

CONSULAR RELATIONS

Agreement Between the
UNITED STATES OF AMERICA
and the PEOPLE'S REPUBLIC OF CHINA

Signed at Beijing March 25, 1997



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

PEOPLE'S REPUBLIC OF CHINA

Consular Relations

*Agreement signed at Beijing March 25, 1997;
Entered into force July 1, 1997.*

**Agreement Between
the Government of the United States of America
and the Government of the
People's Republic of China Regarding the
Maintenance of the United States Consulate General
in the Hong Kong Special Administrative Region**

The Government of the United States of America and the Government of the People's Republic of China, in accordance with Article 157 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Section XI of Annex I of the Joint Declaration of Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong, hereby agree as follows:

1. The Government of the People's Republic of China agrees to the maintenance by the Government of the United States of America of its Consulate General in the Hong Kong Special Administrative Region of the People's Republic of China, the consular district of which shall be the Hong Kong Special Administrative Region.

2. The Government of the People's Republic of China takes note of the consular function which the Consulate General of the United States in Hong Kong performs in Macau, and agrees to the continuation of this function after the Government of the People's Republic of China resumes the exercise of sovereignty over Macau with effect from December 20, 1999.

3. In accordance with Article 73 of the Vienna Convention on Consular Relations,¹ the Consulate General of the United States of America in the Hong Kong Special Administrative Region of the People's Republic of China shall be subject to the following provisions:

(a) The residences of consular officers of the sending State shall enjoy the same inviolability, protection, and immunity from requisition or expropriation as the consular premises of the sending State. If for the needs of the national defense or other public purposes expropriation of consular residences becomes necessary, all possible measures must be taken by the receiving State to avoid interference with the performance of consular functions and promptly to pay appropriate and effective compensation to the sending State.

(b) The exemption from taxes applicable to the premises of the consulate shall extend to the residences of members of the consulate who are not nationals

¹ TIAS 6820; 21 UST 77.

or residents of the receiving State, as well as to any taxes that may be imposed in connection with transactions or documents relating to such residences, but this exemption shall not apply to payment for specific services rendered and to dues and taxes if under the law of the receiving State they are payable by a person contracting with the sending State or with a person acting on behalf of the sending State.

(c) With the assistance of the receiving State, where necessary, the sending State or its representative shall be entitled to purchase, lease, or otherwise acquire consular premises and residences, and to construct or improve such facilities, subject to relevant laws of the receiving State, including the law relating to land, construction, zoning and town planning.

(d) (1) A consulate shall be entitled to exchange communications with its government, with diplomatic missions of the sending State and with other consulates of the sending State, wherever situated. For this purpose, the consulate may employ all ordinary means of communication, including diplomatic and consular couriers, diplomatic and consular bags and codes and ciphers. The consulate may install and use a wireless transmitter only with the prior consent of the receiving State;

(2) The official correspondence of a consulate, regardless of the means of communication employed, as well as sealed consular bags and other containers, provided they bear visible external marks of their official character, shall be inviolable. They may contain nothing other than official correspondence and articles intended exclusively for official use;

(3) The authorities of the receiving State shall neither open nor detain the official correspondence of a consulate, including consular bags and other containers, as described in sub-paragraph (2) of this section;

(4) The consular couriers of the sending State shall enjoy in the territory of the receiving State the same rights, privileges and immunities enjoyed by diplomatic couriers of the sending state;

(5) If a master of a vessel or captain of a civil aircraft of the sending State is charged with an official consular bag, the master or captain shall be provided with an official document showing the number of containers forming the consular bag entrusted to him; he shall not, however, be considered to be a consular courier. By arrangements with the appropriate authorities of the receiving State, and in compliance with the safety regulations of the receiving State, the sending State may send a member of the consulate to take possession of the consular bag directly and freely from the master of the vessel or captain of the aircraft or to deliver such bag to him.

(e) (1) Members of the consulate and their family members shall be immune from the criminal jurisdiction of the receiving State;

(2) Members of the consulate and their family members shall be immune from the civil and administrative jurisdiction of the receiving State respecting any act performed by them in the exercise of consular functions;

(3) The provisions of sub-paragraph (2) of this section shall not apply to civil procedures:

(a) resulting from contracts that were not concluded by a member of the consulate on behalf of the sending State;

(b) relating to succession in which a member of the consulate was involved as executor, administrator, heir or legatee in a private capacity;

(c) concerning a claim by a third party for damage caused by a vessel, vehicle, or aircraft;

(d) concerning private immovable property in the jurisdiction of the receiving State, unless the member of the consulate is holding it on behalf of the sending State for the purposes of the consulate;

(e) relating to any private professional or commercial activities engaged in by a member of the consulate in the receiving State outside of his official functions.

(4) No measures of execution shall be taken against any of the persons mentioned in this section, except in the cases under sub-paragraph (3)(d) of this section, and then under the condition that these measures shall not infringe upon the inviolability of their person or residence;

(5) Members of the consulate and their family members may be called upon to attend as witnesses in the course of judicial or administrative proceedings. In the event of the refusal of a consular officer or a member of the officer's family to give evidence, no coercive measure or penalty may be applied to such person. Consular employees and members of their families may not decline to give evidence except with respect to matters mentioned in sub-paragraph (6) of this section;

(6) Members of the consulate are under no obligation to give evidence concerning matters relating to the exercise of their official functions or to produce official correspondence or documents. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State;

(7) In taking testimony of members of the consulate, the authorities of the receiving State shall take all appropriate measures to avoid hindering the performance of their official consular duties. Upon the request of the head of the consulate, such testimony may, when possible, be given orally or in writing at the consulate or at the residence of the person concerned;

(8) Members of the consulate and their families who are nationals or permanent residents of the receiving State shall not enjoy the above-mentioned privileges and immunities except in respect of any act performed by them in the exercise of consular functions.

(f) (1) A consular officer shall be entitled, in his consular district, to communicate and meet with any national of the sending State, and, when necessary, to arrange for legal assistance and an interpreter. The receiving State shall in no way restrict access between a consular officer and a national of the sending State;

(2) If a national of the sending State is arrested or placed under any form of detention within the consular district, the competent authorities of the receiving State shall immediately, but no later than within four days from the date of arrest or detention, notify the consulate of the sending State. If it is not possible to notify the consulate of the sending State within four days because of communications difficulties, they should try to provide notification as soon as possible. Upon the request of a consular officer, he shall be informed of the reasons for which said national has been arrested or detained in any manner;

(3) The competent authorities of the receiving State shall immediately inform the national of the sending State of the rights accorded to him by this section to communicate with a consular officer;

(4) A consular officer shall be entitled to visit a national of the sending State who has been arrested or placed under any form of detention, including such national who is in prison pursuant to a judgment, to converse and to exchange correspondence with him in the language of the sending State or the receiving State, and may assist in arranging for legal representation and an interpreter. These visits shall take place as soon as possible, but, at the latest, shall not be refused after two days from the date on which the competent authorities notified the consulate that said national had been placed under any form of detention. The visits may be made on a recurring basis. No longer than one month shall be allowed to pass in between visits requested by the consular officer;

(5) In the case of a trial of, or other legal proceeding against, a national of the sending State in the receiving State, the appropriate authorities shall, at

the request of a consular officer, inform such officer of the charges against such national. A consular officer shall be permitted to attend the trial or other legal proceedings;

(6) A consular officer is entitled to provide to a national to whom the provisions of this section apply parcels containing food, clothing, medicaments and reading and writing materials;

(7) A consular officer of the sending State may request the assistance of the authorities of the receiving State in ascertaining the whereabouts of a national of the sending State. The authorities of the receiving State shall do everything possible to provide all relevant and available information;

(8) The rights contained in this section shall be exercised in accordance with the law of the receiving State. Nevertheless, such law shall be applied so as to give full effect to the purposes for which these rights are intended.

(g)(1) All Chinese nationals of the Hong Kong Special Administrative Region entering the United States on the basis of travel documents of the Hong Kong Special Administrative Region of the People's Republic of China will, during the period for which their status has been accorded on a limited basis by visa or lawful visa-free entry, be considered Chinese nationals by the appropriate authorities of the United States for the purpose of ensuring consular access and protection by the People's Republic of China.

(2) All nationals of the United States entering the Hong Kong Special Administrative Region on the basis of travel documents of the United States will, during the period for which their status has been accorded on a limited basis by visa or lawful visa-free entry, be considered nationals of the United States by the appropriate authorities of the People's Republic of China (including those of the HKSAR) for the purpose of ensuring consular access and protection by the United States;

4. The matters that are not referred to in this Agreement shall be regulated by the Vienna Convention on Consular Relations.

5. The present Agreement shall enter into force on July 1, 1997.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done in Beijing on March 25, 1997 in duplicate in the English and Chinese languages, both texts being equally authentic.

James R. Sasser
For the Government of the
United States of America

[Signature]
For the Government of the
People's Republic of China

美利坚合众国政府与 中华人民共和国政府关于在香港 特别行政区保留美国总领事馆的协定

美利坚合众国政府和中华人民共和国政府,根据《中华人民共和国香港特别行政区基本法》第一百五十七条以及《中华人民共和国政府和大不列颠及北爱尔兰联合王国政府关于香港问题的联合声明》附件一第十一部分,议定下列各条:

一、中华人民共和国政府同意美利坚合众国政府在中华人民共和国香港特别行政区保留总领事馆,领区为香港特别行政区。

二、中华人民共和国政府注意到美国驻香港总领事馆在澳门执行领事职务的情况,并同意美国驻香港总领事馆自一九九九年十二月二十日中华人民共和国政府对澳门恢复行使主权之日起继续执行该职务。

三、根据《维也纳领事关系公约》第七十三条,美利坚合众国驻中华人民共和国香港特别行政区总领事馆须遵守下列规定:

(一)派遣国领事官员住宅应享有与派遣国领馆馆舍同

等不得侵犯、受到保护及免于征用的权利。如果为了国防或其他公共用途而必须征用领馆住宅时,接受国应采取一切可能的措施避免妨碍领事职务的执行,并及时向派遣国付出适当的和有效的补偿。

(二)适用于领馆馆舍的免税应延及非为接受国国民或居民的领馆成员的住宅,以及与上述住宅有关的交易或契据之征税。但此项免税不适用于对特定服务的付款,以及按照接受国的法律,一个同派遣国或代表派遣国行事的人订立合同的人应缴纳的捐税。

(三)派遣国或其代表,必要时经接受国协助,应有权购置、租用或获得领馆馆舍和住宅,以及对此类设施进行建筑或修缮,但应遵守接受国有关地皮、建筑、分区和城市规划的法律。

(四)1、领事馆有权同它的政府,以及派遣国在其他任何地方的使馆和领事馆进行通讯。为此目的,领事馆得使用一切普通的通讯办法,包括外交信使和领事信使、外交邮袋和领事邮袋以及密码。领事馆须得到接受国事先同意才能安装和使用无线电发报机;

2、领馆的公务函电,不论使用何种通讯方法,以及加封的领事邮袋和其他容器,只要它们附有标明官方性质的可见外部标志,均不得侵犯,但不得装有公务函电和纯为公务

使用的物品以外的任何东西；

3、领馆的公务函电，包括领事邮袋和其他容器，如本款第2项所述，接受国当局不得开拆或扣留；

4、派遣国的领事信使在接受国境内享有同派遣国外交信使相同的权利、特权与豁免；

5、如果派遣国的船长或民用飞机的机长受托携带官方领事邮袋，该船长或机长应持有官方文件说明他受托携带的构成领事邮袋的容器数目，但是他不被认为是领事信使。经过接受国有关局的安排并遵守接受国的安全规章，派遣国得派领馆成员直接并自由地与该船长或机长接交领事邮袋。

(五)1、领馆成员及其家庭成员免受接受国的刑事管辖；

2、领馆成员及其家庭成员执行领事职务时的作为免受接受国的民事和行政管辖；

3、惟本款第2项之规定不适用下列民事诉讼：

(1)因领馆成员并非代表派遣国订立的合同所引起的诉讼；

(2)有关领馆成员以私人身份作为遗嘱执行人，遗产管理人，继承人或受遗赠人的继承事件的诉讼；

(3)有关第三者要求赔偿船舶、车辆或飞机所造成损害

的诉讼；

(4)有关处在接受国司法管辖下的私人不动产的诉讼，除非领馆成员系代表派遣国为领事馆之用而拥有该不动产者；

(5)有关领馆成员在其公务范围外在接受国进行的任何私人的、专业的或商业的活动的诉讼。

4、对本款所提到的任何人不得采取执行措施，除非属本款第3项(4)的案件，即使对此项案件采取措施也不得损害其人身和住宅的不可侵犯性；

5、领馆成员及其家庭成员得被请在司法或行政程序中到场作证。如领事官员及其家庭成员拒绝作证，不得对其施行强制措施或处罚。除本款第6项所述事项外，领馆工作人员及其家庭成员不得拒绝作证；

6、领馆成员没有义务就其执行公务所涉事项作证，或出示官方信件或文件。领馆成员并有权拒绝作为派遣国法律的鉴定人而作证；

7、接受国当局在接受领馆成员证词时应采取一切适当措施避免妨碍其执行领事职务。应领事馆长的请求，此种证词在可能情形下得在领事馆或有关人员的住宅口头或书面提出；

8、除其执行领事职务的行为外，凡为接受国国民或永

久居民的领馆成员及其家庭成员不应享受上述特权与豁免。

(六)1、领事官员有权在其领事区内与派遣国的国民联系和会见。必要时,可为其安排法律协助和译员。接受国不应以任何方式限制领事官员和派遣国国民的会见;

2、领事区内遇有派遣国国民被逮捕或受到任何形式的拘禁,接受国主管当局应立即通知,最迟于该国民被逮捕或受拘禁之日起的四天内通知派遣国领事馆。如果由于通讯设备方面的困难在四天内无法通知派遣国领事馆,也应设法尽快通知。应领事官员要求,应告知该国民被逮捕或受到何种形式拘禁的理由;

3、接受国主管当局应立即告知该派遣国国民本款所给予的同领事官员进行联系的权利;

4、领事官员有权探视被逮捕或受到任何形式拘禁的派遣国国民,包括根据判决处在狱中的此等国民,以派遣国或接受国语言、文字与之交谈和通信,并可协助安排法律代表和译员。探视应尽快进行,最迟于主管当局通知领事馆该国民受到任何形式拘禁之日起的二天后,不应拒绝探视。探视得按重复方式进行。经领事官员请求,两次探视之间的间隔不应超过一个月;

5、倘遇派遣国国民在接受国受审判或其他法律诉讼,

有关当局经领事官员请求应告知对该国民提出的指控,并应允许一位领事官员旁听审判或其他法律诉讼;

6、对于适用本款规定的国民,领事官员有权供给装有食品、衣服、医药用品、读物和书写文具的包裹;

7、领事官员得请接受国当局协助查明派遣国国民的下落。接受国当局应尽可能提供所掌握的一切有关情况;

8、本款所载各项权利的行使,应遵照接受国的法律。但是,此项法律的适用,务使本条所规定的这些权利的目的,得以充分实现。

(七)1、凡持美国旅行证件进入香港特别行政区的美国国民,于签证或合法免签入境赋予其该身份的有效期限内,将被中华人民共和国有关当局(包括香港特区有关当局)视为美国国民,以确保其享有美国领事会见及保护权;

2、凡持中华人民共和国香港特别行政区旅行证件进入美国的香港特别行政区中国公民,于签证或合法免签入境赋予其该身份的有效期限内,将被美国有关当局视为中国公民,以确保其享有中华人民共和国领事会见及保护权。

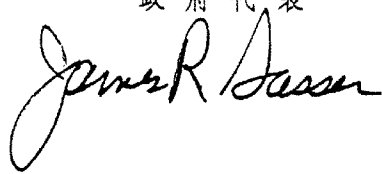
四、本协议未提到的事项将由《维也纳领事关系公约》规范。

五、本协议自一九九七年七月一日起生效。

下列签署人乘各自政府授权,签署本协议,以昭信守。

本协定于一九九七年三月二十五日在北京签订,一式两份,每份都用英文和中文写成,两种文本同等作准。

美利坚合众国
政府代表



中华人民共和国
政府代表

