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‘Prevention of the slave trade in the Persian Gulf: question of increased facilities for passing under the British flag.’

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About this record

Printed correspondence relating to the prevention of the slave trade in the Persian Gulf, with particular reference to the persistence of the slave trade at Muscat under the French flag, and proposals for increasing facilities for vessels to sail under the British flag.

The correspondence comprises brief notes written by Sir Arthur Godley, Permanent Under-Secretary of State for India, dated 25 January 1899 (folio 1) and Sir Alexander Wilson (Chairman of the Mercantile Bank in India), dated 4 August 1899 (folio 2), and two more extensive sets of minutes, written by Sir Dennis Fitzpatrick of the Council of India, dated 25 April 1899 and 10 October 1899 respectively (folios 1 and 2). Fitzpatrick’s minutes chiefly relate to the legal aspect of increasing facilities for passing under the British flag, in reference to the 1890 Brussels Conference Act.

Typographic errors in the correspondence (Mr Murton for Mr Martin) have been corrected with red ink.

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B. 125.

Prevention of the Slave Trade in the Persian Gulf: question of increased facilities for passing under the British Flag.—(Pol. 159/99.)

NOTE by Sir A. Godley.

Could we not do something to increase the facilities for passing under the British flag?

(Signed) A. GODLEY.

25th January 1899.

MINUTE by Sir D. FitzPatrick (No. 1).

This was delayed waiting for a reply from the Foreign Office to a reference made to them, and I have only today found time to look into it.

As to the possibility of proceeding otherwise than under legislative sanction, the certificates or passes referred to in the two correspondences put up with the departmental note of 9th February 1899 seem to have been in the first instance granted merely to protect vessels from being interfered with by our own officers, and, of course, any scrap of paper issued under the authority of the Admiralty and the Foreign Office would suffice for that purpose; but when it is asked whether such passes and certificates can, in the face of the Merchant Shipping Acts, confer any of the privileges of a British ship (especially on a ship owned by foreigners), and in particular whether they can give a right to fly the British flag, the question is one requiring careful consideration. I see the "prerogative of the Crown" is referred to in Sir E. Hertslet's note in the first of the two correspondences, and there may be something in this of which I know nothing, but the question to which I refer does not seem to have been considered in that correspondence. It was expressly raised in the second correspondence, but, as now ascertained from the Foreign Office, it was left unanswered.

It may be that it would not be open to the French to protest against our action, on the ground that it was illegal from the point of view of our own municipal law, but nevertheless it would be prudent to see how we stand with reference to our own law before moving; and I would accordingly suggest that these two correspondences be laid before Sir A. Wilson, who does not appear to have seen them, and who will be able to advise us as to whether we can do what Sir A. Godley suggests without legislative sanction.

As to the possibility of getting legislative sanction, Sir A. Wilson may be right in thinking that it would not be wise to apply to Parliament to help us on this point alone, but there is a correspondence at present pending before him relating to our Act X. of 1841, from which it appears that parliamentary legislation, while it has, as our legal advisers have held, left Section 24 of that Act standing, has placed us in a somewhat awkward predicament with reference to that section, apart altogether from the question now before us, and this being so it might be possible to bring in a Bill to set us right generally, and at the same time take the opportunity of doing the little that would be needed to enable us to give our flag to the vessels now in question.

If it should ultimately turn out that there is a difficulty about giving a British flag, it might perhaps be possible to give some special flag that would be recognised as in some sense ours. I see, from a correspondence which I had before me yesterday, that where there is a protected State

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whose foreign relations are intrusted to Her Majesty's Government like North Borneo, a special flag is given under some sort of Admiralty warrant. It might be worth inquiring whether anything of this sort could be done in the case of any of the vessels here in question.

I have mentioned all the above because Sir A. Godley has raised the question, but I must say I doubt whether we could by granting any flag do much towards getting over our difficulties.

Our being able to grant a flag would only help us in the case of shipowners to whom both we and the French are entitled to grant a flag, and in regard to whom we might hope to forestall the French, but, if the allegation that these ships take the French flag with a view to obtaining protection in carrying on the slave trade is true to any large extent, we should come off badly in the competition with the French; and apart from this, is there any large number of shipowners to whom it is open to us and to the French to grant a flag?

The 32nd Article of the Brussels Act provides that "fitters out or owners "of ships must be either subjects of or persons protected by the Power "whose flag they claim to carry," and in the ordinary and natural course of things there would be hardly any persons who would be at the same time "subjects of or persons protected by" Her Majesty, and "subjects of or persons protected by" the French Government. But what I gather the French are accused by our officers of doing is this—They take hold of a subject of Muscat and bring him under their protection, or perhaps in some cases naturalize him (the information given is still of the vaguest description) *simply in order to be able to give him their flag*, and this is clearly an evasion of the Brussels Act, and *perhaps* also, as the Law Officers suggest in their opinion of the 4th August 1898, contrary to the general principles of international law. If this is so, the proper way to deal with the matter is not by imitating the French and making an attempt to compete with them on their own ground, which for the reason above mentioned might fail, but by stopping them doing what they are doing.

As to how they are to be stopped, the extreme step referred to by the Law Officers could not, of course, be attempted until we had remonstrated, and until we had obtained much more detailed information than we now possess as to the mode of action of the French generally, and also full particulars as to the vessel it was to be tried on.

But, meantime, it would be a most important check on the action of the French, if we got the Sultan to declare that he would not in his territory recognise any protection or naturalization conferred on his subjects otherwise than with his sanction or under the provisions of a treaty. The French cannot say anything against this, as they had to acknowledge, after the most solemn consideration, that the Porte was in its right in taking exactly this course.

There might still be room for a question as to the status of the ship to which the French had given their flag, but the owner would, I gather, usually be on board, and he or any other man of Muscat origin who might be on board would, in Muscat waters, be Muscatee pure and simple, and that, I fancy, would give us a sufficient handle for all practical purposes. I would again* venture to point out that, in order to tackle this case properly, it is of the highest importance to have not only the most detailed information as to the French *modus operandi*, but also some sort of definite evidence of their conniving at the slave trade, and not fulfilling their obligations under Articles 25 and 30 of the Brussels Acts. If we could get a good *primâ facie* case against them on this latter point we should have everybody with us.

* *See* my Note of 9th May 1898.

D. F.-P.

25th April 1899.

P.S.—I ought to add that, though it may not be difficult to prevent any *extension* of the evil by adopting some such measures as those above referred to, it may be very difficult to undo what has already been done. It may be very difficult for the Sultan of Muscat to refuse now to recognise grants of

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naturalization or protection made in the past, and which he has already acqu esced* in. On the occasion I have referred to above, the Porte made its new law prospective only, and stress was laid on this circumstance in defending it. We, too, might find a difficulty in objecting to grants of flags made in the past as evasions of the Brussels Act, if we have for any time allowed them to pass unchallenged. The truth is we ought to have tackled this matter years ago.

* I think the French Consul has raised this very point.

D. F.-P.

MINUTE by Sir A. Wilson.

I am sorry to find that these papers have been overlooked by me.

The Merchant Shipping Act appears to me to prohibit the use of the British flag in the case of any ship owned wholly or in part by persons who are not British subjects. I do not see, therefore, how anybody can lawfully sanction the use of the flag by such ships.

A. WILSON.

4th August 1899.

MINUTE by Sir D. FitzPatrick (No. 2).

I am glad to have seen these fresh papers (the Law Officers' opinion of the 4th August we had already considered—Pol. 2345/99), but I don't think they help us much in our present difficulty.

The main point in the memorandum from the Solicitor to the Board of Trade, dated 12th February 1898, is, I confess, new to me, though I had for many years of my life to grovel among the details of the Merchant Shipping Acts; and I imagine I see certain difficulties about it, but I daresay they could be cleared up, for Mr. Martin is, of course, a master of his subject. At all events, it seems to me unnecessary to discuss the matter in this connection, for, assuming that Mr. Martin is right in holding that the Merchant Shipping Act compels every British subject owning a ship to register it as a British ship and sail it under the British flag, and in considering, as he evidently does, that there is no objection from the point of view of international law to such an enactment, this would help us only as suggesting that we might get the Sultan of Muscat to pass a similar law for his subjects, and even if we might hope to succeed in getting him to do that in his present frame of mind, I gather from the opening of M. Cambon's letter of 22nd August 1899 that it is a thing the Foreign Office would not think it right to attempt. As to what ought to be done I can only repeat what I said before, viz., that if we really mean to tackle the French over this business of giving their flag to Suri dhows, the first thing for us to do is to find out under what French law the French officials are supposed to act in giving the flags; and I should fancy the best way to do that, if the Foreign Office don't like to ask the question officially, would be to get the avocat to our Embassy at Paris to find out. One never can be sure of getting hold of a thing of this sort by poking about in a library. Then, having found the French law under which the French officials profess to act, or may be supposed to act, we would next consider whether, as the Law Officers' opinion seems to suggest, we might object to that law from the point of view of international law. If we found we could not, then we would see whether the French could proceed under it in the face of Clause 1 of Article XXXII. of the Brussels Act, but see as to this the observations at the end of the Foreign Office letter of 20th December 1898 (Pol. 2488/98), which I confess I do not understand.

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'Prevention of the slave trade in the Persian Gulf: question of increased facilities for passing under the British flag.' [2v] (4/4)

Lastly, suppose we found that we could not object to the French law under which the action we complain of is taken, then we should have to direct our officers at Muscat to set to work to ascertain whether the French officers there are acting in strict accordance with that law or are going beyond it. This our officers have, up to the present moment, made no real attempt to do. (See AAA in my note of 9th May 1898, Pol. 460/98). They apparently have not the smallest idea of ferretting out a thing of this sort. Nothing but detailed instructions will make them do it.

There is just one point more. It would be necessary before saying anything about the Brussels Act to look to the ratifications of that Act. France seems to have ratified with some reservations.

D. F.-P.

10th October 1899.

P.S.—There is, of course, the further point as to whether the French are acting up to Articles XXV. and XXX. of the Brussels Act, into which, as I pointed out, no real inquiry has been attempted.

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