



This PDF was generated on 28/01/2022 from online resources of
the **Qatar Digital Library**

The online record can be viewed at:

http://www.qdl.qa/en/archive/81055/vdc_100000001491.0x000299

It contains extra information, high resolution zoomable views and transcriptions.

'Egypt: The Soudan'

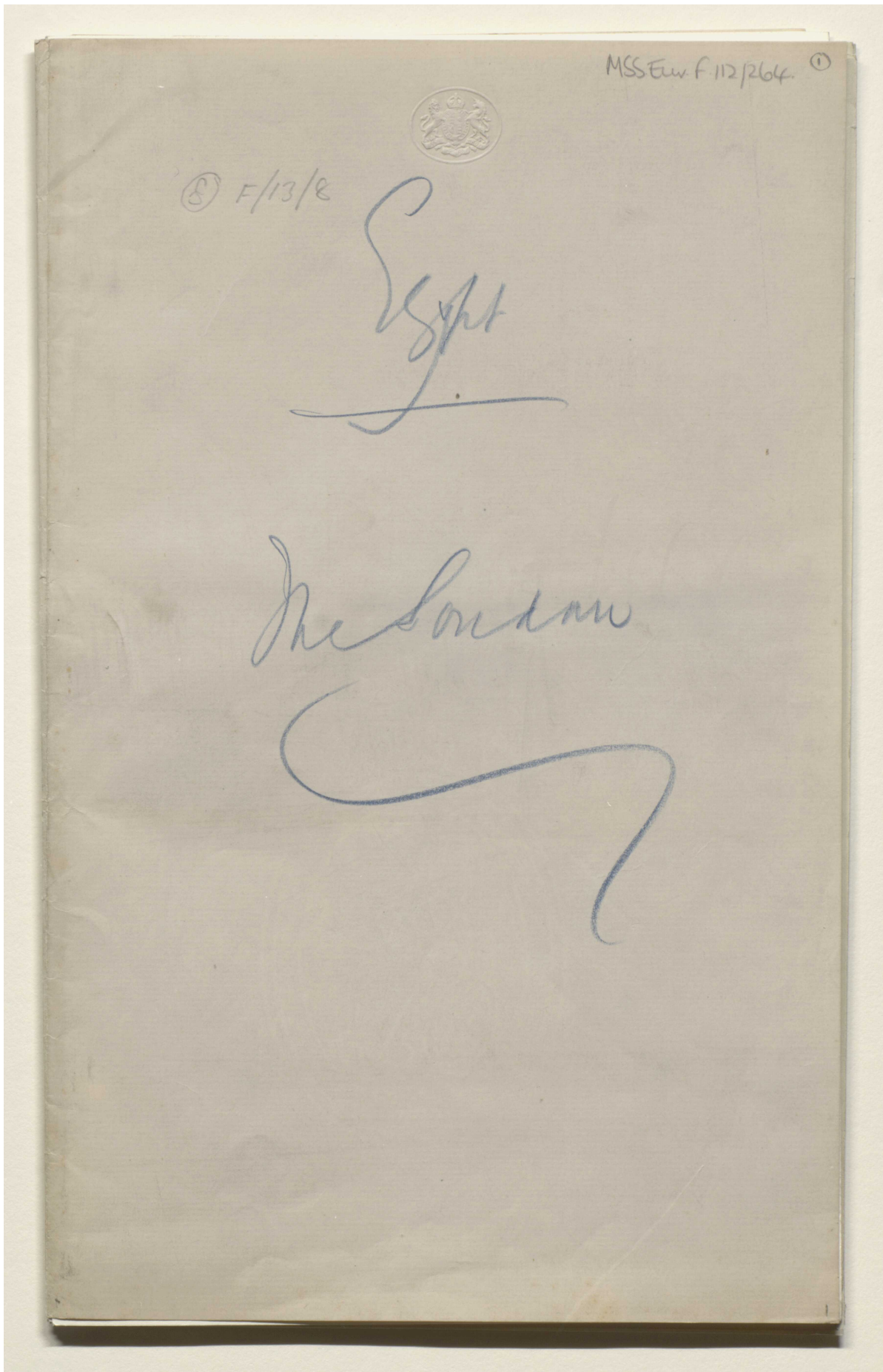
Holding Institution	British Library: India Office Records and Private Papers
Reference	Mss Eur F112/264
Date(s)	17 Jan 1923-14 Feb 1924 (CE, Gregorian)
Written in	English and French in Latin
Extent and Format	1 file (16 folios)
Copyright for document	Public Domain



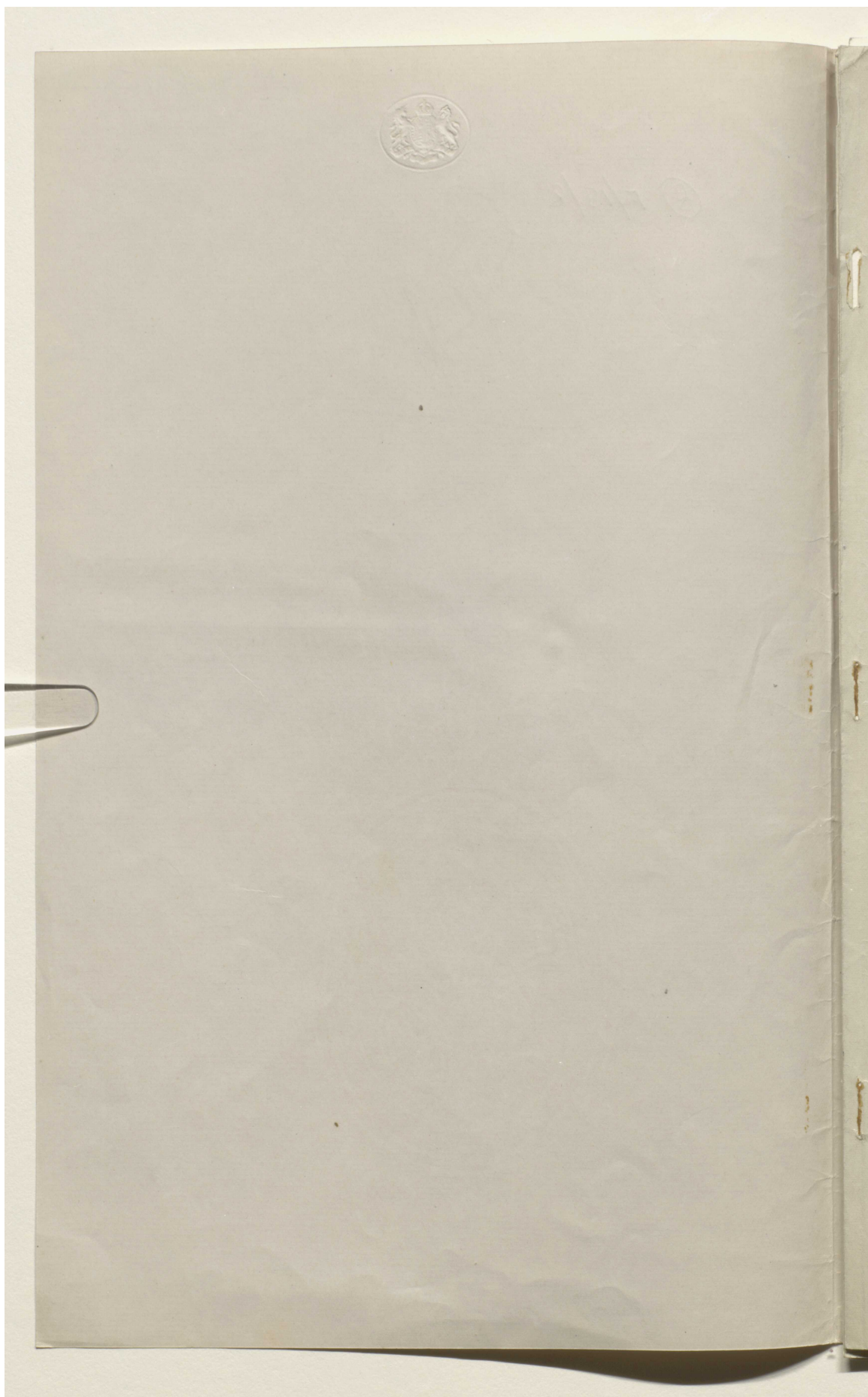
About this record

The file contains printed copies of correspondence, memoranda, and a periodical concerning Egypt and the Sudan (often written as Soudan). The papers relate to the negotiations between Britain and Egypt over the status of Sudan following the end of the British Protectorate in Egypt. They include memoranda by Foreign Office officials, correspondence between Field Marshall Edmund Henry Hynman Allenby (the High Commissioner in Cairo), and Lord Curzon, and copies of *The Near East* which feature articles on Egypt and Sudan (folios 15-17).

'Egypt: The Soudan' [front] (1/36)



'Egypt: The Soudan' [front-i] (2/36)



[This Document is the Property of His Britannic Majesty's Government.]

No. 1.—SECRETARY OF STATE.

EGYPT AND SOUDAN.

[January 17.]

CONFIDENTIAL.

SECTION 1.

[E 789/10/16]

No. 1.

*Memorandum on the Relation of the Soudan to Egypt.**

I.—To the Rebellion of 1882.

The Firmans.

IT was in 1820 that Ibrahim Pasha, under the orders of his father, Mehemet Ali, Pasha of Egypt, began the conquest of what we now call the Soudan. During the succeeding years Mehemet Ali was, however, in a state of continued rebellion against the Porte, and, in consequence, there was no formal recognition by the Porte of the legal status of this new acquisition. In 1840, owing to the intervention of the Quadruple Alliance, Mehemet Ali finally submitted to the Sultan, and in the following year two firmans, both dated the 13th February, were issued defining and regulating his position. Of these the first confers on him, subject to certain conditions, the hereditary government of the Province of Egypt. A map accompanied this firman, showing the limits of Egypt; no copy of this map is available, but it is quite clear that it did not include either the equatorial provinces or the littoral of the Red Sea south of about 21° 5'.† The second firman, which is of great importance for our subject, begins as follows:—

“A mon Vizier Méhémet Ali Pacha, Gouverneur de l’Egypte, à qui a été nouvellement conféré, en outre, le gouvernement des provinces de Nubie, Darfour, Cordofan et Sennaar.—(21 Zilcadé 1256/13 février 1841.)

“Ainsi que le porte un autre firman impérial, je vous ai confirmé dans le gouvernement de l’Egypte à titre héréditaire, avec quelques conditions et certaines limites; de plus, je vous ai accordé, sans hérédité, le gouvernement des provinces de Nubie, Darfour, Cordofan et Sennaar, avec toutes leurs dépendances, c’est-à-dire avec tous les attenants hors des limites de l’Egypte. Guidé par l’expérience et la sagesse qui vous distinguent, vous vous attacherez à administrer et à organiser ces provinces selon mes vues équitables, et à pourvoir au bien-être des habitants.”

At this time, then, the governorship of these provinces, though it was conferred on the same person, was separate from the office of Pasha of Egypt, and the new provinces were not incorporated in Egypt.

2. Had this principle been maintained, then we should have found a series of firmans conferring the non-hereditary jurisdiction over the Central African provinces on the succession of Viceroys who inherited the government of Egypt. No such firmans appear to have been issued; in fact, a careful study of the firmans issued from time to time with regard to Egypt seems to show that the Soudanese provinces were either annexed to, or, under the name of dependencies, regarded as attached to Egypt. There is some difference in treatment between the territories on the western shore of the Red Sea and the Nile provinces. A firman of May 1865 says:—

“Les ports de Massawah et de Suakim vous sont concédés avec la Province de Taka.”

From this time, then, the whole of the coast of the Red Sea is annexed to Egypt; a special tribute was to be paid for this. A firman of the 27th May, 1866, modifying the order of succession, says:—

“J’ai décidé que dorénavant le gouvernement de l’Egypte, avec les territoires qui y sont annexés et qui en dépendent, et avec les caïmacamies de Sévakim et de Moussawa, sera transmis à l’aîné de tes enfants mâles et, de la même manière, aux fils aînés de tes successeurs.”

* Though I have done my best to make the memorandum full and accurate, it deals with very complicated matters, of which I have no special knowledge, and requires the careful criticism and consideration of those who have a more intimate acquaintance with Egyptian law and administration.

† French writers lay stress on the fact that this firman, though an internal act, really constituted an international obligation, for it was communicated to the Powers of the Quadruple Alliance, and could therefore only be altered with their consent.

[205 r—1]

B

The phrase "avec les territoires qui y sont annexés et qui en dépendent" is not defined, but it must be presumed that the second part of it refers to the equatorial provinces over which Egyptian authority had, in fact, recently been extended and confirmed. These words, however, do not occur in the firman of the 8th June, 1867, confirming the title of Khedive on Ismail Pasha. A firman of 1873 consolidates and replaces all the previous firmans and is the most important since 1841. The Law of Succession which it contains applies—

"au Khédivat d'Egypte et de ses dépendances, ainsi que des caïmacamats de Souakim et de Massawa avec leurs dépendances."

From this time we must, I think, take it that the whole of the Soudan, so far as it had been conquered by the Egyptians, is included under the expression "ses dépendances," and becomes part of the hereditary Khedivate. A firman of 1875 confers on the Khedivate the additional territory of the port of Zeyla. A firman of the 2nd August, 1879, appointing Tewfik Khedive, defines the territory over which he shall rule as—

"l'Egypte, tel qu'il se trouve formé par ses anciennes limites et en y comprenant les territoires qui y ont été annexés."

This firman contains also the following paragraph:—

"Le Khédivat ne saura, sous aucun prétexte ni motif, abandonner à d'autres, en tout ou en partie, les privilèges accordés à l'Egypte et qui lui sont confiés, et qui sont une émanation des prérogatives inhérentes au pouvoir souverain, ni aucune partie du territoire."

Anglo-Egyptian Agreement of 1877.

3. The position at this period was elucidated by a convention on the suppression of the slave trade agreed upon by the British and Egyptian Governments on the 17th August, 1877. Under this "the Government of His Highness the Khedive . . . engages to prohibit absolutely from henceforward the importation of any slaves into any part of the territory of Egypt or her dependencies." In another article we find the expression, "in Egypt or on the confines of Egypt and her dependencies towards the centre of Africa." Article 7 runs as follows:—

"The present convention shall come into operation from the date of the signature hereof for Egypt proper as far as Assouan, and within three months from the date of signature for the Egyptian possessions in Upper Africa and on the shores of the Red Sea."

The Soudan, then, is a *dependency* or a *possession* of the Khedive of Egypt. Subject always, of course, to the suzerainty of Turkey, he is internationally recognised as the ruler, and from the international point of view there is no distinction between his authority over Egypt proper and the dependencies.

4. For the purposes of internal administration there was, indeed, a distinction, a distinction which is shown by the proclamation issued by the Khedive giving effect to the provisions of the treaty:—

"La vente des esclaves nègres ou abyssins, de famille à famille, sera et demeurera prohibée en Egypte d'une manière absolue, sur tout le territoire compris entre Alexandrie et Assouan. Cette prohibition aura effet dans sept ans, à partir de la signature de ladite convention, dont la présente ordonnance fera partie intégrante. La même prohibition s'étendra au Soudan et aux autres provinces égyptiennes, mais seulement dans douze ans, à dater de la signature précitée."

But as at this time the Khedive was absolute sovereign, and as there was no constitutional limitation on his absolute power for any part of his dominions, the extent to which the administration of the two portions was, in fact, separated was purely a matter of his personal convenience. Even if owing to the grant of constitutional government in Egypt there had been a complete separation for all internal purposes between Egypt and the Soudan, this would not have affected the right of the Khedive to govern the Soudan as he wished; he could do so through a separate office, or, if he preferred, he could use the Egyptian Ministers for the government of the Soudan. The relationship between the Soudan and Egypt was, in fact, similar to that of India, or any Crown colony to the British Government. Of course, it is obvious that so far as money raised by taxes in Egypt was used for Soudanese purposes, the Government

of Egypt would aim at establishing control over the actual administration of the Soudan

5. For the period with which we have so far had to deal, the facts are quite clear; the Soudan was part of the undisputed possessions of the Khedive, who, subject only to the limitations imposed by the suzerainty of the Porte, as laid down in the firmans, had authority as full and complete as over Egypt itself. On the other hand, international obligations entered into by the Khedive would not properly apply to the Soudan unless this was specifically mentioned; there was, *e.g.*, some doubt whether the jurisdiction of the mixed tribunals established in Egypt extended to the Soudan. Further investigations would be required to determine whether this principle was always observed.

II.—*The Revolt of the Soudan.*

6. In the year 1882 a rebellion broke out in the Soudan, the chief cause of which was the maladministration of the country by Egypt. This rebellion was successful; an Egyptian army was defeated and eventually, in obedience to orders received from the British Government, the Egyptian garrisons were withdrawn from all territory south of the twenty-second parallel of latitude, with the exception of Suakin. As a result of this, the Khedive was, in fact, unable to exercise his authority, and this state of things continued for seventeen years. The mere fact of a rebellion which was not immediately suppressed did not, however, by itself imply any disappearance of the rights enjoyed by the Khedive and the Sultan in virtue of their previous dominion. In order that there should have been brought about any such change in the legal position, something more was required; there must have been the establishment of an orderly Government in the revolting provinces, which was recognised by other civilised States. If we take, for instance, the revolt of the Spanish colonies: although this revolt was successful, the legal rights of the Spanish Government continued until formal recognition of the new state of things was given by England, America, &c., and if at any time before this recognition was given the Spaniards had succeeded in reconquering the colonies, then the fact that there had been a period of disorder and rebellion for as much as twenty years would have been merely a passing episode. Such temporary periods of disorder have been common enough in the history of the Turkish Empire.

7. In the case of the Soudan there never was any formal surrender by the Egyptian Government of its authority, and there is abundant evidence that other States continued to regard the Khedive as the legitimate ruler of the country. In the Anglo-Italian Agreement of the 15th April, 1891, a clause was inserted as follows:—

“It is agreed between the two Governments that any temporary military occupation of the additional territory specified in this article (the Province of Kassala is in question) shall not abrogate the rights of the Egyptian Government over the said territory, but that these rights shall only remain in suspense until the Egyptian Government shall be in a position to reoccupy the district in question . . . and there to maintain order and tranquillity.”*

When in 1894 an arrangement was made by which a certain portion of equatorial Africa was leased to the Congo Free State, the French Government objected to this arrangement on the ground that it infringed the rights of the Sultan and of the Khedive in the provinces of the basin of the Upper Nile, and was incompatible alike with the firman relating to Egypt and with the international acts by which the integrity of the Ottoman Empire had been secured. They added:—

“Is it necessary to mention that for many years these provinces have been occupied and administered by Egypt, and, although the agents of the Khedive, in consequence of events beyond their control, have been obliged quite recently to abandon them for the moment, that the Khedivial Government has never ceased declaring its wish to re-establish its authority there? Moreover, the declaration made by Turkey ratifies in the clearest manner the legal position.”*

Lord Kimberley, in answer to these observations, does not challenge the main principle and gives an assurance that “the claims in question will not be disregarded whenever Turkey and Egypt may be in a position to assert them . . . they are in accord with the Government of France in desiring to preserve intact the possessions of the Sultan.”

* “Egypt, No. 2 (1898),” p. 14.

8. There can be no doubt, then, that at this period the claims of the Khedive and the Sultan, though dormant, were still regarded as valid, and if at any time the Khedive could reassert his authority over his revolted provinces, he would once again be recognised, as before, as the legitimate ruler of the country.

III.—*The Reconquest of the Soudan and the Agreement of 1899.*

9. In fact, the territory was reconquered in the year 1898. After the defeat of the Mahdi's forces it became necessary to provide for the future administration of the Soudan, and this involved a consideration of the legal and political status of the country. This was determined by the Agreement of the 19th January, 1899, between the Egyptian and the British Governments. As is well known, the interpretation of this agreement is, for reasons which will appear, one of very peculiar difficulty. All that we have to do here is to enquire how far and in what way the settlement arrived at affected the relations of the Khedive to the Soudan.

10. It will be convenient first to deal with the situation as it was before the agreement was signed. In this connection we must note that the forces by which the reconquest was achieved were largely Egyptian, though there were associated with them a considerable number of British troops; the larger part of the expense was borne by the Egyptian Government;* the operations were conducted by Sir Herbert Kitchener in his capacity of Sirdar of the Egyptian army; he was, that is, an officer who received his commission from the Khedive.

11. In consequence of the presence of a French expedition at Fashoda, it became necessary immediately after the victory of Omdurman to establish a title to the country. This was done when Sir Herbert Kitchener met Major Marchand at Fashoda. On that occasion he claimed the country, as against the French, as Egyptian, and he hoisted the Egyptian flag alone at Fashoda. All his negotiations with Major Marchand were conducted as Sirdar of the Egyptian army; he stated that he had "reoccupied" the country; he stated that "the Government of the country has been formally resumed by Egypt," and that, "by decree of the Government of His Highness the Khedive, all these countries have been placed under military law." Again, in reporting to the Egyptian Government, Sir Herbert Kitchener says: "I went with a flotilla of gunboats up the White Nile to re-establish the authority of His Highness in the old moudariehs and governorships of the Soudan."

12. In accordance with these statements, the title to the Soudan as against the French rested solely on the revived authority of the Egyptian Government, and, unless there were some definite and formal act by the Egyptian Government renouncing the whole or part of this authority, matters would revert to the *status quo*, as it existed before 1882.

13. The only such formal act is the agreement of the 19th January, and we must now enquire as to the object with which that agreement was drafted and its actual terms.

14. It was drawn up by Lord Cromer, on whose advice Her Majesty's Government acted in these matters. Attached to this are extracts from the official memorandum sent by Lord Cromer when he submitted the draft agreement. From this and from other sources of information we find that Lord Cromer had two main objects in view. First, he desired to secure the practical predominance of Great Britain in the administration of the Soudan in order to avert the misgovernment which had existed before the rebellion, and he apparently desired to make this predominance of a more formal and permanent character than attached to the exceptional and precarious control which the British Government in fact exercised over the Egyptian Government; it must be something which would endure, even though the Egyptian Government were to recover its full independence as regards Egypt proper. Secondly, it appeared to him to be of the highest importance that the Capitulations, involving as they did the privileged position of foreigners, which had been so disastrous in Egypt, and the mixed courts, should not apply to the Soudan. The second point required a separation between the administration of the Soudan and Egypt more precise and complete than had hitherto existed; this, however, as we have seen, need not present any serious difficulty. It would be easy enough to distinguish between the administration of the Soudan and Egypt without in the least impairing the full sovereignty of the Khedive over both countries. The

* In the final settlement apparently, out of the total cost of some 2,000,000*l.*, the actual cost to the British Treasury was a little over 500,000*l.*

Capitulations and the Mixed Courts were involved, however, in the question of Turkish suzerainty, for they applied to all parts of the Turkish Empire; it was necessary, therefore, in some way or other, to diminish, if not completely to abolish, Turkish suzerainty. On the other hand, for general political reasons it did not appear safe openly and avowedly to declare that the Soudan had ceased to be a portion of the Turkish Empire.

15. Lord Cromer's own statement of his objects and methods is, as one would expect, in form extremely moderate; all that he requires is a recognition that Her Majesty's Government has "predominant rights in the determination of the future régime of the country," and that, in accordance with this, the Governor-General, to whom the actual authority is to be entrusted, shall act under the instructions of the British Government, and he expressly states that the Soudan, "though possessing a separate political status, is still to be Egyptian territory." This all seems to point to an agreement by which the Khedive, still preserving his legal authority, shall formally undertake to exercise it in conformity with the wishes of the British Government.

16. Now, if we turn to the agreement itself, we find that this seems to be, in fact, what it means. There is in it no surrender on the part of the Khedive of such share of sovereignty as he had previously enjoyed; on the contrary, it contains positive evidence that in form the Khedivial authority is maintained. We find it expressly stated that the provinces of the Soudan had been under the authority of the Khedive, that by the late rebellion they were temporarily lost to Egypt, and that they had been regained by the joint military and financial efforts of the British Government and the Government of the Khedive. The words "temporarily lost" are, I think, important; they certainly seem to imply that by the reconquest they had been restored to Egypt, and that the result of the reconquest was the re-establishment of the quasi-sovereignty of the Khedive, and with it the suzerainty of Turkey. It must also be noted that under the new arrangement which was brought into force by this agreement the actual power over the Soudan was transferred to a Governor-General, but this Governor-General, though he was nominated by the British Government, is appointed by Khedivial decree; this implies that formally his authority is derived from the Khedive.

17. As against this, there are two points only that might be made. First, the words in the preamble:—

"It is desired to give effect to the claims which have accrued to Her Britannic Majesty's Government by right of conquest."

Now, the introduction of the conception of a "right of conquest" is clearly inconsistent with the conception of the restoration of Khedivial authority, for, if the *de jure* sovereignty had always remained with Egypt, then a right of conquest could only have been established as against the Egyptians by an army at war with them, and not by forces acting as allies of the Egyptians. So far as these words go, this agreement is inconsistent with itself. It was, as it was intended to be, a compromise, but one which was made by including in it divergent and inconsistent claims. I cannot, however, imagine that this single phrase inserted in the preamble could be taken as sufficient to outweigh the other parts of the agreement. The utmost that could be said would be that, as there was a clear inconsistency, neither party to the agreement was justified in interpreting the whole except by agreement with the other. Secondly, we have the agreement that the British and Egyptian flags should be used together throughout the Soudan. To this Lord Cromer refers in a speech delivered on the 4th January, 1899, at Omdurman (delivered, that is, before the publication of the agreement). He says:—

"You see that both the British and Egyptian flags are floating over this house. That is an indication that for the future you will be governed by the Queen of England and the Khedive of Egypt. The sole representative in the Soudan of both the British and Egyptian Governments will be the Sirdar, in whom both Her Majesty the Queen and His Highness the Khedive have the fullest confidence."*

This language certainly seems to imply that there will be a formal co-dominion in which the sovereignty of the Soudan is shared by the Queen and the Khedive. All we can say is that in the agreement, and it is the agreement which alone counts, there

* Mr. Rodd to Marquess of Salisbury, January 5, 1899.

is no indication of such a co-dominion. All that there seems to be is a delegation of authority by the Khedive to an officer nominated by agreement with the British Government.

18. Additional evidence in favour of this view is to be found in the fact that under the new arrangement the whole charge for the very considerable deficit in the administration of the Soudan, amounting annually to about 2,000,000*l.*, was a charge upon the Egyptian budget. It is inconceivable that the Egyptian Government should have consented to bear this expense unless they had believed that the Soudan still remained part of the territories of the Khedive, and the British Government, by its refusal to bear any part of the expense, seems to have given up any right to claim that it was in any real manner a co-sovereign.* Finally, we must note that the agreement was never officially communicated to foreign Governments; the convention, therefore, has no force as against other States; the Khedive, in signing it, did not perform any act of external sovereignty, and he was only exercising his right of making arrangements for the internal administration of the territory accorded to him by the firmans.

Lord Salisbury's Statements.

19. I venture to think that difficulties of interpretation to a large extent arise not so much from the text of the agreement itself as from the statements made at the time, both confidentially and publicly, by Lord Salisbury. It was he who, more clearly than Lord Cromer, laid stress on the theory of title by right of conquest. Obviously he was influenced in doing this by the desire to eliminate as far as possible the assertion of the suzerainty of the Sultan. In conversations with the French Ambassador on the 6th and 12th October, 1898, his language is not inconsistent with the view that all which had happened was the restoration of the dormant authority of Egypt:—

"I pointed out to him that the Egyptian title to the banks of the Nile had certainly been rendered dormant by the military successes of the Mahdi, but that the amount of right, whatever it was, which by those events has been alienated from Egypt had been entirely transferred to the conqueror."

"I generally insisted on the view that the Valley of the Nile had belonged, and still belonged, to Egypt, and that whatever impediment or diminution that title might have suffered from the conquest or occupation of the Mahdi had been removed by the victory of the Anglo-Egyptian army of the 2nd September."†

But in conversation with the Turkish Ambassador, Lord Salisbury used language of a different complexion:—

"I said we had undoubtedly conquered the territory governed by the Khalifa. . . . Since these firmans had been granted the Soudan had been conquered by an invader whom the Sultan did not attempt to resist, and whom the Khedive was not able to drive back. It had been conquered territory for thirteen years. There was no ground in international law for saying that when, mainly by the action of a third party, such as Great Britain, the Khalifa was driven out of the territory he had conquered, the rights of the Sultan, which had been extinguished thirteen years ago, revived in force for his benefit, though he had taken no part whatever in recovering them from the dominion of the Khalifa."‡

And in other conversations during January and February 1899 he gives expression to similar views. We have here, then, the theory that the rights of the Sultan had lapsed, that there had been an invasion, a conquest, a reconquest, and that, consequently, a completely new state of things had arisen. It would have been very difficult to defend this language against criticism, and Lord Salisbury, while he continued to give expression to his views to the Turkish Ambassador, always refused to enter into any discussion of the point. The statement is incorrect. There had

* The financial arrangements and the argument which may be derived from them can only be discussed by someone who has personal knowledge of Egyptian administration. A French writer quotes the following resolution passed by the Legislative Council of Egypt at the first meeting after the publication of the convention of January 19, 1899: "Nous avons constaté qu'aux dépenses figure une somme de £ E. 417,000, destinée à combler le déficit des recettes du Soudan, bien que le Gouvernement n'ait fait mention ni des recettes ni des dépenses. Le Conseil législatif approuve, néanmoins, cette somme, attendu que le Soudan fait partie intégrante de l'Égypte."

† "Egypt, No. 3, (1898)."

‡ Lord Salisbury to Mr. N. O'Connor, February 22, 1899.

been no invasion, but only a rebellion. The theory that the rights of the Sultan had been extinguished by what had taken place seems inconsistent with the documents quoted in a previous section, showing that, in the view of the British Government, the rights of the Khedive were still valid, for the Khedive held his position in virtue of a firman from the Sultan. Again, the statement that the Sultan "had taken no part whatever in recovering the territory" is inconsistent with the language used by Lord Cromer, in which he definitely says that the Egyptian army forms part of the Ottoman army.

20. Speaking in the House of Lords on the 7th February, 1899, Lord Salisbury said:—

"We hold the dominions of the Khalifa by two titles. We hold them undoubtedly as having formed part of the possessions of Egypt, of which we are now in occupation, but we also hold them by a much less complicated, much older, much better understood title—the title of the conquest. They were conquered by the British and Egyptian forces, and I was careful in the first communication I made to the French Government to place our title upon the basis of conquest, because I believed it to be the most useful, the most simple and the most salutary of the two. But I earnestly repudiate the inference, if anybody be inclined to draw it, that we intended to dispute the title or to commit any injustice towards our ally, the Khedive. We have fully recognised his position. When the noble lord asks whether we recognise the position of any other Power, I reply to him that we rely upon the title of conquest. Whether the Soudan was a portion of the Ottoman dominions at any time I have great doubts; at least, a very small portion of it was. But whether this was so or not, it had been conquered by the Khalifa, and it had been occupied for thirteen years. But that the result of the Egyptian and the British army should be simply to revive the claims and titles which events had swept away on behalf of those who took no part in our action is a claim which, I think, cannot be sustained by historical precedent or by international law. We hold it by conquest."

It is scarcely necessary to point out that the two titles to which Lord Salisbury appeals are not merely different from one another, but inconsistent with one another; ultimately there must be a decision between them, and, if so, there can be no doubt that the title of conquest would have to go, for, as pointed out, a right of title by conquest could only be as against the *de jure* ruler of a country; we were completely pledged to the recognition that the Khedive was the ruler, and a title by conquest could therefore be acquired not by troops who were acting as allies of the Khedive, but only by those who were acting in opposition to him.

21. As a result of numerous conversations, the Sultan ultimately expressed himself to be fully satisfied with the explanations given by Lord Salisbury to the Turkish Ambassador. At this Lord Salisbury himself was much surprised. The explanation suggested by Sir N. O'Connor was that there had not been, as the Sultan probably apprehended, any express repudiation of Ottoman suzerainty. He was therefore probably satisfied that his claims, such as they were, remained unimpeached, and that he would at some future date, if occasion arose, be able to appeal to them.

22. In summing up the events of this period, there is one final observation to be made. The only thing which has real authority is the actual text of the agreement; as against the text of the agreement, no statement or interpretation given by a British statesman alone can have any weight, for it does not bind the other party, which is the Egyptian Government; still less does it bind the Porte, which was not consulted in the whole matter. As regards the agreement itself, it may, I think, be stated with considerable assurance that no Egyptian Minister would have been found to put his signature to any instrument by which the Khedive formally resigned his authority over the Soudan; if he had done so, he would have been acting *ultra vires*, for this would have been to disregard the firmans, in virtue of which the Khedive himself held authority in Egypt.

IV.—The War and the British Declaration of February 1922.

23. At the end of 1914 proclamations were issued both in London and Cairo by which the suzerainty of Turkey over Egypt was terminated, a British protectorate over Egypt proclaimed, the Khedive Abbas deposed, and Prince Hussein appointed

'Egypt: The Soudan' [5v] (10/36)

8

in his place as Sultan of Egypt. In all these acts there is no mention of the Soudan, and undoubtedly, when they were drafted, it was Egypt alone, and not the Soudan, which was considered. None the less, it must be taken that, at any rate, the termination of Turkish suzerainty applied to the Soudan as well as to Egypt proper, for, if it had not done so, the suzerainty of Turkey over the Soudan would have continued. We are therefore driven to the conclusion that in acts of this kind the word "Egypt," even if the Soudan is not specifically mentioned, includes the Soudan, and that for the purposes of international relations the Soudan must be considered part of Egypt.

24. We can now pass on to the final stage—the unilateral declaration issued by the British Government on the 22nd February, 1922. By this Egypt is recognised as a sovereign independent State. The question now arises, does the word "Egypt" as used in this proclamation include the Soudan? Surely there can be no doubt that it does, for the following reason. Certain matters are reserved to the discretion of His Majesty's Government pending the conclusion of arrangements as to them; these matters are four in number, and include the Soudan; the Soudan, that is, is treated in this document as a matter exactly parallel to, for instance, the protection of foreign interests in Egypt and the protection of minorities; the protection of minorities is a purely internal Egyptian matter, with regard to which the control is to be left to the British Government: as the Soudan is placed in the same category, without any intimation that it stands on a different footing, it surely follows that it is also an internal matter, which would (unless there was an agreement to the contrary) be under the control of the Egyptian Government, and, therefore, that the territory of the Soudan is part of the independent sovereign State; all that is said is that the administration of a certain function of government and the administration of a certain district within this State are to be dealt with in a particular manner. If it had been intended that the Soudan was to be regarded as outside the independent sovereign State of Egypt, then it should have been dealt with in a separate paragraph, so as to make this clear. But at the time this proclamation was issued Egypt was an absolute monarchy; the sovereignty was at the date of this declaration held by the King; if, then, the Soudan is part of the sovereign State of Egypt, the King of Egypt is *ipso facto* King of the Soudan.

J. W. HEADLAM-MORLEY.

January 17, 1923.

Extracts from Explanatory Memorandum Submitted by Lord Cromer in Enclosing Draft Agreement with the Egyptian Government, November 10, 1898.

* * * * *

"What, therefore is the political status of the country (Soudan) to be? Annexation by England would, of course, solve all the difficulties of which I am now treating. But I understand that, for many obvious political and financial reasons, we do not wish to annex. On the other hand, the recognition of the Soudan as a portion of the Ottoman dominions, in no way distinct from the rest of Egypt, would perpetuate all the international difficulties and obstruction of which, during the last fifteen years, we have had such an unfortunate experience in dealing with Egyptian affairs. Under these circumstances, we have to find a compromise between the two extremes. Such a compromise may, I think, be found; but it is to be remembered that we shall be creating a status hitherto unknown to the law of Europe, and that, therefore—more especially in view of the extreme complication of some of the details—it is no easy matter to put down on paper any arrangement which may confidently be predicted to be workable in practice and perfectly capable of defence in all its parts by valid and logical argument.

"I think the arrangement had better take the form of a convention or agreement with the Egyptian Government.

"The validity of any such convention may, and without doubt will, be challenged.

"In the first place, it may be argued that, under the Imperial firmans, the Khedive has no right to make any treaty with a foreign Power other than commercial and customs conventions, and those which concern the relations of foreigners with the internal administration of the country.

"Moreover, it is laid down in the firman to the present Khedive that he 'shall not, on any pretext or motive, abandon to others, in whole or in part, the privileges

accorded to Egypt, which are entrusted to him, and which pertain to the inherent rights of the sovereign Power, nor any portion of the territory.'

"To arguments based on these considerations a two-fold answer may be given.

"In the first place, it may be said that the convention is no treaty properly so called; that in signing it the Khedive will not perform any act of external sovereignty; that he will merely be exercising his acknowledged right of making arrangements for the internal administration of the territory accorded to him by the firmans; and that the fact of the Egyptian flag continuing, in concert with the British, to fly everywhere in the Soudan, shows that the suzerainty of the Sultan is, in part at all events, still recognised in that country.

"This argument is, however, in my opinion, weak, for the more we dwell on whatever fragment of the Sultan's suzerainty which will remain, the more difficult will it be to differentiate the Soudan from the rest of the Ottoman dominions in respect to the treatment of Europeans and other subjects.

"I prefer, therefore, to take our stand boldly on the second argument, and that is that the Egyptian army, which forms part of the Ottoman army, was unable to maintain its position in the Soudan, and would, unaided, have been quite unable to reconquer that country; that the reconquest has been effected by English money, English troops, and Egyptian troops officered and trained by Englishmen; that this fact confers on Her Majesty's Government, on the recognised principles of international law, predominant rights in the determination of the future régime of the country; that the question of whether the Khedive is acting within his rights is therefore beside the mark, for that, rather than ceding anything to England, he is obtaining concessions from England.

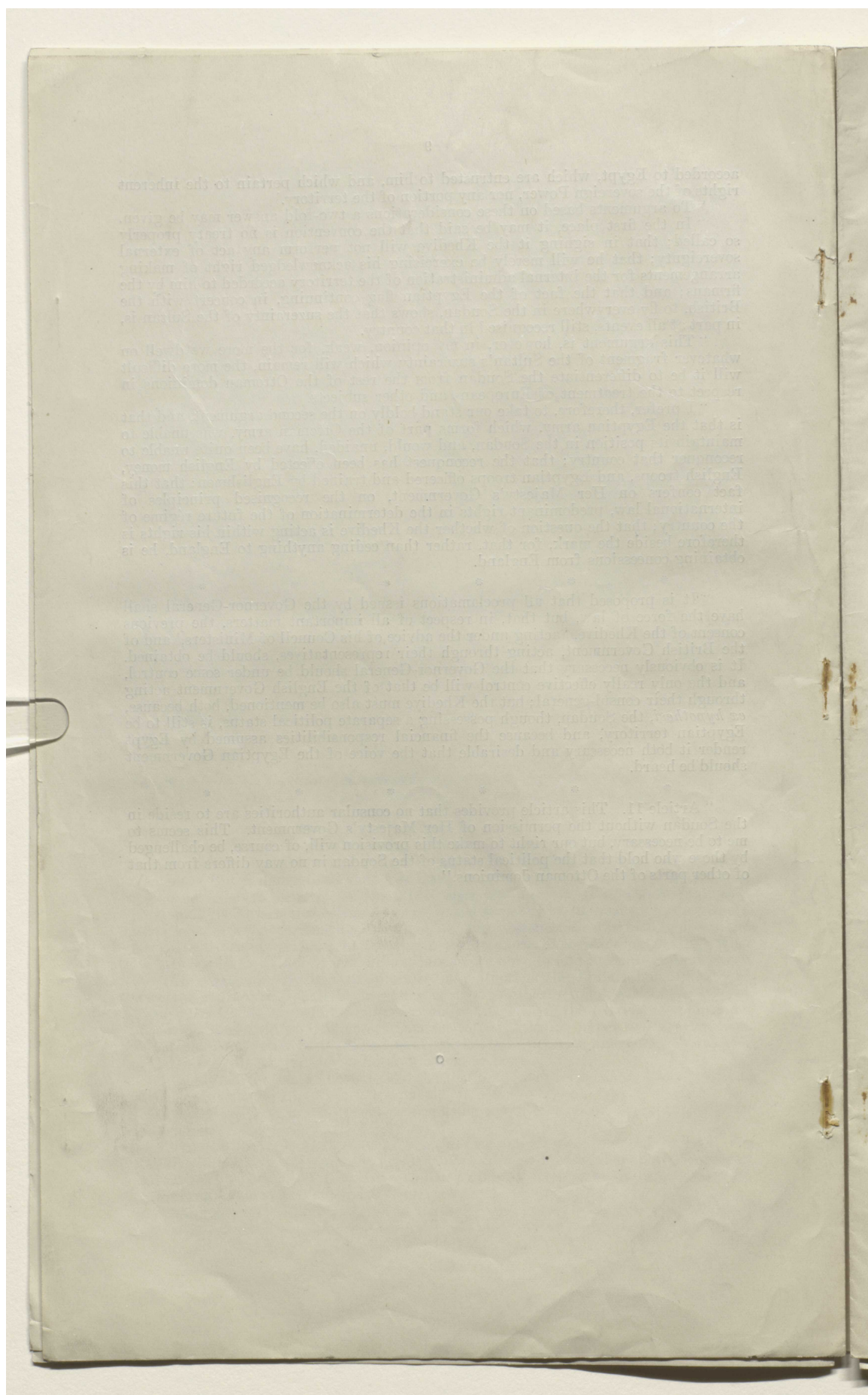
* * * * *

"It is proposed that all proclamations issued by the Governor-General shall have the force of law, but that, in respect of all important matters, the previous consent of the Khedive, 'acting under the advice of his Council of Ministers,' and of the British Government, acting through their representatives, should be obtained. It is obviously necessary that the Governor-General should be under some control, and the only really effective control will be that of the English Government acting through their consul-general; but the Khedive must also be mentioned, both because, *ex hypothesi*, the Soudan, though possessing a separate political status, is still to be Egyptian territory, and because the financial responsibilities assumed by Egypt render it both necessary and desirable that the voice of the Egyptian Government should be heard.

* * * * *

"Article 11. This article provides that no consular authorities are to reside in the Soudan without the permission of Her Majesty's Government. This seems to me to be necessary, but our right to make this provision will, of course, be challenged by those who hold that the political status of the Soudan in no way differs from that of other parts of the Ottoman dominions."

'Egypt: The Soudan' [6v] (12/36)



[This Document is the Property of His Britannic Majesty's Government.]

No. 1.—SECRETARY OF STATE.

EGYPT AND SOUDAN.

[February 19.]

CONFIDENTIAL.

SECTION 2.

[E 1958/10/16]

No. 1.

Field-Marshal Viscount Allenby to the Marquess Curzon of Kedleston.—(Received February 19.)

(No 83.)

Cairo, February 11, 1923.

My Lord,

I HAVE the honour to refer to my telegram No. 39 of the 25th January, 1923, and to relevant correspondence on the subject of the situation arising out of the terms of the articles concerning the Soudan in the draft Constitution for Egypt.

2. In accordance with the authority conveyed to me in your Lordship's telegram No. 38 of the 30th ultimo, I informed King Fuad on the morning of Friday, the 2nd instant, that I had a communication to make to His Majesty on behalf of His Majesty's Government, and I asked him to grant me an audience in the course of the afternoon.

3. His Majesty received me at 4 o'clock, and I began by reading to him a short covering letter expressing the hope that neither the King nor his Government would persist in an attitude of which so serious a view was taken by His Majesty's Government, but would see their way to authorise me, without delay, to give the necessary assurances to your Lordship. The letter then drew His Majesty's attention to the two annexes attached to it, and invited him to give these assurances in a document bearing his signature and drawn up in the form set forth in Annex No. 2, which was based on the text of my telegram No. 43 of the 26th ultimo. It went on to state that, should His Majesty fail to affix his signature to this document, my instructions were so to inform your Lordship and to publish the essential parts of Annex No. 1, which was based on the text of my telegram No. 39 of the 25th ultimo.

4. Copies of the covering letter and of the two annexes in English and French are enclosed herein.

5. His Majesty listened in silence to the reading of Annex No. 1 until I reached the last paragraph, when he protested violently against the suggestion that he was attempting to secure autocratic powers or had any inclination or intention to depart from the policy, which he had pursued for the last five years, of loyal co-operation with the Residency and with His Majesty's Government. He then begged me to proceed with the reading.

6. When I came to the end of Annex No. 2, I reminded His Majesty that my instructions were to invite him to sign it, and that I proposed to ask him to return it to me, so signed, by 7 o'clock.

7. He said that the communication I had just made to him was a matter of the gravest importance, upon which he could not take a decision on his sole responsibility. He begged me therefore not to make the communication in the form of an ultimatum, but to allow him time to discuss the question with his Ministers. He pointed out that as it was Friday it might be difficult for him to gather his Ministers together, and, while he would do his best to send me a reply by 7 o'clock, he asked that I should allow him time until noon on the following day. I agreed to do so.

8. I then handed to His Majesty texts in English and French of the covering letter and the two annexes, together with a personal letter emphasising briefly the unwisdom of the assumption of autocratic powers by a constitutional monarch, the reasons for which His Majesty's Government had come to hold this view of the part played by the King in recent affairs in Egypt and the concern felt by them on this account. The audience then terminated.

9. While I was with the King a member of my staff called on the Prime Minister and handed to him officially on my behalf a communication embodying the text of Annex No. 1 with the omission of the last paragraph, together with copies of Annex No. 2 and of my covering letter to the King, with the omission of the words at the end of the last sentence drawing His Majesty's attention to the last paragraph of Annex No. 1 in the form in which it was presented to him. These two documents were communicated to the Prime Minister unofficially.

[229 t-2]

B

'Egypt: The Soudan' [7v] (14/36)

2

10. At 7 o'clock the Prime Minister called upon me and submitted to me the following two formulæ for the Soudan articles of the Constitution :—

"1. Le titre que portera le Roi d'Égypte sera établi après que les délégations autorisées auront fixé le statut définitif du Soudan."

"2. La présente Constitution est applicable au Royaume d'Égypte."

"Cette disposition ne porte aucune atteinte aux droits qu'a l'Égypte au Soudan."

11. Tewfik Nessim Pasha stated that if these formulæ appeared to me to be acceptable he would endeavour to secure the assent of his colleagues to their insertion in the Constitution. I replied that the first, although clumsy, seemed to me to be harmless, and that the second appeared to be a translation of a formula already proposed by your Lordship. I would therefore submit them to your Lordship for your consideration. I pointed out, however, that before doing so I should expect to receive from the King a favourable reply to the communication I had made to His Majesty.

12. The Prime Minister called again at 10 o'clock on the following morning, and informed me that these formulæ had been accepted by his colleagues.

13. In reply to my question whether the King had expressed his willingness to sign the document I had given to him, the Prime Minister said that he had been directed by His Majesty to suggest that it would be more in consonance with constitutional practice if the document in question were signed by Mahmud Fakhry Pasha as Minister for Foreign Affairs. I made it clear that I could not entertain such a suggestion.

14. Just before 12 o'clock I received a visit from M. Robert Rolo, who came on the King's behalf to reiterate this request, and, on receiving a negative reply, he stated that he was confident of being able to persuade His Majesty to sign if a little more time were allowed to him. I replied that, as I was anxious to do what I could to help the King to extricate himself from the difficulty he had fallen into, I was willing to allow him a respite, but that I should expect to be informed of the nature of the reply His Majesty was going to make by 1:30.

15. At 1:30 Fakhry Pasha telephoned from the palace to ask whether I would be willing to receive the Prime Minister and himself in the course of the afternoon. He was informed, in reply, that I was at a loss to understand the purpose of such a visit, and that I was unable to assent to it. The hour by which, as I had been given to understand, the King's reply would be in my hands was already past, and I could only assume that His Majesty was still hesitating. I should be glad therefore if he would ask the King to indicate a time at which he would be disposed to receive another visit from myself. Fakhry Pasha replied that he would convey this message to His Majesty.

16. Shortly after 2 o'clock Said Pasha Zulficar, the Grand Chamberlain, called to make, as he said, a last appeal that the signature of Fakhry Pasha or Tewfik Nessim Pasha should be accepted in place of that of the King. I replied that I had already allowed His Majesty a long respite, and that there were limits to my patience; if he persisted in withholding his reply I should be obliged, to my regret, to inform your Lordship that he was unwilling to accede to the wishes of His Majesty's Government. Said Pasha hastened to assure me that from the outset the King had been ready to sign, but had been in some fear lest such an act on his part might be represented as unconstitutional. I replied that this was an aspect of the question that did not concern me. I had explained to the King the terms of my instructions, and I could not depart from them. I reminded Said Pasha at the same time that, failing an immediate message from the King indicating the nature of his reply, I should be compelled to ask His Majesty to receive me again.

On his return to the palace Said Pasha telephoned to say that the reply would be in the affirmative, and that he would bring to me at 7 o'clock a document in the form suggested bearing the King's signature.

Precisely at 7 o'clock Said Pasha returned with a type-written document signed by the King. On examining it I perceived that, in addition to certain textual alterations of no special importance, the concluding sentence had been so redrafted as to omit the words "... accepte les vues du Gouvernement de Sa Majesté britannique." I accordingly informed the Grand Chamberlain that I could not accept the document in the form in which it stood, and after making the necessary corrections I returned it to him and asked him to invite His Majesty on my behalf to direct that it should be recopied in its corrected form and to sign it without further delay.

'Egypt: The Soudan' [8r] (15/36)

3

Towards 9 o'clock Said Pasha returned to the Residency bearing a document in the form I desired. A copy of the document is enclosed herein. At the same time he brought with him a copy of a letter addressed to the King by his Ministers, informing His Majesty that, in view of the assurances he had received from myself to the effect that His Majesty's Government had no wish to call into question either the rights of Egypt in the Soudan or their rights to the waters of the Nile, the Prime Minister and his colleagues had agreed to the insertion in the Constitution of two articles in the form already stated. A copy of this letter is enclosed herein.

On the receipt of these communications from the Grand Chamberlain, I despatched to your Lordship my telegram No. 55 of the 3rd instant.

I have, &c.
ALLENBY, F.M.,
High Commissioner.

Enclosure 1 in No. 1.

Field-Marshal Viscount Allenby to King Fuad.

Cairo, February 2, 1923.

I AM directed by the Marquess Curzon of Kedleston to present to your Majesty the documents annexed hereto and numbered respectively 1 and 2.

I need not dilate to your Majesty upon the grave nature of the first of these two communications. I earnestly hope that your Majesty and your Majesty's Government will not persist in an attitude of which so serious a view is taken by the British Government, and will see your way to authorise me without any delay to give the necessary assurances to His Britannic Majesty's Government. The form in which His Britannic Majesty's Government invites your Majesty to give these assurances is set forth in Annex No. 2, which I am to ask your Majesty to sign. Should your Majesty fail, after consideration, to affix your signature to this second document, my instructions are that the essential parts of the first document are to be forthwith published. What further action His Britannic Majesty's Government may take in this case I shall not endeavour to anticipate, but I venture to call your Majesty's attention to the last paragraph of Annex No. 1.

Annex No. 1 to Enclosure 1.

HIS Britannic Majesty's Government will not recognise the assumption by His Majesty the King of Egypt of the title of King of the Soudan, and, should His Majesty assume it, they will so inform foreign Governments.

His Britannic Majesty's Government will regard such an act on the part of His Majesty the King of Egypt not only as discourteous to His Britannic Majesty's Government, but as an unfriendly act, constituting a denunciation of the Agreement of the 19th January, 1899, and a repudiation of the Declaration of the 28th February, 1922. His Britannic Majesty's Government will consider themselves at liberty to review their position in both these respects.

While repudiating any act on the part of the Egyptian Government which in their judgment is contrary to the Agreement of January 1899 or the Declaration of February 1922, His Britannic Majesty's Government wish it to be clearly understood that they have not the least intention of interfering with the full rights of Egypt to the waters of the Nile.

His Britannic Majesty's Government are at a loss to understand the reasons for which the Government of His Majesty the King of Egypt can have contemplated making use of the Constitution as a means of forestalling future negotiations on the subject of the Soudan, and thus bringing His Britannic Majesty's Government into an unwelcome attitude of apparent opposition to the restoration of representative institutions in Egypt, on the faith and in the expectation of which the protectorate was abolished.

It is evident that His Britannic Majesty's Government, having abolished the protectorate chiefly with the object of giving satisfaction to the aspirations of the Egyptian people, cannot view with approval continued delay in the establishment of the constitutional liberties which have been promised, a delay which involves the

[229 t—2]

B 2

8

'Egypt: The Soudan' [8v] (16/36)

4

perpetuation of an autocratic system which is far from commending itself to the views of that Government.

His Britannic Majesty's Government hope to see the questions which remain to be discussed between Great Britain and Egypt resolved by negotiation between the two countries, and consequently cannot but desire to see a constitutional régime set up in order that these negotiations may be undertaken with the authorised representatives of the Egyptian people.

By adhering to the course he has in contemplation His Majesty the King of Egypt will forfeit the amity of His Britannic Majesty's Government, who have for some time past reviewed with disquietude His Majesty's sustained efforts to arrogate to himself autocratic power, and, bearing in mind the evils of the personal régime which brought about their intervention in Egypt in 1882, they will henceforth closely scrutinise His Majesty's personal acts.

Annex No. 2 to Enclosure 1.

AS certain clauses relating to the status of the Soudan, the insertion of which in the Egyptian Constitution had been under consideration, were held by His Britannic Majesty's Government to contain implications not reconcilable with the Agreement of the 19th January, 1899, or with the terms of the Declaration of the 28th February, 1922, and inasmuch as the adoption of these clauses tended to modify the *status quo* and to anticipate future negotiations, His Britannic Majesty's Government directed his Excellency the High Commissioner to make representations to this effect to His Majesty the King.

In discharging this mission his Excellency the High Commissioner further expressed to His Majesty on behalf of His Britannic Majesty's Government the hope that the promulgation of a Constitution, in the expectation of which the protectorate was abolished, would not be embarrassed by controversy.

His Excellency the High Commissioner added that, in view of the fact that the protectorate had been abolished more particularly in order to give satisfaction to the aspirations of the Egyptian people, it was evident that His Britannic Majesty's Government could not view with favour a continued delay in the grant of the promised constitutional liberties. It being the hope of the British Government that the matters still in issue may be resolved by negotiations between Great Britain and Egypt, that Government cannot but desire to see a constitutional régime established in Egypt, in order that these negotiations may be undertaken with the authorised representatives of the Egyptian people.

His Excellency the High Commissioner at the same time gave His Majesty a full assurance that His Britannic Majesty's Government had no desire to call in question the rights of Egypt in the Soudan or her rights to the waters of the Nile.

His Majesty the King, in reply, has authorised his Excellency the High Commissioner to transmit a communication to His Britannic Majesty's Government, in which His Majesty states that, having taken the representations and assurances of the British Government into most serious consideration, and being no less desirous than is the British Government that the establishment of constitutional institutions in Egypt should be accomplished without controversy or delay, His Majesty acquiesces in the views of His Britannic Majesty's Government.

Enclosure 2 in No. 1.

Field-Marshal Viscount Allenby to King Fuad.

(Personal.)

February 2, 1923.

I AM authorised by His Britannic Majesty's Government on this occasion to lay particular stress on the anxiety which has been caused to them by your Majesty's tendency to assume autocratic powers in Egypt.

It was the evils produced by unchecked autocracy which led to the intervention of Europe in Egyptian affairs and ultimately to the British occupation of Egypt. If after many years His Britannic Majesty's Government thought themselves justified in granting independence to the country of which they had given the throne to your

'Egypt: The Soudan' [9r] (17/36)

5

Majesty, they did not do so in order that your Majesty should in any way endeavour to assume prerogatives not appertaining to a strictly constitutional monarchy, but in the hope that a genuinely constitutional régime would be established with the least possible delay.

Your Majesty has perhaps not realised the degree of personal restraint, and even self-effacement in political affairs, which is demanded of a constitutional Sovereign, though I recall that on many occasions you have assured me that you sincerely desire to play this part.

His Britannic Majesty's Government have viewed with the liveliest concern many of your Majesty's actions, among which I may mention your impeding the administration of the country by refusing for many weeks during last summer to hold a meeting of the Council of Ministers, your publicly disassociating yourself from one political party and associating yourself with another, your revision of the statutes of Egyptian orders so as to place them to a greater extent within your personal grant, your interference in details of administration, and your personal interest in the political aspects of journalism.

In thus sincerely warning your Majesty of the grave dangers which you are incurring, I need not assure you of the regret with which my Government, which has consistently supported you in a difficult period, would feel themselves obliged to abandon this attitude.

Enclosure 3 in No. 1.

King Fuad to Field-Marshal Viscount Allenby.

Palais d'Abdine, le 3 février 1923.

SON Excellence le Haut-Commissaire a fait part à Sa Majesté le Roi que le Gouvernement de Sa Majesté britannique considérait que certaines dispositions relatives au statut du Soudan, et dont l'insertion dans la Constitution de l'Égypte avait été envisagée, contenaient des stipulations implicitement inconciliables avec l'accord du 19 janvier 1899 ou avec les termes de la déclaration du 28 février 1922, et que leur adoption tendrait à modifier le *statu quo* et à préjuger des négociations futures.

En s'acquittant de cette mission, son Excellence le Haut-Commissaire a ajouté qu'ayant aboli le protectorat surtout dans le but de donner satisfaction aux aspirations du peuple égyptien, le Gouvernement britannique exprimait l'espoir que la promulgation de la Constitution ne serait pas retardée, et que, désirant solutionner, par des négociations à intervenir entre la Grande-Bretagne et l'Égypte, les points qui restaient à débattre, le Gouvernement britannique souhaitait de voir s'établir en Égypte un régime constitutionnel afin que les négociations pussent être entreprises avec les représentants autorisés du peuple égyptien.

Son Excellence le Haut-Commissaire a, en même temps, donné à Sa Majesté la pleine assurance que le Gouvernement de Sa Majesté britannique n'avait nullement le désir de mettre en discussion les droits de l'Égypte dans le Soudan ni ses droits aux eaux du Nil.

Dans sa réponse, Sa Majesté le Roi a autorisé son Excellence le Haut-Commissaire à faire connaître au Gouvernement de Sa Majesté britannique que Sa Majesté, ayant pris en sérieuse considération les représentations et les assurances du Gouvernement de Sa Majesté britannique et désirant sincèrement que les institutions constitutionnelles soient établies rapidement en Égypte, accepte les vues du Gouvernement de Sa Majesté britannique exprimées dans les paragraphes ci-dessus.

FOUAD.

Enclosure 4 in No. 1.

Tewfik Nessim Pasha to King Fuad.

Sire,

J'AI l'honneur de soumettre à votre Majesté que j'ai fait part à mes collègues des assurances formelles que son Excellence le Haut-Commissaire a données à votre Majesté, dans son audience d'hier, que le Gouvernement de Sa Majesté britannique n'a nullement le désir de mettre en discussion les droits de l'Égypte dans le Soudan ni ses droits aux

'Egypt: The Soudan' [9v] (18/36)

6

eaux du Nil. Je les ai ensuite consultés, sur la base de ces assurances, relativement aux dispositions à insérer dans la Constitution et j'ai pu constater qu'ils sont d'accord avec moi sur les deux textes ci-après :

1. " Le titre que portera le Roi d'Égypte sera établi après que les délégations autorisées auront fixé le statut définitif du Soudan."
2. " La présente Constitution est applicable au Royaume d'Égypte.
" Cette disposition ne porte aucune atteinte aux droits qu'a l'Égypte au Soudan."

Je prie votre Majesté, &c.

TEWFIK NESSIM.

'Egypt: The Soudan' [10r] (19/36)

[This Document is the Property of His Britannic Majesty's Government.]

No. 1.—SECRETARY OF STATE.

EGYPT AND SOUDAN.

[March 12.]

CONFIDENTIAL.

SECTION 1.

[E 2652/10/16]

No. 1.

Field-Marshal Viscount Allenby to the Marquess Curzon of Kedleston.—(Received March 12.)

(No. 107.)

My Lord,

Cairo, February 26, 1923.

I HAVE the honour to transmit to your Lordship herewith a copy of observations submitted by Sir Maurice Amos, legal adviser to the Residency, with reference to Mr. Headlam-Morley's memorandum on the relation of the Soudan to Egypt of the 17th January last.

I have, &c.

ALLENBY, F.M.,
High Commissioner.

Enclosure in No. 1.

THE STATUS OF THE SOUDAN.

Observations upon Mr. Headlam-Morley's Memorandum of January 17, 1923.

THE perusal of this important memorandum suggests the following reflections:—

2. The recent discussion between His Majesty's Government and the Government of Egypt as to the status of the Soudan was provoked by the expression on the part of the Egyptian Ministers of an intention to incorporate in the Egyptian Constitution two articles relating to the Soudan, of which the tenour was as follows:—

- (1.) Le Roi portera le titre de Roi d'Egypte et du Soudan.
- (2.) La présente Constitution est applicable à toutes les parties du Royaume d'Egypte, à l'exception du Soudan. Celui-ci, bien qu'il forme une partie intégrante du Royaume, aura un régime propre de Gouvernement à établir par une loi spéciale.

3. The promulgation of these clauses would appear to imply the assertion of the following propositions:—

- (a.) That the Soudan is an "integral part" of the Kingdom of Egypt;
- (b.) That the Egyptian Government is at liberty to determine by Egyptian legislation the "régime de gouvernement" applicable to the Soudan; and
- (c.) That the King of Egypt is at liberty to assume the title of "King of the Soudan."

4. Against any official assertion of these propositions His Majesty's Government thought it necessary to lodge an emphatic protest. They rested their protest on two substantive grounds, namely, (a) that the assertion of these propositions would amount to a denunciation of the agreement of the 19th January, 1899, and (b) that their assertion would constitute an attempt to modify the *status quo* with regard to the Soudan, the maintenance of which was stipulated by the declaration of the 28th February, 1922.*

5. Mr. Headlam-Morley, as the result of his researches, has reached the conclusion that, in taking this attitude, His Majesty's Government have asserted claims which cannot be justified.

In his view, a true analysis of the status of the Soudan immediately prior to the declaration of the 28th February, 1922, reveals a constitutional situation more in

*It was implied in the communication made by His Majesty's Government to the Egyptian Government that the status of the Soudan as determined in 1899 had not been modified in any relevant respect, favourable to the claims of Egypt, in the period which had intervened previous to 1922.

accordance with the Egyptian than with the British contentions; while he also considers (somewhat paradoxically it may seem) that the declaration itself contributes something to the fortification of the Egyptian thesis. He concludes that "the sovereignty (of the Soudan) was at the date of this declaration held by the King (of Egypt); if then the Soudan is part of the Sovereign State of Egypt, the King of Egypt is *ipso facto* King of the Soudan."

6. The author of the memorandum has chiefly directed his attention to the question of the King's title, or rather to that aspect of legal relations between the Soudan and Egypt which affects the claim of the King of Egypt to the title of King of the Soudan. He does not specifically examine the Egyptian claim to establish a "régime propre de gouvernement" in the Soudan "par une loi spéciale." Indeed, it is difficult to see how such a claim could be substantiated unless the view is adopted either that the Convention of 1899 is void, or that it may at any time be denounced by the Egyptian Government, in such a manner as to restore the Soudan to their untrammelled sovereignty. To this subject I shall return.

6A. Before proceeding to the main issues in this question it will be convenient to call attention to a minor logical pitfall against which the Egyptians (and even, in certain passages, the author of the memorandum) do not appear to have sufficiently guarded themselves. Is it contended that the Soudan is part of Egypt, or, is it contended that sovereignty over the Soudan is exclusively vested in the ruler of Egypt and by the same title as that by which he rules Egypt? These are two different ideas. His Majesty King George V does not rule all his dominions by the same title. Even if we assume that the Soudan is subject to the unshared sovereignty of the King of Egypt it does not follow that King Fouad is King of the Soudan.

In point of fact the ex-Khedive Abbas Hilmy Pasha only claimed, in respect of Nubia, the Soudan, Kordofan and Darfour, the title of "souverain."*

7. The Egyptian claim that the Soudan is an "integral" part of Egypt obviously goes beyond anything that can be rationally defended. No stronger language could be used in respect of a Mudirya in the Delta. The only contention that deserves examination is that the Soudan is, and at all relevant times has been, an inalienable dependency of Egypt, subject to the undivided sovereignty of the ruler of Egypt, who is at liberty (a) to adopt with regard to that territory what title he pleases, and (b) to set up such system of government there as he may think proper.

8. Mr. Headlam-Morley's main thesis then is that at the present moment sovereignty over the Soudan is vested in the King of Egypt in a sufficiently absolute manner to entitle him to assume the style of King of those territories. The considerations by which this thesis is supported may be summarised, or at least indexed, as follows:—

- (a.) Prior to the Mahdist rebellion in 1882 the Soudan was a dependency or possession of the Khedive of Egypt and as such was under his sole and absolute sovereignty, subject only to the suzerain rights of Turkey.†
- (b.) The Mahdist rebellion effected no *de jure* alteration in the rights of the Khedive, which merely became dormant.
- (c.) The Soudan was reconquered in the name of the Egyptian Government.
- (d.) There is no indication in the text of the agreement of 1899 that it purported to establish a condominium, "and it is the agreement which alone counts" (cf. paragraphs 10-12 below).
- (e.) As it appears from Lord Cromer's explanatory memorandum of the 10th November, 1898, "and from other sources of information," the objects which the agreement was designed to realise were:—
 - (i.) To secure the practical predominance of Great Britain in the Administration of the Soudan in such a manner that that predominance would endure even though the Egyptian Government were to recover its full independence as regards Egypt proper.

* Cf. the "Almanac de Gotha, 1911." The word "souverain" purports to be a translation of the Arabic word "sahib," which may be more properly translated "lord."

† Mr. Headlam-Morley alludes (paragraph 5) to a doubt having been entertained whether "international obligations entered into by the Khedive (would) properly apply to the Soudan unless this was specifically mentioned; there was, e.g., some doubt whether the jurisdiction of the Mixed Tribunals established in Egypt extended to the Soudan."

I have been unable to trace the existence of this doubt save in the mind of a litigant. In 1878 the Mixed Court of Appeal decided, in the case of *Musalli v. Mina Saad*, that "Khartoum, faisant partie du territoire égyptien, est nécessairement soumis à la juridiction des Tribunaux de la Réforme" ("Recueil officiel," III, 49).

(ii.) To prevent the Capitulations from being applicable in the Soudan.

The agreement was not intended, by its principal author, to deprive the Khedive of his "legal authority" (*cf.* paragraphs 10-12 below).

- (f.) The firman of 1879 prohibits the Khedive from alienating any part of the territories conceded to him. A formal resignation by the Khedive of any part of his authority over the Soudan would have been a breach of this firman, and therefore *ultra vires*, and consequently cannot have been intended by the Egyptian signatory to the agreement of 1899 (*cf.* paragraph 15 below).
- (g.) The absence of any mention of the Soudan in the proclamation of 1914 declaring the protectorate over Egypt must be taken to imply that "for purposes of international relations the Soudan must be considered part of Egypt," since otherwise the suzerainty of Turkey over the Soudan would have continued (*cf.* paragraph 16 below).
- (h.) The declaration of the 28th February, 1922, reserves the question of the Soudan from a grant of independence; consequently, save for this reservation, and subject to the effect of the agreement of 1899, the Soudan would have passed under the untrammelled control of the new independent State; consequently it is a part of that State (*cf.* paragraph 17 below).

9. It will be convenient if, before examining the arguments of the memorandum, the present writer states the propositions which he conceives to be correct. They are as follows:—

- (a.) Previously to the Mahdist rebellion the Soudan was a dependency of Egypt, subject to the sovereignty of the Khedive and to the suzerainty of Turkey.
- (b.) The result of the rebellion was that for sixteen years this sovereignty and this suzerainty became dormant.
- (c.) The Soudan was reconquered by an Anglo-Egyptian partnership, a partnership in which, though its operations were carried on under the "raison sociale" of "Egypt," the predominant partner was the British Government.
- (d.) The prize of the war successfully concluded by the partners was the *de facto* sovereignty over the Soudan.
- (e.) In January 1899 articles of partnership were for the first time concluded; each party made a contribution to the common stock; Egypt contributed the *de jure* sovereignty and a share, though a subordinate one, in the *de facto* sovereignty, in which Britain contributed the major share. The partnership articles vested in each partner an undivided share both in the *de jure* and in the *de facto* sovereignty,* and delegated the exercise of sovereign powers to a new Government.
- (f.) The new Government thus created in the Soudan to give effect to the condominium of the partners does not stand in the ordinary relationship of dependency to either of its overlords; neither Britain nor Egypt can by any ordinary machinery legislate for the Soudan; neither Britain nor Egypt can validly make a treaty on behalf of the Soudan, save with the consent of the latter, involving any obligation to legislate or to take any executive action in the Soudan; no appeal in judicial matters lies from a Soudan court to any court in Egypt or England.

The only legal means by which the two sovereign Governments can give effect to their sovereignty and control the high officer who represents them at Khartoum is either (a) by concurring in his removal or (b) by concurring in a modification in the terms of the pact from which he derives his powers.

10. It will be observed that I see no reason to dissent from the first three propositions in which I have endeavoured to summarise Mr. Headlam-Morley's argument (paragraph 8 (a), (b) and (c)). Our difference arises when we come to consider the effect of the agreement of 1899. I cannot help thinking that Mr. Headlam-Morley has failed to attach their due constitutional significance to the two objects, which he concedes it to have been the intention of this agreement to realise (see paragraph 8 (e)). It appears to me to be indisputable that, whatever

* But the leading share was attributed to His Majesty's Government, who acquired an exclusive voice in the selection of the Governor-General (clause 3), and in the recognition of foreign consuls (clause 10).

may have been said before or afterwards, the agreement effected a change in the sovereignty over the Soudan. It is suggested that this act was of a purely administrative character. "All that there seems to be is a delegation of authority by the Khedive to an officer nominated by agreement with the British Government." It is certainly a "delegation" of an unusual character. The agreement expresses an obligation of an irrevocable character, to appoint, on the nomination of a foreign Government a series of officers, each one of whom, so long as he holds office, exercises almost complete sovereign powers in the territories committed to his charge; the Khedive cannot remove him, cannot give him any orders or instructions, and cannot exercise any of the ordinary attributes of sovereignty over his head. No otherwise, it may seem, could the object have been attained that His Majesty's Government should retain predominant authority in the Soudan in the event of Egypt recovering its independence.

11. But a consideration of an even more peremptory character is the following: It is conceded that the agreement of 1899 was designed to relieve the Soudan from the incubus of the Capitulations. This object was in fact attained. It is then necessary to ask what kind of instrument it was which had the force requisite to effect this result. It is certain that no mere mandate to administer would suffice: even the declaration of a Protectorate has no such effect. Annexation has. It is therefore difficult to avoid the conclusion that, in the view of the Capitulatory Powers, that is to say of Europe and the United States, who have acquiesced in the disappearance of the privileges they previously enjoyed in the Soudan, the agreement of 1899 lay somewhere above the declaration of a British protectorate and somewhere below an out and out annexation. It must at least have involved the vesting of an adequate measure of sovereign authority in a State which was not bound by the Capitulatory treaties.

12 This has been the view of the Mixed Courts. In 1910 the Mixed Court of Cairo sitting under the presidency of the German Judge M. Herzbruch, was called upon to decide upon the relations subsisting between the Egyptian and Soudanese Governments. The judgment contains the following passages:—

"Attendu qu'on ne saurait méconnaître que la situation du Soudan vis-à-vis de l'Egypte n'est pas, après la conquête, restée la même qu'elle était avant :

"Qu'en effet, le Soudan n'est pas revenu à l'Egypte libre de toutes charges, mais grevé du droit de conquête au profit du conquérant, soit la Grande-Bretagne, qui a contribué au succès dans une large mesure et peut prétendre à des compensations de ce chef ;

"Attendu que le droit de conquête a été réglé précisément dans la convention incriminée, d'accord entre les Puissances conquérantes ;

"Attendu qu'il a été établi un véritable 'condominium' au profit des Puissances conquérantes, que, pour ainsi dire, un Etat nouveau distinct et indépendant de l'Egypte a été créé qui a droit d'administrer, de légiférer et de juger ;

"Que l'article 2 dispose que les drapeaux britannique et égyptien flottent ensemble au Soudan, ce qui indique bien que le drapeau égyptien n'y a pas seule autorité ;

"Attendu qu'il est donc manifeste que la convention dont il s'agit est un acte de souveraineté émanant non seulement du pouvoir souverain de l'Egypte, mais encore de celui de la Grande-Bretagne." &c.*

13. The present observations might well be brought to a close at this point. But it may be convenient if some remarks are added upon certain relatively subsidiary aspects of the controversy.

* Bencini et Quistas c. le Gouvernement égyptien ; B.L.J. 1910, p. 12.

A bench of Egyptian judges of the Native Court of Cairo decided in a similar case which arose in 1908 as follows:—

"Attendu qu'il résulte de l'accord intervenu le 19 janvier 1899 entre le Gouvernement de Sa Majesté la Reine d'Angleterre et le Gouvernement de Son Altesse le Khedive d'Egypte que le Gouvernement du Soudan a été fondé et est devenu détaché du Gouvernement égyptien avec un caractère politique propre à lui ; que le Gouverneur général y remplit ses fonctions en vertu d'une autorisation à lui conférée par le Gouvernement britannique conjointement avec le Gouvernement égyptien. Le fonctionnaire susénoncé est également investi du pouvoir de faire les lois nécessaires audit pays où sont installés des tribunaux, en vue de juger les affaires rentrant dans ses circonscriptions territoriales." ("Bulletin officiel," 1909, p. 26.)

In both these cases the point decided was that the Egyptian Government had no civil responsibility for the acts of the Soudan Government. I have found no other cases.

14. Though I venture to think that the author of the memorandum insists unduly upon the exclusive authority of the text of the agreement of 1899, I must agree with him in regretting that English statesmen have on different occasions given explanations of the bearing of that document, which are difficult to reconcile. It will be evident from what precedes that in my view its true character is sufficiently revealed by an analysis of its terms. The analysis of the legal implications of public documents (especially in regard to such recondite matters as the distribution of sovereignty in a veiled *condominium*), is essentially a task for constitutional lawyers; and the most eminent statesmen may be pardoned if they occasionally falter in the subsequent interpretation of the acts which they have themselves negotiated and concluded. Nevertheless it is satisfactory to reflect that the Egyptian Government and people would scarcely be justified in complaining that the attitude of His Majesty's Government in this matter was one the adoption of which they had no reason to anticipate.

Not only had they before them the decisions of their own tribunals, already referred to, but they may fairly be taken to have had notice of a document which, though unofficial, is of indisputable importance as an expression of the views of one who, for the matter in issue, was among the most authoritative of British statesmen. I refer to Lord Cromer's "Modern Egypt." In the second volume of that work, on p. 116, we find: "I proceed to give a brief summary of the contents of this document (the agreement of 1899). The first and most important point was to assert a valid title to the exercise of sovereign rights in the Soudan by the Queen of England, in conjunction with the Khedive."

15. The author of the memorandum urges the consideration that the Khedive cannot be supposed to have infringed the prohibition imposed by the firman of 1879 upon the alienation of his rights; and argues that had he done so, he would have been acting *ultra vires*. This is a somewhat technical plea, and it is difficult to avoid technicalities in examining it. The term *ultra vires* is a forcible one, and does not naturally come to the mind of a lawyer in the presence of a restraint upon alienation: it suggests that an alienation in breach of the prohibition is absolutely and irremediably void—a state of things which is not often met with.

A more natural construction is that a prohibition upon alienation inserted in a grant, vests in the grantor either a right to have a wrongful assignment set aside, or a right to claim a forfeiture of the grant. This, it is submitted, is the more reasonable view to take of the present case; it cannot be suggested that the Khedive was so wholly incapable of ceding his rights that no waiver, condonation, or ratification by Turkey would have sufficed to remedy his deficiency.

We have therefore to enquire what Turkey did.

In the first place we find that she looked on passively at the loss of the Khedive's provinces; then she apparently acquiesced, again in silence, in the assumption by a powerful State of a major share in the exploit of their reconquest, a task in which she took no share; finally when the war was victoriously concluded, and the terms of settlement between the Allies were published, Turkey appears, it is true, to have asked for explanations; but she also appears to have acquiesced in highly unsatisfactory replies. In any event, doubtless because she could not help it, she permitted the agreement to stand—"and the only thing which has real authority is the actual text of the agreement." It would be highly unreal to argue that Turkey cannot have acquiesced in any defeasance of her theoretical rights. On the contrary, it is very likely. In short, I think that we are fully entitled to say that Turkey waived any right of objection which may have accrued to her. And in any case, the present controversy is not with Turkey.

16. It is contended in paragraph 23 of the memorandum that the omission of any express mention of the Soudan from the proclamations establishing the protectorate, implies that "for the purposes of international relations the Soudan must be considered part of Egypt." It may be remarked in reply that it is at least questionable whether the protectorate extended to the Soudan. There were two sovereignties in the Soudan, that of Great Britain and that of the Khedive; the former was clearly not affected by the protectorate; the latter perhaps, or even probably, was: but this was a consequence of a proposition which is not disputed, namely, that the Soudan was, in respect of the Khedive's share in the sovereignty, an Egyptian dependency. Any instrument whereby the Khedive ceased to be a vassal of Turkey extended its effects, without express words, to any place where any part of the Khedive's sovereignty was recognised. But by no logical bridge could the conclusion be reached that this implication involved the exclusive subordination of the Soudan to Egypt.

17. Finally it is argued in paragraph 24 of the memorandum that the question of the Soudan is referred to in the Declaration of Independence in such language as to imply that the Soudan is a part of Egypt. If this argument is to be put into the mouths of the Egyptians, it may fairly be pointed out that they are scarcely entitled to invoke the language of the Declaration of 1922. They have carefully guarded themselves against any formal acceptance of it; and the language of the second article relating to the Soudan (quoted in paragraph 2 above) brings them clearly into conflict with it—as they have been told. However this may be, it is now suggested that the reservation of the question of the Soudan from the grant of independence implies a recognition of the fact that if the Declaration of Independence had been made without any reservation, the question of the Soudan would have remained what it had hitherto been—a purely internal matter.

The first comment which this reasoning suggests is that it proves too much. It points to the conclusion that an independent Egypt would have uncontrolled powers of disposition over the Soudan—a conclusion which the agreement of 1899 was admittedly designed to avert.

But, it may be asked, if it was so clear that this conclusion would have been impossible, why was it necessary to reserve the question of the Soudan? The reply is that the object contemplated in making that reservation was not to prevent Egypt recovering untrammelled sovereignty over the Soudan—it is agreed that no such precaution was necessary—but to preserve, if desired, any effects which the declaration of the protectorate may have had upon the relations between Egypt and the Soudan. It might, for example, be argued that one result of the reservation is wholly to preclude Egypt from any share in the representation of the Soudan in foreign relations.

18. It has been impossible in this note to avoid the atmosphere of legalities. But it may be permitted to me to observe in conclusion that very human matters are at stake.

Many thousands of armed and warlike men in the Soudan, who will not tolerate any substantial extension of Egyptian claims to have authority in their country, are watching the developments of the present controversy with anxiety not unalloyed with suspicion.

'Egypt: The Soudan' [13r] (25/36)

[This Document is the Property of His Britannic Majesty's Government.]

No. 1.—SECRETARY OF STATE.

EGYPT AND SOUDAN.

[August 17.]

CONFIDENTIAL.

SECTION 1.

[E 8362/209/16]

No. 1.

Memorandum by Mr. Murray.

HAVING regard to the probability that the Egyptian Parliament, when it meets, will press for the initiation of negotiations on the reserved subjects in the British declaration of the 28th February, 1922, it appears desirable to take advantage of the presence in England of high officials of the Soudan Government and of the Egyptian Public Works Ministry to attempt to arrive at a decision as to the form in which an agreement between His Majesty's Government and Egypt should be reached in regard to the division of the Nile water supply between Egypt and the Soudan.

Mr. Cory, the American member of the Nile Projects Commission, which was appointed by and reported to the Egyptian Government in 1920, in his minority report on water distribution, laid down the broad principles upon which, in his opinion, an agreement for the allocation of water between Egypt and the Soudan should be based.

M. Dupuis, who was invited by the Egyptian Government to examine and report generally on irrigation questions in Egypt, in his report of June 1923, further developed Mr. Cory's proposals, with which he was in general agreement.

Both M. Dupuis and Mr. Cory, however, contemplated an agreement which would determine not merely the allocation of the available water supply with only the Assouan and Makwar reservoirs in existence, but would automatically adjust the allocation of water resulting from future developments of reservoir construction. A common feature of both their recommendations was the creation of a kind of Conservancy Board, which would supervise the operation of present reservoirs and would approve, or even work out, schemes for future development.

It is the composition and functions of this Conservancy Board which would be likely to prove the most difficult questions for settlement with the Egyptian Government. From the point of view of His Majesty's Government and of the Soudan, it may be taken as axiomatic that, if political bias in the decisions of the board is to be avoided, the British members of that body must be in the majority. From the Egyptian point of view, it is almost inconceivable that any Egyptian Government responsible to a Parliament could agree to the setting up of a board which did not contain an Egyptian majority. This conflict of opinion appears in itself to make an early agreement almost out of the question.

There is, however, another point to consider. In M. Dupuis's report it was contemplated that the Conservancy Board should enjoy wide executive powers, which, from the nature of things, they would wield only in the Soudan. In other words, the Soudan Irrigation Service, if such were created, would play a very subservient rôle to the Conservancy Board. It is not to be expected that such an arrangement would commend itself to the Soudan Government, who have, in fact, already placed on record their objection to the suggestion.

In these circumstances, it is suggested that the simpler and less ambitious the form of the agreement the better chance will it stand of being accepted by the Egyptian Government. In the accompanying draft agreement an attempt has been made to define the vested rights in the water supply of Egypt and the Soudan on the lines recommended by Mr. Cory and M. Dupuis, and to set up a simple machinery which should satisfy both the Egyptian and the Soudan Governments that the distribution of the water was, in fact, being conducted on the agreed lines.

The two engineers who, under the draft agreement, would be appointed by the Egyptian and Soudan Governments respectively would in fact constitute the nucleus of the more ambitious Conservancy Board recommended in M. Dupuis's report, but they would not actually exercise executive functions in the Soudan so long as the Soudan Irrigation Service conducted the regulation on the Makwar dam and the Gezira Canal head in such a way as to conform with the principles embodied in the agreement.

It is therefore suggested that the draft agreement should be examined by the various officials mentioned in the beginning of this memorandum, who should

[374 r—1]

'Egypt: The Soudan' [13v] (26/36)

2

subsequently meet at the Foreign Office and discuss any amendments or modifications of its terms they may wish to suggest.

If these can be framed in such a way as to meet with general acceptance, it will be of undoubted advantage to have a draft agreement ready before any question of opening negotiations with the Egyptian Government actually arises.

J. MURRAY.

Foreign Office, August 17, 1923.

Annex.

Draft Agreement between the British and Egyptian Governments respecting the Use of the Waters of the Nile.

Whereas the British and Egyptian Governments are agreed that the time has come to define and place on record the vested rights of Egypt and the Soudan respectively to divert and use the water of the Nile and its branches; and

Whereas it is to the interest of both countries that the fullest advantage should be taken of the available water supply;

The undersigned, duly authorised thereto by their respective Governments, have agreed as follows:—

ARTICLE 1.

Egypt and the Soudan respectively shall be deemed to have acquired and to possess vested rights to the use of the volumes of water measured in cubic metres per second as at Assouan, to the extent and during the periods set out in the following table:—

Period.	Vested Rights.		Total.
	Egypt.	Soudan.	
Jan. 1-10	580	100	680
" 11-20	580	106	686
" 21-31	530	102	632
Feb. 1-10	660	92	752
" 11-20	690	84	774
" 21-28	770	83	853
Mar. 1-10	870	83	953
" 11-20	880	83	963
" 21-31	940	48	988
Apr. 1-10	950	47	997
" 11-20	960	51	1,011
" 21-30	870	51	921
May 1-10	870	47	917
" 11-20	950	38	988
" 21-31	980	20	1,000
June 1-10	1,220	20	1,240
" 11-20	1,260	20	1,280
" 21-30	1,340	21	1,361
July 1-10	1,370	20	1,390
" 11-20	1,390	20	1,410
" 21-31	1,390	138	1,528
Aug. 1-10	1,970	198	2,168
" 11-20	2,260	255	2,515
" 21-31	2,470	265	2,735
Sept. 1-10	3,360	264	3,624
" 11-20	3,360	232	3,592
" 21-30	3,360	132	3,492
Oct. 1-10	2,550	124	2,674
" 11-20	1,500	118	1,618
" 21-31	1,050	114	1,164
Nov. 1-10	580	118	698
" 11-20	580	106	686
" 21-30	580	106	686
Dec. 1-10	640	102	742
" 11-20	690	102	792
" 21-31	680	100	780

ARTICLE 2.

At periods when the natural flow of the Nile is insufficient to supply the volumes of water defined in article 1, the amount to be taken by each country shall be reduced in the same proportion.

The natural flow of the Nile at any point is deemed to be the quantity which would flow if there were no artificial interference to such flow at any point upstream. In determining the amount by which the natural flow falls short of the volumes defined in article 1, account shall be taken of the volumes stored during times of surplus supply in the reservoirs upstream—the Assouan and Makwar dams respectively.

ARTICLE 3.

At periods when the natural flow of the Nile exceeds the volumes of water defined in article 1, the excess shall be divided equally between the two countries, regard being had to the necessity for filling the reservoirs mentioned in article 2.

ARTICLE 4.

The execution of the provisions of this agreement shall be supervised by two engineers appointed by the Egyptian Government and the Governor-General of the Soudan respectively. These engineers shall jointly report to the Governments of Egypt and of the Soudan on the last day of each of the periods mentioned in the table in article 1 the actual volumes of water allocated to each country. Any error of distribution in any given period shall be compensated by a corresponding modification of the distribution in the next ensuing period.

ARTICLE 5.

The regulation on the Makwar dam and on the Gezira Canal head-works shall be conducted generally in accordance with this agreement, and immediate effect shall be given to requests in respect of the allocation of water formulated jointly by the engineers mentioned in article 4.

ARTICLE 6.

The appointment of the engineers shall be for a period of five years. They shall have full discretion to engage whatever staff they may deem necessary for the due fulfilment of their mission. During the absence on leave or on any other account of either of the engineers, the Egyptian Government or the Governor-General of the Soudan, as the case may be, shall appoint a substitute.

ARTICLE 7.

In the event of the two engineers being unable to agree on any point arising in connection with the execution of their duties, they shall refer the question to an independent arbitrator to be selected by them in agreement.

ARTICLE 8.

The salaries of the engineers, together with the annual sum to be placed at their disposal for the payment of their staff and to meet any other expenses incurred in the execution of their mission, shall be determined by the Egyptian and Soudan Governments, and shall be provided in equal shares by those Governments.

ARTICLE 9.

All meteorological and hydrographical data required by the engineers and in the possession of the Egyptian and Soudan Governments shall be supplied to the engineers as and when they may require it. The engineers or members of their staff appointed by them shall at all times be allowed liberty of access to all regulating works, as well as to all gauge and discharge records in Egypt and the Soudan.

'Egypt: The Soudan' [14v] (28/36)

4

ARTICLE 10.

This agreement shall come into force on its ratification by the two contracting Governments, and shall be liable to revision whenever the construction of further reservoirs on the Nile or its branches shall have modified the present régime of the river.

In the absence of such revision, the agreement will lapse on the day on which the reservoir or reservoirs referred to in the preceding paragraph are actually put in operation.

ARTICLE 11.

At the expiration of the term of the present agreement, the two contracting Governments shall be bound to negotiate a new agreement, which shall be subject to the same conditions as the present one.

ARTICLE 12.

The provisions of the present agreement shall be subject to the ratification of the two contracting Governments, and shall be subject to the same conditions as the present one.

ARTICLE 13.

The provisions of the present agreement shall be subject to the ratification of the two contracting Governments, and shall be subject to the same conditions as the present one.

ARTICLE 14.

The provisions of the present agreement shall be subject to the ratification of the two contracting Governments, and shall be subject to the same conditions as the present one.

ARTICLE 15.

The provisions of the present agreement shall be subject to the ratification of the two contracting Governments, and shall be subject to the same conditions as the present one.

ARTICLE 16.

The provisions of the present agreement shall be subject to the ratification of the two contracting Governments, and shall be subject to the same conditions as the present one.

ARTICLE 17.

The provisions of the present agreement shall be subject to the ratification of the two contracting Governments, and shall be subject to the same conditions as the present one.

'Egypt: The Soudan' [15r] (29/36)

This page cannot be made available due to copyright or data protection restrictions.

'Egypt: The Soudan' [15v] (30/36)

This page cannot be made available due to copyright or data protection restrictions.

This page cannot be made available due to copyright or data protection restrictions.

'Egypt: The Soudan' [16v] (32/36)

This page cannot be made available due to copyright or data protection restrictions.

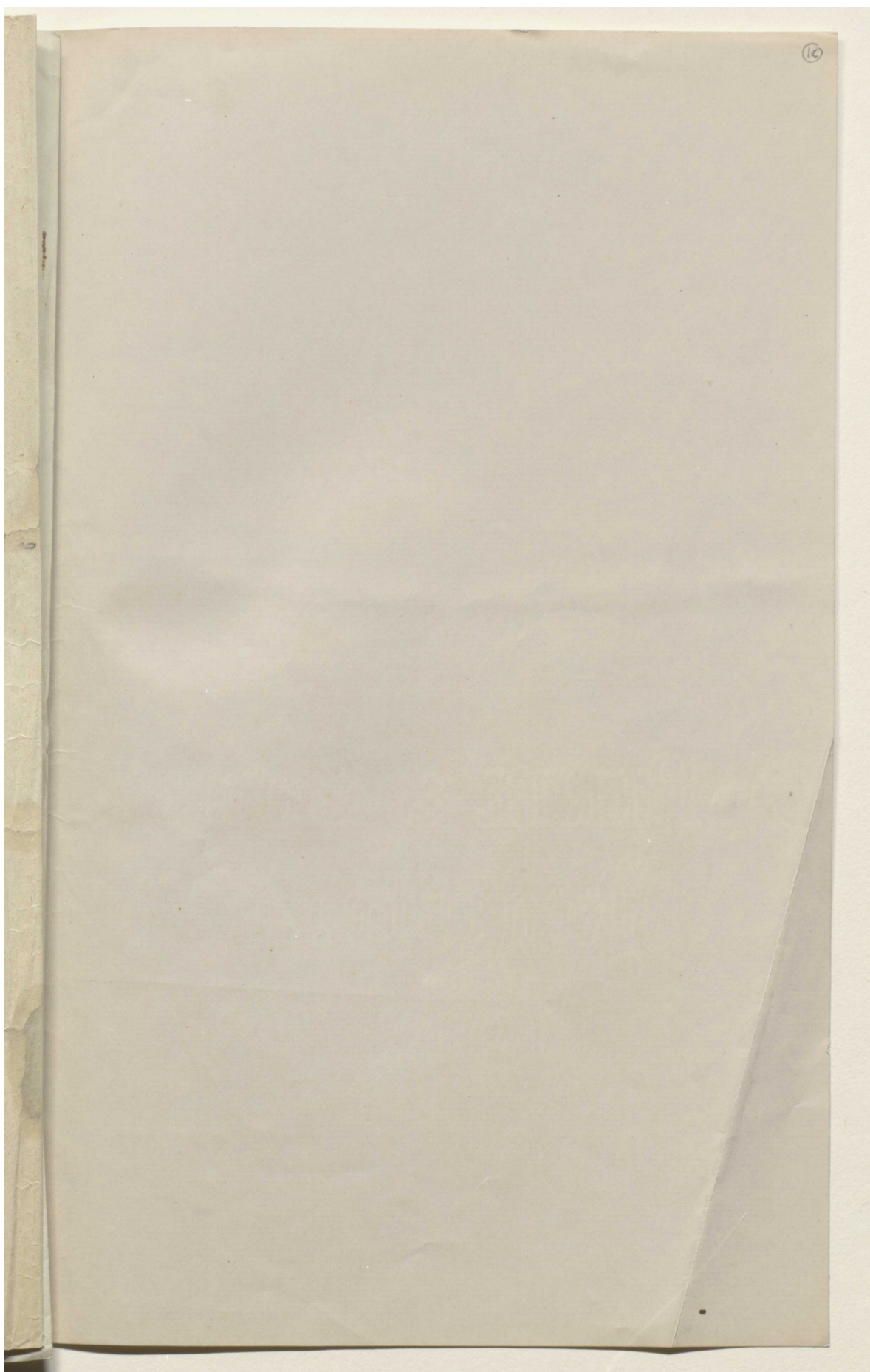
'Egypt: The Soudan' [17r] (33/36)

This page cannot be made available due to copyright or data protection restrictions.

'Egypt: The Soudan' [17v] (34/36)

This page cannot be made available due to copyright or data protection restrictions.

'Egypt: The Soudan' [back-i] (35/36)



'Egypt: The Soudan' [back] (36/36)

