

Considering that the law of guaranties does not even admit the extraterritoriality of the places occupied by the Pope;

Considering that if the internal legislation of the Italian State grants to the Pope certain personal privileges, which ordinarily form the appanages of sovereignty, such for instance as the right of active and passive legation which he exercises under very exceptional conditions, in view of the fact that his representatives are not real diplomatic agents, and that the Papal treaties (concordats) are not assimilable to the treaties between nations, it remains nevertheless true that from the international point of view the Pope must no longer be regarded as the head of a state;

Considering that under these conditions, the pontifical flag, in so far as it would be the symbol of a State, or the insignia of the head of a State, has ceased to exist, and that any element that might remove the said emblem from the interdiction formulated in the Prefectoral Decree, which alone might make either a national flag or the insignia of an authorized or recognized society, is totally lacking."

AN ANTECEDENT ALGECIRAS

When France, in 1901 and 1902, began actively to come to terms with Morocco regarding the Algero-Moroccan frontier, European observers of the moves in colonial politics realized with varying degrees of accuracy that another step in the cherished ambition of a consolidated French Africa was imminent. The Algerian frontier district was at that time occupied by tribesmen owning little allegiance to anyone and predisposed to trouble. Their comparative freedom from molestation had been due solely to the fact that they were actually living and raiding and fighting in a no-man's land, a territory belonging certainly neither to Algeria nor Morocco. A treaty of 1845 had defined a boundary which had been very imperfectly surveyed and had never existed for practical purposes. On July 20, 1901, a protocol was signed between France and Morocco looking to the policing and control of the frontier region and to the establishment of markets in it. It was supplemented by an agreement of April 20, 1902, and additional articles thereto of May 7, 1902. The three documents were ratified by Morocco seven months later, an important consideration in respect to the validity of any understanding with the Makhzen, or Moroccan government, which at that time was as elusive regarding obligations as it could be. The three treaties were not onerous; they made for obvious good order and development of commerce in the frontier region. Yet it was certain that they would have an important effect in extending French influence, for they provided that the finely-attuned French colonial instrument of the *bureau arabe* should enter the frontier region, and where it goes the people become French colonists through the sheer conviction of its ever-demonstrated efficiency.

Simultaneously France was beginning her series of understandings on Mediterranean territories, of which the best known is that with Great Britain of April 8, 1904. Italy was the first state with which an agreement was reached. Treaties relating to Tunisia, concluded on September 28, 1896, and a commercial arrangement of November 21, 1898, had served to improve relations between the two countries, and the French cabinet took up with the Italian ministers the proposition of an agreement that France would not be disposed to hinder Italian action in Tripoli if Rome would not hinder French action in Morocco. In December, 1900, some understanding was reached, but the known bipartite declaration was made in May, 1902, at the very time when France was making her Algero-Moroccan frontier situation certain.

On the coast of Morocco, opposite her own littoral, Spain owned for historic reasons the towns of Ceuta, Peñon de Velez de la Gomera, Alhucemas and Melilla, while just off the coast were the Zaffarine Islands. All were *presidios*, practically prison settlements, yet they gave Spain an undoubted right in northern Morocco. To the south on the Atlantic seaboard was the uncertain possession of Santa Cruz de Mar Pequeña, now identified and named Ifni. Below Morocco on the same coast lay Spanish Rio de Oro, resulting from the fact that Spain had, by royal decree of December 26, 1884, declared a protectorate over the Saharan littoral. On April 6, 1886, a royal order had incorporated the coast in the captaincy-general of the Canaries, the possession of which had first set Spain's eyes in the direction of the sub-Moroccan country. The Spanish declaration of protectorate in 1884 included the territory between Capes Bojador and Blanco, while the region northward to Cape Juby remained in doubt as to European ownership or control. At the very beginning of the present century Señor Leon y Castillo sought to reach an understanding whereby Spain was to be recognized as possessing the Saharan coast north from Cape Bojador. France replied that this question of the ownership of the Sequia el Hamra region affected Morocco and that consequently it could not be decided without the consent of England. There the question rested.

Spain was thus actively interested in Morocco at the very time France was negotiating with Italy and with Morocco. In fact, for a year or more, some agitation had been going on in Spain to have something done in Morocco. Señor Silvela had published in *La Lectura* in August, 1901, an article in which he had discussed the matter and which had

created much comment. That Spain and France should approach each other respecting the Shereefian empire was therefore a foregone conclusion.

In August, 1902, Spain and France did start the Moroccan question toward its international phase. At that time, Sagasta being premier and Leon y Castillo ambassador to Paris, a project of treaty was written by which Morocco was to be divided territorially between Spain and France, with the biggest slice appertaining to Madrid. Delcassé was at the Quai d'Orsay and the terms of the treaty project, which came to light only after the Agadir settlement was history, were as follows: ¹

Franco-Spanish Project of Treaty, 1902

The Government of the French Republic and the Government of his Majesty the King of Spain, happy in testifying to the cordial relations which exist between France and Spain and desiring to fortify them still more in the future, for the common good of the two countries, are agreed upon the following provisions:

Art. 1. France by the common possession of frontiers, Spain by the possession of the *presidios* and her various interests in relation with the territory of Morocco, have a preëminent interest in the maintenance of the territorial, political, economic, administrative, military and financial independence of Morocco.

They will not therefore conclude with any Power whatsoever any convention of any kind nor will they associate themselves, directly or indirectly, in any action which would have as its effect either the encouragement of establishing a foreign influence there or injury to the legitimate action and interests of either there, and without the prior consent of the other.

Art. 2. If through the weakness of the Moroccan Government, through its impotence to assure order and security, or for any other reason, the maintenance of the *status quo* becomes impossible, the Government of the French Republic and the Government of his Majesty the King of Spain determine as hereinafter follows the limits within which each of them would have the right of reëstablishing tranquility, of protecting the life and property of individuals and of guaranteeing the freedom of commercial transactions.

Art. 3. On the one side: The line of demarkation between the French and Spanish spheres of influence would run from the intersection of the meridian of 14 degrees 20 minutes west of Paris (12 degrees west of Greenwich) provided by the convention of June 27, 1900, with the 26th degree of north latitude, which line will run toward the east to its intersection with the road indicated by a dotted line on the map forming annex No. 1 to the present convention and binding Bir el Abbas, to Mader Ym Ugadir, passing through Tinduf. From this point of meeting, it will run northwesterly and to the intersection of the Wad Merkala by the said road, the use of which will be

¹ On Nov. 10, 1911, *Le Figaro* published a text "which had probably been transmitted to it by the Spanish embassy and which has given rise to no denial by the French ministry of foreign affairs."

common in this section to French and Spanish nationals, the soil of the road as well as of Tinduf and of its vicinity remaining however within the French sphere of influence; running from this point of intersection, the line of demarkation will mount the *thalweg* of the Wad Merkala to its source, to reach at that point, directly, by the parallel passing through the said source the 10th degree of longitude west from Paris (7 degrees 40 minutes west from Greenwich), which it will follow northward to its meeting with the Wad Draa. Thence it will mount, by the *thalweg*, the Wad Draa to Buna mounting by the affluent of the Draa which rejoins it near Beni Smigin toward the north, and following it to Taghbalt; from there, it will rejoin Tirzin Urkan and passing between Ymitez and Tiilit toward the source of the Wad Dades ascend the ridges of the Atlas which it will follow in descending to Cape Ghir, passing by Tizi (peak) u Rijint, Ait Ymi, Teluet, Tagharat, Tushka, Bibana and Bibawan. It is understood that in case of doubt the principle that the line of demarkation will be that of the watershed will always be adhered to for securing the exactitude of this delimitation.

It is also understood that, as relates to the commerce of the caravans of the Sus the Spanish Government may establish *entrôpôts* at Tinduf, where the said caravans will also have the right of using water.

On the other side: The line of demarkation between the spheres of French and Spanish influence will begin on the coast of the Atlantic Ocean from the mouth of the Wad Sebu from whence it will ascend the *thalweg* from the sea to its confluence with the Wad Mikkes. By their *thalwegs* it will ascend this river and that one of its branches which passes through Medhuma. From the source of this last watercourse, the line of demarkation will reach directly the ridge of Jebel Beni Mtir, which, as well as the ridge of Jebel Ait Yussi it will follow to the Wad Sebu, from which it will ascend the *thalweg* and that of its first affluent on the right. From the source of this latter watercourse, it will reach as directly as possible the source of the nearest affluent of the Wad Bu Zennelan, and will descend these two watercourses to the Wad Ynauen. It will thence follow the *thalweg* of this river to its source, then will begin again through Taza and Riata, following the ridge of the mountains Rejidam, and will thence follow the course of the Muluya to Meduhar and its outlet into the Mediterranean.

Art. 4. The two high contracting parties, recognizing the importance of the position of Tangier in relation to the necessary freedom of the strait of Gibraltar, will not eventually oppose the neutralization of this city.

Art. 5. In affirming the absolutely pacific character of the present convention, the two high contracting parties decide that if either, for the protection of its interests within its sphere of influence, must resort to force, it will make known to the other in advance the necessity in which it finds itself.

If, during the period of the *status quo*, one of the two high contracting parties, as a result of injury, prejudice or menace to its interests, sees itself reduced to exercise, in order to obtain satisfaction, a temporary coercive action at any point of Moroccan territory, it will make known to the other in advance the necessity in which it finds itself.

Art. 6. In questions which may be raised regarding the present convention, the two high contracting parties will lend to each other the support of their diplomacy.

Art. 7. French ships will enjoy all the facilities which Spanish ships shall be allowed to access by sea from the Wad Sus, Wad Sebu and the Muluya into Spanish ter-

ritorial waters. It will be the same on a reciprocal basis for Spanish ships in French territorial waters, and access by sea from the rivers comprised in its zone of influence.

Navigation and fishing will be free for French and Spanish nationals in the common rivers or parts of rivers.

The policing of navigation and fishing in those rivers or parts of rivers, in the French and Spanish territorial waters at the approaches of the Wad Sus, the Wad Sebu and the Muluya and the others comprised in this convention, as well as the other questions relating to lighting, buoyage, and the management and use of the waters will be the object of arrangements concerted between the two governments.

The rights and advantages which derive from the present article, being stipulated on account of the common or border character of the bays, river mouths or rivers above mentioned, will be exclusively reserved to the nationals of both of the two contracting parties and cannot in any manner be transferred or conceded to the nationals of other nations without the prior agreement of the two high parties today contracting.

Art. 8. No differential right in relation to navigation, customs and transportation by railroad, and generally no privilege of a commercial order shall be established in the spheres of influence delimited by the present convention. All facilities of transit and of circulation will be given, for commerce coming from the interior or destined thither, in and through the territories recognized as forming part of the Spanish and French spheres of influence, as they are delimited in Art. 3 of the present convention.

Art. 9. Neither of the two high contracting parties can, without the consent of the other, alienate all or part of the territories placed within its sphere of influence.

Art. 10. The lines of demarkation determined by Art. 3 of the present convention are traced on the maps subjoined (annexes Nos. 1 and 2). In case there would be occasion to apply them on the ground, it is agreed that so far as possible account will be taken of the position of the border tribes.

Art. 11. The present convention, being intended to remain secret, cannot be divulged, communicated or published, in whole or in part, without a prior agreement between the two high contracting parties.

On December 3, 1902, Sagasta fell, with the project of treaty unsigned. On Dec. 6th Señor Silvela formed a new ministry and the treaty project never went further, though it would have given Spain the best part of Morocco. Why Spain failed to sign the treaty, and therefore why the Moroccan question became a European one in the way that it did is now known, thanks to the careful research of M. Rouard de Card.¹ In April, 1904, the Anglo-French convention was signed, and resulted in a repercussion at Madrid. In the first ten days of June, Morocco in general was the subject of debate in the Cortés. Two of the Sagasta ministry hinted at the secret treaty. The Duke of Almodóvar, Sagasta's

¹ La Question marocaine et la Négociation franco-espagnole de 1902. Paris, 1912.

minister of foreign affairs and therefore one of its negotiators, in this debate said:

Señor Sagasta considered it indispensable that Señor Silvela, who was to be his successor in the government, should have a complete, authenticated and exact knowledge, as full as was necessary and as we who prepared it had. So that it is understood that Señor Silvela as head of the government refused to realize or to achieve what the Liberal government had left to be concluded and which lacked only the final touch; that Señor Silvela had assented to what was done and that, moreover, he admired it, I can prove.

Naturally Señor Silvela felt the imputation and sought to have his say. His reply was published in *Imparcial* on June 11, 1904, and was reprinted in pamphlet form. The letter deals with Spanish politics and with personalities to a large extent. He cited his article of August, 1901, in *La Lectura* and repeated its burden. "I have spent the best and even a part of the worst of my life in saying to my superiors, my friends and my adversaries that everything which would not tend to preserve the "*status quo* in Morocco must be considered as pure folly," he wrote. "But I say and repeat: This *status quo*, so wise and so worthy of praise, has an inconvenience which destroys all its advantages, namely, it is impossible. In the face of foreign interferences whose eventuality was in my opinion near at hand, I counselled the *entente cordiale* with France, whose interests can be harmonized with ours without doing violence to those of other friendly powers." He mentions his interview with the Duke of Almodóvar and continues:

I considered, and continue to consider, excellent everything that the Spanish Government had concerted with the French Government and I conveyed to you my felicitations, being persuaded that it would be a work of peace and concord assured against any suspicion and any dissatisfaction by friendly powers.—Three months passed without any one saying anything of the projected convention. When I was called to the counsels of the Crown, I found this convention unsigned.—It belonged to me to propose and decide on a matter so important. From the sources of information one in the exercise of power has, I learned how it was necessary to insure our action in Morocco against possible difficulties raised by interested third parties. At the moment very important questions were pending between France and England. To overcome the difficulties and the obstacles which we should have to meet, to offset the compensations and guaranties which were sought from us in exchange for and under the pretext of the expansion of our influence on the African coast, France would offer us her diplomatic support, which was not sufficient to reassure us in this circumstance. I thought that it was an imperious duty to suspend the signing of the treaty until all doubts had disappeared from my own mind, and also to agree to nothing on the subject of territories and spheres of influence on the African littoral

without previously making completely *au courant* of the affair the friendly powers (Great Britain) which had a title and the means of being heard in this negotiation.

The principles of the treaty project are today the basis of Moroccan division under the Franco-Spanish convention of November 27, 1912, notwithstanding all the intervention that occurred from 1905 on. Great Britain and France two years later acknowledged Spanish special interests by Art. 8 of the declaration of April 8, 1904, and the secret Franco-Spanish convention of October 3, 1904, reiterated the territorial division contemplated in 1902 but took account of the increasing French influence by a decrease of the extent of the Spanish spheres of influence. Though the convention of 1904 was secret, it became known to the German diplomats at Madrid shortly after its signing and the plans it indicated for dividing Morocco between France and Spain, thereby closing a market and throwing large potential mineral resources out of competition particularly into French control, are assigned as reasons for the Kaiser's dramatic visit to Tangier in the spring of 1905 and the international status of the Moroccan question resulting from the Algeciras Conference.

THE ATTEMPT OF TURKEY TO ABROGATE THE CAPITULATIONS

The Department of State was officially informed by the Turkish Ambassador on September 10, 1914, that on and after the first of October the Ottoman Government had determined to abrogate the conventions known as the "Capitulations" which he stated "restrict the sovereignty of Turkey in her relations with certain Powers." The United States is one of these Powers. It was further stated that "all privileges and immunities accessory to these conventions or issuing therefrom are equally repealed." The purpose was to remove "an intolerable obstacle to all progress in the Empire," and the relations of Turkey to the Powers were to be regulated henceforth by "the general principles of international law." There can be no doubt that extraterritorial rights interfere with sovereignty, or at least with its unhindered exercise; that they are, at least at the present day, regarded as a mark of inferiority; and that they are to be considered as marking a stage of transition to the full exercise of sovereignty. But the question arises how rights of this kind are to be abrogated. Can it be done by the country in which they exist without the consent of the country which exercises them? Thus considered, the question involved in the action of the Turkish Government is not what