

CHINESE COURTS IN THE INTERNATIONAL SETTLEMENT AT SHANGHAI

Agreement, with attached notes and a unilateral declaration by non-Chinese signatories regarding guaranteed rights, signed at Nanking February 17, 1930

Entered into force April 1, 1930

Agreement extended by exchange of notes of February 8, 1933,¹ for a period of three years from April 1, 1933, and "thereafter . . . until . . . denounced;" declaration renewed by unilateral declaration of February 8, 1933¹

Terminated May 20, 1943, as between the United States and China by treaty of January 11, 1943²

47 Stat. 2713; Executive Agreement Series 37

AGREEMENT RELATING TO THE CHINESE COURTS IN THE INTERNATIONAL SETTLEMENT AT SHANGHAI

ARTICLE I

From the date on which the present Agreement comes into force, all former rules, agreements, exchanges of notes *et cetera* having special reference to the establishment of a Chinese court in the International Settlement at Shanghai shall be abolished.

ARTICLE II

The Chinese Government shall, in accordance with Chinese laws and regulations relating to the judiciary and subject to the terms of the present Agreement, establish in the International Settlement at Shanghai a District Court (Ti Fang Fa Yuan) and a Branch High Court (Kao Teng Fa Yuan Fen Yuan). All Chinese laws and regulations, substantive as well as procedural, which are now in force, or which may hereafter be duly enacted and promulgated shall be applicable in the Courts, due account being taken of the Land Regulations and Bye-Laws of the International Settlement,

¹ EAS 45, *post*, vol. 3.

² TS 984, *post*.

which are applicable pending their adoption and promulgation by the Chinese Government, and of the terms of the present Agreement.

Judgments, decisions and rulings of the Branch High Court are subject to appeal, according to Chinese law, to the Supreme Court of China.

ARTICLE III

The former practice of Consular deputies or Consular officials appearing to watch proceedings or to sit jointly in the Chinese court now functioning in the International Settlement shall be discontinued in the Courts established under the present Agreement.

ARTICLE IV

When any person is arrested by the municipal or judicial police, he shall, within twenty-four hours, exclusive of holidays, be sent to the Courts established under the present Agreement to be dealt with, failing which he shall be released.

ARTICLE V

The Courts established under the present Agreement shall each have a certain number of procurators to be appointed by the Chinese Government, who shall hold inquests and autopsies (Chien Yen) within the jurisdiction of these Courts and shall otherwise perform their functions in accordance with Chinese law in all cases involving the application of Articles 103 to 186 of the Chinese Criminal Code, except where the Municipal Police of the International Settlement or the party concerned has already initiated prosecution, provided that all preliminary investigations conducted by the procurator shall be held publicly and counsel for the accused shall have the right to be present and heard.

In other cases arising within the jurisdiction of the Courts, the Municipal Police or the party concerned shall prosecute. The procurator shall have the right to express his views in court in all criminal cases in which the prosecution is initiated by the Municipal Police or the party concerned.

ARTICLE VI

All judicial processes, such as summonses, warrants, orders, *et cetera*, shall be valid only after they have been signed by a judge of the Courts established under the present Agreement, whereupon they shall be served or executed by the judicial police or, as provided below, by the process-servers thereof.

No person found in the International Settlement shall be handed over to the extra-Settlement authorities without a preliminary investigation in court at which counsel for the accused shall have the right to be present and heard, except in the case of requests emanating from other modern law courts when the accused may be handed over after his identity has been established by the Court.

All judgments, decisions and rulings of the Courts shall be executed as soon as they become final as a result of the judicial procedure in force in the said Courts. Whenever necessary, the Municipal Police shall render any assistance within their power as may be requested of them.

The process-servers of the Courts shall be appointed by the Presidents of the Courts respectively and their duties shall be to serve all summonses and deliver other documents of the Courts in connection with civil cases. For the execution of judgments in civil cases, the process-servers shall be accompanied by the judicial police. The officers and members of the judicial police of the Courts shall be appointed by the President of the Branch High Court upon the recommendation of the Municipal Council and shall be subject to dismissal by the President of that Court upon cause shown. Their services will also be terminated by the President at the request of the Municipal Council upon cause shown. They shall wear the uniform designed by the Chinese judicial authorities, and shall be subject to the orders and direction of the Courts and faithful to their duties.

ARTICLE VII

The House of Detention for civil cases and the Women's Prison attached to the Chinese court now functioning in the International Settlement at Shanghai shall be transferred from that court to the Courts established under the present Agreement and shall be supervised and administered by the Chinese authorities.

All prisoners now serving sentences in the prisons attached to the Chinese court now functioning in the International Settlement and those sentenced by the Courts established under the present Agreement shall, at the discretion of the said Courts, serve their sentences either in such prisons in the Settlement or in Chinese prisons outside the Settlement, except that offenders against the Police Offences Code and the Land Regulations and Bye-Laws and persons under arrest awaiting trial shall serve their periods of detention in the Settlement. The prisons in the Settlement shall be operated, as far as practicable, in conformity with Chinese prison regulations and shall be subject to inspection, from time to time, by officers appointed by the Chinese judicial authorities.

Persons sentenced to death by the Courts established under the present Agreement shall be sent to the Chinese authorities outside of the Settlement for execution of such sentence.

ARTICLE VIII

Foreign lawyers duly qualified will be admitted to practice in the Courts established under the present Agreement in all cases in which a foreigner is a party, provided such foreign lawyer can only represent the foreign party concerned. The Municipal Council may also be represented in the same manner by duly qualified lawyers, Chinese or foreign, in any proceedings

in which the Council is complainant or plaintiff or the Municipal Police is the prosecutor.

In other cases or proceedings in which the Council considers the interests of the Settlement to be involved, it may be represented by a duly qualified lawyer, Chinese or foreign, who may submit to the Court his views in writing during the proceedings and who may, if he deems necessary, file a petition in intervention in accordance with the provisions of the Code of Civil Procedure.

Foreign lawyers who are entitled to practice under this Article in the above-mentioned Courts shall apply to the Ministry of Justice for lawyers' certificates and shall be subject to Chinese laws and regulations applicable to lawyers, including those governing their disciplinary punishment.

ARTICLE IX

Four permanent representatives shall be appointed, two by the Chinese Government and two by the Governments of the other Powers signatory to the present Agreement, who together shall seek to reconcile such differences of opinion regarding the interpretation or application of the present Agreement as may be referred to them by the President of the Branch High Court or by the authorities of the signatory foreign Powers, provided that their Report shall have no binding force upon either party except by mutual consent, it being understood that no judgments, decisions, rulings or orders of the Courts, as such, shall be referred to the aforesaid representatives for consideration.

ARTICLE X

The present Agreement and the attached Notes shall enter into effect on April 1st, 1930 and shall continue in force for a period of three years from that date, provided that they may be extended for an additional period upon mutual consent of the parties thereto.

NANKING,

February 17, 19th Year R.C. (1930).

Hsu Mo
on behalf of the Minister for Foreign
Affairs

J. DE PINTO DIAZ
on behalf of the Brazilian Chargé
d'Affaires

In the name of the American Minister,
JOSEPH E. JACOBS

W. MEYRICK HEWLETT
on behalf of His Britannic Majesty's
Minister

L. GRONVOLD
on behalf of the Norwegian Chargé
d'Affaires

F. E. H. GROENMAN
on behalf of the Netherlands chargé
d'affaires

In the name of the French Minister:
E. KOECHLIN

[SEAL OF THE MINISTRY OF FOREIGN AFFAIRS]

ATTACHED NOTES

*The Foreign Signatories to the Chinese Minister for Foreign Affairs*NANKING, *February 17, 1930.*

SIR,

With reference to the Agreement which we have signed to-day concerning the establishment of a District Court and a Branch High Court in the International Settlement at Shanghai, we have the honour to request your confirmation of our understanding on the following points:

1. It is understood that the Courts established under the present Agreement shall exercise jurisdiction over civil and criminal cases as well as police offences and inquests in the International Settlement at Shanghai, provided that the jurisdiction of the said courts over persons shall be the same as that of other Chinese Courts and provided that their territorial jurisdiction shall be the same as that of the Chinese court now functioning in the International Settlement at Shanghai, except (a) mixed criminal cases arising on private foreign property outside the limits of the Settlement and (b) mixed civil cases arising in areas surrounding the Settlement.

2. It is understood that the present practice regarding the respective jurisdictions of the Chinese court now functioning in the International Settlement and the Court existing in the French Concession shall be followed, pending a definite arrangement between the Chinese Government and the authorities concerned.

3. It is understood that as far as practicable Chinese shall be recommended by the Municipal Council to serve as officers and members of the judicial police of the Courts established under the present Agreement. It is further understood that among the officers of the judicial police appointed by the President of the Branch High Court under Article VI of the present Agreement, there will be one to be designated by the Municipal Council, to whom will be allotted by the President an office on the Court premises and who will make an entry of all judicial processes of the Courts, such as summonses, warrants, orders and judgments, for the purpose of service or execution in accordance with the provisions of the above-mentioned Article.

4. It is understood that the establishment of the Courts provided for in the present Agreement in no way affects the validity of judgments rendered by the Chinese court now functioning in the International Settlement and its predecessor, and that such judgments shall be considered as final and valid except where an appeal has been lawfully taken or reserved. It is further understood that the judgments of the Courts established under the present Agreement shall be on the same footing as regards validity as the judgments of all other Chinese Courts.

5. It is understood that the present Agreement does not in any way affect or prejudice any future negotiations regarding the status of extra-Settlement roads.

6. It is understood that the sum of sixty thousand dollars (\$60,000) now on deposit with the Bank of China to the credit of the present Chinese court in the International Settlement shall be maintained by the Chinese Government to the credit of the new Courts established under the present Agreement.

7. It is agreed that in accordance with Chinese law, there shall be maintained by the Courts established under the present Agreement, a storage room for articles confiscated by the Courts, which remain the property of the Chinese Government, it being understood that confiscated opium and instruments for the smoking and preparation thereof shall be burned publicly in the International Settlement every three months and that the Municipal Council may present to the Presidents of the Courts for transmission to the Ministry of Justice such suggestions as it may desire to make regarding the disposal of confiscated arms.

8. It is understood that upon the coming into force of the present Agreement, all cases pending in the Chinese court now functioning in the International Settlement shall be dealt with in the Courts established under the present Agreement in accordance with the procedure in force in the latter Courts, provided that the proceedings in mixed cases shall, as far as practicable, be continued from the point where they are taken over and concluded within a period of twelve months which period may be extended at the discretion of the Courts when the circumstances in any case so warrant.

We avail ourselves of this opportunity to renew to Your Excellency the assurance of our highest consideration.

J. DE PINTO DIAZ
on behalf of the Brazilian Chargé
d'Affaires

L. GRONVOLD
on behalf of the Norwegian Chargé
d'Affaires

In the name of the American Minister,
JOSEPH E. JACOBS

F. E. H. GROENMAN
on behalf of the Netherlands Chargé
d'affaires

W. MEYRICK HEWLETT
on behalf of His Britannic Majesty's
Minister

In the name of the French Minister:
E. KOEHLIN

HIS EXCELLENCY,
DR. CHENGTING T. WANG,
Minister for Foreign Affairs,
Nanking.

The Chinese Minister for Foreign Affairs to Each of the Foreign Signatories

[TRANSLATION]

NANKING, *February 17, 1930.*

SIR,

I have the honour to acknowledge the receipt of your Note referring to the Agreement which we have signed to-day concerning the establishment of a District Court and a Branch High Court in the International Settlement at Shanghai, in which you request my confirmation of the following points:

"1. It is understood that the Courts established under the present Agreement shall exercise jurisdiction over civil and criminal cases as well as police offences and inquests in the International Settlement at Shanghai, provided that the jurisdiction of the said Courts over persons shall be the same as that of other Chinese Courts and provided that their territorial jurisdiction shall be the same as that of the Chinese court now functioning in the International Settlement at Shanghai, except (a) mixed criminal cases arising on private foreign property outside the limits of the Settlement and (b) mixed civil cases arising in areas surrounding the Settlement.

"2. It is understood that the present practice regarding the respective jurisdictions of the Chinese court now functioning in the International Settlement and the Court existing in the French Concession shall be followed, pending a definite arrangement between the Chinese Government and the authorities concerned.

"3. It is understood that as far as practicable Chinese shall be recommended by the Municipal Council to serve as officers and members of the judicial police of the Courts established under the present Agreement. It is further understood that among the officers of the judicial police appointed by the President of the Branch High Court under Article VI of the present Agreement, there will be one to be designated by the Municipal Council, to whom will be allotted by the President an office on the Court premises and who will make an entry of all judicial processes of the Courts, such as summonses, warrants, orders and judgments, for the purpose of service or execution in accordance with the provisions of the above-mentioned Article.

"4. It is understood that the establishment of the Courts provided for in the present Agreement in no way affects the validity of judgments rendered by the Chinese court now functioning in the International Settlement and its predecessor, and that such judgments shall be considered as final and valid

except where an appeal has been lawfully taken or reserved. It is further understood that the judgments of the Courts established under the present Agreement shall be on the same footing as regards validity as the judgments of all other Chinese Courts.

“5. It is understood that the present Agreement does not in any way affect or prejudice any future negotiations regarding the status of extra-Settlement roads.

“6. It is understood that the sum of sixty thousand dollars (\$60,000) now on deposit with the Bank of China to the credit of the present Chinese court in the International Settlement shall be maintained by the Chinese Government to the credit of the new Courts established under the present Agreement.

“7. It is agreed that in accordance with Chinese law, there shall be maintained by the Courts established under the present Agreement, a storage room for articles confiscated by the Courts, which remain the property of the Chinese Government, it being understood that confiscated opium and instruments for the smoking and preparation thereof shall be burned publicly in the International Settlement every three months and that the Municipal Council may present to the Presidents of the Courts for transmission to the Ministry of Justice such suggestions as it may desire to make regarding the disposal of confiscated arms.

“8. It is understood that upon the coming into force of the present Agreement, all cases pending in the Chinese court now functioning in the International Settlement shall be dealt with in the Courts established under the present Agreement in accordance with the procedure in force in the latter Courts, provided that the proceedings in mixed cases shall, as far as practicable, be continued from the point where they are taken over and concluded within a period of twelve months which period may be extended at the discretion of the Courts when the circumstances in any case so warrant.”

In reply I have the honour to confirm the understanding of the points as quoted above.

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

Hsu Mo

on behalf of the Minister for Foreign Affairs

HIS EXCELLENCY

MR. NELSON T. JOHNSON,
*American Minister to China,
Nanking.*

UNILATERAL DECLARATION REGARDING GUARANTEED RIGHTS

*The Foreign Signatories to the Chinese Minister for Foreign Affairs*NANKING, CHINA. *February 17, 1930.*

EXCELLENCY:

With reference to the Agreement which we have signed today establishing a new Chinese judicial system in the International Settlement at Shanghai, we desire to point out that such Agreement cannot in any way affect or invalidate rights guaranteed to the Powers concerned and to their nationals under existing treaties between such Powers and China and we accordingly reserve our full rights in this regard.

We further reserve the right to object to the enforcement in the International Settlement of any future Chinese laws that affect or in any way invalidate the Land Regulations or Bye-Laws of the International Settlement or that may be considered prejudicial to the maintenance of peace and order within this area.

We avail ourselves of this opportunity to renew to Your Excellency the assurance of our highest consideration.

J. DE PINTO DIAZ
on behalf of the Brazilian Chargé d'Affaires

In the name of the American Minister,
JOSEPH E. JACOBS

W. MEYRICK HEWLETT
on behalf of His Britannic Majesty's
Minister

L. GRONVOLD
on behalf of the Norwegian Chargé
d'Affaires

F. E. H. GROENMAN
on behalf of the Netherlands chargé
d'affaires

In the name of the French Minister:
E. KOEHLIN

HIS EXCELLENCY

DR. C. T. WANG,
Minister for Foreign Affairs,
Nanking, China.