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Autochthonous Sovereignty and Territorial Appropriations in Nineteenth-Century Franco-African Treaties

Isabelle Surun

The relation between sovereignty and international law has been the subject of conflicting grand narratives, which fail to adequately represent the practice of a diplomacy of imperial contact that pitted European powers and autochthonous political entities against one another. The most common version describes the emergence of the notion of sovereignty in its territorial form in Europe with the Peace of Westphalia in 1648, followed by its spread to the rest of the world through the transfer of sovereignty to newly independent states at the time of decolonization.¹ The colonial period itself is sidelined, and the colonial appropriation of territory is not considered an infringement of sovereignty on the grounds that the notion did not exist outside of Europe. To the contrary, an alternative postcolonial version outlined by Antony Anghie asserts that international law and the doctrine of sovereignty both originated from the problems posed by the “colonial confrontation” as early as the sixteenth century: contemporary jurists were obliged to come up with ways to avoid attributing a legal personality based on “sovereignty” to non-European states, while at the same time recognizing those of European states themselves.²

This article was translated from the French by Arby Gharibian and edited by Chloe Morgan and Nicolas Barreyre.

1. See, for example, Daniel Philpott, *Revolutions in Sovereignty: How Ideas Shaped Modern International Relations* (Princeton: Princeton University Press, 2001).

2. Antony Anghie, “Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law,” *Harvard International Law Journal* 40, no. 1 (1999): 1–71; Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004).

Anghie's detour through the imperial periphery sheds light on the importance of relations between European and non-European political entities—largely forgotten by the history of international law. However, he analyzes them through doctrines conceived by European legal experts and as part of an intellectual history of the scholarly literature upon which the discipline of international law was founded. As a result, Anghie says more about the workings of a European discourse that aimed to deny legal capacity to the rest of the world than he does about the legal interactions that arose from the colonial confrontation. Yet this confrontation did not simply produce the scholarly doctrine of European international law; it also gave rise to a large body of contractual texts through which European and non-European signatories sought to settle their relations in law—in other words, to the practice of international law outside Europe.

This documentation has been interpreted in different and diverging ways. Comparing the clauses in seventeenth- and eighteenth-century Euro-Asian treaties with those of nineteenth-century Euro-African treaties, Charles Henry Alexandrowicz distinguished an initial period characterized by a classic “law of nations,” developed by authors such as Hugo Grotius or Emer de Vattel, which attributed to all nations equal dignity and the legal capacity to settle their relations from a position of equality.³ He then identified a “period of transition” in the nineteenth century, during which the “principle of equality and reciprocity” in relations between European and African states gradually disappeared in accordance with a “positivist” conception of international law, excluding most African and Asian countries from the “family of nations” in the name of racial and civilizational criteria that established the superiority of Europeans.⁴ According to Anghie, this denial of legal personality—which negated the sovereignty of societies like the Amerindian nations and justified the conquest of their territory if they obstructed the universal right to engage in commerce—began in the sixteenth century with the work of Francisco de Vitoria (*De Indis*, 1559). This means that the large number of treaties produced by the colonial confrontation and by commercial relations with non-European entities raise questions of interpretation. Indeed, their very existence contradicts the received doctrine, for they demonstrate the possibility of establishing contractual relations with non-European societies, amounting to a *de facto* recognition of their legal personality. For Anghie, the treaties that governed territorial appropriations outside of Europe actually brought about the disappearance

3. Charles Henry Alexandrowicz, “Treaty and Diplomatic Relations between European and South Asian Powers in the Seventeenth and Eighteenth Centuries,” *Recueil des cours de l'Académie de droit international*, vol. 100 (Leiden: A. W. Sijthoff, 1961), 207–320; Alexandrowicz, “Le droit des nations aux Indes orientales aux XVI^e, XVII^e, XVIII^e siècles,” *Annales ESC* 19, no. 5 (1964): 869–84; Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries)* (Oxford: Clarendon Press, 1967).

4. Alexandrowicz, “Le rôle des traités dans les relations entre les puissances européennes et les souverains africains. Aspects historiques,” *Revue internationale de droit comparé* 22, no. 4 (1970): 703–9; Alexandrowicz, “The Partition of Africa by Treaty,” *Proceedings of the Symposium of the Colston Research Society* 25 (1973): 129–57; Alexandrowicz, *The European-African Confrontation: A Study in Treaty Making* (Leiden: A. W. Sijthoff, 1973).

of indigenous sovereignty—at the very moment it was made visible on paper—by immediately incorporating it into European sovereignty, seen as the only legitimate one. These treaties thus served as texts written in disappearing ink, displaying and effacing autochthonous sovereignty in the same gesture. This interpretation, which considers these treaties to be founded on a sleight-of-hand, makes it possible to denounce them as inauthentic and to deny them any legal weight. It entails discounting their contractual element, as well as any value the non-European party might have placed in them. In this article, I will explore an alternative hypothesis by examining how the drafting of a treaty, which was partially a co-construction, conferred on the autochthonous political entity the ability to affirm its own sovereignty, quill in hand. The analysis of a corpus of treaties concluded in the nineteenth century between French authorities and those of West African territories challenges the commonly held view that these documents of colonial practice confiscated sovereignty.⁵

Produced by a diplomacy of imperial contact at the initiative of European agents, this corpus of texts reflects the activity of colonial authorities in Senegal in a long-term process of commercial and territorial expansion. The asymmetry of the sources does not, however, imply a Eurocentric approach. Historians of colonization have developed techniques to interpret the documents bequeathed by the colonial archive, reading them “against the grain” or “along the grain.”⁶ These make it possible to resist the unilateralism of the sources by deciphering their discourse and identifying what they do not say, or by revealing the gaps and inconsistencies that run counter to the image of rationality and omnipotence claimed by the colonial state. Moreover, it is in no way a question of reinforcing the colonizers’ belief in their capacity to transform the world by seeing territorial expansion as the vector of a unilateral transmission of purely European concepts such as the notion of sovereignty. Thus, without purporting to write a connected history,

5. For a recent collection of articles that takes a similar approach to these questions, see Saliha Belmessous, ed., *Empire by Treaty: Negotiating European Expansion, 1600–1900* (Oxford: Oxford University Press, 2014).

6. “Against the grain” refers to the techniques for analyzing colonial categories employed by the leading historian of subaltern peoples in India, Ranajit Guha, in order to extricate the facts reported in the archive from their discursive envelope and thereby reconstitute the figure of the subaltern: Ranajit Guha, *Elementary Aspects of Peasant Insurgency in Colonial India* (Delhi: Oxford University Press, 1983). On Guha’s approach and that of subalternist historians in general, see Jacques Pouchepadass, “Les *Subaltern Studies* ou la critique postcoloniale de la modernité,” *L’Homme* 156 (2000): 161–86. The “along the grain” approach was developed more recently by Ann Stoler in her study of the colonial state and its workings in the Dutch Indies: Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2009). For an example of how these methods apply in a West African context, see David Robinson, *Paths of Accommodation: Muslim Societies and French Colonial Authorities in Senegal and Mauritania, 1880–1920* (Athens: Ohio University Press, 2000). Robinson reveals the ways in which French knowledge about West African Muslim societies was constructed, the reliance of this knowledge on local informants, and the limits of the colonial archive (pp. 37–57).

understood as a history “in equal parts,”⁷ I will attempt to reconstitute—insofar as it is possible and to the extent that it can be detected in the documents—the role played by the African signatories in the establishment of these treaties.

This involves an attempt to retrace the history, over the long nineteenth century, of a diplomatic genre that dealt inventively with international law and eluded all codification, before ultimately crystallizing in the “colonial protectorate.” A classic subject of international law, the protectorate relies on the dissociation of two levels of sovereignty: external sovereignty authorizing a state entity to maintain relations with others, conclude treaties, or declare war; and internal sovereignty, by which a state’s authority is exercised over the inhabitants that are subject to it. For a sovereign authority to establish a protectorate, it must thus substitute itself for another authority in terms of external sovereignty, taking responsibility for defending its borders and territory, all while leaving it total autonomy in exercising the prerogatives conferred by its internal sovereignty.

In what follows, I will examine how this model was put in place by inscribing it in the long history of the transition from a system of concessions and trading posts, which characterized the European presence in Africa until the end of the eighteenth century, to a system of territorial appropriations orchestrated by the colonial partition. The balance of power between colonial and autochthonous authorities evolved throughout this long nineteenth century, but it also varied greatly from one location to another at any given date. The treaties could thus be the corollary of conquest, the direct result of a military operation in coastal or fluvial regions where commercial contact had long been established, but they could also be signed by Europeans in a position of weakness, advancing alone into African territory well beyond the limits of the colony. Paradigmatic objects of the imperial transition from a colonial old regime to the formation of new empires, treaties can help us clarify the processes of territorial appropriation as they raise the central question of sovereignty. Both support for and instrument of the transfer of sovereignty, they reveal the progressive dismantling of African sovereignty, and even its exclusion from the realm of the possible. Nevertheless, they also represent a preliminary recognition of this sovereignty. This interplay of recognition and confiscation can be understood only by examining both autochthonous and European conceptions of sovereignty, with treaties forming the interface between the two. If the former reflect the diversity of local forms of sociopolitical organization, ranging from acephalous societies to constituted states, the latter are paradoxically just as inconsistent. In particular, they differ depending on whether they were implemented in the metropole or on the imperial margins.

A precise analysis of the legal terms used to designate appropriations helps reveal the chaotic nature of the process, evident in the fluidity of the categories used (appropriation of land or of territory, sovereignty or suzerainty, etc.). This study will first examine the multiple paths explored by European negotiators, and then present the formalization of the colonial protectorate in an increasingly tense

7. Romain Bertrand, *L'Histoire à parts égales. Récits d'une rencontre Orient-Occident, XVI^e-XVIII^e siècle* (Paris: Éditions du Seuil, 2011).

context where rivalries between empires took precedence over political relations with autochthonous sovereigns. Whether they concerned a classic or “colonial” protectorate, or indeed any other form of treaty, negotiations focused on sovereignty. The final section of this article will therefore examine the conditions that made sovereignty negotiable, analyzing how consent to a treaty was expressed in diplomacy and considering emblematic cases where African heads of state refused to enter into this kind of negotiation.

Tinkering With Words: The Vocabulary of Sovereignty

Taken as a series, the treaties signed in “Senegal and its dependencies” prove very heterogeneous in terms of both the phrasing of their clauses and their terminology.⁸ If treaties represent the medium and the legal instrument of territorial appropriations and transfers of sovereignty in favor of the colonial power, a close analysis of the legal forms of these appropriations is needed to understand what precisely was being transferred: a piece of land (or terrain), a territory, limited political rights, or full-fledged sovereignty. In other words, what were the regimes of appropriation mobilized by contractual relations? The indetermination of the vocabulary is immediately apparent in these texts, which were drafted by officers with little knowledge of the legal subtleties of the notions they employed, barely aware of the contradictions they were introducing from one clause to the next. The terms used should therefore not be taken literally, but rather in relation to the semantic context used throughout the clauses of a treaty. Shifts in meaning are common, and require careful reading. Each treaty, or limited series of similar treaties, can be considered as an original creation owing a great deal to the political and legal imagination of the European negotiator, even if borrowings, repetitions, and circulations can be observed as practices became “routine” without becoming uniform. The standardized printed forms used by certain British trading companies at the time of the “scramble for Africa,” or by Henry Morton Stanley on behalf of Leopold II in Congo, had no equivalent in French diplomatic activities in West Africa. The chronological breadth of the corpus studied, mostly dating from 1817 to 1897 with a few older items, reveals a general movement that proceeded by trial and error.

8. The corpus of texts studied includes more than 400 treaties. The former Choiseul database of items from the French Ministry of Foreign Affairs archive, now incorporated into the database “Traités et Accords de la France,” listed 170, available online: http://basedoc.diplomatique.gouv.fr/Traites/Accords_Traites.php. A manuscript register, preserved in the National Archives of Senegal (hereafter “ANS”), lists and summarizes 300 for West Africa and Gabon between the end of the eighteenth century and 1879, indicating their main clauses without providing the full texts: ANS series D Senegal, Affaires politiques et administratives, 10D1/59. Finally, the National Archives of Senegal and the French National Archives of Overseas Territories in Aix-en-Provence (hereafter “ANOM”) contain other items, some of which are not listed in any of these resources, and for which it was not possible to establish an exhaustive inventory.

The Regime of Land Ownership and its Uses

During the first half of the nineteenth century, a form of appropriation inspired by the trading-post system that had prevailed in Africa until the end of the eighteenth century persisted along the coasts and “in the rivers.” Concerning “terrains” but not “territories,” it belonged to the register of property law rather than that of politics. It involved, to take an example from Casamance, the “cession to France of a terrain needed to establish a trading post and its pier in the village of M’Bering [Diembering] or its environs” on March 29, 1828; the French took possession two days later and an official report was filed.⁹ The use of the trading-post model and the framing of the discourse in terms of property law do not however prevent certain shifts in meaning, suggesting that the distinction between terrain and territory remained blurred for a long time. We thus see, again in Casamance, a “cession of a territory for an establishment” in 1828, and the “cession of a territory for a trading post in Cajinole” in 1860.¹⁰

What was new was the absence of royalties paid to the chief in recognition of his eminent domain over the land. The “cession of full ownership of the island of Carabane” (at the mouth of the Casamance) on January 22, 1836, shows that the regime of full and unqualified ownership was gradually imposing itself at the expense of a more complex regime of real property that privileged a tiered conception of rights over the land and distinguished the user from the owner. The treaty thus becomes closer to a notarial act that depoliticizes the relation to the land. According to this logic, a terrain can in principle be the object of a transaction, just like any other good.

The question of the modalities of land appropriation arose above all in settlement colonies, where this appropriation was one of the central colonial legislative devices permitting the purchase of indigenous lands or the expropriation or confinement of dispossessed people in Algeria, South Africa, Southern Rhodesia, or the highlands of Kenya. West Africa generally did not fall under this model, for it did not experience this type of colonization—with the exception of a short-lived attempt at agricultural colonization in the lower valley of the Senegal River, launched by the governor Julien Schmaltz in 1819 and abandoned in 1831.¹¹ Aside from this abortive experiment, purchases of terrains appear sporadically. Certain treaties present themselves as a provisional legal framework for future transactions involving real property, notably anticipating the arrival of Frenchmen engaged in commercial or mining activity. They were a way of reassuring autochthonous authorities that these installations would be established through negotiation rather than expropriation. The treaty signed on September 30, 1855 by Louis Faidherbe,

9. Unless otherwise specified, the treaties mentioned in this article appear in ANS 10D1/59, here p. 44. Hereafter only the subseries will be cited for the treaties collected in series D.

10. ANS 10D1/59, manuscript sheets inserted in the register.

11. Mamadou Diouf, *Le Kajor au XIX^e siècle. Pouvoir cedido et conquête coloniale* (Paris: Karthala, 1990), 123–24; Boubacar Barry, *La Sénégambie du XV^e au XIX^e siècle. Traite négrière, Islam et conquête coloniale* (Paris: L’Harmattan, 1988), 196–98; Georges Hardy, *La mise en valeur du Sénégal de 1817 à 1854* (Paris: É. Larose, 1921).

Dioukha Samballa, and a number of chiefs from Khasso, made the provision that the French “could create new establishments wherever they chose by compensating the owners of the land if it is occupied.”¹² The lands appropriated in this manner were initially peripheral (portions of shoreline or islands), later extending to enclaves embedded in autochthonous territory, and were often intended for the construction of a fort. The purchase of land for the fort of Medina in 1855 shows that acquisitions made under the regime of real property transactions were not entirely exempt from recourse to politics, and could involve the payment of a custom¹³ that signaled recognition of the sovereign of Khasso’s eminent domain.¹⁴

The case of Joal, a village in the Petite-Côte region that was the subject of four treaties between 1785 and 1859, shows how the interplay between real property and politics was recomposed in successive contexts. The agreement signed on March 25, 1785 between “Mr. Blin, commander of Gorée, acting in the name of the comte de Repentigny, governor general of the African coast, and Biram Paté, known as Barbessin, sovereign prince of the kingdom of Joal,” which provided for the “cession to France, without remuneration, of 100 *toises* of land in Joal to establish a trading post,” represents an early example of appropriation with no financial compensation. The free transfer did not exclude the payment of customs duties on coastal commerce, however: “Commercial ships will continue to pay the usual customs duties. Military ships will not pay under any circumstances.”¹⁵ Ownership and sovereignty are clearly distinguished, the imposition of customs duties being a measure of the latter. The sovereignty of the Bour, or king, is nevertheless curtailed by the clause imposing the free visitation of Joal by French warships, indicating an unfavorable balance of power for the coastal kingdom. Yet the land ceded in 1785 was not delimited or even identified, let alone taken possession of, as attested by later treaties that reiterate the “cession to the French of a terrain of 100 *toises* for the establishment of a trading post.”¹⁶ This was therefore a provisional ownership whose purpose was above all to preempt future rights.

The treaty that renewed the agreement on customs with the king of Sine on March 19, 1849 is even more explicit, since it provides for the “cession to France of a terrain of 100 square *toises* and more if necessary, of which France will take possession when it pleases.” The indefinite postponement of the taking of possession, the indeterminacy of the location, the extension, and even the purpose of

12. ANS 10D1/59, p. 27.

13. The French word “coutume” (more often plural, “coutumes”) in this context describes the duties paid to an indigenous sovereign for the right to land and to trade in his or her territory. It is both a gift and a traditional usage, both material and symbolic. In this translation we use “custom” and “customs” when the meaning is clear, and “customary payments” when disambiguation is needed.—*Les Annales*.

14. Sékéné Mody Cissoko, *Le Khasso face à l'Empire toucouleur et à la France dans le Haut-Sénégal, 1854–1890* (Paris: ACCT/L'Harmattan, 1988).

15. ANS 10D1/59, p. 135. The epithet “Barbessin” could be an erroneous transcription of the title Bour (king) of Sine, or Bourba Sine.

16. ANS 10D1/59, p. 131, treaty entered into by the commander of Gorée and Wagam Faye, king of Sine, on February 17, 1837.

the terrain (there is no mention of a project to establish a trading post) turned this virtual property right into a vaguely-identified legal object that, under the cover of property law, allowed the threat of political domination to slip in. The king of Sine, May-Diouf Nilane Faye, perfectly understood this and introduced a clause restricting the future use of the land: France could take possession, but did “not have the right to establish a fort without concluding new agreements with the king.” However, this restriction, accepted by the negotiating signatory, naval lieutenant Arnaud Charles Gabriel Jaffrézic, was subsequently rejected by the governor.¹⁷ This refusal attests to the ambiguity of the notion of “terrain” and the equivocal ways it was employed by French authorities in Senegal in a context of rising tensions surrounding the control of peanut production in Petite-Côte. A fort would indeed be built at Joal, but only after the military expedition of May 1859 conducted by Faidherbe in south Cayor, Baol, Sine, and Saloum, when the kingdoms were in no position to oppose the treaties that were imposed upon them.¹⁸ These treaties put in place a series of measures that reserved commerce to French merchants and gave them the right to erect “buildings in masonry if they deemed it appropriate” on land purchased “from the individuals who owned it.” They also placed coastal and estuary areas under military control with the following clause: “The French government will choose whatever location suits it to build a fort.”¹⁹ Without formally abandoning their territorial sovereignty, these kingdoms saw their coastal areas brought brutally under France’s zone of influence.

Conceived as a series, the four treaties involving Joal (1785, 1837, 1849, and 1859) form a sequence illustrating the initial phase of the imperial transition, sketching out the process of creating dependence. The register of land appropriation was used in each of these stages, but it was the vector of a shift in meaning that altered the sovereignty of the kings of Sine. The initial stage enabled the disassociation of the possession of land and the exercise of autochthonous sovereignty, thus emptying the land of its political charge. It was then progressively reinvested with a political signification that made the acquired land a reserve of undetermined rights benefitting the French, to the point of granting effective control over the coastal rivermouth of the Sine. Under the guise of an enclave, the acquired terrain thus became the Trojan horse of political domination. Yet it is too early, at this stage of the process, to speak of a transfer of sovereignty: even if the conditions for strategic control had been put in place, the kingdom of Sine remained sovereign.

17. ANS 10D1/59, p. 131.

18. This intervention represented a turning point in treaty policy: Faidherbe had clearly announced that his goal was “to declare null treaties and conventions passed in recent years for the regulation of customs to be paid to chiefs of the country in exchange for security promised by the latter ... and to establish our future relations on new and more dignified terms.” Cited in Martin A. Klein, *Islam and Imperialism in Senegal: Sine-Saloum, 1847–1914* (Stanford: Stanford University Press, 1968), 55.

19. *Annales sénégalaises de 1854 à 1885, suivies des traités passés avec les indigènes* (Paris: Maisonneuve frères and C. Leclerc, 1885), 406–7. Only the Cayor treaty is reproduced, but the others are similar. On the military expedition, see Yves Saint-Martin, *Le Sénégal sous le Second Empire. Naissance d’un empire colonial, 1850–1871* (Paris: Karthala, 1989), 416–23.

Sovereignty and the Cession of Territory

The discourse of political and territorial appropriation sometimes tended to superimpose itself on top of, and explicitly to substitute, that of real property, as seen in the series of treaties made with numerous chiefs from the banks of the Casamance in 1838 and 1839, which included a transfer “in full ownership and sovereignty to His Majesty the King of the French.”²⁰ The association of the two terms here calls for investigation.

A convention signed with the chiefs of three villages in Upper Casamance (Bisséri, Dingavare, and Sandignéry) provided for the transfer of the entire riverbank “dependent on their territory, to a depth of two hundred meters” (art. 1),²¹ a territorial “concession” that was accompanied by exclusive trading rights for the French (art. 2). Sovereignty was manifested by the chiefs’ commitment “to maintain and display the French flag at the points designated to them,” “while waiting for the creation of the planned establishments” (art. 3). Ownership gave the French the right to “cut the wood they require in the country and graze their cattle there” (art. 4), but the chiefs retained a right of use, reserving “for themselves ... the power to cultivate the Lougans [fields] and to use the palm trees located on the conceded terrain” (art. 1). Finally, the treaty made provision for the symbolic compensation of “friendship and protection” granted by the King of the French “to the inhabitants,” as well as the material compensation of annual “customary payments” to the chiefs and principal dignitaries of each of the villages, as specified in article 5:

In return for the cession of territory indicated in the first article and the obligations imposed upon the said chiefs, His Majesty the King of the French grants the inhabitants friendship and protection, and commits to give each of the three villages annually the value of fifty bars payable in the merchandise of their choice, divided as follows:

<i>To the chief, thirty bars</i>	30
<i>To the alcaty, fifteen bars</i>	15
<i>To the chief's envoy, two and a half bars</i>	2 ½
<i>To the alcaty's envoy, two and a half bars</i>	2 ½
<i>The said custom being the only royalty granted to them.</i> ²²	

20. ANS 10D1/65, convention between governor Charmasson and the chiefs of the villages of Bisséri (Yabou), Dingavare (Sébéti), and Sandignéry (Dhiénou) in Upper Casamance, signed on board the *Érèbe* on December 21, 1839; ANS 10D1/62, sleeve 12, “Casamance 1838–1897,” file 1, 1838–1839, various treaties and conventions concluded with the chiefs of Casamance and Rio Nunez. Unsigned verbatim copies.

21. ANS 10D1/65. In two other villages, Somboudou and Pacao, the concession only extended to a depth of one hundred meters.

22. ANS 10D1/65. The *barre*, or iron bar, served as a monetary unit. It was subsequently converted into merchandise ranging from cotton loincloths of varying quality to gunpowder, specially made “trade guns,” eau-de-vie, and tobacco. An alcaty was a local dignitary, often someone who knew how to read and write serving as a secretary. At the bottom of these treaties, the chiefs affixed their marks in the form of a cross, while the alcaty signed their names in Arabic. See figure 1, p. 210.

Here the custom fulfills multiple functions. It is at once a kind of rent on the conceded land, in accordance with the trading-post system, and compensation for the sovereignty renounced over the riverbank: the “terrain” of article 1 thus becomes a “territory” in article 5. It is also related to the “obligations” accepted by the chiefs, who agreed to cease trading with other nations and committed themselves to displaying the French flag. This last obligation was temporary, for it would last only until the posts were established. Rather than being a sign of sovereignty over the territory, the flag’s main function was to dissuade merchants of other European powers from potentially setting up at the same location—in other words, it was a sign directed toward the exterior rather than a marker of allegiance imposed on the chiefs. Finally, the last clause of article 5 indicates that the custom was total and acquitted the French of any further financial obligation: it excluded the levying of any taxes on the volume or value of merchandise involved in future transactions. It was, in a sense, a kind of custom by subscription, by way of an annual payment. This agreement placed the riverbank of the three villages under a trading-post system, reinforced by the sovereignty that the French assumed over those parts of the territory that interested them. Yet it did not put an end to the internal or external sovereignty of the chiefs over the rest of their territory. The custom in and of itself was a recognition of their sovereignty.

Exceptionally, the margins of the original copies of these treaties, both recto and verso, record those payments made in kind up to 1848, detailing the merchandise provided and attested by the signatures of a dignitary, an interpreter, and the captain of the French ship that carried the custom. These annual accounts bear traces of incidents that affected relations between traders and the population at different dates. The Sandignéry copy contains the following record:

*Paid on December 25, 1843 to the alcaty of Sandignéri: the customs due for the current year, which customs will be given to Mr. Dumont, trader, as a downpayment for the merchandise looted last February 15 at Sandignéri by the inhabitants.*²³

In 1848, the customary payments of another village were given directly to a trader whose merchandise had been looted “in the river.” The custom could thus be reduced by deductions unilaterally decided by the authorities of Senegal to the benefit of the dispossessed merchants. But while in 1843 the responsibility for compensation was left to the alcaty, or representative of the chief, who retained responsibility for the acts of his subjects, in 1848 the French authorities circumvented this intermediary, effectively denying the chief’s sovereignty over his subjects. In the opposite sense, in 1841 the French ended the “palm tree affair”—involving wood unduly taken “from some Mandingo people who had left it in the post” at Sandignéry—by adding twelve and a half kilos of gunpowder and two bars of iron to the custom as compensation. Susceptible to being adjusted in order to settle disputes, the custom thus represented both the recognition of local authority by

the French and the materialization of the sometimes fluctuating relations between the two parties.

If French sovereignty applied only to the conceded land in the series of treaties signed at Casamance in 1838 and 1839, at the beginning of the 1840s it started to be distinguished from the cession of land and to extend to an entire territory. The initiative fell to navy officer Édouard Bouët (later known by the name Bouët-Willaumez) who, at the head of an exploratory trading mission along the gulf coast of Guinea in 1838 and 1839, had signed the first treaties relating to the cession of land with the chiefs of Garroway (in modern Liberia) and with King Denis of Gabon.²⁴ Upon his return, Bouët had drafted a report advocating the establishment of three fortified trading posts in Garroway, Grand-Bassam (Ivory Coast), and Gabon. As commander of the naval base in Gorée, where he was charged with curbing the illegal slave trade, and later as governor of Senegal (1842–1844), he pursued his policy of signing treaties without waiting for the conclusions of the commission appointed to evaluate his project. In a new treaty signed in 1842, the Blackwill brothers of Garroway thus conceded to the King of the French “all of their rights of sovereignty over the lands legitimately inherited from their fathers.”²⁵ In the same way, Bouët obtained the concession of sovereignty over the land and river of Grand-Bassam, to which was added the cession of a terrain of two square miles.²⁶ He also signed a new treaty with King Louis of Gabon, son of King Denis, who ceded his father’s former village and conceded “all sovereignty” over his country.²⁷ Exceeding his remit in this way meant that when the Ministry of the Navy decided to proceed with the planned construction of fortified posts and passed the required budget in 1843, Bouët had already laid the legal groundwork to make this possible.²⁸ All that remained was to obtain sovereignty over the trading post at Assinia, which had replaced Garroway in the project. This was accomplished in 1844.²⁹

The trademark of the campaigns conducted by Bouët and his lieutenants was the systematic use of “concession of sovereignty,” as distinguished from “cession of land.” The solemn takeovers were accompanied by music, and the hoisted flag

24. *Traités et Accords de la France*, TRA18380013/001, convention with the brothers Blackwill, chiefs of Garroway, December 14, 1838; ANS 10D1/59, p. 157, convention signed with King Denis on February 9, 1839.

25. *Traités et Accords de la France*, TRA18420007, treaty relating to sovereignty over the territory of Garroway, February 7, 1842.

26. ANS 10D1/59, p. 157, treaty concluded between the delegates of Commander Bouët and King Peter of Grand-Bassam, and the chiefs of the country, February 19, 1842.

27. ANS 10D1/59, p. 157, treaty concluded between Commander Bouët and King Louis, chief of the right bank of Gabon, March 18, 1842.

28. On the decision and campaign to establish forts, see Bernard Schnapper, *La politique et le commerce français dans le golfe de Guinée de 1838 à 1870* (Paris: Mouton, 1961). Schnapper demonstrates that the chiefly political decision was essentially motivated by British competition in the region, clearly emphasized by Bouët. The trading companies of Bordeaux and the merchants of Gorée were far less enthusiastic about the project, since the new establishments were too far removed from their commercial circuits.

29. ANS 10D1/59, p. 157, treaty with the king and chiefs of Assinia, March 16, 1844.

was saluted by the ceremonial firing of cannon. The requirement to display the flag was more closely controlled after the establishment of the forts, and violations could result in occasionally brutal retaliation by inexperienced post commanders.³⁰ The flag once again seems to have been an instrument for marking territory in the context of rivalry with other empires, especially as competition with the British increased during the 1840s. With the establishment of these fortified posts emerged a new doctrine governing the kind of relations to be established with indigenous chiefs. Captain Broquant, who had accompanied Bouët on his commercial exploration of the coast in 1838, also drafted a report in which he expressed a certain distrust regarding the contractual relations of the trading-post system:

*When I say that trading posts are needed in Africa, I mean armed establishments capable of defending themselves, not simple residences founded on the faith of treaties and under the protection of the local chiefs. One only needs to glance at these regions to recognize that there is, so to speak, no political system other than the submission of the weak to the strong.*³¹

The ability to protect, an attribute of sovereignty, was thus transferred from one partner to another, and would henceforth be claimed by the French in their relations with African chiefs. This was not entirely unprecedented. Such a demand could occasionally be made by pre-Revolutionary French authorities, as seen in the report from a “long palaver about a treaty between the king of France and that of Bar on March 31, 1785” concerning the reestablishment of the Albreda post at the mouth of the Gambia river:

We had established customs for the so-called protector of the nation and the merchants who would come to trade at Albreda.

*The title of protector of the French nation is ridiculous when applied to them, as it is the king of France who protects and defends his allies and friends. If any disturbance occurs, it should be referred to the commanding officer.*³²

The “ridicule” inspired by the notion of an African chief protecting European citizens is symptomatic of the transition from a conception of international relations anchored in the “law of nations” and considering them as equals, to a “positivist” conception establishing the superiority of European nations over others.³³ The new doctrine did not impose itself overnight, but grew more pronounced during periods of heightened rivalry between empires—such as the 1840s—which favored the establishment of a more affirmative balance of power with African chiefs.

30. Schnapper, *La politique et le commerce*, 69–70.

31. ANOM FM SG SEN/III/5B, Broquant report, p. 96, cited in Schnapper, *La politique et le commerce*, 21, n. 1.

32. ANS 10D1/0060, p. 12, treaties and conventions with various chiefs from the Southern Rivers, February 8, 1785 to August 16, 1849.

33. Alexandrowicz, *The European-African Confrontation*.

Suzerainty and Sovereignty

Alongside the term sovereignty, used in the Casamance treaties of 1838 and 1839 and the slightly later Bouët treaties of the early 1840s, one increasingly finds the more surprising term “suzerainty.” It initially appeared in a few treaties in 1852 and 1860, then in several series of treaties concluded in Casamance (ten in 1861, one in 1863, and twenty in 1865–1866), as well as two treaties concluded in 1865 and 1866 along the Mellacoree (one of the Southern Rivers, situated in modern-day Guinea). The term was used either alone or in association with “sovereignty” or “protectorate.” The Portuguese had made widespread use of the vassal-suzerain relation in treaties concluded in Asia during the sixteenth century and in Africa during the seventeenth century, including in Monomotapa in 1629.³⁴ In the context of nineteenth-century Franco-African treaties, however, the use of the term “suzerainty” seems to be a reinvention originating during the Second Empire (1852–1870), particularly as applied to the context in Casamance. It nevertheless remained in use after the establishment of the Third Republic, in conditions that call for closer analysis.

The corpus of texts examined for this study seem to indicate that the introduction of the term “suzerainty” into the language of these treaties can be attributed to Emmanuel Bertrand-Bocandé, a merchant from Nantes who became the “Resident” of Carabane in 1849. The trading post established on this island at the mouth of the Casamance, on land acquired “in full ownership” for a negligible sum in 1836, was attributed a resident commissioner, a merchant who displayed the French flag in front of his house and represented the colonial authority in commercial disputes and relations with the chiefs. Bertrand-Bocandé replaced the first incumbent, Jean Baudin—deposed in 1849 for trading in slaves and attacking an English ship—and remained in the position until 1864.³⁵ The commanders of Gorée and the governors of Senegal considered him to be knowledgeable about the societies of Lower Casamance³⁶ and an able and indefatigable negotiator when it came to diplomacy with the chiefs; he was viewed as the consolidator of the French presence in the Casamance estuary. Despite being supported by the Maurel and Prom Company, however, plans to have him named senior Resident (*résident supérieur*) in Casamance failed. Bertrand-Bocandé nevertheless remained a local figure regularly consulted by governors on politics and commerce in the region.³⁷ He was behind the series of treaties concluded there during the years 1851–1852 and 1860.

34. Ibid., 14–17.

35. Saint-Martin, *Le Sénégal sous le Second Empire*, 126–27.

36. Bertrand-Bocandé, “Carabane et Sédhiou. Des ressources que présentent dans leur état actuel les comptoirs français établis sur les bords de la Casamance,” *Revue coloniale* 16 (1856): 398–421; Bertrand-Bocandé, “Notes sur la Guinée portugaise ou Séné-gambie méridionale,” *Bulletin de la Société de Géographie*, 3rd ser., 11 (1849): 265–350, and 12 (1849): 57–93.

37. Saint-Martin, *Le Sénégal sous le Second Empire*, 265–66, 402–5, 454, and 458–59.

The treaty concluded in 1852 with the chiefs of Cape Roxo, located between the mouth of the Casamance and the Cacheo river to the south (in modern Guinea-Bissau), is phrased rather curiously. It simultaneously employs the notions of sovereignty and suzerainty, distinguishing between the two and applying them to different parts of the territory. Article 1 stipulates that the signatory chiefs “cede full ownership and sovereignty, in perpetuity and without royalty, of all the arable and non-arable islands depending on their territory and formed by the backwaters joining the Casamance to the Rio Grande San Domingo, in other words, the Rio de Cacheo between Carabane and Cape Roxo.” In article 2, “they recognize the same right of sovereignty for France over the entire shoreline of the territory of Cape Roxo, in accordance with limits that will be determined by French agents,” and in article 3, “they submit the rest of their territory to the suzerainty of France.”³⁸ The treaty thus puts in place a gradation of rights over the territory. The concession of sovereignty over land of which ownership has been ceded—as in the case of the islands—is a formula familiar from earlier treaties. Simple sovereignty, without cession of land, is applied to the shoreline, with no specification of the extent of the territory involved. Its purpose was apparently to guarantee a non-exclusive but privileged right of access to the coast and riverbank. Finally, suzerainty, applied to the inland regions that made up the rest of the territory, appears as a weakened form of sovereignty.

Reading the treaty, it is difficult to determine the legal parameters, the area of application, or even the extension of the territory concerned by the “right of sovereignty” over the shoreline. Did it entail a formal annexation or reserved rights? Would the future delimitation of its extension relate to the number of kilometers of shore involved, or to the depth of the territory along the shoreline? And what does sovereignty over a shore signify if the latter is conceived of as a line? Suzerainty on the other hand, though hardly better defined, clearly refers to an act of political submission. Applying to the “rest” of the territory, in other words the territory remaining under the sovereignty of the chiefs, it in fact amounts to an act of allegiance, and establishes domination over the persons of the chiefs rather than their territory. This aspect of the treaty can be explained fairly clearly by the context. The previous year at Cagnut, a retaliatory expedition against the Jola of the region around Carabane had ended with the submission of the chiefs and the signing of a treaty negotiated by Bertrand-Bocandé. The Jola chiefs had been forced to surrender full ownership of the entire island of Carabane and to accept the suzerainty of France.³⁹ This last clause thus appears to be a legal instrument designed to rein in the chiefs who posed a threat to French commercial activities in the region. According to Yves Saint-Martin, the legal formalization of French domination was nevertheless directed more against the Portuguese—France’s competitor on the Casamance river, where they possessed a presidio at Ziguinchor—

38. ANS 10D1/62, sleeve 12.

39. ANS 13G2, treaty concluded with the chiefs of Cagnut on March 25, 1851, cited in Moustapha Kebe, “La domination coloniale française en Basse Casamance, 1836–1960,” (PhD diss., Université Cheikh Anta Diop de Dakar, 2006).

than against the Jola themselves.⁴⁰ At Cape Roxo, the treaty of 1852 does not seem to have followed a series of attacks and retaliations, but it was concluded in the same context of Franco-Portuguese rivalry. For Saint-Martin, the Cagnut expedition marked a turning point in the policy of the governors of Senegal toward African chiefs, even outside Casamance.⁴¹ The events represent a milestone in the imperial transition, and found their echo in treaties through the invention of colonial suzerainty. In a later treaty also negotiated by Bertrand-Bocandé, the imposition of suzerainty was an explicitly retaliatory measure, establishing an unequal form of peace.⁴²

The recognition of suzerainty, associated with the notion of protection, asserts a domination that is political but not territorial, and was one of the ways that the legal invention of the colonial protectorate manifested itself. Having been introduced by Bertrand-Bocandé, the term suzerainty was taken up in a series of treaties concluded in Casamance, largely at the initiative of post commanders at Carabane (Lower Casamance) and Sedhiou (Upper Casamance), but occasionally during a visit to the region by the commander of Gorée (Émile Pinet-Laprade, in 1861) or the governor of Senegal (Jean Jauréguiberry, in 1861 and 1863).⁴³ Their clauses are similar to the Casamance treaties of 1838–1839, attributing exclusivity of trade and the right to cut wood to the French. Some prohibit the chiefs from selling land without the authorization of a representative of the French government, and oblige them to cede, without compensation, any land needed for the establishments of French merchants.

A term inherited from the feudal system, “suzerainty” refers to the homage a vassal paid to his suzerain; in the sense that suzerainty engages a person while sovereignty applies to a territory, it personalizes political relations. As a result, suzerainty is not hereditary, and must be renewed with every new reign. The survival of this feudal notion following the establishment of the Third Republic in 1870 might seem surprising. The treaties concluded in the Southern Rivers between 1877 and 1879, often at the initiative of Charles Émile Boilève, the director of political affairs in Senegal, combine references to suzerainty and protectorate.

40. Saint-Martin, *Le Sénégal sous le Second Empire*, 186.

41. Ibid. Lower Casamance was particularly difficult for the French to grasp due to its political fragmentation, with each village constituting an autonomous political unit: Peter Mark, *A Cultural, Economic and Religious History of the Basse Casamance since 1500* (Wiesbaden/Stuttgart: Franz Steiner Verlag, 1985); Christian Roche, *Histoire de la Casamance. Conquête et résistance, 1850-1920* (Paris: Karthala, 1985); Séverine Awenengo Dalberto, “Les Joola, la Casamance et l’État au Sénégal (1890–2005),” (PhD diss., Université Paris 7-Denis Diderot, 2005).

42. ANS Senegal 10D1/65 and 13G4, treaty concluded with the village of Thiong on May 5, 1860. The treaties signed between 1860 and 1865 in Lower Casamance bear the mark of a conflictual situation: villages had risen up against previously accepted territorial encroachments, lashed out against European traders, and been subject to punitive expeditions in retaliation. See Kebe, “La domination coloniale française,” 107–8.

43. ANS 10D1/59, pp. 149–52.

But the majority refer back to earlier treaties dating from 1865–1866, simply reusing their terminology and adding more restrictive clauses.⁴⁴ Their main purpose was to ensure that new chiefs confirmed the formal submission to France made by their predecessors.

In 1870, when the fortified trading posts founded by Bouët on the Guinea and Gabon coast were potentially going to be abandoned, Admiral Siméon Bourgois, superior commander of the establishments of the Gold Coast and Gabon, expressed doubts about the nature of the treaties that had been signed: “It is regrettable that the majority of treaties concluded on the coast of Africa were written in the language of sovereignty, when the reality involved a very limited protectorate.”⁴⁵ If the notion of sovereignty used by Bouët now seemed excessive in relation to France’s actual involvement at these points along the coast, the concept of suzerainty as reinvigorated by Bertrand-Bocandé—however anachronistic it appeared to be—ultimately corresponded more closely to the nature of the relations between France and the chiefs of the coastal states.

It is difficult to draw clear conclusions from such a flexible and slippery usage of terms and their application. For Alexandrowicz, it is an illustration of the ignorance of the European negotiators, military or colonial administrators who did not fully understand the legal notions they were using.⁴⁶ It must not be forgotten, however, that there was no preestablished and unified model that enabled the legal form of appropriations to be clearly set out. The earlier experience of Europeans in Asia, or of the Portuguese in Africa, to which Alexandrowicz compares European diplomatic activity in nineteenth-century Africa, does not seem to have provided a usable sphere of reference. At most, European negotiators were familiar with the treaties their predecessors had signed with the representatives of a given territory. They thus took their inspiration from these documents, introducing variants that generally tended to accentuate the legal constraints imposed on the chiefs. The pressure they felt authorized to exert, however, depended greatly on the circumstances, reflecting both rivalry with other empires over a territory and the local evolution of power relations between Europeans and Africans. In sum, the diplomatic activity analyzed here demonstrates a certain liberty on the part of the actor-authors of these texts, who constantly invented new forms of expression.

44. ANS 10D1/59, pp. 163–66.

45. ANOM, Gabon I/9h, letter from Admiral Bourgois to the minister of the Navy, June 29, 1870, cited in Schnapper, *La politique et le commerce*, 60.

46. Alexandrowicz, *The European-African Confrontation*, 62 (“Legal terminology was obviously not a significant weapon in the colonial officer’s professional armory”), and 80 (“It has been often maintained that the Africans did not understand international law in detail but we may wonder whether European colonial negotiators had grasped the meaning of the law.”)

The Invention of the Colonial Protectorate

It remains to clarify the notion of “protectorate,” which also encompassed different realities, ranging from “very limited,” to use the words of Admiral Bourgois, to something bordering on annexation.

Protection and Protectorate

The word “protection,” from which “protectorate” derives, was used in a similarly indeterminate way. The early appearance of these two terms does not conclusively prove the existence of actual “colonial protectorates” as they were defined by late nineteenth-century legal experts.⁴⁷ In 1838, for instance, the simple cession of a terrain in Garroway was accompanied by an “offensive and defensive alliance with France, which in return guaranteed its protectorate.”⁴⁸ Offered in return for alliance, this “protectorate” seems to signify literal protection against attacks from enemies of all sorts, for it in no way involved a cession of sovereignty. It was not until four years later that the new chief of Garroway, “given the violent attack suffered by his people at the hands of inhabitants from the interior,” expressed his wish to “place himself even more directly under the patronage of a powerful king” and the Blackwill brothers consented to cede to the King of the French “all of their rights of sovereignty over the lands legitimately inherited from their fathers.” It was in this troubled context of repelling an occupier from the interior—who in actual fact had seized the land ceded to France in 1838—that the inhabitants of Garroway decided to “place themselves under the protectorate of the King of the French, whose subjects they henceforth consider themselves to be.”⁴⁹ The false protectorate was thus superseded by a pure and simple subjection of all the inhabitants in the form of a treaty that engaged the responsibility not only of the chief but of the entire population. The fact that the plans to establish a fortified post at Garroway were ultimately abandoned suggests that the new arrangement remained just as fictional as its predecessor.

In the series of Casamance treaties dating from 1838–1839, there was a clear relinquishing of sovereignty over the territory ceded to the French, but the friendship and protection pledged in return applied to all inhabitants of the village. The limited territory of the concession and the territory under protection were not one

47. François Gairal, *Le protectorat international. La protection-sauvegarde, le protectorat de droit des gens, le protectorat colonial* (Paris: A. Pédone, 1896).

48. ANS 10D1/59, p. 157, treaty between Bouët and the Blackwill brothers, signed on December 14, 1838 aboard the brigantine *La Malouine*, and listed as a “protectorate” in *Traités et Accords de la France*, TRA18380013.

49. *Traités et Accords de la France*, TRA18420007, treaty signed aboard the *Nisus*, anchored at Garroway, on February 7, 1842, by Bouët and King Guillaume (known as Will), the elder of the Blackwills, along with his younger brother. I have already described the context in which the treaties with Bouët were established between 1842 and 1844—there is little doubt that military pressure played a part in their acceptance.

and the same—it was not a “protectorate.” In the Mellacoree region, the treaty signed with almany⁵⁰ Maléguy Touré in 1865 recognized, in exchange for suzerainty and a protectorate, his authority over all of Moréah, which was extended to the neighboring rivers. The “protectorate” thus entailed a territorial expansion for the autochthonous authority, a more considerable political advantage than protection in its own right.

The Uncertain Uses of Annexation: The Dismantling of Fouta-Toro

The notion of protection remained relevant, even if only rhetorically, in the use of the term “protectorate” by Faidherbe and his successors during the annexations in Middle Senegal in the 1860s and 1870s that gradually dismantled the Fouta-Toro confederation. This area formed a necessary passage between the Upper and Lower River and was a trading region for merchants from Saint-Louis, who wanted to abolish the “customary payments” and obtain protection for their commerce. It was also a theocratic Muslim state with a population that was particularly sympathetic to the preaching of El-Hajj Umar, who had opposed the French presence in Senegal by laying siege to the fort of Medina in 1857 and later founded a theocratic state further east, centered on the Niger River. Fouta-Toro thus represented a pocket of resistance to the French advance toward the Upper River that had been underway since the early 1850s.

Once Faidherbe became governor, the policy of bringing Fouta-Toro under control consisted of a series of campaigns culminating in treaties that sought to progressively separate all of the provinces from the confederation. The goal was to isolate central Fouta, which had already been weakened by the migration of some of its inhabitants along with El-Hajj Umar. According to the terms of these treaties, the initial phase involved the peripheral provinces declaring themselves “independent” of this state and benefiting from French protection. This was the case in 1858 for Dimar, and in 1859 for Toro and Damga, located on either side of central Fouta.⁵¹ The argument is developed most fully in the treaty signed with the chief of Toro:

Article 1. Toro, recognizing that its political union with Fouta has always been more damaging than useful, and wishing to ensure both the future protection of the French and lasting peace with them, henceforth declares itself independent

Article 3. The governor recognizes the independence of this new state and its elected chief. He promises aid and protection against enemies that the present treaty may create, and in the event that the Toro villages bordering Fouta suffer damage from the inhabitants

50. The majority of chiefs from the Muslim states of West Africa bore the title almany, the equivalent of the Arabic *al imam*.

51. Peace treaty with the chief of Dimar, June 18, 1858; peace treaty with the chief of Toro, April 10, 1859; peace treaty with the Damga, September 10, 1850. All of these treaties, signed by Faidherbe, are reproduced in *Annales sénégalaises*, 425–26 and 428.

of that country, the governor promises to have a tower built at the most suitable location to ensure the effective protection of Toro.

By forming independent states in this way, the governor was induced to protect their borders with what remained of the confederation. The need for protection ensued from the very terms of the treaty that created fragile political entities serving as buffer states. Presented as a manifestation of concern and goodwill, for Faidherbe the promise to build a tower on the new border represented a means of controlling Fouta-Toro as close as possible to the heart of the territory, dotting the river with fortified installations. Nevertheless, none of these treaties were presented as establishing a “protectorate,” and in the *Annales sénégalaises* they are classed under the heading “peace treaties” (*traités de paix*). The series culminated in a treaty with Fouta, which was forced to recognize the new borders imposed by the creation of these new states and its de facto reduction to “Fouta in the strict sense, or central Fouta.”⁵²

In a second phase, the three provinces that separated from the confederation between 1860 and 1863—Dimar, Damga, and Toro—were annexed.⁵³ For Toro, this was the culmination of a destructive land and river campaign waged by Jauréguiberry, governor of Senegal from 1861 to 1863, against the new lam Toro (almamy of Toro) Samba Oumané, thought to be hostile to the French. The resulting treaty was first and foremost an act of submission.⁵⁴ Yet a close reading of the text makes it possible to probe the nuances of the term “annexation.” The preamble and first article are those of an unequal peace, the governor taking advantage of the destruction and terror caused by the bombardment to impose the complete submission of Toro:

The governor of Senegal and its dependencies accepts the submission of the inhabitants of Toro and consents to grant them peace on the following conditions:

*Article 1. The inhabitants of Toro recognize that their country has been annexed by the French colony of Senegal, that they are consequently under the dependence and protection of His Majesty the Emperor of the French, represented in Senegambia by the governor.*⁵⁵

Here, annexation is defined by the addition of dependence to protection. Yet the following articles show this dependence to be limited, for they specify that “Toro will continue to administer itself according to its laws, uses, and customs,” and that “the religion of the inhabitants will be seriously respected.” If the governor reserved the right to control the designation of chiefs, retroactively confirming the lam Toro selected by the general assembly of chiefs, he nevertheless decided to follow the terms of the treaty and confirm Samba Oumané, his erstwhile opponent.

52. Peace treaty with Fouta, August 15, 1859, reproduced in *Annales sénégalaises*, 426–27.

53. *Annales sénégalaises*, 428 (for Dimar), 431–32 (for Toro), and 432 (for Damga). See also ANS 13G5.

54. Saint-Martin, *Le Sénégal sous le Second Empire*, 489–90.

55. *Ibid.*

Other than the usual clauses stipulating freedom of commerce and forbidding robbery, the only restrictive measures were in article 7, which made the French administration the only jurisdiction capable of settling disputes between French subjects and the inhabitants of Toro, and in article 6, according to which “the chiefs are charged with applying the laws of the country and the orders of the governor in all of the villages under their authority.” Legislative power was thus divided between local institutions and the colonial authority, while executive power remained entirely in the hands of local authorities. Sovereignty was thus, at the very least, shared. Far from being a true annexation, which would have imposed the application of the colony’s laws, the configuration was effectively that of a protectorate without a resident commissioner. The French commander was a judicial authority to be called upon in certain cases, but no specific jurisdiction was attributed to him in matters of internal administration, not even on a consulting basis. Jauréguiberry must have been aware he was using the term annexation incorrectly, since in a dispatch to the minister two days after signing the treaty, he explained that he had inserted this clause solely to avoid giving the impression that the new treaty was a retreat compared to its predecessor. He was not, however, familiar with the terms used in the treaty of 1859, which he had been unable to find in the archives.⁵⁶ This example is symptomatic of the little-supervised diplomatic practices that gave European negotiators free rein to invent new formulations.

The practice of annexation was not invented by Jauréguiberry. It had first been employed by Faidherbe in Oualo in December 1855, and was also implemented in Cayor, again by Faidherbe, at the end of his second term in 1865: following these campaigns, the governor successively adopted the titles of brak of Oualo and damel (king) of Cayor. These annexations left no trace in the registers, since they were unilateral decisions.⁵⁷ The annexation by treaty of Dimar, Damga, and Toro thus represented an anomaly that would soon be noticed. In a context quite different from those in Oualo and Cayor, and by way of thoughtless imitation, Jauréguiberry believed he could apply the same terminology of annexation to Toro, even though it was formally contradicted by the content of the treaty. Leaving the legitimately elected Samba Oumané in place, Jauréguiberry had no plans to transfer the title of lam Toro to the governor. Moreover, the very notion of annexation was called into question by both the colonial administration and the ministry during the final years of the Second Empire and the beginning of the Third Republic. The major reorientation of France’s Senegalese policy around 1870 led to a number of developments: the deannexation of central Cayor and the return of sovereignty to Lat Dior, its former ruler⁵⁸; the restoration of a certain autonomy to Oualo in the form of a constitution presided over by a “superior chief,” who did not hold

56. Christian Scheffer, ed., *Instructions générales données de 1763 à 1870 aux gouverneurs et ordonnateurs des établissements français en Afrique occidentale*, vol. 2, 1831–1870 (Paris: Société de l’histoire des colonies françaises, 1927), 364.

57. Saint-Martin, *Le Sénégal sous le Second Empire*, 330 and 524.

58. Treaty of January 12, 1871, reproduced in *Annales sénégalaises*, 411.

the title of brak but who, being chosen from among the royal family, could be considered as such by those he ruled⁵⁹; and the decision to “renounce direct domination over Toro and Dimar by allowing the people to name their chiefs themselves and to rule themselves as they see fit”—though in fact this was already the case.⁶⁰ Finally, in the treaties imposed on Irlabé and Lao, the last two provinces to be detached from Fouta-Toro in 1877, the process was quicker but there was no longer any question of annexation. A single act was all it took to declare these provinces independent of Fouta and at the same time place them under the protectorate of France.⁶¹

Protected and Independent?

The diplomatic practice that became dominant during the 1870s and 1880s involved an increasingly reasoned use of the notion of protectorate. The treaties were far from identical in their details, but the definition of a protectorate as the sharing of sovereignty based on the dissociation of internal and external sovereignty had become an unwritten rule, even though it was never expressed directly in these terms. Negotiators took special care to assure African chiefs that the rules of succession would not be called into question, that they would retain their authority over their subjects, and that they could govern according to their customs and practices. For example, the treaty concluded in 1883 with the teigne (king) of Baol announced that the kingdom would be “placed under the protectorate of France.” This involved a promise of “support and protection for Baol in the event that its inhabitants or their property be threatened because of the friendship pact freely contracted with France,” but also included the commitment that “the French Republic will interfere neither in the government nor in the internal affairs of Baol.” Permanence at the head of the state was assured by article 9, which specified that “the rights of the teigne and his successors remain absolutely the same as in the past”—even if article 10 showed that these rights were conditional: “The French Republic recognizes in advance the succession of the throne of Baol within the Tiéacine family, in accordance with the former practices of the country, on the condition that the successor recognize the clauses of the present treaty.”⁶²

The dissociation of external and internal sovereignty gave rise to even more terse formulations, as in a series of treaties negotiated by Parfait-Louis Monteil during his mission in 1890–1891. These were drafted according to two separate models, one consisting of protectorate and trade, the other of alliance and trade, which the officer used according to the circumstances. The treaties that fell under

59. Saint-Martin, *Le Sénégal sous le Second Empire*, 592–95.

60. Letter from the minister of the Navy and colonies to the governor of Senegal and its dependencies, Paris, May 26, 1870, in Scheffer, *Instructions générales*, 2:401.

61. ANS 10D1/59, pp. 67 and 69, treaties from October 24, 1877, with Irlabé and Lao.

62. Treaty with the teigne of Baol, March 8, 1883, reproduced in *Annales sénégalaises*, 419–20; also available in *Traité et Accords de la France*, TRA18830015.

the “protectorate” model all reused the same clauses, with the exception of a few variants. The first two articles of the treaty signed with the almay of San were as follows:

Art. 1. The almay of San, in his own name and that of his successors, places his country under the French protectorate.

Art. 2. France recognizes the independence of the city of San under the current almay and the family members who succeed him in the normal order of succession. France commits to protecting this independence against the undertakings of neighboring countries.⁶³

The juxtaposition of the terms “protectorate” and “independence” is paradoxical only in appearance, for in fact it clearly illustrates the dissociation between internal and external regimes of sovereignty. The repetition of the term “independence” in article 2 clearly conveys this dichotomy: San’s internal independence is guaranteed by the preservation of all the prerogatives of its almay, while in its relations with its neighbors this independence relies on the protection of France. The loss of external sovereignty was conveyed to the almay of San in the following clauses:

Art. 8. The almay of San commits to not make treaties with any foreign European power without the prior consent of the French government.

Art. 9. As an effective sign of our protection, which he could use against any foreign European endeavor, the almay of San has received from us a French flag that he pledges to conserve.⁶⁴

Here the context of inter-imperial rivalry can be observed once again, prompting the same insistence on displaying the flag—a marker of external sovereignty directed against European rivals—as in the Southern Rivers and along the Gold Coast. It is also an indication of what Alexandrowicz considered to be the deformation of the juridical practice of the classic protectorate into a “colonial protectorate,” a purely political instrument of the race for titles sparked among European powers after the Berlin Conference of 1884–1885. In this framework, the treaties concluded with African chiefs were no longer considered bilateral acts regulating a specific relation between an African and a European state, but as provisional territorial rights to be exercised within the European “concert of nations.” This was also the meaning that François Gairal gave to the “colonial protectorate,” which he defined as a transitory and provisional form of appropriation, its essential aim being to signify political influence without immediately investing the means or effort required by an actual occupation.⁶⁵ This reading demonstrates the rhetorical dimension of the protectorate treaty, which established a right by pronouncing it and formally

63. *Traités et Accords de la France*, TRA18910025, trade and protectorate treaty with the chief of the city of San, January 14, 1891. A mimeographed copy of this treaty can be found among Monteil’s papers in the French National Archives: AN 66 AP 4.

64. *Ibid.*

65. Gairal, *Le protectorat international*.

notifying other powers. From this perspective, the treaties constitute so many performative utterances, whose accumulation established a kind of empire of paper. The question remains as to what they signified for the African signatories.

Is Sovereignty Negotiable?

Numerous actors involved in the partition of Africa, especially among negotiators seeking treaties on behalf of British chartered companies, cast doubt on the contractual value of the documents they had to get signed. This was the case with Frederick Lugard, who, in his negotiations with a Kikuyu chief in Kenya, refused to use the preestablished form issued by the company, which he considered to be a fraud: “No man if he understood would sign it, and to say that a savage chief has been told that he cedes all rights ... in exchange for nothing is an obvious untruth.”⁶⁶ Yet if numerous treaties were concluded in hasty transactions, the narrative sources produced by European contractants often mention endless negotiations, during which the African party scrupulously examined each clause. In 1881, for instance, the doctor Jean Bayol obtained the signature of the almamy Ibrahim Sori of Fouta-Djalon after “five days of palavers.”⁶⁷ If the treaties were not signed thoughtlessly by African contractants, this raises the question of their motives for signing, as well as the extent to which chiefs could accept renouncing their sovereign rights and transferring them to a foreign power.

Expressing Consent

The subject of consent on the part of African sovereigns who signed treaties was raised at the Berlin Conference by the American representative, John Kasson. He succeeded in inserting a declaration into the protocol of the final act that affirmed the principle of “modern international law”—which tended to recognize “the right of native tribes [African communities] to dispose freely of themselves and of their hereditary territory”—and demanded that future takeovers be based on this principle.⁶⁸ For Alexandrowicz, the powers that signed the act at least tacitly recognized this principle.⁶⁹ From then on, a number of treaties included formulaic phrases attesting to the signing chief’s consent along with his full and complete understanding of the treaty’s terms and the commitments they imposed. In the post-Berlin

66. *Diaries of Lord Lugard*, vol. 1, *East Africa, November 1889–December 1890* (London: Faber and Faber, 1963), 318, cited in Saadia Touval, “Treaties, Borders, and the Partition of Africa,” *Journal of African History* 7, no. 2 (1966): 279–93, here p. 283.

67. Thierno Diallo, “La mission du Dr Bayol au Fouta-Djalon (1881) ou la signature du 1^{er} traité de protectorat de la France sur le Fouta-Djalon,” *Bulletin de l’Institut fondamental d’Afrique noire* 24, series B, 1 (1972): 118–50; Ismaël Barry, *Le Fuuta-Jaloo face à la colonisation. Conquête et mise en place de l’administration en Guinée (1880-1920)* (Paris: L’Harmattan, 1997), 1:116.

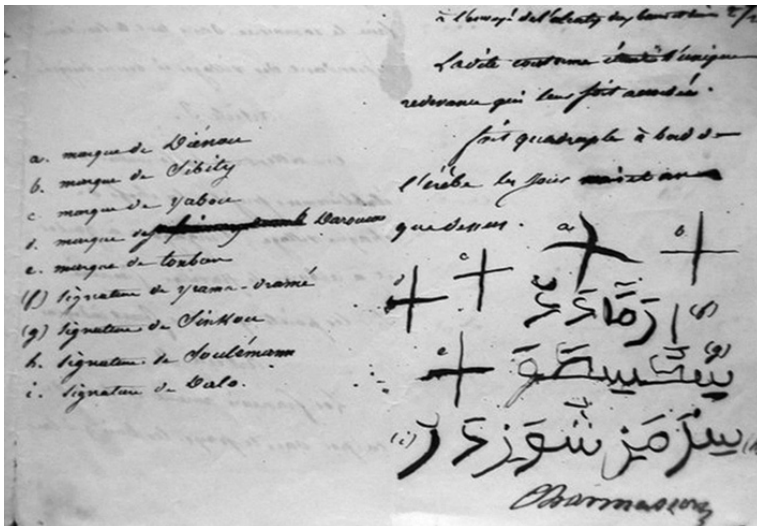
68. Declaration cited in Alexandrowicz, *The European-African Confrontation*, 47.

69. *Ibid.*

context of transition from classical to colonial protectorate, it is nevertheless tempting for historians to see the cross or signature inscribed at the bottom of treaties by African chiefs as a purely formal mark with no real contractual value, either extorted under the pressure of a military expedition or the product of a misunderstanding. Yet as Saadia Touval has shown, a significant number of the treaties were signed at the initiative of African chiefs in the hope that an alliance with a European power would bring decisive support in a conflict with a more powerful neighbor, or, on the contrary, help maintain control over vassals and even gain territory.⁷⁰ Beyond local political strategies that can account for the decision to negotiate with Europeans, the ways this consent was expressed in treaties can also shed light on their diplomatic signification.

In the context of French expansion in West Africa, treaty diplomacy was practiced with political entities of different natures—including acephalous societies, city-states, kingdoms, and federations—in which sovereignty was vested in actors of varying status. In acephalous societies like those of Lower Casamance, political fragmentation meant that it was necessary to sign a separate treaty with each village. The consent of the village community was thus reduced to its simplest form of expression, the chief's "mark" in the form of a cross. In those regions under Islamic influence, Muslim dignitaries (alcaty or *cadi*, imam or marabout) added their signature in Arabic to that of the chief or king.

Figure 1. Marks of chiefs and Arabic signatures of dignitaries (or alcatys)



Source: ANS Senegal 10D1/65, convention between Charmasson and chiefs from the villages of Bisséri (Yabou), Dingavare (Sébéti), and Sandignéry (Dhiénou) in Upper Casamance, signed aboard the *Èrèbe* on December 21, 1835.

Their presence conferred the guarantee of writing on the act, and committed the state beyond the person of the king. Other members of the royal family are occasionally added as witnesses; the signature of the heir to the throne in particular ensured a long-term commitment.⁷¹ In city-states, notables represented the collectivity through their presence next to the king.⁷² Finally, in states that had been Islamized for longer periods and had participated in the Arabic diplomatic tradition, consent was expressed in a more regulated manner and in the head of state's own hand, constituting a sort of commentary on the treaty.

This commentary could be intended for internal use, like the message to his subjects inscribed by the emir of the Trarza Moors at the bottom of a treaty concluded with Faïdherbe in 1858:

*Let he who reads this know that Mohammed El-Habib gives his assent to this peace treaty between himself and the French, the which treaty was brought to him by Khiaroum on behalf of his father Mokhtar-Sidi on Sunday the tenth day of the month of Choual in the year 1274 of the hegira. Mohammed El-Habib, king of the Trarzas, to his successors and his peoples.*⁷³

When negotiations took place through representatives of the two parties, it could also take the form of a short missive addressed to the governor of Senegal. The letter in which Mustapha, almamy of Fouta, officially recognized the clauses of the treaty dismantling the confederation of Fouta-Toro leaves no doubt as to the meaning he ascribed to it: "The purpose of this letter is to inform you that I myself accept what Fouta, Toro, and Damga have accepted, whether it brings me good or ill, and whether I be diminished or aggrandized."⁷⁴

The same note of forced consent appears in Lat Dior's formal acceptance of the 1871 treaty in which the French reinstated his sovereignty over Cayor, annexed during the reign of the preceding damel, while also taking away five of the kingdom's provinces:

*Lat Dior, king of Cayor, sends his fullest salutations to Governor Valière. I would have you know that I, Lat Dior, accept the conditions that you have imposed upon me for the country of Cayor. Know this in all sureness. Salutations!*⁷⁵

71. In a treaty signed in Boussa in 1897, the king's mark thus appears along with that of his nephew Daoudou, heir to the throne, as well as the Arabic signature of the imam of Boussa. *Traités et Accords de la France*, TRA18970022.

72. As in 1895 in Say, where three notables inscribed their sign under that of the king. *Traités et Accords de la France*, TRA18950040.

73. Treaty of May 20, 1858, reproduced in *Annales sénégalaises*, 397–99. The consent to this treaty was denounced by Mohamed El-Habib's nephews, who assassinated him in 1860.

74. Peace treaty with Fouta, August 15, 1859, reproduced in *Annales sénégalaises*, 427–28.

75. ANS 10D1/62, sleeve 5, file 3, treaty with Cayor, January 12, 1871.

This is of course a recognition of the conditions imposed, but the detailed expression of consent also acted as a signature—a text written in the damel’s own hand that bore the value of a ratification and, as such, was an act of sovereignty in the full sense. It appears at the bottom of the treaty, next to and on the same level as the official ratification by the governor of Senegal. The two ratifications differ in only one respect, but it is an important one: that of the governor was subject to approbation by the supervising ministry (the Ministry of the Navy before 1894, the Ministry of the Colonies thereafter).⁷⁶ The sovereignty of a figure like Lat Dior was therefore more complete than that of his negotiating partner, the governor of Senegal.

This eminent sovereignty, along with Cayor’s strategic position between Saint-Louis and Dakar, became a point of tension with the plans for the reorganization of Senegalese space conceived by the French in the 1870s, and led to long negotiations that culminated in a “workable compromise” with Lat Dior.⁷⁷ The increasingly important role played by the harbor of Dakar in the exchanges between the metropole and the colony strengthened relations between this new port and the old one at Saint-Louis, which was silting over. Travelling from one to the other required crossing Cayor territory. In the treaty of 1871, Lat Dior had already committed to “protect the telegraph line from Saint-Louis to Gorée against any violence within his territory.” In 1879, the negotiations related to the establishment of a railroad between Dakar and Saint-Louis, and Lat Dior paid close attention to their potential implications in terms of sovereignty. It was effectively a question of conceding a terrain traversing his territory from one end to the other. To limit the danger arising from this measure, he first obtained recognition of his “ownership” over the entirety of his territory within the borders defined in 1871 (art. 1). In exchange for this guarantee, he committed to “grant the French the use of a commercial route,” and to “freely give the land needed for the route and the installations connected with it.” If it was not to stand in contradiction with article 1, this “gift” could not be understood as a full devolution of ownership over the land but only as a right of usage. The damel had also taken pains to limit the concession to the strict minimum of land needed for the installation of tracks and stations. Taken as a whole, it formed a corridor dotted with enclaves, and this posed the problem of border control. It was a question of preventing the French from spreading out from these enclaves, while simultaneously prohibiting his own subjects from finding a comfortable extraterritorial situation within them:

Art. 10. The concession of land, whether for the line, stations, or stopping points, can under no circumstances represent rights over the surrounding area in favor of the French,

76. During the 1870s, the signature of the governor of Senegal was generally preceded by the phrase “Ratified except for ministerial approval.” This was the case for the treaties signed with Lat Dior in 1879: ANS 10D1/62, sleeve 5, folders 4 and 5. The treaties sent to the Depot for Public Papers Concerning the Colonies, and published in the *Journal officiel*, were ratified by decree.

77. This is the expression used by Robinson, *Paths of Accommodation*, 27. On Cayor and Lat Dior, see Diouf, *Le Kajoor au XIX^e siècle*.

nor serve as a place of refuge for subjects of the damel seeking to remove themselves from his authority.

*Consequently, no subject of Cayor can reside inside the concessions without the express authorization of the damel, and the present convention in no way affects the rights of the damel to exercise his sovereignty.*⁷⁸

The sovereignty of the damel was manifested in the control he exercised over the boundaries by forbidding his subjects to cross them. The status of the corridor and the enclaves themselves nonetheless remained undetermined in terms of sovereignty. Lat Dior conceded the right of the French to police the stations and stopping points, but the convention prohibited them from establishing a garrison or deploying troops, other than to come to his aid if a third power were to violate his territory. The employees of the railroad obliged to reside in the conceded space had to be without exception civilians. Devolution of the right to police afforded the French one of the attributes of sovereignty, which contradicted the affirmation that the damel's sovereignty was in no way curtailed by the convention. On the other hand, the prohibition on deploying their army within the concession meant that external sovereignty was in the hands of Lat Dior.

Two days after affixing his seal on the convention, Lat Dior negotiated an additional act fixing Cayor's contribution of labor and materials for the construction of the railroad.⁷⁹ There is no doubt that the provision of labor was a French request, and it would be tempting to see Lat Dior as one of those colonial-era chiefs who collaborated with authorities by requisitioning his own subjects for forced labor, especially given that at the end of each campaign the governor gave him "two handsome Arabian horses testifying to satisfaction with his subjects' work." Yet the text includes a number of specifications that attest to the damel's desire to negotiate the best working conditions for his subjects employed in these tasks: a similar salary to those paid in Saint-Louis, a ration of rice, annual work periods compatible with agricultural work, and a prohibition on using children under twelve. The damel committed to providing wood free of charge, but forest resources were protected by a ban on felling female palm trees and the French had to provide their own water on the construction site by digging wells that would eventually be given to the people. All these elements demonstrate Lat Dior's ability to impose demands on the French, and reveal him to be a sovereign concerned by the interests of his subjects and by the preservation of his territory's resources. Finally, before affixing his seal the damel had his *cadi* add the "formal restriction, to be inscribed in article 1, that the people of Cayor employed as workers will be required to perform only the amount of work that is within the limit of their ability." With this last-minute amendment, he ensured that he had the last word.

78. ANS 10D1/62, sleeve 4, convention of September 10, 1879 with Cayor.

79. ANS 10D1/62, sleeve 5, additional act to the convention of September 10, 1879 with Cayor, signed on September 12, 1879. The two texts are reproduced in *Annales sénégaloises*, 413–17.

The Refusal of King Glegle

As part of a sequence of interactions between contracting powers, each treaty expressed the state of a changing balance of power at the moment of its signing. Consenting to imposed conditions could thus be a way of recognizing a temporary state of affairs in the balance of power without prejudicing the future and without jeopardizing relations. From this standpoint, the purely contractual aspect of the treaty takes precedence over the close examination of its contents. Nevertheless, when first confronted with the notion of the transfer of sovereignty as presented in a protectorate treaty, many African chiefs reflected carefully on what they were ready to consent to, and some denounced previously concluded treaties on the grounds that they had not clearly understood the terms at the moment of signing. The stumbling block was very often the question of sovereignty, and more precisely that of its transfer.

Certain narrative sources reveal the gnawing concern of African heads of state about the unknown threat represented by the arrival of white men, new actors in West African politics whose intentions needed to be clarified. For instance, Bayol reported the ambiguous words spoken by almamy Sori during negotiations for the treaty of 1881:

*Fouta should belong to the Fula and France to the French. But these two nations, which share the same father and mother, will together become one, and the more powerful will lend its support to the weaker.*⁸⁰

This conception of the relation between African and European sovereignties was expressed even more explicitly in the aftermath of King Glegle of Dahomey's denunciation of a treaty signed with Portugal on August 5, 1885. This episode, which ultimately led to the withdrawal of the protectorate in 1887, shines an exceptional light on two interconnected issues: the African sovereign's consent and his understanding of the terms of the treaty. While it was not the only factor, King Glegle's clear and repeated rejection of the protectorate played a determining role in the Portuguese retreat.

As the king was away "at war," the treaty of August 5, 1885 had been signed in his stead by his son, the crown prince Kondo,⁸¹ who had been sent for that purpose.⁸² The Portuguese envoy, Doctor Meyrelles, was accompanied by the chacha Julião Felix de Souza, who acted as intermediary and interpreter in addition

80. Cited in Barry, *Le Fuuta-Jaloo face à la colonisation*, 116.

81. Under the name of Béhanzin, this prince was to become the last king of independent Dahomey, and offered fierce resistance to the French conquest until his surrender in 1894.

82. Letter from Glegle, king of Dahomey, to Dom Luiz I, king of Portugal, July 16, 1887. The file on this affair includes numerous Portuguese documents, analyzed and sent by the French ambassador at Lisbon, Albert Billot, and translated into French: ANOM FM/SG/AFR/VI/67b.

to representing Dahomey.⁸³ The treaty did not involve all of Dahomey, but only the “maritime coast,” a zone whose definition and borders are not specified in the available sources. The occupation of the Dahomey coast in September 1885 “did not raise objections on the part of the country’s authorities,” wrote Major Curado, governor of Ajuda, who had received “affectionate” gestures from the king, including the gift of a terrain “to build a palace.”⁸⁴ Difficulties began when the Portuguese sought to exercise their jurisdiction over the territory. This brought them into conflict with the chacha, acting in the name of the king of Dahomey, who reserved the right to settle all disputes, even between whites, on the basis of a letter from the king of Portugal supposedly given to him by the governor of the province of São Tomé and assuring that no changes would be made in the application of customs. In the face of these unexpected obstacles, Curado assembled representatives from the king of Dahomey, who set out a conception of “protectorate” that was tangibly different from the one the Portuguese had planned to put in place: for these representatives, it simply entailed “the establishment of the Portuguese flag on the coast, just like those of the trading companies already present.”⁸⁵ According to them, “protectorate” was a new designation invented by Europeans to refer to an agreement allowing them to settle and display their national symbol while pursuing the regular course of their relations with African sovereigns. Curado saw this declaration as a sign of the “duplicity of Dahomean policy,” but also recognized that “the protectorate treaty was entered into, on the part of Dahomey, by people who did not have, or did not appear to have, full knowledge of their acts.”⁸⁶ When asked about this matter, chacha Felix de Souza acknowledged “that he did not understand what sovereignty was when he signed the treaty of Aguanum, and that his cosignatory had not the least thought of ceding sovereignty over any territory to the Portuguese crown.”⁸⁷

83. “Chacha” was initially the nickname given to Francisco Felix de Souza, a slave trader from Bahia in Brazil who settled on the Slave Coast in the late eighteenth or early nineteenth century. He allied himself with King Ghezo of Dahomey, who made him an important dignitary in his kingdom and awarded him the title of chacha. This title was later passed on to his descendants, who became one of the powerful Luso-African families involved in trade on the coast of modern-day Togo and Benin. See Pierre Verger, *Flux et reflux de la traite des Nègres entre le golfe de Bénin et Bahia de Todos os Santos du XVII^e au XIX^e siècle* (Paris: Mouton, 1968), cited in Elikia M’Bokolo, *Afrique Noire. Histoire et civilisations*, vol. 2, *XIX^e-XX^e siècles* (Paris: Hatier/AUPELF, 1992), 112. Julião Felix de Souza had thus inherited the title of chacha (spelled “xaxa” in Portuguese documents), and in principle enjoyed the king’s confidence. However, his close relations with the Portuguese authorities meant that they sometimes considered him “as a Portuguese functionary”: ANOM FM/SG/AFR/VI/67b, telegram from the secretary general of the government of São Tomé to the minister of the Navy at Lisbon, November 21, 1887, item 89 in the documents reproduced in the *Diário do Governo* on May 8 and 9, 1888.

84. Letter from Major Curado, governor of Ajuda, to the governor of São Tomé, October 13, 1886, item 46 in the documents reproduced in *Diário do Governo*, summarized by Billot.

85. *Ibid.*

86. *Ibid.*

87. Item 39 in the documents reproduced in *Diário do Governo*.

In the spring of 1887, Governor Nolim traveled to Abomey, the capital of Dahomey, with the intention of putting an end to the misunderstanding surrounding the protectorate. It was during this visit that the point of view of the Dahomean head of state was finally expressed in an unambiguous way, first from the mouth of the crown prince, then during an audience that Glegle himself granted to the Portuguese captain.⁸⁸ During these interviews, the prince declared “that the treaty was made without the king’s authorization, and that he himself could not cede an inch of land to any nation.” Glegle confirmed this position, affirming that “the laws of the country did not allow him to cede a spoonful of land to any nation or person.”⁸⁹ This was later reiterated in a letter addressed by Glegle to the king of Portugal: “I do not give my lands to any nation, not even a spoonful, but I do wish for friends to engage in commerce there.”⁹⁰

The recurrence of the spoonful metaphor eloquently represents the way that this sovereign understood his relation to his territory. Superposing the discourse of real property onto that of territorial sovereignty, the territory was also a “land” over which the king enjoyed an inalienable right of eminent domain. He could invite foreigners to engage in trade, but they had to submit to the rules of hospitality and could not act as though the conceded terrain was their own territory. In his letter, Glegle denounced the impudence of certain Europeans, especially the French, who no longer followed these rules:

*A few days ago, the French placed a flag on a small plot of land that is mine, which I forbade, and if they continue I will stop them and that will be the first time; never before did Europeans come to this point. The English wanted to do the same, but as I did not accept what they wanted, they did nothing more. The French also fired a cannon a little while ago, and the ball fell a half league from Ajuda; I keep this cannonball to serve one day as evidence.*⁹¹

This sovereign, who emphasized the growing appetite of European partners but was not intimidated by gunboat diplomacy, expressed the principle of African sovereignty over African lands in the clearest of terms. He asked the king of Portugal to have the following words reproduced “in all of Europe”: “It is better for each nation to govern its lands, the whites in theirs with their kings, and I, king

88. Nolim’s trip (his name is also spelled as Rolin in other sources) was documented in a report sent on June 9, 1887, which did not reach São Tomé until October. A long letter from Billot to the minister of foreign affairs, dated May 18, 1888, cites large excerpts from it, and summarizes the conclusions the officer drew from the mission. It does not give translations of the documents reproduced in the *Diário do Governo* and related items, except for the letter from Glegle.

89. Report of Nolim, governor of Ajuda, on his trip to Abomey, June 9, 1887, cited in a letter from Billot, the French ambassador in Lisbon, to R. Goblet, minister of foreign affairs, May 18, 1888.

90. Letter from Glegle, king of Dahomey, to Dom Luiz I, king of Portugal, dated July 16, 1887.

91. *Ibid.*

of Dahomey, with mine.”⁹² This declaration of principle was also a condemnation of a continuing development: “the white men took the lands of the Negroes, but these Negroes cannot do the same,” he lamented. His convictions ruled out any kind of consent to a transfer of sovereignty, even over part of the territory. He thus considered the treaty of August 5, 1885, signed without his authorization, as a violation of his sovereignty, for which he ascribed all responsibility to Felix de Souza. Glegle responded by arresting the chacha, who had accompanied Captain Nolim to Abomey, and charging him with high treason. For Glegle this was a resounding way to express his denunciation of the treaty—by trying the chacha he also, in a way, put the treaty itself on trial.⁹³

Captain Nolim had to face up to the consequences, as did Portugal. After trying in vain to explain “the notion of the protectorate” to Glegle, the governor of Ajuda backed down, saying that Portugal sought no cession of territory. His report helped convince the governor of São Tomé, who forwarded it to the minister along with his personal comments. He proposed abandoning a protectorate that he believed could only be maintained through a deployment of force disproportionate to the potential benefits and that had, moreover, become an obstacle to commercial relations with Dahomey:

*The king of Dahomey formally refuses to accept our dominium and interference on territory that belongs to him ... Protectors of a nation more powerful than ours, at least in its naturally defended territory, we are forced to suffer his demands and vexations.*⁹⁴

The minister of the Navy and colonies immediately made the decision to lift the protectorate. We do not know in what terms Nolim tried to explain the notion of a protectorate to Glegle, but the task was insurmountable. As far as can be judged from the documents relating to the affair, and in the absence of the treaty itself, the definition seems to have diverged from the classic one to a fairly important extent. None of the sources distinguish between external and internal sovereignty; no mention is made of this distinction in the Portuguese documents published in the *Diário do Governo*, the comments of the French ambassador in Lisbon, or the comments made by the minister of foreign affairs and the minister of the Navy and colonies in France. Moreover, it is unclear how the classic protectorate defined in this way could apply to a portion of the territory. How could external sovereignty be transferred, if the coastline was not itself the seat of a sovereign authority? And

92. Ibid.

93. The chacha’s disgrace can also be explained by rivalries between Brazilian merchant families from Ouidah, and by the embezzlement apparently committed by Felix de Souza in the financial transactions related to the treaty. See Robin Law, *Ouidah: The Social History of a West African Slaving “Port,” 1727–1892* (Athens: Ohio University Press, 2004), and Joseph Adrien Djivo, “Le roi Glélé et les Européens. L’échec du protectorat portugais sur le Danhomé (1885–1887),” *Cahiers du Centre de recherches africaines* 8 (1994): 269–84.

94. Report from the governor of São Tomé to the minister of the Navy and colonies in Lisbon, cited by Billot, undated (October 1887).

what internal Dahomean authority could subsist in a territory thus separated from the rest of the kingdom? If our understanding of what the first governor of Ajuda was instructed to put in place—a fully Portuguese jurisdiction applying Portuguese law and accompanied by construction and improvement projects—is correct, then the Portuguese categorically did not anticipate the continued existence of any internal sovereignty. This was at the heart of the conflict with the *chacha*, who intended to continue applying Dahomean customs and jurisdiction over the territory of Ajuda. The supposed Portuguese “protectorate” resembled a pure and simple annexation in every way, and under these conditions Glegle’s refusal to consent to it is understandable. The parties that contracted the Dahomean side of the treaty and thoughtlessly inserted the king’s signature may not have understood the meaning of the word “sovereignty,” but the Portuguese signatory mistook the subject at hand, calling an act of annexation a “protectorate.”⁹⁵

An Indivisible Sovereignty?

In the case just examined, sovereignty was conceived by both parties as single, whole, and grounded in territory; it was therefore non-negotiable. The protectorate designed by the Portuguese involved dividing the territory, not sharing sovereignty. In light of this case, it is thus possible to reexamine the initial question—consent to treaties in general and to protectorates in particular—from a new perspective. The issue is to explain why some chiefs did not consider it dishonorable to form associations with Europeans by treaty, whereas others were fiercely opposed to this kind of negotiation. The phrase used by Glegle to describe his conception of the prerogatives and territorial rights of all peoples, whether African or European (“It is better for each nation to govern its lands, the whites in theirs with their kings, and I, king of Dahomey, with mine”), is fairly similar to the one Bayol attributed to almayy Sori (“Fouta should belong to the Fula and France to the French”). These are expressions of an entirely “Westphalian” conception of sovereignty, both *statal* and territorial. They make it possible to challenge the idea that territorial sovereignty was an exceptionally European creation that colonization spread out over the oceans to a world ignorant of its meaning. They also oblige us to rethink the argument that sovereignty in Africa related to people rather than territory. But they do support the hypothesis that such claims over sovereignty were made by the chiefs of states that had experienced a continued process of state formation since the eighteenth century, sometimes reinforced in the nineteenth century. This was the case for Dahomey, Fouta-Djalón, and many others such as Ashanti or the caliphate of Sokoto, which the British subjugated with difficulty. These states, endowed with a *statal* and territorial dynamic comparable to those of European states, conceived of sovereignty in terms similar to those claimed by

95. Djivo suggests that Glegle’s delegation of the signature to his son and the *chacha* could have been a ruse to maintain the possibility of denouncing the treaty, or even a governmental practice allowing him to avoid committing his responsibility: Djivo, “Le roi Glélé et les Européens,” 275–76.

European powers over their own home territory. From there, a clash of sovereignties was inevitable.

On the other hand, numerous interstitial states engaged in dual allegiances with more powerful neighbors, and certain statal formations were organized into multifaceted and shifting confederations like Khasso. These states may have seen the newly arrived Europeans as partners offering new opportunities within a multi-level game of alliances, and they were often more receptive to protectorates that offered them something in exchange for ceding part of their sovereignty. In these spaces, a treaty could represent a new allegiance, deemed preferable at a particular point in time to those it replaced, and the partial or complete relinquishing of external sovereignty was a familiar arrangement. Conversely, a treaty could confirm the suzerainty of an African chief over a third party's territory, even if this territory was also under a protectorate. For instance, in the peace treaty signed in 1858 between Faidherbe and Mohammed El-Habib, the emir of the Trarzas, the latter renounced all rights of suzerainty over the territory of Oualo, annexed by France in 1855, and recognized the protectorate established by Senegal over Dimar, Djolof, Ndiambour, and Cayor. But he also saw his rights confirmed over some of these states, for which the governor committed to directly paying him the corresponding tribute.⁹⁶ These states were thus subjected to two levels of external sovereignty, one in the form of a protectorate, the other expressed in terms of suzerainty—an arrangement that ran counter to the idea of complete French sovereignty over the river. The unusual character of this configuration is emphasized by Saint-Martin when he speaks of a “Franco-Trarza condominium.”⁹⁷ It was the result of a true negotiation of sovereignty over the territories of a third party: that the Trarzas renounce their pretensions over Oualo was more important to the governor of Senegal than the more formal rights over territories further from the colony that he recognized in exchange, rights that he incidentally restricted by preventing the Moors from collecting tributes on the left bank of the river.

When it came to consenting to treaties, local political situations and existing regimes of sovereignty played a more significant role in disparities than the individual stance of particular chiefs and their inclination to “collaborate” or “resist.” Yet sovereignty could be negotiated only if both sides conceived of it as divisible. These contractual relations were a long way from simply transporting a notion of territorial sovereignty elaborated in Europe for use by nation-states to the margins of empire. They reflected forms of accommodation and compromise with local situations, out of which emerged a system of sovereignty quite different from the one that prevailed in the European metropole: the “layered” sovereignties characteristic of empires.⁹⁸ The practice of French negotiators was not fundamentally different from that which predominated in the British Empire, for the distinction between external and internal sovereignty—the basis of the protectorate—

96. Treaty of May 20, 1858, reproduced in *Annales sénégalaises*, 397–99.

97. Saint-Martin, *Le Sénégal sous le Second Empire*, 336.

98. The phrase “layered sovereignty” is used in Jane Burbank and Frederick Cooper, *Empires in World History: Power and the Politics of Difference* (Princeton: Princeton University Press, 2010).

was similar in every way to the “indirect rule” theorized by Lord Lugard. The majority of the treaties by which African states had progressively been incorporated into the empire were only voided in the 1910s and 1920s, as part of France’s policy of administrative homogenization in its West African colonies. The traditional rules of succession were upended by the establishment of an “administrative chiefdom,” while the division into cantons reworked the boundaries of former kingdoms.⁹⁹ For all that, colonial governments were never able to completely bypass local authorities, for no empire could avoid “work[ing] with intermediaries.”¹⁰⁰

As documents produced by contractual practices, treaties were first of all *texts*. Investigating the terminology that they mobilize reveals a proliferation of formulae, legal tinkering, the vagueness of the terms in use, and internal contradictions. “Terrains” become “territories,” cessions of sovereignty are simultaneously recognitions of sovereignty, “annexations” are really “protectorates” and vice versa. The archaic institution of “suzerainty” also momentarily resurges from the past, no doubt a more appropriate term for the relations it expressed than the “sovereignty” that supplanted it.

In revealing the distortions between what these texts say and the legal categories they use, my intention was not to disqualify these practices on the grounds of the actors’ incompetence—an incompetence often ascribed to African signatories but in fact shared to a large extent by Europeans. Rather, it was a question of revealing the workings of the remarkable legal laboratory in which territorial appropriations were contractually resolved. Both the basis for and an instrument of a colony’s territorialization, treaties were the site of an erratic reinvention of territorial sovereignty, in which the liberty and autonomy of the actors was fully expressed before the imposition of a normative practice in the form of the “colonial protectorate.” Drawing attention to the indecision and contradictions that formed an integral part of treaties also relativizes their nature as performative utterances: the “rights” that they established over a particular territory only existed to the extent that credence was given to their pronouncements. Taken literally, however, the foundations of these rights are not as solid as they seem.

Faced with this empire of paper, it is possible to reexamine the crucial question of African chiefs’ consent to the contractual practices whose categories were imposed on them and with which they were associated only on the margins. Beyond the advantages that a particular chief could find in a given alliance—the purely contractual function of treaties—African heads of state consented because they interpreted these texts literally. What did “protectorate” treaties affirm if not the preservation of the title within a reigning family, the continuation of the chief’s authority over his subjects, and the perpetuation of customary jurisdictions? Of course there was always that first article ceding “sovereignty,” a term that was all

99. François Zucarelli, “De la chefferie traditionnelle au canton : évolution du canton colonial au Sénégal, 1855–1960,” *Cahiers d’études africaines* 13/50 (1973): 213–38.

100. Burbank and Cooper, *Empires*.

the more difficult to translate given that its content did not become clear on reading the ensuing clauses. A prohibition on entering into alliances with others? This was certainly one way of understanding allegiance. The obligation to display the French flag? The almany Sori, who as far as he was concerned had just signed a trade and alliance treaty in Arabic with Bayol and had no way of suspecting that the French version was in fact a “protectorate” treaty, happily welcomed the flag offered by the French naval doctor as a symbolic gift and not as a mark of submission. One suspects that many others did likewise, at least until an overly zealous post commander bombarded their village as punishment for not displaying the flag. It is not a question of minimizing the loss of external sovereignty, but rather of emphasizing how the contractual arrangements obscured this loss and made it seem like an empty formula. The sovereignty of the French could be accepted precisely because—in contrast to what was actually affirmed in the treaty—it was not “full and whole.” For those who read article 1 literally, however, the treaty was unacceptable. The dividing line between these two readings of the treaties entails different conceptions of sovereignty. On the one hand was indivisible territorial sovereignty, full and whole; on the other divisible sovereignty, including a series of layered rights open to constant discussion in an attempt to preserve what was the most essential. These two positions can thus be explained by the ambivalence ingrained in the treaties.

Seen from the perspective of African heads of state, contractual practices sometimes represented what colonial historiography has described as the agency of the colonized. In this case, the agency in question is that of the chiefs preparing to enter into colonial domination, who, as we have seen, expressed themselves under their own names and on their own terms, offering willing or disillusioned consent, anger or refusal, with guile or with obstinacy. They seized upon contractual arrangements as a way of making their voices heard on the international scene, even if it was only “locally” international. However aware they may have been that the balance of power relations was shifting to their disadvantage, they examined the transfers of sovereignty offered or imposed upon them, and signed no document lightly. What is more, they made their mark in negotiations, and used treaties that deprived them of all or part of their sovereignty to actually exercise sovereignty. The image I invoked in my introduction—in which autochthonous sovereignty immediately evaporated on being recognized by Europeans in treaties written in invisible ink—comes full circle: the ratification of these treaties by the hands of African sovereigns, especially when accompanied by their comments, is like the heat of an open flame, prompting the invisible text to reappear anew.

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