

Canadian Forces Act

As regards Japan, an agreement has been concluded recently with Japan regarding the criminal jurisdiction over United Nations forces there. The provisions of this agreement are nearly identical with the criminal jurisdiction provisions of the NATO status of forces agreement. Jurisdiction vests concurrently in the Japanese courts and in the Canadian service tribunals, Canada having the primary right to exercise jurisdiction in relation to certain offences, and the Japanese courts having the primary right in relation to others. Japan has agreed to give sympathetic consideration to Canadian requests that Japan waive its primary right to exercise jurisdiction in cases where Canada considers such waiver to be of particular importance.

If it is the wish of hon. members I can supplement this with a short statement on the purport of section 10, based on that background.

Some hon. Members: Six o'clock.

Mr. Harkness: You had better do it after six o'clock.

At six o'clock the committee took recess.

AFTER RECESS

The committee resumed at eight o'clock.

The Deputy Chairman: We are on clause 10.

Mr. Campney: When the committee rose at six o'clock I indicated that I would like to make a short statement on clause 10 which I thought might be helpful because the subject matter is something that arises out of our attempt to keep abreast of developments in foreign countries and our relations under NATO with the jurisdictional systems of those countries.

Before I make this short statement I should like to say first that the fact of making dependents subject to the military code, as this section does to some degree, does not in any sense create a relationship in its normal sense under which a wife or a child would be obliged in any way to comply with ordinary military orders in the same sense as the husband or father would. In other words, the clause would not make a dependent achieve anything like the status of an officer or man. This clause really sets out the conditions under which persons accompanying our forces may be subject to the code of service discipline, with the exceptions I have mentioned, or the reservations I have noted.

The National Defence Act now provides in section 56 that a person who accompanies

any unit or other element of the Canadian forces that is on service or active service in any place is subject to military law.

Under Canadian and also under British and American military law, civilians accompanying the armed forces when engaged in active operations have always been subject to military law. One of the reasons for this is that the forces are often operating, particularly in time of war, in areas where civil courts and authorities are non-existent or unable to act. It is obviously essential that persons accompanying the forces should be subject to some law at all times. Furthermore, the inherently dangerous nature of military activities makes it essential that close control be exercisable by the military authorities over all persons participating in those activities.

Clause 10 limits and defines the conditions under which civilians who accompany the forces are to be subject to service jurisdiction. The provisions of the clause other than those dealing with dependents out of Canada do not extend but rather limit the jurisdiction that might be exercised by the services over accompanying civilians.

Clause 10, if enacted, will make dependents who are living abroad with their husbands or fathers subject to the code of service discipline under such conditions as may be prescribed by the governor in council. It is desirable that such dependents should be made subject to the code of service discipline, as under arrangements that Canada has made with the governments of certain countries in which our forces are stationed they may thereby be wholly or partially exempted from the criminal jurisdiction of the courts of those countries.

Under the new clause such dependents must be tried by a special court presided over by a Canadian judge or member of the Canadian bar and other civilians subject to the code may be tried by this special court. It is possible to make trial by the special court mandatory for dependents because it is anticipated that dependents would not be present in a theatre of active operations. In so far as other civilians accompanying the forces are concerned, the legislation must be suitable for war conditions when it would not be practical to have a special court, and in this case such civilians would in all likelihood be tried by military courts.

It is not intended that the services will in fact exercise jurisdiction over civilians unless it is absolutely essential or in the best interests of the civilians themselves that they do so.

Within Canada the civil courts, by virtue of the National Defence Act, will continue