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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 XXIII

### SPAIN. PROCEDURAL AGREEMENT NO. 16 TO THE 26 SEPTEMBER 1953 AGREEMENTS<sup>1</sup>

#### Jurisdiction Over Members of United States Forces

1. Pursuant to the authority contained in the Agreements of 26 September 1953, the following procedures are established for the exercising of jurisdiction, control and custody over members of the United States Forces alleged to have committed an offense in Spanish territory.

2. a. The term, Chief, Joint United States Military Group, shall have reference to the Chief, Joint United States Military Group, Spain or to the Senior Military Officer assigned to duty with the United States Forces in Spanish territory.

b. The term "Commander" shall have reference to the Commanding Officer of the United States Forces at any fixed installation within the Spanish territory.

c. The term "Mixed Commission on Jurisdiction" shall have reference to a board of Spanish authorities whose principal duties shall be to assure that the spirit and intent of the terms of the Agreements signed on 26 September 1953 regarding criminal jurisdiction over members of the United States Forces are effectively carried out, and to implement, enforce and monitor the procedures hereafter established. The Commission shall be established within the building of the High General Staff in the Madrid area.

d. The term "Members of the United States Forces" has reference to military personnel of the United States Armed Forces, the technicians and personnel accompanying, serving with or employed by said forces who are subject to the military laws of the United States and members of the families of the aforementioned individuals.

3. Whenever Spanish authorities apprehend a member of the United States Forces for the alleged commission of an offense

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<sup>1</sup> 4 UST 1876, TIAS 2849.

which in the judgment of the Spanish authorities requires detention or confinement, the following procedure will apply:

a. The person who is being detained or confined by Spanish authorities will, upon disclosure that he is a member of the United States Forces, be permitted, if he desires, to communicate with his superior authority by telephone or telegraph at the earliest opportunity.

b. The apprehending or detaining authority will, within twenty-four hours after the arrest or apprehension, furnish the following information to the Mixed Commission on Jurisdiction:

(1) Name and organization of United States Forces personnel involved and, if military, the grade and service number.

(2) Type of offense committed.

(3) Time, date and place offense committed.

(4) Disposition of persons involved.

(5) Investigative or security agency involved and location thereof.

(6) Description of identifying documents in the possession of the persons involved.

(7) Any other pertinent information.

c. Immediately upon receipt of the aforementioned information, the Mixed Commission on Jurisdiction, or a member thereof, will relay all available data to the Chief, Joint United States Military Group, or his designated representative. In this respect, the Mixed Commission on Jurisdiction will make arrangements to be operative twenty-four hours a day and seven days a week.

d. When United States authorities reasonably believe that the individual being detained or confined is a member of the United States Forces, the Chief, Joint United States Military Group, or his designated representative, will so certify to the Mixed Commission on Jurisdiction, (or a member thereof when the Mixed Commission on Jurisdiction is not in session) and will further request that the alleged offender be released into the custody of United States military authorities. The request will indicate the approximate time that the individual appointed to take the alleged offender into custody will present himself to the detaining authorities.

e. The Mixed Commission on Jurisdiction, or a member thereof, will honor the certification and request and will instruct the detaining or confining authority to release the alleged offender to the custody of United States military authorities.

f. Under some circumstances, United States military authorities may conclude that a guard is not required to return an alleged offender to United States military control. The aforementioned request will so indicate, and in these cases the Mixed Commission on Jurisdiction, or a member thereof, will arrange for immediate release of the alleged offender.

g. The Chief, Joint United States Military Group, or a "Commander," whichever is more convenient, will evaluate all evidence furnished by Spanish authorities and may conduct a supplementary investigation to determine all the facts and circumstances of the case. If the evaluation indicates that the offense is punishable under the Uniform Code of Military Justice, as set out in Manual for Courts-Martial, U.S. 1951 (as interpreted by judicial decisions) and that the alleged offender is a member of the United States Forces, the Chief, Joint United States Military Group, or his representative, will so certify to the Mixed Commission on Jurisdiction. The certification will indicate "prima facie" the article of the Uniform Code of Military Justice which the alleged offender may have violated.

h. The Mixed Commission on Jurisdiction may ordinarily accept this certification as conclusive proof of the facts certified, and will issue an order notifying the competent Spanish authorities that the United States Forces authorities will exercise jurisdiction in the case.

i. In those cases where the Mixed Commission on Jurisdiction takes exception to the certification referred to in paragraph 3g *supra*, the Mixed Commission on Jurisdiction shall prepare a brief of all the facts and circumstances of the case and the reasons for taking such exception. This brief shall be made in duplicate, one to be forwarded to the Spanish Minister of Justice and the other to the Chief, Joint United States Military Group or their delegates. These authorities shall, in consultation with each other, resolve the question presented, and their decision shall be binding and conclusive upon Spanish and United States authorities alike.

j. If a member of the United States Forces is apprehended by United States authorities for the commission of an offense punished by Spanish laws, a report thereof and the aforementioned certifications will be submitted to the Mixed Commission on Jurisdiction immediately but the individual shall be retained in the custody of the United States authorities.

4. The Chief, Joint United States Military Group, or the "Commander," as the case may be, will, subsequent to the determination that the offense allegedly committed is punishable under the Uniform Code of Military Justice and that the offender is a member of the United States Forces, conduct an extensive investigation of the alleged offense and will thereafter make a determination as to what further action will be taken concerning the criminal aspects of the case which shall be binding upon all concerned. The offender shall thereafter be immune from prosecution or suit in Spanish courts or tribunals for the criminal aspects of the same offense.

5. In some instances, members of the United States Forces may commit minor offenses which in the judgment of Spanish authorities do not require arrest or confinement or may become involved in accidents which come to the attention of Spanish authorities. These incidents will be reported to the Mixed Commission on Jurisdiction in writing and will be transmitted so as to reach the addressee within four days after the occurrence. These reports will not be acted upon by the Mixed Commission on Jurisdiction but will be transmitted to the Chief, Joint United States Military Group for whatever action he may deem appropriate in each case.

6. When necessary, branch offices of the Mixed Commission on Jurisdiction shall be established in cities adjacent to or in the vicinity of military installations where members of the United States Forces are stationed, or assembled, in sufficient numbers to warrant such action. The time and place of establishment shall be determined by Spanish and United States authorities. The branch offices shall operate in coordination with the Mixed Commission on Jurisdiction in Madrid and shall be guided by the same principles and procedures as those established for the Mixed Commission on Jurisdiction in the Madrid area.

7. Whenever a member of the United States Forces commits an offense solely against the property of the United States or solely against the property or person of another member of the United States Forces and the offense is committed on a military reservation in an area which is under the control of a United States "Commander," the offender will, if he is apprehended by Spanish military police, immediately be turned over into the custody of United States military authorities for disciplinary action. No report of the offense will be made to the Mixed Commission on Jurisdiction and the United States "Commander's"

disposition of the case shall be final and binding on all concerned. In all other cases of offenses committed on a military reservation, the procedure established in other paragraphs shall apply.

8. a. In those cases where Spanish authorities desire to prosecute a member of the United States Forces in Spanish courts, a request for such jurisdiction, and the reasons therefor, will be made to the Chief, Joint United States Military Group, through the Mixed Commission on Jurisdiction in Madrid, Spain. The Chief, Joint United States Military Group, will give full consideration to any request formulated by the competent Spanish authorities and if he accedes to the request, he or his delegated representative will execute a waiver of jurisdiction which will confer upon Spanish authorities the right to proceed to trial of the individual summoned.

b. The custody of a member of the United States Forces over whom Spanish authorities are to exercise jurisdiction, because of waiver of jurisdiction by United States authorities or because the offense charged is not punishable under the Uniform Code of Military Justice, shall remain with the United States authorities until such time as the trial is concluded and the sentence pronounced. The United States authorities shall accept the responsibility of assuring the presence of the offender at the appointed time of trial.

c. Whenever a member of the United States Forces is prosecuted by the Spanish authorities, he shall be entitled to the same rights and privileges as those enjoyed by Spanish citizens in connection with judicial proceedings. The principal rights to which a member of the United States Forces shall be entitled are:

- (1) Protection against Ex Post Facto law.
- (2) Protection against Bills of Attainder.
- (3) A prompt and speedy trial.
- (4) Be informed, in advance of trial, of the specific charge or charges made against him.
- (5) Have a public trial and be present at his trial.
- (6) Have the burden of proof placed upon the prosecution.
- (7) Be tried by an impartial court.
- (8) Be protected from the use of a confession obtained by illegal or improper means.
- (9) Be confronted with the witnesses against him.
- (10) Have compulsory process for obtaining witnesses in

his favor, if they are within the jurisdiction of the government of Spain.

(11) Have legal representation of his own choice for his defense during trial and pretrial procedures or shall be furnished free legal counsel under the same terms and conditions applicable to Spanish citizens.

(12) If he considers it necessary, to have the services of a competent interpreter.

(13) Have a representative of the United States Forces present at his trial.

9. a. The authorities of the United States and Spain will assist each other in the collection of evidence, conducting investigations and securing the presence of witnesses for investigations and trials. The Mixed Commission on Jurisdiction and representatives of the Joint United States Military Group, Spain, shall confer frequently for the purpose of developing and maintaining a satisfactory method of operation.

b. Spanish nationals and other persons in territory under Spanish jurisdiction, (except members of the United States Forces) who are required to appear as witnesses before United States Military Courts will be paid fees and allowances at rates to be determined by the Chief, Joint United States Military Group in coordination with pertinent Spanish authorities.

c. United States authorities shall advise the Mixed Commission on Jurisdiction of the results of any United States trial in which the accused was an offender against Spanish laws. Spanish authorities shall advise the Chief, Joint United States Military Group of the results of trials in those cases where a member of the United States Forces was prosecuted in Spanish courts.

10. a. Members of the United States Forces shall not be subject to the civil jurisdiction of Spanish courts or authorities for acts or omissions arising out of the performance of their official duties. A certificate from the United States military authorities attesting the status in this regard of a member of the United States Forces shall be considered conclusive by Spanish authority.

b. None of the foregoing procedures shall prejudice the rights of the injured party to indemnification either by following the ordinary Spanish civil procedures or by making an administrative claim for the damages incurred under the applicable laws of the United States. The United States authorities shall adjudicate all claims presented expeditiously. Persons who elect to

undertake a suit in the Spanish civil courts shall thereafter be barred from seeking administrative relief from the United States government for claims arising out of the same act.

MADRID, THE 4TH OF FEBRUARY 1955

FOR THE HIGH  
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