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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 XVI

### DOMINICAN REPUBLIC. AGREEMENT RELATING TO LONG-RANGE PROVING GROUND

Agreement between the United States and the Dominican Republic regarding Long-Range Proving Ground, November 26, 1951.<sup>1</sup> 3 UST 2569, TIAS 2425, 150 UNTS 227.

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#### ARTICLE XV

(1) (a) Except as provided in subparagraph (b), the Government of the United States of America shall have the right to exercise exclusive criminal jurisdiction over any offenses committed in the Dominican Republic by:

(i) Members of the United States Forces;

(ii) Other persons subject to United States military law except Dominican nationals or local aliens.

(b) Except during a period of hostilities in which either Government is engaged, the Government of the United States of America and the Government of the Dominican Republic shall have concurrent jurisdiction over offenses committed outside the sites referred to in Article II by persons described in subparagraph (a) against a Dominican national or local alien. In each such case, the Mixed Military Commission shall decide which Government shall exercise jurisdiction, and shall give consideration to whether the offense arose out of any act or omission done in the performance of official duties. During a period of hostilities in which either government is engaged the principle stated in subparagraph (a) shall apply.

(2) Whenever military authorities of the United States of America may exercise jurisdiction over an alleged offender, the authorities of the Dominican Republic will assist in the arrest and handing over of such alleged offenders, the collection of evi-

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<sup>1</sup> Extended by Exchange of Notes of March 31, 1962 and July 25, 1962, (13 UST 2082, TIAS 5165) to September 30, 1962. Expired by its terms on that date.

dence and the carrying out of all necessary investigations, including the seizure and in proper cases the handing over of exhibits and all objects connected with the offense. All persons not subject to United States Government jurisdiction under this Agreement, who are charged with offenses committed on a site, or who are found on a site in connection with offenses committed elsewhere in the Dominican Republic, shall be surrendered to the Dominican authorities. In such cases the United States authorities will assist in the collection of evidence and the carrying out of all necessary investigations including the seizure and in proper cases the handing over of exhibits and all objects connected with the offense.

## APPENDIX XVII

### PHILIPPINES. AGREEMENT CONCERNING MILITARY BASES

Agreement between the Philippines and the United States concerning Military Bases, March 14, 1947. 61 Stat. 4019, TIAS 1775, 43 UNTS 272.

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#### ARTICLE III

##### DESCRIPTION OF RIGHTS

1. It is mutually agreed that the United States shall have the rights, power and authority within the bases which are necessary for the establishment, use, operation and defense thereof or appropriate for the control thereof and all the rights, power and authority within the limits of territorial waters and air space adjacent to, or in the vicinity of, the bases which are necessary to provide access to them, or appropriate for their control.

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#### ARTICLE XIII

##### JURISDICTION

1. The Philippines consents that the United States shall have the right to exercise jurisdiction over the following offenses:

(a) Any offense committed by any person within any base except where the offender and offended parties are both Philippine citizens (not members of the armed forces of the United States on active duty) or the offense is against the security of the Philippines;

(b) Any offense committed outside the bases by any member of the armed forces of the United States in which the offended party is also a member of the armed forces of the United States; and

(c) Any offense committed outside the bases by any member of the armed forces of the United States against the security of the United States.

2. The Philippines shall have the right to exercise jurisdiction over all other offenses committed outside the bases by any member of the armed forces of the United States.

3. Whenever for special reasons the United States may desire not to exercise the jurisdiction reserved to it in paragraphs 1 and 6 of this Article, the officer holding the offender in custody shall so notify the fiscal (prosecuting attorney) of the city or province in which the offense has been committed within ten days after his arrest, and in such a case the Philippines shall exercise jurisdiction.

4. Whenever for special reasons the Philippines may desire not to exercise the jurisdiction reserved to it in paragraph 2 of this Article, the fiscal (prosecuting attorney) of the city or province where the offense has been committed shall so notify the officer holding the offender in custody within ten days after his arrest, and in such a case the United States shall be free to exercise jurisdiction. If any offense falling under paragraph 2 of this Article is committed by any member of the armed forces of the United States

(a) while engaged in the actual performance of a specific military duty, or

(b) during a period of national emergency declared by either Government and the fiscal (prosecuting attorney) so finds from the evidence he shall immediately notify the officer holding the offender in custody that the United States is free to exercise jurisdiction. In the event the fiscal (prosecuting attorney) finds that the offense was not committed in the actual performance of a specific military duty, the offender's commanding officer shall have the right to appeal from such finding to the Secretary of Justice within ten days from the receipt of the decision of the fiscal and the decision of the Secretary of Justice shall be final.

5. In all cases over which the Philippines exercises jurisdiction the custody of the accused, pending trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base, who shall acknowledge in writing that such accused has been delivered to him for custody pending trial in a competent court of the Philippines and that he will be held ready to appear and will be produced before said court when required by it. The commanding officer shall be furnished by the fiscal (prosecuting attorney) with a copy of the information against the accused upon the filing of the original in the competent court.

6. Notwithstanding the foregoing provisions, it is mutually agreed that in time of war the United States shall have the right to exercise exclusive jurisdiction over any offenses which may be committed by members of the armed forces of the United States in the Philippines.

7. The United States agrees that it will not grant asylum in any of the bases to any person fleeing from the lawful jurisdiction of the Philippines. Should any such person be found in any base, he will be surrendered on demand to the competent authorities of the Philippines.

8. In every case in which jurisdiction over an offense is exercised by the United States, the offended party may institute a separate civil action against the offender in the proper court of the Philippines to enforce the civil liability which under the laws of the Philippines may arise from the offense.

#### ARTICLE XIV

##### ARREST AND SERVICE OF PROCESS

1. No arrest shall be made and no process, civil or criminal, shall be served within any base except with the permission of the commanding officer of such base; but should the commanding officer refuse to grant such permission he shall (except in cases of arrest where the United States has jurisdiction under Article XIII) forthwith take the necessary steps to arrest the person charged and surrender him to the appropriate authorities of the Philippines or to serve such process, as the case may be, and to provide the attendance of the server of such process before the appropriate court in the Philippines or procure such server to make the necessary affidavit or declaration to prove such service as the case may require.

2. In cases where the service courts of the United States have jurisdiction under Article XIII, the appropriate authorities of the Philippines will, on request, give reciprocal facilities as regards the service of process and the arrest and surrender of alleged offenders.

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#### ARTICLE XX

##### MILITARY OR NAVAL POLICE

It is mutually agreed that there shall be close cooperation on a reciprocal basis between the military and naval police forces of

the United States and the police forces of the Philippines for the purpose of preserving order and discipline among United States military and naval personnel.

## APPENDIX XVIII

### KOREA. AGREEMENT ON JURISDICTION<sup>1</sup>

Agreement between the United States and Korea relating to Jurisdiction over Offenses by United States Forces in Korea. July 12, 1950. 5 UST 1408, TIAS 3012, 222 UNTS 228.

The American Embassy presents its compliments to the Ministry of Foreign Affairs of the Republic of Korea and has the honor to state that in the absence of a formal agreement defining and setting forth the respective rights, duties and jurisdictional limitations of the military forces of the United States (excepting the United States Military Advisory Group to Korea, which is covered by the agreement signed in Seoul on January 26, 1950)<sup>2</sup> and the Government of the Republic of Korea, it is proposed that exclusive jurisdiction over members of the United States Military Establishment in Korea will be exercised by courts-martial of the United States.

It is further proposed that arrests of Korean nationals will be made by United States forces only in the event Korean nationals are detected in the commission of offenses against the United States forces or its members. In the event that arrests of Korean nationals are made under the circumstances set forth above, such persons will be delivered to the civil authorities of the Republic of Korea as speedily as practicable.

The Ministry of Foreign Affairs and the Government of the Republic of Korea will understand that in view of prevailing conditions, such as the infiltrations of North Koreans into the territory of the Republic, United States forces cannot be submitted, or instructed to submit, to the custody of any but United States forces. Unless required, owing to the nonexistence of local courts, courts of the United States forces will not try nationals of the Republic of Korea.

The American Embassy would be grateful if the Ministry of

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<sup>1</sup> Came into force on 12 July 1950 by the exchange of the said notes.

<sup>2</sup> United Nations, *Treaty Series*, Vol. 178, p. 97.