Roger S. Clark (Rutgers Law)

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**British Treaty-Making with African and Arab Leaders in the Nineteenth Century Aimed at the Suppression of the Slave Trade**

**I Introduction**

Beginning in about 1817, British diplomatic, consular and (especially) naval representatives negotiated scores of bilateral treaties for the abolition of the transatlantic slave trade. The other parties were East and West African leaders (variously described as “Kings”, “Chiefs” or “Potentates”), and Arab leaders (typically “Sheiks”). Early examples of what, in the twentieth century, came to be called “International Criminal Law Suppression Conventions”,[[1]](#footnote-1) these treaties have received little detailed attention in either legal[[2]](#footnote-2) or historical literature.[[3]](#footnote-3) While most of them were published in various treaty collections, alongside treaties with European and American powers,[[4]](#footnote-4) I have found a handful so far only in the British National Archives.

Typically, the leaders were obliged by the treaties to adopt and enforce a law banning the slave trade in their territories (occasionally slavery itself) and to authorize the British navy to search their ships in their waters and on the high seas, and often ships of all nations within their territorial and internal[[5]](#footnote-5) waters. The slaves would be freed. The aim was to cut off the supply of slaves to the Americas or the Persian Gulf. In return, the leaders earned the pleasure of the British Crown, trading expectations, and, in many of the earlier treaties, a one-time or recurring “gift” of goods. In the twentieth century, some of the legal techniques used in these slave-trade treaties were adapted to deal with broader problems of human bondage beyond the trade in chattel slaves. A good example is the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.[[6]](#footnote-6) The Protocol contains obligations similar to those in the slave trade treaties to make trafficking criminal and to punish those responsible. Its provisions dealing with protection and assistance to victims, including asylum or repatriation, are the direct descendants of articles in the slave trade treaties contemplating freeing the slaves.

This chapter will examine the language of these instruments and seek to place them in their historical context as contributions to the cause of freedom from slavery and other human trafficking. Of particular interest is the way the British characterized the issues as legal ones, and the tools of international law (discussed below) which they created. For the most part, even as the dominant imperial power of the time, they regarded themselves as obligated by the rule of law to act through such instruments rather than through naked force.

The slave trade treaty genre is best known concerning British practice with European and American powers, initially with Portugal[[7]](#footnote-7) and Spain.[[8]](#footnote-8) The key points in those treaties, as they evolved, were obligations to criminalize the trade, to permit British ship visits, and to afford contributions to the Portuguese and Spanish Treasuries as an incentive to participate. My focus here, however, is on a group of bilateral treaties with African and Arab leaders. I have located about a hundred of them, in print or in the British National Archives in Kew outside London.[[9]](#footnote-9) They span the period 1817 to 1893, underscoring that they were no passing fancy. Considerable resources were devoted to negotiation and enforcement[[10]](#footnote-10) – salaries and expenses of negotiators; contributions in coin or goods to the leaders concerned; the costs of enforcement, especially by naval patrols and the stationing of British “agents”. Most of the earlier treaties made no attempt to impose British sovereignty over all or part of the entities concerned.[[11]](#footnote-11) The non-British party was treated as an “equal” sovereign. The British were interested more in trade and relatively soft-power influence than in formal colonial acquisition. By the 1890s, however, the agreements were mostly superseded by the more familiar, but legally varied, instruments of colonial control, namely straight annexation or creation of a “protectorate” or “protected state” status.[[12]](#footnote-12) Revised *Instructions for the captains and commanding officers of Her Majesty’s ships of war employed in the suppression of the slave trade*, issued in 1892, noted the effective demise, through territorial colonization, of the instruments I discuss here.[[13]](#footnote-13)

As one who grew up in the South Pacific, I have always been skeptical about the motives of large Powers, and especially those of a colonial persuasion. On this occasion, I am prepared to give the British the benefit of the doubt. After their own abolition, they were genuinely committed to ending both slavery and the trade itself and put significant diplomatic and other resources into that endeavor.[[14]](#footnote-14) They saw treaty negotiation as a fundamental part of the plan. Viscount Palmerston (long-time Foreign Secretary) and Sir Robert Peel (as Prime Minister of a different Government), two of the main architects of the steps taken in the 1840s, faced off in the House of Commons on 16 July 1844. Palmerston argued for more unilateral uses of hard power, in particular in destroying the barracoons of Africa. Peel insisted in response:

The noble Lord described his proceedings very summarily, by stating that he gave the officers in command of the cruising vessels stationed there orders to seize the barracoons, carry off the negroes they found in them, and to destroy these receptacles without regard to the strict letter of the Law of Nations, or being too nice in that respect. No doubt we are a powerful country, and it is possible to land on the coast of Africa and destroy these places, but it is important for us to ascertain whether the Laws of Nations or Conventions justify such acts as these. They may be savage nations, and may make no demands on us, but there are European interests on the coasts of Africa; and if we choose to disregard the laws which govern the intercourse between nations, we may have to decide whether we will persevere in the acts we have committed, resolved to sanction or defend them at all hazards, or on complaint acknowledge that we are wrong and make compensation.[[15]](#footnote-15)

Peel’s comments deserve some unpacking, as they are deeply relevant to the strategy involved in the treaties under review. Firstly, he stresses fidelity to what he (and his legal advisers) regard as customary international law (which he describes in accordance with the language of his time as “the Laws of Nations”). Secondly, he understands the possibilities of changing custom through treaty provisions (“Conventions”). Thirdly, he acknowledges that other European powers have shipping and strategic interests in Africa that preclude unilateral action. Fourthly, he shares contemporary prejudices of the Africans as “savage nations”, but regards them as “nations” nonetheless. Hence, he is led to a strategy that includes negotiating treaties with Africans and Europeans alike.

**II The Treaties**

What follows is a discussion of a substantial sample of the totality up to the early 1850s, by which time the main provisions were largely standardized.

The first I found was a treaty of 23 October 1817 with Radama, King of Madagascar,[[16]](#footnote-16) Article 2 of which provided:

[T]here shall be an entire cessation and extinction through all the Dominions of King Radama, and wherever his influence can extend, of the sale or transfer of Slaves or other Persons whatever, to be removed from the soil of Madagascar, into any Country, Island or Dominion of any other Prince, Potentate, or Power whatever; and that Radama, King of Madagascar, will make a Proclamation and Law, prohibiting all his Subjects, or Persons depending on him or his Dominions, to sell any Slave, to be transported from Madagascar; or to aid, abet, or assist in such sale, **under penalty, that any Person so offending, shall be reduced to slavery himself.**

The last line hits you, does it not? This is not a treaty forbidding slavery; it is the trade which is banned; slavery may be the penalty for engaging in the trade! Slavery itself was not abolished in Madagascar until the French did so in the 1890s, when it established colonial rule. Gradualism was a feature of the abolition of both the trade and slavery itself throughout the nineteenth century. This is a great example of the ambivalence built into the process. Banning the trade was an exercise in the art of the possible.

Radama’s acquiescence came at a price to the British. Article 3 provided for a set of “articles” (money and goods) to be given annually to the King “in consideration of this concession on the part of” the King, “and in full satisfaction for the same, and in consideration of the loss of revenue thereby incurred by Radama”.[[17]](#footnote-17) A pattern had been established for later practice: an obligation to criminalize and to enforce, and the giving of material incentives. Like the Portuguese and Spanish before him, the King was prepared to cash in the value of holding property rights in humans and the British were prepared to pay. Ambiguities abound!

The second, more sophisticated, example I found is published as “General Treaty between the East India Company (Great Britain) and the Friendly Arabs (Trucial Sheikdoms of Oman and Bahrein)” of 8 January 1820.[[18]](#footnote-18) Its main focus was suppressing piracy in the Persian Gulf, but it addressed other matters, including the slave trade. Article 8 of the Treaty contained a prohibition that appears again in the slave trade treaties in the early 1850s,[[19]](#footnote-19) namely that “The putting of men to death after they have given up their arms is an act of piracy and not of acknowledged war….” Assimilating the war crime of killing prisoners to piracy is a little strange from a legal point of view, but the juxtaposition of piracy, war crimes and the slave trade as breaches of international criminal law is common in modern usage.

Article 9, the nub for our purposes, provided that “The carrying off of slaves, men, women, or children, from the coasts of Africa or elsewhere, and the transporting them in vessels, is plunder and piracy, and the friendly Arabs shall do nothing of this nature.”[[20]](#footnote-20) Note that this is the language of state responsibility. The “friendly Arabs” obligate themselves not to engage in these activities and any criminal sanctions are at best implicit. In later treaties, the individual criminal aspect is in the foreground. There were no “gifts” on this occasion, I suspect because the British were mindful of the long experience of European and American powers which were forced to pay ransom to the Barbary States for the rescue of “Christian” slaves and did not want to establish another precedent for payment here.

The first of the instruments that I have located with leaders on the African continent itself (East Africa in this instance, although most of what followed was with West Africa) was dated 23 August 1823,[[21]](#footnote-21) and is best described as a unilateral declaration[[22]](#footnote-22) by King Makasane of Mapoota.[[23]](#footnote-23) It accompanied a treaty of friendship, commerce and access with the British.[[24]](#footnote-24) It reversed the pattern of the Arab treaties and provided for the abolition of slavery (and presumably, by implication, the slave trade):

No human creature shall ever be a slave in Mapoota, that is, no man, woman or child, shall be considered as the property of any other person; and it shall be the worst crime to steal, or buy or to sell any such; and there shall only be one law for the government of every man in Mapoota.

There was more, not all of it acceptable by modern standards, but which did indicate where contemporary nineteenth century law on ownership of others was heading, albeit not in a straight line. There were some clawbacks from the general prohibition. It provided, for example, that “wives are the property of their husbands, under the terms of the contract by which they become wives,” and that “No woman shall be free to make any contract whatever without the consent of her natural guardian.” Apparently “no woman” in the general clause of the declaration did not include wives! Nevertheless, “No person shall by any act or contract whatever become the slave of another, that is his property, in such a sense as would put it in the power of a master to inflict death, pains, or punishment, on him according to the judgment or caprice of such master only.”[[25]](#footnote-25) A contract of self-slavery was void! This latter principle was an important one in later discussions of indentured labor and debt bondage.[[26]](#footnote-26)

The reference to stealing, buying or selling persons for slavery as “the worst crime”[[27]](#footnote-27) is notable in that it again invokes the specter of the criminal law. The King of Mapoota is not specifically required to make these acts a crime or to afford significant punishments for them, but perhaps this is implicit. Such obligations, at least for the trade in slaves, would be spelled out specifically in later treaties, beginning with the next one in the series.

This total abolition of slavery instrument was a loner in its detail and has clauses I did not find repeated elsewhere. Much of abolitionist work entailed compromise and weighing of what the traffic could bear at a particular time. Did it just prove too difficult to navigate issues of total abolition within Africa so early? I hope that one of my readers has more light to shine on this outlier of a treaty!

A more precise reference to the slave *trade* (but not slavery itself) appears in West Africa in a “Treaty with the Chiefs of the Soombia Soosoos”, 18 April 1826,[[28]](#footnote-28) done by Kenneth Macaulay, Acting Governor of Sierra Leone.[[29]](#footnote-29)  Its fourth Article provided that:

The said Chiefs and Headmen promise and engage to abolish the slave trade and not to allow any exportation of slaves from their respective countries nor to allow any vessels, craft, boats or [illegible] to enter any of their rivers, creeks, bays or waters for the purpose of buying or selling slaves or being in any manner engaged in the slave trade nor to allow factories or other establishments to be found by any means whatsoever for the purchasing or selling of slaves.

This looks to the abolition of the slave trade, but does not itself require the abolition of slavery within the realms of the Soombia Soosoos.[[30]](#footnote-30)

These early treaties are random in drafting technique and years apart. 1841, however, was a banner year in the negotiation of anti-slavery treaties, corresponding with a general increase in British anti-slave-trade patrols on the African coast.[[31]](#footnote-31) The *Consolidated Treaty Series*[[32]](#footnote-32) contains a group of nine treaties “made by the British anti-slavery patrols with native potentates” in West Africa during the year.

The first, of 11 January 1841, with King Freeman and Prince Freeman of New Cestos,[[33]](#footnote-33) is a stunningly concise piece of drafting, filling about half a page, but which sets the tone for the package. It starts with the proposition that “the Slave Trade is now and for ever abolished.” It promises that any Englishman[[34]](#footnote-34) may settle for the purpose of trade and that the persons and property of all traders are to be protected; disputes between “settlers and natives” are to be “determined by arbitration”. It adds, in an important reiteration of British policy at the time, based on colonial domination via soft power, that “This Agreement does not give the English, or any other foreign Power, any territorial rights in the town of New Cestos, or the country adjacent, subject to the above-named King and Prince.”[[35]](#footnote-35)

The second, a very detailed Treaty with the Chiefs of the Timmanees, 13 February 1841,[[36]](#footnote-36) is another treaty encouraging trade, but it breaks several areas of new ground in dealing with slavery and the slave trade. Article I, for example, says that no British born subjects or liberated Africans shall be made slaves in the Timmanee country. If any such persons are made slaves, or brought in as slaves, they are to be set free immediately and assisted in returning to Freetown.[[37]](#footnote-37) This is not a total abolition of slavery, but goes some way in that direction.[[38]](#footnote-38) Article II provides that no persons whatever shall be taken out of the Timmanee country as slaves; and no person in the Timmanee country shall be concerned in any way in seizing, keeping, carrying or sending away any persons for the purpose of their being taken out of the country as slaves. Moreover, the Chiefs were obligated to “punish severely all who break this law.”

Article III represented a dramatic, and until now unusual,[[39]](#footnote-39) delegation of enforcement power to the British:

The officers of the Queen of England may seize every vessel or boat of the Timmanees found anywhere carrying on the trade in slaves in the waters belonging to the Timmanees, and may also seize every vessel or boat of other nations found carrying on the trade in slaves in the waters of the Timmanees. And the vessels and boats so seized shall be taken to an English possession to be tried by English law.[[40]](#footnote-40) And the officers of the Queen of England may destroy all barracoons, buildings, fences and inclosures, used in keeping or detaining persons when taken away to another country as slaves. And they may seize all goods, merchandize, in such barracoons, buildings, fences, or inclosures, or which shall have been imported into the Timmanee country, for the purpose of buying or being exchanged for persons to be carried away as slaves. And the goods and merchandize so seized shall be taken to a British territory to be tried by English law. And the proceeds shall be disposed of between the Queen of England and the Alikarlie,[[41]](#footnote-41) or other Chiefs of the Timmanees, in the manner provided by the existing treaty with Spain;[[42]](#footnote-42) but the officers of the Queen of England shall not destroy any barracoons, buildings, fences, or inclosures, without the authority of the Chief or headman of the district; nor shall they carry away any goods or merchandize which they find on land, without his authority; but they may take all persons whom they find detained in the barracoons, or other buildings or enclosures, as well as in all vessels or boats, and place them under the protection of the Queen of England, that they may be made free.

Apparently the British could seize any Timmanee slave vessel “anywhere” – within Timmanee waters (including rivers and creeks) or on the high seas. Vessels of other nations plying their trade in Timmanee waters could also be seized. Timmanee territorial jurisdiction over such vessels had been delegated to the British.[[43]](#footnote-43) British enforcement power, with local acquiescence, extended also beyond the waters to the land territory of the Timmanees. Buildings, goods and chattels could be seized and sold (with the authority of the local leader) and the proceeds shared out. Above all, the slaves were to be made free.

But there was more; payments were to be made. Article XIII provided that

the Queen of England, “out of friendship for the Chief of the Timmanees, and because the said Chief, with the consent of the proper Chiefs, has made this agreement”, gives him and thirty-six other Chiefs and leaders, various quantities of baft (fabric), tobacco and rum, to be payable every year.[[44]](#footnote-44) The Portuguese and Spanish precedents[[45]](#footnote-45) and the early one with the King of Madagascar,[[46]](#footnote-46) promising payments, were now being applied on the African continent.[[47]](#footnote-47)

Along with the carrots of payments and agents to offer advice, some instruments recognize a British stick. On 25 April 1842, Lieutenant Edward C. Earle, commanding officer of Her Britannic Majesty’s brig *Rapid* asserted, on the occasion of the ratification of a treaty with King Bell:

I … hereby make known to King Bell (with reference to the Treaty for the suppression of the Slave Trade)[[48]](#footnote-48) that should it appear at any time hereafter, from want if the annual certificate (which King Bell declares he will produce), of no Slave Trade having existed in his territories, or from any other circumstances, that the Slave Trade has existed, the presents will in such case be discontinued, and King Bell will incur the severe displeasure of Great Britain, by whom the Slave Trade will be put down by force.[[49]](#footnote-49)

There was presumably an implied right under nineteenth century law of treaties, as in modern treaty law, to suspend payments if a fundamental objective of the treaty is not fulfilled, but “severe displeasure” sounds a bit unilateral and militaristic! Less heavy-handed, and more consistent with the British approach to obtaining the “consent” of the leaders, were (negotiated rather than unilateral) *treaty* provisions to the same effect. Thus the Aboh Treaty[[50]](#footnote-50) states that “Any infringement of this Treaty will subject the Chief of Aboh to the severe displeasure of the Queen of Great Britain, and the loss of duties herein stipulated for.”[[51]](#footnote-51)

The British naval presence, in the rivers and off the coast, was extensive, but information was still useful so that ships might be deployed where they might have most effect. Thus some of the treaties have the leader promising that “should any slave-vessels arrive in the river, he will inform any of Her Britannic Majesty’s cruizers thereof that may be in the neighbourhood.”[[52]](#footnote-52) The enterprise was a cooperative one between Britain and the chiefs.

The essence of suppression conventions is a promise on the part of one or both parties to promulgate (and, in principle, enforce) a law on the subject of the suppression promise. Thus, the Treaty with the King of Cartabar[[53]](#footnote-53) asserts that:

The King of Cartabar shall, within 48 hours of the date of this Treaty, make a law for carrying the whole of it into effect, and shall proclaim that law; and the King of Cartabar shall put that law into force from that time for ever.[[54]](#footnote-54)

A pair of the expansive 1841 agreements contained language ending the practice of “making human sacrifices on account of religious or political ceremonies.”[[55]](#footnote-55) Those who were sacrificed were probably slaves or prisoners of war, but the treaties do not elaborate on who was being protected. 1842 saw two Agreements of 10 and 11 May devoted specifically to human sacrifice on the death of a chief. They were negotiated by William Allen, Acting Captain of Her Majesty’s steam vessel “Albert”, with leaders who had previously done slave-suppression agreements, one with A’Lobah, commonly called King Bell, of Bell’s Town, Cameroons, the other with Gandoh, one of the two chiefs of Dualla, commonly called King Aqua, of Aqua’s Town, Cameroons.[[56]](#footnote-56) The Agreement with King Bell records that “whereas, on the explanation by Captain Allen of the evil tendency of such a practice in all its bearings, the said Chief has declared his conviction of the truth and justice of these arguments, and his regret that they have never been explained to him before.” The parties accordingly agree “That from the signing of this Agreement, no human being whatever shall be sacrificed on account of religious or other ceremonies or customs.” In the case of King Aqua, the King is recorded as “fully sensible of the evil tendency of such a practice, and believes it has fallen into disuse.” Yet, “as no positive obligations exist to prevent the recurrence of it” he freely agrees that no further sacrifices shall take place and “that he will command his son not to perform such sacrifice at his death.”[[57]](#footnote-57)

A batch of almost identical treaties done in 1852[[58]](#footnote-58) pick up the sacrifice theme and return full cycle to one aspect of the first of our treaties, the killing of prisoners of war. The standard sacrifice clause has the leaders promising that:

[N]o human being shall, at any time, be sacrificed within their territories, on account of religious or other ceremonies, and that they will prevent the barbarous practice of murdering prisoners captured in war.[[59]](#footnote-59)

Forgotten for three and a half decades, the problem of prisoners of war now enters into the boiler-plate of the treaties. There is a cluster of ideas here: prisoners of war must not be killed; nor may they be enslaved; nor may prisoners of war or slaves be used for human sacrifice.

Beyond that, these treaties forbid the export of slaves, and people within the jurisdiction from so doing, on pain of punishment; no European or other person may be permitted to reside in the land as a slave-trader; slave buildings are to be destroyed; if the slave trade re-emerges, the British may use force and seize boats of the entity concerned (but not those of other states);[[60]](#footnote-60) slave-traders are to be expelled; the British may trade freely; missionaries may follow their vocation. Interestingly, the era of compensation for the loss of slave revenue is over; there is no provision for gifts to the leadership in any of them.[[61]](#footnote-61)

**III Conclusion**

The British crusade to end slavery and the slave trade focused on both demand and supply. Until slavery was entirely abolished in the United States, Cuba and Brazil,[[62]](#footnote-62) efforts in tandem with those countries emphasized discouraging re-supply by their merchant marines or rogue ships of other nations. The efforts with the African and Arab potentates endeavored to cut off supply at the source, before it crossed the ocean, undoubtedly with some success. Ultimately, abolition in the last part of the nineteenth century spelled the end of the Trans-Atlantic Trade. Yet pockets of slavery itself, and other forms of modern slavery, are still with us.[[63]](#footnote-63)

1. The essence of a suppression treaty is a promise to criminalize a particular activity. Most modern suppression treaties are multilateral; the older ones, like those in this chapter, were typically bilateral. The instruments I discuss here are variously titled “Treaty”, “Agreement”, “Convention” or “Engagement”. The difference in nomenclature is irrelevant to their legal significance. [↑](#footnote-ref-1)
2. Apart from some earlier thoughts on a more limited sample of the treaties, Roger S. Clark, “Steven Spielberg’s *Amistad* and other Things I Have Thought About in the Past Forty years: International (Criminal) Law, Conflict of Laws, Insurance and Slavery,” *Rutgers Law Journal* 30 (No. 2) (1998-99) 371, 428-32, I know of no discussion of them in the legal literature. Similar treaties with European states are discussed in Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights Law* (New York: Oxford, 2012). [↑](#footnote-ref-2)
3. Hugh Thomas, in his classic, *The Slave Trade* (New York: Touchstone/Simon & Schuster, 1997) 669-70 notes these efforts but does not discuss the contents of the treaties; Christopher Lloyd, T*he Navy and the Slave Trade* (London: Frank Cass, 1968) has several references but no systematic discussion, see, e.g., 149-56. [↑](#footnote-ref-3)
4. My references are to the versions in the *Consolidated Treaty Series* (*CTS*). The British evidently regarded these instruments as binding on the international plane, although some older literature casts doubt on the validity of treaties between European powers and entities that were not part of the “civilized” world. Sir Kenneth Keith put that argument to rest in the context of the Treaty of Waitangi, the 1840 agreement between Great Britain and the indigenous Maori of New Zealand. See K.J. Keith, “International Law and New Zealand Municipal Law,” in J.F. Northey ed., *The A.G. Davis Essays in Law* (London: Butterworths, 1965) 130, 136-38. See also, The Right of Passage over Indian territory, 1960 *ICJ* 6, Judgment of April 12, 1960 (obviously accepting validity of eighteenth century agreements between Portugal and princely states); Advisory Opinion on Western Sahara, 1975 *ICJ* 12 (accepting legitimacy of agreements between Spain and entities in Western Sahara); Land and Maritime Boundary between Cameroon and Nigeria: Equatorial Guinea intervening), Judgment of 10 October 2002, 2002 *ICJ* 303 (casting some doubt on the legal characterization of such agreements). [↑](#footnote-ref-4)
5. Many of the leaders had territories abutting or enclosing rivers or creeks, rather than the ocean. [↑](#footnote-ref-5)
6. GA Resolution 55/25 of 15 November 2000. [↑](#footnote-ref-6)
7. Additional Convention between Great Britain and Portugal for the Prevention of the Slave Trade, 28 July 1817, 67 *CTS* 373. [↑](#footnote-ref-7)
8. Treaty between Great Britain and Spain for the Abolition of the Slave Trade, 23 September 1817, 68 *CTS* 45. [↑](#footnote-ref-8)
9. These unpublished ones (and manuscripts of some published ones) are in the Foreign Office Archives, FO 97/432 (Slave Trade Department). They are mostly handwritten, usually copies rather than originals, and sometimes, in spite of copperplate penmanship, hard to decipher. Note that the British had a piece of the bureaucracy in Westminster specifically devoted to the slave trade (the Slave Trade Department). [↑](#footnote-ref-9)
10. There are some interesting examples of associated costs (especially “salaries and incidentals”) on FO 96/34 at the British National Archives, Foreign Office, Chief Clerk’s Department 1824-43. [↑](#footnote-ref-10)
11. For an exception, see Treaty with Cartabar, next note. [↑](#footnote-ref-11)
12. E.g., Provisional Agreement with King Mwanga of Uganda, signed at Kampala, 29 May 1893, 178 *CTS* 447 (dealing with protectorate, commerce and the slave trade). At least one of the early ones was partially along such lines, Additional Articles, to the Treaty with Cartabar, 23 April 1841 (same date), 92 *CTS* 336, Article I:

    The King of Cartabar, seeing that he is unable of himself to prevent the incursions of neighbouring ill-disposed Chiefs, delighting only in war, and who have heretofore annually ravaged his country, carrying off his people as slaves, the cattle and produce, now and for ever places the country of Cartabar under the sole protection of the Sovereign of England, and he begs that Her Majesty, Victoria I, Queen of England, may become, in her own Royal person, and for her heirs and successors, the protecting sovereign of the Cartabar country; and the King of Cartabar freely cedes for ever the Queen of England, her heirs and successors, one square mile of land in such part of his country as shall be pointed out by the Lieutenant-Governor of the British settlements on the Gambia, or other officer authorized to do so.

    Note that there is here both a cession of a relatively small piece of territory and a broader protectorate. By the end of the nineteenth century nearly all the entities appearing in my story had been swept up into the British, Portuguese or French Empires. Many acquired by Britain were not annexed as such to the British Crown but rather were subject to some sort of protectorate arrangement which left them with some international personality intact. [↑](#footnote-ref-12)
13. London, HMSO, 1892. They provide:

    The partition of the Coasts of Africa between European Powers has altered the position of the “Uncivilized States” on the West Coast with whom Great Britain has Treaties for the Suppression of the Slave Trade.

    The waters of that Coast, with the exception of the coast line belonging to Dahomey, have, within the limits recognized by International Law, become the territorial waters of some Civilized State. You will consequently be guided in regard to vessels within these limits by the instructions relating to Territorial Waters.

    Dahomey succumbed to the French the following year, making “civilized” control of the West Coast complete. [↑](#footnote-ref-13)
14. See, e.g., Thomas, n. 3, chapter 31 (“Active Exertions”). Devotees of the television series *Victoria* will be familiar with Prince Albert’s brilliant 1 June 1840 abolitionist speech to over four thousand people. [↑](#footnote-ref-14)
15. *Hansard*, House of Commons, 16 July 1844. Peel also referred to a legal opinion of the Queen’s Advocate: “Unless you have a convention with the native African princes, you are not entitled to destroy the barracoons; this [apparently the slave trade] is not an act of piracy which the Law of Nations would take notice of, and if a murder be committed, you will be responsible for the act.” [↑](#footnote-ref-15)
16. Treaty between Great Britain and Madagascar, 23 October 1817, 68 *CTS* 115. [↑](#footnote-ref-16)
17. The treaty also assumed that there would be an Agent of the Governor of Mauritius, resident at the Court of Radama. He would have significant influence on the kingdom’s governance, but the French, not the British, ultimately colonized the territory formally. [↑](#footnote-ref-17)
18. 70 *CTS* 463, signed initially by entities called Ras-al-Khaimah, Zyah, Shargah, Abu Dhabi, Ajman, and Umm-al-Quaiwaim, and acceded to by Bahrein on 5 February. (Translation from the Arabic original.) The *Treaty Series* contains numerous agreements entered into by the East India Company, regarded as an instrument of the Crown for treaty purposes. Much later, Great Britain established protectorates over the Trucial (or “treaty”) States and some of the others involved. For another early East India Company slave trade suppression treaty, see Treaty between the East India Co. (Great Britain) and the Imam of Muscat for the Suppression of Slavery, signed 10 September 1822, 72 *CTS* 473 (Imam promises to prevent his subjects from selling slaves to “Christians of all nations”; permit the stationing of a British slave trade intelligence-gathering official in Zanzibar, where the Imam also held sway; and for British seizure of slave ships in certain contingencies). Zanzibar and Muscat became the prime focus of British efforts late in the nineteenth century and many additional treaties followed. See Raymond Howell, *The Royal Navy and the Suppression of the Slave Trade* (New York: St. Martin’s, 1987) (mentioning the treaties discussed in this chapter only in passing). [↑](#footnote-ref-18)
19. Nn. 58-9. [↑](#footnote-ref-19)
20. Throughout the nineteenth century, the British tended to conflate the slave trade with piracy, the one generally accepted international crime over which any state was said to have jurisdiction to punish the guilty. This occurred sometimes in United States usage. This treaty, you will notice, makes the same move with the war crime of killing prisoners. The British/American conflation of the slave trade and piracy never quite captured universal acceptance; nor is killing prisoners widely regarded as piracy. The British were still trying to make the piracy connection in the negotiations on the 1926 and 1956 Slavery Conventions, C.W.W. Greenidge, *Slavery* (1958) 183, 196. Some slave traders moonlighting as pirates were captured by the British naval squadron on slave patrol and executed for piracy rather than slave-trading, Lloyd (n. 3) 64-67. [↑](#footnote-ref-20)
21. FO 97/432 (Foreign Office, Slave Department). I have not found a printed version. [↑](#footnote-ref-21)
22. It was signed in the presence of two naval officers and two interpreters and apparently regarded by the British as a binding international instrument. [↑](#footnote-ref-22)
23. Now Maputo in Mozambique. The Portuguese had not secured total dominion over their colony at this point, but they endeavored to nullify the British actions. See material in George McCall Theal, ed., *Records of South-Eastern Africa* (London, for Government of Cape Colony, 1903), Vol IX, 71-2. [↑](#footnote-ref-23)
24. Also dated 23 August 1823. It was good for only four years and apparently not renewed. The source in Theal, n. 23, has this treaty encompassing the abolition of the slave trade, but I have not located the text. [↑](#footnote-ref-24)
25. This clause continued:

    Servitude is however permitted, 1st for daily hire for wages, 2nd to perform certain tasks or works when by agreement or contract the remuneration depends on the completion of such works, 3rd conditional personal servitude for any time to which fathers or guardians may engage children, for any time before they attain the age of seventeen years. Men above that age may be engaged for any time not exceeding six years.

    This is rather a sophisticated effort to tread the line between chattel slavery and contracts for hire, with a nod towards the inevitability of child labor. [↑](#footnote-ref-25)
26. It fell to important twentieth century treaties to deal with issues such as forced labor, debt bondage, serfdom, child marriage, servile marriage and child servitude, notably the International Labor Organization Forced Labor Convention (1930) and the 1956 United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery. [↑](#footnote-ref-26)
27. Is “worst crime” hyperbole? Worse than murder? Worse than regicide? Perhaps the point is just that it is “serious”. One is reminded of twentieth century efforts to squeeze various undoubted evils into the categories of genocide or torture when there are other categories that would be adequate. We are still arguing about whether aggression or genocide is the “crime of crimes”. [↑](#footnote-ref-27)
28. 76 *CTS* 185. [↑](#footnote-ref-28)
29. In 1808, Great Britain established a small colony on the coast, at the estuary of the Sierra Leone River, mainly the city of Freetown, where freed slaves were sent. It was not until 1893 that a much larger protectorate was established over the interior of what is now Sierra Leone. As well as those with chiefs in the interior of Sierra Leone, many of the treaties discussed in the text were with chiefs from the area near the, also small, Gambia colony. The Gambia, Sierra Leone, Gallinas, Senegal, Niger and Congo Rivers were common routes for the export of slaves. [↑](#footnote-ref-29)
30. Id. See also Convention that Macaulay did with the King of Barra, 15 June 1826, 76 *CTS* 281 (with the “advice and consent” of the King’s chiefs and headmen) (the King agreed “not to allow any slaves purchased in the River Gambia to be carried over land through any part of his territories, or to be shipped therefrom”); Article 3 of the Treaty of Alliance and Friendship between the Governor of Sierra Leone and Quai, King of the Wooli Nation, on the right bank of the River Gambia, 15 May 1827, 77 *CTS* 203 (“not to allow any fellow creatures to be sold or purchased within his territory and to persuade the other Kings and Chiefs of Africa to do the same, for while this odious practice is permitted, wars will be encouraged and there cannot be security to cultivate the ground or to trade”); Treaty with the People of Brekama, 29 May 1827, 77 CTS 235, Article II (“engage not to allow any slaves to be purchased or sold within their territory nor to employ themselves or their people in this trade”); Treaty with the King of Combo, 4 June 1827, Article I, 77 *CTS* 237 (“To prohibit and abolish the purchase and sale of slaves”). Treaty between Great Britain and the Chiefs of Gallinas, 21 November 1840, 91 *CTS* 175 (expelling white slave-traders and destroying their factories, but no specific general suppression of slavery or the slave trade). The Gallinas treaty followed a naval intervention apparently of the kind Lord Palmerston (n. 15) had authorized, *Thomas* (n. 3) 669-70, Lloyd (n. 3) 94-9. [↑](#footnote-ref-30)
31. Thomas (n. 3) 659-64. [↑](#footnote-ref-31)
32. Vol. 92, at 315. Orders for enforcing most of this batch appear in the *Instructions for the Guidance of her Majesty’s Naval Officers Employed in the Suppression of the Slave Trade* 90-8 (London, both Houses of Parliament, 1844) (issued by “the Commissioners for executing the Office of the Lord High Admiral”, presumably after consultation with the Foreign Office). This document contains negotiating instructions for new agreements (pp. 15-6) and a “Draft of Engagement” (p. 168). Lloyd (n. 3) 92-3 attributes the drafting of this model Engagement to ardent opponent of the slave trade Captain Joseph Denman, son of the Lord Chief Justice and the officer in charge of the Gallinas intervention n. 30. [↑](#footnote-ref-32)
33. 92 *CTS* 316. [↑](#footnote-ref-33)
34. Many of the treaties (and the “Draft Engagement”, n. 32) refer to the “English” and some refer to Victoria as “Queen of England”. Chauvinism of the English naval elite? Simplification for the uncivilized? It must refer to Great Britain in general. [↑](#footnote-ref-34)
35. Some of the treaties, while granting neither “territorial rights” nor a protectorate, suggest some British dominion over foreign relations by discouraging the Chiefs’ right to wage war. See, eg, Timmanees Treaty, 92 *CTS* Article XVII, at 321: “No wars shall be entered into between the Chief of the Timmanee people or their successors, or with any other Chiefs or States, without first making the Government of Sierra Leone acquainted with the matter in dispute.” See also Treaty with the King of Cartabar, 92 *CTS* 323, 324, Article VI: “And the King of Cartabar will not make any war upon any other country, unless with the consent of the Lieutenant-Governor of the British settlements on the Gambia.” (This provision was perhaps superseded by the protectorate created by the Additional Articles to the Treaty entered into (as an afterthought?) the same day.) Was Britain trying to prevent wars for acquiring slaves, or was it imposing a general Pax Britannica on the supposedly uncivilized? [↑](#footnote-ref-35)
36. 92 *CTS* 316. [↑](#footnote-ref-36)
37. The second part of Article I is an unusual example of British exercise of nationality jurisdiction which also appears in several later treaties:

    But no British born subjects, or liberated Africans, shall engage in war, or excite or provoke to war, in the Timmanee country; and if any British born subjects, or liberated Africans, shall engage in war or excite or provoke war, they shall be sent for by the Governor of Sierra Leone and punished.

    For an example of nationality jurisdiction over slave trade offenses committed by British citizens anywhere in the world, see 6 & 7 Victoria, c. XCVIII (24 August 1843). [↑](#footnote-ref-37)
38. For an earlier example of a British effort to protect its people from slavery, see Treaty of Peace, England and Tripoli, 18 October 1662, 7 *CTS* 253 (“[N]o subject of His said Majesty may be bought or sold, or made slave of in Tripoli or its territories.”) [↑](#footnote-ref-38)
39. The treaty with the Trucial Sheikdoms, n. 18, contained provisions on joint responses by the parties. [↑](#footnote-ref-39)
40. There was British legislation empowering the relevant naval and judicial action. Vice-Admiralty courts had jurisdiction. See legislation in n. 37. [↑](#footnote-ref-40)
41. The Alikarlie seems to have been an inner group of leading chiefs. [↑](#footnote-ref-41)
42. The reference must be to the 1817 Treaty with Spain (n. 8) which provided, in Article VII of its Regulations for Mixed Commissions, that duly seized vessels and their cargo, apart from slaves, were to be sold at public sale “for the profit of the two Governments.” Slaves were to be freed. [↑](#footnote-ref-42)
43. Not every power would be comfortable about the British boarding their boats. The territorial sovereign would have power under international law to search anyone’s vessels in its waters and could presumably delegate that power to the World’s Policeman. But, would all agree with either part of this proposition? Some of the later treaties were a little more cautious on this front. For example, the Treaty with Obi Osai, Chief of Aboh, 28 August 1841, 92 *CTS* 328, provided:

    The officers of the Queen of Great Britain may seize every vessel or boat of Aboh, found anywhere carrying on the Trade in Slaves, and may also seize every vessel or boat *of other nations with whom a similar Agreement has been made*, carrying on the Trade in Slaves in the waters belonging to the Chief of Aboh. Upon such seizure and after regular condemnation, according to the provisions of this Agreement, the slaves shall be made free, and the vessels or boats shall be destroyed. (Emphasis added.)

    Condemnation under the Agreement normally meant an examination made by the naval officer in charge in the presence of a Chief or headman (Article III). By the 1850s, the clause referred only to the vessels of the African party itself. [↑](#footnote-ref-43)
44. “Every year” seems to mean indefinitely, but other treaties promised only a single payment or payments for say five years. [↑](#footnote-ref-44)
45. Nn. 7, 8. [↑](#footnote-ref-45)
46. N. 16. [↑](#footnote-ref-46)
47. Some 1841 treaties acknowledged expressly, like the early Treaty with King Ramada (n. 16), that suppressing the trade might be costly to the King’s revenues. The Treaty with King Eyamba, signed at Calebar Town, 6 December 1841, 92 *CTS* 325, Article III, read: “And in consideration of this concession on the part of King Eyemba, and in full satisfaction for the same, and for the loss of revenue thereby incurred by King Eyamba, Lieutenant Blount, on the part of the Queen of England, does engage, that there shall be paid to King Eyamba, yearly, for 5 years, from the ratification and approval of this Treaty, the following, viz., 2000 dollars (Spanish); upon a certificate being received that the said laws and proclamations have been enforced, which shall be signed by King Eyamba and the masters of any British merchant-vessels there may be in the river at the time.” An interesting delegation of power to the merchant marine as opposed to the navy. (Presumably a naval signature would pass.) [↑](#footnote-ref-47)
48. This must be referring to the Treaty with King Bell, of 7 May 1841, 92 *CTS* 325, although it is not so titled as for suppression of the slave trade. [↑](#footnote-ref-48)
49. British Declaration, 25 April 1842, *CTS* 326. (The annual presents, to last for five years, were 60 muskets, 100 pieces of cloth, 2 barrels of [gun?]powder, 2 puncheons [a large barrel] of rum, 1 scarlet coat with epaulettes, 1 sword. Treaty of 7 May 1841, 92 *CTS* at 326.) A similar Declaration was made to King Acqua the same day, on ratification of his treaty. 92 *CTS* at 327 (he received the same gifts). [↑](#footnote-ref-49)
50. 92 *CTS* 328 at 330 (Article XV). [↑](#footnote-ref-50)
51. The reference to “duties” is apparently to the King’s power under the treaty to collect duties of up to one-twentieth the value of British imports. The King had obtained many presents, but this was one-off not a repeat gift. There was no threat to take them back. An identical duties provision appears in the Treaty with Egarra, 92 *CTS* 331 at 334. This Chief also received a one-time lengthy list of goods, including a dozen snuff boxes, a dozen padlocks, a dozen pairs of spectacles, but only one drum and one tambourine. [↑](#footnote-ref-51)
52. Treaty with King Bell, 92 *CTS* 325. To same effect, Treaty with King Acqua, 92 *CTS* 326, 327; Treaty with King Eyamba, 92 *CTS* 335. Among others, the Treaty with the King of Cartabar, *CTS* 323, 324, went further and provided for an agent: “The Queen of England may appoint an agent to visit or to reside in the Cartabar country, and this agent is to watch over the fulfilment of this treaty; he shall always receive honour and protection in the Cartabar country, and the King will pay attention to what he says. The person and property of this agent shall be sacred.” On agents, see also, Timmanees n. 35; Aboh n. 43; Egarra n. 51. [↑](#footnote-ref-52)
53. 92 *CTS* 323, Article XI. [↑](#footnote-ref-53)
54. The treaty has obligations concerning such matters as trade and the rights of English residents as well as forbidding white slavery and the slave trade, so the King’s “law” could be quite complex if it followed British legislative practice where Parliament would give effect to it in Parliament’s own words. I suspect that African constitutional practice was most often merely some sort of proclamation of the Treaty. The 48 hour requirement is striking – these are not necessarily constitutional monarchies requiring consultation with Parliament. But some of the agreements must have required consultation with other leaders under local customs. [↑](#footnote-ref-54)
55. Timmanees, n. 36, Article XVIII, and that with Obi Osai, Chief of Aboh, 92 *CTS* 328, Additional Article: “The Chief of Aboh declares that no human beings are sacrificed on account of religious or other ceremonies or customs in the Aboh country, and hereby stipulates that he will prevent the introduction of such barbarous and inhuman customs and ceremonies in his country.” (Truth or face-saving?) The missionaries were on the job in West Africa by now and may have been offering some encouragement of these negotiations. Several of the treaties promise to protect the right of missionaries “to freely practice and teach the Christian religion” and to “leave the country when they please”. Treaty with the Chiefs of the Timmanees, 92 *CTS* 316, 318; Treaty with the King of Cartabar, 92 *CTS* 323, 324. See also Treaty with Aboh, 92 *CTS* 328, 329 and Treaty with Ochijeh, Attah of Egbarra, 92 *CTS* 331, 332-3 (subjects of those leaders “who may embrace the Christian faith [shall not] be, on that account, or on account of the teaching or exercise thereof, molested or troubled in any manner whatsoever.”) [↑](#footnote-ref-55)
56. Despatch from Her Majesty’s Commissioners of the Expedition to the Niger. “Aqua” and “Acqua” are clearly the same person. In FO 97/432. [↑](#footnote-ref-56)
57. Despatch No. 43 from Lord Stanley to the Commissioners, acknowledging receipt of these Agreements, in FO 97/432, adds “and I have to acquaint you, and desire that you will equally inform those Chiefs, that having laid the said Agreements before the Queen, Her Majesty has been graciously pleased to confirm and ratify the same.” The treaties seldom have any specific provisions requiring ratification and most appear on their face to be effective immediately. But as these instances suggest, some at least were referred to Westminster for further executive action, the Queen no doubt accepting the advice of a Minister, or the whole Cabinet, in this respect. [↑](#footnote-ref-57)
58. Engagements for the Abolition of the Traffic in Slaves etc. between Great Britain and the Chiefs of the Egba Nation, Dahomey, Porto Novo, Little Popoe, Goom Cork-way, Abo-Den Arfo, Afflowhoo, Adinnar Cooma, Adaffie, Block-ouse, Aghwey, Grand Popoe, Jaboo, King Akitoe of Lagos, the Chiefs of Bussama and Badagry (West Africa), signed 5, 13, 17, 24, 26, 27, 28, 29, 30 January, 2, 25, 28 February, 9, 18 March 1852, 107 *CTS* 423 ff. Most of these treaties were signed on behalf of the Queen by Thomas George Forbes, Commander of Her Majesty’s Ship *Philomel* and witnessed, among others, by Louis Fraser, Her Majesty’s Vice-Consul for the Kingdom of Dahomey. Provision was made in these treaties for France to join the treaty should it wish. Fraser, whose main task was to obtain a slave treaty with the King of Dahomey, failed in this endeavor, although Forbes was able to negotiate one that did not include the abolition of human sacrifice. See Robin Law ed., *Dahomey and the Ending of the Trans-Atlantic Slave Trade: The Journals and Correspondence of Vice-Consul Louis Fraser 1851-1852* (Oxford: OUP for British Academy, 2012). Lloyd (n.3) discusses, at 154, the joy of the King of Dahomey in human sacrifice. [↑](#footnote-ref-58)
59. Contained in all except the Dahomey Treaty (n. 58). [↑](#footnote-ref-59)
60. Cf. n. 43. Treaties with other Chiefs or with European and American States may have permitted such seizures. [↑](#footnote-ref-60)
61. A House of Commons *Report from the Select Committee on Slave Trade Treaties*, 1852-3, paras 3 and 4, gives an official tally. In 1849-50 here were “forty-two treaties for the Suppression of the Slave trade existing between Great Britain and native Chiefs on the Coast of Africa.” Since May of 1850, twenty-three more treaties had been concluded with “native Chiefs.” [↑](#footnote-ref-61)
62. The House of Commons report, n. 61, indicates that the trade to Brazil had largely dried up by 1852, and that it would be “extinct” if the Cuban market could be closed off. [↑](#footnote-ref-62)
63. See, e.g., Helen Duffy, “Hadijatou Mani Korua v Niger: Slavery Unveiled by the ECOWAS Court”, (2009), 9 (No. 1) *Human Rights Law Review* 151; Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, UN Doc. A/HRC/33/46 (2016) pp. 4-18 (debt bondage). [↑](#footnote-ref-63)