



Treaty Series No. 45 (1947)

EXCHANGE OF NOTES

BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
AND THE LEBANESE GOVERNMENT

CONCERNING THE SETTLEMENT OF
PENDING CASES BEFORE THE
LEBANESE MIXED COURTS

BEIRUT, 22nd JANUARY, 1947

*Presented by the Secretary of State for Foreign Affairs
to Parliament by Command of His Majesty*

LONDON

HIS MAJESTY'S STATIONERY OFFICE

TWOPENCE NET

EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE UNITED
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MIXED COURTS

Beirut, 22nd January, 1947

No. 1

Mr. M. J. R. Talbot to M. Henri Bey Pharaon

British Legation, Beirut,

22nd January, 1947

Your Excellency,

I HAVE the honour to make, on instructions from His Majesty's Government in the United Kingdom, the following proposal on the subject of the Lebanese Courts:—

2. His Majesty's Government in the United Kingdom, while not receding from the contention which they have always maintained that, on the abolition of the Mixed Courts, the capitulatory jurisdiction of British Consular Courts would in strict theory automatically revive until surrendered in a further agreement to be made between the two Governments, note that the Lebanese Government are not in agreement with this theory and, far from pressing their point of view, are prepared to join with the Lebanese Government in finding a practical and final solution which will give the fullest recognition to the independence of the Lebanese judicature.

3. His Majesty's Government in the United Kingdom, agreeing to the abolition of the Mixed Courts as from the end of the year 1946, suggest that the cases pending before these courts should be heard in the Lebanese National Courts, but that the judges before whom they would be argued, in all degrees of jurisdiction, should be Lebanese magistrates who have had experience in the Mixed Courts and who will therefore be able finally to dispose of the cases on the bases of the existing pleadings and the interlocutory decisions already made, without the necessity of having them translated, thus ensuring continuity of procedure and jurisprudence. His Majesty's Government are convinced that the Lebanese Government will agree that this is a fair and reasonable solution of the difficulty and will allow the cases to be settled with the minimum of delay and in the general interest.

4. As regards the juridical position of British subjects in the Lebanon in the future, His Majesty's Government in the United Kingdom recognise that they will naturally come within the full jurisdiction of the National Courts. At the same time His Majesty's Government are confident that the Lebanese Government will be prepared to adopt, with regard to their personal status, the rule which is adopted in the majority of countries, namely, that their national law should be applied to them. It is true that in the United Kingdom, and nearly all other British territories for which His Majesty's Government in the United Kingdom are responsible, it is the law of the domicile rather than the law of the nationality which is applied for personal status cases. But the expression "domicile" in English law has a very special meaning and is quite distinct from the conception of residence. "Domicile" refers to the place which is deemed to be a man's permanent home as opposed to the residence which he may establish for even

quite a long period elsewhere. Further, every person acquires at his birth as his domicile of origin the domicile of his parents and the English courts require such strict proof that the domicile of origin has been replaced by a new domicile of choice that it is comparatively rarely that they find that the domicile of origin has been so displaced. Consequently in fact the result is that, in the vast majority of cases, a Lebanese national in the United Kingdom and the British territories referred to above will in fact be held to be domiciled in Lebanon and therefore in matters of personal status Lebanese law would be applied to him by the courts. Acceptance of this principle would mean that with regard to all questions concerning marriage and conjugal rights, divorce, judicial separation, dowry, paternity, affiliation, legitimation, adoption, capacity of persons, majority, guardianship, trusteeship and interdiction, succession by will or on intestacy, distribution of estates, and settlements, and in general family law, British subjects in the Lebanon would be subject to their national laws, and if with respect to any of the said questions one of the parties should bring a matter before the Lebanese Courts, the said Courts would have to apply the appropriate British laws. The competent British authorities will, of course, furnish to the Lebanese Government, in case of need, the necessary information relative to such British laws.

5. I hope that your Excellency will be able to communicate to me at an early date the consent of the Lebanese Government to a practical solution of these outstanding juridical problems on the above lines.

I avail, &c.

(Signed) M. J. R. TALBOT.

M. Henri Bey Pharaon to Mr. M. J. R. Talbot

سيدي

جوابا على مذكرتكم التي تكرمتم بارسالها الي بتاريخ اثنين وعشرين كانون الثاني

سنة ١٩٤٧ رقم ١٠ في شان المحاكم اللبنانية اتشرف باعلامكم ما يلي :

٢ - تشرف الحكومة اللبنانية ان تاخذ علما بموافقة الحكومة البريطانية على

الغاء المحاكم المختلطة في نهاية عام ١٩٤٦ .

٣ - ان الحكومة اللبنانية تحققت للمصلحة العامة وتلانيا لكل تاخير واتعدادا

في النفقات وتوصلا الى الفصل فعلا نهائيا بالقضايا المعلقة امام المحاكم المختلطة

مستعدة بصورة استثنائية وموتقة لان تقبل الاقتراح الوارد في مذكرتكم بان يتولى

النظر والفصل في تلك القضايا فضاة لبنانيون ذوو خبرة بشؤون المحاكم المختلطة .

٤ - اما فيما يتعلق باحوال الرعايا البريطانيين الشخصية فان الحكومة اللبنانية

على استعداد ايضا للاخذ بالمبدأ المقرر في القانون الدولي الخاص والذي تنمى

عليه حاليا المحاكم اللبنانية ومحاكم معظم الدول وهو المبدأ القاضي بان يطبق في

قضايا الاحوال الشخصية القانون الوطني لصاحب العلاقة . وقد اخذت الحكومة اللبنانية

علما بالبيان الوارد في مذكرتكم عن وجهة النظر الانكليزية المستمدة من احكام القانون

الانكليزي العمري الاجراء والذي يعوجه تطبيق احكام القانون اللبناني لفصل معظم

القضايا الخاصة باحوال اللبنانيين الشخصية استنادا الى المعنى المقصود من كلمة محل

الاقامة في نظر اجتهاد المحاكم الانكليزية .

وانني انتهمز هذه الفرصة لاجدد لكم يا سيدي تاكيد اسمي اعتباري .



بروت « كانون الثاني ١٩٤٧ »

(Translation)

*Lebanese Ministry of Foreign Affairs,
Beirut, 22nd January, 1947*

Sir,

I HAVE the honour to reply to the Note on the subject of the Lebanese Courts, which you were so good as to address to me on 22nd January.

2. The Lebanese Government has the honour to take note of the consent of His Majesty's Government to the abolition of the Mixed Courts as from the end of the year nineteen hundred and forty-six.

3. The Lebanese Government in the general interest and in order to avoid all unnecessary delay and expense in reaching a final decision of the cases pending before the Mixed Courts are prepared, as an exceptional and temporary measure, to accept the suggestion contained in your note for their prompt disposal before Lebanese magistrates with experience in the Mixed Courts.

4. As regards the personal status of British subjects in the Lebanon, the Lebanese Government are prepared to adopt the principle, which is already admitted by the Lebanese Courts and which is considered as a principle of private international law recognised by the Courts of the majority of countries, of the application in such matters of the national law of the person concerned. The Lebanese Government have taken note of the statement of the position in England under English law as set out in your note, according to which in fact in the majority of cases in England the national Lebanese law will be applied to determine questions of personal status concerning Lebanese nationals owing to the special nature of the conception of the domicile as developed in the jurisprudence of the English courts.

I avail, &c.

(Signed) HENRI PHARAON.

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