

1911

EAST AFR. PROT.

383

2383

C. I. A.  
KenyaDate  
1911

Jan

period Paper

## definition of boundaries

for purposes administration only

Recommend that any such definition be arranged locally without reference making the any change in boundaries made to obtain the  
and subject of local people can have to have

W. Reid

I agree that unless we are bound by  
 Govt. of U.S.A. or C. of 1902 to have all  
 changes in the boundaries of provinces and  
 districts specifically referred to next to  
 approval it would be well to avoid reference  
 here to the case of such changes. Approval  
 will also be given in except in the  
 case of native reserves, hospital portions  
 of which Sir Frank would recognize,  
 except in a portion here to form an  
 addition to the demarcation of such  
 districts. (Loring's addition for example.)  
 If so arranged it will be easier to  
 have a clear record of the areas of

should be S. of 3 giving a general sketch  
of the alteration of boundaries of provinces  
or districts by the Govt. (always excepting  
alteration of the boundaries of native  
reserves)?

Perhaps the opinion of our legal  
adviser should be obtained on these  
points.

I am not sure whether the ~~advice~~  
notification of the boundaries only in the  
usual maps of the Protectorate  
furnished from time to time will  
fully meet the needs of the Govt.  
We can ascertain the idea so far  
as to what has been done.

SAB

Jan 9

To Adm'r. Feb. 13 did get ~~ans~~ to  
complete the S. of 3 from going to  
fix the int'lly dat to make

N.J.R.

9/1

her box

Up Diddes

I do not understand why the majority of attorney

the administrative boundaries of provinces or districts should be so constant and continuous as to render any deviation or frequent alteration in that behalf on the part of the S.o.S. of it as inexpedient, however, we don't consider it as being undesirable.

Sec 31 of the Registration Act says that retrospective laws in an State entered into before and after the commencement of that Act, shall obtain the existing interests affecting the date respective necessary as on the Act confirming the same to make the Rule.

Sec 32 of the same Act records that where an Act passed after the commencement of that Act confers powers or imposes duties, they affect the existing interests affected by the previous Government and the duty shall be performed from time to time as occasion requires.

The Act was commenced on January 1890, and consequently the Registration Act 1890 - the 1st Dec 1890 was passed and made retrospective after its commencement. Therefore the words "with the approval of the S.o.S. and in 31 of the Act can be said to be an expression which, even if the interpretation put in is very wide, that expression amounts to the expression of - that and 32 of the Act will thus apply.

It has been your suggestion that 31 of the Act, which though retrospective cannot be construed to be an absolute, to the present point, I venture to suggest that the S.o.S. may properly be advised to further his duty under the Act in accordance with the provision laid down in Sec 32(1) - i.e. "from time to time as occasion requires".

A general approval of the Act, called for by you in the interests of a class beyond yourself for example of the law, seems undesirable.

Therefore, I agree with what Rishi says that

I think that on the construction of 6617  
the O.C. the approval of the S.P.S. is required  
on the particular occasion of any alteration  
of boundary <sup>whether</sup> before or after the  
particular alteration is made.

If necessary and desirable the O.C.  
can be amended.

Wm. Howard

Surely they cannot be  
boundary at the boundaries of districts  
properly or truly & any boundary to  
go into effect after 7. A.M. is - law  
as alter the O.C.

Optim to be for or in the middle  
alone

P.S. 12.

I hold that you certainly bound  
by the O.C. and I cannot think  
that it is necessary to amend, &  
for this purpose

H. 7. 12. 1. 11.

215

COLONIAL OFFICE.

L O N D O N .

4th Jan. 1911.

333

F JAN 11

Sir,

Under Article 6, West African Order in Council, 1902, the Commissioner may, with the approval of the Secretary of State, by proclamation define any boundaries of the territories for the time being within the limits of this order, and divide those territories into provinces or districts in such a manner and with such sub-divisions as may be convenient for purposes of administration, describing the boundaries thereof and assigning names thereto.

Though there would appear to be every necessity in the cases of the definition of native reserves or their subsequent alteration to refer such boundaries for the sanction of the Secretary of State, I cannot see that any useful purpose is served by constant reporting on the changes of boundaries for provinces or districts. Such boundaries have an administrative value only, but bear no sense connected with military operations, & in no way affect any question of native reserves, or the ownership of lands.

It would be preferable, as in West Africa, to allow the definition of such boundaries to be approved of locally - any change being submitted in the usual maps of the Protectorate furnished from time to time.

The Under Secretary of State

to the Colonies.

L O N D O N .

- 2 -

I do not think the particular article in question would be contravened by any such action, as any change in the boundaries of territories would in all cases be submitted to the Secretary of State.

I have the honour to be,

Sir,

Your obedient servant,

*John Ward*

Govt 313 Sab

DRAFT

dated to Percy Gerard  
Kandy, S.C., R.S.

MINUTE

27 Jan. 1900

Mr. Parker and Mr. Dugay,  
Mr. Butler, Mr. E. H. Miller,  
Mr. C. L. Wood,  
Mr. G. C. Lovell,  
Sir J. Hopwood,  
Col. Atty.

Mr. Hartwell

1. In view of the receipt of  
your letter of the 4<sup>th</sup> January  
returning a proposal that  
would be received from the Secretary  
the approval of the Secretary  
of State should not be sought  
in the case of every change  
in the boundaries of provinces  
or districts in the S.P. with  
the exception of the separation  
of native reserves and their  
subsequent alteration.

2. As you are aware,  
approval is now sought  
in accordance with which

of the East Africa Protectorate Council,  
1902, which states that the  
"Parliament may, with  
the approval of the S. of S.,  
define any boundaries etc etc."

3. but Parliament ~~cannot~~ finds it difficult to  
understand <sup>that</sup> the necessity  
of altering the administrative  
boundaries of provinces and  
districts should be an  
instant and continuing  
so & render ~~it~~ impossible to  
say he should give ~~and~~ obtain a  
parallel approval by them  
of such alterations, and while it is clear  
that such a step, if necessary, however  
very slow to be taken, would be believed to be  
itself expedient, it would not  
appear to be legally admissible.

4. Section 31 of the Interpretation  
Act 1889 exists that expression  
used in an O. or C. if the O. or C.  
is made after the commencement  
of that Act, shall, unless  
the contrary intention appears,  
have

the same importation meaning  
as in the Act comprising  
the power to make the O. or C.  
Section 32(1) of the same <sup>218</sup>  
Act enacts that when  
an Act passed after the  
~~commencement~~ commencement  
of that Act confers a  
power or imposes a duty  
there, unless the contrary  
intention appears, the power  
may be exercised ~~at any time~~  
and be performed from  
time to time as occasion  
requires.

5. As the Interpretation Act  
commenced on the 1<sup>st</sup> Jan  
1890, and consequently  
the Foreign Jurisdiction  
Act 1890, and the East  
Africa O. or C. 1902 were  
repealed made respectively  
after its commencement.

If, therefore, the words "with  
the approval of the S. of S."  
in Section 6(1) of the O. or C.  
can be said to be an

an "expression" within  
the meaning of Section

31 of the Interpretation

Act - and ~~there is~~ <sup>al Harout</sup>

~~it would then be held to be so,~~  
~~certainly arguable~~

that expression amounts  
to the imposition of a duty,  
and Section 32(1) of the  
act would apply.

f. A general approval  
stamped of the kind for which  
you ask would, in the absence  
of a clear legal warrant  
for giving it, be undesirable;  
and apart from any question  
of expediency, Mr. Harout  
feels that he is bound by  
~~his~~ <sup>the principle of constancy</sup> to refuse each  
case of application in the  
circumstances of previous  
decisions to be referred or forwarded  
for such approval again.

The principle of constancy  
is no part of the interpretation  
of art 3 of the letter  
of intent.