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previous Paper

22056

Status of Protectorate  
Association in a British possession

Submitted for comment memorandum by Crown  
Advocate on procedure to be adopted.

Mr. A. C. Cox.

I enclose a copy of the ...  
... of the Anglo-Siam  
... of 1890 ... of the ...  
... by Treaty (Vol. II)  
I think that the first thing to be done  
is to send off of 22056 of my ...  
letter of 26 July + of the ...  
to the F.O. for their ...

H. J. R.

23/8/11

Mr. J. J. ...

HJR  
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Copy shown to ... 1911 17 April 1911 ...

subsequent Paper

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COLONIAL OFFICE,  
LONDON.

21st Decr. 1910.

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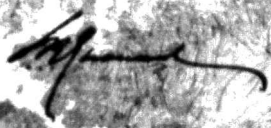
Dear Mr. Mead,

*4205*

With reference to your semi-official letter on the subject of the procedure to be adopted to annex the British East Africa Protectorate as a British possession, which was raised on the question of the naturalisation of aliens, I beg to forward a memorandum drawn up by the Crown Agents for consideration.

I hope this matter can be taken up while I am in England.

Yours sincerely,



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MEMORANDUM on the Procedure to be adopted to annex the  
East Africa Protectorate as a British Possession.

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For the purposes of this Memorandum it would be convenient that the Protectorate should be deemed to be divided into three parts, namely:-

- (1) Lands within the Dominions of the Sultan of Zanzibar.
- (2) Lands within the Dominions of the Sultan of Vitu.
- (3) All lands not included in (1) or (2).

The dominions  
of the Sultan  
of Zanzibar.

2. With regard to the question of the advisability of annexing the mainland dominions of the Sultan of Zanzibar.

The treaties between the Powers and Sultan of Zanzibar render it impossible for this Administration to make and enforce as against subjects of the treaty powers laws which are elsewhere admitted to be proper and necessary.

Scarcely an Ordinance is passed which does not call forth a formal protest from one or all of the Foreign Consuls. In some cases I have been able to advise that the protest is not well founded. In other cases I have had to advise that the law cannot be enforced as against the persons or property of subjects of the Treaty Powers without infringing the provisions of treaties with the Sultan.

A notable instance is the Customs Ordinance which has recently become law, and which is based on

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the English law which has been generally adopted in British Colonies. Some of the provisions of that Ordinance recognised in England and elsewhere as necessary and proper for securing to the Government the customs duties leviable and for preventing smuggling cannot be enforced in relation to ships belonging to subjects of the Treaty Powers. By reason of the Treaties this Administration is prohibited from imposing and levying legitimate taxation, municipal rates or charges and port and harbour dues. No Probate duty is leviable on property in the Coast Strip forming part of the estate of a foreign merchant or resident, unless the person administering the estate has reason to apply to the Courts for assistance in collecting monies due to the estate.

So long as the legal status of Slavery was recognised in the Coast Strip there might have been some objection to annexing that part of the Protectorate. Now that the legal status of Slavery has been abolished throughout the Protectorate I can think of no objection to annexation, whilst on the other hand serious obstruction to the proper Administration of the Protectorate would be removed if the Sultan were induced to cede to Great Britain his dominions in the Protectorate. Since the Sultan has withdrawn the reserve under which he gave his adhesion to the Berlin Act, and the fiscal provisions of that Act as modified by the Brussels Act already apply to the Sultan's Dominions within the Protectorate, the provisions of Article 35 of the Berlin Act would not interfere with the levying of the

Customs duties now collected on the Coast, were the Dominions of the Sultan ceded to Great Britain.

I am not in a position to suggest on what terms the Sultan could be induced to cede his dominions within the Protectorate. He now receives £17,000 a year from the British Government in consideration of his allowing the British Government to administer his dominions within the Protectorate and to retain the duties, taxes etc., levied within such dominions. Of the £17,000 paid to the Sultan £5,000 represents interest on the £200,000 paid to the B.E.A. Company for the surrender of their concession and property in the Protectorate.

Witu.

3. With regard to the territories of Witu it would appear that all that is necessary in order that such territories may be acquired as a British Possession is that the present Sultan of Witu who was appointed by the British Government, and is, to all intents and purposes, a servant of the British Government, should be advised to cede his territories.

Germany withdrew her Protectorate over Witu in favour of Great Britain in 1890. Great Britain engaging to recognise the Sovereignty of Witu over the territory extending from Kipini to the point opposite the Island of Kwyno (Anglo German Agreement 1890 Article 2).

In consequence of the Witu rebellion in 1890-91 the Sultan, Fumo Omari, was deposed and for five years no other Sultan was appointed, the territories of Witu being administered first by the B.E.A.

Company and afterwards by the Sultan of Zanzibar.

The present Sultan, Omar bin Mohammed, who is not connected with the Witu Dynasty, was made Sultan in 1895.

He receives a salary of £300 a year for services rendered to the Government similar to those rendered by Liwalis in other Districts. He collects no taxes, duties or dues on his own account and exercises no powers qua Sultan which are not exercised elsewhere by a Liwali.

For an immediate increase in his salary as a Liwali and a guaranteed pension on retirement he would doubtless be quite willing to cede his Sovereign rights over Witu. Having regard to the provisions in the Anglo-German Agreement it would seem that it would be better to obtain the formal cession of Sovereignty from the present Sultan rather than to wait until his death and then annex the Witu territories.

The S.E.A. Company concluded some sixty-one treaties with Native Chiefs by which the latter purported to cede to the Company all their Sovereign rights and rights of government over all their territories, countries, peoples and subjects.

From the records at my disposal it would appear that all these treaties were with tribes living within 200 miles of the Coast. But it may be that other treaties of which I have no knowledge were entered into by the Company.

Since

Since the Administration of the Protectorate has been taken over by the British Government, it has not, so far as I have been able to discover, been considered necessary to require any of the Native tribes to agree through their representatives to submit to the Government established by His Majesty. Government has been imposed on all tribes whether they desired it or not, and if any person or body of persons amongst them even possessed any claims to exercise Sovereign rights, such claims have not been advanced whilst the British Government has been administering the Protectorate.

It would doubtless be possible to obtain from representatives of the various tribes and sub-tribes a formal surrender to His Majesty of all Sovereign rights over the lands and native peoples of the Protectorate, should it be considered that such surrender was necessary or desirable.

If Sovereign rights in any person or body of persons had been recognised it would be proper that the surrender of such rights should be obtained before the lands within this Protectorate are annexed as British Territory. Where, however, Sovereign rights have not been recognised in any person or persons and it has not been considered necessary to require all uncivilized people to submit to be governed by the British Government it is somewhat difficult to support the contention that the British Government should obtain a formal surrender of any claims to Sovereign rights before annexing the lands of such people as British Territory.

It is true that the lands within this Protectorate are now governed under and in accordance with Orders-in-Council made under the Foreign Jurisdiction Act, but it is submitted that this form of government was established not because it was considered that the uncivilized tribes to be governed were possessed of any Sovereign rights, which should be ceded before the lands they possessed could be annexed, but for the reason that until effective control has been obtained over uncivilized races it is, for obvious reasons, more convenient that lands occupied by them should be administered as a Protectorate and not as a part of the territories of the Protecting Power.

The British Government by its Officers appointed for and in connection with the Administration of the Protectorate, by settlers and missionaries living under the protection of the Government established is in occupation of practically the whole of the Protectorate. There are some of the outlying portions of the Protectorate which are not at present fully administered but I believe I am correct in stating that the Protectorate as a whole has been brought under such effective control as to prevent any danger of internal disturbance of a serious nature arising in any part of the Protectorate.

It would appear that the time is now ripe for the formal annexation of those territories, which, I presume was always intended should be effected when effective control had been established throughout the Protectorate.



5. I am not aware of any instance in which territories proclaimed to be a British Protectorate have been annexed as a British Possession. It would seem, however, that after the cession of all recognised Sovereign rights have been obtained the annexation of lands not subject to any recognised Sovereign rights would be accomplished by any declaration or act indicating an intention to annex and retain such lands as British Territory. Letters Patent, resiting occupation effectively established and the fact of annexation and conferring Crown Colony Government in substitution for the Government established by or under Orders-in-Council under the Foreign Jurisdiction Act, would, it is submitted, be a convenient and sufficient mode of notifying that the East Africa Protectorate had been annexed as a British Colony.

(Sd.) G.M. COBBE,

Crown Advocate.

Nairobi,

6th November, 1910.

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U.S. of S.  
F.O.

Given Date

MINUTE.

- Mr. Fenwick 28/12
- Mr. Butler 29
- Mr. Fildes
- Mr. Just
- Mr. Cox
- Sir C. Lucas
- Sir F. Hopwood
- Col. Seely
- ~~Lord Curzon~~
- Mr. Harcourt

In  
I am directed by Mr. Sec. Harcourt  
to transmit to you, the said  
before Sec. Gen. E. Grey,

~~of a copy of the~~  
correspondence  
dispatch from the Governor

of the Cab. ~~and~~ ~~concerning~~  
papers relating to the  
annexation of the British  
East Africa Protectorate as a  
British Protectorate

number Cab. 15 June 1906

22056

to Sir P. G. G. 20 July

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to Sir P. G. G. 20 Dec

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have relation to, when  
in force, as has not  
been to send the memoranda  
22056

2. Mr. Harcourt will  
be