

No. 100

CHINA
and
**UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND**

Exchange of Notes (with Annex) constituting an agreement on jurisdiction over members of their respective forces present in the territory of the other party. Chungking, 7 July 1945

Chinese and English official texts communicated by the Director of the Office of the Permanent Chinese Delegation to the United Nations. The filing and recording took place on 5 April 1948.

CHINE
et
**ROYAUME-UNI DE GRANDE-BRETAGNE ET
D'IRLANDE DU NORD**

Echange de notes (accompagné d'une annexe) constituant un accord relatif à la juridiction dont relèvent les membres des forces armées de chacune des parties sur le territoire de l'autre. Tchoungking, 7 juillet 1945

Textes officiels chinois et anglais communiqués par le Directeur du bureau de la délégation permanente chinoise auprès de l'Organisation des Nations Unies. Le classement et l'inscription au répertoire ont eu lieu le 5 avril 1948.

No. 100. EXCHANGE OF NOTES CONSTITUTING A SINO-BRITISH AGREEMENT¹ ON JURISDICTION OVER MEMBERS OF THEIR RESPECTIVE FORCES PRESENT IN THE TERRITORY OF THE OTHER PARTY. CHUNGKING, 7 JULY 1945

I

*Sir Horace Seymour, British Ambassador, to Dr. K. C. Wu,
Vice-Minister for Foreign Affairs*

BRITISH EMBASSY
CHUNGKING

7th July, 1945

Sir,

His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and the Government of India are desirous of determining by agreement with the Government of the Republic of China, and on the basis of reciprocity, the question of jurisdiction over members of their respective forces when these forces are present in territory of the other party. They propose that this question should be determined in accordance with the provisions of the Annex to this present note. If in the future Chinese forces should be stationed in any territory under the authority of His Majesty's Government in the United Kingdom not covered by the provisions of the Annex to this note, His Majesty's Government will be prepared to extend the provisions of the Annex to Chinese forces stationed in any such territory.

If Your Excellency confirms on behalf of the Government of the Republic of China their acceptance of this proposal, the present note (with its Annex) and Your Excellency's note in reply shall be deemed to constitute an agreement between His Majesty's Government in the United Kingdom on their own behalf and in respect of Burma and the Government of India on the one part and the Government of the Chinese Republic on the other part.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Signed) H. J. SEYMOUR

His Excellency Dr. K. C. Wu
Vice-Minister for Foreign Affairs
Chungking

¹ Came into force on 7 July 1945, by the exchange of the said notes.

II

*Dr. K. C. Wu, Vice-Minister for Foreign Affairs, to Sir Horace Seymour,
British Ambassador*

MINISTRY OF FOREIGN AFFAIRS
CHUNGKING

7th July, 1945

Sir,

I have the honour to acknowledge receipt of Your Excellency's note of today's date reading as follows:

[See note I]

I have the honour to inform Your Excellency that I was authorized to confirm, on behalf of the Government of the Republic of China, their acceptance of the proposal as recorded in Your Excellency's note and its accompanying Annex. The present note and Your Excellency's note under reply with its Annex (a copy of which is hereto appended) shall be deemed to constitute an agreement between the Government of the Republic of China on the one part, and His Majesty's Government in the United Kingdom on their own behalf and in respect of Burma and the Government of India on the other part.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Signed) Dr. K. C. Wu

His Excellency
Sir Horace James Seymour, K.C.M.G., C.V.O.
His Majesty's Ambassador
Chungking

ANNEX

Article 1

(1) In this Agreement the expression:

(a) "Members of the British forces" means every uniformed person, holding a rank in the naval, military or air forces, maintained by the Government of the United Kingdom, the Government of India or the Government of any overseas territory, colony or territory under the protection of His Majesty The King of Great Britain, Ireland and the British Dominions beyond the seas, Emperor of India, who is, in respect of the duties which he performs in Chinese territory, under

the orders of the commander of any British naval, military or air force in China. It includes uniformed members (i) of political or civil staffs attached to the British forces, (ii) of the women's forces auxiliary to the said forces, (iii) of the nursing staffs, male and female, (iv) of the staff of the Navy, Army and Air Force Institutes, (v) of guerrilla units auxiliary to the British forces which operate under the command of a commander of the British forces and which are subject to British military law. It does not include Chinese nationals employed by or accompanying the British forces but not enlisted or commissioned in the British forces; nor does it include nationals of third powers or persons without nationality who may be recruited in China for employment with the British forces. The expression also includes members of the crews (other than Chinese nationals) of merchant ships belonging to or chartered or requisitioned by or on behalf of the Government of the United Kingdom, the Government of India, or the Government of any overseas territory, colony or territory under the protection of His Majesty The King of Great Britain, Ireland and the British Dominions beyond the seas, Emperor of India, which are operating in conjunction with the British naval authorities.

(b) "Members of the Chinese forces" means every uniformed person, holding a rank in the naval, military or air forces, maintained by the Government of the Republic of China, who is, in respect of the duties which he performs in India or Burma, under the orders of the commander of any Chinese naval, military or air force in India or Burma. It includes uniformed members (i) of political or civil staffs attached to the Chinese forces, (ii) of the women's forces auxiliary to the said forces, (iii) of the nursing staffs, male and female, (iv) of the staff of the Navy, Army and Air Forces Institutes, (v) of guerrilla units auxiliary to the Chinese forces which operate under the command of a commander of the Chinese forces and which are subject to Chinese military law. It does not include British nationals employed by or accompanying the Chinese forces but not enlisted or commissioned in the Chinese forces; nor does it include nationals of third powers or persons without nationality who may be recruited in India or Burma for employment with the Chinese forces. The expression also includes members of the crews (other than British subjects or British protected persons) of merchant ships belonging to or chartered or requisitioned by or on behalf of the Government of the Republic of China, which are operating in conjunction with the Chinese naval authorities.

(c) "Members of the forces" means "members of the British forces" or "members of the Chinese forces" as the case may be and "forces" means the British or Chinese forces as the case may be.

(d) "Service tribunals" means naval, military or air force tribunals of the force to which the person concerned belongs, exercising jurisdiction under the naval, military or air force law of that force, or as regards the members of the crews of the merchant ships referred to in Article 1 (1) (a), British Naval Courts, and, as regards the members of the crews of the merchant ships referred to in Article 1 (1) (b), the appropriate Chinese tribunal.

(e) "Service authorities" means the appropriate authorities of the British forces in China or (as the case may be) of the Chinese forces in India or Burma.

(f) "Territory" means the territory in which the members of the forces are present.

(g) "Local authorities" means the authorities (civil or military) of the territory.

(2) This agreement applies to members of the British forces present anywhere in the territories of the Republic of China and to members of the Chinese forces who are present anywhere in India or in Burma.

Article 2

(1) In all criminal matters members of the forces shall be subject to the jurisdiction of Service tribunals. The jurisdiction of the Service tribunals shall be exclusive of the jurisdiction of all other tribunals in the territory, unless, in any particular case, the senior officer present in the territory of the forces to which the accused belongs, requests or consents to the exercise of jurisdiction by some tribunal of the territory. This request or consent shall be given in writing and addressed direct to the local authorities who have been designated as competent for this purpose by the Government or administration of the territory in question.

(2) Where a case, which is of legitimate interest to the local authorities because it arises out of injury to a local inhabitant or local property or for some other reason, is submitted to a Service tribunal, the local authorities may request the Service authorities to inform them of the progress of the case, and, when the case is concluded, to supply a copy of the text of the judgment of the tribunal.

Article 3

(1) Save as provided in paragraphs (2) and (3) of this Article, a member of the forces may only be arrested, searched or detained in custody by his Service

authorities. Only the Service authorities shall have the right to enter or search any premises which are occupied exclusively by the forces as a camp, barracks, offices, stores, warehouses, or residence.

(2) A member of the forces may be arrested by the local authorities when such arrest is necessary in order to maintain public order. In this case the arrested person will be immediately handed over to the Service authorities. In any case where there is any doubt whether an arrested person is a member of the forces, a certificate signed by an officer of or above the rank of Major in the Military forces and of or above the rank in the Naval and Air forces which corresponds to that of Major shall be accepted by the local authorities as conclusive.

(3) The local authorities shall, on request from the Service authorities, search for members of the forces alleged to have committed offences, and if they are found, shall arrest them and hand them over to the Service authorities.

Article 4

The Service authorities will investigate and deal appropriately with any alleged criminal offences committed by members of the forces which may be brought to their notice by the competent local authorities or which the Service authorities may find to have taken place. The Service tribunals will try and, on conviction, punish all criminal offences which members of the forces may be alleged on sufficient evidence to have committed in the territory.

Article 5

The trial of any member of the forces for an offence against a member of the civilian population of the territory will be conducted in open court (except where security considerations forbid this) and will be arranged to take place promptly in the territory and within a reasonable distance from the spot where the offence was alleged to have been committed, so that witnesses shall not be required to travel great distances to attend the hearing.

Article 6

The Service authorities and the local authorities will collaborate to provide satisfactory machinery for such mutual assistance as may be required in making investigations and collecting evidence in respect of offences which members of the forces are alleged to have committed or in which they are alleged to be concerned. In general such preliminary action will be taken by the local authorities on behalf of the Service authorities where witnesses, or other persons from whom it is desired to have statements, are not members of the forces. Conversely, the Service authorities will assist in connexion with the prosecution before the courts of the territory

of persons who are not members of the forces, where the evidence of any member of these forces is required or where the assistance of the Service authorities in the investigation of the case (including the taking of statements from members of the forces) may be needed.

Article 7

(1) Any claim for reparation on account of damage or injury caused or alleged to have been caused in the territory by members of the forces shall be referred in the first instance to the Service authorities, who, in the event of a settlement not being reached, will consult with the local authorities.

(2) If any claim for reparation cannot be settled between the local and Service authorities, the claim may be taken up through the diplomatic channel.

(3) The preceding paragraphs of this Article do not apply to damage or injury caused by "acts of war" (that is to say, by acts done in the zone of military operations which are part of offensive or defensive operations against the enemy) which shall form the subject of future discussion between the Governments parties to the present Agreement.

(4) As soon as the present Agreement comes into force, the competent British and Chinese authorities will discuss and determine the detailed arrangements necessary for examining and disposing of claims in accordance with paragraph 1 of this Article.

Article 8

The local authorities will investigate and deal appropriately with any alleged criminal offences, committed by persons in the territory against members of the forces, or the property of the forces or the security of the forces, which may be brought to their notice by the Service authorities or which the local authorities may find to have taken place. If sufficient evidence is produced against any person accused of any such offence committed in the territory, the local authorities will cause him to be arrested, tried, and, on conviction, punished in the same manner as if such offence had been committed against the members, the property or the security of forces maintained by the Government of the territory. The Service authorities shall be informed by the local authorities of the results of all action taken by the latter under this Article.

Article 9

(1) The present agreement shall come into force immediately as from this day's date.

(2) The present Agreement shall remain in force until it is terminated by a notice of termination given to the Chinese Government by His Majesty's Ambassador in China jointly on behalf of the Government of the United Kingdom and the Government of India, or given to His Majesty's Ambassador in China by the Chinese Government. Notice of termination shall not be given prior to the termination of hostilities with Japan or to their suspension by a general armistice. Any notice of termination so given shall take effect six months after the date upon which it is given.
