

No. 2809

**AUSTRALIA, CANADA, NEW ZEALAND,
UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND,
UNITED STATES OF AMERICA
and
JAPAN**

**Protocol (with annex and agreed official minutes) on the
exercise of criminal jurisdiction over United Nations
Forces in Japan. Signed at Tokyo, on 26 October 1953**

Official texts: English and Japanese.

*Registered by the United Kingdom of Great Britain and Northern Ireland
on 24 March 1955.*

**AUSTRALIE, CANADA, NOUVELLE-ZÉLANDE,
ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD,
ÉTATS-UNIS D'AMÉRIQUE
et
JAPON**

**Protocole (avec annexe et procès-verbal officiel) relatif à
l'exercice de la juridiction pénale à l'égard des forces
armées des Nations Unies se trouvant au Japon. Signé à
Tokyo, le 26 octobre 1953**

Textes officiels anglais et japonais.

*Enregistré par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
le 24 mars 1955.*

No. 2809. PROTOCOL¹ BETWEEN AUSTRALIA, CANADA, NEW ZEALAND, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE UNITED STATES OF AMERICA AND JAPAN ON THE EXERCISE OF CRIMINAL JURISDICTION OVER UNITED NATIONS FORCES IN JAPAN. SIGNED AT TOKYO, ON 26 OCTOBER 1953

Whereas the Protocol to amend article XVII, pertaining to the exercise of criminal jurisdiction over the United States forces in Japan, of the Administrative Agreement between the Governments of Japan and the United States of America is to come into force on October 29, 1953 ; and

Whereas the Government of Japan is ready to meet the desire of the Governments concerned for similar provisions governing the exercise of criminal jurisdiction over their United Nations forces in Japan ;

Therefore, the Parties to this Protocol have agreed as follows :—

1. The exercise of criminal jurisdiction (including disciplinary jurisdiction) over the United Nations forces in Japan shall be governed by the provisions set forth in the annex to this Protocol.

The provisions set forth in the annex shall be integrated into a general agreement regarding the status of the United Nations forces in Japan when such agreement is concluded.

2. This Protocol shall be signed by the Governments of Japan, the United States of America acting as the Unified Command, and any State which has sent forces to Korea pursuant to the United Nations Security Council resolutions of June 25,² June 27³ and July 7, 1950,⁴ and the United Nations General Assembly resolution of February 1, 1951,⁵ and shall come into force on October 29, 1953, with respect to these signatory States.

¹ Came into force on 29 October 1953 in accordance with article 2.

² United Nations, *Official Records of the Security Council, Fifth Year, No. 15*, p. 4.

³ United Nations, *Official Records of the Security Council, Fifth Year, No. 16*, p. 4.

⁴ United Nations, *Official Records of the Security Council, Fifth Year, No. 18*, p. 8.

⁵ United Nations, *Official Records of the General Assembly, Fifth Session, Supplement No. 20 A (A/1775/Add.1)*.

After the first coming into force of this Protocol, it shall be open, subject to the consent of the Government of Japan, for signature by the Government of any other State which has sent or may hereafter send forces to Korea pursuant to the aforesaid resolutions, and it shall come into force with respect to such sending State as of the date of its signature unless otherwise agreed.

IN WITNESS WHEREOF the representatives of the Governments of the Parties hereto, duly authorised for the purpose, have signed this Protocol.

DONE in Tokyo this 26th day of October, 1953, in the Japanese and English languages, both texts being equally authoritative, in a single copy, which shall be deposited in the Archives of the Government of Japan. Certified copies shall be transmitted by that Government to each of the signatory Governments.

For the Government of Japan :

Katsuo OKAZAKI
Takeru INUKAI

For the Government of the United States of America
acting as the Unified Command :

John M. ALLISON

For the Government of the Commonwealth of Australia :

E. Ronald WALKER

For the Government of Canada :

R. W. MAYHEW

For the Government of New Zealand :

R. L. G. CHALLIS

For the Government of the United Kingdom of Great
Britain and Northern Ireland :

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ANNEX

ARTICLE CONCERNING CRIMINAL JURISDICTION

1. Subject to the provisions of this article—

- (a) The military authorities of the sending State shall have the right to exercise within Japan all criminal and disciplinary jurisdiction conferred on them by the law of the sending State over all persons subject to the military law of that State ;
- (b) The authorities of Japan shall have jurisdiction over the members of the United Nations forces or of the civilian components thereof, and their dependents with respect to offences committed within the territory of Japan and punishable by the law of Japan.

2.—(a) The military authorities of the sending State shall have the right to exercise exclusive jurisdiction over persons subject to the military law of that State with respect to offences, including offences relating to its security, punishable by the law of that sending State but not by the law of Japan.

(b) The authorities of Japan shall have the right to exercise exclusive jurisdiction over members of the United Nations forces or of the civilian components thereof, and their dependents with respect to offences, including offences relating to the security of Japan, punishable by its law but not by the law of the sending State concerned.

(c) For the purposes of this paragraph and of paragraph 3 of this Article a security offence 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 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 sending State shall have the primary right to exercise jurisdiction over a member of the United Nations forces or of the civilian component thereof in relation to—
 - (i) Offences solely against the property or security of that State, or offences solely against the person or property of another member of the force of that State or of the civilian component thereof, or a dependent ;
 - (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 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.

4. The foregoing provisions of this article shall not imply any right for the military authorities of the sending State to exercise jurisdiction over persons who are nationals of or ordinarily resident in Japan, unless they are members of the force of that sending State.

5.—(a) The authorities of Japan and the military authorities of the sending State shall assist each other in the arrest of members of the United Nations forces or of the civilian components thereof, or their dependents in the territory of Japan and in handing them over to the authority which is to exercise jurisdiction in accordance with the above provisions.

(b) The authorities of Japan shall notify promptly the military authorities of the sending State of the arrest of any member of the force of that sending State or of the civilian component thereof, or a dependent.

(c) The custody of an accused member of the force of a sending State or of the civilian component thereof over whom Japan is to exercise jurisdiction shall, if he is in the hands of that sending State, remain with that State until he is charged by Japan.

6.—(a) The authorities of Japan and the military authorities of the sending State 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 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 authority delivering them.

(b) The authorities of Japan and the military authorities of the sending State 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 Japan by the military authorities of the sending State if the legislation of Japan does not provide for such punishment in a similar case.

(b) The authorities of Japan shall give sympathetic consideration to a request from the military authorities of the sending State for the assistance in carrying out a sentence of imprisonment pronounced by the military authorities of the sending State under the provisions of this article within the territory of Japan.

8. Where an accused has been tried in accordance with the provisions of this article either by the authorities of Japan or by the military authorities of a sending State 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 territory of Japan by the authorities of another State, Party to this Protocol. However, nothing in this paragraph shall prevent the military authorities of the sending State from trying a member of its force 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 Japan.

9. Whenever a member of the United Nations forces or of the civilian components thereof, or a dependent is prosecuted under the jurisdiction of Japan 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 Japan ;
- (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 Japan ;
- (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 sending State and to have such a representative present at his trial.

10.—(a) Regularly constituted military units or formations of the United Nations forces shall have the right to police any United Nations forces facilities. The military police of such forces may take all appropriate measures to ensure the maintenance of order and security within such facilities.

(b) Outside these facilities, such military police shall be employed only subject to arrangements with the authorities of Japan and in liaison with those authorities, and in so far as such employment is necessary to maintain discipline and order among the members of the United Nations forces.

11. If the provisions of article XVII of the Administrative Agreement between the Government of Japan and the Government of the United States of America, signed at Tokyo on February 28, 1952, as amended by the Protocol signed at Tokyo on September 29, 1953, are further amended, Parties to this Protocol shall, after consultation, make similar amendments to the corresponding provisions of this article, provided the forces of the sending State concerned are under circumstances similar to those giving rise to such further amendment.

AGREED OFFICIAL MINUTES REGARDING ARTICLE CONCERNING CRIMINAL JURISDICTION

Re paragraph 1 (a) and paragraph 2 (a) :

The scope of persons subject to the military law of the sending States shall be communicated, through the Joint Board, to the Government of Japan by the Governments of the sending States.

Re paragraph 2 (c) :

The Governments of the sending States shall inform the Government of Japan and the Government of Japan shall inform the Governments of the sending States of the details of all the security offences mentioned in this sub-paragraph and the provisions governing such offences in the existing laws of their respective countries.

Re paragraph 3 (a) (ii) :

Where a member of the United Nations forces or of the civilian components thereof is charged with an offence, a certificate issued by or on behalf of his commanding officer stating that the alleged offence, if committed by him, arose out of an act or omission done in the performance of official duty, shall, in any judicial proceedings, be sufficient evidence of the fact unless the contrary is proved.

The above statement shall not be interpreted to prejudice in any way article 318 of the Japanese Code of Criminal Procedure.

Re paragraph 3 (c) :

1. Mutual procedures relating to waivers of the primary right to exercise jurisdiction shall be determined by the Joint Board. These procedures shall be similar to those adopted by the Joint Committee under the Japan-United States Administrative Agreement.

2. Trials of cases in which the Japanese authorities have waived the primary right to exercise jurisdiction, and trials of cases involving offences described in paragraph 3 (a) (ii) committed against the State or nationals of Japan shall be held promptly in Japan within a reasonable distance from the places where the offences are alleged to have taken place unless other arrangements are mutually agreed upon. Representatives of the Japanese authorities may be present at such trials.

Re paragraph 4 :

Persons with the dual nationality of a sending State and Japan who are subject to the military law of the sending State and who have been brought to Japan by the sending State shall not be considered as nationals of Japan, but shall be considered as nationals of the sending State for the purposes of this paragraph.

Re paragraph 5 :

1. In case the Japanese authorities have arrested an offender who is a member of the United Nations forces or of the civilian components thereof, or a dependent subject to the military law of the sending State with respect to a case over which Japan has the primary right to exercise jurisdiction, the Japanese authorities will, unless they deem that there is adequate cause and necessity to retain such offender, release him to the custody of the military authorities of the sending State provided that he shall, on request, be made available to the Japanese authorities, if such be the condition of his release. The authorities of the sending State shall, on request, transfer his custody to the Japanese authorities at the time he is indicted by the latter.

2. The military authorities of the sending State shall promptly notify the Japanese authorities of the arrest of any member of the United Nations forces, or of the civilian components thereof or a dependent in any case in which Japan has the primary right to exercise jurisdiction.

Re paragraph 9 :

1. The rights enumerated in items (a) through (e) of this paragraph are guaranteed to all persons on trial in Japanese courts by the provisions of the Japanese Constitution. In addition to these rights, a member of the United Nations forces or of the civilian components thereof, or a dependent who is prosecuted under the jurisdiction of Japan shall have such other rights as are guaranteed under the laws of Japan to all persons on trial in Japanese courts. Such additional rights include the following which are guaranteed under the Japanese Constitution :—

(a) He shall not be arrested or detained without being at once informed of the charge against him or without the immediate privilege of counsel ; nor shall he be detained without adequate cause ; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.

- (b) He shall enjoy the right to a public trial by an impartial tribunal.
- (c) He shall not be compelled to testify against himself.
- (d) He shall be permitted full opportunity to examine all witnesses.
- (e) No cruel punishments shall be imposed upon him.

2. The authorities of the sending State shall have the right upon request to have access at any time to members of the force of that State or of the civilian component, or their dependents who are confined or detained under Japanese authority.

3. Nothing in the provisions of paragraph 9 (g) concerning the presence of a representative of the Government of the sending State at the trial of a member of the force of that State or of the civilian component thereof, or a dependent prosecuted under the jurisdiction of Japan, shall be so construed as to prejudice the provisions of the Japanese Constitution with respect to public trials.

Re paragraphs 10 (a) and 10 (b) :

1. The military authorities of the United Nations forces will normally make all arrests within facilities in use by and guarded under the authority of the United Nations forces. This shall not preclude the Japanese authorities from making arrests within facilities in cases where the competent authorities of the United Nations 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 Japanese authorities and who are not subject to the jurisdiction of the United Nations forces are within facilities in use by the United Nations forces, the military authorities of the United Nations forces will undertake, upon request, to arrest such persons. All persons arrested by the military authorities of the United Nations forces, who are not subject to the jurisdiction of the United Nations forces, shall immediately be turned over to the Japanese authorities.

The military authorities of the United Nations forces may, under due process of law, arrest in the vicinity of a facility any person in the commission or attempted commission of an offence against the security of that facility. Any such person not subject to the jurisdiction of the United Nations forces shall immediately be turned over to the Japanese authorities.

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

Where search, seizure, or inspection with respect to persons or property within facilities in use by the United Nations forces or with respect to property of the United Nations forces in Japan is desired by the Japanese authorities, the military authorities of the United Nations forces will undertake, upon request, to make such search, seizure, or inspection. In the event of a judgment concerning such property, except property owned or utilised by the Government of a sending State or its instrumentalities, the

authorities of the sending State concerned will turn over such property to the Japanese authorities for disposition in accordance with the judgment.

Re application of this article :

The provisions of this Article shall not apply to any offences committed before the coming into effect of this article.

Re implementation of this article :

The implementation of this article and these minutes shall be similar to the implementation of the Protocol and the Agreed Official Minutes of September 29, 1953, between the Governments of Japan and the United States of America.

Minister for Foreign Affairs of Japan :

Katsuo OKAZAKI

Minister of Justice of Japan :

Takeru INUKAI

Ambassador Extraordinary and Plenipotentiary of the
United States of America to Japan :

John M. ALLISON

Ambassador Extraordinary and Plenipotentiary of the
Commonwealth of Australia to Japan :

E. Ronald WALKER

Ambassador Extraordinary and Plenipotentiary of Canada to Japan :

R. W. MAYHEW

Chargé d'Affaires *en pied* of New Zealand to Japan :

R. L. G. CHALLIS

Ambassador Extraordinary and Plenipotentiary of the
United Kingdom of Great Britain and Northern Ireland to Japan:

Esler DENING
