

NOTIFICATION EFFECTED BY AN
EXCHANGE OF NOTES

(June 1 and 19, 1938)

EXTENDING TO CANADA AS FROM JULY 1, 1938

THE CONVENTION

BETWEEN

HIS MAJESTY

AND

HIS MAJESTY THE KING OF IRAQ

REGARDING

LEGAL PROCEEDINGS IN CIVIL AND
COMMERCIAL MATTERS

Signed at Bagdad, July 25, 1935

Ratifications exchanged at London, November 18, 1936



OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1938

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NOTIFICATION EFFECTED BY AN EXCHANGE OF NOTES (JUNE 1 AND 19, 1938) EXTENDING TO CANADA AS FROM JULY 1, 1938, THE CONVENTION BETWEEN HIS MAJESTY AND HIS MAJESTY THE KING OF IRAQ REGARDING LEGAL PROCEEDINGS IN CIVIL AND COMMERCIAL MATTERS SIGNED AT BAGDAD, JULY 25, 1935

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

DEPARTMENT OF EXTERNAL AFFAIRS

OTTAWA, March 31, 1938.

No. 57

SIR,

I have the honour to invite your attention to my despatch No. 54, dated the 22nd February, 1937, and particularly to the following Civil Procedure Conventions:—

1. Convention with Iraq, signed at Bagdad, July 25, 1935, ratified at London, November 18, 1936, printed in Cmd. 5369.
2. Convention with Greece, signed at London, February 27, 1936, ratified at Athens, November 16, 1937, printed in Cmd. 5643.

I have the honour to state that His Majesty's Government in Canada desire that, in accordance with the stipulations therein contained, the above named Conventions with Iraq and Greece should be extended to Canada by notification to the representative Governments. Such extension should, if it is possible and convenient, come into force from a fixed date, and it is desirable that that date should be the 1st July, 1938. If, however, the adoption of this date is impracticable, the first day of any subsequent month of this year would be satisfactory.

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 of Canada the Attorney General of such Province; in the North West Territories the Commissioner of the North West Territories; and in the 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 have included a tabulated list of the authorities, together with their addresses therein, and I shall be grateful therefor, if you will take such steps as may be necessary to notify the interested Governments.

I have the honour to be,

Sir,

Your most obedient, humble servant,

O. D. SKELTON

for the Secretary of State for External Affairs.

PROVINCE OR TERRITORY	AUTHORITY AND ADDRESS	LANGUAGE
Ontario	Attorney-General, Toronto	English
Quebec	Attorney-General, Quebec	English or French
Nova Scotia	Attorney-General, Halifax	English
Prince Edward Island	Attorney-General, Charlottetown	English
New Brunswick	Attorney-General, Fredericton	English
British Columbia	Attorney-General, Victoria	English
Manitoba	Attorney-General, Winnipeg	English
Saskatchewan	Attorney-General, Regina	English
Alberta	Attorney-General, Edmonton	English
North West Territories	Commissioner for the North West Territories, Ottawa	English
Yukon Territory	The Gold Commissioner of the Yukon Territory, Dawson City	English

From the British Ambassador at Bagdad to the Minister for Foreign Affairs of Iraq

BRITISH EMBASSY

BAGDAD, 1st June, 1938.

No. 274

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 17 (a) of the convention regarding legal proceedings in civil and commercial matters, which was signed at Bagdad on the 25th July, 1935, the accession of His Majesty to that convention in respect of the Dominion of Canada.

2. The attached list indicates in each case the authority in the different parts of Canada to whom requests for service under Article 3 or Letters of Request under Article 8 for the taking of evidence should be transmitted, and the language in which communications and translations are to be made.

3. In accordance with Article 17 (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 July next.

4. In requesting that Your Excellency will be so good as to acknowledge the receipt of this communication, I avail myself of this opportunity to express to Your Excellency the assurance of my highest consideration.

MAURICE PETERSON

From the British Ambassador at Bagdad to the Minister for Foreign Affairs of Iraq

BRITISH EMBASSY

BAGDAD, 1st June, 1938.

No. 275

YOUR EXCELLENCY,

With reference to my Note No. 274 of to-day's date, respecting accession of His Majesty in respect of the Dominion of Canada to the convention regarding legal proceedings in civil and commercial matters, signed at Bagdad on July 25th, 1935, I have the honour, at the instance of His Majesty's Government in Canada, to request on their behalf that Letters of Request for the taking of evidence shall contain full and complete interrogatories in order to ensure due execution.

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

MAURICE PETERSON

*From the Minister for Foreign Affairs of Iraq to the British
Ambassador at Bagdad*

(Translation)

MINISTRY OF FOREIGN AFFAIRS

DEPARTMENT OF OCCIDENTAL AFFAIRS

BAGDAD, 19th June, 1938.

No. 10252/3874/5.

YOUR EXCELLENCY,

I have the honour to acknowledge the receipt of your letter No. 274 dated 1st June, 1938, regarding the Convention relating to legal proceedings in civil and commercial matters signed at Bagdad on the 25th July, 1935, in which, in accordance with Article 17 (a) of the Convention, you notify me:

That the Convention has been acceded to by Canada;

That the list attached to Your Excellency's letter referred to above indicates in each case the authority in the different parts of Canada to whom requests for service (under article 3) or Letters of Request (under Article 8) for the taking of evidence should be transmitted, and the language in which communications and translations are to be made; and

That in accordance with Article 17 (a) of the Convention in question, the accession now notified will come into force one month from the date of Your Excellency's letter, that is to say, on the 1st July next.

I avail myself of this opportunity to express to Your Excellency my highest consideration and esteem.

TAUFIQ AL SUWAIDI

*From the Minister for Foreign Affairs of Iraq to the British
Ambassador at Bagdad*

(Translation)

MINISTRY OF FOREIGN AFFAIRS

DEPARTMENT OF OCCIDENTAL AFFAIRS

BAGDAD, 19th June, 1938.

No. 10253/3874/5.

YOUR EXCELLENCY,

I have the honour to acknowledge the receipt of your letter No. 275 dated 1st June, 1938, respecting the Convention regarding legal proceedings in civil and commercial matters signed at Bagdad on July 25th, 1935, in which you notify me that at the instance of His Majesty's Government in Canada Letters of Request for the taking of evidence shall contain full and complete interrogatories in order to ensure due execution.

I avail myself of this opportunity to express to Your Excellency my highest consideration and esteem.

TAUFIQ AL SUWAIDI

CONVENTION BETWEEN HIS MAJESTY AND HIS MAJESTY THE KING OF IRAQ 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 Majesty the King of Iraq:

Being desirous to render mutual assistance in the conduct of legal proceedings in civil and commercial matters which are being dealt with or which it is anticipated may be dealt with by their respective judicial authorities;

Have resolved to conclude a Convention for this purpose, and have appointed 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:

Sir Archibald John Kerr Clark Kerr, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, his Ambassador Extraordinary and Plenipotentiary at Bagdad; and

His Majesty the King of Iraq:

Nouri Pasha El Said, Minister for Foreign Affairs, Order of the Rafidain I Class Military.

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

I.—Preliminary

ARTICLE 1.

(a) Except where the contrary is expressly stated, this Convention applies only to civil and commercial matters, including non-contentious matters.

(b) In this Convention the words:—

(1) “territory of one (or the other) High Contracting Party” shall be interpreted:—

(i) in relation to His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, as meaning England and Wales and all territories in respect of which the convention is in force by reason of extensions under Article 16 or accessions under Article 17; and

(ii) in relation to His Majesty the King of Iraq as meaning Iraq.

(2) “persons” shall be deemed to mean individuals and artificial persons;

(3) “artificial persons” shall be deemed to include partnerships, companies, societies and other corporations;

(4) “subjects of a High Contracting Party” shall be deemed to include artificial persons constituted or incorporated under the laws of the territory of such High Contracting Party;

(5) “subjects of one (or of the other) High Contracting Party” shall be deemed:—

(i) in relation to His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, to mean all subjects of His Majesty wherever domiciled, and all persons under His protection; and

(ii) in relation to His Majesty the King of Iraq, to mean all persons of Iraqi nationality.

II.—Service of Judicial and Extra-Judicial Documents

ARTICLE 2.

(a) In Part II of this Convention the expression "country of origin" means the country from which the documents to be served emanate, and the expression "country of execution" means the country in which service of documents is to be effected.

(b) When judicial or extra-judicial documents drawn up in the territory of one of the High Contracting Parties are required by a judicial authority situated therein to be served on persons in the territory of the other High Contracting Party, such documents may be served on the recipient, whatever his nationality, by any of the methods provided in Articles 3 and 4 in all cases where such method of service is recognized by the law of the country of origin.

ARTICLE 3.

(a) A request for service shall be addressed and sent by a Consular Officer acting for the country of origin to the competent authority of the country of execution, requesting such authority to cause the document in question to be served.

(b) The request for service shall be drawn up in the language of the country of execution and shall state the names and descriptions of the parties, the name, description and address of the recipient, and the nature of the document to be served, and shall enclose the document to be served in duplicate.

(c) The document to be served shall either be drawn up in the language of the country of execution, or be accompanied by a translation into such language. Such translation shall be certified as correct by a Consular Officer acting for the country of origin.

(d) Requests for service shall be addressed and sent:—

In England to the Senior Master of the Supreme Court of Judicature.

In Iraq to the Ministry of Justice.

If the authority to whom a request for service has been sent is not competent to execute it, such authority shall (except in cases where execution is refused in accordance with paragraph (f) of this Article) of his own motion forward the request to the competent authority of the country of execution.

(e) Service shall be effected by the competent authority of the country of execution, who shall serve the document in the manner prescribed by the municipal law of such country for the service of similar documents, except that, if a wish for some special manner of service is expressed in the request for service, such manner of service shall be followed in so far as it is not incompatible with the law of that country.

(f) The execution of a request for service, duly made in accordance with the preceding provisions of this Article, shall not be refused unless (1) the authenticity of the request for service is not established, or (2) the High Contracting Party in whose territory it is to be executed considers that his sovereignty or safety would be compromised thereby.

(g) In every instance where a request for service is not executed by the authority to whom it has been sent, the latter will at once inform the Consular Officer by whom the request was sent, stating the ground on which the execution of the request has been refused or the competent authority to whom it has been forwarded.

(h) The authority by whom the request for service is executed shall draw up a certificate proving the service or explaining the reason which has prevented such service, and setting forth the fact, the manner and the date of such service or attempted service, and shall send the said certificate to the Consular Officer by whom the request for service was sent. The certificate of service or of attempted service shall be placed on one of the duplicates or attached thereto.

ARTICLE 4.

(a) Service may be effected, without any intervention of the authorities of the country of execution by a Consular Officer acting for the country of origin, in any manner permissible by the law of the country of origin provided that no physical compulsion is used.

(b) All documents served by a Consular Officer shall, unless the recipient is a subject or citizen of the High Contracting Party from whose territory the document to be served emanates, either be drawn up in the language of the country of execution or be accompanied by a translation into such language, certified as correct as prescribed in Article 3 (c).

(c) The fact that an attempt to effect service in accordance with this article has failed does not preclude a request being subsequently made in accordance with Article 3.

ARTICLE 5.

(a) In any case where documents have been served in accordance with the provisions of Article 3, the High Contracting Party, by whose Consular Officer the request for service was addressed, shall repay to the other High Contracting Party any charges and expenses which are payable under the law of the country of execution 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 not exceed such as are usually allowed in the courts of that country.

(b) Repayment of these charges and expenses shall be claimed by the competent authority by whom the service has been effected from the Consular Officer by whom the request was addressed, when sending the certificate provided for in Article 3 (h).

(c) Except as provided above, no fees of any description shall be payable by one High Contracting Party to the other in respect of the service of any documents.

III.—*Taking of Evidence on Commission*

ARTICLE 6.

In Part III of this Convention, the expressions—

(1) "Taking of Evidence" shall be deemed to include the taking of the statements of a plaintiff, defendant, expert or any other person on oath or otherwise; the submission to a plaintiff, defendant, expert or any other person of any oath with regard to any legal proceedings; and the production, identification and examination of documents, samples or other objects.

(2) "Witness" shall be deemed to include any person from whom any evidence, as defined above, is required to be taken.

(3) "Country of origin" shall be deemed to mean the country by whose judicial authority the evidence is required, and the "country of execution" the country in which the evidence is to be taken.

ARTICLE 7.

When a judicial authority in the territory of one of the High Contracting Parties requires that evidence should be taken in the territory of the other High Contracting Party, such evidence may be taken, whatever the nationality of the parties or witnesses may be, in any one of the ways prescribed in Article 8 or 9.

ARTICLE 8.

(a) The judicial authority of the country of origin may, in accordance with the provisions of the law of his country, address himself by means of a Letter of Request to the competent authority of the country of execution, requesting such authority to take the evidence.

(b) The Letter of Request shall be drawn up in the language of the country of execution, or be accompanied by a translation into such language. Such translation shall be certified as correct by a Consular Officer acting for the country of origin. The Letter of Request shall state the nature of the proceedings for which the evidence is required, giving all necessary information in regard thereto, the names of the parties thereto, and the names, descriptions and addresses of the witnesses. Letters of request shall also either (1) be accompanied by a list of interrogatories to be put to the witness or witnesses, or, as the case may be, by a description of the documents, samples or other objects to be produced, identified or examined, and a translation thereof, certified as correct in the manner heretofore provided; or (2) shall request the competent authority to allow such questions to be asked *viva voce* as the parties or their representatives shall desire to ask.

(c) Letters of Request shall be transmitted—

In England by an Iraqi Consular Officer to the Senior Master of the Supreme Court of Judicature.

In Iraq by a British Consular Officer to the Ministry of Justice.

In case the authority to whom a Letter of Request is transmitted is not competent to execute it, such authority shall (except in cases where execution is refused in accordance with paragraph (f) of this Article) of his own motion forward the Letter of Request to the competent authority of the country of execution.

(d) The competent authority of the country of execution shall give effect to the Letter of Request and obtain the evidence required by the use of the same compulsory measures and the same procedure as are employed in the execution of a commission or order emanating from the authorities of his own country, except that if a wish that some special procedure should be followed is expressed in the Letter of Request, such special procedure shall be followed in so far as it is not incompatible with the law of the country of execution.

(e) The Consular Officer, by whom the Letter of Request is transmitted, shall, if he so desires, be informed of the date when and the place where the proceedings will take place, in order that he may inform the interested party or parties, who shall be permitted to be present in person or to be represented, if they so desire, by barristers or solicitors or by any representatives who are competent to appear before the courts either of the country of origin or of the country of execution.

(f) The execution of a Letter of Request which complies with the preceding provisions of this Article can only be refused—

- (1) If the authenticity of the Letter of Request is not established;
- (2) If, in the country of execution, the execution of the Letter of Request in question does not fall within the functions of the judiciary;
- (3) If the High Contracting Party in whose territory it is to be executed considers that his sovereignty or safety would be compromised thereby.

(g) In every instance where a Letter of Request is not executed by the authority to whom it is addressed, the latter will at once inform the Consular Officer by whom it was transmitted, stating the grounds on which the execution of the Letter of Request has been refused, or the competent authority to whom it has been forwarded.

(h) When a Letter of Request has been executed, the competent authority to whom it was transmitted or forwarded shall send to the Consular Officer by whom it was transmitted the necessary documents establishing its execution.

ARTICLE 9.

(a) The evidence may also be taken, without the intervention of the authorities of the country of execution by a Consular Officer acting for the country of origin.

(b) The Consular Officer may request individuals named by the court of the country of origin to appear before him to give evidence. The attendance and giving of evidence before him shall be entirely voluntary and no measures of compulsion shall be employed.

(c) Requests to appear issued by a Consular Officer shall, unless the recipient is a subject of the High Contracting Party for whose judicial authority the evidence is required, be drawn up in the language of the country of execution or be accompanied by a translation into such language.

(d) The evidence may be taken in accordance with the procedure recognized by the law of the country of origin, and the parties will have the right to be present in person or to be represented by barristers or solicitors of that country or by any representatives who are competent to appear before the courts either of the country of origin or of the country of execution.

ARTICLE 10.

The fact that an attempt to take evidence by the method laid down in Article 9 failed owing to the refusal of any witness to appear or to give evidence does not preclude a request being subsequently made in accordance with Article 8.

ARTICLE 11.

(a) Where evidence is taken in the manner provided in Article 8 the High Contracting Party, by whose judicial authority the Letter of Request was addressed, shall repay to the other High Contracting Party any expenses incurred by the competent authority of the latter in the execution of the request in respect of 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 such authority may have deputed to act, in cases where the law of the country of execution permits this to be done, and any charges and expenses incurred by reason of a special procedure being requested and followed. These expenses shall be such as are usually allowed in similar cases in the courts of the country of execution.

(b) The repayment of these expenses shall be claimed by the competent authority by whom a Letter of Request has been executed from the Consular Officer by whom it was transmitted when sending to him the documents establishing its execution as provided in Article 8 (h).

(c) Except as above provided, no fees of any description shall be payable by one High Contracting Party to the other in respect of the taking of evidence.

IV.—*Judicial Assistance for Poor Persons and Security for Costs*

ARTICLE 12.

The subjects of one High Contracting Party resident in the territory of the other High Contracting Party shall not be compelled to give security for costs in any case where a subject or citizen of such other High Contracting Party would not be so compelled.

ARTICLE 13.

(1) The subjects of one High Contracting Party shall enjoy in the territory of the other High Contracting Party a perfect equality of treatment with subjects of the latter High Contracting Party as regards free legal assistances for poor persons.

(2) The provisions of this Article apply to criminal as well as to civil and commercial matters.

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.

The present Convention, of which the English and Arabic texts are equally authentic, shall be subject to ratification. Ratifications shall be exchanged in London. The Convention shall come into force one month after the date on which ratifications are exchanged, and shall remain in force for three years after the date of its coming into force. If neither of the High Contracting Parties shall have given notice through the diplomatic channel to the other not less than six months before the expiration of the said period of three years of his intention to terminate the Convention, it shall remain in force until the expiration of six months from the date on which either of the High Contracting Parties shall have given notice to terminate it.

ARTICLE 16.

(a) This Convention shall not apply *ipso facto* to Scotland or Northern Ireland, the Channel Islands or the Isle of Man, nor to any of the Colonies overseas territories or Protectorates of His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, nor to any territories under His suzerainty, 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 this Convention is in force under Article 15, by a notification given through His Ambassador in Iraq, extend the operation of the Convention to any of the above-mentioned territories.

(b) Such notification shall state the authorities in the territory concerned to whom requests for service under Article 3 or Letters of Request under Article 8 are to be transmitted, and the language in which communications and translations are to be made. The date of the coming into force of any such extension shall be one month from the date of such 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 Convention to any of the territories referred to in paragraph (a) of this Article, terminate such extension on giving six months' notice of termination 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 17.

(a) The High Contracting Parties agree that His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, may at any time, while the present Convention is in force, either under Article 15 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 other 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 His Majesty the King of Iraq has given notice of termination in respect of all territories to which the Convention applies. The provisions of Article 16 (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 15 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 or accession in respect of that country.

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

Done in duplicate at Bagdad the Twenty-Fifth day of July of 1935.

(L.S.) NOURY SAID

(L.S.) ARCHIBALD CLARK KERR

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