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FROM THOMAS JEFFERSON TO JOHN ADAMS, WITH DRAFT OF TREATY PROPOSED FOR BARBARY STATES, 6 AUGUST 1785

To John Adams, with Draft of Treaty Proposed for Barbary States

DEAR SIR

Paris Aug. 6. 1785.

I now inclose you a draught of a treaty for the Barbary states, together with the notes Dr. Franklin left me. I have retained a presscopy of this draught, so that by referring to any article, line and word in it you can propose amendments and send them by the post without any body's being able to make much of the main subject. I shall be glad to receive any alterations you may think necessary as soon as convenient, that this matter may be in readiness. I inclose also a letter containing intelligence from Algiers. I know not how far it is to be relied on. My anxiety is extreme indeed as to these treaties. What are we to do? We know that Congress have decided ultimately to treat. We know how far they will go. But unfortunately we know also that a particular person has been charged with instructions for us, these five months who neither comes nor writes to us. What are we to do? It is my opinion that if Mr. Lambe does not come in either of the packets (English or French) now expected, we ought to proceed. I therefore propose to you this term, as the end of our expectations of him, and that if he does not come we send some other person. Dr. Bancroft or Capt. Jones occur to me as the fittest. If we consider the present object only, I think the former would be most proper: but if we look forward to the very probable event of war with those pirates, an important object would be obtained by Capt. Jones's becoming acquainted with their ports, force, tactics &c. Let me know your opinion on this. I have never mentioned it to either, but I suppose either might be induced to go. Present me affectionately to the ladies & Colo. Smith & be assured of the sincerity with which I am Dr. Sir Your friend & servt.,

TH: JEFFERSON

ENCLOSURE

Draught of a Treaty of Amity and Commerce between the United states of America and

For the purpose of establishing peace, friendship and commerce between the United states of America and their citizens on the one part and _____ and his subjects on the other, the parties have established the following articles.

1. There ^o shall be a firm, inviolable and universal peace and sincere friendship between the United states of America and their citizens on the one part and _____ and his subjects on the other part, without exception of persons or places.
2. His ^o majesty agrees to release all citizens of the United states now in captivity within his dominions, and to restore all property which has been taken by any of his subjects from citizens of the United states.
3. No ^o vessel of his majesty shall make captures or cruize within sight ^o of the coasts of the United states.
4. No ^o citizen or subject of either party shall take from any power with ^o whom the other may be at war any commission or letter of marque ^o for arming any vessel to act as a privateer against the other on pain of being punished as a pirate.
5. If ^o one of the parties should be engaged in war with any other power ^o, the free intercourse and commerce of the subjects or citizens of ^o the party remaining neuter with the belligerent powers shall not be interrupted. On the contrary in that case as in full peace the vessels of the neutral party may navigate freely to and from the ports and on the coasts of the belligerent parties, free vessels making free goods, insomuch that all things shall be adjudged free which shall be on board any vessel belonging to the neutral party although such things belong to an enemy of the other: and the same freedom shall be extended to persons who shall be on board a free vessel, although they should be enemies to the other party, unless they be souldiers in actual service of ^o such enemy. In like manner all persons subjects or citizens of either party, and all property belonging to subjects or citizens of either party found on board a vessel of the enemy of the other shall be free from capture and detention.
6. In ^o the same case where one of the parties is engaged in war with any ^o other power that the vessels of the neutral party may be readily and ^o certainly known it is agreed that they shall be provided with sea letters or passports which shall express the name, the property and burthen of the vessel, as also the name and dwelling of the master, which passports shall

be made out in good and due forms (to be settled by conventions between the parties whenever occasion shall require) shall be renewed as often as the vessel shall return into port, and shall be exhibited whensoever required as well in the open sea as in port. But if the said vessel be under convoy of one or more vessels of war belonging to the neutral party, the simple declaration of the officer commanding the convoy that the said vessel belongs to the party of which he is shall be considered as establishing the fact and shall relieve both parties from the trouble of further examination.

7. And ^o to prevent entirely all disorder and violence in such cases it is stipulated ^o that when the vessels of the neutral party, sailing without convoy ^o, shall be met by any vessel of war public or private of the other party, such vessel of war shall not approach within cannon shot of the said neutral vessel nor send more than two or three men in their boat on board the same to examine her sea letters or passports.

8. All ^o persons belonging to any vessel of war public or private who shall ^o molest or injure in any manner whatever the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest, sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

9. All ^o citizens of the United states taken by any of the powers of Barbary ^o or their subjects and brought into any of the ports or dominions of the emperor of Marocco shall be immediately set at liberty by the emperor: and all vessels and merchandize belonging to citizens of the United states, and taken by any of the said powers or their subjects and brought into any of the ports or dominions of his Majesty shall in like manner be caused by his majesty to be delivered up by the captors without being carried out of port, and shall be faithfully restored to the said citizens owning them.

10. If ^o the citizens or subjects of either party, in danger from tempests ^o, pirates, enemies or other accident, or needing repairs, or supplies of ^o water, food or other necessities, shall take refuge with their vessels or ^o effects within the harbours or jurisdiction of the other, or if the armed vessels public or private of either party, shall take such refuge for any the same causes, they shall be received, protected and treated with humanity and kindness, and shall be permitted to furnish themselves at reasonable prices with all refreshments, provisions and other things necessary for their sustenance, health and accommodation and for the repair of their vessels.

11. When ^o any vessel of either party shall be wrecked, foundered, or otherwise ^o damaged on the coasts or within the dominions of the other, their ^o respective subjects or citizens shall receive, as well for themselves as ^o for their vessels and effects the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case: and if the operations of repair shall require that the whole or any part of their cargo be unladed, they shall pay no duties, charges or fees on the part which they shall relade and carry away.

12. The vessels ^o of the subjects or citizens of either party coming on any coast belonging to the other but not willing to enter into port, or being entered into port and not willing to unload their cargoes or break bulk, shall have liberty to depart and to pursue their voiage without molestation and without being obliged to pay any duties charges or fees whatsoever or to render any account of their cargo.

13. Each party ^o shall endeavor by all the means in their power to protect and defend all vessels and other effects belonging to the citizens or subjects of the other, and the persons of the citizens and subjects of the other, which shall be within the extent of their jurisdiction by sea or land, and shall use all their efforts to liberate such persons and to recover and cause to be restored to the right owners their vessels and effects which shall be taken within the extent of their said jurisdiction.

14. Whenever the vessels ^o of either party in any port of the other shall be about to depart, all hostile vessels in the same port or it's vicinities shall be detained by the party within whose jurisdiction they are until such vessel shall have had a reasonable time to escape.

15. No vessels ^o of war of the United states within the ports of his majesty ^o shall be searched under pretence of their having on board fugitive slaves, or under any other pretence whatever, nor shall any person be required to pay for any such slaves, nor to redeliver them if any such should really have taken asylum therein.

16. The vessels ^o of war of either party coming to anchor in a port of the other shall be saluted by the forts or batteries with as many guns as a vessel of the same size of any other nation, which vessel shall return the salute, gun for gun.

17. The subjects ^o and citizens of either party may frequent the coasts and countries of the other, and reside and trade there in all sorts of produce, manufactures and merchandize, the purchase and sale of which shall be free to all persons of every description [unembarrassed by monopoly],¹ paying no greater duties than the [natives of the country or the] most

favoured nation pay; and they shall enjoy all the rights privileges and exemptions in navigation and commerce which [native subjects or citizens, or] the subjects of the most favored nation enjoy^o. They shall also be free to pass and repass with their merchandize within the territories of the other without being obliged to obtain passports.

18. All merchants^o, commanders of vessels and other subjects and citizens^o of each party shall have free liberty in all places within the dominion or jurisdiction of the other to manage their own business themselves, or to employ whomsoever they please to manage the whole or any part thereof for them: and shall not be obliged to make use of any interpreter broker or other person whatsoever, nor to pay them any salary or fees unless they chuse to make use of them. Moreover, they shall not be obliged in loading or unloading their vessels to make use of those workmen which may be appointed by public authority for that purpose, but it shall be entirely free for them to load or unload them by themselves, or to make use of such persons in loading or unloading them as they shall think fit, without paying any fees or salary to any other whomsoever: neither shall they be forced to unload any sort^o of merchandize into any other vessels, or to receive them into their own or to wait for their being loaded longer than they please.

19. No merchant^o or other citizen or subject of either party within the territories of the other shall be obliged to buy or sell any merchandize or thing against his will, and shall be free to buy and sell whatever he may think² proper.

20. That the vessels^o of either party loading within the ports or jurisdiction of the other may not be uselessly harrassed or detained, it is agreed that all examinations of goods required by the laws shall be made before they are laden on board the vessel, and that there shall be no examination after, nor shall the vessel be searched at any time unless articles shall have been laden therein clandestinely and illegally, in which case the person by whose order they were carried on board, or who carried them without order, shall be liable to the laws of the land in which he is. But no other person shall be molested, nor shall any other goods nor the vessel be seised or detained for that cause.

21. The subjects^o or citizens of either party, their vessels and effects shall not be liable^o to any embargo seisure or detention on the part of the other for any military expedition or other public or private purpose whatsoever. And in all cases of seizure, detention or arrest for debts contracted by any citizen or subject of the one party within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only and according to the regular course of proceeding usual in such cases.

22. If any difference^o either civil or criminal arise between two citizens of the United States^o within the territories of his majesty neither shall be bound to answer or appear before the judiciary institutions of the country nor to obey any officer or process thereof, but it shall be decided by the Consul for the United states, who shall have full authority in every such case civil and criminal to proceed according to the instructions he shall have received from Congress. But if the power of the country shall be necessary to aid him in the arrest, detention or punishment of one of the parties, he shall receive such aid.

23. If any citizen^o of the United states within the territories of his majesty, assault, strike, wound, or kill a subject of his majesty or any other person under his protection (other than a fellow-citizen which case is herein before provided for) he shall be punished in the same manner and not more rigorously than a subject who should have committed the same offence. Nor shall he be punished until the Consul^o of his nation shall have been called on to defend him. And if he make his escape, neither the said Consul nor any other citizen of the said United states shall be detained or molested on that account. A subject of his majesty committing a like offence within his territories on a citizen of the United states shall be punished in the same manner as if he had committed it on one of his majesty's subjects.

24. The citizens^o or subjects of the United states shall have power to dispose^o of their personal goods within the jurisdiction of his majesty by testament, donation or otherwise: and their representatives shall succeed to their said personal goods within the same jurisdiction by testament, or ab intestato and may take possession thereof either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence^o of the representative the Consul, vice consul or agent for the United states shall take care of the said goods according to his instructions,^o or if there be no such Consul, vice consul or agent, then certain good and principal people of the country shall be appointed^o to make an inventory of them and to take care of them for the representative, so that the officers of the said country may not meddle with them on pretence of escheat, forfeiture or on any other pretence whatever.

25. Each party^o shall be at liberty to keep within any the ports of the other Consuls^o, viceconsuls, agents, or commissaries of their own appointment^o who shall be free and secure in their persons, houses, and effects^o, and shall not in any case be bound to answer for the debts of any citizens of their nation or others unless they shall have obliged themselves

thereto by writing. Each of them shall be at liberty to chuse his own interpreters, brokers and other agents and servants, to go as often as he pleases on board any vessels in the harbours, to pass and repass in the country, to practise his own religion in his own house openly and freely and receive any other persons there to do the same, without being subject to molestation or insult by word or deed. He ^o shall enjoy an exemption from all duties for the provisions and necessaries ^o of every kind for his house and family, shall be authorised to take ^o depositions, authenticate contracts, deeds, wills, and other writings, give passports, and perform all other the functions of his office according to his instructions, without impediment from any, but on the contrary shall be aided therein by the power of the country when he shall ask such aid.

26. If any contravention ^o to this treaty shall happen, the peace shall continue ^o nevertheless: but the party injured shall demand amicable reparation, and until this shall have been denied shall not appeal to arms.

27. If war ^o should arise between the two parties, the subjects and citizens ^o of either country, then residing or being in the other, shall be allowed ^o to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects without molestation or hinderance.

28. If either party ^o shall hereafter grant to any other nation any particular favour in navigation or commerce, it shall immediately become common to the other party, freely where it is freely granted to such other nation, or on yeilding the compensation where such other nation does the same.

29. This treaty ^o shall be in force fifty years from the exchange of ratifications which exchange shall be within eighteen months from the date hereof, and in the mean time the several articles thereof shall be observed on both sides as if they were already ratified.

In witness whereof &c.

Note, in the marginal references G.D. stands for our General Draught, and the number following it for the article of that general draught. A. stands for Algerines. D. for Dutch. E. for English. F. for French. M. for Moors, the first number for the date and the second for the article of the treaty. Thus D.M.1683. 21. stands for the treaty between the Dutch and Moors, 1683. art. 21. All those here referred to will be found in the 5th. and 7th. vols. of the Corps Diplomatique.

1. There shall be peace.

2. Prisoners shall be released.

3. No Moorish vessels shall cruise on our coasts.

4. The citizens of neither to arm against the other under a foreign power.

5. Free vessels ^o shall make free goods and persons, and free goods and persons not to lose freedom tho' in enemy's vessels.

6. Vessels to be provided with passports.

7. Armed vessels not to approach trading vessels.

8. Masters of armed vessels to give security.

9. Citizens of U.S. and their property brought by any Barbary vessel into Marocco, to be released.

10. Vessels forced by enemy, tempest or other necessity, shall be received into harbour and protected.

11. Vessels ^o wrecked or damaged shall be protected and aided.

12. Vessels not breaking bulk to pay no duties.

13. Vessels and effects mutually protected in the harbours of each other.

14. On their departure, hostile vessels to be detained.

15. Vessels of war not be searched, asylum for fugitive slaves.


16. Vessels of war to be saluted.

17. Free intercourse and commerce between the parties. no monopolies.

18. Individuals may transact their own business.

19. Every one free to buy and sell, but shall not be compelled to buy or sell.

20. Goods ^o shall be examined before laden on board the vessel.

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21. No embargo on vessels. persons and effects not to be seized. procedure for debts.
 22. Differences between citizens of U.S. to be decided by Consul.
 23. Assault between American and Moor to be punished as if both were Moors.
 24. The goods of persons dying shall go to their representatives.
 25. Consuls and their privileges.
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26. Contravention.
 27. War.
 28. Future favors to other nations to become common to these parties.
 29. Duration of treaty. Ratification. In mean time, in force.

RC (MHi: AMT); endorsed in part: "ansd. 18 [Aug.] 1785." PrC (DLC). Recorded in SJL as sent "by Mr. Prentis"; entry in SJPL reads: "Adams John. Barbary." Enclosures: Draft of a treaty (MS in MHi: AMT); undated, in TJ's hand; the "retained ... press copy" has not been found, nor have Franklin's notes been located. The "letter containing intelligence from Algiers" has not been found, though it may have been that enclosed in Jones to TJ, 31 July 1785, or Bondfield to TJ, 14 July 1785.

Although Franklin has generally been credited with writing the first draft of the treaty with the Barbary states (e.g., Van Doren, *Franklin*, p. 713), it is apparent that in the few short weeks before his departure he had time to prepare but little more than a table of references to pertinent articles in existing treaties. These notes he did not "have time to put into form," but left them for TJ to "reduce" (see TJ to Adams, 22 June, 7 July, and 28 July 1785). Whether TJ used all of the indicated articles cannot be determined in the absence of Franklin's notes, but, as in the preparation of the GENERAL DRAUGHT (see under 10 Nov. 1784), TJ made his own classification, this time grouping the articles under "Vessels at Sea," "Vessels in Port," and "Persons on Shore." In this and in other respects the first draft was unquestionably written by TJ.

1. The three passages in square brackets (supplied) in Article 17 are those that John Adams thought should be left out (Adams to TJ, 18 Aug. 1785). He was doubtless correct in feeling that Article 17 went "farther than our Countrymen will at present be willing to go."

2. The following words deleted at this point: "shall be useful or desireable."

Authorial notes

[The following note(s) appeared in the margins or otherwise outside the text flow in the original source, and have been moved here for purposes of the digital edition.]

- G.D.1.
- D.M.1610.16.
- D.M.1683.8.
- E.A.1686.8.
- G.D.20.
- D.M.1683.7.
- F.A.1684.15.
- G.D.12.
- D.M.1683.3.19.