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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 XXIV

WEST INDIES FEDERATION. AGREEMENT CONCERNING UNITED STATES DEFENCE AREAS

Agreement with the Federation of the West Indies, February 10, 1961, 12 UST & OIA 408, TIAS 4734.

ARTICLE I

DEFINITIONS

In this Agreement, the expression :

“Contractor personnel” means employees of a United States contractor who are not ordinarily resident in the Federation and who are there solely for the purposes of this Agreement;

“Defence area” means an area in respect of which the Government of the United States of America (hereinafter called “the United States Government”) is for the time being entitled to have and enjoy, in accordance with the terms and conditions of this Agreement, the rights, power and authority described in Article II;

“Dependents” means the spouse and children under 21 of a person in relation to whom it is used; and, if they are dependent upon him for their support, the parents and children over 21 of that person;

“Federation” means the Federation of The West Indies;

“Members of the United States Forces” means:

- (a) military members of the United States forces on active duty;
- (b) civilian personnel accompanying the United States Forces and in their employ who are not ordinarily resident in the Federation and who are there solely for the purposes of this Agreement; and
- (c) dependents of the persons described in (a) and (b) above;

“Military purposes” means:

- (a) the installation, construction, maintenance and use of

military equipment and facilities including facilities for the training, accommodation, hospitalisation, recreation, education and welfare of members of the United States Forces; and

- (b) all other activities of the United States Government, United States contractors and authorised service organisations carried out for the purposes of this Agreement;

“Territory” means any Territory of the Federation in which there exists an area which is, or is treated as, a defence area; and “the Territory” means the Territory concerned;

“United States contractor” means any person, body or corporation ordinarily resident in the United States of America that is in the Territory for the purposes of this Agreement by virtue of a contract with the United States Government, and includes a subcontractor;

“United States Forces” means the land, sea and air armed services of the United States, including the Coast Guard.

ARTICLE II

GENERAL DESCRIPTION OF RIGHTS

The United States Government shall have and enjoy, in accordance with the terms and conditions of this Agreement, the rights, power and authority which are necessary for the development, use, operation and protection for military purposes of the defence areas which are described in the Annexes [1] hereto. The United States Government shall have and enjoy such rights of access, rights of way and easements as may be necessary for these purposes.

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ARTICLE IX

CRIMINAL JURISDICTION

- (1) Subject to the provisions of this Article,

(a) the military authorities of the United States shall have the right to exercise within the Territory all criminal and disciplinary jurisdiction conferred on them by United States law over all persons subject to the military law of the United States;

(b) the authorities of the Territory shall have jurisdiction over members of the United States Forces with respect to offences

¹ *Post*, p. 16. (Author’s note: The Annexes referred to in this Article are not included in this Appendix).

committed within that Territory and punishable by the law in force there.

(2) (a) The military authorities of the United States shall have the right to exercise exclusive jurisdiction over persons subject to the military law of the United States with respect to offences, including offences relating to security, punishable by the law of the United States but not by the law in force in the Territory.

(b) The authorities of the Territory shall have the right to exercise exclusive jurisdiction over members of the United States Forces with respect to offences, including offences relating to security, punishable by the law in force in the Territory but not by the law of the United States.

(c) For the purposes of this paragraph and of paragraph (3) of this Article, an offence relating to security shall include

(i) treason;

(ii) sabotage, espionage or violation, of any law relating to official secrets or secrets relating to national defence.

(3) In cases where the right to exercise jurisdiction is concurrent the following rules shall apply:

(a) The military authorities of the United States shall have the primary right to exercise jurisdiction over a member of the United States Forces in relation to

(i) offences solely against the property or security of the United States or offences solely against the person or property of another member of the United States Forces;

(ii) offences arising out of any act or omission done in the performance of official duty.

(b) In the case of any other offence the authorities of the Territory shall have the primary right to exercise jurisdiction.

(c) If the authorities having the primary right decide not to exercise jurisdiction they shall notify the other authorities as soon as practicable. The United States authorities shall give sympathetic consideration to a request from the authorities of the Territory for a waiver of their primary right in cases where the authorities of the Territory consider such waiver to be of particular importance. The authorities of the Territory will waive, upon request, their primary right to exercise jurisdiction under this Article, except where they in their discretion determine and notify the United States authorities that it is of particular importance that such jurisdiction be not waived.

(4) The foregoing provisions of this Article shall not imply any right for the military authorities of the United States to exercise jurisdiction over persons who belong to, or are ordinarily resident in, the Federation unless they are military members of the United States Forces.

(5) (a) To the extent authorised by law, the authorities of the Territory and the military authorities of the United States shall assist each other in the service of process and in the arrest of members of the United States Forces in the Territory and in handing them over to the authorities which are to exercise jurisdiction in accordance with the provisions of this Article.

(b) The authorities of the Territory shall notify promptly the military authorities of the United States of the arrest of any member of the United States Forces.

(c) Unless otherwise agreed, the custody of an accused member of the United States Forces over whom the authorities of a Territory are to exercise jurisdiction shall, if he is in the hands of the United States authorities, remain with the United States authorities until he is charged. In cases where the United States authorities may have the responsibility for custody pending the completion of judicial proceedings, the United States authorities shall, upon request, make such a person immediately available to the authorities of the Territory for purposes of investigation and trial and shall give full consideration to any special views of such authorities as to the way in which custody should be maintained.

(6) (a) To the extent authorised by law, the authorities of the Territory and of the United States shall assist each other in the carrying out of all necessary investigations into offences, in providing for the attendance of witnesses and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offence. The handing over of such objects may, however, be made subject to their return within the time specified by the authorities delivering them.

(b) The authorities of the Territory and of the United States shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

(7) A death sentence shall not be carried out in any Territory by the military authorities of the United States if the legislation of that Territory does not provide for such punishment in a similar case.

(8) Where an accused has been tried in accordance with the provisions of this Article and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned, he may not be tried again for the same offence within the Federation. Nothing in this paragraph shall, however, prevent the military authorities of the United States from trying a military member of the United States Forces for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of a Territory.

(9) Whenever a member of the United States Forces is prosecuted by the authorities of a Territory he shall be entitled—

(a) to a prompt and speedy trial;

(b) to be informed in advance of trial of the specific charge or charges made against him;

(c) to be confronted with the witnesses against him;

(d) to have compulsory process for obtaining witnesses in his favour if they are within the jurisdiction of the Territory;

(e) to have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the Territory;

(f) if he considers it necessary, to have the services of a competent interpreter; and

(g) to communicate with a representative of the United States and, when the rules of the court permit, to have such a representative present at his trial which shall be public except when the court decrees otherwise in accordance with the law in force in the Territory.

(10) Where a member of the United States Forces is tried by the military authorities of the United States for an offence committed outside a defence area or involving a person, or the property of a person, other than a member of the United States Forces, the aggrieved party and representatives of the Territory and of the aggrieved party may attend the trial proceedings except where this would be inconsistent with the rules of the court.

(11) A certificate of the appropriate United States commanding officer that an offence arose out of an act or omission done in the performance of official duty shall be conclusive, but the commanding officer shall give consideration to any representation made by the Government of the Territory.

(12) Regularly constituted military units or formations of the

United States Forces shall have the right to police the defence areas. The military police of the United States Forces may take all appropriate measures to ensure the maintenance of order and security within such defence areas.

(13) In this Article, a reference to the authorities of a Territory includes, where appropriate, the authorities of the Federation.

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APPENDIX XXV

AUSTRALIA. AGREEMENT CONCERNING THE STATUS OF UNITED STATES FORCES IN AUSTRALIA

Agreement between the United States and Australia. May 9, 1963. TIAS 5349.

ARTICLE 1

In this Agreement, except where the contrary intention appears:

“Australia” includes the territories under the authority of the Commonwealth of Australia;

“members of the United States Forces” means personnel belonging to the land, sea or air armed services of the United States in Australia in connection with activities agreed upon by the two Governments, other than those for whom status is provided otherwise than under this Agreement;

“members of the civilian component” means civilian personnel in Australia in connection with activities agreed upon by the two Governments who are neither nationals of, nor ordinarily resident in, Australia, but who are:

(a) employed by the United States Forces or by military sales exchanges, commissaries, officers’ clubs, enlisted men’s clubs or other facilities established for the benefit or welfare of United States personnel and officially recognised by the United States authorities as nonappropriated fund activities; or

(b) serving with an organisation which, with the approval of the Australian Government, is accompanying the United States Forces;

“dependant” means a person in Australia who is the spouse of, or other relative who depends for support upon, a member of the United States Forces or of the civilian component.

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ARTICLE 8

(1) Subject to the provisions of this Article :

- (a) the military authorities of the United States shall have the right to exercise within Australia all criminal and disciplinary jurisdiction conferred on them by the law of the United States over all persons subject to the military law of the United States ;
- (b) the authorities of Australia shall have jurisdiction over members of the United States Forces and of the civilian component and dependants with respect to offences committed within Australia and punishable by the law of Australia.

(2) (a) The military authorities of the United States shall have the right to exercise exclusive jurisdiction over persons subject to the military law of the United States which respect to offences, including offences relating to its security, punishable by the law of the United States, but not by the law of Australia.

(b) The authorities of Australia shall have the right to exercise exclusive jurisdiction over members of the United States Forces and of the civilian component and dependants with respect to offences, including offences relating to the security of Australia, punishable by the law of Australia but not by the law of the United States.

(c) For the purposes of this paragraph and paragraph (3) of this Article, an offence relating to the security of a State shall include :

- (i) treason against the State ;
- (ii) sabotage, espionage or violation of any law relating to official secrets of that State, or secrets relating to the national defence of that State.

(3) In cases where the right to exercise jurisdiction is concurrent the following rules shall apply :

(a) The military authorities of the United States shall have the primary right to exercise jurisdiction over persons subject to the military law of the United States in relation to :

- (i) offences solely against the property or security of the United States, or offences solely against the person or property of a member of the United States Forces, the civilian component or a dependant ;

- (ii) offences arising out of any act or omission done in the performance of official duty.
 - (b) In the case of any other offence the authorities of Australia shall have the primary right to exercise jurisdiction.
 - (c) If the State having the primary right decides not to exercise jurisdiction, it shall notify the authorities of the other State as soon as practicable. The authorities of the State having the primary right shall give sympathetic consideration to a request from the authorities of the other State for a waiver of its right in cases where that other State considers such waiver to be of particular importance.
- (4) The foregoing provisions of this Article shall not confer on the military authorities of the United States any right to exercise jurisdiction over persons who are nationals of or ordinarily resident in Australia unless they are members of the United States Forces.
- (5) (a) The military authorities of the United States and the authorities of Australia shall assist each other in accordance with arrangements to be agreed to by them in the arrest of members of the United States Forces or of the civilian component or of dependants in Australia and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.
- (b) The authorities of Australia shall notify promptly the military authorities of the United States of the arrest of any member of the United States Forces or of the civilian component or of a dependant.
- (c) The custody of an accused member of the United States Forces or of the civilian component or of a dependent over whom Australia is to exercise jurisdiction shall, if he is in the hands of the United States authorities, remain with the United States to the extent authorised by United States law until he is charged by Australia.
- (6) (a) The military authorities of the United States and the authorities of Australia shall assist each other in the carrying out of all necessary investigations into offences, and in the collection and production of evidence, including the seizure of and, in proper cases, the handing over of objects in connection with an offence. The handing over of such objects may, however, be made subject

to their return within any reasonable time specified by the authority delivering them.

(b) The military authorities of the United States and the authorities of Australia shall notify each other of the disposal of all cases in which there are concurrent rights to exercise jurisdiction.

(7) (a) A death sentence shall not be carried out in Australia by the military authorities of the United States.

(b) The authorities of Australia shall give sympathetic consideration to a request from the military authorities of the United States for assistance in carrying out a sentence of imprisonment pronounced by the authorities of the United States under the provisions of this Article within Australia.

(8) Where an accused has been tried in accordance with the provisions of this Article either by the military authorities of the United States or by the authorities of Australia and has been acquitted, or has been convicted and is serving, or has served, his sentence or has been pardoned or has had sentence suspended, he may not be tried again for the same offence within Australia. However, nothing in this paragraph shall prevent the military authorities of the United States from trying a member of the United States Forces for any violation of rules of discipline arising from an act or omission which constituted an offence for which he was tried by the authorities of Australia.

(9) Whenever a member of the United States Forces or of the civilian component or a dependant is prosecuted under the jurisdiction of Australia he shall be entitled:

- (a) to a prompt and speedy trial;
- (b) to be informed, in advance of trial, of the specific charge or charges to be made against him;
- (c) to be confronted with the witnesses against him;
- (d) to have compulsory process for obtaining witnesses in his favour, if they are within the jurisdiction of Australia;
- (e) to have legal representation of his own choice for his defence or to have free or assisted legal representation under the conditions prevailing for the time being in the part of Australia in which he is being prosecuted;
- (f) if he considers it necessary, to have the services of a competent interpreter; and
- (g) to communicate with a representative of the United

States Government and, when the rules of the court permit, to have such a representative at his trial.

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ARTICLE 20

(1) Regularly constituted military units or formations of the United States Forces shall have the right to police any camps, establishments or other premises or areas of which the United States Forces have exclusive occupation as the result of arrangement with the Australian Government. United States military police may take all appropriate measures to ensure the maintenance of order and security in such premises or areas.

(2) Outside such premises and areas, United States military police will be employed only subject to arrangements with the appropriate Australian authorities and in liaison with such appropriate Australian authorities and in so far as such employment:

- (a) is appropriate to provide for the protection of United States installations in premises or areas of which the United States Forces have the use, but not exclusive occupation; or
- (b) is necessary to maintain discipline and order among the members of the United States Forces and to ensure their security.

(3) The United States Government may, after appropriate consultation in any case between the relevant authorities of the two Governments, designate areas comprising buildings or portions of buildings or installations in premises or areas of which the United States Forces have use or occupation to be areas into which only personnel authorised by the local United States Commander may enter. The United States Forces will be responsible for the internal security of areas so designated.