

1911

EAST AFR. PROT.
ZANZIBAR

40012

C/O
40012
Recd
P. 14

Foreign

Date.

Mainland Dominions
of Sultan of Zanzibar

13 Dec.

at previous Paper.

for
347/62

Would prefer to defer obit's pending receipt of
his arguments for proposed change of a *Table de*
Documents. Received appear to be the correct copy
Alaska Bd, which presumably, Co. will furnish.

copy conveyed by post 5 July 12
78 6236:12

~~Mr. Fiddes~~

Mr. Fiddes,

The extent of the dominions of the Sultan of Zanzibar within the limits of the East Africa Protectorate is fixed by Clause 1 (2) of Lord Idlesleigh's note to the German Ambassador dated 1st November 1886. (Pages 884 and 885 of Vol. III of Hertslet's map of Africa by Treaty, 1909 Edition). By the exchange of notes which took place at that time the German and British Governments mutually recognized the sovereignty of the Sultan over certain territories on the mainland. The depth of the Sultan's dominions from the coast is defined in the following words:- "The coast line has an ^{fixed} internal depth of ten sea miles measured from the coast direct into the interior from high water mark".

The question of the precise meaning of this definition began to be agitated in 1898. It was then desirable

142) W. 22061-14
20. 1/11. A. & B. W.

Subsequent Paper

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desirable to mark a point on the track of the proposed Uganda Railway to show the inland boundary of the Sultan of Zanzibar in order to facilitate the acquisition of land for the construction of the railway. Sir Arthur Hardinge in his despatch No. 221 of the 19th July 1898 pointed out that in the neighbourhood of Mombasa several arms of the sea extended nearly ten miles inland, so that high-water mark was in many cases a considerable distance from the general line of the coast, and stated that the actual points at which the boundary posts on the line of the railway had been erected though nineteen miles from Mombasa ~~was~~ only ten miles inland from the head of one of these inlets. It appeared from his despatch that a map had been drawn up by Mr. Whitehouse, the chief engineer of the Railway, reproducing in the interior the indentations made in the actual coast line by the tidal creeks and arms of the sea and thus giving an extraordinarily straggling line as the inland boundary of the Sultan's dominions. Sir A. Hardinge himself preferred to draw from the head of each of these creeks a circle with a radius of ten miles inland, stating that this was the principle on which the Imperial British East Africa Company had acted and that it was more in harmony with the spirit of the Anglo-German agreement, the intention of which was, he said, to recognize the Sultan's sovereignty over the districts in which, as within ten miles of his ships, his control was undoubted and effective. He stated, however, that the matter was one not involving any political or administrative consequences, (a remark which it has not taken long to falsify), and that he had agreed to the boundary mark on the Railway being fixed at a distance of nineteen miles 1600 yds. from Mombasa. The Government of Zanzibar were informed of this at the time.

Pages 167
168 of F.O.
print 7099

That might
be inland
the course
navigate
etc

The

The Foreign Office referred this despatch to the Director of Military Intelligence, who said that subject to a ruling based on knowledge not in his possession as to the meaning and intention of the Treaty, he would be inclined to consider any claim of the Sultan of Zanzibar to a frontier at a distance of ten sea miles from the extremities of creeks as little short of preposterous. He pointed out that by the agreement this distance was to be measured from the coast and he did not see how it was possible to consider the extremities of the creeks to be points on the coast unless it were admitted in principle that all points situated on the shores of inland waters affected by the tide should be so considered. He pointed out that, if this were admitted, it would be difficult to argue that Richmond was not on the coast of England or that places situated one hundred miles or more up the Amazon are not on the coast of South America. Sir J. Ardagh concluded by expressing the opinion that the measurement in the present instance should be taken from the actual coast line of the open sea, excluding estuaries, inlets, and mouths of rivers.

The opinion of the Director of Military Intelligence was conveyed to Sir A. Hardinge, who adhered to his own view that the system hitherto adopted locally of fixing the boundary by measurement from the heads of creeks and estuaries should continue to be followed, and deprecated making any change which might affect localities previously recognized as lying either within or without the Zanzibar dominions.

Intelligence
 Vision Note
 Sept. 26th
 98. Pages
 0, 241 of F.O.
 mf. print
 90.

dominions. Lord Salisbury agreed that in the particular case of the boundary mark on the line of the Railway the demarcation arranged should be adhered to, but ^{subjected} that care should be taken to place on record, by some written communication from the British Agency to the Sultan's Government, that the line was ^{wholly} one of mutual convenience and must not be taken as having been laid out in strict accordance with the text of the agreement of the 1st November 1886 or in conformity with the principles internationally accepted as governing the demarcation of boundaries similarly described.

Since then we have had the Alaska boundary question. I understand that in that case the award went against this country, and that it was decided that the boundary should follow the sinuosities of the coast including deeply indented inlets and arms of the sea. I also understand that the British case in that question was considerably prejudiced by the existence of British maps showing the boundary in this way and by the practice which had been actually followed in observing the boundary.

It would seem that we are in danger of being similarly hampered in the present instance by previous practice and observance.

I do not think ^{that} it would be the least use to hurl at Sir Percy Girouard a mass of correspondence about the Alaska boundary. It would probably be impossible for him to determine what bearing it had on the present case or to what extent he could base arguments upon it. That is clearly a Foreign Office matter, though they

seen

A
F.O. despatch
No. 116 of
26th April
1899, page 1
of F.O. print
7401.

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seen eager to avoid the responsibility.

I think ^{you} would reply referring to the Foreign Office correspondence quoted above saying that Sir Percy Girouard's reasons for ^{trying} to restrict the width of the coast strip as much as he legitimately can are ^{no doubt} based on administrative and political grounds connected with land titles and the position of the subjects of foreign powers, that Mr. Harcourt sympathizes with these reasons and shares the Governor's desire that the width of the coast strip should be restricted to the narrowest dimensions compatible with the legitimate interpretation of the ^{agreed} document by which it was recognized, and that he would be glad to be furnished with the opinion of the Secretary of State for Foreign Affairs as to the possibility of maintaining the attitude that the measurement should be made from the actual coast line of the open sea and should exclude estuaries, inlets, and mouths of rivers, due regard being had to the actual wording of the agreement with Germany ~~on the subject~~ and to the award in the Alaska boundary question or any similar precedent of which the Foreign Office may be aware. He will also

ask whether the reservation referred to above was actually made

The Germans also submitted to a coast strip in the agreement of 1886, but in 1890 they bought out the Sultan's sovereignty (with British concurrence) for £200,000. otherwise we might have had

their assistance in narrowing the dimensions
of the Great Staff. As it is, there is no room
for a deal with them on the point.

Staff

Jan

Should we not point out that,
having regard to the F.O. despatch
No 116 of Apr 26 1899 referred to above,
Sir P. Stourmont's view, though it differs
from Sir A. Henderson's, can hardly be
said to involve a change in the
attribute hitherto adopted. The
views then adopted of the F.O. in other
an exception from the ordinary British
policy, due to ^{particular} ~~particular~~ circumstances.
C.T. 10/1

I don't follow: the despatch of 26/4/99
definitely implies Sir A. Henderson's boundary
as being fixed for historical convenience "(1) &
therefore it doesn't matter whether or not it was
drawn in accordance with the original agreement
between G. Britain & Germany (i.e. I see it
certainly was not). I don't see how we can go
back on the line unless the Sultan doesn't
question it. — But we might stand this on the
F.O. as Mr. B. also suggests. C.T. 11/1

I agree with Mr. Diddis. After all the matter
makes no practical difference to the Sultan,
and I think what the Gov. does know we
might get him to suggest a practicable
line following Lord H's generally.

If the line is definitely known most of the
inconveniences will disappear

250

Meantime should to F.O. as proposed.

Well

Ed 12/1

not being able to get a copy of
 the great coast map the despatch
 I have referred to from the 20
 it is an unauthorised document
 for a point further which I have
 suggested and I should advocate.

Sir A. Hardinge to the Marquess of Salisbury — Received January 12, 1898

(No. 388.)
 My Lord,

Mombasa, December 13, 1898

I HAVE the honour to submit the following observations on the Memorandum by the Intelligence Division of the War Office, enclosed in your Lordship's despatch of the 26th of the 22nd October, respecting the inland boundaries of the Sultanate of Zanzibar.

In that Memorandum Sir John Ardagh raises two questions:—

1. The calculation of the inland boundary from the heads of creeks or estuaries as against the general coast-line; and
2. The accuracy, assuming that the inland boundary should be so calculated, of a point at present marked by boundary posts on the line of the Uganda Railway.

As regards the first of these two questions, I would venture to submit that it is now late for us to formulate the theory that the inland frontier of the Sultanate should be reckoned from a line drawn across the mouths of the bays and creeks. Such an interpretation might in some ways be convenient, as it would immediately extinguish the slavery and the Treaty rights of foreigners at several important centres at which we have hitherto enjoyed legal recognition, but it would be contrary to the view sanctioned by the usage of the last twelve years and recognized by the three Administrations, that of the Sultan, of the Imperial British East Africa Company, and of the Protectorate, which have governed the coast since the delimitation of 1886. When it first came to this country in 1894 and inquired about the inland limits of the Sultanate, was told both by the Company's officials and by the Zanzibar Government that they extended 10 miles inland from high water on the coast, including in the term "coast" the shores and heads of the Kilifi Creek, and of Ports Tudor and Reitz, between which is the Island of Mombasa, and that, therefore, Rabai, Ribe, Gonjoro, Tunganiko, and several other places of less importance were, though more than 10 sea miles from the actual sea-board, included within the Sultan's dominions. The reason for this view, the correctness of which is now for the first time questioned, and which finds expression in the official map of the late Company and in that laid before Parliament in my last annual Report, was probably the presumption that the Commissioners intended, in accordance with your Lordship's instructions to Colonel Kitchener, to confirm the Sultan in the possession of all places at which he exercised, at the time of their inquiry, effective authority, and that there was no doubt that he did so in the towns and villages above mentioned, which had always been considered as within the boundaries of the Vilayets of Mombasa and Takaungu respectively, his authority being really effective 10 miles and from any point accessible to his vessels. And, although I have not all the papers on the subject of the boundary negotiations before me, I am disposed to think that this was the real intention of the Commissioners, for in the special *procès-verbal* of the 26th June, containing their so-called "unanimous opinion" ("Africa No. 3, 1887," p. 35), they recognize the Sultan as entitled to an internal depth of 5 miles along the

coast between Vanga and Takaungu, but to a radius of 10 miles round Mombasa, thus suggesting that behind Mombasa his authority extended inland twice as far as on the rest of the coast.

This "unanimous opinion" appears, however, to have hardly deserved the name. Lord Bunsen, writing about it on the 17th August to Sir E. Layard, observes that "the British and French Commissioners had recognized the title of the Sultan of Zanzibar to the whole coast-line which he claimed, while the German Commissioner had only recognized his rights to a certain number of points," and it is clear that the German Government was then desirous of restricting His Highness' territory within the narrowest possible bounds. But the claims of the Sultan, which the British and French Commissioners recognized, certainly included Rabai and Tanganiko, both of which were included in his domains, and at the latter of which, 15 miles up the Kilimashere he had a custom-house, though both the Rabai people and Sheikh Salim-ben-Hamm-el-Masri, of Takaungu, were no doubt left very much to themselves.

But, whatever may have been the real intention of the Commissioners, it would, I fear, cause very great practical inconvenience if we were now suddenly to construe it in opposition to the usage of the past twelve years.

Successive Foreign Secretaries, including your Lordship, in the instructions which they have issued respecting slavery and respecting the reception and emancipation of slaves at Rabai have treated that place as being a part of the Sultan's dominions, and have thus acquiesced on behalf of Her Majesty's Government in the opinion held by the local authorities. The Courts of Justice, both Consular and native, have, for the last twelve years, acted on the assumption that Rabai, Mazeras, Ribe, Tanganiko, and Gonjoro, were in Zanzibar territory, have applied Sultan's Decrees, confirmed titles and settled cases of land tenure and matter affecting the rights of foreigners thereon, that assumption, and "The Native Courts Regulations, 1897," approved of by your Lordship, embody in their delimitation of the vilayets the view hitherto held on the subject. The German Mission settlement at Jimba, 3 miles north of Rabai, has moreover, always been regarded by the German Consulate at Zanzibar as being just within the limits of the Sultanate, and a non-recognition of the Treaty rights of the missionaries—which would be an actual consequence of an alteration of the old boundary—would probably entail a controversy with Count Hardenberg as to the meaning of the Arrangement of 1886 between the Earl of Iddesleigh and Count Hatzfeldt. I should therefore, strongly deprecate, as likely to engender unnecessary confusion and complications, besides being unintelligible to the Arabs and natives, an alteration of the frontier as hitherto understood by all parties locally interested in it, and I believe that Sir John Ardagh, if he takes the considerations I have endeavoured to indicate into account, will reconsider the advisability of the change proposed by him.

Assuming that this is so and that the old boundary is maintained, there is next the question of the point at which the railway crosses it. Mr Whitehouse states in a note just received, that he "worked on the assumption that the boundary was to be 10 miles from high water and took a fair average line" without allowing for the difference between sea and statute miles, and he adds that "to be exact and keep to the points we fixed high water, we should be 2 miles further inland."

I would therefore propose that the posts be shifted 2 miles further up the line which will place them a little over 21 miles from the actual town of Mombasa.

I have, &c.

(Signed) ARTHUR H. HARDINGE.

40012

Recd
14/12/11
Foreign Office

December 13 1911.

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Sir:-

I am directed by Secretary Sir E. Grey to state, for the information of Mr. Secretary Harcourt, that he has had under his consideration your letter of the 4th ultimo respecting the inland boundary of the Mainland possessions of the Sultan of Zanzibar. Sir E. Grey would prefer to defer his observations on the matter until he has received Sir P. Girouard's arguments in favour of a change in the attitude hitherto adopted.

As regards the documents required by Sir P. Girouard I am to suggest that the Governor is probably in possession of the correspondence between this Department and Sir A. Hardinge, to some of which he refers by number and date. It appears probable that all he wishes to obtain is correspondence respecting the Alaska boundary which might bear on the question and which can presumably be supplied

by

Under Secretary of
Colonial Office

for
3/11/11

... and ...
The United Kingdom of Great Britain
Foreign Office
London

(43878/11)

by your Department.

I am,

Sir,

Your most obedient,

humble servant,

W. Langley



Downing Street,

18 January, 1912.

DRAFT

UNDER SECRETARY OF STATE
FOREIGN OFFICE.

MINUTE.

Sir,

Mr. Butler. 16th Jan.

I am directed by Mr Secretary

Mr.

Harcourt to acknowledge the receipt of

Mr. Fiddes. 17

Sir H. Just.

your despatch no. 43678/11 of the 13th of

Sir J. Anderson

Lord Emmott.

December relating to the inland boundary

Mr. Harcourt,

of the Mainland Dominions of the Sultan
of Zanzibar.

I am to request you to inform

Secretary Sir E. Grey that Mr Harcourt, at-

attention has now been called to the follow-

ing correspondence on this subject:-

despatch
Sir A. Hardinge's to Lord Salisbury
no. 221 of the 19th July, 1898.
Intelligence Division note of the
26th September, 1898.
Sir A. Hardinge's despatch to Lord
Salisbury, 13th December, 1898. *Case 11. 16*
Lord Salisbury's despatch to Sir A.
Hardinge of the 26th December, 1899.

*Amoy (Luffing) 4444/12
6236/12*

*70 base 2
Copy to Mr 5 July 12*

*the papers should be
top than for be present
that the volume relating
the F. B. E. G. C. should be
forwarded to the Secretary. It
to be returned here
immediately. If the F. B. E. G. C.
is used it should be used
according to the regulations. If not
more.*

No 238 of the

It appears from this correspondence that divergent views have long been held as to the ~~precise~~ ^{proper} situation of the boundary, but that ~~a~~ ^{it was decided to accept for practical purposes} boundary mark on the line of the

Uganda railway fixed more or less in accordance with Sir A. Hardinge's interpretation of the ~~discussion~~ ^{description} of the boundary as given in Lord Iddesleigh's note to the German Ambassador dated the 1st of November, 1886,

~~was accepted for practical purposes.~~ It was, however, stipulated in Lord Salisbury's ^{to what} despatch No. 116 of the 26th April, 1899, that

care should be taken to place on record by some written communication ^{from} the British Agency to the Sultan's Government, that the line was merely one of mutual convenience, and must not be taken as having been laid

out in strict accordance with the text of the Agreement between Great Britain and Germany embodied in the notes of the 29th 40th and the 1st November, 1886, or in

conformity with the principles internationally accepted as governing the demarcation of boundaries similarly described, but it would

3 It would appear

appear from Sir A. Hardinge's despatch No. 388 of the ^{13th} ~~6th~~ December 1898 that the ~~correspondence~~ ^{case} may be prejudiced by the practice actually followed in regard to the boundary at that time, and by the official map of the late Imperial British East Africa Company and the map included in Sir A. Hardinge's report on the condition ^{and progress} of the Protectorate ^{to} of the 20th July, ¹⁸⁹⁷ ~~1899~~ which was laid before ^{the} ~~the~~ Parliament in December of that year (C. 868).

4. Mr Harcourt has no doubt that Sir P. Girouard's reasons for wishing to restrict the width of the coast strip are based on administrative and political grounds connected with titles to land and the position of the subjects of foreign powers. Mr Harcourt sympathises with these reasons, and shares the Governor's desire that the width of the coast strip should be as narrow as ^{may be} possible consistently with the ^{agreement} ultimate interpretation of the agreement by which it was recognised.