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**'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'.**

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**About this record**

This printed India Office report was written by John Gilbert Laithwaite and published in November 1934. It aims 'to examine, with particular reference to the proposal which has been put forward to establish a station at Khor Quwai [Khawr Quway] in the Musandim Peninsula, the history of the Declaration of 1862 by which France and Great Britain undertook to respect the independence of Muscat, and its effect, and that other existing treaty provisions, on the right of H.M. Government (subject to the consent of the Sultan of Muscat) to establish a naval station in Muscat territory.'

The documents include a short note on the status of the Musandam Peninsula. It lists key treaty engagements between the Sultan of Muscat and His Majesty's Government with relevant extracts including:

- British Treaty of Commerce of 1839 with Muscat, Article 2;
- Treaty of Commerce between France and Muscat, 1844, Article 3;
- Anglo-French Declaration of 10th March 1862;
- British Treaty of Commerce of 1891 with Muscat, Article 4;

- Exclusive Agreement of the Sultan of Muscat with H.M. Government, 1891.

Further sections are:

- Muscat and France, 1770-1934;
- British Connection with Muscat, 1770 to 1934;
- The Anglo-French Declaration of 1862: its importance in Muscat Policy, and the interpretations which have been placed on it.

'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [1r] (1/12)

CONFIDENTIAL.

B. 438.

India Office.

P.Z. 6811/34.

MUSCAT.

Question whether a Naval Station could be established for use by His Majesty's Ships at Khor Quwai or elsewhere in Muscat Territory compatibly with the existing International Engagements of His Majesty's Government.

The object of the present note is to examine, with particular reference to the proposal which has been put forward to establish a station at Khor Quwai in the Musandim Peninsula, the history of the Declaration of 1862 by which France and Great Britain undertook to respect the independence of Muscat, and its effect, and that of other existing treaty provisions, on the right of H.M. Government (subject to the consent of the Sultan of Muscat) to establish a naval station in Muscat territory.

Status of the Musandim Peninsula.

2. Before proceeding to an examination of the relevant treaty provisions and their importance in the present connection it may be mentioned that, while in 1902-04 some doubt was expressed as to whether the Musandim Peninsula (and so the Khor Quwai and the surrounding territory) could properly be regarded as falling within the territory of the Sultan of Muscat, the result of investigations undertaken locally by Mr. Lorimer and embodied in Lorimer's Gazetteer of the Persian Gulf was to show that the area must be regarded as falling within the territory of the Sultan. In the light of those investigations the British Counter Case submitted to the Hague Tribunal in 1905 in the Muscat Dhows Arbitration stated that "from Ras Dibba to Tibba (Tibat), the coast forming the promontory of Musandim is claimed by the Sultan of Muscat, who has certainly before and since 1864 exercised authority on that coast by his Vali and in other ways; and his rights on the coast are recognised by the Sheikh of Shargah and the Jowasmi." There have been no developments since 1905 to justify any reconsideration of this conclusion, and it is relevant that H.M. Government have, so recently as 1930, assisted the Sultan of Muscat to assert his authority at Khassab.

Treaty Engagements.

3. The treaty engagements of importance in the present connection are the following:—

- (a) British Treaty of Commerce of 1839 with Muscat, Article 2.
- (b) Treaty of Commerce between France and Muscat, 1844, Article 3.
- (c) Anglo-French Declaration of 10th March 1862.
- (d) British Treaty of Commerce of 1891 with Muscat, Article 4.
- (e) Exclusive Agreement of the Sultan of Muscat with H.M. Government, 1891.

4. The following are the relevant extracts from the treaty engagements in question:—

*British Treaty of Commerce with Muscat of 1839.*

5. Article 2 of the Treaty of Commerce of 1839 between the British Government and the Sultan of Muscat provides *inter alia* that "British subjects shall be at liberty to purchase, sell, or hire land or houses in the dominions of His Highness the Sultan of Muscat. . . ." This treaty was replaced in 1891 by the revised treaty referred to in paragraph 10 below.

*French Treaty of Commerce of 1844.*

6. Article 3 of the Treaty of Commerce between His Highness the Imam of Muscat and the King of the French of November 1844, which is still in force, provides *inter alia* that "the French shall be at liberty to purchase, sell, or rent land, houses, or warehouses in the dominions of . . . Muscat."

*The Anglo-French Declaration of 1862.*

7. The Anglo-French Declaration of 10th March 1862 places on record that "Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and His Majesty the Emperor of the French, taking into consideration the importance of maintaining the independence of His Highness the Sultan of Muscat and of His Highness the Sultan of Zanzibar, have thought it right to engage reciprocally to respect the independence of these sovereigns.

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Lor. II,  
1368-9,  
1569, 1614.  
P. 741/05.

Aitch.  
(1933) XI,  
No. iv,  
p. 293.  
Appendix  
II, p. xxx.  
No. x, pp.  
304-5.  
No. xvi,  
p. 311.  
No. xvii,  
pp. 317-8

'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [1v] (2/12)

"The undersigned . . . being furnished with the necessary powers hereby declare in consequence that Their said Majesties take reciprocally this engagement."

*Its Origin.*

P. 1717/99.  
Aitch.  
(1933),  
Vol. XI,  
No. ix,  
pp. 303-4.

8. The Declaration arose out of discussions which had reference primarily to the position of Zanzibar. Sultan Saiyid Said, who had ruled over both Muscat and Zanzibar, died in 1856. He had been anxious that his elder son, who had acted as his deputy in Muscat, should succeed to the rulership of Oman, and his younger son to the rulership of Zanzibar. Serious differences arose between the sons, as the elder in virtue of his succession to Muscat also claimed feudal suzerainty over Zanzibar. These difficulties were finally composed by the intervention of Lord Canning, then Viceroy of India, who, in an arbitral Award of 2nd April 1861, decided that Zanzibar should be independent of Muscat and should pass to the younger son of Saiyid Said, but that it should pay to Muscat an annual subsidy of 40,000 crowns.

From Col.  
Rigby, No. 2,  
2.1.61.  
To Lord  
Cowley,  
27.6.61.  
From Lord  
Cowley, 4  
and 11.10.61  
P. 1717/99.  
Lor. I, 447.

9. As both H.M. Government and France had on the date of the Award separate treaties with the Sultan of Muscat, it was apparently considered necessary that France as well as H.M. Government should recognise the separate independence of the two States. (It is noteworthy, however, that this does not appear to have been thought necessary in the case of the United States of America, which had been in treaty relations with Muscat since 1833.) But the immediate cause of the Anglo-French Declaration of 1862 appears to have been the erection by the French of a large barrack at Zanzibar for occupation as a mission house and hospital. The building could easily be occupied by troops, in which case it would dominate the town, and H.M. Ambassador in Paris was accordingly instructed to make enquiries on the subject of the French Government. M. de Thouvenel in reply gave satisfactory explanations and added that the Emperor of the French was ready to enter into a reciprocal engagement to guarantee the independence of the Sultan of Zanzibar. In the light of this intimation the Anglo-French Declaration, under which both parties recognised the independence of Muscat and of Zanzibar, was prepared and signed at Paris on 10th March 1862. Despite the paramount importance of Indian interests in Muscat, no prior reference was made to the Government of India, who first learnt that the Declaration had been concluded in 1871.

*British Treaty of Commerce of 19th March 1891.*

10. The Treaty of Commerce of 1839 referred to in paragraph 5 above, was replaced in 1891 by a revised treaty between Great Britain and Muscat (signed on 19th March 1891 and ratified in 1892), which is still in force. Article 4 of the Treaty of 1891 provides *inter alia* that each of the High Contracting Parties "shall allow the subjects of the other to enter all ports, creeks and rivers with their vessels and cargoes . . . and . . . to hire, purchase and possess houses, warehouses, shops, stores and lands" in each other's dominions.

*Exclusive Agreement of 20th March 1891 between Great Britain and Muscat.*

11. The Exclusive Agreement of 20th March 1891 recorded that the Sultan of Muscat and Oman "does pledge and bind himself, his heirs and successors never to cede, to sell, to mortgage or otherwise give for occupation, save to the British Government, the dominions of Muscat and Oman or any of their Dependencies." This agreement (which may be regarded as being inconsistent with the terms of the Anglo-French Declaration of 1862) has never been officially communicated to the French Government by H.M. Government. When it was communicated by the Sultan to the French Vice-Consul at Muscat in 1899 (see paragraph 31 below) the Vice-Consul replied in writing that he could not recognise it as it was contrary to the Declaration of 1862.

*Relations of Muscat with France and Great Britain, 1770-1934.*

12. Before proceeding to consider the importance in the present connection of the engagements referred to above, and the interpretation which has been placed on the Declaration of 1862 in correspondence between the British and the French Governments, it may be convenient to refer very briefly to the relations of France and of Great Britain with Muscat in the period from about 1770 to the present time.

'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [2r] (3/12)

Muscat and France, 1770-1934.

1770-1891.

13. There appears to be no recorded French connection with Muscat (and certainly none of any importance) before the second half of the eighteenth century. In the second half of the eighteenth century intermittent relations were established with the rulers of Muscat through the French Agents at Baghdad and in the Mauritius. Those relations were temporarily interrupted in 1781, but were renewed in 1785. Relations remained generally friendly up to 1798, in which year the Sultan entered into an agreement with Great Britain under which he undertook to co-operate with her against France. Overtures made by the French Government in 1799 were rejected, and the Sultan in 1803 declined to receive a French mission or a French Consul who had been appointed to Muscat by Napoleon. In 1807, however, a treaty was concluded between Muscat and the French Captain-General at Mauritius. A revised treaty was substituted in 1808 and a French Consular Agent sent to reside at Muscat, where he remained until 1810. French influence, now for a short time predominant in Muscat, disappeared with the capture of Mauritius and Réunion by Great Britain in 1810. From 1815 onwards relations were again re-established. A commercial convention finally came into existence and (after prior reference by the Sultan to H.M. Government) a regular Commercial Treaty was concluded with France in 1844. No French representative was, however, accepted in Muscat up to the death of Saiyid Said in 1856, and while the French authorities in Mauritius appear to have attached importance to maintaining the connection of France with the Sultanate, those relations were of no special significance.

Lor. I, 416,  
428, 430,  
462, 468.

14. There were no developments of importance between 1844 and the conclusion of the Anglo-French Declaration of 1862, which was, of course, concluded without reference to Muscat, nor did the French Government show any signs of greater interest in Muscat between 1862 and 1891. In 1874 a French Vice-Consul appears to have been appointed to Muscat (under the terms of the French Treaty of 1844), but the appointment never took effect. In 1881 a British subject (who was already acting as Consul for the United States of America) was appointed to act as French Consul, but the period for which he held this post is not clear.

Muscat Pré-  
cis, § 205,  
footnote.  
Lor. I, 525.

1891-1899.

15. From 1891 onwards there is a marked increase in French interest in Oman. At about this period France and Russia had entered into a combination for the purpose of diminishing British influence in the Persian Gulf and of promoting a joint policy of their own in that region. In Oman the task of opposing British interests devolved on France. In 1891 the French Government protested (without foundation) that the rule of succession to the Sultanate of Oman had recently been altered under the advice of the Government of India. In 1893 an undertaking was given in the French Chamber that a Vice-Consul should be established at Muscat, and unsuccessful endeavours were made by a French subject to obtain a site for a coal shed at Sur.

Lor. I, 547.

16. In 1894 a French Vice-Consul was appointed and took up his post. Between 1894 and 1899 no effort was spared to increase French prestige in Muscat at the expense of H.M. Government. In 1895 a French war vessel reached Muscat only a few days too late to assist the Sultan in dealing with insurgents against his authority. In 1896 France protested against assistance given by H.M. Government to the Sultan to re-establish his authority in Dhofar, on the grounds that it was contrary to the Declaration of 1862. In 1897 they themselves offered the services of a French war vessel, which were, however, declined, to suppress the Dhofar rebellion; and in 1898 they acquired, without prior reference to H.M. Government, a site for a coaling shed in Muscat territory. The difficult situation which resulted is described in more detail in the note on the Bunder Gisseh incident in paragraphs 30 to 36 below. Suffice it to say that after considerable diplomatic discussion and as the result of the delivery of an ultimatum to the Sultan by H.M. Government, the Sultan in 1899 cancelled the lease and agreement was reached between the British and French Governments on the basis of the division between France and H.M. Government, with the Sultan's approval, of an area which had since 1874 been occupied by British coaling sheds.

*The French Flag Question, 1899-1905.*

17. Since a period prior even to the Anglo-French Declaration of 1862 the French had been in the habit of granting the protection of their flag to Muscat vessels—

**'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [2v] (4/12)**

a practice which gave rise to very considerable difficulty owing to the fact that vessels so protected engaged freely in the slave trade and the arms traffic and that they were immune from search by British vessels. In 1898 the Sultan, in connection with the arms traffic, gave wide rights of search to the British Government over all vessels belonging to his State and no protest was made by the French. The situation, however, became increasingly serious with an increase in the number of vessels flying the French flag. In 1899 the Sultan notified the French Consul that he could not recognise French jurisdiction over Muscat subjects flying the French flag. In 1902 H.M. Government formally protested through the Political Agent against the exercise of French jurisdiction over flag holders as a breach of the Declaration of 1862.

*Decision of Hague Tribunal in the Muscat Dhows Arbitration, 1905.*

18. The questions of the scope of the Anglo-French Declaration of 1862 in relation to the issue of papers by France to subjects of the Sultan authorising them to fly the French flag, and the effect of the holding of such papers by Muscat subjects on the Sultan's jurisdiction were ultimately referred to the Hague Tribunal in 1905 by agreement between the French and British Governments. The Hague Tribunal on 8th August 1905 ruled that while prior to the ratification of the Brussels Act of 1890 by France on the 2nd January 1892 the French Government had been at liberty to authorise Muscat vessels to fly the French flag, they had ceased so to be entitled as from that date, save when the owner or fitter out of the ship could establish that he had been considered and treated by France as a protégé prior to 1863 (a date chosen as one at which, in virtue of legislation by the Ottoman Court and of the Franco-Moroccan Treaty of that year, the creation of new protégés was regulated and limited); that in these circumstances the right should not be given in any future cases, although owners of vessels which, prior to 1892, had been authorised to fly the French flag should retain this authorisation so long as it was renewed by France to the grantee, but that the authorisation could not be transferred to another vessel or owner, and that the flying of the French flag under such authorisation conferred no rights on Muscat subjects as against the Sultan.

1905-1934.

19. Between 1904 and 1912 the most important matter affecting French interests in Muscat (where France continued to endeavour to maintain her special position) arose out of the arms traffic in the Persian Gulf. The arms traffic was, up to his death in 1907, conducted by a French citizen, M. Goguyer, who lived in Muscat. Substantial French manufacturing firms were closely interested in it; and, it being essential from the point of view of H.M. Government that an effective check should be placed upon the trade, a question of great political difficulty arose. The French declined various proposals made to them under which, in return for important territorial concessions elsewhere by H.M. Government, France would abrogate her rights under her Commercial Treaty of 1844 with Muscat and the Anglo-French Declaration of 1862, thereby leaving H.M. Government liberty of action in the Sultanate. The question was finally settled in 1912 independently of the French authorities by the issue of a proclamation by the Sultan prohibiting the arms traffic. H.M. Government in return gave certain compensation and guarantees to His Highness, including a guarantee of the support necessary to dispose of objections that might be raised by France or other Powers.

20. Great difficulty arose with France consequent on this settlement of the arms traffic question, and it was only after long and difficult negotiations that in the early part of 1914 the French Government agreed to recognise the regulations which had been put in force at Muscat and the right of the Sultan to amend those regulations with the concurrence of H.M. Government. H.M. Government in return paid £64,495 as compensation to the interested French firms.

21. In 1913, on the accession of Sultan Taimur, the French Government, who had suggested that the two Governments should simultaneously recognise the new ruler, were informed that while H.M. Government, as they had already indicated, adhered to the Declaration of 1862, they had, in accordance with their usual practice, already taken steps to recognise the *de facto* ruler—more especially as they understood that the French Consul at Muscat only awaited the receipt of instructions by his British colleague to accord official recognition on behalf of France. No protest was received from the French authorities.

P.G. 13,  
p. 46, §16.

**'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [3r] (5/12)**

5

22. Between 1913 and the present day French interest in Muscat has steadily declined, and since the War it has been of negligible importance. In the course of the Peace negotiations of 1919 the question of securing the abrogation of the Commercial Treaty of 1844 and a free hand for Great Britain in Muscat was under consideration, but does not appear to have been pursued. The French coal depôt in Muscat was relinquished in 1920; the number of Muscat dhows flying the French flag had in that year fallen to seven, of which five only belonged to Muscat subjects, and it is improbable that any Muscatis are at the present time entitled to fly the French flag. The Consulate has now been closed for many years, though not abandoned, and active French interest in the State is confined to the rights enjoyed by France under her Commercial Treaty of 1844 (which made it necessary recently to secure French concurrence in certain modifications proposed in the Muscat tariff) and to a visit to Muscat and its waters by a French sloop, which usually takes place annually.

**British Connection with Muscat, 1770 to 1934.**

23. The British connection with Muscat dates from the early seventeenth century. The first formal treaty between H.M. Government and Muscat, under which Muscat undertook to co-operate with Great Britain against the French, was signed in 1798. That treaty has, since the beginning of the nineteenth century, been supplemented by a large number of engagements. Of these the most important are the Treaty of Commerce of 1839, which has since been replaced by the Treaty of Commerce of 1891, and the Exclusive Agreement of 1891, to which reference is made in paragraph 3 above. In addition, Muscat has contracted engagements with H.M. Government in regard to the suppression of the slave trade, the arms traffic, piracy, the grant of concessions for oil and coal, the making of air regulations; and she has conceded exclusive jurisdiction over British subjects (including British protected persons) and the subjects of Indian States to H.M. Government.

24. It is not unfair to say that through much of this period the continued existence of Muscat has been possible only because of the moral, financial and, occasionally, the military or naval assistance lent her by the Government of India and H.M. Government. But for these she might have succumbed to the Wahabis at various periods between 1800 and 1870; she would have found difficulty in retaining her control in Dhofar in 1896-97; and the ruling house might well have been driven into the sea by the tribal rebellion of 1895 or by the fanatical Imam of the hinterland and his Ibadhi followers between 1914 and 1922. Since 1873, moreover, when Zanzibar ceased to make the annual payment due to Muscat under the Canning Award to which reference is made in paragraph 8 above, the payment, now known as the Zanzibar Subsidy, and amounting to Rs. 86,400, has been made annually by the Government of India. From 1913 to the present day an annual subsidy of 1 lakh of rupees (the discontinuance of which has recently been under consideration) has in addition been paid to successive Sultans by the Government of India in recognition of their co-operation in the putting down of the arms traffic.

25. The interest of H.M. Government in Muscat has thus throughout the period under consideration been substantial and of vital practical importance to the continued existence of Muscat as an independent State. It is in marked contrast with the interest taken in Muscat by the French Government, which may not unfairly be described as having been actuated largely by political motives which were not directly related to the special interests of Muscat; and which in more recent times appears to have been based on the desire of the French Government to assert itself in a region in which British interests have long been predominant, or to use the nuisance value of the Anglo-French Declaration of 1862 to secure concessions in other areas of the international field from H.M. Government.

**The Anglo-French Declaration of 1862 : its importance in Muscat Policy, and the Interpretations which have been placed on it.**

26. The leading case on the interpretation of the Declaration of 1862 is the so-called Bunder Gisseh incident of 1899. But before dealing in greater detail with the discussions to which that incident gave rise, it may be placed on record that the existence of the Declaration has for many years bulked largely in British policy in this area. The circumstances in which the Declaration was concluded are described in paragraphs 8-9 above; it will be seen that it was made without

3227

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'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [3v] (6/12)

6

prior consultation with the Government of India and that it had regard primarily to a possible French challenge to Zanzibar; and it seems not unfair to suggest that no special consideration was given to the embarrassing consequences to which it might give rise in Muscat.

S. of S. to  
G. of I.  
Desp. 4<sup>s</sup>,  
19.10.94.

S. of S. to  
G. of I. tel.  
28.3.96.

F. O. to  
Paris,  
27.5.96.

10.2.97.  
S. of S. to  
G. of I. tel.  
18.2.98.

27. In 1890 an India Office proposal for the establishment of a protectorate over Muscat was rejected by the Foreign Office partly because of the existence of the Declaration; in 1891 a French protest, based on the Declaration, was received against alleged British activities. In 1894 the Sultan was advised to plead the terms of the Declaration should France claim to grant protection to French flagholders who were Muscat subjects; in 1895 the proposal for the establishment of a protectorate was revived by the Government of India, who thought that it might be possible to obtain French consent in connection with the arrangements then contemplated in regard to Madagascar, but H.M. Government considered that there was no prospect of this. In 1896 the French were officially informed of assistance proposed to be given to the Sultan to maintain himself in Dhofar, and were assured that the action proposed in support of His Highness implied no intention of establishing any protectorate over Muscat. The assistance in question was, however, followed in May 1896 by a protest by the French Ambassador against unilateral action of this nature, in reply to which the Foreign Secretary assured him that there was no intention "of establishing any protectorate over Muscat or any departure from the engagements undertaken in the Declaration of 10th March 1862." In 1897 the grant of armed assistance to the Sultan in Dhofar was again approved by H.M. Government, but with a specific warning by the Secretary of State for India to the Political Resident of the importance of bearing in mind the Declaration of 1862. In 1898 a proposal for assisting the Sultan by taking control of his Customs was rejected by H.M. Government on the ground that actual and direct control of the Muscat Customs by the Government of India would be in conflict with the independence of the Sultan secured by the Declaration of 1862. In the Bunder Gisseh incident of 1899 H.M. Government took their stand on the Declaration as against the French Government (see paragraphs 33-35 below).

*Law Officers' Opinion of February 1899.*

B/122/99.

28. In February 1899, the Law Officers of the Crown advised as follows:—

"(1) The Declaration of 1862 does not in our opinion require the British Government to abstain from exercising a preponderating influence in Muscat, so long as that influence is not exerted in any way inconsistent with the independence of Muscat. For instance, the [Zanzibar] Subsidy and the terms on which it was made payable involved no breach of the Declaration.

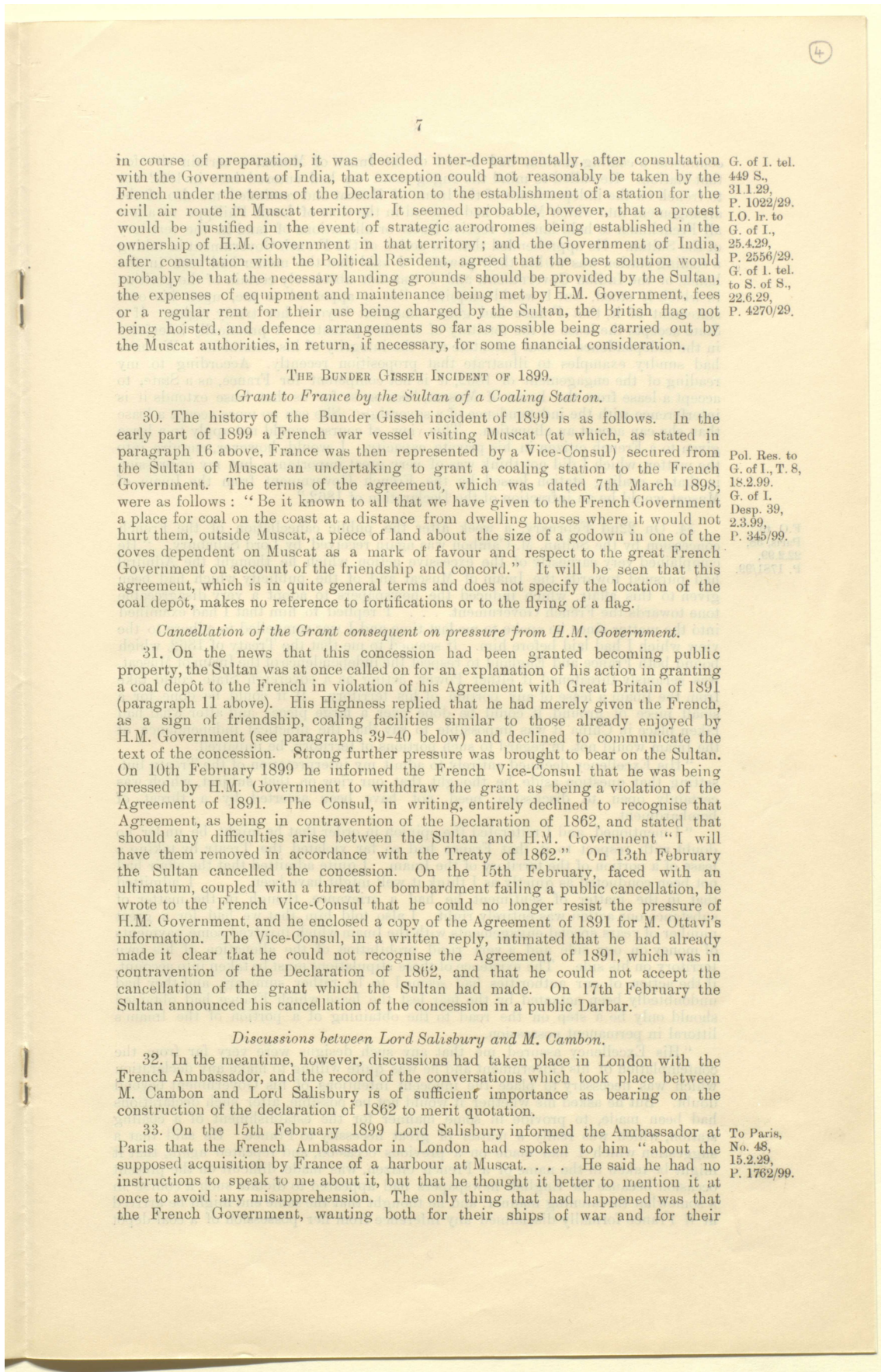
"(2) We think that the British Government would be justified in punishing or even deposing a particular Sultan who broke his engagements with the British Government. The undertaking contained in the Declaration is an engagement to respect the independence of the Sovereigns of Muscat as representing the country, and does not carry with it an inability to punish any particular Sovereign for breaches of treaty or of international law. For this the consent of France is not necessary. But it would be a breach of the Declaration if after deposing a particular Sultan a successor were set up who was not independent.

"We should add that whilst the question whether the Sultan could consistently with the Declaration be required to dismiss a particular adviser must depend on the special circumstances of the case, it is hardly compatible with the independence of Muscat that the Sultan should be compelled to accept Ministers and advisers who are acceptable to the British Government."

29. In the discussions over the flying of the French flag by Muscat dhows which culminated in the reference of 1905 to the Hague Court (paragraph 18 above), H.M. Government again took their stand on the Declaration and contended that the French claim to jurisdiction over Muscat dhows or subjects flying the French flag was inconsistent with its terms—a view in substance accepted by the Hague Court. Frequent reference was also made to the existence of the Declaration in the discussions which took place between 1904 and 1912 about the suppression of the arms traffic, but the efforts of H.M. Government to secure its abrogation were unsuccessful. In 1929, when the air route to India along the Arab Coast of the Persian Gulf was



'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [4r] (7/12)



'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [4v] (8/12)

8

commerce a coaling station, had leased of the Imam of Muscat a certain site for that station. He called to mind the engagement we had entered into in 1862 not to trench on the independence of the Imam of Muscat and reminded me also of the arrangement into which Muscat had entered in the time of Louis Philippe to allow all Frenchmen to hold land, or receive leases or alienations of land in the territory of the Sultan. He apprehended that the action of the French Government in taking a coaling station was within their powers. I said that the matter had been in the hands of the Indian Government, and I was not absolutely certain of the position in which it stood, but I would enquire. But it appeared to me, upon his own statement of it, that France had gone somewhat beyond her treaty rights. If a State accepts the lease of the territory of another potentate it practically interferes in the independence of that potentate and the integrity of his dominions. We have had sundry examples to illustrate that proposition recently. According to my reading of the engagement of 1862, it is not competent for France, as a State, to accept a lease from the Imam of Muscat, because so far as that lease extends it is interference with the independence of a sovereign. She can no more accept a lease than she can accept an alienation. This view, of course, would not apply to a lease given to a French citizen in his private capacity. I would, however, enquire into the matter, which I did not think was of very great importance, but my impression is that a coaling station leased by the French Government from the Imam of Muscat would be an infraction of the Declaration of 1862."

F.O. to  
Paris, 58,  
22.2.99,  
P. 1781/99.

34. On 22nd February, a week after the public cancellation of the French concession by the Sultan, M. Cambon was again received by Lord Salisbury. "He complained very earnestly of the excessive action which he thought the Admiral had pursued towards the Imam of Muscat and of the publicity which had been given to this affair, which induced the newspapers to adopt a very disagreeable tone towards the French Government. . . . I replied to him that I had examined into the matter since he spoke to me last time and I was compelled to adhere to the view which I had laid before him. It seemed to me that the Treaty of 1862, which bound both France and England to respect the independence of the Imam of Muscat, was seriously threatened if either Power, acting as a sovereign State, could take from the Imam a lease of any portion of his territory. If it could be done for a small piece of ground, it could be done over a large piece; and after what had taken place in China it was impossible to say that the practical independence of the Imam would not, in regard to such portions of territory, be impaired.

"His Excellency declined entirely to admit my interpretation of the Treaty but, setting that question aside, he thought that our view on that subject, which was certainly open to discussion, need not have been asserted by a threat of bombardment.

"I mentioned, and I reiterated the opinion in order that he might be under no doubt with respect to it, that France had so far violated the Treaty by taking a lease of a portion of the territory of the Imam. I quite admitted that the affair had not been conducted as quietly as I think it well might have been. . . . I admitted that in the matter of sentiment he had a grievance, though in the matter of substance our action was entirely right. I also told him that we had for a great number of years special engagements with the Imam which involved some payments of money on our side and a very rigid prohibition of the alienation of his own territory on his side. The existence of these stipulations must be taken into account, if the action of our authorities had seemed to be rather summary, and they had undoubtedly been actuated by the fear lest the lease which France had obtained should only be a step on the road to the obtaining of a portion of the Imam's littoral in permanent possession.

"His Excellency assured me that any such designs were very far from the contemplation of his Government and he was quite willing to make any declaration which was necessary to place the innocent intentions of his Government beyond doubt. But he asked me whether it would not be possible, after such declarations had been made, to provide in some manner for the establishment of a coaling station, which was really a matter of great necessity to France. He said that a suggestion which I had made on a previous occasion, and repeated again, that it might be taken in the name of a French citizen, was made difficult on the present occasion because the English newspapers had appeared to dictate such a course in a somewhat threatening manner, and he thought that the same end might be arrived at if France formally disclaimed any inference from her possession of a coal depôt

'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [5r] (9/12)

9

which could be construed to be derogatory to the independence of the Imam or to establish any French right to the littoral. . . . Lord Salisbury undertook to examine this suggestion further with the India Office, within whose jurisdiction the matter fell.

35. On the 27th February 1899 M. Cambon again called on the Foreign Secretary and "said that the French Government accepted our reading of the Treaty of 1862, that neither State might accept any cession or lease of Muscat territory, and that they no longer pressed the proposal that they should keep the grant of Bunder Gisseh under formal assurances excluding the idea of territorial right. His Excellency maintained, however, that it was necessary for his Government to be able to procure coal in these waters and they accordingly proposed to establish a coal depôt on exactly the same terms as our own, that is to say, on sufferance. But he requested that the British Agent at Muscat might be informed that this had been done with the assent of Her Majesty's Government, as otherwise the Imam might object to the arrangement. . . ."

F.O. to I.O.,  
27.2.99,  
P. 1794/29.

*Settlement of Bunder Gisseh Incident.*

36. After lengthy further discussion between the French Government and H.M. Government and examination of alternative sites, the matter was finally settled in July 1900 by the grant to France by H.M. Government (after reference to the Sultan) of one-half of the area which they had hitherto themselves enjoyed for coaling purposes in the Makalla cove in Muscat harbour. The conditions of the grant were that the area in question should be held on precisely the same conditions as the British area, i.e. that no political or territorial rights of any kind should be involved and no right given to fly the national flag or to erect fortifications. H.M. Government successfully insisted on having a determining voice in the question of the site to be granted to France, the argument that they were entitled to ensure that that site was in no way superior to the site held by Great Britain, since "France, under the Treaty of 1862, had no right to any privilege which England had not a right also to possess," being employed in the course of the discussions.

I.O. to F.O.,  
21.4.99,  
P. 1465/99.  
P.A. to  
Sultan,  
20.3.99,  
8.6.99.

F.O. Desp.  
to Paris,  
No. 331,  
7.10.99,  
P. 2371/99.

37. The main points which emerge from the incident are:—

(a) While the acquisition of a lease of land by a private individual for use as a coaling station would not constitute a violation of the Declaration of 1862 and would be permissible under the French Commercial Treaties of 1844 and the British Commercial Treaty of 1891, acceptance of a lease or cession of Muscat territory by either Government would be an infraction of the terms of the Declaration.

(b) H.M. Government based their representations to the Sultan on his violation of the Exclusive Agreement of 1891.

*Vis-à-vis* the French, on the other hand, and in Parliament, H.M. Government took their stand on the Declaration of 1862, the India Office, while emphasising that the Agreement of 1891 "conferred exceptional rights upon the British Government", agreeing with the Foreign Office that it was impossible to found any argument on that "to which France was not a party." That Agreement has never been officially communicated by H.M. Government to the French Government, and the French Vice-Consul declined to recognise it when it was officially communicated to him by the Sultan on the ground that it contravened the Declaration of 1862. On the other hand, H.M. Government in dealing with the French made some play (*cf.* paragraph 34 above) with their special treaty relations with the Sultan, and recorded their financial assistance to him and the fact that he had undertaken not to alienate his territory.

I.O. to F.O.,  
2.5.99,  
P. 1949/99.

(c) H.M. Government felt unable to resist a French claim for precisely equal treatment; but were able to require that the area attributed to the French should be attributed on conditions identical with those on which the British area was held, viz. that no political or territorial rights were acquired in it and that the national flag should not be flown or defences erected.

'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [5v] (10/12)

10

*The French Coal Shed at Muscat, 1900-20.*

38. The French maintained their coal shed until December 1920-21, when they abandoned it, H.M. Government taking a lease for one year of their interest in it.

Later in 1921 H.M. Government informed the French Government that they proposed to advise the Sultan to resume the site, for which they had themselves no use, and with the concurrence of France they took action accordingly. In December 1921 the Muscat Council of Ministers, after acknowledging the abandonment of the French coal depôt, added: "We will be honoured if you inform your High Government that we return that portion to her according to the past gift to her from His Highness the Sultan." The Political Agent in reporting this offer, which was accepted by H.M. Government, stated that while the word used by the Council was "gift," the intention was "use of the site."

*History and Position of the British Coal Depôt at Muscat, 1874-1934.*

39. Up to the year 1875 the Government of India used to stock their coal in three godowns in Muscat, and the British-India Steam Navigation Company had a small coal shed in the Makalla cove in Muscat harbour, for which no rent was paid. An annual rent of Rs. 174 was paid by Government for one godown, the others having been given rent free by the Sultan. Two fires, which endangered the safety of the town of Muscat, having broken out in the coal godowns in 1875, Saiyid Turki offered to allow H.M. Government to build a godown at Makalla next to the British-India coal shed, and the Government coal was accordingly stored there. In 1876 the British-India Steam Navigation Company broke up their coal depôt at Muscat and sold the materials of the shed by auction, the site being resumed by the Sultan, who handed it over to the Political Agent for the use of Government. As stated in paragraphs 31 and 33 above, a portion of the British site was in 1900 made over to France, by whom it was held till 1920. Its use was regranted to H.M. Government by the Sultan in 1921.

40. The ground on which the Makalla coal sheds stand was not purchased by Government, nor was it rented, and the Political Agent reported in February 1899 that there was nothing in the records of the Muscat Agency to show whether the Sultan made a gift to the British Government of the site or whether he merely allowed the British coal sheds to be built there out of courtesy. The Political Agent added that the whole cove was not taken up by H.M. Government, a portion of it being occupied by fishermen, whose houses adjoined the British coal shed; that the cove was open to all; and that no British flag has ever been hoisted at Makalla. So far as is known the British flag has not subsequently been hoisted on the Muscat coal sheds, nor has rent been paid for them. They have not been actively used for many years, and in June 1934 they were transferred to the R.A.F. for use as an oil depôt with the written concurrence of the Sultan.

Tel. from  
P.A., Mus-  
cat, to G. of  
I., 28.2.99.

G. of I.  
Desp. 39,  
of 2.3.99,  
P. 345/89.  
P.Z. 4963/  
34.

**Conclusion.**

41. From the note above it will be seen that the French interest in Muscat is of long standing and dates back to the eighteenth century; that it is based essentially on the Commercial Treaty of 1844 and the Anglo-French Declaration of 1862; but that it has been of active importance only between 1890 and 1914, although the Treaty provisions referred to still remain in force. Any sentimental attachment based on long historical association apart, the French have in the past, even during the period of the Entente Cordiale and immediately prior to the Great War, shown themselves fully alive to the "nuisance value" of their position in Muscat; and between 1908 and 1912 they declined offers made by H.M. Government of a not ungenerous territorial compensation elsewhere in return for an abrogation of their treaty rights. While France might be expected not to raise difficulties so long as the importance of any anchorage or rights acquired is minimised, and so long as H.M. Government are in a position to claim that no infringement of the Declaration of 1862 is involved, it is *prima facie* unlikely, even now, when for many years her active interest in Muscat has been slight, that her consent to the abrogation of the Declaration of 1862 or of the Commercial Treaty of 1844 could be secured without long discussion and a *quid pro quo* which might be disproportionately large.

**'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [6r] (11/12)**

42. On this assumption, the questions for settlement appear to be—

- (a) the extent to which, and the conditions on which, H.M. Government are at liberty, having regard to the construction which has been placed on the Declaration of 1862, to acquire rights in respect of the use of a site in Muscat territory for naval purposes;
- (b) whether such conditions are capable of fulfilment.

43. As regards the first of these points, it would be open to a *British subject* in his private capacity (as distinct from the British Government) to acquire land for use as a harbour or a station under the terms of Article 3 of the British Commercial Treaty of 1891. H.M. Government themselves suggested to the French in 1899 that the difficulty which had arisen over Bunder Gisseh should be solved by the acquisition of a site for a coaling shed by a French subject, and the suggestion was rejected at the time by the French Government professedly only because it would not have been consistent with their prestige to accept it in the light of the references which had been made to it in the English Press. There are, however, in any event, obvious difficulties about the acquisition of an area which would in practice be used only or even predominantly for naval purposes by any private individual.

44. If, on the other hand, rights acquired are acquired by *Government* and not by a private individual, the construction of the Declaration of 1862 at once becomes material. The construction placed on that Declaration in the discussions of 1899-1900 described above was that neither signatory of the Declaration can, consistently with its terms, obtain a lease or cession of Muscat territory; that no action is permissible which would be an infringement of the independence of the Sultan (compare on this point the opinion expressed by the Law Officers in a different connection in 1899, paragraph 2S above); and that in these circumstances to acquire territorial or sovereign rights over property which they use in Muscat, to fly the national flag, or to erect defensive works, on such property would be a violation of the terms of that Declaration. (The coal sheds which H.M. Government have held in Muscat since 1874 have accordingly been held on sufferance only; the national flag has not been flown, defensive works have not been erected, and no territorial or sovereign rights in the area have been conveyed. The coal sheds held by France from 1900 to 1920 were held on the same basis. Of the other sites at present occupied by H.M. Government, the use of the site of the civil aerodrome at Gwadar has been granted by the Sultan, who will receive an annual rent in return; its use is not confined to British subjects or aeroplanes; the British flag is understood not to be flown; and liability for protection rests with the Sultan. The position in regard to the strategic aerodromes is not clear; but it would appear that the Sultan, while retaining full sovereignty, has granted the use of the sites in question rent free, the British flag not being hoisted, and defensive works not being erected.)

45. It is open to question, in the second place, whether, on the construction placed on the Declaration in 1899, H.M. Government are not committed to recognising that either signatory can claim rights under the Declaration corresponding to those which may be acquired by the other. H.M. Government felt unable in 1899 to plead the Exclusive Agreement of 1891 against the French; that Agreement has at no stage been officially communicated to the French Government (and a French statement to the Sultan that it is inconsistent with the Declaration of 1862, and cannot be recognised, remains on record); and H.M. Government urged in the course of the discussions that France has no right to any privilege which England has not also a right to possess (paragraph 36 above). The point is of some importance because of the risk that the French, for reasons of prestige or from a desire to embarrass, either now or at a later stage, might advance a claim to a corresponding concession which (despite the provisions of the Exclusive Agreement of 1891) it might be difficult for the Sultan or for H.M. Government to resist.

46. From the above it would appear that H.M. Government might reasonably claim to be entitled, consistently with their existing international engagements, to acquire rights in the Khor Quwai from the Sultan of Muscat, so long as those rights were without prejudice to the sovereignty of His Highness, conveyed no territorial or sovereign rights, and did not involve the flying of the national flag or the erection of defensive works. There need be no question of any acquisition

'Muscat. Question whether a naval station could be established for use by His Majesty's ships at Khor Quwai or elsewhere in Muscat territory compatibly with the existing international agreements of His Majesty's Government'. [6v] (12/12)

of territorial or sovereign rights, and no difficulty need arise over this. So far as defence is concerned, it would seem reasonable to suggest that no exception could be taken to the equipment of the staff of the station with rifles, &c., for ordinary purposes of self-defence, or to the building of boundary walls; while the knowledge that the station was visited at regular intervals by the sloops of the Persian Gulf Squadron would seem likely to deter surrounding tribes from making raids upon it. The question of the *flying of the flag* is one of greater difficulty. Having regard to the visit paid annually to Muscat by a French sloop and to the fact that the existence of the new station must become known to the international shipping using the Gulf, it seems unlikely that if the flag were in fact flown it would escape notice. Even if a flag other than the National flag were flown, and if the flagstaff were not fixed in the ground, it might be open to France to argue that the presence of a flag was only consistent with the existence of a naval station or dépôt of such a character as to constitute an infringement of the Declaration of 1862.

47. A difficulty which should not be overlooked in connection with the acquisition of the site is perhaps that discussed in paragraph 45 above. It is perhaps relevant in this connection that under the Red Line Agreement Muscat falls within the sphere of the I.P.C., which contains a French group which has in the past shown itself extremely anxious to obtain a share in any oil development in the Persian Gulf area. Should oil at some time in the future be found in the Sultan's dominions and be exploited by the I.P.C., French interest in Muscat might very well revive and the French Government be glad to take advantage of the existence of a British naval station to make a corresponding demand on the Sultan.

J. G. LAITHWAITE.

India Office,  
2nd November 1934.

45. It is open to question in the second place, whether on the construction placed on the Declaration in 1862, H.M. Government are not committed to recognizing that other signatories can claim rights under the Declaration corresponding to those which may be acquired by the other. H.M. Government let enable in 1860 to place the Exclusive Agreement of 1861 against the French; that Agreement has at no stage been officially communicated to the French Government (and a French statement to the Sultan that it is inconsistent with the Declaration of 1862 and cannot be recognised, remains on record); and H.M. Government urged in the course of the discussions that France has no right to any privilege which England has not also a right to possess (paragraph 33 above). The point is of some importance because of the risk that the French, for reasons of prestige or from a desire to embarrass, either now or at a later stage, might advance a claim to a corresponding concession which (despite the provisions of the Exclusive Agreement of 1861) it might be difficult for the Sultan or for H.M. Government to resist.

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