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SPAIN : OCTOBER 27, 1795

*Treaty of Friendship, Limits, and Navigation, signed at San Lorenzo el Real October 27, 1795. Original in English and Spanish. Submitted to the Senate February 26, 1796. Resolution of advice and consent March 3, 1796. Ratified by the United States March 7, 1796. Ratified by Spain April 25, 1796. Ratifications exchanged at Aranjuez April 25, 1796. Proclaimed August 2, 1796.*

His Catholic Majesty and the United States of America desiring to consolidate on a permanent basis the Friendship and good correspondence which happily prevails between the two Parties, have determined to establish by a convention several points, the settlement whereof will be productive of general advantage and reciprocal utility to both Nations.

With this intention his Catholic Majesty has appointed the most Excellent Lord Don Manuel de Godoy and Alvarez de Faria, Rios, Sanchez Zarzosa, Prince de la Paz Duke de la Alcudia Lord of the Soto de Roma and of the State of Albalá: Grandee of Spain of the first class: perpetual Regidor of the City of Santiago: Knight of the illustrious Order of the Golden Fleece, and Great Cross of the Royal and distinguished Spanish order of Charles the III. Commander of Valencia del Ventoso, Rivera, and Aceuchal in that of Santiago: Knight

Deseando S. M. Catolica y los Estados Unidos de America consolidar de un modo permanente la buena correspondencia y amistad que felizmente reyna entre ambas Partes, han resuelto fixar por medio de un Convenio varios puntos de cuyo arreglo resultará un beneficio general, y una utilidad reciproca á los dos Paises.

Con esta mira han nombrado S. M. Catolica al Excelentisimo S<sup>or</sup> D<sup>o</sup> Manuel de Godoy, y Alvarez de Faria, Rios, Sanchez Zarzosa, Principe de la Paz, Duque de la Alcudia: Señor del Soto de Roma, y del Estado de Albalá: Grande de España de primera clase: Regidor perpetuo de la Ciudad de Santiago: Caballero de la insigne Orden del Toyson de Oro: Gran Cruz de la Real y distinguida Orden Española de Carlos III. Comendador de Valencia del ventoso, Rivera, y Aceuchal en la de Santiago: Caballero Gran Cruz de

and Great Cross of the religious order of S<sup>t</sup> John: Counsellor of State: First Secretary of State and Despacho: Secretary to the Queen: Superintendant General of the Posts and High Ways: Protector of the Royal Academy of the Noble Arts, and of the Royal Societies of natural history, Botany, Chemistry, and Astronomy: Gentleman of the King's Chamber in employment: Captain General of his Armies: Inspector and Major of the Royal Corps of Body Guards & & & and the President of the United States with the advice and consent of their Senate, has appointed Thomas Pinckney a Citizen of the United States, and their Envoy Extraordinary to his Catholic Majesty. And the said Plenipotentiaries have agreed upon and concluded the following Articles.

## ART. I.

There shall be a firm and inviolable Peace and sincere Friendship between His Catholic Majesty his successors and subjects, and the United States and their Citizens without exception of persons or places.

## ART. II.

To prevent all disputes on the subject of the boundaries which separate the territories of the two High contracting Parties, it is hereby declared and agreed as follows: to wit: The Southern boundary of the United States

la Religion de S<sup>o</sup> Juan: Consejero de Estado: primer Secretario de Estado y del Despacho: Secretario de la Reyna N<sup>ra</sup> S<sup>ta</sup> Superintendente general de Correos y Caminos: Protector de la R<sup>l</sup> Academia de las Nobles Artes, y de los R<sup>l</sup>es Gabinetes de Historia natural, Jardin Botanico, Laboratorio Chímico, y Observatorio Astronomico: Gentilhombre de Camara con exercicio: Capitan General de los Reales Exercitos: Inspector, y Sargento Mayor del R<sup>l</sup> Cuerpo de Guardias de Corps. & & & y el Presidente de los Estados Unidos con el consentimiento y aprobacion del Senado à D<sup>o</sup> Tomas Pinckney Ciudadano de los mismos Estados y su Enviado Extraordinario cerca de S. M. Catholica. Y ambos Plenipotenciarios han ajustado y firmado los Articulos siguientes.

## ART. I.

Habrá una Paz solida é inviolable y una amistad sincera entre S. M. Catolica sus sucesores y subditos, y los Estados Unidos y sus Ciudadanos, sin excepcion de personas ó lugares.

## ART. II.

Para evitar toda disputa en punto á los limites que separan los territorios de las dos Altas Partes Contratantes, se han convenido, y declarado en el presente articulo lo siguiente: á saber. Que el Limite Meridional de los Estados

which divides their territory from the Spanish Colonies of East and West Florida, shall be designated by a line beginning on the River Mississippi at the Northernmost part of the thirty first degree of latitude North of the Equator, which from thence shall be drawn due East to the middle of the River Apalachicola or Catahouche, thence along the middle thereof to its junction with the Flint, thence straight to the head of St Mary's River, and thence down the middle thereof to the Atlantic Ocean. And it is agreed that if there should be any troops, Garrisons or settlements of either Party in the territory of the other according to the above mentioned boundaries, they shall be withdrawn from the said territory within the term of six months after the ratification of this treaty or sooner if it be possible and that they shall be permitted to take with them all the goods and effects which they possess.

### ART. III.

In order to carry the preceding Article into effect one Commissioner and one Surveyor shall be appointed by each of the contracting Parties who shall meet at the Natchez on the left side of the River Mississippi before the expiration of six months from the ratification of this convention, and they shall proceed to run and mark this boundary according to

Unidos que sepára su territorio de el de las Colonias Españolas de la Florida Occidental y de la Florida Oriental se demarcará por una linea que empieze en el Rio Misisipi en la parte mas septentrional del grado treinta y uno al Norte del Equador, y q<sup>e</sup> desde alli siga en derechura al Este hasta el medio del Rio Apalachicola ô Catahouche, desde alli por la mitad de este Rio hasta su union con el Flint, de alli en derechura hasta el nacimiento del Rio S<sup>ta</sup> Maria, y de alli baxando por el medio de este Rio hasta el Oceano Atlantico. Y se han convenido las dos Potencias en que si hubiese tropa, Guarniciones, ô Establecimientos de la una de las dos Partes en el territorio de la otra segun los limites que se acaban de mencionar, se retirarán de dicho territorio en el termino de seis meses despues de la ratificacion de este Tratado, ô antes si fuese posible, y que se les permitirá llevar consigo todos los bienes y efectos q<sup>e</sup> posean.

### ART. III.

Para la execucion del articulo antecedente se nombrarán por cada una de las dos Altas Partes contratantes un Comisario y un Geometra q<sup>e</sup> se juntarán en Natchez en la orilla izquierda del Misisipi antes de expirar el termino de seis meses despues de la ratificacion de la convencion presente, y procederán à la demarcacion de estos limites conforme à lo estipu-

the stipulations of the said Article. They shall make Plats and keep journals of their proceedings which shall be considered as part of this convention, and shall have the same force as if they were inserted therein.<sup>1</sup> And if on any account it should be found necessary that the said Commissioners and Surveyors should be accompanied by Guards, they shall be furnished in equal proportions by the Commanding Officer of his Majesty's troops in the two Floridas, and the Commanding Officer of the troops of the United States in their Southwestern territory, who shall act by common consent and amicably, as well with respect to this point as to the furnishing of provisions and instruments and making every other arrangement which may be necessary or useful for the execution of this article.

## ART. IV.

It is likewise agreed that the Western boundary of the United States which separates them from the Spanish Colony of Louissiana, is in the middle of the channel or bed of the River Mississippi from the Northern boundary of the said States to the completion of the thirty first degree of latitude North of the Equator; and his Catholic Majesty has likewise agreed that the navigation of the said River in its whole breadth

lado en el articulo anterior. Levantarán planos, y formarán Diarios de sus operaciones que se reputarán como parte de este Tratado, y tendran la misma fuerza que si estuvieran insertas en el.<sup>1</sup> Y si por qualquier motivo se creyese necesario que los dichos Comisarios y Geometras fuesen acompañados con Guardias, se les darán en numero igual por el General que mande las tropas de S. M. en las dos Floridas, y el Comandante de las tropas de los Estados Unidos en su territorio del sudoeste, que obrarán de acuerdo y amistosamente asi en este punto, como en el de apronto de viveres é instrumentos, y en tomar qualesquiera otras disposiciones necesarias para la execucion de este articulo.

## ART. IV.

Se han convenido igualmente que el Limite Occidental del territorio de los Estados Unidos q<sup>o</sup> los separa de la Colonia Española de la Luisiana, está en medio del Canal ó Madre del Rio Misisipi, desde el limite septentrional de dichos Estados hasta el complemento de los treinta y un grados de latitud al Norte del Equador; y S. M. Católica ha convenido igualmente en que la navegacion de dicho Rio en toda

<sup>1</sup> See the note regarding Article 3.

from its source to the Ocean shall be free only to his Subjects, and the Citizens of the United States, unless he should extend this privilege to the Subjects of other Powers by special convention.

## ART. V.

The two High contracting Parties shall by all the means in their power maintain peace and harmony among the several Indian Nations who inhabit the country adjacent to the lines and Rivers which by the preceeding Articles form the boundaries of the two Floridas; and the beter to obtain this effect both Parties oblige themselves expressly to restrain by force all hostilities on the part of the Indian Nations living within their boundaries: so that Spain will not suffer her Indians to attack the Citizens of the United States, nor the Indians inhabiting their territory; nor will the United States permit these last mentioned Indians to commence hostilities against the Subjects of his Catholic Majesty, or his Indians in any manner whatever.

And whereas several treaties<sup>1</sup> of Friendship exist between the two contracting Parties and the said Nations of Indians, it is hereby agreed that in future no treaty of alliance or other whatever (except treaties of Peace) shall be made by either Party with the

su extension desde su orilla hasta el Océano, será libre solo á sus subditos, y á los Ciudadanos de los Estados Unidos, á menos que por algun tratado particular haga extensiva esta libertad á subditos de otras Potencias.

## ART. V.

Las dos Altas Partes contratantes procurarán por todos los medios posibles mantener la paz, y buena armonía entre las diversas Naciones de Indios que habitan los terrenos adyacentes á las líneas y Rios que en los artículos anteriores forman los límites de las dos Floridas; y para conseguir mejor este fin se obligan expresamente ambas Potencias á reprimir con la fuerza todo genero de hostilidades de parte de las Naciones Indias que habitan dentro de la línea de sus respectivos límites: de modo que ni la España permitirá que sus Indios ataquen á los q<sup>e</sup> vivan en el territorio de los Estados Unidos ó á sus ciudadanos; ni los Estados q<sup>e</sup> los suyos hostilizen á los Subditos de S. M. Católica ó á sus Indios de manera alguna.

Existiendo varios tratados<sup>1</sup> de amistad entre las expresadas Naciones y las dos Potencias, se ha convenido en no hacer en lo venidero alianza alguna ó tratado (excepto los de Paz) con las Naciones de Indios que habitan dentro de los límites de la otra

<sup>1</sup> See the note regarding Article 5.

Indians living within the boundary of the other; but both Parties will endeavour to make the advantages of the Indian trade common and mutually beneficial to their respective Subjects and Citizens observing in all things the most complete reciprocity: so that both Parties may obtain the advantages arising from a good understanding with the said Nations, without being subject to the expence which they have hitherto occasioned.

## ART. VI.

Each Party shall endeavour by all means in their power to protect and defend all Vessels and other effects belonging to the Citizens or Subjects of the other, which shall be within the extent of their jurisdiction by sea or by land, and shall use all their efforts to recover and cause to be restored to the right owners their Vessels and effects which may have been taken from them within the extent of their said jurisdiction whether they are at war or not with the Power whose Subjects have taken possession of the said effects.

## ART. VII.

And it is agreed that the Subjects or Citizens of each of the contracting Parties, their Vessels, or effects shall not be liable to any embargo or detention on the part of the other for any military expedition or other public or

parte; aunque procurarán hacer comun su comercio en beneficio amplio de los Subditos y Ciudadanos respectivos, guardandose en todo la reciprocidad mas completa: de suerte q<sup>e</sup> sin los dispendios que han causado hasta ahora dichas Naciones á las dos Partes contratantes consigan ambas todas las ventajas q<sup>e</sup> debe producir la armonía con ellas.

## ART. VI.

Cada una de las dos Partes contratantes procurará por todos los medios posibles protexer y defender todos los Buques y qualesquiera otros efectos pertenecientes á los Subditos y Ciudadanos de la otra que se hallen en la extension de su jurisdiccion por Mar ó por Tierra; y empleará todos sus esfuerzos para recobrar y hacer restituir á los Propietarios legitimos los Buques y Efectos que se les hayan quitado en la extension de dicha jurisdiccion estén ó no en guerra con la Potencia cuyos subditos hayan interceptado dichos Efectos.

## ART. VII.

Se ha convenido que los Ciudadanos y Subditos de una de las Partes contratantes, sus Buques, ó efectos no podran sugetarse á ningun embargo ó detencion de parte de la otra, á causa de alguna expedicion militar, uso publico, ó

private purpose whatever; and in all cases of seizure, detention, or arrest for debts contracted or offences committed 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 proceedings usual in such cases. The Citizens and Subjects of both Parties shall be allowed to employ such Advocates, Solicitors, Notaries, Agents, and Factors, as they may judge proper in all their affairs and in all their trials at law in which they may be concerned before the tribunals of the other Party, and such Agents shall have free access to be present at the proceedings in such causes, and at the taking of all examinations and evidence which may be exhibited in the said trials.

ART. VIII.

In case the Subjects and inhabitants of either Party with their shipping whether public and of war or private and of merchants be forced through stress of weather, pursuit of Pirates, or Enemies, or any other urgent necessity for seeking of shelter and harbor to retreat and enter into any of the Rivers, Bays, Roads, or Ports belonging to the other Party, they shall be received and treated with all humanity, and enjoy all favor, protection and help, and they shall be permitted to re-

particular de qualquiera que sea; y en los casos de aprehension, detencion, ó arresto bien sea por deudas contrahidas ú ofensas cometidas por algun Ciudadano ó Subdito de una de las Partes contratantes en la jurisdiccion de la otra, se procederá unicamente por orden y autoridad de la Justicia, y segun los tramites ordinarios seguidos en semejantes casos. Se permitira à los Ciudadanos y Subditos de ambas Partes emplear los Abogados, Procuradores, Notarios, Agentes, ó Factores que juzguen mas à proposito en todos sus asuntos y en todos los Pleytos q<sup>e</sup> podrán tener en los Tribunales de la otra Parte, á los quales se permitirá igualmente el tener libre acceso en las causas, y estar presentes á todo exâmen y testimonios que podran ocurrir en los Pleytos.

ART. VIII.

Quando los Subditos y habitantes de la una de las dos Partes contratantes con sus Buques bien sean publicos y de guerra, bien particulares ó mercantiles se viesen obligados por una tempestad, por escapar de Piratas ó de Enemigos, ó por qualquiera otra necesidad urgente á buscar refugio y abrigo en alguno de los Rios, Bahias, Radas, ó Puertos de una de las dos Partes, serán recibidos, y tratados con humanidad, y gozaran de todo favor, proteccion y socorro, y les será licito prove-

fresh and provide themselves at reasonable rates with victuals and all things needful for the sustenance of their persons or reparation of their Ships, and prosecution of their voyage; and they shall no ways be hindered from returning out of the said Ports, or Roads, but may remove and depart when and whither they please without any let or hindrance.

## ART. IX.

All Ships and merchandize of what nature soever which shall be rescued out of the hands of any Pirates or Robbers on the high seas shall be brought into some Port of either State and shall be delivered to the custody of the Officers of that Port in order to be taken care of and restored entire to the true proprietor as soon as due and sufficient proof shall be made concerning the property thereof.

## ART. X.

When any Vessel of either Party shall be wrecked, foundered, or otherwise damaged on the coasts or within the dominion of the other, their respective Subjects or Citizens shall receive as well for themselves as 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

erse de refrescos, viveres y demas cosas necesarias para su sustento, para componer los Buques, y continuar su viage, todo mediante un precio equitativo; y no se les detendrá ó impedirá de modo alguno el salir de dichos Puertos ó Radas, antes bien podran retirarse y partir como y quando les pareciere sin ningun obstaculo ó impedimento.

## ART. IX.

Todos los Buques y mercaderias de qualquiera naturaleza que sean que se hubiesen quitado à algunos Piratas en Alta Mar, y se traxesen à algun Puerto de una de las dos Potencias, se entregarán alli à los Oficiales ó Empleados en dicho Puerto à fin de que los guarden y restituyan integramente à su verdadero propietario luego que hiciere constar debida y plenamente que era su legitima propiedad.

## ART. X.

En el caso de que un Buque perteneciente à una de las dos Partes contratantes naufragase, varase, ó sufriese alguna avería en las Costas ó en los dominios de la otra, se socorrerá à los Subditos ó Ciudadanos respectivos, asi à sus personas, como à sus Buques y efectos, del mismo modo que se haría con los habitantes del Pais donde suceda la desgracia, y pagaran solo las mismas cargas y derechos q<sup>e</sup> se hubieran exígido



would be subject to pay in a like case: and if the operations of repair should require that the whole or any part of the cargo be unladen they shall pay no duties, charges, or fees on the part which they shall relade and carry away.

ART. XI.

The Citizens and Subjects of each Party shall have power to dispose of their personal goods within the jurisdiction of the other by testament, donation, or otherwise; and their representatives being Subjects or Citizens of the other Party shall succeed to their said personal goods, whether by testament or ab intestato and they may take possession thereof either by themselves or 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 of the representatives, such care shall be taken of the said goods as would be taken of the goods of a native in like case, until the lawful owner may take measures for receiving them. And if question shall arise among several claimants to which of them the said goods belong the same shall be decided finally by the laws and Judges of the Land wherein the said goods are. And where on the death of any person hold-

de dichos habitantes en semejante caso. y si fuese necesario para componer el Buque q<sup>e</sup> se descargue el cargamento en todo ó en parte, no pagarán impuesto alguno, carga, ó derecho de lo que se buelva á embarcar para ser exportado.

ART. XI.

Los Ciudadanos ó Subditos de una de las dos Partes contratantes, tendran en los Estados de la otra la libertad de disponer de sus bienes personales bien sea por testament, donacion, ú otra manera, y si sus herederos fuesen Subditos ó Ciudadanos de la otra Parte contratante, sucederán en sus bienes ya sea en virtud de testament ó ab intestato y podran tomar posesion bien en persona ó por medio de otros que hagan sus veces, y disponer como les pareciere sin pagar mas derechos que aquellos q<sup>e</sup> deben pagar en semejante caso los habitantes del Pais donde se verificase la herencia. Y si estuviesen ausentes los herederos se cuydará de los bienes que les hubiesen tocado, del mismo modo que se hubiera hecho en semejante ocasion con los bienes de los naturales del Pais, hasta que el legitimo Propietario haya aprobado las disposiciones para recoger la herencia. Si se suscitasen disputas entre diferentes competidores que tengan derecho á la herencia, seran determinadas en ultima instancia segun las leyes y por los Jueces

ng real estate within the territories of the one Party, such real estate would by the laws of the Land descend on a Citizen or Subject of the other were he not disqualified by being an alien, such subject shall be allowed a reasonable time to sell the same and to withdraw the proceeds without molestation, and exempt from all rights of detraction on the part of the Government of the respective states.

## ART. XII.

The merchant Ships of either of the Parties which shall be making into a Port belonging to the enemy of the other Party and concerning whose voyage and the species of goods on board her there shall be just grounds of suspicion shall be obliged to exhibit as well upon the high seas as in the Ports and havens not only her passports but likewise certificates expressly shewing that her goods are not of the number of those which have been prohibited as contraband.

## ART. XIII.

For the beter promoting of commerce on both sides, it is agreed that if a war shall break out between the said two Nations one year after the proclamation of war shall be allowed to the merchants in the Cities and Towns where they shall live for collect-

del Pais en que vacase la herencia. Y si por la muerte de alguna persona que poseyese bienes raizes sobre el territorio de una de las Partes contratantes, estos bienes raizes llegasen à pasar segun las leyes del Pais à un Subdito ó Ciudadano de la otra Parte, y este por su calidad de extrangero fuese inhabil para poseerlos, obtendra un termino conveniente para venderlos y recoger su producto, sin obstaculo, exento de todo derecho de retencion de parte del Gobierno de los Estados respectivos.

## ART. XII.

A los Buques mercantes de las dos Partes q<sup>s</sup> fuesen destinados à Puertos pertenecientes à una Potencia enemiga de una de las dos, cuyo viage y naturaleza del cargamento diese justas sospechas, se les obligará à presentar bien sea en alta Mar bien en los Puertos y Cabos no solo sus pasaportes sino tambien los certificados que probarán expresamente que su cargamento no es de la especie de los que están prohibidos como de contrabando.

## ART. XIII.

A fin de faborecer el comercio de ambas Partes se ha convenido que en el caso de romperse la guerra entre las dos Naciones, se concedera el termino de un año despues de su declaracion à los Comerciantes en las Villas y Ciudades que habitan, para juntar

ing and transporting their goods and merchandizes, and if any thing be taken from them, or any injury be done them within that term by either Party, or the People or Subjects of either, full satisfaction shall be made for the same by the Government.

## ART. XIV.

No subject of his Catholic Majesty shall apply for or take any commission or letters of marque for arming any Ship or Ships to act as Privateers against the said United States or against the Citizens, People, or inhabitants of the said United States, or against the property of any of the inhabitants of any of them, from any Prince or State with which the said United States shall be at war.

Nor shall any Citizen, Subject, or Inhabitant of the said United States apply for or take any commission or letters of marque for arming any Ship or Ships to act as Privateers against the subjects of his Catholic Majesty or the property of any of them from any Prince or State with which the said King shall be at war. And if any person of either Nation shall take such commissions or letters of marque he shall be punished as a Pirate.

## ART. XV.

It shall be lawful for all and singular the Subjects of his Catholic Majesty, and the Citizens

y transportar sus mercaderias, y si se les quitase alguna parte de ellas ó hiciese algun daño durante el tiempo prescrito arriba por una de las dos Potencias, sus Pueblos ó Subditos, se les dará en este punto entera satisfaccion por el Gobierno.

## ART. XIV.

Ningun Subdito de S. M. Catolica tomará encargo ó patente para armar Buque ó Buques q<sup>o</sup> obren como Corsarios contra dichos Estados Unidos, ó contra los Ciudadanos, Pueblos, y habitantes de los mismos, ó contra su propiedad ó la de los habitantes de alguno de ellos de qualquier Principe que sea con quien estubieren en guerra los Estados Unidos.

Igualmente ningun Ciudadano ó habitante de dichos Estados Unidos pedirá ó aceptará encargo ó patente para armar algun Buque ó Buques con el fin de perseguir los Subditos de S. M. Catolica, ó apoderarse de su propiedad, de qualquier Principe ó Estado que sea con quien estubiese en guerra S. M. Catolica. Y si algun individuo de una ó de otra Nacion tomase semejantes encargos ó patentes sera castigado como Pirata.

## ART. XV.

Se permitirá à todos y à cada uno de los Subditos de S. M. Catolica; y à los Ciudadanos

People, and inhabitants of the said United States to sail with their Ships with all manner of liberty and security, no distinction being made who are the proprietors of the merchandizes laden thereon from any Port to the Places of those who now are or hereafter shall be at enmity with his Catholic Majesty or the United States. It shall be likewise lawful for the Subjects and inhabitants aforesaid to sail with the Ships and merchandizes aforementioned, and to trade with the same liberty and security from the Places, Ports, and Havens of those who are Enemies of both or either Party without any opposition or disturbance whatsoever, not only directly from the Places of the Enemy aforementioned to neutral Places but also from one Place belonging to an Enemy to another Place belonging to an Enemy, whether they be under the jurisdiction of the same Prince or under several, and it is hereby stipulated that Free Ships shall also give freedom to goods, and that every thing shall be deemed free and exempt which shall be found on board the Ships belonging to the Subjects of either of the contracting Parties although the whole lading or any part thereof should appertain to the Enemies of either; contraband goods being always excepted. It is also agreed that the same liberty be extended to persons who are on board a free Ship, so that, although they be

Pueblos y habitantes de dichos Estados q<sup>e</sup> puedan navegar con sus Embarcaciones con toda libertad y seguridad, sin que haya la menor excepcion por este respeto aunque los propietarios de las mercaderias cargadas en las referidas embarcaciones vengan del Puerto que quieran y las traygan destinadas á qualquiera Plaza de una Potencia actualmente enemiga ó q<sup>e</sup> lo sea despues asi de S. M. Catolica como de los Estados Unidos. Se permitirá igualmente á los Subditos y habitantes mencionados navegar con sus Buques y mercaderias, y frequéntar con igual libertad y seguridad las Plazas y Puertos de las Potencias enemigas de las Partes contratantes ó de una de ellas sin oposicion ú obstaculo, y de comerciar no solo desde los puertos del dicho enemigo á un Puerto neutro directamente, sino tambien desde uno enemigo á otro tal bien se encuentre bajo su jurisdiccion ó bajo la de muchos; y se estipula tambien por el presente tratado que los Buques libres asegurarán igualmente la libertad de las mercaderias, y que se juzgaran libres todos los efectos que se hallasen á bordo de los Buques que perteneciesen á los Subditos de una de las Partes contratantes, aun quando el cargam<sup>to</sup> por entero ó parte de el fuese de los enemigos de una de las dos; bien entendido sin embargo q<sup>e</sup> el contrabando se exceptua siempre. Se ha convenido asi-

Enemies to either Party they shall not be made Prisoners or taken out of that free Ship unless they are Soldiers and in actual service of the Enemies.

ART. XVI.

This liberty of navigation and commerce shall extend to all kinds of merchandizes excepting those only which are distinguished by the name of contraband; and under this name of contraband or prohibited goods shall be comprehended arms, great guns, bombs, with the fusees, and other things belonging to them, cannon ball, gun powder, match, pikes, swords, lances, speards, halberds, mortars, petards, granades, salpetre, muskets, musket ball bucklers, helmets, breast plates, coats of mail, and the like kind of arms proper for arming soldiers, musket rests, belts, horses with their furniture and all other warlike instruments whatever. These merchandizes which follows shall not be reckoned among contraband or prohibited goods; that is to say, all sorts of cloths and all other manufactures woven of any wool, flax, silk, cotton, or any other materials whatever, all kinds of wearing aparel together

mismo que la propia libertad gozarán los sugetos que pudiesen encontrarse á bordo del Buque libre aun quando fuesen enemigos de una de las dos Partes contratantes, y por lo tanto no se les podra hacer Prisioneros ni separarlos de dichos Buques, á menos q<sup>o</sup> no tengan la qualidad de Militares, y esto hallandose en aquella sazon empleados en el servicio del enemigo.

ART. XVI.

Esta libertad de navegacion y de comercio debe extenderse á toda especie de mercaderias, exceptuando solo las que se comprehenden bajo el nombre de contrabando ó de mercaderias prohibidas: quales son las arinas, cañones, bombas con sus mechas y demas cosas pertenecientes á lo mismo: balas, polvora, mechas, picas espadas, lanzas, dardos, alabardas, morteros, petardos, granadas, salitre, fusiles, balas escudos casquetes, corazas, cotas de malla, y otras arinas de esta especie propias para armar á los Soldados. Portamosquetes, bandoleras, Caballos, con sus armas y otros instrumentos de guerra sean los que fueren. Pero los generos y mercaderias que se nombrarán ahora, no se comprehenderán entre los de contrabando ó cosas prohibidas: á saber, toda especie de paños y qualesquiera otras telas de lana, lino, Seda, algodón, ú otras qualesquiera materias, toda especie de

with all species whereof they are used to be made, gold and silver as well coined as uncoined, tin, iron, latton, copper, brass, coals, as also wheat, barley, oats, and any other kind of corn and pulse: tobacco and likewise all manner of spices, salted and smoked flesh, salted fish, cheese and butter, beer, oils, wines, sugars, and all sorts of salts, and in general all provisions which serve for the sustenance of life. Furthermore all kinds of cotton, hemp, flax, tar, pitch, ropes, cables, sails, sail cloths, anchors, and any parts of anchors, also ships masts, planks, wood of all kind, and all other things proper either for building or repairing ships, and all other goods whatever which have not been worked into the form of any instrument prepared for war by land or by sea, shall not be reputed contraband, much less such as have been already wrought and made up for any other use: all which shall be wholly reckoned among free goods, as likewise all other merchandizes and things which are not comprehended and particularly mentioned in the foregoing enumeration of contraband goods: so that they may be transported and carried in the freest manner by the subjects of both parties, even to Places belonging to an Enemy, such towns or Places being only excepted as are at that time besieged, blocked up, or invested. And except the cases in which any Ship of war

vestidos con las telas de que se acostumbran hacer, el oro y la plata labrada en moneda ó no, el estaño yerro, laton, cobre, bronce, carbon, del mismo modo que la cevada, el trigo, la avena, y qualesquiera otro genero de legumbres: el tabaco y toda la especieria, carne salada y ahumada, pescado salado, queso y manteca, cerveza, aceytes, vinos, azucar y toda especie de sal, y en general todo genero de provisiones que sirven para el sustento de la vida. Ademas toda especie de algodón cañamo, lino, alquitran, pez, cuerdas, cables, velas, telas para velas, ancoras, y partes de que se componen, mastiles, tablas, maderas de todas especies, y qualesquiera otras cosas que sirven para la construccion y reparacion de los Buques, y otras qualesquiera materias que no tienen la forma de un instrumento preparado para la guerra por tierra ó por mar no seran reputadas de contrabando, y menos las que estan ya preparadas para otros usos. Todas las cosas que se acaban de nombrar deben ser comprendidas entre las mercaderias libres, lo mismo que todas las demas mercaderias y efectos que no estan comprendidos y nombrados expresamente en la enumeracion de los generos de contrabando: de manera que podran ser transportados y conducidos con la mayor libertad por los Subditos de las dos Partes contratantes, á las Plazas enemigas,

or Squadron shall in consequence of storms or other accidents at sea be under the necessity of taking the cargo of any trading Vessel or Vessels, in which case they may stop the said Vessel or Vessels and furnish themselves with necessaries, giving a receipt in order that the Power to whom the said ship of war belongs may pay for the articles so taken according to the price thereof at the Port to which they may appear to have been destined by the Ship's papers: and the two contracting Parties engage that the Vessels shall not be detained longer than may be absolutely necessary for their said Ships to supply themselves with necessaries: that they will immediately pay the value of the receipts: and indemnify the proprietor for all losses which he may have sustained in consequence of such transaction.

ART. XVII.

To the end that all manner of dissensions and quarels may be avoided and prevented on one side and the other, it is agreed that in case either of the Parties hereto should be engaged in a war, the ships and Vessels belonging to the Subjects or People of the other Party must be furnished with sea letters or passports expressing the name, property, and bulk of the Ship, as also the name and place of habitation of the master or commander of the said

exceptuando sin embargo las q<sup>as</sup> se hallasen en la actualidad sitiadas, bloqueadas, ó embestidas. Y los casos en que algun Buque de Guerra, ó Esquadra que por efecto de avería ú otras causas se halle en necesidad de tomar los efectos que conduzca el Buque ó Buques de comercio, pues en tal caso podra detenerlos para aprovisionarse y dar un recibo para que la Potencia cuyo sea el Buque que tome los efectos, los pague segun el valor que tendrian en el Puerto adonde se dirigiese el propietario segun lo expresen sus cartas de navegacion: obligandose las dos Partes contratantes á no detener los Buques mas de lo que sea absolutamente necesario para aprovisionarse, pagar inmediatamente los recibos, y á indemnizar todos los daños q<sup>as</sup> sufra el propietario á consecuencia de semejante suceso.

ART. XVII.

A fin de evitar entre ambas Partes toda especie de disputas y quejas, se ha convenido q<sup>as</sup> en el caso de que una de las dos Potencias se hallase empeñada en una guerra, los Buques y Bastimentos pertenecientes á los Subditos ó Pueblos de la otra, deberan llevar consigo patentes de Mar ó pasaportes que expresen el nombre, la propiedad, y el porte del Buque, como tambien el nombre y morada de su dueño y Comandante de dicho Buque, para que de este

Ship, that it may appear thereby that the Ship really and truly belongs to the Subjects of one of the Parties; which passport shall be made out and granted according to the form<sup>1</sup> annexed to this Treaty. They shall likewise be recalled every year, that is, if the ship happens to return home within the space of a year. It is likewise agreed that such ships being laden, are to be provided not only with passports as above mentioned but also with certificates containing the several particulars of the cargo, the place whence the ship sailed, that so it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the Officers of the place whence the ship sailed in the accustomed form; and if any one shall think it fit or adviseable to express in the said certificates the person to whom the goods on board belong he may freely do so: without which requisites they may be sent to one of the Ports of the other contracting Party and adjudged by the competent tribunal according to what is above set forth, that all the circumstances of this omission having been well examined, they shall be adjudged to be legal prizes, unless they shall give legal satisfaction of their property by testimony entirely equivalent.

modo conste que pertenece real y verdaderam<sup>te</sup> á los Subditos de una de las dos Partes contratantes; y que dichos pasaportes deberan expedirse segun el modelo<sup>1</sup> adjunto al presente tratado. Todos los años deberán renovarse estos pasaportes en el caso de que el Buque vuelva á su Pais en el espacio de un año. Igualmente se ha convenido en que los Buques mencionados arriba si estuviesen cargados, deberán llevar no solo los pasaportes sino tambien certificados que contengan el pormenor del cargamento, el lugar de donde ha salido el Buque, y la declaracion de las mercaderias de contrabando q<sup>e</sup> pudiesen hallarse á bordo; cuyos certificados deberán expedirse en la forma acostumbrada por los Oficiales empleados en el Lugar de donde el Navio se hiciese á la vela; y si se juzgase util y prudente expresar en dichos pasaportes la persona propietaria de las mercaderias se podra hacer libremente: sin cuyos requisitos sera conducido á uno de los Puertos de la Potencia respectiva y juzgado por el tribunal competente con arreglo á lo arriba dicho, para que exâminadas bien las circunstancias de su falta sea condenado por de buena presa si no satisfaciese legalmente con los testimonios equivalentes en un todo.

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<sup>1</sup> No form of passport is annexed to the treaty; see the note regarding Articles 17 and 18.



## ART. XVIII.

If the Ships of the said subjects, People or inhabitants of either of the Parties shall be met with either sailing along the Coasts on the high Seas by any Ship of war of the other or by any Privateer, the said Ship of war or Privateer for the avoiding of any disorder shall remain out of cannon shot, and may send their boats aboard the merchant Ship which they shall so meet with, and may enter her to number of two or three men only to whom the master or Commander of such ship or vessel shall exhibit his passports concerning the property of the ship made out according to the form<sup>1</sup> inserted in this present Treaty: and the ship when she shall have shewed such passports shall be free and at liberty to pursue her voyage, so as it shall not be lawful to molest or give her chace in any manner or force her to quit her intended course.

## ART. XIX.

Consuls shall be reciprocally established with the privileges and powers which those of the most favoured Nations enjoy in the Ports where their consuls reside, or are permitted to be.

## ART. XX.

It is also agreed that the inhabitants of the territories of each

## ART. XVIII.

Quando un Buque perteneciente á los dichos Subditos, Pueblos, y habitantes de una de las dos Partes fuese encontrado navegando á lo largo de la Costa ó en plena Mar por un Buque de Guerra de la otra, ó por un corsario, dicho Buque de guerra ó corsario á fin de evitar todo desorden se mantendrá fuera del tiro de cañon, y podra enviar su Chalupa á bordo del Buque mercante, hacer entrar en el dos ó tres hombres á los quales enseñará el Patron, ó Comandante del Buque sus pasaportes y demas documentos que deberan ser conformes á lo prevenido<sup>1</sup> en el presente tratado, y probará la propiedad del Buque: y despues de haber exhibido semejante pasaporte, y documentos, se les dejará seguir libremente su viage sin que les sea licito el molestarles ni procurar de modo alguno darle caza ú obligarle á dejar el rumbo q<sup>o</sup> seguía.

## ART. XIX.

Se establecerán Consules reciprocamente con los privilegios y facultades que gozaren los de las Naciones mas favorecidas en los Puertos donde los tubieren estas ó les sea licito el tenerlos.

## ART. XX.

Se ha convenido igualmente que los habitantes de los territorios de

<sup>1</sup> No form of passport is inserted in the treaty; see the note regarding Articles 17 and 18.

Party shall respectively have free access to the Courts of Justice of the other, and they shall be permitted to prosecute suits for the recovery of their properties, the payment of their debts, and for obtaining satisfaction for the damages which they may have sustained, whether the persons whom they may sue be subjects or Citizens of the Country in which they may be found, or any other persons whatsoever who may have taken refuge therein; and the proceedings and sentences of the said Court shall be the same as if the contending parties had been subjects or Citizens of the said Country.

## ART. XXI.

In order to terminate all differences on account of the losses sustained by the Citizens of the United States in consequence of their vessels and cargoes having been taken by the Subjects of his Catholic Majesty during the late war between Spain and France, it is agreed that all such cases shall be referred to the final decision of Commissioners to be appointed in the following manner. His Catholic Majesty shall name one Commissioner, and the President of the United States by and with the advice and consent of their Senate shall appoint another, and the said two Commissioners shall agree on the choice of a third, or if they cannot agree so they shall each propose one

una y otra Parte respectivamente seran admitidos en los tribunales de Justicia de la otra Parte, y les sera permitido el entablar sus Pleytos para el recobro de sus propiedades, pago de sus deudas, y satisfaccion de los daños que hubieren recibido bien sean las personas contra las quales se quejasen Subditos ó Ciudadanos del Pais en el que se hallen, ó bien sean qualesquiera otros sugetos que se hayan refugiado alli; y los Pleytos y sentencias de dichos tribunales seran las mismas que hubieran sido en el caso de que las Partes litigantes fuesen Subditos ó Ciudadanos del mismo Pais.

## ART. XXI.

A fin de concluir todas las disensiones sobre las perdidas que los Ciudadanos de los Estados Unidos hayan sufrido en sus Buques y cargamentos apresados por los Vasallos de S. M. Catolica durante la guerra que se acaba de finalizar entre España y Francia se ha convenido que todos estos casos se determinarán finalm<sup>te</sup> por Comisarios que se nombrarán de esta manera. S. M. Catolica nombrará uno, y el Presidente de los Estados Unidos otro con consentimiento y aprobacion del Senado, y estos dos Comisarios nombrarán un tercero de comun acuerdo: pero si no pudiesen acordarse cada uno nombrará una persona, y sus dos nombres puestos en suerte se sacarán en presencia de los dos

person, and of the two names so proposed one shall be drawn by lot in the presence of the two original Commissioners, and the person whose name shall be so drawn shall be the third Commissioner, and the three Commissioners so appointed shall be sworn impartially to examine and decide the claims in question according to the merits of the several cases, and to justice, equity, and the laws of Nations. The said Commissioners shall meet and sit at Philadelphia and in the case of the death, sickness, or necessary absence of any such commissioner his place shall be supplied in the same manner as he was first appointed, and the new Commissioner shall take the same oaths, and do the same duties. They shall receive all complaints and applications, authorized by this article during eighteen months from the day on which they shall assemble. They shall have power to examine all such persons as come before them on oath or affirmation touching the complaints in question, and also to receive in evidence all written testimony authenticated in such manner as they shall think proper to require or admit. The award of the said Commissioners or any two of them shall be final and conclusive both as to the justice of the claim and the amount of the sum to be paid to the claimants; and his Catholic Majesty

Comisarios, resultando por tercero aquel cuyo nombre hubiese salido el primero. Nombrados asi estos tres Comisarios, jurarán que examinarán y decidirán con imparcialidad las quejas de que se trata segun el merito de la diferencia de los casos, y segun dicten la justicia, equidad, y derecho de gentes. Dichos Comisarios se juntarán y tendran sus sesiones en Filadelfia, y en caso de muerte, enfermedad, ó ausencia precisa se reemplazará su plaza de la misma manera que se eligió, y el nuevo Comisario hará igual juramento y ejercerá iguales funciones. En el termino de diez y ocho meses contados desde el dia en que se junten, admitirán todas las quejas y reclamaciones autorizadas por este articulo. Asimismo tendran autoridad para exâminar baxo la sancion del juramento â todas las personas que ocurran ante ellos sobre puntos relativos â dichas quejas, y recibirán como evidente todo testimonio escrito que de tal manera sea autentico que ellos lo juzguen digno de pedirle ó admitirle. La decision de dichos Comisarios ó de dos de ellos sera final y concluyente tanto por lo q<sup>e</sup> toca â la justicia de la queja como por lo que monte la suma que se deba satisfacer â los demandantes, y S. M. Catolica se obliga â hacer las pagar en especie sin rebaxa, y en las epocas lugares, y baxo las condiciones que se decidan por los Comisarios.

undertakes to cause the same to be paid in specie without deduction, at such times and Places and under such conditions as shall be awarded by the said Commissioners.

## ART. XXII.

The two high contracting Parties hoping that the good correspondence and friendship which happily reigns between them will be further increased by this Treaty, and that it will contribute to augment their prosperity and opulence, will in future give to their mutual commerce all the extension and favor which the advantage of both Countries may require; and in consequence of the stipulations contained in the IV. article his Catholic Majesty will permit the Citizens of the United States for the space of three years from this time to deposit their merchandize and effects in the Port of New Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores, and his Majesty promises either to continue this permission if he finds during that time that it is not prejudicial to the interests of Spain, or if he should not agree to continue it there, he will assign to them on another part of the banks of the Mississippi an equivalent establishment.

## ART. XXII.

Esperando las dos Altas partes contratantes que la buena correspondencia y amistad que reyna actualmente entre si se estrechará mas y mas con el presente tratado, y que contribuirá à aumentar su prosperidad y opulencia, concederán reciprocamente en lo succesivo al comercio todas las ampliaciones ó faores que exígiere la utilidad de los dos Paises; y desde luego à consecuencia de lo estipulado en el articulo IV. permitirá S. M. Católica por espacio de tres años à los Ciudadanos de los Estados Unidos que depositen sus mercaderias y efectos en el Puerto de Nueva Orleans, y que las extraigan sin pagar mas derechos qe un precio justo por el alquiler de los Almacenes ofreciendo S. M. continuar el termino de esta gracia si se experimentase durante aquel tiempo que no es perjudicial à los intereses de la España, ó sino conviniese su continuacion en aquel Puerto proporcionará en otra parte de las orillas del Rio Misisipi un igual establecimiento.

## ART. XXIII.

The present Treaty shall not be in force untill ratified by the Contracting Parties, and the ratifications shall be exchanged in six months from this time, or sooner if possible.

In Witness whereof We the underwritten Plenipotentiaries of His Catholic Majesty and of the United States of America have signed this present Treaty of Friendship, Limits and Navigation and have thereunto affixed our seals respectively.

Done at San Lorenzo el Real this seven and twenty day of October one thousand seven hundred and ninety five.

THOMAS PINCKNEY

[Seal]

EL PRINCIPE DE LA PAZ

[Seal]

## ART. XXIII.

El presente tratado no tendrá efecto hasta que las Partes contratantes le hayan ratificado, y las ratificaciones se cambiarán en el termino de seis meses, ó antes si fuese posible contando desde este dia.

En fe de lo qual Nosotros los infraescritos Plenipotenciarios de S. M. Catolica y de los Estados Unidos de America hemos firmado en virtud de nuestros plenos poderes este tratado de Amistad, Limites, y Navegacion, y le hemos puesto nuestros sellos respectivos.

Hecho en San Lorenzo el Real á veinte y siete de Octubre de mil setecientos noventa y cinco.

THOMAS PINCKNEY

[Seal]

EL PRINCIPE DE LA PAZ

[Seal]

## NOTES

There are two originals of this treaty in the Department of State file; no differences between them have been noticed; the text here printed has been collated with that one of them which forms a part of the proclamation and which is indorsed as received on April 12, 1796. The other was received on February 22, 1796, and is so indorsed; it is the example sent to the Senate (D. S., 3 Instructions, U. S. Ministers, 103, letter to Pinckney of February 27, 1796); from it the signature and seal of El Principe de la Paz, following the Spanish text, have been cut away.

The Department of State file now contains a facsimile of the United States instrument of ratification, obtained from the Spanish archives; it is in usual form, including both English and Spanish texts. A draft of the instrument, bearing the same date, March 7, 1796, is in D. S., Miscellaneous Letters, January-April, 1796.

The treaty was not received by the Department of State until February 22, 1796. The effort made to accomplish the exchange of ratifications by the date fixed by Article 23 of the treaty six months

from the date of signature, or April 27, 1796, was successful. In a letter to Charles Rutledge of March 10, 1796 (D. S., 3 Instructions, U. S. Ministers, 111), Pickering wrote:

To guard against accidents from the danger of the seas, three ratified copies of the treaty will be sent addressed to you. For the same reason it will be proper for you to obtain at least duplicate copies, each formally ratified by the King, one of which you will forward to this office by the earliest good opportunity; and retain the other until a conveyance offers by some American citizen of reputation who shall be returning to this Country. And because the President desires to receive the earliest possible authentic information of the ratification by his Catholic Majesty, you will, besides forwarding at least one copy of the treaty with the original ratification thereon by the King, transmit to this office, by three separate conveyances, three original certificates of the exchange of the ratifications, under the hand and seal of the Spanish minister with whom the exchange shall be made. Of this mode of giving certificates we have an example in the case of the exchange of the ratifications of the late treaty between the United States and Great Britain: and the forms of the certificates proper to be used on this occasion you will find inclosed. One such certificate given by you, on the part of the United States, to the Spanish minister, will suffice: but three originals will be proper for you to receive from him, because of the hazard of failure in crossing the sea.

The letter of credence from the President to his Catholic Majesty declares your special powers to exchange the ratifications. The original and a copy of that letter are inclosed.

The certificate of the exchange of ratifications was executed in triplicate at Aranjuez on the date of the exchange. An original is in the Department of State file, which contains also the Spanish instrument of ratification; this was received at Philadelphia on July 30, 1796 (D. S., 3 Instructions, U. S. Ministers, 218), and the proclamation was issued three days later.

The original proclamation is in the Department of State file; inclusion of a duplicate original of the treaty was not usual in the early practice, but otherwise the document is in the customary form.

#### NOTE REGARDING ARTICLES 17 AND 18

Each of these articles speaks of sea letters or passports "according to the form annexed to" or "inserted in" the treaty; but no such form is part of either of the two originals of the treaty in the Department of State file or of either instrument of ratification; the protocol of exchange of ratifications makes no mention of any form of passport or sea letter; and no such form is set forth in the proclamation of the treaty. It may be said here that in the records of the period the expressions "passport" and "sea letter" were interchangeably used as meaning the same kind of paper.

The omission of the form of passport from the treaty when signed was deliberate; the reason given was doubtless inadequate, but Pinckney is explicit on the point in his letter from Paris of December 18, 1795 (received May 12, 1796; D. S., 6 Despatches, Spain; copy in D. S., 4 Despatches, Great Britain, 354):

Not being furnished with a copy of the Sea Letter issued by the President I could not annex it to the treaty as I had intended in pursuance of the provision

in the 17<sup>th</sup> Article—You will no doubt, Sir, have observed & supplied that deficiency—it will likewise be *essential* in case the treaty should be ratified to send proper powers to whoever may be charged with the Exchange of the ratifications in Spain.

The omission of any form of passport or sea letter from the treaty had consequences which were elaborately discussed in *The Amiable Isabella*, 6 Wheaton, 1-101.

There is no doubt, however, that the deliberate omission of the form from the treaty was well known to the Department of State from the above-quoted despatch of Pinckney of December 18, 1795.

Pinckney's letter of December 18, 1795, was answered on May 23, 1796 (D. S., 3 Instructions, U. S. Ministers, 131). The ratification by the United States had, of course, already been sent to Spain, and indeed had been delivered on the previous April 25. The only reference to the point in the instruction was this paragraph:

With the treaty with Spain ratified by the President, were transmitted to Mr Rutledge the necessary powers to exchange the ratifications with the Spanish Minister.

That forms were agreed on and exchanged between the two Governments shortly after the going into force of the treaty is almost equally certain.

In earlier treaty editions (Davis, 780-81, Haswell, 1012, and Malloy, II, 1647), reference is made to the fact that in Volume III (not Volume II) of a collection of Spanish treaties printed at Madrid in 1801 (not 1800), at pages 429-31 (Coleccion de los tratados de paz), there appear two forms of Spanish sea letters as annexes to the treaty text. These are also printed in 6 Wheaton, 97-101. In the English version of the memoirs of the Prince of the Peace (Memoirs of Don Manuel de Godoy) are to be found nearly accurate English translations of those Spanish forms of sea letters, which are there called "models of passports or naval patents"; it seems from that work that those forms, with the text of the treaty, were embraced in an ordinance or decree of September 4, 1796 (*ibid.*, II, 402-18). There is no copy of that document in the Spanish edition of the memoirs of Godoy.

With the note of Davis above mentioned, which remarks that "no explanation of these facts has ever been discovered," there is printed also a letter from Jacob Wagner to the Secretary of State under date of November 3, 1814 (original in D. S., Miscellaneous Letters, October-December, 1814), in which he says:

Averse to a correspondence with the writer of the enclosed letter, but willing to answer the object for public purposes, I take the liberty of doing it to you.

No form of a passport was annexed to the treaty with Spain, though referred to in one of the articles as annexed. To remedy this defect, the Secretary of State agreed with the Chevalier (now Marquis) Yrujo, Envoy of Spain, upon a form which has been constantly printed in the Spanish language, in the sea-letters issued to American vessels. It was closely translated from one of the other passports in the ordinary formulary, under the inspection of the Chevalier. From which of them I do not recollect—most probably it was from that contained in the treaty with Great Britain. My knowledge of the matter is the more certain from having had some agency in it.

I suppose there must be something in the correspondence of the Department of State *in perpetuum rei memoriam*; but as it passed about 18 years ago I cannot refer to it from memory.

Among the printed State-Papers I collected and had bound together, when employed in the Department of State, was a quarto volume, comprehending an official copy of the treaty as promulgated by the Spanish Sovereign. If the volume remains in the office, it may be consulted with advantage, as it embraces a variety of passports prescribed in consequence of the treaty and probably adopts and sanctions the one agreed upon at Philadelphia, as above explained.

The precise position of Wagner in the Department of State in 1796-97 does not appear; but he was Chief Clerk from February 8, 1798, to March 31, 1807. Wagner's letter was written in response to a letter to him from J. B. Colvin dated November 2, 1814, which Wagner enclosed to the Secretary of State. Colvin was then editor of the Bioren and Duane edition of the laws of the United States. There is a brief note to Article 17 of the treaty in Volume I of that edition (printed in 1815), at page 274, based seemingly on Wagner's letter.

Wagner's recollection, nearly eighteen years after the event, was somewhat at fault. The form of the United States passport under the Spanish treaty was certainly not taken from any "treaty with Great Britain," for there was no such form to take; however, Wagner's statement that the two Governments agreed "upon a form which has been constantly printed in the Spanish language, in the sea-letters issued to American vessels," is confirmed by the following note of February 24, 1797, from the Minister of Spain to Colonel Pickering, the original of which is in D. S., 1A Notes from the Spanish Legation:

The Chevalier d'Yrujo presents his Compliments to Colonel Pickering, and has just received the Copy of the passports or Sea letters, agreed on by our Treaty. The Chevalier will have immediately a Translation made in Spanish, which he will send to the Secretary of State to be printed.

In the printed Copies received from Madrid, of the Treaty, there is only the model of the Sea letters given by the King of Spain, and as it will be convenient to have a Copy in the office of the Secretary of State the Chevalier d'Yrujo takes the liberty of sending one to Colonel Pickering, at the same time the Chevalier will keep in his office the printed Copy of the American sea letters, which he has just sent him

From the above note it is clear that D'Yrujo had received from Pickering the United States printed form of sea letter in English; he was translating that form into Spanish for printing by this Government; and he transmitted a copy of the Spanish forms. The agreement between the two Governments, while informal, was thus complete.

There seems no reason to doubt that the Spanish forms transmitted to Pickering by D'Yrujo were those embodied in the Spanish decree and referred to above. Just what United States form was printed in Spanish by this Government is not so certain. The "quarto volume" mentioned in the last paragraph of the letter of Wagner above quoted has not been found; but it is highly probable that that United States form was similar to one which was in use in the early



part of the nineteenth century, some original examples of which are in the Manuscript Division of the Library of Congress. The earliest in date is of 1805; others, issued during the next few years, are in the archives of the Department of State.

The form of document just mentioned was based in part on the provisions of the treaty with the Netherlands of 1782 (Document 5), to which there are annexed three forms of ship's documents, the first being called a passport, the second a certificate, and the third a sea letter; it was printed in four languages, French, Spanish, English, and Dutch, in parallel columns. At the top of the sheet, in the English and the Dutch, is the first form annexed to the treaty with the Netherlands and there called a passport; this is followed by the signatures of the President and the Secretary of State, with the Great Seal, and the countersignature of the collector of the port; then follows the third form from the treaty with the Netherlands, in the four languages, with the signature of the official before whom the oath was taken. But in the first part of the document, the passport proper, the French and the Spanish are quite different in their wording from the English and the Dutch; they contain the provisions of the form annexed to the Treaty of Amity and Commerce with France of February 6, 1778 (Document 1), and included in Article 4 of the convention of September 30, 1800 (Document 25). It appears that passports under the French treaty had earlier been issued in English and that Jefferson, as Secretary of State, had in 1793 made some slight changes in their wording (*American State Papers, Foreign Relations, II, 302*).

That the above-described document embodied the wording sent by D'Yrujo to Pickering on February 24, 1797, is very likely, particularly in view of Wagner's later statement that it had "been constantly printed in the Spanish language, in the sea-letters issued to American vessels."

At the same time there was also in current use a much shorter form of passport. There are numerous original examples extant, some in the archives of the Department of State and others in the Manuscript Division of the Library of Congress. Some of these are dated as early as 1802, and there is one which, while mutilated, could not have been later than 1801; and this form continued in use at least as late as 1841, for among the examples in the archives of the Department of State is one signed in blank by John Tyler and Daniel Webster.

This short form is in English only. It is an engraved parchment, and all the examples which have been seen are cut or indented at the top. It appears that this form was prepared under the statute of June 1, 1796 (1 Statutes at Large, 489-90). It was issued under the Great Seal, with the signatures of the President and of the Secretary of State and a further signature by the collector of the port. A letter of Pickering of August 16, 1796, transmits twenty-four such passports to President Washington "to be completed by your signature" (*D. S., Miscellaneous Letters, August-December, 1796*).

The reference in the letter of Pinckney above quoted of December 18, 1795, to "the Sea Letter issued by the President," is perhaps to a form prepared by John Jay and approved by Washington late in the year 1789 (D. S., 130 C. C. Paper, Passports, folios 13-14). That form of 1789 replaced a still earlier form under the resolution of the Continental Congress of February 12, 1788 (*ibid.*, folios 1-3). The form of 1789 was similar to that of 1796 in its requirements of signatures and seal.

#### NOTE REGARDING ARTICLE 3

The Commissioner of the United States to run the line under Article 3 was Andrew Ellicott. Two volumes of his papers, including his journal for about two months of 1799 and correspondence with the Secretary of State and other officials, Spanish and American, are in the archives of the Department of State. Some of the correspondence is printed in American State Papers, Foreign Relations, II, 20-27, 78-87. The Journal of Andrew Ellicott, which covers the entire period of his work, from 1796 to 1800, with six maps, was printed in Philadelphia in 1803; following the journal proper is an appendix of "Astronomical, and Thermometrical Observations," with eight plates. This appendix (seemingly with only one plate) had been separately printed in Philadelphia in 1801.

However, the original report (or reports) of the Commissioners under Article 3 and their map (or maps) of the boundary are not to be found in the archives of the Department of State. It appears from a letter of Albert Gallatin, dated at New York February 18, 1830 (original in the archives of the Department of State), that while he was Secretary of the Treasury (1801-1813) they had been loaned for use in the Land Office and that thereafter they (or at least the map) had been loaned to "a Committee of Congress." Gallatin's letter enclosed Ellicott's manuscript of "observations to accompany the Map of part of the Mississippi River; the southern boundary of the United States; and the coast of West Florida" (which was used in parts of the book of 1803), and also a copy of the book of 1801.

#### NOTE REGARDING ARTICLE 5

It is not possible to state positively just what treaties between the United States and the Indian nations in question were then in force; those that had previously been made are the following: with the Cherokee, November 28, 1785 (a treaty of 1783 is mentioned in American State Papers, Indian Affairs, I, 326, but this was probably with the State of Virginia); with the Choctaw, January 3, 1786; with the Chickasaw, January 10, 1786; with the Creeks, August 7, 1790; with the Cherokee, July 2, 1791, February 17, 1792, and June 26, 1794. The texts of those treaties are in Kappler, Indian Affairs; Laws and Treaties, II, 8-16, 25-34.

There were also secret articles of the treaty with the Creeks of 1790, the original of which is in the Department of State archives; their provisions are summarized in the work of Samuel Flagg Bemis,

Pinckney's Treaty, at pages 200-1; the first of those articles received the assent of the Senate during the negotiations (Executive Journal, I, 55-6); but with that exception it seems that the text of the six secret articles has not heretofore been published. They read as follows:

Article 1st—The commerce necessary for the Creek nation shall be carried on through the ports, and by the citizens of the United States, if substantial and effectual arrangements shall be made for that purpose by the United States, on or before the first day of August one thousand seven hundred and ninety two—In the mean time, the said commerce may be carried on through its present channels and according to its present regulations.

And whereas the trade of the said Creek nation is now carried on wholly or principally through the territories of Spain and obstructions thereto may happen by war or prohibitions of the Spanish government:

It is therefore agreed between the said parties that in the event of any such obstructions happening it shall be lawful for such persons as the President of the United States shall designate to introduce into and transport through the territories of the United States to the country of the said Creek nation, any quantity of goods wares and merchandize not exceeding in value in any one year Sixty thousand dollars, and that free from any duties or impositions whatsoever, but subject to such regulations for guarding against abuse, as the United States shall judge necessary; which privilege shall continue as long as such obstructions shall continue.

Article 2'nd—The United States also agree to allow to each of the great medal chiefs herein after named, a commission, a great medal with proper ornaments, and each one hundred dollars annually for themselves and the other beloved men of their towns respectively—to wit—

Of the Upper Creeks—The Chiefs the Oakfuskees, Tuckabatchees, and the present Talissee King of the half-way house.

Of the lower Creeks—The Chiefs of the Cusitahs and Cowetas— And—

Of the Semanolees—The Chief of Micasukee—

Article 3'rd—In order to effect a consolidation of the interests of the United States and the Creek nation, it is hereby stipulated that Alexander M<sup>c</sup>Gillivray the beloved Chief of the said nation shall also be constituted the Agent of the United States in the said nation with the rank of Brigadier General and the pay of one thousand two hundred dollars per annum, on his taking the usual oaths required by law.

Article 4th—And the said Alexander M<sup>c</sup>Gillivray hereby stipulates to use his highest exertions to endeavor to cultivate the firmest friendship between the United States and the said Creek nation.

Article 5th—The United States agree to educate and clothe such of the Creek youth as shall be agreed upon, not exceeding four in number at any one time.

Article 6th—These secret articles shall take effect and be obligatory on the contracting parties as soon as the same shall have been ratified by the President of the United States, with the advice and consent of the Senate of the United States.

An account of the relations between Spain and the Indian nations, by Jane M. Berry, with citations of various treaties, is in *The Mississippi Valley Historical Review*, III, 462-77. Two of the Spanish treaties, that with the Talapuche of June 1, 1784, and that with the Chickasaw and Choctaw of May 14, 1790, are printed in *American State Papers, Foreign Relations*, I, 278-80. Texts (in Spanish) of three treaties made by Spain are in *Serrano y Sanz, España y los Indios Cheroquis y Chactas* (Seville, 1916), 82-92; these are a treaty

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with the Choctaw of July 14, 1784, a treaty with the Choctaw and Chickasaw of May 10, 1793, and a treaty with the Chickasaw and various other nations of October 28, 1793. In *Documentos históricos de la Florida y la Luisiana* (Madrid, 1912) is the text (in Spanish) of a treaty with the Chickasaw and Choctaw of May 14, 1792 (436-39); and the book of Doctor Bemis, cited above, discusses the relations of both countries with the Indian tribes in Chapters II and IX; see also generally, *The Spanish-American Frontier, 1783-1795*, by Arthur Preston Whitaker.