

當局對《1999年法律適應化修改（第10號）條例草案》委員會
在一九九九年七月十九日所提出事宜的回應

- (1) 提醒有關國際組織注意《關於〈中華人民共和國國籍法〉在香港特別行政區實施的幾個問題的解釋》（於一九九六年五月十五日第八屆全國人民代表大會常務委員會第十九次會議上通過）中有關“中國公民”定義的相關條文

在立法會通過《1999年法律適應化修改（第10號）條例草案》後，我們會提醒在香港的國際組織及領館注意《關於〈中華人民共和國國籍法〉在香港特別行政區實施的幾個問題的解釋》（《解釋》）（副本載於附件甲）中有關“中國公民”定義的相關條文。

- (2) 關於如何處理持外國護照中國公民申報國籍變更的申請，以及入境事務處會在何種情況下拒絕這種申報的問題

正如我們在第（1）點中提及，全國人民代表大會常務委員會（人大常委會）曾就《中華人民共和國國籍法》在香港特區的實施通過了上述的《解釋》。除作出其他規定外，該《解釋》亦授權香港特區入境事務處處理香港居民中持外國護照的中國公民申報國籍變更的申請。

根據該《解釋》，凡具有中國血統，並在香港或中國其他地方出生的香港居民，即使現時持有或早已持有香港的英國屬土公民護照、英國國民（海外）護照，或任何其他外國護照，亦將被視為在香港特區的中國公民。

若這類香港居民本身希望被視為在香港特區的外國公民，便須向香港特區入境事務處申報國籍變更。當申報獲批准後，這些人士便會被視為在香港特區的外國公民，享有外國領事保護權。

申報國籍變更的申請人可用郵遞方式或親往香港特區入境事務處遞交申請表。申請人須填寫申請表（18歲或以上人士須填寫 ID869 表格，而 18 歲以下人士須填寫 ID870 表

格) 並繳交費用 145 元。申請人亦須提交文件，證明本身是中國國籍的香港居民及已取得外國國籍。當有關申報獲批准後，入境事務處會向申請人發出確認信。

申報國籍變更的申請如要獲得批准，申請人須符合下列要求：

- 申請人精神健全；
- 根據人大常委會在《解釋》中詳加說明的《中華人民共和國國籍法》，申請人為中國公民；
- 申請人為香港居民；
- 申請人能提供證據（例如外國護照），證明他具有外國國籍；
- 並無證據顯示申請人用以宣稱其具有外國國籍的文件，是偽造或以非法途徑取得的；以及
- 申請人在放棄中國國籍後，不會成為無國籍人士。

在香港的中國公民通過“英國國籍甄選計劃”而獲得的英國公民身分，根據《中華人民共和國國籍法》不予承認（見人大常委會《解釋》第三段）。因此，中國公民因上述計劃取得英國公民身分而申請申報國籍變更，將不獲批准。

(3) 向立法會提供中華人民共和國與美國、加拿大及聯合王國所簽訂關於該等國家駐港領事館的協定副本

協定的副本載於附件乙、丙及丁。

(4) 闡明在中國領土內出生，同時亦為香港華裔居民的加拿大或美國公民，在進入香港後，即使沒向入境事務處申報更改國籍，亦不被視作中國公民的期限

於一九九七年十一月二十八日簽訂，並於一九九九年三月十一日生效的《中華人民共和國政府和加拿大政府領事協定》（見附件乙）中的第十二條第三款規定，“凡持有派遣國有效旅行證件進入接受國的派遣國國民，於簽證或合法免簽證入境賦予其該身份的有效期限內，將被接受國有關當局視為派遣國國民，以保證其得到派遣國領事的會見和保護”。

於一九九七年三月二十五日簽訂，並於一九九七年七月一日生效的《中華人民共和國政府與美利堅合眾國政府關於在香港特別行政區保留美國總領事館的協定》（見附件丁）中的第三條第(七)款 2 項規定“凡持美國旅行證件進入香港特別行政區的美國國民，於簽證或合法免簽入境賦予其該身分的有效期限內，將被中華人民共和國有關當局(包括香港特區有關當局)視為美國國民，以確保其享有美國領事會見及保護權”。

根據與加拿大和美國的免簽證安排，來自上述兩個國家的旅客可免簽證在港逗留三個月，惟須符合一般的入境條件(例如持有有效的旅遊證件)。故此，根據上述兩條有關領館的協定，加拿大和美國的國民在該三個月內會被視為該國的國民。

- (5) 會中引述關於根據香港法例第 190 章公告規定，即使為國際機構代表亦不享有特權及豁免權者，在一九九七年七月一日之前及之後的人數

請參閱附件戊。

- (6) 關於第 190 章詳題及該章第 6 條中“慣例”一詞，澄清該詞原來的涵意究竟是指國際慣例，還是英格蘭的習慣法

第 190 章第 6 條（或實際上第 190 章整章）就關乎君主、外交代表或外國等的特權及豁免權作出規定。按該條文的文意，“慣例”應該是指與外國等的特權及豁免權有關的慣例。由於當中牽涉香港與其他主權國等的交往，因此屬國際性的層面。

此外，根據 Philip S. James 所著的《英格蘭法律導論》（Introduction to English Law）（第 12 版），在現代，一般慣例大部分已被廢棄，或已納入法律規則的範疇內。只有在個別地區生活的一些羣體中通行的某些地方慣例，偶爾會獲得法院承認，可制定為該地區的特殊法例。例如，沃爾馬(Walmer)的漁民被認定為擁有特殊權利，可以在某個特定的海灘曬網。不過，這種地方慣例與外國的特權及豁免權毫無關係。

再者，英格蘭亦承認“國際慣例”（請參考在附件已有關支持這一說法的節錄）。當局認為，“慣例”一詞應詮釋為國際法慣例。

- (7) 關於第 190 章第 6 條“慣例”一詞，舉例說明一些在第 190 章或其他國際協議中未有指明的有關特權和豁免權的國際慣例

正如上文第（6）點的解釋，第 190 章第 6 條“慣例”一詞應詮釋為國際法慣例。雖然在香港尚未有因國際慣例而授予特權和豁免的個案，但我們知道在其他地方有經由國家法院考慮及裁決的有關個案。其中一個例子便是有關使館的銀行帳戶的國際慣例。雖然在《維也納外交關係公約》內並沒有清楚訂明，德國聯邦憲法法院在一九九七年判決 **Philippine Embassy Bank Account**（菲律賓大使館銀行帳戶）的案件時，便接納及應用國際慣例（請參閱在附件庚的參考文件）。

由於中華人民共和國亦承認國際慣例（請參考在附件辛有關支持這一說法的節錄），中華人民共和國（包括香港特別行政區）有國際義務按照國際慣例給予特權和豁免。當局認為必須繼續在本地法例中指出該等國際慣例在香港具有法律效力。故此，當局認為有必要在 190 章第 6 條中保留慣例的提述。

- (8) 鑑於英格蘭並不包括香港，而中華人民共和國則包括香港，考慮以“中華人民共和國”取代“英格蘭”的建議是否恰當

當局認為這項適應化建議應不會引起含糊不清的問題。第 190 章內有關條文對中華人民共和國的提述，其隱含的意義是指中華人民共和國司法管轄區，對香港的提述隱含的意義則是指香港司法管轄區。香港作為中華人民共和國一部分的事實，應不會引起對有關條文理解上的困難。而且，“中國大陸”一詞只是地理概念的描述，在論及司法管轄權問題時，採用該名稱未必適合。

- (9) 關於第 190 章附屬法例 A、D、E、I、K 的第 8(3)條，解釋為何建議以“中國公民的人”取代“英國公民、英國屬土公民或英國海外公民而並非任何女皇陛下政府(在香港的女皇陛下政府除外)的代表或伴隨該名代表並屬其職員的人”

現以附屬法例 A 的第 8(3)條去解釋有關建議。根據現有條文，女皇陛下政府可分為：（a）在香港的女皇陛下政

府；及（b）不包括香港的女皇陛下政府。（a）的代表或屬其職員的人並不享有特權及豁免權，但屬英國公民、英國屬土公民或英國海外公民而本身是（b）的代表或伴隨該名代表並屬其職員的人，則可享有特權及豁免權。

然而，由於香港作為中華人民共和國的特別行政區的地位與以前作為英國殖民地的地位不同，而且依據有多個國家所採取的國際慣常做法，一個國家的國民在他自己的國家內，不會獲給予外交特權及豁免權，因此建議廢除與（b）有關的條文而無須以其他條文取代。

(10) 考慮中文“憲報”的名稱應否“適應化”

當局認為“憲報”的名稱與《基本法》或香港作為中華人民共和國特別行政區的地位並無矛盾，故此不需“適應化”。

全國人民代表大會常務委員會關於《中華人民共和國國籍法》在香港特別行政區實施的幾個問題的解釋

全國人民代表大會常務委員會
關於《中華人民共和國國籍法》在香港特別
行政區實施的幾個問題的解釋

（1996年5月15日第八屆全國人民代表大會
常務委員會第十九次會議通過）

根據《中華人民共和國香港特別行政區基本法》第十八條和附件三的規定，《中華人民共和國國籍法》自1997年7月1日起在香港特別行政區實施。考慮到香港的歷史背景和現實情況，對《中華人民共和國國籍法》在香港特別行政區實施作如下解釋：

一、凡具有中國血統的香港居民，本人出生在中國領土（含香港）者，以及其他符合《中華人民共和國國籍法》規定的具有中國國籍的條件者，都是中國公民。

二、所有香港中國同胞，不論其是否持有“英國屬土公民護照”或者“英國國民（海外）護照”，都是中國公民。自1997年7月1日起，上述中國公民可繼續使用英國政府簽發的有效旅行證件去其他國家或地區旅行，但在香港特別行政區和中華人民共和國其他地區不得因持有上述英國旅行證件而享有英國的領事保護的權利。

三、任何在香港的中國公民，因英國政府的“居英權計劃”而獲得的英國公民身份，根據《中華人民共和國國籍法》不予承認。這類人仍為中國公民，在香港特別行政區和中華人民共和國其他地區不得享有英國的領事保護的權利。

Explanations of some questions by the Standing Committee of the National People's Congress concerning the implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region

**EXPLANATIONS OF SOME QUESTIONS BY THE
STANDING COMMITTEE OF THE NATIONAL
PEOPLE'S CONGRESS CONCERNING THE
IMPLEMENTATION OF THE NATIONALITY LAW OF
THE PEOPLE'S REPUBLIC OF CHINA IN THE HONG
KONG SPECIAL ADMINISTRATIVE REGION***

(Adopted at the Nineteenth Session of the Standing Committee of the Eighth National People's Congress on 15 May 1996)

According to Article 18 of and Annex III to the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, the Nationality Law of the People's Republic of China shall be applied in the Hong Kong Special Administrative Region from 1 July 1997. Taking account of the historical background and the existing circumstances of Hong Kong, the Standing Committee gives the following explanations concerning the implementation in the Hong Kong Special Administrative Region of the Nationality Law of the People's Republic of China—

1. Where a Hong Kong resident is of Chinese descent and was born in the Chinese territories (including Hong Kong), or where a person satisfies the criteria laid down in the Nationality Law of the People's Republic of China for having Chinese nationality, he is a Chinese national.
2. All Hong Kong Chinese compatriots are Chinese nationals, whether or not they are holders of the "British Dependent Territories Citizens passport" or "British Nationals (Overseas) passport". With effect from 1 July 1997, Chinese nationals mentioned above may, for the purpose of travelling to other countries and territories, continue to use the valid travel documents issued by the Government of the United Kingdom. However, they shall not be entitled to British consular protection in the Hong Kong Special Administrative Region and other parts of the People's Republic of China on account of their holding the above mentioned British travel documents.
3. According to the Nationality Law of the People's Republic of China, the British Citizenship acquired by Chinese nationals in Hong Kong through the "British Nationality Selection Scheme" will not be recognised. They are still Chinese nationals and will not be entitled to British consular protection in the Hong Kong Special Administrative Region and other parts of the People's Republic of China.

* This English translation text is prepared by Department of Justice, Government of the Hong Kong Special Administrative Region. It is for reference purposes and has no legislative effect.

四、在外國有居留權的香港特別行政區的中國公民，可使用外國政府簽發的有關證件去其他國家或地區旅行，但在香港特別行政區和中華人民共和國其他地區不得因持有上述證件而享有外國領事保護的權利。

五、香港特別行政區的中國公民的國籍發生變更，可憑有效證件向香港特別行政區受理國籍申請的機關申報。

六、授權香港特別行政區政府指定其入境事務處為香港特別行政區受理國籍申請的機關，香港特別行政區入境事務處根據《中華人民共和國國籍法》和以上規定對所有國籍申請事宜作出處理。

4. Chinese nationals of the Hong Kong Special Administrative Region with right of abode in foreign countries may, for the purpose of travelling to other countries and territories, use the relevant documents issued by the foreign governments. However, they will not be entitled to consular protection in the Hong Kong Special Administrative Region and other parts of the People's Republic of China on account of their holding the above mentioned documents.
5. If there is a change in the nationality of a Chinese national of the Hong Kong Special Administrative Region, he may, with valid documents in support, make a declaration at the authority of the Hong Kong Special Administrative Region responsible for nationality applications.
6. The Government of the Hong Kong Special Administrative Region is authorised to designate its Immigration Department as the authority of the Hong Kong Special Administrative Region responsible for nationality applications. The Immigration Department of the Hong Kong Special Administrative Region shall handle all nationality applications in accordance with the Nationality Law of the People's Republic of China and the foregoing provisions.

中華人民共和國政府和 加拿大政府領事協定

中華人民共和國政府和加拿大政府（以下稱“締約雙方”），
為發展兩國的領事關係，以利於保護兩國國家和兩國國民的權利和利益，促進
兩國間的友好合作關係，
決定締結本協定，並議定下列各條：

第一條 定 義

就本協定而言，下列用語的含義是：

- （一）“領館”指總領事館、領事館、副領事館或領事代理處；
- （二）“領區”指為領館執行領事職務而設定的區域；
- （三）“領事官員”指派任此職承辦領事職務之任何人員，包括領館館長在內；
- （四）“派遣國國民”指具有派遣國國籍的自然人，適用時，也指派遣國的法
人；

（五）“法律”：

對中華人民共和國而言，是指所有具有法律效力的國家、省、自治區、直轄市和地方的法律、行政法規、規章，以及香港特別行政區的條例和附屬法規。

對加拿大而言，是指所有聯邦、省的法律規章和市政法規。

第二條

一般領事職務

領事官員有權執行下列職務：

- （一）確保派遣國及其國民的權利和利益；
- （二）增進派遣國和接受國之間的經濟、貿易、科技、文化和教育關係，並在其他方面促進兩國之間的友好合作；
- （三）用一切合法手段調查接受國的經濟、貿易、科技、文化和教育等方面的情況，並向派遣國政府報告；
- （四）執行派遣國授權而不為接受國法律所禁止或不為接受國所反對的其他領事職務。

第三條

接受有關國籍的申請和民事登記

一、領事官員有權：

- (一) 接受有關國籍問題的申請；
- (二) 登記派遣國國民；
- (三) 登記派遣國國民的出生。

二、本條第一款的規定不免除當事人遵守接受國法律的義務。

第四條

頒發護照和簽證

一、領事官員有權：

- (一) 向派遣國國民頒發護照和其他旅行證件，以及加注和吊銷上述護照或證件；
- (二) 向前往或途經派遣國的人員頒發簽證，以及加簽或吊銷上述簽證。

二、如接受國主管當局獲得派遣國主管當局所發護照或其他旅行證件，除純粹爲了臨時目的而保留者外，應退還

給派遣國主管當局。

第五條

公證和認證

一、領事官員有權：

- （一）應任何國籍的個人要求，為其出具在派遣國使用的各種文書；
- （二）應派遣國國民的要求，為其出具在派遣國境外使用的各種文書；
- （三）把文書譯成派遣國或接受國的官方文字，並證明譯本與原本相符；
- （四）認證派遣國有關當局或接受國有關當局所頒發的文書上的簽字和印章；
- （五）執行派遣國授權並不違反接受國法律的其他公證職務。

二、領事官員出具、證明或認證的文書如在接受國使用，只要它們符合接受國法律，應與接受國主管當局出具、證明或認證的文書具有同等效力。

三、在與接受國法律不相抵觸的前提下，領事官員應有權接受和臨時保管派遣國國民的證件和文書。

第六條

協助派遣國國民

一、領事官員有權：

（一）自由地在領區內同派遣國國民聯繫和會見。接受國不應限制派遣國國民同領館聯繫及進入領館；

（二）了解派遣國國民在接受國的居留和工作情況，並向他們提供必要的協助；

（三）請求接受國主管當局查尋派遣國國民的下落，接受國主管當局應盡可能提供有關情況。接受國應盡一切可能為領事官員和派遣國國民之間直接聯繫提供便利；

（四）按照接受國法律，接受和臨時保管派遣國國民的現金和貴重物品。

二、遇有派遣國國民不在當地或由於其他原因不能及時保護自己的權利和利益時，領事官員可根據接受國法律在接受國法院或其他主管當局前代表該國民或為其安排適當代理人，直至該國民指定了自己的代理人或本人能自行保護其權利和利益時為止。

第七條

監護和托管

一、領區內包括未成年人在內的無行為能力或限制行為能力的派遣國國民需要指定監護人或托管人時，接受國主管當局應通知領館。

二、領事官員有權在接受國法律允許的範圍內保護包括未成年人在內的無行為能力或限制行為能力的派遣國國民的權利和利益，必要時，可為他們推薦監護人或托管人，並監督他們的監護或托管活動。

第八條

拘留、逮捕通知和探視

一、遇有派遣國國民在領區內被接受國主管當局拘留、逮捕或以任何其他方式剝奪自由時，接受國主管當局應不遲延地自拘留、逮捕或被剝奪自由之日起通知領館。如果由於通訊困難無法不遲延地通知派遣國領館，接受國主管當局也應盡快通知，並應通知領館該國民被拘留、逮捕或以任何其他方式剝奪自由的原因。

二、領事官員有權探視被拘留、逮捕或以任何其他方式剝奪自由的派遣國國民，用派遣國或接受國語言與其交談或聯繫，並有權為其安排譯員和法律協助。接受國主管當局應安排領事官員探視上述國民。探視應盡快進行，最遲於主管當局通知領館該國民受到任何形式拘禁之日起的兩日後，不應拒絕探視。探視可按重覆方式進行。經領事官員請求，兩次探視之間的時間不應超過一個月。

三、對於適用本條規定的國民，領事官員有權向其提供裝有食品、衣服、醫藥用品、讀物和書寫文具的包裹。

四、接受國主管當局應將本條第一、二、三款的規定通知上述派遣國國民。

五、遇有派遣國國民在接受國受審判或其他法律訴訟，有關當局將向領館提供對該國民提出指控的情況，並應允許領事官員旁聽審判或其他法律訴訟。

六、遇有派遣國國民受審判或其他法律訴訟，當需要時，接受國主管當局將為其安排適當的翻譯。

七、領事官員在執行本條職務時，應遵守接受國的法律，但接受國法律的適用不應限制本條規定的權利的實施。

第九條

死亡通知

接受國主管當局獲悉派遣國國民在接受國死亡時，應立即通知領館，並應領館的請求提供死亡證書或其他證明死亡原因及其情況的文件副本。

第十條

關於遺產的職務

一、接受國有關地方當局獲悉由於派遣國國民在接受國死亡而遺留財產，且死者在接受國無已知的繼承人或遺囑執行人時，應盡速通知派遣國領館。

二、接受國有關地方當局獲悉無論屬何國國籍的死者在接受國遺有財產，根據死者的遺囑或接受國的法律，居住在接受國外的派遣國國民對遺產可能享有利益時，應盡速通知派遣國領館。

三、領事官員有權採取適當的措施保護或保存死亡的派遣國國民在接受國內遺留的財產。為此，領事官員可以為保護非接受國永久居民的派遣國國民的利益與接受國主管

當局聯繫，除非該國民另有代表。領館可請求接受國主管當局准許領事官員在清點和封存時到場，並一般地關注此事的進行。

四、領事官員有權維護對某一死者在接受國遺留的財產享有或聲稱享有權利的派遣國國民的利益，不論死者屬何國國籍，但以該國民不在接受國或在接受國無代理人為限。

五、領事官員有權接受非接受國永久居民的派遣國國民因他人死亡有權獲得的在接受國內的任何現款或其他財產，以便轉交給該國民，包括遺產份額、按僱員賠償法支付的款項、養老金和一般的社會福利金以及保險收益，除非法院、執行分配的機構或人員明示確實可通過其他方式轉交。法院、執行分配的機構或人員可要求領事官員遵守就下列各項規定的條件：

- （一）出示該國民的委託書或其他授權書；
- （二）提供該國民收到此現款或其他財產的合理證明；
- （三）如領事官員不能提供上述證明，則退回此現款或其他財產。

六、領事官員行使本條第三至第五款規定的權利時，須遵守接受國的法律。本條的任何規定不授權領事官員起律師的作用。

第十一條

轉送司法文書

領事官員有權在接受國法律允許的範圍內轉送司法文書和司法外文書，如派遣國和接受國之間另有協議，則按協議辦理。

第十二條

關於旅行方便

一、締約雙方同意給予自稱同時具有中華人民共和國和加拿大國籍的人在兩國間旅行以便利，但這並不意味着中華人民共和國承認雙重國籍。上述人員的出境手續和證件按照其通常居住國的法律辦理。入境手續和證件應按照前往國的法律辦理。

二、如果司法和行政程序妨礙派遣國國民在其簽證和證件有效期內離開接受國，該國民不應失去派遣國領事的會見和保護權。應准許該國民離開接受國，除接受國法律規定的出境證件外，無需取得接受國其他證件。

三、凡持有派遣國有效旅行證件進入接受國的派遣國

國民，於簽證或合法免簽證入境賦予其該身份的有效期限內，將被接受國有關當局視為派遣國國民，以保證其得到派遣國領事的會見和保護。

第十三條

同接受國當局聯繫

領事官員在執行職務時，可與其領區內的地方主管當局聯繫，必要時也可與接受國的中央主管當局聯繫，但以接受國的法律和慣例允許為限。

第十四條

本協定同其他國際協議的關係

本協定依一九六三年四月二十四日訂於維也納的《領事關係公約》第七十三條第二款締結，本協定未明確規定的事項，按該公約處理。

第十五條

領土適用

本協定也適用於中華人民共和國香港特別行政區。

第十六條

磋商

締約雙方同意不定期就雙方共同關心的領事事務進行磋商。

第十七條

生效和終止

一、本協定應自締約雙方通過外交途徑相互通知已完成各自的手續之日起第三十一天生效。

二、本協定經締約任何一方通過外交途徑書面通知可以終止。協定的終止自該通知發出之日起六個月後生效。

下列簽署人秉各自政府授權，簽署本協定，以昭信守。

本協定於一九九七年十一月二十八日在渥太華簽訂，一式兩份，每份都用中文、英文和法文寫成，三種文本同等作準。

中華人民共和國政府代表

錢其琛

（簽字）

加拿大政府代表

勞埃德·阿克斯沃西

（簽字）

CONSULAR AGREEMENT
BETWEEN
THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA
AND
THE GOVERNMENT OF CANADA

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA AND
THE GOVERNMENT OF CANADA, (hereinafter referred to as the "Contracting
Parties"),

DESIRING to develop their consular relations in order to facilitate the
protection of the rights and interests of their nations and nationals, and to promote the
friendly relations and cooperation between the two countries,

HAVE DECIDED to conclude this Agreement and have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement, the following expressions shall have the
meanings hereunder assigned to them:

- (a) "consular post" means any consulate-general, consulate, vice-consulate, or
consular agency;
- (b) "consular district" means the area assigned to a consular post for the exercise
of consular functions;
- (c) "consular officer" means any person, including the head of a consular post,
entrusted in that capacity with the exercise of consular functions;
- (d) "national of the sending State" means an individual having the nationality of
the sending State and, when applicable, a corporate body of the sending State;
- (e) "law" means

for the People's Republic of China:

all laws, administrative decrees and regulations having the effect of law of the
State, provinces, autonomous regions, municipalities directly under the Central
Government and other localities, and ordinances and subordinate legislation of
the Hong Kong Special Administrative Region; and

for Canada:

a) federal and provincial laws and regulations, and municipal by-laws.

ARTICLE 2

General Consular Functions

A consular officer shall be entitled to the performance of the following functions:

- (a) protecting and securing the rights and interests of the sending State and those of its nationals;
- (b) furthering the development of economic, trade, scientific, technological, cultural and educational relations between the sending State and receiving State and otherwise promoting their friendly relations and cooperation;
- (c) ascertaining by all lawful means conditions of the receiving State in the economic, trade, scientific, technological, cultural, educational and other fields, and reporting thereon to the government of the sending State; and
- (d) performing other consular functions authorized by the sending State which are not prohibited by the law of the receiving State or to which the receiving State does not object.

ARTICLE 3

Applications Pertaining to Nationality and Civil Registration

1. A consular officer shall be entitled to:
 - (a) receive applications pertaining to nationality;
 - (b) register nationals of the sending State;
 - (c) register births of nationals of the sending State.
2. The provisions of paragraph 1 of this Article shall not exempt the persons concerned from the obligation to observe the law of the receiving State.

ARTICLE 4

Issuance of Passports and Visas

1. A consular officer shall be entitled to:
 - (a) issue passports or other travel documents to nationals of the sending State and endorse or invalidate the said passports or documents;
 - (b) issue visas to persons who will go to or pass through the sending State and endorse or invalidate the said visas.
2. The passports and other travel documents issued by the authorities of the sending State coming into the possession of the authorities of the receiving State, other than those held for purely temporary purposes, shall be returned to the authorities of the sending State.

Article 5

Notarization and Authentication

1. A consular officer shall be entitled to:
 - (a) draw up documents of a person of any nationality for use in the sending State upon the request of that person;
 - (b) draw up documents of a national of the sending State for use outside the sending State upon the request of that national;
 - (c) translate documents into the official language(s) of the sending State or of the receiving State and certify that the translation is in conformity with the original;
 - (d) authenticate signatures and seals on documents issued by the competent authorities of the sending State or of the receiving State;
 - (e) carry out other notarial functions authorized by the sending State that are not contrary to the law of the receiving State.
2. When used in the receiving State, the documents drawn up, certified or authenticated by a consular officer in accordance with the law of the receiving State, shall have the same validity and effect as the documents drawn up, certified or authenticated by the competent authorities of the receiving State.
3. A consular officer shall be entitled to receive or take into temporary custody the certificates and documents of a national of the sending State provided that this is not incompatible with the law of the receiving State.

ARTICLE 6

Assistance to Nationals of the Sending State

1. A consular officer shall be entitled to:
 - (a) communicate and meet freely with nationals of the sending State in the consular district, and the receiving State shall neither restrict communication between nationals of the sending State and a consular post nor restrict their access to the consular post;
 - (b) ascertain living and work conditions of nationals of the sending State in the receiving State and provide them with necessary assistance;
 - (c) address the competent authorities of the receiving State to ascertain the whereabouts of a national of the sending State, and the said authorities shall do everything possible to provide the relevant information. The receiving State shall do everything possible to facilitate direct communications between consular officers and nationals of the sending State;
 - (d) receive and take into temporary custody money or valuables of a national of the sending State in accordance with the law of the receiving State.

2. A consular officer may represent a national of the sending State who is not present or for any other reason is unable to defend in time his rights and interests before the court or other competent authorities of the receiving State or arrange for him an appropriate representative in accordance with the law of the receiving State until he designates his own representative or is able to assume the defence of his rights and interests.

ARTICLE 7

Guardianship and Trusteeship

1. The competent authorities of the receiving State shall notify the consular post when a guardian or trustee is required for a national, including an underaged national, of the sending State in the consular district who has no capacity or limited capacity to act on his own behalf.
2. A consular officer shall be entitled to protect, to the extent permitted by the law of the receiving State, the rights and interests of a national, including an underaged national of the sending State who has no capacity or limited capacity to act on his own behalf and, when necessary, to recommend a person to be appointed as guardian or trustee to that national and supervise the activities pertaining to guardianship or trusteeship.

ARTICLE 8

Notification of Detention, Arrest and Visit

1. If a national of the sending State is detained, arrested or deprived of freedom by any other means in the consular district by the competent authorities of the receiving State, the said authorities shall notify the consular post of the matter without delay from the date of the detention, arrest, or deprivation of freedom. If it is not possible to notify without delay the consular post of the sending State because of communication problems, the competent authorities of the receiving State shall provide notification as soon as possible. The said authorities shall inform the consular post of the reasons for which a national has been detained, arrested, or deprived of freedom by any other means.
2. A consular officer shall be entitled to visit a national of the sending State who is under detention, arrest or deprived of freedom in any other means, to converse or communicate with him in the language of the sending State or the receiving State and to arrange for interpretation and legal assistance. The competent authorities of the receiving State shall make arrangements for a consular officer to visit the said national. This visit 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 have notified the consular post that the said national has been placed under any form of detention. Visits may be made on a recurring basis. No longer than one month shall be allowed to pass between visits requested by a consular officer.
3. A consular officer shall be allowed to provide to a national, to whom these provisions apply, parcels containing food, clothing, medicaments and reading and writing materials.
4. The competent authorities of the receiving State shall inform the above-mentioned national of the sending State of the provisions contained under paragraphs 1, 2, and 3 of this Article.

5. In the case of a trial or other legal proceedings against a national of the sending State in the receiving State, the appropriate authorities shall make available to the consular post information on the charges against that national. A consular officer shall be permitted to attend the trial or other legal proceedings.
6. In the case of a trial or other legal proceedings against a national of the sending State, the appropriate authorities of the receiving State shall make available adequate interpretation to that national when necessary.
7. A consular officer shall comply with the law of the receiving State in performing the functions provided for in this Article. Nevertheless, the application of the law of the receiving State shall not restrict the implementation of the rights provided for in this Article.

ARTICLE 9

Notification of Death

Upon learning of the death of a national of the sending State in the receiving State, the competent authorities of the receiving State shall so inform the consular post as soon as possible and provide upon the request of the consular post, a death certificate, or a copy of other documents, confirming the cause of death and its circumstances.

ARTICLE 10

Functions Concerning Estates

1. Whenever the appropriate local authorities of the receiving State learn of an estate resulting from the death in the receiving State of a national of the sending State who leaves in the receiving State no known heir or testamentary executor, they shall promptly so inform a consular post of the sending State.
2. Whenever the appropriate local authorities of the receiving State learn of an estate of a deceased, regardless of nationality, who has left in the receiving State an estate in which a national of the sending State residing outside the receiving State may have an interest under the will of the deceased or in accordance with the law of the receiving State, they shall promptly so inform a consular post of the sending State.
3. A consular officer is entitled to take appropriate measures to protect and conserve the estate left in the receiving State by a deceased national of the sending State. To this effect, a consular officer may approach the competent authorities of the receiving State with a view to protecting the interests of a national of the sending State who is not a permanent resident of the receiving State, unless that national is otherwise represented. A consular post may request the competent authorities of the receiving State to permit the presence of a consular officer at the inventorying and sealing and, in general, may also take an interest in the proceedings.
4. A consular officer is entitled to safeguard the interests of a national of the sending State who has, or claims to have, a right to property left in the receiving State by a deceased, irrespective of the latter's nationality, and if that national is not in the receiving State or does not have a representative there.

5. A consular officer is entitled to receive for transmission to a national of the sending State who is not a permanent resident of the receiving State any money or other property in the receiving State to which that national is entitled as a consequence of the death of another person, including shares in an estate, payment made pursuant to employee's compensation law, pension and social benefits in general and proceeds of insurance policies, unless the court, agency or person making distribution directs that transmission be effected in a different manner. The court, agency or person making distribution may require that a consular officer comply with conditions laid down with regard to:
 - (a) presenting a power of attorney or other authorization from that national;
 - (b) providing reasonable evidence of the receipt of such money or other property by that national; and
 - (c) returning the money or other property in the event the consular officer is unable to provide that evidence.
6. In exercising the rights provided by paragraphs 3 through 5 of this Article, a consular officer shall comply with the law of the receiving State. Nothing in this Article shall authorize a consular officer to act as an attorney-at-law.

ARTICLE 11

Transmitting Judicial Documents

A consular officer shall be entitled to transmit judicial and extra-judicial documents to the extent permitted by the law of the receiving State, subject to the operation of the existing agreements between the sending State and the receiving State.

ARTICLE 12

Facilitation of Travel

1. The Contracting Parties agree to facilitate travel between the two States of a person who may have a claim simultaneously to the nationality of the People's Republic of China and that of Canada. However, this does not imply that the People's Republic of China recognizes dual nationality. Exit formalities and documentation of that person shall be handled in accordance with the law of the State in which that person customarily resides. Entry formalities and documentation shall be handled in accordance with the law of the State of destination.
2. If judicial or administrative proceedings prevent a national of the sending State from leaving the receiving State within the period of validity of his visa and documentation, that national shall not lose his right to consular access and protection by the sending State. That national shall be permitted to leave the receiving State without having to obtain additional documentation from the receiving State other than exit documentation as required under the law of the receiving State.

3. A national of the sending State entering the receiving State with valid travel documents of the sending State will, during the period for which his status has been accorded on a limited basis by visa or lawful visa-free entry, be considered as a national of the sending State by the appropriate authorities of the receiving State with a view to ensuring consular access and protection by the sending State.

ARTICLE 13

Communication with the Authorities of the Receiving State

In the exercise of his functions, a consular officer may address the competent local authorities in his consular district and, when necessary, the competent central authorities of the receiving State to the extent permitted by the law and usage of the receiving State.

ARTICLE 14

Relations between this Agreement and other International Agreements

This Agreement is concluded in accordance with the Article 73 paragraph 2 of the Convention on Consular Relations, done at Vienna, April 24, 1963, and matters not expressly stipulated in it shall be handled in accordance with that Convention.

ARTICLE 15

Application of Territory

This Agreement shall apply as well to the Hong Kong Special Administrative Region of the People's Republic of China.

ARTICLE 16

Consultations

Both Contracting Parties agree to meet from time to time to discuss consular issues of common concern.

ARTICLE 17

Entry into Force and Termination

1. This Agreement shall enter into force after the expiration of thirty days following the date on which the Contracting Parties have notified each other through diplomatic channels that their procedures have been complied with.
2. This Agreement may be terminated by either Contracting Party by giving written notice through diplomatic channels. Termination shall take effect six months after the date of such notice.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at _____, on this _____ day of _____, 1997,
in the Chinese, English and French languages, each version being equally authentic.

FOR THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA

FOR THE GOVERNMENT
OF CANADA

ACCORD CONSULAIRE
ENTRE
LE GOUVERNEMENT DU CANADA
ET
LE GOUVERNEMENT DE
LA RÉPUBLIQUE POPULAIRE DE CHINE

LE GOUVERNEMENT DU CANADA ET LE GOUVERNEMENT DE LA
RÉPUBLIQUE POPULAIRE DE CHINE (ci-après dénommés les « Parties
contractantes »),

DÉSIREUX de développer leurs relations consulaires et de faciliter la protection
des droits et des intérêts de leurs nations et de leurs ressortissants et afin de promouvoir
des relations amicales et la coopération entre les deux pays,

ONT DÉCIDÉ de conclure cet Accord et sont convenus de ce qui suit :

ARTICLE PREMIER

Définitions

Aux fins du présent Accord, les expressions suivantes s'entendent comme suit:

- a) « poste consulaire » tout consulat-général, consulat, vice-consulat ou agence consulaire;
- b) « circonscription consulaire » territoire attribué à un poste consulaire pour l'exercice des fonctions consulaires;
- c) « fonctionnaire consulaire » toute personne, y compris le chef de poste consulaire, chargée en cette qualité de l'exercice de fonctions consulaires;
- d) « ressortissant de l'État d'envoi » une personne possédant la nationalité de l'État d'envoi et, le cas échéant, une personne morale de l'État d'envoi;
- e) « loi » et dans le cas du Canada, toutes les lois et tous les règlements fédéraux et provinciaux, et les règlements municipaux; et dans celui de la République populaire de Chine, toutes les lois et tous les décrets et règlements administratifs ayant force de loi, de l'État, des provinces, des régions autonomes, des municipalités relevant directement du gouvernement central, et des autres localités, et les ordonnances et la législation subordonnée de la Région administrative spéciale de Hong Kong.

ARTICLE 2

Fonctions consulaires générales

Un fonctionnaire consulaire peut exercer les fonctions suivantes :

- a) protéger et sauvegarder les droits et les intérêts de l'État d'envoi et ceux de ses ressortissants;
- b) favoriser le développement de relations économiques, commerciales, scientifiques, technologiques, culturelles et éducationnelles entre l'État d'envoi et l'État de résidence et promouvoir de toute autre manière les relations amicales et la coopération entre eux ;
- c) s'informer, par tout moyen licite, des conditions prévalant dans l'État de résidence dans les domaines économique, commercial, scientifique, technologique, culturel, éducationnel et autres et faire rapport au gouvernement de l'État d'envoi ;
- d) exercer les autres fonctions consulaires autorisées par l'État d'envoi qui ne sont pas interdites par la loi de l'État de résidence ou auxquelles ce dernier ne s'oppose pas.

ARTICLE 3

Demandes se rapportant à la nationalité et à l'état civil

1. Un fonctionnaire consulaire peut:
 - a) recevoir les demandes qui ont trait à la nationalité ;
 - b) enregistrer les nationaux de l'État d'envoi ;
 - c) enregistrer les naissances des ressortissants de l'État d'envoi.
2. Les dispositions du paragraphe 1 du présent article ne libèrent pas les personnes concernées de leur obligation de respecter la loi de l'État de résidence.

ARTICLE 4

Délivrance de passeports et de visas

1. Un fonctionnaire consulaire peut délivrer :
 - a) des passeports et autres documents de voyage aux ressortissants de l'État d'envoi, les viser ou les invalider ;
 - b) des visas aux personnes qui se rendent dans l'État d'envoi ou qui veulent traverser son territoire, les viser ou les invalider.
2. Les passeports et autres documents de voyage délivrés par les autorités de l'État d'envoi et qui se trouvent en possession de l'État de résidence, à l'exception de ceux qui sont retenus à des fins purement provisoires, sont rendus aux autorités de l'État d'envoi.

ARTICLE 5

Légalisation et authentification

1. Un fonctionnaire consulaire peut:
 - a) dresser les actes requis par toute personne, de quelque nationalité qu'elle soit, qui sont destinés à servir sur le territoire de l'État d'envoi;
 - b) dresser, à la demande d'un ressortissant de l'État d'envoi, les actes destinés à servir ailleurs que sur le territoire de cet État;
 - c) traduire divers documents dans les langues officielles de l'État d'envoi, ou de l'État de résidence, et certifier la conformité de la traduction avec l'original;
 - d) authentifier les signatures et les sceaux apposés sur les documents délivrés par les autorités compétentes de l'État d'envoi ou de l'État de résidence;
 - e) exercer les autres fonctions notariales autorisées par l'État d'envoi qui ne sont pas contraires à la loi de l'État de résidence.
2. Lorsqu'ils sont utilisés sur le territoire de l'État de résidence, les documents rédigés, certifiés ou authentiqués par un fonctionnaire consulaire en conformité avec la loi de l'État de résidence ont même validité et même effet que les documents qui le sont par les autorités compétentes de cet État.
3. Un fonctionnaire consulaire est autorisé à recevoir et à conserver provisoirement les certificats et les documents d'un ressortissant de l'État d'envoi, à moins que la loi de l'État de résidence ne la permette pas.

ARTICLE 6

Aide apportée aux nationaux de l'État d'envoi

1. Un fonctionnaire consulaire peut:
 - a) rencontrer et communiquer librement avec les ressortissants de l'État d'envoi dans sa circonscription consulaire; l'État de résidence ne limite en rien les communications entre ces ressortissants et un poste consulaire ni l'accès de ces ressortissants au poste consulaire;
 - b) s'informer des conditions de vie et de travail des ressortissants de l'État d'envoi sur le territoire de l'État de résidence et leur prêter l'assistance nécessaire;
 - c) s'enquérir auprès des autorités compétentes de l'État de résidence du lieu où se trouve un ressortissant de l'État d'envoi; lesdites autorités font alors tout ce qui est en leur pouvoir pour lui fournir l'information pertinente. L'État de résidence fera également tout en son pouvoir pour faciliter les communications directes entre les fonctionnaires consulaires et les ressortissants de l'État d'envoi;
 - d) recevoir et assurer la garde provisoire de fonds ou d'objets de valeur des ressortissants de l'État d'envoi, en conformité avec la loi de l'État de résidence.

26

peut représenter un ressortissant de l'État d'envoi absent ou qui ne peut, pour quelque autre raison, en temps utile, assurer la défense de ses droits et de ses intérêts devant un tribunal ou quelque autre autorité compétente de l'État de résidence, ou il peut retenir en son nom les services d'un représentant approprié, jusqu'à ce que ce ressortissant soit en mesure de le désigner lui-même ou d'assurer personnellement sa défense.

ARTICLE 7

Tutelle et curatelle

1. Les autorités compétentes de l'État de résidence avisent le poste consulaire lorsqu'il s'avère nécessaire de nommer un tuteur ou un curateur à un ressortissant de la circonscription consulaire de l'État d'envoi, y compris à un mineur, parce qu'il est incapable, totalement ou partiellement, d'agir en son propre nom.
2. Un fonctionnaire consulaire, dans la mesure où le permet la loi de l'État de résidence, peut assurer la protection des droits et des intérêts d'un ressortissant de l'État d'envoi, y compris d'un mineur, incapable, totalement ou partiellement, d'agir en son propre nom et, si nécessaire, peut recommander la nomination d'une personne donnée, à titre de tuteur ou de curateur de ce ressortissant, et de superviser les activités reliées à la tutelle ou à la curatelle.

ARTICLE 8

Notification en cas de détention, d'arrestation et de droit de visite

1. Les autorités compétentes de l'État de résidence qui détiennent, arrêtent ou privent de sa liberté sous une forme ou une autre, un ressortissant de l'État d'envoi en notifient sans attendre, à partir de la date de la détention, de l'arrestation ou de la privation de liberté, le poste consulaire de cet État situé dans la circonscription consulaire en cause. S'il n'est pas possible de faire cette notification sans délai, en raison de problèmes de communication, les autorités compétentes la font dès que possible. Elles informent le poste consulaire des motifs de l'arrestation, de la détention ou de toute forme de privation de liberté.
2. Un fonctionnaire consulaire peut rendre visite à un ressortissant de l'État d'envoi qui est détenu, arrêté ou privé de liberté sous une forme ou une autre, à converser ou à communiquer avec lui, dans l'une ou l'autre des langues de l'État d'envoi ou de l'État de résidence, et à prendre des arrangements en matière d'interprétation et de représentation par avocat. Les autorités compétentes de l'État de résidence prennent les arrangements nécessaires pour qu'un fonctionnaire consulaire puisse rendre visite audit ressortissant. Cette visite doit pouvoir avoir lieu le plus tôt possible; elle ne saurait être refusée, au plus tard, deux jours après le jour où les autorités compétentes ont donné notification au poste consulaire de la mise en détention, quelqu'en soit la forme, dudit ressortissant. Les visites peuvent se poursuivre sur une base régulière. Il ne peut s'écouler plus d'un mois entre les visites demandées par le fonctionnaire consulaire.
3. Un fonctionnaire consulaire peut remettre au ressortissant auquel s'appliquent les présentes dispositions des colis qui peuvent contenir de la nourriture, des vêtements, des médicaments, de quoi lire et de quoi écrire.

4. Les autorités compétentes de l'État de résidence informent les ressortissants de l'État d'envoi, se trouvant dans la situation précitée, des dispositions des paragraphes 1, 2 et 3 du présent article.
5. Dans le cas d'un procès ou de quelque autre instance judiciaire intentée contre un ressortissant de l'État d'envoi sur le territoire de l'État de résidence, les autorités compétentes transmettent au poste consulaire les informations reliées aux accusations portées contre ce ressortissant. Un fonctionnaire consulaire peut assister au procès ou à l'instance judiciaire introduite.
6. Dans les cas précités, les autorités compétentes de l'État de résidence mettent à la disposition du ressortissant traduit en justice les facilités d'interprétation adéquates lorsque nécessaire.
7. Un fonctionnaire consulaire se conforme à la loi de l'État de résidence dans l'exercice des fonctions prévues au présent article. Néanmoins, l'application de la loi de l'État de résidence ne limite pas l'exercice des droits prévus au présent article.

ARTICLE 9

Avis de décès

Lorsqu'elles apprennent le décès d'un ressortissant de l'État d'envoi dans l'État de résidence, les autorités compétentes de l'État de résidence en informent le poste consulaire sans tarder et, à sa demande, elles lui remettent un certificat de décès, ou copie de tout document, attestant des causes et des circonstances du décès.

ARTICLE 10

Fonctions concernant les successions

1. Les autorités locales compétentes de l'État de résidence qui ont connaissance que, par suite du décès d'un ressortissant de l'État d'envoi sur le territoire de l'État de résidence, une succession s'est ouverte, alors qu'il n'y a sur ce territoire aucun héritier ni exécuteur testamentaire connu, en informent rapidement le poste consulaire de l'État d'envoi.
2. Les autorités locales compétentes de l'État de résidence qui ont connaissance du décès d'une personne, quelle qu'en soit la nationalité, qui laisse sur le territoire de cet État une succession dans laquelle un ressortissant de l'État d'envoi ne résidant pas sur le territoire de l'État de résidence pourrait avoir des droits, en vertu du testament laissé par le défunt ou de la loi de l'État de résidence, en informent rapidement le poste consulaire de l'État d'envoi.



3. Un fonctionnaire consulaire peut prendre les mesures appropriées de protection et de conservation de la succession que laisse sur le territoire de l'État de résidence un ressortissant de l'État d'envoi qui est décédé. À cet effet, un fonctionnaire consulaire peut, en s'adressant aux autorités compétentes de l'État de résidence, se porter à la défense des intérêts d'un ressortissant de l'État d'envoi qui ne réside pas en permanence sur le territoire de l'État de résidence, à moins que ce dernier ne soit déjà représenté. Le poste consulaire peut demander aux autorités compétentes de l'État de résidence d'autoriser la présence d'un fonctionnaire consulaire au moment où il est fait inventaire, ou au moment de l'apposition des scellés, et, en général, peut aussi intervenir dans les procédures.
4. Un fonctionnaire consulaire peut défendre les intérêts d'un ressortissant de l'État d'envoi qui a, ou prétend avoir, des droits sur les biens laissés sur le territoire de l'État de résidence par le défunt, quelle que soit la nationalité de ce dernier, si le ressortissant qui prétend à ces droits ne se trouve pas sur le territoire de l'État de résidence ou n'y a pas de représentant.
5. Un fonctionnaire consulaire peut recevoir, afin de les transmettre à un ressortissant de l'État d'envoi qui n'est pas résident permanent de l'État de résidence, tous fonds et autres biens se trouvant sur le territoire de l'État de résidence auxquels ce ressortissant a droit du fait du décès d'une autre personne, y compris sa part dans une succession, une indemnité versée en vertu de la législation du travail, une pension, des avantages sociaux en général et des montants versés aux termes de polices d'assurances, à moins que le tribunal, l'autorité ou la personne procédant au partage n'ordonne de les lui transmettre suivant un autre mode. Ce tribunal, cette autorité ou cette personne peut exiger d'un fonctionnaire consulaire qu'il satisfasse à certaines conditions afférentes à:
- a) la présentation d'une procuration ou de tout autre pouvoir conféré par ce ressortissant;
 - b) la remise d'une preuve raisonnable de la réception des fonds ou des autres biens par ce ressortissant;
 - c) la restitution des fonds ou des autres biens dans le cas où le fonctionnaire consulaire ne serait pas en mesure de fournir cette preuve.
6. Dans l'exercice des droits conférés aux paragraphes 3 à 5 du présent article, un fonctionnaire consulaire se conforme à la loi de l'État de résidence. Le présent article n'autorise en rien un fonctionnaire consulaire à agir à titre de conseiller juridique.

ARTICLE 11

Transmission d'actes judiciaires

Un fonctionnaire consulaire peut transmettre des actes judiciaires et extrajudiciaires dans la mesure où la permet la loi de l'État de résidence, sous réserve des traités en vigueur entre l'État d'envoi et l'État de résidence.

ARTICLE 12Facilitation des déplacements

1. Les Parties contractantes sont convenues de faciliter les déplacements entre leurs deux territoires d'une personne qui peut revendiquer à la fois être un ressortissant de la République populaire de Chine et du Canada. Toutefois, il ne saurait en être déduit que la République populaire de Chine reconnaît qu'une personne puisse être à la fois un ressortissant de plus d'un État. La loi de l'État de résidence habituelle de cette personne prévaut quant aux formalités et aux documents de sortie lorsque cette personne sort du territoire de l'une des Parties Contractantes. La loi de l'État de destination prévaut quant aux formalités et aux documents nécessaires à l'admission de cette personne sur son territoire.
2. Si, en raison d'une procédure judiciaire ou administrative, un ressortissant de l'État d'envoi n'est pas autorisé à quitter l'État de résidence au cours du délai de validité de son visa ou de ses documents, il conserve son droit d'accessibilité consulaire et son droit à la protection de l'État d'envoi. Il est autorisé à quitter l'État de résidence sans avoir à obtenir de ce dernier d'autres documents que ceux requis en vertu de la loi de cet État pour la sortie de son territoire.
3. Un ressortissant de l'État d'envoi admis sur le territoire de l'État de résidence muni de documents de voyage valides émanant de l'État d'envoi est considéré comme un ressortissant de l'État d'envoi par les autorités compétentes de l'État de résidence lorsqu'il s'agit de lui assurer l'accessibilité consulaire et la protection de l'État d'envoi durant la période pendant laquelle un statut lui est accordé, limitativement, aux termes d'un visa ou d'une admission légale sans visa.

ARTICLE 13Communication avec les autorités
de l'État de résidence

Dans l'exercice de ses fonctions, un fonctionnaire consulaire peut s'adresser aux autorités locales compétentes de sa circonscription consulaire et, si nécessaire, aux autorités centrales compétentes de l'État de résidence, dans la mesure où le permettent la loi et les usages de cet État.

ARTICLE 14Rapports entre le présent Accord et
d'autres accords internationaux

Le présent Accord est conclu en vertu de l'article 73, paragraphe 2 de la Convention sur les relations consulaires, faite à Vienne le 24 avril 1963, et les sujets qui n'y sont pas expressément énoncés sont régis en conformité avec cette Convention.

ARTICLE 15Champ d'application territorial

Le présent Accord s'applique aussi à la Région administrative spéciale de Hong Kong de la République populaire de Chine.

ARTICLE 16

Consultations

Les Parties contractantes sont convenues de se réunir à l'occasion afin de discuter de questions consulaires d'intérêt commun.

ARTICLE 17

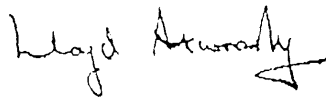
Entrée en vigueur et dénonciation

1. Le présent Accord entre en vigueur au terme des trente jours qui se seront écoulés depuis le jour auquel les Parties contractantes se seront mutuellement notifié, par la voie diplomatique, l'accomplissement des formalités nécessaires à cet égard.
2. Le présent Accord peut être dénoncé unilatéralement par les Parties contractantes, par notification écrite donnée par la voie diplomatique. La dénonciation prend effet six mois après la date de la notification.

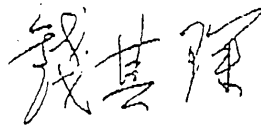
EN FOI DE QUOI, les soussignés, dûment autorisés à cet effet par leurs gouvernements respectifs, ont signé cet Accord.

FAIT, en double exemplaire, à *Ottawa*, ce *28^e* jour de *novembre*, 1997, en langue française, anglaise et chinoise, chaque version faisant également foi.

POUR LE GOUVERNEMENT
DU CANADA



POUR LE GOUVERNEMENT DE
LA RÉPUBLIQUE POPULAIRE
DE CHINE



中華人民共和國外交部的信頭

(96)部領五字第 84 號

大不列顛及北愛爾蘭聯合王國駐華大使館：

中華人民共和國外交部向大不列顛及北愛爾蘭聯合王國駐華大使館致意，並榮幸地收到大使館一九九六年九月二十六日第 66/96 號照會，內容如下：

“大不列顛及北愛爾蘭聯合王國大使館向中華人民共和國外交部致意，並謹代表大不列顛及北愛爾蘭聯合王國政府建議，為執行一九八四年十二月十九日於北京簽訂的大不列顛及北愛爾蘭聯合王國政府與中華人民共和國政府關於香港問題的聯合聲明中英國可在香港特別行政區建立總領事館的規定，從進一步發展兩國友好關係和加強兩國領事關係的共同願望出發，大不列顛及北愛爾蘭聯合王國政府與中華人民共和國政府就英國在香港設立總領事館達成協議如下：

一、中華人民共和國政府確認同意大不列顛及北愛爾蘭聯合王國政府在香港設立總領事館，領區為香港特別行政區。

二、中華人民共和國政府將根據一九六三年四月二十四日《維也納領事關係公約》及中華人民共和國有關法律和

規定爲總領事館的設立提供必要的協助。

三、以英國政府或代表英國政府的任何人爲房主或承租人的領事官員住宅將享有與總領事館館舍同樣的免稅待遇。

四、兩國政府一九八四年四月十七日於北京簽訂的關於在上海和曼徹斯特設立總領事館協議第三、五、六、七及八條將適用於根據本協議設立的總領事館。

五、本協議未提及的領事事務將根據一九六三年四月二十四日《維也納領事關係公約》予以規範。領事事務將本着友好合作的精神在平等互利的基礎上予以處理。

如蒙外交部代表中華人民共和國政府未照確認上述建議，本照會及外交部的復照將構成大不列顛及北愛爾蘭聯合王國政府與中華人民共和國政府間的一項協議，並自一九九七年七月一日起生效。”

中華人民共和國外交部謹代表中華人民共和國政府確認上述照會內容。

順致最崇高的敬意。

一九九六年九月二十六日於北京

The Embassy of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Ministry of Foreign Affairs of the People's Republic of China and would like to propose, on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland, in implementation of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the question of Hong Kong, done at Beijing on 19 December 1984, whereby it is provided that the United Kingdom may establish a Consulate-General in the Hong Kong Special Administrative Region, and proceeding from the common desire further to develop friendly relations and strengthen consular relations between the two countries, that the Governments of the United Kingdom of Great Britain and Northern Ireland and the People's Republic of China hereby agree on the establishment of a British Consulate-General in Hong Kong as follows:

1. The Government of the People's Republic of China confirms its consent to the Government of the United Kingdom of Great Britain and Northern Ireland to establish a Consulate-General in Hong Kong with the consular district comprising the Hong Kong Special Administrative Region.
2. In accordance with the Vienna Convention on Consular Relations of 24 April 1963 and the relevant laws and regulations of the People's Republic of China, the Government of the People's Republic of China shall provide the necessary assistance for the establishment of the Consulate-General.
3. The like exemption from dues and taxes as shall be accorded to the premises of the Consulate-General shall be accorded to the residence of a consular officer of which the Government of the United Kingdom, or any person acting on its behalf, is the owner or lessee.
4. Articles 3, 5, 6, 7 and 8 of the Agreement between the two Governments done at Beijing on the 17th day of April 1984 on the establishment of Consulates-General at Shanghai and Manchester shall apply to the Consulate-General to be

established under the present Agreement.

5. Consular matters which are not dealt with in this Agreement shall be regulated by the Vienna Convention on Consular Relations of 24 April 1963. Consular matters shall be handled on the basis of equality and mutual benefit and in a friendly and co-operative spirit.

If the above proposal is confirmed in a Note from the Ministry of Foreign Affairs representing the Government of the People's Republic of China, this Note and the reply from the Ministry of Foreign Affairs shall constitute an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China. It shall enter into force on 1 July 1997.

The Embassy of the United Kingdom of
Great Britain and Northern Ireland in China
Beijing 26 September 1996

**AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON
THE ESTABLISHMENT OF A BRITISH CONSULATE-GENERAL
AT SHANGHAI AND A CHINESE CONSULATE-GENERAL AT
MANCHESTER**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China;

Proceeding from the common desire to develop friendly relations and strengthen consular relations between the two countries;

Have agreed to establish a Consulate-General of each country in the other, as follows:

ARTICLE 1

(1) The Government of the People's Republic of China gives its consent to the Government of the United Kingdom to establish a Consulate-General at Shanghai, with the consular district comprising the Shanghai Municipality directly under the jurisdiction of the Central Government and the Provinces of Jiangsu and Zhejiang.

(2) The Government of the United Kingdom gives its consent to the Government of the People's Republic of China to establish a Consulate-General at Manchester, with the consular district comprising the counties of Greater Manchester, Merseyside, Lancashire, Tyne and Wear, North Yorkshire, South Yorkshire, West Yorkshire, Durham and Derbyshire.

(3) The dates on which the two Governments will establish the above-mentioned Consulates-General shall be determined by mutual agreement.

ARTICLE 2

In accordance with the relevant laws and regulations of their respective countries, and following friendly consultation, the Contracting Governments shall mutually provide necessary assistance for the establishment of the Consulates-General, including assistance in the acquisition of premises for the Consulate-General and accommodation for its members.

ARTICLE 3

(1) The consular premises shall be inviolable. The authorities of the receiving State may not enter the consular premises without the consent of the head of the consular post or the head of the diplomatic mission of the sending State, or a person designated by one of those persons.

(2) The receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

(3) The provisions of paragraph (1) of this Article shall likewise apply to the residences of consular officers.

ARTICLE 4

(1) Unless otherwise agreed by the Contracting Governments, the number of members of the consular post shall not exceed the limit of 30 persons, of which that of consular officers shall not exceed the limit of 10 persons, and that of consular employees and members of the service staff shall not exceed the limit of 20 persons.

(2) Consular officers shall be nationals of the sending State, and not nationals or permanent residents of the receiving State.

ARTICLE 5

(1) The receiving State shall take all steps necessary to provide full facilities for the performance of consular functions by the consular officers of the sending State.

(2) With the consent of the receiving State, consular officers shall be able to exercise consular functions in areas outside their consular district when necessary. The receiving State shall render necessary assistance in this regard.

ARTICLE 6

The receiving State shall treat consular officers with due respect, and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

ARTICLE 7

(1) Members of the consular post and members of their families shall be immune from the criminal jurisdiction of the receiving State and shall not be liable to arrest or detention pending trial.

(2) Members of the consular post shall be immune from the civil and administrative jurisdiction of the receiving State in respect of any act performed by them in the exercise of consular functions.

(3) The provisions of paragraph (2) of this Article shall not apply in respect of a civil action:

- (a) relating to private immovable property situated in the receiving State, unless the member of the consular post holds it on behalf of the sending State for the purposes of the consular post;
- (b) relating to succession in which the member of the consular post is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) relating to any professional or commercial activity exercised by the member of the consular post in the receiving State outside his

(d) arising out of a contract concluded by the member of the consular post in which he did not contract, expressly or impliedly, on behalf of the sending State;

(e) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

(4) No measures of execution shall be taken against any of the persons mentioned in this Article, except in the cases coming under subparagraphs (a), (b) and (c) of paragraph (3) of this Article and provided also that the measures concerned can be taken without infringing the inviolability of the person concerned or of his residence.

(5) Members of the consular post and members of their families may be called upon to attend as witnesses in the course of judicial or administrative proceedings. If a consular officer or a member of his family should decline to give evidence, no coercive measure or penalty shall be applied to that person. Consular employees and members of their families, as well as members of the service staff and members of their families, may not decline to give evidence except as provided in paragraph (6) of this Article.

(6) Members of the consular post 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 evidence from members of the consular post, the authorities of the receiving State shall take all appropriate measures to avoid inter-ference with the performance of their consular functions. At the request of the head of the consular post, such evidence may, when possible, be given orally or in writing at the consular premises or at the residence of the person concerned.

(8) Members of the consular post who are nationals or permanent residents of the receiving State and members of their families, as well as those members of the families of the members of the consular post who are themselves nationals or permanent residents of the receiving State, shall not enjoy the rights, facilities and immunities provided for in this Article, except the immunity provided for in paragraph (6) of this Article.

ARTICLE 8

(1) Consular officers shall have the right to communicate with nationals of the sending State and to have access to them in the consular district. The receiving State shall not in any way limit the communication of nationals of the sending State with the consular post or their access to it.

(2) If a national of the sending State is arrested, committed to prison or detained in any other manner in the consular district, the competent authorities of the receiving State shall notify the consular post of the sending State to that effect as soon as possible and at the latest within seven days from the time at which the personal freedom of that national is restricted. A visit to that national as requested by consular officers shall

be arranged by the competent authorities of the receiving State two days after the consular post is notified of the restriction of the personal freedom of that national. Subsequent visits shall be permitted at intervals not exceeding one month.

(3) The rights mentioned in this Article shall be exercised within the framework of the laws and regulations of the receiving State, it being understood, however, that those laws and regulations shall enable full effect to be given to the purposes for which the said rights are granted.

ARTICLE 9

Consular matters which are not dealt with in this Agreement shall be settled by the Contracting Governments in accordance with the relevant provisions of the Vienna Convention on Consular Relations of 24 April 1963⁽¹⁾, through friendly consultation and in a spirit of mutual understanding and co-operation.

ARTICLE 10

Paragraph (2) of Article 4 and Articles 5, 8 and 9 of this Agreement shall also apply to the diplomatic missions of the two States with respect to the exercise of consular functions.

ARTICLE 11

Each Contracting Government shall notify the other in writing of the completion of the procedures required by its respective national laws. This Agreement shall enter into force on the date of the later of those notifications⁽²⁾.

Done in duplicate at Beijing this 17th day of April 1984, in the English and Chinese languages, both texts being equally authoritative.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

For the Government of the People's
Republic of China:

[WU XUEQIAN]

⁽¹⁾ Treaty Series No. 14(1973), Cmnd. 5219.

⁽²⁾ The Agreement entered into force on 14 January 1985.

**中華人民共和國政府與
美利堅合眾國政府關於在香港
特別行政區保留美國總領事館的協定**

中華人民共和國政府和美利堅合眾國政府，根據《中華人民共和國香港特別行政區基本法》第一百五十七條以及《中華人民共和國政府和大不列顛及北愛爾蘭聯合王國政府關於香港問題的聯合聲明》附件一第十一部分，議定下列各條：

一、中華人民共和國政府同意美利堅合眾國政府在中華人民共和國香港特別行政區保留總領事館，領區為香港特別行政區。

二、中華人民共和國政府注意到美國駐香港總領事館在澳門執行領事職務的情況，並同意美國駐香港總領事館自一九九九年十二月二十日中華人民共和國政府對澳門恢復行使主權之日起繼續執行該職務。

三、根據《維也納領事關係公約》第七十三條，美利堅合眾國駐中華人民共和國香港特別行政區總領事館須遵守下列規定：

（一）派遣國領事官員住宅應享有與派遣國領館館舍同

等不得侵犯、受到保護及免予徵用的權利。如果爲了國防或其他公共用途而必須徵用領館住宅時，接受國應採取一切可能的措施避免妨礙領事職務的執行，並及時向派遣國付出適當的和有效的補償。

（二）適用於領館館舍的免稅應延及非爲接受國國民或居民的領館成員的住宅，以及與上述住宅有關的交易或契據之徵稅。但此項免稅不適用於對特定服務的付款，以及按照接受國的法律，一個同派遣國或代表派遣國行事的人訂立合同的人應繳納的捐稅。

（三）派遣國或其代表，必要時經接受國協助，應有權購置、租用或獲得領館館舍和住宅，以及對此類設施進行建築或修繕，但應遵守接受國有關地皮、建築、分區和城市規劃的法律。

（四）1、領事館有權同它的政府，以及派遣國在其他任何地方的使館和領事館進行通訊。爲此目的，領事館得使用一切普通的通訊辦法，包括外交信使和領事信使、外交郵袋和領事郵袋以及密碼。領事館須得到接受國事先同意才能安裝和使用無線電發報機；

2、領館的公務函電，不論使用何種通訊方法，以及加封的領事郵袋和其他容器，只要它們附有標明官方性質的可見外部標誌，均不得侵犯，但不得裝有公務函電和純爲公務

使用的物品以外的任何東西；

3、領館的公務函電，包括領事郵袋和其他容器，如本款第 2 項所述，接受國當局不得開拆或扣留；

4、派遣國的領事信使在接受國境內享有同派遣國外交信使相同的權利、特權與豁免；

5、如果派遣國的船長或民用飛機的機長受託攜帶官方領事郵袋，該船長或機長應持有官方文件說明他受託攜帶的構成領事郵袋的容器數目，但是他不被認為是領事信使。經過接受國有關當局的安排並遵守接受國的安全規章，派遣國得派領館成員直接並自由地與該船長或機長接交領事郵袋。

（五）1、領館成員及其家庭成員免受接受國的刑事管轄；

2、領館成員及其家庭成員執行領事職務時的作為免受接受國的民事和行政管轄；

3、惟本款第 2 項之規定不適用下列民事訴訟：

(1)因領館成員並非代表派遣國訂立的合同所引起的訴訟；

(2)有關領館成員以私人身份作為遺囑執行人，遺產管理人，繼承人或受遺贈人的繼承事件的訴訟；

(3)有關第三者要求賠償船舶、車輛或飛機所造成損害

的訴訟；

(4)有關處在接受國司法管轄下的私人不動產的訴訟，除非領館成員係代表派遣國為領事館之用而擁有該不動產者；

(5)有關領館成員在其公務範圍外在接受國進行的任何私人的、專業的或商業的活動的訴訟。

4、對本款所提到的任何人不得採取執行措施，除非屬本款第 3 項(4)的案件，即使對此項案件採取措施也不得損害其人身和住宅的不可侵犯性；

5、領館成員及其家庭成員得被請在司法或行政程序中到場作證。如領事官員及其家庭成員拒絕作證，不得對其施行強制措施或處罰。除本款第 6 項所述事項外，領館工作人員及其家庭成員不得拒絕作證；

6、領館成員沒有義務就其執行公務所涉事項作證，或出示官方信件或文件。領館成員並有權拒絕作為派遣國法律的鑑定人而作證；

7、接受國當局在接受領館成員證詞時應採取一切適當措施避免妨礙其執行領事職務。應領事館長的請求，此種證詞在可能情形下得在領事館或有關人員的住宅口頭或書面提出；

8、除其執行領事職務的行為外，凡為接受國國民或永

久居民的領館成員及其家庭成員不應享受上述特權與豁免。

(六) 1、領事官員有權在其領事區內與派遣國的國民聯繫和會見，必要時，可為其安排法律協助和譯員。接受國不應以任何方式限制領事官員和派遣國國民的會見；

2、領事區內遇有派遣國國民被逮捕或受到任何形式的拘禁，接受國主管當局應立即通知，最遲於該國民被逮捕或受拘禁之日起的四天內通知派遣國領事館。如果由於通訊設備方面的困難在四天內無法通知派遣國領事館，也應設法盡快通知。應領事官員要求，應告知該國民被逮捕或受到何種形式拘禁的理由；

3、接受國主管當局應立即告知該派遣國國民本款所給予的同領事官員進行聯繫的權利；

4、領事官員有權探視被逮捕或受到任何形式拘禁的派遣國國民，包括根據判決處在獄中的此等國民，以派遣國或接受國語言、文字與之交談和通信，並可協助安排法律代表和譯員。探視應盡快進行，最遲於主管當局通知領事館該國民受到任何形式拘禁之日起的二天後，不應拒絕探視。探視得按重複方式進行。經領事官員請求，兩次探視之間的間隔不應超過一個月；

5、倘遇派遣國國民在接受國受審判或其他法律訴訟，

有關當局經領事官員請求應告知對該國民提出的指控，並應允許一位領事官員旁聽審判或其他法律訴訟；

6、對於適用本款規定的國民，領事官員有權供給裝有食品、衣服、醫藥用品、讀物和書寫文具的包裹；

7、領事官員得請接受國當局協助查明派遣國國民的下落。接受國當局應盡可能提供所掌握的一切有關情況；

8、本款所載各項權利的行使，應遵照接受國的法律。但是，此項法律的適用，務使本條所規定的這些權利的目的，得以充分實現。

（七）1、凡持中華人民共和國香港特別行政區旅行證件進入美國的香港特別行政區中國公民，於簽證或合法免簽入境賦予其該身份的有效期限內，將被美國有關當局視為中國公民，以確保其享有中華人民共和國領事會見及保護權；

2、凡持美國旅行證件進入香港特別行政區的美國國民，於簽證或合法免簽入境賦予其該身份的有效期限內，將被中華人民共和國有關當局（包括香港特區有關當局）視為美國國民，以確保其享有美國領事會見及保護權。

四、本協議未提到的事項將由《維也納領事關係公約》規範。

五、本協定自一九九七年七月一日起生效。

下列簽署人秉各自政府授權，簽署本協定，以昭信守。

本協定於一九九七年三月二十五日在北京簽訂，一式兩份，每份都用中文和英文寫成，兩種文本同等作準。

中華人民共和國
政府代表

美利堅合眾國
政府代表

外交部副部長李肇星

美國駐華大使尚慕杰

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

The Government of the People's Republic of China and the Government of the United States of America, 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 the 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 Macao, and agrees to the continuation of this

function after the Government of the People's Republic of China resumes the exercise of sovereignty over Macao with effect from December 20, 1999.

3. In accordance with Article 73 of the Vienna Convention on Consular Relations, 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 the members of the consulate who are not nationals 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 authorized by their respective governments, have signed this agreement.

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

For the Government of the
People's Republic of China

外交部副部長
李肇星

For the Government of the
United States of America

美國駐華大使
尙慕杰

香港居民不具資格享有第 190 章公告
所規定的特權及豁免權詳情

適應化前

按第 190 章的規定沒有資格享有特權及豁免權的人士：

類別	截至 1997 年 6 月 此類別人士在港的估計人數
英國公民：這些是享有聯合王國居留權的英國公民	並沒有有關的數字
英國屬土公民：根據《1981 年英國國籍法》所規定而產生的較新概念；就 1997 年前的香港而言，這是指在香港出生，或其父母在香港出生的香港居民。	340 萬
英國海外公民：同樣是根據《1981 年英國國籍法》所作規定而產生的新概念；這是特為以下類別人士而“創設”的：並無資格取得前殖民地的新國籍，但又沒有申請轉作英國國民（海外）的聯合王國前殖民地居民。	並沒有有關的數字 （但相信人數極少）

適應化前未規定沒有資格享有特權及豁免權的香港居民：

類別	截至 1997 年 6 月 此類別人士在港的估計人數
身分證明書持有人（即並非在香港出生的香港永久性居民）	130 萬
簽證身分書持有人（即新來港人士）	30 萬
屬中國公民但並未持有旅行證件的香港居民	80 萬
屬香港永久性居民的其他國家國民	並沒有有關的數字

適應化後

按第 190 章的規定沒有資格享有特權及豁免權的人士：

類別	截至 1997 年 6 月 此類別人士在港的估計人數
中國公民，包括： 以前屬英國屬土公民而在香港特別行政區（特區）成立以後成為中國公民的人士 身分證明書持有人（即並非在香港出生的香港永久性居民） 簽證身分書持有人（即新來港人士） 屬中國公民但並未持有旅行證件的香港居民	340 萬減 8 000 人 （減少的 8 000 人是以前屬英國屬土公民但在特區成立以後不能成為中國公民的少數族裔人士） 130 萬 30 萬 80 萬

適應化後未規定沒有資格享有特權及豁免權的香港居民：

類別	截至 1997 年 6 月 此類別人士在港的估計人數
以前屬英國屬土公民但在特區成立以後不能成為中國公民的少數族裔人士	約 8 千
屬香港永久性居民的其他國家國民	並沒有有關的數字

《奧本海姆國際法》(Oppenheim's International Law) 第 9 版第一冊導論及第一部中有關“國際法的淵源”及“慣例”的節錄：（由當局提供的非正式中釋本）

“國際法的淵源

各國的實踐（*practice*）本身已清楚顯示，現行具法律效力的規則源自哪些獲認許的淵源。不過，《國際法院規約》第三十八條也甚有參考價值，該條規定：

一．法院對於陳訴各項爭端，應依國際法裁判之，裁判時應適用：

（子）不論普通或特別國際協約，確立與訟當事國明確承認之規條者。

（丑）國際習慣，作為通例之證明而經接受為法律者。

（寅）… …

（卯）… …

二．… …

第三十八條雖然沒有明確說明該條載有國際法的正式淵源，但一般會如此推斷… …不過，由於該條文[第三十八條]已載入《國際法院規約》，故此對於國際法院具有法律約束力；同時，由於該條反映了國家的實踐，故此一般來說亦具有權威性。”

[第 22-24 頁]

“慣例

慣例是國際法以至一般法律的最古老本源… …雖然《國際法院規約》第三十八條提出所謂‘國際習慣’，

作為通例之證明而經接受為法律者’一句，乍看有點耐人尋味……，不過，規約的表述卻足以強調，國際法此一淵源的本質，就在於各國實踐。各國實踐在此不僅包括各國之間的對外行為，同時也為各國的國內立法、司法裁決、外交文書、政府內部備忘錄及部長們在國會和其他地方的聲明等內部事項所證明。近年來出版了若干有關國家實踐的書籍，一般人對於國家實踐廣義上的認識，已大為提高。[以下引述腳註：‘此乃以美國為例，即由 Wharton, Moore, Hackwarth 及 Whiteman 等人所編撰之《匯編》(Digests)，以及自一九七三年起美國國務院每年出版的《美國國際法實踐匯編》(*Digest of United States Practice in International Law*)。參閱 Parry 所著《英國國際法實踐》(*British Practice in International Law*)……’]…慣例就是採取某種行動的明顯而持續的習慣，而這種習慣是在堅信有關行動根據國際法是必須採取或是正確的信念下形成的……就《國際法院規約》第三十八條而言，實踐必須是普遍性的，才能構成國際慣例；這似乎暗喻如接受某一實踐為法律，該實踐亦須同樣獲得國際社會普遍接受……故此，並非每一個國家都必須以明示或默示的方式，把實踐作為法律遵守。

[第 25-29 頁]

節錄自 Eleen Denza 《外交法律》（*Diplomatic Law*）第二版（由當局提供的非正式中釋本）

使館銀行帳戶

由於《公約》（《維也納外交關係公約》）第二十二條的條文出現空隙，須以國際習慣法補充，因而引起另一個與使館有直接關係的問題，就是使館所持有的為其在接受國提供資金的銀行帳戶，是否須受扣押或強制執行措施限制。雖然根據《公約》第二十四條，使館檔案‘不論位於何處’，均不得侵犯；但第二十二條第三項只給予使館館舍財產搜查、徵用、扣押或強制執行的豁免，而銀行帳戶並不在有關處所內。一如有關使館處所免受起訴的情況，在國家豁免範圍的一般限制下，該問題具實際重要性。若某外國被判敗訴，該被告國在有關司法管轄區內最重要的資產有可能是其使館銀行帳戶。在某些國家，對外地主權國採取扣押或強制執行的措施仍是不許可的；而在另一些國家，則只可對直接有關訴訟因由的財產採取該等措施，亦即排除對使館帳戶採取行動的可能性。不過，在其他國家，對外國採取扣押或強制執行措施的許可範圍較大，因而第二十二條對使館帳戶欠缺明確保障的問題便引起關注。

大部分司法管轄區均可能出現上述情況，高級法院裁定，用以支付使館開支及經常費用的使館銀行帳戶並不受強制執行措施限制。有關上述問題的主要案例 *Philippine Embassy Bank Account*（菲律賓大使館銀行帳戶）是由德國聯邦憲法法院於一九七七年判決的。該法院裁定，根據國際法的一般規則，對外國執行判決有以下規定：

若在開始執行措施時，該等財產是用以體現該外國的主權，則在未經該外國同意的情況下執行判決，是不可接納的。對訴訟所在國家的外國使館一般往來帳戶提出的申索，若是為支付使館的開支及費用，則不會受訴訟所在國的強制執行措施限制。

即使部分透過該帳戶進行的交易在關係和活動上是合法的行為（*iure gestionis*），上述規則仍然適用。接受國的主管當局若質疑派遣國擬定的資金用途，並不適當，因為此舉相當於採取受禁制的干涉使館內部運作的行動。

一九八四年，在 *Alcom v. Republic of Colombia*（*Alcom* 對哥倫比亞共和國）一案中，上議院就《1978 年國家豁免法》對有關問題作出決定，准許對‘現時正用於或擬用作商業用途’的財產採取強制執行措施，並對‘商業用途’賦予引申意義。該法令並未載列有關使館帳戶的明訂條文。上議院認為 *Philippine Embassy Bank Account*（菲律賓大使館銀行帳戶）一案具說服力，因為國際公法要求對用於使館開支的使館往來帳戶豁免採取強制執行措施。對於該法令的解釋，上議院認為有關帳戶不可被‘分割為多種用途，以便將來可在該帳戶並無因第三債務人的法律程序而被扣押的情況下，把取自該帳戶的款項用於該等用途’。除了不足以採取法律行動的例外情況外，除非有證據顯示該帳戶指定只用於清償商業交易引致的債務，否則根據上述法令，該帳戶仍可豁免被扣押。上議院的判決推翻了上訴法院的判決，而設於倫敦的若干使館，曾因憂慮帳戶會受影響而要把其帳戶遷往離岸地區，至此亦得以恢復正常運作。

一九八六年，奧地利最高法院在審理 *Republic of ‘A’ Embassy Bank Account Case*（‘甲’共和國大使館銀行帳戶案）時，同意德國法院所作的判決，並且認為，由於是否危及大使館執行職務的問題難以判斷，因此‘在國際法下，外國享有的保障範圍極廣，而該範圍的劃定以典型的抽象危險，而非以危及執行職務能力的具體威脅為參照標準’。同樣於一九八六年，在 *MK v. State Secretary for Justice* 一案中，荷蘭國務委員會維持土耳其大使館某銀行帳戶的豁免權，讓該據稱專為支付該大使館運行費用而設的銀行帳戶免受扣押。一九八七年，在 *In the Matter of the Application of Liberian Eastern Timber Corporation v. The Government of Liberia*（利比里亞東方木材公司所作申請對利比里亞政府事件）中，美國地方法院以《維也納公約》第二十五條及《1976 年外國主權豁免法》為依據，維持大使館銀行帳戶享有的豁免權。連帶把帳戶其中一部分闢作商業用途，‘不會令大使館的銀行帳戶失去主權豁免的屏障’。一九八九年，意大利最高上訴法院在審理 *Banamar Capizzi v. Embassy of Algeria*（*Banamar Capizzi* 對阿爾及利亞大使館）一案時，採用當時普遍接納的觀點，認為大使館的銀行帳戶享有豁免權；此舉同樣強調，若本地法院企圖查看大使館的款項是否作主權用途，則‘難免會令使館的事務受到不當干擾’。一九九零年，瑞士聯邦法庭在審理 *Z v. Geneva Supervisory Authority for the Enforcement of Debts and Bankruptcy*（*Z* 對日內瓦債務及破產事宜執行監督局）一案時同意，撥予外國使館使用的款項不得扣押。

根據聯合國大會一九六九年通過的《紐約特別使館公約》，第二十五條賦予特別使館館舍不得侵犯權。該條的內容與《維也納外交關係公約》第二十二條極為接近，但根據前者第三款，免受搜查、徵用、扣押及強制執行的權利的適用範圍，則擴及‘特別使館於運作上使用的其他財產’；如此一來，便完全迴避了銀行帳戶方面的棘手問題。此外，根據《有關國家及其財產的管轄豁免的國際法委員會章程》擬稿，為供使館使用而持有的銀行帳戶，列為不可被執行的國家財產之一，而各國從未就此點提出相反意見。不同國家的法院所作的決定足以確認國際習慣法採取的法律立場，可見此法律立場似乎已為各國所接納。

**Extracts from the 2nd Edition of Eileen Denza's Diplomatic Law —
Commentary on the Vienna Convention on Diplomatic Relations**

Embassy Bank Accounts

Another question of direct concern to diplomatic missions where Article 22 leaves a lacuna to be filled by customary international law is whether bank accounts held by a mission in order to fund its operations in the receiving State are subject to attachment or execution. Although under Article 24 of the Convention the archives of a mission are inviolable 'wherever they may be', Article 22.3 gives immunity from search, requisition, attachment or execution only to property on the premises of the mission,

⁵⁸ C. 33.

⁶⁰ Public Law 95-393.

⁵⁹ Public Law 94-583 § 1605, in 63 ILR at p. 657.

⁶¹ 988 F 2d 295 (1993); 99 ILR 194.

and accounts are not held on the premises. As in the case of immunity from suit in respect of mission premises, the question has become of practical importance with the general limitation in the extent of state immunity. If a judgment is obtained against a foreign State, the most significant asset which the defendant State has within the jurisdiction is likely to be its embassy bank account. In some States, attachment and execution are still not permitted against foreign sovereigns, while in others they may be permitted only against property which is directly linked to the cause of action, which will preclude the possibility of action against embassy accounts. In other States, however, attachment or execution against foreign States is permitted on a wider basis, and this has brought into focus the absence of specific protection in Article 22 for the embassy's accounts.

In most jurisdictions where the possibility arises, superior courts have concluded that embassy bank accounts maintained to cover a mission's costs and running expenses are not subject to enforcement. The leading case, *Philippine Embassy Bank Account*, was decided by the German Federal Constitutional Court in 1977. The Court concluded that there was a general rule of international law that execution of judgment against a foreign State was:

inadmissible without the consent of the foreign State if, at the time of the initiation of the measure of execution, such property serves sovereign purposes of the foreign State. Claims against a general current bank account of the embassy of a foreign State which exists in the State of the forum and the purpose of which is to cover the embassy's costs and expenses are not subject to forced execution by the State of the forum.

The rule applied even though some transactions through the account might be in the context of relationships and activities which were *iure gestionis*. It could not be proper for the authorities in the receiving State to question the purposes for which the sending State intended funds to be used, for this would amount to prohibited intrusion into the internal operations of the diplomatic mission.⁶²

In 1984 the House of Lords in *Alcom v. Republic of Colombia*⁶³ determined the question in the context of the State Immunity Act 1978, which allowed execution against property 'which is for the time being in use or intended for use for commercial purposes', and gave an extended meaning to 'commercial purposes'. The Act had no express provision for embassy accounts. The House of Lords found the *Philippine Embassy Bank Account Case* convincing that public international law required immunity from execution to be given to the current bank account of a diplomatic mission

⁶² 65 ILR 146, esp. pp. 164 and 187-91.

⁶³ [1984] AC 580, [1984] 2 All ER 6, [1984] 2 WLR 750; 74 ILR 170. See critical comment by Crawford in 1984 *BYIL* 340 and by Hazel Fox in 1985 *ICLQ* 115.

used for mission expenses. On the construction of the Act they held that the account was not susceptible to 'dissection into the various uses to which monies drawn upon it might have been put in the future if it had not been subjected to attachment by garnishee proceedings'. Unless the account could be shown to be earmarked, save for *de minimis* exceptions, solely to settle liabilities incurred in commercial transactions, it remained immune from execution under the Act. The House of Lords judgment reversed that of the Court of Appeal, and enabled a number of diplomatic missions in London — which had been sufficiently concerned by the threat to their accounts to move their accounts offshore — to resume normal operation.

In 1986 the Supreme Court of Austria, in *Republic of 'A' Embassy Bank Account Case*,⁶⁴ also concurred with the judgment of the German Court and held that, due to the difficulty of judging whether performance of embassy functions was endangered, 'international law made the area of protection enjoyed by the foreign State very wide and determined it by reference to the typical abstract danger and not to the specific threat to the ability to function'. Also in 1986 the Netherlands Council of State in *MK v. State Secretary for Justice*⁶⁵ upheld the immunity from attachment of a bank account which the Turkish Embassy had stated was set aside for the purpose of meeting its running costs. In *the Matter of the Application of Liberian Eastern Timber Corporation v. The Government of Liberia*⁶⁶ in 1987 saw the United States District Court uphold the immunity of embassy bank accounts, relying on Article 25 of the Vienna Convention as well as on the Foreign Sovereign Immunities Act 1976. Incidental use of part of the account for commercial purposes 'would not cause the embassy bank account to lose its mantle of sovereign immunity'. In Italy the Court of Cassation in 1989 followed the prevailing tendency towards immunity for embassy bank accounts in *Banamar Capizzi v. Embassy of Algeria*,⁶⁷ again emphasizing that any attempt by a domestic court to check whether embassy funds were used for sovereign purposes 'would inevitably result in an undue interference in the affairs of the diplomatic mission'. In Switzerland the Federal Tribunal in 1990 in *Z v. Geneva Supervisory Authority for the Enforcement of Debts and Bankruptcy*⁶⁸ agreed that funds allocated for the use of a foreign diplomatic mission could not be attached.

The New York Convention on Special Missions⁶⁹ adopted by the General Assembly in 1969 under Article 25 accords inviolability to premises of special missions in terms which follow closely Article 22 of the Vienna Convention on Diplomatic Relations, but under paragraph 3

⁶⁴ 77 ILR 489.

⁶⁵ 1988 NYIL 439; 94 ILR 357.

⁶⁶ 89 ILR 360. See also *Foxworth v. Permanent Mission of the Republic of Uganda to the United Nations*, Southern District of New York 1992, 99 ILR 138.

⁶⁷ 87 ILR 56.

⁶⁸ 102 ILR 205.

⁶⁹ Cmnd. 4300.

immunity from search, requisition, attachment, and execution is extended to 'other property used in the operation of the special mission', thus avoiding altogether the difficulty over bank accounts. The draft Articles of the International Law Commission on Jurisdictional Immunities of States and their Property also include bank accounts held for purposes of a diplomatic mission among the State property which may not be made subject to enforcement, and there has been no adverse comment on this from States. The legal position in customary international law as confirmed by decisions of national courts thus seems to be accepted by States.⁷⁰

關於中華人民共和國承認國際慣例的資料文件的節錄-

(a) 王鐵崖《國際法引論》第 67-69 頁

此書有專節論述“國際習慣”，內容如下：

“英文 “custom” 在國際法上是指有法律拘束力的慣例，【國際法院規約】第 38 條第 1 款就是用 international custom 這一詞語的。... 在中文，情形比較混亂。... 在國際法上，中文“習慣”和“慣例”的區分是不明確的。【國際法院規約】第 38 條第 1 款的正式中文將 international custom 譯為“國際習慣”。周鯁生¹在討論國際法的淵源時提出條約和國際慣例兩種，而他所說的“國際慣例”顯然是指“國際習慣”，即 international custom。我國外交文件和國內法規中幾乎見不到“國際習慣”這個詞語，常見的是“國際慣例”。我國與一些國家的建交公報中就常用“國際慣例”這一詞語。例如，1970 年 10 月 13 日《中加(加拿大)兩國建立外交關係的聯合公報》中聲稱：“中、加兩國政府商定在六月之內互派大使，並在平等互利的基礎上，根據國際慣例，在各自首都為對方的建館及執行任務提供一切必要的協助”。1971 年 8 月 4 日《中土（土耳其）兩國建立外交關係的聯合公報》用“根據國際準則和慣例”的詞語；1972 年 2 月 14 日《中墨（墨西哥）兩國建立外交關係的聯合公報》用“按照國際法和國際慣例”的詞語。”

(b) 新編中華人民共和國常用法律法規全書

“第八章 涉外民事關係的法律適用

¹ 周鯁生先生在國際法方面是一位著名的作者

第一百四十二條 涉外民事關係的法律適用，依照本章規定確定。

.....

中華人民共和國法律和中華人民共和國締結或者參加的國際條約沒有規定的，可以適用國際慣例。

.....

第一百五十條 依照本章規定適用外國法律或者國際慣例的，不得違背中華人民共和國的社會公共利益。”

- (c) 維也納領事關係公約的序言也有引述：‘確認凡未經公約明文規定之事項應繼續適用國際習慣法之規例’
- (d) 維也納外交關係公約的序言同有引述：‘重申未經公約明文規定之問題應繼續適用國際習慣法之規例’