



Treaty Series No. 37 (1947)

## Exchange of Notes

between the Government of the United Kingdom  
and the Government of Syria

concerning the Settlement of Pending Cases  
before the Syrian Mixed Courts

Damascus, 1st-2nd November, 1946

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

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EXCHANGE OF NOTES BETWEEN THE GOVERNMENT OF THE  
UNITED KINGDOM AND THE GOVERNMENT OF SYRIA CON-  
CERNING THE SETTLEMENT OF PENDING CASES BEFORE  
THE SYRIAN MIXED COURTS

*Damascus, 1st-2nd November, 1946'*

No. 1

*His Majesty's Legation at Damascus to the Syrian Ministry for Foreign Affairs*

Sir,

*British Legation,*

*Damascus, 1st November, 1946*

His Majesty's Legation present their compliments to the Syrian Ministry for Foreign Affairs, and, on instructions from His Majesty's Government, have the honour to send their reply to the Ministry's Note No. S.151 of the 9th May, 1946<sup>(1)</sup>, on the subject of the Syrian Courts.

2. His Majesty's Government in the United Kingdom fully appreciate the desire of the Syrian Government to settle as soon as possible all the pending cases which had been begun before the Mixed Courts in May 1945, and which have since been suspended, and at the same time they understand the point of view of the Syrian Government which is clearly set out in the Ministry's note under reply that, in the future, the administration of justice should be entrusted exclusively to magistrates of Syrian nationality. For these reasons, 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, they note that the Syrian Government are not in agreement with this theory and, far from pressing their point of view, they are prepared to join with the Syrian Government in finding a practical and final solution which will give the fullest recognition to the independence of the Syrian judicature. His Majesty's Government have accordingly decided to withdraw the request made in the Legation's Note No. 85 of the 30th March, 1946<sup>(1)</sup>, for the appointment of neutral judges to terminate the cases pending before the Mixed Courts, and to suggest instead that these cases should be heard in the Syrian National Courts but that the judges before whom they would be argued, in all degrees of jurisdiction, should be Syrian magistrates who have had experience in the Mixed Courts and who will therefore be able finally to dispose of the cases on the basis 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 Syrian 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.

3. As regards the juridical position of British subjects in Syria 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 Syrian Government will be prepared to adopt, with regard to their

<sup>(1)</sup> Not reproduced. The notes here published contain all the terms of the Agreement.

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 Syrian national in the United Kingdom and the British territories referred to above will in fact be held to be domiciled in Syria and therefore in matters of personal status Syrian 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 Syria 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 Syrian Courts, the said Courts would have to apply the appropriate British laws. The competent British authorities will, of course, furnish to the Syrian Government, in case of need, the necessary information relative to such British laws.

4. His Majesty's Legation hope that the Ministry will be able to communicate to them at an early date the consent of the Syrian Government to a practical solution of these outstanding juridical problems on the above lines.

His Majesty's Legation avail, &c.

الجمهورية السورية  
وزارة الخارجية

الموضوع —————

الرقم ٤٤٠/س  
دمشق في ١٩٤٧/٤

تمدى وزارة الخارجية السورية تعيانها الى مفوضية صاحب الجلالة البريطانية  
وتتشرف بان تجيب عن مذكرتها رقم ١٣١ (١٠٣ / ١٠ / ٤٦) وتاريخ ١ تشرين الاول ٤٦  
بما يلي :

• حرصا على المصلحة العامة وتجنبها لاي تأخير او نفقة غير ضرورية تصرف في سبيل  
التوصل الى القرار النهائي في القضايا المعقدة لدى المحاكم المناظرة في قضايا الاجانب  
فان الحكومة السورية مستعدة لان تقبل بالاقتراح الوارد في مذكرة المفوضية كند بيرا احتشائي  
وموقت ليوضع نورا تحت تصرف القضاة السوريين ذوي الخبرة في المحاكم المناظرة في قضايا  
الاجانب .

اما فيما يتعلق باحوال الرعايا البريطانيين الشخصية في سورية فان الحكومة السورية  
مستعدة لان تطبق عليها المبدأ المنبع حاليا في المحاكم السورية والمعتبر كأحد مبادئ  
الحقوق الدولية الخاصة والمعترف به من قبل محاكم معظم البلدان الا وهو مبدأ تطبيق القانون  
الوطني للشخص ذي العلاقة . وقد اخذت الحكومة السورية علما ببيان الوضع الحقوقي في  
انكلترا كما هو مبين في مذكرة المفوضية والذي بموجبه يطبق على معظم قضايا الاحوال  
الشخصية للرعايا السوريين في انكلترا القانون الوطني السوري وذلك بناء على الطبيعة  
الخاصة لمفهوم " محل السكن " كما يتضح ذلك من النظام القضائي في المحاكم الانكليزية .  
تنتهز وزارة الخارجية السورية هذه المناسبة لتعرب للمفوضية الملكية البريطانية  
من فائق احترامها .

المفوضية الملكية البريطانية

دمشق

*Syrian Republic, Ministry of Foreign Affairs,  
Damascus, 2nd November, 1946.*

*(Translation)*

THE Syrian Ministry of Foreign Affairs present their compliments to His Britannic Majesty's Legation and have the honour to reply to their note dated 1st November, 1946, as follows:

The Syrian 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 the Legation's note for their prompt disposal before Syrian magistrates with experience in the Mixed Courts.

As regards the personal status of British subjects in Syria, the Syrian Government are prepared to adopt the principle which is already admitted by the Syrian 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 Syrian Government have taken note of the statement of the position in England under English law as set out in the Legation's note, according to which in fact in the majority of cases in England the national Syrian law will be applied to determine questions of personal status concerning Syrian nationals owing to the special nature of the conception of the domicile as developed in the jurisprudence of the English courts.

The Syrian Ministry of Foreign Affairs avail, &c.

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