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EXCHANGE OF NOTES

BETWEEN

THE UNITED KINGDOM AND FRANCE.

ARRANGEMENTS UNDER
ARTICLE X, §4, OF THE CONVENTION OF
OCTOBER 20, 1906, RESPECTING
THE NEW HEBRIDES.

August 29, 1907.

*Presented to both Houses of Parliament by Command of His Majesty.
January 1908.*

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EXCHANGE OF NOTES BETWEEN THE UNITED
KINGDOM AND FRANCE. ARRANGEMENTS
UNDER ARTICLE X, § 4, OF THE CONVEN-
TION OF OCTOBER 20, 1906,* RESPECTING
THE NEW HEBRIDES.

August 29, 1907.

No. 1.

The French Minister to Sir Edward Grey.—(Received August 30.)

*Ambassade de France, Londres,
le 29 Août, 1907.*

M. le Secrétaire d'État,

LES Délégués Français à la Commission Franco-Britannique qui s'est réunie à Londres au mois de Mai dernier pour discuter les arrangements à faire en exécution de l'Article X, paragraphe 4, de la Convention du 20 Octobre, 1906, relative aux Nouvelles-Hébrides ont soumis à M. le Ministre des Colonies les résultats de leurs travaux. Je suis aujourd'hui chargé de faire savoir à votre Excellence que mon Gouvernement approuve les solutions proposées par cette Commission, dont les discussions n'ont cessé d'être animées d'un esprit de conciliation et d'entente auquel je suis heureux de pouvoir ici rendre hommage.

Le Gouvernement de la République donne sa pleine et entière adhésion au Règlement rédigé en exécution de l'Article X (4) et ci-annexé (No. 1). Ce Règlement sera considéré comme faisant corps avec le dit Article X et sera promulgué en même temps que celui-ci.

Conformément aux recommandations faites par suite d'une discussion officieuse entre les Représentants des deux Gouvernements, le Gouvernement de la République prescrira au Haut Commissaire Français d'omettre, dans le texte de la Convention qui sera publié et rendu obligatoire dans l'archipel pour les citoyens Français, les mots suivants, figurant à l'Article LI (4) : "après deux avertissements donnés par écrit à l'engagiste," étant entendu que le Gouvernement de Sa Majesté Britannique procédera de même pour les mots correspondants du texte Anglais: "after two written warnings addressed to the employer."

* "Treaty Series No. 3 (1907)."

Le Gouvernement de la République adressera au Haut Commissaire Français les instructions générales et les instructions spéciales sur le régime du travail, dont le texte est ci-annexé (Nos. 2 et 3), dès que le Gouvernement de Sa Majesté Britannique lui aura fait connaître qu'il a adressé ou est disposé à adresser des instructions similaires au Haut Commissaire Anglais.

Le Gouvernement de la République autorisera le Haut Commissaire Français à ajourner, d'accord avec le Haut Commissaire Anglais, la promulgation des Articles IX (2), XI à XIX inclusivement, XXI à XXVII inclusivement, LVI (3), LX (3 et 4), et LXI (2) jusqu'à ce que les Magistrats du Tribunal Mixte soient installés dans l'archipel. Les citoyens Français coupables d'infractions aux dispositions de la Convention ou des Règlements d'exécution pris par les Hauts Commissaires seront, à titre transitoire, poursuivis, conformément à l'Article XX et aux dispositions antérieurement en vigueur, devant l'autorité judiciaire Française, étant entendu que le Gouvernement Anglais procédera de même à l'égard des sujets Britanniques.

Le Gouvernement de la République profite de cette occasion pour déclarer que les procès et litiges immobiliers auxquels se réfèrent les Articles XXII et suivants de la Convention du 20 Octobre, 1906, comprennent également les procès et litiges concernant les mines, minerais, et en général le sous-sol des îles.

Je serais reconnaissant à votre Excellence de vouloir bien, en m'accusant réception de la présente note, me faire savoir si le Gouvernement de Sa Majesté le Roi approuve de son côté les dispositions ci-dessus énoncées, afin que le complet accord établi entre nos deux Gouvernements soit ainsi officiellement constaté.

Veillez, &c.
(Signé) GEOFFRAY.

(Translation.)

*French Embassy, London,
August 29, 1907.*

M. le Secrétaire d'État,

THE French Delegates on the Anglo-French Commission, which met in London in May last to discuss the arrangements to be made under Article X, § 4, of the Convention of the 20th October, 1906, respecting the New Hebrides, have submitted the results of their discussions to the Minister for the Colonies. I have now the honour to inform your Excellency that my Government approve the recommendations of the Commission, and I am glad at the same time to be able to record my appreciation of the conciliatory spirit in which its discussions were carried on.

The Government of the Republic concur fully in the Regulations drawn up in order to give effect to Article X (4) of the Convention, which are annexed hereto (Annex 1). These Regulations will be considered as forming part of the aforesaid Article X, and will be promulgated simultaneously with that Article.

In accordance with recommendations made after semi-official

discussions between the Representatives of the two Governments, the Government of the Republic will instruct the French High Commissioner to omit from the text of the Convention to be published and made binding on French citizens in the Group, the following words which occur in Article LI (4): "après deux avertissements donnés par écrit à l'engagiste," it being understood that the Government of His Britannic Majesty deal similarly with the corresponding words in the English text: "after two written warnings addressed to the employer."

The Government of the Republic will communicate to the French High Commissioner the General and Special Instructions relating to the Labour Regulations, the text of which is annexed hereto (Annexes 2 and 3), as soon as the Government of His Britannic Majesty have informed them that they have communicated, or are prepared to communicate, similar instructions to the British High Commissioner.

The Government of the Republic will authorize the French High Commissioner to postpone, with the concurrence of the British High Commissioner, the promulgation of Articles IX (2), XI to XIX inclusive, XXI to XXVII inclusive, LVI (3), LX (3 and 4), and LXI (2) until the Judges of the Joint Court have entered upon their duties in the Group. French citizens guilty of infringing the provisions of the Convention or the Regulations which the High Commissioners may make in order to give effect to them, will, for the time being, be prosecuted in accordance with Article XX and with the provisions previously in force before the French judicial authority, it being understood that the British Government will deal in a similar manner with British subjects.

The Government of the Republic take this opportunity to place on record the fact that the "procès" and "litiges immobiliers," which form the subject of provisions in Article XXII and following Articles of the Convention of the 20th October, 1906, include suits with regard to mines, minerals, and everything under the surface of the soil.

I should be obliged if your Excellency would, in acknowledging the receipt of this note, inform me whether His Majesty's Government, on their part, approve the provisions above set forth, in order that the complete understanding arrived at between our two Governments may be officially placed on record.

I have, &c.

(Signed) GEOFFRAY.

Annexe 1.

*Règlement.**

LES/ Soussignés, Jean Weber, Sous-Chef de Bureau au Ministère des Colonies; de Comte de Manneville, Premier Secrétaire à

* For English text see p. 23.

l'Ambassade de France à Londres ; Louis Mallet, Sous-Secrétaire d'État Adjoint des Affaires Étrangères, Compagnon du Très Honorable Ordre du Bain ; Frederick Fitchett, Docteur en Droit, Solicitor-General de la Nouvelle-Zélande, délégués respectivement par le Gouvernement de la République Française et par le Gouvernement de Sa Majesté Britannique à l'effet de préparer, conformément au § 4 de l'Article X de la Convention des Nouvelles-Hébrides, signée à Londres le 20 Octobre, 1906, les dispositions relatives aux traitements, aux passages, aux congés, aux remplacements par intérim, et d'une manière générale à tout ce qui concerne le fonctionnement du Tribunal Mixte, sont convenus des dispositions suivantes, qu'ils ont résolu de soumettre à l'agrément de leurs Gouvernements respectifs :—

Règlement arrêté en commun par les Gouvernements Français et Anglais pour l'Exécution des Dispositions de l'Article X (4).

I.—*Traitements.*

Le traitement du Président du Tribunal Mixte sera de 22,500 fr. par an ; celui du Juge Français, du Juge Anglais, et du Procureur de 17,500 fr. par an chacun ; celui du Greffier de 10,000 fr. par an. Ces Magistrats auront droit, en outre, au logement.

Les salaires du personnel auxiliaire du Tribunal Mixte seront fixés par le Président, sous réserve de l'approbation des deux Hauts Commissaires.

II.—*Passages et Frais de Tournées.*

Le Président du Tribunal Mixte, les Juges Français et Anglais, le Procureur, et le Greffier auront droit au passage gratuit en première classe pour rejoindre leur poste aux Nouvelles-Hébrides.

Ils recevront la moitié de leur solde à partir du jour de leur embarquement, et leur solde entière à partir du jour de leur arrivée aux Nouvelles-Hébrides. Ils seront rapatriés aux mêmes conditions lorsqu'ils quitteront définitivement leur poste après cessation de leurs fonctions, sauf le cas de révocation pour mauvaise conduite ; toutefois, ces avantages ne leur seront accordés que s'ils ont servi au moins trois ans dans l'archipel, ou s'ils se retirent pour raison de santé.

Lorsqu'ils se déplaceront dans l'archipel pour les besoins du service, ils auront droit au remboursement de leurs dépenses effectives de transport, et recevront, en outre, une indemnité de vivres calculée à raison de 25 fr. par nuit pour frais de route par terre, et de 6 fr. 25 c. par nuit pour frais de voyage par mer.

III.—*Congés.*

Sous réserve du consentement des deux Hauts Commissaires, il pourra être accordé aux Magistrats du Tribunal Mixte des

congés à demi-solde, dont la durée sera égale au sixième du temps de leurs services effectifs; toutefois, sauf pour motifs spéciaux aucun congé de cette nature ne pourra leur être accordé avant l'accomplissement de leur troisième année de service aux Nouvelles-Hébrides, ni ensuite à des intervalles de moins d'un an, ni pour une durée de plus d'un an.

Lorsque la durée du congé sera d'au moins six mois, les Magistrats auront droit au passage gratuit aller et retour pour se rendre dans leurs pays d'origine.

IV.—*Limite d'Age.*

Les Magistrats cesseront obligatoirement leurs fonctions à l'âge de 60 ans, excepté dans des cas spéciaux et avec le consentement exprès des deux Hauts Commissaires.

V.—*Pensions.*

Aucun Magistrat du Tribunal Mixte n'aura droit à pension sur le budget commun des Nouvelles-Hébrides.

VI.—*Intérim.*

En cas d'absence ou d'indisponibilité du Président du Tribunal Mixte, le Procureur le remplacera dans ses fonctions.

En cas d'absence ou d'indisponibilité des Juges Français ou Anglais, un remplaçant intérimaire sera désigné respectivement par le Haut Commissaire Français ou Anglais.

En cas d'absence ou d'indisponibilité du Procureur, le Greffier le remplacera dans ses fonctions. En raison de ce service spécial, le Greffier devra n'être ni citoyen Français, ni sujet Anglais, et devra posséder les connaissances de droit nécessaires.

En cas d'absence ou d'incapacité du Greffier, le Président lui désignera un remplaçant intérimaire, sans condition de nationalité.

Les intérimaires, s'ils appartiennent déjà au personnel du Tribunal Mixte, auront droit à un traitement égal à la moitié du total de leur propre traitement et de celui du Magistrat qu'ils remplaceront. S'ils sont pris en dehors de ce personnel, ils auront droit aux mêmes allocations que les titulaires, pendant la durée de leur intérim.

VII.—*Service intérieur du Tribunal Mixte et Pouvoirs du Président.*

Toutes les dispositions concernant les audiences du Tribunal Mixte et son fonctionnement intérieur seront arrêtées par le Président.

Le Greffier et le personnel auxiliaire sont soumis à l'autorité disciplinaire du Président, mais celui-ci ne pourra prononcer la révocation qu'avec l'assentiment des Commissaires-Résidents.

VIII.—*Dispositions générales.*

Sous réserve de l'approbation ultérieure des deux Gouvernements, les deux Hauts Commissaires régleront conjointement toutes les questions concernant le Tribunal Mixte et non prévues par le présent Règlement.

Fait à Londres, en double exemplaire, le 17 Mai, 1907.

(Signé) J. WEBER.
H. de MANNEVILLE.
LOUIS MALLET.
DR. FITCHETT.

Annexe 2.*

INSTRUCTIONS GÉNÉRALES AU HAUT COMMISSAIRE FRANÇAIS DES NOUVELLES-HÉBRIDES POUR L'APPLICATION DE LA CONVENTION DU 20 OCTOBRE, 1906.

Le Ministre des Colonies à M. le Gouverneur de la Nouvelle-Calédonie, Haut Commissaire de la France aux Nouvelles-Hébrides.

Vous avez été informé que le Gouvernement de la République a décidé de laisser au Gouverneur de la Nouvelle-Calédonie la haute direction des affaires des Nouvelles-Hébrides, dans le système institué par la Convention Franco-Anglaise du 20 Octobre dernier.

Les traitements des Magistrats, et autres détails concernant le fonctionnement du Tribunal Mixte, ont fait l'objet d'un règlement récent ; il est à espérer que les Juges pourront être nommés à bref délai et dirigés sur l'archipel. Le moment est donc venu de promulguer la Convention. Le Gouvernement de la République a décidé de vous adresser les présentes instructions, afin de préciser l'esprit dont devra s'inspirer votre Administration et le sens dans lequel il conviendra d'exercer vos pouvoirs. Ces instructions ont fait l'objet d'un spécial échange de vues entre le Gouvernement Français et le Gouvernement Britannique. Ce dernier les adresse semblablement à votre collègue Britannique, le Haut Commissaire pour l'ouest du Pacifique.

Le préambule de la Convention du 20 Octobre, 1906, indique la volonté des deux nations " d'assurer l'exercice de leurs droits de souveraineté aux Nouvelles-Hébrides." Les deux Puissances, qui s'étaient engagées l'une envers l'autre à ne pas intervenir seules aux Nouvelles-Hébrides, s'accordent maintenant pour y intervenir conjointement. Leurs souverainetés, au lieu de s'exclure,

* See corresponding Instructions to British High Commissioner, p. 25.

se combinent; elles prennent possession des Iles en commun, et, par là même, écartent la possibilité de l'intervention d'une tierce Puissance.

Le Condominium Franco-Anglais, qui avait toujours existé de façon latente, va devenir une réalité.

Ce principe admis, il était très difficile d'en déterminer les applications. L'histoire diplomatique n'offrait à cet égard aucun précédent. Le régime du Condominium n'a été appliqué jusqu'à présent que dans des pays déjà pourvus d'institutions propres; il revêtait alors la forme d'un Protectorat conjoint. Aux Nouvelles-Hébrides, rien de semblable: les indigènes, groupés en tribus, qui s'ignorent mutuellement, n'ont aucune organisation politique dont il soit possible de tirer parti.

Les deux Puissances n'ont pas estimé qu'il fût, quant à présent, désirable de créer ce pouvoir neutre, autonome, qui fait défaut. Elles ont préféré reconnaître et renforcer les organisations Française et Anglaise déjà existantes, laisser subsister leur dualité, tout en étendant leur compétence, et déterminer seulement dans quelle mesure et suivant quelles règles, pour quelques cas spéciaux, elles auraient à combiner leur action.

Ainsi, sur le même territoire, coexisteront deux Colonies, l'une Anglaise, l'autre Française, régies chacune par sa législation propre, mutuellement indépendantes l'une de l'autre. La Convention institue entre elles un règlement de bon voisinage.

La règle générale à laquelle vous référez en tout ce qui n'est pas expressément prévu par la Convention est formulée à l'Article I, section 3: "Les ressortissants des deux Puissances Signataires, ainsi que les ressortissants des tierces Puissances, conserveront dans toute sa plénitude leur statut personnel et réel."

Les citoyens Français et les sujets Anglais emportent aux Nouvelles-Hébrides, avec leur nationalité, les qualités, devoirs, et droits attachés à cette nationalité. Mais la loi nationale, qui les régit jusqu'à présent à titre personnel, les régit dorénavant à titre territorial; pour les Français, l'archipel est territoire Français, pour les Anglais, territoire Anglais. Il n'est dérogé à ce principe que sur un très petit nombre de points, qui seront envisagés à mesure qu'ils se présenteront au cours de ces instructions.

Le régime appliqué aux ressortissants de tierces Puissances en découle logiquement; ces étrangers sont invités à opter, non pour l'une ou l'autre nationalité, mais pour l'une ou l'autre des législations qui peuvent les régir. En d'autres termes, ils ont à déclarer s'ils se considèrent comme résidant en territoire Français ou en territoire Anglais. Un sujet Suédois, par exemple, qui se sera placé sous la protection de la loi Française, sera de tous points assimilable à un de ses compatriotes établi en Nouvelle-Calédonie; s'il choisit, au contraire, la loi Anglaise, sa situation sera analogue à celle qu'il aurait s'il résidait aux Iles Fidji.

Les étrangers qui n'auront pas spontanément opté dans un délai de six mois seront placés d'office sous l'un ou l'autre régime par une décision prise d'accord entre vous et votre collègue. Afin d'éviter tout froissement, il conviendra de faire connaître très

exactement cette situation aux ressortissants des tierces Puissances, afin de réduire autant que possible les cas où une telle décision d'office devra être prise. Si, néanmoins, il est nécessaire d'y recourir pour quelques cas, les Hauts Commissaires ou leurs Délégués s'inspireront uniquement des raisons de convenance locale, en plaçant l'étranger sous l'un ou l'autre régime, selon qu'il se trouve installé à proximité d'un groupe Français ou d'un groupe Anglais. Toute question de rivalité nationale sera soigneusement écartée.

Dans le même esprit, la Convention laisse entendre que l'option, ou la décision qui en tiendra lieu, aura un caractère définitif : un étranger placé sous le régime Français ne sera pas admis à passer ultérieurement sous le régime Anglais, et réciproquement.

Les indigènes Néo-Hébridais sont exclus de ces dispositions. C'est toujours en vue d'éviter des rivalités fâcheuses que l'Article VIII leur interdit d'acquérir la qualité de ressortissants de l'une ou l'autre Puissance.

Les deux Hauts Commissaires ont conjointement autorité sur les Chefs des tribus et peuvent édicter des règlements les concernant. L'un des objets de la Convention était de soumettre les indigènes, pour la première fois, à une autorité régulière dont ils pussent attendre aide et protection. Les conditions particulières de l'archipel ne permettront sans doute pas avant longtemps à cette protection de produire tout son effet tutélaire. En attendant vous devrez poursuivre de tous vos efforts la cessation des guerres entre tribus et l'abolition des coutumes cruelles ou dégradantes.

Le Gouvernement de la République attache une grande importance à ce que ce point de vue ne soit pas négligé, et il a toute confiance que, tout en vous conformant aux principes généraux établis par l'Article VIII, vous userez des moyens dont vous disposez pour relever graduellement le niveau de l'existence chez les indigènes de l'archipel.

Il ne paraît pas nécessaire de donner de longs éclaircissements sur l'organisation administrative générale. Elle n'est, en effet, que le développement des institutions antérieures parallèlement établies par les deux nations. Les Hauts Commissaires sont toutefois investis du pouvoir d'édicter en commun des règlements pour le "maintien de l'ordre et la bonne administration, ainsi que pour les mesures d'exécution nécessitées par la Convention."

Vous n'avez point perdu le pouvoir de statuer seul, d'après les principes de la législation Française existante, sur les matières intéressant spécialement l'administration de vos nationaux. Mais il sera bon, en règle générale, que vous donniez officiellement connaissance de ces règlements à votre collègue Anglais.

Sont considérés comme services communs les services de la police, des postes, et des télégraphes, des travaux d'intérêt général, du balisage et des feux, de la police sanitaire, et le service financier qui se rattache à cette organisation commune. Quelques explications à cet égard ne seront pas superflues.

En ce qui concerne la police, l'Article II donne des précisions

qui fixeront vos idées. Les deux sections Française et Anglaise restent distinctes avec faculté de se réunir lorsqu'elles doivent intervenir au nom de la souveraineté commune, par exemple, vis-à-vis des indigènes vivant en tribus. Mais il serait bon, pour éviter les rivalités et les conflits toujours à redouter, que ces deux corps fussent recrutés parmi des hommes de même race, qu'ils restassent en contact permanent, et habitassent côté à côté dans la même caserne.

Pour les autres services, c'est un désir de simplification qui a conduit à les déclarer communs. Vous avez toute latitude pour les organiser comme vous l'entendrez d'accord avec votre collègue. Une solution qui a été adoptée dans d'autres pays soumis à un régime de Condominium consisterait à procéder par voie de délégations mutuelles. L'un des Hauts Commissaires organiserait et dirigerait plus particulièrement certains services, et son collègue les autres. Toutes les fois qu'il existera déjà dans l'un ou l'autre des groupements des rudiments d'organisation, ils devront être utilisés et étendus plutôt que de recourir à des créations nouvelles. Si des difficultés se présentaient pour le fonctionnement mixte de l'un ou l'autre de ces services, il serait toujours possible de les dédoubler, dans une certaine mesure, en imitant, par exemple, les dispositions prévues pour la police.

Enfin, il convient de remarquer que le service commun des travaux ne concernera que les travaux d'une utilité commune, et que le service financier commun sera exclusivement le service financier afférent au Tribunal Mixte et aux services énumérés à l'Article IV, § 1. Chaque Haut Commissaire conserve toute liberté pour organiser seul les services particuliers qu'il pourra juger nécessaire et pour gérer ses finances propres.

La Commission Navale Mixte, bien que formellement maintenue par l'Article VI, perd en grande partie le caractère qu'elle avait jusqu'à présent. Elle cesse d'avoir une initiative propre, en dehors des cas d'urgence. Elle devient une force militaire destinée à seconder ou à remplacer la police chaque fois que les circonstances l'exigent.

Cependant, vous aurez soin de ne pas interpréter trop étroitement les mots "sauf dans les cas d'urgence." Dans l'état actuel de l'archipel, de nombreux cas se présenteront où la Commission Navale pourra juger bon d'engager une action sans les délais que nécessiterait une communication avec le chef-lieu, et il est essentiel qu'elle ne considère pas que toute liberté de décision et d'initiative lui ait été enlevée par la Convention.

Sous le régime antérieur, elle n'avait qualité que pour procéder à de véritables opérations de guerre contre les tribus. Elle rétablissait l'ordre par des démonstrations sommaires, destinées à impressionner les indigènes. Elle ne pouvait ni arrêter ni juger ceux-ci. Une fois l'action finie, son rôle était terminé.

Dorénavant son intervention pourra être plus précise. Il y aura lieu, non de punir en masse les tribus, mais de rechercher les coupables et de s'en saisir pour les déférer à la justice.

Le territoire de l'archipel ne sera pas non plus interdit en

quelque sorte aux détachements armés que pourront débarquer les navires de guerre, en dehors même des cas où une opération militaire est nécessaire.

L'organisation judiciaire prévue par la Convention échappe en grande partie à votre compétence, en raison du principe de la séparation des pouvoirs. Il n'est, toutefois, pas inutile de vous en indiquer les grandes lignes.

De même que les autorités administratives Françaises et Anglaises conservent une indépendance mutuelle, leur coopération étant toutefois exigée dans certains cas, de même les Tribunaux de l'une et l'autre Puissance restent distincts et un organe mixte est institué entre eux. Mais ici cet organe mixte acquiert une particulière importance ; la réunion du Juge Français et du Juge Anglais ne pouvait suffire à le constituer, et un corps spécial de Magistrats n'appartenant ni à l'une ni à l'autre des deux nationalités leur est adjoind.

La Convention détermine la compétence de ce Tribunal Mixte, qui est essentiellement appelé à statuer sur les matières concernant directement ou indirectement les indigènes. C'est en vertu de cette conception que toute affaire est portée devant ce Tribunal dès qu'un indigène est poursuivi ou est partie au procès ; c'est pour la même raison que tous les litiges immobiliers lui sont soumis, car la propriété foncière a toujours été, de près ou de loin, acquise des indigènes ; c'est enfin dans le même esprit que toutes les infractions aux règlements prévus par la Convention lui sont déférés, car ces règlements visent surtout les rapports des résidents de toute nationalité avec les indigènes.

Quant aux règles concernant la loi applicable, la procédure, elles sont inspirées de la préoccupation de laisser respectivement les citoyens Français et les sujets Anglais sous la protection de leur législation propre.

La compétence des Tribunaux Nationaux se trouve définie par celle même du Tribunal Mixte. Les procès contre non-indigènes, en dehors des litiges immobiliers, les poursuites correctionnelles et criminelles contre les non-indigènes, seront portés devant eux, suivant les règles très claires que pose l'Article XX.

La Convention se termine par divers règlements particuliers concernant le régime immobilier, la police de la navigation, le recrutement des travailleurs indigènes, les armes, munitions, et boissons alcooliques, enfin les municipalités.

Les dispositions relatives au régime immobilier intéressent exclusivement le Tribunal Mixte. Vous devrez vous abstenir soigneusement de toute intervention dans ces questions particulièrement délicates. Les instances en dépossession d'immeubles, les requêtes aux fins d'immatriculation, seront adressées par les intéressés au greffe du Tribunal Mixte, et l'Administration proprement dite se refusera absolument même à en prendre acte, fût-ce à titre transitoire.

Au cas où le Tribunal estimerait nécessaire de faire procéder à des reconnaissances de terrain ou des levers de plans par des agents administratifs, vous lui en laisseriez toute la responsabilité,

en invitant les Magistrats à désigner eux-mêmes les collaborateurs à ce requis.

L'Article XXVII, § 8, attribue compétence aux Hauts Commissaires pour déterminer, par régions, des réserves inaliénables affectées aux indigènes. Il n'existe point aux Nouvelles-Hébrides de domaine d'État, de sorte que toutes les dispositions prises devront être inspirées uniquement de raisons de fait, dûment constatées, et de la préoccupation supérieure, d'assurer aux indigènes l'exercice de droits naturels définis par l'usage et par leurs besoins.

Le règlement concernant la police de la navigation s'inspire exclusivement de l'idée générale exposée au début, de laisser les citoyens Français et les sujets Anglais sous le régime de leurs législations respectives, et de considérer cet archipel à la fois comme terre Française et comme terre Anglaise.

Le Gouvernement Britannique ayant adressé par avance à votre collègue des instructions concernant le recrutement des travailleurs, cette question ne sera pas traitée ici. Je vous en entretiendrai dans une lettre spéciale.

La prohibition, de vendre aux indigènes des armes, munitions, et spiritueux est formulée en termes absolus. Mais vous remarquerez que cette interdiction ne concerne que le fait de livrer ces articles à un indigène; les non-indigènes restent complètement libres d'introduire des armes ou des boissons alcooliques pour leur usage, et ils n'ont pas à en justifier. Mais le libéralisme de ces dispositions doit avoir pour complément une répression vigoureuse des délits reconnus.

Vous aurez, d'accord avec votre collègue, à investir d'un mandat spécial les officiers et agents de la force publique, en vue de la recherche et de la constatation des infractions.

De plus, vous vous appliquerez à faire comprendre aux colons qu'il y va de leur propre sécurité et de leur propre intérêt; en fournissant des armes de guerre aux Canaques, ils préparent les attentats que l'on pourra diriger contre eux-mêmes et leurs familles; en livrant des spiritueux à de malheureux sauvages incapables de maîtriser leurs passions, ils avilissent une race nécessaire à la prospérité du pays.

Le dernier règlement concerne les municipalités. Lors des travaux préparatoires de la Convention, il a été adopté presque sans débats par les Délégués des deux pays, tant l'idée qui s'en dégage était naturelle et légitime. Ainsi qu'il a été dit au début, la difficulté dans l'organisation du Condominium était l'absence de toute autorité neutre locale, l'impossibilité de fusionner deux législations aussi différentes que celles de la France et de l'Angleterre. De là un régime nécessairement compliqué et lourd à manier.

Ne serait-il pas possible de laisser naître en quelque sorte des circonstances cette organisation neutre, qui ne pouvait être faite de toutes pièces?

C'est l'idée qui a conduit à faire ici appel au principe fécond de l'autonomie et du "self-government." Les Français et les

Anglais vivent en bons voisins aux Nouvelles-Hébrides ; ils ont des intérêts communs, des besoins parallèles. Il faut les mettre le plus possible à même de se grouper entre eux, de s'organiser, de créer, et de développer des institutions propres, nées des circonstances, adaptées aux nécessités. C'est de leur effort amical et concerté que doit naître la société qu'il n'était pas possible de susciter artificiellement.

Vous devrez donc, d'accord avec votre collègue, aider le plus possible à la constitution de ces groupements d'habitants non-indigènes, accepter libéralement les demandes des colons désireux de se former en municipalités, bien entendu dans des limites raisonnables, quant au nombre des colons et quant à l'étendue du territoire qu'ils habitent, et ne contrarier leurs propositions spontanées que si elles devaient comporter des dangers pour l'ordre public.

Vous aurez naturellement à élaborer, conformément à l'Article 67, des règlements d'application, et je recommande tout particulièrement à votre attention la nécessité de fixer des règles précises et prudentes pour la gestion des finances municipales.

Telles sont les indications générales qu'il a paru opportun de vous donner.

Dès la réception des présentes instructions, vous vous mettrez en rapport avec votre collègue Anglais, et vous vous concerterez avec lui pour vous rencontrer à une date très rapprochée dans l'archipel, afin d'y procéder conjointement à la promulgation de la Convention.

Il ne sera pas inutile de donner à cette cérémonie une certaine solennité, et d'en profiter pour attester publiquement la cordiale entente qui règne entre les deux pays, et qui rend seule possible l'application de ce régime sans précédent.

Vous vous préoccuperez ensuite immédiatement des mesures d'exécution. Vous aurez intérêt à déléguer très largement votre autorité à votre représentant dans l'archipel. Il est indispensable que des relations cordiales et suivies s'établissent entre les Commissaires-Résidents. La plupart des questions pourront être réglées par eux, sur les lieux, sous réserve de votre approbation ultérieure. Toute autre méthode d'administration, qui exige déjà de longs délais lorsqu'un seul Gouvernement est en cause, provoquerait ici d'interminables retards par la nécessité de référer à la fois aux deux hautes autorités prochaines, parfois même aux deux Gouvernements métropolitains.

Il est à supposer qu'il ne sera pas immédiatement possible de faire fonctionner le Tribunal Mixte ; l'état social des Nouvelles-Hébrides est si peu avancé que les Magistrats risqueraient même de ne pouvoir ni se loger ni tenir leurs audiences. Vous aurez à apprécier la situation et à en informer votre Gouvernement, votre collègue agissant de même de son côté.

S'il vous paraît possible de louer aux frais du Condominium les logements nécessaires au Tribunal et à ses Juges, ceux-ci seront acheminés sur les Nouvelles-Hébrides sans autre retard.

S'il est, au contraire, reconnu nécessaire de procéder à des

constructions neuves, des délais plus longs seront naturellement obligatoires.

En tout état de cause, vous vous préoccuperiez immédiatement, d'accord avec votre collègue, des aménagements nouveaux que les circonstances paraîtront exiger.

D'après les évaluations Françaises, une somme de 350,000 fr. serait nécessaire pour ces constructions. D'après les évaluations Anglaises, le chiffre serait de 300,000 fr. Ces deux indications sont suffisamment concordantes pour qu'il vous soit sans doute aisé d'arrêter des propositions précises, que vous notifierez immédiatement à l'autorité centrale. Les fonds dont vous disposez déjà vous permettront de commencer les travaux.

Vous pourrez ensuite charger votre délégué, d'accord avec son collègue, d'organiser immédiatement le service des travaux et celui des finances, en utilisant les agents Français ou Anglais déjà sur les lieux.

Ce seront là les mesures de toute première urgence.

L'organisation des autres services mixtes pourra être faite au fur et à mesure des besoins. Tant que la police ne sera pas organisée, la Commission Navale Mixte pourra, dans une certaine mesure, y suppléer, mais vous ne négligeriez rien pour hâter la constitution d'une force régulière et l'aménagement d'un local convenable pour la recevoir.

Les médecins résidant déjà dans l'archipel fourniront sans doute le moyen de faire fonctionner de suite le service sanitaire. Quant aux autres services communs, l'urgence en est moins pressante.

S'il n'est pas possible d'installer immédiatement le Tribunal Mixte, il n'en sera pas moins nécessaire de mettre immédiatement en vigueur les règlements concernant les armes et spiritueux et les contrats d'engagements. Par entente spéciale, et à titre transitoire, les délinquants pourraient être traduits devant l'autorité judiciaire dont ils relèvent quant à présent.

Les règlements sur la navigation et sur les municipalités sont d'application immédiate et facile.

Quant au règlement sur les propriétés foncières, il ne pourra entrer en vigueur que lorsque le Tribunal Mixte fonctionnera.

Vous aurez donc à hâter la mise en application de la Convention de la manière qui vient d'être dite, en usant largement d'initiative, et en tenant votre Gouvernement au courant des mesures prises.

D'une manière générale, vous devrez faire autant que possible appel à un personnel des plus réduits. Vous établirez, d'accord avec votre collègue, un budget pour le prochain exercice, que vous notifierez immédiatement à l'autorité centrale. Les dépenses devront être comprimées d'autant plus soigneusement que très peu de ressources propres viendront les contre-balancer.

Bien que vous ayez le pouvoir d'édicter conjointement avec votre collègue des contributions et taxes, vous n'userez de ce pouvoir qu'avec beaucoup de modération ; les ressources des colons sont faibles, et l'on arrêterait l'essor de la colonisation en leur imposant des charges quelque peu importantes.

Tout au plus serait-il possible, la première année, de percevoir quelques droits de navigation, très peu élevés, et des taxes sur les recrutements et engagements d'indigènes. L'on ne peut guère espérer que l'ensemble de ces produits dépasse de 15,000 fr. à 20,000 fr.

Les droits de greffe du Tribunal Mixte porteront peut-être ce total à 25,000 fr.

Or, l'on ne saurait se dissimuler que la dépense générale des services communs atteindra facilement un chiffre huit ou dix fois supérieur, lorsque l'organisation nouvelle aura été complètement constituée.

Il importe donc de ne réaliser cette organisation que peu à peu, en dotant le Condominium de l'embryon des services essentiels, et en évitant de donner à ceux-ci une extension prématurée.

Ces mesures de prudente exécution sont entièrement remises à votre initiative et à votre compétence, en lesquels les deux Gouvernements ont toute confiance.

Annexe 3.

INSTRUCTIONS AU HAUT COMMISSAIRE FRANÇAIS SUR LA QUESTION DU TRAVAIL DES INDIGÈNES AUX NOUVELLES-HÉBRIDES.

Le Ministre des Colonies à M. le Gouverneur de la Nouvelle-Calédonie, Haut Commissaire de la France aux Nouvelles-Hébrides.

LES instructions générales que vous avez reçues par ce même courrier relativement à l'application de la Convention du 20 Octobre, 1906, ne traitent pas de la question de la main-d'œuvre indigène.

La raison vous en a été indiquée. Antérieurement aux pourparlers qui se sont engagés à Londres en Mai dernier, le Gouvernement Britannique avait notifié ses intentions au Haut Commissaire Anglais de l'Ouest du Pacifique, dont les attributions relativement aux Nouvelles-Hébrides viennent d'être confirmées. Il est donc nécessaire de compléter, sur ce point particulier, les instructions générales qui vous ont été adressées.

Le règlement sur les engagements de travailleurs indigènes s'inspire de l'idée générale affirmée par la Convention : les ressortissants de l'une et de l'autre Puissance sont placés sous la seule direction et sous la seule surveillance de leurs autorités nationales respectives ; l'indigène engagé relève, pour le temps de son engagement, de la protection de l'autorité dont relève son engagiste.

L'application de ce Règlement devra être l'objet d'une attention spéciale de votre part.

Les deux Gouvernements se sont proposé, en l'édicant, d'améliorer sérieusement la condition des travailleurs indigènes, de leur donner la garantie d'un contrat régulier, surveillé par les pouvoirs publics, d'instituer un contrôle rapproché, susceptible d'exercer en toutes circonstances son action tutélaire et bienveillante.

L'insuffisance du régime antérieur était manifeste ; elle a été à de nombreuses reprises signalée par vous-même et vos prédécesseurs. Les deux Gouvernements se sont donc trouvés pleinement d'accord pour faire disparaître un état de choses qui n'avait d'autre explication que leur désir mutuel d'ajourner une intervention constituant un acte effectif de souveraineté à l'égard des indigènes.

Ce n'est d'ailleurs pas seulement un devoir d'humanité ; c'est aussi l'intérêt bien compris de colons, qui commande d'assurer aux indigènes un traitement équitable et une réelle protection. L'avenir des Nouvelles-Hébrides est lié, dans une large mesure, à celui de la race Canaque, et vous n'ignorez pas d'ailleurs que le Gouvernement de la République est profondément pénétré, dans l'administration des Colonies Françaises, de cette vérité que le sort des entreprises coloniales dépend avant tout de la prospérité assurée aux populations locales.

Le système institué par la Convention donne à l'Administration le pouvoir de suivre l'indigène dans toutes les positions qu'il occupe depuis son départ de sa tribu jusqu'à son retour définitif. La surveillance des contrats est exercée, non seulement par le Commissaire-Délégué, mais par des personnes investies d'attributions spéciales à cet effet.

Votre premier soin sera donc de désigner un nombre suffisant de semblables agents. Toutes les fois qu'il ne sera pas possible de les choisir parmi des fonctionnaires ou des officiers, vous les prendrez parmi les colons eux-mêmes, en vous attachant à n'investir de ces fonctions que des personnes d'une honorabilité connue, ayant acquis une certaine autorité morale sur leurs voisins. Il conviendra, même dans ce cas, de leur allouer une rétribution, signe de leur qualité officielle, en même temps que gage de leur subordination à votre haute direction.

Vous ferez comprendre à ces Délégués l'importance de leur mission, qui exige du tact, de la pondération, et un large sentiment de justice. Vous appellerez leur attention notamment sur l'Article LIV, qui définit l'étendue de leurs pouvoirs. Sans être, à proprement parler, des Inspecteurs du Travail, au sens où ce mot est entendu en France, ils doivent se considérer comme les tuteurs naturels des engagés, avec lesquels ils se tiendront fréquemment en contact.

Le Commissaire-Résident sera leur chef immédiat. Il sera désirable qu'il procède de temps à autre à des tournées d'inspection, ou confier des missions analogues à des Magistrats, officiers, ou fonctionnaires se déplaçant dans l'archipel.

L'Article XXXI subordonne l'autorisation de recruter à la délivrance d'un permis spécial.

De semblables permis ne seront naturellement pas accordés à

des indigènes. Vous vous assurerez, par ailleurs, de la moralité des personnes qui vous adresseront des demandes.

Les licences délivrées par vous pourront comporter des stipulations précises auxquelles devra se soumettre le titulaire, faute de quoi l'autorisation lui serait retirée.

Dans ces clauses spéciales à chaque permis, vous préciserez pour chaque recruteur l'obligation de faire viser son registre par l'autorité administrative, en indiquant, d'après l'itinéraire qu'il se propose de suivre, les points où il devra se présenter aux agents placés sous vos ordres. Vous vous attacherez à faire en sorte qu'aucun indigène ne puisse être emmené à une grande distance de sa tribu sans avoir comparu devant l'un de vos Délégués, qui l'interrogera, et qui s'assurera, conformément aux dispositions de l'Article LI, § 5, qu'il comprend et accepte librement les conditions de l'engagement.

Ainsi, après toute opération de recrutement dans une région déterminée, le recruteur aura à présenter les travailleurs emmenés par lui à l'agent le plus proche, qui mentionnerait sur le registre l'accomplissement de cette formalité.

Je tiens de plus à ce que vous insériez dans toutes les licences délivrées par vous une clause interdisant d'emmener hors de l'archipel les femmes et les enfants, à l'exception, bien entendu, du cas où ils accompagneraient le chef de la famille.

L'Article XXXIII, § 2, prévoit que les Commissaires-Résidents fixeront de concert le minimum de taille que devront avoir atteint les enfants pour pouvoir être engagés. Cette disposition s'explique par l'impossibilité de connaître le plus souvent l'âge exact des indigènes. Elle devra être appliquée de manière à empêcher que des enfants ne soient engagés avant l'âge où leurs forces se sont pleinement développées et les rendent aptes au travail—c'est-à-dire, en général, avant l'âge de 15 ans.

Vous aurez à prendre des précautions particulières pour que l'application de l'Article LV ne puisse donner lieu à aucun abus. L'emploi libre de travailleurs indigènes non liés par un contrat de longue durée devra être surveillé suivant des formes que vous déterminerez, d'abord avec votre collègue Anglais. C'est l'un des points sur lesquels vous aurez à préciser la Convention par un règlement d'exécution pris conformément à l'Article VII.

L'Article LI devra être interprété dans ce sens, que l'indigène, ayant terminé son temps d'engagement, aura droit au rapatriement, mais non que ce rapatriement lui sera imposé d'office. Il sera toujours loisible à l'indigène de renoncer à cette faculté. Vous aurez à prendre les mesures nécessaires pour spécifier les conditions dans lesquelles le travailleur pourra faire usage de son droit, soit que vous fixiez un délai, passé lequel il serait considéré comme y ayant renoncé, soit que vous exigiez du colon, dans le cas où il n'aurait pas procédé ou fait procéder lui-même au rapatriement le versement d'une provision permettant à l'Administration de l'effectuer elle-même ultérieurement.

Je signale enfin à votre attention que, par un échange spécial de notes, les deux Gouvernements ont décidé de supprimer, dans

l'Article LI, § 4, les mots "après deux avertissements donnés par écrit à l'engagiste."

Cette modification a paru nécessaire afin de permettre que, dans les cas de sévices graves, lorsque la vie même d'un engagé paraîtrait en danger, celui-ci pût être soustrait sans retard aux violences de l'engagiste. Elle s'imposait d'autant plus que le texte Anglais : "In case of persistent ill-treatment of a labourer" a une force beaucoup plus grande que le texte Français : "En cas de mauvais traitements persistants envers un engagé."

L'idée des rédacteurs de la Convention avait été de permettre la résiliation d'office du contrat, après deux avertissements, dans les cas peu graves, tels que nourriture insuffisante, mauvais logement, excès manifeste de travail, &c. Les cas de violence eussent été déferés au Tribunal Mixte. Le texte Anglais ne permet pas cette interprétation. De plus, le Gouvernement Britannique a fait remarquer avec raison que l'on donnerait ainsi à l'autorité administrative le pouvoir de résilier d'office les contrats dans les cas peu graves, tandis que l'intervention de la justice serait nécessaire dans les cas plus sérieux, ce qui ne paraît pas logique. Le plus simple est donc de confier toujours au Commissaire-Résident le droit de prononcer la résiliation, en remettant à sa sagesse le soin d'apprécier les circonstances.

Il convient d'ailleurs de ne point se méprendre sur la portée de cette modification. Vous donnerez comme instructions formelles au Commissaire-Résident de n'user de ses pouvoirs, en pareille matière, qu'avec une grande circonspection. En règle générale, il devra avoir adressé au moins deux avertissements par écrit à l'employeur avant de prononcer une rupture de contrat. Si, dans un cas d'urgence, il juge indispensable de passer outre à cette formalité, il devra immédiatement vous en rendre compte par un rapport motivé, et vous ferez une enquête sur l'affaire, vous tracerez très exactement à votre subordonné ses devoirs à cet égard, afin d'éviter tout arbitraire.

J'ajoute, en terminant, que je vous prie de me tenir au courant des mesures que vous aurez prises en exécution des présentes instructions.

(Translation.)

INSTRUCTIONS TO THE FRENCH HIGH COMMISSIONER WITH REGARD
TO THE QUESTION OF NATIVE LABOUR IN THE NEW
HEBRIDES.

*The Minister of the Colonies to the Governor of New Caledonia,
French High Commissioner in the New Hebrides.*

You will observe that the general instructions with regard to the application of the Convention of the 20th October, 1906, which you will receive simultaneously with these, do not deal with the question of native labour.

The reason for this has been pointed out to you. Prior to the negotiations which took place in London last May, the British

Government had sent their instructions to the British High Commissioner for the Western Pacific, under whose official control it has been decided to leave the New Hebrides. It is therefore necessary to supplement on this particular point the general instructions which have been conveyed to you.

The Regulations with regard to the engagement of native labourers are based on the general principle laid down by the Convention. The citizens and subjects of either Power are placed under the sole direction of their respective national authorities. Each native engaged is, for the period of his engagement, under the protection of the same authority as his employer.

You should pay special attention to the administration of these Regulations.

In drawing up these Regulations it has been the intention of the two Governments to improve materially the condition of native labourers, to afford them the guarantee of a regular contract, supervised by public authorities, and to institute a close control, which would afford help and protection in any case where they were needed.

The failings of the previous system were obvious, and have been often pointed out by yourself and your predecessors. The two Governments agreed to put an end to a state of things which was only to be explained by their mutual desire to postpone any intervention which might constitute an effective act of sovereignty over the natives.

Moreover, it is not only a duty of humanity, it is also obviously the interests of the settlers, which necessitate that equitable treatment and real protection should be afforded to the natives. The future of the New Hebrides is, to a great extent, dependent on that of the Kanaka race, and you are aware that the Government of the Republic is animated, in the administration of the French Colonies, by the knowledge that the fate of colonial enterprises depends, in the first place, on the amount of prosperity assured to the native populations.

The system instituted by the Convention gives the Administration the power of supervising the native in all positions he may occupy from the moment of his leaving his tribe to that of his definite return to it. The supervision of contracts is exercised, not only by the Sub-Commissioner ("Commissaire-Délégué"), but also by persons invested with special powers for the purpose.

Your chief object should therefore be to nominate a sufficient number of these agents. In the event of your being unable to select them from among the functionaries or officers in the group, you should select them from among the settlers, taking care, however, only to appoint persons of well-known respectability. It would be well in this case to allow them some remuneration as an indication of their official position as well as a guarantee for their due subordination to your authority.

You should thoroughly explain to these agents the importance of their work, which will demand tact, judgment, and a broad sense of justice. You should especially call their attention to Article

LIV of the Convention, which defines the extent of their powers. Without being, properly speaking, Labour Inspectors ("Inspecteurs du Travail") in the sense in which this term is understood in France, they should consider themselves as natural guardians of the natives engaged, with whom they should keep in close touch.

The Resident Commissioner will be their immediate chief. It would be desirable that he should from time to time proceed on a tour of inspection, or intrust such duty to any Magistrates, officers, or officials who may be touring in the group.

Article XXXI makes a special permit necessary in all cases where recruiting is authorized.

Such permits will naturally not be issued to natives. You should further satisfy yourself as to the moral character of the persons who may apply for them.

The licences which you may issue might contain definite stipulations to which the licensee will have to submit on the pain of having his authorization withdrawn.

In these special clauses you should make it clear to each recruiter that he is bound to have his licence ("registre") indorsed by the administrative authorities, and you should indicate at the same time the points on the line of route he intends to follow, at which he should present himself to the Agents under your orders. You should endeavour to arrange matters in such a way that it will be impossible for any native to be removed to a considerable distance from his tribe without having appeared before one or other of your Agents, who should examine him in order to make sure, in accordance with the stipulations of Article LI, § 5, that he understands the conditions of his engagement, and is acting as a free agent in accepting them.

Consequently, after any recruiting has taken place in a given district, the recruiter should present the labourers whom he has engaged to the nearest Agent, who in his turn ought duly to record that this formality has been complied with.

I further desire that you should insert in all the licences that you issue a clause forbidding women and children to be taken out of the group, with the exception, of course, of those who may accompany the head of their family.

Article XXXIII, § 2, provides that the Resident Commissioners shall fix jointly the minimum height which children must have reached in order to be engaged. This provision is explained by the fact that it is generally impossible to ascertain the exact age of the natives. The Article should therefore be applied in such a way as to prevent children from being recruited before the age at which their strength is fully developed so as to fit them for their work—in fact, generally speaking, before the age of 15.

You should be particularly careful to see that Article LV, when in force, does not give rise to any abuses. You should lay down certain rules, after previous consultation with your English colleague, for your guidance in supervising the conditions of employment of such labourers as are not bound by a contract of long duration. This is one of the cases in which you will

Lastly, I would request you to keep me informed of the measures which you may decide to take in order to carry out these instructions.

No. 2.

Sir Edward Grey to the French Minister.

M. le Ministre, *Foreign Office, August 29, 1907.*

THE British Delegates on the Anglo-French Commission which met in London in May last to discuss the arrangements to be made under Article X, § 4, of the Convention of the 20th October, 1906, respecting the New Hebrides, have submitted the results of their discussions to His Majesty's Government.

I have now the honour to inform you that His Majesty's Government approve the recommendations of the Commission, and I am glad at the same time to be able to record my appreciation of the conciliatory spirit in which its discussions were carried on.

His Majesty's Government concur fully in the Regulations drawn up in order to give effect to Article X (4) of the New Hebrides Convention, which are annexed hereto (Annex 1). These Regulations will be considered as forming part of the aforesaid Article X, and will be promulgated simultaneously with that Article.

In accordance with recommendations made after semi-official discussions between the Representatives of the two Governments, His Majesty's Government will instruct the British High Commissioner to omit from the text of the Convention to be published and made binding on British subjects in the Group the following words which occur in Article LI (4): "after two written warnings addressed to the employer," provided that the French Government deal similarly with the corresponding words in the French text: "après deux avertissements donnés par écrit à l'engagiste."

His Majesty's Government have communicated to the British High Commissioner the accompanying Special Instructions relating to the Labour Regulations, and will communicate the General Instructions, the text of which is annexed hereto (Annexes 2 and 3), as soon as the French Government have informed His Majesty's Government that they have communicated, or are prepared to communicate, similar instructions to the French High Commissioner.

His Majesty's Government will authorize the British High Commissioner to postpone, with the concurrence of the French High Commissioner, the promulgation of Articles IX (2), XI to XIX inclusive, XXI to XXVII inclusive, LVI (3), LX (3 and 4), and LXI (2) until the Judges of the Joint Court have entered upon their duties in the Group.

British subjects, guilty of infringing the provisions of the Convention or the Regulations which the High Commissioners may make in order to give effect to them, will, for the time being, be

have to define more clearly the Convention by means of an administrative Regulation drawn up in accordance with Article VII.

Article LI should be interpreted to mean that a native, on completing the term of his engagement, has the right to be repatriated, but not that repatriation is obligatory. It will always be permissible for a native to renounce his claim to repatriation. You should therefore take the necessary steps for specifying the conditions under which a labourer can avail himself of his right; for instance, you might either fix a time-limit after the expiration of which he will be considered to have renounced his right, or, in the event of a settler not having repatriated nor taken steps to repatriate a native, you might compel him to pay a sum which would enable the Administration to do so itself.

Lastly, I would call your attention to the fact that by a special exchange of notes the two Governments have decided to suppress in Article LI, § 4, the words "after two written warnings addressed to the employer."

This modification appeared necessary in order to provide, in cases of serious cruelty, when the labourer's life itself might be in danger, for his withdrawal without delay from the violence of his employer. It was all the more necessary as the English text, "in case of persistent ill-treatment of a labourer," is much more forcible than the French text, "en cas de mauvais traitements persistents envers un engagé."

The drafters of the Convention intended that it should be permissible in less serious cases, such as insufficient food, bad housing, or obvious overwork, &c., to cancel a contract after two warnings. Cases of violence would have been referred to the Mixed Tribunal. The English text, however, does not permit of this interpretation. The British Government have, moreover, very rightly pointed out that the administrative authorities would thus be given the power to cancel contracts in less serious cases, whereas the intervention of the judicial power would be necessary in the more serious cases, an arrangement which does not seem logical. The simplest solution is therefore to invest the Resident Commissioner in all cases with the right of decreeing the cancellation, trusting to his good judgment to weigh carefully the circumstances of each case.

It is important that there should be no doubt as to the bearing of this modification. You should give the Resident Commissioner strict instructions that in cases of this nature he is to use the powers conferred on him with the greatest circumspection. As a general rule, he should have addressed at least two written warnings to the employer before decreeing the cancellation of the contract. If in an urgent case he considers it indispensable to ignore this formality, he should furnish you immediately with a detailed report on the subject, and you should hold an inquiry into the matter and give him precise instructions as to his duties in this respect in order to avoid all arbitrary action.

prosecuted in accordance with Article XX and with the provisions previously in force before the British judicial authority, it being understood that the French Government will deal in a similar manner with French citizens.

His Majesty's Government take this opportunity to place on record the fact that the words "land suits" and "litiges immobiliers," which form the subject of provisions in Article XXII and following Articles of the Convention, include suits with regard to mines, minerals, and everything under the surface of the soil.

I have, &c.

(Signed) E. GREY.

Annexes.

1. Regulations respecting salaries, &c., of members of the Joint Court in the New Hebrides.
2. General Instructions.
3. Instructions relating to the Labour Regulations.

Annex 1.

Joint Regulations respecting Salaries, &c., of Members of the Joint Court in the New Hebrides.

THE Undersigned, Louis Mallet, Assistant Under-Secretary of State for Foreign Affairs, Companion of the Most Honourable Order of the Bath; Frederick Fitchett, Doctor of Laws, Solicitor-General for New Zealand; Jean Weber, Sous-Chef de Bureau at the Ministry for the Colonies; le Comte de Manneville, First Secretary French Embassy in London, delegated respectively by the Government of His Britannic Majesty and the Government of the French Republic in order to draw up, in conformity with paragraph 4 of Article X of the Convention respecting the New Hebrides, signed in London the 20th October, 1906, arrangements as to the salaries, travelling allowances, leave, acting appointments, and in general all matters relating to the working of the Joint Court, have agreed to the following provisions, which they have resolved to submit to the approval of their respective Governments:—

Joint Regulations of the British and French Governments under Article X (4).

I.—Salaries.

The salary of the President of the Joint Court shall be 900*l.* per annum. The salaries of the British and French Judges shall be 700*l.* each per annum. The salary of the Public Prosecutor shall be 700*l.* per annum. The salary of the Registrar shall be 400*l.* These officers shall also be entitled to free quarters.

The salaries of the staff of the Joint Court shall be fixed by the President, subject to the approval of the two High Commissioners.

II.—*Passages and Travelling.*

Free passages (first class) shall be provided for the President of the Joint Court, the British and French Judges, the Public Prosecutor, and the Registrar from their place of residence to the New Hebrides.

They shall further be entitled to half-pay from the date of embarkation, and to full pay from the date of arrival in the New Hebrides. Similar allowances shall be granted on the ultimate return home of those officers, upon determination of their appointments for any other reason than misconduct, provided they have served not less than three years, or return home on the ground of ill-health.

They shall also, when travelling in the Group in the performance of their official duties, receive actual expenses of transport, together with 1*l.* subsistence allowance for each night on land and 5*s.* for each night at sea.

III.—*Leave.*

Subject to the consent of the two High Commissioners, the officers mentioned in Article II may be granted leave on half-pay up to one-sixth of their resident service; but in the absence of special ground such leave shall not be granted before the completion of three years' service in the New Hebrides, nor thereafter at less than yearly intervals, nor for more than twelve months at any one time.

When the leave taken is not less than six months, the officers shall be entitled to a free passage to their own country and back.

IV.—*Age Limit.*

Except in special cases, and with the express consent of the two High Commissioners, retirement shall be compulsory at the age of 60.

V.—*Pensions.*

No member or officer of the Joint Court shall be entitled to a pension from New Hebrides funds.

VI.—*Acting Arrangements.*

In the absence or incapacity of the President of the Joint Court, the Public Prosecutor shall act for him.

In the absence or incapacity of the British or French Judge, a substitute shall be appointed by the British or French High Commissioner respectively.

In the absence or incapacity of the Public Prosecutor, the Registrar shall act for him. In view of this provision, the

Registrar shall not be either a British subject or a French citizen and must possess the necessary legal qualifications.

In the absence or incapacity of the Registrar, the President shall appoint a suitable substitute irrespective of nationality.

Officers, while holding acting appointments, shall, if they are already on the staff of the Joint Court, receive a salary equal to half the combined salaries of their own post and of the officer for whom they are acting. If not members of the staff of the Joint Court when appointed, they shall be entitled to the same emoluments as the person for whom they are acting would have received.

VII.—*Business of the Joint Court and Powers of the President*

All arrangements for the sittings of the Joint Court and the conduct of its business shall be made by the President.

The Registrar and staff of the Joint Court shall be under the control of the President, but their appointment shall not be revocable by him except with the concurrence of the two Resident Commissioners.

VIII.—*General.*

Subject to the approval of the two Governments, the two High Commissioners shall arrange jointly for all matters relating to the Joint Court not covered by the preceding Regulations.

Done in duplicate at London, the 17th May, 1907.

(Signed)

LOUIS MALLET.
FRED. FITCHETT.
J. WEBER.
H. DE MANNEVILLE.

Annex 2.

GENERAL INSTRUCTIONS TO THE BRITISH HIGH COMMISSIONER
WITH REGARD TO THE APPLICATION OF THE CONVENTION OF
OCTOBER 20, 1906.

*Draft of Despatch from the Earl of Elgin to High Commissioner
Sir E. in Thurm.*

Sir,

Downing Street September , 1907.*

I HAVE already informed you that His Majesty's Government have decided to leave to the High Commissioner for the Western Pacific the control of the affairs of the New Hebrides, under the system set up by the Anglo-French Convention of the 20th October, 1906.

*This despatch was duly sent off to the High Commissioner on the 26th September.

2. The salaries of the members and other details relating to the working of the Joint Court have recently been settled by the framing of Regulations under Article X (4) of the Convention, and I trust that the Judges will shortly be appointed and proceed to the New Hebrides. The time has therefore come to proclaim the Convention, and His Majesty's Government accordingly desire to address to you general instructions with regard to the spirit in which the Convention should be administered, and the manner in which you should exercise the powers conferred upon you. His Majesty's Government have been in communication on the subject with the French Government, who are addressing similar instructions to your French colleague, the Governor of New Caledonia.

3. The preamble of the Convention of the 10th October, 1906, indicates the desire of the two Governments "to secure the exercise of their paramount rights in the New Hebrides." The two Powers, who were mutually bound not to intervene separately in the New Hebrides, now agree to intervene there together. Instead of remaining mutually exclusive, their paramount rights are combined; the two countries jointly assume jurisdiction in the islands, and thereby provide against the possible appearance of a third Power. The Anglo-French Condominium, which had always existed in a latent form, will become a reality.

4. It was found very difficult to determine the manner in which this principle should be applied. Diplomatic history furnished no exact precedent. Hitherto experience of a Condominium has been limited to countries already possessing institutions of their own; in those cases it took the form of a Joint Protectorate. In the New Hebrides, on the contrary, the natives live in tribes which hold aloof from one another, and they have no political organization which could be utilized.

5. The two Powers have not thought it desirable at present to create the separate authority, neither British nor French, which is absent in the New Hebrides. They have preferred to recognize and reinforce the pre-existing British and French organizations, to preserve their distinct character while extending their scope, and to determine only to what extent and on what principles they should unite for some special cases. On the same territory there will coexist, as it were, two aggregations of settlers—one British, the other French—each governed by its own law and independent of the other. The Convention establishes a system under which they may exist in harmony side by side.

6. The general principle by which you will guide yourself in all cases not expressly provided for by the Convention is laid down in Article I (3): ". . . The subjects and citizens of the two Signatory Powers and the subjects and citizens of other Powers shall . . . remain subject to the fullest extent to the laws of their respective countries." British subjects and French citizens take with them to the New Hebrides, with their nationality, the qualities, duties, and rights attached to that nationality. But henceforth the two nations who formerly exercised only a personal

jurisdiction over their own nationals, assume a quasi-territorial jurisdiction. For the British resident that jurisdiction will be British; for the French it will be French. From this principle there are few departures, with which I shall deal later in this despatch.

7. The system applied to the subjects or citizens of other Powers is logically derived from this principle. These persons are invited to choose, not between the British and French nationalities, but between the two legal systems. In other words, they have to declare whether they consider themselves as living under British or French jurisdiction. For example, a Swedish subject who places himself under the protection of French law will occupy a position in all respects similar to that of a Swede established in New Caledonia; if, on the other hand, he chooses the English legal system, his position will be similar to that which he would occupy if he lived in a British Protectorate.

8. If such persons do not make their choice within six months, they will be officially placed under one of the two co-existing legal systems by the joint decision of you and your French colleague. In order to avoid all friction, it is desirable that the position should be made known with the utmost clearness to residents who are neither British nor French, so as to reduce as far as possible the number of cases where such a decision is required. If, however, it is necessary to resort to that mode of settlement, the High Commissioners or their delegates will base their decisions solely on grounds of local convenience; the legal system to be applied to a resident neither British nor French must be determined by the answer to the question whether his neighbours are British or French. All considerations of national rivalry should be carefully excluded.

9. In the same spirit, the Convention implies that the choice or decision once made is final: a foreigner, for instance, placed under the British legal system will not be able to transfer himself later to the French system, or *vice versa*.

10. The natives of the New Hebrides are excluded from the scope of these provisions. The object of Article VIII (2), which prohibits natives from acquiring in the Group the status of subject or citizen, or from being under the separate protection of either of the two Signatory Powers, was to prevent undesirable rivalries. The two High Commissioners have joint authority over the native Chiefs, and power to make Regulations concerning them. One of the purposes of the Convention was to place the natives, for the first time, under a regular authority to whom they could look for help and protection. For some time to come it will no doubt be impossible, in the peculiar conditions of the Group, to make such protection thoroughly effective; but meanwhile you will do your utmost to insure the cessation of intertribal warfare, and the abolition of cruel and degrading customs. His Majesty's Government attach great importance to this aspect of the Convention, and they have every confidence that, whilst acting in accordance with the general principles laid down in Article VIII,

you will use the best means at your disposal to raise gradually the level of moral and material prosperity among the natives.

11. It does not appear necessary to enter into any long explanations on the general administrative organization. It is simply the development of pre-existing institutions established in an elementary form by the two nations on parallel lines. The High Commissioners are invested with the power to issue joint Regulations "for the peace, order, and good government of the Group, as well as for the execution of the measures resulting from the present Convention." You retain the power to regulate separately, in accordance with existing British legislation, matters which specially concern British subjects; but as a general rule it will be desirable that you should officially communicate any such Regulations to your French colleague.

12. The following public services are to be undertaken in common: Police, posts and telegraphs, public works, ports and harbours, buoys and lighthouses, public health, and the financial business which is involved by this joint organization. A few remarks on these matters may not be superfluous.

13. With regard to the police, Article II contains provisions which will supply a definite basis of organization. The British and French divisions remain distinct, though they may combine when they have to act in the name of the two Powers jointly, as, for instance, in dealing with natives living in tribes. But in order to avoid undesirable rivalries and friction, the two corps should be recruited as far as possible among men of the same race, should be always in close touch with one another, and should have their quarters together.

14. The other services have been declared to be in common from a desire for simplification. You are at liberty to organize them as you may think fit to arrange with your French colleague. A mode of procedure which has been adopted in other countries under a Condominium is mutual delegation of powers; one of the High Commissioners would thus be more particularly charged with the organization and direction of certain services, and his colleague with that of the others. Whenever the rudiments of organization for any administrative purpose already exist, they should be utilized and extended instead of being rejected in favour of new creations. If the joint administration of any of these services is found to present difficulties, it would always be possible to divide them to a certain extent into separate administrations, following, for instance, the model of the police services.

15. Finally, it will be observed that the service of "public works" refers only to works of joint utility, and that the joint financial arrangements will be exclusively those relating to the Joint Court and to the services mentioned in Article IV (1). Each High Commissioner retains full liberty to organize separately the national services which he may consider necessary, and to administer his own finances.

16. The Joint Naval Commission, although formally maintained by Article VI, will lose to some extent its previous character.

Except in cases of urgency, it will cease to act on its own initiative. It will become an armed force, intended to assist or replace the civil police when circumstances require it. You will, however, be careful not to interpret too narrowly the words "except in case of urgency." In the existing state of affairs in the Group it may often happen that naval officers will think it desirable to intervene without the delays required for communication with headquarters, and it is essential that they should not regard themselves as deprived by the Convention of all liberty of decision and action.

17. Formerly their operations were purely in the nature of "acts of war" against the tribes; they restored order by summary demonstrations intended to impress the natives, who could be neither arrested nor tried in the legal sense of the word. Their functions were at an end as soon as warlike operations were completed. Henceforth their intervention will be within more clearly defined limits; it will be a question only of dealing with individual natives who have committed outrages, not, it is hoped, of punitive expeditions against a tribe or tribes. At the same time the men-of-war will be able to land armed parties, even in cases where no military operation is necessary.

18. The judicial organization provided by the Convention is to a large extent outside the limits of your authority. It may, however, be useful to indicate its main lines.

19. In the same way as the British and French administrative authorities remain independent of each other, while bound to co-operate in certain cases, so the Courts of both Powers remain separate and a Joint Tribunal is set up. But in this case a peculiar importance attaches to the Joint Tribunal: the combination of a British and of a French Judge being for obvious reasons inadequate, they are reinforced by a special staff of officers belonging to neither nationality. The Convention defines the powers of the Joint Court, which is essentially a Court to decide cases directly or indirectly affecting the natives. On this principle criminal cases in which a native is defendant, and civil cases to which he is a party, will come before the Joint Court; for the same reason all land suits will come before it, since landed property has in all cases been acquired in the first instance from the natives. In the same spirit it will try all offences against the Regulations contained in the Convention, since these Regulations are intended to deal mainly with the relations between the natives and the non-native residents of every nationality.

20. The principles laid down by the Convention as to the "law applicable" and procedure, rest on the basis that British subjects and French citizens should be left under the protection of their own law.

21. The jurisdiction of the national Courts is limited and defined by that of the Joint Court. Suits against non-natives (except suits concerning land) and criminal prosecutions of non-natives will go before those Courts in accordance with the principles clearly laid down in Article XX.

22. The Convention ends with certain special Regulations concerning land, the supervision of shipping, the recruiting of native labourers, arms, ammunition, and intoxicating liquors, and municipalities.

23. The arrangements with regard to landed property are the exclusive concern of the Joint Court. You should carefully refrain from intervention in those peculiarly delicate questions. Suits for eviction and applications for registration of titles will be addressed by the parties concerned to the Registry of the Joint Court, and the executive properly so-called will absolutely refuse to take cognizance of them even as a temporary arrangement. When the Court thinks it necessary to cause inspections or surveys of land to be made by administrative officers, you will leave to it the whole responsibility, inviting its members to select for themselves the assistants whom they may require.

24. Article XXVII (8) gives the High Commissioner authority to establish inalienable reserves for the natives in different districts. As there are no Crown lands in the New Hebrides, the only basis of action must be the proved requirements of the situation and the guiding principle that the natives must be assured the exercise of their natural rights as defined by custom and by their needs.

25. The Regulations respecting the supervision of shipping are based solely on the general principle which I have already explained—that British subjects and French citizens should be left to the control of their national law, the Group being regarded as a country subject at the same time to both British and French jurisdiction.

26. His Majesty's Government have already addressed to you full instructions on the recruiting of native labourers, and I need not therefore refer further to the Articles of the Convention dealing with that subject.

27. The sale of arms, ammunition, and intoxicating liquors to natives is absolutely forbidden by the Convention. This prohibition, however, leaves non-natives free to introduce arms or alcoholic liquors for their own use without interference; but the individual liberty thus left to the white settlers necessarily implies a vigorous repression of offences against the provisions of the Convention forbidding sale to natives. Acting in concert with your French colleague, you will confer on the officers and agents of the police the authority contemplated by Article LX, to inquire into and report breaches of the Regulations. You will moreover, strive to impress on the settlers that in these measures their own security and interests are vitally concerned. If they supply the natives with weapons, they pave the way for attacks upon themselves and their families; if they give liquor to savages incapable of controlling their passions, they degrade a race necessary to the prosperity of the country.

28. The last division of the Convention is concerned with municipalities. When the draft of the Convention was under discussion, these provisions were adopted without great controversy, because the principle involved in them seemed natural and

legitimate. As I have already said, the main difficulty in organizing the Condominium was the absence of all independent local authority and the impossibility of merging into one two systems of law so different as the English and the French. The result was bound to be an arrangement complicated and difficult to work. The question therefore arose whether circumstances themselves might not naturally produce the spontaneous organization—neither British nor French—which it was impossible to create artificially. Such a result might, it was thought, follow from a cautious application of the principle of self-government. British and French settlers live in the New Hebrides side by side on terms of friendship; they have common interests and similar needs. It seems desirable to enable them as much as possible to organize themselves into communities, and to create and develop their own institutions according to the pressure of circumstances and the necessities of their position. Thus common action and common interests which could not otherwise be called into existence may spring from their friendly combination.

29. In concert with your French colleague, you will therefore assist as far as is properly possible in the constitution of these communities of non-native residents, consider favourably the requests of settlers desirous of forming municipalities, of course within reasonable limits as to the minimum number of such settlers and the area they inhabit, and not refuse their proposals unless they involve danger to the public order and good government.

30. It will naturally be your duty, in accordance with Article LXVII, to prepare Regulations for enforcing the provisions respecting municipalities. I would call your attention particularly to the necessity of laying down clear and cautious rules for the administration of the municipal finances.

31. I have now given you the general explanations and instructions which seem desirable. On the receipt of these instructions you should put yourself into communication with your French colleague, and arrange with him to meet you at an early date in the Group, in order that you may jointly proclaim the Convention. It will be advisable to mark the occasion by a certain amount of ceremony, so as publicly to emphasize the cordial understanding between the two Powers, which alone renders it possible to establish this novel system of government.

32. You will immediately take steps to carry out the Convention; and it will be advisable that your powers under it should be largely delegated to your representative in the Group. It is indispensable that close and cordial relations should be established between the Resident Commissioners. Most of the questions which will arise may be settled between them, subject to your approval. Any other method of carrying on the administration (which already involves much delay, though only one Government at a time has hitherto been concerned) would result in prolonged postponements owing to the necessity of referring to two high authorities, sometimes even to the two central Governments.

33. It will presumably not be possible for the Joint Court to enter at once upon its duties. The social condition of the New Hebrides is so primitive that the Judges and officers of the Court might not be able either to find quarters for themselves, or a Court in which to hold their sessions. You should therefore examine the situation and report to His Majesty's Government, as your French colleague will no doubt do on his side. If you think it possible to lease at the expense of New Hebrides funds the quarters necessary for the Court and its Judges, the latter will proceed to the New Hebrides as soon as possible. If, however, it is deemed necessary first to build quarters and a Court-house, a longer interval must necessarily elapse.

34. In any event, however, you should immediately consider, in consultation with your French colleague, the question of the new buildings, which the circumstances may seem to require. The French estimate for the cost of these works is 14,000*l.*, the British 12,000*l.* These two estimates are sufficiently close to enable you without trouble to formulate definite proposals, which you should communicate at once to me. The funds already at your disposal will permit you to commence work.

35. You will instruct the Resident Deputy-Commissioner to organize immediately, in concert with his French colleague, the services of Public Works and of Finance, of course making use of any British or French officials already on the spot.

36. These are the most urgent measures. The organization of the other joint services can be conducted gradually and as need arises. Until the police force is organized the Joint Naval Commission can take its place to a certain extent, but you will use every effort to expedite the creation of a regular force and the construction of suitable quarters.

37. The service of Public Health can no doubt be constituted without delay from the medical men already resident in the Group. The establishment of the other joint services is a matter of less urgency.

38. If it is not possible to provide immediately for the working of the Joint Court, it will be none the less necessary to put in force immediately the Regulations concerning arms, liquor, and engagements of native labourers. As a temporary arrangement specially agreed on, offenders can be brought, as at present, before their national authority.

39. The Regulations as to navigation and municipalities can be brought into operation without difficulty and at once; but the Regulations as to landed property can only come into force when the Joint Court has entered upon its duties.

40. The Convention, or the greater part of it, should thus be brought into operation as soon as you can arrange it, in the manner which I have explained. It will be necessary for you to exercise your discretion freely, while keeping His Majesty's Government fully informed of the steps taken. As a general rule the numbers of the staff employed should be kept down as far as possible. In consultation with your French colleague, you should prepare an

estimate of expenditure which should be immediately forwarded to His Majesty's Government. It will, of course, be necessary to watch expenditure the more carefully, because there will be very little local revenue to assist in defraying it.

41. Although you have authority, in conjunction with your French colleague, to impose duties and taxes, this power must, of course, be used with moderation. Many of the settlers do not possess large means, and it would be a mistake to retard the settlement of the Group by collecting from them duties of any great importance. It might, however, be possible in the first year to obtain a revenue from the imposition of small shipping dues, and fees on the recruiting and engagements of native labourers, but it can scarcely be hoped that the total amount from these sources will exceed 600*l.* or 800*l.* The legal fees, &c., of the Joint Court will perhaps bring this total up to 1,000*l.*

42. On the other hand, there can be little doubt that the general expenses of the services undertaken in common will be eight or ten times that sum when the new organization has been established in its entirety. It can therefore only be set up gradually, beginning with the rudiments of the essential services and refraining from premature elaboration.

43. His Majesty's Government must leave it to your energy and discretion—in which they have full confidence—to take the measures absolutely necessary, while moving with the care the situation requires.

I am, &c.

Annex 3.

INSTRUCTIONS TO THE BRITISH HIGH COMMISSIONER ON THE
QUESTION OF NATIVE LABOUR IN THE NEW HEBRIDES.

The Earl of Elgin to High Commissioner Sir E. im Thurn.

Sir,

Downing Street, March 21, 1907.

I HAVE already informed you that for practical reasons it will probably be impossible for a few months to bring into operation the Anglo-French Convention of the 20th October, 1906, respecting the New Hebrides; but, in anticipation of its coming into force, it may be useful that I should convey to you general instructions on that important part of it which deals with the recruiting and engagement of native labourers.

2. As the New Hebrides have hitherto been without any recognized Government, European settlers in those islands have been subject to no general law, but only to such provisions of the law of their own country as applied to them wherever they may be, together with any special provisions made by the competent legislative authority of the country of which they are subjects or

citizens. Such special provision has been made, so far as His Majesty's Government are aware, only for British and French settlers.

3. I shall refer later to the special provision made for British subjects by and under "The Pacific Islanders' Protection Acts, 1872 and 1875," but I may remark here that in practice it has been difficult to see that any laws were enforced, even in the case of British subjects and French citizens. For many years there was neither a British nor a French resident officer in the Group; the only authority was the Joint Naval Commission, whose functions were limited to the protection of life and property, by means of acts (if action unfortunately became necessary) which were technically acts of war or reprisal against the natives. There was for many years no person resident in the Group with any legal authority over European settlers.

4. The anomalies of the international position of the Group involved serious consequences for the natives. They have not been the subjects or citizens, nor have they been subject to the jurisdiction, of any civilized Power. Their country has been one wherein no civilized Power has exercised any legal authority save in respect of its own nationals, and the exercise of even that authority has been for years difficult and almost impossible. I need not discuss the result of these conditions upon the natives as regards their internal affairs, and especially as regards inter-tribal relations; it will be sufficient to consider them as affecting the question of the recruiting and employment of native labourers by Europeans.

5. This question must be considered under two heads: first, with respect to recruiting in the New Hebrides for service outside the Group; and, secondly, with respect to recruiting in the New Hebrides for service within the Group. The latter subject is that which is mainly affected by the recent Convention, but I will first deal briefly with the former, which requires less consideration.

6. Since there has been no Government in the New Hebrides able to impose the conditions upon which recruiting of natives by or for Europeans might be allowed, such recruiting has been controlled only by the laws and Regulations of the competent national authorities of the Europeans conducting it. French recruiting for New Caledonia is governed by French Regulations; British recruiting for Queensland in the past, and the recruiting for Fiji, which still continues, though on a very small scale, have been governed (subject, of course, to the general provisions of the Pacific Islanders' Protection Acts) by the laws and Regulations of those two Colonies respectively. When an emigrant from the New Hebrides arrives in New Caledonia or Fiji he finds that the conditions of his service are governed by the laws of the Colony, exactly as in the case of emigrants from India to British Guiana or Mauritius their conditions of service are governed by the colonial laws.

7. His Majesty's Government decided, for the reasons stated

in paragraphs 48 and 49 of my despatch of the 16th November last to the Governor-General of Australia (No. 28 in the Parliamentary Paper Cd. 3288 of 1907) not to suggest to the French Government that recruiting should be forbidden for service in places outside the New Hebrides. Such recruiting may therefore be continued, but it will be subject to the provisions of the new Convention. Now that Queensland no longer recruits, New Caledonia and Fiji are the only places which regularly obtain labourers from the New Hebrides. The French Government are of course responsible for the welfare of natives of the Group serving in New Caledonia. Fiji, to which there is now very little emigration from the New Hebrides, has made detailed provision for Polynesian immigrants by Ordinance No. 21 of 1888 and amending Ordinances.

8. That part of the Convention which deals with the recruiting and engagement of native labourers must therefore in practice apply, and was so drawn as to apply, primarily to recruiting for service within the Group and to the conditions of such service.

9. These conditions have hitherto been almost entirely unregulated, at least as far as natives employed by British subjects are concerned. They were matters which it was beyond the competence of any British Colonial Legislature to control, for obviously neither Fiji nor Queensland had power to pass laws which would bind British subjects resident in the New Hebrides. It follows that the only means by which the dealings of British subjects with the natives could be controlled were either Imperial legislation or Regulations made by the High Commissioner for the Western Pacific under the Pacific Order in Council, 1893. Under this Order in Council the only relevant Regulation is No. 2 of 1896, which provides that no action shall be brought in the High Commissioner's Court against any native in respect of any contract entered into after the coming into force of the Regulation, but that a native may bring an action against a non-native person. The prohibition of actions against natives was superfluous in the New Hebrides, since the natives there have never been subject to the jurisdiction of the Court. There remains, therefore, only the Imperial legislation contained in "The Pacific Islanders' Protection Acts, 1872 and 1875." Those Acts make provision merely for the prevention of kidnapping and connected offences; they lay down no detailed Regulations whatever as to the conditions of recruiting other than that the native must himself consent, and that the master of any British vessel desirous of carrying native labourers must obtain a licence and enter into a bond of 500*l*. They do not regulate in any way the conditions of employment.

10. The position within the New Hebrides has therefore been as follows:—French citizens have been controlled in regard to the natives working for them by French Regulations; British subjects have been under practically no legal control; Europeans other than British or French appear to have been entirely unrestricted in their dealings with the natives whom they employed.

11. His Majesty's Government are glad to believe that, as a matter of fact, native labourers have in general been well treated by their employers, but it was obviously impossible in drawing up the basis of a new régime to leave the conditions of employment so entirely to the individual employer. The labour clauses of the Convention of the 20th October last constitute the first step in the introduction of law and order into the relations between European settlers generally and the natives whom they employ. The Convention leaves to His Majesty's Government and the French Government respectively the administration of its provisions so far as concerns their own nationals and the natives employed by them; but for the first time it lays down identical principles binding upon persons of both nationalities, and provides for the application of those principles to Europeans who are neither British subjects nor French citizens.

12. The Anglo-French Commission of last February, when drawing up the labour clauses, and His Majesty's Government in examining them, were confronted with two difficulties. In the first place, considerations of time rendered it impossible to include in the Convention Regulations as elaborate in detail as exist in some Colonies; and, secondly, even if such Regulations could have been framed here, it would have remained doubtful how far they could be put into force, at least for some time, in a country where practically the whole machinery of administration had still to be created. Necessarily, therefore, the Convention leaves room for much elaboration in matters of detail. It will be the duty of the High Commissioner and the Resident Commissioner, by the use of the powers which the Convention confers upon them, to provide for the supplementing of its provisions when experience has been gained of the working of the new system, and as the administration of the Group becomes more complete and efficient.

13. There are, however, some special points to which I desire to draw your immediate attention.

14. Under Article XXXI of the Convention a licence from you or the Resident Commissioner is necessary before any vessel under the British flag can recruit native labourers. You will, of course, be careful not to issue a licence in respect of any vessel unless you are satisfied that the master is a person of good character who may be trusted to conduct his operations in full accord with the spirit and the letter of the Convention. In particular, care should be taken that no natives are allowed to do the actual recruiting and engaging of labourers. It is, of course, open to you to refuse licences, except on such conditions as you may see fit to impose, and it will no doubt be desirable, as you have suggested, to require British vessels licensed to recruit more than a certain number of natives to carry on board a Government officer to supervise operations.

15. In Article XXXIII it is provided that children shall only be engaged if they are of a certain minimum height to be fixed by the two Resident Commissioners jointly. The clause was framed in this manner because it appeared that, as you are doubtless well

aware, owing to the difficulty of fixing or ascertaining the ages of natives, which they themselves frequently do not know, an age limit would have been comparatively useless. If, for instance, the clause had run, "No children under the age of 14 years shall be engaged," it might have been impossible to decide in particular cases whether or not the Regulation had been broken. If the clause had run, "Natives shall not be engaged unless they are of a minimum height, &c.," it might have resulted in prohibiting the employment of persons fit for work and desirous to engage.

16. It was, of course, never intended to permit the employment of children of tender years; and you will instruct Captain Rason to be careful, in settling with his French colleague the minimum height required, to fix it so as absolutely to exclude the engagement of such children, and to insure that only those natives are engaged who are of fit age for employment.

17. If, when the Convention comes into operation, it is found that the *Heads of tribes mentioned in Article XXXIII* are unfit to exercise their responsibilities as to the engagement of unmarried females, you will, of course, consider what alternative arrangements are possible, and report to me on the subject. The administration of the provisions of this Article will require the greatest care and circumspection in the interest of women and children who fall within its terms.

18. His Majesty's Government desire that the Resident Commissioner and the labour officers subordinate to him should also exercise the greatest care in sanctioning the prolongation of a term of engagement as a punishment for breaches of discipline under Articles XLII, XLVIII, and XLIX, and withhold their approval from any such measure unless they are thoroughly satisfied as to the circumstances of each case.

19. Article XLV forbids employers to require night work from their labourers. It also prohibits work on Sundays, except for domestic duties and the care of animals. These provisions are not, of course, intended to fix or even to suggest the proper extent of day labour, but to put an end to the existing possibility of abuses. His Majesty's Government are informed that, as a matter of fact, labourers in the New Hebrides work mostly from 6 A.M. to 10 A.M. and 3 P.M. to 7 P.M.; and labour inspectors must, of course, take care that natives are not compelled to work at unusual and unnecessary hours, or for an unduly long time.

20. The rate of wages mentioned in Article XLVI (4), viz., 10s. a-month, was selected because it appeared that that is a usual rate in the Group for newly recruited labourers. If the current rate of wages rises materially, you should report the fact to me in order that His Majesty's Government may consider whether steps should be taken for the alteration of the clause in question.

21. Article XLIX forbids desertion or the harbouring of a deserter. You are aware that difficulties have been occasionally caused by a settler of one nationality inducing the labourers employed by a settler of another nationality to desert their employer or by receiving them after desertion. This clause is intended to

prevent the recurrence of such difficulties. Any abuse of it must be prevented by the exercise of the powers of the Government officers in such a manner as to insure that permission to leave an employer is not refused to a labourer, if there is any good cause for granting it.

22. Article LI is to be understood not as compelling a labourer to return to his home against his will, but as compelling his employer to provide him with a free passage if he desires to return. The provisions of Article XI clearly imply this interpretation, and it is scarcely necessary to say that the Joint Commission, which framed the draft Convention of February 1906, never intended to make repatriation compulsory on the labourer—a measure which would have been absurd, since there would be nothing to prevent a labourer sent back to his home against his will from returning at once, free from his contract, to the island where he had been working.

23. Under Article LIV the High Commissioner, the Resident Commissioner, and their subordinates are given wide powers of control, which, together with the legislative powers conferred by Article VII, and the power to refuse recruiting licences, except on such conditions as it may be thought fit to impose, will enable the provisions of the Convention to be supplemented by local Regulations. Such matters as the housing accommodation to be provided for native labourers, the scale of food necessary, and similar details will naturally be settled locally, and I shall be glad if you will consult the Resident Commissioner, and report to me as soon as possible what provisions are considered necessary to supplement the Convention in such respects.

24. You will have gathered from the 50th paragraph of my despatch of the 16th November last to the Governor-General of Australia that His Majesty's Government desire that there should be officers before whom natives to be employed by British subjects should be taken prior to embarkation. It will be the function of such officers to insure that each native is fully aware of the contract into which he is entering, and that the recruiters have fully performed the duty imposed upon them. It may be possible, and it would certainly be desirable, to appoint in each island or district a resident of repute to perform these duties.

25. In addition to this arrangement, it is essential that there should be a staff of officers to inspect labourers under contract to British employers, to inquire into complaints, and generally to insure the full execution of the provisions of the Convention. His Majesty's Government regard it as of great importance that the system of inspection should be thoroughly adequate, and I shall be glad if you will report to me as soon as possible on the subject, indicating the number of labour officers whom you think it necessary to employ, and the salaries which you would propose.

26. Among other matters relating to the Western Pacific, I propose to discuss with the Prime Ministers of Australia and New Zealand, during their approaching visit to this country, the questions raised by the clauses of the Convention which refer to native

labour; and I may have further instructions to convey to you after consultation with Mr. Deakin and Sir J. Ward.

27. His Majesty's Government are aware that, in the present circumstances of the Group, it must be a little time before the Administration can attain the completeness and efficiency which His Majesty's Government desire. The explanations and instructions which are given in this despatch will, I trust, enable you to take all possible preliminary steps for introducing the new system of regulating the relations of employer and labourer; and I have only to request, in conclusion, that you will keep a careful watch over it when started, and inform me fully of its working, in order that improvements may be made as experience is gained and as the administration of the Group increases in efficiency.

I have, &c.

(Signed) ELGIN.

The Earl of Elgin to High Commissioner Sir E. in Thurn.

Sir,

Downing Street, June 17, 1907.

SINCE my despatch of the 21st March was written, His Majesty's Government have had an opportunity of discussing with the Prime Minister of the Commonwealth of Australia the provisions of the Anglo-French Convention of the 20th October last respecting the New Hebrides, and I have now to convey to you further instructions on one or two points.

2. In deference to Mr. Deakin's views, His Majesty's Government would have been prepared to agree with the French Government to prohibit altogether the recruiting of natives of the New Hebrides for service outside the Group, *i.e.*, for New Caledonia and Fiji. It has been ascertained, however, that the French Government are not prepared to accept such a proposal, but they would be willing to impose further restrictions on such recruiting to the effect that females shall not be recruited unless accompanying or joining their fathers or husbands, nor males apparently under the age of 15 years unless accompanying or joining their fathers. This latter restriction was proposed *ex majore cautela*, though as a matter of fact the limit of height to be fixed under Article XXXIII (2) of the Convention would by itself preclude in all or almost all cases the recruiting of natives apparently between the ages of 12 and 15, and the recruiting for Fiji of natives below the age of 12 is already forbidden under Ordinance No. 21 of 1888.

3. These are the additional restrictions to which the French Government would be willing to agree; but neither that Government nor His Majesty's Government are precluded from separately imposing such conditions as they may think fit on the issue of licences to vessels sailing under the French or British flag and recruiting for a French or British Colony respectively. The French Government are, as they have always been, and must remain, solely responsible for the conditions which govern recruit-

ing under the French flag for service in New Caledonia; and His Majesty's Government remain similarly responsible for recruiting for service in Fiji.

4. You will naturally refrain from issuing to vessels sailing under the British flag licences to recruit for places outside the Group except for Fiji, and in issuing any such licences you will provide that no females shall be recruited for service, nor males apparently under the age of 15 years (this latter restriction being of course in addition to the limit of height to be fixed under Article XXXIII (2) of the Convention, and not in substitution for it); and, further, that any labourer recruiting for service in Fiji may, if he so desires, take with him a wife and their children at the expense of the employer. Women and children other than members of the families of labourers recruited should not be allowed to accompany natives.

5. I shall be glad if you will consider and report to me what alterations (if any) will be required, by reason of the above instructions, in the Fiji Ordinance No. 21 of 1888 and the amending Ordinances, under which recruiting from the New Hebrides for service in Fiji has been and is conducted.

6. It has been represented to me that the safeguards contained in Article XXXIII of the Convention may prove insufficient to prevent the recruiting of females nominally for ordinary pursuits but in fact for immoral purposes, and that the engagement of females should only be permitted when they accompany their husbands. There are difficulties in dealing with this matter, owing to the facts that natives of the New Hebrides have three or four wives, who are exchanged whenever it pleases the men, and that women frequently enlist in order to escape from the brutal treatment which they receive in their own villages. In these circumstances, I should be glad to learn whether you would recommend the adoption of the suggestion made to me, or whether you think it inadvisable to impose further restrictions on the recruiting of females for service within the Group. I have already instructed you to exercise the greatest care and circumspection in the administration of the Article.

7. I have also instructed you that the labour inspectors to be appointed should take care that labourers are not compelled to work unduly long hours during the day. This is especially necessary, I am informed, for the hot season. If by experience you find any difficulty in this matter, it will of course be possible to prescribe any necessary restrictions of hours as a condition of the issue of a recruiting licence. But the prevention of this kind of abuse must in practice depend more on adequate inspection and control than on formal Regulations.

8. In the 24th paragraph of my despatch of the 21st March, I expressed the desire of His Majesty's Government that there should be officers before whom natives to be employed by British subjects should be taken prior to embarkation, and that if possible there should be at least one such officer in each island. These officers will of course take the utmost care to see that

the rates of wages specified in the contracts of service are fair and reasonable, having regard to the rates current in the New Hebrides.

9. If it is impracticable to take newly recruited labourers before these officers prior to embarkation on the recruiting vessel, this should at least be done before the vessel leaves the island where the labourers are recruited.

10. I shall be glad if you will favour me with your views and those of the Resident Commissioner on the question of the conditions which are to govern the liability of employers to return labourers to their homes (if the latter desire to be returned) upon the expiration of their indentures. It would seem reasonable to fix a period within which the labourer must exercise his right after the termination of his indenture, and to require the employer to deposit with the Government a sum sufficient to cover the expense of the labourer's ultimate return, unless the latter is returned to his home by the employer immediately after the expiration of the contract.

11. It has been suggested to me that the provisions in Article LV of the Convention with regard to short engagements, &c., may possibly require further definition. I shall be glad if you and Captain Rason will consider the point and report to me in due course. You are at liberty, if you think fit, to communicate with your French colleague with a view to the issue of a Joint Regulation under Article VII of the Convention.

12. His Majesty's Government have ascertained that the French Government are prepared to agree to the modification of Article LI (4), a provision which, as you are aware, His Majesty's Government would have taken steps to amend before the signature of the Convention if circumstances had not arisen appearing to call for immediate action and to render it inexpedient to delay that signature by further negotiation with the French Government.

13. With these instructions and those already given in my previous despatch, you will, I trust, be in a position to carry out the provisions of the Convention with regard to native labourers in the manner which His Majesty's Government desire. I have already asked you to keep a careful watch over the system and inform me fully of its working.

14. It has been suggested to me that the provisions of the Convention with regard to the supply of arms, ammunition, and liquor to natives require some attention, and I shall be glad of any observations on the subject which you may desire to offer. In this connection I may refer you to paragraph 55 of my despatch of the 16th November last to the Governor-General of Australia, printed on pp. 53-66 of the Parliamentary Paper Cd. 3288 of 1907. I need hardly say that any measures calculated to reinforce the prohibition of the supply of arms, ammunition, and liquor to natives will command the full approval of His Majesty's Government.

15. They are approaching the French Government with a view

to the prohibition of the importation into the New Hebrides of opium in any form in which it can be used for smoking. I stated in my telegram of the 4th October and despatch of the 16th November to Lord Northcote that His Majesty's Government were prepared for their part to accept this proposal. I am informed that opium smoking is at present unknown among the natives of the New Hebrides; but it may be well to take precautions against the appearance of the practice.

I have, &c.
(Signed) ELGIN.
