

It is the question at length
of the fact that the right of
acquiring & transferring property in
land is undoubtedly conferred by Article 5,
of the Berlin Act.

As to (2) I say that the British cannot
admit that it is not the duty of
every inhabitant of a country, whatever
nationality he may belong, to acquiesce himself
with the measures of that country nor that
the fact of the country is under any
obligation to give compensation for any loss
to which an inhabitant may be exposed
owing to public works. It is observed
that the Italian fact does not deny the
right of the Italian fact in time of war to
pass legislation of the nature of the order
now in question, and in regard to
the question that such legislation should only
be applied to enemy subjects has been

Can only repeat that the legislation was
 necessitated by the activities of the subjects
 of a neutral ^{and friendly} nation ~~supposedly friendly~~

It seems as above in referring to the
 and suggest an answer to the Italian
 Ambassador on these lines.

W.S.
 10.1.21.

The real difficulty is para 5.
 I can't think why the Italians disagreed in Art 2.

When our best general defence is the
 necessity of war

should not (?) include more accurately

para 5 "not be caused" - admit that it is seen to be an
 in the past - to assume that a law which
 on the face of it clearly applies to him does not
 in fact have that application."

That is what the Italians mean I think

Yes - substitute this for A. J.F.B.

5 ft for reason W.S. 11.1.21 et seq.

In any further communication
on this subject, please quote

No. *C. 15027/8517/22*

and address—
not to any person by name.

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

1082
Rec.
Dist. 7 JAN 21

12

THE Under-Secretary of State for Foreign Affairs presents his
compliments to *The Under Secretary of State,
Colonial Office* and, by direction of the Secretary of State,
transmits herewith copy of the under-mentioned paper, for favour
of observations.

Foreign Office,
6th Jan. 1921.

Reference to previous correspondence:

Colonial Office 511401/20 of 2nd Nov. 1920

Description of Enclosure.

Name and Date.	Subject.
<i>From Italian Ambassador 22nd Dec 1920</i>	<i>Property of Monsieur Perlo in East Africa</i>

Similar letter sent to

December 22nd 1920.

My Lord:-

I have to acknowledge the receipt of your note of the 12th ultimo (C.10241/8517/22), in which Your Lordship was good enough to acquaint me with the reasons for which the British Government was of opinion that it could not recognise that Monsignor Perlo had any right whatever to compensation for the refusal of the Authorities of British East Africa to register certain agreements acquiring land.

In thanking Your Lordship for this communication, I have however the honour to bring to your notice the unsoundness of some legal statements contained in it:

(1) The view advanced that Article 2 of the Treaty of Berlin of February 1865 cannot be applied to the case in question because the latter is concerned with the transfer of property, while the treaty deals with commercial relations has no real foundation, inasmuch as the lands in regard to which complaint is made were acquired by Perlo for commercial and industrial purposes. Similarly it cannot be doubted that the position of Monsignor Perlo under that treaty should be equal to that of British subjects residing at Nairobi.

(2) As regards the other argument adduced, viz. that Perlo, knowing the decree of the Governor forbidding the transfer of property without his consent, bought at his own risk and peril and has no right to bring forward a claim. It is to be observed that even if it be admitted that the state of war could suspend international treaties, this suspension ought to operate in relation to subjects of enemy States and not also in regard to subjects of friendly and allied States

like

Honourable,
Gordon of Kedleston, K.G.
&c. &c.

like Italy) and that therefore Monsignor Perlo could buy property in the territory of Nairobi, without believing himself to be acting in contravention of the ordinance in question.

In submitting these observations to Your Lordship's fair consideration, I have the honour to request you to be good enough to give further examination to the justice of Monsignor Perlo's request for compensation.

In thanking Your Lordship, I have &c.,

(Signed) IMPERIALI.

40/1087/21 (Cura)

Ind

It

18 January 1921

Sir,

I am to ask the rest of your

DRAFT.

U.S. 9?
50

letter C. 15027/1857/22 of the 6th of Jan
^{note}
forwarding a copy of a ~~communication~~
from the Italian Ambassador with

MINUTE.

- Mr. Broule 14 Jan
- Mr. Butterfield 15
- Mr.
- Mr. Grindle.
- Sir H. Lambert.
- Sir H. Read.
- Sir G. Fiddes.
- Col. Amery.
- Lord Milner.

Refer to the question of the transfer
of property in Cura to Monsignor Pet.
2 I am to ~~submit~~ you ~~to~~ ~~submit~~ ~~you~~
~~Curzon of Kedleston that while~~
~~Lord Curzon notes the Italian view~~
As regards
as to the learning on the case
of Article 2 of the Berlin Act of
1885 ^{the} ~~has~~ ~~philae~~ ~~the~~ ~~remains~~ ~~of~~ ~~openness~~
expressed in the third part of
the letter from this Dept of the 2nd
of November last. as ^{Earl} ~~Lord~~
~~Curzon~~ ^{of Kedleston} is aware, the destination

(57401)

between rights of trade & commerce & rights
 of acquisition & transfer of property, is well
 known in international agreements; ~~and~~ e.g.,
~~for~~ same in the Treaty of Commerce
 between Great Britain & Italy ~~which~~ the two
 classes of rights are dealt with in
 different articles, ^{at the same time}
 of Treaty of Commerce generally. ^{In} ~~the~~
 considers however, that it is hardly ^{to be} ~~at~~
 worth while, ^{having} ~~to~~ argue this question at
 length in view of the fact that the
 right of acquiring & transferring
 property in land is undoubtedly
 conferred by article 5 of the Berlin Act.

3. as regards ^{the Italian Ambassador's} ~~the~~ ~~point~~ ~~to~~ ~~which~~
^{Italy's obligation} ~~the~~ ~~point~~ ~~to~~ ~~which~~
~~that~~ Lord Milner cannot admit that it is
 open to ^{the} ~~an~~ inhabitant ^{of a country} to assume that
 a law ^{of that country} which on the face of it clearly
 applies to him does not in fact have that
 application nor that the fact ~~of~~ ~~the~~

country is under ~~an~~ obligation
 to give compensation for any loss
 to which an inhabitant may be
 exposed owing to his failure
 to make himself acquainted
 with the local laws 16

4. Lord Milner observes that the
 Italian point does not deny the
 right of the Government in time
 of war to pass legislation of
 the nature of the one now
 in question & he can only
 repeat, as regard the contention
 that such legislation should
 only be applied to enemy
 subjects, that the legislation
 has necessitated by the

activities of the subjects
 of a neutral & friendly
 nation. As indicated in
 5. I am brought, for
 Lord Curzon's course, that a

DRAFT.

MINUTE.

- Mr.
- Mr.
- Mr.
- Mr. Orindle.
- Sir H. Lambert.
- Sir H. Read.
- Sir G. Fiddes.
- Col. Amery.
- Lord Milner.

(20/10/1914)

letter from this date
 of Mr. ...
 ...
 ...
 ...
 ...

