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Egypt No. 1 (1929)

EXCHANGE OF NOTES

relating to

Proposals for an Anglo-Egyptian Settlement

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

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his fifteenth day of March, in

JAMES A. ROBB.
JAMES MALCOLM.
F. KVEYTON.

**Exchange of Notes relating to Proposals for an
Anglo-Egyptian Settlement.**

No. 1.

Mr. A. Henderson to Mohammed Mahmoud Pasha.

Your Excellency,

Foreign Office, August 3, 1929.

THE accompanying proposals, together with the explanatory notes to be exchanged on matters of detail, which your Excellency is about to submit to the Egyptian Parliament, represent the extreme limit to which I could recommend His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to go in their desire to achieve a lasting and honourable settlement of outstanding questions between Great Britain and Egypt.

It is the earnest hope of His Majesty's Government that patriotic Egyptians without distinction of party will examine these proposals in the same friendly and conciliatory spirit which has characterised our recent conversations, and will find in them a satisfactory basis for the future relations between our respective countries. If this should be the verdict of the newly-elected Egyptian Parliament, His Majesty's Government for their part will immediately submit the proposals to Parliament with a view to the conclusion and ratification of a treaty carrying them into effect.

I have, &c.

ARTHUR HENDERSON.

Enclosure in No. 1.

Proposals for an Anglo-Egyptian Settlement.

1.

THE military occupation of Egypt by the forces of His Britannic Majesty is terminated.

2.

An alliance is established between the High Contracting Parties in consecration of their friendship, their cordial understanding, and their good relations.

3.

Egypt, being anxious to become a member of the League of Nations, will present in the conditions prescribed by article 1 of the Covenant a request for admission to the League, which His Britannic Majesty undertakes to support.

3

4.

Should any dispute with a third State produce a situation which involves a risk of a rupture with that State, the High Contracting Parties will concert together with a view to the settlement of the said dispute by peaceful means in accordance with the provisions of the Covenant of the League of Nations and of any other international obligations which may be applicable to the case.

5.

Each of the High Contracting Parties undertakes not to adopt in foreign countries an attitude which is inconsistent with the alliance or will create difficulties for the other Party thereto. In pursuance of this undertaking they will not oppose each other's policy in foreign countries, nor conclude with a third Power any agreement of a political character which might be prejudicial to the interests of the other Party.

6.

His Britannic Majesty recognises that the responsibility for the lives and property of foreigners in Egypt devolves henceforth upon the Egyptian Government. His Majesty the King of Egypt will ensure the fulfilment of his obligations in this respect.

7.

Should, notwithstanding the provisions of paragraph 4 above, either of the High Contracting Parties become engaged in war, the other High Contracting Party will, subject always to the provisions of paragraph 14 below, immediately come to his aid in the capacity of an ally. In particular, His Majesty the King of Egypt will, in the event of war or menace of war, furnish to His Britannic Majesty on Egyptian territory all the facilities and assistance in his power, including the use of his ports, aerodromes and means of communication.

8.

In view of the desirability of identity in training and methods between the Egyptian and British armies, His Majesty the King of Egypt undertakes that, should he deem it necessary to have recourse to foreign military instructors, these shall be chosen from amongst British subjects.

9.

In order to facilitate and secure to His Britannic Majesty the protection of the Suez Canal as an essential means of communication between the different parts of the British Empire, His Majesty the King of Egypt authorises His Britannic Majesty to maintain upon Egyptian territory in localities to be agreed upon, to the east of longitude 32° E., such forces as His Britannic Majesty considers necessary for this purpose. The presence of these forces shall not constitute in any manner an occupation and will in no way prejudice the sovereign rights of Egypt.

10.

In view of the friendship between the two countries and of the alliance contemplated in the present proposals, the Egyptian Government when engaging the services of foreign officials will as a rule engage British subjects.

11.

His Britannic Majesty recognises that the capitulatory régime now existing in Egypt is no longer in accordance with the spirit of the times and with the present state of Egypt.

His Britannic Majesty accordingly undertakes to use all his influence with the Powers possessing capitulatory rights in Egypt to obtain, in conditions which will safeguard the legitimate interests of foreigners, the transfer to the Mixed Tribunals of the jurisdiction of the existing Consular Courts, and the application of Egyptian legislation to foreigners.

12.

In view of the friendship between the High Contracting Parties and of the alliance contemplated in the present proposals, His Britannic Majesty will be represented at the Court of His Majesty the King of Egypt by an Ambassador, duly accredited, and His Majesty the King of Egypt will reserve the highest diplomatic rank at his Court to the representative of His Britannic Majesty.

His Majesty the King of Egypt will be represented at the Court of St. James's by an Ambassador.

13.

While reserving liberty to conclude new conventions in future modifying the conventions of 1899, the High Contracting Parties agree that the status of the Sudan shall be that resulting from the said conventions. Accordingly, the Governor-General shall continue to exercise on the joint behalf of the High Contracting Parties the powers conferred upon him by the said conventions.

14.

Nothing in the present proposals is intended to or shall in any way prejudice the rights and obligations which devolve, or may devolve, upon either of the High Contracting Parties under the Covenant of the League of Nations or the Treaty for the Renunciation of War signed at Paris on the 27th August, 1928.

15.

The High Contracting Parties agree that any difference on the subject of the application or the interpretation of the provisions of the present proposals which they are unable to settle by direct negotiation shall be dealt with in accordance with the provisions of the Covenant of the League of Nations.

16.

At any time after the expiration of a period of twenty-five years from the coming into force of a treaty based on the above proposals such modification of its terms as may be deemed appropriate in the circumstances as they then exist may be made by agreement between the High Contracting Parties.

ARMY.

BRITISH NOTE.

Your Excellency,

In the course of our recent discussions, certain military questions arose and were most carefully considered. These questions fall naturally into two categories: first, those concerning the Egyptian forces which might, in the unhappy event of the circumstances arising contemplated in the first sentence of paragraph 7 of the proposals, be called upon to co-operate actively with allied British forces; and, secondly, questions touching the British forces which, under paragraph 9, will be stationed in the neighbourhood of the Suez Canal for the purpose of ensuring the defence of that vital artery of British imperial communications.

As to the first category, your Excellency and I agreed as follows:—

- (1.) Existing arrangements, under which the Inspector-General and his staff exercise certain functions, shall terminate. British personnel shall be withdrawn from the Egyptian forces.
- (2.) The Egyptian Government, however, desire in accordance with paragraph 8 of the proposals to avail themselves of the advice of a British military mission. His Britannic Majesty's Government in the United Kingdom and Northern Ireland undertake to furnish such a mission. The Egyptian Government will send the personnel of the Egyptian forces to be trained abroad in Great Britain only. His Majesty's Government, for their part, undertake to receive any personnel which the Egyptian Government may send to Great Britain for this purpose.
- (3.) In the interests of the close co-operation referred to above, the armament and equipment of the Egyptian forces shall not differ in type from those of the British forces. His Majesty's Government undertake to use their good offices to facilitate the supply of such armament and equipment from Great Britain whenever the Egyptian Government so desire.

With regard to the British forces referred to in paragraph 9 of the proposals:—

- (i.) The Egyptian Government will provide, free of cost to His Majesty's Government, lands, barracks, &c., in

ARMY.

localities to be agreed upon, equivalent to those now occupied by the British forces in Egypt. Upon the completion of this new accommodation, those forces shall be transferred thereto, handing over the lands, barracks, &c., thus vacated to the Egyptian Government. In view of the technical objections to effecting this transfer piecemeal it shall await the completion of the new accommodation to be provided. Having regard to the character of the region lying to the east of longitude 32° E. steps will be taken to furnish reasonable amenities by planting trees, gardens, &c., for the troops, who will also be provided with an adequate emergency fresh water supply.

- (ii.) Subject to any modifications which may in the future be made by agreement between the two Governments, the privileges and immunities in jurisdictional and fiscal matters at present enjoyed by the British forces in Egypt will continue.
- (iii.) Unless the two Governments agree to the contrary, the Egyptian Government will prohibit the passage of aircraft over the territories situated on either side of the Suez Canal and within 20 kilom. of it. This prohibition will not, however, apply to the forces of the two Governments or to services maintained by genuinely British or Egyptian organisations operating under the authority of the Egyptian Government.

We also agreed that the Egyptian Government will give all necessary facilities to British military aircraft, personnel and stores on passage to or from the aerodromes placed at the disposal of the British forces in accordance with paragraph 9 of the proposals. His Majesty's Government will give appropriate facilities to Egyptian military aircraft, personnel and stores in territory under their control.

Sir,

EGYPTIAN NOTE.

I have the honour to acknowledge the receipt of your note of to-day's date dealing with certain military questions, and to confirm that it accurately represents the agreement at which we have arrived.

ADVISERS.

Sir,

EGYPTIAN NOTE.

As you are aware, the Egyptian Government have taken in hand an extensive programme of internal reform, and I realise that this task will become even more far-reaching and difficult in view of the important modifications in the capitulatory system contemplated by the proposals. I appreciate that, in order to secure the satisfactory completion of this programme of reform the best advice

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procurable will be required, and I take this opportunity of informing you that it is the intention of the Egyptian Government to maintain, during the period necessary for the completion of the reforms in question, the employment of British subjects in the posts of Financial Adviser to the Egyptian Government and Judicial Adviser to the Ministry of Justice. Future occupants of these posts will be selected by the Egyptian Government in agreement with His Britannic Majesty's Government in the United Kingdom, and will receive their appointments as Egyptian officials from the Egyptian Government.

BRITISH NOTE.

Your Excellency,

I have the honour to acknowledge the receipt of your note of to-day's date regarding the posts of the Financial Adviser to the Egyptian Government and the Judicial Adviser to the Ministry of Justice, and note with satisfaction your Excellency's statement of the intentions of the Egyptian Government.

POLICE.

EGYPTIAN NOTE.

Sir,

I take this opportunity of informing you that the Egyptian Government intend to abolish the European Bureau of the Public Security Department, but, in pursuance of the undertaking contained in paragraph 6 of the proposals, the Egyptian Government will retain, for at least five years from the coming into force of a treaty based on the proposals, a certain European element in their city police, which will remain for the same period under the command of British officers.

If at some future date the Egyptian Government should desire to reorganise their police force, I shall be glad to know whether they can rely upon the assistance of His Britannic Majesty's Government in this task.

BRITISH NOTE.

Your Excellency,

His Britannic Majesty's Government in the United Kingdom note with satisfaction that in pursuance of the undertaking contained in paragraph 6 of the proposals the Egyptian Government, after the disappearance of the European Bureau of the Public Security Department, will retain, for at least five years from the coming into force of a treaty based on the proposals, a certain European element in their city police, which will remain for the same period under the command of British officers.

If at some future date the Egyptian Government should desire to reorganise their police force, His Britannic Majesty's Government will be happy to lend them the services of individual experts or of a police mission as they have done in the case of other countries similarly desirous of reorganising their police.

CAPITULATIONS.

BRITISH NOTE.

Your Excellency,

Paragraph 11 of the proposals provides as follows:—

“His Britannic Majesty recognises that the capitulatory régime now existing in Egypt is no longer in accordance with the spirit of the times and with the present state of Egypt.

“His Britannic Majesty accordingly undertakes to use all his influence with the Powers possessing capitulatory rights in Egypt to obtain, in conditions which will safeguard the legitimate interests of foreigners, the transfer to the Mixed Tribunals of the jurisdiction of the existing Consular Courts, and the application of Egyptian legislation to foreigners.”

It will be useful if I explain to your Excellency the lines on which I think this reform of the capitulatory régime might well proceed, as I shall be prepared to support the efforts of the Egyptian Government to conclude arrangements with the Powers, on these lines when a treaty based on the proposals comes into force.

It was hoped in 1920, when negotiations were in progress between the British and Egyptian Governments, that arrangements might be made for the closing by foreign Powers of their Consular Courts in Egypt. Draft laws were accordingly prepared in that year extending the existing jurisdiction of the Mixed Tribunals, and enabling them to exercise all the jurisdiction now exercised by the Consular Courts.

I shall be prepared to agree to the utilisation of those draft laws as the basis of the reform of the capitulatory régime if foreign Powers are willing to transfer to the Mixed Tribunals the jurisdiction of their consular courts.

On points of detail many changes will no doubt be required. These must be discussed by experts. There are, however, certain modifications which will, I think, be necessary in any event, and which I desire to take this opportunity of pointing out to your Excellency.

It may be difficult for some Powers to agree to the transfer to the Mixed Tribunals of all suits relating to the “statut personnel” of their nationals. Transfer in the case of these questions should be facultative. Jurisdiction in such matters should remain with the consular authorities unless an agreement is made between the Egyptian Government and the foreign Government concerned for its transfer to the Mixed Tribunals. I anticipate agreement that the Mixed Tribunals should exercise jurisdiction in these matters in cases where British subjects are concerned.

In the case of pardons or remissions of sentences imposed on foreigners, and also in connexion with the execution of capital sentences imposed on foreigners, the Minister of Justice will consult the Judicial Adviser, so long as that official is retained, before tendering his advice to the King.

I recognise that the conditions in which the capitulations are at present applied as regards the power of the Egyptian Government to legislate for or to impose taxation on foreigners are no longer con-

CAPITULATIONS.

sistent with modern conditions. I should be prepared to agree that in future any assent which is necessary before Egyptian legislation, including fiscal legislation, is applied to foreigners shall be given by the General Assembly of the Mixed Tribunals, except in the case of legislation relating to the constitution or jurisdiction of the Mixed Tribunals themselves, which should not come into force until it has been approved by the Powers. It should be the duty of the General Assembly of the Mixed Tribunals to satisfy itself that the legislation in question is not inconsistent with the principles generally adopted in modern legislation which is applicable to foreigners, and, with particular relation to legislation of a fiscal character, that it does not inequitably discriminate against foreigners, including foreign companies.

An extension of the criminal jurisdiction of the Mixed Tribunals will necessitate the preparation and promulgation of a new Code of Criminal Procedure. The draft laws prepared in 1920 contain certain provisions of importance on this subject of criminal procedure (articles 10-27 of Law II, draft of the 18th April, 1920), and your Excellency will no doubt agree that the new Criminal Code should not diverge from the principles laid down in these articles.

There are certain matters as to which it will be necessary for agreement to be reached between the Egyptian Government and His Britannic Majesty's Government in the United Kingdom, but I do not think it necessary to do more at the moment than mention these subjects.

The first is the definition of the word “foreigner” for the purposes of the proposed extension of the jurisdiction of the Mixed Tribunals. I understand from your Excellency that the codes now enforced by the Native Courts in Egypt subject to the Native Courts all persons in Egypt other than those who by law, usage or treaty are withdrawn from their jurisdiction. I am content to accept this principle provided that it is understood that all foreigners who have enjoyed the benefit of the capitulatory régime in the past will fall under the jurisdiction of the Mixed Tribunals irrespective of changes of sovereignty effected after the war of 1914-18.

The second is the increase in the personnel of the Mixed Tribunals which will be necessitated by the proposed extension of their jurisdiction, and, as part of this question, the new functions of the Procureur Général of the Mixed Tribunals and the staff which will be necessary to enable him to discharge those functions satisfactorily. The Judicial Adviser will, so long as that official is retained, be consulted with regard to the appointment of foreign judges in the Mixed Tribunals and of foreign members of the parquet, if any.

EGYPTIAN NOTE.

Sir,

I have the honour to acknowledge the receipt of your note of to-day's date, in which you informed me of the lines upon which His Majesty's Government in the United Kingdom consider that the reform of the capitulatory régime might well proceed, and drew my

CAPITULATIONS.

attention to certain particular considerations to which you attach importance.

I am happy to state that the particular proposals to which you referred are in accordance with the intentions of the Egyptian Government, who are also in general agreement with His Britannic Majesty's Government as to the lines on which the reform of the capitulatory system should proceed.

As regards the definition of the word "foreigner," I would observe that, while the Egyptian Government would have no objection to the civil and criminal jurisdiction of the Mixed Tribunals including foreigners who possessed capitulatory privileges before the war of 1914-18, those foreigners who do not possess and never have possessed those privileges must evidently be subject to the jurisdiction of the Native Courts.

FOREIGN OFFICIALS.**EGYPTIAN NOTE.**

Sir,

In the course of our conversations in regard to paragraph 10 of the proposals, it was understood that His Britannic Majesty's Government in the United Kingdom and Northern Ireland will not press for an unreasonably narrow interpretation of this paragraph, and that nothing therein contained shall prejudice the freedom of the Egyptian Government to engage non-British foreign officials for posts for which suitable British subjects are not available.

BRITISH NOTE.

Your Excellency,

I have the honour to acknowledge the receipt of your note of to-day's date regarding the engagement of foreign officials and to confirm the statement therein recorded of the understanding which we have reached.

MINORITIES.**BRITISH NOTE.**

Your Excellency,

I wish to place it on record that it was not thought necessary to mention, in the proposals, the question of the protection of minorities, which figured in the declaration of the 28th February, 1922, but that it is recognised that this question will in future be the exclusive concern of the Egyptian Government.

EGYPTIAN NOTE.

Sir,

I have the honour to take note of your communication of to-day's date respecting minorities in Egypt.

SUDAN.**BRITISH NOTE.**

Your Excellency,

When discussing paragraph 13 of the proposals, we agreed that the question of the indebtedness of the Sudan to Egypt should now be examined with a view to a settlement on fair and equitable lines.

We further agreed that a representative of the British Treasury should discuss the question with a representative of the Egyptian Ministry of Finance as soon as a treaty based on the proposals comes into force.

EGYPTIAN NOTE.

Sir,

In reply to your note of to-day's date I have the honour to confirm our agreement that the question of the indebtedness of the Sudan to Egypt should be examined by representatives of the British Treasury and of the Egyptian Ministry of Finance with a view to its settlement on fair and equitable lines.

BRITISH NOTE.

Your Excellency,

It will be convenient to place on record the agreement which we have reached as regards the method by which international conventions are to be made applicable to the Sudan. The conventions which it will be desired to apply to the Sudan will naturally be conventions of a technical or humanitarian character.

In cases where such a convention is signed on behalf of both Egypt and Great Britain, and it is desired that the convention should be applied to the Sudan, the British and Egyptian delegates will, at a convenient moment, make a joint declaration, to be duly placed on record, to the effect that their signatures on behalf of Egypt and the United Kingdom respectively are intended, taken together, to cover the Sudan, and (in cases where the convention requires ratification) that, when the ratifications of both the King of Egypt and His Britannic Majesty have been deposited, the convention will become applicable to the Sudan in accordance with its terms. If no such declaration is made the convention will not become applicable to the Sudan, unless by the method of accession, to which reference is made later.

In cases where such a declaration has been made, no special mention would be made of the Sudan in the instruments of ratification.

In some cases, where the convention provides for subsequent accession, and it may be convenient that the convention should be applied to the Sudan by this method, accession would be effected by a joint instrument, signed on behalf of Egypt and Great Britain respectively by two persons duly appointed for the purpose. The method of depositing the instrument of accession would be the subject of agreement in each case between the two Governments. In such cases no question of ratification arises.

SUDAN.

At international conferences where such conventions are negotiated the Egyptian and British delegates would naturally keep in touch with a view to any action which they may agree to be desirable in the interests of the Sudan.

EGYPTIAN NOTE.

Sir,

I have the honour to acknowledge the receipt of your note of to-day's date regarding the method of application to the Sudan of international conventions which it may be desired should apply to that country. I beg to confirm the statement therein recorded of the understanding which we have reached.

BRITISH NOTE.

Your Excellency,

During our recent discussions your Excellency expressed the hope that, on the coming into force of a treaty, Egyptian troops would be readmitted to the Sudan.

If, as His Majesty's Government in Great Britain and Northern Ireland earnestly trust, the treaty is worked in the same friendly spirit in which the proposals were negotiated, they will be prepared to examine sympathetically a proposal for the return to the Sudan of an Egyptian battalion simultaneously with the withdrawal of the British forces from Cairo.

EGYPTIAN NOTE.

Sir,

I have the honour to acknowledge the receipt of your note of to-day's date, relative to the return of an Egyptian battalion to the Sudan, and to take note of the attitude of His Britannic Majesty's Government in the matter.

No. 2.

Mohammed Mahmoud Pasha to Mr. A. Henderson.

*Egyptian Legation, London,
August 3, 1929.*

Sir,

I HAVE the honour to acknowledge receipt of the letter which you handed to me to-day, covering the proposals, together with explanatory notes to be exchanged on matters of detail, which have been under discussion between us with a view to the achievement of a lasting and honourable settlement of outstanding questions between Egypt and Great Britain.

I realise that these proposals represent the extreme limit to which you could recommend His Britannic Majesty's Government to go, and for my part I am prepared to submit them to the Egyptian

people and Parliament in the sincere belief that their acceptance would be in the best interests of my country.

I share the earnest hope of His Britannic Majesty's Government that these proposals will be examined by all patriotic Egyptians without distinction of party in the same friendly and conciliatory spirit in which they have been conceived and discussed by us, and that they will be found to embody a satisfactory basis for the future relations between our respective countries.

It is in this spirit and with this hope that I take back these proposals to the Egyptian people.

M. MAHMOUD.