BILATERAL · AUGUST 10, 1965

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES OF AMERICA AMENDING ARTICLE XIII OF THE MILITARY BASES AGREEMENT OF 14 ...

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Note: The Agreement entered into force, August 10, 1965.

Excellency:

I have the honor to acknowledge Your Excellency's note No. 36949 dated August 10, 1965 with Annex regarding revision of criminal jurisdiction arrangements under the Philippine-United States Military Bases Agreement of 1947.

I have the honor to inform Your Excellency that the provisions contained in that Annex are acceptable to the United States Government, and that my Government agrees that Your Excellency's note and this reply shall constitute an agreement between our two Governments to enter into force on the date of this note.

Accept, Excellency, the renewed assurances of my highest consideration.

(Sgd.) William McCormick Blair, Jr.

His Excellency

MAURO MENDEZ,

Secretary of. Foreign Affairs,

Manila

No. 36949

Manila, August 10, 1965

Excellency:

I have the honor to refer to our recent discussions regarding revision of the arrangements for criminal jurisdiction under the Philippine-United States Military Bases Agreement of 1947, and to propose the amendment of Article XIII of the
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Agreement by substituting the provisions .set forth in the Annex to this note together with attached Agreed Official Minutes and Agreed Implementing Arrangements for the present provisions of Article XIII; except for paragraph 8 of the present article concerning civil actions which I propose remain in effect.
In view of the great interest of the Philippine Government and people in a revision of arrangements governing

criminal jurisdiction, I wish also to propose that pending the conclusion of continuing negotiations on other aspects of the Military Bases Agreement, the new criminal jurisdiction arrangements be implemented immediately.
Upon receipt of a note from Your Excellency indicating that the provisions contained in the Annex are acceptable to the United States Government, the Government of the Republic of the Philippines will consider that this note with its Annex and your reply thereto constitutes an agreement between the two governments on this subject, the agreement to enter into force on the date of your note in reply.

Accept, Excellency, the renewed assurances of my highest consideration.

(Sgd.) MAURO MENDEZ
Secretary of Foreign Affairs

ANNEX

Criminal Jurisdiction Provisions
with attached Agreed Official
Minutes and Agreed Implementing
Arrangements

ANNEX

To Department of Foreign Affairs Note No. 36949, dated August 10, 1965

ARTICLE XIII

1. Subject to the provisions of this Article,

(a) The authorities of the Republic of the Philippines 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 Republic of the Philippines and punishable by the law of the Republic of the Philippines;

(b) The military authorities of the United States shall have the right to exercise within the Republic of the Philippines 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;

2. (a) The authorities of the Republic of the Philippines 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 the Philippines, punishable by its law but not by the law of the United States;

(b) 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 offenses, including offenses relating to its security, punishable by the law of the United States, but not by the law of the Republic of the Philippines.

(c) For the purposes 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.

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

(a) The authorities of the Republic of the Philippines shall have the primary right to exercise jurisdiction in all offenses except as enumerated in paragraph (b) hereof.

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

(i) offenses solely against the property or security of the United States, or offenses solely against the person or property of a 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.

(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 the Philippines, unless they tire members of the United States armed, forces.

5. (a) The appropriate authorities of the Republic of the Philippines and the appropriate authorities of the United States shall assist each other in the arrest of members of. the United States armed forces or civilian component and their dependents in the Republic of the Philippines and in handling them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

(b) The authorities of the Republic of the Philippines 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.

(c) The custody of an accused member of the United Slates armed forces or civilian component or dependent over whom the Republic of the Philippines is to exercise jurisdiction shall, if he is in the hands of the United States, remain with the United States until he is charged by the Republic of the Philippines.

6. (a) The authorities of the Republic of the Philippines and United States 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 authorities of the Republic of die Philippines and the United Suites shall notify one another of the disposition of all cases in which there are concurrent rights to exercise jurisdiction.

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

(b) The authorities of the Republic of the Philippines shall give sympathetic consideration to a request from the 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 the Republic of the Philippines.

8. Where an accused has been tried in accordance with the provisions of this Article bv the authorities of the Republic of the Philippines or bv the authorities of the United States 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 offense .within the same territory by the authorities of the either State. However, nothing in this paragraph shall

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prevent the military authorities of the United States from trying a member of its force for any violation of rules or discipline arising from an act or omission which constituted an offense for which he was tried by the authorities of the Republic of the Philippines.

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 the Philippines 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 the Philippines;

(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 the Philippines;

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

(g) to communicate with a representative of the Government of the United States; and

(h) to have a representative of the United States Government present during the trial, which will be public except when the court decrees otherwise in accordance with Philippine law.

10. (a) Regularly constituted military units or formations of the United States armed forces shall have the right to police any camps, establishments or other premises which they occupy as the result of an agreement with the Republic of the Philippines. The military police of the United States armed forces may take all appropriate measures to ensure the maintenance of order and security of. such premises.

(b) Outside these premises, such military police shall be employed only subject to arrangements with the authorities of the Republic of the Philippines 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.

11. The Government of the Republic of the Philippines shall seek legislation as it deems necessary to ensure the adequate security and protection within its territory of installations, equipment, property, records and official information of the United States Government and the punishment of persons who may contravene laws enacted for that purpose.

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AGREED OFFICIAL MINUTES

Regarding Article XIII of the
Military Bases Agreement as Revised

1. The primary jurisdiction of the United States under paragraph 3(b} will extend only to those persons subject to the military law of the United States regularly assigned to the Philippines or present in the Philippines in connection with the presence there of the U.S. bases.

The term "persons subject to the military law of the United States" does not apply to members of the civilian component or dependents, with respect to whom there is no effective military jurisdiction at the time this arrangement enters into force. If the scope of U.S. military jurisdiction changes as a result of subsequent legislation, constitutional amendment or decision by appropriate authorities of the United Slates, the Government of the United States shall inform the Government of the Philippines through diplomatic channels.

2. The term "official duty" appearing in Section 3(b) (ii) of this Article is understood to be any duty or service required or authorized to be done by statute, regulation, the order of a superior or military usage. Official duty is not meant to include all acts by an individual during the period while he is on duty, but is meant to apply only to acts which are required or authorized to be done as a function of that duty which the individual is performing.

3. Whenever it is necessary to determine whether an alleged offense arose out of an act or omission done in the performance of official duty, a certificate issued by or on behalf of the commanding officer of the alleged offender or offenders, on advice of the Staff Legal Officer or Staff Judge Advocate, will be delivered promptly to the city or provincial fiscal (prosecuting attorney) concerned, and this certificate will be honored by the Philippine authorities.

In those cases where the Secretary of Justice of the Republic of the Philippines considers that discussion of a certificate of official duty is required in the circumstances, it shall be made the subject of review through discussions between appropriate officials of the Government of the Republic of the Philippines and the diplomatic mission of the United States provided a request is received by the diplomatic mission within ten days from receipt of the certificate by the fiscal.

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 Staes 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.

5. In all cases over which the Republic of the Philippines exercises jurisdiction, the custody of an accused member of the United States armed forces, civilian component, or dependent, pending investigation, trial and final judgment, shall be entrusted without delay to the commanding officer of the nearest base, who shall acknowledge in writing (a) that such accused has been delivered to him for custody pending investigation, trial and final judgment in a competent court of the Philippines and (b) that he will be made available to the Philippine authorities for investigation upon their request and (c) that he will be produced before said court when required by it. The commanding officer shall be furnished by the fiscal (prosecuting attorney) with a copy-of the information against the accused upon the filing of the original in the competent court.

6. Notwithstanding the foregoing provisions, it is mutually agreed that in time of war the United States shall have the right to exercise exclusive jurisdiction over any offenses which may be committed by members of the armed forces of the United States in the Philippines.

7. The United States agrees that it will not grant asylum in any of the bases to any person fleeing from the lawful jurisdiction of the Philippines. Should any such person be found in any base, he will be surrendered on demand to the competent authorities of the Philippines.

8. The provisions of this agreement shall not apply to any offense committed before its coming into effect, Such cases shall be governed by the provisions of Article XIII of the Military Bases Agreement as it existed prior to this amendment,

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AGREED IMPLEMENTING ARRANGEMENTS

Regarding Article XIII of the Military Bases Agreement as Revised

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.

2. a. The U.S. military authorities will normally make all arrests, or otherwise take persons into custody, within U.S. bases. This shall not preclude the Philippine authorities from doing so within the bases where the base commander or his authorized representative has given consent, or in the case of pursuit of a flagrant offender who has committed a serious crime.

If the Philippine authorities desire that persons not subject to the jurisdiction of the U.S. armed forces who are within U.S. bases be arrested or taken into custody, the U.S. military authorities will undertake, upon request, and within the limits of their authority, to make the arrest or take them into custody, All persons arrested or taken into custody by the U.S. military authorities who are not subject to the jurisdiction of the U.S. armed forces shall immediately be turned over to the Philippine authorities for compliance with formalities required by Philippine law and for custody except as provided by Agreed Minute Number 5.

The U.S. military authorities may apprehend inside and in the vicinity of the U.S. bases any person in the commission or attempted commission of an offense against the security of that base. Any such person not subject to the jurisdiction of the U.S. armed forces shall immediately be turned over to the Philippine authorities for compliance with formalities required by Philippine law and for custody except as provided by Agreed Minute Number 5.

b. The Philippine authorities will normally not exercise the right of search, seizure, or inspection with respect to any persons or property within the bases in use by and guarded under the authority of the United States armed forces or with respect to property of the United States armed forces wherever situated, except in cases where the competent authorities of the United States armed forces consent to such search, seizure, or inspection by the Philippine authorities of such persons or property.

Where search, seizure, or inspection with respect to persons or property within the bases in use by the United States armed forces or with respect to property of the United States armed forces in the Philippines is desired by Philippine authorities, the United States military authorities will undertake, upon request, and within the limits of their authority, to make such search, seizure, or inspection. In the event of a judgment concerning such property, except property owned or utilized by the United States Government or its instrumentalities, the United States, to the extent permitted under its law, will turn over such property to the Philippine authorities for disposition in accordance with the judgment.

3. The confinement or detention by Philippine authorities of members of the United States armed forces or the civilian component, or dependents, shall be carried out in facilities agreed on by appropriate authorities of the Republic of the Philippines and the United States. The appropriate authorities of the United States will be authorized to visit these persons upon request at the place of confinement and will be authorized to provide in appropriate cases supplementary care and provisions for such persons, such as clothing, food, bedding, and medical and-dental treatment.

4. A Criminal Jurisdiction Implementation Committee shall be established as a means for consultation between the two governments on matters requiring mutual consultation, in the implementation of the criminal jurisdiction arrangements. Each government shall appoint a co-chairman and an equal number of such additional representatives of the armed services or civilian agencies as may be determined by mutual consultation between the two governments. The committee will establish its own rules or procedure.

The committee shall be so organized that it may meet promptly at any time upon the request of either of the two governments. Any matter which the committee is unable to resolve shall be referred to the respective governments for further consideration.

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