

## JURISDICTION OVER CRIMINAL OFFENSES COMMITTED BY ARMED FORCES

*Exchanges of notes at New Delhi September 29 and October 10, 1942;  
Indian ordinance published October 26, 1942  
Entered into force October 26, 1942  
Obsolete*

58 Stat. 1199; Executive Agreement Series 392

### EXCHANGES OF NOTES

*The Secretary to the Government of India in the External Affairs Department to the Secretary in Charge of the Office of the Personal Representative of the President of the United States of America to India*

NEW DELHI, *the 29th September 1942*

SIR,

I enclose a copy of the United States of America (Visiting Forces) Act, 1942 which has recently been enacted in the United Kingdom. The military authorities of the United States of America in India have long been anxious that similar legislation should be enacted in India, which is not included in the territories to which the United Kingdom Act can be applied by Order in Council under section 3 thereof. A draft Ordinance, of which a copy is enclosed <sup>1</sup> has been prepared with a view to give effect to their wishes.

2. You will observe that the United Kingdom Act is expressed to give effect to the Agreement recorded in the Notes exchanged between His Majesty's Government in the United Kingdom and the Government of the United States of America,<sup>2</sup> and that those Notes are set out in a Schedule to the Act. It is felt that the Indian Ordinance should in like manner give effect to an Agreement in the like sense between the Government of India and the Government of the United States of America, and I would propose for your consideration that this letter read with your reply thereto be regarded as constituting an Agreement between the two Governments to the

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<sup>1</sup> Not printed here.

<sup>2</sup> Exchange of notes at London July 27, 1942 (EAS 355, *post*, UNITED KINGDOM).

arrangements and understandings *mutatis mutandis* set out in the Note addressed by Mr. Anthony Eden to the American Ambassador in London.

I have the honour to be, Sir,

Your most obedient servant,

H. WEIGHTMAN

*Secretary to the Government of India*

S. P. 28/9

UNITED STATES OF AMERICA (VISITING FORCES) ACT, 1942

CHAPTER 31

An act to give effect to an agreement recorded in Notes exchanged between His Majesty's Government in the United Kingdom and the Government of the United States of America, relating to jurisdiction over members of the military and naval forces of the United States of America.

[6th August 1942.]

WHEREAS His Majesty, in exercise of the powers conferred on Him by subsection (3) of section one of the Allied Forces Act, 1940, and of all other powers enabling Him in that behalf, has been pleased, by Order in Council, to make provision defining the relationship of the authorities and courts of the United Kingdom to the military and naval forces of the United States of America who are or may hereafter be present in the United Kingdom or on board any of His Majesty's ships or aircraft, and facilitating the exercise in the United Kingdom or on board any such ship or aircraft of the jurisdiction conferred on the service courts and authorities of the United States of America by the law of that country:

3 & 4 Geo. 6.  
c. 51.

And whereas the Notes relating to jurisdiction over members of the said forces set out in the Schedule to this Act have been exchanged between His Majesty's Government in the United Kingdom and the Government of the United States of America:

And whereas it is expedient to give effect to the agreement recorded by the said Notes:

Now, therefore, be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Criminal proceedings in courts of the United Kingdom not to be taken against members of forces of the United States of America.

1.—(1) Subject as hereinafter provided, no criminal proceedings shall be prosecuted in the United Kingdom before any court of the United Kingdom against a member of the military or naval forces of the United States of America :

Provided that upon representations made to him on behalf of the Government of the United States of America with respect to any particular case, a Secretary of State may by order direct that the provisions of this subsection shall not apply in that case.

(2) The foregoing subsection shall not affect any powers of arrest, search, entry, or custody, exercisable under British law with respect to offences committed or believed to have been committed against that law, but where a person against whom proceedings cannot, by virtue of that subsection, be prosecuted before a court of the United Kingdom is in the custody of any authority of the United Kingdom, he shall, in accordance with such general or special directions as may be given by or under the authority of a Secretary of State, the Admiralty, or the Minister for Home Affairs in Northern Ireland, for the purpose of giving effect to any arrangements made by His Majesty's Government in the United Kingdom with the Government of the United States of America, be delivered into the custody of such authority of the United States of America as may be provided by the directions, being an authority appearing to the Secretary of State, the Admiralty, or the Minister, as the case may be, to be appropriate having regard to the provisions of any Order in Council for the time being in force under the Act hereinbefore recited and of any orders made thereunder.

(3) Nothing in this Act shall render any person subject to any liability whether civil or criminal in respect of anything done by him to any member of the said forces in good faith and without knowledge that he was a member of those forces.

Membership of forces of the United States of America.

2.—(1) For the purposes of this Act and of the Allied Forces Act, 1940, in its application to the military and naval forces of the United States of America, all persons who are by the law of the United States of America for the time being subject to the military or naval law of that country shall be deemed to be members of the said forces :

Provided that no person employed in connection with the said forces, not being a citizen or national of the United States of America, shall be deemed to be a member of those forces unless he entered into that employment outside the United Kingdom.

(2) For the purposes of any proceedings in any court of the United Kingdom, a certificate issued by or on behalf of such

authority as may be appointed for the purpose by the Government of the United States of America stating that a person of the name and description specified in the certificate is, or was at a time so specified, subject to the military or naval law of the United States of America, shall be conclusive evidence of that fact.

(3) For the purposes of any proceedings in any court of the United Kingdom in which the question is raised whether a party to the proceedings is, or was at any time, a member of the military or naval forces of the United States of America, any such certificate as aforesaid relating to a person bearing the name in which that party is charged or appears in the proceedings shall, unless the contrary is proved, be deemed to relate to that party.

(4) Any document purporting to be a certificate issued for the purposes of this section, and to be signed by or on behalf of an authority described as appointed by the Government of the United States of America for the purposes of this section, shall be received in evidence, and shall, unless the contrary is proved, be deemed to be a certificate issued by or on behalf of an authority so appointed.

3.—(1) His Majesty may by Order in Council direct that the foregoing provisions of this Act shall, subject to such adaptations and modifications as may be specified in the Order, have effect in any colony or in any British protectorate or in any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom, in like manner as they have effect in the United Kingdom. Application of Act to colonies.

(2) An Order in Council under this section may be revoked or varied by a subsequent Order in Council.

4. This Act may be cited as the United States of America Short title.  
(Visiting Forces) Act, 1942.

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*The Secretary in Charge of the Office of the Personal Representative of the President of the United States of America to India to the Secretary to the Government of India in the External Affairs Department*

NEW DELHI  
October 10, 1942

710/820-Dept/jog  
No. 50

SIR:

I have the honor to refer to your note of September 29, 1942 indicating that the Government of India is prepared to enter into an agreement with the Government of the United States giving the American Military authori-

ties in India exclusive jurisdiction over criminal offenses which may be committed in India by members of the American Forces; and to make the agreement effective by an ordinance, a proposed draft of which was attached to the note.

The Government of the United States agrees that your note and this reply shall constitute an agreement between the two Governments to the arrangements and understandings *mutatis mutandi* set out in the note of July 27, 1942 addressed by Mr. Anthony Eden to the Ambassador of the United States in London which was included in a schedule to the United States of America (Visiting Forces) Act 1942, 5 and 6 GEO. 6, Chapter 31.

It is understood that the agreement shall be in force from the date on which the proposed ordinance of the Government of India takes effect.

I have the honor to be, Sir,  
Your obedient servant,

NORRIS S. HASELTON  
*Secretary in Charge*

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*The Secretary in Charge of the Office of the Personal Representative of the President of the United States of America to India to the Secretary to the Government of India in the External Affairs Department*

710/820-NSH/jog

OCTOBER 10, 1942

DEAR MR. WEIGHTMAN:

I have sent you under separate cover this morning the formal agreement of the Government of the United States to the proposals contained in your note No. 8491-X/42 of September 29, whereby the American military authorities in India would be given exclusive jurisdiction over criminal offences which may be committed in India by members of those Forces.

I should be glad to know for the information of my Government whether the proposed ordinance would have any application in Indian States. If it will not apply, can you give me an idea as to the status of American troops who might conceivably become involved in incidents of one sort or another in a native state. As you know, American military personnel are in some cases stationed in native states and there is always the possibility that troops might have to enter or pass through these states in the performance of their duty. Any clarification of these points which you may be able to give me would be much appreciated.

Sincerely yours,

NORRIS S. HASELTON  
*Secretary in Charge*

HUGH WEIGHTMAN, Esquire, C. I. E.,  
*Secretary to the Government of India  
in the External Affairs Department,  
New Delhi.*

*The Secretary to the Government of India in the External Affairs Department to the Secretary in Charge of the Office of the Personal Representative of the President of the United States of America to India*

NEW DELHI,  
*The 16th Octr., 1942*

D. O. No : 9042-X/42

DEAR MR. HASELTON :

Will you please refer to your D.O. letter No. 710/820, dated the 10th October, 1942, enquiring whether the proposed Allied Forces (U.S.A.) Ordinance would have application in the Indian States?

I am desired to say that it is intended that the Ordinance, when promulgated, should be brought to the notice of the Residents in the Indian States, who will be informed that His Excellency the Crown Representative has decided that no Criminal proceedings shall be taken in any State court against any member of the U. S. A. armed forces. For all practical purposes therefore the position will be identical in British India and in the States.

Yours sincerely,

H. WEIGHTMAN

To

NORRIS S. HASELTON, Esquire,  
*Secretary in charge of the  
Office of the Personal Representative  
of the President of the United States  
of America to India at New Delhi.*

INDIAN ORDINANCE

*Ordinance No. LVII of 1942 as published in the  
Gazette of India Extraordinary, Oct. 26, 1942*

GOVERNMENT OF INDIA  
LEGISLATIVE DEPARTMENT  
*New Delhi, the 26th October, 1942*  
ORDINANCE No. LVII OF 1942.

AN

ORDINANCE

*to make certain provisions respecting the military  
and naval forces in British India of the United  
States of America.*

WHEREAS an emergency has arisen which renders it necessary, in order to give effect to an agreement recorded in Notes exchanged between the Central Government in British India and the Gov-

ernment of the United States of America, relating to jurisdiction over members of the military and naval forces of the United States of America, to make certain provisions respecting those forces in British India;

Now, **THEREFORE**, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor<sup>26 Geo. 5, c. 2.</sup> General is pleased to make and promulgate the following Ordinance:—

Short title,  
extent and com-  
mencement.

1. (1) This Ordinance may be called the Allied Forces (United States of America) Ordinance, 1942.

(2) It extends to the whole of British India.

(3) It shall come into force at once.

Bar of criminal  
proceedings in  
British Indian  
Courts.

2. (1) Notwithstanding anything contained in section 12 of the Allied Forces Ordinance,<sup>LVI of 1942.</sup> 1942, or elsewhere in any law in force in British India, no criminal proceedings shall, subject as hereinafter provided, be prosecuted in British India before any Court of British India against a member of the military or naval forces of the United States of America:

Provided that, upon representation made to it on behalf of the Government of the United States of America in any particular case, the Central Government may by order direct that the provisions of this subsection shall not apply in that case.

(2) Nothing in sub-section (1) shall affect any powers of arrest, search, entry or custody exercisable under the law in force in British India with respect to offences committed or believed to have been committed against that law, but where a person against whom proceedings cannot, by virtue of that sub-section, be prosecuted before a Court of British India is in the custody of any authority of British India he shall, in accordance with such general or special directions as may be given by or under the authority of the Central Government for the purpose of giving effect to any arrangements made by the Central Govern-

ment with the Government of the United States of America, be delivered into the custody of such authority of the United States of America as may be provided by the directions:

Provided that the powers of arrest, search and entry saved by this sub-section shall not be exercised on or in respect of any premises occupied or used by the military or naval forces of the United States of America unless application is first made to the officer commanding the forces occupying or using such premises.

(3) Nothing contained in this Ordinance shall render any person subject to any liability whether civil or criminal in respect of anything done by him to a member of the said forces in good faith and without knowledge that he was a member of those forces.

LVI of 1942.

3. (1) For the purposes of this Ordinance and of the Allied Forces Ordinance, 1942, in its application to the military and naval forces of the United States of America, all persons who are by the law of the United States of America for the time being subject to the military or naval law of that country shall be deemed to be members of the said forces:

Member-  
ship of mili-  
tary and  
naval forces  
and proof  
thereof.

Provided that no person employed in connection with the said forces, not being a citizen or national of the United States of America, shall be deemed to be a member of those forces unless he entered into that employment outside British India.

(2) For the purposes of any proceedings in any Court of British India a certificate issued by or on behalf of such authority as may be appointed for the purpose by the Government of the United States of America stating that a person of the name and description specified in the certificate is, or was at the time so specified, subject to the military or naval law of the United States of America, shall be conclusive evidence of that fact.

(3) For the purposes of any proceedings in any Court of British India in which the question is raised whether a party to the proceedings is or was at any time a member of the military or naval

forces of the United States of America, any such certificate as aforesaid relating to a person bearing the name in which that party is charged or appeared in the proceedings shall, unless the contrary is proved, be deemed to relate to that party.

(4) Any document purporting to be a certificate issued for the purposes of this section, and to be signed by or on behalf of an authority described as appointed by the Government of the United States of America for the purposes of this section, shall be received in evidence and shall, unless the contrary is proved, be deemed to be a certificate issued by or on behalf of an authority so appointed.

LINLITHGOW

*Viceroy and Governor General*

SHAVAX A. LAL

*Secy. to the Govt. of India*