

1925

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**KENYA
ZANZIBAR**

C. O.
38426
22 JUL 25

DATE

16th July 1925.

G'S DEP NORTHCOVE.
CONF 111

CIRCULATION :-

Mr. *Botting*

Mr.

Asst. U.S. of S.
W. S. ...

Perm. U.S. of S.

Par. U.S. of S.

Secretary of State.

SAINT GERMAIN CONVENTION. EFFECT ON ZANZIBAR TREATIES.

This memo by Attorney General commenting on note enclosed in S. of S's despatch and quoting particular instances of claims for special treatment made by subjects of treaty powers. Asks for statement defining attitude to be adopted.

MINUTES

I have used this in referring to F.O. on 34816/25. *3601 (Lancaster)*

Re: on general question

179.4.

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18.9.25.

This should be registered Zanzibar at

I have now, with the assistance of Resd/26049/25 & this paper, Z. X

prepared a revised version of the

"Note on the Zanzibar Treaties" which

is annexed hereto. I have also

used the number on 70/55810/25

Previous Paper
File Gov. 45021/24
A. G. R. 26049
(451.5952/25) L. H. A.

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Subsequent Paper

10669/26

as the basis of a "C.O. commentary" on the Note, which is also annexed. The commentary is of a confidential nature, while the Note is not.

I would suggest that both should be sent to the Kenya & Tanganyika Secretaries for record & reference, but first we must have F.O. approval. If submitted accordingly.

In Lyell Grant's memo on this paper is not a very helpful contribution. It would be very nice if we could ride off on the argument that the St. Germain Convention washes out the Treaties, but the matter is not so simple as all that. However the point is put to F.O. in the draft, & we can see what they say.

C. J. Jeffries
5.12.25.

Yes. Mr. Lyell Grant's view is to present the Convention as a reply to the "Note" and to try to present the Convention as a disputed reading of the Convention.

C. J. Jeffries

W. Bottomley -

It seems to me quite

certain that the statement on page 3 of the Note is wrong as regards the U.S. America. The Convention of St. Germain only applies to Powers who have ratified or acceded to it. It has done neither. It might be advisable to comment on this - C.J. 7.12.25

The important paper on the point raised by Mr. Strachey is 70/31418/21 E.A. as a result of which it was decided (on 70/36719/21 Kenya) to act as regards Customs duties as if the Convention of St. Germain had the effect of modifying all existing treaties on the subject. It appears from 70/45198/21 E.A. that the Powers were duly notified of the Kenya increases, & there is no trace of any objection having been raised. In the case the "Note" & comment, though condensed, may perhaps stand.

Powers were duly notified of the Kenya increases, & there is no trace of any objection having been raised.

In the case the "Note" & comment, though condensed, may perhaps stand.

C. J. Jeffries
8.12.25.

W. Strachey

It might be better in the future to refer to the "Note" as a "disputed reading" of the Convention.

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of all
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"is now treated as being replaced
generally by the Convention 1919,
although, in the case of those States, signatories
to the Acts, which have not ratified or
accessed to the Convention, this procedure
is not strictly in accordance with the
actual position"

1914

~~1914~~

NOTE ON THE ZANZIBAR TREATIES.

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At the outbreak of the War, the Treaties in force applicable to the dominions of the Sultan of Zanzibar were as follows:-

is Treaties

- p 9. (1) Treaty between the United States and Muscat - September 21, 1833.
- p 18 (2) Treaty between France and Muscat - November 17, 1844.
- p 25 (3) Treaty between the Hanseatic Republics and Zanzibar, June 13, 1859.
- p 37 (4) Treaty between Portugal and Zanzibar - October 25, 1879.
- p 42 (5) Treaty between Italy and Zanzibar - May 28, 1885.
- p 46 (6) Convention between Belgium and Zanzibar - May 30, 1885.
- p 78 (7) Convention between Austria Hungary and Zanzibar - August 11, 1887.
- p 98 (8) Agreement between Russia and Zanzibar - August 12/24, 1896.

The German and Austrian Treaties lapsed at the outbreak of War, and have definitely not been revived. The Russian Treaty lapsed with the fall of the Empire, and it was agreed with the Soviet Delegation of August, 1924 that it should be considered as one of the Treaties which had lost its force. The Italian Treaty was cancelled when the Treaty for the cession of Jubaland took effect.

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As regards the surviving treaties, the provisions as to extra-territorial jurisdiction in Zanzibar have been surrendered; the remaining privileges conferred by these Treaties on nationals of the Powers concerned are as follows:-

1. Property. The right to acquire, possess and sell property appears in all the Treaties except that with the United States.
2. Right of Agents of the Government to enter upon premises owned or occupied by foreigners. Under Article 3

of the French Treaty and Article 7 of the Portuguese Treaty, such entry is not permitted without the consent of the occupant or of the Consul representing the country of which the occupant is a National. The provision does not give trouble in the case of Police or Sanitary Officers. Objections are sometimes raised by Consuls to Regulations issued by the Zanzibar Government for the proper control of buildings, the Survey Decree and the Preservation of Plantations Decree.

3. Liberty to enter Zanzibar and to trade and travel, and leave the territory. This is the subject of a definite provision (Article 2) in the French, United States and Portuguese Treaties; and applies to Belgians by virtue of the most-favoured-nation clause in the Belgian Convention.

4. Taxation other than import and export duties. Article 2 of the French Treaty is as follows:-

"The subjects of His Highness the Imam of Muscat shall be permitted in full liberty to enter, reside, trade and travel in France with their merchandise. The French shall enjoy the same liberty in the dominions of His Highness the Sultan of Muscat, and the subjects of each of the two countries shall have reciprocally the right, in the other, to all the privileges and advantages which are or may be accorded to subjects of the most-favoured-nation". Article 6 of the

United States Treaty is as follows:- "The citizens of the United States resorting to the ports of the Sultan for the purpose of trade shall have leave to land and reside in the said ports without paying any taxation or imposition whatever for

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for such liberty other than the general duties on imports which the most-favoured-nation shall pay".

These clauses have not been held to prevent the imposition of a public health and street lighting rate in the town of Zanzibar, or to preclude the levy of municipal rates in Mombasa, and the application of the Kenya non-native poll tax to foreigners in the coastal dominions of the Sultan.

5. Commerce and Trade

(a) Import Duties. Article 3 of the ~~United Kingdom~~ Treaty, Article 10 of the French Treaty and Article 3 of the Portuguese Treaty lay down that the ships of those countries entering the harbour of Zanzibar or any other harbour in the Sultan's dominions shall not pay more than five per cent duty on the cargo landed, which shall be considered as an equivalent of all import and export duties, tonnage, pilotage, anchorage or any other tax. This limitation applies to Belgian ships by virtue of the most-favoured-nation clause in the Belgian Convention.

This limitation was overridden by the Brussels Declaration of 1890, which with the rest of the arrangements under the Berlin and Brussels Acts is now ^{treated as being} ^{generally} replaced by the

Convention of Saint Germain-en-Laye of the 10th September, 1919 although in the case of those States, signatories to the Acts, which have not acceded to the Convention, this procedure is not strictly in accordance with the actual provisions.

A Convention between Great Britain and the United States dated May 31st, 1902, recognised, under certain conditions, and subject in particular to a most-favoured-nation clause, the right of the Zanzibar Government to levy import duties up to 10 per cent ad valorem.

(b) Duties on goods exported in French, Portuguese, American or Belgian ships are forbidden by the Treaty provisions just quoted. It has been held that the duty charged on cloves exported from the Zanzibar Protectorate is not an export or customs due, but a duty corresponding to the old native taxes. - Certain duties on other exported produce have been

Treaties
03

been tacitly accepted by all the Treaty Powers for many years.

(c) Freedom of Trade. Article 2 of the United States Treaty, Article 11 of the French Treaty, and Articles 2 and 4 of the Portuguese Treaty provide that there shall be no restriction upon the nature of articles to be imported and exported, that trade shall be completely free, and that no fixed price or monopoly shall be established. These provisions apply to Belgium through the operation of the most-favoured-nation clause.

6. Light and Harbour Dues.

These are forbidden by the Treaty sections quoted under the preceding head, but a separate Convention was signed with the United States on June 5th, 1903, under which it was agreed that, subject to the consent of the other Treaty Powers to a similar arrangement being obtained, light dues at the rate of lanna, and harbour dues at the same rate, upon every registered ton should be leviable on vessels of the United States entering ports in the islands of Zanzibar and Pemba. The consent of the other Treaty Powers was obtained in 1904. The dues were, in return for certain concessions, reduced to 1 anna in all from January 1st, 1914, but raised again (by general consent) to 2 annas, on the ground of the increased cost of the service, with effect from October 1st, 1921.

7. Distressed Vessels and Crews.

Under Article 15 of the French Treaty and Article 6 of the Portuguese Treaty the Zanzibar Government must assist in the refitting of shipwrecked or damaged ships, in the salvage of property and its delivery to the owners or the Consul. Under Article 5 of the American Treaty they must also maintain the crews of shipwrecked vessels at the public expense.

8. Immunity of Consular Officers.

In view of the immunity of the British Agent and

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Consul General (now the British Resident) from the jurisdiction of the Courts, a similar immunity has in the past been claimed for the Consuls of Treaty Powers, by virtue of the most-favoured-nation clauses of the Treaties. The British Resident did not, however, succeed to the privileges of the British Agent and Consul-General in this respect, and any immunity which foreign Consuls might now claim could only be based upon Article 9 of the United States Treaty of 1833, which confers personal immunity upon the United States Consul, if any.

9. Administration of Estates.

The agreement with France as to the surrender of Consular jurisdiction reserves to France her previous rights with regard to the administration of the estates of French citizens and protected persons, in so far as this does not involve a direct or indirect return to the exercise of Consular jurisdiction. A similar privilege extends to the other Treaty Powers by virtue of the most-favoured-nation clauses.

Colonial Office comments on the "Note on the Zanzibar Treaties".

1. Property. The Treaty provisions are reasonable and ^{harm} ~~harm~~less. Similar provision is made in Article 3 of the Convention of Saint Germain-en-Laye of 10th September, 1919.

2. Right of Agents of the Government to enter upon premises owned or occupied by ~~French~~ As stated in the "note", the Treaty provisions in this connection give rise to no difficulty in practice. Any difficulty which might arise could be settled by the production of a warrant from the British court, to which the Consular powers of extra-territorial jurisdiction have been surrendered.

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3. Liberty to enter Zanzibar and to reside, trade and travel and leave the territory. No objection appears to have been raised by the Treaty Powers since 1916 to the control of immigration at Mombasa and other ports in the mainland dominions of the Sultan of Zanzibar, but in the past the French Government have protested against the exercise of such control in the island dominions. Recently, however, decrees have been passed for the proper control of immigration at Zanzibar, and no protest appears to have been made.

121

219/22
Z.)

4. Taxation other than import and export duties. Although local rates etc. have been levied as shown in the "note", it has not been without protest. ^{For instance, in} ~~In~~ 1914 the French Consul protested locally against the public health and street lighting legislation in Zanzibar, though he made it clear that his protest was purely formal.

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In 1915 the French Consular Agent at Mombasa protested locally against the levy of hut tax and conservancy fees upon French nationals and protected persons in the Sultan's

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Sultan's mainland dominions. It appears that no action was taken on this protest in the absence of a protest from the French Government (F.O. letter to C.O. No. 116258/15 of September 13th, 1915, and connected correspondence.)

F.O.
42229/15
K.)

In 1920 several protests were received from the local representatives of Treaty Powers against the levy of municipal rates etc. in Zanzibar. No action was made.

dt.
28967/20
Z.)

In 1922, the French and Belgian Governments protested against the payment of poll tax, income tax and traders' licences by French and Belgian subjects in the Kenya Protectorate. The validity of the protest was not admitted by His Majesty's Government, and the matter appears to have dropped.

1925/22
K.Z.
(various papers)

Claims for the exemption of foreign Consuls from taxation, and for the remission of death duties on the estates of foreign nationals have been made on several occasions both in Kenya and in Zanzibar, but have been rejected.

F.O.
46599/25
Z. and
(united papers)

5. Commerce and Trade.

(a) Import Duties. The protests of the French Government when the Zanzibar duties were raised to 7 1/2% and subsequently (in 1921) to 10% per cent ad valorem were ignored, and no protest appears to have been made against the much higher rates of duty now in force in Kenya.

F.O.
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K.Z.)

(b) Export Duties. As shown in the "note" no practical difficulty has arisen under this head.

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51873/21
Z.)

(c) Freedom of Trade. Circumstances might arise in which the restrictions on the establishment of a fixed price for goods or of a monopoly might be found to cause

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31418/21
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cause difficulty.

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6. Light and Harbour Dues. No special difficulty has arisen as regards the islands; in fact, when the increase of the rate to 2 annas was being discussed in 1921 the United States Government expressed their willingness to revise the Convention if necessary. The French Government have protested against the dues imposed in Kenya in 1922, but the protest has been ignored.

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7. Distressed Vessels and Crews.

8. Immunity of Consular Officers.

9. Administration of Estates. It does not appear that any special difficulty is experienced under these heads, except (as regards the last two) in the matter dealt with under head 4 (taxation) above.

KENYA.

No. 111.

CONFIDENTIAL.



C. O.
38426

GOVERNMENT HOUSE,
22 AUG 25 NAIROBI,

KENYA.

16th July, 1925.

Sir,

With reference to your Confidential despatch of the 31st March, relative to the effect upon the various Zanzibar treaties of the Convention signed at Saint Germain-en-Laye on the 10th of September, 1919, revising the General Act of Berlin of the 26th of February, 1885, and the General Act and Declaration of Brussels of the 2nd of July, 1890, I have the honour to transmit two copies of a memorandum compiled by the Attorney General consenting upon the note enclosed to your despatch and quoting particular instances of claims for special treatment which have been made by the subjects of treaty powers.

*File
55810/24*

Memorandum
Dated 20-6-25.

2. I observe that it is not desirable to draw attention to the question of the claims for differential treatment, but when the Attorney General's memorandum has been considered by the Foreign Office I should be grateful if this Government may be supplied with a statement defining the attitude to be adopted in future cases and as a result of the Convention of Saint Germain.

I have the honour to be,

Sir,

Your most obedient, humble servant,

J. R. Kerth

GOVERNOR'S DEPUTY.

RIGHT HONOURABLE
LIEUTENANT COLONEL L. C. M. S. AMERY, P. C., M. P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W.

627

IG/AP.

Both June, 1925.

562 /25.

The Hon'ble Ag. Colonial Secretary,
N a i r o b i.

RE: EFFECT OF CONVENTION OF VARIOUS ZANZIBAR TREATIES.
PARAGRAPH NO. 37/B. 10920/45 OF THE 4th MAY, 1925.

I have examined the Treaties with the Sultan of Zanzibar and agree that those with Germany, Austria and Russia have lapsed.

It is observed that the Treaty with Italy will be cancelled when the Treaty for the cession of Jubaland takes effect.

Only four Treaties, therefore, need be considered, namely:-

- (1) Treaty between the United States and Muscat - September 21st, 1833:
- (2) Treaty between France and Muscat - November 17th, 1844:
- (3) Treaty between Portugal and Zanzibar - October 25th, 1879:
- (4) Convention between Belgium and Zanzibar - May 30th, 1835.

As regards the above I also agree that the provisions as to extra-territorial jurisdiction have been surrendered. The privileges conferred by these Treaties on nationals of the Powers concerned have been dealt with very fully in the note enclosed in the Secretary of State's confidential despatch dated the 11st March, 1925, (hereinafter referred to as "the note") on which my observations appear below:-

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1. Property. I agree. In the case of France the power to purchase, sell or take on lease lands, house, warehouses or other property is expressly given by Article 3 and so to Portugal by Article 7. Belgium enjoys the same privilege under the most-favoured-nation clause, but America does not appear to enjoy this right under the Treaty of 1833.

By ^{the} Convention of Saint Germain-en-Laye, 10th September, 1919, however, American nationals and the nationals of the other above named Powers enjoy equal rights with British nationals "with regard to the protection and transmission of their movable and real property". Article 13 of the Convention ^{it is submitted} abrogates the Berlin and Brussels acts, and by implication, abrogates the Treaties of 1833, 1879 and the Convention of 1885 and places the nationals of all five Powers on equal footing. See also Article 4 of the Saint Germain-en-Laye Convention which must be interpreted in the sense that its provisions are applicable only to the territories indicated in Article 1 and its annex.

2. Right of agents of the Government to enter upon premises owned or occupied by foreigners. Such right of entry, as stated in the note, is not permitted without the consent of the occupant or the Consul representing the country of which the occupant is a national. The point, however, appears of little importance since all have surrendered extra-territorial jurisdiction, and all nationals of the Treaty Powers are placed in the same position as nationals exercising authority in the territory - see Article 3, Convention of Saint Germain-en-Laye.

3. Liberty to enter Zanzibar and to reside, trade and travel, and leave the territory. I agree.

America by virtue of Articles II and VI
 France " " " Article II
 Belgium " " " the most-favoured-nation clause.

Here again all nationals enjoy equal rights under the Convention of Saint Germain-en-Laye.

4. Taxation other than import and export duties. I agree. Portugal and Belgium can also claim the same rights under the most-favoured-nation clause.

The note states that "these clauses have not been held to prevent the imposition of public health and street lighting rates Municipal rates non-native poll tax to foreigners in the coastal dominions of the Sultan. The correspondence on my files confirms this.

Other claims to exemption have been advanced under these clauses, namely, by the French Consular Agent for the exemption of French nationals and protected persons residing in Mombasa from Conservancy fees and ^{the payment of Hut and Poll Tax by} Comoro Islanders domiciled in the coast strip.

This question was referred by the Under Secretary of State for the Colonies in his despatch No. 37157/15 of the 20th August, 1915, to the Under Secretary of State, Foreign Office, who did not, however, give a final ruling on the point and asked for further information. This was furnished in His Excellency's No. 17 confidential despatch of the 2nd February, 1916. ^{this Government do} The files do not show whether a final ruling has been given.

Foreign Consuls have also claimed certain exemptions and though I cannot gather from this ^{Government's files} their exact nature the Secretary of State in his despatch No. 222 of the 24th March, 1919, ruled that Foreign Consuls have no claim to exemption from payment of Municipal rates and taxes in the East Africa Protectorate.

France and Italy have both claimed exemption in respect of their nationals from the payment of death duties. This claim, however, has been definitely refused - see Foreign Office letter No. 586/3586/50 dated the 22nd June, 1920, addressed to the Under Secretary of State, Colonial Office.

Treaty Powers have also claimed to be exempted from the provisions of the Traders Licensing Ordinance, 1919, Super Tax on the Uganda Railway, Taxes on Motor cars, Income Tax (France), Postage rates - all refused.

It is submitted, however, that all nationals are placed on the same footing by virtue of the Convention of Saint Germain-en-Laye.

5. Commerce and Trade.

- (a) Import duties
 - (b) Duties on goods imported
 - (c) Freedom of trade
- } I agree.

With regard to (a) it is agreed that the 5% limitation was overridden by the Brussels Declaration of 1890 which fixed the rate at 10% which in turn was replaced by Saint Germain-en-Laye, Article 2, which reserves complete liberty of action as to customs regulations and tariffs to be applied to their territories. Hence the increased tariffs imposed by the Customs Tariff Ordinance, 1920, which have never so far as I am aware been objected to by any Power.

With regard to (b) and (c) I have no comments to offer on the note.

6. Light and Harbour Dues. I agree with the comment against this heading in the note.

All the existing Treaties admittedly appear to preclude the imposition of Harbour dues, but as stated in the note, America and later the other Treaty Powers accepted a charge in respect of light and harbour dues. It is submitted that the question is now settled by the Convention of Saint Germain-en-Laye, Article 2, which saves to the states concerned "complete liberty of action as to navigation regulations and tariffs".

7. Distressed Vessels and Crews. I agree. Belgium can also claim the same right under the most-favoured-nation clause.

8. Jurisdiction America claimed the immunities conferred by Article IX of the Treaty of 1833, but the Foreign Office definitely rejected this claim - see Foreign Office letter No. 103174/345/17/7 of the 13th June, 1917, addressed to the Under Secretary of State and I do not understand on what ground the other Treaty powers can claim a higher right unless it be that the British Resident has been granted immunity since the date of the letter mentioned above. The immunity is not given by Article 3 of the Treaty between Great Britain and August 19th March, 1891, which cancelled the Treaty of the 31st May, 1839.

9. Administration of Estates. I agree but subject to my remarks below.

France, Italy and Belgium have all claimed that their Consuls are entitled to administer the estates of their respective nationals. In the case of Italy the matter is not now of importance. Administration is under the jurisdiction of the Courts and it is submitted that Consuls in order to administer must apply for that power in the ordinary way, as the Courts must. The provisions of article 3 of the Convention of Saint Germain-en-Laye which appears to override the Treaties.

Article 3 provides that nationals of the signatory Powers "shall enjoy without distinction the same treatment and the same rights as the nationals of the Power exercising authority in the territory, with regard to the protection of their persons and effects with regard to the acquisition and transmission of their movable and real property".

[Handwritten signature]
ATTORNEY-GENERAL

~~632~~

Mr. Jeffries 5/12/25
Mr. Bolton 5/12
Mr. E. J. Harding
Mr. Strachan 9/12
Mr. J. Shackburgh

2nd
Austl
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Sir,

Downing Street,

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Mr. G. Grindle
Mr. C. Davis
Mr. Wilson
Mr. Ormsby Gore
Mr. J. Oldenden
Mr. Amery

(u/s 49)

With reference to your letter

No. A4763/2207/50 of the 14th of October,
and connected correspondence

directed by Mr. Secretary Amery to trans-
mit to you, to be laid before Secretary

Sir Austen Chamberlain, a "Note on the

Zanzibar Treaties" which has been pre-
pared in this Department together with

a memorandum commenting on the various
points of the note.

2. This compilation has been sub-
mitted to the Governments of Kenya and

Zanzibar, and, so far as Mr. Amery is
aware, provides an accurate summary of the

present position with regard to these
treaties. Mr. Amery would, however, be

grateful for any observations or correc-
tions which Sir Austen Chamberlain may be

able to furnish.

3. In

DRAFT.

U.S. of S.

F.O.

the Z'bar. Treaties
comments on above

[Space copies below]

3. In this connection, the Governor of Kenya has asked that he may be furnished with a statement of the effect of the Convention signed at Saint Germain-en-Laye on the 10th of September, 1919, on the Treaty provisions. The question of the effect of Article 2 on the rights of the Governments of Kenya and Zanzibar with regard to customs and navigation regulations and tariffs has been dealt with in your letter No. A5261/1979/60 of the 27th of November, 1924, a copy of which has been sent to the Governor. Apart from this, the provisions of the Convention do not appear to touch upon the special matters in which the powers of the Governments of Zanzibar and Kenya are circumscribed by the Treaties, of which the chief are internal taxation, Government control of prices, and control of immigration. If it could be argued that, in ~~view~~^{spite} of the existence of the ^{Treaties} Convention, any legislation is justified which is not inconsistent with

(53810/14)

with

General provisions of the
 with the Convention and which makes
 no distinction between the subjects of
 the various countries adhering to the
 Convention, the position of the local
 Governments would be much improved, but
 Mr. Amery presumes that it is
 difficult to sustain such an argument.
 He would, however, be glad of Sir Austen
 Chamberlain's observations on this ques-
 tion, and of his suggestions as to the
 reply which should be returned to the
 Governor of Kenya.

I am, etc.,

(Signed) C. STRACHEY