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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 XIII

REVISED LEASED BASES. AGREEMENT WITH GREAT BRITAIN REVISING LEASED BASES AGREEMENT

Agreement between the United Kingdom and the United States modifying Articles IV and VI of the Leased Bases Agreement of March 27, 1941. July 19 and August 1, 1950. 1 UST 585, TIAS 2105, 88 UNTS 273.

ARTICLE IV

JURISDICTION

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

(a) Where the accused is a member of a United States force,
(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 Leased Areas; concurrent jurisdiction over all other offences wherever committed.

(b) Where the accused is a British subject or a local alien and a civil court of the United States is sitting in the Territory, exclusive jurisdiction over security offences committed inside the Leased Areas.

(c) Where the accused is not a member of a United States force, a British subject 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 Leased Areas; and United States interest offences committed inside the Leased Areas; 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 Territory, exclusive

jurisdiction over security offences which are not punishable under the law of the Territory; concurrent jurisdiction over all other offences committed inside the Leased Areas.

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

(d) Where the accused is not a member of a United States force, a British subject 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 Territory, exclusive jurisdiction over security offences committed inside the Leased Areas; concurrent jurisdiction over all other offences committed inside the Leased Areas and, if a state of war exists, over security offences committed outside the Leased Areas.

(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 Leased Areas, such right shall extend to security offences committed outside the Leased Areas which are not punishable under the law of the Territory.

(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 subject, a local alien or, being neither a British subject 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 Territory.

(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 Territory 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 Territory or in any other case in which the United States authorities are requested by the competent authorities of the Territory 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 Territory 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 Territory.

(c) If the United States authorities elect not to exercise such jurisdiction, and if it shall be agreed between the Government of the Territory 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 Territory 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 Territory and the United States authorities.

(b) Where an offence is within the jurisdiction of a civil court of the Territory 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 Territory 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 Leased Areas or, if not punishable by the Government of the United States of America in the Territory, inside the Leased Areas:

(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 Territory, 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 or any part thereof or of any equipment or other property of any such Government in the Territory.

(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 Territory 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 Leased Areas.

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

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

(a) "British subject" shall not include a person who is both a British subject and a member of a United States force.

(b) "local alien" means a person, not being a British subject, a member of a United States force or a national of the United States who is ordinarily resident in the Territory.

(c) "member of a United States force" means a member (entitled to wear the uniform) of the naval, military or air forces of the United States of America.

(d) "security offence" means any of the following offences against the United States and punishable under the law thereof:

(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 Territory, of the Government of the United States of America, or to the safety of the United States Naval or Air Bases or establishments or any part thereof or of any equipment or other property of the Government of the United States of America in the Territory.

(e) "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.

(f) "United States interest offence" means an offence which (excluding the general interest of the Government of the Territory 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 subject or local alien) or property (not being property of a British subject or local alien) present in the Territory by reason only of service or employment in connection with the construction, maintenance, operation or defence of the Bases.

Note

It was also agreed: "That Article VI of the Agreement of March 27th, 1941 shall have effect as if the words '(except where, under Article IV, jurisdiction is to be exercised by the United States or is not exercisable by the courts of the Territory)' were substituted for the words '(except in cases where the United States authorities elect to assume and exercise jurisdiction in accordance with Article IV (1))'."