBER 30, 1977 (note

Type of offense	Germany	Japan	Korea	Philippines	Spain	Turkey	Uni King
Serious offenses							
Murder	9	1	4	1	-	1	-
Rape	15	9	-	25	6	-	-
Manslaughter and negligent homicide	5	-	1	13	1	3	1
Arson	-	5	-	1	-	-	-
Robbery, larceny, and related offenses	14	117	7	34	6	-	27
Burglary and related offenses	-	2	-	12	1	-	-
Forgery and related offenses	-	-	-	2	1	-	6
Aggravated assault	1	8	-	12	5	-	7
Total serious offenses	44	142	12	100	20	4	41
Less serious offenses							
Simple assault	-	55	-	223	18	4	12
Drug abuse	10	135	-	93	29	12	244
Offenses against economic control laws	1	31	1	66	-	-	27
Disorderly conduct, drunkenness, breach of peace, etc	19	27	-	25	28	9	67
Other	20	35	-	165	11	3	21
Total less serious offenses	50	283	1	572	86	28	371
Traffic offenses (note b)	37,538	2,156	2	172	100	34	2,162
Total all offenses	37,632	2,581	15	844	206	66	2,574

a/Statistics extracted from the "Report of Statistics on the Exercise of Criminal Juris Tribunals Over United States Personnel," December 1, 1976, to November 30, 1977, prep of the Judge Advocate General, Department of the Army as executive agent for DOD

b/Includes drunken and reckless driving and fleeing the scene of an accident

CRIMINAL OFFENSES COMMITTED BY U S CIVILIAN ADULTS

IN TWO OVERSEAS MILITARY COMMUNITIES DURING 1977

	Number of offenses from military reports	Foreign country actions		DOD administrative actions	No action or action unknown
		Police	Court		
Serious offenses					
Blackmarketing	10	1	-	8	2
Fraud	9	3	-	6	6
Grand larceny	6	3	-	4	6
Driving while intoxicated	5	-	-	5	-
Drug violation--major	4	4	3	-	1
Aggravated assault	3	3	2	2	-
Carnal knowledge	2	2	-	-	2
Robbery	2	2	2	-	-
Hit and run	2	-	-	1	1
Others (one incident each)	6	3	-	4	4
Total serious offenses	49	21	7	30	22
Less serious and petty offenses (note a)					
Shoplifting	36	14	12	30	6
Domestic disturbance	15	2	-	13	3
Drug violation--minor	12	6	1	7	8
Simple assault	7	4	1	5	3
Vandalism	7	4	-	5	2
Child neglect	5	-	-	4	1
Affray	4	4	-	3	4
APO mail violations	4	-	-	2	2
Ration violations	4	-	-	3	1
Disorderly conduct	3	1	-	2	2
Contributing to juvenile delinquency	2	-	-	2	-
Customs violations	2	-	-	1	1
Drunk and disorderly	2	1	-	2	1
Improper vehicle registration	2	-	-	1	1
Possession of weapon	2	1	-	2	1
Others (one incident each)	7	1	-	5	2
Total petty offenses	114	38	14	87	38
Total offenses (note b)	163	59	21	117	60

a/Does not include less serious traffic offenses

b/Total offenses does not add to total actions because more than one action may have been taken for some offenses

APPENDIX IV

CRIMINAL OFFENSES COMMITTED BY U.S DEPENDENT JUVENILES (note a)

IN TWO OVERSEAS MILITARY COMMUNITIES DURING 1977

	Number of offenses from military reports	Foreign country actions		DOD administrative actions	No action or action unknown
		Police	Court		
Serious offenses					
Breaking and entering	23	5	-	17	9
Arson	5	-	-	4	1
Grand larceny	4	-	-	5	1
Aggravated assault	2	-	-	-	2
Drug violation--major	2	2	1	-	1
Fraud	2	1	-	-	2
Others (one incident each)	3	1	1	2	1
Total serious offenses	41	9	2	28	17
Less serious and petty offenses.					
Shoplifting	85	58	36	72	23
Vandalism	18	3	-	18	2
Drug violation--minor	13	7	-	11	8
Pettv larceny	13	4	1	5	7
Affray	10	-	-	9	1
Malicious mischief	10	3	-	9	4
Simple assault	9	3	-	7	5
Disturbing the peace	7	-	-	7	-
Drunk in public	6	-	-	6	-
Curfew violation	4	-	-	4	-
Trespassing	4	-	-	4	-
Obscene phone call	3	-	-	3	-
Solicitation of alcohol beverage	3	-	-	3	-
Peeping tom	2	-	-	2	-
Others (one incident each)	4	2	-	2	2
Total petty offenses	191	80	37	162	52
Total offenses (note b)	232	89	39	190	69

a/Includes dependents 10 to 17 years old

b/Total offenses does not add to total actions because more than one action may have been taken for some offenses

APPENDIX V

MANPOWER
RESERVE AFFAIRS
AND LOGISTICS

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON D C 20301

22 MAY 1979

Mr H L Krieger
Director, Federal Personnel
and Compensation Division
U S General Accounting Office
Washington, D C 20548

Dear Mr Krieger

This is in reply to your letter to the Secretary of Defense regarding your draft report dated April 12, 1979, "The U S Does Not Have Criminal Jurisdiction Over DoD Civilians and Dependents in Foreign Countries," OSD Case #5147, FPCD-79-45

The draft report examines selected aspects of overseas criminal jurisdiction and recommends

a Extension of such jurisdiction over U S civilian employees and dependents accompanying the forces in foreign countries

b A statistical report to host countries of actions taken in foreign criminal cases waived by such host countries

(See GAO Note, p. 40.)

The Department of Defense has consistently supported, and will continue to support, legislation for extraterritorial criminal jurisdiction over U S civilians serving with, employed by, or accompanying the Armed Forces in foreign countries The GAO draft report makes no new substantive contribution in this area

The second recommendation, on reporting disposition of waived offenses, requires further study However, nothing has been brought to the Department's attention to indicate

a That we are not clearly and promptly meeting all requests for information by host countries

b That we are in any way making a cavalier disposition of waived cases In fact, the high waiver rate points to the contrary conclusion

(See GAO Note, p. 40.)

(See GAO Note below.)

More detailed initial comments are attached Thank you for the opportunity to comment on your draft report

Sincerely,

Richard Danzig
Acting Principal Deputy Assistant
Secretary of Defense (MRA&L)

Enclosure

GAO Note: The deleted comments relate to information in the draft report the agency determined was politically sensitive. To avoid classifying this final report, this information has been deleted.

DOD SUMMARY COMMENTS ON GAO RECOMMENDATIONS

1 Extraterritorial criminal jurisdiction The primary focus of the draft GAO report is on the extension of U S criminal jurisdiction to civilian personnel and dependents accompanying the forces overseas As noted on page 26, there is a long history of bills, introduced in Congress, to accomplish this purpose The Department of Defense has consistently supported this legislation As recently as the 95th Congress the House Subcommittee on Immigration, Citizenship, and International Law held hearings on H R 763 which provided for extraterritorial criminal jurisdiction A member of the Department testified in favor of this legislation

However, this support does not extend to the position of the GAO draftsmen to create extraterritorial U S -Federal courts which would sit in the territory of host nations This concept has long been discarded in the practice of nations and would represent an intrusion upon the sovereignty of a friendly state Such arrangements would also be at variance with existing SOFAs and necessitate renegotiations The GAO proposals are extreme in that they call for the establishment of U S courts capable of entertaining civil as well as criminal actions No valid basis is submitted for the extension of such civil jurisdiction, and the proposals as written would surely bring about the outright rejection of any criminal jurisdictional enlargement

2 Report information to the host country, and DoD, on command actions taken in waived cases A second concern evidenced by the GAO report is an alleged failure by U S commanders overseas to report both to the Department of Defense and to the host nation on the disposition of offenses committed by both military and civilian members of their commands

a The GAO position is a misunderstanding of the reporting requirements inherent in SOFA arrangements abroad It has always been the policy to give host nation judicial authorities exactly what they requested This obligation is an affirmative part of the SOFA Such information is exchanged routinely by liaison officers at all levels and is tailored to the specific desires of the responsible local or higher level authorities

b The drafters of the GAO report appear to have difficulty reconciling police and law enforcement type statistics with the judicial statistics involved in reports to host governments and to Congress Just as occurs in the United States, most police files or reports do not constitute cases actually referred to trial Rather each factual situation must be considered on its own merits by persons trained in the law to determine an appropriate disposition of that case Only those cases which contain sufficient evidence of criminality, and which are subject to the primary or exclusive jurisdiction of the host nation, are eventually reported to local authorities for disposition and, of course, are included in the Annual Report to the Senate Armed Services Committee

Of concern to the Department of Defense is the statement found in Chapter 3 of the GAO report that United States military authorities "may be lax in the prosecution" of criminal cases affecting "the life and property of host country nationals "

a This statement is unsupported and is in direct variance with the continuing high rate of waivers of host nation criminal jurisdiction It is uncertain what corrective action the GAO investigators might propose

b Direction by DoD to take disciplinary actions under the Uniform Code of Military Justice (UCMJ) in all criminal cases released by the host country to U S authorities for disposition would constitute "unlawful command influence " Article 37 of the UCMJ, 10 U S C 837, forbids commanders from directing subordinate commanders to take disciplinary action in any case While the need to account for cases released to U S military authorities for disposition is recognized, each individual case is unique and commanders must continue to be allowed to exercise the full range of disciplinary actions allowed by regulations and the UCMJ

DEPARTMENT OF STATE

Washington D C 20520

CONFIDENTIAL

June 8, 1979

Mr J K Fasick
Director, International Division
General Accounting Office
Washington, D C 20548

Dear Mr Fasick

(U) This is in response to your letter of April 12 to the Secretary requesting the comments of the Department of State on the draft GAO report entitled "The U S Does Not Have Criminal Jurisdiction Over DOD Civilians and Dependents in Foreign Countries."

(U) The draft report examines various agreements in force between the United States and foreign countries regarding the status of United States armed forces in those countries from the standpoint of the arrangements made therein with respect to the exercise of criminal jurisdiction Starting from the generally accurate premise that existing United States law does not permit the United States to exercise jurisdiction over ordinary criminal activity on the part of Department of Defense civilian personnel and dependents in foreign countries, the draft report concludes with a number of specific recommendations. The latter includes the enactment of legislation extending the criminal jurisdiction of the United States to cover such personnel.

(See GAO Note, p. 47.)

(U) It should be noted that the scope of the draft report extends well beyond the problem of criminal jurisdiction over civilian personnel and dependents to encompass as well criminal jurisdiction over uniformed military personnel The latter element tends to distort the focus of the draft report and should either be made the subject of a separate report or treated distinctly in the draft report and the title of the draft report revised accordingly

(U) Generally, the Department of State agrees in principle with the draft report insofar as it sets forth the limits of extraterritorial criminal jurisdiction under current law and recommends the enactment of legislation to resolve, at least in part, the problems that those limits may present The Department has in the past supported the enactment of appropriate legislation to accomplish this end

(U) The draft report nevertheless gives rise to a number of serious difficulties that the Department of State strongly recommends be taken into account prior to the issuance of a final report on the subject.

(See GAO Note, p. 47.)

(See GAO Note, p. 47.)

the draft report presents difficulties insofar as it overstates the seriousness of the criminal jurisdiction problem in given host countries We are, of course, deeply concerned and embarrassed whenever any United States Government employee, whether military or civilian, or a dependent, engages in activity which may violate the laws of the host country. We recognize, too, that in most cases of ordinary crimes current United States law does not permit the exercise of criminal jurisdiction abroad over civilian personnel and dependents, and that such administrative remedies as may be available are oftentimes a poor substitute for criminal sanctions.

(U) It is difficult, nonetheless, to accept the notion that the absence of criminal jurisdiction over civilians and dependents is a major adverse element in our relations with host countries As the draft report properly notes, the host country has, absent agreement to some other effect, the complete right to exercise its enforcement jurisdiction against such personnel in cases of alleged violations of host country law The decision to exercise, or not to exercise, such jurisdiction in a given case remains the responsibility of the host country Every current status-of-forces agreement (SOFA) between the United States and a host country recognizes the exclusive jurisdiction of the host country with respect to offenses punishable under host country, but not United States law, including such of those offenses as may be committed by military personnel, cf Article VII(2)(b) of the Agreement of June 19, 1951 between the Parties to the North Atlantic Treaty regarding the Status of Their Forces (NATO SOFA, TIAS 2846) The host country is aware that there is very little that the United States authorities may legally do in the event the host country chooses not to exercise its exclusive jurisdiction in such cases

(U) Problems are more likely to occur, if at all, in cases of concurrent jurisdiction, that is, where an offense is punishable by both host country and United States law SOFA's commonly provide in such cases that the host

country has the "primary" right to exercise criminal jurisdiction in all except a carefully delineated category of cases, generally those arising in the course of official duty or against United States personnel, property, or security In addition, SOFA's commonly permit the party having the primary right to exercise jurisdiction to waive that right upon the request of the other party, and require the party enjoying such primary right to notify the other party in the event it chooses not to exercise that right. While it is conceivable that a party not having, or having waived, the primary right to exercise jurisdiction may be distressed at what it might perceive in a given case to be inadequate enforcement action by the other party, we are unaware of any persuasive basis for the proposition that the practice of the United States with respect to the exercise of such jurisdiction has been unsatisfactory or otherwise a cause for serious complaint by any host country

(U) The principal effect of legislation extending the authority of the United States to exercise criminal jurisdiction over offenses committed by civilian personnel and dependents abroad would be to expand the range of possible "concurrent jurisdiction" offenses Many of these offenses would be those over which the host country under current SOFA arrangements would have the primary right to exercise criminal jurisdiction. At the same time, the number of offenses with respect to which the United States could request a waiver of the host country's primary right would increase, and the enlarged authority of the United States to impose criminal sanctions may lead host countries more frequently to choose not to exercise the primary right to jurisdiction The resulting expanded ability of the United States to take effective action directly is likely to enable the exercise of more effective discipline over civilian personnel and dependents than may now be the case While the Department of State would welcome such a result, the specific foreign policy benefits that may accrue as a consequence should not,however, be overestimated

(U) We do, on the other hand, see serious difficulties with any proposal to establish United States courts in foreign countries to deal with criminal and civil cases involving United States personnel Any such court could function only with the agreement of the host country and, because such a proposal smacks of long-outmoded concepts of "extraterritoriality", it is not likely that host

country agreement could be obtained. In any case, the establishment of such a court system in host countries would require major revision of current agreements, and it would be difficult to limit the scope of any such renegotiation once proposed. Lastly, the establishment and operation of such a court system would pose exceptionally difficult practical and procedural problems that would seriously detract from any marginal advantages that might be gained with regard to the effective enforcement of United States laws governing the conduct of United States personnel abroad

[See GAO Note below.]

We appreciate the opportunity to comment on the draft report

Sincerely,

David C. Gompert
Deputy Director
Bureau, Politico-Military Affairs

GAO Note: The deleted comments relate to information in the draft report the agency determined was politically sensitive. To avoid classifying this final report, this information has been deleted.

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON D C 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

JUL 0 5 1979

Mr Allen R Voss
Director
General Government Division
United States General Accounting Office
Washington, D C 20548

Dear Mr Voss

This is in response to your request to the Attorney General for the comments of the Department of Justice (DOJ) on your draft report entitled "The U S Does Not Have Criminal Jurisdiction Over DOD Civilians And Dependents In Foreign Countries "

The DOJ agrees with the draft report's conclusion that the extraterritorial criminal jurisdiction of the United States is very limited, however, it should be pointed out that there is no constitutional impediment to exercising such jurisdiction if Congress specifically provides for it Robert L Keuch, Deputy Assistant Attorney General, Criminal Division, in a statement concerning H R. 763 and H R 6148 (95th Congress) before the Subcommittee on Immigration, Citizenship and International Law of the House Committee on the Judiciary, on July 21, 1977, (hereafter referred to as the "Keuch Statement") provided a concise, legal and factual summary of DOJ's position concerning this problem A copy of the Keuch Statement is enclosed.

The draft report accurately states that a series of Supreme Court cases have made it clear that courts-martial have no jurisdiction over civilians in foreign countries The draft report demonstrates that for practical purposes there is a void in the law because foreign countries may have jurisdiction in accordance with a treaty or custom but are often reluctant to prosecute a United States citizen if neither the foreign country nor one of its citizens has

an interest in the crime This void is a definite problem One position held by GAO on page 7 is misleading in that it implies 18 U S C. Section 7, which defines the Special Maritime and Territorial Jurisdictions of the United States, may provide jurisdiction over on-base crimes overseas DOJ is aware of no cases holding that foreign military bases are part of the special territorial jurisdiction of the United States In fact, it has been held that an American Consulate is such an area (see United States v Erdos, 474 F 2d 157 (4th Cir 1973)), but consulates and embassies are very different from military bases, and the United States would likely incur serious international repercussions if it was argued that foreign bases are reserved or acquired for the use of the United States Therefore, the void in jurisdiction is even greater than the draft report states

Page 28 of the report states that "H R 763 would not have covered offenses . which were either committed off an installation or against a non-American victim " This is not entirely true The DOJ supported H R 763 (95th Congress), and its passage would have filled most of the void that is discussed in the draft report Off-installation offenses would have been covered if the victim was a service member or another dependent or Department of Defense (DOD) employee On-installation offenses would have been covered regardless of the nationality of the victim

The draft report recognizes that the Congress has long considered legislative proposals to extend United States laws to civilians and dependents accompanying the armed forces overseas and recommends that "The Secretary of Defense and the Attorney General study all aspects and implications of extending U.S criminal jurisdiction to civilians and dependents overseas and report their findings to the Congress by May 1980 " It further recommends that the study should include provisions for the extraterritorial extension of laws covering the whole range of offenses, from petty to serious, for establishing courts and/or magistrates overseas and, if appropriate, for bringing offenders back to the United States for trial

We disagree that petty offenses (crimes for which the penalty does not exceed 6 months imprisonment and a $500 fine) should be included in the study and also oppose the overseas location of courts Establishing courts and magistrates overseas creates tremendous budgetary and logistical problems, as well as problems of due process in providing counsel, and the attendance of witnesses The DOJ believes the best approach is that adopted by H R 763, which essentially provides for criminal jurisdiction over DOD civilians and dependents who commit crimes overseas that are offenses if committed within the special maritime and territorial jurisdiction. This approach also provides for a removal procedure to get a defendant back to the United States for trial in existing Federal courts and excludes petty offenses because the punishment does not warrant the expense and effort of removal A petty offense can most likely be punished adequately by administrative sanctions

The DOJ and DOD agreed to two minor clarifying amendments to H R 763 when they supported the bill in 1977 The Criminal Division presently has on file draft legislation reflecting H R 763, as amended, and hopes to see it enacted during this Congress, possibly as an amendment to another bill. The DOJ has also drafted legislation in a separate title that provides for jurisdiction over certain persons in Antarctica, another area where there is a jurisdictional void.

The DOJ feels that no further study of this area is needed. The problem has been studied by both DOD and DOJ for 19 years--since 1960 when court-martial jurisdiction over civilians was ruled unconstitutional Since 1970, bills substantively identical to H R 763 have been introduced and supported by DOD and DOJ. Congress has held only one hearing on the bills--in 1977--which produced the Keuch Statement. No known opposition to the bill surfaced and members of the House Subcommittee expressed optimism that the House would act The DOJ believes that more studies are unwarranted because they would simply result in another draft comparable to H R 763

We appreciate the opportunity to comment on the draft report Should you desire any additional information, please feel free to contact us

Sincerely,

Kevin D. Rooney, acting

Kevin D Rooney
for Assistant Attorney General
for Administration

GAO REPORTS ON THE MILITARY JUSTICE SYSTEM

Addressee	Report title, number, and issue date
The Congress	"AWOL in the Military: A Serious and Costly Problem" (FPCD-78-52, Mar. 30, 1979)
The Congress	"Fundamental Changes Needed to Improve the Independence and Efficiency of the Military Justice System" (FPCD-78-16, Oct. 31, 1978)
The Congress	"Eliminate Administrative Discharges in Lieu of Court-Martial: Guidance For Plea Agreements in Military Courts is Needed" (FPCD-77-47, Apr. 18, 1978)
The Congress	"Military Jury System Needs Safeguards Found in Civilian Federal Courts" (FPCD-76-48, June 6, 1977)
The Secretary of Defense	"Millions Being Spent to Apprehend Military Deserters Most of Whom Are Discharged As Unqualified for Retention" (FPCD-77-16, Jan. 31, 1977)
The Congress	"The Clemency Program of 1974" (FPCD-76-64, Jan. 7, 1977)
The Secretary of Defense	"People Get Different Discharges in Apparently Similar Circumstances" (FPCD-76-46, Apr. 1, 1976)
The Secretary of Defense	"More Effective Criteria and Procedures Needed for Pretrial Confinement" (FPCD-76-3, July 30, 1975)
The Congress	"Uniform Treatment of Prisoners Under the Military Correctional Facilities Act Currently Not Being Achieved" (FPCD-75-125, May 30, 1975)
The Secretary of Defense	"Urgent Need for a Department of Defense Marginal Performer Discharge Program" (FPCD-75-152, Apr. 23, 1975)

Senate Committee on Armed Services	"Need for and Uses of Data Recorded on DD Form 214 Report of Separation From Active Duty" (FPCD-75-126, Jan. 23, 1975)
The Congress	"Improving Outreach and Effectiveness of DOD Reviews of Discharges Given Service Members Because of Drug Involvement" (B-173688, Nov. 30, 1973)

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