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KENYA
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FRIGN

FRENCH TREATY RIGHTS

1921

TRADERS LICENSING ORDINANCE

JANUARY

The copy of note from French Ambassador drawing attention to certain measures alleged to violate French rights for observations Requests copies of decrees if available.

Previous Paper

22987

Mr. Bollenby: *S. H. R. D.*

This should be registered "Kenya" not "Zanzibar" as the P.O. have made a mistake in their letter ~~concerning~~ the legislation against which protest is made is not Zanzibar but Kenya legislation.

As regards the Traders Licensing Ordinance, we must, I think, take the line ^{that} of Article XI of the French Muscat Treaty of 1844, which conferred the right to buy and sell within the Sultan's dominions such as is enjoyed by Zanzibar subjects unimpeded by "any municipal or exclusive privilege of selling or buying", but would not appeal to prohibit the passing of legislation regulating the manner in which that right shall be exercised, provided that such legislation applied equally to all persons trading in the Sultan's dominions, and that no preference be given to any particular class of such traders. As to that, I might say ^{that} because, under Article XI of the French Treaty, the

no copy because necessary may be made

at subsequent Paper

In reading up the back history of this subject it struck me as curious that all these disputes with the French and other Treaty Powers with regard to the commercial provisions of the Zanzibar Treaties were not ended by the Brussels Act of 1890, which, prima facie, would have appeared to have terminated the special treaty arrangements and to have substituted for them the commercial system established by the Berlin and Brussels Acts, and I have, therefore, thought it worth while in such spare time as I have been able to collect in the last month or so to compile the annexed memorandum giving the past history of the matter. It will be seen from this memorandum that the advantages which it was hoped to derive from the annexation of Zanzibar to the Brussels Act were thrown away by the F.O. in 1900 - ~~we~~ we can only hope that the F.O. will not do the same thing over again with regard to the new Convention.

X

935

Inquire into this paper

In the memo I think it well to look to some effect to H.O. for early strong pointing out that it is essential to decide ^{on} our position ^{with} respect to the Treaty, when the Convention of 10.9.19 takes effect.

4.2.76

I have some fear lest, by their admission that the Treaty of 1844 involves the earlier ~~with~~ ^{with} ~~the~~ ^{the} ~~arrangements~~ ^{arrangements}, it may not be

possible to argue that the Treaty
of 1844 is overridden by the 1919
Convention

Cal. 193. 21

KA 22/31/21

at once

to J.R.

23/11/21

For further communication
on this subject, please quote

A 248/248/60

to any person by name.

RECEIVED
OFFICE

37

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

THE Under-Secretary of State for Foreign Affairs presents his
compliments to *the Under Secretary of State for
the Colonies* and begs to enquire, by direction of the
Secretary of State, whether an answer may shortly be expected to

the Foreign Office letter No. *A 248/248/60* of the

0
432 *20th* January, 1921 respecting *Exemption of French
Citizens in Zanzibar.*

*Mr. [unclear] has
written this has been
and [unclear] at
the [unclear] on
4/4/21*



Foreign Office,

24 March 1921.

J.A.S.

Mr. [unclear] has had for [unclear]

[Handwritten initials]

to any further communication
in this subject, please quote
No. A 248/248/60.
and address,
not to any person by name,

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38

FOREIGN OFFICE.
S.W.1.

January 21st, 1921.

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

Sir:-

With reference to your letter No. ^{F.O.} 35987/20 of July 15th last relative to French Treaty rights in Zanzibar, I am directed by Earl Curzon of Kedleston to transmit to you herewith copy of a Note of January 8th received from the French Charge d'Affaires, drawing attention to certain measures which he alleges have been taken by the Zanzibar Government in violation of French Treaty rights. I am to request that Lord Milner's observations upon the contentions put forward in this Note and to enquire whether the text of the Decrees referred to are available. In this case Lord Curzon would be glad if copies might be forwarded to this Department.

I am,

Sir,

Your most obedient,

humble Servant,

R. Sperling

Under-Secretary of State,
Colonial Office.

Copy

(Translation)

A 248/1000/69

On the instructions of the Minister of Foreign Affairs the French Chargé d'Affaires has the honour of calling the attention of the British Govt to the breach of the Treaty of Amarat of the 17th Nov. 1844 involved in certain measures taken by the Govt of B. E. A. (Colony of Kenya).

These measures apply to the French dependants in the coastal zone of the continent, which forms part of the Dominions of the Sultan of Zanzibar, the obligation of the trading licence provided by the "Traders Licensing Order Aug. 31. 1919" as well as that of the land tax, of the land succession tax & of the income tax, of the land which are according to ^{the terms of the draft published in the} ~~the terms of the draft published in the~~ official Gazette of Vairobi, to come into force at the end of 1921.

Article 7 of the treaty of friendship & commerce

of 17 Nov. 1844, concluded between France & the
State of the Sultan of Muscat, & actually applicable to
Zanzibar, ensure to the French that "commerce shall be
perfectly free & shall be subject to import duty only."

The imposition of any supplementary tax on commerce
is therefore contrary to the express terms of the treaty, & the
obligation of the landing license could not, on any part of the
territory of Zanzibar, apply to French merchants, the same
observations would apply to essentially to the land tax, the
succession tax & income tax, additional taxes from which the
French are immune under the treaty of Muscat. Such immunity
is moreover an established principle in the countries which are
parties to the treaty & only an express provision could invalidate
this principle.

In these circumstances M. de Heurien has been instructed to
request Earl Curzon of Kedleston to be so good as to cause instructions
to be sent to the Govt of the E. A. P. in order that the measures in question
may be revoked in so far as they concern the French ^{who are} settled
in the dominions of the Sultan of Zanzibar.
He takes the opportunity of expressing his knowledge of the highest com-

Sur les instructions de M. le Ministre des Affaires Etrangères, le Chargé d'Affaires de France a l'honneur de signaler à l'attention du Gouvernement britannique l'atteinte portée au Traité de Mascate du 17 Novembre 1844 par certaines mesures prises par le Gouvernement de l'Afrique Orientale anglaise (Colonie du Kenya).

Ces mesures étendent aux ressortissants français dans la zone côtière du continent, qui fait partie des Etats du Sultan de Zanzibar, l'obligation de la patente de commerce édictée par la "Traders Licensing Ordinance August 31st 1919" ainsi que celle de l'impôt foncier, de l'impôt successoral foncier et de l'impôt sur le revenu qui doivent, aux termes du projet publié à la Gazette Officielle de Nairobi, entrer en vigueur à la fin de 1921.

Or l'article II du traité d'amitié et de commerce du 17 Novembre 1844 conclu entre la France et les Etats du Sultan de Mascate et actuellement applicable à Zanzibar, assure aux Français que "le Commerce y sera parfaitement libre et ne sera soumis qu'au seul droit d'importation".

L'établissement de toute taxe supplémentaire sur le commerce est donc contraire aux termes exprès du traité et l'obligation de la patente ne saurait, pour aucune partie du territoire de Zanzibar, s'étendre aux commerçants français. Les mêmes observations s'appliqueraient éventuellement à l'impôt foncier, à l'impôt successoral foncier et à l'impôt sur le revenu, taxes additionnelles dont les Français sont dispensés par le traité de Mascate. Une telle dispense est

d'ailleurs/

d'ailleurs de règle en pays de capitulations et seul un ⁴¹
texte exprès pourrait déroger à ce principe.

Dans ces conditions M. de Fleurian a été chargé de demander à Sa Seigneurie le Comte Curzon de Kedleston de vouloir bien faire adresser des instructions au Gouvernement du Protectorat de l'Est Africain pour que les mesures dont il s'agit soient rapportées en ce qui concerne les Français établis dans les Etats du Sultan de Zanzibar. Il saisit cette occasion pour lui renouveler les assurances de sa très haute considération./.

Ambassade de France à Londres,

Albert Gate House,

8 Janvier 1921.

The important clauses in the Treaty of 1844 between France and Muscat (of which Zanzibar was formerly a Dependency) are as follows:-

Article 2. The subjects of His Highness the Imam of Muscat shall have complete freedom of entrance into, residence, commerce and travel in France, together with their merchandise. The French shall enjoy the same freedom in the States of His Highness the Sultan of Muscat, and the subjects of each of these two countries shall be entitled, in the other country, to all the privileges and advantages which are, or may in the future, be accorded to the subjects of the most favoured nations.

Article 3. The French shall have the power to buy, to sell, or to lease lands, houses and shops in the dominions of His Highness the Sultan of Muscat. No person shall, under any pretext, enter houses, shops or other properties possessed or occupied by French subjects, or by persons in the service of French subjects, nor visit them without the consent of the occupant, unless the French Consul shall have intervened.

The French shall not, under any pretext, be detained against their will in the dominions of the Sultan of Muscat.

Article 10. The duty leviable on merchandise imported in French vessels to the dominions of His Highness the Sultan of Muscat

throughout His Highness' dominions, and their liberty shall not be impeded by any monopoly or exclusive privilege of selling or buying.

None the less, France shall abstain from carrying on trade in ivory and copal gum on the East Coast of Africa, from the port of Tanga, latitude 4° 30' South, to the port of Quiloa, 7° South, both ports included, until such time as England or the U.S.A., or any other Christian nation may be entitled to engage in such trade.

Art. 12.

If a dispute arises as to the value of goods imported into the Custom of Mombasa's territory, and the duties thereon, the Customs authority shall have the right to demand a certified part of the value of such goods, in lieu of the payment of duty, and the merchant shall be bound to deliver the amount so demanded, whenever the value of the goods exceeds the amount payable for duty. The amount so demanded shall be paid to the Customs authority, and any further payment to the Customs authority shall be made in accordance with the provisions of the laws, no matter to what part of the Customs territory the goods are taken. If the Customs authority refuse to allow the goods to be taken into the territory, the goods shall not be taken into the territory, the point at issue shall be submitted to two competent persons, selected, the one by the Chief of Customs, the other by the merchant, who shall value the goods. If the arbiters differ in opinion, they shall nominate a third arbiter, whose decision shall be final, and the duty shall be levied in accordance with the value so estimated.

by such State." This provision had special reference to Zanzibar which at that time was an independent Power.

The Sultan adhered to the Act on the 8th of November, 1886, but with the reservation that "his adhesion to the said Act shall not entail or shall not be supposed to signify his acceptance of the principle of free trade, which, according to Article I of the said Act, shall not be applicable to his territories in the eastern zone which is therein defined, except in so far as he shall assent thereto".

By the Agreement of 14th June, 1890, the Sultan of Zanzibar placed his dominions under the protection of Great Britain, and by Article II of that agreement, it was provided that all the relations of Zanzibar of whatever sort with foreign Powers should be conducted "under the sole advice and through the channel of Her Majesty's Government". By Article III of the Agreement the Sultan agreed to abide by any equitable arrangement that may be come to between Great Britain and Germany as regards the portion of the Sultan's dominions lying between the Umba and Rovuma rivers, and in the same year that territory was ceded to Germany for a payment of 4,000,000 Marks in gold. It may be convenient here also to state that the Benadir Coast was ceded to Italy, at first for a term of twenty-five or fifty years under the agreement of 13th August, 1892, and afterwards in perpetuity

Sulla Tattler p. 74-75

W's Tattler p. 82-83

*all's Treaties, page 89
p. 89-93*

for a lump sum payment of £14,000 under the
exchange of Notes of 13th January, 1890

(Ball's Treaties
page 11)

By the Declaration between Great

Britain and France of the 6th August, 1890

(Ball's Treaties
page 67)

respecting Territories in Africa, France in return
for British recognition of the French Protectorate
over Madagascar recognised the British Protectorate
over Zanzibar, subject to the proviso "It is
understood that the establishment of this
Protectorate will not affect any rights or immunities
enjoyed by French citizens in the territories in
question".

It should be noted that as this
Declaration is subsequent to the signing of the
Declaration attached to
Brussels Act (see below) the rights and immunities
were presumably to be as governed by the Declaration
appended to that Act.

By the Declaration respecting import duties
appended to the Brussels Act and bearing the same
date viz. 2nd July, 1890, the Signatory or Adhering
Powers who had possessions or Protectorates in the
Conventional Basin of the Congo were authorised to
impose import duties at a rate not exceeding 10%
ad valorem, and by an Agreement between Great Britain,
Germany and Italy signed at Brussels on the 22nd
December, 1890, those three parties agreed, so far as
their territories within the Eastern Zone were
concerned, to levy duties "in accordance with the
Customs regulations actually in force under the
Treaties with Zanzibar which provide for an import
duty of 5% ad valorem".

By Foreign Office Circular of the 22nd June,
1891, His Majesty's Government notified the Powers

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original of the

Zanzibar

Zanzibar was declared a free port on the 1st of February 1892. The Foreign Office notice of the 8th February 1892 (Map of Africa by Treaty, Vol. I, p. 31) declared that "on and after that day import duties on all goods coming from foreign countries into the port of Zanzibar would cease ^{and} to be abolished", but that arms and ammunition, alcoholic liquors, and kerosene and similar oils would be ^{ex} accepted. The Note went on to say that "all the above mentioned articles will still remain subject to the duties leviable under existing Treaties with foreign powers or under the provisions of the General Act of the Brussels conference, as soon as the latter shall come into force" (the inference clearly ^{being} that the provisions of the Brussels Act would take the place of the provisions in the Treaties as soon as the Act came into force).

By Foreign Office Circular of the 22nd June 1892 (Map of Africa by Treaty, Vol. I, pp. 312, 313), the British Government notified to the Powers signatories

signatories of the Berlin Act that it had been decided to place the British Protectorate of Zanzibar from the 1st of July following under the free zone provisions of Article 1 of the Act of Berlin. In this Circular it was stated that "the Sultan's dominions will, from the above-named date, (viz., 1st July, 1892) be placed permanently in the same financial position as that in which the Congo Free State was placed by the provisions of the Berlin Act, afterwards modified by the Declaration annexed to the Brussels Act. 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 framed for the free zone by the assembled Powers in 1885".

By this means it was hoped to get rid of the hampering difficulties caused by the Treaty engagements, and to obtain for Zanzibar commercial freedom within the terms of the Berlin and Brussels Acts. The Portuguese, United States and Belgium Governments made no comments on the Circular. They merely sent an acknowledgment and may be taken, therefore, as having acquiesced in the action of His Majesty's Government.

The French and Italian Governments, however, raised objection. The Italian objection was only on a minor point and may be disposed of first. The Italian Government took exception to the notification on the ground

conf. para 634 p. 65

Berlin Act and the qualified nature of his adhesion, and pointed out that 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, 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 she had, therefore, the right to claim its application to her Protectorate of Zanzibar. As regards the Declaration of the 5th August, 1890, the note stated that Her Majesty's Government admitted that they were bound to respect all rights and immunities to which French citizens were entitled in Zanzibar, but pointed out that France had in the previous month become a party to the Declaration with its attendant results and that French citizens could not enjoy any rights or immunities inconsistent with the Berlin and Brussels Acts. The Powers by inviting the Sultan of Zanzibar to adopt the commercial system established by those Acts of necessity surrendered any obligation binding him to them which would have prevented him from acceding to their wishes. This would seem self-evident but in point of fact ~~the~~ ^{XCVI} 6th Article of the Act of Brussels expressly stipulated that the General Act repealed all contrary stipulations

of Conventions previously concluded between the
of Majesty Powers.

Zanzibar ~~was declared a free port~~
~~and a free port~~ remained a free port until
the 15th September 1899 when the 5% import duty
was re-imposed.

Attention was drawn to this decision in a
conversation which the French Ambassador had with
Lord Salisbury on the question of the acceptance
by the French Government of the British tribunals
and the closing of the French Consular Courts, and
certain explanations were asked. In a Foreign Office
note of the 15th February, 1900, replying to the points
raised in this conversation Lord Salisbury stated -
"Finally, Your Excellency wished to have an assurance
that the duties now imposed on French imports into
Zanzibar in consequence of its having ceased to be
a free port, would not exceed the maximum of 5% ad
valorem stipulated by the French Treaty.

I have communicated with Her Majesty's Agent and
Consul-General on this point, and have ascertained that
no compulsory duty will be levied in consequence of
the renewed imposition of duties in excess of
the limit of 5% 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."

And in a further note of the 7th of August, 1900, with
regard to the L.M. Customs regulations, Lord Salisbury
referred to the proposed statistical tax as being
"over and above the 5% allowed by Treaty."

*J.O. Conf. Point
7675 H. 75 2*

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Thus it would appear that in these two notes ~~the Foreign Office abandoned the position which they~~
~~had taken up in 1892, and admitting that the question of~~
import duties was governed by the Treaties, not by the
Brussels Act.

By the exchange of notes of May 1904 with regard to the closure of the French Consular Court at Zanzibar and the recognition by the French Government of the British tribunals, France admitted the right of legal officers armed with proper legal authority to enter the houses etc. of French subjects and protégés, but stipulated that apart from this question the immunities, privileges or prerogatives stipulated by the Treaty of 1890 in favour of France should be maintained in conformity with the declaration signed at London on the 5th August 1890, and that any dispute as to the extent of the above immunities, privileges or prerogatives should be settled by the diplomatic channel. Lord Lansdowne, in his reply acknowledging the receipt of the French note, stated that he had pleasure "in confirming the agreement which is come to, the terms of which are correctly described in Your Excellency's note".

The rate of import duty was raised from 5% to 7% ad valorem on the 1st January 1908, and the French Government immediately protested against this increase as contravening the undertakings given in the Foreign Office notes of the 15th February 1900 and the 7th August 1900 above referred to.

To these representations the Foreign Office replied in a Note dated the 22nd May 1908. In this note the Foreign Office argued that the two notes referred

to had reference only to wharfrage dues and to the statisti-
cal tax and that they "did not deal in any way with the
changes which His Majesty's Government might find it ne-
cessary to make at some future time". Moreover, the
Foreign Office pointed out that it was "not probable that
the right of Zanzibar to levy increased import duties which
had been strenuously defended in 1892, would have been aban-
doned so lightly in 1900". It was, however, necessary to ad-
mit that the French contention was not unassailable, but the
Foreign Office urged that the moderate increase of Customs
duties introduced was necessary to carry out the obliga-
tions of the Brussels Act, and His Majesty's Government
trusted, therefore, that the French Government would not
object to the increased duties being levied; "though, had
the correspondence of 1900 been examined at the time when
the intention of the Government of Zanzibar to increase
the dues was brought to the notice of His Majesty's Govern-
ment, Sir E. Grey would have thought it right to enter into
communication with the French Government beforehand".

To this the French Government replied in a note
dated the 26th November, ^{in which} ~~and in this note~~ M. Cambon re-
ferred to the exact terms of Lord Salisbury's note of the
15th February 1900 and maintained that that note contained
a distinct promise that the rate of import duty would not
be increased beyond 5%.

~~affair had been sent to the Committee~~
No reply ~~was sent to this note~~ but import duty
at the increased rate of 7½% continued to be levied
generally.

H.F.B. 19.3.21.

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Kenya

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Ans'd

DRAFT.

The Under Secretary of State,
Foreign Office.

Downing Street,
8 April, 1921.

MINUTE.

Mr. Battersee.

Sir,

Mr. *b.w.*

I am directed to acknowledge the receipt of your letter A.248/248/60 of the 21st ~~February~~ forwarding a copy of a note from the French Charge d'affaires in which he draws attention to certain measures which he alleges have been taken by the Kenya Government in violation of French Treaty rights.

- Mr. Girdle.
- Sir H. Lambert.
- Sir H. Reed.
- Sir G. Fisher.
- Col. Amery.
- Mr. Churchill.

Copies of the Traders Licensing Ordinance and of the Income Tax Ordinance to which reference is made in this note are enclosed herewith for the information of Earl Curzon of Kedleston. The Land Tax and Land Transfer Tax Bill ~~reference is also made as originally framed has been dropped and a new Land Tax Bill is now under consideration.~~ But it is impossible to say whether the Bill

Draft

in a modified form will be passed or not. It will be observed that the legislation in question is not Zanzibar legislation but Kenya legislation applying to the coastal strip which forms part of the mainland dominions of the Sultan of Zanzibar.

3. As regards the Traders Licensing Ordinance, the Secretary of State holds the view that Article XI of the French Treaty of 1844 to which reference is made in paragraph 3 of the French ^{change d'affaires} note merely confers the right to buy and sell within the Sultan's dominions such as is enjoyed by Zanzibar subjects unimpeded by ^{any municipal or exclusive privilege of selling or buying} but does not prevent the passing of legislation regulating the manner in which that right should be exercised provided that such legislation applies equally to all persons trading in the Sultan's dominions and that no preference is shown to any particular class of such traders. In this connection it may

be observed that it is provided under Article 2 of the Treaty of 1844 that Zanzibar subjects have ^{freedom to trade with other States, under the same conditions of licence of entrance into, residence, commerce, and travel in France as their merchandise} but it is not imagined that the French Government would on account of this provision admit that such persons are exempt from any legislation as regard to these matters that may be generally imposed.

4. As regards the Income Tax and Land Tax (if it be finally decided to impose a tax of this nature) it will be remembered that in the case of the Zanzibar arbitrary and Lighting Rate the Secretary of State for Foreign Affairs has held the view that French citizens are

are not exempt from the payment of municipal rates of F.O. letter A4128/3582/60 of the 14th August and F.O. despatch to Lord Derby of the 14th August enclosed in F.O. letter A4928/3586/60 of the 16th August. The Secretary of State is of opinion that the view which has been taken with regard to the Zanzibar Municipal Rates applies equally to the taxes proposed by the Kenya Government and he trusts that Lord Curzon will concur in this view.

5. As regards the question generally, I am to observe that it may be hoped that as soon as the Convention of the 10th September, 1919, revising the Berlin and Brussels Acts is finally ratified all disputes ^{with} the present nature ^{of} France and the other Treaty Powers ^{have} will come to an end, and in the meantime, it would seem desirable to proceed slowly with any diplomatic discussions regarding such matters. A separate letter is being addressed to the F.O. with regard to the effect of the new Convention in abrogating the commercial provisions of the existing Zanzibar Treaties.

I am, etc.,

(Signed) G. GRINDLE

DRAFT.

MINUTE.

- Mr.
- Mr.
- Mr.
- Mr. Grindle.
- Sir H. Lambert.
- Sir E. Reed.
- Sir G. Frides.
- Col. Amery.
- Mr. Churchill.

HERB. ...

DRAFT.

Under Secretary of State,
Foreign Office.

Downing Street,
8 April, 1921.

*Copy
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MINUTE.

Mr. Batherbee.

Mr.

Mr.

Mr. G. ...

Sir H. Lambert.

Sir H. Read.

Sir G. Fiddes.

Col. Amery.

Mr. Churchill.

Sir,

I am etc., to transmit to you to be laid before Earl Curzon of Kedleston the enclosed copy of a memorandum relating to the commercial provisions in the ~~Zanzibar Treaty~~ Zanzibar Treaty which has been prepared in this Department in view of the various diplomatic discussions relating to Zanzibar with France and other Treaty Powers.

The Secretary of State has hitherto assumed that, as soon as the Convention of the 10th of September, 1919, revising the Berlin and Brussels Acts was ratified the Zanzibar Government would have a perfectly free hand in commercial matters, but in view of the assurance given to the French Government in 1900 to which reference is made in the enclosed memoran-

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B.

may attempt to argue that, just as they maintained
that the Zanzibar Treaties were not terminated by
the Brussels Declaration of 1892, so those Treaties are
not abrogated by the new Convention. As Lord
Curzon is aware it is of vital importance to Zanzibar
in the present financial circumstances to secure ~~the~~
such commercial freedom as may be necessary, to enable
that Government to impose generally the additional
taxation which is essential to meet the increasing
needs of the administration and the Secretary of
State ~~will be glad to have an assurance that~~
Lord Curzon will be prepared to give his full
support to the Zanzibar Government in this matter.
It is desirable to be quite clear as to the position
before the Convention comes into force,
the Secretary of State will be glad to be favoured
with Lord Curzon's observations on the question at
his early convenience.

(Signed) G. GRINDLE

None as altered in
Pencil. Three extra
copies to be made.

The important clauses in the Treaty of 1814 between France and Muscat (of which Zanzibar was formerly a Dependency) are as follows:-

Article 2.

The subjects of His Highness the Imam of Muscat shall have complete freedom of entrance into, residence, commerce and travel in France, together with their merchandise. The French shall enjoy the same freedom in the States of His Highness the Sultan of Muscat, and the subjects of each of these two countries shall be entitled, in the other country, to all the privileges and advantages which are, or may in the future, be accorded to the subjects of the most favoured nations.

Article 3.

The French shall have the power to buy, to sell or to lease lands, houses and shops in the dominions of His Highness the Sultan of Muscat. No person shall, under any pretext, enter houses, shops or other properties possessed or occupied by French subjects, or by persons in the service of French subjects, nor visit them without the consent of the occupant, unless the French Consul shall have intervened.

The French shall, not, under any pretext, be detained against their will in the dominions of the Sultan of Muscat.

Article 10.

The duty leviable on merchandise imported in French vessels to the dominions of His Highness the Sultan

Sultan of Muscat shall in no case exceed 5 per cent ad valorem; and if the merchandise imported by any other nation is admitted at a lower rate, the benefit of this reduction is guaranteed to similar goods imported in French vessels. In consideration of the payment of this single duty, French vessels and their cargoes shall be free of all import duties, export duties, duties in respect of licensing, pilotage, anchorage, and all other taxes whatever, whether on arrival or on departure. No duty shall be levied on the portion of a cargo which is not unloaded from a vessel, and if these goods are subsequently shipped to another place in the Sultan's dominions, they shall not then be subjected to any additional or higher duty. After the payment of the duty above-mentioned, the goods may be sold, wholesale or retail, without paying further duties.

No duty whatever shall be levied from French vessels which may enter the ports of the Sultan of Muscat's dominions for repairs, to victual, or to learn the state of the market.

French vessels shall be fully entitled to enjoy, in the ports dependent on the Sultan of Muscat, all privileges and immunities granted to vessels of the most favoured nation.

Article II.

No article of commerce whatever shall be prohibited, for import or for export, in the domains of the Sultan of Muscat; commerce therein shall be entirely free, and shall be subject only to the sole import duty authorized by the preceding article; and to no other.

The French shall have complete liberty to buy and sell from whom and to whom they think fit

throughout

throughout His Highness' domains, and this liberty shall not be impeded by any monopoly or exclusive privilege of selling or buying.

None the less, France shall abstain from carrying on trade in ivory and copal gum on the East Coast of Africa, from the port of Tangani, latitude $4^{\circ} 30'$ South, to the port of Quilca, 7° South, both parts included, until such time as England or the U.S.A., or any other Christian nation may be entitled, to engage in such trade.

Article 12.

If a dispute arise as to the value of goods, imported into the Sultan of Muscat's dominions, which are liable to the 5% duty, the Customs authority shall have the right to demand a twentieth part of the goods in kind, in lieu of the payment of 5%, and the merchant shall be bound to deliver the $1/20$ th so claimed, whenever the nature of the goods renders this method of payment practicable; but the merchant who shall have paid this duty (in kind) shall not be liable to make any further payment to the Customs for the remaining $19/20$ ths of his goods, no matter to what part of the Sultan of Muscat's dominions it suits him to ship them. If the Customs authority refuse to deduct this $1/20$ th in kind, or if the goods do not lend themselves to such partition, the point at issue shall be submitted to two competent persons, selected, the one by the Chief of Customs, the other by the merchant, who shall value the goods. If the arbiters differ in opinion, they shall nominate a third arbiter, whose decision shall be final.

final, and the duty shall be levied in accordance with the value so estimated.

Article 13.

A French merchant shall not be permitted to put his goods on the market during the 3 days following their arrival, unless, before the expiration of this period, the merchant and the Chief of Customs shall have come to an agreement on the value of the goods. If, within the period of these 3 days, the Chief of Customs has not accepted one of the two methods indicated for the levying of the duty, the authorities appointed by His Highness the Sultan of Muscat shall, on appeal being made to them, compel the Customs authorities to adopt one or the other of these two methods.

Similar provisions, though in varying form, occur in the Treaties with the United States (1823) and Portugal (1879)

The Treaties with Italy (1860) and Belgium (1836) contain "most favoured nation" clauses under which the subjects of these two countries are granted all the privileges and advantages accorded to subjects of the most favoured nation and so confer on those countries the benefits contained in the Treaties with France, the United States and Portugal. The Treaties with late enemy States can be neglected as of course they were abrogated by the war.

By the General Act of Berlin of 1865 the principle of free trade was extended to the "Eastern zone" defined by Article 1 of that Act, within which

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Zanzibar lay. It was, however, provided in the last paragraph of Article I that "in extending the principle of free trade to this eastern zone, the Conference Powers only undertake engagements for themselves, and that in the territories belonging to an independent Sovereign State this principle shall only be applicable in so far as it is approved by such State". This provision had special reference to Zanzibar which at that time was an independent Power

The Sultan adhered to the Act on the 8th of November 1896, but with the reservation that "his accession to the said Act shall not be deemed to signify his acceptance of the principle of free trade, which, according to Article I of the said Act, shall not be applicable to his territories in the eastern zone which is therein defined, except in so far as he shall assent thereto".

By the Agreement of 14th June 1890, the Sultan of Zanzibar placed his dominions under the protection of Great Britain, and by Article II of that Agreement, it was provided that all the relations of Zanzibar of whatever sort with foreign Powers should be conducted "under the sole advice and through the channel of Her Majesty's Government". By Article III of the Agreement the Sultan agreed "to abide by any equitable arrangement that may be come to between Great Britain and Germany as regards the portion of the Sultan's dominions lying between the Umba and Rovuma rivers", and in the same year that territory was ceded to Germany for a payment of 4,000,000 Marks in gold. It

Sail's Treaties
pages 74-75.

Sail's Treaties
pages 82, 83.

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may be convenient here also to state that the Benadir Coast was ceded to Italy, at first for a term of twenty five or fifty years under the agreement of 12th August 1892, and afterwards in perpetuity for a lump sum payment of £144,000 under the exchange of Notes of 13th January 1906.

U.I.'s Treaties, (nos 89-93)

By the Declaration between Great Britain and France of the 5th August 1890, respecting Territories in Africa, France in return for British recognition of the French Protectorate over Madagascar recognized the British Protectorate over Zanzibar, subject to the proviso "It is understood that the establishment of this Protectorate will not affect any rights or immunities enjoyed by French citizens in the territory in question". It should be noted that as this Declaration is subsequent to the signing of the Declaration attached to the Brussels Act (see below) the rights and immunities were presumably to be as governed by the Declaration appended to that Act.

U.I.'s Treaties (nos 112-118)

U.I.'s Treaties (nos 84-86)

By the Declaration respecting import duties appended to the Brussels Act and bearing the same date, viz. 2nd July 1890, the Signatory or Adhering Powers who had possessions or Protectorates in the Conventional Basin of the Congo were authorized to impose import duties at a rate not exceeding 10% ad valorem; and by an Agreement between Great Britain Germany and Italy signed at Brussels on the 22nd December 1890, these three parties agreed, so far as their territories within the Eastern Zone were concerned, to levy duties "in accordance with the Customs Regulations actually in force under the Treaties with Zanzibar, which provide for an import duty of 10% ad valorem".

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Zanzibar was declared a free port on the 1st of February 1892. The Foreign Office notice of the 8th February 1892 (Map of Africa by Treaty, Vol. 1., p. 311) declared that "on and after that day import duties on all goods coming from foreign countries into the port of Zanzibar would cease and be abolished", but that arms and ammunition, alcoholic liquors, and kerosene and similar oils would be excepted. The Note went on to say that "all the above mentioned articles will still remain subject to the duties leviable under existing Treaties with foreign powers or under the provisions of the General Act of the Brussels conference, as soon as the latter shall come into force" (the inference clearly seeming to be that the provisions of the Brussels Act would take the place of the provisions in the Treaty as soon as the Act came into force.)

By Foreign Office Circular of the 22nd June 1892 (Map of Africa by Treaty, Vol. 1., pp. 312, 313), the British Government notified to the Powers signatories of the Berlin Act that it had been decided to place the British Protectorate of Zanzibar from the 1st of July following under the free zone provisions of Article 1 of the Act of Berlin. In this Circular it was stated that "the Sultan's dominions will, from the above-named date, (viz., 1st July, 1892) be placed permanently in the same financial position as that in which the Congo Free State was placed by the provisions of the Berlin Act, afterward modified by the Declaration annexed to the Brussels Act. The existing system under which the tariffs and duties

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are regulated by Commercial Treaties with individual Powers will be extinguished by the substitution of the system framed for the free zone by the assembled Powers in 1885".

By this means it was hoped to get rid of the hampering difficulties caused by the Treaty engagements, and to obtain for Zanzibar commercial freedom within the terms of the Berlin and Brussel Acts. The Portuguese, United States and Belgian Governments made no comments on the Circular. It merely had an acknowledgment and may be taken, therefore, as having acquiesced in the action of His Majesty's Government.

The French and Italian Governments, however, raised objection. The Italian objection was only on a minor point and may be disposed of first. The Italian Government took exception to the notification on the ground that it appeared to include the Somali ports which had been ceded to Italy. Lord Salisbury explained to the Italian Ambassador that it was not intended that the notification should apply to the Northern ports within the Italian sphere and enquired whether the Italian Government would wish the Sultan of Zanzibar should be advised to issue Proclamation putting the ports in question in the notification. The Italian Government agreed to this course, but, as a matter of fact, no further action was to have been taken in view of the French objection.

The French objection was more serious. In a long and carefully reasoned note, dated 23rd August 1892, the French Government took formal exception to the notification, calling attention to the fact that

F.O. Conf. print
6341 p. 45.

F.O. Conf. print
6341 p. 131.

F.O. Conf. print
6341 p. 185.

F.O. Conf. print
6341 pp. 177, 179.

when the French Government on the 5th of August, 1890, agreed to recognize the English Protectorate over Zanzibar, it did so on the understanding that the establishment of the Protectorate did not diminish the rights enjoyed by French citizens in the Sultan's dominions, and maintaining by a series of arguments that it was impossible to annul in this way the existing Treaties.

C. Conf. print
62, pp. 160.
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To this the British Government replied in Lord Salisbury's note of the 31st October, 1892, traversing generally the ground taken by the French Government. The note pointed out that all the Signatory Powers to the Act of Berlin engaged themselves to use their good offices to obtain the consent of a reluctant State, thus proving the anxiety of all the Powers to include Zanzibar, if her consent could be obtained, within the area of commercial liberty as defined by the Act. The note then proceeded to deal with certain arguments based by the French Government on the delay on the part of the Sultan of Zanzibar in adhering to the Berlin Act and the qualified nature of his adhesion, and pointed out that 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, 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 she had, therefore, the right to claim its application to her Protectorate of Zanzibar. As regards the Declaration of the 5th August, 1890, the note stated that Her Majesty's Government admitted that they were bound to respect all rights and immunities to which French citizens were entitled in Zanzibar, but pointed out that France had in the previous

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month became a party to the Declaration with its attendant results and that French citizens could not enjoy any rights or immunities inconsistent with the Berlin and Brussels Acts. The Powers by inviting the Sultan of Iannibar to adopt the commercial system established by those Acts of necessity surrendered any obligation binding ^{him} to them which would have prevented him from acceding to their wishes. This would seem self-evident, but in point of fact Article XVII of the Act of Brussels expressly stipulated that the General Act repealed all contrary stipulations of Conventions previously concluded between the Signatory Powers.

Iannibar remained a free port until the 15th September 1899 when the 5% import duty was re-imposed.

Attention was drawn to this decision in a conversation which the French Ambassador had with Lord Salisbury on the question of the acceptance by the French Government of the British tribunals and the closing of the French Consular Courts, and certain explanations were asked. In a Foreign Office note of the 15th February, 1900, replying to the points raised in this conversation, Lord Salisbury stated - "Finally, Your Excellency wished to have an assurance that the duties now imposed on French imports into Iannibar in consequence of its having ceased to be a free port, would not exceed the maximum of 5% and valorem stipulated by the French Treaty.

I have communicated with Her Majesty's Agent

Agents and General-Consuls on this point, and have ascertained that no compulsory charge will be levied in consequence of the resumed imposition of customs duties. Inasmuch as the limit of 25 cent 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.

And in a further note of the 7th of August, 1900, with regard to the new Customs regulations, Lord Salisbury referred to the proposed stipulation as being "over and above the 25 allowed by Treaty".

It seems difficult to read the assurances given in these regulations in any other way than as confirming the position taken up in 1825, and admitting that the question of import duties was governed by the Treaty, not by the Brussels Act.

By the exchange of notes of May 1894 with regard to the change of the French Consular Agent at London and the recognition by the French Government of the British tribunal, France admitted the right of legal officers armed with proper legal authority to enter the houses, etc., of French subjects and protégés, but stipulated that apart from this question the immunities, privileges or prerogatives stipulated by the Treaty of 1844 in favour of France should be maintained in conformity with the declaration signed at London on the 6th August 1890, and that any dispute as to the extent of the above immunities, privileges or prerogatives should be settled by the diplomatic channel. Lord Lansdowne, in his reply acknowledging the receipt of the French note, stated that he had pleasure "in confirming the agreement which is come to, the terms of which are correctly described in Your Excellency's note".

O. Conf. print
75 pp. 75-76

All's Treaties
p. 106-109

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exact terms of Lord Salisbury's note of the 15th February
1900 and maintained that that note contained a distinct
promise that the rate of import duty would not be
increased beyond 5%.

No reply appears to have been sent to H.
Cannon's note but import duty at the increased rate of
7½% continued to be levied generally.