

# *A Comparative Study on Criminal Jurisdiction of Overseas Military Bases*

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**Abstract:** The criminal jurisdiction of overseas military bases is the product of state gaming. In international practice, the criminal jurisdiction of overseas military bases is mainly divided into the Soviet (Russian) model and the American model. Based on the comparative study of the Soviet Union (Russia) and the United States model, this paper believes that the acquisition of overseas military bases, the differences in policies, and the pattern of military rise are important factors affecting the change of criminal jurisdiction system of overseas military bases. This paper argues that our country should learn from the experience of the United States and the Soviet Union (Russia) to perfect the criminal jurisdiction system of our overseas security bases from two aspects of international law and domestic law.

## **1. The concept of criminal jurisdiction of overseas military bases**

### **1.1 The definition and nature of criminal jurisdiction of overseas military bases**

National criminal jurisdiction refers to the power of a state to exercise jurisdiction of crimes. According to the political principle of separation of state powers, in a state governed by the rule of law, the state must control or manage individuals or affairs through legislative, judicial, and executive methods. The power of a state to exercise jurisdiction of crimes, namely national criminal jurisdiction, consists of criminal legislative jurisdiction, which is the effectiveness of the criminal substantive law, criminal procedure law, and penal execution law enacted by parliament in accordance with legal procedures; criminal judicial jurisdiction, which is the power of courts to convict and sentence through judgments in accordance with legal procedures; and criminal executive jurisdiction, which mainly refers to the power of law enforcement agencies to investigate, prosecute, and execute penalties in accordance with legal procedures. The separation of criminal jurisdiction does not mean that there is no connection between criminal legislative jurisdiction, criminal judicial jurisdiction, and criminal executive jurisdiction. Only when these three powers are checked by law can the state better exercise criminal jurisdiction. The first is the restraining function of criminal legislative jurisdiction. The criminal executive jurisdiction and criminal judicial jurisdiction, which involve the pursuit and punishment of crimes, are essentially conflicts between rights and powers between individuals and the state. In the procedures of investigating, prosecuting, and punishing crimes, they can only be clearly defined by the criminal procedure law enacted by the legislative body to protect the legitimate rights and interests of the parties involved; the restraining function of criminal judicial jurisdiction,

the criminal judicial jurisdiction restrains the criminal legislative jurisdiction by giving judicial personnel the right to make necessary interpretations of legislation and to interpret and explain abstract criminal legal provisions. The restraining function of criminal executive jurisdiction is mainly reflected in the discretionary power that law enforcement officers have over specific criminal cases when enforcing the law, rather than mechanically applying the law. In specific criminal cases, there are numerous situations that are not stipulated by legislation, yet law enforcement personnel cannot abandon their duties as a result. They must handle legal provisions with flexibility and adaptability<sup>[1]</sup>, but such flexibility/adaptability must be limited within the bounds of legislation. <sup>[2]</sup> The criminal jurisdiction of overseas military bases also possesses the aforementioned restrictive functions, which, according to this paper, are primarily manifested in the following aspects: In terms of coordinating political interests, the restrictive role of criminal jurisdiction represents a reflection of political interest coordination. Taking the U.S. military base in Okinawa as an example, to maintain political and economic assistance from the U.S. military, the Okinawa government chooses to favor/shield American military personnel who commit crimes, citing the “Japan-U.S. Status of Forces Agreement”. In terms of international security mechanisms, the restrictive role of criminal jurisdiction of overseas military bases lies in maintaining the stability of alliance structures. From the ontological perspective of international mechanisms, norms and rules serve as means to manage state relations in specific domains, and states precede mechanisms, adopting strategies such as creating, maintaining, complying with, or ignoring international mechanisms based on self-interest. <sup>[3]</sup> Ideally, the host country’s agreement with the leasing country for military bases overseas serves as the primary basis for delineating criminal jurisdiction within the bases. However, in reality, the leasing country of overseas military bases often chooses to shield/ignore criminal acts committed by its military personnel in order to maintain the stability of the alliance. In conclusion, criminal jurisdiction of overseas military bases is, to a certain extent, a product of power struggles among major nations, and its criminal jurisdiction exhibits a relatively flexible state based on considerations of political interests or the stability of alliances.

## 1.2 Characteristics of criminal jurisdiction of overseas military bases

Compared to domestic military bases, the criminal jurisdiction of overseas military bases exhibits the following characteristics. In terms of legal basis, the criminal jurisdiction of overseas military bases primarily relies on the authorization granted by international treaties. According to Article 38 of the *Statute of the International Court of Justice*, international treaties and customary international law can both serve as the basis for allocating criminal jurisdiction of military bases. In contrast, the criminal jurisdiction of domestic military bases is authorized by the country’s constitution or military laws. Regarding jurisdictional principles, overseas military bases are detached from the territory of the leasing country. Based on international practice, overseas military bases established by NATO and the Warsaw Pact tend to adopt a combination of personal jurisdiction and functional jurisdiction. Domestic military bases, on the other hand, often establish criminal jurisdiction systems based on territorial jurisdiction. In terms of criminal law enforcement, countries have full criminal law enforcement authority over military bases within their own territories. However, for overseas military bases, due to the detachment from territorial jurisdiction, the leasing country only has criminal law enforcement authority within the scope “authorized by treaties” for crimes committed within the base. In terms of legal interest protection, establishing overseas military bases is an important measure for countries to protect their overseas interests. Unlike domestic military bases, overseas military bases tend to prioritize safeguarding national maritime route security, protecting overseas citizens, and safeguarding national overseas investment interests. In terms of jurisdiction scope, private armed forces are included within the scope of criminal jurisdiction. The armed forces of overseas military

bases can belong to the state or to non-governmental organizations or other entities. In practice, countries recruit armed personnel through employment contracts with private security companies to provide security services for expatriate personnel and assets. For instance, the United States has signed security contracts with domestic or Iraqi security companies. During the Iraq War, the number of personnel from major American security companies even exceeded that of the U.S. troops stationed in Iraq. Numerous private security companies, such as Blackwater, were engaged in auxiliary combat missions for the U.S. military during wartime. In Iraq, many missions that the U.S. military hesitated to undertake were carried out by personnel from private security companies with whom the U.S. had signed security contracts. Through the “Status of Forces Agreement” with Iraq, the U.S. extended the jurisdictional immunity of its troops stationed in Iraq to personnel from security companies responsible for auxiliary work on behalf of the U.S., thereby claiming the legal status of these private security personnel. <sup>[4]</sup> The rapid development of private security companies has made them an essential component of the armed forces in overseas military bases, and international practice has increasingly seen overseas military operations dominated by private security companies. In this context, the criminal jurisdiction of overseas military bases tends to include the armed forces of private security companies within its scope.

### **1.3 Development of the criminal jurisdiction system of overseas military bases**

The United Nations International Law Commission has pointed out that the rights of the leasing country of an overseas military base in terms of criminal jurisdiction of the base are limited to the scope and duration permitted by the national declaration of the host country of the overseas military base. The competition of criminal jurisdiction of overseas military bases is essentially a conflict of rights under international law. As stated by the public international law scholar Brownlie, from the perspective of the exercise of extraterritorial jurisdiction by sovereign states, the jurisdiction and privileges obtained by the leasing country of an overseas military base in the host country are “contractual licenses <sup>[5]</sup>” acquired by the leasing country based on the consent of the host country.

In the early days, the jurisdiction of overseas military bases applied the “flag state law theory”. The absolute immunity theory of traditional international law holds that there is no jurisdiction between sovereign states as equal subjects, so the foreign troops, as representatives of the state, enjoy absolute immunity equal to that of sovereign states. According to the flag state law theory, for a considerable period of time, the leasing country of overseas military bases had exclusive jurisdiction of its own military personnel within the base. Before World War II, Western countries generally accepted the flag state law theory of overseas military bases and formed international customary law in international practice. After World War II, the theoretical system of flag state law gradually collapsed with the birth of the concept of relative sovereignty. At the same time, more and more countries became aware of their sovereignty and opposed the leasing country of overseas military bases enjoying exclusive criminal jurisdiction of overseas military bases. <sup>[6]</sup> In this context, the traditional jurisdiction of overseas military bases, where the “flag state law” theory was eliminated, was impacted by modern international law, and the issue of criminal jurisdiction of overseas military bases emerged accordingly. In other words, the issue of the competition of criminal jurisdiction of overseas military bases mainly revolves around the coordination between the territorial jurisdiction of the host country of the base and the flag state law, that is, the limit of criminal jurisdiction obtained by the leasing country from the host country after the signing of the garrison agreement.

### **1.4 Political reasons for the changes in criminal jurisdiction of overseas military bases**

The alliance relationship of overseas military bases is an important factor affecting the formulation of treaties on criminal jurisdiction. The alliance treaty and the garrison agreement are the legal basis

for the cooperation between the leasing country and the host country of overseas military bases. The alliance treaty stipulates the rights and obligations of the leasing country and the host country, as well as the procedures and organizations for alliance decision-making. The core content is the application of the alliance treaty and the division of criminal jurisdiction of the allied troops. In this case, while restricting the sovereignty of the host country, the characteristics of the alliance treaty also make the leasing country pay a corresponding material price. For the alliance, the functions of the alliance are defined by the treaty. Based on the balance between the level of security demand and the acceptable cost, countries will choose specific allies and stipulate the degree of military cooperation between the two parties in the treaty. Whether a country can obtain security when it is needed depends on whether its allies fulfill their commitments. The way to achieve this goal is to increase the cost of allies violating their commitments, send more effective signals externally, and a feasible way is to adopt a more binding mechanism.<sup>[7]</sup> The criminal jurisdiction system of overseas military bases is one of its mechanisms, and the division of criminal jurisdiction mainly follows the same rule.

This article argues that when the host country and the leasing country of overseas military bases have a high degree of cooperation, the reliability of the alliance is relatively low. Western scholar Mattes pointed out that in a symmetrical alliance, the leasing country and the host country of overseas military bases restrict the betrayal of the allied countries by setting up complex mechanisms to increase the cost of violating the alliance treaty; in an asymmetrical alliance, the stronger country often has enough control over the weaker country, so there is no need for complex mechanisms to restrain itself and its allies.<sup>[8]</sup> Examples of symmetrical alliances include NATO, which has relatively equal national strength. Therefore, in the distribution of criminal jurisdiction, the criminal jurisdiction system of NATO, led by the United States, shows a relatively equal trend. Examples of asymmetric alliances are similar to the Warsaw Pact, where the Soviet Union had complete control over its satellite states. Therefore, it tends to present a criminal jurisdiction system in favor of the Soviet Union.

At the same time, after the formation of a country's criminal jurisdiction of overseas military bases, it may undergo fluctuations due to political reasons, mainly in two aspects:

Firstly, the leasing country and the host country occupy unequal international positions within the military alliance system. The scope of the leasing country's criminal jurisdiction of overseas military bases is related to the host country's emphasis on the priority of international security public goods supply from the leasing country. The establishment of overseas military bases is essentially one of the ways for military powers to provide international security public goods to weaker countries within the military alliance. When the host country is highly dependent on the military protection provided by the leasing country and feels satisfied with the priority of the international security public goods supply from the leasing country, it will voluntarily cede most of its criminal jurisdiction in the military treaty signed with the leasing country and actively bear the operating costs of the overseas military base. When the international security environment of the host country improves or its own military strength is enhanced, reducing the demand for military protection from the leasing country, the host country will ignore the "priority ranking of international security public goods supply from the leasing country" and demand to sign a new treaty to reduce the criminal jurisdiction of the leasing country's overseas military bases.

During the Cold War, Japan and the Soviet Union fell into a diplomatic deadlock over the "Northern Territories" issue, and the establishment of the U.S. military bases in Japan posed an effective deterrence to the Soviet Union. At that time, Japan was heavily dependent on the military protection provided by the United States, so the Status of Forces Agreement (SOFA) granted the U.S. military exclusive criminal jurisdiction in various aspects. After the Cold War, the Japanese government and the U.S. government revised the SOFA multiple times, attempting to reduce the criminal jurisdiction of the U.S. military bases in Japan, but the U.S. response was negative.

When the host country is in a relatively secure international environment, the protection of the

leasing country's overseas interests and geo-strategic games depend on the establishment of overseas military bases. When the host country and the leasing country tend to have equal status within the alliance system, the leasing country will reduce the criminal jurisdiction of overseas military bases and provide economic and political assistance to the host country in exchange for the continuation of overseas military bases.

Secondly, changes in national policies are also an important factor affecting the criminal jurisdiction system of overseas military bases. Taking the United States as an example, the introduction of "Nixon Doctrine" aimed to implement a comprehensive military contraction policy, during which the United States closed a large number of overseas military bases. During Nixon's administration, the United States proposed that the remaining overseas military bases would be allowed to remain only if the host countries provided significant military trade orders to American military industrial complexes in exchange for the U.S. military's domestic presence. The introduction of the "Nixon Doctrine" coincided with the period of "Soviet offense and American defense" during the U.S.-Soviet rivalry, and the U.S. military allies had to agree to the relevant demands of the United States. As a result, the United States expanded its criminal jurisdiction of overseas military bases and rejected the host countries' demands to reduce it.<sup>[9]</sup>

During the Cold War, South Korea relied on international security products provided by the United States to withstand military pressure from North Korea and the Soviet Union. On August 15, 1948, after the establishment of the South Korean government, the South Korean President and the Commander of the U.S. Forces Korea (USFK) signed the "Interim Administrative Agreement on Military Security Affairs for the Transitional Period" on August 24, granting the USFK the right to use the necessary facilities and base areas, as well as exclusive jurisdiction of USFK personnel, dependents, and relatives. However, this administrative agreement was terminated in June 1949 after the withdrawal of USFK. Following the outbreak of the Korean War and the re-entry of the U.S. troops, in order to regulate the legal status and criminal jurisdiction of USFK, the United States and South Korea signed the "Agreement Concerning the Status of United States Armed Forces in the Republic of Korea" in the form of an exchange of notes on July 12, 1950, in which the South Korean government acknowledged the criminal jurisdiction of USFK. In the 1966 Status of Forces Agreement (SOFA) between the United States and South Korea, South Korea made significant concessions regarding the criminal jurisdiction of USFK. With the collapse of the Soviet Union and the end of the Cold War, the foundation upon which the U.S.-South Korea military alliance rested was shaken. As the common threat disappeared, the nature of U.S.-South Korea relations evolved from a subordinate "protector-protégé" relationship to a partnership. Concurrently, the economic relationship shifted from "vertical dependence" to "mutual benefit and reciprocity" as South Korea's economy grew. This economic development also fueled South Korea's defense autonomy, leading to a transformation in the U.S.-South Korea military relationship from "U.S.-led" to "U.S.-supported".

<sup>[10]</sup> At the same time, crimes committed by USFK personnel became increasingly serious. For instance, in June 2002, two USFK soldiers drove an armored vehicle and ran over two South Korean female middle school students, killing them. Following an "acquittal" verdict handed down by the USFK military court in November, large-scale demonstrations and protests were held by South Korean citizens. However, aware of the ongoing confrontation between North and South Korea and South Korea's urgent need for military protection from the United States, the United States refused to modify the core criminal jurisdiction provisions of the SOFA during negotiations with South Korea.

<sup>[11]</sup>

## 1.5 Two models of criminal jurisdiction systems in overseas military bases

In international practice, the division of jurisdiction of overseas military bases is complex. There

are two main typical models: the American model, where jurisdiction is primarily exercised by the base leasing country, and the Soviet (Russian) model, where jurisdiction is primarily exercised by the host country. The core clauses of relevant agreements generally cover the following: types of military facilities, number of garrisoned troops, quantity and types of overseas military assets (aircraft, ships, radars, observation equipment, etc.), rights and freedoms to use military base facilities and equipment, rights to enter and exit the base, and overflight rights outside the military base. Additionally, garrison agreements often include the legal status of garrisoned personnel and their property, such as freedom of movement, attire, weapon carrying, taxation, criminal and civil justice, entry and exit rights, driver's licenses, registration fees, etc. Among them, issues related to sovereignty typically include the scope of application of local laws, judicial proceedings against garrisoned personnel, compensation for the use of military bases, and consultation procedures between the host country and the leasing country.

The core content of the American model is that the United States has entered into short-term or permanent status of forces agreements (SOFA) with its allies, outlining specific provisions on the legal status of the U.S. troops stationed abroad, the U.S. military visas, tax exemptions for the U.S. military supplies, compensation for damages, criminal jurisdiction, and other issues, thereby establishing a comprehensive legal system for overseas military bases.<sup>[12]</sup> As of 2023, the United States has established 374 overseas military bases in over 140 countries through international treaties such as SOFAs.<sup>[13]</sup> For instance, the United States and Iceland signed the Defense Agreement with Iceland in 1951, stipulating that the number of the U.S. troops stationed in Iceland and their jurisdiction require the consent of the Icelandic government.<sup>[14]</sup> The agreements between the United States and countries leasing overseas military bases primarily address the legal status of three categories of personnel: first, military civilian personnel and auxiliary technicians covered by the Vienna Convention on Diplomatic Relations; second, military personnel stationed at overseas military bases and issues related to their property; and third, temporary military personnel stationed overseas for military exercises. Depending on the extent of the leasing country's criminal jurisdiction, these agreements can be categorized into three types: the first type grants the leasing country complete "extraterritoriality", allowing the host country to exercise jurisdiction only in a few exceptional circumstances; the second type allocates criminal jurisdiction based on territorial jurisdiction, distinguishing between the area of the overseas military base and other territories of the host country; and the third type allows concurrent jurisdiction between the host country and the leasing country without distinguishing regions, but determines which party has priority in exercising jurisdiction under different circumstances based on specific matters.

The Soviet model is based on the principle of personal jurisdiction. If Soviet troops and their civilian personnel violate the laws of the host country, they are subject to the jurisdiction of the host country; if they violate Soviet citizens or commit job-related crimes, they are subject to the jurisdiction of the Soviet Union; if citizens of the host country violate Soviet troops personnel, it is considered an infringement on the armed forces of the host country, and criminal responsibility is borne in accordance with the laws of the host country; when the Soviet Union and the host country disagree on the judicial aspects of crimes or negligence committed by military personnel, they are resolved through mixed commissions established in Berlin, Warsaw, and Budapest in accordance with treaties. If the mixed commissions cannot resolve the issue, it is handled through diplomatic channels. The criminal jurisdiction of temporary military bases, such as those used for Soviet military exercises abroad, is negotiated between the Soviet Union and the host country.<sup>[15]</sup>

After the disintegration of the Soviet Union, Russia further improved its criminal jurisdiction system for overseas military bases through domestic legislation. Article 5 of the revised version of the Russian "Law on Security" in 2010 stipulates that Russia must participate in security assurance activities implemented abroad in accordance with international treaties or agreements signed or



recognized by the Russian Federation to achieve international security integration. When revising the “National Defense Law” in 2013, Russia increased the reasons for executing military tasks abroad from three to seven, taking into account the needs of specific military operations, adding “armed forces deployed abroad are attacked, counter-attacked, or stop aggression against third countries, protecting overseas citizens, combating piracy, and protecting the safety of navigation of national citizens’ ships”. Laws such as the “Law on Internal Troops of the Ministry of Internal Affairs”, “Law on Mobilization Readiness and Mobilization”, “Law on Procedures for Peacekeeping by Military and Civilian Personnel”, and “Regulations on Armed Forces Participating in Maintaining or Restoring International Security and Peacekeeping Operations” provide a legal basis for Russia to obtain criminal jurisdiction of overseas military bases through domestic legislation. <sup>[16]</sup> Regarding the allocation of criminal jurisdiction, Paragraph 4 of Article 7 of the “Law of the Russian Federation on Military Courts” in 2019 stipulates that military courts abroad try all civil, administrative, and criminal cases, including war crimes, involving federal troops stationed abroad.

Overall, the differences between the two models are reflected in the following aspects: Firstly, the United States divides its allies into three levels based on their national strength, applying different criminal jurisdiction systems to each level. In contrast, the military strength of the Soviet Union and its satellite countries was relatively disparate. In the face of the Soviet Union’s absolute military superiority, the satellite countries generally accepted the expansive criminal immunity of the Soviet troops stationed abroad, presenting a relatively uniform criminal jurisdiction system. Secondly, in addressing the issue of competition of criminal jurisdiction, the United States tends to adopt a “specific issue, specific analysis” approach. Based on the types of criminal jurisdiction systems, it relies on the garrison agreements and related documents as a legal basis to construct a dispute resolution system for competition of criminal jurisdiction between the leasing country and the host country, primarily through legal channels. The Soviet Union (Russia), on the other hand, prefers to jointly establish a “Mixed Commission on Competition of Criminal Jurisdiction” between the host country and the leasing country, establishing a mixed dispute resolution system for competition of criminal jurisdiction that prioritizes legal channels and supplements them with diplomatic means. Thirdly, in terms of exclusive jurisdiction and “priority jurisdiction”, the United States sets up exclusive jurisdiction primarily based on the principle of personal jurisdiction and “priority jurisdiction” as a supplement based on the principle of territorial jurisdiction, taking into account the strength of its allies and the development of the international situation. The Soviet Union (Russia) model, however, lacks relevant provisions on “priority jurisdiction” and also presents a single model for setting up exclusive jurisdiction, primarily based on the principle of personal jurisdiction.

## **2. Competition of criminal jurisdiction and its resolution in overseas military bases under multilateral agreements**

Taking the United States and the Soviet Union as examples, the “NATO Status of Forces Agreement” signed by the United States and NATO allies in 1951 is a typical example of resolving competition of criminal jurisdiction in overseas military bases under the American model. On the Soviet side, due to the highly centralized authoritarian mechanism implemented by the Soviet Union, the competition of criminal jurisdiction and its resolution in overseas military bases were scattered in Soviet military laws and subsidiary documents such as the “Warsaw Pact”. This paper conducts a comparative study on the competition and resolution of criminal jurisdiction in overseas military bases under multilateral stationing agreements through a comparative analysis approach.

### **2.1 The American model**

The American model of jurisdiction of overseas military bases under multilateral agreements

adopts territorial jurisdiction as the principle and resolves competition of criminal jurisdiction in overseas military bases by establishing exclusive jurisdiction. Based on existing research, it can be mainly divided into the following three situations:

The first situation involves coordinating competition of criminal jurisdiction through personal jurisdiction. For example, the “NATO Status of Forces Agreement” signed by the United States and NATO allies in 1951 provides detailed regulations for resolving competition of criminal jurisdiction in overseas military bases of the host country: Firstly, all crimes committed by military personnel of the leasing country within the overseas military base are under the exclusive jurisdiction of the leasing country; secondly, the exclusive jurisdiction of crimes committed by civilian personnel of the leasing country’s military and their families on the territory of the host country belongs to the host country; thirdly, specific principled clauses are established, stating that in principle, the host country has jurisdiction of crimes committed by military personnel of the leasing country on its territory.<sup>[17]</sup> In other words, under such circumstances, the leasing country of the overseas military base does not have jurisdiction of crimes committed by its military civilian personnel in the host country.

The second situation involves establishing exclusive jurisdiction for specific crimes to reduce conflicts in criminal jurisdiction. For instance, Subparagraph 2 of Paragraph 7 of the “NATO Status of Forces Agreement” stipulates that “the authorities of the leasing country shall have the right to exercise exclusive jurisdiction of criminal acts committed by personnel subject to its military law”. In other words, if military personnel of the leasing country in the overseas military base only violate the military discipline and national security laws of the leasing country, the leasing country exercises exclusive jurisdiction.<sup>[18]</sup>

The third situation involves mitigating conflicts in criminal jurisdiction by imposing restrictions on concurrent jurisdiction. Taking the 1988 “Short v. Government of the Netherlands” case as an example, the United States argued that it had priority jurisdiction based on the “NATO Status of Forces Agreement” and hoped to extradite Major Short, a US military advisor stationed in the Netherlands, back to the country. However, the Dutch criminal court rejected this request on the grounds that “the extradition of a person sentenced to death is not permitted”.

## 2.2 The Soviet (Russian) model

The Soviet military law adopted the “corporate principle” for the criminal jurisdiction of Soviet military personnel, which means that the spatial validity of Soviet military law extends not only to the territory of the Soviet Union but also to Soviet land, sea, and air forces stationed on foreign territories. While enjoying criminal immunity from the host country, Soviet military law still has criminal jurisdiction of them. From the very beginning of its establishment, the Soviet Union believed that its primary task was to bring its ideology to every corner of the world.<sup>[19]</sup> After World War II, the Soviet Union played a pivotal role in the global cause of anti-colonialism and anti-hegemony. In order to weaken the strength accumulated by the old capitalist countries such as the United States and Japan in the previous colonial system, the Soviet Union, while politically promoting the concept of the “Yalta System” of anti-colonialism, suppressed the remaining colonial forces in Eastern Europe through military occupation and military control.<sup>[20]</sup> The “corporate principle” emerged at the inception of the Soviet Union. Based on the Soviet military strategy and the need for ideological expansion, as well as maintaining the absolute control of the Soviet Union over its satellite states, the corporate principle adopted a strict principle of personal jurisdiction, which means that the Soviet Union had absolute criminal jurisdiction of crimes committed by its foreign-based troops.

This absolute criminal jurisdiction is manifested in the following aspects. First, the general military crimes and job-related crimes committed by Soviet military personnel overseas are tried according to Soviet military law. Second, when Soviet military personnel engage in betrayal during wartime or



attack allied forces in the host country of overseas military bases, it is regarded as an internal rebellion among Soviet military personnel; if similar laws and regulations exist in the host country of overseas military bases, the laws of the host country shall apply. Third, crimes committed by military personnel from the host countries of Soviet Union's member states in overseas military bases are under the exclusive jurisdiction of the host countries. Fourth, when foreign military personnel who do not enjoy extraterritorial jurisdiction arrive in Soviet territory or after their home countries are occupied by the Soviet Union, and engage in criminal acts against the Soviet government and military, Soviet military criminal law applies. Fifth, criminal acts committed by military personnel of defeated countries that infringe upon the interests of the Soviet Union and its people are under the exclusive jurisdiction of the Soviet Union.<sup>[21]</sup>

After the collapse of the Soviet Union, Russia constructed a criminal jurisdiction system for overseas military bases based on treaties related to collective security organizations, focusing on international crimes such as counter-terrorism, anti-aggression, and combating transnational drug trafficking. These treaties mainly include the 1992 Collective Security Treaty, the 1992 Agreement on the Status of the Collective Security Council, the 2001 Heads of State Statement on the Establishment of a Collective Security Rapid Reaction Force in Central Asia, the 2002 Charter of the Collective Security Treaty Organization (CSTO): Agreement on the Legal Status of the Collective Security Treaty Organization, the 2003 Heads of State Statement on the Establishment of the Joint Command of the Collective Security Treaty Organization, the 2007 CSTO Agreement on Peacekeeping Operations, the 2009 Agreement on the Establishment of Collective Response Forces, the 2010 Provisions on Collective Security Cooperation among Member States in the Field of Information Security, the 2012 Declaration of Member States of the Collective Security Treaty: Agreement on the Legal Status of the Collective Security Treaty Organization, the 2013 Agreement on the Composition and Functioning of the Armed Forces of the Collective Security Treaty Organization, and the 2018 Agreement on Measures against Terrorists in Armed Conflicts. These treaties provide specific provisions on the criminal jurisdiction of Russian overseas military bases when dealing with non-traditional security threats.

The Russian model has undergone the following changes compared to the Soviet model: Firstly, in terms of the objects of criminal jurisdiction, the Russian model tends to address non-traditional security threats such as terrorism, piracy, and transnational crimes. Secondly, the Russian model often interfaces with international policing organizations. For instance, when Russia participates in the Shanghai Cooperation Organization (SCO), it advocates integrating the spirit of the Collective Security Treaty with the Charter of the SCO to build a collective security system centered on intelligence exchange, police cooperation, and humanitarian assistance. Lastly, within the framework of the Collective Security Treaty Organization (CSTO), the "Regulations on the Collective Rapid Deployment Forces" have been approved, with each member state contributing nearly a division of troops. This military force is usually administered by the military departments of their respective countries and is only commanded by the decision-making body of the CSTO during training and formal military operations. This model has ushered in a new paradigm for criminal jurisdiction of overseas military bases, whereby during non-training and non-military operations periods, the military forces of the leasing countries and host countries of overseas military bases are stationed within their respective territories, applying the principle of territorial jurisdiction to minimize competition of criminal jurisdiction.

In summary, the competition of criminal jurisdiction of Soviet (Russian) overseas military bases under multilateral agreements adopts the "corporate principle" from domestic military law, which prioritizes the principle of personal jurisdiction and supplements it with the principle of territorial jurisdiction. Crimes committed by Soviet (Russian) military personnel in overseas military bases are exclusively subject to the jurisdiction of the Soviet Union (Russia).

## **2.3 Comparison of two systems of competition of criminal jurisdiction under multilateral agreements**

### **2.3.1 Similarities**

By comparing the “Agreement on the Status of NATO States” between the United States and its NATO allies with the domestic military law of the Soviet Union (Russia) and the annexed documents of the Warsaw Pact, it can be found that both have the following commonalities in dealing with competing criminal jurisdictions under multilateral treaties: First, general crimes and duty-related crimes involving the military personnel of the leasing country are under the exclusive jurisdiction of the leasing country; second, crimes committed within overseas military bases that endanger the national security of the leasing country are under the exclusive jurisdiction of the leasing country, and vice versa; third, both models advocate that crimes committed by the military personnel of the leasing country that violate the laws of the leasing country but not the laws of the host country are under the exclusive jurisdiction of the leasing country.

### **2.3.2 Differences**

Firstly, the two models differ in terms of the subjects of immunity. The Soviet Union (Russian) model’s criminal immunity extends to military dependents and civilian personnel, while the U.S. model categorizes criminal jurisdiction into three scenarios based on different circumstances: Firstly, criminal immunity is limited to the official conduct of the U.S. military personnel and their civilian counterparts; secondly, exclusive jurisdiction is allocated through the principle of territorial jurisdiction to determine criminal immunity; thirdly, the U.S. military personnel, their civilian counterparts, and military dependents enjoy the same level of criminal immunity as the U.S. military.

Secondly, the two models differ in their integration of domestic law and military agreements. The Soviet Union (Russian) model advocates extending domestic military law to the criminal jurisdiction system of overseas military bases (the corporate principle). In contrast, the U.S. model insists that the division of criminal jurisdiction in overseas military bases should be strictly enforced in accordance with multilateral agreements.

Thirdly, the two models differ in their approach to criminal jurisdiction immunity. The Soviet Union (Russian) model asserts that criminal immunity encompasses not only jurisdiction but also execution procedures. Conversely, the U.S. model limits criminal immunity solely to jurisdiction.

## **3. Competition of criminal jurisdiction and its resolution in overseas military bases under bilateral garrison agreements**

To address the issue of competition of criminal jurisdiction in overseas military bases under bilateral garrison agreements, this article selects and conducts a comparative analysis of bilateral agreements such as the 1966 Status of Forces Agreement between the United States and the Republic of Korea, the 1947 Agreement Between the Republic of the Philippines and the United States of America Concerning Military Bases, and the 1956 Treaty on the Legal Status of Soviet Forces in Poland.

### **3.1 The American model**

Taking the U.S. Forces Korea (USFK) as an example, the criminal jurisdiction of the USFK underwent numerous changes from the early post-World War II period to the end of the Cold War. In the early aftermath of World War II, the United States occupied the southern part of Korea in 1945, using it as a military base to hinder the unification efforts of North Korea and the Soviet Union

towards South Korea. To counter the socialist bloc led by the Soviet Union, the United States signed a military agreement with the Syngman Rhee government, thereby establishing a Korean military under the U.S. control.<sup>[22]</sup> After the Korean Armistice Agreement, the United States and South Korea signed the Korea-U.S. Mutual Defense Treaty.<sup>[22]</sup> The signing of this treaty provided the United States with a legal basis for establishing overseas military bases, stationing troops, and controlling the political and economic aspects of South Korea.<sup>[23]</sup> Meanwhile, to address the issue of criminal jurisdiction of the USFK, the United States and South Korea signed the Status of Forces Agreement in 1966, which made specific provisions regarding the competition of criminal jurisdiction of the USFK.

The aspects of exclusive jurisdiction primarily encompass: (1) Except during martial law, crimes committed by the U.S. military personnel and their dependents in South Korea are subject to exclusive jurisdiction by the United States;<sup>[24]</sup> (2) For crimes committed by the U.S. military personnel that violate the U.S. military law but not Korean law, the United States exercises exclusive jurisdiction; conversely, for crimes that violate Korean law but not the U.S. law, South Korea exercises exclusive jurisdiction;<sup>[24]</sup> The aspects of competition criminal jurisdiction are mainly as follows: The 1966 Status of Forces Agreement between the United States and South Korea establishes the principle of functional jurisdiction, stipulating the priority of jurisdiction between the U.S. and South Korea. Specifically: (1) For crimes committed by the U.S. military personnel against the U.S. citizens, the U.S. military has priority jurisdiction. (2) When there is a concurrence of criminal jurisdiction between the U.S. and South Korea, South Korea has priority jurisdiction in principle. However, for duty-related crimes and internal crimes committed by the U.S. military personnel, the U.S. military exercises priority jurisdiction.<sup>[24]</sup> The aspects of criminal law enforcement primarily include: South Korea retains jurisdiction of the criminal execution of USFK personnel and their dependents. However, when a criminal suspect is in the custody of the U.S. military, they remain in U.S. military detention until the end of the judicial process. If a criminal suspect is in Korean custody and the U.S. military requests their transfer, South Korea is obligated to turn over the suspect to the U.S. military, who will then detain them until the end of the trial. Lastly, criminal suspects suspected of violating Korean national security are detained by Korean authorities.<sup>[24]</sup>

Article 13 of the 1947 Agreement between the Republic of the Philippines and the United States of America Concerning Military Bases similarly embodies the principle of territorial jurisdiction as the primary basis, supplemented by personal jurisdiction. To address the issue of competition of criminal jurisdiction of the U.S. military bases in the Philippines, the agreement stipulates as follows: (1) Any crime committed by the U.S. military personnel within the Philippines' military bases shall be subject to exclusive jurisdiction by the United States; all crimes committed by the U.S. military personnel outside these bases shall be subject to exclusive jurisdiction by the Philippines. (2) During wartime, crimes committed by the U.S. military personnel both inside and outside the bases shall be subject to exclusive jurisdiction by the United States. (3) In cases where the Philippines has exclusive jurisdiction but waives it, the United States shall exercise exclusive jurisdiction. (4) During the execution of military missions or in times of emergency in either the Philippines or the United States, the United States may freely exercise jurisdiction of crimes committed by the U.S. military personnel. In terms of criminal law enforcement, the agreement provides: (1) For cases under the exclusive jurisdiction of the U.S. military, the U.S. military shall be responsible for the arrest and detention of offenders. (2) For cases under the exclusive jurisdiction of the Philippines but where the Philippines waives its jurisdiction, the local government prosecutor at the scene of the crime must notify the offender's officer within ten days after the arrest. The United States may then freely choose whether to exercise criminal law enforcement powers. (3) For crimes committed by the U.S. military personnel that fall under the exclusive jurisdiction of the Philippines, detention by the Philippine judicial authorities may occur with the approval of the commander of the U.S. military in the Philippines.<sup>[25]</sup>

### 3.2 The Soviet (Russian) model

Under the Soviet (Russian) model, the issue of competition criminal jurisdiction in bilateral agreements is primarily addressed by establishing exclusive jurisdiction through bilateral treaties, granting significant criminal jurisdictional immunities to the host country to alleviate the competition of criminal jurisdictions. For instance, Article 9 of the 1956 Treaty on the Legal Status of Soviet Troops in Poland between the Soviet Union and Poland stipulates that crimes committed by Soviet troops and their families within Polish territory against non-Soviet citizens are generally subject to Polish law and the exclusive jurisdiction of Polish judicial authorities; whereas crimes committed by Soviet troops and their families against Soviet citizens and duty-related crimes are subject to Soviet law and the exclusive jurisdiction of Soviet judicial authorities.<sup>[26]</sup> The 1968 Agreement on the Status of Soviet Troops in Czechoslovakia between the Soviet Union and Czechoslovakia stipulates that Soviet military personnel enjoy full administrative and criminal immunity during their temporary stay in Czechoslovakia. Furthermore, Articles 3 to 5 of the 1973 Convention on Immunities and Privileges of the Headquarters and Commanders of the Warsaw Pact Forces, promulgated by the Warsaw Pact, provide that officers and civilian personnel of the Warsaw Pact Headquarters enjoy privileges and criminal immunity in the member states; the buildings of the Warsaw Pact Headquarters enjoy immunity, including immunity from execution even if criminal jurisdiction is lost; and when officers and civilian personnel of the Warsaw Pact Headquarters lose their criminal immunity and violate the laws of the host country, they are subject to the laws and military tribunals of the host country.<sup>[26]</sup>

Soviet scholar Goner summarized the characteristics of criminal jurisdiction of Soviet overseas military bases under bilateral agreements as follows: Firstly, crimes committed by Soviet military personnel in overseas military bases related to their duties and crimes committed by Soviet citizens against other Soviet citizens are subject to Soviet law and the exclusive jurisdiction of Soviet judicial authorities. Secondly, non-national security crimes committed by Soviet military personnel and their families that violate the laws of the host country are subject to the laws of the host country and the exclusive jurisdiction of the host country's judicial authorities. Thirdly, acts committed by citizens of the host country against Soviet military personnel are considered as violations against their own military and are subject to the laws of the host country and the exclusive jurisdiction of the host country's judicial authorities. When there are disagreements between the two parties regarding jurisdiction of crimes and negligence cases committed by Soviet military personnel, they can be submitted to the Mixed Committees established in Berlin, Warsaw, Budapest, and Prague under the treaty for resolution. If the Mixed Committees are unable to resolve the issues submitted to them, they shall be addressed through diplomatic channels.<sup>[27]</sup>

### 3.3 Comparison of two systems of competition of criminal jurisdiction under bilateral agreements

#### 3.3.1 Similarities

It is evident from the aforementioned treaties that both the United States' Status of Forces Agreement with the Republic of Korea and the Soviet Union's Treaty on the Legal Status of Soviet Troops in Poland, among others, contain provisions stipulating that crimes committed between citizens of the host country shall be subject to the exclusive jurisdiction of the host country when addressing the issue of competition criminal jurisdiction of foreign troops. Some scholars believe that this arrangement stems from the policy consistently pursued by the United States and the Soviet Union during their rivalry, which aimed to minimize the jurisdiction of the host countries over foreign military bases. Only when foreign troops enjoy sufficient criminal immunity can they effectively

carry out their tasks of promoting national policies. <sup>[28]</sup> Secondly, crimes suspected of endangering the host country or the leasing country shall be subject to the exclusive jurisdiction of the host country or the leasing country, respectively.

### **3.3.2 Differences**

In resolving the issue of competition of criminal jurisdiction, the U.S model, exemplified by the Status of Forces Agreement with the Republic of Korea, adopts the establishment of “priority jurisdiction” to determine the order and hierarchy of jurisdiction. Overall, this model tends to favor the leasing country in matters of competition of criminal jurisdiction.

The Soviet (Russian) model, on the other hand, favors the establishment of a joint mixed commission between the leasing country and the host country as a dispute resolution mechanism. From a legal perspective, military agreements with a hierarchical system are primarily embodied in the priority provisions for competition of jurisdiction.

## **4. Analysis of the reasons for differences in the criminal jurisdiction system of overseas military bases**

### **4.1 Different ways of acquiring overseas military bases**

As mentioned earlier, overseas military bases are primarily acquired through three methods: conquest, alliance, and compensation. Overseas military bases acquired through conquest inherently carry the shade of great power chauvinism, and therefore, the criminal jurisdiction system of such bases tends to grant the leasing country as much “extraterritoriality” as possible. For instance, the overseas military base established by the United States in Haiti after its occupation in 1915. <sup>[1]</sup> Similarly, the Soviet Union maintained a long-term overseas military base on the territory of the German Democratic Republic in the early post-World War II period. During this period, both the United States and the Soviet Union acquired overseas military bases through conquest, and therefore, there were no significant differences in their criminal jurisdiction systems.

With the onset of the Cold War, tensions between the United States and the Soviet Union escalated. Recognizing the strength of its NATO allies, the United States adopted a strategy of alliance plus compensation to acquire overseas military bases, which manifested in limiting the criminal immunity of overseas U.S. troops to prevent allies from defecting or constraining its hegemony. In contrast, the Soviet Union, with its generally weaker Warsaw Pact allies, was able to use high-handed tactics to coerce them into granting broader criminal immunity to overseas Soviet troops. After the Cold War ended, the purpose of the United States in establishing overseas military bases shifted from arms races and nuclear deterrence during the Soviet era to maintaining global hegemony and addressing non-traditional security threats. At this point, the United States primarily relied on economic compensation while limiting its criminal jurisdiction of overseas military bases to secure their continued existence. For instance, the Status of Forces Agreement between the United States and Croatia signed in 2008, and the United States-Australia Forces Deployment Agreement signed in 2014 are examples of this approach. <sup>[29]</sup>

### **4.2 Differences in national policies have varying impacts on overseas military bases**

World War II had a significant impact on the European situation, with the most direct consequence being the deep penetration of Soviet military forces into Central and Eastern Europe, where the Soviet Union leveraged its troop presence to serve its political strategies, which extended beyond merely defeating Nazism. From its inception, the Soviet Union viewed its primary mission as spreading

socialism to every corner of the world.<sup>[30]</sup> In the aftermath of World War II, the Soviet Union played a pivotal role in the global endeavor against colonialism and hegemony. To weaken the entrenched power of established capitalist countries like the United States and Japan within the former colonial system, the Soviet Union politically promoted the anti-colonial “Yalta System” ideology while militarily occupying and administering residual colonial forces in Eastern Europe.<sup>[31]</sup> Under the influence of this foreign policy, the Soviet Union rationalized the exportation of ideology.<sup>[30]</sup> As Stalin famously stated, “Whoever occupies a territory imposes upon it his own social system. Each can impose his own system wherever his army can reach. There is no other way.” The Soviet Union diplomatically inherited the foreign policy of Czarist Russia. Since the expansion of Czarist Russia under Catherine the Great, the westward expansion policy remained a fixed national strategy until the end of the Russian Empire. Even after the October Revolution, the Soviet Union became the manifestation of this expansion, and this form of foreign policy evolved into a stable theoretical system from 1919 to 1949, which aimed to dominate Poland and the region downstream of the Danube River, break Turkish dominance over the Balkans, control the Baltic and Black Seas, and focus on securing control over the Turkish Straits.<sup>[32]</sup> Guided by this national strategy, the Soviet Union believed that controlling Eastern European allied nations would suffice to achieve the aforementioned strategic objectives. To ensure its military dominance over these Eastern European allies, the Soviet Union controlled the Warsaw Pact Command, mandatorily dispatched Soviet military advisers to military bases in member states, and implemented a jurisdiction system that limited the criminal jurisdiction of Eastern European allied nations (host countries) over overseas military bases. After the dissolution of the Soviet Union, the Yeltsin and Putin administrations in Russia inherited Soviet policies. However, due to Russia’s weakened national strength, it could no longer establish overseas military bases as forward stations along its borders as during the Soviet era. Recognizing the international situation, Yeltsin comprehensively consolidated Russian military forces within the country’s main theaters of operation. With the eastward expansion of NATO, some former Soviet satellite states gradually left Russia’s collective security system and joined NATO. In this context, Russia was compelled to adhere to the Soviet-era tradition and adopt stricter policies of unified ideology towards former Soviet satellite states within the Collective Security Treaty Organization. This policy has also profoundly influenced Russia’s criminal jurisdiction system over overseas military bases.<sup>[32]</sup>

As previously mentioned, the criminal jurisdiction of the U.S. overseas military bases exhibits three forms and continues to evolve with changing international dynamics. Taking the “Administrative Agreement between the United States and Japan” and the “Status of Forces Agreement with the United States Armed Forces in Japan” as examples, the U.S. established overseas military bases primarily based on two strategic considerations post-World War II: Firstly, to contain the resurgence of Japanese militarism.<sup>[33]</sup> After World War II, the United States adopted a military policy of suppression and attack against Japan, forcibly transforming Japanese society through military occupation, such as abolishing the old police force, completely disbanding Japanese fascist groups, and imposing complete military-political control over Japan.<sup>[34]</sup> Consequently, the “Administrative Agreement between the United States and Japan” signed in 1952 granted the U.S. military “extraterritoriality” in Japan. Although Article 17 of the agreement was revised by Japan and the United States in 1953, it did not fundamentally alter the issue. Secondly, to contain the Soviet Union. With the onset of the Cold War, Japan emerged as a pivotal frontline against socialist nations like the Soviet Union and China. To prevent Soviet infiltration in Japan, the United States elevated Japan to the same status as its NATO allies. As a result, the newly signed “SOFA with the United States Armed Forces in Japan” eliminated numerous clauses granting criminal immunity to the U.S. troops stationed in Japan.



### 4.3 Differences in the model of military rise

The Soviet Union's (Russia's) military rise model was based on national mobilization, primarily serving the Soviet ambition to dominate the world. In such a context, the Soviet Union had to view the Western bloc as an enemy in both national propaganda and policy, as both its global domination ambition and ideological threats drove the entire Soviet national economy towards militarization, with the majority of national economic activities serving military purposes. Within this system that leveraged the entire nation's strength to develop military capabilities, control over criminal jurisdiction of overseas military bases became crucial. Therefore, the Soviet Union's model of criminal jurisdiction of overseas military bases exhibited a single-minded expansionist approach, vigorously restricting the criminal jurisdiction of host countries.

In contrast to the Soviet military rise model that emphasized monopoly, the U.S. military rise model is a typical example of a capitalist free market economy. Most of the funding for the U.S. overseas military expansion flows into domestic military industrial enterprises, which in turn lobby the government to alter the U.S. government's policies on overseas military bases. From the beginning to the end of the Cold War, the domestic military-industrial complex in the United States has been a significant force influencing the U.S. decisions regarding overseas military bases. As international situations change, military-industrial enterprises use lobbying and other means to encourage the U.S. government to implement different criminal jurisdiction policies for overseas military bases, maintaining their existence and ensuring continued military procurement orders from host countries for American arms dealers.<sup>[35]</sup>

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