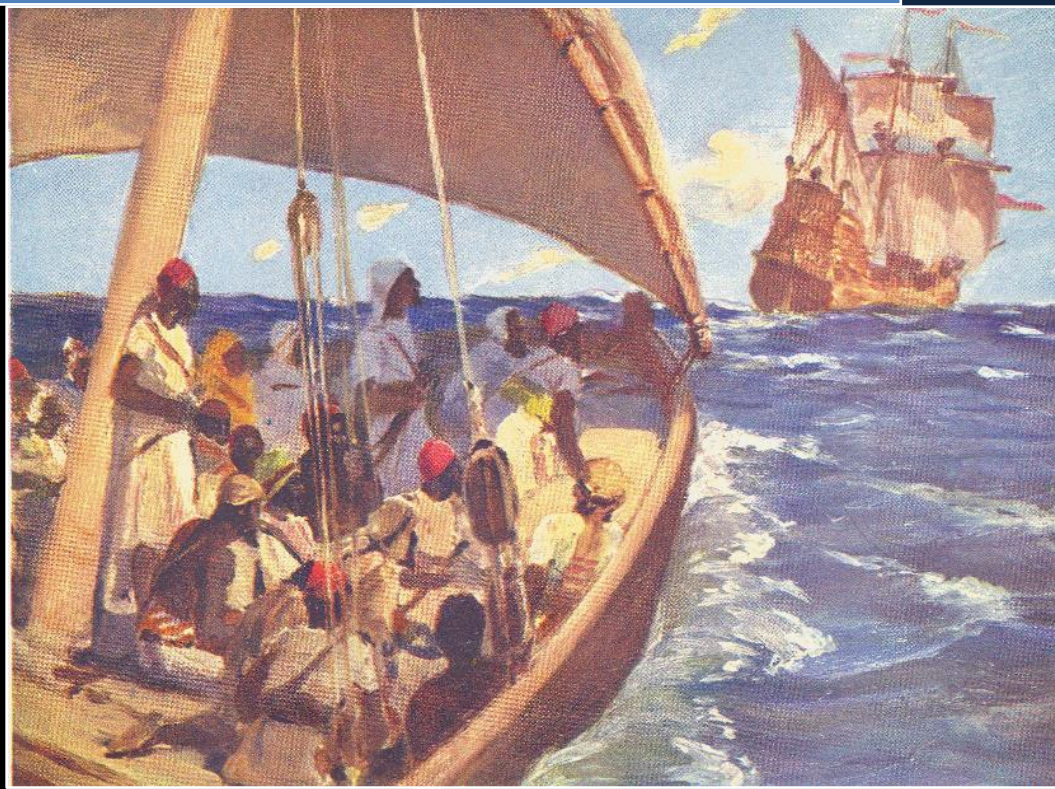




BARBARY TREATIES 1786-1816



Preparer – Qu Amah Re Sut El

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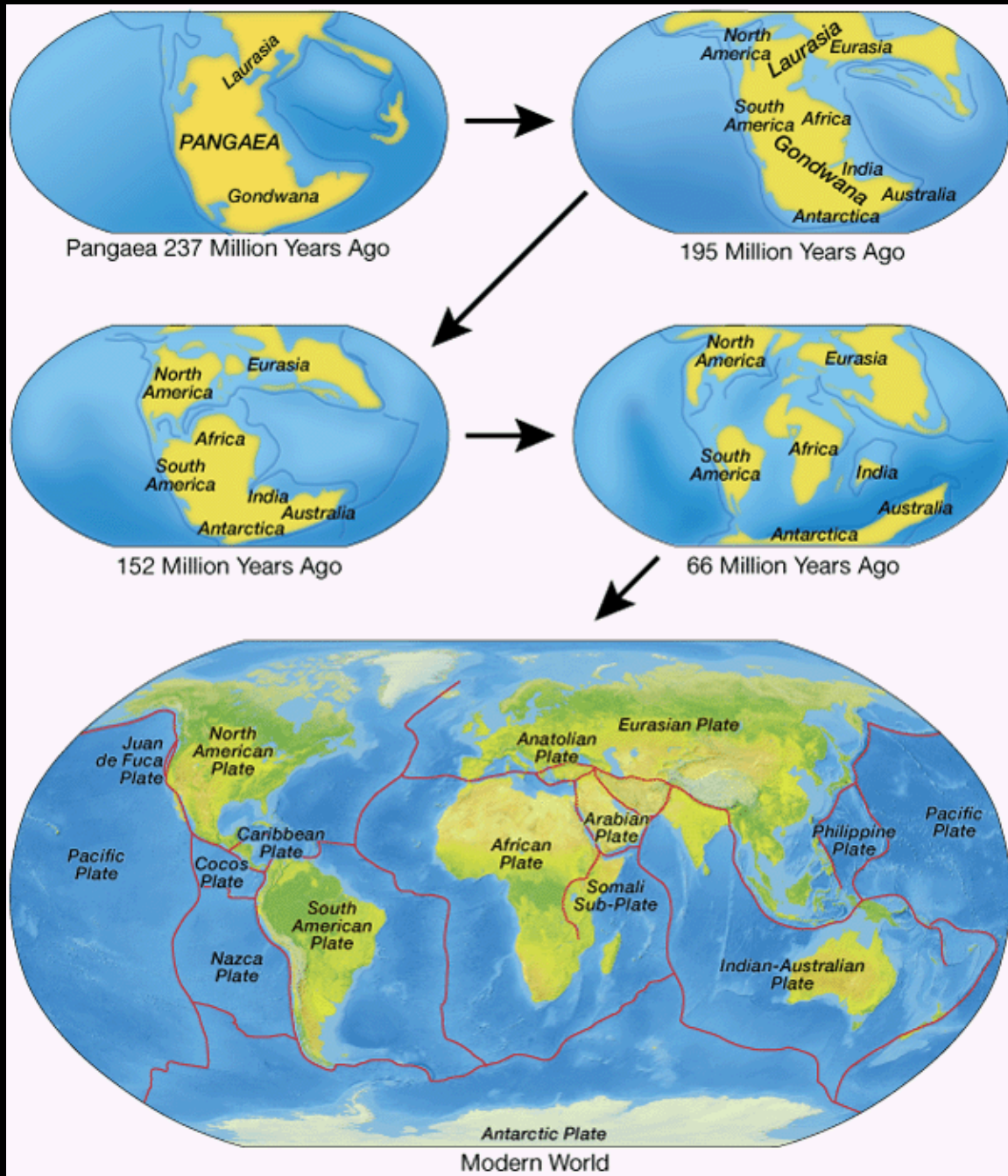
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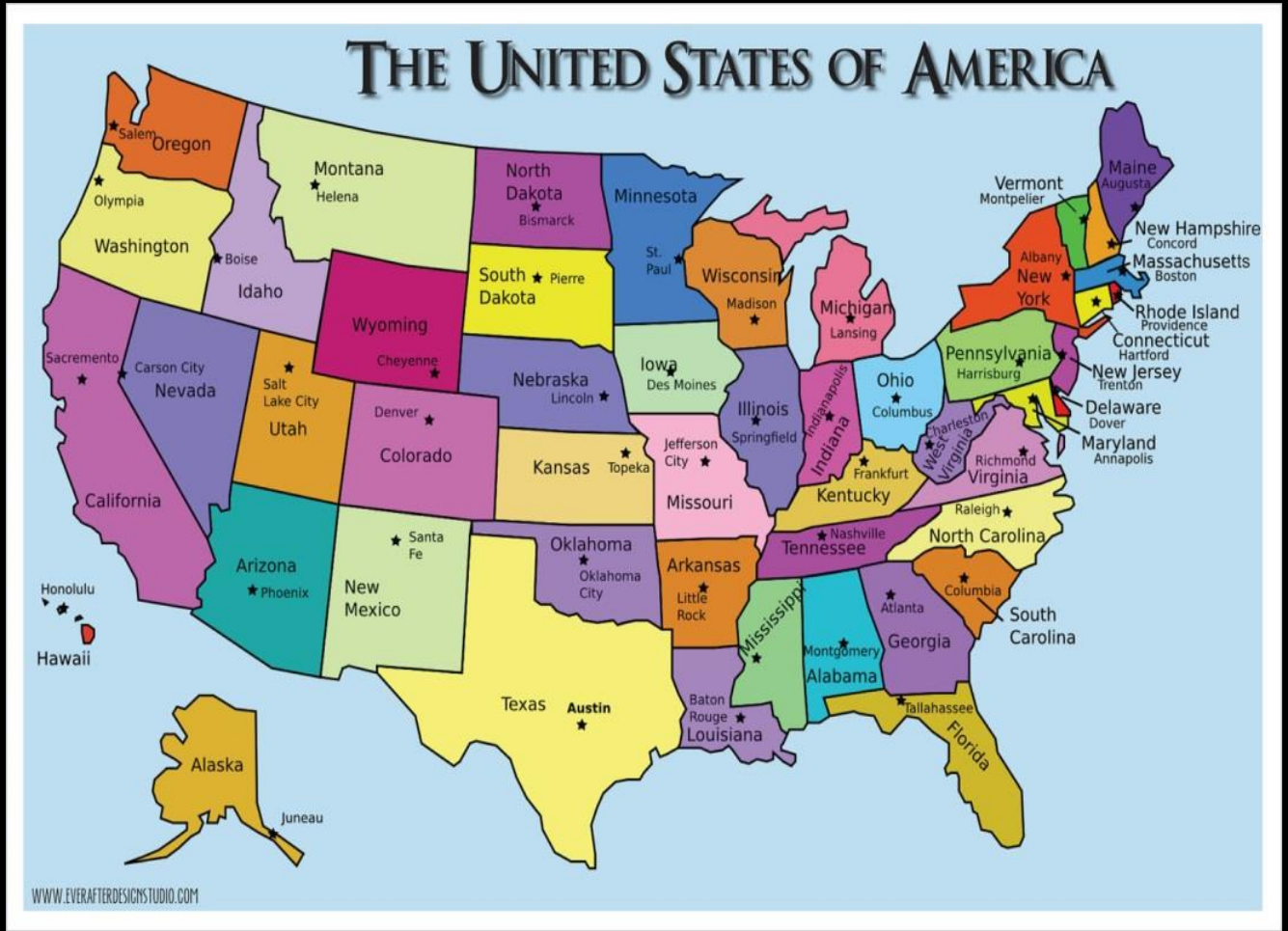
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Holy Koran of the Moorish Science Temple of America 47:1-7:

1. The inhabitants of Africa are the descendants of the ancient Canaanites from the land of Canaan.
2. Old man Cush and his family are the first inhabitants of Africa who came from the land of Canaan.
3. His father Ham and his family were second. Then came the word Ethiopia, which means the demarcation line of the dominion of Amexem, the first true and divine name of Africa. The dividing of the land between the father and the son.
4. The dominion of Cush, North-East and South-East Africa and North-West and South-West was his father's dominion of Africa.
5. In later years many of their brethren from Asia and the Holy Lands joined them.
6. The Moabites from the land of Moab who received permission from the Pharaohs of Egypt to settle and inhabit North-West Africa; they were the founders and are the true possessors of the present Moroccan Empire. With their Canaanite, Hittite, and Amorite brethren who sojourned from the land of Canaan seeking new homes.
7. Their dominion and inhabitation extended from North-East and South-West Africa, across great Atlantis even unto the present North, South, and Central America and also Mexico and the Atlantis Islands; before the great earthquake, which caused the great Atlantic Ocean.



BARBARY TREATIES

The Barbary Treaties 1786-1816

Treaty with Morocco - The English Translation of 1786



The Arabic original of this treaty and the English translation thereof of 1786 have been examined by Dr. C. Snouck Hurgronje, of Leiden, whose comments and notes, and translation of various articles, are as follows:

[The Seal]

The inner circle of the seal contains the name "Muhammad, son of Abdallah, son of Isma'il, God is his protector and his Lord." The border of the seal contains the verse taken from the well-known poem in praise of the Prophet, called the Burdah, which verse occurs in several other seals of these North African documents: "He who takes the Apostle of God for his helper, if the lions encounter him in their jungles, they will withdraw."

[The Text]

Praise be to God! This is the written document of the articles of peace which we have established with the Americans [Marikanos] and which we have confirmed in this book and sealed with our seal, in order that they may remain permanent, if God please. Written in Murakush [Marrakesh] the twenty-fifth of the blessed month of Shaban of the year two hundred and thousand.

I have given this literal translation of the introduction merely as a specimen, although it presents no essential difference from the translation of 1786. I have not thought it necessary to note all the



merely formal differences occurring in the translation of the articles where they do not in the least affect the meaning.

The first article is that these articles mentioned in this book, being twenty-five articles, have been agreed upon by both parties. That took place in the presence of their agent, the Honorable Thomas Barclay, who came here from the side of the American States [Estados al-Marikanos] and whom they had sent to supervise their affairs and their treaty of peace with us.

The second article is that if there shall be war with any nation whatever, no ship of either of the parties shall sail out and take the colors of the enemy, going to help the enemy, neither from our side nor from that of the Americans.

The third article is that if war has been made with any nation whatever, and a ship has been captured from people belonging to that nation, and there shall be found on board a Moslem or a Christian with goods belonging to them, they shall be at liberty with their goods. Even if they were carrying goods belonging to a nation with whom we are at war [such goods] shall not be taken from their hands nor shall they be compelled to unload them, for the sake of the peace prevailing between us and them.

The fourth article. There shall be a signal [instead of "signal or pass" the original has only one word, 'aldmah, meaning "signal," "sign," "token"] between us by which we may know each other at sea. Whenever one of us meets a warship, he shall not examine it, but the declaration of the commander shall suffice him concerning her [the warship] with other ships.

The fifth article. "If either of the parties shall be at war"- the original has only "if there shall be war."

The sixth article is that if Moslems shall capture people of our [meaning here the American] nation or their goods and bring them to our [here meaning of the Moroccans] Lord (may God give him victory!), he will set them at liberty. Likewise, if Moslems from other than our dominions shall capture them and bring them into any of our ports, they shall be set at liberty, because they are under our protection and on terms of peace with us.

The seventh article. Instead of "interruption" the original has a word meaning "difficulty".



The eighth article is that if any vessel meets with a disaster and runs ashore and unloads her cargo in order to repair, she shall be at liberty to reload her cargo whenever she likes without paying duty or anything.

The ninth article is that if any vessel shall be cast on shore on any part of our coasts, she will be left to herself that she may consider what suits her best, be it to sail out from [by] another place or to transfer her cargo, or whatever else may be convenient to her. Nobody shall approach her, as she is under our protection. Likewise, if a vessel enters a port or wind forces her to put into a port, she shall not be compelled to unload her cargo; on the contrary, she shall remain under our protection until she sails out by her own free will.

The tenth article is that if any of the parties shall have an engagement with any Christian nation, and the engagement takes place near a town of one of the parties, we shall help each other against that nation until she be defeated or have gone away; or if a vessel shall be cast ashore in Ouadnoun or in another place, the Christians being aboard shall be under [our] protection until they reach their country, if God please.

The eleventh article is that if we are at war with any Christian nation, and we shall be in a port and our ship intends to sail out of the port, and a ship of the enemy intends to pursue her, the latter shall not sail out in pursuit of her until twenty-four hours have elapsed; and likewise, ships of the Americans, if they are in a port during a war and they intend to sail out, no ship shall pursue her until twentyfour hours have elapsed, be they ships of the Mohammedans or of the Christians.

The twelfth article is that if a warship shall put into any of our ports, she shall not be examined but shall remain left to herself; and if there should be a fugitive prisoner on board her, he shall not be brought ashore by compulsion, nor shall the governor of the dominion where the ship stops demand from the commander of the ship the price of that prisoner.

The thirteenth article is without any important difference from the translation of 1786.

The fourteenth article is that the commerce of the merchants shall be on the same footing as that of the Spaniards, and they shall be honored and go in the towns and seaports where they like, without anybody bothering them, and they shall be like the most favored nation with us for the time being.



The fifteenth article is that the merchants shall pursue their business, and if they wish to employ assistants or interpreters, they shall be free to do so. No cargo shall be transported from one ship into another, and no ship shall be detained in the port; and if they wish to employ people to assist them in matters concerning the cargo or otherwise, they shall not have to pay more than other nations used to pay before them.

The sixteenth article has been well rendered in all essentials in the translation of 1786, but the words "are not to be made slaves" are not in the original, and the "Mexican dollar" is represented in Arabic by "royal" only.

The seventeenth article is that the merchants shall not be compelled to buy merchandise, but such as they like to buy by their free consent. The same rule is to be applied to sale, except in cases concerning which there have prevailed customs with other (Christian nations before them, who carried them [the goods?], in which cases there will be no difficulty. [The meaning of the latter stipulation is not clearly expressed in the Arabic text.]

The eighteenth article is that goods to be loaded shall be weighed and examined before they are brought on board, in order that the ship may not be detained because they have ascertained that there is contraband on board. Now if this be the case, then only he who brought the contraband shall be punished, according to the usage applied to others before him, but the ship and its cargo and what belongs to it shall be free from guilt. [Possibly the Arabic text intended to say what is said in the translation of 1786, but in that case the attempt has entirely failed. Thus there is no expression corresponding to "unless" of that translation.]

The nineteenth article requires no correction.

The twentieth article is that if a person of our [can only mean hero the American] nation or under our flag is guilty of misdemeanor, the Consul of his nation shall pass sentence upon him. If the Consul wants the assistance of the officials of the Pasha of the place, it shall be granted to him.

The twenty-first article is that if there has been killed a Christian out of them or the reverse [sic] or has wounded him [sic], then he will be sentenced according to the rules of the Sacred [Mohammedan] Law, neither more nor less, and the trial is to take place in the presence of the Consul. If the delinquent escapes before having been sentenced, the Consul shall not be held responsible for him nor for the crime he committed. [The redaction of Article 21 is extremely inept.]



The twenty-second article is that if an American citizen shall die in our country and no will shall appear, their Consul shall supervise his estate and his goods [merchandise], 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 heirs of his are present, [the property] shall be given to the heirs without interference, or if he has designated in a will signed with his hand, the person to whom the property is to be delivered, then the question shall be submitted to the consideration of the Consul.

The twenty-third article is that the Consuls shall reside in any seaport they like, and they shall be respected like [consuls of] other (Christian nations before them. If a person of their nation has had dealings with a Moslem concerning money, and he has caused it to be lost, the Consul shall not be held responsible for it, unless the Consul has given a written declaration to that effect, in which case he shall have to pay it. If he has not given such a declaration, then nobody has a claim upon him-like [this is the case with] all the consuls.

The twenty-fourth article is that if either party should protest concerning any articles of the peace treaty, so that one asserted a question and the other asserted a question and contended that this was not according to the article, and the controversy should last a long time, then peace is to be maintained and both parties have to argue the best they can. If in the end one of them does not agree to the treaty of peace and strenuously declines [or "if neither of them agrees to the treaty of peace and both strenuously decline"], so that war is declared [literally "put into action"], then nine months shall be granted to all the merchants to remove their goods. Whenever our Lord [i. e., the Emperor of Morocco] shows a favor to any (Christian nation, we [i. e., the Americans] shall partake in it.

The twenty-fifth article is that this treaty of peace shall remain permanent, if God please, by God's might and power, a period from ["of" is evidently meant] fifty years. We have delivered this book to the above-mentioned Thomas Barclay on the first day of the blessed Ramadan of the year two hundred and thousand.

The Barbary Treaties 1786-1816

Treaty with Morocco - Hunter Miller's Notes



The city of Morocco, where the treaty was signed, is now known as Marrakesh.

The dates given are those recited; some doubt is cast upon their accuracy, however, by letter from Thomas Barclay, who negotiated the treaty with the Emperor of Morocco, addressed to Adams and Jefferson and dated at Morocco July 16, 1786, from which the following is extracted (Diplomatic Correspondence, 1783-1789, I, 814):

The 13th instant the treaty was sent to me by the Effendi, since which some important alterations have been made, which the villany and carelessness of the Talbe Houdrani (to whom the drawing was committed) made necessary; and yesterday it was again delivered from Tahar Fennish, to whose hands the King committed the arrangement of the matter. It still wants an additional article, or rather a declaration, which his Majesty has permitted to be made in his name, but which he desired might not make a part of the treaty.

In a letter of June 26, 1786, Barclay had written, "the last draft of the treaty is made, and will probably be signed in a few days" (*ibid.*, 805).

The document signed by Jefferson and Adams, including the English translations of the treaty and of the additional article, is printed in full after the Arabic text of the treaty; following it is printed the Ship-Signals Agreement, with a comment on its two lines of Arabic script; then come the observations of Doctor Snouck Hurgronje regarding the English translation of 1786, with his own rendering of various articles.

THE ORIGINAL DOCUMENTS

The original document signed by Jefferson and Adams is in 91 C. C. Papers, I, folios 213-31. The Department of State file contains a facsimile of that document, the original of the treaty, and the original of the Ship-Signals Agreement; but the original of the additional article has not been found and accordingly cannot be reproduced. As to this article, Barclay reported (letter to Adams and Jefferson, October 2, 1786, Diplomatic Correspondence, 1783-1789, II, 695):

The original of the declaration made by Mr. Fennish could not be placed in the same book with the treaty sealed by the Emperor, the Moorish forms not permitting it; therefore, Mr. Fennish wrote it in another book, which I had placed in his hands, with a copy of the treaty for examination, in order that he might certify the verity of it, lest any accident should happen to the original; which book, with authenticated copies of the other papers, remains in my hands.



The original of the additional article appears to have been enclosed in a letter from Thomas Barclay to Jefferson, dated at Madrid December 4, 1786 (signed "copy" in 91 C. C. Papers, I, folios 21112), from which the following is an extract:

I now inclose you a Copy of the Declaration made by Tahar Fennish in addition to the 10th article of the Treaty with the Emperor of Morocco. It is in Arabic and sign'd by himself. the necessity of a Duplicate of that Declaration, did not appear obvious to me untill I got to Tangier, and within this hour it has reach'd me. you have also the Translation annex'd to it.

In the calendar of letters to Jefferson (Bulletin of the Bureau of Rolls and Library, No. 8, pt. 2, 36) this letter is listed "Press copy. 4^o. 2 pages." The letter, which is in the Library of Congress (26 Thomas Jefferson Papers, folio 4477), is not a press copy, however; it is an original. There is no enclosure with it. In Diplomatic Correspondence, 1783-1789, II, 34, is printed a translation of the additional article, certified by Thomas Barclay under the date of the above-mentioned letter and referring to "the annexed declaration, in Arabic "; but that certified translation has not been found.

NOTE REGARDING THE RATIFICATION

The United States instrument of ratification is copied in 135 C. C. Papers, I; also in Journals, 1823 ea., IV, 756-59. The two forms are not identical; the latter contains a paragraph mentioning the approval of the treaty by Jefferson and Adams which the former omits. Neither form mentions the Ship-Signals Agreement.

In the making of treaties, the procedure and customs of the various Barbary States differed somewhat inter se and were not in all respects those of usual diplomatic practice. Thus, in the present instance, the sealing on behalf of the Emperor of Morocco of the original treaty written in the "book," with the delivery thereof, was deemed a finality on the part of Morocco. The theory seems to have been somewhat similar to our notion of a unilaterally executed grant and its delivery, for the text in the "book" was not signed or sealed on behalf of the other party. It may be added that the "book" is literally a book, in leather covers, with the text running from the back leaf on alternate pages and the front pages blank.

The customs of Morocco were doubtless not known to Adams and Jefferson, for their commission to Barclay, following the language of their own commission from Congress (Diplomatic Correspondence, 1783-1789, I, 656-57), gave him authority only



. . . under our directions and instructions, to commence and prosecute negotiations and conferences for the said treaty, with such person or persons on the part of the Emperor of Morocco as his Majesty shall appoint and empower for that purpose-

Provided always, that the treaty in question shall be signed by us, but that preliminary articles thereto may, if previously approved by us, be signed by the said agent.

Indeed, such "missions by deputation" were criticized by Adams as "unknown to Courts and Ministers, and to the law of nations" (*ibid.*, II, 802); but the practice had been suggested by him (Wharton, Diplomatic Correspondence, VI, 692).

The signing by Jefferson and Adams of the certified translations was therefore properly a part of their report to Congress of the result of the negotiation entrusted to them and delegated by them to Thomas Barclay; but the agreement was already complete on the part of Morocco and awaited only the ratification of Congress, and doubtless notice thereof, to become complete on both sides.

As was reported from Morocco some fifty years later:

The Treaty, it will be observed, being sealed by the Emperor according the diplomatic custom observed in this Empire, bears the form of a grant. Hence, it would be out of rule to deface the original with my signature or seal. I have therefore attached these to the copy and translation which will accompany the original, according to the usage observed by Diplomatic Agents in other parts of Barbary. (D. S., 5 Consular Despatches, Tangier, No. 39, October 11, 1836.)

The necessity of acceptance on the part of the United States was recognized, however, for Barclay wrote in one of his reports (letter to Adams and Jefferson, September 18, 1786, Diplomatic Correspondence, 1783-1789, II, 723):

I was asked to sign an acceptance of the articles on the part of the United States; but as the treaty was not drawn up in the form expected, I excused myself, (without, however, giving any offense,) referring Mr. Fennish to Congress and the Ministers.

A letter from Congress to the Emperor of Morocco notified the ratification of the treaty; the same letter indicates that it had been published and proclaimed (Secret Journals of Congress, IV, 365, July 23, 1787). With this letter the United States instrument of ratification was transmitted



(Diplomatic Correspondence, 1783-1789, II, 44, 86). The letter and ratification were duly delivered to the Emperor of Morocco some time prior to August 17, 1788. The original of the letter of acknowledgment on the part of the Emperor of Morocco, dated that day and written in Arabic, is in the archives of the Department of State; and there is an Italian translation of it in 88 C. C. Papers, II, folio 524, as one of the enclosures to a letter ("triplicate") of November 5, 1788, from William Carmichael, Charge d'Affaires at Madrid, to Jay. In that letter (printed in Diplomatic Correspondence, 1783-1789, III, 370) Carmichael calls the acknowledgment of the Emperor of Morocco "the ratification of the treaty," and similarly in his letter to Jefferson of November 3, 1788 (43 Thomas Jefferson Papers, folio 7423), and in his letter to Jay of December 2, 1788 ("duplicate" in 88 C. C. Papers, II, folios 588-89, with no enclosures; that letter is printed in Diplomatic Correspondence, 1783-1789, III, 381-82; see also the two letters of Francisco Chiappe, *ibid.*, 371-72). But, while doubtless a confirmation of the treaty, the letter of the Emperor of Morocco can hardly be deemed a ratification in any formal or technical sense.

The seal of the letter, which follows its opening phrases, is the same as that of the treaty; and as translated by Doctor Snouck Hurgronje, the letter reads thus:

In the name of God, the Compassionate, the Merciful, and there is no might nor power but in God, the Great, the High.

From the servant of God, Muhammed, son of Abdallah, may God bestow His favor upon him. Amen!

[Seal]

To the Great One of the American States [Estados Amarikanos], the President. Peace be on those who follow the right guidance [i. e., the Mohammedan religion]! To come to the point: Your letter has reached us and also have reached us the articles of the Treaty of Peace which you have sent us, and we are with you on terms of complete truce and peace. We have now written what you wanted us to write to Tunis and Tripoli, and all that you have asked from us shall be fulfilled if God please. Greetings! Written in the middle in [the month Dhu] al-Qa'dah [Zu'lkadah] of the year two and two hundred and thousand 1202.

Doctor Snouck Hurgronje makes also the following comment on the letter:



Placing the seal at the head of the letter denotes great superiority in rank of the writer in comparison with that of the person to whom the letter is addressed.

"The Great One of . . ." is the title by which infidel rulers are addressed in letters from the Prophet. The greeting formula, "Peace be on those who follow the right guidance," is the classical one to be addressed to unbelievers, implying that they are not worth greeting.

NOTE REGARDING PROMULGATION

There appears no official record of any separate proclamation of this treaty. The United States instrument of ratification, however, embodying the treaty and additional article in English, was published at the time (e. g., the Daily Advertiser, New York, July 21, 1787). The Department of State file now contains a facsimile of the newspaper print.

Accordingly, the instrument of ratification seems to have served as a proclamation and to have been regarded as such upon publication. As published it follows the form in the Journals, referred to above, and recites that the treaty was "written in the Arabic language " and "translated into the language of the said United States of America"; it contains no mention of the Ship-Signals Agreement.

As stated above, copies of the Ship-Signals Agreement were, on July 23, 1787, ordered by Congress to be sent to the Executives of the States (Secret Journals of Congress, IV, 369, where the paper is called No. 6 instead of No. 7; see Diplomatic Correspondence, 1783-1789, II, 695). From that period to the present, however, the Ship-Signals Agreement seems never to have been printed, either in the diplomatic correspondence or elsewhere.

THE LATER CONFIRMATION

A treaty with Morocco was there regarded as to some degree personal on the part of the ruling Emperor, at least to the extent of requiring confirmation or recognition by a successor. Accordingly, soon after the death of the then Emperor, in April, 1790, negotiations to that end were initiated (see American State Papers, Foreign Relations, I, 104, 128, 288-90); but conflicts regarding the succession to the throne of Morocco continued for some years; after these were ended, a letter was written by the succeeding Emperor, dated at Rabat August 19, 1795 (2 Safar,



A. U. 1210), recognizing the treaty with his father. For the papers in the matter, including a translation of the confirming letter, see *ibid.*, 525-27.

The Barbary Treaties 1786-1816

Treaty with Morocco - 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,

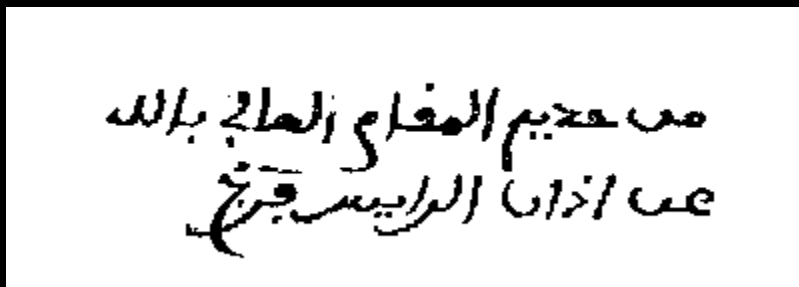
In the Day, a blue Pendant is to be hoisted on the End of the Main Yard, and in the Night a Lantern is to be hoisted on the same Place.

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



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 adhan, 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."

The Barbary Treaties 1786-1816 Treaty with Morocco June 28 and July 15, 1786 -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 fling my Master whom God preserve
TAMER BEN ABDELHACK(1) 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.

THos BARCLAY

Note, The Ramadan of the Year of the Hegira 1200 Commenced on the 28th 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 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.



(1) The spelling in the original document is uncertain, but Abdelhack is correct, el-Hack or el-Haqq being one of the names of God.

The Barbary Treaties 1786-1816



Treaty with Algeria September 5, 1795 Translation of 1930

The Turkish text of the original treaty which is reproduced above has been examined by Dr. J. H. Kramers, of Leiden, in collaboration with Dr. C. Snouck Hurgronje. The new translation of the Turkish made by Doctor Kramers, with his notes thereon, is printed below, following this general comment of Doctor Kramers on the text:

As the 1795 English translation of nearly all the articles of this treaty discloses considerable difference from the Turkish text, a complete new English translation has been given.

The treaty is written in excellent Turkish and does not show any sign of being a translation from an Arabic original.

It seems that the last page of Turkish text of the document was originally the beginning of the treaty, for it contains the preambulatory stipulations to the articles of the treaty, as is also the case in the treaty with Algiers of 1816 (Document 37). Accordingly the translation begins with those introductory clauses.



[Translation]

[Added Text] - Treaty of Peace and Amity, signed at Algiers September 5, 1795 (21 Safar, A. H. 1210). Original in Turkish. Submitted to the Senate February 15, 1796. Resolution of advice and consent March 2, 1796. Ratified by the United States March 7, 1796. As to the ratification generally, see the notes. Proclaimed March 7, 1796.

Reason for the Drawing up of the Peace Treaty with the American People

The reason for the drawing up of this treaty and the motive for the writing of this convention of good omen, is that on Saturday, the twenty-first day of the month of Safar of this year 1210, (1) there have been negotiations for a treaty of peace between the ruler and commander of the American people, living in the island called America among the isles of the ocean, and the frontier post of the holy war, the garrison (2) of Algiers. To this purpose has been appointed as his Ambassador, (3) Joseph Donaldson, who has, in confirmation of the articles and paragraphs of the present treaty, strengthened the mutual friendship and good understanding in the exalted presence of His Excellency the noble Vizier and powerful Marshal who sits on the throne of lordship, the destructor of tyranny and injustice and the protector of the country, Hassan Pasha-may God grant to him what he wishes; and in the presence of all the members of the Divan, of the chiefs of the victorious garrison, and of the victorious soldiers. This peace treaty has been concluded, together with the contractual promise to give annually to the garrison of Algiers 12,000 Algerian gold pieces, provided that, in equivalence of these 12,000 gold pieces, being the price of the peace, there may be ordered and imported for our garrison and our arsenal, powder, lead, iron, bullets, bombshells, bomb stones, gun stones, masts, poles, yards, anchor chains, cables, sailcloth, tar, pitch, boards, beams, laths, and other necessities, provided that the price of all the ordered articles shall be accounted for, so that, if this is equal to 12,000 gold pieces, it shall be all right, but if the price of the articles is higher, it shall be paid to them, (4) and if there remains something to our credit, they promise to complete it. If, before the conclusion of our peace, our vessels of war have captured vessels of the said nation, these shall not be restored and shall remain our prizes, but if our war vessels capture one of their ships after the date of the conclusion of the peace treaty, it is promised that this ship shall be given back.

All this has been put down in the present document, which shall be consulted whenever needed and according to which both parties shall act.



21 Safar, 1210.

[Tughra (5) of HASSAN PASHA]

[Seal of HASSAN PASHA]

ARTICLE 1.

The statements of the first article are that in this year 1210 an agreement has been reached between the ruler of America, George Washington, President, our friend and actually the Governor of the States of the island of America, and the lord of our well-preserved garrison of Algiers, His Highness Hassan Pasha-may God grant to him what he wishes-the Dey, together with the Agha of his victorious army, his minister, all the members of the Divan, and all his victorious soldiers, and equally between the subjects of both parties. According to this agreement our peace and friendship shall be steady and has been confirmed. After this date nothing has been left that is contrary to our peace or that may disturb it. (6)

21 Safar, 1210.

ARTICLE 2.

The statements of the second article are that when large or small ships belonging to our friend the ruler of America, and equally ships belonging to his subjects, arrive in the port of Algiers or in other ports dependent on Algiers, and they sell from their goods according to the ancient usage, there shall be taken a duty of 5 plasters from every 100 plasters, in the same way as this is paid, according to the treaties, by the English, the Dutch, and the Swedes, and that no more shall be taken. Also that if they wish to take back their unsold goods and reembark them, nobody shall require anything from them, and equally that nobody in the said ports shall do them harm or lay hand upon them

21 Safar, 1210

ARTICLE 3.

The statements of the third article are that if war vessels or merchant vessels belonging to our friend the American ruler meet on the open sea with war vessels or merchant vessels belonging



to Algiers, and they become known to each other, they shall not be allowed to search or to molest each other, and that none shall hinder the other from wending its own way with honor and respect. Also, that whatever kind of travelers there are on board, and wherever they go with their goods, their valuables, and other properties, they shall not molest each other or take anything from each other, nor take them to a certain place and hold them up, nor injure each other in any way.

21 Safar, 1210.

ARTICLE 4.

The statements of the fourth article are that if war vessels of Algiers meet with American merchant vessels, large or small, and this happens out of the places under the rule of America, there shall be sent only a shallop, in which, besides the rowers, two persons shall take place; on their arrival no more than two persons shall go on board the ship, the commander of the said ship having to Rive permission, and after the showing of the Government passport, these persons shall perform quickly the formalities with regard to the ship, and return, after which the merchant vessel shall wend its own way.

Further, that if war vessels of the American ruler meet with war vessels or merchant vessels of Algiers, and these vessels are in possession of a passport delivered by the ruler of Algiers or the American Consul residing in Algiers, nobody may touch anything belonging to the said vessel, but it shall wend its way in peace.

Further, that the war vessels of Algiers, large or small, shall not touch Americans not possessed of American passports within a period of eighteen months after the date of the passports given by reason of the peace treaty and after the date of the peace treaty (7) and they shall not hinder them from going their way. Equally, if the war vessels of the American ruler meet with Algerian ships, they shall not prevent them from continuing their journey in the same way, within a period of eighteen months, but they shall wend peacefully their way.

Further that our friend the American ruler shall not give a passport to any crew not being under his rule and not belonging to his own people; if an American passport is found in the hands of a crew not belonging to his own people, we shall take them as prize, for this is not covered by the stipulations of this peace treaty. This has been expressly stated in this article in order to prevent a rupture of peace; so it shall not be neglected.



21 Safar, 1210.

ARTICLE 5.

The statements of the fifth article are that none of the captains of Algerian ships or of their officers or commanders shall take anybody by force from American ships into their own ships or bring such a person to other places, that they shall not interrogate them on account of anything or do them harm, whatever kind of people they may be; as long as these are on American ships, they shall not molest them.

21 Safar, 1210.

ARTICLE 6.

The statements of the sixth article are that if a ship of the American ruler or belonging to his subjects shall be stranded on one of the coasts of the territory under Algerian rule and is wrecked, nobody shall take anything from their properties or goods or plunder them.

Also, that if such a thing should happen, their goods shall not be taken to the customhouse, nor shall there be done any damage to their people, and if a similar thing should happen in the places that are under the rule of Algiers, the inhabitants shall do anything in their power to give every possible aid and assistance and help them to bring their goods on dry places.

21 Safar, 1210.

ARTICLE 7.

The statements of the seventh article are that no Algerian ship, small or large, shall, with the permission and the authority of the ruler of Algiers, be equipped from countries at war with the ruler of America and commit acts of war against the Americans.

21 Safar, 1210.



ARTICLE 8.

The statements of the eighth article are that if an American merchant buys a prize in Algiers, or if an Algerian cruiser captain who has taken a prize on the open sea sells his prize to an American merchant, either in Algiers or on the sea, so that it is bought immediately from the captain, and there is drawn up a document concerning this sale, and if he meets afterwards another war vessel from Algiers, nobody shall molest the merchant who has bought this prize, nor shall he prevent him from wending peacefully his way.

21 Safar, 1210.

ARTICLE 9.

The statements of the ninth article are that the inhabitants of Tunis, Tripoli, Sale, or others shall in no wise bring the people or the goods of American ships, large or small, to the territory under the rule of Algiers, nor shall there be given permission to sell them nor shall they be allowed to be sold.

21 Safar, 1210.

ARTICLE 10.

The statements of the tenth article are that if the warships of the American ruler bring to Algiers, or to ports under Algerian rule, prizes or goods captured by them, nobody shall hinder them from doing with their booty as they wish, namely, selling it or taking it with them.

Also, that American war vessels shall not pay any tithes or duties whatever

Further, that if they wish to buy anything for provisions, the inhabitants shall give it to them at the same price as they sell it to others and ask no more.

Likewise, if those people want to charter ships for the transport of Roods to whatever region, province, or port, be it to Smyrna or from Constantinople to this region, or for the transport of travelers from Smyrna or other provinces, or in order to convey pilgrims to Egypt, they may charter those ships at reasonable prices, In the same way as other peoples, and from our side they



shall not be opposed by pretexts such as that it is contraband or that it is not allowed among us, so that we do not allow those ships to leave.

21 Safar, 1210.

ARTICLE 11.

The statements of the eleventh article are that if war vessels belonging to our friend the American ruler come to anchor in front of Algiers, and a slave, being an American or of another nationality, takes refuge on board the said war vessel, the ruler of Algiers may claim this slave, at which request the commander of the war vessel shall make this fugitive slave leave his ship and deliver him into the presence of the ruler of Algiers. If the slave is not to be found and reaches a country of unbelievers, the commander of the ship shall pledge his word that he shall return and bring him to Algiers.

21 Safar, 1210.

ARTICLE 12.

The statements of the twelfth article are that from this time onward the subjects of the American ruler shad not be bought, nor sold, nor taken as slaves, in the places under the rule of Algiers.

Also, that since there is friendship with the American ruler, he shall not be obliged to redeem against his will slaves belonging to him, but that this shall be done at the time he likes and that it shall depend on the generosity and the solicitude of the friends and relations of the slaves.

Further, that there shall be put no term or time for the redeeming of prisoners, that the amount which shall be found convenient shall be paid in due order, and that there shall be negotiations about the price with the masters of the slaves; nobody shall oblige the masters to sell their slaves at an arbitrary price, whether they be slaves of the State, of others, or of the Pasha; but if the redeemed persons are American subjects, there shall not be asked of them more than of other nations In similar circumstances.

Also, that if the Algerian vessels of war capture a ship belonging to a nation with which they are at war, and there are found Americans among the crew of this ship, these shall not be made



slaves if they are in possession of a pass, (8) nor shall there be done harm to their persons and goods; but if they are not in possession of a pass (8) they shall be slaves and their goods and properties shall be taken.

21 Safar, 1210.

ARTICLE 13.

The statements of the thirteenth article are that if one of the merchants of the American ruler or one of his subjects shall die in Algiers or in one of the dependencies of Algiers, the ruler of Algiers or other persons shall not touch in any way the deceased's money, property, or Roods; if he has designated before his death an executor, nobody else shall touch any part of his property or goods, either if the executor mentioned is present in Algiers or if he is not there. Accordingly, the person designated as executor by the deceased shall take the properties and the goods, and nobody else shall touch the slightest part of it; so shall it be. The executor or the person delegated by him as his representative shall make an inventory of his money and property, take possession of it, and forward it in due time to the heir.

Further, that if no subject of the American ruler is present, the American Consul shall made an inventory of the said deceased's money and goods and take possession of them and keep them in charge until the arrival of his relations living in their own country.

21 Safar, 1210.

ARTICLE 14.

The statements of the fourteenth article are that neither in Algiers itself nor in its dependencies shall the American merchants be obliged to purchase goods which they do not desire, but they shall be free to purchase the goods they desire.

Also, that the ships visiting the ports of Algiers shall not be molested in this way-that goods which they do not wish be put into the ships.



Further, that neither the American (consul nor anyone else, in case an American subject is unable to pay his debts, shall be held responsible for those debts and be obliged to pay, unless some persons, according to their free will, are bound for the debtor.

21 Safar, 1210.

ARTICLE 15.

The statements of the fifteenth article are that if one of the subjects of the American ruler has a suit at law with a Mohammedan or with some one subjected to the rule of Algiers, the said suit at law shall be settled in the presence of His Excellency the Dey and the honored Divan, without intervention of anybody else. If there occurs a suit at law among those people themselves, the American Consul shall decide their disputes.

21 Safar, 1210.

ARTICLE 16.

The statements of the sixteenth article are that should one of the subjects of the American ruler have a fight with a Mohammedan, so that one wounds the other or kills him, each one shall be punished according to the prescriptions of the law of his own country, that is, according to the custom in all other places. If, however, an American kills a Mohammedan and flies and escapes after the murder, neither the American Consul in Algiers nor other Americans shall be compelled to answer for him.

21 Safar, 1210.

ARTICLE 17.

The statements of the seventeenth article are that the American Consul, now and in future, without regard to who he is, shall be free to circulate without fear, while nobody shall molest his person or his goods.

Also, that he may appoint anyone whom he desires as dragoman or as broker.



Also, that whenever he wishes to go on board a ship or to take a walk outside, nobody shall hinder him.

Further, that a place shall be designated for the practice of their void religious ceremonies, that a priest whom they need for their religious instruction may dwell there, and that the American slaves present in Algiers, either belonging to the Government or to other people, may go to the house of the Consul and practice their vain religious ceremonies without hindrance from the chief slave guard or from their masters.

21 Safar, 1210.

ARTICLE 18.

The statements of the eighteenth article are that now there reigns between us peace and friendship, but that if in future there should occur a rupture of our present state of peace and friendship, and there should be caused trouble on both sides, the American Consul, and besides him the subjects of the American ruler either in Algiers or in its dependencies, may not be hindered either in peace or in trouble, and that whenever they wish to leave, nobody shall prevent them from leaving with their goods, properties, belongings, and servants, even if such a person be born in the country of Algiers.

21 Safar, 1210.

ARTICLE 19.

The statements of the nineteenth article are that a subject of the American ruler, to whatever country he goes or from whatever country he comes, and to whatever kind of people he belongs, shall not be molested in his person, goods, property, belongings, or servants, in case he meets with Algerian vessels, large or small. (9) Equally, if an Algerian is found on board a ship belonging to enemies of the American ruler, they shall not be molested in any way in their person, their property, their goods, their money, or their servants, but the properties of these people shall not be regarded with disdain, and they shall always be treated in a friendly manner.

21 Safar, 1210.



ARTICLE 20.

The statements of the twentieth article are that every time that a naval commander of the American King, our friend, arrives off Algiers, the American Consul shall inform the commander as soon as the vessel is seen; after the said captain has anchored before the port, the commander of Algiers shall, in honor of the American ruler, order a salute of twenty-one guns from the citadel, after which the captain of the American ruler shall answer gun for gun, and, as the said vessel is a vessel of the King, there shall be given provisions according to the custom, in honor of the King.

21 Safar, 1210.

ARTICLE 21.

The statements of the twenty-first article are that there shall not be asked duty and taxes for goods that are destined for the house of the American Consul, consisting of eatables, drinkables, other necessities, and presents.

21 Safar, 1210.

ARTICLE 22.

The statements of the twenty-second article are that if there occurs from this time onward a disturbance of our peaceful relations, from whatever side this happens, this shall not rupture our peace, but the peace shall be maintained and our friendship shall not be disturbed. The person injured, to whatever party he belongs, shall claim justice. If, however, the fault and the guilt are on both sides, or on the side of a subject, and the matter is kept secret, (10) our belief in our friendship shall remain and our word shall remain as good as ever.

21 Safar, 1210.

(1) In the chronological tables 21 Safar, A. H. 1210, corresponds to September 6, 1795, which was a Sunday. In this case, however, 21 Safar, A. H. 1210, no doubt answers to September 5, 1795.



- (2) "Garrison" renders the Turkish word "odgiak," which means originally "a hearth " and, as a military term, "a regiment " of the Janizaries.
- (3) The Turkish text has here "pashador," which seems to be an attempt to render the word "ambassador."
- (4) That is, the difference shall be paid to the Americans.
- (5) "Tughra" is the "name sign," a kind of calligraphic monogram in which a ruler's names are inscribed. The tughra takes the place of the signature.
- (6) Each article concludes with the word "salaam," salutation or peace, which has been left untranslated.
- (7) This is a literal translation, but the sense is not very clear. The words "of the passports given by reason of the peace treaty" seem to be superfluous.
- (8) The Turkish has " passavant."
- (9) The Turkish text does not mention the condition that these Americans and their goods are on ships belonging to enemies of Algiers, but this, of course, is the meaning.
- (10) This passage is not very clear in the Turkish text.

The Barbary Treaties 1786-1816

Treaty with Algeria September 5, 1795 : Hunter Miller's Notes

The original of this treaty is in Turkish, not in Arabic as stated in the proclamation. The articles which are written in English on pages of the original document are a translation, signed by Joseph Donaldson, jr., who negotiated the treaty at Algiers.



There is an interesting account of the negotiations, entitled "Narrative of the proceedings of Joseph Donaldson Esq.," written by Richard O'Brien, afterwards Consul General at Algiers, in D. S., 1 Archives, Tunis, 1793-1801 (a volume from the consular archives at Tunis), where O'Brien gives this account of himself:

Late Master of the Ship Dauphin, of Philadelphia, but was Captured the 30th of July 1785. fifty leagues to the Westward of Lisbon by an Algerine Corsair of 34 Guns & 450 men-& Remained in Captivity until the 11th of September 1795 Redeemed in Consequence, of the Peace made by the United States, with Algiers.

The report of Donaldson on the treaty, dated September 7, 1795 (D. S., I Consular Despatches, Algiers), is somewhat confused and in certain respects obscure; but he mentions that the text was in Turkish, saying that James Leander Cathcart, who was one of the American captives and was chief Christian clerk of the Dey of Algiers, "returned to me with Articles of a Treaty in Turkish & then Englished, which Proves to be that of the Sweedes." The Swedish treaty here referred to is the Treaty of Peace and Commerce with Algiers of April 25/May 5, 1792, which was a renewal, with additions, of a treaty of April 5/16, 1729. For the Swedish text and a French translation, see Von Martens, *Recueil des principaux traites*, 1st ed., VI, 296-311; 2d ed., V, 316-31. The substance of each of the respective twenty-two articles of the Swedish and American treaties is in general similar.

The date of the treaty is stated above in the two calendars according to the original documents, namely, Saturday, September 5, 1795, and 21 Safar, A. H. 1210. According to the chronological tables the Mohammedan date corresponds to September 6, 1795; however, the mention of the day of the week (see the opening phrase of the translation of 1930) fixes the date definitively, and in this case there is no doubt that 21 Safar, A. H. 1210, answers to September 5, 1795. From the report of Donaldson above mentioned it appears that the money bargain, to which the negotiations in reality wholly related, was struck on Saturday, September 5, and the treaty was delivered by Cathcart to Donaldson "the next morning."

However, a more complete and perhaps more accurate account of the negotiations is that of Cathcart, as written in *The Captives*, 158-95. Certainly Cathcart had at least as much to do with the bargain struck to pay \$585,000 for the treaty and the ransom of the American captives as Donaldson had, and indeed, according to Cathcart, much more. He gives September 3, 1795, as the date of the arrival of Donaldson at Algiers and September 5 as the date of the verbal money



agreement, the proclamation of peace, and the salute to the American flag; and on September 7 he says (page 191):

This afternoon I received the treaty in Turkish from the Secretary of State, and with the translation in English which was made and written by me, and collated with the original in twenty-three articles, and the four passports before mentioned, I took to Mr. Donaldson.

THE ORIGINAL TREATY

The documentary form of the original treaty in the Department of State file, the only original paper which it contains, is unusual. The document is composed of sixteen sheets of paper approximately ten inches wide and fourteen inches long, folded once, evenly, lengthwise; these sheets are held together by a ribbon which is tied along the center fold; so that, as folded, the treaty looks like a long pamphlet of thirty-two narrow leaves or sixty-four narrow pages. Neither the sheets nor the pages are numbered; but taking the pages as if they were numbered, the articles appear (beginning at page 16) in left-to-right order of pagination, one on a page, the English on the left pages, the Turkish on the right; these are followed by the final clause of the English translation of 1795 with the signature of Donaldson and, opposite thereto, the corresponding Turkish text with its signature and seal; next and last is written the confirmation or approval of Col. David Humphreys, then Minister to Portugal; and on page 14 is written, in English, the long way of the page from foot to top:

A Treaty of Peace or Amity concluded this Present Day Jima artasi ye twenty first of the Luna Safer year of the Hegira 1210 Corrisponding with Saturday the fifth of September One thousand Seven Hundred & Ninety five between Hassan Bashaw Dey of Algiers his Divan and Subjects and George Washington President of the United States of North America and the Citizens of ye Said United States.

Finally there is a later endorsement on page 1 of the document giving the date of Senate action.

Whether the present arrangement of the sheets that compose the treaty document is the original arrangement thereof is very doubtful; the internal evidence leads to the view that this present arrangement of the document is that which it had when it left the hands of Donaldson; but it may well be that when the treaty was first written in Turkish and before it was "Englished," as Donaldson says, the articles were arranged in the usual Turkish right-to-left order of pagination. The point is quite unimportant except that it is now impossible to say definitely whether the



clause which has always been printed as the final clause of the treaty (according to the English translation of 1795) was not in reality a preamble. That Donaldson regarded it as a final clause is clear from the position of his signature; but as the translation of 1930 shows, it reads like a preamble and may well have been one.

However, in the reproduction of the Turkish text above, the clause appears at the end, corresponding with the English translation of 1795 and with the original document in its present arrangement.

The translation which is first printed above is that which is written in the treaty document and which was then signed by Donaldson. It is that which is in the Statutes at Large and elsewhere generally. The style of that translation as here printed follows the original document literally, except that punctuation which has been inserted in the first four articles of the document in a different-colored ink and in a different hand, apparently at a later date, is here omitted. Following that translation is the certificate or approval of Humphreys. Then is printed the translation of the Turkish which was made in 1930 by Dr. J. H. Kramers, of Leiden. As shown by the translation of 1930., the discrepancies between the original Turkish and the translation of 1795 are numerous; and in some articles, such as 10, 11, and 14, the differences are striking.

OTHER ORIGINALS

It appears that there was another original of this treaty in the files of the Consulate at Algiers. After the treaty had been in force for nearly seventeen years, a rupture took place and Tobias Lear, Consul General, and all other Americans then in Algiers, were expelled from the country on July 25, 1812. One of the demands of the Dey of Algiers at that time, which he successfully enforced, was that the yearly tribute of \$21,600 stipulated in the treaty should be calculated according to Mohammedan and not to Christian years. While the money settlement was being arranged, the Dey sent by messenger to Lear for "the original Treaty, (in English and Turkish,)" so that he "might see the time when the said Treaty was ratified the terms By," and Lear delivered it "without hesitation, supposing that the Dey might wish to see something in it, or that he might compare it with that which was in the Palace "; but the Dey refused to return the treaty, sending word "he should retain the Treaty, as was the custom in Algiers, when Consul was sent away on account of his Government" (report of Lear, July 24, 1812, and letter to the Secretary of State, July 29, 1812, D. S., 8 (consular Despatches, Algiers; see also Laws of the United States, Bioren & Duane ea., I, 288-89).



According to Cathcart (The Captives, 221-23), there were, in all, four originals of the treaty, two executed at the time of the agreement and two others by October 1, 1795; these were intended to be delivered as follows (ibid., 221): "one to be sent to the Secretary of State, one to Col. Humphreys, one to remain in the Consulate, and one in the palace. "

NOTE REGARDING RATIFICATION

Some observations regarding the practice as to treaties with the Barbary States are to be found in the notes to the Treaty with Morocco of 1786 (Document 14).

There is no duplicate or written copy of the United States instrument of ratification in the Department of State file. The text of the instrument, however, was published at the time (e. g., Claypoole's American Daily Advertiser, Philadelphia, March 10, 1796). In form the document, dated March 7, 1796, is at once a ratification and a proclamation. It mentions the treaty as "written in the Arabic language, being translated into the language of the United States," and includes the translation signed by Donaldson and also the approval of Humphreys. A facsimile of the newspaper print is now in the Department of State file.

On April 13, 1796, the instrument of ratification was forwarded to Humphreys (D. S., 3 Instructions, U. S. Ministers,] 17-20). The instrument was received by Humphreys on June 17, 1796, and was forwarded by him to Robert Montgomery, Agent at Alicante, for transmission to Joel Barlow, Consul General at Algiers (D. S., 3 Despatches, Spain, No. 50, June 22, 1796).

Accordingly it seems probable that the Dey of Algiers was notified by Barlow of the ratification shortly thereafter, perhaps during the negotiations and discussions of July, 1796; and it IS even possible that the United States instrument of ratification was then delivered; in his report of September 7, 1795, Donaldson wrote, "the Dey recommends a Frigate being sent here with the ratification as it is on Secret Questions usual to return the Salute which is always fired from the Castle Fort." But doubt on the point must remain in view of statements subsequently made regarding the practice of Algiers; thus Charles O. Handy, Secretary to the Mission of 1816 to Algiers, in a letter to Commodore Chauncey of December 30, 1816 (D. S., 9 Consular Despatches, Algiers) wrote:

The Treaties which Algiers has heretofore had with the Maritime Powers of Europe, appear more in the light of capitulations made with their respective Consuls, acting with plenary Powers, than with their Governments of whose sentiments they are only the authorized organs.



Consequently the rejection, or ratification, of such Treaties, is never with the Regency a subject of interest, or importance. From the long and unvaried custom, arbitrarily adopted, and resolutely pursued, by this Barbary State, they never have, & probably never will, recognize, the approbation of a Government, as essential to the completion and execution of a Treaty. Our Treaty in June 1815 they refused to receive after it had been approved of by the President & Senate, alledging as a reason therefor, that the Algerine Regency never had acknowledged the necessity of such a measure & would never be governed by it in any manner whatever.

Not very important in this case, however, were treaty formalities and treaty procedure. The existence and execution of the treaty, from the viewpoint of the Dey of Algiers, depended wholly upon the receipt by him of the large payments by the United States stipulated dehors the treaty. The delay in the transmittal of the amounts promised on the signature of the agreement caused added and successful demands for more; the statement of Cathcart (*The Captives*, 22~21) is that "had the funds arrived as the Dey expected, it would have prevented all the trouble, anxiety and enormous expense which occurred afterwards, which at least doubled the original price promised for peace and the ransom of our brethern in captivity. " (See the papers with the message of President Washington of January 9, 1797, *American State Papers*, Foreign Relations, I, 553-58.)

Not until July 8, 1796, were the survivors of the American captives who had been held in miserable slavery in Algiers released. Joel Barlow reported that six of them had in the previous few weeks died of the plague, which " still rages with such violence in the town "; and he added:

Our people have conducted themselves in general with a degree of patience and decorum which would become a better condition than that of slaves. . . .

Several of them are probably rendered incapable of gaining a living. One is in a state of total blindness; another is reduced nearly to the same condition; two or three carry the marks of unmerciful treatment in ruptures produced by hard labour; and others have had their constitutions injured by the plague. Some of these are doubtless objects of the charity of their countrymen. (D. S., 2 Consular Despatches, Algiers, No. 8, July 12, 1796.)

The treaty was bought by the United States; and it was the price paid and payable, which the Treasury estimated at \$992,463.25, and not any instrument of ratification, which made the treaty a realty



The practical difficulties of the situation were officially recognized at the time; under date of June 8, 1796, the following notice or press release, signed by the Secretary of State, was issued, entitled " Caution to Merchants and other Citizens of the United States" (text from D. S., 9 Domestic Letters, 158; the notice was published in the press, e. 9., Claypoole's American Daily Advertiser, Philadelphia, June 10, 1796):

The advices received by Captain O'Brien from Colt Humphreys at Lisbon, show that the temporary obstacles to a fulfilment of the stipulations on the part of the United States with the Dey and Regency of Algiers are not yet removed. The treaty itself being put in Jeopardy, by these unexpected delays, the safety of American vessels entering the Mediterranean has become extremely precarious. It should also be remembered, that no treaty has ever yet been made between the United States and the Governments of Tunis and Tripoli. Merchants and other citizens of the United States, will hence see the hazard to which they will expose their property and the liberty of their fellow citizens, by engaging, in the present state of things, in commerce within the straits of Gibraltar.

Indeed, years elapsed before the stipulations of 1795 and 1796 could be fulfilled by the United States. They are discussed at some length in the instructions to O'Brien, given when he went as Consul General to Algiers in 1798 (D. S., 4 Instructions, U. S. Ministers, 188-93, December 29, 1797). The following extracts therefrom will serve to show their nature:

The Crescent Frigate in which you are to embark, you will deliver to the Dey and Regency, for whom it has been constructed and equipped, conformably to the stipulation of Mr Barlow.

The Schooner Hamdullah, which has lately sailed with Stores for Algiers is also to be delivered to the Dey. . . . This Schooner has been purchased, and the Schooner Lelah Eisha is now building here, for the Dey, in the expectation that they will not only soothe him under the past delays & disappointments in the fulfilment of our stipulations, but serve as acceptable substitutes for the stipulated, masts, Yards, and heavy planks, which are so costly and difficult to procure, and so exceedingly expensive to transport-the former, when delivered at Algiers will cost the United States perhaps thirty times their estimated price in the stipulations. You will, therefore, exert all your talents to effect these objects. And for your full information concerning them, the copies of the original agreement and of the articles for the annual presents, and of the Invoices of articles furnished in pursuance thereof, are herewith delivered to you. We shall be anxious to receive the details of your negotiations in this business & their result.



THE PASSPORTS

The original treaty was brought to the United States by Capt. Richard O'Brien; one of the four passports mentioned by Cathcart as having been delivered with the treaty on September 7, 1795 (The Captives, 191), and very likely the one used by O'Brien, is in the archives of the Department of State; it has the seal and also the tughra or name sign of Hassan Pasha, Dey of Algiers; and as translated by Doctor Kramers from the Turkish; it reads as follows:

The reason of the writing of this document is this: On the 23d of the month of Safar, 1210. The bearer of the present document, belonging to the American people, that has now concluded a peace treaty with the frontier-post of the holy war, Algiers, has desired a passport for himself as well as for the ship on board which he is and for all the sailors, being Americans, for the period of a year after the date of this document, in order that, when navigating and passing on sea, if they meet with war vessels of Algiers or of Tunis the well-preserved, or of Tripoli, these shall not lay hand on his ship or on his crew or his load and cargo, or molest him. According to this demand of security this passport has been drawn up and written and given into his hands. Therefore, if the war vessels of Algiers, when meeting, do him any harm or molestation, those people shall be punished severely and if he meets with molestation from the war vessels of Tunis or Tripoli, they shall be punished by the intermediary of their officers. In order to state this this passport has been given as a proof into his hands, so that it may be produced and used in time of need.

Written in the last days of Safar, 1210. Frontier of Algiers the well-preserved.

The Barbary Treaties 1786-1816

Treaty with Tripoli 1796



The Annotated Translation of 1930



The Arabic text of the original treaty book with the Barlow translation, as well as the Cathcart copy (described below), and also the Italian translation in the Department of State file, have been examined by Dr. C. Snouck Hurgronje, of Leiden.

The annotated translation of the Arabic, the work of Doctor Snouck Hurgronje, follows. The order of arrangement is that there comes first what may be called the treaty proper, then the "receipt," and then the "note," followed by an account of the seals used.

[Translation of the Treaty]

Praise be to God! Declaration from [sic] this noble affair and this clear and important speech, being the agreement consisting of the articles of peace and fellowship and all friendship and love and good trust and all confidence on account of the peace treaty between us with the Americans and [sic] with our Lord and Master the exalted Lord Yussuf Pasha of Tripoli, may God strengthen him by His grace, amen! and in agreement with his whole Divan, the whole population of his regency and his Divan, may God strengthen them by His grace and His favor, amen!

Praise be to God! Declaration thereof from the first article. That we have agreed upon a perfect, valid, everlasting peace, without modification or change from the beginning to the end, in permanency, with the Americans and [sic] with our honored Lord, the Lord Yussuf Pasha of Tripoli, may God strengthen him and likewise his Divan, and what we have arranged between us [has been arranged] with a pure heart from our side and from their side. This treaty of peace has been displayed [the Arabic word here used generally denotes "to break a seal," or something of that sort] and worked out in detail by our honored and exalted Master, our supreme [the word here used is uncommon; it may have the meaning of sovereign] Master, the Lord Yussuf Pasha, in the protected [i. e., by God] Algiers, may God strengthen him by His grace, amen!

Praise be to God! Declaration thereof: the second article. We have agreed concerning all goods carried by ships of the Americans, that it shall not be lawful to seize them from [on] the part of Tripoli ships; and likewise ships of Tripoli carrying goods, no American warship shall commit inimical acts against them. Thus it shall be with us and with them, from both of the two [sic] sides.

Glory be to God! Declaration of the third article. We have agreed that if American Christians are traveling with a nation that is at war with the well-preserved Tripoli, and he [evidently the



Tripolitan] takes [prisoners] from the Christian enemies and from the American (Christians with whom we are at peace [the Arabic sentence is here most confused], then he sets him [sic] free; neither he nor his goods shall be taken. Likewise, the Americans, when they take [literally "bring"] ships of their enemies and there are on board people from Tripoli, they shall not take one of them nor their goods. Thus! [This word, occurring at the end of several articles, seems to take the place of a full stop.]

Praise be to God! Declaration of the fourth article. We have also agreed concerning all the ships sailing out from the well-preserved Tripoli, that they [evidently the Tripolitans] are not allowed to take any of the American ships until a term of eighteen months shall have expired, and likewise there shall not be taken any of the Tripolitan ships until the condition of eighteen months shall be fulfilled, because the country of the Americans is at a great distance. This stipulation is connected with the passports; when the number of months of the term that we have mentioned shall be complete, and we have observed the term of one year and a half, beginning by the date which we have mentioned, then all the ships of the Americans must have passports. Thus.

Praise be to God! Declaration of the fifth article. We have agreed that, if persons of the American nation have bought a prize from the nation which has been by correspondence [writing] that they have bought it [apart from the obscurity of this Arabic sentence, it seems that some words after "nation" have been omitted], then the written document shall be valid between us from both sides, because the correspondence has the validity of a passport, and the term shall be of one year from the date of their buying the prize. Thus.

Praise be to God! Declaration of the sixth article. We have agreed that all American vessels putting into the port of the well-preserved Tripoli, of the Americans [sic], shall buy anything they are entitled to, provisions and other things. If the ship has suffered any damage, she shall repair it and so forth, like all the other Christian nations. And if an American ship, while sailing, has encountered winds or heavy storm at sea and is shipwrecked, and she is in want of lifting [?] or of anything else, she shall take whatever is necessary [or "whatever belongs to her"], and if she is bound to another country, being full of cargo, while such a misfortune befell her at sea, and she put into the port of Tripoli in order to repair all her damages, [she shall be allowed to do so]. And if she wants to sell her merchandise, she shall pay the customs according to the custom of other [Christian] nations. But if she has repaired all her damages and discharged her load and merchandise, and then reloads it again as it was before, [the cargo] shall be free. Thus.



Praise be to God! Declaration of the seventh article. We have agreed that if any vessel of the Americans is shipwrecked or damaged on the shore of Tripoli, the Moslems shall assist them until their goods are completely recovered from him who withholds. And if the vessel has merchandise or anything else, the Moslems shall be with them guarding the goods from thieves [deceivers] and shall watch over them until they have finished their affairs. Thus.

Praise be to God! Declaration of the eighth article. We have agreed upon this matter from both the two [sic] sides. If there is an American ship in the neighborhood of the Tripoli shore, and an enemy of their own kind [I. e., a Christian enemy] encounters them and pursues them, trying to take them, then they shall be assisted from the side of the Moslems with guns from the forts of Tripoli for their defense [?], that they commit no hostility against them within gunshot. Likewise, if they are in the port, lying at anchor, the enemy shall not be allowed to expel them. Likewise, if there are at anchor in the port two ships [belonging to nations] which are at enmity with each other, and one of them wishes to sail out, then her enemy shall not be allowed to sail out within twenty-four hours, as is the custom of all the [Christian] nations. Thus.

Praise be to God! Declaration of the ninth article. We have agreed that all the tradesmen and likewise the merchants [the two words used here are the Arabic musabbibin and the foreign word merkantiyye; perhaps it is simply a pleonastic expression, or perhaps two different classes of commercial people are meant] of the American nation who bring merchandise to the well-preserved Tripoli, and likewise the captains and sailors, shall have to pay the customs as all the [Christian] nations pay them, and as it is the custom, and the Consul of the Americans shall continue doing his official duty as it is done by all the [(Christian] nations, namely, the kiss of the Feast and of the [mifda?]. Thus.

The word not translated (mifda, or something like it), is of uncertain reading; the Italian translation renders it by "godimento." It may have denoted some periodical, probably annual, entertainment or feast of non-religious character, at which the authorities had to pay a complimentary visit to the Sultan. The "Feast " seems to denote that of the 1st of Shawwal, the conclusion of the Ramadan fasting. I guess that on such occasions the consuls had to "kiss" the Pasha's cloak or even the floor in front of His Highness, and most probably they were obliged to accompany that act of reverence with the offering of costly presents.

Praise be to God! Declaration of the tenth article. Be it known that the Americans have paid the present and the money for the peace treaty on the hand of the exalted Lord, our Master, the Lord Hassan Pasha, who [al-munshi?] in Algiers, may God strengthen him, and they are now acquitted



of the number of presents [literally "the number, the present"] and likewise of the money, and this money and these presents they have given [shall be counted] forever, and they shall not continue to pay every year. This which they have given shall be at once complete, remaining forever. Thus.

The word not translated, probably to be read al-munshi, seems to be the equivalent of "residing" or "governing," but is not used in that sense in common Arabic.

The eleventh article of the Barlow translation has no equivalent whatever in the Arabic. The Arabic text opposite that article is a letter from Hassan Pasha of Algiers to Yussuf Pasha of Tripoli. The letter gives notice of the treaty of peace concluded with the Americans and recommends its observation. Three fourths of the letter consists of an introduction, drawn up by a stupid secretary who just knew a certain number of bombastic words and expressions occurring in solemn documents, but entirely failed to catch their real meaning. Here the only thing to be done by a translator is to try to give the reader an impression of the nonsensical original:

Praise be to God, who inspires the minds of rulers with causes of well-being and righteousness! The present matter may be in the interest of the land and the servants [of God], in order that things may be put in their place. This whole affair has been opened [by omission of one letter the Arabic reads "victories" instead of "opened"] by the intermediary of the exalted, honored Prince, the Lord Hassan Pasha, in the protected [by rod] Algiers, may God strengthen him and give him victory and help him in accomplishing good things; thus in the beginning and in the end, and may the acquiescence in his order take place by considering all his affairs, and may his endeavor repose on the fitness of his reflection. So may God make it, the beginning of this peace, a good and graceful measure and an introduction having for result exaltation and glorification, out of love for our brother and friend and our most beloved, the exalted Lord Yussuf Pasha, [here follows the same word as in Article 10: al-munshi?, "residing" or "governing"] in the well-protected [by God] Tripoli, may God strengthen him by His grace and His favor, amen! Because our interests are one and united, because our aim is that acts may succeed by overthrowing justice, and the observance [of duty?; of treaties?; of the Sacred Law?] becomes praiseworthy by facts entirely, amen! by making successful safety and security by permanence of innumerable benefits and pure and unmixed issue. Prosperity accompanies highness and facilitation of good by length of the different kinds of joy makes permanent. Praise be to God for the comprehensive benefit and your perfect gifts, may God make them permanent for us and for you, thus till the day of resurrection and judgment, as long as times last, amen!



Further, if there are American people coming to the well-protected Tripoli, they wish to be, by your carefulness, honored [and free] from all disagreements as are, Indeed, all the [Christian] nations, so that nobody molests them and no injury befalls them; and likewise people from Tripoli, if they proceed to the country of the Americans, they shall be honored, elevated upon the heads, nobody molesting or hindering them until they travel [homeward] in good state and prosperity. Thus. And greetings!

Praise be to God! Declaration of the twelfth article. If there arises a disturbance between us on both sides, and it becomes a serious dispute, and the American Consul is not able to make clear [settle] his affair, and [then] the affair shall remain suspended between them both, between the Pasha of Tripoli, may God strengthen him, and the Americans, until the Lord Hassan Pasha, may God strengthen him, in the well-protected Algiers, has taken cognizance of the matter. We shall accept whatever decision he enjoins on us, and we shall agree with his condition and his seal [i. e., the decision sealed by him]; may God make it all permanent love and a good conclusion between us in the beginning and in the end, by His grace and favor, amen!

[Translation of the "Receipt"]

forty thousand duros 40,000
watches 13
seal rings 5
ells of cloth 140
terser[?] garments 4

Praise be to God! Explanation: This is our memorandum delivered to [in the hand of its bearer, the Captain Ibrahim [sic], the American: We have received forty thousand royal duros and thirteen watches, some of them gold, some silver, some tumbak, and five seal rings, three of which diamond, one sapphire, one with a watch in it, hundred and forty one [sic] ells of cloth, and four terser [?] garments. That is on account of the peace treaty of His [God's] servant, Yussuf Pasha, with the Americans and the completeness [perhaps the last word means only that the memorandum is hereby finished].

The seal, badly imprinted on this "receipt," is the same as the topmost of those which follow Article 12 of the treaty; it represents the signature of Hassan Pasha.



On the right side of the seal there are four small lines of script, written by the same hand that wrote the names of the goods and the figures at the top of the page, and the two lines under the seal, but a hand other than that which wrote the three lines of text. Those four lines of script read as follows: "Kararnaili [sic], may his glory last, amen! 20th day of Jumada al-awwal, year 1211." The last two lines read: "This is the copy from [sic] the memorandum of the exalted Lord Yussuf Pasha, in the well-preserved Tripoli, and his seal

The word used for "silver" (fejra) is uncommon, although not altogether unknown. The word corresponding to "pinsback" in the Barlow translation is tumb-k, which may be derived from Portuguese "tambaca" (from Malay "tembaga"), which denotes copper and a certain number of alloys of that metal. That word is derived from the Sanskrit; the thus-named alloy of copper and zinc used to be imported from Indo-Chinese countries (see Hobson-Jobson-A Glossary of Colloquial Anglo-Indian Words and Phrases, 929, and the references in Note A of that work, List of Glossaries, in verbo).

The 20th day of Jumada I, A. I. 1211, coincided with November 21, 1796, or thereabout.

"Karamaili" is probably a corruption of the clan-name, "Karamanli," which occurs several times in the signatures to the treaty, e. 9., in the signature of Yussuf Pasha of Tripoli, but not in that of Hassan Pasha of Algiers; so it seems to be here not an adscript to the seal of Hassan Pasha, but rather a substitute for the seal of Yussuf Pasha; but even then it remains an enigma why he did not seal this receipt and why his name should have been written so incompletely, with the essential elements lacking.

[Translation of the "Note"]

Praise be to God' This is a memorandum and a statement of what the Americans are still obliged to pay on account of the peace treaty: The amount of money being the value of twelve thousand royal duros; and likewise hawsers, being five, eight inches thick; and also cables, being three, each ten inches thick; and also tar, twenty-five barrels; and also pitch, twenty-five barrels; and likewise rosin, ten barrels; and also boards of rebel [this denotation of a sort of wood is unknown to me; it is not the common Arabic word for oak], five hundred; and likewise boards of binu flamank [also unknown to me; flamank means Dutch; perhaps "Dutch pine" is meant], five hundred; and also masts, being ten; and likewise yards, twelve; and also canvas for sails [the text adds the qualification dhi lamunah, which I cannot explain], fifty pieces; and also anchors, being four. This is what the Americans are still obliged to pay in this mentioned number as has been



mentioned [sic] and afterwards, when the Consul comes from his country, they shall have to bring all that we have mentioned, amounting to this number, when he arrives at the well-preserved Tripoli, may God protect her by His grace, amen! Contained [certified?] completely on the first day of Rajab in this above-mentioned rescript, year 1211.

The seal imprinted on this "note" is illegible; it is, however, the seal of Hassan Pasha, Dey of Algiers, and the same as the topmost of those which follow Article 12 of the treaty, where the imprint is clearer.

The "4th" of Rajab is not in the Arabic text. The 1st of Rajab, 1211, may have corresponded to December 31, 1796, or to January 1, 1797; but compare "four days from the beginning" in the lines written at the left of the seal of Hassan Pasha, following Article 12 of the treaty, which are translated below in the account of the seals. The Arabic rendering of "1st Rajab" may also mean "beginning of Rajab."

ACCOUNT OF THE SEALS

The eleven seals will be explained here, beginning with the topmost, after which the three horizontal rows (of three, three, and four seals respectively) are treated, proceeding from the right side to the left.

The superscriptions are not signatures (the seals themselves being considered as such), but each of them denotes the name and title or function of the owner of the seal at the top of which it is written. All these superscriptions, except that of the topmost seal, are in the handwriting of one and the same secretary; the exception is probably owing to the fact that the seal of Hassan Pasha, with its superscription, was affixed in Algiers, not, like the other ten, in Tripoli. The writer of the ten superscriptions follows the eastern method of using diacritical points, whereas all the other pages, and also Article 12, are written in the western (Maghrebin) manner.

First superscription. "His Worship the Eminent Hassan Pasha, son of Husein, Wall [governor] of the well-protected Gate of Holy War, Algiers of the West."

The seal. The central oval contains the name of Hassan Pasha, son of Husein, and around the oval are two verses which may be rendered as follows:



My God, Thou art the Giver of grace and favors And I am the committed of sins; so forgive me.

My Lord I full is my trust in Thee,

So make true, O my God, my good trust!

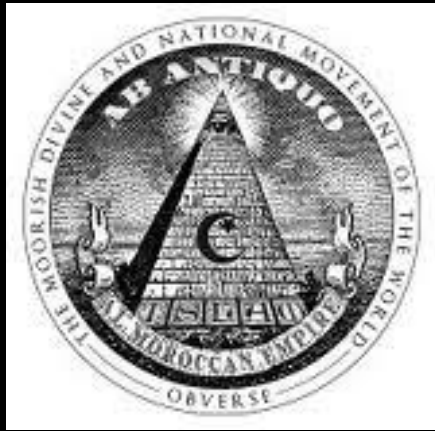
At the left of this topmost seal there are two lines written by the same hand as Article 12, which wrote also all the other articles and which is different from the hands of both writers of the superscriptions. These lines read as follows: "And this is the seal of the honored Lord, the Lord Hassan Pasha, may God strengthen him, in the vilayet [province] of Algiers, dominion of Holy War, may she be victorious by the help of God. It [referring, as it seems, to the whole treaty] has been fixed and written down in this document [the word *itman*, translated here by "document," is rather uncommon and means properly something like "assurance" or "certification"] at the date of the beginning of the month of Rajab, four days from the beginning. Year 1211."

Second superscription. "His Excellency the Exalted, the Honorable Wezir [after Wear there is a word which I cannot exactly identify] Yussuf Pasha, son of Ali Pasha, son of Muhammed Pasha son of Ahmed Pasha Karamanli [see above, the notes to the translation of the 'receipt'], Mutesarrif [this word denotes in the Turkish administration a rank inferior to that of Wah, 'subgovernor,' governing a sanjak, being a part of a vilayet, governed by a Wall] of the well-preserved Tripoli of the West, dominion of Holy War."

The seal. In the central oval: "His [God's] servant, Yussuf Bey, son of Ali Pasha Karamanli, 1195" (probably the Hegira year of his nomination). Around the oval are two verses from the well-known Burdah (the poem in praise of the Prophet), running thus: "He who takes the Apostle of God for his helper, if the lions encounter him in their jungles, they will withdraw." "You never see a friend of his [the Apostle's] but victorious, nor an enemy of his but crushed! "

Third superscription. "The Right Honorable Kadim Muhammed Bey, son of Yussuf Pasha, son of Ali Pasha, son of Muhammed Pasha, son of Ahmed Pasha Karamanli, in the well-protected Tripoli of the West, dominion of Holy War."

The seal. The inner circle certainly contains the names mentioned in the superscription, but the letters are intertwined so as to make up a calligraphic puzzle of the sort favorite with Arabic seal engravers. I have read only some of the names, and it seemed hardly worth while to decipher the



whole. The outer circle contains the first of the two verses occurring around the oval of the seal last above described.

Fourth superscription. "The Exalted Muhammed, Kethoda-iOjaghy ['chief of the garrison'; may also denote 'chief of the place'] of Tripoli of the West, dominion of Holy War."

The seal. Inner square: "Muhammad, son of Abdallah." Around the square: "Seeking [asking for] the grace of God." There is still one word more, of the reading of which I am not quite sure.

Fifth superscription. "The Exalted Ahmed Agha, chief of the port of Tripoli of the West, dominion of Holy War."

The seal. "Hoping for His [God's] grace, which is worthy of being hoped for. Ahmed, son of Mustapha, son of Ahmed Year 1201."

Sixth superscription. "The Exalted al-Hajj [title of those who have performed the pilgrimage to Mecca] Ahmed, treasurer of the garrison [or place] of Tripoli of the West, dominion of Holy War."

The seal. "His [God's] servant, who seeks His (trace, al-Haj j Ahmed, treasurer."

Seventh superscription. "All, Agha [commander] of the Janizaries of the well-protected Tripoli of the West, dominion of Holy War."

The seal. "His [God's] servant, seeking God's powerful grace, All, son of . . . [illegible] Year 1200."

Eighth superscription. "The Exalted Suleyman, Seraskar [commander of the army] of Tripoli of the West, dominion of Holy War."

The seal. "Seeking God's grace, Suleyman . . . "(other words illegible).

Ninth superscription. "The Exalted the Agha [commander] of the Sipahi~ [soldiers; perhaps the infantry is meant], Khalil, in the well-protected Tripoli of the West, dominion of Holy War."

The seal. "The proprietor [i. e., of this seal], His [God's] servant, Muhammed Khalil."



Tenth superscription. Muhammed Ata Allah, secretary of the town.

The seal. " Seeking forgiveness and safeguard, His [God's] servant, Muhammed, son of Al-Hajj Ata allah liabtan."

Eleventh superscription. " The Honorable Muhammed, sheik of the town [or 'of the country'], the well-protected Tripoli, dominion of Holy War."

The seal. "Seeking . . . Muhammed . . ." (the rest illegible).

The Barbary Treaties 1786-1816

Treaty with Tripoli 1796 : Hunter Miller's Notes

The two dates and places given for the signature of the treaty (Tripoli, November 4, 1796, and Algiers, January 3, 1797) are explained by the fact that the provisions of the agreement with the Pasha of Tripoli were deemed to be to some extent at least under the protection or guaranty of the Dey of Algiers and made with his approval. So after the completion of the negotiations at Tripoli by Capt. Richard O'Brien, the agreement was taken to Algiers for the signature and seal of the Dey of Algiers; and consequently the various signatures and certificates of Joel Barlow, Consul General at Algiers, which are hereafter mentioned, became a part of the record.

There are four documents in the Department of State file of this treaty.

THE ORIGINAL TREATY

The first to be noted is that which contains the original treaty. It is a book in the literal sense. There are fourteen pages of Arabic text; all of these are right-hand pages. In the Arabic order, the first of them is the "note" of the money and presents, mentioned, according to the Barlow translation, in Article 10 of the treaty; the second is the "receipt," also mentioned in that article, and this page, like the first, is sealed with the seal of the Dey of Algiers. Then come the twelve pages of the treaty; the preamble is on the first of these with Article 1; and there is one article on



a page, except that the script on the page between Articles 10 and 12, is, as fully explained in the annotated translation of 1930, not an article at all. The last of those twelve pages has also the seals and superscriptions, of which there are eleven In all, including one for the Dey of Algiers. The fourteen pages of Arabic text are reproduced above in left-to-right order of pagination; but the twelve treaty pages come first and then the "receipt" and then the "note."

In the original treaty book, on the corresponding fourteen left-hand pages, each signed or initialed by Joel Barlow, Consul General at Algiers, is a purported English translation of the Arabic of the respective pages opposite.

It is the Barlow translation which is here printed following the Arabic text and in the same order, first the twelve articles of the treaty, then the "receipt" and the "note," after which is the approval of Col. David Humphreys, then Minister at Lisbon, dated February 10, 1797; as written in the original document.

The Barlow translation of the treaty proper is that which has been printed in all official and unofficial treaty collections ever since it appeared in the Session Laws of the first session of the Fifth Congress, in 1797, and in The Laws of the United States, Folwell ea., IV, 44-8, printed in 1799; but in those treaty collections, as, for example, in 8 Statutes at Large, 154-56, the "receipt" and the "note" (there called "notice") are omitted; and the first source of the texts of those collections was clearly a now missing copy, as is shown by the fact that they include a certification of the text as a copy; that certification is signed by Joel Barlow under date of January 4, 1797, and it is neither in the original document nor in the Cathcart copy, which is particularly described below.

Returning to the original document and still observing the reverse or Arabic order, the next page has written on it a certificate in Spanish regarding the signatures and seals, which reads as follows:

Nos Do Gerardo Joseph de Sousa Caballero Profeso en la orden de Christo, Consul General y Enargado de Negocios por Su Magestad Catholica en esta Cindad y Reyno de tripoly de Berberia.

Certificamos que las antecedences firmas y sellos son los verdaderos de los Sugetos que firman todos los Documentos de Paz que se bacon con las Naciones Christianas y son:-



Issuf Baxa: Mohamet Bey: Mamet Keya: Amet Rais de Marina: Amet Gamadar: Aly Haga del Divan: Soliman Maya: Galil Bachi Aga: Mohamet Chegue de la Cindad: Mamet Cocha: y por fe de la verdad lo firmo de mi propia mano, sellado del Real sello de este Consulado de Espana, en tripoly de Berberia a los quatro dies del mes de Noviembre de Mil siete Cientos noventa y seis.

[Seal] GERARDO JOSEPH DE SOUZA

Affixed to the same page is the following translation of that Spanish certificate:

We Don Gerardo Joseph de Souza Knight of the order of Christ, Consul General and Charge des Affaires of his Catholic Majesty in this City and Kingdom of Tripoli of Barbary.

Certify That the foregoing signatures and seals are those of the persons who sign all treaties of peace which are concluded with Christian Nations. They are

Jussuf Bashaw Mahomet Bey

Mamet Treasurer

Amet Minister of Marine

Amet Chamberlain

Ally Chief of the Divan

Soliman Kaya

Galil General of the Troops

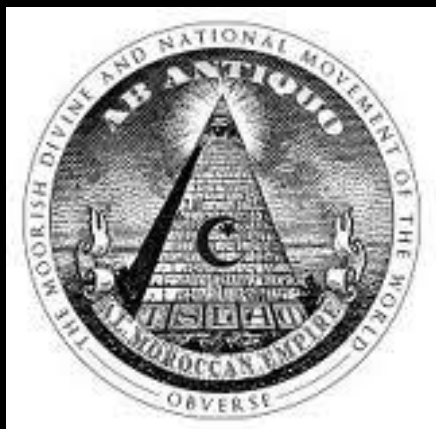
Mohamet Com'.of the City

Mamet Secy

In faith of which I sign these presents with my own hand. Sealed with the royal seal of this Consulate of Spain, in Tripoli of Barbary on the 4th of November 1796

(L. S.) signed GERARDO JOSEPH DE SOUZA

On the next (preceding) page of the original treaty book is the following certificate regarding the signature and seal of the Dey of Algiers:



I Joel Barlow, agent and consul general of the United States of America for the city and Kingdom of Algiers, certify and attest that the seal standing uppermost on the page next but two preceding this [in the Arabic order] is that of the Regency of Algiers and that the signature above it is that of Hassan Bashaw Dey.

In testimony whereof I sign these presents with my hand and affix thereto the seal of the consulate of the United States at Algiers this 4th day of January 1797. [Seal] JOEL BARLOW

To that same page of the book is affixed a sheet of note paper; the first portion of the writing thereon by Capt. Richard O'Brien, who had negotiated the treaty at Tripoli and who had previously for some years been a prisoner in Algiers, reads thus:

Recapitulation of the Terms of Peace of the United States of America with the Bashaw of Tripolia november the 4th 1796. Concluded.

For the Peace and the Redemption of 4 Captives 40000

Given to the Bashaw as presents agreeable to the list amounting to 3486.

To be given for the Peace and Consolary presents 12000.

For the Services of al Signior Farfaro 2000.

For the Ries of the Marine 1000.

Requisite with the Consul, 200 piques of Cloth.

Remarkd and Certifyed by me. RICHd OBRIEN in Tripolia november the 4th 1796.

Following this on the same affixed sheet, is this certificate in Spanish:

Do Gerardo Josef de Sousa, Cavo profeso en la Orn. de Christo, Consul Gral. y Encargado de negocios de S. M. C. serca del Baxa de Tripoly de Berberia.

Certefico que la Cuenta que antecede formada y accinada por el Capitan Ricardo Obrien individuo Americana, y Acomisinado en esta Capital pa la confirmasion de Paz entresu Nacion, y esta Regencia; Is siesta, verdadera, y conforme su distribution a los particu]ares que express: en los que intervine, a instancias del mencionado Obrien. En fee de lo qual sele da el preste sellado Con el R'sello de este Consulado, y firmado de mi propia mano: en Tripoly de Berbera a quatro de Novre de mil setecientos noventa y seis.



[seal] GERARDO JOSEPH DE SOUZA

Also affixed to the same page of the treaty book is the following translation of the foregoing certificate:

We Don Gerardo Josef de Souza Knight of the Order of Christ, Consul General and Chargé des Affaires of his Catholic Majesty near the Bey of Tripoli of Barbary

Certify that the foregoing account, formed and entered into by Captain Richard OBrien, an American Citizen, and Commissioner in this Capital for concluding peace between his Nation and this Regency, is accurate, true and conformable to the distribution to the individuals therein mentioned: to which I was a witness at the request of the said OBrien.

In faith whereof I have sealed these presents with the royal Seal of this Consulate, and signed the same with my hand in Tripoly of Barbary the 4th of November 1796.

(L. S.) GERARDO JOSEPH DE SOUZA

On the next two (preceding) pages of the original treaty book appears the approval of Col. David Humphreys, then Minister to Portugal, dated at Lisbon February 10, 1797.

It is to be added that most of the pages of the original treaty book are quite stained.

THE CATHCART COPY

The second document in the Department of State file to be noted is a very similar book, containing a copy of the treaty certified by the Dey of Algiers and also by Barlow; this latter book may be called the Cathcart copy. Something should be said about James Leander Cathcart and the book itself, before noting the differences between the Cathcart copy and the original treaty book.

Cathcart was born in Scotland on June 1, 1767; he had been a midshipman on the frigate *Confederacy* of the Continental forces; while a seaman on the schooner *Maria* from Boston he had been taken prisoner by the Algerines in 1785. He became chief Christian clerk to the Dey of Algiers and returned to the United States during the negotiations with Algiers in 1796. Cathcart



was commissioned Consul at Tripoli on July 10, 1797; but his instructions were not written until December 20, 1798, his letter of credence being dated the next day; and he did not reach Tripoli as Consul until April 5, 1799.

That Cathcart had with him in Tripoli the book which is here given his name is certain. Where it had been before that is uncertain, but probably Cathcart took it with him from Algiers in 1799, for he says in one of his letters that he found no document at all, not even a copy of the treaty, in the office at Tripoli. That the Cathcart copy was prepared at the same time as the original treaty book is conclusively established both by its appearance and by the internal evidence of its contents; but there is nothing to show when it was received by the Department of State.

The differences between the Cathcart copy and the original treaty book will now be noted.

The fourteen pages of the Arabic in the original are (with absolutely insignificant differences) the same in the Cathcart copy, except that the copy lacks all the seals and superscriptions of the original, and except that the copy has on four of its pages, under the Arabic, a seal of red wax impressed with the monogram "JLC," the seal of Cathcart. The English written opposite the fourteen pages of the Arabic in the copy and signed or initialed, as in the original, by Joel Barlow on each page, is in substance in the copy the same as in the original. There are some variances, but none of them is very material. However, on the first page of the English, which is the "note" mentioned in Article 10 of the treaty, there are certain annotations of Cathcart, as follows:

(a) Referring to the pine and oak boards: "3 inch of the longest & best sort for deck planks planks fit for ship building. Thus saith the Bashaw. Cathcart."

(b) Referring to the masts and yards: "fit for vessels from 2 to 300 Tons."

(c) Referring to the canvas: "the Bashaw insisted upon having 50 bales of Canvas with 12 pieces or bolts in each bale. Cathcart."

(d) At the foot of the page the following: "In April 1799, I gave the Bashaw 10,000 Spanish dollars for the above list of stores & 8,000 for a brig of War of ten guns promised him by Capt'n OBrien this sum being in full of all demands for ever. Cathcart."

On the next page of the English of the copy, which is a translation of the receipt for the money and presents, someone (perhaps Cathcart) has added three words (here italicized) to the



transcription of the signature by Barlow, so that it reads, "Jussuf Bashaw-Bey- whom God exalt Upon a Gibbet."

It is in respect of the pages following, or as would be said here, preceding, the fourteen Arabic and corresponding English pages above mentioned, that the differences between the original treaty book and the copy are more notable. In the copy the following are omitted: (a) the certificate of the Spanish Consul General regarding the signatures and seals, and the translation thereof; (b) the certificate of Barlow regarding the seal of the Dey of Algiers; (c) the account of O'Brien, with the certificate appended thereto and the translation thereof; (d) the approval of Humphreys.

There are, however, in the Cathcart copy three written pages which are not in the original treaty book; and those three pages follow, or, as would be said here, precede directly the above-mentioned fourteen pages.

The first of the three is in Arabic under the seal of Hassan Pasha, Dey of Algiers; it is in the nature of a certificate, dated January 3, 1797; Doctor Snouck Hurgronje writes that "the text is drawn up in a very bad style " and gives this translation thereof:

Praise be to God! Declaration that this speech and this copy is from two documents [here again the word Oman is used; see the account of the seals, above] containing that [same text] in the same words exactly as in the [document] seal[ed] by the exalted, the honored Hassan Pasha, residing [governing?; see the annotated translation of Article 10 of this treaty] in Algiers, and this peace treaty has been authorized at his hands, consisting of a full [complete] peace treaty forever, may God make his days last and give him victory and make him continue in life with fulness of enjoyments; and likewise sealed by the exalted, the Lord Yussuf Pasha in the well-protected Tripoli, may God strengthen him; and likewise sealed by all the chief officers of his Government and the members of his Divan. We have put them [evidently the articles of peace are meant] in writing completely in the mentioned rescript in the two documents [itmans], and likewise the seal of the exalted, the Lord Hassan Pasha in the vilayet of Algiers, the Gate of Holy War, may she be victorious by the help of God. Thus it has been put down and written in the two documents, at the date of the beginning of the month Rajab, four days from the beginning, in the year 1211.

The second of the three pages is opposite the foregoing and has the following In English:



I Joel Barlow, agent and consul general of the United States of America for the city and Kingdom of Algiers, certify and attest that the foregoing is a true copy of the treaty between the United States of America & the Bey and subjects of Tripoli, and of the several papers accompanying the same. And that the writing in Arabic on the page opposite to this is a certificate of the Dey of Algiers similar to what is here written by me.

In testimony whereof I sign these presents with my hand and affix thereto the seal of the Consulate of the United States-at Algiers this 3d day of January 1797.

[Seal] Joel Barlow

Then comes another (the final) page, in Arabic text, without any English translation or equivalent at all. It has an Arabic seal at the top and under the Arabic text the same red-wax seal of Cathcart as elsewhere. The following translation of that page of Arabic shows that it is in the nature of a confirmation or approval of the treaty on the part of Mustapha Pasha, who became Dey of Algiers upon the death of Hassan on May 15, 1798 (D. S., 3 Consular Despatches, Algiers, letter of Richard O'Brien of July 1, 1798; 7 *ibid.*, letter of Tobias Lear of January 25, 1807). While the Arabic seal is illegible, comparison shows that it is the seal of Mustapha Pasha. Doctor Snouck Hurgronje writes that "the text is drawn up in an abominable style similar to that of the letter which is in place of Article 11 of the treaty"; he mentions that at the right side of the seal are the words, "Praise be to God alone!"; and he gives this translation of the page:

Be that known to whosoever takes cognizance of our rescript concerning this noble affair and this important, clear speech from His [God's] granting success by His grace and His favor, to the results of acts and may He make prosperous by His bounty the end and the present! The right honorable the Lord Mustapha Pasha, may God strengthen him, amen! The reason is that we have now written down our rescript concerning the agreement and all the articles which have been signed by Yussuf Pasha in the well-protected Tripoli with the Americans, and we accord with their having concluded a full [complete] peace, and we assent to this agreement written down here and to take upon ourselves that contract and that assent exactly as that is contained [in the documents], without any alteration, modification, or change being made in this affair. Greetings!

And this comes from him who has written by authorization of the exalted, the most faithful and blessed, the Lord Mustapha Pasha, may God strengthen him, amen!

At the date of two days from [sic] Zu'lkadah in the end of it, year 1212.



On the authority of Doctor Snouck Hurgronje it is to be added that the above formula of dating is quite uncommon; it might denote either 2 or 28 Zu'lkadah. In the latter case the words "in the end of it" would refer to the month; otherwise, to the year. But the date here intended is 28 Zu'lkadah, A. H. 1212; for by the chronological tables the equivalent date is May 14, 1798, and in this case May 15, 1798, the date of the accession of Mustapha Pasha.

THE ITALIAN TRANSLATION

The third document in the Department of State file to be noted, is a translation of the treaty into Italian, a language then much in use in Tripoli. The translation covers not only the twelve articles of the treaty proper, but the receipt and note as well; and also the two Arabic pages of the Cathcart copy which are not in the original treaty book; so the translator had before him the Cathcart copy.

This translation was not made by Cathcart; it is not in his writing; he would naturally have written in English; and further it appears from his journal of the Tripoli negotiations of 1799 that he did not read Arabic, although he seems to have been familiar with Turkish and Italian. But that the translation was made for him and under his direction is clear, for on the cover page is written, over his full signature:

Literal translation of the Treaty between the United States of America &: the Regency of Tripoli in Barbary-the translation in English sign'd by Joel Barlow EsqT on the 26th of November 1796 being extremely erroneous.

Undoubtedly this refers to the Barlow translation in the certified copy which Cathcart had, here called the Cathcart copy, which, as above set forth, is now in the Department of State file. (The Barlow translation in the original treaty book is almost identical.) The date given for the Barlow translation, November 26, 1796, is approximately, and may even be quite, correct; for strictly speaking, that translation is not, as a translation, dated at all.

The Italian translation is a pamphlet with one page of Italian script for each page of the Arabic of the Cathcart copy. When the Italian translation of the treaty was received at the Department of State does not appear. It seems not to have been rendered into English; but as hostilities were begun by Tripoli in May, 1801, after threats for a year earlier, the actual terms of the treaty became, not long after the arrival of Cathcart in Tripoli in 1799, of little practical importance. The content of the Italian translation is discussed below.



THE UNITED STATES RATIFICATION AND PROCLAMATION

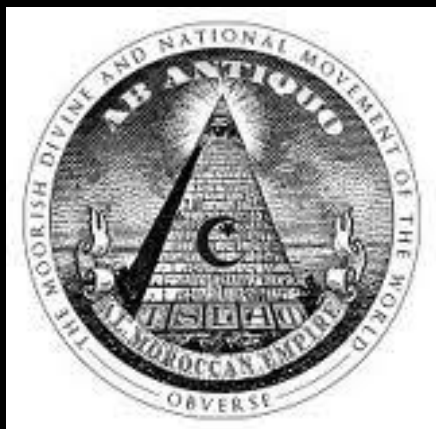
The fourth document in the Department of State file, and the last to be noted, is at once the United States instrument of ratification and the proclamation, dated June 10, 1797.

In its combination of what are ordinarily two separate papers, that document is of unusual form. It is under the Great Seal and is signed by Adams and attested by Pickering as Secretary of State; but before the testimonium clause is this paragraph of ratification and proclamation:

Now be it known, That I John Adams, President of the United States of America, having seen and considered the said Treaty do, by and with the advice consent of the Senate, accept, ratify, and confirm the same, and every clause and article thereof. And to the End that the said Treaty may be observed and performed with good Faith on the part of the United States, I have ordered the premises to be made public; And I do hereby enjoin and require all persons bearing office civil or military within the United States, and all others citizens or inhabitants thereof, faithfully to observe and fulfil the said Treaty and every clause and article thereof.

The text embodied in the paper after the words, "which Treaty written in the Arabic Language, being translated into the Language of the United States, is in the words following to wit," is almost exactly the same as that in the Statutes at Large, which was perhaps copied from the instrument now described. Accordingly the provisions of the twelve articles appear in the document as written by Barlow in English in the original treaty book; so do the signatory names, although the copyist of them made a slip or two. The Barlow certification of January 4, 1797, which was doubtless contained in a now missing copy, is included, as is also the Humphreys approval or confirmation; but the receipt and the note, each of which Article 10 (according to the Barlow translation) in terms makes a part of the treaty, are not otherwise mentioned.

Thus the proclamation was immediate with the ratification and did not await any such formality as notice to the Bey of Tripoli of the ratification of the treaty by the United States. The treaty, like the treaty with the Dey of Algiers of 1795 (Document 17), had been bought; and, as much of the purchase price had already been paid, any subsequent item of procedure was doubtless considered to be of comparatively little importance.



NOTE REGARDING THE ARABIC TEXT

The original here reproduced consists of the fourteen Arabic pages of the original treaty book heretofore described. The two Arabic pages of the certified or Cathcart copy, to which reference has been made in these notes, are not, as such, reproduced.

NOTE REGARDING THE Barlow TRANSLATION

The translation first printed is that of Barlow as written in the original treaty book, including not only the twelve articles of the treaty proper, but also the receipt and the note mentioned, according to the Barlow translation, in Article 10. The signature of Barlow is copied as it occurs, but not his initials, which are on every page of the fourteen which is not signed. The Humphreys approval or confirmation follows the translation; but the other writings, in English and Spanish, in the original treaty book, are not printed with the translation but only in these notes.

It is to be remembered that the Barlow translation is that which was submitted to the Senate (American State Papers, Foreign Relations, II, 18-19) and which is printed in the Statutes at Large and in treaty collections generally; it is that English text which in the United States has always been deemed the text of the treaty.

As even a casual examination of the annotated translation of 1930 shows, the Barlow translation is at best a poor attempt at a paraphrase or summary of the sense of the Arabic; and even as such its defects throughout are obvious and glaring. Most extraordinary (and wholly unexplained) is the fact that Article 11 of the Barlow translation, with its famous phrase, "the government of the United States of America is not in any sense founded on the Christian Religion," does not exist at all. There is no Article 11. The Arabic text which is between Articles 10 and 12 is in form a letter, crude and flamboyant and withal quite unimportant, from the Dey of Algiers to the Pasha of Tripoli. How that script came to be written and to be regarded, as in the Barlow translation, as Article 11 of the treaty as there written, is a mystery and seemingly must remain so. Nothing in the diplomatic correspondence of the time throws any light whatever on the point

A further and perhaps equal mystery is the fact that since 1797 the Barlow translation has been trustfully and universally accepted as the just equivalent of the Arabic. Its text was not only formally proclaimed as such but has been continuously printed and reprinted as such; and yet evidence of the erroneous character of the Barlow translation has been in the archives of the



Department of State since perhaps 1800 or thereabouts; for in the handwriting of James Leander Cathcart is the statement quoted above that the Barlow translation is "extremely erroneous"; and while the Italian translation of the Arabic text on which that endorsement appears, presents its own linguistic difficulties, largely owing to its literal rendering and its consequent non-literary character as Italian, it is none the less in essence a reasonable equivalent of the Arabic. Indeed, allowing for the crudeness of the original Arabic and the changes which always result from a retranslation, it may be said that a rendering of the Italian translation into English gives a result which is in general not dissimilar from the English translation of Doctor Snouck Hurgronje of 1930; and of course the most cursory examination of the Italian translation would show (assuming the Italian to be even an approximation of the Arabic), that the Barlow translation, as Cathcart wrote, was "extremely erroneous"; but nothing indicating that the Italian translation was even consulted has been found, and it does not appear that it was ever before 1930 put into English. Some account of the Italian translation as a document is given above.

NOTE REGARDING RATIFICATION

From the point of view of the rulers of Tripoli, the validity and effective character of the treaty depended on the receipt of those things promised in the "note," which were to be delivered "on the arrival of an American Consul Tripoli." What had been delivered on the negotiation of the treaty as set forth in O'Brien's account, was merely a part of an uncompleted whole.

When Cathcart, as the American Consul, arrived at Tripoli on April 5, 1799, the stores agreed to be delivered!, and at least part of which had been shipped, had not arrived. They were thought to have been lost or captured. Cathcart was quite willing to agree upon a money equivalent; but he was met with an added demand of the Pasha of Tripoli for a brig alleged to have been promised by O'Brien at the time of the signing of the treaty. The negotiations following, during the course of which the Pasha of Tripoli declared that he did not consider himself obliged to fulfil the treaty, were very lively; but with the help of Dr. Bryan McDonogh, whom the Pasha wrote of as "our Doctor," the whole matter was finally adjusted for \$18,000 on April 10, 1799. There is a full and interesting account of the proceedings in Cathcart's "Journal of the negotiation and ratification of the Treaty between the United States of America and the Regency of Tripoli in Barbary" (D. S., 2 Consular Despatches, Algiers).

"A ratified copy of the Treaty with Tripoli" was one of the enclosures with the instructions to Cathcart of December 20, 1798 (D. S., 5 Instructions, U. S. Ministers, 25-30); very likely the ratification embraced the copy certified by Barlow under date of January 4, 1797, for, as above



mentioned, the proclamation includes that certification, which is also printed in the Statutes at Large. While the original ratification remained in the hands of Cathcart (Tripoli . . . Letter Book by James Leander Cathcart, 270, 285), it is possible that a copy thereof was delivered upon the settlement of April 10, 1799, and further possible that there was something almost in the nature of an exchange of ratifications of the treaty on or about April 10, 1799, the day of the agreed settlement. A letter from the Pasha of Tripoli to President Adams of April 15, 1799 (translation from the Italian in D. S., 1 (consular Despatches, Tunis), concludes thus:

Whereby we have consummated the Peace which shall, on our side, be inviolate, provided You are Willing to treat us as You do other Regencies, without any difference being made between Us. Which is the whole of what we have, at present, to say to You, wishing you at the same time the most unlimited prosperity.

The Barbary Treaties 1786-1816



Tunis 1797 : Truce of June 17, 1796

The motive of the writing of this document is as follows: On the 11th of the month of Zu'lhiyJah of this year 1210, answering to the 15th of June [June 17, 1796, according to the chronological tables] according to the Greek calendar. The glory of the princes of the Christian nation, the selected chief among the community of Jesus, Washington, the present ruler of America-may his days end with blessings-being desirous and wishing to negotiate a treaty of peace in order to lay the foundations of friendship and to strengthen the sincere amity with the frontier post of the Holy War, the victorious garrison of Tunis the well-preserved, just as our friends, the other Christian Governments, have done the same with our victorious garrison, has confided the negotiations of the said treaty to his Consul Barlow, residing in Algiers, and the said Consul again teas confided the negotiations of the treaty to the French merchant, Joseph Famin, residing in Tunis the well-preserved. The said merchant has appeared in my presence and has stated and declared in general his wish and desire for a treaty between the American ruler and the Government of Tunis the well-preserved. After it has been immediately communicated and



confirmed to the said merchant on what terms a treaty could be agreed to, the said merchant has communicated the stipulations of the treaty to the said Consul, and the said Consul has communicated it to his Government. Now, until the answer comes and within a limit of six months after the date of this document, security has been given. Therefore, if during the said period war vessels of our well-preserved garrison place meet at sea with ships of the said Americans they shall not hinder them or molest them in any way, but they shall be treated as friends, and immediately order has been given to our officers to let them go their way. If American ships meet with ships belonging to our well-preserved garrison place, it has been agreed between the two Governments, that they shall treat each other in a friendly way. This convention has been written and sealed and given into the hands of the said merchant, so that he may send it to its proper place. Until the arrival of the answer this convention shall be observed between the two Governments; according to it both parties shall act, and it shall be opposed in no way. Salutations. Written on the 11th of Zu'lhiJjah and the 15th June of the year 1210.

[Tughra (name sign) of Hamuda, commander (mir miran) of the frontier post of the Holy War, Tunis the well-preserved.]

The Barbary Treaties 1786-1816

Treaty of Peace and Friendship, Signed at Tunis August 28, 1797

Treaty of Peace and Friendship, signed at Tunis August 28, 1797, and, with alterations, March 26, 1799. Original in Turkish. Submitted to the Senate February 21, 1798. Resolution of advice and consent, on condition, March 6, 1798. Resubmitted to the Senate December 13, 1799. Resolution of advice and consent to altered Articles 11, 12, and 14, December 24, 1799. Ratified by the United States January 10, 1800. As to the ratification generally, see the notes. Not proclaimed (semble), but see the notes as to publication.

The following pages of Turkish are a reproduction of the articles of the original of the altered treaty; but they are arranged in left-to-right order of pagination, and of necessity the Turkish script runs length-ways of the pages. They are followed by the French translation which is written in the original document and the English translation which is in the Department of State file; after the translations is the approval of Humphreys of the treaty as first signed, and then the



approval of Eaton and Cathcart of the altered treaty, as copied in the original. Following those tents is a comment on the French translation, written in 1930. ()*

God is infinite.

Under the auspices of the greatest, the most powerful of all the princes of the Ottoman nation who reign upon the earth, our most glorious and most august Emperor, who commands the two lands and the two seas, Selim Khan I the victorious, son of the Sultan Moustafa, whose realm may God prosper until the end of ages, the support of kings, the seal of justice, the Emperor of emperors.

The most illustrious and most magnificent Prince Hamuda Pasha, Bey, who commands the Odgiak of Tunis, the abode of happiness; and the most honored Ibrahim Dey; and Suleiman, Agha of the Janizaries and chief of the Divan; and all the elders of the Odgiak; and the most distinguished and honored President of the Congress of the United States of America, the most distinguished among those who profess the religion of the Messiah, of whom may the end be happy.

We have concluded between us the present Treaty of Peace and Friendship, all the articles of which have been framed by the intervention of Joseph Stephen Famin, French merchant resident at Tunis, Charge d'Affaires of the United States of America; which stipulations and conditions are comprised in twenty-three articles, written and expressed in such manner as to leave no doubt of their contents, and in such way as not to be contravened.

ARTICLE 1.

There shall be a perpetual and constant peace between the United States of America and the magnificent Pasha, Bey of Tunis, and also a permanent friendship, which shall more and more increase.

ARTICLE 2.

If a vessel of war of the two nations shall make prize of an enemy vessel in which may be found effects, property, and subjects of the two contracting parties, the whole shall be restored; the Bey shall restore the property and subjects of the United States, and the latter shall make a reciprocal



restoration; it being understood on both sides that the just right to what is claimed shall be proved.

ARTICLE 3.

Merchandise belonging to any nation which may be at war with one of the contracting parties, and loaded on board of the vessels of the other, shall pass without molestation and without any attempt being made to capture or detain it.

ARTICLE 4.

On both sides sufficient passports shall be given to vessels, that they may be known and treated as friendly; and considering the distance between the two countries, a term of eighteen months is given, within which term respect shall be paid to the said passports, without requiring the conge or document (which at Tunis is called testa), but after the said term the conge shall be presented.

ARTICLE 5.

If the corsairs of Tunis shall meet at sea with ships of war of the United States having under their escort merchant vessels of their nation, they shall not be searched or molested; and in such case the commanders shall be believed upon their word, to exempt their ships from being visited and to avoid quarantine. The American ships of war shall act in like manner towards merchant vessels escorted by the corsairs of Tunis.

ARTICLE 6.

If a Tunisian corsair shall meet with an American merchant vessel and shall visit it with her boat, she shall not exact anything, under pain of being severely punished; and in like manner, if a vessel of war of the United States shall meet with a Tunisian merchant vessel, she shall observe the same rule. In case a slave shall take refuge on board of an American vessel of war, the Consul shall be required to cause him to be restored; and if any of their prisoners shall escape on board of the Tunisian vessels, they shall be restored; but if any slave shall take refuge in any American merchant vessel, and it shall be proved that the vessel has departed with the said slave, then he shall be returned, or his ransom shall be paid.



ARTICLE 7.

An American citizen having purchased a prize-vessel from our Odgiak, may salt our passport, which we will de liver for the term of one year, by force of which our corsairs which may meet with her shall respect her; the Consul on his part shall furnish her with a bill of sale; and considering the distance of the two countries, this term shall suffice to obtain a passport in form. But after the expiration of this term, if our corsairs shall meet with her without the passport of the United States, she shall be stopped and declared good prize, as well the vessel as the cargo and crew.

ARTICLE 8.

If a vessel of one of the contracting parties shall be obliged to enter into a port of the other and may have need of provisions and other articles, they shall be granted to her without any difficulty, at the price current at the place; and if such a vessel shall have suffered at sea and shall have need of repairs, she shall be at liberty to unload and reload her cargo without being obliged to pay any duty; and the captain shall only be obliged to pay the wages of those whom he shall have employed in loading and unloading the merchandise.

ARTICLE 9.

If, by accident and by the permission of God, a vessel of one of the contracting parties shall be cast by tempest upon the coasts of the other and shall be wrecked or otherwise damaged, the commandant of the place shall render all possible assistance for its preservation, without allowing any person to make any opposition; and the proprietor of the effects shall pay the costs of salvage to those who may have been employed.

ARTICLE 10.

In case a vessel of one of the contracting parties shall be attacked by an enemy under the cannon of the forts of the other party, she shall be defended and protected as much as possible; and when she shall set sail, no enemy shall be permitted to pursue her from the same port, or any other neighboring port, for forty-eight hours after her departure.



ARTICLE 11.

When a vessel of war of the United States of America shall enter the port of Tunis, and the Consul shall request that the castle may salute her, the number of guns shall be fired which he may request; and if the said Consul does not want a salute, there shall be no question about it.

But in case he shall desire the salute, and the number of guns shall be fired which he may have requested, they shall be counted and returned by the vessel in as many barrels of cannon powder.

The same shall be done with respect to the Tunisian corsairs when they shall enter any port of the United States.

ARTICLE 12.

When citizens of the United States shall come within the dependencies of Tunis to carry on commerce there, the same respect shall be paid to them which the merchants of other nations enjoy; and if they wish to establish themselves within our ports, no opposition shall be made thereto; and they shall be free to avail themselves of such interpreters as they may judge necessary, without any obstruction, in conformity with the usages of other nations; and if a Tunisian subject shall go to establish himself within the dependencies of the United States, he shall be treated in like manner.

If any Tunisian subject shall freight an American vessel and load her with merchandise, and shall afterwards want to unlade or ship them on board of another vessel, we will not permit him until the matter is determined by a reference of merchants, who shall decide upon the case; and after the decision, the determination shall be conformed to.

No captain shall be detained in port against his consent, except when our ports are shut for the vessels of all other nations, which may take place with respect to merchant vessels but not to those of war.

The subjects of the two contracting powers shall be under the protection of the Prince and under the jurisdiction of the chief of the place where they may be, and no other persons shall have authority over them. If the commandant of the place does not conduct himself agreeably to justice, a representation of it shall be made to us.



In case the Government shall have need of an American merchant vessel, it shall cause it to be freighted, and then a suitable freight shall be paid to the captain, agreeably to the intention of the Government, and the captain shall not refuse it.

ARTICLE 13.

If among the crews of merchant vessels of the United States, there shall be found subjects of our enemies, they shall not be made slaves, on condition that they do not exceed a third of the crew; and when they do exceed a third, they shall be made slaves. The present article only concerns the sailors, and not the passengers, who shall not be in any manner molested.

ARTICLE 14.

A Tunisian merchant who may go to America with a vessel of any nation soever, loaded with merchandise which is the production of the kingdom of Tunis, shall pay duty (small as it is) like the merchants of other nations; and the American merchants shall equally pay, for the merchandise of their country which they may bring to Tunis under their flag, the same duty as the Tunisians pay in America.

But if an American merchant, or a merchant of any other nation, shall bring American merchandise under any other flag, he shall pay six I per cent duty. In like manner, if a foreign merchant shall bring the merchandise of his country under the American flag, he shall also pay six (1) per cent.

ARTICLE 15.

It shall be free for the citizens of the United States to carry on what commerce they please in the kingdom of Tunis, without any opposition, and they shall be treated like the merchants of other nations; but they shall not carry on commerce in wine, nor in prohibited articles; and if any one shall be detected in a contraband trade, he shall be punished according to the laws of the country. The commandants of ports and castles shall take care that the captains and sailors shall not load prohibited articles; but if this should happen, those who shall not have contributed to the smuggling shall not be molested nor searched, no more than shall the vessel and cargo; but only the offender, who shall be demanded to be punished. No captain shall be obliged to receive



merchandise on board of his vessel, nor to unlade the same against his will, until the freight shall be paid.

ARTICLE 16.

The merchant vessels of the United States which shall cast anchor in the road of the Gouletta, or any other port of the Kingdom of Tunis, shall be obliged to pay the same anchorage for entry and departure which French vessels pay, to wit: Seventeen plasters and a half, money of Tunis, for entry, if they import merchandise; and the same for departure, if they take away a cargo; but they shall not be obliged to pay anchorage if they arrive in ballast and depart in the same manner.

ARTICLE 17.

Each of the contracting parties shall be at liberty to establish a consul in the dependencies of the other; and if such consul does not act in conformity with the usages of the country, like others, the government of the place shall inform his Government of it, to the end that he may be changed and replaced; but he shall enjoy, as well for himself as his family and suite, the protection of the government. And he may import for his own use all his provisions and furniture without paying any duty; and if he shall import merchandise (which it shall be lawful for him to do), he shall pay duty for it.

ARTICLE 18.

If the subjects or citizens of either of the contracting parties, being within the possessions of the other, contract debts or enter into obligations, neither the consul nor the nation, nor any subjects or citizens thereof, shall be in any manner responsible, except they or the consul shall have previously become bound in writing; and without this obligation in writing they cannot be called upon for indemnity or satisfaction.

ARTICLE 19.

In case of a citizen or subject of either of the contracting parties dying within the possessions of the other, the consul or the wakil shall take possession of his effects (if he does not leave a will), of which he shall make an inventory; and the government of the place shall have nothing to do therewith. And if there shall be no consul, the effects shall be deposited in the hands of a



confidential person of the place, taking an inventory of the whole, that they may eventually be delivered to those to whom they of right belong.

ARTICLE 20.

The consul shall be the judge in all disputes between his fellow citizens or subjects, as also between all other persons who may be immediately under his protection; and in all cases wherein he shall require the assistance of the government where he resides to sanction his decisions, it shall be granted to him.

ARTICLE 21.

If a citizen or subject of one of the parties shall kill, wound, or strike a citizen or subject of the other, justice shall be done according to the laws of the country where the offense shall be committed. The consul shall be present at the trial; but if any offender shall escape, the consul shall be in no manner responsible for it.

ARTICLE 22.

If a dispute or lawsuit on commercial or other civil matters shall happen, the trial shall be had in the presence of the consul, or of a confidential person of his choice, who shall represent him and endeavor to accommodate the difference which may have happened between the citizens or subjects of the two nations.

ARTICLE 23.

If any difference or dispute shall take place concerning the infraction of any article of the present treaty on either side, peace and good harmony shall not be interrupted until a friendly application shall have been made for satisfaction; and resort shall not be had to arms therefor, except where such application shall have been rejected; and if war be then declared, the term of one year shall be allowed to the citizens or subjects of the contracting parties to arrange their affairs and to withdraw themselves with their property.

The agreements and terms above concluded by the two contracting parties shall be punctually observed with the will of the Most High. And for the maintenance and exact observance of the



said agreements, we have caused their contents to be here transcribed, in the present month of Rabia Elul, of the Hegira one thousand two hundred and twelve, corresponding with the month of August of the (Christian year one thousand seven hundred and ninety-seven.

The BEY'S signature

[Seal]

IBRAHIM DEY'S signature [Seal]

The AGHA SULEIMAN'S signature [Seal]

To all to whom these Presents shall come or be made known.

W

Whereas the Underwritten David Humphreys hath been duly appointed (commissioner Plenipotentiary by letters patent under the signature of the President and seal of the United States of America, dated the 30th day of March 1795, for negotiating and concluding a Treaty of Amity and (commerce with the Most Excellent & Illustrious Lord the Bey and Supreme (commander of the State of Tunis; whereas in conformity to the necessary authority committed to him therefor, he did constitute and appoint Joel Barlow an Agent in the business aforesaid; and whereas the annexed Treaty was in consequence thereof agreed upon, in the manner and at the time therein mentioned through the intervention of Joseph Stephen Famin invested with full Powers for the said purpose.

Now, know ye, that I David Humphreys Commissioner Plenipotentiary aforesaid, do approve and conclude the said Treaty and every article and clause therein contained, reserving the same nevertheless for the final Ratification of the President of the United States of America, by and with the advice and consent of the Senate of the said United States. In Testimony whereof I have signed the same with my name & affixed thereto my Seal, at the City of Madrid this fourteenth day of November 1797.

[Seal] DAVID HUMPHREYS.

Whereas the President of the United States of America, by his Letters patent, under his signature and the seal of State, dated [Seal] the 18th day of December 1798, vested Richard OBrien,



William Eaton and James Leander Cathcart, or any two of them in the absence of the third, with full powers to confer, negotiate and conclude with the Bey and Regency of Tunis, on certain alterations in the treaty between the United States and the government of Tunis, concluded by the intervention of Joseph Etienne Famin on behalf of the United States, in the month of August 1797; we the underwritten William Eaton and James Leander Cathcart (Richard O'Brien being absent) have concluded on and entered in the foregoing treaty certain alterations in the eleventh, twelfth and fourteenth articles, and do agree to said treaty with said alterations: reserving the same nevertheless for the final ratification of the President of the United States, by and with the advice and consent of the Senate. In Testimony whereof we annex our names and the Consular seal of the United States. Done in Tunis the twenty sixth day of March in the year of the Christian Era one thousand seven hundred and ninety nine, and of American Independence the twenty third.

(signed) WILLIAM EATON

JAMES LEAR CATHCART

(*) The Turkish text and the material on the French Translation has not been reproduced by the Avalon Project. [Back](#)

(1) See the [note regarding Article 14](#). [Back](#)

he Barbary Treaties 1786-1816

Tunis 1797 : Senate Resolution of March 6, 1798

Resolved, (two-thirds of the Senators present concurring therein,) That the Senate do advise and consent to the ratification of the treaty of peace and friendship, between the United States of America and the Bey and government of Tunis, concluded in the month of August, one thousand seven hundred and ninety-seven, on condition that the fourteenth article of the said treaty, which relates to the duties on merchandise, (to be reciprocally paid by the citizens and subjects of the said parties, in their respective ports,) shall be suspended.



Resolved, That it be recommended to the President of the United States, to enter into a friendly negotiation with the Bey and government of Tunis, on the subject of the said article, so as to accommodate the provisions thereof to the existing treaties of the United States with other nations.

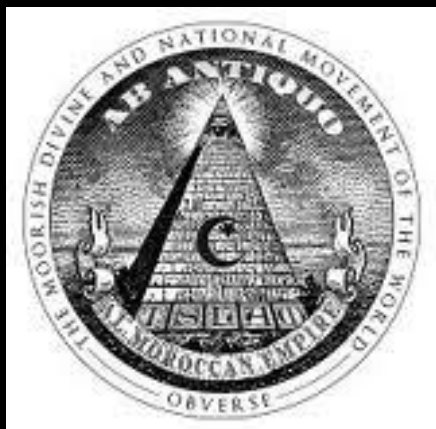
The Barbary Treaties 1786-1816 Tunis 1797 : Hunter Miller's Notes

The exact date of the first signature of the treaty, before it was amended, is not stated therein; but a letter dated September 2, 1797, from Joseph Etienne Famin, a French merchant of Tunis who conducted the negotiations of 1797 there on behalf of the United States, to George Clark, the Charge d'Affaires at Algiers, gives the date as August 28, 1797 (D. S., 1 Archives, Tunis, 1793-1801).

The signatures and seals then affixed were those of three officials of the Regency of Tunis. On the pages of the original treaty opposite the Turkish text (of which there are fifteen pages) is written a French translation of the respective Turkish articles. That French translation was doubtless prepared by or under the direction of Famin. However, the letter of Famin to the Secretary of State making a report of those negotiations has not been found. It was dated September 25, 1797, and is mentioned in a letter of April 6, 1798 (D. S., 3 Consular Despatches, Algiers).

While it is undoubted that the treaty text was Turkish and the French a translation, it should be added that a copy of the French text of 1797 (D. S., 1 Archives, Tunis, 1793-1801) is certified by Famin in the following words: "J'affirme la presents copie conforme a l'original."

It appears that various originals of the treaty were prepared at the time. One of them was transmitted by Col. David Humphreys, then Minister to Spain, from Madrid (D. S., 4 Despatches, Spain, No. 120, November 14, 1797), and another by Joel Barlow from Paris (D. S., 2 Consular Despatches, Algiers, January 7, 1798).



THE ALTERATIONS

Alterations (here a more accurate word than amendments) were subsequently made in the treaty in March, 1799, before ratification by the United States. The changes had their beginning in the Senate resolution of March 6, 1798, which reads as follows (Executive Journal, I, 263-64):

Resolved, (two-thirds of the Senators present concurring therein,) That the Senate do advise and consent to the ratification of the treaty of peace and friendship, between the United States of America and the Bey and government of Tunis, concluded in the month of August, one thousand seven hundred and ninety-seven, on condition that the fourteenth article of the said treaty, which relates to the duties on merchandise, (to be reciprocally paid by the citizens and subjects of the said parties, in their respective ports,) shall be suspended.

Resolved, That it be recommended to the President of the United States, to enter into a friendly negotiation with the Bey and government of Tunis, on the subject of the said article, so as to accommodate the provisions thereof to the existing treaties of the United States with other nations.

While the resolution of the Senate related only to Article 14, it was considered by the Secretary of State (Pickering) that Articles 11 and 12 were also objectionable, and changes in them were proposed, an interesting and early example of the control of treaty negotiations by the President, even after Senate action. (See instructions to Richard O'Brien, William Eaton, and James Leander Cathcart, D. S., 5 Instructions, U. S. Ministers, 16-23, December 18, 1798; printed in part in American State Papers, Foreign Relations, II, 281-82.) It may be mentioned here that in connection with those instructions the cost of the treaty was estimated at \$179,044.

THE NEGOTIATIONS OF 1799

There is a full account of the negotiations carried on at Tunis by Cathcart and Eaton in March, 1799, in the journal of the latter dated April 15, 1799 (D. S., 1 Consular Despatches, Tunis). In a despatch of June 1, 1799, in the same volume, Eaton says that the substance of the result of the negotiations was:

The Treaty with alterations-The consent of the Bey for six months forbearance in expectation of the regalia of maritime and military stores-His demand for a present in jewels-and his request for a cruiser.



The negotiations brought about changes in the three articles mentioned-11, 12, and 14; the rest of the treaty remained unaltered. The way the alterations were made was unusual; such of the sheets of the original document as contained the original text or the translation of those three articles were removed from that document, and in place thereof were inserted other sheets on which had been written the new text of the three articles and also (but unchanged) such other articles as had appeared on the sheets removed.

It was on March 26, 1799, that the altered treaty was received from the Bey of Tunis by the representatives of the United States. The translation in French of the three altered articles was then written in, in its proper place. There was added to the document, or at least to one of its originals, the clause signed by Eaton and Cathcart on behalf of the United States, dated the day of the delivery of the altered treaty.

THE ORIGINAL DOCUMENTS

The original which is now in the Department of State file is in the form of a pamphlet remade in the manner above indicated. Its final page (in the Turkish order) has, however, been torn off, and in lieu thereof on one of the two added sheets, as if it were on the final page, appears the French translation of the final clause of the treaty (not quite accurately copied, as "deux" is written for "douse") and a copy of the confirmation of Eaton and Cathcart.

The whole original document is embodied in a duplicate instrument of ratification, which is written in the reverse or Turkish order of pagination. Thus the opening words of the ratification are written on the reverse of the first page of the Turkish text and (in the Turkish sense) preceding it. Accordingly, the ratification begins at what would here be called the back of the paper sheets (which are together like a pamphlet, but are not bound or even stitched); and the signatures of Adams and Pickering, and formerly the wafer for the Great Seal (which has since become detached and lies loose in the file), are at the front.

The file contains also portions of four other originals; one is of the altered treaty, nearly complete, one sheet only being missing; each of the other three comprises sheets of the treaty as first written. All four have the page with the seals and signatures on behalf of Tunis.

There are also in the file various separate or single sheets or pages torn from complete instruments; one bears the original certificate signed by David Humphreys at Madrid November 14, 1797; another bears what appears to be the original certificate of Eaton and Cathcart, but the



lower part of that sheet, including the signatures, is torn away; still another, with no text except the French of the final clause, has on it the words, "approved at Paris the 12 Novr 1797," and the signature of Joel Barlow. The remaking of the treaty by the substitution of new sheets for old, has made the file a strange collection of parts and pieces; indeed, some of the old (and now separate) wrappers in the file note "remnants of the Treaties" or "remnants of the detached sheets."

NOTE REGARDING RATIFICATION

After the amended articles had been agreed to, much remained to be done both by way of form and in matter of substance before the treaty could go into force. In transmitting "the treaty with the alterations inserted," Eaton wrote as follows regarding the ratification: "The ratified copy of the treaty which will be returned is expected to be an exact and entire copy of the entire treaty enclosed."

More important was the letter written (in French) by the Bey of Tunis to the President of the United States under date of April 30 1799 (original letter in D. S., I Consular Despatches, Tunis), in which it was said very flatly that if the naval munitions promised did not arrive by the following November 1, the treaty would be void ("le terme expire, sans que ces effete fussent parvenus, tout Traite serait nut et la bonne amitid qui exists, de nouveau rompue ")

The Senate resolution of advice and consent of December 24, 1799; is in rather unusual form, as it refers to amended Articles 11, 12, and 14 only (Executive Journal, I, 329-30).

The United States instrument of ratification was forwarded to Eaton in January, 1800, and with it was a letter from the President to the Bey of Tunis. The ratification embodied " one of the originals " received from Eaton (see D. S., 5 Instructions, U. S. Ministers, 277, No. 3, January 11, 1800, and 289, No. 34, January 17, 1800); and after another wrangle about the stores to be delivered, the papers were finally put into the hands of the Bey of Tunis on March 27, 1800, as the following extracts from the letter of Eaton to the Secretary of State of March 31, 1800 (1 (consular Despatches, Tunis, No. 16), indicate:

This day [March 26] was employed in rendering into Italian the President's letter to the Bey, his ratification of the treaty, and such of the communications of the Secretary of State as related to the regalia of naval and military stores.



At the palace. Made the above communications to the Bey [March 27, 11 a. m.] He expressed great satisfaction.

At the same time it seems that an understanding was reached that the last paragraph of Article 12 of the treaty was to be carried out by Tunis only on the basis of the most favored nation. A circular letter of Eaton dated at Tunis April 10, 1800 (Prentiss, The Life of the Late Glen. William Eaton, 136), is as follows:

Having at length amicably adjusted the affairs of the United States with the Bey and Regency of Tunis, I desire you will communicate this agreeable intelligence to the masters of American vessels, and others interested, who may come within the limits of your Consulate.

The principal minister of the Bey has pledged himself that the last clause of the 12th article of our treaty with this Regency, inserted by Joseph Etienne Famin, shall have the same effect with respect to American merchant vessels as the custom of all other nations at peace with Tunis has established with respect to their own, and no other. There is therefore now no danger to be apprehended from American vessels visiting this coast: perfect health prevails here.

NOTE REGARDING PROMULGATION

There is no record of any proclamation of this treaty. No publication of the treaty has been found earlier than the text contained in The Laws of the United States, Folwell ea., V, 213-23. That volume was printed in 1801; but the first section of it, the Session Laws of the first session of the Sixth Congress and including the text of this treaty, appeared in 1800.

Announcement of the alterations of March 26, 1799, was made in the following circular letter of Cathcart, dated at Tripoli May 4, 1799 (Tripoli . . . Letter Book by James Leander Cathcart, 56):

Being commissioned by the President of the United States of America to act in conjunction with Messrs. O'Brien and Eaton, in order to effect certain alterations in the treaty intervention of J. E. Famin, between the United States of America and the Regency of Tunis, I am happy to inform you that such alterations took place in said treaty as will meet the approbation of the President and Senate, on the 26th of March, 1799, and that for the nine next ensuing months from that date, all merchandise belonging to citizens of the United States imported into any of the ports of the Regency of Tunis pays duty only 3 per cent.



advalorem, according to an old price current of the year 1753, which reduces the duty nearly one half. From Tunis I proceeded to Tripoli, where I have had the good fortune to persuade the Bashaw to receipt the sum of \$18,000 in cash, in lieu of the stores and brig of war promised this regency when our peace took place. \ The above sum is in fun of all demands from the United States forever.

I therefore congratulate the seamen and: merchants of the United States on their being entirely out of danger from all the Barbary States, provided they are very particular with their passports which is absolutely necessary.

NOTE REGARDING THE TEXTS PRINTED

When the treaty was first submitted to the Senate, on February 21, 1798, the message of Adams said that he laid before that body "the original treaty." This was doubtless the example transmitted by Humphreys from Madrid, for his approval (now a separate sheet in the file) is printed with the message in American State Papers, Foreign Relations, II, 123; following it is an English translation, which (aside from Articles 11, 12, and 14, subsequently altered) is that which has since been generally printed, except that its text of Article 8 is incomplete. That incompleteness is to be thus explained: The original documents show that the 1797 French translation of the treaty omitted the final phrase of Article 8 regarding the wages to be paid by the captain of a ship; the omission was noticed during the 1799 negotiations; the proper addition to the French translation written in the original was then made, the Turkish remaining without change; and the English version was corrected here accordingly. In D. S., 1 Archives, Tunis, 1793-1801, a volume of letters and papers relating mostly to Tunis, but in part to Tripoli, is a corrected draft of the French of Articles 11, 12, and 14, with a note to the effect that the final phrase of Article 8 should be added to the French translation.

The Turkish text here reproduced is from the original above described as being now in the file and embodied in a duplicate United States instrument of ratification; the Turkish is in left-to-right order of pagination and the script runs lengthways of the pages. That text is here followed by two translations in parallel columns, French and English; thereafter is copied the approval of David Humphreys of the treaty as first signed, dated at Madrid November 14, 1797, and then the approval of Eaton and Cathcart of March 26, 1799. Following those texts is a comment on the French translation of the Turkish, written in 1930 by Dr. J. H. Kramers.



The French translation here printed is a literal copy of the French written on pages of the original treaty; the English translation is from a paper in the Department of State file, the date of which appears to be not earlier than 1810; but that same English translation was printed in the Folwell edition of the laws, as noted above, in 1801. From the form of the English translation it is clear that it is a retranslation of the French and not an original translation of the Turkish; this translation is the one printed in the Statutes at Large and elsewhere generally. Doubtless the current English version of the amended Articles 11, 12, and 14, is the same as that which was laid before the Senate on December 13, 1799; but their text is not in American State Papers, Foreign Relations, II, 281-82. So far as Articles 11 and 14 are concerned, that translation of 1799 was of necessity a new one; but also in respect of Article 12 it differs from the earlier English even in those paragraphs which are the same in French.

In connection with the English text of the treaty usually printed, it is to be noted that the journal of Eaton gives the following as the English of Article 11 as agreed on during the negotiation of 1799:

When a vessel of war of one of the parties shall enter a port of the other, and demand to be saluted, there shall be paid one barrel of powder for each gun demanded for the salute; but if the demand be not made, by the consul on the part of the United States, or by the commandant of the vessel on the part of the kingdom of Tunis, no salute shall be given, nor payment demanded for the salute.

It has not been deemed necessary to reproduce the original Turkish of the three articles which were altered-11, 12, and 14. The French translation of those three articles, as written at the time, and their English translation, appear in a note following.

NOTE REGARDING ARTICLES 11, 12, AND 14

The French translation of the original form of Articles 11, 12, and 14, as written in 1797, is printed below, with an English translation from American State Papers, Foreign Relations, II, 124; but only the latter part of Article 12 is given here, as the first three paragraphs of the article were not changed.

ARTICLE 11



When a vessel of war of one of the parties shall enter a port of the other, she shall be saluted by the forts and shall return the salute gun for gun, neither more nor less. But there shall be given by the parties, respectively, a barrel of powder for every gun which shall be required for the salute.

ARTICLE 12

The subjects or citizens of the two nations shall be protected by the government or commandants of the places where they may be, and not by the other authorities of the country. In case the Government of Tunis shall have need of an American vessel for its service, the captain shall freight his vessel, and the freight shall be paid to him according to the agreement of the Government, without his being allowed to refuse.

ARTICLE 14

The citizens of the United States of America who shall transport into the Kingdom of Tunis the merchandise of their country in the vessels of their nation, shall pay three per cent duty. Such as may be laden by such citizens under a foreign flag, coming from the United States or elsewhere, shall pay ten per cent duty. Such as may be laden by foreigners on board of American vessels coming from any place whatever, shall also pay ten per cent duty. If any Tunisian merchant wishes to carry merchandise of his country under any flag whatever, into the United States of America, and on his own account, he shall pay three per

The notes of Doctor Kramers regarding the Turkish of the original form of Articles 11, 12, and 14, as written in 1797, and their translation, follow:

Article 11. The text differs from the text of Article 11 in the final treaty. The French translation is not correct. It should read:

Si un batiment de guerre americain arrive dans le port de Walk al-Wad [la Goulette; see Article 16 of the treaty], il sera salue par le fort avec le nombre de coupe de canon qu'il desirers, et il donnera un baril de poudre pour chaque coup de canon qui aura ete tire.

(If an American vessel of war arrives in the port of the Gouletta, she will be saluted by the fort with the number of guns that she desires, and she will give a barrel of powder for each gun.)



Article 19. The Turkish text of the first three paragraphs of this article is identical with the text of Article 12 in the treaty, except for very slight differences.

The fourth paragraph is also identical with the same paragraph in the treaty text.

The fifth paragraph in the treaty, however, is lacking in the original form.

The final paragraph of the original form has the same text as in the treaty. There is some difference in the words used, but the provisions are exactly the same.

Article 14. The French of this article in the original form is correct.

NOTE REGARDING ARTICLE 14

That the rate on certain goods imported, prescribed in the second paragraph of Article 14 of the treaty, was, as the French translation shows, ten per cent, is clear from Eaton's statement: "The ten per cent on goods imported in foreign bottoms &c was forced upon us" (D. S., 1 Consular Despatches, Tunis, April 11, 1799).

The English translation usually (and here) printed gives the rate as six per cent. In the translation in the Department of State file "SIX" is in two places changed in pencil to "ten," with the following Pencil footnote: "See the Original Treaty (verbally altered by Col: Lear).⁷⁷

The explanation is probably to be found in the negotiations carried on by Col. Tobias Lear at Tunis in 1807. The "arrangement," as Lear calls it in one of his despatches, which was then made, he reported as thus stated to him by an official of Tunis on January 21, 1807:

his Master would receive the Money in preference to the Ship,-and now that all matters were settled between us; and that the Citizens of the U. States might come here and trade upon the footing of the other Nations and feel as perfect a security as they could do in their own Country. He said the Bey was satisfied, and hoped that he should always continue in harmony with the U. States. (D. S., 7 Consular Despatches, Algiers, January 25, 1807.)

Lear also wrote on February 17, 1807, to Charles D. Coxe, whom he left in charge at Tunis:



I shall pay to His Excellency, the Bey, the sum of Ten Thousand Dollars, on behalf of the United States, as a compensation for his Cruizer and her two Prizes, which were Captured by our Squadron off Tripoli. This will settle all pecuniary matters with this Regency; and our Treaty with the Bey stands as originally agreed upon, excepting that the Citizens of the U. States, who may trade here, paying the same duties on Merchandize as are paid in the U. States, we are placed upon the footing of the most favoured Nations in Commercial Matters,-And, the Bey, will not require any Merchant Vessel of the U. States, to be Chartered to him excepting on the same terms and Conditions as she would be Charter'd to an Individual. (Ibid.)

If those statements of Lear are correct, the terms of the treaty were verbally altered in various respects other than in the mere matter of the rate. Perhaps the arrangement then reached was better described by Coxe in his letter to Commodore Rogers of October 15, 1825 (D. S., 5 Consular Despatches, Tunis), where he wrote:

It will be necessary to go back to the time of Mellimelli's return from the United States, and when Consul Genl Lear came to Tunis in 1807, in the Constitution Frigate Captain Campbell, by order of our Government, to settle all differences with the Bey, which it was found impossible to do with Mellimelli at Washington, who thought only of extorting presents. The result was, that Col. Lear and the Bey, (Hamuda Basha) came to an understanding, that we were to be placed on the same terms with the most favored nations in commercial matters; and in short that the old Treaty should be laid on the shelf, until, our Government should think proper to take measures for a formal alteration of it. Our understanding with them, respecting Salutes was to remain the same as you had left it when you were here with the Squadron in 180~That is, instead of paying for them, we were neither to give nor receive Salutes.

Consul General Lear after this arrangement with the Bey, appointed me to take charge of our affairs here, and I soon had the satisfaction of inducing our merchants to an advantageous commerce with Tunis from 1807 to 1814 - The old Treaty to the contrary notwithstanding.

The proclamation of the treaty with Tunis of 1824 (Document 45) includes the English of certain articles of this treaty; Article 14 is there written as here, that is, with the rate six per cent.



THE EARLIER TRUCE

Prior to the first signature of this treaty a "truce" with Tunis had twice been arranged; on about June 15, 1796, a "truce for six months" was concluded by Famin (American State Papers, Foreign Relations, I, 554); and Cathcart writes thus of an arrangement made in 1795 at Algiers (The Captives, 233):

. . . between those dates I had several conferences with the Dey [of Algiers] and Hadgi Ally [Ambassador of Tunis at Algiers], and this day [November 8, 1795] procured a truce for the United States with Tunis for eight months, guaranteed by the Dey of Algiers, translated it and took the original to Mr. Donaldson, who kept his bed with the gout and colic.

The Turkish original of the truce of June, 1796, is in the archives of the Department of State; it has been thus translated by Doctor Kramers:

The motive of the writing of this document is as follows: On the 11th of the month of Zu'lhiJJah of this year 1210, answering to the 15th of June [June 17, 1796, according to the chronological tables] according to the Greek calendar. The glory of the princes of the Christian nation, the selected chief among the community of Jesus, Washington, the present ruler of America-may his days end with blessings-being desirous and wishing to negotiate a treaty of peace in order to lay the foundations of friendship and to strengthen the sincere amity with the frontier post of the Holy War, the victorious garrison of Tunis the well-preserved, just as our friends, the other Christian Governments, have done the same with our victorious garrison, has confided the negotiations of the said treaty to his Consul Barlow, residing in Algiers, and the said Consul again teas confided the negotiations of the treaty to the French merchant, Joseph Famin, residing in Tunis the well-preserved. The said merchant has appeared in my presence and has stated and declared in general his wish and desire for a treaty between the American ruler and the Government of Tunis the well-preserved. After it has been immediately communicated and confirmed to the said merchant on what terms a treaty could be agreed to, the said merchant has communicated the stipulations of the treaty to the said Consul, and the said Consul has communicated it to his Government. Now, until the answer comes and within a limit of six months after the date of this document, security has been given. Therefore, if during the said period war vessels of our well-preserved garrison place meet at sea with ships of the said Americans they shall not hinder them or molest them in any way, but they shall be treated as friends, and immediately order has been given to our officers to let them go their way. If American ships meet with ships belonging to our well-preserved garrison place, it has been



agreed between the two Governments, that they shall treat each other in a friendly way. This convention has been written and sealed and given into the hands of the said merchant, so that he may send it to its proper place. Until the arrival of the answer this convention shall be observed between the two Governments; according to it both parties shall act, and it shall be opposed in no way. Salutations. Written on the 11th of Zu'lhijjah and the 15th June of the year 1210.

[Tughra (name sign) of Hamuda, commander (mir miran) of the frontier post of the Holy War, Tunis the well-preserved.]

ANNEX

I. ORIGINAL MEMBERS OF THE LEAGUE OF NATIONS SIGNATORIES OF THE TREATY OF PEACE

UNITED STATES OF AMERICA
BELGIUM
BOLIVIA
BRAZIL
BRITISH EMPIRE
CANADA
AUSTRALIA
SOUTH AFRICA
NEW ZEALAND
INDIA
CHINA
CUBA
ECUADOR
FRANCE
GREECE
GUATEMALA
HAITI
HEDJAZ
HONDURAS
ITALY
JAPAN
LIBERIA
NICARAGUA
PANAMA
PERU
POLAND
PORTUGAL
ROUMANIA
SERB-CROAT-SLOVENE STATE



SIAM
CZECHO-SLOVAKIA
URUGUAY
STATES INVITED TO ACCEDE TO THE COVENANT

ARGENTINE REPUBLIC
CHILI
COLOMBIA
DENMARK
NETHERLANDS
NORWAY
PARAGUAY
PERSIA
SALVADOR
SPAIN
SWEDEN
SWITZERLAND
VENEZUELA

n. FIRST SECRETARY GENERAL OF THE. LEAGUE OF NATIONS
The Honourable Sir James Eric DRUMMOND, K.C.M.G., C.B.

Article 1

We want and understand that the law of the late King of glorious memory our lord and father, of the April 23rd 1615, be executed in our islands. We order to all our officers to chase out of our islands all the Jews who have established their home, to who, like to declared enemies of the Christian name, we order to get out within three months, from the day of publication of the law, on pain of confiscation of body and possessions.

Article 2

All the slaves who will be in our islands will be baptized and educated in the catholic, apostolic and roman church. Order the inhabitants who buy Negroes newly arrived to inform the governor and quartermaster of the islands within eight days the latest, on pain of arbitrary fines; that will give order to baptize and educate them in adequate time.



Article 3

We forbid public exercise of other religion than the catholic, apostolic and roman one; want that the contravening persons be punished as rebels and disobeying persons to our commandments. Forbid any assembly for this reason, we declare those one as illicit and seditious subject to the same pain, which will be the same even for the masters who let this done by his slaves.

Article 4

There will no commander to direct the Negroes, who is no of the catholic, apostolic and roman religion, on pain on confiscation of those Negroes against this masters who put a such commander and arbitrary punishment against the commanders who accept this job.

Article 5

We forbid our subjects of the so-called reformed religion to cause trouble either impediment to our other subjects, even to their slaves in the free exercise of the catholic, apostolic and roman religion, on pain of exemplar punishment.

Article 6

We enjoin, all our subjects, whatever function and condition they are, to observe the Sundays and holidays; which are kept to our subjects of catholic, apostolic and roman religion. Forbid them to work either to make their slaves work the appointed days, since midnight to other midnight, to culture the land, making sugars and any other work, on pain of arbitrary fine and punishment against the masters, and of confiscation of the sugars as well as the slaves that our officers will see working. [NB: all pretexts are good, to deprive the slaves of weekly rest and holidays.]



Article 7

We forbid them to hold Negroes market and any kind of goods the appointed days too, on same pain of confiscation of the goods on the market, and arbitrary fine against the merchants.

Article 8

Declare our subjects who are not of the catholic, apostolic and roman religion incapable to contract in the future any valid marriage. Declare bastards the children who will birth from these conjunctions, that we want to be held and reputed, we hold and repute for real cohabitation.

Article 9

Free men who had one or several children in their cohabitation, with their slaves, the master and him will be condemned to a fine of two thousand pounds of sugar. And if they are the slave masters with who they had the so-called children, we want that further the fine, they will be deprive of the slave and the children, and she and them be confiscated to profit of the hospital, without any possibility to be emancipated. This article is not valid when the man is free and he is not married to an other person during his cohabitation with the slave, will marry in the church rules his so-called slave, who will be emancipated by this mean, and the slave become free and legal.5in the black code of 1724 (Louisiana): no possible marriage between white and black, banning of celebrate mix marriages for the priests; no cohabitation between whites and blacks emancipated or free, and slaves.]

Article 10

The so-called solemnity prescribed by the edict of Blois and the declaration of the month of November 1639, for the marriages, will be observes as for free persons as slaves, with nevertheless that the consent of the slave's father and mother be necessary, but only the master's. [NB: the slaves who would be constrained to marry by their master have no legal mean to refuse.]



Article 11

Forbid very expressly the priest to proceed to slaves' marriages, if they don't have their masters' consent. Forbid to the masters to use no compel on their slaves for marry them against their will.

Article 12

The children who will birth from marriages between slaves will be slaves and will belong to the masters of the slaves women and not to their husband's one, if the husband and the wife have different masters.

Article 13

Want if the husband has married a free woman, the children as males as females follow their mother's condition and be free like her in spite of their father's servitude; and if the father is free and the mother slave, the children be slave too.

Article 14

The masters are required to bury in holy land in a cemeteries intended to this aim their baptized slaves; and for those who will die without receive baptism, they will be buried by night in some field close to where they'll deceased. [NB: the black men "holy land" is quite different to the whites "holy land".]

Article 15

Forbid to slaves to carry offensive weapon, either big sticks, on pain of whip and confiscation of the weapons to the benefit of who will seize them; except only those who have been sent hunting by their masters, and will have their notes or know marks.



Article 16

Forbid also to slaves belonging to different masters to form a crowd by day or night on the pretext of wedding party or otherwise, either at one of their masters or elsewhere, and more less in big paths or place away, on pain of corporal punishment, which will not be less than whip and lily flower; in case of frequent repeat offense and others aggravate circumstances, will be able be punished of death, what we let to the judges arbitration. Enjoin our subjects to hunt for the contravening, and arrest them and lead them in jail, although they are not officers and there is no decree against them.

Article 17

The masters will be convinced to have let or tolerated such assemblies composed by slaved who don't belong to them, will be condemned in their own and private names to repair any damage which will be done to their neighbors during these assemblies, in ten ecus fine for first time and twice for subsequent offense.

Article 18

Forbid the slaves to sell sugar canes for any reason or occasion, even with their masters' permission, on pain of whip for the slaves, and of ten pounds for the masters who let this and the same for the buyers.

Article 19

Forbid them too to expose for sell in the market, either bring in the particular houses to sell any kind off foodstuff, even fruits, vegetables, firewood, grasses to feed animals and the products they made, without an express permission of their masters by a note or known marks, on pain of claims of the sold goods, without restriction of price by their masters.

Article 20



Want for this reason that two persons are in charge of each market to verify the foodstuff and goods that have been brought by the slaves, together the notes and known marks of their masters, the carry.

Article 21

Permit to all our subjects inhabitants of our islands to seize all the things they'll find the slaves in charge when don't have notes of their masters, either known marks, to be delivered very shortly to their masters, if the plantations are close of where the slaves will be surprised at committing offense; or else the things will be very shortly sent to the hospital to held in trust till the masters are informed.

Article 22

The masters will be obliged to make supply, per each week, their slaves aged of ten more for their food, with two pots and half, measurement of the country, of manioc flour, or three cassavas weighting two pounds and half each at least, or equivalent things, with two pounds of salted beef or three pounds of fish or anything else with same proportion; and the children, since they are weaned till ten years old, the half of provisions above. [NB: the mortality of black people was very important. They were poorly fed. The white people make them work out of their possibilities for more benefits.]

Article 23

Forbid them to give to the slaves sugar cane brandy for the provisions mentioned in previous article.

Article 24

Forbid them also to release themselves of the food and subsistence of their slaves, by letting them work some days of the week "to be self-employed"



Article 25

The masters will be obliged to supply each slaves every years two clothes or four alders of cloth, as so-called masters like. [NB: in fact, the masters don't care of clothing them.]

Article 26

The slaves who won't be fed, clothed and maintained by their masters in accordance with what we have order by the presents rules will be able to give the opinions to general attorney and the memories in his hands, on what and automatically, if the opinions come to him from other persons, the masters will be prosecuted by his petition and without pay anything, what we want to be observed as the masters' crimes and barbarian and inhuman treatments toward their slaves. [NB: the articles 30 and 31 quash purely and simply the good intentions of the article 26.]

Article 27

The infirm slaves by age, illness otherwise, either the illness is incurable or non, will be supported and will maintain by their master; and incase they would have neglected themselves them, the so-called slaves will be assigned to the hospital; the masters will condemned to pay six sols by day by days for the food and the maintain of each slave. [NB: the current practice is pure and simple desertion]

Article 28

Let us declare that the slaves can not have anything which is not belong to their master, and all come them by industry or liberality of other persons or otherwise whatever the way, is acquired in full property to their master, without the slaves' children, their father or mother, their parents and any free or slave others can lay claim nothing by inheritance, provision of a will between living people or because of death. We declare the such provisions are useless, both all the promises or obligations which would be made, as being made by people legally incompetent to incline and to contract by their own.

Article 29



Let us want nevertheless that the masters are responsible of what their slaves will make by their commandment, and together for what they'll will have managed and negotiated in the shops, and the particular kind of trade of which their masters will appoint them; and the case the masters didn't give any order and didn't appoint them, they will be responsible only for what will profit to them; and if nothing profit to the masters, the earning of this so-called slaves that their masters permitted them to have will be seized, after the masters will have deduced what will be owed to them; except if the earning is, all or a part of goods which the slaves have been permitted to trade for their own, on what their masters will take only by contribution of a sol for a pound with the other creditors.

Article 30

The slaves won't have office neither commission with public functions, neither be constituted agents by others than their masters for manage neither administrate any shop, neither be arbitrators, experts or witnesses in civil and criminal matter. And in case they are listen as witness, their deposition will serve only for memories to help the judges to find out, but those depositions won't be able to be used to have presumptions, neither circumstances, neither evidences.

Article 31

The slaves won't be able to be litigant neither is in judgment in civil matter, in plaintiff or in defendant; neither be private party in criminal matter, except their masters to act and to proceed, and to prosecute for compensations for insults and excess their slaves have been subjected.

Article 32

The slaves will be prosecuted without the need the master get responsible but only in the case of complicity; and so-called slaves will be judged in first pending by ordinary judges and on appeal by the supreme council on the same pre-trial investigation of the case, with the same procedures than free persons.



Article 33

The slave, who hit his master, his mistress or his mistress husband or their children with contusion or bloodshed, or at the face, will be punished by death.

Article 34

And as for the immoderate language or assault which will be committed by slaves against free people, we want that it's be severely punished, even by death if it's necessary.

Article 35

The daylight robberies, even the horses, the mares, the mules, the oxen and the cows one which will be made by slaves, or by emancipated persons, will be punished by corporal pains, even by death if necessary.

Article 36

The robberies of sheep, goats, pigs, poultry, sugar canes, peas, millet, manioc, or others vegetables made by the slaves will be punished regarding the degree of robbery, by the judges, if they'll be able if it's necessary condemn them to be beaten by birch by the enforcer of the great justice, and marked by lily flower.

Article 37

The masters will be obliged, in case of robbery or other damage caused by their slaves, besides the slaves corporal pains, to right the wrong in their name, if they don't prefer to abandon the slaves to the one who the wrong has been made; what they have to choose in three days, starting from the day of the sentence, otherwise they will be waned.



Article 38

The runaway slave who has been on the run during one month starting from the day his master will denounce him to justice, will have the ears cut off and will be marked by lily flower on a shoulder; if he re offends one more time starting from as well as the day of his of the denunciation, will have the ham cut off and will be marked by lily flower on the other shoulder; and the third time he will be punished by death.

Article 39

Emancipated people who will harbor in their house runaway slaves will be condemned for each one toward their masters in fine of three hundred pounds of sugar by retention day; and the other free people who help them in the same way, in ten pounds of fine for each day.

Article 40

The slave, punished by death on denunciation of his master, non accomplice of the crime for what he will have been condemned, will be appraised before the execution by two major inhabitants of the island who will be appointed automatically by the judge; and the price of appraisal will be paid to the master; and to satisfy for what, it will be fixed by the quartermaster for each head of Negroes who rights of the amount of money given by the estimation. It will be settled up for each so-called Negroes, and will be levied by the farmer of the western royal property to avoid charges.

Article 41

It is forbidden to the judges, to our prosecutors, and to the clerks to collect any tax in the criminal trial against the slaves, in pain of misappropriation of public funds.

Article 42



The masters will have the right, when they'll estimate it's necessary, to chain up the slaves and make beat them by sticks and ropes; defend them to torture them, neither make them member mutilations, on pain of confiscation of the slaves and very extraordinarily the masters will be prosecuted. [NB. The reality is that settlers bully, wound, torture, and kill.]

Article 43

We demand to our officers to prosecute the masters and the commanders who will kill a slave under their power and leadership, and punish the murder regarding the atrocity of the circumstances; and in case the forgiveness it's necessary, permit our officers to sent back the forgiven masters and commanders, without it's needing letter of mercy from us.

Article 44

We declare the slaves be movable, and as such enter the community, can not be seize by mortgage, can be shared equally between co-heirs without possibility for one of them to take a part before the sharing neither birthright, neither to be reserved to their wife before death by the husband, and be subject of feudal or descendants retract, feudal and seigniorial rights, to the formalities of the decrees.

Article 45

We don't want to deprive our subjects of the faculty to stipulate them proper to their persons and to their own folks by their side and lineage, as it's the use for money and other movables things.

Article 46

In slaves seizures will be fulfilled prescribed formalities by our orders and customs for seizure of movable things. We want that the money which coming from to be distributed by order of the seizures, or, in case of ruin, a sol for a pound, after the privileged debts will have been paid, and generally that the slaves condition to be well-ordered in all matter, as the one of the others movables things, except these cases.



Article 47

Do not let them be seized and sold separately the husband and the wife with their under age of puberty children, if they are all under the power of the same master; we declare null seizures and separate sale which will be done of them, what we want to take place in voluntary alienations, on punishment against those who would do alienations to be deprived of the one or those they will have kept, who will be awarded to the acquirers, without they would pass to do any supplement of value. [In the practice the master can sell children separately of his parents and to bargain for separately the spouses.]

Article 48

Do not let them can therefore slaves working now in the sugar-refinery, indigo houses and plantations, age of fourteen years and overhead until sixty years, be seized for debts, otherwise as to will arise of the value of their purchase, or that the sugar-refinery or the indigo house or the plantation where they work would been seized really, we defend, hardly of nullity, to proceed by real seizure and adjudication by decree on the sugar-refineries and indigo houses neither plantations, without comprising in it the slaves of the aforesaid age and there working now.

Article 49

The judicial farmers of sugar houses, indigo houses or plantations really seized with slaves will have to pay the entire price of their lease: without the possibility to count as the fruits they perceive the slave children born during their lease.

Article 50

We want, nevertheless all contrary conventions that we declare null, that the so-called children belong to the seized part, if the creditors are satisfied or to the adjudicator if it intervenes a decree; and for that



purpose mention, will be done in the last forepart notice before the interposition of the decree, the so-called children born the slaves since the real seizure; that in same notice mention will be done the deceased slaves since the real seizure in which they were counted.

Article 51

We want to avoid expenses and procedure lengths, that the giving away of entire value of the conjoined fund adjudication and slaves and what will proceed from the value of judicial leases, be done between creditors according to the order of their privileges and mortgages, without distinguishing what is for the fund value of what is for the slaves value.

Article 52

And nevertheless the feudal and seigniorial rights will be paid only in proportion to the funds price.

Article 53

It will be only admit to retire the ordered funds, the persons of noble lineage and feudal lords who retire the slaves who have been sold with these funds, neither the purchasers won't be able to keep the slaves without the funds.

Article 54

We enjoin to noble guardians and burgesses, persons who rent usufruct and others enjoying of the funds to which are joined who work, to steer the appointed slaves as good paterfamilias without they would pass after their administration to give back the value of those who will be deceased or full-fashioned by illness, age or otherwise without their lack, and without they draw as to hold back as fruits to their profits born of slaves children lasting their administration; who we want be preserved and return to those who will be his masters and proprietors.



Article 55

The masters of twenty years old will be able to free their slaves by all actions between living persons or because of death, without they would to pass to give reasons of their emancipation, neither that they would need of opinion of their parents, though they would be minor of twenty five years. [Measures will come hereafter to penalize hardly the emancipation]

Article 56

Slaves who will have been done residuary legatees by their masters, or named executors of their testaments, or guardians of their children, will pass and will consider as free men. [It didn't ever has been any black guardian neither of mulatto of the whites, and of course, there hasn't been a black executor or half-breed of the white deceased masters.

Article 57

We declare their emancipation made in our island serve as them as place of birth in our island, and the emancipated slaves don't need our letters of naturalization to enjoy our natural subjects advantages in our kingdom, lands and countries of our obedience, even they born in foreign countries.

Article 58

We command the emancipated persons to respect singularly their ancient masters, their widows and their children; or else the insult they will have made to them be punished more severely than if it has been somebody else. We declare them franc and quit toward them of all other charges, services and useful rights that their ancient masters would like too pretend, both on the persons and properties and succession in quality of bosses.

Article 59



We grant to the emancipated persons the same rights, privileges and immunity, which enjoy the persons born as free, we want that merit of an acquired freedom produce in them, also as for their persons than for their goods, the same effects as the happiness of the natural freedom causes to our other subjects. [NB: a lot of restrictions will be added: no access to nobility, no access to the “whites class”, no possibility to have a practice in magistrate and in the militia, no job which can make them meet, even far from, the juridical or judicial functions, etc.]

Article 60

We declare the seizures and fines, which have not particular destination by these present articles, belong to us, to be paid to those who are appointed to the collect of our incomes. We want nevertheless that the third of these so-called confiscation and fine be given to the hospital established in the island where they have been made. We ask the persons who hold our sovereign council established in Martinique, Guadeloupe, saint-Christopher, that they have to make read, publish and register these present articles, and keep and observe point by point in accordance with the form and the term of the content in them, without to agree on neither permit they are contravened in any way, in spite of all edicts, declarations and customs, we have departed and depart from by these present articles. Because it's our good pleasure; in order to be firm and stable matter forever, we have made append our seal. Given in Versailles in the month of March sixteen eighty-five and our reign the forty-second. Signed Louis. Further, by the King, Colbert. Stamp Le Tellier. And sealed with the great green wax seal, in green and red silk shellac.

Draft of the Inter-American Declaration of the Rights of Indigenous Peoples

Draft approved by the IACHR at the 1278 session held on September 18, 1995

The present draft has been approved by the Inter American Commission on Human Rights of the OAS for consultation about its text with Governments, indigenous organizations, other interested institutions and experts. On the basis of their answers and comments, the IACHR will prepare its final proposal to be presented to the General Assembly of the OAS.



INTERAMERICAN COMMISSION ON HUMAN RIGHTS

PREAMBLE

1. Indigenous institutions and the strengthening of nations.

The Member States of the Organization of American States (hereafter the States),

Recalling that the indigenous peoples of the Americas constitute an organized, distinctive and integral segment of their population and are entitled to be part of the countries' national identity, and have a special role to play in strengthening the institutions in the state and in establishing national unity based on democratic principles; and,

Further recalling that some of the democratic institutions and concepts embodied in the Constitutions of American States originate from institutions of the indigenous peoples and that in many instances their present participatory systems for decision-making and the internal authority of the indigenous peoples contribute to improving democracies in the Americas.

2. Eradication of poverty

Recognizing the severe and widespread poverty afflicting indigenous peoples in many regions of the Americas and that their living conditions and social services are generally deplorable; and concerned that indigenous peoples have been deprived of their human rights and fundamental freedoms resulting inter alia in their colonization and the dispossession of their lands territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests.

Recalling that in the Declaration of Principles issued by the Summit of the Americas. in December 1994, the Heads of State and Governments. declared that in observance of the International Decade of the World's Indigenous People, they will focus their energies on improving the exercise of democratic rights and the access by indigenous peoples and their communities.



3. Indigenous Culture and Ecology

Appreciating the respect for the environment accorded by the cultures of indigenous peoples of the Americas, and considering the special relationship between the indigenous peoples and the land on which they live.

4. Harmonious relations, respect and the absence of discrimination

Mindful of the responsibility of all the States and peoples of the Americas to participate in the struggle against racism and racial discrimination.

5. Enjoyment of community rights

Recalling the international recognition of rights that can only be enjoyed when exercised in community with other members of a group.

6. Indigenous survival and control of their territories

Considering that in many indigenous cultures, traditional collective systems for control and use of land and territory, including bodies of water and coastal areas, are a necessary condition for their survival, social organization, development and their individual and collective well-being, and that the form of such control and ownership is varied and distinctive and does not necessarily coincide with the systems protected by the domestic laws of the States in which they live.

7. Demilitarization of indigenous areas

Noting the presence of armed forces in many areas of the lands and territories of the indigenous peoples and emphasizing the importance of withdrawing them from where they are not strictly needed for their specific functions.

8. Human rights instruments and other advances in international law

Recognizing the preeminence and applicability of the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and international human rights law to the States and peoples of the Americas; and



Mindful of the progress achieved by the States and indigenous organizations in codifying indigenous rights especially in the sphere of the United Nations and the International Labor Organization, and in this regard recalling the ILO Agreement 169 and the Draft UN Declaration on the subject.

Affirming the principle of the universality and indivisibility of human rights, and the application of international human rights to all individuals.

9. Advances in the provisions of national instruments

Noting the constitutional and legislative progresses achieved in some countries of the Americas in guaranteeing the rights and institutions of indigenous peoples.

Declare:

SECTION ONE. 'INDIGENOUS PEOPLES'

Art. 1 Definition

1. In this Declaration indigenous peoples are those who embody historical continuity with societies which existed prior to the conquest and settlement of their territories by Europeans. (alternative 1) [as well as peoples brought involuntarily to the New World who freed themselves and cultures from which they have been torn]. (alternative 2) [, as well as tribal peoples whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations].
2. Self identification as indigenous or tribal shall be regarded as a fundamental criterion for determining, the groups to which the provisions of this Declaration apply.
3. The use of the term "peoples" in this Instrument shall not be construed as having any implication with respect to any other rights that might be attached to that term in international law.



SECTION TWO. 'HUMAN RIGHTS'

Art. II. Full observance of human rights

1. Indigenous peoples have the right to the full and effective enjoyment of the human rights and fundamental freedoms recognized in the Charter of the OAS the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and international human rights law; and nothing in this Declaration shall be construed as in any way limiting or denying those rights or authorizing any action not in accordance with the instruments of international law including human rights law.
2. The States shall ensure for all indigenous peoples the full exercise of their rights.
3. The States also recognize that the indigenous peoples are entitled to collective rights insofar as they are indispensable to the enjoyment of the individual human rights of their members. Accordingly they recognize the right of the indigenous peoples to collective action, to their cultures, to profess and practice their spiritual beliefs and to use their languages.

Art III. Right to belong to an indigenous community or nation

Indigenous peoples and individuals have the right to belong to an indigenous community or nation in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right.

Art. IV. Legal status of communities

The States shall ensure that within their legal system personality is attributed to communities of indigenous peoples.

Art. V. No forced assimilation



The States shall not take any action which forces indigenous peoples to assimilate and shall not endorse any theory, or engage in any practice, that imports discrimination, destruction of a culture or the possibility of the extermination of any ethnic group.

Art. VI Special guarantees against discrimination

1. The States recognize that where circumstances so warrant special guarantees against discrimination may have to be instituted to enable indigenous peoples to fully enjoy internationally and nationally-recognized human rights; and that indigenous peoples must participate fully in the prescription of such guarantees.
2. The States shall also take the measures necessary to enable both indigenous women and men to exercise, without any discrimination, civil, political, economic, social and cultural rights. The States recognize that violence exerted against persons because of their gender prevents and nullifies the exercise of those rights.

SECTION THREE. CULTURAL DEVELOPMENT

Art. VII. Right to cultural integrity

1. States shall respect the cultural integrity of indigenous peoples, their development in their respective habitats and their historical and archeological heritage, which are important to the identity of the members of their groups and their ethnic survival.
2. Indigenous peoples are entitled to restitution in respect of property of which they have been dispossessed, or compensation in accordance with international law
3. States shall recognize and respect indigenous lifestyles, customs, traditions, forms of social organization, use of dress, languages and dialects.

Art. VIII. Philosophy, outlook and language

1. States recognize that indigenous languages philosophy and outlook are a component of national and universal culture and as such shall respect them and facilitate their dissemination .



2. The States shall take measures to see to it that broadcast radio and television programs are broadcast in the indigenous languages in the regions where there is a strong indigenous presence and to support the creation of indigenous radio stations and other media.
3. The States shall take effective measures to enable indigenous peoples to understand administrative legal, and political rules and procedures and to be understood in relation to these matters. In areas where indigenous languages are predominant, States shall endeavor to establish the pertinent languages as official languages and to give them the same status that is given to non-indigenous official languages.
4. When indigenous peoples wish educational systems shall be conducted in the indigenous languages and incorporate indigenous content and that shall also provide the necessary training and means for complete mastery of the official language or languages.

Art. IX. Education

1. Indigenous peoples shall be entitled to a) establish and set in motion their own educational programs institutions and facilities b) to prepare and implement their own educational plans programs curricula and materials; c) to train, educate and accredit their teachers and administrators The States shall endeavor to ensure that such systems guarantee equal educational and teaching, opportunities for the entire population and complementary with national educational systems.
2. States shall ensure that those educational systems are equal in all ways to that provided to the rest of the population.
3. State shall provide financial and any other type of assistance needed for the implementation of the provisions of this article.

Art. X. Spiritual and religious freedom

1. Indigenous peoples have the right to liberty of conscience freedom of religion and spiritual practice for indigenous communities and their members, a right that implies freedom to conserve them, change them, profess and propagate them both publicly and privately.
2. States shall take necessary measures to ensure that attempts are not made to forcibly convert indigenous peoples or to impose on them beliefs against the will of their communities.



3. In collaboration with the indigenous peoples concerned, the States shall adopt effective measures to ensure that their sacred sites, including burial sites, are preserved, respected and protected. When sacred graves and relics have been appropriated by state institutions they shall be returned.

Art. XI. Family relations and family ties

1. Families are a natural and basic component of societies and must be respected and protected by the State. Consequently the State shall protect and respect the various established forms of indigenous organizations relating to family and filiation.
2. In determining the child's best interest in matters relating to the protection and adoption of children of members of indigenous peoples and in matters of breaking of ties and other similar circumstances, consideration shall be given by Courts and other relevant institutions to the views of the those peoples including individual family and community views.

Art. XII. Health and wellbeing

1. The States shall respect indigenous medicine, pharmacology, health practices and promotion, including preventive and rehabilitative practices.
2. They shall facilitate the dissemination of those medicines and practices of benefit to the entire population.
3. Indigenous peoples have the right to the protection of vital medicinal plants, animal and minerals.
4. Indigenous peoples shall be entitled to use, maintain, develop and manage their own health services, and they shall also have access, without any discrimination, to all health institutions and services and medical care.
5. The states shall provide the necessary means to enable the indigenous peoples to eliminate such health conditions in their communities which fall below international accepted standards.

Art. XIII. Right to environmental protection

1. Indigenous peoples are entitled to a healthy environment, which is an essential condition for the enjoyment Or the right to life and well-being.



2. Indigenous peoples are entitled to information on the environment, including information that might ensure their effective participation in actions and policies that might affect their environment.
3. Indigenous peoples shall have the right to conserve restore and protect their environment and the productive capacity of their lands, territories and resources
4. Indigenous peoples shall participate fully in formulating and applying government programmes of conservation of their lands and resources.
5. Indigenous peoples shall be entitled to assistance from their states for purposes of environmental protection and may request assistance from international organizations.

SECTION FOUR. 'ORGANIZATIONAL AND POLITICAL RIGHTS'

Art XIV. Rights of association, assembly, freedom of expression and freedom of thought.

1. The States shall promote the necessary measures to guarantee to indigenous communities and their members their right of association assembly and expression in accordance with their usages, customs, ancestral traditions, beliefs and religions
2. The States shall respect and enforce the right of assembly of indigenous peoples and to the use of their sacred and ceremonial areas, as well as the right to full contact and common activities with sectors and members of their ethnic groups living in the territory of neighboring states.

Art. XV. Right to self government, management, and control of internal affairs.

1. States acknowledge that indigenous peoples have the right to freely determine their political status and freely pursue their economic social and cultural development and that accordingly they have the right to autonomy or self-government with regard to their internal and local affairs including culture religion education information media health housing employment, social welfare, economic activities, land and resource management,



the environment and entry by nonmembers; and to the ways and means for financing these autonomous functions.

2. Indigenous populations have the right to participate without discrimination, if they so decide, in all decision-making, at all levels, with regard to matters that might affect their rights, lives, and destiny. They may do so through representatives elected by them in accordance with their own procedures, They shall also have the right to maintain and develop their own indigenous decision-making institutions, as well as equal opportunities to access to all national fora.

Art. XVI. Indigenous Law

1. Indigenous law is an integral part of the States' legal system and of the framework in which their social and economic development takes place.
2. Indigenous peoples are entitled to maintain and reinforce their indigenous legal systems and also to apply them to matters within their communities including systems pertaining to ownership of real property and natural resources resolution of conflicts within and between indigenous communities crime prevention and law enforcement and maintenance of internal peace and harmony.
3. In the jurisdiction of any State procedures concerning indigenous peoples or their interests shall be conducted in such a way as to ensure the right of indigenous peoples to full representation with dignity and equality before the law. This shall include observance of indigenous law and custom and, where necessary, use of the native language.

Art. XVII. National incorporation of indigenous legal and organizational systems

1. The States shall promote the inclusion in their national organizational structures. of institutions and traditional practices of indigenous peoples.
2. The institutions of each state in areas that are predominantly indigenous or that are serving in those communities, shall be designed and adapted as to reflect and reinforce the identity, culture and organization of those populations, in order to facilitate their participation.



SECTION V. 'SOCIAL, ECONOMIC AND PROPERTY RIGHTS'

Art. XVIII. Traditional forms of ownership and ethnic survival. Rights to land and territories

1. Indigenous peoples have the right to the legal recognition of the various and specific forms of control, ownership and enjoyment of territories and property by indigenous peoples.
2. Indigenous peoples have the right to the recognition of their property and ownership rights with respect to lands and territories they have historically occupied, as well as to the use of those to which they have historically had access for their traditional activities and livelihood.
3. Where property and user rights of indigenous peoples arise from rights existing prior to the creation of those States the States shall recognize the titles of indigenous peoples relative thereto as permanent exclusive inalienable imprescriptible and indefeasible. This shall not limit the right of indigenous peoples to attribute ownership within the community in accordance with their customs traditions uses and traditional practices nor shall affect any collective community rights over them. Such titles may only be changed by mutual consent between the States and respective indigenous people when they have full knowledge and appreciation of the nature or attributes of such property.
4. The rights of indigenous peoples to existing natural resources on their lands must be especially protected. These rights include the right to the use management and conservation of such resources.
5. In the event that ownership of the minerals or resources of the subsoil pertains to the State so that the State has rights over other resources on the lands the governments must establish or maintain procedures for the participation of the peoples concerned in determining whether the interests of these people would be adversely affected and to what extent before undertaking or authorizing any program for tapping of exploiting existing resources on their lands. The peoples concerned shall participate in the benefits of such activities, and shall receive compensation in accordance with international law, for any damages which they may sustain as a result of such activities.
6. The States shall not transfer or relocate indigenous peoples except in exceptional cases, and in those cases with the free, genuine and informed consent of those populations, with



full and prior indemnity and prompt replacement of lands taken, which must be of similar or better quality and which must have the same legal status; and with guarantee of the right to return if the causes that gave rise to the displacement cease to exist.

7. Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated occupied, used or damaged, or the right to compensation in accordance with international law when restitution is not possible.
8. The States shall take all measures, including the use of law enforcement personnel to avert prevent and punish if applicable any intrusion or use of those lands by unauthorized persons or by persons who take advantage of indigenous peoples or their lack of understanding of the laws, to take possession or make use of them. The States shall give maximum priority to the demarcation of properties and areas of indigenous use.

Art. XIX. Workers rights

1. Indigenous peoples shall have the right to full enjoyment of the rights and guarantees recognized under international labor law or domestic labor law; they shall also be entitled, where circumstances so warrant, to special measures to correct, redress and prevent the discrimination to which they have historically been subject.
2. Where circumstances so warrant, the States shall take such special measures as may be necessary to:
 - a. protect effectively the workers and employees who are members of indigenous communities in respect of fair and equal hiring and terms of employment, insofar as general legislation governing workers overall does not provide;
 - b. to improve the work inspection service in regions, companies, or paid activities involving indigenous workers or employees,
 - c. ensure that indigenous workers:
 - i. enjoy equal opportunity and treatment as regards all conditions of employment, job promotion and advancement;
 - ii. are not subjected to racial, sexual or other forms of harassment;
 - iii. are not subjected to coercive hiring practices, including servitude for debts or



any other form of servitude. even if they have their origin in law, custom or a personal or collective arrangement which shall be deemed absolutely null and void in each instance;

iv. are not subjected to working conditions that endanger their health, particularly as a result of their exposure to pesticides or other toxic or radioactive substances;

v. receive special protection when they serve as seasonal, casual or migrant workers in agriculture or in other activities and also when they are hired by labor contractors in order that they benefit from national legislation and practice which must itself be in accordance with firmly established international human rights standards in respect of seasonal workers, and

vi. ensure that indigenous workers or employees are provided with full information on their rights consistent with such national legislation and international standards and on recourses available to them in order to protect those rights.

Art. XX . Intellectual property rights.

1. Indigenous peoples shall be entitled to recognition of the full ownership control and protection of such intellectual property rights as they have in their cultural and artistic heritage, as well as special measures to ensure for them legal status and institutional capacity to develop use share market and bequeath that heritage on to future generations.
2. Where circumstances so warrant indigenous peoples have the right to special measures to control develop and protect and full compensation for the use of their sciences and technologies. including their human and genetic resources in general, seeds, medicine, knowledge of plant and animal life, original designs and procedures.

Art. XXI. Right to development.

1. The States recognize the right of indigenous peoples to decide democratically what values, objectives, priorities and strategies will govern and steer their development course, even if they are different from those adopted by the national government or by other segments of society. Indigenous peoples shall be entitled to obtain on a non-discriminatory basis appropriate means for their own development according to their



preferences and values, and to contribute by their own means, as distinguishable societies, to national development and international cooperation.

2. The States shall take necessary measures to ensure that decisions regarding any plan, program or proposal affecting the rights or living conditions of indigenous people are not made without the free and informed consent and participation of those peoples, that their preferences are recognized and that no such plan, program or proposal that could have harmful effects on the normal livelihood of those populations is adopted. Indigenous communities have the right to restitution or compensation in accordance with international law, for any damage which, despite the foregoing precautions, the execution of those plans or proposal may have caused them; and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.
- 3.

SECTION SIX. 'GENERAL PROVISIONS'

Art. XXII. Treaties agreements and other implied arrangements.

Indigenous peoples have the right to the recognition observance and enforcement of treaties agreements and other arrangements concluded with States or their successors according to their spirit and intent and to have States honor and respect such treaties agreements and other constructive arrangements. Conflicts and disputes which cannot otherwise be settled should be submitted to competent international bodies (agreed to by all parties concerned).

Art. XXIII.

Nothing in this instrument shall be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire.

Art. XXIV.

Nothing in this instrument shall be construed as granting any rights to ignore boundaries between States.



September 19, 1995

