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# The Soviet-Polish Status of Forces Agreements

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## I. INTRODUCTION

Following outbursts in Hungary and Poland in 1956, a series of status of forces agreements between the USSR and a number of Warsaw pact member countries were signed.<sup>(1)</sup> The purpose of this presentation is to outline one of these status of forces agreements: the Soviet-Polish status of forces agreements.<sup>(2)</sup> The basic agreement is known as "Treaty Between the Government of the Union of Soviet Socialist Republics and the Government of the Polish People's Republic Concerning the Legal Status of Soviet Forces Temporarily Stationed in Poland," which became effective on 27 February 1957.<sup>(3)</sup> A special agreement known as "Agreement Between the Government of the Polish People's Republic and the Government of the Union of Soviet Socialist Republics Concerning Mutual Legal Assistance in Matters Relating to the Temporary Stationing of Soviet Forces in Poland," came into force on 8 May 1958.<sup>(4)</sup> The presentation consists of three parts: first, general provisions; second, criminal jurisdiction; and third, mutual legal assistance. After the outline of these three parts, a brief observation will be made.

## II. GENERAL PROVISIONS

General provisions of the Soviet-Polish status of forces agreement includes

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(1) As to the English text of a number of these agreements, see generally J.P. Jain, *Comp. DOCUMENTARY STUDY OF THE WARSAW PACT*, New York: Asia Pub. House(1973).

(2) As to extracts of speeches made by the Polish Prime Minister and the Soviet Foreign minister on the occasion of signing the Soviet-Polish Status of Forces Agreement, see *Id.*, at 225-227.

(3) Signed 17 December 1956, TIAS No. 3830, 265 UNTS 194.

(4) Signed 26 October 1957, TIAS No. 6223, 431 UNTS 238.

such subjects as the Soviet pledge to the respect of the Polish sovereignty, the use of facilities and tort liabilities. These subject areas stipulated by both parties can roughly be categorized into ten.

1. Respect for Polish sovereignty and the observance of the Polish law by the Soviet forces. Soviet forces are to respect the Polish sovereignty and not to interfere with the Polish domestic affairs. At the same time, "Soviet personnel"<sup>(5)</sup> has a duty to observe the Polish law.

2. The Strength, duty stations<sup>(6)</sup> and activities of the Soviet forces. The numerical strength and matters related to the duty stations of the Soviet forces in Poland are to be covered by special agreements between the contracting parties. The troop movement outside the Soviet duty stations requires the consent of Polish authorities. The training and maneuvers of Soviet forces are also needed by either mutually agreed plan or consent from the Polish authorities.

3. Military uniform, arms, vehicle registration and driving license. Soviet military personnel are required to wear the proper uniform and to handle their arms to comply with the Soviet army rules. The command of the Soviet forces determines the registration number and markings to be placed on the official vehicles and their facsimiles are to be transmitted to the competent Polish authorities.<sup>(7)</sup> The Polish government is to accept as valid, without a driving test or fee, driving licenses issued by the Soviet authorities to Soviet personnel.

4. Procedures concerning the entry, stay and exit. Procedures related to the entry and departure of Soviet personnel, administrative questions related to their stay and the types of documents required for them are subjects to be spelled out by a special bi-lateral agreement.

5. The facilities. The procedure and conditions of use of various facilities by

(5) The term, Soviet personnel, is used to denote "individuals serving with the Soviet forces and of members of their families." *Id.*, 204-206. As to the Soviet practices of international agreements, see G.I. Tunkin, *THEORY OF INTERNATIONAL LAW*, Harvard Univ. Press, 207-224 (1974); Triska & Slusser, *Ratification of Treaties in Soviet Theory, Practice and Policy*, 34 *BRITISH YEAR BOOK OF INTERNATIONAL LAW* 312 (1958).

(6) *Id.*, at 206.

(7) As to the definition of "competent authorities," see *Id.*, at 240.

Soviet forces including the terms of payment are to be determined by special agreements. The construction work on various facilities in and outside of the duty stations of the Soviet forces requires the consent of the Polish government. The facilities released from use by the Soviet forces are to be returned to the Polish authorities in good condition. Questions related to the transfer of installations, including ones constructed by the Soviet forces, to the Polish government are to be settled by special agreements.

6. Liability for damage. The Soviet government is to compensate for any material damage caused to the Polish state, Polish institutions or citizens or to citizens of any third state by any act or omission by Soviet military units or individuals serving therewith in the performance of their official duties. A Soviet Polish Mixed Commission established by virtue of the status of forces agreement under discussion determines the amount of such compensation in accordance with the provisions of Polish law. This Commission also examines any disputes arising out of the obligation of Soviet military units. Furthermore, the Soviet government is to compensate for any material damage caused to the Polish state, Polish institutions or citizens or to citizens of any third state by any act or omission of Soviet military units or the Soviet personnel *not* in the performance of their official duties. A competent Polish court is to determine the amount of such compensation and pays in Polish currency within three months after the announcement of the decision rendered by the Mixed Commission or the Polish court. Unsettled claims prior to the adoption of the agreement under discussion are subject to examination by the Mixed Commission. Any damage caused to the property of the Soviet military units or to individuals serving with the Soviet forces by any act or omission of Polish state institutions is to be compensated by the Polish government based on the amount determined by the Mixed Commission pursuant to the Polish law. The Mixed Commission is also to examine any dispute arising out of the obligations of Polish state institutions incurred to the Soviet military units. The Polish government is to compensate the Soviet government for any damage caused to Soviet

military units, to individuals serving with the Soviet forces and to members of the families of such individuals by any act or omission by Polish citizens. In this instance, the Polish court is to determine the amount of such compensation.

7. The Soviet forces in transit and domestic freight movements. Matters related to the Soviet troops in transit and domestic military freight movements including the routes, dates, procedure and terms of payment for the transportation are to be settled through special agreements. Soviet troops in transit are also subject to the provisions concerning jurisdiction and liability for damages stipulated by the existing Soviet-Polish status of forces agreements.

8. Fiscal, customs, foreign exchange, entry and exit. Special agreements are to settle questions concerning the application of Polish regulations relating to the fiscal, customs and foreign exchange and the regulations concerning entry and exit of Soviet personnel.

9. Plenipotentiaries, a Soviet-Polish Mixed Commission and the diplomatic channel. In order to settle questions arising daily in connection with the stationing of the Soviet troops, each government appoints plenipotentiaries. In addition, a Soviet-Polish Mixed Commission is created to settle questions relating to the interpretation or application of status of forces agreements. The Commission, composed of six members, three from each side, adopts its own rules of procedure and locates its central office in Warsaw. If the Commission fails to settle the question, the diplomatic channel is to be utilized.

10. Effective date and amendments. Effective date is on the day of the exchange of the instruments of ratification. Amendments to the agreement can be made by agreements between the contracting parties.

### III. CRIMINAL JURISDICTION

The subject area of criminal jurisdiction is covered by four articles under the basic agreement. One of these articles deals with the issue of mutual legal assistance which was further implemented by the special bilateral agreement.

This provision together with the special agreement will be treated under a

separate heading.

1. Territorial jurisdiction. Any person serving with the Soviet forces who commits “a serious or lesser offense”<sup>(8)</sup> in Poland, is, in principle, subject to the Polish criminal jurisdiction by facing the investigation of the Polish military legal authorities and trial by the Polish military tribunals. However, this general rule based on the territorial principle, contains two exceptions: first, if the crime was committed solely against the Soviet Union or against an individual serving with the Soviet forces or a member of the family of such individual; and second, if the crime was committed by the Soviet personnel in the performance of their official duties. Any case that comes under these two exceptions is to be subject to the Soviet criminal jurisdiction. The basic rule of Polish criminal jurisdiction over the Soviet personnel is also weakened by a special provision that both sides are to give sympathetic consideration when there is a request to each other to transfer or accept jurisdiction in specific cases. If the trial has been concluded for any case, transfer of jurisdiction is banned. Proposals to accept or transfer jurisdiction are to be made and decisions taken; on the Polish side, by the court or procurator or the voivodship or by the court or procurator of the military district; on the Soviet side, by the Military Tribunal or the Military Procurator of the Soviet forces in Poland, depending on the authority which is conducting or is to conduct the case.<sup>(9)</sup>

2. The same penalty principle. A serious crime committed by any person against the Soviet forces or military personnel in Poland is to receive the same penalty as if the crime had been committed against Polish armed forces or Polish military personnel.

3. Relocation of Soviet convicts. Any member of Soviet personnel convicted under the Polish law is to be withdrawn from Poland if the competent Polish authorities so request.

(8) As to the Soviet legislation related to criminal and procedure law, see William E. Butler, Ed., *THE SOVIET LEGAL SYSTEM*, Oceana Publications, N.Y. 661-700 (1978).

(9) “Agreement Concerning Mutual Legal Assistance in Matters Relating to the Temporary Stationing of Soviet Forces in Poland,” *supra* note 4, at 246-248.

#### IV. MUTUAL LEGAL ASSISTANCE

In the process of prosecuting any person who has committed serious and lesser offenses, both countries are to render each other every assistance including legal assistance. To spell out the principles and procedure dealing with mutual legal assistance, a special agreement on mutual legal assistance, cited earlier, is in force. Special features of this agreement can be outlined in the following way.

1. Extent of legal assistance. Extent of mutual legal assistance rendered by the competent authorities of both sides is to include two areas: first, co-operation with the other party who is instituting the judicial proceeding; and second, at the request of the other party, rendition of such legal assistance as serving of summonses on and the interrogation of accused persons, witnesses and experts, searches, inspection of places and articles, the collection of material evidence, the seizure of articles which may serve to establish the facts of the case, the identity of the offender, etc.

2. Notification of crimes committed. The competent authorities of either of the contracting parties has to immediately inform the other party whenever they learn that a serious or lesser offense, subject to the jurisdiction of such other party, has been committed by a member of the Soviet forces. In such cases, the Polish authorities are also to notify the military commandant of the nearest Soviet garrison. At the request of or without being requested by the competent authorities of the party to whose jurisdiction the case is subject, the other party may apprehend and identify a person who has committed an offense and hand that person over immediately to the nearest competent authorities of the party to whose jurisdiction the case is subject. While an offender is in detainment and awaiting arrival of a representative of the competent authorities of the party, to whose jurisdiction the case is subject, the competent authorities of the other party are to take the necessary steps to preserve clues and evidence. If the case is subject to Polish criminal jurisdiction, the competent Polish authorities should immediately inform the military procurator of the Soviet

forces whenever a Soviet personnel is subject to criminal proceedings or is detained or arrested. When a crime is committed by a person not serving with the Soviet forces against the Soviet forces, individuals serving therewith or members of their families, the competent Soviet authorities should follow the notification process to the competent Polish authorities and undertake such necessary steps as to identify and detain the offender, and preserve relevant evidence related to the crime.

3. Prosecution of Soviet personnel. The competent Polish authorities with the consent of their Soviet counterparts, may perform necessary acts related to the prosecution of criminals within the Soviet duty station or may check incoming or outgoing mail of Soviet military units. These acts are also effectuated through legal assistance by the competent Soviet authorities if the Polish authorities desire to do so. The arrest of a member of the Soviet forces requires a warrant issued by a Polish court or prosecutor who is to contain a short statement of the circumstances of the crime and, if possible, an indication of where and when it was committed. The principles and procedures applicable to members of the Polish armed forces are to be observed in the event of the arrest of and preferral of criminal charges made against members of the Soviet forces. In general, the legislation concerning criminal liability of members of the Polish armed forces is to be applied in cases where offenses subject to the jurisdiction of the Polish party are committed by the members of the Soviet forces.

4. Trial of Soviet personnel by Poles. Trial of a member of the Soviet forces by the competent Polish authorities requires the observation of the following five rules. (a) At every stage of Polish judicial proceedings, the accused enjoys equal treatment which is accorded to Polish citizens ; (b) if the Soviet side desires, the trial is not to be open to the public ; (c) the military procurator of the Soviet forces, with the consent of Polish authorities, may attend the trial and study the case records to interview those in custody, and expect to receive information related to the progress of the case and copies of the sentence or other decision related to the conclusion of the proceeding ; (d) the Soviet author-

ities ensure that the accused who is not in custody is to appear in response to summons by the competent Polish authorities; and (e) a request to seek the service of Soviet lawyers to act as counsel for the defense is to receive sympathetic consideration by Poles.

5. Enforcement of penalties. The Soviet authorities are under a duty to facilitate the enforcement of penalties imposed on the Soviet personnel pronounced by the Polish courts and other competent authorities. The transfer of a Soviet convict to the Polish authorities is mandatory if a sentence involving deprivation of liberty is not imposed conditionally and takes legal effect. Sympathetic consideration is required for applications by either of the contracting parties for the assumption or transfer of responsibility to execute sentences especially sentences of deprivation of liberty reached by a Polish court on a Soviet personnel.

6. Trial of Soviet personnel by the Soviet courts or other Soviet authorities. When a Soviet personnel is under trial by the Soviet courts or other Soviet authorities within the area of the duty station of the Soviet forces, the following rules are to be observed : (a) Outside the Soviet duty station, the competent Soviet authorities are authorized only to inspect the scene of the offense and to search the premises occupied by the Soviet personnel ; (b) interrogation of a non-Soviet witness or expert, or such acts as search and seizure are to be conducted by the Polish authorities at the request of the Soviet counterparts ; (c) in case of the direct interrogation of a person, such a person is to be summoned through the competent Polish procurator and no compulsion is used on the person so summoned ; (d) the Polish authorities are to render assistance in the identification and detention of offenders, the interrogation of witnesses and experts and also in preserving clues and evidence relating to offenses, etc. ; (e) in the course of the proceedings, where the injured party is a Polish citizen or institution or a citizen or institution of a third party, such injured party enjoys the same rights which are accorded to a Soviet citizen or institution ; (f) a Soviet court of first instance normally hears cases involving crimes against Polish citizens or institutions or institutions of a third state, and permits the Polish



Military Procurator to be present at the hearing. If the Polish Military Procurator so desires, the competent Soviet authorities inform him of the progress of the case and transmit to him copies of the sentence or other decision concluding the proceedings; and (g) except sentences imposing a penalty of detention for a term of not more than three months, sentences rendered by Soviet courts cannot be enforced in Poland.

7. Polish trial of a case wherein the injured party is a Soviet citizen or institution. When the Polish authorities conduct a trial wherein the injured party is a Soviet citizen or institution, the Soviet Military Procurator may request the Polish Courts and procurators to keep him informed of the progress of cases and to transmit to him copies of the sentence or other decision concluding the proceedings. Both sides are to entertain sympathetically each other's request for sharing case records.

8. Jurisdictional disputes and emergency measures. While negotiating which side is to exercise the criminal jurisdiction over certain cases, both sides are to reach an understanding to undertake urgent measures to preserve clues and evidence related to a crime, to identify and to arrest the offender, etc. In case of a failure to reach such an understanding, these measures have to be taken by the Polish authorities outside the Soviet duty station and by the Soviet authorities within a Soviet duty station.

9. Channel of communication, expenses and languages. In handling cases under the agreement, the Polish side is to communicate directly with the Military Tribunal and the Military Procurator of the Soviet forces in Poland or with the Military commandant of the nearest Soviet garrison, while the Military Tribunals and Military Procurators of the Soviet forces are in turn to communicate directly with the competent Polish authorities. If the authority communicated with is not a proper one, it refers the matter immediately to the appropriate authority and notifies the referral action taken to the applicant authority. Legal assistance is rendered free of charge and expenses incurred are borne by the party performing acts of legal assistance. Official business is conducted either

in Polish or Russian.

10. Supplementary rules, effective date and amendment. Matters not covered by this agreement are to be governed by the existing rules on legal assistance. Effective date of this agreement is on the day of the exchange of the instruments of ratification which is October 26, 1957. Amendments to this agreement are to be made by an agreement between the contracting parties.

## V. AN OBSERVATION

The foregoing presentation is designed to outline some salient features of the Soviet-Polish Status of Forces Agreements.

Solutions to problems arising due to the stationing of foreign troops under the Warsaw Pact was sought through bilateral agreements. This arrangement is markedly different from that of the NATO. Another unique feature of the Soviet-Polish SOFA is that the text of the agreement is riddled with so many provisions that the matter will be dealt with by special agreements. It is not altogether clear how many of these so called special agreement provisions are actually spelled out and signed by both parties.<sup>(10)</sup> Other characteristics of the Soviet-Polish SOFA are the enunciation of respect for Polish sovereignty by the Soviet forces and a duty to observe the Polish law by Soviet personnel. For this purpose, the military strength, location of duty stations and military activities of the Soviet forces are subject to the consent of Polish government.

Other interesting features for the Westerners interested in the Socialist approach to SOFA include: (1) the Soviet troops in transit are also subject to such provisions as criminal jurisdiction and liability for damages; (2) the agreement uses its own wording of "individuals serving with the Soviet forces and of members of their families"; (3) problems arising under SOFA are to be resolved through three means: plenipotentiaries, mixed-commission and diplomatic channel; (4) the term, "the serious and lesser offenses" appears frequently in

(10) In order to receive an official sanction of the United Nations pursuant to article 102, United Nations Charter, registration of agreements with the United Nations may especially benefit Poland.

the text of agreements. The definition of this term does not appear in the text. Perhaps, this term is used loosely in the operation of SOFA especially in matters dealing with criminal jurisdiction and legal assistance; (5) Soviet trial court can convene in Poland; and (6) both governments are to assume a wider role of compensation for tort liabilities.

Why did the USSR execute a number of status-of-forces agreements with Warsaw Pact member countries? Some reasons and effects of the signing of agreements are speculated by a commentary in the following words:<sup>(11)</sup>

...there is evidence to suggest that the presence of Soviet troops in Hungary and Poland was no longer a burning political issue in these countries in the late fifties and early sixties. Apart from a general feeling that nothing could be done about it, there was also the fact that the presence or absence of Soviet troops made no major difference insofar as the relationship with the Soviet Union was concerned. The continuing presence of United States forces in NATO countries probably also helped sweeten the bitter pill, and the correct behavior of local Soviet garrisons contributed further to defusing a potentially explosive problem. Thus it would appear that the Pact, in its capacity as the instrument legalizing the stationing of Soviet troops in a number of Eastern European countries, performed a useful role, except when the issue acquired explosive proportions in 1956. When the Soviet concessions formalized in the Status of Forces agreements eliminated some of the emotional intensity of the issue, this function of the Warsaw Pact was no longer considered especially significant or controversial..”

While the writer lacks the kind of data required to draw a complete picture of the “true mean” of the Soviet-Polish status of forces agreements, it is hoped that the discussion is not purely academic and that the surface messages conveyed are significant in their own rights.

(11) The First Decade, INTERNATIONAL CONCILIATION, May 1969, No. 573, at 23-24,