The Asiento de Negros and International Law

Andrea Weindl
Institut für Europäische Geschichte, University of Mainz, Germany

Introduction

The year 2007 marked the 200th anniversary of the beginning of the abolition of the transatlantic slave trade. Causing one of the largest forced migrations in the history of humankind,¹ the trade was not the result of aggressive entrepreneurial activity outside of law and order. For a long period, European states had tried to organise the trade within a legal framework. In addition to agreements with African states and trading partners, which in large part were defined by the Africans,² a decisive role in these attempts were played by agreements among European states in regard to African trading posts, trade monopolies and terms of supply. Thus, for a long period, the

¹ There is still no exact number on the scale of the transatlantic slave trade. Most scholars estimate for the period between 1500 and 1870 a number of about 11.8 million slaves who were embarked in Africa, and about 10.3 million people who reached America alive on board of slave vessels. See David Eltis, Stephen D. Behrendt, David Richardson, Herbert S. Klein, “Introduction”, in: idem, booklet of The Trans-Atlantic Slave Trade. A Database on CD-Rom, (Cambridge, New York: Cambridge University Press, 1999), p. 5.

² Needless to say, that the conditions in Africa were subject to changes. Nevertheless, for the period analysed in this article it may be valid to assert that, due to the situation of European concurrence at the West African coast, Africans were able to dictate their conditions to European trade partners. Of course, there was no unitary “African trade partner” but several ethnical groups, states and stakeholders. However, African conditions of the trade are not the subject of this article. Thus seen from a European point of view, this assertion may be the case.
basis of slave trade was formed by the 200-year-old history of the *asiento de negros*, the contract by which the Spanish colonial administration tried to ensure the supply of slaves to their colonies. The *asiento* was at no time merely a Spanish issue, and so in the 18th century the treaty found its way into international European law. This article aims to deal with the concept of the *asiento*, to show its development and to search for the basis of the exceptional position of the *asiento de negros* within an international legal framework.

**Definition**

Between the 16th and 18th century, the Spanish term *asiento*\(^3\) denoted a treaty between the Spanish crown and a legal person, that is, a private person or a company, by which the crown rented to the contracting party for a defined period the monopolistic right to merchandise a certain commodity. *Asientos* were often concluded in connexion with public debt. For purchasing public obligations and annuities, the lender in lieu of reimbursement received an *asiento* which meant a monopoly for a certain commodity and/or a certain geographical area.\(^4\)

In particular, the *asiento* would result in a great impact for the economy of Spanish American colonies, because the treaty secured or should secure fixed revenues for the crown and the supply of the region with certain commodities, whereas the contracting party bore the risk of the trade. In addition, it seemed that by placing *asientos*, the implementation and control of the colonial monopolistic system, which reserved the right of trade with America to Castilians, could be enforced.\(^5\)

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\(^{3}\) Literally, *asiento* means seat or stipulation, agreement.


\(^{5}\) Between 1525 and 1545, the trading house of Welser from Augsburg obtained a charter for trading and mining in America. In 1528, they also received the licence to import African slaves, which they resold one year later. Nevertheless, for the main period investigated here in connexion with the history of the *asiento de negros*, the prohibition of participation of non-Castilian merchants in the trade with America was in force. See Enrique Otte, “Die Welser in Santo Domingo”, in: *Homenaje a Johannes Vincke para el 11 de Mayo 1962*, Vol. 2,