

DOMINION OF CANADA

TREATY SERIES, 1928

No. 16

NOTIFICATION EFFECTED BY AN EXCHANGE  
OF NOTES

(17th December, 1928, 15th January, 1929)

EXTENDING TO CANADA

AS FROM THE 17th DECEMBER, 1928

THE CONVENTION

BETWEEN

HIS MAJESTY AND BELGIUM

respecting

Legal Proceedings in Civil and Commercial Matters

Signed at London, the 21st June, 1922



OTTAWA

F. A. ACLAND

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

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*The British Secretary of State for Foreign Affairs to the Belgian Ambassador to Great Britain*

No. T 13870/5169/371

FOREIGN OFFICE, S.W.1.  
December 17, 1928.

YOUR EXCELLENCY,

I have the honour, at the request of His Majesty's Government in Canada, to notify you that His Britannic Majesty desires, in accordance with article 14 (b) of the Anglo-Belgian Civil Procedure Convention of June 21, 1922, to extend the convention to that Dominion.

2. I have the honour to inform Your Excellency that the authorities to whom judicial and extrajudicial acts and commissions rogatoires should be transmitted are, where action is to be taken in any Province in Canada, the Attorney-General of such province; in the Northwest Territories, the Commissioner of the Northwest 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 is English, except in the province of Quebec where they may be made either in English or in French.

3. The Governments of the provinces of Ontario, Manitoba, Nova Scotia, Alberta and of the Yukon Territory have intimated that to ensure their due execution commissions rogatoires to be executed in their territories should contain full and complete interrogatories.

4. In requesting that you will be so good as to acknowledge this communication on behalf of your Government, I have the honour to suggest that the exchange of notes thus constituted should be regarded as placing the matter on formal record, and that the extension of the terms of the convention to the Dominion of Canada should be considered as coming into force from the date of this note.

I have, etc.,

AUSTEN CHAMBERLAIN.

His Excellency BARON DE CARTIER DE MARCHIENNE,  
etc. etc. etc.

(Translation)

*The Belgian Ambassador to Great Britain to the British Secretary of State for Foreign Affairs*

(T. 657/657/371)

BELGIAN EMBASSY,  
LONDON, January 15, 1929.

SIR,

Referring to Your Excellency's note No. T.13870/5169/371 of December 17 last, I have the honour to inform you that the Royal Government willingly acquiesces in His Britannic Majesty's desire that the Anglo-Belgian Convention of June 21, 1922, concerning the transmission of judicial and extra-judicial documents and the taking of evidence should be extended to the Dominion of Canada.

The Belgian Consul-General at Montreal will be the authority competent to transmit to the designated British authorities letters of request and judicial and extra-judicial acts proceeding from Belgium, the Belgian Congo and Ruanda-Urundi for execution or service in the Dominion of Canada.

I have the honour, etc.,

E. DE CARTIER.



CONVENTION BETWEEN THE UNITED KINGDOM AND BELGIUM  
RESPECTING LEGAL PROCEEDINGS IN CIVIL AND  
COMMERCIAL MATTERS

Signed at London, June 21, 1922

[Ratifications exchanged at London, February 22, 1924.]

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty the King of the Belgians, being desirous to facilitate the conduct of legal proceedings between persons resident in their respective territories, have decided to conclude a Convention for this purpose and have accordingly nominated as their Plenipotentiaries:

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India: The Right Honourable the Earl of Balfour, K.G., O.M., Lord President of His Privy Council;

His Majesty the King of the Belgians: Monsieur C. Leurquin, Officer of the Order of Leopold, Councillor of the Court of Cassation, and Monsieur V. Kinon, Officer of the Order of Leopold, Knight of the Order of the Crown, Director-General of the Ministry of Justice;

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

I.—*Preliminary*

ARTICLE 1

This Convention applies only to civil and commercial matters.

II.—*Service of Judicial and Extra-Judicial Documents*

ARTICLE 2

When judicial or extra-judicial documents drawn up in one of the contracting States are to be served on persons in the territory of the other, such documents may, at the option of the party interested, be transmitted to the recipients in either of the ways provided in Articles 3, 4 and 5.

ARTICLE 3

(a) The request for service is addressed:

In Belgium, by the British Consul to the "Procureur du Roi" within whose jurisdiction the recipient of the document is;

In England, by the Consul-General of Belgium in London to the Senior Master of the Supreme Court of Judicature in England.

(b) The request, containing the name of the authority from whom the document transmitted emanates, the names and descriptions of the parties, the address of the recipient and the nature of the document in question, shall be drawn up in one of the languages employed in the State applied to. The authority who receives the request shall send to the consular authority the



documents proving the service or explaining the reason which has prevented such service.

Service shall be effected by the competent authority of the State applied to. Such authority, except in the cases provided for in paragraph (c) of this Article, may limit its action to effecting service by the transmission of the document to the recipient if he is willing to accept it.

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 its own State.

(c) If the document to be served is drawn up in one of the languages employed in the State applied to, or is accompanied by a translation in one of such languages, the authority applied to, should a wish to that effect be expressed in the request, shall serve the document in the manner prescribed by its municipal law for the service of similar documents, or in a special form which is not incompatible with such law. Should such wish not be expressed, the authority applied to will endeavour to affect service in the manner provided in paragraph (b).

The translation provided for in the preceding paragraph shall be certified as correct by a diplomatic or consular agent of the State making the request or by an official or sworn translator of one or other of the two States.

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

(e) Proof of service shall be furnished by a certificate from the authority of the State applied to, setting forth the fact, the manner and the date of such service.

If the document to be served has been forwarded in duplicate the certificate shall appear on one of the copies, or be attached to it.

#### ARTICLE 4

The document to be served may also be delivered to the recipient, whatever his nationality, in person without the application of any compulsion and without the intervention of the authorities of the State in whose territory service is to be effected:—

(a) By the diplomatic or consular agents of the State making the request or

(b) By an agent appointed, either generally or in any particular case, by the tribunals of the State making the request.

The document shall be drawn up in one of the languages of the State in whose territory service is to be effected, or shall be accompanied by a translation in one of these languages, unless the recipient is a national of the State making the request.

#### ARTICLE 5

Documents drawn up by the competent officials in one of the two States may also be transmitted by post to recipients who are established or resident in the territory of the other State.

#### ARTICLE 6

The provisions of Articles 2, 3, 4 and 5 do not prevent the persons concerned from effecting service directly through the competent officials or officers of the country in which the document is to be served.



## ARTICLE 7

No fees of any description shall be payable by one State to the other in respect of the Service.

Nevertheless, in the case provided for in Article 3, the State making the request must pay to the State applied to any charges which are payable under the local law to the persons employed to effect service. These charges are calculated in accordance with the tariff in force for nationals of the State applied to. Repayment of these charges is claimed by the judicial authority applied to from the consular authority making the request when transmitting the certificate provided for in Article 3 (e).

III.—*Taking of Evidence*

## ARTICLE 8

When a Court in one of the contracting States orders that evidence is to be taken in the territory of the other State, this may be done in either of the ways prescribed in Articles 9 and 11.

## ARTICLE 9

(a) The Court may, in accordance with the provisions of its law, address itself by means of a "commission rogatoire" to the competent authority of the other contracting State, requesting it to undertake within its jurisdiction either a judicial inquiry or some other judicial act.

(b) The "commission rogatoire" shall be drawn up in one of the languages of the authority applied to, or accompanied by a translation in one of those languages certified as correct by a diplomatic or consular officer of the State making the request, or by an official or sworn translator of one of the two States. If it is not accompanied by a translation, this may be made by the State applied to.

(c) The "commission rogatoire" shall be transmitted:—

In England, by the Consul-General of Belgium in London to the Senior Master of the Supreme Court of Judicature in England;

In Belgium, by the British Consul to the "Procureur du Roi" within whose jurisdiction the "commission rogatoire" is to be executed.

(d) It shall be incumbent upon the judicial authority to whom the "commission rogatoire" is addressed to give effect to it by the use of the same compulsory measures as in the execution of a commission emanating from the authorities of the State applied to.

(e) The consular authority of the State making the request will, if he so desires, be informed of the date and place where the proceedings will take place, in order that the interested party may be able to be present.

(f) The execution of the "commission rogatoire" can only be refused:

(1) If the authenticity of the document is not established;

(2) If in the State applied to the execution of the "commission rogatoire" does not fall within the functions of the judiciary;

(3) If the State applied to considers it such as to affect its sovereignty or safety.

(g) In case the authority applied to is without jurisdiction, the "commission rogatoire" will be forwarded without any further request to the competent authority of the same State in accordance with the rules laid down by its law.



(h) In every instance where the "commission rogatoire" is not executed by the authority applied to, the latter will at once inform the consular authority of the State making the request, 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 "commission rogatoire" will apply, so far as the procedure to be followed is concerned, the law of its 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 State applied to."

#### ARTICLE 10

No fees of any description shall be payable by one State to the other in respect of the execution of "commissions rogatoires."

Nevertheless, the State making the request repays to the State applied to 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 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.

The repayment of these expenses is claimed by the authority applied to from the authority making the request when transmitting to it the documents establishing the execution of the "commission rogatoire." These charges are calculated in accordance with the tariff in force for nationals of the State applied to.

#### ARTICLE 11

(a) The evidence may also be taken, without the intervention of the authorities of the State in whose territory it is to be taken, by a diplomatic or consular agent of the State before whose Courts the evidence is to be used, or by some other person named by the said Courts.

(b) The agent appointed to take the evidence may request named individuals to appear as witnesses, to produce any document, and to take an oath, but he has no compulsory powers.

(c) Summonses to appear issued by the agent will be drawn up in one of the languages of the State where the evidence is to be taken, or accompanied by a translation into one of those languages, unless the recipient is a national of the State making the request. Every summons shall state expressly that there is no compulsion to appear.

(d) The evidence may be taken in accordance with the procedure laid down by the law of the State in which the evidence is to be used, and the parties will have the right to be represented by barristers or solicitors of that State.

#### ARTICLE 12

The fact that an attempt to take evidence by the method laid down in Article 11 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 9.

### IV.—General Provisions

#### ARTICLE 13

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



## ARTICLE 14

(a) The present 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.

(b) This Convention shall not apply to any of the Dominions, Colonies, Possessions or Protectorates of the two High Contracting Parties, but either High Contracting Party may at any time extend, by a simple notification, this Convention to any such Dominion, Colony, Possession or Protectorate.

Such notification shall state the date on which the Convention shall come into force, the authorities to whom judicial and extra-judicial acts and "communications rogatoires" are to be transmitted, and the language in which communications and translations are to be made.

Each of the High Contracting Parties may, at any time after the expiry of three years from the coming into force of the extension of this Convention to any of its Dominions, Colonies, Possessions or Protectorates, terminate such extension on giving six months' previous notice.

(c) This Convention shall also not apply to Scotland or Ireland; but His Britannic Majesty shall have the right to extend the Convention to Scotland or Ireland on the conditions set forth in the preceding paragraph in respect of Dominions, Colonies, Possessions or Protectorates.

In witness whereof the Undersigned have signed the present Convention and have affixed thereto their seals.

Done in duplicate at London, the 21st day of June, 1922.

(L.S.) BALFOUR.  
(L.S.) CH. LEURQUIN.  
(L.S.) V. KINON.



