Exhibit A1

NOT FOR PUBLICATION

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL INGRAM EL, Plaintiff-Appellant, v. JOE CRAIL; et al., Defendants-Appellees.	No. 19-16866 D.C. No. 2:18-cv-01976-MCE-EFB MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted September 8, 2020**

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

Michael Ingram El appeals pro se from the district court's judgment dismissing his action alleging breach of contract. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *Naffe v. Frey*, 789

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

F.3d 1030, 1035 (9th Cir. 2015). We affirm.

The district court properly dismissed plaintiff's action for lack of subject matter jurisdiction because plaintiff failed to allege plausibly that his action arose under a treaty of the United States, or diversity of citizenship. *See* 28 U.S.C. §§ 1331, 1332(a); *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (jurisdictional dismissal is warranted where claims are "made solely for the purpose of obtaining federal jurisdiction" (citation omitted)); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857-58 (9th Cir. 2001) (requirements for asserting diversity under § 1332).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

Exhibit B1

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL INGRAM EL,

Plaintiff,

v.

JOE CRAIL; WESTERN MUTUAL INSURANCE; RESIDENCE MUTUAL INSURANCE,

Defendants.

No. 2:18-cv-01976-MCE-EFB PS

ORDER

On August 16, 2019, the magistrate judge filed findings and recommendations herein which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed objections and a motion to recuse the undersigned on September 30, 2019.[1] Those filings have been considered.

This court reviews de novo those portions of the proposed findings of fact to which objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). As to any portion of the proposed findings of fact to which no objection has been made, the court

[1] Plaintiff's motion for recusal fails to demonstrate that "a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might be questioned." *United States v. Holland*, 519 F.2d 909, 913 (9th Cir. 2008). Accordingly, his motion for recusal is denied.

assumes its correctness and decides the motions on the applicable law. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified Sch. Dist., 708 F.2d 452, 454 (9th Cir. 1983).

The court has reviewed the applicable legal standards and, good cause appearing, concludes that it is appropriate to adopt the proposed Findings and Recommendations in full. Accordingly, IT IS ORDERED that:

1. The proposed Findings and Recommendations filed August 16, 2019, are adopted;
2. Plaintiff's motion to recuse (ECF No. 33) is denied;
3. Defendants' motion to dismiss (ECF No. 18) is granted;
4. Plaintiff's first amended complaint is dismissed without leave to amend; and
5. The Clerk is directed to close the case.

IT IS SO ORDERED.

Dated: September 10, 2019

MORRISON C. ENGLAND, JR
UNITED STATES DISTRICT JUDGE

Exhibit C1

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL INGRAM EL,

Plaintiff,

v.

JOE CRAIL; WESTERN MUTUAL INSURANCE; RESIDENCE MUTUTAL INSURANCE,

Defendants.

No. 2:18-cv-1976-MCE-EFB PS

FINDINGS AND RECOMMENDATIONS

This case is before the court on defendants' motion to dismiss plaintiff's First Amended Complaint for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(1) and defendant Joe Crail's motion to dismiss for insufficient service of process pursuant to Rule 12(b)(5).[1] ECF No. 18. As discussed below, the motions must be granted.[2]

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[1] This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Eastern District of California Local Rule 302(c)(21).

[2] The court determined that oral argument would not be of material assistance in resolving the motions and they were submitted without oral argument pursuant to Eastern District of California Local Rule 230(g).

I. Background

Plaintiff's first amended complaint consist largely of rambling and conclusory allegations that are difficult to follow. *See generally* ECF No. 16. Plaintiff refers to himself as a "Moorish National, Consul, Diplomat, Natural Citizen, Moorish Science Temple of America, Moorish Devine and National Movement of the world, [and] Aboriginal Indigenous Moorish American." *Id.* at 5. The amended complaint references the Treaty of Peace and Friendship between Morocco and the United States and cites extensively to caselaw that is largely irrelevant to plaintiff's underlying dispute with defendants; i.e. a denial of an insurance claim. Plaintiff also attached to the complaint what appears to be a page from the Moorish Koran. *Id.* at 16. In a section with the heading "The Unconstitutional 14th Amendment" plaintiff attempts to tie his reference to Moors as somehow establishing diversity of citizenship, *id.* at 6, which as addressed below is lacking here.

In the portions of the complaint that actually identify plaintiff's dispute with defendants it is apparent that he challenges a denial of insurance coverage. Liberally construed, the crux of the amended complaint is that defendants impermissibly refused to pay plaintiff insurance benefits after his home was destroyed by a fire. ECF No. 16 at 10. Plaintiff alleges that he obtained homeowner's insurance from defendants in June 2017. *Id.* at 8. Under the policy's terms, defendants were required to insure "plaintiff against loss or damage by fire, to the amount of $231,000.00 . . . ." *Id.* at 8. On July 21, 2017, plaintiff's home was destroyed by a fire. *Id.* at 10. Plaintiff subsequently submitted a claim documenting the property damage, but defendants allegedly breached the insurance contract "by refusing to answer questions, negotiate or come to mutual agreement with" plaintiff. *Id.* at 11.

As discussed below, plaintiff does not assert a federal question claim and there is no basis for diversity jurisdiction. On that basis, defendants move to dismiss the amended complaint for lack of subject matter jurisdiction. ECF No. 18. Defendant Crail also moves to dismiss for insufficient service of process. *Id.* at 13-14.

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II. Legal Standards

1. Rule 12(b)(1)

A federal court is a court of limited jurisdiction, and may adjudicate only those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332, confer "federal question" and "diversity" jurisdiction, respectively. Federal question jurisdiction requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a "case or controversy" within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be authorized by a federal statute that both regulates a specific subject matter and confers federal jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court's diversity jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the matter in controversy exceeds $75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

A motion to dismiss pursuant to Rule 12(b)(1) seeks dismissal for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). On a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, plaintiff bears the burden of proof that jurisdiction exists. *See, e.g., Sopcak v. Northern Mountain Helicopter Serv.*, 52 F.3d 817, 818 (9th Cir. 1995); *Thornhill Pub. Co. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). Different standards apply to a 12(b)(1) motion, depending on the manner in which it is made. *See, e.g., Crisp v. United States*, 966 F. Supp. 970, 971-72 (E.D. Cal. 1997). "A Rule 12(b)(1) jurisdictional attack may be facial or factual." *Safe Air For Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack "asserts that the lack of subject matter jurisdiction is apparent from the face of the complaint." *Id.* If the motion presents a facial attack, the court considers the complaint's allegations to be true, and plaintiff enjoys "safeguards akin to those applied when a Rule 12(b)(6) motion is made." *Doe v. Schachter*, 804 F. Supp. 53, 56 (N.D. Cal. 1992).

Conversely, a factual attack, often referred to as a "speaking motion," challenges the truth of the allegations in the complaint that give rise to federal jurisdiction and the court does not presume those factual allegations to be true. *Thornhill*, 594 F.2d at 733. Although the court may consider evidence such as declarations or testimony to resolve factual disputes, *id.*; *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988), genuine disputes over facts material to jurisdiction must be addressed under Rule 56 standards. "[W]hen ruling on a jurisdictional motion involving factual issues which also go to the merits, the trial court should employ the standard applicable to a motion for summary judgment. Under this standard, the moving party should prevail only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." *Trentacosta v. Frontier Pacific Aircraft Industries, Inc.*, 813 F.2d 1553, 1558 (9th Cir. 1987) (quotations and citations omitted) (emphasis added).

As discussed below, in the instant case the face of the amended complaint demonstrates that subject matter jurisdiction is absent.

III. Discussion

1. Subject Matter Jurisdiction

a. Diversity Jurisdiction

Plaintiff alleges that the court has subject matter jurisdiction because the parties' citizenship is diverse. ECF No. 16 at 4-5. Diversity jurisdiction exists where the parties' citizenship is diverse and the matter in controversy exceeds $75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). For purpose of diversity jurisdiction, an individual is a citizen of the state in which he is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A corporation is a citizen of any state where it is incorporated and of the state in which it has it principle place of business. 28 U.S.C. § 1332(c).

In his amended complaint, plaintiff concedes that he and each of the defendants are citizens of California. ECF No. 24 at 8 ("Plaintiff, Michael Ingram El, and the Defendants reside, are Domiciled and or [sic] principally do business in California . . . ."). Despite that concession, he contends that he is "not a resident of California or a Citizen of the United States" because he is

a "Moorish National, Consul, Diplomat, Natural Citizen, Moorish Science Temple of America, Moorish Divine and National Movement of the world, Aboriginal Indigenous Moorish American" and that "Moors are not citizens of the Union States Society." ECF No. 16 at 5. But regardless of plaintiff's eccentric legal characterizations of his citizenship, the complaint identifies facts demonstrating that he resides in California. His home that was damaged or destroyed by the fire is described as being located at "6684 Spoerriwood Court Sacramento, California." ECF No. 16 at 8 & 10. Further, the property was insured as his "dwelling," (*id.* at 9 & 11), and he seeks payments for "[a]dditionl living [e]xpenses." It is clear from plaintiff's complaint that he is a resident of California, which in light of his admission to defendants' California citizenship, defeats diversity jurisdiction.

Plaintiff's Moorish citizenship argument is a frivolous attempt to establish diversity jurisdiction where none exits, and the ploy is not new. *See, e.g., Bey v. Municipal Court*, Nos. 11-7343 (RBK), 11-4351 (RBK), 2012 WL 714575 (D.N.J. Mar. 5, 2012 ("Any claims or arguments raised by Plaintiff which are based on his membership in the Moorish American Nation are [by definition] frivolous."); *Bey v. White*, No. 2:17-cv-76-RMG-MGB, 2017 WL 934728, at *3 (D.S.C. Feb. 14, 2017) ("If Plaintiff is attempting to assert that he is not subject to law or is personally immune from prosecution by virtue of his self-proclaimed membership in the Moorish Nation, such claims fail to state a plausible claim for relief, and in fact, are patently frivolous.").[3]

Plaintiff also asserts the frivolous contention that he is not a California citizen under *Dred Scott v. Sanford*, 60 U.S. 19 (1857), which, according to plaintiff, continues to stand for the proposition that "people called Negro, Black, African, etc. . . are not and can never be citizens of the United States of America . . . ." ECF No. 16 at 6. *Dred Scott's* infamous holding that freed African-Americans are not citizens under the United States Constitution has long since been invalided by the enactment of the Fourteenth Amendment to the United States Constitution. *See, e.g., Tuaua v. United States*, 788 F.3d 300, 304 (D.C. Cir. 2015) (observing that *Dred Scott* was

[3] Plaintiff also appears to be alleging that the parties are somehow diverse because the Moorish Science Temple of America is located in Chicago, Illinois (ECF No. 16 at 5). But the relevant inquiry is plaintiff's domiciliary, not the citizenship of an entity that is not a party to this action.

"necessarily repudiated with the ratification of the Fourteenth Amendment."); *Jones v. Tozzi*, 1:05CV01480WW DLB, 2005 WL 1490292, at *6 n.5 (E.D. Cal. June 21, 2005) ("Plaintiff may rest assured that *Dred Scott* is no longer the law of the land."). More to the point, it has nothing to do with this insurance dispute or the plaintiff.

Plaintiff, apparently aware that the Fourteenth Amendment has effectively overturned *Dred Scott*, further argues that the Fourteenth Amendment does not apply to him because he is Moorish. He contends that the Moorish Nation "did not sign a treaty with the United States of America agreeing to be citizens" and that "the colonial governing powers colorably [sic] conferred a citizenship status without the Moors' mutual agreement." *Id.* As discussed above, the argument based on plaintiff's predicate that he is necessarily not domiciled in California because he is Moorish is frivolous. *See, e.g., Khattab El v. U.S. Justice Dep't*, No. 86-6863, 1988 WL 5117, at 5 (E.D. Pa. Jan. 22, 1988) ("[T]he United States has not recognized the sovereignty of the Moorish Nation, thus precluding sovereign immunity claims.").

Plaintiff has failed to demonstrate diversity of the parties necessary to support diversity jurisdiction.

b. Federal Question Jurisdiction

Plaintiff also fails to establish federal question jurisdiction. Federal question jurisdiction requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a "case or controversy" within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be authorized by a federal statute that both regulates a specific subject matter and confers federal jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). The presence or absence of federal question jurisdiction "is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of plaintiff's properly pleaded complaint." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

Here, plaintiff appears to contend that there is federal question jurisdiction because under the Treaty of Peace and Friendship between the United States and Morocco, "all issues between the Moorish Americans and European Nations, being of a treaty Nature [sic] are obviously of a federal jurisdiction." ECF No. 16 at 4. Plaintiff also contends that his claim(s) arises under

federal law because "[s]tates cannot make treaties [and] therefore, have no jurisdiction." *Id.* Again, such assertions are patently frivolous.[4] Furthermore, plaintiff's claim(s) are not predicated on any treaty. Rather, plaintiff merely alleges a breach of contract claim against defendants based on their alleged failure to pay insurance benefits. *See generally* ECF No. 16 at 8-12. Consequently, this action does not present a federal question, and plaintiff's first amended complaint must be dismissed for lack of subject matter jurisdiction.

IV. Leave to Amend

The only remaining issue is whether to grant leave to amend. Plaintiff has demonstrated that granting leave to amend would be futile. Plaintiff concedes facts demonstrating that the parties' citizenship is not diverse, and it is clear that plaintiff asserts only a state law claim(s). Further, plaintiff's penchant for asserting frivolous legal arguments weighs strongly against leave to amend. Plaintiff's opposition brief fails to advance any colorable arguments suggesting a basis for subject matter jurisdiction. Simply put, nothing in the amended complaint nor plaintiff's opposition suggests plaintiff could state a claim against defendants over which this court has jurisdiction. Accordingly, dismissal should be without leave to amend. *See Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987) (while the court ordinarily would permit a pro se plaintiff leave to amend, leave to amend should not be granted where it appears amendment would be futile).

V. Conclusion

Accordingly, it is hereby RECOMMENDED that:

1. Defendants' motion to dismiss (ECF No. 18) be granted;

2. Plaintiff's first amended complaint be dismissed without leave to amend; and

3. The Clerk be directed to close the case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days

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[4] Plaintiff also claims that being a Moorish American confers upon him diplomatic status, and that pursuant to 28 U.S.C. § 1364 this court has jurisdiction to hear direct actions against insurers for members of diplomatic missions and their families. Plaintiff is mistaken. *See Bey v. Ind.*, 847 F.3d 559, 559 (7th Cir. 2017) (being a "Moor" does not make a person a sovereign citizen and, unlike being a foreign diplomats, it does not provide immunity from U.S. law).

after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED: August 15, 2019.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

Exhibit D1

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THIS IS TO CERTIFY FURTHER, that the work is marked with a Library of Congress stamp that bears the date September 26, 1990.

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Acting Chief
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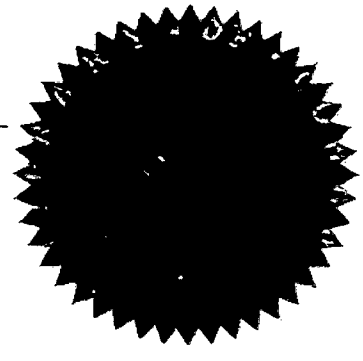


BY AUTHORITY OF CONGRESS.

THE

Public Statutes at Large

OF THE

UNITED STATES OF AMERICA,

FROM THE

ORGANIZATION OF THE GOVERNMENT IN 1789, TO MARCH 3, 1845.

ARRANGED IN CHRONOLOGICAL ORDER.

WITH

REFERENCES TO THE MATTER OF EACH ACT AND TO THE SUBSEQUENT ACTS ON THE SAME SUBJECT,

AND

COPIOUS NOTES OF THE DECISIONS

OF THE

Courts of the United States

CONSTRUING THOSE ACTS, AND UPON THE SUBJECTS OF THE LAWS.

WITH AN

INDEX TO THE CONTENTS OF EACH VOLUME,

AND A

FULL GENERAL INDEX TO THE WHOLE WORK, IN THE CONCLUDING VOLUME.

TOGETHER WITH

The Declaration of Independence, the Articles of Confederation, and the Constitution of the United States;

AND ALSO,

TABLES, IN THE LAST VOLUME, CONTAINING LISTS OF THE ACTS RELATING TO THE JUDICIARY, IMPOSTS AND TONNAGE, THE PUBLIC LANDS, ETC.

EDITED BY

RICHARD PETERS, ESQ.,

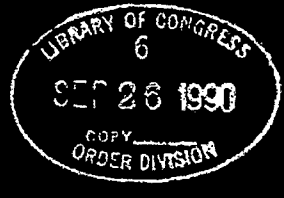
COUNSELLOR AT LAW.

VOL. VIII.

BOSTON:

LITTLE, BROWN AND COMPANY.

1867.



TREATY OF PEACE AND FRIENDSHIP

Between the United States of America, and His Imperial Majesty the Emperor of Morocco. (a)

January, 1787.

To all Persons to whom these Presents shall come or be made known.

WHEREAS the United States of America, in Congress assembled, by their commission bearing date the twelfth day of May, one thousand seven hundred and eighty-four, thought proper to constitute John Adams, Benjamin Franklin, and Thomas Jefferson, their Ministers Plenipotentiary, giving to them, or a majority of them, full powers to confer, treat and negociate with the Ambassador, Minister, or Commissioner of his Majesty the Emperor of Morocco, concerning a treaty of amity and commerce; to make and receive propositions for such treaty, and to conclude and sign the same, transmitting it to the United States in Congress assembled, for their final ratification; and by one other commission, bearing date the eleventh day of March, one thousand seven hundred and eighty-five, did further empower the said Ministers Plenipotentiary, or a majority of them, by writing under their hands and seals, to appoint such agent in the said business as they might think proper, with authority under the directions and instructions of the said Ministers, to commence and prosecute the said negociations and conferences for the said treaty, provided that the said treaty should be signed by the said Ministers: And whereas we, the said John Adams and Thomas Jefferson, two of the said Ministers Plenipotentiary (the said Benjamin Franklin being absent) by writing under the hand and seal of the said John Adams at London, October the fifth, one thousand seven hundred and eighty-five, and of the said Thomas Jefferson at Paris, October the eleventh of the same year, did appoint Thomas Barclay, agent in the business aforesaid, giving him the powers therein, which, by the said second commission, we were authorized to give, and the said Thomas Barclay, in pursuance thereof, hath arranged articles for a treaty of amity and commerce between the United States of America, and his Majesty the Emperor of Morocco, which articles, written in the Arabic language, confirmed by his said Majesty the Emperor of Morocco, and sealed with his royal seal, being translated into the language of the said United States of America, together with the attestations thereto annexed, are in the following words, to wit:

ROYAL SEAL.

In the Name of ALMIGHTY GOD.

This is a Treaty of Peace and Friendship established between us and the United States of America, which is confirmed, and which we have ordered to be written in this book, and sealed with our royal seal, at our court of Morocco, on the twenty-fifth day of the blessed month of Shaban, in the year one thousand two hundred, trusting in God it will remain permanent.

ARTICLE I.

We declare that both parties have agreed that this treaty, consisting

(a) By "an act making an appropriation for the purpose therein mentioned," passed March 3, 1791, Laws U. S. vol. 1, 214, twenty thousand dollars are appropriated for effecting a negotiation of the treaty with Morocco, September 16, 1836. post, 484

of twenty-five articles, shall be inserted in this book, and delivered to the Honorable Thomas Barclay, the agent of the United States, now at our court, with whose approbation it has been made, and who is duly authorized on their part to treat with us concerning all the matters contained therein.

Emperor's consent to the treaty.

ARTICLE II.

If either of the parties shall be at war with any nation whatever, the other party shall not take a commission from the enemy, nor fight under their colours.

Neither party shall take commission from the enemy of the other.

ARTICLE III.

If either of the parties shall be at war with any nation whatever, and take a prize belonging to that nation, and there shall be found on board subjects or effects belonging to either of the parties, the subjects shall be set at liberty, and the effects returned to the owners. And if any goods belonging to any nation, with whom either of the parties shall be at war, shall be loaded on vessels belonging to the other party, they shall pass free and unmolested, without any attempt being made to take or detain them.

Regulation in case of captures.

ARTICLE IV.

A signal or pass shall be given to all vessels belonging to both parties, by which they are to be known when they meet at sea; and if the commander of a ship of war of either party shall have other ships under his convoy, the declaration of the commander shall alone be sufficient to exempt any of them from examination.

Signal or pass to be given to vessels.

ARTICLE V.

If either of the parties shall be at war, and shall meet a vessel at sea belonging to the other, it is agreed, that if an examination is to be made, it shall be done by sending a boat with two or three men only; and if any gun shall be fired, and injury done without reason, the offending party shall make good all damages.

How vessels shall be examined in time of war.

ARTICLE VI.

If any Moor shall bring citizens of the United States, or their effects, to his Majesty, the citizens shall immediately be set at liberty, and the effects restored; and in like manner, if any Moor, not a subject of these dominions, shall make prize of any of the citizens of America, or their effects, and bring them into any of the ports of his Majesty, they shall be immediately released, as they will then be considered as under his Majesty's protection.

Citizens of the U. S. captured, to be released.

ARTICLE VII.

If any vessel of either party shall put into a port of the other, and have occasion for provisions or other supplies, they shall be furnished without any interruption or molestation.

Vessels wanting supplies, to be furnished.

ARTICLE VIII.

If any vessel of the United States shall meet with a disaster at sea, and put into one of our ports to repair, she shall be at liberty to land and re-load her cargo, without paying any duty whatever.

Provision in case of misfortune.

ARTICLE IX.

If any vessel of the United States shall be cast on shore on any part of our coasts, she shall remain at the disposition of the owners, and no one shall attempt going near her without their approbation, as she is

Regulation in case of shipwreck, and being forced into port.

then considered particularly under our protection; and if any vessel of the United States shall be forced to put into our ports by stress of weather, or otherwise, she shall not be compelled to land her cargo, but shall remain in tranquility until the commander shall think proper to proceed on his voyage.

ARTICLE X.

Vessels protected in certain cases.

If any vessel of either of the parties shall have an engagement with a vessel belonging to any of the Christian powers within gun shot of the forts of the other, the vessel so engaged shall be defended and protected as much as possible until she is in safety; and if any American vessel shall be cast on shore on the coast of Wadnoon, or any coast thereabout, the people belonging to her shall be protected and assisted, until, by the help of God, they shall be sent to their country.

ARTICLE XI.

Privileges of vessels in case of war.

If we shall be at war with any Christian power, and any of our vessels sail from the ports of the United States, no vessel belonging to the enemy, shall follow until twenty-four hours after the departure of our vessels; and the same regulation shall be observed towards the American vessels sailing from our ports, be their enemies Moors or Christians.

ARTICLE XII.

Ships of war belonging to U. S. not to be examined.

If any ship of war belonging to the United States shall put into any of our ports, she shall not be examined on any pretence whatever, even though she should have fugitive slaves on board, nor shall the governor or commander of the place compel them to be brought on shore on any pretext, nor require any payment for them.

ARTICLE XIII.

Ships of war to be saluted.

If a ship of war of either party shall put into a port of the other and salute, it shall be returned from the fort with an equal number of guns, not with more or less.

ARTICLE XIV.

Commerce on the footing of the most favoured nation.

The commerce with the United States shall be on the same footing as is the commerce with Spain, or as that with the most favoured nation for the time being; and their citizens shall be respected and esteemed, and have full liberty to pass and repass our country and seaports whenever they please, without interruption.

ARTICLE XV.

Privileges of merchants.

Merchants of both countries shall employ only such interpreters, and such other persons to assist them in their business, as they shall think proper. No commander of a vessel shall transport his cargo on board another vessel; he shall not be detained in port longer than he may think proper; and all persons employed in loading or unloading goods, or in any other labour whatever, shall be paid at the customary rates, not more and not less.

ARTICLE XVI.

In case of war, prisoners not to be enslaved, but exchanged.

In case of a war between the parties, the prisoners are not to be made slaves, but to be exchanged one for another, captain for captain, officer for officer, and one private man for another; and if there shall prove a deficiency on either side, it shall be made up by the payment of one hundred Mexican dollars for each person wanting. And it is agreed that all prisoners shall be exchanged in twelve months from the time of their being taken, and that this exchange may be effected by a merchant or any other person authorized by either of the parties.

Exhibit E1

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

CASE CONCERNING RIGHTS OF NATIONALS OF THE UNITED STATES OF AMERICA IN MOROCCO

(FRANCE *v.* UNITED STATES OF AMERICA)

JUDGMENT OF AUGUST 27th, 1952

1952

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS,
AVIS CONSULTATIFS ET ORDONNANCES

AFFAIRE RELATIVE AUX DROITS DES RESSORTISSANTS DES ÉTATS-UNIS D'AMÉRIQUE AU MAROC

(FRANCE c. ÉTATS-UNIS D'AMÉRIQUE)

ARRÊT DU 27 AOÛT 1952

This Judgment should be cited as follows :

"Case concerning rights of nationals of the United States of America in Morocco, Judgment of August 27th, 1952 : I.C.J. Reports 1952, p. 176."

Le présent arrêt doit être cité comme suit :

« Affaire relative aux droits des ressortissants des États-Unis d'Amérique au Maroc, Arrêt du 27 août 1952 : C. I. J. Recueil 1952, p. 176."

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JUDGMENT

CASE CONCERNING RIGHTS OF NATIONALS OF THE UNITED STATES OF AMERICA IN MOROCCO

(FRANCE *v.* UNITED STATES OF AMERICA)

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ARRÊT

INTERNATIONAL COURT OF JUSTICE

1952
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YEAR 1952

August 27th, 1952

CASE CONCERNING RIGHTS OF NATIONALS OF THE UNITED STATES OF AMERICA IN MOROCCO

(FRANCE *v.* UNITED STATES OF AMERICA)

Economic liberty without any inequality in Morocco in the General Act of Algeciras.—Effect of establishment of Protectorate thereon.—Effect of discrimination on validity of Residential Decree of December 30th, 1948, regulating imports.

Consular jurisdiction in French Zone of Morocco as based on bilateral treaties, most-favoured-nation clauses and multilateral treaties.—Meaning of "dispute" in Treaty of 1836 between Morocco and the United States; whether applicable to criminal and civil matters.—Effect of renunciation by other States of consular jurisdiction.—Effect of Convention of Madrid and Act of Algeciras on consular jurisdiction.—Custom and usage.

"Right of assent" to Moroccan legislation as corollary of consular jurisdiction.—Assent necessary for application of Moroccan laws in consular courts.—Local laws contrary to treaty rights.

Fiscal immunity as based on Convention of Madrid and Act of Algeciras and most-favoured-nation clauses.

Interpretation of Article 95 of Act of Algeciras.

JUDGMENT

Present: *President* Sir Arnold McNair; *Judges* Basdevant, Hackworth, Zoričić, Klaestad, Badawi, Read, Hsu Mo, Levi Carneiro, Sir Benegal Rau, Armand-Ugon; *Registrar* Hambro.

In the case concerning the rights of nationals of the United States of America in Morocco,

between

the French Republic,

represented by :

M. André Gros, Professor of the Faculties of Law, Legal Adviser to the Ministry for Foreign Affairs,

as Agent,

assisted by :

M. Paul Reuter, Professor of the Faculty of Law of Aix-en-Provence, Assistant Legal Adviser to the Ministry for Foreign Affairs,

as Assistant Agent,

and by :

M. Henry Marchat, Minister Plenipotentiary,

as Counsel,

and by :

M. de Lavergne, *inspecteur des finances*,
M. Fougère, *maître des requêtes au Conseil d'État*,
M. de Laubadère, Professor of the Faculties of Law,

as Expert Advisers ;

and

the United States of America,

represented by :

Mr. Adrian S. Fisher, the Legal Adviser, Department of State,

as Agent,

assisted by :

Mr. Joseph M. Sweeney, Assistant to the Legal Adviser, Department of State,

Mr. Seymour J. Rubin, member of the Bar of the District of Columbia,

as Counsel,

and by :

Mr. John A. Bovey Jr., Consul, United States Consulate-General, Casablanca,

Mr. Edwin L. Smith, Legal Adviser, United States Legation, Tangier,

Mr. John E. Utter, First Secretary, United States Embassy, Paris,

as Expert Advisers,

THE COURT,

composed as above,

delivers the following Judgment :

On October 28th, 1950, the Chargé d'affaires *a.i.* of France to the Netherlands filed in the Registry, on behalf of the Government of the French Republic, an Application instituting proceedings before the Court against the United States of America, concerning the rights of nationals of the United States of America in Morocco. The Application referred to the Declarations by which the Government of the United States of America and the French Government accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Court's Statute. It also referred to the Economic Co-operation Agreement of June 28th, 1948, between the United States and France, and to the Treaty for the Organization of the French Protectorate in the Shereefian Empire, signed at Fez on March 30th, 1912, between France and the Shereefian Empire. It mentioned the Treaty of Peace and Friendship of September 16th, 1836, between the United States and the Shereefian Empire, as well as the General Act of the International Conference of Algeciras of April 7th, 1906.

Pursuant to Article 40, paragraphs 2 and 3, of the Statute, the Application was communicated to the Government of the United States as well as to the States entitled to appear before the Court. It was also transmitted to the Secretary-General of the United Nations.

The time-limits for the deposit of the Pleadings were fixed by Order of November 22nd, 1950. The Memorial of the French Government, which was filed on the appointed date, quoted several provisions of the General Act of Algeciras and drew conclusions therefrom as to the rights of the United States. The construction of a convention to which States other than those concerned in the case were parties being thus in question, such States were notified in accordance with Article 63, paragraph 1, of the Statute : for this purpose notes were addressed on April 6th, 1951, to the Governments of Belgium, Spain, Italy, the Netherlands, Portugal, the United Kingdom of Great Britain and Northern Ireland and Sweden.

On June 21st, 1951, within the time-limit fixed for the deposit of its Counter-Memorial, the Government of the United States of

America filed a document entitled "Preliminary Objection". The proceedings on the merits were thereby suspended. The Preliminary Objection was communicated to the States entitled to appear before the Court as well as to the States which had been notified of the deposit of the Application pursuant to Article 63 of the Statute. The proceedings thus instituted by the Preliminary Objection were terminated following a declaration by the Government of the United States that it was prepared to withdraw its objection, having regard to the explanations and clarifications given on behalf of the French Government, and following a declaration by the French Government that it did not oppose the withdrawal. An Order of October 31st, 1951, placed on record the discontinuance, recorded that the proceedings on the merits were resumed, and fixed new time-limits for the filing of the Counter-Memorial, Reply and Rejoinder.

The Counter-Memorial and Reply were filed within the time-limits thus fixed. As regard the Rejoinder, the time-limit was extended at the request of the Government of the United States from April 11th to April 18th, 1952, by Order of March 31st, 1952. On April 18th, 1952, the Rejoinder was filed and the case was ready for hearing. Public hearings were held on July 15th, 16th, 17th, 21st, 22nd, 23rd, 24th and 26th, 1952, during which the Court heard : MM. André Gros and Paul Reuter on behalf of the French Government ; and Mr. Adrian S. Fisher and Mr. Joseph M. Sweeney on behalf of the Government of the United States.

At the conclusion of the argument before the Court, the Submissions of the Parties were presented as follows :

On behalf of the French Government :

"May it please the Court,

To adjudge and declare

That the privileges of the nationals of the United States of America in Morocco are only those which result from the text of Articles 20 and 21 of the Treaty of September 16th, 1836, and that since the most-favoured-nation clause contained in Article 24 of the said treaty can no longer be invoked by the United States in the present state of the international obligations of the Shereefian Empire, there is nothing to justify the granting to the nationals of the United States of preferential treatment which would be contrary to the provisions of the treaties ;

That the Government of the United States of America is not entitled to claim that the application of all laws and regulations to its nationals in Morocco requires its express consent ;

That the nationals of the United States of America in Morocco are subject to the laws and regulations in force in the Shereefian Empire and in particular the regulation of December 30th, 1948, on imports not involving an allocation of currency, without the prior consent of the United States Government ;

That the decree of December 30th, 1948, concerning the regulation of imports not involving an allocation of currency, is in conformity with the economic system which is applicable to Morocco, according to the conventions which bind France and the United States ;

That Article 95 of the Act of Algeciras defines value for customs purposes as the value of the merchandise at the time and at the place where it is presented for customs clearance ;

That no treaty has conferred on the United States fiscal immunity for its nationals in Morocco, either directly or through the effect of the most-favoured-nation clause ;

That the laws and regulations on fiscal matters which have been put into force in the Shereefian Empire are applicable to the nationals of the United States without the prior consent of the Government of the United States ;

That, consequently, consumption taxes provided by the Dahir of February 28th, 1948, have been legally collected from the nationals of the United States, and should not be refunded to them."

On behalf of the Government of the United States :

"1. The Submissions and Conclusions presented by the French Government in this case should be rejected on the ground that the French Government has failed to maintain the burden of proof which it assumed as party plaintiff and by reason of the nature of the legal issues involved.

2. The treaty rights of the United States in Morocco forbid Morocco to impose prohibitions on American imports, save those specified by the treaties, and these rights are still in full force and effect.

The Dahir of December 30, 1948, imposing a prohibition on imports is in direct contravention of the treaty rights of the United States forbidding prohibitions on American imports and the French Government by applying the Dahir of December 30, 1948, to American nationals, without the consent of the United States, from December 31, 1948, to May 11, 1949, violated the treaty rights of the United States and was guilty of a breach of international law.

American nationals can not legally be submitted to the Dahir of December 30, 1948, without the prior consent of the United States which operates to waive temporarily its treaty rights.

3. The jurisdiction conferred upon the United States by the Treaties of 1787 and 1836 was jurisdiction, civil and criminal, in all cases arising between American citizens.

In addition, the United States acquired in Morocco jurisdiction in all cases in which an American citizen or protégé was defendant through the effect of the most-favoured-nation clause and through custom and usage.

Such jurisdiction was not affected by the surrender by Great Britain in 1937 of its rights of jurisdiction in the French Zone of Morocco.

Such jurisdiction has never been renounced, expressly or impliedly, by the United States.

4. Under the regime of extraterritorial jurisdiction now exercised by the United States in Morocco, United States citizens are not subject, in principle, to the application of Moroccan laws.

Such laws become applicable to the United States citizens only if they are submitted to the prior assent of the United States Government and if this Government agrees to make them applicable to its citizens. The Dahir of December 30, 1948, not having been submitted to the prior assent of the United States Government, cannot be made applicable to United States citizens.

As a counter-claim :

1. Under Article 95 of the Act of Algeciras, the value of imports from the United States must be determined for the purpose of customs assessments by adding to the purchase value of the imported merchandise in the United States the expenses incidental to its transportation to the custom-house in Morocco, exclusive of all expenses following its delivery to the custom-house, such as customs duties and storage fees.

It is a violation of the Act of Algeciras and a breach of international law for the customs authorities to depart from the method of valuation so defined and to determine the value of imported merchandise for customs purposes by relying on the value of the imported merchandise on the local Moroccan market.

2. The treaties exempt American nationals from taxes, except as specifically provided by the same treaties ; to collect taxes from American nationals in violation of the terms of the treaties is a breach of international law.

Such taxes can legally be collected from American nationals only with the previous consent of the United States which operates to waive temporarily its treaty right, and from the date upon which such consent is given, unless otherwise specified by the terms of the consent.

Consumption taxes provided by the Dahir of February 28, 1948, which were collected from American nationals up to August 15, 1950, the date on which the United States consented to these taxes, were illegally collected and should be refunded to them.

3. Since Moroccan laws do not become applicable to American citizens until they have received the prior assent of the United States Government, the lack of assent of the United States Government to the Dahir of February 28, 1948, rendered illegal the collection of the consumption taxes provided by that Dahir."

* * *

The Court will first deal with the dispute relating to the Decree issued by the Resident General of the French Republic in Morocco, dated December 30th, 1948, concerning the regulation of imports

into the French Zone of Morocco. The following Submissions are presented :

On behalf of the Government of France :

> "That the Decree of December 30th, 1948, concerning the regulation of imports not involving an allocation of currency, is in conformity with the economic system which is applicable to Morocco, according to the conventions which bind France and the United States."

On behalf of the Government of the United States of America :

> "The treaty rights of the United States in Morocco forbid Morocco to impose prohibitions on American imports, save those specified by the treaties, and these rights are still in full force and effect.
>
> The Dahir of December 30, 1948, imposing a prohibition on imports is in direct contravention of the treaty rights of the United States forbidding prohibitions on American imports...."

The French Government contends that the Decree of December 30th, 1948, is in conformity with the treaty provisions which are applicable to Morocco and binding on France and the United States. This contention is disputed by the United States Government for various reasons. The Court will first consider the claim that the Decree involves a discrimination in favour of France which contravenes the treaty rights of the United States.

By a Dahir of September 9th, 1939, His Shereefian Majesty decided as follows :

> "*Article 1.*—It is prohibited to import into the French Zone of the Shereefian Empire, whatever may be the customs regulations in force, goods other than gold in any form.
>
> *Article 2.*—The Director General of Communications may, however, waive this prohibition on entry as regards combustible solid mineral matter and petroleum products, and the Director of Economic Affairs may do likewise as regards any other products.
>
> *Article 3.*—It is left to the decision of the Resident General to determine the measures whereby the provisions herein contained shall be put into effect."

A Residential Decree of the same date laid down the terms of application of the Dahir, including provisions relating to requests for a waiver of the prohibition of imports. Article 4 provided :

> "Goods of French or Algerian origin shipped from France or Algeria, shall for the time being be admitted without any special formalities."

Further regulations were prescribed by a Residential Decree of September 10th, 1939, subjecting imports without official allocation

of currency to special authorization. Article 7 provided in its first paragraph :

> "Commercial arrangements with France, Algeria, French Colonies, African territories under French Mandate, and Tunisia, are not subject to the provisions herein contained."

By a Residential Decree of March 11th, 1948, a new Article 5 was added to the Decree of September 9th, 1939 :

> "*Article 5.*—Save for such exceptions as may be specified by the appropriate heads of departments, the prohibition on entry shall hereafter be generally waived as regards goods imported from any origin or source, when import does not entail any financial settlement between the French zone of the Shereefian Empire, France, or any territory of the French Union on the one part and foreign territory on the other part."

Finally, this new Article 5 was revoked by the Decree of December 30th, 1948, which is the subject-matter of the present dispute. After having referred to the Dahir of September 9th, 1939, and to the Decrees of that date and of March 11th, 1948, the Resident General of the French Republic decreed :

> "*Article 1.*—The provisions of Article 5 of the aforesaid Residential Decree of September 9th, 1939, will cease to apply as from January 1st, 1949, save for the exception set out in Article 2 hereof.
>
> *Article 2.*—Goods which are proved to have been shipped directly to the French Zone of the Shereefian Empire before January 15th, 1949, shall still fall within the provisions of Article 5 of the aforesaid Residential Decree of September 9th, 1939.
>
> . . . . . ."

The effect of this Decree was to restore the import regulations introduced in September 1939. Imports without official allocation of currency were again subjected to a system of licensing control. But these import regulations did not apply to France or other parts of the French Union. From France and other parts of the French Union imports into the French zone of Morocco were free. The Decree of December 30th, 1948, involved consequently a discrimination in favour of France, and the Government of the United States contends that this discrimination contravenes its treaty rights.

It is common ground between the Parties that the characteristic of the status of Morocco, as resulting from the General Act of Algeciras of April 7th, 1906, is respect for the three principles stated in the Preamble of the Act, namely : "the sovereignty and independence of His Majesty the Sultan, the integrity of his domains, and economic liberty without any inequality". The last-mentioned principle of economic liberty without any inequality must, in its

application to Morocco, be considered against the background of the treaty provisions relating to trade and equality of treatment in economic matters existing at that time.

By the Treaty of Commerce with Great Britain of December 9th, 1856, as well as by Treaties with Spain of November 20th, 1861, and with Germany of June 1st, 1890, the Sultan of Morocco guaranteed certain rights in matters of trade, including imports into Morocco. These States, together with a number of other States, including the United States, were guaranteed equality of treatment by virtue of most-favoured-nation clauses in their treaties with Morocco. On the eve of the Algeciras Conference the three principles mentioned above, including the principle of "economic liberty without any inequality", were expressly accepted by France and Germany in an exchange of letters of July 8th, 1905, concerning their attitude with regard to Morocco. This principle, in its application to Morocco, was thus already well established, when it was reaffirmed by that Conference and inserted in the Preamble of the Act of 1906. Considered in the light of these circumstances, it seems clear that the principle was intended to be of a binding character and not merely an empty phrase. This was confirmed by Article 105, where the principle was expressly applied in relation to the public services in Morocco. It was also confirmed by declarations made at the Conference by the representative of Spain, who referred to "equality of treatment in commercial matters", as well as by the representative of France.

The establishment of the French Protectorate over Morocco by the Treaty of March 30th, 1912, between France and Morocco, did not involve any modification in this respect. In the Convention between France and Germany of November 4th, 1911, concerning the establishment of this Protectorate, the Government of Germany made in Article 1 the reservation that "the action of France should secure in Morocco economic equality between the nations". On the other hand, the Government of France declared in Article 4 that it would use its good offices with the Moroccan Government "in order to prevent any differential treatment of the subjects of the various Powers."

The other States on behalf of which the Act of Algeciras was signed, with the exception of the United States, adhered later to the Franco-German Convention of 1911, thereby again accepting the principle of equality of treatment in economic matters in Morocco. France endeavoured to obtain also the adherence of the United States, and in a Note of November 3rd, 1911, from the French Ambassador in Washington to the United States Secretary of State, reference was made to the Franco-German Convention. It was declared that France would use her good offices with the Moroccan Government in order to prevent any differential treatment of the subjects of the Powers. In another Note from the French Ambassador to the Secretary of State, dated November 14th, 1918,

it was declared that the benefit of commercial equality in Morocco results, not only from the most-favoured-nation clause, but also from the clause of economic equality which is inserted in the Act of Algeciras and reproduced in the Franco-German Convention of 1911.

These various facts show that commercial or economic equality in Morocco was assured to the United States, not only by Morocco, but also by France as the protecting State. It may be asked whether France, in spite of her position as the protector of Morocco, is herself subject to this principle of equality and can not enjoy commercial or economic privileges which are not equally enjoyed by the United States.

It is not disputed by the French Government that Morocco, even under the Protectorate, has retained its personality as a State in international law. The rights of France in Morocco are defined by the Protectorate Treaty of 1912. In economic matters France is accorded no privileged position in Morocco. Such a privileged position would not be compatible with the principle of economic liberty without any inequality, on which the Act of Algeciras is based. This was confirmed by the above-mentioned Note from the French Ambassador in Washington of November 14th, 1918, where it is stated that, by virtue of the clause of economic equality inserted in the Act of Algeciras, other States have preserved their right to enjoy such equality, *"même vis-à-vis de la Puissance protectrice"*, and that the United States can, therefore, not only recognize French courts in Morocco, but also give up, in the French Zone, the enjoyment of all privileges following from capitulations, without thereby losing this advantage.

It follows from the above-mentioned considerations that the provisions of the Decree of December 30th, 1948, contravene the rights which the United States has acquired under the Act of Algeciras, because they discriminate between imports from France and other parts of the French Union, on the one hand, and imports from the United States on the other. France was exempted from control of imports without allocation of currency, while the United States was subjected to such control. This differential treatment was not compatible with the Act of Algeciras, by virtue of which the United States can claim to be treated as favourably as France, as far as economic matters in Morocco are concerned.

This conclusion can also be derived from the Treaty between the United States and Morocco of September 16th, 1836, Article 24, where it is "declared that whatever indulgence, in trade or otherwise, shall be granted to any of the Christian Powers, the citizens of the United States shall be equally entitled to them". Having regard to the conclusion already arrived at on the basis of the Act of Algeciras, the Court will limit itself to stating as its opinion that the United States, by virtue of this most-favoured-nation clause,

has the right to object to any discrimination in favour of France, in the matter of imports into the French Zone of Morocco.

The Government of France has submitted various contentions purporting to demonstrate the legality of exchange control. The Court does not consider it necessary to pronounce upon these contentions. Even assuming the legality of exchange control, the fact nevertheless remains that the measures applied by virtue of the Decree of December 30th, 1948, have involved a discrimination in favour of imports from France and other parts of the French Union. This discrimination can not be justified by considerations relating to exchange control.

For these reasons the Court has arrived at the conclusion that the French Submission relating to the Decree of December 30th, 1948, must be rejected. It therefore becomes unnecessary to consider whether this Submission might be rejected also for other reasons invoked by the Government of the United States. In these circumstances, the Court is not called upon to consider and decide the general question of the extent of the control over importation that may be exercised by the Moroccan authorities.

* * *

The Court will now consider the extent of the consular jurisdiction of the United States of America in the French Zone of Morocco.

The French Submission in this regard reads as follows :

> "That the privileges of the nationals of the United States of America in Morocco are only those which result from the text of Articles 20 and 21 of the Treaty of September 16th, 1836, and that since the most-favoured-nation clause contained in Article 24 of the said Treaty can no longer be invoked by the United States in the present state of the international obligations of the Shereefian Empire, there is nothing to justify the granting to the nationals of the United States of preferential treatment which would be contrary to the provisions of the treaties."

The United States Submission concerning consular jurisdiction reads as follows :

> "3. The jurisdiction conferred upon the United States by the Treaties of 1787 and 1836 was jurisdiction, civil and criminal, in all cases arising between American citizens.
>
> In addition, the United States acquired in Morocco jurisdiction in all cases in which an American citizen or protégé was defendant through the effect of the most-favoured-nation clause and through custom and usage.
>
> Such jurisdiction was not affected by the surrender by Great Britain in 1937 of its rights of jurisdiction in the French Zone of Morocco.
>
> Such jurisdiction has never been renounced, expressly or impliedly, by the United States."

It is common ground between the Parties that the present dispute is limited to the French Zone of Morocco. It is on this ground that

it has been argued. The Court cannot, therefore, pronounce upon the legal situation in other parts of Morocco.

In order to consider the extent of the rights of the United States relating to consular jurisdiction, it has been necessary to examine three groups of treaties.

The first group includes the bilateral treaties of Morocco with France, the Netherlands, Great Britain, Denmark, Spain, the United States, Sardinia, Austria, Belgium and Germany, which cover the period from 1631 to 1892.

These treaties, which were largely concerned with commerce, including the rights and privileges of foreign traders in Morocco, dealt with the question of consular jurisdiction in three different ways :

(1) Certain of the treaties included specific and comprehensive grants of rights of consular jurisdiction to the Powers concerned, e.g., the Treaties with Great Britain of 1856 and with Spain of 1799 and 1861.
(2) Certain of the treaties made strictly limited grants of privileges with regard to consular jurisdiction, e.g., the Treaties with the United States of 1787 and 1836.
(3) There were other treaties, which did not define in specific terms the treaty rights granted by Morocco, but, instead, granted to the foreign nations through the device of most-favoured-nation clauses, the advantages and privileges already granted, or to be granted, to other nations.

There is a common element to be found in the most-favoured-nation clauses which have brought about and maintained a situation in which there could be no discrimination as between any of the Powers in Morocco, regardless of specific grants of treaty rights. When the most extensive privileges as regards consular jurisdiction were granted by Morocco to Great Britain in 1856 and to Spain in 1861, these enured automatically and immediately to the benefit of the other Powers by virtue of the operation of the most-favoured-nation clauses.

The second group consisted of multilateral treaties, the Madrid Convention of 1880 and the Act of Algeciras of 1906. The method of relying on individual action by interested Powers, equalized by the operation of the most-favoured-nation clauses, had led to abuse and it had become necessary not merely to ensure economic liberty without discrimination, but also to impose an element of restraint upon the Powers and to take steps to render possible the development of Morocco into a modern State. Accordingly, the rights of protection were restricted, and some of the limitations on the powers of the Sultan as regards foreigners, which had resulted from the provisions of the earlier bilateral treaties, were abated. The possi-

bility of abuse in the exercise by Morocco of the powers thus extended, was taken care of by reserving an element of supervision and control in the Diplomatic Body at Tangier.

The third group of treaties concerned the establishment of the Protectorate. It included the agreements which preceded the assumption by France of a protectorate over Morocco, and the Treaty of Fez of 1912. Under this Treaty, Morocco remained a sovereign State but it made an arrangement of a contractual character whereby France undertook to exercise certain sovereign powers in the name and on behalf of Morocco, and, in principle, all of the international relations of Morocco. France, in the exercise of this function, is bound not only by the provisions of the Treaty of Fez, but also by all treaty obligations to which Morocco had been subject before the Protectorate and which have not since been terminated or suspended by arrangement with the interested States.

The establishment of the Protectorate, and the organization of the tribunals of the Protectorate which guaranteed judicial equality to foreigners, brought about a situation essentially different from that which had led to the establishment of consular jurisdiction under the earlier treaties. Accordingly, France initiated negotiations designed to bring about the renunciation of the regime of capitulations by the Powers exercising consular jurisdiction in the French Zone. In the case of all the Powers except the United States, these negotiations led to a renunciation of capitulatory rights and privileges which, in the case of Great Britain, was embodied in the Convention of July 29th, 1937. In the case of the United States, there have been negotiations throughout which the United States had reserved its treaty rights.

The French Submission is based upon the Treaty between the United States and Morocco of September 16th, 1836, and it is common ground between the Parties that the United States is entitled to exercise consular jurisdiction in the case of disputes arising between its citizens or protégés. There is therefore no doubt as to the existence of consular jurisdiction in this case. The only question to be decided is the extent of that jurisdiction in the year 1950, when the Application was filed.

* * *

The first point raised by the Submissions relates to the scope of the jurisdictional clauses of the Treaty of 1836, which read as follows:

> "*Article 20.*—If any of the citizens of the United States, or any persons under their protection, shall have any dispute with each

other, the Consul shall decide between the parties; and whenever the Consul shall require any aid, or assistance from our government, to enforce his decisions, it shall be immediately granted to him.

Article 21.—If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the Consul assisting at the trial; and if any delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever."

It is argued that Article 20 should be construed as giving consular jurisdiction over all disputes, civil and criminal, between United States citizens and protégés. France, on the other hand, contends that the word "dispute" is limited to civil cases. It has been argued that this word in its ordinary and natural sense would be confined to civil disputes, and that crimes are offences against the State and not disputes between private individuals.

The Treaty of 1836 replaced an earlier treaty between the United States and Morocco which was concluded in 1787. The two treaties were substantially identical in terms and Articles 20 and 21 are the same in both. Accordingly, in construing the provisions of Article 20 —and, in particular, the expression "shall have any dispute with each other"—it is necessary to take into account the meaning of the word "dispute" at the times when the two treaties were concluded. For this purpose it is possible to look at the way in which the word "dispute" or its French counterpart was used in the different treaties concluded by Morocco : e.g., with France in 1631 and 1682, with Great Britain in 1721, 1750, 1751, 1760 and 1801. It is clear that in these instances the word was used to cover both civil and criminal disputes.

It is also necessary to take into account that, at the times of these two treaties, the clear-cut distinction between civil and criminal matters had not yet been developed in Morocco.

Accordingly, it is necessary to construe the word "dispute", as used in Article 20, as referring both to civil disputes and to criminal disputes, in so far as they relate to breaches of the criminal law committed by a United States citizen or protégé upon another United States citizen or protégé.

* * *

The second point arises out of the United States Submission that consular jurisdiction was acquired "in all cases in which an American citizen or protégé was defendant through the effect of the most-favoured-nation clause and through custom and usage" and that such jurisdiction was not affected by the surrender by Great Britain in 1937 of its rights of jurisdiction in the French Zone and has never been renounced expressly or impliedly by the United States.

It is necessary to give special attention to the most-favoured-nation clauses of the United States Treaty of 1836. There were two grants of most-favoured-nation treatment.

Article 14 provides :

> "The commerce with the United States shall be on the same footing as is the commerce with Spain, or as that with the most favored nation for the time being ; and their citizens shall be respected and esteemed, and have full liberty to pass and repass our country and seaports whenever they please, without interruption."

Article 24 deals with the contingencies of war, but it contains a final sentence :

> ".... and it is further declared, that whatever indulgence, in trade or otherwise, shall be granted to any of the Christian Powers, the citizens of the United States shall be equally entitled to them."

These articles entitle the United States to invoke the provisions of other treaties relating to the capitulatory regime.

The most extensive privileges in the matter of consular jurisdiction granted by Morocco were those which were contained in the General Treaty with Great Britain of 1856 and in the Treaty of Commerce and Navigation with Spain of 1861. Under the provisions of Article IX of the British Treaty, there was a grant of consular jurisdiction in all cases, civil and criminal, when British nationals were defendants. Similarly, in Articles IX, X and XI of the Spanish Treaty of 1861, civil and criminal jurisdiction was established for cases in which Spanish nationals were defendants.

Accordingly, the United States acquired by virtue of the most-favoured-nation clauses, civil and criminal consular jurisdiction in all cases in which United States nationals were defendants.

The controversy between the Parties with regard to consular jurisdiction results from the renunciation of capitulatory rights and privileges by Spain in 1914 and by Great Britain in 1937. The renunciation by Spain in 1914 had no immediate effect upon the United States position because it was still possible to invoke the provisions of the General Treaty with Great Britain of 1856. After 1937, however, no Power other than the United States has exercised consular jurisdiction in the French Zone of Morocco and none has been entitled to exercise such jurisdiction.

France contends that, from the date of the renunciation of the right of consular jurisdiction by Great Britain, the United States has not been entitled, either through the operation of the most-favoured-nation clauses of the Treaty of 1836 or by virtue of the provisions of any other treaty, to exercise consular jurisdiction

beyond those cases which are covered by the provisions of Articles 20 and 21 of the Treaty of 1836.

The United States Submission is based upon a series of contentions which must be dealt with in turn.

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The first contention is based upon Article 17 of the Madrid Convention of 1880, which reads as follows :

> "The right to the treatment of the most favoured nation is recognized by Morocco as belonging to all the Powers represented at the Madrid Conference."

Even if it could be assumed that Article 17 operated as a general grant of most-favoured-nation rights to the United States and was not confined to the matters dealt with in the Madrid Convention, it would not follow that the United States is entitled to continue to invoke the provisions of the British and Spanish Treaties, after they have ceased to be operative as between Morocco and the two countries in question.

The contention of the United States is based upon the view that most-favoured-nation clauses contained in treaties with countries like Morocco must be given a different construction from that which is accorded to similar clauses in treaties with other countries. Two special considerations need to be taken into account.

The first consideration depends upon the principle of a personal law and the history of the old conflict between two concepts of law and jurisdiction : the one based upon persons and the other upon territory. The right of consular jurisdiction was designed to provide for a situation in which Moroccan law was essentially personal in character and could not be applied to foreigners.

The second consideration was based on the view that the most-favoured-nation clauses in treaties made with countries like Morocco should be regarded as a form of drafting by reference rather than as a method for the establishment and maintenance of equality of treatment without discrimination amongst the various countries concerned. According to this view, rights or privileges which a country was entitled to invoke by virtue of a most-favoured-nation clause, and which were in existence at the date of its coming into force, would be incorporated permanently by reference and enjoyed and exercised even after the abrogation of the treaty provisions from which they had been derived.

From either point of view, this contention is inconsistent with the intentions of the parties to the treaties now in question. This is shown both by the wording of the particular treaties, and by the

general treaty pattern which emerges from an examination of the treaties made by Morocco with France, the Netherlands, Great Britain, Denmark, Spain, United States, Sardinia, Austria, Belgium and Germany over the period from 1631 to 1892. These treaties show that the intention of the most-favoured-nation clauses was to establish and to maintain at all times fundamental equality without discrimination among all of the countries concerned. Further, the provisions of Article 17 of the Madrid Convention, regardless of their scope, were clearly based on the maintenance of equality.

The contention would therefore run contrary to the principle of equality and it would perpetuate discrimination. It can not support the Submission of the United States regarding the extent of the consular jurisdiction in the French Zone.

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The second contention of the United States is based upon the geographically limited character of the renunciation of consular jurisdiction by Great Britain. This was restricted in its scope to the French Zone.

It has been claimed on behalf of the United States that Great Britain retained its jurisdictional rights in the Spanish Zone and it has been argued that "the United States, which still treats Morocco as a single country, is entitled under the most-favoured-nation clause in Article 24 of its treaty to the same jurisdictional rights which Great Britain to-day exercises in a part of Morocco by virtue of the Treaty of 1856".

The Court is not called upon to determine the existence or extent of the jurisdictional rights of Great Britain in the Spanish Zone. It is sufficient to reject this argument on the ground that it would lead to a position in which the United States was entitled to exercise consular jurisdiction in the French Zone notwithstanding the loss of this right by Great Britain. This result would be contrary to the intention of the most-favoured-nation clauses to establish and maintain at all times fundamental equality without discrimination as between the countries concerned.

Reliance has also been placed upon the position of France and French nationals as regards the new tribunals of the Protectorate, which have been established for the purpose of exercising jurisdiction over foreigners and applying Moroccan laws to them in the French Zone. These tribunals have been constituted with French aid and under French direction and supervision. It is suggested that these are, in reality, consular courts and that the United States is entitled to be placed, in this regard, in a position of equality with France.

But the tribunals of the Protectorate in the French Zone are not in any sense consular courts. They are Moroccan courts, organized

on French models and standards, affording guarantees of judicial equality to foreigners.

Accordingly the Court can not accept this contention.

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The third contention of the United States is based upon the nature of the arrangements which led to the termination of Spanish consular jurisdiction in the French Zone. By a Convention between France and Spain of November 27th, 1912, provision was made for the exercise by Spain of special rights and privileges in the Spanish Zone. By a bilateral Declaration between France and Spain of March 7th, 1914, Spain surrendered its jurisdictional and other extraterritorial rights in the French Zone, and provision was made for the subsequent surrender by France of similar rights in the Spanish Zone. This was accomplished by a bilateral Declaration between France and Spain of November 17th of the same year.

The United States contends that, as both the Convention of 1912 and the Declarations of 1914 were agreements between France and Spain, and as Morocco was not named as a party to either agreement, the rights of Spain under the earlier provision still exist *de jure*, notwithstanding that there may be a *de facto* situation which temporarily prevents their exercise.

Even if this contention is accepted, the position is one in which Spain has been unable to insist on the right to exercise consular jurisdiction in the French Zone since 1914. The rights which the United States would be entitled to invoke by virtue of the most-favoured-nation clauses would therefore not include the right to exercise consular jurisdiction in the year 1950. They would be limited to the contingent right of re-establishing consular jurisdiction at some later date in the event of France and Spain abrogating the agreements made by the Convention of 1912 and the Declarations of 1914.

France contends that these agreements were concluded pursuant to the power which Morocco conferred on France by the provisions of the Treaty of Fez of 1912. The general terms of Articles V and VI were broad enough to give to France the conduct of the international relations of Morocco, including the exercise of the treaty-making power. The Convention and the Declarations must therefore be regarded as agreements made by a protecting Power, within the scope of its authority, touching the affairs of and intended to bind the protected State, as is made clear by the third paragraph of Article I of the Treaty of Fez of 1912 which provided that: "The Government of the Republic will come to an understanding with the Spanish Government regarding the interests which the latter Government has in virtue of its geographical position and territorial possessions on the Moroccan coast." In these circumstances, it is necessary to hold that these agreements bound and enured to

the benefit of Morocco and that the Spanish rights as regards consular jurisdiction came to an end *de jure* as well as *de facto*.

It is necessary to deal with another aspect of this question which arises out of the wording of the Declaration made by France and Spain on March 7th, 1914. This Declaration contained the following provisions :

> "Taking into consideration the guarantees of judicial equality offered to foreigners by the French Tribunals of the Protectorate, His Catholic Majesty's Government renounces claiming for its consuls, its subjects, and its establishments in the French Zone of the Shereefian Empire all the rights and privileges arising out of the regime of the Capitulations.
>
> . . . . . .
>
> So far as the Government of the French Republic is concerned, it binds itself to renounce euqally the rights and privileges existing in favour of its consuls, its subjects, and its establishments in the Spanish Zone as soon as the Spanish Tribunals are established in the said Zone.
>
> . . . . . ."

The Declaration whereby France complied with the above undertaking was made on November 17th, 1914, and included the following paragraph :

> "Taking into consideration the guarantees of judicial equality offered to foreigners by the Spanish Tribunals in the Protectorate, the Government of the French Republic hereby renounces claiming for its consuls, its subjects and its establishments in the Spanish Zone of the Shereefian Empire, all the rights and privileges arising out of the regime of the Capitulations."

It will be observed that both Declarations use the words "*renonce à réclamer*" (renounces claiming) and the question has arisen whether these words were intended as a surrender or renunciation of all the rights and privileges arising out of the capitulatory regime, or whether they must be considered as temporary undertakings not to claim those rights or privileges so long as the guarantees for judicial equality are maintained in the French Zone by the tribunals of the Protectorate and so long as the corresponding guarantees are maintained in the Spanish Zone.

The question is academic rather than practical. Even if the words in question should be construed as meaning a temporary undertaking not to claim the rights and privileges, the fact remains that Spain, in 1950, as a result of these undertakings was not entitled to exercise consular jurisdiction in the French Zone. It follows that the United States would be equally not entitled to exercise such jurisdiction in the French Zone in the year 1950.

Nevertheless, it is necessary for the Court to examine these Declarations in order to determine what the parties had in mind when they used the words in question.

The parties in both Declarations used the expression "taking into consideration the guarantees of judicial equality ....". These are words which, if given their ordinary and natural meaning, state the consideration which led to the making of the surrender, but they are not words which would normally be used if it was intended to make a conditional surrender.

The Court is of opinion that the words "*renonce à réclamer*" must be regarded as an out-and-out renunciation of the capitulatory rights and privileges. This view is confirmed by taking into account the declarations and other arrangements made by France with other interested Powers designed to bring about the surrender of their jurisdictional and other extraterritorial rights in the French Zone.

The two Declarations made by France and Spain in 1914 show that they both regarded the expression "*renonce à réclamer*" as equivalent to a renunciation of the rights in question. In the Declaration of March 7th, 1914, the French Government bound itself "to renounce equally the rights and privileges ....". In the later Declaration of November 17th, 1914, France gave effect to this obligation by using the expression "*renonce à réclamer*". It is clear, therefore, that both France and Spain regarded this expression as proper for bringing about a complete surrender or renunciation of the rights and privileges in question.

On July 31st, 1916, the French Ambassador at Washington sent to the Secretary of State of the United States "the text of the Declaration signed, with reference to the abrogation of capitulations in the French Zone of Morocco, by all the Powers signatory of the Algeciras Conference and by the South-American Republics". In the text, thus transmitted, the expression used in English was "relinquishes its claim to all the rights and privileges growing out of the Capitulation regime ....". It is thus clear that at that date, long before the present dispute had arisen, France regarded the expression "relinquishes its claim" (or, in other words, "*renonce à réclamer*") as bringing about the abrogation of the privileges in question.

The Declaration made by France and Spain of March 7th, 1914, was one of a series of agreements negotiated by France with more than twenty foreign States "for the surrender of their jurisdictional and other extraterritorial rights so far as concerned the French Zone of Morocco". At least seventeen of these agreements used the expression "*renonce à réclamer*" as a means of bringing about a complete abrogation of all rights and privileges arising out of the regime of Capitulations. They are referred to in the Counter-Memorial in the following words : "for the surrender of their juris-

dictional and other extraterritorial rights", and again, "for the renunciation of extraterritorial rights". Further, all of the States which had signed these agreements abandoned forthwith the exercise of consular jurisdiction or other capitulatory rights or privileges in the French Zone.

In these circumstances, it is necessary to conclude that the Spanish Declaration of March 7th, 1914, brought about the surrender or renunciation of all Spanish jurisdictional or other extraterritorial rights in the French Zone, and an abrogation of those provisions of the Spanish Treaty of 1861 which concern "the rights and privileges arising out of the regime of Capitulations".

The Court, therefore, can not accept the contention that the United States is entitled, by virtue of the most-favoured-nation clauses, to invoke in respect of the French Zone those provisions of the Spanish Treaty of 1861 which concern consular jurisdiction.

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The fourth contention of the United States is that the extensive consular jurisdiction as it existed in Morocco in the year 1880 was recognized and confirmed by the provisions of the Madrid Convention, and that the United States, as a party to that Convention, thereby acquired an autonomous right to the exercise of such jurisdiction, independently of the operation of the most-favoured-nation clauses.

There can be no doubt that the exercise of consular jurisdiction in Morocco in the year 1880 was general, or that the Convention presupposed the existence of such jurisdiction. It dealt with the special position of protégés and contained provisions for the exercise of jurisdiction with regard to them.

On the other hand, it is equally clear that there were no provisions of the Convention which expressly brought about a confirmation of the then existing system of consular jurisdiction, or its establishment as an independent and autonomous right.

The purposes and objects of this Convention were stated in its Preamble in the following words : "the necessity of establishing, on fixed and uniform bases, the exercise of the right of protection in Morocco and of settling certain questions connected therewith....". In these circumstances, the Court can not adopt a construction by implication of the provisions of the Madrid Convention which would go beyond the scope of its declared purposes and objects. Further, this contention would involve radical changes and additions to the provisions of the Convention. The Court, in its Opinion—Interpretation of Peace Treaties (Second Phase) (*I.C.J. Reports* 1950, p. 229)—stated : "It is the duty of the Court to interpret the Treaties, not to revise them."

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The fifth contention of the United States is that the consular jurisdiction in Morocco was recognized and confirmed by various provisions of the Act of Algeciras, and that the United States acquired an autonomous right to exercise such jurisdiction independently of the operation of the most-favoured-nation clauses.

In 1906 the twelve Powers at Algeciras all exercised capitulatory rights and privileges to the extent that they were prescribed either by the General Treaty with Great Britain of 1856 or by the Spanish Treaty of 1861. They did so by virtue of direct treaty grant, as in the case of Great Britain or Spain ; or by virtue of most-favoured-nation clauses, as in the case of the United States ; or without treaty rights, but with the consent or acquiescence of Morocco, as in the case of certain other States. Accordingly, the Act of Algeciras pre-supposed the existence of the regime of Capitulations, including the rights of consular jurisdiction, and many of its provisions assigned particular functions to the then existing consular tribunals. Reference has been made in the course of the argument to Articles 19, 23, 24, 25, 29, 45, 59, 80, 81, 87, 91, 101, 102 and 119. For example, Chapter V, which deals with "the customs of the Empire and the repression of fraud and smuggling", contains Article 102, which provides :

> "Every confiscation, fine or penalty must be imposed on foreigners by consular jurisdiction, and on Moorish subjects by Shereefian jurisdiction."

In the conditions which existed at the time, this Article made it necessary for the prosecution of nationals of the twelve Powers for fraud and smuggling to be dealt with in the consular courts.

Since 1937, the position has been one in which eleven of the Powers have abandoned their capitulatory privileges, and their consular jurisdiction has ceased to exist. Accordingly, Morocco has been able to make laws and to provide for the trial and punishment of offenders who are nationals of these eleven countries. The position of the United States is different, and must now be examined.

Unlike the Madrid Convention, the Act of Algeciras was general in its scope and was not confined to a limited problem such as that of protection. On the other hand, the interpretation of the provisions of the Act must take into account its purposes, which are set forth in the Preamble in the following words :

> "Inspired by the interest attaching itself to the reign of order, peace, and prosperity in Morocco, and recognizing that the attainment thereof can only be effected by means of the introduction of reforms based upon the triple principle of the sovereignty and independence of His Majesty the Sultan, the integrity of his domains, and economic liberty without any inequality...."

Neither the Articles to which reference has been made above nor any other provisions of the Act of Algeciras purport to establish consular jurisdiction or to confirm the rights or privileges of the regime of Capitulations which were then in existence. The question, therefore, is whether the establishment or confirmation of such jurisdiction or privileges can be based upon the implied intentions of the parties to the Act as indicated by its provisions.

An interpretation, by implication from the provisions of the Act, establishing or confirming consular jurisdiction would involve a transformation of the then existing treaty rights of most of the twelve Powers into new and autonomous rights based upon the Act. It would change treaty rights of the Powers, some of them terminable at short notice, e.g., those of the United States which were terminable by twelve months' notice, into rights enjoyable for an unlimited period by the Powers and incapable of being terminated or modified by Morocco. Neither the preparatory work nor the Preamble gives the least indication of any such intention. The Court finds itself unable to imply so fundamental a change in the character of the then existing treaty rights as would be involved in the acceptance of this contention.

There is, however, another aspect of this problem arising out of the particular Articles to which reference has been made above. These are the Articles which include provisions necessarily involving the exercise of consular jurisdiction. In this case, there is a clear indication of the intention of the parties to the effect that certain matters are to be dealt with by the consular tribunals and to this extent it is possible to interpret the provisions of the Act as establishing or confirming the exercise of consular jurisdiction for these limited purposes. The maintenance of consular jurisdiction in so far as it may be necessary to give effect to these specific provisions can, therefore, be justified as based upon the necessary intendment of the provisions of the Act.

This result is confirmed by the provisions of Articles 10 and 16 of the Convention between Great Britain and France of July 29th, 1937. These Articles refer to the jurisdictional privileges "accorded on the basis of existing treaties" or "enjoyed by the United States of America under treaties at present in force". They pre-suppose, therefore, that the jurisdictional privileges of the United States, even after the surrender of British capitulatory rights, would not be limited to the jurisdiction provided by Articles 20 and 21 of the Treaty with Morocco of 1836. This view is also supported by the provisions of Article 4 of the Protocol of Signature to this Convention. This Article provided for the abrogation of certain provisions of the General Treaty of 1856 and, as regards the Act of Algeciras, for the renunciation "of the right to rely upon Articles 1 to 50, 54 to 65, 70, 71, all provisions of Article 72 after the word 'permit',

75, 76, 80, 97, 101, 102, 104, 113 to 119", and it also provided that "in Article 81 the words 'by the competent consular authority' must be deemed to be omitted and in Article 91, the word 'competent' must henceforth be substituted for the word 'consular' ".

It is clear that, in 1937, France (representing Morocco) and Great Britain were proceeding upon the assumption that certain of the provisions of the Act of Algeciras recognized a limited consular jurisdiction for the purposes of the judicial proceedings therein described.

The Court is not called upon to examine the particular articles of the Act of Algeciras which are involved. It considers it sufficient to state as its opinion that the consular jurisdiction of the United States continues to exist to the extent that may be necessary to render effective those provisions of the Act of Algeciras which depend on the existence of consular jurisdiction.

This interpretation of the Act, in some instances, leads to results which may not appear to be entirely satisfactory. But that is an unavoidable consequence of the manner in which the Algeciras Conference dealt with the question of consular jurisdiction. The Court can not, by way of interpretation, derive from the Act a general rule as to full consular jurisdiction which it does not contain. On the other hand, the Court can not disregard particular provisions involving a limited resort to consular jurisdiction, which are, in fact, contained in the Act, and which are still in force as far as the relations between the United States and Morocco are concerned.

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The sixth contention of the United States is that its consular jurisdiction and other capitulatory rights in Morocco are founded upon "custom and usage".

This contention has been developed in two different ways. The first relates to custom and usage preceding the abandonment of capitulatory rights in the French Zone by Great Britain in 1937. The second relates to the practice since that date.

Dealing first with the period of 150 years, 1787 to 1937, there are two considerations which prevent the acceptance of this contention.

The first is that throughout this whole period, the United States consular jurisdiction was in fact based, not on custom or usage, but on treaty rights. At all stages, it was based on the provisions either of the Treaty of 1787 or of the Treaty of 1836, together with the provisions of treaties concluded by Morocco with other Powers, especially with Great Britain and Spain, invoked by virtue of the most-favoured-nation clauses. This was the case not merely of the United States but of most of the countries whose nationals were trading in Morocco. It is true that there were Powers represented at the Conference of Madrid in 1880 and at Algeciras in 1906 which had no treaty rights but were exercising consular jurisdiction with

the consent or acquiescence of Morocco. It is also true that France, after the institution of the Protectorate, obtained declarations of renunciation from a large number of other States which were in a similar position. This is not enough to establish that the States exercising consular jurisdiction in pursuance of treaty rights enjoyed in addition an independent title thereto based on custom or usage.

The second consideration relates to the question of proof. This Court, in the Asylum Case (*I.C.J. Reports 1950*, pp. 276-277), when dealing with the question of the establishment of a local custom peculiar to Latin-American States, said :

> "The Party which relies on a custom of this kind must prove that this custom is established in such a manner that it has become binding on the other Party. The Colombian Government must prove that the rule invoked by it is in accordance with a constant and uniform usage practised by the States in question, and that this usage is the expression of a right appertaining to the State granting asylum and a duty incumbent on the territorial State. This follows from Article 38 of the Statute of the Court, which refers to international custom 'as evidence of a general practice accepted as law'."

In the present case there has not been sufficient evidence to enable the Court to reach a conclusion that a right to exercise consular jurisdiction founded upon custom or usage has been established in such a manner that it has become binding on Morocco.

This contention has also been based upon the practice since the date when the treaty right of the United States to exercise extended consular jurisdiction and derivative rights came to an end with the coming into operation of the Convention between France and Great Britain of 1937.

During this period France and the United States were in negotiation with regard to a number of questions, including the renunciation of capitulatory rights. There are isolated expressions to be found in the diplomatic correspondence which, if considered without regard to their context, might be regarded as acknowledgments of United States claims to exercise consular jurisdiction and other capitulatory rights. On the other hand, the Court can not ignore the general tenor of the correspondence, which indicates that at all times France and the United States were looking for a solution based upon mutual agreement and that neither Party intended to concede its legal position. In these circumstance, the situation in which the United States continued after 1937 to exercise consular jurisdiction over all criminal and civil cases in which United States nationals were defendants, is one that must be regarded as in the

nature of a provisional situation acquiesced in by the Moroccan authorities.

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Accordingly, it is necessary to conclude that, apart from the special rights under Articles 20 and 21 of the Treaty of 1836 and those which arise from the provisions of the Act of Algeciras, to which reference has been made above, the United States claim to exercise and enjoy, as of right, consular jurisdiction and other capitulatory rights in the French Zone came to an end with the termination of "all rights and privileges of a capitulatory character in the French Zone of the Shereefian Empire" by Great Britain, in pursuance of the provisions of the Convention of 1937.

* * *

The Court will now consider the claim that United States nationals are not subject, in principle, to the application of Moroccan laws, unless they have first received the assent of the United States Government.

The French Submission is this regard reads as follows :

> "That the Government of the United States of America is not entitled to claim that the application of all laws and regulations to its nationals in Morocco requires its express consent ;
>
> That the nationals of the United States of America in Morocco are subject to the laws and regulations in force in the Shereefian Empire and in particular the regulation of December 30th, 1948, on imports not involving an allocation of currency, without the prior consent of the United States Government."

The United States Submission in this regard reads as follows :

> "4. Under the regime of extraterritorial jurisdiction now exercised by the United States in Morocco, United States citizens are not subject, in principle, to the application of Moroccan laws.
>
> Such laws become applicable to the United States citizens only if they are submitted to the prior assent of the United States Government and if this Government agrees to make them applicable to its citizens. The Dahir of December 30, 1948, not having been submitted to the prior assent of the United States Government, cannot be made applicable to United States citizens."

The claim that Moroccan laws are not binding on United States nationals, unless assented to by the Government of the United

States, is linked with the regime of Capitulations, and it will not be necessary to repeat the considerations which have already been discussed in dealing with consular jurisdiction.

There is no provision in any of the treaties which have been under consideration in this case conferring upon the United States any such right. The so-called "right of assent" is merely a corollary of the system of consular jurisdiction. The consular courts applied their own law and they were not bound in any way by Moroccan law or Moroccan legislation. Before a consular court could give effect to a Moroccan law it was necessary for the foreign Power concerned to provide for its adoption as a law binding on the consul in his judicial capacity. It was the usual practice to do this by embodying it either in the legislation of the foreign State or in ministerial or consular decrees of that State issued in pursuance of delegated powers. The foreign State could have this done or it could refuse to provide for the enforcement of the law. There was a "right of assent" only to the extent that the intervention of the consular court was necessary to secure the effective enforcement of a Moroccan law as against the foreign nationals.

In the absence of any treaty provisions dealing with this matter, it has been contended that a "right of assent" can be based on custom, usage or practice. It is unnecessary to repeat the reasons which have been given for rejecting custom, usage and practice as a basis for extended consular jurisdiction, and which are largely applicable to the "right of assent". It is, however, necessary to point out that the very large number of instances in which Moroccan laws were referred to the United States authorities can readily be explained as a convenient way of ensuring their incorporation in ministerial decrees binding upon the consular courts. In that way, and in that way only, could these laws be made enforceable as against United States nationals so long as the extended consular jurisdiction was being exercised.

The problem arises in three ways, which must be considered separately.

The first is in cases where the application of a Moroccan law to United States nationals would be contrary to the treaty rights of the United States. In such cases, the application of Moroccan laws, whether directly or indirectly to these nationals, unless assented to by the United States, would be contrary to international law, and the dispute which might arise therefrom would have to be dealt with according to the ordinary methods for the settlement of international disputes. These considerations apply to the Decree of December 30th, 1948, which the Court has found to be contrary to treaty rights of the United States.

The second way in which the problem arises is in cases in which the co-operation of the consular courts is required in order to enforce the Moroccan legislation. In such cases, regardless of whether the application of the legislation would contravene treaty rights, the assent of the United States would be essential to its enforcement by the consular courts.

The third way in which the problem arises is in cases where the application to United States nationals, otherwise than by enforcement through the consular courts, of Moroccan laws which do not violate any treaty rights of the United States is in question. In such cases the assent of the United States authorities is not required.

Accordingly, and subject to the foregoing qualifications, the Court holds that the United States is not entitled to claim that the application of laws and regulations to its nationals in the French Zone requires its assent.

* * *

The Government of the United States of America has submitted a Counter-Claim, a part of which relates to the question of immunity from Moroccan taxes in general, and particularly from the consumption taxes provided by the Shereefian Dahir of February 28th, 1948. The following Submissions are presented with regard to these questions :

On behalf of the Government of the United States :

> "2. The treaties exempt American nationals from taxes, except as specifically provided by the same treaties ; to collect taxes from American nationals in violation of the terms of the treaties is a breach of international law.
>
> Such taxes can legally be collected from American nationals only with the previous consent of the United States which operates to waive temporarily its treaty right, and from the date upon which such consent is given, unless otherwise specified by the terms of the consent.
>
> Consumption taxes provided by the Dahir of February 28, 1948, which were collected from American nationals up to August 15, 1950, the date on which the United States consented to these taxes, were illegally collected and should be refunded to them.
>
> 3. Since Moroccan laws do not become applicable to American citizens until they have received the prior assent of the United States Government, the lack of assent of the United States Government to the Dahir of February 28, 1948, rendered illegal the collection of the consumption taxes provided by that Dahir."

On behalf of the Government of France :

> "That no treaty has conferred on the United States fiscal immunity for its nationals in Morocco, either directly or through the effect of the most-favoured-nation clause ;

That the laws and regulations on fiscal matters which have been put into force in the Shereefian Empire are applicable to the nationals of the United States without the prior consent of the Government of the United States ;

That, consequently, consumption taxes provided by the Dahir of February 28th, 1948, have been legally collected from the nationals of the United States, and should not be refunded to them."

The Government of the United States contends that its treaty rights in Morocco confer upon United States nationals an immunity from taxes except the taxes specifically recognized and permitted by the treaties. This contention is based on certain bilateral treaties with Morocco as well as on the Madrid Convention of 1880 and the Act of Algeciras of 1906.

The Court will first consider the contention that the right to fiscal immunity can be derived from the most-favoured-nation clauses in Article 24 of the Treaty between the United States and Morocco of 1836 and in Article 17 of the Madrid Convention, in conjunction with certain provisions in treaties between Morocco and Great Britain and Morocco and Spain.

The General Treaty between Great Britain and Morocco of 1856 provided in the second paragraph of Article IV that British subjects "shall not be obliged to pay, under any pretence whatever, any taxes or impositions". The Treaty between Morocco and Spain of 1861 provided in Article V that "Spanish subjects can not under any pretext be forced to pay taxes or contributions".

It is submitted on behalf of the United States that the most-favoured-nation clauses in treaties with countries like Morocco were not intended to create merely temporary or dependent rights, but were intended to incorporate permanently these rights and render them independent of the treaties by which they were originally accorded. It is consequently contended that the right to fiscal immunity accorded by the British General Treaty of 1856 and the Spanish Treaty of 1861, was incorporated in the treaties which guaranteed to the United States most-favoured-nation treatment, with the result that this right would continue even if the rights and privileges granted by the Treaties of 1856 and 1861 should come to an end.

For the reasons stated above in connection with consular jurisdiction, the Court is unable to accept this contention. It is not established that most-favoured-nation clauses in treaties with Morocco have a meaning and effect other than such clauses in other treaties or are governed by different rules of law. When provisions granting fiscal immunity in treaties between Morocco and third States have been abrogated or renounced, these provisions can no longer be relied upon by virtue of a most-favoured-nation clause. In such circumstances, it becomes necessary to examine

whether the above-mentioned provisions in the Treaties of 1856 and 1861 are still in force.

The second paragraph of Article IV in the General Treaty with Great Britain was abrogated by the Franco-British Convention of July 29th, 1937, Protocol of Signature, Article 4 *(a)*. As from the coming into force of this Convention, that paragraph of Article IV of the General Treaty of 1856 could no longer be relied upon by the United States by virtue of a most-favoured-nation clause.

As already held above, the effect of the Declaration made by France and Spain of March 7th, 1914, was an unconditional renunciation by Spain of all the rights and privileges arising out of the regime of Capitulations in the French Zone. This renunciation involved, in the opinion of the Court, a renunciation by Spain of the right of its nationals to immunity from taxes under Article V of its Treaty with Morocco of 1861, since such a general and complete immunity from taxes must be considered as an element of the regime of capitulations in Morocco. When Spain relinquished all the capitulatory rights, it must thereby be considered as having given up the rights to fiscal immunity.

This view is confirmed by the attitude taken by number of other States in this respect. Great Britain renounced all rights and privileges of a capitulatory character in the French Zone by Article 1 of its Convention with France of 1937. In the Protocol of Signature it was declared that the effect of this Article and of Article 16 is to abrogate a number of articles in the General Treaty of 1856, including, as has been stated above, the second paragraph of Article IV. This seems to show that France, representing Morocco, and Great Britain were proceeding on the assumption that the tax immunity accorded by that Article was a right of a capitulatory character. The other States, which, during the years 1914-1916, equally renounced all rights and privileges arising out of the regime of Capitulations in the French Zone, have acquiesced in the taxation of their nationals.

For these reasons, the Court holds that the right to tax immunity accorded by Article V of the Spanish Treaty of 1861, having been surrendered by Spain, can no longer be invoked by the United States by virtue of a most-favoured-nation clause.

The Government of the United States has further contended that it has an independent claim to tax immunity by virtue of being a party to the Convention of Madrid and the Act of Algeciras. It contends that by these instruments a regime as to taxes was set up, which continued the tax immunity in favour of the nationals of foreign States, thereby confirming and incorporating this pre-existing regime, which therefore is still in force, except for the States which have agreed to give it up.

The Court is, however, of opinion that the Madrid Convention did not confirm and incorporate the then existing principle of tax

immunity. It merely pre-supposed the existence of this principle and curtailed it by exceptions in Articles 12 and 13 without modifying its legal basis. It did not provide a new and independent ground for any claim of tax immunity.

Similar considerations apply to the Act of Algeciras, which further curtailed the regime of tax immunity by exceptions in Articles 59, 61, 64, and 65. It did not provide any new and independent legal basis for exemption from taxes.

The Government of the United States has invoked Articles 2 and 3 of the Madrid Convention, which grant exemption from taxes, other than those mentioned in Articles 12 and 13, to certain "protected persons". But the "protégés" mentioned in Articles 2 and 3 constituted only a limited class of persons in the service of diplomatic representatives and consuls of foreign States. No conclusion as to tax immunity for nationals of the United States in general can, in the opinion of the Court, be drawn from the privileges granted to this limited class of protected persons.

It is finally contended, on behalf of the Government of the United States, that the consumption taxes imposed by the Dahir of February 28th, 1948, are in contravention of special treaty rights. Reference is made to the Treaty of Commerce between Great Britain and Morocco of 1856, Articles III, VII, VIII and IX, and it is submitted that United States nationals are exempt from those consumption taxes by virtue of these Articles in conjunction with the most-favoured-nation clauses in the Treaty of 1836 between Morocco and the United States.

These four Articles in the British Commercial Treaty of 1856 relate to taxes and duties on goods exported from or imported into Morocco, or on goods conveyed from one Moroccan port to another. The consumption taxes provided by the Dahir of February 28th, 1948, are, according to its Article 8, payable on all products whether they are imported into the French Zone of Morocco or manufactured or produced there. They can not, therefore, be assimilated to the particular taxes mentioned in the articles of the British Commercial Treaty, invoked by the United States, nor can they be considered as a customs duty. The mere fact that it may be convenient in the case of imported goods to collect the consumption tax at the Customs Office does not alter its essential character as a tax levied upon all goods, whether imported into, or produced in, Morocco. It may be recalled in this connection that the Permanent Court of International Justice recognized that fiscal duties collected at the frontier on the entry of certain goods were not to be confused with customs duties; in its Judgment of June 7th, 1932, in the Free Zones Case (P.C.I.J., Series A/B, No. 46, p. 172), it laid down that "the withdrawal of the customs line does not affect the right

of the French Government to collect at the political frontier fiscal duties not possessing the character of customs duties".

The Court is, consequently, unable to hold that the imposition of these consumption taxes contravenes any treaty rights of the United States. In such circumstances the question of a partial refund of consumption taxes paid by United States nationals does not arise.

It follows from the above-mentioned considerations that the Government of the United States is not entitled to claim that taxes, including consumption taxes, shall be submitted to the previous consent of that Government before they can legally be collected from nationals of the United States. Since they are, in the opinion of the Court, not exempt from the payment of any taxes in the French Zone, there is no legal basis for the claim that laws and regulations on fiscal matters shall be submitted to United States authorities for approval.

The conclusion which the Court has thus arrived at seems to be in accordance with the attitude which other States have taken with regard to this question. Tax immunity in the French Zone is not claimed either by the United Kingdom or by Spain or any other State which previously enjoyed such a privileged position. The only State now claiming this privilege is the United States, though no tax immunity is guaranteed by its Treaty with Morocco of 1836. To recognize tax immunity for United States nationals alone would not be compatible with the principle of equality of treatment in economic matters on which the Act of Algeciras is based.

* * *

The final Submission of the United States of America upon that part of its Counter-Claim which is based upon Article 95 of the General Act of Algeciras, is as follows :

> "1. Under Article 95 of the Act of Algeciras, the value of imports from the United States must be determined for the purpose of customs assessments by adding to the purchase value of the imported merchandise in the United States the expenses incidental to its transportation to the custom-house in Morocco, exclusive of all expenses following its delivery to the custom-house, such as customs duties and storage fees.
>
> It is a violation of the Act of Algeciras and a breach of international law for the customs authorities to depart from the method of valuation so defined and to determine the value of imported merchandise for customs purposes by relying on the value of the imported merchandise on the local Moroccan market."

The final Submission of the Government of France upon this part of the Counter-Claim is as follows :

> "That Article 95 of the Act of Algeciras defines value for customs purposes as the value of the merchandise at the time and at the place where it is presented for customs clearance ;"

which, as was made clear in the oral argument, means the value in the local, i.e. Moroccan, market.

The necessity, evidenced by Articles 95, 96 and 97 of the Act of Algeciras, of creating some kind of machinery for securing a just valuation of goods by the Customs authorities would appear to follow, *inter alia*, *(a)* from the principle of economic equality which is one of the principles underlying the Act, and *(b)* from the fact that the import duties were fixed by the signatory Powers at 12½ %. Clearly, it would be easy, if it were desired to do so, to discriminate against particular importers by means of arbitrary valuations or to evade a fixed limitation of duties by means of inflated valuations. But while the signatory Powers realized the necessity for some such machinery, it does not appear that the machinery has given rise to a practice which has been consistently followed since the Act entered into force.

Article 95 specifies four factors in valuing merchandise :

(a) the valuation must be based upon its cash wholesale value ;

(b) the time and place of the valuation are fixed at the entry of the merchandise at the custom-house ;

(c) the merchandise must be valued "free from customs duties and storage dues", that is to say, the value must not include these charges ;

(d) the valuation must take account of depreciation resulting from damage, if any.

Article 96, which relates only to the principal goods taxed by the Moorish Customs Administration, contemplated an annual fixing of values by a "Committee on Customs Valuations" sitting at Tangier. The local character of this Committee, and of the persons whom it is directed to consult, should be noted. The schedule of values fixed by it was to be subject to revision at the end of six months if any considerable changes had taken place in the value of certain goods. Article 96 is procedural and is intended to operate within the ambit of Article 95.

Article 97 provided for the establishment of a permanent "Committee of Customs", intended to supervise the customs service on a high level and to watch over the application of Article 96 and 97, subject to the advice and consent of the "Diplomatic Body at Tangier".

The Committee on Customs Valuations referred to in Article 96 appears to have lapsed in 1924 when the Convention of Decem-

ber 18th, 1923, on the Tangier Zone came into force, and replaced it by a Committee representing the three Zones. The latter Committee has not met since 1936.

Articles 82 to 86 of the Act, which relate to declarations by importers, must also be noted. Article 82 requires an importer to file a declaration, which must contain a detailed statement setting forth the nature, quality, weight, number, measurement and value of the merchandise, as well as the nature, marks and numbers of the packages containing the same. A declaration of value made by the importer can clearly not be decisive, because he is an interested party, but at the same time he knows more about the goods than anybody else, and, unless fraud is suspected, it is right that the value appearing in the declaration should form an important element in the valuation about to be made.

It can not be said that the provisions of Article 95 alone, or of Chapter V of the Act considered as a whole, afford decisive evidence in support of either of the interpretations contended for by the Parties respectively. The four factors specified by Article 95 are consistent with either interpretation ; in particular, the expression "free from customs duties and storage dues" affords no clear indication, because, if the value in the country of origin, increased by the amount of insurance, freight, etc., is to be taken as the basis, this expression means "before entering the customs office and paying duties" ; whereas, if the value in the local market is to be accepted as the basis, some such expression is necessary (or at any rate prudent) in order to indicate that the duty of 12½ % must not be levied on a value which already contains the 12½ %.

The Court has examined the earlier practice, and the preparatory work of the Conference of Algeciras of 1906, but not much guidance is obtainable from these sources. The Commercial Agreement made between France and Morocco, dated October 4th, 1892, consists of two letters exchanged between the Foreign Minister of Morocco and the Minister of France in Morocco, the latter of which contains the expression :

> "These goods shall be assessed on the basis of their cash wholesale market value in the port of discharge, in reals of vellon."

A preliminary draft of the Act (p. 97 of French *Documents diplomatiques*, 1906, *fascicule* 1, *Affaires du Maroc*, entitled "II. Protocoles et comptes rendus de la Conférence d'Algésiras") contains the following article :

> "*Article XIX.*—Import and export duties shall be paid forthwith in cash at the custom-house where clearance is effected. The *ad valorem* duties shall be determined and paid on the basis of the cash wholesale value of the goods at the port of discharge or the custom-

house in the case of imports. Merchandise can only be removed after the payment of customs duties and storage.

The holding of the goods or the collection of duty shall, in every case, be made the subject of a regular receipt delivered by the officer in charge."

Later (p. 100), upon a British proposal, the second sentence was modified so as to read :

"The *ad valorem* duties shall be determined and paid on the basis of the cash wholesale value of the goods at the custom-house, free from customs duties."

At a later stage the German delegation made the following proposal (*ibid.*, p. 232) :

"The *ad valorem* duties imposed on imports in Morocco shall be assessed on the value of the imported goods in the place of shipment or of purchase, to which shall be added the transport and insurance charges to the port of discharge in Morocco...."

That amendment was rejected, from which it may be inferred that the value in the country of origin was rejected as the conclusive test.

It is also necessary to examine the practice of the customs authorities since 1906, in so far as it appears from the materials made available to the Court by the Parties. It seems that there has been a reluctance to attribute a decisive effect to any single factor in valuing merchandise.

For instance, in a letter of July 16th, 1912, from the Controller of Moroccan Customs to the American Minister at Tangier, it is stated that the customs officers "apply for the appraisal of merchandise the rules established by the Act of Algeciras and by the Customs regulations. They use market prices, bills of sale and their professional knowledge."

The following excerpts occur later in the same letter :

"The bill of sale is an element of valuation, but it is not conclusive evidence.

. . . . . .

The customs has always proceeded as described above in regard to petroleum products imported from Fiume and from Trieste ; for which importers furnish means of appraisal by attaching to the declarations the original bills of sale, of which the prices are compared with the market prices of origin.

. . . . . .

This value [i.e. for customs purposes] includes the purchase price of the petroleum f.o.b. New York, increased by all expenses subsequent to the purchase, such as export duties paid to foreign customs, transportation, packing, freight, insurance, handling,

> unloading, etc.—in short, all that contributes to make up at the moment of presentation at the customs office the cash wholesale value of the product, according to which, under Article 95 of the Act of Algeciras, the duties must be paid.
>
> . . . . . "

It is also interesting to note from the Minutes of the meeting at Tangier of the Committee on Customs Valuations on June 7th, 1933, that the Director of Customs explained :

> ".... that his Department adopts as elements of valuation for the application of the duties concerned, the invoice of origin, transport costs to the port of importation, the value of the merchandise on the local market on arrival, general market price lists and any other information which may be useful to fix the value upon which the duty is based".

On the other hand, passages can be found in the Customs regulations and in circulars issued by the Moroccan Debt Control in which the emphasis is laid upon the value in the Moroccan market as the important factor. The latest "Tables of minimum and maximum values of the principal merchandise imported into Morocco", adopted by the Committee on Customs Valuations at their last meeting on March 11th, 1936, at Tangier, reveal a range so great that they could only afford the most general guidance as to the actual valuation of a particular cargo or piece of merchandise.

The general impression created by an examination of the relevant materials is that those responsible for the administration of the customs since the date of the Act of Algeciras have made use of all the various elements of valuation available to them, though perhaps not always in a consistent manner.

In these circumstances, the Court is of the opinion that Article 95 lays down no strict rule on the point in dispute. It requires an interpretation which is more flexible than either of those which are respectively contended for by the Parties in this case.

The Court is of the opinion that it is the duty of the Customs authorities in the French Zone, in fixing the valuation of imported goods for customs purposes, to have regard to the following factors :

(a) the four factors specified by Article 95 and mentioned above ;

(b) the contents of the declaration which the importer is required by the Act to file in the custom-house ;

(c) the wholesale cash value in the market of the French Zone ;

(d) the cost in the country of origin, increased by the cost of loading and unloading, insurance, freight, and other charges incurred before the goods are delivered at the custom-house ;

(e) the schedule of values, if any, which may have been prepared by the Committee on Customs Valuations referred to in Article 96 or by any committee which may have been substituted therefor by arrangements to which France and the United States have assented expressly or by implication ;

(f) any other factor which is required by the special circumstances of a particular consignment or kind of merchandise.

The factors referred to above are not arranged in order of priority but should operate freely, within any limits that have been, or may be, prescribed under Article 96 of the Act ; and, in view of the governing principle of economic equality, the same methods must be applied without discrimination to all importations, regardless of the origin of the goods or the nationality of the importers. The power of making the valuation rests with the Customs authorities, but it is a power which must be exercised reasonably and in good faith.

* * *

For these reasons,

THE COURT,

on the Submissions of the Government of the French Republic,

unanimously,

Rejects its Submissions relating to the Decree of December 30th, 1948, issued by the Resident General of the French Republic in Morocco ;

unanimously,

Finds that the United States of America is entitled, by virtue of the provisions of its Treaty with Morocco of September 16th, 1836, to exercise in the French Zone of Morocco consular jurisdiction in all disputes, civil or criminal, between citizens or protégés of the United States ;

by ten votes to one,

Finds that the United States of America is also entitled, by virtue of the General Act of Algeciras of April 7th, 1906, to exercise in the French Zone of Morocco consular jurisdiction in all cases, civil or criminal, brought against citizens or protégés of the United States, to the extent required by the provisions of the Act relating to consular jurisdiction ;

by six votes to five,

Rejects, except as aforesaid, the Submissions of the United States of America concerning consular jurisdiction ;

unanimously,

Finds that the United States of America is not entitled to claim that the application to citizens of the United States of all laws and regulations in the French Zone of Morocco requires the assent of the Government of the United States, but that the consular courts of the United States may refuse to apply to United States citizens laws or regulations which have not been assented to by the Government of the United States ;

on the Counter-Claim of the Government of the United States of America,

by six votes to five,

Rejects the Submissions of the United States of America relating to exemption from taxes ;

by seven votes to four,

Rejects the Submissions of the United States of America relating to the consumption taxes imposed by the Shereefian Dahir of February 28th, 1948 ;

by six votes to five,

Finds that, in applying Article 95 of the General Act of Algeciras, the value of merchandise in the country of origin and its value in the local Moroccan market are both elements in the appraisal of its cash wholesale value delivered at the custom-house.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-seventh day of August, one thousand nine hundred and fifty-two, in three copies, one of which will be placed in the archives of the Court and the others will be transmitted to the Government of the French Republic and to the Government of the United States of America, respectively.

(Signed) Arnold D. McNAIR,
President.

(Signed) E. HAMBRO,
Registrar.

Judge HSU MO declares that, in his opinion, the jurisdictional rights of the United States of America in the French Zone of Morocco are limited to those provided in Articles 20 and 21 of its Treaty with Morocco of September 16th, 1836, and that the United States is not entitled to exercise consular jurisdiction in cases involving the application to United States citizens of those provisions of the Act of Algeciras of 1906 which, for their enforcement, carried certain sanctions. The Act of Algeciras, as far as the jurisdictional clauses are concerned, was concluded on the basis of a kind of consular jurisdiction as it existed at that time in its full form and in complete uniformity among the Powers in Morocco. The various provisions, in referring to "consular jurisdiction", "competent consular authority", "consular court of the defendant", etc., clearly meant that jurisdiction which was being uniformly exercised by foreign States over their respective nationals as defendants in all cases. They did not mean such limited jurisdiction as might be exercised by the United States consular courts, in accordance with Article 20 of the Moroccan-United States Treaty of 1836, in cases involving United States citizens or protégés only. When, therefore, consular jurisdiction in its full form ceased to exist in respect of all the signatory States to the Act of Algeciras, the basis for the application by the various consular tribunals of the measures of sanction provided in that Act disappeared, and the ordinary rules of international law came into play. Consequently, such sanctions should thenceforth be applied by the territorial courts, in the case of United States citizens as well as in the case of all other foreign nationals. As regards reference in the Franco-British Convention of 1937 to the jurisdictional privileges enjoyed by the United States, it must be considered as a precautionary measure on the part of France against the possibility of the refusal of the United States to relinquish such privileges. In any case, the rights of the United States vis-à-vis Morocco in matters of jurisdiction must be determined by their own treaty relations, and could not derive from any admission made by France on Morocco's behalf to a third party.

Judges HACKWORTH, BADAWI, LEVI CARNEIRO and Sir Benegal RAU, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment the common statement of their dissenting opinion.

(Initialled) A. D. McN.

(Initialled) E. H.

ARTICLE XVII.

Merchants may buy and sell all goods except those prohibited to other Christian nations.

Merchants shall not be compelled to buy or sell any kind of goods but such as they shall think proper; and may buy and sell all sorts of merchandize but such as are prohibited to the other Christian nations.

ARTICLE XVIII.

Goods to be examined before sent on board, and not after, unless in case of fraud.

All goods shall be weighed and examined before they are sent on board, and to avoid all detention of vessels, no examination shall afterwards be made, unless it shall first be proved that contraband goods have been sent on board, in which case, the persons who took the contraband goods on board, shall be punished according to the usage and custom of the country, and no other person whatever shall be injured, nor shall the ship or cargo incur any penalty or damage whatever.

ARTICLE XIX.

Vessels not to be detained.

No vessel shall be detained in port on any pretence whatever, nor be obliged to take on board any articles without the consent of the commander, who shall be at full liberty to agree for the freight of any goods he takes on board.

ARTICLE XX.

How disputes shall be settled.

If any of the citizens of the United States, or any persons under their protection, shall have any disputes with each other, the consul shall decide between the parties, and whenever the consul shall require any aid or assistance from our government, to enforce his decisions, it shall be immediately granted to him.

ARTICLE XXI.

How crimes shall be punished.

If a citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a citizen of the United States, the law of the country shall take place, and equal justice shall be rendered, the consul assisting at the trial; and if any delinquent shall make his escape, the consul shall not be answerable for him in any manner whatever.

ARTICLE XXII.

How estates of deceased citizens shall be disposed of.

If an American citizen shall die in our country, and no will shall appear, the consul shall take possession of his effects; and if there shall be no consul, the effects shall be deposited in the hands of some person worthy of trust, until the party shall appear who has a right to demand them; but if the heir to the person deceased be present, the property shall be delivered to him without interruption; and if a will shall appear, the property shall descend agreeable to that will as soon as the consul shall declare the validity thereof.

ARTICLE XXIII.

Consuls and their privileges.

The consuls of the United States of America, shall reside in any seaport of our dominions that they shall think proper; and they shall be respected, and enjoy all the privileges which the consuls of any other nation enjoy; and if any of the citizens of the United States shall contract any debts or engagements, the consul shall not be in any manner accountable for them, unless he shall have given a promise in writing for the payment or fulfilling thereof, without which promise in writing, no application to him for any redress shall be made.

ARTICLE XXIV.

Regulations in case of war.

If any differences shall arise by either party infringing on any of the articles of this treaty, peace and harmony shall remain notwithstanding, in the fullest force, until a friendly application shall be made for an arrangement, and until that application shall be rejected, no appeal shall be made to arms. And if a war shall break out between the parties, nine months shall be granted to all the subjects of both parties, to dispose of their effects and retire with their property. And it is further declared, that whatever indulgences, in trade or otherwise, shall be granted to any of the Christian Powers, the citizens of the United States shall be equally entitled to them.

ARTICLE XXV

Duration of treaty.

This treaty shall continue in full force, with the help of God, for fifty years.

We have delivered this book into the hands of the beforementioned Thomas Barclay, on the first day of the blessed month of Ramadan, in the year one thousand two hundred.

I certify that the annexed is a true copy of the translation made by Isaac Cardoza Nunez, interpreter at Morocco, of the treaty between the Emperor of Morocco and the United States of America.

THOMAS BARCLAY.

ADDITIONAL ARTICLE.

Grace to the only God.

Vessels of U. S. to be protected.

I, the under-written, the servant of God, Taher Ben Abdelkack Fennish, do certify, that His Imperial Majesty, my master, (whom God preserve,) having concluded a treaty of peace and commerce with the United States of America, has ordered me, the better to complete it, and in addition of the tenth article of the treaty, to declare, "That if any vessel belonging to the United States, shall be in any of the ports of his Majesty's dominions, or within gun-shot of his forts, she shall be protected as much as possible; and no vessel whatever, belonging either to Moorish or Christian Powers, with whom the United States may be at war, shall be permitted to follow or engage her, as we now deem the citizens of America our good friends."

And, in obedience to his Majesty's commands, I certify this declaration, by putting my hand and seal to it, on the eighteenth day of Ramadan,(a) in the year one thousand two hundred.

The servant of the King, my master, whom God preserve,

TAHER BEN ABDELKACK FENNISH.

I do certify that the above is a true copy of the translation made at Morocco, by Isaac Cordoza Nunez, interpreter, of a declaration made and signed by Sidi Hage Taher Fennish, in addition to the treaty between the Emperor of Morocco and the United States of America, which declaration the said Taher Fennish made by the express directions of his Majesty

THOMAS BARCLAY.

(a) The Ramadan of the year of the Hegira 1200 commenced on the 20th June, in the year of our Lord 1786.

Now, know ye, That we, the said John Adams and Thomas Jefferson, Ministers Plenipotentiary aforesaid, do approve and conclude the said treaty, and every article and clause therein contained, reserving the same nevertheless to the United States in Congress assembled, for their final ratification.

In testimony whereof, we have signed the same with our names and seals, at the places of our respective residence, and at the dates expressed under our signatures respectively.

JOHN ADAMS, (L. S.)
London, January 25th, 1787.

THOMAS JEFFERSON, (L. S.)
Paris, January 1st, 1787

Exhibit A2

NOT FOR PUBLICATION

FILED

SEP 16 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STATE OF CALIFORNIA, Plaintiff-Appellee, v. MICHAEL INGRAM EL, Defendant-Appellant.	No. 20-15345 D.C. No. 2:19-cv-00560-KJM-DB MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, District Judge, Presiding

Submitted September 8, 2020**

Before: TASHIMA, SILVERMAN, and OWENS, Circuit Judges.

Michael Ingram El appeals pro se from the district court's order remanding his case to California Superior Court for lack of subject matter jurisdiction. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's decision to remand a removed case. *Patel v. Del Taco, Inc.*, 446 F.3d 996, 998

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Exhibit B2

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

MICHAEL INGRAM EL,

Defendant.

No. 2:19-cv-0560 KJM DB PS

ORDER

Defendant Michael Ingram El is proceeding pro se in the above-entitled action. The matter was referred to a United States Magistrate Judge as provided by Local Rule 302(c)(21).

On October 17, 2019, the magistrate judge filed findings and recommendations, which were served on defendant and which contained notice to defendant that any objections to the findings and recommendations were to be filed within fourteen days after service of the findings and recommendations. The fourteen-day period has expired, and defendant has not filed any objections to the findings and recommendations.

Although it appears from the docket that defendant's copy of the findings and recommendations were returned as undeliverable, defendant was properly served. It is the defendant's responsibility to keep the court apprised of defendant's current address at all times. Pursuant to Local Rule 182(f), service of documents at the record address of the party is fully effective.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed *de novo*. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) ("[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court . . . ."). Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed October 17, 2019 (ECF No. 5) are adopted in full; and

2. This action is summarily remanded to the Sacramento County Superior Court.

DATED: January 23, 2020.

CHIEF UNITED STATES DISTRICT JUDGE

Exhibit C2

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, et al.,

Plaintiffs,

v.

MICHAEL INGRAM EL,

Defendant.

No. 2:19-cv-0560 KJM DB PS

FINDINGS AND RECOMMENDATIONS

On April 1, 2019, defendant Michael Ingram El filed a notice of removal of this action from the Sacramento County Superior Court. (ECF No. 1.) Defendant is proceeding pro se. Accordingly, the matter has been referred to the undersigned for all purposes encompassed by Local Rule 302(c)(21).

On September 27, 2019, the undersigned issued to defendant an order to show cause as to why this action should not be remanded to the Sacramento County Superior court due to a lack of subject matter jurisdiction. (ECF No. 4.) Defendant was provided fourteen days to file a response. The time for filing a response has passed and defendant has failed to respond to the order to show cause.

As explained to defendant in the September 27, 2019 order, jurisdiction is a threshold inquiry that must precede the adjudication of any case before the district court. Morongo Band of Mission Indians v. Cal. State Bd. of Equalization, 858 F.2d 1376, 1380 (9th Cir. 1988). Federal

courts are courts of limited jurisdiction and may adjudicate only those cases authorized by federal law. Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994); Willy v. Coastal Corp., 503 U.S. 131, 136-37 (1992). "Federal courts are presumed to lack jurisdiction, 'unless the contrary appears affirmatively from the record.'" Casey v. Lewis, 4 F.3d 1516, 1519 (9th Cir. 1993) (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546 (1986)).

Lack of subject matter jurisdiction may be raised by the court at any time during the proceedings. Attorneys Trust v. Videotape Computer Prods., Inc., 93 F.3d 593, 594-95 (9th Cir. 1996). A federal court "ha[s] an independent obligation to address sua sponte whether [it] has subject-matter jurisdiction." Dittman v. California, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the obligation of the district court "to be alert to jurisdictional requirements." Grupo Dataflux v. Atlas Global Group, L.P., 541 U.S. 567, 593 (2004). Without jurisdiction, the district court cannot decide the merits of a case or order any relief. See Morongo, 858 F.2d at 1380.

The basic federal jurisdiction statutes are 28 U.S.C. §§ 1331 and 1332, which confer "federal question" and "diversity" jurisdiction, respectively. Federal jurisdiction may also be conferred by federal statutes regulating specific subject matter. "[T]he existence of federal jurisdiction depends solely on the plaintiff's claims for relief and not on anticipated defenses to those claims." ARCO Envtl. Remediation, LLC v. Dep't of Health & Envtl. Quality, 213 F.3d 1108, 1113 (9th Cir. 2000).

District courts have diversity jurisdiction only over "all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs," and the action is between: "(1) citizens of different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state . . . as plaintiff and citizens of a State or of different States." 28 U.S.C. § 1332. "To demonstrate citizenship for diversity purposes a party must (a) be a citizen of the United States, and (b) be domiciled in a state of the United States." Lew v. Moss, 797 F.2d 747, 749 (9th Cir. 1986). "Diversity jurisdiction requires complete diversity between the parties-each defendant must be a citizen of a different state from each plaintiff." In re Digimarc Corp. Derivative Litigation, 549 F.3d 1223, 1234 (9th Cir. 2008).