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FOR HUMAN RIGHTS STUDIES
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مركز القاهرة لدراسات حقوق الإنسان

Toward the Emancipation of Egypt:

A Study on Assembly Law 10/ 1914



*Demonstrations are
prohibited by order of
the ~~British~~ Military
Governor*

Egyptian

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Founded in 1993, the Cairo Institute for Human Rights Studies (CIHRS) is an independent regional non-governmental organization which aims to promote respect for the principles of human rights and democracy in the Arab region. For this purpose, CIHRS focuses on analyzing the difficulties facing the application of international human rights law, disseminating a culture of respect for human rights in the region, and engaging in dialogue between cultures regarding the various international human rights treaties and declarations. CIHRS further seeks to attain this objective by developing, proposing, and promoting changes to policy and practice in the Arab region in order to bring them in line with international human rights standards. In addition, CIHRS conducts human rights advocacy at national, regional, and international human rights mechanisms, carries out research, and provides human rights education, both for youth and for established human rights defenders seeking ongoing professional development. CIHRS is a major publisher of information related to human rights in the Arab region, and its publications include a magazine, an academic quarterly, and scores of books dealing with various human rights-related issues.

A key component of CIHRS' mandate is to help shape the understanding of and discourse around the most pressing human rights issues in the Arab region. CIHRS then seeks to coordinate and mobilize the key players and NGOs across the Arab world to work together to raise public awareness about these issues and to reach solutions in line with international human rights law.

CIHRS enjoys consultative status with the United Nations ECOSOC and observer status with the African Commission for Human and Peoples' Rights. CIHRS is also a member of the Euro-Mediterranean Human Rights Network (EMHRN) and of the International Freedom of Expression Exchange (IFEX). CIHRS has its main offices in Cairo. CIHRS was awarded the French Republic Award for Human Rights in December 2007.

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“This exceptional law [the assembly law] . . . was used by executive officials to deny the freedom of individuals and repress them in numerous circumstances during and after the world war . . . They continue to use it today, although it has been nullified by Article 4 of the constitution, which states that ‘personal freedom is guaranteed’ and Article 20, which states that ‘Egyptians shall have the right to meet in calm and peacefulness.’ There is, therefore, no grounds for retaining this law and it must be repealed.”

-- Mohammed Youssef Bey, member of the Chamber of Deputies for Kafr al-Duwwar, explaining his submission of a bill to repeal Law 10/ 1914, January 15, 1926.

Dedication

CIHRS dedicates this report to the hundreds of thousands of Egyptians, who over the last century, have been imprisoned or unjustly slain as a result of the illegal Assembly Law's enforcement, when their only crime was to exercise their right of peaceful assembly and protest - first against the occupation and later against a succession of post-independence 'nationalist' leaders. CIHRS will not forget them or the suffering endured by their families.





Authors

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Report's Overview

Successive post-independence governments have found the colonial-era Assembly Law (Law 10/1914) to be a brutally effective weapon in silencing dissent. This is why, 89 years after its repeal by the Egyptian Parliament in 1928, ostensibly nationalist governments continue to relish in the deployment of this despotic relic from the occupation era. The law drastically extends the reach of the regime's draconian legal apparatus by legalizing the concept of collective liability, which allowed for mass sentences against participants in any assembly where a crime was alleged to have occurred, regardless of each participant's individual criminal liability. Furthermore, an individual's physical presence at the assembly is not even a prerequisite for conviction. He/she needs only re-publish a call for a demonstration to be sentenced to prison for five years, on the grounds of promoting an unlawful assembly during which actions were committed defined as crimes under the law.

The intensified deployment of the Assembly Law in the last decade that has made it—rather than the better-known Protest Law (Law 107/2013)—the number-one cause of the imprisonment of political dissidents, journalists, human rights defenders, and others demanding social reforms. Simply for exercising their right to peacefully assemble, tens of thousands of Egyptians are currently serving prison sentences of up to 20 years in prison. The Egyptian judiciary has recently taken this draconian measure a step further, by ruling that participation in an illegal demonstration under the Protest Law is a separate crime under the Assembly Law.

The Assembly Law was used as a legal means for collective punishment and cordoning off the public sphere after the initial revolution of January 25, 2011 and the military's June 30, 2013 ouster of then-president Mohammed Morsi. The framers of the Protest Law (based on Law 14/1923 on meetings and demonstrations) referred to the Assembly Law in the preamble, viewing the two laws as complementary. The difference between the colonial authorities and post-independence governments is that the former believed one law was sufficient to curb peaceful assembly. The colonial authorities therefore did not oppose steps by the Parliament in 1928 to repeal Law 10/1914. In contrast, the government of interim President Adly Mansour retained the Assembly Law while also issuing the Protest Law to specifically suppress demonstrations.

Researchers at the Cairo Institute for Human Rights Studies traced the Assembly Law's historical trajectory and genealogy from its issuance to the present, examining the law from a new perspective to answer the following questions: How, and in what circumstances, was the Assembly Law issued? What does the historical record reveal about its role in suppressing Egyptian protests against the British occupation? How and why was it repealed? What is the Egyptian Parliament's record in regards to the law? Despite the law's repeal, how did successive Egyptian governments preserve the law, in an 89-year legal scandal? And how did successive national leaders conceal the fact of its

repeal, allowing post-independence governments to exploit the law for the same objectives as the occupiers?

Originally passed 103 years ago, Law 10/1914 was the first legal statute in Egypt to criminalize individuals' freedom to peacefully assemble. The law presents historians and legal experts with a compelling case study of how colonial era laws endure to govern postcolonial states as well as how legal genealogies and procedural irregularities in past law-making processes continue to affect Egyptians to the current day. Overall, the Assembly Law represents a shameful continuum of repression originating during the British occupation and persisting unabated in post-revolutionary Egypt under current President Abd al-Fattah al-Sisi. The British colonial authorities and the Egyptian national governments following the end of the British mandate and then independence - from King Fuad I to President al-Sisi- despite their differences, are all links in a chain of oppression that remains unbroken throughout the course of over a century.

Tantamount to martial law and issued by colonial authorities during World War I, the Assembly Law's repressive capacities were strengthened by subsequent post-independence governments through amendments and complementary laws - a manifestation of Egyptian leaders' persistent fear of a participatory public sphere, a potentially democratic space in which oppositional voices may be heard. The law became a fundamental and enduring part of this legal arsenal mobilised by colonial and national governments alike against Egyptians' right to peacefully assemble.

Subsequent Egyptian national governments followed in the footsteps of King Fuad I even after independence and up to the present day, anxiously clinging to the repressive practices of the occupation-era, and in many cases, intensifying these practices. President Gamal Abd-al Nasser amended Article 3 of the Assembly Law to increase the penalty to 15 years of imprisonment. In 1964, Nasser's interior minister issued a decree regulating the use of firearms, which allowed firearms to be used to disperse assemblies composed of five or more individuals in the event of a public security breach. In 1971, President Anwar al-Sadat issued the Police Law (Law 109/1971), which affirmed the ministerial decree and permitted the use of firearms to disperse assemblies of five persons or more.

A central feature of this chain is its stranglehold over the right to peacefully assemble, which encompasses any collective action by Egyptians - from assembly, protest, and demonstration to the organization of political parties, trade and labour unions, and civic associations. All of Egypt's governments, spanning from the colonial era to modern times, have warily viewed Egyptians' right to peacefully assemble and protest as a grave threat to be averted and suppressed by any and all means, including unlawful and even lethal means. The freedom and lives of hundreds of thousands of Egyptians have been brutally extinguished as a result of the colonial and national authorities' fixation upon suppressing any semblance of solidarity between Egyptians for the purpose of expressing dissent.

The British refused to intervene and halt the Assembly Law's repeal on King Fuad I's behalf, deem-

ing the law too repressive for the constitutional monarchy Egypt was at the time. Far from being defenders of Egyptians' right to assemble, the British took a nonchalant attitude towards law, since there were already other laws in place to block protests. Thus, concern for public opinion back home – in particular, maintaining a ruse of democracy after the First World War - determined their approach. They believed that British intervention to keep such a brazenly undemocratic law could not be justified to the British people.

Although Egypt is no longer colonized, the intensifying use of the Assembly Law has ushered in an age of unprecedented repression, exceeding even that of Egypt's foreign colonization. It must be reiterated that this report exposes the fact that Egyptian post-colonial governments were even more ruthless in their exploitation of this law against their own citizens than were the colonial authorities. They added new, more draconian provisions to the Assembly Law, relied on it as a reference for further repressive legislation, and codified into law the use of lethal force against peaceful demonstrators.

The Assembly Law defied not only the legal rules regarding the issuance of applicable laws in 1914, but it even defied its own abolition in 1928. One of the most disturbing findings of this report on the Assembly Law is that Egyptian governments, exploiting nationalist rhetoric, ironically used colonial-era means, instruments, and laws against their own people, with even greater ferocity and hostility than the British occupation authorities once did. In 1928, when the Egyptian Parliament decided to repeal the Assembly Law, historical documents revealed King Fuad I implored the British to intervene by any means to prevent the law's repeal.

Submerged by their single-minded focus in formulating repressive legislation to suppress peaceful assembly, both pre- and post-independence governments have failed to question the legislation's actual efficacy. Law 10/1914 neither stopped the 1919 revolution nor did it prevent the massive demonstrations of 1935 demanding the reinstatement of the 1923 Constitution. It failed to quell the student and worker protests of 1946, the demonstrations of 1968, or the uprising of January 1977 sparked by increased food prices. By the same token, laws tailored after the 1914 Assembly Law did not stop demonstrators from taking to the streets on January 25, 2011 or June 30, 2013. As history demonstrates, these laws merely gave government leaders the illusion of control, and were perhaps a major reason they met the fates they did.

Furthermore, the British colonial authorities, as evidenced by their 1928 correspondence, had to dissociate themselves from the Assembly Law, considering its application as "contrary to the democratic spirit" and too "draconian for a Constitutional regime"¹ in the 1920s. Indeed, this colonial law

1 FO/141/444/2/121799/99, "The proposed Ultimatum to the Egyptian Govt., Telegram No. 227, April 20, 1928.

has lost its historical, political, and ethical value and its continued application by successive Egyptian political leaders who hypocritically claimed to uphold nationalist, anti-colonial policies is a politically, constitutionally, and historically iniquitous act.

Regardless of whether the decision, 89 years ago, to repeal Law 10/1914 had been published in the Official Gazette or not, there is one indisputable historical fact, the Assembly Law - failing to be adopted by the proper legislative authorities at that time - was illegally adopted by the British colonial authorities to confront an exceptional circumstance –the First World War, which ended a century ago.

After winning their independence from British, French, Belgian, and other colonial powers, some African political activists believed that true independence would not be achieved as long as the colonial mind-set prevailed among those governing their countries; leaders who despised their own people, barricaded themselves behind an arsenal of colonial statutes, and imported modern weaponry to perpetuate the suppression of their people.

Post-colonial activists coined the phrase ‘the second independence,’ to refer to reaching the true objectives of the nation’s initial independence from colonialism. These objectives include the liberation from colonial laws, policies, and practices, and the establishment of a democratic system. This democracy would guarantee citizens’ individual and collective rights and enable them to manage national resources and wealth in the public interest. As a colonial-era law officially repealed 89 years ago but illegally enforced to this day, the Assembly Law is clear evidence that Egypt, like its counterparts in formerly-colonized African countries, is in dire and immediate need of a second independence.

Justice can no longer be delayed for the tens of the thousands of innocent citizens’ languishing in Egypt’s prisons - it is time to immediately rectify this historical and national shame and affirm the repeal of the repressive Assembly Law. Egyptian legislators must also immediately undertake a thoroughgoing review of the Protest Law and purge it of all provisions inimical to civil and political liberties, bringing it in line with international human rights standards. The competent authorities should immediately release all persons incarcerated under this invalid and unjust law, apologize to them, and compensate their families.

Recommendations:

The Assembly Law was issued under pressure and interference from the British colonial authorities without following the legal rules in force at the time, set forth in the Organic Law of 1913. It was not only the process of issuance, but the content as well, that was flawed. When the law was first discussed by the 1924 Parliament, a repeal was recommended. However, the Parliament was dissolved before its decision was finalized. The law therefore remained in force until the next Parliament, seated in 1926, resolved to repeal it in 1928. The Parliament then sent King Fuad I the bill to repeal Law 10/1914 for ratification, pursuant to the 1923 Constitution. That constitution gave the King a one-month period to object to laws approved by the Parliament; if no objections were forthcoming within that timeframe, the law was considered ratified and promulgated.

King Fuad I lodged no official objection and so under the 1923 Constitution, Law 10/1914 was incontrovertibly repealed; however, the King's refusal to publish the repeal law in the Official Gazette meant that it did not enter into force. This loophole has allowed a repealed law to survive within the Egyptian legal system for 89 years, as we will be examined in detail in this report, using historical documentation.

As such, CIHRS affirms that Law 10/1914, known as the Assembly Law, has been abrogated.

- To uphold the rule of law, the law repealing the Assembly Law- having been approved by the Egyptian Parliament in 1928 - must be published in the Official Gazette. Furthermore, several other steps should be taken to ensure right of peaceful assembly is upheld and respected, most importantly:
- Hold accountable security personnel and commanders who have used or ordered the use of excessive and lethal force against peaceful demonstrators. Lethal and excessive force has claimed the lives of at least 2,000 people over the last five years.
- Purge the statutory code of repressive laws used to suppress demonstrators, including Law 107/2013 and Ministry of Interior Decree 156/1964 that legalised lethal use of force by police, as well as several provisions of the Penal Code. The end result of this purge should be consistency with Egypt's constitution and its ratified international conventions; as well as with interpretations of UN special rapporteurs on the rights of freedom of assembly and freedom of association, and the protection of human rights defenders.
- Any new law regulating the right of peaceful assembly must contain strict rules and a mechanism guaranteeing transparent accountability for security personnel who infringe upon this right. It must prohibit the use of firearms to disperse peaceful assemblies.
- Amend legislation that allows long-term pre-trial detention, which has become a form of sen-

tencing itself expansively employed against demonstrators since 2013.

- Parliament or the president must issue a law pardoning all those imprisoned for exercising their right to peaceful assembly.

Aside from these measures, serious steps must be taken to reform the judicial system in Egypt, which has significantly deteriorated in the past few years. Investigations and trials of demonstrators do not comply with procedures guaranteeing the right of defence. Furthermore, they expose a reckless disregard for the law and criminal procedure, as well as a biased reliance on investigations by the security apparatus. As a result, several verdicts issued by felony courts have been vacated. Judicial reform cannot be divorced from the comprehensive reform of the security establishment in Egypt, together with accountability for those who caused the death or serious injury of demonstrators or sexually assaulted male and female demonstrators.

None of this can be realized absent of political will and a transformation of the state's view of the right of peaceful assembly from an "unadulterated evil" to an opportunity to bring stability to the country and avoid the uprisings that brought about the demise of its predecessors.

Report's Methodology

Work on this report began in July 2014. The release of the report was scheduled for October that same year, to mark the 100th anniversary of the Assembly Law, issued in 1914, as well as the one-year anniversary of the adoption of the Protest Law, which shares the same repressive underpinnings, in November 2013. With this timetable in mind, the CIHRS research team met. The main idea was to examine Law 10/1914—under which thousands of demonstrators have been prosecuted—from a perspective different from that taken by numerous legal researchers and experts: a perspective that went beyond legal analysis of the law's provisions and applications to explain how the law has persisted for over a century.

The team decided to trace the law from its promulgation to the present day. Specifically, the researchers were asked to analyse the circumstances around the adoption of the law. Did the British occupation impose the law on the Egyptian authorities, or was it a direct consequence of the leaders' orders? What were the grounds offered for its issuance? How did Egyptians receive the law at the time, and how did the press and various political forces deal with it? And how did they challenge it? As the research continued, the team found that the law was constitutionally tainted, as it had not been issued by the proper legislative authority at the time. This raised the question of the Egyptian Parliament's stance on the law, since the Parliament was required to debate the law and ensure its constitutional integrity under the legal rules in force at the time.

Among press reports, parliamentary minutes, and British documents, the researchers stumbled across a short report from the British High Commissioner to the British Foreign Office informing the office that the Egyptian Chamber of Deputies had repealed the Assembly Law, Law 10/1914. Dated December 20, 1927, the document changed the course of the research and raised new questions requiring further examination.

In the periodicals' section of the Egyptian National Library, researchers came across a small news item in *al-Balagh al-Ushbu'i* from Wednesday, December 21, 1927: "The Chamber of Deputies, by a majority of 143 votes, approved the repeal of the Assembly Law, Law 10/1924."² From there, the researchers turned immediately to the minutes of the Senate, which was required to approve all laws issued by the Chamber of Deputies.

The researchers discovered that the Senate had, in fact, unanimously approved the repeal of the Assembly Law on January 30, 1928, subsequently referring it to the King. However, all available research avenues in Egypt yielded nothing after this. Nothing was found in the minutes of either house

² The paper erroneously identified the date of Law 10 as 1924 instead of 1914. We confirmed the error by reviewing all laws issued in 1924 as well as the minutes of the both houses of parliament from December 1927 through January 1928.

of parliament (until the date it was dissolved) indicating that the King had vetoed the bill or returned it to the Parliament for revision. At the same time, there was no published record of the repeal law in the Official Gazette, as required by the constitutional law at the time.

We therefore had to broaden our search beyond documents and correspondence in the Egyptian archive to discover the fate of the repeal. The Egyptian authorities refused to grant researchers access to the National Archive, so they had no choice but to turn to Egyptian and non-Egyptian lawyers and historians specialized in that historical period. (Several of these lawyers and historians requested anonymity, fearing for their personal safety.) The information received from these researchers made it incumbent for research efforts to be redirected to documents held by the British National Archives.

Thanks to ease of access and freedom of research at the London-based British archive, a CIHRS researcher specializing in modern Egyptian history was able to review hundreds of documents and pieces of correspondence between the Parliament and King Fuad I, between the King and the British High Commissioner, and between the latter and the British Foreign Office, as well as official correspondence between the British and Egyptian governments. This documentation demonstrated that King Fuad I did not officially notify the Parliament of his objection to the law repealing the Assembly Law. As a result, the serious flaws in the Assembly Law were starkly reflected in rulings and sentences issued by Egyptian courts, which are closely examined by legal researchers in the annex to this report. This follows a legal analysis of the most significant shortcomings of the law, which was repealed by the Egyptian Parliament.

An array of obstacles prevented the release of this report on the originally appointed date. These obstacles not only affected the report, but threatened the existence of the CIHRS and broadly affected the Egyptian human rights movement in general. While the report was delayed for two full years, the challenges persist and in fact have become more daunting. These include:

Hostility to Human Rights Organizations in Egypt

Just days after the work plan and outline for the report were discussed, the Ministry of Social Solidarity declared that all entities operating in the field of civic work were required to register under the Associations Law, 84/2002. Later statements by the minister clarified that such entities included those involved in research and rights work. CIHRS subsequently moved some of its activities and staff to its new headquarters in Tunisia.

The CIHRS Cairo office soon faced another challenge when it was targeted for investigation in case No.173/2011, known as the foreign funding case. First initiated in 2011, 43 staff members with foreign NGOs were convicted and sentenced in connection with the case. As a result of the investigation, one of the lead researchers for the report left the country, amid serious fears that he could be convicted in connection with the case. These fears have only increased. The investigating judges for the foreign funding case have summoned three staff members of CIHRS. CIHRS and its director

have had their assets frozen, and the editor of this report has been banned from travel.

Lack of Freedom of the right to Information

This report could have been completed in less time if a freedom of information law existed in Egypt. While parliamentary minutes are available, CIHRS wanted to review official correspondence and the private papers of several politicians from the early 20th century, held in the National Archives. However, gaining access to the archives is no easy matter, even to view century-old documents. Upon approaching the archives, an employee informed the CIHRS research team that they were not open to the public; access required affiliation with a university or research body and the filing of an application. Since the topic under research was of a political nature, the employee told the researchers that the application would have to go through General Intelligence, the National Security Council, and Homeland Security.

Furthermore, since the acceptance or denial of the application was not in the hands of the National Archives, the employee could not tell the research team how long it may take to attain approval. Given the uncertainty of the outcome in any case, alternatives began to be considered, to avoid losing more time. The requirement of security establishment approval to access historical documents dating back a century was odd indeed. The only explanation for such a procedure is that it reflects the state's attempt to control the historical record and narrative.

The CIHRS research team was thus forced to travel to London to examine archival material there. In stark contrast to the situation in Egypt, access to the British national archives required no special permit or even application. All one has to do is walk through the door, to find all the necessary research assistance freely offered.

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Part One



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The Assembly Law

An Illegitimate Colonial Law

PART ONE: The Assembly Law – An Illegitimate Colonial Law

Law 10/1914, The Assembly Law, was passed in a dubious and unstable legal context in which Egypt's international status was complicated, with various political fronts vying for power in its internal administration. The unclear nature of Egypt's international legal status was rooted in its position under Ottoman suzerainty and British administration. At the time of the First World War, internal Egyptian politics was a site of intense contestation between various stakeholders, both nationally and internationally.

As we will detail below, the Assembly Law was passed in violation of law-making procedures as stipulated by the 1913 Organic Law, and is thus considered null and void. The law was issued by Hussein Rushdi Pasha, head of the Legislative Council (Prime Minister) at the time, during the absence of the Khedive Abbas Hilmi II, in his capacity as regent. However, the regency order did not give Rushdi the authority to pass laws.

1- British Occupation and Public Spaces

On October 18, 1914, Law 10/1914 was passed. The Assembly Law was approved by the Council of Ministers, and ratified by Prime Minister Hussein Rushdi Pasha acting in his capacity as regent in the absence of the then head of state, Khedive Abbas II, at the time in Constantinople on his annual vacation.³

The law consisted of five articles that criminalized any assembly of five or more persons if the public authorities deemed the assembly liable to disturb the public peace. If the assembled persons refused to comply with an order to disperse, the law made them liable to no more than six months imprisonment or a fine of at least LE20. The penalty was increased to a prison sentence of no more than two years and no less than six months if the purpose of the assembly was to commit a crime, obstruct the execution of laws and regulations, or deny an individual the freedom to work. If this denial involved the use of force or threat thereof, the law prescribed a sentence of no more than six months imprisonment for every person who knew of the "criminal" purpose of the assembly and did not stand down. Persons carrying weapons or implements liable to cause death were subject to two years' imprisonment.

The law also upheld the principle of collective responsibility, providing for the same punishment for

³ On May 25, 1914, Khedive Abbas II traveled to his Dalaman Estates, after which he went to Constantinople to observe Ramadan. Before he left, he declared Rushdi Pasha his regent.

the assembly organizers and participants and holding the organizers criminally liable for any act committed by the assembled persons, even if the organizers were not present at the assembly or had left prior to the commission of the act.⁴

According to British documents and explanatory memorandums, the law filled a perceived gap in the Penal Code's (No. 3/1904) dealings with public assemblies. In a report presented to the British Parliament in 1920, it was noted that:

*Law No. 10 of 1914 was promulgated with the object of providing more effective means than already existed for punishing unlawful assemblies. With the exception of certain provisions in regard to pillage by armed bands and a section providing for increased penalties for assault and unlawful wounding when committed with the use of arms by members of a band exceeding four persons, the Penal Code contained no specific provisions for offences committed by assemblies of persons.*⁵

Information remains murky as to what prompted the urgent passage of Law No. 10/1914, but from information gathered from foreign office correspondences, the law passed as part of a series of strategies intended to keep a lid on increasing agitation by both a rising contingent of nationalist politicians and demonstrations after the outbreak of the First World War.⁶ Certain commentators of the period allude to the idea that the law passed to curb undesired reactions from members of the newly side-lined legislative council to certain laws and their very side-lining.

Page after page of British correspondence reveals a sense of panic regarding potential upheaval, and especially reports of Ottoman officers coming into Egypt to instigate an uprising.⁷ The Ministry of the Interior, for example, reported that "a good many Turks, recently arrived in Cairo, hold meetings occasionally in a café in front of Finish's place, right by Sheikh Salama's Theatre. They are all Unionists and some of them are here on a special mission. They keep in touch with their brethren at

4 Article 3(bis) was later added with Law 87/1968 to double the maximum sentence for any crime set forth in Article 1 and 2 of the laws committed by one of the assembled persons, provided it did not exceed a term of hard labour or 20 years' imprisonment. A maximum term of life imprisonment with hard labor was prescribed if the assembled person wilfully vandalized public property or facilities or their equivalent.

5 Egypt No. 1 (1920), *Report by His Majesty's High Commissioner on the Finances, Administration, and Condition of Egypt and the Sudan for the Period 1914–1919*, London, p. 81. Annex 1

6 See for example files in. Annex (2) FO 371/1970: File 45389, Decypher telegram from Sir L. Malley- Therapia addressed to Cairo, September 2, 1914; Annex (3) File 41801, Decypher of telegram from Sir L. Mallet (Constantinople) August 21, 1914 to Cairo; Annex (4) File 43130, Sir L. Mallet to Sir Edward Grey, August 16, 1914.

7 Annex (5) FO 371/1970/36711, Sir L. Mallet to Sir Edward Grey, August 25, 1914;

Annex (6) FO 371/1970/43800, Sir Edward Grey to Mr. Cheetham, August 27, 1914; Annex (7) FO 317/1970/44593, Decypher of telegram from Mr. Cheetham (Cairo), August 29, 1914.

Port Said.”⁸ The Cairo police also filed reports of central power intrigues, sending information to the Ministry of the Interior of around 250 German officers in Syria plotting an attack on Egypt via al-Arish with the Turks.⁹

A hardliner stance against agitations was encouraged. Lord Lloyd, the British High Commissioner of Egypt between 1925 and 1929, remembered British administrators as “full of anxieties on this score and that. They feared that, in the event of war with Turkey, religious feeling would show itself in action hostile to Great Britain.”¹⁰

*During the early days of the war, when enemy and Turkish propaganda was having a not inconsiderable effect in the cities of Egypt, the administration should have shown itself hesitant rather than firm in its treatment of enemy aliens. Prompt action in this regard might have prevented the appearance of systems, which undoubtedly embarrassed the government in August. But fortunately, wise counsels soon prevailed and over 700 enemy aliens were deported to Malta together with a number of Turks and Egyptians known to be engaged in subversive activities.*¹¹

As the war raged on, intelligence reports and police arrests, as well as uncovered plots of Ottoman-German intrigue threatening Egypt’s borders, shored up the narrative of ensuing unrest.¹²

These ostensible intrigues and secret plots, however, were not the driving forces of potential agitation in Egypt. As Malak Badrawi argues, financial policies and high taxes were squeezing ordinary Egyptians and were increasingly turning public opinion against those in power.¹³ The depreciating market for Egypt’s cotton as a result of the war heralded economic hardship, and potential rebellions in rural areas were anticipated with possible policies to quell them.¹⁴ On September 7, 1914, British diplomat Sir Milne Cheetham wrote, “If we can assist them to sell a portion of their crop, I believe that even in the event of a Turkish attack, the country population will remain absolutely tranquil and sympathetic.”¹⁵

While the war increased the panic of the British, it was not new. For years leading up to the war’s outbreak, tensions and fear of a loss of control plagued officials. Indeed, the fear of rioting haunted

8 Annex (8) FO 141/648/1, Strictly Confidential, Note by Ministry of Interior to Mr Cheetham, August 25, 1914.

9 Annex (9) FO 141/648/1, Ministry of Interior Note, August 1914.

10 Lord Lloyd, *Egypt Since Cromer*, vol. 1 (London: Macmillan and Co. Limited, 1933), p. 195.

11 *Ibid.*, p. 191.

12 Malak Badrawi, *Political Violence in Egypt, 1910–1924* (Surrey: Curzon Press, 2000), pp. 114–15.

13 *Ibid.*, p. 115.

14 Annex (10) FO 407/182, Mr. Cheetham to Sir Edward Grey, September 10, 1914, p. 191.

15 Mr. Cheetham to Sir. E. Grey, September 7, 1914, cited in Lord Lloyd, *Egypt Since Cromer*, vol. 1, p. 195, fn. 4.

the British since the very beginning of their occupation in 1882, as their response to the riots in Alexandria of that year attest.¹⁶ Political violence and the fear that public opinion would turn against the political establishment preoccupied officials, as sporadic acts of violence and revolts threatened to dissolve the ostensible “tranquillity” with which the British often characterized the population.

The 1909 protests against the Press Law accelerated discussion about the imperatives of controlling assemblies. Commenting on the protests of 1909, Sir Ronald Storrs, a British official in the Egyptian government and later Oriental Secretary at the Foreign Office, wrote that “enlightened Egyptian opinion deplores the futility of the whole affair.....however seasonable such practices may be on the first day or the current month, to endanger the lives of harmless passers-by is an odd way indeed of vindicating the freedom of the Press, and warns the irresponsible promoters that the right of public assembly is not invariable throughout the world, nor if grossly abused, immutable in Cairo.”¹⁷

For years after, sporadic outbreaks of violence and gun battles in the streets were reported.¹⁸ In 1909, there were news reports of agitators entering the country, and in 1910, rioting was also reported. The assassination of Botrous Ghali in 1910 by the Watani party nationalist Ibrahim Nassif al-Wardani and the subsequent glorification of Wardani at home and abroad disturbed authorities. There were also outbreaks of sectarian violence across the country, especially following Ghali’s assassination. Strikes and some demonstrations were also reported in October 1910.¹⁹

Nationalist fervour was also on the rise as certain narratives of oppression circulated in the newly proliferating mass media. Things came to a head in July 1914 with the attempted assassination of the Khedive while he was on holiday in Constantinople by a student with alleged links to the Watani Party and what the British called “violent nationalists” living in Constantinople.²⁰

Around the outbreak of the First World War, the British were constantly monitoring and observing the public mood. Agents and spies were sent to cafes, to politicians’ homes, and gatherings, eavesdropping on conversations. While the public mood relayed back seemed to shift from one of calm to outright anger, it is the latter, as attested by the reports from various sources that dominated the narrative of the Foreign Office.

16 See for instance Egypt No. 16 (1882), *Correspondence Respecting the Riots at Alexandria on the 11th June*, 1882, London.

17 Cited in Lloyd, *Egypt Since Cromer*, vol. 1, p. 94.

18 See for example, “Fatal War Riot in Egypt: Shots Exchanged Between Natives and Europeans in Alexandria,” *New York Times*, November 2, 1911, p. 4.

19 “Strike in Cairo,” *Morning Bulletin*, October 21, 1910, p. 5. “Strike in Egypt: A Riot Quelled,” *The Examiner*, October 21, 1910, p. 5.

20 Annex (11) FO 407/182, Mr. Cheetham to Sir Edward Grey, July 28, 1914, pp. 188-89. FO 141/648/232, His Britannic Majesty’s Agent and Consul-General in Egypt, Cairo to Foreign Office in London, July 28, 1914.

2- Competing Spheres of Jurisdiction and Sovereignty

In a period of legal slipperiness, and a world war in which the two occupiers of Egypt were about the join opposing sides, the law-making process was trapped between competing sovereignties. While Britain was administrating affairs in Egypt from 1882, when it invaded to put down a revolt and secure its interests, Egypt was still nominally under Ottoman rule. Still legally an Ottoman province under British administration, Egypt was therefore governed by a complicated web of treaties, firmans, and conventions that defined the nexus of power between the Ottoman Porte, Khedival authority, and European powers.

On December 18, 1914, the British terminated Ottoman suzerainty by declaring Egypt a British protectorate. Whilst khedival authority had increased during the nineteenth century as it managed to carve out for itself legislative and jurisdictional autonomy, the politics of regional stakeholders as well as the interests of the local elite meant that the legislative sphere was a site of intense struggle for domination and influence. In terms of the Assembly Law, cracks in the legal process began to show on two levels, the first of which had to do with its passing without debate in the Egyptian Legislative Assembly, and the second that it was passed without the approval of the khedive, who had sole legislative authority.

3- The Assembly Law passes without consultation of the Legislative Assembly

On July 21, 1913, the Organic Law (Law 29/1913) was adopted stipulating that laws could not be promulgated without first consulting the Legislative Assembly (*al-jam'iyya al-tashri'iyya*).²¹ Yet, to pave the way for unhindered passage of legislation during the First World War, advances in more consultative and representative government, represented by the Organic Law, were rolled back. On October 18, 1914, a decree was passed postponing the sitting of the Legislative Assembly, which allowed for the enactment of laws without consultation (the decree was repealed in 1923). The British were given ample opportunity to do this, considering the khedive was not in the country when the war broke out, and certain powers lay in the hands of the Council of Ministers and the Regent Hussein Rushdi Pasha.²² Hussein Rushdi Pasha assumed the office of regent in the absence of the khedive and was all too willing to cooperate with the British.

In September 1914, almost two months into the war, and to pave the way for the quick and efficient

21 Translation of the Organic and Electoral Laws of Egypt, Promulgated July 21, 1913, Part III – Powers and Attributions of the Legislative Assembly.

22 Abbas Hilmi II, *The Last Khedive of Egypt: Memoirs of Abbas Hilmi II*, trans. ed. Amira Sonbol (Cairo: The American University in Cairo Press, 2006), pp. 303–04.

passing of laws, the British convinced Rushdi Pasha to postpone more sessions of the Legislative Assembly. Indeed, the prospect of having to deal with such an assembly was worrisome to the British. The presence of “proofs of irresponsibility and faction” in the session, with the prospect that “members will probably fail to comprehend necessity of legislation contemplated,” convinced the British of the hazard of keeping it. Having the Legislative Assembly would in the words of Cheetham, “offer opportunities for intrigue against a Ministry which is otherwise committed to co-operation with us and would provide a field where external influences might become dangerous.”²³

Other than the feared ‘intrigues’ of the members of the assembly, the British wanted to enact laws on a clear slate, without the corresponding problems that might arise concerning legal invalidity. In a telegram to the foreign minister, Cheetham clearly stated that while certain “emergency” laws had been enacted without consultation with the Legislative Assembly, the continuation of this might spell illegitimacy for any other law enacted. He wrote “. . .if general legislation were now enacted without reference to the Assembly and question of its legality were raised against the Government, the result might affect validity of all such measures of legislation which has not been so referred.”²⁴

In a 1928 recount of the events of 1914, Major E.W. Polson Newman also noted:

*. . . the forthcoming meeting of the Legislative Assembly was likely to bring forth questions regarding the war legislation of the Council of Ministers, and it was advisable that this should be avoided in present circumstances. Rushdi Pasha’s wishes in this respect met with the approval of the British Residency, with the result that the meeting of the Assembly was adjourned for a further two months. In the interval, however, martial law was proclaimed and the Egyptian Legislative Assembly was destined never to meet again. Yet, in view of the action of the Council of Ministers in sacrificing national interests in favour of Great Britain and their seizure of all executive power, it was not likely that the members of the Assembly would tamely submit to this procedure; so legislation had to be introduced forbidding public meetings. Even this measure was received without protest, which gave encouragement to responsible British officials in their feelings with regard to the future.*²⁵

As such, Cheetham proposed the suspension of the Organic Law as pertaining to the operations of the Legislative Assembly. The Foreign Office in London agreed. However it seems that the sitting of the Legislative Assembly was only postponed indefinitely. CIHRS scoured issues of the Official Gazette from 1914 and found no trace of any law or sovereign edict suspending the provisions of the Organic Law, as noted in the correspondence between Cheetham and Sir Edward Grey cited above.

23 Annex (12a-b) FO 407/183, Mr. Cheetham to Sir Edward Grey, September 29, 1914.

24 Ibid.

25 E.W. Polson Newman, *Great Britain in Egypt* (Cassell and Company Ltd, London: 1928) pp. 203-204.

The only measure taken was to postpone the convening of the Legislative Assembly, not to suspend the provisions of the organic law. In turn, this means that Law 10/1914 was issued in violation of the provisions of Organic Law 29/1913.

In his book on the 1919 revolution, Abd al-Rahman al-Rafi'i writes "the Legislative Assembly was the quasi-representative body existing in this age. It concluded its first and only legislative session in June 1914, shortly before the outbreak of the war. When the war erupted, British policy deemed it better to obstruct its sessions, foreclosing the issuance of any decrees that might contain a note of protest at the coup."²⁶

In his memoirs, Lord Lloyd reflected on the situation in October 1914:

By the middle of October, the position of affairs was such that both the British Agent and the Prime Minister Regent could congratulate themselves. The economic difficulties had been, or were, in the process of being surmounted: if not contented, the country was at least not seriously ruffled and accepted the orders of the Government without much questioning. Fortified by this experience, it was decided to suspend the activities of the Legislative Assembly, which was due to hold its next session in November. A decree to that effect was published on October 18, and was shortly followed by an order declaring all public meetings illegal. The Council of Ministers could not perhaps be blamed for a disinclination to face the Assembly at such a juncture. The lesson of its previous sitting had gone too deep.²⁷

4- The Assembly Law passes without the approval of the khedive

Bypassing the Legislative Assembly was not the only irregularity which marred the passage of Law 10/1914. Questions also existed regarding the authority to issue laws. The law was issued by Hussein Rushdi Pasha, the head of the Council of Ministers and acting regent in the absence of Khedive Abbas Hilmi II, who possessed only limited forms of legislative power at the time.

²⁶ *Thawrat sanat 1919: tarikh Misr al-qawmi min sanat 1914 ila sanat 1921*, pt. 1 (Cairo: Maktabat al-Nahda al-Misriya, 1946), p. 27.

²⁷ Lloyd, *Egypt Since Cromer*, vol. 1, p. 191.

According to the regency order,^{28 29} Rushdi Pasha did not possess the authority to issue laws in the absence of the khedive, with the exception of edicts related to government operations, similar to present-day executive decrees. As such, he did not have the authority to issue either the Assembly Law or the edict postponing the seating of the Legislative Assembly. The Organic Law contained no provision allowing the postponement of the assembly's convening or identifying who possesses law-making authority when the assembly is not in session or is otherwise absent. This may be due to the lack of a theory of necessity to address exceptional circumstances or because the khedive, in his capacity as the legitimate ruler, possesses such authority without a need to make this explicit. The prime minister thus usurped law-making authority, which was limited to the khedive, with the input of the Legislative Assembly. On the same day the Assembly Law was issued, Rushdi Hussein issued another order postponing the convening of the Legislative Assembly, although this was neither among his nor the khedive's prerogatives, since the law regulating the assembly provided for its dissolution but contained no provision for its postponement.

The postponement of the Legislative Assembly and the subsequent passing of laws in favour of Britain was not surprising given the actions of the Council of Ministers after the outbreak of the First World War. Indeed, within days of the outbreak of the war, Hussein Rushdi Pasha, head of the Council of Ministers responsible for passing Law No. 10 in October, had passed a bill constituting what some legal experts believed to be a legislative coup-d'état vis-à-vis the authority of the khedive and the Ottoman Empire. While Khedive Hilmi II was recuperating in his Tchiboukli palace in Constantinople after an attempt on his life in July of that year, the Council of Ministers passed a bill, that according to certain legal opinion, effectively declared Egypt's entry in the war by cutting ties with Germany, justifying it by claiming that "the presence of the British army of occupation in Egypt renders the country liable to attack by the enemies of His Britannic Majesty."³⁰

Bypassing the khedive, who had shown himself to be uncooperative with the government in previous years,³¹ the Council of Ministers' declaration was, according to one law expert, illegal as it circum-

28 "President of the Council of Ministers, the benevolent Hussein Rushdi Pasha: we intend, God willing, to travel out of the country, and given our complete faith in you and our total reliance on you, we have made you our deputy and our regent for the duration of our absence, to supervise the operation of our government and the issuance of orders necessary for such, in light of your well-known deliberation and discernment. If you have need to travel outside the country, the operation of our government for the duration of your absence shall be overseen jointly by your remaining colleagues in the Council of Ministers, in light of their well-known expertise. What decisions they make shall be issued as orders under the signature of their most senior member. We have issued this distinguished edict to your benevolence that you may be cognizant of it and act pursuant to it.

29 We thank Hussein Omar for providing this text.

30 Official Gazette, August 6, 1914.

31 FO 141/648/1, Cheetham to Sir W. Tyrrell, September 24, 1914. Cheetham wrote "To understand the attitude of Rushdi Pasha and his Ministers who support him, it is necessary to remember the part played by the Khedive in leading opposition against the government in the recent

vented the conditions of the Turco-Egyptian treaty, which stipulated Egypt as a vassal state that could not declare war or conclude deals with foreign states, a privilege reserved for the Ottoman sultan.³² In this way, the decision of the Council of Ministers, which amounted to forbidding agreements with those at war with Britain, constituted what Harry J. Carman called an “enforced act of rebellion on the part of Egypt for it obviously implied a definite repudiation of the suzerainty of the Sultan.”³³

Although, during September and October of 1914, Abbas Hilmi II sought to return to Egypt and sent ciphers to Rushdi Pasha demanding he make no decisions without his consultation, as these decisions would have no legal basis,³⁴ such as laws, including the freezing of the Legislative Assembly, passed under the regency of Rushdi Pasha. Within the first few weeks after the outbreak of the war, the khedive worried that war with Turkey would put an end to his position in Egypt.³⁵ The law was thus promulgated at a time in which the administering state, the British occupying power, had postponed the country’s legislative authority, giving the Council of Ministers free rein to enact legislation, at least until the end of the war. The Legislative Assembly’s reassembly was delayed indefinitely until the end of the war, and thus no law passed by decree could be assessed by a competent body.

Moreover, the British had entertained suspicions of the khedive early on and plotted to change the status of Egypt and further extend British jurisdiction if he declared his support for Germany.³⁶ The khedive’s relationship with the British oscillated between tension and cooperation, but by 1914, for

legislative session.”

32 Harry J. Carman, “England and the Egyptian Problem,” *Political Science Quarterly*, 36:1 (March 1921), pp. 64–65.

33 Carman, “England and the Egyptian Problem,” p. 64.

34 According to the memoirs of Ahmed Shafiq Pasha, Khedive Abbas Hilmi II sent a telegram to Hussein Rushdi Pasha, the regent, chiding him: “My dear regent, I have observed that some of your decisions were made on the grounds that you received no orders from us in that regard. Prudence required you to affirm that your telegrams had reached us. You should have sent a copy of your telegrams by mail or special messenger. If you had employed this method, there would have been no misunderstanding, though we received nothing from you from August 27 to October 22. In these difficult circumstances, it was necessary, in regard to important matters, that you make no decision before I gave you my consent. For example, regarding the postponement of the Legislative Assembly, we learned that our response to you by telegram did not reach you. You should have requested a response from us in writing. In addition, as there is no call in the current situation for the granting of ranks and medals, we learned from a telegram from Sudan that you did grant some, although we responded to you in this regard and ordered you not to do so. As a precaution in these circumstances, we urge you to keep us informed of every important decision to solicit our opinion, particularly in regard to the serious matters we shall face. We have previously expressed our satisfaction with your presence at the head of our government, and we take this opportunity to reiterate this satisfaction and note our full confidence in you and your firm faithfulness to us and your nation. I do not doubt your friendship and perspicacity. You must act with courage, firmness, and ongoing patience for the good our dear country. Believe, my dear regent, that we have the best of intentions.” Ahmed Shafiq Pasha, *Mudhakkirati fi nisf qarn*, part 2, chapter 2, titled “Letter of criticism from Abbas to Rushdi followed by trust and praise,” p. 358 ff.

35 Annex (13) FO 141/648/1, Mr. Cheetham to Foreign Office, Sir R. Rodd’s Telegram No. 289, August 28, 1914.

36 See for example Annex (14), FO 407, Mr. Cheetham to Sir Edward Grey, September 10, 1914, p. 2.

various reasons, the khedive and the British were cooperating through gritted teeth. The Ottomans, too, especially one wing of the Young Turks, were antagonized by the khedive. The khedive was also angered by the lack of support he was receiving from the Turks while he was in Constantinople. Indeed, the nonchalant manner in which they concluded their investigations into his attempted assassination infuriated the khedive.

Once the war broke out, the British took strict measures to prevent the khedive from returning to Egypt, as reports abounded of his affiliations with the Germans, Turks, and Egyptian nationalists. While the British had hoped to keep Abbas II at arm's length in the first couple of months into the war, by the end of September, they were plotting his overthrow and sounding out the khedive's uncle Hussein Kamil for the possibility of his assuming the throne after ties to the Ottomans were completely severed.

Law 10/1914 was thus issued in the midst of a full moratorium on politics and political life in Egypt and on direct order of the British occupation authorities to Hussein Rushdi Pasha, who did not possess the legislative authority to do so. The strategic motivations for issuing the law were to bring the political sphere to heel for the British, who were waging a war against Germany and the Ottoman state, and to clamp down on public action, which could lead to widespread protests directed at political and economic conditions. The goal was to silence both the Egyptian political elite and ordinary people and give police greater control over dispersing crowds.

The passing of the law to increase the policing of assemblies in Egypt intersected with a pattern and policy of policing in Egypt that had seemed to have finally triumphed at the outbreak of the war. The very structure and policies of the Egyptian police, born out of a struggle over the Egyptian Interior Ministry between nationalists and the British, clearly gave precedence to oppressive forms of policing. From the disbanding of the Ministry of the Interior by Khedive Sa'id, to the swing into corporal banishment and the reinstatement of the police by Ismail, to the professionalization of the police in the late 19th and early 20th century, of all the various models of policing that had emerged as possible alternatives, it was the militarization of the police in Egypt that triumphed.³⁷

Certainly, Law 10/1914 was embedded within a wider pattern of wartime repression of civil liberties, one that was not restricted to the colonies. In various countries around the world, war meant exceptional circumstances and exceptional laws.³⁸ What essentially happened in most countries is that many of those wartime laws were repealed in the aftermath of the war. In other cases, such as the Espionage Law in the US, they continue to have ramifications on present day penal codes and the

37 Harold Tollefson, *Policing Islam: The British Occupation of Egypt and the Anglo-Egyptian Struggle over Control of the Police, 1882–1914* (Westport, Greenwood Press, 1999).

38 See for example Samuel Walker, *Presidents and Civil Liberties from Wilson to Obama: A Story of Poor Custodians* (Cambridge: Cambridge University Press, 2012), p. 10.

instrumentalization of the law for repression. This is an important point, but one which we do not have the space here to elaborate.

Part Two



The Assembly Law's

Repressive Articles

PART TWO: The Assembly Law's Repressive Articles

The Assembly Law is not only problematic because it contravened law-making processes, but because it is inherently flawed and oppressive. The law's articles and underlying definitions only increase the urgency of its immediate repeal.

The preamble of the Assembly Law justifies its issuance in view of "the necessity of swiftly creating a penalty for crimes committed by means of assembly that is more effective than the provisions currently in force." The necessity at that time was the start of the First World War, to which Britain, then occupying Egypt, was a party. The exceptional nature of the law was perhaps the primary grounds cited by the Interior Committee in both houses of the Parliament for the law's repeal. "The aforementioned assembly law was issued on October 18, 1914, and the reason leading the legislator to issue it was the general state of war," stated the committee.

1- The Draconian Nature of the Assembly Law

The explanatory memo of Law 10/1914 states that its objective is to allow the authorities to suppress assemblies insofar as they constitute a threat to the public peace, even in the absence of the commission of a crime. "Simply assembling could constitute a danger to the public peace, especially in the current economic conditions generated by European wars," the memo states. "It was therefore deemed necessary, to give the government the means to enable it to uphold the public order regardless of conditions." The drafters of the law also sought to establish the collective responsibility of the assembled persons for the assembly and any crimes that might be committed during it. This contravenes one of the most basic principles of criminal justice, namely the individuality of punishment.

According to the explanatory memo, the Penal Code contained several provisions to deter the commission of such crimes; however, the problem, in the view of the framers, was that these articles set forth specific crimes and did not uphold collective responsibility. They also did not criminalize assembly per se, even if a crime was committed during such a gathering.

Law 10/1914 consists of four articles and one amendment, Article 3(bis), added in 1968 by Gamal Abd al-Nasser after student protests that year. The framers of these articles, both the British occupation and post-independence regimes, tailored them to be as broad as possible to allow intentions to be punished. The articles give police the authority to break up assemblies of five or more persons.

Article 1 of the Assembly Law criminalizes a gathering of five or more persons if security personnel deem it liable to infringing upon the public peace. In effect, this gives the security apparatus absolute discretion to assess the assembly's impact on the public peace. Neither the law nor its explanatory memo sets forth specific rules defining endangerment of the public peace, which could be used to minimise abuse of authority by law-enforcement officials. This absolute authority invariably leads the

security bodies to deal arbitrarily with assemblies that do not necessarily take the form of a demonstration, march, or sit-in, and are not likely to infringe upon the public peace. Such assemblies may simply be a gathering in a public place such as a café.

The Court of Cassation has upheld this interpretation, noting:

For every assembly consisting of at least five persons, if something prohibited under Article 1 of the law occurs when it is liable to endanger public peace, the assembled persons must disperse when ordered to do so by the authorities.³⁹ In turn, Law 10/1914 on assembly contains nothing indicating that the assembly be directed at the person of the government to resist it or protest its actions more generally or to breach security or overturn the government. Indeed, Article 1 of the law applies to assembled persons whenever they do not heed an order given to them to disperse by the authorities, the latter having deemed the assembly liable to endanger the public peace, and this is so even if the assembled persons harbor no criminal intent.⁴⁰

In this context, we recall the words of Mohammed Yusuf Bey in the 1926 Parliament when he submitted the bill to repeal the Assembly Law:

The law did not only stiffen the penalty for crimes committed in the course of an assembly, as stated in its preamble. It punishes any assembly consisting of five persons or more absent the commission of a crime. In fact, an assembly of such a small number of persons was a crime in and of itself, if [law enforcement authorities] deemed it liable to endanger the public peace. If the authorities ordered those assembled to disperse and they refused to obey or do so, they were subject to imprisonment or a fine under Article 1 of this law.

There is no doubt that people are free to come and go, individually or together, and to disperse and meet regardless of their number, provided their action does not harm another. If they committed an act punishable under the public law, the authorities would prevent them from committing this crime or apprehend them if they committed it, as set forth in criminal law⁴¹.

The article therefore contains an additional extremely problematic aspect: namely, that the explanatory memo fails to define the term ‘public peace.’ This thus creates a loophole allowing the public

39 Article 101 of the General Directives for Prosecutions defines public authority personnel as “those charged with upholding the public order and security and in particular preventing and apprehending crimes, protecting lives, honor, and property, and executing tasks dictated by the laws and regulations.”

40 Criminal Cassation, appeal 1864/10JY, Technical Office 5 (Omar Collection), part 1, p. 274.

41 See Annex (16)

authorities to arbitrarily restrict the right of peaceful assembly, for it gives the authorities absolute freedom to determine if the assembly is liable to endanger the public peace or not. This authority is broad enough that they can use it as they wish.

The law thus leaves it to jurisprudence and the courts to define this vague term. Further muddling matters is the fact that rulings issued by various courts have never strictly defined the concept of public peace since the law was passed to the present day, nor have legal commentators offered an explanation of the intent of public peace.⁴² This may indicate a desire to preserve the ambiguous nature of the concept, thereby enabling authorities to exploit it in order to restrict the freedom of individuals to peacefully assemble.

The Supreme Constitutional Court (SCC) has held that the legislator's failure to frame penal statutes to specify their intentions in a way that resolves every debate about their true nature robs these statutes of their clarity and certainty, which are two prerequisites. Such statutes hence do not give those to whom they are addressed reasonable notification of acts they are required to do or not do as prohibited or enjoined by the legislator.⁴³

Paragraph 1 of Article 2 defines the conditions for assembly as a gathering of at least five persons convened for the purpose of committing a crime, preventing or obstructing the execution of laws and regulations, influencing the authorities in their operations, or denying a person the freedom to work with the use of force or threat thereof. It prescribes a penalty of imprisonment of no more than six months or a fine of no more than LE20. Paragraph 2 prescribes a penalty of no more than two years imprisonment and/or a fine of no more than LE50 for any person bearing arms or implements liable to cause death if used as a weapon.

Under this article, an assembly of five or more persons is subject to criminal sanction if their intent is to commit a crime, even if the crime does not take place. In other words, it seeks to punish intentions. According to Dr. Hosni al-Gindi:

Article 2 of the assembly law leads to the assertion that the legislator did not require any crime to be committed in actuality. It is sufficient that the purpose of the assembled person is to commit a crime. If it is proven that the assembled persons gathered for a criminal purpose, Article 2 of the law applies to them. Moreover, the type and nature of the crime is not considered until it actually takes place. The rule here is the existence of an unlawful purpose, regardless of the execution or non-execution of it. Saying otherwise

42 Dr. Hussein al-Gindi, *Jara'im al-ijtima'at al-'amma wa-l-muzahirat wa-l-tajamhur fi-l-qanun al-misri: dirasa muqarina* (Dar al-Nahda al-'Arabiya, 2002–03), p. 177.

43 SCC, appeal 33/16 constitutional JY, session of February 3, 1996 and appeal 24/18 constitutional JY, session of July 5, 1997, cited by Dr. Fathi Surour in *al-Qanun al-jina'i al-dusturi* (Dar al-Shurouk), p. 90.

effaces the distinction between Articles 2 and 3 of the law. The requirement of Article 2 is that the assembly take place for a particular crime, but it does not require the actual execution of the crime or the fulfillment of this purpose. If the crime occurs or the assembled persons execute their criminal purpose to commit a crime, Article 3 must be applied.⁴⁴ This is what the Court of Cassation concluded when it said, “To be subject to sentencing under Article 2 of Law 10/1914 on assembly, it is sufficient that there be an assembly with intent to commit a crime and that the participants be knowledgeable of this.”⁴⁵

This is not the only problem with Article 2. The article also punishes freedom of expression. In defining the material element of the crime, the article uses overly broad terms, some of which constitute means of expression of opinion.

The first such expression is “the commission of a crime,” which indicates the legislator’s desire to punish participants in a peaceful assembly if any crime is committed, regardless of how trivial or minimal the ensuing damage is. As a legal concept, a crime is any infringement of a penal statute; it is accomplished only by the commission or omission of an act that realizes this infringement.⁴⁶ As such, a crime is a violation of any penal statute, even those classed as minimal infractions.

The second expression is “preventing or obstructing laws or regulations,” which makes all persons demonstrating to advocate for the change or repeal of an unjust law that infringes upon their rights or liberties subject to penalties; for in such a demonstration, the implementation of laws and regulations are in fact being obstructed or prevented. The phrase “influence the authorities in their work” is closely linked to the foregoing phrase. The authorities may be influenced by demonstrations demanding that an authority rescind or issue a decree. An example is the case of the demonstrations on January 18 and 19, 1977, in which some defendants were charged with planning, promoting, and participating in an assembly that inflames the public by calling on them to obstruct the execution of laws and decrees with the objective of influencing the operation of constitutional authorities and institutes of knowledge.⁴⁷

As explained above in the analysis of the circumstances in which Law 10/1914 was issued, the law was issued by direct order of the British occupation authorities, which wholly disregarded legal and constitutional precepts. The objectives of the law as described by the explanatory memo are thus not a surprise. The surprise is that post-independence governments offered the same grounds cited by the colonial authorities to amend the law in 1968 with the addition of Article 3(bis),⁴⁸ which stiffened

44 Al-Gindi, pp. 206–07.

45 Criminal Cassation, appeal 71/10JY, session of December 25, 1939, Technical Office 5 (Omar Collection) part 1, p. 61.

46 SCC, appeal 24/18JY, session of July 5, 1997, Technical Office 8, part 1, p. 709.

47 Sentence issued by High State Security Court (emergency) in felony 1844/1977, entered as no. 67/1977/Central Abdin Plenary.

48 Added with Presidential Decree 87/1968, which had the force of law.

the penalty for crimes committed during assemblies.

According to the explanatory memo, Article 3(bis) was added because assembly per se infringed upon the public peace. If one of the assembled persons seized the opportunity presented by the assembly to commit a crime, this represented a particularly severe crime and thus was considered an aggravating circumstance. The explanatory memo notes that Law 10/1914 only provides for punishment for the act of participating in an assembly, but does not increase penalties for crimes committed during it.⁴⁹

2- The First Decade of the Assembly Law

While labour strikes and other demonstrations seemed to lessen on account of martial law, sporadic disturbances did occur especially among workers, and the Assembly Law was swiftly applied. In 1917, Russell Pasha, assistant commandant of the Cairo Police, deployed the Assembly Law to disperse a group of cigarette strikers. Evoking the Victorian sensibilities of policing, he wrote in a letter:

I've been having a busy four days with some cigarette-rollers on strike. We have got very strict laws of course on illegal assembly and this morning about five hundred of the strikers refused to accept the very good terms the Governor had got for them out of the Company. They came here en masse and I told them off, but they announced their intention of marching to Abdin Palace.

I let them start and then sent word after them that I would see them again. They all came back to Headquarters and when I'd got them all in the yard I locked the gate and put a strong guard over them, searched and listed the lot of them, read them the riot act and then let them go.⁵⁰

While the Assembly Law and martial law did little to dampen the mood for revolution in 1919, scores of protestors were charged with demonstrating or inciting people to do so in the years that followed. As with the situation today, authorities used a set of charges to lock people up or fine them for acts associated with demonstrating or assembly, including possession of unlicensed weapons, wounding, murder, pillaging, assaulting police, breaking and entering, and looting.⁵¹

49 The explanatory memo for Law 87/1968, which amended Law 10/1914 on assembly, states, "If assembly per se infringes the public peace, there is no doubt that an assembled person seizing the opportunity of the assembly to commit crimes poses a special danger and should therefore be considered an aggravating circumstance for the punishment for the crime he commits, which is not addressed by Law 10/1914 on assembly. Its provisions stop at addressing participation in or the planning of an assembly."

50 Quoted in Ronald Seth, *Russell Pasha* (London: William Kimber and Co. Limited, 1966), p. 130.

51 See figures in FO 141/583/9307, Riots and Murders Statistics.

According to Abd al-Rahman al-Rafi'i,⁵² on May 10, 1919, British soldiers stormed the café Groppi's as various nationalists held a meeting there. They began to search those assembled, ostensibly for weapons or flyers, but found nothing. The following day, the military authority issued an order signed by Gen. Watson to disperse all meetings in cafes. The decree stated, "It is prohibited to hold any meeting that infringes order in shops, cafes, restaurants, or entertainment venues in the Cairo district. Any person who takes part in such meetings is in violation of martial law. Any meeting attended by more than five persons shall be considered an infringement of the public order if a speech is given or if any extraordinary conduct takes place that could reasonably lead to the breach of public security."

The law was used not only to bar meetings at coffee shops during the 1919 revolution, but to convict scores of participants in such meetings. For example, in a case in Dayr Mawas, 91 people were referred to a British military tribunal on charges of killing or abetting the killing of British officers and soldiers in Dayrut and Dayr Mawas on March 18, 1919 and assembling armed with clubs, sticks, bricks, and other weapons with the intention of attacking British people.⁵³

In a case in Faqus, a group of local notables was tried on charges of inciting and participating in unrest on March 15 to 21, which led to the destruction of the railway line, as well as assembly. One person was sentenced to death and the remaining defendants received prison sentences of three to five years.⁵⁴

In Rosetta, 90 locals were arrested for taking part in protests on March 17, 1919. They were charged with setting fire to the district, vandalizing the railroad, assaulting the sheriff, and assembly. A British military tribunal convened in Alexandria in April 1919 sentenced them to hard labour or imprisonment for terms ranging from less than a year to five years.⁵⁵

While violent force and intimidation (including flying an aircraft close to crowds in 1922, for instance)⁵⁶ were put to use to put down demonstrators, the law was also used to stifle any form of popular mobilization in 1919 and after. Certain figures in the Foreign Office from 1922 reveal the extent to which people were tried and jailed solely on charges related to demonstrating and the unlawful use of public space. Scores of people were fined or "admonished" for breaking curfews, while "inciting others to take part in unlawful demonstration" brought sentences of two years and "20 strokes with cane." For "taking part in an unlawful demonstration" people were sentenced to two years behind bars.⁵⁷

52 Al-Rafi'i, *Thawrat sanat 1919*, p. 23.

53 Ibid, p. 58.

54 Ibid, p. 62.

55 Ibid, p. 62.

56 Reports that the British used aircraft to disperse protesters were denied. The British did admit, however, that aircraft were used "merely for demonstration purposes." FO 141/583/9307, Very Secret, Troopers London to Egypt Force Cairo, February 13, 1922 and High Commissioner for Egypt, Cairo to Washington, February 15, 1922.

57 See table in FO 141/583/9307, Riots and Murders Statistics.

Part Three



The Assembly Law

Repealed by Parliament 89 Years Ago

PART Three: The Assembly Law, Repealed by Parliament 89 Years Ago

The issue of procedural irregularities of the Assembly Law's passing raises serious questions of legislative authority and sovereignty at the time of its passing. Just ten years later, and after the promulgation of the 1923 Constitution, the law was embroiled in another legal predicament in the context of competing political interests and a parliamentary and constitutional crisis.

With the end of the war in 1918 and the 1919 popular revolution, a partial extension of the global movement toward self-determination, and following years of negotiations over partial independence and the postponement of the Legislative Assembly, the Legislative Assembly was finally abolished ten days after the adoption of the 1923 Constitution.⁵⁸

The Constitution of 1923 and Parliament of 1924: The First Attempt to Repeal the Assembly Law

According to the 1923 Constitution, legislative power and the right to initiate laws lay with the King as well as the Parliament, the Chamber of Deputies and Senate (Article 24).⁵⁹ Draft laws required the approval of the Chamber of Deputies before being sent to the Senate for final approval (Article 25).⁶⁰ Article 35⁶¹ of the Constitution clarifies Article 25, stipulating the King's powers in legislative processes and presented two cases for the King's intervention. The first, pursuant to Article 36⁶² is that the King could oppose the law within one month of its issuance and simply to send the bill back to parliament, whereupon a two-thirds majority was required for passage. The second is that the King would be silent on the law, whereupon after a month, the law would be considered ratified. Article 35 of the Constitution, however, set a time limit on the King for ratification:

If the king chooses not to ratify a bill approved by the Parliament, he shall return it to the latter within one month for reconsideration. If the bill is not returned on the appointed

58 The assembly was abolished by Law 10/1923 on the repeal of provisions of Organic Law 29/1913 on the Legislative Assembly.

59 Article 24 states "Legislative power is held by the king in participation with the Senate and the House of Representatives.

60 Article 25 states "No law may be promulgated unless resolved by the Parliament and endorsed by the King."

61 Article 35 states "Should the King deem not to endorse a bill approved by the Parliament, he shall return such to the latter within one month for reconsideration. Should the bill not be returned on such appointed date, the bill shall be considered endorsed by the King and be promulgated."

62 Article 36 states "Should a bill be returned on the abovementioned date and the Parliament approves such by two-thirds majority of the Members of both houses, the bill shall be made into law and be issued. Should the majority be less than two thirds, the bill may not be considered in the same session. Should the Parliament approve such bill in another session by absolute majority of votes, the bill shall be made into law and be issued."

date, the bill shall be considered ratified by the king and be issued.

The latter provision was entirely disregarded by King Fuad I when it came to the repeal of Law 10/1914. This requires a closer look at how the parliaments of 1924 and 1926 treated the law.

All laws issued during the First World War—when the meetings of the Legislative Assembly were suspended—had to be put to the assembly within 15 days of the next session.⁶³ Parliamentary life only resumed in 1924, and it was in this year that laws, among them Law 10/1914, were put to the new Parliament pursuant to Article 169 of the 1923 Constitution.⁶⁴ This process was overseen by the Wafd Party, which had dominated politics since the end of the war.⁶⁵ When Law 10/1914 was put to the Parliament, deputies debated which committee should be responsible for discussing and reporting on it. The law was referred to the Interior Committee, which forwarded it to the government for an opinion on its repeal.⁶⁶

Article 169 of the Constitution did not require the Parliament to approve or even debate laws issued in the absence of the Legislative Assembly in order for them to remain in force; the laws simply had to be submitted to the Parliament. This was the fate of Law 10/1914, which was put to the 1924 Parliament, but was not subject to any real debate in that session. Deputies simply discussed which parliamentary committee should be tasked with preparing a report on the law. In any case, this Parliament was dissolved just four months later.⁶⁷

1- Parliament of 1926: First Genuine Discussion of Assembly

Law

On 15 January 1926, a Member of Parliament (Chamber of Deputies) for Kafr al-Dawwar, Mohammad Yusuf, proposed repealing Law 10/1914. He argued that it was passed in an extraordinary time, the outbreak of the First World War, which had now passed. The MP described the law as “a provision of martial law used by executive authority personnel to confiscate the freedom of individuals

63 According to Article 2 of the edict issued on October 18, 1914, “Every high edict that is not by nature temporary and was issued without being presented to the Legislative Assembly when it was obligatory to present it under the provisions of the organic law shall be automatically abrogated 15 days after the Legislative Assembly convenes unless during this period it is presented to the assembly in amended or unamended form.” Official Gazette, occasional issue 137, Sunday, October 18, 1914.

64 Article 169 stated, “Laws that should have been submitted to the Legislative Assembly pursuant to Article 2 of the high edict issued on Dhu al-Qa’da 28, 1332/October 18, 1914 shall be submitted to the two houses of parliament in its first session. If they are not submitted to it in this session, they shall be abrogated.”

65 Annex (15) See the minutes for the Chamber of Deputies, session 17, April 13, 1924, pp. 195–96.

66 Ibid.

67 Edict dissolving the parliament and calling a new assembly to session, published in the Official Gazette, 114 (occasional), December 24, 1924.

and repress them.”⁶⁸ His proposal was accepted.⁶⁹ On February 27, 1927, the Chamber of Deputies referred the bill to repeal the Assembly Law to the Interior Committee for assessment, and on December 13, 1927, the committee met to discuss the bill, with Deputy Interior Minister Ali Gamal al-Din Pasha in attendance. Remarkably, the deputy minister informed the committee that the government had no objection to the bill and approved the repeal of the Assembly Law. On December 20, 1927, the Interior Committee unanimously approved the bill to repeal Law 10/1914.

In its report, the committee noted:

The aforementioned assembly law was issued on October 18, 1914, and the reason leading the legislator to issue it was the general state of war.

The is incompatible with the personal freedom guaranteed in the constitution and is out

68 Mohammad al-Yusuf submitted a memo to the Chamber of Deputies on the repeal of the assembly law, in which he stated, “The preamble of this law states, ‘Given the necessity of swiftly creating a penalty for crimes that is more effective than the provisions currently in force.’ The necessity referred to in this law is, in the view of its framers, the state of war that began in the year in which this legislation was issued. In fact, there was no necessity warranting such exceptional legislation in Egypt tantamount to martial law. The country was nothing if not calm, peace nothing if not well-established.

“The law did not only stiffen the penalty for crimes committed in the course of an assembly, as stated in its preamble. It punishes any assembly consisting of five persons or more without the commission of a crime. In fact, an assembly of such a small number of persons was a crime in and of itself, if [law enforcement authorities] deemed it liable to endanger the public peace. If the authorities ordered those assembled to disperse and they refused to obey or do so, they were subject to imprisonment or a fine under Article 1 of this law.

“There is no doubt that people are free to come and go, individually or together, and to disperse and meet regardless of their number, provided their action does not harm another. If they committed an act punishable under the public law, the authorities would prevent them from committing this crime or apprehend them if they committed it, as set forth in the criminal law.

“As for the content of Article 2 of this law, which stiffens the penalty for assembly if the purpose is to prevent or obstruct the execution of laws or regulations, or to influence the authorities in their work, or to deny a person the freedom of work, it contravenes the general rules for crimes because this purpose is tantamount to an intention, and such intention, aside from being a psychological matter, is not a crime or an attempted crime, for it is that determination that Article 45 of the Penal Code has ruled cannot be considered an attempted felony or misdemeanor, as is the case with preparatory acts. Moreover, the acts thought to be the purpose of the assembled persons are either permissible and thus not punishable or prohibited under the general law and thus their perpetrators are subject to punishment under the Penal Code.

“This exceptional law is a provision of martial law used by executive authority personnel to confiscate the freedom of individuals and repress them in numerous circumstances during and after the world war, and before, during, and after the declaration of martial law in the country. They continue to use it to this day, although it has been terminated by the constitution, Article 4 of which states that personal freedom is guaranteed and Article 20 of which states that Egyptians have the right to meet in peace and tranquility. There is thus no grounds for maintaining this law and it should be repealed.” Appendix No. 1, Mohammad Yusuf, proposed bill, January 15, 1926 in Appendix of Chamber of Deputy Minutes, session 9, December 20, 1927, p 129. Annex (16)

69 Ibid.

of step with the current age, in which the parliament does not permit the existence of such laws that restrict liberty and contravene the constitution, which gives Egyptians the right to assemble in calm and tranquillity, especially since the law on public meetings and demonstrations in public roads is currently before the assembly now.

As such, the committee unanimously approves the repeal of the aforementioned assembly law, approves the bill submitted to repeal it, and submits it to the assembly for approval pursuant to constitutional rules.⁷⁰

The Chamber of Deputies approved the bill to repeal Law 10/1914 on assembly on December 20, 1927 and referred it to the senate. The Senate, in turn, referred it to its Interior Affairs Committee. The committee unanimously approved the bill and forwarded it back to the Senate, which also unanimously approved it on January 30, 1928⁷¹. The bill was then sent to King Fuad I for ratification and publication, pursuant to Article 34 of the Constitution.⁷²

2- The King Receives the Bill to repeal the Assembly Law

As noted above in the discussion of Article 35 of the 1923 Constitution, King Fuad I had two choices upon receiving a bill. He could veto it, sending it back to the Parliament for reconsideration and approval with a two-thirds majority of the assembly. Or he could do nothing. If no response from the King was forthcoming within one month, the bill was considered ratified and issued as a law.

In the case of the bill repealing the Assembly Law, the King neither objected nor ratified it by the time the Parliament was dissolved in June 1928. In other words, the one-month period stipulated by the Constitution in Article 35 elapsed with no response from King Fuad I, meaning that the bill was ratified and the Assembly Law was in fact repealed.

While there seemed to have been conflicting statements in the archives and official documents about when the one-month period stated in Article 35 began—whether it began from the time of the Senate’s approval of the bill, or when it lands into the hands of the king—in all scenarios, the one-month period seemed to have elapsed without any official opposition from the King. A supposed ruling in May 1928 by the Contentieux provided that the one-month period stipulated in Article 35 of the Constitution dates from the passage of the bill in the Parliament and not from its submission to the King.⁷³ If this was the case, the one-month granted to the King for comments on bills would have expired at the end of February or the beginning of March at the latest.

70 Appendix 1, report of the Interior Committee on the proposal to repeal Law 10/1914 on assembly, appendix to the minutes of the Chamber of Deputies, session 9, Dec. 1, 1927, p. 128. Annex (17)

71 Annex (19) minutes of the Chamber of Senates, session 14, Jan. 31, 1928, p. 244 – 245, also Appendix 18, list of Senates voted in favour of repealing the law, Annex (18)

72 Article 34 states:

73 Annex (20) FO 407/206, Lord Lloyd to Sir Austen Chamberlain, May 8, 1928, p. 154.

King Fuad I perhaps was of the belief that the month began from the day the bill arrived on his desk. But even if this was the case, the one-month period seemed to have expired.⁷⁴ The King himself revealed that the one-month deadline would pass on May 9.⁷⁵ Correspondence between the King and the British reveal that King Fuad I had requested the British to intervene to stop the bill being automatically passed. On May 6, in panic, the King sent his chef du cabinet to the British complaining that should he not sign the bill to repeal Law 10/1914, it would become law in three days, on May 9, 1928, and asking for some sort of intervention.⁷⁶ On May 7, the King kept firm in his stance that he would not sign the bill. He would have been bitterly disappointed when the British response came: Chamberlain rejected the request for intervention.⁷⁷

For various political reasons, his concern about rising protests especially among the Wafd, and his authoritarian stubbornness, King Fuad I dragged his feet on the matter, ignoring the constitutional time limit and refusing to take a position on the law as he should have according to Articles 35 and 36 of the Constitution. The King, it seems, preferred to ignore the matter, the legal implications of which were the repeal of Law No.10/1914.

For many in the British administration, the repeal of Law 10/1914 was a done deal. When in April 1928, Keown-Boyd, head of the European Department in the Ministry of the Interior's Public Security Department, had written his letter to Nahhas, protesting against the amendments to Law 14/1923, he based his protestations on the assumption that Law 10/1914 had in fact been annulled.⁷⁸ In other words, since in Keown's mind Law 10/1914 had already ostensibly been abrogated, he saw no need to amend the other law regulating demonstrations.

Most significantly, the issue of Law 10/1914 was somewhat diluted by proposed amendments to Law 14/1923 on demonstrations. Indeed, the two laws were often discussed in the same sessions of the Chamber of Deputies and the Senate, with Law 14/1923 receiving most of the attention. The British were nonchalant about repealing Law 10/1914, describing it as a "subsidiary" issue.⁷⁹ In fact, the British went as far as to call Law 10/1914 "too draconian for a constitutional regime," and "contrary to the democratic spirit."⁸⁰

74 FO 407, Lord Lloyd to Sir Austin Chamberlain, April 14, 1928, in *Further Correspondence Respecting Egypt and Sudan*, Jan–Jun. 1928, pp. 101–02.

75 Annex (20-a) See reported conversation between the King's Chef du Cabinet and Lord Lloyd in FO 141/444/2/12179, Lord Lloyd to Austen Chamberlain, May 6, 1928.

76 Annex (20-b) FO 141/444/2, Lloyd to Sir Austen Chamberlain, May 8, 1928.

77 Annex (20-c) FO 141/444/2/12179, Austen Chamberlain to Lord Lloyd, May 8, 1928.

78 Annex (21) FO 407/206 Keown-Boyd to Nahas Pasha, April 8, 1928, Confidential Print, p. 115.

79 Annex (21) FO 141/444/2/12179/104, Sir Austen Chamberlain to Lord Lloyd, Secret Telegram, 25 April, 1928.

80 Annex (23) FO/141/444/2/12179/99, "Regarding The proposed Ultimatum to the Egyptian Govt. Telegram No. 227, April 20, 1928.

This does not mean that the British were in any way defending the right to protest and assemble. The British put up a nasty fight to safeguard Law 14/1923 from any amendments (which were also approved by the Chamber of Deputies and the Senate, but had to go back to parliament on a technicality). They even sent warships to Egypt and threatened to depose Mustafa Nahas if the amendments were approved. Nahas backed down, and Law 14/1923 remained as it was.

In addition, when the ultimatum was drafted for the Egyptian government about their amendments to Law 14/1923, the British decided that Law 10/1914 should not be included:

I venture to hope that it may be possible to drop from the ultimatum the demand for the withdrawal of the Bill repealing Law. No. 10 of 1914 on Illegal Assemblies. We have hitherto raised no objections to the Bill, and it was generally agreed last December that we could get on without the 1914 law, as the 1923 Law was adequate to our purposes . . . Nahas, with perfect justice, might ask why he should be faced with an ultimatum on a question which has not until that moment been the subject of any conflict with us. The Wafd might make capital out of this both in Egypt and in England. Incidentally, it would be difficult to justify to the democratic English public the necessity for an ultimatum to retain a law so contrary to the democratic spirit as this law of 1914 framed under an autocratic regime and in an autocratic spirit.⁸¹

For the British, Law 14/1923 was sufficient for policing protests. As in all indirect colonial situations, they knew they needed to compromise with the Egyptian government. In intervening with the legislative process, they needed to consider its effects both in Egypt and Britain. The difficulties that might arise from any vetoing of the repeal of Law 10/1914 would have outweighed any benefit.

What is certain, according to numerous documents we viewed, is that on May 9, 1928, the law bill repealing Law 10/1914 on assembly was considered ratified by King Fuad I and automatically issued under Article 35 of the Constitution. We could not find any document in the minutes of the Senate or the Chamber of Deputies to suggest the King had responded to the bill.

3- Publication in the Official Gazette

Article 26 of the 1923 Constitution requires the publication of laws in the Official Gazette to promulgate knowledge of them: “Laws shall enter into force in the entire Egyptian territory with their issuance by the king, and this issuance shall be known by their publication in the Official Gazette. They shall be enforced in all areas of Egyptian territory from the time their issuance is promulgated.”

Under Article 35 of the 1923 Constitution, however, the law is considered issued, but did not reach the final stage pursuant to Article 26 of the same constitution, that is, its publication in the Official Gazette. This raises questions about publication in the Official Gazette that should be clarified here.

81 *Ibid.*

Egyptian courts have issued rulings pertaining to the enforcement of laws and decrees not published in the Official Gazette; however, they have not addressed the non-promulgation of laws repealing other laws and their enforcement. The jurisprudence we consulted also does not address the issue, considering only interpretations of how laws are issued and the objective of their publication. This may be because this issue so rarely arises or it may be that publication in the Official Gazette is such an axiomatic part of the notification of a legal rule prior to enforcement that it cannot be ignored or neglected.

The Administrative Court has distinguished the issuance of a law from its publication or promulgation, noting that “the rule is that laws and their provisions are enforced from the date of their publication, not the date of issuance. A law may be issued on a certain date and only published on a subsequent date. Issuance differs from publication in its essence. Issuance is a legal act that consummates the law itself. It includes two matters, the first being the president’s testament that both houses of the parliament have affirmed the law in accordance with constitutional provisions and the second being an order to all agencies and authorities to enforce the law within their remit. As for publication, it is a material act that follows issuance and is effected by the appearance of the law in the state’s Official Gazette. The purpose is to inform the public of the law, so that they may have knowledge of it prior to its application. It is a necessary precondition to the implementation of the law.”⁸²

In short, this ruling means that failure to publish the repeal of Law 10/1914 does not mean that the law has lapsed, but that it cannot be implemented except after the completion of the promulgation process. Since the one-month period set forth in Article 35 of the 1923 Constitution elapsed without an objection from the King, the law is considered ratified and issued. In the language of the Administrative Court ruling, this ratification and issuance is tantamount to a testament that the law was approved by the legislature in accordance with constitutional provisions and that the executive authority was ordered to enforce it. But the next step required for the enforcement of the repeal—publication—was not completed.

As detailed above, King Fuad I was apparently dissatisfied with the repeal of Law 10/1914 and refrained from ratifying it. Preferring not to directly quash the law, however, he asked the British to intervene, which they refused to do.⁸³

The King, as such, utterly disregarded the Constitution and set himself above the provisions of Article 35 of the Constitution. This type of intransigence was addressed by Dr. Fathi Fikri in a study published on the website of the Supreme Constitutional Court (SCC)⁸⁴ that analysed the failure to

82 Administrative Court, appeal no. 231/2JY, issued in the session of January 3, 1950, Technical Office 4, part 1, p. 147.

83 For more details, see Annex (20-b)

84 “Raqabat dusturiyat al-lawa’ih fi thalathin ‘aman: mulahizat awaliya wa khams istintajat naqdiya,” SCC website, <http://hccourt.gov.eg/Pages/elmglacourt/mkal/18/fathefkry18.htm>.

Pages/elmglacourt/mkal/18/fathefkry18.htm.

promulgate statutes⁸⁵ and the ramifications.

According to Fikri, since the executive authority controls the publication of legislation in the Official Gazette, there is no excuse it can use for the failure to promulgate laws. Fikri thus argues that non-publication “indicates a degree of encroachment on legitimacy, particularly constitutional legitimacy,” which in turn constitutes “denigration of the entire legal system.”

King Fuad I’s intransigence was not limited to his refusal to publish the repeal of Law 10/1914. On July 19, 1928, he dissolved the Parliament with Royal Edict 46/1928, suspended Articles 89 and 155 of the Constitution, and postponed the new elections for three years. Appropriating legislative authority, he arrogated to himself the power to issue decrees with the force of law. The dissolution of the Parliament in particular was a relief for the king, who had become wary of the Wafd government’s ongoing willingness to give in to the parliament’s whims. This gave King Fuad I the chance to rid himself of al-Nahas and his government as well.

In 1930, the new Constitution, drafted in secret sessions, was introduced, the contents of which revealed the extent to which the King had seen the 1923 Constitution as an obstacle to his absolutism. The 1930 Constitution gave increased legislative powers to the monarch and altered the structure of government. It seems probable that the whole affair with Law 10/1914 and the issue of the one-month time limit taught King Fuad I a lesson in autocracy. In the new Constitution, Article 35, which in the 1923 Constitution had given the King one month to respond to a parliamentary bill and restricted his abilities to reject a bill outright, was amended to give him two months to respond. The newly amended article also stipulated that if he did not respond within the given time limit, the bill would automatically be vetoed.

For years after, Egypt was rocked with protests and demonstrations calling for the reinstatement of the 1923 Constitution. The issue came to a head in 1935 when student protests threatened to turn into a full-blown revolution. Fearing uncontrollable revolt, the King relented, and the 1923 Constitution was reinstated in 1936.

Years after Law 10/1914 was repealed by the Parliament, and with the ensuing unrest and economic problems in the country and soon the declaration of another world war in 1939, the entire debate over the law was forgotten, left buried in the historical records.

85 The SCC did not hesitate to declare unconstitutional statutes in force if they were not promulgated. The constitutional court initially relied on Article 188 of the constitution, which states, “Laws shall be published in the Official Gazette within two weeks of their issuance. They shall enter into force one month after the date of publication, unless stated otherwise.” Although this provision specifies laws, the SCC interpreted the term broadly to include any statute, whether parliamentary legislation or a regulatory statute. Ibid.

Part Four



The Assembly Law

as the Foundation of the Protest Law and
Suppression of Peaceful Assembly

PART 4: The Assembly Law as the Foundation of the Protest Law and Suppression of Peaceful Assembly

Over the past years, the right to peaceful assembly in Egypt has been increasingly violated. Thousands of people⁸⁶ are held today under laws banning demonstrations and assemblies. Recognizing that uprisings and revolution emerge in part from the act of assembly, the state apparatus in Egypt quickly moved to foreclose its very possibility. But it did not have to look very far to stifle the freedom to peacefully assemble and reoccupy public space as a sanitized apolitical site. It did so through arrest, imprisonment, mass killing of protesters, and a complete lack of accountability for those violating people's rights. But the state also stifled freedom to assemble by drawing on its colonial era laws, such as the Assembly Law.

For over 100 years, the repealed Assembly Law has been used to suppress freedom of opinion and expression and the right of peaceful assembly. It has also formed the basis for several other statutes as well, such as provisions of Law 109/1971 on the police, which legitimize the use of lethal force to disperse assemblies. Law 10/1914 is a key element in most cases brought against demonstrators, both those that are still pending and those that have ended in convictions. The law has been applied by the courts to imprison untold numbers of activists, political dissidents, and human rights defenders.

1- The Assembly Law's Exploitation to Legitimize Extrajudicial Killing

At the outset, it is important to note that the Assembly Law is not the only reason for the extrajudicial killing of demonstrators over the last five years. The primary reasons are a reckless disregard for the right to life and the lack of accountability. Nevertheless, in this section, we shall review legal provi-

86 Reports from human rights organizations indicate that some 41,000 people have been arrested and detained over the last two years, but thus far there is no concrete accounting of the number of individuals currently detained in prisons, save for a statement in October 2015 from the deputy interior minister, who said that 11877 people were detained in 2015 for involvement in terrorist activities. Given the flawed, imprecise language used in terrorism laws, we believe that many of these people are imprisoned for exercising their right of peaceful assembly. For more details on terrorism laws in Egypt, see Joint Statement, "Law on terrorist entities allows rights groups and political parties to be designated terrorists," 28 February 2015 <http://www.cihrs.org/?p=11031&lang=en> and "Latest counterterrorism law encourages extrajudicial killing and cements impunity, joint legal commentary by Cairo Institute for Human Rights Studies and the Egyptian Initiative for Personal Rights," 26 August 2015, <http://www.cihrs.org/?p=17219&lang=en>

sions that allow for the use of firearms based on the definition of assembly in Law 10/1914 and how these provisions constituted yet another violation of several other rights, such as the right to bodily safety and the right to life.

Police Law (Law 109/1971) and Interior Minister Decree 156/1964

Paragraph 3 of Article 102 of the Police Law (Law 109/1971) enumerates the cases in which policemen may use force to disperse assemblies or demonstrations of five or more persons if they endanger public security and after the assembly is warned to disperse. Article 1, paragraph 3 of Interior Minister Decree 156/1964 addresses in detail how firearms may be used to disperse an assembly of five or more persons if public security is endangered. The head of the force must first issue an oral warning to the assembled persons or demonstrators ordering them to disperse. If they fail to comply, the force may fire at them intermittently to give them the opportunity to disperse. This paragraph also defines the incremental escalation of firepower: first small-gauge shotguns, followed by live ammunition arms if the assembly does not disperse, and finally rapid-fire weapons if necessary.

These provisions rely on the definition of assembly set forth in Article 1 of Law 10/1914—with all the flaws noted above—as grounds for the use of lethal force against individuals in a group of at least five persons if the security forces deem their assembly liable to endanger public security and peace and if they do not obey orders to disperse. As a result of this reliance on a flawed definition, these provisions turn security personnel into judges who can issue death sentences on the spot based on the ill-defined crime of breaching public security.

2- Maximizing Penalties through the Assembly Law and the Protest Law

Non-specialists are likely to confuse the Assembly Law (Law 10/1914) with the Protest Law regulating demonstrations and protests. In fact, many people are unaware that the former exists and has been in force continuously for 103 years, assuming wrongly that the many protestors sentenced to prison were convicted under the Protest Law of 1923 (Law 14/1923) or the 2013 Protest Law (Law 107/2013) that replaced it. Thus, the vast majority of demands to repeal or amend the 2013 Protest Law have made no reference to the Assembly Law, although both the 1923 and 2013 protest laws refer to it in their preambles.

The Assembly Law constitutes the basis of all the demonstration cases that we reviewed. The investigating authorities hew closely to the accusations listed in police reports, which consistently include the charge of assembly in all cases related to the exercise of peaceful assembly. Any gathering of five or more persons conducted with the purpose of committing crimes, preventing the authorities from duly operating, or preventing the implementation of laws and regulations is considered in violation of Article 2 of Law 10/1914. On this basis, the court enumerates the crimes committed during

the gathering as follows⁸⁷:

- *Participating in an unlawful/unlicensed demonstration that infringed upon public security, impeded the interests of citizens, cut roads and transportation, and obstructed traffic.*
- *Making a show of force, using violence, disturbing peace and security, and creating alarm.*
- *Assaulting public servants.*
- *Destroying moveable and immovable assets and attacking public and private property.*
- *Possessing implements used in the assault of persons.*

It is the Assembly Law then, rather than the Protest Law, which provides the basis for collectively punishing participants in demonstrations. In fact, undertaking a demonstration without a permit is itself considered a separate crime committed during such unlawful gatherings.

From the judgments reviewed below, it is clear that ‘assembly’ is the first and principal charge brought against protestors; other crimes, including participating in an unlicensed demonstration, follow from and are considered the purpose of the gathering.

This has been confirmed by the Court of Cassation, which has ruled, “The crime of participating in a demonstration is other than the crime of assembly, and they are punishable under two different laws. Whether the demonstration and assembly occurred at one time or at separate times and whether one of the actions arose from the other or they were two independent actions, in any case they constitute two different crimes punishable by law under two different statutes. However, if the actions of the demonstration are the same actions of the assembly, the court shall impose the more severe penalty.”⁸⁸

In light of this, to ensure that the Assembly Law is not applied to demonstrations, public meetings, and processions, the organizers must obtain a permit from the Interior Ministry. Otherwise, the assembly is considered an act of unlawful assembly infringing upon public peace and order or undertaken for the purpose of committing crimes. At this point, the Assembly Law is automatically applied on the grounds that the unlawful demonstration is a criminal purpose of the gathering. In turn, courts levy the penalties set forth in the Assembly Law, since they are the more severe. The Protest Law carries the penalty of a fine for an unlicensed demonstration, for example, while the Assembly Law carries a sentence of imprisonment or a fine for the same act.

87 Most judgments under consideration did not deviate from these charges.

88 Criminal Cassation, appeal no. 38/48JY, issued in the session of Dec. 4, 1930, Technical Office 2 (Omar collection), pt. 1, p. 144.

3- The right to demonstrate is guaranteed in theory yet to assemble is a crime in and of itself.

Both acts involve the assembly of a number of people, but the material act of assembly is a crime in and of itself, whether it results in the commission of crimes or not. In contrast, the demonstration, though subject to stringent conditions, is a lawful means of expressing one's opinion under the Constitution and theoretically carries no penalty, though the organization of demonstrations is regulated by law.

In addition, liability for crimes committed during a demonstration is individual and does not extend to all demonstrators, unlike an assembly. Under the Assembly Law, the principle of the individuality of punishment does not apply since the law is predicated on the concept of joint liability for crimes committed in the course of the gathering.

A) A Weapon for Collective Punishment

Theoretically at least, the Assembly Law provides the major grounds for mass sentences and the joint liability of participants in assemblies for crimes committed during them. It is the link and evidence that a person participating in the gathering is also a participant in the crime. Courts have thus often invoked the law, especially after June 30, 2013, as the basis of mass sentences against demonstrators. Courts assume that by participating in the assembly, participants necessarily have knowledge of its objectives; if one participant commits a crime, all persons assembled are therefore considered accomplices.⁸⁹

The Court of Cassation has upheld this interpretation, ruling, "Paragraph 2 of Article 3 of Law 10/1914 on assembly states that if a crime is committed with the intent of realizing the purpose of the assembly, all persons who comprise the assembly at the time of the commission of this crime bear criminal liability as accomplices if they have proven knowledge of that purpose."⁹⁰

B) Even Peaceful Assembly Defined as a Crime

Assembled persons need not commit a crime or stage a violent assembly to be guilty of the crime of assembly. The very act of assembling is a crime in and of itself, punishable under Article 1 of the Assembly Law. Merely by staging an assembly liable to endanger the public peace (with 'endanger' determined at police discretion) and refusing to leave, the assembled persons are subject to six months in prison or a maximum fine of LE20.

This was affirmed by the Court of Cassation in a ruling stating, "Every assembly consisting of at least five persons, even if staged without prohibited ill intent under Article 1 of Law 10/1914, when it is

89 See the judgment issued in the Shura Council demonstration case, in which Alaa Abd al-Fattah and others were charged, p. 5.

90 Appeal no. 1890/16JY, issued in the session of Dec. 2, 1946, Technical Office 7 (Omar collection), pt. 1, p. 239.

likely to endanger the public peace, the assembled persons must disperse when ordered to do so by police. If they disobey the order to disperse, each person is subject to the penalty set forth in Article 1 of the law. If it is proven that the defendants assembled to commit a crime, Article 2 of that law shall be applied as well. If it is then proven that they assaulted policemen and destroyed immovable or moveable assets not belonging to them, Article 3 of that law must be applied as well.”⁹¹

C) Police may order dispersion of the assembly without needing to follow stipulations in the Protest Law

Law 107/2013 provides for several checks, though fragile, on law-enforcement personnel when dispersing a public meeting or demonstration. They must first ask the participants in the gathering to leave. If they refuse, water hoses may be deployed, followed by tear gas and then batons (Article 12). If these methods prove fruitless or in the event of acts of violence, warning shots may be fired, as well as sound and smoke bombs, rubber pellets, and non-rubber shotgun pellets. Live ammunition may also be used in the cases enumerated by the law (Article 13).

However, these checks may be disregarded when applying Article 2 of the Assembly Law, which criminalizes the gathering if its purpose is the commission of a crime or the prevention or obstruction of the enforcement of laws or regulations. The justification here for not complying with the controls for the dispersion of the assembly is the prevention of such crimes. If the demonstration is unlicensed, it is a crime per se under the Assembly Law and law-enforcement personnel may therefore disperse it without reference to the controls set forth in the Protest Law.⁹² The Court of Cassation affirmed this saying, “The law does not make punishment for the crime of assembly conditional on a prior warning from the public servants to the assemblers to disperse when the purpose of the assembly is the commission of crimes.”⁹³

91 Appeal no. 2198/2JY, issued in the session of Jun. 20, 1932, Technical Office 2 (Omar collection), pt. 1, p. 595.

92 See the judgment in the Azhar University incident case, p. 6.

93 Appeal no. 1791/30JY, issued in the session of Jan. 30, 1961, Technical Office 12, pt. 1, p. 148.

Special Appendix



Special Appendix

Review of Egyptian court judgements in cases involving assembly

Special Appendix

Review of Egyptian court judgements in cases involving assembly

It is difficult to tally all court judgments that have invoked the Assembly Law since its issuance in 1914. The statute has been widely used since that time, by both the British colonial authorities and their post-independence successors, to suppress any political or social action. What is certain is that the Assembly Law has been a cornerstone of all cases involving peaceful assembly and demonstrations heard by Egyptian courts over the past 103 years. It has proved to be a brutally efficient tool of collective punishment and a means of penalizing the intentions of participants in such assemblies. In this section, we offer an analysis of the judicial application of the law in several major cases in the post-colonial era. We will review the most prominent points cited by Egyptian courts in their application of the Assembly Law.

1- 1977 Protests

Public Prosecution case no. 1844/1977 and no. 67/1977/Central Plenary/Abdin station (High State Security Court); the 1977 uprising

The Public Prosecution charged 171 people in the case as follows:

- *They established an organization seeking to overturn the political, economic, and social orders of the state and the social body by using force, terrorism, and other unlawful means. Namely, they formed an underground communist organization (the Egyptian Communist Workers Party) with the aim of staging a popular revolution to remove the legitimate authority and impose by force a communist order. In the framework of executing the destructive plots of their party, their cadres organized and participated in assembling and staged demonstrations and unrest on January 18 and 19, 1977 by inflaming the masses with chants, bulletins, other types of tendentious propaganda and spurring them to commit the crimes of demonstration, subversion, resistance to the authorities, and other grave crimes that occurred on these two days as included in the Public Prosecution's investigations. They thereby aimed to ignite a popular revolution that would end the existing regime and impose communism by violence and terrorism. Their attempt was thwarted as a result of being frustrated by the precautions taken for security and order.*
- *They organized, encouraged, and participated in an act of assembly leading to the inflaming of the masses with their call to impede the execution of laws and regulations with the aim of influencing the operation of the constitutional authorities, and this with intent to spur the masses to gather and demonstrate against the authorities with force and vi-*

olence, seeking thereby renewed acts of chaos, terrorism, and the hindering of studies by force, and some of them participated in demonstrations and marches organized for this purpose.

The court concluded that the events of January 18 and 19, 1977 were the direct result of decisions to increase prices and that they erupted spontaneously without incitement or exploitation. In addition, the case files contained no evidence against the defendants. None of them were apprehended with implements, weapons, explosives, or other means used by underground groups. Based on this, the court concluded that the charge of incitement and participation in an assembly with the purpose of spreading chaos and terrorism to overthrow the regime was baseless given that the element of force was not proven. The court was thus compelled to acquit the defendants on these charges.

The court ruled as follows:

- *To sentence Defendants 3-Talaat Muaaz Rumeih; 8-Ahmed Mustafa Ismail; 24-Shawqiya al-Kurdi Nasr Shahin; 25-Faten al-Sayyed Afifi; 26-Rizqullah Boulos Rizqullah; 28-Magda Mohammed Adli; 29-Omar Mahmoud Abd al-Mosen Khalil; 41-Mohammed Hassan Mohammed; 55-Adli Mohammed Ahmed Aleiwa; 81-Khaled Mohammed al-Sayyed al-Fishawi; and 169-Iman Atiyya Mohammed to three years imprisonment and a fine of LE100.*
- *To sentence Defendants 10-Sayyed Ahmed Hifni; 15-Mohammed Hisham Abd al-Fattah Ibrahim; 57-Lutfi Azmi Mustafa; 87-Mubarak Abduh Fadl; 122-Mohammed Ahmed Eid; 123-Mohammed Mohammed Fathi Abd al-Gawad; 164-Mohammed Mahmoud Gad al-Nimr; and 170-Hussein Hafez Gamaa to one year imprisonment with labour and fine of LE50 and to acquit them of the other charges against them.*
- *To acquit all other defendants of the charges against them.*

2. Shura Council demonstrations of November 26, 2013

Defendants Alaa Abd al-Fattah, Ahmed Abd al-Rahman, Abd al-Rahman Sayyed, and Abd al-Rahman Tareq sentenced to five years imprisonment, a fine of LE100,000, and a term of police probation equivalent to the sentence.

On November 26, 2013, a group of political activists and human rights defenders organized a demonstration in front of the Shura Council to protest the adoption of a constitutional article allowing civilians to be tried in military courts. The court charged them as follows:

They participated, with other unknown persons, in an assembly consisting of more than five persons liable to endanger the public peace, the purpose of which was to commit the crimes of assaulting persons and public and private property and influencing public servants in the course of duty using force and violence insofar as one of them bore an

implement used in the assault of persons, and this occurred in pursuance of their purpose in assembly with their knowledge of the following crimes:

- *They, with other unknown persons, made a show of force and threatened violence.*
- *They participated in a demonstration by which they infringed upon public security and order, cut the roads, and obstructed traffic.*
- *They assaulted two police personnel.*

Defendant 1

- *Organized an assembly consisting of more than five persons.*
- *Organized a demonstration without notifying the police station in writing.*

Defendant 2

- *Possessed an implement used in the assault of persons.*

The court rejected the defence argument that the indicting rationale in the Protest Law could not be applied with the incriminating rationale set forth in Law 10/1914 on assembly. The court reasoned that there was no material or legal barrier to applying both statutes since both had elements that distinguished them from the other and could therefore be applied without contradiction or inconsistency. This is true even though the two statutes appear similar in the material act constituting the two crimes since they are quickly distinguished with reference to the necessary conditions set forth in each law. If the material act performed by the defendants and other unknown persons—namely, assembling in a crowd of more than 350 to protest the Protest Law and the article allowing civilians to be tried in military courts—took place absent written notice to the security authorities, this act alone constitutes a violation of the Protest Law.

If the demonstrators infringed upon public security or order in any way, this act is a violation of the Assembly Law as well as the Protest Law. If the same act was performed with the purpose of committing a crime, preventing or obstructing the enforcement of laws or regulations, influencing the authorities in their actions, or denying a person the freedom to work with the use of force or threat and the participants knew of this purpose or knew and did not stand down, their gathering meets the definition of assembly and every participant is criminally liable. In this way, the court reasoned, they have violated Law 10/1914 on assembly and the Protest Law simultaneously. This is not an unknown situation in law, where Article 32 of the Penal Code is relevant. That article states that if one act constitutes several crimes that are committed for a single purpose and are inextricably linked, they must all be considered one crime and punished with the penalty for the severest crime.

The court also rejected the defence argument that the elements of the crime of assembly were not

obtained, reasoning that the criteria for assembly are that it be a gathering consisting of at least five persons; that its purpose is to commit a crime, prevent or obstruct the enforcement of laws or regulations, influence the authorities in their actions, or deny a person the freedom to work with the use of force or threat; that the participants intend to pursue this purpose and persist until it is realized; and that the crime be a single criminal activity not independently undertaken by one of the participants.

The court cited tweets posted by Alaa Abd al-Fattah on his Twitter account calling for a demonstration to challenge the Protest Law and the constitutional article permitting military trials for civilians to deduce Abd al-Fattah's intention to commit the crime of violating the provisions of the Protest Law. It further reasoned that the participants in the demonstration came knowing its purpose and that the defendants did not heed a police order to disperse, but remained on the site, while some lay down on the road to affirm that they would not abandon their position. According to the court, this persistence clearly proved the elements of the crime of assembly.

The court learned from the testimony of defence witnesses from among the 50-member constituent assembly that hearings had been designated for people opposed to the military trials provision in the constitution and thus concluded that there was a way for the defendants to air their objections. Staging a demonstration therefore "exceeded the bounds of peacefully airing opinion to the point that could be described as imposing opinion by compulsion. The intent of their assembly was to compel the 50-member committee to come down on their side and adopt their view to the exclusion of others, which constitutes an infringement of the freedom of this committee to do its job absent influence or pressure."

The court also concluded that Alaa Abd al-Fattah was responsible for every act committed by any of the people present at the assembly in pursuance of its purpose, even if he were not present at the time or had left prior to the commission of the act, reasoning that he was an organizer of the assembly under Article 4 of Law 10/1914. The other defendants bore criminal liability for the crime committed as well because they were committed in pursuance of the intended purpose of the assembly, of which participants had knowledge. As such, they bore responsibility as accomplices under paragraph 2 of Article 3 of the Assembly Law.

The court considered that by republishing the call for the demonstration on his Facebook page and Twitter account, Abd al-Fattah had advocated for the unlawful demonstration. Since the demonstration involved a purpose likely to influence members of the constituent assembly in their work, as well the crime of breaking the Protest Law, assaulting two policemen, and making a show of force, the defendant therefore committed the crime of organizing the assembly.

The court rejected the defence argument that the material and moral elements of the crime of possession of bladed weapons was not proven against any of the defendants. The court ruled instead that the fact that one participant in the assembly bore a bladed weapon did not absolve the other par-

ticipants of criminal liability for the crime or their lack of knowledge of the possession of the weapon, since paragraph 2 of Article 3 of the Assembly Law states that every person composing the assembly is responsible for any crime committed during it if their knowledge of the purpose of the assembly is proven. Moreover, Article 4 of the law punishes assembly organizers for every act committed by persons in the gathering, even if they are not present at the time.

3- The Abdin Court demonstrations case

(Including defendants Ahmed Maher, Mohammed Adel, and Ahmed Douma) They were sentenced to three years imprisonment and a fine.

On November 30, 2013, the Qasr al-Nil Prosecution summoned Ahmed Maher to question him about his participation in the demonstration at the Shura Council on November 26, 2013. Several political activists and human rights defenders assembled in front of the Abdin Court to support Maher. They were subsequently charged as follows:

Organizing and participating in an assembly consisting of more than five persons liable to endanger the public peace, the purpose of which was to commit the crimes of assaulting persons and private property, influencing the public authorities in their operation using force and violence, and bearing implements used in the assault of persons, knowing the purpose of the assembly. In pursuance of this purpose, they committed the following crimes:

1. They participated in a demonstration that infringed upon public security and order, hindered the interests of citizens, endangered them, and prevented them from exercising their business and their rights, influenced the course of justice, cut roads, obstructed traffic, and endangered property.

2. They made a show of force and used violence against police forces tasked with securing the Abdin Court building and area residents with intent to alarm and inflict harm on them to compel them to refrain from doing their job; impeded the execution of laws; and disturbed public security and peace, which act had the effect of frightening the victims and endangering their lives, and this while they bore implements used in the assault of persons. Based on these acts, the following crimes were committed:

- They assaulted public servants (police personnel) with force and violence using implements used in assault (stones and bottles).*
- They damaged moveable property (the furniture of a coffee shop next to the courthouse).*
- They possessed and others possessed on their behalf implements used to in the assault of persons (stones and bottles) without grounds of necessity.*
- They organized a demonstration without notifying the competent bodies.*

The court rejected the defence argument for the non-specificity of the charge, responding that Articles 2 and 3 of Law 10/1914 on assembly set legal conditions for what constitutes an assembly: that it consist of at least five persons and that its purpose be to commit a crime, prevent or hinder the execution of laws and regulations, influence the authorities in their actions, or deny a person freedom to work using force or threat thereof. Punishment for assembly, given that the assembled persons share liability for crimes committed in pursuance of the assembly's purpose, is conditional on their proven knowledge of this purpose; that the intent to assault brought them together and remained with them until they realized their purpose; and that the crimes committed occurred as a result of a criminal activity of one nature all of which occurred during the gathering. The court said, "With this, the legislator has made the elements of the crime of assembly, as legally defined, a matter in which is realized a form of contribution to the crimes committed by one of the assembled persons, making the criteria for liability and sanction knowledge of the purpose of the gathering and the willingness to realize this purpose. And all of this is in consideration that the rule regarding accomplices is that a person is an accomplice to the crime, not to its doer; this capacity [as accomplice] is derived from the legally criminalized act of participation itself."

The court stated that all the case files proved that the defendants had called on their supporters to assemble in front of the Abdin Court to support Ahmed Maher during his interrogation at the Qasr al-Nil Prosecution. The purpose of this assembly was to influence the course of the interrogation, prevent the authorities from doing their job with the use of force and threat, and make a show of force with their numbers. They harboured the intent to assault with the goal of executing their purpose, and when the forces tasked with securing the courthouse prevented them from entering, they assaulted them by pelting them with stones and empty bottles. They also used furniture from the coffee shop next to the courthouse in the assault and caused damage and destruction to it. All of these crimes, the court said, were committed in pursuance of that purpose. The court thus concluded that the argument for the non-specificity of the charge was without merit since the liability rested with them all.

In convicting the defendants, the court said that the crimes of assembly and organizing and participating in the demonstration were proven with certainty against them. The police investigations revealed that the defendants had mobilized a number of their supporters—around 500—on social media, and they assembled in front of the courthouse to support the first defendant and influence the course of the interrogation. This made it clear to the court that the intention to assault persons and property brought them together with the other demonstrators, their supporters, and persisted until they were able to realize their purpose, which was the attempt to influence the authorities during the questioning of the defendant. This is not discredited by the claim that the assembly began innocently, since during the incident events happened to render it punishable, and this when the participants' intention turned to realizing the aforementioned criminal purpose. The court said that the defendants called for the demonstration on social media and took part in it, intending to violate the law and dis-

regard its provisions.

4- Demonstrations at Azhar University, December 28, 2013

Several students at Azhar University organized a demonstration on campus on December 28, 2013. The court charged them as follows:

They participated, with others, in an assembly consisting of more than five persons liable to endanger the public peace, the purpose of which was to commit the crimes of intentionally damaging public and private property, preventing a government institution (Azhar University) from functioning, and influencing public servants in the course of duty using force insofar as some of the defendants bore Molotov cocktails, fireworks, bladed weapons, and stones, and this occurred in pursuance of the purpose of the assembly with their knowledge of the following crimes:

- They, with others unknown persons, destroyed some buildings designated for a public institution (Azhar University) and damaged public property in pursuance of a terrorist purpose with intent to create alarm and spread chaos among staff and prevent students from taking their examinations.*
- They, with others, used force with threat against public servants.*
- They, with others, made a show of force and threatened violence, and they used it against citizens with intent to alarm them and inflict material and moral harm on them to impose their supremacy.*
- They assaulted police officers and violently resisted them in the course of and because of their duty.*
- They, with others, participated in a demonstration to disturb public security and order, impede the interests of citizens, harm them, endanger them, and prevent them from doing their business.*

According to the case files, several students organized assemblies and demonstrations in front of university faculties with the aim of preventing students and faculty from entering exams. The court rejected the defence argument that the elements of the crime of assembly were not proven and that Article 40 of the Penal Code on aiding and abetting a crime did not apply due to the lack of principal or secondary contribution to the sit-in. Instead the court applied the provisions of a different law.

The court said that jurists and courts had established that an assembly is a gathering of at least five persons and is not conditional on prior agreement to assemble; it is sufficient that the assembly take place incidentally, even without prior agreement. It added that the prerequisite that for the gathering to be considered public, it need not be limited to an assembly in a public road or place. It needs to

only have the intent of 'public'; meaning that the assembly take place anywhere people can see the assembled persons or in a place where the public can join it at will, thus increasing the danger to public peace.

The court defined the act of assembly under the law as of two types. The first is one that threatens the public peace, while the second is one organized for an unlawful purpose. The latter differs from the former in terms of special intent; in the latter, the material element of the crime is simply gathering, and there is no requirement that it threaten public peace or that the assembled persons were given an order to disperse and did not do so. It is also not conditional on the realization of the unlawful purpose sought by the assembled persons. The crime is committed, the court reasoned, both when the offender takes part in the gathering with knowledge of its unlawful purpose and when he takes part in it ignorant of its purpose but does not remove himself when he learns of it.

As such, all participants in the assembly are principal offenders in the crime because with their acts, all participants performed the action constituting the material element of the crime, namely unlawful assembly.

As for the moral element—the defendants' intention—in the second type of assembly, it requires special intent on the part of the offenders, which is the unlawful purpose, namely, preventing or impeding the enforcement of laws or regulations or influencing the authorities by the use of force or threat thereof. Article 3, paragraph 2 of Law 10/1914 on assembly states that if a crime is committed with intent to pursue the purpose of the gathering, all persons comprising the assembly at the time of the commission of the crime bear criminal liability as accomplices if their knowledge of the purpose of the assembly is proven. This means that offenders are liable for the most severe crime they wilfully committed.

Based on this, the court found that the defendants and other unknown persons gathered in an assembly of more than five persons in front of the university faculties and committed crimes, thereby all becoming principal perpetrators in the assembly and all subject to criminal liability as accomplices in the severest crime they committed with intent to pursue the purpose of the gathering—namely, the crime of wilful destruction of a public building.

5. Ittihadiya demonstrations case,

in which defendants Sanaa Ahmed Seif and others were sentenced to three years imprisonment; the judgment was upheld on appeal with the sentence reduced to two years imprisonment

On June 21, 2014, several political activists and human rights defenders organized a demonstration heading for the Ittihadiya Presidential Palace to demand the release of persons detained under the Protest Law and the repeal of that law. They were referred to trial on charges of participating in an assembly consisting of more than five persons liable to endanger the public peace and with the pur-

pose of committing the following crimes:

1. Participating in a demonstration that infringed upon public security and order, hindered the interests of citizens, cut roads and transportation, obstructed traffic, and assaulted public and private property.

2. They made a show of force and used violence on a public road to inspire fear in passers-by and endanger their lives. Based on these crimes, the following crimes occurred:

I. They damaged trees planted on the public road.

II. They intentionally damaged public property (a police vehicle).

III. They intentionally damaged moveable and immoveable assets.

The court found that the defendants participated in an assembly with the purpose of disturbing security and endangering public security, and with others they were loud and boisterous with the aim of inflaming strife. They all harboured the same idea and came from different governorates with a prior agreement to engage in an unlawful act with the purpose of impeding the execution of laws, thereby making a show of force liable to alarm people, as well as damaging public and private property.

Based on the act of assembly in which all demonstrators participated, the court concluded that all the crimes were linked, having taken place at a single time and place and based on a single criminal notion during their assembly, with the intent to pursue the purpose of the assembly.

The defendants' counsel challenged the constitutionality of Article 1 of Law 10/1914 on assembly, but the court used its discretionary authority under the Supreme Constitutional Court law to deny the defence.

Appendices



Appendices

abolition of the Capitulations. There are, however, a certain number of laws which have been passed since 1913, to which attention may appropriately be called, in view of the effect they have had in modifying Egyptian judicial institutions.

Law No. 7 of 1914 makes certain modifications in the Native Code of Criminal Procedure, and in Law No. 4 of 1905 under which the Courts of Assizes were created. The object of these changes was to put an end to conflicts which arose in practice between the committing magistrates and the summary courts, in regard to the legal qualification of offences in certain cases. The committing magistrate occasionally refused to send a case for trial to the Assizes because he considered it to be a misdemeanour, while at the same time the summary judge refused to try it on the ground that in his opinion it constituted a crime.

The law in question provided that if the summary judge holds that an offence brought before him as a misdemeanour constitutes a crime, the *parquet* shall bring it before a committing magistrate, who may either commit it for trial before the assizes or dismiss the case. If he differs from the summary judge as to the qualification, and considers that the offence constitutes a misdemeanour or a police offence only, he may send it for trial before the assizes with alternative charges qualifying the offence either as a crime or as an offence of a lesser degree of gravity. The law also introduced an important innovation in giving to the prosecutor-general and to the civil claimant the right to appeal against a decision by the committing magistrate dismissing a charge on the ground of insufficiency of evidence. It also defined the power of the committing magistrate in respect of a series of minor points which had given rise to controversy, such as the question of his right to modify or aggravate the charge as laid before him by the prosecuting authority.

Law No. 10 of 1914 was promulgated with the object of providing more effective means than already existed for punishing unlawful assemblies. With the exception of certain provisions in regard to pillage by armed bands and a section providing for increased penalties for assault and unlawful wounding when committed with the use of arms by members of a band exceeding four persons, the Penal Code contained no specific provisions for offences committed by assemblies of persons.

The necessity of such provisions had, however, become apparent, and the law in question makes it an offence punishable with six months of imprisonment or a fine of £5. 20 for any member of an assembly of a nature to endanger the peace to refuse to obey an order to disperse given by a lawful authority. The same penalties are incurred by any person who, having knowledge of the common object, joins an assembly collected for the purpose of committing an offence, of interfering with the execution of the law, of interfering with the action of a public authority, or of depriving any individual of his liberty of action.

Increased penalties are provided for the case where arms are carried or where resort is had to force or violence. The promoters of an unlawful assembly are criminally responsible for offences committed by members of the assembly in the execution of the common object, although such promoters were not actually present when such acts were committed.

Law No. 12 of 1915 had for its object to put an end to an abnormal state of things which had prevailed in the organisation of the *Mehkemehs*. This consisted in the fact that a *kadi* from Constantinople was president both of the Supreme *Mehkemeh* and of the *Mehkemeh* of Cairo, and enjoyed certain exceptional powers in respect to the recruitment and promotion of the subordinate *kadis*.

As from the date of the law, the Supreme *Mehkemeh* and *Mehkemeh* of Cairo have had distinct presidents appointed on the nomination of the Minister of Justice, and the exceptional prerogatives of the former have disappeared. The organisation of the *Mehkemehs* has thus been brought to closer conformity with that of the other judicial institutions of the country.

In the year 1915 a reform was brought about which had long been urged, and to which allusion is made in Lord Kitchener's report for the year 1911.* This reform relates to the number of judges required to make up a chamber in the Mixed Courts. This number had hitherto been eight in the Court of Appeal and five in the Courts of First Instance. These numbers were reduced respectively to five and three by Law No. 3 of 1915. This important reform has had excellent effects upon the amount of work got through and reduction of arrears.

Law No. 15 of 1916 creates for the first time a regularly organised bar for the *Mehkemehs*. It lays down the conditions required for admission to that bar, prescribes a period of apprenticeship, provides for the creation of a bar council, and lays down the disciplinary penalties to which members of the profession expose themselves in case of breach of professional duty.

[3437 y—2]

* Page 14 and Appendix 2.

M

Annex 1

P. 81 of the report by the British high commissioner on the finances, administration, and condition of Egypt and Sudan for the period 1914–1919, on the grounds for the issuance of the Assembly Law.

This Document is the Property of His Britannic Majesty's Government, and should be returned to the Foreign Office when done with, unless required for official use. Political.

Decypher telegram from Sir L. Mallet (Therapia)

d. 4 p.m.

September 1st, 1914.

r. 9 p.m.

no. 668.

45389

2 SEP 1914

Following sent to Cairo to-day.

by immediately preceding telegram.

I learn on good authority that a high-placed senator Sulleiman El Barouni, whose photograph I hope to be able to send if you want it, is in Egypt probably in Cairo engaged in attempting to foment revolutionary movement.

He is said to be supported by Prince Omar Toussoun who has been arrested at Marseilles.

Addressed to Cairo: repeated to London and Paris.

Annex 2

Telegram from Sir L. Mallet (Therapia) to Cairo on September 2, 1914, on verified information of attempts to foment revolution against the British occupation.

1914.	THE WAR.	41801
Constantinople August 21.		22 AUG 1914 File No. 56711
Telegram. Sir L. Mallet no. 581.	(Subject.) <u>Turkey and Egypt.</u>	Information reporting probable attempt to smuggle arms into Egypt from Tabuk on Hedjaz Railway across Red Sea. Turkish officers said to be sent to Egypt to agitate.
Last Paper. 41489		
(Print.)	(Distributed by J.L.O..	(Minutes.) (Repealed Copy) G.P.C. 22-viii-14.
(How disposed of.) 15a India office. Aug. 24		The Turkish govt is completing its war preparations against us very thoroughly. For the purpose of keeping us quiet, the Grand Vizier and other officials are permitted to give assurance to Sir L. Mallet and
Action completed. AM	(Index.) 39	
Next Paper. 41482		(80,431) W.27. 22-25 2000 11/13 A.S.W. (80,050) 27-31 2000 4/14.

Annex 3(a)

Telegram from Sir L. Mallet in Constantinople to Cairo on August 21, 1914, on information about an attempt to smuggle weapons over the Red Sea from the Hijaz to Egypt.

THE WAR.
B.

4180162

Decypher of telegram from Sir L.Mallet (Constantinople).
22 AUG 1914

August 21st, 1914.

(d. 10.35 p.m. August 21st. r. 5.30 a.m. August 22nd).

No.581.

Movements of Turkish naval troops - Aegean Turkey

An Egyptian named Youef. Bey el Mouelhy (sic) informs me that five persons engaged in arms trade who were imprisoned by Turkish authorities eight months ago have been released and are now in constant communication with Minister for War here. It is thought they may wish to smuggle arms into Egypt from Tabuk on Hedjaz Railway across Red Sea. Their names are Abdel Sullen, Farghal, Broos Sadded and Maledin Chitei, Hag Ali and Hagfadl. Their agent at Alexandria is ? Chaplain (? to) Abdil-Keda el Galayeni.

Also I hear nineteen Turkish officers have been sent to Egypt to agitate.

Sent to Cairo.

Annex 3(b)

Another section of Annex 3(a) on the dispatch of 19 Turkish officers to Egypt.

1914.	THE WAR.	43130 28 AUG 1914
Mallet Aug 25	No. 43130	File No. 36711
Telegram. L. Mallet No 618.	(Subject.) <u>Turkish Attitude towards Egypt.</u> Rumour that Egyptianals ^(sic) have been guaranteed by Ottoman Minis ^(sic) £7,500,000 if Turkey reoccupies Egypt. But Ambassador's information still is that there is no great concentration of troops towards Egyptian frontier.	
Last Paper. L 3129	(Minutes.) Sent to Cairo. (Distributed Political).	
The War PRINTED.	L.O. 26 Aug. G.E.C. 26-VIII-14. A.C. Aug 26	
(How disposed of.)		
on ed.) al	(Index.) 39. ✓	
Text Paper. 43544	(86,481). W1.27,737-69. 5000. 11/12. AUG 14	

Annex 4

Telegram from Sir L. Mallet to Sir Edward Grey on August 26, 1914, revealing promises of substantial Ottoman financial rewards for those who would collaborate with Ottoman forces to enter Egypt.

1914.	THE WAR.	<div style="border: 1px solid black; padding: 5px; display: inline-block;">43130</div> 28 AUG 1914 File No. 36711
on file Aug 25		
Telegram. H. Mallet No 618.	(Subject.) <u>Turkish Attitude towards Egypt.</u> Rumour that Egyptianists ^(sic) have been guaranteed by Ottoman Minister ^(sic) £7,500,000 if Turkey reoccupies Egypt. But Ambassador's information still is that there is no great concentration of troops towards Egyptian frontier.	
Last Paper. 43129	(Minutes.) Sent to Cairo. (Distributed Political). L.O. 26 Aug. G.P.C. 26-VIII-14. G.P.C. Aug 26	
(Print.) ✓ The War PRINTED.	(How disposed of.)	
on ted.) al	(Index.) 39. ✓	
Text Paper. 43544	(86,431). Wt. 27,737--00. 5000. 11/13. A + F 12	

Annex 5
 Another section of Annex 4.

1914	THE WAR.	43800
Aug 26.	No. 43800.	27 AUG 1914 File No. 36771 Received by
Prince Borgese. (Verbal)	(Subject) <u>Turkey and Egypt.</u> Reports received by Italian Govt. that Turkish soldiers & officers in disguise were passing into Egypt and from Egypt to Cyrenaica.	
Last Paper. 43524		
(Prof.) War (let out) PRINTED.	(Minutes) D.P.C. 28-VIII-14.	
(Enc. Report of.) Tel. to Cairo no. 132 Aug 27 Replied tele. 440		
tion dated.) Date	(Index.) 39	
Next Paper. 43861	28002—W. & S. I&L—(50)—27737—5,000—11-13.	

Annex 6

Telegram from Sir Edward Grey to Mr. Cheetham on August 27, 1914, on reports that Ottoman officers and soldiers continued to surreptitiously enter Egypt.

1914.	THE WAR.	44593
Cairo Aug 29	No. 44593.	30 AUG 1914 File No. 36711
Telegram. Cheetham 114 confidential.	(Subject.) <u>Turkish Intrigues agst Egypt.</u> Hears on good authority that 8 Turkish Officers have gone to Cyrenaica & intrigue agst Egypt. Coast guards & police have seen no signs of movements referred to in F.O. Tel No 132 of Aug 27.	
Last Paper. 44192.	(Minutes.) (Distributed Military): J.P.C. 20-VIII-14.	
(Print.)		
(How disposed of.)	This shows that the Italian information was correct and that the Egyptian authorities lack either vigilance or power to act. I think we are going too far in our policy of letting the Arabs do exactly what they like. A.C. Aug 30 E.f.	
n ed.) L	(Index.) M 39	
ext Paper. 44770	(86,431). Wt. 27,737—69. 5000. 11/2 24W	

Annex 7

Telegram from Mr. Cheetham in Cairo on August 29, 1914, on verified information concerning Turkish subversives in Egypt.

Mr. Cheetham.

Caire, le Aug. 25, 1914

Strictly Confidential

NOTE

The Address
Y.M.

Persistent rumours have circulated lately in the town to the effect that H.H. the Khedive had died, and that the Government was keeping back the sad news until after the Feast.

I learn from a reliable source that Ahmed Bey Shawki spreads the news that the British Ambassador at Constantinople is opposed to the Khedive's return to Egypt now. This bit of news Shawki Bey imparted confidentially to Mohamed Bey Mahmoud, Mudir of Behera, and to others; and Mohamed Bey passed it on to my informant. Shawki Bey's object is no secret, he wishes to stir up public opinion.

Some authoritative sources, however, assert that it is the Turkish Government which opposes His Highness's return to Egypt, on account of the Arab Question.

One of my special informants states that Ahmed Bey El Aris, chief of the Maia spies, has returned to Egypt in view of the persistent demands of the Turkish authorities who know him to be a re-actionary of the first water, and look with aversion to his stay in the Ottoman Capital.

I learn that a good many Turks, recently arrived in Cairo, hold meetings occasionally in a Café in front of Finish's place, right by Sheikh Salama's Theatre. They are all Unionists; and some of them are here on a special mission. They keep in touch with their brethren at Port Said.

I learn further that the chemist Mohamed Kiazim, one of the Turks who are known to us, helps them in every possible way, and meets their chiefs in a private house in Heliopolis.

Annex 8

Strictly confidential letter from the Ministry of Interior to Mr. Cheetham on August 25, 1914, on reports that Turks with the labour movements were frequenting a café next to the Sheikh Salama Theater on a special mission and were in contact with comrades in Port Said.

NOTE

-2-

The Cairo City Police has been duly notified of these facts.

It is bruited in Cairo that some 250 German officers had come to Syria, in view of the possible Turkish attack on Egypt from the direction of Al Arish.

CONSTANTINOPIE NEWS: The Egyptians who went lately to Constantinople manifested great joy on learning that Lord Kitchener would not return to Egypt, and in their conversations passed many abusive reflections on the subject. They went so far as to openly do this in the Khedivial Reception.

One of them, a certain Kaimakam Tewfik Bey Fahmi, came into the Reception Hall with a copy of the Turkish newspaper Tasvir Afkar (translation of one of its interesting articles attached herewith), and passed many abusive remarks.

My informant relates further the following strange story:

The War Ministry took away two Turkish mariners employed in Al Mahroussa, and enrolled them in the Army. When the news of this strange procedure was brought to the knowledge of Al Maia, it sent Aref Pasha, Chief of the Turkish cabinet, to protest against the act and secure the release of the two privates.

What did the War Ministry do ? It simply arrested Aref Pasha and enrolled him in the Army. Somehow he managed to escape, and is now hiding in Djiboukli Palace. It is said that the Khedive asked Ismail Bey Hakki to settle the matter.

*This must be
wrong.*
H. J.

H. J.

Annex 9

Ministry of Interior Note of August 1914, on information about conspiracies by the Axis powers and a plan by 250 German soldiers in Syria to attack Egypt through Arish in collaboration with the Turks.

[48237]

No. 62.

Mr. Cheetham to Sir Edward Grey.—(Received September 10.)

(No. 139.)

(Telegraphic.) P.

Cairo, September 10, 1914.

IN reply to your telegram No. 170, I beg to report that I had already paid some attention to the question of the issue of a proclamation in Egypt in case of war with Turkey, as I knew there was considerable preoccupation among Egyptian Ministers as regards their position and responsibilities should such a war occur. Although I have done nothing to originate or encourage the idea that a change in the status of Egypt is in contemplation, yet there is doubtless a large section of opinion which shares the views of Ministers, who anticipate that His Majesty's Government will declare a protectorate or annexation, and therefore the line taken in the proclamation must obviously depend on any decision of His Majesty's Government with respect to the future status of Egypt.

The matter has been seriously considered by me in consultation with the Advisers of the Interior and Finance. Our opinion is that unless a proclamation of war with

Annex 10(a)

P. 191 of a letter from Mr. Cheetham to Sir Edward Grey on September 10, 1914, on the poor market for Egyptian cotton as a result of the war and the spread of rebellion and anger to rural areas.

Turkey were accompanied by the declaration of a protectorate, a situation would arise in which we could not guarantee either internal order or financial stability. If the fiction of Turkish suzerainty were then maintained, Egyptians, and above all Egyptian officials, would be placed in a position of divided allegiance, and their co-operation with us would thus be seriously affected. I am very doubtful whether Ministers would remain in office unless we are prepared to announce a definite connection with Great Britain, for they would regard doing so as involving the risk of their lives. In such circumstances it would be impossible to replace Ministers, and, at a moment of great difficulty, we should have to take over the administration of the country under martial law and unassisted by the leading Egyptian officials. If, on the other hand, His Majesty's Government were at the outset openly to announce their intention of declaring a protectorate in the place of the Turkish suzerainty, I think that Ministers would probably stand by us, and that they would be supported by our numerous well-wishers throughout the country. It is almost essential that we should have the co-operation of the Regent and Ministers in order to be able to deal successfully with the religious movement which war against the Khalif would be certain to arouse.

I venture to emphasise the above views. Public opinion is on our side at present, and the certain knowledge that it was the intention of His Majesty's Government to treat Egypt as part of the British Empire, and consequently reward and protect her supporters here, would make us sure of the loyalty of our friends and of the acquiescence of the numerous officials and others, for whom self-interest is the only guide.

In a previous telegram (No. 153) I pointed out that the main preoccupation of the agricultural population of Egypt is the question of the sale of this autumn's cotton crop, and that it is generally believed that only England is in the position to save the country from wholesale disaster by providing a market for it.

If it were considered possible to accompany the declaration of a protectorate by a statement to the effect that the progress of Egypt towards internal self-government would not be retarded, but rather accelerated, by such a protectorate, I am firmly convinced that the majority of enlightened Egyptians would receive the declaration not only with acquiescence, but even with favour.

The proposed new status of Egypt would render such an assurance possible, but we should have to consider its terms very carefully; it would not do to adumbrate measures which it would prove impossible to introduce in the present state of Egyptian development without prejudicing the progress that has already been achieved. In any case, one point that must be made clear is that while Egyptians would secure the full status and advantages of British subjects, the principle of an Egyptian national entity should remain unimpaired.

In another telegram I am forwarding a summary of proposed paragraphs for the preamble of proclamation in case we should go to war with Turkey, which would appear suitable in any circumstances. The proclamation itself could be drawn up in terms similar to those already issued; and I think we should at the same time prohibit trading with the enemy, so as to prevent seditious intercourse between Egypt and Turkey.

Annex 10(b)

Another section of Annex 10(a).

[36947]

No. 58.

Mr. Cheetham to Sir Edward Grey.—(Received August 8.)

(No. 137. Confidential.)

Sir,

Ramleh, July 28, 1914.

REPORTS from Constantinople will no doubt have provided full information with regard to the attempt on the life of the Khedive referred to in my telegrams Nos. 53 and 54 of the 26th instant and to-day's date respectively. I learn from the head of the Khedivial household at present in Alexandria that his Highness is in no danger, though he was apparently struck by several bullets and wounded in the left arm and in the face.

The assailant who was killed on the spot, was an Egyptian student named Mahmoud Mazhar. He had resided for some years in Constantinople where he belonged to the Naval School. He was well connected, and the son of an Egyptian judge now deceased.

From information at the command of the Egyptian Ministry of Interior it appears that Mahmoud Mazhar was a neurasthenic who more than once tried to take his own life. Enquiry into his antecedents also shows that he was intimately connected with Sheikh Shawish and a Dr. Ahmed Fouad who is known as an especially violent Nationalist. This latter was a member of the secret society formed by Ibrahim

Annex 11(a)

Pp. 188–189 of a confidential print from Mr. Cheetham to Sir Edward Grey on July 28, 1914, on the attempt to assassinate Khedive Abbas Hilmi II in Constantinople.

189

99

Wardani, and would have been condemned for complicity in the murder of Boutros Pasha if Egyptian law as to conspiracy had not been defective. Since then he has lived in Constantinople and taken a prominent part in the group of extreme Nationalists collected there.

It seems therefore probable, on the evidence at present forthcoming, that a Nationalist organisation was responsible for the attempted assassination of the Khedive, and the crime appears at first sight very much to resemble that of Wardani, who was a weak-headed instrument prompted by Sheikh Shawish. Further investigations may, however, throw fresh light on the affair, and an interesting fact is that a brother of Mahmoud Mazhar fought against the Italians in Tripoli and animosity against the Khedive for the part he is well-known to have taken in recent events in Cyrenaica may have counted for something. You will be aware that his Highness has been to a large extent reconciled with the Nationalists during the past year and their press in Egypt is now very friendly to him, so that a further motive for the crime might well be expected.

The main impression made on the Egyptian public by the recent incident is one of surprise and horror at the detestable methods of the Nationalists, but there is a rather curious under-current of opinion that the crime may have been due to intrigues on the part of agents of the Committee of Union and Progress.

I have, &c.

MILNE CHEETHAM.

Annex 11(b)

Another section of Annex 11(a).

Mr. Cheetham to Sir Edward Grey.—(Received September 29.)

(No. 191.)
(Telegraphic.)

Cairo, September 29, 1914.

DECROWNING.

Question of legislative assembly, which should normally meet on the 1st November, arises in connection with proposed financial legislation, including raising of rates of stamp-duties and court fees, restriction of area under cotton in coming year, &c., some of which would involve modifications of decrees promulgated after consulting Legislative Assembly (or old Legislative Council).

Three courses are open to Egyptian Government :—

1. To promulgate above-mentioned legislation without consulting Assembly, as has been done in case of recent emergency legislation, such as decree instituting a moratorium, suspending cotton-bourse, fixing price of food, &c ;
2. To consult Assembly ; and
3. To suspend it.

1. Although native and mixed Courts of Appeal have held that omission to consult old Legislative Council did not render legislation invalid, it is not absolutely certain what decision would be as to Legislative Assembly. Native Courts are, it is true, treating recent emergency legislation as binding, and there is no reason to anticipate any other attitude on the part of Mixed Court. But if general legislation were now enacted without reference to the Assembly and question of its legality were raised and decided against the Government, result might affect validity of all such measures of legislation which has not been so referred.

2. Feeling of Ministers is against consulting Assembly under present conditions. They are influenced by proofs of irresponsibility and faction given in Session of present year. Moreover, members will probably fail to comprehend necessity of legislation contemplated. In particular, likelihood of opposition to financial measures directly affecting their personal interests is indicated by the fact that a very moderate proposal for light succession duties framed last spring was not even introduced in view of its failure to elicit any support.

On more general grounds it is, in my opinion, only prudent to avoid complications which a Session commencing in November would introduce into a situation the character of which we cannot now foretell. Opening of the Assembly would offer opportunities for intrigue against a Ministry which is otherwise committed to co-operation with us and would provide a field where external influences might become dangerous. Temporary excitement lately caused by rumours as to abolition of Capitulations shows how country could be affected by inflammatory speeches intended to embarrass statesmen.

3. There remains formal suspension, which it is understood members are to some extent manoeuvring. Ordinary programme of legislative reform, in which the Assembly may take a useful part, is of necessity arrested for economic reasons, and I believe that the presence of legislative body is to be deprecated, at any rate for the next few months. A decree has been drafted with my concurrence which, after reciting that existing circumstances may call for immediate action on the part of the executive, suspends operations of Organic Law as regards the Assembly until the

[1246]

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Annex 12

Telegram no. 191 from Mr. Cheetham to Sir Edward Grey on September 29, 1914, expressing his fear that members of the Legislative Assembly would fail to understand the need for exceptional legislation in wartime and his proposal to freeze the assembly.

139 Tels. 1914
(92,927). W.L. 1,127-4. 1000. 2/14. A.S.W.

128 Tels. 1914
(92,927). W.L. 1,127-4. 1000. 2/14. A.S.W.

TELEGRAM.

Code

Cypher E

Clear

From His Britannic Majesty's Agent and
Consul-General in Egypt

To Foreign Office

Station CAIRO

Station _____

Despatched 28 AUG. 1914 11.15

No. 110 Conf.

Sir R. Rodd's telegram No. 289.

Prince Aziz Hasa, who has just arrived from Constantinople where he has seen Khedive, informs me that His Highness is in a state of nervous collapse. He is afraid of his life in Constantinople, and thinks that in case of acute tension or war with Turkey his position in Egypt would be untenable. He does not therefore wish to return here. He has already been thinking of retiring to Italy.

I think this solution is a happy one. The Khedive will still be represented here by Regent, and his voyage to Italy can be represented as necessary for the restoration of his health.

*Repeated
Copy to Rome.*

Scanned by C

Annex 13

Telegram from Mr. Cheetham to Sir R. Rodd at the Foreign Office, on Khedive Abbas Hilmi's fear that war with Turkey would end his rule in Egypt.

No. 5.

Mr. Cheetham to Sir Edward Grey —(Received September 10)

(No. 140.)

(Telegraphic.)

Cairo, September 10, 1914.

MY immediately preceding telegram: Preamble of proclamation of war with Turkey.

Following is summary of suggested paragraphs, full text of which could be telegraphed if desired :—

War has been declared by Turkey.

No Turkish interests being involved in existing war, war is an unprovoked act of aggression undertaken by the Sultan upon advice of unscrupulous military and foreign advisers, notwithstanding most specific guarantees given by His Majesty's Government and Allied Governments.

Fact that up to last moment Turkish statesmen and diplomatists gave pacific assurances to the allies proves that statesmanship sacrificed to alien influence.

Egypt is liable to attack no less than British territory, and rights of autonomy won on battlefield by founder of Khedivial dynasty, as well as reforms of the last thirty years, are in danger.

His Majesty's Government have therefore decided to accord protection to Egypt under Khedivial dynasty now and in future.

Non-Egyptian Ottomans who wish for leave of absence to be allowed to depart peaceably. All who stay to be entitled to full status of Egyptians and to protection implied thereby.

Great Britain accepts fullest responsibility for defence of Egypt against foreign aggression.

Intention on the part of His Majesty's Government in no way to curtail existing privileges, but to accelerate progress towards self-government.

Policy of religious and personal liberty to continue, and it is earnest desire of His Majesty's Government to develop reforms in due course in closest association with Egyptian authorities and in accordance with desires of people.

Financial and other difficulties only to be overcome with assistance of Powers in control of sea. Sale and delivery of present cotton crop will be aided by every practicable means.

In view of the veneration for the Sultan's person shared by many millions of His Britannic Majesty's most loyal subjects, Egypt will be used as little as possible as a base of military operations against Turkey.

His Majesty's Government will look to Khedivial Government for the same loyal aid as in recent weeks in maintenance of internal order.

Allusion to powers of general officers commanding, with expression of sincere hope that resort thereto will be rendered unnecessary by self-restraint, &c., of Egyptian people.

Annex 14

P. 2 of a telegram from Mr. Cheetham to Sir Edward Grey on September 10, 1914, on proposals to contain the shocks of Turkey's declaration of war on Britain, including by declaring a British Protectorate in Egypt.

لقائنا الغرض الذي توخينا عند تأليف اللجان. وأخالف رمزى بك في فكره لأنى أرى أن كل قانون فيه فكرة تشريعية فإذا أخذنا رأى حضرته كان حق النظر فيها كلها من اختصاص لجنة الحفائية .

شفيق منصور أفندى — أنا منض لرأى رمزى بك لأن هذه القوانين لا بد أن تنظر في مصدرها قبل تحويلها وأخالف رأى صبرى أفندى من حيث الرجوع الى الفكرة الفنية في كل قانون فمثلا قانون التجمهر فيه مواد خاصة بالأمن العام والشؤون الداخلية وفيه العقوبة ومن اختصاص المحاكم تطبيقها فالفكرة الفنية التي بنى عليها هذا القانون هي فكرة خاصة بالأمن العام فالقانون يحول والحالة هذه الى لجنة الشؤون الداخلية وأنا مؤيد لاقتراح رمزى بك وهو (أن يرجع الى الوزارة التي صدر منها القانون ويحول على اللجنة المختصة بذلك) وأطلب أخذ الرأى على هذا الاقتراح .

أحمد رمزى بك — يظهر انه لاخلاف في الرأى لأن تبيجتها واحدة فوأبى أن يحول القانون على لجنة الوزارة التي اقترحت ورأى الأستاذ صبرى أفندى أبو علم هو أن يحول القانون على اللجنة المختصة بالنظر في الفكرة الفنية التي بنى عليها وهذا تأييد لرأى لأن كل وزارة لم تضع الا القوانين التي هي من الوجهة الفنية صاحبة الاختصاص فيها فمثلا قانون التجمهر قد اقترحت وزارة الداخلية لأنها صاحبة الاختصاص في الأمور الخاصة بالنظام وكذلك قانون الصحافة وكذلك المسائل التي تحدد عقوبات على مخالقات الزراعة لم تصدورها وزارة الزراعة الا لأنها صاحبة الفكرة الفنية فيها فإذا قلنا الوزارة التي اقترحت فانما نقول الفكرة الفنية التي بنى عليها . والفكرتان واحدة .

محمد صبرى أبو علم أفندى — لما انتخبنا لجنة الشؤون الداخلية انتخبناها لا لتتصرف في التشريع بوجه عام ولكن لتتصرف في التشريع الخاص بالأمن العام والأمور الداخلية فقط فاذا كنا نحيل النظر في المسائل الداخلية على غيرها فان ذلك يكون معناه نقل الشيء من جهة طبيعته الى جهة أخرى . ولما انتخبنا لجنة الحفائية انتخبنا أعضاء المفروض فهم انهم اصلح من غيرهم من الوجهة الفنية للنظر في المسائل القانونية وكذلك أصرعلى رأى .

شفيق منصور أفندى — لما انتخبنا لجنة الشؤون الزراعية روعى في ذلك أنها ستنظر في القوانين الخاصة بالزراعة وفي نصوص موادها كما أن لجنة الشؤون الداخلية هي التي ستنظر في الأمور المتعلقة بالأمن العام ولم يرقم في ذهننا وقت ذلك أن لجنة الحفائية ستكون مختصة بالنظر في كل القوانين بل الحقيقة أن كل لجنة تنظر القانون الخاص بها — وأقترح اقبال باب المناقشة وأخذ الرأى على ذلك .

عمود علام أفندى — الآراء كلها متحدة فالأستاذ صبرى فيما يختص بفكرته الفنية يحاول الخلط بين الحفائية التي صاغت المشروع وعليها توقيع العقوبة وبين الفكرة التي أوجبت وضع هذا القانون فمثلا وزارة الزراعة عند ما أرادت وضع قانون لتنقية دودة الفطن وضعته وأرسلته لوزارة الحفائية لصياغته في قالب قانوني فمصدر القانون في الواقع هو وزارة الزراعة لأنها هي التي أصدرته . لذلك أوافق على رأى الصوفانى بك الذى عززه رمزى بك من ضرورة معرفة المصدر أما اذا لم نفعل ذلك فاننا نلقى بكل القوانين كتلة واحدة في يد لجنة الحفائية .

١٧ سبتمبر : قانون بتحديد السعر الأقصى للطحن في طواحين القمح ويظهر من الحبوب .

تقرر إحالته على لجنة الداخلية .

٢٢ سبتمبر : أمر عال بانقاص المساحة التي تزرع قطناً في سنة ١٩١٥ تقرر إحالته على لجنة الزراعة .

٢٦ سبتمبر : قانون بشأن الموازين والمقاييس والمكاييل بالفطر المصرى (أصوات المسالية أصوات الداخلية) .

تقرر إحالته على لجنة المسالية .

٣٠ سبتمبر : أمر عال بتحديد التأجيل الجبرى في المواد التجارية . تقرر إحالته على لجنة الحفائية .

١٤ أكتوبر : أمر عال بتحديد التأجيل الجبرى في المواد التجارية . تقرر إحالته على لجنة الحفائية .

١٨ أكتوبر : أمر عال بتأجيل ابتداء الدور المقبل لانقضاء الجمعية التشريعية . (أصوات — يحفظ) .

عبد اللطيف الصوفانى بك — كيف يحفظ هذا مع أنه أعظم شيء أصابنا منه ضرر . فكيف تمر بنا هذه الأمور وقد جاءت ساعة الحساب بدون مناقشة . وهذه أعمال استبدادية ارتكبت ضد البلاد .

يجب أن نخرج على هذا العمل الضار وهو تعطيل أعمال الجمعية التشريعية . قرر المجلس إحالة القانون الخاص بتأجيل دور الجمعية التشريعية على لجنة الحفائية .

السكرتير — ١٨ أكتوبر : قانون بشأن التجمهر .

عبد اللطيف الصوفانى بك — لى ملاحظة يامعالى الرئيس . لأن هذه القوانين مبنى فيها الجهة التي أرسلت منها فما دام الأمر كذلك فيجب تحويلها الى لجنها ولنضرب مثلا قانون كذا فانه مبين فيه أنه جاء من الداخلية أو المسالية أو الحفائية فيجب والحالة هذه تحويله على لجنة الداخلية أو المسالية أو الحفائية فتمت عرف المصدر وهو معروف طبيعاً فمن السهل تحويله على اللجنة المختصة .

أحمد رمزى بك — اذا كان كل قانون تطبيقه المحاكم يجب أن يحول على لجنة الحفائية فيجب تحويل كل القوانين اذن على لجنة الحفائية من الآن ولكن لكل قانون مصدر فيجب تحويله على اللجنة المختصة بالوزارة صاحبة الفكرة في اصداره انما يحال على لجنة الحفائية أمثال القوانين المعدلة لقانون تقويمات — أما قانون مثل قانون دودة الفطن فيحال على لجنة الزراعة ولذلك اقترح أن يرجع في كل قانون الى الوزارة التي اقترحت وطليت اصداره . محمد صبرى أبو علم أفندى — اننا عند انتخاب أعضاء اللجان راعينا التخصيص في أعمال فنية معينة فيجب عند توزيع القوانين على تلك اللجان أن نراعى الفكرة الفنية في كل قانون لا الوزارة التي صدر منها فتحول كل مشروع قانون على اللجنة التي لها اختصاص في النظر فيه ولو فعلنا غير ذلك

Annex 15 (a)

Minutes of the 17th session of the Egyptian Chamber of Deputies of April 13, 1924, containing a discussion of Law 10/1914 on assembly by the competent committee.

حسين هلال بك - أرى أن الموضوع أخذ وقتا كبيرا وهذه المهادلة ليست منتجة لأن القوانين لها واضع ولها منفذ أى هناك فكرة أصلية في سبب وجودها وهناك تطبيق هو بلا شك من اختصاص وزارة الحفانية ولكن الفكرة الأساسية للقانون تأتي دائما من الوزارة التي ابتكرته فكل وزارة هي المسؤولة عن الفكرة الأساسية للقانون بناء على ذلك تكون كل لجنة مختصة بالقانون الذي يربح إليها النظر فيه وأما الحفانية فلا اختصاص لها الا بوضع الصيغة القانونية والتطبيق .

وأذكر أنه عند ما عرضت علينا هذه القوانين بمعرفة صاحب الدولة رئيس الحكومة عرضت علينا لنوزعها كما تقدرها لأننا نعرف أدنى اللجنة الفلانية هي التي تنتظر في القانون الفلاني وقال بهذا أيضا أحمد خشية بك عند ما قال أن التقديم يكون للمجلس مباشرة وهو الذي يحمله على اللجان فبناء عليه أطلب من حضراتكم الاستمرار على تلاوة القوانين بالطريقة التي سرنا عليها وإذا لبس علينا أمر تناقشنا فيه .

أحمد ماهر افندي - إذا رجعتنا للمصادر أشكل علينا الأمر لأن قانون التجمهر يقول بأنه على وزيرى الداخلية والحفانية تنفيذ أمرنا هذا فأى الوزارتين هي المصدر .

(أصوات : التجمهر خاص بالداخلية) .

الأستاذ أبو الفتح الفقى - هذه مناقشات أفلاطونية لا تنتهي منها والأصوب أخذ رأى المجلس وانى أقترح أن تترك الأمر لما يراه المجلس في احالة كل قانون للجنة التي يراها .

جعفر فخري بك - أوافق على الرأى القائل بالبحث عن مصدر القانون وإذا كان القانون صادرا من مجلس الوزراء نفسه فننظر الى المقصود من هذا القانون ثم نحيله الى اللجنة المختصة .

محمد صبرى أبو علم افندى - اقتراحى هو أن (توزع القوانين ومشروعاتها على اللجان بحسب الفكرة الفنية السائدة عليها) .

عبد السار الباسل بك - الجلسة غير قانونية والأعضاء أقل من مائة .

الرئيس - نظرا لقوات الوقت وعدم تكامل العدد القانونى ترفع الجلسة لغد .

وأقفلت الجلسة حيث كانت الساعة الثانية عشرة والنصف صباحا .

Annex 15 (b)

Another section of Annex 15(a).

مذكرة إيضاحية

الاقترح بمشروع قانون بإلغاء قانون رقم ١٠ لسنة ١٩٢٤
الخاص بالتجمهر

في ١٨ أكتوبر سنة ١٩١٤ صدر قانون رقم ١٠ لمنع التجمهر المؤلف من خمسة أشخاص على الأقل وبمعاينة المتجمهرين بالحبس لمدة لا تتجاوز ستة شهور أو بغرامة لا تتجاوز عشرين جنيا مصريا ، وفي بعض الأحوال بالحبس مدة لا تزيد عن ستين أو بغرامة لا تتجاوز خمسين جنيا مصريا ، وفي البعض الآخر بالحبس ثلاث سنين .

وجاء في مقدمة هذا القانون مانصه :

”ونظرا لأن الضرورة تقضي بالتعجيل في إيجاد عقوبة للجرائم التي ترتكب بواسطة التجمهر تكون أشد تأثيرا من الأحكام المعمول بها الآن .“

هذه الضرورة التي يشير إليها هذا القانون هي - على رأي واضعيه - حالة الحرب العدوية التي ابتدأت في السنة التي صدر فيها هذا التشريع وفي الحقيقة لم تكن هناك ضرورة تقضي بذلك التشريع الاستثنائي في مصر الذي هو بمثابة الأحكام العرفية ، فلم تكن البلاد في ذلك الوقت إلا هادئة ، ولم يكن السلم الا مستقرا .

لم يكن هذا القانون قاصرا على تشديد العقوبة على الجرائم التي ترتكب بواسطة التجمهر كما جاء في مقدمته ، بل انه يعاقب على مجرد التجمهر المؤلف من خمسة أشخاص على الأقل من غير ارتكاب أى جريمة ، بل كان التجمهر من هذا العدد القليل جريمة في ذاتها اذا رؤى (رجال السلطة بحسب تقديرهم) ، ان من شأنه أن يجعل السلم العام في خطر وأمر رجال السلطة المتجمهرين بالتفرق فمن رفض طاعة أمر التفرق أو لم يعمل به يعاقب بالحبس أو الغرامة طبقا للمادة الأولى من ذلك القانون .

لا شك في أن الناس أحرار في الغدو والرواح فرادى أو مجتمعين ، وفي التفرق والاجتماع مهما كان عددهم ، مادام عملهم لا يضر بالغير . فان ارتكبوا عملا يعد جريمة يعاقب عليها القانون العام كان رجال السلطة منهم عن ارتكاب هذه الجريمة أو ضبطهم اذا ارتكبوها بحسب ما هو مبين في قانون تحقيق الجنايات .

وأما ما جاء في المادة الثانية من هذا القانون من تشديد عقوبة التجمهر اذا كان الغرض منه منع أو تعطيل تنفيذ القوانين أو اللوائح ، أو اذا كان الغرض منه التأثير على السلطات في عملها ، أو حرمان شخص من حرية العمل الخ ، فهو مخالف للقواعد العامة الخاصة بالجرائم ، لأن ذلك الغرض عبارة عن التية ، وهذه التية فضلا عن كونها أمرا نفسانيا فلا تعتبر جريمة ولا شروعا في جريمة ، لأنها هي العزم الذي تقضت المادة (٤٥) عقوبات على عدم اعتباره شروعا في جريمة أو جنحة ، ومثله كمثل الأعمال التحضيرية . هذا فضلا عن كون الأعمال التي يظن أنها كانت غرضا للتجمهرين اما أن تكون مباحة فلا عقوبة عليها ، واما أن تكون محظورة بحسب القانون العام فيعاقب مرتكبوها طبقا لقانون العقوبات .

هذا القانون الاستثنائي الذي هو من الأحكام العرفية قد استعمله رجال السلطة التنفيذية مصادرة لحرية الأفراد وتكديلا بهم في ظروف عديدة في إبان الحرب العالمية وبعد أن وضعت الحرب أوزارها وقبل إعلان الأحكام العرفية في البلاد وأثناءها وبعد زوالها ، ولا يزالون يستعملونه الى الآن على الرغم من القضاء عليه بالدستور الذي نص في المادة الرابعة منه ”بأن الحرية الشخصية مكفولة“ وفي المادة العشرين منه ”بأن لتصريين حق الاجتماع في هدوء وسكينة . . . الخ“ فلا وجه اذا لبقاء هذا القانون ، ويجب الغاؤه ما

نائب كافر الدوار
محمد يوسف

١٥ يار سنة ١٩٢٦

Annex 16

Minutes of the 9th session of the Egyptian Chamber of Deputies on December 20, 1927, containing the explanatory memorandum of the bill to repeal the Assembly Law, presented by Mohammed Yusuf, a deputy for Kafr al-Dawwar.

ملحق رقم ١

أمرنا بما هو آت :

مادة ١ - إذا كان التجمهر المؤلف من خمسة أشخاص على الأقل من شأنه أن يجعل السلم العام في خطر وأمر رجال السلطة المتجمهرين بالفرق فكل من بلغه الأمر منهم ورفض طاعته أو لم يعمل به يعاقب بالحبس مدة لا تزيد عن ستة شهور أو بغرامة لا تتجاوز عشرين جنيها مصريا .

مادة ٢ - إذا كان الغرض من التجمهر المؤلف من خمسة أشخاص على الأقل ارتكاب جريمة ما أو منع أو تعطيل تنفيذ القوانين أو اللوائح . أو إذا كان الغرض منه التأثير على السلطات في أعمالها أو حرمان شخص من حرية العمل سواء كان ذلك التأثير أو الحرمان باستعمال القوة أو التهديد باستعمالها فكل شخص من المتجمهرين اشترك في التجمهر وهو عالم بالغرض منه أو علم بهذا الغرض ولم يتعد عنه يعاقب بالحبس مدة لا تزيد عن ستة شهور أو بغرامة لا تتجاوز عشرين جنيها مصريا .

وتكون العقوبة الحبس الذي لا تزيد مدته عن سنتين أو الغرامة التي لا تتجاوز خمسين جنيها مصريا لمن يكون حاملا سلاحا أو آلات من شأنها أحداث الموت إذا استعملت بصفة أسلحة .

مادة ٣ - إذا استعمل المتجمهرون المنصوص عليهم في المادة السابقة أو استعمل أحدهم القوة أو العنف جاز إبلاغ مدة الحبس المنصوص عليه في الفقرة الأولى من المادة المذكورة الى سنتين لكل شخص من الأشخاص الذين يتألف منهم التجمهر . وجاز إبلاغ مدة الحبس المنصوص عليه في الفقرة الثانية منها الى ثلاث سنين لحامل الأسلحة أو الآلات المشابهة لها .

وإذا وقعت جريمة بقصد تنفيذ الغرض المقصود من التجمهر فجذب الأشخاص الذين يتألف منهم التجمهر وقت ارتكاب هذه الجريمة يحملون مسؤوليتها جنائيا بصفتهم شركاء إذا ثبت عامهم بالغرض المذكور .

مادة ٤ - يعاقب مدير التجمهر الذي يقع تحت حكم المادة الثانية من هذا القانون بنفس العقوبات التي يعاقب بها الأشخاص الداخلون في التجمهر ويكونون مسؤولين جنائيا عن كل فعل يرتكبه أى شخص من هؤلاء الأشخاص في سبيل الغرض المقصود من التجمهر ولو لم يكونوا حاضرين في التجمهر أو ابتعدوا عنه قبل ارتكاب الفعل .

مادة ٥ - على ناظر الحفانية تنفيذ هذا القانون ويعمل به من تاريخ نشره في الجريدة الرسمية ما

صدر بالقاهرة في ٢٨ ذي القعدة سنة ١٣٢٢ (١٨ أكتوبر سنة ١٩١٤)

ناظر الحفانية بأمر الحضرة الخديوية بالنيابة عن الحضرة الخديوية
ثروت رئيس مجلس النظار حسين رشدي
حسين رشدي

تقرير لجنة الداخلية

عن مشروع القانون الخاص بإلغاء القانون رقم ١٠ سنة ١٩١٤ الخاص بالتجمهر

أحال المجلس على لجنة الداخلية بتاريخ ٢٥ فبراير سنة ١٩٢٧ مشروع قانون مقدم من حضرة العضو المحترم محمد بك يوسف بإلغاء القانون رقم ١٠ لسنة ١٩٢٤ الخاص بالتجمهر لبحثه وعرض النتيجة على المجلس .
وقد بحثت اللجنة هذا المشروع في جلسات عديدة وأخيرا لما أتى مندوب الحكومة وطلب ارجاء النظر في هذا المشروع أخطرت اللجنة المجلس بذلك بتاريخ ٢٦ يونيو سنة ١٩٢٧ .

وأخيرا عرض المشروع بجلسته ١٣ ديسمبر سنة ١٩٢٧ وفيها حضر سعادة على باشا جمال الدين وكيل الداخلية وبسؤاله عن وجهة نظر الحكومة في هذا المشروع قرر أن الحكومة لا تعارض في الغائه وأنها موافقة على المشروع المذكور .

قرأت اللجنة أن قانون التجمهر المذكور صدر في ١٨ أكتوبر سنة ١٩١٤ وكان السبب الذي دعا المشرع الى إصداره حالة الحرب العامة .

وحيث ان هذا القانون لا يتفق مع الحرية الشخصية المكفولة بالدستور ولا يتماشى مع العصر الحاضر الذي لا يسمح فيه البرلمان بوجود مثل هذه القوانين المقيدة للحرية والمخالفة للدستور الذي جعل للصيرين حق الاجتماع في هدوء وسكينة خصوصا وأن قانون الاجتماعات العامة والمظاهرات في الطرق العمومية معروض على المجلس الآن .

وعلى ذلك رأيت اللجنة بإجماع الآراء الموافقة على إلغاء قانون التجمهر المذكور والموافقة على مشروع القانون المقدم بالغائه وهي تعرضه على المجلس لإقراره طبقا للقواعد الدستورية ما

المكبر النائب
محمد صبرى
رئيس اللجنة
عبد الفتاح يحيى

قانون رقم ١٠ لسنة ١٩١٤ بشأن التجمهر

نحن خديو مصر

بعد الاطلاع على الأمر العائى الصادر في ١٤ يونيو سنة ١٨٨٣ المشتمل على لأتمة ترتيب الحاكم الأهلية .

ونظرا لأن الضرورة تقضى بالتعجيل في إبعاد عقوبة للجرائم التي ترتكب بواسطة التجمهر تكون أشد تأثيرا من الأحكام المعمول بها الآن .
وبناء على ما عرضه علينا ناظر الحفانية وموافقة رأى مجلس النظار .

٩ - المرسوم بقانون

الصادر في ١٩ أكتوبر سنة ١٩٢٥ والوارد من مجلس النواب بتعديل المواد ٢١٧ و ٢١٧ و ٢١٧ من قانون العقوبات الأهل ، اعطاه الى لجنة الحفائية

الرئيس - عرضت على حضراتكم البنية المرسوم بقانون الوارد في جدول أعمال جلسة اليوم تحت رقم ٦ وهو اخصاص بتعديل المواد ١٧ و ٥٢ و ٢١٧ و ٢١٧ من قانون العقوبات الأهل وقد أثيرت حضراتكم أن مجلس النواب قد أقره وأن الغرض من عرضه مجرد إخطار المجلس بذلك وكان هذا على اعتقاد أنه من ضمن المراسم بقوانين التي سبق أن أسألتها المجلس على البيان المختصة ولكن السكرتيرية تهنئي الى أنه لم تسبق اسالة ذلك المرسوم بقانون الى اللجنة ، فهل توافقون حضراتكم على إحالة الى لجنة الحفائية ؟

(موافقة) .

١٠ - تقديم النظر

في بعض المسائل الواردة في جدول الأعمال

شرح في ثلاثة تقرير لجنة الاقتراحات والعرائض عن الاقتراحات التي أحضرتها يوم ٣ يناير سنة ١٩٢٨

أصوات : يؤجل لآخر الجلسة .

معالي عبد شفيق باشا - أتى أعرض في ذلك فإنا ان قررتا مبدأ تأجيل نظر الاقتراحات والعرائض عن الأعمال الأخرى فقد أتى مشاريع تستغرق وقت الجلسة ولا ننظر تقارير لجنة الاقتراحات والعرائض فأطلب السيد حسب جدول الأعمال .

الرئيس - ألا يرى معالي الباشا أن مشروع القانون اخصاص بالتجمهر أولى بالنظر من تقرير لجنة الاقتراحات ؟

معالي محمد شفيق باشا - لنستغل ثلاثة أيام في الأسبوع حتى نخرج من كل أعمالنا .

الرئيس - هل توافقون حضراتكم على تقديم النظر في مشروع القانون الوارد بجدول الأعمال تحت رقم ١٢ على الأعمال الأخرى ؟

(موافقة) .

١١ - مشروع قانون

بالغاء القانون رقم ١٠ لسنة ١٩١٤ الخاص بالتجمهر ، تقرير لجنة الداخلية ، اقراره

تلى خطاب اللجنة وهذا نصه :

”حضرة صاحب الدولة ورئيس مجلس الشيوخ

أشرف بأن أبعث لمتوليتكم مع هذا تقرير لجنة الأمور الداخلية عن مشروع قانون بالغاء القانون رقم ١٠ لسنة ١٩١٤ الخاص بالتجمهر والمرفوض الكرم

بعرضه على هيئة المجلس وقد انتخبت اللجنة حضرة صاحب السعادة
صفوت باشا ليكون مقررا لها .

وتفضلوا بولتكم بقبول وافر الاحترام ما

رئيس لجنة الأمور الداخلية
أحمد علي

تلى تقرير اللجنة وهذا نصه :

”أسأل المجلس على هذه اللجنة بجملة ٢٦ ديسمبر سنة ١٩٢٧ مشروع قانون وارد من مجلس النواب بالغاء القانون رقم ١٠ لسنة ١٩١٤ الخاص بالتجمهر وقد اجتمعت اللجنة بتاريخ ٣ و ١٤ يناير سنة ١٩٢٨ وبعد المناقشة في مشروع القانون المذكور والاطلاع على القانون رقم ١٠ لسنة ١٩١٤ رأت أن هذا القانون مخالف لنصوص الدستور التي كفلت للصريين حرية الاجتماع وأن الباحث على عمل هذا القانون قد زال بزوال مدة الحرب وأن الاجتماعات العامة والمظاهرات قد نظمها القانون طبقا لنصوص الدستور ولهذا الأسباب رأت اللجنة بالاجماع الموافقة على مشروع القانون الوارد من مجلس النواب بتاريخ ٢١ ديسمبر سنة ١٩٢٧ بالغاء القانون رقم ١٠ لسنة ١٩١٤ الخاص بالتجمهر ما

١٤ يناير سنة ١٩٢٨
رئيس اللجنة
أحمد علي

سعادة مجد صفوت باشا (مقرر اللجنة) - قانون التجمهر يعاقب على كل اجتماع مكون من خمسة أشخاص على الأقل بالكيفية والشروط الواجبة فيه . وكان السبب في سن هذا القانون قيام الحرب ووجود حالة الاستثنائية الناشئة عنها . أما وقد صدر الدستور وكفل للناس حرية التجمع أصبح هذا القانون لا عمل له . ولذلك واقتت اللجنة على مشروع القانون الوارد من مجلس النواب بالغاؤه .

تلى مشروع القانون وهذا نصه :

”مشروع قانون

بالغاء قانون رقم ١٠ لسنة ١٩١٤ الخاص بالتجمهر

نحن فؤاد الاول ملك مصر

قرر مجلس الشيوخ ومجلس النواب القانون الاتي نصه وقد صدقوا عليه وأصدرواها :

مادة ١ - يلغى قانون رقم ١٠ لسنة ١٩١٤ الخاص بالتجمهر .

مادة ٢ - على وزير الحفائية تنفيذ هذا القانون ، ويعمل به من تاريخ نشره في الجريدة الرسمية .

نأمر بأن يصمم هذا القانون بخاتم الدولة وأن ينشر في الجريدة الرسمية وينفذ كقانون من قوانين الدولة .“

Annex 18 (a)

Minutes of the 14th session of the Senate of January 30, 1928, containing the Senate's unanimous approval of the bill repealing the Assembly Law.

ناصر بأن يصمم هذا القانون بخاتم الدولة وأن ينشر في الجريدة الرسمية وينفذ كقانون من قوانين الدولة .”

الرئيس - يؤخذ الرأي على مشروع القانون بالنداء بالاسم .

أخذ الرأي على مشروع القانون بالنداء بالاسم ابتداء من اسم حضرة ابراهيم الطاهرى بك الذى أسفرت عنه القرعة فوافق عليه المجلس بالإجماع وكان عدد الأصوات التى أعطيت ٧٤ صوتاً (١١) .

الرئيس - المجلس يقرر الموافقة على مشروع القانون المذكور .

١٢ - مشروع قانون

بالغاء الذكرى الصادر فى ١٣ أغسطس سنة ١٨٨٨ الخاص بوجوب اذعان جميع الموظفين الموجودين فى المديرىات والمحافظات لسلطة المحافظ أو المدير ،
تقرير لجنة الداخلية ، اقراره

تلى كتاب اللجنة وهذا نصه :

”حضرة صاحب الدولة رئيس مجلس الشيوخ

أتشرف بأن أبحث لديوتكم مع هذا تقرير لجنة الأمور الداخلية عن الاقتراح بمشروع قانون بالغاء الذكرى الصادر فى ١٣ أغسطس سنة ١٨٨٨ الخاص بوجوب اذعان جميع الموظفين الموجودين فى المديرىات والمحافظات لسلطة المحافظ أو المديرية كانت النظرة التابع لها هؤلاء الموظفون والمرجو التكرم بعرضه على هيئة المجلس .

وقد اتخبت اللجنة حضرة صاحب السعادة محمد صفوت باشا ليكون مقرراً لها فى ذلك أمام المجلس .

وتفضلوا دولتكم بقبول عظيم الاحترام ما

رئيس لجنة الأمور الداخلية

أحمد على

تلى تقرير اللجنة وهذا نصه :

”أحال المجلس بتاريخ ٢٦ ديسمبر سنة ١٩٢٧ على اللجنة الاقتراح بمشروع قانون الوارد من مجلس النواب بالغاء الذكرى الصادر فى ١٣ أغسطس سنة ١٨٨٨ بوجوب اذعان جميع الموظفين الموجودين فى المديرىات والمحافظات لسلطة المحافظ أو المديرية كانت النظرة التابع لها هؤلاء الموظفون .

قد اجتمعت اللجنة وبحثت فى الاقتراح بمشروع القانون المذكور بجلستها المنعقدتين فى ٣ و ١٤ يناير سنة ١٩٢٨ ورأت أن الذكرى المقترحة الغاؤه تقدم عليه المهدي وأصبح غير نافذ فعلا بسبب تنظيم العلاقات بين مختلف الوزارات والمصالح وأصبح كل وزير مسئولاً وحده عن وزارته وله وحده حق الاشراف على الموظفين التابعين لها فلا محل إذن لتدخل موظف آخر لمراقبة موظفى تلك الوزارة فضلاً عن أن اذعان موظف ما الى رئيسين مختلفين ربما أدى الى ارتباك فى الأعمال .

(١) راجع الملحق رقم ١ ملحق المضبطة .

الرئيس - هل توافقون حضراتكم على مشروع هذا القانون من حيث المبدأ ؟

(موافقة) .

الرئيس - المجلس يقرر الموافقة على مشروع هذا القانون من حيث المبدأ ، والآن هل توافقون حضراتكم على تلاوته مادة فسادة ؟

(موافقة) .

تليت مقدمة القانون والمادة الأولى وهذا نصهما :

نحن فؤاد الأول ملك مصر

فر مجلس الشيوخ ومجلس النواب القانون الآتى نصه وقد صدقنا عليه وأصدرناه :

مادة ١ - يلغى قانون رقم ١٠ لسنة ١٩١٤ الخاص بالجمهور .

الرئيس - هل توافقون حضراتكم على هذه المادة ؟

(موافقة) .

الرئيس - المجلس يقرر الموافقة على المادة الأولى .

تليت المادة الثانية وهذا نصها :

”مادة ٢ - على وزير الحفانية تنفيذ هذا القانون ، ويعمل به من تاريخ نشره فى الجريدة الرسمية .

أمر بأن يصمم هذا القانون بخاتم الدولة وأن ينشر فى الجريدة الرسمية وينفذ كقانون من قوانين الدولة .”

الرئيس - هل توافقون حضراتكم على هذه المادة ؟

(موافقة) .

الرئيس - المجلس يقرر الموافقة على المادة الثانية .

هل ترون حضراتكم قراءة مشروع القانون للمرة الثالثة فى هذه الجلسة أو ارتباطاً الى جلسة أخرى ؟

أصوات : يقرأ الآن .

الرئيس - يتلى مشروع القانون للمرة الثالثة .

تلى مشروع القانون وهذا نصه :

”مشروع قانون

بالغاء قانون رقم ١٠ لسنة ١٩١٤ الخاص بالجمهور

نحن فؤاد الأول ملك مصر

فر مجلس الشيوخ ومجلس النواب القانون الآتى نصه وقد صدقنا عليه وأصدرناه :

مادة ١ - يلغى قانون رقم ١٠ لسنة ١٩١٤ الخاص بالجمهور .

مادة ٢ - على وزير الحفانية تنفيذ هذا القانون ، ويعمل به من تاريخ نشره فى الجريدة الرسمية .

ملحق رقم ١

أسماء حضرات الأعضاء الذين وافقوا على مشروع القانون بالناء القانون رقم ١٠ لسنة ١٩١٤ الخاص بالتجمهر

(٥١) محمد شفيق باشا	(٢٦) صليب فلوديوس باشا	(١) الشيخ ابراهيم بسيوني الخطيب
(٥٢) محمد صدق باشا	(٢٧) الشيخ طه حسين	(٢) ابراهيم سيد احمد بك
(٥٣) محمد صفوت باشا	(٢٨) عبد الحكيم احمد محمد عبد الفتاح بك	(٣) الشيخ ابراهيم عبد الحميد نوار
(٥٤) محمد عبد اللطيف افندي	(٢٩) الدكتور عبد الحميد فهمي افندي	(٤) ابراهيم فرج أبو الجدايل بك
(٥٥) الشيخ محمد عز العرب بك	(٣٠) عبد الرحمن ملموم بك	(٥) الشيخ ابراهيم يوسف عطا الله
(٥٦) محمد علوي الجزائر بك	(٣١) عبد الفتاح الالوزي بك	(٦) أحمد ذو الفقار باشا
(٥٧) اللواء محمد كامل باشا	(٣٢) عبد الفتاح رجائي افندي	(٧) أحمد زيور باشا
(٥٨) محمد محب باشا	(٣٣) عبد الله سليمان أباطه بك	(٨) أحمد علي باشا
(٥٩) محمد مغازي باشا	(٣٤) عدلي يكن باشا	(٩) أحمد محمد حجازي بك
(٦٠) الدكتور محمد هاشم افندي	(٣٥) الشيخ عزب البثي	(١٠) أحمد مصطفى بك
(٦١) محمود أبو النصر بك	(٣٦) علي اسماعيل بك	(١١) اسماعيل سري باشا
(٦٢) محمود الاخرى باشا	(٣٧) الشيخ علي رمضان الطويحي	(١٢) الشيخ الشافعي أبو واقبه
(٦٣) محمود رشاد باشا	(٣٨) علي عبد الرازق بك	(١٣) ألفريد شماس افندي
(٦٤) محمود شكرى باشا	(٣٩) اللواء علي فهمي باشا	(١٤) أمين سامي باشا
(٦٥) مرسى وزير بك	(٤٠) الشيخ علي محمد مروان	(١٥) بولس حنا باشا
(٦٦) مصطفى رشيد بك	(٤١) فهمي حنا ويصا بك	(١٦) بيومي مذكور بك
(٦٧) الفريق موسى فؤاد باشا	(٤٢) الأتيا لوكاس	(١٧) حافظ عابدين بك
(٦٨) ميشيل أيوب باشا	(٤٣) الشيخ متولى عمر حجازي	(١٨) حسن رشوان حمادى بك
(٦٩) يحيى ابراهيم باشا	(٤٤) محمد أحمد الشريف بك	(١٩) الشيخ حسن عبد القادر
(٧٠) الشيخ يس محمود أبو جليل	(٤٥) محمد أفلاطون باشا	(٢٠) حسين عبد الفقار بك
(٧١) يوسف قطاوى باشا	(٤٦) محمد الحفنى الطرزى باشا	(٢١) اللواء حسين خيرى باشا
(٧٢) يوسف بنتشوتو بك	(٤٧) محمد العبابي باشا	(٢٢) اللواء حسين شريف باشا
(٧٣) يوسف وهبه باشا	(٤٨) محمد توفيق راضى بك	(٢٣) رزق شعبان شعيره بك
(٧٤) محمود بسيوني افندي	(٤٩) محمد جعفر افندي	(٢٤) سعيد فهمي الروبي بك
	(٥٠) محمد زكى عبد الرازق بك	(٢٥) الدكتور سوريال جرجس سور يال افندي

Annex 19

Names of the parliamentarians who voted to repeal the Assembly Law.

HIGH COMMISSIONER
7 MAY 1928
No 12179/153

Cypher.

TELEGRAM.

Lord Lloyd.
COMMISSIONER FOR EGYPT
Cairo.

To:-
To Sir Austen Chamberlain.
Foreign Office.

6.5.28. 9.45 P.M.

No. 270.

Dated 6.5.28.

Your telegram No.180.

King sent his Chef du Cabinet today to tell me that Prime Minister was urgently pressing His Majesty to sign measure repealing law of 1914 and to ask my advice. Unless this measure is returned by His Majesty whether signed or unsigned by May 9 it will automatically become law.

Since forthcoming White Paper will according to your telegram No.206 include my despatch No.304 fourth paragraph of which concedes that a case may be made out for repealing law of 1914 I assume that we cannot now, even if we would, take serious exception to this step. In view however of your assumption as to King Fuad's attitude contained in your telegram No.180 combined with your reluctance to invoke His Majesty's assistance I thought it well to reply that I could give His Majesty no advice but that if he wished definite expression of His Majesty's Government's wishes I could only consult you. I should be glad of your observations if possible by Tuesday morning.

Annex 20(a)

Lord Lloyd to Austen Chamberlain on Lloyd's conversation with the king's chef du cabinet on May 6, 1928, reporting that the King Fuad I dispatched his chef du cabinet in a panic asking for intervention to prevent the passage of the bill repealing the Assembly Law.

Cypher.

HIGH COMMISSIONER
EGYPT
No 12179/156

TELEGRAM.

From Lord Lloyd,
HIGH COMMISSIONER FOR EGYPT
Cairo.

To
To Sir Austen Chamberlain,
Foreign Office.

Registered 11.40 a.m. 8.5.28

No. 272

Dated 8.5.28

My telegram No.270.

King whom I saw yesterday informed me spontaneously that he had decided in no circumstances to sign the bill. As His Majesty does not mean to return it unsigned it will become law automatically under Article 35 of the Constitution.

2. His Majesty is much incensed by a reported new ruling of the Contentieux under which the month's delay provided for in Article 35 will date from the passage of a bill through Parliament and not from its submission to the King.

3. His Majesty went on to tell me that Nahas intended to propose Makram Obeid for the Legation in London with the avowed intention of re-opening negotiations for a treaty as soon as possible. Same information had previously been given me by Mohamed Mahmoud Pasha, whose resignation is still in the balance. Latter added that Nahas Pasha neither hoped nor intended that these negotiations should succeed but would use them to gain time and augment his prestige in the country.

Annex 20(b)

Telegram from Lord Lloyd to Austen Chamberlain on May 6, 1928, reporting that the King would not ratify the repeal law, in which case the law would be promulgated if it were not sent back to the Parliament within one month.

Cypher.

HIGH COMMISSIONER
EGYPT.
8 - MAY 1928
No 12179/156

TELEGRAM.

Sir Austen Chamberlain,
Foreign Office.

To: Lord Lloyd,
HIGH COMMISSIONER FOR EGYPT
Cairo.

1305. 8-5-28.

Received 1450. 8-5-28.
(Date and Time).

No. 211.

Dated 8-5-28.

Important. -/133

Your telegram No. 270 second paragraph first sentence.

Your assumption is correct and I approve your language to King Fuad. His Majesty's Government are not prepared to offer any advice to His Majesty at this juncture. In any case our intervention over the Assemblies Bill seems to have had an excellent effect on Egyptian opinion which might be impaired by our repeating our intervention so soon in an immaterial question.

M. Hoan
M. Salford.

[Signature]
8.5.

H. 2.
The telegram referred to is flagged in the file. See 9/5.

Annex 20(c)

Telegram from Sir Austen Chamberlain to Lord Lloyd on May 8, 1928, in which the former agrees with the latter's proposal to withhold assistance to the King in preventing the repeal of the Assembly Law.

Enclosure 3 in No. 81.

Mr. Keown-Boyd to Nahas Pasha.

Mon cher Ministre,

Le Caire, le 8 avril 1928.

A L'ISSUE de notre conversation d'hier, votre Excellence m'a demandé de lui fournir une note exposant franchement toutes les critiques auxquelles se prête le projet de loi sur les réunions et les manifestations, actuellement à l'étude au Sénat.

Pour que je puisse parler le plus franchement, je me permets de présenter mes observations sous forme d'une lettre particulière.

Votre Excellence se souviendra que j'ai touché sur l'impression générale que nous fait la forme et la teneur du projet. D'autre part, votre Excellence m'a fait remarquer que le texte se divise naturellement en deux chapitres, l'un ayant trait aux réunions, l'autre aux manifestations, et semblait vouloir que je m'en tienne à cette division. Je tâcherai de m'y adhérer.

Tout d'abord, en ce qui concerne la forme générale du projet, je me trouve astreint à dire, sans équivoque, qu'elle a inspiré, dans l'esprit tant de lecteurs anglais que de fonctionnaires administratifs égyptiens, l'idée que le projet a été rédigé de sorte que le pouvoir exécutif ne pourra jamais à l'avenir exercer sur les réunions et manifestations l'autorité qu'il a pu exercer dans le passé.

Je comprends parfaitement que l'on eût cherché à exprimer, dans sa plus haute forme, l'idéal de la conservation de la liberté individuelle; je comprends également que le Parlement et le Cabinet eût formulé ce projet, en 1924, dans le seul but de conformité avec le texte de la Constitution, qui dit que les réunions publiques "sont soumises aux prescriptions de la loi"; mais la raison veut que s'il y a loi, ce soit un instrument suffisamment puissant pour permettre au Ministre de l'Intérieur de parer aux éventualités que l'expérience nous a enseignés de prévoir en Égypte, ayant égard à la mentalité encore peu développée du prolétariat, et à la psychologie des rassemblements égyptiens.

A notre avis, le projet ne constitue pas un pareil instrument, en tant qu'il ne donne pas au Ministre de l'Intérieur le pouvoir d'empêcher les réunions ou manifestations alors même qu'il sait, ou prévoit, qu'elles doivent amener les désordres. Plutôt, ce projet nous paraît comme le clair exposé de l'attitude, ouvertement adoptée par plusieurs Députés, qui se traduit ainsi: "Nous avons assez souffert aux mains des autorités dans le passé; nous voulons assurer qu'elles ne pourront jamais plus nous faire souffrir." Cette attitude semble mal fondée, puisque, en matière de législation, le législateur doit évidemment présumer la bonne volonté de la personne chargée de l'exécution de la loi, et cette personne est sujette aux sanctions légales et constitutionnelles au cas où elle se sert de la loi à fins autres que celles de la justice pure et du maintien de l'ordre public.

Le Parlement a déjà aboli un puissant instrument pour le maintien de l'ordre public: la Loi No. 10 de 1914 sur les "Rassemblements." Si maintenant il remplace la Loi No. 14 de 1923 par un instrument aussi peu efficace que le projet en question, le Ministre de l'Intérieur se trouverait en posture peu enviable au cas où il serait appelé à faire face à une situation réellement sérieuse.

[18842]

1 2

Annex 21

Letter from Keown-Boyd to Mustafa al-Nahas Pasha, objecting to amendments to Law 14/1923, assuming that Law 10/1914 had already been repealed and thus there was no need to amend any other law regulating demonstrations.

Maintenant je me permets de citer en détail les divers défauts que présente le projet de loi :

1. La Constitution elle-même prescrit (article 20) que " les Égyptiens ont le droit de se réunir paisiblement et sans arme. La police ne peut assister à leur réunion, et il n'est point nécessaire de l'en aviser. Cette disposition n'est pas applicable aux réunions publiques, lesquelles sont soumises aux prescriptions de la loi, et ne peut empêcher ou restreindre toute mesure à prendre pour la protection de l'ordre social."

Or, dans le projet, aucune mention n'est faite, soit en matière de réunion, soit en ce qui concerne les manifestations, des pouvoirs que la Constitution elle-même réserve expressément aux autorités.

On peut en conclure qu'au cas où, par exemple, Housny-el-Araby, après simple notification à l'adresse du Gouvernorat, se mettrait à tenir dans le quartier Gommouk d'Alexandrie une réunion, à l'accompagnement de drapeaux rouges, cris antimonarchistes, et tous les apparats du communisme, tendant à introduire dans les usines d'Alexandrie les principes du communisme, personne ne pourrait l'empêcher. (Votre Excellence se rappellera certainement des troubles communistes à Alexandrie en février 1924.)

Le Ministère de l'Intérieur a déjà attiré l'attention du Parlement sur l'impuissance de la police en pareilles circonstances et a suggéré, pour y remédier, l'insertion, dans l'article 1^{er} du projet, d'une simple phrase affirmant que le Ministre a pouvoir d'empêcher toute réunion dont le but la place à la portée de l'alinéa 2 de l'article 20 de la Constitution ou de l'article 151 du Code pénal. Malheureusement, cette solution n'a pas été adoptée.

Il est même à noter que—vraisemblablement par une erreur de rédaction—l'article 7 du projet de loi, tout en donnant à l'autorité exécutive le pouvoir d'empêcher une manifestation non déclarée, ne lui accorde pas ce pouvoir en ce qui concerne les réunions; ainsi toute personne peut tenir, sans préavis, une réunion préjudiciable à l'ordre public, et s'en tirer moyennant une amende ne dépassant pas P. T. 100. Je sais que l'on prétend qu'en pareil cas les autorités exécutives pourraient empêcher la réunion en se prévalant de la Constitution même, mais il est fort douteux que les autorités s'avisent à prendre pareille initiative en face d'une loi qui semble clairement l'exclure; il est également douteux que pareille initiative trouve l'appui des tribunaux.

2. L'article 5 du projet envisage la reprise, une fois le calme rétabli, d'une réunion dissoute pour cause de désordres graves. Est-ce là une disposition pratique ou même raisonnable?

3. Article 7, alinéa 2: La première phrase autorise la police de disperser les manifestations " dans le cas où l'ordre public viendrait à être troublé." La police a eu maintes fois l'expérience qu'au moment où l'ordre public est troublé, le moment pour une intervention utile est déjà passé. Je ne cite que le cas de la mise à sac et à feu des bureaux du "Kashkoul." La leçon que nous avons apprise est qu'il est nécessaire que la police ait le pouvoir d'agir dès que, à son jugement, les actes de violence sont probables.

4. En ce qui concerne l'article 8, sans parler de la légèreté des peines prévues—légèreté un peu déconcertante lorsqu'on compare ces peines avec celles prévues à l'article 9 pour les fonctionnaires—je ne m'imagine pas que la crainte d'une peine ne dépassant pas une semaine d'emprisonnement et P. T. 100 d'amende puisse refréner le moins du monde une foule enragée s'adonnant à une manifestation non déclarée et qui fait fi d'un avertissement policier en vertu de l'alinéa 2 de l'article 7. Je me permets de citer les paroles dont s'est servi feu Zaghoul Pacha, à ce propos, au Parlement, le 8 juillet 1924 :

" La peine doit exercer une action préventive, autrement elle est inutile.

" Au cas où il se produit une manifestation que la police juge nécessaire de défendre comme préjudiciable à l'ordre public, et où, malgré un avertissement de la police, les manifestants persistent, la peine d'une semaine d'emprisonnement ou de P. T. 100 d'amende serait absolument insuffisante et exposerait l'autorité au mépris. Les rassemblements doivent être libres et non assujétis aux sanctions, ou bien ils doivent être prohibés, et, dans ce dernier cas, l'on doit infliger aux infracteurs de peines efficaces."

Le Rapporteur :

" Nous voulions que l'infraction fût une contravention et non un délit."

Annex 21 (b)

Another section of Annex 21 (a)

Saad Pacha :

"Supposons qu'il se produise une manifestation contraire à la loi, que la police veut empêcher et que les manifestants s'opposent à la police. Est-ce là, à votre avis, un cas sans importance, où la peine contraventionnelle suffit, malgré que les contraventions ne constituent pas des antécédents judiciaires? A mon avis, cette peine n'aurait aucun effet préventif. Je n'aime pas la sévérité, mais j'aime que chaque chose soit estimée à sa juste valeur, et que chaque infraction entraîne la peine proportionnée à sa nature."

L'on ne saurait mieux exprimer le point de vue de ceux auxquels incombe la responsabilité du maintien de l'ordre.

J'ai bien noté que l'article 9 ne s'applique qu'aux réunions, à l'exclusion des manifestations. Ce n'est là qu'un léger palliatif à un article qui, à mon avis, ne peut que dissuader les fonctionnaires de l'exercice même raisonnable et juste des pouvoirs que la loi leur accorde. Je me figure le cas où un malheureux fonctionnaire subalterne, à famille nombreuse et aux appointements modiques, délégué pour assister à une réunion organisée par un agitateur violent, hésite d'agir jusqu'à ce que le moment où il aurait pu prévenir le désastre, et peut-être sauver des vies, est irrévocablement passé.

Cet article, insolite dans sa forme et renfermant une claire indication de méfiance sinon d'hostilité de la part de la législature envers l'exécutif, a non seulement blessé l'amour-propre de la police, mais ne peut que compromettre gravement à l'avenir l'exécution de ses devoirs. Il est subversif de la discipline en tant qu'il fournit à l'officier subalterne un prétexte légitime pour non-exécution d'un ordre supérieur tendant à la dispersion d'une réunion publique, puisqu'en cas où le parquet ou le tribunal ne partagerait pas son avis quant à l'existence de l'état de "désordres graves," il s'exposerait à l'emprisonnement et une forte amende, sans parler de sa carrière brisée. D'autre part, le contraste flagrant entre l'inculpation de délit qui pèse sur le fonctionnaire et la simple contravention à laquelle s'expose le manifestant ne peut qu'amener le mépris de l'autorité et encourager le fauteur de troubles. Le fonctionnaire est toujours sous l'empire d'un vif sentiment des conséquences fâcheuses pour lui-même, soit de toute négligence dans l'exécution de son devoir, soit de tout excès de zèle; ce n'est donc pas à lui mais au public insonniant qu'il faut rappeler la justice immanente.

Il n'est pas douteux qu'en cas où ce projet deviendrait loi, les organisateurs de rassemblements et manifestations, aussi bien que tous les agitateurs, s'efforceraient de connaître à fond cette loi et tous les pièges qu'elle tend à l'agent de l'autorité. Au cas donc où un officier de police aurait le courage de disperser une réunion publique, il aurait affaire à une foule de gens qui, se croyant dans leurs droits, au lieu de se disperser, comme ils le feraient dans les conditions actuelles, résisteraient à l'outrance l'intervention—illégal, à leur sens—de la police.

Votre Excellence a, je crois, expliqué à la Chambre que la responsabilité ministérielle envers le Parlement constitue une garantie suffisante que l'on ferait justice du fonctionnaire outrepassant ses pouvoirs en matière de manifestations. Le même argument ne s'applique-t-il pas donc en matière de réunions?

6. Un point très important est que le projet de loi ne contient aucune disposition autorisant la police à sauvegarder la sécurité publique en indiquant les lieux des rassemblements et les routes à suivre par les manifestations. Jusqu'ici l'on croyait que c'était là un droit naturel de la police, découlant de son devoir général de maintenir l'ordre public, mais ce principe semble avoir été rejeté par le Parlement. Le déni de ce droit à la police constitue une dérogation sérieuse à ses pouvoirs de protection vis-à-vis les vies et les biens des étrangers. Il est concevable, par exemple, qu'une manifestation organisée sur une question de politique domestique de partis se rassemblant à Kasr-el-Doubara et se dirigeant par voie de la Sharia Kasr-el-Nil soit rejointe en route par la lie de la populace et aboutisse au sacageant des magasins européens dans la Sharia Kasr-el-Nil.

Un dernier point que je me permets de faire ressortir est qu'une loi destinée à maintenir la paix publique dans les réunions et manifestations est d'ordre technique non moins qu'un règlement destiné au contrôle de la circulation dans les rues et devrait être ainsi interprétée.

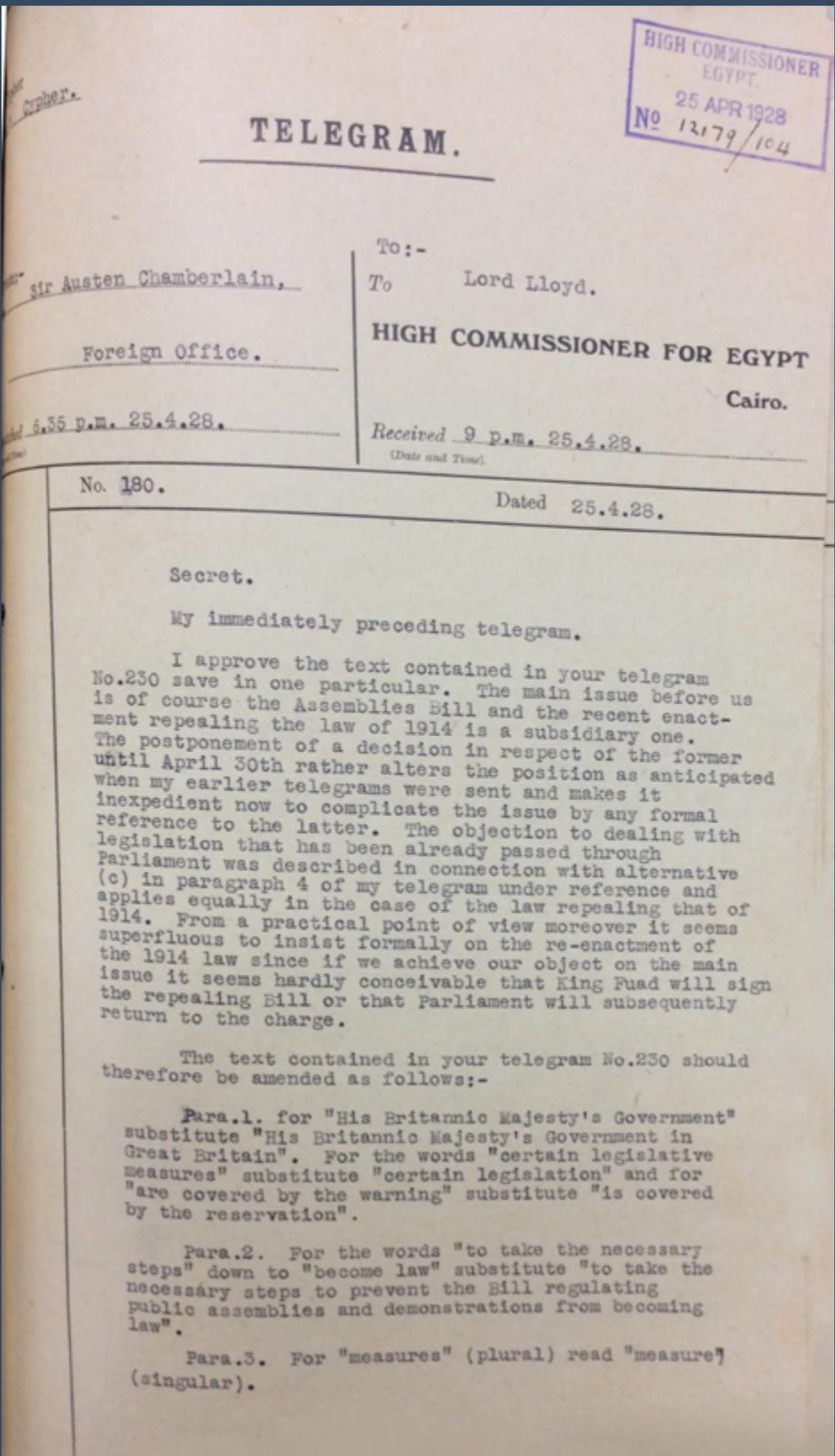
Veuillez, &c.

A. W. KEOWN-BOYD

Director-General, European Department.

[18842]

13



TELEGRAM.

HIGH COMMISSIONER
EGYPT.
25 APR 1928
No 12179/104

Craber.
sir Austen Chamberlain,
Foreign Office.
6.55 p.m. 25.4.28.

To:-
To Lord Lloyd.
HIGH COMMISSIONER FOR EGYPT
Cairo.
Received 9 p.m. 25.4.28.
(Date and Time).

No. 180. Dated 25.4.28.

Secret.

My immediately preceding telegram.

I approve the text contained in your telegram No.230 save in one particular. The main issue before us is of course the Assemblies Bill and the recent enactment repealing the law of 1914 is a subsidiary one. The postponement of a decision in respect of the former until April 30th rather alters the position as anticipated when my earlier telegrams were sent and makes it inexpedient now to complicate the issue by any formal reference to the latter. The objection to dealing with legislation that has been already passed through Parliament was described in connection with alternative (c) in paragraph 4 of my telegram under reference and applies equally in the case of the law repealing that of 1914. From a practical point of view moreover it seems superfluous to insist formally on the re-enactment of the 1914 law since if we achieve our object on the main issue it seems hardly conceivable that King Fuad will sign the repealing Bill or that Parliament will subsequently return to the charge.

The text contained in your telegram No.230 should therefore be amended as follows:-

Para.1. for "His Britannic Majesty's Government" substitute "His Britannic Majesty's Government in Great Britain". For the words "certain legislative measures" substitute "certain legislation" and for "are covered by the warning" substitute "is covered by the reservation".

Para.2. For the words "to take the necessary steps" down to "become law" substitute "to take the necessary steps to prevent the Bill regulating public assemblies and demonstrations from becoming law".

Para.3. For "measures" (plural) read "measure" (singular).

Annex 22

Telegram from Sir Austen Chamberlain to Lord Lloyd on April 25, 1928, agreeing not to include Law 10/1924 in the ultimatum that the British government intended to give Egypt if it amended Law 14/1923 on demonstrations.

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

HIGH COMMISSIONER

No 12179/71

April 16, 1928.

EGYPT AND SUDAN.

CONFIDENTIAL.

SECTION 1.

J 1273/4/16]

No. 1.

Lord Lloyd to Sir Austen Chamberlain.—(Received April 16.)

No. 304.)

Cairo, April 7, 1928.

Sir,

WITH reference to correspondence ending with my telegram No. 206 of to-day's date, I have the honour to transmit herewith the text of the Bill regarding public meetings and demonstrations as finally passed by the Chamber and approved without any substantial modification by the Senate (see my telegram No. 55 of the 24th January last).

2. It was subsequently discovered that, owing to a clerical oversight, the last sentence of the second article had been omitted by the Senate in the text approved by it. Owing to this formal vice, the Bill had to be submitted to the Senate again. Ramadan and the crisis arising out of the rejection of the proposed Anglo-Egyptian Treaty delayed the second consideration of the Bill by the Senate, and it is still in the commission of the Senate. On the 27th ultimo, the Senate postponed the examination of the Bill for a fortnight.

3. It may be useful to recapitulate the defects of this legislation on which I have previously touched in my telegrams.

4. There is really little reasonable ground for abrogating either Law No. 10 of 1914 regarding illegal assemblies ("rassemblements") or Law No. 14 of 1923 regarding "Les Réunions publiques et les Manifestations sur la Voie publique" (see Lord Allenby's despatch No. 383 of the 9th June, 1923). It might, however, be possible to make out a case for the abrogation of the former law, which could be represented as too Draconian for a constitutional régime. The latter law could not, however, be represented in that light, and was even defended by Zaghlul Pasha before the Parliament of 1924. Moreover, in his note of November, 1924, to Lord Allenby, Zaghlul Pasha intimated that the Egyptian Government would, if necessary, seek further legislative powers to deal with demonstrations.

5. The present Bill is obviously aimed at weakening the executive and at facilitating political agitation and demonstrations in the frequently recurring periods of tension between Great Britain and nationalist Egypt. Indeed, Members of Parliament, in conversation with officials in the Ministry of the Interior, definitely stated that they intended to have the law framed in such a way that they would never again suffer at the hands of the police as in the past. The following are the principal defects of the present Bill:—

- (1.) No power is given to the executive to prevent beforehand any meeting or manifestation, however dangerous or pernicious it may be. The executive possesses such power in virtue of article 4 of Law No. 14 of 1923. It is not even definitely stated in the present Bill that the police can prevent a meeting which has not complied with the provisions of the Bill. It has been maintained that article 20 of the Constitution gives the Government a general right, "pour la protection de l'ordre social," to prohibit meetings. However, it is unlikely that the executive would dare, on the authority of this general and vague provision, to take action in a matter regulated by a special law.
- (2.) The Bill contains no provision giving the police the right to guide demonstrations from one locality to another in the interest of public order or convenience.
- (3.) Article 5 of the Bill deprives the police of the right to disperse a meeting which seems likely to result in disorder. Such a right is conferred indirectly by article 7 of Law No. 14 of 1923. Article 5 of the present Bill incidentally contains an extraordinary provision authorising the resumption of a meeting dissolved on account of grave disorder. Article 7 of the Bill, though less positive in form, clearly does not give the police the right to disperse a manifestation before public order has actually been disturbed. At present such a right is conferred on the police by article 10 of Law No. 14 of 1923.

[428 q—1]

Annex 23(a)

Telegram from Lord Lloyd to Sir Austen Chamberlain asking him to remove Law 10/1914 from the ultimatum to be sent to Egypt, describing the law as autocratic.

HIGH COMMISSIONER
EGYPT
23 APR 1928
No 12179/99

His Excellency.

The proposed Ultimatum to the Egyptian Govt.

Telegram No. 227 of the 20th. April to the F.O.

I venture to hope that it may be possible to drop from the ultimatum the demand for the withdrawal of the Bill repealing Law No. 10 of 1914 on Illegal Assemblies. We have hitherto raised no objections to this Bill, and it was generally agreed last December that we could get on without the 1914 law, as the 1923 Law was adequate for our purposes. Indeed, as far as I know, only twice has the Bill repealing the 1914 Law come into the Anglo-Egyptian picture at all. Once, when I was sent to ask Tewfik Hessim to suggest to the King that H.M. should postpone its signature until Y.E. had seen the King a few days later. Tewfik Hessim told me that the King had already instructed him to inform Mahas that H.M. proposed to delay signature until the difficulties regarding the Bill on Public Meetings and Demonstrations were settled. Mahas replied (over the telephone) to Tewfik Hessim that there were no difficulties about the Bill repealing the 1914 Law and that it was quite distinct from the other Bill. Tewfik Hessim retorted that H.M. considered that both Bills were "dans le même esprit" and had better be handled together. The second mention of this Bill repealing the 1914 Law was in a recent conversation with Mahas, to whom Y.E. pointed out that it was rather unfortunate that he should have chosen this moment to send up the first Bill to the King for signature.

I would urge that nothing in these two episodes provides matter for ultimata. An ultimatum implies some antecedents. Mahas, with perfect justice, might ask why he should be faced with an ultimatum on a question which had not until that moment been the subject of any conflict with us. The Wafd might make capital out of this both in Egypt and in England. Incidentally, it would be difficult to justify to the democratic English public the necessity for an ultimatum to retain a law so contrary to the democratic spirit as this Law of 1914 framed under an autocratic régime and in an autocratic spirit. We have, it will be remembered, already told the F.O. that the 1914 Law might ~~possibly~~ be represented as too draconian for a Constitutional régime (see paragraph 4 of Y.E.'s despatch No. 304 of April 7th. to F.O.).

I think that these considerations should be represented to the F.O. It is as well to enter into such a far reaching conflict without any appearance of unreasonableness.

✓
Stoan ✓
Peters ✓

Re

Advise Mr K. Boyd to give his view on this at once please / 23.4.

23rd. April, 1928.

Wt Smart.
C.F. spoke to Mr Keown-Boyd about this.
JES 24/4

Annex 23(b)

Letter from Lord Lloyd asking for the removal of the Assembly Law, writing, "...the 1923 Law was adequate to our purposes...Incidentally, it would be difficult to justify to the democratic English public the necessity for an ultimatum to retain a law so contrary to the democratic spirit as this law of 1914 framed under an autocratic regime and in an autocratic spirit."



[CIHRS supports call to open the Egyptian National Archives to the public, and to allow researchers full access to its contents. It also supports calls for freedom of information, and guidelines for research that that abide with international standards.]