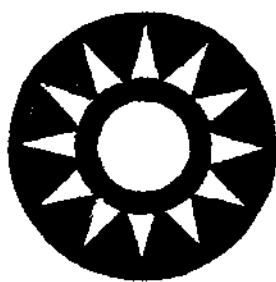


白皮書第八十二號（三十七年一月）



中英關於駐在彼此領土內之軍隊人員管轄權問題換文

（中華民國三十四年七月七日生效）

中華民國國民政府外交部編印

中英關於駐在彼此領土內之軍隊人員管轄權問題換文

(一) 英大使致吳次長照會

逕啓者英王陛下之人不列顛與北愛爾蘭聯合王國政府及印度政府願與中華民國政府基於相互原則協同決定駐在彼此領土內之軍隊人員管轄權問題並建議此項問題應依照本照會附件之規定決定之倘將來中國軍隊駐在英王陛下之聯合王國政府管轄下之任何領土而該領土不在本照會附件所規定之範圍內者英王陛下政府準備將附件中之規定推廣適用於駐在任何此等領土內之中國軍隊如荷

閣下以中華民國政府名義證實中華民國政府接受此項建議本照會（及其附件）與

閣下覆照即認為構成英王陛下聯合王國政府代表其本國及緬甸暨印度政府與中華民國政府間之協定

本大使順向

貴代部長重表敬意

此致

中華民國外交部政務次長代理部務吳閣下

西曆一千九百四十五年七月七日

薛 穆

頃准

(二) 吳次長覆英大使照會

貴大使本日照會內開：

「英王陛下之大不列顛與北愛爾蘭聯合王國政府及印度政府願與中華民國政府基於相互原則協同決定駐在彼此領土內之軍隊人員管轄權問題並建議此項問題應依照本照會附件之規定決定之倘將來中國軍隊駐在英王陛下之聯合王國政府管轄下之任何領土而該領土不在本照會附件所規定之範圍內者英王陛下政府準備將附件中之規定推廣適用於駐在任何此等領土內之中國軍隊如荷

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閣下覆照即認為構成英王陛下聯合王國政府代表其本國及緬甸暨印度政府與中華民國政府間之協定」

等由本次長茲奉命代表中華民國政府接受

貴大使之照會及其附件所記錄之建議本照會與

貴大使來照及其附件（該附件抄附於後）即認為構成中華民國政府與英王陛下聯合王國政府代表其本國及緬甸暨印度政府間之協定

本政務次長代理部務順向

貴大使重表敬意

此致

英王陛下欽命駐中華民國全權大使薛穆爵士閣下

中華民國三十四年七月七日

吳國楨（簽字）

附件

第一條

(一) 在本協定中所謂

(甲) 「英國軍隊人員」係指身着制服在聯合王國政府印度政府或任何海外屬地殖民地或受大不列顛愛爾蘭及英國海外諸領地君主兼印度皇帝陛下保護之領土之政府所維持之海陸空軍中居有級位並關於其在中國領土內執行之職務係屬英國駐華任何海陸空軍司令官指揮之人員而言此項人員包括身着制服之(1)附屬於英軍之政治或文職人員(2)輔助英軍之婦女隊人員(3)男女看護人員(4)海陸空軍慰勞組織之人員(5)在任何英軍司令官指揮下作戰並服從英國軍法輔助英軍之游擊隊此項人員並不包括英軍所僱用或隨從英軍但非編入英軍或受英軍委任之中國人民亦不包括英軍在中國招僱之第三國人民或無國籍人民上稱「英國軍隊人員」並包括與英國海軍當局協同作戰屬於聯合王國政府印度政府或任何海外屬地殖民地或受大不列顛愛爾蘭及英國海外諸領地君主兼印度皇帝陛下保護之領土之政府或被各該政府所租用或徵發或為各該政府而租用或徵發之商船上之船員(中國人民除外)

(乙) 「中國軍隊人員」係指身着制服在中華民國政府所維持之海陸空軍中居有級位並關於其在印度或緬甸執行之

職務係屬中國駐印或駐緬任何海陸空軍司令官指揮之人員而言此項人員包括身着制服之(1)附屬於中國軍隊之政治或文職人員(2)輔助中國軍隊之婦女隊人員(3)男女看護人員(4)海陸空軍慰勞組織之人員(5)在任何中國軍隊司令官指揮下作戰并服從中國軍法輔助中國軍隊之游擊隊此項人員並不包括中國軍隊所僱用或隨從中國軍隊但非編入中國軍隊或受中國軍隊委任之英籍人民亦不包括中國軍隊在印度或緬甸招僱之第三國人民或無國籍人民上稱「中國軍隊人員」並包括與中國海軍當局協同作戰屬於中華民國政府或被該政府所租用或徵發或爲該政府而租用或徵發之商船上之船員(英籍臣民或受英國保護之人民除外)

(丙)「軍隊人員」係分別指「英國軍隊人員」或「中國軍隊人員」而言「軍隊」係分別指英國或中國軍隊而言

(丁)「軍事法庭」係指各有關之人員所隸屬軍隊之海陸空軍軍事法庭而該法庭係依據各該軍隊海陸空軍軍法行使管轄權者其關於第一條(一)款甲項中所達之商船上之船員者係指英國海事法庭其關於第一條(一)款乙項中所達之商船上之船員者係指適當之中國法庭

(戊)「軍事當局」係分別指英國軍隊在中國之該管當局或中國軍隊在印度或緬甸之該管當局

(己)「領土」係指軍隊人員所駐在之領土

(庚)「地方當局」係指當地之(民事或軍事)當局

(二)本協定適用於駐在中華民國領土內任何地方之英國軍隊人員及駐在印度或緬甸任何地方之中國軍隊人員

第二條

(一)關於一切刑事案件軍隊人員應受軍事法庭之管轄除遇特殊案件經被告所屬軍隊在駐在地之最高軍官請求或同意當地法庭行使管轄權者外軍事法庭之管轄權應排除當地其他一切法庭之管轄權上項請求或同意應以書而爲之並應直接致達於該駐在地之政府或行政機關爲此目的而指派之適當地方當局

(二)如由於損害當地居民或當地財產或其他理由所發生而地方當局對之有正當利害關係之案件提交軍事法庭時地方當局得請求軍事當局告知該案之進行情形並於案件終結時將法庭之判決書抄送一份

第三條

(一)除本條第二款及第三款另有規定外軍隊人員僅得由其軍事當局予以逮捕搜查或拘禁僅軍事當局有權進入或搜查專爲軍隊佔用作爲營地兵房辦公室儲藏室倉庫或住宅之任何房地

(二)爲維持公共秩序所必要時軍隊人員得由地方當局逮捕之遇此情形應將被逮捕人立即移送於軍事當局如被逮捕人是否爲軍隊人員發生疑問時地方當局應接受該軍隊之陸軍少校官級或陸軍少校官級以上之軍官或相當於陸軍少校官級或陸軍少校官級以上之海空軍軍官簽字之證明書作爲確定

(三)地方當局經軍事當局之請求應偵緝被控犯罪之軍隊人員如經查獲應予以逮捕並移送於軍事當局

第四條

軍事當局對於軍隊人員之被控犯罪者經地方主管當局之通知或自行發覺時均應予以偵查並作適當之處理軍事法庭對於被控在駐在地犯罪事而有充分證據之軍隊人員應予審理如判定有罪並應加以懲處

第五條

任何軍隊人員如對駐在地平民有犯罪行為(除爲安全起見不能公開外)應公開審理並設法在駐在地離被控犯罪地點適當距離之內迅速舉行務使證人等不須經涉長途參加審訊

第六條

軍事當局與地方當局應合作設置妥善機構俾於軍隊人員被控犯罪或與罪案有關時對於偵查案情及搜集證據作必要之互助如證人或擬向其探證之其他人等非爲軍隊人員時地方當局通常應代軍事當局採取此項初步措置反之如在駐在地法庭被控犯罪者非爲軍隊人員而需要向任何軍隊人員探證或爲偵查案情(包括向軍隊人員取得證言在內)需要軍事當局之協助時軍事當局應予協助

第七條

(一) 軍隊人員在駐在地所爲或被控所爲之損害或傷害之任何賠償要求應先向軍事當局提出如不能解決時軍事當局應與地方當局磋商辦理

(二) 如任何賠償要求軍事當局與地方當局不能解決時得由外交途徑辦理之

(三) 本條前兩款不適用於因「作戰行爲」而發生之損害或傷害（即指在軍事行動區域中所作之行爲而此軍事行動係屬對敵攻守行動之一部者）此項損害或傷害應爲此協定之雙方政府將來討論之問題

(四) 本協定一經生效英國與中國之主管當局應即商討並決定依本條第一款審查與處置賠償要求時所必需之詳細辦法

第八條

地方當局對於所在地人民被控對軍隊人員或軍隊之財產或安全犯罪者經軍事當局之通知或自行發覺時均應予以偵查並作適當之處理地方當局對於被控在所在地犯有此項罪案之人民如經提出充分證據時應予逮捕審理如判定有罪時並應加以懲處此項懲處應與對駐在地政府所維持之軍隊人員財產或安全犯同樣罪案者相同地方當局應將依照本條規定所爲一切措置之結果通知軍事當局

第九條

(一) 本協定應自本日起立即發生效力

(二) 本協定繼續有效以迄英王陛下駐華大使代表聯合王國政府及印度政府向中國政府通知廢止或中國政府向英王陛下駐華大使通知廢止時爲止此項廢止之通知不得於對日戰事結束前或因普遍停戰協定而對日停戰前爲之上述任何廢止之通知應自通知之日起滿六個月後生效

SINO-BRITISH AGREEMENT ON JURISDICTION
OVER MEMBERS OF THEIR RESPECTIVE
FORCES PRESENT IN THE TERRITORY
OF THE OTHER PARTY

EXCHANGE OF NOTES

(I) NOTE FROM 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.

(II) NOTE FROM DR. K. C. WU, VICE-MINISTER
FOR FOREIGN AFFAIRS, TO SIR HORACE
SEYMOUR, BRITISH AMBASSADOR.

MINISTRY OF FOREIGN AFFAIRS,
CHUNGKING. July 7, 1945.

Sir,

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

"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 have the honour to inform Your Excellency that

I am 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.

K. C. WU

His Excellency,
Sir Horace James Seymour,
His Majesty's Ambassador,
CHUNGKING.

A N N E X

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 guerilla 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 Force Institutes, (v) of guerilla 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,