

RIGHT OF PROTECTION IN MOROCCO

Convention signed at Madrid July 3, 1880

Effective from July 3, 1880

Ratifications exchanged at Tangier May 1, 1881

Senate advice and consent to ratification May 5, 1881

Ratified by the President of the United States May 10, 1881

Proclaimed by the President of the United States December 21, 1881

Ratification of the United States deposited at Tangier March 9, 1882

Amendment, implementation, and termination in part: Provisions of the General Act of Algeciras of April 7, 1906,¹ prevail over any conflicting provisions; article 11 implemented by article 60 of the General Act; extraterritorial jurisdiction in Morocco relinquished by the United States October 6, 1956;² article 15 relating to Moroccan nationality obsolete and without effect³

22 Stat. 817; Treaty Series 246

[TRANSLATION]

His Excellency the President of the United States of America; His Majesty the Emperor of Germany, King of Prussia; His Majesty the Emperor of Austria, King of Hungary; His Majesty the King of the Belgians; His Majesty the King of Denmark; His Majesty the King of Spain; His Excellency the President of the French Republic; Her Majesty the Queen of the United Kingdom of Great Britain and Ireland; His Majesty the King of Italy; His Majesty the Sultan of Morocco; His Majesty the King of the Netherlands; His Majesty the King of Portugal and the Algarves; His Majesty the King of Sweden and Norway;

Having recognized the necessity of establishing, on fixed and uniform bases, the exercise of the right of protection in Morocco, and of settling certain questions connected therewith, have appointed as their plenipotentiaries at the conference assembled for that purpose at Madrid, to wit:

His Excellency the President of the United States of America, General Lucius Fairchild, Envoy Extraordinary and Minister Plenipotentiary of the United States near His Catholic Majesty;

¹ TS 456, *post*, p. 464; see art. 123 of the General Act.

² *Department of State Bulletin*, Nov. 26, 1956, p. 844.

³ See footnote 9, p. 77.

His Majesty the Emperor of Germany, King of Prussia, Count Eberhardt de Solms-Sonnenwalde, Knight Commander of the first class of his Order of the Red Eagle with oak leaves, Knight of the Iron Cross, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty;

His Majesty the Emperor of Austria, King of Hungary, Count Emanuel Ludolf, his Privy Councillor in actual service, Grand Cross of the Imperial Order of Leopold, Knight of the first class of the Order of the Iron Crown, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty;

His Majesty the King of the Belgians, Mr. Edward Anspach, Officer of his Order of Leopold, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty;

His Majesty the King of Spain, Don Antonio Cánovas del Castillo, Knight of the distinguished Order of the Golden Fleece, etc., etc., President of his Council of Ministers;

His Excellency the President of the French Republic, Vice-Admiral Jaurès, Senator, Knight Commander of the Legion of Honor, etc., etc., Ambassador of the French Republic near His Catholic Majesty;

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Honorable Lionel Sackville Sackville West, her Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty who is likewise authorized to represent His Majesty the King of Denmark;

His Majesty the King of Italy, Count Joseph Greppi, Grand Officer of the Order of Saint Maurice and Saint Lazarus, of that of the Crown of Italy, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty;

His Majesty the Sultan of Morocco, the Taleb Sid Mohammed Vargas, his Minister of Foreign Affairs and Ambassador Extraordinary;

His Majesty the King of the Netherlands, Jonkheer Maurice de Heldewier, Commander of the Royal Order of the Lion of the Netherlands, Knight of the Order of the Oaken Crown of Luxemburg, etc., etc., his Minister Resident near His Catholic Majesty;

His Majesty the King of Portugal and the Algarves, Count de Casal Ribeiro, Peer of the Realm, Grand Cross of the Order of Christ, etc., etc., his Envoy Extraordinary and Minister Plenipotentiary near His Catholic Majesty;

His Majesty the King of Sweden and Norway, Mr. Henry Åkerman, Knight Commander of the first class of the Order of Wasa, etc., etc., his Minister Resident near His Catholic Majesty;

Who, in virtue of their full powers, recognized as being in good and due form, have agreed upon the following articles:

ARTICLE 1⁴

The conditions under which protection may be conceded are those established in the British and Spanish treaties with the Government of Morocco, and in the convention made between that Government, France and other powers in 1863, with the modifications introduced by the present convention.

ART. 2

Foreign Representatives at the head of a Legation may select their interpreters and employees from among the subjects of Morocco or others.

These protected persons shall be subject to no duty, impost or tax whatever, other than those stipulated in articles 12 and 13.

ART. 3

Consuls, Vice consuls or Consular Agents having charge of a post, and residing within the territory of the Sultan of Morocco, shall be allowed to select but one interpreter, one soldier and two servants from among the subjects of the Sultan, unless they may require a native secretary.

These protected persons shall, in like manner, be subject to no duty, impost or tax whatever, other than those stipulated in articles 12 and 13.

ART. 4

If a Representative shall appoint a subject of the Sultan to the office of Consular Agent in a town on the coast, such agent shall be respected and honored, as shall the members of his family occupying the same dwelling with him, and they, like him shall be subject to no duty, impost or tax whatever, other than those stipulated in articles 12 and 13; but he shall not have the right to protect any subject of the Sultan other than the members of his own family.

⁴A U.S. note of Feb. 13, 1914, addressed to the French Ambassador at Washington, stated in part:

"The provisions of the convention of 1863 appear to be substantially the same as the 'regulations relative to protection adopted by common consent by the Legation of France and the Government of Morocco, August 19, 1863,' reprinted in 'Treaties in Force, 1904,' at the end of the Madrid convention. . . . The British and Spanish treaties mentioned in Article I of the Madrid convention are presumably the general treaty of December 9, 1856, between Great Britain and Morocco, and the treaty of commerce and navigation of November 20, 1861, between Spain and Morocco." (1914 For. Rel. 909.) For background, see II Hackworth 554.

For text of the 1863 regulations, see p. 78; for the general treaty of Dec. 9, 1856, between Great Britain and Morocco, see *British and Foreign State Papers*, vol. 46, p. 176; for the treaty of commerce and navigation of Nov. 20, 1861, between Spain and Morocco, see *ibid.*, vol. 53, p. 1089.

He may, however, for the exercise of his functions, have a protected soldier.

Officers in acting charge of Vice Consulates being subjects of the Sultan, shall, during the exercise of their functions, enjoy the same rights as Consular Agents who are subjects of the Sultan.

ART. 5

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

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

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

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

ART. 6

Protection shall extend to the family of the person protected. His dwelling shall be respected.

It is understood that the family is to consist only of the wife, the children, and the minor relatives dwelling under the same roof.

Protection shall not be hereditary. A single exception, which was established by the convention of 1863, but which is not to create a precedent, shall be maintained in favor of the Benchimol family.

Nevertheless, if the Sultan of Morocco shall grant another exception, each of the contracting powers shall be entitled to claim a similar concession.

ART. 7

Foreign representatives shall inform the Sultan's Minister of Foreign Affairs, in writing, of any selections of an employee made by them.

They shall furnish annually to the said Minister a list of the names of the persons protected by them or by their Agents throughout the States of the Sultan of Morocco.

This list shall be transmitted to the local authorities, who shall consider as persons enjoying protection only those whose names are contained therein.

ART. 8

Consular officers shall transmit each year to the authorities of the district in which they reside a list, bearing their seal, of the persons protected by them. These authorities shall transmit it to the Minister of Foreign Affairs, to the end that, if it be not conformable to the regulations, the Representatives at Tangier may be informed of the fact.

A consular officer shall be required to give immediate information of any changes that may have taken place among the persons protected by his Consulate.

ART. 9

Servants, farmers and other native employees of native secretaries and interpreters shall not enjoy protection. The same shall be the case with Moorish employees or servants of foreign subjects.

Nevertheless, the local authorities shall not arrest an employee or servant of a native officer in the service of a Legation or Consulate, or of a foreign subject or protected person, without having notified the authority upon which he is dependent.

If a subject of Morocco in the service of a foreign subject shall kill or wound any person, or violate his domicile, he shall be arrested immediately, but the diplomatic or consular authority under which he is shall be notified without delay.

ART. 10

Nothing is changed with regard to the situation of brokers, as established by the treaties and by the convention of 1863, except what is stipulated, relative to taxes, in the following articles.

ART. 11 ^a

The right to hold property is recognized in Morocco as belonging to all foreigners.

The purchase of property must take place with the previous consent of the Government, and the title of such property shall be subject to the forms prescribed by the laws of the country.

^a Implemented by art. 60 of General Act of Algeciras of Apr. 7, 1906 (TS 456), *post*, p. 479.

Any question that may arise concerning this right shall be decided according to the same laws, with the privilege of appeal to the Minister of Foreign Affairs stipulated in the treaties.

ART. 12 ⁶

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

He who shall make a false statement, shall be fined double the amount of the tax that he would regularly have been obliged to pay for the property not declared. In case of repeated offense this fine shall be doubled.

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

ART. 13 ⁷

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

The said tax shall not be increased without a new agreement with the Representatives of the Powers.

ART. 14

The mediation of interpreters, native secretaries or soldiers of the different Legations or Consulates, when persons are concerned who are not ⁸ under the protection of the Legation or Consulate, shall be permitted only when they are the bearers of a document signed by the head of a mission or by the consular authority.

⁶ Regulations in execution of art. 12 were signed at Tangier Mar. 30, 1881 (Great Britain, *Command Papers*, 1882, C. 3163; *British and Foreign State Papers*, vol. 72, p. 636 (French)).

⁷ Regulations in execution of art. 13 were signed at Tangier Mar. 30, 1881 (Great Britain, *Command Papers*, 1882, C. 3163; *British and Foreign State Papers*, vol. 72, p. 636 (French)), and on June 2, 1896 (Gustav Roloff, *Das Staatsarchiv*, vol. LXIV, p. 337 (French)).

⁸ The word "not" was omitted in the translation of the convention as it was printed in 22 Stat. 823. A memorandum in the files of the Department of State dated Apr. 28, 1883, takes note of the error in the English translation and directs that the correction be made in the "pamphlet copy" of the convention.

ART. 15⁹

Any subject of Morocco who has been naturalized in a foreign country, and who shall return to Morocco, shall after having remained for a length of time equal to that which shall have been regularly necessary for him to obtain such naturalization, choose between entire submission to the laws of the Empire and the obligation to quit Morocco, unless it shall be proved that his naturalization in a foreign country was obtained with the consent of the Government of Morocco.

Foreign naturalization heretofore acquired by subjects of Morocco according to the rules established by the laws of each country, shall be continued to them as regards all its effects, without any restriction.

ART. 16

No irregular or unofficial protection shall be granted in future. The authorities of Morocco will recognize no protection, of any kind whatever, save such as is expressly provided for in this convention.

Nevertheless, the exercise of the customary right of protection shall be reserved for those cases only in which it may be desired to reward signal services rendered by a native of Morocco to a foreign power, or for other altogether exceptional reasons.

The Minister of Foreign Affairs at Tangier shall be previously informed of the nature of the services, and notified of the intention to reward them, in order that he may, if need be, present his observations thereon; yet the final decision shall be reserved for the Government to which the service shall have been rendered.

The number of persons thus protected shall not exceed twelve for each power, and this number is fixed as the maximum unless the consent of the Sultan shall be obtained.

The status of persons who have obtained protection in virtue of the custom which is henceforth to be regulated by this stipulation shall be without limitation of the number of persons belonging to this class and now so protected, the same for themselves and their families as that which is established for other protected persons.

⁹ A U.S. note of Mar. 17, 1959, addressed to the Moroccan Ministry of Foreign Affairs, referred to a note from the Ministry dated Oct. 8, 1958, in which the Embassy had been informed that the Moroccan Government had decided to strike all prescriptions relating to Moroccan nationality from the text of the Madrid convention. The U.S. note said, in part:

"The Government of the United States of America, having unilaterally relinquished certain rights in Morocco with the reemergence of Morocco into independence in 1956, considers that in line with historical developments Article XV of the Madrid Convention on Protection of 1880 has become obsolete and without effect.

"The Government of the United States takes due cognizance, therefore, of the action taken by the Moroccan Government as set forth in its above cited Note, which the United States Government understands to refer only to Article XV of the Madrid Convention on Protection of 1880."

ART. 17

The right to the treatment of the most favored nation is recognized by Morocco as belonging to all the powers represented at the Madrid conference.

ART. 18

This convention shall be ratified. The ratifications shall be exchanged at Tangier with as little delay as possible.

By exceptional consent of the high contracting parties the stipulations of this convention shall take effect on the day on which it is signed at Madrid.

In faith whereof the respective plenipotentiaries have signed this convention, and have thereunto affixed the seals of their arms.

Done at Madrid, in thirteen originals, this third day of July, one thousand eight hundred and eighty.

[For the United States:] LUCIUS FAIRCHILD	[SEAL]	[For the United Kingdom and for Denmark:] L. S. SACKVILLE WEST	[SEAL]
[For Germany:] E. DE SOLMS	[SEAL]	[For Italy:] J. GREPPI	[SEAL]
[For Austria-Hungary:] E. LUDOLF	[SEAL]	[For Morocco:] MOHAMMED VARGAS	[signature in arabic] [SEAL]
[For Belgium:] ANSPACH	[SEAL]	[For the Netherlands:] HELDEWIER	[SEAL]
[For Spain:] A. CÁNOVAS DEL CASTILLO	[SEAL]	[For Portugal:] CASAL RIBEIRO	[SEAL]
[For France:] JAURÈS	[SEAL]	[For Sweden and Norway:] ÅKERMAN	[SEAL]

[TRANSLATION]

REGULATIONS RELATIVE TO PROTECTION ADOPTED BY COMMON CONSENT BY THE LEGATION OF FRANCE AND THE GOVERNMENT OF MOROCCO, AUGUST 19, 1863 ¹⁰

Protection is individual and temporary.

It consequently does not in general apply to the relatives of the person protected.

It may apply to his family, that is to say, to his wife and children living under the same roof. It lasts at the longest for a person's lifetime and is never hereditary, with the single exception of the Benchimol family, which has furnished for several generations and still furnishes persons who act in the capacity of Brokers and interpreters for the post at Tangier.

Protected persons are divided into two classes.

The first class comprises natives employed by the Legation and by the various French consular officers.

¹⁰ I Malloy 1226. For background on acceptance prior to the Madrid convention of regulations relative to protection, see G. Fr. de Martens, *Nouveau recueil général de traités* (2d series), vol. VI, p. 525.

The second class consists of native factors, brokers, or agents, employed by French merchants for their business affairs. It is proper here to refer to the fact that the term merchant is only applied to a person carrying on the import or export trade on a large scale, either in his own name or as the agent of others.

The number of native brokers enjoying French protection is limited to two for each commercial house.

By way of exception commercial firms having establishments in different ports may have two brokers attached to each of these establishments, who may as such enjoy French protection.

French protection is not extended to natives employed by French citizens in agricultural occupations.

Nevertheless, in consideration of the existing state of things, and by agreement with the authorities of Morocco, the benefit of the protection which has hitherto been granted to the persons referred to in the foregoing paragraph shall be extended to the said persons for two months from the first of September next.

It is, moreover, understood that agricultural laborers, herdsmen, or other native peasants, in the service of French citizens shall not be legally prosecuted without immediate information thereof being communicated to the competent consular officer, in order that the latter may protect the interests of his countrymen.

The list of all protected persons shall be delivered by the proper consulate to the competent magistrate of the place, who shall likewise be informed of any changes that may subsequently be made in the said list.

Each protected person shall be furnished with a card in French and in Arabic, mentioning his name and stating the services which secure this privilege to him.

All these cards shall be issued by the Legation of France at Tangier.

TANGIER, *Aug. 19, 1863.*