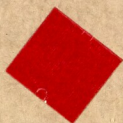


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EASTERN DEPARTMENT

ARABIA

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FROM Agency Kuwait
Command

CONFIDENTIAL

No. 2 (to Bahrain)

1643/1

Dated 9/1/54

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References to former relevant papers

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References to later relevant papers

Extra territorial jurisdiction in Kuwait.
Gives history of the extraterritorial jurisdiction in Kuwait; H.M.G.'s policy regarding same; states present position and makes suggestions for dealing with it.

MINUTES

This has been delayed by a search for earlier papers.

In this important and informative despatch Mr. Pelly first refers to Mr. Moberly's note (enclosure No.1) outlining the historical background to our capitulatory position in Kuwait. He points out that until the recent influx of "foreigners" (i.e. persons subject to our jurisdiction) the number of cases coming before the Agency Court was very small. The Oil Company was to all intents a jurisdictional enclave, and most of its "mixed" cases, i.e. those involving foreigners and Kuwaitis, were settled out of court by the payment of compensation. It is not surprising, therefore, that no attempt was made to pass laws applicable in both the Agency Court and those of the Ruler (paragraphs 2-3). The rapid development of Kuwait has led in the past two years to a substantial increase in the number of foreigners and therefore of the number of cases handled by the Agency Court. It soon became apparent that if the Order in Council were to be effective there must exist a common law. It was also realised that both the Agency and Kuwait Courts must be of roughly equal competence and must either respect each other's sphere of jurisdiction or act jointly (paragraph 4). The Foreign Office considered that the first of these aims could best be achieved by our drafting laws which would be applied first by the Ruler's proclamation to persons under his jurisdiction then by Queen's Regulation to persons under ours. The second aim was to be accomplished by encouraging the development of the local judicial system and improving our own (paragraphs 5 and 7).

2. Mr. Pelly points out that little progress has so far been made towards achieving either of these aims (paragraphs 6 and 8). The Ruler has refused to admit the need for a similar law for Kuwaitis and foreigners; he has rejected our offer of a legal adviser and turned down our suggestion that joint courts should be set up. (Unlike the latest Bahrain, Qatar and Trucial States Orders in Council, the Kuwait Order 1953 contains no provision for the establishment of such courts).

/3.

3. Unfortunately the Ruler's attitude is not merely negative and unco-operative. Mr. Pelly describes how he and his shaikhs are deliberately undermining our jurisdiction. In the absence of a common law, they attempt to apply Kuwaiti law to "foreigners", and the Kuwait administration endeavours, whenever possible, to decide "mixed" cases without reference to the Agency (paragraphs 9 and 10). Even more serious is their pressure on foreign firms (paragraphs 11 and 12). Under pain of penalty, they are ordered to print all their notices in Arabic (paragraph 9). The big contracting firms, having been forced to take on Kuwaiti partners, are also forced to "register" these partnerships in the Kuwait court, thereby strengthening Kuwaiti propaganda to the effect that the firms thus become subject to "Kuwait law". British firms are compelled to accept the Ruler's decision in disputes affecting Kuwaitis. If they refuse, they find it impossible to continue operations. Indeed, Mr. Pelly goes so far as to state that foreign firms cannot hope to be allowed to remain in business in Kuwait if they insist upon their capitulatory rights.

4. The Kuwait Oil Company does not escape this pressure (paragraphs 13 and 14). In cases of liability for damage caused by driving accidents, its employees are asked to pay the compensation determined by a Kuwaiti "accident committee", while compensation claims arising from industrial accidents are "settled" by direct correspondence between the State and the Company.

5. In paragraph 15 Mr. Pelly emphasises that these erosive tactics are not the result of the Ruler's ignorance. That they are part of a deliberate policy is established by his recent request that all mixed cases should be heard in the Kuwaiti courts.

6. I agree with Mr. Pelly's conclusions in paragraphs 16 and 17 that, as the first step to countering this serious encroachment on our jurisdictional rights, we should strengthen the Agency Court by appointing a British legal expert as registrar. This has already been recommended by the Department and the Legal Advisers in connexion with the deterioration of the work of the Kuwait Court noticed by Judge Haines on his recent visit. We are now seeking the authority of E. and O. Department for such an appointment. It would be better still if, in addition, we could get the Ruler to accept a British legal adviser in the Kuwait administration, but he appears to have set his face rigidly against this.

7. As several months must elapse before a registrar can be appointed to the Agency Court, we should, I think, consider what early action we can take to counter the Ruler's erosive tactics. Perhaps Mr. Burrows could see him and make it clear that Her Majesty's Government will not tolerate any undermining of their capitulatory rights. The Oil Company and other British commercial firms in Kuwait should be urged to take a firm stand, backed by the Agency, and, if necessary, the Residency, against any measures taken against them contrary to the provisions of the Order-in-Council. If the Ruler of Kuwait is allowed to pursue unchecked his so far highly successful policy of undermining our jurisdictional rights, there is little doubt that the Rulers of Bahrain and Qatar

/will

will not be slow in following his example.

Hubert Buckmaster
(M.S. Buckmaster)

February 8, 1954.

Mr. Ewart-Biggs.
Mr. Evans (Legal Counsellor)
Judge Haimes (Claims Department).

Mr. Pelly suggests that the Government of Kuwait
are engaged upon a co-ordinated and concerted
campaign to undermine our jurisdiction in Kuwait.
If this is so it is a very serious matter. We
recognise that at some future time it may be
to consider, perhaps gradually, one extra limit.
rial jurisdiction (cf. para 5 of Sir F. Bicknell's
report). But before this occurred we would hope
that, through our good offices, the British
judicial system would have been developed and
improved to an extent which would make
the transfer of jurisdiction feasible. But
is by no means the case today. Our
efforts to follow this policy by

- (a) helping the Kuwaitis to introduce
suitable legislation, to form the basis
of what Mr. Pelly calls a "common law"
- (b) persuading them to accept a British
legal adviser, who would improve the
working of their courts & help with (a).
- (c) letting them benefit by the example
of the British courts in Kuwait

have been so far singularly unsuccessful.
(b) has proved impracticable. There are
indications that in some instances (a)

NOTHING TO BE WRITTEN IN THIS MARGIN.

will not be acceptable to the Kuwaitis. Though this should not deter us from presenting the draft Penal & Criminal Procedure Codes & the legislation on Company Law, Workmen's Compensation, Trade Marks etc which is now in preparation. Only (c) and the proposal to this end contained in para. 16 of Mr Pelly's despatch seem to offer any immediate means of improving a most disquieting position. I agree therefore that we should try to get a Registrar to the Court for Kuwait appointed as soon as possible. A man of the right personality speaking Arabic might be able to influence the Kuwaitis to ^{the Kuwaitis to} ~~though this might be while work~~ improve their own courts. It must be said re-activate ours, a process which Judge Haines' recent report indicates to be very necessary.

Chambers

9/12

The state of affairs disclosed in this despatch is even less satisfactory than I had supposed on reading Judge Haines' report on his visit to Kuwait at the end of last year. It seems clear that the inefficient exercise of our jurisdiction and failure to stand by our jurisdictional rights in Kuwait has led

- (a) to our jurisdiction being disregarded not only by the Ruler but also by persons and companies subject to it who have been content to settle their disputes as best they can by extra-judicial means rather than insist of their being submitted to our Courts;

/(b)

NOTHING TO BE WRITTEN IN THIS MARGIN.

Minutes.

- (b) to persons who ought to enjoy the protection of our jurisdiction being put at the mercy of arbitrary decisions by the Kuwait authorities;
- (c) to the Ruler believing, with no little justification, that he can administer justice better than we can;
- (d) to the creation of a situation in which it is extremely difficult to persuade the Ruler to accept a British judicial adviser or to enact legislation drafted by us or to improve his own legal and judicial system.

There can be little doubt to my mind that our failure in ~~which~~^{these} field has caused damage to our reputation not only with the Ruler but with other persons and companies (some of them American) in Kuwait.

2. The remedy is to set our house in order with the utmost expedition

- (i) by the appointment of a legally qualified Registrar for our Courts;
- (ii) by establishing a high standard of judicial work in our Courts;
- (iii) by introducing the necessary codes of substantive law and procedure;
- (iv) by insisting that our jurisdictional agreements with the Ruler are implemented.

Our recent advertisement inviting barristers and solicitors interested in legal work abroad to submit their names to the Legal Adviser has met with a fair response and I have every hope that we shall be able to find a suitable person for appointment as Registrar quite soon. Faster progress is now being made with the drafting of the new penal code and I expect this to reach its final form within the next few weeks. Judge Haines is pressing on with the drafting of criminal and civil procedure codes. The fulfillment of (ii) and (iv) above is largely dependent on (i) and (iii). In particular, I think that we must improve our own standards very considerably before we shall be in a strong position to insist on the full exercise of our jurisdictional rights against the Ruler. There is no reason, however, why the Political Agent and his staff should not make an immediate start to do what they can in improving the standard of their judicial work.

WVJ Evans

(W.V.J. Evans)
February 15, 1954.

Mr. Fitzmaurice B es - after Judge Haines

9

NOTHING TO BE WRITTEN IN THIS MARGIN.

I am very glad that Mr. Pelly has dealt with this subject so fully. I knew that the Kuwait Oil Co. had been submitting to the orders of the Kuwait Court on traffic damages but hoped that Mr. Doyle's new policy would be effective. ~~I~~ I did not realize that the foreign contractors were so ~~likely~~ prone to submit to the Kuwait Court although I thought that many of them did not know ours existed. I agree with the remedies suggested. I am doing what I can to get on with the procedure codes but I find that I have little time to spare from any other work. I hope to complete the Criminal procedure code during my next visit to the Persian Gulf.

J. H. James
6/2/54

After discussion with Judge James I am very much hoping we can secure approval for a scheme whereby he gives up Claims Dept. & devotes increased time (a) to judicial work in the Gulf (b) drafting of Codes. This will be put up in due course to Eastern Dept. & Lord Reading.

C. H. Fitzmaurice 'X

I support Sir Gerald

Fitzmaurice's recommendation.

The ideal would be for

for Judge Haines to devote his entire time to the drafting of legislation and the supervision of our Courts in the Gulf.

E and O Dept have made a vacancy in the establishment for a registrar at Kuwait (EA ^{1643/11} ~~1053/15~~ of 1953) and we are now seeking Treasury approval for such an appointment (Mr. Metting's letter at Flag "A"). Mr. Evans tells me that he has several candidates in mind, and we shall set about selecting a suitable man as soon as we get the all-clear from the Treasury.

[P.T.O.] *Substantive* 23/2.

NOTHING TO BE WRITTEN IN THIS MARGIN.

Until we hear from the Treasury, there is nothing for us to do except, I suggest, to thank Mr. Pelly and tell him that we hope to do something about the situation he describes.

I submit a draft:

A. C. S. L. 1
26/2.

I agree. This is of the utmost importance, & we must do all we can to rectify the position. H
26/2

Q 27/2.

AJ Bahrain 130 of 13/3

Q 17/3

(1643/1)
CONFIDENTIAL.

Political Agency,
 KUWAIT.
 January 9, 1954.

Despatch No.2.

Sir,

In this despatch I have the honour to recall the history of our extra-territorial jurisdiction in Kuwait; our policy regarding it; to examine the extent to which that policy has been implemented; to state the present position (including particularly an account of the attempts being made to render our extra-territorial rights nugatory) and to make some suggestions for dealing with it.

2. Some definitions are necessary. Throughout, the expression 'foreigners' will be used for persons subject to the jurisdiction of Her Majesty and 'Kuwaitis' for either the Kuwait State, represented by its police, or for persons subject to the jurisdiction of the Ruler. 'Mixed cases' are those in which, in criminal cases, a 'foreigner' is complainant and a 'Kuwaiti' is accused and in civil suits, a 'foreigner' is plaintiff and a 'Kuwaiti' defendant - or vice versa. In a mixed case the court of the accused or defendant has jurisdiction. 'Common law' will be used for law which has been made both by Queen's Regulation and Ruler's proclamation and which can thus be applied in mixed cases.

3. The first enclosure to this despatch is a note prepared by Mr. Moberly giving the history of how our capitulatory position was achieved. But, while it existed on paper, there was practically no need to assert it when the number of people subject to our jurisdiction did not exceed a few dozen. No effort was made to create law which could be applied in both the Agency and Kuwait courts. No records are to hand, but it is safe to say that before the great increase in the number of 'foreigners' in Kuwait town during the last two years, the Political Agent could hardly have heard twenty cases a year - and none of those mixed cases. It is true that from 1948 onwards the Kuwait Oil Company employed an increasing number of 'foreigners', ultimately to the order of 2,000 or 3,000 souls (including Indians and Pakistanis). But cases in which they were involved with Kuwaitis were mostly those (such as driving and industrial accidents) which would be and were settled out of court by the payment of compensation by the Oil Company. The distance of the Company's employees from the town, the fact that they were discouraged from close dealings with the local people, the way in which their investigating branch dealt with and kept cases out of court and the strict discipline exercised over the employees by the Company ensured that they were neither involved in civil suits with individual /Kuwaitis.....

His Excellency,
 E.A.B.Burrows Esq., C.M.G.,
 The Residency,
 BAHRAIN.

Kuwaitis nor rendered themselves liable to criminal prosecution at the instance of the Kuwait State or of a Kuwaiti. The Company was a jurisdictional enclave. It dealt directly with the State in judicial matters and little attempt seems to have been made to observe the provisions of Article 4 of the original political agreement concluded between the Company and Her Majesty's Government. In the Kuwait State, judicial functions were exercised by every shaikh of consequence. Jurisdiction was largely determined as in mediaeval Europe, with reference to persons rather than to territory, although there was a rough division of criminal and civil matters between the shaikhs. One shaikh had savage beating administered impartially to all offenders against the Koranic laws on fasting, the prohibition of alcohol and the like.

4. Under the second, third and fourth heads of the first paragraph our capitulatory position is best treated from two aspects. The first is that if the Order in Council is to be effective in practice there must exist a common law. The second is that both the Agency and Kuwait courts must be of approximately equal competence (in the non-legal sense) and must either respect each other's sphere of jurisdiction or act jointly. A third aspect - the difficulty experienced by the Agency court in administering the law while being dependant on the Kuwait State for executive power - can be dismissed briefly. No extension of Her Majesty's executive power to Kuwait State in the context of our extra-territorial rights has been contemplated.

5. In Foreign Office despatches Nos. 76 and 77 of November 20, 1950, after consideration of the methods by which common law might be made, it was decided that we should assist in the drafting of Kuwaiti laws which would then be applied to Kuwaitis by proclamation of the Ruler and to 'foreigners' by Queen's Regulation.

6. Not much progress has been made towards carrying out this policy. The one case in which, for obvious reasons, it was successful was in the passing of the Income Tax decree applicable only to the Kuwait Oil Company and devised to implement the profit-sharing agreement of 1952. In the other case in which it was tried the Kuwaitis are not entirely to blame for failing to accept our draft Traffic Regulations but they have shown no enthusiasm for them. In various conversations the Ruler has shown himself unable and, latterly, unwilling to understand the need for similar law to be applied to 'Kuwaitis' and 'foreigners'. (Reference is invited to the records of interviews given by the Ruler to Sir Eric Beckett in 1952 and to paragraph 7 of that with Judge Haines which forms the second enclosure to this despatch).

7. The policy on the second aspect of the problem was also laid down in the Foreign Office despatch referred to. It was (i) to encourage the development of the local judicial system and (ii) so to improve our own that both may be better equipped to meet modern requirements. The hope expressed that joint courts might become one avenue through which improvements could be achieved in the Ruler's courts.

8. Even less progress has been made towards implementing this policy. The mere suggestion to the Ruler or / his.....

was

his "Chief Justice", Shaikh Abdulla Jabir, that they should employ a legal expert, recommended by us, not only to help to draft laws but also to administer justice in the Kuwaiti courts, has been several times turned down. A letter to the Ruler from Mr. Pirie-Gordon suggesting that provision should be made for joint courts in the new draft Order in Council was returned (vide my letter No.167/3/53 to Sir Rupert Hay). Except for the occasional visit arranged ad hoc of the Registrar of the Bahrain court or of Judge Haines to hear cases in the Kuwait Agency court, that court, due to the lack of judicial training of Foreign Service officers, is no better staffed, though it has far more work to do, than it was when the Government of India were responsible for the Persian Gulf posts.

9. As for the present position, so far are the Ruler and the shaikhs from co-operating with us in devising a common law that they are continually trying to apply Kuwait law to 'foreigners'. The fact that, owing to our inability to make a common law, on such subjects as motor registration and gun licenses, 'foreigners' obey the Kuwait laws on these subjects is prejudicial enough to our position. But it is not a fact for which the Kuwaiti administration is entirely responsible. What is a direct challenge is action such as the ordering of foreign firms, under paid of penalty, to print all notices in Arabic, as reported in my letter 174/11/53 of September 12, 1953, to Your Excellency. Recently too, in reply to my enquiry, the Acting Ruler informed me that a Kuwaiti proclamation requiring export licenses for cars "applied to all". I have asked for a copy of it, stating that, if the Ruler wishes, Her Majesty's Government will consider its application to 'foreigners' by Queen's Regulation. That such consideration is necessary can be confirmed by a glance at the Kuwait "Law of Compensation", which is enclosure No.3 to this despatch.

10. As the opportunity for them naturally occur more frequently the attacks on the other aspects of our position are more persistent. There have not been a large number of mixed cases filed in the Agency court. The disquieting feature from our point of view is that there have been too few. The most common mixed cases in which 'foreigners' in Kuwait town get involved, as those in the Oil Company, are cases arising out of driving accidents. It is in these (such as the "Moseley" case reported in my letter of that the clash of jurisdiction is most explicit and most evident. The Ruler dismisses our mention of them on the grounds that they concern trifles and that the amounts involved are small. These grounds are often valid but, of course, not always. Because such cases are so frequent and the issues involved are so clear it is not unlikely that, if we could ensure that they were treated in accordance with the Order in Council it would establish a most desirable precedent for the treatment of other classes of cases. As it is, the constant endeavour of the Kuwaiti administration is to decide these cases themselves. This is resisted, as it was in the "Moseley" case, in every case which comes to the notice of the Agency. But despite the fact that 'foreigners' have been warned that in cases against them they should not submit to the jurisdiction of the Kuwait court....

courts nor pay fines or compensation at the order of these courts, it is suspected that some do. Avoidance of giving offence to the Kuwaitis at the cost of only a small fine would, in some cases, seem preferable to a doctrinaire stand on our capitulatory rights.

11. The other most common class of cases in which, in Kuwait town, 'foreigners' and Kuwaitis are likely to be involved is that arising out of commercial transactions, e.g. suits under company law and the law of contract. Here again the effort of the Kuwaitis is directed towards keeping every such case out of the Agency court. This is not often done, as in the traffic cases, by actually attempting to have such cases decided in the Kuwait courts. Prophylactic action to avoid their arising was taken when the big British contracting firms, forced to take Kuwaiti partners, came on the scene. They were also forced to "register" their partnerships in the Kuwait court - an act of no legal significance in our view, though it aided the Kuwaiti propaganda to the effect that the firms thus became subject to "Kuwait Law" and made it difficult to explain the legal position to the contractors, more especially as that position corresponded less with the facts than did the actual position: which is that no 'foreign' contractor nor indeed, any 'foreign firm' can hope to be allowed to remain in business here if they insist upon their capitulatory rights.

12. Another Kuwait method in commercial cases tending to render nugatory the provisions of the Order in Council is to get the British firm concerned to agree to arbitration or rather, to having its dispute with a Kuwaiti settled by reference to the Ruler. The firm is not, of course, bound to accept the Ruler's decision nor is there any method of compelling it to do so; but were it to reject it, it would find it impossible to continue in business here. Messrs. Gray, Mackenzie and Co. Ltd., paid £30,000 to a Kuwaiti in such a case. Nor is there much comfort to be derived from the fact that, as it was put to the Ruler in paragraph 6 of enclosure No.2, I recently decided several civil disputes in "mixed" cases. As arguing points, they may have been worth quoting. But they were, in fact, only settlements by conciliation out of court. It is doubtful whether the Kuwaitis concerned would have submitted to our often lengthy procedure and (to them) strange law. One political consideration arising out of the lack of a common corpus of commercial law understood by 'foreigners' and Kuwaitis is that it has probably permitted some sharp practice and the consequent promotion of mutual distrust. If it had existed, the deplorable situation between the British contractors and the Kuwaitis might never have arisen and even if it had arisen, the existence of the law would probably have made it easier to solve.

13. As with 'foreigners' in Kuwait town, the commonest type of 'mixed' case in which the Oil Company are involved is that of liability for damage caused by a driving accident. They are, however, in the person of their representative, Mr. Doyle, who, unlike his predecessors, is a trained lawyer, beginning to question whether in every case they can go on paying amounts of compensation for damage determined by a Kuwaiti "Accident Committee", under rules /promulgated.....

promulgated by one of the Shaikhs without ultimately losing their immunity from Kuwait jurisdiction. Furthermore, now that the abolition of their own Investigation Branch and its handing over to the State has been agreed to, it appears doubtful whether, as one British officer of the Investigation Division has expressed it, the company will be able to keep "in the family" matters decided in other countries in courts of law or at any rate by official intervention or through lawyers.

14. Practically speaking, the only other class of "mixed" case to which the Kuwait Oil Company are a party is claims for compensation as a result of industrial accident. These are not, as in Bahrain, decided by a committee comprising representatives of the State and the Oil Company under the chairmanship of the Political Agent. They are settled (if the expression can be used of cases in which one party - the Oil Company - practically always pays what is demanded without demur) by direct correspondence between the State and the Company. In the absence of any statute however, their legal content is comparatively small and they are suitable for arbitration in the Bahrain fashion. It is desirable to try to introduce this. Otherwise the Kuwait Oil Company may, as has already happened in driving accident cases, find themselves faced with demands for payment of compensation in cases of industrial accidents based, not on negotiated agreement but, ostensibly, on decrees of Kuwaiti courts or even in the form of judicial fines.

15. Even after experience of the erosive tactics described in the preceding paragraphs it might be possible to assume in individual cases that the Kuwait administration was acting through an ignorance of how the Order in Council should be operated. Shaikh Abdullah Jabir once stated that even if his son were in a case against a 'foreigner' he would insist that he plead in the Agency court. (Shaikh Subah as Salim, however, said that any Kuwaiti attending the Agency court would be laughed at). The Ruler's request however, recorded in the second paragraph of Enclosure No.2 that all mixed cases should be heard in the Kuwait courts disposes of any possibility of doubt as to the real Kuwaiti attitude. It was made before on the occasion reported in my letter No.170/4/52 of April 30, 1952, to Sir Rupert Hay, but not then so emphatically. It is a direct attack on our extra-territorial rights. It establishes that Kuwaiti policy, in this matter at any rate, is co-ordinated and coherent. In making his request the Ruler also remarked that "times have changed" - sufficient indication that he has learnt well the lessons of the history of our agreements with Egypt and Persia. No doubt the large number of educated Egyptians, Palestinians, Syrians and Lebanese now in Kuwait have been eager teachers. To such an extent the prophecy made a paragraph 12 of Mr. Jakins' letter No.1/29/50 of December 12th, 1950, to Sir Rupert Hay has proved true.

EA1662/4
16. If our policy could be implemented it would meet this situation. But I submit that the main specific measure contemplated towards that end (cf. paragraph 2 iv of Foreign Office despatch No.134 of July 31st, 1952) was the appointment of a legal expert in the Kuwait administration; and that seems unlikely in the foreseeable future, to be possible. The only alternative measure likely to help is the appointment of a legal expert to the Agency staff. He would have similar qualifications to those of the Registrar

Registrar of the Bahrain court. In addition to the same duties he would have to resist, as it has fallen to the lot of the Political Agent to do so far, every attempt at an encroachment on our position by the Kuwait administration. Such action must always be taken with expedition, takes time and nearly always involves lengthy interviews. He would, at the same time, observe in detail the Kuwaiti courts in action and, when possible, offer advice for their improvement and, where necessary, act as an observer in mixed cases heard by them. In reply to the Ruler's statement that he had improved his courts the appointment of our legal expert would be adduced as practical proof that we had strengthened the Agency court. We could hope, too, that with such strengthening our court would serve as an example to the Kuwaitis and reconcile them to or perhaps even bring them to welcome our jurisdiction, though it must be remembered that it is not a "fair" deal but a deal for Kuwaitis which they always want. We would then be in a stronger position to state, in reply to the Ruler, that until his courts and laws were adequate for the administration of justice to 'foreigners', cession of jurisdiction could not be contemplated.

17. It is easy to see that if the present Kuwaiti policy is pursued unchecked, there is a danger of our jurisdiction in mixed cases being whittled away and of 'foreigners' then being subjected to the type of justice prevalent in Saudi Arabia. That would be a slip towards the abolition of our jurisdiction in all cases.

18. I am sending copies of this despatch to the Foreign Office and the British Middle East Office.

I have the honour to be Sir,

with the highest respect,

Your obedient servant,

C.J.Pelly.

KUWAIT COURT.THE LAW OF COMPENSATION (+)

A. For wilfully murdering a person or injuring any part of his body full punishment according to the Islamic Law (Shariat al Islamiah) will be meted out. (i.e. death).

B. But when the crime is not wilful the following compensation will be paid to the injured party.

<u>Full compensation</u>	<u>For killing a person.</u>
"	destroying a person's brain power.
"	" sense of hearing.
"	" eyesight.
"	" sense of smell.
"	" taste.
"	" sense of touch and feeling.
"	" voice.
"	" vitality.
"	stopping a person's reproductive capacity.
"	causing leprosy.
"	causing a very serious leprosy.
"	blackening the skin.
"	destroying a person's ability to stand and to sit.
"	cutting off a person's nose.
"	" the penis.
"	" the tip of the penis.
"	damaging the testicles.
"	cutting off a woman's breast.
"	" a woman's nipples so as to stop milk. @
"	damaging the nipples. @
"	blinding a one eyed man.

C. If a person commits any two of the above crimes he will have to pay double compensation.

<u>Half Compensation</u>	<u>For</u>
"	cutting off one hand.
"	" cutting off one leg.
"	destroying an eye (exception - the eye of a one eyed man).
$\frac{1}{3}$ of full compensation	for causing a wound inside the body (internal injury).
$\frac{1}{3}$ of full compensation	for causing a wound up to the head, but not affecting the brain because of the brain cover (skull).
$\frac{3}{20}$ of full compensation	for a wound which affects a bone and causes a very light fracture, but which can be treated with medicine only.
$\frac{1}{20}$ of full compensation	for a wound that exposes the bone without harming it. (Exception - a wound in the face).

Note. When the wound is in the face, something over and above the $\frac{1}{20}$ of full compensation will be awarded.

20

Contd.....

- 1 of full compensation For every finger cut off.
 $\frac{1}{10}$
 1 of full compensation For cutting intentionally or by
 $\frac{30}{30}$ mistake any finger tip except
 the thumb.
 1 of full compensation For every thumb tip cut off.
 $\frac{20}{20}$

- Note.
- (a) All the above rates of compensation are applicable only when the injured is a man.
 - (b) For an injury to a female, the woman will get half the rate of the male compensation in all respects.
 - (c) But in the case of a wound, ($\frac{1}{3}$ compensation) above, the woman will get the same compensation as a man.
 - (d) For the destruction of an unborn child the compensation is $\frac{1}{10}$ th of the mother's rate, and as much when the embryo increases in number, (i.e. twins).

This will be applied only in the case of destroying the unborn child and when the mother is alive. But if the mother dies before delivery, no compensation need be paid for the unborn child but only for the mother.

- F. The Court will investigate the case of wounds for which no compensation has been specified by the law, eg., cutting the ear without harming the eardrum, taking out a shaky tooth, damage to an eyelid, pulling out a finger or toe nail etc. unintentionally. As for a sound tooth, the rate is $\frac{1}{20}$ th of the full compensation.
- © In these cases the Court will investigate and can reduce or increase the compensation as warranted by the situation. But in other cases the rates of compensation specified by the law are irrevocable.
- (+) The actual amount of full compensation will be fixed from time to time by the Ruler. At the moment, i.e. end of 1953, this has been fixed at Rs. 32000/-

Sd. Col. H. R. P. Dickson, C.I.E.

17.11.1953.

CERTIFIED TRUE TRANSLATION.

Ahmadi,
 18th November, 1953.

Enclosure No. 1.H.M.G.'s Jurisdiction in Kuwait.

The need for an Order in Council in Kuwait was originally discussed in correspondence between the India Office and the Foreign Office in 1911 and 1912 (we do not appear to have copies of their correspondence in the Agency). The matter was then shelved pending negotiations with Turkey regarding the status of Kuwait and was indefinitely postponed owing to the war.

2. The question was raised again in 1919 when a draft Order was prepared in order to vest the Political Agent with jurisdiction over British subjects. The Muscat rather than the Bahrain Order was taken as a model since it was not felt necessary at that time for the Political Agent to have jurisdiction over foreigners. The possibility of one comprehensive Order covering the whole Arabian coast of the Gulf was also mooted.

3. In August 1921, the India Office concurred in the proposal to open negotiations with the Shaikh of Kuwait with a view to the eventual promulgation of an Order in Council but agreed that its issue should be deferred until the Turkish Treaty came into force and its exact status was thereby defined. In the meantime, the Residency had considered some of the problems involved in assuming jurisdiction over various classes of foreigners and in December 1921 the Political Agent, Kuwait, sounded the Ruler and was satisfied that he would raise no objection to H.M.G. assuming jurisdiction over subjects of certain European countries and the United States as well as British subjects. The Political Agent, Kuwait, also reported that the Ruler would not cede jurisdiction over the subjects of non-Christian powers except possibly China and Japan, except under strong pressure.

4. There was a further period of delay while it was decided whether Kuwait was to be subordinate to H.M.G.'s representative in Mesopotamia or to the Residency in Bahrain and while a final settlement with Turkey was awaited. A draft was finally agreed in 1925 and copies were sent out together with an instruction to obtain an undertaking from the Shaikh in regard to the delegation of jurisdiction over foreigners to H.M.G. It was not, however, thought necessary by the India Office to delay the publication or coming into force of the Order until that undertaking had been obtained.

5. In accordance with these instructions, the Political Agent wrote to Shaikh Ahmad in October 24, 1925, explaining the jurisdiction which, under the Order in Council, would be taken over by H.M.G. At first the Shaikh made a reservation about cases between Kuwaitis employed by British subjects or others under our jurisdiction and Kuwaitis which, he said, should be still decided by him. The Political Agent wrote again on November 1 setting out exactly what was intended by the Order. In these two letters he clearly explained to Shaikh Ahmad the jurisdiction which he was authorised to exercise under the 1925 Order in Council and after the clarification of the second letter the Shaikh replied that he had no objection.

6. This did not, however, finally settle the question of jurisdiction over foreigners since under Article 8 (1) (2) of the Kuwait Order in Council, 1925, jurisdiction was to be exercised by the Political Agent only in respect of nationals of countries whose governments had signified their agreement to this. In fact, at the time, no foreign governments were approached. But the question became more urgent in 1932 when the early entry of an oil company was expected. It was agreed that it was not desirable to approach /foreign....

foreign governments since they would not necessarily consent to the Shaikh ceding jurisdiction to us and complications might arise with:-

- (a) countries which had capitulations in the Ottoman Empire who might maintain that Kuwait had been part of that Empire and therefore they still had rights there;
- (b) signatories of the Treaty of Lousanne which finally settled the disposal of the former Ottoman provinces.

Therefore it was agreed that a new Order in Council or an amendment to the 1925 Order was required. The former course was adopted as being less likely to attract attention to the change in the wording in the Order. The change proposed was to drop all mention of consent by the governments concerned being necessary before the Shaikh's cession of jurisdiction over foreigners to H.M.G. became effective.

7. There was some doubt as to whether it would or would not be necessary to obtain a further letter from the Shaikh ceding such jurisdiction since his agreement in 1925 had been conditional on consent being obtained from the governments concerned but it was in the end decided that if the Shaikh agreed to the new draft omitting that provision this would be sufficient.

8. On July 26, 1934, the Political Agent, Kuwait, was instructed by the Political Resident to explain the new draft which had then been prepared to Shaikh Ahmad and he accordingly had an interview with him and subsequently wrote enclosing Arabic translations of the proposed alterations. After he had been given confirmation that the power conferred by the Order did not extend to subjects of foreign Muslim Powers, the Shaikh signified in a letter dated October 13, 1934, that he had no objection to the Order. Finally, an English copy was given to him for reference and record.

9. It was still not entirely clear whether the subjects of other Gulf Rulers in treaty relations with Britain were to be regarded as British protected persons within the meaning of the Order. But although in Bahrain they were so regarded, the Political Agent, Kuwait, explained that the reverse had been the practice in Kuwait and this position appears to have been accepted by the Political Resident in his letter D.O.No.116-S of February 13, 1936.

10. A further complication arose out of the British Protectorates, Protected States and Protected Persons Order in Council (No.140 of 1949) which declared the Gulf States to be "Protected States" and therefore the Political Agent, Kuwait, suggested to the Political Resident that an amendment might be required to that Order to the effect that it did not alter the jurisdiction of the Shaikh of Kuwait over subjects of those States when in Kuwait. I can trace no letter on the files to show that such an amendment was made. However, in March, 1950, subjects of the other Gulf States were still clearly regarded as subject to the jurisdiction of the Shaikh of Kuwait and shortly afterwards the Ruler of Bahrain was specifically granted similar jurisdiction to bring him into line.

11. There is little correspondence on the files on the origins of the Kuwait Order in Council, 1949, but the main alterations incorporated in it arose from the changes in the status of India /after.....

after 1947. The draft does not appear to have been shown to the Ruler before promulgation but three copies were given to him afterwards for information and record.

12.. After the Kuwait Order in Council, 1949, came into force this Agency raised two further points:-

- (a) Was it desirable to retain the provision in Article 8 I (a) (iv) whereby 'employed Kuwaitis' if registered as such by the Political Agent, were to be subject to our jurisdiction?
- (b) Should Lebanese subjects be regarded as nationals of a Muslim State and therefore within the definition of Kuwait subject in Article 4 of the Order?

13. With regard to point (a) Judge Haines wrote to Mr. Jakins that it was intended to retain this provision to protect such persons in the future and that it was left to the Political Agent to decide whether to use this provision or not. Although in the original draft of the Kuwait Order in Council, 1953, the provision was omitted, it was brought back in the final draft of the Order at our request.

14. Point (b) raised the whole question of the vagueness of of the definition of persons subject to the Ruler's jurisdiction and when considering future policy in the Persian Gulf the Foreign Office suggested that a definite list of countries should be discussed with the Shaikh. Originally a list was proposed which would restrict the Ruler's jurisdiction but later the Foreign Office agreed that such a restriction was impracticable and in the end a list was put to the Ruler which contained all the independent Arab Muslim countries, with the exception of Libya, together with stateless Muslims of Palestinian origin but not including non-Arab Muslim countries such as Turkey, Afghanistan and Indonesia. The Ruler signified his agreement to this list in an exchange of letters in January, 1952. But if a case arises in the future concerning a national of one of those Muslim countries excluded from the Ruler's jurisdiction, he may well feel aggrieved that they were not included in the list which was submitted to him. Nevertheless, the list submitted to the Ruler was restricted in this way on the express instruction of the Foreign Office and at the time His Highness raised no objection. Subsequently this list was embodied in Article 8 of the Kuwait Order in Council, 1953, and represents the only jurisdictional change actually made by that Order.

15. Arising out of Sir Eric Beckett's report, it was proposed that provision should be made in the new Order for the setting up of Joint Courts in Kuwait at some future date and this was included in the earlier drafts of the new Order. Mr. Pirie-Gordon accordingly wrote to the Ruler explaining the inclusion of this provision but he reacted so strongly against the idea that all mention of Joint Courts was deleted from the final draft.

16. Apart from this specific point the draft Order was not referred by us to the Ruler but although it might have been more tactful to have kept him informed about its progress and to have sent him an Arabic translation of paragraph 8 of the 1953 Order which details the extent of our jurisdiction in Kuwait and, by implication, the extent of his own, he had already agreed to the change which it embodies, namely the definition of what is meant by a "Muslim State".

Enclosure No. 2.Minute.

When Judge Haines saw him in London, the Ruler told him that he would like to speak to him about the jurisdictional position in Kuwait. Accordingly Haines extended his visit here to enable him to see the Ruler who returned from India yesterday. Haines and I saw him at Dasman Palace this morning and had an interview lasting for an hour and a half.

After the exchange of the usual courtesies, Haines reminded the Ruler that he had expressed a wish to speak to him. The Ruler opened the discussion by stating that there was a question at issue between his administration and the Political Agency which he wished to settle - that of jurisdiction. He said that it was desirable but not possible for the Agency Courts and the Kuwait Courts to deal with similar cases in a similar way. He gave as an instance of this the case of an alleged Hadhramauti who had committed an offence of rape against an Indian girl aged 8 years. He said that the man was punished, under the sentence of a Kuwaiti court, by receiving 80 lashes, 3 months imprisonment and a Fine of Rs. 3,000. This was dealing with the matter properly according to the Shera Law. The Agency had no power to do this. He had actually referred the case to the Political Agent who had been inspired to do the right thing and had not insisted on taking the case to his Court. The next point the Ruler made was that there should not be two Courts in Kuwait dealing with mixed cases. Cases between parties subject to the Agency jurisdiction should of course be heard in the Agency Court but all mixed cases (including those where a person subject to the Agency jurisdiction was Accused or Defendant) should be heard in the Kuwaiti Courts - a representative from the Agency attending. Before he came to rule, the Ruler had not, he continued, paid much attention to affairs generally or to the Courts; but since then he had done so and had done everything possible to improve them and to staff them with competent judges.

I said that in the case mentioned about the Hadhramauti, which I remembered, it was not established that the Accused was subject to the jurisdiction of the Agency. Haines repeated this too, and said that if it had been so established the Political Agent would have been bound to insist upon the case being heard in the Agency Court and would have been brought to task by the Foreign Office if he had not done so. He said that the Ruler's proposal that all mixed cases should be heard in the Kuwaiti Courts amounted to a proposal to alter the terms of the agreement made between Her Majesty's Government and the late Ruler regarding jurisdiction and embodied in the Order in Council. Further discussions ensued on this point. The Ruler ultimately said that he admitted that the present position was as stated in the Order in Council and that he acquiesced in its working as at present but that at some time in the future mixed cases should be heard as he proposed. Haines suggested that it might meet the Ruler's objection to two Courts hearing cases if a joint Court consisting of a Kuwaiti and an Agency judge were instituted for hearing mixed cases. The Ruler seemed disposed to consider this proposition but on Haines' further enquiring what the functions of the Agency representative in the Kuwait Courts during mixed cases would be, Abdulla Mulla (who had been present at and obviously very interested in the interview throughout) seemed to intervene

in order to disparage the joint court proposal and the Ruler finally followed his example. He went on to say that the function of the representative would merely be to listen and offer comment but not to advise or insist.

I pointed out that we would find it difficult to allow those subject to our jurisdiction to have their cases decided upon by Kuwaiti courts. In a case I knew of ("the Moseley case") a Kuwaiti court had wrongly taken jurisdiction and had sentenced and fined the accused without even giving him a chance to appear. The Ruler questioned this and then said he would look into it.

I said that recently I had decided cases between Kuwaitis and persons subject to our jurisdiction and the parties were satisfied. The Ruler retorted that both parties could not have been satisfied.

The Ruler said that Haines should consider his suggestion at length. Haines promised to do so.

Haines then enquired as to the law which would be administered in the Kuwaiti Court in cases where the Accused or Defendant was a person subject to the jurisdiction of the Agency. He was on common ground with the Ruler that in cases of personal status the Islamic Law would be implied. In other cases particularly in Criminal cases the Ruler said that the law would be taken from the "Majalla" which was a legacy from the days of the Otoman Empire. Haines said that he would like to see a copy of the "Majalla".

The Ruler reverted to the case of the Madhramauti first quoted and Haines had to admit that no British Court could impose a sentence of 80 lashes, but whipping in such a case could be imposed and also a sentence of imprisonment.

The meeting was friendly throughout although the difference in points of view was very apparent.

C.J. Pelly.

19th December, 1953.

Registry
No.

~~Top Secret~~
~~Secret~~
~~Confidential~~
~~Restricted~~
~~Open~~

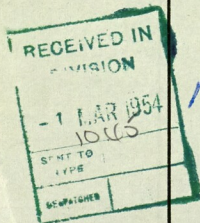
Draft.

Despatch to
Kuwait.
U/N

By Bahrain rep.
BMEC.

Shortly to be able
to address a
further communication
to you.

Amman
16/2.



NOTHING TO BE WRITTEN IN THIS MARGIN.

F.O.P.

+2C.

March 1st, 1954

23

Sir,

informative

17th 9th Jan.
Tans / despatch No 2/65

H.M. Political Resident at Bahrain,
(1643/), about extra-territorial
jurisdiction in Kuwait, has been
read with much interest, in
~~the Department.~~ ~~The situation~~
~~which it discloses is being~~
~~considered here and further~~
~~to let you have my~~

I am considering ^{urgently} the situation
which it discloses and, in
particular, the recommendation
in your para 16, on which I hope

I am sending a copy of
this despatch to H.M.P.R. and to
the Head of the BMEC.

Amman 17/2

Unnumbered

OUT FILE

(EA 1643/1)

FOREIGN OFFICE, S.W.1.

RESTRICTED

March 1, 1964.

Sir,

Your informative despatch No. 2 of the 9th of January to Her Majesty's Political Resident at Bahrain, about extra-territorial jurisdiction in Kuwait, has been read with much interest. I am considering urgently the situation which it discloses and, in particular, the recommendation in your paragraph 16, on which I hope shortly to be able to address a further communication to you.

2. I am sending a copy of this despatch to Her Majesty's Political Resident and to the Head of the British Middle East Office.

I am, with great truth and regard,

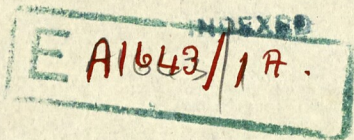
Sir,

Your obedient Servant,
(For the Secretary of State)

C.J. Pelly, Esq., C.M.G., C.B.E.,
etc., etc., etc.,
Kuwait.

FROM BAHRAIN TO FOREIGN OFFICE

En Clair



25
FILES

Mr. Burrows

No. 130

March 13, 1954

D. 3.50 p.m. March 13, 1954

R. 1.23 p.m. March 13, 1954

Your un-number despatch EA 1643/1 of March 1
to Kuwait.

My further comments follow in bag of March 16
but do not affect recommendation in paragraph 16 of
Kuwait despatch No. 2.

EA1643/1

O-O-O-



Bennett

2

E

EASTERN DEPARTMENT

E

A1643/2

26

1954

ARABIA

FROM **CONFIDENTIAL**

He Burrows

Bahran

No.

29 (16422/1/50)

Dated

12/3/54

Received in
Registry—

22/3/54

Jurisdiction in Kuwait

Discusses ~~our~~ attitude to mixed cases being dealt with in the ruler's Courts and the reply to be given to the ruler. Considers we should put pressure on the ruler for improvement in Kuwait's legal arrangements. Has given instructions for Court records to be kept in two form.

David Kuwait

References to former relevant papers

-11

EA1642/4

XS 03/91K2/2654
11054

(Print)

(How disposed of)

1/16/54
9/1/54
Copy in Legal Affairs
1/1/54

(Action
completed)

(Index)

References to later relevant papers

MINUTES

In this despatch Mr. Burrows discusses whether, and to what extent, we should hold out to the Ruler of Kuwait the prospect of greater jurisdictional responsibility. Mr. Burrows points out that Sir Eric Beckett in paragraph 5 of his report of April 1952 (Flag A) considered that "for political reasons we will have to be ready to agree at some future time that the present judicial system shall be replaced by a single judicial system which will all be under the Ruler". Against the obvious danger that a modification in ~~the~~ extra-territorial jurisdiction in Kuwait will be interpreted as a sign of decreasing political interest and influence, Mr. Burrows sees the opposite danger that by holding on too tenaciously to our present position we may provoke the Kuwaitis to challenge not only our own jurisdictional position, but the whole basis of our exclusive relationship.

2. Mr. Burrows is in favour of indicating to the Ruler in general terms that we are willing to grant him wider jurisdictional rights, as an inducement to him to improve his own legal system. He suggests telling him that no changes could be made now because of the primitive state of the Kuwait legal arrangements. As to our ultimate aim, Mr. Burrows considers that the Ruler should be approached on one of the following lines:—

- We shall eventually give up our separate jurisdiction altogether.
- We shall ultimately hand over all ~~the~~ jurisdiction to a joint or mixed court.
- We shall review ~~the~~ jurisdictional arrangements after the successful establishment of a joint court.

Whatever line is taken, Mr. Burrows realises that the Ruler must be told that before we can grant him greater judicial responsibility, a number of preliminary steps must be taken, among them the building up of a single system of law, the establishment of joint courts and the legal training of ~~the~~ Kuwaitis.

3. In his concluding paragraph, Mr. Burrows expresses confidence that the standard of judicial work at our Court in Kuwait will improve even before the appointment of a new registrar.

/4.

4. I am inclined to agree with the general line Mr. Burrows proposes. There is, it seems, much to be said for indicating to the Ruler that we are prepared ultimately to make some jurisdictional concessions, provided ~~that~~ that he improves his own legal set-up. I also agree that such an approach should be in the most general terms, and for this reason course (c) seems on the whole the most satisfactory at this stage.

5. I do not think, however, that anything would be gained by approaching the Ruler until we have raised the efficiency of our own Court on the lines indicated at -/1. This can only be done effectively by the registrar whom we intend to appoint. Even when we have secured Treasury approval for the creation of such a post - at present they are still stalling - it is doubtful whether a suitable man could be found to go out to Kuwait before late September or early October.

M.S. Buckmaster
M.S. Buckmaster.
March 31, 1954.

Mr. Ewart-Biggs ✓

Legal Advisers (Mr. Evans.)

→ *Claims Dept (Judge Haimes on return)*

We must surely work on the assumption that in the end, when the Kuwaiti Courts have developed to a sufficient standard, we will be prepared to merge our jurisdiction, perhaps gradually, into that of theirs. ~~British~~ *British* Courts. It would be difficult to justify any other policy before international opinion or to reconcile it with our own declared intentions to allow dependent countries full sovereignty if they wish for it and are capable of bearing its responsibilities. The present tributary position which we enjoy might perhaps be represented as a price paid for our protection, but that is a dangerous argument in that the Kuwaitis might eventually be provoked to renounce the bargain. In the long term we are likely to pursue our connexion with Kuwait most effectively by assisting them to develop their own institutions rather than by adhering to our privileges against their wishes.

NOTHING TO BE WRITTEN IN THIS MARGIN.

There might be advantage, as Mr. Burrows indicates, in making it clear to the Ruler that such is our policy, while at the same time resisting his present, very premature, proposal that his courts should ^{now} take jurisdiction in all 'mixed' cases. It would no doubt be difficult, however, to convince him that his judicial system needs much improvement before it is fit to deal with ^{British subjects and} foreigners. He will cling to the Shari' and Islamic procedure. However, in furthering forward his present proposal he indicated, with a true Arab conceit, that he was doing so because his courts were better equipped to deal properly with cases than ours. Nevertheless he may expect a combination of firmness and frankness. I doubt in any way whether it would make the present position any worse; whereas if we give the Ruler the impression that we are clinging to our privileges for their own sake we will make him oppose them more bitterly.

Christie
5/4.

I agree. But the greatest care will have to be taken not to leave the Ruler with the impression that he can expect extensive adjustments to the jurisdictional position in the near future. It will take many years to develop his legal and judicial system to a stage at which any

substantial surrender of jurisdiction by
 us would be justified and he should
 be left in no doubt about this.

Mr Evans

6/4

Sir Gerald Fitzmaurice

I agree, but it seems to me that the two policies which Mr. Burrows in his paragraph 2 rather indicates as mutually exclusive of one another are not in fact really so, and that both could and should be pursued. We may decide that the eventual aim, if circumstances justify it, is a transfer of our jurisdiction to the Kuwait courts or to a system of mixed courts, and we may (though I fully agree with Mr. Evans that great caution is necessary in what we say) let the Ruler know that this is our eventual aim, though its realisation must depend entirely on how far Kuwaiti courts and justice come up to the necessary standards. There is certainly much to be said for all this with a view to holding out an inducement to the Ruler to accept our advice in legal and judicial matters, etc.

But none of this constitutes any reason why we should fail in the meantime (and unless and until all this has come about) to insist on the strict letter of our capitulatory rights and the carrying out of the existing agreements. Moreover, I should have said that this was so not merely from the legal but from the political point of view. I feel quite sure that our political influence must suffer from the present more or less open flaunting of the jurisdictional agreements by the Kuwaitis. I feel we should insist on the following:-

(a) that jurisdiction in all "mixed" cases lies exclusively with our courts and does not lie with the Kuwaiti courts *unless the foreigner has submitted to their jurisdiction*

(b) consequently, no recognition on our part will be extended to any decision given in a mixed case by a Kuwaiti court, and such decisions will not be regarded as having any validity: *(in disregard of (a))*

(c) it follows, therefore, that in cases where a "foreigner" has been made a defendant in a suit before a Kuwaiti court, we shall not take any steps to enforce any judgment given against him and will not allow such a judgment to be executed: *(Who has not voluntarily & genuinely submitted)*

(d)/

NOTHING TO BE WRITTEN IN THIS MARGIN.

(d) if, of course "foreigners" choose to bring actions in the Kuwaiti courts, we cannot prevent them, but in so far as it may arise, we shall refuse to recognise or give effect to any resulting judgments.

I believe that what we should in fact aim at in the future is not any out and out renunciation of our jurisdiction but a mixed court system, at any rate as an intermediate step. I agree, however, with Mr. Burrows at the end of his paragraph 4 that it is quite unnecessary at this stage to indicate to the Ruler precisely what eventual steps we contemplate.

G.G. Fitzmaurice

(G.G. Fitzmaurice)
April 8, 1954.

As will be seen from XS 03/91 K2/1054, the Treasury have now sanctioned the appointment of a permanent Registrar to our Court for Kuwait. Please see also Mr. Kelly's letter of June 8 to Mr. Fry in this connexion (XS 03/91 K2/2654)

I submit a draft despatch to Bahrain.
Legal Adviser (Mr. Simpson) ^{9/2/54} *[Signature]*
24/6 10/VER

Minutes.

Ephemeral.

Mr. Fry

This has been
passed by Sir S.
Fitzmaurice, and
I think you should
see it.

I imagine you
will agree with me
that the piece about
Mr. Higozi ~~is~~ is
rather (should go as
a separate despatch.
If so, and if
you agree with the
wording, I will
do the necessary
separating &
send the two
dispatches for typing.

A... ~~lan~~
28/6

Thank you. I agree
lt
29/6.

Redrafted as two
dispatches
on EA 1642/4.D. 30/6.

Mr. Fry has not yet seen

Mr. Bunn's despatch at EA

1643/2. If he has not time

to read it, he will find the
main points fully summarised and
discussed in the minutes. The
draft below deals also with Mr.

Kelly's letter of June 8 at

XS 03/91K2/2654, to which, I

suggested, we need not reply
separately.

Just Sentiments
28/6.

Mr. General

lt
29/6.

NOTHING TO BE WRITTEN IN THIS MARGIN.

Despatch No. 29. ✓

(16422/7/54)

CONFIDENTIAL



British Residency,
Bahrain.

March 12, 1954.

32

EA1643/2

Sir,

With reference to my despatch No. 17 of February 15, I have the honour to submit further comments on the question of jurisdiction in Kuwait which I have now had an opportunity to discuss with Mr. Pelly during my recent visit to Kuwait and with Judge Haines since his arrival here.

2. It seems clear to me that we must refuse the proposal made by the Ruler of Kuwait, as reported in Mr. Pelly's despatch No. 2 (1643/1) of January 9, that all mixed cases i.e. those in which either party is a Kuwaiti or subject to Kuwaiti jurisdiction, should be heard in the Ruler's courts. But I suggest that in answering this proposal, and in discussing the question of jurisdiction generally with the Ruler, we should be clear whether we are refusing to make concessions in this matter because we regard the present judicial arrangements as an essential element in our special political position in Kuwait or because we regard the Ruler's courts as at present /incapable

The Right Honourable

Anthony Eden M.C., M.P.,

Her Majesty's Principal Secretary of State
for Foreign Affairs,

Foreign Office S.W.1.

EA1642/4

EA1643/1



incapable of carrying out satisfactorily judicial functions in respect of persons now subject to our jurisdiction. In the former case we should have merely to take our stand on the existing agreement incorporated in the exchanges of letters with the Ruler's predecessor and to make it clear either explicitly or at least by implication that we regarded our present judicial arrangements as an inseparable part of our special relationship i.e. as something we required in return for our protection of Kuwait's interests, and we should be unable to hold out any hope of this attitude being modified. In the latter case, on the contrary we would be able to say that we could not change the present arrangements for the time being but we could hold out hope of doing so as soon as we were satisfied that the Ruler's legislative and judicial arrangements were adequate to the task of dealing with cases involving those now subject to our jurisdiction.

3. There seems to be no logical reason why the surrender of part of our jurisdiction should weaken our political position. Politically and psychologically speaking however it must be remembered that where this has happened in other Middle East countries the process once begun has been a continuing one and has ended in our retaining no judicial rights at all. It has moreover in practice been accompanied by the loss of a special political position, though not necessarily by the loss of preponderant political
/influence.



- 3 -

influence. There must always be the danger that in the case of Kuwait a modification of our extra-territorial jurisdiction will be taken as a sign of decreasing political interest and influence and will therefore make our political task more difficult. On the other hand our political position in Kuwait rests pretty clearly on the obvious need of Kuwait for protection against its neighbours and there may be less disposition there to challenge our position than in larger countries which appeared at least in their own eyes better able to stand on their own feet. Moreover there is the opposite danger that if we hold on too long to existing positions which cause serious indignation to the Kuwaitis this may in itself induce them to question not only these particular positions but the whole basis of our exclusive relationship. The balance between the two arguments is a delicate one.

EA.64
4. Sir Eric Beckett expressed the opinion in paragraph 5 of his report of June 6, 1952 on the judicial arrangements in the Persian Gulf, that sooner or later we should have to contemplate the abandonment of our separate jurisdiction. I do not know whether this view is endorsed by Her Majesty's Government, taking into account the political factors set out in the preceding paragraphs. If we were able to proceed on this basis it would certainly make possible a more conciliatory and constructive reply to the Ruler's approach to us on this subject, since we could use his desire for a larger sphere of /jurisdiction,



jurisdiction, and our willingness to concede this, as an inducement to improve the legal system in Kuwait. Indeed if we cannot make use of this incentive our means of persuasion in this direction are likely to prove rather feeble. If we adopt this course, as on the whole I am inclined to think we should, we would still have to decide how far we could go and what kind of cession of jurisdiction we could contemplate in the foreseeable future. The outline of what we would say would be that we could not make any changes now because of the unsatisfactory nature of Kuwait legislation and the Kuwait courts, but we accepted the principle that such and such changes should eventually be made and that the sooner the Kuwaitis made their system better the sooner would this objective be reached. To fill in the blank we could either say, as did Sir Eric Beckett, that eventually we shall give up our separate jurisdiction altogether; or we could say that we were prepared ultimately to give up all jurisdiction (except perhaps personal status cases) to a joint or mixed court; or we could merely say that the first essential step was to get the joint court going for mixed cases and that when this had been successfully established we would review judicial arrangements with the Ruler to see whether they were now mutually satisfactory. In any of the variants of this approach we would point out strongly to the Ruler that if he wants greater judicial responsibility there are a number of essential steps to be taken before this



- 5 -

can be achieved. Among the more important ones are the building up of a single system of law by the enactment of codes and individual pieces of legislation concurrently by ourselves and the Ruler, secondly the establishment and encouragement of the joint courts, and thirdly the training of Kuwaitis to enable them to play their proper part in the administration of justice in the joint and local courts. The suggestion could further be made that all these steps would be greatly facilitated if the Ruler were to appoint a British judicial expert to help him. On the whole I think it may be best not to indicate at this stage too precisely what cessions of jurisdiction we may be able to contemplate, but to try to have the essential first steps taken in improving the legal system in Kuwait with the prospect that if this is done we will be willing to show a reasonable attitude in further discussion of judicial arrangements.

5. To sum up, there are fairly evenly balanced political arguments for and against holding out to the Ruler of Kuwait the prospect of greater judicial responsibility. We should perhaps allow the question to be decided in favour of doing so in general terms because this would give the best means of pressure for an improvement in Kuwait's legal arrangements.

6. It should be borne in mind that anything promised to Kuwait will also have to be promised at the same time, if not sooner, to Bahrain and probably somewhat later to Qatar.

7. I shall be glad to know what are your reactions

/to



- 6 -

to the above considerations. Judge Haines will be going to Kuwait during his present visit to the Persian Gulf. If he delays his visit until after the beginning of April the Ruler will, on present plans, already have left for Europe and it will therefore presumably be possible for Judge Haines to avoid saying anything with reference to his conversation with the Ruler in December. But when the Ruler is present in Kuwait during any subsequent visit of Judge Haines it will almost inevitably be necessary to have a further discussion with him on this subject, and indeed if the line I have tentatively recommended is approved we may in fact wish to take the initiative in raising the matter again in the hope of bringing about some improvement in Kuwait's legal system.

8. With further reference to your despatch No. 11 (EA 1642/2) of January 21 I impressed on Mr. Pelly during my recent visit how important it is that, even before the appointment of the official recommended in my despatch No. 17, the judicial work at Her Majesty's Political Agency should be carried out promptly and effectively and that the records should be kept in proper form. I am confident that this work will now be given a higher priority than has been possible with the pressure of other business in the past.



9. I am sending a copy of this despatch to
Mr. Pelly.

I have the honour to be,
with the highest respect,

Sir,

Your obedient Servant,

(B.A.B. Burrows)

Registry
No.

EAH643/2.

July 1 39

Top Secret.

Secret.

Confidential.

Restricted.

Open.

Sin,

OUTFILE

In Y.K.'s despatch No.

Draft.

Despatch.

Dr. BABBAR.

CRC,

Babbar

No 98

Copy

Kmail v/v.

29 (16422/7/54) of the 12th of

March you discuss whether

[the form: c to the

end.

NOTHING TO BE WRITTEN IN THIS MARGIN.

RECEIVED IN DIVISION	
30 JUN 1954	
SENT TO	7700
DESCRIPTION	

Registry
No. EA 1643/2

TOP SECRET
SECRET
Confidential.
RESTRICTED
SECRET

MSB

Draft.

DESPATCH

To:-

Mr. Burrows,
Bahrain.

Copy to Mr.

Pelly,

Kuwait and

XS 03/91K2/2654

to Judge Hoar
(Chairman)

Please see minutes

Legal Advisers

(Mr. Simpson)

NOTHING TO BE WRITTEN IN THIS MARGIN.

[X This has been
discussed with
Mr. Helling,
who thinks it
best to omit
all reference to
involvements at
this stage.]

Sir J. Higgins
(may wish to
see)

Sir,

In Your Excellency's despatch No. 29

(16422/7/54) of the 12th of March you submitted
further comments on the question of jurisdiction

in Kuwait. I am pleased to inform you that
sanction has now been obtained for the
appointment of a permanent Registrar to H.M.

Court for Kuwait, at a salary of £912 per
annum, plus foreign allowance of £1,360, if
married, or £825 if a bachelor. This officer
will also receive free rent allowance if
free furnished accommodation is not available.

In his letter No. 1643/8 of the 8th of June,

to Mr. Fry, Mr. Pelly suggested that Mr.
Hijazi might fill this post. permanently. I
should like to have a further report on Mr.

Hijazi before expressing my views on this
suggestion. On the whole, it would seem
preferable to appoint a British lawyer, to
this post, and you may like to consider Mr.

McLeary as a possible candidate. (Please see
my despatch No. 85 (EA 1642/47) of the 4th of June).

In your above-mentioned despatch, your
Excellency discusses whether, and, to what

extent, we should hold out to the Ruler of
Kuwait the prospect of greater jurisdictional
responsibilities. I agree that our policy

should be shaped on the assumption that, when
the Kuwait Courts have developed sufficiently,
we should be prepared to merge our jurisdiction,
perhaps gradually, into theirs. It would be
difficult to justify any other policy before
international opinion or to reconcile it

/with

with our own declared intentions to allow dependent countries full sovereignty if they wish for it and are capable of bearing its responsibilities.

3. I see no objection to your indicating to the Ruler in general terms that such is our ultimate policy, but there is no need, at this stage, to tell him precisely what eventual steps we contemplate. You should, at the same time, resist emphatically ~~the~~^{his} present very premature proposal that his Courts should now take jurisdiction in all "mixed" cases.⁴ You will no doubt use the greatest care not to give him the impression that he can expect extensive adjustments to the jurisdictional position in the near future. You should explain to him, unpalatable though this may be, that it will take ~~many years~~^{a long time} to develop his legal and ~~jurisdictional~~^{judicial} system, sufficiently to justify any substantial surrender of jurisdiction.

In making this point you should emphasise that you hope that he will accept our advice in legal and judicial matters, and that the permanent Registrar, whom we intend to appoint, will be pleased to give such advice. You might also like to mention that the Ruler of Bahrain has recently agreed to engage an Arabic-speaking British Legal Adviser, and that we should be glad to help him find someone with similar qualifications for Kuwait.

4. Meanwhile, we must insist on the strictest interpretation of our capitulatory rights and the carrying out of existing agreements. There

/seems

NOTHING TO BE WRITTEN IN THIS MARGIN.

(please see
my despatch
no 97
EA 1642/4 of
the 1st of July)
22

EA 1643/1

seems little doubt that our political influence in Kuwait must suffer from the present more or less open flouting of jurisdictional agreements by the Ruler ^{described in detail} ~~despite any~~ by Mr. Pelly in his despatch No. 2 (1643/1) of the 9th of January. ^{in particular} You should therefore, at the earliest opportunity, emphasise to the Ruler that jurisdiction in all "mixed" cases^a in which a "foreigner" is defendant^a lies exclusively with our Courts, not with the Kuwaiti Courts, unless the "foreigner" has submitted to their jurisdiction. Consequently, we cannot recognise any decision given in a "mixed" case^a by a Kuwaiti Court in disregard of this, and such decisions will not be regarded as having any validity. It follows, therefore, that in cases where a "foreigner" who has not voluntarily and genuinely submitted to Kuwaiti jurisdiction has been made a defendant^a in a suit before the Kuwaiti Court, we shall not take any ^{steps} ~~steps~~ to enforce any judgment given against him and will not allow such a judgment to be executed.

5. I am copying this despatch to Mr. Pelly at Kuwait.

I am, with great truth and respect,

Sir,

Your Excellency's obedient Servant,

lt
29/6

NOTHING TO BE WRITTEN IN THIS MARGIN.

(EA 1643/2)

FOREIGN OFFICE, S.W.1.

CONFIDENTIAL

July 1, 1954.

OUTFILE

Sir

In Your Excellency's despatch No. 29 (16422/7/54) of the 12th of March you discuss whether, and, if so, to what extent, we should hold out to the Ruler of Kuwait the prospect of greater jurisdictional responsibilities.

2. I agree that our policy should be shaped on the assumption that, when the Kuwait Courts have developed sufficiently, we should be prepared to merge our jurisdiction, perhaps gradually, into theirs. It would be difficult to justify any other policy before international opinion or to reconcile it with our own declared intentions to allow dependent countries full sovereignty if they wish for it and are capable of bearing its responsibilities.

3. I see no objection to your indicating to the Ruler in general terms that such is our ultimate policy, but there is no need, at this stage, to tell him precisely what eventual steps we contemplate. You should, at the same time, resist emphatically his present very premature proposal that his Courts should now take jurisdiction in all "mixed" cases. You will no doubt use the greatest care not to give him the impression that he can expect extensive adjustments to the jurisdictional position in the near future. You should explain to him, unpalatable though this may be, that it will take a long time to develop his legal and judicial system sufficiently to justify any substantial surrender of jurisdiction. In making this point you should emphasise that you hope that he will accept our advice in legal and judicial
/matters,

His Excellency
Mr. Bernard Burrows, C.M.G.,
etc., etc., etc.,
Bahrain.

matters, and that the permanent Registrar whom we intend to appoint (please see my despatch No. 97, EA 1642/4 of the 1st of July) will be pleased to give such advice. You might also like to mention that the Ruler of Bahrain has recently agreed to engage an Arabic-speaking British Legal Adviser, and that we should be glad to help him find someone with similar qualifications for Kuwait.

4. Meanwhile, we must insist on the strictest interpretation of our capitulatory rights and the carrying out of existing agreements. There seems little doubt that our political influence in Kuwait must suffer from the present more or less open flouting of jurisdictional agreements by the Ruler described in detail by Mr. Pelly in his despatch No. 2 (1643/1) of the 9th of January. In particular you should, at the earliest opportunity, emphasise to the Ruler that jurisdiction in all "mixed" cases in which a "foreigner" is defendant lies exclusively with our Courts, not with the Kuwaiti Courts, unless the "foreigner" has submitted to their jurisdiction. Consequently, we cannot recognise any decision given in a "mixed" case by a Kuwaiti Court in disregard of this, and such decisions will not be regarded as having any validity. It follows, therefore, that in cases where a "foreigner" who has not voluntarily and genuinely submitted to Kuwaiti jurisdiction has been made a defendant in a suit before the Kuwaiti Court, we shall not take any steps to enforce any judgment given against him and will not allow such a judgment to be executed.

5. I am copying this despatch to Mr. Pelly at Kuwait.

I am, with great truth and respect,
 Sir,
 Your Excellency's obedient Servant,
 (For the Secretary of State)

Jessie King

Shaw
V. I.
Book

2249 6111

E

EASTERN DEPARTMENT

45

E

A1643/3

1954

ARABIA

FROM Confidential
 7.0 Minute
 Judge Haines

No.

Dated 6/1/54

Received in
 Registry— 14/1/54.

Reports on his inspection of the Kuwait Courts,
 the registers are now in order for 1953 and 1954.
 Suggests Hajagi should be sent to Kuwait to cover period
 when Pelly and McSherry were absent. Comments on case
 of leg. V. Rashid Hussein Dacari.
 Copy of letter to H. Haines below.

References to former relevant papers

MINUTES

Please see my letter of April 6 to Mr. Burrows
 reporting on my inspection of the Kuwait Court. I am
 glad to report that the registers are now in order for
 1953 and 1954.

I am looking into the question regarding
 procedure for the Fugitive Offenders Act and will write
 to Mr. Pelly as promised.

There is a spare copy of the letter for your files
 if you want it.

(Print)

C.H. Haines

12/4/54

(How disposed of)

Mr. Evans (Legal Counsellor) (Written initial on Judge Haines file).
 Mr. Buckmaster (Eastern Depart.).

From the tone of this report it
 appears that there has been ^{some} ~~much~~
 improvement in the standard of work
 at the Court for Kuwait.

Mr. Hajagi has now arrived at
 Kuwait, where he should
 be

(Action
 completed)

(Index)

H.H.H.

J.

References to later relevant papers

45461

he of considerable assistance to

Mr. Kelly.

W.B. Brewster
21/4.

Mr. ^{C.B.} ^{23/4} ~~Evett~~ - Biggs.

A. ...
24/4.

CONFIDENTIAL

Middle East Centre for Arab
Studies,
Shemlan,
Lebanon.

E
47

6th April, 1954.

E A1643B

I inspected the court records in Kuwait to see whether the suggestions made on my previous visit had been carried out. I found that the Registers are now properly kept. The Criminal Register had been written up for 1953 and the 1954 entries were up to date. The Civil Registers had been written up for 1953 but there were no Civil cases filed for 1954. It appears that a number of Civil disputes have been settled out of Court under Article 11. I have asked that a note of the number of disputes so dealt with be kept for use in the annual report on the working of the Order. The Estates Register had been written up but I suggested some additional headings and Moberly said that he would put them in. There were for 1954 a number of entries in which the Court had notice of death but no action had been taken for the administration of the estates. I explained that the time for entry in the Register is when application for a grant has been made or the Court decides to act under Article 51.

When the Court hears of a death it should cause a notice to be put up on the Court notice board under Article 47. Moberly said that he would do this. I reminded Moberly of Article 16 which requires a list of Judges of the Court for Kuwait and of the Chief Court to be exhibited on the notice board and also of the requirements of Article 88 and suggested a notice be put on Notice Board stating where the Order and Rules and Regulations may be inspected.

I saw that the inquest which was part heard on my previous visit had been finished in the manner I had suggested.

I had a general talk with Pelly but in view of the satisfactory position of the records I had little to say. It is desirable that the registers be written up for the previous years but that must wait until staff matters improve considerably.

Pelly agreed entirely with the suggestion that Hijazi should be sent out to cover the period when both he and Moberly would be absent. He sent a telegram to this effect on the night of 2nd April but I expect he has sent you a copy. I do hope that the Foreign Office will be able to arrange for this.

Pelly made it clear that Moberly was only able to write up the Court records at the expense of his other work and hinted that if Hijazi cannot come the Court work would have to suffer. I said that if the records were neglected during that time they should be written up as soon as Moberly returned. However if the books are entered up if and when cases are filed very little extra time will be needed and I would strongly advise an effort being made to keep them up to date.

The case of Reg. v. Rashid Rustom Irani alias Rashid Rustomian was shown to me. In this case Mowdsley had taken depositions under paragraph 512 of the Indian Criminal Procedure Code for use under Article 29 of the Fugitive

B.A.B. Burrows Esq., CMG,
Political Resident,
Bahrain.

/Offenders

Offenders Act 1881. Politically it would probably be a good thing to get the man back for trial but it may mean sending someone to India to bring him back and will certainly be expensive. The collection of Acts and Orders is missing so I was unable to advise Pelly as to the procedure. (It was thought that Mawdsley may have taken the Court's copy away with him) I will look it up and advise Pelly after my return to the Foreign Office.

(C.H. Haines)

1954

E

EASTERN DEPARTMENT

ARABIA

E A1643/4 ✓

49

FROM

CONFIDENTIAL

Mr Burros

Bahrain

No.

1383/46/54

Dated

24/6/54

Received in
Registry—

29/6/54

References to former relevant papers

GA 4102/64

EA1644/17 (1951)

EA 1648/1 (1952)

(Print)

(How disposed of)

By Mr Burros Bahrain

from M.L.

Set 2

(Action
completed)

20319.

(Index)

225/45

References to later relevant papers

(EA1646/4)

Discusses our attitude to Khalid Mubarak's
action against his father. Has discussed
question of our jurisdiction in Kuwait with Haines and
Polly and has come to the conclusion that our
assumption of jurisdiction over Moslem corporations in the
1953 Order in Council was unilateral and therefore wrong.
If this is the case the Order in Council should be amended
to exclude it.

MINUTES

I should be grateful for your
views on this. I have flagged
the relevant pp.

It appears that the provision
in the 1953 Kuwait Order giving
us jurisdiction over ^{all} corporations ~~belonging to~~
~~Moslem States~~ other than those incorporated
under a law enacted by the Ruler
was taken from the Bahrain Order,
1952 on which the new Kuwait Order
was based (see minutes on EA 1644/10 etc

45461

Flag E). If, as Mr. Burros

/ maintains,

maintain, we did not secure the Rule of Kinsait's agreement to this extension of our jurisdiction, we were presumably wrong to assume jurisdiction over these corporations. If so, we should, I suppose, amend the Order as Mr. Burrows suggests, though this would be most undesirable politically, especially in the light of the Rule's tendency to encroach more and more on our jurisdictional rights.

W. B. Simpson
12/7.

Legal Advisers (Mr. Simpson)

As far as the construction of the two Orders goes, I am bound to say that I agree with Mr. Burrows. He appears to be suggesting a D. R. as contemplated in Art 8 (1) (i) (b) of the Order rather than an amendment of the Order itself.

Whether in view of the attitude of the Rule it would be politically better to make the D. R. or simply to acquiesce in his assumption of jurisdiction, I cannot of course judge.

1. Attach

W. B. Simpson

14/7

Minutes.

1. I attach a draft letter to Bahrain. I should be particularly grateful for comments on para. 4.
2. You will see from para. 5 of Mr. Burrows' letter of June 24 that he would like us to prepare the amending regulation. Do you agree that we should do this even if it means an extra exchange of letters postponing enactment still further? For it seems to me that we must consult Bahrain, who are so much more knowledgeable about local conditions than we are, before we can produce the most sensible and effective definition of the types of Corporation we wish to exempt from our jurisdiction.
3. Bearing this in mind would you approve of a request added to this letter asking for them to draw up a draft Q.R.?

R. T. Higgins. 24.8.

~~Legal~~ Advisers (Mr. Simpson)
Judge Haines (Claims Dept.)

I think that Mr. Burrows has in mind an amending O.C. since the normal procedure is for Bahrain to submit draft Q.R.s. For a Q.R. to be issued
under

NOTHING TO BE WRITTEN IN THIS MARGIN.

under Article 82 (3)(k) it will be necessary for the Rules was to agree that companies incorporated in countries whose nationals are subject to his jurisdiction ^{should} be added to his jurisdiction. But as far as the Rules is concerned there has been no change and we cannot now ask him to agree.

A very small amendment of Art 8 (1)(i)(b) would give effect to Mr. Burrows request. All we need do is to substitute "persons" for "individuals". "Persons" includes a corporation (See Art 4). We could if there is no political objection ^{say} ~~add~~ in the Explanatory note that we find that the ~~the~~ former drafting did not give full effect to the agreement between ~~the~~ the Rules and us.

F. Hume
26/6/54

I attach a new draft. Martin Buckmaster agrees that there is no point in drawing up ^{an} ~~a~~ draft amendment and Explanatory Note at this stage. The bag goes on Saturday this week and we should like to send this letter off then. I hope you agree.
R. Higgins 27.8.

Judge Hume (Claims Dept.)

/Legal

Minutes.
Legal Advisers (Mr. Simpson)

I suggest that there is no need to refer this again to Bahrain. Mr. Burrows wants the matter put right and the method of doing so will not matter to him. If my suggestion is accepted a draft amending Omt should be made and submitted to the Secy of State.

Cy. Heines
27/8/54

I agree

J. L. Simpson
27/8

Letter to Mr. Burrows, Bahrain in draft.

R. T. Higgins 31.8.

lt
31/8

21 Mr Burrows, Bahrain
To Mr Fry, 16422/14/54
September 17.

I have consulted Judge
Heines about this, and attach
a draft Amending Order. /I

Minutes.

Verhere it to redraft the
Explanatory Note. The
purpose of an Explanatory
Note of this kind is not to
explain an omission from the
previous Order, but ^{to indicate} _{whereas} the
amending Order is intended
to accomplish.

Joyce A.C. Galloway

22/11

Please print as usual
for submission to the S. of S.
You will see a precedent for
this Order in the Bahrain
(Amendment) Order, 1953.
Library (Miss Hughes).

msBentham

23/11.
Gpy

NOTHING TO BE WRITTEN IN THIS MARGIN.

Minutes.

Copy of draft Order in Council
attached for submission to the Secretary
of State. Would department kindly
fill in the date of operation?

H.A.E. Hughes

[H.A.E. HUGHES]

26/11

I should be grateful if
you would glance at this
draft before it is submitted.
Mr. Logan, now on leave from
Tunisia, is not altogether satisfied
with the phrase "corporations which
are nationals of the Modern States
listed"..... in the Explanatory Note
annexed to this Order.
His point is that certain corporations
in

NOTHING TO BE WRITTEN IN THIS MARGIN.

in Kuwait, which this Amending Order is intended to cover, one registered in a European country as well as in the Modern State concerned. Could such corporations be described as nationals of a Modern State?

Wm. B. B. B.
29/11.

Legal Counsellor
(Mr. Simpson).

The explanatory note is of course only intended to indicate the general purpose of the Amendment. Mr. Morgan's real worry, I take it, is whether corporations of the type mentioned will be excluded.

Minutes.

by the proposed amendment to Art 8 (1) (1) (b). I think they will be. Once it is shown that a corporation is incorporated in say Saudi Arabia, it is excluded by (b), and it does not matter whether it is incorporated in some ^{other} country, e.g. or European country, as well.

J.L. Simpson
3/12.

I attach a draft submission, based on the precedent of the Bahrain Amendment Order, 1953 at Page A. When approved, this draft Order must be submitted to the Policy Council. I should be grateful if Sir G. Fitzmaurice could be asked to

EA.6 + 1/11.

NOTHING TO BE WRITTEN IN THIS MARGIN.

to approve this now, as
the Council are meeting just
before Christmas and papers
for their consideration should
reach them within the next
few days.

W. B. Stewart
6/12.

Legal Councillor
(Mr. Simpson).

Sir G. *Stewart*
Stewart

Stewart

See now EA 1646/4.

1. 23/46/54.
CONFIDENTIAL



British Residency,
Bahrain.

Entered
4
26/6
60

June 24, 1954.

Dear Bunny

GA4102/64.

Pelly's letter 13813/26 of June 17 copied to Peck, General Department, about action by Abdullah Mubarak against Air Liban.

2. I have discussed with Haines and with Pelly, who has been here for a couple of days, the suggestion that we should protest against the assumption of jurisdiction by Kuwait over this Company. This occasions a slightly complicated excursion into the history of our jurisdiction in Kuwait.

3. There is no doubt that according to the 1953 Order in Council, paragraph 8, (1) (i) (a) and (b) we have jurisdiction over all Corporations since there is no law enacted by the Ruler and since (b) is confined to individuals. There is equally little doubt, by reference to paragraph 8 of the previous Order and to the definitions in that Order of "foreigner", "Kuwait subject" and "person", that under the previous Order in Council we did not have jurisdiction over Corporations belonging to a Moslem State. The only change in this respect to which we asked the agreement of the Ruler of Kuwait was that shown in the correspondence enclosed in Hay's letter to Sarell 1645/3/52 of January 24, 1952. This quotes the definition in the earlier Order in Council of "Kuwait subject" as being "a subject of the Shaikh of Kuwait and any person, not being a British subject, who is the national of any other Moslem State". "Person" is defined in the Order as including Corporations. The Ruler's agreement is asked to replacing this clause by another defining Kuwait jurisdiction as covering "nationals" of various States. "Nationals" must be read in this letter as referring back to "national" in the earlier Order in Council. The definition of "Kuwait subject" refers to persons who are nationals. Therefore these "nationals" in the letter are "persons" and thus by definition include corporations. Therefore on the letter of this agreement I think it must be held that we did not secure the agreement of the Ruler of Kuwait to our assumption of jurisdiction over Corporations belonging to the States named. As to the spirit of the agreement I imagine, and Pelly confirms the impression so far as his memory goes, that neither party was thinking of Corporations and that therefore there was no intention on either side to change the jurisdiction over them even if the wording had permitted this. The instructions in Foreign Office Despatch No. 168 (EA 1644/17) of October 31, 1951 make no mention of the point.

4. It appears therefore that our assumption of jurisdiction over these Corporations in the 1953 Order in Council was a unilateral act, contrary to usage as established under the earlier Orders in Council, and not sanctioned by any

L.A.C. Fry Esq., O.B.E.,
Eastern Department,
Foreign Office S.W.1.

/new



new grant or agreement. If so this assumption of jurisdiction was wrong and the Order in Council should be amended to exclude it. It follows further that we should not protest at Abdullah Mubarak's action. (Even if the grounds for our having assumed jurisdiction over Corporations was slightly better than I believe it to be I should in any case hesitate to do this since it would lead the Kuwaitis to question once more the whole of our separate jurisdiction.)

5. If you agree with the above I shall be glad if the necessary amending regulation can be prepared as soon as possible.

6. I am sending a copy of this letter to Pelly.

Yours ever

Bernard Burrows

(B. A. B. Burrows)

NOTHING TO BE WRITTEN IN THIS MARGIN.

Registry
No. EA 1643/4

Top Secret.
Secret.
Confidential.
Restricted.
Open.

R.
T.
H.

Draft. Letter to:

B.A.B. Burrows,
Esq., C.M.G.,
BAHRAIN.

from:

L.A.C. Fry,
Eastern Dept.

Seen by

Judge Davies
Mr. Simpson (Legal Advisor)
Mr. Brinkley

RECEIVED IN DIVISION
- 1 SEP 1954
SENT TO TYPE
REPATCHED

62
Sept 2
15
+ 0 c on file

I apologise for the delay in replying to your letter 1383/46/54 of June 24 about the assumption of jurisdiction by the Kuwait Government over Air Liban.

2. I agree that our assumption of jurisdiction over Corporations of this kind in the 1953 Order was a unilateral act, contrary to usage as established under the earlier Orders in Council, and not sanctioned by any new grant or agreement.

3. We intend therefore, subject to your agreement, to draw up an amending Order in Council which would substitute "persons" for "individuals" in Article 8(1)(i)(b) of the Kuwait Order 1953. This would have the effect of extending the range of those exempted from the Order, because "persons" includes Corporations. (as will be seen from the definition in Article 4 of the Order)

4. An Explanatory Note ^{could} be added to the Order saying that the former draft did not give full effect to the agreement between the Ruler and H.M.G.

5. Would you kindly let me know if you agree?
lt
3/8

(EA 1643/4)

FOREIGN OFFICE, S.W.1.

RESTRICTED

September 2, 1954.

My dear Benesh,

I apologise for the delay in replying to your letter 1383/46/54 of June 24 about the assumption of jurisdiction by the Kuwait Government over Air Liban.

2. I agree that our assumption of jurisdiction over Corporations of this kind in the 1953 Order was a unilateral act, contrary to usage as established under the earlier Orders in Council and not sanctioned by any new grant or agreement.

3. We intend therefore, subject to your agreement, to draw up an amending Order in Council which would substitute "persons" for "individuals" in Article 8(1) (i) (b) of the Kuwait Order 1953. This would have the effect of extending the range of those exempted from the Order, because (as will be seen from the definition in Article 4 of the Order) "persons" include Corporations.

4. An Explanatory Note could be added to the Order saying that the former draft did not give full effect to the agreement between the Ruler and Her Majesty's Government.

5. Would you kindly let me know if you agree?

*Yours ever**Bunny*

(L.A.G. Fry)

B.A.B. Burrows, Esq., C.M.G.,
Bahrain.



P.W.

E

64

RESTRICTED

BRITISH RESIDENCY,
BAHRAIN.

(16422/14/54)

EA 1643/4th

September 17, 1954.

Dear Bunny,

INDEXED

Thank you for your letter EA 1643/4 of September 2 about jurisdiction over Corporations in Kuwait.

2. I agree with the terms of the amending Order in Council which you propose, and to the Explanatory Note.

Yours ever,

Brooks Richards.

for (B.A.B. Burrows)

L. A. C. Fry, Esq., O.B.E.,
Eastern Department,
Foreign Office,
London, S.W.1.

BRITISH LEGATION,
BAHRAIN.

September 17, 1934.

File

Algeria

RESTRICTED

(1622/1934)

Thank you for your letter of 10th & 11th September & about jurisdiction over Corporations in Algeria.

S. I agree with the terms of the amending Order in Council which you propose, and to the Explanatory Note.

Yours ever

Robert B. Brown

(R.B.B. Brown)

I. C. Fry, Esq., O.E.D.,
Eastern Department,
Foreign Office,
London, S.W.1.

1954

E
EASTERN DEPARTMENT

ARABIA

E

A1643/5

65

FROM Mr Burrows
Bahrain

Confidential

No. 66 (1086/8/54

Dated June 28

Received in
Registry— July 5

Has now discussed with Judge Haines
the possibility of extending jurisdiction of Her
Majesty's Court for Kuwait to the Neutral Zone.
Discusses within the basis of this extension of
the jurisdiction.

References to former relevant papers

EA 1084/6

MINUTES

We must discuss this with

Judge Haines, since it is he
who will presumably draft the
Queen's Regulation.

B/U 10/8, by which time
he should have returned from
leave.

19/7.

(Print)

(How disposed of)

Dr) H. Haines
Bahrain
for M. Buckmaster
Nov. 23
Crancery Seddalahones

Dr) from Eastern Dept

Dr) Judge Haines
for M. Buckmaster
Dec 6

Dr) Bahrain 1082 9/10

(Action
completed)

9/10

(Index)

10/12

References to later relevant papers

Please see minutes on EA 1084/6 /1954 which
refer to this matter.

I have discussed this with both Mr. Sumferson
and Mr. Buckmaster and it was agreed that

I should put my views on this paper.

The position in the neutral zone is not quite as visualized by Mr Simpson. If a crime is committed by one of our subjects in the neutral zone there is a very present danger that the Saudi authorities might apprehend him and try him according to their rules. This is something it is very desirable to avoid for a precedent which we should not welcome would easily be established. We felt that much time would be wasted if we were to argue this out with the Saudis and we might precipitate them into seizing jurisdiction.

Mr Burrows sets out in his despatch quite clearly his proposal. It is based on his Arab idea of jurisdiction over the subject. I feel sure that the Saudis would claim jurisdiction over any member of the American Oil Co. coming from ^{or apprehended in} Saudi Arabia and they would find it difficult to protest against one assuming a similar jurisdiction through the Rules of Kuwait ~~over~~ ^{or apprehended in} persons coming from Kuwait.

It is true that we should have to publish our O.R. but if it is framed suitably it should not give rise to any difficulties. There remains the difficulty about persons who enter the neutral zone without connexion with either state. I can see no easy solution and we must I think leave this to negotiation at a suitable date.

By James
25/6/54 JWS

NOTHING TO BE WRITTEN IN THIS MARGIN.

Judge Haines has kindly undertaken to draft the necessary O.R. I entirely agree with the views expressed in his minute. The difficulty referred to in the last para. of this minute will cause us some head-scratching, though the number of persons in this category will, I think, be very small.

substantiated
26/8.

Legal Advisers
(Mr. Simpson).

I have no doubt that a Queen's Regulation as proposed by Judge Haines is, from a practical point of view, the right solution. It may be that it is what the Saudi Arabians would expect us to do in the

/circumstances,

circumstances, and that no trouble will arise from it.

2. I must confess, however, that I have some doubts about our saying publicly, or even in private negotiation, that H.M. was exercising jurisdiction on the Arab principle of jurisdiction over the subject. I take it that Judge Haines is satisfied that to claim this principle will not put us in difficulty in other parts of the Persian Gulf Shaikhdoms. I would, however, be rather troubled about possible repercussions in other parts of the world. It is not altogether infrequent to have disputes between United Kingdom and other states over questions of jurisdiction, and in those contexts we maintain that all jurisdiction is in principle territorial, though there are some recognized derogations from it, some of which result in the exercise of jurisdiction on a personal basis.

the principle /

3. I am not, of course, opposing Judge Haines's solution, but merely suggesting that we shall have to be careful how we formulate our justification of it, if we have to justify it.

J.L. Simpson

(J.L. Simpson)
August 30, 1954.

Judge Haines
(Claims Dept)

I can foresee no difficulty in the Persian Gulf. No foreigner ^{there} would willingly place himself under the jurisdiction of the Saudis. ~~The~~ The jurisdiction in the Neutral Zone can only be between Kuwait and Saudi-Arabia. We must devise some method of exercising it and this seemed to be the only practical way. It is difficult to see how this arrangement in the particular circumstances would have troublesome repercussions. I will proceed with the draft unless

You

NOTHING TO BE WRITTEN IN THIS MARGIN.

You still feel troubles about it.

Haines
3/9

J. Simpson

NOTHING TO BE WRITTEN IN THIS MARGIN.

*Our only justification
could be that Kuwait
exercises his jurisdiction
there and we exercise
it by grant.*

Haines
6/9

I can quite see that no foreigner in his senses would protest the jurisdiction of H.M. court if the alternative were trial by a Saudi court. I should have thought, however, that there might be circumstances where a foreigner could hope to escape trial altogether, or to get some remission of the sentence imposed by H.M. court by protesting the jurisdiction. If such a foreigner were, before or after trial by H.M. court, to appeal to his Government, his Government is very likely to ask on what basis jurisdiction has been conferred on H.M. court. It would be at that point that we would be in some difficulty and have to consider very carefully what justification we advanced for the conferment of jurisdiction on the court. As we have found in other contexts, these questions of jurisdiction are apt to give rise to international controversy, and as at present advised, I doubt if we would wish to say jurisdiction had been conferred on Arab principles. This, it seems to me, is the risk which has to be weighed against the practical advantages of proceeding as you suggest. I am inclined to think that it is a risk which in the circumstances must be accepted, but I nevertheless draw attention to it.

J.L. Simpson
(J.L. Simpson)
September 4, 1954.

Judge Haines

See marginal note
Haines
6/9

I regret the delay in producing this draft but it was due to pressure of other work.

The main purpose of this ^{extension} ~~extension~~ of jurisdiction is to cover criminal cases but I think we ought to also extend it for the purpose of civil matters. The wording of Article I would, I think, enable us to hear any cases arising in the Neutral Zone ~~in~~ Kuwait itself. There may be great advantage in having this power and I feel that in view of Article 82(2) we have power to do this.

I do not suppose that joint courts will be possible but in view of the fact that we have made provision for them in the Order itself we ought perhaps to make provision in this regulation in case we may need them.

C. H. Haines

September 24, 1954.
C. H. Haines.

*I should be grateful for
your views on this draft.*

substantive
24/9.

*Legal Adviser
(Mr. Simpson).*

/ This

NOTHING TO BE WRITTEN IN THIS MARGIN.

This question has been extensively discussed between Judge Harris and myself. Judge Harris, I think, agreed that for legal reasons much which I need not trouble the dept., his original draft (also attached) would not do. I have prepared an alternative (also attached). This was not seen or agreed by Judge Harris before he left.

The principal difference between Judge Harris and myself is that while he would try to enumerate the classes of people to whom the Reg. would apply, I enumerate the classes to which the Reg. would not apply, a method, I consider, less likely to get us into the situation where we find we cannot try anybody we want to try.

My method, I understand, is opposed by Judge

Harris on the ground that it would be regarded by the Saudis as provocative. It is really for the Dept to decide, whether there is anything in this, and if so, whether we can risk provoking the Saudis in the interests of good legal administration.

Perhaps the Dept. would consider this? It may be that the Dept will want to put the problem to the Political Resident. If so, I shall be glad to draft next week on the legal issues involved.

g/s Simpson
2/11

In the Department's view,
the extension of the Kuwait
Order to the Kuwait -
Saudi Neutral Zone is likely
to provoke a hostile
/Saudi

NOTHING TO BE WRITTEN IN THIS MARGIN.

Saudi reaction however it is achieved. We feel therefore that we should accept your draft, which is the most satisfactory legally, as a working basis. But clearly we must consult Bahrain and Jedda at this stage, and we should be grateful if you would set out the legal issues involved, as you have kindly offered to do.

W. B. Burton
10/11.

Legal Counsellor
(Mr. Simpson).

I attach three copies of a note on the legal issues. This note might be sent, as it stands, to Bahrain and Jedda

Minutes.
or if you prefer, embodied in
dispatches.

J. L. Simpson
13/11

Mr Buckmaster

A Judge Haines, Bahrain to Mr. Buckmaster.
November 19.

I have sent Judge
Haines a copy of Mr. Simpson's
draft and explanatory note,
which he will discuss with
Mr. Bunnors.

Draft letter to Tedda.

Just Buckmaster
25/11.

A) Bahrain 794A of 8/12

Telegram to Bahrain
29/12.

NOTHING TO BE WRITTEN IN THIS MARGIN.

Note on the draft"Kuwait Neutral Zone Regulation".

The requirement has been to prepare a Queen's Regulation by which, as stated in paragraph 4 of the Political Resident's despatch of May 27, H.M. courts in Kuwait would be authorised to exercise jurisdiction in the Neutral Zone over those subject to their jurisdiction in Kuwait but excluding persons and corporations holding concessions from the King of Saudi-Arabia and their full-time employees and the dependant relatives of those employees. I have assumed that the intention was that both civil and criminal jurisdiction should be assumed.

2. I was told that the Saudi-Arabians might not take kindly to the making of this Regulation. It seemed to me, therefore, desirable to keep the Regulation as short and simple as possible, and that the drafting technique for achieving this would be to declare that the Kuwait Order, 1953, should apply to the Neutral Zone, leaving all the detailed provisions of the Order to "walk in" except in as far as they were excluded by the Regulation. That is the general scheme of the Regulation.

Article 1. I would have preferred to say here that the Neutral Zone should be deemed to be within the limits of the Kuwait Order but I have deferred to representations that the existing wording would be less provocative to the Saudis.

Article 2. This excludes the class of persons over whom it is not desired to take jurisdiction. It is based on the exclusion suggested by the Political Resident to which I have already referred, with some additions which seemed to me necessary. I do not think it is necessary to do anything more in the Regulation than to exclude "persons". Their property rights and liabilities will, under the terms of the Kuwait Order, be excluded. They will also be "persons not subject to this Order" for the purposes of Part 8 of the Order. On the other hand, British ships and aircraft will be included in the application of the Order to the Neutral Zone.

3. I may say here that it was urged upon me that we should proceed not by excluding persons over whom we did not wish to take jurisdiction but by enumerating the classes of persons over whom we did wish to take jurisdiction. This suggestion is superficially attractive in that it might be argued that the narrower the class of person over whom jurisdiction is assumed,

/the

NOTHING TO BE WRITTEN IN THIS MARGIN.

the less likely we are to provoke a strongly hostile Saudi reaction. The suggestion is, however, legally speaking, very difficult, if not quite impossible. The supporters of it were not able to suggest any satisfactory definition of the class of persons over whom jurisdiction should be expressly assumed. One suggestion was that the class of persons should be those who had entered the Zone from Kuwait. This, I consider, legally speaking, an impossible basis of definition. It would make the jurisdiction of the court dependent on a fortuitous circumstance i.e. the direction from which the person in question had entered the Zone. Apart from the possible difficulty of proving entry from one direction rather than another, such a definition might lead to strange results. For example, when two persons jointly committed a crime, it might be found that one could be tried and the other not, and the difference would be based on the direction from which they had entered the Zone.

4. I consider it essential, therefore, to use the method of excluding persons over whom jurisdiction is not to be taken, rather than including those over whom jurisdiction is to be taken. I consider that the method I have adopted means that the court will have a wider jurisdiction than it is, in fact, intended that it should exercise. I see, however, that in his despatch already referred to, Mr. Burrows says that the exercise of jurisdiction will be "subject to the direction of the Political Resident". I take this to mean that in criminal cases his "fiat" will be required for all prosecutions. I have not thought it necessary to provide in the Regulation that prosecutions require the fiat of the Political Resident. It seemed to me that to do this might suggest to the Saudis that we were more apprehensive over this assumption of jurisdiction than we are. I assume that administrative means can be found for ensuring that no prosecution is brought under the Regulation without the sanction of the Political Resident.

Article 3. The general rule of construction, at least when one is amending the substantive law, is that a new piece of legislation does not have retrospective effect. In conferring jurisdiction on a court as we are doing here, it is necessary to provide whether that jurisdiction, though conferred, only from the making of the Order, can be exercised in respect of things done or not done before the making of the Order. The plan I have adopted is that of saying expressly that criminal jurisdiction shall not be exercised under the Regulation in respect of anything done before the making of the Regulation. This, of course, implies that non-criminal jurisdiction can be exercised under the Regulation, although the cause or matter arose before the Regulation was made.

/I am

NOTHING TO BE WRITTEN IN THIS MARGIN.

I am, of course, open to instruction on the point, but as at present advised, I do not see any objection to civil jurisdiction being assumed in this way, e.g. probate could be granted although death occurred before the making of the Regulation and so on.

5. I have so far considered only the application of the Kuwait Order itself to the Neutral Zone. Consideration also needs to be given to the question how many of the King's or Queen's Regulations made under the Kuwait Order should be applied in the Neutral Zone. The draft Kuwait Neutral Zone Regulation provides that "persons subject to this Order" where they occur in the Order, are to be construed as excluding the class of persons over whom jurisdiction is not assumed. Something needs to be added about the construction of "persons subject to the Kuwait Order" or "persons to whom the Order applies", etc., where these expressions occur in Queen's Regulations. I am unable without instructions to decide which of the Queen's Regulations should be extended to the Neutral Zone. I shall be glad if someone would indicate them to me if I am to continue the drafting task. It is necessary to look at these Regulations with some care. For example, the Alcoholic Drinks Regulation uses the expression "within the limits of the Order" and the Passport Regulation uses the expression "Kuwait". Each of these Regulations thus raises drafting points which would have to be considered if they are to apply to the Neutral Zone.

6. I am conscious of the fact that the drafting of this Regulation is taking time. I hope, however, that it will be apparent that it is a more complex business than might initially have been thought.

J.L. Simpson
(J.L. Simpson)
November 13, 1954.

NOTHING TO BE WRITTEN IN THIS MARGIN.

mk
KUWAIT

NOTICE

8/10 78.
8/12
1 cpe

The following Regulation, made by me and allowed by Her Majesty's Principal Secretary of State for Foreign Affairs, is published for general information.

Her Majesty's Political Resident
in the Persian Gulf.

QUEEN'S REGULATION MADE UNDER ARTICLE 82 OF

THE KUWAIT ORDER, 1953.

NO. 1954

The Kuwait Neutral Zone Regulation, 1954

1. Subject as hereinafter provided, the Kuwait Order, 1953, shall apply to the Neutral Zone, as if the Neutral Zone were within the limits of the aforesaid Order, and the expression "Kuwait" wherever it occurs in the aforesaid Order shall, unless a contrary intention appears, be construed accordingly.
2. In the application of the Kuwait Order, 1953, to the Neutral Zone, the powers conferred by the aforesaid Order shall, without prejudice to the exceptions set out in Article 8(1)(i)(a) and (b) thereof, not extend to the persons following:-
 - (a) Any person who is in the service of His Majesty the King of Saudi Arabia, or holds a concession from him, or is a full-time employee of a person who holds such concession.
 - (b) Any person who is the wife or dependent child of a person referred to in (a).
 - (c) Any corporation incorporated under the law of Saudi Arabia, and the expressions "persons not subject to this Order", and "persons subject to this Order", wherever they occur in the aforesaid Order, shall be construed accordingly.
3. Nothing in this Regulation shall be construed as authorising any court set up under the Kuwait Order, 1953, to exercise criminal jurisdiction in respect of any offence committed before

/the

the making of this Regulation, if such Court would not have been so authorised, had this Regulation not been made.

4. The Regulation may be cited as "The Kuwait Neutral Zone Regulation, 1954."

NOTHING TO BE WRITTEN IN THIS MARGIN.

Registry
No.

Top Secret.
Secret.
Confidential.
Restricted.
Open.

Draft.

Queen's
Regulation

11/9.65
11/9.45
KUWAIT

NOTICE

The following Regulation, made by me and allowed by Her Majesty's Principal Secretary of State for Foreign Affairs, is published for general information.

Her Majesty's Political Resident
in the Persian Gulf.

QUEEN'S REGULATION MADE UNDER ARTICLE 82 OF
THE KUWAIT ORDER, 1953.

NO. 1954.

The Kuwait Neutral Zone Regulation, 1954.

1. Subject as hereinafter provided, the Kuwait Order, 1953, shall apply to the Neutral Zone, as if the Neutral Zone were within the limits of the aforesaid Order, and the expression "Kuwait" wherever it occurs in the aforesaid Order shall, unless a contrary intention appears, be construed accordingly.
2. In the application of the Kuwait Order, 1953, to the Neutral Zone, the powers conferred by the aforesaid Order shall, without prejudice to the exceptions set out in Article 8(1)(i)(a) and (b) thereof, not extend to the persons following:-

- (a) Any person who is in the service of His Majesty the King of Saudi Arabia, or holds a concession from him, or is a full-time employee of a person who holds such concession.
- (b) Any person who is the wife or dependent child of a person referred to in (a).

(c) Any corporation incorporated under the law of Saudi Arabia, and the expressions "persons not subject to this Order", and "persons subject to this Order", wherever they occur in the aforesaid Order, shall be construed accordingly.

3. Nothing in this Regulation shall be construed as authorising any court set up under the Kuwait Order, 1953, to exercise criminal jurisdiction in respect of any offence committed before the making of this Regulation, if such Court would not have been so authorised, had this Regulation not been made.

4. The Regulation may be cited as "The Kuwait Neutral Zone Regulation, 1954."

NOTHING TO BE WRITTEN IN THIS MARGIN.

KUWAIT

NOTICE

The following Regulation, made by me and allowed by Her Majesty's Principal Secretary of State for Foreign Affairs, is published for general information.

Her Majesty's Political Resident in
the Persian Gulf.

Bahrain.

QUEEN'S REGULATION MADE UNDER ARTICLE
OF THE KUWAIT ORDER, 1953.

NO. 1954.

The Kuwait Neutral Zone Regulation, 1954.

1. The Kuwait Order, 1953, shall apply to the Neutral Zone as hereinafter specified as if the Neutral Zone were within the limits of the Order.

2. The Order shall apply to

(1) All persons within the limits of the Neutral Zone who would, when in Kuwait, be subject to the Order within the meaning of Article 8(1(i)) of the said Order and who:

- (a) have entered the Neutral Zone from Kuwait; or
- (b) hold concessions from the Ruler of Kuwait; or
- (c) are full time employees of persons referred to in sub-paragraph (b); or
- (d) are dependent relatives of any of the persons referred to in sub-paragraphs (a), (b) and (c).

(2) The property and all personal or proprietary rights and liabilities within the limits of the Neutral Zone of all persons referred to in paragraph (1).

/(3) All

(3) All persons within the Neutral Zone
over whom the Ruler of Kuwait claims
jurisdiction to the extent provided in
Part VIII of the Order.

3. The Regulation may be cited as 'The Kuwait
Neutral Zone Regulation, 1954'.

Registry
No.

Top Secret.
Secret.
Confidential.
Restricted.
Open.

Draft.

By 11/12
1044
KUWAIT

NOTICE

84

The following Regulation, made by me and allowed by Her Majesty's Principal Secretary of State for Foreign Affairs, is published for general information.

Her Majesty's Political Resident in the Persian Gulf.

Bahrain.

QUEEN'S REGULATION MADE UNDER ARTICLE
OF THE KUWAIT ORDER, 1953

NO. 1954.

The Kuwait Neutral Zone Regulation, 1954.

1. The Kuwait Order, 1953, shall apply to the Neutral Zone as hereinafter specified as if the Neutral Zone were within the limits of the Order.
2. The Order shall apply to
 - (1) All persons within the limits of the Neutral Zone who would, when in Kuwait, be subject to the Order within the meaning of Article 8(1(i)) of the said Order and who:
 - (a) have entered the Neutral Zone from Kuwait; or
 - (b) hold concessions from the Ruler of Kuwait; or
 - (c) are full time employees of persons referred to in sub-paragraph(b); or
 - (d) are dependent relatives of any of the persons referred to in sub-paragraphs (a), (b) and (c).
 - (2) The property and all personal or proprietary rights and liabilities within the limits of the Neutral Zone of all persons referred to in paragraph (1).

/(3) All

NOTHING TO BE WRITTEN IN THIS MARGIN

(3) All persons within the Neutral Zone over whom the Ruler of Kuwait claims jurisdiction to the extent provided in Part VIII of the Order.

3. The Regulation may be cited as 'The Kuwait Neutral Zone Regulation, 1954'.

Despatch No. 66.✓

(1086/8/54)

CONFIDENTIAL



86

British Residency,
Bahrain.

June 28, 1954

Sir,

EA 1084/6.
With reference to paragraph 4 of my despatch No. 59 of May 27 I have now discussed with Judge Haines the possibility of extending the jurisdiction of Her Majesty's Court for Kuwait to the Neutral Zone. He sees no objection to the course proposed in my despatch. The basis for this extension of jurisdiction would be as follows:- In 1925 the former Ruler of Kuwait granted Her Majesty's Government jurisdiction over certain classes of people in Kuwait. This can be taken to mean that we can properly exercise jurisdiction over persons over whom, but for these agreements, the Ruler would claim to exercise jurisdiction. There can be no doubt that, especially taking account of the tribal principle of jurisdiction over persons rather than places, the Ruler of Kuwait would claim to exercise jurisdiction over persons emanating from Kuwait or appertaining to Kuwait in the Neutral Zone. Moreover in the absence of international agreement to the contrary such a claim would appear reasonable on any principle.

The Right Honourable

/Therefore

Anthony Eden M.C., M.P.,

Her Majesty's Principal Secretary of

State for Foreign Affairs,

Foreign Office,

London S.W.1.

5 JUL 1954

OFFICE OF THE

Bahrein.

June 28, 1954

March No. 86.

(1954/86)

CONFIDENTIAL

Sir,

With reference to paragraph 4 of my despatch No. 29 of May 27 I have now discussed with Judge Haines the possibility of extending the jurisdiction of Her Majesty's Court for Kuwait to the Neutral Zone. He sees no objection to the course proposed in my despatch. The basis for this extension of jurisdiction would be as follows: - In 1925 the former Ruler of Kuwait granted Her Majesty's Government jurisdiction over certain classes of people in Kuwait. This can be taken to mean that we can properly exercise jurisdiction over persons over whom, but for those agreements, the ruler would claim to exercise jurisdiction. There can be no doubt that, especially taking account of the legal principle of jurisdiction over persons rather than places, the ruler of Kuwait would claim to exercise jurisdiction over persons emanating from Kuwait or supervening to Kuwait in the Neutral Zone. Moreover in the absence of international agreement to the contrary such a claim would appear reasonable on any principle.

Therefore

The Right Honourable

Anthony Eden M.C., M.P.

Her Majesty's Principal Secretary of

State for Foreign Affairs,

Foreign Office,

London S.W.1.



Therefore the Ruler may be held to have, at any rate by implication, granted us jurisdiction over those classes of persons in the Neutral Zone who would be under our jurisdiction in Kuwait. In the exchange of letters enclosed in Sir R. Hay's letter to Mr. Sarell No. 1645/3/52 of January 24, 1952 the present Ruler reaffirmed this grant of jurisdiction. This reading of the position was embodied in the 1925 and 1949 Kuwait Orders in Council, which extended to all the territories and possessions of the Ruler, and which may thus be held to cover such rights of possession as he has in the Neutral Zone. The 1953 Order excludes the Neutral Zone from the automatic application of the Order, but paragraph 82 (1) gives the Political Resident power to make Queen's Regulations extending its effect to the Neutral Zone. The fact that it was thought necessary specifically to exclude the Neutral Zone in paragraph 2 of the 1953 Order suggests that it was held to be included in the previous Orders. Paragraph 82 (1) of the 1953 Order is sufficient evidence that we have not disbarred ourselves from renewing the inclusion of the Neutral Zone should we so decide.

2. In these circumstances I wish to repeat my recommendation that we should proceed to take the action proposed in paragraph 4 of my despatch No. 59 of May 27 and that we can do this by Queen's

/Regulation



- 3 -

Regulation extending our jurisdiction to the classes of persons described therein in the Neutral Zone. If this recommendation is acceptable I hope that the necessary Queen's Regulation may be prepared as soon as possible.

3. I am sending copies of this despatch to Her Majesty's Ambassador at Jedda and to the Political Agent at Kuwait.

I have the honour to be,
with the highest respect,

Sir,

Your obedient Servant,

(B.A.B. Burrows)



The Residence,
Bahran.

89

P. W. Persian Gulf
Nov. 1954

A1643/5A

INDEXED

Dear Martin,

Your note on pending legislation
in the Persian Gulf item No 21. I regret to
report that I omitted to take a draft with me.
Would you please have sent to me by air
mail the draft Q.R. together with a note as
to the ~~latest~~ latest state of play between John
Sumpson and me? I think that he put up
a draft which I could not agree was sufficient.
Perhaps I could have a copy of this also.

I am off to Kuwait today and the P.R. is
away until 28th Nov so with luck you should
be

be able to get the paper to me in time

I have a few amendments to suggest
for the Procedure Rules which I hope are
now in proof.

Sorry to have to inflict this
on you.

Yours ever,

B. H. James

10/40
10/11
(EA 1643/5)

Despatched - Dist

~~R. Phillips~~

91

Pse type

FOREIGN OFFICE, S.W.1.

for signature [November 23, 1954.]

[Dear Judge Haines,]

sebelas

Dec 10 1954

Many thanks for your letter of November 19 about the Kuwait Neutral Zone Regulation.

...

I enclose a copy of your original draft. According to John Simpson, you accept his view that, for legal reasons which he has not enumerated, your draft is inadequate. He has, therefore, prepared a fresh draft, a copy of which I now enclose, together with an explanatory note setting out the legal aspects of this problem.

The principle difference between your version and his appears to be that whereas you enumerate the classes of people to whom the Regulation would apply, he lists those to whom it would not apply. This method is, in his words, "less likely to get us into the situation where we find we cannot try someone whom we want to try".

In our view this Regulation is likely to provoke a hostile Saudi reaction, no matter how it is framed. We feel, therefore, that we should accept John Simpson's draft as a working basis, subject, of course, to the views of Jedda, to whom it has been copied, together with copies of Simpson's note and of the Political Resident's Despatch No.66 of June 28 which outlines the need for this legislation.

We should be ~~most~~ grateful if you would discuss ^{this} with the Political Resident. ~~and let us have his views in due course.~~

Yours sincerely
M. S. Buckmaster

(M.S. Buckmaster)

His Honour Judge C.H. Haines, C.B.E.,
The Residency,
Bahrein.

Registry
No. EA 1643/5

XXXXXX
XXXXXX
Confidential.
XXXXXX
XXXXXX

M.
S.
B.

Draft. Letter
Chancery,
Jedda.

Dear Chancery,

We enclose a copy of a draft
"Queen's Regulation", ~~which has been~~ ^{which would}
prepared by the legal advisers, extending
the provisions of the Kuwait Order, 1953,
to the Kuwait - Saudi Neutral Zone.

We also enclose a copy of a note on the
legal issues involved, and of the Political
Resident's Despatch No.66 of June 28 setting
out the need for this legislation.

*2. Will you please let us know how you think
we should be grateful for your
the Saudis would react if,
comments on this draft Queen's Regulation,
were issued.
in the light of the probable Saudi reactions
to it.*

From
Eastern
Department

Yours faithfully, *elen*
EASTERN DEPARTMENT.

*A. ...
3/12*

November 23, 1954.

RECEIVED IN
DIVISION
- 4 DEC 1954
SENT TO
6/12
DISPATCHED

EA 1643/5
all encls.

NOTHING TO BE WRITTEN IN THIS MARGIN.

(EA 1643/5)

FOREIGN OFFICE, S.W.I.

CONFIDENTIAL

December 6, 1954.

OUTFILE

Dear Chancery,

--- We enclose a copy of a draft Queen's Regulation, prepared by the legal advisers, which would extend the provisions of the Kuwait Order, 1953, to the Kuwait - Saudi Neutral Zone. We also enclose a copy of a note on the legal issues involved, and of the Political Resident's Despatch No.66 of June 28 setting out the need for this legislation.

2. Will you please let us know how you think the Saudis would react if this draft Queen's Regulation were issued.

Yours ever,

EASTERN DEPARTMENT.

The Chancery,
British Embassy,
Jedda.

CB for Division. EN 1643/5 94
AMENDMENT SLIP for top copy

~~AMENDED COPY~~

~~AMENDED DISTRIBUTION~~

Bahrain telegram No. 794A of Dec 8 to Foreign Office

~~Foreign Office telegram No. _____ of _____ to _____~~

Please re-number 795

MI.

Spence

Authorised by

W. H. L.

Conrad D.

Staff Officer Room 131

[Delete where not applicable].

Date

13/12/56

FROM BAHRAIN TO FOREIGN OFFICE

En Clair

E A 1643/5 B FILES

Mr. Burrows

No: 794A 795

December 8, 1954.

D: 6.30 p.m. December 8, 1954.

R: 4.11 p.m. December 8, 1954.

Following for Buckmaster from Haines.

My letter re neutral zone.

Have you sent copies of drafts ? If not
please send urgently.

JJJJJ



Note re. number.

We have called this
tel no 794A as we
have already received a
no. 794.

Att. S/Comm. Dept

ADVANCE COPY

P.W.

V. 2000

CEA

Mr Buckmaster

R10

TEL NO 794A 96

Dec 8 Eastern

F.O. LDN

CWF18 VSA217 CV31 BAHRAIN 27.8 1830 F BG ETAT COUNT O E E E E

COUNT PCNTN =

FRODROME LONDON 79408 =

FOLLOWING FOR BUCKMASTER FROM HAINES MY LETTER RE NEUTRAL ZONE STOP

HAVE YOU SENT COPIES OF DRAFTS ? IF NOT PLEASE SEND URGENTLY =

BURROWS +

79408 QUESTION MARK +

SENT 1610/8 VVNN PSE ACK 1 TKU

F.O. LDN

YH

Registry
No. EA 1643/5

Top Secret.
Secret.
Confidential.
Restricted.
Open.

EMERGENCY	}
IMMEDIATE	
PRIORITY	
ROUTINE	
with	priority
without	
DEFERRED	

* Date and time (G.M.T.) telegram should reach addressee(s).....

(Date) 9 DEC 1954

Despatched 2 M.

97

Draft.

Telegram to :—

Bahrain (Resy).

No. 1082

(Date) 9.12.54

Repeat to :—

RECEIVED IN C.B.
10 DEC 1954
SENT TO DEPT

En Clair.

Code.

Cypher.

Distribution :—

~~Depute~~

Files.

Copies to :—

[Security classification
—if any

Addressed to

Bahrain (Residence)

telegram No. (date)

repeated for information to

Following for Haines

Your telegram 794 AE of
December 8: Neutral Zone Regulation

Drafts sent by air -
mail November 23.

Duplicates follows by
log December 11.
9/12.

NOTHING TO BE WRITTEN IN THIS MARGIN.

GP-685
125,000-77-28 98/250 125,000-77-28 98/250

6.30
9/12/54

20

En Clair

FILES

EA 1643/5

No. 1082

December 9, 1954.

D. 7.11 p.m. December 9, 1954.

Your telegram 794 A [of December 3: Neutral
Zone Regulation].

Following for Haines.

Drafts sent by airmail November 23. Duplicates
follow by bag December 11.

:::::

(HA 1643/5)

FOREIGN OFFICE, S.W.1.

December 10, 1954.

RESTRICTED

Dear Judge Haines

OUTFILE

Many thanks for your letter of November 19 about the Kuwait Neutral Zone Regulation.

2. I enclose a copy of your original draft. According to John Simpson, you accept his view that, for legal reasons which he has not enumerated, your draft is inadequate. He has, therefore, prepared a fresh draft, a copy of which I now enclose, together with an explanatory note setting out the legal aspects of this problem.

3. The principle difference between your version and his appears to be that whereas you enumerate the classes of people to whom the Regulation would apply, he lists those to whom it would not apply. This method is, in his words, "less likely to get us into the situation where we find we cannot try someone whom we want to try".

4. In our view this Regulation is likely to provoke a hostile Saudi reaction, no matter how it is framed. We feel, therefore, that we should accept John Simpson's draft as a working basis, subject, of course, to the views of Jedda, to whom it has been copied, together with copies of Simpson's note and of the Political Resident's Despatch No.66 of June 28 which outlines the need for this legislation.

5. We should be grateful if you would discuss this with the Political Resident.

Yours sincerely

(sgd)(M. S. Buckmaster)

P.S This is a copy of my letter of Nov 23 which seems to have gone astray. I

His Honour Judge C. H. Haines, C.B.E., am so sorry that you have been held up like this.

The Residency,
Bahrain.

XXXXXX
XXXXXX
XXXXXXX
XXXXXX

KUWAIT

NOTICE

Queen's
Regulation

The following Regulation, made by me and allowed by Her Majesty's Principal Secretary of State for Foreign Affairs, is published for general information.

Her Majesty's Political Resident
in the Persian Gulf.

QUEEN'S REGULATION MADE UNDER ARTICLE 82 OF

THE KUWAIT ORDER, 1953.

No. _____ 1954.

The Kuwait Neutral Zone Regulation, 1954.

1. Subject as hereinafter provided, the Kuwait Order, 1953, shall apply to the Neutral Zone, as if the Neutral Zone were within the limits of the aforesaid Order, and the expression "Kuwait" wherever it occurs in the aforesaid Order shall, unless a contrary intention appears, be construed accordingly.
2. In the application of the Kuwait Order, 1953, to the Neutral Zone, the powers conferred by the aforesaid Order shall, without prejudice to the exceptions set out in Article 8(1)(i)(a) and (b) thereof, not extend to the persons following:-

- (a) Any person who is in the service of His Majesty the King of Saudi Arabia, or holds a concession for him, or is a full-time employee of a person who holds such concession.

/(b)

(b) Any person who is the wife or dependent child of a person referred to in (a).

(c) Any corporation incorporated under the law of Saudi Arabia.

and the expressions "persons not subject to this Order", and "persons subject to this Order", wherever they occur in the aforesaid Order, shall be construed accordingly.

3. Nothing in this Regulation shall be construed as authorising any court set up under the Kuwait Order, 1953, to exercise criminal jurisdiction in respect of any offence committed before the making of this Regulation, if such Court would not have been so authorised, had this Regulation not been made.

4. The Regulation may be cited as "The Kuwait Neutral Zone Regulation, 1954."

1954

E

EASTERN DEPARTMENT

ARABIA

E

A 1643

102
6

FROM Mr Burrows
Bahrain

Confidential

No. 1383/50/54

Dated July 5th

Received in
Registry— July 13th

Has now learnt that the fine of Rs. 5000
was not imposed on Air Liban but on their
agents in Kuwait, Ennesco. If this is a Kuwaiti
firm we have no grounds for protesting to Mulbank

164

References to former relevant papers

- 1/4

MINUTES

Pl see minutes and action

on - 4.

16/7.

(Print)

(How disposed of)

(Action
completed)

(Index)

2-29

1810

References to later relevant papers

Encl

(1383/50/54)



BRITISH RESIDENCY,
BAHRAIN.

CONFIDENTIAL

July 5, 1954.

A1643/6

E

103

Dear Bunny

EA1643/4

Please refer to my letter 1383/46/54 of June 24. I have now learnt that the fine of Rs. 5,000 was not imposed on Air Liban but on their agents in Kuwait, Enesco. If this is a Kuwaiti firm, we would have no grounds for protesting to Abdullah Mubarak.

2. This does not alter the conclusion of my letter under reference, viz: that we should divest ourselves of jurisdiction over corporations of countries whose nationals come under the Ruler's jurisdiction.

3. I am sending Pelly a copy of this letter.

Yours ever

Bernard Burrows

(B.A.B. Burrows)

L.A.C. Fry, Esq., O.B.E.,
Eastern Department,
Foreign Office,
London, S.W.1.

1954

E
EASTERN DEPARTMENT

ARABIA

104
E A1643/87

FROM Mr Pelly
Kuwait,
to Mr Buckmaster
Confidential-
No. 1645/29
Dated July 5.
Received in
Registry— July 16.

Comments on enclosed copy of minute
made after a visit to Kuwait Courts
and to the offices of Shaikh Subah al Salem
Head of town police

References to former relevant papers

MINUTES

EA1372/6.

It is encouraging that Mr. Hijazi
has established such amicable relations
with Shaikh Subah, and it
is to be hoped that they
will co-operate in the consideration
of our draft traffic regulations.

In my letter to Mr. Logan at
EA1372/6, I undertook to send Kuwait
a copy of the penal code as

soon as it was ready.

Legal Advisers
(Mr. Simpson) 21/7

CAB 22/1

19/7.

(Print)

(How disposed of)

(Action
completed)

(Index)

21/8/54

18/10

References to later relevant papers



Political Agency,
KUWAIT.

105

1645/29

July 5, 1954.

CONFIDENTIAL.

E A1643/6

E
Etc.

Dear Buckmaster,

I thought you would be interested to see the enclosed copy of a minute which Ahmad Hijazi made after a visit to the Kuwait Courts and to the offices of Shaikh Subah al Salim, the Head of the town police.

2. As we have already reported, Shaikh Subah is being particularly friendly towards Hijazi and seems to go out of his way to give him the impression that he is anxious to cooperate with us in the drafting of legislation. This willingness has not yet been put to the test because when Hijazi suggested that they should get down to discussing the traffic regulations Shaikh Subah excused himself by saying that he would prefer first to receive a copy of our draft officially from the Secretariat. The Secretariat have apparently omitted, deliberately or otherwise we do not know - to send our draft to Shaikh Subah; their excuse is that they have only one copy. It was for that reason that we tried to obtain another copy but as there are so few of them we cannot let that one out of our hands. We are trying to get a copy to Shaikh Subah soon and we shall then see whether his professions to Hijazi are genuine. However, he has just left for a visit to Syria and the Lebanon.

3. The interesting point about Hijazi's minute is I think that Shaikh Subah's organisation has now been reinforced by the return to Kuwait of Shaikh Sa'ad, who has been at the Hendon Police College for the last two years. It may be that he and Colonel Jasim al Qutami have persuaded Shaikh Subah to work on our legislation. If that is so, the sooner we can get a draft Code of Criminal Procedure and also a draft Penal Code in their hands the better, for we cannot be sure that the enthusiasm of Shaikh Sa'ad and Jasim will endure for very long.

Yours sincerely,
C. J. Pelly.

C. J. Pelly.

Hon. M.S. Buckmaster,
Eastern Department,
Foreign Office,
London S.W. 1.

Yesterday I visited the Ruler's Courts and the Police H.Q.

At the Courts I attended, in accordance with Article 70 of the Order in Council 1955, the first hearing of "Gray, Mackenzie & Co. v. Abdul-Aziz Saleh". The trial took place before Shaikh Abdullah Mubarak in his reception room. The Defendant began, then the plaintiff followed. When the defendant asked for witnesses the Court adjourned. Shaikh Abdullah Mubarak promised to let me know of the date of the next hearing.

At the Police H.Q. I met Shaikh Sabah Salim, Shaikh Sa'ad and Col. Jasim al-Qutami. I wanted to make an appointment with them to discuss Traffic Regulations.

As he has not officially seen the draft Regulations submitted to the Kuwait Government by the Foreign Office, Sabah Salim asked for an opportunity to enable him to see and study that draft. I suggest you get in touch with the Secretariat and ask them to pass the draft to Sabah Salim. The sooner we discuss these Regulations the better.

Shaikh Sa'ad then made remarks about the more important laws, referring in particular to the Penal Code saying: "How are we to deal with a thief, are we to cut his hand?" Col. Jasim then made remarks about the Code of Criminal Procedure saying: "If you are going to prepare us a Penal Code we shall need a Code of Criminal Procedure, otherwise how are we going to apply the Penal Code?"

I assured them that the Penal Code was almost ready and that it might be submitted to them within one month. (I was told by Judge Haines that it was in the process of being printed). I did not say much about the Code of Criminal Procedure but I told them that by the time they studied, approved and adopted the Penal Code we shall be working on the Code of Criminal Procedure. Then Shaikh Sabah intervened and said "I hope you are right, but we have been waiting for the Penal Code for more than two years."

Shaikh Sabah al Salim then spoke against the extravagance of some members of the Al Subah family. He compared the provision of cars for members of the family and their officials with the arrangements in the Agency and pointed out that I, a Judge of the Court, used a taxi. He said that British economy and organization would ensure survival. He then drove me to the Agency in his ~~(to our credit)~~ Cadillac.

A.H.

20.6.54

A.P.A.

1954

E

EASTERN DEPARTMENT

ARABIA

107

E

A1643/8

FROM

Mr Burnes

Bahrain

No.

74(16+22/1254)

Dated

25/7/54

Received in
Registry—

31/7/54

References to former relevant papers

-1/2
-1/2
-1/1

(File A)

(Print)

(How disposed of)

Reports on improved legal position in Kuwait.

besides various points regarding jurisdiction which we wished discussed with the ruler may now be left until a later date. Besides however that the behavior of the Kuwaiti police needs watching.
164
Lancel Knecht

MINUTES

It is encouraging that the Kuwait Government seem to have relented from their policy of nibbling at our jurisdiction. Mr Burnes has not yet been able to speak to the ruler at the time suggested in our despatch No 98. but because of the improved position this is not now so necessary. The ruler may perhaps not revert to his suggestion that all mixed cases should be heard in his courts.

28/6/54

28/5/54

Legal Adviser (Mr Simpson)

Indy. Vain

Mr. Brookman

on return

26/11

(Action
completed)

(Index)

av.
8/11

25/11/54

References to later relevant papers

Despatch No. 79
(16422/12/54)
CONFIDENTIAL



British Residency,
Bahrain.

E.
108

July 23, 1954.

E A1643/8

Sir,

EA I discussed with Mr. Pelly during my recent visit to Kuwait your despatch No. 98 (EA 1643/2) of July 1 about jurisdiction in Kuwait.

EA.1643/1 2. The situation has in some important respects changed for the better since the date of Mr. Pelly's despatch No. 2 of January 9. Since that date we have not heard of any case which has been wrongly dealt with by the Kuwaiti courts instead of our own.

On the contrary several cases have occurred in which the Kuwaiti authorities have properly referred to our courts, cases which had been submitted to them but which should rightly be heard by us. This happier state of affairs seems to be due largely to the knowledge that we now have a full time and qualified judicial officer at the Agency and to the success of Mr. Hijazi in winning the confidence of the Kuwaiti authorities concerned. In addition there now seems, as shown

/in

The Right Honourable

Anthony Eden M.C., M.P.,

Her Majesty's Principal Secretary of State
for Foreign Affairs,

Foreign Office,

London S.W.1.



- 2 -

-17 in Mr. Pelly's letter to Mr. Buckmaster No. 1645/29 of July 5, to be a somewhat better prospect that agreed legislation on lines desired by us may be passed in Kuwait. I myself spoke to Shaikh Sa'ad on this subject during my recent visit, and I can confirm that so far as he is concerned, he fully realises the necessity for regulations and codes. It does not of course follow that the Ruler will share his son's enthusiasm for up-to-date legislation, but with the support of his own police department we shall at least be in a considerably stronger position in putting forward our proposals on this subject.

3. I therefore felt that it was not a matter of quite so much urgency to bring our views on jurisdiction to the notice of the Ruler as it appeared to be a few months earlier. Moreover his limited powers of application to government business were so fully occupied during my visit, with the report on the Iraq water scheme, and even more with complaints brought to him by the merchant community against the members of his family and the petition for constitutional reforms arising therefrom, that I thought it best not to raise with him on this occasion this additional large subject, to which he would certainly not have paid proper attention. I am however most grateful for the guidance given in your despatch and I will endeavour to carry out your instructions at the

/next



next favourable opportunity, either if the Ruler again reverts to the general subject of jurisdiction, possibly on the occasion of a future visit by Judge Haines to Kuwait, or if further difficulties arise in the execution by us of our capitulatory rights.

4. The only jurisdictional matter which is at present causing difficulty in Kuwait is that of action by the local police in one or two recent cases against those subject to our jurisdiction. One of the basic causes of these difficulties seems to be the absence of laws and regulations known both to the police and to those under our jurisdiction. This uncertainty can be aggravated by provocation on either side to result in unpleasant incidents of the kind which have occurred. It will be necessary to watch very carefully the behaviour of the Kuwait police in this respect and to protest where necessary. But we are unlikely to escape such incidents altogether until appropriate regulations have been put into force and the greater experience of the Kuwait police leads them to behave in a more restrained manner and inspires greater respect for them on the part of foreigners.

5. I am sending a copy of this despatch to the Acting Political Agent in Kuwait.

I have the honour to be,
with the highest respect,

Sir,

Your obedient Servant,

B.A.B. Burrows
(B.A.B. Burrows)

E

EASTERN DEPARTMENT

ARABIA

E

A1643/9¹¹¹

1954

FROM

Mr Logan
Kuwait, 16
Mr Buckmaster

Confidential

No.

3002/7/11

Dated

September 6

Received in

Registry—

September 17

Comments on the jurisdiction of Her Britannic Majesty's Court for Kuwait in divorce cases.

Requests the points mentioned within to be clarified for them, and the reasons explained why Her Britannic Majesty's Court has no jurisdiction in divorce matters.

References to former relevant papers

MINUTES

The telegram referred to
is on your file 33 attached.

I am having a copy made
for our files (-10).

I should be grateful for your
comments on this letter.

W. B. Smith
21/9.

(Print)

(How disposed of)

Dft. Mr Logan
Kuwait,
from Judge Haies
October 1st

cc) Mr Lucas, Bahrain
October 1st

(Action
completed)

JL/10

(Index)

10/10

References to later relevant papers

-/10

Judge Haies
(Claims Dept).

This is, I suggest, a matter for me
45461 as a judge of the Chief Court rather
than

tain for the Dept. I shall be grateful
if you will point this out to Mr. Logan.

The reference to the Indian Divorce Act
was made to show that it was clearly
in the mind of the drafter of the
Order to exclude jurisdiction in Divorce
and Nullity of Marriage retaining only
judicial separation. If one considers
the essential requirements to confer
jurisdiction in divorce i.e. domicile in
the jurisdiction the reason is clear. There
can be very few of persons ^{subject to our jurisdiction} who ^{that they have a} could
establish ⁱⁿ Kuwait domicile.

There is no question of "equity justice
and good conscience" in the matter of
divorce which is a creature of statute or
religious law.

The Court would not be justified in
falling back on Art 12 (2) or (3). The
first essential is for the Court to
have jurisdiction to entertain a case.

There is no divorce jurisdiction and what
Mr. Logan wishes us to do is ^{in effect} to apply
Moslem divorce law. This in my view
we cannot do. The only way a

Moslem divorce could come to the Court
might be on an action about the dowry
and the question of its validity ^(of the divorce) is raised.

~~If necessary I can issue a declaration~~

So far as Moslems are concerned I
can see no object in trying to take
jurisdiction. ~~The Sharia Court is obviously~~
~~the right court but if that is likely~~
~~to cause difficulties in Kuwait we should~~
~~have to apply some Moslem law to appropriate~~
~~law~~

On second thoughts
I do not think
that the Sharia Court
has jurisdiction to
grant divorces but may
be pronounce on their
validity. ^{1/10}

NOTHING TO BE WRITTEN IN THIS MARGIN.

Minutes.

113

~~less. I do not, myself, think this
at all desirable.~~

B. Haines
24/9/54

We spoke about this. I
agree that this is a
matter for you rather than for me,
especially as Mr. Logan's telegram
number 205 at -10 was addressed
to you. Would you, therefore,
be good enough to reply
direct to Mr. Logan?

W. B. Haines
29/9.

Judge Haines
(Claims Dept)

I have

Minutes.

done so. The draft does not
quite follow my minute but
I think it will explain more
clearly why there is no
divorce jurisdiction.

B. Haines
6/10/54

R 6/10.

NOTHING TO BE WRITTEN IN THIS MARGIN.

Political Agency,
KUWAIT. *E*

3002/7/11

September 6, 1954.

CONFIDENTIAL.

A/1643/9

*Fate**Dear Martin,*

33/39
Please refer to Foreign Office telegram No. 268 about the jurisdiction of Her Britannic Majesty's Court for Kuwait in divorce cases.

Judge Haines

2. Is Judge Haines' ruling based on the fact that divorce and nullity is excepted in the reference to the Indian Divorce Act in the First Schedule to the Kuwait Order 1953? We had thought that the Court's jurisdiction was defined in wide terms by Article 8 (2), and that Article 12 and the schedules only show the law to be applied. As certain sections of the Indian Divorce Act are not applied by 12(1)(a) of Part II, would not the Court be justified in falling back on 12(2) and 12(3) and settling the case in accordance with Justice, equity and good conscience, recognising and applying in a Muslim divorce case the divorce customs of Kuwait, ascertained by reference to a Qadhi under Section 46(2) of the Order? If the Court would not be so justified it seems to us that the schedules are to be regarded as showing all the law to be applied and therefore as limiting the Court's jurisdiction, and that Article 12(3) of the Order has no application.

3. Hijazi has raised the further question of whether, even if it can be shown that the Court has jurisdiction in some divorce cases, it would be right under the principles of private international law for the Court to assume it in a case where the husband is domiciled in Kuwait.

4. We shall be grateful if you will consider these points and clarify for us the reasons why Her Britannic Majesty's Court has no jurisdiction in divorce matters.

5. I am sending a copy of this letter to the Hon. I.T.M. Lucas at Bahrain.

Yours ever
Drake

D.A. Logan.

The Hon. M.S. Buckmaster,
Eastern Department,
Foreign Office,
London S.W. 1.



116

Dear Buckmaster *[initials]* 4/10

Herewith my letter to
Logan. If you agree will
you please have it sent off
and an copy sent to Lucas.

Yours
[Signature]

TOP SECRET
Secret.
Confidential.
Restricted.
Open.

Draft.

D.A. Logan, Esq.
Kuwait.

Your letter 3002/7/11 of September 6 to Martin Buckmaster has been passed to me as you raised the question of jurisdiction with me in your telegram No 205 of August 15. This matter of jurisdiction is a judicial matter and you were quite right in referring it to me in the first instance.

I was referring to the exception to the Indian Divorce Act in the First Schedule when I said that divorce and nullity of marriage has been expressly excluded.

It is correct that Article 8 gives jurisdiction over "property and all personal or proprietary rights and liabilities within the limits of the Order" but I do not think that divorce or nullity of marriage falls within this description. The power of a Court to grant divorce is conferred by statute and in applying the Indian Divorce Acts to Kuwait we have expressly excluded divorce and nullity of marriage. You will note that the Indian Divorce Act applies only to persons who profess the Christian religion. If you bear this fact in mind you will see how it would be impossible to apply Article 12(2) in the case of persons professing the Christian religion.

The case that you have in mind involves Moslems. Your argument appears to be that as there is no specific law giving the Court power to grant Moslem divorces the Court may entertain a suit in the application of Article 12(2) or (3) and refer the matter to a Qhadi under Article 46(2). Now as I understand the Moslem religious law on

/the

NOTHING TO BE WRITTEN IN THIS MARGIN

Copy to the Hon
S. Th. Lucas.
- Bahrain

Dispatched
by Division
on 5/10/54

the subject the husband has the right to divorce his wife by declaring to her in the prescribed manner that she is divorced. ^(Talak) The wife also has a right to seek divorce but only with the consent of her husband. It is in effect a bargain between the wife and her husband (Khoola). There is no recourse to any Court but the Qhadi will, I believe, make a record of the divorce and will, where there are disputes, decide whether or not the divorce was valid. There is, therefore, no local law or custom which could be exercised by a Court in order to effect a divorce. That right rests with the husband alone or the wife and husband by consent.

^{There} This is in India the 'Dissolution of Muslim Marriages Act, 1939', which deals with the right of a Moslem woman to apply to the Court for a divorce but this act has not been applied to Kuwait. ^{NP} Now to enable the procedure set out in Article 46(2) to be put into effect there must be a suit pending in which the Court has jurisdiction. If a Moslem were to apply to the Court for a divorce the proper course would be to refuse to accept the suit. I am sure that if the suit were accepted and the matter referred under Article 46(2) to the Qhadi he would say that he had no power to act, and, that the husband alone or the wife and husband by consent had such power.

I have gone into this at some length as it seems that you have a particular case in mind. If this is so it would have helped had you given particulars of the case. I can conceive that cases might arise where the validity of a Moslem divorce might be in question e.g. where there is a dispute as to the return of a dowry. In such a case the Court would have jurisdiction and a

/reference

NOTHING TO BE WRITTEN IN THIS MARGIN

~~Reference~~

As you sent a copy of your letter to Lucas at Bahrain I am sending him a copy of my letter. It would have been more correct to send copies to the Judge of the Chief Court for the Persian Gulf. I am sure that Lucas will see that the letters are filed in the right place

£/10

EA 1643/9

CONFIDENTIAL

FOREIGN OFFICE, S.W.1.

October 1, 1954.

Your letter 3002/7/11 of September 6 to Martin Buckmaster has been passed to me as you raised the question of jurisdiction with me in your telegram No 205 of August 15. This matter of jurisdiction is a judicial matter and you were quite right in referring it to me in the first instance.

2. I was referring to the exception to the Indian Divorce Act in the First Schedule when I said that divorce and nullity of marriage has been expressly excluded.

3. It is correct that Article 8 gives jurisdiction over "property and all personal or proprietary rights and liabilities within the limits of the Order" but I do not think that divorce or nullity of marriage falls within this description. The power of a Court to grant divorce is conferred by statute and in applying the Indian Divorce Acts to Kuwait we have expressly excluded divorce and nullity of marriage. You will note that the Indian Divorce Act applies only to persons who profess the Christian religion. If you bear this fact in mind you will see how it would be impossible to apply Article 12(2) in the case of persons professing the Christian religion.

4. The case that you have in mind involves Moslems. Your argument appears to be that as there is no specific law giving the Court power to grant Moslem divorces the Court may entertain a suit in the application of Article 12(2) or (3) and refer the matter to a Qhadi under Article 46 (2). Now as I understand the Moslem religious law on the subject the husband has the right to divorce his wife by declaring to her in the prescribed manner that she is divorced. ^(Talaq) The wife also has a right to seek divorce but only with the consent of her husband. It is in effect a bargain between the wife and her husband (Khoola). There is no recourse to any Court but the Qhadi will, I believe, make a record of the divorce and will, where there are disputes, decide whether or not the divorce was valid. There is, therefore, no local law or custom which could be exercised by a Court in order to effect a divorce. That right rests with the husband alone or the wife and husband by consent.

5. There is in India the 'Dissolution of Muslim Marriages Act, 1939', which deals with the right of a Moslem woman to apply to the Court for a divorce but this act has not been applied to Kuwait.

6. Now to enable the procedure set out in Article 46 (2) to be put into effect there must be a suit pending in which the Court has jurisdiction. If a Moslem were to apply to the Court for a divorce the proper course would be to refuse to accept the suit. I am sure that if the suit were accepted and the matter referred under Article 46 (2) to the Qhadi he would say that he had no power to act, and, that the husband alone or the wife and husband by consent had such power.

/7. I have

D.A. Logan, Esq.,
Political Agency,
KUWAIT.

2.

7. I have gone into this at some length as it seems that you have a particular case in mind. If this is so it would have helped had you given particulars of the case. I can conceive that cases might arise where the validity of a Moslem divorce might be in question e.g. where there is a dispute as to the return of a dowry. In such a case the Court would have jurisdiction and a reference to a Qhadi under Article 46 (2) would be proper.

8. The question raised by Hijazi is not understood. We would not take jurisdiction (if we had divorce jurisdiction) in divorce cases unless the husband were domiciled in Kuwait. There can be very few Christians who are so domiciled and this may be the reason for excluding such jurisdiction.

9. As you sent a copy of your letter to Lucas at Bahrain I am sending him a copy of my letter. It would have been more correct to send copies to the Judge of the Chief Court for the Persian Gulf. I am sure that Lucas will see that the letters are filed in the right place.

E

EASTERN DEPARTMENT

122

EA 1643/10

1954

ARABIA

FROM Mr Logan
Kuwait

Unclaimed
No. 205

Dated 15:8:54

Received in
Registry— 5:10:54

Following for Judge Haines:-

Asks if Her Britannic Majesty's Court
has jurisdiction to accept a divorce case between
two Pakistani Muslims and to make an order
based on recommendations of local Sharia Court
in accordance with Article 46 of Kuwait Order
1953.

References

- / 109

Original entered MINUTES
on Judge Haines' file
33/39.

Reply within.

Please see no - 9

26/10.

(Print)

(How disposed of)

Del) Kuwait 268
16:9:54.

(Action
completed)

11/10

(Index)

10/10

FROM KUWAIT TO FOREIGN OFFICE

123

En clair

A1643/10

FILES

Mr. Logan

D. 2.30 p.m. August 15, 1954

No. 205

August 15, 1954

R. 2.20 p.m. August 15, 1954

Following for Haines.

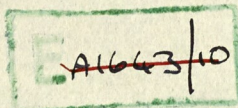
Since provisions of Indian Divorce Act do not apply in cases relating to divorce, has HMBS court jurisdiction to accept divorce case between two Pakistani Moslems and to make order based on recommendations of local Sharia Court in accordance with Article 46 (2) of Kuwait Order 1953?

PPPP

COPY: Original entered 23/39 (Judge Haines' file).

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En Clair



TELEGRAM TO KUWAIT FROM FOREIGN OFFICE.

No. 268

D. 7.36 p.m. August 16, 1954.

August 16, 1954.

Your telegram 205 [of August 15]

Following from Haines.

No. Article 46 (2) only applies if the Court has jurisdiction to hear the suit. Divorce and nullity of marriage have been expressly excluded from its jurisdiction.

E

EASTERN DEPARTMENT

E

EA 1643/12

125

ARABIA

FROM

H. Bureau,
Bahrain.

No 110

No (16422/22/54)

Dated 7/12

Received in
Registry—

20/12

Copies Despatches No 5 to Aden and 1 to
Hargisa about the desire of the Ruler of
Kharit to extend his jurisdiction to cover all
Muslims except Pakistanis. Asks what is the
exact jurisdictional status of the
inhabitants of the Aden Protectorates
and British Somaliland.

References to former relevant papers

MINUTES

You have no doubt heard
about this. We may expect
a further despatch from Mr.
Bureau when he has received
the comments of the Governors
of Aden and British Somaliland.

Substantiated
26/1

(Print)

(How disposed of)

8c) 9. Watt, Colonial Office
7/11/56

(Action
completed)

(Index)

M. G. M. 29/1/55

21/1/55

References to later relevant papers

✓ Judge (Poon 190) 27/1
Legal Adviser (Mr. Lygon) 27/1

28/1

47013

EA 1641/2/56

No.

110

E

His Majesty's Political Resident Bahrain
presents his compliments to Secy. of State for Foreign
Affairs and has the honour to transmit to him the under-mentioned
documents.

British Residency,
Bahrain.

A1643/12.

December 7, 1954.

Reference to previous correspondence:

126

Description of Enclosure.

Name and Date.	Subject.
<u>CONFIDENTIAL</u> Bahrain despatch No. 5 to Aden and No. 1 to Hargeisa (16422/22/54) of December 7, 1954.	Jurisdictional position in the British protected State of Kuwait.

RECEIVED IN 62
 28-154-1054
 SENT TO DEPT.

2/1/2

...Political Resident
 ...his comments to Secy. of State
 ...the honor to transmit to him the
 documents

Residency, Bahrain.
 British

December 7, 1934

Reference to previous correspondence:

Description of Enclosure

Subject	Name and Date
Unofficial position in the British protected State of Kuwait.	<u>CONFIDENTIAL</u> Bahrain Report No. 5 to Aden and No. 1 to Baghdad (10/22/34) of December 7, 1934.

22/22/54.
(Despatch No. 1.)
CONFIDENTIAL

British Residency,
Bahrain.

127

December 7, 1954.

Sir,

I have the honour to refer to the jurisdictional position in the British-protected state of Kuwait, and to inform Your Excellency that His Highness the Ruler of Kuwait at present exercises jurisdiction over nationals of Saudi Arabia, Iraq, Jordan, Iran, Syria, Egypt, the Lebanon, the Yemen, Muscat and Oman, subjects of the Rulers of Kuwait, Bahrain, Qatar and the Trucial States, and stateless Muslims of Palestinian origin.

2. The Ruler has, however, expressed his desire recently to extend this jurisdiction to cover all Muslims other than Pakistanis. While there is no immediate intention of acceding to this request, it may be useful in the future to be able to encourage the Ruler to give effect to judicial reforms which we have long urged upon

/him

His Excellency

Sir Gerald Reece, K.C.M. G., C.B.E.,
Governor of British Somaliland,
(Hargeisa)

him, by holding out the hope of granting such a concession to him, and I shall wish in due course to submit the matter for decision to the Foreign Office. In order that I may do so with full knowledge of the facts I should be glad to know what is the exact jurisdictional status of the inhabitants of British Somaliland. If like the inhabitants of British colonial territories they enjoy a right of appeal in judicial matters to Her Majesty the Queen, it would seem inappropriate for us to surrender jurisdiction over them while we retain extra-territorial jurisdiction in the Gulf States over nationals of the United Kingdom and colonies. On the other hand it is an established principle that the Ruler of each of the British Protected States in the Gulf (except for the Trucial States) has jurisdiction over the subjects of the others. The decision whether we can agree to extend this to persons from British Protectorates will depend up to a point upon whether their jurisdictional status in their country of origin is more akin to that of "British subjects - Citizens of the United Kingdom and Colonies" or to subjects of the Gulf Rulers, and I should be grateful for Your Excellency's views in this connection.

3. I should also be grateful for any additional comments which Your Excellency may wish to make on

/the

- 3 -

the possible transfer of jurisdiction described above. The extent of the problem, in practical terms, may be gauged from the fact that there are in Kuwait at the moment approximately two hundred persons from the Somaliland territories (nearly all from British Somaliland).

4. A despatch in similar terms is being addressed to His Excellency the Governor of Aden, and copies are being sent to the Foreign Office, the Colonial Office and to the Political Agency, Kuwait.

I have the honour to be,
with the highest respect,

Sir,

Your obedient Servant,

(B.A.B. Burrows)

COPY

(EA 1643/12)

16422/22/54.
(Despatch No. 1.)
CONFIDENTIAL

British Residency,

Bahrain.

December 7, 1954.

Sir,

I have the honour to refer to the jurisdictional position in the British-protected state of Kuwait, and to inform Your Excellency that His Highness the Ruler of Kuwait at present exercises jurisdiction over nationals of Saudi Arabia, Iraq, Jordan, Iran, Syria, Egypt, the Lebanon, the Yemen, Muscat and Oman, subjects of the Rulers of Kuwait, Bahrain, Qatar and the Trucial States, and stateless Muslims of Palestinian origin.

2. The Ruler has, however, expressed his desire recently to extend this jurisdiction to cover all Muslims other than Pakistanis. While there is no immediate intention of acceding to this request, it may be useful in the future to be able to encourage the Ruler to give effect to judicial reforms which we have long urged upon him, by holding out the hope of granting such a concession to him, and I shall wish in due course to submit the matter for decision to the Foreign Office. In order that I may do so with full knowledge of the facts I should be glad to know what is the exact

/jurisdictional

His Excellency

Sir Gerald Reece, K.C.M.G., C.B.E.,
Governor of British Somaliland,
(Hargeisa)

jurisdictional status of the inhabitants of British Somaliland. If like the inhabitants of British colonial territories they enjoy a right of appeal in judicial matters to Her Majesty The Queen, it would seem inappropriate for us to surrender jurisdiction over them while we retain extra-territorial jurisdiction in the Gulf States over nationals of the United Kingdom and colonies. On the other hand it is an established principle that the Ruler of each of the British Protected States in the Gulf (except for the Trucial States) has jurisdiction over the subjects of the others. The decision whether we can agree to extend this to persons from British Protectorates will depend up to a point upon whether their jurisdictional status in their country of origin is more akin to that of "British subjects - Citizens of the United Kingdom and Colonies" or to subjects of the Gulf Rulers, and I should be grateful for Your Excellency's views in this connection.

3. I should also be grateful for any additional comments which Your Excellency may wish to make on the possible transfer of jurisdiction described above. The extent of the problem, in practical terms, may be gauged from the fact that there are in Kuwait at the moment approximately two hundred persons from the Somaliland territories (nearly all from British Somaliland).

4. A despatch in similar terms is being addressed to His Excellency the Governor of Aden, and copies are being sent to the Foreign Office, the Colonial Office and to the Political Agency, Kuwait.

I have the honour to be,
with the highest respect,

Sir,

Your obedient Servant,

(Signed) (B.A.B. Burrows)

E

EASTERN DEPARTMENT

132

E A1643/13.

1954

ARABIA

FROM

7.0 Mide

R Haimes

No.

Dated Dec 9 1954

Received in Registry— " 30 1954

References to former relevant papers

(Print)

(How disposed of)

(Action completed)

(Index)

Aelt
30/3/60

References to later relevant papers

Report on his visit to Kuwait

1) Longways cases filed in 1954 with those filed in 1953

2) Attached note regarding ^{the} accommodation required so that the Registry can be separated from the Court room.

MINUTES

This report is somewhat disturbing. Mr. Pelly and Mr. Logan have, it appears, been too pre-occupied with political and other matters to devote much time to ~~supervising~~ the supervision of Court work. However, Mr. Pelly seems anxious to put matters right, and we may hope for a marked improvement by the time of Judge Haimes's next visit to Kuwait in February.

47013

2. I gather that although Mr. Hejazi's procedure in Court/cases

cases has often been far from perfect, he has made useful contacts with Kusaie judges and Government officials. This has had the effect of increasing confidence in our Court among Kusaitis and, to some extent, countering the Ruler's encroachment on our jurisdictional position.

W.B. 25/1

Legal Adviser ^{grd} 26/1
(Mr. Simpson)

Please see the last paper within, in which Judge Haines draws attention to the lack of proper accommodation for the Registrar to our Court for Kusaie. The Department hope that this can be remedied before long.

W.B. 28/1

Cape and Supply Dept
(Mr. W. Adams Clark)

we

Minutes.

We have asked the Ministry of
Works to remedy this in D. D. Adams Clark's
letter of February 11 or 20, 1911/55.

Adams Clark 11
3

not sent to 15/3

Judge Haines
(on return)
11/7/4/55

NOTHING TO BE WRITTEN IN THIS MARGIN.

A1643/13.

KUWAIT

During my recent visit I inspected the Court files. The following table sets out the cases filed in 1954 as compared with those filed in 1953:-

	1954	1953
Criminal	21	24
Civil	21	1
Estates	18	2
Bankruptcy	1	-
Civil cases settled out of Court	14	2

The increase in Civil work and Estates is remarkable and is mainly due, in my opinion, to the appointment of Mr. Hijazi as Registrar. It is clear that the work was there to be done and the public now know that we are ready to do it. Mr. Hijazi's relations with the Kuwait Court officials are excellent and there is now a well established practice for referring cases to us when it is clear that the accused or the defendant is subject to our jurisdiction.

Criminal and Civil Cases

I looked at all the cases filed since my last visit and made comments on them. Generally I found the same disregard of procedure which I found in December 1953. I found that the Court files contained letters, minutes and other matter not strictly part of the judicial proceedings. This in spite of the Court circular dated 10th June, 1954. In some criminal cases tried as warrant cases I found that there had been no examination of the accused.

In another case, Regina v Mounzer Constanti, I found that Mr. Hijazi had convicted the accused without taking any evidence. He framed a charge on the unsworn statement of the prosecutor.

In some civil cases no summons had been issued. It seems that the defendant was sent for by other means. In no civil case were issues framed as required by Order XIV of the Indian Civil Procedure Code.

I showed these cases to Mr. Pelly who said that he regretted that he had not yet been able to exercise any supervision. I said that I hoped that he could find time to do so because it was very evident that Mr. Hijazi does need some guidance especially as regards procedure. Mr. Pelly went into these cases with me and wrote a minute to the Registrar pointing out the defects, a copy of which is attached. In regard to the case of Regina v Mounzer Constanti I told Mr. Pelly that I considered that it should be quashed and that he should report it to the Chief Court. In fairness to Mr. Hijazi I must say that I think that the mixing up of minutes and letters with case documents was mainly due to Mr. Logan and Mr. Moberley who have tended to treat Court cases in the same way as any ordinary Agency paper.

/ESTATES

- 2 -

Estates

I went through every case filed in 1954 and I found that I had to comment on every one. The main errors were:-

- (1) No petition for a grant in some cases. It seems that Mr. Hijazi thought that a verbal application was sufficient.
- (2) Grant of letters of administration when the correct grant should have been letters of administration with the will annexed.
- (3) Grant to an attorney of an executor or person entitled to administration was not limited until the executor or person entitled comes in and obtains a grant.
- (4) No account of administration has been made when the Court administers under Article 51.
- (5) Accounts of administration by officers of the Court have not been called for as required by the order.

I have impressed on Mr. Hijazi how important it is to get his procedure right. I was disappointed to note that although in my report of my inspection dated 19th December, 1953 I went to the trouble to set out in some detail the procedure to be followed in Estate cases, no attention appears to have been given to it. I did not go through these Estate cases with Mr. Pelly, but I called his attention to the fact that my notes made in December 1953 do not appear to have been followed. I said that when Mr. Hijazi presented a grant to the Judge for signature the Judge should call for the file and satisfy himself that all the procedural requirements have been complied with before he signs it. I noticed that in two cases concerning the estates of persons from the Aden Protectorate the Kuwait Government refused to hand over the effects as they claimed jurisdiction over them. A protest was made but with no effect. As some two months had passed since the protest I referred the case to Mr. Pelly.

Bankruptcy

I had been asked to ascertain why the Kuwait Court had not made the order of adjudication passed in the Bahrain Court enforceable in Kuwait. When I called for the Court file I was informed that it did not exist. The whole matter was in an Agency file and had been dealt with on minutes and letters in the usual way. Here and there on the file was a Court document. This matter arose in Mr. Pelly's absence and when I showed it to him he very promptly had the files put right. Mr. Pelly will deal with the application as soon as the Receiver can appoint an agent to approach the Court.

Inquests

There have been no inquests although the Political Agent has held a number of enquiries under Article 40 (2). I have asked that a note of these enquiries be added to the annual report.

Settlements out of Court.

- 3 -

Settlements Out of Court

Records of these settlements which are conducted by the Registrar or a member of the Agency have been kept and a brief note of them is entered in a register. This is excellent.

I have impressed on Mr. Hijazi the importance of making sure that he has his procedure right and that he must not trust to his memory of what might be the English procedure. I think he now realises the position and will see that his work is done properly in future. I think that I have also impressed on Mr. Pelly that he must exercise some supervision over his Registrar. I have made this report rather detailed as I think that you ought to know the position, but I would like to suggest that you take no action on this but await my next visit to Kuwait when I can see whether my talks have had any effect.



(C. H. Haines)
December 9, 1954.

I have looked at with Judge Haines the 11 Court files below. On some of these he and I have recorded comments. About the case Regina v. Mounzer Constanti I would like to speak to Registrar.

2. Arising out of the inspection of these files there are some points of

and A) Law and procedure
 B) Office procedure,

which Registrar must pay attention to in future. They are as regards A),

i. In Civil Suits Registrar must assist the parties in filing the complaints and written statements in so far as possible in accordance with the provisions of the Civil Procedure Code. He should then take care in framing issues. If the issues are properly framed it is much easier to hear the suit and to arrive at the correct finding. The contrary is of course true.

ii. In at least one and I think more cases no summons was served on the defendant. Nor, though the defendant apparently did appear in Court his doing so was recorded in the proceedings. A summons should ordinarily issue as provided for in the Code. How are summons served in Kuwait in a) criminal and b) civil cases?

As regards B),

i. If the files seen are a sample then the recording of judicial work is being very badly done. In fact no attempt has been made to keep the papers dealing with judicial proceedings in separate files. Correspondence about the case, minutes, notes etc., are jumbled together with the proceedings of the case and records of evidence. I am not blaming Registrar who is new to this work but I must insist that he realise the importance of keeping judicial records properly. It must be remembered that a judicial file is the record and usually the only record of crimes, punishments, disputes, rights and liabilities which affect the lives and property of the people concerned. It is therefore usually far more important than in the case of other files that such records be kept in proper permanent form and accessible. In furtherance of this Registrar should,

a. separate the judicial record in all his cases (past if possible as well as those to come) from correspondence and other papers about but not part of the judicial file.

/ b.

b. record proceedings in cases and suits separate from evidence and statements,

c. obtain file covers different in colour from any others used in the Agency for the judicial files. They should have the name of the Court printed on the front and be different (perhaps different colours) from criminal cases and civil suits. I think it would be better too if administrative or correspondence files kept by the Registrar were also of a different colour (but not of course of the same colour as the judicial files) from those used in the Confidential Registry. Registrar should make a draft of the proposed working of the file covers and show it to me. Judge Haines will help in obtaining the new covers.

d. There is absolutely no necessity to follow in the Registrar's correspondence files, the Foreign Office practice of retaining drafts and it is even less necessary and more untidy to keep them on judicial files where all papers should be retained in the original. The cluttering up of judicial and even of correspondence files with drafts should cease.

ii. Is a register of companies under the Order in Council kept? If so I should like to see it.

iii. What is the procedure for the receipt of Court Fees and other monies by the Court? How are they credited with the Accountant? Does the Registrar keep a record of such receipts in a register? Are Court Fees collected by stamps affixed to the plaints and are these properly cancelled?

3. Generally speaking Registrar should be careful to consult the books on law and procedure in any case where he is not absolutely certain that he is acting according to the law and rules. In cases of doubt he should consult Judge Haines or myself. He should consult me about office procedure.

4. I would like the points dealt with above separately on separate sheets of paper. Registrar should please let me have his replies, comments or reports of compliance as soon as he can.

C. J. Felly.

November 27, 1954.

Court Registrar.

Some time ago I said that I thought that a Registry should be provided at Kuwait and that, if possible Mr. Hijazi should have an office to himself. At present both Mr. Hijazi and his clerk work in the Court-room. When the Court is sitting all work of the Registry must cease. I think it is most undesirable that the Court and Registry should be housed in the same room. When I mentioned this to Mr. Felly he reminded me that it was usual for magistrates in India to have their offices and Courts in one room. That might have been quite satisfactory for a district officer who was administrator, chief of police and magistrate all rolled into one and where the populace was illiterate. These conditions do not apply in Kuwait. We have now begun to get the Court on a proper footing in Kuwait and the sooner we get proper office accommodation the better. There should be, as in Bahrain, an office for the Registrar, an office for the Registry to which the public may come to file complaints, plaints and other process and a Court-room.

In order to provide Mr. Hijazi with a separate office the entrance to the servants' staircase had been partly made into a room by cutting off the last flight of stairs. This room is on the verandah, from which the public enter the Court. The Registrar would have to work his way through the body of the Court to take his seat on the Bench. This in itself is a major disadvantage of the choice but a still further disadvantage is that the room is 7'0" x 9'0" only. I strongly recommend that the idea of using this space be abandoned and the staircase be restored. We must press the Ministry of Works to provide suitable office accommodation as soon as possible and particularly must we ensure that in the new building plan we have proper Court accommodation. The present Court-room was formerly the Agency kitchen and is not entirely satisfactory.

HS

(G. H. Haines)
December 2, 1954.

1954

E

EASTERN DEPARTMENT

ARABIA

E

✓
EA 1643/141
14.

FROM

Foreign Office
Mr. H. Haines

No.

Dated

29/12/54

Received in
Registry—

30/12/54

The United Nations Zone Regulation
documents which ^{incorporate} ~~include~~ H. Haines
views on Foreign Office letter and enclosure

164

References to former relevant papers

-15

MINUTES

Please see within

(Print)

(How disposed of)

(Action
completed)

(Index)

M.B. M
4/3/55

12/1/55

References to later relevant papers

EA 1641/2/55

NOTHING TO BE WRITTEN IN THIS MARGIN.

Minutes.

Enter E

11643/14.

142

The attached minute was seen and agreed by Mr. Burrows who asked me to put it up to you as his news on your letter and its enclosures. I am sending a copy of the minute to Mr. Burrows.

B. Haines
29/12/54

Mr. Buckmaster ✓

I have discussed this
with Mr. Logan, who agrees
with Mr. Burrows's re-draft
of Article 1(a) of Judge
Haines's draft (Flag B at
EA 11643/5). Before submitting this,
/I

I should be grateful for
any further comments you
may have.

~~Just B. 2~~
~~19~~

You will see from
EA 1641/3 that Tesda do
not expect any marked
Saudi reaction to the promulgation
of this Queen's Regulation.

Just B. 2
19/1.

Legal Advisers
(Mr Simpson)

NOTHING TO BE WRITTEN IN THIS MARGIN.

I have discussed this question at some length with Judge Haines. I think we both accept that jurisdiction should be taken in the Neutral Zone and that it should be on some basis which can be defended.

2. I start from the position that the Kuwait Order in Council itself provides for jurisdiction to be taken in the Neutral Zone by Queen's Regulation, and that we should accordingly take jurisdiction in the Zone over all persons subject to the Kuwait Order, save only those who obviously belong to Saudi Arabia. I am strengthened in this view by the consideration that once we take any jurisdiction at all in the Neutral Zone, we may well have ceded all the jurisdiction we do not take to Saudi Arabia. At all events, I do not see how having elected not to take jurisdiction over a class of person, we could protest if Saudi Arabia promptly took jurisdiction over that class. It may well be that the publication of a rather timid little Queen's Regulation by us would ultimately result in the assumption of a very wide jurisdiction by Saudi Arabia. There is the further consideration that Jeddah advise that the immediate Saudi Arabian reaction to our legislation is not likely to be very marked. The Political Resident appears to think that the jurisdiction which would be assumed under my draft is too wide, but I am not at all sure that it has been made clear to him that there is a distinction between jurisdiction and the exercise of jurisdiction, and that he will have complete discretion to stop any prosecution which he considers politically unwise.

3. Judge Haines's view, if I have understood it correctly, is that we should claim jurisdiction in the Neutral Zone by an implied grant from the Ruler. He also thinks that the Ruler would claim jurisdiction over persons who had come into the Neutral Zone from Kuwait, and that therefore we ought also to take jurisdiction over persons (subject to the Order) who have come into the Neutral Zone from Kuwait. That the Ruler would claim jurisdiction merely because somebody had passed through his territory is a proposition which I must say surprises me. However ~~that may be~~, it would be as well to find out on what basis the Ruler would claim jurisdiction in the Neutral Zone, and unless the Department sees objection, this suggestion might be put to the Political Resident, and also the point at the end of para 2 above

J.L. Simpson

(J.L. Simpson)
February 3, 1955.

Judge Haines

Mr. Buchmaster

NOTHING TO BE WRITTEN IN THIS MARGIN.

See minute

I am afraid that Mr. Simpson has not quite understood my reference to ~~our~~ our claim to jurisdiction in the Neutral Zone. To make my point quite clear I must expand it somewhat.

The Order recites in its preamble the words used in the Foreign Jurisdiction Acts "Whereas by treaty, capitulation, grant *etc.* The Neutral Zone is one in which the Ruler and the King of Saudi Arabia have equal rights. We can therefore only exercise jurisdiction by virtue of ^{or agreement or} grant from the Ruler of Kuwait. There is no treaty formally giving us jurisdiction but I believe the Ruler did in 1935 agree by note to our taking such jurisdiction.

I do not think that there is anything in the state of the Neutral Zone to justify our taking jurisdiction under Art 2 of the Foreign Jurisdiction Act & if we did it could apply only to British Subjects.

B. H. A. H. A.
3/2/55

See now 1955 PP
Am.

NOTHING TO BE WRITTEN IN THIS MARGIN.

THE KUWAIT NEUTRAL ZONE REGULATION

I discussed EA 1643/5 and its enclosures with the Political Resident.

The Political Resident's first reaction was that he did not like Article I of either draft. He feels that we should find some other formula which does not make it so apparent that we are applying the Kuwait Order to the Neutral Zone. He would prefer a modification of my draft on these lines:-

The Kuwait Order, 1953, shall apply in the Neutral Zone to(here set out the persons to whom it should apply).

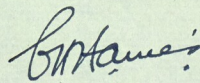
We thought that Mr. Simpson's scheme might be too wide. It would give us jurisdiction over say an American established in business in Saudi Arabia and having nothing to do with the Government or the oil company who paid a short business trip to the Neutral Zone. The Political Resident thought that this would be most objectionable to the Saudis. He thought that we might modify 1(a) of my draft to cover people who were ordinarily resident in Kuwait or were employed by firms having a place of business in Kuwait. It was realised that this might cause some difficulty if the firm had a place of business in Saudi Arabia as well.

The following might do:-

- (a) are ordinarily resident in Kuwait or are full time employees of persons conducting business in Kuwait.

It may be necessary to define "ordinarily resident" and it was suggested that should include a person who has resided in Kuwait for say three months or who has come to Kuwait with the intention of being ordinarily resident there.

The Political Resident agreed that we should have to consider what Queen's Regulations should apply. If the Kuwait Order is to apply then by Article 12(1)(d) all Queen's Regulations made will apply. It would be necessary to exclude specifically those Queen's Regulations we do not wish to have applied.



C.H. Haines.
December 29, 1954.

