

NOTIFICATION EFFECTED BY AN

EXCHANGE OF NOTES

(May 17, July 1 and 9, 1935)

EXTENDING TO CANADA AS FROM THE 1st AUGUST, 1935

THE CONVENTION

BETWEEN

HIS MAJESTY

AND

THE PRESIDENT OF THE TURKISH REPUBLIC

REGARDING

LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS

Signed at Angora November 28, 1931

Ratifications exchanged at London April 12, 1933

IN FORCE AUGUST 1, 1935



OTTAWA
J. O. PATENAUDE, I.S.O.
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
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JULY 1 AND 9, 1935) EXTENDING TO CANADA AS FROM THE
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LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS**

*From the Secretary of State for External Affairs of Canada to the Secretary of
State for Dominion Affairs*

DEPARTMENT OF EXTERNAL AFFAIRS

OTTAWA, May 17, 1935.

SIR,

I have the honour to invite your attention to the Civil Procedure Conventions which have been concluded with Spain, Sweden, Norway, Poland, Italy, Austria, Portugal, Turkey and Germany, all of which have been signed and duly ratified. I have the honour to state that His Majesty's Government in Canada desire that, in accordance with the stipulations therein contained, these Conventions shall be extended to Canada by notification to the representative Governments. Such extension might well come into force from the date of ratification, or from a fixed date. In the latter event, it would be most convenient if the date could be the same in respect to all of the Conventions, and I venture to suggest that the 1st of August of this year would be a satisfactory and, presumably, a practicable date. The question of dates will, of course, depend upon the circumstances but, if feasible, a uniform date would be preferable.

The authorities to whom judicial and extra-judicial Acts and Commissions Rogatoires are to be transmitted, will be, where action is to be taken in any Province in Canada, the Attorney-General of such Province; in the North West Territories, the Commissioner of the North West Territories; and in Yukon Territory, the Gold Commissioner of that territory. The language in which communications to such authorities and translations are to be made will be English, except in the Province of Quebec, where they may be made either in English or in French. In order to insure due execution, Commissions Rogatoires should contain full and complete interrogatories.

I shall be obliged, therefore, if steps will be taken to make the necessary notifications to the representative Governments.

I have the honour to be,

Sir,

Your obedient servant,

O. D. SKELTON

*for the Secretary of State for
External Affairs*

From the Charge d'Affaires at the British Embassy in Turkey to the Minister for Foreign Affairs of the Government of the Turkish Republic

BRITISH EMBASSY IN TURKEY

CONSTANTINOPLE, July 1, 1935.

YOUR EXCELLENCY,

At the instance of His Majesty's Government in Canada I have the honour to notify to Your Excellency, in accordance with Article 18 (a) of the convention regarding legal proceedings in civil and commercial matters, which was signed at Angora on the 28th November, 1931, the accession of His Majesty to that convention in respect of the Dominion of Canada.

The attached list indicates the authority in the various Provinces of Canada to whom judicial and extra-judicial documents and letters of request should be transmitted.

In accordance with Article 18 (a) of the Convention, the accession now notified will come into force one month from the date of this note that is to say, on the 1st August next.

In requesting that Your Excellency will be so good as to acknowledge the receipt of this communication, I have the honour to renew to Your Excellency the assurance of my highest consideration.

JAMES MORGAN

<i>Province or Territory</i>	<i>Authority</i>
Ontario	Attorney-General
Quebec	Attorney-General
Nova Scotia	Attorney-General
Prince Edward Island	Attorney-General
New Brunswick	Attorney-General
British Columbia	Attorney-General
Manitoba	Attorney-General
Saskatchewan	Attorney-General
Alberta	Attorney-General
North West Territories	Commissioner of the North West Territories
Yukon	The Gold Commissioner of the Yukon Territory

From the Minister for Foreign Affairs of the Government of the Turkish Republic to the Chargé d'Affaires, British Embassy in Turkey

(Translation)

ANKARA, July 9, 1935.

MONSIEUR LE CHARGÉ D'AFFAIRES,

I have the honour to acknowledge receipt of your note No. 80/161-15-35 of the 1st July, 1935, informing me that, in accordance with Article 18 (a) of the Legal Procedure Convention signed at Ankara on November 28, 1931, His Majesty's Government in Canada have acceded to the said Convention in respect of the Dominion of Canada.

In accordance with Article 18 (a) of the Convention, such accession will become effective one month from the date of your note, that is to say, on August 1st next.

While thanking you for the above communication, I have the honour to be, Sir, your most obedient, humble servant.

AALI TURKGELDI

CONVENTION BETWEEN HIS MAJESTY, IN RESPECT OF THE UNITED KINGDOM, AND THE PRESIDENT OF THE TURKISH REPUBLIC REGARDING LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS

His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India, and His Excellency the President of the Turkish Republic, being desirous to render mutual assistance in the conduct of legal proceedings, in civil and commercial matters, including non-contentious matters, which are being dealt with by their respective courts or authorities; have decided to conclude a convention for this purpose and have accordingly nominated as their plenipotentiaries:

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

For Great Britain and Northern Ireland:

The Right Honourable Sir George Russell Clerk, G.C.M.G., C.B., His Majesty's Ambassador Extraordinary and Plenipotentiary in Turkey.

His Excellency the President of the Turkish Republic:

His Excellency Dr. Tevfik Rüştü Bey, Minister for Foreign Affairs, Deputy for Smyrna;

Who, having communicated their full powers, found in good and due form, have agreed as follows:—

I.—Preliminary

ARTICLE 1

(1) This convention applies only to civil and commercial matters, including non-contentious matters.

(2) In the present convention the words "His Majesty" mean His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India.

(3) In the present convention the expression "Territories of the one (or of the other) High Contracting Party" means, in relation to His Majesty, England and Wales and any other territories to which the convention may be applicable by reason of extensions under Article 17 and accessions under Article 18.

(4) The expression "subjects of one (or of the other) High Contracting Party" means in relation to His Majesty all subjects of His Majesty wherever domiciled.

II.—Service of Judicial and Extra-Judicial Documents

ARTICLE 2

When judicial or extra-judicial documents drawn up in the territory of one High Contracting Party are to be served on persons in the territory of the other, the party interested at his option may cause such documents to be served on the recipient in any of the ways provided in Articles 3, 5 and 6.

ARTICLE 3

(a) The request for service is addressed:—

In England by the Turkish Consul in London to the Senior Master of the Supreme Court of Judicature in England.

In Turkey by a British consular officer to the Governor of the Province, in which his consulate is situated, for transmission to the appropriate Turkish authorities.

(b) The request, containing the name of the authority from whom the document transmitted emanates, the names and descriptions of the parties, the names, descriptions and address of the recipient, and the nature of the document in question, shall be drawn up in the language of the country in which service is to be effected. The document to be served shall be drawn up in the language of the country in which service is to be effected, or be accompanied by a translation in such language. The said translation shall be certified as correct by the consular officer by whom the request was addressed, or by an official or sworn translator of one or other of the countries concerned.

(c) Service shall be effected by the competent authority of the country in which service is to be effected, who shall serve the document in the manner prescribed by the municipal law of such country for the service of similar documents, or, should a wish to that effect be expressed in the request, in a special form which is not incompatible with such law. If the authority to whom a document has been transmitted is not competent to deal with it, such authority will of its own motion transmit the document to the competent authority of his own country.

(d) The execution of the request for service can only be refused if the High Contracting Party in whose territory it is to be effected considers it such as to compromise his sovereignty or safety.

(e) The authority who receives the request shall send to the consular officer the documents proving the service or explaining the reason which has prevented such service. Proof of service shall be furnished by a certificate from the authority of the country in which service is to be effected, setting forth the fact, the manner and the date of such service. The document to be served, and the translation, if any, shall be forwarded in duplicate, and the certificate shall appear on one of the copies, or be attached to it.

ARTICLE 4

No fees of any description shall be payable by one High Contracting Party to the other in respect of the service.

Nevertheless, in the cases provided for in Article 3, the High Contracting Party from whose territory the documents emanate must pay to the High Contracting Party in whose territory they are served any charges and expenses which are payable under the local law to the persons employed to effect service, and any charges and expenses incurred in effecting service in a special manner. These charges and expenses shall be calculated in accordance with the tariff in force for nationals in the country in which service is effected so far as the same is applicable. Repayment of these charges and expenses shall be claimed by the authority of the country in which service is effected from the consular officer making the request when transmitting the certificate provided for in Article 3 (e).

ARTICLE 5

The document to be served may also be served on the recipient, if he is a subject or citizen of the High Contracting Party from whose territory the documents emanate, without the application of any compulsion and without the intervention of the authorities of the High Contracting Party in whose territory service is to be effected, by the diplomatic or consular officers of the High Contracting Party from whose territory the documents emanate.

The document shall be drawn up in the language of the country in which service is to be effected, or shall be accompanied by a translation in such language.

ARTICLE 6

Service of documents may also be effected by post in cases where this method is permitted by the law of the country from which the document emanates, if the recipient is a subject or citizen of the High Contracting Party from whose territory the document emanates.

II.—Taking of Evidence

ARTICLE 7

When a Court in the territory of one High Contracting Party orders that evidence is to be taken in the territory of the other High Contracting Party, this may be done in either of the ways prescribed in Articles 8 and 10.

ARTICLE 8

(a) The Court may, in accordance with the provisions of its law, address itself by means of a letter of request to the competent authority in the territory of the other High Contracting Party, requesting such authority to undertake a judicial enquiry within his jurisdiction.

(b) The letter of request shall be drawn up in the language of the authority applied to, or accompanied by a translation in such language certified as correct by a diplomatic or consular officer of the High Contracting Party from whose Court the request emanates or by an official or sworn translator of one of the countries concerned.

(c) The letter of request shall be transmitted—
In England by the Turkish Consul in London to the Senior Master of the Supreme Court of Judicature in England;
In Turkey by a British consular officer to the Governor of the province in which his consulate is situated for transmission to the appropriate Turkish authorities.

(d) It shall be incumbent upon the judicial authority to whom the letter of request is addressed to give effect to it by the use of the same compulsory measures as in the execution of a commission or order emanating from the authorities of his own country.

(e) The consular officer by whom the letter of request is transmitted shall, if he so desires, be informed of the date and place where the proceedings will take place, in order that the interested parties may be able to be present or to be represented.

(f) The execution of the letter of request can only be refused—

- (1) If the authenticity of the request is not established;
- (2) If in the country to the authorities of which the request is addressed, the execution of the letter of request does not fall within the functions of the judiciary;
- (3) If the High Contracting Party in whose territory the request is to be executed considers it such as to affect his sovereignty or safety.

(g) In case the authority applied to is without jurisdiction, the letter of request shall be forwarded, without any further request, to the competent authority of the same country in accordance with the rules laid down by the law of that country.

(h) In every instance where the letter of request is not executed by the authority to whom it is transmitted, the latter will at once inform the consular officer by whom the request is transmitted, stating the grounds on which the execution of the commission has been refused, or the judicial authority to whom the commission has been forwarded.

(i) The authority which executes the letter of request will apply, so far as the procedure to be followed is concerned, the law of his own country.

Nevertheless, an application by the authority making the request that some special procedure may be followed shall be acceded to, provided that such procedure is not incompatible with the law of the country where the request is to be executed.

ARTICLE 9

(a) No fees of any description shall be payable by one High Contracting Party to the other in respect of the execution of letters of request.

(b) Nevertheless, the High Contracting Party, from whose Court the request emanates, shall repay to the High Contracting Party, in whose territory it is executed, any charges and expenses payable to witnesses, experts, interpreters or translators, the costs of obtaining the attendance of witnesses who have not appeared voluntarily, and the charges and expenses payable to any person whom the competent judicial authority may have deputed to act in cases where the municipal law permits this to be done, and any charges and expenses incurred by reason of a special procedure being requested and followed.

(c) The repayment of these charges and expenses shall be claimed by the authority of the country in which the request was executed from the consular officer by whom the request was transmitted when delivering the documents establishing the execution of the letter of request. These charges and expenses are calculated in accordance with the tariff in force for nationals in the country in which the request was executed so far as the same is applicable.

ARTICLE 10

(a) The evidence may also be taken, without the intervention of the authorities of the High Contracting Party in whose territory it is to be taken, by a diplomatic or consular officer of the High Contracting Party before whose Courts the evidence is to be used.

(b) The diplomatic or consular officer appointed to take the evidence may request named individuals provided that they are subjects or citizens of the High Contracting Party for whose Courts the evidence is required, to appear as witnesses or to produce any document, and to take an oath, but he has no compulsory powers.

(c) Requests to appear issued by the consular officer will be drawn up in the language of the country where the evidence is to be taken, or accompanied by a translation into such language.

(d) The evidence may be taken in accordance with the procedure laid down by the law of the country in which the evidence is to be used, and the parties will have the right to be present or to be represented by any person who is competent to act before the tribunals of either country concerned.

ARTICLE 11

The fact that an attempt to take evidence by the method laid down in Article 10 has failed owing to the refusal of any witnesses to appear, to give evidence, or to produce documents does not preclude an application being subsequently made in accordance with Article 8.

IV.—*Security for Costs, etc.*

ARTICLE 12

As regards security for costs, orders for the payment of costs and expenses, free judicial assistance and imprisonment for debt, the subjects or citizens of one High Contracting Party shall enjoy in territory of the other High Contracting Party a perfect equality of treatment with the subjects or citizens of that High Contracting Party.

ARTICLE 13

In cases where a subject or citizen of one High Contracting Party has, in accordance with Article 12, been exempted from giving security for costs in the territory of the other, judgments condemning such person to pay costs shall be enforceable by the Courts or authorities in the territory of the former High Contracting Party by the most summary procedure available for enforcing foreign judgments under the laws of that country.

V.—General Provisions

ARTICLE 14

Any difficulties which may arise in connection with the operation of this Convention shall be settled through the diplomatic channel.

ARTICLE 15

(a) Either High Contracting Party may at any time while the present Convention is in force terminate the operation of Articles 5, 6 and 10, without affecting the operation of the remainder of the Convention, by giving two months' notice to this effect through the diplomatic channel.

(b) If while the present Convention is in force, the President of the Turkish Republic shall, by a notification given through the Turkish Ambassador in London, give his consent to the extension of the application of Articles 5, 6 or 10 to classes of persons other than the class to which those articles at present apply, the application of those articles shall be extended in the territories of both High Contracting Parties as from the date of and in accordance with such notification.

ARTICLE 16

The present Convention, of which the English and Turkish* texts are equally authentic, shall be subject to ratification. Ratifications shall be exchanged in London. The Convention shall come into force three months after the date on which ratifications are exchanged and shall remain in force for three years after its coming into force. In case neither of the High Contracting Parties shall have given notice to the other six months before the expiration of the said period of his intention to terminate the Convention, it shall remain in force until the expiration of six months from the day on which either of the High Contracting Parties shall have given such notice.

ARTICLE 17

(a) This Convention shall not apply *ipso facto* to Scotland or Northern Ireland, nor to any of the Colonies or Protectorates of His Majesty, nor to any mandated territories in respect of which the mandate is exercised by his Government in the United Kingdom, but His Majesty may at any time while the Convention is in force under Article 16 extend by a notification given through his Ambassador in Turkey this Convention to any of the above-mentioned territories.

(b) Such notification shall state the authorities in the territory concerned to whom judicial and extra-judicial documents and letters of request are to be transmitted. The language in which communications or translations are to be made shall be English. The date of the coming into force of any such extension shall be one month from the date of its notification.

(c) Either of the High Contracting Parties may, at any time after the expiry of three years from the coming into force of an extension of this Con-

* Not printed.

vention to any of the territories referred to in paragraph (a) of this article, terminate such extension on giving six months' previous notice through the diplomatic channel.

(d) The termination of the Convention under Article 16 shall, unless otherwise expressly agreed to by both High Contracting Parties, *ipso facto* terminate it in respect of any territories to which it has been extended under paragraph (a) of this article.

ARTICLE 18

(a) The High Contracting Parties agree that His Majesty may at any time, while the present Convention is in force, either under Article 16 or by virtue of any accession under this Article, by a notification given through the diplomatic channel, accede to the present Convention in respect of any Member of the British Commonwealth of Nations whose Government may desire that such accession should be effected, provided that no notification of accession may be given at any time when the President of the Turkish Republic has given notice of termination in respect of all the territories of His Majesty to which the Convention applies. The provisions of Article 17 (b) shall be applicable to such notification. Any such accession shall take effect one month after the date of its notification.

(b) After the expiry of three years from the date of the coming into force of any accession under paragraph (a) of this Article, either of the High Contracting Parties may, by giving six months' notice of termination through the diplomatic channel, terminate the application of the Convention to any country in respect of which a notification of accession has been given. The termination of the Convention under Article 16 shall not affect its application to any such country.

(c) Any notification of accession under paragraph (a) of this Article may include any dependency or mandated territory administered by the Government of the country in respect of which such notification of accession is given; and any notice of termination in respect of any such country under paragraph (b) shall apply to any dependency or mandated territory which was included in the notification of accession in respect of that country.

In witness whereof the undersigned have signed the present Convention, in English and Turkish texts, and have affixed thereto their seals.

Done in duplicate at Angora, this twenty-eighth day of November, one thousand nine hundred and thirty-one.

GEORGE R. CLERK

Dr. T. RÜSTÜ

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