

EAST AFR. PROT.  
N<sup>o</sup> 43707

43707  
14 DEC 07

Number N<sup>o</sup> 499

(Subject)

1907

Sultanate of Wita

Other was the peculiar position it occupies  
with regard to E.A.P. as regards sovereign rights and  
honors of the Sultan. Consider that time has come  
for a revision of the position, and if art. 2 of the  
Treaty is to remain in force, the Sultan's  
rights must be preserved.

(Minute)

Mr. Read

We should tell  
him so, when  
we reply,  
W.S.

This def. Act. has been  
conf. at least of not merit.

Copy to F.O. for their  
dear Mr. [unclear]

S. [unclear]

to 1925-56

Governor's Office

43707

Native

Rec 14 DEC 07

November 22nd 1907.

*Handwritten notes:*  
Sultan of Witu  
Sultan of Witu  
Sultan of Witu  
14/11/07  
EAST AFRICA PROTECTORATE.

No. 499

(Incl. 1)

My Lord,

I have the honour to report that in view of an order which was recently made by the Sultan of Witu with regard to the collection of India-rubber in His Highness's dominions, which order was enforced by the Acting Collector of Lamu, the Principal Judge has asked me to inform him what authority the Sultan had to make such an order. This question raises in a concrete form the whole matter of the Sultan of Witu's position and powers within his dominions, a matter which, as far as I can ascertain, has never been defined, but which, in view of the fact that questions are likely to arise in the near future if the Tana River is opened up to European colonization, should be

clearly

H.M. PRINCIPAL SECRETARY OF STATE

FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

(2)

clearly recorded.

2. By Article 2 of the Treaty of Berlin, signed in 1878 between Great Britain and Germany on July 1st, 1878, Germany withdrew in favour of Great Britain her Protectorate over Witu, Great Britain at the same time engaging to recognize the sovereignty of the Sultan of Witu over the territory, the boundaries of which were fixed in 1890.

3. Owing to various events, the Habshan Dynasty, to which the Sultan of Witu belongs, was overthrown a short while after the Treaty of Berlin was signed. A

recapitulation of the circumstances which followed is given by Sir A. Hardinge in his Despatch No. 21 (Confidential) of February 9th 1895, an extract of which I enclose for Your Lordship's information.

4. Early in 1895 Germany asked for the fulfilment of the Treaty and on February 6th of that year the Earl of Kimberley telegraphed to the Consul-General instructing him to arrange for the judicious selection of a new native Sultan.

It was decided not to reinstate the Habshan

Dynasty

(2)

Dynasty, and the Liwali or local Governor, Ouari Mahdi, was eventually chosen and duly appointed on June 11th, 1895, Captain Rogers, the Sub-Commissioner of Tangiland, being appointed Resident at the Court of Witu.

6. In the 1902 Order-in-Council the Sultanate of Witu was included within the boundaries of the East Africa Protectorate, and the laws generally applied to the Protectorate made to apply equally in so far as they are applicable to the Sultanate of Witu. The Crown Advocate, whom I have consulted, is of opinion that this procedure was incorrect. Not only can the Sultan of Witu as a sovereign power make laws with his own sanctions, subject to the approval of the protecting power, but no laws which have not received the Sultan's sanction have validity in the Sultanate. In pursuance of the agreement between Great Britain and Germany the Sultanate of Witu is expressly excluded from the jurisdiction of the native Courts under the Native Courts Regulations 1897 (Article 1). On this occasion the Sultan appears to have placed his sanctions within the application of the Native Courts, but no doubt exists on the point, and as there is

(4)

no record of his having signed the Proclamation, which was approved by the Marquis of Salisbury. I have caused him to sign a fresh proclamation according to the terms of which all laws which apply to the Protectorate are, in so far as they can be, valid in Witu.

7. Until recently the independent position of the Sultan of Witu was marked by the Sub-Commissioner of Lamu holding the position of Resident at the Court of Witu, but this title has now been allowed to lapse with the consequence that though the old state of affairs remains it has become somewhat further obscured.

8. Two native magistrates have been placed by the British Government in the Sultanate of Witu but Magistrates can only be appointed with the Sultan's leave and can derive their authority to act as Magistrates there from him alone. I have now taken steps to legalize their position. There is, so far as I know, no reason to prevent the Sultan, himself from claiming, if he wished to exercise it, the widest jurisdiction within his own territories. Great difficulty might arise if an European were to commit a crime in the

Sultanate

Sultanate or if an European criminal were to escape to  
 it. The former possibility was recognized by Sir A.  
 Herding who wrote in his "Report on the Condition and  
 Progress of the East Africa Protectorate from its Estab-  
 lishment to the 30th July 1907" (page 37) that, "as  
 the Sultan's powers were very vaguely expressed, it was  
 probable that in the event of an European being charged  
 in Witu with a serious crime, the native government would  
 be invited by the protecting power to have the case tried  
 by one of the Judges appointed as described by the  
 Secretary of State under the provisions of the Africa  
 Order in Council".

But the most important point which presents itself  
 to us just now is the fact that the Sultan of Witu having  
 sovereign rights within his dominions is able, should he  
 desire to do so, to sell African land, not privately  
 indeed, within his territories, whilst the British  
 Government has no right to alienate any portion of these  
 lands. As it came to my notice a short while ago that  
 an European was trying to acquire Crown land in the Witu  
 Sultanate from the Sultan, I took the opportunity of  
 informing the Sultan, who came to Mombasa to meet me  
 regarding

(a)

regarding the abolition of the legal Status of Slavery, that he should not lease or sell any land without the sanction of the Government. To this he at once agreed. He is a most loyal and obedient man, and I do not think he is likely to break faith with us, but were he to do so, we should, as matters stand at present, have no remedy but to depose him. I think the best way out of the difficulty would be <sup>to</sup> ask him to sign a document whereby he would make over to the British Government all waste and not privately owned lands in the Sultanate, and in return we might give him a small increase of salary. At present His Highness receives £840 per annum. Were he to receive an additional £60 and bring his stipend up to £,900 per annum I have no doubt but that he would willingly resign these rights.

10. But I consider that the time has now come for a complete revision of our relations with the Sultanate of Witu, and of the terms of Article 2 of the Treaty of Berlin which our present position in East Africa has rendered obsolete, and I venture to ask if it would be possible to enter into diplomatic negotiations with

Germany

(7)

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34875

Germany towards this end. The only interests Germany now has in the Sultanate are the claims referred to in the correspondence ending with Your Lordship's despatch No. 544 of the 4th October last, and it does not seem that the settlement of these claims need interfere with the main question at issue.

11. Sultan Omari Mahdi is now an old man and is not likely to live very much longer. He has no direct heirs or near relations, and as it would be impossible to reinstate the deposed Nebavian Dynasty it would be well on the Sultan's death for Great Britain quietly to annex the Sultanate. Should Germany look for some concession in return for this breach of the Treaty of Berlin, as Count Hatzfeld stated in 1890 would be the case, it might be possible to select another deserving servant of the Crown and appoint him Sultan of Suda.

I have the honour to be,  
With the highest respect,  
My Lord,

Your Lordship's most obedient,  
humble servant,



The massacre of the Germans in Vitu, which occasioned the overthrow of the Sultanate, took place two months after the signature of the Treaty of 1890, on which Germany now takes her stand, but before the transfer of the country from the Germans to the British Protectorate had been actually effected. Although, therefore, the Marquis of Salisbury disclaimed any responsibility for its occurrence he readily agreed, at the urgent request of the German Government, to punish Sultan Fumo Bakari and Admiral Fremantle's expedition, accompanied by a Zanzibar contingent, was accordingly despatched for that purpose. When it approached with the Sultan fled with the whole of the population into the bush, abandoning his capital, which was razed to the ground by the British force. The greater part of the inhabitants, including Fumo Bakari himself, found refuge at Jomari with the Somali or Mboni Chief Avatullah, who, though practically independent, had long recognised a kind of nominal overlordship in the Vitu Sultans. About three months after his arrival there Sultan Fumo Bakari died. A sum of Rs. 10,000 had been offered by Her Majesty's Government for his capture, and it was believed that a poisoned hookah had been administered to him by

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one of his adherents, a Patta Arab known as Bwana Kibini, in the hope of obtaining this reward. Thereupon the Witu exiles proclaimed as Sultan his surviving eldest brother Bwana Shehe. The latter, to whom I shall have occasion to refer later on, is a person of weak intellect, but his single act was not in itself irrational. He strongly urged his people to make peace with the British Government and to restore the property stolen from the plundered Germans. These proposals proved very unpalatable, and the new Sultan's young brother, Rumo Omari, took advantage of the discontent which they created to represent him as unfit to reign and to have himself elected as his successor. Bwana Shehe was accordingly, after a reign of a few days, deposed and put in irons and Rumo Omari ruled the outlaws in his stead. Shortly afterwards, however, on the 25th January 1911, the terms of peace, for which proposals which they had interposed Bwana Shehe, were presented to the Sultan of Witu. They suited the British from Mr. G. H. Smith, as Mr. G. H. Smith's representative promising to give the Sultan what might be given to him and to restore the property taken from the Germans. No mention was made of the Sultanate; but it was provided to the Sultan that he should be granted to them that Rumo Omari should receive "honourable treatment", and a pension for his life along with conditional upon his good behaviour and in return for nominal services to be rendered by him to the Imperial British East Africa Company.

This arrangement, which formally terminated the  
sovereignty

sovereignty of the Sultan, which was followed by the transfer in March 1891 of the country to the Imperial British East Africa Company, who were authorized by Her Majesty's Government to assume its administration, and to fly their flag there to the exclusion of all others. As, however, Lord Salisbury favoured the idea of eventually appointing the Sultan of Zanzibar to be Sultan of Vitu, Her Majesty's Government reserved their right to decide the question of the ultimate sovereignty over the country, and of its connection, in any way, with Zanzibar.

In the case of South Mozambique, Berkeley and Mackenzie proceeded to Zimondi and announced in Durbar the termination of Fumo Churi's pretended sovereignty, and the assumption of the Government by the Company. Fumo Churi, as the representative of the old Sultan, acquiesced in this decision; although he afterwards went in rebellion, assumed the title of Sultan, he was henceforth officially only known as Sheikh, and the treaty concluded with his people by the Company was described as made between the latter and the "Notables of Vitu" as one of whom he formally subscribed it.

I mention all these particulars because they show that the people of Vitu are the only active pretender to the throne both actually residing, by treaty with the authority representing the Protecting Power, all claims to sovereignty or separate national existence.

About a year later the ex-Sultan Swaha Shaha, who had been released, was <sup>per</sup>mitted to live in Vitu on a small pension from the Company. These proceedings

verbal, public and notorious, and their legality was never called in question by the German Government.

Once, and, so far as I am aware, only once, did its Ambassador in London make any allusion to article 2 of the Treaty of 1890. In his despatch to Sir E. Malet, No. 378A of the 9th December, 1890, the Marquis of Salisbury stated that he pointed out to Count Fatzfeldt that the "temporary confusion into which our operations (undertaken at the earnest request of the German Government) had thrown" him made it difficult to execute this Article with

Execution. Count Fatzfeldt replied to this "that the German Government were very sensible of the accuracy of this representation, and that they were quite ready to forego the execution of that portion of the Article in question, and to consent that the Sultanate of Vitu and the Coast to the North of it should come, not under the Protectorate, but under the direct possession of Her Majesty. But in making this concession they looked for some concession in return (Gegenleistung) he then proceeded to mention certain German claims which he hoped Her Majesty's Government would take into their favourable consideration.

Lord Salisbury replied that he did not at that moment contemplate the abolition of the Sultanate of Vitu, but he intimated that he considered himself free to act in the matter as he thought fit. "The present Sultan," he said "had been guilty of grievous crimes, and it was quite possible that, as a Protecting Power, we might

exercise

were all British and Dutch lands, and the territory was never called in question by the German Government.

Once, and, so far as I am aware, only once, did the Ambassador in London make any allusion to article 2 of the Treaty of 1890. In his despatch to Sir E. Malet, No. 2781 of the 9th December, 1890, the Marquis of Salisbury stated that he pointed out to Count Intzevelt that the "temporary confusion into which our operations (undertaken at the earnest request of the German Government) had thrown this matter difficult to execute this Article with Execution."

Count Intzevelt replied to this "that the German Government were very sensible of the accuracy of this representation, and that they were ready to forego the execution of that portion of the Article in question, and to consent that the Sultanate of Witu, and the Coast to the North of it should come, not under the Protectorate, but under the direct possession of Her Majesty. But in making this concession they looked for some concession in return ('Gegenleistung') he then proceeded to mention certain German claims which he hoped Her Majesty's Government would take into their favourable consideration."

Lord Salisbury replied that he did not at that moment contemplate the abolition of the Sultanate of Witu, but he intimated that he considered himself free to act in the matter as he thought fit. "The present Sultan" he said "had been guilty of grievous crimes, and it was quite possible that, as a Protecting Power, we might

exercise our undoubted right of deposing him."

Count Hatfield did not demur in any way to this proposition nor was the question, so far as I can see, ever raised again. It is evident, however, that the right of deposition carries with it that of selecting a successor, and it is clear, from their correspondence with this Agency on the subject, that both the Marquess of Salisbury and the Earl of Rosebery entertained no doubt that on both these questions Her Majesty's Government were the sole judges, and might, without any departure from the Treaty, appoint, if they thought fit, either the Sultan of Zanzibar, or any other candidate, to be Sultan, so long as the separate existence of the Zanzibar Sultanate was preserved.

In the two years during which the Company administered Zanzibar the capital was rebuilt and efforts were made to induce Fumo Usari and his people to return there. But though many of the exiles gradually came in, in spite of his opposition, Fumo Usari himself could not be induced to do so. Relations with him were constantly strained; his followers kept committing acts of robbery and murder, and when after the withdrawal of the Company in 1890 Mr. Todd and Mr. J. Mathews went to pacify the country and establish the Sultan of Zanzibar as its Ruler, they found it necessary to destroy the outlaw stronghold and drive Fumo Usari still further into the bush. There he lingered

for

for a while at a settlement called Ngomeni and he was brought down last summer by Captain Rogers. His subsequent conviction for conspiracy and transportation to a prison at Zanzibar are too recent to need further reference. Continued punishment of Mahashi (Awatullah's successor), Sulaiman bin Abdulla, and the other outlaw Chiefs, his removal extinguished the last ember of disaffection in Ujiji, and, by the end of last year, Captain Rogers was able to report that this long disturbed district, which for many years had been a hot bed of crime and trouble, had settled down into perfect tranquility.

EDWARD A. JARVIS

Zanzibar,

February 21st 1882.



For 2007

10/11/07

C.D.  
No. 10  
P. 11  
104

21 Dec 07

Jan

with reference to the Pa

letter from your Dept of the

of Oct No 31927, I am directed to transmit to you

to be laid before Sir Edward

Grey for any observations which he

may desire to offer, a copy

of a report from the Gov of

the E.A.P. respecting the

position occupied by the Sultan

of Witu in relation to the

E.A.P.

Dr

RJA

DRAFT

to the Sec of State

MINUTE

- Mr. [Name]
- Mr. [Name]
- Mr. [Name]
- Mr. [Name]
- Mr. [Name]
- Mr. [Name]
- Mr. [Name]
- Mr. [Name]
- Mr. [Name]
- Mr. [Name]
- Mr. [Name]

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