

#### 4. COUNTER-MEMORIAL SUBMITTED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA

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##### PART I

##### STATEMENT OF THE CASE

The proceedings in this case were instituted by an Application filed by the Government of the French Republic on October 28, 1950, to determine whether the United States is entitled to continue to exercise in Morocco certain rights which it derives from treaties, international agreements and custom and usage. The French Government has instituted these proceedings in its capacity of Protector of Morocco as well as on its own behalf, and has so stated to the Court on October 6, 1951, pursuant to a Preliminary Objection filed by the United States on June 21, 1951, and to a request from the Court dated October 4, 1951. This Counter-Memorial is submitted by the Government of the United States, pursuant to the Order issued by the Court on October 31, 1951, in answer to the allegations and arguments presented by the French Government in its Application of October 28, 1950, and its Memorial of March 1, 1951.

Recourse to judicial settlement in international affairs is quite often considered essentially to be a means of settling disputes between States which might create international friction or endanger international security. This emphasis upon the maintenance of peace as the primary function of the technique of judicial settlement is perfectly justified, of course, in the light of past experience. The clash between the conflicting interests of States seeking to achieve ends the attainment of which was limited only by the interplay of their respective politics has too often given recourse to the use of self-help, force and violence.

Recourse to judicial settlement, nevertheless, does not necessarily indicate that there exists between the parties a conflict such as threatens to develop into a dispute endangering international peace. There always arises in the course of international relations differences which are nothing but the normal and legitimate differences bound to exist between parties having dissimilar points of view, backgrounds and interests. Such differences, especially when they continue unresolved over a fairly extended period of time, prove sometimes too complex for the parties to reach by themselves a satisfactory settlement. Recourse to judicial settlement becomes in such cases the proper means for these States both to obtain a successful termination of the dispute and to abide by the standards of international conduct to which the modern community of nations adheres.

The case now before the Court falls in the latter category. The normal political relations between the Parties have not been affected in any manner, in the past or now, by the fact that they have been holding divergent views with respect to the various questions raised in these proceedings. The questions at issue concern strictly the interpretation of a complex treaty situation in Morocco about which the United States and France have been in disagreement ever since the establishment of the French Protectorate. They are questions of law in the most literal sense of the term and are submitted to the Court in the belief that resort to judicial settlement will not only promote a just decision satisfactory to both Parties, but will also contribute to the development of the tradition of law and order which both the United States and France desire to promote.

### *RESPECTIVE POSITIONS OF THE PARTIES*

The immediate source of the controversy which has brought the case to the International Court of Justice was the enactment by the Government of Morocco of measures of economic control which deprived United States nationals of certain commercial rights which they have long had and exercised in Morocco. The enactment of these measures, and in particular a Dahir of December 30, 1948, brought to the fore, and to its climax, a controversy which had been growing between the Parties for several years. The respective and conflicting positions of the Parties in the course of the controversy can be summarized as follows.

The position of the United States is based on rights acquired from Morocco in the course of treaty relations with that country from 1787, the date of the conclusion of the first United States treaty with Morocco, to 1906, the date of the conclusion of the Act of Algeciras. These treaty rights comprise economic rights and extraterritorial rights.

Foremost among the economic rights is the right to economic liberty, which guarantees to American nationals in Morocco the right freely to engage in trade and industrial or other business activities. In implementation of this general principle, there have been granted, for example, the right to equality of treatment; the right of traders to be exempt from all forms of taxation save those specified in the treaties; the right to be exempt from customs duties above 12½% of the value of the imported merchandise.

The extraterritorial rights include the jurisdiction of American consular courts in all cases in which a United States national is a defendant and, as a corollary, the immunity of United States nationals from the application of Moroccan law. The rights include, in addition, protection of certain native Moroccans, involving their enjoyment of certain privileges and subjecting these persons, generally speaking, to the jurisdiction of the consular courts of

the United States under the same conditions which prevail in the case of American citizens.

No difficulties were experienced by the United States in the exercise of its treaty rights in Morocco up to the time of the establishment of the protectorate by France. Nor were there, prior to that time, difficulties with the French Government regarding Morocco. The interests of the United States in Morocco before 1912 were the same as those of France either because of the identity of the treaty grants made by Morocco to the United States and to France or because of the equalizing effect of the most-favored-nation clause. In addition to France and the United States, these economic and extraterritorial rights were exercised by many other nations, including in particular Austria-Hungary, Belgium, Germany, Great Britain, Italy, the Netherlands, Portugal, Russia, Spain and Sweden.

The identity of the interests of France with those of other nations in Morocco ended when France established its protectorate over Morocco. As Morocco came into the French sphere of political influence, the conflict between the new interests of France and those of other Powers, including the United States, developed along two main lines : opposition to economic rights, and opposition to extraterritorial rights.

Except for miscellaneous exceptions which are not relevant here, none of the States concerned surrendered its economic rights in Morocco after the establishment of the protectorate. The French Government, however, soon began to take the position that these economic rights constituted an encroachment upon the special position of France in Morocco, despite the fact that the French Government had specifically promised to respect and to maintain these economic rights as a condition precedent to the recognition of the protectorate by other nations.

In the years preceding World War II, France strove to reduce these economic rights through various means ranging from negotiation to circumvention and outright refusal to recognize them. The United States, along with a number of other interested foreign Powers, resisted these attempts. The end of World War II saw a recrudescence of the attempts of France to terminate the economic rights granted by Morocco. The United States Government was willing to negotiate such temporary adjustments as were regarded necessary under the circumstances, but the special difficulties arising from the enactment of the Dahir of December 30, 1948, resulted in the French Government's bringing the long-standing conflict concerning economic rights before the Court.

With respect to extraterritorial rights, a large number of foreign Powers (Great Britain and the United States excepted) acceded soon after the establishment of the protectorate to the French request for their surrender, so far as concerned the French zone of Morocco. Great Britain surrendered its extraterritorial rights in 1938, but the United States has continued to maintain them in

the French zone of Morocco as well as in Tangier and the Spanish zone. Here again the French Government has, since 1912, been disposed to consider these rights as an encroachment upon its position of protecting Power in Morocco, despite the fact that the United States specifically reserved all its treaty rights when it recognized the French protectorate in 1917. The impact of the Dahir of December 30, 1948, sharpened the differences between the United States and France over extraterritorial rights. The question of these rights also is now brought before the Court by the French Government.

Such, briefly stated, are the respective positions of the Parties on the basis of which the French Government has presented for the decision of the Court the four submissions which are reviewed below.

### *SUBMISSIONS OF THE FRENCH GOVERNMENT*

In so far as concerns the economic rights of the United States in Morocco, the issue is raised in the fourth submission, which requests the Court to declare and judge that :

“The Dahir of December 30, 1948, concerning the regulation of imports not involving an allocation of currency, is in conformity with the economic system which is applicable to Morocco, according to the conventions which bind France and the United States.”

The French Government makes no challenge to the legal origin and existence of these economic rights, which have been written into a number of bilateral treaties and into the Act of Algeciras, and have been specifically recognized by the French Government in the treaties which it concluded preliminary to and preparatory to the establishment of the protectorate. Instead the French Government alleges that the issue of the legality of the economic regime instituted by the Dahir of December 30, 1948, is controlled by the recent conventions to which the United States and France are parties and not by the treaty rights on which the United States relies. In effect, the French Government is alleging that these recent conventions have superseded or abrogated the previous treaty rights.

So far as the controversy relates to the extraterritorial rights of the United States in Morocco, the French Government has raised the issue in submissions 1, 2, and 3. In the first submission, the French Government requests the Court to judge and declare :

“That the privileges of the nationals of the United States of America in Morocco are only those which result from the text of Articles 20 and 21 of the Treaty of September 16th, 1836, and that, since the most-favored-nation clause contained in Article 24 of the said treaty can no longer be invoked by the United States in the present state of the international obligations of the Shereefian Empire, there is nothing to justify the granting to the nationals of the United States of preferential treatment which would be contrary to the provisions of the treaties.”

Apparently the "privileges" to which this submission refers are the rights of extraterritorial jurisdiction and protection of the United States. The French Government is not in a position to deny that these treaty rights were validly granted by the Sultan of Morocco. Moreover, the French Government acknowledges on pages 60-61 of its Memorial that the exercise of these rights could not have been legally controverted up to 1938; it states that it refrained from contesting their exercise after 1938 for political reasons. The French Government proposes now to show that, as a matter of international law, these rights are no longer enforceable. It argues that new factors and circumstances have arisen which justify the State of Morocco in considering the major part of the United States rights of jurisdiction as invalid.

In the second and third submissions, the French Government requests the Court to judge and declare:

"That the Government of the United States of America is not entitled to claim that the application of all laws and regulations to its nationals in Morocco requires its express consent;

That the nationals of the United States of America in Morocco are subject to the laws and regulations in force in the Shereefian Empire, and in particular the regulations of December 30th, 1948, on imports not involving an allocation of currency, without the prior consent of the United States Government."

These two submissions seem to restate the first submission in more specific form, since jurisdiction of foreign consular courts and immunity from local law are corollaries. In connection with these submissions, it is to be noted that the French Resident Commissioner General in Morocco has been seeking the assent of the United States Government to Moroccan legislation affecting American nationals for more than thirty years. The French Government, however, proposes now to show that, because of new circumstances, the right to immunity from local law (in the absence of assent) no longer exists.

None of the treaty questions under reference in these four submissions have arisen in the Tangier zone or the Spanish zone of Morocco. The submissions of the French Government accordingly, while not as explicit as desirable on this point, concern only the treaty rights of the United States in the French zone of Morocco. All the statements of the United States in this case, including those concerning jurisdiction, are made on that understanding:

The issues having thus been presented by the French Government in its submissions, the Government of the United States proposes to examine now the relation to those issues of the allegation of the French Government concerning the burden of proof in this case.

### BURDEN OF PROOF

On page 29 of its Memorial, the French Government alleges that, in point of law, it is really in the position of a defendant, and not in the position of a plaintiff. The Government of the United States does not believe that the stand taken by the French Government in this respect is well founded.

This stand would appear to be incompatible with the statement made by the French Government in the sentence immediately following that :

“Consequently, the Government of the French Republic, in order to seize the Court, has disregarded logic and has *abandoned the position of respondent.*” (Italics supplied.)

The principle which charges the plaintiff with the burden of proof, *actori incumbit probatio*, is well established in law. Having assumed the position of plaintiff by its own admission, the French Government has assumed as well the burden of proof in this case.

The Government of the United States submits further that, in addition to the devolution of the burden of proof by reason of procedure, the French Government must bear the burden of proof in this proceeding by reason of the nature of the legal issues which it has presented to the Court.

The French Government does not deny that the obligations on which the United States relies have been legally and effectively brought into existence by treaty. As pointed out above, the French Government admits and recognizes as legally valid the treaty basis of these rights. It concedes the legality of the grant of rights of extraterritorial jurisdiction, and concedes the legality of their exercise at least up to 1938. It does not argue that the treaties do not provide in unmistakable language economic rights for United States nationals in Morocco. Rather, it advances the proposition that new factors and circumstances have arisen which, in international law, entitle the State of Morocco to consider such treaty rights as no longer in force. It contends that the State of Morocco is or should be released from obligations validly contracted, and has undertaken, therefore, to prove to the satisfaction of this Court that the State of Morocco has a right to be so released. In other words, the French Government has assumed the burden of proof from the standpoint of substance as well as from that of procedure.

### COMPULSORY JURISDICTION

The United States Government does not raise any jurisdictional issue in the proceeding, even though it does not concur in the allegations with respect to the compulsory jurisdiction of the Court which have been presented by the French Government, it being its understanding that its abstaining from raising the issue does not affect its legal right to rely in any future case on its reservations contained in its acceptance of the compulsory jurisdiction of the Court.

## PART II

### THE FACTS

In view of the nature of the legal issues which have been raised in the Application and in the Memorial, the Government of the United States submits that the following questions of fact arise:

- (1) What are the treaties and other agreements which establish the rights of the United States in Morocco.
- (2) What are the treaties and other acts which determine the rights and obligations of France as Protecting Power.
- (3) What are the circumstances which gave rise to the dispute in this case.

#### CHAPTER I

#### *TREATIES ESTABLISHING THE RIGHTS OF THE UNITED STATES IN MOROCCO*

In order properly to determine the origin and existence of the treaty rights which the United States has secured from the Sultan of Morocco and exercised in that country without any objection up to the present time, it is necessary to review historically not only the treaty relations of the United States with Morocco, but also the treaty relations of other foreign Powers with the State of Morocco. There are two reasons for this. On the one hand, it is necessary to make such a review since certain treaty rights were not granted directly to the United States but depend for their existence upon the effect of the most-favored-nation clause in conjunction with treaties concluded by Morocco with other Powers. On the other hand, the issues in this case emerge with greater clarity when placed against their historical background—a background which has always involved not only Morocco, the United States and France, but a number of other nations as well.

#### *A. BILATERAL TREATIES CONCLUDED BY MOROCCO —1631-1880*

The Sultans of Morocco, in contrast to the rulers of the rest of North Africa, do not appear to have entertained extended treaty relations with the so-called Christian Powers until the 17th Century. The treaties concluded prior to that period were mostly treaties of peace or of political alliance (with the King of France, 1282; the Kings of Aragon, 1274, 1309, 1323, 1357, and 1358), except for the commercial treaties concluded with the King of Majorca

in 1339 and with the Republic of Pisa in 1358. See M. L. de Mas Latrie, *Traité de Paix et de Commerce Concernant les Relations des Chrétiens avec les Arabes de l'Afrique septentrionale au Moyen Age* (Paris, 1868), 66, 96, 192, 285, 297, 318, 325, 327. There seems no doubt that attempts to carry on commerce with Morocco were frequent, but these commercial operations appear never to have developed to any large extent because of widespread piracy and of the harsh treatment frequently suffered by Christian traders at the hands of the inhabitants of Morocco.

### 1. *Treaties concluded during the 17th Century*

In view of the factors which had impeded the development of commercial relations, it is not surprising that in the first comprehensive treaties of commerce concluded by Christian Powers with the Sultans of Morocco attempts were made to include two types of guaranties: guaranties relating to commercial rights as such (in particular freedom of commerce) and guaranties relating to the personal safety of traders (in the form of extraterritorial jurisdiction).

France, which already maintained a permanent consul in Morocco during the 16th Century, was the first foreign Power to obtain a comprehensive commercial treaty from the Sultans of Morocco. Two treaties were signed on September 17 and 24, 1631 (Annexes 1 and 2). Article IV of the Treaty of September 17 granted freedom of commerce to French merchants:

“That all French merchants, who shall come to the ports of our kingdoms, shall have permission to unload their merchandise, to sell and buy freely, without paying any duty except the Dixme and recognized Tavalit [which] in the same fashion, the merchants our subjects shall be obligated [to pay] in France.” (Translation; for French text, see Annex 1.)

Article IX of the same treaty recognized extraterritorial rights of jurisdiction to the French consuls so far as concerned disputes of any kind among their nationals:

“That all differences which shall arise between the French Christians, whether of justice or otherwise, the Ambassador who shall reside in our said kingdoms, or the Consuls shall terminate them, unless they wish to come before us for whatever the damage might have been.” (Translation; for French text, see Annex 1.)

France confirmed its position in Morocco during the same century by concluding two more treaties with Morocco on July 18, 1635, and on January 29, 1682 (Annexes 3 and 4). In the latter treaty, Article II restated in sweeping terms the freedom of commerce already established in Article IV of the Treaty of September 17, 1631:

“In the future there shall be peace between the Emperor of France and his subjects and the Emperor of Morocco, King of Fez



and of Sus, and his subjects ; and those said subjects shall be able reciprocally to carry on their commerce in the said empires, kingdoms and countries, and to navigate in full freedom, without any cause and any pretext whatsoever being able to prevent it." (Translation ; for French text, see Annex 4.)

The extraterritorial jurisdiction already provided in Article IX of the Treaty of 1631 was restated in clearer terms in Article XII of the Treaty of 1682 :

"... and said Consul shall have all power and jurisdiction over the differences which shall arise between Frenchmen, and the Judges of the said Emperor of Morocco shall not be able to take cognizance of them". (Translation ; for French text, see Annex 4.)

Article XIII of this treaty, in addition, contained a significant development in the field of extraterritorial jurisdiction. It dealt with differences arising, not between French nationals, but between French and Moroccan nationals, and provided a special handling of this sort of case :

"If there should arise some difference between a Frenchman and a Moroccan, they shall not be judged by the ordinary judges, but instead by the Council of the said Emperor of Morocco or by his Commandant in the ports where said differences arise." (Translation ; for French text, see Annex 4.)

The Netherlands, following the lead of France, concluded a treaty with Morocco on May 26, 1683 (Annex 5), which paralleled quite closely the treaty concluded by Morocco with France in 1682. Article XIV granted freedom of commerce to Dutch traders and Article XV recognized the exclusive jurisdiction of the consuls of the Netherlands over disputes of any type, civil or criminal, arising between their nationals :

"The subjects of said Netherlands, whether Christians or Jews, shall not be asked, in case of pleading or suit, in the States of his said Majesty, to submit to the jurisdiction of this country ; but if there should arise some difference, whether civil or criminal, between those of the country of the Netherlands, in that case they shall not be obliged to appear in front of any judge, except their Consul, who shall have entire authority to terminate all the differences, in the civil as well as in the criminal, such as murders, wounds, and other such offences...." (Translation from a French text, see Annex 5.)

Article XVI of the same treaty, however, reserved the jurisdiction of Morocco over criminal cases arising out of incidents between nationals of the Netherlands and Moroccan subjects, and no mention was made of a special handling of civil suits between Moroccan subjects and Dutch nationals.

## 2. *Treaties concluded during the 18th Century*

The treaty pattern already established in the 17th Century was confirmed and more fully developed during the 18th Century. The main features of this pattern,

- (a) economic rights including freedom of commerce,
- (b) jurisdiction of foreign consuls over all disputes arising between their nationals, and
- (c) a special trial of civil disputes arising between Moroccans and foreigners by the Emperor or his representative,

will be found in most of the treaties concluded in this period. These treaties, however, included as well significant additions.

The first development concerned economic rights. Traders, who already enjoyed the right to carry on commerce freely, acquired gradually an immunity from certain taxes which at the end of the century resulted in complete immunity from taxes of all kinds. They were assured as well privileges regarding customs duties, the rate of which was fixed at 10% of the value of the imported product. Finally, the concept of equality of treatment of all nationalities in all commercial matters became a standard feature of the treaties concluded by Morocco.

A second development concerned extraterritorial jurisdiction. Soon the special trial by the Sultan of Morocco or by his personal representative of civil cases between foreigners and Moroccans was extended as well to criminal cases arising out of incidents between Moroccans and foreigners. At the end of the century, this special procedure gave way to recognition in the treaties of the complete jurisdiction of foreign consuls over all cases, civil and criminal, in which their nationals were defendants.

The third significant addition concerned the most-favored-nation clause. With the development of trade, treaties became more numerous, and in order to avoid constant rewriting of new treaties for the benefit of foreign countries in constant rivalry to obtain identical gains, the Sultans of Morocco started to use the type of clause which we designate today as the most-favored-nation clause.

Great Britain entered into very extensive treaty relations with the Sultans of Morocco during the 18th Century. Treaties were concluded on January 23, 1721 (with Additional Articles dated July 10, 1729), December 15, 1734, January 15, 1750 (with Additional Articles dated February 1, 1751), July 28, 1760 (with Additional Articles dated May 24, 1783), and on April 8, 1791; finally another treaty was concluded just after the turn of the century, on June 14, 1801 (with Explanatory Articles dated January 19, 1824) (Annexes 6, 7, 8, 9, 10 and 11).

With respect to economic rights, freedom of commerce was granted to British traders in one form or another in all these treaties

and found its clearest expression in Article XXXVI of the Treaty of 1791 :

“There shall be an entire freedom of commerce throughout all the Dominions of both Parties, where commerce is at this time permitted, or shall be permitted hereafter to the Subjects of any other Nation ; and that the trade of the Subjects of both Parties may be established on just foundations, and all difficulties in future removed, a permanent Tariff for regulating the Duties of Import and Export shall be established, which Tariff is to be considered as forming a part of this Treaty, the same as if it was here inserted word for word.” (Annex 10.)

British subjects were partially exempted from the payment of taxes by Article IV of the Treaty of 1750 ; and by Article IV of the Treaty of 1791 received a complete immunity from the payment of all taxes, which was only implied in Article IV of the Additional Articles, dated 1751, to the Treaty of 1750, and in Article VII of the Treaty of 1760 :

“... and neither they [English subjects] nor their domestics, of any religion, shall pay the Poll-Tax or any other Tax”. (Annex 10.)

Provisions were made for the payment of customs duties in Article XII of the Treaty of 1760, Article VI of the Additional Articles of 1783, and in Article XXXVI of the Treaty of 1791. Of special significance were the provisions relating to custom duties in the Treaty of 1760 and the Additional Articles of 1783 since they introduced the principle of equality of treatment in this field.

With respect to extraterritorial jurisdiction, the matter was covered in practically all of the treaties concluded during the 18th Century by Great Britain. As to disputes, civil or criminal, arising between British subjects, the absolute and exclusive jurisdiction of the British consul was consistently recognized : Article IX of the Treaty of 1721 ; Article IX of the Treaty of 1760 and Article VII of the Treaty of 1791. The latter read :

“... and all such causes as may arise between English subjects, or those under English protection, shall be determined by the English Consul or his Deputy alone”. (Annex 10.)

As to cases involving British nationals and Moroccan subjects, the British treaties of the 18th Century went further than the French treaties of the 17th Century which provided a trial by the Emperor or by his personal representative in civil cases, but left the criminal trial of a Frenchman to the ordinary courts without any special privilege save the presence of the French consul. The British treaties extended the special trial by the Emperor or his personal representative to criminal cases involving British nationals and Moroccan subjects. Thus, Article IX of the Treaty of 1721 read :

"If any quarrel or dispute shall happen between any Englishman and a Musselman, by which hurt to either may ensue, the same to be heard before and determined by the Emperor only; and if an Englishman who may be the Aggressor shall make his escape, no other Englishman shall suffer upon his account; and if 2 Englishmen shall quarrel, to be determined by the English Consul, who shall do with them as he pleases; and if any quarrel or dispute shall happen between Musselmen in England, or in any of the English Dominions, by which hurt may ensue, the same to be heard before one Christian and one Musselman, and to be determined according to the Laws of Great Britain." (Annex 6.)

This special handling of mixed criminal cases was maintained in the subsequent treaties: Article IX of the Treaty of 1760; Article VIII of the Treaty of 1791; and Article VIII of the Treaty of 1801 (Annexes 9, 10, and 11).

But the special handling of civil cases was soon replaced by a wider privilege whereby both the representative of the Sultan and the British consul were given jurisdiction over civil cases involving British nationals and Moroccan subjects. Thus Article II of the Additional Articles to the Treaty of 1721, dated July 10, 1729, provided:

"That the King of Great Britain's Subjects be not obliged to appear before the Cady or Justices of the Country in any cause, but only the Governor of the place, and His Britannic Majesty's Consul, to take cognizance of, and adjust the difference they may have with the Natives of the Country." (Annex 6.)

Identical provisions were included in all the subsequent treaties: Article III of the Treaty of 1750; Article XXI of the Treaty of 1760; Article VII of the Treaty of 1791; and Article VII of the Treaty of 1801, which appears to go even further than the preceding provisions and to permit the consul alone to take jurisdiction in such cases (Annexes 8, 9, 10 and 11).

The most-favored-nation clause first appeared in Article XV of the Treaty of 1791:

"The subjects of the King of England, and those under His said Majesty's protection, over and above the Stipulations contained in this Treaty, shall enjoy all the privileges and advantages which now are, or which hereafter may be, granted to any of the Subjects of the most favoured Nation." (Annex 10.)

It was restated in Article XV of the Treaty of 1801:

"English Subjects, in addition to what is mentioned in those Treaties, shall enjoy any other privileges which other Powers enjoy at present, and if hereafter any further indulgences be granted to any other Power, the greatest share shall be extended to this friendly Nation to the Emperor of Morocco." (Annex 11.)

France concluded only one treaty with Morocco during the 18th Century. This treaty, signed on May 28, 1767, was based, as

stated in its Article I, on the Treaty of 1682, and indeed the provisions relating to commerce in Article II and those relating to extra-territorial jurisdiction in Articles XI and XII were substantially identical to those of the earlier treaty. The new agreement was significant only because of the equality of treatment with respect to customs duties which was granted in Article V (Annex 12).

Denmark similarly concluded a treaty with Morocco on July 25, 1767, the main feature of which was the granting of limited most-favored-nation treatment in Articles V and VII (Annex 13). The Netherlands renewed on June 29, 1777, a previous treaty with Morocco dated 1752 (Annex 14).

Spain was also active during this period and concluded three treaties with the Sultans of Morocco on May 28, 1767, May 30, 1780, and March 1, 1799. The Treaty of 1767 paralleled quite closely the Treaty concluded by France in Morocco on the same day, so far as concerned commercial rights and jurisdictional rights (Article 5 and Article 12 ; see Annex 15). The Treaty of 1780 was significant only from the standpoint of the most-favored-nation treatment of export duties which was granted in Point 3 (Annex 16). But the Treaty of 1799 introduced far-reaching changes and developments in the fields of commercial rights and of extraterritorial jurisdiction.

With respect to economic rights, the Treaty of 1799 confirmed the right to freedom of commerce granted in previous treaties (Article I), but introduced a notable feature with respect to customs duties which had never been granted previously to any nation. Article XXVII limited the rate of duty on imports to 10 % of the value of the merchandise imported :

“Whenever Spanish nationals shall import merchandise into the ports of Morocco, they shall not pay duties except the established duty of 10 % in money or goods in conformity with the practice in the various Customs Bureaus, without any change.” (Translation from a French text, see Annex 1.)

With respect to extraterritorial jurisdiction, the exclusive jurisdiction of the Spanish consul over disputes, civil and criminal, arising between Spanish nationals was maintained by Article IV :

“The Consul-General of Spain, Vice Consuls or Agents, shall settle with absolute jurisdiction the affairs of Spanish nationals in the state of Morocco....” (Translation from a French text, see Annex 17.)

Article V, which in effect completed the evolution started in the treaties between Great Britain and Morocco, expressly granted jurisdiction to the Spanish consul over civil disputes between Spanish nationals and Moroccan subjects in which a Spanish national was defendant :

“In all the demands for payment of debts and for execution of contracts or in all other differences which the subjects of Morocco shall have against Spanish nationals, they shall address themselves to the Consul-General of Spain, to the Vice-Consuls, or the Agents

in their respective districts so that they, by making them appear, shall terminate and arrange the differences and constrain them, if it is necessary, to fulfill their obligations ; and in the reverse case, said agents shall notify the Moroccan Government so that its subjects shall pay to the Spanish that which they owe, and shall act so that execution shall give rise to no delays, for the administration of justice must be reciprocal and in good faith if it is to be a solid foundation for friendship and good harmony between the two nations and for the existence and well being of all." (Translation from a French text, see Annex 17.)

Article VI departed very clearly from the precedents established concerning jurisdiction over mixed criminal cases in the British and French treaties, which had conceded only a special trial by the Emperor or his personal representative. Article VI of the Spanish Treaty of 1799 conceded exclusive jurisdiction to the Spanish consul in all criminal cases where a Spanish national was defendant :

"Every Spanish national who shall commit in the States of Morocco some scandal, injury or crime deserving penalty or punishment, shall be surrendered to his Consul-General or Vice-Consuls so that, *according to the laws of Spain*, he shall be so punished or be sent back to his country properly guarded, every time the circumstances shall so require. The same thing shall reciprocally be observed with respect to Moroccan delinquents in Spain...." (Italics supplied ; translation from a French text, see Annex 17.)

The United States concluded its first treaty with Morocco on January 25, 1787. It is important to note that in concluding this treaty, American negotiators relied heavily on the good offices and the advice of the French Government. Congress nominated a commission for negotiating a treaty with the Barbary Powers, including Morocco. These commissioners

"addressed a joint note to Count de Vergennes, asking his advice upon the conduct of their negotiations, and requesting that the good offices of the French King should be interposed with the Emperor of Morocco....". 5 Moore, *Digest of International Law* (1906), 392.

It is not surprising, therefore, that the text of the treaty concluded by the United States with Morocco was modelled on the treaties concluded by France with Morocco rather than on the treaties concluded by Great Britain with Morocco. Like the French Treaty of 1767, the American treaty failed to include a number of privileges, especially in the jurisdictional field, which were already enjoyed by Great Britain in 1787.

So far as concerned economic rights, Article 14 of the treaty did not define specifically the commercial privileges of the United States, but conceded through the device of the most-favored-nation clause all the commercial privileges granted to Spain :

"The commerce with the United States shall be on the same footing as is the commerce with Spain, or as that with the most favored nation for the time being and their citizens shall be respected and esteemed and have full liberty to pass and repass our country and seaports whenever they please, without interruption." (Annex 18.)

Article 17 provided in addition :

"Merchants shall not be compelled to buy or sell any kind of goods but such as they shall think proper ; and may buy and sell all sorts of merchandise but such as are prohibited to the other Christian nations." (Annex 18.)

So far as concerned extraterritorial jurisdiction, Article 20 dealt with civil and criminal disputes arising between American nationals or proteges :

"If any of the citizens of the United States, or any persons under their protection, shall have any disputes with each other, the Consul shall decide between the parties and whenever the Consul shall require any aid or assistance from our Government to enforce his decisions it shall be immediately granted to him." (Annex 18.)

Article 21 dealt with criminal mixed cases by providing :

"If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a citizen of the United States, *the law of the country shall take place*, and equal justice shall be rendered, the Consul assisting at the trial ; and if any delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever." (Italics supplied ; Annex 18.)

So far as concerned most-favored-nation treatment, one of the most significant features of the treaty concluded by the United States in 1787 was the most-favored-nation clause included in Article 24, which had never been included in such sweeping terms in previous treaties concluded by Morocco :

".... and it is further declared, that whatever indulgences in trade or otherwise, shall be granted to any of the Christian Powers, the citizens of the United States shall be equally entitled to them". (Annex 18.)

By virtue of the most-favored-nation clause, the United States had acquired by the end of the 18th Century rights much larger in scope than those specifically mentioned in its treaty, including :

- (a) the economic rights granted to Spain and to Great Britain ; principle of freedom of commerce as such ; right of United States traders not to pay customs duties on imports over 10 % of the value of the product ; immunity of United States traders from taxes of all kind, and other privileges ;
- (b) the jurisdictional rights granted to Spain in 1799, resulting in jurisdiction of the American consuls over all disputes, civil and criminal, in which their nationals were defendants.

### 3. *Treaties concluded during the 19th Century*

While Morocco entered again into numerous treaties during the 19th Century with a number of foreign nations, the most important of these treaties were those concluded with Great Britain in 1856 and with Spain in 1861. These two treaties do not depart significantly from the pattern evolved during the 18th Century, but they are extremely important in the following respects :

- (a) these treaties represent the culmination and, practically, the termination of the process of treaty evolution which started with the development of commercial relations in the 17th Century ;
- (b) they embody practically all the rights conceded by Morocco in previous treaties as well as, in some instances, rights developed through custom and usage ;
- (c) they are superior in draftsmanship to the older treaties, and set forth with more precision and detail the scope and meaning of the various rights involved.

The United States renewed its Treaty of 1787 on September 16, 1836. The later treaty was almost literally a reproduction of the Treaty of 1787 (Annex 19). A comparison of the text of the Treaty of 1787 with that of the Treaty of 1836 revealed only trifling differences :

“The writings in Arabic have been examined by Professor C. Snouck Hurgronje, of Leiden. From his report it appears that the differences in the Arabic between the original and the copy are of the most trifling character. The introduction, except for the seal, and fifteen articles, are exactly the same, and in the other articles there are a few verbal or orthographical differences of no moment.

Having compared the original of this treaty with that of the treaty of 1786, Professor Snouck Hurgronje finds that aside from the preamble and the opening and closing articles, the Arabic of the treaty of 1836 is almost exactly the same as that of the earlier treaty. Of the twenty-three articles numbered 2 to 24, eighteen are identical. Article 14 differs only in the order of the sentences ; in Articles 5, 8, and 9, the trifling differences are merely orthographical ; and in Article 11 one Arabic word for ‘twenty’ is used in the early treaty and another word in the later.

.....

In respect of the few real differences between the Arabic text of this treaty and that of the treaty of 1786, Dr. Snouck Hurgronje writes as follows :

‘The preamble differs from that of the treaty of 1786 in having a superscription, “In the name of God, the Compassionate, the Merciful” ; and after the word “seal” is the word “al-sharif”, meaning “the blessed, the noble”.

The second sentence of the preamble of this treaty, which gives the date, may be thus translated : “Written at Miknasah of



the Olives on the third of Jumada al-Akhirah [Jumada II], one thousand two hundred and fifty-two."

The seal of this treaty (which is not legible) naturally differs from that of the former treaty.

In Article 1 the second sentence of the later treaty may be translated thus : "That took place in the presence of their Agent and Plenipotentiary and consul general, James Leib, residing at this time in the well-preserved Tangier."

Article 25 of this treaty is thus translated : "This treaty shall continue in full force, if God please, by God's might and power, a period from [sic] fifty years, and it shall continue to be in force between the two Governments in accordance with the prevailing rule until either of the parties gives notice to the other in a period from [sic] a year, of his intention to abandon [break] it, in which case it will cease at the end of that year." ' ' IV Miller, *Treaties of the United States* (1934), 68-69.

Great Britain concluded two treaties with Morocco on December 9, 1856 ; the first one was a General Treaty, and the second a Treaty of Commerce and Navigation (Annexes 20 and 21.) Their main features were as follows :

With respect to economic rights, the principle of freedom of commerce was stated in very clear terms in Article I of the Treaty of Commerce :

"There shall be reciprocal freedom of commerce between the British dominions and the dominions of the Sultan of Morocco...." (Annex 21.)

The scope and meaning of the principle was made clear in the following provisions. According to the first and third paragraphs of Article I, British subjects were granted the right to transact freely in Morocco :

".... The subjects of Her Britannic Majesty may reside in and trade to any port of the territories of the Sultan of Morocco to which any other foreigners are or shall be admitted.

.....

.... they shall be allowed to buy from, and to sell to, whom they like, all articles not prohibited in Article II of this Convention, either by wholesale or retail, at all places in the Moorish Dominions, without being strained or prejudiced by any monopoly, contract, or exclusive privilege of purchase or sale whatever, except the articles of export and those of import enumerated in Article II ; ...." (Annex 21.)

Further, no restrictions, save the exceptions specified, could be imposed on the import or export of goods. Thus Article II provided :

"The Sultan of Morocco engages to abolish all monopolies or prohibitions on imported goods, except tobacco, pipes of all kinds used for smoking, opium, sulphur, powder, saltpetre, lead, arms of all kinds, and ammunition of war ; and further to abolish all mono-

polies of agricultural produce, or of any other article whatsoever in the dominions of the Sultan, except leeches, bark, tobacco and other herbs used for smoking in pipes." (Annex 21.)

And Article VI stated :

"Merchandise or goods, except the articles enumerated in Article II, imported by British subjects in any vessel, or from any country, shall not be prohibited in the territories of the Sultan of Morocco....

All articles, except those enumerated in Article II, the produce of Morocco, may be exported therefrom by British subjects in any vessels, on as favourable terms as by the subjects of any other foreign country, or by native subjects." (Annex 21.)

Throughout these provisions recurred the guaranty that economic equality would be maintained. Thus the right which the Sultan reserved to prohibit certain imports and exports was made subject in Article V to the condition that it would not be applied unless equality of treatment were assured :

"... No prohibition, either as to the exportation or importation of any article, shall apply to British subjects, unless such prohibition shall apply to subjects of every other nation." (Annex 21.)

With respect to customs duties, Article VII limited the rate to 10% of the value of imports on arrival :

"... His Majesty, the Sultan of Morocco, hereby agrees that the duties to be levied on all articles imported into the territories of His Majesty by British subjects, shall not exceed 10 per cent in cash on their value, at the port of their disembarkation...." (Annex 21.)

Article VII likewise provided specified rates for export duties. In Articles VI and VII the principle of equality of treatment with respect to import and export duties was guaranteed :

"Merchandise or goods ... shall not ... be subject to higher duties than are levied on the same kind of merchandise or goods imported by the subjects of any other foreign Power, or by native subjects....

Should the Sultan of Morocco think proper to reduce the duties on articles of exportation, His Majesty shall have the right of doing so, on condition that British subjects shall pay the lowest duty that shall be paid by any other foreign or native subjects." (Annex 21.)

Finally, Article IV of the General Treaty exempted British subjects from the payment of any taxes :

"They [British Subjects] shall not be obliged to pay, under any pretense whatever, any taxes or impositions." (Annex 20.)

With respect to extraterritorial jurisdiction, the principles were clearly stated in Articles VIII and IX of the General Treaty. Article VIII dealt with cases involving British subjects only, and granted exclusive jurisdiction to the consuls :

"In all criminal cases and complaints, and in all civil differences, disputes, or causes of litigation which may occur between British subjects, the British Consul-General .... shall be sole judge and arbiter...." (Annex 20.)

Article IX, like the Spanish Treaty of 1799 but in more precise terms, granted exclusive jurisdiction to the British consul in all cases, civil or criminal, where British nationals were defendants :

"All criminal cases and complaints, and all civil differences, disputes, or causes of litigation arising between British subjects and subjects of the Moorish Government, shall be adjusted in the following manner.

If the plaintiff be a British subject and the defendant a Moorish subject, the Governor of the town or district, or the Kadi, according as the case may appertain to their respective courts, shall alone judge the case ; the British subject making his appeal to the Governor or Kadi, through the British Consul-General, Consul, or his deputy, who will have a right to be present in the court during the whole trial of the case.

In like manner, if the plaintiff be a Moorish subject, and the defendant a British subject, the case shall be referred to the sole judgment and decision of the British Consul-General, Consul, Vice-Consul, or Consular Agent ; the plaintiff shall make his appeal through the Moorish authorities ; and the Moorish Governor, Kadi, or other officer who may be appointed by them shall be present, if he or they so desire, during the trial and judgment of the case. Should the British or Moorish litigant be dissatisfied with the decision of the Consul-General, Consul, Vice-Consul, Governor, or Kadi (according as the case may appertain to their respective courts), he shall have a right of appeal to Her Britannic Majesty's Chargé d'Affaires and Consul-General, or to the Moorish Commissioner for Foreign Affairs, as the case may be." (Annex 20.)

Furthermore, Article XIV of the General Treaty introduced a provision not heretofore encountered in any treaty. The previous treaties between Great Britain and Morocco, while covering the case of disputes among British nationals, and of disputes between British nationals and nationals of another nationality, left open the question of disputes between British nationals and other foreigners. Morocco renounced completely any kind of jurisdiction over any case in which British nationals and nationals of another nationality were involved, by Article XIV of the Treaty :

"In all criminal cases, differences, disputes or other causes of litigation arising between British subjects and the subjects or citizens of other foreign nations, no Governor, Kadi, or other Moorish authority shall have a right to interfere, unless a Moorish subject may have received thereby any injury to his person or property, in which case the Moorish authority, or one of his officers, shall have a right to be present at the tribunal of the Consul.

Such cases shall be decided solely in the tribunals of the foreign Consuls, without the interference of the Moorish Government, according to the established usages which have hitherto been

acted upon, or may hereafter be arranged between such Consuls." (Annex 20.)

This article in effect confirmed the established usage and custom according to which jurisdiction in mixed cases belonged to the tribunal of the nationality of the defendant in accordance with the rule *actor sequitur forum rei*.

With respect to most-favored-nation treatment, the right was stated in its broadest form in Article I of the Treaty of Commerce :

"... and they [British subjects] shall, moreover, enjoy all other rights and privileges which hereafter may be granted to any other foreigners, subjects, or citizens of the most favored nation". (Annex 21.)

It appeared again in Articles XIII and XX of the General Treaty :

"All British subjects, whether Mahometans, Jews, or Christians, shall alike enjoy all the rights and privileges granted by the present Treaty and the Convention of Commerce and Navigation which has also been concluded this day, or which shall at any time be granted to the most favoured nation." (Annex 20.)

"The subjects of the Queen of Great Britain, and those who are under her government or protection, shall have the full benefit of the privileges and of the particular favours granted by this Treaty and which may be allowed to the subjects of other nations that are at war with Great Britain ; and if after this date any other privileges shall be granted to any other Power, the same shall be extended and applied to and in favour of all British subjects in every respect, as to the subjects of such other Power." (Annex 20.)

Spain concluded a Treaty of Commerce with Morocco on November 20, 1861, which paralleled or reproduced the provisions of the British Treaty of 1856. Commercial rights identical to those granted in the British treaties were included in Articles 40, 44, 45, 47, 48, 49 and 50. Articles 40, 44 and 50 assured equality of treatment to Spanish nationals. The rate of import duties was limited to 10% of the value of the merchandise imported, and specific duties on exports were established by Article 50. Jurisdictional rights were specified, in all respects identical to those of Great Britain, in Articles 10, 11 and 16. The identity of the Spanish Treaty of 1861 with the British Treaty of 1856 is so complete that there is no need to quote here the provisions of the Spanish Treaty. (For an English text of the Treaty, see Annex 22.)

Miscellaneous treaties were concluded by Morocco with France on May 17, 1824 (Additional Articles to the Treaty of 1767), and May 28, 1825, with Sardinia on June 30, 1825, with Austria on March 19, 1830, with the Netherlands on May 18, 1858, with Belgium on January 4, 1862, and with Germany on June 1, 1890. Generally, those treaties did not define in specific terms the treaty rights granted by Morocco but, instead, granted to the foreign nations through the device of the most-favored-nation clause the

advantages and privileges already granted, or to be granted, to other nations. (Annexes 23, 24, 25, 26, 27, 28, and 29.) Morocco also concluded a Commercial Arrangement with France on October 4, 1892, which was significant mainly because it lowered import duties on certain precious products from 10% to 5%. (Annex 30.)

#### B. MULTILATERAL AGREEMENTS CONCLUDED WITH MOROCCO—1880-1912

Since many foreign nations held identical treaty rights in Morocco through the equalizing effect of the most-favored-nation clause, they had identical interests in seeing that their treaty rights were maintained. Because of the identity of their interests, these nations developed during the latter part of the 19th Century the practice of dealing with problems concerning their treaty rights in Morocco through collective action.

This collective approach was practiced by their diplomatic representatives in residence at Tangier, who frequently presented their requests or complaints to the Moroccan Government, not in their individual capacities, but rather in the name of the "Diplomatic Body". The collective action was employed as well with respect to the conclusion of new agreements with Morocco. The foreign Powers insisted that outstanding treaty issues be dealt with through international conferences. This era, accordingly, witnessed the end of the conclusion of bilateral treaties with Morocco and the substitution of multilateral agreements in which all interested nations participated.

##### 1. *The Convention of Madrid, July 3, 1880*

The Conference of Madrid was convened to regulate the exercise of the right of protection and enacted an instrument entitled "Convention as to Protection", which was signed on July 3, 1880, by the United States, Germany, Austria, Belgium, Denmark, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Sweden and Norway, and Morocco. Despite its limitative title, however, the Convention dealt with a number of subjects other than protection, including naturalization, right of ownership of real property, payment of taxes and most-favored-nation treatment. (Annex 31.)

##### (a) *Right of Protection in General*

Protection was an institution which developed through custom and usage in countries where extraterritorial jurisdiction prevailed. It consisted essentially in an extension to the local population of some extraterritorial privileges normally granted to foreigners only. Such was the case in Morocco. The diplomatic representatives of foreign nations who employed of necessity a number of natives, and the traders who, unable to travel safely in the interior of Morocco, had to carry out their commercial operations through native agents or brokers, acting as intermediaries, used their

privileged position to extend to their employees the benefits of some of the privileges and immunities which they enjoyed themselves.

No treaty concluded by Morocco prior to 1880 had conferred a right of protection as such, but some provisions in the treaties implied or confirmed by implication the existence of such a right by recognizing the existence in favor of natives employed by foreigners of special privileges, such as immunity from taxation and the right to be judged by the consular courts of the nationality of their employers. See, in the treaties concluded by Morocco with Great Britain, Article IV of the Treaty of 1750, Article IV of the Additional Articles of 1751, Article VII of the Treaty of 1760, and Articles IV and VII of the Treaty of 1791; in the treaties concluded with France, Article XI of the Treaty of 1767. (Annexes 8, 9, 10, and 12.)

By the middle of the 19th Century, the right of protection had been formally established through custom and usage, but it was so flagrantly abused that various attempts were made to reduce its scope, culminating in the Convention of Madrid of 1880. See, as to previous efforts to restrict the scope of protection, Article 3 of the General Treaty concluded by Morocco with Great Britain in 1856 and Article 3 of the Treaty concluded with Spain in 1861; also the Special Agreement on Protection concluded between France and Morocco on August 19, 1863<sup>1</sup>. (Annexes 20, 22, and 31.)

(b) *Provisions of the Madrid Convention Relating to the Issues in this Case*

With respect to economic rights, Articles 12 and 13, providing for the payment of the agricultural tax and of the gate tax by foreigners and their proteges, confirmed by implication the fact that all nationals of the States parties to the Convention, including the United States, had previously enjoyed immunity from taxes of all kinds:

“Foreigners and protected persons who are the owners or tenants of cultivated land, as well as brokers engaged in agriculture, shall pay the agricultural tax. They shall send to *their Consul annually*, an exact statement of what they possess delivering *into his hands* the amount of the tax.

.....

The nature, method, date and apportionment of this tax shall form the subject of a special regulation between the *Representatives of the Powers* and the Minister of Foreign Affairs of His Shereefian Majesty.”

.....

<sup>1</sup> Contrary to the statement sometimes made on this point, the United States did not adhere to the Regulations concluded between France and Morocco in 1863; the Regulations, however, were incorporated by reference in Articles 1 and 10 of the Convention of Madrid, to which the United States is a party.

"Foreigners, protected persons and brokers owning beasts of burden shall pay what is called the gate-tax. The apportionment and the manner of collecting this tax which is paid alike by foreigners and natives, shall likewise form the subject of a special regulation *between the Representatives of the Powers* and the Minister of Foreign Affairs of His Shereefian Majesty.

The said tax shall not be increased without a new agreement with the Representatives of the Powers." (Italics supplied; Annex 31.)

With respect to jurisdictional rights, Article 5 of the Convention of Madrid confirmed clearly that all States parties to the Convention had jurisdiction, both civil and criminal, in cases in which their proteges were defendants :

"The Government of Morocco recognizes the right of Ministers, Chargés d'Affaires and other Representatives, which is granted to them by treaties, to select the persons whom they employ, either in their own service or that of their governments, unless such persons shall be sheiks or other employees of the Government of Morocco, such as soldiers of the line or of the cavalry, excepting the Maghaznias appointed as their guard. In like manner they shall not be permitted to employ any subject of Morocco who is under prosecution.

It is understood that civil suits commenced before protection, shall be terminated before the courts which have instituted such proceedings. The execution of the sentence shall suffer no hindrance. Nevertheless, the local authorities of Morocco shall take care to communicate, without delay, the sentence pronounced, to the Legation, Consulate or Consular Agency upon which the protected person is dependent.

As to those persons formerly protected, who may have a suit which was commenced before protection was withdrawn from them, their case shall be tried by the court before which it was originally brought.

The right of protection shall not be exercised towards persons under prosecution for an offense or crime, before they have been tried by the authorities of the country, or before their sentence, if any has been pronounced, has been executed." (Annex 31.)

At the same time, Article 11 recognized the jurisdiction of Moroccan courts over cases concerning title to real property (Annex 31).

With respect to the most-favored-nation clause, Article 17 of the Convention guaranteed to all parties, the enjoyment of the rights which had been accorded to any one of them :

"The right to the treatment of the most favored nation is recognized by Morocco as belonging to all the Powers represented at the Madrid Conference." (Annex 31.)

Except as may concern Articles 5, 11, 12, 13 and 17, the French Government does not in the present proceeding contest the authority of the United States to exercise the right of protection within the limits of the Convention of Madrid ; this proceeding, there-

fore, is not concerned with the rights of the United States in respect of protection except to the extent noted above. In connection with the subject of protection, the Government of the United States observes that the present proceeding has been entitled in the French language: "Droit des *ressortissants* américains au Maroc", while the English title reads: "Rights of American *Nationals* in Morocco". The word *ressortissants* is a word of much broader import than the word *nationals*, since it includes both nationals of the United States and its proteges. Indeed, for this very reason, the word *ressortissants* is not infrequently used in English instead of the word *nationals* whenever it is necessary to convey the broader meaning. The Government of the United States, therefore, submits that the word *nationals*, as used in the English translation of the French Application, should not be construed strictly, but rather should be given the broader meaning of the word *ressortissants* whenever necessary in the case. There had been no necessity for distinguishing between *nationals* and *ressortissants* up to the present juncture; with the introduction of the provisions of the Convention of Madrid dealing with protection, however, it became necessary to emphasize the distinction.

## 2. *The General Act of Algeciras, April 7, 1906*

While there were a number of factors, including political considerations, which led to the convening of the Conference of Algeciras, the legal aspects may be described as follows: the financial and economic situation of Morocco, due in part to incompetent administration, was so chaotic that the need for reforms and increased revenues was obvious. The program of reforms proposed by Morocco could not have been carried out without altering the treaty rights of the various Powers involved. These foreign Powers, in turn, were not willing to agree to a modification of their treaty rights unless it applied equally to all parties concerned. Following lengthy negotiations between a number of Powers, particularly France and Germany, the Sultan called a conference for the purpose of implementing his proposed reforms. The Conference was convened at Algeciras, and the General Act there drawn up was ratified by Germany, Austria, Hungary, Belgium, Spain, the United States, France, Great Britain, Italy, the Netherlands, Portugal, Russia, Sweden, and Morocco.

### (a) *The Act in General*

The Act of Algeciras is composed of 123 articles grouped under seven chapters, dealing with: I, Organization of the Police; II, Repression of Contraband of Arms; III, Establishment of a State Bank; IV, Creation of New Revenues and Better Return of Taxes; V, Regulations of Customs and Repression of Smuggling; VI, Operation of Public Services and Public Works; and VII, General



Provisions. The object of the Act was to revitalize the economy of the Shereefian Empire through the institution of reforms which would insure "order, peace and prosperity" in that country (Annex 32). To this end, the program of reforms was to be carried out through a system of international control which took two forms.

The first form of international control was the direct participation of a number of foreign nations in the functioning of Moroccan institutions. Thus, the police force created by Chapter I of the Act was to be trained by French and Spanish officers, and the progress and efficiency of the police force was to be checked and reported upon by an officer of the Swiss Army (Articles 1-12, Annex 32). The State Bank of Morocco, created in Chapter III of the Act, was to operate under the following conditions: the countries participating in the Conference could subscribe in equal shares to the capital of the Bank; the Bank of Germany, the Bank of Spain, the Bank of England, and the Bank of France could appoint auditors to supervise the operation of the Bank of Morocco; jurisdiction over disputes arising between the Bank and the shareholders or the Moroccan Government were to be decided by the Federal Court of Lausanne, Switzerland (Articles 31-58; Annex 32). The Committee on Customs Valuations, created by Article 96, included among its eight members five members appointed in one form or another by the foreign Powers. The Committee on Customs, created by Article 97, had three members, two of whom were to be appointed by the foreign Powers (Annex 32).

The second form of international control was the delegation to the Diplomatic Body at Tangier of extensive powers to assure the proper implementation of the program of reforms, to participate in the administration of the new regulations, to advise the Moroccan Government whenever necessary, and to adjust with the Moroccan Government all the differences which might arise with foreigners in connection with the implementation of the program. (Articles 4, 8, 9, 11, 18, 45, 59, 61, 63, 64, 65, 66, 70, 71, 72, 73, 75, 76, 96, 97, 104, 108, 110, 114, 117, 118 (Annex 32).)

(b) *Provisions of the Act of Algeciras Relating to the Issues in this Case*

With respect to economic rights, the Preamble of the Act established the principle of "economic liberty" as the controlling principle of the economic relations of Morocco with foreign Powers:

"Inspired by the interest attaching itself to the reign of order, peace, and prosperity in Morocco, and recognizing that the attainment thereof can only be effected by means of the introduction of reforms based upon the triple principle of the sovereignty and independence of His Majesty the Sultan, the integrity of his domains,

and *economic liberty without any inequality*, have resolved .... to call together a conference at Algeciras...." (Italics supplied ; Annex 32.)

This principle, it should be noted, was broader in scope than the principle of freedom of commerce previously agreed to by Morocco in its bilateral treaties with foreign Powers. Whereas freedom of commerce covered only the trading activities of foreign Powers in Morocco, and guaranteed such rights as the right to transact freely without any interference and the right to import goods without any restrictions or prohibitions (save specified and limited exceptions), the principle of economic liberty guaranteed as well the right to engage freely in business or industrial activities. Article 105 made the point clear by restating the principle of economic liberty at the beginning of the Declaration concerning Public Services and Public Works :

"With a view to assuring the application of the principle of economic liberty without any inequality, the Signatory Powers declare that none of the public services in the Shereefian Empire can be alienated for the advantage of private interests." (Annex 32.)

The principle of equality of treatment, of course, was given equal emphasis and made the corollary of the principle of economic liberty, since it was already the controlling principle of previous treaty relations with Morocco and since a prime goal of the Powers in convening the Conference was to maintain equality among themselves. Like the principle of economic liberty, the principle of equality was given a field of application wider than mere trading activities and was to apply as well to business or industrial activities. To this end, a number of safeguards were provided with respect to the operations of Public Works or Public Services. After restating the principles in Article 105, the foreign Powers reserved to themselves in Article 106 the right to see to it that no one among them could monopolize such industrial activity :

"In case the Shereefian Government should invoke the aid of foreign capital or foreign industry for the working of public services or for the operation of public works, roads, railways, ports, telegraphs, and other public works, the Signatory Powers reserve to themselves the right to see to it that the authority of the State over these great enterprises of general interest remains entire." (Annex 32.)

They also established a bidding procedure, without preference of nationality, in Articles 107, 108, 109 and 110 :

"The validity of the concessions which may be made under the terms of Article 106, as well as for Government supplies, shall, throughout the Shereefian Empire, be subordinated to the principle of public awards on proposals, without preference of nationality, whenever applicable under the rules followed in foreign laws."

. . . . .

“As soon as the Shereefian Government shall have decided to invite proposals for execution of public works, it shall so inform the Diplomatic Body. It shall later communicate to it the plans, specifications, and all documents annexed to the call for proposals, in order to enable the nationals of all the Signatory Powers to form a clear idea of the contemplated works and compete for the same. A sufficient term for this shall be specified in the call for proposals.”

“The specifications shall not contain, either directly or indirectly, any condition or provision which may be prejudicial to free competition and which may give advantage to competitors of one nationality over those of another nationality.”

“The contracts shall be awarded in the form and according to the general conditions prescribed by the regulations which the Shereefian Government shall draw up with the assistance of the Diplomatic Body.

The contracts shall be awarded by the Shereefian Government to the bidder who, while conforming himself to the specifications, shall have submitted the bid fulfilling the most advantageous general conditions.” (Annex 32.)

In Articles 111 and 112 they extended the application of this procedure to the exploitation of cork forests, mines, and quarries (Annex 32).

The Act of Algeciras maintained the limit of 10 % on duties on imports, but temporarily added to it a special tax of 2½ % in Article 66 :

“Merchandise of foreign origin shall temporarily be subject on entry into Morocco to special taxes amounting to 2½ per cent *ad valorem*. The whole proceeds of this special tax shall form a special fund, which shall be devoted to the execution of and expenses connected with public works for the development of navigation and the general trade of the Shereefian Empire.” (Annex 32.)

In addition, the Act provided in Article 95 for a method of valuation in connection with the payment of custom duties :

“The import and export duties shall be paid cash at the custom-house where liquidation has been made. The *ad valorem* duties shall be liquidated according to the cash wholesale value of the merchandise delivered in the custom-house and free from customs duties and storage dues. Damages to the merchandise, if any, shall be taken into account in appraising the depreciation thereby caused. Merchandise can only be removed after the payment of customs duties and storage.

The holding of the goods or the collection of duty shall, in every case, be made the subject of a regular receipt delivered by the officer in charge.” (Annex 32.)

Articles 96 and 97 established committees to determine the schedule of values to be used in appraising the value of merchandise dutiable in the Moorish customs (Annex 32).

The immunity from taxes provided by earlier treaties, but somewhat reduced by the imposition of the gate and agricultural tax in the Convention of Madrid, was further affected by Articles 61, 64 and 65 of the Act of Algeciras :

“With a view to creating new resources for the Maghzen, the conference recognizes in principle that a tax may be established on city buildings.

.....

The tax is due from the Moorish or foreign owner, without distinction, but the tenant or the holder of the key shall be responsible to the Moorish Treasury.”

.....

“The conference takes formal note of the proposition formulated by the Shereefian delegates on the subject of taxes to be created on certain trades, industries, and professions.”

.....

“The conference adheres to the proposition proposed by the Moorish delegation to create, with the assistance of the Diplomatic Body :

(a) A stamp tax on contracts and notarial acts brought before ‘adouls’.

(b) A maximum transfer tax of 2 per cent on sales of real estate.

(c) A statistical and weighing tax of a maximum of 1 per cent *ad valorem* on merchandise transported by coasting vessels.

(d) A passport fee to be collected from Moorish subjects.

(e) Eventually, wharfage and light-house dues, the proceeds of which shall be devoted to harbor improvement.” (Annex 32.)

In all cases, the imposition, collection, and use of the taxes were controlled by the Diplomatic Body.

With respect to jurisdictional rights, the Act of Algeciras confirmed the jurisdiction of foreign consuls over their nationals and proteges.

In Chapter II, entitled “Regulations Concerning the Detection and Repression of the Contraband of Arms”, Article 24 required the consular authorities to conduct investigation and search of suspected vessels :

“When there is good reason to suppose that a vessel anchored in a port open to commerce carries guns, ammunition, or other prohibited merchandise, with a view of introducing the same into Morocco, *the officers of the Shereefian customs shall so inform the competent consular authority, in order that the latter may carry out, in company with a delegate of the Shereefian customs, such investigations, verifications, or searches as may be judged necessary.*” (Italics supplied : Annex 32.)

Article 25 provided that in case of flagrant infraction the Moroccan customs authorities making the arrest were to turn the vessels over to the consular authorities :

"In the case of the introduction or the attempted introduction by sea of prohibited merchandise outside of a port open to commerce, the Moorish customs authorities may bring the vessel to the nearest port, *to be turned over to the consular authority*, who shall have the right to seize it and continue such seizure until payment of the fines decreed. The vessel may, however, be released at any period of the trial, provided that the judicial proceedings shall not be impeded thereby, on the *deposit made with the consular authority* of the maximum of the fine, or else under responsible bail accepted by the customs." (Italics supplied ; Annex 32.)

Article 29 emphasized that the attribution of jurisdiction depended upon the nationality of the offender :

"The Moorish customs authorities shall notify directly the diplomatic or consular agents of any violations of this regulation, committed by *those under their jurisdiction*, in order that the same may be prosecuted before the *proper jurisdiction*.

Similar violations committed by *Moorish subjects* shall be submitted directly by the customs to the Shereefian authority...." (Italics supplied ; Annex 32.)

In Chapter III devoted to the Establishment of a State Bank, Article 45 recognized the jurisdiction of foreign consuls over actions instituted by the Bank against their nationals :

"Actions instituted in Morocco by the Bank shall be brought before the *Consular Court of the defendant or before the jurisdiction of Morocco, in accordance with the rules of competence established by the Shereefian treaties and firmans....*" (Italics supplied ; Annex 32.)

In Chapter IV, concerning the collection of taxes, numerous Articles made it clear that their collection could be carried out only through the consular authorities ; for example, Article 59 stated :

"As soon as the 'tertib' shall have been put into regular operation with regard to Moorish subjects, *the representatives of the Powers at Tangier shall subject their citizens, subjects, and proteges in the Empire to the application thereof*. But it is understood that this tax shall not be applied to foreign subjects except....

The consular authorities shall retain a certain percentage of the receipts of the taxes they collect from those subject to their jurisdiction to cover the cost of tax bills and collection...." (Italics supplied ; Annex 32.)

Similar provisions were made in Articles 80, 81, 87, 91, 101 and 102 of Chapter V dealing with the Repression of Fraud and Smuggling. Articles 101 and 102 in particular provided :

"The Moorish customs authorities shall directly inform the *diplomatic or consular agents of any violations of this regulation*, which

may have been committed by those under *their jurisdiction*, in order that they may be *prosecuted before the competent court*.

A delegate of the customs shall be charged to follow the legal proceedings in cases pending before the several jurisdictions."

*"Every confiscation, fine, or penalty must be imposed on foreigners by consular jurisdiction, and on Moorish subjects by Shereefian jurisdiction."* (Italics supplied ; Annex 32.)

Finally, the jurisdiction of the consular courts was confirmed in Chapter VI regarding Public Services and Public Works, Article 119 reserved to the consular courts the final decision on the amount of compensation to be paid to expropriated foreign owners :

"The owner may appeal from the arbitrators' decision to a competent jurisdiction, and in accordance with the rules set for arbitration cases by the law of the country to which he belongs." (Annex 32.)

The Act of Algeciras made it obvious in some of its provisions that the law applicable by the consular courts was the law of their various nationalities, and not the local law. To this effect were Article 119, quoted immediately above, and Article 23 :

"The accomplices in the offenses set forth in Articles 20, 21, and 22 shall be liable to the same penalties as the principals. The elements determining complicity shall be adjudged according to the laws of the court in charge of the case." (Annex 32.)

According to Article 123, the Act maintained in force all previous treaty rights granted by Morocco, except to the extent of inconsistency with the Act of Algeciras :

"All treaties, conventions, and arrangements of the Signatory Powers with Morocco remain in force. It is understood, however, that in case of conflict between their provisions and those of the present General Act, the stipulations of the latter shall prevail." (Annex 32.)

### C. SUMMARY OF TREATY RIGHTS GRANTED TO THE UNITED STATES

The historical development of the treaty relations of Morocco with foreign Powers which has been outlined so far gave to the United States the following rights :

#### ECONOMIC RIGHTS

Economic liberty, meaning :

Right of Americans to engage in industrial or business activities in Morocco, on a footing of equality with other nations ;

Right to engage in trade without restrictions or interferences, to import goods without being subjected to restrictions or prohibitions of any kind (save specified and limited exceptions), and to be treated on a footing of equality with other nations with respect to such restrictions as might be placed on exports.

Custom duties :

On imports, limited to 12 % of the value of the imported product ;

On exports, specific duties as provided in the treaties and in no case higher than those paid by other nations.

Taxes :

Immunity from taxes, save those specifically recognized by the treaties, the Convention of Madrid, and the Act of Algeciras.

### *JURISDICTIONAL RIGHTS*

Jurisdiction of United States consular courts (except as concerned title to real property) :

Over all cases, civil and criminal, involving disputes among United States nationals and/or proteges ;

Over all cases, civil and criminal, involving Moroccans and United States nationals or proteges when such United States nationals or proteges are defendants ;

Over all cases, civil and criminal, involving foreign nationals or proteges and United States nationals or proteges, when such United States nationals or proteges are defendants.

To determine in final resort the compensation to be paid to United States owners of real property in cases of expropriation.

Immunity from the application of the local law, except in so far as the application of local law may have been agreed upon in the treaties or conventions, or through other arrangements such as the consent of the Diplomatic Body, or through the assent of the United States.

### *MOST-FAVORED-NATION TREATMENT*

With respect to all rights and privileges granted by Morocco to other foreign nations.

The above summary is limited, of course, to the rights which are involved in the present proceeding. While the United States has received other rights, the validity and exercise of these has not been contested by the French Government ; they are, therefore, not involved in the present case.

## CHAPTER II

*TREATIES AND OTHER ACTS CONCERNING THE  
ESTABLISHMENT OF THE PROTECTORATE*

Historical review of the treaty relations of foreign Powers with Morocco thus discloses that the interests of these foreign Powers centered on two main points—their economic rights and their extraterritorial rights. The preservation of these rights was accomplished in negotiations which maintained equality among the interested Powers. When this equality was threatened by the ascendancy of France to a position of dominance in the affairs of Morocco, the other Powers were careful to condition their assent to French political control by requiring from France guaranties of their existing treaty rights. The history of the negotiations concerning the establishment and recognition of the French Protectorate illustrates the legal effect, with respect to the Moroccan treaties, of the assumption by France of its protectorate status in Morocco. In each case, existing rights were to be continued until expressly relinquished. France consistently sought surrender or modification of rights possessed by foreign States in Morocco ; but it has remained clear throughout that the establishment of the Protectorate, by itself, had no effect on the economic and extraterritorial rights guaranteed in treaties between Morocco and other States.

*A. COMMITMENTS OF FRANCE CONCERNING THE  
ECONOMIC RIGHTS OF FOREIGN POWERS IN  
MOROCCO*

Before the signing of the Act of Algeciras, the French Government was already laying the foundation for the establishment of a protectorate by concluding agreements with certain interested European Powers in which the French Government promised to maintain, in exchange for recognition of its superior position in Morocco, the economic rights acquired by these European Powers in that country. Thus, in Article II of the Declaration concerning Egypt and Morocco (with Secret Articles), signed by France and Great Britain on April 8, 1904, the French Government specifically undertook to respect all the rights acquired by Great Britain in Morocco by treaty or by usage :

“The Government of the French Republic declare that they have no intention of altering the political status of Morocco.

His Britannic Majesty's Government, for their part, recognize that it appertains to France .... to preserve order in that country, and to provide assistance....

*They declare that they will not obstruct the action taken by France for this purpose, provided that such action shall leave intact the rights*



*which Great Britain, in virtue of Treaties, Conventions, and usage enjoys in Morocco...."* (Italics supplied, Annex 33.)

In Article IV the French Government stated its intention to maintain in Morocco the principles of economic liberty and equality :

"The two Governments, *being equally attached to the principles of commercial liberty both in Egypt and Morocco*, declare that they will not, in those countries, countenance any inequality either in the imposition of custom duties or other taxes, or of railway transport charges." (Italics supplied ; Annex 33.)

Spain adhered to this Declaration on October 3, 1904 (Annex 34). Similarly, the French Government assured the German Government, in an Exchange of Letters dated July 8, 1905, of its dedication to the principle of economic liberty and equality :

"The Government of the Republic is convinced .... that the Imperial Government would not pursue .... any aim which would compromise the legitimate interests of France in that country [Morocco] or be contrary to the rights of France as they result from its treaties or arrangements and in harmony with the following principles.

. . . . .  
Economic liberty without any inequality ;" (Translation ; for French text, see Annex 35.)

Moreover, by becoming a party to the Act of Algeciras of 1906, France enlarged its previous commitments and gave them a multilateral character. France became bound towards all parties to the Act to respect and maintain all of the economic rights granted by Morocco to those parties, including economic liberty without inequality ; and indeed, France, being a party to the Act, could not modify its provisions without the consent of all the parties.

Finally, France, after the Act of Algeciras, negotiated with Germany a convention dated November 4, 1911, which, in contemplation of the establishment of the French Protectorate over Morocco, defined the conditions under which the Protectorate was to be accepted by Germany and by the parties to the Act of Algeciras, to whom the convention was to be submitted for adherence. In Article I of this convention, France specifically undertook to maintain the principles of economic liberty and equality already guaranteed in previous treaties :

".... Consequently, it [the German Government] adheres to the measures of reorganization, of control, and of financial guarantee, which the French Government, after obtaining the accord of the Moroccan Government, may consider necessary to take for that purpose *with the reservation that the action of France shall safeguard in Morocco economic equality between the nations.*

In the event of France's being led to strengthen and to extend her control and her protection, the Imperial German Government,

recognizing France's full liberty of action, and *subject to the reservation that the commercial liberty stipulated by previous treaties is to be maintained, will raise no objection whatever....*" (Italics supplied; translation; for French text, see Annex 36.)

France pledged itself again to the same obligations in Article IV :

*"The French Government declares that, firmly attached to the principle of commercial liberty in Morocco, it will not permit any inequality...."* (Italics supplied; translation; for French text, see Annex 36.)

## B. ESTABLISHMENT OF THE PROTECTORATE

The Protectorate of France over Morocco was established by the Treaty of Fez on March 30, 1912 (Annex 37). The two sovereigns stated the object of the treaty in the Preamble :

*"The Government of the French Republic and the Government of His Majesty the Sultan, desirous of inaugurating a regular regime in Morocco based upon internal order and general security, making it possible to introduce reforms and to insure the economic development of the country, have agreed upon the following :"*

In Article I they agreed on a program of reforms :

*"The Government of the French Republic and His Majesty the Sultan, have agreed to establish in Morocco a new regime admitting of the administrative, juridical, educational, economic, financial and military reforms which the French Government may deem useful to be introduced within the Moroccan territory."*

and provided that the new regime :

*".... shall safeguard the religious status, the respect and traditional prestige of the Sultan...."* (Translation; for French text, see Annex 37.)

Article II dealt with the military and police powers of the French Government in Morocco, and Article III with the protection which the French Government was bound to provide against dangers threatening the person or throne of the Sultan and his heirs. Article IV reserved to the Sultan or his delegates the enactment of legislative measures implementing the program of reforms proposed by the French Government.

With respect to the conduct of diplomatic relations in Morocco, Article V provided :

*"The French Government shall be represented near His Shereefian Majesty by a Resident Commissioner-General, the representative of all the powers of the Republic in Morocco, who shall attend to the execution of the present agreement.*

*The Resident Commissioner-General shall be the sole intermediary of the Sultan near foreign representatives and in the relations which these representatives maintain with the Moroccan Government. In*

particular, he shall have charge of all matters relating to foreigners in the Shereefian Empire.

He shall have the power to approve and promulgate, in the name of the French Government, all the decrees issued by His Shereefian Majesty." (Translation ; for French text, see Annex 37.)

With regard to the conclusion of acts of an international nature, the Sultan pledged in Article VI :

".... not to conclude any Act of an international nature without the previous approval of the French Republic". (Translation ; for French text, see Annex 37.)

Article VII dealt with financial matters, and in this connection, the Sultan agreed in Article VIII to refrain from contracting private or public loans without the consent of the French Government.

Following the Treaty of Fez, the French Government, in furtherance of provisions included in previous agreements with Spain and Great Britain, granted to Spain a zone of influence in Morocco in the Convention of November 27, 1912, and participated in the establishment of the international zone of Tangier in the Convention relating to the Organization of the Statute of Tangier of December 18, 1923.

### C. *NEGOTIATIONS CONCERNING THE EXTRATERRITORIAL RIGHTS OF FOREIGN POWERS IN MOROCCO*

Prior to the establishment of the Protectorate, the French Government conducted negotiations for the purpose of substituting for the extraterritorial jurisdiction of foreign Powers in Morocco the jurisdiction of French courts. Thus, Article II of the Secret Articles to the Declaration between Great Britain and France of April 8, 1904, provided :

"His Britannic Majesty's Government have no present intention of proposing to the Powers any changes in the system of the Capitulations, or in the judicial organization of Egypt.

In the event of their considering it desirable to introduce in Egypt reforms tending to assimilate the Egyptian legislative system to that in force in other civilized countries, the Government of the French Republic will not refuse to entertain any such proposals, on the understanding that His Britannic Majesty's Government will agree to entertain the suggestions that the Government of the French Republic may have to make to them with a view of introducing similar reforms in Morocco." (Annex 33.)

Similarly, Article IX of the Convention concluded between Germany and France on November 4, 1911, stated :

"This [temporary] procedure shall remain in force until such time as a judicial system, founded on the general principles embodied in the legislation of the Powers interested, shall have been instituted, which shall ultimately, by agreement between those Powers,

replace the Consular Courts." (Translation ; for French text, see Annex 36.)

Following the establishment of the Protectorate, the French and the Spanish Governments agreed, in Article XXIV of the Convention of November 27, 1912, creating the Spanish zone of influence, reciprocally to submit their nationals to the jurisdiction of the other party in its zone :

"The Government of the French Republic and the Government of their Catholic Majesty reserve to themselves the facility to proceed to the establishment in their respective zones of judicial organizations inspired by their own legislations. Once these organizations are established and the nationals and proteges of each country are submitted, in their respective zone, to the jurisdiction of those tribunals, the Government of the French Republic, in the Spanish zone of influence, and the Government of His Majesty the King of Spain in the French zone of influence, shall also subject to this local jurisdiction their respective nationals and proteges." (Translation ; for French text, see Annex 38.)

In the years 1914, 1915, and 1916, France negotiated a series of agreements with foreign Powers for the surrender of their jurisdictional and other extraterritorial rights so far as concerned the French zone of Morocco (not the Spanish zone nor the Tangier zone). Agreements were negotiated :

- (1) With States which previously had concluded bilateral treaties with Morocco or were parties to the Convention of Madrid of 1880 : Russia, January 15 (28), 1914<sup>1</sup> ; Spain, March 7, 1914<sup>2</sup> ; Norway, May 5, 1914<sup>3</sup> ; Sweden, December 17, 1914<sup>4</sup> ; Denmark, May 12, 1915<sup>5</sup> ; Belgium, September 22, 1915<sup>6</sup> ; Italy, March 9, 1916<sup>7</sup> ; Portugal, April 6, 1916<sup>8</sup> ; the Netherlands, May 26, 1916<sup>9</sup>.
- (2) With States which had never entered into treaty relations of any sort with Morocco : Switzerland, June 11, 1914<sup>10</sup> ; Greece, April 15, 1915<sup>11</sup> ; Bolivia, June 21, 1915<sup>12</sup> ; Japan, July 14, 1915<sup>13</sup> ; Paraguay, September 30, 1915<sup>14</sup> ; Uruguay,

<sup>1</sup> 107 British and Foreign State Papers 821.

<sup>2</sup> 109 State Papers 939.

<sup>3</sup> 107 State Papers 818.

<sup>4</sup> 108 State Papers 877.

<sup>5</sup> 109 State Papers 913.

<sup>6</sup> *Id.* at 871.

<sup>7</sup> 114 State Papers 767.

<sup>8</sup> 110 State Papers 878.

<sup>9</sup> *Id.* at 875.

<sup>10</sup> 113 State Papers 1042.

<sup>11</sup> 108 State Papers 876.

<sup>12</sup> 109 State Papers 872.

<sup>13</sup> 109 State Papers 939.

<sup>14</sup> I Rivière, *Traité, Codes et Lois du Maroc* (1924) 185.

December 29, 1915<sup>1</sup>; Haiti, January 15, 1916<sup>2</sup>; Venezuela, February 8, 1916<sup>3</sup>; Costa Rica, May 31, 1916<sup>4</sup>.

These agreements for the renunciation of extraterritorial rights were generally in the following form :

"Declaration between France and \_\_\_\_\_ relative to the renunciation by \_\_\_\_\_ of rights under the capitulations in the French zone of the Empire of Morocco :

The undersigned, duly authorized .... make by common agreement the following Declaration :

Taking into consideration the guarantees of juridical equality offered to foreigners by the French Courts of the Protectorate, the Government of \_\_\_\_\_ renounces claiming for its Consuls, subjects, and establishments in the French zone of the Shereefian Empire, all rights and privileges arising out of the regime of the Capitulations...." (For two such Declarations, see Annex 39.)

Spain similarly negotiated a series of agreements in the form of Declarations by which the interested countries surrendered their extraterritorial rights in the Spanish zone of Morocco.

In 1919 the French Government obtained the renunciation of extraterritorial rights by Germany in Article 142 of the Treaty of Versailles of June 28, 1919, and by Austria in Article 97 of the Treaty of Saint-Germain-en-Laye of September 19, 1919. Article 97 of the Treaty with Austria was identical to Article 142 of the Treaty with Germany :

"Germany, having recognized the French protectorate in Morocco, hereby accepts all the consequences of its establishment, and she renounces the regime of the capitulations in Morocco. This renunciation shall take effect from August 3, 1914."

In 1923, France participated with Great Britain and Spain in the establishment of the Tangier Statute, Article 48 of which provided for the creation of a mixed court to supplement the consular courts of the parties to the Statute.

#### D. NEGOTIATIONS CONCERNING THE ECONOMIC AND EXTRATERRITORIAL RIGHTS OF THE UNITED STATES IN MOROCCO

##### 1. Before the Treaty of Fez

At the time of the conclusion of the Convention between Germany and France of November 4, 1911, the French Government sought to obtain the adherence of the United States to the convention.

<sup>1</sup> Rivière, *Traités, Codes et Lois du Maroc* (1924) 185.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> 110 State Papers 835.

It presented a request for assurances to that effect to the Department of State on November 3, 1911, and pointed to the guaranties provided in the Franco-German Convention with respect to freedom of trade :

*"The freedom of trade provided by the treaties shall, under the terms of the agreement, be firmly maintained and my Government has bound itself not to connive at any inequality either in the assessment of customs, duties, imposts, or other taxes or in the drawing up of tariffs of railways or any other transportation. France will likewise use her interest with the Moroccan Government to prevent any differential treatment of the citizens or subjects of the Powers, and notably to secure for them participation on equally favorable conditions in proposals for contracts and supplies of materials."* (Italics supplied ; Annex 40.)

The Secretary of State declined on November 8, 1911, to give the assurances requested by the French Ambassador :

"In reply I beg to say that as the adherence of this Government to such an agreement would seem to imply the modification of certain of its existing treaty rights, the consent to such adherence on the part of the United States involves the conjoint action of the treaty-making Powers of this Government and our acceptance of the agreement in question could therefore be made only by and with the advice and consent of the Senate. The Department will be glad, at any time you so desire, to discuss more fully with your excellency the questions presented by the agreement above mentioned." (Annex 40.)

Upon a renewed request from the French Ambassador on December 6, 1911, for some kind of assurances in the matter (Annex 40), the Secretary of State replied on December 15, 1911 :

"As regards the desire of the Government of the French Republic that the Government of the United States will adhere to the articles in this agreement relating to commercial rights and the administration of justice, I beg to call your excellency's attention to the fact that adhesion on the part of this Government, so far as these articles are concerned, would involve a modification of our existing treaty rights with Morocco, which under our Constitution could only be done by, and with the advice and consent of the United States Senate.

I take pleasure, however, in informing your excellency that, in conformity with the expressed desire of the French Republic, the Department would feel inclined, when the proper time may come, to undertake negotiations with a view to entering into such new treaty arrangements as may be appropriate for modifying our existing extraterritorial rights and the rights of American proteges in Morocco along the lines suggested in the Franco-German agreement and in general to agree in principle to the other articles of the agreement, provided that the commercial and other advantages secured to us under our existing treaties are preserved." (Annex 40.)

## 2. *After the Treaty of Fez*

Following the conclusion of the Treaty of Protectorate on March 30, 1912, the French Government sought to gain the adherence of the United States to that treaty. It presented a request for assurances to that effect to the Department of State on January 8, 1913. (Annex 41.)

As in the case of the request for adherence to the Franco-German Convention of 1911, the Secretary of State declined on January 22, 1913, to give the requested assurances on the grounds that the United States could not participate in the settlement of European political questions and that an adherence to the treaty required the advice and consent of the United States Senate. But he suggested that the United States might recognize the Protectorate of France if the French Government were willing to recognize and guarantee the treaty rights of the United States in Morocco :

“Provided, however, the Government of the French Republic is willing to give its assurance that American interests and rights in Morocco, as are at present safeguarded by existing treaties, shall continue to receive the same consideration in the future as they have been entitled to and have enjoyed in the past, on such an understanding the Government of the United States would be inclined to view with favor the reforms which the French protectorate contemplate introducing into Morocco as provided for in the treaty in question.” (Annex 41.)

The French Government some months later requested the United States to surrender its rights of jurisdiction in Morocco. It communicated to the Department of State on October 7, 1913, copies of the French and Shereefian laws establishing a new judiciary system in Morocco, which was intended to supersede the French consular courts, and requested the United States to place its citizens under the new jurisdiction. :

“The new judiciary system, instituted by virtue of the provisions in paragraph 2 of Article 9 of the Franco-German treaty of November 4, 1911, is intended to supersede the French Consular Courts on and after October 15, 1913.

In accordance with the provisions of the aforesaid article, I have been instructed to ask the Federal Government to place its citizens under the new jurisdiction....” (Annex 42.)

On February 13, 1914, the Secretary of State declined to agree to this proposal for surrender of American jurisdictional rights unless adequate provisions were made for the preservation of American economic rights in Morocco and for the settlement of a number of complaints arising from violations of the treaty rights of the United States :

“On the subject of the French protectorate this Government has heretofore expressed itself as being in favor of the reforms which France contemplated introducing into Morocco in accordance with

the stipulations of the Franco-Moroccan treaty of March 30, 1912, on the understanding that provision be made for the preservation of American interests and rights in Morocco, commercial or otherwise, which are at present safeguarded by existing treaties with that country. The more important of those interests and rights it is proper now to enumerate."

.....

"The foregoing statement covers the more important matters under discussion between this Government and that of Morocco. There are other matters which have given rise to diplomatic correspondence, but they may be reserved for future discussion, if need be. The present review embraces matters that touch the maintenance of American commercial interests in Morocco and the protection of the liberty and property of American citizens and proteges in that country, and it is for the purpose of removing any points of controversy in these particulars and bringing about an adjustment of them, that this Government, animated with a favorable disposition toward the reforms which the French protectorate is designed to assure, has addressed itself to an exposition of the questions as to which it desires to reach a definite understanding and settlement, as a preliminary to or incident of the recognition, in due and proper form, of the fundamental change involved in the establishment of a foreign governmental regime in the Shereefian Empire." (Annex 42.)

The French Government repeated its request for the surrender of jurisdictional rights and requested, as well, the surrender of other extraterritorial privileges (the French Ambassador to the Secretary of State, April 22, 1914; Annex 43). Following further correspondence (the Secretary of State to the French Ambassador, April 30, 1914; the French Ambassador to the Secretary of State, June 10, 1914; the French Chargé d'Affaires to the Secretary of State, July 16, 1914; Annex 43), the French Embassy answered on July 16, 1914<sup>1</sup>, the points made by the Secretary of State on February 13, 1914, and asked that the United States Government place its nationals and proteges under the jurisdiction of the French courts:

"The willingness of the Federal Government to recognize the Protectorate's regulation powers cannot be doubted by the Embassy or by the French Government. I am convinced that your excellency will find in the foregoing explanations all the palliations you may wish for, and I have no doubt that you will, as has already been done by most of the other Powers, agree to forego the benefits of

<sup>1</sup> It should be observed that the note of the French Embassy was in error in alleging that the Government of the United States had given its adherence to the Franco-German Treaty of 1911. This was not the case since, as stated by the French Government on page 47 of the Memorial, all the signatories of the Act of Algeciras, *except the United States*, adhered to the Franco-German Treaty of 1911. A like error appears in a note of November 14, 1918, from the French Chargé to the Secretary of State. (For the text of the note of July 16, 1914, see French Memorial, pp. 181-186; for the text of the note of November 14, 1918, see French Memorial, pp. 196-198.)



extraterritoriality in the French Zone of the Shereefian Empire and accept to place persons subject to American jurisdiction under that of our Courts." (Annex 43.)

Negotiations on the question of economic and extraterritorial rights in conjunction with the recognition of the French Protectorate were reopened by a note of the French Ambassador dated April 17, 1916 (Annex 44). The Secretary of State expressed on July 1, 1916, the readiness of the United States Government to recognize the French Protectorate and to surrender its extraterritorial rights provided that the French Government were willing to give specified guaranties concerning the economic rights of Americans in Morocco and concerning the settlement of outstanding claims, and to accept the surrender of extraterritorial rights in a treaty :

"This Government, however, considers that simultaneously with the recognition by the United States of the French protectorate in Morocco the Government of the French Republic should guarantee :

1. That the vested rights of American citizens and proteges in property in Morocco will be respected and confirmed....
2. That equality of opportunity will be accorded American commercial interests .... including equal treatment .... as granted by the Algeciras Act....
3. That the United States and its citizens shall in any event possess the rights of the most favored nation....
4. That the American claims against the Government of Morocco will be adjusted before the expiration of a certain reasonable period by the payment of the awards of the claims commission of 1910, and by an assurance that the awards of the present claims commission will be paid by France....
5. That American rights in the Spanish zone in Morocco or in the international zone at Tangier will not in any way, in so far as France is concerned, be prejudiced or adversely affected by the recognition of the French protectorate by the United States, or by the surrender or modification of its capitulatory rights in the French zone in Morocco.

.... I shall be pleased, upon the receipt of the assurances of your excellency's Government that it is prepared to give to the Government of the United States the guaranties mentioned simultaneously with the exchange of ratifications of such a treaty, to enter into negotiations for a treaty surrendering the extraterritorial rights of the United States in the French zone of Morocco." (Annex 44.)

The French Government agreed to give effect to the surrender of extraterritorial rights in a treaty (the French Ambassador to the Secretary of State July 31, 1916, Annex 44), provided that the text of the treaty should follow the standard form of the Declarations of surrender of extraterritorial rights made by other nations. Upon the request of the United States Government that the treaty be concluded in the name of the Sultan of Morocco as well as in the

name of the French Republic, so that the Moroccan Government would become a party to it (see telegram from Legation Tangier to the Secretary of State August 8, 1916, Annex 44), the French Ambassador agreed in a note dated August 26, 1916 :

"In accordance also with Mr. Polk's suggestion, an addition to the text which I had submitted to him will provide for an exchange of ratifications, and the preamble will be so worded as to recall the fact that I am empowered to act on behalf of both the President of the French Republic and of the Sultan of Morocco. The text would therefore begin thus :

'The President of the French Republic acting in his own name, as well as in that of His Majesty the Sultan of Morocco, in accordance with Art. 6 of the Franco-Moroccan Treaty of March 30, 1912, and the President of the United States, etc.'

This is (with the addition, however, of a direct reference to the treaty) the same formula as was used for Tunis in 1904. As for the Treaty of 1912 I notified its text to one of your predecessors on the 8th of January 1913." (Annex 44.)

At the same time further negotiations were proceeding with respect to the terms of the guaranties to be stipulated as a condition of the surrender of extraterritorial rights by the United States (the French Ambassador to the Secretary of State, October 3, 1916, and the Secretary of State to the French Ambassador, October 12, 1916, Annex 44). The main difficulty lay in the unwillingness of the French Government to guarantee the economic rights of the United States as provided by previous treaties and international agreements.

Negotiations for the surrender of extraterritorial rights, along with the negotiations for the guaranties concerning economic rights, were put aside early in 1917, when the Secretary of State wrote to the French Ambassador in Washington as follows :

"My dear Mr. Ambassador : Referring to your notes of July 31, August 26, and October 3 last in regard to the recognition of the French Protectorate in Morocco, I have, as a result of careful consideration, reached the conclusion that, owing to the pressure of business before the Senate of the United States, which would have to approve any treaty entered into between our countries, and in view of your expressed desire that my Government take prompt action relative to the Moroccan situation, possibly the best mode of procedure to be adopted would be to consider separately the question of the recognition of the Protectorate and the question of our capitulatory and other rights in Morocco, as has been done, I understand, by all the European Powers in respect to their relations in Morocco. In order to advance the matter with all possible expedition, I am prepared to recognize in a formal note the French Protectorate in Morocco, and concurrently recommend that the item of salary for our Minister to Morocco in the Appropriation Bill now pending in Congress be changed to an item of salary for a Diplomatic Agent to that country. I am per-

sueded to make this proposal informally, as I am desirous, as far as possible, to meet the wishes of your Government and your people, to whom we are bound by a traditional and sincere friendship. If this proposal is agreeable to your Government and this step is accomplished, there would remain for further negotiation the question of our capitulatory and other rights in Morocco, which could be taken up in due time.

I shall be pleased, my dear Mr. Ambassador, to hear from you on this matter at your earliest convenience, since if any change such as I have indicated is to be made in the Diplomatic Appropriation Bill, it is essential that it be made as soon as possible." (Annex 45.)

On January 8, 1917, the French Ambassador welcomed the proposed recognition and agreed that the matter of surrender of extraterritorial rights be considered later in a treaty to that end :

"As for the abrogation of capitulations, while we have no objection to the matter being separately considered, we earnestly desire, as you know, that it be taken up at once, so that we could sign the convention referred to in previous correspondence, e.g., in my letter of August 26, the matter to be dealt with by the Senate as soon as circumstances will allow." (Annex 45.)

The United States thereupon sent a note of recognition to the French Government in which it recognized :

".... the establishment of the French Protectorate over the French zone of the Shereefian Empire". (Annex 45.)

The French Ambassador subsequently pointed out that the recognition of the protectorate should apply to the Protectorate of France over the whole of Morocco and not only to the French zone :

"On one passage of your letter, I am asked to draw your attention, the wording of which being not in exact conformity with facts. It is stated there that the Government of the United States 'recognizes the establishment of the French Protectorate over the French Zone of the Shereefian Empire'.

In reality the Protectorate established by France in Morocco, with the assent of its ruler, covers the whole of that country, as evidenced by the terms of the Treaty of March, 1912, a copy of which I had the honor of transmitting to you on January 3, 1913. The Spanish rights are mentioned in it (Art. 1) as being to be defined by an agreement between the Governments, not of Morocco, but of France and of Spain. Every Power, Spain included, has recognized that our Protectorate was coextensive with the total area of Morocco." (Annex 45.)

The Secretary of State, accordingly, sent the following note of recognition to the French Government on October 20, 1917 :

"Excellency : I have the honor to acknowledge the receipt of your note of January 19, referring to the Department's note of January 11 (15), recognizing the French Protectorate over the

French Zone of Morocco, and requesting that this recognition be changed to a recognition of a French Protectorate over Morocco.

I have now the honor to inform you that the Government of the United States has concluded to recognize, and hereby formally recognizes (subject to my informal note of January 2, 1917, on this matter), the Protectorate of France over Morocco subject to the special rights and privileges of Spain in Morocco." (Annex 45.)

### CHAPTER III

#### *CIRCUMSTANCES GIVING RISE TO THE DISPUTE IN THIS CASE*

The diplomatic history of the negotiations concerning the establishment and recognition of the French Protectorate shows that the treaty rights previously granted to foreign Powers by Morocco remained unaffected by the new situation, except as otherwise and specifically agreed upon by such Powers. While some States agreed to surrender their capitulatory rights, no such agreement took place with respect to their economic rights. The French Government, nevertheless, began soon after the establishment of the Protectorate to disregard the economic rights of the United States and other foreign Powers in Morocco, whenever such rights obstructed the development of its own interests. The efforts of France to terminate through various means the economic rights of the United States, and the efforts of this Government to maintain its treaty rights in Morocco have culminated in the present case before this Court.

#### *A. THE DISPUTE PRIOR TO WORLD WAR II*

Before its recognition of the Protectorate, the United States Government already had found itself in conflict with the French authorities concerning the exercise of its treaty rights in Morocco. Following requests from the French Ambassador that the United States adhere to the Treaty of Fez and place its nationals under the jurisdiction of the French courts in Morocco (the French Ambassador to the Secretary of State, January 8, 1913; the French Chargé d'Affaires to the Secretary of State, October 7, 1913; Annexes 41 and 42), the Department's reply of February 13, 1914, pointed out, among other things, that trade discriminations were practiced against American nationals with regard to customs duties and that the principle of free and open competition established by the Act of Algeciras was not respected:

"In the second place the Department ventures to mention the subject of trade discriminations practiced by the authorities in Morocco. Complaints, apparently well founded, have reached this Government that customs duties have been imposed arbitrarily and

without uniformity ; that free and open competition in bidding for the construction of public works or the furnishing of supplies for the Government have been denied." (Annex 42.)

The Department suggested that its complaints regarding the maintenance of American commercial interests in Morocco, as well as other related questions, should be settled prior to its recognition of the Protectorate. Further exchanges of correspondence followed, and upon renewed requests by the French Government for recognition, the Department expressed on July 1, 1916, its willingness not to delay recognition, but felt compelled, in view of the actions of the French Government, to request specific guaranties concerning the respect of its treaty rights, and more specifically of its economic rights :

"This Government, however, considers that simultaneously with the recognition by the United States of the French Protectorate in Morocco the Government of the French Republic should guarantee :

2. That equality of opportunity will be accorded American commercial interests, not only to maintain their present standing in Morocco, but also to share in the country's commercial development, including equal treatment with respect to the levying and collecting of duties on imports and exports as granted by the Algeiras Act, and including equal opportunity to share in the construction of public works and the furnishing of governmental supplies as granted by that Act." (Annex 44.)

The matter of guaranties was not settled then since the United States Government decided to proceed immediately with the recognition of the Protectorate as a gesture of friendship for the French Government and the French people, and to reserve for a later date the discussion of guaranties concerning its rights in Morocco. (See *supra*, Part II, Chapter II.)

The years following the recognition of the Protectorate witnessed an increasing number of difficulties between the French authorities and the United States Government concerning its treaty rights in Morocco. The occasions on which the United States, with other parties to the Act of Algeiras, felt compelled to protest and oppose as illegal actions of the French authorities are far too numerous to permit detailed examination of all of them in this Counter-Memoriam. A few characteristic examples are given, however, to illustrate the range of these treaty violations.

The Act of Algeiras guaranteed to all foreign nationals an equal opportunity to participate in enterprises such as the construction of public works and special provisions of the Act provided the bidding procedure to be followed in such cases. In 1921, the Protectorate authorities granted to a company controlled in effect by French interests an exclusive concession for the construction and operation of a port at Tangier. The Department of State instructed the Amba-

sador in France on December 22, 1921, to object to this concession on the ground that it violated the Act of Algeciras since American nationals were deprived of the opportunity to participate, on terms of equality with nationals of other Powers, in such an enterprise (Annex 46). The reply of the French Minister for Foreign Affairs, dated January 18, 1922, asserted that the Moroccan Government could grant concessions as it wished, but admitted that the construction work should have been put up for public bids :

"I have the honor to inform Your Excellency that the concession of the port of Tangier was granted by His Shereefian Majesty to the 'Société internationale pour le Développement de Tanger' pursuant to the provisions of treaties in force which permit the Moroccan Government freely to grant large public enterprises on condition that the grantee should put the construction and supplies up for public bids.

It is true that the concession grant of June 2, 1921, provided that the construction work of the port should not be opened to public bids.... I have the pleasure to inform Your Excellency, however, that steps have been taken to revoke the provision of the grant of concession of June 2 and that the construction work will be put up for public bidding by the concessionaire." (Annex 46.)

In putting the port construction work up for public bidding, however, the Protectorate authorities ignored the provisions of the regulations applicable in such cases under the Act of Algeciras. The Diplomatic Corps at Tangier, except the Diplomatic Agent of France, protested this violation on June 12, 1922. See the instruction from the Acting Secretary of State to the Chargé in France of September 21, 1922 (Annex 46).

On September 21, the Department of State instructed its Chargé d'Affaires in France to protest the concession to the French Government (Annex 46) and was informed on October 17, 1922, that the British and Spanish Ambassadors would present similar protests (Annex 46). The French Government took the position, the Ambassador reported on November 3, 1922, that the concession was justified under the terms of the Franco-German Convention of 1911 (to which the United States was not a party) and asserted that the United States had constructively waived its rights in any event by failing to protest previous concessions of a similar type (Annex 46). The Department instructed its Ambassador in France on November 3 and 4, 1922, formally to reserve all the rights of the United States in the matter (Annex 46). Concessions for public works continued to be granted exclusively to French interests without public bidding. Pointing to the specific provisions of the Act of Algeciras and the previous admission from the French Government that public bidding was required, the United States protested such concessions made in the French zone of Morocco in 1923, 1927 and 1932. A similar protest was lodged in 1930 in the Tangier Zone with the support of the majority of the nations

represented on the Committee of Control of the Tangier Zone which adopted on that occasion a resolution stating in part :

"The Committee of Control, the majority of which has expressed the opinion that, in conformity with treaty stipulations, concessions cannot be accorded in Tangier except as a result of public adjudication, nevertheless agrees to examine the electricity concession without letting its decision be invoked through any claim whatsoever as constituting a precedent." (Annex 46.)

The right to engage in trade without restrictions or interferences and to import goods freely into Morocco was explicitly guaranteed in bilateral treaties concluded by foreign nations with Morocco and was reaffirmed by the Act of Algeciras. Nevertheless, a dahir (law) was enacted on June 6, 1929, which prohibited the importation of foreign wheat and flour into the French Zone of Morocco. The United States, with Great Britain, Italy, Spain, Belgium and Argentina, protested the dahir to the Protectorate authorities. The protest which the Department on August 6, 1929, instructed the Ambassador to present to the French Government was not answered (Annex 47). With a view similarly to restrain foreign imports, but through a different method, a dahir enacted on January 30, 1933, instituted "compensating taxes", to be paid in addition to normal customs duties upon certain products and merchandise imported into the French Zone of Morocco. The United States, with Great Britain, Belgium and Italy, protested this measure on February 8, 1933, on the ground that it was discriminatory (Annex 47). Following an unsatisfactory reply from the French Resident General on March 8, 1933, the United States renewed its protest on March 14, 1933, without success (Annex 47) ; similar legislation continued to be enacted. The next year, the French authorities openly moved to abrogate the freedom of imports provided by the treaties and made known to the American Diplomatic Agent in Tangier their intent shortly to establish in Morocco a regime of quotas for imports. The Secretary of State instructed the American Ambassador in France on December 18, 1934, to express to the French Government the concern of the United States with the threat to the principle of economic liberty and equality which resulted from both the past violations of the principle and from the recent proposals for the establishment of a quota regime :

"In regard to the administrative measures already in effect you may state that this Government has been apprised by its representatives in Morocco of an apparent persistent policy of the Protectorate Government, pursued during a considerable period, to break down through discriminatory dahirs and other measures international economic and commercial liberty in Morocco in favor of French trade, in violation of the Act of Algeciras and of the treaties. A long list of complaints based on treatment derogatory to American interests, many of which have been filed with the Protectorate authorities, could be cited...."

"With respect to the new proposals as enunciated by M. Ponsot, you may say to the French that this Government believes that quota systems are inherently discriminatory and that the establishment of such a system in Morocco would not only strike at the heart of the principle of commercial equality as guaranteed in the treaties and conventions regarding Morocco, but it would constitute the establishment of new trade barriers against nations at the very moment when the nations are seeking to formulate policies which are calculated to remove excessive restrictions with the view of encouraging the fullest volume of mutually profitable trade." (Annex 47.)

The instruction informed the Ambassador that the Governments of Italy and of the Netherlands were similarly in opposition to the French proposals. The Ambassador received assurances from the French Government on December 18, 1934, that it had no desire to promulgate regulations in violation of treaties, but would on the contrary seek negotiations in the matter with the States parties to the Act of Algeciras (Annex 47). Following informal discussions with the French Government, the United States declined to accept the French proposals. Upon reports that the French Government was determined to put the proposed measures into effect with or without this Government's assent, the Department of State instructed the American Ambassador in France on March 16, 1935, formally to protest the proposed regime of quotas (Annex 47). The French Government denied on May 6, 1935, that the proposed regime of quotas would be contrary to the open-door principle established by the Act of Algeciras and threatened to denounce the Treaty of 1836 between the United States and Morocco:

"... The said treaty, concluded for a duration of fifty years, is now subject to denunciation, upon twelve months' advance notice. The French Government can avail itself of this right at any moment." (Translation ; Annex 47.)

The proposed regime of quotas, however, was also opposed by other parties to the Act of Algeciras except Great Britain, which assented to the French proposals. While maintaining its views with respect to quotas during the discussions which continued in 1936, the United States was especially concerned with obtaining a solution of the dispute through the orderly procedure of negotiation, and opposing the attempt of France unilaterally to impose measures which it found in clear violation of treaties. It so informed the British Government on April 27, 1936, upon the latter's inquiries with respect to the United States opposition to a regime of quotas in Morocco, and went so far as to suggest a meeting of all interested Powers to find a compromise solution of the problem :

"From the foregoing, His Britannic Majesty's Government will appreciate the manifest difficulties, apparently insuperable, which prevent the Government of the United States from acquiescing in the proposed establishment of a quota system in Morocco. As is



shown, however, by its disposition towards a possible modification of the Moroccan tariff rates, the Government of the United States is by no means uncompromisingly opposed to any change, nor does it wish to assume a legalistic attitude towards the Moroccan problem. Nevertheless, the present regime in Morocco is squarely based upon legal provisions incorporated in international agreements, and the United States believes that these provisions of law ought not to be changed except by due process of law. Therefore, and as evidence of its sincere desire to cooperate with His Britannic Majesty's Government and with the Protectorate Government of Morocco, the Government of the United States is prepared to agree to participate in a frank discussion, between representatives of all the interested Powers, of the various problems involved." (Annex 47.)

The suggestion was not acted upon, but the French authorities did not carry out their proposed imposition of quotas.

The methods to be used in assessing custom duties were provided by the Act of Algeciras. Prior to the establishment of the Protectorate in 1912, the customs authorities in Morocco informed the American Minister that the duties on imports were assessed on the basis of the purchase value of the merchandise at the point of origin, plus expenses incidental to its delivery at the custom-house in Morocco, in conformity with the provisions of the Act of Algeciras :

"This value comprises the purchase price of petroleum f.o.b. New York plus all expenses after the purchase .... everything which contributes, at the moment of presentation at the custom-house, to the wholesale value of the product on which, according to art. 95 of the Act of Algeciras, the duties must be paid." (Translation ; quoted in the note from the American Consul General at Casablanca to the Diplomatic Counsellor of the French Residency of November 13, 1947 ; see Annex 59.)

After 1912, the customs authorities of the Protectorate departed in an increasing number of instances from the method of valuation provided by the Act, and assessed duties on American imports instead on the basis of the value of similar goods on the Moroccan market. The situation became particularly acute in 1934 when this departure from the methods of valuation provided by the treaties appeared to become a general rule. The protests of the United States were unsuccessful (Annex 48). Furthermore, the French authorities informally declared to an American official in 1939 that they intended to use a double system of customs valuation by using in some cases the value at the point of origin as provided by the Act of Algeciras, and in others the selling price in Morocco :

"Mr. Caron informed me .... [that] it was the intention of the customs authorities to continue to base the valuation on the c.i.f. invoice value where that was feasible and on the retail selling price less certain deductions in other cases." (Annex 48.)

The rate of customs duties on imports was fixed by the treaties at 12½ %. The French authorities inquired in November 1934 whether the United States would acquiesce in an increase of this rate (Annex 48). The Department authorized its representative in Morocco on November 14, 1934, to accept the principle of the raise, provided no discrimination were involved and other parties to the Act of Algeciras were in agreement (Annex 48). The American Diplomatic Agent so informed the French Resident General on November 20, 1934, and made it clear that the consent of the United States would be secured only if arbitrary assessments of American imports were discontinued :

"I have the honor to recall that, in the course of the interesting interview which, in response to Your Excellency's invitation I had the honor of holding with you last Saturday at Rabat, I informally suggested that my Government might eventually give consideration to a reasonable increase in the Moroccan Customs Tariffs, if such modification became necessary for purposes of revenue, providing the increase were to be uniform, void of discrimination, and agreed to by the Powers signatory of the Act of Algeciras, and I added that such eventual consideration on the part of my Government would necessarily be contingent upon the cessation of the arbitrary and abusive appraisal of imported goods by the Protectorate Customs Administration, which, in defiance of the treaty provisions, resulted in the levy of excessive duties on American imported merchandise." (Annex 48.)

The French authorities took issue with this proposal on May 6, 1935, on the ground that France had no legal obligation to consult the parties to the Act prior to an increase of the rate of duties on imports :

"So far as the customs reform is concerned, the French Government desires to state that it cannot admit either in principle or in fact the thesis of the Federal Government according to which the tariff regime in Morocco might not be modified without the consent of the Powers signatory to the Act of Algeciras." (See the note from the French Ministry for Foreign Affairs to the American Embassy of May 6, 1935, Annex 47.)

The proposed increase of duties was part of a general plan of customs reforms which included as well the impositions of quotas (see above). In view of the opposition of most of the parties to the Act of Algeciras to this program as a whole, the proposed increase in customs duties was not carried into effect.

The treaties provided immunity from taxation for the nationals of foreign Powers in Morocco, except as otherwise specified in the Madrid Convention and the Act of Algeciras. When taxes imposed by the Protectorate authorities were objected by the United States in 1928 as being in violation of these treaties, the Resident General asserted that the Franco-German Treaty of 1911 and the Franco-Moroccan Treaty of 1912 (to neither of which the United States

had adhered) had given to France the right to introduce into Morocco any reforms and to make whatever modifications might be useful in existing tax regulations. The protests of the United States to the French Residency and to the French Government, taking issue with this disregard of treaty rights, were unavailing (Annex 49). Article 13 of the Madrid Convention specified that gate taxes could be established after joint agreement of the Moroccan authorities and the Diplomatic Body but that any increase of such taxes should receive the assent of the representatives of foreign Powers. The United States, with Belgium and Great Britain, protested on June 5, 1934, without success, the increase in such taxes ordered by the Protectorate authorities on July 13, 1933, without its prior agreement (Annex 49). In many other instances the taxes enacted by the Protectorate authorities were clearly discriminatory. Thus, the United States, with Belgium, Great Britain, and Italy, protested the enactment in 1928 and 1931 of railroad and dock tariffs which established preferences in favor of products originating from the French zone of Morocco (Annex 49) and compensation taxes enacted in 1933 applying only to certain foreign imports (see the note from the American Diplomatic Agent at Tangier to the French Resident General of March 8, 1933, in Annex 47).

Other treaty violations concerned the imposition of restrictions abridging the right of Americans to reside, to hold real property and to open or carry out commercial or business enterprises in Morocco, the use of administrative pressure by local authorities to harass American business, and the establishment in most fields of monopolies controlled by French interests to the detriment of other foreign nations. There were, in addition, a number of interferences on the part of the Protectorate authorities with the exercise by the United States of its capitulatory rights of protection and jurisdiction. Indeed the range and number of treaty violations which occurred during this period at least raised a question whether they did not evidence a concerted plan directed to the abrogation of the treaty rights of the United States in Morocco.

Throughout these disputes, the United States maintained the view that the Protectorate authorities had no right to modify by their unilateral action the treaty rights of the United States. This Government insisted that the proper way for the Protectorate authorities to seek justifiable adjustments or modifications of treaty provisions was to consult with the United States and obtain its assent. In some cases the only means available to the United States to oppose French violations of treaty rights was the protesting of the violations to the Protectorate authorities and to the French Government. This was true whenever the violations could be carried out effectively by the Protectorate authorities by confronting the United States with a "fait accompli". This was the case, for example, with legislation creating monopolies in favor of

French interests and with arbitrary and discriminatory practices on the part of the administrative authorities such as the illegal seizure or detention of American goods and the overassessment of customs duties. In other cases, however, the United States was in a position to oppose more effectively the claim of the Protectorate authorities that they could impose measures departing from treaty provisions without the prior agreement of the United States. By maintaining its consular courts in Morocco, the United States maintained its treaty right to immunity for its nationals from the application of the local law. Whenever laws and decrees enacted in violation of the treaties could not be carried out effectively without enforcement through judicial action, the Protectorate authorities had no choice but to sue Americans in their consular courts, and these courts in turn refused to enforce the particular legislation involved, unless the United States had agreed, after request from the Protectorate authorities, to apply to its nationals this particular legislation. This was the case for example with legislation imposing taxes in violation of the immunity provided by the treaties. The United States always expressed its willingness to depart from the treaties in this respect and enforce reasonable taxes against Americans, provided the Protectorate authorities would request and secure the prior agreement of the United States to this modification of its rights. The French authorities themselves recognized the validity of the legal principle involved since the French authorities submitted more than a hundred laws and decrees for the prior assent of this Government during this period, and thereby belied their often repeated claim that they could legally enact measures departing from treaty provisions without prior consultation with and agreement of the United States.

An attempt was made in 1937 to settle through diplomatic negotiations the various problems arising in Morocco between the United States and France. Following the negotiation with Great Britain of a convention for the surrender of British capitulatory rights in the French zone of Morocco and of an agreement to conclude a treaty for commercial relations between Great Britain and Morocco, the French Government on August 26, 1937, suggested that the United States similarly surrender its capitulatory rights (Annex 50). The Department of State in its answer of October 19, 1937, proposed the simultaneous negotiation of an agreement to surrender capitulatory rights and of a convention of commerce and navigation :

".... The American Government would therefore desire to enter into negotiations for such an agreement in the form of a convention of commerce and navigation simultaneously with the proposed negotiations for a convention relating to capitulatory matters. Upon learning that your Government is in accord with this proposal I shall be glad to prepare and submit drafts of both conventions for its consideration...." (Annex 50.)

On August 5, 1938, the French Government agreed to conclude such agreements :

“Under these circumstances, the French Government has instructed me to confirm to Your Excellency the interest which it would attach to concluding with the Government of the United States two agreements similar to those which it has signed with the British Government : the former contemplating the abolition of the rights and privileges of a capitulatory nature enjoyed by the United States in Morocco, and the second concerning commercial relations between the French and Tanager zones of the Sherifian Empire and the Government of the United States....” (Annex 50.)

After further exchanges of correspondence in the matter, negotiations opened in Washington, D.C., in June 1939. Following a recess during the summer, the parties were to meet again on October 1, 1939, when the beginning of World War II interrupted and terminated the negotiations.

#### B. *THE DISPUTE AFTER WORLD WAR II*

The recrudescence of the conflict at the end of World War II arose from the enactment by the Protectorate authorities of measures of economic control which violated the right of American nationals to import freely into Morocco, and from illegal practices which deprived them of their rights with respect to customs and taxation.

The right for United States nationals to engage in trade without restrictions or interferences and to import freely into Morocco was explicitly provided by the treaties and confirmed by the Act of Algeiras. This was clearly admitted by the Diplomatic Cabinet of the French Resident General in a note addressed to the American Consulate-General in Casablanca on June 25, 1947 :

“Mr. Marchat does not ignore that, in this matter, an unconditional interpretation of the treaties gives in theory full freedom to American importers.” (Translation ; for French text, see Annex 53.)

Despite the fact that the legal right of the United States in the matter was well established, the Protectorate authorities applied to American importers war-time regulations requiring importers to obtain licenses to import their merchandise into the French zone of Morocco. The justification offered by the French authorities for the licensing of imports was that it was necessary to the effectiveness of control of exchange and currency. The French authorities had asked the United States in 1944 to make applicable to American nationals war-time restrictions concerning exchange control which had been introduced in French Morocco as a result of joint action by the American and French authorities in North Africa. The United

States having so agreed (Annex 51), they applied as well to Americans the requirement of import licenses. The United States had not agreed to make applicable to American nationals the requirement of import licenses, but acquiesced tacitly in a spirit of cooperation to the licensing requirement with the understanding that the Protectorate authorities would continue to issue licenses to American importers without difficulties, as a mere formality.

In the spring of 1947, the Protectorate authorities refused to issue licenses to American importers in an increasing number of instances. The American Consul-General protested this practice to the French Residency on May 8, 1947 (Annex 52), and pointed out that the requirement of import licenses was discriminatory since import licenses were not required for imports from France and, moreover, was without real justification since Americans financed their imports with their own dollars and not through the Moroccan exchange office ; these objectionable features of the license requirement were of no great consequence, as long as licenses continued to be issued to Americans as a matter of course, but not so when they were refused or otherwise not granted :

“Mr. Lewis need hardly point out to Mr. Marchat that since import licenses are not required for imports from France the requirement that imports from the United States or by Americans from other sources be covered by import licenses issued by the Protectorate authorities is clearly discriminatory.... In a spirit of co-operation the United States Government has not withdrawn its assent to the application to Americans of the exchange control regulations and therefore, in that spirit, no protest has been made heretofore against the continued enforcement of the import license requirement notwithstanding the obviously discriminatory character which it has assumed. It nevertheless should be clear to the Protectorate authorities that, once application has been made in the appropriate manner to the authorities and a reasonable period of time has been given for processing the application, approval must inevitably be expected when no request for foreign exchange is involved. The difficulties of the Protectorate Government in the matter of foreign exchange, particularly dollar exchange, is understood, and there is no desire to influence the Protectorate Government in the allocation of exchange, unless clear evidences of discrimination, through the application of the exchange or *groupement* regulations, develop. However, the position is entirely different when licenses are refused, or are otherwise not granted, where no exchange has been requested.” (Annex 52.)

The answer from the Diplomatic Counsellor of the French Residency dated June 25, 1947 (Annex 53), recognized the freedom of importation granted to Americans under the treaties and assured the Consulate-General that the great majority of requests for licenses would be satisfied immediately, as long as they involved no request for allocation of foreign exchange from Morocco :

"Instructions have already been given to the services of execution in order that the great majority of these requests [for licenses] be satisfied in the shortest time, if they do not involve allocations of exchange." (Translation ; for French text, see Annex 53.)

Following the end of what may be called the opening phase of the dispute, the Protectorate authorities discarded all considerations of legality and stopped entirely a short time thereafter the issuance of import licenses to American nationals, in flagrant violation of the assurances given by the Residency General in the note of June 25, 1947. In answer to the numerous protests made by the American Consulate-General at Casablanca against the suspension of American imports, the Residency notified the Consulate-General on September 13, 1947 (Annex 54), that henceforth the importation of goods not requiring allocation of exchange would be limited to products essential to the Moroccan economy :

"Furthermore, by reason of the importance of the imports, and the disturbances they create in the Moroccan economy, the Protectorate authorities find themselves obliged to limit the granting of import licenses to certain categories of merchandise chosen in the light of the essential needs of the Moroccan economy." (Translation ; for French text, see Annex 54.)

While ignoring the question of treaty right, the French authorities presented the arguments that restrictions on imports were necessary to check illegal transfers of funds from Morocco and inquired whether the Consulate-General would in the future guarantee that funds used by American importers originated in the United States (Annex 54). The American Consulate-General explained to the Residency on September 22, 1947 (Annex 55), that it could not guarantee the origin of American funds because the free economy of the United States made it literally impossible to verify capital holdings, but expressed his readiness to examine other methods of control, especially those which could parallel such measures as the French authorities themselves employed in dealing with the repression of illegal transfers of funds from Morocco by French nationals or other non-American nationals :

"The suggestion made by Mr. de Bourdeille relative to some sort of a moral guarantee to be given by the Consulate-General as to the origin of funds has been carefully examined and found to be impracticable, particularly since the free economy obtaining in the United States makes it literally impossible to verify the extent of individual capital holdings there. However, the Consulate-General would be interested to examine any other control measures which may be proposed in the light of the present practice of the Protectorate authorities in dealing with illegal transfers of foreign exchange on the part of non-Americans." (Annex 55.)

This offer to work out effective measures of control of exchange violation did not lead to practical results in the course of further discussions on the matter, and the French authorities continued to

restrict American imports (Annex 56). Moreover, despite the repeated assurances which the Consulate-General gave to the Protectorate authorities as early as June 1947 (see Annex 52) that it would prosecute in the Consular Courts any case of illegal transfer of funds involving Americans, the French authorities failed to bring a single charge of exchange violation against an American national in 1947 and 1948. In the circumstances, the argument of the French authorities that their main concern in restraining imports was to suppress illegal transfers from Morocco appeared specious.

Another practice of the Protectorate authorities which made questionable their argument concerning the necessity of restraining American imports for the purpose of checking illegal transfers, was that no objections were made to the importation by American nationals of certain products when the American importers were willing, in one case, to sell their imports to the group controlling the sale of that product in Morocco, and in other cases to sell 2/5 of their import to the Protectorate authorities. No concern was expressed in such cases with the origin of funds financing the imports. The Residency having outlined its position in this respect in a note dated March 5, 1948 (Annex 57), the American Consulate-General on March 9, 1948, reviewed the position of the United States throughout the whole dispute and maintained the view that *any* restrictions on imports from the United States, not involving allocation of exchange from Morocco, should be removed. (Annex 58.)

Finally, the customs practices of the French authorities made it evident that they intended to force the issue of import controls by arbitrary means irrespective of the merits of any argument in the matter. Prior to the notification of September 13, 1947, that henceforth imports would be restricted, the customs authorities had been assessing the values of American imports on the basis of their original cost in the United States plus expenses incidental to delivery in Morocco. Coincidental with the refusal of the French authorities to issue licenses to American importers, the customs services began to assess American imports on the basis of their value on the free Moroccan market. On the other hand, identical imports financed through allocation of exchange from Morocco continued to be assessed on the basis of their original cost in the country of origin. As a result, assessments on American imports rose to as much as three times the assessments on identical imports by others. The Consulate-General at Casablanca protested the practice on November 13, 1947 (Annex 59), since it clearly discriminated against American trade and was in addition a violation of the specific provisions of the Act of Algeciras :

“The Consul of the United States of America at Casablanca has the honor to present his compliments to the Minister Plenipotentiary, Diplomatic Counsellor of the Residency General of France



in Morocco and to protest strenuously against what would appear to be the arbitrary and unilateral action of the customs authorities in Casablanca in endeavoring to assess improper valuations on imported American goods.

The action protested obliges the importer either to leave his goods in the custom house, with all the risks that that implies, and incur needless additional expense, or else pay the excessive duty demanded under protest, thus tying up additional funds for an indefinite period.

... Regarding these cases it was pointed out that definite discrimination was involved since others importing with dollars allocated by the Protectorate Authorities were assessed the correct legal duty on absolutely identical merchandise.

It would also seem to be desirable to point out once more here that Article 95 of the Act of Algeciras defines the basis for assessment of import duties by the Moroccan customs as follows :

'The *ad valorem* duties shall be liquidated according to the cash wholesale value of the merchandise delivered in the customs and free from customs duties and storage dues.'

This wholesale value comprises the wholesale export value in the exporting country increased by the expenses necessary for importation up to the Moroccan port of entry excluding customs and warehousing duties. That such was the interpretation of Article 95 in the intention of the Powers at the Algeciras Conference including the French themselves, is confirmed by a letter from M. G. Luret to Minister Carpenter dated July 16, 1912.

The endeavor of the French Protectorate to revert to customs valuations on the basis of internal market prices is thus seen to be without legal basis." (Annex 59.)

The protest was renewed on March 2, 1948, and again on April 2, 1948 (Annex 60). The answer of the Residency dated May 4, 1948 (Annex 61), recalled that the dispute on this point was an old one and that accordingly the United States had no grounds to complain of *new* discrimination. Moreover, it justified the practice of using different methods of assessments by arguing that in order to maintain the principle of economic equality of the Act of Algeciras, it was necessary to equalize competition by assessing some imports more than others, instead of taxing them uniformly on the basis of their original cost :

"Mr. Marchat has the honor to inform Mr. Fletcher that if, by reason of the circumstances, this question arose with new acuteness and under a rather special aspect, it is certainly not the first time that the terms of Article 95 of the Act of Algeciras have been the object on the part of persons involved of an interpretation different from that of the Sherifian customs administration.

.... American importers who raised the question these last few months have no grounds to complain of new or discriminatory practices on the part of the Sherifian customs administration. The latter has never ceased from applying the methods, studied on very numerous occasions and in all their aspects, which are revealed on examination to be the only ones conforming to the spirit as well as the letter of the Act of Algeciras....

Such are the principles flowing both from the old treaties and from the preparatory work for the Act of Algeciras which have always guided the Sherifian customs administration in the carrying out of its daily task with the desire to adhere as closely as possible to the conditions on the Moroccan market and with a constant aim of objectivity and impartiality. They easily dispose of that alleged anomaly which certain importers believed they discerned in different duties for identical merchandise depending on whether it is imported with or without an attribution of foreign exchange by the Exchange Office. As it is established, in fact, that according to the circumstances the merchandise is put on sale at prices presenting considerable divergence, it would be both contrary to the dispositions of Article 95 and to the rule of equal opportunity if the merchandise were to be taxed uniformly on the basis of the cost price." (Translation ; for French text, see Annex 61.)

The issue of the application of import controls to American nationals became moot when the Protectorate authorities removed on March 11, 1948, the war-time requirement that imports of goods without allocation of exchange from Morocco be subject to licensing, except for certain listed commodities. Henceforth, all persons residing in Morocco, whatever their nationality, were free to import all products (except for the listed commodities) in unrestricted amounts as long as they requested no official allocation of exchange. Thus terminated what may be called the second phase of the controversy.

The third phase of the dispute was initiated by the enactment on December 30, 1948, of a Residential Decree which abrogated the regime of free importation for goods not purchased through an official allocation of exchange. The decree did not specify the regime which would apply thereafter. The French Resident, however, in notifying the American Consul-General at Casablanca on December 30, 1948 (Annex 62), of the enactment of the decree, informed him that, for the future, the requirement of a license for the import of goods without official allocation of exchange was re-established and that the issuance of such licenses would be limited to a small number of goods and commodities. The note explained that such restrictions were necessary since the freedom previously granted to importers had resulted in extensive illegal transfers of funds which had adversely affected the French currency :

"You have not forgotten the circumstances under which the system of imports without allocation of foreign exchange was instituted in Morocco at the beginning of the year. This system .... has

resulted in having the most unfortunate consequences on the steadiness of the foreign exchange market in Paris. It has become evident that these imports were financed illegally, either by the export of currency to Tangier, by private clearing arrangements, or especially by the purchase of foreign exchange on the parallel market in Paris, so that finally this financing constituted one of the chief elements of the inflation recorded on that market.

Not only the French Government, but the American Government likewise, informed through the good offices of the Economic Co-operation Administration, is acutely concerned about this situation, since its effects upon the carrying out of the Marshall Plan are evident. To put an end thereto, the Protectorate Government finds itself obliged to introduce important restrictions on the present system. Imports without the allocation of foreign exchange, although not being completely eliminated, are going to be limited strictly to capital goods and to some commodities essential to the economy of the country and the nourishment of its population." (Translation ; for French text, see Annex 62.)

The answer of the American Consul-General of January 5, 1949 (Annex 63), reiterated the willingness of the American authorities to prosecute any American found violating exchange control laws and reminded the Residency that until and unless the French authorities requested and obtained the assent of the United States to the restrictions apparently contemplated by the decree of December 30, 1948, American nationals would continue to claim the regime of freedom previously in force :

"Prior to March 11, 1948, the position of the Consulate-General was that American individuals and firms using their own foreign exchange might import into Morocco whatever commodities they pleased (except, of course, for items which might endanger Moroccan security) and that import licenses were to be issued promptly, since application for them was a mere formality in such cases. Importers were to be obliged to make no cessions to the rationing or other services. Restrictions accepted by the United States with regard to exchange controls, which had moreover been accepted only on a temporary basis, could not be presumed to affect transactions in which the purchase of foreign exchange with francs was not involved. Reasonable evidence of violation of exchange controls had to be adduced before refusing or delaying the issuance of an import license. An *a priori* presumption of illegal conduct could not be raised against an American ressortissant under any circumstances.

The position today is different. Since the Decree of December 30, 1948, is not applicable to American ressortissants without the prior approval of the Department of State, and since the approval of the restrictions abolished by the Decree of March 11, 1948, was automatically voided by their abolition, an American ressortissant *using his own foreign exchange* may today import freely into Morocco any commodity he desires (still excepting items which might endanger Moroccan security) without being obliged to obtain an import license." (Annex 63.)

That the French authorities recognized the validity of the claim of the United States to its treaty right to freedom to import until the United States agreed to a modification of its right was made clear by the subsequent requests from the Residency for the assent of the United States to the new restrictions. Difficulties developed immediately, however, with respect to the precise nature of the restrictions to which the United States was requested to assent. Since the Residential decree of December 30, 1948, did not specify the regime of restrictions which would apply in the future, but merely conferred general authority to control imports, the United States refused to consider for assent anything but the precise regulations which would govern imports without allocations of exchange in the future. Following general or evasive requests for assent on January 15, 1949, February 26, 1949, and March 17, 1949, and requests from the United States for a precise statement of the contemplated regulations on February 16, 1949, and March 8, 1949 (Annex 64), as well as oral discussions of the matter, the French Resident General submitted for the assent of the United States a statement of the import regulations to be applied pursuant to the decree of December 30, 1948 :

"With reference to our recent conversations, I consider it desirable to confirm hereinafter the various particulars which I have had occasion to furnish you regarding the new regulations which concern the importation of goods without allocation of foreign exchange and which were put into force in the French zone of Morocco beginning with January 1 last.

Beginning with March 1948, for the majority of products, no license was required for importation without payment.

The financing of such purchases, the volume of which increased from month to month, had a disturbing effect on the firmness of the franc in both the Paris and the Tangier markets, where it constituted one of the important factors in the increase in the value of foreign currencies registered during the past year.

Disturbed, with good reason, by these repercussions on the stability of our currency, the French Government requested me to revise the regime which had been established, so as to reduce the volume of imports without payment.

In view of these circumstances, I decided that, beginning with January 1 last, importation without financial settlement could be effected only under import licenses issued subject to the usual conditions.

Import licenses may be issued only for the following products :

- Milk, sweetened or unsweetened, condensed or powdered
- Sugar and molasses
- Coffee, green or roasted
- Tea, green
- Equipment and spare parts
- Cement
- Metals, ferrous and non-ferrous

Pneumatic tires, heavy  
Lubricants

I should be grateful if you would be so good as to take the usual steps with the Department of State with a view to making the regulations set forth above applicable to American citizens in the French zone of Morocco." (Translation ; for French text, see Annex 65.)

Despite their clear acknowledgment as early as January 15, 1949, of the principle that restrictions on imports were a departure from treaty rights which necessitated the agreement of the United States, the Protectorate authorities started to apply the new import regulations to American nationals before obtaining such consent and impounded American goods upon their arrival in Morocco. The Consulate-General at Casablanca protested these practices on February 11 and 16, 1949, and the Legation at Tangier similarly protested on March 2, 1949, and March 14, 1949 (Annex 66), stating on the latter occasion :

"I have the honor to refer to my note to Your Excellency of March 2, 1949, requesting that Your Excellency take appropriate steps to end attempts by Protectorate officials to apply the new import restrictions to Americans in the absence of consent by the Department of State and to inform your Excellency that I have been instructed to bring it to Your Excellency's attention that the Department of State considers that the application of the new regulations to American ressortissants without its consent clearly disregards American treaty rights.

I have been further instructed to insist that any goods imported by American ressortissants which are being held by the customs authorities be released to their owners and that the new restrictions may in no case be applied to American ressortissants unless and until formal assent to them is communicated to Your Excellency." (Annex 66.)

The American Diplomatic Agent called personally on the French Resident General on March 17, 1949, to protest the application to American nationals of the import regulations imposed in furtherance of the decree of December 30, 1948, but to no avail.

In view of this persistent policy of the Protectorate authorities, it was obvious that their request for the assent of the United States to import regulations amounted to an empty formality. In addition, experience had shown in 1947 and 1948 that the Protectorate authorities were disposed to use arbitrary means to force the issue of American imports, such as discriminatory assessments of import duties and illegal taxation. Accordingly, the American Diplomatic Agent informed the Residency on March 24, 1949 (Annex 67), that the United States could not give its assent to the new import regulations, unless the Protectorate authorities were willing to reach a mutual understanding concerning the equitable application of these regulations to American nationals, to guarantee a fair assessment of customs duties in conformity with the Act of Algeciras,

to refund taxes illegally collected without the assent of the United States, and to release American goods illegally detained :

“Increasing complaints of American importers have caused the American Government to become concerned over the apparent disregard of its treaty rights in Morocco in a number of instances. *Guarantees of equitable administration and the solution of certain outstanding problems are, therefore, necessary conditions of its assent to the above-mentioned regulations.* Foremost among such problems are those arising from the application to American ressortissants of legislation and regulations to which the formal assent of the United States has not been given.

In short, the American Government's assent to the new import regulations cannot be given unless a satisfactory solution of the above and related problems is reached, that is, unless customs duties are assessed in accordance with the Act of Algeciras and at the official exchange rates; unless unapproved tax increases cease to be levied and measures be taken for refunding increased levies paid by Americans in the past under protest; and unless all goods detained through premature application of the new import licensing regulations be released without excess warehousing charges or other prejudice to the importer.” (Italics added; Annex 67.)

The Resident General, while expressing willingness to enter into discussions on these various points, noted that he had to refer the matter to the French Government. Accordingly, the Embassy of the United States in Paris confirmed informally to the French Government the position that no consideration would be given to discussing the assent to import regulations unless American imports illegally detained should be released. The French Ministry of Foreign Affairs agreed on April 11, 1949 (Annex 68), to release American goods held by the Moroccan customs, provided the United States would give its assent to the import regulations immediately afterwards, but insisted that further conditions concerning a fair assessment of customs duties and the refund of taxes illegally collected be reserved for later discussion :

“In a spirit of conciliation, the Ministry of Foreign Affairs is prepared to request General Juin to release to the American importers the merchandise at present held in the customs warehouses without requiring payment of the fines for delay or even payment of the warehousing charges normally due because of such delay, as soon as the Ministry shall have the assurance that its decision will be followed immediately by the agreement of the American Government to the regulations in question.

The Ministry of Foreign Affairs believes it indispensable that the State Department not condition the assent which is now requested to agreement on the other points brought up in Mr. Plitt's memorandum. In fact these points can only form the subject

of an agreement within the framework of an over-all settlement of the rights enjoyed by American nationals under the treaties between the United States and Morocco." (Translation ; for French text, see Annex 68.)

The Embassy replied on April 19, 1949 (Annex 69), that the United States would not consider giving its assent until the goods were released, but would *consider* giving such assent immediately after the release of the goods :

"The American Government regrets that it cannot give further consideration to giving its assent to the decree of December 30th, abrogating Avis 299, until the authorities of the French Moroccan Protectorate release from customs without penalty or storage charges the goods now held. In this connection the American Government feels obliged to recall that no dahir or decree can apply to American ressortissants until it has given its assent thereto. However, the Department of State will immediately consider giving its assent to the December 30th decree immediately after the release of the goods now held in customs custody." (Annex 69.)

The Embassy renewed the request for release of American goods on May 9, 1949 (Annex 70), and pointed out that the United States would not enter into any discussions concerning its assent until such release :

"However, while it feels confident that a fair and mutually satisfactory arrangement can be reached, the Department of State must insist upon such immediate release and upon postponing any further discussion of such an arrangement until the authorities of the French Protectorate Zone in Morocco cease illegally applying the decree of December 30th which abrogated Avis 299." (Annex 70.)

On May 11, 1949, the Department of State was informed by the French Embassy that the Resident General had been instructed to cause the unconditional release of American goods (Annex 71). On May 18, 1949, the Ambassador of France requested the Secretary of State (Annex 71) to take steps to settle as soon as possible the question of the United States assent to import regulations :

"The Ambassador of France would appreciate it if the Secretary of State would be good enough to take steps for settling as soon as possible a situation which cannot continue without causing the most unfortunate repercussions in economic stability and internal order and in the reconstruction effort being made in application of the Marshall Plan." (Translation ; for French text, see Annex 71.)

Following the release of American imports, negotiations to reach an understanding concerning the equitable application of the import regulations to Americans opened in Morocco on May 24, 1949, between representatives of the United States and of the Protectorate. During the course of the negotiations the French Embassy in Washington urged the Secretary of State to assent to the import regulations (May 27, 1949, Annex 72) and the French Foreign Office in Paris presented a similar request to the American

Embassy in Paris (May 31, 1949, Annex 72). In its note, the French Foreign Office stated that it would become necessary to apply the import regulations to American nationals on June 7, 1949, irrespective of United States assent, but informed the Embassy that the Protectorate authorities would be instructed to establish a uniform method of assessment of customs and to administer the regulations in a liberal spirit<sup>1</sup>. The negotiations in Morocco resulted in a limited Agreement on the basis of which the parties approved a record of their exchange of views dated June 4, 1949, and the United States agreed on June 5, 1949, temporarily to give its assent to the import regulations for a period of three months on the understanding that the following conditions would be fulfilled :

*"1. That an agreement is reached with the United States within three months on the specific formula applicable to American ressortissants for imports with exchange.*

*2. That agreement is reached now on the principle of no limitations on imports of capital goods, replacement parts and maintenance products without exchange and not for resale. The Department of State would be willing during the next three months to negotiate a reasonable definition of the scope of such products.*

*3. That substantial progress is made during the next three months in developing a satisfactory and permanent system of import valuation for customs purposes, and assurances are given regarding further discussions on other problems of customs valuation and consumption tax matters.*

4. That the fifteen-day period of grace previously agreed to by Protectorate authorities is affirmed.

5. That U.S. assent to the decree of December 30 does not in any way imply assent to the dahir of September 1939, which has previously been rejected.

The United States has noted the assurances of the French Government concerning customs valuation and its intention to follow a liberal policy with respect to licences without exchange. It has also noted the intention of the French Government to notify U.S. Consular offices of any possible changes in the list of goods subject to control. The United States, however, reasserts, among other rights, the right to withhold its consent to modifications in this list." (Italics added ; Annex 73.)

On June 10, 1949, the United States formally gave its assent for a period of three months to the import regulations listed in the note from the Residency of April 14, 1949, and specifically stated :

*"I have been instructed by my Government to inform Your Excellency that assent is given to these specific regulations for a period of three months on the understanding that discussions will continue in an effort to reach a further satisfactory agreement to that mentioned below and on the following conditions."* (Italics added ; Annex 73.)

<sup>1</sup> On May 23, 1949, the Protectorate authorities suspended the import regulations in force under the decree of Dec. 30, 1948.—On May 30, 1949, they reestablished the regulations effective June 15, 1949.



Despite the specific terms of the note of June 5 reserving a number of points for further discussion and the terms of the United States assent of June 10 which limited it to a period of three months and also specified the necessity of further discussions, the French Government asserted on June 11, 1949 (Annex 74), that the entire problem was settled and that it would consider the assent given by the United States as a permanent assent :

"In the circumstances, the Ministry of Foreign Affairs considers that the entire problem has been settled not only for three months, but permanently, without prejudice, of course, to adjustments and improvements which are expressly provided for in the agreement reached at Rabat.

.....

Thus the Ministry of Foreign Affairs is convinced that the American Government, recognizing that the five conditions made in the note of the Embassy are fulfilled, shall consider in the light of the minutes of the negotiations held at Rabat as well as in the light of the indications given in the present note that it is a permanent assent which it has given to the Moroccan regulations of December 30 [1948]." (Translation ; for French text, see Annex 74.)

The note ignored the condition that further discussions should define the equitable application to Americans of the import regulations and dismissed the conditions relating to assessment of customs duties and illegal taxation of American nationals by suggesting that these questions, as well as the whole question of treaty rights of the United States, be submitted to international arbitration. By note dated June 21, 1949 (Annex 75), the Diplomatic Agent in Tangier refuted the assertions of the French Government and pointed out to the Resident General that the assent of the United States was a temporary one, and subject to the condition of further discussions concerning the manner in which import regulations would be applied to Americans, as well as customs valuations and taxation :

"I have been instructed to inform Your Excellency that the Department of State does not share the view of the Foreign Office that the entire problem of imports by American business men in Morocco has been settled permanently as a result of the discussions in Rabat. In that connection the memorandum summarizing the discussions itself provides for further consideration of such matters as the customs valuation system and the addition of new quotas for products imported with official exchange. My Government gave temporary assent to the import regulations mentioned above on the understanding that discussions be continued in an effort to reach further agreement on such questions and on the question of the assessment of consumption taxes to which the United States Government had not given its assent. My Government's assent therefore can in no sense be considered permanent and I have been instructed to reiterate the conditions set forth in the Legation's note of June 10, 1949, notifying Your Excellency of the assent

of my Government to the application to American ressortissants of these import regulations for a period of three months effective as of the date of the Legation's note." (Annex 75.)

The French Ministry for Foreign Affairs thereupon reiterated by a note dated July 4, 1949 (Annex 76), its previous suggestion to submit to international arbitration the question of customs duties and taxes and requested the permanent assent of the United States to the import regulations in force under the decree of December 30, 1948 :

"Concerning customs valuations, as the Ministry of Foreign Affairs has already stated in its previous note, the procedure which is followed in Morocco at present has been confirmed by a decision of the 'Cour de Cassation' which the French Government can no more change than can the American Government modify a decision of the [American] Supreme Court.

Finally, it is not possible for the French Government to agree, at the risk of entirely paralyzing action by the Moroccan authorities in economic and fiscal matters, that the application of all the fiscal measures which Morocco may be led to adopt, be subordinated to the previous assent of the American Government. Such measures have always been immediately enforced without any discrimination, and the French Government, in so far as it is concerned, believes that the American Government does not have the right, under the treaties which bind it to Morocco, to demand that it be otherwise.

However, anxious both to give the American Government a proof of its good will and to comply strictly with its international obligations, the French Government has proposed to the American Government to submit the above two points to an international body, undertaking in advance to accept whatever decisions this tribunal might render.

Regardless of the decision which the State Department may make, the Ministry of Foreign Affairs believes it is essential to move out of the state of uncertainty which the American Government seems to wish to maintain by reserving unto itself the possibility of questioning every three months the assent which it gave on June 10 to the Moroccan regulation of December 30. The Ministry of Foreign Affairs therefore looks forward to receiving the State Department's permanent assent which the satisfactions it has granted to the American Government allow it, in its opinion, legitimately to be able to expect." (Translation ; for French text, see Annex 76.)

In reply to this request for permanent assent, the American Diplomatic Agent at Tangier invited the French Residency on July 14, 1949 (Annex 77), to fix a date for the resumption of negotiations contemplated by the American temporary assent of June 10, 1949. Similarly on July 20, 1949, the Department informed the French Ambassador (Annex 77) that it was ready to pursue the negotiations.

Negotiations resumed on August 4, 1949, between representatives of the United States and of the Protectorate and terminated on September 4, 1949. A proposed *modus vivendi* was drafted which contained provisions for the equitable application to American nationals of import controls and a proposed compromise regarding uniform methods of customs assessments. No agreement was reached regarding the subject of taxes. Since the temporary assent of the United States to import controls, dated June 10, 1949, was about to expire, the assent was renewed for 30 days on September 10, 1949, in order to permit study by both Governments of the proposed *modus vivendi* (Annex 78). The United States informed the French Government on October 8, 1949 (Annex 79), that the proposed agreement did not satisfy the question of taxes, nor provide satisfactory methods of preventing administrative discrimination. The United States accordingly asked the Protectorate authorities to agree to the refund of taxes illegally collected and to the creation of a joint commission empowered to deal with the complaints of American nationals regarding the administration of import controls. Since the temporary assent to import controls of September 10, 1949, was about to expire, the United States renewed its temporary assent for 60 days in order to permit negotiations on its proposals. The Protectorate authorities failed to acknowledge the United States proposals until November 29, 1949 (Note received Oct. 1, 1949; Annex 80), a few days before the expiration of the assent of October 8, and did not answer the proposals of the United States. On December 2, 1949, accordingly, the American Embassy notified the French Government that in the circumstances it would not extend its assent any further upon its expiration on December 8:

"My Government considers the Residency's note of December 1, 1949, an inadequate answer to the Legation's note of October 8, 1949, since it fails to reply to the United States proposal for arrangements which would justify United States assent to the December 30, 1948 avis. Although my Government is not opposed to further discussions at a future date, it considers that it is not possible under the circumstances to justify extension of its temporary assent, which in the absence of an agreement on the United States proposals, will lapse on December 8." (Annex 81.)

On December 4, 1949, the French Residency in Morocco requested an extension of the assent of the United States due to expire December 8 (Annex 82), request which was satisfied by extending the assent until December 31, 1949 (Annex 83)<sup>1</sup>. Following this extension of assent, the French Residency declined on December 11, 1949, to accept the proposals of the United States of October 8,

<sup>1</sup> On Dec. 7, 1949, the French Embassy communicated to the Department of State the text of an Application instituting proceedings which it proposed to file at that time with the International Court of Justice in connection with the whole controversy (Annex 84).

1949, concerning the refund of taxes and the creation of a mixed commission (Annex 85). Negotiations were pursued in Paris in the course of which an agreement was reached concerning the conditions under which the import regulations listed in the request for assent of April 14, 1949, would become applicable to American nationals. The Legation thereupon gave its assent on December 31, 1949, to these import regulations, subject to the conditions of application agreed upon to American nationals and with the specified reservation that such assent, being justified only by special circumstances, was withdrawable on 30 days' notice :

"I have the honor to refer to the Legation's notes to Your Excellency dated June 10, 1949, September 10, 1949, October 8, 1949, and December 8, 1949, which were in reference to Your Excellency's note 171-D dated April 14, 1949, which requested the assent of the Department of State to certain import regulations, set forth in the latter note, in order to make them applicable to American ressortissants in the French Zone of Morocco.

I have been instructed by my Government to inform Your Excellency that the temporary assent given to these specific regulations in the Legation's notes referred to above is hereby extended for an indefinite period on the following conditions :

1. The provisions for implementation of control of dollar financed imports into the French Zone of Morocco contained in a summary memorandum of conversations between officials of the Residency and American Government officials dated September 4, 1949, with the revised text regarding agency changes submitted by the Residency on September 8, 1949, and a minute regarding the definition of maintenance goods and the tea situation dated December 31, 1949, a copy of which is enclosed with this note, shall be applied.

2. The application to take effect as of the date of this notification to Your Excellency.

3. This assent does not imply assent to any previous dahirs, decrees, orders, regulations or administrative measures which have not been accepted by the Department of State and specifically to the Dahir of September 9, 1939, regarding the control of imports, which was rejected by the Department of State.

4. The jurisdiction of the American Consular Courts over American nationals and protected persons in the French Zone of Morocco is not abridged in any manner by reason of the measures in question.

5. Subsequent modification, whether by dahir, decree, order, regulations, tariffs or administrative decisions shall require in each instance the specific approval of the United States Government before they may become applicable to American ressortissants.

6. These import regulations are regarded by my Government as arising from exceptional economic conditions now existing in Morocco, and its assent to the application of these measures to American ressortissants is subject to withdrawal after 30 days notice to Your Excellency." (Annex 86.)

Upon acknowledgment by the Resident General on the same day (Annex 86), further exchanges of notes defined the establishment of the consultative machinery for implementation of the conditions

of application of import regulations to American nationals and enlarged the list of products which could be imported without official allocation of exchange (Annex 86).

During the following year, American importers found numerous causes of dissatisfaction with the system of import controls which had been made applicable to them under the *modus vivendi* of December 30, 1949. The Congress of the United States, accordingly, enacted a law which directed that funds given by the United States to assist the economic recovery of foreign nations should not be made available to any country of which a dependent area failed to comply with the treaty rights of the United States. The *modus vivendi* of December 30, 1949, was a departure from the treaty provisions guaranteeing freedom of imports to American nationals. For this reason, the American Ambassador informed the French Government on October 3, 1950 (Annex 87), that the United States was contemplating the withdrawal of its assent to the import regulations in force under the Decree of December 30, 1948. The French Government thereupon objected to what it considered a denunciation of the *modus vivendi* of December 31, 1949, and announced on October 25, 1950 (Annex 88), its intent to file with the International Court of Justice an Application instituting proceedings to determine the nature and scope of the treaty rights of the United States in Morocco. Pending the decision of the Court, the *modus vivendi* of December 31, 1949, is maintained in force.

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### PART III

#### ARGUMENT

##### *SUMMARY OF ARGUMENT*

Summarily stated, the position of the United States is that treaty rights granted in the past to the United States by the State of Morocco are still in full force and effect and cannot be modified, infringed or abrogated, without the consent of the United States: *pacta sunt servanda*.

The United States denies the validity of the submissions presented by the French Government according to which it is urged that recent international agreements entered into by the United States and France have superseded the United States treaty right to import freely into Morocco, and that recent changes in the status of the international obligations of Morocco have abolished the United States treaty right to extraterritorial jurisdiction. The United States will show that the arguments advanced by the French Government in support of its submissions fail to sustain the burden of proof which the French Government has assumed by virtue of both the nature of the legal issues raised and its procedural position as plaintiff in this proceeding, and that accordingly its treaty rights with respect to freedom of import and extraterritorial jurisdiction are still valid and enforceable.

The United States also proposes to demonstrate the continuing validity of its treaty rights with respect to assessment of customs duties and collection of taxes. The French Government has presented no arguments on these two points. Both questions are, however, integral parts of the present dispute (see Memorial, Exposition of Facts, pp. 18-29, and Counter-Memorial, Part II, Chapter III, *supra*) and qualify accordingly as counter-claims under Article 63 of the Rules of Court. The French Government, moreover, urged the submission of these two points to an international tribunal during the course of the dispute now before the Court. (Notes of June 11 and July 4, 1949, Annexes 74 and 76.)

Arguments concerning the right to import freely, assessment of customs duties, and collection of taxes will be presented first. Next the issue of extraterritorial jurisdiction will be considered.

As noted above (see Part I, Statement of the Case) these arguments pertain solely to the treaty rights of the United States in the French zone of Morocco.

## CHAPTER I

## ECONOMIC RIGHTS

## A. RIGHT TO IMPORT FREELY INTO MOROCCO

The position of the United States is that it is entitled by treaties with Morocco to a regime of free trade with that country without restrictions or prohibitions on imports, save those which are specified in the treaties. The United States considers, therefore, that the application to American nationals of the prohibitions on imports provided by the Dahir of December 30, 1948, is a violation of its treaty rights and a breach of international law unless the United States specifically agrees, prior to the application of the *import prohibitions to American nationals, to waive its treaty rights, and unless the conditions under which it waives its rights are fully respected.* Its position is that mutual consent between the parties is necessary to relieve one of the parties of its obligations under the treaties and that in the absence of such mutual consent, a departure from the terms of the treaties is a violation of international law.

In taking this position, it should be noted, the United States relies strictly on its right to import as provided by the treaties. It does not rely, for the purpose of the argument, on the additional ground that American nationals in Morocco are not, in any event, under the regime of capitulations, subject to the application of Moroccan law without the formal assent of the United States Government (see Part III, Chapter II).

The position of the French Government is that the treaties do not forbid restrictions or prohibitions on American imports and that accordingly, the prohibitions of December 30, 1948, could be applied to United States nationals without the consent of the United States.

The discussion of the argument presented by the French Government requires first, a precise analysis of the decree enacted by the French Residency General on December 30, 1948. Article 1 is the operative portion of the decree, since the other article merely sets forth certain details of application :

*"Article 1 : The provisions of Article 5 of the aforesaid residential decree of the 9th day of September, 1939, will cease to apply as from the first day of January 1949, save for the exception set out in Article 2 hereof."* (Translation ; for French text, see Annex 89.)

Article 5 of the Resident's decree of September 9, 1939, excepted imports not requiring an official allocation of exchange from French Morocco from the general prohibition on imports which had been enacted on the same day. Article 5 provided :

"Save for such exceptions as may be specified by the appropriate heads of departments, the prohibition on entry thereof shall hereafter be generally waived as regards goods imported from any origin or source, when import does not entail any financial settlement between the French zone of the Sherifian Empire, France, or any territory of the French Union on the one part and foreign territory on the other part<sup>1</sup>." (Translation; for French text, see Annex 90.)

The other articles of the residential decree of September 9, 1939, were similarly devoted to making exceptions to the basic legislation prohibiting imports. In particular, Article 4 excepted goods of French and Algerian origin :

"Goods of French or Algerian origin, and goods shipped from France or Algeria, shall for the time being be admitted without any special formalities." (Translation; for French text, see Annex 90.)

The basic legislation imposing prohibition on imports was a dahir (law) enacted by the Sultan of Morocco on September 9, 1939 :

*"Dahir of the 9th day of September, 1939 (24 rejeb 1358), relating to the control of imports :*

Praise be to God !

(Great Seal of Sidi Mohamed)

Know all men by these presents, and may God give uplift and power to the purport thereof !

That His Sherifian Majesty,

Has decided as follows :

*Article 1.*—It is prohibited to import into the French zone of the Sherifian Empire, whatever may be the Customs regulations in force, goods other than gold in any form.

*Article 2.*—The director general of communications may, however, waive this prohibition on entry as regards combustible solid mineral matter and petroleum products and the director of economic affairs may do likewise as regards any other products.

*Article 3.*—It is left to the decision of the Resident General to determine the measures whereby the provisions herein contained shall be put into effect.

Made at Rabat on the 24th rejeb 1358 (9th Day of September, 1939).

Seen, promulgated and put into force :

Rabat, the 9th day of September, 1939.

Minister plenipotentiary, delegate of the Resident General,  
J. Morize."

(Translation ; for French text, see Annex 91.)

<sup>1</sup> This article was enacted March 11, 1948, as an addendum to the other articles of the decree of Sept. 9, 1939.



Since the residential decree of December 30, 1948, merely cancelled a residential exception to the basic legislation, its net effect was to reestablish the sweeping prohibition against all imports in the French zone of Morocco included in Article 1 of the Sultan's law of September 9, 1939, subject to such derogations as might be permitted by the administrative authorities<sup>1</sup>.

The scope of the Dahir of December 30, 1948, being thus defined, the next question is whether this prohibition against imports is compatible with the provisions of the treaties concluded between the United States and Morocco.

Freedom of commerce is the cornerstone of the treaty relations of the United States and other foreign Powers with Morocco. Established as early as the 17th Century and developed during the 18th, the principle was given its full scope and significance in the treaties concluded by Morocco during the 19th Century (see Part II, Chapter I, *supra*). These treaties, in addition to reaffirming the principle of freedom of commerce and guaranteeing to foreigners the right to engage in trade without interference, specifically provide that the importation of foreign goods into Morocco can not be subjected to restrictions or prohibitions of any kind, save for specified and limited exceptions. Article II of the Treaty of Commerce concluded by Morocco with Great Britain on December 9, 1856 (which is still in force), provides:

"The Sultan of Morocco engages to abolish all monopolies or *prohibitions on imported goods*, except tobacco, pipes of all kinds used for smoking, opium, sulphur, powder, saltpetre, lead, arms of all kinds, and ammunitions of war ; ...." (Italics added ; Annex 21.)

Article VI of the same treaty similarly states :

"*Merchandise or goods*, except the articles enumerated in Article II, imported by British subjects in any vessel, or from any country, shall not be prohibited in the *territories of the Sultan of Morocco....*" (Italics added ; Annex 21.)

Article XLIX of the Treaty of Commerce concluded by Morocco with Spain on November 20, 1861 (which is still in force), declares :

"The merchandise and produce imported into ports of Morocco by Spanish subjects, from any place or country, *shall not be prohibited in the territory* of the Sultan of Morocco...." (Italics added ; Annex 22.)

Article 2 of the Treaty of Commerce concluded by Morocco with Germany on June 1st, 1890 (not in force since 1919), reads :

"*German traders shall be free to introduce in the States of His Majesty the Sultan of Morocco merchandise and produce of all*

<sup>1</sup> On the day of publication of the residential decree of Dec. 30, 1948, a notice was issued that licences for imports not involving allocation of exchange might be issued only for a group of 9 products or commodities.

*types* ....; are excepted from this disposition: tobacco ....; opium ...., arms .... of which the import is prohibited." (Italics added; translation; for French text, see Annex 29.)

The United States, like many other Powers with which Morocco entered into treaty relations, did not receive these rights in specific terms, but received them through the device of the most-favored-nation clause included in Articles 14 and 24 of its Treaty of 1836:

*Art. 14*

The commerce with the United States shall be on the same footing as is the commerce with Spain, or as that with the most favored nation for the time being; ...."

*Art. 24*

.... And it is further declared, that whatever indulgence, in trade or otherwise, shall be granted to any of the Christian powers, the citizens of the United States shall be equally entitled to them." (Annex 19.)

There is no question, therefore, that the treaty rights of the United States include specific prohibitions against the import of American goods such as those which result from the residential decree of December 30, 1948.

No further discussion would be necessary of the obvious conflict between the prohibition on imports of December 30, 1948, and the provisions of the treaties, were it not for the assertion by the French Government that the principle of economic liberty of the Act of Algeciras does not forbid import prohibitions. The principle is stated in the Preamble of the Act:

"Inspired by the interest attaching itself to the reign of order, peace, and prosperity in Morocco, and recognizing that the attainment thereof can only be effected by means of the introduction of reforms based upon the triple principle of the sovereignty and independence of His Majesty the Sultan, the integrity of his domains, and economic liberty without any inequality, have resolved, upon the invitation of His Shereefian Majesty, to call together a conference at Algeciras...." (Italics added; Annex 32.)

The argument advanced by the French Government is that the principle of economic liberty is too vague and too general to read in it a guarantee against import prohibitions (Memorial, pp. 78, 81). The argument is irrelevant, and at the same time self-defeating, since it admits by implication that prohibition against imports would be illegal if explicit provisions forbidding them were found in the treaties, and since very precise prohibitions to that effect have just been shown to exist in the treaties. The argument is misleading since it points to an alleged vagueness of the principle of economic liberty to justify import prohibitions under the Act of Algeciras, but ignores Article 123 of the Act

which maintains in force all previous treaties concluded by Morocco, including their provisions specifically forbidding prohibitions on imports (Annex 32). The argument, finally, is without any intrinsic validity in any event: a review of the diplomatic negotiations which led to the inclusion of the principle of economic liberty in the Act of Algeciras shows that it was intended to guarantee to the parties to the Act their treaty rights to import freely into Morocco.

With a view to obtaining political control of Morocco, the French Government initiated in 1900 a series of diplomatic negotiations destined to secure the consent of other foreign Powers to such control. Having concluded such an agreement with Italy on December 14-16, 1900, the French Government concluded on April 8, 1904, a Declaration with Great Britain, with Secret Additional Articles, whereby the parties waived their reciprocal political interests in Morocco and Egypt. Great Britain, however, held paramount commercial interests in Morocco, through its previous treaties, which it wished to retain. The French Government accordingly undertook to guarantee these rights in Article IV of the Declaration:

"The two Governments, being equally attached to the principles of commercial liberty both in Egypt and Morocco, declare that they will not, in those countries, countenance any inequality either in the imposition of customs duties or other taxes, or of railway transport charges." (Annex 33.)

A review of the treaty rights of Great Britain in Morocco shows that no commercial rights other than those guaranteeing a regime of free trade without restrictions or prohibitions on either imported goods or the traders importing them could properly be described by the word "liberty". (See Part II, Chap. I, *supra*.) Other treaty rights were either relative rights, in the sense that Great Britain was entitled to equality of treatment in certain respects (for example, with respect to duties or restrictions which might be placed on exports) or rights not connoting liberty of action in a commercial sense (limitation of the rate of customs on imports to 10%; immunity of British citizens from taxes). The expression "commercial liberty" in this Declaration was meant therefore to guarantee to Great Britain its right to a regime of free trade without restriction on imports.

Germany held in Morocco commercial rights in all respects identical to those of Great Britain and became concerned with the diplomatic negotiations being carried on by France with Great Britain, and with the negotiations conducted at the same time by France with Morocco for the introduction of reforms into that country. The French Ambassador in Berlin requested authorization from the French Ministry of Foreign Affairs on April 21, 1904, to point out to the German Government that the commercial rights of

Germany in Morocco were completely guaranteed by the references to *commercial liberty* and *equality* in the Franco-British Declaration of April 8, 1904 :

“So far as concerns the guarantees which Germany could request for its commerce in Morocco, they are all summarized in the *liberty* which is assured by Article 4 of the Declaration of April 8.

. . . . .

The reciprocal engagement undertaken by France and Great Britain not being in any degree privative, the *equality of treatment* in matters of customs and taxation could not but extend to other Powers in commercial relations with Morocco.” (Italics added ; translation.) Ministère des Affaires étrangères, *Documents diplomatiques, Affaires du Maroc, 1901-1905, 129-130*<sup>1</sup>.

In the view of the French Government, therefore, the use of the expression “commercial liberty” was an adequate means of guaranteeing to Germany the free trade without prohibitions on imports to which, like Great Britain, it was entitled under the treaties.

The Spanish Government adhered to the Franco-British Declaration on October 3, 1904, and, through Secret Articles, obtained from France a promise for a Spanish zone of influence in Morocco. The Spanish and French Governments declared at the same time that both Governments :

“remained firmly attached to the integrity of the Moroccan Empire under the sovereignty of the Sultan”. (Translation ; for French text, see Annex 34.)

In anticipation of objections from the German Government, the French Ambassador in Berlin was instructed on October 12, 1904, to declare that the Franco-Spanish declaration could not affect the guarantees for German commercial rights in Morocco which were already included in the Franco-British Declaration. (See *Documents diplomatiques, 166.*) The French Ambassador reported on March 22, 1905, however, that the claims of Germany in Morocco appeared to go beyond liberty of commerce and to include as well liberty to engage in *industrial activities* :

“.... the pretensions of Germany can be deemed now to concern two points : maintenance of equality of treatment in the economic field, preservation of the independence of the Sultan. On these two points, the German claims do not appear in conflict with our policy in Morocco. The agreement of April 8, 1904, establishes the principle of commercial liberty with a qualification specified in Art. IV *in fine* : it appears, however, that German industry as well as German finances have the ambition of competing in Morocco with our own, whether it concern [public] loans or public works.” (Translation.) *Documents diplomatiques, 202.*

<sup>1</sup> Hereinafter referred to as *Documents diplomatiques*.

The conflict between German and French policies in Morocco grew and reached a deadlock when Germany announced on June 16, 1905, its intent not to recognize any reforms which France and the Sultan proposed to introduce into Morocco, unless they were adopted by an international conference of all interested Powers since the proposed reforms would be in contravention of the treaty rights of these Powers. *Documents diplomatiques*, 234-235. The French Government denied on June 21, 1905, any intent to obtain political control of Morocco or to modify the rights of other Powers, and reiterated the principles which had inspired its policy in signing agreements with Great Britain and Spain :

“Our proposals to the Sherifian Government, therefore, respect the principles and safeguard the interests which preoccupied the Imperial Government. Neither the *sovereignty of the Sultan*, nor the *integrity of his territory*, nor the *position of the Powers*, as it results from the treaties, can be altered.” (Italics added ; translation.) *Documents diplomatiques*, 237.

On this basis, and after further exchanges of correspondence, the two Governments reached an agreement on July 8, 1905, determining the conditions under which they would participate in a conference to implement a program of reforms in Morocco. The letters exchanged on this occasion stated :

“The Government of the Republic is convinced .... that the Imperial Government would not pursue, at the Conference proposed by the Sultan of Morocco, any aim which would compromise the legitimate interests of France in that country [Morocco] or be contrary to the rights of France, as they result from its treaties or arrangements, and in harmony with the following principles :

- Sovereignty and independence of the Sultan ;
- Integrity of his empire ;
- Economic liberty, without any inequality ;
- Utility of reforms....”

.....  
(Translation ; for French text, see Annex 35.)

The use of the expression “economic liberty”, in contrast to the expression “commercial liberty” previously used, was intended to guarantee not only the commercial rights of Germany in Morocco, but also the German claims to free industrial activities. It was an enlargement of the guarantees previously included in the Franco-British declaration of April 8, 1904, not a departure from it. This was made clear by a note of the French Government, dated August 1, 1905, which outlined the program of the Conference of Algeiras and stated :

“3. The work of the conference should not be limited, in our view, to the determination of the reforms which I have outlined, and of the ways and means of putting them into effect. It would

be advisable that it should fix in addition, and make the Sultan accept, some principles guaranteeing *the economic liberty which France has already stipulated in its agreements with other Powers and which has been easily agreed upon in the exchange of letters of July 8 last.* (Italics added ; translation.) *Documents diplomatiques*, 259.

To the end of assuring freedom for industrial activities, pursuant to the principle of economic liberty, the French Government proposed in the same note the enactment of the provisions now included in Articles 105 to 112 of the Act of Algeciras concerning the granting to foreign Powers of concessions for public works and services.

Following the agreement of France and Germany to participate in a conference to introduce reforms into Morocco subject to respect of the principles of sovereignty of the Sultan, integrity of his domains and economic liberty without inequality, the Conference of Algeciras opened on January 16, 1906. In the first session, the Spanish representative, as President of the Conference, stated :

"The Powers are also in agreement that the achievement of this important purpose [prosperity of Morocco] could be achieved only through the introduction of reforms into the Empire, reforms based on the triple principle of sovereignty of the Sultan, integrity of his Domains, and equality of treatment in commercial matters, that is to say '*the open door*'." (Italics added ; translation.) *Actes de la Conférence d'Algésiras*, Séance d'ouverture, January 16, 1906.

The French delegate agreed with this statement, adding some remarks concerning industrial activities :

"... I propose that the Conference give its adhesion to the thought which he [the President] so properly formulated and take for basis of projected reforms the triple principle of sovereignty of the Sultan, integrity of his Domains and *the open door in commercial matters.* To these principles are related those which are inscribed in the program concerning economic reforms ; adjudication for public works, no alienation to the benefit of private interests of public services." (Italics added ; translation.) *Actes de la Conférence d'Algésiras*, Séance d'ouverture, January 16, 1906.

The German delegate supported this statement, and the President recorded the unanimous assent of the delegates to his proposal. Thus the principle of economic liberty, with the accompanying principles of sovereignty of the Sultan and integrity of his domains, came to be included in the Preamble of the Act of Algeciras.

It is clear from the review of the diplomatic negotiations preceding the Act of Algeciras that the French Government used or sponsored the use of the expressions commercial liberty, open door in commercial matters, or economic liberty, in the Franco-British Declaration of 1904, the Franco-German Exchange of Letters of 1905 and the Preamble of the Act of Algeciras of 1906

for the specific purpose of guaranteeing to all parties concerned the regime of free trade without restrictions on imports to which they were entitled by previous treaties with Morocco. The fact that the expression "economic liberty" is broader in scope than the expressions "commercial liberty" and "open door" does not detract from this interpretation, but merely indicates, as pointed out by the French delegate at the Conference, that the guarantee of freedom extended as well to industrial activities which, insignificant at the time of the conclusion of previous treaties, were becoming in 1906 an important element of Moroccan economy.

The Dahir of December 30, 1948, having been shown to violate both the specific provisions of the treaties and the general principle of economic liberty of the Act of Algeciras, the next question is whether this violation of treaty rights is removed by the French argument that the Dahir is in conformity with the provisions of conventions to which the United States and France are parties.

Two conditions must be met if this argument is to be considered relevant. First, the conventions in question must have abrogated or superseded the previous treaty rights of the United States in Morocco which forbid prohibitions on imports; otherwise the Dahir remains a violation of such treaty rights. Second, the conventions in question must be binding upon both the United States and Morocco in order to abrogate or supersede the treaty rights granted to the United States by Morocco since a treaty affects the contracting States only: *Pacta tertiis nec nocent nec prosunt*.

Five agreements or treaties have been invoked by the French Government in the course of its argument: The Havana Charter for an International Trade Organization of March 24, 1948; the General Agreement on Tariffs and Trade of October 30, 1947; the Convention for European Economic Cooperation of April 16, 1948; the International Monetary Fund Agreement concluded at the Bretton Woods Conference of July 1-22, 1944; and the Economic Cooperation Agreement between the United States and France of June 28, 1948.

The Havana Charter has not yet been ratified by either the United States, France, or Morocco, and, furthermore, is not yet in force among any of the signatories. This the French Government specifically admits (Memorial, p. 80). The General Agreement on Tariffs and Trade entered provisionally into force on January 1, 1948, between eight States, including the United States and France, but France did not enter into this agreement on behalf of Morocco. On the contrary, Morocco was specifically excepted from the notification of France dated May 13, 1949, that the agreement would become effective in its overseas territories. The United States is not a party to the Convention for European Economic Cooperation. Under no circumstances, therefore, may it be asserted that these agreements could in any manner modify or abrogate the treaty rights previously granted to the United States by the State of Morocco.

The International Monetary Fund Agreement and the Economic Cooperation Agreement between the United States and France are binding alike upon the United States and Morocco in view of the fact that France entered into these agreements on behalf of Morocco. To this extent, accordingly, it may be proper to consider them in connection with the argument that previous provisions of treaties concluded between the United States and Morocco have been abrogated or superseded by later agreements between the same parties.

The abrogation of previous treaty rights by later agreements should not, in the view of the United States, be presumed. The sanctity of treaties in international law requires that such abrogation be express or result from unequivocal provisions to that effect. In this case, neither one of the two agreements under consideration contains any provisions requiring a party, or giving it the right, to impose prohibitions on imports. Neither one contains even a reference to such a subject-matter. Neither one, therefore, may be deemed to have modified by its express terms previous treaty provisions forbidding prohibitions on imports.

Even if it were assumed, however, that recent agreements between two parties could abrogate indirectly or by implication their previous treaty rights, there could not be found any support for this argument in the International Monetary Fund Agreement or in the Economic Cooperation Agreement between the United States and France. To sustain the argument of abrogation by implication in this case, it would be necessary to show that these agreements conferred upon Morocco a legal right or obligation to impose exchange control, that exchange control necessarily led to control of imports, including imports not involving an official allocation of exchange, and that as a result these agreements might be deemed to confer upon Morocco an implied right or obligation to control imports which necessarily superseded its previous obligation not to prohibit imports. Arguments are offered in the French Memorial in support of the proposition that exchange control inexorably leads to control of all imports. No valid evidence is offered, however, which supports the proposition that the two agreements involved conferred upon Morocco either the right or the obligation to control its exchange and, without proof of this basic premise, the whole argument of abrogation by implication necessarily falls.

One of the fundamental purposes of the International Monetary Fund Agreement is :

“To assist .... in the elimination of foreign exchange restrictions which hamper the growth of world trade.” (Article 1, para. (IV) <sup>1</sup>.)

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<sup>1</sup> The complete text of the International Monetary Fund agreement has been communicated to the Registrar of the International Court of Justice, pursuant to Article 43, para. 1, of the Rules of Court.



By their membership in the Fund, therefore, the parties would be committed, in principle, to the *elimination of exchange control*. This purpose is implemented by Article VIII, which defines the general obligations of members and provides :

"Section 2. Avoidance of restrictions on current payments.

(a) Subject to the provisions of Article VII, Section 3 (b), and Article XIV, Section 2, *no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions.*" (Italics added.)

This article prohibits exchange control in unquestionable terms, subject to two reservations. One of these is Article XIV, Section 2, which the French Memorial (p. 79) describes as a provision *authorizing* control of exchange :

"Sec. 2. *Exchange restrictions.*—In the post-war transitional period members may, notwithstanding the provisions of any other articles of this Agreement, maintain and adapt to changing circumstances (and, in the case of members whose territories have been occupied by the enemy, introduce where necessary), restrictions on payments and transfers for current international transactions. Members shall, however, have continuous regard in their foreign exchange policies to the purposes of the Fund ; and, as soon as conditions permit, they shall take all possible measures to develop such commercial and financial arrangements with other members as will facilitate international payments and the maintenance of exchange stability. In particular, members shall withdraw restrictions maintained or imposed under this Section as soon as they are satisfied that they will be able, in the absence of such restrictions, to settle their balance of payments in a manner which will not unduly encumber their access to the resources of the Fund."

This provision does not empower, nor does it compel, Morocco to control its exchange. It merely acknowledges that exchange control already exists as a matter of fact and gives the option to a party, for a transitional period, to maintain such control instead of abolishing it immediately as required by Article VIII of the Agreement. It does not create any rights or obligations of any kind, save the negative right of option not to become bound by the terms of the Agreement prohibiting exchange control. This interpretation is confirmed by the terms of Section 3 of Article XIV, dealing with the exercise of the right of option :

"Sec. 3. *Notification to the Fund.*—Each member shall notify the Fund before it becomes eligible under Article XX, Section 4 (c) or (d), to buy currency from the Fund, whether it intends to avail itself of the transitional arrangements in Section 2 of this Article, or whether it is prepared to accept the obligations of Article VIII, Sections 2, 3, and 4. A member availing itself of the transitional arrangements shall notify the Fund as soon thereafter as it is prepared to accept the above-mentioned obligations."

To suggest a contrary interpretation and to contend that Section 2 of Article XIV is a positive provision which authorizes exchange control is not possible. To advance such a construction is to say that the legal authority of the parties to control their exchange originates in, and depends upon, Section 2 of Article XIV. But the parties obviously had this authority (except for treaty limitations in effect) prior to the Agreement. Otherwise there would have been no need to draft an agreement to eliminate exchange restrictions. If the parties had such authority, they cannot lose it until they accept, as provided by Section 3 of Article XIV, "the obligations of Article VIII, Section 2", which deprive them of the right to impose exchange restrictions. As long as they refuse to accept such obligations they retain exactly the same legal authority to control exchange which they previously had: Section 2 of Article XIV, therefore, is not the source of such authority. It may be conjectured that the only case in which the authority to control exchange could be derived by a party directly from Section 2 of Article XIV would be the hypothetical case of a State which first deprived itself of such authority by accepting unqualifiedly the obligations of Article VIII, and subsequently asked and obtained from the Fund permission to re-exercise the exchange control under reference in Section 2 of Article XIV. Section 2 of Article XIV, accordingly, cannot be construed as conferring upon Morocco a legal right or obligation to control its exchange.

The other reservation to the prohibition against exchange control of Article VIII, is the case covered by Article VII, Section 3 (b). This provision is also described in the French Memorial as *authorizing* exchange control (p. 79) and is further identified thus:

"Other provisions of this Agreement deal with special instances in which control becomes legitimate. For example, when the Fund considers that certain currency has become scarce (Art. VII, Section 3 (b))." (Memorial p. 80.)

The ambiguity here turns upon the meaning of the words *scarce currency*. These words might be taken, in the context of the French Memorial, to refer to the shortage of currency, such as the dollar shortage, which is invoked by the French Government to justify control of exchange in Morocco. If the words were accepted with this meaning, the implication would be created that the International Monetary Fund Agreement accords to the members, including Morocco, the right to control their exchange when they are short of dollars. This, however, is not the proper meaning of Article VII, Section 3 (b). The financial position at issue under this provision is the financial position of the Fund, not that of its members:

"Sec. 3. *Scarcity of the Fund's holdings*.—(a) If it becomes evident to the Fund that the demand for a member's currency seriously threatens the Fund's ability to supply that currency, the Fund, whether or not it has issued a report under Section 1 of this Article,

shall formally declare such currency scarce and shall thenceforth apportion its existing and accruing supply of the scarce currency with due regard to the relative needs of members, the general international economic situation, and any other pertinent considerations. The Fund shall also issue a report concerning its action.

(b) A formal declaration under (a) above shall operate as an authorization to any member, after consultation with the Fund, temporarily to impose limitations on the freedom of exchange operations in the scarce currency...."

No such scarcity of the Fund's holdings has ever been formally declared or ever existed and thus no exchange restrictions have ever been permissible under this provision. This provision, therefore, cannot be construed as having conferred upon Morocco a legal right to control its exchange.

A similar ambiguity arises from the listing by the French Government of Article VI, Section 1 (a), as an example of a provision in the Agreement which makes it *compulsory* for a State to establish exchange control :

"Or an even better example is the case where the establishment of an exchange control system becomes compulsory for one of the member States, as in the case of excessive transfers of capital. (Article VI, Section 1 (a))." (Memorial, p. 80.)

Without any further explanations, the implication might be created that this provision makes it mandatory for member States to control their exchange whenever excessive transfers of capital threaten their financial position. This, however, is not the case. This provision seeks to protect the resources of the Fund from drawings by members to meet a large or sustained capital outflow :

"Sec. 1. Use of the Fund's resources for capital transfers.—  
(a) A member may not make net use of the Fund's resources to meet a large or sustained outflow of capital, and the Fund may request a member to exercise controls to prevent such use of the resources of the Fund. If, after receiving such a request, a member fails to exercise appropriate controls, the Fund may declare the member ineligible to use the resources of the Fund."

The financial position at issue, here again, is that of the Fund, not that of the member. This provision has never been invoked by the Fund. This provision, therefore, cannot be construed as having conferred upon Morocco a legal obligation to control its exchange.

It is necessary to determine now whether the Economic Cooperation Agreement between the United States and France provides otherwise.

The statement in the French Memorial (p. 80) that the Economic Cooperation Agreement contains numerous references to the Havana Charter might be taken to imply that the Agreement incorporates by reference the provisions of the Havana Charter, not yet in force, dealing with exchange control and restrictions on imports.

The implication, however, would be incorrect. The sole provision of the Economic Cooperation Agreement referring to the Havana Charter is paragraph 5 of the Annex :

“5. It is understood that the phrase in Article V ‘after due regard for the reasonable requirements of France for domestic use’ would include the maintenance of reasonable stocks of the materials concerned and that the phrase ‘commercial export’ might include barter transactions. It is also understood that arrangements negotiated under Article V might appropriately include provision for consultation, in accordance with the principles of Article 32 of the Havana Charter for an International Trade Organization, in the event that stockpiles are liquidated<sup>1</sup>.”

Article 32 of the Havana Charter requires members holding stocks of primary commodities accumulated for non-commercial purposes to liquidate such stocks in a manner which will avoid serious disturbances to world markets for the commodity involved. This reference to the Havana Charter is not relevant, therefore, to the issue of authority to impose exchange control.

Only Article II, paragraph 1 (c), of the Economic Cooperation Agreement might possibly be invoked, because it deals with financial provisions. By its terms, France, acting on its own behalf and on behalf of Morocco, undertakes :

“(c) To stabilize its currency, establish or maintain a valid rate of exchange, balance its governmental budget as soon as practicable, create or maintain internal financial stability, and generally restore or maintain confidence in its monetary system....”

Under this provision, France assumes a general obligation to establish or maintain its finances in good condition. The provision makes specific reference to various aspects of the problem of maintaining sound financial conditions, such as the stabilization of currency, the establishment of a valid rate of exchange, and the balancing of the budget. It does not mention, however, the methods by which this general obligation is to be implemented. It makes no express reference to exchange control.

In the circumstances, neither the International Monetary Fund Agreement nor the Economic Cooperation Agreement can be invoked to support the argument that the previous treaty rights of the United States to freedom of import have been legally abrogated. The legal technique of the argument of abrogation by implication involves essentially finding as a basic premise a treaty right or obligation to impose exchange control from which a series of implications may be derived leading to the final conclusion that treaty rights of the United States conflicting with the implementation of exchange control are necessarily abrogated. In the case of

<sup>1</sup> The complete text of the Economic Cooperation Agreement has been communicated to the Registrar of the International Court of Justice pursuant to Article 43, paragraph 1, of the Rules of Court.

the International Monetary Fund Agreement, Morocco has acquired no right nor any obligation to impose exchange control. The failure to support the basic premise, therefore, vitiates in this instance the whole argument of abrogation by implication. In the case of the Economic Cooperation Agreement, there is no express reference to exchange control, but it may be argued that the general obligation to maintain finances in sound condition contains by implication an obligation to control exchange such as supports in turn the further implications necessary to reaching the conclusion that the treaty rights of the United States have been abrogated. The legal technique of the argument of abrogation by implication is already open to serious objections since a result as serious as the abrogation of treaty rights is predicated in part on a series of implications, instead of being predicated on express or unequivocal provisions to that effect. To go a step further, and to presume that this series of implications, instead of being predicated on an express premise, could itself be predicated on a premise established only by implication, would be inconsistent with sound principles of interpretation. The binding effect of treaties should not be repudiated on such inconclusive grounds. Since there is no express requirement in the Cooperation Agreement that Morocco control its exchange, the failure to establish this basic premise also vitiates in this case the argument of abrogation by implication as a whole.

Even if it were admitted, however, that the argument of abrogation by implication could be predicated upon an implied obligation to impose exchange control, it still would remain to be shown that the implied obligation is of such a character that it necessarily leads, through a series of implications based on this premise, to the abrogation of previous United States treaty rights inconsistent with the implementation of exchange control. Exchange control is not the only method of stabilizing a currency, balancing international accounts and restoring confidence in a monetary system. For example, the adjustment of exchange rates, the taking of internal fiscal and financial measures designed to restrain inflation, and even the removal of existing measures of exchange control would be considered, depending upon the particular circumstances involved in each particular case, the proper method of achieving a general obligation to maintain finances in sound condition. Since a plurality of methods is available to carry out the obligation, such obligation cannot be construed as containing by implication a legal obligation to control exchange so compelling and absolute in character as may be relied upon to prove, through a series of further implications, that the treaty rights of the United States are necessarily abrogated which conflict with the implementation of such exchange control.

The legal validity has been established at this point, therefore, of the following propositions: the Dahir of December 30, 1948, prohibits American imports into Morocco; subject to such

derogations as may arbitrarily be permitted by the administrative authorities ; the treaties concluded by Morocco with the United States from 1836 to 1906 forbid prohibitions on imports, save for limited and specified exceptions ; those treaty provisions have not been superseded or abrogated by recent agreements to which the United States and Morocco are parties. It follows, therefore, that the treaty rights of the United States forbidding prohibitions on imports are still in full force and effect and that the application to American nationals of the Dahir of December 30, 1948, prohibiting imports is a violation of such rights.

It remains to be considered under what circumstances American nationals would legally be submitted to the Dahir of December 30, 1948. This could result only from an express waiver by the United States of its treaty right upon a request from Morocco to that effect. Only then could the parties, through mutual consent, legally suspend the operation of the treaty provisions forbidding prohibitions on imports. Conversely, unless and until the United States expressly waives its treaty right, American nationals cannot be legally submitted to the Dahir of December 30, 1948, prohibiting imports.

It may be added that the acts of the United States throughout the course of the dispute over import control have remained consistent with the legal position which it upholds herein. (See Part II, Chap. III (*supra*).) (It insisted on the respect of its treaty right of freedom of trade without restriction on imports and protested the violation of its treaty right repeatedly, just as it had done in conjunction with other States during the years preceding World War II. At the same time, it offered to assent, and did assent, when it deemed it proper, to the request of the French Government that it waive its treaty right and submit American nationals to the prohibitions on imports resulting from the Dahir of December 30, 1948. At no time, however, was the waiver a surrender of its treaty right. It was in all cases a limited waiver, of temporary duration, and subject to withdrawal upon appropriate notice. Thus the temporary waiver agreed upon by the French Resident General and the American Minister at Tangier on December 31, 1949, read in part :

“These import regulations are regarded by my Government as arising from exceptional economic conditions now existing in Morocco, and its assent to the application of these measures to American ressortissants is subject to withdrawal after 30 days notice....” (Annex 86.)

Nor can it be implied, as the French Memorial does (p. 83), that the agreement of the United States to waive its treaty right was an admission of compatibility between its treaty right and the import prohibitions of the Dahir of December 30, 1948. The agreement to waive the treaty right was not given because import

control was compatible with it, but rather, the agreement to waive was requested and given precisely because import control and the treaty right were not compatible. Indeed, the very fact that the French Government repeatedly requested the United States to waive its treaty right furnishes repeated admissions that it recognized the right of American nationals not to be subject to the prohibition on imports of the Dahir of December 30, 1948. And if further evidence were needed of the inconsistency between the practice of the French authorities in Morocco and the claims now made by the French Government, it should be enough to cite the statement made by the French Resident General on June 25, 1947, in connection with the complaints of the American Consulate concerning restrictions on American imports :

"Mr. Marchat does not ignore that, in this matter, an unconditional interpretation of the treaties gives in theory full freedom to American importers." (Translation ; for French text, see Annex 53.)

In conclusion, the United States submits that :

- (a) The treaty rights of the United States in Morocco forbid Morocco to impose prohibitions on American imports, save those specified by the treaties ;
- (b) The treaty rights of the United States forbidding prohibitions on imports are still in full force and effect ;
- (c) The French Government has failed to present any proof establishing either that the said treaty rights were not granted to the United States or that the same treaty rights are not still in effect ;
- (d) The Dahir of December 30, 1948, imposing a prohibition on imports is in direct contravention of the treaty rights of the United States forbidding prohibitions on American imports ;
- (e) The French Government, by virtue of the application of the Dahir of December 30, 1948, to American nationals, without the consent of the United States, from December 31, 1948, to May 11, 1949, violated the treaty rights of the United States and was guilty of a breach of international law ;
- (f) American nationals cannot legally be submitted to the Dahir of December 30, 1948, without the prior consent of the United States.

## B. ASSESSMENT OF CUSTOMS DUTIES

The United States maintains that, under Article 95 of the Act of Algeciras, the assessment of customs duties should be based on the cash wholesale value of the import at its point of origin, plus expenses incidental to its transportation and delivery to the custom-house in Morocco. The French Government maintains that the assessment of customs duties should be based on the average value of similar merchandise on the Moroccan market.

Article 95 of the Act of Algeciras provides :

“Les droits d'entrée et de sortie seront payés au comptant au bureau de douane où la liquidation aura été effectuée. *Les droits ad valorem seront liquidés suivant la valeur au comptant et en gros de la marchandise rendue au bureau de douane, et franche de droits de douane et de magasinage.* En cas d'avaries, il sera tenu compte, dans l'estimation, de la dépréciation subie par la marchandise. Les marchandises ne pourront être retirées qu'après le paiement des droits de douane et de magasinage.

Toute prise en charge ou perception devra faire l'objet d'un récépissé régulier, délivré par l'agent chargé de l'opération.”

“The import and export duties shall be paid cash at the custom-house where liquidation has been made. *The ad valorem duties shall be liquidated according to the cash wholesale value of the merchandise delivered in the custom-house and free from customs duties and storage dues.* Damages to the merchandise, if any, shall be taken into account in appraising the depreciation thereby caused. Merchandise can only be removed after the payment of customs duties and storage.

The holding of the goods or the collection of duty shall, in every case, be made the subject of a regular receipt delivered by the officer in charge.” (Italics added, Annex 32.)

The controversy turns upon the interpretation of the word “rendue”. According to the French position, “rendue” connotes both place and time, so that the cash wholesale value of the merchandise is determined *at the place and at the particular time* it is imported. Such value is the prevailing price at the time of delivery of similar merchandise on the Moroccan market, less customs duties and storage fees. According to the United States point of view, “rendue” describes the place which the merchandise has reached, so that its value is determined by the expenses incurred previous to its delivery to the custom-house in Morocco. This value includes the purchase value in the country of origin plus expenses incidental to transportation, and necessarily excludes customs duties and storage fees.

According to accepted principles of interpretation, words should be given the ordinary meaning which they bear in the context, unless such meaning leads to unreasonable or absurd results. Taken in its normal sense, “rendue” means that the merchandise has been rendered, delivered, that the physical movement of the merchandise has been completed. It does not connote the idea of time. The words “au bureau de douane” confirm the idea of physical movement by describing the place where the merchandise is to be delivered. The words “marchandise rendue au bureau de douane” describe, therefore, the geographical place or the physical stage of importation at which the value of the merchandise is to be determined.

This construction leads to reasonable results. The value of the merchandise determined at the physical stage of delivery to the



custom-house includes only the purchase value in the country of origin and the expenses incident to transportation. This determination of the value of the merchandise must conform to the further specifications of Article 95 that it be the "cash wholesale" value and be "free from customs duties and storage dues". The cash value, "valeur au comptant", is the price prevailing upon the day of purchase, irrespective of the price variations which may result from a number of factors, such as from the extension of credit. The cash value of the merchandise, therefore, is precisely the purchase value in the country of origin which is taken into account under the construction proposed by the United States. "Franche" in the expression "franche des droits de douane et de magasinage" normally means an exemption, an exoneration from duties and indicates that the customs duties and the storage fees are at no time included in the calculation of the value of the merchandise. The construction proposed by the United States conforms precisely to this specification, since the value at the physical stage of delivery to the custom-house necessarily excludes customs duties and storage fees.

Since the natural meaning of the word "rendue" leads in the context to a reasonable and unambiguous construction, this ordinary meaning should prevail and be applied as it stands without speculating whether it was or was not the intention of the parties to introduce in addition to the concept of place or physical delivery of the merchandise, the notion of time. Only the strongest evidence could override this principle of construction, and no such evidence is available either in the context or in the preparatory works.

The context, far from supporting the construction proposed by the French Government, is incompatible with it. The French Government construes "rendue" as connoting *time* in addition to place and asserts that the value at the *time* of delivery to the custom-house is the value on the Moroccan market of similar merchandise, less customs duties and storage fees. Had the intent been so, Article 95 would have provided that the customs duties and storage fees should be *deducted* from such market value. Instead, it provides that the value shall be *free*, "franche", from customs duties and storage dues. "Franche" does not indicate that customs duties are deducted from the value of the merchandise. On the contrary, it means that the merchandise *ab initio* is not subject to, is exonerated, exempted from customs duties. For example "zone franche" is defined by French legal authorities thus :

"Zone territoriale, fixée unilatéralement ou par traité et déterminée par le recul du cordon douanier d'un pays en deçà de sa frontière politique, et qui se trouve ainsi soustraite à l'application des droits de douane<sup>1</sup>."

<sup>1</sup> Capitant, *Vocabulaire juridique* (1930), 502.

"Zone of territory, fixed unilaterally or by treaty and established by bringing the customs barrier back of the political frontier, which is thus exempted from the application of customs duties."

Similarly, the status of a merchandise "franche de douane" described as "franchise douanière" is defined thus by the same authorities :

"Exonération, provisoire ou définitive, des droits de douanes sur des marchandises généralement non destinées à la consommation nationale. Ex. : les marchandises soumises au régime de l'admission temporaire, de l'entrepôt, du transit, ou introduites en zone franche ... sont admises en franchise<sup>1</sup>."

"Exoneration, provisory or definitive, from customs duties of merchandise generally not destined for national consumption. Ex. : merchandise submitted to the regime of temporary admission, deposit, transit, or introduced in zone franche are admitted in franchise."

It follows, accordingly, that "franche" in Article 95 requires the value of the merchandise to be determined when customs duties and storage fees are not yet incorporated in its price. The French argument leads to precisely the reverse technique of first incorporating customs duties and storage fees in such value and then deducting the same duties and fees. The construction proposed by the French Government therefore should be rejected, since it would only contradict the specific terms of the clause concerning customs duties and storage fees, and since it is a cardinal principle that rules of construction cannot be invoked to render meaningless a provision of a treaty, or any part thereof.

Similarly, the preparatory works to the Act of Algeciras, far from revealing evidence in support of a special rather than an ordinary meaning of the word "rendue", indicate that the parties intended to reject the construction proposed by the French Government. Prior to the Act of Algeciras, the practice of the Moroccan customs administration was to determine the value of imported merchandise according to its value on the local Moroccan market of such merchandise. Article II of the Treaty of Commerce between Germany and Morocco indeed provided specifically :

".... the calculation of these duties shall be made on the basis of the wholesale cash price which the said merchandise *shall have on the market* of the port through which they shall be introduced". (Italics added ; translation ; Annex 29.)

In the course of the discussions concerning the reorganization of Moroccan customs, the first draft dealing with assessment of customs duties provided :

"Les droits *ad valorem* seront liquidés et payés d'après la valeur en gros et au comptant de la marchandise au port de débarquement

<sup>1</sup> *Ibid.*, 262.

ou au bureau d'entrée, s'il s'agit d'importation." (*Actes de la Conférence d'Algésiras*, Annexe au protocole n° 7, art. XIX.)

"The *ad valorem* duties shall be liquidated and paid according to the wholesale value of the merchandise at the port of landing or at the bureau of entry, in the case of imports." (Translation.)

The drafters whose purpose was to reorganize the system of customs already established ignored the phraseology of the German treaty specifying that the local market value would be the rule of customs evaluation and embodying the Moroccan practice at the time. At the outset, therefore, the intent was to reject the local market value principle.

The delegate from Great Britain offered an amendment to substitute for the words "at the port of landing or at the bureau of entry" the words "at the custom-house and free from customs duties":

"Les droits *ad valorem* seront liquidés et payés d'après la valeur au comptant et en gros de la marchandise au bureau de douane et franche de droits de douane." (*Actes de la Conférence d'Algésiras*, 8<sup>me</sup> séance.)

"The *ad valorem* duties shall be liquidated and paid according to the cash wholesale value of the merchandise at the custom-house and free from customs duties." (Translation.)

This substitution was in line with the general intent of the original proposal since, contrary to the local market value rule which necessarily included customs duties, it specified that the value should be free, "franche", from customs duties.

The German delegate introduced the third proposal relating to valuation of customs duties:

"Les droits *ad valorem* perçus au Maroc sur les importations seront calculés sur la valeur que l'article importé a dans le lieu de chargement ou d'achat, avec majoration des frais de transport et d'assurance jusqu'au port de déchargement au Maroc." (*Actes de la Conférence d'Algésiras*, annexe 7 au protocole n° 15.)

"The duties *ad valorem* perceived in Morocco on imports shall be calculated on the value which the imported article has in the place of loading or buying, increased by expenses for transportation and insurance to the port of unloading in Morocco." (Translation.)

Not a single objection was made to this proposal, even though the French and British delegates objected to some features of another part of the German draft dealing with the establishment of a list of fixed values for certain imports. It is apparent, accordingly, that the German draft was not a departure from the two previous drafts but only a more extensive statement of the rule of purchase value in the country of origin plus transportation expenses already defined in succinct terms in the version proposed by the British delegate.

The final version of Article 95 as it stands today is basically the draft offered by the British delegate with the addition of the word "rendue". While the minutes of the Conference do not state the precise motives which led the drafters to incorporate this word in the British draft, the previous history of Article 95 strongly suggests that it was intended to introduce with more conciseness the idea of physical movement which the German draft spelled out in full. The definition of the purchase value provided in the German draft by the words *value of the imported article in the place of loading or buying* was already covered by the words *cash value* in the British draft. The definition of the place of evaluation provided in the German draft by the words *to the port of unloading in Morocco*, was already covered by the words *at the custom-house and free from customs duties* in the British draft. It remained only to add the word "rendue" in the British draft to incorporate the precision of the German draft that the expenses necessary to transportation to the port of unloading were included in such value. The intent of the parties in introducing the word "rendue" in the final version of Article 95, when viewed in the larger perspective of the intent of the parties in adopting this provision as a whole, confirms in all respects the interpretation which the United States places on the word "rendue" by giving to this word its ordinary meaning in the context.

If it were necessary to pursue further the discussion of the proper construction of the word "rendue" and of the second sentence of Article 95, other arguments in favor of the United States position could be drawn as well from the wording of related articles in the Act concerning the problem of customs valuation. When the British draft of Article 95 was adopted, the Conference had not dealt yet with the problem of appraisal, "estimation", that is the problem of obviating the arbitrariness with which the Moroccan customs authorities, in view of the previous experience of the Powers in the matter, would presumably apply the principles of valuation contained in Article 95. The first proposal on this point was introduced by the German delegate and consisted of a single article which spelled out, as has already been seen, a definition of value in terms of purchase value in the country of origin plus expenses incidental to transportation, and at the same time established a board of foreign importers which would fix a tariff of the values of the most common articles of import to guide the appraisal of the Moroccan customs authorities :

"Les droits *ad valorem* perçus au Maroc sur les importations seront calculés sur la valeur que l'article importé a dans le lieu de chargement ou d'achat, avec majoration des frais de transport et d'assurance jusqu'au port de déchargement au Maroc.

*Afin de fixer pour une période déterminée la valeur dans les ports d'entrée des principaux articles taxés, l'administration des douanes marocaines invitera les principaux commerçants étrangers intéressés*

dans le commerce d'importation à procéder, en commun avec elle, à l'établissement d'un tarif pour une période n'excédant pas douze mois. Le tarif ainsi établi sera communiqué par la douane marocaine au Corps diplomatique et sera en même temps officiellement publié.

Il sera considéré comme officiellement reconnu en ce qui concerne les produits et ressortissants des États signataires, en tant qu'aucun membre du Corps diplomatique n'y fait une formelle opposition pendant la quinzaine qui suivra la publication officielle et la communication conforme adressée au Corps diplomatique." (*Italics added*; *Actes de la Conférence d'Algésiras*, Annexe n° 7 au protocole 15.)

"The duties *ad valorem* perceived in Morocco on imports shall be calculated on the value which the imported article has in the place of loading or buying, increased by expenses for transportation and insurance to the port of unloading in Morocco.

*In order to fix for a specified period the value in the port of entry of the more important articles which are taxed*, the Moroccan customs administration will invite the principal merchants interested in the import trade to proceed, in agreement with it, to the establishment of a tariff for a period not to exceed 12 months. The tariff so established shall be communicated by the Moroccan customs to the Diplomatic Body and shall at the same time be officially published.

It will be considered officially recognized so far as concerns the products of the ressortissants of signatory States, in so far as no member of the Diplomatic Body will have formally opposed it during the two weeks which will follow the official publication and the communication addressed to the Diplomatic Body." (*Italics added*; translation.)

It is readily apparent from this provision that the values which were to be assigned to the more common items of import were to be determined by applying the principles of valuation included in the first paragraph, i.e. by adding purchase value in the country of origin and transportation expenses.

The French delegate objected that French financial interests (whose loans to the Sultan of Morocco were guaranteed by the receipts of Moroccan customs duties, bond issue of 1904) were not represented on the board. The British delegate thereupon introduced a draft which paralleled the second paragraph of the German proposal relating to the fixing of a tariff of values, but satisfied the French objection by modifying the composition of the board and giving a representation to French financial interests. (*Actes de la Conférence d'Algésiras*, Annexe 8 au protocole 15.) The resulting draft is now Article 96 :

*"La valeur des principales marchandises taxées par les douanes marocaines sera déterminée chaque année, dans les conditions spécifiées à l'article précédent, par une Commission des valeurs douanières, réunie à Tanger et composée de :*

1. Trois membres désignés par le Gouvernement marocain,
2. Trois membres désignés par le Corps diplomatique à Tanger,

3. Un délégué de la Banque d'État.
4. Un agent de la Délégation de l'Emprunt marocain 5 %, 1904.

La commission nommera douze à vingt membres honoraires domiciliés au Maroc, qu'elle consultera quand il s'agira de fixer les valeurs et toutes les fois qu'elle le jugera utile. Ces membres honoraires seront choisis sur les listes des notables, établies par chaque Légation pour les étrangers et par le représentant du Sultan pour les Marocains. Ils seront désignés, autant que possible, proportionnellement à l'importance du commerce de chaque nation.

La commission sera nommée pour trois années.

Le tarif des valeurs fixées par elle servira de base aux estimations qui seront faites dans chaque bureau par l'administration des Douanes marocaines. Il sera affiché dans les bureaux de douane et dans les chancelleries des légations ou des consulats à Tanger.

Le tarif sera susceptible d'être révisé au bout de six mois, si des modifications notables sont survenues dans la valeur de certaines marchandises."

*"The value of the chief articles of merchandise dutiable in the Moorish customs is to be appraised every year under the conditions specified in the foregoing article by a Committee on customs valuations, meeting at Tangier, and consisting of:*

1. Three members appointed by the Moorish Government.
2. Three members appointed by the Diplomatic Body at Tangier.
3. One delegate of the State Bank.
4. One agent of the delegation of the 5 per cent Moroccan loan of 1904.

This Committee shall appoint from twelve to twenty honorary members resident in Morocco, whom it shall consult when called upon to determine the value, and whenever it may see fit. These honorary members shall be selected from the lists of notables drawn up in the case of foreign subjects by each legation, and in the case of Moors by the Sultan's representative. They shall be appointed as far as possible in proportion to the importance of the commerce of each nation.

The Committee shall be appointed for the term of three years.

The schedule of values fixed by it shall serve as a basis for the appraisals which the Administration of Moorish Customs shall make in every custom-house. It shall be posted at all custom-houses and in the chanceries of the legations and consulates at Tangier.

The schedule may be revised at the end of six months in case of considerable changes in the values of certain articles." (Annex 32.)

This article compromised the German and British proposals relating to the composition of the board, but maintained the part of the German draft which provided for the establishment of a tariff of values of the more common items of import. Since this part of the German proposal contemplated without question that the values of the tariff would be determined by reference to the purchase value in the country of origin plus transportation expense,

Article 96 necessarily maintained this same method of valuation. Consistency between Articles 95 and 96, when viewed in the light of the history of these two articles and particularly in the light of the history of the German proposal, requires that they both be construed as adopting for basis of valuation of customs duties the value of the import in the country of origin plus transportation expenses.

A similar reasoning predicated on the wording of Article 85 of the Act leads to an identical conclusion. Article 82 requires an importer to file a declaration for customs purposes indicating among other things the value of the imported merchandise. Article 85 provides the penalties applicable if the declaration is found inaccurate as to declared value, and the declarant was not acting in good faith :

“Dans le cas où la déclaration serait reconnue inexacte quant à la valeur déclarée, et si le déclarant ne peut justifier de sa bonne foi, la douane pourra, soit prélever le droit en nature séance tenante, soit, au cas où la marchandise est indivisible, acquérir ladite marchandise, en payant immédiatement au déclarant la valeur déclarée, augmentée de cinq pour cent.”

“If the declaration should be found inaccurate as to the declared value, and the declarant should be unable to prove his good faith, the customs may either levy the duty in kind, then and there, or, if the merchandise is indivisible, take the said merchandise by at once paying to the declarant its declared value, plus 5 per cent.” (Annex 32.)

The levy in kind of 12.5 % (10 % customs duty provided by previous treaties plus the 2.5 % as provided in Art. 66) on divisible merchandise is precisely 12.5 % of the value of the merchandise calculated in terms of the expenses incurred by the importer up to the point of unloading, that is purchase value in the country of origin plus transportation expenses, and not 12.5 % of the value of the merchandise on the local Moroccan market. Consistency between Articles 85 and 95, therefore, requires that Article 95 be construed as adopting for basis of valuation of customs duties the value of the import in the country of origin plus transportation expenses.

Moreover, it can be readily perceived that neither Article 82, nor article 85, providing for penalties in case of inaccurate declaration of value, would make any sense at all if the construction of Article 95 proposed by the French Government were to prevail. If the value contemplated by Article 95 were the value on the local Moroccan market, less customs duties and storage fees, the importer would have to find out immediately upon the arrival of the merchandise its value on the Moroccan market as well as the amount of customs duties and storage fees. The local market value, on that day, would be ascertained readily enough. The determination of

customs duties and storage fees could not be established, however, without recourse to customs officials themselves. Thus the curious situation would develop of an importer who, in order to prepare the declaration of value which he is required to present to customs officials so that they can determine the amount of customs duties, would have to secure beforehand, from the same officials, the exact amount of such duties. Moreover, how could the declaration of value differ in any manner from the appraisal of customs officials and how could the declaration of value be inexact or fraud be possible since the market value on the day of arrival is a matter of public knowledge and since the customs duties to be deducted from the market value have already been determined by the customs officials? The incongruity of such a system is evident. The declaration of value under Article 82 would be absolutely unnecessary, and the system of penalties imposed by Article 85 would become completely useless. No such contradictions are found, on the contrary, under the construction proposed by the United States.

Having thus supported the position of the United States on evidence drawn from the analysis of the language of Article 95, from the intent of the parties as made apparent by the diplomatic history of this article, and from a comparison of Article 95 with other articles relating to customs valuation, there remains to be considered the evidence provided by the statements and practice of French and Moroccan customs authorities.

On July 18, 1912, Mr. Luret, the chief representative in Morocco of French bondholders whose interests were guaranteed by the receipts of Moroccan customs, was by virtue of the terms of the 1904 loan and of subsequent arrangements in control of the Moroccan customs administration. Following a complaint from the American Minister concerning customs duties assessed against imports of the Vacuum Oil Company, he wrote to the American Minister that the company had failed to furnish the *original invoices* which could be checked against quotations on the *market of origin* and defined the dutiable value of imported merchandise under Act 95 of the Act of Algeciras thus :

"This value comprises the purchase price of the petroleum f.o.b. New York increased by all expenses subsequent to the purchase, such as outgoing dues paid at foreign custom-houses, transportation, packing, freight, insurance, manipulation, landing, et cetera, in a word, everything that contributes to constitute, at the moment of presentation at the custom-house, the cash wholesale value of the product, on the basis of which, according to Article 95 of the Act of Algeciras, the duties must be paid." (Translation ; quoted in the note dated November 13, 1947, from the American Consul-General at Casablanca to the Diplomatic Counsellor of the French Residency ; Annex 59.)

This declaration formally contradicts the method of valuation now supported by the French Government.



In 1928, the customs regulations published by the Moroccan customs authorities provided :

“(81) *Marchandises taxées à la valeur*

Aux termes de l'article 95 de l'acte d'Algésiras, les droits *ad valorem* sont liquidés suivant la valeur au comptant et en gros de la marchandise rendue au bureau des douanes et franche des droits de douane et de magasinage. La valeur des marchandises pour l'application du tarif est en conséquence celle qu'elles ont dans le lieu et au moment où elles sont présentées pour l'acquiescement des droits. Elle comprend donc, outre le prix d'achat à l'étranger, les frais postérieurs à l'achat, tels que les droits de sortie acquittés aux douanes étrangères, le transport ou fret, l'assurance, les frais de débarquement, en un mot tout ce qui contribue à former à l'arrivée, au Maroc, le prix en gros de la marchandise (droits d'entrée et de magasinage non compris), soit le prix courant de la marchandise dans le lieu où elle est douanée.” *Règlementation douanière* (édition 1928).

“(81) *Merchandise taxed on value*

By the terms of Article 95 of the Act of Algeciras, the duties *ad valorem* are liquidated according to the cash wholesale value of the merchandise delivered to the custom-house and free from customs duties and storage fees. The value of this merchandise for the application of the tariff is consequently that which it has in the place and at the moment it is presented for payment of duties. It comprises, therefore, in addition to the purchase price in the foreign country, the expenses following the purchase such as the export duties paid to foreign customs, the transportation or freight, insurance, expenses for unloading, in a word all which contributes to form upon arrival in Morocco the wholesale value of the merchandise (excepting customs duties and storage fees), that is the current price of the merchandise in the place where the customs duties are assessed.” (Translation.)

This regulation formally contradicts as well the method of valuation now supported by the French Government.

Finally, the customs authorities in Morocco, notwithstanding their interpretation of Article 95 to require valuation on the basis of the local market value rule, have refused to follow this method and have determined, instead, the value according to the purchase value in the country of origin plus expenses incident to transportation, whenever the latter values happened to be higher than those prevailing on the local market. Conversely, the customs authorities have shifted from the method of valuation based on purchase value plus transportation expenses to the local market value rule whenever this method was more adequate to serve their particular purpose at the time. Indeed, it is such a shift which gave rise to the issue of customs valuation in the present dispute. On November 13, 1947, the American Consul-General at Casablanca protested the fact that the Moroccan customs

authorities who had previously valued certain American imports on the basis of their invoice value (in other words, on its value in the United States) shifted without notice to valuation based on the value of the import on the internal Moroccan market. In so doing, the customs authorities greatly increased the value for customs purposes of merchandise imported by Americans using their own dollars. At the same time, identical merchandise imported by others, with dollars allocated by the Protectorate authorities, were assessed at the former rates. (Annex 59.) The very practice of the customs authorities, therefore, contradicts the claim that determination of value according to value in the country of origin less transportation expenses is not the proper method of valuation under Article 95 of the Act of Algeciras, and shows that the claim to a different rule is motivated essentially by a desire to foster arbitrariness and discrimination in violation of the principle of equality of treatment guaranteed by the treaties and the Act.

In conclusion, the United States submits that :

- (a) Under Article 95 of the Act of Algeciras, the value of imports from the United States must be determined for the purpose of customs assessments by adding to the purchase value of the imported merchandise in the United States the expenses incidental to its transportation to the custom-house in Morocco, exclusive of all expenses following its delivery to the custom-house, such as customs duties and storage fees.
- (b) It is a violation of the Act of Algeciras and a breach of international law for the Moroccan customs authorities to depart from the method of valuation so defined and to determine the value of imported merchandise for customs purposes by relying on the value of the imported merchandise on the local Moroccan market.

### C. COLLECTION OF TAXES

The position of the United States is that, since the treaties grant immunity from taxes to all foreign nationals except for the taxes specifically recognized in the same treaties, it is a violation of those treaties to impose and collect taxes from American nationals unless the Government of the United States has specifically agreed to waive, at the request of the Moroccan authorities, the immunity of its nationals in each particular instance.

The policy of the United States in the matter of taxation has always been to agree to make applicable to American citizens all Moroccan laws and duties imposing such taxes unless they were discriminatory. The United States has never sought to create a special favored position in favor of its nationals in Morocco by relying on its treaty right to immunity. The numerous occasions

on which it gave its assent to the request of the Moroccan authorities for the application of taxes to its nationals is incontrovertible testimony of its good faith in the matter.

On the other hand, the United States has always objected to the imposition of taxes on American nationals before its consent has been obtained. No question of capitulatory rights is involved in this stand. It simply expresses its view that, in international law, a right conceded by treaty cannot be modified, infringed or abrogated by the unilateral action of one of the parties. Both a request from Morocco for application of the tax to Americans, and a waiver of right on the part of the United States, limited to the particular tax involved, are necessary to provide the mutual consent in the absence of which the imposition of the same tax on American nationals is a violation of treaty obligations and a breach of international law.

The French Government has not challenged the immunity of American nationals from taxation in Morocco. Even if it were so, it would be enough to refer to the review of treaty provisions presented by the French Government in its Memorial (pp. 39 and 43) and to the review of treaty rights presented in this Counter-Memorial (see Part II, Chapter I, *supra*) to dismiss such a contention with finality. Nor does the French Government contest that the consumption taxes imposed by the Dahir of February 28, 1948 (Annex 92), were in contradiction to the immunity provided by the treaties. In the circumstances, the United States, while willing to give its assent to the application of such taxes to American nationals, takes the position that taxes collected from American nationals up to the date it gives such assent are illegally collected and should be refunded upon presentation of adequately documented claims.

The French Government advances in support of its position a number of arguments none of which meet the legal issue involved and which, in one form or another, amount to saying that once the illegal act of collection of taxes has been carried out, it would not be practical or possible for the Protectorate authorities to take any action correcting the illegal act.

One argument is that for American nationals to be exempt from the application of the tax until the assent of the United States were given would be to jeopardize the effect of the tax law. The longer the delay in assenting, the more ineffective the tax law, and such a result would be incompatible with the proper financial administration of the Protectorate. Thus the tax should apply to American nationals from the day of its enactment :

"In the past, indirect taxes, by reason of the method of their collection, have always, in fact, been paid by United States nationals before the official texts establishing or amending the rates of these had been officially agreed to by the State Department. The extremely rare cases in which there was an indication of refusal to pay,

were settled by amicable arrangement. Thus it was that the collection of the consumption tax, which Mr. Plitt mentions, gave rise to only one complaint which, moreover, was withdrawn soon after it had been made, by the person who originated it; and practically all the American businessmen have complied with the new tax without expressing any protest or reservation.

If this were not the case, the effectiveness of the economic or fiscal measures which the Protectorate Government is led to adopt and which it may be essential to enforce without exception and without delay, would risk being seriously jeopardized: many businessmen, including those having the most important businesses, could, as a matter of fact, avoid complying with these measures, simply by stating their nationality as a reason, as long as the American Government did not give its assent to the measures....” (Translation; Note from the French Ministry for Foreign Affairs, dated April 11, 1949, Annex 68.)

“... From this point of view, the obligation to seek, before taking any action in the economic and financial domain, an external agreement would be a paralyzing factor and would expose the country which might be submitted thereto to the most serious danger. In the contemporary world the competition is too rigorous to permit risks to be incurred which would result from the delays inevitably inherent in such a system....” (Translation; Note from the French Resident General, dated Dec. 11, 1949, Annex 85.)

The argument ignores the legal point from which this issue arises. The tax is by definition in conflict with the immunity of American nationals from all taxes not specified by the treaties, or not already assented to by the United States. The legal obligation as a result is for Morocco not to impose such a tax on American nationals. There is no legal obligation, as the French argument implies, for the United States to assent and thus waive its treaty rights, either upon the enactment of the law or at any time thereafter. The treaty itself, therefore, creates the situation concerning which the French Government complains, not the action of the United States in refusing or delaying its assent. This treaty situation the French Government assumed when it established its Protectorate over Morocco.

Another argument is that to accept the United States claim would force the extension of the same privilege to all other foreign nationals who, by the play of the most-favored-nation clause, would be entitled to the same rights as American nationals.

“Finally, the special privileges which American nationals would enjoy, if the requests of the United States Legation were agreed to, would affect the principle of equality of legislation which most, if not all, States recognize today, and which is the very foundation of the organization of a modern country. Moreover, such special privileges would constitute an obvious infringement of the rule of economic equality....” (Translation; Note from the French Ministry for Foreign Affairs, dated April 11, 1949, Annex 68.)

"... the Sherifian Government would be exposed, through the working of the most-favored-nation clause which all the other foreign ressortissants who have been affected by the increase in rates since March 1, 1948, doubtless would not fail to invoke, to the necessity of making on the same basis very substantial reimbursements to them...." (Translation ; Note from the French Resident General, dated Dec. 11, 1949, Annex 85.)

In other words, the French Government asserts that, having equally violated the treaty rights of all foreign Powers involved, it cannot be asked to redress the violation in one case since the right to equality of treatment would require a redress of the violation in all cases. The fallacy of this argument is obvious. Whether the treaty right of the United States is violated alone or in conjunction with those of a number of other foreign Powers does not affect in any way the illegality of the situation so created : it certainly does not cure such illegality. To violate equally the rights of all parties does not justify the violation of the rights of each party. Nor does the failure of some parties to object to the violation of their treaty right prevent the United States from objecting to the violation of its treaty rights or relieve the Protectorate authorities from its obligation not to violate the rights of the party which so objects.

Another argument somewhat identical in theory to the one mentioned above is that the refund claimed by the United States would be too large in amount to permit serious consideration :

"In addition, it should be noted that the application of a system of special privileges would lead to literally inextricable difficulties, for the taxes in question are collected in connection with multiple transactions and usually incorporated in the (sales) price of the goods concerned. This consideration by itself explains the impossible situation with which the Administration would be confronted if it was decided to accede to the Diplomatic Agent's request for refund of taxes paid by American nationals as a result of the application of the Dahir of February 1948 : besides the fact that these payments amount to a very large total—several hundred million francs—the refund of which would entail serious consequences in connection with the budget, it would be practically impossible for the Protectorate Administration to embark on a program of reimbursement which would give rise to insoluble problems of legal claims on the part of persons of other than American nationality who would consider that they were likewise justified, under the principle of equality, in claiming the refund of their tax payments." (Translation ; Note from the French Ministry for Foreign Affairs, dated April 11, 1949, Annex 68.)

By-passing the practical issue whether the size of American commerce in Morocco, and the rates of taxation involved, are such as to support the assertion, the argument is void of any legal validity. Else it would be necessary to admit that the more important or

sizeable in terms of money value a treaty violation, the less the aggrieved party would be entitled to redress.

Finally, the argument is made that the treaties do not establish the right for the United States to demand that taxes be not imposed on American nationals without its consent.

“Finally, it is not possible for the French Government to agree, at the risk of entirely paralyzing action by the Moroccan authorities in economic and fiscal matters, that the application of all the fiscal measures which Morocco may be led to adopt, be subordinated to the previous assent of the American Government. Such measures have always been immediately enforced without any discrimination, and the French Government, in so far as it is concerned, believes that the American Government does not have the right, under the treaties which bind it to Morocco, to demand that it be otherwise.” (Translation ; Note from the French Ministry for Foreign Affairs, dated July 4, 1949, Annex 76.)

This is the crux of the argument. In the view of the United States it is axiomatic under international law that, as long as the treaties clearly provide for immunity of taxation for American nationals, the imposition of taxes violate these treaty rights. Thus it necessarily follows that in order legally to apply such taxes to American nationals, the treaty impediment must be removed by mutual agreement of the parties, such mutual agreement being expressed on the one hand by a request from Morocco for the application of the proposed taxes to American nationals and on the other hand by the consent of the United States to such a request. Except as otherwise and expressly provided, the mutual agreement could not take effect until the date upon which the consent of the United States has been given, and the taxes could not legally be collected until such date.

In conclusion, the United States submits that :

- (a) The treaties specifically exempt American nationals from taxes, except as provided by the same treaties ;
- (b) The French Government, by virtue of the collection of taxes from American nationals in violation of the specific terms of the treaties, is guilty of a breach of international law ;
- (c) Such taxes cannot legally be collected against American nationals without the previous consent of the United States, and from the date upon which such consent has been given, unless otherwise specified by the terms of the consent ;
- (d) Consumption taxes provided by the Dahir of February 28, 1948, which were collected from American nationals up to October 28, 1950, date of the application of the French Government in this case, were illegally collected and should be refunded to them.

## CHAPTER II

*EXTRATERRITORIAL JURISDICTION*

The position of the United States is that it possesses today all the rights of extraterritorial jurisdiction which it possessed before the establishment of the French Protectorate, that is, jurisdiction in all cases, civil and criminal, in which United States nationals or proteges are defendants<sup>1</sup>. As a corollary of such jurisdiction, the United States claims the right for its *ressortissants* to be immune from the application of the local law except in so far as the application of the local law may have been agreed upon in treaties or conventions, or through other arrangements such as the consent of the Diplomatic Body or the assent of the United States.

The position of the French Government is that the rights of jurisdiction of the United States are now limited to civil cases involving disputes among United States *ressortissants* and that American *ressortissants* are not immune from the application of the local law.

A. *SCOPE OF THE RIGHTS OF JURISDICTION GRANTED IN THE UNITED STATES TREATY OF 1836 AND IN THE BRITISH TREATY OF 1856*

The first part of the French argument is devoted to an analysis and comparison of the rights of jurisdiction granted to the United States in the Treaty of 1836 and of those granted to Great Britain in the Treaty of 1856. This analysis is based on the theory that extraterritorial rights, by nature, were exceptions or derogations from territorial sovereignty. In the view of the United States, this theory is neither warranted nor relevant to the issues in the present case.

The position that extraterritorial rights can be analyzed by reference to the principle of territorial sovereignty is based on an unsound assumption. The concept of capitulations did not arise in relation to the notion of territorial sovereignty. It owes its origin instead to the principle of personality of law according to which foreigners were considered barred on various grounds, religious and otherwise, from sharing with the local population the benefit of the local law

<sup>1</sup> For purposes of simplification, the United States argument will not refer specifically and expressly to United States proteges, it being understood that all arguments and conclusions presented with respect to the extraterritorial jurisdiction of the United States over its own nationals should be deemed to have been made as well in support of the same jurisdiction over its proteges. Claims of jurisdiction with regard to proteges are qualified, however, to the extent that cases involving the "personal status" of proteges may involve the application of religious law and thus be of the resort of Moroccan courts.

and had therefore to remain subject to their own law and be subject to their own system of administering justice. Far from being considered a derogation from sovereignty, this principle was the normal rule which determined the practice of the local State whenever the necessity for intercourse compelled people of different nationality, religion, or civilization, to live within the same territory. The growth and development of what we call capitulations must be traced to this principle.

Proof in support of this view is abundant. From the most remote time, there exists evidence establishing the practice of extraterritoriality as a normal and necessary consequence of the principle of personality of law. Thus, as early as 1200 B.C., the Phœnicians lived under their own laws in Egypt. See I, Twiss, *The Law of Nations* (1884), 444. In the 6th Century B.C., the Greeks who were established in the Egyptian city of Naucratis enjoyed an independent administration of justice under their own laws. See I, Calvo, *Le Droit international théorique et pratique* (1896), 3. The Israelites at least twice in their history sojourned under capitulations. See Ravndal, *The Origin of the Capitulations and of the Consular Institution* (Sen. Doc. No. 34, 67th Cong., First Sess., 1921), 8. The Romans, like the Greeks, denied the application of their laws to aliens and required that aliens live under their own national laws as administered by the Prætor. See Girard, *Manuel élémentaire de Droit romain* (1906), 111-113; II, Calvo, *op. cit. supra*, 9-10.

The history of medieval times is replete with examples of the existence in Europe of systems of extraterritorial jurisdiction based on the personal law of the foreigner. The laws of the Goths, Lombards, and Franks provided that foreigners should settle their disputes according to their own laws. See II, Calvo, *op. cit. supra*, 10-11; I, Miltitz, *Manuel des Consuls* (1837), 160-162. The Italian Republics had extraterritorial jurisdiction wherever their commercial enterprises led them: The Emperor of Constantinople gave the right to Venice in 1060 to send its magistrates to judge its nationals in both civil and criminal cases, and Emperor Alexis III granted Venice in 1199 the right to judge also disputes between its own nationals and Greek nationals. See I, Bonfils, *Manuel de Droit international public* (7th rev. ed., Fauchille, 1914), 495-496. By the 15th Century, Italian consuls were exercising extraterritorial jurisdiction over their nationals in London, The Netherlands, Spain and France. The French cities enjoyed similar rights of jurisdiction in Italy and Spain. The consuls of England exercised the same rights in the Netherlands, Russia, Norway, Sweden, and Denmark. See II, Miltitz, *op. cit. supra* (Partie II), 77, 78, 118, 119, 148, 149, 190, 193, 203, 385, 392, 393, 394-400; Bonfils, *op. cit. supra*, 495-497. So strong was the concept that it survived in Europe even in the face of the new principle of territorial sovereignty. Thus, at the end of the 18th Century the United States and France



were willing to concede to each other extraterritorial jurisdiction to decide differences and suits arising between their respective subjects on the other's territory. Consular Convention of 1788, Article XII (I, Malloy, *Treaties of the United States*, 495). By Article X of a treaty dated February 19, 1810, England was permitted to maintain in Portugal judges with jurisdiction to decide all causes brought before them by British subjects. See 37, Martens, *Recueil des Traités*, 158.

The principle of extraterritoriality was observed as well in all Arab countries. The question is still debated among historians whether the document known as the Testament of Mohammed (A.D. 625), which conceded extraterritorial privileges to the Christians, is apocryphal. See Ravndal, *op. cit. supra*, 12. Following the conquest of Jerusalem, the successors of Mohammed left to the Christians the benefit of Christian laws and judges. See I, Pélassié du Rausas, *Le Régime des Capitulations dans l'Empire ottoman* (1902). Except for offenses against Moslem laws, Christians under Moslem domination in Spain were tried by their own judges and in accordance with their own laws. See Ravndal, *op. cit. supra*, 13. With the Crusades and because of their influence on the development of commerce, the practice of extraterritoriality became the general rule in all countries along the Mediterranean Sea, whether they were controlled by Christian princes or by Mohammedans. In fact, the desire of Mohammedan rulers for increased commerce and navigation is generally deemed responsible for the widespread development of capitulations in those countries. See Mas de Latrie, *op. cit. supra*, 114-115. The Italian cities of Pisa, Venice, Genoa, and Florence all obtained extraterritorial privileges in Egypt during the 12th Century. See Piétri, *Étude critique sur la Fiction d'Extériorité* (1895), 292. The capitulations spread to all the Barbary States between the 12th and 16th Centuries: treaties between Tunis and Venice, Genoa, Pisa, Florence and Aragon; between Egypt, Venice and Genoa; between Tripoli and Genoa. The provisions of these capitulations reveal generally the following pattern: Cases, civil and criminal, involving Christians of the same nationality were within the exclusive jurisdiction of their consuls, and the law to be administered was their national law. In mixed cases, the principle *actor sequitur forum rei* was generally followed: thus cases between foreigners of different nationalities were to be decided by the consul of the defendant, while cases between natives and foreigners were to be decided by the jurisdiction of the defendant. See Liu Shih-shun, *Extraterritoriality, Its Rise and its Decline* (1925), 58-60; Bonfils, *op. cit. supra*, 496.

Such was the historical development of the practice of extraterritoriality at the beginning of the 16th Century when the European States began to enter into regular treaty relations with the Mohammedan States. The practice was embodied in those treaties. Treaties concluded with the Ottoman Empire, first by France (1528-1535)

and thereafter by practically all European Powers—Great Britain, the Netherlands, Austria-Hungary, Sweden, Italy, Denmark, Russia, Spain, Belgium, Portugal, etc.—and with Algiers, Morocco, Tripoli, Tunis, Persia, Muscat and Zanzibar, Egypt, Ethiopia, etc., provided for extraterritorial jurisdiction ranging from exclusive jurisdiction of the foreign consuls in cases, civil and criminal, involving their nationals only, to jurisdiction in mixed cases, civil and criminal, in which their nationals were defendants. The Mohammedan communities merely continued the precedents and practice which once in Europe and now in the Islamic world commanded that the foreigner be kept outside of the life and jurisdictional protection of the local society and live instead according to his own law. Differences between the Christian and Mohammedan civilizations, religious and otherwise, undoubtedly fostered the maintenance of relations according to the principle of extraterritoriality. While legal writers have given various explanations for the continuance of the system in Mohammedan countries at a time when in Europe the principle of personality of law had given way to the principle of territorial sovereignty, they agree on the conclusion that the origin of the system of extraterritoriality in Mohammedan countries is to be found in the immemorial practice and respect of the principle of personality of law. E. G. Belin, *Des Capitulations et des Traités de la France en Orient* (1870), 115-117; IV, Pradier-Fodéré, *Traité de Droit international public* (1888), 722-727; Dislère et de Moüy, *Droits et Devoirs des Français en Orient et Extrême-Orient* (1893), 37-39; Piétri, *Étude sur la Fiction d'Exterritorialité* (1895), 284-287; Rey, *La Protection dans les Échelles du Levant et de Barbarie* (1899) 1-19; I, Pélissié du Rausas, *Le Régime des Capitulations dans l'Empire ottoman* (1902), 1-23; Le Bœuf, *De la Protection au Maroc* (1905), 6-18; Bonfils, *Manuel de Droit international public* (7th rev. ed., Fauchille, 1914), 495-498, 514-529; Abi-Chahla, *L'Extinction des Capitulations en Turquie et dans les Régions arabes* (1924), 1-59; de Heyking, *L'Exterritorialité* (1926), 137-139, 163-165; Chauvel, *Les Notions d'État et de Nationalité au Maroc* (1937), 64-65; Twiss, *The Law of Nations* (1884), 442-469; Hinckley, *American Consular Jurisdiction in the Orient* (1906), 17-18; Ravndal, *The Origin of the Capitulations and of the Consular Institution* (Sen. Doc. No. 34, 67th Cong., 1st Sess., 1921), 5-55; Nasim Sousa, *The Capitulatory Regime in Turkey* (1934), 1-67; Liu Shih-shun, *Extraterritoriality, Its Rise and Its Decline* (1925), 23-75.

Since the controlling principle in the development of capitulations was the principle of personality of law, it is erroneous to analyze the capitulations which developed in Morocco by reference to the principle of territorial sovereignty. It is true that today the principle of jurisdiction based on territoriality has become the more generally accepted rule. Equally true is the fact that the system of extraterritoriality has acquired as a result an except-

ional or anomalous character. But this is solely the result of evolution and the conclusion cannot be drawn from it that the system of extraterritoriality had an anomalous and exceptional character when it developed in Morocco and other Mohammedan States from the 16th to the 19th Centuries. Thus the historical result—the fact that today the principle of territorial jurisdiction is the rule and the principle of the personality of law the exception—should not be adopted as a general principle of interpretation of capitulations, and the extraterritorial institutions of Morocco should not be analyzed in terms of derogations to the principle of territorial sovereignty.

When applied to the case of Morocco, the theory that extraterritorial jurisdiction should be analyzed in terms of derogation from territorial sovereignty leads to conclusions inconsistent with the terms of the treaties. Starting from the concept that the exercise of criminal jurisdiction by the foreign consul was a more extensive derogation from territorial sovereignty than the exercise of civil jurisdiction, the French Government reaches the conclusion that there existed two states of extraterritorial jurisdiction in Morocco : the stage of *Consular Jurisdiction*, in which the foreign consul exercised only civil jurisdiction in litigation between his nationals, and the stage of *Capitulatory System*, in which the foreign consul exercised, in addition, criminal jurisdiction over the nationals of his country, as well as jurisdiction in mixed civil cases involving his nationals as defendants and natives as plaintiffs. It may be that, in reaching this distinction, the exercise of jurisdiction in mixed civil cases was also considered an unwarranted derogation from territorial sovereignty by the French Government. In any case, the point of this argument is that the presence or the absence of criminal jurisdiction is a controlling, if not the controlling, criterion of the distinction between *Consular Jurisdiction* and *Capitulatory System*.

The validity of this distinction can be most readily tested by applying it to the General Treaty concluded by Great Britain with Morocco in 1856 which the French Government cites as an example of the stage of extraterritorial jurisdiction defined as *Capitulatory System*. Article VIII of this treaty grants to the consuls of Great Britain jurisdiction to decide both civil and criminal cases arising between British subjects and proteges, and Article IX grants them jurisdiction to decide both civil and criminal cases arising between Moroccan plaintiffs and British defendants.

“In all criminal cases and complaints, and in all civil differences, disputes, or causes of litigation which may occur between British subjects, the British Consul-General, Consul, Vice-Consul, or Consular Agent, shall be sole judge and arbiter. No Governor, Kadi, or other Moorish authority, shall intermeddle therein ; but the subjects of Her Britannic Majesty shall, in all matters of criminal or civil cognizance arising or existing between British

subjects exclusively, be amenable to the tribunal of the Consul-General, Consul, or other British authority only.

All criminal cases and complaints, and all civil differences, disputes, or causes of litigation arising between British subjects and subjects of the Moorish Government, shall be adjusted in the following manner :

If the plaintiff be a British subject and the defendant a Moorish subject, the Governor of the town or district, or the Kadi, according as the case may appertain to their respective Courts, shall alone judge the case; the British subject making his appeal to the Governor or Kadi through the British Consul-General, Consul, or his deputy, who will have a right to be present in the court during the whole trial of the case.

In like manner, if the plaintiff be a Moorish subject, and the defendant a British subject, the case shall be referred to the sole judgment and decision of the British Consul-General, Consul, Vice-Consul, or Consular Agent ; the plaintiff shall make his appeal through the Moorish authorities ; and the Moorish Governor, Kadi, or other officer who may be appointed by them shall be present, if he or they so desire, during the trial and judgment of the case. Should the British or Moorish litigant be dissatisfied with the decision of the Consul-General, Consul, Vice-Consul, Governor, or Kadi (according as the case may appertain to their respective Courts), he shall have a right of appeal to Her Britannic Majesty's Chargé d'Affaires and Consul-General, or to the Moorish Commissioner for Foreign Affairs, as the case may be." (Annex 20.)

To put it in the phraseology of the French Government, this *Capitulatory System* grants to British consuls, in addition to jurisdiction in civil litigation between British nationals, criminal jurisdiction to prosecute British nationals, as well as jurisdiction in mixed civil cases involving British nationals as defendants and Moroccans as plaintiffs.

But if the French Government is correct in asserting that the *Capitulatory System* granted to Great Britain for the first time in 1856 is distinguishable from *Consular Jurisdiction* because it grants to British consuls criminal jurisdiction to prosecute British nationals, it must follow that prior to the *Capitulatory System* established by the Treaty of 1856, British consuls did not have criminal jurisdiction to prosecute British nationals and possessed only jurisdiction in civil cases arising between British nationals.

Treaties concluded by Great Britain with Morocco during the 18th Century, however, already conferred upon British consuls jurisdiction to decide *criminal* cases arising between British nationals. Thus Article IX of the Treaty of 1721 provided :

"If any quarrel or dispute shall happen between any Englishman and a Musselman, by which hurt to either may ensue, the same to be heard before and determined by the Emperor only ; and if an Englishman who may be the Aggressor shall make his escape, no other Englishman shall suffer upon his account ; and if 2 English-

men shall quarrel, to be determined by the English Consul, who shall do with them as he pleases...." (Annex 6.)

Similarly Article IX of the Treaty of 1760 stated :

"If there shall happen any quarrel or dispute between any Englishman and any Musselman, by which any of them may receive detriment, the same shall be heard and determined by the Emperor alone ; and if any Englishman, who shall be the Aggressor, shall make his escape, in such case, no other Englishman shall suffer on his account, or in his place ; it is also agreed, that if any law-suit, dispute, or difference arises between the Subjects of His Britannic Majesty, they shall be accommodated by the Consul of the Nation...." (Annex 9.)

Article VIII of the Treaty of 1856 merely restated in more precise and detailed language the civil and criminal jurisdiction in cases arising between British nationals which had already been granted to British consuls in previous treaties. Thus it is the grant of *civil and criminal* jurisdiction in cases arising between Moroccan plaintiffs and British defendants, contained in Article IX, which distinguishes the Treaty of 1856 from previous treaties. The distinction between *Consular Jurisdiction* and *Capitulatory System*, therefore, is unsound.

The application of the distinction between *Consular Jurisdiction* and *Capitulatory System* to the Spanish Treaty of 1861 leads to the same conclusion. The previous treaties granted to Spanish consuls jurisdiction both civil and *criminal* in cases arising between Spanish nationals.

Article XII of the Treaty of 1767 provided :

"For the contestations among Spanish nationals, civil as well as criminal, their Consul alone shall be competent...." (Translation from a French text ; see Annex 15.)

Later treaties merely maintained in force the civil and criminal jurisdiction in cases between Spanish nationals already granted in the Treaty of 1767. Thus, Article X of the Treaty of 1861 provided :

"The Consul-General, Consuls, Vice-Consuls, or Consular Agents of Spain shall be the only judges or arbiters in criminal cases, law-suits, actions at law or disputes of any kind, civil or criminal, which may arise between Spanish subjects resident in Morocco, and no Governor, Cadi, or any other Morocco authority shall interfere in such cases." (Annex 22.)

The later treaties, however, also enlarged this jurisdiction by granting in addition to Spanish consuls jurisdiction, *civil and criminal*, in cases arising between Moroccan natives and Spanish defendants. Thus Article XI of the Treaty of 1861 provided :

"All actions, criminal cases, lawsuits, litigations, or disputes of any kind, either civil or commercial, which may arise between Spanish and Moroccan subjects, shall be decided in the following manner :

If the suitor or plaintiff be a Spanish subject and the defendant or accused a Morocco subject, the judge of the case shall be the

governor of the city or district, or the Cadi, according as the case belongs to the jurisdiction of one or the other. The Spanish subject shall lay his demand before the Governor or Cadi by means of the Consul-General, Consul, Vice-Consul or Consular Agent of Spain, and they shall have the right to attend the court during their trial.

If the plaintiff be a Morocco subject and the accused a Spanish subject, the case shall only be submitted to the cognizance and decision of the Consul-General, Consul, Vice-Consul or Consular Agent of Spain. The plaintiff shall present his demand through the Morocco authorities ; and the Morocco Governor, Cadi, or any other official appointed by them, may be present, if they desire it, during the trial and decision of the case.

If the Spanish or Morocco plaintiff or litigant shall not comply with the decision of the Consul-General, Consul, Vice-Consul or Consular Agent, or with that of the Morocco Governor or Cadi, according as the case may belong to the tribunal of one or the other, they shall have the right to appeal respectively to the *Chargé d'affaires* of Spain or the Morocco Commissioner of foreign affairs." (Annex 22.)

As in the case of the British treaty, it is the grant of *civil and criminal* jurisdiction in cases arising between Moroccan plaintiffs and Spanish defendants, contained in Article XI, which distinguishes the late treaty from previous treaties.

Thus the analysis of the British Treaty of 1856 and of the Spanish Treaty of 1861 leads to conclusions which go beyond the refutation of the distinction between *Consular Jurisdiction* and *Capitulatory System*. Their history strongly suggests that the normal rule of extraterritorial jurisdiction in Morocco before the conclusion of these treaties was jurisdiction of the foreign consul in civil and criminal cases arising between their nationals. A review of the treaties concluded by Morocco during the 17th and 18th Centuries confirms this view.

Some of these treaties expressly conferred criminal jurisdiction upon the foreign consul in cases arising between his nationals. Thus Article XV of the Treaty concluded in 1683 by Morocco with the Netherlands provided :

"... but if there should arise some difference, whether civil or criminal, between those of the country of the Netherlands, in that case they shall not be obliged to appear in front of any Judge, except their Consul, who shall have entire authority to terminate all the differences, in the civil as well as in the criminal....". (Translation from a French text ; see Annex 5.)

Article IX of the Treaty concluded by Great Britain with Morocco in 1721 read :

"If any quarrel or dispute shall happen between any Englishman and a Musselman, by which hurt to either may ensue, the same to be heard before and determined by the Emperor only, and if an Englishman who may be the Aggressor shall make his escape, no other Englishman shall suffer upon his account ; and if 2 English-

men shall quarrel, to be determined by the English Consul, who shall do with them as he pleases....” (Annex 6.)

Article XII of the Treaty of 1767 between Spain and Morocco stated :

“For the contestations among Spanish nationals, civil as well as criminal, their Consul alone shall be competent....” (Translation from a French text ; see Annex 15.)

Article XVI of the Treaty concluded between the Netherlands and Morocco in 1777 provided :

“The subjects of the Estates General .... shall thus, in the event of disputes which may have arisen, either civil or criminal (solely between those of the above-mentioned Netherlands nation), not be required to appear before any other magistrate than their consul....” (Annex 14.)

Some treaties did not refer expressly to criminal jurisdiction, but indicated by their context that the inclusion of both civil and criminal cases was intended. This was the case of the Spanish Treaty of 1799. Article I of this treaty (Annex 17) expressly renewed and confirmed all the privileges granted to Spain in the Treaty of 1767 and thus renewed the specific privileges of civil and criminal jurisdiction granted in Article XII of that treaty :

“For the contestations among Spanish nationals, civil as well as criminal, their Consul alone shall be competent....” (Translation from a French text ; see Annex 15.)

Yet Article IV of the Treaty of 1799 did not expressly mention criminal jurisdiction, but stated :

“The Consul-General of Spain, Vice-Consul or Agents, shall decide with absolute jurisdiction the affairs of Spanish nationals in Morocco ....” (Translation from a French text ; see Annex 17.)

In like manner, the Treaty concluded by France in 1767 has been construed by the French Government itself, despite the absence of an express provision, as equivalent to a grant of both civil and criminal jurisdiction. In the Treaty concluded in 1767 by Morocco with France, Article XI did not specify whether criminal jurisdiction was granted, and merely referred to the right of the French Consuls to hear and decide the “differences” arising between French nationals. The French Government has listed this article in its Memorial in support of the proposition that foreign consuls had exclusive jurisdiction before 1836 to decide “all differences” arising between their nationals (Memorial, p. 33). In support of the same proposition, the French Government listed as well Article 12 of the Spanish Treaty of 1767 which provided :

“For the contestations among Spanish nationals, civil as well as criminal, their consul alone shall be competent....” (Italics added ; translation from a French text ; see Annex 15.)

Since Article 12 of the Spanish treaty specifically provided for civil and criminal jurisdiction, and since the French Government relied on this article to show that foreign consuls had exclusive jurisdiction to decide "all differences" arising between their nationals, it must follow that the French Government itself construed the word "differences" as including both civil and criminal cases and thus conferring both civil and criminal jurisdiction. A similar reasoning applies to the construction of the word "differences" in the French Treaty of Sept 17, 1631, especially in view of the fact that the only other treaty concluded by Morocco during the 17th Century was the Treaty with the Netherlands of 1683 which expressly indicated that "differences" referred to both civil and criminal cases. The wording of the jurisdictional provisions included in the Treaty concluded by Morocco with Denmark in 1767 also leads to similar conclusions (Annex 13). Article XIV provided :

"If there arises a difference between a Moroccan and a Dane, the Emperor shall decide it or the governor of the place where it will happen, in the presence of the consul, who shall defend his cause as he may." (Translation ; for a French text, see Annex 13.)

The right of the consul to defend his national in the Moroccan courts was characteristic of criminal cases arising between foreigners and natives. Thus the French Treaty of 1682 provided in Article XVI :

"Any Frenchman who shall hit a Moroccan shall not be punished until said consul has been called to defend the cause of the Frenchman." (Translation ; for French text, see Annex 4.)

The French Treaty of 1767 contained an identical provision in Article XIII. Article XIV of the Danish treaty, therefore, used the word "difference" to describe criminal cases. "Difference" accordingly described criminal cases as well as civil cases in Article XV of the same treaty, providing :

".... and if there arises a difference between some Danes, whatever it might be, said consul shall decide it and no one else, without any one meddling in it". (Translation ; for French text, see Annex 13.)

To construe the treaties of this period not referring expressly to criminal jurisdiction as including both civil and criminal jurisdiction is clearly proper in this case. There was no clear distinction at the time in Morocco between civil and criminal jurisdiction. The modern concept was not yet established that responsibility for the prosecution and punishment of criminal offences was the function of the State. Instead the punishment of offenders was the responsibility of the victim, or his family, and the proceeding in a criminal case, as in a civil case, was essentially a contest or a dispute between private parties. Le Bœuf, *De la Protection au Maroc* (1905), 97. To grant jurisdiction to the foreign consul, therefore,



in *any* "differences", "disputes", "contestations", or "affairs", between his nationals, as the treaties variously provided, was to grant jurisdiction, in all cases, irrespective of their character, civil or criminal, as long as they involved only persons of the same nationality<sup>1</sup>. Thus the treaties concluded by Morocco during the 17th Century with France and the Netherlands, and during the 18th Century with Great Britain, Spain, the Netherlands, Denmark and France, granted jurisdiction to the foreign consul explicitly or by reasonable implication, in both civil and criminal cases arising between his nationals.

The United States treaty was drafted in 1787 (the text of 1836 was only a literal copy of the 1787 Treaty ; See Part II, Chapter I). Articles 20 and 21 provided :

"If any of the citizens of the United States, or any persons under their protection, shall have any disputes with each other, the Consul shall decide between the parties ; and whenever the Consul shall require any aid or assistance from our Government, to enforce his decisions, it shall be immediately granted to him."

"If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor should kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the Consul assisting at the trial ; and if any delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever." (Annex 19<sup>2</sup>).

The American consul has jurisdiction in "any disputes" arising between American citizens, but the word "dispute" is not further defined. The French Government admits that this jurisdiction extends to civil cases, but argues that it does not include criminal cases. This argument predicated solely on the distinction between *Consular Jurisdiction* and *Capitulatory System*, asserts that criminal jurisdiction is found only in treaties establishing a *Capitulatory System*, such as the *British Treaty of 1856* and the *Spanish Treaty of 1861*. This distinction has been shown to be without any validity. In any event, it is clear that the word "dispute" at the time of the drafting of the treaty did not describe exclusively civil cases.

<sup>1</sup> The same principle applied to the treaties concluded in 1825 with Sardinia and in 1830 with Austria.

<sup>2</sup> The privilege of the American Consul, it should be noted, was not merely the passive right to be present at the trial, as the French Government contends. The same formula was used in a number of other treaties where its meaning was more clearly defined. In the Treaty of 1682 with France, Article XVI provided : "Any Frenchman who shall hit a Moroccan shall not be punished until said Consul has been called to *defend the cause of the Frenchman...*" Similarly, the Treaty of 1767 with France provided in Article XIII : "If a Frenchman hits a Moor, he shall be judged only in the *presence of his Consul who shall defend his cause...*", Article XIV of the Treaty of 1767 with Denmark provided, "If there shall arise a difference between a Moor and a Danish national, the Emperor or the Governor of the place where this happens shall decide it in the *presence of the Consul who shall defend his cause as he may.*" (Italics supplied ; translations from French texts ; see Annexes 4, 12 and 13.)

"Dispute" today may tend to connote argument and debate (civil cases) rather than physical exchange of blows (criminal cases). At the time the treaty was drafted, however, "dispute" connoted in English, physical contest and combat as well as argument and debate. Indeed it was used for the purpose of referring to criminal cases in Article IX of the Treaty concluded in 1721 by Morocco with Great Britain :

"If any quarrel or dispute shall happen between any Englishman and a Musselman, by which hurt to either may ensue, the same to be heard before and determined by the Emperor only ; and if an Englishman who may be the Aggressor shall make his escape, no other Englishman shall suffer upon his account ; ...." (Annex 6.)

It was used for the same purpose in Article IX of the British Treaty of 1760 :

"If there shall happen any quarrel or dispute between any Englishman and any Musselman, by which any of them may receive detriment, the same shall be heard and determined by the Emperor alone ; and if any Englishman, who shall be the Aggressor, shall make his escape, in such case, no other Englishman shall suffer on his account, or in his place ; it is also agreed, that if any lawsuit, dispute, or difference arises between the subjects of His Britannic Majesty, they shall be accommodated by the Consul of the Nation...." (Annex 9.)

Since at the time the treaty was drafted "dispute" described criminal as well as civil cases, the granting of jurisdiction to the American consul in "any disputes" arising between American citizens granted him criminal as well as civil jurisdiction in such cases. The United States treaty, therefore, like the other treaties concluded during this period, merely reflected the general rule of extraterritoriality in force in Morocco since the 17th Century, which left the administration of justice in all cases arising between foreigners of the same nationality to their consul.

The existence of this general rule in the 17th and 18th Centuries as well as the extension of jurisdiction in mixed cases which obtained in the British Treaty of 1856 and in the Spanish Treaty of 1861 were nothing but the logical and necessary consequences of the principle of personality of law. The Moroccan society of the time was essentially a closed society bound by religious ties and administered under a system of religious law from which the foreigner was necessarily excluded. Proceedings in criminal cases, as in civil cases, were contests between private parties. In the circumstances, the application to foreigners of their national law and the administration of such law in "any" case arising among themselves by their consul was the normal and necessary solution. Mixed cases, i.e. cases between natives and foreigners, presented

a problem, however, since the two laws, instead of functioning side by side and independently from each other, necessarily conflicted. The Moroccan law prevailed in mixed cases until the 19th Century, when under the pressure of more extensive intercourse between natives and foreigners the foreign law and the local law were brought to a position of equality by attributing jurisdiction in mixed cases to the tribunal of the nationality of the defendant, in application of the principle *actor sequitur forum rei*. The Moroccan courts retained jurisdiction in all cases in which Moroccans were defendants and the foreigners were plaintiffs, while the foreign consul exercised jurisdiction in all cases in which his nationals were defendants and Moroccans were plaintiffs; Morocco, moreover, relinquished jurisdiction in all cases between foreigners of different nationalities (British Treaty of 1856, Article XIV, Spanish Treaty of 1861, Article XVI), and jurisdiction in practice was attributed to the consul of the nationality of the defendant. Thus, under the controlling influence of the concept of personality of law did extraterritorial jurisdiction develop in Morocco, from the 16th to the 19th Century.

In conclusion, the Government of the United States submits that :

- (a) The jurisdiction conferred upon the United States by the Treaty of 1787 and 1836 was jurisdiction, civil and criminal, in all cases arising between American citizens.
- (b) The jurisdiction conferred upon Great Britain by the Treaty of 1856 was jurisdiction, civil and criminal, in all cases in which a British citizen was defendant.

#### B. THE MOST-FAVORED-NATION CLAUSE ARGUMENT

The French Government concedes that the rights of jurisdiction of the United States went far beyond the strict wording of the jurisdictional provisions included in the Treaty of 1836 since the United States could claim through the effect of the most-favored-nation clause in its Treaty of 1836 all the rights of extraterritorial jurisdiction granted to Great Britain in the Treaty of 1856. The French Government argues, however, that when Great Britain surrendered its rights of extraterritorial jurisdiction in 1937, so far as concerned the French zone of Morocco, the United States lost as a result, in the French zone of Morocco, all the rights which it held through Great Britain by virtue of the most-favored-nation clause, and has now only the rights expressly granted in the Treaty of 1836.

The theory of the argument is that the most-favored-nation clause promises to the beneficiary, in the future, a position no less favorable than that of any third party. The rights so acquired, the French Government states, cannot become permanent unless the granting State may be deemed to have recognized the exercise of

the right by the beneficiary State independently of the effect of the most-favored-nation clause. In the latter case, the right loses its dependent and indirect character and becomes a right acquired directly and permanently. The French Government contends that no such recognition has taken place in this case, and that, accordingly, the rights of the United States acquired by effect of the most-favored-nation clause remained indirect and dependent rights which lapsed when the Government of Great Britain surrendered its own rights.

The Government of the United States concedes that the most-favored-nation clause theory on which the French Government predicates its argument is a valid modern theory. It agrees that, as a matter of general principle, in modern practice, the most-favored-nation clause does not continue in force rights acquired only through its effect, after the termination of the treaty which contained such rights. The Government of the United States, however, does not consider that this principle is controlling in the analysis of the most-favored-nation clause in the Moroccan treaties. It maintains, moreover, that even if this point were conceded, the application to the present case of the general theory of the lapse of rights acquired through the most-favored-nation clause would not in any event support the French conclusion that the rights of extraterritorial jurisdiction acquired by the United States over and above those expressly granted in the Treaty of 1836 are now abrogated.

(1) *The most-favored-nation clause theory on which the French Government relies does not control this particular case*

(a) It appears quite well established that the most-favored-nation clause theory invoked by the French Government is essentially a product of modern times, and more particularly of the latter part of the 19th Century. It also appears, generally speaking, that it bears essentially a European and American character, in the sense that the practice which it crystallized was essentially developed by the States of the European and American continents in their relations among themselves. See the authorities cited by the French Government (Memorial, p. 61) which support this point adequately. The existence among those States of common needs and interests, commercial and otherwise, undoubtedly was instrumental in fostering this practice. Only a substantial identity of civilizations, cultures and legal systems or concepts, however, could have impressed it with the homogeneity necessary to support a most-favored-nation clause theory commanding the acceptance which it now receives.

The earliest antecedents of the most-favored-nation clause are to be found in the treaties concluded by Mohammedan States with European cities as early as the 12th Century. Following its increasing use in treaties of capitulations concluded thereafter by Mohammedan States with European Powers, the most-favored-

nation clause appeared more and more regularly in the treaties concluded by the European States among themselves until the 19th Century, when the practice among European and American States resulted in the crystallization of the theory advanced by the French Government. See Cavaretta, *La Clausola della Nazione più Favorita* (1906), 13-61; Hornbeck, *The Most-Favored-Nation Clause in Commercial Treaties* (1910), 10-11; Farra, *Les Effets de la Clause de la Nation la plus Favorisée* (1910), 33-47; Hepp, *Théorie Générale de la Clause de la Nation la plus Favorisée* (1914), 29-57; Ito, *La Clause de la Nation la plus Favorisée* (1930), 78-93. The so-called Christian Powers in effect took over and gradually adapted to the conduct of their treaty relations among themselves a clause which had been created at an earlier period to regulate, and which indeed continued to regulate well into the 19th Century, treaty relations between Mohammedan States and Christian Powers.

This clause in its early form did not serve the purpose, nor did it have the effect, which characterizes it today in modern practice. It was used primarily as a device for incorporating bodily into the treaties in which it was included all the special privileges which had been accorded to other States. It simply avoided the necessity of enumerating in the treaty the rights already granted to other States and at the same time ensured that no rights were possibly overlooked. Thus Farra states:

"Here is the meaning of the clause at the beginning and that is the difference from the modern clause. The country to which most-favored-nation treatment was granted received only the benefit of the rights already conceded to other countries...."

This stipulation was nothing but a sort of concise formula which avoided the specific enumeration of advantages granted in previous treaties...." Farra, *op. cit. supra*, 37-38. (Translation.)

Similarly Hornbeck writes:

"From the beginning of the seventeenth century, international trade increased by leaps and bounds. The political machinery was not far behind the economic. Each State wished to have a guarantee of the greatest possible advantages for its commerce and industry, and, in return for the advantages which it gained, it had to give concessions. In order to establish the guarantees, treaties became necessary and frequent. In order to avoid repetition, a clause was framed which should refer back, embrace the conditions of the treaties already existing, and extend their provisions to the newly-contracting States. This clause was that of the 'most favored nation'." Hornbeck, *The Most-Favored-Nation Clause in Commercial Treaties* (1910), 11.

Ito summarizes the views of a number of writers on this point thus:

"Instead of repeating all these advantages in the treaty to be concluded, the habit was taken of including a clause by which

all advantages granted to a third party would be extended to the contracting parties...." Ito, *op. cit. supra*, 80. (Translation.)

See also Cavaretta, *op. cit. supra*, 13-61; Visser, *La Clause de la Nation la plus favorisée*, IV, *Revue de Droit international et de Législation comparée* (2<sup>me</sup> Série, 1902), 70-71. The question did not arise whether the rights so acquired were permanent. The very purpose of the clause was to confer the rights as if they had actually been listed. The fact that a practical device was used to accomplish the purpose could not affect a permanence which would have been equally, but more clumsily, achieved through actual enumeration.

Implicit in this early form of the most-favored-nation clause was the notion of equality. The beneficiary State obtained certain rights because they were already granted to another State, or to specified third States. When treaty relations became more complex, and it became more difficult to determine easily which of the third State enjoyed the better position, the device of the most-favored-nation clause was adapted to the need by granting to the beneficiary the rights of the nation most favored at the time. In the last stage of the evolution, the parties perfected the advantages which the clause afforded by expressly indicating, when relevant, that the beneficiary of the clause should become entitled, in addition to the rights incorporated by reference, to those which might be granted in the future to third States, and thus be assured of a position of equality as long as the treaties with third States containing such rights remained in effect. See Visser, *op. cit. supra*, 70-71; Farra, *op. cit. supra*, 46; Hornbeck, *op. cit. supra*, 12; Ito, *op. cit. supra*, 80-81.

The modern form of the most-favored-nation clause developed by the European-American practice of the latter part of the 19th Century is concerned with ensuring to its beneficiary a position of equality with third States at any time. Thus it follows that its beneficiary loses rights predicated on the clause when the treaties with third States containing such rights terminate. The scope of the rights enjoyed through the clause is directly controlled by the equality which its beneficiary may claim. It becomes irrelevant whether the rights were already in existence at the time the treaty containing the clause was concluded, or came into existence afterwards. The concern for a status of equality which originally was directed only to rights which might be secured in the future by third States is now directed to the whole range of rights, present and future, which may be secured upon and from the day the clause goes into effect.

This being so, it does not necessarily follow that the evolution of the most-favored-nation clause which resulted from the practice of States of the European and American continents among themselves, also obtained in the practice of Christian Powers with Mohammedan Powers. The development of a capitulatory system in Mohammedan

States such as Morocco from the 16th to the 19th Century, at a time when all vestiges of extraterritorial jurisdiction had disappeared in Europe, is clear enough evidence of the impossibility of assuming that developments in one treaty practice necessarily took place in the other. No less clear is the evidence afforded by the development in Mohammedan countries during the same period of privileges in all other fields, including the commercial field, of practices which never existed in the treaties of European and American States among themselves; the maintenance for centuries of the principle of freedom of commerce, of fixed customs duties, of immunity from taxes, are but a few of the examples available. The Government of the United States, moreover, submits that there are a number of reasons suggesting, in the absence of evidence to the contrary, that the purpose and effect of the most-favored-nation clause in the Moroccan treaties did not undergo evolution similar to the one which took place in European-American practice.

That the most-favored-nation clause should have emerged from the European-American practice of the 19th Century as a device concerned only with assuring equality at any given time is understandable in view of the identity of conditions within which the parties conducted their treaty relationships. Their common foundation of *jurisprudence and socio-political development* required that sovereign equality and exact reciprocity prevail among themselves. In turn their main object in using the most-favored-nation clause was to obtain a guarantee that exact equality of treatment with all third States be maintained at any given point of time with regard to commercial, shipping, and other such rights and privileges. As a result, the original purpose of incorporation by reference and the corollary effect of permanence attaching to rights so incorporated, which characterized the clause originally, disappeared or were supplanted by the overriding consideration of equality. In their relations with Mohammedan States, on the contrary, Western States were concerned with considerations of a different type. While concerned with maintaining equality among themselves, the Western Powers were mainly concerned with obtaining from the Mohammedan States a privileged status of extraterritoriality which they regarded as necessary to the protection of their citizens and their interests, in view of the disparity between the social order and the legal system of the Mohammedan States and their own. The most-favored-nation clause in its early form permanently incorporating by reference the rights already granted to other States, fitted precisely their needs. The status they sought was not a precarious one, dependent upon its continuous enjoyment by a third State, but rather a secure one, deriving its value from the permanence of its origin. Nor was it to their interest to use the device of the most-favored-nation clause, convenient as it might be, to obtain certain rights instead of enumerating them, if the prospective result was to make them subject to reduction at any time as a result of the

decision of a third State to accept lesser rights or as a result of the decision of the local State not to renew the treaty of the third State. The most-favored-nation practice in force needed no adaptation or modification. The permanence of extraterritorial status was assured on the one hand by the incorporating effect of the clause upon rights previously granted to third States ; on the other hand, their concern for equality among themselves was fulfilled, when desired, by adding expressly a guarantee that they would receive as well rights which might be granted in the future to other Christian nations, and would thus enjoy them as long as the treaties with third States containing such rights continued in force.

The view that the most-favored-nation clause continued in the treaty practice with Mohammedan States to fulfill the two different purposes and the two different effects which it was originally designed to fulfill becomes the more reasonable, when consideration is given to the substantial amount of confusion with regard to the effect of the clause, evident in the early stages of crystallization of European-American thinking in the matter. Keeping in mind that this practice produced a clause the purpose of which is to guarantee equality at any given time and the effect of which is to make the scope or number of rights available directly dependent upon the equality which may be claimed, there was a rather unusual amount of concern during the latter part of the 19th Century with the question whether the clause operated only to include rights already granted, or whether it extended as well to rights to be granted in the future. As Hornbeck puts it :

“Nearly all writers discuss the question whether the provision of the most-favored-nation clause ought to include merely relations existing at the time of the conclusion of the treaty or ought to secure to the most favored nation a treatment equal to that of the nation at each and any moment the most favored, that is, whether the clause extends to favors granted in the future.”  
Hornbeck, *The Most-Favored-Nation Clause*, III, *American Journal of International Law* (1909), 632.

This concern with the distinction indicates that the European-American practice was still in the process of eliminating one of the two different purposes which the clause originally had, and suggests that this process of evolution was complicated by the parallel existence at the same time of a treaty practice with Mohammedan States in which the Western States had an interest in maintaining the distinction. Even in the practice of European and American States among themselves, attempts were made to maintain the original distinction between the two possible effects of the clause. Thus France engaged during the latter part of the 19th Century in a long controversy with Brazil concerning the effect of the clause, in which France claimed the benefit of rights acquired through the most-favored-nation clause when the treaties with these States containing such rights were no longer in force, and



Brazil refused to concede the existence of such gratuitous rights. Brazil, *Relatorio da Repartição dos Negocios Estrangeiros* (1857), Annex, Doc. No. 8 ; *ibid.* (1859), Annex B, II. In the course of the settlement of the controversy, the parties felt it necessary to stipulate by a Declaration dated October 26, 1878 :

"The stipulations set down in the Consular Convention concluded on the sixth of August 1876, between Brazil and Italy, shall apply to the consuls of France in Brazil and to the consuls of Brazil in France, *so long as the said convention shall remain in force.*" *Brazil, Relatorio...., ibid.* (1878), Annex I, Suppl., 8-9. (Italics added ; translation.)

Finally, the view that the clause in the treaty practice of Mohammedan States continued permanently to incorporate rights previously granted, and when relevant, to guarantee equality in the future, derives support from the opinion expressed by Politis in a case involving the interpretation of a most-favored-nation clause in a treaty of capitulations. Turkey had concluded a treaty with Austria in 1718, Article 5 of which permitted Austrian Consuls to claim their nationals once they had been sentenced by the Turkish authorities for a criminal offense against a native (first stage of extraterritorial jurisdiction) and to make them serve their sentence in the jail of the Consulate or in Austria. Other foreign Powers, including Belgium, claimed and exercised the same privilege by virtue of a right to most-favored-nation treatment granted in treaties concluded with Turkey after 1718. In 1877, Austria renounced its right under Article 5 of its Treaty of 1718. Belgium and other Powers continued to claim the privilege. The argument was made that the right, having been acquired through a most-favored-nation clause, could not survive the abrogation of the right by Austria. Politis answered the argument thus :

"This reasoning is specious. It could be admitted legally only in the case [hypothèse] where the grant of the privilege which is claimed has been granted to the third party only posteriorly to the treaty containing the most-favored-nation clause ; in this case, it is true to say that the most-favored-nation treatment does not confer an independent right ; it permits only the right to claim the larger rights conceded to others and it loses its borrowing value as soon as these advantages have been withdrawn or abandoned. But it is entirely different when the grant of the most-favored-nation clause, instead of preceding, follows the grant of the privilege to a third party ; in this case, the most-favored-nation clause confers a direct and principal right to the enjoyment of the advantages already granted ; it is equivalent to a formal mention of these advantages in the treaty which contains it and it supplies a right [titre] independent of the fate of the convention on which it takes effect." *Les Capitulations et la Justice répressive ottomane*, II, *Revue de Droit international privé et de Droit pénal international* (1906), 680 (translation).

The distinction drawn by Politis appears the more persuasive since it was predicated on the holding of an Arbitral Decision dated April 8, 1901, in a case which involved precisely the same issue between Turkey and Greece, and where Greece had similarly argued against the application of the lapse theory. See Politis, *op. cit. supra*, 681. Nys supports the same distinction.

"The question has arisen of knowing if States which could claim a right or a privilege only by virtue of the most-favored-nation clause, may invoke this right or privilege when the State to which they were first recognized renounces them. To resolve it [the question] it is necessary to see whether or not the grant of the most-favored-nation clause is posterior to the grant of the right or privilege. If it is posterior it confers, as has been said by another writer, a direct and principle right to the enjoyment of rights already granted to third States; it is equivalent to a formal mention of these advantages in the treaty." II, Nys, *Le Droit international* (1912), 528 (translation).

The Government of the United States submits, accordingly, that in the absence of evidence to the contrary, the most-favored-nation clause in treaties of capitulations with Mohammedan countries did not evolve, like the clause in European-American practice, into a device exclusively designed to guarantee to its beneficiary a position of equality with third States at any given time and to continue in force rights acquired through its effect only for the duration of the treaties with third States containing such rights. In the case of treaties with Mohammedan States such as Morocco, a distinction should be made between the two purposes and effects of the clause. The clause, unless otherwise specified, permanently incorporates by reference the rights previously granted to third States. When it indicates by its wording that it is intended instead, or concurrently, to guarantee to its beneficiary a position of equality in the future, the rights so acquired do not continue in force after the termination of the treaty containing such rights.

(b) If the views submitted above are accepted, the United States predicates the continuity of its rights of extraterritorial jurisdiction in Morocco, among other grounds, on the most-favored-nation clause of Article 17 of the Convention of Madrid :

"The right to the treatment of the most favored nation is recognized by Morocco as belonging to all Powers represented at the Madrid Conference." (Annex 31.)

The words "there is granted the most-favored-nation treatment", when not supplemented with further specifications, have been construed as clearly evidencing an intent only to extend to its beneficiary the rights already granted to third States, without any reference to any advantages which may be accorded in the future.

See Cavaretta, *op. cit. supra*, 91-92. The most-favored-nation clause in this case is of course posterior to the grant of rights of jurisdiction to Great Britain in 1856 and to Spain in 1861. It incorporates by reference those rights for the benefit of the parties to the Convention. Since the incorporation in such a case is permanent, the rights of jurisdiction of the United States acquired through the effect of the most-favored-nation clause of the Convention of Madrid could not be abrogated through the surrender by Great Britain of the rights it acquired in 1856. The French Government, however, questions whether the United States could rely on the most-favored-nation clause included in the Convention of Madrid to establish the validity of its claims to jurisdiction. The argument is that the most-favored-nation clause of Article 17 should be construed as applying only to questions of protection because the Convention of Madrid is concerned only with matters of protection.

The Convention of Madrid is entitled "Convention as to Protection", but it deals as well with a number of subjects entirely unrelated to protection. Article 11 of the Convention deals with the rights of foreigners to own real property in Morocco and related questions thereto. Articles 12 and 13 concern the taxes to be paid by foreigners<sup>1</sup>. Article 15 of the Convention deals with the naturalization of Moroccan subjects and the status to which they were entitled upon their return to Morocco as naturalized citizens of another State. Since the Madrid Convention does not deal solely with questions of protection, it is not possible to conclude that the most-favored-nation clause of Article 17 was intended solely to refer to matters of protection.

To construe the most-favored-nation clause of Article 17 as a clause intended to preserve in the future the equality of the foreign Powers with respect to the exercise of the right of protection would be inconsistent with the purpose of the Convention. The purpose of this Convention, so far as it related to protection, was to reduce the scope of the privilege regarding protection and to give it for that purpose a uniform basis of application. The French Government agrees that such was the purpose of the Convention (see Memorial, pp. 56-57), and the preamble of the Convention confirms expressly that its purpose was such:

"[The parties] having recognized the necessity of establishing, on fixed and uniform bases, the exercise of the right of protection in Morocco..." (Annex 31.)

<sup>1</sup> Such references as are made in these articles to natives, and protected natives, had for purpose to emphasize that foreigners were placed on a footing of equality with natives with respect to the taxes provided by the articles. They did not refer to protection as such. See the statement of the Moroccan Minister of Foreign Affairs in the course of the Tangier Conference of 1879, and the minutes of the Madrid Conference, referring to the adoption of Articles 12 and 13. *Documents diplomatiques, La Question de la Protection diplomatique et consulaire au Maroc* (1880), 171, 226, referred to hereinafter as *Documents diplomatiques*.

There was no need, therefore, for a most-favored-nation clause of which the only purpose could have been to guarantee to the foreign Powers that, if Morocco should extend to one Power privileges of protection broader than those accorded in the Convention, all the other Powers would enjoy it equally. The extension of new privileges necessarily contemplated by such an interpretation of the clause would be in contradiction with the clear purpose of the Convention to limit the privilege of protection.

An examination of the articles relating to protection, as such, confirms the view that there could have been no justification for the inclusion of the guarantee of most-favored-nation treatment with respect to protection. These articles defined the exercise of the right of protection on a fixed and uniform basis and did not contemplate or suggest that the situation so defined might be altered in favor of one foreign Power. The only exception to this general rule was introduced at the request of the French delegate in Article 6 of the Convention. Article 6 was intended to prohibit the grant of hereditary protection. The French delegate sought a special exception in favor of a French protected family (Benchimol family), and the other Powers agreed to accept this exception if any further exception granted by the Sultan would become available as well to all the other Powers<sup>1</sup>:

“.... Protection shall not be hereditary. A single exception, which was established by the Convention of 1863, but which is not to create a precedent, shall be maintained in favor of the Benchimol family. Nevertheless, if the Sultan of Morocco shall grant another exception, each of the contracting Powers shall be entitled to claim a similar concession.” (Annex 31.)

It is significant that a provision was made for most-favored-nation treatment in the only article of the Convention relating to protection which suggested that there might be a departure from the general rule of fixed and uniform exercise of the right of protection for all foreign Powers.

Article 17, indeed, need not be construed by reference to any of the provisions relating to protection any more than Article 11 dealing with ownership of real property, or Article 12 and 13, dealing with taxes, need to be so construed. Like those articles, it is self-contained, an end in itself, and just as heterogeneous. Article 17 simply “recognizes” the right to equality of treatment as a treaty right separate and distinct from any other substantive right included in the Convention and of a scope limited only by the extent and the number of the concessions made by Morocco to any one foreign Power in the course of its treaty relations.

Evidence is available to corroborate this view. In a Secret Convention, dated September 1, 1905, to implement their Secret Convention of October 3, 1904 (Annex 34), France and Spain

<sup>1</sup> *Documents diplomatiques*, 188.

agreed to share in Morocco to the exclusion of other States a preferential position in commercial and financial matters. They were well aware of the obstacle arising from the equality of treatment provided by Article 17 of the Madrid Convention and accordingly agreed in Article IV of the Secret Convention of 1905 that:

"The two Powers undertake to observe this agreement even in the case that the stipulations of Article 17 of the Madrid Convention should be extended to all questions of an economic and financial nature...." (Translation; Annex 34.)

Despite the guarded language of a provision which attempts not to concede expressly the point, the admission is clear that the most-favored-nation clause of the Convention of Madrid *could*, and probably *would*, be deemed by the parties to apply to matters other than Protection.

The Cour de Rabat, in a ruling dated July 12, 1924, referred to certain treaty rights provided in Article 5 of the Spanish Treaty of 1861 and stated in this connection:

"Whereas this principle is more specifically stated by Article 5 of the treaty concluded December 20, 1861, between Morocco and Spain, *treaty the benefit of which most foreign Powers can claim by application of the most-favored-nation clause*, clause granted notably for France by the Diplomatic Act of May 28, 1825, the treaty of Sept. 10, 1844, and the Convention of Madrid of July 3, 1880 (Art. 17); ...." Rec. arr. Rabat. II, 1923-1924, No. 264, pp. 411 et s. (Italics added; translation.)

Similarly the 1951 edition of *Cours élémentaire d'Organisation administrative marocaine, à l'Usage des Candidats aux Fonctions publiques*, by Pourquier and Chagneau, which is also used, it is believed, as a standard text book at the "Institut des Hautes Études marocaines", an official institution of higher learning in Rabat, specifically states that the most-favored-nation clause of the Madrid Convention gave to all the parties to the Convention the rights of extraterritorial jurisdiction granted to Great Britain in 1856.

"Other treaties, more advantageous, conferred upon the consul jurisdiction in penal actions as well as civil (excepting strictly real actions) in which a ressortissant of the consul was defendant. The application of the rule *actor sequitur forum rei* provided especially in the Spanish-Moroccan Treaty of 1799 and in the British-Moroccan treaty of 1856, *was extended to the consuls of Powers entitled to most-favored-nation treatment and later to the Powers signatories of the Madrid Convention of July 3, 1880 [see infra] by virtue of Article 17 of this Convention.*" (Italics added; translation; Fasc. I, pp. 6-7.)

The rights of jurisdiction acquired by Great Britain in 1856 and by Spain in 1861, therefore, have been conferred upon the United States by virtue of Article 17 of the Convention of Madrid,

and since in this type of situation the most-favored-nation clause theory advanced by the French Government has no application, the rights of the United States did not lapse when Great Britain surrendered its rights of jurisdiction in the French zone of Morocco.

- (2) *Even if the most-favored-nation clause theory on which the French Government relies were deemed controlling, it does not support the conclusions suggested by the French Government*

In the view of the United States Government, the theory of the most-favored-nation clause advanced by the French Government, if it were applicable, does not justify the contention that the rights of jurisdiction acquired by the United States through the most-favored-nation clause have lapsed.

(a) The theory of the French Government is based on the assumption that rights acquired by the beneficiary of a most-favored-nation clause are dependent for their validity upon the conditions contained in the grant of such rights to a third State, so far as concerns their extent, the time for which they are given and the territory in which they apply. The rights of jurisdiction granted by Morocco to Great Britain in 1856 were not limited with reference to the territory within which they could be exercised. Consequently, the United States acquired in Morocco, through the effect of the most-favored-nation clause, rights of jurisdiction which were not limited by reference to their territorial application. Nevertheless, the French Government contends that the United States has lost its rights of jurisdiction, so far as their existence depended on the effect of the most-favored-nation clause upon the British treaty, in a limited portion of Moroccan territory, the French zone. Such a contention, it is believed, is not supported by the authorities cited by the French Government in support of its argument. The authorities may conclude that rights derived through the effect of the most-favored-nation clause are dependent upon the existence of the rights granted to a third State, but they do not appear to support the French contention that the effect of an abrogation can be to parcel out the territory within which the rights can be exercised. The question would be otherwise if Morocco had limited or divided the territories within which Great Britain could exercise its rights of jurisdiction since 1856. The abrogation of 1937 then could also take effect piecemeal, depending on the specific portions of territory involved. Not so, however, in the instant case where the rights were granted to Great Britain, and acquired by the United States, for the whole of Morocco.

Moreover, the French Government has also argued that the recognition of the Protectorate by the United States was tantamount to a surrender of extraterritorial rights; if this were true, the surrender would have taken effect for the whole of Morocco and not for any specific zone since France expressly requested the United States not

to recognize the French Zone of Morocco, but to recognize instead its protectorate over the whole of Morocco. (See Part II, Chapter II.) Yet it concludes here that the rights of jurisdiction of the United States can be abrogated in the French zone only. The result is not only contradictory, but suggests that the French Government should be estopped from pleading that the abrogation of the treaty rights of the United States can take effect within a division of Morocco which the French Government asked the United States not to recognize.

(b) The rights of jurisdiction acquired by the United States through the effect of the most-favored-nation clause are not necessarily dependent upon the rights granted to Great Britain in 1856. The treaty concluded between Spain and Morocco in 1861 provided rights of jurisdiction in all respects identical to those granted to Great Britain in the Treaty of 1856. The acquisition of extraterritorial rights of jurisdiction by the United States, through the effect of the most-favored-nation clause, can be predicated either on the Spanish Treaty of 1861 or on the British Treaty of 1856. The abrogation of the provisions of the British Treaty of 1856 could not result in the abrogation of the rights so acquired by the United States if the Spanish Treaty of 1861 were still in effect. This treaty has never been abrogated.

The Convention of 1937 by which the rights of Great Britain of 1856 were abrogated was an agreement between three parties: Great Britain, France and Morocco.

“His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the French Republic, acting in his own name and on behalf of His Majesty the Sultan of Morocco ;” (Annex 93).

The inclusion of Morocco as a party to this Convention was necessary, of course, to accomplish the intended abrogation. The Treaty of 1856 was concluded by Morocco as a sovereign State. Morocco, being still a sovereign State, could alone abrogate the treaty, and France, as protecting Power through which the foreign relations of Morocco were conducted, negotiated the treaty on behalf of His Majesty the Sultan of Morocco.

By contrast, the Treaty concluded between Spain and France on November 27, 1912, by which each of the parties agreed to place in the future its nationals under the jurisdiction of the other in its zone (Article 24 ; Annex 38), and the reciprocal Declaration between Spain and France of March 7, 1914 (Annex 94), by which each of the parties surrendered the right to claim jurisdiction over its nationals in the zone of the other, did not include Morocco as a party. The French Government itself has emphasized that the exclusion of Morocco as a party to the Treaty of November 27, 1912, had far-reaching consequences. In a note addressed to this Government in connection with the recognition of the Protectorate,

it pointed out that this treaty, not being concluded in the name of Morocco, could not be viewed as a concession by Morocco of a protectorate to Spain :

“On one passage of your letter, I am asked to draw your attention, the wording of which being not in exact conformity with facts. It is stated there that the Government of the United States ‘recognizes the establishment of the French Protectorate over the French Zone of the Sheriffian Empire’.

In reality the Protectorate established by France in Morocco, with the assent of its ruler, covers the whole of that country, as evidenced by the terms of the Treaty of March 1912, a copy of which I had the honor of transmitting to you on January 3, 1913. The Spanish rights are mentioned in it (Art. 1) as being to be defined by an *Agreement between the Governments, not of Morocco, but of France and of Spain*. Every Power, Spain included, has recognized that our Protectorate was coextensive with the total area of Morocco.” (Italics supplied ; Annex 45.)

Since, according to the statement of the French Government, Morocco was not a party to the Treaty of 1912 concluded between Spain and France, all the provisions of that Treaty relating to rights of jurisdiction and to the abrogation of previous inconsistent treaty provisions could not have affected in any manner the Treaty concluded in 1861 between Morocco and Spain. The same was necessarily true of the Agreement between France and Spain of March 7, 1914, where the French and the Spanish Governments mutually renounced their claims to jurisdiction in each other's zones without including Morocco as a party. It follows, therefore, that no treaties have been concluded by Morocco to this day which could have affected the existence of the provisions of the Treaty of 1861 between Spain and Morocco. This treaty is still in force.

It is enough that the Treaty of 1861 be in force between Spain and Morocco, although Spain does not enforce its provisions against the French Government, to confer upon the United States, through the effect of the most-favored-nation clause, the rights of jurisdiction granted by Morocco to Spain in the Treaty of 1861. Most of the authorities cited by the French Government based their views on the assumption that there was an actual abrogation of the treaty on which the most-favored-nation clause took effect ; no such abrogation has taken place in this case. Moreover, an agreement between France and Spain for the waiver of their respective rights of jurisdiction could not affect in any event the existence of rights of jurisdiction acquired by the United States through the effect of the most-favored-nation clause, since, in order to argue that the agreement between Spain and France could terminate such United States rights, it would be imperative to assume that the rights of jurisdiction of the United States were based, through the effect of the most-favored-nation clause, on a treaty concluded between Spain and France. Such an assumption would be contrary to established facts.



(c) The French argument assumes that the rights of extraterritorial jurisdiction of the United States are predicated solely on the effect of the most-favored-nation clause. They are predicated as well, however, on custom and usage.

Extraterritorial jurisdiction in Morocco and other Moslem countries developed as an institution, a regime, designed to provide foreigners, whatever their nationality, with a juridical status adapted to the special conditions of the local society with which they came in contact. In this society, custom played a far more important rôle than written law. Practice, rather than written treaties, established the juridical status of the foreigner. From time to time, the practice was formalized in a treaty which, even though concluded with one foreign Power, reflected the rule already in force in Morocco with respect to all foreigners. New practices in turn often supplanted the written agreements. Custom and usage, therefore, is a source of law which, in countries of extraterritoriality more so than in others, must be given equal rank with the express provisions of the treaties in determining the juridical status of the nationals of foreign Powers at any given time. Pietri, in discussing the juridical status of foreigners under capitulation treaties, states the point thus :

“... With oriental people it is entirely different : law is essentially *customary*, or if preferred, it is custom which normally makes the law. It follows that the texts of written laws [treaties] have for them but a relative importance and that custom must always suffice to abrogate them.” Pietri, *Étude critique sur la Fiction d'Exterritorialité* (1895), 298-299. (Translation.)

Similarly Politis, dealing with the same question, declares :

“... But is written law [treaties] in accord .... with custom ? In the Orient, more than elsewhere perhaps, all the law is not in the [written] texts. Custom plays a very great rôle : such conventional rule often is considerably extended in practice ; to the privileges formally conceded by treaties, usage has added others.” Politis, *Les Capitulations et la Justice répressive ottomane*, II, *Revue de Droit international privé et de Droit pénal international* (1906), 667. (Translation.)

Piggott quotes an English decision which aptly summarizes the point :

“... It is true, as we have said, that if you enquire as to the existence of any particular privileges conceded to one State in the dominions of another, you would, amongst European nations, look to the subsisting treaties ; but this mode of incurring obligations, or of investigating what has been conceded, is a matter of custom and not of natural justice. Any mode of proof by which it is shown that a privilege is conceded is, according to the principles of natural justice, sufficient for the purpose. The formality of a treaty is the best proof of the consent and acquiescence of parties ;

but it is not the only proof, nor does it exclude other proof ; and more especially in transactions with oriental States. Consent may be expressed in various ways ; by constant usage permitted and acquiesced in by the authorities of the State, active assent, or silent acquiescence, where there must be full knowledge." (The Laconia, 2 Mo. P.C. (N.S.), at 181.) Piggott, *Exterritoriality* (1907), 41-42.

See Pélissié Du Rausas, *Le Régime des Capitulations dans l'Empire ottoman* (1902), 128-129 ; Du Rausas, *Une Question de Compétence consulaire*, II, *Revue de Droit international privé et de Droit pénal international* (1906), 289.

Custom and usage in Morocco, rather than the treaties, created the rights of extraterritorial jurisdiction of the foreign consul in all mixed cases, civil and criminal, in which his national was defendant. When dealing with questions of extraterritorial jurisdiction in Morocco, it is usual to refer to the British General Treaty of 1856 and the Spanish Treaty of 1861 as the agreements which recognized the jurisdiction of the foreign consul in all cases, civil and criminal, in which his nationals were defendants, in application of the rule *actor sequitur forum rei*. It is clear, however, that practice had already developed this jurisdiction before the conclusion of these treaties. Great Britain exercised jurisdiction in all cases in which British nationals were defendants long before the conclusion of the Treaty of 1856, as a matter of practice and not as a matter of treaty rights. Thus Flournoy states with respect to the jurisdictional provisions of the British General Treaty of 1856 :

"With regard to extraterritorial jurisdiction, the treaty discarded the unworkable provisions of the old agreement, and in substitution therefor *virtually legalized the existing practice*, though retaining, unfortunately, the old confusion between civil and criminal law.

.....  
*Though these provisions merely legalized the existing practice*, there was a positive gain in the surrender by the Moroccan Government of any claims to jurisdiction in the type of cases specified." Flournoy, *British Policy Towards Morocco* (1935), 180-181. (Italics added.)

Nor can it be argued that this practice of the British consuls was predicated on a legal claim to equality of treatment with the Spanish consuls to whom jurisdiction in mixed cases involving Spanish defendants and Moroccan natives had already been granted in express terms in the Treaty of 1799. Reports of the British consuls to the British Foreign Office prior to 1856 show that their exercise of jurisdiction was strictly a practical and customary arrangement with the local authorities and not a formal legal claim based on most-favored-nation treatment. Thus the British Consul, in suggesting to the Foreign Office in 1847 the conclusion of a new treaty which included the jurisdictional provisions which were finally included in the General Treaty of 1856 made the following comment :

"It would be difficult for the Moorish Government to oppose the present proposed alteration in the articles on jurisdiction, as they must acknowledge it would be merely acquiescing on their part, by treaty, to forms which have been in successful practice for many years and to which they have therefore given their tacit consent<sup>1</sup>." J. D. Hay to Palmerston, No. 23, 27 June 1847, enclosure 4, F.O. 99/35. See also Flournoy, *op. cit. supra*, 37, 38.

That the treaty was a formalization of existing custom and usage rather than a source of law is also apparent from the terms of Article XIV in which Morocco formally renounced jurisdiction in disputes between British nationals and other foreigners so that the foreign consuls could take jurisdiction "according to the established usages which have hitherto been acted upon, or may hereafter be arranged between such consuls". (Annex 20.) An identical reference to usages is to be found in the Spanish Treaty of 1861.

Certain States, moreover, predicated their exercise of jurisdiction in Morocco solely upon custom and usage and without the benefit of any treaty provision of any sort. Among the States participating at the Madrid Conference of 1880 were Germany, Portugal, Sweden and Norway. Russia later adhered to the Convention. So far as can be ascertained, these States had never concluded any treaties with Morocco, nor were they successors to treaties concluded with Morocco. The French Government has developed at length in its Memorial the contention that the Convention assumes, "suppose", the existence of such rights of jurisdiction and that it merely determines the conditions within which such jurisdiction could be exercised with respect to proteges. (Memorial, pp. 56-57.) If this were true, Germany, Portugal, Sweden and Norway, and Russia could not properly participate in a conference, and ratify a convention, defining among other things the conditions under which rights of jurisdiction over proteges may be asserted, unless they possessed precisely the same rights of jurisdiction over proteges as the other States parties to the Convention. Since none of those States had ever entered into treaty relations with Morocco before, it must follow that custom and usage conferred upon them the rights of jurisdiction which made them eligible for participation in the Conference on a footing of equality with the other States.

A similar reasoning applies to the Act of Algeciras. All the provisions of the Act relating to the enforcement of measures relating to matters such as contraband, customs, collection of taxes and smuggling are based impliedly or expressly on the assumption that foreign consuls have jurisdiction over any case in which their nationals are defendants (see, for example, Articles 24, 25, 29, 45, 59, 80, 87, 91, 101, 102, Annex 32). Unless it is admitted that Portugal, Sweden, and Russia became entitled to all the rights ever

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<sup>1</sup> Complete text communicated to the Registrar of the International Court of Justice pursuant to Article 43, para. 1, of the Rules of Court.

granted to other Powers through the most-favored-nation clause of Article 17 of the Madrid Convention, it must follow that custom and usage conferred upon these States the rights which made them eligible for participation in the Algeiras Conference.

Finally, the agreements negotiated by France for the surrender by other Powers of their capitulatory rights in the French zone of Morocco prove conclusively that custom and usage, in the absence of treaties, conferred rights of extraterritorial jurisdiction in Morocco. France negotiated such agreements with States which previously had concluded bilateral treaties with Morocco granting either specific rights of jurisdiction or most-favored-nation treatment, viz. Spain, Denmark, Belgium, Italy, the Netherlands and Great Britain. France also obtained a surrender of rights of extraterritorial jurisdiction from Germany and Austria. France negotiated as well agreements of surrender with States of which the rights of extraterritorial jurisdiction could be predicated only on the most-favored-nation clause of Article 17 of the Convention of Madrid: Russia, Norway, Sweden, Portugal. But France, in addition, concluded agreements for the surrender of rights of extraterritorial jurisdiction with States which had never entered into treaty relations with Morocco of any kind: Switzerland, Greece, Bolivia, Japan, Paraguay, Uruguay, Haiti, Venezuela and Costa Rica (see Part II, Chapter II, *supra*). Only through custom and usage could these last-mentioned States have acquired the rights of extraterritorial jurisdiction of which France negotiated the surrender.

Since the jurisdiction of all foreign Powers before the establishment of the Protectorate was uniform; and since custom and usage conferred such jurisdiction, as did also specific treaty provisions or the most-favored-nation clause, the rights of jurisdiction of the United States in all cases in which a United States national was a defendant rest on custom and usage as well as on treaties or on the effect of the most-favored-nation clause. Rights of jurisdiction predicated on custom and usage are not subject to the most-favored-nation clause theory on which the French Government relies. The rights of jurisdiction of the United States did not lapse, therefore, when Great Britain surrendered its rights of jurisdiction in the French zone of Morocco.

(d) In practice, the French Government has admitted that the renunciation by Great Britain in 1937 of its rights of jurisdiction in the French zone of Morocco could not terminate the corresponding rights of jurisdiction of the United States.

Following the conclusion of its treaty with Great Britain in 1937, the French Government immediately invited the United States to conclude a similar agreement (note of August 26, 1937; Annex 50). The French Government states (Memorial, p. 61) that it was aware at that time of the incidence of the British renunciation upon the United States rights. Nevertheless, the French Government did not

limit its request to a surrender of the rights of jurisdiction specifically granted to the United States in the Treaty of 1836. It referred generally to "the capitulatory régime" enjoyed by the United States in Morocco by virtue of the treaty of 1836 :

"The United States enjoys in Morocco the capitulatory régime by virtue of the treaty concluded between the two Powers on September 16, 1836. Article 25 of this Convention reads as follows :

'The present treaty shall be in force, God helping, during fifty years ; at the expiration of that term, it shall continue to be binding on the two Powers until one of them has notified its intention to depart therefrom by notice twelve months in advance, in which case the effects thereof shall cease at the expiration of the twelve months.'

The above-mentioned Convention between the United States and Morocco not having been denounced, the United States continues to benefit by the capitulatory régime in Morocco. In fact, following the conclusion of the Franco-Britannic agreement it remains today the last Power in a position to avail itself of that régime." (Annex 50.)

In its answer of October 19, 1937, the United States removed all possible ambiguity by claiming as its rights of jurisdiction, not only those of the Treaty of 1836, but also those derived from other treaties and confirmed by long-established custom and usage :

"I observe that in your note reference is made to Article 25 of the American-Moroccan Treaty of September 16, 1836, which provides for the termination of the Treaty upon one year's notice given by either party. *In order that there may be no misunderstanding, I think it is pertinent to point out that American capitulatory rights in Morocco are derived not only from the American-Moroccan Treaty of 1836 but also from other treaties, conventions or agreements and confirmed by long-established custom and usage.* It is unnecessary to enlarge upon this point, since it seems to have been recognized by the French Government in the third paragraph of Article 10 and the second paragraph of Article 16 of the Anglo-French Convention of July 29, 1937, in both of which articles reference is made to the jurisdictional privileges enjoyed by the United States in Morocco 'under *treaties* at present in force'. Moreover, as you probably are aware, the recognition by the Government of the United States of the Protectorate of France over Morocco was expressly made subject to subsequent negotiation between the United States and France respecting the capitulatory and other rights of the United States in Morocco." (Italics added ; Annex 50.)

The French Government was thereby put on notice of the scope of the rights of jurisdiction claimed by the United States after the renunciation by Great Britain of rights of jurisdiction in the French zone of Morocco. The French Government, with full knowledge of the legal effect which its failure to object implied, accepted the claims of the United States and never objected to such claims, so

far as this Government can find, to the end of the negotiations in September 1939. The French Government thereby admitted that the rights of jurisdiction of the United States, so far as they were related to those surrendered by Great Britain, were not affected by such surrender and had to be renounced specifically, like those granted in 1836, by the United States.

Officials of the Protectorate in Morocco have continued to bring charges against American citizens in the American consular courts ever since 1937 in application of the traditional principle of jurisdiction that an American defendant is subject in all cases only to the jurisdiction of such courts. The French courts in Morocco have continued to decline to take jurisdiction in all cases in which a United States citizen was a defendant. It is clear, accordingly, that in the view of both, the renunciation by Great Britain in 1937 of its rights of jurisdiction in the French zone of Morocco was without effect on the rights of jurisdiction of the United States.

Moreover, the French Government specifically admits that the rights of jurisdiction of the United States acquired through the most-favored-nation clause would not lapse under certain conditions. Thus it states :

*"In conclusion, the rights which the United States may have claimed and which were not based on legal instruments to which the United States Government themselves have been a party, would necessarily share the fate of the extraneous instruments indirectly benefiting the United States. It would have been otherwise only if, by some act later than 1856, those rights had become the object of a direct undertaking of the Sherifian Empire or of France to the United States, their legal basis being thus transformed. In that event, those rights would have ceased to be an indirect consequence, and would have become actual, final stipulations."* (Italics added ; translation ; Memorial, pp. 61-62.)

The failure of the French Government to notify the United States in any manner that, in its view, some of its rights of extraterritorial jurisdiction were terminated in the French zone of Morocco when Great Britain terminated its own rights in that zone ; the failure of the French Government to object to the express claim of the United States that its rights of jurisdiction included all the rights which it had acquired through the most-favored-nation clause and by custom and usage ; and the failure of the French Government to object to the exercise of such jurisdiction by the United States, up to the present case, constitute acts which by the very admission of the French Government have caused the rights of the United States to become actual and final stipulations and to be removed from the application of the most-favored-nation clause theory on which the French Government relies.

- (3) *A specific renunciation is necessary to terminate the rights of extraterritorial jurisdiction of the United States in Morocco and the United States has never, expressly or impliedly, renounced such rights*

The United States has continued to exercise its rights of jurisdiction in Morocco, in their most extended form, and has never renounced, expressly or impliedly, these rights. The contention of the French Government that the United States recognition of the Protectorate was tantamount to a waiver of its rights of jurisdiction can find no support in law or in fact. The French Government argues in this respect thus :

"When France signed with the Shereefian Empire the Protectorate Treaty of 1912, the logical consequence was that foreign Powers should waive their status under the capitulations, and, more especially, their judicial status. In itself, the recognition of a Protectorate, which they all made, carried this waiver along with it. In recognizing the French Protectorate, they recognized this Protectorate in the terms and with the scope attributed to it by the treaty which created it." (Translation ; Memorial, p. 59.)

The establishment of a Protectorate, however, does not give the right to the protecting Power to disregard the treaty rights previously conceded by the protected Power. Such treaties continue in force. Such was the view adopted by Professor Basdevant with respect to the establishment of the Protectorate of France over Morocco :

"First of all, there exist in Morocco consular jurisdictions. Based on treaties, the establishment of the Protectorate is not sufficient to make them disappear ; for this an agreement with each interested Power would be necessary.

.....

The protectorate, leaving previous treaties in existence, does not abrogate it [protection] *ipso jure*." Basdevant, *Die Entwicklung der Marokko-Frage*, Jahrbuch des Völkerrechts (1913), 780-782. (Translation.)

See also Bonfils, *Manuel de Droit international public* (7th ed. rev. Fauchille, 1914), 526. Thus, the recognition of a Protectorate cannot, of itself, abrogate or modify the treaty rights of the recognizing Powers with the protected State. France itself recognized the validity of this principle when it negotiated instruments of renunciation of extraterritorial jurisdiction with a number of foreign Powers independently of their acts of recognition.

The effect which recognition has on the treaty rights of the recognizing Power depends strictly upon the conditions under which it recognized the Protectorate. The terms of the United States recognition of the French Protectorate establish conclusively that such recognition did not affect its treaty rights in Morocco.

On November 30, 1911, the French Government requested the adherence of the United States to the Franco-German Convention of November 4, 1911 (Annex 40). This Convention defined, in contemplation of the establishment of the French Protectorate over Morocco, the conditions under which the Protectorate was to be accepted by foreign Powers, including the establishment of a judicial system to replace the capitulatory jurisdiction of foreign Powers (Annex 36). The United States declined on November 8, 1911, to adhere to the terms of the Convention :

"In reply I beg to say that *as the adherence of this Government to such an agreement would seem to imply the modification of certain of its existing treaty rights*, the consent to such adherence on the part of the United States involves the conjoint action of the treaty-making Powers of this Government and our *acceptance of the agreement in question could therefore be made only by and with the advice and consent of the Senate*. The Department will be glad, at any time you so desire, to discuss more fully with your excellency the questions presented by the agreement above mentioned." (Italics added ; Annex 40.)

On January 8, 1913, the French Government requested the adherence of the United States to the Treaty of Protectorate of Fez of March 30, 1912 (Annex 41). The United States similarly declined to adhere to the terms of the treaty :

"... As your excellency is aware, *adhesion on the part of the Government of the United States to any treaty, under our Constitution, can only be given by and with the advice and consent of the United States Senate*, and, after careful consideration of the Franco-Moroccan Protectorate Treaty, this Government is of the opinion that it is not sufficiently detailed and concrete in its provisions to permit of submission to this country's treaty-making power." (Italics added ; Annex 41.)

At the same time, however, the United States expressed its willingness to recognize the French Protectorate and to consider a subsequent request from France for the surrender of American rights of extraterritorial jurisdiction, provided the surrender be done in a treaty and the French Government give in such treaty adequate guarantees for the recognition and maintenance of the economic treaty rights of the United States in Morocco. (Annexes 42-44 ; see Part II, Chapter II, *supra*.) In view of the delays encountered in the negotiation of a treaty for the surrender of extraterritorial jurisdiction and for concurrent guarantees concerning other United States treaty rights, the United States proposed on January 2, 1917, to proceed with the recognition of the Protectorate and to reserve for later consideration the negotiations concerning the surrender of capitulatory rights :

"... in regard to the recognition of the French Protectorate in Morocco, I have, as a result of careful consideration, reached the:



conclusion that .... possibly *the best mode of procedure to be adopted would be to consider separately the question of the recognition of the Protectorate and the question of our capitulatory and other rights in Morocco, as has been done, I understand, by all the European Powers in respect to their relations in Morocco....* I am persuaded to make this proposal informally, as I am desirous, as far as possible, to meet the wishes of your Government and your people, to whom we are bound by a traditional and sincere friendship. *If this proposal is agreeable to your Government and this step is accomplished, there would remain for further negotiation the question of our capitulatory and other rights in Morocco, which could be taken up in due time.*" (Italics added ; Annex 45.)

On January 8, 1917, the French Government specifically agreed that the two questions be considered separately :

"As for the abrogation of capitulations, *while we have no objection to the matter being separately considered*, we earnestly desire, as you know, that it be taken up at once, so that we could sign the convention referred to in previous correspondence, e.g., in my letter of August 26, the matter to be dealt with by the Senate as soon as circumstances will allow." (Italics added ; Annex 45.)

On October 20, 1917, the United States recognized the Protectorate of France over Morocco :

"I have now the honor to inform you that the Government of the United States has concluded to recognize, and hereby formally recognizes (*subject to my informal note of January 2, 1917, on this matter*), the Protectorate of France over Morocco subject to the special rights and privileges of Spain in Morocco." (Italics added ; Annex 45.)

It is clear, from the history of the negotiations, that the United States never adhered to the terms of the Treaty of Protectorate, that its recognition was recognition of the existence of the Protectorate as such and not recognition of the terms of the Treaty of Protectorate, and that, moreover, all its treaty rights were specifically reserved with the concurrence of the French Government upon the occasion of such recognition.

The United States has constantly adhered to this position and has refuted, whenever necessary, all contrary contentions on the part of the French Government, whether they be implied or express. Thus, the American Chargé d'Affaires in France transmitted to the Secretary of State on October 30, 1923, a note from the French Government in which the hope was expressed that the United States would :

".... consent to give its natural sequence to the recognition which it made of the Protectorate of the French Republic over Morocco and that it will also cancel the American capitulations in the French Zone of the Shereefian Empire....". (Annex 95.)

In a telegram dated November 28, the Secretary of State instructed the Chargé d'Affaires to tell the French Government that :

".... this Government does not consider the cancellation of American capitulatory rights in the French Zone of Morocco to be a natural sequence to our recognition of French Protectorate....".  
(Annex 95.)

Similarly, the French Government having advanced in the course of an argument concerning the treaty rights of the United States the contention that the United States recognition of the Protectorate was adherence to the Protectorate treaties and thus a modification of United States treaty rights in Morocco, the Department of State instructed the American Ambassador in France on February 9, 1935, as follows :

".... [the] reference to recognition of French Protectorate disregards repeated declarations of this Government that *recognition did not include adherence to Protectorate treaties or any modification of American treaty rights which could be effected only by another treaty with the concurrence of the Senate*. Recognition of Protectorate was expressly based on informal note from Secretary of State to French Ambassador, Washington, dated January 2, 1917, which declared that 'there would remain for further negotiation the question of our capitulatory and other rights in Morocco'." (Italics added ; Annex 96.)

Finally, the United States does not understand how the French Government may maintain in one part of the Memorial the argument that the United States recognition of the Protectorate was a waiver of its rights of jurisdiction when the French Government specifically admits in another part of the Memorial that such recognition could not affect United States capitulatory rights in Morocco :

"These statements [meaning those exchanged during the negotiations for the recognition] are quite clear. Their evident meaning is that the recognition of the Protectorate by the United States *does not affect* the rights of the United States in Morocco under the capitulations or other instruments.

. . . . .

.... this idea was obviously not in the intentions of the Secretary of State, who simply distinguished two questions 'as did the other European Powers' and who, by using a purely negative form, intended to prevent the capitulatory rights *from being affected by the recognition of the Protectorate* and to reserve it for future negotiations." (Italics supplied in part ; translation ; Memorial, pp. 62-63.)

In conclusion, the Government of the United States submits that :

- (a) The United States acquired in Morocco jurisdiction in all cases in which an American citizen or protege was defendant ;

- (b) Such jurisdiction was predicated on specific treaty provisions, the effect of the most-favored-nation clause, and custom and usage ;
- (c) Such jurisdiction was not affected by the surrender by Great Britain in 1937 of its rights of jurisdiction in the French zone of Morocco ;
- (d) Such jurisdiction has never been renounced, expressly or impliedly, by the United States.

### C. *NON-APPLICABILITY OF LOCAL LAW TO AMERICAN CITIZENS ; RIGHT OF ASSENT*

The French Government concedes that the United States has the right to refuse to recognize and to make applicable to American citizens Moroccan laws which are in conflict with United States treaty rights. It is for this reason, the French Government states, that Moroccan legislation is submitted by the Protectorate authorities to the prior approval of the United States ; this "courtesy" affords the United States Government an opportunity to determine whether the proposed legislation violates its treaty rights (Memorial, pp. 77-78). It has already been shown in this Counter-Memorial that the Dahir of December 30, 1948, violates the treaty right of the United States to freedom of importation in Morocco. According to the admission of the French Government, therefore, the United States had the right to refuse to recognize and to make applicable to American citizens the Dahir of December 30, 1948, when it was submitted for its assent.

The argument presented by the French Government, however, goes beyond the issue whether, in this particular case, the United States was justified in refusing to make applicable to its citizens legislation violating its treaty rights. The argument is that, except when the legislation violates United States treaty rights, Moroccan law is, as a rule of general application, binding upon American citizens, and that, barring the special case of conflict with treaty rights, the American consular courts cannot refuse to apply Moroccan laws to American citizens on the ground that such laws have not received the previous assent of the United States Government. The submission of proposed Moroccan legislation to the prior approval of the United States, it is argued, is only a "courtesy" affording a convenient technique of determining beforehand possible conflict with treaty rights, but it is not a legal obligation since the Moroccan law is, save in the case of conflict with treaties, binding upon American citizens.

The argument is entirely predicated on the theory that the applicability or non-applicability of Moroccan law to American citizens is determined by the principle of territorial sovereignty. According to this argument the principle of territorial sovereignty

is the generally-accepted rule in international law; the principle of territorial sovereignty, therefore, determines the binding effect of Moroccan law; by application of this principle, Moroccan law is necessarily binding upon all persons within the Moroccan territory, including American citizens. In the view of the United States Government, this application of the principle of territorial sovereignty is neither warranted nor relevant to the issues.

The first issue to be resolved is whether Moroccan law applied to foreigners in Morocco prior to the establishment of the French Protectorate. The legal status of all foreigners with regard to Moroccan law prior to 1912 was determined by a uniform regime of extraterritorial jurisdiction. This regime did not arise in relation to the concept of territorial sovereignty. It owed its origin instead to the concept of personality of law. The regime developed at a time when the modern concept did not exist in Mohammedan countries, such as Morocco, that the binding effect of law was coextensive with the territory of the sovereign. Instead the law was founded on a personal relationship, racial, religious, or otherwise, between the members of the local community. As a result the law bore the earmarks of a personal privilege, the applicability of which was coextensive with established membership in the local community. Thus the local sovereign was receptive to the concept that the foreigner, as a member of a different racial or religious group, should be removed from the effect of the local law and subjected instead to his own, his "personal" law. This was accomplished by granting jurisdiction to foreign consuls in all cases in which their nationals were defendants. That extraterritorial jurisdiction was nothing but a concrete application of the concept of personality of law is well supported by the authorities. The point has been established in an earlier part of the argument. (See the authorities cited in Part III, Chap. II, A.) It follows that the legal effects of the regime of extraterritorial jurisdiction must be determined by reference to the principle of personality of law, and not by reference to the principle of territorial sovereignty. It follows as well that by definition, the legal effect of a grant of extraterritorial jurisdiction was to remove foreigners from the effect of the local law and to subject them to their national law.

The authorities support the view that extraterritorial jurisdiction and immunity from local law were one and the same thing. Extraterritorial jurisdiction is not the limited power to administer the law; it is jurisdiction in the broad sense of the word, the power to make the law. Pélissié du Rausas states the point thus:

"To determine the juridical condition of the foreigner in a given country, is to determine what law normally applies to the juridical relations in which this foreigner is involved. We have seen above on what principle this problem was resolved by the capitulations. Applying purely and simply the principle of personality of law, the capitulations decide that the foreigner, travelling

or residing in the Ottoman Empire, remains subject to his national law....

.....

*These [treaty provisions granting extraterritorial jurisdiction] have a double purpose: to subject the foreigner to the foreign law and tribunals [and] to remove him from the Ottoman law and tribunals. The system of personality of law applied by the Capitulations is thus to be analyzed as an immunity which is characteristic: immunity of jurisdiction, the word jurisdiction being taken in the very extensive sense which the Romans gave to it of the power to make the law as well as the power to apply it." I, Pélissié du Rausas, Le Régime des Capitulations dans l'Empire ottoman (1902), 203-204. (Italics added; translation.)*

To hold otherwise, states Piggott, would be in flagrant contradiction of the intent of the parties in concluding treaties of capitulations:

"As I have just said, on the face of them these words seem to contemplate only the exercise of judicial powers. It does not appear, however, to involve a too great straining of these words to hold that the jurisdiction, to which all questions in regard to these rights are made subject, must include the right to decide, legislatively, as distinct from judicially, what those rights are: for that is one of the questions which arises in regard to them. But the broad rule of interpretation of treaties, which in due course we shall consider, may also be appealed to in order to justify this construction. If the grant were to be construed to be one of trial of disputes only, the law to be applied would of necessity be that of the oriental country; and this, it may be safely asserted, is never, in the absence of express stipulation, contemplated by the contracting parties. The point involved in this discussion may be put shortly thus—Is a reference to the decision of disputes 'by British law' essential to the application of that law, or can it be inferred as above suggested? The answer is, I think, that it is not essential.

.....

*The power to declare what the rights are is, therefore, I think, to be derived from such a grant as the one referred to above, as well as the right to determine all disputes in connexion with them." Piggott, Extraterritoriality (1907), 77-78. (Italics added.)*

The practice was so well established of considering the foreigner immune from the application of the local law in extraterritorial countries that some of the older writers have felt compelled, in order to explain the practice in legal terms, to resort to the fiction that the foreigner, while residing in countries of extraterritorial jurisdiction, was considered for all legal purposes as residing in the State from which he came. Thus Féraud-Giraud writes:

"Thus it is that the foreigner established in *les Échelles du Levant et de la Barbarie* will always keep his nationality, his civil

and political rights, as if he had never ceased to reside in the metropolitan territory.

*That residing in a foreign territory, he keeps [remains subject to] his national laws....*

That he shall be subject to his national jurisdiction, in civil matters or in criminal matters.

*And that not only he keeps [remains subject to] his law and his judges, but that the power of administration and of police to which he is subject, shall be again exercised by a delegate of his government and such power shall be exercised under the control and supervision of that government." II, Féraud-Giraud, De la Jurisdiction française dans les Échelles du Levant et de Barbarie (1871), 59. (Italics added ; translation.)*

See also by the same writer, *Les Justices mixtes dans les Pays hors Chrétienté* (1884), 12. Other writers similarly support the theory that the immunity of the foreigner from the local law should be explained in terms of the fiction of extraterritoriality :

"From the whole of the privileges granted by the [Ottoman] Porte, it appears clearly that French citizens may from now on live in Turkey under the protection of their consuls, with the advantages which they possess in their country as if they had never ceased to reside there. 'On the Mohammedan territory', writes M. A. Benoit, 'they continue to be subject to their national law.... From this exceptional situation there results for them [French citizens] a sort of exterritoriality similar to the one which guarantees to foreign ambassadors accredited to foreign courts the independence necessary to their functions....'

.....

In principle, French law rules in a sovereign manner in our consular tribunals.... Thanks to the fiction of exterritoriality resulting from the capitulations, *French citizens residing in the Ottoman territory are reputed living still in their mother country and subject to their national laws.*" *Le Régime des Capitulations par un ancien Diplomate* (1898), 215, 235. (Italics added ; translation.)

The French courts have repeatedly held that French citizens in countries of extraterritorial jurisdiction were to be considered as living in France and subject only to French law. See the conclusion of Pietri, supported by an example upheld by the *Cour de Cassation*, that French *jurisprudence* abounds in decisions to this effect. Pietri, *Étude critique sur la Fiction d'Exterritorialité* (1895), 319-320. See also the decision of the Court of Aix, the Court of Appeals in France for French consular courts, of November 9, 1905, in II, *Revue de Droit international privé et de Droit pénal international* (1906), 288-292.

Most of the writers, however, have not felt it necessary to rely on the fiction and have simply acknowledged the fact that a regime of extraterritorial jurisdiction removes the foreigner from the effect of the local law. Thus Moore states :

"Owing to diversities in law, custom, and social habits, the citizens and subjects of nations possessing European civilization enjoy in countries of non-European civilization, chiefly in the East, an extensive exemption from the operation of the local law. This exemption is termed 'extraterritoriality.'" II, *Digest of International Law* (1906), 593. (Italics added.)

Abi-Chahla writes :

"As a general rule, the foreigner is withdrawn from the effect of the territorial laws and jurisdictions and depends upon the consular representatives of his own country." Abi-Chahla, *L'Extinction des Capitulations en Turquie et dans les Régions arabes* (1924), 74. (Italics added ; translation.)

Matine-Daftary declares :

"The regime of capitulations is a privileged regime which withdraws the nationals of a foreign State from the application of the laws and from the civil and criminal jurisdiction of the tribunals of the State in the territory of which they reside, and which subjects them to the jurisdiction of their own State, as exercised by its consul." *La Suppression des Capitulations en Perse* (1930), 39.

See also : IV, Pradier-Fodéré, *Traité de Droit international public* (1888), 735 ; Dislere et de Moüy, *Droits et Devoirs des Français dans les Pays d'Orient et d'Extrême-Orient* (1893), 38-39 ; Pietri, *Étude critique sur la Fiction d'Exterritorialité* (1895), 283-291 ; Le Bœuf, *De la Protection au Maroc* (1905), 11 ; II, Nys, *Le Droit international* (1912), 466 ; Bonfils, *Manuel de Droit international public* (7th ed. rev. Fauchille, 1914), 520 ; de Heyking, *L'Exterritorialité* (1926), 166 ; Ouang, *Essai sur le Régime des Capitulations en Chine* (1933), 6 ; Flournoy, *British Policy towards Morocco* (1935), 221. The general principle, therefore, under a regime of extraterritorial jurisdiction such as prevailed in Morocco was that the local law did not apply to foreigners and that they were subject only to their national law.

Contrary to the contention of the French Government, the treaties concluded by Morocco are in conformity with the principle. A number of treaty provisions indicate clearly that in Morocco immunity from the local law and extraterritorial jurisdiction were one and the same thing. Articles 20 and 21 of the United States Treaties of 1787 and 1836 provided :

"If any of the citizens of the United States, or any persons under their protection, shall have any dispute(s) with each other, the Consul shall decide between the parties ; and whenever the Consul shall require any aid, or assistance from our Government, to enforce his decisions, it shall be immediately granted to him.

If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the Consul assisting at the trial ; and

if any delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever." (Annexes 18 and 19.)

The extraterritorial jurisdiction of the United States in cases arising between American citizens was defined in Article 20 by reference to the authorities exercising the judicial power so conferred. The jurisdiction of Moroccan courts was defined in Article 21 by stating that in mixed criminal cases American nationals were subject to the law of Morocco. The judicial power and the law to be administered were considered, therefore, as one and the same thing. To grant jurisdiction to the United States consul in cases arising between American nationals was to specify the subjection of American nationals to American law ; to recognize that American nationals, in mixed criminal cases, were subject to Moroccan law was to subject them to the jurisdiction of Moroccan courts. A similar reasoning applies to Articles V and VI of the Spanish Treaty of 1799 :

"In all the demands for payment of debts and for execution of contracts or in all other differences which the subjects of Morocco shall have against Spanish nationals, they shall address themselves to the Consul-General of Spain, to the Vice-Consuls, or the Agents in their respective districts so that they, by making them appear, shall terminate and arrange the differences and constrain them, if it is necessary, to fulfil their obligations ; and in the reverse case, said agents shall notify the Moroccan Government so that its subjects shall pay to the Spaniards that which they owe, and shall act so that execution shall give rise to no delays, for the administration of justice must be reciprocal and in good faith if it is to be a solid foundation for friendship and good harmony between the two nations and for the existence and well-being of all." (Translation from a French text ; see Annex 17.)

"Every Spanish national who shall commit in the States of Morocco some scandal, injury or crime deserving penalty or punishment, shall be surrendered to his Consul-General or Vice-Consuls so that, *according to the laws of Spain*, he shall be so punished or be sent back to his country properly guarded, every time the circumstances shall so require. The same thing shall reciprocally be observed with respect to Moroccan delinquents in Spain...." (Italics added ; translation from a French text ; see Annex 17.)

The omission of any reference to the applicability of Spanish law in Article V, and the emphasis on the applicability of such law in Article VI indicate that references to the Spanish law and references to the judicial power of the Spanish consul were used synonymously to serve an identical purpose. Another illustration of the identity in the Moroccan treaties of the concepts of law and of jurisdiction is furnished by Article 11 of the Convention of Madrid :

"The right to hold property is recognized in Morocco as belonging to all foreigners.



The purchase of property must take place with the previous consent of the Government, and the title of such property shall be subject to the forms prescribed by the laws of the country.

Any question that may arise concerning this right shall be decided according to the same laws, with the privilege of appeal to the Minister of Foreign Affairs stipulated in the treaties." (Annex 31.)

It could not be doubted that the reference to the laws of Morocco in the first part of the last paragraph is designed to confer jurisdiction upon the Moroccan courts in cases concerning ownership of real property, nor that the reference to the Moroccan appellate jurisdiction in the last part of the same paragraph subjects the case on appeal to Moroccan law. A similar example is furnished by Article 15 of the same Convention which provides that, in some cases, Moroccan subjects naturalized in a foreign country who would normally be subject to the jurisdiction of the consular court of their new nationality, will have to submit to "the laws of the Empire", or leave Morocco.

Since the grant of immunity from the local law conferred by the grant of jurisdiction was the general rule in the Moroccan treaties, it is not unusual to find a number of treaty provisions which confirm the general rule by stating expressly that the law applicable to the foreigner in the particular case covered by the provision is his national law. The argument of the French Government that such express statements would have been useless if the immunity from the Moroccan law had been the usual rule is without validity. The only question is whether there exists a conflict in the treaties between the provisions granting immunity from the local law and other provisions. The provisions under reference such as Article XII of the British General Treaty of 1856 (Annex 20) and Articles IX, XIV and LIX of the Spanish Treaty of 1861 (Annex 22) specifying that the foreign law applies, might be repetitions to a limited extent, but are in complete conformity with the jurisdictional provisions conferring immunity from the local law. If it were necessary, the repetitions would probably be explained on the ground that the provisions involved dealt with special problems directly or indirectly related to jurisdiction in which the parties were sufficiently interested to agree on the drafting of a special provision and where, out of an excess of caution, they reiterated the rule of non-applicability of Moroccan law to the foreigner.

Similarly, the argument that the extensive immunities, amounting to diplomatic immunity, granted to foreign consuls would have been useless unless the applicability of Moroccan law had been considered the general rule cannot be supported. The immunity from the application of the local law, it has been shown, was coextensive with the extent of the jurisdiction conferred. A grant of jurisdiction to the foreign consul in all cases in which his nationals were defendants completely removed such nationals from the

effect of Moroccan law. This, however, was the last stage of the development of extraterritorial jurisdiction in Morocco. At an earlier stage, the foreign consul had jurisdiction only in cases arising between his nationals. Cases arising between his nationals and natives were within the jurisdiction of the Moroccan courts. The immunity from the application of Moroccan law was, accordingly, limited in scope. Thus it was necessary to provide the foreign consuls with an all-inclusive and absolute immunity from the effect of the Moroccan law, and the more so since the consul exercised in Morocco functions by far more important than those he would have normally exercised in other countries.

The recognition in Article II of the Convention of Madrid of the jurisdiction of the Moroccan courts over all cases involving title to real property, irrespective of the nationality of the owner, does not in any manner conflict with the general rule of immunity of foreigners from the application of Moroccan law. Ownership of real property was the one right which Mohammedan countries such as Morocco never conceded to foreigners until very late in their history because of the fact that, in conformity with the personal concept of law, the foreigner was absolutely banned on religious grounds from such ownership. Significantly, when foreigners obtained the right to buy real property at the Conference of Madrid, the grant of the right was made conditional upon an express recognition that the Moroccan courts would continue to exercise jurisdiction in cases involving such ownership and that the Moroccan law would continue to apply. The same history took place in other Mohammedan countries. Jurisdiction of the local courts over all cases involving ownership of real property is an exception just as characteristic of extraterritorial jurisdiction as is the general rule of non-applicability of the local law to foreigners in all other cases. See I, Pélassié Du Rausas, *Le Régime des Capitulations dans l'Empire ottoman* (1902), 456-479.

There was not, as contended by the French Government, a general recognition in the treaties of the applicability of Moroccan police powers to foreigners. The only provision quoted in support of this allegation is contained in Article IV of the General Treaty concluded by Morocco with Great Britain in 1856.

“With respect to the personal privileges to be enjoyed by the subjects of Her Britannic Majesty in the dominions of the Sultan of Morocco, His Sherifian Majesty engages that they shall have a free and undoubted right to travel and to reside in the territories and dominions of his said Majesty, subject to the same precautions of police which are practised towards the subjects or citizens of the most favoured nations.” (Annex 20.)

If this provision were to be construed as subjecting British nationals to the police laws of Morocco, it would be so only to the extent of police laws concerning travel and residence. This article,

moreover, does not state that British nationals are subject to such police laws. It states that they are free to travel and reside "subject to the same precautions of police practised" towards other foreigners. While the nature of these precautions of police is not too clear, it is submitted that they do not refer to police laws in the modern sense of the term, as alleged by the French Government. It is clear beyond doubt in any event that as a matter of practice Moroccan police laws never applied to foreigners in Morocco and that even the French Protectorate authorities did not consider them applicable to either British or American nationals without the consent of their respective Governments. See Memorial, page 73, and the references to the British Order in Council of October 29, 1914, 108 *British and Foreign State Papers* (1914), 160-161.

While freedom of trade is recognized in the treaties, specified exceptions are provided with respect to the import of certain products and the right is reserved to Morocco to prohibit exports when necessary. Imports and exports, moreover, are subject to the payment of duties. From the presence of these provisions, the French Government concludes that foreigners as a general rule were subject to Moroccan law. This conclusion, in the view of the United States Government, is unwarranted. The presence of these provisions simply reflects the factual and historical conditions within which extraterritorial jurisdiction developed in Morocco. The essential purpose of the treaties concluded by Morocco was to guarantee to foreigners freedom of residence and travel and freedom of trade. The problem of determining the legal status of foreigners arose only after, and as a consequence of, the granting by Morocco of the right to enter the territory and to trade therein. After a period of progressive development, the result was reached that foreigners were submitted to a regime of extraterritoriality which removed them from the application of the local law. This expansion therefore was necessarily limited by the specific reservation of powers included in the treaties, such as those concerning prohibitions on exports and the collection of duties.

Expert authorities, familiar with Morocco, support the view that the Moroccan treaties, like the treaties concluded by other countries in which extraterritorial jurisdiction developed, granted to all foreigners immunity from the application of the local law. Thus Ménard (writing as President of the Bar of the Mixed Court of Tangier) has expressed the view that under the regime of extraterritorial jurisdiction prevailing in Morocco, foreigners were subject only to their national law :

"To obtain that capitulatory Powers renounce their privilege of jurisdiction, it was necessary, in a word, not to affect, or at least to affect as little as possible, their privilege of legislation.

*I shall show, indeed, that this regime of capitulations is to be analyzed in these two privileges, the last one [privilege of legislation]*

being that *the capitulatory ressortissant is submitted, in principle, only to his national law....*

The positive aspect of the privilege of legislation is that the *foreigner, generally speaking, is in all respects subject except as concerns immovable property, only to his national law which is applied by his consular jurisdiction.*" I, Ménard, *Traité de Droit international privé marocain* (1935), 161, 174. (Italics added ; translation.)

The 1951 *Cours élémentaire d'Organisation administrative marocaine, à l'Usage des Candidats aux Fonctions publiques*, by Pourquier and Chagneau, specifically states that Moroccan law did not apply to foreigners under the regime of extraterritorial jurisdiction :

"The privilege of jurisdiction thus defined created, in fact, a privilege of legislation, since, when the consul judged one of his ressortissants, he naturally applied his national law, and not the local law. *Such law accordingly had no effect with respect to foreign ressortissants.*" (Italics added ; translation ; Fasc. I, p. 7.)

The 1949 edition of the same publication contains a statement that the effect of the privilege of jurisdiction and of the privilege of legislation was to place the citizens of foreign Powers "under the regime of extraterritoriality". (Fasc. IX, p. 4.)

The statement made by the "Président de Chambre" of the Court of Appeals of Rabat, French Morocco, on the occasion of the opening session of the Court in the fall of 1932, indicates that the immunity of foreigners from the application of the Moroccan law was recognized as a matter of course by French judicial circles :

"The Court of Rabat believes that the foreigners must not be deprived of the *legislative immunities* which they enjoyed under the regime of capitulations." *Discours de Rentrée, Cour d'Appel de Rabat, Audience solennelle du 3 Octobre 1932*, quoted by Ménard, *op. cit. supra*, 162. (Italics added ; translation.)

Similarly, the Mixed Court of Tangier stated in a case decided November 8, 1949 :

"Furthermore, on the other hand, the Mixed Court is without competence to take cognizance of a suit brought against a Moroccan by a citizen of the United States of America, who, as a result of the refusal of the American State to renounce its capitulatory rights, continues to enjoy complete legislative and jurisdictional immunity, and may himself be cited only before his own consular tribunal." (Annex 97.)

The remaining question is whether the rule of non-applicability of Moroccan law to foreigners continued to apply after the establishment of the French Protectorate in 1912. The practice followed by the French authorities since 1912 of requesting the assent of the Governments of Great Britain and of the United States to legislation enacted by the Protectorate is most convincing evidence that,

in the view of the Protectorate authorities themselves, the local law did not apply otherwise to British and American nationals.

The practice of assent was a familiar feature in all countries where constitutional jurisdiction prevailed. Thus, for example, the Turkish Government stated in a memorandum dated July 7, 1869, in which it objected to the extraterritorial jurisdiction of foreign Powers :

“Consequently, the pretension of foreigners to refuse to abide by a particular law of the Empire, *because it has not been formally recognized by the ambassador or the consul from whom they depend .... must not be admitted in the future.*” Quoted by Pélissié du Rausas, *op. cit. supra*, 223. (Italics added ; translation.)

Referring to the situation of the foreigner in Morocco under the treaties, Ménard states :

“... local laws and regulations being applicable to him [foreigner] only with the express adherence of the government of the Power on which he depends...”. *Op. cit. supra*, 161. (Translation.)

It is only in countries of extraterritorial jurisdiction, it is believed, that this practice of assent developed. Only in those countries was it necessary to develop a legal means of rendering the local law applicable to foreigners when the circumstances so required. The practice was followed in Morocco by the Protectorate authorities. The only possible explanation for their following this practice is that they recognized the immunity of British and American nationals from the local law resulting from the maintenance by Great Britain and the United States of their right of extraterritorial jurisdiction in Morocco.

The French Government specifically admits the existence of this practice from 1912 to the present day. The proposed explanation that this practice was merely a courtesy cannot be accepted. From the early days of the Protectorate, the Government of the United States took the position that no legislation would be considered applicable to United States nationals unless the prior consent of the United States had been secured. The United States Government has consistently objected in the course of the past forty years to any attempt to make applicable to its nationals legislation not previously submitted to its express assent. The Protectorate authorities were on notice, therefore, of the legal significance which was ascribed to the requirement of assent by the United States. By submitting hundreds of laws to the assent of the United States for forty years, the Protectorate authorities clearly attributed the same legal significance to the practice of assent.

In conclusion the Government of the United States submits that :

- a. Under the regime of extraterritorial jurisdiction now exercised by the United States in Morocco, United States citizens are not subject, in principle, to the application of Moroccan laws ;

- b. Such laws become applicable to the United States citizens only if they are submitted to the assent of the United States Government and this Government agrees to make them applicable to its citizens.

## SUBMISSIONS

On the basis of the observations presented herein, and without prejudice to observations and conclusions further to be presented, the Government of the United States submits that :

1. The submissions and conclusions presented by the French Government in this case should be rejected on the ground that the French Government has failed to maintain the burden of proof which it assumed as party plaintiff and by reason of the nature of the legal issues involved.

2. The treaty rights of the United States in Morocco forbid Morocco to impose prohibitions on American imports, save those specified by the treaties, and these rights are still in full force and effect.

The Dahir of December 30, 1948, imposing a prohibition on imports is in direct contravention of the treaty rights of the United States forbidding prohibitions on American imports and the French Government by applying the Dahir of December 30, 1948, to American nationals, without the consent of the United States, from December 31, 1948, to May 11, 1949, violated the treaty rights of the United States and was guilty of a breach of international law.

American nationals cannot legally be submitted to the Dahir of December 30, 1948, without the prior consent of the United States which operates to waive temporarily its treaty rights.

3. The jurisdiction conferred upon the United States by the Treaties of 1787 and 1836 was jurisdiction, civil and criminal, in all cases arising between American citizens.

In addition, the United States acquired in Morocco jurisdiction in all cases in which an American citizen or protege was defendant through the effect of the most-favored-nation clause and through custom and usage.

Such jurisdiction was not affected by the surrender by Great Britain in 1937 of its rights of jurisdiction in the French zone of Morocco.

Such jurisdiction has never been renounced, expressly or impliedly, by the United States.

4. Under the regime of extraterritorial jurisdiction now exercised by the United States in Morocco, United States citizens are not subject, in principle, to the application of Moroccan laws.

Such laws become applicable to the United States citizens only if they are submitted to the prior assent of the United States Government and if this Government agrees to make them applicable to its citizens. The Dahir of December 30, 1948, not having been submitted to the prior assent of the United States Government, cannot be made applicable to United States citizens.

On the basis of the arguments which it has presented in support of its counter-claims, the United States Government requests the Court to judge and to declare that :

1. Under Article 95 of the Act of Algeciras, the value of imports from the United States must be determined for the purpose of customs assessments by adding to the purchase value of the imported merchandise in the United States the expenses incidental to its transportation to the custom-house in Morocco, exclusive of all expenses following its delivery to the custom-house, such as customs duties and storage fees.

It is a violation of the Act of Algeciras and a breach of international law for the customs authorities to depart from the method of valuation so defined and to determine the value of imported merchandise for customs purposes by relying on the value of the imported merchandise on the local Moroccan market.

2. The treaties exempt American nationals from taxes, except as specifically provided by the same treaties ; to collect taxes from American nationals in violation of the terms of the treaties is a breach of international law.

Such taxes can legally be collected from American nationals only with the previous consent of the United States which operates to waive temporarily its treaty right, and from the date upon which such consent is given, unless otherwise specified by the terms of the consent.

Consumption taxes provided by the Dahir of February 28, 1948, which were collected from American nationals up to

October 28, 1950, date of the application of the French Government in this case, were illegally collected and should be refunded to them.

3. Since Moroccan laws do not become applicable to American citizens until they have received the prior assent of the United States Government, the lack of assent of the United States Government to the Dahir of February 28, 1948, rendered illegal the collection of the consumption taxes provided by that Dahir.

*(Signed)* ADRIAN S. FISHER,  
Agent of the Government  
of the United States of America.

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## ANNEXES

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OF SEPTEMBER 17, 1631

*Source: Rouard De Card, Les Traités Entre La France et Le Maroc (1898), 191-194.*

*Traité de paix entre Louis XIII, Empereur de France, et celui du Maroc. Fait à Maroc le 17 septembre 1631*

Au Nom de Dieu tres-pitoiable et tres-misericordieux, auquel tout le monde doit rendre compte, par commandement du tres-haut, l'Empereur tres-puissant et juste, le Successeur de la Maison du Prophete Mahumet, le Roi Molei Elgualid, et Fatmi, et Hafni et Prophetic.

Dieu veuille favoriser son Roiaume, et que ses Armes soient toujours florissantes, et qu'il soit heureux en sa vie. Nous ordonnons avec la faveur de Dieu et son pouvoir et sa main droite avec ses benedictions, ce tres-haut Traité, l'Imperial, le Roial qui est pour le soulagement de tous les maux passez, avec l'aide de Dieu, et pour la continuation de Paix, contracté avec le tres-haut et tres-puissant l'Empereur de France, avec la confiance et seureté qui se doit tant en general que particulier.

Sçavoir faisons à tous ceux qui liront et auront connoissance de la teneur du présent Traité, que nous faisons Alliance de nostre tres-Haute Couronne avec celle de l'Empereur Tres-Chrétien, qui professe la Loi du Messie, par l'entremise de tres-nobles, tres-prudens et vaillans les Sieurs Chevaliers de Razilli et du Chalard Amiral et Vice-Amiral de la Flotte envoyée par Sa Majesté Tres-Chrétienne en nos côtes d'Afrique, avec pouvoir de faire et signer le présent Traité, pour et au nom du tres-haut et tres-puissant entre tous les Potentats de la Chrétienté, tenant le plus haut Siege de valeur et vertu l'invincible Empereur de France et de Navarre, Fils ainé de l'Eglise, Protecteur du Saint-Siege : afin d'entretenir la Paix et seureté qui a esté par ci-devant entre nos Predecesseurs et les siens, et pour apaiser la Guerre, laquelle s'est du depuis ensuivie, et tant pour ôter toutes les occasions des maux, plaintes et dommages passez, que pour la seureté des Esprits et cessation des meurtres et captivités. La continuation de cette conformité sera veritable pour le commun Droit des Sujets de l'une et l'autre Couronne suivant les Conditions qui seront ci après declarées, lesquelles obligent à toute sorte de tranquillité, profit et assurance des biens et personnes des dits Sujets, et avec ces Conditions avons accordé ce qui nous a été demandé aux Articles suivants : c'est à sçavoir ;

I. — Que tous les differents, pertes et dommages qui sont arrivez par ci-devant, entre les Sujets de l'une et de l'autre Couronne, seront pour nuls et non advenus.

II. — Que tous les Captifs François qui sont et viendront à Salé, Saffi et autres endroits de nos Roiaumes, soient à l'instant donnez pour libres, et que l'on ne les puisse jamais captiver d'oresnavant.

III. — Que les Mores ne pourront captiver aucun François que l'on amenera dans les Navires de Tunis ou Alger, et s'ils les acheptent, ne les pourront tenir captifs, ains au contraire seront obligez de les rendre libres.

IV. — Que tous les Marchands François qui viendront aux Ports de nos Roiaumes pourront mettre en terre leurs Marchandises, vendre et achepter librement, sans paier aucun Droit que la Dixme et Tavalit reconneu comme aussi de même seront obligez en France les Marchands nos Sujets.

V. — Que les Navires des François pourront emporter de nos Ports tout ce qui leur sera nécessaire, et des victuailles la part ou le temps leur offrira : et de même nos Sujets dans les Ports de la France.

VI. — Que si la Mer par tourmente jectoit quelques Navires sur nos côtes et sables, qu'aucuns de nos Sujets ne soient si osez de mettre la main en aucune chose des dits Navires, et biens généralement quelconques, ni sur les hommes, ains au contraire qu'ils puissent retirer leurs dits Navires et biens, et les emmener ou emporter où bon leur semblera et de même les Mores en France.

VII. — Que si quelqu'un des Navires de nos Sujets prenoit quelques Navires des Ennemis, dans lesquelles se trouvât des dits Chrétiens François seront libres avec leurs biens.

VIII. — Et leurs permettons qu'ils puissent établir des consuls François dans nos ports où bon leur semblera, afin qu'ils soient intercesseurs dans les dits Ports entre les Chrétiens François et les Mores, et autres quels qu'ils puissent estre, soit en leurs ventes ou achapts, et qu'ils les puissent assister en tout ce qui leur pourra arriver de dommages, et ne pourront faire les plaintes en notre Conseil suivant les coutumes, et que l'on ne les trouble en leur Religion : et que des Religieux pourront estre et demeurer en quelque part que soient établis les dits Consuls, exerçant leur dite Religion avec les dits François et non avec d'autre Nation.

IX. — Que tous les différens qui arriveront entre les Chrétiens François, soit de Justice ou autrement, l'Ambassadeur qui résidera en nos dits Roiaumes, ou Consuls les pourront terminer, si ce n'est qu'ils veüillent venir par devant nous pour quelque dommage receu.

X. — Que s'il arrivoit que les Consuls commissent quelque délit en leurs affaires, leur sera pardonné.

XI. — Que s'il arrivoit que quelque uns de nos Sujets de ceux qui sont dans nos Ports ne voulussent obeir au présent Traité de Paix, contracté entre nos deux Couronnes, et prissent quelques François Chrétiens par Mer et par Terre seront chatiez, et pour cette occasion ne se pourra rompre la Paix qui est entre nous.

XII. — Que si les navires de nos ennemis estoient dans les Ports de France et en leur protection, nos Navires ne pourront les en sortir, et de même les Ennemis de France s'ils estoient dans nos Ports.

XIII. — Que l'Ambassadeur de l'Empereur de France qui viendra en nôtre Cour, aura la même faveur de respect que l'on rendra à celui qui résidera de nôtre part en la Cour de France.

XIV. — Et si ce traité de Paix, contracté entre Nous et l'Empereur de France venoit à se rompre, ce que Dieu ne permette, par quelque différend qui pourroit arriver, tous les Marchands qui seront de l'un Royaume à l'autre se pourront retirer avec leurs biens où bon leur semblera pendant le temps de deux mois.

XV. — Que les Navires des autres Marchands Chrétiens, quoiqu'ils ne soient pas François, venans en nos Roiaumes et Ports avec la Bannière Française pourront traiter comme François, ainsi qu'il se pratique en Levant et Constantinople.

XVI. — Que le présent Traité de Paix sera publié dans l'étendue des Empires, de Maroc et de France, afin qu'estant sceu, les Sujets de l'une et de l'autre Couronne puissent traiter seurement.

Tous les Articles ci-dessus mentionnez sont seize, lesquels sont pour le bien general et particulier, sans qu'il y ait dommage ni préjudice pour le Morisme, ni pour les Mores, d'autant que c'est pour le soulagement et Paix generale, laquelle estoit contractée par ci-devant entre nos predecesseurs de l'une et de l'autre Couronne. Et par ainsi nous concluons avec la faveur de Dieu et son commandement et promettons de les executer sans y contrevenir, et nous obligeons à entretenir inviolablement cette paix et union que nous avons signée à Maroc le 18 du mois de Safar 1041 qui est le 17 septembre 1631.

*Signé* : ELGUALID.

Et est écrit le présent Traité en Arabique, sera nul s'il n'est conforme à celui que nous avons signé en François.

*Signés* : Le chevalier DE RAZILLI, et DU CHALARD.

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*Annex No. 2*

TREATY BETWEEN MOROCCO AND FRANCE  
OF SEPTEMBER 24, 1631

*Source* : Rouard De Card, *Les Traités Entre La France et Le Maroc* (1898), 195-197.

*Traité entre Louis XIII, Empereur de France,  
et Molei Elgualid, Empereur de Maroc.*

*Fait en la rade de Saffi, le 24 septembre 1631*

I. — Premièrement que tous les differens de l'une et de l'autre Couronne demeurent pour nuls d'oresnavant.

II. — Qu'aucuns Mores ni autres Sujets de l'Empereur du Maroc ne pourront estre Captifs en France.

III. — Que Sa Majesté Tres-Chrétienne emploiera sa faveur pour le rachapt du Morabite nommé Sidi-le-Ragragri qui est à Malte, ainsi qu'il est porté par la lettre de l'Empereur de Maroc.

IV. — Que Sadite Majesté Très-Chrétienne n'assistera ni aidera les Espagnols contre les Sujets dudit Empereur de Maroc, et en cas qu'il les assiste, les François qui se trouveront pris dans les Armemens, seront de bonne prise comme les Espagnols.

V. — Que les François ne traiteront avec les Sujets rebelles de l'Empereur de Maroc, tant pour vendre que pour achepter, ni leur fourniront d'Armes et Munitions de Guerres, Navires ni autres choses qui sont ; c'est à sçavoir à Assi, de Messe et autres.

VI. — Que si l'Empereur de Maroc a besoin de Navires et Munitions pour son service, il en pourra avoir de France, pourveu que ce ne soit pas contre les Amis de Sa Majesté Tres-Chrétienne.

VII. — Qu'en France l'on ne forcera les Mores en ce qui sera de leur Religion, non plus que les François ne le seront dans les Roiaumes de l'Empereur de Maroc, et sans qu'aucune Justice contraigne lesdits Mores.

VIII. — Que Sa Majesté Tres-Chrétienne donnera la liberté aux Mores qui sont dans ses Galleres à Marseille, comme semblablement l'Empereur de Maroc donnera la liberté à tous les François qui se trouveront en ses Roiaumes et Ports.

IX. — Que s'il arrivoit quelque différent entre les Mores Marchands qui seront en France, l'Ambassadeur de l'Empereur de Maroc résidant en France les terminera, et le même se fera par l'Ambassadeur ou Consul de France en Affrique.

X. — Que s'il arrivoit quelque différend entre les Sujets de Sa Majesté Tres-Chrétienne, et les Sujets de l'Empereur de Maroc, tant par Mer que par Terre, ou aux Ports et Rades de Barbarie, les François ne pourront faire aucune prise sur les Sujets dudit Empereur, ains s'adresseront à ses Juges et Officiers et restitution leur sera faite, ce qui sera réciproquement en France.

XI. — Que les Sujets de Sa Majesté Tres-Chrétienne pourront empêcher et défendre qu'aucuns Anglois ou autres Nations puissent trafiquer ni porter aucunes Armes, ni autres choses aux Sujets rebelles de l'Empereur de Maroc.

XII. — Que tous les Jugements et Sentences qui seront donnez par les Juges et Officiers de l'Empereur de Maroc entre les Sujets de Sa Majesté Tres-Chrétienne et les Sujets dudit Empereur, seront valablement executez, sans qu'ils s'en puissent plaindre au Roiaume de France, et le même se pratiquera entre les Sujets de Maroc et les François en France.

XIII. — Que tous les Navires François qui traiteront aux Roiaumes et Ports de l'Empereur de Maroc, ne pourront tirer desdits Roiaumes de l'or monnoyé, comme il estoit accoutumé du tems des Predecesseurs de Sadite Majesté Impériale ; mais pourront transporter toute sorte d'autre Or en Tibar, Lingots, et autre Or rompu et non monnoyé, et

s'ils en estoient trouvez saisis, sera confisqué en quelque quantité que ce soit.

XIV. — Que si les ennemis de l'Empereur de Maroc portent ou amènent en France de ses Sujets, ils seront mis en liberté de même qu'il a esté accordé pour les Sujets de Sa Majesté Tres-Chrétienne.

XV. — Que les François ne pourront traiter de la Paix avec aucuns des sujets de l'Empereur du Maroc, que par mon Autorité ; d'autant que cette Paix sera publiée et exécutée par tous les Roiaumes de Sa Majesté.

Et les présens Articles seront signés et scellés de la main et Sceau desdits Sieurs Commandeur de Razilli, du Chalard, dont la ratification de Sa Majesté Tres-Chrétienne sera envoyée dans un an à l'Empereur de Maroc.

Fait à la rade de Saffi, le 24<sup>e</sup> jour du mois de septembre 1631.

Signé : Le chevalier DE RAZILLI, et DU CHALARD.

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*Annex No. 3*

TREATY BETWEEN MOROCCO AND FRANCE OF JULY 18, 1635

*Source : Rouard De Card, Les Traités Entre La France et Le Maroc (1898), 198-199.*

*Traité entre le Roi Louis XIII, Roi de France et de Navarre, et Moléi Elgualid, Empereur du Maroc, Roi de Fez, de Suz et de Salé, etc. Fait à Saffi, le 18 juillet 1635*

I. — Que leurs Majestez desirans relier leur amitié et bonne correspondance, avec sincere et reciproque affection, ayant esté interrompue par la faute de certains mal-intentionnez, dont la punition sera faite, Promettent que le Traité de la Paix cy-devant faite entre leursdites Majestez, au mois de Septembre 1631, est et demeurera valablement confirmée en tous ses Points et Articles, sans qu'à l'advenir il y puisse estre contrevenu en quelque sorte et maniere que ce soit.

II. — Et s'il arrivoit par l'entreprise d'aucuns des Sujets de leurs Majestés, de contrevenir audit Traité de Paix, que sur la plainte qui leur en sera faite, les coupables seront chastiez comme criminels, rebelles et perturbateurs du repos public, et seront tenus du dommage des parties.

III. — Que tous les François detenus esclaves, pris et retenus depuis le Traité de Paix, seront presentement rendus au sieur du Chalard, pour Sadite Majesté Tres-Chrétienne : et de mesme les Sujets du Roy de Maroc, qui luy sont envoyez par Sa Majesté Tres-Chrétienne.

IV. — Que les Gouverneurs et habitans des Villes et Forteresses de Salé et autres Sujets du Roi de Maroc, rendront tous les François pris et retenus depuis la Paix, sans paier aucun rachap. Ce que ledit Roi de Maroc leur commandera tres-expressément par de Tres-Royales

lettres, et en cas de refus, Sa Majesté Tres-Chrétienne se servira de ses moyens, sans que la Paix d'entre leurs Majestez se puisse rompre.

V. — Que les Raiz et Capitaines des Vaisseaux des Sujets du Roi de Maroc qui trafiqueront en France, porteront Passeport de Sa Majesté ou des Gouverneurs des Villes et Ports où ils seront equippez : et de mesme tous les Capitaines ou Maistres de Navires qui arboreront la Bannière Françoisé, seront obligez de porter un Congé de Sa Majesté Tres-Chrétienne ou de son Eminence le Seigneur Cardinal, Duc de Richelieu, Pair, Grand-Maistre, Chef et Surintendant général, de la Navigation et Commerce de France.

VI. — Ne sera, ni pourra estre rien attenté sur les personnes et biens des Consuls de la Nation Françoisé, qui seront pourveus desdits Offices par Sa Majesté Tres-Chrétienne et établis en chacune des Villes et Ports des Roiaumes et Empire de Maroc, ains en jouiront avec les Privileges, Franchises, Préeminences, Droits et Libertez, appartenans et attribuez ausdits Consuls, lesquels seront assistez pour l'exercice de leur Religion, les François et austres Chrétiens, des Gens d'Eglise François, qui seront envoieez pour demeurer avec lesdits Consuls en tous lieux d'Afrique.

Et seront lesdits Articles de Paix du mois de septembre 1631, publiez par toutes les Villes, Ports et Rades des Roiaumes de leurs Majestez.

Lesquels dits presens Articles seront signez au nom de Sa Majesté Tres-Chrétienne, par le Sieur du Chalard, Conseiller en son Conseil d'Estat, et Gouverneur de la Tour de Cordoüan, en vertu du Pouvoir et Commission qu'il en a du 24<sup>e</sup> jour du mois d'octobre 1634.

*Signé* : LOUIS.

Et plus bas, Par le Roi, BOUTHILLIER ; scellée du grand Sceau de cire jaune, sur double queuë pendante.

Fait à Saffi, le 18<sup>e</sup> jour du mois de juillet 1635.

Je certifie que les Articles de la Paix dont copie est cy-dessus transcrite, sont conformes et de même teneur que ceux que le Roi de Maroc a signez, écrits en Langue Arabe, baillez à Monsieur du Chalard, qui a signé ceux écrits en François, au nom du Roi Tres-Chrétien, envoyez au Roy de Maroc.

Fait à Saffi le 19 juillet 1635.

*Signé* : MORAT.

## Annex No. 4

TREATY BETWEEN MOROCCO AND FRANCE  
OF JANUARY 29, 1682

Source : *Rouard De Card, Les Traités Entre La France et Le Maroc (1898), 200-204.*

*Articles et Conditions de Paix traitez par l'ordre exprès de très-haut, très-puissant, très-excellent et très-invincible Prince Louis XIV, par la grâce de Dieu Empereur de France et Roi de Navarre, avec les Ambassadeurs de très-haut, très-excellent, très-puissant et très-invincible Prince Muley Ismael, Empereur de Maroc, Roi de Fez et de Sus. Fait à Saint Germain en Laye, le vingt-neuvième janvier 1682*

I. — Tous Actes d'Hostilité cesseront à l'avenir entre les Armées de Terre et de Mer, et les Vaisseaux et Sujets de l'Empereur de France, et ceux de l'Empereur de Maroc, Roi de Fez et de Sus.

II. — A l'avenir il y aura Paix entre l'Empereur de France et ses Sujets et l'Empereur de Maroc, Roi de Fez et de Sus, et les siens ; et pourront lesdits Sujets reciproquement faire leur commerce dans lesdits Empires, Royaumes et Pays, et naviguer en toute liberté, sans en pouvoir estre empêchez pour quelque cause et sous quelque prétexte que ce soit.

III. — Les Vaisseaux armez en guerre dans les Ports de l'Empereur du Maroc, rencontrans en Mer les Vaisseaux et Bâtimens navigans sous l'etendart de France, et les Passeports de l'Admiral de France, conformes à la copie qui sera transcrite en fin du présent Traité<sup>1</sup>, les laisseront en toute liberté continuer leur voyage sans les arrester ni donner aucun empêchement, ains leur donneront tout le secours et assistance dont ils pourront avoir besoin ; et reciproquement les Vaisseaux François en seront de même à l'égard des Vaisseaux des Sujets de l'Empereur de Maroc, qui seront porteurs des Certificats du Consul François qui sera établi à Salé, desquels certificats la copie sera pareillement transcrite en fin du présent Traité.

IV. — Les Vaisseaux de Guerre et Marchands des deux Nations seront reçeus réciproquement dans les Ports et Rades, tant de la domination de l'Empereur de France que de celle de l'Empereur de Maroc, et il leur sera donné toute sorte de secours par les Navires et pour les Equipages et Passages en cas de besoin. Comme aussi il leur sera fourni des vivres, agrez, et généralement toutes autres choses necessaires, en les payant aux prix ordinaires et accoûtumez dans les lieux où ils auront relâché.

V. — S'il arrivoit que quelque Vaisseau marchand François étant dans l'un des Ports ou Rades de la domination de l'Empereur de Maroc, fust attaqué par des Vaisseaux de guerre Ennemis, mesmes par ceux d'Alger et de Tunis, et des autres Ports de la Coste d'Afrique, ils seront deffendus et protegez par le Canon des Châteaux et For-

<sup>1</sup> Nous n'avons pas jugé utile de reproduire le modèle de ces passeports qu'on peut trouver dans le *Corps universel diplomatique* de Du Mont, t. VII, 2<sup>me</sup> partie, p. 19.

teresses, et il leur sera donné un temps suffisant pour sortir et s'éloigner desdits Ports et Rades pendant lequel seront retenus lesdits Vaisseaux ennemis, sans qu'il leur soit permis de les poursuivre ; Et la mesme chose s'exécutera de la part de l'Empereur de France, à condition toutefois que les Vaisseaux armez en Guerre par l'Empereur de Maroc ou ses Sujets, ne pourront faire des prises dans l'étenduë de six lieues des Costes de France.

VI. — Tous les François pris par les Ennemis de l'Empereur de France, qui seront conduits dans tous les Ports et les Terres de la domination de l'Empereur de Maroc, seront mis aussi-tost en liberté sans pouvoir estre retenus Esclaves, mesmes en cas que les Vaisseaux d'Alger, Tunis et Tripoly, et autres qui sont ou pourront estre en guerre avec l'Empereur de France, missent à terre des Esclaves François, ledit Empereur de Maroc donnera dès à present ordre à tous ses Gouverneurs de retenir lesdits Esclaves et de travailler à les faire racheter par le Consul François, au meilleur prix qui se pourra et pareille chose se pratiquera en France à l'égard des Sujets de l'Empereur de Maroc.

VII. — Tous les Esclaves François qui sont à présent dans l'étenduë des Terres de la domination dudit Empereur de Maroc, pourront estre racheptez moyennant trois cent livres piece, sans que ceux qui s'en servent à present puissent en demander un plus grand prix ; ce qui sera pareillement observé à l'égard des Esclaves, Sujets dudit Empereur de Maroc qui pourroient estre en France. Et comme par le projet de Trêve fait entre le Sieur de la Barre et l'Alcayde Omar, ledit Alcayde est convenu par le Billet signé de sa main, remis ès mains dudit Sieur de la Barre, qu'il seroit restitué le mesme nombre de François Esclaves qu'il y avoit de Maures sur le vaisseau du nommé Aly Baudy, lesdits Ambassadeurs assuerent qu'aussi-tost que ledit Empereur de Maroc leur Maistre aura connoissance de la vérité du billet donné par ledit Alcayde, il fera restituer le nombre de soixante-cinq François, pour avec vingt que ledit Alcayde a fait restituer, faire le nombre de quatre-vingt cinq, pour l'équivalent du mesme nombre de Maures qui ont esté restituez par ledit sieur de la Barre.

VIII. — Les Etrangers passagers trouvez sur les Vaisseaux François, ni pareillement les François pris sur les Vaisseaux Etrangers, ne pourront estre faits Esclaves sous quelque prétexte que ce puisse estre, quand mesme le Vaisseau sur lequel ils auroient esté pris se seroit deffendu. Ce qui aura pareillement lieu à l'égard des Etrangers trouvés sur les Vaisseaux de Maroc, et des Sujets dudit Empereur de Maroc sur des Vaisseaux Etrangers.

IX. — Si quelque Vaisseau François se perdoit sur les Costes de la dépendance de l'Empereur de Maroc, soit qu'il fust poursuivi par les Ennemis, ou forcé par le mauvais tems, il sera secouru de tout ce dont il aura besoin pour estre remis en Mer, ou pour recouvrer les Marchandises de son chargement, en payant le travail des journées de ceux qui auront esté employez, sans qu'il puisse estre exigé aucun droit ni tribut pour les Marchandises qui seront mises à Terre, à moins qu'elles ne soient vendues dans les Ports de la domination dudit Empereur.

X. — Tous Marchands François qui aborderont aux Ports ou Costes du Maroc ou Fez, pourront mettre en Terre leurs Marchandises, vendre



et achepter librement sans payer autre chose que ce qu'ont accoutumé de payer les Sujets dudit Empereur de Maroc, et il en sera usé de la mesme maniere dans les Ports de la Domination de l'Empereur de France, et en cas que lesdits Marchands ne missent leurs Marchandises à terre que par entrepos, ils pourront les rembarquer sans payer aucuns Droits.

XI. — Il ne sera donné aucun secours ni protection contre les François aux Vaisseaux de Tripoly, Alger, Tunis, ni ceux qui auront armé sous leur commission : Et fera led. Empereur de Maroc deffenses expresses à tous ses Sujets d'armer sous commission d'aucun Prince ou Estat Ennemi de la Couronne de France. Comme aussi empeschera que ceux contre lesquels ledit Empereur de France est en Guerre puissent armer dans ses ports pour courre sur ses Sujets.

XII. — Pourra ledit Empereur de France mettre un Consul à Salé, Tetouan, ou tel autre lieu qu'il trouvera bon, pour assister les Marchands François dans tous leurs besoins ; et pourra ledit Consul exercer en liberté dans sa Maison la Religion Chrestienne, tant pour luy que pour tous les Chrestiens qui y voudront assister. Comme aussi pourront les Sujets dudit Empereur de Maroc qui viendront en France, faire dans leur Maison l'exercice de leur religion ; et aura ledit Consul tout pouvoir et jurisdiction dans les differens qui pourront naistre entre les François, sans que les Juges dudit Empereur de Maroc en puissent prendre aucune connoissance.

XIII. — S'il arrivoit quelque different avec un François et un Maure, ils ne pourront estre jugez par les Juges ordinaires, mais bien par le Conseil dudit Empereur de Maroc ou du Commandant pour lui dans les Ports où lesdits differens arriveront.

XIV. — Ne sera ledit Consul tenu de payer aucune dette pour les Marchands François s'il n'y est obligé par écrit ; et seront les effets des François qui mourront audit pays remis es mains dudit Consul pour en disposer au profit des François, ou autres ausquels ils appartiendront. Et la mesme chose sera observée à l'égard des Sujets de l'Empereur de Maroc qui voudroient s'établir en France.

XV. — Jouira ledit Consul de l'exemption de tous droits pour les provisions, vivres et Marchandises necessaires à sa Maison.

XVI. — Tout François qui aura frapé un Maure ne pourra estre puni qu'après avoir fait appeler ledit Consul pour deffendre la cause du François ; et en cas que ledit François se sauve, ne pourra ledit Consul en estre responsable.

XVII. — S'il arrive quelque contravention au présent Traité, il ne sera fait aucun acte d'hostilité qu'après un déni formel de justice.

XVIII. — Si quelque Corsaire de France, ou du Royaume de Maroc, fait tort aux Vaisseaux François ou Maures qu'il trouvera en Mer, il en sera puni et les Armateurs responsables.

XIX. — Si le present Traité de paix conclu entre l'Empereur de France et celui de Maroc venoit à être rompu, ce qu'à Dieu ne plaise, tous les Marchands François qui seront dans l'étenduë des Terres de la domination dudit Empereur de Maroc pourront se retirer partout où bon leur semblera, sans qu'ils puissent estre arrestez pendant le temps de trois mois.

XX. — Les Articles cy-dessus seront ratifiez et confirmez par l'Empereur de France et celuy de Maroc pour estre observez par leurs Sujets pendant le temps de six ans ; et afin que personne n'en pretende cause d'ignorance seront leus, publiez et affichez partout où besoin sera.

Fait et arresté à Saint-Germain-en-Laye, ce vingt-neuvième jour de janvier 1682.

*Signé* : COLBERT DE SEIGNELAY.  
COLBERT DE CROISSY.

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*Annex No. 5*

TREATY BETWEEN MOROCCO AND THE NETHERLANDS  
OF MAY 26, 1683

*Source* : VII Du Mont, Corps Universel Diplomatique (Partie II), 64-70.

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*Traité de Paix, de Navigation, & de Commerce, entre MULEY ISMAEL, Empereur de Maroc d'une part, & les Seigneurs Etats Generaux des PROVINCES-UNIES des Pays-Bas, avec son Altesse le Prince d'ORANGE d'autre part. Ratifié à la Haye de la part de Leurs Hautes Puissances le 26. Mai 1683. & par l'Empereur de Maroc le 10. du Ramadan 1095*

Les États Generaux des Provinces-Unies, à tous ceux qui ces presentes verront ou entendront lire, Salut. Sçavoir faisons, Qu'entre Sa Majesté Muley Ismael Empereur de Maroc, Roi de Fez, Tafilet & Garbe & Afrique d'une part, & Nous & son Alteffe le Seigneur Prince d'Orange d'autre part, a été conclu & dressé le Traité de Paix & de Commerce inferé ci-aprés mot pour mot.

I. Est arrêté & conclu, qu'à l'avenir, il y aura entre Sa Majesté Muley Ismael, Empereur de Maroc, Roi de Fez, Tafilet, Garbe & Afrique d'une part & les Hauts & Puiffans Seigneurs les Etats Généraux des Provinces-Unies, & son Alteffe le Seigneur Prince d'Orange d'autre part, une bonne ferme & inviolable Paix, qui aura son commencement du jour que la Ratification du present Traité faite de la part des fudits Seigneurs Etats Généraux, fera livrée entre les mains de Sa Majesté Muley Ismael ; Et dès ce jour cesseront tous Actes d'hostilité de part & d'autre, ledit present Traité étant dès à present comme pour lors approuvé, ratifié & confirmé dans tous & un chacun ses Points & Articles.

II. Les Vaisseaux & autres Batimens des fudits Seigneurs Etats Generaux, ou ceux de leurs Sujets & Habitans tant Chrétiens que Juifs auront toujours une libre entrée dans les Rades & Ports de fadite Majesté, ou dans les autres Places de ses Royaumes, pour y demeurer à l'ancre aussi long-tems qu'il leur plaira, comme pour y negocier, vendre & acheter en toute liberté, en payant les Droits pour les Marchandises qui seront vendues, sans plus, sous quelque nom, titre,

ou pretexte que ce puisse être ; mais celles qui ne seront pas vendues, pourront être rembarquées & emmenées en toute liberté, sans en payer aucun droit ou imposition, & pourront partir quand bon leur semblera, sans aucun retardement ni empêchement ; Et à l'égard des Marchandises de contrebande, comme Poudre à canon, Salpêtre, Planches, & toutes sortes de bois à construire des Vaisseaux, Cordage, Goudron, Poix, Fûils & autres choses servant à la Guerre, les Habitans des susdites Provinces-Unies ne seront tenus d'en payer aucun droit à sa susdite Majesté.

III. Les Batimens, & Vaisseaux marchands, tant ceux de ladite Majesté ou de ses Sujets, que ceux des susdits Seigneurs Etats Generaux ou de quelqu'un de leurs Sujets, pourront tenir la Mer & négocier, sans être visités de l'un l'autre, ni retenus ni molestés, aussi toutes personnes & passagers de quelques Provinces ou Nation qu'ils puissent être, en quelqu'un desdits Vaisseaux qu'ils puissent se trouver, seront entièrement libres avec leur argent, denrées, Marchandises & meubles, & ne pourront être arrêtés de part, ni d'autre, ni retenus, pillés, ni endommagés en aucune manière.

IV. Les Vaisseaux de guerre de ladite Majesté, ou autres Bâtimens marchands, rencontrans en pleine Mer & hors des lieux dependans des susdits Seigneurs Etats Generaux quelque Vaisseau marchand ou autres des Sujets des susdits Seigneurs Etats Generaux, pourront envoyer leur Chaloupe, à bord desdits Vaisseaux des Provinces-Unies, seulement avec deux hommes qui entreront dans ladite Chaloupe excepté les Rameurs, & il ne pourra passer dans aucun Vaisseau marchand ou autre Bâtiment, plus grand nombre que lesdits deux hommes, sans permission du Capitaine, ou Maître du Bâtiment, lequel leur ayant montré un Passeport convenable, ladite Chaloupe sera obligée de se retirer aussi-tôt ; & ledit Vaisseau marchand continuera son voyage, sans aucun empêchement, ou obstacle ; Et reciproquement au cas que quelque Vaisseau, ou autre Bâtiment marchand des susdits Seigneurs Etats Generaux, viennent à rencontrer quelque Vaisseau ou Vaisseaux de sa susdite Majesté, & un Capitaine d'un d'iceux Vaisseaux ayant montré Passeport convenable signé par ordre de ladite Majesté, ensemble un Certificat du Consul des susdits Seigneurs Etats Generaux, qui résidera pour lors à Salé ou autrement, alors le susdit Bâtiment ou Vaisseau marchand pourra poursuivre librement son voyage.

V. Aucun Capitaine ou autre personne de quelque Vaisseau ou Bâtiment marchand de sa susdite Majesté, ne pourra enlever d'aucun Vaisseau, aucune personne ou personnes appartenans aux Sujets desdits Seigneurs Etats Generaux, quelles qu'elles soient, pour les amener ou faire amener ailleurs, & pour y être examinés, ou sous quelque pretexte que ce puisse être ; bien moins sera-t-il permis d'exercer la torture ou question, ou autre violence contre aucune personne de quelque Nation ou condition que ce puisse être, qui seront sur les bords de quelques Vaisseaux appartenans aux Sujets de leurs Hautes Puissances, sous quelque pretexte ou allegation que ce puisse être.

VI. Au cas que quelques Bâtimens ou Vaisseaux marchands des susdits Seigneurs Etats Generaux, ou de quelqu'un de leurs Sujets ou Habitans viennent à échouer sur les côtes de ladite Majesté, lesdits Vaisseaux, ni leurs dependances, Marchandises & charges ne seront

confitquez, ni l'Equipage fait esclave, mais feront au contraire tous Sujets de ladite Majesté tenus d'employer tous les devoirs possibles pour sauver l'Equipage & les Marchandises.

VII. Aucun Sujet de Sa Majesté ou desdits Seigneurs Etats Generaux, ne pourront prendre de Commission de quelque autre Potentat ou Prince pour infester ou molester avec leurs Vaisseaux à eux appartenans ou autres les Sujets de la susdite Majesté ou des susdits Seigneurs Etats Generaux respectivement.

VIII. Aucuns Vaisseaux de la susdite Majesté, soit grands ou petits, ne pourront croiser ou pirater es environs des Côtes, Havres, Villes & Places de la Domination desdits Seigneurs Etats Generaux.

IX. Les Ennemis de Sa Majesté, ou des susdits Seigneurs ne pourront amener dans les Havres de ladite Majesté ou desdits Seigneurs Etats Generaux aucune prise faite sur lesdits Sujets ou y vendre & trafiquer leurs Vaisseaux, Marchandises & Personnes.

X. Au cas que quelque Vaisseau de guerre des susdits Seigneurs Etats Generaux vienne à tomber dans les Ports de la susdite Majesté avec quelque prise, ils les y pourront vendre, en toute liberté, ou en disposer selon que bon leur semblera sans être molestés de personne, qui que ce puisse être ; de plus les Vaisseaux de Guerre desdits Seigneurs Etats Generaux ne seront point tenus de payer quelque Droit ou Gabelle, mais au contraire, s'il leur manquoit quelques vivres, ils pourront acheter librement ce dont ils auront besoin, au prix courant.

XI. Aussitôt que quelque Vaisseau de Guerre des susdits Seigneurs Etats Generaux sera arrivé dans quelqu'un des Havres de ladite Majesté ; Et que le Consul des Provinces-Unies, ou le Capitaine du susdit Vaisseau en aura donné connoissance au Gouverneur de la susdite Place, cela sera publié, afin que chacun garde ses Esclaves ; mais s'il arrivoit que nonobstant cela quelque Esclave vint à s'échaper, ou qu'on soupçonnât qu'il en seroit échappé quelqu'un, le susdit Gouverneur ne souffrira pas que pour ce sujet il soit commis aucune insolence contre le susdit Consul ou contre d'autres Sujets des Provinces-Unies ; mais il fera enjoint aux Maîtres d'un tel Esclave ou Esclaves, qu'ils les redemandent avec toute discretion au Capitaine ou Commandant auprès de qui ils pourroient s'être sauvez ; Et au cas que l'Officier le denie constamment, & que l'on n'en ait point de connoissance certaine, le Maître ou les Maîtres seront tenus d'ajouter une foi entiere à la parole du susdit Officier, sans pour cette occasion pouvoir molester le Consul ou les susdits Sujets en aucune maniere. Neanmoins s'il étoit certain, que tel Officier vint à cacher la verité, lesdits Gouverneurs de la part de Sa Majesté demanderont au Consul qu'il en écrive aux Etats Generaux, afin qu'il soit donné sans délai satisfaction aux Maîtres de tels Esclaves qui se seroient échapez.

XII. Du jour que la Ratification du present Traité aura été fournie à ladite Majesté de la part desdits Seigneurs Etats Generaux, aucun Sujet ou Habitant des Provinces-Unies, tant Juifs que Chrétiens, ne pourront être faits Esclaves dans tous les Roiaumes de ladite Majesté, sous quelque pretexte que ce puisse être. De plus les susdits Seigneurs Etats Generaux, en vertu de ce Traité ne seront nullement tenus de racheter aucuns Sujets ou Habitans qui sont presentement Esclaves ou qui pourroient l'être faits avant l'Echange des susdites Ratifications ;

mais il dependra abfolument de leur franche volonté, fans aucune limitation ni restriction de tems, de mettre leur compaffion en effect & ainfi de les racheter dans le tems qu'ils le jureront à propos. A condition de convenir avec leur Maître d'un prix raifonnable pour leur rançon, fans qu'on les puiffe contraindre d'en delivrer aucun malgré eux, foit des Efcaves des Galeres, Gouverneur, Alcayde, ou à qui qu'ils puiffent appartenir ; ne trouvant pas à propos pour plusieurs raifons de ftipuler, que les Maîtres foient obligez de fe deffaire de leurs Efcaves, étant leur propre bien, pour le prix de leur premier achapt ; ni que les fufdits Seigneurs Etats feront obligez de les prendre, fi on les leur vouloit faire rachetter de force. Promettant fa Sufdite Majefté d'employer fon Authorité en cette affaire, pour que les deux Parties foient fatisfaites : & eft enfuite accordé que tous les Efcaves, étant Sujets & Habitans dedits Seigneurs Etats Generaux, à l'occafion de leur rachapt, jouiront du Profit & des Emolumens du rabais & diminution des Droits qui appartiennent à Sa Majefté, comme auffi des autres frais, en payant pour iceux un prix auffi raifonnable qu'aucun Efcave d'autres Nations à l'égard de leur rachapt, comme on a coûtume de les payer, foit après la Paix concluë, foit par maniere d'Aumône. Bien entendu que tels Efcaves, Habitans des Provinces-Unies, qui voudront jouir de cet Avantage, devront être rachettez par les Commiffaires ou autres Miniftres de l'Etat des Provinces-Unies, qui ci-après viendront dans les Etats de Sa fufdite Majefté. Et les autres Efcaves, Habitans des fufdits Provinces qui ne voudront pas jouir de l'avantage des fufdits Droits, pourront procurer leur Liberté par d'autres Perfonnes, s'ils le jugent à propos. Les fufdits Commiffaires, ou autres Miniftres publics, qui feront ci-après établis de la part dedites Provinces-Unies, dans les Roiaumes de Sa fufdite Majefté auront la Liberté & le Pouvoir de faire par devant eux ou par devant leurs Secretaires paffer tous Contracts, Accords, Lettres Patentes, & autres Depêches en leur nom, & faire en outre tout ce qui eft neceffaire pour le rachapt & retour des Efcaves qui feront delivrez, fans que perfonne, qui que ce puiffe être, puiffe s'y oppofer, ou molefter les Efcaves racheptez. En outre les fufdits Miniftres pourront faire & paffer par devant eux toute forte d'Instrumens & Contracts au profit d'autres Nations Chrétiennes, comme les autres Miniftres des autres Princes & Potentats & même accorder des Paffeports fans contradiction de perfonne.

XIII. S'il arrive que quelqu'un des Sujets dedits Seigneurs Etats Generaux vienne à mourir dans quelque'une des Places ou Villes de Sadite Majefté, les Effects & Deniers ne feront point faifis par les Gouverneurs, Juges ou autres Officiers de la part de Sadite Majefté, même nul dedits Gouverneurs ou autres Officiers n'en pourront prendre connoiffance ou en faire aucune recherche, mais tels Effects & Deniers feront mis és mains de ceux que le deffunt aura inftitué à cet effect par fon Teftament, au cas qu'ils foient dans les Lieux où ledit deffunt fera decedé, & fi les Heritiers ne font pas prefens au lieu, l'Executeur teftamentaire que le deffunt aura inftitué, après qu'il aura fait un Inventaire fidele dedits Marchandifes & Deniers les prendra en fa garde ; & aura foin qu'ils puiffent par voyes fures être mis és mains de l'Heritier legitime. Mais fi quelqu'un dedits Heritiers vient à decéder ab inteftat, le Conful des fufdites Provinces-Unies, prendra ledites Marchandifes & Deniers en la garde, fous un Inventaire convenable, pour être reftituez aux plus proches Parens & Heritiers du deffunct.

XIV. Les Marchands tant Chrétiens que Juifs desdites Provinces-Unies, qui se trouvent dans quelqu'une des Villes de Sadite Majesté, ne feront point obliger à acheter des Marchandises contre leur gré ; mais il fera toujours à leurs choix d'en acheter de telles qu'ils trouveront leur être utiles, semblablement, aucun Capitaine ou Maître de Vaisseau des fudites Provinces, ne fera obligé de charger aucune Marchandise malgré foi pour la transporter, ou de faire un Voyage, en quelque Place où il ne voudroit pas aller. Aucun Consul desdites Provinces ne fera pas non plus tenu de payer les dettes d'un autre fujet desdites Provinces, à moins que dans cette occasion il ne se fut rendu Caution ou Repondant par quelque Acte public.

XV. Les Sujets, tant Chrétiens que Juifs, des fudits Seigneurs Etats Generaux, ne feront pas tenus, en cas de Plaidoirie ou de Procez, dans les Etats de Sa fudite Majesté, de se soumettre à la Jurisdiction de ces Païs ; mais s'il arrive quelque different, soit Civil ou Criminel, entre ceux de ladite Nation des Provinces-Unies seuls, en ce cas ils ne feront pas obliger de comparoir par devant un autre Juge que leur Consul, qui aura entiere Authorité, de terminer tous les differens tant au Civil qu'au Criminel, comme Meurtre, Blessures & autres Delicts, & de proceder suivant l'Instruction & Ordre des fudits Seigneurs Etats Generaux.

XVI. Au cas que quelques Sujets des fudits Etats Generaux se trouvant dans les Etats de Sadite Majesté, vinssent à faire tort à un More, le blesser, ou le tuer, il fera puni de la même maniere, & non plus rigoureusement qu'un More qui auroit commis la même Faute ou Delict ; Mais s'il venoit à s'échapper, le Consul ni aucun autre Sujet des fudits Seigneurs Etats Generaux n'en pourront pas à cette occasion être inquietez ni molestez.

XVII. Le fudit Consul desdits Seigneurs Etats Generaux étant dans les Etats de Sa fudite Majesté, y pourra vivre en toute liberté & sureté, tant à l'égard de sa Personne que de ses effects, & il pourra choisir son Truchement & son Courtier, & aller à bord de tous Vaisseaux, qui seront dans les Havres & à la Rade, & ce aussi souvent qu'il lui plaira, comme aussi de voyager par le Païs. Outre cela il lui sera loisible & permis de faire publiquement dans sa Maison l'Exercice de la Religion Reformée sans aucune vexation ou moleste, soit de parolles ou de fait, de qui que ce puisse être.

XVIII. Est aussi accordé & convenu que non seulement, pendant la continuation de Paix & Amitié, mais même en cas de quelque interruption & rupture d'icelles, entre Sa fudite Majesté & lesdits Seigneurs Etats Generaux, le Consul, & autres Sujets des fudits Seigneurs Etats Generaux, qui sont demeurans dans les Etats de Sadite Majesté, sçavoir tant en tems de Guerre qu'en tems de Paix, auront entiere liberté de se transporter dans leur propre Païs ou dans d'autres avec des Vaisseaux de quelque Nation, que ce soit, quand bon leur semblera & d'emmener avec eux leurs effects, Familles & Serviteurs, sans qu'on leur puisse à cet égard apporter aucun empêchement.

XIX. Aucuns Sujets des fudits Seigneurs Etats Generaux, soit Juifs ou Chrétiens, étant Passagers, allant ou venant dans ou de quelques Havres, ne pourront être molestez, encore que ces Passagers fussent dans quelque Vaisseau ennemi de Sadite Majesté ; semblablement aucun

Paffager de Sa fudite Majefté, étant dans un Vailleau ennemi defdits Seigneurs Etats Generaux ne pourra être molefté dans fa Perfonne ou effects qu'il aura fur ledit Vailleau.

XX. Auffitôt que la Ratification du fudit Traité de la part defdits Seigneurs Etats Generaux aura été delivrée à Sa fudite Majefté, toutes les Injures, & les Dommages soufferts de part & d'autre feront mis en un perpetuel oubli, & cesseront d'un & d'autre côté toute forte d'Hostilité & violences, & demeurera cette Paix en fa parfaite force & vigueur, & continuera à toujours. Et au cas qu'après le jour que ladite Ratification aura été mise és mains de Sadite Majefté, il le fit quelque prise, ou que quelque Dommage vint à être souffert de part ou d'autre, avant que la Paix vienne à la Connoiffance d'un chacun des Sujets, il en fera fait une prompte fatisfaction.

XXI. Au cas que par inadvertance ou autrement il le fit quelque Contravention au present Traité de la part de Sadite Majefté, ou de celle des fudits Seigneurs Etats Generaux, ladite Paix demeurera neantmoins en fon entiere vigueur, fans que pour ce on en vienne à la Rupture de ladite Paix, Amitié & bonne Correfpondance ; mais la Partie lezée demandera une prompte Reparation à l'amiable, avant que d'en venir aux Armes ; Et au cas que ce foit quelque Sujet particulier qui l'ait fait ; il fera puni fans aucune connivence, comme Infracteur de Paix & Perturbateur du Repos public.

C'est pourquoi, Nous avons ledit Traité & chaque Article d'icelui agréé, approuvé, & ratifié, comme nous l'agreons, aprouvons & ratifions par ces presentes, promettant en bonne foi & fincerement de l'entretenir & observer, le faire entretenir & oblserver inviolablement, & ne permettrons qu'il y foit donné atteinte & qu'il foit enfreint par qui que ce foit directement ou indirectement, fous quelque prétexte que ce puiſſe être. En témoin de quoi Nous avons confirmé ces presentes de nôtre grand Seau, & fait icelles parapher par le Prefident de nôtre Affemblée, & fait figner par nôtre Greffier. Ainſi fait en nôtre Affemblée a la Haye le vingt fixième May mil ſix cent quatre-vingt & trois.

*La Ratification de ce Traité à l'égard de Sa Majefté Imperiale de Maroc, a été ſignée le 10. de Ramadan l'an 1095. qui ſuivant notre computation est . . . d' Août 1684. ſuivant & en conſormité de la Lettre Miſſive de Sa ſuſdite Majeſté Imperiale, & qui a été envoyée avec ledit Traité à leurs Hautes Puiſſances, & mentionnée dans les Notules Secretes du 15. Decemb. 1684.*

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*Annex No. 6*

TREATY BETWEEN MOROCCO AND GREAT BRITAIN OF  
JANUARY 23, 1721  
WITH ADDITIONAL ARTICLES DATED JULY 10, 1729

*Source : 1 British and Foreign State Papers, 428-432.*

*TREATY of Peace and Commerce between Great Britain and  
Morocco.—Signed at Fez, 23rd January 1721*

TREATY of Peace concluded between His Majesty George the First, King of Great Britain, France, and Ireland, and Muli Ismael, son of

Muli Alli Sherife, King of Fez, Mequinez, Morocco, and all the West of Africa, God bless him. The following Articles were agreed on, in the presence of Bashaw Ahamad, Son of Abdula, and the then English Ambassador, interpreted by Moses, son of Attor, Servant and Interpreter at the Emperor's Court.

ART. I. In order to establish Peace between the Powers, both by land and sea, and all their respective Dominions, it is agreed on, that the English may now, and always hereafter, be well used and respected by our Subjects, agreeable to the orders and commands of the Emperor.

II. That all English Men-of-War and Merchant Ships, that shall come to any part of the Emperor's Dominions, to trade or otherwise, and shall have on board a cargo not proper for vending in the place where they shall come, may depart with the same to any other part of the Emperor's Dominions, and shall pay Duty but once for the same ; and that no Duty at all shall be paid for any War implements, such as fire arms, swords, and anything belonging to the Army, as also for materials of all kinds for Ship-building ; and if any English Ship shall arrive at any of the Emperor's Ports, with any merchandise destined for any other part of the World, that no Duty shall be paid for such merchandise, but shall depart with the same without any manner of molestation. If any English Ship shall be thrown upon the Emperor's coasts, by stress of weather, or otherwise, the same shall be protected, and may safely depart without any ill usage or interruption : in like manner shall be treated the Emperor's Ships, happening to be thus thrown on the coast of Great Britain, or the Dominions thereto belonging.

III. That all the English Ships and Emperor's Ships may pass and repass the Seas without hindrance, interruption, or molestation, from each other ; nor shall any money, merchandise, or any demand be made or taken by the Ships of either Power from each other ; and if any Subjects of any other Nation shall be on board either the English or the Emperor's Ships, they shall be safely protected by both Sides.

IV. If the Emperor's Men-of-War meet with any English Ships, and shall want to see their Passports, they are to send a Boat, with 2 Men of fidelity to peruse the said Passports, who are to return without any further trouble, and then both Sides to proceed quietly on their respective voyages ; the same usage to be received by the Emperor's Merchant Ships from the English Men-of-War, who shall allow the Passport made out by the English Consul ; and if the Consul shall not be present to make them, then the Passports made out by the English Merchants to be good and valid.

V. If the English Men-of-War, Privateers, or Letter-of-Marque Ship, shall take Prizes from any Nation with whom they shall be at War, they shall have liberty to bring and dispose of the same in any of the Emperor's Dominions, without any Duty or charge whatsoever.

VI. If any English Ship shall, by storm, or in flying from her enemy, come upon the Emperor's coasts, the same shall be safely protected, and nothing touched or taken away, but shall be under the direction of the English Consul, who shall send the goods and People where he shall think fit.



VII. It is the mutual agreement of the King of Great Britain and the Emperor, that the Emperor do issue out orders to all parts of his Dominions, for the well-using of all the English Subjects, and that particular places be appointed for the burial of their dead; that the Consul's Brokers shall freely go on board any Ship without interruption; that the English Consuls, Merchants, and other Subjects of Great Britain, may safely travel by land with effects, without any hindrance whatever; and if any English, settled in the Emperor's Dominions, shall be desirous to return home, that they may so do with their Families, goods, and effects, without interruption; if any English die, the effects of such to be taken under the care of the Consul, to be disposed of as directed by the Will of such Person, and if no Will, for the benefit of such Person's next Heir; and if any debts shall be owing to such deceased Person, the same to be paid by order of the Governor or other Person in power, where such Person shall die; and that a Subject of the Emperor's be appointed to demand and receive the same, and deposit the same in the hands of the English Consul for the aforesaid uses. If any English shall contract debts in the Emperor's Country, and remove from thence without satisfying the same, no other Person shall be liable to pay such debts. The like usage and treatment the Subjects of the Emperor are to receive in the King of Great Britain's Dominions; and that the King may send as many Consuls to the Emperor's Dominions as he shall think necessary.

VIII. That no English Merchant, Captains of Ships, or other Person or Persons whatsoever, that are English Subjects, shall be forced to sell any of their goods for less than the real value; and that no Captain, Master, or Commander of any English Ship shall be compelled, without their own will and consent, to carry any goods or merchandises for any Person or Persons whatsoever; nor shall any Sailor be forced away from any English Ship.

IX. If any quarrel or dispute shall happen between any Englishman and a Musselman, by which hurt to either may ensue, the same to be heard before and determined by the Emperor only; and if an Englishman who may be the Aggressor shall make his escape, no other Englishman shall suffer upon his account; and if 2 Englishmen shall quarrel, to be determined by the English Consul, who shall do with them as he pleases; and if any quarrel or dispute shall happen between Musselmen in England, or in any of the English Dominions, by which hurt may ensue, the same to be heard before 1 Christian and 1 Musselman, and to be determined according to the Laws of Great Britain.

X. If it shall happen that this Peace by any means shall be broken, the Consul, and all other English, shall have 6 months' time to remove themselves with their Families and effects, to any place they please, without interruption; and that all debts owing to them shall be justly paid to them.

XI. If any English in the Emperor's Dominions, or the Emperor's Subjects in the English Dominions, shall maliciously endeavour to break the Peace, such of them who shall be proved so to intend, shall by each Power be punished for such offence; each Power to take cognizance of their own Subjects.

XII. If any of the Emperor's Subjects shall purchase any commodity in the English Dominions, they shall not be imposed upon in price, but pay the same as is sold to the English.

XIII. That not any of the Spanish, whether Captains, Sailors, or other Persons under the English Government in Gibraltar, or Port Mahon, shall be taken or molested, sailing under English Colours with Passports.

XIV. That no excuse be made, or ignorance pretended, of this Peace, the same shall be published and declared to all the Subjects of each Power, which Declaration shall be signed by each Power, and kept by them to prevent disputes.

XV. If any Men-of-War shall be on the Emperor's coasts, that are Enemies to the English, and any English Men-of-War, or other English Ships, shall happen to be or arrive there also, that they shall not in any manner be hurt or engaged by their Enemy; and when such English Ships shall sail, their Enemies' Ships shall not set sail under 40 hours afterwards. And if after the conclusion of this Peace, any Ships shall happen to be taken by either Power within 6 months after the proclamation of the Peace, that the same, with the People and effects, shall be restored.

Made and declared in the presence of the Emperor's Servant Ahammed Basha, Son of Alli, son of Abdula, by the authority given to him by the Emperor. Dated this 23rd of January, in the year 1721, English style. Wrote and given to Charles Stewart, Esq., the English Ambassador, in the 7th year of the Reign of King George the First.

(L.S.) CHARLES STEWART.

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*ADDITIONAL ARTICLES between Great Britain and Morocco.—Signed at Fez, 10th July 1729*

ADDITIONAL ARTICLES of Peace and Commerce between the Most High and Most Renowned Prince George the Second, by the grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, Duke of Brunswick and Lunenburg, Arch Treasurer and Elector of the Holy Roman Empire; and the High and Glorious, Mighty and Right Noble, Prince Mulley Abdalla, Ben Mulley Ismael, Ben Mulley Xeriph, Ben Mulley Aly, King and Emperor of the Kingdoms of Fez, Taffalet, Suz, and all the Algarbe and its Territories in Africa, &c. Concluded, agreed, and adjusted by John Russell, Esq., in the behalf of His Britannic Majesty, and by His Excellency Bashaw Hamet Ben Abdallah, on behalf of the said King and Emperor of Morocco.

ART. I. That all Moors or Jews, subject to the Emperor of Morocco, shall be allowed a free traffic, to buy or sell for 30 days in the City of Gibraltar, or Island of Minorca, but not to reside in either place, but to depart with their effects, without let or molestation, to any part of the said Emperor of Morocco's Dominions.

II. That the King of Great Britain's Subjects be not obliged to appear before the Cady or Justices of the Country in any cause, but only the

Governor of the place, and His Britannic Majesty's Consul, to take cognizance of, and adjust the difference they may have with the Natives of the Country.

III. That all of His Britannic Majesty's Subjects, as well those of Hanover as others, that may happen to be Passengers, or belong to any Foreign Ship or Vessel, and taken by any of the Emperor of Morocco's Cruizers, shall immediately be set at liberty, and sent to the City of Gibraltar.

IV. That there be permission for buying provisions, and all other necessaries, for His Britannic Majesty's Fleet or City of Gibraltar, at any of the King of Fez and Morocco's Sea Ports, at the market prices, and the same to be shipped off, without paying Custom, as has been lately practised, contrary to the Treaty of Peace subsisting.

All the other Articles, being 15 in number, concluded, agreed, and adjusted, by the Honourable Charles Stewart, Esq., on the behalf of His Britannic Majesty, and by His Excellency Bashaw Hamet Ben Aly, Ben Abdallah, and His Imperial Majesty's Treasurer, Mr. Moses Ben Hattar, a Jew, on the behalf of the said King of Fez and Morocco, shall stand good and be of the same force, as in the Reigns of the Most High and Most Renowned Prince George the First, King of Great Britain, France, and Ireland, &c., &c. (of glorious memory), and the High and Glorious, Mighty and Right Noble Prince Albumazer Muley Ismael, late Emperor of Morocco.

And it is further agreed, that all the Articles afore-mentioned, as well the 15, as the Additional ones, shall in 20 days after the date hereof be published in the Arabic language, and affixed on the gates of all Sea Ports in His Imperial Majesty's Dominions.

Signed and dated at the Court of Fez, the 10th day of July 1729, O.S.

(L.S.) JOHN RUSSELL.

*Annex No. 7*

TREATY BETWEEN MOROCCO AND GREAT BRITAIN OF  
DECEMBER 15, 1734

*Source: 1 British and Foreign State Papers, 432-433.*

*TREATY of Peace between Great Britain and Morocco.—  
Signed at—, 15th December 1734*

TREATY of Peace between His Majesty George the Second, King of Great Britain, France, and Ireland, and Muley Abedela Ben Ismael, King and Emperor of Fez, Mequinez, Morocco, and all the West of Africa, God bless him.

ART. I. That if any English shall happen to be on board any Ship or Ships, Enemies to the Emperor, that may be taken by the Emperor's Ships, such English shall be well treated, delivered into the hands of the English Consul, and have their liberty to go where they please: this Article to continue in force for 6 months from the conclusion of this

Peace, in which time it is required, that notice shall be given by the King of Great Britain to all the English Subjects not to embark on board any of the Emperor's Enemies' Ships; for after that time, if the English shall so embark, the blame must be their own, as no regard will be had to them more than the Emperor's Enemies.

II. If any of the Emperor's Subjects shall be made Slaves, and escape to an English Man-of-War, or to Gibraltar, Port Mahon, or any of the English Dominions, that they shall be protected, and with all convenient speed sent to their respective homes. The like treatment to be given to the English who shall be Slaves, and escape to any part of the Emperor's Dominions.

III. If any English shall contract anything to be paid to the Emperor's Subjects, that Notes shall be given for the same; and in like manner the same to be observed by the Emperor's Subjects in the English Dominions; and if it shall happen that such Subjects of either Power cannot write, to get some Person to write such Notes for them.

That no excuse be made, or ignorance of this Peace pretended, the same shall be published and declared to all the Subjects of both Powers, both what is now agreed on, and the Articles concluded with King George the First; which Declaration shall be signed by each Power, and by them kept to prevent disputes.

This Treaty was concluded the 15th of December 1734.

(L.S.) JOHN LEONARD SOLLICOFFRE.

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*Annex No. 8*

TREATY BETWEEN MOROCCO AND GREAT BRITAIN OF  
JANUARY 15, 1750, WITH ADDITIONAL ARTICLES DATED  
FEBRUARY 1, 1751

*Source: 1 British and Foreign State Papers, 433-436.*

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*TREATY of Peace between Great Britain and Morocco.—  
Signed at Fez, 15th January 1750*

TREATY of Peace between His Majesty George the Second, King of Great Britain, France, and Ireland, and Mulay Abedela Ben Ismael, King and Emperor of Fez, Mequinez, Morocco, and all the West of Africa, God bless him; and the following Articles were concluded by Alcaide Habeb Lohab, First Minister, and William Petticrew, Esq., His Britannic Majesty's Consul-General.

ART. I. For establishing Peace and Friendship, it is agreed and concluded for firm and valid, both by land and sea, in all the Dominions of both Powers, that the English in general shall and may now, and at all times hereafter, enjoy and continue in Peace and Friendship with the Emperor and his Subjects, and be well used and respected by the Emperor's Subjects, agreeable to the order and commands of the Emperor.

II. That such number or quantity of Passports, as may be necessary, be transmitted to the Emperor, indented in such manner as shall tally with the Passports that shall be received by the English Merchants in England; and if an English Man-of-War meets with any Merchant Ships belonging to the Emperor, such Merchant Ships shall be obliged to produce and show their Passports given to them by the English Consul.

III. If any dispute shall happen between the English and the Emperor's Subjects, the same not to be determined by a Judge, but ended and adjusted by the English Consul and the Coyed, (that is) the Mayor of the Town, where such dispute shall happen.

IV. That none of the Emperor's Subjects shall, at any time, forcibly enter the houses of the English, or any place belonging to them, or take and carry away any of their goods and effects, unless they have leave and authority from the Emperor so to do. That if any of the Emperor's Subjects shall hire any English Ship to carry and convey goods from one part of the Emperor's Dominions to another, and shall happen by stress of weather, or any other occasion, to touch at any place or places in the voyage, such Ship or Ships shall not be obliged to pay anything for the shelter or assistance they may receive, and that no English whatever, or any of their Servants (though not English), shall be liable to pay the Tax, imposed upon the Emperor's Subjects, called the *Poll-Tax*.

V. That the 15 Articles of Peace, made and concluded between King George the First, and Muli Ismael, are hereby agreed to and confirmed with His Majesty King George the Second, as good and valid, and shall be faithfully kept and observed, together with the aforesaid 4 Articles.

Concluded the 15th of Rabbei the 1st, in the year 1164, which is in English style the 15th of January, 1750.

(L.S.) WILLIAM PETTICREW.

*ADDITIONAL ARTICLES between Great Britain and Morocco.—  
Signed at Fez, 1st February 1751*

ADDITIONAL ARTICLES of Peace and Commerce between the Most High, Illustrious, and Most Renowned Prince George the Second, by the grace of God, King of Great Britain, France, and Ireland, Defender of the Christian Faith, &c., and the High, Glorious, Mighty and Most Noble Prince Mulay Abedela, Ben Mulay Ismael, Ben Mulay Seriph, Ben Mulay Aly, King and Emperor of the Kingdoms of Fez, Morocco, Taffilete, Sus, and all the Algarbe and its Territories, agreed on and concluded by William Petticrew, Esq., on the behalf of His Britannic Majesty, and by the Alcaide Habeb Lohab Ben Hamed Limury, First Minister on the behalf and by order of the King of Fez and Morocco.

ART. I. It is agreed on and concluded, that from henceforward there shall be between His Majesty of Great Britain, Prince and Elector of Hanover, and the King of Fez and Morocco, their Heirs and Successors, a general, true, and perfect Peace for ever, as well by land as by sea and

fresh waters ; and also between the Lands, Kingdoms, Dominions, and Territories belonging to or under the jurisdiction of His Britannic Majesty in Germany, and those appertaining to the King of Fez and Morocco, and their Subjects, People, or Inhabitants respectively, of what condition, degree, or quality soever, from henceforth reciprocally shall owe the other all friendship ; and that all Ships, Vessels, Passengers with their effects trafficking voluntary, or compelled by Enemies, disasters of the seas, or any accident whatsoever, to the Coast of the Emperor of Fez and Morocco's Dominions, being His Britannic Majesty's Subjects in Germany, shall, from henceforth, be treated with the said regulations as specified by the Treaties of Peace now subsisting between His Britannic Majesty and the King of Fez and Morocco.

II. It is agreed, that all Ships and Vessels belonging to His Britannic Majesty in Germany, shall carry a proper Pass, and that a copy of such Pass, with the heads of the said Passes, shall be sent to His Britannic Majesty's Consul, residing in Barbary, to the end that he may deliver the same to the Commanders or Captains of the King of Fez and Morocco's Ships of War or Cruizers, to the end that due regard may be had to this Peace, and that no Commander or Captain may offend through ignorance ; and all Commanders or Captains of Ships or Vessels belonging to His Britannic Majesty's Subjects in Germany, meeting with any Ship or Vessel belonging to the King of Fez and Morocco, or his Subjects, if the Commander of such Ship or Vessel produce a Pass signed by the Governor of the City they belong to, with a Certificate from the English Consul, and in case of his death or absence, from the major part of the English Merchants residing in the said place, in such cases the said Ship or Vessel shall pursue freely her voyage without hindrance or molestation.

III. It is agreed, that the King of Great Britain's Subjects shall not be obliged to appear before Justices of the Country on any cause, but that only the Governor of the City of His Britannic Majesty's Consul shall take cognizance of, and adjust the difference or suits they may have with the Moors, or other Inhabitants in the Dominions of the King of Fez and Morocco.

IV. It is agreed, that no Governor or Officer under the King of Fez and Morocco, shall, without the King's Special Order, visit or register the dwelling houses or magazines of any of His Britannic Majesty's Subjects residing in Barbary ; and that all British Ships, taking freight in any Port of the King of Fez and Morocco to carry to other Ports of the said Kingdom, shall be exempted from all Port Charges, as usual, in whatever Port they may put in ; and that the Consul and the other British Merchants shall be freely allowed to have Moors or Jews as their Interpreters and Brokers, who shall be exempted from all Taxes, as likewise all their Domestic Servants.

All the other Articles, being 15 in number, concluded, agreed, and adjusted by the Admiral Charles Stewart, on the behalf of His Britannic Majesty ; and by His Excellency Bashaw Hemet Ben Ally, Ben Abdalla, and His Imperial Majesty's Treasurer, Mr. Moses Benatar, on behalf of the said King of Fez and Morocco, shall stand good, and be of the same force, as in the Reign of the Most High, Illustrious, and Renowned Prince George the First, King of Great Britain, France, and Ireland, of glorious memory ; and the High, Mighty, and Most Noble Prince Mulay

Ismael, late Emperor of Morocco ; as likewise the other Articles, being 3 in number, agreed and concluded by John Leonard Sollicoffre, Esq., on behalf of His Britannic Majesty, and His Excellency Bashaw Hamet Ben Aly Ben Abdalla, on behalf of the King of Fez and Morocco.

It is agreed on and concluded, that all the Articles aforementioned, being 18 in number, with these Additional Articles that are translated into the Arabic language, Copies thereof be sent to all His Imperial Majesty's Alcaldes and Officers of all the Ports in his Dominions, there to be read by the Cady or Chief Justice in public assembly; and afterwards to remain deposited either in the hands of the Judge or the Alcaide of the Port, that recourse may be had thereto on all occasions which may occur ; and that the Ratification of the said Articles shall be made within the term of 6 months, or sooner if possible, in Spanish, which shall be received and be of equal force.

Dated and signed at the Court of Fez, on the 1st of February 1751, N.S.

(L.S.) WILLIAM PETTICREW.

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*Annex No. 9*

TREATY BETWEEN MOROCCO AND GREAT BRITAIN OF  
JULY 28, 1760, WITH ADDITIONAL ARTICLES  
DATED MAY 24, 1783

*Source: 1 British and Foreign State Papers, 436-445.*

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*TREATY of Peace and Commerce between Great Britain and  
Morocco.—Signed at Fez, 28th July 1760*

ARTICLES of Peace and Commerce, made between the High and Glorious, Powerful and Most Noble Monarch, Sidi Mahomet Ben Abdalla, Emperor and King of the Kingdoms of Fez and Morocco, Trafilet, Sus, and All the Algarbe, and its Territories in Africa, &c., and the Most High and Famous Monarch, George the Second, by the grace of God, King of Great Britain, France, and Ireland, Defender of the Christian Faith, Duke of Brunswick and Lunenburg, Arch-Treasurer, and Prince Elector of the Holy Roman Empire, &c., concluded, agreed, and adjusted by the said Emperor of Fez and Morocco, and by the Noble Mark Milbanke, Esq., on the part of His Britannic Majesty.

ART. I. It is agreed and concluded, that, from this time forward, there shall be, between His Majesty of Great Britain, and the Emperor of Fez and Morocco, their Heirs and Successors, a general, true, and perfect Peace for ever, as well by land as by sea and fresh waters ; and also between their Lands, Kingdoms, Dominions, and Territories, belonging to, or under the jurisdiction of either of them ; and that their respective Subjects, People, or Inhabitants, of whatever condition, degree, or quality they be, shall reciprocally show to each other all friendship ; and that, on the demise of either of Their Majesties, the

Successor shall send an Ambassador to the other, to notify his accession to the Throne.

II. It is also agreed, that all English Ships of War, and Merchant Ships, that shall come to any part of the Emperor's Dominions to trade, or for any other purpose, and shall have on board a cargo, which shall not be saleable in the said place where they come, may depart with the same to any other part whatsoever of the Emperor's Dominions, and shall not pay the Duties for it more than once; and that no Duty shall be paid for implements of War, such as fire-arms, swords, or any other thing whatsoever which may belong to the Military; neither for all sorts of materials used for building Ships; and that, if any English Ship shall come to any of the Emperor's Ports with merchandize destined for another part of the World, they are not to pay any Duty for such merchandize, so that they may depart with the same without any molestation. If any English Ship shall be thrown upon the Emperor's coast, by bad weather or otherwise, the same shall be protected, and depart again in safety, without any ill-treatment or interruption. And the Emperor's Ships, which shall be thrown on the coast of Great Britain, or Dominions thereunto belonging, shall be treated in the same manner.

III. It is also agreed, that all Ships belonging to the Subjects of the said King of Great Britain, and of the Emperor of Fez and Morocco, and his Subjects, may securely navigate and pass the Seas, without being searched, or receiving hindrance or trouble, the one from the other; and that all Persons and Passengers, of whatever Nation they may be, belonging to either of the Parties, shall be entirely free, without being detained, molested, robbed, or receiving any damage from the others. And moreover, it is agreed, that the English Ships, which shall be freighted in any Port of the Emperor of Fez and Morocco, for other Ports of the same Kingdom, shall not be obliged to pay the usual Port Charges; and that no Captain or other Person, belonging to any Ship or Vessel of the Emperor of Fez and Morocco, or his Subjects, shall take any Person or Persons whatsoever out of any Ship or Vessel of the King of Great Britain, or his Subjects, in order to be examined, or under any other pretence whatsoever; neither shall they offer violence to any Person or Persons, of whatever Nation or quality they be, on board a Ship belonging to His Majesty's Subjects.

IV. It is besides agreed, for the better observance of the preceding Articles, according to their true intent, that the Ships of War or Cruizers, belonging to the Emperor of Fez and Morocco, or to his Subjects, meeting with any Ships, or other Vessels, of the King of Great Britain, or his Subjects, (not being in the Seas belonging to His Majesty's Dominions,) may send a single Boat on board, with 2 trusty Rowers, and no more, who may enter such Ships or Vessels; that on showing them a Passport, signed by the King of Great Britain, or by the High Admiral of England, Scotland, and Ireland, in the form hereafter mentioned, the said Boat shall depart immediately, leaving such Ships to pursue their voyage freely: and when it may happen, that any Ship of War, or Privateer, of the King of Great Britain, shall meet any Ship or Vessel of the Emperor of Fez and Morocco, or of his Subjects, on the Captain of such Ship showing a Passport from the Governor of the City to which he belongs, with a Certificate from the English Consul, or, in case of his



death, or absence, from the major part of the English Merchants residing there ; in such case, he shall be permitted to pursue his voyage without impediment or injury.

V. It is also agreed, that, in case any Ships of War of the King of Great Britain, or of his Subjects, shall come to any Port under the Dominion of the Emperor of Fez and Morocco, with prize goods they shall be permitted to sell them without hindrance or imposition ; and in case any Squadron, or single Ship of War, or Merchant Ship of His Majesty, shall want provisions, victuals or refreshments, it is hereby agreed that they may buy them, in the quantity and quality they shall have occasion for, at the current market-price, free of Duties, or of any other gratuity.

VI. It is moreover agreed, that if any Ship, or other Vessel, belonging to His Britannic Majesty, or to his Subjects, shall, by misfortune, storm, or any other disaster whatsoever, be forced ashore, or wrecked, on any part of the Dominions of the Emperor of Fez and Morocco, such Ship or Ships, Persons and goods, shall be faithfully, and without the least damage or diminution, restored and delivered to the Consul, or *any other Person whom their Owner shall appoint to receive the same* ; the People shall be set at liberty, and permitted to depart whensoever they please, without the least detention.

VII. It is moreover agreed, that His Majesty of Great Britain shall have liberty to establish a Consul, or as many Consuls as he pleases, in the Dominions of the Emperor of Fez and Morocco, and that the said Consul or Consuls may reside in any Port or Ports, or places they please, as well maritime as others, belonging to or under the jurisdiction of the Emperor of Fez and Morocco ; and that the said Consul or Consuls shall be treated with the respect due to their titles or characters ; and they, as well as the other Subjects of His Majesty residing there, shall be permitted to enjoy the entire freedom and exercise of their religion, without the least impediment, reproach, or affront, either in word or action ; and that they shall have a decent place for their burying ground, against which no violence shall be committed ; and that the aforesaid Consuls and Factors may dispatch, at their pleasure, their Brokers and Servants, with liberty to go from place to place, by sea and land ; it is likewise granted to them to embark and go on board any Ship or Ships whatsoever, *to treat and contract, as well in the Port as in the Road*, without impediment, constraint or limitation, concerning their effects, secure from any risk of confiscation or embargo, under any pretence ; and the said Consul or Consuls, with the other Subjects of His Britannic Majesty trading there, shall have full liberty to leave the Country whensoever they please, without impediment or molestation being offered to them or their effects. And it is moreover agreed, that if any Subject of His Britannic Majesty, residing or trafficking in the Dominions of the Emperor of Fez and Morocco, shall happen to die, the Governor of the place, where it happens, shall be obliged to see all his goods and effects delivered into the hands of His Majesty's Consul, and, in default of such Consul, to some English Merchant, who is to secure and keep them for the disposition of his Heirs ; but this is to be understood in case the Deceased shall not have left a Partner, or Friend, or, before his decease, shall not have recommended his said effects and debts to some other Christian Merchant (of any Nation whatsoever), in which

case, the Governor shall not intermeddle further than to use his authority to see that the Will and Testament of the Deceased be carried into execution, as in recovery of his debts, &c., and further declares, that no Subject of His Britannic Majesty shall be obliged to give satisfaction for any other debt, but what shall be contracted by himself, or shall appear by his accounts; and that the Subjects of the Emperor of Fez and Morocco, as well Moors as Jews, residing in the Dominions of the King of Great Britain, shall enjoy the same privileges that are granted to the English residing in Barbary; and that the Domestic Servants of the Consuls, and other Subjects of His Britannic Majesty, of whatever Nation they may be, either Moors or others, shall not pay the Tax called the Poll-Tax, or any other Tax.

VIII. It is agreed, that no Alcaide, Governor, Soldier, or Subject of the Emperor of Fez and Morocco, shall lay violent hands on the effects or merchandises, belonging to the Subjects of His Britannic Majesty, within the jurisdiction of the Emperor of Fez and Morocco, without first treating, agreeing, and paying the value thereof, or according to an agreement made, and without having permission and authority from the Emperor for that purpose; neither shall the Subjects of His Britannic Majesty be forced to buy goods contrary to their inclination; and it is moreover agreed, that no Commander, or Captain of an English Ship, shall be obliged, or constrained to negotiate, or receive on board, merchandises belonging to any Person whatsoever, he or they declaring to the Consul residing there the reason for it; neither shall the said Ship be detained, or embargoed, under any pretence; and that if any of the Emperor's Subjects shall freight an English Ship to carry and convey any commodities from one place to others of the Emperor's Dominions, and it shall happen, either from bad weather, or any other accident whatever, to touch at any place or places in the voyage, such Ship or Ships shall not be obliged to pay anything for the shelter or assistance they may receive; nor shall a Pilot or Mariner be taken out of any English Ship.

IX. If there shall happen any quarrel or dispute between any Englishman and any Mussulman, by which any of them may receive detriment, the same shall be heard and determined by the Emperor alone; and if any Englishman, who shall be the Aggressor, shall make his escape, in such case, no other Englishman shall suffer on his account, or in his place; it is also agreed, that if any law-suit, dispute, or difference arises between the Subjects of His Britannic Majesty, they shall be accommodated by the Consul of the Nation: and if any quarrels shall happen among the Mussulman in England, or in any of the English Dominions, by which one of them may receive detriment, the same shall be heard before a Christian and a Mussulman, and shall be decided according to the Laws of Great Britain.

X. It is agreed, that not only during the present Peace and Amity, but also in case of a Rupture or War breaking out between Their said Majesties, in any time hereafter, the Consul and other Subjects of the King of Great Britain, who reside or traffic in the Dominions of the said Emperor of Fez and Morocco, shall be permitted to quit the Country whenever they think proper, as well in Peace as in War, in any Vessels of whatever Nation; and also, in case of a Rupture, the space of 6 months shall be granted to them to remove; and all their debts shall be justly

paid to them ; and they shall take away their effects, Families, Children, though born in the Country, and Servants, without the least detention, impediment, or embargo.

XI. It is moreover agreed, that if any Englishman, in the Dominions of the Emperor, or any Subjects of the Emperor, in the English Dominions, shall maliciously endeavour to break the Peace, they who are guilty of such crime shall be punished by each Sovereign for that offence : but each Sovereign shall take cognizance of his own Subjects.

XII. It is also agreed, that if any Subject of the Emperor of Fez and Morocco desires to transport commodities from the Dominions of the King of Great Britain, he shall be permitted to do it, without paying greater Duties or Impositions than other Nations pay, according to the custom of the Country ; and when the English Convoy shall be ready, it shall be ordered, after its arrival at Gibraltar, to convoy the Vessel on which the said commodities are embarked, to the Port His Imperial Majesty shall appoint.

XIII. It is also agreed, that no Spaniard, or Native of any other Country, whether Captains, Mariners, Fishermen, or other Persons, under the English Government in the City of Gibraltar, (or in the Island of Minorca, when it shall again be in possession of the English,) shall be seized or molested, navigating under the English Flag, with Passports from the Governor, or Commander in Chief of those places, and that they shall be considered and esteemed as English natural Subjects.

XIV. It is also agreed, that all the Subjects of the Emperor of Fez and Morocco, Moors or Jews, shall be permitted to traffic, buy, or sell in the City of Gibraltar, (or in the Island of Minorca, when it shall again be in possession of the English,) for the space of 30 days only, and, at the end of that time, to take and carry away, without molestation, all their effects to any part of the Dominions of the Emperor of Fez and Morocco.

XV. It is further concluded, that all the Subjects of His Britannic Majesty, and likewise of Hanover, and of his other Dominions, who, being Passengers on board any Ship or Vessel of any Nation not in friendship with the Emperor of Fez and Morocco, shall be taken and made Prisoners by any of his Cruizers, shall be immediately set at liberty, and delivered to His Britannic Majesty's Consul residing at the place where they shall be taken to ; and if there be no Consul residing in such place, to the principal Merchant there, with directions to send them by the first and most convenient opportunity to the Fortress of Gibraltar, or to any other place ; and in case any of the Emperor's Subjects, being Passengers on board any Ship or Vessel of any Nation at War with His Britannic Majesty, shall be taken by His Britannic Majesty's Ships, they shall, in like manner, be set at liberty ; and all His Britannic Majesty's Subjects, belonging to Hanover, or his other Dominions in Germany, shall enjoy the same privileges, and shall receive the same respect, and shall be considered by the Emperor of Fez and Morocco, and by his Subjects, in the same manner as the English.

XVI. It is moreover agreed, that such of the English Subjects of His Britannic Majesty, or others, who shall be ordered by the Governor of the City of Gibraltar, (or of the Island of Minorca, when it shall be

again in the possession of the English,) shall be permitted, and shall have liberty to buy cattle, provisions, refreshments, and all necessaries they please, for the said places, in the public markets, or in any other manner, as shall be most convenient to them, in any Port or place in the Dominions of the Emperor of Fez and Morocco, and shall take them away, without hindrance or molestation, paying a stipulated Duty for the said cattle, provisions, refreshments, &c.

XVII. It is moreover agreed, that such a number and quantity of Passports shall be transmitted to the Emperor of Fez and Morocco, as shall be judged necessary for him, and which shall be indented in such manner as shall tally with those which the English Merchants shall receive in England; and if a Ship of War shall meet with any of the Merchant Ships belonging to the Emperor, such Merchant Ships shall be obliged to produce and show their Passports, which the English Consul has given them.

XVIII. It is also agreed, that if any of the Subjects of the Emperor of Fez and Morocco shall have been made Slaves, and shall escape on board any English Ship of War, or to Gibraltar (or to Port Mahon, when it shall be again in possession of the English), or in any other part of the English Dominions, the same are to be protected, and sent with all convenient speed, to their respective homes; and His Majesty of Fez and Morocco assures and promises, that the Subjects of His Britannic Majesty who may escape from Ceuta, or any other Garrison on the coast of Africa, being Prisoners in such Garrisons on the coast of Africa (not having taken Arms against the Emperor) shall be free, and sent to Gibraltar.

XIX. It is moreover agreed, that no Obligation or Contract shall have force, or be valid, against any Merchant whatsoever, Subject of His Britannic Majesty, unless the said Merchant shall have signed it with his hand, and in case that any one cannot write, it shall suffice that a Person, to his satisfaction, has wrote such Obligations or Contracts, and signed them for him; the same privilege shall be granted to the Subjects of the Emperor of Fez and Morocco, residing in the Dominions of His Britannic Majesty.

XX. It is moreover agreed, that all Ships and Vessels belonging to His Britannic Majesty in Germany shall carry a Pass; that the form and head of the said Pass shall be sent to the Consul of His Britannic Majesty residing in Barbary, to be delivered to the Commanders or Captains of the Ships, or Cruizers of the Emperor of Fez and Morocco, to the end that the said Commanders or Captains may show the due respect to this Peace, without offending through ignorance; and all the Commanders or Captains of Ships or Vessels belonging to the Subjects of His Britannic Majesty in Germany, who shall meet with any Ship or Vessel of the Emperor of Fez and Morocco, or of his Subjects, if the Captain thereof shows a Pass, signed by the Governor of the City he belongs to, with a Certificate from the English Consul, or in case of his death or absence, from the major part of the English Merchants residing there, he shall be permitted to pursue his voyage without impediment or injury.

XXI. It is also agreed, that the Subjects of His Britannic Majesty shall not be obliged to present themselves before the Magistracy of

the Country, to be judged, under any pretence ; and their causes, suits, or differences, which may happen with the Moors, or any other Subjects whatsoever, living in the Dominions of the Emperor of Fez and Morocco, shall be judged and determined only by the Governor of the City, and English Consul.

XXII. It is also agreed, that in case any Ship or Ships of War, or others, at enmity with His Britannic Majesty, shall be in any Port of the Emperor of Fez and Morocco, where at the same time there shall be Ships belonging to the Subjects of His Britannic Majesty, the said Cruizers shall not be permitted to offer any violence to them, nor to sail under 40 hours after the said Ships shall be departed ; and it is moreover agreed that the Peace shall commence from the signing of this Treaty, after which no Subject of His Britannic Majesty shall be bought, sold, or made a Slave of in any part of the Dominions, or under the Jurisdiction of the Emperor of Fez and Morocco ; and this shall be ratified within 6 months, or sooner if possible ; and in case, in the mean time, any Prize shall be made by either of the 2 Parties with loss, reparation shall be made, according to the shares, and as the Ship or effects shall have been sold : and the part which shall remain entire, shall be immediately restored in its own species ; the People shall be set at liberty.

XXIII. It is agreed and concluded (in order that there be no excuse made, or ignorance pretended of this Peace) that the 25 Articles following and before-mentioned, shall be declared and published to all the Subjects of each Power, which Declaration shall be signed by each Party, and shall be observed by them to avoid disputes ; and that they shall be translated immediately, by the Emperor's order, into the Arabic language ; that Copies shall be sent to all the Alcaldes and Officers of all the Ports and Dominions of His Imperial Majesty, to be read publicly by the Judge, and afterwards to remain deposited in the hands of the said Judge, or the Alcaide of the Port, for occasions that may offer ; and to prevent all other troubles, that every Captain of a Ship of War or Cruizer of the Emperor of Fez and Morocco, shall be provided with a Copy of them, which Copy shall be actually on board the said Ship or Cruizer, in order to make this Peace the more inviolable ; and that the Ratification of the said Articles shall be in the Spanish language, which shall be received, and of equal force, as if it was in either language of the 2 Nations.

XXIV. And lastly, it is agreed and concluded, that when His Excellency Mark Milbanke, Esq., His Britannic Majesty's Ambassador, arrives at Court, or where he shall receive his audience, or during the time he stays in the Dominions of the Emperor, he shall never, in any manner, be asked or interrogated by the Emperor, his Servants, or any other Person, either Christian, Moor, or Jew, relating to any Prize or Prizes, made by His Britannic Majesty's Ships of War, or Privateers ; neither shall he meet with any insults or affronts, by applications on that or any other matter ; it being clearly understood, that the 25,000 pesos duros which are paid (exclusive of the 200,000 pesos duros for the redemption) are for the entire satisfaction of all difficulties, differences, pretensions, disputes of any sorts, depending between Their Imperial and Britannic Majesties, their Subjects or the Inhabitants of their Dominions, and to cement a true and inviolable Peace and Friend-

ship between the 2 Nations. And it is further agreed, that the Consul or Consuls of His Britannic Majesty shall not pay any Duties for their furniture, clothes, or baggage, or any other necessaries which they shall at times have occasion to bring to the Emperor's Dominions, for the consumption of them, or their Families or their houses.

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*Additional Article*

It is moreover agreed, that if any of the Governors of Gibraltar or Minorca (when it shall be again in the possession of the English) shall desire Flour or Wheat for the Troops of the said Garrisons, that His Imperial Majesty permits them to buy the same in any places of His Imperial Majesty's Dominions, and to carry them away, paying a fixed Duty; but it is understood, that the Emperor does not grant the said privilege to any Merchant to carry away the said articles to sell. And it is permitted that the Ships of War may buy the said articles for their own use, in any Port of His Imperial Majesty's Dominions, without paying any Duty or Imposition.

Given and signed in our Royal Court of Fez, the 28th of July 1760.

(L.S.) MARK MILBANKE.

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*ADDITIONAL ARTICLES between Great Britain and Morocco.—Signed at Sallee, 24th May 1783*

ADDITIONAL ARTICLES of Friendship and Commerce, made by the Emperor of Morocco with the King of Great Britain; concluded with Sir Roger Curtis, His Britannic Majesty's Ambassador to Morocco, 24th May, 1783.

In the Name of God, Amen. Nothing can be done but with the help of God. From the Slave of God, Mahomet Ben Abdallah. God is his Master.

These are the Articles of Friendship and Peace made and concluded between us and the Great King of the English, George the Third, through the hands of His Excellency Sir Roger Curtis, the Ambassador which he sent unto us.

ART. I. There is Peace and Friendship between us, agreeable to former Treaties, nor has it been otherwise. The English Merchants have free liberty to come to all our Ports, there to trade, and to buy, and to sell like other Nations; and we also give leave to the Merchants, our Subjects, to repair to and trade at all English Ports.

II. All English Subjects, who have debts or demands in our Dominions or Ports, have free liberty to come and recover the same, and to be paid even to the last blanquin. But if any have claims upon such as are bankrupt and unable to pay, their money is unavoidably lost; for we have heretofore often signified, to all the Merchants who traded to our Ports, not to sell their goods but for ready money, or to Persons

of established credit ; and these are still our orders. And we also give the same orders to our Merchants who trade to Foreign Ports, not to sell but for ready money, or with People of credit ; and if they dealt with insufficient Persons, they must lose their money.

III. We grant to the English the house at Tangier, where the English Vice-Consul used to live ; but as to the house of Elihu the Jew, where Logie used to live, it is agreed with the said Elihu, that if he suffered any Christian, of whatsoever Nation, to live in the said house, it shall be taken from him, and forfeited to the Public Treasury of the Mus-sulmen ; and all the furniture and other effects of Logie, which was in the said house, we have ordered to be restored again, without anything being lost ; and if anything shall be missing, our Servant Alcaide Mahomet Ben Abdelmaleek, the Governor of Tangier, is to pay for it.

IV. We grant to the English our house at Tangier, where Benido used to live, and after him our Servant Alcaide Abdelhazed Fenish. We give it to you.

V. We promise to build a house for the English Agent, at Marteen. The rooms on the ground-floor shall be for lodging the stores of our Ships, and the upper part shall be for the habitation of whoever the English send.

VI. The English shall load provisions and refreshments from all our Ports for 1 year, the said year to commence on the 1st day of the month Jumet, the 1st in the year, 1197 (1st April, 1783), and to end on the last day of the month Rabere, the 2nd, 1198 (28th March, 1784), during which year they are to pay no Duty, no ounce, nor anchorage fee. And from the 1st of the month Jumet, 1st, 1198 (1st April, 1784), the English shall have the use of all our Ports, Safe, Willideeah, New Teet, Tadallah, Dalbydah, Arabat (the beginning of goodness), Sallee, Mamora, Tangier, Larache, and Tetuon, to load the aforesaid provisions and refreshments : to pay the following Duties : for every ox, 4 cobbs ; for a sheep, 7 ounces ; for a dozen fowls, 6 ounces ; and all other articles to pay the same Duty as formerly, except at the Port of Mogador, where the English are to pay the same Duties, for provisions or refreshments, as the Merchants of other Christian Nations. And we grant the English leave to take on board mules from all our Ports, paying 10 cobbs duty for every mule ; and they are allowed 3 cwt. of barley for each mule.

VII. The Master of every Vessel which comes from Gibraltar to load provisions or refreshments, is to bring a Clearance, in which is to be inserted, upon the oath of the Master, the size of the Vessel.

A Vessel of 200 quintals, or 10 tons burthen, is to pay for anchorage fee, 3 cobbs ; from 200 to 400, or 20 tons, 5 cobbs ; from 400 to 600, or 30 tons, 8 cobbs ; from 600 to 800, or 40 tons, 10 cobbs. But if any Vessels carry any manner of merchandise besides provisions and refreshments, they shall pay the same anchorage Duties as the Merchant Vessels of all other Nations which come to our coasts.

VIII. We have given orders to our Servants, at all our Ports, that they do observe and obey all the Articles which we have now granted, neither more nor less. These are our orders.

The 23rd of the month Jumet, the 2nd in the year of God, 1197 (24th May, 1783).

(L.S.) ROGER CURTIS.

*Annex No. 10*TREATY BETWEEN MOROCCO AND GREAT BRITAIN OF  
APRIL 8, 1791*Source: 1 British and Foreign State Papers, 446-455.**TREATY of Peace between Great Britain and Morocco.—Signed at  
Sallee, 8th April 1791*

Praised be God alone.

THIS is a Copy of the Writing of the Treaties of Peace between the Lord of the Faithful, who is crowned Defender of the Law, by the grace of God of the Universal World, that this prosperity may never be at an end.

Mahomed el Mehidi el Yazid, whom God has crowned at the head of his Troops, that his fame may be continued to be named in his Dominions ; and George the Third, King of England ; in 43 Articles.

ART. I. For the freedom, security, and perfect ease of the Subjects of both Parties,

It is agreed, that the English shall have liberty to establish a Consul (or as many Consuls as they please) in the Dominions of the Emperor of Morocco, who shall have the liberty of the Country, and reside in any Port or place he chooses, whether maritime or not, as he may find most conducive to the service of the King his Master, and advantageous to the trade of his Subjects.

II. The English Consul residing in the Emperor's Dominions shall be treated at all times with the respect and civility due to his character.—His person and house shall be inviolable, and if any Person injures or insults him, by word or deed, he shall be severely punished. He shall have liberty to choose his own Interpreters and Servants, either Mussulmen or others, who are not to pay the Poll-tax, or any Tax or contribution whatsoever ; he shall be allowed a place to pray in ; he shall have liberty, at all times, of hoisting His Majesty's Flag on the top of his house, either in Town or Country, and in his Boat when he passes on the water ; he shall not pay Duty for furniture, clothes, baggage, or any other necessaries which he imports in the Emperor's Dominions, for the use of himself or his Family ; and if the nature of the service, or any other motive, require his absence from Barbary, neither himself, his Servants, baggage, or effects shall be stopped or detained upon any pretence whatsoever ; but shall have free leave to go, and to return as often as he may think it necessary ; and all honours or privileges that are now, or may hereafter be granted, to the Consul or Deputy of any other Power, shall likewise be granted to the English Consul and his Deputy.

III. English Subjects are permitted to come with their Ships, merchandise, or goods, to all parts of the Emperor's Dominions ; to enter into the same, to remain and reside there without any limitation of time ; also to hire, or build houses or stores ; and the English Subjects visiting or residing in the Dominions of the Emperor, and the Subjects of the Emperor visiting or residing in any part of the English Dominions, shall not do to each other any harm, offence, or injury, either by word or deed, but shall treat each other with all possible respect and friendship.



IV. English Subjects, or any under English protection, residing in, or trading to, any part of the Dominions of the Emperor, shall be in perfect security as to their persons, property, and effects; they shall enjoy the entire freedom and exercise of their religion without the least reproach or affront, and shall have a convenient place for their burying ground, against which, or the bodies buried in the Country, no violence or indecency shall be committed; they shall have the liberty of the Town and Country; may choose their own Interpreters, Brokers, Couriers, and Servants, be they Mussulmen or not, whom they may dispatch at their pleasure, with liberty to go from place to place, either by sea or land; and, whenever they think proper, they may go or send on board any Ship whatever, either in the Port or Road, and neither they nor their Domestic, of any religion, shall pay the Poll-tax or any other Tax.

V. No English Subject, or Person under English protection, shall be forced to sell or buy anything contrary to their inclination, nor shall the Moors take any effects from them but by their own consent, according to an agreement made; and the like conduct shall be observed by the English towards such Moors as may be in the English Dominions.

VI. No English Subject, or Person under English protection, shall be bound to pay the debts of any other English Subject, or of any other Person whatsoever, unless he become Surety for the same by a public Act under his own hand.

VII. Such causes or differences as may arise in Barbary between the Subjects of His Imperial Majesty and English Subjects, shall not be decided by the Cadi or Judges of the place, but are to be determined by the Governor of the City, and the English Consul or his Deputy; nor shall an English Subject, or one under English protection, be obliged, on any pretence, to present himself before the ordinary Magistracy of the Country; and all such causes as may arise between English Subjects, or those under English protection, shall be determined by the English Consul or his Deputy alone.

VIII. If there happen any quarrel between any English Subject, or Person under English protection, and Mussulmen, by which either of them may receive detriment, the cause shall be heard and determined by the Emperor alone, and if the English Subject, or Person under English protection be the Aggressor, he shall be punished with no greater severity than a Moor guilty of the like offence ought to be; and if he escape, no other English Subject, or Person under English protection, shall suffer on his account, or in his place; and if it appear that the crime was committed by accident, or in his own defence, he shall be treated agreeably to the customs observed towards Mussulmen in like cases.

And if any quarrel shall happen between Englishmen and Mussulmen in any part of the Dominions of the King of England, by which one of them may receive detriment, the same shall be heard before an equal number of Mussulmen and Christians, and determined agreeably to the Laws of England.

IX. All Subjects of the Emperor who shall have been made Slaves, and shall escape to any English Ship of War, or to any part of the English Dominions, shall be protected and sent with all convenient speed to their homes; and in like manner all English Subjects, who may escape

from any Garrison on the coast of Africa, or from any place without the English Dominions, where they were Prisoners or Slaves, to any part of the Emperor's Dominions, shall immediately be free, and be delivered up to the Consul or his Deputy, or be sent to Gibraltar.

X. No English Subject, or Person under English protection, shall be permitted to turn Mussulman, being induced thereto by surprise, unless he voluntarily appear before the Governor with the British Consul or his Deputy 3 times in 3 days, and each day declare his resolution to turn Mahometan.

XI. Any English Subject, or Person under English protection, turning Moor, and having in his possession goods or estate the property of other English Subjects, or books or papers relating to the property of other English Subjects; all such books, papers, goods, or estate, shall positively be delivered to the British Consul or his Deputy, that they may be conveyed to their true Owners.

XII. All English Subjects of every denomination, that may be in the Emperor of Morocco's Dominions, shall always, and at all times, both of Peace and War, have full and absolute liberty to depart and go to their own or any other Country, upon any Ship or Vessel of what Nation soever they shall think fit; they shall be permitted to sell, or alienate their moveable or immoveable estates, and to carry away the price thereof, with their effects, goods, Families, or Servants, whether born in the Country or not, without any interruption or hindrance, and the same privilege shall be allowed to all the Subjects of the Emperor, who may be in the English Dominions.

XIII. If any English Subject, or Person under English protection, dies in any part of the Emperor's Dominions, his goods and monies shall not be seized by the Governor, Judges, or other Officers, who shall likewise make no inquiry after the same; but the said goods and monies shall be received by such Person or Persons whom the Deceased, by Will, shall have made his Heirs, in case they be present; but if the Heirs be not there, then the Executors constituted by the Deceased, or, in their absence, the Consul or his Deputy, shall, after having made an inventory of all the property left, take them into custody for the benefit of the lawful Heirs. And in case any English Subjects die, not having made any Will, the English Consul or his Deputy shall, after having made an inventory, possess himself of his goods and monies, for the use of the Kindred and Heirs of the Deceased: and the Governor, or any other Officer in power, in the place where such Person shall die, shall order all debts due to the Deceased to be paid to the Consul or his Deputy for the above uses.

XIV. It is agreed and understood that all the German Subjects of the King of England, or Inhabitants of his German Dominions, and all the Inhabitants of Gibraltar, are and shall be considered as English Subjects, and entitled to the privileges of English Subjects to all intents and purposes, as if they were born in the City of London: and if any Place or Dominion shall hereafter become subject to the King of England, either by cession or conquest, the Inhabitants thereof shall be considered as English Subjects, and be as fully entitled to all the privileges of English Subjects, as if such Place or Dominion was now especially named in this Treaty.

XV. The Subjects of the King of England, and those under His said Majesty's protection, over and above the Stipulations contained in this Treaty, shall enjoy all the privileges and advantages which now are, or which hereafter may be, granted to any of the Subjects of the most favoured Nation.

XVI. There shall be a reciprocal and perfect freedom of navigation between the Subjects and Vessels of the King of England and of the Emperor of Morocco; and if any Ship of War or Privateer belonging to the King of England or his Subjects, shall meet with any Ship or Vessel belonging to the Emperor or his Subjects, if the Commander of any such Ship or Vessel shall produce a Pass signed by the Moorish Governor, and a Certificate from the English Consul or his Deputy, declaring such Vessel to be the property of the Emperor or his Subjects, or if they have no such Pass or Certificate, yet if the Commander and major part of the Ship's Company be Subjects of the Emperor, the said Moorish Ship or Vessel shall pass freely.

XVII. The Ships of War or Cruizers belonging to the Emperor of Morocco, or to his Subjects, meeting with any Ship or Vessel belonging to the King of England or his Subjects, not being in any of the Seas appertaining to any of His Majesty's Dominions, may send a single Boat on board with 2 Sitters, which 2 and no more may enter the Ship; and on showing them a Passport signed in the usual manner, the said Boat shall depart immediately, leaving the Ship to pursue her voyage, although she should be coming from or bound to a Port in the Dominions of a Prince or State actually at War with the Emperor; nor shall any Pilot, Mariner, Passenger, or Person whatsoever, either for examination or on any other pretence, or any stores or effects of any kind, either as a free gift or otherwise, be taken out of or from any Vessel belonging to the King of England or to his Subjects. And all Prizes, taken by the King of England's Ships, or Subjects, and all Vessels fitted out in any of the distant English Governments, shall not be molested in case of not having a Mediterranean Pass on board; but a Certificate under the hand of the Commanding Officer, that shall so take Prizes, and a Certificate under the Hands and Seal of the Governor or Chief of such distant Government where the Ship sailed from, shall be a sufficient Pass to either of them.

XVIII. It is agreed that the Ships or Vessels of the Emperor, or those belonging to his Subjects, are not to cruise so near any of the Ports belonging to the King of England's Dominions, as to disturb or molest the trade thereof in any manner whatsoever.

XIX. Any Subjects of the Emperor of Morocco, being Passengers on board any Vessels belonging to a Nation at War with England, and if such Vessel be taken by the English Ships, the Moorish Subjects on board shall all be set at liberty, and their property restored to them; and all English Subjects, being Passengers on board any Ship or Vessel of any Nation not in Peace with the Emperor, if such Vessel be taken by the Emperor's Cruizers, the English Subjects shall be immediately set at liberty, and all their property restored to them.

XX. Any Ship or Vessel belonging to the King of England or his Subjects, having Passengers, goods, or merchandise, although the property of a People actually at War with the Emperor, shall pass

free and unmolested, and the like freedom is granted to all Vessels belonging to the Emperor or his Subjects.

XXI. If any Ship belonging to the King of England or his Subjects shall come to any Port within the Emperor's Dominions with a prize or prize goods, they shall be at liberty to sell them, without hindrance or molestation, or depart therewith, as they please.

XXII. If any Ship or Vessel of either of the Parties shall have an engagement with a Vessel of any other Power, within gun-shot of the coast of the other, the Vessel so engaged shall be protected or defended as far as possible.

XXIII. All Ships or Vessels of any Nation whatsoever, which shall be under the guns of the Ships of War of either Party, shall, for the time, be considered as immediately under the protection of the Crown to which such Ships of War belong, nor shall it be lawful on any account to molest Vessels so protected.

XXIV. It shall not be lawful for any Cruizers, not being subject to the Emperor or the King of England, who have Commissions from any Prince or State, in enmity with either the Emperor or the King of England, to refit their Ships in the Ports of one or the other Nation, nor to sell what Prizes they have taken, or in any other manner whatever to exchange either Ships' merchandise, or any other ladings; neither shall they be allowed to purchase stores, or even provisions, except such as shall be necessary for their going to the next Port of the Country to which they belong.

XXV. If any Ship or Vessel belonging to any Power whatsoever at War with the King of England, shall be in any Bay, Port, or Road of the Emperor's Dominions, where at the same time there shall be Vessels belonging to the King of England, or his Subjects, the said Vessels of the Enemy shall not be permitted to offer any violence to them, nor to sail under 24 hours after the said Vessels shall be departed; and in like manner shall all Vessels of the Emperor or his Subjects be protected in the Ports of the King of England.

XXVI. If any Squadron, or single Ship of War, or Merchant Vessel, belonging to the King of England or his Subjects, being in the Ports, or on the Coast of His Imperial Majesty's Dominions, shall want provisions or refreshments, they may buy them in the quantity or quality they may have occasion for, at the current market price, free of Duties, or of any other gratuity, and the like privilege shall be granted to the Moorish Vessels in any Port of the King of England's Dominions.

XXVII. As the English Ships of War do frequently assemble in the Bay of Gibraltar, or cruise in the neighbouring Seas, if at any time they should be in want of provisions and refreshments, and should send from thence to purchase supplies in any part of the Emperor's Dominions, they shall be permitted by their Agents, properly authorized, to buy cattle, alive or dead, and all other kinds of refreshments and provisions, at the prices they are sold for in the market, and shall be suffered to carry them off without paying Duty, in the same manner as if such English Ships of War were themselves in the Port.

XXVIII. All Packets bearing the King of England's Commission, or Commission from the Royal Post-Office, shall be treated with the

same respect, and enjoy the same privileges as His Majesty's Ships of War.

XXIX. No Native of any Country whatsoever, whether Captain, Mariner, Fisherman, or other Person, under the English Government, in the City of Gibraltar, or any other place that may hereafter belong to the King of England, shall be seized or molested, navigating or fishing under the English Flag, with Passports attested by the Governor or Commander in Chief of those places, but they shall be considered and esteemed as English natural-born Subjects.

XXX. The Ships of the Subjects and Inhabitants of both Their Majesties, coming to any of the Sea-coasts within the Dominions of either, but not willing to enter into Port, or being entered, not being willing to show or to sell the cargoes of the Ships, shall not be obliged to give an account of their loading, nor shall they be searched, examined, or delayed on any pretence whatsoever.

XXXI. If any English Ship or Vessel shall come into any Port of the Emperor's Dominions, having a cargo on board, a part only of which is destined for such place, no Duty shall be demanded or paid but for such articles as are there landed, and the Vessel or Crew shall, without the least molestation, be permitted to depart freely with the remainder of her cargo.

XXXII. No Commander of an English Ship or Vessel shall be obliged to receive on board Passengers or merchandise, neither for public nor private service, belonging to any Person whatsoever, against his consent, nor to make a voyage to any place he shall not have a mind to go to, neither shall his Vessel be searched, detained, or embargoed on any pretence.

XXXIII. If any of the Emperor's Subjects shall hire any English Vessels, to convey any goods or Passengers from one part of the Emperor's Dominions to another, and shall happen, by violence of weather or other occasion, to touch at any place on the voyage, such Ships shall not be obliged to pay Anchorage, Port charges, or anything for the shelter they may receive.

XXXIV. Any Ship or Vessel belonging to any part of the English Dominions that may meet with an accident at Sea, and shall put in any Port of the Emperor's Dominions to repair, shall be received and treated with all manner of humanity and civility; have all the protection and assistance of Friends; shall be at liberty to land and re-load her cargo, without paying any Duty whatever; shall be allowed to buy provisions and other necessaries, for the support of their Persons and future subsistence to their destined Port, or for repairing their Ships; and they shall in no manner be retarded or hindered from proceeding on their voyage.

XXXV. If any Ship or Vessel belonging to the King of England or his Subjects, be forced on shore, or wrecked on any part of the Emperor's Dominions, they shall have all the protection and assistance of Friends; every part of the Ship-tackle, furniture, goods, or merchandise, saved either by themselves or others, or driven on shore, shall neither be hidden, nor detained from them, nor hurt, under any pretext whatsoever, but shall be restored to the Proprietors, or to the Consul or his

Deputy, for their use ; all the People shall be at liberty, and without the least detention permitted to embark whensoever they please for any part of the World ; and in like manner shall the Vessels and Subjects of the Emperor be treated, if wrecked on the coast of the English Dominions ; and if any English Vessel be wrecked at Oled Nun, or on the coast to the southward among the Arabs, the Emperor will use his utmost power and influence to have the Men restored, that they may return immediately to their own Country, and the Consul or his Deputy is permitted, at the same time, to use his best endeavours to procure the Men, in which humane duty he shall be cordially assisted by the Emperor's Subjects.

XXXVI. There shall be an entire freedom of commerce throughout all the Dominions of both Parties, where commerce is at this time permitted, or shall be permitted hereafter to the Subjects of any other Nation ; and that the trade of the Subjects of both Parties may be established on just foundations, and all difficulties in future removed, a permanent Tariff for regulating the Duties of Import and Export shall be established, which Tariff is to be considered as forming a part of this Treaty, the same as if it was here inserted word for word.

XXXVII. The Subjects of the King of England, or those under his said Majesty's protection, who shall repair to the Dominions of the Emperor for cattle or provisions of any kind, shall be allowed to purchase and embark the same, paying the Duties according to the established Tariff ; and should the arrival of several Foreign Vessels at the same time, cause the demand for cattle and provisions to exceed the quantity offered for sale, the English Subjects shall at all times be furnished with an equal proportion at the usual market prices, nor shall the Subjects of any one Nation be allowed to engross the whole ; and as a proof of the Emperor's friendship for the King of England, it is agreed that if, at any time hereafter, His said Majesty's Garrison of Gibraltar shall be in any want of provisions, and there be no scarcity in Barbary, the Emperor will permit the English to buy Flour or Wheat, and to export the same at a reasonable Duty, solely for the use of the Troops, &c., of the said Garrison.

XXXVIII. In case any Subject of the King of England, or Person under His said Majesty's protection, shall import into any part of the Emperor's Dominions any warlike stores, or any kind of materials for building, rigging, or repairing of Ships, they shall not pay for the same any Custom or Duty whatsoever.

XXXIX. All goods and merchandise or effects, that shall be imported into any Port of the Emperor's Dominions, by English Subjects, or those under English protection, and which have once paid the regular Duty, may be exported or transmitted to any other part of the Emperor's Dominions, without paying any further Duty, and all merchandise smuggled in without paying Duties shall be confiscated, but no other punishment shall be inflicted on the Subjects of either Dominion.

XL. All the Treaties made with Muley Ishmael, Muley Abdellah Ben Ishmael, and Sidi Mahomet Ben Abdellah, shall continue in force and be faithfully observed, except the Articles that shall be found contrary to what is this day concluded and signed.

XLI. That whensoever it shall happen hereafter, through inadvertency or otherwise, that anything is done by the Ships or Subjects on either side, contrary to any of these Articles, the friendship and good intelligence shall not immediately thereupon be broke off; but this Treaty shall subsist in all its force, until satisfaction, after having been regularly demanded, shall be refused; and the Subjects of either Party who shall maliciously break this Treaty, or any of the Articles thereof, shall be severely punished by their respective Sovereigns, each Sovereign to take cognizance of the conduct of his own Subjects.

XLII. If ever the good understanding and friendship now subsisting between the 2 Courts should be broken, and War ensue, which God forbid, all English Subjects and those under English protection, of every rank and denomination, being within the Dominions of the Emperor, shall be permitted to retire with all their property, families, and servants, whether born in the Country or not, to any part of the World that they please, and by the Vessels of any Nation whatsoever; and to all such as desire it, 6 months shall be given, during which time they shall be in perfect freedom and safety, and sell and dispose of their goods and effects; nor shall their Persons or property be molested or disturbed in any manner, either on account of the War or other pretence; but on the contrary, they shall enjoy good and speedy justice, to the end that they may dispose of or remove their property and recover their debts; for which purpose the Powers of the Government shall at all times assist them, and so shall it be to the Moors in England.

XLIII. That there may be no ignorance pretended of this Peace, this Treaty shall be declared and published to all the Subjects of each Power, and Copies be sent to all the Alcaydes and Customers of all the Ports of the Emperor's Dominions, and the Captains of all his Cruizers.

Praised be God alone.

*Seal.*

God of Truth  
Crown the Truth.  
There is only One  
God, and the Prophet  
Mahomet  
Sent of God.

The writing of the Slave of God, Mohamed el Yazid el Mehedi, whom God preserve.—Amen.

The 43 Articles, or Treaties, that are written on these 3 sheets, on the right side, are confirmed between me and the Powerful Englishman King George the Third, by means of his Ambassador, James Mario Matra. I consent to all of them, and make my peace on them, except 1 Article, which is No. 7, which says that the Cadi, or Moorish Judge shall not be present at the trial of Causes between English Merchants and Moors; to this I cannot consent, for it cannot be dispensed with that the Judge shall not be present, because he is the principal, and to be depended upon, and with the consent of the above-mentioned

Ambassador the Treaty remains concluded for all English Ships that will enter and sail from my Ports.

4th Sheban, 1205.

Concluded on, and ratified by the Emperor of Morocco, in the City of Sallee, the 8th of April, 1791.

(L.S.) JAMES M. MATRA.

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*Annex No. II*

TREATY BETWEEN MOROCCO AND GREAT BRITAIN OF  
JUNE 14, 1801, WITH EXPLANATORY ARTICLES DATED  
JANUARY 19, 1824

*Source: 1 British and Foreign State Papers, 455-462, and  
14 British and Foreign State Papers, 641.*

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*TREATY of Peace between Great Britain and Morocco.—  
Signed at Fez, 14th June 1801\**

THIS is the Patent Letter, containing, by the grace and power of God, the Treaties of Peace, Friendship, and Security; explained to the utmost, between His Imperial Majesty, Emperor of the Faithful Religion, proclaimed by the Almighty God, King of Agarb, Morocco, and all the Moorish Territories, Muley Soliman, Ben Mahomed, Ben-Abdala, may the Lord continue his grace over him and extol his Reign, through his Agent and Subject, Hadgi Abderhaman Ash Ash, now Governor of Tetuan; and the Agent of the English King, George the Third, whose Ambassador is James Maria Matra, now Consul at Tangier. To each of these Articles both Parties shall agree. These Articles have been made at Fez. May the Lord preserve them from all evil. Dated in the latter days of the month Moharam, 1216.

Herein we shall explain each Article:

ART. I. The English King may appoint one or more Consuls in the Dominions of the Emperor of Morocco and Fez; he or they may reside in any of the Emperor of Morocco's Ports, or in any of his Towns, at the election of the Consul, where he may think it convenient for his King's Subjects, or for the benefit of his commerce.

II. The Consul who may reside in the Dominions of the Emperor of Morocco, shall be treated with the utmost respect, according to his employment, and his house and family shall be taken care of; they shall not be molested by any body, nor affronted in any way whatever, and they who may be guilty of so doing shall be severely punished, in order that they may serve as an example to others; the said Consul may choose for his service either Moors or others, and none of his Dependants shall pay any Tax (which is commonly paid by the Jews), nor anything of the kind; the said Consul may establish a place of worship, and hoist his national colours at all times, either upon his

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\* Confirmed 19th January 1824. See Vol. 1826, 27. Page 641.



House, within or without the Town, or in his Boat if he goes out to Sea. The said Consul shall be free from the payment of any Duties on whatever he may bring for his use, or the use of his house, in the Dominions of the Emperor of Morocco. Should the said Consul be called home to his King's service or otherwise, he shall not be hindered from going, or be stopped, either he or his Dependants, or anything that belongs to him : he shall be at free liberty to go and come when he pleases ; he shall be treated with the utmost respect, and if anything more should be granted to any Consul of another Nation, it shall also be granted to him and his Agents.

III. English Subjects shall be permitted to come, with their Vessels and property of whatever kind, to any of the Dominions of the Emperor of Morocco ; they shall also be permitted to reside therein as long as they please, and to build warehouses for their merchandise ; the good friendship shall continue between the Subjects of both Nations for ever, so that no harm be done on either side.

IV. English Subjects or Merchants residing in the Dominions of the Emperor of Morocco, shall, themselves and their property, be in perfect security : they may follow their religion without being molested ; they may also choose a place proper for a burying-ground for their dead, and may go out with a corpse to bury it, and return in safety. They are also at liberty to send any of their Agents, either by land or sea, for the purpose of their service, without their being hindered or stopped ; and if any English Merchant should happen to have a Vessel in or outside the Port, he may go on board himself, or any of his People, without being liable to pay anything whatever.

V. English Subjects shall not be compelled to sell their property, or to make purchases unless at their own option, and no Moor shall take any property belonging to an English Subject, unless it be given by the goodwill of the Proprietor, or by mutual agreement ; the same shall be practised towards Moorish Merchants in the English Dominions.

VI. No English Subject shall be answerable for any debts, contracted by another Individual, unless under his own hand he be responsible for the same.

VII. Disputes between Moorish Subjects and English Subjects shall be decided in the presence of the English Consul, provided the decision be conformable to the Moorish Law, in which case the English Subject shall not go before the Cadi or Hacam, as the Consul's decision shall suffice.

VIII. Should any dispute occur between English Subjects and the Moors, and that dispute should occasion a complaint from either of the parties, the Emperor of Morocco alone shall decide the matter ; if the English Subject be guilty, he shall not be punished with more severity than a Moor would be ; should he escape, no other Subject of the English Nation shall be arrested in his stead ; and if the escape be made after the decision, in order to avoid punishment, he shall be sentenced the same as a Moor would be who had committed the same crime. Should any dispute occur in the English Territories, between a Moor and an English Subject, it shall be decided by an equal number of the Moors residing there and of Christians, according to the custom of the place, if not contrary to the Moorish Law.

IX. Moorish Subjects who escape from the Emperor of Morocco's Dominions, and go on board of any English Ship of War, or to any of the English Ports, shall be restored to their Country, without being sent as Prisoners; and English Subjects who come to the Dominions of the Emperor of Morocco, whether from their own Country, or from any other place near the Barbary Coast, such as Ceuta, from whence they may have made their escape, shall be delivered up to the Consul or his Agent, in order that they may be embarked for Gibraltar.

X. Renegades from the English Nation, or Subjects who change their religion to embrace the Moorish, they being of unsound mind at the time of turning Moors, shall not be admitted as Moors, and may again return to their former religion, but if they afterwards resolve to be Moors, they must abide by their decision, and their excuses will not be accepted.

XI. If any English Subject turn Moor, and have in his possession effects or papers belonging to English Subjects, he shall deliver them up to the English Consul or his Agent, in order to their being returned to the respective Owners.

XII. English Subjects, resident in the Emperor of Morocco's Dominions, either in Peace or War, are at liberty to go to their own Country, or elsewhere, either in their own or in any other Vessel; they may dispose of their effects or houses, &c., and take their value with them, as also their Families and Servants, even though they should have been born in Barbary, without impediment whatever; and the same shall be practised towards Moorish Subjects residing in the English Dominions.

XIII. When an English Subject dies in the Emperor of Morocco's Dominions, his effects shall not be searched or touched by any of the Governors, but shall be delivered into the hands of his Executors, or his Heirs, if present; but if no Heir or Executor appear, the Consul or his Agent shall be Executor for the same, he taking an inventory of all such effects found, to be delivered to the Deceased's Heirs or Executors. If the Deceased made no Will, the Consul or Agent shall take charge of the effects, in whose possession they shall remain until the Heir appears. If any debts were owing to the Deceased, the Governor of the Place shall assist and compel the Debtors to pay their debts to the Consul, or his Agent, to be kept for the Heir.

XIV. All the Treaties concluded between the English and the Moorish Agent, are to be considered as extending to any Territories the English may have in Germany, and to their Inhabitants, the same as if they were Natives of England, as also to Gibraltar and its Inhabitants, who shall be considered as Natives of London; they shall also extend to any other Town and its Inhabitants, which may hereafter be under the Dominion or Protection of England, as if they were included, from the beginning, in the Treaties.

XV. English Subjects, in addition to what is mentioned in those Treaties, shall enjoy any other privileges which other Powers enjoy at present, and if hereafter any further indulgences be granted to any other Power, the greatest share shall be extended to this friendly Nation to the Emperor of Morocco.

XVI. The navigation between the English Subjects and Vessels and those of the Emperor of Morocco, shall be free, and if an English Man-of-War or Privateer meet at sea, with a Moorish Man-of-War or Merchantman, the latter shall not be hindered of their navigation, provided they are furnished with their Passes given to them by their respective Governors, certified by the English Consul or his Agent ; but if no Passport be found on board, certified as above, the Vessel being under Moorish colours, and the greater part of the Crew being Moors, it shall not be molested or hindered of its navigation.

XVII. If a Morocco Man-of-War meet with an English Vessel at sea, not being in the English Sea, the Moorish Man-of-War may send his Boat, with 2 Officers, on board of the English Vessel to examine her Pass ; the 2 Officers only shall be permitted to go on board ; and, after so doing, the Boat shall return, and the Vessel continue its voyage : if an English Vessel come out of a Port with which the Emperor of Morocco may be at War, or go into it, no Mariners, Pilot, or Strangers shall, in either case, be taken from it ; nor shall any one be allowed to search the said Vessel for the purpose of taking any ammunition or goods from the English Vessel, under the pretence of receiving them from the Captain as a present, or otherwise ; and all Prizes taken by the King of England's Ships, and met with at sea by the Emperor of Morocco's Cruizers, even without a Pass, shall not be molested or hindered from their navigation, a Letter or Affidavit, either of the Captain by whom the Capture was made, or of the Governor of the place from whence she sailed, being deemed sufficient.

XVIII. The Emperor of Morocco's Cruizers, and his Subjects, shall not cruize near the English Ports, so that the commerce of the said Ports be interrupted, nor shall English Vessels so cruize near the Emperor of Morocco's Ports.

XIX. If a Moor, of the Emperor of Morocco's Subjects, be on board a Vessel of a Nation with which the King of England is at War, and the Vessel happen to be taken a Prize, neither the Moor nor his effects shall be seized, but shall be liberated ; the same shall be observed, if an English Subject be found on board a Vessel, with whose Nation the Emperor of Morocco may be at War, and which may be taken as Prize, the English Subject and his effects being liberated.

XX. If an English Vessel capture a Prize, and bring it into any of the Emperor of Morocco's Ports, the Vessel or cargo may be sold without being hindered by any body, or the Prize taken away wheresoever they please.

XXI. If an English Vessel run from a Vessel with which it may be at War, and come within gun-shot of the Emperor of Morocco's Ports, the latter shall be fired upon, and the utmost shall be done to protect the former : the same condition shall be observed in respect of the Emperor of Morocco's Cruizers, when near the English Ports.

XXII. If a Morocco Cruizer meet with a Vessel of any Nation, under convoy of an English Cruizer, such Vessel shall be considered as belonging to the King of England, she being under the protection of the English, and the Morocco Cruizer shall not detain her, or hinder her navigation, on any pretext whatever ; the same shall be practised by the English,

if they find a Vessel under convoy or protection of the Emperor of Morocco's Cruizers.

XXIII. Cruizers belonging neither to Morocco nor England, but having a Pass from a Nation with which the Emperor of Morocco or the King of England may be at War, shall not be allowed to enter any Port of either Party, nor to sell a Prize therein, neither shall they be allowed to take any stores or provisions, excepting only such a quantity of provisions as may be sufficient for their voyage home.

XXIV. If Vessels of a Nation with which the King of England is at War, enter any of the Emperor of Morocco's Ports or Bays, wherein there should happen to be English Vessels, it shall not be permitted to the Enemy to do violence to the English, or to molest them in any way, nor shall the Enemy be permitted to follow an English Vessel from the Harbour till 24 hours after her departure ; the same shall be practised towards Vessels of the Emperor of Morocco in English Ports.

XXV. If an English Fleet, Cruizer, or Merchant-ship, come into a Port of the Emperor of Morocco, or into any of his Bays or Rivers and want provisions, they shall be allowed to buy what is necessary, at the current price paid by other Nations that are at Peace.

XXVI. Packet-boats, furnished with the King of England's Pass, or with a Passport from the Person authorised to dispatch King's Packets, shall be considered as Ships of War.

XXVII. The Inhabitants of Gibraltar, which is under the English command, as also the Inhabitants of any other Town which may hereafter be in possession of the English, shall be considered as native Englishmen, and be permitted to travel, and navigate, and fish, under English colours, with the Governor's Pass, without being hindered or molested.

XXVIII. Vessels of either Party, or its Subjects, that enter into the Ports or Bays of either Party, and do not choose to come into harbour, or to anchor in the Port, being bound for another place, shall not be obliged to exhibit their cargoes, nor to sell any part of them, nor shall they in such case be searched.

XXIX. If an English Vessel land part of its cargo in any of the Emperor of Morocco's Ports, it shall only pay the Duties inward, on the quantity landed, but not for the remaining part of the cargo, which has not been landed, and it shall be at liberty to depart with the latter to any place whatsoever.

XXX. No English Captain shall be compelled to take on board of his Vessel, any Passenger or Person, or goods belonging to any Person whatever, against his will, nor shall the Captain be compelled to go to any Port without his consent, nor be prevented from going where he pleases.

XXXI. If a Subject of the Emperor of Morocco freight an English Vessel, for the purpose of loading or taking Passengers from one of the Emperor's Ports to another ; and, on his voyage, be driven by the wind and weather into another of the Emperor of Morocco's Ports, he shall not pay any Anchorage or other Duty whatever in such Port.

XXXII. English Vessels meeting with distress at sea, and entering any of the Emperor of Morocco's Ports to repair their damages, shall

be allowed to come in, and shall be assisted with all requisite stores, &c., to continue their voyage to their destination.

XXXIII. If an English Vessel strand, or be wrecked on the Emperor of Morocco's coast, it shall be protected and assisted in every respect as becoming friendship; the Vessel, and what may be saved from such wreck, shall be delivered to the Consul or his Agent, for the use of the Owners, and the Crew shall be at liberty to depart when they please; the same shall be observed, in a similar case, towards the Emperor of Morocco's Vessels on the English coast; and if any English Vessel be cast away at Wadnun, or the Sands near, the Emperor of Morocco shall do his utmost to ensure the safety of the Crew, and their being sent to their Country; the English Consul or his Agent may also use his endeavours in procuring their liberty, and shall be assisted in that object by the Governor residing near the place.

XXXIV. If an English Subject, or Person under the King of England's protection, come to the Dominions of the Emperor of Morocco to load provisions, he shall be allowed, on payment of the existing Duties, to export them to other Christian Nations, with which he may be at Peace, it being understood that their coming over for that purpose shall be at proper seasons of the year, or once or more, according as may be agreed upon, as he is not permitted so to come and export without stipulation, and out of season.

XXXV. If English Ships come to a Port where Ships of other Nations happen also to be, and want a supply of provisions, and the place do not afford sufficient to satisfy both, it shall be divided in proportion to the number of Vessels, and shall be paid for at the current market price, without its being permitted to the Ships of other Nations to take more than their portion; and if, henceforward, the Garrison of Gibraltar should be in want of provisions, provided they be abundant in Barbary, the Emperor of Morocco shall permit their exportation, for the use of the Troops and the Inhabitants, at the same Duties that are paid by other Nations at the same period.

XXXVI. If an English Subject come to the Emperor of Morocco's Ports with ammunition or naval stores, he shall not pay any Duty for the same.

XXXVII. If an English Subject have imported any merchandise into the Emperor of Morocco's Ports, and have paid Duty thereon, and choose afterwards to remove the said merchandise to another of the Emperor of Morocco's Ports, he shall not pay any further Duty; and if any goods be smuggled by Subjects of either Party, the goods which they have smuggled shall be seized, but no other punishment shall be inflicted, to serve as an example to other.

XXXVIII. All the Treaties concluded with Muly Ishmael, Muly Abdala, and Muly Mahomed Ben Abdala, shall be in force without alteration; excepting such Articles as may be contrary to this Treaty between both Parties.

XXXIX. If any of the Subjects or Cruizers of either Party break through these Treaties, either by mistake or purposely, the Peace shall not, therefore, be disturbed, but shall continue until after a complaint be made to the respective King; and if any Subject of either Party be

guilty of an infraction of these Treaties, he shall be severely punished by his King.

XL. If a rupture of the Peace happen, and War ensue, (which God forbid,) all English Subjects, as also all Morocco Subjects, of whatever description, may proceed to any part of the World they please, with their Families, property, and Servants, whether born in Barbary or not, on board the Vessel of any Nation, and 6 months' notice shall be given to them, in order that they may have time to dispose of their effects, and settle their affairs; and, during the said 6 months, they and their property shall continue in safety, without being molested or injured in any way, on account of the Declaration of War, and they shall be assisted by the respective Governors in recovering their debts without delay; the same shall be practised with the Emperor of Morocco's Subjects in the Dominions of the King of England.

*EXPLANATORY ARTICLES to the Treaty of Peace between  
Great Britain and Morocco of 14th June, 1801. Signed at Fez,  
19th January 1824*

THE preceding Treaty was produced before the Supreme Lord of the Believe, Emperor of the Muslems, the Honorable Emperor Mulana Abderahman Ben Mulana Hisham, Ben Mulana Mohamed Benabdala, Ben Mulana Ismael, whom may God protect,—on the part of His Majesty the King of Great Britain, King George the Fourth, by James Sholto Douglas, his Ambassador, and his Consul residing at Tangier, for the purpose of renewing and confirming the Treaty of Peace which has so long subsisted between the two Governments, as it appears in the present Treaty, consisting of 41 Articles, produced by the said Consul, sealed by our sanctified Lord Mulana Soliman, whom may God have in his glory.

His Majesty the Emperor of the Faithful has been pleased to order, that the said Treaty should be read in his presence, for His Majesty's information, and after having heard the contents of the different Articles, one by one, he approves of what his Uncle has done for the benefit of the Subjects of both Nations, and confirms the said Treaty, from the 1st Article, wherein it is mentioned, that His Britannick Majesty shall have one or more Consuls in the Empire of Morocco, to Article 41 inclusive, excepting the two Articles seven and eight, which have been altered as follows:

ART. VII. All disputes that may arise between Moorish and British Subjects, shall be decided by the Governor of the Place, the Chief Judge, and the British Consul, and in case either of the Parties disapprove of the decision, he is at liberty to appeal to the Emperor.

VIII. If any dispute arise between Moorish and British Subjects, or those under His Britannick Majesty's protection, and that serious personal injury be experienced by either party, in consequence of such dispute, the Emperor of Morocco alone shall decide the Cause. If the English Subject be guilty, he shall not be punished with more severity than a Moor would be. If the offender make his escape, no other British Subject shall be apprehended in his stead. If the offender escape, before or after condemnation, from fear of punishment, he shall be subject

to the same sentence as a Moor would be under similar circumstances. Should any dispute occur in the British Territories, the matter shall be decided according to the laws and customs of England, with liberty to make the customary appeals.

This concludes the two before-mentioned Articles.

Ratified by the Emperor of Morocco, at the Imperial Palace at Fez, the 18th Jumad the First, 1239.—A.D. 19th January, 1824.

JAMES SHOLTO DOUGLAS.

NLI. This Treaty of Peace, concluded between the Emperor of Morocco and the King of England, shall be published to the Subjects of both Parties, that the Conditions may not be concealed, and Copies shall be given to the Governors and Commissioners of Imports and Exports of the Emperor of Morocco, and to the Captains of his Cruizers, this being the end of the above-mentioned Articles, concluded on the foregoing date, which corresponds with the 14th June, 1801, of the birth of Jesus, the Messiah, Son of Mary. Peace to Him.

(L.S.) MULEY SOLIMAN.

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*Annex No. 12*

TREATY BETWEEN MOROCCO AND FRANCE OF MAY 28, 1767

Source: 10, *Martens, Recueil Des Traités*, 72-79.

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*Traité de paix et de commerce entre la France et l'Empereur de Maroc, signé à Maroc le 28 Mai 1767*

Que le nom de Dieu unique soit loué.

Traité de paix et d'amitié, conclu le dernier jour de la lune de Leza alharam, dernier mois de l'an 1180, (qui est le 28 du mois de mai de l'an 1767 de l'ère chrétienne), entre le pieux *Sidy-Muley-Mahamit*, fils de *Sidy-Muley-Abdalla*, fils de *Sydy-Muley-Ismael*, de glorieuse mémoire, empereur de Maroc, Fez, Miquènes, Sus, Tafilet et autres lieux, avec le très puissant empereur *Louis quinze* de son nom, par l'entremise de son excellence Mr. le comte de *Brengnon*, son ambassadeur, muni des pleins-pouvoirs de son Empereur, aux conditions ci-après.

ART. I.

Le présent traité a pour base et fondement celui qui fut fait et conclu entre les très-hauts et très-puissans empereurs *Sydy-Ismael*, que Dieu ait béni, et *Louis quatorze*, empereur de France, de glorieuse mémoire.

ART. II.

Les sujets respectifs des deux empires pourront trafiquer, naviguer et voyager en toute assurance, partout où bon leur semblera, par terre

et par mer, dans la domination des deux empires, sans craindre d'être molestés ni empêchés, sous quelque prétexte que ce soit.

#### ART. III.

Quand les armemens de l'empereur de Maroc rencontreront en mer des navires marchands, portant pavillon de l'empereur de France, et ayant passeports de l'amiral dans la forme transcrite au bas du présent traité, ils ne pourront les arrêter ni les visiter, ni prétendre absolument autre chose que de présenter leurs passeports ; et, ayant besoin l'un de l'autre, ils se rendront réciproquement des bons offices : et quand les vaisseaux de l'empereur de France rencontreront ceux de l'empereur de Maroc, ils en usseront de même, et ils n'exigeront autre chose que le certificat du code françois établi dans les états dudit empereur, dans la forme transcrite au bas du présent traité. Il ne sera exigé aucuns passeports des vaisseaux de guerre françois, grands ou petits, attendu qu'ils ne sont pas en usage d'en porter, et il sera pris des mesures dans l'espace de six mois, pour donner aux petits bâtimens qui sont au service du Roi, des signes de reconnaissance dont il sera remis des copies par les consuls aux corsaires de l'Empereur de Maroc. Il a été convenu de plus que l'on se conformera à ce qui se pratique avec les corsaires de la régence d'Alger, à l'égard de la chaloupe que les gens de mer sont en usage d'envoyer pour se reconnoître.

#### ART. IV.

Si les vaisseaux de Maroc entrent dans quelque port de la domination de l'empereur de France, ou si respectivement les vaisseaux françois entrent dans quelqu'un des ports de l'empereur de Maroc, ils ne seront empêchés, ni les uns ni les autres, de prendre à leur bord toutes les provisions de bouche dont ils peuvent avoir besoin, et il en sera de même pour tous les agrès et autres choses nécessaires à l'avitaillement de leurs vaisseaux, en le payant au prix courant sans autre prétention ; ils recevront d'ailleurs tous les bons traitemens qu'exige l'amitié et la bonne correspondance.

#### ART. V.

Les deux nations respectives pourront librement entrer et sortir en tout tems des ports de la domination des deux empires, et y trafiquer avec toute assurance ; et si par hasard il arrivoit que leurs marchands ne vendissent qu'une partie de leurs marchandises, et qu'ils voulussent remporter le restant, ils ne seront soumis à aucun droit pour la sortie des effets invendus. Les marchands françois pourront vendre et acheter dans toute l'étendue de l'empire de Maroc, comme ceux des autres nations, sans payer aucun droit de plus ; et si jamais il arrivoit que l'empereur de Maroc vint à favoriser quelques autres nations sur les droits d'entrée et de sortie, dès lors les François jouiroient du même privilège.

#### ART. VI.

Si la paix qui est entre l'empereur de France et les régences d'Alger, Tunis et Tripoli, et autres, venoit à se rompre, et qu'il arrivât qu'un navire françois, poursuivi par son ennemi, vint à se réfugier dans les



ports de l'empereur de Maroc, les gouverneurs des dits ports seront tenus de le garantir et de faire éloigner l'ennemi, ou bien de le retenir dans le port un tems suffisant pour que le vaisseau poursuivi puisse lui-même s'éloigner, ainsi que cela est généralement usité ; de plus les vaisseaux de l'empereur de Maroc ne pourront croiser sur les côtes de France qu'à trente milles loin des côtes.

## ART. VII.

Si un bâtiment ennemi de la France venoit à entrer dans quelque port de la domination du roi de Maroc, et qu'il se trouve des prisonniers français qui soient mis à terre, ils seront dès l'instant libres et ôtés du pouvoir de l'ennemi : il en sera usé de même, si quelque vaisseau ennemi de l'empereur de Maroc entre dans quelque port de France, et qu'il mette à terre des sujets du dit empereur. Si les ennemis de la France, quels qu'ils soient, entrent avec des prises françaises dans les ports de l'empereur de Maroc, ou qu'alternativement les ennemis de l'empire de Maroc entrent avec des prises dans quelque port de France, les uns et les autres ne pourront vendre leurs prises dans les deux empires, et les passagers, fussent-ils même ennemis, qui se trouveront réciproquement embarqués sous les pavillons des deux empires, seront de part et d'autre respectés, et on ne pourra, sous aucun prétexte, toucher à leurs personnes et à leurs biens ; et si par hasard il se trouvoit des François passagers sur des prises faites par les vaisseaux de l'empereur de Maroc, les François, eux et leurs biens, seront aussitôt mis en liberté, et il en sera de même des sujets de l'empereur de Maroc, quand ils se trouveront passagers sur des vaisseaux pris par les François : mais si les uns et les autres étoient matelots, ils ne jouiroient plus de ce privilège.

## ART. VIII.

Les vaisseaux marchands français ne seront point contraints de charger dans leur bord, contre leur gré ce qu'ils ne voudront pas, ni d'entreprendre aucun voyage forcément et contre leur volonté.

## ART. IX.

En cas de rupture entre l'empereur de France et les régences d'Algèr, Tunis et Tripoli, l'empereur de Maroc ne donnera aucune aide ni assistance aux dites régences en aucune façon, et il ne permettra à aucun de ses sujets de sortir ni d'armer sous aucun pavillon des dites régences pour courir sur les François ; et si quelqu'un des dits Sujets venoit à y manquer, il sera puni et responsable du dit dommage. L'empereur de France, de son côté, en usera de même avec les ennemis de l'empereur de Maroc, et il ne les aidera ni ne permettra à aucun de ses sujets de les aider.

## ART. X.

Les François ne seront tenus ni obligés de fournir aucune munition de guerre, poudre, canons, ou autres choses généralement quelconques servant à l'usage de la guerre.

## ART. XI.

L'empereur de France peut établir dans l'empire de Maroc la quantité de consuls qu'il voudra, pour y représenter sa personne dans les ports

du dit empire, y assister les négocians, les capitaines et matelots, en tout ce qu'ils pourront avoir besoin, entendre leurs différens et décider des cas qui pourront survenir entre eux, sans qu'aucun gouverneur des places où ils se trouveront puisse les en empêcher : les dits consuls pourront avoir dans leurs maisons leurs églises pour y faire l'office divin, et si quelqu'une des autres nations chrétiennes vouloit y assister, on ne pourra y mettre obstacle ni empêchement ; et il en sera usé de même à l'égard des sujets de l'empereur de Maroc, quand ils seront en France ; ils pourront librement faire leurs prières dans leurs maisons. Ceux qui seront au service des consuls secrétaires interprètes, courtiers ou autres, tant au service des consuls que des marchands, ne seront empêchés dans leurs fonctions, et ceux du pays seront libres de toute imposition et charge personnelle. Il ne sera perçu aucun droit sur les provisions et autres effets à leur usage qu'ils recevront d'Europe, de quelque espèce qu'ils soient ; de plus, les consuls françois auront le pas et préséance sur les consuls des autres nations \*, et leur maison sera respectée, et jouira des mêmes immunités qui sont accordées aux autres.

#### ART. XII.

S'il arrive quelque différend entre un Maure et un François, l'Empereur en décidera, ou bien celui qui le représente dans la ville où l'accident sera arrivé, sans que le cadi ou le juge ordinaire puisse en prendre connoissance ; et il en sera usé de même en France, s'il arrive un différend entre un François et un Maure.

#### ART. XIII.

Si un François frappe un Maure, il ne sera jugé qu'en présence du consul, qui défendra sa cause, et elle sera jugée sans impartialité, (*par-tialité*) et au cas que le François vint à s'échapper, le consul n'en sera point responsable ; et si par contre un Maure frappe un François, il sera châtié suivant la justice et l'exigence du cas \*\*.

#### ART. XIV.

Si un François doit à un sujet de l'empereur de Maroc, le consul ne sera responsable du payement que dans le cas où il auroit donné son cautionnement par écrit, alors il sera contraint de payer ; et, par la même raison, quand un Maure devra à un François, celui-ci ne pourra point attaquer un autre Maure, à moins qu'il ne fût caution ou débiteur.

Si un François venoit à mourir dans quelque place de l'empereur de Maroc, ses biens et effets seront à la disposition du consul, qui pourra y faire mettre les scellés, faire l'inventaire, et procéder enfin à son gré, sans que la justice du gouvernement puisse y mettre le moindre obstacle.

\* A la suite de ces mots, le texte arabe du traité s'exprime ainsi : « Les consuls pourront aller où ils voudront dans les terres de l'empire de notre maître, par terre et par mer, sans aucun obstacle, et sur les vaisseaux de leur nation ; et leurs maisons seront respectées, et il ne sera permis à personne d'enfreindre leurs privilèges, qui seront les mêmes qu'on accorde aux autres. » Note de Mr. K.

\*\* Cet endroit est exprimé ainsi en arabe : « Si un Maure frappe un François, et qu'il prenne la fuite, on n'exigera pas qu'il soit représenté. » Note de Mr. K.

## ART. XV.

Si le mauvais tems ou la poursuite d'un ennemi forcent un vaisseau françois à échouer sur les côtes de l'empereur de Maroc, tous les habitans des côtes où le cas peut arriver seront tenus de donner assistance pour remettre le dit navire en mer, si cela est possible ; et si cela ne se peut, ils l'aideront à retirer les marchandises et effets du chargement, dont le consul le plus voisin du lieu ou son procureur disposera suivant leur usage, et l'on ne pourra exiger que le salaire des journaliers qui auront travaillé au sauvetage ; de plus, il ne sera perçu aucun droit de douane ou autre sur les marchandises qui auront été déposées à terre excepté celles que l'on aura vendues.

## ART. XVI.

Les vaisseaux de guerre françois entrant dans les ports et rades de l'empereur de Maroc y seront reçus et salués avec les honneurs dus à leur pavillon, vu la paix qui règne entre les deux empires, et il ne sera perçu aucun droit sur les provisions et autres choses que les commandans ou officiers pourront acheter pour leur usage ou pour le service du vaisseau, et il en sera usé de même envers les vaisseaux de l'empereur de Maroc, quand ils seront dans les ports de France.

## ART. XVII.

A l'arrivée d'un vaisseau de l'empereur de France en quelque port ou rade de l'empire de Maroc, le consul du lieu en avisera le gouverneur de la place, pour prendre ses précautions et garder les esclaves pour qu'ils ne s'évadent pas dans le dit vaisseau ; et au cas que quelques esclaves vinssent à y prendre asile, il ne pourra être fait aucune recherche à cause de l'immunité et des égards dus au pavillon ; de plus, le consul ni personne ne pourra être recherché à cet effet, et il en sera usé de même dans les ports de France, si quelque esclave venoit à s'échapper et passer dans quelque vaisseau de guerre de l'empereur de Maroc.

## ART. XVIII.

Tous les articles qui pourroient avoir été omis, seront entendus et expliqués de la manière la plus favorable pour le bien et l'avantage réciproque des sujets des deux empires, et pour le maintien et la conservation de la paix et la meilleure intelligence.

## ART. XIX.

S'il venoit à arriver quelque contravention aux articles et conditions sur lesquels la paix a été faite, cela ne causera aucune altération à la dite paix, mais le cas sera mûrement examiné, et la justice sera faite de part et d'autre. Les sujets des deux empires qui n'y auront aucune part, n'en seront point inquiétés, et il ne sera fait aucun acte d'hostilité que dans le cas d'un déni formel de justice.

## ART. XX.

Si le présent traité de paix venoit à être rompu, tous les François qui se trouveront dans l'étendue de l'empire de Maroc, auront la

permission de se retirer dans leur pays avec leurs biens et leurs familles ; et ils auront pour cela le tems et terme de six mois.

Le soussigné ambassadeur de l'empereur de France, muni de ses pleins-pouvoirs, datés de Versailles du 23 mars dernier, déclare avoir terminé et conclu le présent traité de paix, d'amitié et de commerce entre l'empereur de Maroc et l'empereur de France, et à icelui fait apposer le sceau de ses armes.

Fait à Maroc le 28 Mai mil sept cent soixante-sept.

Signé :

Le Comte DE BRENGNON.

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*Annex No. 13*

TREATY BETWEEN MOROCCO AND DENMARK OF  
JULY 25, 1767

*Source : 101 British and Foreign State Papers, 283-287.*

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*TRAITÉ de Paix et de Commerce renouvelé entre le Roi de Danemark et l'Empereur de Maroc. — Signé à Maroc, le 25 juillet 1767*

Que le nom de Dieu unique soit loué !

TRAITÉ de Paix et de Commerce renouvelé entre le très-haut et très-puissant Sidy Mohamet, Ben Sidy Muley Abdela, Ben Sidy Muley Ismael, Ben Sidy Muley Scherif, Ben Sidy Muley Aly, Roi et Empereur des Royaumes de Fez, Maroc et Taffilet, Sus et tout l'Algarbe et ses territoires, et le très-haut-puissant et très-noble Prince Chrétien Sept, Roi de Danemark et Norvège, des Vandales et des Goths, Duc de Slesvig, Holstein, Stormarn et des Ditmarsiens, Comte d'Oldenbourg et de Delmenhorst, &c., par l'entremise de son Consul-Général dans l'Empire de Maroc muni de son plein-pouvoir, M. Jens Koustrup, sur les conditions ci-après mentionnées, et nous nous obligeons de tenir et accomplir en tous ses points le contenu : fait à Maroc le 28 de la lune de Saphar, l'an de l'Egire, 1181, ce qui revient au 25 juillet, 1767, de notre style.

ART. 1. Que les ports de Saffy et Salé ne resteront plus pour compte de la compagnie danoise, comme ils ont été par le passé, vu que la compagnie qui en était chargée d'en faire le paiement ne subsiste plus, mais l'Empereur de Maroc disposera de ses dits ports comme bon lui semblera, dès le 24<sup>me</sup> jour de la lune de Saphar, l'an de l'Egire 1181, qui correspond au 10 du mois de juillet, vieux style, l'an 1767, après que le dit consul s'est obligé de payer à l'Empereur de Maroc 12,500 piastres fortes d'Espagne pour le temps que les dits ports ont resté pour compte de la dite compagnie qui est depuis le premier du mois de mai, vieux style, jusqu'au 10 juillet de l'année ci-dessus, promettant que les Danois ne seront jamais tenus dans aucun temps de reprendre la ferme des dits ports.

II. Il est permis au dit consul, ou qui pour lui sera, de disposer des biens et effets de la compagnie partout où ils se trouveront dans l'Empire de Maroc, comme bon lui semblera, de vendre ou les livrer à qui il voudra sans nul empêchement et sans être tenu de payer nulle dîme que ce qui a déjà été payé, ni droit de sortie que ce qui est usité et de coutume, vu qu'il est autorisé de la compagnie danoise de disposer de leurs biens, effets et dettes, comme bon lui semblera et s'il juge à propos d'envoyer de l'argent en espèces, il n'en paiera aucun droit de sortie comme il est de coutume.

III. L'Empereur de Maroc donnera ses ordres à tous les officiers et gouverneurs dans ses villes et provinces d'assister le dit consul et le protéger à recevoir ce qui est dû aux facteurs de la compagnie dans son Empire, selon ce qui est de justice ; le dit consul peut nommer qui bon lui semblera pour vaquer à sa place à recevoir les dites dettes sans nul empêchement.

IV. Il est permis aux négociants danois, qui sont Schaltenbrand, Ebbesen, aujourd'hui négociants à Salé, et à Schutz et Holst, négociants à Saffy, et à Host, résidant à Mogador, qui était au service de la compagnie danoise, de se retirer dans leur patrie par le vaisseau de guerre aujourd'hui à la rade de Salé, avec leurs biens, effets et meubles, leurs livres de compte et tout ce qui leur appartient ; il en est permis de même aux domestiques du défunt consul Barisien, vu que la compagnie ni aucun de la nation danoise ne sont point tenus de continuer à fournir des négociants, ni de faire de commerce dans aucun des ports de l'Empire de Maroc, d'aucune manière que ce soit, excepté ceux qui voudront y venir négocier volontairement n'en seront point empêchés.

V. Les négociants danois peuvent en toute assurance venir dans l'Empire de Maroc, voyager, vendre et acheter dans toutes les provinces, villes et villages, ports et rades, sans être obligés de payer aucun droit d'entrée et de sortie plus sur ce que paient les autres négociants des nations chrétiennes ; ils s'établiront où ils voudront sans être tenus de bâtir maisons ou s'établir contre leur gré dans aucune des villes ou ports, ou autre chose pareille, si non par leur propre volonté.

VI. La paix et bonne harmonie régnera toujours entre les deux couronnes respectives, comme il a été par ci-devant, et le pavillon danois sera respecté par terre comme par mer, quand il sera rencontré par les corsaires de l'Empereur de Maroc. La nation danoise aura le pas et la préséance sur les autres nations chrétiennes auprès de l'Empereur de Maroc, étant les premiers des chrétiens qui ont fait la paix avec le dit Empereur, et aucun sujet danois ne sera molesté ni mal traité dans l'Empire de Maroc.

VII. Les sujets du Roi de Danemarck ne paieront aucun droit ni taxe dans les marchés plus que les autres nations, et si jamais il arrivait que l'Empereur de Maroc vient à favoriser quelque autre nation chrétienne sur les droits d'entrée et de sortie, les Danois jouiront du même privilège. Ils ne paieront aucun droit de sortie sur les provisions qui seront nécessaires pour leurs vaisseaux qui viendront dans les ports de l'Empire de Maroc, pendant leur séjour en rade, et pour ce qui peut leur être nécessaire pour faire le voyage à l'endroit de leur destination.

VIII. Les négociants danois ne seront forcés par aucun de vendre leurs marchandises au-dessous du prix qu'ils voudront ; il en sera usé

de même envers leurs commissaires qu'ils auront établis dans les autres villes ; les vaisseaux danois ne seront jamais forcés à faire aucun voyage d'un port à l'autre contre le gré et la volonté de leurs propriétaires ; il ne sera tiré aucun danois de leurs vaisseaux contre son gré par qui que ce soit.

IX. Si quelqu'un des sujets de l'Empereur de Maroc frette un navire danois pour lui transporter de marchandises d'un port à l'autre et qu'il soit forcé par le vent ou autre accident à mouiller dans quelque port ou rade de l'Empereur de Maroc, il ne paiera aucun droit.

X. Si un marchand danois apporte des marchandises et qu'il veuille les emporter à un autre lieu, après en avoir payé la dîme, n'y trouvant pas à vendre, il ne sera point tenu à en payer la dîme une seconde fois ; mais les gouverneurs du port seront tenus à lui fournir un certificat pour qu'il ne paie point d'autre dîme en les débarquant dans quelqu'un des ports de l'Empire de Maroc, et toutes les munitions de guerre et constructions des vaisseaux et poudre, &c., que les Danois apporteront, ne seront point tenus à en payer la dîme, et si un vaisseau danois se trouve chargé des marchandises destinées à un autre lieu outre l'Empire de Maroc, et qu'il mouille à quelque port ou rade du dit Empire, pour nécessité ou autre raison, il ne sera point forcé à décharger aucune marchandise contre son gré.

XI. Si un bâtiment danois venait à se rompre sur les côtes de l'Empire de Maroc, le dit bâtiment et tout son chargement et personnes sont en toute sûreté ; et ils peuvent s'en aller où ils voudront ; et s'il venait à échouer, et qu'il ait besoin d'assistance, l'Empereur de Maroc donnera ses ordres en conséquence à ses officiers, où pareil cas sera arrivé, de donner toute aide au dit bâtiment pour le faire sortir s'il est possible, et la marchandise qui s'y trouverait ne paiera aucune dîme, que de ce qui se vendrait sur le lieu, et si le propriétaire remporte ses effets ou marchandises, ils ne paieront aucun droit de sortie.

L'Empereur de Maroc fixera aux Danois un endroit dans toutes les villes de son Royaume destiné pour enterrer leurs morts.

XII. Si un corsaire de l'Empereur de Maroc rencontre un navire marchand danois, ils useront pour ce qui regarde la descente de la chaloupe et feront montrer le passeport, selon qu'il avait été convenu avec le commandeur de Lutzow dans la lune Schaban, l'année 1166.

XIII. L'Empereur de Maroc donnera ses ordres aux capitaines de ses corsaires de ne pas sortir pour croiser sans porter le passeport et patentes du dit consul, vu qu'il se pourrait qu'en se rencontrant avec les vaisseaux de guerre danois, on pourrait le prendre pour ennemi et avoir des suites fâcheuses s'il ne produisait point de patentes et de passeport du dit consul, et quand les corsaires des deux Couronnes respectives se rencontreront, ils useront entre eux des marques et signaux qui étaient usités par ci-devant, sans en laisser aucun réciproquement.

XIV. S'il arrive un différend entre un More et un Danois, l'Empereur en décidera ou bien le gouverneur de la place où cela arrivera, en présence du consul, qui défendra sa cause de son possible.

XV. Le dit consul aura sa résidence à Salé, tout le temps qu'il voudra, à la maison où le consul Barisien faisait son domicile, sans

que personne le force d'en sortir pour faire sa demeure à une autre place : le dit consul aura pouvoir d'envoyer des vice-consuls dans les ports de l'Empire de Maroc où il jugera à propos, qui auront force et pouvoir ; ils seront respectés et protégés tout comme lui. Le dit consul a pouvoir de les chasser après et nommer d'autres à leur place, sans que personne puisse l'en empêcher. La maison du dit consul comme les maisons des négociants danois seront respectées et protégées, sans que personne puisse les molester, vu qu'ils sont sous la protection et la bonne foi de l'Empereur, leurs servants et domestiques sont libres de toutes les taxes du Gouvernement, et s'il arrive un différend entre quelques Danois, soit qui que ce soit, le dit consul en décidera et non aucun autre, sans que personne s'y mêle. Si quelque Danois venait à mourir, qui que ce soit n'aura rien à voir ni se mêler de ses affaires, si non que le consul, ou qui pour lui sera, en disposera comme il jugera à propos. Le dit consul peut avoir dans sa maison un endroit pour faire l'office divin, et si quelqu'un des autres chrétiens voulait y assister, on ne pourra mettre obstacles ni empêchement, et tout ce qu'il lui viendra d'Europe, soit provisions de bouche, hardes, meubles pour l'usage de sa maison, ne paieront aucun droit d'entrée.

XVI. Si un esclave s'échappait à un corsaire de l'Empereur de Maroc ou qu'un esclave maroc s'échappait à un vaisseau de guerre danois, l'un et l'autre seront libres, vu le respect du pavillon.

XVII. Si le présent traité de paix venait à être rompu, ce qu'à Dieu ne plaise, tous les Danois qui se trouveront dans l'étendue de l'Empire de Maroc auront l'espace de six mois pour se retirer en toute sûreté dans leur pays avec leurs biens et effets.

XVIII. S'il venait à arriver quelque contravention aux articles et conditions ci-dessus, cela ne causera aucune altération à la dite paix, mais le cas sera mûrement examiné et la justice sera faite de part et d'autre, et il ne sera fait aucun acte d'hostilité que dans le cas d'un déni formel de justice.

XIX. Le Traité de Paix et de Commerce ci-dessus a été traité et conclu à condition que le Roi de Danemarck enverra pour présent à l'Empereur de Maroc chaque année les articles ci-après et dont le dit consul s'est obligé de remettre la dite quantité chaque année, savoir :

12, je dis douze, canons de fer, du calibre de 24 livres la balle ;

13, je dis treize, canons de fer, du calibre de 18 livres la balle ;

25, je dis vingt-cinq, canons de fer ;

10, je dis dix, câbles de 16 pouces d'épaisseur ;

10, je dis dix, câbles de 13 pouces d'épaisseur ;

10, je dis dix, câbles de 10 pouces d'épaisseur ;

30, je dis trente, câbles ;

2,000 planches de chêne, dont la largeur est de 12 pouces, et 1,000 auront 4 pouces d'épaisseur et l'autre 1000 3 pouces d'épaisseur, et la longueur de toute la partie sera de différentes espèces propres pour la construction des frégates de vingt-quatre pièces de canon jusqu'à trente-six. Plus 6,500 piastres fortes en espèces.

Le Roi de Danemarck aura le choix ou d'envoyer les dits articles et piastres ci-dessus ou d'envoyer pour le tout 25,000 piastres fortes en espèces. Le dit accord commence depuis le 1<sup>er</sup> du mois de mai passé, vieux style, de la présente, et finit le dernier jour du mois d'avril

prochain, l'an 1768, qui est le temps du paiement de la première année et cela continuera ainsi pour tous les ans pendant que la paix dure.

XX. Si, ce qu'à Dieu ne plaise, que par malheur en apportant les dits articles ou piastres ci-dessus, il lui arriverait quelque accident, il sera pour compte du Roi de Danemarck, car l'Empereur de Maroc n'entend autre, si non tout remis à terre dans un de ses ports qu'il souhaitera, bien entendu que s'il arrivait un accident imprévu, l'Empereur de Maroc remettra le paiement avec celui de l'année d'après. Et sur ce que dessus la paix a été traitée et conclue, ainsi nous renonçons à toutes les prétentions entre les deux Couronnes respectives, sinon à celles qui sont écrites et signées par le consul Koustrup. Celle-ci j'ai signée et mis mon cachet en vertu de mon plein-pouvoir jusqu'à la ratification du Roi, mon maître.

Maroc, le 25 juillet, 1767.

(L.S.) JEAN KOUSTROUP.

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*Annex No. 14*

TREATY BETWEEN MOROCCO AND THE NETHERLANDS OF  
JUNE 29, 1777

*Source of Dutch text: 1 Martens. Recueil Des Traités, 619-634.*

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*Note: The English text attached is a summary of the provisions of the treaty, except as concerns Articles IX, XVI and XVII which are literal translations of the Dutch text.*

*Renouvellement du traité de paix de 1752. entre l'Empereur de Maroc & les Provinces-unies des Pays-bas. Salé 29. Juin 1777*

ART. I.

Is geconcludeert en bellooten, dat in het toekomende tusschen syne Majesteit Muley Abdala, Keiser der Maroccen, Koning van Fez, Tafilete, Algarve en Africa, &c. ter eenre, en de feer Hooge en Magtige Heeren Staaten Generaal der vereenigde Nederlanden ter andere zyde, sal zyn een goede, valte en bestendige Vreede, die lyn aanvang neemen sal met den dag dat het tegenwoordige Tractaat van weegens den gemelden Hooge en Magtigen Keiser, soo ook van weegens de opgemelde Heeren Staaten Generaal sal weesen onderteeckent, als wanneer, en dus van den dag af aan dat dit Tractaat sal weesen onderteeckent, ter eenre en andere zyde cefteeren fullen alle actens van hostiliteit, en soo als dan ook van die selfde dag af aan in eeuwige vergeetenheit fullen werden gestelt, alle de beledigingen en schaaden ter eenre en andere zyde geleden: En fullen de Inwoonders en Onderhoorigen van beide de Natien, de eene de andere reciproque vriendschap bewysen: Welke Vriendschap altoos duurende weesen sal. Werdende door deefe tegenwoordige gerenoveert en geconfirmeert den geheelen innehoude van het Tractaat van den Hage, tusschen den overleede Keiser Muley Ismaël



en de opgemelde Heeren Staaten Generaal in dato 3. December 1684, en van de Hegira 10, van Ramadan 1095, voor foo verre het felve aan den inhoude deefer niet bevonden fal werden te contrarieeren.

## ART. II.

De Scheepen of andere Vaartuigen van de teer Hooge en Mogende Heeren Staaten Generaal of van der felver Onderdanen en Onderhorigen, foo Chriftenen als Jooden, fullen ten allen tyde een vrye en onbelemmerde ingang hebben in alle de Baayen en Havenen van opgemelde fyne Majesteit of in andere Plaatsen van fyne voorfchreeve Ryken, foo omme aldaar ten anker te blyven leggen geduurende de tyd die fy fullen goedvinden, als om met alle vryheid te mogen koopen en verkoopen, onder betaalinge van de ordinaire Regten van de Douanes van de Koopmanschappen die verkogt fullen werden, sonder meer, onder wat naam, titul of pretext fulks ook foudde moogen weefen, dan ten aanfien van de Waaren die niet verkogt fullen konnen werden, fullen defelve weeder aan Boord gebragt, en met alle vryheid ingelaaden werden, sonder eenige Regten of Impositien daar voor te betaalen, foo als defelve Scheepen dan ook na goedvinden sonder eenige ophoudinge of nadeel fullen mogen vertrekken. Niet minder fal geen Capitein genoodfaakt wefen grooter gedeelte van fyne Laadinge aan Land te brengen dan hy goedvinden fal, en fal vryelyk mogen vertrekken met de Waaren die hy aan Boord fal hebben gehouden, sonder iets daar vooren te betaalen. En ten opfigte van de contrabande Goederen, als Buskruyt, Swavel, Planken, en alle andere foorten van Hout tot de Scheepbouw dienende, Touwwerk, Pek, Teer, Snaphaanen en alle andere Oorlogsmateriaalen, daar van fullen de Onderdaanen der gemelde vereenigde Nederlanden niet gehouden zyn eenige Regten aan hoogemelde fyne Majesteit te betaalen.

## ART. III.

In gevalle het kooome te gebeuren dat eenige Scheepen of Vaartuigen van fyne Majesteit of van de vereenigde Nederlanden quaamen te vervallen in eenige Baayen of Havenen van fyne Majesteit of van die der vereenigde Nederlanden, het zy defelve daar toe genootfaakt waaren geworden door Vyanden, tempeesten op zee of andere toevallen, fullen defelve bevryd zyn van het betaalen van Ankergeld, of van het geeven van Buskruyt of andere diergelike faaken onder de benaaminge van *Haveregten of andere Impositien*, foo by het inkoomen als by het vertrekken uit de voorfchreeve Havenen, en ook sonder aan defelve eenige verhinginge of mocyelykheid toe te brengen.

## ART. IV.

De Scheepen of Vaartuigen foo van hooggemelde fyne Majesteit of van deffels Onderdaanen, als die van opgemelde Heeren Staaten Generaal, of van eenige derfelver Onderdanen fullen de Zee bevaaren en Negotieeren, sonder van de eene nog van de andere zyde gevifiteert, opgehouden nog gemolefteert te mogen worden.

Insgelyks fullen alle Perfoonen of Passagiers, van wat Land of Natie die ook fouden mogen weefen, die fig met haare Penningen, Goederen, Koopmanschappen en Meubilen in eenige der voorfz Scheepen fullen

bevinden, volkooime vryheit genieten, en fal niemand van de eene of andere zyde gearreffeert, opgehouden, geplundert, of in eeniger maniere befchadigt mogen werden.

#### ART. V.

De Oorlogfchcepen of andere Vaartuigen van opgamelde fyne Majesteit of van deffelfs Onderdaanen, in volle Zee, en buiten de Plaatten dependeerende van haar Hoog Mog. de Heeren Staaten Generaal ont moetende eenig Koopvaardyfchip of andere Scheepen van opgamelde Heeren Staaten Generaal, fullen aan Boord van defelve Scheepen der vereenigde Nederlanden mogen fenden haare Sloep alleenlyk met twee Man, behalven de Roeyers, en fal ook niet meerder Volk op eenig Koopvaardy- of ander Schip moogen koomen, fonder permissie van den Capitein of Schipper, dewelke haar behooryk Pasport, volgens het Formulier aan het einde deeser geinfereert, vertoon hebbende, fal de voorfchreeve Sloep gehouden zyn aantonds af te houden, en het Koopvaardyfchip fyne reife kunnen vervolgen fonder fchade nog moeyelykheid. En reciproquelyk wanneer eenig Schip of ander Vaartuig van hooggemelde fyne Majesteit en den Capitein van een der voorfchreeve Scheepen vertoon hebbende een behooryk Pasport, geteekent door ordre van hooggemelde fyne Majesteit, en te gelyk een Certificaat van den Conful van hooggemelde Heeren Staaten Generaal, die in der tyd tot Salé of andere Plaats faal refideeren, of by overlyden of abfentie van den Conful, geteekent dor het grootfte gedeelte van de Commercianten der vereenigde Nederlanden, tot Salé of andere Plaats refideerende fal het voorfchreeve Schip of Vaartuig fyne reife vryelyk mogen vervolgen.

#### ART. VI.

Geen Capitein of ander Perfoon van eenig Schip of Vaartuig van hooggemelde fyne Majesteit, fal uit eenig Schip, toebehoorende aan Onderdaanen van de Heeren Staaten Generaal, mogen ligten eenig Perfoon of Perfoonen, wie defelve ook fouden mogen zyn, om die na elders te transporteeren, of omme aldaar te werden geëxamineert, onder wat pretext fulks ook foude mogen weefen; veel minder fal het aan hun gepermitteert zyn, te pynigen of eenig geweld te pleegen aan eenige Perfoonen, van wat Natie of conditie defelve ook fouden mogen zyn, die fig bevinden fullen aan Boord van eenige Scheepen toebehoorende aan Onderdaanen van haar Hoog Mog., onder wat pretext of ter wat oorfaake fulks ook foude mogen zyn.

#### ART. VII.

In gevalle eenige Scheepen of Vaartuigen van opgamelde haar Hoog Mog. de Heeren Staaten General, of eenige van der felver Onderdaanen of Onderhoorige, mogten koomen te ftranden op de Kufften van hooggemelde fyne Majesteit, fullen defelve Scheepen met alle der felver toebehooren, Gereedfchappen, Goederen en Laadinge niet geconfisqueert, nog de Equipage tot Slaaven gemaakt worden: Maar in tegendeel fullen de Onderdaanen van hoogtgemelde fyne Majesteit verpligt zyn, alle mogelyke middelen te gebruiken om het Volk en Laadinge te falveeren; en fullen de Goederen ter goeder trouwe en fonder eenige

benadeeling of vermindering worden overgegeven aan den Capitein of Gefaghebber, of aan de Eigenaars, of an de geenen die van hunnentweegen tot de overneeminge der voorschreeve Goederen fullen zyn geauthoriseert, alleenlyk betaalende den arbeid volgens gewoonte, en sal aan het Volk dat op foodanigen geftrande Schip sal zyn geweest, volkoomme vryheid werden gelaaten omme te gaan werwaards het haar goeddunken sal, sonder eenige moeyelykheid ter contrarie.

## ART. VIII.

Geene Onderdaanen van syne Majesteit nog van de Heeren Staaten Generaal fullen Commissien mogen neemen van eenige andere Potentaaten of Princen, omme met Scheepen hun toebehoorende, of wel met Scheepen van andere, te infelteeren of eenig moleft te doen aan de respectieve Onderdaanen van hoogftgemelde syne Majesteit en van de Heeren Staaten Generaal.

## ART. IX.

Geene Scheepen van hoogftgemelde syne Majesteit, het zy groote of kleine, fullen vermogen te kruiffen of ter kaap vaaren ontrent de Reëen, Havenen, Steeden of Plaatsen behoorende onder de Jurisdictie van de Hoog Mog. Heeren Staaten Generaal.

## ART. X.

Geene Vyanden van syne Majesteit nog van de Hoog Mog. Heeren Staaten Generaal fullen moogen opbrengen in de respectieve Havenen van hoogftgemelde syne Majesteit noch van de Heeren Staaten Generaal eenige Pryfen op der selver respectieve Onderdaanen gemaakt, nog der selver Goederen, Scheepen of Perfoonen aldaar mogen vernegotieeren of verkoopen. En in gevalle eenig Schip of Scheepen van Oorlog of Kaapers van Vyanden der vereenigde Nederlanden sig mogten bevinden in eenige der Havenen van den Kaifer der Maroccen, op de eigenfte tyd dat eenige Scheepen van Onderdaanen der vereenigde Nederlanden sig meede aldaar bevinden mogten, sal het aan de foodanige Scheepen van Oorlog nog Kaapers niet gepermitteert zyn eenige hostiliteiten tegens de Scheepen van de vereenigde Nederlanden te pleegen, soo als het insgelyks aan haar niet gepermitteert sal zyn, uit de foodanige Havenen te vertrekken, dan veertig uren na de tyd dat de voorschreeve Nederlandfche Scheepen vertrokken fullen weefen.

## ART. XI.

In gevalle eenige Scheepen van Oorlog van de Hoog Mog. Heeren Staaten Generaal in de Havenen van syne Majesteit met eenige Pryfen mogten koomen, fullen sy deselve met alle vryheid aldaar moogen verkoopen, en na der selver goedvinden daar van moogen disponeeren, sonder door iemand, wie het ook soude mogen zyn, daar inne te mogen werden gemolefteert, ook sonder enige neuwe Regten, hoedanig genaamt, niet te min betaalende de ordinaire Regten van de Goederen die verkogt souden mogen werden. Soo als ook de Oorlogsfcheepen van de Hoog Mog. Heeren Staaten Generaal niet gehouden fullen zyn eenige Regten of Gabellen te betalen, maar sal het aan deselve, en

aan alle andere Onderdaanen van den Staat, het zy Koopvaardye- of andere Scheepen, vryftaan, wanneer fy eenige Vyvres noodig fouden mogen hebben, defelve vryelyk prys courant te mogen koopen, fonder daar voor eenige Regten te betaalen of remuneratie te doen.

#### ART. XII.

Soo haaft als enig Oorlogfchip van de Hoog Mog. Heeren Staaten Generaal in eenige der Havenen van fyne Majesteit fal zyn gekoomen, en dat den Conful der vereenigde Nederlanden of den Capitein van het Schip daar van kenniffe aan de Gouverneurs der voorfchreeve Plaatsen fal hebben gegeven, fal fulks werden gepubliceert, ten einde een iegelyk op fyne Slaaven hebbe te paffen. Dan in gevalle des niet-tegenftaande eenige Slaaven mogten koomen te echappeeren of dat'er fufpicie mogte zyn, dat reeds een of meer geëchappeert mogten zyn, fullen de voornoemde Gouverneurs nogtans niet permitteeren, dat ter dier faake eenige infolentie tegens den voornoemden Conful of enig ander Onderdaan der vereenigde Nederlanden werde gepleegt; maar fullen in tegendeel aan den Meeftter van foodanige Slaaf of Slaaven gelaften, dat hy defelve met alle difcretie te rug vraage en overneeme van den Capitein of Commandant, by wie fy fig fouden hebben gefalveert. En in gevalle de Officiers fulks conftantelyk fal blyven negeeren, en dat men van het tegendeel geen overtuigende kenniffe heft, fal den Meeftter of Meefters verpligt zyn volkoomen geloof en credit aan het feggen van foodanigen Officier te geeven, fonder ter dier faake den Conful of eenige andere de voorfchreeve Onderdaanen in eeniger manieren te molefteeren. Dan foo het des niettegenftaande mogte confteeren, dat foodanigen Officier de waarheid niet hadde gefegt, fullen de vornoemde Gouverneurs aan den Conful in naame van fyne Majesteit verfoeken, daar over aan de Heeren Staaten Generaal te fchryven, ten einde aan de Meefters van foodanige geëchappeerde Slaaven aantonds voldoeninge werde gegeven.

#### ART. XIII.

Van den dag af aan dat dit tegenwoordige Tractaat fal zyn onderteekent, fullen geene Slaaven van de vereenigde Nederlanden, het zy Jooden of Chriftenen, in geene der Ryken van fyne Majesteit werden gemaakt, onder wat pretext fulks ook foude mogen weefen, dan indien egter eenige Onderdaanen van defelve vereenigde Nederlanden tot Slaaven gemaakt mogten zyn, na den dag van het tekenen van dit Tractaat, fullen defelve fonder eenig rantfoen in volle vryheid werden gefelt, omme fonder eenige verhinderinge te kunnen gaan werwaards fy fullen goedvinden.

#### ART. XIV.

Wanneer het quame te gebeuren dat eenige der Onderdaanen van de Hoog Mog. Heeren Staaten Generaal in eenige der Steeden of Plaatsen van hoogftgemelde fyne Majesteit koomen te overlyden, fullen deffelfs Goederen of Effecten door de Gouverneurs, Regters of andere Officiere van wegens fyne Majesteit niet mogen werden gearrefteert, foo als ook niemand van de voornoemde Gouverneurs, of andere Officiere daar van eenige infpectie fullen mogen neemen of dienthalven het

geringfte onderzoek mogen doen; maar fullen de foodanige Goederen en Effecten blyven gereferveert voor den of die geenen die den Overleedene by fyn Testament tot Erfgenaam of Erfgenaamen fal hebben geïnstitueert, wanneer den foodanige fig kooome te bevinden ter Plaatse daar den Overleedene gestorven fal zyn. Dan in gevallye het quame te gebeuren, dat de Erfgenaamen niet present mogten zyn, fal den Exe- cuteur van het Testament, door den Overleedene wettelyk daar toe aangestelt, na het maaken van een behoorlyke Inventaris van alle de voorfz Goederen en Effecten, deselve ter goeder trouwe onder fyne bewaaringe neemen, sonder eenige belemmeringe, ten einde te besorgen dat alles langs secuere weegen in handen van de wettige Erfgenaamen kooome de geraaken. Dan in gevallye eenige der vornoemde Onderdaanen mogten koomen te overlyden sonder Testament gemaakt te hebben, fal den Consul der vereenigde Nederlanden, of by desselfs absentie den geenen die door het grootfte gedeelte van de Commer- cianten der voorschreeve vereenigde Nederlanden daar toe fal zyn geauthoriseert, alle de voorschreeve Goederen en Effecten onder een behoorlyke Inventaris overneemen, omme die aan de Bloedvrynden en Erfgenaamen van den Overleedenen te doen geworden.

## ART. XV.

De Commercianten der voorschreeve vereenigde Nederlanden, soo Christenen als Jooden, die fig in eenige der Steeden van fyne Majesteit fullen bevinden, fullen in geenerhande maniere verpligt zyn eenige Waaren tegens haar fin te kooplen, maar fal het in tegendeel altoos aan haar keufe staan, de foodanige te kooplen, die fy oordelen fullen haar dienstig te zyn, ook fal het aan geen Alcajde, Gouverneur of Onderdaan van den Keiser gepermitteert zyn gewaapender hand possessie de neemen van eenige Goederen of Koopmanschappen toebehoorende aan Onderdaanen der vereenigde Nederlanden, sonder alvoorens over de prys te zyn geconveniëert, of dat de Penningen daar vooren zyn betaald, of soo als fy met elkanderen fullen zyn overeengedoomen, alles sonder eenig het minste geweld te pleegen. Niet minder fal geen Capitein der vereenigde Nederlanden; nog Schipper, verpligt zyn eenige Goederen tegens fyne fin in te laaden, omme die te transporteeren of over te voeren na eenige Plaatsen werwaards hy niet soude begeeren te zeilen; soo als den Consul de voorschreeve vereenigde Nederlanden nog ook de Onderdaanen van deselve niet verpligt fullen zyn eenige schulden te betalen voor andere Onderdaanen van deselve vereenigde Nederlanden, ten waare fy op een wettige wyse daar vooren borge waren gebleeven. Ook fullen geene Scheepen opgehouden nog gearresteert mogen worden, onder wat pretext fulks ook soude moogen zyn; gelyk ook geene Stuurlieden nog Bootsgeffellen van de voorschreeve Scheepen geligt fullen mogen werden, onder wat voorwendfel fulks ook soude mogen weefen. Niet minder fullen de Consuls der vereenigde Nederlanden nog der selver Onderdaanen aanspraakelyk of responsabel zyn voor eenige piraterie, diefftal of fraude, van wat natuur die ook soude mogen weefen, de gepleegt louden kunnen werden aan Goederen toebehoorende aan Onderdaanen van fyne Kaiserlyke Majesteit, die in Hollandfche Scheepen of andere Vaartuigen gelaaden souden mogen weefen, tenwaare te vornoemde Consuls of Onderdaanen der vereenigde Nederlanden de voorschreeve bevragtinge hadden ver-

feekert of op een publicque wyfe tot Borgen daar voor waaren gebleven. Blyvende de Consul alleenlyk verpligt, wanneer hy van het pleegen dier euveldaad fal zyn geïnformeert, daar van aanftonds aan de Hoog Mog. Heeren Staaten Generaal kenniffe te geeven, ten einde door haar Hoog Mog. voorfieningen werden gedaan, om te doen apprehendeeren den Capitein of Schipper en Equipagie van foodanig Schip of Vaartuig an welkers Boord diergelyke piraterie, dieftal of fraude mogte zyn gepleegt, en behalven defelve te doen ftraffen volgens de Wetten der vereenigde Nederlanden, ook voor foo veel in hun is tragten te beforgen dat de geenen die befchaadigt fouden mogen zyn voldoeninge koomen te genieten.

## ART. XVI.

De Onderdaanen van haar Hoog Mog. de Heeren Staaten Generaal, foo Christenen als Jooden, fullen in gevalle van Proceffen in de Ryken van fyne Keiferlyke Majesteit niet verpligt zyn fig te onderwerpen aan een jurisdictie dier Landen, en fullen dus in gevalle van opgekoomene quefften, foo civile als crimineele, (alleen tuffchen die van de voorfchreeve Nederlandfche Natie) voor geen ander Regter gehouden zyn te compareeren, als alleen voor haaren Consul of voor die van de Natie der voorfchreeve vereenigde Nederlanden, den welken compleete autoriteit fal hebben om alle de differenten af te doen, foo in het civile als in het crimineele, en namentlyk in de gevallen van geweldige dood, quetfingen en andere delicten, waar inne geprocedeert fal worden volgens de Inffruccien en Ordres van haar Hoog Mog. de Heeren Staaten Generaal.

## ART. XVII.

In geval eenige Onderdaanen van de Hoog Mog. Heeren Staaten General, fig in die Ryken van fyne Keiferlyke Majesteit bevindende, een Moor quame te befchaadigen of te quetfen, fal den foodanige worden geftraft op de eigentfte wyfe en niet zwaarder dan een Moor foude werden gedaan, in gevalle hy diergelyke delicten gepleegt foude hebben. Dan in gevalle van dooflag fal hy alleenlyk geoordeelt worden door fyne Majesteit, fonder tuffchenkomfte van eenig ander Regter, en foo den foodanige mogte koomen te ontvlugten, fal den Consul nog geen andere Onderdaanen van haar Hoog Mog. de Heeren Staaten Generaal ter dier faake geïnquieteert nog gemolefteert mogen worden.

## ART. XVIII.

Het fal aan de Heeren Staaten Generaal vry ftaan een of meerder Confuls te fenden in foodanige Plaatten onder het gefag van den Keifer der Maroccen gehoorende, als hoogftdefelve dienftig fullen oordeelen te behooren; welke Consul of Confuls fullen worden gehandeld met alle behooryke refpect, overeenkomstig der felver Character; en fullen defelve Consul of Confuls in de Ryken van hoogftgemelde fyne Majesteit met alle vryheid en feekerheid woonen, foo den opligte van der felver Perfoonen als van haare Goederen, en fullen foo wel defelve Confuls als de andere Onderdaanen der vereenigde Nederlanden haare Talsmann en Maakelaars mogen verkiefen; foo als het aan defelve ook fal vry ftaan fig op alle Scheepen te begeeven, fo in de Havenen als op de geenen die op de Rheën ten anker fouden mogen leggen, en tulks fo

meenigmaal als het hun goeddunken fal; soo als het aan hun ingelyks vry fal itaan te Land te mogen reifen. Boven dien fal het aan hun ook gepermitteert wefen en vry itaan haare Religie vryelyk te exercceren; fullende de Confuls de Chriffelyke Gereformeerde Religie in haare Huifen publicq mogen doen oeffenen en exercceren, fonder eenige vexatie of moleft, nog met woorden, nog met werken, door wie fulk ook foudde mogen gefchieden, en fal vor het overige aan hun worden toegeftaan een eerlyke plaats ter begraavinge van hunne Dooden, tegens welke geen onbetaamelykheid nog befpottinge gepleegt fal mogen werden.

## ART. XIX.

Insgelyks werd geconfenteert, dat niet alleen gedurende de tyd van vrede en vriendschap, maar ook in het geval van eenige inbreuk in defelve, tuffchen hoogtgemelde fyne Majesteit en de Hoog Mog. Heeren Staaten Generaal, den Conful en andere Onderdaanen van hooggemelde Heeren Staaten Generaal in de Ryken van fyne Majesteit refideerende, volkoomen vryheid fullen hebben, soo wel in tyde van Oorlog als van vrede, fig na haare eigene of andere Landen te begeeven, met foodanige Scheepen van wat Natie die ook fouden mogen zyn, als fie fullen koomen goed te vinden, soo ook omme meede te mogen neemmen haare Meubilen, Familien en Domesticquen, fonder dat hun daar inne eenige fchaade of naadeel werde toegebracht, en fal in foodaanige gevulle aan hun den tyd van zes maanden werden vergunt, omme van alle haare faaken te konnen difponeeren, en vervolgens fig te begeeven ter Plaatfe daar fy goed fullen vinden te behooren.

## ART. XX.

Geen Onderdaan van hooggemelde Heeren Staaten Generaal, het zy Jood of Chriften, als Paffagier gaande of koomende met fyne Bagagie uit of in eenige Haaven, fal mogen werden gemolefteert, ofschoon fodaanigen Paffagier fig mogte bevinden op een Viandelyk Schip van hoogtgemelde fyne Majesteit, soo als van gelyke geen Paffagier van fyne Keiferlyke Majesteit, fig bevindende op een Vyandelyk Schip van haar Hoog Mog. de Heeren Staaten Generaal fal mogen werden gemolefteert in fyn Perfoon of in fyne Goederen dy hy in foodanigen Schip foudde mogen hebben gelaaden.

## ART. XXI.

In gevulle door inadvertentie of op eenige andere wyfe eenige contraventien aan dit jegenwoordige Tractaat fouden mogen werden leegaan, het zy van de zyde van hoogtgemelde fyne Majesteit of van de zyde van de Heeren Staaten Generaal, fal des niettegenftaande deefe vrede in fyne volle kragt blyven, fonder dat daar door eenige breuke an deefe vrede en goede correfpondentie fal werden toegebracht, maar fal de geoffenferde Partye op eene vriendelyke wyfe een prompte repartitie van foodanige contraventie verfoeken, en op geene andere wyfe tot de Waapenen koomen, dan na de expiratie van zes maanden dat hy foodanige reparatie fal hebben verfoegt, en geene voldoeninge daar op fal hebben bekoomen. En in gevulle foodanige contraventien door particuliere Onderdaanen fouden mogen zyn gepleegt, fullen

defelve fonder eenige diffimulatie worden geftraft als Perturbateurs van de publicque ruft en Verftoorders van de vrede.

ART. XXII.

Dit Tractat fal door den Keifer der Maroccen werden geratificeert immediaat, een door de Heeren Staaten Generaal der vereenigde Nederlanden binnen een behoorlyke tyd na dat de distantie van der felfer Dominien fulks fal permitteeren. En werd verders verklaart, dat fonder af te wagten het uitwiffelen der Ratificatien, egter de vrede fyn aanvang fal ncemen met den dag van de onderteekening, foo als dan ook van heeden af voor altoos alle foorten van hoftiliteiten tuffchen de twee Natien fullen koomen te ceffeeren, overeenkomstig het geftipuleerde in dit Tractaat.

ART. XXIII.

En ten einde geen van beide de Partyen eenige ignorantie moge pretendeeren, maar dat een iegelyk fig conformeere, voor foo veel zyn gedeelte aangaat met den innehoude van dit tegenwoordige Tractaat, fal de Kaifer der Maroccen het felve na de onderteekening doen publiceren door alle fyne Ryken en Dominien, en het felve in de Arabifche Taale gefchreeven doen affigeeren op de Poorten der Plaatsen daar Zeehavenen zyn en elders daar fulks noodig geoordeelt fal werden; fullende gelyke publicatie en affixie van wegens de Heeren Staaten Generaal werden gedaan in de Landen onder hunne Heerfchappe behoorende.

Formulier van het Pasport het welk de Scheepen gehoorrende aan Onderdaanen van haar Hoog Mog. de Heeren Staaten Generaal der vereenigde Nederlanden fullen moeten hebben, waar van in het vyfde Articul van dit Tractaat mentie is gemaakt.

By de Gecommitteerde Raaden ter Admiraliteit der vereenigde Nederlanden: Laat paffeeren het Schip N. N. Schipper N. N. met fyn Paffagiers, Goederen en Koopmanschappen, fonder eenige embarras, detentie, arrest nog moleft, als zynde ons door goede getuigeniffe gebleeken, dat het voorfchreeve Schip is toebehoorende aan Onderdaanen der vereenigde Nederlanden.

Gegeeven onder onfe teekening en Zegel van de Admiraliteit in

Het voorfchreeve Pasport fal gefchreeven zyn op een Pergament, in het boovenfte gedeelte de figuur hebbende van een Schip door midden gefneeden, waar van de boovenfte gedeeltens fullen werden overgegeevan aan de Capiteinen der Kaapers die uit Salé of andere Havenen fullen loopen, omme by het ontmoeten van Scheepen, gehoorrende aan Onderdaanen van haar Hoog Mog., te konnen sien of defelve in de Pasporten paffen, en daar mede overeenkoomen. En om alle fraudes te eviteeren, en dat geene andere Natien fig van de voorfchreeve Pasporten koomen te bedienen, fullen haar Hoog Mog. de Coupures van defelve foo dikwils mogen veranderen als fy dienftig oordeelen fullen te behooren, waar



van den Consul communicatie zal geeven, soo ook van de tyd wanneer foodanige Pasporten haar begin sullen neemen. Dan gelyk het soude kunnen gebeuren dat de Scheepen van de Ooftindische Compagnie ter oorfaake van de verafgeleegene reifen sig in tyds van foodanige nieuwe Pasporten niet soude kunnen voorfien, en fyne Keiferlyke Majesteit en de Heeren Staaten Generaal wenshende, soo veel doenlyk zy, alle foorten van dilputen te eviteeren, zyn geconvenieert, dat, het zy de Pasporten voor de andere Koopvaardyscheepen werden vernieuwt dan niet, de Scheepen van de voorschreeve Ooftindische Compagnie altoos gekent, en gedistingueert sullen weesen door een groot Zeegel met de Waapenen van de Staaten Generaal, het welk op haar Pasport gevonden zal worden, welkers Hoofd insgelyks met het eigenst Zeegel ter regter zyde gezeegeld zal weesen, en door den Consul van Haar Hoog Mog. aan de Kaapers van fyne Keiferlyke Majesteit separaat werden overgegeeven: en de voorschreeve Zeegels en Coupures conform bevonden werdende, het zy deese Pasporten different zyn of niet aan die van de andere Koopvaardyscheepen, zal men noytans de voorschreeve Scheepen van de Ooftindische Compagnie vryelyk laaten passeeren: werdende foodanigen Pasport en Zeegel voor permanent verklaart ter ty toe fyne Keiferlyke Majesteit en haar Hoog Mog. eenstemmig anders sullen koomen te disponeeren.

Tetuan November

21. 1752.

Maan Moharam 14:

1166.

(L. S.) Uit kragte van fyne Keiferlyke Majesteits volle magt aan my,  
MOHAMET LUCAS.

(L. S.) Uit kragte van haar Hoog Mog. de Staaten Generaals volle magt aan ons  
FRANCOIS BUTLER.  
LEWIS BUTLER.

Rec.

Rec. 25. Aug.

1777.

De Capitein Kinsbergen heeft onder het Tractaat van Vreede van 1752, welke by uit het Spaansch heeft daen Copieeren en aan Sumbel overgegeeven, om aan den Keifer te behandigen deese volgende Periode daar onder gevoegt en geteekent.

Je souffigné Jean Henri de Kinsbergen, Chevalier de l'ordre Militaire de St. George & Capitaine de Haut-bord au service de Leurs Hautes Puissances Messieurs les Etats-Généraux des Provinces-Unies des Pays Bas; certifie & declare avoir renouvelé la paix avec S. M. Imp, l'Empereur de Maroc en Conséquence du pouvoir qui m'a été donné par M. le Contre Amiral Pichot, Commandant l'Escadre de LL. HH.

P. P. sur les Côtes de Barbarie, suivant le Traité conclu entre ladite Maj. Imp., & lesdits Etats-Généraux des Provinces-Unies.

A Tetuan le 21. Nov. 1752, exprimé ci-devant  
Fait à Salé le 9. Juillet 1777.

(Signé)

J. H. DE KINSBERGEN.

Rec. 25. Aug.  
1777.

Dieu seul soit loué. Il n'y a point  
d'adresse ni de force qui ne vienne  
de lui.

(L. S.)

A l'Amiral Hollandois Daniël Pichot, salut à celui que suit le droit chemin ;

Nous avons reçu dans notre Cour relevée votre ami Kinsbergen, qui est venu pour faire la Paix avec nous, la quelle nous lui avons accordée dimanche 24 de la Lune jumed premier de l'année 1191. (qui repond au 29. Juin 1777.) bien entendu que ce soit suivant les anciens Traités.

De quoi nous avons donné avis à tous les Gouverneurs de nos Ports bien heureux, de même qu'à tous les Capitaines de nos Corfaires défenseurs que Dieu garde, afin que la Paix soit accomplie par terre & par mer.

Het bovenstaande is een Translaat  
van den Brief van den Keiser van  
Marocco, waar van het Origineel  
hier nevens gaat.

(Geteekent)

J. H. VAN KINSBERGEN.

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RENEWAL OF THE PEACE TREATY OF 1752 BETWEEN THE  
SULTAN OF MOROCCO AND THE UNITED PROVINCES OF THE  
NETHERLANDS—JUNE 29, 1777

Article I\*.

[There shall hereby be a renewal of the lasting peace and friendship between His Majesty the Sultan of Morocco and the Netherlands Estates General and their subjects.]

Article II.

[The ships of the Netherlands Estates General shall have unrestricted access to the bays, harbors, and ports of the Sultan's Realm and may

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\* Translator's note: [Summaries of Articles which make no reference to jurisdictional questions are given in brackets.]

remain at anchor there as long as they see fit and engage in commercial transactions without the payment of any extra duties or imposts. They may leave freely whenever they wish with whatever they have retained on board, without the payment of any export duty to the Sultan.]

Article III.

[If the ships of either the Sultan of Morocco or the United Netherlands shall be forced to enter each other's ports and harbors as a result of wind or tempest or the pursuit of enemies, they shall be exempt from all harbor fees and imposts upon entering or leaving, and no difficulties shall be put in their way.]

Article IV.

[The Sultan and the Estates General promise not to stop or molest each other's ships or those of their subjects on the high seas. All passengers on such ships, from whatever country they may be, shall be free from any search or seizure or any molestation whatsoever.]

Article V.

[The Sultan's warships may send a sloop with two men to board merchantmen or other vessels of the Estates General on the high seas to ascertain if their papers are in order ; if such is found to be the case they must let them proceed without delay.]

Article VI.

[No captain of any of the Sultan's ships shall have the right to remove any person, whosoever he may be, from a Netherlands ship and transport him elsewhere for any reason whatever ; nor shall he be permitted to molest or harm him in any way.]

Article VII.

[If any of the ships of the Netherlands or its subjects are shipwrecked on the shores of the Sultan's realms, neither they nor their cargoes shall be confiscated nor shall their crews be made slaves ; on the contrary, the Sultan's subjects shall be obligated to use all possible means to salvage crew and cargo, which shall without further ado be turned over to the captain or the owner and a charge be made only for the actual work performed.]

Article VIII.

[No subjects of the Sultan of Morocco or of the Netherlands shall make an agreement with any prince or potentate for the use of his ships or those of others to molest or harm the subjects of either of these countries.]

Article IX.

No ships of His Most Illustrious Majesty, large or small, shall be permitted to cruise or engage in privateering near the roads, roadsteads, harbors, anchorages or berths subject to the jurisdiction of the Estates General.

## Article X.

[No enemies of the Sultan of Morocco or of the Netherlands may bring maritime prizes into the harbors of either of these countries, if the prizes have been taken from Dutch or Moroccan nationals; nor may any of the ships, cargoes, or persons be sold there. In the event that a warship or privateer of an enemy of the Netherlands is in a Moroccan harbor at the same time as any ships belonging to Netherlands subjects, the former may not molest the latter ships in any way and shall not be permitted to leave such harbors until 40 hours after said Netherlands ships have departed.]

## Article XI.

[Should any Netherlands warships bring prizes of war into Moroccan harbors, they shall be permitted to dispose of them there freely without any undue molestation or the payment of any extra customs duties.]

## Article XII.

[As soon as a Dutch warship enters any Moroccan harbor and the Dutch consul or the captain of the ship has notified the Governor of the particular place of the fact, it shall be publicly proclaimed in order that all may take heed to prevent the escape of any slaves. If, however, some do escape or such is rumored, the aforementioned Governors shall not subject the Dutch nationals or the consul to any indignities in regard to the matter; they shall merely direct the master of the slaves in question to get in touch with the captain of the vessel where they are rumored to have sought refuge, in order that he may ascertain the truth. Should the slaves be discovered there, he may request the consul or the captain, in the name of the Sultan, to release them into his custody.]

## Article XIII.

[From the date of the signature of the present Treaty, no Netherlands nationals, either Christians or Jews, shall ever be held in slavery anywhere within the Sultan of Morocco's Realm.]

## Article XIV.

[In the event of the death of a Netherlands subject within the realm of the Moroccan Sultan, his estate and his effects shall not be confiscated by the Sultan or by any of his subjects or officers nor subjected to any inspection whatsoever, but shall be turned over to the heirs of the deceased in accordance with his last will and testament, if they are living in that place. Otherwise, the legally appointed executor of the estate shall take it over. If any Dutch subject dies intestate, the Netherlands Consul of the place shall take charge of the estate.]

## Article XV.

[No Netherlands merchants operating in the lands of the Sultan of Morocco shall be obligated to buy any merchandise beyond what they freely choose to acquire, nor shall they be subjected to any physical violence in regard thereto by the Sultan's officers. But, likewise, there

shall be no countenancing of piracy or fraud in regard to the property of the subjects of the Sultan in Netherlands harbors on the part of Dutch officials or citizens.]

#### Article XVI.

The subjects of the Estates General, whether Christians or Jews, shall not, in the case of lawsuits *within the Realm of His Imperial Majesty*, be bound to submit to the jurisdiction of these countries and shall thus, in the event of disputes which may have arisen, either civil or criminal, (solely between those of the above-mentioned Netherlands nation) *not be required to appear before any other magistrate than their consul or that of the above-mentioned United Netherlands nation*, who shall have complete authority to decide all disputes, civil as well as criminal, namely, in cases of homicide, assault and other delicts, in which the procedure shall be in accordance with the instructions and orders of the Estates General.

#### Article XVII.

In the event that any subject of the Estates General is in the Realm of His Imperial Majesty and should injure or maim a Moor, such person shall be punished in the same manner and no more severely than a Moor would be if he committed a similar offense. In case of homicide, however, he shall be judged by His Majesty the Sultan alone, *without the interposition of any other magistrate*; and should such a person chance to escape, neither the consul nor any other subject of the Estates General shall be interrogated or molested in regard to the case.

#### Article XVIII.

[The Netherlands Estates General shall be free to send as many consuls as they deem necessary to the various cities of the Sultan's realm, and they must be treated with respect and consideration and be permitted to go on board any Dutch ships in the harbors of those countries. They shall likewise be permitted to travel about freely and to worship according to the dictates of their conscience.]

#### Article XIX.

[The consuls and any other subjects of the Estates General shall be permitted in war as well as peace time *to leave the realm of the Sultan of Morocco* by whatever ship they may prefer. They may also take along their families, domestics, and furniture, being allowed six months' time to dispose of their effects without having any difficulties whatsoever placed in their way.]

#### Article XX.

[No Netherlands subject, whether Jew or Christian, shall be molested upon entering or leaving any harbor, even though he may be a passenger on board a ship that is hostile to the Sultan of Morocco; likewise, no subject of the Sultan who is a passenger on a ship hostile to the Netherlands, or his baggage, shall be molested by the Dutch.]

## Article XXI.

[In case of violation of this Treaty by either Party, neither shall resort to arms until at least six months have elapsed since a petition was submitted for redress of grievances and no settlement was reached. If private individuals violate this Treaty they shall be punished as disturbers of the peace.]

## Article XXII.

[This Treaty shall be signed by the Parties thereto as soon as possible and ratifications exchanged as soon as practicable in view of the distances involved. It shall, however, enter into force and all hostilities cease on the date of signature of the Treaty, in accordance with its provisions.]

## Article XXIII.

[This Article provides for the proclamation of the Treaty by the Sultan and its publication in the Arabic language in all the ports of his realm. It further describes in detail the form and wording of the clearance papers that all ships of both Parties must carry in order to avoid molestation at the hands of the authorities of the Sultan or the Estates General of the Netherlands. Precautions are taken against abuse of these credentials by third parties, and special provision is made for the East India Company.]

## Annex No. 15

## TREATY BETWEEN MOROCCO AND SPAIN OF MAY 28, 1767

Source: Rouard De Card, *Les Relations De L'Espagne et Du Maroc* (1905), 171-174.

*Traité de paix et de commerce signé le 28 mai 1767*

## GRACES A DIEU TOUT-PUISSANT

*Traité de paix et de commerce conclu, signé et scellé entre les très hauts et très puissants Princes don Carlos III, Roi d'Espagne et des Indes, et l'Empereur du Maroc Sidy Mohamet Ben- Abdala, ben Ismael, Roi de Fez, Mequinez, Algarbe, Sus, Tafilete et Dra; la partie contractante pour Sa Majesté Catholique étant son ambassadeur plénipotentiaire don Jorge Juan, qui par son ordre et au même effet s'est transporté à la Cour du Maroc, le premier jour de la lune de Aulmoharram de l'an 1181 de l'ère mahométane, ou 28 mai 1767 de l'ère chrétienne*

Article 1<sup>er</sup>. — La paix sera constante et perpétuelle sur mer et sur terre, avec l'amitié la plus réciproque et la plus franche entre les deux souverains et leurs sujets respectifs.

Art. 2. — La navigation s'effectuera pour les ressortissants des deux pays au moyen de lettres conçues de telle façon que pour les comprendre, il ne sera pas nécessaire de savoir lire. Les embarcations qui se trouveraient sans ces lettres seront conduites par celui qui les saisira au port le plus proche du pays du navire saisi et livrées au gouverneur de ce port. Toutefois, pour les petites barques de pêche de l'un et de l'autre pays, il ne sera exigé aucune espèce de passeport. Les dits passeports dont il vient d'être parlé pourront être changés toutes les fois que cela paraîtra nécessaire.

Art. 3. — Les navires de guerre de l'un et de l'autre pays ne demanderont aux autres embarcations que de vérifier les dits passeports. Non seulement ils ne pourront obliger les dites embarcations à jeter l'ancre ni exécuter sur elles la moindre perquisition, mais ils ne pourront même pas les obliger à mettre un canot ou une chaloupe à la mer. Le navire de guerre qui viendra vérifier les passeports sera, lui, tenu de mettre sa chaloupe à la mer et, de cette chaloupe, un seul homme sera autorisé à monter à bord de l'embarcation pour opérer la vérification. Quels que soient les individus ennemis qui se trouveraient dans la dite embarcation, ils seront libres comme aussi leurs biens et les objets leur appartenant seront respectés.

Art. 4. — Si un naufrage vient à se produire sur la côte de l'un ou l'autre pays, on traitera les naufragés de la façon la plus hospitalière et on tâchera de sauver les embarcations. On donnera aux équipages les secours qu'ils demanderont à cet effet, en ne faisant payer les travaux et les opérations de sauvetage qu'au juste prix.

Art. 5. — Il y aura liberté de commerce entre les deux nations et liberté de navigation d'un pays à l'autre.

Tout bâtiment pourra séjourner dans les ports tout le temps qu'il lui plaira et les sujets de l'un et l'autre pays pourront, sans qu'aucun tiers s'entremette dans l'affaire, acheter et vendre les marchandises comme ils le voudront et où il leur conviendra de le faire, quand ce serait dans l'intérieur des deux royaumes, exception faite pour les marchandises de contrebande.

Art. 6. — On fixera définitivement les droits d'entrée et de sortie à payer par les commerçants, mais les navires de guerre seront exempts de payer aucun des droits, non plus que le droit d'ancrage ni aucun autre impôt.

Art. 7. — Pour faciliter le commerce dans les États de S. M. Impériale, on y établira un consul général représentant S. M. Catholique. On pourra aussi établir des Vice-Consuls dans les différents ports qu'on jugera convenable. Ces agents seront chargés de veiller aux intérêts de leurs nationaux, de rendre la justice due à chacun et de délivrer aux embarcations les lettres de mer exigées.

Art. 8. — On ne pourra pêcher dans les environs des ports que si l'on est pourvu d'une licence à cet effet. Le pêcheur se présentera muni de cette licence au capitaine du port et celui-ci lui indiquera les limites dans lesquelles la pêche devra s'exercer.

Art. 9. — Toute embarcation saisie sur la côte pour s'en être approchée soit par nécessité, soit par ignorance ou pour de mauvais desseins, sera remise avec tout son contenu et son personnel au Consul ou au

Vice-Consul le plus voisin, afin que celui-ci se rende compte de la faute commise et qu'un châtement soit infligé au délinquant par le pays auquel le navire appartiendra.

Art. 10. — Les Espagnols qui désertent des Présides de Ceuta, Melilla, Peñon et Alhucemas et les Maures qui s'y réfugieront seront immédiatement et sans le moindre retard rendus par les principaux chefs ou gouverneurs qui les auront saisis, à moins qu'ils ne changent de religion.

Art. 11. — Tout Espagnol dans les États de S. M. Impériale et tout sujet de celle-ci dans le Royaume de S. M. Catholique jouira de la liberté, quel que soit le motif qui les aura déterminés à venir dans l'un ou l'autre État.

Art. 12. — Pour les contestations des Espagnols entre eux, tant civiles que criminelles, leur Consul sera seul compétent. Et si ce Consul ne se trouve pas présent pour juger les contestations criminelles, l'agresseur sera arrêté par les autorités de justice jusqu'à ce que le Consul dispose de lui.

Art. 13. — Relativement aux biens des Espagnols qui mourront dans les États de S. M. Impériale, nulle autre personne que leur Consul ne pourra en connaître. Et si le décès avait lieu dans les parages où ne se trouverait aucun Consul, les autorités judiciaires locales auront la garde de ces biens et en donneront avis au Consul, afin que celui-ci prenne les dispositions nécessaires. De la même manière, les autorités judiciaires d'Espagne auront la garde des biens des Maures qui viendront à y décéder jusqu'à ce que, après avis préalable, S. M. Impériale en dispose, à moins que le légitime héritier ne soit présent, auquel cas on lui remettra la totalité des biens, ou à moins encore que dans son testament le défunt n'ait pris d'autres dispositions.

Art. 14. — Tout navire de S. M. Impériale qui viendra dans un port d'Espagne devra subir la quarantaine fixée, à moins que les Consuls ne lui aient donné un certificat de parfaite santé, auquel cas il sera affranchi de cette formalité.

Art. 15. — Tout chrétien ou rênégat qui se réfugiera dans les Présides ou à bord des vaisseaux de guerre de S. M. Catholique stationnés dans les ports de S. M. Impériale, demeurera libre. Il en sera de même pour tout mahométan ou rênégat qui, dans les ports de l'Espagne, se réfugiera sur les vaisseaux de guerre de S. M. Impériale.

Art. 16. — Si, par mégarde, il se produisait quelque cas qui ne serait pas conformes aux présentes stipulations ou à l'amitié vraie et réciproque que les deux nations doivent professer l'une pour l'autre, le traité de paix ne sera pas pour cela annulé. La partie lésée transmettra sa plainte afin qu'on lui donne la satisfaction qui sera due ; et, au cas où cette satisfaction ne lui serait pas donnée dans le délai de six mois, alors seulement on pourra considérer l'incident comme une rupture de la paix.

Art. 17. — Si, par malheur, le cas d'une semblable rupture venait à se produire, ce qu'à Dieu ne plaise, on laissera un laps de temps de six mois pour que les sujets des deux nations se retirent avec tous leurs effets ou leurs biens et pour qu'ils prennent passage sur tel vaisseau qu'il leur plaira, sans que, pendant ce délai de six mois, il puisse leur



être fait la moindre offense ni causé le moindre préjudice en quoi que ce soit.

Art. 18. — S. M. Impériale s'abstient de délibérer au sujet de l'établissement que S. M. Catholique veut fonder au sud de la rivière Non (oued Noun), car elle ne peut se rendre responsable des accidents et des malheurs qui pourraient se produire, vu que sa souveraineté ne s'étend pas jusque là et que les peuplades vagabondes et féroces, habitant ce pays, ont toujours causé des dommages aux gens des Canaries et les ont même réduits en captivité. Mais S. M. Impériale, depuis Santa-Cruz jusqu'au Nord, concède aux gens des îles Canaries et aux Espagnols le droit exclusif de pêche, sans permettre à aucune nation d'exercer le même droit sur aucune partie de la côte qui leur restera entièrement réservée.

Art. 19. — La loi s'oppose absolument aux agrandissements que S. M. Catholique demande à effectuer dans les quatre Présides. Depuis l'époque où ces points ont été occupés par l'Espagne, leurs Majestés Impériales ont fixé les limites sur l'avis de leurs tolbas et ulémas, et ont juré de n'y rien changer, serment qui a été et qui est encore observé par tous les Empereurs. Et c'est pourquoi S. M. Impériale ne peut donner satisfaction à cette demande, quoique dans son for intérieur elle soit disposée à accorder encore beaucoup plus.

Toutefois, pour renouveler les limites des Présides et les marquer avec des pyramides de pierres, S. M. Impériale nomme, de son côté, le chef de Acher, gouverneur de Tétouan, et tout ce que celui-ci fixera ou marquera comme limite, d'accord avec le commissaire nommé par S. M. Catholique, est tenu dès maintenant pour fixé et marqué par S. M. Impériale, comme aussi par les plénipotentiaires de S. M. Catholique.

(L. S.) DON JORGE JUAN.

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*Annex No. 16*

TREATY BETWEEN MOROCCO AND SPAIN OF MAY 30, 1780

*Source: Rouard De Card, Les Relations de L'Espagne et Du Maroc (1905), 175-179.*

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*Convention d'amitié et de commerce entre le Roi d'Espagne et l'Empereur du Maroc, signée à Aranjuez, le 30 mai 1780*

Le très illustre Mohamet ben Otoman s'étant rendu à Madrid en qualité d'ambassadeur et ministre plénipotentiaire du Roi du Maroc auprès de Sa Majesté catholique, a présenté une instruction de son souverain indiquant les points sur lesquels il avait mission de traiter.

En conséquence le Roi d'Espagne a ordonné au comte de Florida-Blanca de discuter en son nom les propositions de l'ambassadeur et, après s'être mis d'accord avec lui sur tous les points, de rédiger une réponse. Cette réponse, jointe à l'instruction de l'ambassadeur, formerait

entre les cours de Madrid et du Maroc une convention qui resserrerait plus fortement et affirmerait l'amitié entre les deux monarchies pour le bien de leurs vassaux et pour l'avantage de leur commerce.

Le moment est venu de rédiger cette réponse laquelle non seulement satisfait aux points indiqués dans l'instruction, mais encore renferme d'autres points dont quelques-uns sont complétés par des additions. Et ledit ambassadeur, ayant tout accepté, ladite convention a été conclue entre les deux cours comme suit :

### CONVENTION

Entre le très illustre seigneur don José Moniño comte de Florida-Blanca, chevalier pensionné de l'ordre royal de Charles III, conseiller d'État de Sa Majesté, premier secrétaire d'État et du cabinet, surintendant général des courriers terrestres et maritimes, des postes et des services d'estafettes en Espagne et aux Indes, et des voies de communication du royaume : et le très illustre seigneur Mohamet ben Otoman, ambassadeur et ministre plénipotentiaire du Roi du Maroc, en vertu des ordres de leurs souverains respectifs.

#### AU NOM DE DIEU TOUT-PUISSANT

*Instruction donnée par le Roi du Maroc à son ambassadeur et signée par lui*

*1<sup>er</sup> Point.* — Quand les Anglais apprirent que Votre Majesté leur déclarait la guerre, ils nous firent dire qu'ils voulaient nous envoyer six ou huit navires qui navigueraient sous notre pavillon et qui transporteraient des provisions de nos ports à la place de Gibraltar.

Nous rendant compte de leurs mauvais desseins et de leurs projets perfides, comprenant que de la sorte les dits navires pourraient entrer dans le port de la place assiégée et y introduire des approvisionnements sans que Votre Majesté, par considération pour nous, y apportât aucun obstacle. Nous leurs avons répondu que nous n'avions pas besoin de leurs navires et nous n'avons pas consenti à leur demande.

Actuellement, nous désirons que Votre Majesté nous envoie trois ou quatre navires très forts qui puissent charger mille cinq cents quintaux, que les dits navires se rendent dans nos domaines pour y charger des blés et autres objets d'approvisionnement afin de les porter des ports où ils sont en abondance dans les ports où ils font défaut. Nous désirons aussi que ces navires aient leurs capitaines, leurs seconds, leurs pilotes et leurs contre-mâîtres : quant à nous, nous fournirons les marins de l'équipage. Nous paierons aussi le frêt des navires secrètement afin que l'on connaisse le service que nous rend Votre Majesté sans intérêt aucun et seulement par suite de la réciproque amitié existant entre nous.

*Réponse de Sa Majesté Catholique.* — S. M. enverra au Roi du Maroc les navires qu'il demande, mais les matelots seront espagnols, afin d'éviter le désaccord qui pourrait surgir entre marins espagnols et marocains.

*2<sup>e</sup> Point.* — Les négociants de Tétouan nos sujets qui auparavant avaient coutume de faire le commerce de peaux et autres produits sur la place de Gibraltar, remarquèrent que les embarcations anglaises

portaient de Gibraltar ces peaux et autres articles à Barcelone et qu'elles en retiraient de grands bénéfices. Et comme ledit trafic avec Gibraltar a pris fin, ils nous demandèrent de faire le même commerce à Barcelone et d'y chercher des associés qu'ils puissent s'adjoindre pour légit commerce afin de pouvoir continuer les mêmes opérations sur ces marchandises. Et les mêmes navires, désignés ci-dessus (navires espagnols), en déchargeant à Tétouan les provisions qu'ils y apporteront, seront chargés par les marchands des produits du pays et les transporteront à Barcelone où ils chargeront de la soie et autres marchandises. Les négociants, sujets de Votre Majesté, n'auront rien à craindre pour leurs intérêts, ayant comme garantie notre royale parole.

*Réponse.* — Les dits navires pourront venir à Barcelone pour leur commerce en toute liberté ; ils y paieront les droits qui auront été fixés et établis.

*3<sup>e</sup> Point.* — Les commerçants de Fez qui, généralement font le commerce en Orient, emportent avec eux de la monnaie d'argent pour leurs affaires, la changeant contre de l'or parce que dans ces régions ils perdraient sur l'argent. Pour cette raison ils nous ont prié de leur permettre d'envoyer chaque année deux commerçants à Cadix pour changer la monnaie d'argent contre de la monnaie d'or et pour pouvoir acheter des grains de cochenille au prix courant, car cet article est très demandé et a un très grand débouché à Fez. Celui qui leur vendra ces grains de cochenille pourra, s'il le veut, être payé en monnaie espagnole ou, s'il le veut, il pourra recevoir en échange soit des peaux soit de la cire.

*Réponse.* — Ces commerçants peuvent venir à Cadix pour y acheter les grains de cochenille ou d'autres produits espagnols au prix courant ; quant au change de la monnaie d'argent contre de l'or, lorsque ce métal sera abondant (car pour le moment il est très rare), il sera permis de l'effectuer, à condition de payer pour son exportation et pour celle des autres articles les droits que paye en Espagne la nation la plus favorisée, et on acceptera la monnaie espagnole et les autres effets qui seront offerts.

*4<sup>e</sup> Point.* — Nous avons reçu la lettre de Votre Majesté et nous nous sommes pénétré de son contenu avec grand plaisir. En voyant la traduction élégante de votre interprète nous nous sommes demandé si ce dernier était Mahométan ou Chrétien. S'il était Mahométan, il aurait dû commencer la lettre de cette manière : « Louanges à Dieu seul et à notre seigneur Mahomet, apôtre de Dieu et dernier prophète ». S'il était chrétien, il aurait dû commencer ainsi : « Louanges à Dieu et paix à notre seigneur Jésus-Christ, fils de Marie, apôtre et verbe de Dieu ». L'interprète ne l'ayant pas fait, nous avons mis en doute sa religion.

*Réponse.* — Le traducteur est Chrétien et s'est conformé à l'usage observé ici qui consiste à donner à Dieu les louanges dans les prières par lesquelles nous nous préparons à tout ce que nous entreprenons.

*Autres points que comprend la réponse de Sa Majesté Catholique*

*1<sup>er</sup> Point.* — Les marchands espagnols qui viendront dans les ports du Roi du Maroc, tels que Tétouan, Tanger, Larache, Salé, Mogador

et autres, seront bien traités et reçus ; ils y seront en sécurité pour leur vie et leurs biens.

*2<sup>e</sup> Point.* — Les négociants espagnols pour ce qu'ils exporteront des domaines du Roi du Maroc, devront payer les droits établis conformément aux ordres de ce souverain, lesquels droits seront fixés et certains, sans augmentation aucune. Et ces mêmes Espagnols devront au point de vue des droits à payer, être plus favorisés que les sujets des autres nations.

*Addition.* — Le roi d'Espagne dans ces domaines fera la même chose et pas plus à l'égard des négociants marocains.

*3<sup>e</sup> Point.* — Les sujets du Roi du Maroc pourront venir faire leur commerce dans les ports d'Alicante, Malaga, Barcelone et Cadix et aussi bien dans ces ports que dans les autres du royaume, ils seront bien traités et bien reçus. On leur fournira les vivres qui leur seront nécessaires. Ils pourront aussi réparer leurs navires en payant les dépenses qu'ils feront et les objets qu'ils achèteront.

*4<sup>e</sup> Point.* — Les navires de S. M. Catholique et ceux du Roi du Maroc auront aussi un signal pour se reconnaître afin de ne pas se confondre avec les Algériens ou toute autre puissance ennemie et afin d'éviter des méprises regrettables.

*5<sup>e</sup> Point.* — Dans le cas où Gibraltar appartiendrait à une époque quelconque à S. M. Catholique, le Roi du Maroc considérera cette place comme les autres domaines de l'Espagne ; il laissera transporter hors du territoire marocain tout ce qui sera nécessaire à la dite place, comme le fera S. M. Catholique, pour Tanger et autres ports du même voisinage ; enfin il protégera et aidera S. M. Catholique en cas d'insulte ou de guerre contre les ennemis.

*Addition.* — Le Roi d'Espagne agira réciproquement de la même manière à l'égard du Roi de Maroc, c'est ainsi que doit s'entendre cet article.

*6<sup>e</sup> Point.* — Si Sa Majesté Catholique venait à désigner quelques personnes pour prendre en ferme les droits d'exportation de comestibles par les ports de Larache, Tétouan et Tanger, on leur concèdera ce fermage au juste prix que devrait payer tout autre fermier.

*7<sup>e</sup> Point.* — Les sujets de S. M. Catholique résidant dans les États du Maroc ne pourront être obligés de loger et d'entretenir aucune personne dans leurs maisons.

*8<sup>e</sup> Point.* — Toutes les fois que les sujets de S. M. Catholique, résidant dans les États du Maroc, loueront des maisons pour un temps et pour un prix déterminés, on ne leur haussera pas le loyer pendant ce temps et on ne les en délogera pas, pourvu qu'ils payent le prix convenu.

*9<sup>e</sup> Point.* — Si quelques Consuls, Vice-Consuls ou commerçants espagnols veulent bâtir pour eux-mêmes des maisons dans les États du Roi du Maroc, ils pourront le faire ; et, au cas où ils voudront vendre ou louer ces maisons, on ne pourra leur susciter aucune difficulté.

*10<sup>er</sup> Point.* — Si le Roi des deux Siciles voulait participer aux avantages que se promettent par cette convention Sa Majesté Catholique et le Roi du Maroc, on considérera ce souverain et ses sujets comme

compris dans les stipulations du présent traité pour tout ce qui a rapport à la liberté et à la sécurité du trafic et du commerce des deux nations. Et par suite toutes hostilités seront suspendues entre Napolitains et Marocains.

(L. S.) Comte de FLORIDA-BLANCA.

Par lettre du 25 décembre de la présente année, le Roi du Maroc, Mohamet, fils de Abdalla, envoya à Sa Majesté catholique, Charles III, l'approbation et la ratification de la convention précédente. Dans sa lettre il indiqua expressément qu'il avait fait partir les navires anglais des ports de Tanger et de Tétouan et qu'il leur avait interdit tout commerce dans ces ports.

Dans le courant de l'année suivante 1781, Sa M. Sicilienne adhéra à plusieurs articles de la dite convention et S. M. Marocaine approuva et ratifia cette adhésion.

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*Annex No. 17*

TREATY BETWEEN MOROCCO AND SPAIN OF MARCH 1, 1799

Source : 17 Martens, *Recueil Des Traités*, 581-611.

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*Traité de paix, d'amitié, de navigation, de commerce et de pêche entre S. M. Catholique et S. M. marocaine, conclu et signé à Mequinez, le 1<sup>er</sup> mars 1799*

Au nom de Dieu tout puissant !

Traité de paix, d'amitié, de navigation, de commerce et de pêche convenu entre les très hauts et très puissants princes D. Carlos IV. roi d'Espagne et des Indes etc. et Muley Soliman, roi de Maroc, Fez, Mequinez, Suz etc. négocié de la part de S. M. Catholique par son plénipotentiaire et intendant des armées royales D. Jouan Manuel Gonzalez Salmon lequel par ses ordres et à cet effet a passé à la cour de Mequinez des Olivares, et de la part de S. M. Marocaine par le très excellent seigneur Sid Mahamet Ben Ottoman son premier ministre ; lesquels après avoir échangés leurs pleinpouvoirs respectifs ont stipulé en conformité des instructions que chacun d'eux avait reçue, les articles suivants :

ART. I. Le traité de l'an 1767, la convention de 1780 : et l'arrangement de 1785 sont renouvelés et confirmés en tout ce qui n'est pas contraire au présent traité.

ART. II. Aucune des deux hautes parties contractantes ne fournira sous prétexte quelconque des vivres, excepté ce qu'exige l'humanité, des munitions, soit de bouche ou de guerre ni aucun genre d'armes aux ennemis actuels ou futurs de l'une des deux puissances ; comme elle ne leur accordera point le passage de leurs troupes par son territoire, ne leur fournira point son pavillon et ses passeports, et ne permettra pas qu'ils arment en course dans ses ports.

ART. III. A fin que la paix et la bonne amitié, consolidée de nouveau par le présent traité, subsistent avec la plus parfaite harmonie, et qu'il ne puisse s'introduire dans les états reciproques des sujets qui par leurs actions, leur conduite, ou leurs opinions pourraient la troubler, il ne sera permis à aucun Espagnol de passer dans les états de Maroc ni de s'y établir, s'il n'en obtient la permission, ou le passeport du commandant ou gouverneur du port d'où il s'embarque et qui indique l'objet ou les objets de son voyage ; lesquels documents seront examinés lors de son arrivée par le consul-général d'Espagne, les vice-consuls ou commissaires. La même chose aura lieu en Espagne par rapport aux sujets de Maroc, lesquels devront se munir de passeports des dits consul-général, vice-consul ou commissaires. Ceux qui ne présenteront point les dits documens ne seront admis sous aucun prétexte ; mais si ces documens sont en règle on leur accordera toute protection et sureté ; et en conséquence le gouvernement veillera à ce qu'ils n'éprouvent aucun mauvais traitement ni aucune autre vexation, punissant avec toute rigueur ceux qui les molesteraient ; et à cet effet S. M. Catholique fera expédier les ordres les plus stricts aux gouverneurs de ses ports. La même chose aura lieu de la part du gouvernement de Maroc sous la menace que tout officier qui ne fera pas bon accueil à chaque sujet de S. M. Catholique qui passe ou qui séjourne dans les états de Maroc encourra l'indignation du gouvernement.

ART. IV. Le consul-général d'Espagne, les vice-consuls ou commissaires régleront avec une juridiction absolue les affaires des espagnols dans les états de Maroc, le gouvernement leur fournissant les secours en troupes, chaloupes armées ou autres qu'ils désireront pour arrêter et s'assurer des malfaiteurs, par le quel moyen le bon ordre et le repos public seront conservés.

ART. V. Dans toutes les demandes en payement de dettes, accomplissemens de contracts ou autres différends quelconques que les sujets de Maroc auront à poursuivre contre les Espagnols, ils s'adresseront au consul-général d'Espagne aux vice-consuls ou commissaires dans leurs districts respectifs pour que ceux ci les faisant comparaître devant eux tachent de terminer et d'ajuster leurs différends, en les astreignant en cas de besoin de remplir leurs obligations ; et dans le cas opposé les dits employés remettront un office au gouvernement marocain pour que les sujets de celui-ci payent aux espagnols ce qu'ils leurs doivent, en faisant en sorte qu'ils l'exécutent sans donner lieu à des délais ; car l'administration de la justice doit être reciproque et de bonne foi comme un fondement solide de l'amitié et de la bonne harmonie entre les deux nations, non-moins que de l'existence et du bien être de tous.

ART. VI. Tout Espagnol qui commettra dans les états de Maroc quelque scandale, injure ou crime qui mérite correction ou punition, sera délivré à son consul-général ou vice-consuls, pour que d'après les lois de l'Espagne ou les lui inflige ou le renvoyé à son pays avec la sureté nécessaire, toutes les fois que les circonstances l'exigeront. La même chose sera reciproquement observée à l'égard de délinquants marocains en Espagne, de sorte qu'on les envoie au premier port de la domination de S. M. marocaine sans qu'il précède une information judiciaire ou autre formalité que celle d'un officier que le commandant gouverneur ou juge du territoire où ils commettent le délit enverra au consul-général

d'Espagne pour l'informer du crime ou délit, afin que leur gouvernement leur inflige la punition conforme aux lois et statuts.

ART. VII. Les dits consul-général, vice-consuls ou commissaires continueront à jouir de l'immunité de tous droits par rapport aux provisions de denrées et autres choses dont ils auront besoin et qu'ils feront venir d'Espagne ou d'autres pays pour leur consommation respective. Le dit consul-général aura la permission non seulement d'arborer à son hôtel à Tanger le pavillon royal d'Espagne, mais il pourra aussi sans aucun empêchement se rendre à bord des navires de sa nation quand il le jugera nécessaire, arborant le grand pavillon à la poupe du vaisseau ou chaloupe qui le conduira ; et la maison consulaire jouira de l'immunité et des prérogatives et distinctions dont elle a jouie jusqu'ici, et que lui a accordé le grand roi defunt Sid Mahamed Ben Abdala.

ART. VIII. S'il meurt à Maroc un Espagnol ou son domestique, supposé que celui-ci soit d'une nation chrétienne, le consul-général, les vice-consuls ou commissaires, disposeront de son enterrement dans la forme qui leur semblera la plus convenable, en se chargeant de tous ses biens pour les restituer à ses héritiers.

S'il meurt un Marocain en Espagne, le commandant, gouverneur ou juge du territoire dans lequel le cas survient mettra sous sa garde ce qu'il aura laissé, et en avisera le dit consul-général, lui envoyant note des biens, pour qu'il le fasse savoir à ses héritiers et soigne leur recouvrement sans qu'il en soit rien égaré.

ART. IX. Quand les Espagnols acheteront légitimement quelque terrain en Maroc avec la permission du gouvernement, ils pourront y bâtir des maisons pour leurs habitations magasins etc. les louer et les vendre comme il leur conviendra. Et toutes les fois qu'ils loueront des maisons et magasins pour un tems et un prix déterminé, on ne leur haussera point le loyer pendant ce tems et ne les en délogera pas, pourvu qu'ils payent le prix fixé, et supposant qu'ils en agissent comme il est dû. La même chose s'observera en Espagne par rapport aux marocains.

ART. X. Les Espagnols pourront quitter Maroc avec entière liberté et quand bon leur semblera sans avoir besoin de la permission du gouvernement ; cependant il leur faudra le consentement du consul-général, des vice-consuls ou commissaires afin que ceux-ci sachent s'ils sont libres de dettes ou d'autre sorte d'obligations qu'ils devront acquiter avant leur départ ; ce qui non seulement est conforme à la justice, mais aussi conservera la bonne et due réputation du nom espagnol ; et en aucune manière le consul-général ni ses vice-consuls ou commissaires ne seront tenus à payer les dettes que contractent les dits espagnols en Maroc, s'ils ne se sont pas engagé expressement sous leur signature à les acquiter ; et la même chose aura lieu en Espagne à l'égard du gouvernement de Maroc.

ART. XI. Ni les sujets de S. M. Catholique qui résident dans les états de Maroc, ni ceux de Maroc residant en Espagne ne pourront être obligés de loger ni d'entretenir personne dans leurs maisons.

ART. XII. Le libre culte de la religion catholique sera accordé à tous les sujets du roi d'Espagne dans les états de S. M. marocaine, et les actes qui lui sont propres pourront être exercés dans les hospices des pères missionnaires établis dans le dit royaume, et protégés dès longtems de la part des monarques de Maroc. Ces missionnaires jouiront dans

leurs hospices respectifs de la surété, des distinctions et privilèges qui leur ont été accordés par les précédens souverains de Maroc et par le monarque actuel. Et en considérant que leur ministère et leurs travaux, loin de déplaire aux marocains leur ont toujours été agréables et utiles par leurs connaissances pratiques en medecine et par l'humanité avec la quelle ils ont contribué à leur soulagement S. M. marocaine s'engage de permettre qu'ils restent dans ses états avec leurs établissemens, même si un jour la bonne harmonie était interrompue entre les deux nations (ce qu'on n'a pas lieu d'attendre) comme ils ont subsisté pendant les règnes précédans non obstant les guerres faites entre les deux monarchies. De même les marocains vivant en Espagne auront l'exercice privé comme ils l'ont eu jusqu'ici des actes servant au culte de leur religion.

ART. XIII. Comme on doit tacher de prévenir autant qu'il se peut le malheur résultant des événements imprévus, s'il survenait une nouvelle rupture entre les deux souverains, ils stipulent de s'accorder réciproquemens le tems de six mois ou lunes à compter du jour de la publication de la guerre dans leurs états, afin que les sujets respectifs puissent se retirer librement dans leur patrie avec tous leurs biens et effets.

S. M. marocaine désirant de plus que le nom odieux d'esclavage soit effacé de la mémoire des hommes, elle promet que dans le cas inattendu d'une rupture elle traitera les officiers, soldats et mariniers espagnols pris pendant la guerre, comme prisonniers de guerre en les échangeant sans distinction des personnes, classes ou grades le plus promptement que possible, sans passer en aucun cas le terme d'un an à compter du tems où ils furent capturés en se faisant donner un reçu à l'époque de leur tradition pour servir de norme à l'arrangement des échanges successifs ; on ne considérera pas comme de tels prisonniers de guerre les enfans qui n'ont pas encore douze ans accomplis, les femmes de quelqu'age qu'elles soient, ni les vieillards agés de plus de soixante ans, lesquels, tandis qu'on ne peut attendre aucune offense de ces trois classes de personnes, ne doivent pas souffrir le moindre dommage ou vexation ; donc aussitôt qu'ils auront été pris ils seront remis en liberté et par le moyen de vaisseaux parlementaires ou neutres seront transportés dans leurs pays, les fraix de ce transport étant à la charge de la nation à la quelle appartiennent ces prisonniers ; ce que S. M. Catholique promet d'observer de même, les deux hautes puissances contractantes engageant réciproquement leur parole royale pour l'accomplissement exacte de ce qui est contenu dans cet article. Et si à la fin de la guerre il se trouvait un excédent en prisonniers, on regardera cet objet pour terminé et n'en tiendra pas compte, mais délivrera les reçus de la part de celui qui les aura en mains.

ART. XIV. Les sujets de S. M. Catholique qui désertent des places de Ceuta, Melilla, Peñon et Alhucemas seront conduits aussitôt qu'ils seront arrivés sur le territoire de Maroc devant le consul général, et il dépendra de celui-ci de faire d'eux ce que lui ordonnera le gouvernement espagnol, et il payera les fraix de leur transport et de leur entretien. Cependant si, devant le dit consul ils disaient et confirmaient vouloir embrasser la religion mahometâne, alors le gouvernement marocain les gardera. Mais si accidentellement il se présentait quelqu'un devant le souverain et déclarait librement devant celui-ci qu'il désire se faire Maure, dans ce cas là il ne devra pas être conduit devant le dit consul général.



ART. XV. Les limites du camp de Ceuta et l'étendue du terrain pour le pâturage des troupeaux de cette place, resteront sur le même pied qu'elles ont été fixées et désignées en 1782.

Tandis qu'il a subsisté la meilleure harmonie entre la dite place et les Maures limitrophes, il est bien connu combien ceux de Melilla, Alhucemas et du Pennon sont turbulents et à charge, lesquels malgré les ordres réitérés de S. M. marocaine donnés pour conserver une même correspondance avec les dites places, n'ont pas cessé de les incommoder *continuellement* ; et bienque ceci semble une contrevention à la paix générale conclue par mer et par terre, cependant ce ne devra pas être considéré ainsi, comme étant contraire aux bonnes et amiables intentions des deux hautes parties contractantes, et n'étant que l'effet de la *mauvaise inclination des dits habitans* : cependant S. M. marocaine promet d'employer tous les moyens que lui suggère sa prudence et son autorité, pour obliger les dits voisins à entretenir une meilleure correspondance et à éviter les désagrémens qui naissent, tant pour les garnisons des dites places, que pour les camps des maures, des dits excès. Cependant s'ils continuaient sans relache, ce qu'on doit ne pas espérer, comme cela ne serait non seulement contraire à la justice, mais *blesserait aussi les égards dus à la souveraineté de S. M. Catholique* qui doit ne pas dissimuler ni tolérer de semblables insultes tandis que ses propres places pourraient seules y mettre ordre, il est convenu par ce nouveau traité, que les forteresses espagnoles pourront se servir du canon et de mortiers en cas qu'elles seraient offensées, tandis que l'expérience a fait voir que le feu de mousqueterie ne suffit pas pour ramener à la raison la dite sorte de gens.

#### *Navigation*

ART. XVI. Les navires marchands des deux nations pourront aborder dans les ports de chacune d'elles, étant munis des lettres de mer convenables expédiées par les autorités respectives. Les passeports dont ils seront munis pour leur navigation, seront arrangés de manière à ce que pour en juger il ne soit pas nécessaire de savoir lire. Ceux qui n'en seront pas munis, seront conduits par le vaisseau qui les rencontre, dans le port le plus proche de sa nation sans les molester, et avec obligation de les présenter intactes au gouverneur de celui-ci. Les petites barques de pêcheurs de l'une ou l'autre nation ne seront pas obligées à présenter des passeports. Ceux-ci pourront changer de forme, mais en ayant mutuellement soin d'avertir de chaque changement qui se fait pour parvenir à la connaissance de ceux qu'il concerne.

ART. XVII. Les vaisseaux de guerre des deux puissances ne forceront pas leurs navires marchands qu'ils rencontreront en pleine mer et dont ils voudront examiner les passeports, de lancer en l'eau leur bateau ou chaloupe, mais c'est aux vaisseaux de guerre à le faire, et ceux-ci n'employeront pas plus d'une seule personne de confiance pour aller à bord et y faire le dit examen ; et celle-ci ne pourra sous aucun prétexte visiter ou examiner ces navires, mais se bornera uniquement à examiner les passeports dont doivent être munis les Marocains de la part du consul général d'Espagne de la manière la plus simple, et les Espagnols de ceux usités de leur gouvernement ; en conséquence de quoi si les uns ou les autres causaient volontairement quelque dommage ou incommo-

dité à quelque navire ou à son équipage, l'agresseur sera puni à proportion de ses excès, et tenu à la réparation des dommages qu'il aura causés.

ART. XVIII. Les vaisseaux des deux nations qui se rencontreraient en pleine mer et auraient besoin de vivres, d'eau ou d'autre chose nécessaire pour continuer le voyage, se fourniront réciproquement ce que d'après les circonstances ils jugeront pouvoir faire, et la valeur de ce qu'ils donneront sera payée au prix courant.

ART. XIX. Pour preuve de la bonne harmonie qui doit régner entre les deux nations, il est stipulé que toutes les fois que les corsaires marocains feront prise de quelque navire ennemi, et qu'il s'y trouverait des mariniers ou passagers espagnols, des marchandises ou autre chose qui pourrait appartenir à des sujets espagnols, ils les remettront libres à leur consul général, avec tous leurs biens et effets, dans le cas où ils retournent dans les ports de S. M. marocaine : mais si avant ils entrent dans un des ports espagnols ils les remettront sur le même pied au commandant ou gouverneur du lieu, et si la vérification ne pouvait pas se faire de l'une ou l'autre de ces manières, ils les laisseront avec pleine sûreté dans le premier port ami où ils aborderont. La même chose sera observée par les vaisseaux espagnols quant aux sujets et biens marocains qu'ils rencontreront sur les vaisseaux ennemis capturés ; la bonne harmonie et les égards dûs au pavillon des deux souverains s'étendant au point d'accorder la liberté des personnes et des biens des sujets de puissances ennemies de l'une et l'autre nation qui naviguent sur des vaisseaux espagnols ou marocains avec des passeports légitimes dans lesquels sont exprimés les équipages et effets qui leur appartiennent, pourvu qu'ils ne soient pas de ceux que défend le droit de la guerre.

ART. XX. Si les vaisseaux de quelque puissance barbaresque en guerre contre l'Espagne, feraient prise de quelque navire appartenant à celle-ci, ou à ses sujets, et l'amèneraient dans un des ports de Maroc, il ne leur sera point permis de vendre aucun des individus capturés ni la cargaison, soit en tout soit en partie. La même chose s'observera réciproquement en Espagne s'il y serait conduit un vaisseau marocain pris par une autre puissance ennemie de Maroc.

ART. XXI. Les vaisseaux des deux nations tant de guerre que marchands qui par d'autres vaisseaux de quelque puissance en guerre avec l'une d'elles seraient attaqués dans les ports ou sous le canon des forteresses seront défendus par le feu des dits port ou forteresses en retenant les vaisseaux ennemis, sans leur permettre de commettre quelque hostilité, ni de sortir des ports avant 24 heures après que les vaisseaux amis auront mis à la voile. Les deux hautes parties contractantes s'engagent aussi à réclamer réciproquement de la puissance ennemie de l'une d'elles la restitution des prises faites à la distance de deux lieues de leurs côtes, ou à la vue d'icelles, si le navire pris pour n'avoir pu s'approcher de la terre y avait jetté l'ancre. Enfin elles défendront de vendre en leurs ports les vaisseaux ou navires pris en pleine mer par quelque autre puissance ennemie de l'Espagne ou de Maroc ; et en cas qu'ils y entreraient avec quelque prise des deux nations enlevée à la vue des côtes dans la forme ci-dessus exprimée, elles la déclareront libre sur le champ, obligeant le capteur de l'abandonner avec tout ce qu'il aurait enlevé de ses effets, équipages etc.

ART. XXII. Si quelque navire espagnol faisait naufrage sur la rivière num et sa côte, dont S. M. marocaine ne possède pas la souveraineté, elle promet cependant pour marque du prix qu'elle attache à l'amitié de S. M. Catholique, d'employer les moyens les plus propres et les plus efficaces pour sauver et délivrer les équipages et les autres personnes qui ont le malheur de tomber entre les mains des habitans de ces lieux.

ART. XXIII. Dans tous les ports d'Espagne ouverts au commerce on admettra les navires marocains après avoir pris les précautions et formalités que l'office de santé prend pour la sureté du bien public. En cas de naufrage ou d'abordement forcé sur une rade quoique non généralement libre, on prêtera secours en faisant le possible pour sauver les personnes les navires et effets ; lequel service sera payé au prix courant, comme aussi la valeur des provisions achetées, sans lever des droits sur aucun objet ni même des marchandises qu'on aura sauvées et voudra conduire dans un autre lieu ; seulement quand elles seront vendues dans le pays on levera les droits accoutumés. La même chose s'observera réciproquement sans aucune différence sur les côtes, rades et ports de S. M. de Maroc à l'égard des navires espagnols.

ART. XXIV. Les vaisseaux de guerre des deux nations ne payeront dans aucun des ports respectifs un droit d'ancrage ou autre droit pour les vivres, eau, bois, charbon et rafraichissemens dont ils auront besoin pour leur consommation.

ART. XXV. Sa Majesté marocaine ne réclamera pas les esclaves chrétiens d'aucune puissance de l'Europe qui se réfugient à Ceuta, Melilla, Peñon et Alhucemas, ou à bord des vaisseaux de guerre espagnols ; comme de la même manière S. M. Catholique ne demandera pas la restitution des mahometans d'aucun pays qui dans les ports d'Espagne se réfugient dans des vaisseaux de guerre marocains.

### *Commerce*

ART. XXVI. Les marocains payeront en Espagne les mêmes droits d'importation et d'exportation pour des objets de leur propriété dont l'exportation et l'importation est permise, qu'ils ont payé jusqu'à présent.

ART. XXVII. Toutes les fois que les Espagnols importeront des marchandises dans les ports de Maroc, ils ne payeront pas plus de droits que le droit établi de dix pour cent en argent ou espèces conformément à ce qui s'est pratiqué dans les différens bureaux de douâne sans aucun changement.

ART. XXVIII. On n'exigera des Espagnols depuis le port de Mogodor jusqu'à celui de Tetuan inclusivement pour les marchandises, bétail et fruits ci-dessous spécifiés que les droits suivans :

		Grosécus	Onces *
Pour chaque fanègue de toute sorte de légume	—	4	—
— — tête de bétail à cornes	—	3	—
— — — — à laine	—	—	5
— — — — de mulet	—	8	—
— — douzaine de poules et toute autre			
— — — — sorte de volaille	—	—	3
— — millier d'œufs	—	—	5
— — quintal de dattes	—	—	5
— — — de cire, ce que payent les propres			
— — — — sujets de S.M. de Maroc	—	—	—
— — millier d'oranges et citrons	—	1	—
— — la douzaine de peaux (de Tafilet)	—	1	—
— — chaque quintal de laine	—	2	—
— — — — d'amandes	—	1	—
— — centaine de planches de bois		12	—
— — quintal de riz	—	—	8
— — — de peaux de vaches ou chevres			
— — — — en poil ou tannés	—	2	—
— — — d'huile	—	—	2
{ Pour chaque quintal d'ivoire			} selon ce qu'on exige dans le port de Mogodor.
{ — — — — de cuivre			
{ — — — — de gomme			
{ — — livre de plumes blanches et noires d'Austruche			

ART. XXIX. Comme aujourd'hui le port de Sta Cruz de Barbarie se tient fermé, l'offre que S. M. marocaine a antérieurement fait à l'Espagne, que ses sujets y jouiraient d'un rabais de 30 pour cent des droits que payent les autres nations, ne peut sortir d'effet ; cependant cette faveur aura lieu toutes les fois que le dit port viendra à s'ouvrir.

ART. XXX. La compagnie des cinq grands corps marchands de Madrid, jouira comme jusqu'à présent du privilège exclusif d'exporter des bleds par le port de Derbeyda, en payant seize réaux de vellon pour chaque fanègue de blèd et huit pour chacune d'orge, restant également dans leur force et valeur les conventions qui sur cet objet se sont antérieurement conclues avec S. M. de Maroc. Cependant S. M. Catholique pourra étendre ce dit privilège à l'avantage de quelques uns ou de tous ses sujets quand elle le jugera convenable ; vu que S. M. de Maroc déclare qu'elle accorde ce port exclusif non par égard à la dite compagnie mais par déférence pour le roi d'Espagne.

D'après la même maxime et les mêmes circonstances se régira le privilège que la maison de commerce de Don Benito patron de Cadiz possède dans le port de Mazagan, sans exiger plus de droits que ceux de 16 réaux par fanègue de blèd et huit par fanègue d'orge.

ART. XXXI. Non obstant qu'il se présente à S. M. marocaine quelque juste motif pour défendre l'exportation des grains de ses états ou quelques autres marchandises ou objets de commerce, cela n'empêchera pas que les Espagnols n'exportent ce qu'ils tiendraient déjà dans leurs magasins

\* Les onces se comptent à dix par grosécus par conséquent équivalent à un réal de plata effectif.

ou auraient acheté et payé avant la défense (bien que cela soit dans la possession des sujets de S. M. de Maroc) tout comme ils le feraient s'il n'eut pas été publié de défense, sans leur causer la moindre vexation ni préjudice à leurs intérêts. Ceci se pratiquera de même dans le cas semblable en Espagne par rapport aux Maures de Maroc.

ART. XXXII. La perception du droit d'ancrage dans les ports de Maroc pour les navires marchands, sera 20 à 80 réaux de vellon pour chaque navire d'après sa classe, son jaugeage etc. excepté ceux qui viennent à retour, tel que les pêcheurs qui seront entièrement libres.

ART. XXXIII. On renouvelle la permission d'exporter du chanvre et du bois pour l'usage des arsenaux royaux de S. M. Catholique en payent pour le quintal du premier quinze onces du pays ou trente réaux de vellon en droits, et pour chaque centaine de planches du dernier 240 réaux, bien entendu que du dit privilège aucun sujet espagnol ne pourra user en son particulier, sans obtenir une permission spéciale de S. M. Catholique.

ART. XXXIV. L'expérience ayant prouvée combien sont continuelles les fraudes que commettent les navires espagnols particulièrement quant à l'exportation de monnaies des ports de S. M. Catholique à ceux de Maroc, le consul-général, ses vice-consuls ou commissaires n'auront non seulement la liberté de veiller à ceci, mais aussi le gouvernement de Maroc fournira tous les secours qu'ils lui demandent lorsqu'ils en auront besoin, afin qu'ils puissent arrêter ou envoyer en Espagne les capitaines ou patrons des navires auprès des quels on rencontre cette fraude et toute autre personne sujette de S. M. Catholique qui se rendra coupable de ce genre de délit : le gouvernement marocain ayant de même soin à examiner si, même dans les navires de quelque autre nation venant des états d'Espagne, il se trouvent des effets clandestinement chargés par des Espagnols : dans le quel cas il en fera part au consul-général ou vice-consuls afin que ceux ci usant de leur droit en puissent faire part à leur gouvernement. Tout marocain qui sera surpris avec des marchandises de contrebande sur le fait de l'exportation ou importation dans les ports d'Espagne, sera envoyé prisonnier avec ses marchandises au gouvernement de Maroc et on fera part de cet événement au consul général à fin qu'il soit puni à proportion de son délit. Cependant si la marchandise appartenait à des chrétiens, on la gardera et confisquera en Espagne en ne renvoyant que l'auteur de la fraude. Lorsqu'un sujet de Maroc arrivera dans les dits ports avec des marchandises de la dite sorte, ou s'il entrait de propos délibéré avec les dites marchandises sans savoir qu'elles sont défendues, il devra aussitôt en faire la déclaration ; si non la peine ci-dessus exprimée lui sera appliquée.

#### *Pêche*

ART. XXXV. S. M. marocaine accorde aux habitans des îles Canaries et aux Espagnols de tout genre le droit de pêche depuis le port de Ste Cruz de Barbarie jusqu'au nord.

ART. XXXVI. Les Espagnols présenteront la permission dont ils devront être munis pour sortir des ports d'Espagne ou des Canaries à l'Alcalde ou gouverneur maure le plus proche du district dans lequel ils ont l'intention de faire la pêche, et celui ci leur assignera sans retard ni difficulté les limites dans lesquelles ils auront à la faire.

Art. XXXVII. Tout navire espagnol qui sera surpris par les marocains sur leur côte, sans permission de pêcher, ou s'y serait livré par nécessité, ignorance ou de mauvaise foi sera remis aussitôt au consul ou commissaire espagnol le plus proche, afin qu'après avoir examiné sa cause, le capitaine ou patron soit absoud ou puni par ses supérieurs respectifs d'après les loix et les ordonnances qui subsistent en Espagne.

Art. XXXVIII. Tant les Espagnols que les Maures qui font le commerce de Maroc en Espagne devront déclarer dans les bureaux de douânes de S. M. Catholique moyennant un certificat du consul général des vice-consuls ou commissaire résidens dans les ports de Maroc, les marchandises et effets qu'ils tirent de l'un pour les transporter à l'autre, où ils ont précisément le dessein de les importer, sans laquelle détermination le rabais de droits stipulés par l'art. XXVIII. ne les touchera pas et ils payeront à l'égal des autres nations qui ne jouissent pas du privilege.

Le présent traité sera ratifié aussitôt que possible : il en sera signé et scellé trois originaux en langues espagnole et arabe, l'un pour S. M. Catholique l'autre pour S. M. de Maroc, et l'autre qui doit rester au pouvoir du consul général d'Espagne à Maroc ; chacune des deux hautes puissances contractantes ayant soin qu'on observe avec la plus grande exactitude tout ce qui est renfermé dans les articles dont est composé ce traité de paix, d'amitié, de navigation, de commerce et de pêche. En foi de quoi nous soussignés plénipotentiaires de la part de S. M. Catholique D. Juan Manuel Gonzalez Salmon, et de la part de S. M. de Maroc Sid Mahamet Ben-Otoman, les avons scellé de nos sceaux et signés de notre main à Mequinez de los Olivares le premier mars de l'an mil sept cent nonente et neuf repondant au vingt deux de la Lune Ramadan de l'an mil deux cent treize de l'Hegire.

(L. S.) JUAN MANUEL GONZALEZ SALMON.

(L. S.) MAHAMET BEN-OTOMAN.

#### *Ratification du roi*

Don Carlos par la grace de Dieu roi de Castille, de Leon, d'Aragon, des Deux-Sicules, de Jerusalem, de Navarre, de Grenade, de Toledo, de Valence, de Galicie, de Majorque, de Seville, de Cerdaigne, de Cordoue, de Corse, de Murcie, de Jaén, des Algarves, d'Algezire, de Gibraltar, des îles Canaries, des Indes orientales et occidentales, îles et terre ferme de l'Océan ; archiduc d'Autriche, duc de Bourgogne, de Brabant et de Milan ; comte de Habsbourg, de Flandres, de Tyrol et de Barcellone, seigneur de Biscaye et de Molina etc. Comme entre nous et le prince Muley Soliman roi de Maroc, Fez, Mequinez, Suz etc. il a été conclu et signé le 1. mars 1799. par des plénipotentiaires duement autorisés de part et d'autre le présent traité de paix, d'amitié, de navigation, de commerce et de pêche qui comprend les XXXVIII articles suivants :

(ici sont inserés les articles ci-dessus).

Nous ayant vu et examiné les dits XXXVIII articles avons approuvé et ratifié leur teneur comme en vertu de la présente nous l'approuvons et ratifions en entier en la meilleure et plus ample forme, promettant foi et parole de roi de l'accomplir et observer et de le faire accomplir et observer comme si nous même nous l'eussions signé. En foi de quoi nous faisons

expedier la présente signée de notre main, scellée de notre sceau et contresignée par le soussigné notre conseiller honoraire d'état, ambassadeur extraordinaire et plenipotentiaire accredité auprès la republique batave et premier secrétaire privé du despacho général de l'état. Donné à Aranjuez, le 3. avril 1799.

(L. S.)                    Moi le roi.  
MARTIN LOUIS DE URQUIJO.

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*Annex No. 18*

TREATY BETWEEN MOROCCO AND THE UNITED STATES OF  
JANUARY 25, 1787 .

*Source : II Miller, Treaties and Other International Acts of the United States, 212-219.*

[Certified Translation of the Treaty and of the Additional Article, with Approval by Jefferson and Adams.]

To all Persons to whom these Presents shall come or be made known—

Whereas the United States of America in Congress assembled by their Commission bearing date the twelfth day of May One thousand Seven hundred and Eighty four thought proper to constitute John Adams, Benjamin Franklin and Thomas Jefferson their Ministers Plenipotentiary, giving to them or a Majority of them full Powers to confer, treat & negotiate with the Ambassador, Minister or Commissioner of His Majesty the Emperor of Morocco concerning a Treaty of Amity and Commerce, to make & receive propositions for such Treaty and to conclude and sign the same, transmitting it to the United States in Congress assembled for their final Ratification, And by one other Commission bearing date the Eleventh day of March One thousand Seven hundred & Eighty five did further empower the said Ministers Plenipotentiary or a majority of them, by writing under their hands and Seals to appoint such Agent in the said Business as they might think proper with Authority under the directions and Instructions of the said Ministers to commence & prosecute the said Negotiations & Conferences for the said Treaty provided that the said Treaty should be signed by the said Ministers : And Whereas, We the said John Adams & Thomas Jefferson two of the said Ministers Plenipotentiary (the said Benjamin Franklin being absent) by writing under the Hand and Seal of the said John Adams at London October the fifth, One thousand Seven hundred and Eighty five, & of the said Thomas Jefferson at Paris October the Eleventh of the same Year, did appoint Thomas Barclay, Agent in the Business aforesaid, giving him the Powers therein, which by the said second Commission we were authorized to give, and the said Thomas Barclay in pursuance thereof, hath arranged Articles for a Treaty of Amity and Commerce between the United States of America and His Majesty the Emperor of Morocco, which Articles written in the Arabic Language, confirmed by His said Majesty the

Emperor of Morocco & seal'd with His Royal Seal, being translated into the Language of the said United States of America, together with the Attestations thereto annexed are in the following Words, To Wit.

In the name of Almighty God,

This is a Treaty of Peace and Friendship established between us and the United States of America, which is confirmed, and which we have ordered to be written in this Book and sealed with our Royal Seal at our Court of Morocco on the twenty fifth day of the blessed Month of Shaban, in the Year One thousand two hundred, trusting in God it will remain permanent.

.1.

We declare that both Parties have agreed that this Treaty consisting of twenty five Articles shall be inserted in this Book and delivered to the Honorable Thomas Barclay, the Agent of the United States now at our Court, with whose Approbation it has been made and who is duly authorized on their Part, to treat with us concerning all the Matters contained therein.

.2.

If either of the Parties shall be at War with any Nation whatever, the other Party shall not take a Commission from the Enemy nor fight under their Colors.

.3.

If either of the Parties shall be at War with any Nation whatever and take a Prize belonging to that Nation, and there shall be found on board Subjects or Effects belonging to either of the Parties, the Subjects shall be set at Liberty and the Effects returned to the Owners. And if any Goods belonging to any Nation, with whom either of the Parties shall be at War, shall be loaded on Vessels belonging to the other Party, they shall pass free and unmolested without any attempt being made to take or detain them.

.4.

A signal or Pass shall be given to all Vessels belonging to both Parties, by which they are to be known when they meet at Sea, and if the Commander of a Ship of War of either Party shall have other Ships under his Convoy, the Declaration of the Commander shall alone be sufficient to exempt any of them from examination.

.5.

If either of the Parties shall be at War, and shall meet a Vessel at Sea, belonging to the other, it is agreed that if an examination is to be made, it shall be done by sending a Boat with two or three Men only, and if any Gun shall be fired and injury done without Reason, the offending Party shall make good all damages.

.6.

If any Moor shall bring Citizens of the United States or their Effects to His Majesty, the Citizens shall immediately be set at Liberty and



the Effects restored, and in like Manner, if any Moor not a Subject of these Dominions shall make Prize of any of the Citizens of America or their Effects and bring them into any of the Ports of His Majesty, they shall be immediately released, as they will then be considered as under His Majesty's Protection.

## .7.

If any Vessel of either Party shall put into a Port of the other and have occasion for Provisions or other Supplies, they shall be furnished without any interruption or molestation.

## .8.

If any Vessel of the United States shall meet with a Disaster at Sea and put into one of our Ports to repair, she shall be at Liberty to land and reload her cargo, without paying any Duty whatever.

## .9.

If any Vessel of the United States shall be cast on Shore on any Part of our Coasts, she shall remain at the disposition of the Owners and no one shall attempt going near her without their Approbation, as she is then considered particularly under our Protection; and if any Vessel of the United States shall be forced to put into our Ports, by Stress of weather or otherwise, she shall not be compelled to land her Cargo, but shall remain in tranquillity untill the Commander shall think proper to proceed on his Voyage.

## .10.

If any Vessel of either of the Parties shall have an engagement with a Vessel belonging to any of the Christian Powers within gunshot of the Forts of the other, the Vessel so engaged shall be defended and protected as much as possible untill she is in safety; And if any American Vessel shall be cast on shore on the Coast of Wadnoon<sup>1</sup> or any Coast thereabout, the People belonging to her shall be protected, and assisted untill by the help of God, they shall be sent to their Country.

## .11.

If we shall be at War with any Christian Power and any of our Vessels sail from the Ports of the United States, no Vessel belonging to the enemy shall follow untill twenty four hours after the Departure of our Vessels; and the same Regulation shall be observed towards the American Vessels sailing from our Ports.—be their enemies Moors or Christians.

## .12.

If any Ship of War belonging to the United States shall put into any of our Ports, she shall not be examined on any Pretence whatever, even though she should have fugitive Slaves on Board, nor shall the Governor or Commander of the Place compel them to be brought on Shore on any pretext, nor require any payment for them.

<sup>1</sup> Or Ouadnoun, on the Atlantic coast, about latitude 29° N.

## .13.

If a Ship of War of either Party shall put into a Port of the other and salute, it shall be returned from the Fort, with an equal Number of Guns, not with more or less.

## .14.

The Commerce with the United States shall be on the same footing as is the Commerce with Spain or as that with the most favored Nation for the time being and their Citizens shall be respected and esteemed and have full Liberty to pass and repass our Country and Sea Ports whenever they please without interruption.

## .15.

Merchants of both Countries shall employ only such interpreters, & such other Persons to assist them in their Business, as they shall think proper. No Commander of a Vessel shall transport his Cargo on board another Vessel, he shall not be detained in Port, longer than he may think proper, and all persons employed in loading or unloading Goods or in any other Labor whatever, shall be paid at the Customary rates, not more and not less.

## .16.

In case of a War between the Parties, the Prisoners are not to be made Slaves, but to be exchanged one for another, Captain for Captain, Officer for Officer and one private Man for another ; and if there shall prove a deficiency on either side, it shall be made up by the payment of one hundred Mexican Dollars for each Person wanting ; And it is agreed that all Prisoners shall be exchanged in twelve Months from the Time of their being taken, and that this exchange may be effected by a Merchant or any other Person authorized by either of the Parties.

## .17.

Merchants shall not be compelled to buy or Sell any kind of Goods but such as they shall think proper ; and may buy and sell all sorts of Merchandise but such as are prohibited to the other Christian Nations.

## .18.

All goods shall be weighed and examined before they are sent on board, and to avoid all detention of Vessels, no examination shall afterwards be made, unless it shall first be proved, that contraband Goods have been sent on board, in which Case the Persons who took the contraband Goods on board shall be punished according to the Usage and Custom of the Country and no other Person whatever shall be injured, nor shall the Ship or Cargo incur any Penalty or damage whatever.

## .19.

No vessel shall be detained in Port on any pretence whatever, nor be obliged to take on board any Article without the consent of the

Commander, who shall be at full Liberty to agree for the Freight of any Goods he takes on board.

.20.

If any of the Citizens of the United States, or any Persons under their Protection, shall have any disputes with each other, the Consul shall decide between the Parties and whenever the Consul shall require any Aid or Assistance from our Government to enforce his decisions it shall be immediately granted to him.

.21.

If a Citizen of the United States should kill or wound a Moor, or on the contrary if a Moor shall kill or wound a Citizen of the United States, the Law of the Country shall take place and equal Justice shall be rendered, the Consul assisting at the Tryal, and if any Delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever.

.22.

If an American Citizen shall die in our Country and no Will shall appear, the Consul shall take possession of his Effects, and if there shall be no Consul, the Effects shall be deposited in the hands of some Person worthy of Trust, untill the Party shall appear who has a Right to demand them, but if the Heir to the Person deceased be present, the Property shall be delivered to him without interruption; and if a Will shall appear, the Property shall descend agreeable to that Will, as soon as the Consul shall declare the Validity thereof.

.23.

The Consuls of the United States of America shall reside in any Sea Port of our Dominions that they shall think proper; And they shall be respected and enjoy all the Privileges which the Consuls of any other Nation enjoy, and if any of the Citizens of the United States shall contract any Debts or engagements, the Consul shall not be in any Manner accountable for them, unless he shall have given a Promise in writing for the payment or fulfilling thereof, without which promise in Writing no Application to him for any redress shall be made.

.24.

If any differences shall arise by either Party infringing on any of the Articles of this Treaty, Peace and Harmony shall remain notwithstanding in the fullest force, untill a friendly Application shall be made for an Arrangement, and untill that Application shall be rejected, no appeal shall be made to Arms. And if a War shall break out between the Parties, Nine Months shall be granted to all the Subjects of both Parties, to dispose of their Effects and retire with their Property. And it is further declared that whatever indulgences in Trade or otherwise shall be granted to any of the Christian Powers, the Citizens of the United States shall be equally entitled to them.

.25.

This Treaty shall continue in full Force, with the help of God for Fifty Years.

We have delivered this Book into the Hands of the before-mentioned Thomas Barclay on the first day of the blessed Month of Ramadan, in the Year One thousand two hundred.

I certify that the annex'd is a true Copy of the Translation made by Issac Cardoza Nuñez, Interpreter at Morocco, of the treaty between the Emperor of Morocco and the United States of America.

THO<sup>s</sup> BARCLAY

[Translation of the additional Article]

Grace to the only God

I the underwritten the Servant of God, Taher Ben Abdelhack Fennish do certify that His Imperial Majesty my Master /whom God preserve/ having concluded a Treaty of Peace and Commerce with the United States of America has ordered me the better to compleat it and in addition of the tenth Article of the Treaty to declare "That, "if any Vessel belonging to the United States shall be in any of the "Ports of His Majesty's Dominions, or within Gunshot of his Forts, "she shall be protected as much as possible and no Vessel whatever "belonging either to Moorish or Christian Powers with whom the "United States may be at War, shall be permitted to follow or engage "her, as we now deem the Citizens of America our good Friends.

And in obedience to His Majesty's Commands I certify this Declaration by putting my hand and Seal to it, on the Eighteenth day of Ramadan in the Year One thousand two hundred.

(Signed)

The Servant of the King my Master whom God preserve

TAHER BEN ABDELHACK<sup>1</sup> FENNISH

I Do Certify that the above is a True Copy of the Translation Made at Morocco by Isaac Cardoza Nunes, Interpreter, of a Declaration Made and Signed by Sidi Hage Tahar Fennish in addition to the Treaty between the Emperor of Morocco and the United States of America which Declaration the said Tahar Fennish Made by the Express Directions of His Majesty.

THO<sup>s</sup> BARCLAY

Note, The Ramadan of the Year of the Hegira 1200 Commenced on the 28<sup>th</sup> June in the Year of our Lord 1786.

Now know Ye that We the said John Adams & Thomas Jefferson Ministers Plenipotentiary aforesaid do approve & conclude the said Treaty and every Article and Clause therein contained, reserving the

<sup>1</sup> The spelling in the original document is uncertain, but *Abdelhack* is correct, el-Hack or el-Haq being one of the names of God.

same nevertheless to the United States in Congress assembled for their final Ratification.

In testimony whereof we have signed the same with our Names and Seals, at the places of our respective residence and at the dates expressed under our signatures respectively.

JOHN ADAMS. [Seal]

LONDON *January 25. 1787.*

TH: JEFFERSON [Seal]

PARIS *January 1. 1787.*

[Ship-Signals Agreement]

The following Signals are agreed upon between Commodore Rais Farache, on the Part of His Majesty the Emperor of Morocco, and the Honorable Thomas Barclay Esquire Agent for the United States of America on their Part, to the End that the Vessels of both Parties may be known to each other at Sea.

For Vessels of two or of three Masts,

In the Day, a blue Pendant is to be hoisted on the End of the Main Yard, and in the Night a Lantern is to be hoisted on the same Place.

For Vessels of one Mast only,

In the Day, a blue Pendant is to be hoisted at the Mast-Head, and in the Night a Lantern is to be hoisted on the Ensign Staff.

Done at Morocco the Ninth day of the Month of Ramadan in the Year One thousand two hundred.

THOS BARCLAY.

مى محميم المغايع العباب بالله  
عى اعلى الرايس مبرج

COMMENT OF DR. C. SNOUCK HURGRONJE

In the above two lines of Arabic script (very badly written) there are two gross errors: In the first line instead of *'azim*, "great," which is evidently meant, there is written *'adim*, which means "destitute of." In the second line the word *idhn*, "authorization," "permission," has a letter too many, by which it becomes *adhân*, meaning "call to prayer." The two necessary corrections being made, the words run as follows: "From the Great in Position, the High in God [*i. e.*, the Emperor]. By authorization: Rais [*i. e.*, captain] Faraj."

*Annex No. 19*TREATY BETWEEN MOROCCO AND THE UNITED STATES OF  
SEPTEMBER 16, 1836

*Source: IV Miller, Treaties and Other International Acts of the United States, 60-64.*

[Translation]

In the name of God, the merciful and Clement !

(Abd Errahman Ibenu Kesham whom God exalt !)

Praise be to God !

This is the copy of the Treaty of peace which we have made with the Americans ; and written in this book ; affixing thereto our blessed Seal, that, with the help of God, it may remain firm for ever.

Written at Meccanez, the City of Olives, on the 3<sup>d</sup> day of the month Jumad el lahhar, in the year of the Hegira 1252. (corresponding to Sept. 16. A.D. 1836.)

ART. 1. We declare that both Parties have agreed that this Treaty, consisting of Twenty five Articles, shall be inserted in this Book, and delivered to James R. Leib, Agent of the United States, and now their Resident Consul at Tangier, with whose approbation it has been made, and who is duly authorized on their part, to treat with us, concerning all the matters contained therein.

ART. 2. If either of the parties shall be at war with any nation whatever, the other shall not take a commission from the enemy, nor fight under their colors.

ART. 3. If either of the parties shall be at war with any nation whatever, and take a prize belonging to that nation, and there shall be found on board subjects or effects belonging to either of the parties, the subjects shall be set at liberty, and the effects returned to the owners. And if any goods, belonging to any nation, with whom either of the parties shall be at war, shall be loaded on vessels belonging to the other party, they shall pass free and unmolested, without any attempt being made to take or detain them.

ART. 4. A signal, or pass, shall be given to all vessels belonging to both parties, by which they are to be known when they meet at sea : and if the Commander of a ship of war of either party shall have other ships under his convoy, the declaration of the Commander shall alone be sufficient to exempt any of them from examination.

ART. 5. If either of the parties shall be at war, and shall meet a vessel at sea belonging to the other, it is agreed, that if an examination is to be made, it shall be done by sending a boat with two or three men only : and if any gun shall be fired, and injury done, without reason, the offending party shall make good all damages.

ART. 6. If any Moor shall bring citizens of the United States, or their effects, to his Majesty, the citizens shall immediately be set at liberty,

and the effects restored : and, in like manner, if any Moor, not a subject of these dominions, shall make prize of any of the citizens of America or their effects, and bring them into any of the ports of his Majesty, they shall be immediately released, as they will then be considered as under his Majesty's protection.

ART. 7. If any vessel of either party, shall put into a port of the other, and have occasion for provisions or other supplies, they shall be furnished without any interruption or molestation.

ART. 8. If any vessel of the United States, shall meet with a disaster at sea, and put into one of our ports to repair, she shall be at liberty to land and reload her cargo, without paying any duty whatever.

ART. 9. If any vessel of the United States, shall be cast on shore on any part of our coasts, she shall remain at the disposition of the owners, and no one shall attempt going near her without their approbation, as she is then considered particularly under our protection ; and if any vessel of the United States shall be forced to put into our ports by stress of weather, or otherwise, she shall not be compelled to land her cargo, but shall remain in tranquility until the commander shall think proper to proceed on his voyage.

ART. 10. If any vessel of either of the parties shall have an engagement with a vessel belonging to any of the Christian powers, within gun-shot of the forts of the other, the vessel so engaged, shall be defended and protected as much as possible, until she is in safety : and if any American vessel shall be cast on shore, on the coast of Wadnoon<sup>1</sup>, or any coast thereabout, the people belonging to her, shall be protected and assisted, until by the help of God, they shall be sent to their country.

ART. 11. If we shall be at war with any Christian power, and any of our vessels sails from the ports of the United States, no vessel belonging to the enemy shall follow, until twenty-four hours after the departure of our vessels : and the same regulation shall be observed towards the American vessels sailing from our ports, be their enemies Moors or Christians.

ART. 12. If any ship of war belonging to the United States, shall put into any of our ports, she shall not be examined on any pretence whatever, even though she should have fugitive slaves on board, nor shall the governor or commander of the place compel them to be brought on shore on any pretext, nor require any payment for them.

ART. 13. If a ship of war of either party shall put into a port of the other, and salute, it shall be returned from the fort with an equal number of guns, not more or less.

ART. 14. The commerce with the United States, shall be on the same footing as is the commerce with Spain, or as that with the most favored nation for the time being ; and their citizens shall be respected and esteemed, and have full liberty to pass and repass our country and sea-ports whenever they please, without interruption.

ART. 15. Merchants of both countries shall employ only such interpreters, and such other persons to assist them in their business, as they shall think proper. No commander of a vessel shall transport his cargo

<sup>1</sup> Or Ouadnoun, on the Atlantic coast, about latitude 29° N.

on board another vessel : he shall not be detained in port longer than he may think proper ; and all persons employed in loading or unloading goods, or in any other labor whatever, shall be paid at the customary rates, not more and not less.

ART. 16. In case of a war between the parties, the prisoners are not to be made slaves, but to be exchanged one for another. Captain for Captain, Officer for Officer, and one private man for another ; and if there shall prove a deficiency on either side, it shall be made up by the payment of one hundred Mexican dollars for each person wanting. And it is agreed, that all prisoners shall be exchanged in twelve months from the time of their being taken, and that this exchange may be effected by a merchant, or any other person, authorized by either of the parties.

ART. 17. Merchants shall not be compelled to buy or sell any kind of goods but such as they shall think proper : and may buy and sell all sorts of merchandise but such as are prohibited to the other Christian nations.

ART. 18. All goods shall be weighed and examined before they are sent on board ; and to avoid all detention of vessels, no examination shall afterwards be made, unless it shall first be proved that contraband goods have been sent on board ; in which case, the persons who took the contraband goods on board, shall be punished according to the usage and custom of the country, and no other person whatever shall be injured, nor shall the ship or cargo incur any penalty or damage whatever.

ART. 19. No vessel shall be detained in port on any pretence whatever, nor be obliged to take on board any article without the consent of the Commander, who shall be at full liberty to agree for the freight of any goods he takes on board.

ART. 20. If any of the citizens of the United States, or any persons under their protection, shall have any dispute with each other, the Consul shall decide between the parties ; and whenever the Consul shall require any aid, or assistance from our government, to enforce his decisions, it shall be immediately granted to him.

ART. 21. If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a citizen of the United States, the law of the Country shall take place, and equal justice shall be rendered, the Consul assisting at the trial ; and if any delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever.

ART. 22. If an American citizen shall die in our country, and no will shall appear, the Consul shall take possession of his effects ; and if there shall be no Consul, the effects shall be deposited in the hands of some person worthy of trust, until the party shall appear who has a right to demand them ; but if the heir to the person deceased be present, the property shall be delivered to him without interruption ; and if a will shall appear the property shall descend agreeably to that will, as soon as the Consul shall declare the validity thereof.

ART. 23. The Consul of the United States of America, shall reside in any seaport of our dominions that they shall think proper : and they shall be respected, and enjoy all the privileges which the Consuls of any



other Nation enjoy : and if any of the citizens of the United States shall contract any debts or engagements, the Consul shall not be in any manner accountable for them, unless he shall have given a promise in writing for the payment or fulfilling thereof ; without which promise in writing, no application to him for any redress shall be made.

ART. 24. If any differences shall arise by either party infringing on any of the Articles of this treaty, peace and harmony shall remain notwithstanding, in the fullest force, until a friendly application shall be made for an arrangement ; and until that application shall be rejected, no appeal shall be made to arms. And if a war shall break out between the parties, nine months shall be granted to all the subjects of both parties, to dispose of their effects and retire with their property. And it is further declared, that whatever indulgence, in trade or otherwise, shall be granted to any of the Christian powers, the citizens of the United States shall be equally entitled to them.

ART. 25. This Treaty shall continue in force, with the help of God, for fifty years ; after the expiration of which term, the Treaty shall continue to be binding on both parties, until the one shall give twelve months notice to the other of an intention to abandon it ; in which case, its operations shall cease at the end of the twelve months.

CONSULATE OF THE UNITED STATES OF AMERICA

*For the Empire of Morocco*

TO ALL WHOM IT MAY CONCERN.  
BE IT KNOWN.

Whereas the undersigned, James R. Leib, a Citizen of the United States of North America, and now their Resident Consul at Tangier, having been duly appointed Commissioner, by *letters patent*, under the signature of the President and Seal of the United States of North America, bearing date, at the City of Washington, the Fourth day of July A.D. 1835, for negotiating and concluding a Treaty of *peace and friendship* between the United States of North America and the Empire of Morocco ; I, therefore, James R. Leib, Commissioner as aforesaid, do conclude the foregoing Treaty and every Article and clause therein contained ; reserving the same, nevertheless, for the final ratification of the President of the United States of North America, by and with the advice and consent of the Senate.

In testimony whereof, I have hereunto affixed my signature, and the Seal of this Consulate, on the First day of October, in the year of our Lord One Thousand eight hundred and *Thirty six*, and of the Independence of the United States the *Sixty First*.

[Seal] JAMES R. LEIB.

NOTES

The stated date of the signature of this treaty is September 16, 1836.

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*Annex No. 20*TREATY BETWEEN MOROCCO AND GREAT BRITAIN OF  
DECEMBER 9, 1856 (GENERAL TREATY)*Source: 46 British and Foreign State Papers, 176-187.**GENERAL TREATY between Great Britain and Morocco.—  
Signed at Tangier, December 9, 1856 \**

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Sultan of Morocco and Fez, being desirous to maintain and strengthen the relations of friendship which have long subsisted between their respective dominions and subjects, have resolved to proceed to a revision and improvement of the Treaties subsisting between the respective countries, and have for that purpose named as their Plenipotentiaries, that is to say :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John Hay Drummond Hay, Esquire, Her Chargé d'Affaires and Consul-General at the Court of His Majesty the Sultan of Morocco and Fez ;

And His Majesty the Sultan of Morocco and Fez, Seed Mohamed Khateeb, His Commissioner for Foreign Affairs ;

Who, after having communicated to each other their respective full powers, have agreed upon and concluded the following Articles :

ART. I. There shall be perpetual peace and friendship between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, her heirs and successors, and His Sherifian Majesty the Sultan of Morocco and Fez, and between their respective dominions and subjects.

II. Her Majesty the Queen of Great Britain may appoint one or more Consuls in the dominions of the Sultan of Morocco and Fez ; and such Consul or Consuls shall be at liberty to reside in any of the sea-ports or cities of the Sultan of Morocco which they or the British Government may choose, and find most convenient for the affairs and service of Her Britannic Majesty, and for the assistance of British merchants.

III. The British Chargé d'Affaires, or other political agent accredited by the Queen of Great Britain to the Sultan of Morocco, as also the British Consuls who shall reside in the dominions of the Sultan of Morocco, shall always have respect and honour paid to them, suitable to their rank. Their houses and families shall be safe and protected. No one shall interfere with them, or commit any act of oppression or disrespect towards them, either by words or by deeds ; and if any one should do so, he shall receive a severe punishment, as a correction to himself and a check to others.

The said Chargé d'Affaires shall be at liberty to choose his own interpreters and servants, either from the Mussulmans or others, and neither his interpreters nor servants shall be compelled to pay any capitation

\* Signed in the English and Arabic languages.

tax, forced contribution, or other similar or corresponding charge. With respect to the Consuls or Vice-Consuls who shall reside at the ports under the orders of the said Chargé d'Affaires, they shall be at liberty to choose 1 interpreter, 1 guard, and 2 servants, either from the Mussulmans or others; and neither the interpreter, nor the guard, nor their servants, shall be compelled to pay any capitation tax, forced contribution, or other similar or corresponding charge. If the said Chargé d'Affaires should appoint a subject of the Sultan of Morocco as Vice-Consul at a Moorish port, the said Vice-Consul, and those members of his family who may dwell within his house, shall be respected, and exempted from the payment of any capitation tax, or other similar or corresponding charge; but the said Vice-Consul shall not take under his protection any subject of the Sultan of Morocco except the members of his family dwelling under his roof. The said Chargé d'Affaires, and the said Consuls, shall be permitted to have a place of worship, and to hoist their national flag at all times on the top of the houses which they may occupy, either in the city or out of it, and also in their boats whenever they go to sea. No prohibition nor tax shall be put upon their goods, furniture, or any other articles which may come to them for their own use and for the use of their families, in the dominions of the Sultan of Morocco; but the said Chargé d'Affaires, Consuls, or Vice-Consuls, shall be required to deliver to the officers of the Customs a note of hand, specifying the number of articles which they shall require to be passed. This privilege shall only be accorded to those Consular Officers who are not engaged in trade. If the service of their sovereign should require their attendance in their own country, or if they should depute another person to act for them in their absence, they shall not be prevented in any way from so doing; and no impediment shall be offered either to themselves, their servants, or their property, but they shall be at liberty to go and come, respected and honoured; and both they themselves and their deputies or Vice-Consuls shall be entitled, in the most ample sense, to every privilege which is now enjoyed, or may in future be granted, to the Consul of any other nation.

IV. With respect to the personal privileges to be enjoyed by the subjects of Her Britannic Majesty in the dominions of the Sultan of Morocco, His Sherifian Majesty engages that they shall have a free and undoubted right to travel and to reside in the territories and dominions of his said Majesty, subject to the same precautions of police which are practised towards the subjects or citizens of the most favoured nations.

They shall be entitled to hire, on lease or otherwise, dwellings and warehouses; and if a British subject shall not find a house or warehouse suitable for his dwelling or for his stores, the Moorish authorities shall assist him in finding a site, within the localities generally selected for the habitations of Europeans, if there be a suitable site within the town, for building a dwelling or stores, and an agreement shall be entered upon, in writing, with the authorities of the town, regarding the number of years that the British subject shall retain possession of the land and buildings, in order that he shall thus be repaid the expenses of the outlay he shall have made; and no person shall compel the British subject to give up the dwelling or warehouses until the time mentioned in the said document shall have expired. They shall not be obliged to pay, under any pretence whatever, any taxes or impositions. They shall be exempt

from all military service, whether by land or sea ; from forced loans, and from every extraordinary contribution. Their dwellings, warehouses, and all premises appertaining thereto, destined for purposes of residence or commerce, shall be respected. No arbitrary search of or visit to the houses of British subjects, and no arbitrary examination or inspection whatever of their books, papers, or accounts, shall be made ; but such measures shall be executed only in conformity with the orders and consent of the Consul-General or Consul. And, generally, His Majesty the Sultan engages that the subjects of Her Britannic Majesty residing in his states or dominions shall enjoy their property and personal security in as full and ample manner as subjects of the Emperor of Morocco are entitled to do within the territories of Her Britannic Majesty.

Her Britannic Majesty, on her part, engages to ensure the enjoyment of the same protection and privileges to the subjects of His Majesty the Sultan of Morocco within her dominions, which are or may be enjoyed by the subjects of the most favoured nations.

V. All British subjects and merchants who may wish to reside in any part of the dominions of the Sultan of Morocco shall have perfect security for their own persons and property ; and they shall be free to exercise the rites of their own religion, without any interference or hindrance, and to have a burial-place for their dead ; and they shall be allowed to go out to bury them with safety and protection in going and in returning. They shall be free to appoint any one whom they may choose of their own friends or servants for the transaction of their affairs, either on land or at sea, without any prohibition or interruption ; and if a British merchant shall have a ship in or outside of one of the harbours of the Sultan of Morocco, he shall be permitted to go on board of her, either by himself or with any whom he likes of his own friends or servants, without either himself or his friends or servants being subjected to any forced contribution for so doing.

VI. Any person subject to the Queen of Great Britain, or under her protection, shall not be compelled to sell or to buy anything without his own free will ; nor shall any of the Sultan of Morocco's subjects have a claim or right upon any goods of a British merchant but what such merchant may give them voluntarily ; and nothing shall be taken away from any British merchant but what shall be agreed upon between the respective parties.

The same rule shall be observed with regard to Moorish subjects in the dominions of the Queen of Great Britain.

VII. No subject of the Queen of Great Britain, nor any person under her protection, shall, in the dominions of the Sultan of Morocco, be made liable to pay a debt due from another person of his nation, unless he shall have made himself responsible or guarantee for the debtor, by a document under his own handwriting ; and, in like manner, the subjects of the Sultan of Morocco shall not be made liable to pay a debt due from another person of his nation to a subject of Great Britain, unless he shall have made himself responsible or guarantee for the debtor by a document under his own handwriting.

VIII. In all criminal cases and complaints, and in all civil differences, disputes, or causes of litigation which may occur between British subjects, the British Consul-General, Consul, Vice-Consul, or Consular

Agent, shall be sole judge and arbiter. No Governor, Kadi, or other Moorish authority, shall intermeddle therein; but the subjects of Her Britannic Majesty shall, in all matters of criminal or civil cognizance arising or existing between British subjects exclusively, be amenable to the tribunal of the Consul-General, Consul, or other British authority only.

IX. All criminal cases and complaints, and all civil differences, disputes, or causes of litigation arising between British subjects and subjects of the Moorish Government, shall be adjusted in the following manner.

If the plaintiff be a British subject and the defendant a Moorish subject, the Governor of the town or district, or the Kadi, according as the case may appertain to their respective Courts, shall alone judge the case; the British subject making his appeal to the Governor or Kadi, through the British Consul-General, Consul, or his deputy, who will have a right to be present in the Court during the whole trial of the case.

In like manner, if the plaintiff be a Moorish subject, and the defendant a British subject, the case shall be referred to the sole judgment and decision of the British Consul-General, Consul, Vice-Consul, or Consular Agent; the plaintiff shall make his appeal through the Moorish authorities; and the Moorish Governor, Kadi, or other officer who may be appointed by them shall be present, if he or they so desire, during the trial and judgment of the case. Should the British or Moorish litigant be dissatisfied with the decision of the Consul-General, Consul, Vice-Consul, Governor, or Kadi (according as the case may appertain to their respective Courts), he shall have a right of appeal to Her Britannic Majesty's Chargé d'Affaires and Consul-General, or to the Moorish Commissioner for Foreign Affairs, as the case may be.

X. A British subject suing, in a Moorish court of law, a subject of the Sultan of Morocco, for a debt contracted within the dominions of the Queen of Great Britain, shall be required to produce an acknowledgment of the claim written either in the European or Arabic characters, and signed by the Moorish debtor in the presence of, and testified by, the Moorish Consul, Vice-Consul, or Consular Agent, or before 2 witnesses whose signatures shall have been at the time, or subsequently, certified by the Moorish Consul, Vice-Consul, or Consular Agent, or by a British Notary in a place where no Moorish Consul, Vice-Consul, or Consular Agent resides. Each document so witnessed or certified by the Moorish Consul, Consular Agent, or British Notary, shall have full force and value in a Moorish tribunal. Should at any time a Moorish debtor escape to any town or place in Morocco where the authority of the Sultan may be established, and where no British Consul or Consular Agent may reside, the Moorish Government shall compel the Moorish debtor to come to Tangier, or other port or town in Morocco where the British creditor may desire to prosecute his claim before a Moorish court of law.

XI. Should the British Consul-General, or any of the British Consuls, Vice-Consuls, or Consular Agents, have at any time occasion to request from the Moorish Government the assistance of soldiers, guards, armed boats, or other aid for the purpose of arresting or transporting any British subject, the demand shall immediately be complied with, on payment of the usual fees given on such occasions by Moorish subjects.

XII. If any subject of the Sultan be found guilty before the Kadi of producing false evidence to the injury or prejudice of a British subject, he shall be severely punished by the Moorish Government according to the Mahometan law. In like manner, the British Consul-General, Consul, Vice-Consul, or Consular Agent, shall take care that any British subject who may be convicted of the same offence against a Moorish subject, shall be severely punished according to the law of Great Britain.

XIII. All British subjects, whether Mahometans, Jews, or Christians, shall alike enjoy all the rights and privileges granted by the present Treaty and the Convention of Commerce and Navigation which has also been concluded this day, or which shall at any time be granted to the most favoured nation.

XIV. In all criminal cases, differences, disputes or other causes of litigation arising between British subjects and the subjects or citizens of other foreign nations, no Governor, Kadi, or other Moorish authority shall have a right to interfere, unless a Moorish subject may have received thereby any injury to his person or property, in which case the Moorish authority, or one of his officers, shall have a right to be present at the tribunal of the Consul.

Such cases shall be decided solely in the tribunals of the foreign Consuls, without the interference of the Moorish Government, according to the established usages which have hitherto been acted upon, or may hereafter be arranged between such Consuls.

XV. It is agreed and covenanted that neither of the High Contracting Parties shall knowingly receive into or retain in its service any subjects of the other party who have deserted from the naval or military service of that other party; but that, on the contrary, each of the Contracting Parties shall respectively discharge from its service any such deserters, upon being required by the other party so to do.

And it is further agreed, that if any of the crew of any merchant-vessel of either Contracting party, not being slaves, nor being subjects of the party upon whom the demand is made, shall desert from such vessel within any port in the territory of the other party, the authorities of such port and territory shall be bound to give every assistance in their power for the apprehension of such deserters, on application being made by the Consul-General or Consul of the party concerned, or by the deputy or representative of the Consul-General or Consul; and no person whatever shall protect or harbour such deserters.

XVI. No British subject professing the Mahometan faith, or who may have professed the Mahometan religion, shall be considered as having in any manner lost, or as being by reason thereof in any degree less entitled to, the rights and privileges, or the full protection, enjoyed by British subjects who are Christians; but all British subjects, whatever their religion may be, shall enjoy all the rights and privileges secured by the present Treaty to British subjects, without any distinction or difference.

XVII. Any subjects of the Queen of Great Britain who may be found in the dominions of the Sultan of Morocco, either in time of peace or in time of war, shall have perfect liberty to depart to their own country, or to any other country, in their own ships or in the ships of any other nation; and they shall also be free to dispose as they please of

their goods and property of every kind, and to carry away with them the value of all such goods and property, as well as to take their families and domestics even though born and brought up in Africa or elsewhere out of the British dominions, without any one interfering with or preventing them under any pretence. All these rights shall be likewise granted to the subjects of the Sultan of Morocco who may be in the dominions of the Queen of Great Britain.

XVIII. If any subject of Her Britannic Majesty, or any native of a State or place under British protection, should die in the dominions of the Sultan of Morocco, no Governor or officer of the Sultan shall, under any pretence, dispose of the goods or property of the deceased, nor shall any one interfere therewith; but all the property and goods belonging to the deceased, and all that was under his hands and in his possession, shall be taken possession of by the persons chosen by him for that purpose, and named in his will as his heirs, if they should be present; but in case such heir or heirs should be absent, then the Consul-General, Consul, or his deputy, shall take possession of all the property and effects, after making a list or inventory thereof, specifying every article correctly, until he delivers the same to the heir of the deceased. But should the deceased die without making any will, the Consul-General, Consul, or his deputy, shall have the right to take possession of all the property left by him, and to preserve it for the persons entitled by law to the property of the deceased; and if the deceased should leave behind him debts due to him from individuals, then the Governor of the town, or those who have such a power, shall compel the debtors to pay what is due from them either to the Consul-General, Consul, or his deputy, for the benefit of the estate of the deceased; and likewise, if the deceased should leave behind him debts due from him to a subject of the Sultan of Morocco, the Consul-General, Consul, or his deputy shall assist the creditor in the recovery of his claim upon the estate of the deceased.

XIX. The present Treaty shall apply generally to all the dominions of Her Britannic Majesty, and to all subjects who are under her obedience, and all those who inhabit any town or place which is considered part of her kingdom, as also to all her subjects in Gibraltar and its inhabitants, and likewise to the inhabitants of the United States of the Ionian Islands which are under her protection; and all those who are called or described as English shall be considered as British subjects, without any distinction between those born in and those born out of Great Britain; and if the Queen of Great Britain should hereafter possess a town or a country which, either by conquest or by Treaty, shall enter under her authority, all its people and inhabitants shall be considered as British subjects, even if only for the first time subjected to Great Britain.

XX. The subjects of the Queen of Great Britain, and those who are under her government or protection, shall have the full benefit of the privileges and of the particular favours granted by this Treaty and which may be allowed to the subjects of other nations that are at war with Great Britain; and if after this date any other privileges shall be granted to any other Power, the same shall be extended and apply to and in favour of all British subjects in every respect, as to the subjects of such other Power.

XXI. If a subject of the Sultan of Morocco should ship himself and his goods on board of a vessel belonging to a nation at war with the Queen of Great Britain, and that ship should be taken by a British man-of-war, the said Moroquine subject, and also his goods, provided they be not contraband of war, shall not be molested or interfered with, but both he and the goods which he has on board the vessel thus taken, shall be let free, and he shall be set at liberty to go where he pleases. In like manner, if a British subject should take his passage on board of a vessel belonging to a nation at war with the Sultan of Morocco, and that vessel be taken by a Moroquine cruizer, such British subject shall not be molested, nor shall his goods, if not contraband of war, which he may have with him on board of the vessel thus taken, be interfered with, but he shall have his liberty, and be left free to go where he pleases, with his goods without impediment or delay.

XXII. If any duly commissioned British vessel should capture a ship, and take her to a harbour in the dominions of the Sultan of Morocco, the captors shall be allowed to sell such prize or the goods taken in her, without impediment from any one ; or they shall be at liberty to depart with their prize and take her to any other place they please.

XXIII. If a British vessel should be chased by an enemy to within gun-shot from the seaports or shores of the dominions of the Sultan of Morocco, the local authorities shall respect and defend her as much as they can ; and, in like manner, the ships of Morocco shall be protected in all the seaports or coasts of the dominions of the Queen of Great Britain.

XXIV. If a cruizer not belonging either to the Queen of Great Britain or to the Sultan of Morocco should possess letters of marque from a nation at war with Great Britain or with Morocco, that cruizer shall not be permitted to remain in any of the harbours or seaports of either of the 2 parties, nor to sell its prizes therein, nor to exchange such prizes or their cargo for other merchandize ; nor shall any such cruizer be allowed to purchase stores or provisions, except as much as may be absolutely necessary for the voyage to the nearest port of its own country.

XXV. If an armed ship of a nation at war with Great Britain should be found in any of the harbours or seaports of the Sultan of Morocco, and at the same time a British ship should happen to be also there, such ship of the enemy of Great Britain shall not be allowed to seize upon the British vessel, nor to cause it any injury ; and the enemy's ship shall not be allowed to sail in the track of the British vessel till 24 hours shall have elapsed after the departure of the said vessel, if the authorities of the port or harbour have the power of detaining the vessel of the enemy. The same rule shall be observed towards the ships of the Sultan of Morocco or his subjects, in all the harbours and seaports of the Queen of Great Britain.

XXVI. If any British vessels of war or merchant-vessels should enter one of the harbours or seaports of the Sultan of Morocco, and be in want of provisions or refreshments, such vessels shall be at liberty to buy what they require at the current prices of the time, free of duty ; but the quantity shall not exceed that which may be



sufficient for the sustenance of the master and crew during the voyage to the port whither the vessel may be bound, and also the necessary provisions required for the daily maintenance of the crew during the time the vessel remains at anchorage in the Moorish port.

XXVII. Vessels or boats freighted by order of the British Government for the conveyance of mails, or employed by the British Government under contract for the same service, shall be respected, and shall have the same privileges as ships of war, if they do not bring or take articles of merchandize to or from a port of the Sultan of Morocco; but if they carry any merchandize from a port of these dominions, they shall pay the same charges as any other merchant-vessel.

XXVIII. If any vessel belonging to the subjects or to the inhabitants of the dominions of either Contracting Party should enter one of the seaports of the other, and should not wish to go into harbour nor to declare nor sell her cargo there, she shall not be compelled to do so, nor shall any one inquire or search in any way to know what she contains; but a guard may be placed on board by the Custom-House officers, as long as the vessel remains at anchor, to prevent any illegal traffic.

XXIX. If a British vessel with a cargo should enter one of the harbours of the Sultan of Morocco, and should wish to land a part of her cargo which may be destined for that place, she shall not be compelled to pay duties upon more than the landed part of her cargo, and shall not be required to pay any duty upon the rest of the cargo which is left on board, but she shall be at liberty to depart with the remainder of her cargo to any place she pleases. The manifest of the cargo of each vessel shall, on her arrival, be delivered up to the Moorish Custom-House officers, who will be permitted to search the vessel on her arrival and departure, or to place a guard on board the vessel to prevent any illegal traffic.

The same rule shall be observed in British ports with regard to Moorish vessels.

The master of each vessel, on departure from a Moorish port, shall be required to present a manifest of the cargo of articles exported, certified by the Consul or the Vice-Consul, and shall exhibit the manifest to the administrators of Customs when required to do so, in order that they may verify that no goods have been embarked in contraband.

XXX. No captain of a British vessel in a Moorish port, and no captain of a Moorish vessel in a British port, shall be in any way compelled to carry any passengers or any kind of goods against his own will, nor shall he be forced to sail for any place which he does not wish to go to; and his ship shall not be molested in any way whatever.

XXXI. If any of the subjects of the Sultan of Morocco should hire a British vessel to carry goods or passengers from one place to another within the dominions of Morocco, and if in the course of her voyage such British vessel should be forced by stress of weather or accident of the sea to enter a different port in the same dominions, the captain shall not be obliged to pay anchorage or any other duty on account of his entering such port; but if such vessel should discharge or take on board at such port any cargo, the said vessel shall be treated like any other.

XXXII. Any British ships or vessels which may be damaged at sea, and may enter one of the harbours of the Sultan of Morocco for repairs, shall be received and assisted in all their wants during their stay in such harbour, during their refit, or at their departure for the place of their destination, if the articles required for the repairs of the vessel shall be found for sale in such harbour, and in such case they shall be bought and paid for at the same prices as are usually paid by others ; and the British ships or vessels shall not be in any way whatever molested or prevented from proceeding on their voyage.

XXXIII. If a ship belonging to the Queen of Great Britain, or to any of her subjects, should get on shore, or be wrecked on any part of the dominions of the Sultan of Morocco, she shall be respected and assisted in all her wants, in accordance with the rules of friendship ; and such ship, and all her contents, cargo, or any goods which may be saved from her at the time or after the wreck, shall be preserved and given up to the owners, or to the British Consul-General, or his deputy, without the loss or concealment of anything whatever. Should the wrecked vessel have on board any goods which the proprietors desire to sell within the dominions of Morocco, the proprietors shall pay upon these goods the requisite duties ; but if the goods on board the vessel had been embarked from any port of the dominions of Morocco, no other duties in addition to those which may already have been paid, shall be demanded, either on importation or on exportation, and the proprietors shall have the right either of selling the goods in Morocco, or of embarking them, as they please. The captain and crew shall be at liberty to proceed to any place they please, and at any time they may think proper, without any hindrance. In like manner, the ships of the Sultan of Morocco, or of his subjects, shall be treated in the dominions of the Queen of Great Britain ; it being understood that such ships are to be subject to the same lawful charges for salvage to which British ships are subject. If a British vessel should be wrecked at Wadnoon, or on any part of its coast, the Sultan of Morocco shall exert his power to save and protect the captain and crew, till they return to their own country ; and the British Consul-General, Consul, or his deputy, shall be allowed to inquire and ascertain, as much as they can, about the captain and crew of any such ship, in order that they may obtain and save them from those parts of the country ; and the Governors appointed in those places by the Sultan of Morocco shall also assist the Consul-General, Consul, or deputy, in his researches, agreeably to the rules of friendship.

XXXIV. Her Majesty the Queen of Great Britain and His Majesty the Sultan of Morocco engage to do all in their power for the suppression of piracy ; and the Sultan especially engages to use his utmost efforts to discover and punish all persons on his coasts or within his dominions who may be guilty of that crime, and to aid Her Britannic Majesty in so doing.

XXXV. If any of the subjects or of the ships of either of the 2 Parties should do anything contrary to any of the conditions of this Treaty, whether intentionally or unintentionally, the peace and friendship thereby stipulated for shall not be disturbed, but shall remain preserved, fixed, and always durable upon the basis of sincerity, till communication shall be forwarded to the Sovereign of the aggressor, without his being in the mean time molested ; and if any of the subjects of either party

should wish or attempt to violate this Treaty, or any of its conditions his Sovereign shall be bound to chastise and punish him severely for his conduct.

XXXVI. If this Treaty of Peace and Friendship between the Contracting Parties should be infringed, and if, in consequence of such infringement (which God forbid!), war should be declared, all the country and subjects of the Queen of Great Britain, and those under her protection, of whatever degree or class, who may happen to be found in the dominions of the Sultan of Morocco, shall be permitted to depart to any part of the world they choose, and to carry with them their goods and property, their families and their servants or establishments, whether they be British born or not; and they shall be allowed to embark on board of any ship of another nation which they may select. Moreover, a period of 6 months shall be granted them, if they ask for it, for the arrangement of their affairs, the sale of their goods, or for doing what they please with their property; and during such period of 6 months they shall have full liberty and perfect security for their persons and property, without any interference, injury, or hindrance in any way, by reason of such war; and the Governors or authorities shall assist and help them in the arrangement of their affairs, and attend them in the recovery of the debts due to them, without delay, dispute, or postponement. In like manner, all this shall be granted to the subjects of the Sultan of Morocco in all the dominions of the Queen of Great Britain.

XXXVII. This Treaty shall be declared and made public to the subjects of both parties, lest any one of them should remain ignorant of its conditions, and copies shall be prepared and sent to the Governors and men of authority who are entrusted with the revenue and the expenditure; and also to all the seaports and the captains of cruizers belonging to the Sultan of Morocco.

XXXVIII. The present Treaty shall be ratified by Her Majesty the Queen of Great Britain, and by His Majesty the Sultan of Morocco, and the ratifications shall be exchanged at Tangier, as soon as possible within 4 months from the date hereof.

When the ratifications of the present Treaty, and of the Convention of Commerce and Navigation, which has also been concluded this day between the High Contracting Parties, shall have been exchanged, the stipulations of the said Treaty and Convention shall come into immediate operation, and shall be substituted for the stipulations of preceding Treaties between Great Britain and Morocco.

In witness whereof the respective Plenipotentiaries have signed the present Treaty, and have affixed thereto their respective seals.

Done at Tangier, the 9th day of December, in the year 1856, corresponding to the Moorish date of the 10th day of the month of Rabbea the 2nd, in the year 1273.

(L.S.) J. H. DRUMMOND HAY.

(Arabic signature of)

(L.S.) SEED MOHAMED KHATEEB.

*Annex No. 21*TREATY BETWEEN MOROCCO AND GREAT BRITAIN OF  
DECEMBER 9, 1856 (TREATY OF COMMERCE)

*Source: 46 British and Foreign State Papers, 188-195.*

*CONVENTION of Commerce and Navigation between Great Britain  
and Morocco.—Signed at Tangier, December 9, 1856 \**

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, and His Majesty the Sultan of Morocco and Fez, being desirous to extend and improve the relations of commerce and navigation which exist between their respective dominions and subjects, have resolved to conclude a special Convention for that purpose, and have named as their Plenipotentiaries, that is to say :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, John Hay Drummond Hay, Esquire, Her Chargé d'Affaires and Consul-General at the Court of His Majesty the Sultan of Morocco and Fez ;

And His Majesty the Sultan of Morocco and Fez, Seed Mohamed Khateeb, His Commissioner for Foreign Affairs ;

Who, after having communicated to each other their respective full powers, have agreed upon and concluded the following Articles :

ART. I. There shall be reciprocal freedom of commerce between the British dominions and the dominions of the Sultan of Morocco. The subjects of Her Britannic Majesty may reside in and trade to any port of the territories of the Sultan of Morocco to which any other foreigners are or shall be admitted.

They shall be permitted to hire houses, and to build houses, stores, or warehouses, as stipulated in Article IV of the general Treaty of this date.

They shall enjoy full protection for their persons and properties, as specified in Article IV of the General Treaty : they shall be allowed to buy from, and to sell to, whom they like, all articles not prohibited in Article II of this Convention, either by wholesale or retail, at all places in the Moorish dominions, without being strained or prejudiced by any monopoly, contract, or exclusive privilege of purchase or sale whatever, except the articles of export and those of import enumerated in Article II ; and they shall, moreover, enjoy all other rights and privileges which hereafter may be granted to any other foreigners, subjects, or citizens of the most favoured nation.

The subjects of the Sultan of Morocco shall, in return, enjoy in the dominions of Her Britannic Majesty the same protection and privileges which are or may be enjoyed by the subjects or citizens of the most favoured nation.

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\* Signed in the English and Arabic languages.

II. The Sultan of Morocco engages to abolish all monopolies or prohibitions on imported goods, except tobacco, pipes of all kinds used for smoking, opium, sulphur, powder, saltpetre, lead, arms of all kinds, and ammunition of war; and further to abolish all monopolies of agricultural produce, or of any other article whatsoever in the dominions of the Sultan, except leeches, bark, tobacco, and other herbs used for smoking in pipes.

III. No tax, toll, duty, or charge whatsoever, beside the export duty hereinafter mentioned shall, under any pretext or on any account, be imposed by any person whatsoever, in any part of the dominions of Morocco, upon or in respect of any goods or produce whatsoever which may have been purchased for exportation by or on behalf of any British subject; but the said goods or produce, when so purchased, shall be conveyed from any place in Morocco to, and embarked from, any port therein, absolutely free and exempt from all other taxes, tolls, duties, or charges whatsoever. No permit, or any similar document, shall be requisite to enable them to be so conveyed or embarked, nor shall any officer or subject of the Sultan offer any impediment to, or lay any restriction on, the conveyance or embarkation of such goods (except those goods or produce which the Sultan of Morocco shall prohibit from being exported, as arranged in Article V), or, on any pretext, demand or receive any money in respect or on account of such goods; and should any such officer or subject act contrary to this stipulation, the Sultan shall immediately punish with severity the Governor, officer, or other subject who shall have been guilty of such misconduct, and render full justice to British subjects for all injuries or losses which they may duly prove themselves to have suffered thereby.

IV. The subjects of Her Britannic Majesty within the dominions of His Majesty the Sultan shall be free to manage their own affairs themselves, or to commit those affairs to the management of any persons whom they may appoint as their broker, factor, or agent, nor shall such British subjects be restrained in their choice of persons to act in such capacities; nor shall they be called upon to pay any salary or remuneration to any person whom they shall not choose to employ; but those persons who shall be thus employed, and who are subjects of the Sultan of Morocco, shall be treated and regarded as other subjects of the Moorish dominions. Absolute freedom shall be given in all cases to the buyer and seller to bargain together, and no interference on the part of the Sultan's officers shall be permitted. Should any Governor or other officer interfere in the bargains between British and Moorish subjects, or place any impediments in the lawful purchase or sale of goods or merchandize imported into, or to be exported from, the Sultan's dominions, His Sherifian Majesty shall severely punish the said officer for such misconduct.

V. Should the Sultan of Morocco at any time think proper to prohibit the exportation of any kind of grain or other article of commerce from his dominions, British subjects shall in no manner be prevented from embarking all the grain or other articles which they may have in their magazines, or which may have been bought previously to the said prohibition; but they shall be allowed to continue to export all they may have in their possession, during the term of 6 months from the time the prohibition was publicly made known; but on the day when the order of the Sultan of Morocco regarding the prohibition shall arrive, and shall be

published to the merchants, British subjects shall, within the term of 2 days, declare and give proofs of the amount of produce they shall possess in their stores, on which the prohibition is imposed, and they shall also present legal certificates regarding the amount of the said produce which they shall have bought in the interior, or elsewhere, previously to the promulgation of the order for the prohibition. No prohibition, either as to the exportation or importation of any article, shall apply to British subjects, unless such prohibition shall apply to subjects of every other nation.

VI. Merchandise or goods, except the articles enumerated in Article II, imported by British subjects in any vessel, or from any country, shall not be prohibited in the territories of the Sultan of Morocco, nor be subject to higher duties than are levied on the same kind of merchandise or goods imported by the subjects of any other foreign Power, or by native subjects, after the date of this Convention.

All articles, except those enumerated in Article II, the produce of Morocco, may be exported therefrom by British subjects in any vessels, on as favourable terms as by the subjects of any other foreign country, or by native subjects.

VII. In consideration of the favourable terms upon which the produce of Morocco is admitted into the territories of Her Britannic Majesty, and with a view to the extension of commercial intercourse between Great Britain and Morocco, for their mutual advantage, His Majesty the Sultan of Morocco hereby agrees that the duties to be levied on all articles imported into the territories of His Majesty by British subjects, shall not exceed 10 per cent. in cash on their value, at the port of their disembarkation; and that the duties to be levied on all articles exported from the territories of His Majesty by British subjects, shall not exceed in amount the duties marked in the following tariff:

#### TARIFF OF EXPORTS.

Articles of Exportation.	Quantity.	Dollars.	Ounces.
Wheat . . . . .	Per strike fanega	1	
Maize and Durra . . . . .	„ full fanega	$\frac{1}{2}$	
Barley . . . . .	„ strike fanega	$\frac{1}{2}$	
All other grain . . . . .	„ cantar	$\frac{1}{2}$	
Flour . . . . .	„ „	..	30
Bird seed . . . . .	„ „	..	12
Dates . . . . .	„ „	..	40
Almonds . . . . .	„ „	..	35
Oranges, lemons, and limes . . . . .	„ 1,000	..	12
Wild Marjoram . . . . .	„ cantar	..	10
Cummin seed . . . . .	„ „	..	20
Oil . . . . .	„ „	..	50
Gums . . . . .	„ „	..	20
Henna . . . . .	„ „	..	15
Wax . . . . .	„ „	..	120
Rice . . . . .	„ „	..	16
Wool (washed) . . . . .	„ „	..	80
Wool (in grease) . . . . .	„ „	..	55
Hides, sheep, and goat skins . . . . .	„ „	..	36
Tanned skins called Felaty, Zawany, and Cochinea . . . . .	„ „	..	100

Articles of Exportation.	Quantity.	Dollars.	Ounces.
Horns. . . . .	Per 1,000	..	20
Tallow . . . . .	„ cantar	..	50
Mules . . . . .	„ head	25	
Donkeys . . . . .	„ „	5	
Sheep . . . . .	„ „	1	
Goats . . . . .	„ „	..	15
Fowls . . . . .	„ dozen	..	22
Eggs . . . . .	„ 1,000	..	51
Slippers . . . . .	„ 100	..	70
Porcupine quills . . . . .	„ 1,000	..	5
Grasool . . . . .	„ cantar	..	15
Ostrich feathers . . . . .	„ lb.	..	36
Baskets . . . . .	„ 100	..	30
Caraway seed. . . . .	„ cantar	..	20
Combs of wood . . . . .	„ 100	..	5
Hair . . . . .	„ cantar	..	30
Raisins . . . . .	„ „	..	20
Woollen sashes, called Karazy . . . . .	„ 100	..	100
Tackawt (a dye) . . . . .	„ cantar	..	20
Tanned fleeces . . . . .	„ „	..	36
Hemp and flax . . . . .	„ „	..	40

The Sultan of Morocco has the right of prohibiting any article of exportation ; but when a prohibition on any article shall be imposed, it shall be in conformity with what is arranged in Article V ; but upon the exportation of articles the prohibition of which shall be taken off, the duties noted in the tariff shall alone be paid. With regard to wheat and barley, should the Sultan think proper to prohibit the exportation of these articles, but should desire to sell to merchants the grain which belongs to Government, it shall be sold at the price the Sultan thinks proper to impose. Should the Sultan augment or diminish the price of the grain, there shall be granted to the purchaser for exporting that which he shall have bought, the term stated in Article V ; but should the grain be free for exportation, the duties imposed thereon shall be in conformity with what is stated in the tariff.

Should the Sultan of Morocco think proper to reduce the duties on articles of exportation, His Majesty shall have the right of doing so, on condition that British subjects shall pay the lowest duty that shall be paid by any other foreign or native subjects.

VIII. Should a British subject, or his agent, desire to convey by sea, from one port to another in the dominions of the Sultan of Morocco, goods upon which the 10 per cent. duty has been paid, such goods shall be subject to no further duty, either on their embarkation or disembarkation, provided they be accompanied by a certificate from a Moorish Administrator of Customs.

IX. If any article of Moroquine produce, growth, or manufacture, except the articles enumerated in Article II, be purchased for exportation, the same shall be conveyed by the British merchant, or by his agent, free of any kind of charge or duty whatsoever, to a convenient place of shipment. Subsequently, on exportation, the export duty according to the tariff in Article VII shall alone be paid on it.

X. No anchorage, tonnage, import, or other duty or charge, shall be levied in the dominions of the Sultan of Morocco on British vessels,

or on goods imported or exported in British vessels, beyond what is, or may be, levied on national vessels, or on the like goods imported or exported in national vessels; they shall not, however, exceed in amount the rates of the following scale, viz.:

Six moozoonats per ton shall be levied upon every British vessel (except steam-vessels) that does not exceed 200 tons in measurement. Upon every vessel (not a steam-vessel) measuring more than 200 tons, the following charge shall be made, viz., 6 moozoonats per ton shall be paid for 200 of her tons, and 2 moozoonats per ton for the remainder. Should the Administrator of Customs have any doubt regarding the tonnage of a British vessel, as declared by the master, the British Consul or Vice-Consul shall, on appeal being made to him, cause the ship's papers, whereon the tonnage is formally stated, to be exhibited. The same charges shall be made in all the ports of Morocco except Rabat and Laraiiche, at which ports 4 moozoonats per ton shall be paid for pilotage into the river, should the vessel enter the river, and 4 moozoonats per ton for pilotage out of the river; 3 moozoonats per ton shall also be levied upon each vessel entering the river, on account of anchorage. Should a vessel, however, not enter the river, the same charges shall be levied upon her as those which are paid at the other ports. At Mogadore, 4 moozoonats per ton shall be paid on British vessels for pilotage on their entering the port only, and 6 moozoonats per ton for anchorage.

Should the master of a British vessel require, at any other port, a pilot, he shall pay for him at the rate of 2 moozoonats per ton; but this charge shall not be exacted except when the master of a vessel requires a pilot.

The sum of 16 dollars shall be levied, on account of anchorage, on a steam-vessel entering a port in the Moorish dominions for the purpose of discharging or embarking cargo. If, afterwards, the said steam-vessel proceed from that port to any other port or ports in the Moorish dominions, and on her arrival at the latter embark or discharge cargo, the aforesaid charge of 16 dollars for anchorage shall again be levied; but if the said steam-vessel, on her return voyage, should enter a Moorish port at which the said anchorage dues shall have already been paid, no further charge on account of anchorage shall be levied upon her unless the said steam-vessel depart on a second voyage to a Moorish port, or unless during her return voyage she shall have touched at any port other than a port of the Moorish dominions, in which case the aforesaid charge of 16 dollars shall again be levied. The charge, however, for anchorage on a steamer of 150 tons burthen, or less, shall not exceed what is due from a sailing-vessel of the same size.

The masters of all vessels shall pay, in addition to the aforesaid charges, the following sums to officers of the ports, but no other payments shall be demanded of them; viz.:

A vessel measuring 25 tons or less, 20 ounces; a vessel exceeding 25 and not over 50 tons, 40 ounces; a vessel exceeding 50 and not over 100 tons, 60 ounces; a vessel exceeding 100 and not over 200 tons, 80 ounces; a vessel exceeding 200 tons, 100 ounces.

In addition to these charges, the master of every British vessel visiting the port of Tetuan shall pay 10 ounces for the messenger who shall convey the ship's papers from the port of Marteen to Tetuan; 5 ounces to the trumpeter who shall announce the arrival of the vessel; and



3 ounces to the public crier ; but no other payments shall be demanded at the port of Tetuan. No charge for anchorage shall be levied on account of British vessels which may enter the ports of Morocco for the purpose of seeking shelter from the weather, and which do not embark or discharge cargo, nor shall any charge for anchorage be levied upon fishing vessels.

And, in like manner, no anchorage, tonnage, import, or other duty or charge, shall be levied in the British dominions on Moorish vessels, or on goods imported or exported in Moorish vessels, beyond what is or may be levied on national vessels, or on the like goods imported or exported in national vessels.

XI. Should British subjects desire to embark in or discharge goods from vessels arriving in the ports of Morocco, they shall employ the Moorish Government boats for that purpose ; but if within 2 days after the arrival of a vessel the Moorish Government boats are not placed at their disposal for the aforesaid purpose, the British subjects shall have the right of employing private boats, and shall not pay, in such case, to the port authorities more than one-half of what would have been paid, had they employed the Government boats. This regulation shall not be applicable to the ports of Tangier and Tetuan, inasmuch as there is a sufficient number of Government lighters at those 2 ports.

The charges now paid for lighterage at the different ports of Morocco shall not be augmented, and the Administrator of Customs at each port of Morocco shall deliver to the British Vice-Consul a tariff of the charges now demanded for lighterage.

XII. The Articles of this Convention shall be applicable to all the ports in the Empire of Morocco ; and should His Majesty the Sultan of Morocco open the ports of Mehedeia, Agadeer, or Wadnoon, or any other ports within the limits of His Majesty's dominions, no difference shall be made in the levying of duties, or anchorage, between the said ports and other ports in the Sultan's dominions.

XIII. If a British subject be detected in smuggling into the Moroccan territories goods of any description, the goods shall be confiscated to the Sultan ; and such British subject shall, on conviction before the British Consul-General, Consul, Vice-Consul, or Consular Agent, be liable to be fined in an amount not exceeding treble the amount of duties leviable on such goods, or in case of goods not admitted to importation, treble the value of the goods at the current price of the day ; and failing payment of such fines, such British subject shall, on conviction before the British Consul-General, Consul, Vice-Consul, or Consular Agent, be liable to be imprisoned ; or, without being fined, any British subject on conviction as aforesaid may be imprisoned, but in either case for a time not exceeding one year, in such place as the Consul-General, Consul, Vice-Consul, or Consular Agent may determine.

XIV. In order that the 2 High Contracting Parties may have the opportunity of hereafter treating and agreeing upon such other arrangements as may tend still further to the improvement of their mutual intercourse, and to the advancement of the interests of their respective subjects, it is agreed that at any time after the expiration of 5 years from the date of the exchange of the ratifications of the present Convention of Commerce and Navigation either of the High Contracting Parties

shall have the right to call upon the other to enter upon a revision of the same; but until such revision shall have been accomplished by common consent, and a new Convention shall have been concluded and ratified, the present Convention shall continue and remain in full force and effect.

XV. The present Convention shall be ratified by Her Majesty the Queen of Great Britain and by His Majesty the Sultan of Morocco, and the ratifications shall be exchanged at Tangier, at the same time as the ratifications of the General Treaty signed this day between the High Contracting Parties.

When the ratifications of the present Convention and of the said General Treaty shall have been exchanged, the stipulations of the said Convention and Treaty shall come into operation within 4 months, and shall be substituted for the stipulations of all preceding Treaties between Great Britain and Morocco.

In witness whereof the respective Plenipotentiaries have signed the present Convention, and have affixed thereto their respective seals.

Done at Tangier, the 9th day of December 1856, corresponding to the Moorish date of the 10th day of the month of Rabbea the second, in the year 1273.

(L.S.) J. H. DRUMMOND HAY.

(Arabic signature of)

(L.S.) SEED MOHAMED KHATEEB.

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*Annex No. 22*

TREATY BETWEEN MOROCCO AND SPAIN  
OF NOVEMBER 20, 1861

*Source: 53 British and Foreign State Papers, 1089-1108.*

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*TREATY of Commerce and Navigation between Spain and Morocco.*  
*—Signed at Madrid, November 20, 1861*

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[Ratifications exchanged at Tangier, April 2, 1862.]

[Translation]

In the name of God Almighty.

THE most powerful Princes Her Majesty the Queen of the Spains and His Majesty the Sultan of Morocco being desirous of facilitating the commercial relations between their respective subjects, in accordance with their mutual necessities and reciprocal convenience, and deeming it right, at the same time, to determine positively the Consular attributions and privileges which Spaniards enjoy in Morocco, as well in

what relates to jurisdiction as in regard to the exercise of other rights, in fulfilment of the stipulations of Articles XIII and XIV of the Treaty of Peace signed in Tetuan on the 26th of April, 1860, and of Article V of the Treaty concluded in Madrid on the 30th of October of this year, have appointed the undermentioned as their Plenipotentiaries, viz.:

Her Majesty the Queen of the Spains, Don Saturnino Calderon Collantes, Ex-Minister of the Interior, Commerce, Public Instruction and Public Works, Senator of the Kingdom, Grand Cross of the Royal Orders of Charles III. and Isabella the Catholic, Grand Cordon of the Imperial Order of the Legion of Honour of France and of that of Leopold of Belgium, Grand Cross of the Pontifical Order of Pius IX, of the Order of Lewis of Hesse-Darmstadt, of that of Danebrog of Denmark, of the Polar Star of Sweden, of St. Januarius of the Two Sicilies, of the Conception of Villaviciosa of Portugal and of the Guelphs of Hanover, her Principal Secretary of State, and

His Majesty the Sultan of Morocco, his Ambassador Plenipotentiary the Caliph of the Prince of Believers, son of the Prince of Believers, Muley-al-Abbas,

Who, having exchanged their full powers, and having found them in good and proper form, have agreed upon the following Articles :

ART. I. There shall be peace and friendship for ever between Her Majesty the Queen of Spain and His Majesty the Sultan of Morocco, and between their respective subjects.

II. Her Majesty the Queen of Spain may appoint Consuls-General, Consuls, Vice-Consuls, and Consular Agents in all the dominions of the Sultan of Morocco.

These functionaries may reside in any of the seaports or cities of Morocco which the Spanish Government may fix upon, or consider fitting for the better service of Her Catholic Majesty.

III. The Chargé d'Affaires of Spain or any other Diplomatic Agent accredited by Her Catholic Majesty to the Sultan of Morocco, as also the Consul-General, Consuls, Vice-Consuls, and Consular Agents of Spain, residing in the dominions of the Sultan of Morocco, shall enjoy the honours, consideration, and distinction due to their rank.

These Agents, their houses and families, shall enjoy perfect immunity and complete security and protection. No person shall molest or be wanting in respect to them in the slightest degree, either by words or deeds, and, if any person should infringe this provision, he shall be severely chastised, as a punishment to himself and an example to others.

The Chargé d'Affaires or Consul-General may choose his interpreters and servants freely from amongst the Mussulman subjects or amongst those of any other country. His interpreters and servants shall be exempt from all personal contribution, whether capitation, forced contribution, or any other similar or analogous charge.

Consuls, Vice-Consuls, or Consular Agents resident in the ports under the orders of the said Chargé d'Affaires or Consul-General, may name an interpreter, a guard and two servants, either Mussulmans or subjects of another country; and neither the interpreter, the guard, nor the servants shall be obliged to pay capitation taxes, forced contribution, or any other similar or analogous charge.

If the said Chargé d'Affaires or Consul-General shall appoint a subject of the Sultan of Morocco to be Vice-Consul or Consular Agent

in a port of Morocco, he, as well as the members of his family who reside in his house, shall be respected, and shall be exempted from the payment of capitation tax and other similar or analogous charges; but the said Vice-Consul or Consular Agent must not take any subject of the Sultan of Morocco under his protection, with the exception of the members of his family who reside in the same house.

The Chargé d'Affaires or Consul-General, the Consuls, Vice-Consuls, and Consular Agents of Her Catholic Majesty shall be provided with a place for the celebration of worship; they may hoist the national flag, at all times, on the top of the houses occupied by them, whether within or without the city, and hoist it on board their ships when they embark.

When the said agents are not merchants they may import, free of duty, effects, furniture, or any other article for their own use or that of their families, and no impediment of any kind shall be thrown in the way of such importation into the dominions of the Sultan of Morocco; but the Chargé d'Affaires, Consul-General, Consuls, Vice-Consuls, or Consular Agents shall give the Custom-House officials a list in writing of the number of articles they wish to import.

If the service of his Sovereign requires the presence of any Spanish Agent in his own country, and another person is named to represent him during his absence, he shall be recognized by the Morocco Government and shall enjoy the same consideration, rights, and privileges as the former. In this case the above-mentioned agent shall have full liberty to leave and return with his servants and effects, and shall not cease, under any circumstances, to receive attention and respect.

The Chargé d'Affaires or any other Diplomatic Agent, Consul-General, Consuls, Vice-Consuls, Consular Agents or persons delegated by any of these representatives of Her Catholic Majesty shall have a perfect right to all prerogatives or privileges which are at present enjoyed, or shall hereafter be conceded to similar Agents of any other nation.

IV. Her Catholic Majesty's subjects may travel, reside, and establish themselves freely within the dominions of the Sultan of Morocco, submitting themselves to the police regulations applicable to the individuals or citizens of the most favoured nation.

V. When Spaniards purchase with the permission of the authorities, houses, warehouses, or land in the Empire of Morocco, they shall dispose freely of their property, by virtue of their right, without being interfered with by any person. When they hire houses or magazines for a certain length of time and for a certain price, the rent shall not be raised during the term, nor shall they be ejected.

In the same manner natives of Morocco may purchase and hire houses, warehouses, or land in Spain, in conformity with the Spanish laws.

Spanish subjects cannot under any pretext be forced to pay taxes or contributions.

They shall be exempt from all military service, whether by sea or land, as well as from personal burdens, forced loans, and all other extraordinary imposts.

Their houses, warehouses, and all that belongs to them, whether destined for mercantile purposes or private dwellings, shall be respected, and they shall not be obliged to provide food or lodging for any person

against their will. No search or arbitrary examination shall be made in the houses of Spanish subjects, nor shall their books, papers, or accounts be examined or inspected. These measures can only be put in force by a special order from the Consul-General, Consul, Vice-Consul, or Consular Agent.

His Majesty the Sultan of Morocco engages that all Spanish subjects residing in his States and dominions, shall enjoy as complete security both in their persons and property, as subjects of Morocco have a right to enjoy in Her Catholic Majesty's territory.

On her part Her Catholic Majesty engages to assure to the subjects of His Majesty the Sultan, who reside in her dominions, the same protection and privileges enjoyed at present or that may hereafter be enjoyed, by the subjects of the most favoured nation.

VI. All subjects of the Queen of Spain, in the dominions of His Majesty of Morocco, shall be allowed the free exercise of the Catholic religion, and shall be at liberty to perform its rites in their houses or in the established churches.

They shall also have a place destined for the burial of the dead, and no Morocco subjects or officials shall interfere with the burial ceremonies, nor molest the processions, on their way to and from the cemeteries, which shall be respected by all.

In the same manner natives of Morocco resident in Spain, may exercise privately the rites of their religion, as heretofore.

VII. Spanish subjects shall have a right to employ any one in whom they have confidence, to attend to their business, whether carried on by sea or land, without prohibition or impediment.

If a Spanish merchant should require to go on board a vessel, at anchor either in or off any of the Sultan of Morocco's ports, he shall be allowed to proceed on board of such vessel either alone or accompanied by any person, and neither he himself nor the persons who accompany him shall be subject to the payment of any forced contribution on that account.

VIII. No subject or person under the protection of Her Majesty the Queen of Spain, shall be responsible for the debts of his fellow-citizens, unless he should have made himself liable for them by a document written and signed by himself.

The same rule shall be applicable in Spain to the subjects of the Sultan of Morocco.

IX. Any Spaniard guilty of an offence, misdemeanour, or crime, deserving of correction or punishment, in the dominions of the Sultan of Morocco, shall be delivered up to his Consul-General, Consul, Vice-Consul, or Consular Agent, in order that he may be made to answer for it in accordance with the laws of Spain or be sent to his country under proper guard, when the case requires it.

X. The Consul-General, Consuls, Vice-Consuls, or Consular Agents of Spain shall be the only judges or arbiters in criminal cases, lawsuits, actions at law or disputes of any kind, civil or commercial, which may arise between Spanish subjects resident in Morocco, and no Governor, Cadi, or any other Morocco authority shall interfere in such cases.

XI. All actions, criminal cases, lawsuits, litigations, or disputes of any kind, whether civil or commercial, which may arise between Spanish and Morocco subjects, shall be decided in the following manner :

If the suitor or plaintiff be a Spanish subject, and the defendant or accused a Morocco subject, the judge of the case shall be the Governor of the city or district, or the Cadi, according as the case belongs to the jurisdiction of the one or the other. The Spanish subject shall lay his demand before the Governor or Cadi by means of the Consul-General, Consul, Vice-Consul, or Consular Agent of Spain, and they shall have a right to attend the Court during the trial.

If the plaintiff be a Morocco subject and the accused a Spanish subject, the case shall only be submitted to the cognizance and decision of the Consul-General, Consul, Vice-Consul, or Consular Agent of Spain. The plaintiff shall present his demand through the Morocco authorities; and the Morocco Governor, Cadi, or any other official appointed by them, may be present, if they desire it, during the trial and decision of the case.

If the Spanish or Morocco plaintiff or litigant should not comply with the decision of the Consul-General, Consul, Vice-Consul, or Consular Agent, or with that of the Morocco Governor or Cadi, according as the case may belong to the tribunal of the one or the other, they shall have the right to appeal respectively either to the Chargé d'Affaires of Spain or the Morocco Commissioner for Foreign Affairs.

XII. If a Spanish subject shall bring an action before a Morocco tribunal, against a subject of the Sultan of Morocco, for a debt contracted within the dominions of the Queen of Spain, he must present a document written in European or Arabic characters, acknowledging the debt, and signed by the Morocco debtor in the presence of and certified by his Consul, Vice-Consul, or Consular Agent; or in the presence of two witnesses whose signatures shall have been or shall afterwards be certified by the Morocco Consul, Vice-Consul, or Consular Agent, or by a Spanish notary public, when none of the above-mentioned agents are resident in the place. This document, thus legalised and certified by the Morocco Consul, Consular Agent, or Spanish notary public, shall have full force and validity in the tribunals of Morocco.

If a Morocco debtor should make his escape to any town or fortress of Morocco where there is no Spanish Consul or Consular Agent, the Morocco Government shall oblige him to proceed to Tangier, or any other port or city of Morocco where the Spanish creditor may wish to prosecute his demand before the Morocco tribunal.

XIII. If the Consul-General of Spain, or any of the Spanish Consuls, Vice-Consuls, or Consular Agents, should, on any occasion, ask the Morocco Government for the assistance of soldiers, guards, armed boats, or any other aid, in order to arrest or convey a Spanish subject, it shall be granted immediately, on condition of the payment of such dues as are charged to Morocco subjects in similar cases.

XIV. When a subject of the Sultan of Morocco may be deemed by the Cadi to have been guilty of bearing false witness, to the prejudice of a Spanish subject, he shall be severely punished by the Morocco Government, in conformity with Mahometan law.

The Spanish Consul-General, Consuls, Vice-Consuls, or Consular Agents shall take care that any subject of Her Catholic Majesty guilty of a similar offence against a subject of Morocco, shall be punished in conformity with the laws of Spain.

XV. Spanish subjects, or persons under Spanish protection whether Christians, Mahometans, or Hebrews, shall likewise enjoy all the rights and privileges conceded by this Treaty, and those which may be at any time conceded to the most favoured nation.

XVI. In all criminal cases, disputes, disagreements, or litigations, which may arise between Spanish subjects and the subjects or citizens of other foreign nations, no Governor, Cadi, or other Morocco authority shall have a right to interfere, or investigate the case, unless some Morocco subject should have been thereby injured in his person or property, in which case the Morocco authorities or their representatives shall have a right to be present at the Consul's tribunal.

The above cases shall be tried by the *tribunal of the foreign Consuls* alone, without the interference of the Morocco Government, according to established forms, or according to those which may be agreed upon among the said Consuls.

XVII. The High Contracting Parties have agreed not to receive knowingly, nor to maintain in their service, any individual who shall have deserted from their respective armies, navies, or penal establishments. Her Catholic Majesty's subjects who shall desert from the Spanish army, navy, or prisons, shall be at once taken, on their arrival in Morocco territory, to the Consul-General of Spain, and shall be placed at his disposal, in order to carry out the orders of the Spanish Government respecting them, the said Consul-General paying the expenses of their conveyance and maintenance.

As the Morocco Government engages by the present Article to deliver up spontaneously all Spanish deserters, there shall be no obstacle thereto in the pretext hitherto alleged, of their having embraced Mahometanism, to elude the punishment they have incurred.

XVIII. If one of the crew of a vessel belonging to either of the Contracting Parties should desert in a port belonging to the other, the local authorities shall give the Consul, Vice-Consul, or Consular Agent who claims it the assistance he may require to effect the apprehension of the deserter, and no person shall protect him or give him asylum.

The High Contracting Parties agree that the seamen and others of the crew, subjects of the country in which they may desert, as also Morocco slaves who may desert in Spanish ports, shall be exempt from the stipulations contained in the preceding paragraph.

XIX. All subjects of the Queen of Spain who may be in Morocco, even in time of war, shall be at absolute liberty to withdraw to their own country or to any other, in Spanish or other vessels; and may also dispose of all their property as they may think proper, and take the value of the said property with them, as also their families and dependants, even when they may have been born or brought up in Africa, or in any other place out of the Spanish dominions, and no one shall interfere with them or place obstacles in their way, under any pretext whatsoever.

Spanish subjects must, however, previous to their departure, obtain the consent of the Consul-General, Consul, Vice-Consul, or Consular Agent of their nation, in order that they may ascertain whether the said Spanish subjects are free from debts or other obligations which they ought to discharge before leaving; and the above-mentioned

Agents shall not be answerable for debts contracted by Spaniards in Morocco, if they have not expressly engaged to be so under their own hand.

All the above-mentioned rights shall be also guaranteed to the Sultan of Morocco's subjects resident in the dominions of Her Catholic Majesty.

XX. The Consul-General, Consuls, Vice-Consuls, or Consular Agents of Her Catholic Majesty are to issue the requisite passport, free of charge, to all subjects of Morocco proceeding to Spain, and they will not be allowed to enter the Spanish dominions without it.

XXI. If this Treaty between the two Contracting Parties be infringed, and a war (which God forbid) be the consequence, all the officials and subjects of the Queen of Spain, and all those under her protection, of whatever class or category they may be, who may then be in the dominions of the Sultan of Morocco, shall be at liberty to proceed to any part of the world they choose, and to take with them their goods and property, their families and servants, whether natural-born Spaniards or not, and they shall be allowed to embark on board of any vessel of any nation they like. They shall also be allowed a delay of 6 months, should they ask for it, to arrange their affairs, sell their goods, or dispose of their property according to their will; and during the said delay of 6 months, they shall enjoy complete security and entire liberty in their persons and property, without interference, injury, or embarrassment of any kind, on account of the said war. The Governors and authorities shall assist and aid them in settling their affairs, and shall protect them in the recovery of their debts, without hesitation, controversy, or delay.

The same facilities shall be given to subjects of the Sultan of Morocco in all the dominions of Spain.

In the unexpected case of a rupture, His Majesty the Sultan of Morocco engages to treat Spanish officers, soldiers, and seamen taken during the war, as prisoners of war and not as slaves, exchanging them, without distinction of persons, class or rank, as soon as possible, in no case detaining them more than a year from the time of their capture, and a receipt shall be required for them on their delivery, in order to arrange for the subsequent exchange; women, children, and old men, shall not be considered as prisoners of war, and when taken prisoners, shall be set at liberty at once and returned to their country in neutral vessels, or vessels bearing a flag of truce; the expenses of this conveyance to be borne by the nation to whom the prisoners belong: Her Catholic Majesty also engages to observe the above (stipulations) and the two High Contracting Parties engage their royal word for the exact fulfilment of the provisions of this Article. If at the close of the war there should be any excess of prisoners, this matter shall be regarded as settled, and no reclamation shall be made on the subject, the receipts being returned by the party holding them.

XXII. If a Spanish subject dies in the dominions of the Sultan of Morocco, no native Governor or official shall, under any pretext, dispose of the goods or property of the deceased, and no person shall interfere with them.



The persons appointed by the deceased for the purpose, and made his heirs in his will, shall enter at once into possession of all his property, goods, and everything in his possession at the time of his death, if they are present on the spot; and if absent, the Consul-General, Consul, Vice-Consul, Consular Agent, or whoever they may appoint to do so, shall take possession of the deceased's property and effects, after having made an inventory expressing each object clearly, until such time as they may deliver them to the heirs. But if the deceased should have died intestate, the Consul-General, Consul, Vice-Consul, Consular Agent, or their delegate, shall be empowered to take possession of the estate, and keep it for the persons entitled by law to inherit it. If the deceased shall have money owing to him by subjects of Morocco, the Governor of the city or the competent authorities, shall oblige the debtors to pay their debts to the Consul-General, Consul, Vice-Consul, Consular Agent, or their delegate; and if, on the contrary, the deceased shall have left debts to any subject of the Sultan of Morocco, the Consul-General, Consul, Vice-Consul, Consular Agent, or their delegate, shall assist the creditor to recover his claim from the intestate estate or under the will.

If a subject of Morocco dies in Spain, the Commandant, Governor, or Justice of the district, shall take possession of all he leaves, and shall inform the said Spanish Consul-General of the same, sending him a note of the property, in order that he may inform the heirs, and effect its recovery without loss.

XXIII. Vessels of both nations may touch freely at the ports belonging to either of them.

Merchant-vessels must be provided with papers from the proper authorities, and may remain in the said ports as long as necessary, in order to carry on commercial operations.

XXIV. Any Morocco vessel which sails from a port, bound to Spain, must have the manifest of her cargo, and the bill of health legalized by the Spanish Consul, Vice-Consul, or Consular Agent at the port of departure.

XXV. In order to avoid the abuses which may arise from the free navigation of the Ribbian "Carabos," the two Contracting Parties have agreed that the masters or patrons of the said boats shall provide themselves with a passport from the Governors of Spanish fortresses on the coast of the Mediterranean, or from the Spanish Consuls, when they shall fit out in a port where one of these Agents resides; the said document shall be delivered to them gratis, and shall serve as a safe conduct for their legitimate traffic.

XXVI. Her Catholic Majesty and His Majesty the Sultan of Morocco engage to put down piracy by all the means in their power; and His said Majesty particularly engages to use every effort to discover and punish, both on the coasts and in the interior of his dominions, all those who are guilty of this crime, and also to assist Her Catholic Majesty in doing the same.

XXVII. As a proof of the good harmony which is to exist between the two nations, whenever Morocco vessels shall seize an enemy's vessel, and any Spanish seamen, passengers, or property, which may belong to subjects of Her Catholic Majesty shall be found on board, they and

their goods and effects shall be freely given up to the Consul-General, if the captors return to any port of Morocco ; but if previous to so doing, they touch at any port in Spain, they shall deliver them in a like manner to the Commandant or Governor, and in case they are unable to do either the one or the other, they shall leave them in full security at the first friendly port they touch at.

The captains of Spanish vessels shall adopt the same practice with regard to the persons and property of the Sultan of Morocco's subjects found on board of vessels taken from the enemy ; this good harmony, and the respect due to the flag of both Sovereigns being such as to liberate the persons and property of subjects of an enemy to one or the other nation, sailing in Spanish or Morocco vessels with legal passports, stating the luggage or effects which belong to them, when the said property shall not be of a class prohibited by the rights of war.

XXVIII. If a Spanish vessel, with letters of marque in due form, should capture a vessel and take refuge with her in the Sultan of Morocco's dominions, the captors shall have a right to sell her and her cargo, without hindrance from any person, and shall be free to leave with their prize and take her to any other place they may please.

XXIX. If men-of-war or merchant-vessels of either nation, should be attacked by ships of any country which may be at war with one of them, in ports or in places where there are fortresses, they shall be protected by their fire, the enemy's vessels being prevented from committing any act of hostility, and from leaving the ports until 24 hours after the friendly vessels shall have sailed.

The two Contracting Parties engage also to demand reciprocally the restitution, from the enemy of either of them, of the prizes made within 3 miles of their coasts, or within view of them, when on account of its not being able to approach the land, the vessel captured should have been riding at anchor.

Finally, they shall prohibit the sale in their ports of vessels of war or merchant-vessels captured on the high seas by any other Power at war with Spain or Morocco ; and in case (the captors) should enter their ports with a prize of one of the two nations taken in the vicinity of their coasts, in the manner above stated, they shall immediately declare her to be free, and oblige the captors to give her up, with all the property, crew, &c., they may have taken.

XXX. Ships of war or merchant vessels belonging to both nations meeting on the high seas, and requiring provisions, water, or any other essential thing to enable them to continue their voyage, shall supply each other mutually to the best of their power, and such supplies shall be paid for at the current value.

XXXI. In case of a Spanish man-of-war or merchant vessel entering a port or haven of the Sultan of Morocco, and being in want of provisions, the said vessel shall be provided with them free of duty at market prices ; the quantity of provisions must not exceed what is required for the maintenance of the captain and crew during their voyage to their destination, but the vessel may also be supplied with necessaries for the daily maintenance of the crew while anchored in a Morocco port.

XXXII. Vessels freighted by order of the Spanish Government to convey official or private correspondence, or under contract for the

said service, shall be respected and enjoy the privileges of vessels of war, if they do not carry merchandize from or to a port of the Sultan of Morocco, as in the latter case they shall pay the same dues as a merchant vessel.

XXXIII. If a Spanish vessel should arrive on the coast of Morocco and not wish to enter a port, or to declare or sell her cargo, she shall not be obliged to do so, nor shall she be examined under any pretext ; but a Custom-House guard may be placed on board, during the time she may remain at anchor, to prevent any fraudulent transaction.

XXXIV. If a Spanish vessel having a cargo on board should enter any port of the Sultan of Morocco, and only wish to land the portion of her cargo destined for that place, she shall only pay the duties corresponding to the said portion, and she shall not be obliged to pay duty on what remains on board, but she shall be at liberty to proceed with it to her destination.

The manifest of the cargo shall be presented on the ship's arrival to the Custom-House officials of Morocco, in order that they may grant permission for the vessel to be examined on her arrival and previous to her departure, or to place a guard on board to prevent any illegal traffic.

The same rule shall be observed in Spanish ports, with respect to Morocco vessels.

The Spanish Consular Agent shall deliver to the master of each vessel, on her leaving a port of Morocco, a certificate of the manifest of the cargo, stating the articles exported. The masters shall present this document to the directors of the Morocco Custom-Houses, when these latter shall request to see it, in order that they may convince themselves, that no articles of contraband have been embarked.

XXXV. No captain of a Spanish vessel in a port of Morocco and no captain of a Morocco vessel in a port of Spain, shall be compelled against his will, to convey passengers or merchandize of any kind, nor shall they be compelled to proceed to any place against their will, and their vessels shall be free from all molestation.

XXXVI. If a subject of the Sultan of Morocco should freight a Spanish vessel to convey merchandize or passengers from one place to another in the Morocco dominions, and if during the course of the voyage she should be forced to put into another port of the said dominions, through stress of weather, or an accident at sea, the captain shall not be obliged to pay anchorage or any other dues, on account of his having entered the said port ; but if she should discharge or take in cargo at that port, she shall be treated like any other vessel.

XXXVII. If a Spanish vessel be damaged at sea and enter a port of the Sultan of Morocco, to effect repairs, she shall be admitted and every assistance shall be given to her during her stay on account of repairs, or until she leaves for her destination. If the articles required to repair the vessel be sold in the port, they may be purchased and paid for at the prices given by other vessels, and the vessel shall not be molested or prevented from proceeding on her voyage on any account.

XXXVIII. If a Spanish vessel of war or merchant ship get aground or be wrecked on any part of the coasts of Morocco, she shall be respected and assisted in every way, in conformity with the laws of friendship,

and the said vessel and everything in her shall be taken care of and returned to her owners, or to the Spanish Consul-General, Consul, Vice-Consul, Consular Agent or person appointed by them, without deterioration or concealment of any kind. If the wreck should have any articles on board, which the owners may be anxious to sell in Morocco, they shall be at liberty to do so without payment of any duty either for selling or embarking them.

The captain and crew shall be at liberty to proceed to any place they choose and when they like, and no obstacles shall be raised to their so doing.

The vessels of the Sultan of Morocco, or those of his subjects, shall be treated in the same manner in the dominions of Her Catholic Majesty; the said Morocco vessels being considered, in this case, in all that refers to the salvage, as Spanish vessels. If a Spanish vessel be wrecked at Bad-Nun or on any other part of his coast, the Sultan of Morocco shall make use of his authority to save and protect the master and crew until they return to their country, and the Spanish Consul-General, Consul, Vice-Consul, Consular Agent, or person appointed by them, shall be allowed to collect every information they may require relative to the master and crew of the said vessel in order to save them. The Governors in the service of the Sultan of Morocco, shall likewise assist the Spanish Consul-General, Consul, Vice-Consul, Consular Agent or person appointed by them, in their investigations, according to the laws of friendship.

XXXIX. The charges on Spanish merchant vessels in the ports of Morocco, for anchorage and port dues, shall be from 20 to 80 reals on each vessel, according to her class and tonnage, and in conformity with the following

*Tariff of Anchorage and Port Dues.*

	Reals vellon.
Vessels up to 50 tons . . . . .	20 about 4s.
„ from 50 to 100 . . . . .	40 „ 8s.
„ „ 100 to 150 . . . . .	60 „ 12s.
„ „ 150 to upwards . . . . .	80 „ 16s.

XL. No dues except such as are imposed on the national vessels, or on those belonging to the most favoured nation, shall be levied in the ports of Morocco on Spanish ships for pilotage, harbour-master's dues, &c.

These dues can never in any case exceed the under-mentioned :

*Obligatory Pilotage at Rabbat and Larache.*

	Centimes of a Real.
For each ton on vessels entering the port . . . . .	80 (about 2d.)
On their leaving . . . . .	80 ( „ 2d.)

*Pilotage at the discretion of Captains in the Ports of Morocco.*

	Centimes of a Real.
For each ton on vessels entering the port . . . . .	40 (about 1d.)
On their leaving . . . . .	40 ( „ 1d.)

The harbour-master's dues shall not exceed eight reals vellon (about 1s. 6d.) per vessel of any size.

The above dues, and all others, shall be the same in all the ports of the Empire.

XLI. Spanish vessels which put into port through stress of weather, and which do not enter into any commercial transaction, shall be exempted from the payment of all kinds of anchorage and harbour-master's dues, but are subject as to pilotage to the above-mentioned regulations.

Fishing boats shall be exempted from all kinds of dues.

XLII. Vessels of war belonging to one of the two nations, shall pay nothing in the ports of the other for anchorage and harbour-master's dues, nor others of any kind for the provisions, water, wood, coals, and fresh provisions which they may require.

XLIII. It having been found from experience that the want of lights on the northern coasts of Morocco, exposes navigation and commerce to serious risk and loss, and His Majesty the Sultan of Morocco being desirous of contributing to the security of the former and extension of the latter, in so far as lies in his power, engages to construct a lighthouse on Cape Espartel, and to attend to its lighting and preservation.

XLIV. There shall be reciprocal free trade between the dominions of Her Catholic Majesty and those of the Sultan of Morocco.

Her Catholic Majesty's subjects may trade in any part of the territory of Morocco in which natives of other foreign countries are admitted, or shall be hereafter admitted.

Spanish subjects may purchase or sell either wholesale or retail, all articles which are not prohibited, in all parts of the Empire of Morocco, and their interests shall not be injured by any exclusive monopoly, contract, or privilege of purchase or sale. They shall also enjoy all the rights, prerogatives, and commercial advantages which may hereafter be conceded to the subjects or citizens of the most favoured nation.

The subjects of the Sultan of Morocco shall also enjoy in Spain, the same privileges and protection as are at present enjoyed, or as may hereafter be conceded to the subjects or citizens of the most favoured nation.

XLV. The subjects of Her Catholic Majesty and those of His Majesty the Sultan of Morocco shall enjoy perfect freedom of communication with the fortresses of Ceuta and Melilla and their neighbourhood, and may purchase and sell by retail all provisions and goods the importation and exportation of which are not prohibited in the Empire of Morocco. The authorities and officials of the Sultan of Morocco, and those of the said fortresses of Ceuta and Melilla, shall protect the subjects of the two Sovereigns in the exercise of this right.

XLVI. With the exception of the duty on exports mentioned in Article L, no Custom-House, transit, or other duty, shall, under any pretext, or by any person, be charged in the territory of Morocco, upon merchandize or productions purchased for or in the name of a Spanish subject for exportation; and the said merchandize or productions shall be conveyed from any part of Morocco to the ports and embarked free of duty and exempt from Custom-House, transit, or other charges. No pass or similar document shall be required in order to bring them into and embark them in the ports of Morocco, nor shall any official or subject of the

Sultan of Morocco prevent or raise obstacles to the conveyance or embarkation of the said merchandize or productions (except to that of articles the exportation of which shall have been prohibited by the Sultan of Morocco), nor shall any money be levied on the said merchandize under any pretext, and in case any official or subject of the Sultan of Morocco shall act in contravention of this stipulation, his Sovereign shall immediately punish him severely and do full justice to the Spanish subjects, indemnifying them for all damages and losses they may have suffered and can prove.

XLVII. Spanish merchants in Morocco shall have the free direction of their own affairs, or may put them into the hands of brokers or agents appointed by themselves, and they shall not be interfered with, nor shall obstacles be raised to the free choice of the persons to fulfil this charge. Nor shall they be obliged to pay a salary or remuneration to persons whom they may not have chosen to appoint for such duties. Subjects of the Sultan of Morocco who may perform these duties, shall be treated and considered as the rest of the subjects of Morocco.

The buyer and seller shall be free to transact their business together, and no intervention whatsoever shall be allowed on the part of the Morocco officials. If any Governor or other functionary should interfere in transactions between Spanish subjects and the natives of Morocco, or should place any impediment in the way of legal purchase and sale in the dominions of the Sultan of Morocco, of goods or merchandize either imported or exported, His Majesty of Morocco will severely punish the said Governor or official.

XLVIII. Although His Majesty of Morocco may have some good reason for prohibiting the exportation of grain from his dominions, or that of any other class of commercial goods or effects, he shall not prevent Spaniards from embarking in the ports of Morocco, those they may have in store or may have purchased previous to the prohibition (even if still in the possession of His Majesty of Morocco's subjects), just as if, in fact, the said prohibition had not been made, and without the least molestation or prejudice to their interests.

The same practice shall be observed in Spain, in similar cases, with regard to natives of Morocco.

XLIX. The merchandize and produce imported into ports of Morocco by Spanish subjects, from any place or country, shall not be prohibited in the territory of the Sultan of Morocco, nor pay a higher duty, from the date of this Treaty, than that paid on similar goods or produce by the subjects of any other foreign Power or by natives of the country.

All the productions of Morocco may be exported by Spanish subjects from the ports of Morocco, with the same advantages as are enjoyed by the natives or by subjects of any other country.

L. In order to afford greater facilities to the commerce between Spain and Morocco, His Majesty the Sultan of Morocco engages by the present (Treaty) that the duties to be levied on articles imported into his dominions by Spanish subjects, shall not exceed 10 per cent. on their value at the place where they are landed; and that the duties to be levied on articles exported from Morocco by Spanish subjects, shall not exceed the amounts specified in the following

*Tariff of Exportation.*

Articles.		Dollars.*	Ounces.†
Wheat, measured with a strickle . . . . .	per fanega	1	
Indian corn and "Aldorá," heaped. . . . .	"	$\frac{1}{2}$	
Barley, measured with a strickle . . . . .	"	$\frac{1}{2}$	
All other kinds of grain . . . . .	per quintal	$\frac{1}{2}$	
Flour . . . . .	"		30
Canary seed . . . . .	"		12
Dates . . . . .	"		40
Almonds . . . . .	"		35
Oranges, lemons, and limes . . . . .	per 1000		12
Wild marjoram . . . . .	per quintal		10
Cumin seed . . . . .	"		20
Oil . . . . .	"		50
Gum . . . . .	"		20
Eastern privet or Eastern alcanna . . . . .	"		15
Wax . . . . .	"		120
Rice . . . . .	"		16
Wool (washed) . . . . .	"		80
Wool (unwashed) . . . . .	"		55
Leather, sheep or goat's skin . . . . .	"		36
Tanned hides, called Morocco leather, "za- wani," and pigs' hides . . . . .	"		100
Horns of animals . . . . .	per 1000		20
Grease . . . . .	per quintal		50
Mules . . . . .	per head	25	
Donkeys . . . . .	"	5	
Sheep . . . . .	"	1	
Goats . . . . .	"		15
Fowls . . . . .	per dozen		22
Eggs . . . . .	per 1000		51
Slippers . . . . .	per 100		70
Porcupine quills . . . . .	per 1000		5
Saponaceous chalk . . . . .	per quintal		15
Ostrich feathers . . . . .	per lb.		36
Panniers . . . . .	per 100		30
Caraway seed . . . . .	per quintal		20
Wooden combs . . . . .	per 100		5
Horsehair or goat's hair . . . . .	per quintal		30
Raisins . . . . .	"		20
Woollen sashes, called "cresi" . . . . .	per 100		100
"Tackacot" (coloured) . . . . .	per quintal		20
Undressed sheepskins . . . . .	"		36
Hemp and flax. . . . .	"		40

If the Sultan of Morocco in virtue of his right should prohibit the exportation of any articles and afterwards revoke the prohibition, the duties established by this tariff shall not be altered.

With respect to wheat and barley, if the Sultan of Morocco should think proper to prohibit their exportation, but at the same time wish to sell to the merchants the grain belonging to the Government, he

\* The value of the Spanish dollar at the par of exchange of 100 reals per pound sterling is 4 shillings.—(Note of Translator.)

† The present value of the coin known as an "ounce" in Morocco, is of 22 maravedis, or about 2 pence sterling.—(*Ibid.*)

shall do so with all the conditions and advantages enjoyed by the most favoured nation.

If the Sultan of Morocco should wish to reduce the duty on articles of exportation, he can do so, and Spanish subjects shall in this case pay the lowest amount of duty paid by natives of the country or by foreigners.

Morocco subjects shall pay in Spain, on merchandise belonging to them, the importation and exportation of which is legal, the same duties as are paid by subjects of the most favoured nation.

LI. His Majesty the Sultan of Morocco being desirous, in fulfilment of the stipulations of Article XV of the Treaty of Peace signed in Tetuan on the 26th of April, 1860, to facilitate in so far as possible, the extraction of timber for the use of Her Catholic Majesty's dockyards, agrees to concede to Spanish subjects, especially authorized for the purpose by their Sovereign, the right to cut timber in the forests of his dominions, where it can be done without compromising the security of the country, or of the persons employed to do it; erecting for the purpose the huts, coverings, and inclosures indispensable to protect them from the weather, to keep their tools and store the wood cut; and they shall enjoy complete freedom and be protected by the native authorities.

The contract between the Government of Morocco and Her Catholic Majesty's subjects charged with cutting this timber, to determine the price and conditions of the work, shall be made through the intervention of the representative of Spain in Morocco, and he shall see that both parties attend to the exact fulfilment of their agreement. All differences which may arise shall be settled in final resort by mutual agreement between the respective Governments.

The duty on the exportation of wood for Her Catholic Majesty's arsenals shall not exceed 240 reals vellon per 100 planks, as heretofore.

LII. If a Spanish subject, or his agent, should wish to convey by sea, from one port to another of the Sultan of Morocco's dominions, merchandise on which the duty of 10 per cent. has already been paid, it shall not be subject to the payment of other duties either at its embarkation or landing, provided it be accompanied by a certificate from the Morocco Custom-House.

LIII. All articles produced or manufactured in Morocco, and purchased by a Spanish merchant or his agents, with the intention of exporting them, shall be conveyed free of all duty or charges to the place where they are to be embarked in the ports. At their exportation they shall only pay the duty indicated in the tariff contained in Article L.

LIV. Spanish subjects shall employ the lighters belonging to the Morocco Government to embark or land merchandize from their vessels in the ports of Morocco; but if two days after the arrival of a vessel the Government have not placed their lighters at the disposal of the parties interested in these operations for the purpose indicated, the said Spanish subjects may make use of private lighters, and in that case they shall only pay to the port authorities half the dues they would have paid had they employed the Government lighters.

The duty on transhipments, which is now paid in the ports of Morocco, shall not be increased, and the Director of the Custom-House of the



port shall provide the Spanish Consul, Vice-Consul, or Consular Agent, with a copy of the tariff of those duties for his information.

LV. The Articles of this Treaty shall be applicable to all the fortresses and ports of Morocco open to foreign commerce, or which may hereafter be opened, as well in the Mediterranean as in the Atlantic.

LVI. If a Spanish subject should fraudulently import contraband merchandise of any description whatsoever into Morocco, or should export such therefrom, the goods shall be confiscated, and the defrauder given up to the Consul, Vice-Consul, or Consular Agent of Spain, in order that he may be punished according to his offence.

Subjects of Morocco engaged in smuggling in Spain shall be treated in the same manner; they shall be apprehended and given up to Her Catholic Majesty's Consul-General, with an account of their offence, in order that the Morocco Government may inflict the proper punishment on them.

LVII. Spanish subjects, whether inhabitants of the Peninsula, Canary Islands, Balearic Islands, or the possessions of Her Catholic Majesty on the continent of Africa, shall have a right to fish on the coasts of the Empire of Morocco.

LVIII. Spanish vessels intending to fish on the coasts of Morocco must have a permit from the marine authorities of Spain, which they can exhibit, if necessary, to the Morocco authorities, at the place nearest to the spot where they intend to fish.

LIX. When a Spanish fishing vessel shall be suspected of smuggling on the coasts of Morocco, the authorities thereof shall denounce her at once to the nearest Spanish Consul or Consular Agent, in order that he may examine the charge, and cause the master or captain to be acquitted or punished by his superiors, according to the laws and regulations in force in Spain.

LX. In order to facilitate the coral fishery carried on by Spaniards on the coast of Morocco, the High Contracting Parties agree that Spanish boats may carry on the said fishery on all the coasts of the Empire of Morocco, on payment of a fixed and invariable annual sum of 150 dollars for each vessel engaged in the coral fishery.

The captains or masters of vessels about to engage in the said fishery shall address their demands to the Representative of Spain in Morocco, who will forward them to the Commissioner for Foreign Affairs of His Majesty the Sultan, who shall grant the necessary authorization, without delay or difficulty, and he shall receive from the masters themselves, interested in the matter, the corresponding amount of duty, and he shall provide them with a document stating they have obtained a right to fish for coral by the payment of the sum stipulated in this Article.

Masters of Spanish vessels who shall be found engaged in the coral fishery unprovided with the said document proving that they have obtained a right to fish, shall be punished by the said Representative of Her Catholic Majesty.

The penalties shall be in proportion to the nature of the offence.

LXI. All former stipulations between Spain and Morocco are annulled by the present Treaty, with the exception of the Convention signed in Tetuan on the 24th of August, 1859, and the Treaties concluded in the

same city of Tetuan, and at this court, on the 26th of April, 1860, and the 30th of October this year, which shall be in full force and vigour in so far as they are not opposed to the provisions of the present Treaty.

LXII. This Treaty shall be published and notified to the subjects of both Powers, in order that none of them may be ignorant of its conditions, and copies of it shall be sent to the governors and authorities for its exact fulfilment.

LXIII. In order to enable the High Contracting Parties hereafter to discuss and agree upon other arrangements to facilitate still further their mutual relations, and contribute to the interests of their respective subjects, it is agreed, that after ten years have transpired from the day of the exchange of the ratifications of the present Treaty, either of the two Contracting Parties shall have a right to demand the modification of the Treaty; but until such modification shall have taken place by mutual agreement, or a new Treaty shall have been concluded and ratified, the present one shall continue in full force and vigour.

LXIV. The present Treaty shall be ratified by Her Majesty the Queen of Spain and by His Majesty the Sultan of Morocco, and the exchange of the ratifications shall be effected in Tangier within the term of 50 days, or sooner, if possible. 4 copies shall be signed and sealed of this Treaty; one for Her Catholic Majesty, one for His Majesty of Morocco, one to remain in the hands of the Chargé d'Affaires of Spain in Morocco, and one in those of the Minister for Foreign Affairs of this Kingdom, each of the two Contracting Parties being careful to cause all the stipulations contained in the Articles composing the Treaty to be observed most punctually.

In faith whereof we the Undersigned Plenipotentiaries have signed and sealed it with our respective seals, in Madrid, on the 20th of November, in the year 1861 of the Christian era, which corresponds with the 17th of Chumeda, the first of 1278 of the Hegira.

(L.S.) SATURNINO CALDERON COLLANTES.

(L.S.) EL ABBAS.

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*Annex No. 23*

ADDITIONAL ARTICLES TO THE TREATY  
BETWEEN MOROCCO AND FRANCE OF MAY 28, 1767,  
DATED MAY 17, 1824

*Source: Rouard de Card, Les Traités Entre la France et le Maroc (1898), 211.*

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DOCUMENT N° 6

*Articles additionnels au traité de 1767 entre la France et le Maroc, conclu à Wuarga, le 17 mai 1824*

Gloire à Dieu qui est unique. Loin de nous, Grand Dieu, les attributs qu'ils vous donnent!

Le consul de France, Sourdeau, après avoir remis à Notre Majesté une lettre du Roi Louis XVIII et nous avoir présenté le Traité de paix qu'il dit avoir été fait entre nos illustres aïeux (que Dieu sanctifie leurs cendres) et la nation française, nous ayant demandé de marcher sur les traces des mêmes ancêtres auxquels nous avons succédé, nous en confirmons les vingt articles ci-contre, dont le premier commence par ces mots : *le présent Traité a pour base*, et le dernier par ceux-ci : *si le présent Traité vient à être rompu*. Vu l'amitié que la Nation française porte à notre Cour, et son attention pour ce qui regarde nos affaires, raison qui nous la fait distinguer des autres Puissances, et préférer dans notre amitié, nous voulons que tous nos officiers chargés d'exécuter nos ordres, aient pour son consul, ses gens et ceux attachés à lui, toutes sortes d'égards et de considération, et cela à cause de l'estime méritée que nous avons pour sa nation.

1° De plus, nous accordons aux armements de guerre français, lorsqu'ils amèneront dans nos ports protégés de Dieu des prises faites au-delà de la portée de nos canons et hors de notre protection, sur des nations chrétiennes avec lesquelles ils seraient en guerre, la faculté entière de les vendre, s'ils le veulent, sans qu'ils en soient empêchés par aucun des officiers exécuteurs de nos ordres, sous la condition de payer les droits de douanes voulu par l'usage ; — 2° Pareillement, les armements de guerre français qui se rendront dans nos ports protégés de Dieu, et qui auront besoin de s'approvisionner en bœufs, poules et autres articles de subsistance, en sus de ce qu'ils chargent ordinairement sans payer de droits, le chargeront ; mais ils paieront les droits de douane qui existeront, lorsqu'ils opéreront leurs chargements.

Cet ordre a été rendu le 18 ramadan très-révéré l'an 1239 (17 mai 1824).

SOURDEAU, Consul général  
Chargé d'affaires du Roi au Maroc.

(Grand sceau de l'Empereur)  
MULEI-ABD-EL-RHAHAMAN

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*Annex No. 24*

ADDITIONAL ARTICLES TO THE TREATY  
BETWEEN MOROCCO AND FRANCE OF MAY 28, 1767,  
DATED MAY 28, 1825

*Source: Rouard de Card, Les Traités Entre la France et le Maroc (1898), 212.*

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*Articles additionnels conclus le 28 mai 1825, entre la France et le Maroc, portant renouvellement des traités subsistants entre les deux Empires*

Gloire à Dieu, lui seul suffit. Salut à ceux de ses serviteurs qu'il a élus.  
(Ici le sceau de l'Empereur du Maroc).

Ce rescrit respectable de N. M. est pour faire connaître clairement que sur l'envoi que S. M. le Roi Louis fit à N. M. d'un ambassadeur français pour renouveler le traité passé entre nos aïeux (que Dieu

leur soit propice) et ses ancêtres, et confirmer les articles de la paix et de la bonne union qui existent entre les deux Empires, nous avons rempli ses désirs et satisfait à ses demandes par l'article additionnel scellé de notre sceau impérial, inscrit à la page ci-après et placé au dos du premier article du traité.

Peu après la ratification, le souverain susdit mourut ; et son frère, notre ami, le Très Haut et Très Fortuné Roi Charles, étant monté au trône de ses ancêtres, nous a adressé une députation avec une lettre de sa part que nous recevons actuellement, pour nous demander de renouveler le Traité et d'en assurer les bases en le confirmant. Pour satisfaire à ces intentions et désirant d'autant plus maintenir la paix et les Traités, que le Gouvernement français est auprès de notre cour, le plus favorisé, parce que de tout temps, il s'est étudié à faire ce qui pouvait nous être agréable et être utile à notre service, nous suivrons le traité dans toute sa teneur et nous vivrons avec S. M. dans le même état de paix, bonne union et affection sincère qui a existé, sans y porter la moindre atteinte, ni l'altérer en rien, s'il plaît à Dieu.

C'est à ces causes que nous émanons le présent Ordre impérial et exécutoire. Fait le 10 de Chaoual, mois très béni en 1240 (26 mai 1825).

Et enfin nous ferons pour la Nation française ce que nous ferons pour celle des Nations chrétiennes la mieux accueillie et la plus favorisée de notre Cour.

Approuvé ce dernier paragraphe portant la même date que dessus (sceau de l'Empereur).

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*Annex No. 25*

TREATY BETWEEN MOROCCO AND SARDINIA  
OF JUNE 30, 1825

*Source : 98 British and Foreign State Papers, 975-980.*

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*TREATY of Friendship and Commerce between the Kingdom of Sardinia and Morocco.—June 30, 1825 \**

[Translation]

ART. I. Perpetual peace and friendship is assured, together with the establishment in the Empire of a Consul of our own, who shall be chosen among our subjects.

II. The subjects of the two States shall carry on commerce by sea and land in complete security, without provoking molestation, opposition, or displeasure, and shall enjoy reciprocally in either State the same advantages as are accorded to the most favoured nation.

III. The Consuls and other Consular officials of one of the two States shall enjoy in the other the same advantages, favours, privileges, protec-

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\* As communicated in a Royal letter addressed to the Admiralty Council on the 6th October 1825. The Treaty was concluded by the Sardinian Consul, Girolamo Ermirio, but there is nothing to show where it was signed.

tion, and consideration as are enjoyed by those of the most favoured nation.

IV. Our subjects shall not be compelled to furnish cannon, gunpowder, or other munitions of war, and the vessels covered by our flag shall not be detained by force in the States of the Emperor of Morocco, nor be compelled to convey any articles from a specified port to any other port, except voluntarily.

V. The passports, "scontrini", and other papers of the same nature required by our subjects for verification and recognition by Morocco ships, or in the States of Morocco, shall be given by our Ministers only to our subjects.

The recognition of the vessels of the two Powers shall be effected by the exhibition of the "scontrino" or "contrassigno". Small fishing-vessels and the like shall, however, be excepted from this requirement.

On the exhibition of the "scontrino", the corsairs of the Emperor of Morocco, when they encounter at sea merchant-vessels under our flag, shall not detain them nor delay their voyage, nor shall they board them for the purpose of inspecting their cargo, or communicate with them, so that they may not be obliged to undergo quarantine in their port of destination.

In case of urgency, should one be in need of the assistance of the other under any circumstances whatever, it shall be permitted to the one to help the other, as between friends who are in good harmony.

Our ships of war shall conduct themselves in the same manner towards the ships of war or merchant-vessels of Morocco, and shall only require the exhibition of the papers given by their Consul residing at the port from which they may have set out.

VI. When a ship of war of one of the two Powers shall meet a merchant-vessel of the other, the Commander of the ship of war shall not oblige the master of the merchant-vessel to come on board in his boat to exhibit his papers, but the Commander of the ship of war shall himself lower his launch into the water and go on board the other.

If the papers give rise to any suspicion which can only be put an end to by an examination, the Commander shall not permit any one to go on board, but shall intrust the visit to a person in authority.

If such proceeding shall result in any loss to the ship or her cargo, he who shall have occasioned the loss shall be punished, and shall make good the damage, or condemned to pay for what shall have been lost.

VII. Should a ship of war of the Emperor of Morocco capture a vessel belonging to a Power with whom he may be at war, and should any of our subjects be found on board the same, they shall not be subjected to any unpleasantness, but shall be free in their persons, their effects, and their merchandize, and shall be forwarded, with their property, to a port in the Empire of Morocco at which there may be one of our Consular officials, or in a port of another Power at peace with the Emperor. If sent to a port in one of our States, they shall be handed over to the Commandant of the place.

Commanders of our ships of war will act in the same manner towards subjects of Morocco.

VIII. When a Sardinian vessel pursued by an enemy takes refuge within cannon-shot of the coasts of the States of the Emperor of Morocco,

she shall be protected and defended as far as possible, and the Commandant of the coast shall require the enemy ship to depart at once, or shall detain her for such time after the departure of the Sardinian vessel as is customary by maritime rules.

The same practice shall be observed towards vessels of the Emperor which, pursued by an enemy, take refuge on the coasts of our dominions.

IX. All vessels belonging to the subjects of the Emperor of Morocco which leave the ports or coasts of the Empire, on their arrival at the ports or coasts of our dominions shall be obliged to undergo quarantine at the places established for that purpose, or in any other place that may be indicated. On the termination of the quarantine they may enter any of our ports that they may desire.

Equally, the vessels covered by our flag approaching a port of Morocco shall be required to undergo quarantine at the places indicated for that purpose, and shall conform to such practices as are followed by other Powers in similar cases.

X. Our ships of war, on entering the ports of the dominions of the Emperor, shall be received in the same manner as the ships of war of any other Power at peace with the same, and shall embark provisions and anything else that may be required, in accordance with what is customary as regards other Powers most acceptable to the Emperor.

The same proceedings shall be followed as regards the armaments of Morocco on their approaching our ports.

XI. When one of our ships of war enters a port in the dominions of the Emperor, the Consul, or other authority discharging those functions, shall notify the fact to the local Commandant, in order that none of the prisoners that may be in the place shall take refuge on board, since, should a prisoner succeed in taking refuge on board, no person shall have the power to remove him, by reason of the respect due to our flag.

Moreover, no person shall make a demand for him of our Consul, nor shall the latter be liable to any other exactions on the same account.

The same proceedings shall be followed in our ports as regards the vessels of the Emperor of Morocco.

XII. It shall not be permitted to any ship of war of either Power to cast anchor in the neighbourhood of a port of the other in which may be anchored an enemy ship, in order to capture the latter on its departure ; nor to attack the enemy ship, should it be within cannon-shot. It shall likewise not be permitted to attack the anchored vessel at the same distance in a place where there are no cannon, in conformity with usage.

XIII. Should a vessel covered by our flag be driven ashore upon a coast of the States of the Emperor of Morocco by the action of the sea, the manœuvre of an enemy ship, or from any other cause, the Captain of the place and the inhabitants shall help to get her again afloat, and, if necessary, assist in removing her cargo and anything else she may carry, and shall not require of our Consul, of his Agent, or any person charged with such operations, or who has carried out the inspection, any expenses other than those actually incurred by the unloading, nor shall any customs dues on the merchandize be imposed. If, however, any of the goods shall be sold at the place, the duties leviable shall be paid, but, as regards the merchandize, this shall be again loaded into the vessel, or

into any other vessel at another place ; no dues or other taxes whatever shall be levied.

The assistance and succour stipulated can only be expected when the vessels shall approach the ports of Tetuan, Tangier, Laraiche, Saffee or Mogador, and Rabat, or other parts of the coast which may be inhabited, but not when approaching the shores of the desert, or places frequented by bad characters ("masnadieri").

XIV. We shall establish in the ports of Morocco Consuls and Vice-Consuls to assist the merchants, captains of vessels, and seamen, and to settle the questions that may arise between them without interference by the Governor of the place, unless the Consul should request his assistance against those who may refuse to accept his decisions. In such cases the assistance given shall be only such as is asked.

XV. Our Consul shall be at liberty to hoist our flag on his house and on the boat which shall convey him to vessels of his nation, as may be required. His residence shall be entitled to the same consideration and respect as those of the Consuls of other Powers.

XVI. No person shall hinder our Consul from establishing in his house a chapel for the performance, as regards our subjects, of the duties of our holy religion. The subjects of other Powers shall be able to take part in such ceremonies, should they so desire.

XVII. If any one of our subjects should die in the States of the Emperor of Morocco, the Consul shall regulate the succession, and shall proceed in accordance with judicial formalities either to dispose at will of the inheritance, or to consign it to the heirs of the deceased, without any interposition whatever of the laws of the country, or of the Governor of the place.

XVIII. Should one of our subjects in the States of Morocco raise his hand to beat a subject of the Emperor, justice between the two shall be administered in the presence of the Consul. If the offender takes flight, the Consul shall not be required to seek him out in order to compel his appearance. Similar proceedings shall be followed in the case of one who raises his hand to beat one of our subjects. He shall be punished according to his offence, but if he takes flight or reaches a place of asylum, the Governor shall have no power to search for him with that object.

XIX. If it should happen that the Treaty of Peace and Friendship between the two Powers should be broken (which God forbid), and that war should result, the two Sovereigns shall accord reciprocally a period of six months in order to give the subjects of the respective States entire liberty to dispose in the interval of their merchandise, or to transport it in safety to any other place that they may consider convenient, without any disturbance or impediment under the pretext of the existence of the rupture before mentioned. They shall be able to take with them their effects and their families, whether born in Mussulman territory or not.

Should a state of war exist between the two Powers, and one of them should capture a vessel of the other, the persons taken shall not be made slaves, but shall be detained solely with a view to their liberation. They shall be exchanged head for head, the captain and officers counting as ordinary seamen.

Prisoners shall not be detained longer than a year.

If there should be found on board the captured vessels of either of the Powers respectively boys of about 12 years of age, or old men of more than 60, or any women, they shall be sent wherever it may please them to go. The cost of their passages to the place selected by them shall be at their charge.

XX. The inhabitants of the Principality of Monaco are included in the Treaty equally with our subjects.

XXI. Should any dispute arise as to the meaning of any Article of this Treaty which may be read in two ways, and an agreement cannot be arrived at as to its interpretation, or the manner of executing it, peace shall not on that account be altered, but shall be preserved and consolidated, and the disputed point cleared up in the most convenient manner. During this discussion the subjects of the two nations shall enjoy full liberty in the execution of the present Treaty, and in their commerce. No person shall molest them, and war shall not arise between the two Powers, even should one of them refuse to submit to the course of justice.

XXII. If, in the States of Morocco, disturbances should arise between our subjects and subjects of Morocco, the difficulties shall be settled in equity and justice, for which purpose our subjects may present themselves before the Court, assisted by our Consul or other Consular official, or may be represented by an attorney. Appeal from the decision, whether favourable or otherwise, may be made to the Emperor.

On the other hand, should a question arise in our States, it shall be determined by the competent authority in the presence of the Consul of Morocco, or his agent or attorney, and if justice is not accorded appeal shall be made to a Supreme Judge, to whom shall appertain the jurisdiction in such a case.

XXIII. Any omission in any of the foregoing stipulations shall be remedied always to the advantage of the subjects of the two States.

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*Annex No. 26*

TREATY BETWEEN MOROCCO AND AUSTRIA OF  
MARCH 19, 1830

*Source: 98 British and Foreign State Papers, 980-983.*

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*TREATY of Peace and Commerce between Austria and Morocco.*  
*—Signed at Gibraltar, March 19, 1830*

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[Ratified by the Emperor of Austria, May 15, 1830.]

[Translation]

THE perpetual peace concluded in the year 1805 between Austria and Morocco having been unhappily disturbed by the capture of the Austrian merchant-vessel "Il Veloce", seized by a Morocco corsair in



the month of July 1828, and the Government of Morocco having satisfied the claims of the Austrian Government by the restitution of the Vessel in question, His Majesty the Emperor of Austria, King of Hungary and of Bohemia, &c., and His Highness the Sultan of Morocco, &c., wishing to manifest and consolidate the re-establishment of the good understanding between them, have resolved to renew perpetually for themselves, their heirs and successors, the Treaty of Peace and Commerce before-mentioned, but introducing into the same some alterations in Articles VIII and X. They have to this effect appointed as Delegates, that is to say :

His Majesty the Emperor of Austria, Signor Francesco Bandiera, Commander of the Imperial Order of Leopold of Austria, Cavalier of the Imperial Austrian Order of the Iron Crown of the second class, and of the Order of Christ of Portugal, Commanding the Naval Division of His Imperial Majesty in the West ; and Signor Guglielmo de Pfügl, Cavalier of the Imperial Order of Leopold of Austria, Commander of the Order of the Tower and Sword of Portugal, Councillor of Legation of his said Majesty ; and

His Highness the Sultan of Morocco, Signor Judah Benoliel, his Consul-General at Gibraltar ;

Who, in virtue of the authority with which they have been furnished, have agreed that the Treaty of Peace and Commerce concluded in the year 1805 between Austria and Morocco is renewed from the date of this day, and shall be preserved from this time forward and in perpetuity as follows :—

ART. I. The subjects of both the Powers shall comport themselves towards each other amicably and peaceably, and shall not allow to subsist between them any hostility or opposition whether by land or by sea, and whenever there may be occasion for requiring the assistance of the other, they should each render such assistance and lend to one another all friendly aid.

II. When a merchant-vessel meets a ship of war and the latter may wish to examine the navigation papers of the former, she shall send only two persons in the boat to verify the passport ("passaporto").

III. When a Morocco vessel of war meets at sea an Imperial and royal merchant-ship, the latter shall only be required on its own deck to show to the former its passport, the persons shall remain in the boat, and no person shall be permitted to go on board the ship, in order that the Imperial and Royal vessel may not be subjected to quarantine.

IV. Only a ship of war shall be permitted to examine the passport of a merchant-vessel, whenever she may meet with one at sea, and to compare the manifest with that in the possession of the captain.

V. When a vessel of the Contracting Powers shall have been driven on shore in a storm in the harbour itself or on any coast of the sea, all the merchandise and effects on board the vessel shall be placed in safety and under guard ; the inhabitants of the place in which the wrecked vessel may be shall watch over the same and, until the vessel, the merchandise, and the individuals and their effects can be placed in safety, it will be their duty to assist them in every way necessary, and if such vessel should be saved by the aid of God and should require repairs or refitting, it shall be afforded in order that the vessel may

proceed on her voyage. If an Imperial and Royal ship should be wrecked in one of the ports or on the coast of Morocco, and there should be any merchandise which the owner might not wish to sell in Morocco, but should desire to take back to his own country he shall not be bound to pay on that account any customs duty.

VI. No person a subject of either of the contracting countries should be led out of the other in a state of slavery, and if any such be found on board an enemy's ship, neither he nor his property shall be detained if it shall be shown that he is a subject of one of the Contracting Parties, nor shall any claim on that account, great or small, be put forward before either of the two Courts.

VII. It shall be permitted to Imperial and Royal merchants to visit at their pleasure any port of Morocco, and, reciprocally, to the merchants and vessels of Morocco to enter, at their pleasure, any port of His Imperial and Royal Majesty, in which the captain of the port shall observe all the same formalities towards the merchants that arrive there as are observed in the case of those of other nations. The merchants shall moreover be at liberty to sell their merchandise in the said ports, and to make purchases, at their pleasure, of all kinds, without any person being able to claim in respect of the same any customs dues beyond those ordinarily payable.

VIII. The merchandise placed on board Austrian vessels in the States of His Imperial and Royal Majesty, or on board vessels of other nations, and, generally, all merchandise shipped in any port in Austrian vessels, when it shall enter a port of His Highness the Sultan, shall pay the same customs dues as are payable by the most favoured Christian nation. As regards any goods that may not be unloaded from the ship, and which the owner desires to take away again with him, no taxes shall be payable.

IX. When an Imperial and Royal Consul, or his substitute, arrives in a port of Morocco, with the intention of looking after the vessels of his nationals, and to assist them in their affairs, he shall do so at his own house, and shall be at liberty to hoist the flag of his country in the same way as the Consuls of other countries at peace with Morocco are allowed to do, and to decide any controversies that may arise between his own nationals.

X. Should a war break out between other Christian and Mahomedan countries it shall not be allowed on any account to disturb the peace at present subsisting between Austria and Morocco, nor produce any other innovation, but the friendship and the peace shall continue between them. Should, however, war break out between one of the Contracting Parties and another country, no one belonging to either of the two Courts shall hinder those belonging to the other from navigating on the sea with their persons and property as in time of peace. The subjects of both Parties shall be at liberty to place on board any vessel whatever all that they wish to convey whether passengers or merchandise.

XI. Should the present peace, which may God preserve, undergo any alteration by lapse of time, or the present state of things be disturbed and peace changed into war, neither of the Contracting Parties shall allow the other to be affected thereby until after the

lapse of six months ; and if a subject of one of the two Courts finds himself in the States of the other, his person and property shall be respected and maintained in security until he can return to his own country, even should the above-mentioned period of six months have elapsed, and he shall not lose any portion of his property in the State of the other Party, in accordance with the requirements of the laws of justice.

XII. The present perpetual peace and friendship shall last for ever, and the Treaty of Commerce subsisting between the two Parties and established by the preceding Articles shall, with the will of God, never be destroyed by any circumstances, nor shall any additions or derogations take place.

In faith of which the above-named Delegates have signed the present Treaty, and have affixed thereto their respective seals.

Done at Gibraltar, the 19th March 1830.

(L.S.) BANDIERA.

(L.S.) PFLÜGL.

(L.S.) JUDAH BENOLIEL.

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*Annex No. 27*

TREATY BETWEEN MOROCCO AND THE NETHERLANDS OF  
MAY 18, 1858

*Source : I Riviere, Traités, Codes et Lois du Maroc, 47.*

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DÉCLARATION POUR RÉGLER LES RAPPORTS COMMERCIAUX ENTRE LES  
PAYS-BAS ET LE MAROC SIGNÉE LE 18 MAI 1858

*Cet acte ne contient qu'une clause : extension aux représentants et aux sujets des Pays-Bas du traitement de la nation la plus favorisée. C'est donc dans les accords signés avec les autres puissances qu'il faut chercher le statut des ressortissants hollandais au Maroc. La Hollande a d'ailleurs été partie à la Convention internationale de Madrid du 3 juillet 1880 (V. infra) et à l'Acte général de la Conférence d'Algésiras.*

*Le fait que ce pays a réglé ses rapports avec le Maroc par voie de simple référence s'explique par l'absence d'intérêts politiques et par le peu d'intérêt économique que cette puissance y possède. En 1920, le chiffre de son exportation sur le Maroc n'a été que de 6 millions, et celui de son importation du Maroc que de 319.000 francs.*

S. M. le Roi des Pays-Bas et S. M. le Sultan du Maroc et de Fez, désirant étendre les relations de commerce et de navigation qui existent entre leurs États et sujets respectifs, les soussignés : MM. John Hay Drummond Hay, chargé à l'intérim de la gestion du Consulat général néerlandais au Maroc, et Sid Mohammed Khatib, commissaire des

Affaires étrangères de S. M. le Sultan du Maroc, dûment autorisés par leurs Gouvernements, déclarent par la présente que les Consuls et sujets de l'un des deux États jouiront dans le domaine de l'autre, tant pour leurs personnes et leurs biens que pour tout ce qui concerne le commerce et la navigation, de la même protection et des mêmes privilèges qui ont été ou qui, par la suite, seront accordés à la nation la plus favorisée.

En foi de quoi, nous avons signé la présente déclaration et y avons apposé nos cachets.

Fait à Tanger, le 18 mai de l'an 1858.

J. H. DRUMMOND HAY.  
SID MOHAMMED KHATIB.

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*Annex No. 28*

TREATY BETWEEN MOROCCO AND BELGIUM  
OF JANUARY 4, 1862

*Source : I Riviere, Traités, Codes et Lois du Maroc (1924), 59.*

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TRAITÉ D'AMITIÉ, DE COMMERCE ET DE NAVIGATION CONCLU ENTRE LA  
BELGIQUE ET LE MAROC LE 4 JANVIER 1862

*De même que le traité hollandais de 1856, le traité belge de 1862 règle les rapports entre les deux puissances contractantes par voie de référence aux autres traités. La Belgique n'a jamais eu d'intérêts politiques au Maroc. Mais l'importance de son commerce avec ce pays s'est considérablement accru ces dernières années, puisque le chiffre de son exportation sur le Maroc est passé, de 1911 à 1922, de 825.000 francs à 32 millions ; celui de son importation, de 695.000 francs à plus de 7 millions 1/2.*

Au nom de Dieu,

Il n'y a de force et de puissance qu'en Dieu.

S. M. le Roi des Belges, d'une part, et S. M. le Sultan du Maroc, Roi de Fez, d'autre part, désirant cimenter, par la conclusion d'un traité, les bases de l'amitié et de la bonne intelligence entre la Belgique et le Maroc, afin que les sujets et commerçants des deux États soient reçus, honorés et protégés d'une égale manière dans leurs possessions respectives, ont nommé, à cet effet, pour leurs plénipotentiaires, savoir :

S. M. le Roi des Belges, le sieur Ernest Daluin, son Consul général à la Côte occidentale d'Afrique, commandeur de l'Ordre d'Isabelle la Catholique, et S. M. le Sultan du Maroc, le lettré Sidi el Abd-er-Rhaman el Aagi, son fidèle employé et ancien ambassadeur extraordinaire à Londres.

Lesquels, après s'être communiqué leurs pleins pouvoirs, sont convenus des articles suivants :

ARTICLE PREMIER. — Il y aura paix perpétuelle et amitié constante entre les États de S. M. le Roi des Belges et de S. M. Chérifienne, et entre les citoyens des deux pays.

ART. 2. — Les Agents diplomatiques et consulaires du Roi des Belges et les sujets belges, leur commerce et leurs navires jouiront, dans l'Empire du Maroc, de tous les avantages qui ont été ou qui, par la suite, seraient accordés à la nation la plus favorisée. Et, réciproquement, les Agents diplomatiques et consulaires du Sultan du Maroc et les sujets marocains, leur commerce et leurs navires, jouiront, dans le Royaume de Belgique, de tous les avantages qui ont été ou qui, par la suite, seront accordés à la nation la plus favorisée.

ART. 3. — Le présent traité sera mis en vigueur, s'il plaît à Dieu, après avoir été ratifié, et les ratifications en seront échangées dans le plus bref délai possible.

En foi de quoi les plénipotentiaires ont signé le présent traité et y ont apposé leur sceau.

Fait en double original en français et en arabe, à Tanger, la protégée de Dieu, le deuxième jour de la lune de Rejib, l'an de l'hégire 1278, correspondant au 4 du mois de janvier 1862 de l'ère chrétienne.

Ernest DALUIN,

L'Esclave de Dieu, EL HADJ ABD-ER-RHAMAN EL AAGI,  
fils de Mohamed el Aagi.

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*Annex No. 29*

TREATY BETWEEN MOROCCO AND GERMANY OF JUNE 1, 1890

*Source: 1 Riviere, Traités, Codes et Lois du Maroc, 63-65.*

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TRAITÉ DE COMMERCE CONCLU ENTRE L'ALLEMAGNE ET LE MAROC LE  
1<sup>er</sup> JUIN 1890

*Ce traité — ratifié le 10 juillet 1891 — n'offre plus qu'un intérêt historique, ayant été effacé par l'article 141 du traité de Versailles, aux termes duquel « tous les traités, accords, arrangements ou contrats passés par l'Allemagne avec l'Empire chérifien sont tenus pour abrogés depuis le 3 août 1914 ».*

*L'on trouvera plus loin, dans l'étude de l'Acte d'Algésiras, l'indication des événements au milieu desquels cet accord a été conclu. Le principal avantage concédé à l'Allemagne consistait dans l'abaissement des droits de douane à la sortie du Maroc, — abaissement qui, par certains articles, était de près de moitié par rapport aux tarifs de l'accord anglo-marocain de 1856, et qui, par le jeu de la clause de la nation la plus favorisée, devait profiter aux autres puissances ayant contracté avec le Maroc.*

S. M. l'Empereur d'Allemagne, Roi de Prusse, etc., d'une part, et S. M. Chérifienne le sultan de Fez, Maroc et Sus, etc., d'autre part,

inspirées par le désir de fortifier l'amitié existant et de développer les relations de commerce et de navigation entre leurs États et leurs sujets, ont résolu de conclure un traité de commerce spécial, et, à cette fin, ont nommé avec leurs pleins pouvoirs : S. M. l'Empereur d'Allemagne, le très haut ministre résident, Conseiller de légation de Tattenbach ; S. M. Chérifiennne, le très haut Vizir pour les relations extérieures Sid Mohammed el Moufaddal Ben Mohammed Gharrit, et les Oumana <sup>(1)</sup>, les sieurs (suivent les noms des plénipotentiaires marocains), lesquels ont signé la présente Convention, après s'être mis d'accord sur les articles suivants :

ARTICLE PREMIER. — Une amitié constante et inaltérable subsistera entre S. M. l'Empereur d'Allemagne et S. M. le Sultan du Maroc, comme entre leurs Empires et leurs sujets. Entre les deux Empires, il y aura liberté réciproque du commerce. A cette fin, chacune des Hautes Parties contractantes s'engage à assurer et garantir aux sujets de l'autre partie les avantages et privilèges qui du côté de l'une ou de l'autre partie ont été ou seront accordés aux sujets de la nation la plus favorisée.

ART. 2. — Les commerçants allemands pourront introduire dans les États de S. M. le Sultan du Maroc des marchandises et produits de toutes espèces, sans que leur origine ou la nationalité des vaisseaux destinés à leur introduction soit une cause de différence. Sont exceptés de cette disposition : le tabac en poudre et les plantes destinées à être fumées (comme, par exemple, l'opium et autres produits analogues), la poudre, le salpêtre, le soufre, le plomb, les munitions de guerre, et les armes de toute espèce, dont l'introduction est prohibée. S. M. le Sultan du Maroc déclare par la présente Convention que les droits sur les marchandises et produits importés par des Allemands dans les ports de son Royaume n'excéderont pas 10 p. 100 de la valeur des marchandises et produits ; le calcul de ces droits se fera d'après le prix en gros et au comptant que lesdits articles auront sur le marché du port par où ils seront introduits. Les marchandises et produits, à l'exception des articles prohibés désignés ci-dessus, importés par des Allemands au Maroc ne pourront être, dans l'intérieur du Maroc, ni interdits ni frappés de droits plus élevés que ceux acquittés par les Marocains ou les sujets de la nation la plus favorisée. Il sera permis aux marchands allemands d'expédier par mer les marchandises et produits pour lesquels ils auront payé le droit d'entrée dans tout autre port marocain à leur convenance sans avoir à acquitter d'autre droit d'entrée ou de sortie, pourvu qu'ils puissent montrer une attestation délivrée par l'Administration des douanes et relative au paiement du droit d'entrée.

ART. 3. — S. M. Chérifiennne, inspirée par le désir de développer et de favoriser le commerce dans son Empire, permettra aux sujets allemands d'exporter les marchandises et produits énumérés dans le tarif ci-après, moyennant le paiement du droit indiqué en regard de chaque article.

(1) *Oumana*, pluriel de *Amin*. Littéralement, amin veut dire : homme de confiance (du substantif *amana* : confiance). Administrativement, l'amin est un préposé, un agent du maghzen. *L'amin el memlak* est ainsi l'agent des domaines ; *l'amin el moustafad*, l'agent des contributions indirectes et des douanes.

## TARIF D'EXPORTATION (1).

Articles.	Quantités.	Droits.
Maïs . . . . .	la fanègue rase	10 réaux de vellon.
Doura . . . . .	—	10 —
Fèves . . . . .	la fanègue	10 —
Lentilles . . . . .	—	10 —
Pois gros et petits . . . . .	—	10 —
Graines pour oiseaux . . . . .	le quintal	5 —
Dattes . . . . .	—	20 —
Amandes . . . . .	—	15 —
Oranges et citrons . . . . .	le mille	4 —
Marjolaine sauvage . . . . .	le quintal	4 —
Cumin . . . . .	—	8 —
Huile . . . . .	—	25 —
Gomme . . . . .	—	8 —
Henné . . . . .	—	6 —
Cire purifiée . . . . .	—	70 1/8 —
Cire naturelle . . . . .	—	50 —
Riz . . . . .	—	9 3/8 —
Laine lavée . . . . .	—	40 —
Laine non lavée . . . . .	—	27 1/2 —
Peaux de bœuf, mouton, chèvre . . . . .	—	18 —
Peaux tannées . . . . .	le quintal	50 —
Suif . . . . .	—	25 —
Poules . . . . .	la douzaine	10 —
Œufs . . . . .	le mille	25 —
Cornes . . . . .	—	10 —
Pantoufles . . . . .	—	ad valorem 5 %
Piquants de porc-épic . . . . .	le mille	2 réaux de vellon.
R'asoul (savon minéral) . . . . .	le quintal	7 1/2 —
Plumes d'autruche . . . . .	la livre	18 —
Paniers . . . . .	le cent	2 —
Poils . . . . .	le quintal	15 —
Raisins secs . . . . .	—	10 —
Ceintures de laine . . . . .	le cent	50 —
Takwat (teinture) . . . . .	le quintal	10 —
Toisons de brebis préparées . . . . .	—	18 —
Chanvre et lin . . . . .	—	20 —

## ARTICLES QUI ONT ÉTÉ TARIFÉS APRÈS LA CONCLUSION DU TRAITÉ ANGLAIS.

Anis . . . . .	le quintal	10 réaux de vellon.
Couvertures de laine . . . . .	—	ad valorem 5 %
Tapis . . . . .	—	ad valorem 5 %
Fromage . . . . .	le quintal	20 réaux.
Feuilles de palmier . . . . .	100 fagots	8 —
Coussins de cuir avec broderies . . . . .	—	ad valorem 5 %
Horf (cresson) . . . . .	le quintal	10 réaux.
Fasoukh (boules d'aromates) . . . . .	—	10 —
Cordes en poils de chèvres . . . . .	100 paquets	10 —
Haïk (vêtement marocain) . . . . .	—	ad valorem 5 %
Lièvres . . . . .	la pièce	1 réal.
Holbach (Fenu grec) . . . . .	le quintal	5 réaux.
Djellaba (vêtement marocain) . . . . .	—	ad valorem 5 %

(1) Pour la conversion en mesures et valeurs françaises des mesures et valeurs de ce tarif, se reporter aux tarifs des traités anglo-marocain de 1856 et hispano-marocain de 1861.

Articles.	Quantités.	Droits.
Kermès (cochenille) . . . . .	le quintal	10 réaux.
Sacoques en cuir . . . . .		<i>ad valorem</i> 5 %
Graines de lin . . . . .	le quintal	5 réaux.
Orseille (teinture) . . . . .	—	10 —
Œufs d'autruche . . . . .	la pièce	1/2 réal.
Peaux de têtes de bœuf . . . . .	le quintal	4 réaux.
Perdrix . . . . .	la pièce	1 réal.
Lapins . . . . .	—	1 —
Chiffons . . . . .	le quintal	5 réaux.
Feuilles de rose . . . . .	—	80 —
Sanusch (fenouille) . . . . .	—	8 —
Sésame . . . . .	—	8 —
Tamis . . . . .		<i>ad valorem</i> 5 %
Sparte . . . . .	le quintal	2 réaux.
Étriers en fer . . . . .		<i>ad valorem</i> 5 %.
Boyaux . . . . .	le quintal	10 réaux.
Noix . . . . .	—	8 —
Fil de coton . . . . .		<i>ad valorem</i> 8 %
Chaussettes en laine . . . . .		<i>ad valorem</i> 8 %
Nattes de palmier . . . . .		<i>ad valorem</i> 8 %
Sarghina (teinture) . . . . .	le quintal	5 réaux.
Tentes . . . . .		<i>ad valorem</i> 5 %
Plateaux à thé en cuivre . . . . .		<i>ad valorem</i> 8 %
Poissons salés . . . . .	le quintal	20 réaux.
Tortues . . . . .	50 kilos	2 1/2 —
Balais de palmier nain . . . . .	—	1 1/2 —
Coton de palmier . . . . .	—	2 1/2 —
Millet . . . . .	la fanègue	10 —
Koh'l (teinture) . . . . .	le quintal	5 —

ART. 4. — Les marchandises et produits d'origine marocaine portés au tarif inséré dans l'article précédent pourront être exportés par les Allemands, moyennant le paiement des droits fixés pour chaque article, et sur les vaisseaux de toute nation. Les marchands allemands seront autorisés à acheter, en personne ou par leurs agents, ces marchandises et produits sur tous les marchés des États de Sa Majesté le Sultan du Maroc ; il ne pourra être apporté aucun empêchement, restriction ou dommage à leurs transactions commerciales, soit par les fonctionnaires marocains, soit par d'autres personnes. Si des marchands allemands veulent transporter par mer des grains d'un port du Maroc dans un autre port du Maroc, ils payeront le droit de sortie inscrit au tarif pour les grains en question.

ART. 5. — Les dispositions de la Convention de Madrid ne sont pas modifiées par la présente Convention (1).

ART. 6. — Pour que les Hautes Parties contractantes aient la faculté de négocier des améliorations ultérieures qui pourraient être propres à favoriser les intérêts des sujets de leurs États et à faciliter et étendre les rapports commerciaux réciproques, elles ont convenu que, cinq ans après la ratification de ce traité de commerce, chacune d'elles aura le droit d'en proposer à l'autre la revision. Jusqu'à ce que cette revision

(1) Convention internationale du 3 juillet 1880. V. *supra*.



ait été faite et qu'une nouvelle Convention ait été arrêtée ou ratifiée, la présente Convention restera en pleine force et vigueur.

ART. 7. — La présente Convention sera ratifiée par S. M. l'Empereur d'Allemagne et S. M. le Sultan du Maroc, et les ratifications seront échangées le plus tôt possible au lieu à désigner par S. M. le Sultan du Maroc. — Après échange des ratifications, les dispositions de cette Convention entreront en vigueur sans délai.

En foi de quoi, nous, Plénipotentiaires, avons signé la présente Convention.

Fait à Fez, en deux exemplaires originaux, en allemand et en arabe, le 1<sup>er</sup> juin 1890, le douze Chaoual 1307 du calendrier mahométan.

Signé: TATTENBACH.

Signé: MOHAMMED ET MUFFADAL BEN MOHAMMED GHARRIT ;  
EL ARBI BEN ACHMED BENANI ; EL TACHER BEN EL TEHAMI  
BENANI ; EDRIS BEN ACHMED BENANI ; ABD EL UAHAB  
BEN MOHAMMED BENIS ; AZUZ BEN EL KEBIR BEN KIRAN ;  
MOHAMMED BEN EL HADJ EL TACHER EL ASRAK ; MOHAM-  
MED BRISCHA ; BEN NASER BEN MOHAMMED EL HELUH ;  
BEN NASER BEN SCHELUN ; EL ABRAS BEN MOHAMMED  
BERADA ; MOHAMMED BEN SCHELUN ; MOHAMMED BEN EL  
KEBIR BENIS ; MOHAMMED BEN ABD EL KEBIR EL TAZI ;  
MOHAMMED BEN EL TCHAMI COHEN ; EL HADJ EL ARBI  
BEN ABD EL KERIM BEN MUSSA ; EL TAIJER BENANI ;  
EDRIS BEN MOHAMMED BERADA ; MOHAMMED BERADA ; EL  
ARBI BEN ARD EL RESAK BEN SCHAKRUN ; ABD EL KERIM  
BEN HADJ KADUR BENIS.

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*Annex No. 30*

TREATY BETWEEN MOROCCO AND FRANCE OF OCTOBER 4,  
1892 (COMMERCIAL AGREEMENT)

Source : 1 Riviere, *Traité, Codes et Lois du Maroc*, 66-67.

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ACCORD COMMERCIAL CONCLU ENTRE LA FRANCE ET LE MAROC  
LE 4 OCTOBRE 1892

*L'article 7 de la Convention de Tanger du 10 septembre 1844 stipulant, nous l'avons vu, la conclusion d'un nouvel accord qui, « basé sur les traités actuellement en vigueur, aura pour but de les consolider et de les compléter, « dans l'intérêt des relations politiques et commerciales des deux Empires ». Il faudra attendre près de cinquante ans et quatre changements de régime pour la réalisation de cette promesse. Sans doute pouvons-nous jusque-là nous réclamer des traités conclus par le Maroc avec les autres puissances, et ce par application de la clause de la nation la plus favorisée inscrite dans*

nos accords antérieurs. Mais il restait que certains droits qui frappaient nos marchandises étaient fort élevés, et que certaines prohibitions de sortie entravaient notre commerce. Au moment de la refonte de notre système douanier, nous nous fîmes une arme de ses dispositions susceptibles d'être favorables au Maroc, et le désir de voir son commerce en bénéficier amena le gouvernement chérifien à conclure l'accord de 1892. Celui-ci eut pour contre-partie la loi de 1893, autorisant le Gouvernement français à appliquer aux produits marocains, à leur entrée en France, le tarif minimum.

L'accord de 1892 a été réalisé sous la forme de lettres échangées entre notre ministre à Tanger, le comte d'Aubigny, qui en avait été le négociateur — c'est pourquoi il est généralement connu sous le nom d'accord d'Aubigny — et le ministre des Affaires étrangères du Maroc. Les dispositions en sont les suivantes :

1° Réduction des droits de douane à l'entrée au Maroc. Ces droits, qui jusque-là, et en vertu des traités antérieurs, étaient uniformément de 10 p. 100, sont abaissés à 5 p. 100 pour certains produits, dont les vins et les liquides distillés (1). Disposition importante, car elle est devenue la loi en cette matière, qui n'a point été reprise par la législation interne ;

2° Réduction considérable des droits à la sortie du Maroc en faveur de certains articles ;

3° Levée de l'interdiction de sortie qui jusqu'alors frappait certains produits végétaux et animaux ;

4° Enfin, les marques de fabriques françaises sont désormais protégées au Maroc, que nous verrons par la suite adhérer aux accords internationaux touchant la propriété industrielle (2).

I. — *Lettre du ministre des Affaires étrangères du Maroc à M. le Comte d'Aubigny, ministre de France au Maroc :*

En considération de la réduction qui sera faite par votre Gouvernement sur les droits applicables aux produits marocains à leur entrée en France et en vue d'étendre les relations commerciales entre les deux pays pour leur mutuel avantage, S. M. Chérifienne accepte les modifications que vous avez proposé d'apporter au traité de commerce franco-marocain du 26 chaban 1260 (10 septembre 1844) (3). Vous trouverez sous ce pli, en même temps que leur copie, les lettres chérifiennes adressées, au sujet de ces modifications, aux administrateurs de tous les ports.

Mon Auguste Maître donne également son agrément à vos propositions concernant les signes dits « Marques » que les négociants français placent

(1) Voici les chiffres comparatifs de l'importation de ces produits au Maroc, en 1911 et en 1920.

Vins	
1911	1920
32.330 hectos valant 1.206.478 francs	171.249 hectos valant 23.248.051 francs

Alcools	
9.070 hectos valant 548.049 francs	13.951 hectos valant 8.139.738 francs

(2) V. Deuxième partie : Accords relatifs à certains objets spéciaux.

(3) C'est improprement que le traité de 1844 est ici qualifié de traité de commerce. Nous avons constaté que c'est uniquement un traité de paix mettant fin à des hostilités et ne contenant point de clauses commerciales.

sur leurs marchandises. Ces marques doivent être respectées en ce sens que si un négociant marocain contrefait les marques d'un négociant français ou provoque leur contrefaçon, les marchandises fabriquées au Maroc ou à l'étranger, dans l'intention d'être vendues grâce à cette fausse marque comme provenant de la fabrication de ce négociant français, seront confisquées au profit du Gouvernement marocain et l'auteur de la contrefaçon recevra une punition exemplaire.

I Rebi II, 1310 (23 octobre 1892).

Signé : MOHAMMED EL MOUFFADAL BEN MOHAMMED GHARRIT.

Pour traduction conforme :  
Le Consul faisant fonctions de 1<sup>er</sup> drogman,  
HÉLOUIS.

II. — *Lettre chérifienne réglant l'application de l'accord commercial.*

LOUANGE A DIEU SEUL ! IL N'Y A DE FORCE ET DE PUISSANCE QU'EN DIEU.

(Grand sceau de Mouley-Hassan.)

A nos serviteurs les Oumana <sup>(1)</sup> du port de Tanger.

Le Ministre de France nous a demandé certains changements au traité de commerce entre les deux Gouvernements à la date du 26 chaban 1260 (10 septembre 1844). Les produits pour lesquels il a demandé ces changements sont d'abord les six mentionnés ci-contre en premier lieu (A), avec les droits y afférents, et ensuite les huit qui suivent (B), dont l'exportation était interdite et que nous venons d'autoriser avec les droits stipulés en regard.

Nous vous ordonnons de laisser embarquer ces huit produits en percevant les droits portés en face de chacun d'eux, à condition que le négociant qui voudra acheter, pour les exporter, les cinq premiers de ces huit produits, c'est-à-dire les écorces d'arbres, le liège, le minerai de fer et tous les autres minerais, à l'exception du plomb, ne pourra en faire l'acquisition qu'aux indigènes dans les huit ports ouverts au commerce à l'exclusion de tous les autres endroits.

En ce qui concerne les six produits mentionnés en premier lieu, nous vous ordonnons de vous contenter de percevoir les droits portés en regard de chacun d'eux. Tous produits ou marchandises exportés des ports marocains autres que les quatorze produits en question continueront à subir le traitement appliqué actuellement en vertu d'autres traités.

Quant aux produits français importés au Maroc, ils seront soumis aux mêmes droits que ceux perçus actuellement. Mais les tissus de soie pure ou mélangée, les bijoux d'or et d'argent, les pierres précieuses et fausses, les rubis, les galons d'or, toutes les espèces de vins ou de liquides distillés et les pâtes alimentaires ne payeront pas plus de 5 p. 100 *ad valorem*. Ces marchandises seront estimées sur le pied de leur valeur

(1) Sur la signification du mot : oumana, se reporter à la note sous le traité germano-marocain du 1<sup>er</sup> juin 1890.

marchande, au comptant, en gros, dans les ports de débarquement, en réaux de vellon.

Salut.

A. — PRODUITS DONT LES DROITS ONT ÉTÉ RÉDUITS.

Cumin . . . . .	le quintal	6 réaux de vellon.	
Suif . . . . .	—	23	—
Carvi . . . . .	—	8	—
Chanvre et lin . . . . .	—	16	—
Cire blanche . . . . .	—	60	—
Cornes . . . . .	le mille	8	—

B. — PRODUITS DONT L'EXPORTATION ÉTAIT INTERDITE ET A ÉTÉ AUTORISÉE MOYENNANT LA PERCEPTION DES DROITS CI-DESSOUS :

Écorces d'arbres . . . . .	le quintal	6 réaux de vellon.	
Liège . . . . .	—	6	—
Minerai de cuivre . . . . .	—	5	—
Minerai de fer . . . . .	—	2	—
Autres minerais, sauf le plomb . . . . .	—	5	—
Osier . . . . .	—	2	—
Bois d'arar et de cèdre :			
Le demi-charge de chameau . . . . .		6 réaux de vellon.	
Le demi-charge de mule . . . . .		5	—

Pour traduction conforme :

*Le Consul faisant fonctions de 1<sup>er</sup> drogman,*  
HÉLOUIS.

*Annex No. 31*

CONVENTION OF MADRID OF JULY 3, 1880, WITH REGULATIONS CONCERNING PROTECTION ADOPTED BETWEEN FRANCE AND MOROCCO, AUGUST 19, 1863

*Source : 22 United States Statutes at Large, 817-825, and I Malloy, Treaties Between the United States and Other Powers, 1226-1227.*

*Convention between the United States of America, Germany, Austria, Belgium, Denmark, Spain, France, Great Britain, Italy, Morocco, the Netherlands, Portugal, and Sweden and Norway, for the establishment of the right of protection in Morocco. Concluded July 3, 1880; ratification advised by the Senate May 5, 1881; ratified by the President May 10, 1881; proclaimed December 21, 1881.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Proclamation. Whereas a Convention for the establishment on fixed and uniform bases of the exercise of the right of protection in Morocco and for the

settlement of certain questions connected therewith, between the United States and His Majesty the Emperor of Germany and King of Prussia, His Majesty the Emperor of Austria and King of Hungary, His Majesty the King of the Belgians, His Majesty the King of Denmark, His Majesty the King of Spain, His Excellency the President of the French Republic, Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Majesty the King of Italy, His Majesty the Sultan of Morocco, His Majesty the King of the Netherlands, His Majesty the King of Portugal and the Algarves, and His Majesty the King of Sweden and Norway, was signed by their plenipotentiaries at Madrid, on the third day of July, in the year one thousand eight hundred and eighty, the French text of which Convention is word for word as follows :

[Traduction]

His Excellency the President of the United States of America ; His Majesty the Emperor of Germany, King of Prussia ; His Majesty the Emperor of Austria, King of Hungary ; His Majesty the King of the Belgians ; His Majesty the King of Denmark ; His Majesty the King of Spain ; His Excellency the President of the French Republic ; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland ; His Majesty the King of Italy ; His Majesty the Sultan of Morocco ; His Majesty the King of the Netherlands ; His Majesty the King of Portugal and the Algarves ; His Majesty the King of Sweden and Norway ;

Having recognized the necessity of establishing, on fixed and uniform bases, the exercise of the right of protection in Morocco, and of settling certain questions connected therewith, have appointed as their plenipotentiaries at the conference assembled for that purpose at Madrid, to wit :

His Excellency the President of the United States of America, General Lucius Fairchild, Envoy Extraordinary and Minister Plenipotentiary of the United States near His Catholic Majesty ;

His Majesty the Emperor of Germany, King of Prussia, Count Eberhardt de Solms-Sonnenwalde,

Son Excellence le Président des États-Unis d'Amérique ; Sa Majesté l'Empereur d'Allemagne, Roi de Prusse ; Sa Majesté l'Empereur d'Autriche, Roi de Hongrie ; Sa Majesté le Roi des Belges ; Sa Majesté le Roi de Danemark ; Sa Majesté le Roi d'Espagne ; Son Excellence le Président de la République Française ; Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande ; Sa Majesté le Roi d'Italie ; Sa Majesté le Sultan du Maroc ; Sa Majesté le Roi des Pays-Bas ; Sa Majesté le Roi de Portugal et des Algarves ; Sa Majesté le Roi de Suède et de Norvège ;

Contracting parties.

Ayant reconnu la nécessité d'établir sur des bases fixes et uniformes l'exercice du droit de protection au Maroc, et de régler certaines questions qui s'y rattachent, ont nommé pour leurs Plénipotentiaires à la Conférence qui s'est réunie à cet effet à Madrid, savoir :

Preamble.

Son Excellence le Président des États-Unis d'Amérique, Monsieur le Général Lucius Fairchild, Envoyé Extraordinaire et Ministre Plénipotentiaire des États-Unis près Sa Majesté Catholique ;

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, Monsieur le Comte Eberhardt de Solms-

Knight Commander of the first class of his Order of the Red Eagle with oak leaves, Knight of the Iron Cross, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty ;

His Majesty the Emperor of Austria, King of Hungary, Count Emanuel Ludolf, his Privy Councillor in actual service, Grand Cross of the Imperial Order of Leopold, Knight of the first class of the Order of the Iron Crown, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty ;

His Majesty the King of the Belgians, Mr. Edward Anspach, Officer of his Order of Leopold, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty ;

His Majesty the King of Spain, Don Antonio Cánovas del Castillo, Knight of the distinguished Order of the Golden Fleece, etc., etc., President of his Council of Ministers ;

His Excellency the President of the French Republic, Vice-Admiral Jaurès, Senator, Knight Commander of the Legion of Honor, etc., etc., Ambassador of the French Republic near His Catholic Majesty ;

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honorable Lionel Sackville Sackville West, her Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty who is likewise authorized to represent His Majesty the King of Denmark ;

His Majesty the King of Italy, Count Joseph Greppi, Grand Officer of the Order of Saint Maurice and Saint Lazarus, of that of the Crown of Italy, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty ;

Sonnenwalde, Commandeur de première classe de son Ordre de l'Aigle Rouge avec feuilles de chêne, Chevalier de la Croix de Fer, etc., etc., son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique ;

Sa Majesté l'Empereur d'Autriche, Roi de Hongrie, Monsieur le Comte Emanuel Ludolf, son Conseiller intime et actuel, Grand-Croix de l'Ordre impérial de Léopold, Chevalier de première classe de l'Ordre de la Couronne de Fer, etc., etc., son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique ;

Sa Majesté le Roi des Belges, Monsieur Edouard Anspach, Officier de son Ordre de Léopold, etc., etc., son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique ;

Sa Majesté le Roi d'Espagne, Don Antonio Cánovas del Castillo, Chevalier de l'Ordre insigne de la Toison d'Or, etc., etc., Président de son Conseil des Ministres ;

Son Excellence le Président de la République Française, Monsieur le Vice-amiral Jaurès, Sénateur, Commandeur de la Légion d'Honneur, etc., etc., Ambassadeur de la République Française près Sa Majesté Catholique ;

Sa Majesté la Reine du Royaume Uni de la Grande Bretagne et d'Irlande, l'Honorable Lionel Sackville Sackville West ; son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique ; lequel est également autorisé à représenter Sa Majesté le Roi de Danemark ;

Sa Majesté le Roi d'Italie, Monsieur le Comte Joseph Greppi, Grand-Officier de l'Ordre des S. S. Maurice et Lazare, de celui de la Couronne d'Italie, etc., etc., son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique ;

His Majesty the Sultan of Morocco, the Taleb Sid Mohammed Vargas, his Minister of Foreign Affairs and Ambassador Extraordinary ;

His Majesty the King of the Netherlands, Jonkheer Maurice de Heldewier, Commander of the Royal Order of the Lion of the Netherlands, Knight of the Order of the Oaken Crown of Luxemburg, etc., etc., his Minister Resident near His Catholic Majesty ;

His Majesty the King of Portugal and the Algarves, Count de Casal Ribeiro, Peer of the Realm, Grand Cross of the Order of Christ, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty ;

His Majesty the King of Sweden and Norway, Mr. Henry Akerman, Knight Commander of the first class of the Order of Wasa, etc., etc., his Minister Resident near His Catholic Majesty ;

Who, in virtue of their full powers, recognized as being in good and due form, have agreed upon the following articles :

## ARTICLE 1.

The conditions under which protection may be conceded are those established in the British and Spanish treaties with the Government of Morocco, and in the convention made between that Government, France and other powers in 1863, with the modifications introduced by the present convention.

## ARTICLE 2.

Foreign Representatives at the head of a Legation may select their interpreters and employees from among the subjects of Morocco or others.

Sa Majesté le Sultan du Maroc, le Taleb Sid Mohammed Vargas, son Ministre des Affaires Étrangères et Ambassadeur Extraordinaire ;

Sa Majesté le Roi des Pays-Bas, Monsieur le Jonkheer Maurice de Heldewier, Commandeur de l'Ordre Royal du Lion Néerlandais, Chevalier de l'Ordre de la Couronne de Chêne de Luxembourg, etc., etc., son Ministre Résident près Sa Majesté Catholique ;

Sa Majesté le Roi de Portugal et des Algarves, Monsieur le Comte de Casal Ribeiro, Pair du Royaume, Grande-Croix de l'Ordre du Christ, etc., etc., son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique ;

Sa Majesté le Roi de Suède et de Norvège, Monsieur Henri Akerman, Commandeur de première classe de l'Ordre de Wasa, etc., etc., son Ministre Résident près Sa Majesté Catholique ;

Lesquels, en vertu de leurs pleins pouvoirs, reconnus en bonne et due forme, ont arrêté les dispositions suivantes :

## ARTICLE PREMIER.

Les conditions dans lesquelles la protection peut être accordée sont celles qui sont stipulées dans les Traités britannique et espagnol avec le Gouvernement Marocain et dans la Convention survenue entre ce Gouvernement, la France et d'autres Puissances en 1863, sauf les modifications qui y sont apportées par la présente Convention.

## ARTICLE 2.

Les Représentants étrangers Chefs de Mission, pourront choisir leurs interprètes et employés parmi les sujets marocains ou autres.

These protected persons shall be subject to no duty, impost or tax whatever, other than those stipulated in articles 12 and 13.

## ARTICLE 3.

Consuls, &c., allowed to select and employ native assistants, &c. Consuls, Vice consuls or Consular Agents having charge of a post, and residing within the territory of the Sultan of Morocco, shall be allowed to select but one interpreter, one soldier and two servants from among the subjects of the Sultan, unless they may require a native secretary.

These protected persons shall, in like manner, be subject to no duty, impost or tax whatever, other than those stipulated in articles 12 and 13.

## ARTICLE 4.

Appoint-ments of natives; protec-tion ex-tended to appointees. If a Representative shall appoint a subject of the Sultan to the office of Consular Agent in a town on the coast, such agent shall be respected and honored, as shall the members of his family occupying the same dwelling with him, and they, like him shall be subject to no duty, impost or tax whatever, other than those stipulated in articles 12 and 13; but he shall not have the right to protect any subjects of the Sultan other than the members of his own family.

He may, however, for the exercise of his functions, have a protected soldier.

Rights of officers in charge of consul-ates. Officers in acting charge of Vice Consulates being subjects of the Sultan, shall, during the exercise of their functions, enjoy the same rights as Consular Agents who are subjects of the Sultan.

## ARTICLE 5.

Ministers, chargés d'affaires. The Government of Morocco recognizes the right of Ministers,

Ces protégés ne seront soumis à aucun droit, impôt ou taxe quelconque, en dehors de ce qui est stipulé aux articles 12 et 13.

## ARTICLE 3.

Les Consuls, Vice-Consuls ou Agents consulaires Chefs de poste qui résident dans les États du Sultan du Maroc, ne pourront choisir qu'un interprète, un soldat et deux domestiques parmi les sujets du Sultan, à moins qu'ils n'aient besoin d'un secrétaire indigène.

Ces protégés ne seront soumis non plus à aucun droit, impôt ou taxe quelconque, en dehors de ce qui est stipulé aux articles 12 et 13.

## ARTICLE 4.

Si un Représentant nomme un sujet du Sultan à un poste d'Agent consulaire dans une ville de la côte, cet Agent sera respecté et honoré, ainsi que sa famille habitant sous le même toit, laquelle, comme lui-même, ne sera soumise à aucun droit, impôt ou taxe quelconque en dehors de ce qui est stipulé aux articles 12 et 13; mais il n'aura pas le droit de protéger d'autres sujets du Sultan en dehors de sa famille.

Il pourra, toutefois, pour l'exercice de ses fonctions, avoir un soldat protégé.

Les Gérants des Vice-consulats, sujets du Sultan, jouiront, pendant l'exercice de leur fonctions, des mêmes droits que les Agents consulaires sujets du Sultan.

## ARTICLE 5.

Le Gouvernement Marocain reconnaît aux Ministres, Chargés



Chargés d'Affaires and other Representatives, which is granted to them by treaties, to select the persons whom they employ, either in their own service or that of their governments, unless such persons shall be sheiks or other employees of the Government of Morocco, such as soldiers of the line or of the cavalry, in addition to the Maghaznias in command of their guard. In like manner they shall not be permitted to employ any subject of Morocco who is under prosecution.

It is understood that civil suits commenced before protection, shall be terminated before the courts which have instituted such proceedings. The execution of the sentence shall suffer no hindrance. Nevertheless, the local authorities of Morocco shall take care to communicate, without delay, the sentence pronounced, to the Legation, Consulate or Consular Agency upon which the protected person is dependent.

As to those persons formerly protected, who may have a suit which was commenced before protection was withdrawn from them, their case shall be tried by the court before which it was brought.

The right of protection shall not be exercised towards persons under prosecution for an offense or crime, before they have been tried by the authorities of the country, or before their sentence, if any has been pronounced, has been executed.

## ARTICLE 6.

Protection shall extend to the family of the person protected. His dwelling shall be respected.

It is understood that the family is to consist only of the wife, the

d'Affaires et autre Représentants le droit, qui leur est accordé par les Traités, de choisir les personnes qu'ils emploient, soit à leur service personnel, soit à celui de leurs Gouvernements, à moins, toutefois, que ce ne soient des Cheiks ou autres employés du Gouvernement marocain, tels que les soldats de ligne ou de cavalerie, en dehors des Maghaznias préposés à leur garde. De même, ils ne pourront employer aucun sujet marocain sous le coup de poursuites.

Il reste entendu que les procès civils engagés avant la protection se termineront devant les Tribunaux qui en auront entamé la procédure.

L'exécution de la sentence ne rencontrera pas d'empêchement. Toutefois, l'autorité locale marocaine aura soin de communiquer immédiatement la sentence rendue à la Légation, Consulat ou Agence consulaire dont relève le protégé.

Quant aux ex-protégés qui auraient un procès commencé avant que la protection eût cessé pour eux, leur affaire sera jugée par le Tribunal qui en était saisi.

Le droit de protection ne pourra être exercé à l'égard des personnes poursuivies pour un délit ou un crime avant qu'elles n'aient été jugées par les Autorités du pays, et qu'elles n'aient, s'il y a lieu, accompli leur peine.

## ARTICLE 6.

La protection s'étend sur la famille du protégé. Sa demeure est respectée.

Il est entendu que la famille ne se compose que de la femme, des

fares, and others limited in selection of native employees.

Proceedings in civil suits.

Crimes and offenses.

Protection, etc., to extend to family.

children, and the minor relatives dwelling under the same roof.

Protection not to be hereditary.

Protection shall not be hereditary. A single exception, which was established by the convention of 1863, but which is not to create a precedent, shall be maintained in favor of the Benchimol family.

Nevertheless, if the Sultan of Morocco shall grant another exception, each of the contracting powers shall be entitled to claim a similar concession.

#### ARTICLE 7.

List of protected persons to be furnished.

Foreign representatives shall inform the Sultan's Minister of Foreign Affairs, in writing, of any selections of an employee made by them.

They shall furnish annually to the said Minister a list of the names of the persons protected by them or by their Agents throughout the States of the Sultan of Morocco.

This list shall be transmitted to the local authorities, who shall consider as persons enjoying protection only those whose names are contained therein.

#### ARTICLE 8.

Lists to be transmitted under seal, annually.

Consular officers shall transmit each year to the authorities of the district in which they reside a list, bearing their seal, of the persons protected by them. These authorities shall transmit it to the Minister of Foreign Affairs, to the end that, if it be not conformable to the regulations, the Representatives at Tangier may be informed of the fact.

A consular officer shall be required to give immediate information of any changes that may have taken place among the persons protected by his Consulate.

enfants et des parents mineurs qui habitent sous le même toit.

La protection n'est pas héréditaire. Une seule exception, déjà établie par la Convention de 1863, et qui ne saurait créer un précédent, est maintenue en faveur de la famille Benchimol.

Cependant, si le Sultan du Maroc accordait une autre exception, chacune des Puissances contractantes aurait le droit de réclamer une concession semblable.

#### ARTICLE 7.

Les Représentants étrangers informeront par écrit le Ministre des Affaires Étrangères du Sultan du choix qu'ils auront fait d'un employé.

Ils communiqueront chaque année au dit Ministre une liste nominative des personnes qu'ils protègent ou qui sont protégés par leurs Agents dans les États du Sultan du Maroc.

Cette liste sera transmise aux Autorités locales, qui ne considéreront comme protégés que ceux qui y sont inscrits.

#### ARTICLE 8.

Les Agents consulaires remettront chaque année à l'Autorité du pays qu'ils habitent une liste, revêtue de leur sceau, des personnes qu'ils protègent. Cette Autorité la transmettra au Ministre des Affaires Étrangères afin que, si elle n'est pas conforme aux Règlements, les Représentants à Tanger en soient informés.

L'Officier consulaire sera tenu d'annoncer immédiatement les changements survenus dans le personnel protégé de son Consulat.

## ARTICLE 9.

Servants, farmers and other native employees of native secretaries and interpreters shall not enjoy protection. The same shall be the case with Moorish employees or servants of foreign subjects.

Nevertheless, the local authorities shall not arrest an employee or servant of a native officer in the service of a Legation or Consulate, or of a foreign subject or protected person, without having notified the authority upon which he is dependent.

If a subject of Morocco in the service of a foreign subject shall kill or wound any person, or violate his domicile, he shall be arrested immediately, but the diplomatic or consular authority under which he is shall be notified without delay.

## ARTICLE 10.

Nothing is changed with regard to the situation of brokers, as established by the treaties and by the convention of 1863, except what is stipulated, relative to taxes, in the following articles.

## ARTICLE 11.

The right to hold property is recognized in Morocco as belonging to all foreigners.

The purchase of property must take place with the previous consent of the Government, and the title of such property shall be subject to the forms prescribed by the laws of the country.

Any question that may arise concerning this right shall be decided according to the same laws, with the privilege of appeal to the Minister of Foreign Affairs stipulated in the treaties.

## ARTICLE 9.

Les domestiques, fermiers et autres employés indigènes des secrétaires et interprètes indigènes ne jouissent pas de la protection. Il en est de même pour les employés ou domestiques marocains des sujets étrangers.

Native employees excepted.

Toutefois, les Autorités locales ne pourront arrêter un employé ou domestique d'un fonctionnaire indigène au service d'une Légation ou d'un Consulat, ou d'un sujet ou protégé étranger, sans en avoir prévenu l'Autorité dont il dépend.

Si un sujet marocain au service d'un sujet étranger venait à tuer quelqu'un, à le blesser ou à violer son domicile, il serait immédiatement arrêté, mais l'Autorité diplomatique ou consulaire sous laquelle il est placé serait avertie sans retard.

Arrest for killing or wounding any person.

## ARTICLE 10.

Il n'est rien changé à la situation des censaux telle qu'elle a été établie par les Traités et par la Convention de 1863, sauf ce qui est stipulé, relativement aux impôts, dans les articles suivants.

Brokers.

## ARTICLE 11.

Le droit de propriété au Maroc est reconnu pour tous les étrangers.

Right of foreigners to hold property recognized.

L'achat de propriétés devra être effectué avec le consentement préalable du Gouvernement, et les titres de ces propriétés seront soumis aux formes prescrites par les lois du pays.

Toute question qui pourrait surgir sur ce droit sera décidée d'après ces mêmes lois, avec l'appel au Ministre des Affaires Étrangères stipulé dans les Traités.

## ARTICLE 12.

Agricultural tax.

Foreigners and protected persons who are the owners or tenants of cultivated land, as well as brokers engaged in agriculture, shall pay the agricultural tax. They shall send to their Consul annually, an exact statement of what they possess delivering into his hands the amount of the tax.

False statement, penalty for.

He who shall make a false statement, shall be fined double the amount of the tax that he would regularly have been obliged to pay for the property not declared. In case of repeated offense this fine shall be doubled.

The nature, method, date and apportionment of this tax shall form the subject of a special regulation between the Representatives of the Powers and the Minister of Foreign Affairs of His Shereefian Majesty.

## ARTICLE 13.

Gate tax.

Foreigners, protected persons and brokers owning beasts of burden shall pay what is called the gate-tax. The apportionment and the manner of collecting this tax which is paid alike by foreigners and natives, shall likewise form the subject of a special regulation between the Representatives of the Powers and the Minister of Foreign Affairs of His Shereefian Majesty.

The said tax shall not be increased without a new agreement with the Representatives of the Powers.

## ARTICLE 14.

Mediation.

The mediation of interpreters, native secretaries or soldiers of the different Legations or Consulates, when persons are concerned who are under the pro-

## ARTICLE 12.

Les étrangers et les protégés propriétaires ou locataires de terrains cultivés, ainsi que les censaux adonnés à l'agriculture, paieront l'impôt agricole. Ils remettront chaque année à leur Consul la note exacte de ce qu'ils possèdent en acquittant entre ses mains le montant de l'impôt.

Celui qui fera une fausse déclaration paiera, à titre d'amende, le double de l'impôt qu'il aurait dû régulièrement verser pour les biens non déclarés. En cas de récidive cette amende sera doublée.

La nature, le mode, la date, et la quotité de cet impôt seront l'objet d'un Règlement spécial entre les Représentants des Puissances et le Ministre des Affaires Étrangères de Sa Majesté Shériffienne.

## ARTICLE 13.

Les étrangers, les protégés et les censaux propriétaires de bêtes de somme paieront la taxe dite des portes. La quotité et le mode de perception de cette taxe, commune aux étrangers et aux indigènes, seront également l'objet d'un Règlement spécial entre les Représentants des Puissances et le Ministre des Affaires Étrangères de Sa Majesté Shériffienne.

La dite taxe ne pourra être augmentée sans un nouvel accord avec les Représentants des Puissances.

## ARTICLE 14.

La médiation des interprètes, secrétaires indigènes ou soldats des différentes Légations ou Consuls, lors qu'il s'agira de personnes non placées sous la pro-

tection of the Legation or Consulate, shall be permitted only when they are the bearers of a document signed by the head of a mission or by the consular authority.

## ARTICLE 15.

Any subject of Morocco who has been naturalized in a foreign country, and who shall return to Morocco, shall after having remained for a length of time equal to that which shall have been regularly necessary for him to obtain such naturalization, choose between entire submission to the laws of the Empire and the obligation to quit Morocco, unless it shall be proved that his naturalization in a foreign country was obtained with the consent of the Government of Morocco.

Foreign naturalization heretofore acquired by subjects of Morocco according to the rules established by the laws of each country, shall be continued to them as regards all its effects, without any restriction.

## ARTICLE 16.

No irregular or unofficial protection shall be granted in future. The authorities of Morocco will recognize no protection, of any kind whatever, save such as is expressly provided for in this convention.

Nevertheless, the exercise of the customary right of protection shall be reserved for those cases only in which it may be desired to reward signal services rendered by a native of Morocco to a foreign power, or for other altogether exceptional reasons.

The Minister of Foreign Affairs at Tangier shall be previously

tection de la Légation ou du Consulat, ne sera admise qu'autant qu'ils seront porteurs d'un document signé par le Chef de Mission ou par l'Autorité consulaire.

## ARTICLE 15.

Tout sujet marocain naturalisé à l'étranger, qui reviendra au Maroc, devra, après un temps de séjour égal à celui qui lui aura été régulièrement nécessaire pour obtenir la naturalisation, opter entre sa soumission entière aux lois de l'Empire et l'obligation de quitter le Maroc, à moins qu'il ne soit constaté que la naturalisation étrangère a été obtenue avec l'assentiment du Gouvernement marocain.

Foreign naturalization of subjects of Morocco.

La naturalisation étrangère acquise jusqu'à ce jour par des sujets marocains suivant les règles établies par les lois de chaque pays, leur est maintenue pour tous ses effets, sans restriction aucune.

## ARTICLE 16.

Aucune protection irrégulière ni officieuse ne pourra être accordée à l'avenir. Les Autorités marocaines ne reconnaîtront jamais d'autres protections, quelle que soit leur nature, que celles qui sont expressément arrêtées dans cette Convention.

Protection other than under treaty not recognized.

Cependant, l'exercice du droit consuetudinaire de protection sera réservé aux seuls cas où il s'agirait de récompenser des services signalés rendus par un marocain à une Puissance étrangère, ou pour d'autres motifs tout-à-fait exceptionnels.

Exception in case of reward, &c.

La nature des services et l'intention de les récompenser par

Minister of Foreign

Affairs at  
Tangier to be  
notified.

informed of the nature of the services, and notified of the intention to reward them, in order that he may, if need be, present his observations thereon ; yet the final decision shall be reserved for the Government to which the service shall have been rendered.

la protection seront préalablement notifiées au Ministre des Affaires Étrangères à Tanger, afin qu'il puisse au besoin présenter ses observations ; la résolution définitive restera néanmoins réservée au Gouvernement auquel le service aura été rendu.

Protection  
restricted to  
twelve in  
number for  
each power.

The number of persons thus protected shall not exceed twelve for each power, and this number is fixed as the maximum unless the consent of the Sultan shall be obtained.

Le nombre de ces protégés ne pourra dépasser celui de douze par Puissance, qui reste fixé comme maximum, à moins d'obtenir l'assentiment du Sultan.

The status of persons who have obtained protection in virtue of the custom which is henceforth to be regulated by this stipulation shall be without limitation of the number of persons belonging to this class and now so protected, the same for themselves and their families as that which is established for other protected persons.

La situation des protégés qui ont obtenu la protection en vertu de la coutume désormais réglée par la présente disposition sera, sans limitation du nombre pour les protégés actuels de cette catégorie, identique pour eux et pour leurs familles, à celle qui est établie pour les autres protégés.

#### ARTICLE 17.

Right to  
treatment of  
most favored  
nation  
recognized.

The right to the treatment of the most favored nation is recognized by Morocco as belonging to all the powers represented at the Madrid conference.

#### ARTICLE 17.

Le droit au traitement de la Nation la plus favorisée est reconnu par le Maroc à toutes les Puissances représentées à la Conférence de Madrid.

#### ARTICLE 18.

Ratifications.

This convention shall be ratified. The ratifications shall be exchanged at Tangier with as little delay as possible.

By exceptional consent of the high contracting parties the stipulations of this convention shall take effect on the day on which it is signed at Madrid.

#### ARTICLE 18.

La présente Convention sera ratifiée. Les ratifications seront échangées à Tanger dans le plus bref délai possible.

Par consentement exceptionnel des Hautes Parties contractantes les dispositions de la présente Convention entreront en vigueur à partir du jour de la signature à Madrid.

In faith whereof the respective plenipotentiaries have signed this convention, and have thereunto affixed the seals of their arms.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention et y ont apposé le sceau de leurs armes.

Done at Madrid, in thirteen originals, this third day of July, one thousand eight hundred and eighty.

Fait à Madrid, en treize exemplaires, le trois juillet mil huit cent quatre-vingt.

[L.S.] LUCIUS FAIRCHILD.

[L.S.] E. DE SOLMS.

[L.S.] E. LUDOLF.

[L.S.] ANSPACH.

[L.S.] A. CÁNOVAS DEL CASTILLO.

[L.S.] JAURÈS.

[L.S.] L. S. SACKVILLE WEST.

[L.S.] J. GREPPI.

[L.S.] MOHAMMED VARGAS.

(in Arabic characters)

[L.S.] HELDEVIER.

[L.S.] CASAL RIBIERO.

[L.S.] ÅKERMAN.

[SEAL.] LUCIUS FAIRCHILD.

[SEAL.] E. DE SOLMS.

[SEAL.] E. LUDOLF.

[SEAL.] ANSPACH.

[SEAL.] A. CÁNOVAS DEL CASTILLO

[SEAL.] JAURÈS.

[SEAL.] L. S. SACKVILLE WEST.

[SEAL.] J. GREPPI.

[SEAL.] MOHAMMED VARGAS.

(in Arabic characters)

[SEAL.] HELDEVIER.

[SEAL.] CASAL RIBEIRO.

[SEAL.] ÅKERMAN.

Signatures.

And whereas the said Convention has been duly ratified and exchanged ; Proclama-  
tion.

Now, therefore, be it known that I, Chester A. Arthur, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every clause and article thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 21st day of December, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States, the one hundred and sixth.

[SEAL.]

CHESTER A. ARTHUR.

By the President :

FREDK. T. FRELINGHUYSEN,

*Secretary of State.*

*Regulations a relative to protection adopted by common consent by the Legation of France and the Government of Morocco, August 19, 1863, referred to in Article 10*

Protection is individual and temporary.

It consequently does not in general apply to the relatives of the person protected.

It may apply to his family, that is to say, to his wife and children living under the same roof. It lasts at the longest for a person's lifetime and is never hereditary, with the single exception of the Benchimol family, which has furnished for several generations and still furnishes persons who act in the capacity of Brokers and interpreters for the post at Tangier.

<sup>a</sup> Translated from the French.

Protected persons are divided into two classes.

The first class comprises natives employed by the Legation and by the various French consular officers.

The second class consists of native factors, brokers, or agents, employed by French merchants for their business affairs. It is proper here to refer to the fact that the term merchant is only applied to a person carrying on the import or export trade on a large scale, either in his own name or as the agent of others.

The number of native brokers enjoying French protection is limited to two for each commercial house.

By way of exception commercial firms having establishments in different ports may have two brokers attached to each of these establishments, who may as such enjoy French protection.

French protection is not extended to natives employed by French citizens in agricultural occupations.

Nevertheless, in consideration of the existing state of things, and by agreement with the authorities of Morocco, the benefit of the protection which has hitherto been granted to the persons referred to in the foregoing paragraph shall be extended to the said persons for two months from the first of September next.

It is, moreover, understood that agricultural laborers, herdsmen, or other native peasants, in the service of French citizens shall not be legally prosecuted without immediate information thereof being communicated to the competent consular officer, in order that the latter may protect the interests of his countrymen.

The list of all protected persons shall be delivered by the proper consulate to the competent magistrate of the place, who shall likewise be informed of any changes that may subsequently be made in the said list.

Each protected person shall be furnished with a card in French and in Arabic, mentioning his name and stating the services which secure this privilege to him.

All these cards shall be issued by the Legation of France at Tangier.

TANGIER, Aug. 19, 1863.



*Annex No. 32*

## ACT OF ALGECIRAS OF APRIL 7, 1906

*Source : 34 United States Statutes at Large, 2905-2947.*

*General act of the international conference at Algeciras and an additional protocol. Signed at Algeciras April 7, 1906 ; ratification advised by the Senate December 12, 1906 ; ratified by the President of the United States December 14, 1906 ; ratification deposited with the Spanish Government December 31, 1906 ; proclaimed January 22, 1907*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

## A PROCLAMATION.

Whereas a General Act and an Additional Protocol was concluded and signed on April 7, 1906, by the Plenipotentiaries of the United States of America, Germany, Austria-Hungary, Belgium, Spain, France, Great Britain, Italy, the Netherlands, Portugal, Russia, and Sweden, the originals of which General Act and Additional Protocol, being in the French language, are word for word as follows : Preamble.

## [Translation]

Au nom de Dieu Tout Puissant :

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, au nom de l'Empire Allemand ; Sa Majesté l'Empereur d'Autriche, Roi de Bohême, etc., et Roi Apostolique de Hongrie ; Sa Majesté le Roi des Belges ; Sa Majesté le Roi d'Espagne ; le Président des Etats-Unis d'Amérique ; le Président de la République Française ; Sa Majesté le Roi du Royaume Uni de la Grande Bretagne et d'Irlande et des territoires britanniques au delà des mers, Empereur des Indes ; Sa Majesté le Roi d'Italie ; Sa Majesté le Sultan du Maroc ; Sa Majesté la Reine des Pays-Bas ; Sa Majesté le Roi de Portugal et des Algarves, etc., etc., etc. ; Sa Majesté l'Empereur de toutes les Russies ; Sa Majesté le Roi de Suède ;

"In the Name of Almighty God," Contracting powers.

His Majesty the Emperor of Germany, King of Prussia, in the name of the German Empire ; His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary ; His Majesty the King of the Belgians ; His Majesty the King of Spain ; the President of the United States of America ; the President of the French Republic ; His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India, etc. ; His Majesty the King of Italy ; His Majesty the Sultan of Morocco ; Her Majesty the Queen of the Netherlands ; His Majesty the King of Portugal and of the Algarves, etc., etc., etc. ; His Majesty the Emperor of All the Russias ; His Majesty the King of Sweden :

Reforms in  
Morocco.

S'inspirant de l'intérêt qui s'attache à ce que l'ordre, la paix et la prospérité règnent au Maroc, et ayant reconnu que ce but précieux ne saurait être atteint que moyennant l'introduction de réformes basées sur le triple principe de la souveraineté et de l'indépendance de Sa Majesté le Sultan, de l'intégrité des Ses Etats et de la liberté économique sans aucune inégalité, ont résolu, sur l'invitation qui Leur a été adressée par Sa Majesté Chérienne, de réunir une Conférence à Algeciras pour arriver à une entente sur les dites réformes, ainsi que pour examiner les moyens de se procurer les ressources nécessaires à leur application, et ont nommé pour Leurs Délégués Plénipotentiaires, savoir :

Plenipotentiaries.

Sa Majesté l'Empereur d'Allemagne, Roi de Prusse, au nom de l'Empire Allemand :

Le Sieur Joseph de Radowitz, Son Ambassadeur Extraordinaire et Plénipotentiaire près Sa Majesté Catholique, et

Le Sieur Christian, Comte de Tattenbach, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Très-Fidèle ;

Sa Majesté l'Empereur d'Autriche, Roi de Bohême, etc., et Roi Apostolique de Hongrie :

Le Sieur Rodolphe, Comte de Welsersheimb, Son Ambassadeur Extraordinaire et Plénipotentiaire près Sa Majesté Catholique, et

Le Sieur Léopold, Comte Bolesta-Koziebrodzki, Son Envoyé Extraordinaire et Ministre Plénipotentiaire au Maroc ;

Sa Majesté le Roi des Belges :

Le Sieur Maurice, Baron Joostens, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique, et

Inspired by the interest attaching itself to the reign of order, peace, and prosperity in Morocco, and recognizing that the attainment thereof can only be effected by means of the introduction of reforms based upon the triple principle of the sovereignty and independence of His Majesty the Sultan, the integrity of his domains, and economic liberty without any inequality, have resolved, upon the invitation of His Shereefian Majesty, to call together a conference at Algeciras for the purpose of arriving at an understanding upon the said reforms, as well as examining the means for obtaining the resources necessary for their application, and have appointed as their delegates plenipotentiary the following :

His Majesty the Emperor of Germany, King of Prussia, in the name of the German Empire :

Mr. Joseph de Radowitz, His Ambassador Extraordinary and Plenipotentiary to His Catholic Majesty, and

Christian, Count of Tattenbach, His Envoy Extraordinary and Minister Plenipotentiary to His Very Faithful Majesty.

His Majesty the Emperor of Austria, King of Bohemia, etc., and Apostolic King of Hungary :

Rudolph, Count of Welsersheimb, His Ambassador Extraordinary and Plenipotentiary to His Catholic Majesty, and

Leopold, Count Bolesta-Koziebrodzki, His Envoy Extraordinary and Minister Plenipotentiary to Morocco.

His Majesty the King of the Belgians :

Maurice, Baron Joostens, His Envoy Extraordinary and Minister Plenipotentiary to his Catholic Majesty, and

Le Sieur Conrad, Comte de Buisseret-Steenbecque de Blarenghien, Son Envoyé Extraordinaire et Ministre Plénipotentiaire au Maroc ;

Sa Majesté le Roi d'Espagne :

Don Juan Manuel Sánchez y Gutiérrez de Castro, Duc de Almodóvar del Río, Son Ministre d'État, et

Don Juan Pérez-Caballero y Ferrer, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Belges ;

Le Président des Etats-Unis d'Amérique :

Le Sieur Henry White, Ambassadeur Extraordinaire et Plénipotentiaire des Etats-Unis d'Amérique près Sa Majesté le Roi d'Italie, et

Le Sieur Samuel R. Gummeré, Envoyé Extraordinaire et Ministre Plénipotentiaire des Etats-Unis d'Amérique au Maroc ;

Le Président de la République Française :

Le Sieur Paul Révoil, Ambassadeur Extraordinaire et Plénipotentiaire de la République Française auprès de la Confédération Suisse, et

Le Sieur Eugène Regnault, Ministre Plénipotentiaire ;

Sa Majesté le Roi du Royaume Uni de la Grande Bretagne et d'Irlande et des territoires britanniques au delà des mers, Empereur des Indes :

Sir Arthur Nicolson, Son Ambassadeur Extraordinaire et Plénipotentiaire près Sa Majesté l'Empereur de toutes les Russies ;

Sa Majesté le Roi d'Italie :

Le Sieur Emile, Marquis Visconti Venosta, Chevalier de l'Ordre de la Très-Sainte Annonciade, et

Le Sieur Giulio Malmusi, Son Envoyé Extraordinaire et Ministre Plénipotentiaire au Maroc :

Conrad, Count of Buisseret Steenbecque de Blarenghem, His Envoy Extraordinary and Minister Plenipotentiary to Morocco.

His Majesty the King of Spain :

Don Juan Manuel Sanchez y Gutiérrez de Castro, Duke of Almodóvar del Río, His Minister of State, and

Don Juan Pérez-Caballero y Ferrer, His Envoy Extraordinary and Minister Plenipotentiary to His Majesty the King of the Belgians.

The President of the United States of America :

Mr. Henry White, Ambassador Extraordinary and Plenipotentiary of the United States of America to His Majesty the King of Italy, and

Mr. Samuel R. Gummeré, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to Morocco.

The President of the French Republic :

Mr. Paul Révoil, Ambassador Extraordinary and Plenipotentiary of the French Republic to the Swiss Confederation, and

Mr. Eugène Regnault, Minister Plenipotentiary.

His Majesty the King of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, Emperor of India :

Sir Arthur Nicolson, His Ambassador Extraordinary and Plenipotentiary to His Majesty the Emperor of All the Russias.

His Majesty the King of Italy :

Emile, Marquis Visconti Venosta, Knight of the Order of the Very Holy Annunciation, and

Mr. Giulio Malmusi, His Envoy Extraordinary and Minister Plenipotentiary to Morocco.

Sa Majesté le Sultan du Maroc :

El Hadj Mohamed Ben-el Arbi Ettorrés, Son Délégué à Tanger et Son Ambassadeur Extraordinaire,

El Hadj Mohamed Ben Abdeslam El Mokri, Son Ministre des Dépenses,

El Hadj Mohamed Es-Seffar, et Sid Abderrhaman Bennis ;

Sa Majesté la Reine des Pays-Bas :

Le Sieur Jonkheer Hannibal Testa, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique ;

Sa Majesté le Roi de Portugal et des Algarves, etc., etc., etc. :

Le Sieur Antoine, Comte de Tovar, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique, et

Le Sieur François-Robert, Comte de Martens Ferrão, Pair du Royaume, Son Envoyé Extraordinaire et Ministre Plénipotentiaire au Maroc ;

Sa Majesté l'Empereur de toutes les Russies :

Le Sieur Arthur, Comte Cassini, Son Ambassadeur Extraordinaire et Plénipotentiaire près Sa Majesté Catholique, et

Le Sieur Basile Bacheracht, Son Ministre au Maroc ;

Sa Majesté le Roi de Suède :

Le Sieur Robert Sager, Son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté Catholique et près Sa Majesté Très Fidèle.

Lesquels, munis de pleins pouvoirs qui ont été trouvés en bonne et due forme, ont, conformément au programme sur lequel Sa Majesté Chérifienne et les Puissances sont tombées d'accord, successivement discuté et adopté :

His Majesty the Sultan of Morocco :

El Hadj Mohammed Ben-el Arbi Ettorrés, His Delegate at Tangier and Ambassador Extraordinary.

El Hadj Mohammed Ben Abdeslam El Mokri, His Minister of Expenses,

El Hadj Mohammed Es-Seffar, and Sid Abderrhaman Bennis.

Her Majesty the Queen of the Netherlands :

Jonkheer Hannibal Testa, Her Envoy Extraordinary and Minister Plenipotentiary to His Catholic Majesty.

His Majesty the King of Portugal and of the Algarves, etc., etc., etc. :

Anthony, Count of Tovar, His Envoy Extraordinary and Minister Plenipotentiary to His Catholic Majesty and

Francis Robert, Count of Martens Ferrao, Peer of the Kingdom, His Envoy Extraordinary and Minister Plenipotentiary to Morocco.

His Majesty the Emperor of All the Russias :

Arthur, Count Cassini, His Ambassador Extraordinary and Plenipotentiary to His Catholic Majesty, and

Mr. Basile de Bacheracht, His Minister to Morocco.

His Majesty the King of Sweden :

Mr. Robert Sager, His Envoy Extraordinary and Minister Plenipotentiary to His Catholic Majesty and His Very Faithful Majesty.

Who, furnished with full powers, which were found in good and due form, have, in conformity with the programme upon which His Shereefian Majesty and the powers have agreed, successively discussed and adopted :

I. Une Déclaration relative à l'organisation de la police ;

II. Un Règlement concernant la surveillance et la répression de la contrebande des armes ;

III. Un Acte de concession d'une Banque d'Etat marocaine ;

IV. Une Déclaration concernant un meilleur rendement des impôts et la création de nouveaux revenus ;

V. Un Règlement sur les Douanes de l'Empire et la répression de la fraude et de la contrebande ;

VI. Une Déclaration relative aux Services Publics et aux Travaux Publics ;

et, ayant jugé que ces différents documents pourraient être utilement coordonnés en un seul instrument, les ont réunis en un Acte général composé des articles suivants :

#### CHAPITRE I

##### *Déclaration relative à l'organisation de la police*

ARTICLE premier. La Conférence, appelée par Sa Majesté le Sultan à se prononcer sur les mesures nécessaires pour organiser la police, déclare que les dispositions à prendre sont les suivantes.

ART. 2. La police sera placée sous l'autorité souveraine de Sa Majesté le Sultan. Elle sera recrutée par le Makhzen parmi les musulmans marocains, commandée par des Caïds marocains et répartie dans les huit ports ouverts au commerce.

ART. 3. Pour venir en aide au Sultan dans l'organisation de cette police, des officiers et sous-officiers instructeurs espagnols, des officiers et sous-officiers ins-

I. A declaration relative to the organization of the police. Objects of conference.

II. A regulation concerning the detection and repression of the contraband of arms.

III. An act of concession for a Moroccan State Bank.

IV. A declaration concerning a better return of taxes, and the creation of new revenues.

V. A regulation concerning the customs of the Empire and the repression of fraud and smuggling.

VI. A declaration relative to public services and public works.

And, having decided that these different documents might usefully be coordinated in a single instrument, they have united them in a general act composed of the following articles :

#### CHAPTER I

##### *Declaration relative to the organization of the police*

ARTICLE I. The conference summoned by His Majesty the Sultan to pronounce on the measures necessary to organize the police declares that the following provisions should be made : Police organization.  
Declaration.

ART. 2. The police shall be under the sovereign authority of His Majesty the Sultan. It shall be recruited by the Maghzen from Moorish Mohammedans, commanded by Moorish Kaid, and distributed in the eight ports open to commerce. Sovereign authority of Sultan, etc.

ART. 3. In order to aid the Sultan in the organization of this police, Spanish officers and non-commissioned officers as instructors, and French officers and non-

tructeurs français, seront mis à Sa disposition par leurs Gouvernements respectifs, qui soumettront leur désignation à l'agrément de Sa Majesté Chérifienne. Un contrat passé entre le Makhzen et les instructeurs, en conformité du règlement prévu à l'article 4, déterminera les conditions de leur engagement et fixera leur solde qui ne pourra pas être inférieure au double de la solde correspondante au grade de chaque officier ou sous-officier. Il leur sera alloué, en outre, une indemnité de résidence variable suivant les localités. Des logements convenables seront mis à leur disposition par le Makhzen qui fournira également les montures et les fourrages nécessaires.

commissioned officers as instructors, shall be placed at His disposal by their respective Governments, which shall submit their designation to the approval of His Shereefian Majesty. A contract drawn between the Maghzen and these instructors, in conformity to the regulation provided by article 4, shall determine the conditions of their engagement and fix their pay, which must not be less than double of the pay corresponding to the rank of each officer or non-commissioned officer. In addition they will be allowed living expenses, varying according to their residences. Proper lodgings will be placed at their disposal by the Maghzen, which will likewise supply them with their horses and the necessary fodder.

The Governments having jurisdiction over the instructors reserve the right to recall them and replace them by others, accepted and engaged under the same conditions.

Right of recall reserved.

Les Gouvernements auxquels ressortissent les instructeurs se réservent le droit de les rappeler et de les remplacer par d'autres, agréés et engagés dans les mêmes conditions.

Term of service.

ART. 4. Ces officiers et sous-officiers prêteront, pour une durée de cinq années à dater de la ratification de l'Acte de la Conférence, leur concours à l'organisation des corps de police chérifiens. Ils assureront l'instruction et la discipline conformément au règlement qui sera établi sur la matière ; ils veilleront également à ce que les hommes enrôlés possèdent l'aptitude au service militaire. D'une façon générale, ils devront surveiller l'administration des troupes et contrôler le paiement de la solde qui sera effectué par l'Amin, assisté de l'officier instructeur comptable. Ils prêteront aux autorités marocaines, investies du commandement de ces corps, leur concours technique pour l'exercice de ce commandement.

ART. 4. These officers and non-commissioned officers for a period of five years, to date from the ratification of the act of the conference, shall give their service to the organization of a body of Shereefian police. They shall assure instruction and discipline in conformity with the regulations to be drawn up in respect thereto. They shall also see that the men enlisted are fit for military service. In a general way they shall supervise the administration of the soldiers and superintend the payment of their salary, which shall be effected by the "Amin," assisted by the accounting officer instructor. They shall extend to the Moorish authorities invested with the command of these bodies their technical aid in the exercise of the said command.

Duties.

Les dispositions réglementaires propres à assurer le recrutement, la discipline, l'instruction et l'administration des corps de police, seront arrêtées d'un commun accord entre le Ministre de la Guerre chérifien ou son délégué, l'inspecteur prévu à l'article 7, l'instructeur français et l'instructeur espagnol les plus élevés en grade.

Le règlement devra être soumis au Corps Diplomatique à Tanger qui formulera son avis dans le délai d'un mois. Passé ce délai, le règlement sera mis en application.

ART. 5. L'effectif total des troupes de police ne devra pas dépasser deux mille cinq cents hommes ni être inférieur à deux mille. Il sera réparti suivant l'importance des ports par groupes variant de cent cinquante à six cents hommes. Le nombre des officiers espagnols et français sera de seize à vingt ; celui des sous-officiers espagnols et français, de trente à quarante.

ART. 6. Les fonds, nécessaires à l'entretien et au paiement de la solde des troupes et des officiers et sous-officiers instructeurs, seront avancés au Trésor chérifien par la Banque d'Etat, dans les limites du budget annuel attribué à la police qui ne devra pas dépasser deux millions et demi de pesetas pour un effectif de deux mille cinq cents hommes.

ART. 7. Le fonctionnement de la police sera, pendant la même période de cinq années, l'objet d'une inspection générale qui sera confiée par Sa Majesté Chérifienne à un officier supérieur de l'armée suisse dont le choix sera proposé à Son agrément par le Gouvernement fédéral suisse.

Cet officier prendra le titre d'Inspecteur général et aura sa résidence à Tanger.

The regulations to assure the recruitment, discipline, instruction, and administration of the bodies of police shall be established by mutual agreement between the Shereefian Minister of War or his delegate, the inspector provided by article 7, and the highest ranking French and Spanish instructors. Regulations.

The regulations shall be submitted to the Diplomatic Body at Tangier, which will formulate its opinion within a month's time. After that period the regulations shall be enforced.

ART. 5. The total strength of the police shall not be more than 2,500 men, nor less than 2,000. It shall be distributed, according to the importance of the ports, in groups varying between 150 and 600 men. The number of Spanish and French officers shall be between sixteen and twenty ; of Spanish and French noncommissioned officers, between thirty and forty. Number and disposition of force.

ART. 6. The funds necessary to maintain and pay soldiers and officers and noncommissioned officer instructors shall be advanced by the State Bank to the Shereefian Treasury within the limits of the annual budget assigned to the police, which shall not exceed two million and a half pesetas for an effective strength of two thousand five hundred men. State Bank to advance expense fund.

ART. 7. During the same period of five years a general inspection shall be made into the working of the police. Such inspection shall be intrusted by His Shereefian Majesty to a superior officer of the Swiss army, who will be submitted to His approval by the Swiss Federal Government. This officer will be styled Inspector-General and reside at Tangier. Limit.  
Inspection by Swiss officer.  
Rank and residence.

Inspection  
and reports.

Il inspectera, au moins une fois par an, les divers corps de police et, à la suite de ces inspections, il établira un rapport qu'il adressera au Makhzen.

En dehors des rapports réguliers, il pourra, s'il le juge nécessaire, établir des rapports spéciaux sur toute question concernant le fonctionnement de la police.

Sans intervenir directement dans le commandement ou l'instruction, l'Inspecteur général se rendra compte des résultats obtenus par la police chérifienne au point de vue du maintien de l'ordre et de la sécurité dans les localités où cette police sera installée.

Reports to  
Diplomatic  
Body.

ART. 8. Les rapports et communications, faits au Makhzen par l'Inspecteur général au sujet de sa mission, seront, en même temps, remis en copie au Doyen du Corps Diplomatique à Tanger, afin que le Corps Diplomatique soit mis à même de constater que la police chérifienne fonctionne conformément aux décisions prises par la Conférence et de surveiller si elle garantit, d'une manière efficace et conforme aux traités, la sécurité des personnes et des biens des ressortissants étrangers, ainsi que celle des transactions commerciales.

Complaints.

ART. 9. En cas de réclamations dont le Corps Diplomatique serait saisi par la Légation intéressée, le Corps Diplomatique pourra, en avisant le Représentant du Sultan, demander à l'Inspecteur général de faire une enquête et d'établir un rapport sur ces réclamations, à toutes fins utiles.

Salary, etc.

ART. 10. L'Inspecteur général recevra un traitement annuel de vingt-cinq mille francs. Il lui sera alloué, en outre, une indem-

He shall inspect at least once a year the different bodies of the police, and after such inspection he shall draw up a report which he will address to the Maghzen.

In addition to such regular reports, he will, if he regards it as necessary, draw up special reports with reference to the working of the police.

Without directly intervening either in the command or the instruction, the Inspector-General will ascertain the results obtained by the Shereefian police, as regards the maintenance of order and security in the places where this police shall have been established.

ART. 8. A copy of the reports and communications made to the Maghzen by the Inspector-General, with reference to his mission, shall at the same time be transmitted to the Dean of the Diplomatic Body at Tangier, in order that the Diplomatic Body be enabled to satisfy itself that the Shereefian police acts in conformity to the decisions taken by the conference, and to see whether it guarantees effectively, and in conformity with the treaties, the security of person and property of foreign citizens, subjects, and protégés, as well as that of commercial transactions.

ART. 9. In the case of complaints filed with the Diplomatic Body by the legation concerned, the Diplomatic Body may, upon notice given to the representative of the Sultan, direct the Inspector-General to investigate and report for all available purposes in the matter of such complaints.

ART. 10. The Inspector-General shall receive an annual salary of 25,000 francs. In addition, he will be allowed 6,000 francs for



nité de six mille francs pour frais de tournées. Le Makhzen mettra à sa disposition une maison convenable et pourvoira à l'entretien de ses chevaux.

ART. II. Les conditions matérielles de son engagement et de son installation, prévues à l'article 10, feront l'objet d'un contrat passé entre lui et le Makhzen. Ce contrat sera communiqué en copie au Corps Diplomatique.

ART. 12. Le cadre des instructeurs de la police chérifienne (officiers et sous-officiers) sera espagnol à Tétouan, mixte à Tanger, espagnol à Larache, français à Rabat, mixte à Casablanca, et français dans les trois autres ports.

## CHAPITRE II

### *Règlement concernant la surveillance et la répression de la contrebande des armes*

ART. 13. Sont prohibés dans toute l'étendue de l'Empire Chérifien, sauf dans les cas spécifiés aux articles 14 et 15, l'importation et le commerce des armes de guerre, pièces d'armes, munitions chargées ou non chargées de toutes espèces, poudres, salpêtre, fulmi-coton, nitro-glycérine et toutes compositions destinées exclusivement à la fabrication des munitions.

ART. 14. Les explosifs nécessaires à l'industrie et aux travaux publics pourront néanmoins être introduits. Un règlement, pris dans les formes indiquées à l'article 18, déterminera les conditions dans lesquelles sera effectuée leur importation.

ART. 15. Les armes, pièces d'armes et munitions, destinées aux troupes de Sa Majesté Ché-

the expenses of his tours. The Maghzen will place at his disposal a suitable residence and will look after the maintenance of his horses.

ART. II. The material conditions of his engagement and of his establishment, as provided by article 10, shall be the subject of a contract drawn up between him and the Maghzen. A copy of this contract shall be communicated to the Diplomatic Body.

ART. 12. The staff of instructors of the Shereefian police (officers and noncommissioned officers) shall be Spanish at Tetuan, mixed at Tangier, Spanish at Larache, French at Rabat, mixed at Casablanca, and French in the other three ports.

## CHAPTER II

### *Regulations concerning the detection and repression of the contraband of arms*

ART. 13. Throughout the Shereefian Empire, except in the cases specified by articles 14 and 15, the importation and sale is forbidden of arms of war, parts of guns, ammunition of any nature, loaded or unloaded, powder, saltpeter, gun cotton, nitroglycerin, and all compositions destined exclusively for the manufacture of ammunition.

ART. 14. Such explosives as are necessary for industry and public works may, however, be introduced. A regulation drawn up in the manner indicated by article 18 shall determine the conditions under which their importation may be effected.

ART. 15. The arms, parts of guns, and ammunition intended for the troops of His Shereefian

Service contract, etc.

Nationality of staff instructors.

Contraband of arms.

Importation, etc., forbidden.

Explosives used in public works, etc.

Arms, etc., for troops.

rienne, seront admises après l'accomplissement des formalités suivantes :

Formalities.

Une déclaration, signée par le Ministre de la Guerre marocain, énonçant le nombre et l'espèce des fournitures de ce genre commandées à l'industrie étrangère, devra être présentée à la Légation du pays d'origine qui y apposera son visa.

Le dédouanement des caisses et colis contenant les armes et munitions, livrées en exécution de la commande du Gouvernement marocain, sera opéré sur la production :

1. de la déclaration spécifiée ci-dessus.

2. du connaissement indiquant le nombre, le poids des colis, le nombre et l'espèce des armes et munitions qu'ils contiennent. Ce document devra être visé par la Légation du pays d'origine qui marquera au verso les quantités successives précédemment dédouanées. Le visa sera refusé à partir du moment où la commande aura été intégralement livrée.

Sporting arms.

ART. 16. L'importation des armes de chasse et de luxe, pièces d'armes, cartouches chargées et non chargées, est également interdite. Elle pourra, toutefois, être autorisée :

1.° pour les besoins strictement personnels de l'importateur,

2.° pour l'approvisionnement des magasins d'armes autorisés conformément à l'article 18.

Permits for personal use.

ART. 17. Les armes et munitions de chasse ou de luxe seront admises pour les besoins strictement personnels de l'importateur, sur la production d'un permis délivré par le Représentant du Makhzen à Tanger. Si l'importateur est étranger, le permis ne

Majesty will be admitted after the fulfillment of the following formalities :

A declaration signed by the Moorish Minister of War, describing the number and nature of such articles ordered abroad, must be presented to the legation of the country of their origin, whose visa shall be affixed thereto.

The passage through the customs of the cases and packages containing the arms and munitions, delivered at the order of the Moorish Government, shall be effected upon the presentation :

1. Of the aforesaid declaration.

2. Of the invoice indicating the number and weight of the packages and the number and kind of the arms and munitions contained therein. This document must be visaed by the legation of the country of their origin, which will mark on the back the successive amounts previously passed through the customs. This visa will be refused when the order shall have been entirely delivered.

ART. 16. The importation of sporting and high-priced arms, parts of guns, cartridges loaded and unloaded, is likewise forbidden. It may none the less be authorized—

1.° For the strictly personal requirements of the importer ;

2.° For supplying the gunshops authorized by article 18.

ART. 17. Sporting and high-priced arms and the ammunition for the same will be admitted for the strictly personal requirements of the importer on presentation of a permit issued by the representative of the Maghzen at Tangier. If the importer is a foreigner, this

sera établi que sur la demande de la Légation dont il relève.

En ce qui concerne les munitions de chasse, chaque permis portera au maximum sur mille cartouches ou les fournitures nécessaires à la fabrication de mille cartouches.

Le permis ne sera donné qu'à des personnes n'ayant encouru aucune condamnation correctionnelle.

ART. 18. Le commerce des armes de chasse et de luxe, non rayées, de fabrication étrangère, ainsi que des munitions qui s'y rapportent, sera règlementé, dès que les circonstances le permettront, par décision chérifienne, prise conformément à l'avis du Corps Diplomatique à Tanger, statuant à la majorité des voix. Il en sera de même des décisions, ayant pour but de suspendre ou de restreindre l'exercice de ce commerce.

Seules, les personnes ayant obtenu une licence spéciale et temporaire du Gouvernement marocain, seront admises à ouvrir et exploiter des débits d'armes et de munitions de chasse. Cette licence ne sera accordée que sur demande écrite de l'intéressé, appuyée d'un avis favorable de la Légation dont il relève.

Des règlements pris dans la forme indiquée au paragraphe premier de cet article détermineront le nombre des débits pouvant être ouverts à Tanger et, éventuellement, dans les ports qui seront ultérieurement désignés. Ils fixeront les formalités imposées à l'importation des explosifs à l'usage de l'industrie et des travaux publics, des armes et munitions destinées à l'approvisionnement des débits, ainsi que les quantités maxima qui pourront être conservées en dépôt.

En cas d'infractions aux prescriptions réglementaires, la li-

permit will only be granted at the request of his legation.

With respect to ammunition for sporting purposes, each permit shall allow a maximum of a thousand cartridges or the supplies necessary for the manufacture of a thousand cartridges. The permit shall only be issued to those who have never been sentenced for any offense.

ART. 18. The trade in sporting and high-priced arms, not rifled, of foreign manufacture, as well as of the ammunition appertaining to the same, shall be regulated as soon as circumstances permit, by a Shereefian decision made in conformity with the advice of a majority of the Diplomatic Body at Tangier. This shall be the case, as well, with decisions intended to suspend or restrict the exercise of such trade.

Regulation of trade in sporting arms.

Only such persons as have secured a special and temporary license from the Moorish Government shall be allowed to open and operate retail shops for the sale of sporting guns and ammunition. This license shall only be given at the written request of the applicant, indorsed by his legation.

Special license.

Regulations drawn up in the manner indicated by the first paragraph of this article shall determine the number of such retail shops which may be opened at Tangier and, if occasion arises, in the ports that may be later designated. They shall fix the formalities to be imposed on the importation of explosives intended for industry and public works, of arms and ammunition intended to supply such shops, as well as the maximum quantity of stock that can be kept.

Regulations.

In case of the violation of the regulating ordinances, the license

Withdrawal of license.

cence pourra être retirée à titre temporaire ou à titre définitif, sans préjudice des autres peines encourues par les délinquants.

Punishment  
for illegal  
importation.

ART. 19. Toute introduction ou tentative d'introduction de marchandises prohibées donnera lieu à leur confiscation et, en outre, aux peines et amendes ci-dessous, qui seront prononcées par la juridiction compétente.

At open  
ports.

ART. 20. L'introduction, ou tentative d'introduction, par un port ouvert au commerce ou par un bureau de douane, sera punie :

1.° D'une amende de cinq cents à deux mille pesetas et d'une amende supplémentaire égale à trois fois la valeur de la marchandise importée ;

2.° D'un emprisonnement de cinq jours à un an ; ou de l'une des deux pénalités seulement.

Outside of  
open ports.

ART. 21. L'introduction, ou tentative d'introduction, en dehors d'un port ouvert au commerce ou d'un bureau de douane, sera punie :

1.° D'une amende de mille à cinq mille pesetas et d'une amende supplémentaire, égale à trois fois la valeur de la marchandise importée ;

2.° D'un emprisonnement de trois mois à deux ans ; ou de l'une des deux pénalités seulement.

Fraudulent  
sales, etc.

ART. 22. La vente frauduleuse, le recel et le colportage des marchandises prohibées par le présent règlement seront punis des peines édictées à l'article 20.

Punishment  
of  
accomplices.

ART. 23. Les complices des délits prévus aux articles 20, 21 et 22, seront passibles des mêmes peines que les auteurs principaux. Les éléments caractérisant la complicité seront appréciés d'après la législation du tribunal saisi.

may be temporarily or permanently withdrawn without prejudice to other penalties incurred by the offenders.

ART. 19. Every introduction of, or attempt to introduce, the prohibited merchandise shall make it liable to confiscation, and further to the punishments and fines mentioned below, which shall be pronounced by the competent jurisdiction.

ART. 20. The introduction or attempt to introduce in a port open to commerce, or through a customhouse, shall be punished :

1°. By a fine of from 500 to 2,000 pesetas and an additional fine equal to three times the value of the imported merchandise ;

2°. By imprisonment of from five days to a year, or else by only one of these two punishments.

ART. 21. The introduction or attempt to introduce outside a port open to commerce or a customhouse shall be punished :

1°. By a fine of from 1,000 to 5,000 pesetas and an additional fine equal to three times the value of the imported merchandise ;

2°. By imprisonment of from three months to two years, or else by only one of these two punishments.

ART. 22. The fraudulent sale, the receiving and peddling, of merchandise prohibited by the present regulations shall be punished according to the penalties specified in article 20.

ART. 23. The accomplices in the offenses set forth in articles 20, 21, and 22 shall be liable to the same penalties as the principals. The elements determining complicity shall be adjudged according to the laws of the court in charge of the case.

ART. 24. Quand il y aura des indices sérieux, faisant soupçonner qu'un navire mouillé dans un port ouvert au commerce transporte en vue de leur introduction au Maroc des armes, des munitions ou d'autres marchandises prohibées, les agents de la douane chérifienne devront signaler ces indices à l'autorité consulaire compétente afin que celle-ci procède, avec l'assistance d'un délégué de la douane chérifienne, aux enquêtes, vérifications ou visites qu'elle jugera nécessaires.

ART. 25. Dans le cas d'introduction ou de tentative d'introduction par mer de marchandises prohibées, en dehors d'un port ouvert au commerce, la douane marocaine pourra amener le navire au port le plus proche pour être remis à l'autorité consulaire, laquelle pourra le saisir et maintenir la saisie jusqu'au paiement des amendes prononcées. Toutefois, la saisie du navire devra être levée, en tout état de l'instance, en tant que cette mesure n'entravera pas l'instruction judiciaire, sur consignation du montant maximum de l'amende entre les mains de l'autorité consulaire ou sous caution solvable de la payer, acceptée par la douane.

ART. 26. Le Makhzen conservera les marchandises confisquées, soit pour son propre usage, si elles peuvent lui servir, à condition que les sujets de l'Empire ne puissent s'en procurer, soit pour les faire vendre en pays étranger.

Les moyens de transport à terre pourront être confisqués et seront vendus au profit du Trésor chérifien.

ART. 27. La vente des armes réformées par le Gouvernement marocain sera prohibée dans toute l'étendue de l'Empire Chérifien.

ART. 24. When there is good reason to suppose that a vessel anchored in a port open to commerce carries guns, ammunition, or other prohibited merchandise, with a view of introducing the same into Morocco, the officers of the Shereefian customs shall so inform the competent consular authority, in order that the latter may carry out, in company with a delegate of the Shereefian customs, such investigations, verifications, or searches as may be judged necessary.

Inspection of suspected vessels at open ports.

ART. 25. In the case of the introduction or the attempted introduction by sea of prohibited merchandise outside of a port open to commerce, the Moorish customs authorities may bring the vessel to the nearest port, to be turned over to the consular authority, who shall have the right to seize it and continue such seizure until payment of the fines decreed. The vessel may, however, be released at any period of the trial, provided that the judicial proceedings shall not be impeded thereby, on the deposit made with the consular authority of the maximum of the fine, or else under responsible bail accepted by the customs.

At outside ports.

Seizure.

ART. 26. The Maghzen may retain the confiscated merchandise either for its own use, if able to utilize it, on condition that the subjects of the Empire shall not be able to get possession of it, or it shall dispose of it abroad.

Disposal of confiscated merchandise.

The conveyances of the same on shore may be confiscated and shall be sold for the profit of the Shereefian Treasury.

ART. 27. The sale of arms condemned by the Moorish Government shall be prohibited throughout the Shereefian Empire.

Sale of condemned arms forbidden.

Payment of  
reward to  
informer, etc.

ART. 28. Des primes, à prélever sur le montant des amendes prononcées, seront attribuées aux indicateurs qui auront amené la découverte des marchandises prohibées et aux agents qui en auront opéré la saisie : ces primes seront ainsi attribuées après déduction, s'il y a lieu, des frais du procès, un tiers à répartir par la douane entre les indicateurs, un tiers aux agents ayant saisi la marchandise, et un tiers au Trésor marocain.

ART. 28. Rewards taken out of the amount of the fines levied are to be given to the informants who have been instrumental in discovering forbidden merchandise and to the agents who have effected its seizure. Such rewards shall be assigned after deducting, if necessary, the costs of the trial, one-third to be distributed by the customs among the informants, one-third to the officers who seized the merchandise, and one-third to the Moroccan Treasury.

Distribution  
of fines.

Si la saisie a été opérée sans l'intervention d'un indicateur, la moitié des amendes sera attribuée aux agents saisissants et l'autre moitié au Trésor chérifien.

If the seizure has been effected without the intervention of an informer one-half of the fines shall go to the officer making the seizure and the other half to the Shereefian Treasury.

Notice to di-  
plomatic,  
etc., agents.

ART. 29. Les autorités douanières marocaines devront signaler directement aux agents diplomatiques ou consulaires les infractions au présent règlement commises par leurs ressortissants, afin que ceux-ci soient poursuivis devant la juridiction compétente.

ART. 29. The Moorish customs authorities shall notify directly the diplomatic or consular agents of any violations of this regulation, committed by those under their jurisdiction, in order that the same may be prosecuted before the proper jurisdiction.

Les mêmes infractions, commises par des sujets marocains, seront déferées directement par la douane à l'autorité chérifienne.

Similar violations committed by Moorish subjects shall be submitted directly by the customs to the Shereefian authority.

Un délégué de la douane sera chargé de suivre la procédure des affaires pendantes devant les diverses juridictions.

A delegate of the customs shall be assigned to follow the procedure of cases pending before the different jurisdictions.

Enforcement  
of regulations  
French  
frontier.

ART. 30. Dans la région frontière de l'Algérie, l'application du règlement sur la contrebande des armes restera l'affaire exclusive de la France et du Maroc.

ART. 30. In the region bordering on Algeria, the enforcement of the regulations on the contraband of arms shall be the exclusive concern of France and Morocco.

Spanish  
frontier.

De même, l'application du règlement sur la contrebande des armes dans le Riff et, en général dans les régions frontières des Possessions espagnoles, restera l'affaire exclusive de l'Espagne et du Maroc.

Similarly, the enforcement of the regulation on the contraband of arms in the Riff and in general in the regions bordering on the Spanish possessions shall be the exclusive concern of Spain and Morocco.

## CHAPITRE III

## CHAPTER III

*Acte de concession d'une Banque d'État**Act of concession for a State Bank* State Bank.

ART. 31. Une Banque sera instituée au Maroc sous le nom de "Banque d'État du Maroc" pour exercer les droits ci-après spécifiés dont la concession lui est accordée par Sa Majesté le Sultan, pour une durée de quarante années à partir de la ratification du présent Acte.

ART. 31. A bank shall be established in Morocco under the name of the "State Bank of Morocco," to exercise the following specified rights, which are granted to it by His Majesty the Sultan for a period of forty years, to date from the ratification of this act. Name.

ART. 32. La Banque, qui pourra exécuter toutes les opérations rentrant dans les attributions d'une banque, aura le privilège exclusif d'émettre des billets au porteur, remboursables à présentation, ayant force libératoire dans les caisses publiques de l'Empire marocain.

ART. 32. The Bank, which will have power to carry on all transactions entering into the operations of a bank, shall have the exclusive privilege of issuing notes to bearer, payable on presentation and receivable for public dues throughout the Moorish Empire. Powers, etc.

La Banque maintiendra, pour le terme de deux ans à compter de la date de son entrée en fonctions, une encaisse au moins égale à la moitié de ses billets en circulation, et au moins égale au tiers après cette période de deux ans révolue. Cette encaisse sera constituée pour au moins un tiers en or ou monnaie or.

The Bank shall maintain for a period of two years, to date from its going into operation, cash on hand at least equal to half its notes in circulation, and equal to at least one-third after the expiration of said period of two years. At least one-third of such cash on hand is to be gold bullion or gold coin. Cash reserve.

ART. 33. La Banque remplira, à l'exclusion de toute autre banque ou établissement de crédit, les fonctions de trésorier-payeur de l'Empire. A cet effet, le Gouvernement marocain prendra les mesures nécessaires pour faire verser dans les caisses de la Banque le produit des revenus des douanes, à l'exclusion de la partie affectée au service de l'Emprunt 1904 et des autres revenus qu'il désignera.

ART. 33. The Bank shall, to the exclusion of every other bank or establishment of credit, discharge the duty of disbursing treasurer of the Empire. To this end the Moorish Government shall take all necessary measures to deposit in the Bank the proceeds of the customs revenues, exclusive of the part thereof applied to the loan of 1904, and such other revenues as it may designate. Government depository and disbursing treasurer.

Quant au produit de la taxe spéciale créée en vue de l'accomplissement de certains travaux publics, le Gouvernement marocain devra le faire verser à la Banque, ainsi que les revenus qu'il pourrait ultérieurement

With reference to the special tax established in order to carry out certain public works, the Moorish Government must have the same deposited in the Bank, as well as the revenues it may later pledge for its loans, the Funds for public works.

affecter à la garantie de ses emprunts, la Banque étant spécialement chargée d'en assurer le service, à l'exception toutefois de l'Emprunt 1904 qui se trouve régi par un Contrat spécial.

Financial agent of the Government.

ART. 34. La Banque sera l'agent financier du Gouvernement, tant au dedans qu'au dehors de l'Empire, sans préjudice du droit pour le Gouvernement de s'adresser à d'autres maisons de banque ou établissements de crédit pour ses emprunts publics. Toutefois, pour les dits emprunts, la Banque jouira d'un droit de préférence, à conditions égales, sur toute maison de banque ou établissement de crédit.

Negotiation of notes.

Mais, pour les Bons du Trésor et autres effets de trésorerie à court terme que le Gouvernement marocain voudrait négocier, sans en faire l'objet d'une émission publique, la Banque sera chargée, à l'exclusion de tout autre établissement, d'en faire la négociation, soit au Maroc, soit à l'étranger, pour le compte du Gouvernement marocain.

Advances.

ART. 35. A valoir sur les rentrées du Trésor, la Banque fera au Gouvernement marocain des avances en compte-courant jusqu'à concurrence d'un million de francs.

Credit account.

La Banque ouvrira, en outre, au Gouvernement, pour une durée de dix ans à partir de sa constitution, un crédit qui ne pourra pas dépasser les deux tiers de son capital initial.

Interest, etc.

Ce crédit sera réparti sur plusieurs années et employé en premier lieu aux dépenses d'installation et d'entretien des corps de police organisés conformément aux décisions prises par la Conférence, et subsidiairement aux dépenses de travaux d'intérêt général qui ne seraient pas im-

Bank being especially charged with the payments thereon, except, however, in the case of the loan of 1904, which is governed by special contract.

ART. 34. The Bank shall be the financial agent of the Government both within and without the Empire, without prejudice to the Government's right to apply to other banking houses or establishments of credit for its public loans. The Bank, however, shall enjoy, in regard to such loans, a right of preference, other conditions being equal, over any banking or credit establishment.

For Treasury notes or other short-term notes which the Moorish Government may wish to negotiate without making it a public issue, the Bank shall, however, be charged, to the exclusion of every other establishment, with negotiating the same for the account of the Moorish Government, either in Morocco or abroad.

ART. 35. The Bank shall make advances to the Moroccan Government on account current up to a million francs, chargeable against Treasury receipts.

The Bank shall likewise open a credit account for the Government for the period of ten years, to date from its establishment, such account not to exceed two-thirds of its initial capital.

This credit account shall be distributed over several years and employed primarily for the expenses of establishing and maintaining the bodies of police, organized in conformity to the decisions adopted by the conference, and secondarily for the expenses of such works of public



putées sur le fonds spécial prévu à l'article suivant.

Le taux de ces deux avances sera au maximum de sept pour cent, commission de banque comprise, et la Banque pourra demander au Gouvernement de lui remettre en garantie de leur montant une somme équivalente en Bons du Trésor.

Si, avant l'expiration des dix années, le Gouvernement marocain venait à contracter un emprunt, la Banque aurait la faculté d'obtenir le remboursement immédiat des avances faites conformément au deuxième alinéa du présent article.

ART. 36. Le produit de la taxe spéciale (articles 33 et 66) formera un fonds spécial dont la Banque tiendra une comptabilité à part. Ce fonds sera employé conformément aux prescriptions arrêtées par la Conférence.

En cas d'insuffisance et à valoir sur les rentrées ultérieures, la Banque pourra ouvrir à ce fonds un crédit dont l'importance ne dépassera pas le montant des encaissements pendant l'année antérieure.

Les conditions de taux et de commission seront les mêmes que celles fixées à l'article précédent pour l'avance en compte-courant au Trésor.

ART. 37. La Banque prendra les mesures qu'elle jugera utiles pour assainir la situation monétaire au Maroc. La monnaie espagnole continuera à être admise à la circulation avec force libératoire.

En conséquence, la Banque sera exclusivement chargée de l'achat des métaux précieux, de la frappe et de la refonte des monnaies, ainsi que de toutes

interest as might not be charged to the special fund as provided for by the following article:

The maximum rate for these two advances will be 7 per cent, bank commission included, and the Bank may ask the Government to give as security an equal amount in Treasury notes.

If before the expiration of the said term of ten years the Moorish Government should contract a loan, the Bank would have the right to obtain the immediate re-imbusement of its advances made in accordance with the second paragraph of the present article.

ART. 36. The proceeds of the special tax (Articles 33 and 66) shall form a special fund for which the Bank shall keep a separate account. This fund shall be employed in conformity to the regulations adopted by the conference.

In the case of its insufficiency, and chargeable to later receipts, the Bank may open a special credit for such fund, the amount of which should not exceed the total of the receipts for the previous year.

The conditions of the rate and commission shall be the same as those established by the preceding article for advances to the Treasury on account current.

ART. 37. The Bank shall take such measures as it may deem conducive to a sounder monetary situation in Morocco. Spanish currency shall continue to be permitted to circulate as legal tender.

In consequence, the Bank shall have the exclusive charge of purchasing precious metals, of striking and melting coins, as well as of all its other monetary opera-

autres opérations monétaires qu'elle fera pour le compte et au profit du Gouvernement marocain.

Home office,  
etc.

ART. 38. La Banque, dont le siège social sera à Tanger, établira des succursales et agences dans les principales villes du Maroc et dans tout autre endroit où elle le jugera utile.

tions for the account and profit of the Moorish Government.

ART. 38. The home office of the Bank shall be at Tangier, but it shall establish branches and agencies in the principal cities of Morocco or in any other place it may deem expedient.

Real estate.

ART. 39. Les emplacements nécessaires à l'établissement de la Banque ainsi que de ses succursales et agences au Maroc seront mis gratuitement à sa disposition par le Gouvernement et, à l'expiration de la concession, le Gouvernement en reprendra possession et remboursera à la Banque les frais de construction de ces établissements. La Banque sera, en outre, autorisée à acquérir tout bâtiment et terrain dont elle pourrait avoir besoin pour le même objet.

ART. 39. The land necessary for the establishment of the Bank, as well as its branches and agencies in Morocco, shall be placed gratuitously at its disposal by the Government, and at the expiration of the concession the Government shall retake possession of it and reimburse the Bank for the cost of building these establishments. The Bank shall further be authorized to purchase such houses and land as it may require for the same purpose.

Protection.

ART. 40. Le Gouvernement chérifien assurera sous sa responsabilité la sécurité et la protection de la Banque, de ses succursales et agences. A cet effet, il mettra dans chaque ville une garde suffisante à la disposition de chacun de ces établissements.

ART. 40. The Shereefian Government shall insure and be responsible for the safety and protection of the Bank, its branches and agencies. To this end it shall place an adequate guard at the disposal of each establishment in every city.

Tax  
exemptions.

ART. 41. La Banque, ses succursales et agences, seront exemptes de tout impôt ou redevance ordinaire ou extraordinaire, existants ou à créer; il en est de même pour les immeubles affectés à ses services, les titres et coupons de ses actions et ses billets. L'importation et l'exportation des métaux et monnaies destinés aux opérations de la Banque, seront autorisées et exemptes de tout droit.

ART. 41. The Bank, its branches and agencies, shall be exempt from all imposts or dues, ordinary or extraordinary, existing or to be created. The same exemption shall be extended to real estate devoted to its use, and to the certificates and coupons of its shares and to its notes. The importation and exportation of metals and coins intended for banking operations shall be authorized and exempted from every tax.

Supervision  
by High Com-  
missioner.

ART. 42. Le Gouvernement chérifien exercera sa haute surveillance sur la Banque par un

ART. 42. The Shereefian Government shall exercise its high supervision over the Bank by

Haut Commissaire marocain, nommé par lui, après entente préalable avec le Conseil d'Administration de la Banque.

Ce Haut Commissaire aura le droit de prendre connaissance de la gestion de la Banque; il contrôlera l'émission des billets de Banque et veillera à la stricte observation des dispositions de la concession.

Le Haut Commissaire devra signer chaque billet ou y apposer son sceau; il sera chargé de la surveillance des relations de la Banque avec le Trésor Impérial.

Il ne pourra pas s'immiscer dans l'administration et la gestion des affaires de la Banque, mais il aura toujours le droit d'assister aux réunions des Censeurs.

Le Gouvernement chérifien nommera un ou deux Commissaires adjoints qui seront spécialement chargés de contrôler les opérations financières du Trésor avec la Banque.

ART. 43. Un règlement, précisant les rapports de la Banque et du Gouvernement marocain, sera établi par le Comité spécial prévu à l'article 57 et approuvé par les Censeurs.

ART. 44. La Banque, constituée avec approbation du Gouvernement de Sa Majesté Chérifienne, sous la forme des sociétés anonymes, est régie par la loi française sur la matière.

ART. 45. Les actions intentées au Maroc par la Banque seront portées devant le Tribunal consulaire du défendeur ou devant la juridiction marocaine, conformément aux règles de compétence établies par les traités et les firmans chérifiens.

Les actions, intentées au Maroc contre la Banque, seront portées

a High Commissioner, whom it shall appoint after a previous agreement with the Bank's Board of Directors.

This High Commissioner shall have the right to examine into the management of the Bank. He shall supervise the issuance of bank notes and shall see that the provisions of the concession are strictly observed. Duties.

The High Commissioner shall sign every note or affix thereto his seal. He shall be charged with the supervision of the relations between the Bank and the Imperial Treasury.

He shall take no part in the administration or transaction of the banking business, but he shall always have the right to attend the meetings of the Censors.

The Shereefian Government shall appoint one or two deputy commissioners, who shall be especially charged with the supervision of the financial transactions of the Treasury with the Bank. Deputy commissioners.

ART. 43. A set of rules defining the relations of the Bank and of the Moorish Government shall be framed by the special committee provided for in article 57 and approved by the Censors. Regulations.

ART. 44. The Bank, organized with the approval of the Government of His Shereefian Majesty in the form of a corporation, shall be governed by the French law relative thereto. French law to govern.

ART. 45. Actions instituted in Morocco by the Bank shall be brought before the Consular Court of the defendant or before the jurisdiction of Morocco, in accordance with the rules of competence established by the Shereefian treaties and firmans. Prosecutions.

Actions instituted in Morocco against the Bank shall be brought

devant un Tribunal spécial, composé de trois magistrats consulaires et de deux assesseurs. Le Corps Diplomatique établira, chaque année, la liste des magistrats, des assesseurs, et de leurs suppléants.

Ce Tribunal appliquera à ces causes les règles de droit, de procédure et de compétence édictées en matière commerciale par la législation française. L'appel des jugements prononcés par ce Tribunal sera porté devant la Cour fédérale de Lausanne qui statuera en dernier ressort.

Appeals.

Disputes referred to Swiss court.

ART. 46. En cas de contestation sur les clauses de la concession ou de litiges pouvant survenir entre le Gouvernement marocain et la Banque, le différend sera soumis, sans appel ni recours, à la Cour fédérale de Lausanne.

Seront également soumises à cette Cour, sans appel ni recours, toutes les contestations qui pourraient s'élever entre les actionnaires et la Banque sur l'exécution des Statuts ou à raison des affaires sociales.

Formulating by-laws.

ART. 47. Les Statuts de la Banque seront établis d'après les bases suivantes par un Comité spécial prévu par l'article 57. Ils seront approuvés par les Censeurs et ratifiés par l'Assemblée générale des actionnaires.

Shareholders' meetings.

ART. 48. L'Assemblée générale constitutive de la Société fixera le lieu où se tiendront les Assemblées des actionnaires et les réunions du Conseil d'Administration; toutefois, ce dernier aura la faculté de se réunir dans toute autre ville s'il le juge utile.

La Direction de la Banque sera fixée à Tanger.

Board of directors.

ART. 49. La Banque sera administrée par un Conseil d'Administration composé d'autant

before a special tribunal consisting of three consular magistrates and two associates. The Diplomatic Body shall, each year, arrange the list of magistrates, associates, and substitutes.

This tribunal shall apply to such cases the rules of law, procedure, and competence established by the French legislation in commercial matters. Appeals from judgments pronounced by this tribunal shall be taken to the Federal Court of Lausanne, whose decision shall be final.

ART. 46. In case of dispute over the clauses of the concession or litigation arising between the Moorish Government and the Bank, the difference shall be referred, without appeal or recourse, to the Federal Court of Lausanne.

All disputes arising between the shareholders and the Bank in regard to the enforcement of the by-laws or by reason of the corporate business shall likewise be referred, without appeal or recourse, to the same court.

ART. 47. The by-laws of the Bank shall be framed on the following bases by a special committee provided for in article 57. They shall be approved by the Censors and ratified by the General Assembly of Shareholders.

ART. 48. The General Constituent Assembly of the corporation shall fix the place where the meetings of the shareholders and the sessions of the Board of Directors shall be held; the latter, however, shall have the faculty of meeting at any other city if it deems it expedient.

The office of the manager of the Bank shall be at Tangier.

ART. 49. The Bank shall be administered by a Board of Directors consisting of as many

de membres qu'il sera fait de parts dans le capital initial.

Les administrateurs auront les pouvoirs les plus étendus pour l'administration et la gestion de la Société ; ce sont eux notamment qui nommeront les Directeurs, Sous-Directeurs et Membres de la Commission, indiquée à l'article 54, ainsi que les Directeurs des Succursales et Agences.

Tous les employés de la Société seront recrutés, autant que possible, parmi les ressortissants des diverses Puissances qui ont pris part à la souscription du capital.

ART. 50. Les Administrateurs, dont la nomination sera faite par l'Assemblée générale des actionnaires, seront désignés à son agrément par les groupes souscripteurs du capital.

Le premier conseil restera en fonctions pendant cinq années. A l'expiration de ce délai, il sera procédé à son renouvellement à raison de trois membres par an. Le sort déterminera l'ordre de sortie des Administrateurs ; ils seront rééligibles.

A la constitution de la Société, chaque groupe souscripteur aura le droit de désigner autant d'Administrateurs qu'il aura souscrit de parts entières, sans que les groupes soient obligés de porter leur choix sur un candidat de leur propre nationalité.

Les groupes souscripteurs ne conserveront leur droit de désignation des Administrateurs, lors du remplacement de ces derniers, ou du renouvellement de leur mandat, qu'autant qu'ils pourront justifier être encore en possession d'au moins la moitié de chaque part pour laquelle ils exercent ce droit.

Dans le cas où, par suite de ces dispositions, un groupe souscripteur ne se trouverait plus en mesure de désigner un adminis-

members as there are parts in the initial capital.

The Directors shall have the most extensive powers for the administration and management of the corporation ; they shall especially appoint the managers, assistant managers, and members of the commission indicated in article 54, as well as the managers of branches and agencies.

The employees of the company shall be recruited, so far as possible from among the citizens, subjects, or protégés of the several powers which have taken part in subscribing the capital.

ART. 50. The Directors, who shall be appointed by the General Assembly of Shareholders, shall be nominated by the groups subscribing the capital.

The first Board shall remain five years in office. At the expiration of this period, there shall be a renewal at the rate of three members annually. The order of outgoing Directors shall be determined by lot : they may be reelected.

On the constitution of the corporation, each subscribing group shall have the right to nominate as many directors as it shall have subscribed entire parts, but such groups shall not be compelled to select candidates of their own nationality.

The subscribing groups shall not retain their right of nominating directors when the latter are superseded or reelected, unless they can prove that they still have in their possession at least one-half the share conferring that right upon them.

In a case where, by reason of these provisions, a subscribing group should be no longer in a position to nominate a director,

trateur, l'Assemblée générale des actionnaires, pourvoirait directement à cette désignation.

ART. 51. Chacun des établissements ci-après : Banque de l'Empire Allemand, Banque d'Angleterre, Banque d'Espagne, Banque de France, nommera, avec l'agrément de son Gouvernement, un Censeur auprès de la Banque d'Etat du Maroc.

Les Censeurs resteront en fonctions pendant quatre années. Les Censeurs sortants peuvent être désignés à nouveau.

En cas de décès ou de démission, il sera pourvu à la vacance par l'établissement qui a procédé à la désignation de l'ancien titulaire, mais seulement pour le temps où ce dernier devait rester en charge.

ART. 52. Les Censeurs qui exerceront leur mandat en vertu du présent Acte des Puissances signataires devront, dans l'intérêt de celles-ci, veiller sur le bon fonctionnement de la Banque et assurer la stricte observation des clauses de la Concession et des Statuts. Ils veilleront à l'exact accomplissement des prescriptions concernant l'émission des billets et devront surveiller les opérations tendant à l'assainissement de la situation monétaire ; mais ils ne pourront jamais, sous quelque prétexte que ce soit, s'immiscer dans la gestion des affaires, ni dans l'administration intérieure de la Banque.

Chacun des Censeurs pourra examiner en tout temps les comptes de la Banque, demander, soit au Conseil d'Administration, soit à la Direction, des informations sur la gestion de la Banque et assister aux réunions du Conseil d'Administration, mais seulement avec voix consultative.

Les quatre Censeurs se réuniront à Tanger, dans l'exercice de

the General Assembly of Shareholders shall make a direct nomination.

ART. 51. Each of the following institutions : the Bank of the German Empire, the Bank of England, the Bank of Spain, and the Bank of France, shall, with their Government's approval, appoint a Censor for the State Bank of Morocco.

The Censors shall remain in office four years. The outgoing Censors may be reappointed.

In the case of death or resignation the institution which had appointed the former incumbent shall fill the vacancy, but only for the unexpired term of the vacated office.

ART. 52. The Censors who shall exercise their mandate by virtue of this act of the Signatory Powers shall, in the interests of the latter, see that the Bank is efficiently operated and insure the strict observance of the clauses of the concession and of the statutes. They shall see that the regulations governing the issuance of notes are precisely fulfilled, and shall supervise the operations tending to put the monetary situation on a sound basis, but they shall never, under any pretext, interfere in the conduct of business or in the internal administration of the Bank.

Each of the Censors shall be empowered to examine at all times the Bank accounts, and to call for information either from the Board of Directors or the manager's office with regard to the management of the Bank, and attend the meetings of the Board of Directors, but only in an advisory capacity.

The four Censors shall meet at Tangier in the discharge of their

Foreign  
censors.

Duties.

Examina-  
tions.

Meetings.

leurs fonctions, au moins une fois tous les deux ans, à une date à concerter entr'eux. D'autres réunions à Tanger ou ailleurs devront avoir lieu, si trois des Censeurs l'exigent.

Les quatre Censeurs dresseront, d'un commun accord, un rapport annuel qui sera annexé à celui du Conseil d'Administration. Le Conseil d'Administration transmettra, sans délai, une copie de ce rapport à chacun des Gouvernements signataires de l'Acte de la Conférence.

ART. 53. Les émoluments et indemnités de déplacement, affectés aux Censeurs, seront établis par le Comité d'étude des Statuts. Ils seront directement versés à ces agents par les Banques chargées de leur désignation et remboursés à ces établissements par la Banque d'Etat du Maroc.

ART. 54. Il sera institué à Tanger auprès de la Direction une Commission dont les membres seront choisis par le Conseil d'Administration sans distinction de nationalité, parmi les notables résidant à Tanger, propriétaires d'actions de la Banque.

Cette Commission, qui sera présidée par un des Directeurs, ou Sous-Directeurs, donnera son avis sur les escomptes et ouvertures de crédits.

Elle adressera un rapport mensuel sur ces diverses questions au Conseil d'Administration.

ART. 55. Le capital dont l'importance sera fixée par le Comité spécial désigné à l'article 57, sans pouvoir être inférieur à quinze millions de francs, ni supérieur à vingt millions, sera formé en monnaie or et les actions, dont les coupures représenteront une valeur équivalente à cinq cents francs, seront libel-

duties at least once every two years, at a time to be fixed by them. Other meetings at Tangier or elsewhere may take place if three of the Censors should demand it.

The four Censors shall draw up in common accord an annual report, which shall be annexed to that of the Board of Directors. The Board of Directors shall transmit without delay a copy of such report to each of the Governments signatory to the act of the conference.

ART. 53. The Censors' emoluments and traveling expenses shall be fixed by the committee on by-laws. They shall be paid directly by the banks charged with their nomination, and the amount reimbursed to these institutions by the State Bank of Morocco.

ART. 54. To assist the manager's office a committee shall be established at Tangier, the members of which shall be chosen by the Board of Directors, without distinction of nationality, from among the notables residing at Tangier and holding shares of the Bank.

This committee, which shall be presided over by one of the managers or assistant managers, shall give its advice on questions of discounts and opening of credit accounts.

It shall transmit a monthly report on these various subjects to the Board of Directors.

ART. 55. The capital, of which the amount shall be fixed by the special committee designated in article 57, shall be not less than fifteen million francs nor more than twenty million francs, and shall be of gold coin, and the shares thereof, of the value of five hundred francs each, shall be inscribed with the various

lées dans les diverses monnaies or, à un change fixe, déterminé par les Statuts.

Ce capital pourra être ultérieurement augmenté, en une ou plusieurs fois, par décision de l'Assemblée Générale des Actionnaires.

La souscription de ces augmentations de capital sera réservée à tous les porteurs d'actions, sans distinction de groupe, proportionnellement aux titres possédés par chacun d'eux.

Division of  
initial capital.

ART. 56. Le capital initial de la Banque sera divisé en autant de parts égales qu'il y aura de parties prenantes parmi les Puissances représentées à la Conférence.

Subscriptions.

A cet effet, chaque Puissance désignera une Banque qui exercera, soit pour elle-même, soit pour un groupe de banques, le droit de souscription ci-dessus spécifié, ainsi que le droit de désignation des Administrateurs prévu à l'article 50. Toute banque, choisie comme chef de groupe, pourra avec l'autorisation de son Gouvernement être remplacée par une autre banque du même pays.

Notification.

Les Etats, qui voudraient se prévaloir de leur droit de souscription, auront à communiquer cette intention au Gouvernement Royal d'Espagne dans un délai de quatre semaines, à partir de la signature du présent Acte par les représentants des Puissances.

Allotment  
to banks.

Toutefois, deux parts égales à celles réservées à chacun des groupes souscripteurs seront attribuées au *Consortium* des banques signataires du contrat du 12 Juin 1904, en compensation de la cession qui sera faite par le *Consortium* à la Banque d'Etat du Maroc :

1° des droits spécifiés à l'article 33 du contrat ;

gold coinages at a fixed rate of exchange, as determined by the by-laws.

The said capital may thereafter be increased at one or more times by a decision of the General Assembly of Shareholders.

The subscription to the increased capital shall be reserved for all shareholders, without distinction of groups, in proportion to their individual holdings.

ART. 56. The initial capital of the Bank shall be divided into as many equal parts as there are participants among the powers represented at the conference.

To this end, each power shall designate a bank which shall exercise either for itself or for a group of banks the above-specified right of subscription, as well as the right of nomination of the Directors, as provided in article 50. Any bank selected as head of a group may, with its Government's authorization, be superseded by another bank of the same country.

States wishing to avail themselves of their rights of subscription must notify such intention to the Royal Government of Spain within a period of four weeks from the signature of this act by the representatives of the powers.

Two parts, however, equal to those reserved to each of the subscribing groups, shall be assigned to the *consortium* of banks signatory of the contract of June 12, 1904, in compensation for the cession which shall be made by the *consortium* to the State Bank of Morocco :

(1) Of the rights specified in article 33 of the contract ;



2° du droit inscrit à l'article 32 (§ 2) du contrat, concernant le solde disponible des recettes douanières sous réserve expresse du privilège général conféré en premier rang par l'article 11 du même contrat aux porteurs de Titres sur la totalité du Produit des Douanes.

ART. 57. Dans un délai de trois semaines à partir de la clôture de la souscription, notifiée par le Gouvernement Royal d'Espagne aux Puissances intéressées, un Comité spécial, composé de délégués nommés par les groupes souscripteurs, dans les conditions prévues à l'article 50 pour la nomination des Administrateurs, se réunira afin d'élaborer les Statuts de la Banque.

L'Assemblée générale constitutive de la Société aura lieu dans un délai de deux mois, à partir de la ratification du présent Acte.

Le rôle du Comité spécial cessera aussitôt après la constitution de la Société.

Le Comité spécial fixera lui-même le lieu de ses réunions.

ART. 58. Aucune modification aux Statuts ne pourra être apportée si ce n'est sur la proposition du Conseil d'Administration et après avis conforme des Censeurs et du Haut Commissaire Impérial.

Ces modifications devront être votées par l'Assemblée Générale des Actionnaires à la majorité des trois quarts des membres présents ou représentés.

#### CHAPITRE IV

*Déclaration concernant un meilleur rendement des impôts et la création de nouveaux revenus*

ART. 59. Dès que le *tertib* sera mis à exécution d'une façon régulière à l'égard des sujets marocains, les Représentants des Puis-

(2) Of the right inscribed in article 32 (paragraph 2) of the contract concerning the available balance of the customs receipts, with the express reservation of the general preferential right to the aggregate proceeds of customs granted to bondholders by article 11 of the same contract.

ART. 57. Within a period of three weeks from the time of closing the subscriptions, notified by the Royal Government of Spain to the powers interested, a special committee composed of delegates appointed by the subscribing groups, as provided in article 50 for the appointment of Directors, shall meet with a view to elaborating the by-laws of the Bank.

Special committee meeting.

*Ante*, p. 2921.

The General Constituent Assembly shall meet two months after the ratification of this act.

The functions of such special committee shall cease upon the organization of the corporation.

The special committee shall fix the place of its meetings.

ART. 58. No modification shall be made in the by-laws except on the motion of the Board of Directors and with the advice and consent of the Censors and the Imperial High Commissioner.

Changes in by-laws.

Such modifications must be voted by a three-quarters majority, either present or represented, of the General Assembly of Shareholders.

#### CHAPTER IV

*A declaration concerning a better return of taxes and the creation of new revenues*

Taxation and revenue.

ART. 59. As soon as the "*tertib*" shall have been put into regular operation with regard to Moorish subjects, the represent-

"*Tertib*". Application.

sances à Tanger y soumettront leurs ressortissants dans l'Empire. Mais il est entendu que le dit impôt ne sera appliqué aux étrangers,

*a)* que dans les conditions fixées par le règlement du Corps Diplomatique à Tanger en date du 23 Novembre 1903,

*b)* que dans les localités où il sera effectivement perçu sur les sujets marocains.

Les autorités consulaires retiendront un tantième pour cent des sommes encaissées sur leurs ressortissants pour couvrir les frais occasionnés par la rédaction des rôles et le recouvrement de la taxe.

Le taux de cette retenue sera fixé, d'un commun accord, par le Makhzen et le Corps Diplomatique à Tanger.

ART. 60. Conformément au droit qui leur a été reconnu par l'article 11 de la Convention de Madrid, les étrangers pourront acquérir des propriétés dans toute l'étendue de l'Empire Chérifien et Sa Majesté le Sultan donnera aux autorités administratives et judiciaires les instructions nécessaires pour que l'autorisation de passer les actes ne soit pas refusée sans motif légitime. Quant aux transmissions ultérieures par actes entre vifs ou après décès, elles continueront à s'exercer sans aucune entrave.

Dans les ports ouverts au commerce et dans un rayon de dix kilomètres autour de ces ports, Sa Majesté le Sultan accorde, d'une façon générale, et sans qu'il soit désormais nécessaire de l'obtenir spécialement pour chaque achat de propriété par les étrangers, le consentement exigé par l'article 11 de la Convention de Madrid.

atives of the powers at Tangier shall subject their citizens, subjects, and protégés in the Empire to the application thereof. But it is understood that this tax shall not be applied to foreign subjects except—

*(a)* Under the conditions stipulated by the regulation of the Diplomatic Body at Tangier on November 24, 1903;

*(b)* At places where it shall effectively be collected from Moorish subjects.

The consular authorities shall retain a certain percentage of the receipts of the taxes they collect from those subject to their jurisdiction to cover the cost of tax bills and collection.

The rate of such percentage shall be fixed by mutual agreement between the Maghzen and the Diplomatic Body at Tangier.

ART. 60. In accordance with the right granted by article 11 of the Madrid Convention, foreigners shall have the right to acquire property throughout the Shereefian Empire, and His Majesty the Sultan shall issue to his administrative and judicial officers such instructions as may be necessary for them not to refuse the registration of deeds without lawful cause. Subsequent transfers, either by deeds between living parties or by death, shall continue without hindrance.

In the ports open to commerce and within a radius of ten kilometers around such ports, His Majesty the Sultan, generally and without it being necessary henceforth for foreign subjects to obtain a special permission for each purchase of property, now grants the consent required by article 11 of the Madrid Convention.

Property rights of foreigners.

In open ports.

A Ksar el Kebir, Arzila, Azemour et, éventuellement, dans d'autres localités du littoral ou de l'intérieur, l'autorisation générale ci-dessus mentionnée est également accordée aux étrangers, mais seulement pour les acquisitions dans un rayon de deux kilomètres autour de ces villes.

Partout où les étrangers auront acquis des propriétés, ils pourront élever des constructions en se conformant aux règlements et usages.

Avant d'autoriser la rédaction des actes transmissifs de propriété, le Cadi devra s'assurer, conformément à la loi musulmane, de la régularité des titres.

Le Makhzen désignera, dans chacune des villes et circonscriptions indiquées au présent article, le Cadi qui sera chargé d'effectuer ces vérifications.

ART. 61. Dans le but de créer de nouvelles ressources au Makhzen, la Conférence reconnaît, en principe, qu'une taxe pourra être établie sur les constructions urbaines.

Une partie des recettes ainsi réalisées sera affectée aux besoins de la voirie et de l'hygiène municipales et, d'une façon générale, aux dépenses d'amélioration et d'entretien des villes.

La taxe sera due par le propriétaire marocain ou étranger sans aucune distinction ; mais le locataire ou le détenteur de la clef en sera responsable envers le Trésor marocain.

Un règlement édicté, d'un commun accord, par le Gouvernement chérifien et le Corps Diplomatique à Tanger, fixera le taux de la taxe, son mode de perception et d'application et déterminera la quotité des ressources ainsi créées qui devra être affectée aux dépenses d'amélioration et d'entretien des villes.

At Ksar el Kebir, Arzila, Azemour, and eventually in other towns of the coast or the interior, the general authorization stated above is likewise granted to foreigners, but only for purchasers within a radius of two kilometers around those towns. Other places.

Wherever foreigners may have acquired property they will be permitted to erect buildings in compliance with regulations and usage. Erection of buildings.

Before authorizing the execution of deeds for transferring property, the Cadi will have to satisfy himself of the validity of the title in conformity to the Mohammedan law. Deeds.

The Maghzen shall designate in each city and district specified in this article the Cadi who shall have charge of such verification. Verification.

ART. 61. With a view to creating new resources for the Maghzen, the conference recognizes in principle that a tax may be established on city buildings. Building taxes.

A part of the receipts thus realized shall be set aside for the requirements of municipal streets and hygiene, and generally for the expense of improvement and conservation of the cities.

The tax is due from the Moorish or foreign owner, without distinction, but the tenant or the holder of the key shall be responsible to the Moorish Treasury.

Regulations issued jointly by the Shereefian Government and the Diplomatic Body at Tangier shall establish the rate, its method of collection and application, and shall determine the quota of revenue thus created which shall be devoted to the expense of improvement and conservation of the cities.

A Tanger, cette quotité sera versée au Conseil sanitaire international, qui en règlera l'emploi jusqu'à la création d'une organisation municipale.

Agricultural taxes.

ART. 62. Sa Majesté Chérifienne, ayant décidé en 1901 que les fonctionnaires marocains, chargés de la perception des impôts agricoles, ne recevraient plus des populations ni *sokhra* ni *mouna*, la Conférence estime que cette règle devra être généralisée autant que possible.

Buildings rented by foreigners.

ART. 63. Les Délégués chérifiens ont exposé que des biens habous ou certaines propriétés domaniales, notamment des immeubles du Makhzen, occupés contre paiement de la redevance de six pour cent, sont détenus par des ressortissants étrangers, sans titres réguliers ou en vertu de contrats sujets à révision. La Conférence, désireuse de remédier à cet état de choses, charge le Corps Diplomatique à Tanger de donner une solution équitable à ces deux questions, d'accord avec le Commissaire spécial que Sa Majesté Chérifienne voudra bien désigner à cet effet.

Taxes on trade, etc.

ART. 64. La Conférence prend acte des propositions formulées par les Délégués chérifiens au sujet de la création de taxes sur certains commerces, industries et professions.

Si, à la suite de l'application de ces taxes aux sujets marocains, le Corps Diplomatique à Tanger estimait qu'il y a lieu de les étendre aux ressortissants étrangers, il est, dès à présent spécifié que les dites taxes seront exclusivement municipales.

Stamp taxes, etc.

ART. 65. La Conférence se rallie à la proposition faite par la Délégation marocaine d'établir avec l'assistance du Corps Diplomatique:

At Tangier this quota shall be turned over to the International Sanitary Council, which shall decide as to its use until the creation of a municipal organization.

ART. 62. His Shereefian Majesty having decided in 1901 that the Moorish officials who collect the agricultural taxes should no longer receive either the "sokhra" or the "mouna," the conference is of the opinion that this rule should be made general, so far as is possible.

ART. 63. The Shereefian delegates have stated that habous property, or certain State property, notably buildings of the Maghzen, occupied at a rental of 6 per cent, are held by persons subject to foreign jurisdiction without regular title or by virtue of contracts subject to revision. The conference, desirous of remedying this state of affairs, charges the Diplomatic Body at Tangier to solve these two questions equitably, in accord with the special commissioner whom His Shereefian Majesty may be pleased to designate to that effect.

ART. 64. The conference takes formal note of the proposition formulated by the Shereefian delegates on the subject of taxes to be created on certain trades, industries, and professions.

If as the result of the collection of such taxes from Moorish subjects the Diplomatic Body at Tangier should deem it advisable to extend the same to those under foreign jurisdiction, it is hereby specified that the said taxes shall be exclusively municipal.

ART. 65. The conference adheres to the proposition proposed by the Moorish delegation to create, with the assistance of the Diplomatic Body—

a) un droit de timbre sur les contrats et actes authentiques passés devant les adoul ;

b) un droit de mutation, au maximum de deux pour cent, sur les ventes immobilières ;

c) un droit de statistique et de pesage, au maximum de un pour cent *ad valorem*, sur les marchandises transportées par cabotage ;

d) un droit de passeport à percevoir sur les sujets marocains ;

e) éventuellement, des droits de quais et de phares dont le produit devra être affecté à l'amélioration des ports.

ART. 66. A titre temporaire, les marchandises d'origine étrangère seront frappées à leur entrée au Maroc d'une taxe spéciale s'élevant à deux et demi pour cent *ad valorem*. Le produit intégral de cette taxe formera un fonds spécial qui sera affecté aux dépenses et à l'exécution de travaux publics, destinés au développement de la navigation et du commerce en général dans l'Empire chérifien.

Le programme des travaux et leur ordre de priorité seront arrêtés, d'un commun accord, par le Gouvernement chérifien et par le Corps Diplomatique à Tanger.

Les études, devis, projets et cahiers des charges s'y rapportant seront établis par un ingénieur compétent nommé par le Gouvernement chérifien d'accord avec le Corps Diplomatique. Cet ingénieur pourra, au besoin, être assisté d'un ou plusieurs ingénieurs adjoints. Leur traitement sera imputé sur les fonds de la caisse spéciale.

Les fonds de la caisse spéciale seront déposés à la Banque d'Etat du Maroc qui en tiendra la comptabilité.

Les adjudications publiques seront passées dans les formes et suivant les conditions générales prescrites par un Règlement que le Corps Diplomatique à Tanger

(a) A stamp tax on contracts and notarial acts brought before "adouls".

(b) A maximum transfer tax of 2 per cent on sales of real estate.

(c) A statistical and weighing tax of a maximum of 1 per cent *ad valorem* on merchandise transported by coasting vessels.

(d) A passport fee to be collected from Moorish subjects.

(e) Eventually, wharfage and light-house dues, the proceeds of which shall be devoted to harbor improvement.

ART. 66. Merchandise of foreign origin shall temporarily be subject on entry into Morocco to special taxes amounting to 2½ per cent *ad valorem*. The whole proceeds of this special tax shall form a special fund, which shall be devoted to the execution of and expenses connected with public works for the development of navigation and the general trade of the Shereefian Empire.

The programme of works and their order of priority shall be determined jointly by the Shereefian Government and the Diplomatic Body at Tangier.

The surveys, estimates, plans, and specifications appertaining thereto shall be made by a competent engineer, appointed by the Shereefian Government jointly with the Diplomatic Body. This engineer may, if necessary, be assisted by one or more assistant engineers. Their salaries shall be charged to the special fund.

The special fund will be deposited with the State Bank of Morocco, which is to keep its accounts.

Public contracts shall be awarded in the form and under the general terms prescribed by the regulations that the Diplomatic Body at Tangier is charged

Tax on imports.

Proceeds.

Public contract awards.

est chargé d'établir avec le Représentant de Sa Majesté Chérifienne.

Le bureau d'adjudication sera composé d'un représentant du Gouvernement chérifien, de cinq délégués du Corps Diplomatique et de l'ingénieur.

L'adjudication sera prononcée en faveur du soumissionnaire qui, en se conformant aux prescriptions du cahier des charges, présentera l'offre remplissant les conditions générales les plus avantageuses.

Expenditure  
of special tax.

En ce qui concerne les sommes provenant de la taxe spéciale et qui seraient perçues dans les bureaux de douane établis dans les régions visées par l'article 103 du Règlement sur les douanes, leur emploi sera réglé par le Makhzen avec l'agrément de la Puissance limitrophe, conformément aux prescriptions du présent article.

Export tax  
reductions.

ART. 67. La Conférence, sous réserve des observations présentées à ce sujet, émet le vœu que les droits d'exportation des marchandises ci-après soient réduits de la manière suivante :

Pois chiches . . .	20	pour	100
Maïs . . . . .	20	»	100
Orge . . . . .	50	»	100
Blé . . . . .	34	»	100

Export of  
cattle.

ART. 68. Sa Majesté Chérifienne consentira à élever à dix mille le chiffre de six mille têtes de bétail de l'espèce bovine que chaque Puissance aura le droit d'exporter du Maroc. L'exportation pourra avoir lieu par tous les bureaux de douane. Si, par suite de circonstances malheureuses, une pénurie de bétail était constatée dans une région déterminée, Sa Majesté Chérifienne pourrait interdire temporairement la sortie du bétail par le port, ou les ports qui desservent

to frame, together with the representative of His Shereefian Majesty.

The board of awards shall consist of one representative of the Shereefian Government, of five delegates of the Diplomatic Body, and of the engineer.

The award shall be given in favor of the bidder who, in conformity with the specifications, may submit the bid offering the most advantageous general terms.

As for the sums yielded by the special tax and collected at the customs-houses, in the districts specified in article 103 of the Customs Regulations, their expenditure will be determined upon by the Maghzen, with consent of the neighboring power, in accordance with the clauses of this article.

ART. 67. The conference, without detriment to the observations offered upon this point, expresses the wish that the export duties on the following merchandise be reduced as follows :

	Per cent.
Chick-peas . . . . .	20
Corn . . . . .	20
Barley . . . . .	50
Wheat . . . . .	34

ART. 68. His Shereefian Majesty will consent to increase from six to ten thousand the number of head of cattle of the bovine species which each power shall have the right to export from Morocco. Such exportation may be effected through any custom-house. If by misfortune there should be a scarcity of cattle in any particular district his Shereefian Majesty shall have the right to temporarily forbid the exportation of cattle through the port or ports of that district.

cette région. Cette mesure ne devra pas excéder une durée de deux années ; elle ne pourra pas être appliquée à la fois à tous les ports de l'Empire.

Il est d'ailleurs entendu que les dispositions précédentes ne modifient pas les autres conditions de l'exportation du bétail fixées par les firmans antérieurs.

La Conférence émet, en outre, le vœu qu'un service d'inspection vétérinaire soit organisé au plus tôt dans les ports de la côte.

ART. 69. Conformément aux décisions antérieures de Sa Majesté Chérifienne et notamment à la décision du 28 septembre 1901, est autorisé entre tous les ports de l'Empire le transport par cabotage des céréales, graines, légumes, œufs, fruits, volailles, et, en général, des marchandises et animaux de toute espèce, originaires ou non du Maroc, à l'exception des chevaux, mulets, ânes et chameaux pour lesquels un permis spécial du Makhzen sera nécessaire. Le cabotage pourra être effectué par des bateaux de toute nationalité, sans que les dits articles aient à payer les droits d'exportation, mais en se conformant aux droits spéciaux et aux règlements sur la matière.

ART. 70. Le taux des droits de stationnement ou d'ancrage imposés aux navires dans les ports marocains se trouvant fixé par des traités passés avec certaines Puissances, ces Puissances se montrent disposés à consentir la révision des dits droits.

Le Corps Diplomatique à Tanger est chargé d'établir, d'accord avec le Makhzen, les conditions de la révision qui ne pourra avoir lieu qu'après l'amélioration des ports.

ART. 71. Les droits de magasinage en douane seront perçus dans tous les ports marocains où

Such measure shall not exceed two years ; nor shall it be applied at the same time to all the ports of the Empire.

It is further understood that the preceding provisions do not modify the other conditions for the exportation of cattle as fixed by previous firmans.

The conference expresses the additional wish that a veterinary inspection be organized as soon as possible at the seaports.

ART. 69. In accordance with the previous decisions of His Shereefian Majesty, and notably the decision of September 28th, 1901, the transportation is allowed by coasting vessels, between all ports of the Empire, of cereals; grains, vegetables, fruits, eggs, poultry, and in general of merchandise and animals of every kind, of Moroccan origin or not ; except horses, donkeys, and camels, for which a special permit from the Maghzen will be necessary. Such coasting trade may be carried on by vessels of every nationality without such articles being subjected to payment of the export duties, but subject to the special taxes and regulations relative thereto.

Coasting trade.

Restrictions.

ART. 70. The rate of sojourn and anchorage dues levied on ships in Moorish ports being fixed by treaties with certain powers, the said powers are disposed to consent to a revision of such dues.

Harbor dues.

The Diplomatic Body at Tanger is therefore charged to effect an agreement with the Maghzen on the terms of such revision, which can not, however, take place until after the improvement of the ports.

ART. 71. The customs storage dues shall be collected in all Moorish ports where there are

Customs storage dues.

il existera des entrepôts suffisants, conformément aux règlements pris ou à prendre sur la matière par le Gouvernement de Sa Majesté Chérifienne, d'accord avec le Corps Diplomatique à Tanger.

Opium and kiff.

ART. 72. L'opium et le kif continueront à faire l'objet d'un monopole au profit du Gouvernement chérifien. Néanmoins, l'importation de l'opium spécialement destiné à des emplois pharmaceutiques sera autorisée par permis spécial, délivré par le Makhzen, sur la demande de la Légation dont relève le pharmacien ou médecin importateur. Le Gouvernement Chérifien et le Corps Diplomatique régleront, d'un commun accord, la quantité maxima à introduire.

Tobacco.

ART. 73. Les Représentants des Puissances prennent acte de l'intention du Gouvernement chérifien d'étendre aux tabacs de toutes sortes le monopole existant en ce qui concerne le tabac à priser. Ils réservent le droit de leurs ressortissants à être dûment indemnisés des préjudices que le dit monopole pourrait occasionner à ceux d'entr'eux qui auraient des industries créées sous le régime actuel concernant le tabac. A défaut d'entente amiable, l'indemnité sera fixée par des experts désignés par le Makhzen et par le Corps Diplomatique, en se conformant aux dispositions arrêtées en matière d'expropriation pour cause d'utilité publique.

Monopoly contracts.

ART. 74. Le principe de l'adjudication, sans acception de nationalité, sera appliqué aux fermes concernant le monopole de l'opium et du kif. Il en serait de même pour le monopole du tabac, s'il était établi.

Modification.

ART. 75. Au cas où il y aurait lieu de modifier quelque une des dispositions de la présente déclara-

adequate warehouses, in conformity to the regulations existing or to be adopted in regard thereto by the Government of His Shereefian Majesty in accord with the Diplomatic Body at Tangier.

ART. 72. Opium and kiff will continue to be a monopoly of the Shereefian Government. The importation of opium specially intended for medicinal purposes will, however, be allowed by special permit issued by the Maghzen at the request of the legation, the physician, or apothecary importing the same. The Shereefian Government and the Diplomatic Body shall jointly determine the maximum quantity which may be thus introduced.

ART. 73. The representatives of the powers take note of the Shereefian Government's intention to extend to tobacco of all kinds the monopoly existing in the case of snuff. They reserve the right of their citizens, subjects, and protégés to be duly indemnified for damages which the said monopoly may cause such of them as carry on a tobacco business established under the present system. In case no amicable agreement shall be reached, the damages shall be fixed by experts designated by the Maghzen and the Diplomatic Body, in conformity with the provisions governing expropriation for public purposes.

ART. 74. The principle of awarding contracts on bids without preference of nationality shall be applied to the farming of the monopoly of opium and kiff. The same rule would apply to the tobacco monopoly, if created.

ART. 75. If the occasion should arise to modify any of the provisions of this declaration, the



ration, une entente devra s'établir à ce sujet entre le Makhzen et le Corps Diplomatique à Tanger.

ART. 76. Dans tous les cas prévus par la présente déclaration, où le Corps Diplomatique sera appelé à intervenir, sauf en ce qui concerne les articles 64, 70 et 75, les décisions seront prises à la majorité des voix.

#### CHAPITRE V

*Règlement sur les douanes de l'Empire et la répression de la fraude et de la contrebande*

ART. 77. Tout capitaine de navire de commerce, venant de l'étranger ou du Maroc, devra, dans les vingt-quatre heures de son admission en libre pratique dans un des ports de l'Empire, déposer au bureau de douane une copie exacte de son manifeste, signée par lui et certifiée conforme par le consignataire du navire. Il devra, en outre, s'il en est requis, donner communication aux agents de la douane de l'original de son manifeste.

La douane aura la faculté d'installer à bord un ou plusieurs gardiens pour prévenir tout trafic illégal.

ART. 78. Sont exempts du dépôt du manifeste :

1°. Les bâtiments de guerre ou affrétés pour le compte d'une Puissance ;

2°. Les canots appartenant à des particuliers, qui s'en servent pour leur usage, en s'abstenant de tout transport de marchandises ;

3°. Les bateaux ou embarcations employés à la pêche en vue des côtes ;

Maghzen and the Diplomatic Body at Tangier shall reach an understanding on this point.

ART. 76. In all the cases provided for by the present declaration where the Diplomatic Body shall be called upon to intervene, except in what concerns articles 64, 70, and 75, the decision shall be reached by a majority of the votes. Diplomatic intervention.

#### CHAPTER V

*A regulation concerning the customs of the Empire and the repression of fraud and smuggling* Customs regulation.

ART. 77. Every captain of a merchantman coming from a foreign or a Moorish port shall, within twenty-four hours after having been granted free pratique in any of the ports of the Empire, deposit at the customs an exact copy of his manifest, signed by him and certified to by the vessel's consignee. He shall furthermore, if required to do so, produce before the customs authorities the original of his manifest. Deposits of manifests.

The customs shall have power to station one or more watchmen on board to prevent illicit trade.

ART. 78. The following are exempt from depositing the manifest : Exemptions.

1°. Men-of-war or ships chartered for the account of a power.

2°. Boats belonging to private individuals for their personal use and never carrying any merchandise.

3°. Boats or craft used for shore fisheries.

4°. Les yachts uniquement employés à la navigation de plaisance et enregistrés au port d'attache dans cette catégorie ;

5°. Les navires chargés spécialement de la pose et de la réparation des câbles télégraphiques ;

6°. Les bateaux uniquement affectés au sauvetage ;

7°. Les bâtiments hospitaliers ;

8°. Les navires-écoles de la marine marchande, ne se livrant pas à des opérations commerciales.

4°. Yachts intended only as pleasure boats and registered as such at their home ports.

5°. Ships especially charged with laying down and repairing telegraphic cables.

6°. Boats exclusively used in life-saving service.

7°. Hospital ships.

8°. Training ships of the merchant marine not engaged in commercial operations.

Contents of manifests.

ART. 79. Le manifeste, déposé à la douane, devra annoncer la nature et la provenance de la cargaison avec les marques et numéros des caisses, balles, ballots, barriques, etc.

ART. 79. The manifest deposited at the customs shall state the nature and origin of the cargo, with the marks and numbers of the cases, bales, bundles, casks, etc.

Investigations.

ART. 80. Quand il y aura des indices sérieux faisant soupçonner l'inexactitude du manifeste, ou quand le capitaine du navire refusera de se prêter à la visite et aux vérifications des agents de la douane, le cas sera signalé à l'autorité consulaire compétente afin que celle-ci procède avec un délégué de la douane chérifienne, aux enquêtes, visites et vérifications qu'elle jugera nécessaires.

ART. 80. If there is serious reason to suspect the accuracy of the manifest, or in case the captain of the ship should refuse to allow the visit and verifications of customs officers, the case shall be brought to the attention of the proper consular authority, in order that the latter, in company with a delegate of the Shereefian customs, shall undertake the investigations, visits, and verifications that he may judge necessary.

Penalty for non-delivery of manifest.  
*Ante*, p. 2932.

ART. 81. Si, à l'expiration du délai de vingt-quatre heures indiqué à l'article 77, le capitaine n'a pas déposé son manifeste, il sera passible, à moins que le retard ne provienne d'un cas de force majeure, d'une amende de cent cinquante pesetas par jour de retard, sans toutefois que cette amende puisse dépasser six cents pesetas. Si le capitaine a présenté frauduleusement un manifeste inexact ou incomplet, il sera personnellement condamné au paiement d'une somme égale à la valeur des marchandises pour lesquelles il n'a pas produit de manifeste, et à une amende de

ART. 81. If after twenty-four hours, as stated in article 77, the captain has not deposited his manifest, he shall incur, unless the delay be a case of *vis major*, a fine of 150 pesetas for each day's delay; provided, however, that the fine shall not exceed 600 pesetas. If the captain has fraudulently presented an inaccurate or incomplete manifest, he shall be personally condemned to pay a sum equal to the value of the merchandise for which he has failed to produce the manifest, and a fine of from 500 to 1,000 pesetas, and the vessel and merchandise shall be further liable

Fraudulent inaccuracies.

cinq cents à mille pesetas, et le bâtiment et les marchandises pourront en outre être saisis par l'autorité consulaire compétente pour la sûreté de l'amende.

ART. 82. Toute personne, au moment de dédouaner les marchandises importées ou destinées à l'exportation, doit faire à la douane une déclaration détaillée, énonçant l'espèce, la qualité, le poids, le nombre, la mesure et la valeur des marchandises, ainsi que l'espèce, les marques et les numéros des colis qui les contiennent.

ART. 83. Dans le cas où, lors de la visite, on trouvera moins de colis ou de marchandises qu'il n'en a été déclaré, le déclarant, à moins qu'il ne puisse justifier de sa bonne foi, devra payer double droit pour les marchandises manquant, et les marchandises présentées seront retenues en douane pour la sûreté de ce double droit; si, au contraire, on trouve à la visite un excédant quant au nombre des colis, à la quantité ou au poids des marchandises, cet excédant sera saisi et confisqué au profit du Makhzen à moins que le déclarant ne puisse justifier de sa bonne foi.

ART. 84. Si la déclaration a été reconnue inexacte quant à l'espèce ou à la qualité, et si le déclarant ne peut justifier de sa bonne foi, les marchandises inexactement déclarées seront saisies et confisquées au profit du Makhzen par l'autorité compétente.

ART. 85. Dans le cas où la déclaration serait reconnue inexacte quant à la valeur déclarée et si le déclarant ne peut justifier de sa bonne foi, la douane pourra, soit prélever le droit en nature séance tenante, soit, au cas où la mar-

to seizure by consular authority as security for such fine.

ART. 82. Any person about to pass through the customs merchandise imported or intended for exportation shall file in the custom-house a detailed statement setting forth the nature, quality, weight, number, measurement, and value of the merchandise, as well as the nature, marks, and numbers of the packages containing the same.

ART. 83. If there should be found at the time of the visit fewer packages or less merchandise than declared, the declarant, unless able to prove that he has acted in good faith, shall pay double duties for the missing merchandise, and the merchandise presented shall be retained in the customs as security for such double duty. If, on the contrary, there should be found at the time of the visit an excess of packages, or quantity, or weight of the merchandise, this excess shall be seized and confiscated for the benefit of the Maghzen, unless the person making the declaration can prove his good faith.

ART. 84. If the declaration should be found inaccurate as to kind or quality, and the declarant is unable to prove his good faith, the merchandise wrongly declared shall be seized and confiscated by the proper authority for the benefit of the Maghzen.

ART. 85. If the declaration should be found inaccurate as to the declared value, and the declarant should be unable to prove his good faith, the customs may either levy the duty in kind, then and there, or, if the

Invoice  
declarations.

Inaccurate  
invoices.

As to kind  
and quality.

As to value.

chandise est indivisible, acquérir la dite marchandise, en payant immédiatement au déclarant la valeur déclarée, augmentée de cinq pour cent.

False  
declarations.

ART. 86. Si la déclaration est reconnue fausse quant à la nature des marchandises, celles-ci seront considérées comme n'ayant pas été déclarées et l'infraction tombera sous l'application des articles 88 et 90 ci-après et sera punie des peines prévues aux dits articles.

Smuggling,  
etc.

ART. 87. Toute tentative ou tout flagrant délit d'introduction, toute tentative ou tout flagrant délit d'exportation en contrebande de marchandises soumises au droit, soit par mer, soit par terre, seront passibles de la confiscation des marchandises, sans préjudice des peines et amendes ci-dessous qui seront prononcées par la juridiction compétente.

Seizure, etc.

Seront en outre saisis et confisqués les moyens de transport par terre dans le cas où la contrebande constituera la partie principale du chargement.

Fines, at  
open ports.

ART. 88. Toute tentative ou tout flagrant délit d'introduction, toute tentative ou tout flagrant délit d'exportation en contrebande par un port ouvert au commerce ou par un bureau de douane, seront punis d'une amende ne dépassant pas le triple de la valeur des marchandises, objet de la fraude, et d'un emprisonnement de cinq jours à six mois, ou de l'une des deux peines seulement.

Outside open  
ports.

ART. 89. Toute tentative ou tout flagrant délit d'introduction, toute tentative ou tout flagrant délit d'exportation, en dehors d'un port ouvert au commerce ou d'un bureau de douane, seront punis d'une amende de trois cents à cinq cents pesetas et d'une

merchandise is indivisible, take the said merchandise by at once paying to the declarant its declared value, plus 5 per cent.

ART. 86. If the declaration should be found false as to the nature of the merchandise the latter shall be considered as not having been declared, and the offense shall fall under articles 88 and 90 hereinbelow, and shall be punished by the penalties provided for in the said articles.

ART. 87. The smuggling, flagrant or attempted, in or out of the country, by land or by sea, of merchandise subject to duty shall be punishable by confiscation of the merchandise, without prejudice to the penalties and fines hereinbelow, which shall be imposed by the proper jurisdiction.

In addition, the conveyances on shore shall be seized and confiscated when smuggled goods form the greater part of the load.

ART. 88. The smuggling, flagrant or attempted, in or out of the country, through a port open to commerce or through a customhouse, shall be punished by a fine not to exceed triple the value of the merchandise so smuggled and by imprisonment of from five days to six months, or by only one of these penalties.

ART. 89. The smuggling, flagrant or attempted, in or out of the country, outside of a port open to commerce or a customhouse, shall be punished by a fine of from 300 to 500 pesetas, and by an additional fine equal to three times the value of the merchan-

amende supplémentaire égale à trois fois la valeur de la marchandise ou d'un emprisonnement d'un mois à un an.

ART. 90. Les complices des délits prévus aux articles 88 et 89 seront passibles des mêmes peines que les auteurs principaux. Les éléments caractérisant la complicité seront appréciés d'après la législation du tribunal saisi.

ART. 91. En cas de tentative ou flagrant délit d'importation, de tentative ou flagrant délit d'exportation de marchandises par un navire en dehors d'un port ouvert au commerce, la douane marocaine pourra amener le navire au port le plus proche pour être remis à l'autorité consulaire, laquelle pourra le saisir et maintenir la saisie jusqu'à ce qu'il ait acquitté le montant des condamnations prononcées.

La saisie du navire devra être levée, en tout état de l'instance, en tant que cette mesure n'entravera pas l'instruction judiciaire, sur consignation du montant maximum de l'amende entre les mains de l'autorité consulaire ou sous caution solvable de la payer acceptée par la douane.

ART. 92. Les dispositions des articles précédents seront applicables à la navigation de cabotage.

ART. 93. Les marchandises, non soumises aux droits d'exportation, embarquées dans un port marocain pour être transportées par mer dans un autre port de l'Empire, devront être accompagnées d'un certificat de sortie délivré par la douane, sous peine d'être assujetties au paiement du droit d'importation et même confisquées si elles ne figuraient pas au manifeste.

ART. 94. Le transport par cabotage des produits soumis aux

dise, or by imprisonment of from a month to a year.

ART. 90. The accomplices in offenses as provided by articles 88 and 89 shall be liable to the same penalties as the principals. The elements constituting complicity shall be adjudged according to the law of the tribunal in charge of the case. Accomplices.

ART. 91. In the case of smuggling, flagrant or attempted, in or out of the country, by a vessel outside of a port open to commerce, the Moorish customs shall have the right to take such vessel to the nearest port, to be turned over to the consular authority, and the said authority may seize and detain the vessel until it shall have paid the amount of the penalties imposed. Attempt at smuggling by vessels.  
Seizure.

The vessel shall be released at any stage of the action, in so far as the preliminary judicial proceedings are not impeded thereby, upon deposit made with the consular authority of the maximum of the fine, or else under responsible bail accepted by the customs. Release.

ART. 92. The provisions of the preceding articles are also applicable to coasting vessels. Coasting vessels.

ART. 93. Such merchandise as is not subject to an export duty, shipped in a Moorish port to be transported by sea to some other port in the Empire, shall be accompanied by a certificate issued by the customs, under penalty of being subjected to the payment of import duties, and even of being confiscated, if not entered in the manifest. Export certificates.

ART. 94. The transportation by coasting vessels of products sub- Deposit of duties.

- droits d'exportation ne pourra s'effectuer qu'en consignat au bureau de départ, contre quittance, le montant des droits d'exportation relatifs à ces marchandises.
- Refund of deposit. Cette consignation sera remboursée au déposant par le bureau où elle a été effectuée, sur production d'une déclaration revêtue par la douane de la mention d'arrivée de la marchandise et de la quittance constatant le dépôt des droits. Les pièces justificatives de l'arrivée de la marchandise devront être produites dans les trois mois de l'expédition. Passé ce délai, à moins que le retard ne provienne d'un cas de force majeure, la somme consignée deviendra la propriété du Makhzen.
- Payment of duties. ART. 95. Les droits d'entrée et de sortie seront payés au comptant au bureau de douane où la liquidation aura été effectuée. Les droits *ad valorem* seront liquidés suivant la valeur au comptant et en gros de la marchandise rendue au bureau de douane, et franche de droits de douane et de magasinage. En cas d'avaries, il sera tenu compte, dans l'estimation, de la dépréciation subie par la marchandise. Les marchandises ne pourront être retirées qu'après le paiement des droits de douane et de magasinage.
- Receipt. Toute prise en charge ou perception devra faire l'objet d'un récépissé régulier, délivré par l'agent chargé de l'opération.
- Appraisements. ART. 96. La valeur des principales marchandises taxées par les Douanes marocaines sera déterminée chaque année, dans les conditions spécifiées à l'article précédent, par une Commission des valeurs douanières, réunie à Tanger et composée de :
- Committee on customs. 1°. Trois membres désignés par le Gouvernement marocain.
- ject to export duties can only be effected by depositing at the custom-house of the port of departure the amount of export duties on such merchandise and taking receipt therefor.
- This money shall be returned to the depositor by the custom-house where it was deposited, on production of a declaration on which the customs certify the arrival of such merchandise and of the receipt for the deposit of the amount of the duties. The documents proving the arrival of the merchandise shall be produced within three months from the time of shipment. After this term, unless the delay be a case of *vis major*, the amount deposited shall become the property of the Maghzen.
- ART. 95. The import and export duties shall be paid cash at the custom-house where liquidation has been made. The *ad valorem* duties shall be liquidated according to the cash wholesale value of the merchandise delivered in the custom-house and free from customs duties and storage dues. Damages to the merchandise, if any, shall be taken into account in appraising the depreciation thereby caused. Merchandise can only be removed after the payment of customs duties and storage.
- The holding of the goods or the collection of duty shall, in every case, be made the subject of a regular receipt delivered by the officer in charge.
- ART. 96. The value of the chief articles of merchandise dutiable in the Moorish customs is to be appraised every year under the conditions specified in the foregoing article by a committee on customs valuations, meeting at Tangier, and consisting of—
- 1°. Three members appointed by the Moorish Government.

2°. Trois membres désignés par le Corps Diplomatique à Tanger.

3°. Un délégué de la Banque d'Etat.

4°. Un agent de la Délégation de l'Emprunt marocain 5%, 1904.

La Commission nommera douze à vingt membres honoraires domiciliés au Maroc, qu'elle consultera quand il s'agira de fixer les valeurs et toutes les fois qu'elle le jugera utile. Ces membres honoraires seront choisis sur les listes des notables, établies par chaque Légation pour les étrangers et par le Représentant du Sultan pour les marocains. Ils seront désignés, autant que possible, proportionnellement à l'importance du commerce de chaque nation.

La Commission sera nommée pour trois années.

Le tarif des valeurs fixées par elle servira de base aux estimations qui seront faites dans chaque bureau par l'administration des douanes marocaines. Il sera affiché dans les bureaux de douane et dans les chancelleries des Légations ou des Consuls à Tanger.

Le tarif sera susceptible d'être révisé au bout de six mois, si des modifications notables sont survenues dans la valeur de certaines marchandises.

ART. 97. Un Comité permanent, dit « Comité des douanes », est institué à Tanger et nommé pour trois années. Il sera composé d'un Commissaire spécial de Sa Majesté Chérifienne, d'un membre du Corps Diplomatique ou Consulaire désigné par le Corps Diplomatique à Tanger, et d'un délégué de la Banque d'Etat. Il pourra s'adjoindre, à titre consultatif, un ou plusieurs représentants du service des Douanes.

2°. Three members appointed by the Diplomatic Body at Tangier.

3°. One delegate of the State Bank.

4°. One agent of the delegation of the 5 per cent Moroccan loan of 1904.

This committee shall appoint from twelve to twenty honorary members resident in Morocco, whom it shall consult when called upon to determine the value, and whenever it may see fit. These honorary members shall be selected from the lists of notables drawn up in the case of foreign subjects by each legation, and in the case of Moors by the Sultan's representative. They shall be appointed as far as possible in proportion to the importance of the commerce of each nation.

The committee shall be appointed for the term of three years.

The schedule of values fixed by it shall serve as a basis for the appraisals which the administration of Moorish customs shall make in every custom-house. It shall be posted at all custom-houses and in the chanceries of the legations and consulates at Tangier.

The schedule may be revised at the end of six months in case of considerable changes in the values of certain articles.

ART. 97. A permanent committee, to be known as the "Committee of Customs", shall be organized at Tangier and appointed for a term of three years. It shall consist of a special commissioner of His Shereefian Majesty, of a member of the diplomatic or consular body appointed by the Diplomatic Body at Tangier, and of a delegate from the State Bank. It shall be empowered to add to its

Schedule of values.

Permanent committee.

## Duties.

Ce Comité exercera sa haute surveillance sur le fonctionnement des Douanes et pourra proposer à Sa Majesté Chérifienne les mesures qui seraient propres à apporter des améliorations dans le service et à assurer la régularité et le contrôle des opérations et perceptions (débarquements, embarquements, transport à terre, manipulations, entrées et sorties des marchandises, magasinage, estimation, liquidation et perception des taxes). Par la création du "Comité des douanes", il ne sera porté aucune atteinte aux droits stipulés en faveur des porteurs de titres par les articles 15 et 16 du Contrat d'emprunt du 12 Juin 1904.

Des instructions, élaborées par le Comité des douanes et les services intéressés, détermineront les détails de l'application de l'article 96 et du présent article. Elles seront soumises à l'avis du Corps Diplomatique.

## Warehouses.

ART. 98. Dans les douanes où il existe des magasins suffisants, le service de la douane prend en charge les marchandises débarquées à partir du moment où elles sont remises, contre récépissé, par le capitaine du bateau aux agents préposés à l'acconage jusqu'au moment où elles sont régulièrement dédouanées. Il est responsable des dommages causés par les pertes ou avaries de marchandise qui sont imputables à la faute ou à la négligence de ses agents. Il n'est pas responsable des avaries résultant soit du dépérissement naturel de la marchandise, soit de son trop long séjour en magasin, soit des cas de force majeure.

members, in an advisory capacity, one or more representatives of the customs service.

This committee shall exercise its high supervision over the customs service, and shall have the right to propose to His Shereefian Majesty such measures as are likely to effect improvement in the service and assure the regularity and supervision of operations and collections (landing, shipping, land transportation, handling, the incoming and outgoing of merchandise, storage, appraisal, liquidation and collection of duties). The creation of such a Committee of Customs shall in no way infringe the rights stipulated in favor of the bondholders by articles 15 and 16 in the loan contract of June 12th, 1904.

Instructions to be drawn up by the Committee of Customs and the services interested therein shall determine the details of the enforcement of article 96 and of the present article. They shall be submitted to the advice and consent of the Diplomatic Body.

ART. 98. In custom-houses where sufficient warehouses exist the customs service shall take charge of the disembarked merchandise as soon as it is turned over by the captain of the vessel to the officers in charge of the lighterage, who shall receipt therefor, and until such time as it shall have been regularly cleared from the customs. The customs service is responsible for injuries caused by loss of or damage to merchandise which may be imputed to the fault or negligence of its officers. It is not responsible for damages resulting either from the natural decay of merchandise, or from too lengthy a storage in the warehouse, or from cases of *vis major*.



Dans les douanes où il n'y a pas de magasins suffisants, les agents du Makhzen sont seulement tenus d'employer les moyens de préservation dont dispose le bureau de la douane.

Une révision du Règlement de magasinage, actuellement en vigueur, sera effectuée par les soins du Corps Diplomatique statuant à la majorité, de concert avec le Gouvernement chérifien.

ART. 99. Les marchandises et les moyens de transport à terre confisqués seront vendus par les soins de la douane, dans un délai de huit jours à partir du jugement définitif rendu par le tribunal compétent.

ART. 100. Le produit net de la vente des marchandises et objets confisqués est acquis définitivement à l'Etat ; celui des amendes pécuniaires, ainsi que le montant des transactions, seront, après déduction des frais de toute nature, répartis entre le Trésor chérifien et ceux qui auront participé à la répression de la fraude ou de la contrebande.

Un tiers à répartir par la douane entre les indicateurs,

Un tiers aux agents ayant saisi la marchandise,

Un tiers au Trésor marocain.

Si la saisie a été opérée sans l'intervention d'un indicateur, la moitié des amendes sera attribuée aux agents saisissants et l'autre moitié au Trésor marocain.

ART. 101. Les autorités douanières marocaines devront signaler directement aux agents diplomatiques ou consulaires les infractions au présent règlement commises par leurs ressortissants,

In custom-houses where there are not sufficient warehouses the agents of the Maghzen are required only to employ such means of preservation as may be at the disposal of the custom-house.

A revision of the storage regulations now in force shall be made under the direction of the Diplomatic Body, whose decisions shall be taken by a majority vote, in concert with the Shereefian Government. Revision of storage regulations.

ART. 99. Confiscated merchandise and conveyances shall be sold under direction of the customs service within eight days from the date of final judgment rendered by the competent tribunal. Sale of confiscated articles.

ART. 100. The net proceeds of the sale of confiscated merchandise and articles become the final property of the State ; as to pecuniary fines and compromises thereof, the amount, after deduction of costs of all kinds, shall be divided between the Shereefian Treasury and those who have participated in the repression of fraud or smuggling : Proceeds.

One-third to be distributed by the customs among the informants,

One-third to the officers who have seized the goods,

One-third to the Moorish Treasury.

If the seizure has been made without the intervention of an informant, one-half the fine shall be awarded to the officers making the seizure and the other half to the Moorish Treasury.

ART. 101. The Moorish customs authorities shall directly inform the diplomatic or consular agents of any violations of this regulation which may have been committed by those under their juris- Violation by foreigners.

afin que ceux-ci soient poursuivis devant la juridiction compétente.

Les mêmes infractions, commises par des sujets marocains, seront déferées directement par la douane à l'autorité chérifienne.

Un délégué de la douane sera chargé de suivre la procédure des affaires pendantes devant les diverses juridictions.

Imposition of penalties.

ART. 102. Toute confiscation, amende, ou pénalité, devra être prononcée pour les étrangers par la juridiction consulaire et pour les sujets marocains par la juridiction Chérifienne.

On Algerian frontier.

ART. 103. Dans la région frontière de l'Algérie, l'application du présent règlement restera l'affaire exclusive de la France et du Maroc.

Spanish frontier.

De même, l'application de ce règlement dans le Riff et, en général, dans les régions frontières des Possessions espagnoles, restera l'affaire exclusive de l'Espagne et du Maroc.

Revision.

ART. 104. Les dispositions du présent règlement, autres que celles qui s'appliquent aux pénalités, pourront être révisées par le Corps Diplomatique à Tanger, statuant à l'unanimité des voix, et d'accord avec le Makhzen, à l'expiration d'un délai de deux ans à dater de son entrée en vigueur.

diction, in order that they may be prosecuted before the competent court.

Similar violations by Moorish subjects shall be brought directly by the customs before the Shereefian authority.

A delegate of the customs shall be charged to follow the legal proceedings in cases pending before the several jurisdictions.

ART. 102. Every confiscation, fine or penalty must be imposed on foreigners by consular jurisdiction, and on Moorish subjects by Shereefian jurisdiction.

ART. 103. In the region bordering on Algeria the enforcement of these regulations shall be the exclusive concern of France and Morocco.

The enforcement of these regulations in the Riff and in general in the regions bordering on the Spanish possessions shall likewise be the exclusive concern of Spain and Morocco.

ART. 104. The provisions of the present regulations, other than those relating to penalties, may be revised by unanimous decision of the Diplomatic Body at Tanger and in accord with the Maghzen, at the expiration of a term of two years from the date of their taking effect.

#### CHAPITRE VI

#### CHAPTER VI

Public services and works.

*Déclaration relative aux services publics et aux travaux publics*

*A declaration relative to public services and public works*

Non-alienation of public services, etc.

ART. 105. En vue d'assurer l'application du principe de la liberté économique sans aucune inégalité, les Puissances signataires déclarent qu'aucun des services publics de l'Empire Chérifien ne pourra être aliéné au profit d'intérêts particuliers.

ART. 105. With a view to assuring the application of the principle of economic liberty without any inequality, the Signatory Powers declare that none of the public services in the Shereefian Empire can be alienated for the advantage of private interests.

ART. 106. Dans le cas où le Gouvernement chérifien croirait devoir faire appel aux capitaux étrangers ou à l'industrie étrangère pour l'exploitation de services publics ou pour l'exécution de travaux publics, routes, chemins de fer, ports, télégraphes et autres, les Puissances signataires se réservent de veiller à ce que l'autorité de l'Etat sur ces grandes entreprises d'intérêt général demeure entière.

ART. 107. La validité des concessions qui seraient faites aux termes de l'article 106 ainsi que pour les fournitures d'Etat sera subordonnée, dans tout l'Empire chérifien, au principe de l'adjudication publique, sans acception de nationalité, pour toutes les matières qui, conformément aux règles suivies dans les législations étrangères, en comportent l'application.

ART. 108. Le Gouvernement chérifien, dès qu'il aura décidé de procéder par voie d'adjudication à l'exécution des travaux publics, en fera part au Corps Diplomatique ; il lui communiquera, par la suite, les cahiers des charges, plans, et tous les documents annexés au projet d'adjudication, de manière que les nationaux de toutes les Puissances signataires puissent se rendre compte des travaux projetés et être à même d'y concourir. Un délai suffisant sera fixé à cet effet par l'avis d'adjudication.

ART. 109. Le cahier des charges ne devra contenir, ni directement ni indirectement, aucune condition ou disposition qui puisse porter atteinte à la libre concurrence et mettre en état d'infériorité les concurrents d'une nationalité vis-à-vis des concurrents d'une autre nationalité.

ART. 110. Les adjudications seront passées dans les formes et

ART. 106. In case the Shereefian Government should invoke the aid of foreign capital or foreign industry for the working of public services or for the operation of public works, roads, railways, ports, telegraphs, and other public works, the Signatory Powers reserve to themselves the right to see to it that the authority of the State over these great enterprises of general interest remains entire.

ART. 107. The validity of the concessions which may be made under the terms of article 106, as well as for Government supplies, shall, throughout the Shereefian Empire, be subordinated to the principle of public awards on proposals, without preference of nationality, whenever applicable under the rules followed in foreign laws.

ART. 108. As soon as the Shereefian Government shall have decided to invite proposals for execution of public works, it shall so inform the Diplomatic Body. It shall later communicate to it the plans, specifications, and all documents annexed to the call for proposals, in order to enable the nationals of all the Signatory Powers to form a clear idea of the contemplated works and compete for the same. A sufficient term for this shall be specified in the call for proposals.

ART. 109. The specifications shall not contain, either directly or indirectly, any condition or provision which may be prejudicial to free competition and which may give advantage to competitors of one nationality over those of another nationality.

ART. 110. The contracts shall be awarded in the form and

Reservation of authority.

Concessions.

Notice to diplomatic body.

Submission of plans, etc.

Free competition.

Award of contracts.

suivant les conditions générales prescrites par un règlement que le Gouvernement chérifien arrêtera avec l'assistance du Corps Diplomatique.

L'adjudication sera prononcée par le Gouvernement chérifien en faveur du soumissionnaire qui, en se conformant aux prescriptions du cahier des charges, présentera l'offre remplissant les conditions générales les plus avantageuses.

Cork forests. ART. III. Les règles des articles 106 à 110 seront appliquées aux concessions d'exploitation de forêts de chênes-lièges, conformément aux dispositions en usage dans les législations étrangères.

Mines and quarries. ART. II2. Un firman chérifien déterminera les conditions de concession et d'exploitations des mines, minières et carrières. Dans l'élaboration de ce firman, le Gouvernement chérifien s'inspirera des législations étrangères existant sur la matière.

Expropriation of property. ART. II3. Si, dans les cas mentionnés aux articles 106 à 112, il était nécessaire d'occuper certains immeubles, il pourra être procédé à leur expropriation moyennant le versement préalable d'une juste indemnité et conformément aux règles suivantes.

Ascertainment of necessity. ART. II4. L'expropriation ne pourra avoir lieu que pour cause d'utilité publique et qu'autant que la nécessité en aura été constatée par une enquête administrative dont un règlement chérifien, élaboré avec l'assistance du Corps Diplomatique, fixera les formalités.

Property of Moorish subjects. ART. II5. Si les propriétaires d'immeubles sont sujets marocains, Sa Majesté Chérifienne prendra les mesures nécessaires pour qu'aucun obstacle ne soit apporté à l'exécution des travaux

according to the general conditions prescribed by the regulations which the Shereefian Government shall draw up with the assistance of the Diplomatic Body.

The contracts shall be awarded by the Shereefian Government to the bidder who, while conforming himself to the specifications, shall have submitted the bid fulfilling the most advantageous general conditions.

ART. III. The rules of articles 106 to 110 shall be applied to concessions for working cork forests, in accordance with the customary provisions in foreign laws.

ART. II2. The Shereefian firman shall determine the conditions of the concessions and the working of mines and quarries. In the composition of this firman the Shereefian Government shall be guided by foreign laws relating to such matters.

ART. II3. If in the cases mentioned in articles 106 to 112 it should become necessary to occupy certain property, its expropriation may be effected by previous payment of a fair indemnity, in conformity to the following rules :

ART. II4. Expropriation can only be effected on the ground of public utility and when necessity for the same shall have been ascertained by any administrative investigation, the formalities of which shall be determined by Shereefian regulations drawn up with the assistance of the Diplomatic Body.

ART. II5. If the property holders are Moorish subjects, His Shereefian Majesty shall take the necessary measures, that no hindrance shall impede the execution of works that he shall have

qu'Elle aura déclarés d'utilité publique.

ART. 116. S'il s'agit de propriétaires étrangers, il sera procédé à l'expropriation de la manière suivante :

En cas de désaccord entre l'administration compétente et le propriétaire de l'immeuble à exproprier, l'indemnité sera fixée par un jury spécial, ou, s'il y a lieu, par arbitrage.

ART. 117. Le jury sera composé de six experts estimateurs, choisis trois par le propriétaire, trois par l'administration qui poursuivra l'expropriation. L'avis de la majorité absolue prévaudra.

S'il ne peut se former de majorité, le propriétaire et l'administration nommeront chacun un arbitre et ces deux arbitres désigneront le tiers arbitre.

A défaut d'entente pour la désignation du tiers arbitre, ce dernier sera nommé par le Corps Diplomatique à Tanger.

ART. 118. Les arbitres devront être choisis sur une liste établie au début de l'année par le Corps Diplomatique et, autant que possible, parmi les experts ne résidant pas dans la localité où s'exécute le travail.

ART. 119. Le propriétaire pourra faire appel de la décision rendue par les arbitres, devant la juridiction compétente, et conformément aux règles fixées en matière d'arbitrage par la législation à laquelle il ressortit.

## CHAPITRE VII

### *Dispositions générales*

ART. 120. En vue de mettre, s'il y a lieu, sa législation en harmonie avec les engagements con-

declared to be of public utility.

ART. 116. If the owners are foreigners the method of expropriation shall be as follows :

In case of disagreement between the competent administration and the owner of the property to be expropriated, the indemnity shall be fixed by a special jury, or, if the occasion arises, by arbitration.

ART. 117. This jury shall be composed of six expert appraisers, three to be selected by the owner, three by the administration desiring to expropriate. A majority vote shall rule.

If there be no majority, the owner and the administration shall each appoint an arbitrator, and the two arbitrators shall name an umpire.

In case no agreement can be reached in selecting an umpire he shall be appointed by the Diplomatic Body at Tangier.

ART. 118. The arbitrators shall be selected from a list drawn up at the beginning of each year by the Diplomatic Body, and they shall be selected, as far as possible, from experts not living within the district in which the work is to be carried out.

ART. 119. The owner may appeal from the arbitrators' decision to a competent jurisdiction, and in accordance with the rules set for arbitration cases by the law of the country to which he belongs.

## CHAPTER VII

### *General provisions*

ART. 120. With a view to harmonizing its legislation, if the occasion arises, with the engage-

Property of foreigners.

Appraisal.

Arbitrators.

Appeals.

General provisions.

Legislation by signatory powers.

tractés par le présent Acte Général, chacune des Puissances signataires s'oblige à provoquer, en ce qui la concerne, l'adoption des mesures législatives qui seraient nécessaires.

## Ratification.

ART. 121. Le présent Acte Général sera ratifié suivant les lois constitutionnelles particulières à chaque Etat; les ratifications seront déposées à Madrid le plus tôt que faire se pourra, et au plus tard le trente et un Décembre mille neuf cent six.

## Certification.

Il sera dressé du dépôt un procès-verbal dont une copie certifiée conforme sera remise aux Puissances signataires par la voie diplomatique.

## Effect.

ART. 122. Le présent Acte Général entrera en vigueur le jour où toutes les ratifications auront été déposées, et au plus tard le trente et un Décembre mille neuf cent six.

## Stipulations subject to legislation.

Au cas où les mesures législatives spéciales qui dans certains pays seraient nécessaires pour assurer l'application à leurs nationaux résidant au Maroc de quelques-unes des stipulations du présent Acte général, n'auraient pas été adoptées avant la date fixée pour la ratification, ces stipulations ne deviendraient applicables, en ce qui les concerne, qu'après que les mesures législatives ci-dessus visées auraient été promulguées.

## Former treaties.

ART. 123 et dernier. Tous les traités, conventions et arrangements des Puissances signataires avec le Maroc restent en vigueur. Toutefois, il est entendu qu'en cas de conflit entre leurs dispositions et celles du présent Acte Général, les stipulations de ce dernier prévaudront.

## Signatures.

En foi de quoi, les Délégués Plénipotentiaires ont signé le

present General Act, each of the Signatory Powers engages to take the necessary steps leading to the enactment of such legislation as may be necessary so far as it is concerned.

ART. 121. The present General Act shall be ratified according to the constitutional laws of each state. The ratifications shall be deposited at Madrid as soon as practicable, and at the latest by December thirty-first, one thousand nine hundred and six.

A procès verbal shall be made of such deposit and a certified copy sent to each of the Signatory Powers through the diplomatic channel.

ART. 122. The present General Act shall enter into effect as soon as all the ratifications shall have been deposited, and at the latest on December thirty-first, one thousand nine hundred and six.

In case the special legislative measures which may be necessary in certain countries to insure the application to their nationals living in Morocco of certain stipulations of this present General Act shall not have been enacted by the date fixed for ratification, these stipulations shall only become applicable in respect to them after the legislative measures above referred to shall have been promulgated.

ART. 123 and last. All treaties, conventions, and arrangements of the Signatory Powers with Morocco remain in force. It is understood, however, that in case of conflict between their provisions and those of the present General Act, the stipulations of the latter shall prevail.

In faith whereof the Delegates Plenipotentiary have signed the

présent Acte Général et y ont apposé leur cachet.

Fait à Algeciras le septième jour d'Avril mille neuf cent six, en un seul exemplaire qui restera déposé dans les archives du Gouvernement de Sa Majesté Catholique et dont des copies certifiées conformes seront remises par la voie diplomatique aux Puissances signataires.

Pour l'Allemagne :

[L. s.] RADOWITZ.  
[L. s.] TATTENBACH.

Pour l'Autriche-Hongrie :

[L. s.] WELSERSHEIMB.  
[L. s.] BOLESTA-KOZIEBRODZKI.

Pour la Belgique :

[L. s.] JOOSTENS.  
[L. s.] COMTE CONRAD DE  
BUISSERET.

Pour l'Espagne :

[L. s.] EL DUQUE DE ALMO-  
DÓVAR DEL RÍO.  
[L. s.] J. PÉREZ-CABALLERO.

Pour les Etats-Unis d'Amérique : Sous réserve de la déclaration faite en séance plénière de la Conférence le 7 avril 1906.

[L. s.] HENRY WHITE.  
[L. s.] SAMUEL R. GUMMERÉ.

Pour la France :

[L. s.] RÉVOIL.  
[L. s.] REGNAULT.

Pour la Grande Bretagne :

[L. s.] A. NICOLSON.

Pour l'Italie :

[L. s.] VISCONTI VENOSTA.  
[L. s.] G. MALMUSI.

Pour le Maroc :

present General Act and have affixed their seals thereto.

Done at Algeciras this seventh day of April, one thousand nine hundred and six, in a single copy, which shall remain deposited in the archives of the Government of His Catholic Majesty, and of which certified copies shall be transmitted through the diplomatic channel to the Signatory Powers.

For Germany :

[L. s.] JOSEPH DE RADOWITZ  
[L. s.] TATTENBACH

For Austria-Hungary :

[L. s.] WELSERSHEIMB  
[L. s.] BOLESTA-KOZIEBRODZKI

For Belgium :

[L. s.] JOOSTENS  
[L. s.] COMTE CONRAD DE  
BUISSERET

For Spain :

[L. s.] EL DUQUE DE ALMO-  
DÓVAR DEL RÍO  
L. s.] J. PÉREZ-CABALLERO

For the United States of America, with reservation of the declaration made in the plenary session of the conference on April 7, 1906 :

[L. s.] HENRY WHITE  
[L. s.] SAMUEL R. GUMMERÉ

For France :

[L. s.] RÉVOIL  
[L. s.] REGNAULT

For Great Britain :

[L. s.] A. NICOLSON

For Italy :

[L. s.] VISCONTI VENOSTA.  
[L. s.] G. MALMUSI

For Morocco :

Pour les Pays-Bas :

[L. s.] H. TESTA.

Pour le Portugal :

[L. s.] CONDE DE TOVAR.

[L. s.] CONDE DE MARTENS  
FERRÃO.

Pour la Russie :

[L. s.] CASSINI.

[L. s.] BASILE BACHERACHT.

Pour la Suède :

[L. s.] ROBERT SAGER.

Pour copie certifiée conforme,  
Le Sous-Secrétaire d'État.

[SEAL] E. DE OJEDA

For the Netherlands:

[L. s.] H. TESTA

For Portugal :

[L. s.] CONDE DE TOVAR

[L. s.] CONDE DE MARTENS  
FERRAO

For Russia :

[L. s.] CASSINI

[L. s.] BASILE DE BACHERACHT

For Sweden :

[L. s.] ROBERT SAGER

#### PROTOCOLE ADDITIONNEL

Additional  
protocol.

Au moment de procéder à la signature de l'Acte général de la Conférence d'Algeciras, les Délégués d'Allemagne, d'Autriche-Hongrie, de Belgique, d'Espagne, des États-Unis d'Amérique, de France, de la Grande-Bretagne, d'Italie, des Pays-Bas, de Portugal, de Russie et de Suède,

Signatures of  
Moroccan  
delegates  
withheld.

Tenant compte de ce que les Délégués du Maroc ont déclaré ne pas être en mesure, pour le moment, d'y apposer leur signature, l'éloignement ne leur permettant pas d'obtenir à bref délai la réponse de Sa Majesté Chérifienne concernant les points au sujet desquels ils ont cru devoir Lui en référer,

Enforcement  
of reforms,  
etc.

S'engagent réciproquement, en vertu de leurs mêmes pleins pouvoirs, à unir leurs efforts, en vue de la ratification intégrale par Sa Majesté Chérifienne du dit Acte Général et en vue de la mise en vigueur simultanée des réformes qui y sont prévues et qui sont solidaires les unes des autres.

#### ADDITIONAL PROTOCOL

On the point of signing the General Act of the Conference of Algeciras, the delegates of Germany, Austria-Hungary, Belgium, Spain, the United States of America, France, Great Britain, Italy, the Netherlands, Portugal, Russia, and Sweden,

Taking into account the declaration of the delegates of Morocco that they were not, for the present, in position to affix their signatures thereto, they being unable, owing to the distance, to receive an early reply from His Shereefian Majesty concerning the points in regard to which they deemed it their duty to refer to Him,

Reciprocally engage, by virtue of their respective full powers, to unite their efforts towards the ratification of the said General Act in its entirety by His Shereefian Majesty and towards the simultaneous enforcement of the reforms therein provided which are interdependent.



Ils conviennent, en conséquence, de charger Son Excellence M. Malmusi, Ministre d'Italie au Maroc et Doyen du Corps Diplomatique à Tanger, de faire les démarches nécessaires à cet effet, en appelant l'attention de Sa Majesté le Sultan sur les grands avantages qui résulteront pour Son Empire des stipulations adoptées à la Conférence par l'unanimité des Puissances signataires.

L'adhésion donnée par Sa Majesté Chérifiennne à l'Acte Général de la Conférence d'Algeciras devra être communiquée, par l'intermédiaire du Gouvernement de Sa Majesté Catholique, aux Gouvernements des autres Puissances signataires. Cette adhésion aura la même force que si les Délégués du Maroc eussent apposé leur signature sur l'Acte Général et tiendra lieu de ratification par Sa Majesté Chérifiennne.

En foi de quoi, les Délégués d'Allemagne, d'Autriche-Hongrie, de Belgique, d'Espagne, des États-Unis d'Amérique, de France, de la Grande-Bretagne, d'Italie, des Pays-Bas, de Portugal, de Russie et de Suède, ont signé le présent Protocole additionnel et y ont apposé leur cachet.

Fait à Algeciras, le septième jour d'Avril, mille neuf cent six, en un seul exemplaire qui restera déposé dans les archives du Gouvernement de Sa Majesté Catholique et dont des copies, certifiées conformes, seront remises, par la voie diplomatique, aux Puissances signataires.

Pour l'Allemagne :

[L. S.] RADOWITZ.

[L. S.] TATTENBACH.

Pour l'Autriche-Hongrie :

[L. S.] WELSERSHEIMB.

[L. S.] BOLESTA-KOZIEBRODZKI.

They therefore agree to charge His Excellency Mr. Malmusi, Minister of Italy to Morocco and Dean of the Diplomatic Corps at Tangier, to take the necessary steps to that end by calling the attention of His Majesty the Sultan to the great advantages that His Empire would derive from the stipulations adopted at the conference by the unanimous action of the Signatory Powers.

The adhesion given by His Shereefian Majesty to the General Act of the Conference of Algeciras shall be communicated through the Government of His Catholic Majesty to the Governments of the other Signatory Powers. This adhesion shall have the same force as if the delegates of Morocco had affixed their signatures to the General Act and will take the place of ratification by His Shereefian Majesty.

In witness whereof, the delegates of Germany, Austria-Hungary, Belgium, Spain, the United States of America, France, Great Britain, Italy, the Netherlands, Portugal, Russia, and Sweden have signed the present additional protocol and affixed their seals thereto.

Done at Algeciras on the seventh day of April, one thousand nine hundred and six, in a single copy, which shall remain filed in the archives of the Government of His Catholic Majesty, and of which certified copies shall be delivered to the Signatory Powers through the diplomatic channel.

For Germany :

[L. S.] JOSEPH DE RADOWITZ

[L. S.] TATTENBACH

For Austria-Hungary :

[L. S.] WELSERSHEIMB

[L. S.] BOLESTA-KOZIEBRODZKI

Notice of stipulations to Sultan.

Notice of adhesion to signatory powers.

Signatures.

## Pour la Belgique :

[L. s.] JOOSTENS.  
[L. s.] COMTE CONRAD DE  
BUISSERET.

## Pour l'Espagne :

[L. s.] EL DUQUE DE ALMO-  
DÓVAR DEL RÍO.  
[L. s.] J. PÉREZ-CABALLERO.

Pour les Etats-Unis d'Amé-  
rique : Sous réserve de la déclara-  
tion faite en séance plénière de  
la Conférence le 7 avril 1906.

[L. s.] HENRY WHITE.  
[L. s.] SAMUEL R. GUMMERÉ.

## Pour la France :

[L. s.] RÉVOIL.  
[L. s.] REGNAULT.

## Pour la Grande-Bretagne :

[L. s.] A. NICOLSON.

## Pour l'Italie :

[L. s.] VISCONTI VENOSTA.  
[L. s.] G. MALMUSI.

## Pour les Pays-Bas :

[L. s.] H. TESTA.

## Pour le Portugal :

[L. s.] CONDE DE TOVAR.  
[L. s.] CONDE DE MARTENS  
FERRÃO.

## Pour la Russie :

[L. s.] CASSINI.  
[L. s.] BASILE BACHERACHT.

## Pour la Suède :

[L. s.] ROBERT SAGER.  
Pour copie certifiée conforme,  
Le Sous-Secrétaire d'Etat,

[SEAL] E. DE OJEDA

## For Belgium :

[L. s.] JOOSTENS  
[L. s.] COMTE CONRAD DE  
BUISSERET

## For Spain :

[L. s.] EL DUQUE DE ALMO-  
DÓVAR DEL RÍO  
[L. s.] J. PÉREZ-CABALLERO

For the United States of  
America, with reservation of  
the declaration made in the  
plenary session of the confe-  
rence on April 7, 1906 :

[L. s.] HENRY WHITE  
[L. s.] SAMUEL R. GUMMERÉ

## For France :

[L. s.] RÉVOIL  
[L. s.] REGNAULT

## For Great Britain :

[L. s.] A. NICOLSON

## For Italy :

[L. s.] VISCONTI VENOSTA  
[L. s.] G. MALMUSI

## For Morocco :

## For the Netherlands :

[L. s.] H. TESTA

## For Portugal :

[L. s.] CONDE DE TOVAR  
[L. s.] CONDE DE MARTENS  
FERRAO

## For Russia :

[L. s.] CASSINI  
[L. s.] BASILE DE BACHERACHT

## For Sweden :

[L. s.] ROBERT SAGER

## Preamble.

And whereas the said General Act and Additional Protocol were  
signed by the Plenipotentiaries of the United States of America under  
reservation of the following declaration :

"The Government of the United States of America, having no political interest in Morocco and no desire or purpose having animated it to take part in this conference other than to secure for all peoples the widest equality of trade and privilege with Morocco and to facilitate the institution of reforms in that country tending to insure complete cordiality of intercourse without and stability of administration within *for the common good*, declares that, in acquiescing in the regulations and declarations of the conference, in becoming a signatory to the General Act of Algeciras and to the Additional Protocol, subject to ratification according to constitutional procedure, and in accepting the application of those regulations and declarations to American citizens and interests in Morocco, it does so without assuming obligation or responsibility for the enforcement thereof."

Disclaimer of  
political  
interest by  
United States

And whereas, in giving its advice and consent to the ratification of the said General Act and Additional Protocol the Senate of the United States resolved, "as a part of this act of ratification, that the Senate understands that the participation of the United States in the Algeciras Conference, and in the formulation and adoption of the General Act and Protocol which resulted therefrom, was with the sole purpose of preserving and increasing its commerce in Morocco, the protection as to life, liberty and property of its citizens residing or traveling therein, and of aiding by its friendly offices and efforts in removing friction and controversy which seemed to menace the peace between the powers signatory with the United States to the treaty of 1880, all of which are on terms of amity with this government; and without purpose to depart from the traditional American foreign policy which forbids participation by the United States in the settlement of political questions which are entirely European in their scope."

And whereas, the said General Act and Additional Protocol were duly ratified by the Governments of the United States of America and of the other powers aforesaid, and by His Majesty the Sultan of Morocco;

And whereas in pursuance of Article 121 of the said General Act, the ratifications of the said General Act and Additional Protocol of all the signatory powers were deposited with the Government of His Majesty, the King of Spain, on December 31, 1906, thereby constituting a valid exchange of the ratifications thereof;

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said General Act and Additional Protocol to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof, subject to the reservation made in the aforesaid Declaration of the Plenipotentiaries of the United States and to the Resolution of the Senate.

Proclamation.

In witness whereof, I have hereunto set my hand and caused the seal of the United States of America to be hereunto affixed.

Done at the City of Washington this twenty-second day of January, in the year of our Lord one thousand nine hundred and seven, [SEAL] and of the Independence of the United States of America the one hundred and thirty-first.

THEODORE ROOSEVELT.

By the President:  
ELIHU ROOT,  
Secretary of State.

## II.—TREATIES AND OTHER ACTS CONCERNING THE ESTABLISHMENT OF THE PROTECTORATE

### *Annex No. 33*

#### DECLARATION BETWEEN FRANCE AND GREAT BRITAIN CONCERNING EGYPT AND MOROCCO OF APRIL 8, 1904, WITH SECRET ARTICLES

*Source : 101 British and Foreign State Papers, 1053-1059.*

*DECLARATION between Great Britain and France respecting Egypt and Morocco, together with the Secret Articles signed at the same time.  
—Signed at London, April 8, 1904.*

ART. I. His Britannic Majesty's Government declare that they have no intention of altering the political status of Egypt.

The Government of the French Republic, for their part, declare that they will not obstruct the action of Great Britain in that country by asking that a limit of time be fixed for the British occupation or in any other manner, and that they give their assent to the draft Khedivial Decree annexed to the present arrangement, containing the guarantees considered necessary for the protection of the interests of the Egyptian bondholders, on the condition that, after its promulgation, it cannot be modified in any way without the consent of the Powers signatory of the Convention of London of 1885.

It is agreed that the post of Director-General of Antiquities in Egypt shall continue, as in the past, to be entrusted to a French *savant*.

ART. I. Le Gouvernement de Sa Majesté britannique déclare qu'il n'a pas l'intention de changer l'état politique de l'Égypte.

De son côté, le Gouvernement de la République française déclare qu'il n'entravera pas l'action de l'Angleterre dans ce pays en demandant qu'un terme soit fixé à l'occupation britannique ou de toute autre manière, et qu'il donne son adhésion au projet de décret khédivial qui est annexé au présent arrangement, et qui contient les garanties jugées nécessaires pour la sauvegarde des intérêts des porteurs de la Dette égyptienne, mais à la condition qu'après sa mise en vigueur aucune modification n'y pourra être introduite sans l'assentiment des Puissances signataires de la Convention de Londres de 1885.

Il est convenu que la Direction générale des Antiquités en Égypte continuera d'être, comme par le passé, confiée à un *savant* français.

The French schools in Egypt shall continue to enjoy the same liberty as in the past.

II. The Government of the French Republic declare that they have no intention of altering the political status of Morocco.

His Britannic Majesty's Government, for their part, recognize that it appertains to France, more particularly as a Power whose dominions are continuous for a great distance with those of Morocco, to preserve order in that country, and to provide assistance for the purpose of all administrative, economic, financial, and military reforms which it may require.

They declare that they will not obstruct the action taken by France for this purpose, provided that such action shall leave intact the rights which Great Britain, in virtue of Treaties, Conventions, and usage, enjoys in Morocco, including the right of coasting trade between the ports of Morocco, enjoyed by British vessels since 1901.

III. His Britannic Majesty's Government, for their part, will respect the right which France, in virtue of Treaties, Conventions, and usage, enjoys in Egypt, including the right of coasting trade between Egyptian ports accorded to French vessels.

IV. The two Governments, being equally attached to the principle of commercial liberty both in Egypt and Morocco, declare that they will not, in those countries, countenance any inequality either in the imposition of customs duties or other taxes, or of railway transport charges.

The trade of both nations with Morocco and with Egypt shall enjoy the same treatment in transit through the French and

Les écoles françaises en Égypte continueront à jouir de la même liberté que par le passé.

II. Le Gouvernement de la République française déclare qu'il n'a pas l'intention de changer l'état politique du Maroc.

De son côté, le Gouvernement de Sa Majesté britannique reconnaît qu'il appartient à la France, notamment comme Puissance limitrophe du Maroc sur une vaste étendue, de veiller à la tranquillité dans ce pays, et de lui prêter son assistance pour toutes les réformes administratives, économiques, financières et militaires dont il a besoin.

Il déclare qu'il n'entravera pas l'action de la France à cet effet, sous réserve que cette action laissera intacts les droits dont, en vertu des Traités, Conventions et usages, la Grande-Bretagne jouit au Maroc, y compris le droit de cabotage entre les ports marocains dont bénéficient les navires anglais depuis 1901.

III. Le Gouvernement de Sa Majesté britannique, de son côté, respectera les droits dont, en vertu des Traités, Conventions et usages, la France jouit en Égypte, y compris le droit de cabotage accordé aux navires français entre les ports égyptiens.

IV. Les deux Gouvernements, également attachés au principe de la liberté commerciale tant en Égypte qu'au Maroc, déclarent qu'ils ne s'y prêteront à aucune inégalité, pas plus dans l'établissement des droits de douane ou autres taxes que dans l'établissement des tarifs de transport par chemin de fer.

Le commerce de l'une et l'autre nation avec le Maroc et avec l'Égypte jouira du même traitement pour le transit par les pos-

British possessions in Africa. An agreement between the two Governments shall settle the conditions of such transit and shall determine the points of entry.

This mutual agreement shall be binding for a period of thirty years. Unless this stipulation is expressly denounced at least one year in advance, the period shall be extended for five years at a time.

Nevertheless, the Government of the French Republic reserve to themselves in Morocco, and His Britannic Majesty's Government reserve to themselves in Egypt, the right to see that the concessions for roads, railways, ports, &c., are only granted on such conditions as will maintain intact the authority of the State over these great undertakings of public interest.

V. His Britannic Majesty's Government declare that they will use their influence in order that the French officials now in the Egyptian service may not be placed under conditions less advantageous than those applying to the British officials in the same service.

The Government of the French Republic, for their part, would make no objection to the application of analogous conditions to British officials now in the Moorish service.

VI. In order to ensure the free passage of the Suez Canal, His Britannic Majesty's Government declare that they adhere to the stipulations of the Treaty of the 29th October, 1888, and that they agree to their being put in force. The free passage of the Canal being thus guaranteed, the execution of the last sentence of paragraph 1 as well as of

sessions françaises et britanniques en Afrique. Un accord entre les deux Gouvernements réglera les conditions de ce transit et déterminera les points de pénétration.

Cet engagement réciproque est valable pour une période de trente ans. Faute de dénonciation expresse faite une année au moins à l'avance, cette période sera prolongée de cinq en cinq ans.

Toutefois, le Gouvernement de la République française au Maroc et le Gouvernement de Sa Majesté britannique en Égypte se réservent de veiller à ce que les concessions de routes, chemins de fer, ports, &c., soient données dans des conditions telles que l'autorité de l'État sur ces grandes entreprises d'intérêt général demeure entière.

V. Le Gouvernement de Sa Majesté britannique déclare qu'il usera de son influence pour que les fonctionnaires français actuellement au service égyptien ne soient pas mis dans des conditions moins avantageuses que celles appliquées aux fonctionnaires anglais du même service.

Le Gouvernement de la République française, de son côté, n'aurait pas d'objection à ce que des conditions analogues fussent consenties aux fonctionnaires britanniques actuellement au service marocain.

VI. Afin d'assurer le libre passage du Canal de Suez, le Gouvernement de Sa Majesté britannique déclare adhérer aux stipulations du traité conclu le 29 octobre 1888, et à leur mise en vigueur. Le libre passage du Canal étant ainsi garanti, l'exécution de la dernière phrase du paragraphe 1 et celle du paragraphe 2 de l'article VIII de ce

paragraph 2 of Article VIII of that Treaty will remain in abeyance.

VII. In order to secure the free passage of the Straits of Gibraltar, the two Governments agree not to permit the erection of any fortifications or strategic works on that portion of the coast of Morocco comprised between, but not including, Melilla and the heights which command the right bank of the River Sebou.

This condition does not, however, apply to the places at present in the occupation of Spain on the Moorish coast of the Mediterranean.

VIII. The two Governments, inspired by their feeling of sincere friendship for Spain, take into special consideration the interests which that country derives from her geographical position and from her territorial possessions on the Moorish coast of the Mediterranean. In regard to these interests the French Government will come to an understanding with the Spanish Government.

The agreement which may be come to on the subject between France and Spain shall be communicated to His Britannic Majesty's Government.

IX. The two Governments agree to afford to one another their diplomatic support, in order to obtain the execution of the clauses of the present Declaration regarding Egypt and Morocco.

In witness whereof his Excellency the Ambassador of the French Republic at the Court of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, and His Majesty's Principal Secretary of

traité resteront suspendues.

VII. Afin d'assurer le libre passage du Détroit de Gibraltar, les deux Gouvernements conviennent de ne pas laisser élever des fortifications ou des ouvrages stratégiques quelconques sur la partie de la côte marocaine comprise entre Melilla et les hauteurs qui dominent la rive droite du Sébou exclusivement.

Toutefois, cette disposition ne s'applique pas aux points actuellement occupés par l'Espagne sur la rive marocaine de la Méditerranée.

VIII. Les deux Gouvernements, s'inspirant de leurs sentiments sincèrement amicaux pour l'Espagne, prennent en particulière considération les intérêts qu'elle tient de sa position géographique et de ses possessions territoriales sur la côte marocaine de la Méditerranée; et au sujet desquels le Gouvernement français se concertera avec le Gouvernement espagnol.

Communication sera faite au Gouvernement de Sa Majesté britannique de l'accord qui pourra intervenir à ce sujet entre la France et l'Espagne.

IX. Les deux Gouvernements conviennent de se prêter l'appui de leur diplomatie pour l'exécution des clauses de la présente Déclaration relative à l'Égypte et au Maroc.

En foi de quoi son Excellence l'Ambassadeur de la République française près Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Territoires britanniques au delà des Mers, Empereur des Indes, et le Principal Secrétaire d'État pour les Affaires Étran-

State for Foreign Affairs, duly authorized for that purpose, have signed the present Declaration and have affixed thereto their seals.

Done at London, in duplicate, the 8th day of April, 1904.

(L.S.) LANSDOWNE.

(L.S.) PAUL CAMBON.

*Secret Articles*

ART. I. In the event of either Government finding themselves constrained, by the force of circumstances, to modify their policy in respect to Egypt or Morocco, the engagements which they have undertaken towards each other by Articles IV, VI, and VII of the Declaration of today's date would remain intact.

II. His Britannic Majesty's Government have no present intention of proposing to the Powers any changes in the system of the Capitulations, or in the judicial organisation of Egypt.

In the event of their considering it desirable to introduce in Egypt reforms tending to assimilate the Egyptian legislative system to that in force in other civilized countries, the Government of the French Republic will not refuse to entertain any such proposals, on the understanding that His Britannic Majesty's Government will agree to entertain the suggestions that the Government of the French Republic may have to make to them with a view of introducing similar reforms in Morocco.

III. The two Governments agree that a certain extent of Moorish territory adjacent to Melilla, Ceuta, and other *présides* should, whenever the Sultan ceases to exercise authority over

gères de Sa Majesté britannique, dûment autorisés à cet effet, ont signé la présente Déclaration et y ont apposé leurs cachets.

Fait à Londres, en double expédition, le 8 avril 1904.

(L.S.) LANSDOWNE.

(L.S.) PAUL CAMBON.

*Articles secrets*

ART. I. Dans le cas où l'un des deux Gouvernements se verrait contraint, par la force des circonstances, de modifier sa politique vis-à-vis de l'Égypte ou du Maroc, les engagements qu'ils ont contractés l'un envers l'autre par les articles IV, VI et VII de la Déclaration de ce jour demeureraient intacts.

II. Le Gouvernement de Sa Majesté britannique n'a pas l'intention de proposer, quant à présent, aux Puissances de modification au régime des Capitulations et à l'organisation judiciaire en Égypte.

Dans le cas où il serait amené à envisager l'opportunité d'introduire à cet égard en Égypte des réformes tendant à assimiler la législation égyptienne à celle des autres pays civilisés, le Gouvernement de la République française ne refuserait pas d'examiner ces propositions, mais à la condition que le Gouvernement de Sa Majesté britannique accepterait d'examiner les suggestions que le Gouvernement de la République française pourrait avoir à lui adresser pour introduire au Maroc des réformes du même genre.

III. Les deux Gouvernements conviennent qu'une certaine quantité de territoire marocain adjacente à Melilla, Ceuta, et autres présides doit, le jour où le Sultan cesserait d'exercer sur



it, come within the sphere of influence of Spain, and that the administration of the coast from Melilla as far as, but not including, the heights on the right bank of the Sebou shall be entrusted to Spain.

Nevertheless, Spain would previously have to give her formal assent to the provisions of Articles IV and VII of the Declaration of to-day's date, and undertake to carry them out.

She would also have to undertake not to alienate the whole, or a part, of the territories placed under her authority or in her sphere of influence.

IV. If Spain, when invited to assent to the provisions of the preceding Article, should think proper to decline, the arrangement between France and Great Britain, as embodied in the Declaration of to-day's date, would be none the less at once applicable.

V. Should the consent of the other Powers to the draft Decree mentioned in Article I of the Declaration of to-day's date not be obtained, the Government of the French Republic will not oppose the repayment at par of the Guaranteed, Privileged, and Unified Debts after the 15th July, 1910.

Done at London, in duplicate, the 8th day of April, 1904.

(L.S.) LANSDOWNE.

(L.S.) PAUL CAMBON.

elle son autorité, tomber dans la sphère d'influence espagnole et que l'administration de la côte depuis Melilla jusqu'aux hauteurs de la rive droite du Sébou exclusivement sera confiée à l'Espagne.

Toutefois, l'Espagne devra au préalable donner son adhésion formelle aux dispositions des articles IV et VII de la Déclaration de ce jour, et s'engager à les exécuter.

Elle s'engagera en outre à ne point aliéner tout ou partie des territoires placés sous son autorité ou dans sa sphère d'influence.

IV. Si l'Espagne, invitée à adhérer aux dispositions de l'article précédent, croyait devoir s'abstenir, l'arrangement entre la France et la Grande-Bretagne, tel qu'il résulte de la Déclaration de ce jour, n'en serait pas moins immédiatement applicable.

V. Dans le cas où l'adhésion des autres Puissances ne serait pas obtenue au projet de Décret mentionné à l'article I de la Déclaration de ce jour, le Gouvernement de la République française ne s'opposera pas au remboursement au pair, à partir du 15 juillet 1910, des Dettes garanties, privilégiées et unifiées.

Fait à Londres, en double expédition, le 8 avril 1904.

(L.S.) LANSDOWNE.

(L.S.) PAUL CAMBON.

*Annex No. 34*

## DECLARATION BETWEEN FRANCE AND SPAIN CONCERNING MOROCCO OF OCT. 3, 1904, SECRET CONVENTION OF OCT. 3, 1904, AND SECRET AGREEMENT OF SEPT. 1, 1905

*Source : I Rivière, Traités, Codes et Lois du Maroc (1924), 79-83.*

1.— *Déclaration relative à l'intégrité de l'Empire marocain signée à Paris le 3 octobre 1904.*

Le Gouvernement de la République Française et le Gouvernement de Sa Majesté le Roi d'Espagne, s'étant mis d'accord pour fixer l'étendue des droits et la garantie des intérêts qui résultent, pour la France, de ses possessions algériennes et, pour l'Espagne, de ses possessions sur la côte du Maroc et le Gouvernement de Sa Majesté le Roi d'Espagne ayant, en conséquence, donné son adhésion à la déclaration franco-anglaise du 8 avril 1904, relative au Maroc et à l'Égypte dont communication lui avait été faite par le Gouvernement de la République française.

Déclarent :

qu'ils demeurent fermement attachés à l'intégrité de l'Empire marocain sous la souveraineté du Sultan.

En foi de quoi les Soussignés, S. Exc. le Ministre des Affaires étrangères et S. Exc. l'Ambassadeur Extraordinaire et Plénipotentiaire de S. M. le Roi d'Espagne près le Président de la République française, dûment autorisés à cet effet, ont dressé la présente Déclaration qu'ils ont revêtue de leurs cachets:

Fait, en double exemplaire, à Paris le 3 octobre 1904.

DELCASSÉ.

DE LÉON Y CASTILLO.

2. — *Convention secrète au sujet du Maroc signée à Paris le 3 octobre 1904.*

Le Président de la République Française et S. M. le Roi d'Espagne, voulant fixer l'étendue des droits et la garantie des intérêts qui résultent pour la France, de ses possessions algériennes, et pour l'Espagne, de ses possessions sur la côte du Maroc, ont décidé de conclure une convention et ont nommé, à cet effet, pour leurs plénipotentiaires, savoir :

Le Président de la République Française, S. E. M. Théophile Delcassé, député, Ministre des Affaires étrangères de la République Française, etc....

Et S. M. le Roi d'Espagne, S. Exc. M. de Leon y Castillo, marquis del Muni, son ambassadeur extraordinaire et plénipotentiaire près le Président de la République Française, etc.....

Lesquels, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des articles suivants :

## I

L'Espagne adhère, aux termes de la présente convention, à la Déclaration franco-anglaise du 8 avril 1904 relative au Maroc et à l'Égypte.

## II

La région située à l'ouest et au nord de la ligne ci-après déterminée constitue la sphère d'influence qui résulte pour l'Espagne de ses possessions sur la côte marocaine de la Méditerranée.

Dans cette zone est réservée à l'Espagne la même action qui est reconnue à la France par le deuxième paragraphe de l'article 2 de la Déclaration du 8 avril 1904 relative au Maroc et à l'Égypte.

Toutefois, tenant compte des difficultés actuelles et de l'intérêt réciproque qu'il y a à les aplanir, l'Espagne déclare qu'elle n'exercera cette action qu'après accord avec la France pendant la première période d'application de la présente convention, période qui ne pourra pas excéder quinze ans à partir de la signature de la convention.

De son côté, pendant la même période, la France, désirant que les droits et les intérêts reconnus à l'Espagne par la présente convention soient toujours respectés, fera part préalablement, au Gouvernement du Roi, de son action près du Sultan du Maroc en ce qui concerne la sphère d'influence espagnole.

Cette première période expirée, et tant que durera le *statu quo*, l'action de la France près du Gouvernement marocain, en ce qui concerne la sphère d'influence réservée à l'Espagne, ne s'exercera qu'après accord avec le Gouvernement espagnol.

Pendant la première période, le Gouvernement de la République Française fera son possible pour que, dans deux des ports à douane de la région ci-après déterminée, le délégué du représentant général des porteurs de l'emprunt marocain du 12 juillet 1904 soit de nationalité espagnole.

Partant de l'embouchure de la Moulouya, dans la mer Méditerranée, la ligne visée ci-dessus remontera le thalweg de ce fleuve jusqu'à l'alignement de la crête des hauteurs les plus rapprochées de la rive gauche de l'oued Delfa. De ce point, et sans pouvoir, en aucun cas, couper le cours de la Moulouya, la ligne de démarcation gagnera aussi directement que possible la ligne de faite séparant les bassins de la Moulouya et de l'oued Inaouen, de celui de l'oued Kert, puis elle continuera vers l'Ouest par la ligne de faite séparant les bassins de l'oued Inaouen et de l'oued Sebou, de ceux de l'oued Kert et de l'oued Ouergha, pour gagner par la crête la plus septentrionale le djebel Moulai-Bou-Chta. Elle remontera ensuite vers le Nord, en se tenant à une distance d'au moins 25 kilomètres à l'est de la route de Fez à Ksar-El-Kébir, par Ouezzan, jusqu'à la rencontre de l'oued Loukkos, ou oued El-Kous, dont elle descendra le thalweg jusqu'à une distance de 5 kilomètres en aval du croisement de cette rivière avec la route précitée de Ksar-El-Kébir, par Ouezzan. De ce point, elle gagnera aussi directement que possible le rivage de l'océan Atlantique, au-dessus de la lacune de Ez-Zerga.

Cette délimitation est conforme à la délimitation tracée sur la carte annexée à la présente convention sous le n° 1.

## III

Dans le cas où l'état politique du Maroc et le Gouvernement chérifien ne pourraient plus subsister, ou si, par la faiblesse de ce Gouvernement et son impuissance persistante à amener la sécurité et l'ordre public ou pour toute autre cause à constater d'un commun accord, le maintien du *statu quo* devenait impossible, l'Espagne pourrait exercer librement son action dans la région délimitée à l'article précédent et qui constitue dès à présent sa sphère d'influence.

## IV

Le Gouvernement marocain ayant, par l'article 8 du 26 avril 1860, concédé à l'Espagne un établissement à Santa-Cruz-de-Mar-Pequena (Ifni), il est entendu que le territoire de cet établissement ne dépassera pas le cours de l'oued Tazonalt, depuis sa source jusqu'à son confluent avec l'oued Mesa et le cours de l'oued Mesa, depuis ce confluent jusqu'à la mer, selon la carte n° 2 annexée à la présente convention.

## V

Pour compléter la délimitation indiquée par l'article premier de la convention du 27 juin 1900, il est entendu que la démarcation entre les sphères d'influence française et espagnole partira de l'intersection du méridien 14°20' ouest de Paris avec le 26° de latitude nord qu'elle suivra vers l'Est jusqu'à sa rencontre avec le méridien 11° ouest de Paris. Elle remontera ce méridien jusqu'à sa rencontre avec l'oued Draa (1), puis le thalweg de l'oued Draa jusqu'à sa rencontre avec le méridien 10° ouest de Paris, enfin le méridien 10° ouest de Paris jusqu'à la ligne de faite entre les bassins de l'oued Draa et de l'oued Sous, et suivra, dans la direction de l'Ouest, la ligne de faite entre les bassins de l'oued Draa et de l'oued Sous, puis entre les bassins côtiers de l'oued Mesa et de l'oued Noun, jusqu'au point le plus rapproché de la source de l'oued Tazonalt. Cette délimitation est conforme à la délimitation tracée sur la carte n° 2 déjà citée et annexée à la présente convention.

## VI

Les articles 4 et 5 seront applicables en même temps que l'article 2 de la présente convention.

Toutefois, le Gouvernement de la République française admet que l'Espagne s'établira à tout moment dans la partie définie à l'article 4, à la condition de s'être préalablement entendue avec le Sultan.

De même, le Gouvernement de la République française reconnaît dès maintenant au Gouvernement espagnol pleine liberté d'action sur la région comprise entre les 26° et 27°40' de latitude nord et le méridien 11° ouest de Paris, qui sont en dehors du territoire marocain.

## VII

L'Espagne s'engage à n'aliéner ni à céder sous aucune forme, même à titre temporaire, tout ou partie des terrains désignés aux articles 2, 4 et 5 de la présente convention.

## VIII

Si dans l'application des articles 2, 4 et 5 de la présente convention, une action militaire s'imposait à l'une des deux parties contractantes, elle en avvertirait aussitôt l'autre partie.

En aucun cas, il ne sera fait appel au concours d'une puissance étrangère.

## IX

La ville de Tanger gardera le caractère spécial que lui donnent la présence du corps diplomatique et ses institutions municipale et sanitaire.

## X

Tant que durera l'état politique actuel, les entreprises de travaux publics, chemins de fer, routes, canaux, partant d'un point du Maroc pour aboutir dans la région visée à l'article 2 et vice versa, seront exécutées par des sociétés que pourront constituer des Français et des Espagnols.

De même, il sera loisible aux Français et aux Espagnols au Maroc de s'associer pour l'exploitation des mines, carrières, et généralement d'entreprises d'ordre économique.

## XI

Les écoles et les établissements espagnols actuellement existant au Maroc seront respectés. La circulation de la monnaie espagnole ne sera ni empêchée, ni entravée. Les Espagnols continueront de jouir au Maroc des droits que leur assurent les traités, conventions et usages en vigueur, y compris le droit de navigation et de pêche dans les eaux et ports marocains.

## XII

Les Français jouiront dans les régions désignées aux articles 2, 4 et 5 de la présente convention, des mêmes droits qui sont, par l'article précédent, reconnus aux Espagnols dans le reste du Maroc.

## XIII

Dans le cas où le Gouvernement marocain en interdirait la vente sur son territoire, les deux puissances contractantes s'engagent à prendre dans leurs possessions d'Afrique les mesures nécessaires pour empêcher que les armes et les munitions soient introduites en contrebande au Maroc.

## XIV

Il est entendu que la zone visée au § 1<sup>er</sup> de l'article 7 de la déclaration franco-anglaise du 8 avril 1904 relative au Maroc et à l'Égypte commence sur la côte à trente kilomètres au sud-est de Melilla.

## XV

Dans le cas où la dénonciation prévue par le § 3 de l'article 4 de la Déclaration franco-anglaise relative au Maroc et à l'Égypte aurait eu lieu, les Gouvernements français et espagnol se concerteront pour

l'établissement d'un régime économique qui réponde particulièrement à leurs intérêts réciproques.

## XVI

La présente convention sera publiée lorsque les deux gouvernements jugeront, d'un commun accord, qu'elle peut l'être sans inconvénients (2).

En tout cas, elle pourra être publiée par l'un des deux gouvernements à l'expiration de la première période de son application, période qui est définie au § 3 de l'article 2.

En foi de quoi les Plénipotentiaires respectifs ont signé la présente Convention et l'ont revêtue de leurs cachets.

Fait, en double exemplaire, à Paris, le 3 octobre 1904.

DELCASSÉ.

LÉON Y CASTILLO.

### 3. — *Accord secret du 1<sup>er</sup> septembre 1905, destiné à régler le fonctionnement de la Convention secrète du 3 octobre 1904*

#### I. — POLICE DES PORTS

Les corps de police militaire qui devront être organisés le plus tôt possible dans les ports de l'Empire chérifien devant être formés de troupes indigènes, la France, d'accord avec l'Espagne, admet que tous les chefs, officiers et sous-officiers qui seront chargés de l'instruction et du commandement desdites troupes dans les ports de Tetouan et de Larache devront appartenir à la nationalité espagnole ; de son côté, l'Espagne, d'accord avec la France, admet que tous les chefs, officiers et sous-officiers qui seront chargés de l'instruction et du commandement des troupes de police dans les ports de Rabat et de Casablanca devront être de nationalité française.

En ce qui concerne le port de Tanger, en raison des stipulations de l'article 9 du traité du 3 octobre 1904, il est convenu que la police de cette ville sera confiée à un corps franco-espagnol commandé par un Français. Ce régime sera soumis à revision, à l'expiration de la période de quinze ans, prévue à la convention du 3 octobre 1904.

#### II. — SURVEILLANCE ET RÉPRESSION DE LA CONTREBANDE DES ARMES

Conformément à l'esprit de l'article 18 dudit traité, et en vue d'assurer son exécution, il est entendu que sur terre la surveillance et la répression de la contrebande des armes demeurent à la charge de la France, dans la sphère de sa frontière algérienne, et à la charge de l'Espagne dans la sphère de toutes ses places et possessions africaines.

La surveillance et la répression de cette contrebande sur mer seront confiées à une division de navires de guerre des deux puissances, qui en fixeront les types. Cette division sera commandée alternativement, pendant un an, par un officier de la marine de l'une des deux puissances, et, l'année suivante, par un officier de la marine de l'autre puissance, le commandement devant être exercé la première année par un officier de la marine française.

Les deux gouvernements établiront d'un commun accord les règles à observer pour la répression de cette contrebande, lorsqu'il s'agira de l'exercice du droit de visite, dans les cas où l'exercice de ce droit serait indispensable à l'efficacité de la répression.

### III. — INTÉRÊTS ÉCONOMIQUES ET FINANCIERS

En vue d'assurer de part et d'autre dans le sens le plus amical l'exacte interprétation des articles 10, 11 et 12 de la Convention du 3 octobre 1904, il demeure entendu :

1° Que les entreprises de travaux publics, de chemins de fer, de routes et canaux, d'exploitation de mines et carrières, et toutes autres de caractère commercial et industriel, sur le territoire du Maroc, pourront être exécutées par des groupes constitués par des Espagnols et des Français ; les deux gouvernements s'obligent mutuellement à favoriser par les moyens dont ils disposent la création de ces entreprises mixtes, sur la base de l'égalité des droits des associés, dans la proportion du capital engagé.

À l'expiration du délai de quinze ans, prévu par la convention du 3 octobre 1904, les deux Hautes Parties contractantes pourront exécuter les travaux auxquels se réfère le paragraphe précédent, conformément aux règles qu'il indique, dans leurs zones d'influence respectives ;

2° Les Espagnols et les Français, ainsi que leurs établissements et écoles actuellement existants dans l'empire marocain, seront respectés ; en tout cas, ils jouiront pour toujours au Maroc, dans l'exercice de leurs professions et la réalisation de leurs opérations commerciales et industrielles en cours ou projetées, des mêmes droits et privilèges, de manière que l'état juridique des sujets et ressortissants des deux nations soit constamment le même. Les marchandises des deux pays jouiront pour leur introduction, circulation et vente dans l'Empire, d'un traitement identique. Les deux Hautes Parties contractantes emploieront tous les moyens pacifiques en leur pouvoir et se prêteront mutuellement leur concours auprès du Sultan et du Makhzen en vue d'empêcher que, présentement comme dans l'avenir, cette clause ne vienne à être modifiée par l'autorité marocaine par suite de l'établissement de règles différentes en ce qui concerne l'état juridique des personnes et des conditions auxquelles seront soumises les marchandises des deux nations ;

3° La monnaie d'argent espagnole continuera à être librement introduite comme elle l'a été jusqu'ici dans l'Empire, sans que, directement ou indirectement, ou à la suite d'une mesure quelconque prise ou à prendre, il puisse être porté atteinte à la liberté de l'introduction et de la circulation ainsi qu'à la valeur libératrice de ladite monnaie.

Les deux gouvernements s'obligent respectivement à ne pas laisser créer d'obstacles directs ou indirects à ce qui se trouve énoncé au paragraphe précédent, par les institutions commerciales ou industrielles organisées dans l'Empire marocain par leurs sujets respectifs et à employer tous les moyens pacifiques dont chacun d'eux dispose pour que des participations dans le capital et les travaux de toutes les entreprises publiques soient offertes aux sujets des deux nations.

4° Les Gouvernements espagnol et français étant d'accord sur la nécessité de créer au Maroc un établissement de crédit sous la dénomination de Banque d'État ou tout autre établissement dont la présidence sera réservée à la France en raison du plus grand nombre d'actions souscrites par elle, s'entendent également sur les points suivants :

a) La participation en actions de toutes espèces et les parts de bénéfice à réserver à l'Espagne seront supérieures à la part de chacune des autres puissances prises séparément, la France exceptée ;

b) Le personnel espagnol de l'administration de cet établissement et de celle de ses dépenses sera proportionnel à la part de capital souscrit par l'Espagne ;

c) Cet établissement pourra se charger de travaux et de services publics dans l'Empire du Maroc, avec l'assentiment ou en vertu d'un accord avec le Sultan. Il pourra soit les exécuter directement, soit les transférer à d'autres groupes ou entreprises. Toutefois, pour l'exécution de tous ces travaux et services publics, les stipulations des paragraphes ci-dessus a et b devront être observées ;

5° Les deux Gouvernements espagnol et français augmenteront d'un commun accord le nombre actuel des sujets espagnols délégués dans le service des douanes de l'Empire, réorganisé en garantie de l'emprunt contracté en dernier lieu par le Sultan auprès des banques françaises, emprunt dans lequel se trouve englobé l'emprunt contracté antérieurement par Sa Majesté Chérifienne auprès des banques espagnoles.

#### IV

Les deux puissances s'engagent à observer cet accord, même dans le cas où les stipulations de l'article 17 de la convention de Madrid de 1880 viendraient à être étendues à toutes les questions d'ordre économique et financier. Elles s'efforceront par leur action pacifique constante auprès du Sultan et du Makhzen d'assurer l'accomplissement loyal de tout ce que stipule le présent accord.

En outre, l'Espagne étant fermement décidée à marcher complètement d'accord avec la France, au cours des délibérations de la conférence projetée, et la France se proposant d'agir de même avec l'Espagne, il demeure convenu entre les deux gouvernements qu'ils s'aideront mutuellement et procéderont d'un commun accord dans lesdites délibérations, en ce qui concerne les stipulations de la Convention du 3 octobre 1904, dans son interprétation la plus large et la plus amicale, comme en ce qui concerne les différents objets du présent accord.

Ils s'engagent enfin à se prêter réciproquement le concours pacifique le plus entier sur toutes les questions d'ordre général concernant le Maroc, ainsi que le comporte la cordiale et amicale entente qui existe entre eux par rapport aux affaires de l'Empire Chérifien.

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*Annex No. 35*EXCHANGE OF LETTERS BETWEEN FRANCE AND GERMANY  
OF JULY 8, 1905*Source : I Rivière, Traités, Codes et Lois du Maroc (1924), 86-87.*

1. — *Déclarations échangées à Paris, le 8 juillet 1905, entre M. Rouvier, Président du Conseil, Ministre des Affaires Étrangères, et M. le Prince Radolin, Ambassadeur d'Allemagne à Paris*

Monsieur ROUVIER, Président du Conseil, Ministre des Affaires Étrangères, au Prince RADOLIN, Ambassadeur d'Allemagne à Paris.

Paris, le 8 juillet 1905.

Le Gouvernement de la République est convaincu, par les conversations qui ont eu lieu entre les représentants des deux pays, tant à Paris qu'à Berlin, que le Gouvernement impérial ne poursuivait à la Conférence proposée par le Sultan du Maroc aucun but qui compromît les légitimes intérêts de la France dans ce pays, ou qui fût contraire aux droits de la France résultant de ses traités ou arrangements et en harmonie avec les principes suivants :

Souveraineté et indépendance du Sultan :

Intégrité de son empire ;

Liberté économique sans aucune inégalité ;

Utilité de réformes de police et de réformes financières dont l'introduction serait réglée, pour une courte durée, par voie d'accord international ;

Reconnaissance de la situation faite à la France au Maroc par la contiguïté sur une vaste étendue, de l'Algérie et de l'Empire chérifien et par les relations particulières qui en résultent entre les deux pays limitrophes, ainsi que par l'intérêt spécial qui s'ensuit pour la France à ce que l'ordre règne dans l'Empire chérifien.

En conséquence, le Gouvernement de la République laisse tomber ses objections premières contre la Conférence et accepte de s'y rendre.

ROUVIER.

S. A. S. le Prince RADOLIN, Ambassadeur d'Allemagne à Paris, à M. ROUVIER, Président du Conseil, Ministre des Affaires Étrangères.

Paris, le 8 juillet 1905.

Le Gouvernement de la République, acceptant de se rendre à la Conférence proposée par le Sultan du Maroc, le Gouvernement impérial m'a chargé de vous confirmer ses déclarations verbales, aux termes desquelles il ne poursuivra à la Conférence aucun but qui compromette les légitimes intérêts de la France au Maroc ou qui soit contraire aux droits de la France résultant de ses traités ou arrangements et en harmonie avec les principes suivants :

Souveraineté et indépendance du Sultan ;

Intégrité de son empire ;

Liberté économique sans aucune inégalité ;

Utilité de réformes de police et de réformes financières dont l'introduction serait réglée pour une courte durée par voie d'accord international ;

Reconnaissance de la situation faite à la France au Maroc par la contiguïté sur une vaste étendue, de l'Algérie et de l'Empire chérifien, par les relations particulières qui en résultent entre les deux pays limitrophes, ainsi que par l'intérêt spécial qui s'ensuit pour la France à ce que l'ordre règne dans l'Empire chérifien.

RADOLIN.

Cet échange de lettres a été suivi de la déclaration suivante :

« Le Gouvernement de la République et le Gouvernement allemand conviennent :

« 1° De rappeler à Tanger simultanément leurs missions actuellement à Fez aussitôt que la Conférence se sera réunie ;

« 2° De faire donner au Sultan du Maroc des conseils par leurs représentants, d'un commun accord, en vue de la fixation du programme qu'il proposera à la Conférence sur les bases indiquées dans les lettres échangées sous la date du 8 juillet 1905 entre le Président du Conseil, Ministre des Affaires étrangères, et l'Ambassadeur d'Allemagne à Paris.

« Fait à Paris, le 8 juillet 1905.

« ROUVIER.

« RADOLIN. »

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*Annex No. 36*

CONVENTION BETWEEN FRANCE AND GERMANY OF  
NOV. 4, 1911, WITH EXCHANGE OF NOTES

*Source : 104 British and Foreign State Papers, 948-956.*

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CONVENTION between France and Germany respecting Morocco.—  
*Signed at Berlin, November 4, 1911*

[Ratifications exchanged at Paris, March 12, 1912.]

A la suite des troubles qui se sont produits au Maroc et qui ont démontré la nécessité d'y poursuivre, dans l'intérêt général, l'œuvre de pacification et de progrès prévue par l'Acte d'Algésiras, le Gouvernement de la République française et le Gouvernement Impérial allemand ont jugé nécessaire de préciser et de compléter l'accord franco-allemand du 9 février, 1909.

En conséquence, M. Jules Cambon, Ambassadeur extraordinaire de la République française auprès de Sa Majesté l'Empereur d'Allemagne, et M. de Kiderlen-Waechter, Secrétaire d'État des Affaires Étrangères de l'Empire d'Allemagne, après s'être communiqué leurs pleins pouvoirs, trouvés en bonne et due forme, sont convenus des dispositions ci-après :

ART. I. Le Gouvernement Impérial allemand déclare que, ne poursuivant au Maroc que des intérêts économiques, il n'entravera pas l'action de la France en vue de prêter son assistance au Gouvernement marocain pour l'introduction de toutes les réformes administratives, judiciaires, économiques, financières et militaires dont il a besoin pour le bon gouvernement de l'Empire, comme aussi pour tous les règlements nouveaux et les modifications aux règlements existants que ces réformes comportent. En conséquence, il donne son adhésion aux mesures de réorganisation, de contrôle et de garantie financière que, après accord avec le Gouvernement marocain, le Gouvernement français croira devoir prendre à cet effet sous la réserve que l'action de la France sauvegardera au Maroc l'égalité économique entre les nations.

Au cas où la France serait amenée à préciser et à étendre son contrôle et sa protection, le Gouvernement Impérial allemand, reconnaissant pleine liberté d'action à la France, et sous la réserve que la liberté commerciale prévue par les traités antérieurs sera maintenue, n'y apportera aucun obstacle.

Il est entendu qu'il ne sera porté aucune entrave aux droits et actions de la Banque d'État du Maroc tels qu'ils ont été définis par l'Acte d'Algésiras.

II. Dans cet ordre d'idées, il est entendu que le Gouvernement Impérial ne fera pas obstacle à ce que la France, après accord avec le Gouvernement marocain, procède aux occupations militaires du territoire marocain qu'elle jugera nécessaires au maintien de l'ordre et de la sécurité des transactions commerciales, et à ce qu'elle exerce toute action de police sur terre et dans les eaux marocaines.

III. Dès à présent, si Sa Majesté le Sultan du Maroc venait à confier aux agents diplomatiques et consulaires de la France la représentation et la protection des sujets et des intérêts marocains à l'étranger, le Gouvernement Impérial déclare qu'il n'y fera pas d'objection.

Si, d'autre part, Sa Majesté le Sultan du Maroc confiait au représentant de la France près du Gouvernement marocain le soin d'être son intermédiaire auprès des représentants étrangers, le Gouvernement allemand n'y ferait pas d'objection.

IV. Le Gouvernement français déclare que, fermement attaché au principe de la liberté commerciale au Maroc, il ne se prêtera à aucune inégalité pas plus dans l'établissement des droits de douane, impôts et autres taxes, que dans l'établissement des tarifs de transport par voie ferrée, voie de navigation fluviale ou toute autre voie, et notamment dans toutes les questions de transit.

Le Gouvernement français s'emploiera également auprès du Gouvernement marocain afin d'empêcher tout traitement différentiel entre les ressortissants des différentes Puissances; il s'opposera notamment à toute mesure, par exemple, à la promulgation d'ordonnances administratives sur les poids et mesures, le jaugeage, le poinçonnage, &c., qui pourrait mettre en état d'infériorité les marchandises d'une Puissance.

Le Gouvernement français s'engage à user de son influence sur la Banque d'État pour que celle-ci confère à tour de rôle aux membres de sa direction à Tanger les postes de délégué dont elle dispose à la Commission des Valeurs douanières et au Comité permanent des Douanes.

V. Le Gouvernement français veillera à ce qu'il ne soit perçu au Maroc aucun droit d'exportation sur le minerai de fer exporté des ports

marocains. Les exploitations de minerais de fer ne subiront sur leur production ou sur leurs moyens de travail aucun impôt spécial. Elles ne supporteront en dehors des impôts généraux qu'une redevance fixe, calculée par hectare et par an, et une redevance proportionnée au produit brut de l'extraction. Ces redevances, qui seront assises conformément aux articles 35 et 49 du projet de Règlement minier annexé au protocole du 7 juin, 1910, de la conférence de Paris\*, seront également supportées par toutes les entreprises minières.

\* In the Mining Regulations, as finally issued, Articles 35 and 49 of the original draft appear in a revised form (concurrent in by the German Government) under the numbers 32 and 46.

The revised Articles run as follows:—

"Art. 32. Le titulaire d'un permis d'exploitation devra payer, par hectare, une taxe annuelle fixée, savoir:

"Pour les mines de fer et de combustibles: à 1 fr. la première année, 2 fr. la seconde année, et 2 fr. 50 c. à partir de la troisième année.

"Pour les mines d'autres substances: à 1 fr. 50 c. la première année, 2 fr. 50 c. la deuxième année, et 3 fr. 50 c. à partir de la troisième année.

"Cette taxe sera due à partir du 1<sup>er</sup> janvier ou du 1<sup>er</sup> juillet qui aura précédé la remise du dahir d'institution; elle sera exigible par semestre et d'avance, et payable, pour le semestre au cours duquel aura été délivré le dahir, au moment de cette délivrance, et, pour les semestres suivants, le 1<sup>er</sup> janvier et le 1<sup>er</sup> juillet.

"En cas de retard dans le payement, l'intéressé sera mis en demeure de s'acquitter par le Service des Mines, qui prononcera la déchéance du permissionnaire, s'il n'a pas été satisfait dans un délai de deux mois à cette mise en demeure.

"Aussitôt la déchéance prononcée, la mine est, par les soins du Service des Mines, et après avis donné au public, dans les conditions indiquées au § 1 de l'article 27, vendue en adjudication publique au profit de l'exploitant déchu ou de ses créanciers.

"L'adjudication portera, en même temps que sur la mine elle-même, sur toutes ses dépendances et installations accessoires, sur les voies de communication la desservant et qui auraient été établies par l'exploitant à ses frais exclusifs, et sur tous droits et servitudes acquis par ledit exploitant.

"La somme provenant de l'adjudication sera consignée à la Banque d'État pour être répartie à qui de droit, après déduction de tous les frais avancés par le Service des Mines pour arriver à l'adjudication.

"En aucun cas l'adjudication ne pourra avoir lieu à un prix inférieur au montant de ces frais.

"Dès la signification de la déchéance, il est interdit à l'exploitant de détourner ou enlever de la mine, ou de ses dépendances, tout objet placé à demeure ou non, en dehors des simples approvisionnements, à peine d'être poursuivi personnellement à la requête de l'adjudicataire pour tous détournements faits en opposition avec la présente disposition.

"Le Service des Mines peut, aussitôt la déchéance prononcée et notifiée, faire placer la mine en sequestre pour assurer l'exécution de la disposition qui précède.

"Si, après deux tentatives à trois mois d'intervalle, la mine n'a pas été adjugée, le permis est annulé par dahir chérifien; le Service des Mines fait enlever les bornes, et les terrains deviennent libres comme si la mine n'avait pas été instituée, l'attributaire pouvant toutefois enlever tous les engins d'exploitation et toutes les installations de surface par lui établis; il devra avoir opéré cet enlèvement dans un délai maximum de six mois, faute de quoi lesdits engins et installations resteraient acquis sans indemnité à l'État marocain.

"Art. 46. Il sera établi sur les produits des mines, pour être perçues à l'exportation par les agents des douanes aux frontières terrestres et maritimes du Maroc, les taxes ci-après, savoir:—

"Sur toutes les substances comprises dans la classe de mines et non transformées en métaux bruts ou alliages, 3 pour cent *ad valorem*.

Le Gouvernement français veillera à ce que les taxes minières soient régulièrement perçues sans que des remises individuelles du total ou d'une partie de ces taxes puissent être consenties sous quelque prétexte que ce soit.

VI. Le Gouvernement de la République française s'engage à veiller à ce que les travaux et fournitures nécessités par les concessions éventuelles de routes, chemins de fer, ports, télégraphes, & c., soient octroyés par le Gouvernement marocain suivant les règles de l'adjudication.

Il s'engage également à veiller à ce que les conditions des adjudications, particulièrement en ce qui concerne les fournitures de matériel et les délais impartis pour soumissionner, ne placent les ressortissants d'aucune Puissance dans une situation d'infériorité.

L'exploitation des grandes entreprises mentionnées ci-dessus sera réservée à l'État marocain ou librement concédée par lui à des tiers qui pourront être chargés de fournir les fonds nécessaires à cet effet. Le Gouvernement français veillera à ce que, dans l'exploitation des chemins de fer et autres moyens de transport comme dans l'application des règlements destinés à assurer celle-ci, aucune différence de traitement ne soit faite entre les ressortissants des diverses Puissances qui useraient de ces moyens de transport.

Le Gouvernement de la République usera de son influence sur la Banque d'État afin que celle-ci confère à tour de rôle aux membres de sa direction à Tanger le poste dont elle dispose de délégué à la Commission générale des Adjudications et Marchés.

De même, le Gouvernement français s'emploiera auprès du Gouvernement marocain pour que, durant la période où restera en vigueur l'article 66 de l'Acte d'Algésiras, il confie à un ressortissant d'une des Puissances représentées au Maroc un des trois postes de délégué chérifien au Comité spécial des Travaux publics.

VII. Le Gouvernement français s'emploiera auprès du Gouvernement marocain pour que les propriétaires de mines et d'autres exploitations industrielles ou agricoles, sans distinction de nationalité, et en conformité des règlements qui seront édictés en s'inspirant de la législation française sur la matière, puissent être autorisés à créer des chemins de fer d'exploitation destinés à relier leurs centres de production aux lignes d'intérêt général et aux ports.

VIII. Il sera présenté tous les ans un rapport sur l'exploitation des chemins de fer au Maroc, qui sera établi dans les mêmes formes et conditions que les rapports présentés aux assemblées d'actionnaires des sociétés de chemins de fer françaises.

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"Sur les métaux bruts, à l'exception de l'or, et sur les alliages tirés de substances extraites au Maroc, 3 pour cent *ad valorem*.

"Sur l'or 10 pour cent *ad valorem*.

"La fixation de la valeur des diverses substances ci-dessus étant faite au point de sortie par les agents des douanes d'après les mêmes règles que celles de la valeur des marchandises à l'entrée.

"Les métaux ouvrés seront exempts de taxes ; il en sera de même des substances minérales, métaux bruts ou alliages sortant par réexportation, mais à charge expresse pour le réexportateur d'établir leur certificat d'origine."

[Extract from "Dahir portant réglementation pour la recherche et l'exploitation des Mines dans la zone du Protectorat français de l'Empire chérifien", promulgated the 28th January 1914. "Bulletin officiel", No. 66, the 30th January 1914.]

Le Gouvernement de la République chargera un des administrateurs de la Banque d'État de l'établissement de ce rapport, qui sera, avec les éléments qui en seront la base, communiqué aux censeurs, puis rendu public avec, s'il y a lieu, les observations que ces derniers croiront devoir y joindre d'après leurs propres renseignements.

IX. Pour éviter, autant que possible, les réclamations diplomatiques, le Gouvernement français s'emploiera auprès du Gouvernement marocain afin que celui-ci défère à un arbitre désigné *ad hoc* pour chaque affaire, d'un commun accord, par le consul de France et par celui de la Puissance intéressée, ou, à leur défaut, par les deux Gouvernements, les plaintes portées par des ressortissants étrangers contre les autorités marocaines ou les agents agissant en tant qu'autorités marocaines, et qui n'auraient pu être réglées par l'intermédiaire du consul français et du consul du Gouvernement intéressé.

Cette procédure restera en vigueur jusqu'au jour où aura été institué un régime judiciaire inspiré des règles générales de législation des Puissances intéressées et destiné à remplacer, après entente avec elles, les tribunaux consulaires.

X. Le Gouvernement français veillera à ce que les ressortissants étrangers continuent à jouir du droit de pêche dans les eaux et ports marocains.

XI. Le Gouvernement français s'emploiera auprès du Gouvernement marocain pour que celui-ci ouvre au commerce étranger de nouveaux ports au fur et à mesure des besoins de ce commerce.

XII. Pour répondre à une demande du Gouvernement marocain, les deux Gouvernements s'engagent à provoquer la revision, d'accord avec les autres Puissances et sur la base de la Convention de Madrid, des listes et de la situation des protégés étrangers et des associés agricoles au Maroc dont parlent les articles VIII et XVI de cette Convention.

Ils conviennent également de poursuivre auprès des Puissances signataires toutes les modifications de la Convention de Madrid que comporterait, le moment venu, le changement du régime des protégés et associés agricoles.

XIII. Toutes clauses d'accord, convention, traité ou règlement qui seraient contraires aux précédentes stipulations sont et demeurent abrogées.

XIV. Le présent accord sera communiqué aux autres Puissances signataires de l'Acte d'Algésiras, près desquelles les deux Gouvernements s'engagent à se prêter mutuellement appui pour obtenir leur adhésion.

XV. La présente Convention sera ratifiée, et les ratifications seront échangées à Paris aussitôt que faire se pourra.

Fait à Berlin, le 4 novembre 1911, en double exemplaire.

JULES CAMBON.  
KIDERLEN.

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*EXCHANGE OF NOTES relating to the foregoing Convention.  
—Berlin, November 4, 1911*

*(No. 1.) — M. de Kiderlen-Waechter, Secrétaire d'État pour les Affaires Étrangères, à M. Jules Cambon, Ambassadeur de la République française à Berlin*

MON CHER AMBASSADEUR,

*Berlin, le 4 novembre 1911.*

Pour bien préciser l'accord du 4 novembre 1911, relatif au Maroc et en définir la portée, j'ai l'honneur de faire connaître à votre Excellence que, dans l'hypothèse où le Gouvernement français croirait devoir assumer le protectorat du Maroc, le Gouvernement Impérial n'y apporterait aucun obstacle.

L'adhésion du Gouvernement allemand, accordée d'une manière générale au Gouvernement français par l'article I de ladite Convention, s'applique naturellement à toutes les questions donnant matière à réglementation et visées dans l'Acte d'Algésiras.

Vous avez bien voulu me faire connaître d'autre part que, dans le cas où l'Allemagne désirerait acquérir de l'Espagne la Guinée espagnole, l'île Corisco et les îles Elobey, la France serait disposée à renoncer en sa faveur à exercer les droits de préférence qu'elle tient du traité du 27 juin 1900, entre la France et l'Espagne. Je suis heureux de prendre acte de cette assurance et d'ajouter que l'Allemagne restera étrangère aux accords particuliers que la France et l'Espagne croiront devoir faire entre elles au sujet du Maroc, étant convenu que le Maroc comprend toute la partie de l'Afrique du Nord s'étendant entre l'Algérie, l'Afrique occidentale française et la colonie espagnole du Rio de Oro.

Le Gouvernement allemand, en renonçant à demander la détermination préalable de parts à faire à l'industrie allemande dans la construction des chemins de fer, compte que le Gouvernement français sera toujours heureux de voir des associations d'intérêt se produire entre les ressortissants des deux pays pour les affaires dont ils pourront respectivement obtenir l'entreprise.

Il compte également que la mise en adjudication du chemin de fer de Tanger à Fez, qui intéresse toutes les nations, ne sera pas primée par la mise en adjudication des travaux d'un autre chemin de fer marocain, et que le Gouvernement français proposera au Gouvernement marocain l'ouverture du port d'Agadir au commerce international.

Enfin, lorsque le réseau des voies ferrées d'intérêt général sera mis à l'étude, le Gouvernement allemand demande au Gouvernement français de veiller à ce que l'Administration marocaine ait le plus réel souci des intérêts économiques du Maroc et à ce que, notamment, la détermination du tracé des lignes d'intérêt général facilite dans la mesure du possible la jonction des régions minières avec les lignes d'intérêt général ou avec les ports appelés à les desservir.

Votre Excellence a bien voulu m'assurer que, le jour où aura été institué le régime judiciaire prévu par l'article IX de la Convention précitée, et où les tribunaux consulaires auront été remplacés, le Gouvernement français aura soin que les ressortissants allemands soient placés sous la juridiction nouvelle, exactement dans les mêmes conditions que les ressortissants français. Je suis heureux d'en prendre acte et de faire connaître en même temps à votre Excellence que, au jour de l'entrée en

vigueur de ce régime judiciaire, après entente avec les Puissances, le Gouvernement allemand consentira à la suppression, en même temps que pour les autres Puissances, de ses tribunaux consulaires. J'ajoute que, dans ma pensée, l'expression « les changements du régime des protégés », portée à l'article XII de la Convention du 4 novembre, 1911, relative au Maroc, implique l'abrogation, si elle est jugée nécessaire, de la partie de la Convention de Madrid qui concerne les protégés et les associés agricoles.

Enfin, désireux de donner à ladite Convention le caractère d'un acte destiné non seulement à écarter toute cause de conflit entre nos deux pays, mais encore à aider à leurs bons rapports, nous sommes d'accord pour déclarer que les différends qui viendraient à s'élever entre les parties contractantes au sujet de l'interprétation et de l'application des dispositions de la Convention du 4 novembre et qui n'auraient pas été réglés par la voie diplomatique, seront soumis à un tribunal arbitral constitué dans les termes de la Convention de La Haye du 18 octobre 1907. Un compromis devra être dressé et il sera procédé suivant les règles de la même Convention, en tant qu'il n'y serait pas dérogé par un accord exprès au moment du litige.

Veillez, &c.

DE KIDERLEN.

(No. 2.) — *M. Jules Cambon, Ambassadeur de la République française à Berlin, à M. de Kiderlen-Waechter, Secrétaire d'État pour les Affaires Étrangères*

MON CHER SECRÉTAIRE D'ÉTAT,

Berlin, le 4 novembre 1911.

J'ai l'honneur de prendre acte de la déclaration que votre Excellence a bien voulu me faire que, dans l'hypothèse où le Gouvernement français croirait devoir assumer le protectorat du Maroc, le Gouvernement Impérial n'y apporterait aucun obstacle, et que l'adhésion du Gouvernement allemand, accordée d'une manière générale au Gouvernement français par l'article I de l'accord du 4 novembre, 1911, relatif au Maroc, s'applique naturellement à toutes les questions donnant matière à réglementation visées dans l'Acte d'Algésiras.

D'autre part, j'ai l'honneur de vous confirmer que, dans le cas où l'Allemagne désirerait acquérir de l'Espagne la Guinée espagnole, l'île Corisco et les îles Elobey, la France est disposée à renoncer en sa faveur à exercer les droits de préférence qu'elle tient du traité du 27 juin, 1900, entre la France et l'Espagne. Je suis heureux par ailleurs de recevoir l'assurance que l'Allemagne restera étrangère aux accords particuliers que la France et l'Espagne croiront devoir faire entre elles au sujet du Maroc, étant convenu que le Maroc comprend toute la partie de l'Afrique du Nord s'étendant entre l'Algérie, l'Afrique occidentale française, et la colonie espagnole du Rio de Oro.

Je me plais aussi à vous informer que, le Gouvernement allemand renonçant à demander la détermination préalable de parts à faire dans l'industrie allemande dans la construction des chemins de fer, le Gouvernement français sera toujours heureux de voir des associations d'intérêt se produire entre les ressortissants des deux pays pour les affaires dont ils pourront respectivement obtenir l'entreprise.



Vous pouvez également tenir pour certain que la mise en adjudication du chemin de fer de Tanger à Fez, qui intéresse toutes les nations, ne sera primée par la mise en adjudication des travaux d'aucun autre chemin de fer marocain et que le Gouvernement français proposera au Gouvernement marocain l'ouverture du port d'Agadir au commerce international.

Enfin, lorsque le réseau des voies ferrées d'intérêt général sera mis à l'étude, le Gouvernement français veillera à ce que l'administration marocaine ait le plus réel souci des intérêts économiques du Maroc et à ce que, notamment, la détermination du tracé des lignes d'intérêt général facilite dans la mesure du possible la jonction des régions minières avec les lignes d'intérêt général ou avec les ports appelés à les desservir. Votre Excellence peut également compter que le jour où aura été institué le régime judiciaire prévu par l'article IX de la Convention du 4 novembre 1911, relative au Maroc, et où les tribunaux consulaires auront été remplacés, le Gouvernement français aura soin que les ressortissants allemands soient placés sous la juridiction nouvelle exactement dans les mêmes conditions que les ressortissants français.

Je suis heureux, d'autre part, de prendre acte qu'au jour de l'entrée en vigueur du nouveau régime judiciaire, après entente avec les Puissances, le Gouvernement allemand consentira à la suppression, en même temps que pour les autres Puissances, de ses tribunaux consulaires. Je prends acte également que dans la pensée de votre Excellence l'expression « le changement du régime des protégés » portée à l'article XII de la Convention précitée implique l'abrogation, si elle est jugée nécessaire, de la partie de la Convention de Madrid qui concerne les protégés et associés agricoles.

Enfin, désireux de donner à la Convention du 4 novembre 1911, relative au Maroc, le caractère d'un acte destiné non seulement à écarter toute cause de conflit entre nos deux pays, mais encore à aider à leurs bons rapports, nous sommes d'accord pour déclarer que les différends qui viendraient à s'élever entre les parties contractantes au sujet de l'interprétation et de l'application des dispositions de ladite Convention et qui n'auraient pu être réglés par la voie diplomatique, seront soumis à un tribunal arbitral constitué dans les termes de la Convention de La Haye du 18 octobre 1907.

Un compromis devra être dressé et il sera procédé suivant les règles de la même Convention, en tant qu'il n'y serait pas dérogé par un accord exprès au moment du litige.

Veuillez, &c.

JULES CAMBON.

*Annex No. 37*TREATY OF FEZ BETWEEN FRANCE AND MOROCCO  
OF MARCH 30, 1912

*Source : 106 British and Foreign State Papers, 1023-1024.*

*TRAITÉ entre la France et le Maroc pour l'Établissement d'un Régime régulier et l'Introduction des Réformes nécessaires. — Signé à Fez, le 30 mars 1912\**

Le Gouvernement de la République française et le Gouvernement de Sa Majesté chérifienne, soucieux d'établir au Maroc un régime régulier, fondé sur l'ordre intérieur et la sécurité générale, qui permette l'introduction des réformes et assure le développement économique du pays, sont convenus des dispositions suivantes :

ART. I. Le Gouvernement de la République française et Sa Majesté le Sultan sont d'accord pour instituer au Maroc un nouveau régime comportant les réformes administratives, judiciaires, scolaires, économiques, financières, et militaires que le Gouvernement français jugera utile d'introduire sur le territoire marocain.

Ce régime sauvegardera la situation religieuse, le respect et le prestige traditionnel du Sultan, l'exercice de la religion musulmane et des institutions religieuses, notamment de celles des Habous. Il comportera l'organisation d'un Makhzen chérifien réformé.

Le Gouvernement de la République se concertera avec le Gouvernement espagnol au sujet des intérêts que ce Gouvernement tient de sa position géographique et de ses possessions territoriales sur la côte marocaine.

De même, la ville de Tanger gardera le caractère spécial qui lui a été reconnu et qui déterminera son organisation municipale.

II. Sa Majesté le Sultan admet dès maintenant que le Gouvernement français procède, après avoir prévenu le Makhzen, aux occupations militaires du territoire marocain qu'il jugerait nécessaires au maintien de l'ordre et de la sécurité des transactions commerciales et à ce qu'il exerce tout action de police sur terre et dans les eaux marocaines.

III. Le Gouvernement de la République prend l'engagement de prêter un constant appui à Sa Majesté chérifienne contre tout danger qui menacerait sa personne ou son trône ou qui compromettrait la tranquillité de ses États. Le même appui sera prêté à l'héritier du trône et à ses successeurs.

IV. Les mesures que nécessitera le nouveau régime de protectorat seront édictées, sur la proposition du Gouvernement français, par Sa Majesté chérifienne ou par les autorités auxquelles elle en aura délégué le pouvoir. Il en sera de même des règlements nouveaux et des modifications aux règlements existants.

\* "Journal officiel", July 27, 1912.

V. Le Gouvernement français sera représenté auprès de Sa Majesté chérifienne par un Commissaire Résident général, dépositaire de tous les pouvoirs de la République au Maroc, qui veillera à l'exécution du présent accord.

Le Commissaire Résident général sera le seul intermédiaire du Sultan auprès des représentants étrangers et dans les rapports que ces représentants entretiennent avec le Gouvernement marocain. Il sera, notamment, chargé de toutes les questions intéressant les étrangers dans l'Empire chérifien.

Il aura le pouvoir d'approuver et de promulguer, au nom du Gouvernement français, tous les décrets rendus par Sa Majesté chérifienne.

VI. Les agents diplomatiques et consulaires de la France seront chargés de la représentation et de la protection des sujets et des intérêts marocains à l'étranger.

Sa Majesté le Sultan s'engage à ne conclure aucun acte ayant un caractère international sans l'assentiment préalable du Gouvernement de la République française.

VII. Le Gouvernement de la République française et le Gouvernement de Sa Majesté chérifienne se réservent de fixer d'un commun accord les bases d'une réorganisation financière qui, en respectant les droits conférés aux porteurs des titres des emprunts publics marocains, permette de garantir les engagements du Trésor chérifien et de percevoir régulièrement les revenus de l'Empire.

VIII. Sa Majesté chérifienne s'interdit de contracter à l'avenir, directement ou indirectement, aucun emprunt public ou privé et d'accorder, sous une forme quelconque, aucune concession sans l'autorisation du Gouvernement français.

IX. La présente Convention sera soumise à la ratification du Gouvernement de la République française et l'instrument de ladite ratification sera remis à Sa Majesté le Sultan dans le plus bref délai possible.

En foi de quoi les soussignés ont dressé le présent acte et l'ont revêtu de leurs cachets.

Fait à Fez, le 30 mars, 1912.

(L.S.) REGNAULT.

(L.S.) MOULAY ABD-EL-HAFID.

*Annex No. 38*

CONVENTION BETWEEN FRANCE AND SPAIN  
OF NOV. 27, 1912, WITH EXCHANGE OF LETTERS

*Source: 106 British and Foreign State Papers, 1025-1035, 1040-1042.*

*CONVENTION entre l'Espagne et la France en vue de préciser la Situation respective des deux Pays à l'égard de l'Empire chérifien, et Protocole concernant le Chemin de Fer Tanger-Fez. — Signée à Madrid, le 27 novembre 1912\**

[Ratifications exchanged at Madrid, April 2, 1913.]

Le Président de la République française et Sa Majesté le Roi d'Espagne, désireux de préciser la situation respective de la France et de l'Espagne à l'égard de l'Empire chérifien ; considérant, d'autre part, que la présente Convention leur offre une occasion propice d'affirmer leurs sentiments d'amitié réciproque et leur volonté de mettre en harmonie leurs intérêts au Maroc, ont nommé, à cet effet, pour leurs Plénipotentiaires, savoir :

Le Président de la République française : Son Excellence M. Geoffray (Léon-Marcel-Isidore), Ambassadeur extraordinaire et Plénipotentiaire près Sa Majesté le Roi d'Espagne, Commandeur de l'Ordre national de la Légion d'honneur, &c. ; et

Sa Majesté le Roi d'Espagne : Son Excellence Don Manuel Garcia Prieto, Marquis de Alhucemas, Sénateur à vie, Ministre d'État, Chevalier Grand-Croix de l'Ordre civil d'Alphonse XII, décoré de la Médaille d'or d'Alphonse XIII, &c. ;

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, ont arrêté et signé les articles suivants :

ART. I. Le Gouvernement de la République française reconnaît que, dans la zone d'influence espagnole, il appartient à l'Espagne de veiller à la tranquillité de ladite zone et de prêter son assistance au Gouvernement marocain pour l'introduction de toutes les réformes administratives, économiques, financières, judiciaires et militaires dont il a besoin, comme aussi pour tous les règlements nouveaux et les modifications aux règlements existants que ces réformes comportent, conformément à la déclaration franco-anglaise du 8 avril 1904, et à l'Accord franco-allemand du 4 novembre 1911.

Les régions comprises dans la zone d'influence déterminée à l'article II resteront placées sous l'autorité civile et religieuse du Sultan, suivant les conditions du présent accord.

Ces régions seront administrées, sous le contrôle d'un haut commissaire espagnol, par un khalifa choisi par le Sultan sur une liste de deux candidats présentés par le Gouvernement espagnol. Les fonctions

\* "Journal officiel", April 5, 1913.

du khalifa ne seront maintenues ou retirées au titulaire qu'avec le consentement du Gouvernement espagnol.

Le khalifa résidera dans la zone d'influence espagnole et habituellement à Tétouan ; il sera pourvu d'une délégation générale du Sultan, en vertu de laquelle il exercera les droits appartenant à celui-ci.

Cette délégation aura un caractère permanent. En cas de vacance, les fonctions de khalifa seront, provisoirement et d'office, remplies par le pacha de Tétouan.

Les actes de l'autorité marocainé dans la zone d'influence espagnole seront contrôlés par le haut commissaire espagnol et ses agents. Le haut commissaire sera le seul intermédiaire dans les rapports que le khalifa, en qualité de délégué de l'autorité impériale dans la zone espagnole, aura à entretenir avec les agents officiels étrangers, étant donné d'ailleurs qu'il ne sera pas dérogé à l'article V du Traité franco-chérifien du 30 mars 1912.

Le Gouvernement de Sa Majesté le Roi d'Espagne veillera à l'observation des traités et spécialement des clauses économiques et commerciales insérées dans l'Accord franco-allemand du 4 novembre 1911.

Aucune responsabilité ne pourra être imputée au Gouvernement chérifien du chef de réclamations motivées par des faits qui se seraient produits sous l'administration du khalifa dans la zone d'influence espagnole.

II. Au nord du Maroc, la frontière séparative des zones d'influence française et espagnole partira de l'embouchure de la Moulouya et remontera le thalweg de ce fleuve jusqu'à 1 kilom. en aval de Mechra-Klila. De ce point la ligne de démarcation suivra jusqu'au djebel Beni-Hassen le tracé fixé par l'article II de la Convention du 3 octobre 1904.

Dans le cas où la commission mixte de délimitation visée au paragraphe 1 de l'article IV ci-dessous constaterait que le marabout de Sidi-Maarouf se trouve dépendre de la fraction sud des Beni-Bouyahi, ce point serait attribué à la zone française. Toutefois, la ligne de démarcation des deux zones, après avoir englobé ledit marabout, n'en passerait pas à plus de 1 kilom. au nord et à plus de 2 kilom. à l'ouest pour rejoindre la ligne de démarcation telle qu'elle est déterminée au paragraphe précédent.

Du djebel Beni-Hassen, la frontière rejoindra l'oued Ouergha au nord de la djemaa des Cheurfa Tafraout, en amont du coude formé par la rivière. De là, se dirigeant vers l'ouest, elle suivra la ligne des hauteurs dominant la rive droite de l'oued Ouergha jusqu'à son intersection avec la ligne nord-sud définie par l'article II de la Convention de 1904. Dans ce parcours, la frontière contournera le plus étroitement possible la limite nord des tribus riveraines de l'Ouergha et la limite sud de celles qui ne sont pas riveraines, en assurant une communication militaire non interrompue entre les différentes régions de la zone espagnole.

Elle remontera ensuite vers le nord en se tenant à une distance d'au moins 25 kilom. à l'est de la route de Fez à El-Ksar-el-Kebir par Ouezzan, jusqu'à la rencontre de l'oued Loukkos, dont elle descendra le thalweg, jusqu'à la limite entre les tribus Sarsar et Tlig. De ce point, elle contournera le djebel Ghani, laissant cette montagne dans la zone espagnole, sous réserve qu'il n'y sera pas construit de fortifications permanentes. Enfin, la frontière rejoindra le parallèle 35° de latitude nord entre le douar Mgaria et la Marya de Sidi-Slama, et suivra ce parallèle jusqu'à la mer.

Au sud du Maroc, la frontière des zones française et espagnole sera définie par le thalweg de l'oued Draa, qu'elle remontera depuis la mer jusqu'à sa rencontre avec le méridien 11° ouest de Paris ; elle suivra ce méridien vers le sud jusqu'à sa rencontre avec le parallèle 27° 40' de latitude nord. Au sud de ce parallèle, les articles V et VI de la Convention du 3 octobre 1904 resteront applicables. Les régions marocaines situées au nord et à l'est de la délimitation visée dans le présent paragraphe appartiendront à la zone française.

III. Le Gouvernement marocain ayant, par l'article VIII du traité du 26 avril 1860, concédé à l'Espagne un établissement à Santa-Cruz-de-Mar-Pequeña (Ifni), il est entendu que le territoire de cet établissement aura les limites suivantes : au nord, l'oued Bou-Sedra, depuis son embouchure ; au sud, l'oued Noun, depuis son embouchure ; à l'est, une ligne distante approximativement de 25 kilom. de la côte.

IV. Une commission technique, dont les membres seront désignés en nombre égal par les Gouvernements français et espagnol, fixera le tracé exact des délimitations spécifiées aux articles précédents. Dans son travail, la commission pourra tenir compte non seulement des accidents topographiques, mais encore des contingences locales.

Les procès-verbaux de la commission n'auront valeur exécutive qu'après ratification des deux Gouvernements.

Toutefois, les travaux de la commission ci-dessus prévue ne seront pas un obstacle à la prise de possession immédiate par l'Espagne de son établissement d'Ifni.

V. L'Espagne s'engage à n'aliéner ni céder sous aucune forme, même à titre temporaire, ses droits dans tout ou partie du territoire composant sa zone d'influence.

VI. Afin d'assurer le libre passage du détroit de Gibraltar, les deux Gouvernements conviennent de ne pas laisser élever de fortifications ou d'ouvrages stratégiques quelconques sur la partie de la côte marocaine visée par l'article VII de la Déclaration franco-anglaise du 8 avril 1904, et par l'article XIV de la Convention franco-espagnole du 3 octobre de la même année, et comprise dans les sphères d'influence respectives.

VII. La ville de Tanger et sa banlieue seront dotées d'un régime spécial qui sera déterminé ultérieurement ; elles formeront une zone comprise dans les limites décrites ci-après :

Partant de Punta-Altare sur la côte sud du détroit de Gibraltar, la frontière se dirigera en ligne droite sur la crête du djebel Beni-Mayimel, laissant à l'ouest le village appelé Dzar-ze-Zeitun, et suivra ensuite la ligne des limites entre le Fahs d'un côté et les tribus de l'Anjera et de Oued-Ras de l'autre côté jusqu'à la rencontre de l'oued Es-Seghir. De là, la frontière suivra le thalweg de l'oued Es-Seghir puis ceux des oueds M'harhar et Tzahadartz jusqu'à la mer.

Le tout conformément au tracé indiqué sur la carte de l'état-major espagnol, qui a pour titre : "Croquis del Imperio de Marruecos", à l'échelle de 1/100.000, édition de 1906.

VIII. Les consulats, les écoles et tous les établissements français et espagnols actuellement existants au Maroc seront maintenus.

Les deux Gouvernements s'engagent à faire respecter la liberté et la pratique extérieure de tout culte existant au Maroc.

Le Gouvernement de Sa Majesté le Roi d'Espagne, en ce qui le concerne, fera en sorte que les privilèges religieux exercés actuellement par le clergé régulier et séculier espagnol ne subsistent plus dans la zone française. Toutefois, dans cette zone, les missions espagnoles conserveront leurs établissements et propriétés actuels, mais le Gouvernement de Sa Majesté le Roi d'Espagne ne s'opposera pas à ce que des religieux de nationalité française y soient affectés. Les nouveaux établissements que ces missions fonderaient seront confiés à des religieux français.

IX. Aussi longtemps que le Chemin de Fer Tanger-Fez ne sera pas construit, il ne sera apporté aucune entrave au passage des convois de ravitaillement destinés au Maghzen, ni aux voyages des fonctionnaires chérifiens ou étrangers entre Fez et Tanger et inversement, non plus qu'au passage de leur escorte, de leurs armes et bagages, étant entendu que les autorités de la zone traversée auront été préalablement avisées. Aucune taxe ou aucun droit spécial de transit ne pourra être perçu pour ce passage.

Après la construction du chemin de fer Tanger-Fez, celui-ci pourra être utilisé pour ces transports.

X. Les impôts et ressources de toutes sortes dans la zone espagnole seront affectés aux dépenses de ladite zone.

XI. Le Gouvernement chérifien ne pourra être appelé à participer à aucun titre aux dépenses de la zone espagnole.

XII. Le Gouvernement de Sa Majesté le Roi d'Espagne ne portera pas atteinte aux droits, prérogatives et privilèges des porteurs de titres des emprunts 1904 et 1910 dans sa zone d'influence.

En vue de mettre l'exercice de ces droits en harmonie avec la nouvelle situation, le Gouvernement de la République usera de son influence sur le représentant des porteurs pour que le fonctionnement des garanties dans ladite zone s'accorde avec les dispositions suivantes :

La zone d'influence espagnole contribuera aux charges des emprunts 1904 et 1910 suivant la proportion que les ports de ladite zone, déduction faite des 500.000 pesetas hassani dont il sera parlé plus loin, fournissent à l'ensemble des recettes douanières des ports ouverts au commerce.

Cette contribution est fixée provisoirement à 7,95 pour cent, chiffre basé sur les résultats de l'année 1911. Elle sera revisable tous les ans à la demande de l'une ou de l'autre des parties.

Si la revision ainsi opérée donne lieu à une réduction des recettes françaises relatives au produit douanier des ports de la Méditerranée, elle entraînera *ipso facto* le relèvement de la contribution espagnole aux charges des emprunts susmentionnés.

La revision prévue devra intervenir avant le 15 mai suivant l'exercice qui lui servira de base. Il sera tenu compte de ses résultats dans le versement à effectuer par le Gouvernement espagnol le 1<sup>er</sup> juin, ainsi qu'il est dit ci-après.

Le Gouvernement de Sa Majesté le Roi d'Espagne constituera chaque année, à la date du 1<sup>er</sup> mars, pour le service de l'emprunt 1910, et à la date du 1<sup>er</sup> juin, pour le service de l'emprunt 1904, entre les mains du représentant des porteurs des titres de ces deux emprunts, le montant des annuités fixées au paragraphe précédent. En conséquence, l'encaissement au titre des emprunts sera suspendu dans la zone espagnole par application des articles 20 du contrat du 12 juin 1904, et 19 du contrat du 17 mai 1910.

Le contrôle des porteurs et les droits s'y rapportant, dont l'exercice aura été suspendu en raison des versements du Gouvernement espagnol, seront rétablis tels qu'ils existent actuellement dans le cas où le représentant des porteurs aurait à reprendre l'encaissement direct conformément aux contrats.

XIII. D'autre part, il y a lieu d'assurer à la zone française et à la zone espagnole le produit revenant à chacune d'elles sur les droits de douane perçus à l'importation.

Les deux Gouvernements conviennent :

1. Que, balance faite des recettes douanières que chacune des deux administrations zonières encaissera sur les produits introduits par ses douanes à destination de l'autre zone, il reviendra à la zone française une somme totale de 500.000 pesetas hassani se décomposant ainsi :

(a.) Une somme forfaitaire de 300.000 pesetas hassani, applicable aux recettes des ports de l'ouest.

(b.) Une somme de 200.000 pesetas hassani, applicable aux recettes de la côte méditerranéenne, sujette à révision lorsque le fonctionnement des chemins de fer fournira des éléments exacts de calcul. Cette révision éventuelle pourrait s'appliquer aux versements antérieurement effectués, si le montant de ceux-ci était supérieur à celui des versements à réaliser dans l'avenir ; toutefois, les reversements dont il s'agit ne porteraient que sur le capital et ne donneraient pas lieu à un calcul d'intérêts.

Si la révision ainsi opérée donne lieu à une réduction des recettes françaises relatives aux produits douaniers des ports de la Méditerranée, elle entraînera *ipso facto* le relèvement de la contribution espagnole aux charges des emprunts susmentionnés :

2. Que les recettes douanières encaissées par le bureau de Tanger devront être réparties entre la zone internationalisée et les deux autres zones, au prorata de la destination finale des marchandises. En attendant que le fonctionnement des chemins de fer permette une exacte répartition des sommes dues à la zone française et à la zone espagnole, le service des douanes versera en dépôt à la Banque d'État l'excédent de ces recettes, paiement fait de la part de Tanger.

Les administrations douanières des deux zones s'entendront par l'entremise de représentants, qui se réuniront périodiquement à Tanger, sur les mesures propres à assurer l'unité d'application des tarifs. Ces délégués se communiqueront à toutes fins utiles les informations qu'ils auront pu recueillir tant sur la contrebande que sur les opérations irrégulières éventuellement effectuées dans les bureaux des douanes.

Les deux Gouvernements s'efforceront de mettre en vigueur à la date du 1<sup>er</sup> mars 1913 les mesures visées sous le présent article.

XIV. Les gages affectés en zone espagnole à la créance française, en vertu de l'Accord franco-marocain du 21 mars 1910, seront transférés au profit de la créance espagnole, et réciproquement les gages affectés en zone française à la créance espagnole, en vertu du Traité hispano-marocain du 16 novembre 1910, seront transférés au profit de la créance française. En vue de réserver à chaque zone le produit des redevances minières qui doivent naturellement lui revenir, il est entendu que les redevances proportionnelles d'extraction appartiendront à la zone où la mine est située, lors même qu'elles seraient recouvrées à la sortie par une douane de l'autre zone.



XV. En ce qui concerne les avances faites par la Banque d'État sur le 5 pour cent des douanes, il a paru équitable de faire supporter par les deux zones non seulement le remboursement desdites avances, mais d'une manière générale les charges de la liquidation du passif actuel du Maghzen.

Dans le cas où cette liquidation se ferait au moyen d'un emprunt à court ou à long terme, chacune des deux zones contribuerait au payement des annuités de cet emprunt (intérêts et amortissement) dans une proportion égale à celle qui a été fixée pour la répartition entre chaque zone des charges des emprunts de 1904 et 1910.

Les taux de l'intérêt, les délais d'amortissement et de conversion, les conditions de l'émission et, s'il y a lieu, les garanties de l'emprunt seront arrêtés après entente entre les deux Gouvernements.

Les dettes contractées après la signature du présent accord seront exclues de cette liquidation.

Le montant total du passif à liquider comprend notamment :

1. Les avances de la Banque d'État gagées sur le 5 pour cent du produit des douanes ;

2. Les dettes liquidées par la commission instituée en vertu du règlement du Corps diplomatique de Tanger en date du 29 mai 1910.

Les deux Gouvernements se réservent d'examiner conjointement les créances autres que celles visées ci-dessus sous les numéros 1 et 2, de vérifier leur légitimité, et, au cas où le total du passif dépasserait sensiblement la somme de 25.000.000 de francs, de les comprendre ou non dans la liquidation envisagée.

XVI. L'autonomie administrative des zones d'influence française et espagnole dans l'Empire chérifien ne pouvant porter atteinte aux droits, prérogatives et privilèges concédés, conformément à l'Acte d'Algésiras, à la Banque d'État du Maroc, pour tout le territoire de l'Empire, par le Gouvernement marocain, la Banque d'État du Maroc continuera de jouir dans chacune des deux zones de tous les droits qu'elle tient des actes qui la régissent, sans diminution ni réserve. L'autonomie des deux zones ne pourra pas faire obstacle à son action et les deux Gouvernements faciliteront à la Banque d'État le libre et complet exercice de ses droits.

La Banque d'État du Maroc pourra, d'accord avec les deux Puissances intéressées, modifier les conditions de son fonctionnement en vue de les mettre en harmonie avec l'organisation territoriale de chaque zone.

Les deux Gouvernements recommanderont à la Banque d'État l'étude d'une modification de ses statuts permettant :

1. De créer un second haut commissaire marocain, qui serait nommé par l'administration de la zone d'influence espagnole, après entente avec le conseil d'administration de la banque ;

2. De conférer à ce second haut commissaire, pour sauvegarder les intérêts légitimes de l'administration de la zone espagnole, sans porter atteinte au fonctionnement normal de la banque, des attributions autant que possible identiques à celles qu'exerce le haut commissaire actuel.

Toutes démarches utiles seront faites par les deux Gouvernements pour parvenir à la révision régulière, dans le sens indiqué ci-dessus, des statuts de la Banque d'État et du règlement de ses rapports avec le Gouvernement marocain.

Afin de préciser et de compléter l'entente intervenue entre les deux Gouvernements et constatée par la lettre adressée le 23 février 1907 par le Ministre des Affaires Étrangères de la République à l'Ambassadeur de Sa Majesté le Roi d'Espagne à Paris, le Gouvernement français s'engage, en ce qui concerne la zone espagnole, sous réserve des droits de la banque :

1. A n'appuyer aucune candidature auprès de la Banque d'État ;
2. A faire connaître à la banque son désir de voir prendre en considération, pour les emplois de ladite zone, les candidatures de nationalité espagnole.

Réciproquement, le Gouvernement espagnol s'engage, en ce qui concerne la zone française, sous réserve des droits de la banque :

1. A n'appuyer aucune candidature auprès de la Banque d'État ;
2. A faire connaître à la banque son désir de voir prendre en considération, pour les emplois de ladite zone, les candidatures de nationalité française.

En ce qui concerne :

1. Des actions de la banque qui pourraient appartenir au Maghzen ;
2. Les bénéfices revenant au Maghzen sur les opérations de frappe et de refonte de monnaies, ainsi que sur toutes les autres opérations monétaires (article 37 de l'Acte d'Algésiras), il est entendu qu'il sera attribué à l'administration de la zone espagnole une part calculée d'après le même pourcentage que pour la redevance et les bénéfices du monopole des tabacs.

XVII. L'autonomie administrative des zones d'influence française et espagnole dans l'Empire chérifien ne pouvant porter atteinte aux droits, prérogatives et privilèges concédés, conformément à l'Acte général d'Algésiras, pour tout le territoire de l'Empire par le Gouvernement marocain, à la Société internationale de Régie cointéressée des Tabacs au Maroc, ladite société continuera de jouir, dans chacune des deux zones, de tous les droits qu'elle tient des actes qui la régissent, sans diminution ni réserve. L'autonomie des deux zones ne pourra pas faire obstacle à son action, et les deux Gouvernements lui faciliteront le libre et complet exercice de ses droits.

Les conditions actuelles de l'exploitation du monopole, et en particulier le tarif des prix de vente, ne pourront être modifiées que d'accord entre les deux Gouvernements.

Le Gouvernement français ne fera pas obstacle à ce que le Gouvernement royal se concerté avec la régie soit en vue d'obtenir de cette société la rétrocession à des tiers de l'intégralité de ses droits et privilèges, soit en vue de lui racheter à l'amiable, par anticipation, lesdits droits et privilèges. Dans le cas où, comme conséquence du rachat anticipé, le Gouvernement espagnol désirerait modifier dans sa zone les conditions générales de l'exploitation du monopole, et, par exemple, s'il voulait réduire les prix de vente, un accord devra intervenir entre les deux Gouvernements dans le but exclusif de sauvegarder les intérêts de la zone d'influence française.

Les stipulations qui précèdent s'appliqueront réciproquement dans le cas où le Gouvernement français désirerait faire usage des facultés reconnues ci-dessus au Gouvernement espagnol.

La régie pouvant faire objection à un rachat partiel, les deux Gouvernements s'engagent dès maintenant à faire exercer dans l'une et l'autre zone, aussitôt que possible (c'est-à-dire le 1<sup>er</sup> janvier 1933,

en prévenant la régie avant le 1<sup>er</sup> janvier 1931), le droit de rachat prévu à l'article 24 du cahier des charges. A partir du 1<sup>er</sup> janvier 1933, chacune des deux zones deviendra libre d'établir, selon ses convenances, les impôts qui font l'objet du monopole.

Les deux Gouvernements se mettront d'accord pour obtenir, en respectant le cahier des charges :

(a.) La création d'un second commissaire nommé par l'administration de la zone d'influence espagnole ;

(b.) La définition des attributions qui seraient nécessaires à ce second commissaire pour sauvegarder les intérêts légitimes de l'administration de la zone espagnole, sans porter atteinte au fonctionnement normal de la régie ;

(c.) La répartition, par moitié, entre les deux commissaires de la somme de 5.000 rials makhzani argent versés annuellement par la régie pour le traitement du commissaire.

Afin de maintenir pendant la durée du monopole l'identité du tarif des prix de vente dans les deux zones, les deux Gouvernements prennent l'engagement de ne pas assujettir la régie ou ses ayants droit à des impôts nouveaux sans s'être préalablement entendus.

Le produit des amendes prononcées contre la régie pour inexécution du cahier des charges ou abus (article 31 du cahier des charges) sera attribué au Trésor de la zone dans laquelle les infractions ou abus auront été commis.

Pour le partage de la redevance fixe annuelle et des bénéfices (articles 20 à 23 du cahier des charges), on appliquera un pourcentage qui sera déterminé par la puissance de consommation de la zone espagnole, comparativement à la puissance de consommation totale de l'Empire. Cette puissance de consommation sera évaluée d'après les perceptions douanières restant effectivement entre les mains de l'administration de la zone espagnole, compte tenu du reversement prévu à l'article XIII ci-dessus.

XVIII. En ce qui concerne le comité des valeurs douanières, le comité spécial des travaux publics et la commission générale des adjudications, durant la période où ces comités resteront en vigueur, il sera réservé à la désignation du khalifa de la zone espagnole un des sièges de délégué chérifien dans chacun de ces trois comités.

Les deux Gouvernements sont d'accord pour réserver à chaque zone et affecter à ses travaux publics le produit de la taxe spéciale perçue dans ses ports en vertu de l'article 66 de l'Acte d'Algésiras.

Les services respectifs seront autonomes.

Sous condition de réciprocité, les délégués de l'administration de la zone française voteront avec les délégués du khalifa dans les questions intéressant la zone espagnole et notamment pour tout ce qui concerne la détermination des travaux à exécuter sur les fonds de la taxe spéciale, leur exécution, et la désignation du personnel que cette exécution comporte.

XIX. Le Gouvernement de la République française et le Gouvernement de Sa Majesté Catholique se concerteront en vue de :

1. Toutes les modifications qui devraient être apportées dans l'avenir aux droits de douane ;

2. L'unification des tarifs postaux et télégraphiques dans l'intérieur de l'Empire.

XX. La ligne de Chemin de Fer Tanger-Fez sera construite et exploitée dans les conditions déterminées par le protocole annexé à la présente Convention.

XXI. Le Gouvernement de la République française et le Gouvernement de Sa Majesté Catholique s'engagent à provoquer la revision, d'accord avec les autres Puissances et sur la base de la Convention de Madrid, des listes et de la situation des protégés étrangers et des associés agricoles visés par les articles VIII et XVI de cette Convention.

Ils conviennent également de poursuivre auprès des Puissances signataires toute modification de la Convention de Madrid que comporteraient, le moment venu, le changement du régime des protégés et associés agricoles, et éventuellement l'abrogation de la partie de ladite Convention concernant les protégés et associés agricoles.

XXII. Les sujets marocains originaires de la zone d'influence espagnole seront placés à l'étranger sous la protection des agents diplomatiques et consulaires de l'Espagne.

XXIII. Pour éviter autant que possible les réclamations diplomatiques, les Gouvernements français et espagnol s'emploieront respectivement auprès du Sultan et de son khalifa pour que les plaintes portées par des ressortissants étrangers contre les autorités marocaines ou les personnes agissant en tant qu'autorités marocaines, et qui n'auraient pu être réglées par l'entremise du consul français ou espagnol et du consul du Gouvernement intéressé, soient déferées à un arbitre *ad hoc* pour chaque affaire, désigné d'un commun accord par le consul de France ou celui d'Espagne et par celui de la Puissance intéressée ou, à leur défaut, par les deux Gouvernements de ces consuls.

XXIV. Le Gouvernement de la République française et le Gouvernement de Sa Majesté Catholique se réservent la faculté de procéder à l'établissement, dans leurs zones respectives, d'organisations judiciaires inspirées de leurs législations. Une fois ces organisations établies et les nationaux et protégés de chaque pays soumis, dans la zone de celui-ci, à la juridiction de ces tribunaux, le Gouvernement de la République française, dans la zone d'influence espagnole, et le Gouvernement de Sa Majesté le Roi d'Espagne, dans la zone d'influence française, soumettront également à cette juridiction locale leurs nationaux et protégés respectifs.

Tant que le paragraphe 3 de l'article XI de la Convention de Madrid du 3 juillet 1880 sera en vigueur, la faculté qui appartient au Ministre des Affaires Étrangères de Sa Majesté chérifienne de connaître en appel des questions de propriété immobilière des étrangers fera partie, pour ce qui concerne la zone espagnole, de l'ensemble des pouvoirs délégués au khalifa.

XXV. Les Puissances signataires s'engagent à prêter, dès maintenant, dans leurs possessions d'Afrique, leur entier concours aux autorités marocaines pour la surveillance et la répression de la contrebande des armes et des munitions de guerre.

La surveillance dans les eaux territoriales des zones respectives française et espagnole sera exercée par les forces organisées par l'autorité locale ou celles du Gouvernement protecteur de ladite zone.

Les deux Gouvernements se concerteront pour unifier la réglementation du droit de visite.

XXVI. Les accords internationaux conclus à l'avenir par Sa Majesté chérifienne ne s'étendront à la zone d'influence espagnole qu'avec le consentement préalable du Gouvernement de Sa Majesté le Roi d'Espagne.

XXVII. La Convention du 26 février 1904, renouvelée le 3 février 1909, ainsi que la Convention générale de La Haye du 18 octobre 1907, s'appliqueront aux différends qui viendraient à s'élever entre les parties contractantes au sujet de l'interprétation et de l'application des dispositions de la présente Convention et qui n'auraient pas été réglés par la voie diplomatique ; un compromis devra être dressé et il sera procédé suivant les règles des mêmes Conventions en tant qu'il n'y serait pas dérogé par un accord exprès au moment du litige.

XXVIII. Toutes clauses des traités, conventions et accords antérieurs, qui seraient contraires aux stipulations qui précèdent, sont abrogées.

XXIX. La présente Convention sera notifiée aux Gouvernements signataires de l'Acte général de la Fédération internationale d'Algésiras.

XXX. La présente Convention sera ratifiée et les ratifications en seront échangées à Madrid, dans le plus bref délai.

En foi de quoi les Plénipotentiaires respectifs ont signé le présent traité et y ont apposé leurs cachets.

Fait en double expédition, à Madrid, le 27 novembre 1912.

(L.S.) GEOFFRAY.

(L.S.) MANUEL GARCIA PRIETO.

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ANNEXE I

*L'Ambassadeur de France au Ministre d'État*

*Madrid, le 27 novembre 1912.*

Pour bien préciser la portée des dispositions de la Convention signée aujourd'hui qui ont trait à la nomination du khalifa et aux rapports de celui-ci avec les agents étrangers, Votre Excellence me permettra de lui rappeler qu'elle a bien voulu me déclarer que :

En ce qui concerne le premier de ces points, la désignation du khalifa de la zone espagnole pourra être utilement préparée par des pourparlers confidentiels entre les deux Gouvernements, dans le but de s'assurer que le choix du Sultan se portera sur celui des deux candidats visés à l'article I de ladite Convention qui aura les préférences du Gouvernement royal. Il est toutefois entendu que, quels que soient les avantages de cette façon de procéder, chacune des deux Puissances est libre d'y renoncer dans des cas particuliers et de s'en tenir strictement aux clauses de la présente Convention qui, d'un côté, oblige l'Espagne à la présentation d'une liste de deux candidats, et, d'un autre côté, stipule que le choix de Sa Majesté chérifienne aura à se porter sur l'un de ces deux candidats. Il va enfin de soi que ceux-ci devront être des personnalités de marque.

En ce qui touche les rapports que le khalifa, en tant que délégué de l'autorité impériale dans la zone espagnole, aura à entretenir avec les agents officiels étrangers, il est entendu que, lors de la rédaction du

traité, le mot « officiels » a été substitué au mot « consulaires » en vue d'éviter, suivant l'expression de Votre Excellence, les difficultés dans la pratique ; ces difficultés pourraient surgir du fait que, certaines Puissances, n'ayant au Maroc d'agent consulaire de carrière que dans la zone française, ne pourraient suivre directement avec l'administration de la zone espagnole les affaires afférentes à cette zone et que, seule, ladite administration a qualité pour trancher aux termes de notre Convention d'aujourd'hui. Pour les relations diplomatiques des Gouvernements étrangers avec le Sultan, il est bien entendu en effet que la mention faite dans la présente Convention de l'article V du Traité franco-chérifien du 30 mars 1912, en réserve à la France le monopole.

Agrérez, &c.

GEOFFRAY.

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ANNEXE 2

*Le Ministre d'État à l'Ambassadeur de France*

*Madrid, le 27 novembre 1912.*

Pour bien préciser la portée des dispositions de la Convention signée aujourd'hui qui ont trait à la nomination du khalifa et aux rapports de celui-ci avec les agents étrangers, je me permettrai de rappeler à Votre Excellence qu'elle a bien voulu me déclarer que :

En ce qui concerne le premier de ces points, la désignation du khalifa de la zone espagnole pourra être utilement préparée par des conversations confidentielles entre les deux Gouvernements, en vue de s'assurer que le Sultan choisira celui des deux candidats, auquel se réfère l'article I de ladite Convention, qui sera préféré par le Gouvernement de Sa Majesté.

Il reste toutefois entendu que, quels que soient les avantages de cette procédure, chacune des deux Puissances sera libre d'y renoncer dans des cas particuliers et de s'en tenir strictement aux clauses de la future Convention qui, d'une part, oblige l'Espagne à présenter une liste de deux candidats et, d'autre part, stipule que le choix de Sa Majesté chérifienne devra porter sur l'un de ces deux candidats. Il est évident enfin que ceux-ci devront être des personnes de distinction.

Pour ce qui regarde les relations que le khalifa, en qualité de délégué de l'autorité impériale dans la zone espagnole, aura à entretenir avec les agents officiels étrangers, il reste entendu que, lors de la rédaction du traité, le terme « officiels » a été substitué au mot « consulaires » en vue d'éviter, selon mon expression, des difficultés dans la pratique. Ces difficultés pourraient surgir du fait que certaines Puissances, n'ayant au Maroc d'agents consulaires de carrière que dans la zone française, ne pourraient traiter directement avec l'administration de la zone espagnole les questions relatives à cette zone et qui ne peuvent être résolues que par cette administration, selon les termes de notre Convention d'aujourd'hui. Quant aux relations diplomatiques entre les Gouvernements étrangers et le Sultan, il demeure, en effet, bien entendu que

la mention faite, dans la présente Convention, de l'article V du Traité franco-chérifien du 30 mars 1912 en réserve le monopole à la France. Je saisis, &c.

M. GARCIA PRIETO.

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*Annex No. 39*

DECLARATIONS BETWEEN FRANCE AND GREECE AND BETWEEN FRANCE AND SWEDEN RELATIVE TO THE RENUNCIATION BY GREECE AND SWEDEN OF THEIR RIGHTS UNDER THE CAPITULATIONS IN THE FRENCH ZONE OF MOROCCO, DATED MAY 8 (21), 1914, AND JUNE 4, 1914, RESPECTIVELY

*Source : 108 British and Foreign state Papers (Part II), 876-877.*

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*DECLARATION between France and Greece relative to the Renunciation by Greece of her Rights under the Capitulations in the French Zone of the Empire of Morocco.—Athens, May 8 (21), 1914*

[Ratifications exchanged at Athens, April 15, 1915]

Les soussignés, dûment autorisés par leurs Gouvernements respectifs, font d'un commun accord la déclaration suivante :

Prénant en considération les garanties d'égalité juridique, offertes aux étrangers par les tribunaux français du Protectorat, le Gouvernement hellénique renonce à réclamer pour ses consuls, ses ressortissants et ses établissements dans la zone française de l'Empire chérifien, tous droits et privilèges issus du régime des Capitulations.

Les Traités et Conventions de toute nature en vigueur entre la Grèce et la France s'étendent de plein droit, sauf clause contraire, à la zone française de l'Empire chérifien.

La présente déclaration sera soumise par le Gouvernement hellénique à l'approbation de la Chambre des Députés ; elle sera ratifiée et elle entrera en vigueur immédiatement après l'échange des ratifications.

Fait en double à Athènes, le 8 (21) mai 1914.

DEVILLE.

STREIT.

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*DECLARATION between France and Sweden relative to the Renunciation by Sweden of her Rights under the Capitulations in the French Zone of the Empire of Morocco.—Stockholm, June 4, 1914*

[Ratifications exchanged at Paris, December 17, 1914]

Les soussignés, dûment autorisés par leurs Gouvernements respectifs, font, d'un commun accord, la déclaration suivante :

Prenant en considération les garanties d'égalité juridique, offertes aux étrangers par les tribunaux français du Protectorat, le Gouvernement suédois renonce à réclamer pour ses consuls, ses ressortissants et ses établissements, dans la zone française de l'Empire chérifien, tous droits et privilèges issus du régime des Capitulations.

Les Traités et Conventions de toute nature en vigueur entre la France et la Suède s'étendent de plein droit, sauf clause contraire, à la zone française de l'Empire chérifien.

La présente déclaration sera soumise à l'approbation de la Représentation nationale en Suède ; elle sera ratifiée et les ratifications en seront échangées aussitôt que possible.

Fait en double à Stockholm, le 4 juin 1914.

THIEBAULT.  
WALLENBERG.

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*Annex No. 40*

DIPLOMATIC CORRESPONDENCE CONCERNING THE REQUEST  
BY FRANCE FOR ADHERENCE BY THE UNITED STATES TO  
THE CONVENTION BETWEEN FRANCE AND GERMANY OF  
NOV. 4, 1911 :

- The French Ambassador to the Secretary of State, Nov. 3, 1911 ;
- The Acting Secretary of State to the French Ambassador, Nov. 8, 1911 ;
- The French Ambassador to the Secretary of State, Dec. 6, 1911 ;
- The Secretary of State to the French Ambassador, Dec. 15, 1911.

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*The French Ambassador to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
*Washington, November 3, 1911.*

MR. SECRETARY OF STATE : As a result of the disturbances that have taken place in Morocco and demonstrated the necessity of there pursuing, in the interest of all, the undertaking of pacification and progress contemplated by the act of Algieras, the Government of the French Republic had to take, recently, various measures, the main ones of which have been brought to your excellency's knowledge, either orally or in writing. All aimed at maintaining order and the normal development, on a footing of perfect equality, of the economic interests of the powers concerned.

Pourparlers to the same end were recently entered into by the Government of the Republic and the Imperial German Government. It was agreed from the beginning that the arrangements that might come out of those pourparlers should immediately be submitted to the adhesion of the powers interested.



By order of my Government I have the honor to inform your excellency that the agreement sought has just been concluded, and I inclose its text.

As you will notice, the agreement is intended to facilitate for France the execution of the task of pacification and reorganization, which circumstances place it particularly in her power to prosecute.

The freedom of trade provided by the treaties shall, under the terms of the agreement, be firmly maintained and my Government has bound itself not to connive at any inequality either in the assessment of customs, duties, imposts, or other taxes or in the drawing up of tariffs of railways or any other transportation. France will likewise use her interest with the Moroccan Government to prevent any differential treatment of the citizens or subjects of the powers, and notably to secure for them participation on equally favorable conditions in proposals for contracts and supplies of materials.

Knowing that the Government of the United States seeks nothing more in Morocco than the development of the economic interests of its citizens, as has always been proclaimed by the highest authorities of this country, as your excellency was pleased yourself to remark to me repeatedly, my Government fondly cherishes the hope that the arrangement of which the text is inclosed, and which affords the most ample guaranties as regards the said interests, will gain the Federal Government's adhesion. It would attach most special value to receiving such an assurance and obtaining from this country, to which it is bound by ties of friendship, a token of good will, the value of which would be further enhanced if your excellency, to whom I venture to appeal, would kindly let me have an answer as soon as possible.

Be pleased, etc.,

JUSSERAND.

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*The Acting Secretary of State to the French Ambassador :*

DEPARTMENT OF STATE,  
Washington, November 8, 1911.

[See Annex XXXIX to French Memorial, pp. 165-166.]

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*The French Ambassador to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
Washington, December 6, 1911.

MR. SECRETARY OF STATE: By order of my Government, which is in accord with the German Government in this matter, I have the honor to communicate herewith to your excellency a copy of two explanatory letters exchanged by the ambassador of the French Republic at Berlin and the imperial secretary of state for foreign affairs to accompany the Franco-German convention of November 4 relative to Morocco.

These letters specify the scope of some of the articles of the convention; they are communicated to all the powers signatory to the act of Madrid.

I avail myself of this opportunity to remind your excellency of the value my Government would attach to hearing that, for your part, your excellency sees no objection to the introduction into Morocco of reforms that not only respect the American economic interests in those parts, but also insure their development under conditions infinitely more favorable than if the disturbed situation of these last years had continued.

As regards the changes to be made in the status quo which would involve a modification of existing international agreements, my Government is aware that the approval of the United States Senate is required. It would, however, wish to receive even now the assurance that your excellency would be disposed to take such steps as may be necessary to accomplish that end.

Referring to the indications I already have had the honor to make known to your excellency, I beg leave to remind you that the arrangement concluded on the 4th of last month by France and Germany has already received the adhesion of Russia, England, Italy, Sweden, and Morocco itself, whose Sultan has forwarded to the Government of the Republic letters formulating unqualified acceptance.

Be pleased, etc.,

JUSSERAND.

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*The Secretary of State to the French Ambassador*

DEPARTMENT OF STATE,  
Washington, December 15, 1911.

EXCELLENCY: Referring to your excellency's note of the 6th instant inclosing copies of two explanatory letters exchanged between the ambassador of the French Republic at Berlin and the imperial secretary of state for foreign affairs, to accompany the Franco-German convention of November 4 last relative to Morocco and specifying the scope of some of the articles of that convention, previously transmitted, I have the honor to inform your excellency that in conformity with the traditional American foreign policy which forbids participation by the United States in the settlement of political questions which are entirely European in their scope, this Government must refrain from any expression of opinion for or against such part or parts of the Franco-German agreement in relation to Morocco as may be deemed of a political nature.

As regards the desire of the Government of the French Republic that the Government of the United States will adhere to the articles in this agreement relating to commercial rights and the administration of justice, I beg to call your excellency's attention to the fact that adhesion on the part of this Government, so far as these articles are concerned, would involve a modification of our existing treaty rights with Morocco, which under our Constitution could only be done by and with the advice and consent of the United States Senate.

I take pleasure, however, in informing your excellency that, in conformity with the expressed desire of the French Republic, the Depart-

ment would feel inclined, when the proper time may come, to undertake negotiations with a view to entering into such new treaty arrangements as may be appropriate for modifying our existing extraterritorial rights and the rights of American protégés in Morocco along the lines suggested in the Franco-German agreement and in general to agree in principle to the other articles of the agreement, provided that the commercial and other advantages secured to us under our existing treaties are preserved.

Accept, excellency, the renewed assurances of my highest consideration.

P. C. KNOX.

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*Annex No. 41*

DIPLOMATIC CORRESPONDENCE CONCERNING THE REQUEST  
BY FRANCE FOR ADHERENCE BY THE UNITED STATES TO  
THE TREATY OF FEZ OF MARCH 30, 1912, BETWEEN FRANCE  
AND MOROCCO:

The French Ambassador to the Secretary of State, Jan. 8, 1913;  
The Secretary of State to the French Ambassador, Jan. 22, 1913.

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*The French Ambassador to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
*Washington, January 8, 1913.*

MR. SECRETARY OF STATE: By order of my Government, I have the honor to communicate herewith to your excellency the text of the Franco-Moroccan Protectorate Treaty that was signed at Fez on March 30, 1912.

The assurances your excellency was pleased to give me heretofore as to the establishment of the French protectorate in Morocco lead me to hope that the Federal Government will see no objection to giving its adhesion to that instrument. The French Government would be glad to be so assured.

Your excellency will note that under article 6 of the aforesaid treaty "the diplomatic and consular officers of France will be in charge of the representation and protection of Moroccan subjects and interests abroad".

A limitation, however, was put upon the provision by the Franco-Spanish treaty of November 27 last of which I had the honor to communicate to the Department of State on the 29th of the same month. Article 23 of that treaty provides that "The Moroccan subjects belonging in the zone of Spanish influence shall be placed abroad under the protection of the diplomatic and consular officers of Spain".

Be pleased [etc.]

JUSSERAND.

*The Secretary of State to the French Ambassador*

DEPARTMENT OF STATE,  
Washington, January 22, 1913.

[See Annex XLIII to French Memorial, p. 169.]

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*Annex No. 42*

DIPLOMATIC CORRESPONDENCE CONCERNING THE REQUEST  
BY FRANCE FOR THE SURRENDER BY THE UNITED STATES  
OF ITS RIGHTS OF EXTRATERRITORIAL JURISDICTION IN  
MOROCCO :

The French Chargé d'Affaires to the Secretary of State, Oct. 7, 1913 ;  
The Acting Secretary of State to the French Ambassador, Feb. 13,  
1914.

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*The French Chargé d'Affaires to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
Washington, October 7, 1913.

MR. SECRETARY OF STATE : By order of my Government I have the honor to forward herewith to your excellency two copies of the Official Bulletin of the Morocco Protectorate promulgating the new judiciary system in the French zone of the Shereefian Empire, together with a copy of the Journal Officiel of the French Republic of September 9, 1913, which also contains the decree relating to that organization.

The new judiciary system, instituted by virtue of the provisions in paragraph 2 of article 9 of the Franco-German treaty of November 4, 1911, is intended to supersede the French Consular Courts on and after October 15, 1913.

In accordance with the provisions of the aforesaid article, I have been instructed to ask the Federal Government to place its citizens under the new jurisdiction. I shall hasten to forward to my Government the reply your excellency will be so good as to return to me on the subject.

Accept [etc.]

E. DE PERETTI DE LA ROCCA.

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*The Acting Secretary of State to the French Ambassador*

DEPARTMENT OF STATE,  
*Washington, February 13, 1914.*

EXCELLENCY: The Department has the honor to make reply to the Embassy's notes of August 29<sup>1</sup>, September 14<sup>1</sup>, October 7<sup>1</sup>, and January 7<sup>1</sup>, last, relative to the establishment of the French protectorate in Morocco and the revision of the list of American protégés in that country.

In the first note above mentioned the Department is informed, in relation to the establishment of the French protectorate, that, owing to the inadequacy of the means theretofore employed to prevent the smuggling of arms and munitions of war into Morocco, General Lyautey had decided "to declare martial law within the zone of French influence in Morocco in the matter of contraband of arms". In the informal note of September 14, Mr. Peretti, who was then acting as Chargé d'Affaires ad interim, made known the wish of his Government that this Government would give instructions to its representative at Tangier looking to the designation of "a delegate to assist in the revision of the protection lists of people lying under the American jurisdiction". Mr. Peretti added that it was not possible to "accept the reserve (of the United States) relative to the right of foreign representatives to act in the last resort upon the decision of the Maghzen" in regard to the natives who should enjoy the protection of a foreign government.

With his note of October 7, Mr. Peretti transmitted to the Department copies of the official bulletin of the Morocco protectorate "promulgating the new judiciary system in the French zone of the Shereefian Empire". Mr. Peretti called attention to the fact that the new judiciary system was "intended to supersede the French consular courts on and after October 15, 1913", and, under instructions, asked this Government "to place its citizens under the new jurisdiction."

Finally, with your note of the 7th of January last, you transmitted to the Department a list of errata in the "Bulletin Officiel"<sup>2</sup> and requested that "the new French courts in Morocco be recognized at the earliest possible date".

Turning first to the subject of the revision of the protégé lists, mentioned in Mr. Peretti's note of September 14, it is proper to state that the protection of native Moors in Morocco by this Government rests upon its treaty with Morocco of 1836 and the Madrid convention of 1880. The relevant part of the treaty of 1836 is found in article 15, which reads as follows:

Merchants of both countries shall employ only such interpreters and such other persons to assist them in their business as they shall think proper.

The convention of 1880 declares, in article 1, that the protection of native Moors is based on the British and Spanish treaties with Morocco and on the convention of 1863 between France, Morocco, and other Powers, "with the modifications introduced by the present convention", and stipulates, in article 16, that "the authorities of Morocco will recog-

<sup>1</sup> Not printed.

<sup>2</sup> Necessary corrections made in inclosure (not printed) to note of October 7.

nize no protection of any kind whatever save such as is expressly provided for in this convention".

After a careful examination of the several articles of the Madrid convention relative to the protection of American protégés, the Department is unable to reach the conclusion that the Moorish Government enjoys the right ultimately to decide upon the persons who may become protégés of this Government. On the contrary, article 2 of the convention provides that "foreign representatives at the head of a legation may select their interpreters and employees from among the subjects of Morocco or others"; and article 3 provides that consular officers "shall be allowed to select" their employees. By article 5 of the same convention, "the Government of Morocco recognizes the right of ministers, chargés d'affaires, and other representatives, which is granted to them by treaties, to select the persons whom they employ". In regard to the lists of protected persons, the convention is equally precise, as appears by articles 7 and 8, which read as follows :

#### ARTICLE 7.

Foreign representatives shall inform the Sultan's Minister of Foreign Affairs, in writing, of any selections of any employee made by them.

They shall furnish annually to the said minister a list of the names of the persons protected by them or by their agents throughout the States of the Sultan of Morocco.

This list shall be transmitted to the local authorities, who shall consider as persons enjoying protection only those whose names are contained therein.

#### ARTICLE 8.

Consular officers shall transmit each year to the authorities of the district in which they reside a list, bearing their seal, of the persons protected by them. These authorities shall transmit it to the Minister of Foreign Affairs, to the end that, if it be not conformable to the regulations, the representatives at Tangier may be informed of the fact.

A consular officer shall be required to give immediate information of any changes that may have taken place among the persons protected by his consulate.

Regarding the appointment of protégés for "signal services", the convention provides (article 16) that the "Minister of Foreign Affairs at Tangier shall be previously informed of the nature of the services, and notified of the intention to award them, in order that he may, if need be, present his observations thereon ; yet the final decision shall be reserved for the government to which the service shall have been rendered".

Concerning the protection of the native employees of private persons, the treaty of 1836 appears to contain no stipulation ; but in article 9 and 10 of the convention of 1880, there are found the following provisions :

#### ARTICLE 9.

Servants, farmers, and other native employees of native secretaries and interpreters shall not enjoy protection. The same shall be the case with Moorish employees or servants of foreign subjects.

Nevertheless, the local authorities shall not arrest an employee or servant of a native officer in the service of a legation or consulate, or of a foreign subject of protected person, without having notified the authority upon which he is dependent.

If a subject of Morocco in the service of a foreign subject shall kill or wound any person, or violate his domicile, he shall be arrested immediately, but the diplomatic or consular authority under which he is shall be notified without delay.

#### ARTICLE 10.

Nothing is changed with regard to the situation of brokers, as established by the treaties and by the convention of 1863, except what is stipulated, relative to taxes, in the following articles.

Inasmuch as the Madrid convention refers, in article 1, to the "convention of 1863 between France, Morocco, and other Powers" regarding the protection of native Moors, and to the British and Spanish treaties with Morocco on the same subject, it is appropriate to examine the provisions of these treaties on the subject.

The provisions of the convention of 1863 appear to be substantially the same as the "regulations relative to protection adopted by common consent by the Legation of France and the Government of Morocco, August 19, 1863", reprinted, in "Treaties in Force, 1904", at the end of the Madrid convention. The regulations are in part as follows:

Protected persons are divided into two classes.

The first class comprises natives employed by the legation and by the various French consular officers.

The second class consists of native factors, brokers, or agents employed by *French merchants for their business-affairs*.

French protection is not extended to natives employed by French citizens in agricultural occupations.

It is, moreover, understood that agricultural laborers, herdsmen, or other native peasants in the service of French citizens shall not be legally prosecuted without immediate information thereof being communicated to the competent consular officer in order that the latter may protect the interests of his countrymen.

The list of all protected persons shall be delivered by the proper consulate to the competent magistrate of the place, who shall likewise be informed of any changes that may subsequently be made in the said list.

Each protected person shall be furnished with a card, in French and in Arabic, mentioning his name and stating the services which secure this privilege to him.

All these cards shall be issued by the Legation of France at Tangier.

The British and Spanish treaties mentioned in Article I of the Madrid convention are presumably the *general treaty of December 9, 1856, between Great Britain and Morocco, and the treaty of commerce and navigation of November 20, 1861, between Spain and Morocco*. In the British treaty it is specifically provided that the *chargé d'affaires* and the consular officers of Great Britain "shall be at liberty to choose" their own employees and that British subjects "shall be free" to commit

their affairs "to the management of any persons whom they may appoint as their broker, factor, or agent; nor", says the treaty, "shall such British subjects be restrained in their choice of persons to act in such capacities". The Spanish treaty provides that "the chargé d'affaires or consul-general may choose his interpreters and servants from amongst the Mussulman subjects or amongst those of any other country"; that other consular officers "may name" employees "either Mussulmans or subjects of another country", and that Spanish merchants may put their affairs "into the hands of brokers or agents appointed by themselves and they shall not be interfered with, nor shall obstacles be raised to the free choice of the persons to fulfill this charge".

It would, therefore, seem that the choice of the protégés of the United States in Morocco rests, by right of treaty, ultimately with this Government. Such appears to be the view which this Department has always taken of the convention of 1880, and which has been the basis of its action in carrying out the provisions of that convention. The question of the choice of protégés is, however, in the view of this Government, but a phase of the larger question involved in the establishment of French and Spanish control over separate portions of Morocco.

On the subject of the French protectorate this Government has heretofore expressed itself as being in favor of the reforms which France contemplated introducing into Morocco in accordance with the stipulations of the Franco-Moroccan treaty of March 30, 1912, on the understanding that provision be made for the preservation of American interests and rights in Morocco, commercial or otherwise, which are at present safeguarded by existing treaties with that country. The more important of those interests and rights it is proper now to enumerate.

In the first place, attention may be drawn to the right of aliens to hold land in the Sherceefian Empire. This right appears now to be based upon the provisions of the Madrid convention and the Algeciras Act. With a view to carry out article 60 of the Algeciras Act, the Sultan's Foreign Minister on December 5, 1912, sent to the Diplomatic Corps at Tangier a set of regulations classifying the public domain of the empire and defining "inalienable property" and "alienable property". These regulations also laid down certain rules to govern the sale of the latter class of property to foreigners.

It is understood that these regulations are not entirely consistent with the provisions on the subject of land ownership in the act of Algeciras and the convention of Madrid. Under article 11 of the Madrid convention the right of "all foreigners" to "hold property" anywhere within the Empire is recognized, but "the purchase of property must take place with the previous consent of the Government". By article 60 of the Algeciras Act this right was confirmed, and it was further provided that within a radius of 10 kilometers around the open ports and within 2 kilometers around certain other towns, land might be acquired by foreigners without the previous consent of the Moorish Government.

The proposed regulations define "inalienable property" to include "Guish" lands, the seashores, "Habous" or mosque properties, tribal lands, forest land, desert, uncultivated or ownerless lands, ore-bearing land, and escheated property. The Department is advised that practically all of the land within the 10-kilometer zones, especially at Tangier, is either "Guish" land or seashore. Consequently, there would appear to be little or no land lying within the 10-kilometer zones which may be



subject to private ownership without the consent of the Moorish Government.

Moreover, while in one paragraph the regulations recognize the fact that under article 60 of the act of Algeciras no authorization is necessary for the sale of lands within certain zones, in the next paragraph the regulations provide that "the Cadi will approve no sale made to a foreigner unless the authorization according to the regulations has been granted by the Maghzen".

It would seem, therefore, that, if the regulations are correctly understood, an interpretation has been given to article 60 which its terms would not ordinarily bear.

By the same regulations the Moroccan Government reserves the right "to annul or to revise" any deeds of so-called "inalienable property" which may have been given prior to the date of the regulations. The Department is advised that much of the Guish and seashore property, as well as other lands, situated within the zones above mentioned, has long been held by private individuals under deeds legally obtained with the authorization of the responsible agents of the Maghzen.

In view of this circumstance, it is difficult to believe that it is the intention of the Moroccan Government to consider these regulations as retroactive in their operation and as thereby divesting or giving opportunity to divest rights in land legally acquired and officially confirmed by the Maghzen's agents.

The proposed regulations, as understood by the Department, further provide in effect that no transfer of land will be authorized until the different Moorish intermediaries have stated that no Government rights are infringed. This provision probably has in view the carrying out of that part of article 60 of the Algeciras Act which stipulates that "before authorizing the execution of deeds transferring property the Cadi will have to satisfy himself of the validity of the title in conformity to the Mohammedan law". The Department is, however, advised that the records of land titles in Morocco are very incomplete, and that this provision of the regulations may be used to delay indefinitely transfers of property in which the Moorish Government has in fact no legal or equitable rights.

As a further restriction upon the right of land ownership, it is reported that, notwithstanding the provisions of article 60 of the Algeciras Act respecting the acquisition of land within stated zones around the open ports and certain other towns, the Sultan about a year ago issued two decrees imposing military servitudes upon land situated within a radius of 250 meters around towns and fortified quarters within certain enumerated districts.

It appears that certain "habous" or mosque properties are alleged to have been irregularly disposed of in the past to persons subject to foreign jurisdiction, who hold these properties either without regular title thereto or by virtue of doubtful contracts. The Algeciras conference took formal note of this situation, and by article 63 of the Algeciras Act, charged the diplomatic body at Tangier to "solve these questions equitably, in accord with the special commissioner whom His Shereefian Majesty may be pleased to designate to that effect". This stipulation does not appear to have been carried out. On the contrary, the Department is informed that the Sultan has communicated to the Diplomatic Corps a circular proposing measures for the recovery of such properties.

In these circumstances it would seem that titles to land already acquired and the right to make acquisitions in the future are being called into question and placed on an uncertain basis. This Government is therefore desirous of some assurance that the vested rights of its citizens and protégés in property in Morocco will be respected, and to that end will be promptly confirmed by the Moroccan Government, and that existing treaty rights respecting the purchase and sale of land within the Empire will be protected and preserved.

In the second place the Department ventures to mention the subject of trade discriminations practiced by the authorities in Morocco. Complaints, apparently well founded, have reached this Government that customs duties have been imposed arbitrarily and without uniformity; that unreasonable export duties or surcharges have been collected, and that free and open competition in bidding for the construction of public works or the furnishing of supplies for the Government have been denied. It is reported that customs duties on the imports of the Vacuum Oil Co. vary for different ports of entry and for different countries of origin, thus in practical effect working a discrimination between importers at the same or different ports. For example, it is stated that in the recent past the customs duty has varied from 5.50 francs to 6.50 or 7 francs per case. The Department is also informed that in 1911 exporters of olive oil in barrels from Mogador, Morocco, to New York were arbitrarily made to pay 14 pesetas surcharge as tare on the barrels, regardless of the offer and desire of the exporter or his agent to empty a sample barrel for the purpose of determining the exact tare for the shipment.

It is understood that articles 105 to 110, inclusive, of the Algeciras Act require free and open competition "without preference of nationality" in bidding on proposals for public works and supplies for the Moroccan Government. The Department is advised, however, that specific proposals are not always prepared, so that real competition is possible. It is stated, for example, that the specifications do not always disclose the rate of duty on materials, machinery, and tools, so that distant bidders, unacquainted with local conditions, are placed at a great disadvantage in formulating bids. It is understood also that the opportunity of foreign contractors to take part in competitive bidding is minimized by the method of dividing large Government contracts into allotments too small to attract any but nearby contractors.

As the main purpose of the United States in participating in the Algeciras conference and in the adoption of the act resulting therefrom was to preserve and increase its commerce in Morocco, this Government desires equal opportunities for American commercial interests not only to maintain their present standing in Morocco but also to share in the country's commercial development.

In the third place, the Department is advised that a commission composed entirely of French nationals has been appointed for the liquidation of outstanding claims against the Maghzen. Notice of this commission and of the date for presentation of claims has been communicated to this Government and to American citizens and protégés in Morocco. The Department is not at present advised as to the exact amount of the claims so far presented, but it is believed that the sum approximates \$150,000.

It is also understood that certain awards made by the Claims Commission which sat in 1910 for the purpose of considering the claims of aliens against the Maghzen, have not as yet been fully paid.

This Government, therefore, is desirous that the awards of the commission of 1910 be duly paid to the American claimants and that some assurance be given that the awards of the present commission will be paid within a certain reasonable period.

Finally, it is perhaps proper to mention the case of Jacob Benatuil, an American citizen, who has for some years been engaged in litigation before the Moorish courts, in the manner provided in the treaty of Madrid, in an effort to secure the restoration of a strip of land said to have been arbitrarily taken and used for a highway. It appears that the property of Benatuil bordered on a roadway, and that certain persons of foreign nationality, including Frenchmen and Spaniards, who own land on the opposite side of the road, erected buildings beyond their property lines and thereby caused the roadway to encroach upon the land owned by Benatuil. In the course of the litigation Benatuil obtained a judgment in his favor by the Shraa, which on appeal, as provided by treaty, was confirmed by the Sultan's Foreign Minister. Thereupon the Consul General of the United States, according to custom, requested the Moorish authorities to enforce the judgment, but they never acceded to the request. The only legal course then open to the American claimant was for him to sue upon the judgment in the Consular Courts of France, Spain, and the other countries whose nationals were concerned. It is doubtful whether such a course would have proved effective, inasmuch as it is understood that the defendants would, in the event of a decision adverse to themselves, have had the right to appeal to the superior home courts of their respective countries. As the expense involved in such proceedings was prohibitive to the American claimant, the Department has long desired that this case, which has been a source of misunderstanding and diplomatic correspondence for many years, should be disposed of by a settlement between the two Governments.

The foregoing statement covers the more important matters under discussion between this Government and that of Morocco. There are other matters which have given rise to diplomatic correspondence, but they may be reserved for future discussion, if need be. The present review embraces matters that touch the maintenance of American commercial interests in Morocco and the protection of the liberty and property of American citizens and protégés in that country, and it is for the purpose of removing any points of controversy in these particulars and bringing about an adjustment of them, that this Government, animated with a favorable disposition toward the reforms which the French protectorate is designed to assure, has addressed itself to an exposition of the questions as to which it desires to reach a definite understanding and settlement, as a preliminary to or incident of the recognition, in due and proper form, of the fundamental change involved in the establishment of a foreign governmental régime in the Shereefian Empire.

In conclusion, it may be proper to call attention to the situation of the American missionaries in Morocco. These missionaries have for years labored in this field, including the districts inhabited by the Berber tribes, and, as the Department is advised, have maintained and

continue to maintain friendly and mutually satisfactory relations with the authorities of the country. They have expressed themselves as most appreciative of the courteous and kind treatment accorded to them by the French officials in Morocco. This Government therefore ventures to express the earnest hope that, in any reorganization of the Government of the Empire which may be contemplated or in progress, the rights and privileges of these missionaries may be carefully safeguarded and every facility be granted them for the prosecution of their worthy and benevolent task.

Accept [etc.]

J. B. MOORE.

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*Annex No. 43*

DIPLOMATIC CORRESPONDENCE CONCERNING THE  
NEGOTIATIONS FOR THE SURRENDER OF UNITED  
STATES EXTRATERRITORIAL RIGHTS AND RECOGNITION  
OF THE FRENCH PROTECTORATE :

The French Ambassador to the Secretary of State, April 22, 1914 ;  
The Secretary of State to the French Ambassador, April 30, 1914 ;  
The French Ambassador to the Secretary of State, June 10, 1914 ;  
The French Chargé d'Affaires to the Secretary of State, July 16, 1914 ;  
The French Chargé d'Affaires to the Secretary of State, July 16, 1914.

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*The French Ambassador to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
*Washington, April 22, 1914.*

Mr. SECRETARY OF STATE : Referring to the oral communications by which I made known to the Department of State the views of my Government in respect to the remarks contained in your excellency's note of February 13, last, about Morocco, I have the honor, in compliance with instructions I have received, to remind you of the high value we should attach to the United States Government's relinquishing, together with its consular courts, its extraterritorial privileges in the French Zone of the Shereefian Empire.

Your excellency's note above mentioned held out the prospect that the United States would accede to our request and record its accession in due and proper form but pointed out a certain number of topics as to which favorable assurances were requested.

As to the matter of form, my Government wishes me to submit to your excellency the enclosed draft of declaration which in its opinion fits the situation that is to be cleared. I am told that the declaration has already been signed by the Russian and Spanish Governments and that other adhesions are forthcoming.

As to the several points mentioned in your excellency's note I may, as I have already done by word of mouth, assure you that the Government of the Republic is quite ready to settle in the most friendly spirit the questions of interest to the United States in Morocco that may still be pending.

Among these, that of the protégés naturally ceases to be of any practical importance to the Powers that agree to recognize our new courts, the tertib tax being, besides, already paid by foreigners.

As to the right of aliens to own real estate, it has not been restricted by any Shereefian regulations. All that has been done was to take a few urgent measures having relation to strategy or prompted by the necessity of checking speculation in land intended for public use.

The complaint of the "Vacuum Oil Co." against the customs treatment accorded to its products had not been brought by the party concerned or the representative of its country to the notice of my Government, which deems it its duty in this respect to recall that the treaties in force guarantee equal fiscal treatment to all the Powers and that they may be sure that nothing will be overlooked to let their nationals enjoy the full benefit of those advantages.

My Government indulges the hope that under the conditions I have just brought to mind and in view of its firm intention to examine and settle in an entirely friendly way the few questions yet unsettled in which American citizens are interested, your excellency will kindly coincide in the views I have just had the honor to submit to you. Your acceptance of these propositions would be particularly gratifying to the Government of the Republic, which would take it as fresh evidence of the traditional friendship existing between our two countries.

Be pleased to accept [etc.]

JUSSERAND.

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[Inclosure—Translation]

DECLARATION

The undersigned, duly authorized by their respective Governments, make in common accord the following declaration :

Taking into consideration the guarantees of juridical equality offered to foreigners by the French Courts of the Protectorate, the Government of the United States relinquish all claims for its Consuls, persons subject to its jurisdiction, and its establishments to any right or privilege derived from the régime of the Capitulations.

The treaties and conventions of every nature in force between France and the United States cover, as of right, unless otherwise stipulated, the French Zone in the Shereefian Empire.

This declaration will go into effect ten days after its date.

Done in duplicate at———this———.

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*The Secretary of State to the French Ambassador*

DEPARTMENT OF STATE,  
Washington, April 30, 1914.

[See Annex XLVIII to French Memorial, p. 180.]

*The French Ambassador to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
Washington, June 10, 1914.

MR. SECRETARY OF STATE: My Government, to which I did not fail to forward the contents of your excellency's notes of February 13 and April 30 last, about the doing away with the extraterritorial rights in the French Zone of Morocco and about certain claims of American citizens, has just affirmed to me that it had promptly taken steps to bring about, under the most equitable conditions, a settlement of those claims.

In regard to one of them, that of the Vacuum Oil Company, my Government, which had never heard of it, wrote to Morocco to inquire about the grievances the concern might have to state as to the customs treatment it receives. General Liautey accordingly called upon the agent of the company for explanations. The answer was "that he had not the slightest ground for complaint against the customs authorities".

As for the other claims, the instructions sent by your excellency to the representative of the United States at Tangier, have no doubt brought to your knowledge with all the needful explanations the facts from which those claims may have arisen.

I beg leave in this connection to refer to the note I had the honor to address to your excellency on the 22nd ultimo [April] in which while answering the main points mentioned in your note of February 13. I laid stress on the importance attached by my Government to the Government of the United States' earliest possible accession to the request I had laid before you. I am informed by my Government that Russia, Spain and Norway have already renounced their extraterritorial rights by signing a declaration like that enclosed in my above mentioned note. Other accessions are momentarily expected.

Be pleased [etc.]

JUSSERAND.

*The French Chargé d'Affaires to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
Washington, July 16, 1914.

MR. SECRETARY OF STATE: In the course of the negotiations for the suppression of consular courts and the extinction of extraterritorial

rights in the French Zone of the Shereefian Empire, it was occasionally objected to the representative of the Republic that it was not possible for the Powers to take any further responsibility in the fate of their Moorish protégés.

There would seem to be some foundation for that feeling. In fact under the provisions of Article 12 of the Franco-German agreement of November 4, 1911, whose full scope is given in the explanatory letter, the Government of the Republic would certainly have the right after the discontinuance of the consular courts, to ask that protection be done away with, the strict legal effect of this would be to place under native jurisdiction the protégés who, under the present system, are enjoying consular jurisdiction.

But, with a view to obviating the hardships that might thereby be brought upon the Moorish subjects thus deprived of protection, the Government of the Republic is ready to declare them to be, as long as they live, under the jurisdiction of the French courts set up in the protectorate. This would place them, in this respect, on an equal footing with the persons subject to the jurisdiction of the former protecting power and not with the natives.

My Government authorizes me to make its intentions as to this known to the Federal Government, being convinced that they are likely to remove any apprehension concerning its protégés, if, after availing itself of the rights conferred upon it by the existing provisions, the Government of the Republic should procure the abolition.

I avail myself of this opportunity to enclose three copies of Louis Renault's preface to the codes and laws in force in the French protectorate in Morocco which brings forth the value and importance of the legislative work of the protectorate. Showing as it does the guarantees extended to all foreigners in Morocco, that paper ought to expedite adhesion to the new system on the part of the few powers that have not yet relinquished the exercise of consular jurisdiction.

Be pleased [etc.]

R. CLAUSE.

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*The French Chargé d'Affaires to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
*Washington, July 16, 1914.*

Mr. SECRETARY OF STATE: By a letter dated February 13 last, Mr. Bassett Moore made known to the Embassy the Federal Government's intention respecting the acceptance of the jurisdiction of the new courts instituted by us in Morocco for persons subject to American jurisdiction.

At the same time Mr. Bassett Moore expressed a strong desire to arrive at settlement of various questions affecting American interests in the Shereefian Empire.

The Resident Commissioner General of the French Republic, to whom the State Department's note was forwarded by the Minister

of Foreign Affairs has returned to Mr. Viviani an answer the substance of which I have the honor to communicate to you.

With the exception of two clearly defined cases (Vacuum Oil Company and the Benatuil case), which will be fully explained hereinafter, the Federal Government formulates, but does not specify, reservations or demands of a purely general character against the Protectorate Government.

There is no question about the Federal Government being, as much as any other, warranted in watching over the economic rights and interests of Morocco, which, as put by Mr. Bassett Moore, are safeguarded by the treaties concluded between the Foreign Powers and the Shereefian Empire. But it is equally true that the Protectorate Government is bent on respecting to the fullest extent, in favor of Americans as well as all other foreign citizens or subjects, the principle of economic equality.

The principle being once more evoked, the reservations or claims put forth by the Federal Government are so general in their character that, from the fact that the importance of American interests and the number of persons lying under American jurisdiction appear to be out of proportion to the set of reservations and objections offered, the question arises whether Mr. Bassett Moore's letter of February 13, 1914, is not aiming, after all, and while the Federal Government expresses itself in favor of the reforms, to reopen the question of the very principle of the Protectorate regulation powers.

As a matter of fact, it does not seem possible to maintain the protests that have been made against the Protectorate Government, upon careful examination of every one of the questions presented.

1. As regards the contemplated martial law in cases of contraband of arms, the matter having been settled by dropping the subject need not be brought up anew.

2. The Federal Government's statement about protection leads one to believe that the meaning and scope of the Protectorate's intentions have been misunderstood.

Indeed it never was heretofore our intention to do away with protection, but we meant merely to stop its improper use through a revision of the lists jointly with a delegate of every legation concerned. Provision, furthermore, for such a revision was made in the Franco-German treaty to which the Government of the United States gave its adhesion.

It is important, however, to take notice of Mr. Bassett Moore's assertion that "the choice of the American protégés rests ultimately with the Government of the United States", for the right to choose can only be exercised within the limits wherein it conforms to the treaties of the provisions of which the Maghzen may remind the Powers concerned, in order to obtain a return to the enforcement of those conventions.

If the Powers would forego, in principle, their consular jurisdiction, we might, per contra, take up such an enforcement in as liberal a spirit as possible and, to that end, come back to a bilateral revision as provided in the Franco-German treaty.

3. The remarks offered in regard to the original circular of November 1, 1912, laying down rules for the purchase of land appear to have



been prompted by an incomplete study of the subject on the part of the Washington Government.

On the one hand, the consent of the Government, referred to in Article 11 of the Madrid Convention, in Article 60 of the Act of Algeciras and again mentioned in the regulations of November 1, 1912, does not, of course, apply to any but those parts where such consent is requisite, that is to say without the ten kilometre zone around the ports and the two kilometre zone allotted to Azemmour.

On the other hand the circular of November 1, 1912, cannot apply to the Tangier territory specifically referred to in the American memorandum, since Tangier and its purlieu do not come under the regulations decreed in the Protectorate.

As to the "habous" or Government land, the Guish lands, the circular of November, 1912, merely repeated in their respect pre-existing principles that are in force in every State, that is to say, the principles that some land is public domain and inalienable. In again bringing forward that principle, the Resident General merely availed himself of the power to issue regulations granted by the Franco-German treaty.

In answer to the fault found with servitude zones, we are justified in holding that all purchases of land are permitted by the Act of Algeciras (Art. 60), subject to the obligation placed on the purchaser to conform to the laws and usages of the country. Now the Shereefian decrees creating zones of military servitude are precisely to be numbered among "local laws", as the aforesaid Act of Algeciras could not presume to prevent on every subject whatsoever, laws and usages, or include in that phrase only those that existed in 1906.

Mr. Bassett Moore's letter further on asserts that the "records of land titles", which must furnish the Cadis with the means of verifying the validity of the contemplated transactions, are very incomplete. The conclusion drawn by Mr. Moore from this purely gratuitous assertion would, if accepted, have but one result; a perpetuation of wrongs based on those previously committed. Furthermore, when looking into the lawfulness of pending transactions, the local authorities do not confine their investigation to an inspection of the said records.

5. As regards Article 63 of the Act of Algeciras, the Protectorate Government never showed any intention to evade its operation and still more unfounded is the assertion that the Sultan gave notice to the diplomatic corps of measures aimed at the recovery of property of the class referred to in the aforesaid Article. Such a notice never was served. The only measures taken had for their sole object the prevention, for the future, of the wrongs the settlement of which for the past, must be effected in accordance with the procedure directed by the Act of Algeciras.

6. As for the customs grievances formulated by the American Government, the Protectorate Government is quite ready to give them full consideration when they are specified.

The only case presented in the memorandum of February 13, has been investigated at Casablanca by our Consul there.

He reports that the agent of the "Vacuum Oil Company" at Casablanca told him "he had not the slightest ground for complaint against the customs authorities". But the memorandum of the Chargé d'Affaires of the United States at Tangier, hereinafter discussed, having explained that the difficulties under consideration had occurred at Safi and not

at Casablanca, General Liautey referred the question to the office of the Comptroller of the Debt of Tangier which will furnish all the data with which the settlement of this customs difficulty may be taken up at the earliest possible date.

7. As regards the American claims against the Maghzen, the Government of the United States may be assured that they will be examined in the same light as all the claims of persons under foreign jurisdiction. Those already passed upon by the Commission of 1910 will be paid in toto to the beneficiaries out of the funds of the loan that has just been voted.

8. As for the Benatuil case, our agency at Tangier gives me the following information confirmed by Mr. Filipp, our Consul at Tangier. It agrees with the information supplied by the Washington Government.

Jacob Benatuil, an American semsar, having obtained a judgment from the Shraa, about eight years ago, in a real estate suit against several foreigners, of whom one Mr. Fries was French, did not choose to apply to our Consular Court for an exequatur of the Cadi's judgment. The Legations of France and America tried but failed to bring about a friendly settlement of the Cadi's award by a payment by Mr. Fries, the loser, of an indemnity to be determined by umpires, but our fellow citizen, arguing that the judgment against him had been obtained by fraud, would not listen to any settlement.

Inasmuch, however, as the land in dispute lies within the Tangier zone, the American Government can not condition the relinquishment of its extraterritorial rights upon a settlement of this case which by reason of its situs, does not lie under the jurisdiction of the Protectorate authorities.

In order to arrive at a more precise knowledge, if possible, of what is asked of us, our agency at Tangier has been instructed to apply to the Chargé d'Affaires, of the United States for such information as he possesses about the American claims the Government of the United States wished to have settled before recognizing our courts in Morocco.

Mr. Blake's memorandum under date of May 7, sent in reply to our Chargé d'Affaires, comprises 14 claims. But seven of these may be even now stricken out; the first five (including the Benatuil case) belong in Tangier and the other two in El Ksar and Larach. They therefore do not come, by reason of their situs, under the jurisdiction of the Protectorate and can not be brought into a discussion of the relinquishing of extraterritorial rights in the French zone.

As to the other seven claims, they are all routine cases and most of them of a judicial nature, they do not offer, either in their character or their importance, a class of litigation which may afford ground to the United States for further postponing the relinquishment of its extraterritorial jurisdiction and privileges.

The Resident General is, at any rate, even now making it his duty to set on foot an examination of those cases and investigations by the Protectorate local authorities respectively concerned therein. But these cases apparently are not such as to warrant opposition, as a matter of principle, to relinquishing the American extraterritorial rights since the Resident General is even now ready to examine and settle those cases in the most conciliatory manner.

I deemed it expedient to relate hereinabove the explanations furnished by the Commissioner of the Republic which answer every point in Mr. Bassett Moore's memorandum. These explanations meet every claim and objection of the Federal Government, both in satisfying inquiries bearing on specific points and in carrying promises as to minor points that could not yet but will be settled. Finally the report throws as full a light as may be desired on some other topics that do not seem to have been correctly understood or interpreted.

The willingness of the Federal Government to recognize the Protectorate's regulation powers cannot be doubted by the Embassy or by the French Government. I am convinced that your excellency will find in the foregoing explanations all the palliations you may wish for, and I have no doubt that you will, as has already been done by most of the other Powers, agree to forego the benefits of extraterritoriality in the French Zone of the Shereefian Empire and accept to place persons subject to American jurisdiction under that of our Courts.

Aware of the friendly and reciprocal good will which always presides over the settlement of such questions between our two countries, I cannot but remind once more, in conclusion, your excellency (as Mr. Jusserand did before this in his notes of May [April] 22 and June 10 last) of the high value my Government would attach to the Federal Government's early accession to our request laid before it on August 29, 1913.

Be pleased [etc.]

CLAUSSÉ.

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*Annex No. 44*

DIPLOMATIC CORRESPONDENCE CONCERNING FURTHER  
NEGOTIATIONS FOR THE SURRENDER OF UNITED STATES  
EXTRATERRITORIAL RIGHTS AND RECOGNITION OF THE  
FRENCH PROTECTORATE :

The French Ambassador to the Secretary of State, April 17, 1916 ;  
The Secretary of State to the French Ambassador, July 1, 1916 ;  
The French Ambassador to the Secretary of State, July 31, 1916 ;  
Chargé Blake to the Secretary of State, Aug. 8, 1916 ;  
The French Ambassador to the Secretary of State, Aug. 26, 1916 ;  
The French Ambassador to the Secretary of State, Oct. 3, 1916 ;  
The Secretary of State to the French Ambassador, Oct. 12, 1916.

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*The French Ambassador to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
*Washington, April 17, 1916.*

MR. SECRETARY OF STATE : I did not fail to report to my Government the objections formulated by your excellency in the note of Janu-

ary 18 last, to the conditions put on the importation into Morocco of merchandise from neutral countries which, in the opinion of the Federal Government, would be inconsistent with the capitulation régime, the benefit of which is still enjoyed by the United States. I took pains to say at the same time that the Department of State is quite ready for an immediate discussion of the terms on which the capitulatory rights of the United States in that country may be abolished.

The President of the Council, Minister of Foreign Affairs of the Republic, wishes me to point out to your excellency that those rules are intended to prevent Germany from sending to Morocco German merchandise that has been more or less fictitiously nationalized in a neighboring neutral country. The general measures which the French authorities had to take in this respect are therefore not likely to apply to American merchandise and consequently have but a theoretical scope so far as the United States is concerned.

Furthermore, from another standpoint, the Government of the Republic deems it impossible to accept the theory which does not appear to rest on any text and according to which these measures would conflict with capitulatory privileges. The Shereefian Government, as a matter of fact, has the right to order that merchandise from any country must, before entering Morocco, be accompanied by certificates of origin viséd by French consuls and my Government feels justified in its belief that upon a reexamination of this question the Federal Government would concur in that view.

In the course of his communication on the subject, Mr. Briand expresses the satisfaction, which I have already made known orally to your excellency, he experienced in hearing that your excellency had declared your readiness to consider with me a settlement of the capitulation question.

He adds that the French Government would particularly appreciate that mark of confidence and friendship on the part of the Federal Government.

Be pleased [etc.]

JUSSERAND.

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*The Secretary of State to the French Ambassador*

DEPARTMENT OF STATE,  
Washington, July 1, 1916.

[See Annex LIV to French Memorial, pp. 189-190.]

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*The French Ambassador to the Secretary of State*

FRENCH EMBASSY,  
Washington, July 31, 1916.

MY DEAR MR. SECRETARY : Referring to our conversation of the other day, I beg to say that my Government has sent me the text of the declaration signed, with reference to the abrogation of capitulations in

the French zone of Morocco, by all the Powers signatory of the Algeiras Conference and by the South American Republics.

The French Government greatly desires that uniformity be maintained, and hopes that this text, which safeguards all the American rights, will prove acceptable to you.

On account of the need for the President of the United States' ratification, the last paragraph will have, doubtless, to be so written as to take into account such a ratification.

Believe [etc.]

JUSSERAND.

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[Inclosure—Translation]

DECLARATION

The undersigned, duly authorized by their Governments, make the following joint declaration :

Taking into consideration the guaranties of juridical equality offered to aliens by the French tribunals of the protectorate, the Government of the United States of America relinquishes its claim to all the rights and privileges growing out of the capitulation régime for its consuls, the persons subject to its jurisdiction and its establishments within the French zone of the Shereefian Empire.

The treaties and conventions of every description in force between France and the United States extend as of right, unless otherwise specifically provided, to the French zone of the Shereefian Empire.

The present declaration will go into effect within ——— days from the date of signature.

Done in duplicate, at Washington, this ———.

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*Chargé Blake to the Secretary of State*

[Telegram]

AMERICAN LEGATION,  
*Tangier, August 8, 1916, 11 a.m.*

Your telegram August 3, seven p.m. Text of declaration apparently identical with that accepted by most of the Governments which have renounced the capitulations in the French zone of Morocco. It is assumed that this particular declaration concerns solely the abrogation of judicial privileges. The recognition of the French protectorate and the abrogation of the capitulations are separate but consecutive acts, and if performed in this sequence, Moorish Government would not become a party to the treaty surrendering our capitulatory rights. I venture to suggest it should be provided that the suppression of the capitulations will not be retroactive in operation, and if our Government does not insist upon the settlement of all outstanding reclamations against the old Moorish régime, as a corollary to recognition of the French protectorate and suppression of the capitulations, then it should be agreed that the French tribunals should not be competent to pass on any matters which are

present subjects of controversy between our Government and either the old Moorish régime or the French authorities. Such cases could be resolved by common agreement or by arbitration. This reservation as well as all other guaranties, economic or otherwise, which you deem it useful to impose ought to be confirmed by separate communications. The Legation would find it helpful if you would kindly communicate by telegraph a summary of the conditions referred to in your telegram of July 5, five p.m.

BLAKE.

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*The French Ambassador to the Secretary of State*

FRENCH EMBASSY,  
Washington, August 26, 1916.

[See Annex LV to French Memorial, p. 191.]

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*The French Ambassador to the Secretary of State*

[Translation]

FRENCH EMBASSY,  
Washington, October 3, 1916.

MR. SECRETARY OF STATE: Referring to the conversation I had the honor to have yesterday with your excellency, I deem it my duty to confirm to you that my Government is disposed to accompany with an exchange of notes the contemplated convention relative to the abrogation of the capitulations and to the recognition of our protectorate in the French zone of Morocco.

Those notes would stipulate that:

1st: Such American claims as may still be pending in Morocco would be settled in the shortest possible time and in a most conciliatory spirit;

2d: In so far as it may lie in our power the rights of American citizens in the Spanish and Tangier zones shall not be affected by the relinquishment of the capitulations vouchsafed to us in our zone.

3d: Nothing will be omitted to secure in the French zone of Morocco the same equal rights with French citizens as are enjoyed by American citizens in France.

4th: In the event of a mixed court being created in Tangier, the French Government will take in benevolent consideration the ground upon which the American Government might base a request that one of the judges be of American nationality.

Be pleased [etc.]

JUSSERAND.

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*The Secretary of State to the French Ambassador*

DEPARTMENT OF STATE,  
Washington, October 12, 1916.

[See Annex LVII to French Memorial, p. 192.]

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*Annex No. 45*

ABANDONMENT OF NEGOTIATIONS CONCERNING THE  
SURRENDER OF UNITED STATES EXTRATERRITORIAL  
RIGHTS; RECOGNITION OF THE FRENCH PROTECTORATE

The Secretary of State to the French Ambassador, Jan. 2, 1917;  
The French Ambassador to the Secretary of State, Jan. 8, 1917;  
The Secretary of State to the French Ambassador, Jan. 15, 1917;  
The French Ambassador to the Secretary of State, Jan. 19, 1917;  
The Secretary of State to the French Ambassador, Oct. 20, 1917.

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*The Secretary of State to the French Ambassador*

DEPARTMENT OF STATE,  
Washington, January 2, 1917.

MY DEAR MR. AMBASSADOR: Referring to your notes of July 31, August 26, and October 3 last in regard to the recognition of the French Protectorate in Morocco, I have, as a result of careful consideration, reached the conclusion that, owing to the pressure of business before the Senate of the United States, which would have to approve any treaty entered into between our countries, and in view of your expressed desire that my Government take prompt action relative to the Moroccan situation, possibly the best mode of procedure to be adopted would be to consider separately the question of the recognition of the Protectorate and the question of our capitulatory and other rights in Morocco, as has been done, I understand, by all the European Powers in respect to their relations to Morocco. In order to advance the matter with all possible expedition, I am prepared to recognize in a formal note the French Protectorate in Morocco, and concurrently recommend that the item of salary for our Minister to Morocco in the Appropriation Bill now pending in Congress be changed to an item of salary for a Diplomatic Agent to that country. I am persuaded to make this proposal informally, as I am desirous, as far as possible, to meet the wishes of your Government and your people, to whom we are bound by a traditional and sincere friendship. If this proposal is agreeable to your Government and this step is accomplished, there would remain for further negotiation the question of our capitulatory and other rights in Morocco, which could be taken up in due time.

I shall be pleased, my dear Mr. Ambassador, to hear from you on this matter at your earliest convenience, since if any change such as

I have indicated is to be made in the Diplomatic Appropriation Bill, it is essential that it be made as soon as possible.

I am [etc.]

ROBERT LANSING.

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*The French Ambassador to the Secretary of State*

FRENCH EMBASSY,  
Washington, January 8, 1917.

[See Annex LXI to French Memorial, pp. 194-195.]

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*The Secretary of State to the French Ambassador*

DEPARTMENT OF STATE,  
Washington, January 15, 1917.

[See Annex LVIII to French Memorial, pp. 192-193.]

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*The French Ambassador to the Secretary of State*

FRENCH EMBASSY,  
Washington, January 19, 1917.

[See Annex LIX to French Memorial, pp. 193-194.]

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*The Secretary of State to the French Ambassador*

No. 1977

DEPARTMENT OF STATE,  
Washington, October 20, 1917.

EXCELLENCY: I have the honor to acknowledge the receipt of your note of January 19, referring to the Department's note of January 11 [15], recognizing the French Protectorate over the French Zone of Morocco, and requesting that this recognition be changed to a recognition of a French Protectorate over Morocco.

I have now the honor to inform you that the Government of the United States has concluded to recognize, and hereby formally recognizes (subject to my informal note of January 2, 1917, on this matter) the Protectorate of France over Morocco subject to the special rights and privileges of Spain in Morocco.

Accept [etc.]

ROBERT LANSING.

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## III.—THE DISPUTE PRIOR TO WORLD WAR II

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*Annex No. 46*DIPLOMATIC CORRESPONDENCE CONCERNING DISPUTES  
WITH RESPECT TO THE RIGHT TO EQUAL OPPORTUNITY TO  
PARTICIPATE IN THE CONSTRUCTION OF PUBLIC WORKS

- The Secretary of State to the Ambassador in France, Dec. 22, 1921 ;  
The French Minister of Foreign Affairs to the American Ambassador,  
Jan. 18, 1922 ;  
The Acting Secretary of State to the Chargé in France, Sept. 21, 1922,  
quoting the protest of the Diplomatic Body of June 12, 1922 ;  
The Ambassador in France to the Secretary of State, Oct. 17, 1922 ;  
The Ambassador in France to the Secretary of State, Nov. 3, 1922 ;  
The Secretary of State to the Ambassador in France, Nov. 3, 1922 ;  
The Acting Secretary of State to the Ambassador in France, Nov. 4, 1922 ;  
The Head of the League of Nations and Western Department of the  
British Foreign Office to the American First Secretary of Embassy  
in Great Britain, March 30, 1931 ;  
The American Diplomatic Agent at Tangier to the French Resident  
General, July 13, 1931.
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*The Secretary of State to the Ambassador in France (Herrick)*

No. 123

WASHINGTON, December 22, 1921.

SIR : You are requested to transmit to the Foreign Office the following note with regard to the Société internationale pour le Développement de Tanger :

I have the honor to inform you that my Government has been interested to learn from its Diplomatic Agent in Morocco, that consideration is being given to the question of the development of harbor facilities at the port of Tangier, but is concerned at the information that the Sheerifian Government apparently contemplates granting, according to a "Dahir" dated June 2, 1921, exclusive rights for the construction and operation of the harbor at Tangier to a company designated as "La Société internationale pour le Développement de Tanger".

Such proposal seems derogatory to the provisions of the Act of Algiers, which my Government desires firmly to uphold, as assuring to American nationals the right to participate, on terms of equality, with

the nationals of all Powers signatory to that Act, in all public enterprises in the Shereefian Empire.

My Government considers that the creation of efficient harbor services at the port of Tangier is a matter of general interest to the mercantile shipping activities of all maritime Powers, and it would expect that American capital and interests be afforded an opportunity to secure due representation in any scheme proposed for the building and operation of the future harbor at that port.

Finally, while it is not the intention of my Government to intervene in discussions of a purely and exclusively political import regarding the eventual governmental regime of the Tangier Zone, it desires to state that it would appreciate being kept informed of the course of all negotiations directly or indirectly bearing upon the construction, administration, and efficient operation of any projected harbor at Tangier.

I am [etc.]

For the Secretary of State :

HENRY P. FLETCHER.

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[Translation]

*The French Minister for Foreign Affairs (Poincaré) to the American Ambassador (Herrick)*

Mr. AMBASSADOR : By your letter No. 367 dated the 3d of this month, Your Excellency was good enough to write to my predecessor concerning the Dahir dated June 2, 1921, by which the Sultan of Morocco granted to the "Société internationale pour le Développement de Tanger" the concession of the harbor works in that city.

The Government of the United States seems to consider this grant as contrary to the provisions of the Act of Algeciras, which it firmly desires to uphold, since it assures to American nationals an equal right to participate with the nationals of all signatory powers to that act in all public enterprises in the Shereefian Empire. The Federal Government considers the creation of a port at Tangier as a matter of general interest to the activities of all maritime Powers and it expects that American capital and American interests will be represented in any plan proposed for the building of the future port.

Finally, while the American Government does not intend to intervene in discussions of a purely political character regarding the future régime of the Tangier zone, it asks to be kept informed of all negotiations directly or indirectly bearing on the construction and administration of the projected port.

I have the honor to inform Your Excellency that the concession of the port of Tangier was granted by His Shereefian Majesty to the "Société internationale pour le Développement de Tanger" pursuant to the provisions of treaties in force which permit the Moroccan Government freely to grant large public enterprises on condition that the grantee should put the construction and supplies up for public bids.

It is true that the concession grant of June 2, 1921, provided that the construction work of the port should not be opened to public bids. In effect, this arose from an arrangement concluded in 1914, a few days

prior to the war, between the Powers most directly interested in the matter and whose nationals had provided the capital of the "Société internationale pour le Développement de Tanger", that there should be no public bids for the work. I have the pleasure to inform Your Excellency, however, that steps have been taken to revoke the provision of the grant of concession of June 2 and that the construction work will be put up for bidding by the concessionaire. The nationals of all Powers (with the exception of Germans) will therefore be able to present themselves at the public bidding and compete on a footing of perfect equality.

I feel confident that this decision will afford pleasure and satisfaction to the American Government. Mr. White, United States delegate to the Allied Supreme Council, which met at the Ministry for Foreign Affairs on February 25, 1919, declared, in effect, in the name of his Government, that in signing the Act of Algeciras, the Government of the United States declared that its sole desire was to assure free access to the country (Morocco) of the commerce of all nations, to facilitate its development and to increase its civilization by maintaining friendly relations with Morocco. These remain to-day the only questions in which the United States interests itself in the Moroccan problem: "the open door and cordial relations with Morocco".

The foregoing explanations provide Your Excellency with the assurances that the régime of the open door remains in force in Morocco. I have heard from Marshal Lyautey of the cordial relations which exist in the Shereefian Empire between American citizens and the local authorities and I am happy to see that Mr. White's wishes and desires are fully realized in Morocco.

Please accept [etc.]

R. POINCARÉ.

Paris, January 18, 1922.

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*The Acting Secretary of State to the Chargé in France (Whitehouse)*

No. 432

WASHINGTON, September 21, 1922.

SIR: You will recall that on January 3, 1922, the Embassy transmitted to the French Minister for Foreign Affairs a note stating that this Government considered that the grant by the Shereefian Dahir of June 2, 1921, of the concession to construct and administer the harbor works of Tangier to the "Société internationale pour le Développement de Tanger" was made contrary to the provisions of the Act of Algeciras.

M. Poincaré, in his reply of January 18, stated that the concession for the port of Tangier was granted by the Shereefian Government pursuant to the provisions of treaties in force which were said to permit the Moroccan Government freely to grant large public enterprises on the condition that the grantee should put the construction and supplies up for public competition. M. Poincaré further stated that the terms of the Dahir of June 2, 1921, did not provide for such public competition, owing to the fact that the Powers most interested in the concession had decided, in 1914, that there should be no public competition for the work. M. Poincaré announced, however, that the terms of the concession would immediately be modified so as to provide for competition.

In conclusion, M. Poincaré quoted a statement by Mr. Henry White, on February 25, 1919, to the effect that the United States, in signing the Act of Algeciras, had declared that its sole desire was to assure free access to Morocco to the commerce of all nations, to facilitate its development and to increase its civilization by maintaining friendly relations with Morocco, and that in 1919 the only questions in which the United States was interested in Morocco were the "open door" and cordial relations with Morocco.

Upon the receipt of this note, this Government, although not in agreement with the position taken by M. Poincaré, especially with regard to the alleged right of the Shereefian Government freely to grant concessions in Tangier under the terms of the treaties in force, decided to await further developments in regard to the port concession.

These developments have been such, however, that this Government deems it necessary again formally to make plain to the French Government its views on the subject of the port concession, and the procedure by which it has been granted. As you are aware, the Secretary of State verbally explained to the French Ambassador at this capital, during a conversation of July 10, 1922, the attitude of the United States in this matter. As intimated by the statement of Mr. White, which was quoted by M. Poincaré, the preservation of the "open door", which is guaranteed to American and other foreign interests by the Act of Algeciras, is the chief concern of this country in Morocco as well as in other parts of the world where the "open door" principle has been established by international agreements or understandings.

The following statement of the attitude of the United States towards Moroccan affairs, made in the Department's note of February 13, 1914, to the French Ambassador at Washington, sets forth, even more clearly than does Mr. White's statement, the policy of this Government:

"As the main purpose of the United States in participating in the Algeciras Conference and in the adoption of the Act resulting therefrom was to preserve and increase its commerce in Morocco, this Government desires equal opportunities for American commercial interests not only to maintain their present standing in Morocco but also to share in the country's commercial development."

The original project for an international company to develop the port of Tangier, and the procedure contemplated for putting it into effect, were first brought to this Government's attention by a despatch, dated May 23, 1914, from the American Chargé d'Affaires at Tangier, as follows:

"A Commission of four technical delegates, designated respectively by the Governments of France, Spain, Germany and Great Britain, as the Powers principally interested, are to meet in Paris at the end of this month to examine the plans of the port drawn up by the Engineer in Chief of the Department of Public Works of Morocco. The 'Cahier des Charges' relating to the adjudication of the contract for the works of the port, will simultaneously be submitted to the approval of this same Technical Commission. Following this, a report will be made by each of the technical delegates to their respective governments, and in the event of acceptance, the project will then be submitted for formal approval on the part of the Diplomatic Body

in Tangier. Upon the final adoption of the project, the Sultan will issue a 'Dahir' granting the concession of the port to an International Company which has been formed for the purpose of financing the works and administering the harbor. The capital of this company has been raised in the following proportions: 30% by France, 20% by Great Britain, Spain and Germany respectively, and 10% open to contribution on the part of the other Powers. Italy, Belgium and Holland, I understand, have already taken up about 2% each.

"As soon as the formalities, above noted, have been completed, the contract for the construction of the port will be put up for international tender, in accordance with the provisions of the Act of Algeciras."

Attention is especially called to the procedure contemplating submission of the project to the Diplomatic Body at Tangier before the issuance of a Shereefian Dahir granting the concession. Such procedure was in accordance with the Act of Algeciras, and consequently this Government, at that time, foresaw no objection to it. The project of 1914, however, was never realized, owing to the outbreak of the war.

It should be remembered that the United States has not been a party to any agreement modifying its rights in Tangier, under the Act of Algeciras, since 1914.

It was therefore with astonishment that this Government learned that on June 2, 1921, without previous notice to the Diplomatic Body, the Shereefian Government had granted the port concession to the so-called international company, which had been revived in 1921, with 53% of the shares under the virtual direction of France. The submission of the project to the Diplomatic Body in Tangier, required by the Act of Algeciras, and contemplated in 1914 as a matter of course, was omitted. The American Diplomatic Agent at Tangier did not receive a copy of the Shereefian Dahir of June 2, 1921, indeed, until he had specifically requested it.

This disregard of the provisions of the Act of Algeciras was brought to the attention of the French Government by your note of January 3, with the result mentioned above.

On June 8, 1922, the General Commission on Contracts at Tangier, composed of two Shereefian Delegates, two Delegates of the Diplomatic Corps and one Administrative Delegate, met, having been hurriedly and without previous notice called together to receive a communication from the engineer technical adviser of the Shereefian Government concerning the technical project of the construction of the port at Tangier, and concerning the date for the adjudication of the work.

The Secretary of the American Diplomatic Agency, who is one of the two Delegates on this Commission from the Diplomatic Corps, stated at this meeting that the United States Government deemed the port concession in itself to be derogatory to the Act of Algeciras, that the French Government had been so informed, and that consequently he did not consider it proper to participate in any discussion in regard to the execution of the port concession. He therefore requested an adjournment until the matter could be discussed with his Government and until he could receive his Government's instructions.

His request being concurred in by his Italian Colleague, the Commission agreed that another meeting should be called on June 22 to

give an opportunity for the Diplomatic Corps to arrive at a decision in the premises.

In spite of this action of the Commission, the Sultan's representative, who is chairman, on June 12, caused to be published and transmitted to the Diplomatic Corps a printed notice, signed by himself, that the adjudication of the contract for the port works would take place on November 9, 1922.

A meeting of the Diplomatic Corps at Tangier was immediately held, attended by all its members with the exception of the Agent of France. A communication, of which a translation follows, was addressed to the President of the Commission of Adjudications, upon the unanimous resolution of the meeting :

"I have the honor to inform you that the Diplomatic Corps, with the exception of the Diplomatic Agent of France, assembled on June 12th under my presidency, has heard its delegates on the General Commission on Adjudications and Contracts. From the report presented by them it results that at the meeting of said commission held on June 8th, no resolution was passed concerning the adjudication of the works for the construction of a port at Tangier. On the contrary, the commission decided to hold a new meeting on June 22nd next, at which the delegates of the Diplomatic Corps would make their eventual observations.

"Under these conditions, my colleagues have instructed me to express to you their astonishment at receiving a notice, published in the name of the commission, and fixing for the ninth November next the adjudication of the works in question.

"Setting aside all questions of principle relating to the granting of the concession, and without desiring to insist upon the lack of deference toward the Diplomatic Corps which the procedure might signify, my colleagues have requested me to make a formal protest against the publication of the above mentioned notice, the validity of which they do not recognize.

"They have informed their respective governments in this sense and they suggest to Your Excellency that it would be opportune to have this notice of adjudication withdrawn in view of the regrettable consequences it might be susceptible of entailing to private interests."

On June 23, the American Diplomatic Agent at Tangier addressed a note, a copy of which is transmitted herewith, to the Sultan's representative at Tangier, stating that this Government considers the procedure adopted by the Shereefian Government in connection with the port concession to be a violation of the Act of Algeciras, with regard to public contracts and concessions. A copy of the reply of the Sultan's representative, dated July 6, is transmitted herewith.

It will be observed that the most important feature of this reply has to do with the Franco-German treaty of 1911, which, it is stated, "entirely relieved the Shereefian Government of the obligation to have recourse to adjudication for the granting of concessions". The reply further states that "the Government of the United States has adhered to the Protectorate Treaty of 1912, which implies recognition of principles contained in the aforementioned Treaty". These statements appear to be in line with that concerning treaties in force made by M. Poincaré in his note of January 18.

This Government has repeatedly pointed out to the French Government, both formally and informally, that it has never adhered to the protectorate Treaty of 1912.

The recognition of the French Protectorate in the French Zone of Morocco by this Government in its note of January 15, 1917, to the French Ambassador at this capital, did not constitute an adhesion to the Franco-Moroccan Treaty of March 30, 1912, nor did this Government, by this or any other act, adhere to the Franco-German agreement of February 4, 1911, which preceded the treaty of protectorate. On the contrary, this Government, in a note of December 15, 1911, informed the French Ambassador that its adhesion to the Franco-German Agreement "would involve a modification of our existing treaty rights with Morocco, which, under our Constitution, could only be done by and with the advice and consent of the United States Senate".

Consequently, the rights of the United States under the Act of Algeciras, with regard to concessions for public works in Tangier, remain unimpaired by any subsequent special agreements to which this Government is not a party.

Without answering in detail the specific arguments advanced by the Sultan's representative in his note of July 6, it is pointed out that the regulations drawn up under the Act of Algeciras to provide for the award of contracts for public works obviously contemplate the application of the principle of the public award, after competition, of all contracts or concessions for public works, whether such works are to be paid for out of the Special Fund or otherwise. In place of the Special Commission, to which must be submitted contracts for work to be paid for out of the Special Fund, there is established, under the regulations for the awarding of contracts in general, a Special Commission called the General Commission on Contracts. On this Commission, the Diplomatic Body is represented by two delegates, and provision is made for the reference to the whole Diplomatic Body of any objections raised by these delegates. The preamble and pertinent articles of these regulations for the award of contracts in general are quoted below:

"In view of the General Act of Algeciras, and particularly Article 61, providing that part of the receipts from the tax to be levied on city buildings shall be devoted to the needs of municipal roads and hygiene and in general to the expenses of improvement and keeping up of cities; Article 74, relating to the letting out of the tobacco, opium, and kief monopolies; and Articles 105 to 109 inclusive, relating to public services, supplies, and works; and considering that, according to Article 110, it is necessary to determine the formalities and general conditions to which the awarding of contracts in the Empire shall be subject, the following regulations have been prepared in accordance with the agreement reached between the Sherifian Delegation and the Diplomatic Corps:

#### ARTICLE I

"The public works executed in the cases provided for in Articles 61, 74 and 105 to 109 inclusive of the General Act of Algeciras shall be declared to be of public utility on a request being made to the Makhzen,

accompanied by plans in its support, by the Commission provided for in Article 4 below.

#### ARTICLE 2 [3]

"All awards and contracts for work, supplies, and transportation mentioned in the cases contemplated in Article 1 shall be subject to the rules contained in the regulations on awarding of contracts for work to be paid for out of the Special Fund, as modified in the ensuing articles....

#### ARTICLE 4

"In place of the Special Committee organized in accordance with Article 1 of the regulations on the awarding of contracts for work to be paid for out of the Special Fund, there shall be a Sherifian Commission called the General Commission on Contracts, composed as follows :

"Two Sherifian Delegates, two Delegates of the Diplomatic Corps, and one Delegate from the administrative department concerned.

"At the request of one of its members, this Commission shall have attached to it a technical expert to be chosen by it and who shall have a consulting voice. He shall perform the duties prescribed for the engineer in the aforementioned regulations....

"In case the delegates of the Diplomatic Corps should consider that the adoption of a proposition would constitute a violation of the provisions of the General Act of Algeciras, they shall make their objection in the form of a written declaration. Before taking a vote, the president of the Commission shall submit the question thus raised to the Diplomatic Corps, which shall give its opinion regarding the validity of the objection within a period not to exceed 15 days.

#### ARTICLE 5

"When it is necessary to call for bids or conclude direct bargains regarding the matters referred to in Article 1, the Makhzen shall notify the General Commission, which shall have the interested administrative department prepare plans and specifications and submit them to the approval of the Makhzen.

"These documents shall contain the general provisions relating to the job, and specially :....

"Besides these general conditions, special conditions regarding bargains for supplies, monopolies, and transportation may be inserted in the specifications, but without contravening the rule laid down in Article 109 of the Act of Algeciras ....

#### ARTICLE 8

"In case of the awarding of monopolies or supply contracts, the award shall be made to the highest bidder, or to the one asking the lowest price per unit fixed in the specifications, or to the one making the greatest reduction, or asking the lowest price for the whole supply."

Notwithstanding the express provisions, especially Article 4, of these regulations, the port concession itself was apparently never submitted to the Commission, and the notice of adjudication was issued irrespective of the protest of the Diplomatic members of the Commission. Thus there appears to have been a double violation of the letter



of regulations drawn up under the Act of Algeciras, and also a violation of the spirit of that Act.

This Government is unable to reconcile the above enumerated actions of the Shereefian authorities with the final paragraph of M. Poincaré's note of January 18, in which he assures this Government that the régime of the "open door" remains in force in Morocco. The manner in which the port concession has been handled gives this Government cause for grave apprehension lest it be the purpose of the Shereefian Government with the encouragement and support of the French Government to disregard the express provisions of the Act of Algeciras in future cases which may arise affecting American interests in Morocco.

This Government is further firmly of the opinion that the granting of an exclusive port concession at Tangier to a company a majority of whose shares are controlled by one nation, taken in conjunction with the fact that this company is granted administrative control of the port for ninety-nine (99) years, is a violation of the principle of the "open door" established by the Act of Algeciras.

The United States Government, as a signatory of the Act of Algeciras, is unable, under the Constitution of the United States, to view with equanimity violations of that Act and, hence, has no other course open to it than to communicate with other signatory Powers with a view to taking common counsel regarding action that may be taken for the protection of the principle of the "open door" and of the rights of the United States.

You may hand a copy of this instruction, together with its enclosures, to M. Poincaré, with the request that he make known to you at the earliest practicable moment the policy of the French Government with respect to the questions herein raised.

I am [etc.]

WILLIAM PHILLIPS.

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*The Ambassador in France (Herrick) to the Secretary of State*

PARIS, October 17, 1922—6 p.m.

[Received 7:28 p.m.]

406. Have just seen the Spanish Ambassador who handed me a copy of the note which he is going to present to the French Government in regard to the Tangier port concession. He told me British Ambassador was going to hand in a practically identic note. He knew that Whitehouse had already handed in to the Foreign Office a copy of your instructions on this matter but requested me to ask you whether you would be willing to make a further brief additional communication to Foreign Office stating that our Government associated itself with the British and Spanish protests.

He did not seem very optimistic as to the results of our protests and considered that his Government had during the lengthy negotiations lost sight of the main point which was the question of principle and was only now coming back to it.

His new protest is on similar lines to ours. A copy and translation of the Spanish note will be forwarded by the next pouch and a copy of the British note as soon as I receive it.

HERRICK.

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*The Ambassador in France (Herrick) to the Secretary of State*

PARIS, November 3, 1922—3 p.m.

[Received 8 : 10 p.m.]

445. Department's instruction number 432, September 21st, 1922. I am now in receipt of a note from the Foreign Office in answer to Department's instruction above referred to, copy of which is transmitted in to-day's pouch.

In view of the fact that adjudication of the contract for Tangier port works takes place on November 9th it would appear advisable to telegraph a summary of certain portions of this note which is as follows :

Reference is made to article 6 of the Franco-German agreement of 1911 which rendered possible the protectorate treaty which states that the Sultan shall freely choose a concessionaire of important public works. Said provisions have been applied for eleven years in Morocco without protest. The protest of the United States Government against the exercise of his rights by the Sultan to grant a concession for the port of Tangier without authorization of diplomatic corps causes surprise to the French Government which quotes two concessions granted in 1920 without protest (see report number 11, August 15, 1921, of diplomatic agent at Tangier (?) enclosure of Department's instruction to me number 193 February 15, 1922). Reference is also made to the percentages comprising the capital of the Société internationale stating that the Moroccan Government has requested that the German and Austro-German shares be wholly reserved to French and Moroccan capital which request "appears too fair to be refused" and which is strictly in accordance with the provisions of the Treaty of Versailles relative to German relinquishment of the rights in Morocco. In conclusion the French Government expects that the American Legation in Morocco will be instructed to cease its opposition to the concession of the port of Tangier.

HERRICK.

*The Secretary of State to the Ambassador in France (Herrick)*

WASHINGTON, November 3, 1922—5 p.m.

357. Tangier port concession.

Spanish Embassy here states that French Government has informed Spanish Embassy, Paris, that it is unable, or unwilling, to influence Sultan of Morocco to amend plans for adjudication of contract on November 9.

If you receive similar reply from French Government to your representations, please reply immediately, calling attention to this Government's representations, and stating that the United States formally reserves all its rights in the premises.

HUGHES.

*The Acting Secretary of State to the Ambassador in France (Herrick)*

WASHINGTON, November 4, 1922—7 p.m.

361. Your 445, November 3, 3 p.m.

Please reply to French Government in sense of final paragraph of Department's 357, November 3, 5 p.m. You may add that, as this Government is unable to accept the French thesis in regard to the legality of the granting of the port concession, it obviously cannot issue the instructions to the American Agent in Tangier requested by the French note.

PHILLIPS.

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*The Head of the League of Nations and Western Department of the British Foreign Office (Smith) to the American First Secretary of Embassy in Great Britain (Cox)*

No. W3334/24/28

[LONDON,] 30 March, 1931.

MY DEAR COX: I was on the point of writing to Atherton again on the subject of the electric light concession at Tangier when I received your private and confidential letter of March 21st, for which very many thanks.

The majority of the Committee of Control have, our Consul-General at Tangier has reported, proved to be in favour of insistence upon public tender. The French member, however, at an animated meeting of the Committee on February 23rd, refused to accept a proposal put forward by his Italian colleague. The latter suggested that the Committee should declare themselves ready to maintain their conciliatory attitude regarding this particular concession subject to the prior adoption of a motion that "in conformity with treaty stipulations, concessions cannot be accorded to [*in*] Tangier except as a result of adjudication". Monsieur de Witasse would give no reasons for his refusal to accept this suggestion; but, somewhat unexpectedly, proposed an alternative motion which, after some discussion, was ultimately adopted by all present, in the following terms:—

"Le Comité de Contrôle, dont la majorité a exprimé l'avis que, aux termes des traités, les concessions à Tanger doivent nécessairement faire l'objet d'une adjudication publique, accepte néanmoins d'examiner la concession d'électricité sans que sa décision puisse être invoquée à un titre quelconque comme constituant un précédent."

We have examined this formula and have come to the conclusion that it is satisfactory to His Majesty's Government in so far as the concession at issue is concerned. The Secretary of State still thinks, however, that it is most important that the United States Government should if possible be associated with the acceptance of the formula. Mr. Gurney is, accordingly, being instructed to endeavour to secure that effect is given to your suggestion.

Yours sincerely,

C. HOWARD SMITH.

*The American Diplomatic Agent and Consul General at Tangier (Blake)  
to the French Resident General in Morocco (Saint)*

TANGIER, July 13, 1931.

MR. RESIDENT GENERAL: I have the honor to acknowledge the receipt of Your Excellency's Notes, No. 224-D of July 3rd, 1931, and No. 231-D of July 8th, 1931, setting forth the conditions which have led the Tangier Administration to consider, as an exceptional derogation from the principle involved, the expediency of permitting the grant of an Electric Light and Power Concession in Tangier, without appeal to international competition or observance of the procedure of public adjudication.

Your Excellency informs me that the Tangier Administration is desirous to have its views and action in the matter brought to my attention and expresses the hope that, in the special circumstances, the Government of the United States will consent to withdraw the opposition which it had formulated in the premises.

If Your Excellency will be good enough to address to me in the customary form, on behalf of the Shereefian Government, a request in the above sense, I shall immediately telegraph the proposal to my Government with my recommendation for favorable action.

Please accept [etc.]

MAXWELL BLAKE.

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*Annex No. 47*

DIPLOMATIC CORRESPONDENCE CONCERNING DISPUTES  
WITH RESPECT TO THE RIGHT OF FREEDOM OF TRADE

The Acting Secretary of State to the Chargé in France, Aug. 6, 1929;  
The American Diplomatic Agent at Tangier to the French Resident  
General, Feb. 8, 1933;

The French Resident General to the American Diplomatic Agent at  
Tangier, March 8, 1933;

The American Diplomatic Agent at Tangier to the French Resident  
General, March 14, 1933;

The Secretary of State to the Ambassador in France, Dec. 18, 1934;

The Ambassador in France to the Secretary of State, Dec. 18, 1934;

The Secretary of State to the Ambassador in France, March 16, 1935;

The French Ministry for Foreign Affairs to the American Embassy,  
May 6, 1935;

The Department of State to the British Embassy, April 27, 1936.

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No. 4192.

Norman Armour, Esquire,  
American Chargé d'Affaires ad interim,  
Paris.

August 6, 1929.

Sir :

The Department refers to despatch No. 401, dated June 7, 1929, from the American Diplomatic Agent and Consul General at Tangier, concerning the Shereefian Dahir of June 6, 1929, prohibiting the importation of foreign wheat and flour into the French Zone of Morocco. A copy of this despatch was forwarded to the Embassy from Tangier, as well as a copy of despatch No. 405 of June 13, 1929, upon the same subject.

The Department concurs fully in the observations of Mr. Blake as to the threat to the maintenance of the freedom of international trade in the Shereefian Empire which this action constitutes. It is apparent that the Dahir was issued at the behest of the French Government, and the Department desires that you promptly present the following note to the French Minister for Foreign Affairs :

"I have the honor, under instructions from the Government of the United States, to invite the attention of Your Excellency to the Dahir of the Shereefian Government issued and effective June 6, 1929, which purports to prohibit the importation into the French Zone of Morocco of wheat, flour and semolina, excepting wheat originating in the Spanish and Tangier Zones and flour and semolina manufactured in those Zones from native wheat.

Although formal notification to the American Diplomatic Agent at Tangier, customary in the case of such Dahirs, appears to have been overlooked, Mr. Blake did not fail promptly by note dated June 6, addressed to the Resident General of France at Rabat, in his capacity as *Minister for Foreign Affairs of His Shereefian Majesty*, to register formal protest against the action of the Shereefian Government. The Government of the United States is in accord with the action taken in the premises by its representative in Morocco and feels constrained to indicate to the French Government its apprehension at this latest disregard of the régime of the open door in Morocco, which is secured by numerous treaties and particularly by the Act of Algeciras, and which, as Your Excellency is aware, my Government has consistently and steadfastly upheld.

The Act of Algeciras in its provision for economic liberty without any inequality reaffirmed a régime which had received earlier recognition. Under the Convention of Commerce and Navigation between Great Britain and Morocco in 1856, freedom of commerce was provided for and the Sultan of Morocco engaged to abolish all prohibitions on imported goods, excepting only certain specified commodities which do not include any of those whose importation the Dahir of June 6 attempts to prohibit. The Act of Algeciras by Article 123 specifically provided that all treaties, conventions and arrangements of the Signatory Powers with Morocco remain in force.

With its interest in the preservation and development, on the basis of existing treaties, of its commerce in Morocco, the Govern-

ment of the United States cannot view with equanimity this present illegal departure from the régime of freedom of commerce in Morocco, a departure which strikes at the foundation of American trade in the Shereefian Empire and is not in harmony with the expressed attachment of Your Excellency's Government to the principle of commercial liberty in Morocco."

You are requested, after presenting this note, to seek an opportunity to discuss its contents with the Minister for Foreign Affairs and to obtain some indication of what action the French Government contemplates taking in the premises. You will telegraphically report presentation of the note, and will, of course, keep the Department fully and promptly informed of all developments.

I am, Sir,

Your obedient servant,

J. P. COTTON,  
Acting Secretary of State.

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*The American Diplomatic Agent and Consul General at Tangier  
(Blake) to the French Resident General in Morocco (Saint)*

TANGIER, February 8, 1933.

Mr. RESIDENT GENERAL: I have the honor to inform Your Excellency that my attention has been drawn to the publication in the local press and in the *Bulletin officiel* of the French Protectorate, of a Dahir dated January 30, 1933, which purports to institute "Compensation Taxes" upon certain products and merchandise imported into the French Zone of Morocco, in addition to the Customs duties as defined by the treaties.

The terms of this Dahir appear to be in direct violation of specific provisions of the Act of Algeciras and of anterior treaties confirmed thereby, and I therefore have no option but to register my formal protest in regard thereto, and to make the fullest reservations for the protection of the interests of American nationals and *ressortissants*, which may be affected by any attempt to apply to them the provisions of the Dahir referred to.

Whatever justification the Protectorate Government may desire to advance in reference to measures for the prevention of dumping, it is obvious that no legislation for this purpose can be applied to American nationals or protégés in Morocco, unless and until such regulations shall have received the formal assent of the Government of the United States of America, as signatory of the Act of Algeciras.

Please accept [etc.]

MAXWELL BLAKE.

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*The French Resident General in Morocco (Saint) to the American  
Diplomatic Agent and Consul General at Tangier (Blake)*

[Translation]

No. 75-D

RABAT, March 8, 1933.

Mr. DIPLOMATIC AGENT: By letter dated February 8th last, you have been good enough to communicate to me your observations on the subject of the Dahir of January 30, 1933, instituting the compensatory taxes.

I have the honor to inform you that the dispositions of this Dahir are applicable only to merchandise originating or shipped from countries which do not enjoy in the Shereefian Empire the benefit of the most-favored-nation clause, and imported into Morocco at prices manifestly inferior to normal cost prices.

This, moreover, is specified in the Vizirial Decree of February 20, 1933, published in the *Official Bulletin* of the 24th of that month, the text of which you will find enclosed herewith.

Please accept [etc.]

LUCIEN SAINT.

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*The American Diplomatic Agent and Consul General at Tangier  
(Blake) to the French Resident General in Morocco (Saint)*

TANGIER, March 14, 1933.

Mr. RESIDENT GENERAL: I have the honor to acknowledge the receipt of Your Excellency's Note No. 75-D of March 8, 1933, on the subject of my protest and reservations concerning the Dahir of January 30, 1933, which purports to institute compensatory taxes on certain imported merchandise, in conflict with the provisions of the Act of Algenciras and of the treaties confirmed in that Act.

With respect to Your Excellency's remarks on the Vizirial Decree of February 20, 1933, issued in virtue of the Dahir in question, I would observe, firstly that equal freedom of trade with Morocco is assured by the Act of Algenciras for all nations, and secondly that the Act of Algenciras itself provides for the treatment in the Customs of merchandise which it is attempted to clear at prices manifestly below normal values.

Moreover, the Dahir and the Vizirial Decree referred to violate, even in regard to the Powers signatory of the Act of Algenciras, treaty provisions which give their nationals in Morocco the right to import goods or produce from any country, without the imposition on such goods, of duties or taxation in excess of those imposed on similar products of any other origin.

In these conditions it is obvious that the terms of the Vizirial Decree do not in any manner modify the objectionable character of the legislation impugned in my representations of February 8, 1933, and I have no option but to reiterate the protest and to confirm the reservations set forth in my communication of that date.

In conclusion I would advise Your Excellency that I am now transmitting to my Government, for its complete information, copies of the correspondence exchanged between us in this connection.

Please accept [etc.]

MAXWELL BLAKE.

*The Secretary of State to the Ambassador in France (Straus)*

No. 669

[WASHINGTON,] December 18, 1934.

SIR: You are requested to confer with the Ministry for Foreign Affairs and state that this Government views with serious concern the threat to economic equality in Morocco as a result of certain administrative measures relating to customs already made effective by the Protectorate authorities and through the proposed establishment of a new customs regime which, as reported by the American Diplomatic Agent at Tangier, following a conference at Rabat with M. Ponsot, would involve a system of quotas as well as complete modification of clauses of the Act of Algeciras regarding assessment of dutiable values.

In regard to the administrative measures already in effect you may state that this Government has been apprised by its representatives in Morocco of an apparent persistent policy of the Protectorate Government, pursued during a considerable period, to break down through discriminatory dahirs and other measures international economic and commercial liberty in Morocco in favor of French trade, in violation of the Act of Algeciras and of the treaties. A long list of complaints based on treatment derogatory to American interests, many of which have been filed with the Protectorate authorities, could be cited. At the important port of Casablanca, for instance, it may be pointed out, a customs regime has been in force for some time under which arbitrary assessments of the duties on imports have been placed on value far in excess of the real value of the merchandise, increases running as high as 200 to 300 per cent.

With respect to the new proposals as enunciated by M. Ponsot, you may say to the French that this Government believes that quota systems are inherently discriminatory and that the establishment of such a system in Morocco would not only strike at the heart of the principle of commercial equality as guaranteed in the treaties and conventions regarding Morocco, but it would constitute the establishment of new trade barriers against nations at the very moment when the nations are seeking to formulate policies which are calculated to remove excessive restrictions with the view of encouraging the fullest volume of mutually profitable trade.

You may in your discretion state further that, as we interpret the situation, if a modification of the customs regime should become necessary in the interest of Morocco, a possible solution would be a reasonable increase in customs duties, uniform, void of discrimination in their application and agreed to by all the powers signatory to the Act of Algeciras, which for twenty-eight years has been generally regarded as the basis of an economic regime, the cornerstone of which has been economic equality of all nations. Furthermore, you should call to the attention of the French that in the declarations, treaties and conventions relating to the establishment and administration of the French Protectorate, the principle of "commercial equality" is asserted and reiterated over and over again by the French Government. For example, in the Franco-British accord of 1904, it is asserted in Article 4 that the two governments being equally attached to the principle of commercial liberty declare they will not countenance any inequality either in imposition of customs duties or other taxes, and in the secret



articles of the same date which, among other things, recognized the Spanish sphere of influence, it was stipulated that Article 4, cited above, regarding commercial liberty, should remain intact, even though force of circumstances compel France and Great Britain to modify their policy in respect to Morocco and Egypt. At the International Conference of Algeciras, which was called in 1906 for the purpose of defining the position of the powers in Morocco, the plenipotentiaries of twelve nations, including the United States, placed in the preamble to the Act of Algeciras the assertion of "economic liberty without any inequality".

In the Franco-German convention of 1911, which actually paved the way for the establishment of the French Protectorate in Morocco, Germany receiving concessions in the Congo, France declared she was firmly attached to the principle of commercial liberty, and would not countenance inequality either in the establishment of customs duties, imports and other taxes, and would use its good offices with the Moroccan Government in order to prevent differential treatment between the citizens of the different powers, and would especially oppose any step which might reduce the merchandise of a power to a state of inferiority. In the treaty between France and Spain of 1912, which formally recognized on the part of France the Spanish zone of influence in Morocco, Article I provides that the proposed reforms shall be in conformity with the Franco-British accord of 1904, and with the Franco-German agreement of 1911, both of which, as indicated heretofore, recognized and asserted the principle of commercial liberty in the Shereefian Empire.

You should state that this Government finds it difficult to follow the argument advanced by M. Ponsot to the effect that the expiration of the Franco-British accord of 1904 would mark the extinction of commercial liberty for the nations in Morocco. The various declarations of France, enumerated in part above, asserting the principle of commercial liberty, refute this theory. (Furthermore, if M. Ponsot's thesis is deemed to be correct, then it might be argued that France's present preferred position in Morocco is extinguished, for it was through the Franco-British accord that French influence was established in that country.)

In this connection, for background purposes, you are advised that on October 5, 1934, M. Ponsot addressed a note to Ambassador Laboulaye, a copy of which, in translation, is enclosed, in which the French proposals regarding Morocco were outlined in brief as follows :

- (1) It is proposed to establish a new regime on January 1, 1935, the date of the expiration of the Franco-British accord of 1904.
- (2) Negotiations have been conducted with the British, contemplating tariff reciprocity through the establishment of quotas.
- (3) Under the new regime France would exchange commercial guaranties with the United States for the surrender of capitulatory rights by this country, and a system designed to bring about a balance of trade between the United States and Morocco would be provided.
- (4) France would guarantee to the United States (a) a regime of most favored nation ; (b) a consideration of requests for minimum rather than maximum duties ; (c) a quota based on certain years on automobiles and tires imported from the United States.

For your further information, both the Netherlands and Italian Governments have indicated to this Government informally their opposition to the French proposals. The British position is not clear, although it

would appear that they have reached a tentative agreement with France with respect to the establishment of a quota regime.

In conclusion, I feel that in order to make the position of this Government clear and a matter of official record, you should advise the French that this Government is firmly attached to the principle of the "open door" in Morocco and elsewhere, and that it cannot believe that the French Government seriously contemplates giving official sanction to measures already instituted by the Protectorate authorities which are discriminatory and not in harmony with the treaties, or that it contemplates establishing in Morocco an economic regime of the character proposed.

Please cable brief summary of the reaction of the competent French officials as revealed in your conversations and send complete report by early pouch.

Very truly yours,

For the Secretary of State :  
WILLIAM PHILLIPS.

*The Ambassador in France (Straus) to the Secretary of State*

PARIS, December 18, 1934—3 p.m.

[Received December 18—1 : 55 p.m.]

943. Reference your 500, December 17, 6 p.m. Saw Leger who assures me that France has no desire to promulgate new customs regulations in Morocco in violation of conventions and treaties. He tells me that because of distressed industrial conditions in Morocco some modification of present regime must be sought, that negotiations are now in satisfactory progress with Great Britain and Spain and that subsequently negotiations with us will be sought.

Leger expressed the opinion that the present government would last a considerable time possibly until the 1936 elections.

STRAUS.

*The Secretary of State to the Ambassador in France (Straus)*

WASHINGTON, March 16, 1935—3 p.m.

92. Your despatch 1645, February 19, and your telegram 171, March 1, 1 p.m. Department has given careful consideration to the observations of the French representatives as outlined therein and can see no valid reason for changing its decision as set forth in Department's 61, February 19, 7 p.m.

In connection with the indications you reported that whether or not we assent to the proposals, the French Government is determined to put the reforms into effect, we feel that we should reiterate our position as stated in second paragraph of Department's 47, February 9, 3 p.m., as follows: This Government strongly believes that it is obligatory that the parties to the Act of Algeciras should not only be consulted but that

each Power should acquiesce before any changes are made in the customs regime in Morocco.

In order that there may be no misunderstanding, since the discussions in Paris have been informal, we feel that the time has come to lodge with the Ministry for Foreign Affairs this Government's formal protest against the establishment of the proposed system on the following grounds: (1) The system involving quotas would prove to be discriminatory and, therefore, definitely out of harmony with the principle of commercial equality as guaranteed in the Act of Algeciras and by the French in various treaties and declarations which constitute the foundation of the French Administration of Morocco. (2) The establishment of such a system would be particularly unfortunate at this time when efforts are being made to increase world trade by the removal of trade barriers. (3) From the point of view of this Government the essence of the Moroccan question is the maintenance of the "Open Door" which would preclude our assenting to any proposals inconsistent therewith.

For your information despite Coursier's assertion that we are "the only country adopting other than a utilitarian view of the matter" we understand that the Netherlands and Belgium are opposed and that Spain is reluctant to accept.

If you should deem it inadvisable to lodge this formal protest at this time, please telegraph statement of your reasons therefor.

HULL.

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*The French Ministry for Foreign Affairs to the American Embassy in France*

[Translation]

PARIS, May 6, 1935.

The Embassy of the United States apprised the Ministry for Foreign Affairs, by note of April 6, that the unofficial exchanges of views which have taken place since January 14, between the representatives of the Embassy and the French officials, concerning the methods of application of the economic reform envisaged in Morocco, have permitted the Federal Government to examine exhaustively the project of the French Government. Following this examination the American Government felt called upon to protest against the principle of the reform, taking as a basis the following considerations:

The quota system envisaged would be discriminatory and for this reason would strike at the principle of economic equality in Morocco as guaranteed by the Act of Algeciras. Contrary to the principles of the open door, it would, moreover, be particularly inopportune at a moment when efforts should be made to remove obstacles to commerce.

The project of customs reform would be a further blow to the policy of the open door, to which the American Government adheres. The project should not, in its estimation, be put into effect without the consent of all Powers signatory to the Act of Algeciras.

The arguments invoked by the Federal Government to justify its viewpoint have been the object of careful study on the part of the French Government which feels itself constrained to submit, in opposition, the following observations:

The contemplated quota system affects in no way the principle of commercial equality since it would be applied indiscriminately to all merchandise coming from foreign countries, including France, and since the quotas would be allocated in accordance with basic years which would be the same for all countries, including France.

Far from striking at the policy of the open door, the quota system, as envisaged by the Government of the Protectorate, is expressly designed to avoid that, in practice, Morocco should shortly be closed to all foreign importations except those coming from countries which resort to a policy of "dumping". It would be paradoxical if, following the letter rather than the spirit of the Act of Algeciras, countries which have a normal commercial policy should come to deprive themselves of a market which, by definition, ought to be open to all. Is it necessary to recall, in this connection, that the reform envisaged would result in consolidating 52 % of the American trade with Morocco and in placing the United States in a position substantially equal to that of England and the Protective Power ?

To answer all the observations of the Government of the United States on this subject, it must be added that the establishment of a quota system in Morocco constitutes an essentially provisional measure which might be discarded when the imperative reason which motivates it shall have disappeared.

So far as the customs reform is concerned, the French Government desires to state that it cannot admit either in principle or in fact the thesis of the Federal Government according to which the tariff régime in Morocco might not be modified without the consent of the Powers signatory to the Act of Algeciras.

Legally, the Shereefian Government is bound, in so far as modifications to the customs tariff are concerned, only by the tariff clauses existing in treaties concluded by it with foreign Powers. The treaties in force with Great Britain and Spain are the only ones containing clauses of this sort. In this regard, therefore, the United States can only claim most-favored-nation treatment which the Government of the Protectorate has always extended to it.

In fact, the tariff augmentation envisaged being indispensable to the maintenance of the commercial equilibrium of the Protectorate, it is just and equitable that the Powers which, like the United States, have greatly benefited from the development of the purchasing power of the Moroccan market and from the reforms introduced in the French Zone by the Protective Power, should not block measures which are designed to furnish the Moroccan budget with the revenues necessary to the maintenance and the development of a plant without which foreign commerce could not expand.

The Ministry for Foreign Affairs has already made known to the Embassy of the United States, by note of January 14, the reasons why the French Government was unable to accept the interpretation given to Article 123 of the Act of Algeciras by the American Diplomatic Agent at Tangier. It seizes the present opportunity to recall that, no more than did the Madrid Convention of 1880, has the afore-mentioned Article 123 made permanent, without time limitation, the rights held by the United States under the treaty of September 16, 1836. The said treaty, concluded for a duration of fifty years, is now subject to denun-

ciation, upon twelve months' advance notice. The French Government can avail itself of this right at any moment.

Such being the situation, from the legal and factual point of view, the French Government, which has just given new proofs of its desire to co-operate, in ratifying the double tax convention which binds the two countries and in instituting at St. Pierre-et-Miquelon the system of liquor control requested by the Federal Government, hopes that the latter will be so good as to consider, from a practical rather than a juridical standpoint, a reform which circumstances urgently demand shall not be further put off, both in the interest of Morocco and of the countries which trade with the Protectorate.

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*The Department of State to the British Embassy*

AIDE-MÉMOIRE

In its *Aide-Mémoire* of September 18, 1935, the British Embassy requested the views of the Government of the United States with respect to proposed changes in the commercial régime now in operation in the French Zone of Morocco. These changes would involve the imposition of quantitative restrictions on the importation into Morocco of certain commodities and the increase of certain customs rates.

The Government of the United States has been steadfast in its position that the doors of Morocco should be kept open on a basis of commercial equality for all nations, including France, the Protectorate Power. The proposal to institute a system of quotas runs counter not only to that position, but also to the trade program in which the United States is actively engaged. As His Majesty's Government is aware, this program is designed to restore international trade by a lowering of the barriers that hamper its natural flow and by its liberation, in so far as possible, from the many extraordinary restrictions and handicaps which have been placed upon it in recent years.

The Government of the United States holds steadfastly, in the development of its commercial policy, to the rule of equality of treatment. It believes that this rule, by enabling the international exchange of goods to follow lines of economic benefit and by avoiding the many retaliatory acts to which discrimination gives rise, is essential for the rebuilding of international trade. Its judgment in this matter has been supported by much disinterested opinion in which the authoritative expression is to be found in a report of the League of Nations inquiry into clearing agreements. The pursuit of this rule requires that nations give equal opportunity in their markets to all countries which follow the same policy, and accordingly refrain from creating preferences. Furthermore, it is not susceptible of producing its full benefit, in which the trade of all will share, unless countries are willing to refrain from seeking a preferred position in the markets of other countries; for discriminations thereby are inevitably created which tend to produce retaliatory restrictions.

The Government of the United States has at all times in the exercise of its treaty rights in Morocco endeavored to co-operate in every feasible way in the commercial and economic development of Morocco. There-

fore, if Moorish economy now finds need for increased revenue from customs sources, the Government of the United States is prepared, and has previously so stated, to acquiesce in reasonable increases in existing customs rates of duties on commodities imported into Morocco. It should be understood, however, that the Government of the United States is not unmindful of the fact that through the means afforded by Article 96 of the Act of Algeciras the actual customs rates are frequently well in excess of the 12½ percent *ad valorem*, by reason of an arbitrary fixation of value of merchandise. On the other hand, the Government of the United States is not convinced that the imposition of quantitative restrictions upon the importation of certain items of merchandise into Morocco would serve to increase the revenues of the Shereefian Government. Nor is it clear that the proposed quota system would necessarily contribute to the best economic interests of the Moroccan people.

From the foregoing, His Britannic Majesty's Government will appreciate the manifest difficulties, apparently insuperable, which prevent the Government of the United States from acquiescing in the proposed establishment of a quota system in Morocco. As is shown, however, by its disposition towards a possible modification of the Moroccan tariff rates, the Government of the United States is by no means uncompromisingly opposed to any change, nor does it wish to assume a legalistic attitude towards the Moroccan problem. Nevertheless, the present régime in Morocco is squarely based upon legal provisions incorporated in international agreements, and the United States believes that these provisions of law ought not to be changed except by due process of law. Therefore, and as evidence of its sincere desire to co-operate with His Britannic Majesty's Government and with the Protectorate Government of Morocco, the Government of the United States is prepared to agree to participate in a frank discussion, between representatives of all the interested powers, of the various problems involved.

WASHINGTON, April 27, 1936.

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*Annex No. 48*

DIPLOMATIC CORRESPONDENCE CONCERNING DISPUTES  
WITH RESPECT TO TREATY RIGHTS IN CUSTOMS MATTERS

The American Consul at Casablanca to the Director of Moroccan Customs, Nov. 9, 1934 ;

The American Consul at Casablanca to the American Diplomatic Agent at Tangier, Nov. 10, 1934 ;

The Director of Moroccan Customs to the American Consul at Casablanca, Nov. 12, 1934 ;

The American Consul at Casablanca to the Director of Moroccan Customs, Nov. 13, 1934 ;

Extract from a report by Mr. J. Rives Childs, Foreign Service Officer, on temporary duty in Morocco, received Nov. 24, 1939.

The Diplomatic Agent at Tangier to the Secretary of State, Nov. 11, 1934 ;

The Secretary of State to the Diplomatic Agent at Tangier, Nov. 14, 1934 ;

The American Diplomatic Agent at Tangier to the French Resident General, Nov. 20, 1934 ;

The French Ministry for Foreign Affairs to the American Embassy, May 6, 1935 (see Annex 47).

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American Consulate,  
Casablanca, Maroc, 9 novembre 1934.

Monsieur le Directeur,

J'ai eu l'honneur de vous entretenir hier au sujet de la réclamation des firmes ELECTRA et SOCIÉTÉ MAROCAINE DE RÉFRIGÉRATION ÉLECTRIQUE, et depuis notre entretien, deux autres réclamations de même nature ont été formulées à ce Consulat par MM. GAGNEBIN FRÈRES et Jacques Levy SOUSSAN.

Ces maisons qui importent des marchandises des Etats-Unis se présentent au Bureau de la Douane pour accomplir les formalités ordinaires et retirer leurs marchandises; mais la Douane, comme j'ai eu l'honneur de vous l'exposer de vive voix, refusa la liquidation des droits sur la base de la valeur indiquée dans les déclarations ou contre paiement en nature, exigeant pour libérer ces marchandises un droit de beaucoup supérieur par rapport à leur valeur réelle. De ce fait une situation sans issue en est résultée, car les marchandises se trouvent bloquées à la Douane, tel qu'il est établi par un constat légal fait sur la demande des deux maisons les premières nommées ci-dessus.

Etant donné que ce procédé constitue, d'après l'opinion du Consulat, non seulement une dérogation illégale aux lois et règlements douaniers en vigueur, mais aussi un traitement différentiel aux marchandises Américaines, j'ai l'honneur de vous prier à nouveau de faire liquider « séance tenante », conformément aux provisions de ces lois, les droits de douane, soit par paiement en espèces, soit par paiement en nature, et prévenir ainsi l'aggravation des dommages et préjudices résultant aux intéressés, lesquels m'ont déjà fait connaître qu'ils en rendent la douane responsable, ainsi que de tous dégât et pertes causés à la marchandise qui se trouve abandonnée à la douane.

En faisant toute réserve de droit concernant les préjudices subis ou que pourront subir les marchandises en question, ainsi que le commerce Américain, et en vous priant de me faire connaître la suite que vous voudrez bien donner à cette communication, je vous prie d'agréer, Monsieur le Directeur, l'assurance de ma parfaite considération.

Le Consul des Etats-Unis d'Amérique  
(Signed) GEORGE D. HOPPER.

Monsieur Serra,  
Directeur des Douanes et Régies au Maroc,  
Casablanca.

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American Consulate,  
Casablanca, Morocco,  
November 10, 1934.

The Honorable  
Maxwell Blake,  
American Diplomatic Agent and Consul General,  
Tangier.

Sir,

With reference to your letter of October 31, 1934, on the subject of further instances of arbitrary and excessive valuation of American products for the assessment of customs duties at this port, I have the honor to report that I have to-day interviewed the Director of Customs with regard to specific complaints of the firms ELECTRA and SOCIÉTÉ MAROCAINE DE RÉFRIGÉRATION ÉLECTRIQUE, as stated in their letters, copies of which are herewith enclosed.

In introducing the subject, I observed to M. Serra that since my incumbency at this post, various complaints similar to those of ELECTRA and the SOCIÉTÉ MAROCAINE DE RÉFRIGÉRATION ÉLECTRIQUE had been brought to my attention, but that these two cases had assumed a concrete shape and therefore I wished to press for a solution, inasmuch as the customs have refused to allow the goods to be cleared either by payment in cash at the usual rate, or in kind.

M. Serra, in reply, indulged in a very lengthy explanation of his refusal to accept payment of the duties in kind. It appeared to me highly interesting to note these explanations which appear to have been devised with the object of justifying the application of a new customs method of assessment of duty. I am informed that a departure from the methods laid down in the Act of Algeciras has been practised for a long time now, but the present stand taken by the customs leads me to believe that these methods are now being given official recognition. This new phase of the situation, and other discrimination, is under study at present by the foreign Chambers of Commerce, and as soon as a report is submitted I will not fail to bring it to your attention with any further comments that may be warranted by the circumstances.

M. Serra emphatically stated that the customs were not bound to accept payment in kind and that in the present period of depression if payment in kind were permitted, perhaps over 70 or 75 % of the customs transactions would consist of payments in kind, thus converting the customs house into a general store, and that, moreover, certain products, such as those of ELECTRA and the SOCIÉTÉ MAROCAINE DE RÉFRIGÉRATION ÉLECTRIQUE, and many others, could not be sold by him, and that he is prohibited from selling certain other products such as pharmaceutical products, etc.

Deeming it advisable not to engage in a discussion on this ground with the Chief of Customs, I merely observed to him that in considering the complaints presented concerning the arbitrary treatment of American merchandise, I could only demand from him a strict observance of the provisions of the treaties, so long as these treaties remain in existence.



M. Serra re-affirmed his position—that the customs are not bound to accept payment in kind—and stated that the matter had formerly been discussed in Tangier with the American and British Ministers and other representatives of foreign powers, that the right of the customs to refuse payment in kind had been admitted.

I observed that while I was desirous of co-operating with him along the lines indicated in your letter of October 31, 1934, namely, in seeing, in cases where payment in kind was resorted to, that complete sets in working order were delivered to the customs, I could not release him from his responsibility to liquidate without delay the transaction in which the two above-mentioned firms are concerned, either by payment in kind or by payment in cash, and in support of this demand I referred to Art. 85 of the Act of Algeciras. M. Serra argued that the word "peut" (may) in the text of this article means that the customs is at liberty to accept payment in kind or not. On my part, I insisted that it is obligatory on the customs to liquidate "séance tenante" the transaction by the acceptance of either payment in cash or in kind.

M. Serra firmly refused to liquidate the duties either in cash or in kind, insisting that the firms in question, in order to get their merchandise, must pay in cash the amounts assessed by the customs, implying that in the case of non-compliance on their part, the customs would not be responsible for anything that happened to their goods.

I have to-day addressed to M. Serra a note in confirmation of the above representations, copy of which is herewith enclosed. You will note that my communication to M. Serra includes two other claims which were presented to this consulate soon after I had made my representations.

In accordance with your directions I am preparing a despatch to the Department, containing full particulars of these cases.

In view of the importance which this matter is assuming, as four complaints have now been lodged and others may be forthcoming, I respectfully request that the Diplomatic Agency take immediate action with a view to putting an end to this discrimination, which, if permitted to continue, will have a disastrous effect on American trade. Reference is hereby made to letters (confidential) dated June 4 and 19, 1934, from this office concerning interviews with M. Serra on similar questions,

Respectfully yours  
(Signed) GEORGE D. HOPPER,  
American Consul.

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[Translation]

No. 13866.

Casablanca, November 12, 1934.

L'Administrateur des Douanes, Directeur des Douanes et Régies au Maroc, to

The Consul of the United States of America, Casablanca.

Sir :

In reply to your letter of November 9th, and following our conversation at my office of the same date, I have the honor to inform

you that radio apparatus, as all other merchandise, are taxed on the value which they have at the place at which they are declared (in customs) no distinction being made as to their origin.

Frequent contentions having occurred between the Customs and divers importers concerning this valuation, certain of the latter have claimed the right to pay in kind. This mode of liquidation which has become a rule, and which is contrary to both the spirit and the letter of the Act of Algeciras, cannot be accepted by the Customs Administration because it would result, under actual circumstances, in a material obstruction of the operation of Customs services, preventing a just and equitable collection of duties.

Given equal value, the goods should pay equal duty, without regard to their origin.

The Customs Administration has always tried to apply this rule with impartiality, and has never refused to permit importers who were acting in good faith to liquidate their duties without delay, since there was no motive for delaying this operation. The Customs also permits, under certain circumstances, the payment in kind, but it cannot leave to importers the right to choose between payment in cash and payment in kind, resort to the latter mode of payment of duty being left, according to the terms of Art. 85 of the Act of Algeciras, to the appreciation of the Customs.

Please accept, Sir, the assurance of my most distinguished consideration.

(Signed) SERRA.

American Consulate,  
Casablanca, Morocco,  
le 13 novembre 1934.

Monsieur le Directeur,

J'ai l'honneur d'accuser réception de votre lettre No. 13866 du 12 Novembre 1934, au sujet des réclamations formulées par diverses maisons locales contre les évaluations exagérées et difficultés qu'elles rencontrent dans les dédouanements de marchandises importées des Etats-Unis.

Les explications contenues dans votre lettre à ce sujet paraissent constituer un nouveau règlement douanier. Ce règlement étant en contradiction flagrante avec les provisions des traités et règlements en vigueur, il m'est impossible de pouvoir le discuter utilement avec vous. Je me permets, cependant, de vous signaler qu'il y a eu certainement erreur en ce qui concerne le paiement en nature, car les quatre (maintenant cinq) firmes qui ont présenté des plaintes au Consulat m'affirment qu'elles n'avaient, et qu'elles n'ont, aucun désir de payer le montant des droits en nature, mais que devant les exigences de la Douane en fixant la valeur de la marchandise pour déterminer le montant des droits à prélever elles ont été acculées à demander le paiement en nature, seule alternative à leur disposition pour terminer la liquidation des droits et finir la transaction.

J'avais eu l'honneur de vous déclarer de vive voix et je vous le confirme par les présentes que le Consulat est désireux de coopérer

avec vous dans le but de prévenir toute difficulté, que le Consulat ne pouvait que vous demander d'appliquer les provisions des traités et règlements douaniers en vigueur tant que ces lois et règlements n'ont pas été abrogés ou modifiés, et qu'il ne pouvait acquiescer à aucune modification, n'ayant pas, d'ailleurs, l'autorité de le faire.

Dans ces conditions, je me trouve contraint de maintenir les réserves formulées dans ma lettre du 9 novembre et de vous informer que j'ai référé toute la question à l'attention et la considération de Monsieur l'Agent diplomatique des Etats-Unis à Tanger.

Veillez agréer, Monsieur le Directeur, l'assurance de ma parfaite considération.

Le Consul des Etats-Unis d'Amérique,  
(Signé) GEORGE D. HOPPER.

Monsieur SERRA,  
Directeur des Douanes et Régies au Maroc,  
CASABLANCA.

*Extract from a Report by Mr. J. Rives Childs, Foreign Service Officer,  
on temporary duty in Morocco, received November 24, 1939*

*Interview with the Director of Customs .*

While in Casablanca, I met M. Caron, the Director of Customs, both officially and socially, on several occasions. He took part in the negotiations in London and Paris on the Anglo-French Commercial Treaty on Morocco and impressed me as a man of capacity and integrity. With the exception of the First World War, all his life has been spent in the customs service.

M. Caron informed me in reply to my question that the French Protectorate authorities proposed, through the new customs regulations annexed to the Anglo-French Commercial Treaty, to perpetuate the present double system of customs valuation. It was the intention of the customs authorities to continue to base the valuation on the c.i.f. invoice value where that was feasible and on the retail selling price less certain deductions in other cases. It had never been the intention of the customs to adopt the latter practice to the exclusion of the former. The Customs Administration, M. Caron added, sought a flexible system of customs valuation adapted to Morocco and that was what he thought had already been achieved.

I informed M. Caron that in Washington, in examining the customs regulations annexed to the Anglo-French Commercial Treaty, we had found particularly repugnant the penalty imposed of five times the duty in the case of incorrect customs declarations, even though such declarations might have been made in good faith. M. Caron stated he could assure me that, considering the abuses practiced by many irresponsible importers in Morocco, such a precaution was necessary but that it would be used only with discretion. He added that the most formal assurances on this score could be given privately by the French with the conclusion of our treaty.

*The Diplomatic Agent and Consul General at Tangier (Blake) to the Secretary of State*

TANGIER, November 11, 1934—6 p.m.

[Received November 11—5 : 25 p.m.]

13. Referring to Department's telegram No. 9, November 6, 6 p.m., Mr. Ponsot's confidential agent on his way to Paris and London called yesterday to make arrangements for my visit to Mr. Ponsot, and from preliminary conversations with him it is apparent that there is a desire to ease the situation if a formula can be found with regard to our own economic position in Morocco. Protectorate Government in order to provide resources desires to change customs tariffs and Ponsot contends Great Britain, Spain and France are only powers entitled to enjoy an express tariff clause, under their treaties, and that United States or other powers under the Act of Algeciras only retain benefit of most-favored-nation clause which secures them the advantage of the tariff granted to these three powers at any time.

Ponsot inquires whether this argument could be admitted by the American Government.

My view is that it is incompatible with article 123 of Act of Algeciras. Department's instructions are requested to attitude I am to take in this connection.

Ponsot's agent first stated that the Protectorate Government intended to modify the customs régime on January 1st next but after some argument and in response to my direct inquiry as to whether the Protectorate authorities would attempt to put their program into effect without consultation with the other interested powers he admitted that they would prefer to receive American acquiescence prior to its actual enforcement.

However, in view of the obvious determination on the part of the French authorities to take some action of this kind, a proposal such as the following might deter precipitate action and lead to a basis for a satisfactory solution providing it could be made to conform with Mr. Hull's policies and would not complicate situation vis-à-vis Japan. Taking into consideration the Department's request for suggestions as to economic measures which it might be in our interest to accept, may I, with the Department's approval, in my coming interview with Ponsot, now fixed for Saturday 17th instant, bring up for discussion this tentative proposal, informally and without commitment.

Mean average of principal imports of a number of specified articles during period 1928 to 1933 might be accepted as a basis for the fixation of quotas during a determinate period. Both fixation of period and of quota articles to be subject to unanimous consent of the signatories of the Act of Algeciras. This quota system, if accepted, to be operated under the effective control of the powers signatory of the Act of Algeciras. No changes or extension of the list of quota articles as initially approved would be made without a unanimous decision of these powers, and further, after the expiration of the quota period a reversion would be automatically made to the *status quo ante* unless there is unanimous consent of the powers for a continuance of the quota system as above defined. Reply urgently requested with instructions.

Bilateral agreements as to reciprocal trade balance to be rejected.

BLAKE.

*The Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)*

WASHINGTON, November 14, 1934—6 p.m.

11. Your 13, November 11, 6 p.m. Department desires to reaffirm position taken in telegram number 9 of November 6, 6 p.m., particularly emphasizing paragraph 2 to the effect that the French, as we see it, are asking us to give up the principle of the open door in favor of a system of contingents, and will seek to effect a close bilateral balancing of trade between Morocco and the United States.

With respect to Ponsot's inquiry regarding our attitude as to the alleged express tariff clause enjoyed by Great Britain, Spain and France, this Government sees nothing to be gained at this stage by entering into a discussion of the various treaties and conventions which form the basis of our commercial rights in Morocco.

We have given careful consideration to your suggestion regarding quotas. Quota systems are inherently discriminatory and the institution of such a system in Morocco would in all probability constitute a violation of the principle of commercial equality in Morocco as guaranteed in the treaties. In lieu thereof we would rather see, in case some modification of the present regime becomes necessary, a reasonable increase in the customs rates for revenue purposes, provided the rates were uniform, void of discrimination and agreed to by the powers signatory to the Act of Algeciras.

For your confidential information the Netherlands Chargé d'Affaires has advised the Department that his Government, as a signatory of the Algeciras Convention, would not accept the new regime proposed by the French, and indicated that they would agree only to a uniform raise in tariff rates as a last concession.

In your conversations it is suggested that you discreetly intimate to Ponsot that this meeting was arranged by him, and that you are desirous of receiving full information for your Government regarding the eventual plans of the French in Morocco.

HULL.

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*The Acting Secretary of State to the Diplomatic Agent and Consul General at Tangier (Blake)*

WASHINGTON, November 16, 1934—6 p.m.

12. Supplementing Department's No. 11, November 14, 6 p.m., in connection with statement in third paragraph to the effect that we would rather see, in case some modification of the present regime becomes necessary, a reasonable increase in the customs rates for revenue purposes, et cetera, it is suggested that you call Ponsot's particular attention to the customs situation existing at Casablanca as reported in letter of June 4, 1934, addressed to you from Buhrman, in which it is alleged that some American merchandise imported into Morocco is paying as much as 50 percent duty as a result of alleged arbitrary assessments by the Protectorate customs officials. It should be made clear to Ponsot that

any consideration by this Government of an increase in the customs rates would be contingent upon cessation of such practices.

PHILLIPS.

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Tangier, November 20th, 1934.

Mr. Resident General :

I have the honor to recall that, in the course of the interesting interview which, in response to Your Excellency's invitation I had the honor of holding with you last Saturday at Rabat, I informally suggested that my Government might eventually give consideration to a reasonable increase in the Moroccan Customs tariffs, if such modification became necessary for purposes of revenue, providing the increase were to be uniform, void of discrimination, and agreed to by the Powers signatory of the Act of Algeciras, and I added that such eventual consideration on the part of my Government would necessarily be contingent upon the cessation of the arbitrary and abusive appraisal of imported goods by the Protectorate Customs Administration, which, in defiance of the treaty provisions, resulted in the levy of excessive duties on American imported merchandise.

The American Consulate at Casablanca, and the Diplomatic Agency at Tangier, are constantly receiving complaints of this character, and in view of the report, awaiting me on my return to Tangier, of recent representations made by the American Consulate at Casablanca in this same connection, I am wondering whether, during our conversation, I laid sufficient stress upon the importance, to any eventual understanding on the increase of Customs rates, of the removal of the abuses complained of.

I venture moreover to avail myself of this occasion most earnestly to request Your Excellency to be good enough to instruct the Customs authorities of the Protectorate to desist from their arbitrary practices in the dutiable appraisal of imported American goods, in violation of the spirit and the terms of the pertinent Articles of the Act of Algeciras in this regard, and to cause a refund to be made of the excess amount of Customs duties levied on the American merchandise referred to in the annexed copies of the letters of complaint addressed to the American Consul at Casablanca, and in the correspondence exchanged between him and the Director of Customs. The position taken by Mr. Hopper in the premises has my full approval, and will, I cannot doubt, receive the support of Your Excellency.

I trust that I may be advised at an early date that action has been taken by Your Excellency in the above sense, and in this expectation I have requested the American Consul at Casablanca to be good enough to place himself at the disposition of the Customs authorities, and of the parties concerned, to assist in the promotion of a proper adjustment of the matters in question.

Please accept, Mr. Resident General, the assurances of my highest consideration.

Maxwell BLAKE,  
American Diplomatic Agent.

His Excellency

Monsieur Henri Ponsot,  
Commissioner Resident General of the  
Republic of France in Morocco,  
Minister for Foreign Affairs of His  
Shereefian Majesty,  
RABAT.

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*Annex No. 49*

DIPLOMATIC CORRESPONDENCE CONCERNING DISPUTES  
WITH RESPECT TO TREATY RIGHTS IN MATTERS OF  
TAXATION

The American Diplomatic Agent at Tangier to the French Resident General, Dec. 3, 1928 ;  
The Secretary of State to the Ambassador in France, Feb. 26, 1929 ;  
The Chargé in France to the Secretary of State, Sept. 5, 1929 ;  
The American Diplomatic Agent at Tangier to the Secretary of State, June 7, 1934 ;  
The American Diplomatic Agent at Tangier to the French Resident General, June 5, 1934 ;  
The Acting Secretary of State to the American Diplomatic Agent at Tangier, Aug. 24, 1932.

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*The American Diplomatic Agent and Consul General at Tangier  
(Blake) to the French Resident General in Morocco (Steeg)*

TANGIER, December 3, 1928.

MR. RESIDENT GENERAL: Mr. H. Earle Russell, American Consul in Casablanca, acting under instructions from this Legation, has been in correspondence with the local Authorities of that city, looking to the refund of an increase of 20 per cent on Pilotage Dues, irregularly and illegally collected from American vessels prior to the United States Government's assent to the imposition of this additional taxation on its citizens and proteges in Morocco. The American Consul now transmits to me the substance of a communication dated November 19th, 1928, from the aforesaid Authorities, to the effect that the matter is to be treated in accordance with the terms of a Note on the subject, which has been addressed by the Residency General of France at Rabat to the American Diplomatic Agency at Tangier.

Reference is evidently made to Your Excellency's Note No. 169 of June 4th, 1928, which replied to my two letters advising you of the conditions under which my Government would render applicable to American *ressortissants* in the Zone of the French Protectorate, the increments, decreed by Dahirs of January 10th, and May 28th, 1928, on the Consumption Tax on Sugar and on the Pilotage Dues at the Port of Casablanca. This Note was accidentally filed away, at the time of its receipt, without having been brought to my notice. It is therefore only now that I have become acquainted with Your Excellency's observations on the subject of my Government's request that the Maghzen shall cause to be refunded the amounts referred to in the preceding paragraph.

Your Excellency alleges that compliance on the part of the Shereefian Government with this request is impossible since such reimbursements would produce a privileged situation in favor of American *ressortissants*, incompatible, moreover, with the principles of my second reservation, which stipulates equal application of the decreed taxation to the nationals and proteges of all Powers. Consequently, I have the honor to set forth hereunder divers considerations, which in my submission, conclusively overrule these objections on your part.

As Your Excellency is aware, the existing treaties, to which the Shereefian Empire and the United States are parties, categorically debar the former from imposing upon the nationals of the United States any taxation whatsoever, except the Customs Duties and certain other Taxes which are specified in the said treaties. The previous consent of the United States Government is therefore essential before any fiscal innovation can be legally enforced upon its citizens and proteges. It is furthermore beyond dispute that the American Government enjoys the fullest liberty to grant or to withhold, as it may think fit, its assent to the application to American *ressortissants* in the Shereefian Empire of any legislation or fiscal enactments introduced by the Moroccan Government. It is obvious then that the levy upon American *ressortissants* of taxation which has not received the required assent of the United States Government, constitutes an infraction by the Shereefian Government of the pertinent treaty provisions, and that restitution of such illegally collected taxation is a necessary and normal factor in the adjustment of the violation of American treaty rights.

In these circumstances it is idle to contend that the redress, due on account of the failure of the Maghzen properly to observe its treaty obligations, must be withheld on the grounds that there would thereby arise a privileged situation for American nationals. Reference, in this connection, to the American Government's reservation as to the equal application of fiscal measures to the nationals of all Powers is likewise irrelevant, since it is obvious that the sole object of such reservation is to provide a safeguard against the possibility of Shereefian decrees eventually placing American interests in Morocco in a situation of inferiority as compared with those of some other Power.

In reference to the concluding paragraph of Your Excellency's Note hereby acknowledged, I would again recall to the Shereefian Government, that the Franco-German Accord of 1911 and the Franco-Moroccan Treaty of March 30th, 1912, to which the United States are not a party, and to which the American Government has not



subsequently given its adhesion, can have no restrictive effect whatever upon any of the rights and privileges in Morocco which the United States derives from anterior treaties and conventions.

The position which was taken in Your Excellency's Note upon the point at issue, is furthermore in logical contradiction with the practice adopted, in the premises, by the Protectorate Government itself, for it is very evident that the latter's customary appeal to the United States to make new Shereefian legislation applicable to American *ressortissants* is susceptible of no other construction but as an admission, by the Maghzen, of its constitutional inability to enforce its decrees upon American citizens and proteges in Morocco, in the absence of appropriate action on the part of the Washington Government.

It will be sufficient for me to refer Your Excellency to the suggestions contained in my Note of March 10th, 1928, in order to make it clear that the American Government, notwithstanding the unqualified nature of its rights in the matter, is not actuated by a desire to avail itself of such rights for the purpose of securing a privileged situation of fiscal immunity for its nationals in Morocco. At the same time, it has no alternative but to insist upon an effective observance by the Shereefian Authorities of its existing treaty rights and privileges, and accordingly its assent must, in each instance, be formally solicited and obtained before new fiscal charges or any other legislation can be applied, by the agents of the Maghzen, to American citizens and proteges. The claims mentioned in the introductory paragraph of this communication, have arisen as the result of failure on the part of the Residency General to observe the indicated procedure, at the proper time, in connection with the Dahirs under discussion.

If the objections set forth in Your Excellency's Note were to be admitted, the formal application required from the Shereefian Government for the assent of the Secretary of State to Moroccan decrees would resolve itself into a meaningless, perfunctory formality, resulting in the stultification of those very treaty rights which the procedure is designed to protect. Such a position is obviously untenable.

In conclusion, I venture to express the hope that, in the light of the foregoing exposition, Your Excellency will, upon reconsideration, be good enough to instruct the appropriate Authorities at Casablanca to reconstitute the amounts of taxation unduly levied upon American concerns, when their corresponding claims shall be presented by the American Consul in that city.

Please accept [etc.]

MAXWELL BLAKE.

*The Secretary of State to the Ambassador in France (Herrick)*

No. 3076

WASHINGTON, February 26, 1929.

SIR: The Department refers to despatch No. 359 of January 25, 1929, from the American Diplomatic Agent and Consul General at Tangier (copies of which and of its enclosures were forwarded to the Embassy from Tangier) regarding the application to American nationals and *ressortissants* of the Dahir of May 28, 1927, which made a provisional increase of 20 per cent in the pilotage and harbor dues at the port of Casablanca. It notes from the communication of January 18, 1929,

from the Residency General to Mr. Blake that the matter under consideration has been referred to the French Government.

The original Dahir establishing an obligatory pilotage service in the port of Casablanca and fixing the charges to be imposed for anchorage, dockage and wharfage was issued on March 1, 1920, the customary request for the consent of this Government, under treaty provisions, to its application to American nationals and *ressortissants* being formally made to the American Diplomatic Agent and Consul General by the then Resident General, General Lyautey. Under instructions from the Department, consent was granted subject to certain reservations. An increase in the rates established by the original Dahir was effected by the Dahir of May 28, 1927, and these increased charges were collected from American vessels without any previous notification to the American Diplomatic Agent and Consul General, who brought the circumstances to the attention of the Resident General and recalled to him that, under treaty provisions, the consent of this Government was necessary before the increased taxes could legally be levied on American ships. Thereupon the necessary consent was requested by Mr. Steeg and, under instructions from the Department, the consent was accorded to be effective when the excess taxes, illegally collected prior to consent, should have been refunded. There ensued the correspondence of which the Embassy has been furnished copies, in which the Residency General contended that to satisfy the condition as to refund would create a "véritable privilège" in favor of American vessels, and that the Franco-German Accord of 1911 and the Franco-Moroccan Agreement of 1912 "have given to France the right to introduce into Morocco any reforms and to bring to existing regulations whatever modifications might be useful". It was after Mr. Blake had, in his note of December 3, 1928, expressed his observations on these two points that the matter was referred to the French Government for consideration.

As you are aware, it has been the policy of the Department to maintain American rights in Morocco as defined by the Act of Algéciras and previous instruments, and in accordance with that policy the Department has consistently made representations to the Shereefian Government whenever violations of those rights have occurred. Protests were made against the irregular manner of granting the Tangier port concession, the concession for the production of hydraulic and hydroelectric power, and the Oudjda Bou-Arba railroad concession, as the files of the Embassy will show, and last year it reminded the Shereefian Government of its rights in connection with the proposed construction of a pipe line. The Department has not altered its policy, and it cannot accede to the position of the Residency General in the present instance, a position which, in view of the treaty rights which this Government retains in Morocco, is, as Mr. Blake points out, clearly untenable.

Furthermore, exception must be taken to Mr. Steeg's assertion that the Franco-German Accord of 1911 and the Franco-Moroccan Agreement of March 30, 1912, have given to France the right to introduce into Morocco any reforms and to bring to existing regulations whatever modifications she might deem useful. That statement, so far as it implies that those two agreements have affected American treaty rights, is inaccurate, as the Department has clearly set forth whenever such argument has previously been evoked. It will be recalled that this argument was advanced by the French Government at the time of the

discussions concerning the Tangier Port Concession, and that the French Government was then fully acquainted with the position of this Government, from which it has at no time receded. At that time it was stated (see the Department's instruction No. 432 of September 21, 1922, a copy of which was handed by the Embassy to the French Government) :

"This Government has repeatedly pointed out to the French Government, both formally and informally, that it has never adhered to the protectorate treaty of 1912.

"The recognition of the French Protectorate in the French Zone of Morocco by this Government in its note of January 15, 1917, to the French Ambassador at this capital, did not constitute an adhesion to the Franco-Moroccan Treaty of March 30, 1912, nor did this Government, by this or any other act, adhere to the Franco-German agreement of February [November] 4, 1911, which preceded the treaty of protectorate. On the contrary, this Government, in a note of December 5, 1911, informed the French Ambassador that its adhesion to the Franco-German Agreement 'would involve a modification of our existing treaty rights with Morocco, which, under our Constitution, could only be done by and with the advice and consent of the United States Senate'."

This position was again stated in the Embassy's note No. 1042 of November 6, 1922, to the Minister for Foreign Affairs.

The Department had occasion to reaffirm this position to the Shereefian Government in a note which, in accordance with its instruction No. 393 of September 2, 1926 (a copy of which was furnished the Embassy under cover of the Department's instruction No. 2016 of September 2, 1926), the American Diplomatic Agent and Consul-General presented in connection with the protest of this Government against the manner in which a concession for the production of hydraulic and hydro-electric power in Morocco was granted. In that note, after referring to the Department's instruction of September 21, 1922, the notes exchanged in Washington in January 1917, which led up to the American recognition of the French protectorate, were quoted, and it was stated :

"It is obvious from a perusal of the above documents that the United States merely extended political recognition to the French protectorate over Morocco, leaving the question of a possible modification of its treaty rights (which would require ratification by and with the advice and consent of the United States Senate) for future negotiations between the two Governments, and it is equally obvious that this distinction was clearly understood by the French Government. It need hardly be remarked that no such negotiations have ever been carried out or ratified.

"In consequence it is apparent that the treaty rights of the United States in Morocco remain as defined in the Act of Algeciras and previous treaties."

The Department approves the position taken by the American Diplomatic Agent and Consul-General in the present instance, and it deems it advisable, since the Shereefian Government has revived the point and since the matter has been referred to the French Government, to remind the latter, by stating its entire approval of Mr. Blake's note of December 3, 1928, that the treaty rights of the United States in Morocco, acquired by the Act of Algeciras and previous treaties, remain unimpaired. You are accordingly authorized to deliver to the French Foreign Office a memorandum in substance as follows :

The Government of the United States has received, through its Diplomatic Agent and Consul-General at Tangier, a copy of a note under date of January 18, 1929, from the Residency General to Mr. Blake, in acknowledgment of the latter's note of December 3, 1928, concerning the application to American nationals and *ressortissants* of the Dahir of May 28, 1927, which made a provisional increase of 20 per cent in the pilotage and harbor dues at the port of Casablanca. The former note states that the text of the note from the American Diplomatic Agent and Consul-General has been transmitted to the French Government for consideration.

The Government of the United States is confident that the French Government will recognize the validity of the position taken by the American Diplomatic Agent and Consul General, which position has the full endorsement of the Government of the United States and is in accord with that which this Government has previously had occasion to set forth to the French Government, and that it will appreciate that this Government is constrained to withhold its assent to the application to its nationals and *ressortissants* of the Dahir of May 28, 1927, until such time as refund has been made of the excess taxes previously collected in contravention of the treaty rights of this Government.

The Department desires that you report when this memorandum shall have been presented to the French Government.

I am [etc.]

FRANK B. KELLOGG.

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*The Chargé in France (Armour) to the Secretary of State*

No. 9811

PARIS, September 5, 1929.

[Received September 18.]

SIR: With reference to the Department's Instruction No. 3076 of February 26, 1929, instructing me to present a memorandum to the French Government regarding the application to American nationals of the Dahir of May 28, 1927, which made a provisional increase of 20% in the pilotage and harbor dues at the port of Casablanca, I have the honor to report that, as stated in my telegram No. 98 of March 14, 1929, 12 A. M., this memorandum was duly presented to the Foreign Office. I handed it myself to M. de Saint Quentin, Director of the African and Levant Section of the Foreign Office, at the same time informing him that, after he had had an opportunity to study the dossier, I would be pleased to discuss the question further with him.

On August 17, I called on M. Corbin, Director of Political and Commercial Affairs at the Foreign Office, when I took up with him the question of the Shereefian Dahir of June 6, 1929, prohibiting the importation of foreign wheat and flour into the French zone of Morocco. (See the Department's Instruction No. 4192 of August 6, 1929, and my telegram No. 383 of August 17, 11 A.M.) I availed myself of this opportunity to mention to M. Corbin my visit to M. de Saint Quentin on March 14 last, at which time I had presented a further memorandum regarding the pilotage and harbor dues at the port of Casablanca, adding

that I felt constrained to point out that the Embassy had received very little satisfaction so far as matters coming within the jurisdiction of the Sous-Direction de l'Afrique et du Levant were concerned. I pointed out that the question of pilotage dues had now been dragging on for many months and expressed the hope that he would use his good offices to the end that some acknowledgment might be made and action taken on the representations of my Government in this matter. M. Corbin explained that M. de Saint Quentin was then attending the conference at The Hague, but he promised to look into the matter and expedite the reply.

On September 3 last, I again called on M. Corbin and took the occasion to remind him of his promise to me of some two weeks before. At the same time, feeling that it would serve to refresh his memory on the whole question, I took the liberty of showing him the Department's Instruction No. 3076 of February 26, 1929, which sets forth very fully our Government's position in this matter and the reasons therefor. (It will be remembered that in this Instruction the Embassy was directed to deliver to the French Foreign Office a short memorandum, contained on pages 6 and 7.)

M. Corbin seemed to be impressed by the arguments set forth by the Department and I think will do everything in his power to see that a reply is handed to us at the earliest possible date.

I have [etc.]

NORMAN ARMOUR.

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*The Diplomatic Agent and Consul-General at Tangier (Blake) to the Secretary of State*

No. 948

TANGIER, June 7, 1934

[Received June 25.]

SIR: I have the honor to inform the Department that the American Consul at Casablanca has brought to my attention a Vizirial Decree dated July 31, 1933, modifying the tariff of Gate Taxes in the French Zone of Morocco on imported goods, and which has become the subject of serious concern to the Consular Corps at Casablanca.

An English translation of the Vizirial Decree in question is enclosed herewith.

The Department will recall that the Gate Taxes were dealt with by Article 13 of the Madrid Convention of 1880, and that under the provisions of that Article, tariffs, and regulations for the collection of the Gate Taxes, were issued with the approval of the Diplomatic Corps in the years 1881 and in 1896. Article 13 of the Madrid Convention also stipulates that the taxes thus fixed should not be increased without a new agreement with the representatives of the Powers.

Originally these Gate Taxes were imposed only upon merchandise entering and leaving Moroccan towns by land. They were not imposed at the ports on goods imported by sea.

A Dahir of April 20, 1917, purported to extend the application of the tax in question to goods entering Morocco by sea, and empowered the Grand Vizier to promulgate decrees fixing the tariffs to be applied.

From 1917 to 1928 a number of such Vizirial Decrees were issued establishing or modifying the tariff of these Gate Taxes, but the rates were not excessive, and their innocuous effect upon international trading rights apparently caused them to pass unperceived.

No notification of the promulgation of any legislation dealing with the Gate Taxes, has been made to this Legation by the Protectorate Government, nor has the latter made any request for the Department's assent to the enforcement of the modified Gate Taxes on American *ressortissants*.

With the considerable increases, in various categories of merchandise, of the rates edicted by the last Vizirial Decree on the subject, namely that dated July 31, 1933, the Consular representatives of the Powers at Casablanca, have become justifiably alarmed. These taxes have now been developed from mere internal "octroi" taxes, into veritable supplementary Customs taxes on imported merchandise.

The Belgian Government has protested against the discriminatory character of the Gate Tax tariff as now imposed upon cement.

Mr. Buhrman transmits a confidential copy of a Note addressed to the Resident General of France by the British Consul-General at Rabat on the subject of the Gate Taxes in question, under date of April 28, 1934.

This Note states that the conditions in which the Gate Taxes may be applied to foreign *ressortissants* are laid down in the Convention of Madrid of 1880, and recalls that the Convention of Madrid expressly stipulates that the Gate Taxes, as determined with the approval of the Diplomatic Corps in Tangier in 1881 and in 1896, cannot be increased without the consent of the Powers signatory to the Madrid Convention. It points out, moreover, that the regulations referred to authorized the imposition of the Gate Taxes only upon goods transferred from one Moroccan town to another, or on native produce entering into the towns.

Such being the juridical position, the assent of the British Government, it is stated, is necessary, first in regard to the levy of Gate Taxes, in any form, upon imported merchandise, and secondly to any modification of the rate of the taxes fixed by the regulations accepted by the Diplomatic Corps.

The British Consul-General then proceeds to make the statement that the British Government has in no manner abandoned its treaty rights in Morocco and cannot consent to any difference in taxation between imported and local products.

The Belgian Government has protested against the discriminatory strongest objection to the Gate Tax tariffs recently promulgated, and the British Consul-General is instructed to suggest to the Resident General of France the opportuneness of a discussion dealing with all the derogations which have been made from the regulations of 1881 and 1896, with a view to reaching an agreement, satisfactory to the local administration, and without discrimination against British imports.

Our treaty position in the premises is identical with that indicated in the above outline of the British Note.

I enclose herewith copy of a communication dated June 5, 1934, which I have consequently addressed to the Resident General of France at Rabat, on the subject of the Gate Taxes in the French Zone, and I have no doubt that the Department will desire me to confirm this Note with a formal protest on its behalf.

The necessity of opposing this series of arbitrary measures on the part of the French Protectorate Government assumes the gravest importance at this juncture, when the French authorities are attempting by every irregular means to break down the régime of economic liberty in Morocco as laid down by the treaties. They realize the firm opposition which they are likely to encounter, on the part of the Powers, to a revision of the treaty Customs régime, and are therefore giving their constant attention to the discovery of devious devices, such as the present, which will enable them to circumvent the treaty safeguards to international trade in Morocco.

The Department's instruction in the matter will be awaited with great interest.

Respectfully yours,

MAXWELL BLAKE.

Tangier, June 5th, 1934.

Mr. Resident General :

I have the honor to inform Your Excellency that my attention has been drawn to a Vizirial Decree dated July 31, 1933, concerning Gate Taxes on imported merchandise.

In view of the fact that the legislation referred to constitutes a derogation from the provisions of the Madrid Convention of 1880, and also from the regulations promulgated in virtue of that Convention, with the approval of the Diplomatic Corps in Tangier in 1881 and in 1896, I have no option but to formulate the fullest reservations in this regard, pending the receipt of instructions from my Government.

Please accept, Mr. Resident General, the assurances of my highest consideration.

Maxwell BLAKE,  
American Diplomatic Agent.

His Excellency

Monsieur Henri Ponsot,  
Commissioner Resident General of the  
Republic of France in Morocco,  
Minister for Foreign Affairs of His  
Shereefian Majesty,  
RABAT.

No. 103

August 24, 1932.

Maxwell Blake, Esquire,

American Diplomatic Agent and Consul-General, Tangier.

Sir :

The Department has received your despatch No. 749 of July 27, 1932, in regard to (1) the contemplated reduction of Gate Taxes in the Zone of the French Protectorate on products manufactured in Morocco, and

(2) the preferential dock and railroad tariffs applied to cement, lime and plaster manufactured in Morocco.

The Department approves your suggestion that a note be addressed to the French Residency General inviting attention to the reports of the contemplated reduction of Gate Taxes and requesting assurances that any reduction of these taxes which may be made will be applied equally to all products irrespective of the place of their manufacture, in accordance with the provisions of Article XIII of the Madrid Convention of 1880.

The Department also approves and authorizes the reaffirmation of the representations made by you and reported in your despatch No. 664 of November 6, 1931, in regard to the modification of dock and railroad tariffs by which lower rates for embarkation at Casablanca and for transportation on Moroccan railroads are applied to cement, lime and plaster manufactured in the Zone of the French Protectorate than the rates applicable to the same materials produced outside of the Zone of the French Protectorate.

The Department entertains no doubt that this discrimination in favor of Moroccan products is a clear violation of the principle of "economic liberty without any inequality" the maintenance of which is expressly declared in the preamble to the Act of Algeciras to be one of the principal purposes of that convention. The Department also considers that the unconditional form of this declaration renders untenable the contention of the Residency General that the Shereefian Government retains the right to give preferential treatment to local industries since it appears to be clear that any preferential treatment accorded in the Zone of the French Protectorate to any product or enterprise is necessarily inconsistent with the principle of "economic liberty without any inequality" which the authorities of the Zone are definitely obligated by the Act of Algeciras to maintain.

Very truly yours,

W. R. CASTLE, Jr.,  
Acting Secretary of State.

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*Annex No. 50*

DIPLOMATIC CORRESPONDENCE CONCERNING THE NEGOTIATIONS OF 1937-1939 FOR THE SURRENDER OF UNITED STATES CAPITULATORY RIGHTS IN THE FRENCH ZONE OF MOROCCO

The French Ambassador to the Secretary of State, Aug. 26, 1937 ;

The Secretary of State to the French Ambassador, Oct. 19, 1937 ;

The French Ambassador to the Secretary of State, Aug. 5, 1938.

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[Translation]

EMBASSY  
OF THE FRENCH REPUBLIC  
IN THE UNITED STATES

Washington, August 26, 1937.

Mr. Secretary of State :

I have the honor to advise Your Excellency that on July 29, 1937, there was signed at London, between the French Government and the British Government, a Convention concerning the abolition of the rights and privileges of a capitulatory character which are enjoyed by Great Britain in Morocco. This Convention was accompanied by an exchange of letters between the French Ambassador at London and the British Secretary of State for Foreign Affairs.

The settlement concluded provides that the British consular courts in Morocco will be abolished on the entry into force of the Convention, that is to say, January 1, 1938.

On that date British nationals will become subject to trial in the French courts of the Sheriffian Empire under the same conditions as foreigners belonging to other States which have already renounced the capitulatory régime. Likewise, the right of protection will cease to be exercised by Great Britain over certain subjects of the Sultan of Morocco employed in British Consulates or business firms. Nevertheless, in order to take account of certain acquired rights, the persons concerned, the list of whom will be established by the Residency General of France in Morocco and the Consul-General of England at Rabat in the course of the first half of 1938, will be subject, as long as they live, to the jurisdiction of the French courts for all cases not arising from Mohammedan religious law. In accordance with instructions which I have just received, I have the honor to transmit, herewith, to Your Excellency the text of the Franco-Britannic Convention and of its annexes. In proceeding to this communication, I wish to express to Your Excellency the keen interest which my Government would take in the conclusion with the Government of the United States of an agreement similar to that which it has just concluded with the British Government.

The United States enjoys in Morocco the capitulatory régime by virtue of the treaty concluded between the two powers on September 16, 1836. Article 25 of this Convention reads as follows :

"The present treaty shall be in force, God helping, during fifty years ; at the expiration of that term, it shall continue to be binding on the two powers until one of them has notified its intention to depart therefrom by notice twelve months in advance, in which case the effects thereof shall cease at the expiration of the twelve months."

The above-mentioned Convention between the United States and Morocco not having been denounced, the United States continues to benefit by the capitulatory régime in Morocco. In fact, following the conclusion of the Franco-Britannic agreement it remains today the last power in a position to avail itself of that régime.

In advising Your Excellency of the desire of my Government to conclude with the American Government an agreement which would

put an end to this régime, I take the liberty of recalling to Your Excellency that during the Conference of Montreux which ended the régime of the capitulations in Egypt, the representative of the American Government made declarations indicating the conciliatory spirit in which the American Government intended to settle this question. In fact, in the course of the inaugural meeting of this Conference, the delegate of the United States invoked "the good-neighbor policy advocated by President Roosevelt", to affirm "the greatest sympathy for the purposes set forth by the Royal Egyptian Government" in view of the abolition of the capitulations in Egypt. These declarations have given my Government reasons to think that, like the British Government, the American Government will be willing to consent to the abolition of the régime of capitulations in Morocco.

Furthermore, in recognizing, some years ago, the French protectorate in Morocco, the Government of the United States has already given to the French Government a proof of its friendship and of the sympathy with which it has welcomed the work undertaken by France in the Sheriffian Empire. This work, which is today consolidated, constitutes one of the principal factors of peace in Africa and in other parts of the world. The French Government believes that for the happy continuation of its task, it is desirable that a state of things signifying unity in all domains be substituted for a régime carrying certain privileges, the maintenance of which may appear as a limitation of its own sovereignty. It would, therefore, appreciate at its true value the new proof of friendship which the American Government would give to it today by consenting to conclude an agreement on the same bases as the Franco-Britannic agreement.

It goes without saying that American nationals would enjoy, like British nationals in Morocco, a régime in agreement with the general treaties and with Sheriffian legislation. For this purpose, I have the honor to send with the present communication the text of the Dahir of August 12, 1913, on the present state of this legislation. This text defines the civil status of Frenchmen and foreigners in Morocco, thanks to a codification of the most liberal rules of international private law.

In the view of my Government, the question of the abolition of the capitulatory régime enjoyed by the United States in Morocco might be settled either by a special Convention to be negotiated on the bases of the Franco-Britannic Convention of July 29, 1937, or by an exchange of letters.

This latter procedure, which would conform to that employed for admitting the United States to the benefit of the régime reserved for States members of the League of Nations in the mandated countries of Syria and Palestine, would offer the advantage of being more expeditious. The exchange of letters might bear effect beginning with the first of January, 1938. As to the establishment of the list of the ex-American protégés, it might be drawn up within a period of six months by agreement between the Residency General at Rabat and the competent American Consular authority.

In case Your Excellency might agree to the procedure of the exchange of letters, I think I should submit to you, herewith, a draft text.

I may add that the Ministry of Foreign Affairs of the Republic is entirely prepared to give to the Embassy of the United States at Paris all supplementary explanations which the Embassy of the United

States at Paris might desire to receive regarding the Franco-Britannic negotiations which have just come to a successful conclusion. In fact, it appears that the Franco-American conversations might be carried on more fruitfully at Paris because of the facilities which the American experts would have for coming into touch with the high magistrates and the officials of the protectorate of France in Morocco.

In expressing the hope that the Government of the United States will be good enough to exert itself for the purpose of giving satisfaction to the legitimate desire of my Government to put an end in Morocco to a situation which appears to be incompatible with present conditions, I would be very much obliged to Your Excellency if you would be so kind as to advise me as soon as may be practicable of the reception given to the proposal of Mr. Yvon Delbos.

Please accept [etc.]

JULES HENRY.

October 19, 1937.

Sir :

I have received and given careful consideration to your note of August 26, 1937, proposing the conclusion of an agreement between the United States and France, similar to that concluded between France and Great Britain on July 29, 1937, by which the latter country surrendered its capitulatory rights in the French zone of Morocco. Your Government suggests that the agreement proposed might take the form either of an exchange of notes or that of a special convention and points out that the former procedure, which it states was followed when the United States obtained certain rights in the mandated territories of Syria and Palestine, would be more expeditious.

I observe that in your note reference is made to Article 25 of the American-Moroccan Treaty of September 16, 1836, which provides for the termination of the Treaty upon one year's notice given by either party. In order that there may be no misunderstanding I think it is pertinent to point out that American capitulatory rights in Morocco are derived not only from the American-Moroccan Treaty of 1836 but also from other treaties, conventions or agreements and confirmed by long-established custom and usage. It is unnecessary to enlarge upon this point since it seems to have been recognized by the French Government in the third paragraph of Article 10 and the second paragraph of Article 16 of the Anglo-French Convention of July 29, 1937, in both of which articles reference is made to the jurisdictional privileges enjoyed by the United States in Morocco "under *treaties* at present in force". Moreover, as you probably are aware, the recognition by the Government of the United States of the protectorate of France over Morocco was expressly made subject to subsequent negotiation between the United States and France respecting the capitulatory and other rights of the United States in Morocco.

As for the rights of the American Government in Syria and Palestine to which reference is made in your note, it will be recalled that those rights were defined as regards the former territory by the American-French Convention of April 4, 1924, and as regards the latter territory

by the American-British Convention of December 3, 1924. As was explained in the correspondence leading up to the signature of those conventions, notably in a memorandum handed to the French Foreign Office by the American Embassy in Paris on August 9, 1921, this Government was not in a position to agree to the proposed disposition of the territory in question except by the negotiation of an appropriate treaty. Similarly, when the question of the surrender of American capitulatory rights in Morocco arose in 1916, the American Government explained in a note addressed to the French Ambassador in Washington under the date of July 1 of that year, that the most practicable procedure of divesting American Consular officers of their judicial functions in the French Zone of Morocco would be through the negotiation of a treaty providing for the surrender by the United States of its right to exercise consular jurisdiction in the French Zone.

Although the American Government is unable, for the reasons previously stated, to acquiesce in the French proposal for the surrender of American capitulatory rights in the French Zone of Morocco through the medium of an exchange of notes, it is quite ready to consider the surrender of such rights through the conclusion of a convention along the lines of the Anglo-French Convention of July 29, 1937.

It is observed that one of the exchanges of notes annexed to the latter Convention, a copy of which you were good enough to furnish, provides for the conclusion of a new treaty establishing the basis of commercial relations between Great Britain and Morocco. As you are aware, there is at present no adequate bilateral agreement defining the commercial relations between the United States and Morocco. The American Government would therefore desire to enter into negotiations for such an agreement in the form of a convention of commerce and navigation simultaneously with the proposed negotiations for a convention relating to capitulatory matters. Upon learning that your Government is in accord with this proposal I shall be glad to prepare and submit drafts of both conventions for its consideration. As was explained to you orally, at the time you left at the Department of State your note under acknowledgment, the American Government would wish to carry on the proposed negotiations in Washington.

During the time that the above-mentioned matters are under consideration by the two Governments I earnestly hope that the French Government will see its way clear to instructing the French Protectorate authorities at Rabat to concert with the American Diplomatic Agent at Tangier in the settlement of certain minor claims which have arisen with respect to American nationals and protégés in the French Zone of Morocco. Some of these claims date back for several years and although none of them, I believe, involves any large sum I am sure that the French Government will agree that the present is a propitious moment for their settlement in order that all outstanding problems affecting American interests in the French Zone may be solved to the mutual satisfaction of the two Governments. I expect, therefore, to instruct the American Diplomatic Agent at Tangier to approach the Protectorate authorities in this matter in the near future and I should like to be able in this connection to count upon the benevolent co-operation of the French Government.

Accept [etc.]

CORDELL HULL.

[Translation]

EMBASSY  
OF THE FRENCH REPUBLIC  
IN THE UNITED STATES

Washington, August 5, 1938.

Mr. Secretary of State :

I have the honor to transmit herewith to Your Excellency a copy of the text of the treaty which was signed at Paris on July 18, 1938, between the French Government and the British Government concerning commercial relations between the French and Tangier zones of the Sherifian Empire and the United Kingdom of Great Britain and Northern Ireland.

On April 26, 1927 [August 26, 1937], the Chargé d'Affaires of France, Mr. Jules Henry, had the honor to advise Your Excellency that the French Government and the British Government had signed at London a convention concerning the abolition of the rights and privileges of a capitulatory nature enjoyed by Great Britain in Morocco and expressed to you the desire to conclude a similar agreement with the American Government.

Under these circumstances, the French Government has instructed me to confirm to Your Excellency the interest which it would attach to concluding with the Government of the United States two agreements similar to those which it has signed with the British Government : the former contemplating the abolition of the rights and privileges of a capitulatory nature enjoyed by the United States in Morocco, and the second concerning commercial relations between the French and Tangier zones of the Sherifian Empire and the Government of the United States. I am at Your Excellency's disposition as to supplying any supplementary explanations that you may desire to obtain regarding these texts.

Please accept [etc.]

JACQUES TRUELLE.

IV.—THE DISPUTE AFTER WORLD WAR II

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*Annex No. 51*

NOTE FROM THE AMERICAN CHARGÉ AT TANGIER TO THE  
FRENCH RESIDENT GENERAL OF SEPT. 5, 1944

Tangier, Morocco, September 5, 1944.

[*See Annex LXX to French Memorial, p. 234.*]

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*Annex No. 52*

NOTES FROM THE AMERICAN CONSUL-GENERAL AT CASA-  
BLANCA TO THE DIPLOMATIC COUNSELLOR OF THE FRENCH  
RESIDENCY OF MAY 8, 1947, AND JUNE 4, 1947, RESPECTIVELY

AMERICAN CONSULATE-GENERAL

No. 12

*Note*

The Consul-General of the United States of America at Casablanca presents his compliments to the Minister Plenipotentiary, Diplomatic Counsellor of the Residency General of France in Morocco, and has the honor to advise Mr. Marchat that it has come to the attention of Mr. Lewis that the authorities at Rabat are declining to issue import permits to Americans desirous of importing products into French Morocco when no foreign exchange has been requested.

Mr. Lewis need hardly point out to Mr. Marchat that since import licenses are not required for imports from France the requirement that imports from the United States, or by Americans from other sources, be covered by import licenses issued by the Protectorate authorities is clearly discriminatory. The acceptance by the United States Government of the Protectorate's exchange control regulations carried with it the specific reservation that there must be no discrimination in the application of those regulations, which included the import license requirement. In a spirit of co-operation the United States Government has not withdrawn its assent to the application to Americans of the exchange-control regulations and therefore, in that spirit, no protest has been made heretofore against the continued enforcement of the import license requirement, notwithstanding the obviously discriminatory character which it has assumed. It nevertheless should be clear to the Protectorate authorities that, once application has been made in the appropriate manner to the authorities and a reasonable period of time has been given for processing the application, approval must inevitably be expected when no request for foreign exchange is involved. The difficulties of the Protectorate Government in the matter of foreign exchange, particularly dollar

exchange, is understood, and there is no desire to influence the Protectorate Government in the allocation of exchange, unless clear evidences of discrimination, through the application of the exchange or *groupement* regulations, develop. However, the position is entirely different when licenses are refused, or are otherwise not granted, where no exchange has been requested.

While the principle is identical in all cases, Mr. Lewis is particularly concerned about the position of a number of American veterans who have taken up residence in French Morocco for the purpose of entering the import and export trade. The difficulties encountered by these veterans in obtaining import permits has placed a serious handicap on their efforts to establish and maintain their import enterprises, and the evidences of the unwillingness of the Protectorate authorities to approve their applications for import licenses have become so accumulative of late as to cause such persons grave concern as to their future in Morocco and even the survival of their businesses under such conditions. It may seem illogical to the authorities that Americans are willing to utilise their dollars for the purchase of products for importation into Morocco when there is some uncertainty as to their ability to continue such trade on that basis. Mr. Lewis feels, however, that this point is irrelevant. If the Americans wish to operate on that basis and to assume any risks involved it is not for the Protectorate authorities to deny them that right.

Mr. Lewis must insist, therefore, that when Americans apply for import licenses, and no request for exchange is involved, the licenses must be issued, and issued with reasonable promptitude.

Casablanca, May 8, 1947.

To the Minister Plenipotentiary,  
Diplomatic Counsellor  
of the Residency General of France in Morocco,  
Rabat.

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AMERICAN CONSULATE-GENERAL

No. 19.

*Note*

The Consul-General of the United States of America at Casablanca has the honor to present his compliments to the Minister Plenipotentiary, Diplomatic Counsellor of the Residency General of France in Morocco, and informs Mr. Marchat that the continued failure of the Protectorate authorities to grant, except in a few isolated instances, import licenses to Americans who are desirous of importing products into Morocco without exchange authorizations from the Protectorate would seem to indicate that Mr. Lewis's Note No. 12 of May 8, 1947, on this subject is not fully understood. Mr. Lewis would like to point out that the statements contained in that note represent the policy of the United States Government and that no distinctions are to be drawn by the Protectorate between one American and another or between one product and another.

Mr. Lewis is conscious of the concern of the Protectorate Government over the dollar exchange situation in Morocco and of its apprehensions

that unauthorized exchange may be used by Americans and others for the purchase of products in the United States for importation into the French Protectorate. Mr. Lewis wishes to assure M. Marchat that, if any American is discovered by the authorities to be engaged in any illegal exchange activity and evidence in that connection is submitted to the American Consular Court in Casablanca, appropriate action will be taken at once to apply such penalties as may be applicable. Mr. Lewis will also do what he can to encourage Americans to sell their products at reasonable prices, in relation to the established price structures, but inasmuch as the United States Government has not accepted the price control regulations of the Protectorate, Americans are, in actuality, in a legal position to sell their products at such prices as they may be able to get for them and to whoever may be willing to purchase.

Mr. Lewis is also concerned at the failure of the Protectorate to reply to his communications on the subject of licenses. In this particular connection Mr. Lewis wishes to refer to his Notes No. 14 of May 12, 1947, and No. 15 of May 15, 1947, with regard to the difficulties which Mr. SHORES has encountered in obtaining importation and exportation licenses.

While the delay in replying to these particular notes may not be regarded by Mr. Marchat as excessive Mr. Lewis would like to point out that much time elapsed before any action was taken by the Protectorate authorities on the several requests of Mr. Shores, and with the continued delay the interests of Mr. Shores are being greatly prejudiced. Mr. Shores is a veteran of the past war who has taken up residence in Morocco for the purpose of engaging in the import and export business. Almost all of the other Americans who have attempted to establish themselves in Morocco since the end of the war are also veterans. As a result of the many difficulties which they have encountered in complying with the numerous economic controls prevailing in the Protectorate, often attended by long delays in obtaining either approval or refusal from the authorities, the position of many of these veterans has become acute and the prospects for them discouraging. Mr. Lewis cannot view this situation with equanimity, and in the matter of import licenses, in particular, he must insist that where no foreign exchange is requested their applications for licenses must be promptly approved.

Casablanca, June 4, 1947.

To the Minister Plenipotentiary,  
Diplomatic Counsellor  
of the Residency General of France in Morocco,  
Rabat.

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*Annex No. 53*NOTE FROM THE DIPLOMATIC COUNSELLOR OF THE FRENCH  
RESIDENCY TO THE AMERICAN CONSUL-GENERAL  
AT CASABLANCA OF JUNE 25, 1947NOTE FROM THE AMERICAN CONSUL-GENERAL AT CASA-  
BLANCA TO THE DIPLOMATIC COUNSELLOR OF THE FRENCH  
RESIDENCY OF JUNE 30, 1947

RÉSIDENCE GÉNÉRALE M/R Rabat, le  
DE LA  
RÉPUBLIQUE FRANÇAISE  
AU MAROC

—  
CABINET DIPLOMATIQUE

—  
N 463 D

*Note*

Le Conseiller diplomatique du Protectorat a étudié, avec les directeurs des services intéressés de la Résidence générale, les questions soulevées par Monsieur le Consul général des Etats-Unis d'Amérique à Casablanca dans ses notes en dates des 8, 14, 15 mai et 4 juin 1947, sous les nos 12, 14, 15 et 19, relatives à des licences d'importation demandées par des ressortissants américains. Il tient tout d'abord à marquer son appréciation de l'esprit dans lequel Monsieur Charles W. LEWIS a abordé ces problèmes complexes et à lui faire part du désir des services résidentiels de répondre dans la plus large mesure possible aux préoccupations du Consulat général des Etats-Unis.

M. MARCHAT croit cependant devoir discuter l'opinion suivant laquelle, du fait que les importations en provenance de la France ne sont pas soumises au régime des licences (la raison évidente en est la similitude des systèmes monétaires) les importations en provenance des Etats-Unis seraient l'objet d'un traitement discriminatoire contraire aux traités. Pour que ce reproche soit mérité, il faudrait en effet, d'une part, que les importations en provenance d'autres pays dont la monnaie n'est pas le franc soient également exemptées de licences, et d'autre part que le Gouvernement américain, en n'acceptant pas la législation marocaine relative au contrôle des prix, n'ait pas, de lui-même, placé ses ressortissants dans une situation quelque peu différente de celle des autres importateurs.

M. MARCHAT se permet d'insister sur le caractère de cette législation du contrôle des prix, dont l'inspiration et les incidences sont d'ordre politique encore plus que d'ordre économique. Elle a en effet pour but essentiel d'assurer, par des mesures appropriées, l'approvisionnement normal, et accessible à tous, des populations dont le Gouvernement du Protectorat a la charge, et de maintenir ainsi, sur l'ensemble du territoire, les conditions d'ordre et de sécurité dont il est responsable à l'égard des Puissances étrangères. Les avantages dont les ressortissants de ces Puissances, spécialement les ressortissants américains, peuvent se réclamer du fait des traités seraient vains en effet si les difficultés de

ravitaillement, qui sont un des éléments principaux de la paix sociale, arrivaient à créer un malaise qui, en fin de compte, placerait le Maroc dans des conditions défavorables au développement normal des échanges commerciaux.

Les observations qui précèdent marquent les limites dans lesquelles le Gouvernement du Protectorat est en mesure de donner satisfaction aux demandes américaines en ce qui concerne les licences d'importation. Des instructions ont déjà été données aux services d'exécution pour que la grande majorité de ces demandes soient satisfaites dans les meilleurs délais, si elles n'entraînent pas l'attribution de devises. Cette décision d'ordre général ne saurait cependant s'étendre automatiquement à un certain nombre de marchandises contingentées telles que le sucre, le thé, le café, dont l'importance est considérable dans la consommation indigène et dont, pour cette raison, le Gouvernement chérifien a été amené à contrôler de très près les importations et même, dans certains cas, à se constituer l'unique importateur. Sans qu'il soit dans les intentions du Gouvernement du Protectorat de faire obstacle, en pareille matière, aux droits que les importateurs américains tiennent des traités, il a le devoir de s'assurer que l'ordre économique, fondé sur des données dont il peut seul avoir la parfaite connaissance, ne risquera pas d'être faussé par des importations plus ou moins massives faites par des particuliers qui n'ont ni les mêmes éléments d'appréciation, ni les mêmes responsabilités.

Telles sont les seules raisons pour lesquelles plusieurs demandes de licences d'importation, portant sur les marchandises dont il s'agit, ont dû être refusées. Les prix demandés par les importateurs présentaient, en effet, de trop larges écarts avec les prix marocains et même parfois les prix mondiaux. M. MARCHAT n'ignore pas qu'en pareille matière une interprétation inconditionnelle des traités donnerait théoriquement pleine liberté aux importateurs américains. Cependant, surtout dans les circonstances actuelles qui ne sont pas spéciales au Maroc, le Gouvernement américain ne saurait exiger pour certains de ses ressortissants l'exercice illimité, qui pourrait bientôt devenir abusif, de ces stipulations conventionnelles. En tout état de cause, les intérêts de quelques particuliers ne sauraient prévaloir contre l'intérêt général et l'ordre public que le Gouvernement du Protectorat, pleinement conscient de ses obligations internationales, a le devoir de faire respecter.

L'importance de cette discipline des prix n'a d'ailleurs nullement échappé à Monsieur Charles W. LEWIS, puisqu'il a bien voulu, ce dont M. MARCHAT lui est reconnaissant, se déclarer disposé à user de son influence auprès de ses ressortissants pour qu'ils s'y soumettent volontairement. M. MARCHAT remercie également Monsieur Charles W. LEWIS des assurances qu'il lui donne en ce qui concerne la répression éventuelle des trafics illégaux de devises dont seraient saisis les tribunaux consulaires. La Résidence générale attacherait de son côté du prix à ce que le Consulat général voulût bien, toutes les fois que cela lui semblera possible, appuyer de sa garantie morale les demandes des importateurs américains.

En terminant, M. MARCHAT répète que ces demandes dont la majeure partie ont été déjà satisfaites, seront toujours examinées avec la plus grande bienveillance et que les services intéressés du Protectorat restent disposés, dans le cas des marchandises contingentées, à rechercher

avec les importateurs américains des terrains d'entente en ce qui concerne la fixation des prix.

RABAT, le 25 juin 1947.

CONSULAT GÉNÉRAL DES ÉTATS-UNIS  
D'AMÉRIQUE  
A CASABLANÇA.

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AMERICAN CONSULATE-GENERAL

No. 24

*Note*

The Consul-General of the United States of America at Casablanca presents his compliments to the Minister Plenipotentiary, Diplomatic Counselor of the Residency General of France in Morocco, and has the honor to thank M. Marchat for his Note No. 463D of June 25, 1947, on the subject of certain difficulties which have arisen in connection with the issuance by the Protectorate authorities of import licenses to Americans who have made no requests for exchange authorizations.

Mr. Lewis wishes to express his appreciation of the point of view presented by M. Marchat and to assure M. Marchat that the spirit of understanding manifested in this note is gratifying to Mr. Lewis. By mutual co-operation it is hoped that the difficulties which arose in connection with the issuance of import licences will disappear.

Casablanca, June 30, 1947.

To the Minister Plenipotentiary,  
Diplomatic Counselor of the  
Residency General of France in Morocco,  
RABAT.

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*Annex No. 54*

NOTE FROM THE DIPLOMATIC CABINET OF THE FRENCH  
RESIDENCY TO THE AMERICAN CONSULATE-GENERAL AT  
CASABLANCA OF SEPT. 13<sup>1</sup>, 1947

[See Annex II to French Memorial, pp. 99-101.]

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<sup>1</sup> [Note by the Registry] Dated Sept. 18th, 1947, in Annex II to French Memorial.

*Annex No. 55*

## NOTE FROM THE AMERICAN CONSUL-GENERAL AT CASABLANCA TO THE DIPLOMATIC COUNSELLOR OF THE FRENCH RESIDENCY OF SEPT. 22, 1947

## AMERICAN CONSULATE-GENERAL

*Note*

The Consul of the United States of America at Casablanca presents his compliments to the Chief of the Diplomatic Cabinet of the Residency General of France in Morocco and has the honor to acknowledge the receipt of his Note No. 630-D of September 13, 1947. Mr. Elting is glad to receive Mr. de Bourdeille's note as it offers an opportunity to review the position with respect to the temporary application to American trade and ressortissants in French Morocco of exchange controls.

First, it provides an opportunity to reaffirm the Consulate-General's willingness and desire to co-operate with the Protectorate authorities in suppressing illegal franc exports.

Second, it affords a chance to clarify the American position with regard to the question of American imports into French Morocco, with or without accompanying requests for foreign exchange.

With reference to the first point, Mr. Elting has ascertained that an appropriate investigation was set in motion by Mr. Pasquet immediately upon receipt of Mr. de Bourdeille's note No. 631-D of September 13, 1947, and that his answer should reach Mr. de Bourdeille shortly. As will be perceived from Mr. Pasquet's reply every possible measure has been taken to prevent the facilities of Port Lyautey from being used for purposes of irregular monetary transfers.

Furthermore, the Consulate-General desires to reiterate Mr. Lewis's unequivocal stand as to its intention to co-operate to the full by prosecuting any Americans engaging in the illegal exportation of funds. It is clear, however, that the Protectorate authorities through their police and customs services have at their disposal the principal means of discovering exchange irregularities.

The suggestion made by Mr. de Bourdeille relative to some sort of a moral guaranty to be given by the Consulate-General as to the origin of funds has been carefully examined and found to be impracticable, particularly since the free economy obtaining in the United States makes it literally impossible to verify the extent of individual capital holdings there. However, the Consulate-General would be interested to examine any other control measures which may be proposed in the light of the present practice of the Protectorate authorities in dealing with illegal transfers of foreign exchange on the part of non-Americans.

Coming to point two, the Consulate-General must reiterate the position taken by Mr. Lewis in his Note No. 12 of May 8, 1947, which read in part as follows: "... Since import licenses are not required for imports from France the requirement that imports from the United States, or by Americans from other sources, be covered by import licenses issued by the Protectorate Authorities is clearly discriminatory. The acceptance by the United States of the Protectorate's exchange-control

regulations carried with it the specific reservation that there must be no discrimination in the application of those regulations which included the import license requirement. In a spirit of co-operation the United States Government has not withdrawn its assent to the application to Americans of the exchange-control regulations and therefore, in that spirit, no protest has been made heretofore against the continued enforcement of the import license requirement, notwithstanding the obvious discriminatory character which it has assumed. It nevertheless should be clear to the Protectorate Authorities that once application has been made in the appropriate manner to the authorities and a reasonable period of time has been given for processing the application, approval must inevitably be expected when no request for foreign exchange is involved."

While recognizing the convenience of the import license requirement for statistical purposes, the Consulate-General can perceive no grounds for refusal of their issuance when foreign exchange is not requested. For this reason, the Consulate General must insist upon the immediate resumption of issuance of import licenses, when no allocation of foreign exchange is involved. It is in fact astonished at the unilateral suspension on the part of the Protectorate Authorities of the issuance of import licenses not involving requests for foreign exchange, despite the agreement reached on the subject by an exchange of notes between Mr. Lewis and Mr. Marchat last May and June and Mr. de Bourdeille's expressed desire not to modify this agreement.

With respect to the penultimate paragraph of Mr. de Bourdeille's note under reference the Consulate-General can only assume that the category of merchandise for which licenses are to be limited refers to the category mentioned on page two of Mr. Marchat's note No. 463 of June 25, 1947, i. e. tea, coffee and sugar.

Casablanca, September 22, 1947.

To the Minister Plenipotentiary,  
Diplomatic Counsellor  
of the Residency General of  
France in Morocco,  
Rabat.

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*Annex No. 56*

NOTES FROM THE AMERICAN CONSUL-GENERAL AT  
CASABLANCA TO THE DIPLOMATIC COUNSELLOR OF  
THE FRENCH RESIDENCY OF OCT. 31, 1947, AND NOV. 18, 1947,  
RESPECTIVELY

AMERICAN CONSULATE-GENERAL

*Note*

The Consul of the United States of America at Casablanca presents his compliments to the Minister Plenipotentiary, Diplomatic Counsellor

of the Residency General of France in Morocco and has the honor to refer to Note No. 33 of September 22, 1947, concerning the matter of import licenses for Americans when no request for foreign exchange is involved.

The Consulate-General is astonished to observe that the Protectorate Authorities continue to withhold licenses requested by Americans under these conditions for periods which can hardly be considered reasonable. The following specific case is drawn to Mr. MARCHAT'S attention.

An American citizen, Mr. Isaac ABITBOL, has pending applications for the importation of goods, without any request for foreign exchange, dated August 12, August 27, and two dated August 30, 1947.

Reasonable promptitude in the issuance of licenses would seem to imply action in something under two weeks rather than something over two months.

If, as the Consulate-General is inclined to believe, present delays are attributable to the financial rather than the economic services of the Protectorate, it must be re-emphasized here that any attempt to link the granting of import licenses, when no foreign exchange is requested, with such matters as alleged illegal transfer of funds or the valuation of goods for the purpose of assessment of customs duties can most emphatically not be admitted. Accordingly, the Consulate-General must insist upon the immediate issuance of the licenses in question and any others which may have been similarly held up.

Casablanca, October 31, 1947

To the Minister Plenipotentiary,

Diplomatic Counselor of the Residency General of France in Morocco,  
Rabat.

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CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA

No. 44

*Note*

The Consul of the United States of America at Casablanca has the honor to present his compliments to the Minister Plenipotentiary of the Residency General of France in Morocco and to invite reference to Note No. 41 of October 31, 1947, concerning the withholding of import licenses requested by Americans.

It has now been learned that the following licenses applied for by Mr. Isaac ABITBOL have been actually refused:

- 1—Application of August 26, 1947 (No. 18379) (802) covering plastic belts.
- 2—Application of August 26, 1947 (No. 18383) (812) covering toilet soap.
- 3—Application of October 27, 1947 (No. 20115) (1221) covering shoes.

The Consulate-General requests to be informed of the reason for these refusals.

The Consulate-General also desires to have an explanation as to the reasons for which Mr. Abitbol was requested by a letter dated Novem-

ber 6, 1947 (No. 09024 CMM/CT) (SE/5.11.47) from the Service Textiles & Cuirs of the Direction de l'Agriculture, du Commerce et des Forêts, to communicate the price of certain cotton goods, hosiery and mattress covers, for which he had requested import permits, and to submit samples. The Consulate-General is at a loss to understand the meaning of this request in view of the fact that Mr. Abitbol is an American citizen who is importing without requesting an allocation of foreign exchange, not to mention the fact that the goods in question have been freed from price controls.

It is believed to be customary when an agreement, such as that regarding the issuance of import licenses to Americans when no foreign exchange is requested, has been entered into, to maintain the status quo while proposals for modification thereof are discussed with the other party. At the least, the other party may expect some notice with regard to any change, and a frank statement as to the exact basis on which it is proposed that any new policy be founded. As matters now stand, the Consulate-General has no inkling as to what, if any, policy is being adhered to currently. Accordingly, the Consulate-General considers that it is entitled to an explanation of the position of the Protectorate Government in the specific cases referred to above as well as a statement of the general position in the matter.

Casablanca, November 18, 1947.

To the Minister Plenipotentiary,  
Diplomatic Counsellor,  
Residency General of France in Morocco,  
Rabat.

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*Annex No. 57*

NOTE FROM THE DIPLOMATIC COUNSELLOR OF THE FRENCH  
RESIDENCY TO THE AMERICAN CONSUL-GENERAL AT CASA-  
BLANCA OF MARCH 5, 1948

Rabat, le 5 mars 1948.

Résidence générale  
de la République française  
au Maroc  
Cabinet diplomatique  
No. 115 D

*Note*

A la suite de l'entretien qu'il a eu, il y a quelques jours à Casablanca, avec M. FELICI, directeur du Commerce, Monsieur Howard ELTING Jr. a bien voulu téléphoner à M. MARCHAT pour lui demander instamment de faire autoriser le dédouanement d'une cargaison de sucre arrivée au port de Casablanca pour le compte d'un ressortissant américain.

Il résulte des renseignements que M. MARCHAT s'est empressé de recueillir auprès des services intéressés qu'il est bien exact que ce chargement a fait l'objet, en novembre dernier, d'une demande de licence,

présentée par un ressortissant américain qui, à la connaissance tout au moins de ces services, n'est nullement spécialisé dans le commerce du sucre.

S'agissant de marchandises contingentées, pour lesquelles, comme l'indiquait la note de M. MARCHAT à M. Charles W. LEWIS du 25 juin dernier, No. 463, la Résidence générale a dû réserver sa liberté d'action, l'octroi de la licence a été subordonné à l'acceptation par le demandeur des conditions habituelles en pareille matière, dont Monsieur Howard ELTING Jr. a été informé au cours des réunions tenues en décembre et février dans le cabinet de M. MARCHAT.

En effet, comme le sait bien le Consulat général des Etats-Unis, cette Résidence générale se trouve dans l'obligation pour des raisons d'ordre politique, d'exercer un contrôle rigoureux sur la distribution et le prix de vente de ces marchandises qui sont d'une importance vitale pour l'alimentation de la population indigène. Celle-ci, exception faite d'une élite citadine relativement assez peu nombreuse, est essentiellement imprévoyante. Elle ne dispose souvent que de moyens financiers réduits et en est encore au stade d'une éducation économique fort insuffisante. L'expérience a, par exemple, prouvé que, dès que de telles denrées apparaissent sur un marché, les acheteurs les enlèvent sans s'inquiéter de savoir si le prix demandé est ou non le prix contrôlé, ne manquant pas d'ailleurs de rendre l'Administration responsable de variations de prix dont ils ne comprennent pas les raisons. C'est de ces pratiques que l'Administration a dû se préoccuper : elle avait en effet devoir de garantir ces populations contre leur propre prodigalité. Dans ce but, elle contrôle les prix en vue de les maintenir à un taux raisonnable et elle s'assure de stocks de sécurité en exigeant de tout importateur la livraison au Ravitaillement général d'une part, déterminée à l'avance, de ses importations. Ces pratiques sont rendues nécessaires par les circonstances et les services d'exécution ne peuvent en dispenser tel ou tel importateur sous peine de contrevenir à la règle du traitement égal.

Telles sont les raisons d'ordre général pour lesquelles il n'était pas possible aux Services économiques du Protectorat d'autoriser l'importation inconditionnelle du chargement qui fait l'objet de la présente note. Si, cependant, un refus formel n'a pas été notifié par écrit au requérant, c'est que, dans ce cas comme dans d'autres, l'Administration gardait le souci de laisser la porte ouverte à un arrangement. En fait, des conversations se sont poursuivies à ce sujet entre des représentants de l'Administration et l'importateur jusqu'au 4 février, date à laquelle ce dernier s'est définitivement refusé à tout compromis et a décidé de poursuivre nonobstant l'opération.

En terminant, M. MARCHAT a l'honneur de faire savoir à Monsieur Howard ELTING Jr. qu'en dépit de l'attitude de l'importateur américain, l'Administration du Protectorat reste disposée à étudier avec lui, dans le cadre des considérations ci-dessus exposées, les moyens de régler un incident qui ne se serait évidemment pas produit si l'intéressé, pleinement conscient des difficultés qu'il allait provoquer, n'avait cru devoir mettre l'Administration du Protectorat et le Consulat général des Etats-Unis devant le fait accompli.

RABAT, le



*Annex No. 58*

## NOTE FROM THE AMERICAN CONSUL-GENERAL AT CASABLANCA TO THE DIPLOMATIC COUNSELLOR OF THE FRENCH RESIDENCY OF MARCH 9, 1948

AMERICAN CONSULATE-GENERAL

No. 18

*Note*

The Consul of the United States of America at Casablanca has the honor to present his compliments to the Minister Plenipotentiary, Diplomatic Counsellor of the Residency General of France in Morocco, and to acknowledge the receipt of Mr. Marchat's Note No. 115D of March 5, 1948, concerning the question of import licenses for Americans when no allocation of foreign exchange is requested.

In reply, and in order to make the Consulate-General's position perfectly clear, a review of the entire situation seems necessary.

By its Note No. 12 of May 8, 1947, the Consulate-General first protested formally against the failure of the Protectorate Authorities to issue import licenses to American citizens desirous of importing merchandise into the French Zone of Morocco without any allocation of foreign exchange by the Protectorate. This note read in part as follows: "Since import licenses are not required for imports from France, the requirement that imports from the United States, or by Americans from other sources, be covered by import licenses issued by the Protectorate Authorities is greatly discriminatory. The acceptance by the United States of the Protectorate's exchange control regulations carried with it the specific reservation that there must be no discrimination in the application of those regulations which included the import license requirement. In a spirit of co-operation the United States Government has not withdrawn its assent to the application to Americans of the exchange-control regulations and therefore, in that spirit, no protest has been made whatsoever against the continued enforcement of the import license requirement, notwithstanding the obvious discriminatory character which it has assumed. It nevertheless should be clear to the Protectorate Authorities that once application has been made in the appropriate manner to the authorities, and a reasonable period of time has been given for processing the application, approval must inevitably be expected when no request for foreign exchange is involved."

The Consulate-General's Notes Nos. 14 and 15 of May 12 and 15, 1947, respectively, related to specific cases of refusals of licenses and requested information as to the reasons for refusal.

The Consulate-General's Note No. 19 of June 4, 1947, noted the continued failure of the Protectorate Authorities to grant import licenses except in a few isolated instances. It also expressed concern over the failure of the Protectorate to reply to previous communications on the subject. This Note pointed out that the statements contained in Note 12 of May 8 "represent the policy of the United States Government and that no distinctions are to be drawn by the Protectorate between one American and another or between one product and another." It also pointed out that "inasmuch as the United States Government has

not accepted the price-control regulations of the Protectorate, Americans are in actuality, in a legal position to sell their products at such prices as they may be able to get for them and to whoever may be willing to purchase."

By Note No. 463D of June 25, 1947, Mr. Marchat replied to all of the above-mentioned notes. This reply contains the first mention of sugar, tea and coffee, the so-called "political" items. In this Note Mr. Marchat admits that under the Treaties American citizens have full liberty with respect to importations. His additional statement therein to the effect that the exercise of this liberty might become abusive, is an assumption which has not been borne out in other cases.

The Consulate-General's reply, embodied in its Note No. 24 of June 30, 1947, merely expressed appreciation of the spirit of understanding shown by Mr. Marchat and voiced the hope that "by mutual co-operation" the difficulties which arose in connection with the issuance of licenses would disappear. It should be observed that this Note in no way prejudiced the position of the Consulate-General with regard to the right of Americans to receive licenses for all commodities.

A short time later, the issuance of all licenses was once again completely suspended without consultation of, or even notification to, the Consulate-General. Repeated efforts to obtain information from the Protectorate Authorities as to the reasons for this new suspension were unavailing until finally Mr. de Bourdeille's Note No. 630D of September 13, 1947, was received. This Note announced that the Protectorate intended to restrict the licenses to be granted to certain unspecified categories of goods, to be selected with regard to the essential needs of the country.

The Consulate-General's Note in reply, No. 33 of September 22, 1947, reiterated the previous stand that all licenses must be issued when not involving any allocation of foreign exchange, and expressed astonishment at the unilateral suspension of issuance of licenses despite the agreement which had been reached on the subject by the exchange of notes in May and June and Mr. de Bourdeille's express desire not to modify this agreement. Finally, the Note of September 22 stated that it was assumed that the categories of merchandise to which the issuance of licenses were to be limited referred to those items mentioned in Mr. Marchat's Note of June 25.

Despite the above, the Protectorate Authorities went ahead arbitrarily and set up various categories of merchandise to be given varying consideration in the matter of licensing. The Consulate-General was not even able to obtain lists of the goods affected. Oral protests once more having proved unavailing, the Consulate-General by Note No. 41 of October 31, 1947, drew the Protectorate's attention to a specific case in which licenses had been held up since August and once more insisted that such licenses be issued and issued promptly.

On November 18, 1947, by Note No. 44, the Consulate-General raised additional questions on the same subject and added: "It is believed to be customary when an agreement, such as that regarding the issuance of import licenses to Americans when no foreign exchange is requested, has been entered into, to maintain the status quo while proposals for modification thereof are discussed with the other party. At the least, the other party may expect some notice with regard to any change, and a frank statement as to the exact basis on which it is proposed that any new

policy be founded. As matters now stand, the Consulate-General has no inkling as to what, if any, policy is being adhered to currently. Accordingly, the Consulate-General considers that it is entitled to an explanation of the position of the Protectorate Government in the specific cases referred to above as well as a statement of the general position in the matter."

Finally, early in December, the Consulate-General learned indirectly that most of the pending licenses were at last being issued, the Protectorate apparently, having abandoned the "special categories" scheme. On December 18, a meeting was held in Rabat at which the general position was reviewed. At that time, Mr. Elting made it clear that in view of all that had happened the Consulate-General could only take the position that all licenses for all categories of merchandise must be issued and issued promptly. The Protectorate Authorities present brought up the matter of certain specific items which they considered to have a "political" aspect. Mr. Elting pointed out that any tacit agreement which might have existed in the past had been terminated unilaterally, not through any action taken by the Consulate-General, and that he was unable to enter into any other similar agreement under the circumstances, particularly as he was unconvinced by the oral arguments presented. Mr. Elting added, however, that he would be happy to receive a written exposition of the Protectorate's views setting forth why certain categories of merchandise were considered to be of such a nature as to require special treatment. He stated that any such exposition would be given sympathetic consideration and, if necessary, referred to the Department of State at Washington with a view to ascertaining whether his Government wished to modify its position in such cases.

No such written exposition of the Protectorate's position was received, but another meeting was proposed in January. Because of the changes being made in the exchange rate of the franc, this meeting was postponed by mutual consent until the situation was clarified. Finally, the second meeting was held in Rabat on February 24. At this meeting the discussion was concerned largely with two commodities, namely tea and sugar.

With regard to tea, Mr. Elting maintained his previous position and declared that he was unable to accept a system whereby 2/5ths of any importation would be ceded to the Protectorate and the remaining 3/5ths left to the importer for free sale. He repeated his request for a written exposition of the Protectorate's position in the matter, if it was desired to make a case for the restriction of the import rights of Americans.

With regard to sugar, the Protectorate Authorities presented the proposition that the Protectorate, acting through the sugar "groupe-ment", should purchase the entire amount of any sugar imported by Americans, paying a price to be determined, which would include a "reasonable profit". Mr. Elting remarked that this proposal sounded interesting but that it would require study.

Two days after the meeting, a rumor came to Mr. Elting's notice to the effect that the Consulate-General had accepted such an arrangement. Considerable study, in consultation with various interested importers, had been given to the question meanwhile. This study made such a proposal appear unacceptable, and the Protectorate Authorities were so notified orally at once. Furthermore, a meeting was arranged the following day with Mr. FELICI, at which he was given a full and complete

exposition of the Consulate-General's position. Finally, the matter was discussed by telephone with Mr. Marchat. This discussion resulted in Mr. Marchat's preparing and sending his Note No. 115D of March 5, 1948.

From the above outline of the facts, it will be evident that the Consulate-General has done everything in its power to co-operate with the Protectorate Authorities. It will also be clear, however, that under the Treaties American citizens in the French Zone of Morocco have the right to import freely all categories of merchandise when no allocation of foreign exchange is requested. This fact having been established, it remains to examine the argumentation set forth in Note No. 115.

The cession of all or part of a shipment of any commodity to the Protectorate Authorities in effect simply means that the American importers would be making available to the various "groupements" the benefit resulting from the fact that Americans are able to dispose of their own foreign exchange. The question as to whether or not they should make this benefit available to others would appear to be a strictly commercial matter to be discussed between the interested parties without the need for governmental intervention. As has been demonstrated in the case of other commodities, the result of unrestricted importations by Americans has invariably been to weaken greatly, or even destroy, the black market, with an accompanying drop in prices, while at the same time providing Morocco with much needed goods. The Consulate-General finds it hard to understand why American importers, who have not enjoyed the benefits of allocations of foreign exchange by the Protectorate, should be asked to cede a part of their merchandise at uneconomical prices while they would, at the same time, be encouraged to sell the remaining portion of such merchandise at prices higher than those at which they could supply the commodities on the unrestricted free market. Furthermore, it is believed to be an economic truth that an increase in supply invariably must and does result in the fall of prices. Since it must be assumed that under the laws of economics prices of rationed commodities will have to rise by approximately 80 % to correspond with the new current value of the franc, it is believed that free importations will assist greatly in destroying the black market since such importations from the very outset will closely approximate what must become the controlled prices. The net result will thus be a considerable increase in the quantity of essential commodities available at prices far below the black market prices and closely approximating the controlled prices. This will aid in relieving the demand for the scarce dollars available to the Protectorate while attaining the objective of destroying the black market and making available essential goods to all at reasonable prices. It is believed that this is a position which will have the full support of public opinion.

For the above reasons, the Consulate-General must insist once more that licenses for all commodities which Americans may desire to import without requesting foreign exchange, be issued and issued promptly.

Casablanca, March 9, 1948.

To the Minister Plenipotentiary,  
Diplomatic Counsellor  
of the Residency General of France in Morocco,  
Rabat.

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*Annex No. 59*NOTE FROM THE AMERICAN CONSUL-GENERAL AT  
CASABLANCA TO THE DIPLOMATIC COUNSELLOR OF THE  
FRENCH RESIDENCY OF NOV. 13, 1947

## AMERICAN CONSULATE-GENERAL

No. 43

*Note*

The Consul of the United States of America at Casablanca has the honor to present his compliments to the Minister Plenipotentiary, Diplomatic Counsellor of the Residency General of France in Morocco, and to protest strenuously against what would appear to be the arbitrary and unilateral action of the customs authorities in Casablanca in endeavoring to assess improper valuations on imported American goods.

One American concerned is Mr. Joseph F. WECKERLE. The goods are tires which he purchased with his own dollars and imported from the United States, having first obtained an import license. The goods having arrived in Casablanca, Mr. Weckerle presented his import permit, commercial invoice and French consular invoice to the customs authorities. The invoice value, which was not questioned, was shown to be \$21,086.80 equal to Frs. 2,530,320 at the official rate of 120 francs to the dollar. The customs authorities refused to accept this valuation and announced to him that the duty would be assessed on the basis of the internal Moroccan price. Mr. Weckerle protested, pointing out that as recently as three months ago he had brought in tires on which the duty had been normally assessed on the basis of the invoice value. Furthermore, he pointed out that all other importations he had made of tires and automobiles had been so assessed. He asked for the reason for the increase in duty and was told by the customs authorities that this was something *new*.

Another American concerned is Mr. Gus G. STRATTON. In his case also increased customs valuations are something new. The following table proves conclusively that proper valuations were made until July, 1947, at which time the new and arbitrarily increased valuations began to be imposed.

Nature of Merchandise	Cost CIF		Customs Evaluation	Duty Paid Frs.	Date Paid
	Casablanca				
	Frs.		Frs.	Frs.	
1. Buick Road Master 1947	517.700	Appr.	540.000	67.780	8/7/47
2. Doughnut Machines & Parts	289.680		289.079	36.723	9/4/47
3. Kaiser Automobile 1947	319.500	Appr.	300.000	37.227	9/12/47
4. 20 Refrigerators	492.000				
30 Auto-Radios	144.960		1.500.000	197.128	10/16/47
5. 4 Portable Radios GE	39.000				
2 Phonographs GE	5.760		110.000	14.995	10/17/47
6. 5 Typewriters (Re- fabricated)	53.685		151.800	19.181	10/23/47
7. Packard Automobile '48	96.000	Appr.	315.000	39.828	10/27/47

The action protested obliges the importer either to leave his goods in the custom-house, with all the risks that that implies, and incur needless additional expense, or else pay the excessive duty demanded under protest, thus tying up additional funds for an indefinite period.

These are but two of many similar cases which have arisen here in recent months which both Mr. Pasquet and Mr. Elting have been at great pains to draw to the attention of Mr. Marchat and other interested authorities. Mr. Marchat will recall that this was one of the main reasons which impelled Mr. Elting to proceed to Rabat for the purpose of protesting orally at considerable length. Regarding these cases it was pointed out that definite discrimination was involved since others importing with dollars allocated by the Protectorate Authorities were assessed the correct legal duty on absolutely identical merchandise.

Mr. Marchat must be aware of the fact that the effect of American importations without requests for foreign exchange has resulted in very substantial decreases in prices to the consumer here. Would not the effect of the increase in duty here protested be to increase the prices of commodities needed in Morocco and thus injure the Moroccan economy?

The only construction that can be placed on the attempt to levy higher duties is that the measure is aimed at the restriction of the trade in question which in essence amounts to a denial of the legal value of the franc.

It would also seem to be desirable to point out once more here that Article 95 of the Act of Algeciras defines the basis for assessment of import duties by the Moroccan customs as follows:

"The *ad valorem* duties shall be liquidated according to the cash wholesale value of the merchandise delivered in the customs and free from customs duties and storage dues."

This wholesale value comprises the wholesale export value in the exporting country increased by the expenses necessary for importation up to the Moroccan port of entry excluding customs and warehousing duties. That such was the interpretation of Article 95 in the intention of the Powers at the Algeciras Conferences, including the French themselves, is confirmed by a letter from M. G. Luret to Minister Carpenter dated July 16, 1912, on the subject of a misunderstanding between the Customs at Saffi and the Vacuum Oil Company. M. Luret, as representative of the *Délégué du Contrôle de la Dette*, was virtually the Controller of the Moroccan Customs at that time, and in his letter under reference defines the dutiable cash wholesale value of imported goods in the following terms:

"Cette valeur comporte le prix d'achat du pétrole f.o.b. New-York augmenté de tous les frais postérieurs à l'achat, tels que les droits de sortie acquittés aux douanes étrangères, le transport, l'emballage, le fret, l'assurance, les manipulations, le débarquement etc., en un mot tout ce qui contribue à former, au moment de la présentation au bureau de douane, la valeur au comptant et en gros du produit suivant laquelle doivent, d'après l'art. 95 de l'Acte d'Algeciras, être liquidés les droits."

Article 96 of the Act of Algeciras provided that the value of the chief articles of merchandise was to be appraised every year by a Committee

of Custom valuations, but stipulated that such valuations must be made by the Committee *in accordance with the terms of Article 95*. This Committee and also a "Committee of Customs" (Article 97 of the Act of Algeciras) consisting of a Sherifian Commissioner, a member of the Diplomatic or Consular Corps and a delegate from the State Bank "to exercise its high supervision over the customs service" including appraisal of duties, were both abolished by the Tangier Statute of 1923. Inasmuch as the United States Government has refused its adherence to the Tangier Statute, such abolitions cannot affect its rights under the Act of Algeciras including therefore its right, through its representative at Tangier as the sole remaining member of the Diplomatic Corps, to a voice in the matter of the dutiable appraisal of imported goods as provided for in that Act.

Article 95 of the Act of Algeciras superseded the previous practice of the Moroccan customs which, as indicated in Article 2 of the German-Moroccan Treaty of 1890, was to the effect that "the calculation of customs dues (10% *ad valorem*) shall be assessed on the wholesale cash price obtaining in respect of the merchandise in question in the market of the port through which they are imported." Incidentally, it may be recalled that the change in the basis of assessment value introduced by the Act of Algeciras derived from a proposal of the German delegation at the Algeciras Conference (Protocole et Comptes Rendus de la Conférence d'Algésiras — Paris, Imprimerie Nationale 1906 — page 232).

The endeavor of the French Protectorate to revert to customs valuations on the basis of internal market prices is thus seen to be without legal basis.

Casablanca, November 13, 1947.

To the Minister Plenipotentiary,  
Diplomatic Counsellor of the  
Residency General of France in Morocco, Rabat.

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*Annex No. 60*

NOTES FROM THE AMERICAN CONSUL-GENERAL AT  
CASABLANCA TO THE DIPLOMATIC COUNSELLOR OF THE  
FRENCH RESIDENCY OF MARCH 2, 1948, AND APRIL 2, 1948,  
RESPECTIVELY

*Note*

No. 15

The Consul of the United States of America at Casablanca has the honor to present his compliments to the Minister Plenipotentiary, Diplomatic Counsellor of the Residency General of France in Morocco, and to invite reference to his Note No. 43 of November 13, 1947, and to reiterate his protest at the continued assessment of discriminatory customs duties contrary to the provisions of the Act of Algeciras. Mr. Elting is surprised that his Note under reference has remained unanswered for such a protracted period despite Mr. Marchat's assurances,

given at the meeting in Rabat on December 18, 1947, that a reply would be promptly forthcoming. In view of the time which has elapsed and of the importance of this question to American citizen importers here, Mr. Elting requests Mr. Marchat to take the necessary steps with a view to the formulation of an early reply.

Casablanca, March 2, 1948.

To the Minister Plenipotentiary,  
Diplomatic Counsellor  
of the Residency General of France in Morocco, Rabat.

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*Note*

No. 23

The Consul-General of the United States of America at Casablanca has the honor to present his compliments to the Minister Plenipotentiary, Diplomatic Counsellor of the Residency General of France in Morocco, and invites his attention to the fact that the Consulate-General's Note No. 43 of November 13, 1947, concerning the irregular assessment of customs duties, remains unanswered. The matter was recalled in the Consulate-General's Note No. 15 of March 2, 1948. Sufficient time would appear to have elapsed for study of this question and formulation of a reply, for which reason Mr. FLETCHER requests Mr. MARCHAT to inform you at his early convenience of the position of the Protectorate Government with regard thereto.

At the same time Mr. Fletcher desires to refer to the matter of import licenses for American citizens importing merchandise without requesting allocations of foreign exchange, which was the subject of the Consulate-General's Note No. 18 of March 9, 1948, and to inquire whether an early reply may be expected or whether he should proceed on the contrary assumption.

Casablanca, April 2, 1948.

To the Minister Plenipotentiary,  
Diplomatic Counsellor of the Residency General of France,  
Rabat.

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*Annex No. 61*NOTE FROM THE DIPLOMATIC COUNSELLOR OF THE FRENCH  
RESIDENCY TO THE AMERICAN CONSUL-GENERAL  
AT CASABLANCA OF MAY 4, 1948RÉSIDENCE GÉNÉRALE  
DE LA  
RÉPUBLIQUE FRANÇAISE  
AU MAROC

Rabat

Cabinet diplomatique

N° 237-D

*Note*

Par une note en date du 6 mars (*sic*—March 2), le Consulat général des Etats-Unis à Casablanca a bien voulu rappeler à l'attention du Conseiller diplomatique la question de l'évaluation en douane des marchandises américaines importées par des ressortissants américains. Dans de précédentes communications, écrites ou verbales, MM. ELTING et PASQUET avaient contesté les pratiques suivies en cette matière par l'administration des Douanes chérifiennes, et, à l'occasion de cas particuliers, s'étaient élevés contre l'anomalie que constituait à leurs yeux l'application de bases d'évaluation différentes suivant que les marchandises étaient importées avec ou sans attribution de devises par l'Office des Changes.

Se référant aux indications qu'il a eu l'occasion de donner à ce sujet au cours de ses entretiens avec MM. ELTING et PASQUET, M. MARCHAT a l'honneur de faire savoir à Monsieur FLETCHER que si, en raison des circonstances, cette question s'est posée avec une acuité nouvelle et sous un aspect quelque peu particulier, ce n'est certes pas la première fois que les termes de l'article 95 de l'Acte d'Algésiras ont pu faire l'objet, de la part des usagers, d'une interprétation différente de celle de l'administration des Douanes chérifiennes.

C'est pour faire cesser toute équivoque à ce sujet que les représentants du Protectorat avaient saisi l'occasion de la négociation avec la Grande-Bretagne concernant les relations commerciales avec la zone française du Maroc pour compléter, en les précisant, les termes de cet article. La définition finalement adoptée figure en annexe à la lettre n° 5 jointe au traité franco-britannique du 18 juin 1938, documents qui ont été communiqués au Gouvernement américain en vue des négociations de 1939. Il y était écrit que « la valeur à déclarer en douane est la valeur qu'ont les marchandises au comptant et en gros, dans le lieu et au moment où elles sont présentées à la douane, c'est-à-dire la valeur en gros de ces marchandises ou des marchandises de l'espèce dans le marché du lieu où l'importation a été effectuée, déduction faite des droits de douane ou de magasinage ainsi que des frais divers supportés postérieurement à l'importation ».

Si, bien que le traité du 18 juin 1938 n'ait pas encore été ratifié, M. MARCHAT a cru devoir rappeler cette définition dont il croit savoir qu'elle n'avait pas soulevé d'objection particulière au cours des conversations franco-américaines de l'été 1939, c'est pour marquer que la doctrine de l'administration des Douanes chérifiennes n'a jamais varié

en pareille matière, et que les importateurs américains qui ont soulevé la question ces mois derniers ne sont pas fondés à se plaindre de pratiques nouvelles ou discriminatoires de la part de l'Administration des Douanes chérifiennes. Ces dernières n'ont jamais cessé d'appliquer des méthodes, étudiées à de très nombreuses reprises et sous tous leurs aspects, qui se révèlent, à l'examen, les seules conformes à l'esprit tant qu'à la lettre de l'Acte d'Algésiras.

Pour fixer en effet la portée de l'article 95 de l'Acte d'Algésiras, il convient de n'en pas limiter le champ d'application, comme peuvent donner l'impression de le faire les notes du Consulat général des Etats-Unis, au mode de règlement des droits d'importation. D'une part, l'Acte d'Algésiras, dans son article final, consolide les traités en vigueur, qui comportaient, outre le droit général de 10% aux importations, différents droits de sortie, fixés notamment par les traités avec la Grande-Bretagne (1856), l'Espagne (1861), l'Allemagne (1890). D'autre part, il institue de nouvelles taxes *ad valorem*, celles notamment de l'article 65, sur les marchandises transportées par cabotage, et de l'article 66, relatif à la Caisse spéciale des Travaux publics. L'article 95, en fixant le mode de paiement des « droits d'entrée et de sortie » se propose de définir les méthodes d'évaluation, et d'uniformiser les règles applicables au calcul de tous les droits, pour éviter que les liquidations fussent établies sur des bases différentes selon la nature des perceptions.

Ainsi que l'observe avec raison M. ELTING, l'article 95 se substitue en quelque sorte à l'article 2 du traité germano-marocain du 1<sup>er</sup> juin 1890. Mais, loin de s'opposer, les deux textes procèdent du même esprit. Le traité de 1890 fixe le mode de paiement « d'après les prix en gros et au comptant sur le marché du port où la marchandise sera introduite » ; l'article 95 « suivant la valeur au comptant en gros de la marchandise rendue au bureau de douane ». A supposer d'ailleurs que les négociateurs de l'Acte d'Algésiras aient cru devoir adopter un nouveau mode d'évaluation en douane, ils n'auraient pas manqué de prendre en considération le projet déposé par la délégation allemande à la séance du 29 mars 1906, qui précisait que les droits sur les importations seraient « calculés sur la valeur que l'article importé a dans le lieu de chargement ou d'achat, avec majoration des frais d'assurances et de transport jusqu'au port de déchargement ». Ils ont au contraire maintenu la notion de la valeur en gros et au comptant, ce qui marque nettement leur intention de ne pas soumettre à des méthodes d'évaluation différentes les marchandises à l'entrée ou à la sortie, et d'écarter, en ce qui concerne les premières, la notion du prix caf, sur laquelle se fondait la proposition allemande, qui, en définitive, n'a pas été retenue.

On pourrait même ajouter que, si les négociateurs avaient voulu prendre pour base le prix de revient ou d'achat, ils n'auraient pas manqué, ce qu'ils n'ont pas fait, de rendre obligatoire la production des factures. Enfin, on ne voit pas, dans un tel cas, quelle serait la portée, et même l'utilité, de l'article 96, dont rien ne limite l'application aux seuls droits de sortie, si les mercuriales dont il prescrit l'établissement n'avaient pas à être prises en considération, et les produits importés automatiquement taxés en fonction des factures d'achat.

Tels sont les principes, découlant à la fois des traités anciens et des travaux préparatoires de l'Acte d'Algésiras, qui n'ont cessé de guider l'administration des Douanes chérifiennes dans l'accomplissement de sa tâche quotidienne, avec le désir de serrer aussi près que possible les

conditions du marché marocain et dans un constant souci d'objectivité et d'impartialité. Ils font aisément justice de cette prétendue anomalie que certains importateurs ont cru discerner dans les taxations différentes de marchandises identiques, suivant qu'elles sont importées avec ou sans attribution de devises par l'Office des Changes. Comme il est avéré, en effet, que, suivant le cas, elles sont mises en vente à des prix présentant des écarts considérables, il serait à la fois contraire aux dispositions de l'article 95 et à la règle de la chance égale qu'elles fussent uniformément taxées en considération de leur prix de revient.

En exprimant ses regrets de ne pouvoir, en pareille matière, partager l'opinion exprimée par le Consulat général des États-Unis, M. MARCHAT exprime à Monsieur FLETCHER l'espoir que les explications qui précèdent lui permettront de faire comprendre à ceux de ses compatriotes qui l'ont saisi de leurs doléances au sujet de l'interprétation de l'article 95 de l'Acte d'Algésiras que l'application qu'en assure depuis le début du Protectorat l'administration des Douanes chérifiennes est la seule compatible avec la lettre et l'esprit de l'Acte d'Algésiras, ainsi qu'avec la règle de l'égalité de traitement que le Gouvernement chérifien a assumé l'obligation de faire respecter.

Rabat, le 4 mai 1948.

CONSULAT GÉNÉRAL DES ÉTATS-UNIS  
D'AMÉRIQUE,  
CASABLANCA.

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*Annex No. 62*

LETTER FROM THE DIPLOMATIC COUNSELLOR OF THE  
FRENCH RESIDENCY TO THE AMERICAN CONSUL-GENERAL  
AT CASABLANCA OF DEC. 30, 1948

Rabat, le 30 décembre 1948.

[See Annex IX to French Memorial, p. 110.]

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*Annex No. 63*

LETTER FROM THE AMERICAN CONSUL-GENERAL AT CASA-  
BLANCA TO THE DIPLOMATIC COUNSELLOR OF THE FRENCH  
RESIDENCY OF JAN. 5, 1949

Casablanca, Morocco.

January 5, 1949.

[See Annex X to French Memorial, pp. 111-112.]

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*Annex No. 64*CORRESPONDENCE CONCERNING FRENCH REQUESTS FOR  
THE ASSENT OF THE UNITED STATES TO THE IMPORT  
REGULATIONS OF DEC. 30, 1948

- The French Resident General to the American Diplomatic Agent at  
Tangier, Jan. 15, 1949 ;  
The American Diplomatic Agent at Tangier to the French Resident  
General, Feb. 16, 1949 ;  
The Diplomatic Counsellor of the French Residency to the American  
Diplomatic Agent at Tangier, Feb. 26, 1949 ;  
The American Diplomatic Agent at Tangier to the French Resident  
General, March 8, 1949 ;  
The French Resident General to the American Diplomatic Agent at  
Tangier, March 17, 1949.

Résidence générale  
de la  
République française  
au Maroc  
Cabinet diplomatique  
N 28 D

Rabat, le 15 jan. 1949.

Monsieur l'Agent diplomatique,

J'ai l'honneur de vous faire parvenir sous ce pli, en double exemplaire, un arrêté interdirectorial en date du 30 décembre 1948, relatif à l'importation en zone française de marchandises sans contre partie de devises.

Je vous serais reconnaissant de bien vouloir rendre les dispositions de ce texte applicables aux ressortissants américains de la zone française de l'Empire chérifien.

Veillez agréer, Monsieur l'Agent diplomatique, les assurances de ma haute considération.

Monsieur Edwin A. PLITT,  
AGENT DIPLOMATIQUE DES ÉTATS-UNIS  
D'AMÉRIQUE  
à TANGER

(Signé) A. JUIN.

Tangier, February 16, 1949.

Excellency :

I have the honor to refer to Your Excellency's Note No. 28D of January 15, 1949, wherein it is requested that the provisions of the interdirectorial decree of December 30, 1948, cancelling the decree of March 11, 1948, which had established a system of importations without licenses, be made applicable to American ressortissants. Approval of the decree of December 30, 1948, would not provide a sufficient basis

for application of the new system of import restrictions in the French Zone to American ressortissants.

If Your Excellency wishes to submit new regulations to which the assent of the United States is desired, the Legation will transmit them to the Department of State for its consideration.

Please accept, Excellency, the renewed assurances of my high consideration.

Edwin A. PLITT,  
American Diplomatic Agent.

His Excellency  
General Alphonse Juin,  
Commissioner Resident General of the  
Republic of France in Morocco,  
Minister for Foreign Affairs of  
His Sherifian Majesty,  
RABAT.

RÉSIDENCE GÉNÉRALE DE LA  
RÉPUBLIQUE FRANÇAISE AU  
MAROC  
Cabinet diplomatique  
No. 36D

Rabat, le 26 fév. 1949.

Monsieur l'Agent diplomatique,

Par lettre en date du 16 février 1949, vous avez bien voulu m'indiquer que l'arrêté interdirectorial du 30 décembre 1948, qui avait fait l'objet de ma lettre n° 28 en date du 15 janvier, ne paraissait pas être une base suffisante pour permettre l'application, à l'égard des ressortissants américains de la zone française, des nouvelles dispositions relatives aux importations sans licence.

Afin de compléter votre documentation, j'ai l'honneur de vous faire parvenir sous ce pli, accompagné des textes précédents auxquels il se réfère, l'arrêté résidentiel du 30 décembre 1948, dont l'arrêté interdirectorial qui était joint à ma lettre précitée fixe les modalités d'application.

Je vous serais reconnaissant d'effectuer auprès du Département d'État les démarches d'usage en vue de rendre applicables aux ressortissants américains de la zone française de l'Empire chérifien les dispositions de l'arrêté résidentiel du 30 décembre 1948.

Veillez agréer, Monsieur l'Agent diplomatique, les assurances de ma haute considération.

(Signé) MARCHAT.

Monsieur Edwin A. PLITT,  
AGENT DIPLOMATIQUE DES ÉTATS-UNIS  
D'AMÉRIQUE  
à TANGER

Tangier, Morocco,

Excellency :

March 8, 1949.

I have the honor to refer to Your Excellency's Note No. 28D of January 15, 1949, requesting that the Interdirectorial Decree of December 30, 1948, be made applicable to American ressortissants, and to M. Marchat's Note No. 36D of February 26, 1949, concerning the Residential Decree of December 30, 1948.

Your Excellency's attention is invited to the fact that these decrees do not of themselves define the import regulations to be applied but merely provide authority for the control of imports. These texts, therefore, provide insufficient basis for the application to American ressortissants of such new regulations as have been put into effect.

As stated in my Note of February 16, 1949, the Legation will transmit for consideration by the Department of State, the text of any new import regulations to which the Department's assent is desired.

Please accept, Excellency, the renewed assurances of my highest consideration.

Edwin A. PLITT,  
American Diplomatic Agent.

His Excellency  
General Alphonse Juin,  
Commissioner Resident General of the  
Republic of France in Morocco,  
Minister for Foreign Affairs of  
His Sherifian Majesty,  
RABAT.

RÉSIDENT GÉNÉRAL DE LA  
RÉPUBLIQUE FRANÇAISE AU  
MAROC

Rabat, le 17 mars 1949.

Cabinet diplomatique  
No. 125D

Monsieur l'Agent diplomatique,

Par lettre en date du 8 mars 1949, vous avez bien voulu m'indiquer que l'Arrêté résidentiel du 30 décembre 1948 et l'Arrêté interdirectorial du même jour, qui établissent le contrôle des importations, ne vous paraissaient pas susceptibles de constituer une base suffisante pour permettre au Gouvernement américain d'en décider l'application à ses ressortissants.

J'ai l'honneur de vous adresser ci-joint, en triple exemplaire, le Bulletin officiel de l'Empire chérifien n° 1.888, en date du 31 décembre 1948, dans lequel sont publiés le Décret et l'Arrêté susvisés et qui contient, en outre, à la page 1.479, un avis aux importateurs qui précise la réglementation dont vous avez exprimé le désir de recevoir communication.

Veillez agréer, Monsieur l'Agent diplomatique, les assurances de ma haute considération.

Monsieur Edwin A. PLITT,  
AGENT DIPLOMATIQUE DES ÉTATS-UNIS  
D'AMÉRIQUE,

TANGER.

*Annex No. 65*

SUBMISSION BY THE FRENCH RESIDENT GENERAL FOR THE  
 ASSENT OF THE UNITED STATES OF A STATEMENT OF  
 THE IMPORT REGULATIONS TO BE APPLIED TO AMERICAN  
 NATIONALS PURSUANT TO THE DECREE OF DEC. 30, 1948,  
 DATED APRIL 14, 1949

Résidence générale  
 de la  
 République française  
 au Maroc

Rabat, le 14 avril 1949.

Cabinet diplomatique  
 No. 171D

Monsieur l'Agent diplomatique,

Comme suite à nos récents entretiens, je crois utile de confirmer ci-dessous les diverses indications que j'ai eu l'occasion de vous donner au sujet de la nouvelle réglementation mise en vigueur en zone française du Maroc, à partir du 1<sup>er</sup> janvier dernier, en ce qui concerne l'importation de marchandises sans allocation de devises.

Depuis mars 1948, les importations sans paiement étaient admises sans licence pour la plupart des produits.

Le financement de ces achats, dont le volume augmentait de mois en mois, a eu des incidences fâcheuses sur la tenue du franc, sur le marché de Paris comme sur le marché de Tanger, où il constituait un des facteurs importants de la hausse enregistrée sur les devises au cours de l'année dernière.

Ému à juste titre de ces répercussions sur la stabilité de notre monnaie, le Gouvernement français m'a demandé de réviser le régime qui avait été établi, de manière à réduire le volume des importations sans règlement.

Dans ces conditions, j'ai décidé qu'à partir du 1<sup>er</sup> janvier dernier, les importations sans règlement financier ne pourraient être réalisées que sous le couvert de licences d'importation délivrées dans les conditions habituelles.

Des licences ne peuvent être accordées que pour les produits suivants :

- lait sucré ou non, concentré ou en poudre,
- sucres et mélasses,
- café vert ou torréfié,
- thé vert,
- matériels d'équipement et pièces détachées,
- ciment
- métaux ferreux et non ferreux,
- pneumatiques poids lourds,
- lubrifiants.

Toutefois, à titre transitoire, est restée admise sans licence, dans les conditions antérieures, l'importation des produits ne donnant lieu à aucun règlement financier, et qui ont été expédiés directement pour la zone française de l'Empire chérifien avant le 15 janvier 1949 ; les importateurs doivent justifier de la date d'expédition des marchandises par la production des documents suivants :

- 1° — pour les arrivages par mer : connaissements créés au port d'embarquement à destination d'un port de la zone française du Maroc ;
- 2° — pour les importations par les autres voies : derniers titres de transport (lettres de voitures et autres) créés à destination de la zone française du Maroc.

La délivrance des licences sans paiement concerne exclusivement la réalisation de l'importation et n'apporte aucune dérogation à la réglementation des changes et aux autres réglementations en vigueur. Notamment, la licence ne confère aucun droit à obtenir ultérieurement une autorisation en vue d'assurer le règlement financier de l'importation, qu'il s'agisse du prix d'achat de la marchandise, des frais de transport ou d'autres frais accessoires, soit en devises, soit par versement de francs au compte d'un non-résident, soit par compensation de marchandises.

Je vous serais reconnaissant de bien vouloir effectuer auprès du Département d'État les démarches d'usage en vue de rendre applicable la réglementation exposée ci-dessus aux ressortissants américains de la zone française du Maroc.

Veuillez agréer, Monsieur l'Agent diplomatique, les assurances de ma haute considération.

A. JUIN.

Monsieur Edwin A. Plitt,  
Agent diplomatique des États-Unis  
d'Amérique,  
TANGER.

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*Annex No. 66*

NOTES FROM THE AMERICAN DIPLOMATIC AGENT AT  
TANGIER TO THE FRENCH RESIDENT GENERAL DATED  
MARCH 2, 1949, AND MARCH 14, 1949, RESPECTIVELY

Tangier, Morocco,  
March 2, 1949.

[See *Annex XI to French Memorial*, pp. 113-115.]

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*Annex No. 67*

MEMORANDUM FROM THE AMERICAN LEGATION AT TANGIER  
TO THE FRENCH RESIDENCY DATED MARCH 24, 1949

Tangier, March 24, 1949.

[See *Annex XII to French Memorial*, pp. 115-117.]

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*Annex No. 68*

MEMORANDUM FROM THE FRENCH MINISTRY FOR FOREIGN AFFAIRS TO THE AMERICAN EMBASSY DATED APRIL 11, 1949

[See *Annex XIII to French Memorial*, pp. 117-120.]

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*Annex No. 69*

NOTE FROM THE AMERICAN EMBASSY TO THE FRENCH MINISTRY FOR FOREIGN AFFAIRS OF APRIL 19, 1949

[See *Annex XIV to French Memorial*, p. 121.]

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*Annex No. 70*

NOTE VERBALE FROM THE AMERICAN EMBASSY TO THE FRENCH MINISTRY FOR FOREIGN AFFAIRS DATED MAY 9, 1949

[See *Annex XV to French Memorial*, p. 121.]

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*Annex No. 71*

NOTES FROM THE FRENCH EMBASSY TO THE DEPARTMENT OF STATE AND FROM THE FRENCH AMBASSADOR TO THE SECRETARY OF STATE DATED MAY 11, 1949, AND MAY 18, 1949, RESPECTIVELY

No. 164

11 mai 1949.

L'ambassade de France aux États-Unis présente ses compliments au Département d'État et a l'honneur d'appeler son attention sur la question des importations sans allocations de devises dans la zone française du Maroc.

Ainsi qu'en a été informé le Département d'État par les représentants du Gouvernement des États-Unis au Maroc et par cette ambassade, notamment dans un aide-mémoire du 5 janvier 1949, les autorités marocaines ont décidé de mettre fin, à compter du 1<sup>er</sup> janvier 1949, au régime des importations sans devises qui fonctionnait encore au Maroc, bien qu'il eût été supprimé plusieurs mois auparavant en France et dans les territoires de l'union française et qui donnait lieu à des abus tels qu'il ne pouvait être maintenu. Depuis lors, des discussions se sont poursuivies entre les autorités françaises et américaines, à la fois à Washington et à Rabat, au sujet de l'application de cette décision aux ressortissants américains au Maroc.

L'ambassade de France a l'honneur d'informer le Département d'État que pour mettre un terme à ces difficultés et afin d'aboutir à une solution pratique tenant compte des intérêts en cause, à la fois américains et français, le Gouvernement français a donné au Résident général des instructions d'après lesquelles les marchandises actuellement retenues par l'administration des Douanes seraient remises aux importateurs américains sans qu'il soit exigé d'eux ni le paiement des pénalités de retard, ni celui des droits de stationnement. Le Gouvernement français est convaincu que, tenant compte de l'esprit de coopération que manifeste la décision ainsi prise, le Département d'État y répondra en donnant, dans un délai aussi bref que possible, son accord à l'application aux ressortissants américains des dispositions de l'arrêté du 30 décembre 1948. S'il devait en être autrement, la décision que viennent de prendre les autorités françaises entraînerait de graves inconvénients sur lesquels l'attention du Gouvernement américain a déjà été appelée à plusieurs reprises. D'une part la réglementation marocaine des importations sans devises deviendrait totalement inopérante, aux risques de compromettre le succès des efforts que déploient la France et le Maroc pour établir leur équilibre économique et financier, conformément d'ailleurs au vœu du Gouvernement américain et au but du programme d'aide à l'Europe. D'autre part, il en résulterait, au bénéfice des ressortissants américains, un régime discriminatoire qui serait contraire au principe de l'égalité économique posé par l'Acte d'Algésiras et qui ne manquerait pas de soulever des protestations légitimes.

Le Gouvernement français tient à souligner que la mesure ainsi prise en faveur des importateurs américains n'affecte en rien sa position concernant l'interprétation des traités qui lient les États-Unis au Maroc. Dès que sera réglée la question des importations sans devises, il souhaite reprendre avec le Département d'État l'examen concerté, interrompu par la guerre, des droits que tiennent les ressortissants américains de ces traités.

L'ambassade de France saisit l'occasion de la présente note pour renouveler au Département d'État les assurances de sa très haute considération.

Département d'État,  
Washington, D. C.

18 mai 1949.

[See Annex XVI to French Memorial, pp. 122-124.]

*Annex No. 72*

NOTES FROM THE FRENCH AMBASSADOR TO THE  
SECRETARY OF STATE AND FROM THE FRENCH MINISTRY  
FOR FOREIGN AFFAIRS TO THE AMERICAN EMBASSY DATED  
MAY 27, 1949, AND MAY 31, 1949, RESPECTIVELY

Paris, 31 mai 1949.

[See Annexes XIX and XXI to French Memorial, pp. 126-129.]

Ambassade de France  
aux États-Unis  
N° 180.

Washington, le 27 mai 1949.

L'ambassadeur de France aux États-Unis présente ses compliments au secrétaire d'État par intérim et a l'honneur d'insister de nouveau très vivement pour un prompt règlement de la question suivante.

Par note en date du 18 mai 1948, l'ambassadeur de France a signalé la nécessité où se trouvait le Résident général de France au Maroc, après que toutes satisfactions aient été données au Gouvernement américain, de demander l'acceptation sans délai par celui-ci de l'application à ses ressortissants au Maroc de l'arrêté du 30 décembre 1948. Il a indiqué que la non-application à ces seuls ressortissants d'une mesure qui s'étend à toute autre personne résidant au Maroc créait à leur avantage un régime discriminatoire qui soulevait de la part du reste de la population, et en particulier des milieux commerçants, les plus vives protestations. Il a souligné que cette situation risquait d'avoir des répercussions éminemment regrettables et de provoquer au Maroc et en France des réactions gravement préjudiciables au prestige du Gouvernement américain. Ces craintes n'étaient que trop justifiées. La situation au Maroc a pris en cette matière une telle acuité que le Résident général s'est trouvé contraint le 20 mai dernier de remettre en vigueur, à titre exceptionnel et transitoire, le régime antérieur au 1<sup>er</sup> janvier 1949. C'est ainsi qu'afin de supprimer une inégalité de traitement difficilement admissible, la faculté de procéder à des importations sans allocations de devises a été rétablie pour tous.

Ce retour à une pratique, qui avait été supprimée en raison des dangers qu'elle présentait pour la stabilité du franc, entraîne pour l'économie française des conséquences si sérieuses que le Gouvernement français s'est vu dans l'obligation, le 26 mai, d'inviter le Résident général à annuler sa décision et à revenir à la situation qui existait il y a quelques jours, c'est-à-dire après les mesures de déblocage prises en faveur des Américains pour les marchandises importées qui normalement tombaient sous le coup de l'arrêté du 30 décembre.

Le ministre des Finances est convaincu en effet que le redressement du franc, nettement marqué sur les places étrangères depuis plusieurs mois, est dû pour une très large part à l'interdiction des importations sans devises au Maroc et qu'il serait sérieusement compromis si l'arrêté du 30 décembre 1948 restait suspendu. Depuis quelques jours, une certaine faiblesse du franc s'est manifestée sur le marché de Tanger. Or, il est essentiel, au moment où s'ouvre pour la France une nouvelle étape de son redressement financier, que les résultats acquis ne soient pas remis en question.

Par l'entremise de son ambassadeur à Paris, le Gouvernement américain avait fait savoir, le 19 avril dernier, au Gouvernement français qu'il considérerait « immédiatement la possibilité de donner son approbation au décret du 30 décembre » aussitôt après la libération des marchandises qui avaient été retenues.

En raison d'une part de l'importance essentielle qu'offre pour la reconstruction économique de la France l'application de l'arrêté du 30 décembre, et d'autre part des graves difficultés que soulève le maintien d'un régime de faveur au bénéfice des ressortissants américains, le Gouvernement français insiste de la manière la plus pressante auprès

du Gouvernement américain pour que celui-ci donne sans plus tarder son assentiment à la réglementation du 30 décembre. De plus longs délais à l'application aux ressortissants américains de l'arrêté du 30 décembre ne pourraient apparaître que comme la manifestation de la part du Gouvernement américain du désir d'imposer un régime préférentiel en faveur de ses ressortissants.

L'ambassadeur de France est convaincu que le secrétaire d'État voudra bien aviser le plus tôt possible au règlement d'une situation dont le maintien offre les plus graves inconvénients.

Monsieur Henri Bonnet est heureux de saisir cette occasion pour renouveler à l'Honorable James E. Webb les assurances de sa très haute considération.

Son Excellence

l'Honorable James E. Webb,  
Secrétaire d'État a. i.,  
WASHINGTON D. C.

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*Annex No. 73*

NOTES FROM THE AMERICAN EMBASSY TO THE FRENCH  
MINISTRY FOR FOREIGN AFFAIRS AND FROM THE AMERICAN  
DIPLOMATIC AGENT AT TANGIER TO THE FRENCH RESIDENT  
GENERAL, DATED JUNE 5, 1949, AND JUNE 10, 1949,  
RESPECTIVELY

Paris, June 5, 1949.

[*See Annex XXIII to French Memorial, pp. 132-133.*]

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*Copy*

Tangier, Morocco,  
June 10, 1949.

[*See Annex XXIV to French Memorial, pp. 133-134.*]

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*Annex No. 74*

NOTE FROM THE FRENCH MINISTRY FOR FOREIGN AFFAIRS  
TO THE AMERICAN EMBASSY OF JUNE 11, 1949

Paris, le 11 juin, 1949.

[*See Annex XXVI to French Memorial, pp. 135-137.*]

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*Annex No. 75*NOTE FROM THE AMERICAN CHARGÉ AT TANGIER TO THE  
FRENCH RESIDENT GENERAL OF JUNE 21, 1949

Tangier, Morocco,

June 21, 1949.

Excellency :

I have the honor to inform Your Excellency, with reference to my note of June 10, 1949, that the American Embassy in Paris has received a note from the French Foreign Office dated June 11, 1949, officially acknowledging the assent of the United States Government to the import regulations set forth in Your Excellency's note No. 171-D dated April 14, 1949, and setting forth certain observations regarding the limitation of this Government's assent to a period of three months.

The Foreign Office's note states that as a result of discussions in Rabat between the Residency and the Department's representatives the United States Government has received entire satisfaction regarding the points raised in an informal memorandum left by the American Embassy in Paris with the Foreign Office on June 5, 1949, and under these circumstances considers that the entire problem has been settled not only for three months but permanently, without prejudice to improvements provided for in the agreement reached at Rabat.

I have been instructed to inform Your Excellency that the Department of State does not share the view of the Foreign Office that the entire problem of imports by American business men in Morocco has been settled permanently as a result of the discussions in Rabat. In that connection the memorandum summarizing the discussions itself provides for further consideration of such matters as the customs valuation system and the addition of new quotas for products imported with official exchange. My Government gave temporary assent to the import regulations mentioned above on the understanding that discussions be continued in an effort to reach further agreement on such questions and on the question of the assessment of consumption taxes to which the United States Government had not given its assent. My Government's assent therefore can in no sense be considered permanent and I have been instructed to reiterate the conditions set forth in the Legation's note of June 10, 1949, notifying Your Excellency of the assent of my Government to the application to American ressortissants of these import regulations for a period of three months effective as of the date of the Legation's note.

Please accept, Excellency, the renewed assurances of my highest consideration.

BOLARD MORE,  
Chargé d'Affaires a.i.

His Excellency

General Alphonse Juin,  
Commissioner Resident General of the  
Republic of France in Morocco,

Minister for Foreign Affairs of  
His Sherifian Majesty,  
Rabat.

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*Annex No. 76*

NOTE FROM THE FRENCH MINISTRY FOR FOREIGN AFFAIRS  
TO THE AMERICAN EMBASSY OF JULY 4, 1949

[See *Annex XXVII to French Memorial*, pp. 137-139.]

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*Annex No. 77*

NOTES FROM THE AMERICAN DIPLOMATIC AGENT AT TANGIER TO THE FRENCH RESIDENT GENERAL AND FROM THE SECRETARY OF STATE TO THE FRENCH AMBASSADOR DATED JULY 14, 1949, AND JULY 20, 1949, RESPECTIVELY

Tangier, Morocco,  
July 14, 1949.

Excellency :

With reference to the Legation's notes of June 10, 1949, and June 21, 1949, to Your Excellency notifying the assent of my Government to certain import regulations for a period of three months on the understanding that discussions will continue in an effort to reach a further satisfactory agreement, I have the honor to inform Your Excellency that my Government desires that a joint examination of the practical application of understandings reached so far and the continuation of the discussions referred to above commence as soon as possible.

I should, therefore, appreciate being informed as to the date when appropriate Residency officials will be prepared to meet with representatives of the Legation, the Consulate-General at Casablanca and the Consulate at Rabat for this purpose.

Please accept, Excellency, the renewed assurances of my highest consideration.

Edwin A. PLITT,  
American Diplomatic Agent.

His Excellency

General Alphonse Juin,  
Commissioner Resident General of the  
Republic of France in Morocco,

Minister for Foreign Affairs of

His Sherifian Majesty,  
RABAT.

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The Secretary of State presents his compliments to His Excellency the Ambassador of France and has the honor to refer to the Embassy's note No. 164 of May 11, 1949, and to His Excellency's Notes Nos. 170 and 180 of May 18 and 27, 1949, respectively, concerning the import licensing regulations of December 30, 1948, in French Morocco.

The Secretary is pleased to acknowledge officially to the Ambassador of France that United States assent to these regulations was given on

June 10, 1949. This Government was fully aware of the seriousness of the situation and the difficulties which were created by withholding its assent, and was conscious of its obligations, under the European Recovery Program, to assist in the economic recovery of the franc zone ; but, at the same time, this Government was desirous that its well-established treaty rights in French Morocco should be observed, and that equitable treatment for American interests in this area should be assured. Certain discriminatory measures directed against American businessmen made it necessary for this Government to study carefully all aspects of the problem before assenting to the decree, in spite of the fact that it was constantly impressed with the necessity for French Morocco to control its imports in the light of present world conditions. When, in discussions with United States diplomatic and consular representatives, the Protectorate authorities agreed to a satisfactory basis for developing remedies to outstanding discriminatory practices, United States assent was given.

This Government is, of course, vitally interested in the noteworthy results of the discussions which have already taken place. It is, however, desirous of pursuing these negotiations further, in a continued spirit of good will and co-operation, in order that satisfactory solutions of outstanding problems may be attained. The Department is confident that the French Government will continue to uphold the principle of non-discrimination in French Morocco, and, in this connection, will aid in the maintenance of equitable treatment for Americans in that area. The Secretary of State wishes to call the Ambassador's attention again to the conditional nature of this Government's assent and to its sincere desire for a satisfactory solution to the existing problems in order that renewed United States assent to the import licensing regulations may be forthcoming without difficulty upon the termination of the three-month period.

Department of State, Washington, July 20, 1949.

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*Annex No. 78*

NOTE FROM THE AMERICAN DIPLOMATIC AGENT AT  
TANGIER TO THE FRENCH RESIDENT GENERAL  
OF SEPT. 10, 1949

Tangier, Morocco, September 10, 1949.

Excellency :

I have the honor to inform Your Excellency, on the instruction of my Government, that the Department of State has thus far only had the opportunity to review in a preliminary fashion the draft memorandum of conversations which took place at Rabat from August 4 to September 8, 1949, between representatives of the Residency General and representatives of the Legation, the American Consulate-General at Casablanca, and the American Consulate at Rabat, with regard to import controls in the French Zone of Morocco.

The Department has, therefore, instructed the Legation to continue the temporary assent to certain import regulations, which was contained in the Legation's note of June 10 to Your Excellency, for an additional period of not more than thirty days, during which the Department will give the draft memorandum thorough study.

Please accept, Excellency, the renewed assurance of my highest consideration.

Edwin A. PLITT,  
American Diplomatic Agent.

His Excellency  
General Alphonse Juin,  
Commissioner Resident General of the  
Republic of France in Morocco,  
Minister for Foreign Affairs of  
His Sherifian Majesty,  
RABAT.

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*Annex No. 79*

NOTE FROM THE AMERICAN DIPLOMATIC AGENT AT  
TANGIER TO THE FRENCH RESIDENT GENERAL OF  
OCT. 8, 1949

Tangier, Morocco, October 8, 1949.

[See *Annex XXXI to French Memorial*, pp. 149-151.]

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*Annex No. 80*

NOTE FROM THE FRENCH RESIDENT GENERAL TO THE  
AMERICAN DIPLOMATIC AGENT OF NOV. 29, 1949

Résidence générale  
de la République française  
au Maroc  
N° 2829 D.R.G.

Rabat, le 29 novembre 1949.

Monsieur l'Agent diplomatique,

J'ai l'honneur d'accuser réception de la note que vous avez bien voulu m'adresser le 8 octobre au sujet des négociations, qui se sont déroulées récemment entre les représentants du Gouvernement des États-Unis et ceux du Gouvernement du Protectorat au sujet du régime des importations au Maroc.

J'ai noté avec satisfaction l'impression favorable que votre Gouvernement a retirée de l'avancement de ces pourparlers, et j'estime, comme lui, qu'il est désirable que ces échanges de vues parviennent à bref délai à l'institution d'un *modus vivendi* de caractère permanent, sur la base de



son assentiment aux dispositions arrêtées par le Gouvernement du Protectorat à la date du 30 décembre 1948.

Vu toutefois les divergences d'opinion qui existent encore entre les deux Gouvernements touchant les conditions dans lesquelles ce *modus vivendi* peut être défini, il paraît nécessaire que de nouvelles conversations aient lieu en vue de réduire ces divergences.

Je vous propose donc de reprendre ces entretiens, et suggère que les représentants des deux Gouvernements se mettent d'accord, par l'entremise du Consulat des États-Unis à Rabat, sur la date et l'heure auxquelles ils pourront se rencontrer.

Veuillez agréer, Monsieur l'Agent diplomatique, les assurances de ma haute considération.

A. JUIN.

Son Excellence

Monsieur Edwin A. Plitt,  
Agent diplomatique des  
États-Unis d'Amérique,  
TANGER.

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*Annex No. 81*

MEMORANDUM FROM THE AMERICAN EMBASSY TO THE  
FRENCH MINISTRY FOR FOREIGN AFFAIRS OF DEC. 2, 1949

[See Annex XXXII to French Memorial, pp. 151-152.]

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*Annex No. 82*

NOTE FROM THE FRENCH RESIDENCY TO THE AMERICAN  
LEGATION AT TANGIER OF DEC. 4, 1949

Rabat, 4-12-49.

Par sa note du 8 octobre 1949, l'agent diplomatique américain à Tanger a fait part à la Résidence générale de France à Rabat des vues du Gouvernement américain touchant les négociations qui s'étaient déroulées au cours de l'été entre les représentants de ce dernier et ceux du Gouvernement du Protectorat au sujet du régime des importations au Maroc.

Après avoir exprimé le plaisir avec lequel il avait constaté l'esprit de conciliation et de coopération dans lequel les représentants du Gouvernement du Protectorat avaient participé à ces négociations, le Gouvernement américain avait, suivant la note de l'agent diplomatique, retenu l'impression qu'un progrès substantiel avait été accompli dans le sens de l'établissement d'un *modus vivendi* tenant un compte équitable des intérêts de toutes les parties en cause. Il se déclarait prêt à accepter comme base de son assentiment à l'avis du 30 décembre 1948 les conditions résultant de ces négociations telles

qu'elles sont exposées dans le mémorandum du 4 septembre 1949, en tenant compte, en ce qui concerne les nouveaux titulaires de représentations de marques, du texte modifié par la Résidence le 8 septembre 1949 et, en ce qui concerne les achats de thé, des réserves formulées par la Résidence touchant la modification éventuelle, dans un délai maximum de 90 jours, du régime actuellement en vigueur.

Le Gouvernement du Protectorat avait accueilli avec une vive satisfaction ces indications, qui traduisaient nettement le désir du Gouvernement américain d'arriver à un accord durable sur cette difficile question du régime des importations au Maroc, et qui correspondaient si exactement à son propre désir de parvenir à l'établissement d'un *modus vivendi* satisfaisant pour les deux parties.

C'est avec cet objet en vue qu'il avait pris connaissance des conditions, indiquées plus loin dans la note du ministre des États-Unis, auxquelles le Gouvernement américain était prêt à accepter la réalisation d'un tel *modus vivendi*.

Ces conditions impliquant d'importantes questions de principe, il avait été nécessaire de les soumettre pour étude aux autorités compétentes du Gouvernement français, et les consultations qui ont eu lieu à ce sujet entre Paris et Rabat ont pris, par suite des circonstances, des délais plus longs qu'il n'avait pu être primitivement envisagé. C'est ainsi que le Gouvernement du Protectorat, après avoir recueilli le 9 octobre, des mains de M. Plitt, sa note du 8, et en avoir dûment accusé réception, verbalement, au moment de la remise, n'a pas été, à son vif regret, en mesure avant le 29 novembre de se déclarer prêt à reprendre avec les représentants du Gouvernement américain les conversations dont ce dernier avait bien voulu reconnaître lui-même la nécessité pour mettre au point une solution des questions encore pendantes au 8 octobre, et en vue desquelles il avait offert lui-même, d'après la note précitée, un délai supplémentaire, dont il avait estimé la durée à soixante jours. Cette durée s'étant à l'expérience avérée trop courte, pour les motifs indiqués ci-dessus, le Gouvernement du Protectorat attacherait une grande importance à ce que le délai en question fût quelque peu prolongé, afin de donner aux bonnes dispositions manifestées de part et d'autre en vue d'une solution amiable des difficultés en cours, une chance raisonnable d'aboutir à une entente.

Le Gouvernement du Protectorat sait à quelles difficultés le Gouvernement américain a lui-même à faire face à propos de l'affaire en cause, et il n'est nullement dans son esprit d'en sous-estimer le poids. Mais, comme sans doute les autorités diplomatiques et consulaires américaines qui sont au contact des réalités du problème tel que celui-ci se pose au Maroc, il est trop conscient de la gravité des inconvénients que présentera pour *toutes* les parties en cause, non seulement publiques mais privées aussi bien, le retour, même s'il devait être très brièvement temporaire, à un régime différencié dans les importations au Maroc ; et il est trop averti du trouble qui en résultera localement, pour ne pas insister très vivement auprès du Gouvernement américain afin que le délai adopté par ce dernier, et qui s'est révélé insuffisant, soit étendu : ceci, afin qu'un nouvel effort puisse être fait de part et d'autre pour ne pas perdre le bénéfice des résultats déjà acquis dans la voie du rapprochement, en vue de réaliser l'accord désiré, qui ne paraissait pas, en octobre dernier, si loin de la portée des deux parties qu'il ne fût permis d'espérer y réussir.

Ces considérations paraissent au Gouvernement du Protectorat revêtir tant d'importance qu'il lui a paru désirable d'en faire précéder toute discussion des points soulevés dans la note du 9 octobre. L'attention du Département d'État est tout particulièrement appelée sur elles.

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*Annex No. 83*

NOTE FROM THE AMERICAN DIPLOMATIC AGENT AT TANGIER  
TO THE FRENCH RESIDENT GENERAL OF DEC. 8, 1949

Rabat, Morocco, December 8, 1949.

Excellency :

I have the honor to convey to Your Excellency the Department of State's acknowledgment of the receipt of the Residency's reply of November 29, 1949, to the Department's communication contained in the Legation's Note of October 8, 1949.

With reference to a further communication which it is understood the Residency is preparing on the subject of the October 8 Note the Department, in order to give the Residency additional time for its completion which the Department understands is needed, the latter extends until midnight December 31, 1949, the United States assent to the application of the Avis of December 30, 1948, to United States ressortissants under the same conditions as prevailing since October 9, 1949. The period of extension is to expire at midnight on December 31, 1949-January 1, 1950.

The temporary assent herein agreed to does not imply assent to any previous *dahirs, decrees, orders, regulations, or administrative measures* which have not been accepted by the Department of State, and specifically to the Dahir of September 9, 1939, regarding the control of imports, which was rejected by the Department of State. The jurisdiction of the American Consular Courts over American nationals and protected persons in the French Zone of Morocco is not abridged in any manner by reason of the measures in question.

Subsequent modification, whether by dahir, decree, order, regulations, tariffs or administrative decisions, shall require in each instance the specific approval of the United States Government before becoming applicable to American ressortissants.

Please accept, Excellency, the renewed assurances of my highest consideration.

EDWIN A. PLITT,  
American Diplomatic Agent.

His Excellency  
General Alphonse Juin,  
Commissioner Resident General of the  
Republic of France in Morocco,  
Minister for Foreign Affairs of  
His Sherifian Majesty,  
RABAT.

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*Annex No. 84*

PROPOSED FRENCH APPLICATION INSTITUTING PROCEEDINGS IN THE INTERNATIONAL COURT OF JUSTICE DATED  
 DEC. 7, 1949

7 décembre 1949.

AFFAIRES ÉTRANGÈRES

REQUÊTE INTRODUCTIVE D'INSTANCE AU NOM DU GOUVERNEMENT DE  
 LA RÉPUBLIQUE FRANÇAISE A M. LE PRÉSIDENT ET A MESSIEURS LES  
 JUGES DE LA COUR INTERNATIONALE DE JUSTICE

Le soussigné, dûment autorisé par le Gouvernement de la République française et élisant domicile au siège de l'ambassade de France à La Haye,  
 Vu l'article 36, paragraphe 2, du Statut de la Cour et l'acceptation de la juridiction obligatoire de la Cour par le Gouvernement des États-Unis le 26 août 1946 et par le Gouvernement de la République française le 18 février 1947,

Vu l'article 10 de l'accord du 28 juin 1948 entre la France et les États-Unis d'Amérique,

Vu le traité du 30 mars 1912 entre le Gouvernement de la République française et l'Empire chérifien,

Vu l'article 40, alinéa 1, du Statut de la Cour,

A l'honneur de vous adresser la requête suivante :

Le 30 décembre 1948, le Gouvernement chérifien a pris des mesures pour soumettre à licence les importations sans devises et pour limiter ces importations à un certain nombre de produits indispensables à l'économie marocaine.

Par plusieurs notes, le Gouvernement des États-Unis a affirmé que cette mesure mettait en question sur un point essentiel les droits qu'il estime tenir des traités qui le lient au Maroc, notamment du traité du 16 septembre 1836.

Malgré de nombreuses tentatives de la part du Gouvernement de la République française pour trouver une solution amiable aux différents problèmes posés par la réglementation du 30 décembre 1948, le Gouvernement des États-Unis n'a donné à cette réglementation qu'un accord provisoire et temporaire dont la durée a été fixée, en dernier lieu, à soixante jours par une note remise le 8 octobre 1949 à la Résidence générale de France au Maroc par son agent diplomatique à Tanger. Dans cette communication il est précisé qu'un accord définitif du Gouvernement des États-Unis serait subordonné à de nouvelles conditions ; celles-ci apparaissent au Gouvernement français comme contraires aux traités existants.

L'une d'elles est le remboursement aux ressortissants américains des taxes de consommation payées jusqu'à cette date.

Ce remboursement, générateur d'un traitement préférentiel en faveur des ressortissants américains, serait profondément inéquitable parce que ces taxes, incorporées au prix des produits vendus, ont été supportées par les consommateurs et qu'il s'agirait en vérité d'un don gratuit aux seuls importateurs américains, privilège que rien ne saurait justifier.

Le Gouvernement des États-Unis fonde cette prétention sur le principe que toute réglementation chérifienne qui n'a pas reçu au préalable

son accord est inapplicable à ses ressortissants. Les ressortissants américains au Maroc, appuyés par leur représentation diplomatique, entendent échapper de la même manière à d'autres réglementations que celle du 30 décembre 1948 sur les importations sans devises et celle sur les taxes de consommation ; le Gouvernement français se réserve de développer ces points devant la Cour en temps utile.

Alors que le Gouvernement des États-Unis a, de façon formelle, reconnu le Protectorat de la France sur le Maroc par les notes des 15 janvier et 20 octobre 1917, le Gouvernement de la République française ne saurait accepter des prétentions qui aboutiraient en pratique à l'empêcher de remplir la mission qu'il a assumée du fait d'un protectorat reconnu par l'ensemble des États bien avant 1917.

Les réserves que le Gouvernement des États-Unis a formulées en reconnaissant ce protectorat concernent « les droits capitulaires et autres » qu'il tiendrait au Maroc de traités antérieurs.

Le Gouvernement de la République française se propose de faire établir par la Cour internationale de Justice que ces réserves « des droits capitulaires et autres » des États-Unis n'ont jamais comporté et ne peuvent comporter l'extension que prétend actuellement leur donner le Gouvernement des États-Unis d'Amérique. Le traité conclu entre les États-Unis d'Amérique et l'Empereur du Maroc le 16 septembre 1836 prévoit uniquement, dans ses articles 20 et 21, une exemption de la juridiction locale et n'a jamais emporté pour le Gouvernement des États-Unis le droit de subordonner à son consentement exprès l'application à ses ressortissants au Maroc de toute législation ou réglementation.

D'autre part, ce n'est que par le jeu de la clause de la nation la plus favorisée que les ressortissants des États-Unis ont pu bénéficier d'autres privilèges que ceux expressément prévus dans les articles 20 et 21 du traité du 16 septembre 1836 ; mais tous les États étrangers ayant renoncé aux privilèges stipulés dans des traités particuliers en faveur de leurs ressortissants, le jeu de la clause de la nation la plus favorisée ne saurait plus provoquer l'extension de ces privilèges aux ressortissants des États-Unis.

Le Gouvernement des États-Unis prétend aussi que la France, dans son action au Maroc, s'est écartée du principe de la liberté économique sans aucune inégalité, affirmé dans le préambule et l'article 105 de l'Acte d'Algésiras. Selon le Gouvernement de la République française, le contenu concret du principe de la liberté économique sans aucune inégalité doit être déterminé en fonction des données de la pratique internationale, telle qu'elle se dégage de l'évolution économique et de l'interprétation d'autres traités stipulant le même principe. En aucun cas il n'a jamais été admis qu'une disposition de ce genre pût interdire à un État de prendre les mesures nécessaires pour éviter une crise qui menacerait gravement ses conditions mêmes d'équilibre économique et d'existence.

D'ailleurs, le Gouvernement des États-Unis lui-même a, dans une note remise à l'ambassade de France le 29 juillet 1949, reconnu « la nécessité pour le Maroc français de contrôler ses importations étant données les conditions économiques actuelles du monde ». Ainsi, le Gouvernement des États-Unis reconnaît que la liberté absolue à laquelle prétendent ses ressortissants au Maroc ne peut exister et que la règle de la liberté économique sans aucune inégalité doit être interprétée à la lumière d'autres principes, parmi lesquels on pourrait notamment citer

ceux que ce Gouvernement a tenu à insérer dans l'accord conclu avec la France le 28 juin 1948, relatif à l'application du programme de relèvement européen.

Sur un autre point, les Gouvernements de la République française et des États-Unis d'Amérique s'opposent par suite d'une divergence d'interprétation d'une disposition de l'Acte d'Algésiras, article 95, qui fixe la méthode d'estimation des valeurs en douane. A défaut d'accord entre les deux Gouvernements, le Gouvernement de la République française souhaite que la Cour tranche le différend sur ce point.

Le Gouvernement de la République française considère que l'Administration marocaine est juridiquement fondée à taxer les marchandises importées sur la base des cours pratiqués sur le marché local pour les mêmes marchandises ou des marchandises similaires et non, comme l'entend le Gouvernement des États-Unis, sur la base du prix de revient dans leurs pays d'origine ou du prix C. A. F.

Ayant vainement eu recours à la négociation diplomatique sur tous les points précédents, le Gouvernement de la République française a décidé de porter l'ensemble des questions sur lesquelles il s'oppose au Gouvernement des États-Unis d'Amérique devant la Cour internationale de Justice.

En conséquence et sous réserve de tous mémoires, contre-mémoires et en général de tous moyens et preuves à présenter ultérieurement à la Cour,

#### PLAISE A LA COUR,

Donner acte à l'agent du Gouvernement de la République française que, pour toutes notifications et communications relatives à la présente affaire, il élit domicile au siège de l'ambassade de France à La Haye ;

Notifier la présente requête, conformément à l'article 40, alinéa 2, du Statut de la Cour, au Gouvernement des États-Unis d'Amérique ;

Dire et juger tant en l'absence qu'en présence dudit Gouvernement et après tel délai que, sous réserve d'un accord entre les Parties, il appartiendra à la Cour de fixer :

Que les privilèges des ressortissants des États-Unis d'Amérique au Maroc sont aujourd'hui uniquement ceux qui résultent des articles 20 et 21 du traité du 16 septembre 1836 strictement interprétés et que l'application de la clause de la nation la plus favorisée contenue dans l'article 24 dudit traité ne saurait être, dans l'état actuel des engagements internationaux de l'Empire chérifien, la source d'aucun privilège pour les ressortissants des États-Unis ;

Que le Gouvernement des États-Unis d'Amérique n'est pas en droit de prétendre que l'application à ses ressortissants au Maroc de toutes législations et réglementations dépend de son consentement exprès ;

Que les ressortissants des États-Unis d'Amérique au Maroc sont soumis aux dispositions législatives et réglementaires mises en vigueur dans l'Empire chérifien, notamment en ce qui concerne la réglementation du 30 décembre 1948 sur les importations sans devises, sans que l'accord préalable du Gouvernement des États-Unis soit nécessaire ;

Que la réglementation du 30 décembre 1948 sur les importations sans devises est conforme au régime économique applicable au Maroc selon les conventions qui lient la France et les États-Unis ;

Que la méthode d'estimation actuellement en usage des valeurs en douane à l'importation des marchandises au Maroc est conforme aux dispositions conventionnelles en vigueur.

LA HAYE, le 9 décembre 1949. L'agent du Gouvernement de la République française. (*Signé*) GARNIER.

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*Annex No. 85*

NOTE FROM THE FRENCH RESIDENT GENERAL TO THE AMERICAN DIPLOMATIC AGENT AT TANGIER OF DEC. 11, 1949

Rabat, le 11 décembre 1949.

[*See Annex XXXIII to French Memorial, pp. 152-157.*]

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*Annex No. 86*

CORRESPONDENCE CONCERNING THE ASSENT GIVEN BY THE UNITED STATES ON DEC. 31, 1949, TO THE IMPORT REGULATIONS SUBMITTED BY THE FRENCH RESIDENT GENERAL ON APRIL 14, 1949

The American Diplomatic Agent at Tangier to the French Resident General, Dec. 31, 1949;  
The French Resident General to the American Diplomatic Agent at Tangier, Dec. 31, 1949;  
The French Resident General to the American Diplomatic Agent at Tangier, Dec. 31, 1949;  
The American Diplomatic Agent at Tangier to the French Resident General, Dec. 31, 1949;  
The French Resident General to the American Diplomatic Agent at Tangier, Dec. 31, 1949;  
The American Diplomatic Agent at Tangier to the French Resident General, Jan. 12, 1950.

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Tangier, Morocco, December 31, 1949.

[*See Annex XXXIV to French Memorial, p. 157.*]

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Résidence générale  
de la République française  
au Maroc.

Rabat, le 31 décembre 1949.

[*See Annex XXXIV to French Memorial, p. 158.*]

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Résidence générale  
de la République française  
au Maroc.

Rabat, le 31 décembre 1949.

[See Annex XXXIV to French Memorial, pp. 158-159.]

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Tangier, Morocco, December 31, 1949.

[See Annex XXXIV to French Memorial, pp. 159-160.]

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Résidence générale  
de la République française  
au Maroc.

Rabat, le 31 décembre 1949.

[See Annex XXXIV to French Memorial, pp. 160-162.]

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Tangier, Morocco, January 12, 1950.

Excellency :

I have the honor to acknowledge the receipt of Your Excellency's note No. 21 of December 31, 1949, and to thank you for informing me of the supplementary list of products which may be imported into the French Zone of Morocco without official allocations of exchange effective as from January 1, 1950.

I am forwarding this information to Washington for the information of my Government.

Please accept, Excellency, the renewed assurances of my highest consideration.

EDWIN A. PLITT,  
American Diplomatic Agent.

His Excellency  
General Alphonse Juin,  
Commissioner Resident General of the  
Republic of France in Morocco,  
Minister for Foreign Affairs of  
His Sherifian Majesty,  
RABAT.

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*Annex No. 87*

NOTE FROM THE AMERICAN AMBASSADOR TO THE FRENCH  
ACTING MINISTER FOR FOREIGN AFFAIRS OF OCT. 3, 1950

Paris, October 3, 1950.

[See Annex XXXV to French Memorial, pp. 162-163.]

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*Annex No. 88*

NOTE FROM THE FRENCH MINISTRY FOR FOREIGN AFFAIRS  
TO THE AMERICAN EMBASSY OF OCT. 25, 1950

Paris, le 25 octobre 1950.

[*See Annex XXXVII to French Memorial, pp. 164-165.*]

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V. MISCELLANEOUS

*Annex No. 89*

RESIDENTIAL DECREE OF DECEMBER 30, 1948

[*See Annex VII to French Memorial, pp. 106-109.*]

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*Annex No. 90*

RESIDENTIAL DECREE OF SEPTEMBER 9, 1939,  
WITH ARTICLE 5, ENACTED MARCH 11, 1948

ARRÊTÉ RÉSIDENTIEL FIXANT LES CONDITIONS D'APPLICATION DU DAHIR  
DE SEPTEMBRE 1939 RELATIF AU CONTRÔLE DES IMPORTATIONS

[*See Annex I to French Memorial, pp. 97-98.*]

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ARRÊTÉ RÉSIDENTIEL COMPLÉTANT L'ARRÊTÉ RÉSIDENTIEL  
DU 9 SEPTEMBRE 1939 PRIS POUR L'APPLICATION DU DAHIR  
DU 9 SEPTEMBRE 1939 RELATIF AU CONTRÔLE DES IMPORTATIONS

[*See Annex V to French Memorial, p. 104.*]

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*Annex No. 91*

DAHIR OF SEPTEMBER 9, 1939

[*See Annex I to French Memorial, pp. 96-97.*]

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*Annex No. 92*

DAHIR OF FEBRUARY 28, 1948

*B. O. n° 1844 bis, du 3 mars 1948, page 236.*

**Dahir du 28 février 1948 (17 rebia II 1367) portant fixation du taux de certains impôts indirects (taxes intérieures de consommation applicables à certains produits, et droits perçus sur les briquets et autres appareils d'allumage)**

LOUANGE A DIEU SEUL !

*(Grand sceau de Sidi Mohamed)*

Que l'on sache par les présentes — puisse Dieu en élever et en fortifier la teneur !

Que Notre Majesté Chérifienne,

Vu les dahirs du 12 décembre 1915 (4 safar 1334), du 1<sup>er</sup> octobre 1917 (14 hija 1335), du 25 août 1919 (25 kaada 1337), du 5 juillet 1921 (28 chaoual 1339), du 8 juin 1922 (11 chaoual 1340), du 5 avril 1924 (29 chaabane 1342), du 6 janvier 1926 (22 jourmada II 1344), du 20 juin 1930 (22 moharrem 1349), du 28 septembre 1930 (7 chaabane 1349), du 7 septembre 1931 (23 rebia II 1350), du 14 novembre 1931 (3 rejeb 1350), du 6 avril 1932 (29 kaada 1350), du 14 septembre 1932 (12 jourmada I 1351), du 29 août 1933 (8 jourmada I 1352), du 22 décembre 1936 (7 chaoual 1355), du 1<sup>er</sup> mars 1939 (9 moharrem 1358), du 8 août 1940 (4 rejeb 1359) et du 22 août 1940 (18 rejeb 1359) portant création de taxes intérieures de consommation ou réglementant le commerce des briquets et autres appareils d'allumage, et les textes subséquents qui les ont modifiés ou complétés,

A DÉCIDÉ CE QUI SUIT :

ARTICLE PREMIER. — Les taux des taxes intérieures de consommation applicables à certains produits et des droits perçus sur les briquets et autres appareils d'allumage sont fixés conformément aux indications des tableaux A, B, C, D et E ci-après, toutes autres dispositions concernant leur application étant maintenues en vigueur, sauf prescriptions contraires énoncées aux articles 2 et suivants du présent dahir :

## A. — Taxes intérieures de consommation sur les sucres, produits sucrés, saccharine et substances édulcorantes artificielles

DÉSIGNATION DES PRODUITS	BASE DE TAXATION	TARIFS
		Francs
Sucres de betterave, de canne et sucres analogues (saccharose) :		
Bruts en poudre (y compris les vergeoises) :		
Destinés au raffinage et dont le rendement présumé au raffinage est de :		
98% et moins . . . . .	100 kilos nets exprimés en sucre raffiné	600
Plus de 98% . . . . .	100 kilos nets (poids effectif)	600
Non destinés au raffinage, quel que soit leur rendement présumé . . . . .	id.	600
Raffinés ou agglomérés :		
Candis . . . . .	id.	640
Autres . . . . .	id.	600
Mélasses, quelle que soit leur richesse saccharine absolue . . . . .	id.	30
Glucoses pures et tous autres produits saccharins cristallisables, quels que soient leur degré de concentration et la matière première dont ils sont extraits . . . . .	id.	160
Glucoses granulés présentant l'apparence des sucres cristallisables . . . . .	id.	600
Sirops et sucres intervertis . . . . .	id.	600
Confiseries au sucre, sans cacao ni chocolat (bonbons, berlingots, dragées, pâtes de guimauve, jujube, goyaves et analogues, caramels, nougats, glaces, etc.) ; fruits et produits végétaux-confits ou glacés au sucre :		
Contenant une liqueur alcoolique . . . . .	id.	420
Autres . . . . .	id.	600
Biscuits sucrés, contenant :		
Jusqu'à 25% de sucre . . . . .	id.	150
Plus de 25% de sucre jusqu'à 50% inclus . . . . .	id.	300
Plus de 50% de sucre (y compris les macarons, massapains, gâteaux d'amandes et pâtisseries dites « petits fours » ou autres, quelle que soit la proportion de sucre) . . . . .	id.	600
Pains d'épices glacés ou recouverts autrement de sucre et pains d'épices comportant des fruits confits ou sucrés dans une proportion supérieure à 25%, à l'exclusion des pains d'épices enrobés de cacao ou de chocolat . . . . .	id.	600
Poudres sucrées pour crèmes, puddings, entremets, desserts, gelées, etc., sans addition de cacao ou de chocolat . . . . .	id.	60
Confitures, gelées, marmelades, compotes, purées de fruits et produits analogues contenant du sucre ou du miel et ayant d'humidité :		
40% et moins . . . . .	id.	300
Plus de 40% . . . . .	id.	200
		50

DÉSIGNATION DES PRODUITS	BASE DE TAXATION	TARIFS Francs
Œufs complets (blancs et jaunes) et jaunes d'œufs sucrés, en poudre ou autrement présentés . . .	id.	45
Succédanés ou substituts du miel :		
A base de sucre (saccharose) . . . . .	id.	450
A base de produits saccharins, autres que la saccharose, dans une proportion supérieure à 10% . . . . .	id.	160
Laits concentrés complets ou écrémés et farines lactées, additionnés de sucre dans la proportion de :		
Moins de 42% . . . . .	100 kilos nets (poids effectif)	180
42% inclus à 50% exclus . . . . .	id.	270
50% et plus . . . . .	id.	420
Fruits de table ou autres confits ou conservés dans un liquide sucré non alcoolique (fruits au sirop et similaires) . . . . .	id.	150
Fruits de table ou autres confits ou conservés à l'alcool ou à l'eau-de-vie, avec addition de sucre . . . . .	100 kilos nets du poids du sucre y contenu, exprimé en saccharose	600
Liqueurs et tous autres produits sucrés . . . . .	id.	600
Saccharine et toutes autres substances édulcorantes artificielles et produits chimiques assimilés . . . . .	Kilo net (poids effectif)	2.725

B. — *Taxes intérieures de consommation applicables aux denrées coloniales de consommation, leurs substituts et subrogés*

DÉSIGNATION DES PRODUITS	BASE DE TAXATION	TARIFS Francs.
Café :		
Vert, en cerises ou parches, fèves ou pellicules . . . . .	100 kilos nets (poids effectif)	650
Torréfié, moulu ou non :		
Non décaféiné . . . . .	id.	950
Décaféiné . . . . .	id.	880
Thés, verts et noirs, y compris les fleurs et boutons . . . . .	id.	1.635
Vanille . . . . .	id.	2.040
Poivre (genre piper), y compris le poivre dit « de cubèbe » et produits d'imitation en contenant . . . . .	id.	1.635
Piment (des genres <i>capsicum</i> , à l'exclusion du <i>capsicum grossum</i> et <i>pimenta</i> ), y compris le paprika et produits d'imitation en contenant . . . . .	id.	1.635
Cannelle et fleurs de cannellier, y compris le <i>cassia lignea</i> . . . . .	id.	820
Girofle (clous et griffes) . . . . .	id.	820
Noix muscades :		
En coques . . . . .	id.	820
Sans coques . . . . .	id.	1.220
Macis . . . . .	id.	820
Amomes et cardamomes . . . . .	id.	820

DÉSIGNATION DES PRODUITS	BASE DE TAXATION	TARIFS
		<i>Francs</i>
Extrait de vanille (oléorésine) . . . . .	id.	8.160
Cacao en fèves et brisures de fèves, torréfié ou non, en coques, pelures, gousses et pellicules . . . . .	id.	500
Cacao en masse (pâte de cacao) ou en tablettes . . . . .	id.	600
Beurre de cacao, y compris la graisse et l'huile de cacao . . . . .	id.	600
Cacao en poudre . . . . .	id.	600
Chocolat de toutes sortes . . . . .	id.	600
Chicorée torréfiée et autres succédanés torréfiés du café, ne contenant pas de café, en morceaux, en grains ou moulus . . . . .	id.	325
Extraits, essences, et préparations analogues à base de café :		
Liquides . . . . .	id.	1.950
Solides . . . . .	id.	3.800
Vanilline (comprimés et dosettes), y compris ses dérivés et substitués . . . . .	Kilo (poids effectif)	6.850

C. — *Produits pétroliers (carburants, lubrifiants et combustibles)*

DÉSIGNATION DES PRODUITS	BASE DE TAXATION	TARIFS
		<i>Francs</i>
Essences de pétrole, pures ou en mélange . . . . .	Hectolitre	300
Pétroles, huiles minérales raffinées ou lampantes, y compris les mélanges de gazoil et de pétrole . . . . .	id.	160
Pétrole contenu dans les produits composés à base de pétrole, autres que les mélanges de gazoil et de pétrole et les compositions comprenant du pétrole non récupérable susceptible de n'être utilisé ni comme carburant ni comme combustible	L'hectolitre de pétrole y contenu	160
Gazoils, diesel oils et autres produits pétroliers susceptibles d'être utilisés dans les moteurs à combustion interne . . . . .	Hectolitre	140
Mazouts de chauffe, furnace fuels, fuel oils C et autres produits pétroliers de chauffe . . . . .	100 kilos nets	50
Huiles minérales de graissage . . . . .	id.	200
Produits consistants de graissage fabriqués avec des huiles minérales de graissage . . . . .	id.	140

D. — *Autres taxes intérieures de consommation*

DÉSIGNATION DES PRODUITS	BASE DE TAXATION	TARIFS
		<i>Francs</i>
Viandes congelées . . . . .	100 kilos nets	275
Huiles végétales alimentaires, autres que les huiles d'olive (y compris celles contenues dans les conserves alimentaires) . . . . .	id.	60
Acide stéarique servant de matière première à la fabrication des bougies, chandelles, cierges et articles similaires . . . . .	id.	250

DÉSIGNATION DES PRODUITS	BASE DE TAXATION	TARIFS <i>Francs</i>
Paraffine servant de matière première à la fabrication des bougies, chandelles, cierges et articles similaires . . . . .	id.	250
Ozokérite servant de matière première à la fabrication des bougies, chandelles, cierges et articles similaires . . . . .	id.	250
Autres cires minérales servant de matière première à la fabrication des bougies, chandelles, cierges et articles similaires . . . . .	id.	250
Carbure de calcium . . . . .	id.	80
Cires artificielles servant de matière première à la fabrication des bougies, chandelles, cierges et articles similaires . . . . .	id.	250
Bougies, chandelles, cierges et articles similaires en toutes matières . . . . .	id.	250
Tous autres produits similaires de l'ozokérite, de la paraffine ou de l'acide stéarique servant de matières premières à la fabrication des bougies	id.	250
Allumettes . . . . .	Boîte de 30 tiges ou fraction de 30 tiges	0,30
Chapes en caoutchouc non manufacturées, bandages pleins ou creux, chambres à air et pneumatiques à l'état brut travaillé ou fini, destinés à être montés sur des motocyclettes, side-cars, automobiles et véhicules similaires . . . . .	100 kilos nets	1.600
Disques pour phonographes . . . . .	Le disque	15
Appareils récepteurs de radiodiffusion . . . . .	La lampe de réception	50
Lampes ou tubes de réception pour installations et appareils récepteurs de radiodiffusion . . . . .	id.	50
Cartes à jouer :		
Jeux de 40 cartes et moins . . . . .	Le jeu	40
Jeux de plus de 40 cartes . . . . .	id.	80

E. — *Droits d'estampillage et de poinçonnage sur les briquets et autres appareils d'allumage*

Appareils en métal commun, ordinaires . . . . .	L'estampille	50
Appareils en métal commun, dits de luxe . . . . .	Le poinçon	150
Appareils en argent . . . . .	id.	400
Appareils en or . . . . .	id.	1.500
Appareils en platine . . . . .	id.	1.500
Appareils non métalliques sur lesquels l'estampille peut être soudée . . . . .	L'estampille	50
Appareils non métalliques sur lesquels l'estampille ne peut être soudée . . . . .	id.	150

ART. 2. — Sont abrogées les dispositions des articles 5, 6 et 7 du dahir susvisé du 6 avril 1932 (29 kaada 1350) fixant le régime des sucres, mélasses et glucoses, relatives à l'institution d'un droit de raffinage et d'une taxe de surveillance sur les sucres et produits sucrés.

Sont également abrogées les dispositions de l'article 10 du même dahir du 6 avril 1932 (29 kaada 1350) relatives à la licence délivrée aux fabricants de sucre.

ART. 3. — Sont abrogées les dispositions du dahir susvisé du 22 décembre 1936 (7 chaoual 1355) créant une taxe intérieure de consommation sur les chaussures en caoutchouc ou à semelles de caoutchouc.

ART. 4. — Sont abrogées les dispositions de l'article 5 du dahir susvisé du 22 décembre 1936 (7 chaoual 1355) sur le relèvement des taxes intérieures de consommation établies sur certains produits, telles qu'elles ont été modifiées et complétées par le dahir du 28 juillet 1937 (19 jomada I 1356).

De même, sont et demeurent abrogées les dispositions des articles : 4 du dahir du 5 avril 1924 (29 chaabane 1342) fixant le régime de l'importation et le régime intérieur des matières premières entrant dans la fabrication des bougies ; 13 du dahir du 6 avril 1932 (29 kaada 1350) fixant le régime des sucres, mélasses et glucoses.

ART. 5. — La perception des taxes intérieures de consommation applicables aux viandes frigorifiées, aux racines de chicorée préparées, orréfiées ou moulues, aux substituts de la chicorée torréfiés, en grains ou moulus et aux autres succédanés du café, est provisoirement suspendue.

ART. 6. — Les dispositions du dahir susvisé du 25 août 1919 (27 kaada 1337) créant une taxe intérieure de consommation sur les principales denrées coloniales, telles qu'elles ont été modifiées et complétées par les dahirs subséquents, sont étendues à l'extrait de vanille (oléorésine), à la vanilline, ses dérivés et substituts ainsi qu'aux extraits, essences et préparations analogues à base de café. Ces produits son imposés d'après les tarifs indiqués au tableau B de l'article 2 du présent dahir.

ART. 7. — Dans tous les cas où les produits (compositions ou mélanges) sont imposés en fonction de leur teneur en matière imposable la proportion de la matière y contenue est déterminée par le laboratoire officiel de chimie de Casablanca, dont la décision est sans appel.

ART. 8. — Les droits fixés à l'article premier du présent dahir sont exigibles sur les produits introduits dans la zone française de Notre Empire aussi bien que sur ceux qui y sont fabriqués ou obtenus.

Des arrêtés de Notre Grand Vizir détermineront le régime de la fabrication et de la circulation intérieure des produits qui y sont assujettis ainsi que le régime des fabriques et les modalités de contrôle et de perception de l'impôt.

ART. 9. — En cas de soupçon de fraude concernant les impôts indirects visés au présent dahir, les agents de l'administration des Douanes et Impôts indirects peuvent procéder à des visites domiciliaires en se faisant assister d'un officier de police judiciaire.

Quand ces perquisitions sont effectuées dans une maison où se trouvent des femmes musulmanes, les agents doivent se faire précéder par la « arifa » ou, à défaut, par une femme de confiance, de manière à éviter toute plainte pour manque d'égards ou de convenances.

Par dérogation aux dispositions du premier alinéa du présent article, au cas où une majoration de tarif, accompagnée d'une reprise des stocks, vient à être édictée en ce qui concerne les impôts visés au présent dahir, les autres agents de la direction des finances sont habilités, pendant le délai d'un mois à compter du jour de l'application des nouveaux tarifs, à procéder, au même titre et sous les mêmes réserves que les agents de l'administration des Douanes et Impôts indirects, à des visites domiciliaires, en vue de rechercher les stocks non déclarés et constater les infractions dans les localités où ladite administration n'est pas représentée ; la même faculté est dévolue aux officiers de police judiciaire.

ART. 10. — Toute infraction à la législation concernant les impôts indirects visés au présent dahir et aux arrêtés pris pour en assurer l'application ainsi que toute manœuvre ayant eu ou devant avoir pour résultat d'éluider le paiement de l'impôt est punie :

1° D'une amende de 500 à 10.000 francs ;

2° De la confiscation des marchandises trouvées en fraude ;

3° Du quintuple des droits fraudés ou compromis.

Quiconque, ayant été condamné depuis moins de deux années grégoriennes par jugement ou arrêt définitif pour infraction à l'une des dispositions de la législation ou de la réglementation susvisées, se rend coupable d'une nouvelle infraction du même ordre, sera condamné au maximum des peines d'amende et à une peine d'emprisonnement de trois mois à deux ans.

ART. 11. — Par dérogation aux dispositions de l'article 8 ci-dessus, dans le cas où, à la suite d'une majoration tarifaire, est édictée la reprise des stocks libérés des droits, les produits soumis à cette reprise qui n'auront pas été déclarés dans les délais impartis donneront lieu, indépendamment du règlement des droits exigibles, au paiement d'une amende égale au quintuple des droits fraudés ou compromis.

ART. 12. — Les pénalités pécuniaires prévues aux articles 10 et 11 ci-dessus ont le caractère de réparations civiles.

L'article 463 du code pénal est applicable aux infractions prévues au présent dahir, mais pour les peines corporelles seulement. Lesdites infractions sont de la compétence exclusive des juridictions françaises de Notre Empire.

ART. 13. — Dans les cinq jours de la mise en vigueur du présent dahir, tous fabricants ou producteurs, tous commerçants, à l'exception de ceux qui vendent uniquement au détail, tous entrepreneurs de transport et tous dépositaires détenant des sucres, des mélasses de consommation, des thés verts ou noirs, des huiles végétales alimentaires, des bougies, de l'acide stéarique, de la paraffine, de l'ozokérite et autres produits similaires servant de matières premières à la fabrication de bougies, des produits pétroliers, des allumettes, doivent déposer au bureau des douanes et impôts indirects de leur résidence ou, à défaut, à l'autorité locale de contrôle, la déclaration écrite des quantités de produits en leur possession au jour de l'application du présent dahir.

Les quantités en cours de route doivent également faire l'objet d'une déclaration dès leur arrivée à destination.

Ces quantités sont reprises par voie d'inventaire et soumises à la majoration tarifaire résultant de l'application de l'article premier du présent dahir. Le cas échéant, les infractions aux dispositions du présent



article seront recherchées et réprimées conformément aux prescriptions des articles 9 et 11 du présent dahir.

ART. 14. — Les dispositions du présent dahir sont applicables à compter du 4 mars 1948.

*Fait à Rabat, le 17 rebia II 1367 (28 février 1948).*

Vu pour promulgation et mise à exécution :

*Rabat, le 1<sup>er</sup> mars 1948.*

*Le Commissaire résident général,  
A. JUIN.*

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*Annex No. 93*

CONVENTION BETWEEN GREAT BRITAIN AND FRANCE FOR  
THE ABOLITION OF CAPITULATIONS IN MOROCCO AND  
ZANZIBAR, JULY 29, 1937

Source : Treaty Series No. 8 (1938)—Cmd. 5646.

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CONVENTION BETWEEN HIS MAJESTY IN RESPECT OF THE UNITED  
KINGDOM AND THE PRESIDENT OF THE FRENCH REPUBLIC FOR THE  
ABOLITION OF CAPITULATIONS IN MOROCCO AND ZANZIBAR, WITH  
PROTOCOL OF SIGNATURE, MINUTE, AND EXCHANGES OF NOTES

*London, July 29, 1937*

CONVENTION

His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the French Republic, acting in his own name and on behalf of His Majesty the Sultan of Morocco ;

Whereas the present special régime applicable in the French Zone of the Shereefian Empire to British consuls, nationals, and institutions is no longer in accordance with the present state of that zone ;

And whereas His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, in view of the convention signed at Montreux on the 8th day of May, 1937<sup>1</sup>, relating to the abolition of the Capitulations in Egypt, desires to give effect as regards the French Zone of Morocco to the Declaration of the 8th April, 1904<sup>2</sup>, relating to Egypt and Morocco ;

And whereas both High Contracting Parties are also desirous of modifying certain treaties applicable to Zanzibar so as to render them more in conformity with existing conditions ;

Have accordingly decided to conclude a convention for this purpose and have appointed as their plenipotentiaries :

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<sup>1</sup> Treaty Series No. 55 (1937)—Cmd. 5630.

<sup>2</sup> Treaty Series No. 6 (1905)—Cd. 2384.

His Majesty The King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India (hereinafter referred to as His Majesty The King) :

For Great Britain and Northern Ireland :

The Right Honourable Anthony Eden, M.C., M.P., His Majesty's Principal Secretary of State for Foreign Affairs ;

The President of the French Republic :

His Excellency Monsieur Charles Corbin, Ambassador Extraordinary and Plenipotentiary of the French Republic in London ;

Who, having deposited their full powers, found in good and due form, have agreed as follows :

#### ARTICLE I.

His Majesty The King renounces all rights and privileges of a capitulatory character in the French Zone of the Shereefian Empire.

#### ARTICLE 2.

British subjects, British-protected persons and British companies in the French Zone of the Shereefian Empire shall be subject to the jurisdiction of the same tribunals as French citizens and French companies.

In their recourse to such tribunals British subjects, British-protected persons and British companies shall be subject to the same conditions as French citizens and French companies.

After the expiry of ten years from the date of the coming into force of the present convention, the provisions of the second paragraph of this article cannot be invoked, unless the subjects of His Majesty the Sultan of Morocco and companies duly incorporated under the law of the French Zone of the Shereefian Empire enjoy in the United Kingdom the treatment of the most favoured nation as regards the matter referred to in that paragraph.

#### ARTICLE 3.

In respect of matters occurring before the entry into force of the present convention, laws and regulations of the French Zone of the Shereefian Empire shall only be applied to British subjects, British-protected persons, British companies and British ships in cases where in accordance with the existing practice such laws and regulations were then applicable to them.

Duties and taxes, however, payable under legislation, enacted less than one year before the date of the entry into force of the present convention and not yet made applicable by regulations of the British consular authorities, may be recovered from British subjects, British-protected persons and British companies.

British subjects, British-protected persons and British companies shall not be sued in the courts of the French Zone for taxation or duties of any kind which became due more than two years before the coming into force of this convention.

## ARTICLE 4.

The British courts at present exercising jurisdiction in the French Zone of the Shereefian Empire shall continue to deal with the cases regularly instituted before them before the entry into force of the present convention until these cases are finally completed.

Decisions, given by the said courts within the limits of their jurisdiction and which are final, shall be recognised as having the force of *res judicata* by the authorities of the French Zone of the Shereefian Empire. Certificates given by the British consular officers to the effect that the said decisions are final will be accepted.

His Majesty The King undertakes to retain in Morocco all the judicial records of the British consular courts. These records shall be made available to the tribunals of the French Zone of the Shereefian Empire wherever these tribunals require them for the purpose of cases within their jurisdiction. Certified copies of these records will be furnished on request to the said tribunals, the competent authorities of the zone and to any other properly interested party.

## ARTICLE 5.

Subject to the provisions of paragraphs 2 and 3 below, no person owing allegiance to His Majesty the Sultan of Morocco can claim in the French Zone of the Shereefian Empire the protection of His Majesty The King.

Natives of the French Zone of the Shereefian Empire, who at the date of the entry into force of the present convention enjoy British protection, either as employees of a British consulate or as *semsars*, shall for the remainder of their life be justiciable by the French tribunals of the Shereefian Empire except as regards matters coming within the jurisdiction of the Moslem or Jewish religious courts. A list of these persons shall be drawn up within six months of the coming into force of the present convention by agreement between the French Residency General and the British Consulate-General at Rabat. This list shall include the wives and minor children of these persons living under the same roof, and the provisions of this paragraph shall apply in the case of the wives during the lifetime of their husbands, and in the case of the children until the death of their fathers or until their majority, whichever happens earliest.

The persons enumerated in the annex to the present convention shall also enjoy the benefit of the provisions of paragraph 2 above.

## ARTICLE 6.

The British post offices in the French Zone of the Shereefian Empire will be closed at the date which shall be notified to the Residency General at Rabat by the British Consulate-General and in any case not later than thirty days after the entry into force of the present convention.

## ARTICLE 7.

British subjects, British-protected persons and British companies will enjoy in the French Zone of the Shereefian Empire the same personal and private rights (*droits privés*) as French citizens and French

companies. They shall have the same guaranties for the protection of person and property.

#### ARTICLE 8.

British subjects and British-protected persons shall not be subject in the French Zone of the Shereefian Empire to any compulsory personal military service nor to any tax or payment in lieu of such service.

After the expiry of ten years from the date of the entry into force of the present convention, the provisions of the present article cannot be invoked unless the subjects of His Majesty the Sultan of Morocco enjoy in the United Kingdom the treatment of the most favoured nation as regards the matter referred to in this article.

#### ARTICLE 9.

Extracts from "casier judiciaire" shall be delivered to British subjects and British-protected persons resident in the French Zone of Morocco in the same conditions as to French citizens. In order to enable the competent authorities of the zone to deliver such extracts, the British consular authorities in the zone will supply to these authorities certificates as regards convictions, if any, pronounced by the British consular courts in Morocco.

#### ARTICLE 10.

His Majesty The King shall have the right to maintain consulates at any place in the French Zone of the Shereefian Empire where British consulates are at present established. The establishment of new consulates at other places in the said zone shall be subject to the agreement of the Governments of both High Contracting Parties.

British consular officers in the French Zone shall enjoy privileges and immunities not less favourable than those accorded to British consular officers in France or to the consular officers of any other Power in Morocco.

Neither this article nor article 20 of the General Treaty signed at Tangier on the 9th December, 1856<sup>1</sup>, on behalf of Her late Majesty the Queen of the United Kingdom of Great Britain and Ireland and His late Majesty the Sultan of Morocco and Fez, shall, however, entitle His Majesty The King to claim jurisdictional privileges accorded on the basis of existing treaties concluded by His Majesty the Sultan of Morocco and the United States of America.

#### ARTICLE 11.

British schools of every grade shall continue to enjoy in the French Zone, especially in regard to the teaching of English, the same liberty as hitherto. They will be subject to the laws relating to State control which are applicable to all European schools in the French Zone.

#### ARTICLE 12.

Article 4, paragraph 1, of the General Treaty signed at Tangier on the 9th December, 1856, does not affect the right of the authorities of

<sup>1</sup> Presented to both Houses of Parliament by Command of Her Majesty, 1857.

the French Zone of the Shereefian Empire to regulate admittance and immigration into the territory or to expel persons for reasons of police or public order or to apply immigration regulations, provided that there is no discrimination against British subjects or British-protected persons.

Nevertheless, British subjects and British-protected persons who have been resident in the French Zone of Morocco for more than five years shall not be expelled unless—

- (a) They have committed a crime or offence punishable with more than three months' imprisonment.
- (b) They have been guilty of conduct prejudicial to public safety, public order, good morals or public health.
- (c) They are in such a state of indigence as to be a burden to the State.

The provisions of paragraph 2 of this article may be terminated at any time after the expiry of twenty years from the date of the coming into force of this convention by six months' notice.

#### ARTICLE 13.

The powers conferred on British consular officers in the French Zone of the Shereefian Empire in matter of the estates of deceased persons by article 18 of the General Treaty signed at Tangier on the 9th December, 1856, are maintained.

Any disputes arising as regards the estates referred to in the said article shall be determined by the competent tribunals of the said zone in conformity with the provisions of laws of general application.

The provisions of this article may be terminated at any time after the expiry of twenty years from the date of the entry into force of the present convention by six months' notice.

#### ARTICLE 14.

The High Contracting Parties agree that the French decree of the 8th November, 1921, relating to French nationality in the French Zone of the Shereefian Empire, and the Dahir of the same date, relating to Moroccan nationality, are not applicable to British subjects or protected persons born before the date of the entry into force of the present convention.

If the French or Moroccan Governments should enact measures which would result in conferring French or Moroccan nationality by reason of birth or residence in the French Zone of the Shereefian Empire in any case where the above-mentioned decree would not have conferred French nationality, British subjects and protected persons affected by these enactments shall be freed from French or Moroccan nationality if they make a request to this effect in the year which follows their majority.

#### ARTICLE 15.

The subjects of His Majesty the Sultan of Morocco and Moroccan vessels shall enjoy the same rights as French citizens and French ships in the United Kingdom of Great Britain and Northern Ireland, British colonies and in territories under the protection of His Majesty The King, and in mandated territories administered by the Government of the United Kingdom.

The expression "Moroccan vessels" means ships duly registered as such in a port of the French Zone of the Shereefian Empire.

#### ARTICLE 16.

The provisions of all earlier Acts, treaties and conventions which are contrary to the preceding provisions of the present convention are abrogated as between the High Contracting Parties so far as the French Zone of the Shereefian Empire is concerned.

Articles 13 and 20 of the general Treaty signed at Tangier on the 9th December, 1856, cannot be invoked by His Majesty The King to claim the jurisdictional privileges enjoyed by the United States of America under treaties at present in force.

His Majesty The King renounces all rights in the French Zone of the Shereefian Empire under the Convention of Madrid of 1880<sup>1</sup>.

#### ARTICLE 17.

The French Republic renounces all rights and privileges of a capitulatory character in the territories of His Highness the Sultan of Zanzibar.

#### ARTICLE 18.

French nationals (citizens, subjects and protected persons) and French companies shall be subject in the territories of the Sultan of Zanzibar to the jurisdiction of the same courts as British subjects and British companies.

In their recourse to such courts French nationals and French companies shall be subject to the same conditions as British subjects and British companies for so long as British subjects, British-protected persons and British companies enjoy in the French Zone of the Shereefian Empire the benefit of paragraph 2 of Article 2 of the present convention.

#### ARTICLE 19.

French nationals (citizens, subjects and protected persons) and French companies will enjoy in the territories of His Highness the Sultan of Zanzibar the same rights as those accorded in the French Zone of the Shereefian Empire to British subjects, British-protected persons and British companies under Articles 7, 8 and 12 above and subject to the same conditions.

#### ARTICLE 20.

French consuls in the territories of His Highness the Sultan of Zanzibar shall enjoy privileges and immunities not less favourable than those accorded to French consular officers in the United Kingdom or those accorded to the consuls of any other Power in the territories of His Highness the Sultan of Zanzibar.

Neither Article 2 nor Article 5 of the treaty signed at Zanzibar on the 17th November, 1844<sup>2</sup>, with His Highness the Sultan of Muscat and dependencies shall entitle the French Republic to claim in the territories of His Highness the Sultan of Zanzibar jurisdictional privileges or personal privileges for French consuls or French nationals on the basis of pri-

<sup>1</sup> Parliamentary Paper "Morocco No. 1 (1881)"—C. 3053.

<sup>2</sup> See *British and Foreign State Papers*, Vol. XXXV, page 1011.

vileges claimed or granted to other Powers in virtue of existing treaties concluded by His Highness the Sultan of Muscat.

ARTICLE 21.

French schools shall continue to enjoy in the territories of the Sultan of Zanzibar the same freedom as in the past, particularly in regard to the teaching of French. They shall be subject to the laws relating to State control which are applicable to all European schools.

ARTICLE 22.

The powers reserved by the Government of the French Republic as regards estates of deceased nationals for the benefit of French consuls in the territories of His Highness the Sultan of Zanzibar by the letter of the 13th May, 1904<sup>1</sup>, shall be maintained.

All disputes that may arise as regards such estates shall be determined in the territories of His Highness the Sultan of Zanzibar by the competent tribunals in accordance with the provisions of laws of general application. French consuls shall not in any matter be cited before a native court in this capacity as administrator or liquidator of the estate of a French national.

The provisions of the present article may be terminated at any time after the expiry of twenty years from the date of the entry into force of the present convention by six months' notice.

ARTICLE 23.

The following provisions of the Treaty signed at Zanzibar on the 17th November, 1844, with His Highness the Sultan of Muscat and dependencies, namely, Articles 3, 4, 6, 7, 8 and 9, are abrogated so far as the territories of His Highness the Sultan of Zanzibar are concerned.

ARTICLE 24.

For the purposes of this convention the expression "British companies" means any company duly incorporated under the law of any territory under the sovereignty of His Majesty the King or of any territory under his protection, suzerainty or mandate, and the expression "British ships" means any ship duly registered in any of the above-mentioned territories.

The expression "French companies" means any company duly incorporated under the law of France or any French colony, protectorate or territory under mandate, and the expression "French ships" means any ship duly registered in any of the above-mentioned territories.

The expression "subject of His Majesty the Sultan of Morocco" only includes those of His Majesty's subjects who enjoy French diplomatic protection abroad.

The expression "territories of His Highness the Sultan of Zanzibar" means the territories referred to in the notes exchanged on the 13th and 18th May, 1904<sup>2</sup>, between the Government of the United Kingdom and the Government of the French Republic.

<sup>1</sup> See *British and Foreign State Papers*, Vol. XCIX, page 357.

<sup>2</sup> *Idem*.

## ARTICLE 25.

Any dispute between the High Contracting Parties relating to the interpretation or application of the provisions of the present convention, which they are unable to settle by diplomatic means, shall, on the application of one of them, be submitted to the Permanent Court of International Justice unless the High Contracting Parties agree on another method of settlement.

## ARTICLE 26.

The present convention shall be ratified.

The instruments of ratification shall be exchanged at Paris.

The present convention shall enter into force one calendar month after the date of the exchange of ratifications.

In faith whereof the above-named plenipotentiaries have signed the present convention.

Done this 29th day of July, 1937, at London, in duplicate, in English and French, both texts being equally authentic.

ANTHONY EDEN.  
CHARLES CORBIN.

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*Annex*

(See article 5, paragraph 3)

Hadj el Mehdi ben el Arbi el Menebhi.  
Si Jaafar ben Hadj el Mehdi el Menebhi.  
Si Abdelmajid ben Hadj el Mehdi el Menebhi.  
Si Hamsa ben Hadj el Mehdi el Menebhi.  
Si Mohammed (or Larbi) ben Hadj el Mehdi el Menebhi.  
Si Mokhtar ben Hadj el Mehdi el Menebhi.  
Si Ahmed ben Hadj el Mehdi el Menebhi.  
Si Mohammed ben Hadj el Mehdi el Menebhi.  
Si Abdelqader ben Hadj el Mehdi el Menebhi.  
Si Abbas ben Hadj el Mehdi el Menebhi.  
Si Abdelkerim ben Hadj el Mehdi el Menebhi.  
Si Abdellatif ben Hadj el Mehdi el Menebhi.

Omar bel Hadj Hassan el Hadjoui, supernumerary Consular employee, Fez.

Ahmed el Doukali (Hamed bel Hadj Mohammed bel Abbas Doukali), supernumerary Consular employee, Casablanca.

Sid Abderrahman bel Hadj el Mehdi el Menebhi, supernumerary Consular employee, Tangier.

Akhamlish, Mulai Ali, semsar in the employment of Adolfo Benvenuto, Tangier.

Anidjar, Amram P., semsar in the employment of Juan Dassoy, Tangier.

Anidjar, David, semsar in the employment of J. W. Biggs, London.

Azagury, Elias S., semsar in the employment of Stewart Bros. and Co., Glasgow.



Benchimol, Jacob M., semsar in the employment of Seegar Bros. and Co., Manchester.

Benlolo, Leon, semsar in the employment of Samuel Sadler and Co., London.

Bensadon, Joseph M., semsar in the employment of Isaac Abensur, Tangier.

Bensimhon, Simon, semsar in the employment of Isaac de J. Nahon, Tangier.

Cohen, Haim, semsar in the employment of Spruce Manufacturing Co., Ltd., Manchester.

Cohen, Isaac Abraham, semsar in the employment of Alexander Arias, Tangier.

Cohen, Isaac Joseph, semsar in the employment of S. Arditti Bros., Manchester.

Cohen, Jacob Jonas, semsar in the employment of Stewart Bros. and Co., Glasgow.

Cohen, Joseph Semtob, semsar in the employment of Lough Bros., Ltd., London.

Cohen, Simon J., semsar in the employment of Maurice Cohen and Co., London.

Cohen, Solomon Isaac, semsar in the employment of Kessler and Co., Ltd., Manchester.

Daoudi, Thami, semsar in the employment of C. E. Gerahty, Tangier.

Dukali, Kassim, semsar in the employment of Waring and Gillow, London.

Laredo, Isaac, semsar in the employment of Harrison and Crosfield, Ltd., London.

Levy, Abram M., semsar in the employment of Robert Baels and Co., London.

Medina, Afracim H., semsar in the employment of Mrs. Zohra Gabay, Tangier.

Nahon, Isaac M., semsar in the employment of Moxon's Agencies, Tangier.

Nahon, Leon H., semsar in the employment of José D. Cavilla, Tangier.

Pariente, Joseph J., semsar in the employment of E. T. Daniels and Wise, London.

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#### PROTOCOL OF SIGNATURE

At the moment of signing the convention of this day's date the undersigned, being duly authorised to this effect—

1. Declare that it is the intention of both Governments that ratifications shall be exchanged at such date as to enable the convention to come into force on the 1st day of January 1938 ;

2. Declare, with reference to Article 7, that the present convention in no way affects the treaties in force under which, in the French Zone of the Shereefian Empire,

(a) British subjects, British-protected persons and British companies enjoy equality of treatment with French citizens and French companies in the matter of rights concerning movable and immovable

property, mining rights, the exercise of professions, commerce, business and industry ;

- (b) British ships enjoy equality of treatment with French ships ;
- (c) British subjects, British-protected persons and British companies enjoy equality of treatment in matters of taxation with French citizens and French companies ;

3. Declare, with reference to Article 19, that the present convention in no way affects the treaties in force under which, in the territories of His Highness the Sultan of Zanzibar, French nationals and French companies enjoy the equality of treatment with British subjects and British companies in regard to the matters specified as in paragraph 2 above ;

4. Declare that the effect of Articles 1 and 16 of the convention is—

(a) as regards the General Treaty signed at Tangier on the 9th December 1856, to abrogate in so far as they are still in force Articles 2, 3, 4 (except the first and last sentences), 5 to 12, 14, 17 and 18 (except in so far as the provisions of this article are maintained by Article 13 of the convention) ; and (b) as regards the Act of Algeciras<sup>1</sup> to involve the renunciation by His Majesty the King of the right to rely upon Articles 1 to 50, 54 to 65, 70, 71, all provisions of Article 72 after the word "permit," 75, 76, 80, 97, 101, 102, 104, 113 to 119 ; further, in Article 81 the words "by the competent consular authority" must be deemed to be omitted and in Article 91 the word "competent" must henceforth be substituted for the word "consular" ;

5. Declare that, in view of the fact that some of the provisions in the instruments referred to in paragraph 4 above were not considered in the course of the present negotiations, it is understood that the present convention in no way affects the question whether the provisions of these two instruments, which are not specifically mentioned in paragraph 4 above, are still in force or have become obsolete, and the respective points of view of the two High Contracting Parties are entirely reserved as regards the continuance in force of these provisions, and the present convention cannot be invoked in this respect.

Done this 29th day of July 1937, at London, in duplicate, in English and French, both texts being equally authentic.

ANTHONY EDEN.

CHARLES CORBIN.

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#### MINUTE.

The two Delegations desire to record in a minute certain conclusions which were reached in the course of the negotiations relating to the abolition of rights of a capitulatory character in the French Zone of the Shereefian Empire. These conclusions are as follows :

(1) Upon the promulgation of the projected Arrêtés viziriels, referred to in the Note of the 26th April 1937, from the Residency General at Rabat to His Majesty's Consul-General at that city, which will modify the Arrêtés viziriels of 1933 so as to allow motor-transport enterprises in

<sup>1</sup> Treaty Series No. 4 (1907)—Cd. 3320.

the French Zone of the Shereefian Empire to insure their vehicles and their employees with different companies, His Majesty's Government will forthwith cause a King's Regulation to be made applying to British subjects, British-protected persons and British companies, the provisions of the legislation governing transport in the French Zone of the Shereefian Empire.

They will also, upon the promulgation in the French Zone of the projected legislation regarding the insurance of motor vehicles, at once cause a King's Regulation to be made applying this legislation to British subjects, et cetera, subject to such reservations as have already been agreed upon.

It is possible that the point arising on Article 17 (g) of the projected Vizerial decree on insurance of motor vehicles may have to be the subject of further discussion, but there should be no difficulty in settling this point long before January 1938.

(2) With reference to paragraph 2 of Article 5, the terms of which are limited to natives of the French Zone of the Shereefian Empire, the United Kingdom Delegation requested that, when the list provided for in this paragraph is drawn up, the British Consulate-General should be permitted to include in it about 10 semsars and consular employees at present resident in the Spanish Zone on the grounds that these persons are at present subject to the British consular court if they engage in litigation in the French Zone, and, further, that it would be illogical if in the future by reason of a similar agreement with the Spanish Government they should be subject to the Spanish courts in the Spanish Zone, that they should be subject to the native courts in the French Zone.

The French Delegation took note of this request and explained that it was a point on which they had at present no instructions from their Government, and that there was not at this stage of the negotiations time to obtain such instructions. They, nevertheless, undertook to recommend this request for the favourable consideration of the French authorities when discussions took place with regard to the drawing up of the list.

(3) With reference to Article 7, the two Delegations wish to place on record that a copy of the Dahir of the 12th August 1913, which at present regulates the status of French citizens and of foreign nationals in the French Zone of the Shereefian Empire, was produced and note was taken thereof by the United Kingdom Delegation.

(4) With reference to paragraph 2 of the Protocol of Signature, it was agreed by both Delegations that the existence and duration of the rights referred to in this paragraph should not be deemed to be affected in any way by any abrogation of the Commercial Treaty signed at Tangier in 1856 or by its replacement by another commercial treaty of a non-permanent character.

(5) It is understood that, during the commercial negotiations envisaged in the letters with regard to the Commercial Treaty of 1856 the question of the "Règlement sur les douanes" in the French Zone may be included as one of the matters to be discussed.

C. HOWARD SMITH.  
CORDIER.

*Foreign Office, the 29th day of July 1937.*

## EXCHANGES OF NOTES

No. 1

*M. Corbin to Mr. Eden*

Ambassade de France  
en Angleterre.

Monsieur le Secrétaire d'État,

*Londres,  
le 29 juillet 1937.*

Au moment de procéder à la signature de la convention relative à l'abolition des droits de caractère capitulaire dans la zone française de l'Empire chérifien, Votre Excellence a exprimé le désir de connaître le régime qui sera appliqué dans cette zone aux missionnaires britanniques.

J'ai l'honneur de vous faire savoir que le Gouvernement français m'a autorisé à porter à la connaissance du Gouvernement britannique que les missions britanniques, autres que les missions catholiques, bénéficieront, pour leurs établissements anciens ou futurs, dans la zone française de l'Empire chérifien, du même traitement que les missions françaises. Les missions catholiques britanniques jouiront du traitement accordé aux missions catholiques de la nation la plus favorisée à l'exception des missions catholiques françaises.

Veillez agréer, &c.

CH. CORBIN.

[Translation]

Sir,

*French Embassy,  
London, July 29, 1937.*

At the moment of proceeding to signature of the Convention for the abolition of rights of a capitulatory character in the French Zone of the Shereefian Empire, Your Excellency expressed the desire to be informed as to the régime which will be applied in this zone to British missionaries.

I have the honour to inform you that the French Government has authorised me to state that British missionaries, both those established there at present and those that may come in the future, other than Roman Catholic missionaries, will enjoy in the French Zone of the Shereefian Empire the same treatment as French missionaries. British Roman Catholic missionaries will enjoy the same treatment as that accorded to Roman Catholic missionaries of the most favoured nation other than French Roman Catholic missionaries.

I have, &c.

CH. CORBIN.

No. 2

*Mr. Eden to M. Corbin*

Your Excellency,

*Foreign Office,  
London, July 29, 1937.*

I have to acknowledge the receipt of your letter of this day's date relating to British missionaries in the French Zone of the Shereefian

Empire and to state that His Majesty's Government in the United Kingdom are in agreement with the terms of this letter.

I have, &c.

ANTHONY EDEN.

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No. 3

*M. Corbin to Mr. Eden*

Ambassade de France  
en Angleterre.

Monsieur le Secrétaire d'État,

*Londres,  
le 29 juillet 1937.*

Au moment de procéder à la signature de la convention relative à l'abolition des droits de caractère capitulaire dans la zone française de l'Empire chérifien, j'ai l'honneur de porter à la connaissance de Votre Excellence que le Gouvernement français ne fera pas d'objection à ce que le consul général de Grande-Bretagne à Rabat intervienne auprès des autorités compétentes en faveur des personnes visées aux paragraphes deux et trois de l'article 5 de ladite convention.

Veillez agréer, &c.

CH. CORBIN.

[Translation]

*French Embassy,  
London, July 29, 1937.*

Sir,

At the moment of the signing of the Convention relating to the abolition of rights of a capitulatory character in the French Zone of the Shereefian Empire, I have to inform Your Excellency that the French Government will raise no objection to representations by the British consul-general at Rabat with the competent authorities in favour of the persons covered by paragraphs 2 and 3 of article 5 of the said convention.

I have, &c.

CH. CORBIN.

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No. 4

*Mr. Eden to M. Corbin*

Your Excellency,

*Foreign Office,  
London, July 29, 1937.*

I have the honour to acknowledge the receipt of Your Excellency's note of this day's date relating to the persons covered by paragraphs 2 and 3 of Article 5 of the Convention relating to the abolition of rights of capitulatory character in the French Zone of the Shereefian Empire, and to state that His Majesty's Government in the United Kingdom are in agreement with the terms of this letter.

I have, &c.

ANTHONY EDEN.

## No. 5

*Mr. Eden to M. Corbin*

Your Excellency,

*Foreign Office,  
London, July 29, 1937.*

There have been disputes in the past as regards the application to the immovable property of British subjects, British-protected persons and British companies in the French Zone of the Shereefian Empire of protectorate legislation relating to expropriation, or the imposition of servitudes, for reasons of public utility and as regards the compensation payable therefor. Since it is the desire of both Governments that all these disputes shall be settled or provision made for their settlement at the moment when British subjects, British-protected persons and companies in the zone cease to be subject to a special judicial régime, it has therefore been agreed that within two months of the date of this note His Majesty's Consul-General at Rabat shall present a list to the Shereefian authorities of all the cases of this kind which His Majesty's Government in the United Kingdom consider should be settled. In the two months following receipt of the list the Consul-General and the Protectorate authorities will settle as many of these cases as possible by agreement between them.

If there are any cases which cannot be settled in this way, it has been agreed that they shall be referred to M. Cordier, First President of the Court of Appeal at Rabat, to give his opinion as regards the amount of compensation which is due as a matter of equity on the understanding that the Government of the French Republic and His Majesty's Government in the United Kingdom agree to accept this opinion as final.

I have, &amp;c.

ANTHONY EDEN.

## No. 6

*M. Corbin to Mr. Eden*Ambassade de France,  
en Angleterre.

Monsieur le Secrétaire d'État,

*Londres,  
le 29 juillet 1937.*

J'ai l'honneur d'accuser réception à Votre Excellence de sa lettre en date de ce jour, relative au règlement de certaines questions d'expropriation intéressant des sujets, protégés et sociétés britanniques dans la zone française de l'Empire chérifien.

Je m'empresse de faire savoir à Votre Excellence que le Gouvernement français est d'accord sur les termes de cette communication.

Veuillez agréer, &amp;c.

CH. CORBIN.

[Translation]

Sir,

*French Embassy,  
London, July 29, 1937.*

I have the honour to acknowledge the receipt of your Excellency's note of this day's date relating to the settlement of certain questions

of expropriation affecting British subjects, British-protected persons and British companies in the French Zone of the Shereefian Empire, and to state that the French Government is in agreement with the terms of this note.

I have, &c.

CH. CORBIN.

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No. 7

*M. Corbin to Mr. Eden*

Ambassade de France  
en Angleterre.

Monsieur le Secrétaire d'État,

*Londres,  
le 29 juillet 1937.*

Au moment de procéder à la signature de la convention relative à l'abolition des droits de caractère capitulaire dans la zone française de l'Empire chérifien, Votre Excellence a exprimé le désir de connaître le régime qui serait appliqué dans cette zone aux chambres de commerce britanniques.

J'ai l'honneur de vous faire savoir que le Gouvernement français m'a autorisé à porter à la connaissance du Gouvernement du Royaume-Uni que les chambres de commerce britanniques seront admises à exercer leur activité dans la zone française de l'Empire chérifien à condition de se conformer aux lois et règlements applicables aux associations. Ces chambres ne seront pas assimilées aux chambres consultatives françaises auxquelles sont conférés des droits de caractère politique. Il entre, par contre, dans les intentions du Gouvernement français qu'elles soient traitées de la même manière que les associations professionnelles françaises et qu'en particulier elles puissent dans les mêmes conditions que ces dernières présenter des vœux et des suggestions à l'Administration française du Protectorat.

Veillez agréer, &c.

CH. CORBIN.

[Translation]

Sir,

*French Embassy,  
London, July 29, 1937.*

At the moment of the signature of the Convention for the abolition of rights of a capitulatory character in the French Zone of the Shereefian Empire, Your Excellency expressed the desire to be informed with regard to the régime which would be applied in this zone to British Chambers of Commerce.

I have the honour to inform you that the French Government have authorised me to state that British Chambers of Commerce will be permitted to carry on their work in the French Zone of the Shereefian Empire on condition of conforming to the laws and regulations applicable to associations. These Chambers of Commerce will not be assimilated to the French consultative chambers on which rights of a political character are conferred. On the other hand, it is the intention of the French Government that they shall be treated in the same manner as French professional associations, and, in particular, that they shall

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be able to present to the French Administration of the Protectorate their wishes and suggestions in the same conditions as French professional associations.

I have, &c.

CH. CORBIN.

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No. 8

*Mr. Eden to M. Corbin*

Your Excellency,

*Foreign Office,  
London, July 29, 1937.*

I have the honour to acknowledge the receipt of Your Excellency's letter of this day's date relating to British Chambers of Commerce in the French Zone of the Shereefian Empire, and to state His Majesty's Government in the United Kingdom have taken note of the terms of this letter.

I have, &c.

ANTHONY EDEN.

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No. 9

*Mr. Eden to M. Corbin*

Your Excellency,

*Foreign Office,  
London, July 29, 1937.*

I have the honour to inform Your Excellency that His Majesty's Government in the United Kingdom agree with the French Government in recognising that the conditions laid down in Article 14 of the Commercial Treaty of 1856 for the denunciation of that treaty no longer correspond with modern conditions, and, being equally desirous of revising the said treaty, agree that it is opportune to begin negotiations for the purpose of establishing the commercial relations between Great Britain and Morocco on a new basis corresponding to the respective economic interests of the contracting parties.

The new commercial treaty shall be based upon the principles of reciprocity and shall replace the Commercial Treaty of 1856.

It is understood that the two Governments will endeavour to secure that such a treaty shall be concluded before the entry into force of the treaty relating to the abolition of capitulatory rights in the French Zone of the Shereefian Empire.

I have, &c.

ANTHONY EDEN.

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No. 10

*M. Corbin to Mr. Eden*

Ambassade de France  
en Angleterre.

Monsieur le Secrétaire d'État,

*Londres,*  
*le 29 juillet 1937.*

J'ai l'honneur de porter à la connaissance de Votre Excellence que le Gouvernement de la République française est d'accord avec le Gouvernement de Sa Majesté dans le Royaume-Uni pour reconnaître que les stipulations de l'article 14 du traité de commerce de 1856, en ce qui concerne la dénonciation de ce traité, ont cessé de correspondre aux conditions actuelles, et, désireux comme lui de reviser ledit traité, il est également d'accord pour estimer opportun d'ouvrir des négociations à l'effet d'établir les relations commerciales entre le Maroc et la Grande-Bretagne sur des bases nouvelles correspondant aux intérêts économiques respectifs des parties contractantes.

Le nouveau traité de commerce sera basé sur le principe de la réciprocité et remplacera le traité de commerce de 1856.

Il est entendu que les deux Gouvernements s'efforceront de faire en sorte que ce nouveau traité puisse être conclu avant l'entrée en vigueur de la convention relative à l'abolition des droits de caractère capitulaire dans la zone française de l'Empire chérifien.

Veuillez agréer, &c.

CH. CORBIN.

[Translation]

Sir,

*French Embassy,*  
*London, July 29, 1937.*

[As in No. 9]

I have, &amp;c.

CH. CORBIN.

No. 11

*Mr. Eden to M. Corbin*<sup>1</sup>

Your Excellency,

*Foreign Office,*  
*London, July 29, 1937.*

With reference to the convention signed this day at London between His Majesty in respect of the United Kingdom and the President of the French Republic with regard to the termination of British extraterritorial rights in the French Zone of Morocco, I have the honour, on behalf of His Majesty's Government in Australia, to inform Your Excellency that His Majesty's Government in Australia accept the provisions of the said convention on the understanding that they claim under the convention the same rights as His Majesty's Government in the United Kingdom.

I have, &c.

ANTHONY EDEN.

<sup>1</sup> Extraterritorial rights in the French Zone of Morocco have also been renounced by the Governments of Canada, New Zealand, the Union of South Africa, Ireland and India under similar conditions.

*Annex No. 94*

DECLARATION BETWEEN FRANCE AND SPAIN  
OF MARCH 7, 1914

Source: 109 British and Foreign State Papers 939, 940.

DECLARATION between France and Spain relative to the Renunciation by the respective Governments of all Rights arising out of the Capitulations in the other's zone in the Empire of Morocco.—Madrid, March 7, 1914

[*Translation*]

The undersigned, duly authorized by their respective Governments, by common accord make the following declaration:

Taking into consideration the guaranties of judicial equality offered to foreigners by the French tribunals of the Protectorate, His Catholic Majesty's Government renounces claiming for its consuls, its subjects, and its establishments in the French zone of the Shereefian Empire all the rights and privileges arising out of the regime of the Capitulations.

The treaties and agreements of every kind in force between Spain and France will apply *ipso facto*, unless otherwise provided, to the French zone of the Shereefian Empire.

So far as the Government of the French Republic is concerned, it binds itself to renounce equally the rights and privileges existing in favour of its consuls, its subjects, and its establishments in the Spanish zone as soon as the Spanish tribunals are established in the said zone.

The present declaration will become effective ten days from its date.

Done in duplicate in Madrid, the 7th March 1914.

EL MARQUES DE LEMA.  
GEOFFRAY.

*Annex No. 95*

THE AMERICAN CHARGÉ D'AFFAIRES IN FRANCE TO THE  
SECRETARY OF STATE, OCTOBER 30, 1923

THE SECRETARY OF STATE TO THE AMERICAN CHARGÉ  
D'AFFAIRES IN FRANCE, NOVEMBER 28, 1923

881.00/862.

*The Chargé in France (Whitehouse) to the Secretary of State*

No. 3677.

Paris, October 30, 1923

[Received November 15.]

Sir: With reference to the Department's telegram No. 290 of October 20, 1 P.M., to London, repeated to this Embassy, in which I was

instructed to bring informally to the attention of the Foreign Office a statement setting forth the attitude of the United States Government in regard to the Conference of Experts for the determination of the future status of Tangier, and to my telegram No. 419 of October 23, 4 P.M., stating that the Ministry of Foreign Affairs gave verbal assurances, pending a written reply, that American citizens in Tangier would continue to enjoy the favorable privileges provided for in the Act of Algeiras, I have the honor to transmit herewith enclosed copy and translation of a Note dated October 26th from the Ministry of Foreign Affairs, in reply to the Embassy's Note above referred to.

It will be seen that the French Government gives assurances that it will maintain in Tangier the principle of the Open Door, and that the results of the Conference will be submitted to all the signatories of the Act of Algeiras with the exception of Germany and Austria.

In conclusion the Note adds that the French Government hopes that the United States having adhered to the draft convention relative to Tangier, "it will consent to give its natural sequence to the recognition which it made of the Protectorate of the French Republic over Morocco and that it will also cancel the American capitulations in the French Zone of the Sherifian Empire."

I have [etc.].

881.00/862 : Telegram.

*The Secretary of State to the Chargé in France (Whitehouse)*

Washington, November 28, 1923—5 p.m.

429. Your despatch No. 3637, October 30, 1923.

Department is desirous that French Government be made aware informally that this Government does not consider the cancellation of American capitulatory rights in the French Zone of Morocco to be a natural sequence to our recognition of French Protectorate in part of Morocco, or to our suggested adherence to a convention purporting to deal solely with internationalization of City of Tangier.

Repeat to London as Department's 359 and Madrid as 82 for their information.

HUGHES.

*Annex No. 96*

THE SECRETARY OF STATE  
TO THE AMBASSADOR IN FRANCE, FEBRUARY 9, 1935

Washington, February 9, 1935. 3 p.m.

47. Your 79, January 31, 1 p.m., 42, January 15, 6 p.m., and despatch 1529, January 16. Coursier's reference to recognition of French Protectorate disregards repeated declarations of this Government that recognition did not include adherence to protectorate treaties or any modification of American treaty rights which could be effected only by

another treaty with the concurrence of the Senate. Recognition of Protectorate was expressly based on informal note from Secretary of State to French Ambassador, Washington, dated January 2, 1917, which declared that "there would remain for further negotiation the question of our capitulatory and other rights in Morocco". See instruction to Embassy, September 21, 1922, copy of which was handed to Foreign Office on October 6, 1922, and copy of instruction to Tangier of September 2, 1926.

This Government is greatly surprised at the statement in your despatch 1529, January 16, attributed to the Foreign Office representatives, that it is not obligatory to consult the Powers regarding tariff changes and that they wished as a matter of courtesy to acquaint the American Government with the plan. We should like to have the Foreign Office furnish an official statement of the grounds on which this view is based. This Government strongly believes that it is obligatory that the parties to the Act of Algeciras should not only be consulted but that each Power should acquiesce before any changes are made in the customs regime in Morocco.

We seriously doubt the correctness of the statement of the belief that the tariff alterations on the whole would be found advantageous to American trade, attributed also to the Foreign Office representatives, since at least four of this country's exports to Morocco, representing approximately one-half of our total trade, including the major item automobiles, would be placed under quota, with a sharp increase in duty on automobiles.

In reply to the statement attributed to the French in your 42, January 15, to the effect that the French Government, in the establishment of the new regime, is maintaining the principles set forth in the Act of Algeciras, you should reiterate and emphasize the third paragraph of the Department's 669, December 18, 1934.

HULL.

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*Annex No. 97*

JUDGMENT OF NOVEMBER 8, 1949,  
OF THE MIXED COURT OF TANGIER

*Source: Astrea, No. 9, September-October 1949.*

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WHEREAS, Hadj Thami Guessous, a Moroccan subject, refuses to acknowledge the competency of this Court on the ground that Si Abdeslam Saidi, the plaintiff, is of American nationality ;

WHEREAS, indeed, it results from a letter from the Diplomatic Agent of the United States of America at Tangier, dated October 13, 1949, that Saidi, a naturalized American, is domiciled in New York ;

WHEREAS the objection must be taken into consideration ;

WHEREAS, prior to the promulgation of the Statute and the institution of the Mixed Court, the juridical relations of Moroccans with foreigners

and of foreigners with foreigners of different nationality were subjected, from the point of view of competency, to the rule that "*actor sequitur forum rei*";

Furthermore, the jurisdictional immunity resulting from this regime in the favor of foreign ressortissants has been attenuated by the institution of the Mixed Court which, although it dispenses justice in the name of H. M. the Sultan, is not, properly speaking, a national Moroccan tribunal.

WHEREAS, the creation of this Court to which the Sovereign of Morocco has delegated the power to judge his subjects, whether as plaintiffs or as defendants, in their litigation with foreign ressortissants, and even between themselves in the matter of registration (of real property), has had as its necessary counterpart the abrogation of capitulations, in which all of the beneficiary powers have acquiesced with the exception of the United States of America.

Moreover, Article 13 of the Paris Convention formally states the relation existing between the two categories.

WHEREAS it follows that the only foreigners who may bring a defendant of Moroccan nationality before the Mixed Court are those whose governments have renounced the capitulations.

Furthermore, on the other hand, the Mixed Court is without competence to take cognizance of a suit brought against a Moroccan by a citizen of the United States of America, who, as a result of the refusal of the American State to renounce its capitulatory rights, continues to enjoy complete legislative and jurisdictional immunity, and may himself be cited only before his own consular tribunal.

If such is not the case concerning the relations of American citizens with foreigners of other nationalities, it is for the reason, as stated in Article 48 of the Paris Convention, that the Mixed Court has "replaced" the consular courts.

WHEREAS there appears to be a tendency vainly to maintain that the texts of the provisions of the Statute, in regard to the matter of competence, refer to "foreigners" without distinction as to those still enjoying jurisdictional privilege, those formerly subject to the capitulatory regime, and those who have never been;

And whereas Article 43 (48) of the Paris Convention, in specifying that the Mixed Court "shall be responsible for the administration of justice to ressortissants of foreign powers", clearly interprets foreigners as being those to whom the rule of "*actor sequitur forum rei*" is no longer applicable, inasmuch as this Court holds full jurisdiction over them, whatever their position in the suit;

And whereas the foreigners referred to in the text are exclusively those who are ressortissants of States having renounced their capitulatory privileges and whose consular courts have been replaced by the Mixed Court, while the others continue to be governed by the old rule;

And whereas Article I of the Annex to the judiciary dahir repeats the provisions of Article 48; and Article V of the same dahir, in attributing competence to the Mixed Court in penal matters concerning "ressortissants of foreign powers", obviously confirms that this wording of the text refers only to non-capitulatory foreigners.

WHEREAS the Final Act of the conference held at Paris in the month of August 1946 (1945) has in no manner modified the position of the

United States of America in regard to the judiciary institutions of the Zone ;

WHEREAS the Court is not competent to take cognizance of the action brought by Sid Abdeslam Saidi, an American citizen, against the Moroccan subject, Hadj Thami Guessous.

FOR THESE REASONS

The Court, as a Court of First Instance giving judgment on a civil matter publicly and upon the hearing of full argument on both sides ;

After consideration thereof,

Declares itself to be incompetent.

It condemns Sid Abdeslam Saidi to payment of the costs.

The Judge : J. VALLET.

The Secretary : A. DURAS.

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