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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 XV

BAHAMA ISLANDS. AGREEMENT WITH GREAT BRITAIN RELATING TO LONG RANGE PROVING GROUND

Agreement between the United Kingdom and the United States for Establishment in the Bahama Islands of a Long-Range Proving Ground for Guided Missiles. July 21, 1950. 1 UST 545, TIAS 2099, 97 UNTS 194.

ARTICLE I DEFINITIONS

For the purposes of this Agreement:

(1) "Range Area" means that part of the Flight Testing Range which lies within the territory of the Bahama Islands (including the territorial waters thereof).

(2) "United States authorities" means the authority or authorities from time to time authorised or designated, by the Government of the United States of America, for the purpose of exercising the powers in relation to which the expression is used.

(3) "United States Forces" means the armed forces of the United States of America, and "member of the United States Forces" means a member of those forces who is entitled to wear the uniform thereof.

(4) "Flight Testing Range" means the area within the red and hatched line drawn on the attached map. (Not included herein).

(5) "National of the United States" means a citizen of the United States or a person who, though not a citizen of the United States, owes allegiance to the United States.

(6) "British national" means any British subject or Commonwealth citizen or any British-protected person, but shall not include a person who is both a British national and a member of the United States Forces.

(7) "Local alien" means a person, not being a British national, a member of the United States Forces or a national of the

United States, who is ordinarily resident in the Bahama Islands.

(8) "Sites" means the sites provided under Article IV of this Agreement so long as they are so provided.

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ARTICLE V

JURISDICTION

(1) The Government of the United States of America shall have the right to exercise the following jurisdiction over offences committed in the Bahama Islands:

(a) Where the accused is a member of the United States Forces,

(i) if a state of war exists, exclusive jurisdiction over all offences wherever committed;

(ii) if a state of war does not exist, exclusive jurisdiction over security offences wherever committed and United States interest offences committed inside the Sites; concurrent jurisdiction over all other offences wherever committed.

(b) Where the accused is a British national or a local alien and a civil court of the United States is sitting in the Bahama Islands, exclusive jurisdiction over security offences committed inside the Sites.

(c) Where the accused is not a member of the United States Forces, a British national or a local alien, but is a person subject to United States military or naval law,

(i) if a state of war exists, exclusive jurisdiction over security offences committed inside the Sites and United States interest offences committed inside the Sites; concurrent jurisdiction over all other offences wherever committed;

(ii) if a state of war does not exist and there is no civil court of the United States sitting in the Bahama Islands, exclusive jurisdiction over security offences which are not punishable under the law of the Bahama Islands; concurrent jurisdiction over all other offences committed inside the Sites;

(iii) if a state of war does not exist and a civil court of the United States is sitting in the Bahama Islands, exclusive jurisdiction over security offences committed inside the Sites; concurrent jurisdiction over all other offences wherever committed.

(d) Where the accused is not a member of the United States Forces, a British national or a local alien, and is not a

person subject to United States military or naval law, and a civil court of the United States is sitting in the Bahama Islands, exclusive jurisdiction over security offences committed inside the Sites; concurrent jurisdiction over all offences committed inside the Sites and, if a state of war exists, over security offences committed outside the Sites.

(2) Wherever, under paragraph (1) of this Article, the Government of the United States of America has the right to exercise exclusive jurisdiction over security offences committed inside the Sites, such right shall extend to security offences committed outside the Sites which are not punishable under the law of the Bahama Islands.

(3) In every case in which under this Article the Government of the United States of America has the right to exercise jurisdiction and the accused is a British national, a local alien or, being neither a British national nor a local alien, is not a person subject to United States military or naval law, such jurisdiction shall be exercisable only by a civil court of the United States sitting in the Bahama Islands.

(4) In every case in which under this Article the Government of the United States of America has the right to exercise exclusive jurisdiction, the following provisions shall have effect:

(a) The United States authorities shall inform the Government of the Bahama Islands as soon as is practicable whether or not they elect to exercise such jurisdiction over any alleged offences which may be brought to their attention by the competent authorities of the Bahama Islands or in any other case in which the United States authorities are requested by the competent authorities of the Bahama Islands to furnish such information.

(b) If the United States authorities elect to exercise such jurisdiction, the accused shall be brought to trial accordingly, and the courts of the Bahama Islands shall not exercise jurisdiction except in aid of a court or authority of the United States, as required or permitted by the law of the Bahama Islands.

(c) If the United States authorities elect not to exercise such jurisdiction, and if it shall be agreed between the Government of the Bahama Islands and the United States authorities that the alleged offender shall be brought to trial, nothing in this Article shall affect the exercise of jurisdiction by the courts of the Bahama Islands in the case.

(5) In every case in which under this Article the Government

of the United States of America has the right to exercise concurrent jurisdiction, the following provisions shall have effect:

(a) The case shall be tried by such court as may be arranged between the Government of the Bahama Islands and the United States authorities.

(b) Where an offence is within the jurisdiction of a civil court of the Bahama Islands and of a United States military or naval court, conviction or acquittal of the accused by one such court shall not exclude subsequent trial by the other but in the event of such subsequent trial the court in awarding punishment shall have regard to any punishment awarded in the previous proceedings.

(c) Where the offence is within the jurisdiction of a civil court of the Bahama Islands and of a civil court of the United States, trial by one shall exclude trial by the other.

(6) Notwithstanding anything contained elsewhere in this Article, when a state of war exists in which the Government of the United Kingdom is, and the Government of the United States of America is not, engaged, then in any case in which the Government of the United States of America would, but for this paragraph, have exclusive jurisdiction, that jurisdiction shall be concurrent in respect of any of the following offences against any part of His Majesty's dominions committed outside the Sites or, if not punishable by the Government of the United States of America in the Bahama Islands, inside the Sites:

(a) treason;

(b) any offence of the nature of sabotage or espionage or against any law relating to official secrets;

(c) any other offence relating to operations in the Bahama Islands of the Government of any part of His Majesty's dominions, or to the safety of His Majesty's naval, military or air bases or establishments of any part thereof or of any equipment or other property of any such Government in the Bahama Islands.

(7) Nothing in this Article shall give the Government of the United States of America the right to exercise jurisdiction over a member of a United Kingdom, Dominion or Colonial armed force, except that, if a civil court of the United States is sitting in the Bahama Islands and a state of war does not exist or a state of war exists in which the Government of the United States of America is, and the Government of the United Kingdom is not, engaged, the Government of the United States of America shall

have the right, where the accused is a member of any such force, to exercise concurrent jurisdiction over security offences committed inside the Sites.

(8) Nothing in this Article shall affect the jurisdiction of a civil court of the Bahama Islands except as expressly provided in this Article.

(9) In this Article the following expressions shall have the meanings hereby assigned to them :

(a) "Security offence" means any of the following offences against the Government of the United States of America and punishable under the law of the United States of America :

(i) treason ;

(ii) any offence of the nature of sabotage or espionage or against any law relating to official secrets ;

(iii) any other offence relating to operations in the Bahama Islands, of the Government of the United States of America, or to the safety of any equipment or other property of the Government of the United States of America in the Bahama Islands.

(b) "State of war" means a state of actual hostilities in which either the Government of the United Kingdom or the Government of the United States of America is engaged and which has not been formally terminated, as by surrender.

(c) "United States interest offence" means an offence which (excluding the general interest of the Government of the Bahama Islands in the maintenance of law and order therein) is solely against the interests of the Government of the United States of America or against any person (not being a British national or local alien) or property (not being property of a British national or local alien) present in the Bahama Islands by reason only of service or employment in connection with the construction, maintenance, operation or defense of the Flight Testing Range.

ARTICLE VI

SECURITY LEGISLATION

The Government of the Bahama Islands will take such steps as may from time to time be agreed to be necessary with a view to the enactment of legislation to ensure the adequate security and protection of the Sites and United States equipment and other property, and the operations of the United States under this Agreement and the punishment of persons who may con-

travene any laws or regulations made for that purpose. The Government of the Bahama Islands will also from time to time consult with the United States authorities in order that the laws and regulations of the United States of America and of the Bahama Islands in relation to such matters may, so far as circumstances permit, be similar in character.

ARTICLE VII

ARREST AND SERVICE OF PROCESS

(1) No arrest of a person who is a member of the United States Forces or who is a national of the United States subject to United States military law shall be made and no process, civil or criminal, shall be served on any such person within any Site except with the permission of the Commanding Officer in charge of the United States Forces in such Site; but should the Commanding Officer refuse to grant such permission he shall (except where, under Article V, jurisdiction is to be exercised by the United States or is not exercisable by the courts of the Bahama Islands) forthwith take the necessary steps to arrest the person charged and surrender him to the appropriate authority of the Bahama Islands or to serve such process, as the case may be, and to provide for the attendance of the server of such process before the appropriate court of the Bahama Islands or procure such server to make the necessary affidavit or declaration to prove such service.

(2) In cases where the courts of the United States have jurisdiction under Article V, the Government of the Bahama Islands will on request give reciprocal facilities as regards the service of process and the arrest and surrender of persons charged.

(3) In this Article the expression "process" includes any process by way of summons, subpoena, warrant, writ or other judicial document for securing the attendance of a witness, or for the production of any documents or exhibits, required in any proceedings, civil or criminal.

ARTICLE VIII

RIGHT OF AUDIENCE FOR UNITED STATES COUNSEL

In cases in which a member of the United States forces shall be a party to civil or criminal proceedings in any court of the Bahama Islands by reason of some alleged act or omission arising out of or in the course of his official duty, United States counsel

(authorised to practise before the courts of the United States) shall have the right of audience, provided that such counsel is in the service of the Government of the United States of America and appointed for that purpose either generally or specially by the appropriate authority.

ARTICLE IX

SURRENDER OF PERSONS CHARGED

Where a person charged with an offence which fails to be dealt with by the courts of the Bahama Islands is in a Site, or a person charged with an offence which falls under Article V to be dealt with by courts of the United States is in the Bahama Islands but outside the Sites, such person shall be surrendered to the Government of the Bahama Islands, or to the United States authorities, as the case may be, in accordance with special arrangements made between that Government and those authorities.