

EAST AFR. PROT
 No. 19308

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 REC 30 MAY 06

No. 226
 1906
 7th May
 at previous Paper.
 K. of G.
 10044

(Subject.)

Address of Colonists Association

views with regard to part which deals
 Representative Govt. asks for info as to principles
 and working of Councils in other Colonies.

(Minutes.)

Mr. Read

43423

On the 8th June in reply to the
 address of the Colonists Association
 Lord Ugin wrote. I agree that it
 is desirable that the O.A.C. should be
 assisted by a Council in making
 laws, & I propose to advise
 H.M. to issue Letters Patent
 providing for the establishment
 of a Legislative Council, in
 which although the Govt. would
 have a majority there would
 also be an official members
 appointed by H.M. who would

Draft Memorandum
 Council
 1904 38.02
 Gov 13249/08 (London)

shown here present as far
as possible the different interests
of the community

The effort of a Legislature
as it is, is apparent in the above men-
tioned step necessitates the
eff. class of an Executive Council
The question of converting the Public

Trust into a Colony (by giving
Council the title of Governor)
will wait, I think, until we
get rid of the interest and
in the court ship; especially
South Africa, Rhodesia, affords
an example of a Legislative
Council or Protectorate

The Commr suggests an Executive
Council of 4 officials in addition
to the Commr, viz the Deputy
Commr, The Treasurer, the Land
Commr, the Crown Advocate

I do not think however that the
Treasurer should be an official
member, as that not a frequent occa-
sion that Mr. Baring is not

There is no
reason why the
title of Governor
should wait
M.H.

I think that
Deputy Commr,
Treasurer and the
Crown Advocate
should be
official members
of the Council
M.H.

leave the Deputy Treasurer, Mr. Espie, who is not
 a strong man, would succeed. Mr. Bowring should
 certainly be a member but not ex officio. The same
 remarks apply to the Land Commissioner, Colonel
 Montgomery; the present holder should certainly be a
 member, but his substitute would not necessarily be
 suitable. It is usual for the military element to be
 represented in the Executive Council in any Colony
 where there are regular troops; and there is something
 to be said for appointing the Senior Officer of the
 King's African Rifles in the Protectorate to be an
 ex officio member, but I think the balance is against
 it. I think that Mr. Currie, the Manager of the
 Railway, should also be an ordinary member. The Royal
 Instructions to be issued with the Letters Patent
 would as usual give the Commissioner the power to
 appoint persons to be members of the Executive
 Council provisionally in the absence of the non-
 ex officio members.

I agree that Mr. Espie
 should be a member but
 not ex officio.

I would not put
 Mr. Currie in the
 Council as the Gov.
 would not be able to
 do so.

The Commissioner proposes that the Legis-
 lative Council shall consist of the same members as
 the Executive Council together with the Principal
 Judge and 2 or 3 unofficial persons; one of the
 latter being perhaps selected from the Indian communi-
 ty.

The proposal to put the Judge on the
 legislative Council is of course inadmissible; and

There are several colonies in which
 the Chief Justice is in the Legislative
 Council, but in this case it is hardly
 possible that the Judge should be a member.

*903 would be the best
 arrangement and the
 number of members of the
 Council should be 3
 I think the members of the Executive Council as pro-
 posed above numbering 5 or with the Commissioner 6,
 with the addition of 3 unofficial members will do very
 well. I think one of the members should represent
 specially the white settlers round Nairobi, a second
 the rest of the white inhabitants including the white
 servants etc., at Mombasa and any white planters in
 the tropical parts of the Protectorate and a 3rd the
 Indians of the Protectorate. The latter provision will,
 of course, cause a howl from some of the whites. In
 some of the Eastern Colonies representative bodies
 are given by custom the right of nominating members
 of the Legislative Council for the approval of the
 Governor and His Majesty. Such bodies in the East
 Africa Protectorate would be the Colonists' Associa-
 tion at Nairobi, and I believe, a Chamber of Commerce
 at Mombasa; but I do not think that either body is of
 sufficient status to deserve the privilege. As to
 the 7th paragraph of the Commissioner's despatch in
 which he asks for information as to the working of
 the Councils, the Letters Patent and Royal Instruc-
 tions which will be sent him will guide him to a
 large extent, and we might also frame some Standing
 Orders for the Legislative Council on the model of
 the Straits Settlements Standing Orders herewith.*

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The Legislative Council must, I presume, be
 given the power of discussing and passing the Annual
 Estimates; but the question arises whether they should
 do so only after the Estimates have been approved by
 the Colonial Office and the Treasury in which case their
 position would be merely formal (thus, I learn, is the
 practice in the Leewards) or whether they should also

*I agree
 H.H.
 7/10*

be allowed to discuss the draft Estimates, which will of course cause delay but on the whole seems desirable.

All other Ordinances will of course, ordinarily originate in the Legislative Council, but it will be ^{perhaps} perhaps to remove ^{unofficially} the power of legislating by Order in Council as this power, though unnecessary so long as there is a Government majority in the Council, will be useful in case a majority of unofficial or elective members are appointed in the future.

Ag. with the always

W.D.E.

26th June 1906

In answer to

I agree generally.

With regard to the question of converting the Protectorate into a Colony, see the annexed F.O. print. See also Mr Graham's minute on Comm. 105.

I think that there can be no doubt that it would be advisable to forego Annexation for the present.

Agree with

With regard to the question of changing the title of Commⁿ to that of Gov^t, this is only a verbal alteration and as Mr Cox points out in his minute on Comm. 105, ^{such a change} such a change can be effected without difficulty. It would be convenient to ~~change~~ change the title if ^{only} ^{you} think that so desirable.

Agree with

H. J. R.
28/6

I agree subject to my views

General notes. It is not worth
the trouble to answer, as we can
do everything that we want
to do without annexation.

Oct. July 3

100

17

22 5.7

187.

~~Handwritten scribbles~~
Mr. Cox

Should we be dealt with
by you?

H. J. R. a

21/7

Mr. Reed
Mr. Antibus
Lie M. Drumming

Please see Drafts
here with. a fresh
commission will be
necessary.

H. J. R. a

26/7

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26/7

CONFIDENTIAL

(9716.)

133

*Memoranda and Minutes on the Question
of Annexing the British Protectorates
in Africa.*

(1.)

*Memorandum by Mr. Oakes respecting the Advan-
tages, or otherwise, of Protectorates as compared
with Colonial Possessions.*

[Extract from Lord Lansdowne's Minute on Mr.
Sharpe's No 188 of the 29th July, 1901:—

"I should like to have a short enumeration of the
practical inconveniences resulting from 'protection,' and the advantages and disadvan-
tages, if any, of annexation.]

AMONGST the questions which tend to show
the advantages, or otherwise, experienced in
practice in the Administration, respectively, of
British Colonial possessions and of British Pro-
tectorates, those dealing with the following
matters may be cited:—

1. Slavery.
2. Jurisdiction over foreigners.
3. Marriages of British subjects and of
foreigners.
4. Extradition from Protectorates.

There may also, of course, be general considera-
tions bearing upon the question.

1. *Slavery.*

On the 23rd January, 1885, the Lord Chan-
celor (Lord Salisbury) reported upon certain
questions in connection with the negotiations of
that time in progress with Berlin which resulted in

[450]

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2. Jurisdiction over Foreigners.

The views entertained on the subject of jurisdiction over foreigners in British Protectorates appear to have undergone some change in recent years, and it would appear from certain Reports by the Law Officers of the Crown that such jurisdiction may within certain limits be exercised by His Majesty. The original opinion was that it would be desirable, if not actually obligatory, to obtain the concurrence of a foreign Power in the exercise of jurisdiction over its subjects before attempting to exercise it; and although this view may have since been to some extent modified, the disabilities in this connection are still sufficient to demonstrate the difficulties in the way of governing a Protectorate in comparison with those experienced in territories which have been actually annexed to His Majesty's domi-

Sir Henry James,
Sir Farrer
Herschell,
August 3, 1880.

On the 3rd August, 1880, the Law Officers gave the following opinion:—

"We are of opinion that Her Majesty can, by Treaty with a native Chief, obtain jurisdiction within his territories over subjects of foreign civilized States resident within such territories, but the exercise of any such jurisdiction might be made the ground of diplomatic objection by the civilized State to whose subject it is extended, and it should not, as a rule, be exercised without the concurrence of that State given generally or in the particular case."

Sir H. James,
Sir F. Herschell,
December 11,
1884.

The same Law Officers reported to the Colonial Office on the 11th December, 1884, with reference to the British Protectorate of *New Guinea*, in reply to the question "Whether legal jurisdiction over persons other than British subjects could in any way be acquired within the protected area if it did not become British soil," that they were of opinion "that legal jurisdiction over persons other than British subjects could not, under the circumstances, be acquired within the protected area in question if it did not become British soil."

In this case jurisdiction had not been acquired by ~~SAVING~~ otherwise from native Chiefs or authorities.

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Dr. Deane,
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On the 8th August, 1885, the Law Officers, reporting on the mode of administering the Niger districts, said—

See Law Officers' Reports, 1891, Confidential, No. 6207, p. 11.

Memorandum was prepared at the Colonial Office in which it was maintained that certain Articles of the General Act of the Conference of Berlin conceded, at any rate by implication, the right of exercising jurisdiction in Protectorates over the subjects of the Powers which were parties to that Act, and that this principle was confirmed by the General Act of the Brussels Conference of 1890.

Sir R. Webster,
Sir E. Clarke,
April 17, 1891
(to Colonial Office)
and April 20, 1891.

The Law Officers concurred generally in the propositions laid down in this Memorandum, and held that in the regions of South Africa (which were then in question) where British Protectorates had been established, the provisions of the General Acts of Berlin and of Brussels were sufficient to justify the exercise of jurisdiction over the subjects of those Powers which were parties to those General Acts.

On the 26th January, 1895, the Law Officers were consulted by the Colonial Office with reference to jurisdiction in the protected territories adjacent to the Gold Coast Colony; and on the 14th February they reported that, although Great Britain had formerly entertained views contrary to the assumption of jurisdiction over foreigners, within the last ten years she had been assimilating her practice to that of Germany and France, who entertained the view "that the existence of a Protectorate in an uncivilized country imports the right to assume whatever jurisdiction over all persons may be required for its effectual exercise."

Sir R. T. Reid,
Sir Frank
Lockwood,
February 14, 1895.

The Law Officers, therefore, approved an instruction to the Governor of the Gold Coast, in the course of which he was informed that, as regarded the subjects of civilized States, there could be no question as to the jurisdiction of the British Court (in the protected territory), for no other Court was capable of dealing with them.

It will thus be seen, that opinions have been somewhat divided upon this subject at different times, and that the later view, though expressed with reference to certain localities, is not universally acted upon, as, for instance, in the case of Zanzibar. In the case of New Guinea, the difficulty was overcome by converting the Protectorate into a British possession.

As showing the desirability of acquiring jurisdiction over foreigners (at Zanzibar), Mr. Rowland Rodd in 1893 reported a case in which a British Indian gained a suit in the German Consular Court at Zanzibar against a German firm. The

No. 42, 1
February 1, 1893,

letter appended, and the appeal had to be tried at Zanzibar, the Court there having the power to require the attendance of witnesses, &c., from Zanzibar.

Lord Rosebery's comment on this statement was, "This is truly remarkable."

In 1892 the German Government recognized British jurisdiction in East Africa as from the 1st February of that year, excepting in the Islands of Zanzibar and Pemba, for which, they stated, legislative sanction would be necessary, Germany having previously possessed jurisdiction there by Treaty.

Her Majesty's Government expressed a hope that steps would at once be taken to obtain that sanction.

Jurisdiction appears, however, still to be exercised by the foreign Treaty Powers in the Island of Zanzibar, although by Article VII of the Convention signed at London on the 14th November, 1899, Germany renounced her rights of extra-territoriality in Zanzibar on the understanding that this renunciation should not become effective until the rights of extra-territoriality enjoyed there by other nations should be abolished.

With regard to other Protectorates in Africa coming under the Africa Order in Council, 1889, an Order in Council was issued on the 28th June, 1892, whereby British jurisdiction was assumed over foreigners who were subjects of the Powers which were signatories of the Act of Berlin of 1885, and of any other Power which consented to such jurisdiction.

In connection with the question of legal jurisdiction in Protectorates, the case dealt with in the Judgment pronounced on the 16th July, 1901, by Mr. Nunn, may be mentioned.

Mr. Nunn, the Chief Judicial Officer for the Central Africa Protectorate, in forwarding his Judgment in the action of *Cover v. The African Lakes Corporation* to Mr. Commissioner Sharpe, pointed out the number of legal questions raised therein as to the precise position of Great Britain in relation to that Protectorate, and stated that the legal Administration of a British Protectorate was full of pitfalls.

The question of ownership of land by native Chiefs in Protectorates seems to have constituted one of these pitfalls; the theory of the exercise of delegated powers by the protecting Power another; and the exact position of the native

Sir E. Malet,
No. 3, Africa,
January 6;
No. 4, Africa,
January 9, 1892.

To Sir E. Malet,
No. 11, Africa,
January 25, 1892.

"Africa Order in
Council, 1892."

Commissioner
Sharpe, No. 182,
July 29, 1901.

population towards the protecting Power, a third.

3. Marriages in African Protectorates.

The marriage of British subjects in a British Protectorate can be, to a great extent, and has been, provided for by the application of the Foreign Marriage Act of 1892. This Act does not, however, meet all the necessities of the case, and, as regards the marriages of foreigners amongst themselves, it is inoperative.

Marriages, generally, of foreigners as well as of British subjects, can also be provided for in Protectorates where Indian laws may be applied by the introduction of the Indian Christian Marriage Act; but it has not so far, I believe, been thought desirable to introduce it, for reasons connected chiefly with the question of divorce.

In a British possession a marriage law may be applied by Proclamation or otherwise, according to circumstances, and the necessary facilities afforded for the marriage of all inhabitants or residents, whatever their nationality; but in a Protectorate this facility, except as above pointed out, is wanting.

Many inquiries and complaints have from time to time been made in connection with this subject.

In 1897 the Church Missionary Society inquired whether the marriages of "Europeans" could then be legally performed in the Uganda Protectorate.

At that time there were no marriage officers in Uganda appointed under the Foreign Marriage Act. Since that time three such officers have been appointed, so that in three places in the Protectorate a marriage may now be solemnized between parties of whom one, at least, is a British subject. As regards persons other than British subjects, the matter remains as before.

In 1897 Sir A. Hardinge reported that a marriage had taken place at Mashakos, in East Africa, between two British subjects. It happened that a clergyman of the Church of England passed through that place, and advantage was therefore taken of his presence to procure the solemnization of the marriage, which could not otherwise have been effected. It is held that marriages of British subjects solemnized in Indian countries by a Bishop or Dean or Holy Orders are valid by the law of England, and thus this marriage could be solemnized in East Africa notwithstanding the absence of the ordinary

See Law Officers'
Report, August 6,
1900.

July 28, 1897.

November 3, 1892.

See Dr. Tristram's
Report to the
Archbishop of
Canterbury,
February 9, 1877.
Law Officers'
Reports, 1877,
p. 42.

facilities in that connection. But even this rule appears to be open to certain doubts and difficulties which might render absolute reliance upon it somewhat hazardous. For instance, Sir H. Jenkins reported on the 21st March, 1887, that as the validity of a marriage of this description depended upon the doctrine that an Englishman carries with him the English common law with respect to marriage, that doctrine could not apply where the husband was not an Englishman, and perhaps also where the wife was not an Englishwoman. Also, he added, where the husband was domiciled in some part of the Queen's dominions in which the common law is not the English common law, further doubt must arise as to the validity of such a marriage.

Law Officers' Reports, 1887, p. 21.

I believe also that the opinion is entertained that such a marriage would not be legal if any other means of performing a valid marriage in contemplation of English law were available.

It can scarcely be doubted, in view of all the circumstances of the case, that a British Protectorate labours under disadvantages, in the matter of marriage, as compared with a territory annexed to the British dominions.

4. Extradition from British Protectorates.

This question, which has arisen in a practical shape on more than one occasion, also leads to the conclusion that a British Protectorate has disadvantages attaching to it which do not arise in the case of territories forming part of the dominions of the Crown.

In 1888 and the following years correspondence took place with the German Government having for its object the establishment of a system of extradition between the British and the British Protectorates in Africa.

The proposal for an arrangement originated from the German Government, and the question was referred to the Law Officers of the Crown as follows:—

Sir R. Webster, Sir F. Clarke, March 3, 1888.

"In our opinion it would be a desirable course to provide by legislation that the British and German territories in Africa should be treated as if they were British territories, and would therefore be governed with the same title hitherto maintained by Her Majesty's Government.

See also Report by some Law Officers of June 15, 1899.

Home Office, May 15, 1888.

To Count Hatzfeldt, December 19, 1900.

To Lord Chancellor, January 28, 1891.

They suggested, as a preferable course, that facilities should be given to German officers to arrest fugitive German subjects who were alleged to have committed offences within German jurisdiction.

The Home Office were then consulted, and they replied unfavourably to the suggested arrangement, saying that the question was surrounded by difficulties which were well-nigh insuperable.

The German Government having inquired, after a considerable lapse of time, how the matter stood, the German Ambassador was informed in December 1900 that it was still under consideration, and that the subject presented considerable difficulties. In the following month the question was, by direction of Lord Salisbury, referred to the Lord Chancellor as to whether criminals from German spheres of influence taking refuge in British spheres could be expelled from the latter in such a way as to place them in the hands of the German authorities.

No answer was, however, returned by his Lordship down to the date of his resignation of his office in 1892; but in the meantime a proposal was made for an arrangement of a partial character which should admit of the extradition from German Protectorates to British possessions, and from British possessions to German Protectorates, as this was found, on inquiry, to be practicable without having recourse to legislation in order to amend the Extradition and the Foreign Jurisdiction Acts, as would have been the case if extradition had to be made applicable to British Protectorates.

After considerable correspondence an Extradition Treaty in this modified form was concluded with Germany on the 5th May, 1894, but the matter, as regards British Protectorates, has remained in its original condition, no suitable remedy for the existing difficulties having been discovered.

Sir C. Russell, Sir J. Rigby, November 21, 1893.

Sir R. Vinberg, Sir E. Carson, June 29, 1900.

The Law Officers reported in November 1893 that "any effective Extradition Arrangement would require the concurrence of all the Powers whose subjects were to be affected by it."

The most recent report upon this question appears to be that of the present Law Officers, dated the 29th June, 1900, in which they give their opinion "in the case of Protectorates where His Majesty claims general jurisdiction, and not merely over British subjects, and by

virtue of the prerogative assumes or delegates legislative authority, it would be competent for the legislative authority of the Protectorate to make laws similar to the Extradition Acts, so as to give effect to Agreements with other countries for the mutual surrender of fugitive criminals."

With regard to general considerations which have been, or might become, factors in the question of the annexation of British Protectorates, one is mentioned by Mr. Davidson in his Minute on the docket of Commissioner Sharpe's despatch No. 188 of the 29th July, 1901, where he says:—

"The actual assumption of a Protectorate over a vast expanse of territory is a milder process, and one at the moment much less likely to excite jealousy and protest from foreign nations than annexation of the territories would be. Then, again, it is easier to withdraw a Protectorate already declared over an unsettled region than it would be to abandon sovereignty over that region if it had been actually annexed."

As to the latter observation, the Law Officers, in 1886, reporting on the subject of the cession of Ambar Bay to Germany, said:—

Sir R. Webster,
Sir E. Clarke,
December 13,
1886.

"It is not necessary to enter into the general question whether the Crown can cede any part of British territory without the authority of Parliament, but we entertain very grave doubt whether the action of the late Government in concluding the Arrangement in question [i.e. for the cession of Ambar Bay] with Germany in 1885, without making that Arrangement subject to the approval of Parliament, can be justified."

With reference to exciting the jealousy of foreign Powers, it may be stated that when the Colonial Office, in 1896, urged the annexation of Amatongaland as being highly desirable in consequence of difficulties in the way of its administration, a letter was addressed to that Office by the Foreign Office in which the following passage occurs:—

"As regards the question of converting the Protectorate of Amatongaland into a Crown possession, Lord Salisbury considers that the matter is one which requires careful consideration, in the excited state of feeling in the Transvaal and neighbourhood,* as well as in Europe, with reference to African affairs, further annexation of territory by this country at the present

To Colonial Office,
February 17, 1896.

*The "Jesse's Pond" has recently occurred.

women might give rise to hostile criticism, which it is desirable, if possible, to avoid," &c.

Colonial Office,
April 8, 1897.

The matter was accordingly deferred; but in April of the following year the Colonial Office again recurred to the subject, giving reasons connected with the administration of a country of so small an area by separate machinery in favour of annexation, and the proposed annexation was thereupon carried out.

Besides the instances which have been pointed out, there may be other considerations weighing for or against the annexation of protected territories, known only to those concerned in the practical working out of problems connected with the administration of the territories on the spot.

So far as my researches have extended, I have discovered no further cases of inconvenience recorded in the correspondence upon any points other than those touched upon in this Memorandum.

(Signed) A. H. OAKES.

Foreign Office,
March 4, 1902.

(2.)

*Memorandum by Sir C. Hill on Question of
Annexing our Protectorates.*

In a Minute on Mr. Sharpe's No. 188 of the 29th July, 1901, Lord Lansdowne wrote:—

"I am quite ready to consider the important question raised in the above Minutes, but we shall have to discuss it in its application to other Protectorates outside British Central Africa. . . . I should like to have a short enumeration of the practical inconveniences resulting from 'protection,' and the advantages and disadvantages, if any, of annexation."

Shortly put, the practical inconvenience arising from protection springs from the following considerations:—

1. Application of International Treaties
2. Insufficient jurisdiction over foreigners.
3. Extradition questions.
4. Marriage questions.
5. Non-application of Army Act.

The advantages of annexation are the removal of these inconveniences.

The disadvantages are the effect it would have on foreign Powers at the present juncture, and the fact that annexation entails, *ipso facto*, the immediate abolition of slavery.

An essay might be written on the subject, but for practical purposes it may suffice to consider the different sorts of Protectorate and their different wants: their moral virtues and contrary vices.

In the first class of Protectorate stands Zanzibar. There we have an Arab Sultan whose independence is guaranteed by Great Britain, France, and Germany, and who governs through an old-established Arab system applied partly through Europeans, partly through natives. He is under British protection *quod* his relations to foreign Powers, but we do not directly administer his island territories: we do not settle his budget nor appoint his officers. Under our advice he has abolished the legal status of slavery in these islands. On the other hand, he has made over to us the direct administration of his mainland dominions, but his Treaties with us and foreign Powers still run there and our action is hampered by their provisions.

At the present moment, I do not think we need discuss the question of annexing the island portion of the Zanzibar dominions. Abolition of slavery, direct financial responsibilities, and discussions with France and Germany are three obstacles which we need not now attempt to negotiate.

In the Sultan's mainland dominions, a narrow strip 10 miles deep with a few northern towns, the inconvenience of annexation as against protection arises chiefly from the question of domestic slavery, which cannot be permitted to exist on British soil. Annexation means abolition—abolition means compensation and possible social disturbance. Though I think the Arab power is too much broken for a serious rising to be possible, yet immediate abolition might make even the best Araba mere silent spectators of our efforts at development instead of the more or less active supporters which they are.

During the most recent estimate of 15,000 slaves, a sum of about 150,000 should suffice to provide compensation. It might be practicable to find to its use.

On the other hand, the derogation of the

Treaties would be of immense advantage. The Treaties were made when European Powers wanted to safe-guard themselves as much as possible against Mohammedan laws and practices. Consequently, they tied the Sultan down to a minimum of taxation, allowing him no taxes whatever on foreigners, except 5 per cent on imports, and retained jurisdiction over nationals.

The Sultan is ready to hand over his mainland dominions; our acceptance could hardly be held by our co-guarantors to be a violation of our pledge to respect his independence, for they have acquiesced in our Protectorate. Yet it by no means follows that they would agree to annexation without protest or an attempt to make us pay for their concurrence in some inconvenient form.

We must be prepared for that, if we annex.

Moreover, annexation of the strip would lead to annexation of the rest of the Protectorate lying behind it. And here come in those inconveniences which are common to all the Protectorates: they are the vices against which no virtues are to be set:—

(a) Incomplete jurisdiction over foreigners.
(b) Difficulties of the marriage law, as applied to marriages between British subjects and foreigners or between foreigners.

(c) Non-application of the Army Act.

(d) Non-application of Extradition Treaties.

With regard to (a) and (b), it is probable that the inconveniences will disappear without annexation. Jurisdiction over foreigners is really a matter for our own law. If we read it in to our legislation, foreigners, in the absence of contrary Treaty stipulations, must accept the position.

(b) In consequence of a recent opinion of the Law Officers, an attempt, which it is hoped may prove successful, is now being made to overcome the marriage difficulties, and Mr. Gray is drafting Ordinances which will remove the obstacles to marriages.

Annexation, therefore, is probably not called for *quod* marriage purposes.

(c) The non-application of the Army Act is rather more awkward; the Colonial Office have considered before them the question as to whether troops in Protectorates can be held to be either in the King's dominions or on foreign service. The Law Officers seem inclined to think that neither position

can be upheld. Protectorates are certainly not part of the King's dominions.

Annexation would remove all doubts and place our forces on a sound footing—otherwise an amendment of the Army Act is required. The Colonial Office are considering this.

(d.) Extradition Treaties.

These do not apply to Protectorates. Consequently, whenever the surrender of a criminal is required from British or German East Africa, it has to be the subject of local arrangement in circumstances of questionable legality. An alteration would require Parliamentary action on our part. Annexation would settle this.

In the Uganda Protectorate we meet the same set of inconveniences as in the East African Hinterland, plus our Treaty, which recognizes a Ruler of the Kingdom of Uganda.

In neither of these Protectorates, once the mainland strip is left behind, is slavery recognized by us; therefore we need not be frightened by that bogey. Where slavery does exist in some form or another, tact and a little judicious closing of the official eye, will enable us to get rid of it without fuss or disturbance.

No foreign nation has the right of interference in the Uganda Protectorate, and annexation is only dependent on the terms of the aforesaid Treaty as regards the Kingdom of Uganda and our own convenience as regards the rest of the Protectorate.

In British Central Africa also our hands are free from foreign trammels. The general inconveniences of Protectorates exist here as elsewhere, but it appears to me that annexation is not called for. I think it inevitable that the Protectorate will fall under the Colonial Office, and I believe they will be prepared to take it over at the end of this year, when the Crown Agents will move to other quarters and leave more space to the staff of the Colonial Office proper. If this is so, the question of annexation can be left to the Colonial Office. It would in any case seem anomalous that the Protectorate should become a portion of His Majesty's dominions whilst Northern Rhodesia is not so considered.

With the Memorandum I send in a paper by the Librarian, showing at greater length the

See, however, the Agreement with Toro and Ankole.

details of some of the points on which I have touched.

On the whole, although I should greatly like to see the annexation of the Sultan's mainland strip, I am inclined to advise leaving things in the Protectorates as they are. If inconveniences become intolerable or circumstances more favourable, we can cut the Gordian knot hereafter.

C. L. H.

Foreign Office,

April 7, 1902.

(3.)

Minute by Lord Cranborne.

The impression left on my mind by these papers is that the legal difficulties attending the status of Protectorates are in process of being explained away.

It seems the gradual broadening of view in the Law Officers' Department neither has produced, nor is likely to produce, any serious objection, and we shall soon reach the stage when an Order in Council—authorized, if necessary, by a short enabling Act—will make it possible to sweep all the cobwebs away without any resistance from foreign Powers.

One difficulty is, perhaps, more substantial, namely, the limit of customs duties. We are, indeed, practically able to raise them to 10 per cent., but no doubt nothing but annexation would entirely free our action in this respect.

As regards slavery, I do not think that any act of ours ought to absolve us from the pledge to the Arabs. But we cannot annex without abolition, and if this pledge is held to exclude abolition, even when accompanied by compensation, then I think annexation of the mainland strip at present is impossible. If not, then compensation would, of course, not present an insurmountable obstacle.

It appears, therefore, from Sir C. Hall's Memorandum, and these considerations, that there are reasons on both sides. But at the present moment I have no doubt it would be hoptodtime, and perhaps for a short breathing-space after it would be well to send this possibility of friction

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with other Powers, and of reprisals which they might claim to make.

As to the question whether British Central Africa should be transferred to the Colonial Office, I have mentioned the point in another Minute.

April 10, 1902.

(4.)

Minute by the Marquess of Lansdowne.

I am rather dismayed at finding that the wish which I expressed in my Minute on Mr. Sharpe's paper has given Mr. Oakes and Sir C. Hill the trouble of preparing these lengthy Memoranda for which I am extremely obliged. They are valuable contributions to the literature of the subject, and will be of use hereafter whenever the subject comes up, as it must, for further consideration.

The conclusion at which Lord Cranborne has arrived is irresistible. For the present we must sit still. The reasons urged by Lord Salisbury for doing so in 1896* are stronger now than they were then; and we may find comfort in the reflection that the difficulties in the way of annexation are apparently tending to diminish, and that the existing condition of affairs, though presenting some inconveniences, can scarcely be described as intolerable.

L.

* See letter to Colonial Office of February 17, 1896, quoted on p. 40.

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L.

* See letter to Colonial Office of February 13, 1896, quoted on p. 10.

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C.O.
19503
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Commissioner of the

Nairobi,

May 7th 1906.

EAST AFRICA PROTECTORATE.

No.226.

My Lord,

With reference to Mr.Jackson's despatch

No.571 of Oct 18th 1905 giving cover to the address of the Colonists' Association to the Secretary of State, I have the honour to submit my views with regard to that portion of the address which deals with Representative Government.

2. There cannot be any question for some time to come of Representative Government in East Africa in the sense in which this term is usually understood. But there is a general feeling, apart from the signatories to the address, both in official and non-official circles, that the Commissioner should be assisted by

H.M.Principal Secretary of State

for the Colonies,

Downing Street,

L O N D O N, E. W.

a Council in the Administration of the Protectorate, and I think the time has now come for giving expression to my views on the subject; more especially as I notice in the local press allusion to a reply given in the House of Commons by the Under Secretary of State for the Colonies which leads us to presume that action is being contemplated by His Majesty's Government in this connection.

I may say at once that I should welcome the assistance which should receive from a Council, that the measure would be a popular one, and that it would to a great extent put a stop to the complaints made by the political element that the settlers, and non-officials generally, have no voice in matters in which their interests are very largely concerned.

The form that has been generally suggested is that of an Advisory Council. The two main branches into which the conduct of affairs in this, as in other Colonies, may be said to be divided are Administration and Legislation. The term Advisory Council does not seem to me to be sufficiently explicit and there might

be difficulty in defining the duties of such an Assembly. For instance in the present, undeveloped state of the Protectorate it is questionable whether it would be desirable that non-officials should be at once connected with the direct Executive control of affairs. It appears to me that we had better follow the lines which have been adopted in the case of the older Colonies as regards Legislative Councils and Assemblies as laid down in Part III of the Colonial Regulations.

5. There might be two Councils; the Executive and the Legislative. The Executive Council, for the present would be composed of officials without the admixture of non-officials, and might consist of:

- (1) The Deputy Commissioner or Colonial Secretary,
- (2) The Treasurer,
- (3) The Land Commissioner,
- (4) The Crown Advocate,

its duties being to advise His Majesty's Commissioner concerning the application and the execution of passed enactments, the conduct of Native affairs and all important matters connected with the Administration of

the Country.

6. The Legislative Council might consist of the Executive Council with the addition of His Majesty's Principal Judge of the High Court and two or three non-official members to be appointed by the Secretary of State on the recommendation of His Majesty's Commissioner. The duties of this Assembly would be to discuss and advise His Majesty's Commissioner in regard to all Ordinances or Rules having the force of Law, which it is proposed to enact, and if necessary to obtain public opinion thereon. I look upon the Legislative Council as the first step towards non-official intervention in the governing of the Colony, and with a free voice in the making of its laws I consider the European settlers will have no just cause to complain if we do not at once associate them with the Executive Administration of the Protectorate. This could follow at any time whenever deemed expedient. It is open to question, too, whether, in view of the interests the Indian Community have in Mombasa, it would not be advisable to appoint one of their Community to the Legislative Council.

7. I have ventured to give merely an outline of these proposals.

proposals. As the matter is one in connection with which I have unfortunately no previous experience, I would ask that whatever line may be adopted as regards the subject matter of this despatch I may be favoured with the necessary information as to the principles and working of Councils in the other Colonies.

I have the honour to be,

With the highest respect,

My Lord,

Your Lordship's most obedient,

humble servant,

Frederick Hall