

International Law Studies – Volume 43

International Law Documents

U.S. Naval War College (Editor)

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.

V. Agreement With China Regarding Jurisdiction Over Criminal Offenses by Armed Forces

(The Department of State Bulletin, Vol. IX, No. 217, Aug. 21, 1943)

The Secretary of State has received from the American Embassy at Chungking copies of the notes, in English and Chinese, which were exchanged on May 21, 1943 between Mr. George Atcheson, Jr., American Chargé d'Affaires ad interim, and Dr. Kuo-Cheng Wu, Political Vice Minister in Charge of Ministerial Affairs, Chinese Ministry of Foreign Affairs, effecting an agreement between the United States and China regarding the jurisdiction over criminal offenses which may be committed by the armed forces of either country in territory of the other country. The Government of the United States previously had entered into arrangements of a similar character with a number of other countries.

According to information received in the Department of State from the American Embassy at Chungking the following statement was made by the Chinese Ministry of Foreign Affairs in connection with the publication in China of the notes of May 21, 1943:

"According to international law and international practice, when the armed forces of the Allied nations are stationed in the territory of another for the purpose of undertaking joint military operations, exclusive criminal jurisdiction over members of such forces is exercised by the military or naval courts or authorities of the country to which such forces belong. This practice was followed in the last world war. Last year, when the United States despatched

armed forces to territories under British jurisdiction, the United States and the British Governments reached an agreement whereby the armed forces of the United States stationed in British territory are formally placed under the exclusive jurisdiction of the United States military or naval courts or authorities in respect of criminal offenses.

"Inasmuch as all nationals of the United States in China, including those belonging to its armed forces, enjoyed extraterritorial rights, there was no need for any special regulations. However, as the exchange of ratifications of the new Sino-American treaty has already taken place, United States nationals in China are henceforth subject to our jurisdiction. Therefore, the necessity has been felt that the question of criminal jurisdiction over members of the armed forces of the United States in China should be clearly defined.

"Accordingly, the Political Vice Minister in charge of Ministerial Affairs of the Ministry of Foreign Affairs, Dr. K. C. Wu, on behalf of the Chinese Government, and the *Chargé d'Affaires ad interim*, of the United States, Mr. George Atcheson, on behalf of the United States Government, have reached an understanding, on the basis of equality and reciprocity which has been placed on record by an exchange of notes on May 21, 1943, to the effect that jurisdiction over criminal offenses committed by members of the armed forces of the United States in China shall be exclusively exercised by the service courts and the military and naval authorities of the United States, and that the United States Government shall make like arrangements to ensure to such Chinese forces as may be stationed in territory under United States jurisdiction a position corresponding to that of the United States forces in China."

The texts in English of the notes exchanged on May 21, 1943, are as follows:

*The American Chargé at Chungking to the Chinese
Political Vice Minister in Charge of Ministerial
Affairs, Ministry of Foreign Affairs*

CHUNGKING, May 21, 1943.

EXCELLENCY:

Confirming the understanding reached in the conversations which have taken place in Chungking between representatives of our two Governments, I have the honor to inform Your Excellency that it is the desire of the Government of the United States that the service courts and authorities of its military and naval forces shall during the continuance of the present conflict against our common enemies exercise exclusive jurisdiction over criminal offenses which may be committed in China by members of such forces.

If cases arise in which for special reasons the service authorities of the Government of the United States may prefer not to exercise the above jurisdiction, it is proposed that in any such case a written statement to that effect shall be sent to the Chinese Government through diplomatic channels, in which event it would be open to the Chinese authorities to assume jurisdiction.

Assurance is given that the service courts and authorities of the United States forces in China will be willing and able to try, and on conviction to punish, all criminal offenses which members of the United States forces may be alleged on sufficient evidence to have committed in China and that the United States authorities will be willing in principle to investigate and deal appropriately with any alleged criminal offenses committed by such forces in China which may be brought to

their attention by the competent Chinese authorities or which the United States authorities may find have taken place.

Insofar as may be compatible with military security, the service authorities of the United States will conduct the trial of any member of the United States forces for an offense against a member of the civilian population promptly in open court in China and within a reasonable distance from the place where the offense is alleged to have been committed so that witnesses may not be required to travel great distances to attend the trial.

The competent United States authorities will be prepared to cooperate with the authorities of China in setting up a satisfactory procedure for affording such mutual assistance as may be required in making investigations and collecting evidence with respect to offenses alleged to have been committed by members of the armed forces of the United States. As a general rule it would probably be desirable that preliminary action should be taken by the Chinese authorities on behalf of the United States authorities where the witnesses or other persons from whom it is desired to obtain testimony are not members of the United States forces. In prosecutions in Chinese courts of persons who are not members of the United States forces, but where members of such forces are in any way concerned, the service authorities of the United States will be glad to render such assistance as is possible in obtaining testimony of members of such forces or in making appropriate investigations.

Inasmuch as the interests of our common cause will best be served by provision that the foregoing arrangement may be placed on a reciprocal basis, the Government of the United States will be ready to make like arrangements to ensure to such Chinese forces as may be stationed in territory under United States jurisdiction a position corresponding to that of the United States forces in China.

It is proposed that the foregoing arrangement shall be in effect during the present war and for a period of six months thereafter.

If the above arrangement is acceptable to the Chinese Government, this note and the reply thereto accepting the provisions outlined shall be regarded as placing on record the understanding between our two Governments.

I avail [etc.]

GEORGE ATCHESON, Jr.