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Criminal Jurisdiction Over Visiting Armed Forces

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The thoughts and opinions expressed are those of the authors and not necessarily of the U.S. government, the U.S. Department of the Navy or the Naval War College.

APPENDIX XXV

AUSTRALIA. AGREEMENT CONCERNING THE STATUS OF UNITED STATES FORCES IN AUSTRALIA

Agreement between the United States and Australia. May 9, 1963. TIAS 5349.

ARTICLE 1

In this Agreement, except where the contrary intention appears:

“Australia” includes the territories under the authority of the Commonwealth of Australia;

“members of the United States Forces” means personnel belonging to the land, sea or air armed services of the United States in Australia in connection with activities agreed upon by the two Governments, other than those for whom status is provided otherwise than under this Agreement;

“members of the civilian component” means civilian personnel in Australia in connection with activities agreed upon by the two Governments who are neither nationals of, nor ordinarily resident in, Australia, but who are:

(a) employed by the United States Forces or by military sales exchanges, commissaries, officers’ clubs, enlisted men’s clubs or other facilities established for the benefit or welfare of United States personnel and officially recognised by the United States authorities as nonappropriated fund activities; or

(b) serving with an organisation which, with the approval of the Australian Government, is accompanying the United States Forces;

“dependant” means a person in Australia who is the spouse of, or other relative who depends for support upon, a member of the United States Forces or of the civilian component.

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ARTICLE 8

(1) Subject to the provisions of this Article :

- (a) the military authorities of the United States shall have the right to exercise within Australia all criminal and disciplinary jurisdiction conferred on them by the law of the United States over all persons subject to the military law of the United States ;
- (b) the authorities of Australia shall have jurisdiction over members of the United States Forces and of the civilian component and dependants with respect to offences committed within Australia and punishable by the law of Australia.

(2) (a) The military authorities of the United States shall have the right to exercise exclusive jurisdiction over persons subject to the military law of the United States which respect to offences, including offences relating to its security, punishable by the law of the United States, but not by the law of Australia.

(b) The authorities of Australia shall have the right to exercise exclusive jurisdiction over members of the United States Forces and of the civilian component and dependants with respect to offences, including offences relating to the security of Australia, punishable by the law of Australia but not by the law of the United States.

(c) For the purposes of this paragraph and paragraph (3) of this Article, an offence relating to the security of a State shall include :

- (i) treason against the State ;
- (ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defence of that State.

(3) In cases where the right to exercise jurisdiction is concurrent the following rules shall apply :

(a) The military authorities of the United States shall have the primary right to exercise jurisdiction over persons subject to the military law of the United States in relation to :

- (i) offences solely against the property or security of the United States, or offences solely against the person or property of a member of the United States Forces, the civilian component or a dependant ;

- (ii) offences arising out of any act or omission done in the performance of official duty.
 - (b) In the case of any other offence the authorities of Australia shall have the primary right to exercise jurisdiction.
 - (c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.
- (4) The foregoing provisions of this Article shall not confer on the military authorities of the United States any right to exercise jurisdiction over persons who are nationals of or ordinarily resident in Australia unless they are members of the United States Forces.
- (5) (a) The military authorities of the United States and the authorities of Australia shall assist each other in accordance with arrangements to be agreed to by them in the arrest of members of the United States Forces or of the civilian component or of dependants in Australia and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.
- (b) The authorities of Australia shall notify promptly the military authorities of the United States of the arrest of any member of the United States Forces or of the civilian component or of a dependant.
- (c) The custody of an accused member of the United States Forces or of the civilian component or of a dependent over whom Australia is to exercise jurisdiction shall, if he is in the hands of the United States authorities, remain with the United States to the extent authorised by United States law until he is charged by Australia.
- (6) (a) The military authorities of the United States and the authorities of Australia shall assist each other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence, including the seizure of and, in proper cases, the handing over of objects in connection with an offence. The handing over of such objects may, however, be made subject

to their return within any reasonable time specified by the authority delivering them.

(b) The military authorities of the United States and the authorities of Australia shall notify each other of the disposal of all cases in which there are concurrent rights to exercise jurisdiction.

(7) (a) A death sentence shall not be carried out in Australia by the military authorities of the United States.

(b) The authorities of Australia shall give sympathetic consideration to a request from the military authorities of the United States for assistance in carrying out a sentence of imprisonment pronounced by the authorities of the United States under the provisions of this Article within Australia.

(8) Where an accused has been tried in accordance with the provisions of this Article either by the military authorities of the United States or by the authorities of Australia and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned or has had sentence suspended, he may not be tried again for the same offence within Australia. However, nothing in this paragraph shall prevent the military authorities of the United States from trying a member of the United States Forces for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of Australia.

(9) Whenever a member of the United States Forces or of the civilian component or a dependant is prosecuted under the jurisdiction of Australia he shall be entitled:

- (a) to a prompt and speedy trial;
- (b) to be informed, in advance of trial, of the specific charge or charges to be made against him;
- (c) to be confronted with the witnesses against him;
- (d) to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of Australia;
- (e) to have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the part of Australia in which he is being prosecuted;
- (f) if he considers it necessary, to have the services of a competent interpreter; and
- (g) to communicate with a representative of the United

States Government and, when the rules of the court permit, to have such a representative at his trial.

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ARTICLE 20

(1) Regularly constituted military units or formations of the United States Forces shall have the right to police any camps, establishments or other premises or areas of which the United States Forces have exclusive occupation as the result of arrangement with the Australian Government. United States military police may take all appropriate measures to ensure the maintenance of order and security in such premises or areas.

(2) Outside such premises and areas, United States military police will be employed only subject to arrangements with the appropriate Australian authorities and in liaison with such appropriate Australian authorities and in so far as such employment:

- (a) is appropriate to provide for the protection of United States installations in premises or areas of which the United States Forces have the use, but not exclusive occupation; or
- (b) is necessary to maintain discipline and order among the members of the United States Forces and to ensure their security.

(3) The United States Government may, after appropriate consultation in any case between the relevant authorities of the two Governments, designate areas comprising buildings or portions of buildings or installations in premises or areas of which the United States Forces have use or occupation to be areas into which only personnel authorised by the local United States Commander may enter. The United States Forces will be responsible for the internal security of areas so designated.