It is clear from this summary that the discretionary power which the President has, either as civil executive or commander-in-chief of the armed forces, is such that it may be used to embroil the country in dangerous controversy and even war with other states. The proposal to extend it by statute to include the placing of restrictions on the exportation of certain commodities from the United States in time of foreign war will, if adopted, involve only a slight addition to the sum total of the vast power which admittedly he already possesses. If this augmentation of his power in the domain of international relations will make him a potential dictator and endanger the peace and security of the nation, consistency would seem to require that he should be deprived of the far greater and potentially more dangerous powers which he already possesses. But no one has seriously proposed that this should be done and there is little in our past experience to justify an argument in support of such a proposal. Professor Corwin, who has made a detailed study of the subject, concludes that "on the whole, therefore, the net result of a century and a quarter of contest for power and influence in determining the international destinies of the country remains decisively and conspicuously in favor of the President." [13] It would seem that, if there is a discernible tendency, it is in the direction of increasing rather than diminishing the President's power in the domain of international relations. The Supreme Court in its opinion in the recent Chaco arms embargo case pointed out that if embarrassment—perhaps serious embarrassment—is to be avoided in the conduct of the foreign affairs of the country, it is necessary to accord to the President a degree of discretion and freedom which would not be admissible in the conduct of domestic affairs. The court also emphasized that the sources of information at the command of the Executive and his ability to act with promptness and dispatch when prompt action may be necessary, make him a more efficient and maybe a safer organ to be trusted than the Congress would be.

JAMES W. GARNER

ENGLAND AND EGYPT

The Treaty of Alliance between Great Britain and Egypt signed in London August 26, 1936, and ratified December 22, 1936, is a masterly solution of a serious controversy.[1] The World War made a live issue of the question of Egyptian independence. England by reason of its war with Turkey was compelled to declare a protectorate over Egypt in 1914. It was constrained to acknowledge, with reservations, the independence of Egypt on March 15, 1922. This ambiguous situation created increasing distrust and tension between Egypt and England. The Italo-Abyssinian War affected Egypt so vitally that a definite solution was imperatively needed. Egypt was none too sure it could stand up alone against possible Italian aggression. England

[13] The President's Control of Foreign Relations, p. 207.

[1] The treaty is printed in the Supplement to this JOURNAL, p. 77.

could not afford to have a sullen, hostile Egypt on its hands in another international crisis.

The Treaty of Alliance implies an independent footing of equality of Egypt with England "for effective co-operation in preserving peace and ensuring the defence of their respective territories. . . ." Their interests are assumed to be mutual. It must, however, be apparent that by reason of the importance of the Suez Canal to Imperial defence, England has a paramount interest in the affairs of Egypt. Article 5, therefore, is highly significant in its implications: "Each of the High Contracting Parties undertakes not to adopt in relation to foreign countries an attitude which is inconsistent with the Alliance, nor to conclude political treaties inconsistent with the provisions of the present treaty." Egypt may be independent, but its freedom in foreign affairs is by no means unrestricted.

Article 11, which deals with the thorny problem of the Sudan, is likewise of great significance. The condominium of England and Egypt is continued under the reserve, "Nothing in this article prejudices the question of sovereignty over the Sudan." Whose sovereignty is in question? England's by right of conquest and Egypt's by historical right. The question is left open. Why? Because England, through its control of the upper waters of the Nile, desires to retain a powerful control over Egypt.

The Treaty of Alliance, therefore, by establishing a *modus vivendi* for a period of at least twenty years is a real triumph for British diplomacy. It is an extremely clever device which, in the light of the lessons of the late Abyssinian War, should serve the interests of Egypt as well as of the British Empire. The practical necessities of both parties had to be considered as well as nationalistic sensibilities. England had to concede the form in order to preserve the substance. It is extraordinarily interesting to note how this was done.

Article 1 states: "The military occupation of Egypt by the forces of His Majesty the King and Emperor is terminated." This is quite definitive and categorical. But Article 8 provides that Great Britain may maintain 10,000 land forces and 400 air pilots in Egypt "until such time as the High Contracting Parties agree that the Egyptian Army is in a position to ensure by its own resources the liberty and entire security of navigation of the Canal . . ." This arrangement is subject to revision after twenty years by the Council of the League of Nations to determine "whether the presence of British forces is no longer necessary." This significant clause is included in Article 8: "The presence of these forces shall not constitute in any manner an occupation and will in no way prejudice the sovereign rights of Egypt." These military forces are allowed ostensibly for the protection of the allied interests of Egypt and Great Britain. Furthermore, the hateful symbolic presence of British soldiers in the Citadel of Cairo, as well as in Alexandria, is to be ended within eight years when satisfactory barracks have been provided in the neighborhood of the Canal.

Certain important diplomatic "understandings" are embodied in separate notes dealing with the delicate matter of military control. It is agreed that the European Bureau of the Public Security Department (British police in effect) is "abolished forthwith," but "certain European elements in their city police" are to be retained for five years under the command of British officers. It is likewise agreed that British personnel will be withdrawn from the Egyptian Army, but Great Britain is providing a Military Mission "to perfect the training of the Egyptian Army . . . for such time as they (the Egyptian Government) may deem necessary."

It is also agreed that armaments or equipment for the Egyptian Army for purpose of the Alliance "should not differ in type from those of the British Forces." The Egyptian Army, in training as well as equipment, must conform to British standards in order to comply with its obligations as an ally.

With respect to the British Judicial and Financial Advisors who have so tactfully and efficiently exercised an indirect control over the Egyptian Government, the Government has been released "from any restriction of an international character with regard to the retention or non-retention of these officials." The all-powerful British High Commissioner disappears to reappear as a full-fledged Ambassador enjoying perpetual seniority rights over all other ambassadors and ministers!

The humiliating anachronism of special exterritorial privileges for foreigners is dealt with by Article 13: "His Majesty the King and Emperor recognizes that the capitulatory régime now existing in Egypt is no longer in accordance with the spirit of the time and the present state of Egypt. His Majesty the King of Egypt desires the abolition of this régime without delay. Both High Contracting Parties are agreed upon the arrangements with regard to this matter as set forth in the Annex to this Article."

These arrangements envisage the disappearance of all restrictions on Egyptian sovereignty in fiscal as well as in juridical matters. The veto power of the Mixed Courts over Egyptian legislation will be abolished. A "transitional régime for a reasonable and not unduly prolonged period" is contemplated during which the Mixed Tribunals will take over the functions of the Consular Courts. Questions of "personal status" may possibly be left to Consular Courts during the period of transition.

Such a program will entail drastic changes in Egyptian laws and procedure in order to facilitate the complete abolition of the Capitulations. They are much too complicated to permit inclusion in the present comment.

From the nationalistic point of view nothing is more abhorrent, as Japan, Turkey and Persia have known by painful experience, than the existence of a régime of exterritorial privileges for foreigners. It is a most offensive international servitude. Certain foreigners of low ethical standards have always known how to exploit these privileges in ways harmful to the best interests of the country, notably in commercial vice and narcotics. On the other hand, the status of Egypt as a great international cross-road and clear-

ing house, with seventy-five per cent of business in the hands of two hundred thousand foreigners, renders the whole juridical problem exceedingly difficult. The complexity of litigation and of the legal processes involved will place on Egypt a terrific burden of responsibility, first to adapt its legislation to such a change, and secondly, actually to administer justice among many kinds of foreigners. It may turn out that the complete abolition of the Mixed Courts may not prove to be an unmixed blessing. Sheldon Amos, who served Egypt so long and disinterestedly as a British legal advisor, ventures to assert that "next to the Church, the Mixed Courts are the most successful international institution known to history." To suppress this institution entirely may prove to be a backward step. It certainly would be a most liberal attitude if all nations, in matters of litigation involving the interpretation and application of foreign law, could concede that the primary question is not to assert the prestige of territorial jurisdiction but to facilitate the easiest and most liberal solution. Questions of "personal status" concerning birth, guardianship, inheritance, marriage, divorce, and death of foreigners, are matters that do not generally concern local law and morals very closely. And as for ordinary commercial transactions involving complicated foreign relationships, the Mixed Tribunals might be better suited to deal with such matters than an ordinary Egyptian court.

It is quite evident that considerable negotiation may be required before Egypt will enjoy full judicial as well as political independence. The entire problem of the Capitulations is to be discussed at an international conference called by the Egyptian Government at Montreux, Switzerland, April 12, 1937. In its invitation the Government has indicated certain demands. First, that during the "transitional régime" all jurisdiction by Consular Courts, including questions of "personal status," shall be transferred to the Mixed Courts. Second, that the term "foreigner" shall not apply to the vast army of privileged persons, most of whom were born in Egypt, variously denoted as "*ressortissants*" or "*protégés*." Third, the competence of the Mixed Courts in a case involving foreigners is to be determined by the nationality of the parties concerned, "without regard to mixed interests which might be indirectly engaged." How this would affect stockholders in corporations is not clear. Fourth, the Mixed Courts may not pass on the validity of Egyptian legislation affecting foreigners.

It may be readily appreciated that, unless a preliminary understanding has been reached by Great Britain and other interested Powers concerning these extremely complicated matters, the Montreux Conference promises to be exceedingly difficult. It may end either in a deadlock or an unsatisfactory *modus operandi*. A remarkable concession, however, has been made by Great Britain in the Annex to Article 13 of the Treaty of Alliance, whereby Egypt apparently may exercise the right of abolishing the capitulatory régime by unilateral action. "It is understood that in the event of its being found impossible to bring into effect the arrangements referred to . . . the Egyptian

Government retains its full rights unimpaired with regard to the capitulatory régime, including the Mixed Courts." If this should eventuate, then Egypt will have gone much further than may have been desired by some of her wisest patriots. Zaghloul Pasha, the great Egyptian Nationalist leader, said in 1919 that "we seek complete independence but not an independence which shall affect the capitulatory rights of foreigners either as concerns the laws or the jurisdiction of the Mixed Courts."

The United States obviously has not a big stake in Egypt, though curiously enough there are three American judges in the Mixed Courts: Justice Jasper Yates Brinton of the Court of Appeals in Alexandria, Judge Robert L. Henry of the Court of First Instance in Alexandria, and Judge Julien Wright of the Court of First Instance in Cairo. Whatever the issues at stake, the United States is not likely to insist on greater privileges than those which may be claimed or renounced by Great Britain. It is quite clear that the ultimate fate of the capitulatory régime lies in British hands. In any event, Great Britain, by its most adroit statesmanship and diplomacy, has secured, through this Treaty of Alliance with Egypt, an amicable solution of a most embarrassing problem. The best interests of both countries, as well as of other international relations, may have been reasonably insured for another generation.

PHILIP MARSHALL BROWN

THE NEW TREATIES BETWEEN THE UNITED STATES AND PANAMA

On March 2, 1936, the United States and Panama signed four conventions clarifying the relations between Panama and the Canal Zone.[1] These conventions were submitted to the Senate of the United States and the Assembly of Panama for approval. The Assembly consented to the conventions last December, and they are now pending before the Foreign Relations Committee of the United States Senate. The official texts of these conventions have not as yet been made public by the United States Government, and the remarks here made are based upon information regarding these conventions obtained from other sources.

When the so-called Taft Agreement was abrogated by the United States in 1924,[2] negotiations for a new treaty covering that agreement and other questions were begun, culminating in the signature of the convention of July 28, 1926. This convention was rejected by the Assembly of Panama, and consequently was not passed upon by the United States Senate. The treaty failed in Panama apparently for the reason that when it was made public it was found not to meet the country's aspirations for the exercise of the sovereign powers so much restricted by the Treaty of 1903. This disappointment

[1] The four conventions are: a general treaty revising in some respects the Treaty of 1903, with sixteen exchanges of notes relating thereto; a convention for the regulation of radio communications in Panama and the Canal Zone, with three exchanges of notes; a convention providing for the transfer to Panama of two naval radio stations; a convention with regard to the construction of a trans-Isthmian highway between the cities of Panama and Colon.

[2] See editorial in this JOURNAL, Vol. 20 (1926), p. 117.