

Criminal Jurisdiction Arrangements Under the Military Bases Agreement with the Philippines, 10 August 1965, Agreed Minutes re Revised Article XIII, para 4, and Agreed Implementing Arrangements, re Revised Article XIII, para 1

4. The authorities of the Republic of the Philippines, recognizing that it is the primary responsibility of the United States authorities to maintain good order and discipline where persons subject to the military law of the United States are concerned, will, upon the request of the United States authorities, waive their primary right to exercise jurisdiction under section 3(a) of this Article, except where they determine that it is of particular importance that jurisdiction be exercised by the Philippine authorities.

1. If either Government desires to request a waiver of the other government's primary right to exercise jurisdiction, a written request shall be made within ten days of receipt of notification of the commission of an offense. A Philippine request for waiver will be delivered to the United States commander concerned, and a United States request for waiver will be delivered to the city or provincial fiscal concerned.

If either Government is not advised by the other Government within fifteen days of the date of receipt by such other Government of a request for a waiver of jurisdiction that jurisdiction will be exercised by such other Government (the criteria for waiver requests and retention of primary jurisdiction are set forth in paragraph 3(c) and Agreed Official Minute No. 4), the requesting Government shall be free to exercise jurisdiction.

If either Government, however, notifies the other Government that for special reasons it desires to reserve decision with respect to the exercise of jurisdiction, the requesting Government will not be free to exercise its jurisdiction until notice is received that the other Government will not exercise jurisdiction or until the expiration of an additional period of fifteen days, whichever is sooner.

To facilitate the expeditious disposal of offenses of minor importance, arrangements may be made between the U.S. military authorities and the competent Philippine authorities to dispense with the necessity for a request for a waiver of jurisdiction to be made in each particular case.

**Bilateral Status of Forces with the Republic of China, 31 August 1965,
Agreed Minutes to Article XIV, re para 3(c), paras 1-4**

Re paragraph 3(c)

1. The Government of the Republic of China waives in favor of the United States the primary right granted to the Chinese authorities under subparagraph (b) of paragraph 3 of this Article in cases of concurrent jurisdiction, in accordance with paragraphs 2, 3, 4, 5, 6 and 7 of this minute.

2. Subject to any particular arrangements which may be made under paragraph 7 of this minute, the military authorities of the United States shall notify the competent Chinese authorities of individual cases falling under the waiver provided in paragraph 1 of this minute.

3. Where the competent Chinese authorities hold the view that, by reason of special circumstances in a specific case, major interests of Chinese administration of justice make imperative the exercise of Chinese jurisdiction, they may recall the waiver granted under paragraph 1 of this minute by a statement to the competent military authorities of the United States within a period of twenty-one days after receipt of the notification envisaged in paragraph 2 of this minute or any shorter period which may be provided in arrangements made under paragraph 7 of this minute. The Chinese authorities may also submit the statement prior to receipt of such notification.

(a) Subject to a careful examination by the Chinese authorities of each specific case and to the results of such examination, major interests of Chinese administration of justice within the meaning of paragraph 3 above may make imperative the exercise of Chinese jurisdiction, in particular, in the following cases:

(i) security offenses against the Republic of China;

(ii) offenses causing the death of a human being, robbery, and rape, except where the offenses are directed against a member of the United States armed forces or the civilian component, or a dependent; and

(iii) attempts to commit such offenses or participation therein.

(b) In respect of the offenses referred to in subparagraph (a) of this paragraph, the authorities concerned shall proceed in particularly close cooperation from the beginning of the preliminary investigation in order to provide the mutual assistance envisaged in paragraph 6 of this Article.

4. In cases where the Government of the Republic of China has recalled its waiver of jurisdiction pursuant to paragraph 3 of this minute, and where a disagreement exists between the authorities concerned, the Government of the United States may make representations through diplomatic channels. The Government of the Republic of China shall resolve the disagreement having given due consideration to the interests of Chinese administration of justice, and to the interests of the United States Government.

CRIMINAL JURISDICTION PROVISIONS OF THE UNITED STATES-
REPUBLIC OF KOREA STATUS OF FORCES AGREEMENT, 9 JULY
1966

Basic Agreement, Article XXII

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 Republic of Korea all criminal and disciplinary jurisdiction conferred on them by the law of the United States over members of the United States armed forces or civilian component, and their dependents;

(b) the authorities of the Republic of Korea shall have jurisdiction over the members of the United States armed forces or civilian component, and their dependents, with respect to offenses committed within the territory of the Republic of Korea and punishable by the law of the Republic of Korea.

2. (a) The military authorities of the United States shall have the right to exercise exclusive jurisdiction over members of the United States armed forces or civilian component, and their dependents, with respect to offenses, including offenses relating to its security, punishable by the law of the United States, but not by the law of the Republic of Korea.

(b) The authorities of the Republic of Korea shall have the right to exercise exclusive jurisdiction over members of the United States armed forces or civilian component, and their dependents, with respect to offenses, including offenses relating to the security of the Republic of Korea, punishable by its law but not by the law of the United States.

(c) For the purpose of this paragraph and of paragraph 3 of this Article, a security offense against 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 defense 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 members of the United States armed forces or civilian component, and their dependents, in relation to:

(i) offenses solely against the property or security of the United States, or offenses solely against the person or property of another member of the United States armed forces or civilian component or of a dependent;

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

(b) In the case of any other offense, the authorities of the Republic of Korea 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 imply any right for the military authorities of the United States to exercise jurisdiction over persons who are nationals of or ordinarily resident in the Republic of Korea, unless they are members of the United States armed forces.

5. (a) The military authorities of the United States and the authorities of the Republic of Korea shall assist each other in the arrest of members of the United States armed forces, the civilian component, or their dependents in the territory of the Republic of Korea and in handing them over to the authority which is to have custody in accordance with the following provisions.

(b) The authorities of the Republic of Korea shall notify promptly the military authorities of the United States of the arrest of any member of the United States armed forces, or civilian component, or a dependent. The military authorities of the United States shall promptly notify the authorities of the Republic of Korea of the arrest of a member of the United States armed forces, the civilian component, or a dependent in any case in which the Republic of Korea has the primary right to exercise jurisdiction.

(c) The custody of an accused member of the United States armed forces or civilian component, or of a dependent, over whom the Republic of Korea is to exercise jurisdiction shall, if he is in the hands of the military authorities of the United States, remain with the military authorities of the United States pending the conclusion of all judicial proceedings and until custody is requested by the authorities of the Republic of Korea. If he is in the hands of the Republic of Korea, he shall, on request, be handed over to the military authorities of the United States and remain in their custody pending completion of all judicial proceedings and until custody is requested by the authorities of the Republic of Korea. When an accused has been in the custody of the military authorities of the United States, the military authorities of the United States may transfer custody to the authorities of the Republic of Korea at any time, and shall give sympathetic consideration to any request for the transfer of custody which may be made by the authorities of the Republic of Korea in specific cases. The military authorities of the United States shall promptly make any such accused available to the authorities of the Republic of Korea upon their request for purposes of investigation and trial, and shall take all appropriate measures to that end and to prevent any prejudice to the course of justice. They shall take full account of any special request regarding custody made by the authorities of the Republic of Korea. The authorities of the Republic of Korea shall give sympathetic consideration to a request from the military authorities of the United States for assistance in maintaining custody of an accused member of the United States armed forces, the civilian component, or a dependent.

(d) In respect of offenses solely against the security of the Republic of Korea provided in paragraph 2(c), an accused shall be in the custody

of the authorities of the Republic of Korea.

6. (a) The military authorities of the United States and the authorities of the Republic of Korea shall assist each other in the carrying out of all necessary investigations into offenses, and in the collection and production of evidence, including the seizure and, in proper cases, the handing over of objects connected with an offense. The handing over of such objects may, however, be made subject to their return within the time specified by the authority delivering them.

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

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

(b) The authorities of the Republic of Korea 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 military authorities of the United States under the provisions of this Article within the territory of the Republic of Korea. The authorities of the Republic of Korea shall also give sympathetic consideration to a request from the authorities of the United States for the custody of any member of the United States armed forces or civilian component or a dependent, who is serving a sentence of confinement imposed by a court of the Republic of Korea. If such custody is released to the military authorities of the United States, the United States shall be obligated to continue the confinement of the individual in an appropriate confinement facility of the United States until the sentence to confinement shall have been served in full or until release from such confinement shall be approved by competent authorities of the Republic of Korea. In such cases, the authorities of the United States shall furnish relevant information on a routine basis to the authorities of the Republic of Korea, and a representative of the Government of the Republic of Korea shall have the right to have access to a member of the United States armed forces, the civilian component, or a dependent who is serving a sentence imposed by a court of the Republic of Korea in confinement facilities of the United States.

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 the authorities of the Republic of Korea and has been acquitted, or has been convicted and is serving, or has served, his sentence, or his sentence has been reinitiated or suspended, or he has been pardoned, he may not be tried again for the same offense within the territory of the Republic of Korea by the authorities of the other State. However, nothing in this paragraph shall prevent the military authorities of the United States from trying a member of its armed forces for any violation of rules of discipline arising from an act or omission which constituted an offense for which he was tried by the authorities of the Republic of Korea.

9. Whenever a member of the United States armed forces or civilian component or a dependent is prosecuted under the jurisdiction of the Republic of Korea 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 favor, if they are within the jurisdiction of the Republic of Korea;
- (e) to have legal representation of his own choice for his defense or to have free or assisted legal representation under the conditions prevailing for the time being in the Republic of Korea;
- (f) if he considers it necessary, to have the services of a competent interpreter; and
- (g) to communicate with a representative of the Government of the United States and to have such a representative present at his trial.

10. (a) Regularly constituted military units or formations of the United States armed forces shall have the right to police any facilities or areas which they use under Article II of this Agreement. The military police of such forces may take all appropriate measures to ensure the maintenance of order and security within such facilities and areas.

(b) Outside these facilities and areas, such military police shall be employed only subject to arrangements with the authorities of the Republic of Korea and in liaison with those authorities, and insofar as such employment is necessary to maintain discipline and order among the members of the United States armed forces, or ensure their security.

11. In the event of hostilities to which the provisions of Article II of the Mutual Defense Treaty apply, the provisions of this Agreement pertaining to criminal jurisdiction shall be immediately suspended and the military authorities of the United States shall have the right to exercise exclusive jurisdiction over members of the United States armed forces, the civilian component, and their dependents.

12. The provisions of this Article shall not apply to any offenses committed before the entry into force of this Agreement. Such cases shall be governed by the provisions of the Agreement between the United States of America and the Republic of Korea effected by an exchange of notes at Taejon on July 12, 1950. []

Agreed Minutes, Article XXII

The provisions of this Article shall not affect existing agreements, arrangements, or practices, relating to the exercise of jurisdiction over personnel of the United Nations forces present in the Republic of Korea other than forces of the United States.

Re Paragraph 1(a)

It is understood that under the present state of United States law the military authorities of the United States have no effective criminal jurisdiction in peacetime over members of the civilian component or dependents. If the scope of United States military jurisdiction changes as a result of subsequent legislation, constitutional amendment, or decision by appropriate authorities of the United States, the Government of the United States shall inform the Government of the Republic of Korea through diplomatic channels.

Re Paragraph 1(b)

1. In the event that martial law is declared by the Republic of Korea, the provisions of this Article shall be immediately suspended in

the part of the Republic of Korea under martial law, and the military authorities of the United States shall have the right to exercise exclusive jurisdiction over members of the United States armed forces or civilian component, and their dependents, in such part until martial law is ended.

2. The jurisdiction of the authorities of the Republic of Korea over members of the United States armed forces or civilian component, and their dependents, shall not extend to any offenses committed outside the Republic of Korea.

Re Paragraph 2

The Republic of Korea, recognizing the effectiveness in appropriate cases of the administrative and disciplinary sanctions which may be imposed by the United States authorities over members of the United States armed forces or civilian component, and their dependents, may, at the request of the military authorities of the United States, waive its right to exercise jurisdiction under paragraph 2.

Re Paragraph 2(c)

Each Government shall inform the other of the details of all security offenses mentioned in this subparagraph, and of the provisions regarding such offenses in its legislation.

Re Paragraph 3(a)

1. Where a member of the United States armed forces or civilian component is charged with an offense, a certificate issued by competent military authorities of the United States stating that the alleged offense, if committed by him, arose out of an act or omission done in the performance of official duty shall be sufficient evidence of the fact for the purpose of determining primary jurisdiction. The term "official duty" as used in this Article and Agreed Minute is not meant to include all acts by members of the United States armed forces and the civilian component during periods when they are on duty, but is meant to apply only to acts which are required to be done as functions of those duties which the individuals are performing.

2. In those exceptional cases where the Chief Prosecutor for the Republic of Korea considers that there is proof contrary to a certificate of official duty, it shall be made the subject of review through discussions between appropriate officials of the Government of the Republic of Korea and the diplomatic mission of the United States in the Republic of Korea.

Re Paragraph 3(b)

1. The authorities of the Republic of Korea, recognizing that it is the primary responsibility of the military authorities of the United States to maintain good order and discipline where persons subject to United States military laws are concerned, will, upon the request of the military authorities of the United States pursuant to paragraph 3(c), waive their primary right to exercise jurisdiction under paragraph 3(b) except when they determine that it is of particular importance that jurisdiction be exercised by the authorities of the Republic of Korea.

2. With the consent of the competent authorities of the Republic of Korea, the military authorities of the United States may transfer to the courts or authorities of the Republic of Korea for investigation, trial and decision, particular criminal cases in which jurisdiction rests with the United States.

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military authorities of the United States for investigation, trial and decision, particular criminal cases in which jurisdiction rests with the Republic of Korea.

3. (a) Where a member of the United States armed forces or civilian component, or a dependent, is arraigned before a court of the United States, for an offense committed in the Republic of Korea against Korean interests, the trial shall be held within the Republic of Korea.

(i) except where the law of the United States requires otherwise, or

(ii) except where, in cases of military exigency or in the interests of justice, the military authorities of the United States intend to hold the trial outside the Republic of Korea. In this event they shall afford the authorities of the Republic of Korea timely opportunity to comment on such intention and shall give due consideration to any comments the latter may make.

(b) Where the trial is held outside of the Republic of Korea the military authorities of the United States shall inform the authorities of the Republic of Korea of the place and date of the trial. A representative of the Republic of Korea shall be entitled to be present at the trial. The authorities of the United States shall inform the authorities of the Republic of Korea of the judgment and the final outcome of the proceedings.

4. In the implementation of the provisions of this Article, and to facilitate the expeditious disposal of offenses, arrangements may be made between the competent authorities of the Republic of Korea and the military authorities of the United States.

Re Paragraph 6

1. The military authorities of the United States and the authorities of the Republic of Korea shall assist each other in obtaining the appearance of witnesses necessary for the proceedings conducted by such authorities within the Republic of Korea.

When a member of the United States armed forces in the Republic of Korea is summoned to appear before a court of the Republic of Korea, as a witness or as a defendant, United States military authorities shall, unless military exigency requires otherwise, secure his attendance provided such attendance is compulsory under the law of the Republic of Korea. If military exigency prevents such attendance, the military authorities of the United States shall furnish a certificate stating the estimated duration of such disability.

Service of process upon a member of the United States armed forces or civilian component, or a dependent required as a witness or a defendant must be personal service in the English language. Where the service of process is to be effected by a process server of the Republic of Korea upon any person who is inside a military installation or area, the military authorities of the United States shall take all measures necessary to enable the process server to effect such service.

In addition, the authorities of the Republic of Korea shall promptly give copies of all criminal writs (including warrants, summonses, indictments, and subpoenas) to an agent designated by the United States military authorities to receive them in all cases of criminal proceedings of the Republic of Korea involving a member of the United States armed forces or civilian component, or a dependent.

When citizens or residents of the Republic of Korea are required as witnesses or experts by the military authorities of the United States, the courts and authorities of the Republic of Korea shall, in accordance with the law of the Republic of Korea, secure the attendance of such

persons. In these cases the military authorities of the United States shall act through the Attorney General of the Republic of Korea, or such other agency as is designated by the authorities of the Republic of Korea.

Fees and other payments for witnesses shall be determined by the Joint Committee established under Article XXVIII.

2. The privileges and immunities of witnesses shall be those accorded by the law of the court, tribunal or authority before which they appear. In no event shall a witness be required to provide testimony which may tend to incriminate him.

3. If, in the course of criminal proceedings before authorities of the United States or the Republic of Korea, the disclosure of an official secret of either of these States or the disclosure of any information which may prejudice the security of either appears necessary for the just disposition of the proceedings, the authorities concerned shall seek written permission to make such disclosure from the appropriate authority of the State concerned.

Re Paragraph 9(a)

The right to a prompt and speedy trial by the courts of the Republic of Korea shall include public trial by an impartial tribunal composed exclusively of judges who have completed their probationary period. A member of the United States armed forces, or civilian component, or a dependent, shall not be tried by a military tribunal of the Republic of Korea.

Re Paragraph 9(b)

A member of the United States armed forces or civilian component, or a dependent, shall not be arrested or detained by the authorities of the Republic of Korea without adequate cause, and he shall be entitled to an immediate hearing at which such cause must be shown in open court in his presence and the presence of his counsel. His immediate release shall be ordered if adequate cause is not shown. Immediately upon arrest or detention he shall be informed of the charges against him in a language which he understands.

He shall also be informed a reasonable time prior to trial of the nature of the evidence that is to be used against him. Counsel for the accused shall, upon request, be afforded the opportunity before trial to examine and copy the statements of witnesses obtained by authorities of the Republic of Korea which are included in the file forwarded to the court of the Republic of Korea scheduled to try the case.

Re Paragraph 9(c) and (d)

A member of the United States armed forces or civilian component, or a dependent, who is prosecuted by the authorities of the Republic of Korea shall have the right to be present throughout the testimony of all witnesses, for and against him, in all judicial examinations, pre-trial hearings, the trial itself, and subsequent proceedings, and shall be permitted full opportunity to examine the witnesses.

Re Paragraph 9(c)

The right to legal representation shall exist from the moment of arrest or detention and shall include the right to have counsel present, and to consult confidentially with such counsel, at all preliminary investigations, examinations, pretrial hearings, the trial itself, and subsequent proceedings, at which the accused is present.

Re Paragraph 9(f)

The right to have the services of a competent interpreter shall exist from the moment of arrest or detention.

Re Paragraph 9(g)

The right to communicate with a representative of the Government of the United States shall exist from the moment of arrest or detention, and no statement of the accused taken in the absence of such a representative shall be admissible as evidence in support of the guilt of the accused. Such representative shall be entitled to be present at all preliminary investigations, examinations, pretrial hearings, the trial itself, and subsequent proceedings, at which the accused is present.

Re Paragraph 9

A member of the United States armed forces or civilian component, or a dependent, tried by the authorities of the Republic of Korea shall be accorded every procedural and substantive right granted by law to the citizens of the Republic of Korea. If it should appear that an accused has been, or is likely to be, denied any procedural or substantive right granted by law to the citizens of the Republic of Korea, representatives of the two Governments shall consult in the Joint Committee on the measures necessary to prevent or cure such denial of rights.

In addition to the rights enumerated in items (a) through (g) of paragraph 9 of this Article, a member of the United States armed forces or civilian component, or a dependent, who is presented by the authorities of the Republic of Korea:

- (a) shall have the right to appeal a conviction or sentence;
- (b) shall have credited to any sentence of confinement his period of pretrial confinement in a confinement facility of the United States or the Republic of Korea;
- (c) shall not be held guilty of a criminal offense on account of any act or omission which did not constitute a criminal offense under the law of the Republic of Korea at the time it was committed;
- (d) shall not be subject to a heavier penalty than the one that was applicable at the time the alleged criminal offense was committed or was adjudged by the court of first instance as the original sentence;
- (e) shall not be held guilty of an offense on the basis of rules of evidence or requirements of proof which have been altered to his prejudice since the date of the commission of the offense;
- (f) shall not be compelled to testify against or otherwise incriminate himself;
- (g) shall not be subject to cruel or unusual punishment;
- (h) shall not be subject to prosecution or punishment by legislative or executive act;
- (i) shall not be prosecuted or punished more than once for the same offense;
- (j) shall not be required to stand trial if he is physically or mentally unfit to stand trial and participate in his defense;
- (k) shall not be subject to trial except under conditions consonant with the dignity of the United States armed forces, including appearing in appropriate military or civilian attire and unmanacled.

No confession, admission or other statement, obtained by torture, violence, threat, deceit, or after prolonged arrest, or detention, or which has been made involuntarily, and no real evidence which has been obtained by torture, violence, threat, deceit, or as a result of an

unreasonable search and seizure without a warrant, will be considered by the courts of the Republic of Korea as evidence in support of the guilt of the accused under this Article.

In any case prosecuted by the authorities of the Republic of Korea under this Article no appeal will be taken by the prosecution from a judgment of not guilty or an acquittal nor will an appeal be taken by the prosecution from any judgment which the accused does not appeal, except upon grounds of errors of law.

The military authorities of the United States shall have the right to inspect any confinement facility of the Republic of Korea in which a member of the United States armed forces, civilian component, or a dependent is confined, or in which it is proposed to confine such an individual.

In the event of hostilities, the Republic of Korea will take all possible measures to safeguard members of the United States armed forces, members of the civilian component, and their dependents who are confined in confinement facilities of the Republic of Korea, whether awaiting trial or serving a sentence imposed by the courts of the Republic of Korea. The Republic of Korea shall give sympathetic consideration to requests for release of these persons to the custody of responsible United States military authorities. Necessary implementing provisions shall be agreed upon between the two Governments through the Joint Committee.

Facilities utilized for the execution of a sentence to death or a period of confinement, imprisonment, or penal servitude, or for the detention of members of the United States armed forces or civilian component or dependents, will meet minimum standards as agreed by the Joint Committee. The military authorities of the United States shall have the right upon request to have access at any time to members of the United States armed forces, the civilian component, or their dependents who are confined or detained by authorities of the Republic of Korea. During the visit of these persons at confinement facilities of the Republic of Korea, military authorities of the United States shall be authorized to provide supplementary care and provisions for such persons, such as clothing, food, bedding, and medical and dental treatment.

Re Paragraph 10(a) and 10(b)

1. The military authorities of the United States will normally make all arrests within facilities and areas in use by the United States armed forces. This shall not preclude the authorities of the Republic of Korea from making arrests within facilities and areas in cases where the competent authorities of the United States armed forces have given consent, or in cases of pursuit of a flagrant offender who has committed a serious crime.

Where persons whose arrest is desired by the authorities of the Republic of Korea, and who are not members of the United States armed forces or civilian component or dependents, are within facilities and areas in use by the United States armed forces, the military authorities of the United States will undertake, upon request, to arrest such persons. Any person arrested by the military authorities of the United States who is not a member of the United States armed forces or civilian component or a dependent shall immediately be turned over to the authorities of the Republic of Korea.

The military authorities of the United States may arrest or detain in the vicinity of a facility or area any person in the commission or attempted commission of an offense against the security of that facility or area. Any such person who is not a member of the United States armed forces or civilian component or a dependent shall immediately be turned over to the authorities of the Republic of Korea.

2. The authorities of the Republic of Korea will normally not exercise the right of search, seizure, or inspection with respect to any person or property within facilities and areas in use by the United States armed forces or with respect to property of the United States wherever situated, except in cases where the competent military authorities of the United States consent to such search, seizure, or inspection by the authorities of the Republic of Korea of such persons or property.

Where search, seizure, or inspection with respect to persons or property within facilities and areas in use by the United States armed forces or with respect to property of the United States in the Republic of Korea is desired by the authorities of the Republic of Korea, the military authorities of the United States will undertake, upon request, to make such search, seizure, or inspection. In the event of a judgment concerning such property, except property owned or utilized by the Government of the United States or its instrumentalities, the United States will in accordance with its laws turn over such property to the authorities of the Republic of Korea for disposition in accordance with the judgment.

Agreed Understandings, Article XXII

Agreed Minute Re Paragraph 1 (a)

The Government of the Republic of Korea agrees that, upon notification under the second sentence of the Agreed Minute Re Paragraph 1 (a), the military authorities of the United States may exercise jurisdiction over such persons in accordance with the terms of the Criminal Jurisdiction Article.

Paragraph 1 (b)

The civil authorities of the Republic of Korea will retain full control over the arrest, investigation and trial of a member of the United States armed forces or civilian component or a dependent.

Agreed Minute Re Paragraph 2

It is understood that the United States authorities shall exercise utmost restraint in requesting waivers of exclusive jurisdiction as provided for in the Agreed Minute Re Paragraph 2 of this Article.

Agreed Minute Re Paragraph 3 (a)

1. With regard to the Agreed Minute Re Paragraph 3 (a), a substantial departure from the acts a person is required to perform in a particular duty unusually will indicate an act outside of his "official duty."

2. A duty certificate shall be issued only upon the advice of a Staff Judge Advocate, and the competent authority issuing the duty certificate shall be a general grade officer.

3. (a) The certificate will be conclusive unless modification is agreed upon. The United States authorities shall give due consideration to any objection which may be raised by the Chief Prosecutor for the Republic of Korea.

(b) The accused should not be deprived of his entitlement to a prompt and speedy trial as a result of protracted reconsideration of the duty certificate.

Agreed Minute Re Paragraph 3 (b)

1. It is understood that the term "of particular importance" has reference to those cases in which, after a careful examination of each specific case, the exercise of jurisdiction by the Republic of Korea is deemed essential, and the term has reference, in general but not exclusively, to the following types of offense:

(a) security offenses against the Republic of Korea;

(b) offenses causing the death of a human being, robbery, and rape, except where the offenses are directed against a member of the United States armed forces, the civilian component, or a dependent; and

(c) attempts to commit such offenses or participation therein.

2. In respect of the offenses referred to in the above paragraph, the authorities concerned shall proceed in particularly close cooperation from the beginning of the preliminary investigation in order to provide the mutual assistance envisaged in paragraph 6 of Article XXII.

3. In cases where, in the view of the United States authorities, any question arises concerning the determination that a case is one "of particular importance," the United States diplomatic mission reserves the right and expects to be afforded an opportunity to confer with the proper authorities of the Republic of Korea.

Paragraph 5

With regard to the custody of the accused in the hands of the authorities of the Republic of Korea in connection with security offenses:

1. There must be mutual United States-Republic of Korea agreement as to the circumstances in which such custody is appropriate.

2. Confinement facilities of the Republic of Korea must be adequate by United States standards.

Agreed Minute Re Paragraph 9, Subparagraph (a) of Second Unnumbered Paragraph

Under the appellate procedure of the courts of the Republic of Korea, the accused may request a re-examination of the evidence, including new evidence and witnesses, as a basis for new findings of fact by the appellate court.

Exchange of Notes

REPUBLIC OF KOREA,
MINISTRY OF FOREIGN AFFAIRS,
July 9, 1966.

DEAR MR. AMBASSADOR:

Today the Governments of the Republic of Korea and the United States have formally signed the agreement between the United States of America and the Republic of Korea regarding facilities and areas and the status of United States armed forces in the Republic of Korea. Article XXII of that Agreement and its Agreed Minutes provide for the exercise of jurisdiction over members of the United States armed forces, the civilian component, and their dependents in the Republic of Korea. In this regard, the Government of the Republic of Korea, conscious of the strong ties of mutual respect and friendship which bind our two countries, and recognizing the vital role which United States armed forces play in the defense of the Republic of Korea, proposes the following understandings for procedural arrangements pursuant to Paragraph 4 of the Agreed Minute Re Paragraph 3(b).

[For the English language text see below.]

I would be grateful for your confirmation of the above understandings.

Sincerely yours,

TONG WON LEE,
Minister of Foreign Affairs.

His Excellency

WINTHROP G. BROWN,
Ambassador of the United States of America
Seoul, Korea.

The American Ambassador to the Korean Minister of Foreign Affairs
SEOUL, KOREA,
July 9, 1966.

His Excellency

TONG WON LEE,
Minister of Foreign Affairs
of the Republic of Korea, Seoul.

DEAR MR. MINISTER:

I have received your letter of this date on the subject of the agreement signed today between the Republic of Korea and the United States of America regarding facilities and areas and the status of United States armed forces in the Republic of Korea, and confirm the following understandings contained therein with respect to the exercise of jurisdiction over members of the United States armed forces, the civilian component, and their dependents:

That, to facilitate the processing of cases resulting from the presence of United States armed forces deployed in Korea for mutual defense purposes, in implementation of the provisions of the Agreed Minute Re Paragraph 3 (b), the Government of the Republic of Korea will not require the military authorities of the United States to make a request for a waiver in each particular case, and the military authorities of the United States shall have jurisdiction unless the Government of the Republic of Korea determines in a specific case that it is of particular importance that jurisdiction be exercised therein by the authorities of the Republic of Korea;

That, in the interest of expediting the administration of justice, any such determination by the Government of the Republic of Korea shall be provided in writing by the Minister of Justice to the appropriate military authorities of the United States within fifteen days after the Republic of Korea is notified or is otherwise apprised of the commission of an offense falling within its primary jurisdiction, or such shorter period as may be mutually agreed upon pursuant to Paragraph 4 of the Agreed Minute Re Paragraph 3 (b). The military authorities of the United States shall not exercise jurisdiction before the expiration of the fifteen days or other agreed period.

Very sincerely yours,

WINTHROP G. BROWN, *Ambassador*.

WILSON, SECRETARY OF DEFENSE, ET AL.
v. GIRARD.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT.*

No. 1103. Argued July 8, 1957.—Decided July 11, 1957.

PER CURIAM.

Japan and the United States became involved in a controversy whether the respondent Girard should be tried by a Japanese court for causing the death of a Japanese woman. The basis for the dispute between the two Governments fully appears in the affidavit of Robert Dechert, General Counsel of the Department of Defense, an exhibit to a government motion in the court below, and the joint statement of Secretary of State John Foster Dulles and Secretary of Defense Charles E. Wilson, printed as appendices to this opinion, *post*, pp. 531, 544.

Girard, a Specialist Third Class in the United States Army, was engaged on January 30, 1957, with members of his cavalry regiment in a small unit exercise at Camp Weir range area, Japan. Japanese civilians were present in the area, retrieving expended cartridge cases. Girard and another Specialist Third Class were ordered to guard a machine gun and some items of clothing that had been left nearby. Girard had a grenade launcher on his rifle. He placed an expended 30-caliber cartridge case in the grenade launcher and projected it by firing a blank. The expended cartridge case penetrated the back of a Japanese woman gathering expended cartridge cases and caused her death.

The United States ultimately notified Japan that Girard would be delivered to the Japanese authorities for trial. Thereafter, Japan indicted him for causing death by wounding. Girard sought a writ of habeas corpus in the United States District Court for the District of Columbia. The writ was denied, but Girard was granted declaratory relief and an injunction against his delivery to the Japanese authorities. 152 F. Supp. 21. The petitioners appealed to the Court of Appeals for the

District of Columbia, and, without awaiting action by that court on the appeal, invoked the jurisdiction of this Court under 28 U. S. C. § 1254 (1). Girard filed a cross-petition for certiorari to review the denial of the writ of habeas corpus. We granted both petitions. U. S. Supreme Court Rule 20; 354 U. S. 928.

A Security Treaty between Japan and the United States, signed September 8, 1951, was ratified by the Senate on March 20, 1952, and proclaimed by the President effective April 28, 1952.¹ Article III of the Treaty authorized the making of Administrative Agreements between the two Governments concerning "[t]he conditions which shall govern the disposition of armed forces of the United States of America in and about Japan" Expressly acting under this provision, the two Nations, on February 28, 1952, signed an Administrative Agreement covering, among other matters, the jurisdiction of the United States over offenses committed in Japan by members of the United States armed forces, and providing that jurisdiction in any case might be waived by the United States.² This Agreement became effective on the same date as the Security Treaty (April 28, 1952) and was considered by the Senate before consent was given to the Treaty.

Article XVII, paragraph 1, of the Administrative Agreement provided that upon the coming into effect of the "Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces,"³ signed June 19, 1951, the United States would conclude with Japan an agreement on criminal jurisdiction similar to the corresponding provisions of the NATO Agreement. The NATO Agreement became effective August 23, 1953, and the United States and Japan signed on September 29, 1953, effective October 29, 1953, a Protocol Agreement.⁴

¹ 3 U. S. Treaties and Other International Agreements 3329; T. I. A. S. No. 2491.

² 3 U. S. Treaties and Other International Agreements 3341; T. I. A. S. No. 2492.

³ 4 U. S. Treaties and Other International Agreements 1792; T. I. A. S. No. 2846.

⁴ 4 U. S. Treaties and Other International Agreements 1846; T. I. A. S. No. 2848.

pursuant to the covenant in paragraph 1 of Article XVII.

Paragraph 3 of Article XVII, as amended by the Protocol, dealt with criminal offenses in violation of the laws of both Nations and provided:

“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 members of the United States armed forces or the civilian component in relation to

“(i) offenses solely against the property or security of the United States, or offenses solely against the person or property of another member of the United States armed forces or the civilian component or of a dependent;

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

“(b) In the case of any other offense the authorities of Japan 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.”

Article XXVI of the Administrative Agreement established a Joint Committee of representatives of the United States and Japan to consult on all matters requiring mutual consultation regarding the implementation of the Agreement; and provided that if the Committee “. . . is unable to resolve any matter, it shall refer that matter to the respective Governments for further consideration through appropriate channels.”

In the light of the Senate's ratification of the Security Treaty after consideration of the Administrative Agreement, which had already been signed, and its subsequent ratification of the NATO Agreement, with knowledge of the commitment to Japan under the Administrative

Agreement, we are satisfied that the approval of Article III of the Security Treaty authorized the making of the Administrative Agreement and the subsequent Protocol embodying the NATO Agreement provisions governing jurisdiction to try criminal offenses.

The United States claimed the right to try Girard upon the ground that his act, as certified by his commanding officer, was "done in the performance of official duty" and therefore the United States had primary jurisdiction. Japan insisted that it had proof that Girard's action was without the scope of his official duty and therefore that Japan had the primary right to try him.

The Joint Committee, after prolonged deliberations, was unable to agree. The issue was referred to higher authority, which authorized the United States representatives on the Joint Committee to notify the appropriate Japanese authorities, in accordance with paragraph 3 (c) of the Protocol, that the United States had decided not to exercise, but to waive, whatever jurisdiction it might have in the case. The Secretary of State and the Secretary of Defense decided that this determination should be carried out. The President confirmed their joint conclusion.

A sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction. *The Schooner Exchange v. M'Faddon*, 7 Cranch 116, 136. Japan's cession to the United States of jurisdiction to try American military personnel for conduct constituting an offense against the laws of both countries was conditioned by the covenant of Article XVII, section 3, paragraph (c) of the Protocol that

" . . . 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."

The issue for our decision is therefore narrowed to the question whether, upon the record before us, the Constitution or legislation subsequent to the Security Treaty prohibited the carrying out of this provision authorized by the Treaty for waiver of the qualified jurisdiction granted by Japan. We find no constitutional or statutory barrier to the provision as applied here. In the absence of such encroachments, the wisdom of the arrangement is exclusively for the determination of the Executive and Legislative Branches.

The judgment of the District Court in No. 1103 is reversed, and its judgment in No. 1108 is affirmed.

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this case.