



Treaty Series No. 43 (1946)

[Reprint of Canadian Treaty Series No. 11 (1944)]

Treaty

between the Government of Canada and
the Government of the Republic of China

Concerning the Relinquishment of Extra-Territorial Rights and the Regulation of Related Matters

(With Exchange of Notes)

Ottawa, 14th April, 1944

[Ratifications exchanged at Chungking, 3rd April, 1945]

*Presented by the Secretary of State for Foreign Affairs
to Parliament by Command of His Majesty*

LONDON
HIS MAJESTY'S STATIONERY OFFICE

ONE PENNY NET

Cmd. 6948

TREATY BETWEEN THE GOVERNMENT OF CANADA AND THE
GOVERNMENT OF THE REPUBLIC OF CHINA CONCERNING THE
RELINQUISHMENT OF EXTRA-TERRITORIAL RIGHTS AND THE
REGULATION OF RELATED MATTERS

Ottawa, 14th April, 1944

HIS Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, in respect of Canada, and His Excellency the President of the National Government of the Republic of China;

Desiring to promote a spirit of friendship in the general relations between Canada and China, and for this purpose to adjust certain matters in the relations of the two countries;

Have decided to conclude a Treaty for this purpose, and to that end have appointed as their Plenipotentiaries:

HIS Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, for Canada:

The Right Honourable W. L. Mackenzie King, Prime Minister, President of the Privy Council and Secretary of State for External Affairs of Canada; and

HIS Excellency the President of the National Government of the Republic of China:

His Excellency Dr. Liu Shih Shun, Ambassador Extraordinary and Plenipotentiary of the Republic of China to Canada;

Who, having communicated to each other their full powers, found in good and due form, have agreed on the following Articles:—

ARTICLE I

In the present Treaty the expression "companies" shall be interpreted as meaning limited liability and other companies, partnerships and associations constituted under the laws of Canada or of the Republic of China as the case may be.

ARTICLE II

All provisions of treaties or agreements in force between Canada and China, which authorize any British or Canadian authority to exercise jurisdiction in China over Canadian nationals or companies are hereby abrogated. Canadian nationals and companies shall be subject in China to the jurisdiction of the Government of the Republic of China, in accordance with the principles of international law and practice.

ARTICLE III

The Government of Canada will co-operate, to the extent that any Canadian interest may be involved, with the Government of the Republic of China in negotiations and arrangements for the abandonment by foreign Governments of special privileges held by them in Peiping, Shanghai, Amoy, Tientsin and Canton, and will raise no objection to any measure which may be directed to the abolition of such special privileges.

ARTICLE IV

(1) Article II of the present Treaty shall not affect existing rights in respect of, or existing titles to, real property in China held by Canadian nationals or companies. Such existing rights and titles shall be indefeasible except upon proof, established through due process of law, that such rights or titles have been acquired by fraud or by fraudulent or dishonest practices, it being understood that no right or title shall be rendered invalid by virtue of any subsequent change in the official procedure through which it was acquired. It is agreed that the exercise of these rights or titles shall be subject to the laws and regulations of the Republic of China concerning taxation, national defence and the right of eminent domain and that no such rights or titles may be alienated to the Government or nationals (including companies) of any third country without the express consent of the Government of the Republic of China. And it is further agreed that the restriction on the right of alienation of existing rights and titles to real property referred to in this Article will be applied by the Chinese authorities in an equitable manner and that if, and when, the Government of the Republic of China declines to give assent to a proposed transfer, the Government of the Republic of China will, in a spirit of justice and with a view to precluding loss on the part of the nationals or companies whose interests are affected, undertake, if so requested by the nationals or companies to whom permission to alienate has been refused, to take over the rights and titles in question and to pay adequate compensation therefor.

(2) Should the Government of the Republic of China desire to replace by new and appropriate deeds existing documentary evidence relating to real property held by Canadian nationals or companies, the new deeds shall fully protect the prior rights and interests of the Canadian nationals or companies, and their legal heirs, successors or assigns.

(3) Canadian nationals or companies shall not be required by the Chinese authorities to make any payments of fees in connection with land transfers for or with relation to any period prior to the day of coming into force of the present Treaty.

ARTICLE V

The Government of Canada having long accorded rights to nationals of the Republic of China within the territory of Canada to travel, reside and carry on trade throughout the whole extent of that territory, the Government of the Republic of China agrees to accord similar rights to Canadian nationals within the territory of the Republic of China. Each of the two Governments will endeavour to accord in territory under its jurisdiction to nationals and companies of the other country in regard to all legal proceedings and in matters relating to the administration of justice, and to the levying of taxes or requirements in connection therewith, treatment not less favourable than that accorded to its own nationals and companies.

ARTICLE VI

The consular officers of one High Contracting Party, duly provided with exequaturs, shall be permitted to reside in such ports, places and cities of the other High Contracting Party as may be agreed upon. The consular officers of each of the High Contracting Parties shall have the right to interview, to communicate with, and to advise nationals or companies of their country within their consular districts; they shall be informed immediately whenever nationals of their country are under detention or arrest or in prison or are awaiting trial in their consular districts and they shall, upon notification to the appropriate authorities, be permitted to visit any such nationals, and.

in general, the consular officers of each of the High Contracting Parties in the territory of the other shall be accorded the rights, privileges and immunities enjoyed by consular officers under modern international usage.

It is likewise agreed that the nationals or companies of each of the High Contracting Parties in the territory of the other shall have the right at all times to communicate with the consular officers of their country. Communications to their consular officers from nationals of each of the High Contracting Parties who are under detention or arrest or in prison or are awaiting trial in the territory of the other High Contracting Party shall be forwarded to such consular officers by the local authorities.

ARTICLE VII

(1) The High Contracting Parties agree that they will enter into negotiations for the conclusion of a comprehensive modern treaty or treaties of friendship, commerce, navigation and consular rights upon the request of either of them or in any case within six months after the cessation of the hostilities in the war against the common enemies in which they are both now engaged. The treaty or treaties to be thus negotiated will be based upon the principles of international law and practice as reflected in modern international procedure and in the modern treaties which each of the Governments has concluded with other Powers in recent years.

(2) Pending the conclusion of the comprehensive treaty or treaties referred to in the preceding paragraph, if any questions affecting the rights in the territory of the Republic of China of the Canadian Government or of Canadian nationals or companies should arise in future and if these questions are not covered by the present Treaty and annexed exchange of notes or by the provisions of the existing treaties, conventions and agreements between the Governments of Canada and the Republic of China which are not abrogated by or inconsistent with the present Treaty and annexed exchange of notes, such questions shall be discussed by representatives of the two Governments and shall be decided in accordance with the generally accepted principles of international law and with modern international practice.

ARTICLE VIII

The High Contracting Parties agree that questions which may affect the sovereignty of the Republic of China and which are not covered by the present Treaty and annexed exchange of notes shall be discussed by representatives of the High Contracting Parties and decided in accordance with generally accepted principles of international law and modern international practice.

ARTICLE IX

The present Treaty shall be ratified and the instruments of ratification shall be exchanged at Chungking as soon as possible. The present Treaty shall come into force and be effective on the day of the exchange of ratifications.

In witness whereof the above-mentioned Plenipotentiaries have signed the present Treaty and affixed thereto their seals.

Done at Ottawa this fifteenth day of April, 1944, corresponding to the fifteenth day of the fourth month of the thirty-third year of the Republic of China, in duplicate in English and Chinese, both texts being equally authentic.

(L.S.) W. L. MACKENZIE KING.
(L.S.) LIU SHIH SHUN.

EXCHANGE OF NOTES

No. 1

*Dr. Liu Shih Shun to Mr. Mackenzie King**Embassy of the Republic of China,
Ottawa, 14th April, 1944.*

Sir,

IN connection with the Treaty signed to-day between His Excellency the President of the National Government of the Republic of China and His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, for Canada, I have the honour to state that it is the understanding of the National Government of the Republic of China that all rights and privileges relinquished by His Majesty the King, for the United Kingdom of Great Britain and Northern Ireland and India, as provided in the Treaty and exchange of notes of 11th January, 1943,⁽¹⁾ between the Republic of China on the one hand and the United Kingdom of Great Britain and Northern Ireland and India on the other, have been similarly relinquished by His Majesty the King for Canada. This understanding, if confirmed by your Government, shall be considered as forming an integral part of the Treaty signed to-day and shall be considered to be effective upon the date of the entry into force of that Treaty. I should be glad if you would confirm the above understanding on behalf of the Government of Canada.

I avail, &c.

LIU SHIH SHUN.

No. 2

Mr. Mackenzie King to Dr. Liu Shih Shun

Excellency,

Ottawa, 14th April, 1944.

I HAVE the honour to acknowledge the receipt of your Excellency's note of to-day's date reading as follows:—

[As in No. 1]

I have the honour on behalf of the Government of Canada to confirm the understanding of the National Government of the Republic of China that all rights and privileges relinquished by His Majesty the King, for the United Kingdom of Great Britain and Northern Ireland and India, as provided in the Treaty and exchange of notes of 11th January, 1943, between the Republic of China on the one hand and the United Kingdom of Great Britain and Northern Ireland and India on the other, have been similarly relinquished by His Majesty the King for Canada.

This understanding shall be considered as forming an integral part of the Treaty signed to-day and shall be considered to be effective upon the date of the entry into force of that Treaty.

Accept, &c.

W. L. MACKENZIE KING.

(¹) "Treaty Series No. 2 (1943)," Cmd. 6456.

