

1924

KENYA ZANZIBAR

C. O. 55810 28 NOV 24

FROM FOREIGN OFFICE.

Date 27th November 1924.

Mr. C. G. ... Mr. ... Asst. U.S. of S. Mr. ... Secretary of State

187 PORT ORDINANCE, 1922. The copy of further note from French Embassy, together with a memo prepared in F.O. Considers policy of Govt should have been defended on broader lines, and seeks concurrence in course as now explained.

31 MAR 1925

MINUTES

31 MAR 1926 copy copy cables & copy to Sir S. Hemm ... of W.C. X's ...

I am afraid that this has been rather long delayed, with it Govt 45021/24 ... note on the Zanzibar Treaties has been prepared, after discussion with you. The note has been prepared with a view to a copy being given to Sir S. Hemm, who has asked for information about these Treaties; a copy may also be of use to Lord Onslow in connection with the jubaland debate in the House of Lords.

Subsequent Paper G.W. 5852

the

The note is confined to the bare facts about the Treaty, and it is necessary to amplify it under the various heads in order to deal with these papers.

1. Property. The Treaty promises no reasonable and numberless.

2. Right of entry. It is stated ^{or promised} in the note, the Treaty promises on this point appear to give rise to little difficulty in practice.

3. Liberty to enter Lamu et al.

No objection appears to have been raised by the Treaty, since 1846, ⁽¹⁸⁵⁰⁾ Powers to the control of immigration at Mombasa and other Kenya ports in the mainland dominions of the Sultan of Lamu, but in the past the French have protested against such control.

The note is confined to the bare facts about the Treaty, and it is necessary to amplify it under the various heads in order to deal with these papers.

1. Property. The Treaty promises no reasonable and unlimited.

2. Right of entry. It is stated ^{in previous} in the note, the Treaty promises on this point nothing to give rise to little difficulty in practice.

3. Liberty to enter Lamu et c.

No objection appears to have

been raised by the Treaty

since 1916

(1912/13/14/15/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100/101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000/1001/1002/1003/1004/1005/1006/1007/1008/1009/1010/1011/1012/1013/1014/1015/1016/1017/1018/1019/1020/1021/1022/1023/1024/1025/1026/1027/1028/1029/1030/1031/1032/1033/1034/1035/1036/1037/1038/1039/1040/1041/1042/1043/1044/1045/1046/1047/1048/1049/1050/1051/1052/1053/1054/1055/1056/1057/1058/1059/1060/1061/1062/1063/1064/1065/1066/1067/1068/1069/1070/1071/1072/1073/1074/1075/1076/1077/1078/1079/1080/1081/1082/1083/1084/1085/1086/1087/1088/1089/1090/1091/1092/1093/1094/1095/1096/1097/1098/1099/1100/1101/1102/1103/1104/1105/1106/1107/1108/1109/1110/1111/1112/1113/1114/1115/1116/1117/1118/1119/1120/1121/1122/1123/1124/1125/1126/1127/1128/1129/1130/1131/1132/1133/1134/1135/1136/1137/1138/1139/1140/1141/1142/1143/1144/1145/1146/1147/1148/1149/1150/1151/1152/1153/1154/1155/1156/1157/1158/1159/1160/1161/1162/1163/1164/1165/1166/1167/1168/1169/1170/1171/1172/1173/1174/1175/1176/1177/1178/1179/1180/1181/1182/1183/1184/1185/1186/1187/1188/1189/1190/1191/1192/1193/1194/1195/1196/1197/1198/1199/1200/1201/1202/1203/1204/1205/1206/1207/1208/1209/1210/1211/1212/1213/1214/1215/1216/1217/1218/1219/1220/1221/1222/1223/1224/1225/122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control being exercised in Zanzibar itself. Recently, however, decrees have been passed for the proper control of immigration at Zanzibar, and no protest appears to have been made, though the F.O. admit that the legislation would be difficult to defend if attacked.

4. Taxation

Although local rates etc. have been levied as shown in the note, it has not been without protest. In 1914 the French Consul protested against the public health and street lighting regulations ^{in Zanzibar}, though he made it clear that his protest was purely formal. In 1922 the French ^{and Belgians} protested against the payment of poll tax, income tax and trader's licence by French citizens in the Kenya Protectorate. We did not however admit the validity of the protest, and the matter appears to have dropped.

1920 several protests were received from the representatives of Treaty Powers against the levy of municipal rates etc. in Zanzibar. No concession was however made

5. Commerce and Trade

Import Duties

(i) Zanzibar When the Zanzibar import duty was raised to $7\frac{1}{2}\%$ ad valorem in 1908, the French protested on the ground that

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that they had an undertaking from the
F.O. that the rate of 5% laid down in
the Franco-Mercat Treaty would not
be exceeded. The F.O. replied that the
alleged undertaking was not absolute,
and that the increase was required in
order to enable the Cameroonian Govt. to
carry out its obligations under the
Berlin and Brussels Acts. The French
persisted in their objection but no reply
was sent and the duty, as in
fact remained at $7\frac{1}{2}\%$ *ad valorem*.

(iii) Kenya When in 1904 the
Keny. import duty was raised to the
maximum of 10% *ad valorem* allowed
by the Brussels Declaration of 1890, the
French protested. The increase was justified
to them on the ground of the cost of
administering the country in accordance
with the policy laid down in the Berlin
and Brussels Acts. Since the war the
Keny. import duties have been altered
considerably without any protest having
been made on the ground of Treaty obligations.

(b) Export Duties As shown in the note 189
no practical difficulty has arisen under
this head.

(c) Freedom of Trade The Treaty provisions
go farther than the Convention of Saint
Germain in Luga, and the disadvantage
of the position was recently brought out
when the question arose of the Government
of Tanganyika controlling the price of cloves
in the interests of the industry.

6. Light and Harbour Dues

No special difficulty has arisen
in regard to Tanganyika and Pemba; in
fact when the case of Swaziland
was being discussed in 1921 the United
Kingdom Government expressed their
willingness to revise the Convention of
Nairobi. As regards Kenya, the
French have protested against the in-
crease which was imposed there in 1922 in
reply to an attempt to depend the
duty on the basis of the English text
of the Convention of Saint Germain in
Luga, the French have persisted in their
objection.

no
increase
in the
rates

no
HS 89/121
2'000

no
(17180/24)
Kenya
2'000

(5580/24)

the French text of that Convention is the authoritative one, and that under it the Powers "conserve" the right to fix such dues freely, and they claim that this does not confer upon any Power a right which it did not possess before the F.O. propose not to reply, but, if the French adhere to the change, to use arguments similar to those which were employed in connection with the Customs duties. The argument as to the financial needs of Kenya is however possibly somewhat thin, bearing regard to the proposition which the revenue received from these dues bears to the total revenue of the Colony and Protectorate.

7. Jurisdiction

8. Administration of Estates.

The earlier papers refer to difficulties which have arisen when the Council who is administering an estate which, because of some dispute has come before the Court, has refused to give evidence; but there appears to be no record of any recent special difficulty under these heads.

To sum up - the Treaty provisions are generally irritating and on occasion they definitely hamper efficient administration. In particular it would be extremely embarrassing if the French were to realize that, in their interpretation of the Convention of Saint Germain in 1919, the Kenya customs tariff is open to attack, and that our position with regard to control of immigration in Mombasa is now too secure

in regard to action, we should

? Reply to F.O. concurring in

their proposal not to reply to the French protest against the light and harbour dues, + saying that should the French return to the change the question of the time to be taken can be further considered. Entire the unexamined statement regarding shipping.

? Send Kenya in reply to

45021/24 a copy of the note and of the corres. with the F.O. on the subject

handy with handling about 400-

I agree with proposed action -

C.S.

26.3.25

A. Price

N.B. The "Note" does not refer to the personal immunity of consuls from contribution to municipal & other rates. See sig H 4

14952/25

2 bars.

H/1425

Colonial Office comments on the "Note on the Zanzibar Treaties".

~~Notes~~

1. Property The Treaty provisions are reasonable and harmless. Similar provision is made in Art. 3 of the Convention of Saint Germain in force of 10th Sept., 1919.
2. Right of Agents of the Govt. to enter upon premises owned or occupied by foreigners. ~~This right may be regarded as abrogated or the surrender of the treaty powers of extra-territorial jurisdiction, any difficulty under this head could arise only if entry were demanded without ~~consent~~ ^{in violation} of the treaty provisions. As stated in the note the treaty provisions in this connection give ~~no~~ ^{rise} to no difficulty ~~in~~ ^{practice.} Any difficulty which might arise could be settled by the production of a warrant from the British Court, to which the Consular powers of extra-territorial jurisdiction have been surrendered.~~
3. Liberty to enter Zanzibar & reside & trade

was ignored, and no protest appears to have been made against the much higher rate of duty now in force in Kenya.

(b) Export Duties. As shown in the note no practical difficulty has arisen under this head

(c) Freedom of Trade. ~~For~~ restrictions on ~~the~~ the ~~establishment~~ establishment of a fixed price for goods or of a monopoly might be found to cause difficulty.

6. Light & Harbour Dues

No special difficulty has arisen as regards the islands. In fact, when the revision of the rate to Lammas was being discussed in 1921 the United States Govt expressed their willingness to revise the Convention if necessary. The French Govt have protested against the dues imposed in Kenya in 1922 but the protest has been ~~ignored~~ ignored.

7. Distressed Vessels & Crew

8. Immunity of Consular Officers

9. Administration of Estates

It does not appear that any special difficulty is experienced under these heads, except (as regards the last two) in the matters dealt with under head 4 (taxation) above.

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8. Immunity of Consular Officers

9. Administration of Estates

It does not appear that any special difficulty is experienced under these heads, except (as regards the last two) in the matters dealt with under head 4 (paraph) above.

Shipping entered and cleared at Kenya Ports

All nationalitiesFrench.

| | | <u>All nationalities</u> | | <u>French.</u> | | |
|--------|---------|--------------------------|----------------|----------------|----------------|--------|
| | | <u>Number</u> | <u>Tonnage</u> | <u>Number</u> | <u>Tonnage</u> | |
| 920-21 | Sailing | Entered | 392 | 23,824 | 1 | 164 |
| | | Cleared | 442 | 26,931 | 1 | 119 |
| | Steam | Entered | 221 | 673,006 | 11 | 37,095 |
| | | Cleared | 223 | 675,735 | 11 | 37,095 |
| 21 | Sailing | Entered | 114 | 6,810 | 7 | 462 |
| | | Cleared | 285 | 17,430 | 5 | 320 |
| | Steam | Entered | 164 | 519,544 | 8 | 28,859 |
| | | Cleared | 165 | 525,179 | 8 | 28,859 |

No later figures.

any further communication
this subject, please quote
No. A 5261/1979/60.

address—
not to any person by name,

The Under-Secretary of State,
Foreign Office,
London, S.W. 1.

C. O.
55810
23 NOV 24

195
FOREIGN OFFICE

S.W. 1.

27th November, 1924.

Sir,

20962

With reference to the letter from this department No. A 2608/1979/60 of May 2nd last, I am directed by Mr. Secretary Chamberlain to transmit to you herewith a copy of a further note from the French Embassy regarding the enforcement of the Kenya "Port Ordinance, 1922" at Mombasa and other ports of the coastal strip of the dominions of the Sultan of Zanzibar, together with a memorandum on the question prepared in this department.

2. Mr. Chamberlain feels that it would have been preferable not to have relied in the reply to the French Ambassador of May 1st on the letter of an incorrect English translation of the text of article 2 of the Convention of 1919 revising the Antwerp and Brussels Acts and that the policy of His Majesty's Government should have been defended on broader lines. He now considers that the best course will be to follow the precedent set when the seven and a half per cent. import duties were imposed in 1908 and to return no reply to the French note of the 3rd September. Should the French Ambassador revert to the subject, Mr. Chamberlain would propose to justify a continuation of the enforcement of the Ordinance in question against the ships, by the arguments contained in paragraph 8 of the enclosed memorandum.

3. I am to enquire whether Mr. Amery concurs in this course.

4. Mr. Chamberlain would at the same time be glad

Under-Secretary of State,

Colonial Office.

Glad to learn the approximate number and tonnage of French vessels annually affected by the ordinance and how the figures compare with those for other countries.

I am,

Sir,

Your obedient Servant,

J. H. ...

NOTE ON THE ZANZIBAR TREATIES.

At the outbreak of the War, the Treaties in force applicable to the dominions of the Sultan of Zanzibar were as follows:-

- (1) Treaty between the United States and Muscat - September 21, 1833.
- (2) Treaty between France and Muscat - November 17, 1844;
- (3) Treaty between the ~~M~~anseaatic Republics and Zanzibar, June 13, 1859;
- (4) Treaty between Portugal and Zanzibar - October 25, 1879.
- (5) Treaty between Italy and Zanzibar - May 28, 1885.
- (6) Convention between Belgium and Zanzibar - May 30, 1885.
- (7) Convention between Austria Hungary and Zanzibar - August 11, 1887.
- (8) Agreement between Russia and Zanzibar - August 12/24, 1896.

The German and Austrian Treaties lapsed at the outbreak of War, and have definitely not been revived. The Russian Treaty lapsed with the fall of the Empire, and it was agreed with the Soviet Delegation of August, 1924, that it should be considered as one of the Treaties which had lost its force. The Italian Treaty ^{will} be cancelled when the Treaty for the cession of Jubaland ^{takes} effect.

As regards the surviving Treaties, the provisions as to extra-territorial jurisdiction in Zanzibar have been surrendered; the remaining privileges conferred by these Treaties on nationals of the Powers concerned are as follows:-

1. Property. The right to acquire, possess and sell property appears in all the Treaties except that with the United States.

2. Right of Agents of the Government to enter upon premises owned or occupied by foreigners. Under Article 3

of the French Treaty and Article 7 of the Portuguese Treaty, such entry is not permitted without the consent of the occupant or of the Consul representing the country of which the occupant is a national. The provision does not give trouble in the case of Police, who enter under a warrant from the British Court, which in view of the surrender of Consular jurisdiction exercises the functions of the Consul; nor, in practice, in the case of the Sanitary Officers. Objections are sometimes raised by Consuls to Regulations issued by the Zanzibar Government for the proper control of buildings, the Survey Decree and the Preservation of Plantations Decree.

3. Liberty to enter Zanzibar and to reside, trade and travel, and leave the territory. This is the subject of a definite provision (Article 2) in the French, United States and Portuguese Treaties; and applies to Belgians by virtue of the most-favoured-nation clause in the Belgian Convention.

4. Taxation other than import and export duties.

Article 2 of the French Treaty is as follows:-

(translation) "The subjects of His Highness the Imam of Muscat shall be permitted⁺ in full liberty⁺ to enter, reside, trade and travel in France with their merchandise. The French shall enjoy the same liberty in the dominions of His Highness the Sultan of Muscat, and the subjects of each of the two countries shall have reciprocally the right, in the other, to all the privileges and advantages which are or may be accorded to subjects of the most-favoured-nation." Article 6 of the United States Treaty is as follows:- "The citizens of the United States resorting to the ports of the Sultan for the purpose of trade shall have leave to land and reside in the said ports without paying any taxation or imposition whatever

for such liberty other than the general duties on imports which the most-favoured-nation shall pay."

These clauses have not been held to prevent the imposition of a public health and street lighting rate in the town of Zanzibar, or to preclude the levy of municipal rates in Mombasa, and the application of the Kenya non-native poll tax to foreigners in the coastal dominions of the Sultan.

5. Commerce and Trade.

(a) Import Duties. Article 3 of the United States Treaty, Article 10 of the French Treaty and Article 3 of the Portuguese Treaty lay down that the ships of those countries entering the harbour of Zanzibar or any other harbour in the Sultan's dominions shall not pay more than five per cent duty on the cargo landed, which shall be considered as an equivalent of all import and export duties, tonnage, pilotage, anchorage or any other tax. This limitation applies to Belgian ships by virtue of the most-favoured-nation clause in the Belgian Convention.

This limitation was overridden by the Brussels Declaration of 1890, which with the rest of the arrangements under the Berlin and Brussels Acts is now replaced by the Convention of Saint Germain-en-Laye of the 10th September, 1919.

(b) Duties on Goods exported in French, Portuguese, American or Belgian ships are forbidden by the Treaty provisions just quoted. It has been held that the duty charged on cloves exported from the ^{Zanzibar} Protectorate is not an export or customs due, but a duty corresponding to the old native taxes. Certain duties on other exported produce have been tacitly accepted by all the Treaty Powers for many years.

(c) Freedom of Trade. Article 2 of the United States Treaty, Article 11 of the French Treaty, and Articles 2 and 4 of the Portuguese Treaty provide that there shall be no restriction

restriction upon the nature of articles to be imported and exported, that trade shall be completely free, and that no fixed price or monopoly shall be established. These provisions apply to Belgium through the operation of the most-favoured-nation clause.

6. Light and Harbour Dues.

These are forbidden by the Treaty sections quoted under the preceding head, but a separate Convention was signed with the United States on June 5th, 1903, under which it was agreed that, subject to the consent of the other Treaty Powers to a similar arrangement being obtained, light dues at the rate of 1 anna, and harbour dues at the same rate, upon every registered ton should be leviable on vessels of the United States entering ports in the islands of Zanzibar and Pemba. The consent of the other Treaty Powers was obtained in 1904. The dues were, in return for certain concessions, reduced to 1 anna in all from January 1st, 1914, but raised again (by general consent) to 2 annas, on the ground of the increased cost of the service, with effect from October 1st, 1921.

7. Distressed Vessels and Crews.

Under Article 15 of the French Treaty and Article 6 of the Portuguese Treaty the Zanzibar Government must assist in the refitting of shipwrecked or damaged ships, in the salvage of property and its delivery to the owners or the Consul. Under Article 5 of the American Treaty they must also maintain the crews of shipwrecked vessels at the public expense.

8. Jurisdiction *(Immunity of Consul or Officers)*

In view of the immunity of the British Agent and Consul General (now the British Resident) from the jurisdiction of the Courts, a similar immunity has ^{at the present} been claimed

The British Resident did not however succeed to the privileges of the British Agent & Consul General in the respect and any immunity which foreign Consuls might have claim could not be based upon Article 9 of the United States Treaty of 1833 which confers personal immunities upon the Consuls of Treaty Powers, by virtue of the most-favoured-nation clauses of the Treaties. *(I cannot find any.)*

9. Administration of Estates.

The agreement with France as to the surrender of Consular jurisdiction reserves to France her previous rights with regard to the administration of the estates of French citizens and protected persons, in so far as this does not involve a direct or indirect return to the exercise of Consular jurisdiction. A similar privilege extends to the other Treaty Powers by virtue of the most-favoured-nation clauses.

3261/1979/60).

Note verbale.

Par sa lettre No. A 2608/1979/60, en date du 1er Mai dernier, le Foreign Office a fait savoir à cette Ambassade que, de l'avis du Gouvernement Britannique, la Convention de Saint-Germain, du 10 Septembre 1919, portant révision de l'acte de Berlin, du 26 Février 1885, met fin aux avantages du Traité de 1844, avantages consentis à la France par l'Imamat de Mascate, aux droits duquel est le Sultanat de Zanzibar.

De l'article 2, paragraphe 2 de la Convention de Saint-Germain, il résulterait, d'après le Gouvernement de Sa Majesté, que les Etats intéressés - au nombre desquels est Zanzibar - "ont le droit de fixer librement les règles et les tarifs de douane ou de navigation applicables sur leurs territoires".

Le Gouvernement français ne peut admettre ce point de vue. Après avoir posé, à l'Article 1er, le principe de la complète liberté commerciale et à l'article 2, Paragraphe 2 celui du libre accès à tout le littoral et à tous les ports maritimes des territoires énumérés à l'Article 1er, l'Article 2, Paragraphe 3, poursuit, en laissant cependant aux Etats intéressés "le droit de fixer librement les règles et les tarifs de douane ou de navigation applicables sur leurs territoires"; formule qui, manifestement, veut dire que la liberté du commerce et de l'accès du littoral et des ports ne s'étend pas jusqu'à la franchise des droits de douane ou de navigation, mais qui, en aucun cas, ne peut restituer à l'Etat côtier une maîtrise douanière que, par traité antérieur, il aurait perdue. "Sous

réserve/

réserve de ces dispositions, dit l'Article 2, Paragraphe 3, les Etats intéressés conservernt le droit de fixer librement les règles et les tarifs de douane". S'ils le conservernt, c'est qu'ils l'ont: or, dans le cas actuel, l'Etat intéressé n'a pas ce droit, par suite il ne saurait le conserver. En conséquence, l'article 2, Paragraphe 3, est inscricable.

A défaut de l'article 2 de la Convention portant révision de l'Acte de 1890, le Gouvernement britannique invoque l'article 3, qu'il lit ainsi: "Pourront être perçus des taxes et droits qui auront le caractère de rétribution pour services rendus à la navigation". Or, non seulement le droit de 2 1/2 sous par tonne dépasse la limite du service rendu, mais le texte déclare "Pourront être perçus....." ce qui veut dire qu'il ne sera possible de percevoir des droits de navigation que pour rétribution de services rendus. Mais où les traités stipulent une limite soit limitation de ces taxes, sera-t'il possible encore de les percevoir? Ceci constituerait comme une tout autre question.

Inscrites dans l'acte du 10 Septembre 1910, pour limiter la liberté de commerce et d'accès, les réserves de l'article 2, Paragraphe 2 et de l'article 3, Paragraphe 3, ne peuvent s'entendre que comme une exception à la liberté de commerce et d'accès que l'acte africain crée, non comme un affranchissement des réserves auxquelles les Etats compris dans la zone de la liberté de commerce et d'accès n'auraient pas craint de se soumettre au regard d'un Etat étranger. Cet Acte qui leur laisse entière, pour l'avenir,

20

la maîtrise des douanes et des taxes de navigation, rémunératrices des services rendus, ne peut paralyser dans le passé les effets de cette même maîtrise. Les Conventions doivent être ici d'autant mieux respectées que les principes nouveaux, formulés dans l'acte, ne prétendent en rien diminuer, en ce qui concerne les droits de douane et les taxes de navigation, le libre exercice de la pleine capacité de l'Etat territorial.

Enfin, le Foreign Office remarque que son interprétation des articles 2, Paragraphe 2, et 6, Paragraphe 3 de la Convention du 10 Septembre 1919, déjà donnée par lui le 15 Août 1921, n'a reçu de cette Ambassade aucune réponse. De cette absence de réponse, il serait inexact de conclure à un acquiescement du Ministère français des Affaires Étrangères au point de vue britannique: la protestation contenue dans la note de l'Ambassade, du 22 Mars dernier, en fait foi.

A conséquence, le Chargé d'Affaires de France a reçu pour instructions de maintenir auprès du Gouvernement de la Grande-Bretagne la protestation formalisée dans la note du 22 Mars ci-dessus mentionnée.

Ambassade de France à Londres,

Albert G. de Hous,

3 Septembre 1924.

Validity of the Franco-Muscat Treaty of 1844.

It may be well in the first instance to consider the attitude hitherto adopted by His Majesty's Government in particular relation to the protests by the French Government, with regard to the abrogative effect on the Zanzibar treaty position of the Act of Berlin of February 26th, 1885, and the Act of Brussels, with the annexed Declaration, of July 2nd, 1890.

2. On the 22nd June, 1892, a circular was sent to the Powers Signatories of the Berlin Act notifying them that from the 1st July following the British Protectorate of Zanzibar would be placed under the free-zone provisions of Article 1 of the Berlin Act, as modified by the Declaration annexed to the Brussels Act. It was added, however, that there was no present intention of levying at the Port of Zanzibar itself the duties authorised by that Declaration, with the exception of duties on spirits, arms, etc. It was at the same time clearly explained that "the existing system under which the tariffs and duties are regulated by Commercial Treaties with individual Powers will be extinguished by the substitution for it of the system frame for the free-zone by the assembled Powers in 1885", and that in all the other ports of the Sultan's dominions "the five per cent duty on imports now levied under Treaty will be replaced by a similar duty under the Declaration annexed to the Brussels Act."

3. On August 26th, 1892, the French Government addressed a reasoned protest against the British notification

and in a despatch of October 31st, 1892, addressed to Lord Dufferin, Her Majesty's Government replied to each of the objections raised by the French Government. With regard to the doubts of the French Government as to the completeness of the adherence of Zanzibar to the Act of Berlin, Her Majesty's Government maintained that, considering firstly her position as an independent state, Zanzibar was fully entitled to the privileges and bound by the obligations of signatories of, or adherents to, the Act of Berlin, all of whom had participated in the Act of Brussels. If there were a doubt as to the completeness of the adherence of Zanzibar to the Act of Berlin and, inferentially, of her right to benefit by the Brussels Declaration, Her Majesty's Government contended that there could be no doubt whatever as to the position of Great Britain. The preamble of the Declaration, conferred its benefits upon Powers having possessions or protectorates in the conventional basin of the Congo, and Great Britain therefore had the right to claim its application to her protectorate of Zanzibar. With regard to the reservation of the rights and immunities of French citizens (under the Treaty of August of 1844) which was made on the 5th August 1890 when France acknowledged the Protectorate of Great Britain over Zanzibar Her Majesty's Government argued that, being subsequent to the signature of the Brussels Act, it could only be considered as preserving such rights as that act left unimpaired and it was, moreover, with the express purpose of dealing with such a case that provision was made in Article XCVI of the Act for the repeal of all "Contrary Stipulations" contained in the Conventions previously concluded between the Signatory Powers.

It was also pointed out to the French Government that the Powers assembled at Berlin established a fiscal system and expressed their anxiety that Zanzibar should adopt it. This system was altogether inconsistent with that hitherto prevailing under separate commercial treaties with certain Powers and its adoption of necessity implied the abrogation of clauses in such treaties conflicting with it. The Powers, in assenting to the substitution by Zanzibar of a new system for the old one, could not have intended to stipulate that the Sultan should be debarred from accepting their invitation unless he should obtain the separate assent of each Power with whom he might have concluded a Treaty. The collective assent implied in the invitation rendered individual assent superfluous. If then, it was contended, the Acts of Berlin and Brussels were applicable, Zanzibar and Great Britain, as exercising sovereignty over her, were expressly released from any treaty stipulation conflicting with them.

4. Zanzibar remained a free port until September 15th, 1899, when the five per cent import duty was re-imposed. This decision was referred to by the French Ambassador in his conversation in January 1900 in connection with the negotiations for the abandonment of French consular jurisdiction, and in notes to the French Ambassador dated February 15th and August 7th, 1900. His Majesty's Government gave an undertaking which, as appeared later, was interpreted by the French Government as an assurance that import duties should not exceed five per cent. In the note of February 15th, 1900, it was

stated:

stated: "Finally, Your Excellency wished to have an assurance that the duties now imposed on the French imports into Zanzibar in consequence of its having ceased to be a free port would not exceed the maximum of five per cent ad valorem stipulated by the French Treaty (i.e. of 1844).

" I have communicated with Her Majesty's Agent and Consul General on this point, and have ascertained that no compulsory charge will be levied in consequence of the renewed imposition of custom duties in excess of the limit of five per cent ad valorem, any charge which may be made if merchants voluntarily elect to make use of Government wharves or warehouses is obviously not a tax but a payment for services rendered"

In the note of August 7th, 1900, it was stated: "The statistical tax is over and above the five per cent allowed by treaty, so it must be compulsory if it is to be levied at all".

5. In 1904, an Ordinance was issued announcing that a ten per cent ad valorem import duty would be levied in the British East Africa Protectorate (including the mainland dominion of the Sultan but not the islands). The French Government, while not referring to the notes of 15th February and 7th August, 1900, renewed their protest of 1892. In Lord Lansdowne's note of 16th December, 1904, His Majesty's Government explained their attitude in the matter both as regards the legality of their action in raising the duties and
the/

the necessity for this step from an administrative point of view. In the note it was stated: "The entire administration has been in the hands of His Majesty since the 14th December, 1895, and consequently all the expenses of the civilisation of the territory - the very purpose for which the Declaration of 1890 enabled ten per cent import duties to be levied - have fallen on this country. The connection of Zanzibar with the import duties in East Africa is now, therefore, merely technical. The case is one which comes precisely within the spirit of the Declaration of 1890, namely, that of a Power (Great Britain) signatory to the Berlin Act, exercising a Protectorate within the conventional basin, subjected to onerous duties by the Berlin and Brussels Acts for the pacification of the land, the opening of its trade, and the suppression of the Slave Trade, and yet (unless the Declaration applies to it) deprived of the power to raise funds to carry out those duties".

5. The rate of import duty at Zanzibar was raised from five per cent to seven and a half per cent ad valorem on 1st January 1908, and the French Government immediately requested explanations on the ground that the increase appeared to be contrary to undertakings given in the notes to the French Ambassador of 15th February and 7th August, 1900. While admitting that, having regard to the wording used in the notes in question, the contention of the French Government could not be rejected as unreasonable, His Majesty's Government defended their action on the ground that there was no intention that the undertakings given should be regarded

as an assurance that the import duties should always remain at five per cent and explained that the notes had reference only to wharfage dues and a statistical tax and did not deal in any way with the charges which His Majesty's Government might find it necessary to make at some future time. His Majesty's Government also justified the increase in duty as a step that was required in order to enable the Government of Zanzibar to meet the expenses entailed in carrying out the obligations of the Brussels Act. The French Government, however, maintained their contention that they had been given a distinct promise that the rate of import duty would not exceed five per cent, but no reply was sent by His Majesty's Government and the seven and a half per cent duty continued to be levied.

7. During the time therefore that the Berlin and Brussels Acts remained in force, His Majesty's Government may be said to have maintained the attitude that the stipulations in the Franco-Muscat Treaty of 1844 were superseded in so far as they were inconsistent with those Acts, that the Declaration attached to the Brussels Act authorised the imposition of customs duties at Zanzibar up to a maximum of ten per cent ad valorem, and that the increase of the duty above five per cent was justified by the necessity of meeting the expenditure of the Zanzibar Government incurred in carrying out the obligations accepted by the Powers in their adoption of the system imposed by the Berlin and Brussels Acts.

8. It now remains to consider what is the position of the Franco-Muscat Treaty of 1844 in the light of the Convention of St. Germain of 1919, which abrogates the Berlin and Brussels Acts. Although the Convention does

not/

not contain any clause repealing all contrary stipulations of previous treaties, it is legitimate to hold that such is, by implication, the effect of the Convention. Further, it seems reasonable to contend that such contrary stipulations include those provisions of previous treaties which so restrict the freedom of action of a party to the St. Germain Convention as to prevent the adequate fulfilment of the objects of the Convention. As a party to the Convention of St. Germain, Great Britain is bound by the system laid down in that Convention. If therefore the Zanzibar Government is prevented, by clauses in the Franco-Muscat Treaty of 1844, from increasing the customs and navigation tariffs and this is a step which is necessitated by the financial needs of the Zanzibar Government in administering the system imposed by the St. Germain Convention, it may be argued that the restrictive clauses in the Franco-Muscat Treaty should be held to be superseded.

9. Such freedom of action would appear to be in accordance with the English translation of article 2 paragraph 3 of the Convention of St. Germain. The French Government however point to the French text which runs:- "les Etats intéressés conservent le droit de fixer librement les règles et les tarifs de douane ou de navigation.." and they argue that "s'ils le conservent c'est qu'ils l'ont: or dans le cas actuel, l'Etat intéressé n'a pas ce droit, par suite il ne saurait le "conservé". The French text is the only authoritative text but there is some reason to doubt whether the paragraph in question was intended to be read in this restricted sense. In this connection attention is invited to a private letter of November 5th, 1919, to

Mr. Forbes/

Mr. Ferber from Mr. Strachey of the Colonial Office, who was the British representative on the Committee at the Peace Conference dealing with the revision of the Berlin and Brussels Acts. (A copy of this letter is annexed; the original is kept with the Paris archives). Mr. Strachey points out in his letter that the English translations of the Liquor and Arms Traffic Conventions and the Convention revising the Berlin and Brussels Acts are not really translations at all. He states: "They were prepared as English texts, of equal validity with the French. As a matter of fact, the French texts are to a very great extent translations of these English texts. It was only two days before signature that in order to please the French it was decided that only the French text was to be valid. Consequently our texts have to be called translations. They were most carefully prepared, and I think can be accepted without question". It is possible therefore that the French phrase "conserver le droit de fixer librement" was intended to interpret the wider English phrase "reserve to themselves complete liberty of action". There is unfortunately no official information to this effect and in these circumstances it would be difficult to appeal from the authoritative French text to the possible intention of the framers of the article.

X 10. Finally, the validity of the Franco-Muscate Treaty of 1844 can be considered from another point of view. In their protest of 1892, the French Government stated "le traité de 1844 étant perpétuel, ne peut être aboli par les dispositions arrêtées soit à Berlin, soit à Bruxelles, et qui n'ont qu'une durée limitée. Ce ne serait donc pas d'une abolition du traité, mais

simpement/

"l'implication d'une suspension qu'il s'agirait dans l'espace". This point whether a perpetual treaty would be extinguished by an Act whose duration was limited did not at the time present practical importance and it was not therefore dealt with by Her Majesty's Government. Precedents dealing with such a point have however occurred in the past and a Library memorandum on the subject was prepared in 1914 in connection with the German Zanzibar Treaties of Amity, Commerce, and Navigation of 1859 and 1885. In that memorandum the argument put forward, based on the attitude adopted by His Majesty's Government in a similar case in 1913, was as follows: "The treaty of 1859 (with no denunciation clause) between the Hanse Towns and Zanzibar, which by a later exchange of notes became a treaty between Germany and Zanzibar, was superseded in 1885 by a more comprehensive treaty between Germany and Zanzibar which provided for denunciation, and the denunciation of the latter and its termination in 1911 swept the board clear. As to the position with regard to the termination of treaties which have no provision for denunciation, it will be sufficient to mention here that it would appear from precedents that while a treaty containing no time limit can in any case be terminated by the mutual consent of the contracting parties, in the case of one which is commercial in character such consent might from its very nature, as requiring revision from time to time in order to harmonise with changed conditions, reasonably be expected to result from the expressed wish of one of the parties to terminate it. The point was also referred to the Law Officers in 1909, in connection with our Treaty of Amity, Commerce and Navigation of 1825 with

Colombia, who after observing that the question was not free from difficulty, as some of the provisions of the treaty appeared to be of a permanent character, stated that: "On the whole we think that the main object of the treaty is commercial and that it would be held to be temporary in character and terminable by the withdrawal of either party on reasonable notice".

(Sgd.) A.F. Orchard.

FOREIGN OFFICE,

November 1st, 1924.

Mr. Jeffries 26/3/25
7.0/55810/24
Mr. Robertson 27.3.25
Kenya
Zanzibar

215

Mr. Strachey
Sir J. Shuckburgh
Sir O. Davis
Sir G. Grindal
H. Lambert
Sir J. Macdonald
Mr. Ormsby-Gore
Mr. Amery

30

SP

31 March 1925

DRAFT.

SIR

Zanzibar
H. Cr.

I have the pleasure to transmit to you the
acc. copy of a note which has
been prepared in the colonial

office showing the present position,
so far as it can be ascertained
here, with regard to the Zanzibar
treaties.

*the Zanzibar Treaties copy
(in 55810/24)*

It is important that a copy of
this note should be prepared for your information,
and I shall be glad if you
will furnish me with any
comments which you may wish
to offer on this note, and
with

Yrs.

70/55810/24

216

Mr. Jeffries 26/3/25
Mr. Bostanley 27.3.25

Kunya
Zanzibar

Mr. Sanchez
Sir J. Shuckburgh
Sir O. Davis
Sir O. Grindale
Sir H. Lambert
Mr. Ormsby-Gore
Mr. Amery

[Handwritten initials]

Recd. 30/4/25
3

31. March 1925

DRAFT.

SIR

Kunya
Conf.
A.G.

I have to acknowledge the receipt

of Sir Robert Coryndon's disp. No.

(45021/24)

1944 of the 25th July, 1924, in

which you asked for an opinion

as to the effect of the Convention

upon the various Zanzibar treaties

of the Convention signed at Saint

Germain - en - Lays on the 10th of

Sept., 1914, reversing the General Act

of Berlin of the 26th of February,

1885, and the General Act and

Declaration of Brussels of the 2nd

of

The Zanzibar Treaties Commission
1000/24
in 55810/24

7.0. 9/4/24
(17180/24)

7.0. 28/4/24 ✓
(17140/24)

7.0. 27/4/24 ✓
(55810/24)

31/2/25
(at Geneva)

Dft

of July, 1840.

2. I regret that it has not been possible to reply to the despatch at an earlier date.

It was necessary in the first instance to examine the Kangaroo treaties with a view to ascertaining which and what portions of them remain in force. A note on this subject

has been prepared and is enclosed for your information.

It is important that a compilation of this kind should be free from unnecessary and

I shall welcome any comments or corrections which you may consider necessary in connection with this note.

3. With regard to the particular question asked by Sir Robert Gwydon.

of July, 1890.

2. I regret that it has not been possible to reply to the despatch at an earlier date.

It was necessary in the first instance to examine the Zanzibar treaties with a view to ascertaining which and what portions of them remain in force. A note on this subject

has been prepared and is enclosed for your information.

I shall welcome any comments or corrections which you may consider necessary in connection with this note.

3. With regard to the particular question raised by Sir Robert Coryndon,

It is important that a copy of this kind should be sent from necessary and

Mr.
Mr. Strachey.
Sir J. Shackburgh.
Sir O. Davis.
Mr G. Grindle.
Sir J. Masteron Smith.
Mr Ormsby-Gore.
Mr Amery.

DRAFT.

Coryndon, I enclose copies of correspondence with the F.O., from which it will be seen that the question matter has come up in connection with the enforcement of the Port Ordinance, 1922, at Mombasa and other ports in the coastal dominions of the Sultan of Zanzibar. A situation of much difficulty would arise if the French Govt. were to challenge the Kenya import duties on similar grounds to those on which they challenge the port dues, and for this reason it is desirable to avoid drawing

drawing attention to the matter
by any public discussion of
the effect of the convention
of Louis Bernain upon the
treaties. I shall however

be glad to learn the particular
instances in which the subjects
of treaty powers have obtained
special treatment, as stated

in Robert Coryndon's
para 2 of his despatch

(for the Secretary of State)
Signed) W. ORMSBY GORE.

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by any public discussion of
the effect of the convention
of Sinit remain upon the
treaties. I shall however

be glad to learn the particular
instances in which the subjects
of treaty powers have claimed
special treatment, as stated
by Mr Robert Coryndon in
para 2 of his despatch

(for the Secretary of State)
Signed W. ORMSBY GORE

40/55810/24

Jeffries 26/3/25
Mr. Bostwick 27.3 f.

Kenya
Zanzibar

213

- Mr. Strachey
- Sir J. Shackburgh.
- Sir C. Davis.
- Sir G. Grindle.
- H. Lambert
- Sir A. Macdonald-Smith
- Mr. Ormsby-Gore.
- Mr. Amery.

File

SH

31 March

1925

DRAFT.

SIR

1. 0/3.
70.

31 MAR 1925

I am so to ack the receipt
of your letter No A 5261/1974/60 of
the 27th of November, in which was
enclosed a copy of a note from the
French Embassy regarding the
enforcement of the Kenya Port Ordinance
1922, at Mombasa and other ports
of the mandated dominions of H. H.
the Sultan of Zanzibar.

*copy figures
and of minutes on
31/10/24)*
copy to Mr. Amery

2. I am to ~~request you to~~ ^{express concurrence}
~~inform~~ ⁱⁿ her Secty. Chamberlain's ~~letter~~
proposal that no reply should
be sent to the French note.
Shrewsbury

drawing attention to the matter

by any public discussion of

the effect of the convention

of Saint Germain upon the

treasures. I shall however

be glad to learn the particular

instances in which the subjects

of treaty powers have claimed

special treatment, as stated

by Mr Robert Corydon in

para. 2 of his despatch

(for the Secretary of State)
(Signed) W. ORMSBY GORE.

drawing attention to the matter

by any public discussion of

the effect of the convention

of Limit Domain upon the

treasures. I shall however

be glad to learn the particular

instances in which the subjects

of treaty powers have claimed

special treatment, as stated

by Mr Robert Corydon in

para 2 of his despatch

(for the Secretary of State)
Signed) W. ORMSBY GORE

Should the French Govt. press

for a reply, it is suggested that
the question of

the arguments to be adopted

by H. M.'s Govt. ~~might be~~ ^{should then} ~~can~~

~~be~~ be further discussed between

the Foreign Office and the Colonial

Office. ~~when the time comes~~

3. I am to enclose a note

of the most recent figures with

regard to the ~~present~~ proportion

which the number of French

vessels bears to the total number

of ships entered and cleared

at Kenya port.

W. C. BOTTOMLEY

Should the French Govt. press

for a reply, it is suggested that
the question of

the arguments to be adopted
by H. M.'s Govt. ~~might then~~ ^{should then}

be further discussed between

the Foreign Office and the Colonial
Office. ~~when the time comes~~

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of the most recent figures with
regard to the ~~number~~ proportion
which the number of French
vessels bears to the total number
of ships entered and cleared
at Kenya port.

W. C. BOTTOMLEY

Offices 26/3/25

Mr. Bottomley 27.3.25

Mr.

Mr. Strachey

Mr. J. Shackburgh.

Sir G. Davis.

Sir G. Grindle.

Mr. H. Lambert
Mr. J. L. Lamberton-Smith

Mr. Ormsby-Gore.

Mr. Amery.

DRAFT.

Dear Sir,

Henry Hearn, M.P.

the Zanzibar Treasuries
available in 55810/24

70/55810/24

Kenya

Zanzibar

27 MAR
30

For the P.S.'s signature

31 March

1925

I believe that at the time of
the Jubaland debate in the

House of Commons, Mr. Amery
proposed that you should have
a note showing the present
with regard to the Zanzibar
Treasuries

Mr. Amery gave directions
for a note to be prepared, but
the collection of the information
has necessarily taken some time,
and it has not been possible
to send the note to you until
now

now.

In forwarding the note,

I was denied to say that the

subject is one which involves

many difficult international

points. However, they felt sure

that you would appreciate

this, and that you would

exercise great care in the ^{handling} of

me of the matter ^{as} given

in the past.

Ed W. C. ~~Edward Anderson~~