PER CURIAM OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT (FEBRUARY 27, 2020)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BENJAMIN TAGGER,

Plaintiff-Appellant,

v.

STRAUSS GROUP LTD.,

Defendant-Appellee,

SABRA DIPPING CO., LLC.,

Defendant.

No. 18-3189

Before: KEARSE, CALABRESI, and POOLER, Circuit Judges.

PER CURIAM.

Appeal from United States District Court for the Eastern District of New York (Cogan, J.) dismissing the complaint for lack of subject matter jurisdiction. We hold that 28 U.S.C. § 1332(a)(2) does not confer diversity jurisdiction where a permanent resident alien sues a non-resident alien, and that the 1951

Treaty of Friendship, Commerce and Navigation ("FCN Treaty") between the United States and Israel does not otherwise confer federal jurisdiction in this lawsuit.

Appellant Benjamin Tagger, pro se, sued the Strauss Group Limited ("Strauss") for various common law contract and tort claims, alleging that Strauss falsely brought legal action against him in Israel which caused him to be prohibited from leaving Israel. Tagger premised federal jurisdiction on diversity of citizenship pursuant to 28 U.S.C. § 1332(a). Although a citizen of Israel, Tagger lives in Brooklyn as a lawful permanent resident, and Strauss is an Israeli corporation with its headquarters there. Strauss moved to dismiss the complaint for, inter alia, lack of subject matter jurisdiction and under *forum non conveniens*. The district court granted the motion to dismiss, reasoning that Tagger's permanent resident status did not authorize him to be considered a citizen of New York for diversity purposes when the defendant was also an alien, and that Israeli courts were a more appropriate forum in which to litigate the case.

We review factual findings in dismissals for lack of subject matter jurisdiction for clear error and legal conclusions de novo. *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). Under 28 U.S.C. § 1332, federal courts have jurisdiction to hear cases between diverse parties "where the matter in controversy exceeds the sum or value of $75,000[.]" 28 U.S.C. § 1332(a). Section 1332 requires "complete diversity," meaning that "all plaintiffs must be citizens of states diverse from those of all defendants." *Pa. Pub. Sch. Emps.' Retirement Sys. v. Morgan Stanley & Co., Inc.*, 772 F.3d 111, 118 (2d Cir. 2014). Diverse parties consist of citizens of different states or "citizens of a

State and citizens or subjects of a foreign state[.]" 28 U.S.C. § 1332(a)(2). Generally, "[a]n individual's citizenship, within the meaning of the diversity statute, is determined by his domicile[.]" *Van Buskirk v. United Grp. of Cos., Inc.*, 935 F.3d 49, 53 (2d Cir. 2019) (internal quotation marks omitted). Here, it is undisputed that Strauss, an Israeli corporation with its headquarters in Petach Tivka, is a foreign party for the purposes of diversity. *See* 28 U.S.C. § 1332(c)(1). The issue then is whether Tagger, an Israeli citizen and permanent resident in the United States domiciled in New York, is a "citizen" of New York for diversity purposes.

We conclude that Tagger is an alien for the purposes of diversity jurisdiction. As the district court discussed, section 1332 was amended in 1988 to state that "an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled" (the "deeming clause"). Pub. L. No. 100-702, § 203(a), 102 Stat. 4642, 4646 (1988). This created disagreement in the federal courts with respect to whether permanent resident aliens, like Tagger, would be considered aliens when suing other aliens. *Compare Singh v. Daimler-Benz AG*, 9 F.3d 303, 306-12 (3d Cir. 1993) *with Saadeh v. Farouki*, 107 F.3d 52, 60-61 (D.C. Cir. 1997). But in 2011, section 1332 was amended as a part of the Federal Courts Jurisdiction and Venue Clarification Act to remove the "deeming clause" and to amend section 1332(a)(2) to state that jurisdiction existed in suits between "citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an

action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State." Pub. L. No. 112-63, § 101, 125 Stat. 758 (2011); *see also* H. Rep. No. 112-10, at 7 (2011), *reprinted in* 2011 U.S.C.C.A.N. 576, 580 (noting that as amended, the section "would provide that the district courts shall not have diversity of citizenship jurisdiction under paragraph 1332(a)(2) of a claim between a citizen of a state and a citizen or subject of a foreign state admitted to the United States for permanent residence and domiciled in the same state"). The legislative history of this amendment shows that Congress intended to address the constitutional problems posed by the deeming clause. *See* U.S. Const. art. III, § 2, cl. 1 (extending judicial power to controversies "between Citizens of different States . . . and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects"). The House Report accompanying the 2011 bill stated that the amendment was intended to ensure that permanent resident aliens "would no longer be deemed to be U.S. citizens for purposes of diversity jurisdiction, thereby avoiding the possibly anomalous results" with respect to the 1988 language. H.R. Rep. No. 112-10, at *7 (2011), *reprinted in* 2011 U.S.C.C.A.N. 576 (Leg. Hist.).

Accordingly, because federal courts do not have diversity jurisdiction over lawsuits between two foreign parties, we conclude that section 1332(a)(2) does not give the district court jurisdiction over a suit by a permanent resident against a non-resident alien. Under section 1332, both Tagger and Strauss are considered aliens and therefore are not diverse. *See*

Univ. Licensing Corp. v. Paola del Lungo S.p.A., 293 F.3d 579, 581 (2d Cir. 2002).

Tagger does not challenge the district court's interpretation of section 1332, but rather argues that the 1951 Treaty of Friendship, Commerce and Navigation ("FCN Treaty") between the United States and Israel provides him with jurisdiction under its "access to courts" provisions. This argument is meritless. The treaty provides that "[n]ationals [of either the United States and Israel] . . . shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both in pursuit and in defense of their rights." Treaty of Friendship, Commerce and Navigation, Israel-U.S., art. V(1), Aug. 23, 1951, 5 U.S.T. 550.

We have previously commented that these types of "access" provisions of international commercial treaties were "intended to guarantee treaty nationals equal treatment with respect to procedural matters like filing fees, the employment of lawyers, legal aid, security for costs and judgment, and so forth." *Blanco v. United States*, 775 F.2d 53, 62 (2d Cir. 1985). The terms "national treatment" and "most-favored-nation treatment" also do not offer Tagger any relief. The Supreme Court has stated that "national treatment" means nothing more than offering foreign nationals "equal treatment" with domestic nationals. *See Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 188 n.18 (1982). Similarly, "most-favored-nation treatment means treatment no less favorable than that accorded to nationals or companies of any third

country." *Id.* Therefore, the access provision of the Israel-U.S. FCN Treaty does not offer Tagger any more substantive rights than any U.S. citizen would be entitled. Tagger is still required to show that there is complete diversity between the parties, just like any U.S. citizen would. Because there is no complete diversity, the district court properly determined that it lacked subject matter jurisdiction. *See Pa. Pub. Sch. Emps.' Retirement Sys.*, 772 F.3d at 118.

CONCLUSION

For the reasons discussed above, we hold that section 1332(a)(2) does not give the district court jurisdiction over a suit by a permanent resident alien against a non-resident alien, and that the Israel-U.S. FCN Treaty does not otherwise confer federal jurisdiction to Tagger's claims. Accordingly, the judgment of the district court is hereby AFFIRMED.

MEMORANDUM DECISION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK (SEPTEMBER 12, 2018)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BENJAMIN TAGGER,

Plaintiff,

-against-

THE STRAUSS GROUP LTD.,

Defendant.

No. 18-cv-2923 (BMC)

Before: Brian M. COGAN, United States District Judge.

COGAN, District Judge.

Plaintiff *pro se* brings this action arising out of an April 15, 1999 settlement agreement executed in Tel Aviv, Israel between plaintiff and defendant's predecessor-in-interest concerning the foreclosure on a parcel of property located in Israel. Plaintiff claims that this Court has jurisdiction under 28 U.S.C. § 1332(a). Defendant moves to dismiss the complaint for, among other reasons, a lack of diversity jurisdiction and *forum non conveniens*. For the reasons that follow, defendant's motion is granted.

BACKGROUND

Plaintiff is an Israeli citizen.[1] During all relevant times, plaintiff lived in either Israel, Turkey, or the United States.[2] Plaintiff is currently a lawful permanent resident of the United States and is domiciled in New York.[3] Defendant is an Israeli company that develops and sells food and beverage products internationally, including in the United States through its joint venture with PepsiCo Inc.[4]

---

[1] Although plaintiff claims that he "stopped being a legal resident of Israel in 1971," and that Israel considers him a "foreign resident who lives in Turkey," his United States Permanent Resident card provides that he was born in Israel. In addition, defendant has provided a copy of plaintiff's Israeli passport, which expires in 2019.

[2] The dates during which plaintiff lived in Israel, Turkey, and the United States are not clear from the complaint. It appears that plaintiff moved from Israel to the United States around 1971, relocated to Turkey in 1993, returned to Israel for a visit in 2013, and then went back to the United States.

[3] Plaintiff's Permanent Resident card indicates that he has been a resident of the United States since March 21, 1972.

[4] Defendant attaches an affidavit to its reply in support of its motion to dismiss, and explains that defendant is not registered to do business in New York; does not own, use, or possess real property in New York; does not maintain any offices in New York; nor does it have any employees or agents in New York. Defendant also explains that it entered into a joint venture with PepsiCo Inc., whereby each entity indirectly owns a 50% interest in Sabra Dipping Company LLC, which produces and sells hummus and other spreads. Sabra's headquarters are located in White Plains, New York, but Sabra is not a subsidiary of defendant and defendant does not control it. Plaintiff's original complaint asserted a claim against Sabra, but he withdrew it in his amended complaint.

Defendant's headquarters and principal place of business is located in Israel.

On April 15, 1999, plaintiff and defendant's predecessor-in-interest entered into a settlement agreement in Tel Aviv concerning the foreclosure of property located in Israel. Under the terms of the agreement, plaintiff (as the debtor) was to pay an amount equal to U.S. $85,000. Plaintiff also signed a bank guarantee for $25,000, secured by property owned by plaintiff's wife. In consideration, defendant's predecessor-in-interest requested that a trustee cancel and vacate the foreclosure on the property, which the trustee could grant after all of the necessary preconditions for payment were met. The settlement agreement also provided that a "stop-exit order" (prohibiting plaintiff from leaving Israel) would be issued if plaintiff did not comply with its terms.

Plaintiff allegedly paid off his debt. However, in July 2011, defendant requested that the Israeli State Collections Office[5] take action against plaintiff for the value of the debt, including by prohibiting plaintiff's right to receive or renew his driver's license or passport, implementing a prohibition on plaintiff's right to use a credit card, restraining plaintiff's use of his bank accounts, and prohibiting plaintiff's right to leave Israel. Besides serving plaintiff's attorney in May 2000, defendant allegedly did not provide any

---

[5] Plaintiff refers to the "Israeli State Collections Office" or the "Collection Office" in his complaint, so the Court has adopted plaintiff's terminology for the purpose of this Order. However, defendant's affidavit clarifies that this entity is actually the Law Enforcement and Collection System Authority (or the "Registrar"), which is an arm of the Israeli Ministry of Justice in charge of the enforcement of judicial decisions and debt collection.

notice regarding the pending Collection Office action. The Collection Office issued a stop-exit order against plaintiff.[6]

At that time, plaintiff lived in Turkey and was not aware of the stop-exit order. When plaintiff visited Israel in 2013, he was not permitted to leave the country as a result of the 2011 decision. Plaintiff challenged the stop-exit order, claiming that he was a resident of Turkey and paid the entire debt owed under the settlement agreement. Defendant opposed. The Collection Office ordered plaintiff to deposit with it an amount of 100,000 NIS and obtain the signatures of two guarantors for his debt in order to lift the stop-exit order. Plaintiff appealed, and a magistrate judge lifted the stop-exit order. However, following a series of hearings and appeals, it appears that the Israeli enforcement proceeding is still ongoing and defendant is still attempting to collect plaintiff's allegedly outstanding debt.

Plaintiff claims that on November 26, 2013, an Israeli Bailiff's Office determined that "Claims relating to the identity of the persons responsible for delay and damage caused to debtor [Benjamin Tagger] as a result of this delay—these arguments will be heard in the competent Court and not in the Bailiff's Office."

---

[6] As a result of the stop-exit order issued in July 2011, plaintiff was forced to prepare, present, and file an updated questionnaire and a waiver of confidentiality for documents concerning his incomes and expenses; was "seen by the authorities and business community as a capable person with the ability to avoid paying his debts"; and was placed on an "Exit Control List" issued by the Interior Ministry of Israel.

Plaintiff filed the instant lawsuit with this Court in response to this order.

Plaintiff claims that defendant's actions in seeking to collect the debt and a stop-exit order without notice to plaintiff deprived him of his liberty. Plaintiff also brings claims for defamation, conspiracy, negligence, obstruction of justice, fraud, negligent infliction of emotional distress, intentional infliction of emotional distress, interference with contractual relationships, and violations of human rights under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Plaintiff seeks $10,000,000 in damages, in addition to an award of punitive damages, attorneys' fees and costs, as well as pre-and post-judgment interest.

DISCUSSION

Plaintiff invokes federal jurisdiction on the basis of diversity of citizenship. Defendant moves to dismiss for a lack of subject matter jurisdiction, improper service, lack of personal jurisdiction, and *forum non conveniens*. Defendant also moves to dismiss for failure to state a claim. Because the Court agrees with defendant that it lacks subject matter jurisdiction to hear this case, or that it would otherwise dismiss on the basis of *forum non conveniens*, the Court does not address defendant's arguments concerning service of process, personal jurisdiction, or failure to state a claim.

I. Subject Matter Jurisdiction

Under Federal Rule of Civil Procedure 12(b)(1), a district court must dismiss a complaint if the court determines that it does not have subject matter jurisdiction to hear the action. *See Aurecchione v.*

Schoolman Transp. Sys., Inc., 426 F.3d 635, 638 (2d Cir. 2005). In this analysis, the court must construe "all ambiguities and draw[] all inferences" in the plaintiff's favor. *Id.*

Under § 1332(a)(2), "district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between . . . citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State."

Plaintiff, as the party invoking federal jurisdiction, bears the burden of demonstrating that grounds for diversity exist and that diversity is complete." *See Herrick Co. v. SCS Commc'ns, Inc.*, 251 F.3d 315, 322-23 (2d Cir. 2001) (internal quotation marks and citations omitted); *see also Carden v. Arkoma Assocs.*, 494 U.S. 185, 187 (1990) (citing *Strawbridge v. Curtiss*, 3 Cranch 267, 2 L.Ed. 435 (1806)). Diversity is "complete" "if there is no plaintiff and no defendant who are citizens of the same State." *Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 388 (1998).

A district court does not have diversity jurisdiction over cases between aliens. *Bayerische Landesbank, New York Branch v. Aladdin Capital Mgmt. LLC*, 692 F.3d 42, 49 (2d Cir. 2012). Because plaintiff and defendant are each considered aliens under the diversity analysis, the Court does not have jurisdiction over this case and the complaint must be dismissed. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 502 (2006)

("[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the complaint must be dismissed in its entirety.")

Defendant is an Israeli corporation with its principal place of business in Israel. A corporation is a citizen "of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business." 28 U.S.C. § 1332(c)(1).

Defendant is therefore considered to be a citizen of Israel. Plaintiff is a lawful permanent resident domiciled in the state of New York. Generally, an individual's citizenship is determined by his domicile. *Palazzo ex rel. Delmage v. Corio*, 232 F.3d 38, 42 (2d Cir. 2000). However, the history of § 1332(a) and an analysis of that history by courts within the Second Circuit instruct that plaintiff is also considered to be an alien for the purposes of diversity jurisdiction.

In 1988, Congress passed the Judicial Improvements and Access to Justice Act, which amended § 1332(a). The 1988 amendment added the following paragraph to the diversity statute: "For the purposes of this section . . . an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled." Pub. L. No. 100-702, § 203(a), 102 Stat. 4642, 4646. "The general view was that the purpose of this amendment was to remove federal jurisdiction from a case between a citizen of a U.S. state and a permanent resident alien of that same U.S. state because, in effect, such a lawsuit was between two citizens of the same state." *H.K. Huilin Int'l Trade Co. v. Kevin Multiline Polymer Inc.*, 907 F. Supp. 2d 284, 286 (E.D.N.Y. 2012).

Courts disagreed, however, on whether the 1988 amendment simultaneously expanded federal jurisdiction by finding diversity in exactly the situation presented in this case—where a permanent resident alien and a non-resident alien were opposite of one another. "[T]he majority of courts in the Second Circuit did not read this section to so expand diversity jurisdiction." *Id.* Their reasoning was that "if a resident alien were always 'deemed' to be a citizen of the state she lived in, then one nonresident alien could bring suit in federal court against one resident alien without the presence of any United States citizens." *Id.* at 287.

In light of this ambiguity, Congress passed the Clarification Act in 2011, which removed the contested "deeming" provision and inserted the current language instructing that district courts do not have jurisdiction over actions between citizens of a state and citizens of a foreign state who are lawfully admitted for permanent residence and are domiciled in that state. Pub. L. No. 112-63, 125 Stat. 758 § 101. Thus, Congress clarified that it did not intend the 1988 amendment to expand diversity jurisdiction to suits between non-resident aliens and lawful permanent residents; it intended only to eliminate diversity jurisdiction for suits between a citizen of a state and a lawful permanent resident domiciled in the same state.

Marcus v. Five J Jewelers Precious Metals Industry Ltd., 111 F. Supp. 2d 445 (S.D.N.Y. 2000), is instructive.[7] There, the plaintiff was a citizen of Israel who

---

[7] This is true even though *Marcus* was decided 11 years before the Clarification Act was passed. As discussed above, the expansion of federal jurisdiction to this set of facts was consistent with a strict reading of the 1988 amended version of § 1332(a) (which was operative in 2000). *Marcus* is one example of a court within

had been domiciled in New York since 1984 and became a lawful permanent resident in 1985. The defendant was an Israeli corporation with its principal place of business in Israel. The court dismissed the complaint for lack of subject matter jurisdiction, because "all defendants and one plaintiff to the action [were] aliens, [and] complete diversity [was] lacking." *Id.* at 48.

Similarly, in this case, plaintiff's domicile is not operative for the purposes of diversity jurisdiction. Despite the fact that plaintiff has lawful permanent resident status, plaintiff is a citizen of Israel and is considered to be an alien. *See Chan v. Chan*, No. 13-CV-3331, 2015 WL 4042165, at *2 (E.D.N.Y. July 1, 2015) (collecting cases) ("Concerning legal permanent residents, diversity jurisdiction is not available between a resident alien and a foreign alien."). Because plaintiff and defendant are both aliens, the Court lacks subject matter jurisdiction over this action, and the complaint is dismissed.

II. *Forum Non Conveniens*

Even if the Court did have jurisdiction to hear this action, the Court would grant defendant's motion to dismiss for *forum non conveniens*. There is little—if any—connection between this Court and the events giving rise to plaintiff's cause of action.

---

the Second Circuit, facing similar facts to the instant complaint, that refused to read the 1988 amended version of § 1332(a) so broadly, and dismissed a complaint over which it could have technically exercised subject matter jurisdiction. The subsequent passing of the Clarification Act instructs that the *Marcus* court's outcome—dismissing the complaint for lack of subject matter jurisdiction—was correct.

"*[F]orum non conveniens* is a discretionary device permitting a court in rare instances to 'dismiss a claim even if the court is a permissible venue with proper jurisdiction over the claim.'" *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 100 (2d Cir. 2000) (quoting *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 73 (2d Cir. 1998)). The Second Circuit has articulated a three-step process to determine whether *forum non conveniens* is an appropriate grounds for dismissal of a given case. First, a court must determine the degree of deference owed to plaintiff's choice of forum. *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 70 (2d Cir. 2003). Second, a court must determine whether an adequate alternative forum exists. *Id.* Third, a court must balance several factors involving the interests of the parties and the public. *Id.*

In reviewing a motion to dismiss for *forum non conveniens*, a court should assume that the plaintiff's choice of forum will stand, unless the defendant meets its burden of proving that analysis otherwise weighs in its favor. *See Iragorri v. United Techs. Corp.*, 274 F.3d 65, 71 (2d Cir. 2001). "[I]f the balance of conveniences suggests that trial in the chosen forum would be unnecessarily burdensome for the defendant or the court, dismissal is proper." *Id.* This is true even if the plaintiff has filed suit in his home forum. *Id.*

With respect to the first step in the analysis, the Court disagrees with defendant and finds that plaintiff's choice of forum is entitled to deference. Although the Second Circuit has specifically rejected "a rigid rule of decision protecting U.S. citizen or resident plaintiffs from dismissal for *forum non conveniens*," *Wiwa*, 226 F.3d at 102, lawful permanent resident plaintiffs remain subject to the same analysis as any other

plaintiff. Under that analysis, "the greater the plaintiff's or the lawsuit's bona fide connection to the United States and to the forum of choice and the more it appears that considerations of convenience favor the conduct of the lawsuit in the United States, the more difficult it will be for the defendant to gain dismissal for *forum non conveniens*." *Iragorri*, 274 F.3d at 72.

Here, plaintiff is a lawful permanent resident and has a bona fide connection to the Eastern District of New York (as he resides in Kings County). Plaintiff also claims that he is a lung cancer patient[8] and suffers from atrial fibrillation, is dependent on Medicare, and has a nominal income, all of which complicate extensive foreign travel. These facts certainly warrant deference to plaintiff's choice of forum. However, this deference is ultimately overcome by the fact that, besides plaintiff's lawful permanent resident status, this lawsuit bears virtually no bona fide connection to the United States.

Turning to the second step, defendant claims that the Israeli court system presents an adequate alternative forum for the parties' dispute.[9] "An alternative

---

[8] Plaintiff attached to his opposition a letter from his doctor advising the Court that plaintiff had a resection surgery for lung adenocarcinoma on February 28, 2017, which requires a follow up appointment every six months for five years, and an annual follow up after the fifth year. Plaintiff does not appear to be undergoing any other regular cancer treatment.

[9] Defendant does not make this argument, but there also exists a second adequate alternative forum to hear this lawsuit—a New York State court. Defendant contests that it is subject to personal jurisdiction in New York, but that does not mean that a New York court cannot competently hear this case. However, even if a New York court is not an adequate alternative, an Israeli court is. *See e.g., Wilson v. ImageSat Int'l N.V.*, No. 07 CIV. 6176, 2008

forum is adequate if the defendants are amenable to service of process there, and if it permits litigation of the subject matter of the dispute." *Pollux*, 329 F.3d at 75. Here, plaintiff's complaint demonstrates that the Israeli court system is an adequate alternative. Plaintiff has appeared before numerous Israeli courts and agencies in connection with the underlying dispute between the parties, and the Court has no reason to think plaintiff cannot continue to litigate these issues in that forum. Because defendant is an Israeli corporation with its principal place of business in Israel, and because defendant has already appeared in the underlying dispute, it is also clear that defendant is amenable to suit in Israel. Finally, plaintiff's complaint indicates that the stay-exit order was lifted, so the Court has no reason to believe that plaintiff cannot travel to Israel without risking his detention.

As for step three, the Court must balance several factors to determine whether the case should be dismissed so that it can be brought before an Israeli court. "[F]actors that argue against *forum non conveniens* dismissal include the convenience of the plaintiff's residence in relation to the chosen forum, the availability of witnesses or evidence to the forum

---

WL 2851511, at *6 (S.D.N.Y. July 22, 2008), as amended (July 30, 2008) (finding Israel to be an adequate alternative forum where most defendants consented to suit in Israel and plaintiff was subject to jurisdiction of Israeli court); *Sussman v. Bank of Israel*, 801 F. Supp. 1068, 1079 (S.D.N.Y. 1992) (finding Israel to be an adequate alternative forum where Israeli law governed propriety of defendants' conduct, majority of witnesses resided in Israel, plaintiff did not show that any evidence was located in the United States, the majority of documents were in Hebrew, and Israel had a greater public interest in the issues raised by the complaint than the United States).

district, the defendant's amenability to suit in the forum district, the availability of appropriate legal assistance, and other reasons relating to convenience or expense." *Iragorri*, 274 F.3d at 72. However, if it appears that the plaintiff was motivated by forum-shopping—namely to benefit from favorable local laws, the generosity of juries, the plaintiff's popularity or the defendant's unpopularity in the region, or the inconvenience and expense to the defendant—"the easier it becomes for the defendant to succeed on a *forum non conveniens* motion by showing that convenience would be better served by litigating in another country's courts." *Id.*

Besides the convenience factors mentioned in step one, plaintiff claims that he could not obtain counsel in Israel on a contingency fee basis, so he is unable to bring this lawsuit there. However, he is before this Court *pro se*, so the Court is not persuaded that a lack of counsel at plaintiff's preferred hourly rate should prevent his case from being heard in a different forum. In addition, it is likely that much of the evidence relating to plaintiff's suit will involve what the Israeli court system knew and what it based its decisions on—and this evidence will be much easier to obtain in front of an Israeli court rather than a United States court.

The facts underpinning this lawsuit and the evidence necessary to litigate it weigh strongly in favor of dismissing for *forum non conveniens*. The dispute arises out of a 1999 contract between two Israeli citizens, which was executed in Israel, involves an ongoing Israeli debt collection process, and concerns a parcel of real property located in Israel. Plaintiff claims that the impetus for his complaint was an Israeli

Bailiff's Office order indicating that his claims needed to be heard in "the competent Court" (rather than by the Bailiff's Office). This Court is likely not the court that the Bailiff's Office envisioned; rather, plaintiff's claims are properly heard before a competent *Israeli* court.

CONCLUSION

Defendant's [21] motion to dismiss is GRANTED. SO ORDERED.

/s/ Brian M. Cogan
U.S.D.J.

Dated: Brooklyn, New York
September 12, 2018

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT DENYING PETITION FOR REHEARING EN BANC (JUNE 15, 2020)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BENJAMIN TAGGER,

Plaintiff-Appellant,

v.

STRAUSS GROUP LTD.,

Defendant-Appellee,

SABRA DIPPING CO., LLC.,

Defendant.

No. 18-3189

Appellant, Benjamin Tagger, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

/s/ Catherine O'Hagan Wolfe
Clerk

ISRAEL FRIENDSHIP, COMMERCE AND NAVIGATION TREATY (AUGUST 23, 1951)

Treaty, with Protocol and Exchange of Notes, between the UNITED STATES OF AMERICA and ISRAEL Signed at Washington August 23, 1951

Ratification advised by the Senate of the United States of America, with a reservation, July 21, 1953

Ratified by the President of the United States of America, subject to the said reservation, December 18, 1953

Ratified by Israel January 21, 1954

Ratifications exchanged at Washington March 4, 1954

Proclaimed by the President of the United States of America May 6, 1954

Entered into force April 3, 1954

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS a treaty of friendship, commerce and navigation between the United States of America and Israel, together with a protocol and an exchange of notes relating thereto, was signed at Washington August 23, 1951;

WHEREAS the originals of the aforesaid treaty and protocol in the English and Hebrew languages, the original of the note signed by the Ambassador of Israel and the authentic text of the note signed by the

Secretary of State of the United States of America, both in the English language, are word for word as follows:

TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION BETWEEN THE UNITED STATES OF AMERICA AND ISRAEL

The United States of America and Israel, desirous of strengthening the bonds of peace and friendship traditionally existing between them and of encouraging closer economic and cultural relations between their peoples, and being cognizant of the contributions which may be made toward these ends by arrangements encouraging mutually beneficial investments, promoting mutually advantageous commercial and cultural intercourse and otherwise establishing mutual rights and privileges, have resolved to conclude a Treaty of Friendship, Commerce and Navigation, based in general upon the principles of national and of most-favored-nation treatment unconditionally accorded, and for that purpose have appointed as their Plenipotentiaries,

The President of the United States of America:

Dean Acheson, Secretary of State of the United States of America, and

The President of the State of Israel:

Abba Eban, Ambassador Extraordinary and Plenipotentiary of Israel to the United States of America,

Who, having communicated to each other their full powers found to be in due form, have agreed upon the following Articles:

Article I

Each Party shall at all times accord equitable treatment to the persons, property, enterprises and other interests of nationals and companies of the other Party.

Article II

1. Nationals of either Party shall be permitted to enter the territories of the other Party and to remain therein: (a) for the purpose of carrying on trade between the territories of the two Parties and for the purpose of engaging in related commercial activities; and (b) for other purposes subject to the laws relating to the entry and sojourn of aliens.

2. Nationals of either Party, within the territories of the other Party, shall be permitted: (a) to travel therein freely, and to reside at places of their choice; (b) to enjoy liberty of conscience; (c) to hold both private and public religious services; (d) to bury their dead according to their religious customs in suitable and convenient places; (e) to gather and to transmit material for dissemination to the public abroad; and (f) to communicate with other persons inside and outside such territories by mail, telegraph and other means open to general public use.

3. The provisions of the present Article shall be subject to the right of either Party to apply measures that are necessary to maintain public order and necessary to protect the public health, morals and safety.

Article III

1. Nationals of either Party within the territories of the other Party shall be free from unlawful molestations of every kind, and shall receive the most constant protection and security, in no case less than that required by international law.

2. If, within the territories of either Party, a national of the other Party is accused of crime and taken Into custody, the nearest diplomatic or consular representative of his country shall on the demand of such national be immediately notified. Such national shall: (a) receive reasonable and humane treatment; (b) be formally and immediately informed of the accusations against him; (c) be brought to trial as promptly as is consistent with the proper preparation of his defense; and (d) enjoy all means reasonably necessary to his defense, including the services of competent counsel.

Article IV

1. Nationals of either Party shall be accorded national treatment in the application of laws and regulations within the territories of the other Party that establish a pecuniary compensation, or other benefit or service, on account of disease, injury or death arising out of and in the course of employment or due to the nature of employment.

2. In addition to the rights and privileges provided in paragraph 1 of the present Article, nationals of either Party shall, within the territories of the other Party, be accorded national treatment in the application of laws and regulations establishing systems of compulsory insurance, under which benefits are paid

without an individual test of financial need: (a) against loss of wages or earnings due to old age, unemployment, sickness or disability, or (b) against loss of financial support due to the death of father, husband or other persona on whom such support had depended.

Article V

1. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to access to the courts of justice and to administrative tribunals and agencies within the territories of the other Party, in all degrees of jurisdiction, both In pursuit and in defense of their rights. It is understood that companies of either Party not engaged in activities within the territories of the other Party shall enjoy such access therein without any requirement of registration or domestication.

2. Contracts entered into between nationals and companies of either Party and nationals and companies of the other Party, that provide for the settlement by arbitration of controversies, shall not be deemed unenforceable within the territories of such other Party merely on the grounds that the place designated for the arbitration proceedings is outside such territories or that the nationality of one or more of the arbitrators is not that of such other Party. No award duly rendered pursuant to any such contract, and final and enforceable under the laws of the place where rendered, shall be deemed invalid or denied effective means of enforcement within the territories of either Party merely on the grounds that the place where such award was rendered is outside such territories or that the nationality of one or more of the arbitrators is not that of such Party.

Article VI

1. Property of nationals and companies of either Party shall receive the most constant protection and security within the territories of the other Party.

2. The dwellings, offices, warehouses, factories and other premises of nationals and companies of either Party located within the territories of the other Party shall not be subject to unlawful entry or molestation. Official searches and examinations of such premises and their contents, when necessary, be made with careful regard for the convenience of the occupants and the conduct of business.

3. Property of nationals and companies of either Party shall not be taken except for public purposes, nor shall it be taken without the payment of just compensation. Such compensation shall be in an effectively realizable form and shall represent the equivalent of the property taken; and adequate provision shall have been made at or prior to the time of taking for the determination and prompt payment thereof.

4. Neither Party shall take unreasonable or discriminatory measures that would impair the legally acquired rights or interests within its territories of nationals and companies of the other Party in the enterprises which they have established or in the capital, skills, arts or technology which they have supplied; nor shall either Party unreasonably impede nationals and companies of the other Party from obtaining on equitable terms the capital, skills, arts and technology it needs for its economic development.

5. Nationals and companies of either Party shall in no case be accorded, within the territories of the

other Party, less than national treatment and most-favored-nation treatment with respect to the matters set forth in paragraphs 2 and 3 of the present Article. Moreover, enterprises in which nationals and companies of either Party have a controlling interest shall be accorded, within the territories of the other Party, not less than national treatment and most-favored-nation treatment in all matters relating to the taking of privately owned enterprises into public ownership and to the placing of such enterprises under public control.

Article VII

1. Nationals and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other activity for profit (business activities) within the territories of the other Party, whether directly or by agent or through the medium of any form of lawful juridical entity. Accordingly, such nationals and companies shall be permitted within such territories: (a) to establish and maintain branches, agencies, offices, factories and other establishments appropriate to the conduct of their business; (b) to organize companies under the general company laws of such other Party, and to acquire majority interests in companies of such other Party; and (c) to control and manage enterprises which they have established or acquired. Moreover, enterprises which they control, whether in the form of individual proprietorships, companies or otherwise, shall, in all that relates to the conduct of the activities thereof, be accorded treatment no less favorable than that accorded like enterprises controlled by nationals and companies of such other Party.

2. Each Party reserves the right to limit the extent to which aliens may establish, acquire interests in, or carry on enterprises engaged within its territories in communications, air or water transport, banking, or the exploitation of land or other natural resources. However, neither Party shall deny to transportation, communications and banking companies of the other Party the right to maintain branches and agencies to perform functions necessary for essentially international operations in which they are permitted to engage.

3. The provisions of paragraph 1 shall not prevent either Party from prescribing special formalities in connection with the establishment of alien-controlled enterprises within its territories; but such formalities may not impair the substance of the rights set forth in said paragraph.

4. Nationals and companies of either Party, as well as enterprises controlled by such nationals and companies, shall in any event be accorded most-favored-nation treatment with reference to the matters treated in the present Article.

Article VIII

1. Nationals and companies of either Party shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists of their choice. Moreover, such nationals and companies shall be permitted to engage accountants and other technical experts regardless of the extent to which they may have qualified for the practice of a profession within the territories of such other Party, for the particular purpose of making examinations, audits and technical investigations for, and rendering

reports to, such nationals and companies in connection with the planning and operation of their enterprises, and enterprises in which they have a financial interest, within such territories.

2. Nationals of either Party shall not be barred from practising the professions within the territories of the other Party merely by reason of their alienage; but they shall be permitted to engage in professional activities therein upon compliance with the requirements regarding qualifications, residence and competence that are applicable to nationals of such other Party.

3. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment with respect to engaging in scientific, educational, religious and philanthropic activities within the territories of the other Party, and shall be accorded the right to form associations for that purpose under the laws of such other Party. Nothing in the present Treaty shall be deemed to grant or imply any right to engage in political activities.

Article IX

1. Nationals and companies of Israel shall be accorded, within the territories of the United States of America:

(a) national treatment with respect to leasing land, buildings and other immovable property appropriate to the conduct of commercial, manufacturing, processing, financial, construction, publishing, scientific, educational, religious, philanthropic and professional activ-

ities and for residential and mortuary purposes and with respect to occupying and using such property; and

(b) other rights in immovable property permitted by the applicable laws of the States, Territories and possessions of the United States of America.

2. Nationals and companies of the United States of America shall be accorded, within the territories of Israel, national treatment with respect to acquiring by purchase, or otherwise, and with respect to owning, occupying and using land, buildings and other immovable property. However, in the case of any such national domiciled in, or any such company constituted under the laws of, any State, Territory or possession of the United States of America that accords less than national treatment to nationals and companies of Israel in this respect, Israel shall not be obligated to accord treatment more favorable in this respect than such State, Territory or possession accords to nationals and companies of Israel.

3. Nationals and companies of either Party shall be accorded national treatment within the territories of the other Party with respect to acquiring, by purchase or any other method, and with respect to owning and using movable property of all kinds, both tangible and intangible. However, each Party may limit or prohibit: (a) alien ownership of interests in enterprises carrying on particular types of activity, but only to the extent that this can be done without impairing the rights and privileges secured by Article VII, paragraph 1, or by other provisions of the present Treaty; and (b) alien ownership of materials that are dangerous from the standpoint of public safety.

4. Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition.

5. Nationals and companies of either Party shall be accorded within the territories of the other Party national treatment and most-favored-nation treatment with respect to disposing of property of all kinds.

Article X

Nationals and companies of either Party shall be accorded, within the territories of the other Party, national treatment and most-favored-nation treatment with respect to obtaining and maintaining patents of invention, and with respect to rights in trade marks, trade names, trade labels and industrial property of all kinds.

Article XI

1. Nationals of either Party residing within the territories of the other Party, and nationals and companies of either Party engaged in trade or other gainful pursuit or in scientific, educational, religious or philanthropic activities within the territories of the other Party, shall not be subject to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, within the territories of such other Party,

more burdensome than those borne by nationals and companies of such other Party.

2. With respect to nationals of either Party who are neither resident nor engaged in trade or other gainful pursuit within the territories of the other Party, and with respect to companies of either Party which are not engaged in trade or other gainful pursuit within the territories of the other Party, it shall be the aim of such other Party to apply in general the principle set forth in paragraph 1 of the present Article.

3. Nationals and companies of either Party shall in no case be subject, within the territories of the other Party, to the payment of taxes, fees or charges imposed upon or applied to income, capital, transactions, activities or any other object, or to requirements with respect to the levy and collection thereof, more burdensome than those borne by nationals, residents and companies of any third country.

4. In the case of companies of either Party engaged in trade or other gainful pursuit within the territories of the other Party, and in the case of nationals of either Party engaged in trade or other gainful pursuit within the territories of the other Party but not resident therein, such other Party shall not impose or apply any tax, fee or charge upon any income, capital or other basis in excess of that reasonably allocable or apportionable to its territories, nor grant deductions and exemptions less than those reasonably allocable or apportionable to its territories. A comparable rule shall apply also in the case of companies organized and operated exclusively for scientific, educational, religious or philanthropic purposes.

5. Notwithstanding the provisions of the present Article, each Party may: (a) accord specific advantages as to taxes, fees and charges to nationals, residents and companies of third countries on the basis of reciprocity, if such advantages are similarly extended to nationals, residents and companies of the other Party; (b) accord to nationals, residents and companies of a third country special advantages by virtue of an agreement with such country for the avoidance of double taxation or the mutual protection of revenue; and (c) accord to its own nationals and to residents of contiguous countries more favorable exemptions of a personal nature with respect to income taxes and inheritance taxes than are accorded to other non-resident persons.

Article XII

1. The treatment prescribed in the present Article shall apply to all forms of control of financial transactions, including (a) limitations upon the availability of media necessary to effect such transactions, (b) rates of exchange, and (c) prohibitions, restrictions, delays, taxes, charges and penalties on such transactions; and shall apply whether a transaction takes place directly, or through an intermediary in another country. As used in the present Article, the term "financial transactions" means all international payments and transfers of funds effected through the medium of currencies, securities, bank deposits, dealings in foreign exchange or other financial arrangements, regardless of the purpose or nature of such payments and transfers.

2. Financial transactions between the territories of the two Parties shall be accorded by each Party treatment no less favorable than that accorded to like

transactions between the territories of that Party and the territories of any third country. Each Party, however, reserves rights and obligations it may have under the Articles of Agreement of the International Monetary Fund, except as may be otherwise provided in paragraphs b and 5 of the present Article.

3. Nationals and companies of either Party shall be accorded by the other Party national treatment and most-favored nation treatment with respect to financial transactions between the territories of the two Parties or between the territories of such other Party and of any third country.

4. Nationals and companies of either Party shall be permitted to withdraw freely from the territories of the other Party, by obtaining exchange in the currency of their own country,

(a) earnings, whether in the form of salaries, interest, dividends, commissions, royalties, payments for technical services or otherwise, and funds for amortization of loans and depreciation of direct investments and transfers of the whole or any portion of the compensation referred to in paragraph 3 of Article VI, and

(b) funds for capital transfers.

If more than one rate of exchange is in force, the rate applicable to the withdrawals referred to in the present paragraph shall be a rate which is specifically approved by the International Monetary Fund for such transactions or, in the absence of such specifically approved rate, an effective rate which, inclusive of any taxes or surcharges on exchange transfers, is just and reasonable.

5. Each Party shall retain the right in periods of exchange stringency to apply: (i) exchange restrictions to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people, and (ii) specific exchange restrictions approved by the International Monetary Fund. In the event that either Party applies exchange restrictions, it shall make reasonable and specific provision for the withdrawals referred to in paragraph 4 (a) above, together with such provision for the withdrawals referred to in paragraph 4 (b) above as may be feasible, giving consideration to special needs for other transactions.

6. In general, any control imposed by either Party over financial transactions shall, subject to the reservation set forth in paragraph 2 of the present Article, be so administered as not to influence disadvantageously the competitive position of the commerce or investment of capital of the other Party in comparison with the commerce or the investment of capital of any third country.

Article XIII

Commercial travelers representing nationals and companies of either Party engaged in business within the territories thereof shall, upon their entry into and departure from the territories of the other Party and during their sojourn therein, be accorded most-favored-nation treatment in respect of the customs and other matters, including, subject to the exceptions in paragraph 5 of Article XI, taxes and charges applicable to them, their samples and the taking of orders.

Article XIV

1. Each Party shall accord most-favored-nation treatment to products of the other Party, from whatever place and by whatever type of carrier arriving, and to articles destined for exportation to the territories of such other Party, by whatever route and by whatever type of carrier, in all matters relating to customs duties and other charges, and with respect to all other regulations, requirements and formalities imposed on or in connection with imports and exports.

2. Neither Party shall impose any prohibition or restriction on the importation of any product of the other Party, or on the exportation of any article to the territories of the other Party, that:

(a) if imposed on sanitary or other customary grounds of a noncommercial nature or in the interest of preventing deceptive or unfair practices, arbitrarily discriminates in favor of the importation of the like product of, or the exportation of the like article to, any third country;

(b) if imposed on other grounds, does not apply equally to the importation of the like product of, or the exportation of the like article to, any third country; or

(c) if a quantitative regulation involving allotment to any third country with respect to an article in which such other Party has an Important interest, fails to afford to the commerce of such other Party a share proportionate to the amount by quantity or value supplied by or to such other Party during a previous representative period, due

consideration being given to any special factors affecting the trade in the article.

3. Nationals and companies of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to all matters relating to importation and exportation.

4. As used in the present Treaty the term "products of" means "articles the growth, produce or manufacture of. The provisions of the present Article shall not apply to advantages accorded by either Party:

(a) to products of its national fisheries;

(b) to adjacent countries in order to facilitate frontier traffic; or

(c) by virtue of a customs union of which either Party, after consultation with the other Party, may become a member.

Article XV

1. Each Party shall promptly publish laws, regulations and rulings of general application pertaining to rates of duty, taxes or other charges, to the classification of articles for customs purposes, and to requirements or restrictions on imports and exports or the transfer of payments therefor, or affecting their sale, distribution or use; and shall administer such laws, regulations and rulings in a uniform, Impartial and reasonable manner.

2. Each Party shall provide an appeals procedure under which nationals and companies of the other Party, and Importers of products of such other Party, shall be able to obtain prompt and impartial review, and correction when warranted, of administrative

action relating to customs matters, including the imposition of fines and penalties, confiscations, and rulings on questions of customs classification and valuation by the administrative authorities. Penalties imposed for infractions of the customs and shipping laws and regulations shall be merely nominal in cases resulting from clerical errors or when good faith can be demonstrated.

Article XVI

1. Products of either Party shall be accorded, within the territories of the other Party, national treatment and most favored-nation treatment in all matters affecting internal taxation, sale, distribution, storage and use.

2. Articles produced by nationals and companies of either Party within the territories of the other Party, or by companies of the latter Party controlled by such nationals and companies, shall be accorded therein treatment no less favorable than that accorded to like articles of national origin by whatever person or company produced, in all matters affecting exportation, taxation, sale, distribution, storage and use.

Article XVII

1. Each Party undertakes (a) that enterprises owned or controlled by its Government, and that monopolies or agencies granted exclusive or special privileges within its territories, shall make their purchases and sales involving either imports or exports affecting the commerce of the other Party solely in accordance with commercial considerations, Including price, quality, availability, marketability, transportation and other conditions of purchase or sale; and (b) that

the nationals, companies and commerce of such other Party shall be afforded adequate opportunity, in accordance with customary business practice, to compete for participation in such purchases and sales.

2. Each Party shall accord to the nationals, companies and commerce of the other Party fair and equitable treatment, as compared with that accorded to the nationals, companies and commerce of any third country, with respect to: (a) the governmental purchase of supplies, (b) the awarding of concessions and other government contracts, and (c) the sale of any service sold by the Government or by any monopoly or agency granted exclusive or special privileges.

Article XVIII

1. The two Parties will, upon the request of either of them, have discussions regarding the actual or prospective existence of business practices which may have harmful effects upon commerce between their respective territories; and each will take such measures as it deems appropriate with a view to eliminating such undesirable practices. Business practices which may have harmful effects are those which restrain competition, limit access to markets or foster monopolistic control, and which are engaged in or made effective by one or more private or public commercial enterprises or by combination, agreement, or other arrangement among such enterprises.

2. Rights and privileges with respect to commercial, manufacturing and processing activities accorded, by the provisions of the present Treaty, to privately owned and controlled enterprises of either Party within the territories of the other Party shall extend to rights and privileges of an economic nature granted

to publicly owned or controlled enterprises of such other Party, in situations in which such publicly owned or controlled enterprises operate in fact in competition with privately owned and controlled enterprises. The preceding sentence shall not, however, apply to subsidies granted to publicly owned or controlled enterprises in connection with: (a) manufacturing or processing goods for government use, or supplying goods and services to the Government for government Use; or (b) supplying, at prices substantially below competitive prices, the needs of particular population groups for essential goods and services not otherwise practically obtainable by such groups.

3. No enterprise of either Party, including corporations, associations, and government agencies and instrumentalities, which is publicly owned or controlled shall, if it engages in commercial, manufacturing, processing, shipping or other business activities within the territories of the other Party, claim or enjoy, either for itself or for its property, immunity therein from taxation, suit, execution of judgment or other liability to which privately owned and controlled enterprises are subject therein.

Article XIX

1. Between the territories of the two Parties there shall be freedom of commerce and navigation.

2. Vessels under the flag of either Party, and carrying the papers required by its law in proof of nationality, shall be deemed to be vessels of that Party both on the high seas and within the ports, places and waters of the other Party.

3. Vessels of either Party shall have liberty, on equal terms with vessels of the other Party and on equal terms with vessels of any third country, to come with their cargoes to all ports, places and waters of such other Party open to foreign commerce and navigation. Such vessels and cargoes shall in all respects be accorded national treatment and most-favored-nation treatment within the ports, places and waters of such other Party; but each Party may reserve exclusive rights and privileges to its own vessels with respect to the coasting trade, inland navigation and national fisheries.

4. Vessels of either Party shall be accorded national treatment and most-favored-nation treatment by the other Party with respect to the right to carry all articles that may be carried by vessel to or from the territories of such other Party; and such articles shall be accorded treatment no less favorable than that accorded like articles carried in vessels of such other Party, with respect to: (a) duties and charges of all kinds, (b) the administration of the customs, and (c) bounties, drawbacks and other privileges of this nature.

5. Vessels of either Party that are in distress shall be permitted to take refuge in the nearest port or haven of the other Party, and shall receive friendly treatment and assistance, including such repairs, as well as supplies and materials for repairs, as may be necessary and available.

6. The term "vessels", as used herein, means all types of vessels, whether privately owned or operated, or publicly owned or operated; but this term does not, except with reference to paragraph 5 of the present Article, include fishing vessels or vessels of war.

Article XX

There shall be freedom of transit through the territories of each Party by the routes most convenient for international transit:

(a) for nationals of the other Party, together with their baggage;

(b) for other persons, together with their baggage, en route to or from the territories of such other Party; and

(c) for articles of any origin en route to or from the territories of such other Party.

Such persons and articles in transit shall be exempt from transit, customs and other duties, and from unreasonable charges and requirements; and shall be free from unnecessary delays and restrictions. They shall, however, be subject to measures referred to in paragraph 3 of Article II, and to nondiscriminatory regulations necessary to prevent abuse of the transit privilege.

Article XXI

1. The present Treaty shall not preclude the application of measures:

(a) regulating the importation or exportation of gold or silver;

(b) relating to fissionable materials, to radioactive byproducts of the utilization or processing thereof or to materials that are the source of fissionable materials,

(c) regulating the production of or traffic in arms, ammunition and implements of war,

or traffic in other materials carried on directly or indirectly for the purpose of supplying a military establishment;

(d) necessary to fulfill the obligations of a Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests; and

(e) denying to any company in the ownership or direction of which nationals of any third country or countries have directly or indirectly a controlling interest, the advantages of the present Treaty, except with respect to recognition of juridical status and with respect to access to courts.

2. The most-favored-nation provisions of the present Treaty relating to the treatment of goods shall not apply to: (a) advantages accorded by the United States of America or its Territories and possessions to one another, to the Republic of Cuba, to the Republic of the Philippines, to the Trust Territory of the Pacific Islands or to the Panama Canal Zone; or (b) advantages which Israel may accord and which existed under arrangements in force on May 13, 1948.

3. The provisions of the present Treaty relating to the treatment of goods shall not preclude action by either Party which is required or specifically permitted by the General Agreement on Tariffs and Trade [1] during such time as such Party is a contracting party to the General Agreement. Similarly, a contracting party to said Agreement may withhold from countries that have not acceded thereto particular advantages reciprocally negotiated thereunder. In the event that, pursuant to the foregoing sentence, either Party to the

present Treaty withholds most-favored-nation treatment from any product of the other Party, such other Party may thereupon terminate Article XIV, paragraph 1[1], of the present Treaty on giving six months notice.

4. The present Treaty does not accord any rights to engage in political activities.

5. Nationals of either Party admitted into the territories of the other Party f or limited purposes shall not enjoy rights to engage in gainful occupations in contravention of limitations expressly imposed, according to law, as a condition of their admittance.

Article XXII

1. The term "national treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of such Party.

2. The term "most-favored-nation treatment" means treatment accorded within the territories of a Party upon terms no less favorable than the treatment accorded therein, in like situations, to nationals, companies, products, vessels or other objects, as the case may be, of any third country. It is understood that established concessions and regimes which antedate the independence of Israel do not come within the purview of Article VII, paragraph 4, and Article VIII, paragraph 3.

---

[1] Treaties and Other International Acts Series 1700; 61 Stat., pts. 5 and 6.

3. As used in the present Treaty, the term "companies" means corporations, partnerships, companies and other associations, whether or not with limited liability and whether or not for pecuniary profit. Companies constituted under the applicable laws and regulations within the territories of either Party shall be deemed companies thereof and shall have their juridical status recognized within the territories of the other Party.

4. National treatment accorded under the provisions of the present Treaty to companies of Israel shall, in any State, Territory or possession of the United States of America, be the treatment accorded therein to companies created or organized in other States, Territories, and possessions of the United States of America.

Article XXIII

The territories to which the present Treaty extends shall comprise all areas of land and water under the sovereignty or authority of each of the Parties, other than the Panama Canal Zone and, except to the extent that the President of the United States of America shall otherwise determine, the Trust Territory of the Pacific Islands.

Article XXIV

1. Each Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Party may make with respect to any matter affecting the operation of the present Treaty.

2. Any dispute between the Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means.

Article XXV

1. The present Treaty shall be ratified, and the ratifications thereof shall be exchanged at Washington as soon as possible.

2. The present Treaty shall enter into force on the thirtieth day following the day of exchange of ratifications. It shall remain in force for ten years and shall continue in force thereafter until terminated as provided herein.

3. Either Party may, by giving one year's written notice to the other Party, terminate the present Treaty at the end of the initial ten-year period or at any time thereafter.

IN WITNESS WHEREOF the respective Plenipotentiaries have signed the present Treaty and have affixed hereunto their seals.

DONE in duplicate, in the English and Hebrew languages, both equally authentic, at Washington, this twenty-third day of August, one thousand nine hundred fifty-one, which corresponds to the twenty-first day of Av, five thousand seven hundred and eleven.

For the United States of America:

Dean Acheson [Seal]

For Israel:

Abba Eban [SEAL]
Ambassador

PROTOCOL

At the time of signing the Treaty of Friendship, Commerce and Navigation between the United States of America and Israel the undersigned Plenipotentiaries, duly authorized by their respective Governments, have further agreed on the following provisions, which shall be considered integral parts of the aforesaid Treaty:

1. The term "access" as used in Article V, paragraph 1, comprehends, among other things, legal aid and security for costs and judgment.

2. The first sentence of Article V, paragraph 1, shall not obligate either Party with respect to entertaining an action where a decree of dissolution of marriage is sought by an alien. For this purpose, decree of dissolution of marriage includes a decree of divorce and a decree of nullity.

3. The provisions of Article VI, paragraph 3, providing for the payment of compensation shall extend to interests held directly or indirectly by nationals and companies of either Party in property which is taken within the territories of the other Party.

4. With reference to Article VII, paragraph 4, either Party may require that rights to engage in mining on the public domain shall be dependent on reciprocity.

5. It is understood that the provisions of Article IX do not affect the disposition by either Party of its public domain.

6. Either Party, in adopting such measures of exchange control as may be necessary from time to time to deal with a stringency of foreign exchange, may depart from the provisions of paragraphs 2 and 6 of Article XII. However, such measures shall depart no more than necessary from the provisions of said paragraphs and shall be conformable with a policy designed to promote the maximum development of nondiscriminatory foreign trade and to expedite the attainment both of a balance of payments position and of reserves of foreign exchange which will obviate the necessity of such measures. A Party may also, notwithstanding Article XIV, paragraph 2(b) and (c), apply quantitative restrictions on imports that have effect equivalent to exchange restrictions applied pursuant to the preceding sentences of the present provision. A Party resorting to the present provision, or to paragraph 5 of Article XII, shall consult with the other Party at any time, upon request, as to the need for and application of restrictions thereunder, and shall give the other Party as much advance notice as practicable of prospective new or substantially increased resort thereto.

7. The provisions of Article XVII, paragraph 2(b) and (c) of Article XIX, paragraph 4, shall not apply to postal services.

8. The provisions of Article XX, (b) and (c), shall not obligate either Party with respect to nationals and products of any country which does not permit transit through its territories or nationals and products of such Party.

9. The provisions of Article XXI, paragraph 2, shall apply in the case of Puerto Rico regardless of any change that may take place in its political status.

10. Article XXIII does not apply to territories under the authority of either Party solely as a military base or by reason of temporary military occupation,

IN WITNESS WHEREOF the respective Plenipotentiaries have signed this Protocol and have affixed hereunto their seals.

DONE in duplicate, in the English and Hebrew languages, both equally authentic, at Washington, this twenty-third day of August, one thousand nine hundred fifty-one, which corresponds to the twenty-first day of Av, five thousand seven hundred and eleven.

For the United States of America:

Dean Acheson [Seal]

For Israel:

Abba Eban [SEAL]

The Secretary of State to the Israeli Ambassador
Department of State
Washington
August 23, 1951

EXCELLENCY:

I have the honor to refer to the Treaty of Friendship, Commerce and Navigation between the United States of America and Israel signed at Washington on August 23, 1951, and to confirm the understanding reached during the negotiation thereof that, for the purposes of the aforesaid Treaty, the United States of America is prepared, pending enactment of nationality legislation by Israel, to consider persons holding or entitled to hold Israel passports or traveling documents as nationals of Israel.

It is understood also that the foregoing is without reference to any questions of dual nationality.

Accept, Excellency, the renewed assurances of my highest consideration.

Dean Acheson
His Excellency

Abba Eban
Ambassador of Israel
The Israeli Ambassador to the Secretary of State
Embassy of Israel
Washington, D.C.
August 23, 1951

EXCELLENCY:

I have the honor to refer to the Treaty of Friendship, Commerce and Navigation between Israel and the United States of America, signed at Washington

on August 23, 1951, and to confirm the understanding reached during the negotiation thereof that, for the purposes of the aforesaid Treaty, the United States of America is prepared, pending enactment, of nationality legislation by Israel, to consider persons holding or entitled to hold Israel passports or traveling documents as nationals of Israel; and further, it is understood that the foregoing is without reference to any questions of dual nationality.

Accept, Excellency, the renewed assurances of my highest consideration.

Abba Eban
His Excellency

Dean G. Acheson
Secretary of State,
Washington, D. C.

[* * *]

WHEREAS the Senate of the United States of America by their resolution of July 21, 1953, two-thirds of the Senators present concurring therein, did advise and consent to the ratification of the aforesaid treaty, together with the aforesaid protocol and exchange of notes relating thereto, subject to a reservation as follows:

"Article VIII, paragraph 2, shall not extend to professions which, because they involve the performance of functions in a Public capacity or in the interest of public health and safety, are state-licensed and reserved by statute or constitution exclusively to citizens of the country, and no most-favored-nation

clause in the said treaty shall apply to such professions.";

WHEREAS the text of the aforesaid reservation was communicated by the Government of the United States of America to the Government of Israel by a note dated July 28, 1953 and was accepted by the Government of Israel by a note dated December 3, 1953;

WHEREAS the aforesaid treaty, together with the protocol and the exchange of notes relating thereto, was ratified by the President of the United States of America on December 18, 1953, in pursuance of the aforesaid advice and consent of the Senate and subject to the aforesaid reservation, and was ratified on the part of the Government of Israel;

WHEREAS the respective instruments of ratification, as aforesaid, were exchanged at, Washington on March 4, 1954, and a protocol of exchange, in the English and Hebrew languages, was signed at that place and on that date by the respective Plenipotentiaries of the United States of America and Israel, the said protocol of exchange indicating that the aforesaid reservation had been made and accepted;

AND WHEREAS it is provided in Article XXV of the aforesaid treaty that the treaty shall enter into force on the thirtieth day following the day of exchange of ratifications and in the aforesaid protocol of August 23, 1951 that the provisions thereof shall be considered integral parts of the treaty, and the aforesaid notes are deemed to be an integral part of the treaty;

Now, THEREFORE, be it known that I, Dwight P. Eisenhower, President of the United States of America, do hereby proclaim and make public the aforesaid treaty, the aforesaid protocol of August 23, 1951, and

the aforesaid exchange of notes to the end that the same and every article and clause thereof may be observed and fulfilled in good faith on and after April 3, 1954, by the United States of America and by the citizens of the United States of America and all other persons subject to the jurisdiction thereof, subject to the aforesaid reservation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this sixth day of May in the year of our Lord one thousand nine hundred fifty-four and of the Independence of the United States of America the one hundred seventy-eighth.

Dwight D. Eisenhower

By the President:

John Foster Dulles
Secretary of State