6383

6933

FOREIGN

1921

7th February

Last previous Paper

Nov. 6962

JUBALAND

CESSION OF TERRITORY TO ITALY
ABROGATION OF ZANZIBAR - ITALY TREATY OF 1885.

Trs copy of translation of Note from Italian Ambassador stating his Govt. can only renounce commercial clauses of Treaty of 1885 with Zanzibar if Italy is assured the guarantee contained in the Convention of Saint Germain re trade within Congo Basin.

See also 7011.

~~Mr. Bailey~~
Mr. Bottomley

The second sentence of the memo does not make sense, and the Foreign Office tell me that the word "not" should be inserted between "has" and "adhered". I am, in such spare time as I can collect, writing a memorandum on the Zanzibar Treaty question in view of other controversies that have arisen, but I do not think that this need be held up for completion of that memorandum. For the reasons which I have explained on 7011, it seems to me quite plain that His Majesty's Government can bind Zanzibar internationally without the necessity for separate ratification on the part of Zanzibar.

As regards, however, the particular convention now in question. It should be observed that Article 1 provides for "a complete commercial equality in the territories under their authority (that of the Signatory Powers)

Next subsequent Paper

(x2) (85104) Wt 14135, 24 Gp. 163 25000, 8 30 W & S Ltd
(101177) 22646/32 ... 5000 10-20

possession, within the area defined by Article 1 of the General Act of Berlin of February 26th, 1885, set out in the Annexe thereto, but subject to the reservation specified in the final paragraph of that Article" - thereby repeating the wording of the last paragraph of Article 1 of the Berlin Act, which was specially applicable to Zanzibar.

It will be seen from the Procès Verbal, with which Mr. Strachey has been good enough to furnish me, that the reservation was inserted at the instance of the Portuguese Representative, who pointed out that Portugal had made reserves to the Berlin Act and had never given complete commercial equality in the part of Mozambique within the conventional basin. As she was not prepared to do so now, she wanted the old limitation contained in the last paragraph of Article 1 of the Berlin Act retained, and this was agreed to. I may perhaps add that I do not understand the position vis à vis Portugal, as Portugal was one of the Conference Powers and therefore bound, it would have appeared, to set up the system established by the Berlin Act in that part of Portuguese East Africa which forms part of the eastern zone, viz the portion north down to the mouth of the Zambesi, but it is unnecessary to go into this question in the present connection. It is only to reply to the Italian Government that the reservation has no application to Zanzibar, as she is not an independent sovereign State.

If there were any possible doubt as to the position of His Majesty's Government in the matter, it would be desirable to point to the various Agreements since 1896 between Great Britain and Foreign Powers respecting Zanzibar, viz. - The Agreement with Russia of 24th August, 1896, regarding commercial relations; Agreement with France 27th June, 1899 regarding duties on French Brandy; Convention with the United States of first May, 1902, respecting Import duties; Convention with the United States of 5th June, 1903,

respecting

respecting payment of Light and Harbour dues by the United States vessels in Zanzibar, in each of which the property was to be taken as belonging to the name of the Sultan of Zanzibar. In the case of all the Treaties etc. relating to the peace settlement so far as I know been signed without any ratification by this country, including Zanzibar and in such as it does the Federated Malay States.

? Reply to Foreign Office [illegible] the above - [illegible] that we had better answer [illegible] the 7(1) in the same letter as the same point of principle is involved.

If the last [illegible] of the above [illegible] approved I will draft a letter for number.

In any further communication on this subject, please quote

No. A 1019/12/60

and address—

not to any person by name, but to—

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

Immediate.

C. O.
6983.
REC
14 FEB 21

THE Under-Secretary of State for Foreign Affairs presents his compliments to the Under-Secretary of State Colonial Office and, in transmitting herewith, by direction of the Secretary of State, copy of the under-mentioned paper, would be glad to be advised what answer should be returned to The Italian Ambassador

Foreign Office,
14th February 1921.

Reference to previous correspondence.

C.O./5935/21 Colonial Office Letter 5935/21 of 11th February

Description of Enclosure.

Name and Date.	Subject.
From The Italian Ambassador Translation of Memorandum No. 310 of 10th February	Proposed cession of territory in S. Jubaland to Italy

Similar letter sent to

Translation.

No. 110.

MEMORANDUM.

At the time of negotiations which took place in London in March, 1920, with regard to the cession of Jubaland, the British Government laid down among other conditions that of the abrogation of the Commercial Treaty between Italy and Zanzibar dated May 28, 1885, alleging that the Conventions signed at Saint Germain on September 10, 1919, contained the guarantees furnished by the said Treaty. As it would appear that the Sultan of Zanzibar has adhered to the said Convention, the Italian Government is desirous that the British Government should obtain the adhesion of the Sultan to the declaration arranged beforehand, i.e., that the Convention of Saint Germain should also be considered binding upon Zanzibar.

The Italian Government, in effect, can only renounce the commercial clauses of the Treaty of 1885 with Zanzibar if Italy is assured the guarantees contained in the Convention of Saint Germain relating to trade within the Congo Basin.

London, February 10, 1921.

Immediate

Downing Street,
24th February, 1921.

DRAFT.

(7011)

Under Secretary of State,

FOREIGN OFFICE.

MINUTE.

Mr Batterbee 25/2/21.
Mr
Mr Batterbee 23.2.21
Mr Grindle.
Sir H. Lambert
Sir H. Read. 24
Sir G. Fiddes
Mr Amery
Lord Milner.
for cabinet

Sir,

I am etc. to ack. the receipt of your letter (T 1322/439/350) of the 14th of February stating that the Italian Embassy at Paris have enquired of H.M. Embassy whether the King's ratifications of the Arms Traffic and Liquor Traffic Conventions signed at Paris and St. Germain-en-Laye on the 10th of September, 1919, implied their ratification by Zanzibar, or whether separate ratification by Zanzibar is necessary in order to bind that State, and asking for the Secretary of State's observations as to the reply to be made to the Italian Government.

2. In making this enquiry the Italian Govt. probably have in mind that Zanzibar adhered separately to the Berlin Act of 1885 (see page 314 of Volume I of the Map of Africa by Treaty). But that of course took place before the Agreement of the 14th of June, 1890 respecting the British protectorate of the Sultan's dominions (see page 308 of the same Volume) under Article II of which the

Sultan

Sultan agreed that "all his relations of whatever sort with foreign Powers shall be conducted under the sole advice and through the channel of His Majesty's Government." Since the date of that Agreement there has been no doubt as to the power of His Majesty's Govt. to bind Zanzibar in all international relations. It is true that the Sultan also sent representatives to the Conference at Brussels in 1890 and ratified separately the Brussels Act of the 2nd July, 1890, but that was merely due to the fact that arrangements for the Brussels Conference were made before the date (14th of June, 1890) of the Agreement under which Zanzibar became a British Protectorate.

3. If any doubt existed as to the power of H.M.G. in this matter, it would be possible to point to the various Agreements signed ~~in~~ since 1890 between Great Britain and foreign Powers ~~relating to~~ respecting Zanzibar, viz:- ~~The~~ Agreement with Russia of 24th August, 1896, regarding commercial relations; Agreement with France of 27th June, 1901, regarding duties on French Brandy; Convention with the United States of 31st May, 1902, respecting Import duties. Convention with the United States of 5th June, 1903, respecting payment of Light and Harbour dues by the United States vessels in Zanzibar; in each of which Her Majesty was described as acting in the name of the Sultan of Zanzibar.

4. To turn to the particular Conventions now in question, Article 1 of the Liquor Traffic Convention reads - "The High Contracting Parties undertake t apply the following measures for the restriction of the liquor traffic in the territories which are or may be subjected to their control throughout the whole of the Continent of Africa with the exception of Algiers, Tunis, Morocco, Libya, Egypt and the Union of South Afric The provisions applicable to the Continen of Africa shall also apply to the islands lying within 100 nautical miles of the coast." Similarly Article 8 of the Arms Traffic Convention reads - "The High Contracting Parties undertake, each so fa as the territories under its jurisdiction is concerned, to prohibit the importation of the arms and ammunition specified in Articles 1 and 2 into the following territorial areas .....

1. The whole of the Continent of Africa with the exception of Algeria, Liby and the Union of South Africa. Within this area are included all islands situate within a hundred nautical miles of the coast .....".

In view of the above there would appear to be no question that the King's ratificatio of the two Conventions covers Zanzibar, an that separate ratification on behalf of Zanzibar is not necessary.

5. I am to take this opportunity

[illegible] the Parcel [illegible] by H.M. [illegible] to Zanzibar

also to reply to your letter (A 1019/12/60) of the 14th of February, in which a similar question is raised with regard to the Convention signed at St.Germain-en-Laye on the 10th of September, 1919, revising the General Acts of Berlin and Brussels. As regards, however, this ~~particular~~ Convention, it ~~we~~ observes that Article 1 provides for "complete commercial equality in the territories under their authority (that of the Signatory Powers) within the area defined by Article 1 of the General Act of Berlin of February 26th, 1885, set out in the Annexe thereto, but subject to the reservation specified in the final paragraph of that Article" - thereby repeating the words of the last paragraph of Article 1 of the Berlin Act which had special reference to Zanzibar. As it ~~it~~ would appear, ~~however,~~ from the Procès ~~verbal~~ Verbaux of the Commission on the Revision of the Acts of Berlin and Brussels (see especially page 105 of the print), that the reservation was inserted at the instance of the Portuguese representative, who pointed out that Portugal had made reserves to the Berlin Act and had never given complete commercial equality in the part of Mozambique within the Conventional Basin. The reservation can, however, have no application now to Zanzibar which, as above explained, is no longer a "sovereign independent State", and this can be explained to the Italian Govt. if

if they raise the point.

6. In the meantime it would appear sufficient to inform the Italian Govt. that the King's ratification of all three Conventions covers Zanzibar, and that separate ratification on behalf of Zanzibar is not necessary.

I am, etc.

(Sgd) H J Read