

SONS OF UNION VETERANS OF THE CIVIL WAR
OFFICE OF THE NATIONAL COUNSELOR

OPINION I – SERIES 2014-2015

I have been requested of the Commander-in-Chief to render an opinion as to the following question: Whether or not a Camp of the Sons of Union Veterans of the Civil War may be formed in any foreign country and if so, under what circumstances.

I first examined our National Charter as issued by the Congress of the United States.

Title 36 United States Code, Section 200308 states:

Sec. 200308. Principal office

The principal office of the corporation shall be in Trenton, New Jersey, or another place decided by the council of administration. However, the activities of the corporation are not confined to the place where the principal office is located but may be conducted in the District of Columbia and throughout the States, territories, and possessions of the United States. (Emphasis supplied)

What constitutes a territory or possession of the United States? There are four generally recognized types of territories or possessions of the United States:

- Incorporated organized territory
- Incorporated unorganized territory
- Unincorporated organized territory
- Unincorporated unorganized territory

Incorporated organized territory. The United States has not had any incorporated organized territory since 1959 when the Territory of Alaska and the Territory of Hawaii were granted statehood and admitted to the Union.

Incorporated unorganized territory. This includes U.S. coastal waters out to 12 nautical miles offshore, being incorporated but not organized. U.S. flagged vessels at sea, including Naval, Coast Guard and Civilian are also in this category. The only other incorporated unorganized territory is the Palmyra Atoll. This was part of the Territory of Hawaii, however, when the State of Hawaii was admitted to the Union, the Act of Congress explicitly separated Palmyra Atoll from the new state.

Unincorporated organized territory. This includes Guam, Northern Mariana Islands, Puerto Rico and the United States Virgin Islands. These modern inhabited territories under the control of the federal government can be considered as part of the "United States" for purposes of law as defined in specific legislation; but, the judicial term "unincorporated" was coined to legitimize the U.S. late 19th-century territorial acquisition without citizenship and their administration without constitutional protections temporarily until Congress made other provisions. Most of the unincorporated organized territories now grant U.S. citizenship to their inhabitants, with organized local governments.

Unincorporated unorganized territory. This includes American Samoa (technically unorganized, but self-governing under a constitution last revised in 1967) with a population of 55,000 and Wake Island with a population of 150 (all military contractor personnel). The remainder of these territories are uninhabited, including Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island Serranilla Bank and Bajo Nuevo Bank.

The remaining question is U.S. Embassy and Consular missions and U.S. Military bases. The generally accepted legal opinion is these fall within what is known as Extraterritorial Jurisdiction. The United States exercises some degree of jurisdiction in these areas.

As to U.S. Embassy and Consular missions, pursuant to the Vienna Convention on Diplomatic Relations, diplomatic missions do not enjoy full extraterritorial status and are not sovereign territory of the represented state. Rather, the premises of diplomatic missions remain under the jurisdiction of the host state while being afforded special privileges (such as immunity from most local laws).

As to U.S. Military bases, most U.S. military bases are on leased land. The United States will enter into various agreements with the host nation as to the status of each military base, as outlined in the lease, treaty or a Status of Forces Agreement with the host nation. The opinion of military bases generally not be U.S. territory or possessions has been adopted by the Federal Courts, in cases such as Souryal v Torres Advanced Enterprise Solutions, LLC, (847 FSupp2d 835) in a case involving the Family Medical Leave Act and Marshall v Exelis Systems, (decided in March of 2014 - 2014 WL 1213473) decided in the United States District court for the District of Colorado, a claim of racial discrimination under the Civil Rights Act.

The notable exception is the United States Naval Station at Guantanamo Bay, Cuba. In Lakhdar v Bush (128 S.Ct. 2229), the Supreme Court stated:

“Guantanamo Bay is not formally part of the United States. See DTA § 1005(g), 119 Stat. 2743. And under the terms of the lease between the United States and Cuba, Cuba retains “ultimate sovereignty” over the territory while the United States exercises “complete jurisdiction and control.” See Lease of Lands for Coaling and Naval Stations, Feb. 23, 1903, U.S.-Cuba, Art. III, T.S. No. 418 (hereinafter 1903 Lease Agreement); Rasul, 542 U.S., at 471, 124 S.Ct. 2686. Under the terms of the 1934 Treaty, however, Cuba effectively has no rights as a sovereign until the parties agree to modification of the 1903 Lease Agreement or the United States abandons the base. See Treaty Defining Relations with Cuba, May 29, 1934, U.S.-Cuba, Art. III, 48 Stat. 1683, T.S. No. 866.”

The court further relies upon the fact that the base was initially acquired by military conquest and not by negotiated treaty. The assumption, therefore, is that an overseas military base is not U.S. territory, unless a specific exemption exists for that base.

It is therefore my formal opinion that Camps of the Sons of Union Veterans of the Civil War may not be formed in foreign countries, with the limited exception of military bases where the

host country has totally surrendered all claims of sovereignty per an applicable treaty or by right of conquest. The only know base to meat that definition is the U.S. Naval Station at Guantanamo Bay, Cuba.

Respectfully submitted in fraternity, charity and loyalty,

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National Counselor