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INTRODUCTION

The time has come for American Moors to understand the truth and the facts regarding their birthrights and true nationality. Too much falsehood, mythology, and downright lies have been told to us in order to keep us in a state and condition of confusion and chaos. This book is the first volume of many that is designed to clarify the subject matter regarding the birthrights and nationality issue plaguing those who consider themselves Moors.

Moors have deceived themselves into believing that they were ever supposed to be subjects of other peoples companies or governments. This generation of Moors have been lied to for so long that we mistake lies for truth off face value, and never question what is being told to us.

We have been lied to by those who claim to be Moors themselves. In many cases the Moors who have given us false information did so unknowingly because they themselves didn't know the truth. Whatever the case may be Murakush is here to clean up the mess, and dispels the lies, rumors, and mythologies that Moors have become accustomed to digesting as truth.

The falsehoods that has been spread like a plaguing virus has stagnated our rise to prominence since our fall from glory, has now come to an end with the release of this book. Which is designed to correct the thought pattern and brain stimulation of the Moors into a direction of progress, which has been seriously lacking!

Moors have been getting themselves into a world of trouble for the lack of basic understanding and knowledge regarding the truth

about their Birthrights and Nationality and its application in the geo political world of today. Moors have been getting arrested, convicted, getting their homes confiscated, etc. all because they A) either they have misunderstood the true application of law with respect to the Moors status and Identity, or B) they have flat out chose to be subversive and criminal with respect to their intent.

The time has come for things to be put into their proper perspective, so that the “New Moors” will move forward with progress and prosperity with respect to rebuilding a true Moorish Nation in the Americas. Of course further research and study is always required, but this book will set the basis for how research and study will be digested and regurgitated in the present and future. This book will serve to be a useful tool, and is a handbook and guide for New Moors standing on their Square!

Moorish History is entirely too vast to be discussed in just a chapter of a book, but we will brief over some of the basic knowledge regarding Moorish History & Law, which should be understood by All Moors, and the New Moors in particular. Without this basic understanding it becomes easy for Moors to confuse the history of others, by either associating or dis-associating it with Moorish history.

History & Law is a subject that should be taught holistically and not separately. It is because these subjects are looked at as separate that creates the complication of understanding the true of history of the Moors and who they are. History as we know it, is specifically shaped by the victors of war, and treaties or agreements are established to end wars. In other words the only true way to understand history in its

current context of human evolution is to study the conflicts and wars of humans. Moorish History is no different.

For starters the word or term Moor is highly evasive and elusive to many. When we look at our modern dictionaries and definitions versus the historical documents relative to the Moors we quickly learn that there is intentional confusion placed in the midst of the definition. This is done to hide the true identity of the Moors. The term or word Moor has transformed definitions throughout the Millennia's, being shaped by those who inch by inch conquered the Moors so that they will never know their true identity and glorious past.

Usually when researching the name "Moor," contemporary sources will say that the Moors were an Arab, Berber mixed people from North Africa. Other sources will say that the Moors are Muslim Berbers who conquered Spain or that it derives from a Greek term from the word Maures etc. None of these definitions properly defines the word Moor. In the early 1900's Ethnologist determined that the term Moor had no ethnological value. Many in the Moorish Community and Movement already know the true history about the word Moor so there is no need for it to be espoused upon in this chapter, but for more clarity it should be understood that the word Berber derives from the Greek word Bar-Bar which represented a foreign language.

The Greeks called any language they couldn't understand Bar-Bar, which is equivalent to gibberish. Arab is also a term that originates from the Greeks and Romans. Therefore it is clear that these terms were created out of ignorance and does not properly identify the people of which these terms were applied to.

The entire history of our modern world has been crafted and created by the Romans essentially. The Romans employed the age-old concept of "Divide & Conquer" which has led to this entire confusion relative to the proper identity of people in the entire world. Generally when we are looking back at history it is through the lens of the Romans and Greeks.

It must be noted that the Romans became a world power at that time after they defeated the Moors in the Punic Wars (264-146 B.C.E.), which began an Epoch filled with lies and deception about true history. It is said that the victor of war becomes the writer of history. Upon the Romans' victory they began to rename all geographic locations and tribes and nations into colorable derogatory terms. Let us consider the word Carthage. It is said that the Romans fought against the Carthaginians in the Punic Wars. It is also said that the Carthaginians were Phoenicians.

Let's put these terms under a microscope. Carthage is the English word that has derived from multiple languages i.e. (Latin: Carthago or Karthago, Ancient Greek: Καρχηδών Karkhēdōn, Arabic: قرطاج Qarṭāj, Berber Kartajen, Etruscan: *Carθaza, Modern Hebrew: קרתגו Qartágo, from the Phoenician Qart-ʾadašt meaning New City (Aramaic: Qarta ʾdatha). In short Carthage means New City, and was called so by the so-called Phoenicians because it was founded as a Trade (Merchant City). Today this city is now located in what is called Tunis. The Word Punic actually means Phoenician. So when it is said that the Romans defeated the Carthaginians in the Punic Wars they are really saying the Phoenician Wars. Carthage is said to be located in North Africa however

I will show later, how Africa is also a corruption of the land designation where Carthage existed.

Now lets put the term Phoenician under the Microscope. Phoenician etymologically means “land of the purple,” which is called so because the purple dye that the so-called Phoenicians used to trade throughout the Mediterranean. Purple dye was extremely valuable in ancient days, because it was very rare and was only used by royalty. From the root of the various colorable names placed on the Moors we can clearly see that the term has been purposely misapplied to cause confusion to the true identity of a people who have lost their heritage!

Nationality is a very simple yet complex idea in relation to the Moors in America. We see examples of Nations and Nationalism all around the world, but we still haven’t quite yet fully grasped the proper concepts that are self evident in Nationality. Many of the Moors in America Old and Young rely on what Noble Drew Ali teachings of what a Nation or Nationality is, however those teachings are in many instances obscured and non-applicable in the general sense of effectuating it in today’s geo-political climate.

Moors have been the steady victims of falsehoods and misleading teachings for over 2 centuries, and the time has come for this to end, because we are approaching an age of truth where we can no longer be stagnated with lies, falsehoods and misinterpretations of our birth right. While I am not diminishing Noble Drew Ali’s work in any way, it must be said that the creation of the Moorish Science Temple of America is an attempt to recreate the wheel of Islam that has already provided the

ways and means for us to establish or resurrect our Nation, National Standards and Nationality!

To comprehend Nationality, one must first comprehend what a Nation is. According to Blacks Law Dictionary^{4th} edition, “a Nation is a people, or aggregation of men, existing in the form of an organized jural society, usually inhabiting a distinct portion of the earth, speaking the same language, using the same customs, possessing historic continuity, and distinguished from other like groups by their racial origin and characteristics, and generally, but not necessarily, living under the same government and sovereignty.”

From the definition given, it is clear that although the term Nation is very specific in its calculation of what a Nation is, it is also very ambiguous in many ways. At the dawn of the WWI the world began to change in the way Nations were shaped and formed. In the modern era, a Nation has fewer restrictions on what actually constitutes its Nationhood, also a Nation and a State a two distinctly separate things. They are not one in the same or synonymous, although many people think they are.

Murakush Jurisprudence is based on the fundamental principals of reason. To many Moors have been wasting their time running around trying to re-create and reinvent the wheel, when that is not necessary at all. We simply have to remember that which we forgot, which sometimes seem like we are creating new things, however it is simply awakening to the reality that we have been out of the loop on how things work and operate for the last 5 or so centuries.

While there are some things that need to be re-established in certain ways in order to make sure we don't make the same mistake we have made in the past, which has led to this point of deep despair. Murakush Jurisprudence will equip Moors with the proper understanding of how to invoke law properly, safe guard their rights, and rebuild civilization and society in the betterment of our own self and kind and by extension the world over.

This volume of Murakush Jurisprudence is from the perspective that we are currently in subjugation by foreign powers, and how to interface with their legal, and political system to safe guard our rights and unalienable rights. Later volumes will deal with specifics of how to operate our own legal and political systems internally. For now we must dig ourselves out of the muck and mire with the tools that once brought us to prominent power and dominance over the world.

It is imperative that Moors of this era and day time know the importance of implementation and application of correct information which is knowledge and the determination and endurance to proceed fearlessly as we usher in a new day and dawn for us and our downtrodden people.

CHAPTER 1

EXPATRIATION & REPATRIATION

WHAT IS EXPATRIATION?

According to Blacks Law Dictionary 4th edition Expatriation is 1) “the voluntary act of abandoning ones country, and becoming the citizen or subject of another.” 2) “The voluntary renunciation or abandonment of Nationality and allegiance.” Black’s Law Dictionary 6th edition it means 1) “To withdraw (one self) from residence in or allegiance to one’s native country; to leave one’s home country to live elsewhere.” 2) To banish or exile (a person).

As you can see from the legal definition, expatriation can be voluntary or forced depending on that particular nations’ laws and how they view and administrate expatriation. In a basic sense, expatriation is simply changing or giving up ones citizenship. It is should also be noted that those who work abroad are considered expatriates even if the haven’t formally done so.

Thousands of people expatriate annually from the United States, for various different purposes and reasons. Some people expatriate because of taxation purposes, some people expatriate because they disagree with the domestic and foreign policy of the U.S. Some do it because they want to live abroad. Others do it simply because they no longer want to be U.S. Citizens any longer.

Whatever a person’s reason are for expatriation, all citizens have the right to do so if they choose to. There is nothing in the law that can stop a person from expatriating. There are some technicalities involved, however those technicalities are relatively to ones intention for expatriation. It should also be noted that the U.S. has created policy to

regulate the expatriation process, and requires that one leave the U.S. in 6 months, and no longer than a year. Moors should first consider that they could relinquish U.S. citizenship and keep U.S. residency status during the process of expatriation. Also in the special case of the Moors we do not have to leave the land mass of North America, because we are indigenous to it, and have been here historically long before any colonizers or corporate Governments were established on this land mass. "The Survey On The Law Of Expatriation" expresses many of the technicalities on Expatriation and what is required to accomplish it.

It effectively states that relinquishing U.S. Citizenship must be voluntarily and must be accompanied with a termination statement. Expatriation cannot be forced upon its citizens according to U.S. Law. However there is a bill being introduced in Congress, called the "Terrorist Expatriation Act" that stipulates if a U.S. Citizen commits acts of terror against the U.S. then the U.S. can terminate your U.S. Citizenship. Moors should also take note prior to the Nixon Administration, one simply had to claim a Nationality different from the U.S. in order lose the U.S. Citizenship/Nationality.

After the Nixon Administration, it was established that the one had to make a public declaration of voluntary renunciation of U.S. Citizenship/Nationality in order to lose it, otherwise they would have dual citizenship/nationality by taking on a foreign citizenship. Many Moors have asked me about becoming a dual citizen/national of a foreign country in Africa or South America etc. I always explain to them, that according to U.S. Law if any litigation is to take effect with the dual

citizen/national in the U.S. then the Law of the U.S. will take effect and not the nation or country one has become a citizen/national of.

WHY SHOULD MOORS EXPATRIATE?

Moors have been baffled by the prospect of expatriation even though they have nothing to gain from being 14th amendment U.S. Citizens. In fact it is the very instrument that keeps them slaves to a corrupt government and society. Moors have tried to enforce fancy paperwork claiming to have given them some special type of U.S. Status, when the only thing they are doing is making themselves look like fools, and get labeled paper terrorist, all because they choose to ignore the Pure Islam, the Quran, and the Sharia Law.

Moors must expatriate from the United States of America, and repatriate back in the Moorish Empire, or another Islamic Nation. Moors fear expatriation because they fear being stateless. However as long as you are an Islamic Moor you can find a home in any Islamic Nation, and Morocco in particular. They also fear that they will be deported somewhere, however all of this is just false evidence appearing real, because where would they be deported to. It is important for Moors to know that one can relinquish citizenship and retain residency, if that would make them feel better.

Other concerns of Moors are in the nature of retaining benefits from the United States of America, such as Social Security benefits, Disability benefits, etc. Moors should take note that Non Citizen can still retain a Social Security Card & Number, and all of the benefits that they

were supposed to get, so those concerns are not reasons why Moors should not expatriate. Moors should also take note that expatriation doesn't invalidate whatever contracts they have entered into as U.S. Citizens especially those on probation, parole, debts etc. Neither does expatriation exempt Moors from respecting U.S. Laws. Moors should live by the Sharia Law, and the United States of America has treaties with Islamic and Moorish Nations which is covered in the U.S. Constitution through Article 6 which states in part that treaties are the Supreme Law of the Land, which makes treaties apart of the U.S. Law!

A lot of Moors are also concerned with their travel rights, which will be expounded on in later subchapters. Moors should know that there are many remedies for it that exist for expatriates. Moors have also been convinced that they should not expatriate because it is relative to patriarchy and other non-sense such as expatriating will demand that you admit that you were once a citizen based on the premise that you were never a citizen because of the "Dred Scott Case", and the 14th amendment being a fraud because it allegedly was never properly ratified. Moors should expel these ideologies as moot and foolishness, because while they living their life every day as U.S. Citizens through contracting as such they are the ones actually committing fraud by not honoring their ancient foremothers and forefathers.

The Dred Scott court case is irrelevant for Moors to utilize as a means to prove that they were never citizens of the United States of Americas. While it is true African Slave Descendants were never supposed to be U.S. Citizens, the 14th Amendment created a situation where it nullified the Dred Scott case. Many people believe that the 14th

amendment was never properly ratified. Those of the Sovereign Citizen Movement usually make this argument. To a Moor with the proper state of mind, it really doesn't concern us, as to whether or not the 14th amendment was ever properly ratified or not, because we as Islamic Moors were never supposed to be citizens/subjects of a Christian Nation or non Muslim Country. Moors are supposed to retain Foreign National Statue with treaty rights with the United States or any other foreign country or nation in treaty with the Moors or Islamic Nation.

Expatriation is the key for us Moors to get back into the realm in which we belong. A Nation can share territory; however there cannot be a Nation within a Nation. Many Moors say that the Moorish Nation is a Nation within a Nation. This is not true, and is quiet frankly foolishness. The Moors never had a specific nation per se. Moors had an Empire, or more correctly Caliphates and Sultanates, which comprised of numerous Moorish Nations.

HOW CAN THE MOORS BENEFITS FROM EXPATRIATION?

Moors can and will benefit from expatriation because it finally releases Moors from that which ultimately enslaved them. Moors will finally be released from the 14th amendment citizen subject status and the slave status, which they were under before the advent of the 14th amendment citizen subject status. Moors will be able to make the proper claims, declarations and stance that they are Foreign Nationals with respect to the United States and its commercial jurisdiction.

Moors have a few options once expatriating. Moors can become stateless, which is not a bad thing contrary to popular belief and what they have been fed by those they deem as Moorish leaders. The same opportunities that are available to those who are citizens or subjects of a recognized international state are available to expatriates who are stateless. If one does not become a subject or citizen of another Nation-State then he is considered Stateless. To be stateless means that you do not have a state that you claim allegiance to. This also means that you do not come under the protection of any particular state.

This is the general application of statelessness after one expatriate's and in the event they do not become a subject citizen of another state. In relation to Moors the process is a little different. Statelessness as it pertains to Moors allows for a Moor to truly be a Sovereign in his or her own right, and possibly create his or her own emirates, micro nations, and or states. Moors will also have access to the numerous Moorish Treaties that have been denied access to because of their former status as U.S. 14th amendment citizens, which disabled their claim to be generally accepted and recognized as Moors.

The Treaty of Peace & Friendship of 1786 & 1836 with the United States stipulates that Moors subject to the dominions of the emperor of Morocco and Moors not subject to his dominions, this is a clear indication that even if you are not a subject Morocco specifically, that the treaty still applies to you as a Moor in general. Another benefit Moors have once they expatriate is for them to become a subject or citizen of an Islamic nation state, because in Islam and the Quran a Muslim is accepted amongst any and all Muslims.

The key for Moors who expatriate is for them to use the Corporations they have created or are members of, to enter and exit jurisdictions, or nation states throughout the world. In other words a Corporation doing business in the U.S. per se, is considered a foreign corporation if its members are wholly comprised of non-U.S. Citizens. This enable Moors to maneuver through the U.S. jurisdictions (or any other foreign jurisdiction) with their corporation without being a citizen or subject of it.

The only option for Moors who expatriate is to utilize Corporations to maneuver the globe. Moors should lose the entire concept of being employed by someone, corporation, or entity if it is non Moorish or Islamic. Moors should abandon the entire idea of being an employee all together, because Moors are not supposed to be subjects of anyone especially if they are not Muslims. Moors must be industrious which is the only way for a Moor to live.

Moors should create Multinational corporations dealing with trade & export primarily in order to have access to foreign jurisdictions including the U.S. jurisdiction, because this will shield their Status, and align all maneuvering with the business interest solely. In other words once expatriated Moors should only be concerned with commercial interest, as far as where they go and why they go there. This is because Moors will be able to have their corporate immunities in tact, because all of their traveling and maneuvering will be in official capacity and not personal capacity, which essentially creates barriers between you the Natural Flesh & Blood Moor and the corporate entities you will be.

WHAT IS REPATRIATION, AND WHY SHOULD MOORS REPATRIATE?

According to Blacks Law Dictionary 4th edition, Repatriation is “the regaining nationality after expatriating.” When Moors were denationalized and forced into peonage, involuntary servitude from being prisoners of war (P.O.W.’s) as captives of the Christian Nations & Monarchs we essentially lost our nationality through forced expatriation. Therefore Moors must repatriate back into the Moorish Empire (Caliphate & Sultanate), which comprised of many Moorish Nations. We are essentially regaining our nationality that was stripped from us once we repatriate back into the Moorish Empire.

Moors must repatriate back to their “Moorish Nationality” and join the family of nations, and leave behind the civilly dead status in law that has plagued us since our subjugation and colonization. The Moorish Empire was wholly comprised of various Moorish Nations, so there is no single particular Moorish Nation that has ever existed by itself. Therefore the term Moorish Nationality is relative to one of the Moorish Nations. Murakush has established the proper format for Moors to repatriate back into the Moorish Empire, through the Murakush Nation that we have established, and by becoming a member of the Murakush Caliphate and Sultanate of Murakush we have provided Moors with the modernized State, which is a Corporate Islamic State.

Moors should also repatriate because it provides the building blocks and creative avenues to rebuild our Nation in the west or America’s. Without this Moors will never and can never actually obtain and secure the rights that we seek. Moors cannot have one foot in and

one foot out, because it will only cause Moor complications in our efforts for freedom. Subjugated colonized Moor is a Black Person! All the things that Moors seek when they first come into the knowledge of being a Moor is all the reasons why Moors should repatriate back into the Moorish empire, via Murakush. Things such as Travel rights, immunities from colorable law enforcement agents, etc are all the benefits for Moors repatriating back into the Moorish Empire!

Moors must repatriate back into the Moorish Empire or more correctly Caliphate and Sultanate. Just because you abandoned ship doesn't mean the ship is gone. Meaning we as Moors have abandoned our Governments and Nations to be subjects and citizens of colonist. Moors in an organized fashion is the Caliphate and Sultanate.

All entities, Governments, Nations, Countries etc, operates primarily on an admiralty level, which isn't restricted to just interaction on the High Seas, it involves general commerce, especially arrest, detainment etc. This is why the components are always referred to as ships. Town-Ships Member-Ship, and Citizen-Ship. Moors have to get off of the U.S. Ship and get on the Moorish Ship.

An expatriation must be accompanied along with a termination statement; also certain U.S. codes stipulate that U.S. Citizens have the right to terminate contracts. Therefore it is important to exercise the Murakush process of Dissolution which will terminate the contracts attached to the persona you are a surety of before expatriation. We will speak on much of this in late subchapters!

CHAPTER 2

APPLICATION OF SHARIA LAW

WHAT IS THE SHARIA?

The Sharia Law or Al Shari is the ecclesiastical law of Islam. More specifically it is the law that Allah revealed to Prophet Muhammad. The Sharia in totality is the Law from Allah or The One God. Many associates the hadiths as apart of the Sharia, but that is not what was revealed to the Prophet Muhammad. Men wrote the Hadiths, which were stories about the Prophet, and not actually what the Angel Gabriel revealed to the Prophet Muhammad.

Sharīʿah means "way" or "path". The Sharia is the code of conduct and or religious law of Islam. The Sharia is derived from teachings in the Qur'an, and the foundation established by Prophet Muhammad in what is called the Sunnah. Fiqh jurisprudence is an interpretation that applies the Sharia to questions not directly answered by the Quran by using secondary sources.

The Sharia is Allah's law, but there are some discrepancies amongst different Muslim sects as to what is and isn't Allah's Law. There are what you would call modernists, traditionalists and fundamentalists which all have different views of what the Sharia is, as well as those from different schools of Islamic study. Also many Islamic countries and cultures differ on the interpretations of Sharia.

The Sharia has a wide range of application and addresses the same topics that secular law does, including economics, crime, politics, personal issues i.e. hygiene, sexuality, prayer, fasting etc. In official capacity, Islamic judges or Qadis administer the Sharia. Imams have different responsibilities which depends on the interpretation of Sharia.

being used depending on what sect of Muslims are interpreting and using the Sharia. Imams are usually religious community leaders, but they may also be scholars and political leaders also.

Many Islamic nations and countries want to reintroduce the Sharia as the Law of the Land, because it was destroyed as the Law of the Land by European colonists, and in many cases replaced by English law, and other European based laws. Some countries like India have kept the recognition of Sharia to adjudicate on issues relative to personal and community affairs. In some western countries, Muslims are using the Sharia for issues pertaining to family law, and personal disputes for example you have Britain's Muslim Arbitration Tribunal, and also a Family based Sharia Court in Texas USA.

WHY SHOULD MOORS USE THE SHARIA?

Moors have forgotten what has given us the specific tool that allowed us to once be Great rulers of the World. Moors have completely been blinded by the malarkey that has masked our ability to see that which we must use and apply to return to the greatness we once knew of. It is the Sharia Law, which is Moorish Law or otherwise known as Islamic Law issued forth from the Great Quran. Much can be said about whether Moors should use the Sharia Law as a way and means to catapult our return and way back to greatness. However let us first consider a few things.

The Primary Religion (Spiritual Politics & Science) that the Moors utilized was the Sharia Law through Islam. It was this specific system that gave the Moors the tools and capabilities to Conquer Europe and

Civilize it's savage inhabitants. It was the Sharia Law that allowed the Moors to flourish in great wealth, and build Universities, Libraries, Masjids, etc. It was the Sharia Law that kept the Moors in law and order and united against all odds. It was the Moors utilization of the Sharia Law instilled disciplined and accounted for the modern formulation of international law & Treaties. It was when the Moors strayed from the ways of Islam that resulted in the eventual fall of the Moorish Empire.

So why is it that the Moors of today have a problem with Pure Islam and the Sharia? This is greatly due to the fact of the forced Christianization of the Moors through colonization and the Inquisition in Spain. It is a fact that nearly 50% of the Moors brought to the Americas, as Prisoners of War were in fact Muslim by faith. Therefore it stands to reason that Moors of today have forgotten this fact and still retain many of their Christianized ideologies of how they should live in the modern era. Also it is due to the various "Black" Nationalistic & Liberation Movements in the 20th century that has utterly confused Moors as to what pure Islam is and the application of the Sharia.

To understand the Islam and the Sharia in its proper context one would have to understand its foundation as the basis for existing international law. It is indeed fact that the United States of America has created most of Laws regarding diplomatic relations and foreign policy based on its interaction with the Moorish Empire. Without this understanding Moors will be stuck in their Liberation efforts. For example in the 1786-1836 Treaty with the United States of America it stipulates that if a Moor shall kill or wound a citizen of the United States or vice versa that the Sharia Law shall be the basis for how that trial is

to be conducted. When translated into English by Congress they used the term Law of the Country, which in fact false.

Therefore it stands to reason that every time the Moors encounter agents or citizens of the United States of America the Sharia Law is to govern the relations and overall interaction with them legally, commercially, and politically. The United States of America is a Christian Nation, many debate whether that is true, however if it were not it would be no need for the Congress to declare the “Bible” as the infallible word of God. What creates the discrepancy initially when Moors encounter the legal and political system of the United States of America is due to the fact that the Moors are 14th amendment U.S. Citizens. The Quran forbids Muslims to be subjects of Christians, Jews, or non-Muslims. Therefore it is a violation of the Law of the Quran when Moors are citizens of the United States. This is the primary cause of conflict. There is only remedy for this, which I will explain in the next subchapter of Expatriation and Repatriation.

The Quran touches on all of the things Moors encounter in some form or another when interfacing with non-Muslims. Therefore Moors must use the Quran as the primary basis for their authority and law, instead of relying on a Masonic Christian Colonist Document called the constitution as the primary basis for the invocation of the protection of their inherent rights and unalienable rights. Without this Moors do not stand a chance.

There is much controversy in the United States of America and all over the world specifically western and European Countries as to whether they respect, or allow the invocation of the Sharia Law. In

Contrast the Sharia Law invocation in western and European countries is nothing new, because it was once used to subdue them and their savage ways and taught them civilization, commerce, and trade. Therefore the contention is frivolous, and shows that they react out of fear when the Sharia is invoked.

Moors should not fear and utilize the Sharia, as it is our only way to interface with them and be the controllers of own destiny by Allah's will. The Sharia speaks on all the primary issues that plague Moors at this current time, i.e. family, travel, jurisdiction, homes, etc. The final nail in the coffin that will seal the deal for Moors is the establishment up of Sharia Courts to solidify our own legal system, and act as a buffer between their system and ours.

HOW CAN THE SHARIA BE APPLIED?

Many Moors speculate on issue of invocation of the Sharia Law, and whether it is possible to administer in or with the Jurisdiction of the U.S. The fact is the United States promotes religious freedoms, through its Religious Freedoms Restoration Act and Article 1 of the U.S. Constitution. The RFRA was originally applied to Native American Indian Tribes (American Indian Religious Freedom Act Amendments),but has been extended to include all religions and beliefs.

The Official name of this law and its listing is "The Religious Freedom Restoration Act" of 1993, Pub. L. No. 103-141, 107 Stat. 1488 (Nov. 16, 1993), codified at 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4. This Law was passed in1993.It is a U.S. federal law

designed to prevent laws that may substantially burden ones free exercise of their religion. One has to understand that all nations and countries were originally theocratic governments meaning their religion formed the basis for the standards of their laws.

Although many say that the U.S. is not a Christian country, and that there is a separation between church and state, which is in fact not the totality of the truth. The United States Congress has declared the Bible the infallible word of God. If this were not a Christian Country there would be no need to make such a declaration. It should be noted that religious freedoms are not “absolute” and may be burdened when it is in the best interest of the Government.

Therefore it should be understood that using the religious freedoms act is a stepping-stone in establishing the full force and application of the Sharia Law in North America with Expatriated Islamic Moors sharing territories with the U.S. jurisdiction. With Murakush Amerates being established by Moors who are members of Murakush by incorporating Islamic Not for Profit entities i.e. Mosques or Masjids, the invocation of the Sharia Law through Commercial Contracts and business we can begin to impose our will into the jurisdiction, so that the Sharia is enforceable in our jurisdictions.

One taking into consideration being an expatriate and the Entity that is incorporated into an Amerate being wholly owned by Murakush Caliphate of America, whose members are Foreign Nationals, makes the Entire structure of Murakush qualify for Foreign Sovereign Immunities (in accordance with the Foreign Sovereign Immunities Act FSIA), because Murakush membership as far as M.C.A. is not composed of U.S.

Citizens. This is the strategic way of applying the Sharia for benefit of the Moors. The answers lay within acquiring real estate property under the Amerate Jurisdictions so that the more property the Amerate and ultimately the M.C.A. accumulates the more enforceable we can make the Sharia to protect us and give us immunities.

The Sharia can be applied to secure and protect our travel rights, our family issues (Child Support, Foster Care etc), Our debts, Mortgages and many other areas, where Moors become prey to predatory to the U.S. system of oppression. The key to applying the Sharia is first utilizing it to clean up, straighten out and discipline Moors, and to square out our conduct, and get our house in order. Then we must use it to govern the way we deal with Non Moors and Muslims.

Once we have satisfactorily applied the Sharia in such Manner then our Economic and Political Power. As Moors our external interfacing with the U.S. Jurisdiction should be exclusively be done through the Corporations we have created under the M.C.A. and the Amerates. All Internal interfacing should have a separate set of rules that will be published for Murakush members.

In terms of litigation in the U.S. Jurisdiction or other Foreign Jurisdictions in their court's the Sharia must be invoked first and primarily to establish that you only recognize Allah only, and Allah's authority only to have jurisdiction over your person, natural person, and Soul/Sole. The Sharia has an application in almost all facets of our lives, and this is what allows us to remain immune so long as we abide by the Sharia because it protects us from all things secular, and creates a barrier with anyone trying to obtain jurisdiction over your person.

Here are some Surah's and Ayats from the Quran that Moors can apply to commercial, political and legal situations:

Suratul Baqarah [2]

(23) And if ye are in doubt as to what We have revealed from time to time to Our servant, then produce a Sura like thereunto; and call your witnesses or helpers (If there are any) besides Allah, if your (doubts) are true.

(24) But if ye cannot- and of a surety ye cannot- then fear the Fire whose fuel is men and stones,- which is prepared for those who reject Faith.

(27) Those who break Allah's Covenant after it is ratified, and who sunder what Allah Has ordered to be joined, and do mischief on earth: These cause loss (only) to themselves.

(29) It is He Who hath created for you all things that are on earth; Moreover His design comprehended the heavens, for He gave order and perfection to the seven firmaments; and of all things He hath perfect knowledge.

(32) They said: "Glory to Thee, of knowledge We have none, save what Thou Hast taught us: In truth it is Thou Who art perfect in knowledge and wisdom."

(42) And cover not Truth with falsehood, nor conceal the Truth when ye know (what it is).

(78) And there are among them illiterates, who know not the Book, but (see therein their own) desires, and they do nothing but conjecture.

(79) Then woe to those who write the Book with their own hands, and then say:"This is from Allah," to traffic with it for miserable price!- Woe to them for what their hands do write, and for the gain they make thereby.

(97) Say: Whoever is an enemy to Gabriel-for he brings down the (revelation) to thy heart by Allah's will, a confirmation of what went before, and guidance and glad tidings for those who believe,

(98) Whoever is an enemy to Allah and His angels and messengers, to Gabriel and Michael,- Lo! Allah is an enemy to

those who reject Faith.

(100) Is it not (the case) that every time they make a covenant, some party among them throw it aside?- Nay, Most of them are faithless.

(104) O ye of Faith! Say not (to the Messenger) words of ambiguous import, but words of respect; and hearken (to him): To those without Faith is a grievous punishment.

(115) To Allah belong the east and the West: Whithersoever ye turn, there is the presence of Allah. For Allah is all-Pervading, all-Knowing.

(115) To Allah belong the east and the West: Whithersoever ye turn, there is the presence of Allah. For Allah is all-Pervading, all-Knowing.

(136) Say ye: "We believe in Allah, and the revelation given to us, and to Abraham, Isma'il, Isaac, Jacob, and the Tribes, and that given to Moses and Jesus, and that given to (all) prophets from their Lord: We make no difference between one and another of them: And we bow to Allah (in Islam)."

(143) Thus, have We made of you an Ummat justly balanced, that ye might be witnesses over the nations, and the Messenger a witness over yourselves; and We appointed the Qibla to which thou wast used, only to test those who followed the Messenger from those who would turn on their heels (From the Faith). Indeed it was (A change) momentous, except to those guided by Allah. And never would Allah Make your faith of no effect. For Allah is to all people Most surely full of kindness, Most Merciful.

(148) To each is a goal to which Allah turns him; then strive together (as in a race) Towards all that is good. Wheresoever ye are, Allah will bring you Together. For Allah Hath power over all things.

(154) And say not of those who are slain in the way of Allah: "They are dead." Nay, they are living, though ye perceive (it) not.

(177) It is not righteousness that ye turn your faces Towards east or West; but it is righteousness- to believe in Allah and the Last Day, and the Angels, and the Book, and the Messengers; to spend of your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the

ransom of slaves; to be steadfast in prayer, and practice regular charity; to fulfil the contracts which ye have made; and to be firm and patient, in pain (or suffering) and adversity, and throughout all periods of panic. Such are the people of truth, the Allah-fearing.

(178) O ye who believe! The law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty.

(179) In the Law of Equality there is (saving of) Life to you, o ye men of understanding; that ye may restrain yourselves.

(180) It is prescribed, when death approaches any of you, if he leave any goods that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the Allah-fearing.

(181) If anyone changes the bequest after hearing it, the guilt shall be on those who make the change. For Allah hears and knows (All things).

(182) But if anyone fears partiality or wrong-doing on the part of the testator, and makes peace between (The parties concerned), there is no wrong in him: For Allah is Oft-forgiving, Most Merciful.

(190) Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loveth not transgressors.

(191) And slay them wherever ye catch them, and turn them out from where they have Turned you out; for tumult and oppression are worse than slaughter; but fight them not at the Sacred Mosque, unless they (first) fight you there; but if they fight you, slay them. Such is the reward of those who suppress faith.

(193) And fight them on until there is no more Tumult or oppression, and there prevail justice and faith in Allah; but if they cease, Let there be no hostility except to those who practice oppression.

(204) There is the type of man whose speech about this world's

life May dazzle thee, and he calls Allah to witness about what is in his heart; yet is he the most contentious of enemies.

(205) When he turns his back, His aim everywhere is to spread mischief through the earth and destroy crops and cattle. But Allah loveth not mischief.

(206) When it is said to him, "Fear Allah", He is led by arrogance to (more) crime. Enough for him is Hell;-An evil bed indeed (To lie on)!

(207) And there is the type of man who gives his life to earn the pleasure of Allah: And Allah is full of kindness to (His) devotees.

(208) O ye who believe! Enter into Islam whole-heartedly; and follow not the footsteps of the evil one; for he is to you an avowed enemy.

(212) The life of this world is alluring to those who reject faith, and they scoff at those who believe. But the righteous will be above them on the Day of Resurrection; for Allah bestows His abundance without measure on whom He will.

(218) Those who believed and those who suffered exile and fought (and strove and struggled) in the path of Allah,- they have the hope of the Mercy of Allah: And Allah is Oft-forgiving, Most Merciful.

(219) They ask thee concerning wine and gambling. Say: "In them is great sin, and some profit, for men; but the sin is greater than the profit." They ask thee how much they are to spend; Say: "What is beyond your needs." Thus doth Allah Make clear to you His Signs: In order that ye may consider.

(220) (Their bearings) on this life and the Hereafter. They ask thee concerning orphans. Say: "The best thing to do is what is for their good; if ye mix their affairs with yours, they are your brethren; but Allah knows the man who means mischief from the man who means good. And if Allah had wished, He could have put you into difficulties: He is indeed Exalted in Power, Wise."

(224) And make not Allah's (name) an excuse in your oaths against doing good, or acting rightly, or making peace between persons; for Allah is One Who heareth and knoweth all things.

(225) Allah will not call you to account for thoughtlessness in your oaths, but for the intention in your hearts; and He is Oft-

forgiving, Most Forbearing.

(239) If ye fear (an enemy), pray on foot, or riding, (as may be most convenient), but when ye are in security, celebrate Allah's praises in the manner He has taught you, which ye knew not (before).

(255) Allah! There is no god but He,-the Living, the Self-subsisting, Eternal. No slumber can seize Him nor sleep. His are all things in the heavens and on earth. Who is there can intercede in His presence except as He permitteth? He knoweth what (appeareth to His creatures as) before or after or behind them. Nor shall they compass aught of His knowledge except as He willeth. His Throne doth extend over the heavens and the earth, and He feeleth no fatigue in guarding and preserving them for He is the Most High, the Supreme (in glory).

(256) Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things.

(257) Allah is the Protector of those who have faith: from the depths of darkness He will lead them forth into light. Of those who reject faith the patrons are the evil ones: from light they will lead them forth into the depths of darkness. They will be companions of the fire, to dwell therein (For ever).

(263) Kind words and the covering of faults are better than charity followed by injury. Allah is free of all wants, and He is Most-Forbearing.

(275) Those who devour usury will not stand except as stand one whom the Evil one by his touch Hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire: They will abide therein (for ever).

(276) Allah will deprive usury of all blessing, but will give increase for deeds of charity: For He loveth not creatures ungrateful and wicked.

(278) O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers.

(279) If ye do it not, Take notice of war from Allah and His Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be dealt with unjustly.

(280) If the debtor is in a difficulty, grant him time Till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew.

(282) O ye who believe! When ye deal with each other, in transactions involving future obligations in a fixed period of time, reduce them to writing Let a scribe write down faithfully as between the parties: let not the scribe refuse to write: as Allah Has taught him, so let him write. Let him who incurs the liability dictate, but let him fear His Lord Allah, and not diminish aught of what he owes. If they party liable is mentally deficient, or weak, or unable Himself to dictate, Let his guardian dictate faithfully, and get two witnesses, out of your own men, and if there are not two men, then a man and two women, such as ye choose, for witnesses, so that if one of them errs, the other can remind her. The witnesses should not refuse when they are called on (For evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: it is juster in the sight of Allah, More suitable as evidence, and more convenient to prevent doubts among yourselves but if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if ye reduce it not to writing. But take witness whenever ye make a commercial contract; and let neither scribe nor witness suffer harm. If ye do (such harm), it would be wickedness in you. So fear Allah; For it is Good that teaches you. And Allah is well acquainted with all things. If ye are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another, let the trustee (faithfully) discharge his trust, and let him Fear his Lord conceal not evidence; for whoever conceals it, - his heart is tainted with sin. And Allah knoweth all that ye do.

(283) If ye are on a journey, and cannot find a scribe, a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another, Let the trustee (Faithfully) discharge His trust, and let him fear his Lord. Conceal not evidence; for whoever conceals it,- His heart is tainted with sin. And Allah Knoweth all that ye do.

(286) On no soul doth Allah Place a burden greater than it can bear. It gets every good that it earns, and it suffers every ill that it

earns. (Pray:) "Our Lord! Condemn us not if we forget or fall into error; our Lord! Lay not on us a burden Like that which Thou didst lay on those before us; Our Lord! Lay not on us a burden greater than we have strength to bear. Blot out our sins, and grant us forgiveness. Have mercy on us. Thou art our Protector; Help us against those who stand against faith.

Suratu Ali Imran [3]

(3) It is He Who sent down to thee (step by step), in truth, the Book, confirming what went before it; and He sent down the Law (of Moses) and the Gospel (of Jesus) before this, as a guide to mankind, and He sent down the criterion (of judgment between right and wrong).

(18) There is no god but He: That is the witness of Allah, His angels, and those endued with knowledge, standing firm on justice. There is no god but He, the Exalted in Power, the Wise.

(28) Let not the believers Take for friends or helpers Unbelievers rather than believers: if any do that, in nothing will there be help from Allah: except by way of precaution, that ye may Guard yourselves from them. But Allah cautions you (To remember) Himself; for the final goal is to Allah.

(102) O ye who believe! Fear Allah as He should be feared, and die not except in a state of Islam.

(103) And hold fast, all together, by the rope which Allah (stretches out for you), and be not divided among yourselves; and remember with gratitude Allah's favour on you; for ye were enemies and He joined your hearts in love, so that by His Grace, ye became brethren; and ye were on the brink of the pit of Fire, and He saved you from it. Thus doth Allah make His Signs clear to you: That ye may be guided.

(104) Let there arise out of you a band of people inviting [al-muroona] to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity.

(110) Ye are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in Allah. If only the People of the Book had faith, it were best for them: among them are some who have faith, but most of them are perverted transgressors.

(111) They will do you no harm, barring a trifling annoyance; if they come out to fight you, they will show you their backs, and no help shall they get.

(118) O ye who believe! Take not into your intimacy those outside your ranks: They will not fail to corrupt you. They only desire your ruin: Rank hatred has already appeared from their mouths: What their hearts conceal is far worse. We have made plain to you the Signs, if ye have wisdom.

(119) Ah! ye are those who love them, but they love you not,- though ye believe in the whole of the Book. When they meet you, they say, "We believe": But when they are alone, they bite off the very tips of their fingers at you in their rage. Say: "Perish in you rage; Allah knoweth well all the secrets of the heart."

(176) Let not those grieve thee who rush headlong into Unbelief: Not the least harm will they do to Allah: Allah's plan is that He will give them no portion in the Hereafter, but a severe punishment.

(179) Allah will not leave the believers in the state in which ye are now, until He separates what is evil from what is good nor will He disclose to you the secrets of the Unseen. But He chooses of His Messengers (For the purpose) whom He pleases. So believe in Allah. And His messengers: And if ye believe and do right, ye have a reward without measure.

(186) Ye shall certainly be tried and tested in your possessions and in your personal selves; and ye shall certainly Hear much that will grieve you, from those who received the Book before you and from those who worship many gods. But if ye persevere patiently, and guard against evil,-then that will be a determining factor in all affairs.

(200) O ye who believe! Persevere in patience and constancy; vie in such perseverance; strengthen each other; and fear Allah; that ye may prosper.

Suratu An Nisa [4]

(1) O mankind! reverence your Guardian-Lord, who created you from a single person, created, of like nature, His mate, and from them twain scattered (like seeds) countless men and women;- reverence Allah, through whom ye demand your mutual (rights), and (reverence) the wombs (That bore you): for Allah ever

watches over you.

(2) To orphans restore their property (When they reach their age), nor substitute (your) worthless things for (their) good ones; and devour not their substance (by mixing it up) with your own. For this is indeed a great sin.

(3) If ye fear that ye shall not be able to deal justly with the orphans, Marry women of your choice, Two or three or four; but if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess, that will be more suitable, to prevent you from doing injustice.

(4) And give the women (on marriage) their dower as a free gift; but if they, of their own good pleasure, remit any part of it to you, Take it and enjoy it with right good cheer.

(5) To those weak of understanding Make not over your property, which Allah hath made a means of support for you, but feed and clothe them therewith, and speak to them words of kindness and justice.

(6) Make trial of orphans until they reach the age of marriage; if then ye find sound judgment in them, release their property to them; but consume it not wastefully, nor in haste against their growing up. If the guardian is well-off, Let him claim no remuneration, but if he is poor, let him have for himself what is just and reasonable. When ye release their property to them, take witnesses in their presence: But all-sufficient is Allah in taking account.

(7) From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large,-a determinate share.

(8) But if at the time of division other relatives, or orphans or poor, are present, feed them out of the (property), and speak to them words of kindness and justice.

(9) Let those (disposing of an estate) have the same fear in their minds as they would have for their own if they had left a helpless family behind: Let them fear Allah, and speak words of appropriate (comfort).

(11) Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the

inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) the mother has a sixth. (The distribution in all cases ('s) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, Al-wise.

(12) In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allah; and Allah is All-knowing, Most Forbearing.

(15) If any of your women are guilty of lewdness, Take the evidence of four (Reliable) witnesses from amongst you against them; and if they testify, confine them to houses until death do claim them, or Allah ordain for them some (other) way.

(16) If two men among you are guilty of lewdness, punish them both. If they repent and amend, Leave them alone; for Allah is Oft-returning, Most Merciful.

(19) O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness, that ye may Take away part of the dower ye have given them,-except where they have been guilty of open lewdness; on the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing, and Allah brings about through it a great deal of good.

(20) But if ye decide to take one wife in place of another, even if ye had given the latter a whole treasure for dower, Take not the least bit of it back: Would ye take it by slander and manifest wrong?

(22) And marry not women whom your fathers married,- except what is past: It was shameful and odious,- an abominable custom indeed.

(23) Prohibited to you (For marriage) are:- Your mothers, daughters, sisters; father's sisters, Mother's sisters; brother's daughters, sister's daughters; foster-mothers (Who gave you suck), foster-sisters; your wives' mothers; your step-daughters under your guardianship, born of your wives to whom ye have gone in,- no prohibition if ye have not gone in;- (Those who have been) wives of your sons proceeding from your loins; and two sisters in wedlock at one and the same time, except for what is past; for Allah is Oft-forgiving, Most Merciful;

(24) Also (prohibited are) women already married, except those whom your right hands possess: Thus hath Allah ordained (Prohibitions) against you: Except for these, all others are lawful, provided ye seek (them in marriage) with gifts from your property,- desiring chastity, not lust, seeing that ye derive benefit from them, give them their dowers (at least) as prescribed; but if, after a dower is prescribed, agree Mutually (to vary it), there is no blame on you, and Allah is All-knowing, All-wise.

(25) If any of you have not the means wherewith to wed free believing women, they may wed believing girls from among those whom your right hands possess: And Allah hath full knowledge about your faith. Ye are one from another: Wed them with the leave of their owners, and give them their dowers, according to what is reasonable: They should be chaste, not lustful, nor taking paramours: when they are taken in wedlock, if they fall into shame, their punishment is half that for free women. This (permission) is for those among you who fear sin; but it is better for you that ye practise self-restraint. And Allah is Oft-forgiving, Most Merciful.

(29) O ye who believe! Eat not up your property among yourselves in vanities: But let there be amongst you Traffic and trade by mutual good-will: Nor kill (or destroy) yourselves: for verily Allah hath been to you Most Merciful!

(33) To (benefit) every one, We have appointed shares and heirs to property left by parents and relatives. To those, also, to whom your right hand was pledged, give their due portion. For truly Allah is witness to all things.

(34) Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the

husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all).

(35) If ye fear a breach between them twain, appoint (two) arbiters, one from his family, and the other from hers; if they wish for peace, Allah will cause their reconciliation: For Allah hath full knowledge, and is acquainted with all things.

(36) Serve Allah, and join not any partners with Him; and do good- to parents, kinsfolk, orphans, those in need, neighbours who are near, neighbours who are strangers, the companion by your side, the wayfarer (ye meet), and what your right hands possess: For Allah loveth not the arrogant, the vainglorious;

(37) (Nor) those who are niggardly or enjoin niggardliness on others, or hide the bounties which Allah hath bestowed on them; for We have prepared, for those who resist Faith, a punishment that steepes them in contempt;

(58) Allah doth command you to render back your Trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice: Verily how excellent is the teaching which He giveth you! For Allah is He Who heareth and seeth all things.

(59) O ye who believe! Obey Allah, and obey the Messenger, and those charged with authority among you. If ye differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination.

(65) But no, by the Lord, they can have no (real) Faith, until they make thee judge in all disputes between them, and find in their souls no resistance against Thy decisions, but accept them with the fullest conviction.

CHAPTER 3

MOORISH TREATIES

WHAT ARE TREATIES?

Treaties are an express agreement in accordance with international law, which is entered into by those with the capacity to do so in international law, in particular sovereign states, international organizations, or Supranational Organizations. Other names for treaties are convention, protocol, international agreement or even covenant. No matter the different terminology being used to describe what kind of treaties there are, all of the other names attributed to treaties are recognized as of agreements in accordance with International Law.

In many ways treaties are like contracts. Contracts and Treaties are very much similar because it evidences at least two willing parties that assume obligations among themselves. If either party fails to live up to their end of the bargain or obligations they can be held liable in accordance to international law. In contract law it would be considered a breach of contract. Treaties are the officially expressly written agreements that stipulate the use is to legally bind both parties. Treaties are an official document that expresses an agreement in words; which in many cases precedes some form of ceremony to recognize the enacting and signing of the agreement.

Bilateral treaties are created between two different states and or entities. Many bilateral treaties have more than one party or signatories. For example there are bilateral treaties between Switzerland and the European Union. After the Swiss rejected the European Economic Area agreement. Each of the treaties had seventeen parties or signatories. However the aforementioned are bilateral

treaties and not multilateral treaties. Multilateral treaties are created between several countries. In which it establishes duties, rights and obligations between all parties and signatories. Most multilateral treaties are regional treaties.

This might be the most important aspect of Jurisprudence that Moors should be acquainted with in a most intimate form. Treaties are the backbone of International Law and Law in general. It was a Muslim who wrote the initial treatise on International Law. Under the Sharia Treaties are considered Grants. There are many treaties between the Moors and the Christians, which are the actual basis for most if not all of the International Law that exist in modern times.

There are varying types of treaties. There are specifically treaties entitled Peace & Friendships, which are treaties that are created to end wars, and open up trade and commerce with the parties involved. These types of treaties usually have a favorite nations clause within them, which stipulates that one of the parties (usually the disadvantaged party) will be treated as that of a most favored nation from the other party (usually the advantaged party).

This can be seen with the Treaty of Peace & Friendship 1836 between the Sultan of Morocco and the United States of America. This was a reconfirmation of the Treaty of Peace & Friendship that the Sultan's father sealed 50 years earlier in 1786. In the 1786 treaty the Sultan Sidi Muhammad stipulated the Treaty was to be valid for 50 years. In 1836 the United States asked the new Sultan to reseal the treaty his father granted, however he insisted that he couldn't, so he

drafted up the same treaty and added an expiration clause which allows the parties the end of each 50 year interval to terminate the treaty.

WHAT ARE THE MOORISH TREATIES AND ARE THEY STILL VALID TODAY?

Certain treaties are applicable for Moors to utilize and some are not relevant any more. Whether certain treaties are relevant or not, it is necessary to know them because they layout the clear history that is relative to the Moors. There are various treaties between European Christian Powers and Islamic Moorish Powers. The following is a list of most Moorish Treaties with European Christian Powers:

1. **TREATY between GREAT BRITAIN AND TRIPOLI (Signed MARCH 5th 1675-6) "ARTICLE XX.** That no subject of the King of Great Britain, &c., shall be permitted to turn Turk or Moor in the City and Kingdom of Tripoli (being induced thereunto by any surprisal whatsoever) unless he voluntarily appear before the Dey or Governor with the English Consul's druggerman, three times in twenty-four hours space, and every time declare his resolution to turn Turk or Moor."
2. **TREATY between GREAT BRITAIN AND TRIPOLI (Signed JULY 19th 1716) "ARTICLE XXI.** That no subject of the King of Great Britain, &c., shall be permitted to turn Turk or Moor in the City and Kingdom of Tripoli (being induced thereunto by any surprisal whatsoever) unless he voluntarily appear before the Dey or Governor with the English Consul's druggerman, three times in twenty-four hours space, and every time declare his resolution to turn Turk or Moor."
3. **TREATY between GREAT BRITAIN AND TRIPOLI (Signed SEPTEMBER 19th, 1751) ARTICLE XIX.** That no subject of the King of Great Britain shall be permitted to turn Turk or Moor in the City and Kingdom of Tripoli, (being induced thereunto by any surprise whatever,) unless he voluntarily appear before the Dey or Governor, with the English Consul's druggerman, three times in three days, each day declared his resolution to turn or Moor.

4. **TREATY between GREAT BRITAIN AND TRIPOLI (Signed at Sale, APRIL 8th, 1791) ARTICLE X.** No English subject or person under English protection, shall be permitted to turn Musselman, being induced thereto by surprise, unless he voluntarily appear before the Governor with the British Consul or his Deputy three times, three days, and each day declare his resolution to turn Mahometan. **ARTICLE XI.** Any English subject, or person under English protection, turning Moor, and having in his possession, goods or estate the property of other English subjects: all such books, papers, goods, or estate, shall positively be delivered to British Consul or his deputy, that they may be conveyed to their true owners.
5. **TREATY between GREAT BRITAIN AND MOROCCO JAN 23RD 1721**
6. **TREATY between GREAT BRITAIN AND MOROCCO Jan 14 1728,**
7. **TREATY between GREAT BRITAIN AND MOROCCO July 10 1729**
8. **TREATY between GREAT BRITAIN AND MOROCCO Dec 15 1734**
9. **TREATY between GREAT BRITAIN AND MOROCCO Jan 15 1750**
10. **TREATY between GREAT BRITAIN AND MOROCCO Feb 1 1751**
11. **TREATY between GREAT BRITAIN AND MOROCCO July 28 1760**
12. **TREATY between GREAT BRITAIN AND MOROCCO May 24 1783**
13. **TREATY between GREAT BRITAIN AND MOROCCO April 8th 1791**

There are many more Treaties between European Christian Powers and Islamic Moorish Powers. Much more research has to be done in this regard, but the aforementioned treaties are enough in this volume to encourage Moors to look deeper and study more of the relationship of Great Britain and Morocco, as it ultimately shapes the relationship of the Moors and the United States of America, which is simply a British Dominion.

The Most important Treaty relative and relevant to Moors today is the 1836 Treaty of Peace & Friendship, (between the United States of America & Morocco) because it is still in force, and is the longest unbroken Treaty. According to the United States Department of State

this treaty is still in force. It amazes me how many Moors have gone to court over the years and have never invoked the treaty and its protections with the exception of Murakush Top Officials.

Most Moors have been trying to invoke the protections of the 14th amendment, while at the same time disowning its applicability to them while litigating in court. Moors have invoked sovereign citizen rhetoric about the straw man, and redemption process, along with U.C.C. rhetoric, etc. It is not that some of these methodologies don't have their time and place, but how could these methods be invoked before the treaties are invoked.

The Moors have never invoked the Moorish treaties throughout the years, while litigating in court and this makes it very difficult to address the Moorish treaties in court. Thankfully Myself Khalifah Shyaam and Sultan El Aemer of the Murakush Caliphate and Sultanate have done so in order to get it on record that we are standing under that protection. A large reason why the Moors haven't invoked the treaties in court or litigation is because they are truly U.S. citizens/subjects therefore they have no ability to invoke the treaties, because as U.S. citizens it has no applicability to them that would be in favor of their Moorish Identity.

The U.S. Legal system has steadily sought to remove Moors from the protection of our treaty rights. By severing its applicability it allows them to get away with breaking and violating treaty law and international law as it specifically pertains to Moors. This is all the more reason why we must continue to invoke the Moorish Treaties, because it

is our only link to the truth about our past. This is why History and Law is a monolithic subject, because one cannot exist without the other.

HOW SHOULD MOORS APPLY THE TREATY?

There are numerous ways that Moors can apply the Treaty. In order to effectively apply the treaty of peace and friendship of 1836 Moors must have a few things established. 1) Murakush has incorporated the Murakush Caliphate of America in Morocco; therefore it adds an extra layer of immunities and protections as a foreign corporation to the U.S. jurisdiction. (Note: Foreign to the U.S. Jurisdiction doesn't mean foreign to the land itself in North America, it means foreign to the U.S. entity).

This makes all expatriated members qualify for Foreign Sovereign Immunities as well as obtaining access to the protections of the Treaty of Peace & Friendship, along with the various free trade & tax agreements that Morocco has with the United States of America. 2) Treaties are Grants under the Sharia Law; therefore the treaty cannot be invoked without the application of the Sharia. The Moors must apply the treaties in ways that removes the restrictions on our commercial activities as was set forth in the treaty.

Moors must apply the articles that are relative to the situation that Moors deem necessary to use them for. For example U.C.C. 9-311 stipulates that if a treaty secures a certain right, then the treaty supersedes the necessity to apply a U.C.C. Also Article 4 of the Treaty of Peace and Friendship says that if Moors encounter citizens and agents of the United States that a signal or pass shall be given and the Moors

shall be exempt from examination, meaning that Moors are exempt from.

Does the U.S. Courts recognize Moors as having Treaty Rights?

As it pertains to Moors in within the United States commercial jurisdiction and the U.S. Courts; currently do not recognize Moors as have treaty rights, and here's why. Moors are currently under the U.S. Citizen 14th amendment status, and carry the label Black, Negro, and African American from the Federal Directive 15 registry on race classifications. In regards to the 1836 Treaty of Peace and Friendship there is no provisions for "Blacks, Negros, and African Americans" in this treaty. Therefore Moors will have to drop the citizenship and the federal directive 15 application to themselves in order to have recognition as Moors with treaty rights.

Now once this is done, it will still be an uphill battle because of the massive fraud the United States has committed in regards to the forced servitude and subjugation of the Moors, and their willingness to continue to keep this fraud going. Many of the Moors have brought civil actions to the courts throughout the decades to try and substantiate their claims as Moors. However most of these Moors were not expatriated and did not invoke the Treaty of Peace and Friendship.

I myself Khalifah Shyaam Al Muharrir, and Sultan El Aemer Al Mujahdeed have been the only Moors in America to invoke the rights of this treaty, and we are now currently at the appellate level over this issue. Our next stop will be the U.S. Supreme Court, and then the Royal Court of Morocco. If Moors would have invoked this treaty long ago, we

would have more case law from the U.S. Courts to examine and get a well defined view point as to the U.S. Courts overall attitude towards Moors in America claiming treaty rights.

Most Moors have been concerned with invoking some convoluted ideology in the courts about some type of imaginary special status they have Moorish U.S. Citizens which doesn't actually exist. Currently we only see what the U.S. District Court of New Jersey attitude is toward this treaty and its application to Moors in America, and from what we gather they are trying to construe the treaty in their benefit, meaning the treaty was for their benefit when doing business on the high seas on the Northern Coast of Africa and the Mediterranean Sea. We know this is false but this however gives us great insight as to how to properly invoke it this treaty with respect to our rights as Moors.

The true remedy to our recognition as Moors with treaty rights will not come from the U.S. Courts but rather the Legislative or Executive Branches of the U.S. Government. This approach makes it most necessary for us to apply this book for our commercial benefit so that we may effectively influence politics to force the U.S. to stop this massive fraud and lies as it pertains to our treaty rights as Moors. Treaties that are not self-executing need the country of which the treaty was made with; to petition on the individual of concerns behalf. However the 1736-1836 Treaties were not concluded with the Kingdom of Morocco, but the Sultan of Morocco.

When one researches the origins and the language of the treaty you will find that they are indeed self-executing, and extends to Moors who are not subjects of the Dominions of the Sultan of Morocco. In the

treaties with between the Sultan of Morocco and Great Britain it stipulates, "All Moors are vessels of the empire." This fact extends even to our dealings with the United States because the U.S. is nothing but a British Dominion. It is a fact that the U.S. continues to abide by English Law, so according to that Law which treaties are included in, All Moors are vessels of the Moorish Empire.

CHAPTER 4

UNDERSTANDING JURISDICTION

WHAT IS JURISDICTION?

According to Blacks Law Dictionary 4th edition Jurisdiction is the authority, capacity, power or right to act, carry into execution or enforce sentence, judgment or decree, compel parties to come before the court or body, declare, expound, administer or apply the law, it is the power of him who has the right of judging. Basically

The word jurisdiction comes from the Latin word *ius, iuris* which means "oath" and *dicere* means "to speak", which is the power and authority that is given to a legal body or to a political leader to deal with and make determinations on legal issues and, by implication, to administer and facilitate justice within a defined area of responsibility. This term also denotes the geographical area or subject matter that the authority applies to. Jurisdiction is based on conflicting laws, constitutional laws, treaties, and international law

Jurisdiction is a multifaceted word. There are various kinds of jurisdiction, but the common thread in them all in a legal context, is who has authority to prosecute, or administer a particular subject matter. Before Subject matter can be established Personam Jurisdiction must be established. Meaning one's person must be found to be subject to the assuming authority in order for it to be determined if one is indeed subject to the jurisdiction.

There are various forms of jurisdiction. In the U.S. there are 3 main forms of jurisdiction. Some of the fundamental questions

pertaining to law are whether or not a court has the jurisdiction to adjudicate or preside in a case. Jurisdictional questions involve 3 main points:

1. Is there is jurisdiction over the person (*in personam*),
2. Is there is jurisdiction over the subject matter, or res (*in rem*), and
3. Is there is jurisdiction to render the particular judgment sought.

Jurisdiction in many ways means, "power". Courts, may have jurisdiction pertaining to matters only to the extent in which it was given by the Constitution, and or legislation. The question as to whether or not a court has the power to determine jurisdictional questions is in itself a jurisdictional question. This is a legal question referred to as the "jurisdiction to determine jurisdiction."

Subject matter jurisdiction pertains to the court's having the authority to determine issues in controversy i.e. contracts, or a civil rights. State courts have what is called general jurisdiction, which means they have jurisdiction over any controversy with the exception of those controversies prohibited by state law and those which may be allocated to the federal courts of which exclusive jurisdiction apply i.e. bankruptcy & international treaties (28 U.S.C. § 1334). Federal courts have limited jurisdiction. They can only have jurisdiction over cases pertaining to the scope defined by in Article III Section 2 of the U.S. Constitution and Congressional statutes (28 U.S.C. §1251, §1253, §1331,

§1332).

DO THE MOORS HAVE THEIR OWN JURISDICTION

Once a Moor expatriates, dissolve all former contracts, repatriates back into the Moorish Empire/Caliphate and Sultanate and respects the laws of the Quran and the laws of others (only those that the Quran allows), which is confirmed through Moorish Treaties, he or she is operating by divine law, and therefore subject only to the jurisdiction of Allah Solely.

Not being a subject to the U.S. Jurisdiction does not mean Moors have a license to disrespect or not abide by that, which applies, to Moors. As stated in previous subchapters, Treaties are considered apart of U.S. Law and Supreme Law according to U.S. Constitution, therefore when the U.S. is dealing with Moors or vice versa it should be according to the Quran and the Sharia as the Treaty says.

This is the main reason why Moors must open up our own Sharia Courts so that we may be able to have Jurisdiction and authority over our own issues civil and criminal. Sharia courts have already been established in the U.S. where Texas does business. This trend will only increase and get stronger the more that Muslims in general are overcome by the need to live by Allah's law and not man's law which has led to the current corruption crisis in the Christian United States of America.

To date Moors in America do not have their own Jurisdiction with respects to the United States of America. Moors in general are under the

14th amendment classification and one cannot have a nation or jurisdiction as such without the authority of the U.S. Government. In another sense it is possible for Moors to have their own private commercial jurisdiction, which Moors have never established until Murakush! A commercial jurisdiction is a jurisdiction that is controlled by a commercial entity. This is the wave of the present and future. From the current activity in the world one can clearly see that private corporations are replacing the relevancy of corporate nation states, as many nation states are bankrupt and are turning to private corporations to administer and control the functions that were previously the duties and obligations of the public governments.

As stated in earlier chapters a micro-nation or microstate can be established, and would serve to do well in the beginning stages of nation building and the establishment of a state. However the best alternative to this is creating a Commercial jurisdiction that serves the needs of the private members of said corporation. A private security firm must also be incorporated in order to provide security for the jurisdiction that is to be established.

There are plenty of private security firms, that has more lateral than government militaries and police forces, this is because they are private security companies and they operate much like government themselves. Many of these entities have immunities and impunity. Many Moors will scoff at this notion that is being presented, however Moors in America have not been successful with creating, building a nation, or establishing a state, much less a jurisdiction and venue.

This is the last and only option that can be employed by Moors. If Moors want to one day fully establish a Nation State, or rebuild the imaginary one they have been taught existed, then it must first start from this level at its foundation and root, because there is not enough unity nor competency among the Moors to rise to such an astronomical level over night! We have done the groundwork in Murakush to establish this; the rest is up to the Moors to decide if they want to build on firm foundation or shaky ground.

All public governments must adhere to private property and from private property the commercial jurisdiction must be invoked! The only solution for Moors in the 21st century is to operate in a corporate commercial capacity as a unit! The Moors joining Murakush at the ground level must establish the jurisdictions. By establishing the jurisdictions listed in the Murakush Constitution.

CHAPTER 5

TRAVEL RIGHTS & TRAFFIC STOPS

TRAVEL RIGHTS VS. DRIVING PRIVILEGES.

There is much controversy surrounding the topic of travel rights verses the privilege to drive. Many Moors have employed case law from the U.S. case law and other sources to attempt to establish their claim of their "RIGHT TO TRAVEL." For starters the U.S. constitution doesn't protect the right to travel, but travel rights are secured by the U.S. constitution. Secondly if Moors are going to invoke U.S. case law and the U.S. constitution as the primary basis for their travel rights, then it can only be from the position of a U.S. Citizen 14th amendment person, which will in fact render them non-Moors and will relinquish their position as a Moor when arguing such points.

The privilege to drive is granted by the state to its residents and this the bottom-line to it. If one is a 14th amendment U.S. Citizen and or resident of a certain state without any foreign national status then they are required to have what their authorities tell them they must have. There is a difference in U.S. Citizens using the public highways for commercial purposes or private non-commercial purposes, and this difference is what has been misunderstood by many Moors. Here are some case law rulings in regards to the commercial and private non commercial uses of the public highways for travel purposes.

"The use of the highway for the purpose of travel and transportation is not a mere privilege, but a common fundamental right of which the public and individuals cannot rightfully be deprived." Chicago Motor Coach v. Chicago, 169 NE 221.

"The right of the citizen to travel upon the public highways and to transport his property thereon, either by carriage or by automobile, is not a mere privilege which a city may prohibit or permit at will, but a common law right which he has under the right to life, liberty, and the pursuit of happiness." *Thompson v. Smith*, 154 SE 579.

"The right to travel is a part of the liberty of which the citizen cannot be deprived without due process of law under the Fifth Amendment." *Kent v. Dulles*, 357 US 116, 125.

"The right to travel is a well-established common right that does not owe its existence to the federal government. It is recognized by the courts as a natural right." *Schachtman v. Dulles* 96 App DC 287, 225 F2d 938, at 941.

***Hertado v. California*, 110 US 516, the U.S. Supreme Court states very plainly: "The state cannot diminish rights of the people."**

***Bennett v. Boggs*, 1 Baldwin 60, "Statutes that violate the plain and obvious principles of common right and common reason are null and void."**

"The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler*, 263 US 22, at 24.

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 US 436, 491.

"The claim and exercise of a constitutional right cannot be converted into a crime." *Miller v. US*, 230 F486, at 489.

"There can be no sanction or penalty imposed upon one because of this exercise of constitutional rights." *Sherer v. Cullen*, 481 F 946.

"...For while a citizen has the right to travel upon the public highways and to transport his property thereon, that right does not extend to the use of the highways...as a place for private gain. For the latter purpose, no person has a vested right to use the highways of this state, but it is a privilege...which the (state) may grant or withhold at its discretion..." *State v. Johnson*, 245 P 1073.

Moors must keep in mind that the case law presented applies to 14th Amendment U.S. Citizens. Therefore it is no way to honestly and truthfully apply these particular court rulings without being a U.S. Citizen. This case law is non applicable to expatriated Moors. Moors who remain U.S. Citizens can only apply their Moorish heritage as a National Origin, and not a Nationality. Expatriated Moors can utilize other avenues to secure their Travel Rights. The sole basis for Moors travel rights when dealing with the United States jurisdiction is Article 4 of the 1836 Treaty of Peace and Friendship with Morocco and the United States of America. Moors that are members of Murakush can utilize our Murakush Travel Certificates, Murakush Driver Licenses, & Passports.

Many Moors think that have a license is taking their rights from them or they simply look at it as a bad thing. A license is permission and it can come in the form of a certificate. The fact is not that licenses are bad, and negative law, but that you have permission or a license from an entity, or government, or country and nation that is not of your own as Moors. If Moors have an entity that they are members of, then it is only correct for them to have permission from their nation or entity in the form of a license.

Licenses or permission must be utilized in this New World because if you seek the protection of that entity, especially if you are seeking the protection of that nation or entity, then you should have permission from that nation or entity. Moors should not claim they do not need a license from their own nation or entity, and then seek the protection from their nation or entity if and when they find themselves

in a situation where they need to communicate certain particulars to the contrasting foreign jurisdiction and venue.

Expatriated Moors must first understand and know what the U.S. Federal Laws pertain to travel and the International Laws that pertain to travel, once they have acquired foreign national status, or stateless status:

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS□Article 13.□•(1) Everyone has the right to freedom of movement and residence within the borders of each state.□•(2) Everyone has the right to leave any country, including his own, and to return to his country.□

THE UNITED NATIONS□**INTERNATIONAL COVENANT ON**□**CIVIL AND POLITICAL RIGHTS**□Article 12□Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.□Everyone shall be free to leave any country, including his own.□The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.□No one shall be arbitrarily deprived of the right to enter his own country.

USC TITLE 8 CHAPTER 12 SUBCHAPTER I § 1101□30 The term “passport” means any travel document issued by competent authority showing the bearer’s origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign

UNITED STATES CODE□**TITLE 5 PART I CHAPTER 5 SUBCHAPTER II § 551**□Definitions(8)□“license” includes the

whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission

TITLE 18 > PART I > CHAPTER 13 > § 245 Federally protected activities (2) any person because of his race, color, religion or national origin and because he is or has been — (E) traveling in or using any facility of interstate commerce, or using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air; (c) Nothing in this section shall be construed so as to deter any law enforcement officer from lawfully carrying out the duties of his office; and no law enforcement officer shall be considered to be in violation of this section for lawfully carrying out the duties of his office or lawfully enforcing ordinances and laws of the United States, the District of Columbia, any of the several States, or any political subdivision of a State. For purposes of the preceding sentence, the term “law enforcement officer” means any officer of the United States, the District of Columbia, a State, or political subdivision of a State, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a State, or a political subdivision of a State.

The term “vessel,” as defined in Black’s, 6th Ed., is noted as being a legal description not limited to ships or vessels engaged in commerce pursuant to case law like *St. Hilaire Moyer v. Henderson*, C.A. Ark., 496 F.2d, 973. The definition of the term is also provided in the United States Code: **TITLE 18 > PART I > CHAPTER 1 > § 9** Vessel of the United States defined The term “vessel of the United States”, as used in this title, means a vessel belonging in whole or in part to the United States, or any citizen thereof, or any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof. The “vessel of the United States” includes a citizen of the United States. It is a debtor business entity that is subject to the reorganization of the corporation. It is subject to Admiralty Maritime law, which is also known as Law Merchant. This law is the origin of the Law of Negotiable Instruments now codified in the Uniform Commercial Code, adopted in every State as well as the District of Columbia. It is the law that identifies a Debtor and

a Holder in Due Course... As is reflected in the codes of some States, like Oregon's Rules of Court, Rule 1005-1, the DEBTOR'S CURRENT NAME "shall include the debtor's full and correct name in capital letters."

There are other alternatives Expatriated Moors can apply in order to add extra layers of immunities and barriers. There are International Drivers Licenses that Moors can acquire in order to effectuate the security of their travel rights while traveling through the United States Jurisdiction. This will allow Moors to use in conjunction to their foreign national status an instrument that is a foreign origin to the United States Jurisdiction. Moors should familiarize themselves with the Geneva Convention On Road Traffic, The Vienna Convention on Road Travel and the Multilateral Road Traffic Convention.

HOW SHOULD MOORS HANDLE TRAFFIC STOPS?

Moors should be brutally honest with them selves and stop the nonsense of fighting against something when they know they are in the wrong. For starters if Moors find themselves in a traffic stop, and they know they are U.S. Citizens with driver licenses, and birth certificates which basically proves that they are subject for what they trying not to be subject under, then they should just pay their tickets, because it will be more costly fighting the traffic case and filing mountains of papers with the court than to simply just pay the ticket.

With that being said, Moors in general have to understand that most of their concepts regarding the right to travel etc is based on the Bigoted Sovereign Citizens Movement, which Moors in general are not apart of but has become associated with, because of the arguments they

have been presenting to the court. There is nothing inherently wrong with rescinding contracts such as the drivers license however it really doesn't take effect if Moors are still 14th Amendment U.S. Citizens. If Moors find themselves trying to invoke some kind of immunity or protection for the purpose of covering up a breach of contract with the Department of Motor Vehicle i.e. driving with suspended license, or unpaid traffic tickets, then Moors are only setting themselves up for failure. Moors should reconcile those particular issues before trying to invoke Moorish defenses for traffic issues.

I will give two scenarios in which Moors may have a traffic stop or tickets. One a 14th Amendment U.S. Citizen Moors. Two expatriated Moors. If Moors who are members of Murakush, who are still 14th amendment U.S. Citizens, but has all the proper credentials from Murakush, and has filed the proper and essential paperwork; get into a traffic stop, the first thing that the Police Officer will ask for a drivers license, registration, and insurance. That is their standard operating procedure to ask for those instruments. At this point this where things are the most pivotal.

The car should be registered under the Murakush Amerate Jurisdiction, or under an entity formed by the member under the Murakush Amerate Jurisdiction, or the Murakush Caliphate of America or the Sultanates of Murakush. The Insurance for the car should be done this way as well. Therefore if a Moor finds himself in a circumstance with the car, its registered and insured under a corporation that the Moor is member, the key is to own nothing, but control it instead.

This will lessen the damage that can be done to your person, and you as a Natural Man or Woman. Now in regards to the License, Moors who are still 14th amendment U.S. Citizens, but are members of Murakush would present a driver license under their New Name, with their rights reserved on the card. However before presenting a Motor Vehicle driver license they would present their Murakush Credential specifically the S.M. Corporate ID. They should not instantly present the State issued Driver License until they absolutely have to.

Many Moors may be shocked at this solution, but there isn't really much a 14th amendment U.S. Citizen can do in regards to traffic stops. Invoking the Sovereign Citizen jargon has only made police across the U.S. more prompt to shoot and or arrest or detain people. Traffic tickets and fines are purely commercial, and help the township or city keep revenue streaming.

If a ticket is issued to a member of Murakush, Murakush will either pay the ticket for the member from the Murakush traffic fund that all requesting members must participate in, or Murakush will instruct the member to challenge the jurisdiction of the traffic court, the validity of the ticket, but refusing to contract within 72 hours and numerous other means that Murakush has procured for its members.

If an Expatriated Moor who is a member of Murakush may find himself in a traffic stop, then the expatriated Moor has more at his or her disposal to invoke. This Moor once asked for license registration, and insurance, the Moor must do the same thing as the 14th amendment U.S. citizen in regards to the registration and insurance. Both of those instruments should be documented as belonging to Murakush or an

entity created by said member of Murakush, because the member will not lose any property, because they cannot confiscate it from an entity or corporation. In regards to when the Moor is asked for a license, the expatriated Moor can A) Present a Motor Vehicle driver license with their new identity, because motor vehicles issue driver licenses to foreign nationals also. B) Present an International Driver License. C) Present Murakush Traveller Certificate Card D) Present Murakush Driver License Card. E) Present a Murakush Corporate ID card F) Present a Murakush Passport.

All states have statutes that allow religious orgs, or foreign entities and governments to have liaisons established with the Department of Motor Vehicles so that the Identification instruments and license instruments can be recognized by Police Officers when conducting traffic stops. Murakush has established this and is working to establish this in more states that are going business in North America with the help of the spread of the Murakush Amirs, creating Murakush Amerates! Here are some quotes from the Quran that Moors should invoke when dealing with Traveling:

15:65 "Then travel by night with thy household, when a portion of the night (yet remains), and do thou bring up the rear: let no one amongst you look back, but pass on whither ye are ordered";

16:80 "It is Allah Who made your habitations homes of rest and quiet for you; and made for you, out of the skins of animals, (tents for) dwellings, which ye find so light (and handy) when ye travel and when ye stop (in your travels); and out of their wool, and their soft fibres (between wool and hair), and their hair, rich stuff and articles of convenience (to serve you) for a time";

- 18:60 "Behold, Moses said to his attendant, "I will not give up until I reach the junction of the two seas or (until) I spend years and years in travel";
- 20:77 "We sent an inspiration to Moses: "Travel by night with My servants, and strike a dry path for them through the sea, without fear of being overtaken (by Pharaoh) and without (any other) fear";
- 22:46 Do they not travel through the land, so that their hearts (and minds) may thus learn wisdom and their ears may thus learn to hear;
- 29:20 Say: "Travel through the earth and see how Allah did originate creation;
- 30:9 Do they not travel through the earth, and see what was the end of those before them;
- 30:42 Say: "Travel through the earth and see what was the end of those before (you): Most of them worshipped others besides Allah";
- 34:18 Between them and the Cities on which We had poured our blessings, We had placed Cities in prominent positions, and between them We had appointed stages of journey in due proportion: "Travel therein, secure, by night and by day";
- 84:19 Ye shall surely travel from stage to stage;

CHAPTER 6

ARRESTS & DETAINMENT

WHAT IS THE DIFFERENCE BETWEEN AN ARREST

According to Blacks Law Dictionary 4th Edition an Arrest means “1. A seizure or forcible restraint. 2. The taking or keeping of a person in custody by legal authority, esp. in response to a criminal charge; specif., the apprehension of someone for the purpose of securing the administration of the law, esp of bringing that person before a court. From the definition that an arrest is based on a criminal complaint, and police are given legal authority by the U.S. government to carry out their obligation established in legal statute, therefore if one is doing what police deems is a criminal offense.

According to U.S. & English Law the Sheriff is the only person within a county to have arrest powers. These arrest powers are delegated to municipal jurisdictions i.e. cities and towns within the county through the charter granted by the state that establishes the cities and towns. There has been a situation in Florida this year of 2011 where a township dismantled their entire police force, the patrolling duties converted back to the sheriff's office.

Moors should know that an arrest is only legal if a Judge or Magistrate signs the arrest warrant complaint. Most arrest conducted through traffic stops is actually detainments. The police officer detains you, take you to the police station, and then wait for the arrest warrant complaint to be signed by a judge or magistrate. This is what they call processing. Processing also includes them verifying your identity, which includes determining jurisdiction, by verifying whether you are a U.S.

Citizen, resident, if you have a conviction, arrest record or outstanding warrants, by verifying photos and fingerprints.

Your compliance through this process is everything that gives them jurisdiction. Regardless of what they say fingerprints and photos are completely voluntary, they cannot lawfully or legally force you to give them up, because they are apart of your body, and belong to you. Usually the justification for them forcing you to give them up is due to the fact that you are property of the U.S. Government and the State you are a resident of, which renders your body their property and that yours. This achieved through adhesion contracts, and your admittance to being in their jurisdiction. Jurisdiction has nothing to do with land, but more so the entities that operate on a given territory or land.

If they cannot charge you with a crime, or verify your identity they must hold you for 72 hours and then release you. However the way they get around this is by charging you with “obstruction of justice” if you refuse to comply with their demands of processing. Then they will put you in solitary confinement, until you give them what they want. Then release you to see a magistrate or judge.

Once they have processed you at the police station, they send you to the county jail to await a hearing from a magistrate or judge. If you do not comply with their demands of processing at the police station then they will simply send you to the county jail, and let them sort through whatever they couldn't get from you voluntarily. This process and procedure is not the exact same everywhere, but it is however the basic standard operating procedure on how they deal with detainments, arrest, and processing.

HOW SHOULD MOORS HANDLE ARRESTS

It is important for Moors to know that the main component is to not speak to police. Police are trained to inquire, which is the root word for inquisition, which is what they did in Spain when they dispelled the Moors in 1492. It is known as the “Spanish Inquisition,” which essentially is an investigation. People make the mistake of trying to explain themselves to police and law enforcement in general when under questioning, and do not realize that what they are saying is going to be used against them.

When Moors become aware of the scheme that is going on, and the nature of their true rights, pride and ego sets in immediately, so when they get involved in a traffic stop or any other kind of situation that might warrant an arrest, they begin to blab their mouths when it is not necessary to explain to the police that you are “this and that” and your right are “this and that” because it doesn’t matter.

9 times out of 10 the police officer doesn’t even know what you are talking about, and now because Moors have been invoking “Sovereign Citizen” and “UCC Redemption” strategies, the police officer already have a prejudice against you, because they are now taught and trained to view people who make such arguments, or seem to make such arguments as “domestic terrorist.” The Supreme Court this year of 2011 has ruled that police officers do not need to read you your rights anymore. It doesn’t mean they are not your rights, it just means they do not have to make you aware of them any longer in their arrest procedure.

Also the Supreme Court has ruled that the police officers do not need a warrant to bust in your home or any home if they smell marijuana odor coming from the house or property, because knocking or warning that they are at the door may prompt the perpetrator to get rid of the evidence. There are many types of arrest situations, but I will only speak on one kind of arrests, which results from traffic stops, which is very common to the Moors.

If a Moor is pulled over and fits into one of the categories listed in the Travel Rights chapter, then this is how you must conduct yourself. Once pulled over and the police officer asks for your driver license registration and insurance. Present your instruments to him or her. Try as often as possible to always have other Moors or someone travelling with you so you can have witnesses and record the incident as it happens. Once you present your instruments, ask what is the probable cause for the stop

If the police officer continues to inquire about the instruments or if you ever used another name etc., inform him that you are going to invoke your rights to remain silent, and say nothing. Police officer want to arrest Moors every chance they encounter Moors, so do not give them extra ammo by running and blabbing your mouth. If he or she is asking more questions he is only doing so, so that he can eventually make an arrest. Police officers have it in their discretion if they want to arrest someone or write tickets, they do not have to if they do not want to.

If he is asking those questions chances are he wants to arrest you, therefore be prepared for it. If he asks you to step out the car, do so cautiously yet say nothing. Everything you need to say should be said to

the magistrate, unless there are some health issues you must forewarn them of. If you are to speak, make sure you are asking the questions (although I still suggest you remain quiet), about their lawful authority, badge number etc. Relax and do not do any thing or make any gestures that can be seen as threatening, because they are looking for a reason to shoot you, or assault you. If you are being handcuffed make it clear you are to be handcuffed with your hands in the front of you and not the back of you.

Once at the police station remain silent. I will not make any suggestions on if you should give up your fingerprints and photo, which is strictly up to the Moor who is in this particular circumstance. The difference between complying and not complying could make the difference between you leaving this situation sooner than later. Remember complying is giving them jurisdiction, however you can always assert they it was given under threat duress and coercion.

CHAPTER 7

FAMILY COURT & CHILD SUPPORT

HOW DOES FAMILY COURT OPERATE & CHILD SUPPORT OPERATES?

Many Moors are getting caught up in the child support system of family court largely due to being dead beats, and choosing incompatible women to produce children with. Many were unconscious about the truth concerning their identity and overall history that was hidden in plain sight before making the decision to have children. While I do not advocate Moorish men not taking care of the children they have produced. I do understand the burden it has placed on many good Moorish men who do take care of their children and have fallen out of favor with their mother of their child, which may have prompted her to take action in the nature of revenge against him.

It should be understood by Moors that child support in the case of the mother collecting child, really doesn't help the mother or the child, because the state agencies that administer these services usually takes the largest percentage for itself. Child support can come from two different angles. For one if your child's mother was on welfare or public assistance for a period of time, the state will come after you for what it paid to the mother for the years that she was on public assistance.

The second one is if your child's mother goes to the courts to get a court order that you pay out of your check or income a certain portion to the State, which then turns and pays the mother. The issue of child support in general comes from a breakdown of civilization amongst the Moors and colonization. According to the Sharia if a husband and wife divorce or mother father separate, the child must go to the father. A lot

Moorish Men don't want to necessarily take the child, but would rather just pay the child's mother instead.

This all stems from the birth certificate and the citizenship. The birth certificate specifically gives the state Governments jurisdiction over your child, primarily because you are under their jurisdiction as well. The parents of children are considered legal guardians, which the state can take away your children anytime they deem necessary. The birth certificate is a receipt or proof that the contract was made. The contract is the application that was completed for the child's birth certificate. All of this is what ultimately gives the court the right to come after the parents for child support.

Furthermore adhesion contracts are added once the parents apply for the social security card. Family court is established so that it may reach determinations regarding the families that are within their jurisdiction. This is because the parents are not fit to handle and mediate problems of their own, so a third party court is formed to establish the outcomes of such controversy.

Family court will usually side with the Mother especially in cases where Moors are involved because the U.S. social political systems view Moors as a matriarchal community, because single mothers rear most of the homes. Family court usually looks at the work history, current employment, arrest or conviction record, income taxes, expenses and other mitigating factors that determine how they will rule on a given case regarding child support, or custody battles. The parameters including citizenship and race also have a lot to do with the ultimate decisions of the court in cases that appear in family court.

HOW SHOULD MOORS HANDLE CHILD SUPPORT ISSUES?

When it comes to child support Moors should really take note that unless they have expatriated and dissolved the contracts that bind them to the obligation of the state. This does not mean that you are not supposed to take care of the children you helped produced, this simply means that if you want the state out of your business then you must take it through all those steps to make sure you are not liable. It is usually the woman of a Moorish man that gets the state involved with child support cases.

By either applying for and receiving public assistance, or asking the court to force the father to pay child support monthly. The best solution to this problem is before either takes place Moors should have written and signed contracts with the mothers of their children, so that the State doesn't have to be brought into the midst. Moors could have given up the legal right to be considered a parent, or legal parentage at the time of the child's birth, but not years later. That is a more extreme solution, but can only be carried out in the early stages.

Most Moors are employed on a "9-5" job, which means that the child support payments are coming directly out of their checks, so there is nothing they can really do about it. Another option is to quit your 9-5, create a company, and employ yourself part time, therefore there will only be able to take out what you pay yourself part time, and the money made by the company is safe, because of the corporate veil. I must repeat, remember this is not about not taking care of the child you help produced, you must not put a financial limit to what you will do to

support your child. This is about removing or diminishing the role of the state in your affairs on how you support your child.

The Sharia is the ultimate solution, and establishing Sharia courts within the jurisdictions created by Murakush Emirs and Murakush Emirates. Muslims where the State of Texas does business have established a Sharia court that presides over family issues. This is what Moors need to do to in order to establish stronger foundations so that they will not become victims of the state prying into their family issues and business. Moors have to be ready to take control of their families and not become just a paycheck.

As stated earlier the Sharia says that if man and woman separate that the child must go with the father. If you must make custody battle as a counter to child support then that must be done, and you are supposed to use the sharia to do so, simply by arguing Islamic Law over secular law. The More Murakush Masjids that are established the easier these functions become.

Another point that was brought up earlier, is the fact that In the case of the state charging for you for child support due to the mother of your child accepting public assistance at one time or another. Then it is almost impossible to clear your self from that, unless you dissolve, liquidate and expatriate and terminate those contracts that bind you to the state, because the money has been paid already in state benefits and they want it back.

The state perceives it as if you would have been in the home and supported the woman at least then she would not need public assistance. So he being on public assistance is only a reflection of how

poorly you are doing your job in the eyes of the state. If The child support situation is based on the mother of your child taking you to court to get more money, then that is something you have to work out with her, and negotiate with her on. You should work some kind of contract out where you give her a certain amount of money monthly directly in written contract, because she doesn't even get the full amount that the court is taking from you, so it is in your best interest to work that out in such manner!

CHAPTER 8

DEBTS, MORTGAGES & FORECLOSURES

HOW DO MOORS GET OUT OF DEBT?

Moors must come to understand what debt is and how it works. I will not spend too much time on this topic, because I have written about it in length in the book “The Solution: Blueprint To Moorish Liberation.” If you have not purchased that book then you should, because it explains the essential components to clearing up debt and credit. The Dissolution and Liquidation process is a process that includes debt elimination. The Primary way Moors should look at getting out of debt is by utilizing the Sharia.

The Quran forbids the practice of usury or interest, which all financial institutions and schemes have as their central core. If one pays attention to the financial markets especially in the U.S. you will find that all that is spoken of is the interest rates, or interest in general. This is a predatory practice, which is outlawed in Islam, because it breeds slavery, and perpetual servitude.

Moors who are members of Murakush are provided a letter to send their creditors, and inform them that this debt is a burden on the free exercise of our religion because we are forbidden to participate in such practices. This strategy and tactic has worked several times, and is proven to produce the desired results, not because it is a scam trying to avoid your debts, but if they are carrying with the debt and interest and they will not remove the interest then the entire debt is invalid.

This is only applicable for Moors who truly practice Islam. This is the principal way for Moors to get out of debt. There are many other avenues Moors could take and should take. Some can be found in the

Solution book and others can be found in the Murakush Courses provided on our website www.murakushsultanate.com.

HOW DO MOORS STOP THEIR HOMES FROM GETTING FORECLOSED?

Moors must apply the same principals given on the previous page, however foreclosures procedurally are somewhat different. The massive fraud has been uncovered in the passing years, as to how the major banks have defrauded everyone with crappy mortgage deals and then sold them off to other investors in the international markets. These bundled packages were called mortgage-backed securities, which the sub-prime mortgage scam was predicated upon. Which targeted so called Blacks and Latinos.

The first thing Moors must know as a basic rule of law, is that if you sign a mortgage instrument you are essentially giving the bank the property, by agreeing to pay them x amount of years to occupy it. So you never become an owner of it, just a tenant/occupant. Once your signature is on the instrument it activates it's value, and makes it negotiable. As soon as this is done the mortgage note is passed off to investors along with other mortgages, this is called "securitization."

The key for Moors is to understand that the original note that was sold to another bank, and usually the bank that is trying to foreclose on you, will most likely not have the original note. This is all basic knowledge, however you must apply the rules of administrative remedy before you begin suit. This can take as long as you want it to. You can

use every 7-business day, or every 30 days to give them a time frame to respond to request for the note. After you established that they do not own the original note, then you bring a counter claim or cross claim in the form of a civil action against the bank trying to foreclose on the home. Once this is done you must also file a discrimination suit on the grounds of religious prejudice and burdens because the Sharia forbids you to participate in these types of financial programs where interest and usury is tantamount to the mortgage process.

STUDY MATERIAL

This material has is a compilation of various treaties, case law constitutions, statutes, and other miscellaneous material to further advance your studies and knowledge base.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Universal S. A. Bey
Plaintiffs,
v.

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:

: PETITION FOR PERMISSION TO

APPEAL

State of New Jersey et. al.,
State of Delaware et. al.,

: (Order No.11-1317 RBK)
: (Civil No.11-211-SLR)

Defendants, Civil Action No. _____

JURISDICTION & VENUE

1. This is a Petition for Permission to Appeal authorized by Rule 5 of the Federal Rules of Appellate Court. The court has jurisdiction under U.S.C. 28 Section(s) 1292 and 1295. Appellant's claims for judicial, injunctive relief and civil remedies are authorized by 28 U.S.C. § 2284, 42 U.S.C. § 2000bb-1(C) and Rules 8 and 27 of the Federal Rules of Appellate Procedure and Rule 60 of the Federal Rules of Civil Procedure.
2. The United States Court of Appeals for the third Circuit is an appropriate venue under 28 U.S.C. Section 1294 because the appeal is in regards to orders, judgments or decisions from the United States District Courts for the District of Delaware and the District of New Jersey.

II. FACTS

3. Appellant claimed defendants violated their rights under the Constitution (Art.1, 3 and 6, 1st and 4th amend.) and 1786-1836 Treaties of the United States, Religious Freedom Restoration Act (R.F.R.A.), 42 U.S.C. §§ 2000bb to 2000bb-4 and the *International Religious Freedom Act* of 1998 (Public Law 105–292, as amended by Public Law 106–55, Public Law 106–113, Public Law 107–228. Appellants were not able to neither obtain a pro bono attorney nor satisfy any retainer’s fees requested by any attorneys to represent it in the matters brought before the District Courts. Appellant filed with its Civil Complaints Motions for Appointment of Counsel seeking the Courts to appoint it representation and a Motion to proceed with a Private Temple Bond to satisfy any fees or Cost. Appellants received an Order from the United States District Court for the District of Delaware filed the 29th of April, 2011. Appellants received an Order form the United States District Court for the District of New Jersey. Although the District of Delaware recognized receipt of a Temple Bond which they referred to as a Church Bond appellants Motions were denied.
4. Appellant received an Order from the United States District Court for the District of New Jersey. Although the District of New Jersey documented receipt of a Temple Bond, they disturbingly referred to it as a “*Home Made Bond*”, the \$350.00 filing fee was received by the District of New Jersey transaction date was 5/11/2011, appellant’s Motions were denied and the action was terminated without prejudice. The United States District Court of New Jersey issued a 300

page opinion on May 13, 201, 1 which Appellants believe to be bias and discriminative to their National Origin(s) and Nationality of the individuals involved with the action. Appellants also believe the District Court misconstrued the 1786-1836 of the United States treaties of the United States and construed them only in favor of Citizens of the United States as well as actually changing the text of particular articles by added citations in brackets where they are not in the original Classical Arabic or the English translation by by Dr. C. Snouck Hurgronje, of Leiden. The 300 page Opinion burdened and prohibited the appellant's use of their Moorish Attributes and/or Islamic Names.

5. The District Court of New Jersey stated or ruled: *"The term "Barbary Treaties" refers, collectively, to the treaties executed during the 1795-1836 period between the United States and post-medieval North African "city-states," namely Algiers (currently, the capital of Algeria), Tripoli (currently, the capital of Libya) and Tunis (currently, the capital of Tunisia), and between the United States and the post-medieval Sultanate of [*52] Morocco, which then was part of the Ottoman Empire. The treaties were executed in response to the ill of piracy rampant during 15th to 18th centuries in the coastal waters and ports of the North Africa and the high "protection fees" charged by North African rulers for maintaining peace in their coastal waters and ports. See Frank Lambert, the Barbary Wars: American Independence in the Atlantic World (2007) [It appears this author is the source of their interpretation]. These treaties went through numerous superceding reconfirmations and full/partial terminations resulting from: (a) political turmoils*

underwent, during the post-ratification centuries, by these city-states and by the Moroccan sultanate; (b) the "personal-assurances-of-the-particular-North-African-ruler" unique nature of these treaties, which required superceding re-confirmations by each successor to the throne; and (c) political decisions made by the United States. See, e.g., 1795 U.S.T. LEXIS 6, 1815 U.S.T. LEXIS 4, 816 U.S.T. LEXIS 6 (noting superseding developments as to the Treaty with Algiers and its turning obsolete upon Algiers becoming French province); 1805 U.S.T. LEXIS 1 (noting termination of the Treaty with Tripoli in 1912, upon United States recognition of Italian sovereignty [*53] over Libya); 1836 U.S.T. LEXIS 10 (noting termination in part of the Treaty with Morocco on Oct. 6, 1956); Ruth E. Gordon, *Some Legal Problems with Trusteeship*, 28 Cornell Int'l L.J. 301, 347 (1995) (noting loss of independence by the Moroccan sultanate in 1912, after the Treaty of Fez); *emph typestyle="un">[>>](http://avalonlaw.yale.edu/18th_century/bar_1786n.asp#n4)* (explaining the need for superceding confirmations of the Treaties due to their "personal-assurances" nature).

2. *Reference to the Barbary Treaties Is a Unique Identifying Feature*
While discussion of substantive validity/invalidity of constitutional challenges raised in the Complaint at bar falls outside the scope of the Court's inquiry in the Instant Matter, one substantive [*79] issue appears so pertinent to the analysis at hand that it warrants resolution. This unique issue spurs from a single feature present virtually in every submission made by the Murakush Group: this feature is the litigants' nearly invariable general invocation of the Barbary Treaties (and,

specifically, of the Treaty of Morocco) in the context of challenging their searches, arrests, confinements, criminal proceedings, bails, fees, convictions, etc. that took place entirely within the United States territory and were effectuated by the law enforcement and judicial officers of the States of New Jersey, Delaware, Virginia, Florida, etc. 26 Although the Murakush Group's submissions invariably refer to the Barbary Treaties, as a collective, the exact text and context of these references indicates the litigants' interest in invoking solely the Treaty with Morocco. All provisions of the Treaty with Morocco are, however, wholly inapposite to the type of challenges -- known within in federal litigation practice as "prisoners' litigation" -- that were raised by the Murakush Group over the years and are now at bar. As noted *supra*, the Treaty with Morocco was executed, as all Barbary Treaties, with [*80] the aim to: (a) eliminate, or at least curtail, the ill of piracy plaguing the coastal waters and ports of the post-medieval North African geopolitical bodies; and (b) eliminate, or at least halt the rise of, the fees charged by the rulers of these geo-political bodies to the then-developing American merchantry for keeping "peace" in the ports and coastal waters subject to their dominion. See Frank Lambert, *The Barbary Wars: American Independence in the Atlantic World* (2007). It is, therefore, hardly surprising that the bulk of the provisions of the Barbary Treaties: **(a) focused on the issues of maritime/admiralty, war, merchant purchases/sales and akin matters; and (b) were set forth in terms of protections of "vessels."** The use of the term "vessel" by the bulk of Articles of the Barbary Treaties seemingly prompted the Moorish Group to "creatively" refer to themselves and/or to their bodies/torsos as

"vessels," using such phrases as "solar vessel," "divine vessel," "foreign vessel," etc., seemingly in hope to tie the Treaties to their life persons. This curious semantical ploy, however, cannot transform those Articles of the Barbary Treaties that were set forth in terms of "vessels" [*81] into provisions applicable to natural human beings, since the context of each one of these Treaties unambiguously indicates that the term "vessel" could, did and does apply only to non-human crafts designed for navigation on water (or, in the context of modern technologies, perhaps to non-human crafts designed for navigation in or on water, as well as on coastal lands and/or air). **No Article in the Barbary Treaties, including in the Treaty with Morocco** -- so long as a particular Article speaks in terms of a "vessel" -- **can possibly be invoked in any habeas or civil rights claim** addressing the issues of arrest, detention, incarceration, bailing, prosecution, conviction, etc. of any human being, regardless of where these transactions are conducted. See, e.g., *The Nereide*, 13 U.S. 388, 3 L. Ed. 769 (1815) (detailing the nature of potentially viable "vessel" claims); *Henfield's Case*, 11 F. Cas. 1099, F. Cas. No. 6360 (C.C.D. Pa. 1793) (same). This is particularly obvious in the Treaty with Morocco, a short accord consisting of mere twenty-five Articles, with only three Articles addressing not on acts of war, vessels, merchant activities, etc. but other acts against human beings. See 1836 U.S.T. LEXIS 10, arts. 6, 20 and [*82] 21. These three Articles read:

Article 6. *If any Moor shall [obtain physical control over and] bring citizens of the United States [] or their [possessions] to [the Kingdom of Morocco], the [se*

United States] citizens shall immediately be set [free] and the[ir possessions shall be] restored [to them. Analogously], if any Moor [who is] not a [citizen of Morocco], shall [obtain physical control over] any . . . citizens of [the United States] or their [possessions] and bring the[se United States citizens] into any of the ports of [the Kingdom of Morocco,] the[se United States citizens] shall be immediately released [and, moreover, they shall] be considered . . . under [the personal] protection [of the King of Morocco].

***Article 20.** If any of the citizens of the United States, or any persons under their protection, shall have any dispute with each other [while being situated in the Kingdom of Morocco], the [United States] Consul shall [act as a tribunal and] decide between the parties.*

***Article 21.** If a citizen of the United States should kill or wound a Moor . . . , the law of the Country[, i.e., the United States] 28 shall take place, and equal justice shall be rendered [during proceedings [*83] held in the Kingdom of Morocco, to both United States citizens and Moors, and] the [United States] Consul assisting at the trial 28 The Treaty with Morocco, being an ancient accord, does not contain a specific Article containing a definition of the term "Country."*

However, the context of the Treaty makes the meaning of the term abundantly clear, since all references to the sultanate of Morocco, as a geopolitical body, are made in terms of "our Country," with possessive pronoun "our" invariably

*preceding the noun "country." This mode of reference indicates that the term "Country," used without possessive pronoun "our," refers to the United States. None of these three Articles could be read as applying to habeas or civil rights claims raised by the Murakush Group against state police or prosecutorial officers, or judges, or to the claims based on the Murakush Group's arrests, incarceration, bailing, prosecution, convictions, etc. See, e.g., Seals-Bey v. Cross, 2010 U.S. Dist. LEXIS 87794 (N.D. W. Va. July 23, 2010) ("the Treaty of Morocco offers no grounds for relief" to the litigant who raised "prisoners'-litigation"-like claims challenging the litigant's conviction on the grounds [*84] of his self-proclaimed "Moorish" nationality, his assertions that he is not a United States citizen and his allegations that he was "improperly designated as the res" because his criminal proceedings were conducted while referring to him under his actual name rather than under his self-fancied "attribute").*

"Indeed, Article Six of the Treaty was fashioned to prevent undue enslaving of American citizens (and also to prevent theft of American citizens' goods) in the Mediterranean by pirating Moors who were either of Moroccan or of non-Moroccan domicile and who were taking undue advantage of the passage ways, trade, accommodations, etc. in Moroccan coastal waters and ports. This Article is facially inapplicable to the Murakush Group, since their arrests, searches, criminal proceedings, incarcerations, etc. did not occur anywhere near the coastal waters and ports of the Kingdom of Morocco and, to top it all off, these

arrests, searches, criminal proceedings, incarcerations, etc. were not conducted by "Moors." 29 See Thomas H. Lee, *The Safe-Conduct Theory of the Alien Tort Statute*, 106 Colum. L. Rev. 830, 876 (2006) (under the "Treaty with Morocco, . . . the locus of the [T]reaty partners' [*85] interaction [was] confined to the Mediterranean and therefore not within the [geographical] jurisdiction of the United States"); accord *Pitt-Bey v. District of Columbia*, 942 A.2d 1132 (D.C. 2008) (a self-proclaimed "Moorish" minister has no diplomatic immunity protection from criminal proceedings conducted within the United States territory). 29 Moreover, since members of the Murakush Group keep insisting that they are not United States citizens, the Article Six has another reason not to have any relevance to them. Analogously, Articles Twenty and Twenty-One of the Treaty are facially inapplicable to the Murakush Group, since they had no right to consular assistance, and no United States citizen killed or wounded them in the Mediterranean: they were arrested, searched, detained, criminally prosecuted, bailed, etc. well within the borders of the United States, and -- in any event -- equal justice was already available to them under the safeguards of the Fourteenth Amendment's Equal Protection Clause. 30 See *United States v. Casey*, 2005 U.S. Dist. LEXIS 39785 (E.D. Mo. July 21, 2005) (the decision to criminally prosecute a self-declared "Moor" is constitutionally independent of any consular [*86] interest in assistance) (citing *United States v. Ortiz*, 315 F.3d 873, 886 (8th Cir. 2002); *United States v. De La Pava*, 268 F.3d 157, 165-66 (2nd Cir. 2001); *United States v. Emuegbunam*, 268 F.3d 377, 391-94 (6th Cir. 2001); *United States v. Lombera-Camorlinga*, 206 F.3d 882, 885-86 (9th Cir. 2000); *United*

States v. Cordoba-Mosquera, 212 F.3d 1194, 1195-96 (11th Cir. 2000)). 30 Moreover, since members of the Murakush Group keep insisting that they are not United States citizens, Articles Twenty cannot possibly have no relevance to them, since the Article focuses solely on interactions between United States citizens. Consequently, [HN11] all "prisoners'-litigation"-like claims challenging any events associated with arrests, searches, detention, incarceration, prosecution, conviction, etc. that occur within the United States' actual geographical territory (and, especially, if these events involved individuals who reside within that territory) cannot possibly implicate any provision of the Treaty with Morocco. Therefore, all such "prisoners'-litigation"-like claims invoking the Barbary Treaties, either collectively or individually, are necessarily frivolous which, in turn, means that any pleading [*87] asserting such claims is not bona fide. 31 **In the event the Murakush Group disagrees with this Court's reading of the Barbary Treaties or the Treaty with Morocco, the Murakush Group shall not seek this Court's reconsideration. [HN12] Disagreement with the district court's decision is an inappropriate ground for a motion for reconsideration: such disagreement should be raised through the appellate process. See *Assisted Living Associates of Moorestown, L.L.C., v. Moorestown Tp.*, 996 F. Supp. 409, 442 (D.N.J. 1998) [*89] (citing *Birmingham v. Sony Corp. of America, Inc.*, 820 F. Supp. 834, 859 n.8 (D.N.J. 1992), *aff'd*, 37 F.3d 1485 (3d Cir. 1994); *G-69 v. Degnan*, 748 F. Supp. 274, 275 (D.N.J. 1990)); see also *Drysdale v. Woerth*, 153 F. Supp. 2d 678, 682 (E.D. Pa. 2001) ([HN13] a motion for reconsideration may not be used as a means to reargue unsuccessful theories). Therefore, if the**

Murakush Group disagrees with this Court's reading of the Barbary Treaties or the Treaty with Morocco, their sole remedy is appeal to the Court of Appeals for the Third Circuit. ”

III. THE QUESTIONS THEMSELVES

1. Where does the State of New Jersey derive the authority to punish non citizens for possessing World Service Passports derive?
2. Where does the State of New Jersey derive the authority to charge Non citizens with violating False Drivers License statues because they possess a World Service Passport?
3. According to Baldwin v. Franks, 120 U.S. 678, 7 S. Ct. 656, 32 L. Ed. 766 (1887) treaties are as binding within the territorial limits of the United States as they are elsewhere throughout the dominion of the United States, which article of the treaty states that it is only applicable to the Mediterranean?
4. Where U.S. Const. states Supreme Law of the Land does that mean the Mediterranean?
5. Which article of the treaty states that it is not applicable within the territorial borders of the United States?
6. If the circuit court has already ruled that Moors have the right to change their names through the Moorish Science Temple of America, why does the District Court of New Jersey continue to dwell on our Moorish names or Islamic attributes being legal or not?
7. Where does the District Court of New Jersey derive the authority to determine if a Moors name is legal or not?

8. According to *Kennett v. Chamber*, 55 U.S. 38, 14 How. 38, 14 L. Ed.316 (1852) treaties are binding not only upon the government, but upon every citizen. Are State prosecutors and State level Judges not Citizens of the United States?
9. According to Article 6 of the United States Constitution all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. Why wouldn't State officials be bound to uphold the 1786-1836 treaties of the United States?
10. When the Constitution says "Supreme Law of the Land" is that not applicable to the territorial boundaries or borders of the United States?
11. According to *Foster v. Neilson*, 27 U.S. 253, 7 L. Ed. 415 (1829) a Self executing Treaty is a municipal law as well as an international contract Why wouldn't the Municipal officers be subject to the 1786-1836 treaties of the United States.
12. When a Municipal Corporation Officer stops a Moor traveling in a land Vessel or automobile is that not an Interruption? Is an automobile not a Vessel that travels on Land?

IV. REASONS WHY APPEAL SHOULD BE ALLOWED

PROVISIONS, RULES AND STATUTORY AUTHORIZATIONS

10. This matter is a continuation of the Sought of justice to Liberties being restrained and effects being taken from the Moorish corporate officers-agents of the Appellant by Citizens of the United States bearing Civil Offices as well, and their failure to restore effects and Liberties in accordance with Article 6. Of the 1786-1836 treaties of the

United States - Sultanate of Morocco. See Article 6: *“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.”*

A Shari'afian court would not discriminate and accept the already filed Bond as a proper form of payment of cost. In pursuance to Qur'an (2:280) *“And if the debtor is in a difficulty, grant him time till it is easy for him to repay. But if you remit it by way of charity, that is best for you if you only knew.”* In pursuance to Exodus 22:25: *“If you lend money to people, to the poor among you, you shall not deal with them as a creditor; you shall not extract interest from them.”* *“Every loan that derives a benefit (to the creditor) is riba (usury).”* This hadith is reported by Harith ibn Abi Usamah in his Musnad. (Usmani, para 99).

11. In pursuance of Article 21 of the 1786-1836 treaties of the United States-Sultanate of Morocco, if a Citizen of the United States should injure a Moor, or on the contrary if a Moor shall injure a Citizen of the United States the rules of the Sacred Mohammedan Law shall be regarded as the Rules of Decision. According to *Original Classical Arabic* and English Certified translations by Dr. C. Snouck Hurgronje, of Leiden and traditionally formal under the Sharia. See 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 Tryal, and if any Delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever." "Both parties agreed to be governed by the Sacred Muhammadan Law in the event of a dispute between Citizens of the United States and any Moors, the Circuit courts should interpret the Sacred Mohammedan Law to resolve these issues (See U.C.C. § 1-301 Parties' Power to Choose Applicable Law). These issue's are sought to determine whether or not the trust were violated according to the 1786-1836 Treaties of the United States-Morocco and The Constitution of the United States. Reasonably since Moors are being prosecuted in Federal and State Courts and are forcibly given Counsel, they should on the contrary be able to bring Civil Actions in the Federal and State Courts and be appointed Counsel.

12. Appellant requested Injunctive Relief in all matters before the District Courts. In Pursuance to 28 U.S.C. § 1657 (Priority of civil actions) (a) Notwithstanding any other provision of law, each court of the United States shall expedite the consideration of any action for temporary or preliminary conjunctive relief, or any other action if good cause (a right under the Constitution or treaties of the United States or a Federal Statute therefore is shown). The District Court cited 28 U.S.C. 1915 (e) (1) as grounds to deny appellant counsel based on it not qualifying for *Informa Pauperis* Status, however 28 U.S.C. does not restrict the Court from appointing a Corporation Counsel, further the appellant did not fill out or file any applications as an individual or individuals seeking to move forward as a Natural Person or Pauper.

13. In Pursuance to Title 28 Part IV Chapter 85 § 1331. Federal question "*The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.*" In pursuance of 28 U.S.C. § 1652 (State laws as

rules of decision) “*treaties of the United States shall be regarded as rules of decision in civil actions in the courts of the United States.*” The Appellant being a Moorish Corporation incorporated in Colorado is a Citizen of that State and shall be considered a Person under the Protection of the United States. A Moorish Islamic Corporation is entitled to assert rights of treaties and conventions entered into by the parties to Moorish Empire and the Amity and Commerce treaties of the United States which authorizes any Moors to seek Aid or Assistance from the United States if any of the Citizens of the United States, or any Persons under their Protection, shall have any disputes with each other as in like manner. See *Papaila v. Uniden America Corp.* N.D. Tex. 1994, 840 F. Supp. 440, affirmed 51 F. 3d 54, certiorari denied 116 S. Ct. 187, 516 U.S. 868, 133 L.Ed.2d 124 (1995) (following *Fortino* and holding that controlled Japanese subsidiary could assert treaty rights of parent). the court ruled “*United States subsidiary of Japanese Corporation was entitled to assert rights of it parent corporation under Friendship, Commerce and Navigation Treaty and, thus Treaty authorized subsidiary to discriminate against white Citizen of the U.S.A. employee in favor of Japanese citizens sent by parent corporation to protect its interest in subsidiary, despite employee's claims of discrimination on basis of race and National Origin under Texas law, as Treaty superseded inconsistent state law.*” The Second Circuit addressed these issues in *Avagliano v. Sumitomo Shoji America, Inc.*,⁷⁰ and held that a New York incorporated, wholly owned subsidiary of a Japanese company could invoke the treaty’s provisions “to the same extent that they may be availed of by Japanese corporations or firms operating in the United States.”⁷¹ The 67. See e.g., *Treaty of Friendship, Commerce, and Navigation, Nov.30, 1948, U.S.- Republic of China (Taiwan), T.I.A.S No. 1871; Treaty of*

*Friendship, Commerce, and Navigation, Feb. 2, 1948, U.S.-Italy, T.I.A.S No. 1965; Treaty of Friendship, Commerce, and Navigation, Sept. 14, 1950, U.S.-Ireland, 1 U.S.T. 785; Treaty of Friendship, Commerce, and Navigation, Aug. 23, 1951, U.S.-Israel, 5 U.S.T. 550; Treaty of Friendship, Commerce, and Navigation, Aug. 3, 1951, U.S.-Greece, 5 U.S.T. 1829; Treaty of Friendship, Commerce, and Navigation, Apr. 2, 1953, U.S.-Japan, 4 U.S.T. 2063; Treaty of Friendship, Commerce, and Navigation, Oct. 29, 1954, U.S.-Federal Republic of Germany, 7 U.S.T. 1839; Treaty of Friendship, Commerce, and Navigation, Oct. 29, 1954, Mar. 27, 1956, U.S.-Netherlands, 8 U.S.T. 2043; Treaty of Friendship, Commerce, and Navigation, Nov. 7, 1957, U.S.-Korea, 8 U.S.T. 2217; Treaty of Friendship, Commerce, and Navigation, May 24, 1958, U.S.-Nicaragua, 9 U.S.T. 2217; Treaty of Friendship, Commerce, and Navigation, Nov. 12, 1959, U.S.-Pakistan, 12 U.S.T. 110; Treaty of Friendship, Commerce and Navigation, Nov. 25, 1959, U.S.-France, 11 U.S.T. 2398; Treaty of Friendship, Commerce and Navigation, Feb. 21, 1961, U.S.-Belgium, 14 U.S.T. 1284. 68. Treaty of Friendship, Commerce and Navigation, Apr. 2, 1953, U.S.-Japan, 4 U.S.T. 2063 (emphasis added). 71. Avagliano, 638 F.2d at 555-556. In *Fortino v. Quasar Co.*,¹⁰² the Matsushita Electric Corporation of America (Matsushita-U.S.), The Seventh Circuit, in an opinion by Judge Posner, reversed the district court's holding, and held that the subsidiary could assert the treaty rights of its parent. In pursuance of 11 U.S.C. § 1503 (International obligations of the United States) "an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail."*

14. Even in the absence of a specified statute, the District Courts have the power to appoint Counsel. Although, Subsection 1915 of 28 U.S.C. is only applicable to *Informa Pauperis*, subsection (e) (1) states: “*The court may request an attorney to represent “any person” unable to afford counsel.*” The Appellant is a person and has clearly stated in its “Motions for Appointment of Counsel” that it cannot afford counsel for an adequate presentation of the merits, or to ensure fundamental fairness and effective Assistance of Counsel. “The right to counsel is the right to the effective assistance of counsel.”

15. The District Court of Delaware stated that a Bond is not an appropriate method of payment and cited 28 U.S.C 1914; Section 1914 does not restrict the District Court from accepting a Bond as an appropriate method of payment. In pursuance to Rule 7 of the Federal Rules of Appellate Procedure (Bond for Costs on Appeal in a Civil Case) “*the District court in a civil case may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal*”. In pursuance of 28 U.S.C. § 2072 (Rules of procedure and evidence; power to prescribe) (b) “*Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules has taken effect.*” (c) “*Such rules may define when a ruling of a district court is final for the purposes of appeal under section 1291 of this title.*”

16. The Opinions from the District of New Jersey has burdened the appellant’s right to administrate its member’s name changes consistent with the tenets of Islam and its members use of their Moorish-Islamic Attributes in society and ultimately commercial

transactions. It was clarified by the United States Court of Appeals, Eighth Circuit. - 86 F.3d 1159 Submitted May 20, 1996. Filed May 29, 1996 that statutory Name Change policies on religious name change traditions substantially burdened the Moors Religious Freedom as they are not mandated by the tenets of the Islamic Code (Sacred Muhammadan Law) see Moorish Science Temple of America, Inc.; Frank Applewhite; Curtis Owen, Appellants, v. Dennis Benson, Warden; Steve Hokonson, Chaplain, 86 F.3d 1159 *"The Moors produced un rebutted evidence that their religion forbids them from going to court to obtain a legal name change before using the El or Beysuffix. See In re Young, No. 93-2267, slip op. at 20-21 (8th Cir. May 6, 1996) (threshold inquiry of R.F.R.A. claim is whether governmental action substantially burdens religious practice; definition of substantial burden); Brown-El v. Harris, 26 F.3d 68, 69-70 (8th Cir.1994) (policy restricts free exercise if it coerces inmate into violating religious belief); see also Salaam v. Lockhart, 905 F.2d 1168, 1170 (8th Cir.1990) (noting importance of personal name), cert. denied, 498 U.S. 1026 (1991); cf. Azeez v. Fairman, 795 F.2d 1296, 1297, 1300 (7th Cir.1986) (no evidence that use of "committed" name until statutory name change completed violated inmates' religious beliefs). See Martin v. Sargent, 780 F.2d 1334, 1338 (8th Cir.1985); see also Dicken v. Ashcroft, 972 F.2d 231, 233 (8th Cir.1992), "With respect to the Moors' claims regarding the name-change policy, we affirm as to Hokonson and reverse and remand as to Benson. We affirm with respect to the Moors' First Amendment, R.F.R.A." The United States District Courts are not recognizing the civil jurisdiction conferred upon it by the Constitution and 1786 and 1836 treaties of the United States in all cases arising between Moors and Citizens of the United States See International Court Of Justice Reports Of Judgments, Advisory Opinions And*

Orders Case Concerning Rights Of Nationals Of The United States Of America and Morocco (France V. United States Of America) Judgment Of August 27th, 1952. *“Residence of Foreign parts does not affect the Nationality of Moorish Subjects.”* See Article XV of Convention of Madrid concluded July 3, 1880 and Citizenship of the United States, expatriation, and protection abroad By United States. Dept. of State, James Brown Scott, David Jayne Hill, Gaillard Hunt pages 459 and 460. It appears this regime is in favor of calling people out of their names, scarily enough miss categorizing with cognitive biasness, referring to Moors as Sovereign Citizens when we are an extension of the body politic of one of the most friendliest of Empires since at least 1665. The executive members of the Murakush Caliphate...Corporation are non Citizens, with termination statements on file with county and federal records, U.S. expatriation applications on file with the U.S. DOS AND U.S. DOJ and we are Moors, when we were U.S. citizens our National Origins were indeed Moorish, where do they get off calling us Sovereign Citizens or Self Declared Sovereign Citizens when indeed a Declaration of independence from the founding fathers who were no Sovereigns Indeed declared and created for themselves a Sovereign authority, which would make its successors guardians of those same rights spoken of in the Declaration of Independence. Were the founders of the U.S. not British Subjects? When New Jersey was a Colony was it not bound to uphold the treaties between the Moorish Empire and the British Empire? Was it not bound to uphold the treaties between the Christian Empires and the Islamic Empires?

17. The Opinions from the District of New Jersey has burdened the appellant's right to freely exercise their customs, tradition, indigenous and Islamic beliefs as to names of their indigenous lands before the colonization of the Americas by Europeans, contrary to

the International Religious Freedom Act of 1998 and the U.N. Declaration on the Rights of Indigenous Peoples. The US District Court also stated in its opinion, “In the event the clerk receives any submission which: (a) names, among plaintiff(s)/petitioner(s), a judicial entity containing, as part of its name, such as or phrases as “Moorish” and/or “Marrakush” and/or “Marankokush” and/or “Marikanos” and/or “Al-Maricanos” and/or “Timbuctoo” and/or “Samal Shariq” and/or “Indigenous” and/or “Aboriginal” and/or any similarly-sounding concoctions”. The United Nations Declaration on the Rights of Indigenous Peoples, adopted by General Assembly Resolution 61/295 on 13 September 2007 States :

Article 8.

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article: 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by others appropriate means.

The International Covenant on Civil and Political Rights, entry into force 23 March 1976, I accordance with:

Article 1.

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 3.

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 5.

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Article 7.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8.

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

Article 11.

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12.

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country

Article 26.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27.

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of

their group, to enjoy their own culture, to profess and practice their own religion , or to use their own language.

The United States is the United Nations Security protector for this international organization therefore the mandates, policies, and or declarations made with all the member states committed for the ratification of all past and present declarations which might be made for the perseverance of the international community participants.

The Geneva Convention defines the rights and protections of non-combatants, thus:

“ Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall, at all times, be humanely treated, and shall be protected, especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Morocco - Treaty of Peace; September 16, 1836

ART. 1.

We declare that both Parties have agreed that this Treaty, consisting of Twenty five Articles, shall be inserted in this Book, and delivered to James R. Leib, Agent of the United States, and now their Resident Consul at Tangier, 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.

ART. 2.

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

It should be noted that the Districts most referenceable source for their interpretation is not the International Court of Justice, nor Dr. C. Snouck Hurgronje, of Leiden but Frank Lamber a mere author. Part of the opinion of the District below.

18. Indeed Murakush disagrees with the District Court's reading, interpretation, and construing of the treaties of subject and articles in the favor of Citizens of the United States and their comments on our Moorish-Islamic attributes, Moorish Corporate-Islamic titles and issues regarding the legality of our Moorish Names.

U.S. DISTRICT COURT INTERPRETATION OF Article 6. If any Moor shall [obtain physical control over and] bring citizens of the United States [] or their [possessions] to [the Kingdom of Morocco], the [se United States] citizens shall immediately be set [free] and the[ir possessions shall be] restored [to them. Analogously], if any Moor [who is] not a [citizen of Morocco], shall [obtain physical control over] any . . . citizens of [the United States] or their [possessions] and bring the[se United States citizens] into any of the ports of [the Kingdom of Morocco,] the[se United States citizens] shall be immediately released [and, moreover, they shall] be considered . . . under [the personal] protection [of the King of Morocco].

Professor Zechariah Chafee, of Harvard Law School claimed "Supreme", as used in Article VI, "means simply supreme over the states. This is an issue arising out of actions taken and not taken by state officials. First and foremost the title of the treaties is "Peace and Friendship" commonly known as "Amity and Commerce" The treaty name becomes a trope. As an instance of metonymy, the name of a "treaty" in an abstract sense can refer to the subject of the pact or the elements of the pact itself. In other words, the term treaty

conflates the explicit words of the treaty, the signing of the treaty, and the actual implementation and consequences intended by those who drafted the words and those who affixed signatures. These treaties were written by Moors in Classical Arabic. The original and actual English text of the treaties are below, free of any additions like the ones incorporated into the articles by the District Court of New Jersey . The United States Supreme Court has already explained that courts of law are required to interpret treaties as any other contract by giving effect to the intent of the parties as manifested by the terms thereof. Zscher More specifically, in *Seufert Bros. v. Hoptowit et al*, 193 Or 317, 322-23, 237 P2d 949 (1951), cert den, 343 US 926 (1952). Treaties are "not to be interpreted narrowly, as sometimes may be writings expressed in words of art employed by conveyancers, but are to be construed in the sense in which naturally the Indians [aboriginals] would understand them." *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938). Article X. "Project for a Definitive Treaty of Peace and Friendship between his Britannic Majesty and the United States of America July 27th , 1783" "His Britannic Majesty shall employ his good offices and interposition with the King or Emperor of Morocco or Fez, the regencies of Algiers, Tunis, Tripoli or with any of them, and also with any other Prince, State or power of the coast of the Barbary, in Africa and the subjects of the said King, Emperor, States and Powers, and each of them in order to provide as fully and efficaciously as possible for the benefit, convenience and safety of the said United States and each of them, their subjects, people and inhabitants and their vessels and effects against all violence, insults, attacks or depredations, on the part of the said provinces and States of Barbary or their subjects." See Congressional edition By United States. Congress page 603.

A cardinal rule in interpretation of a document is that words and phrases be given "the natural meaning or that meaning most commonly understood when considered in reference to subject matter and circumstances." *Rupp Hotel Operating Co. v. Donn*, 29 So.2d 441 (Fla. 1947). Words having a definite legal meaning that are intentionally used should be given the definite legal meaning. *Langley v. Owens*, 42 So. 457 (Fla. 1906). It is well established that, in construing a treaty between the United States and Indians [aboriginals], the courts will construe it liberally in favor of the Indians [aboriginal], and in the sense in which its provisions would naturally be understood by the Indians [aboriginals]. However, despite this rule of liberal construction, treaties cannot be rewritten or expanded beyond their clear terms, and the obvious, palpable meaning of their words cannot be disregarded, in order to achieve the asserted understanding of the parties. Thus the effect of a treaty is not to nullify a conflicting statute, but rather to suspend its application to a citizen or subject of the country with which the treaty is made. *Ahrens v. Ahrens*, 144 Iowa 48, 123 N.W. 14 (1909). In addition, the United States acquired in Morocco jurisdiction in all cases in which Citizens of the United States or protégé was defendant through the effect of the most-favored-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. <http://www.icj-cij.org/docket/files/11/1927.pdf>

19. Treaties in Force 2009. The absence of a listing for a particular agreement should not be regarded as a determination that it is not in force. TREATIES View or download Treaties in Force 2009 <http://www.state.gov/s/l/treaty/treaties/2009/index.htm>

MOROCCO — PEACE TREATIES^ Treaty of peace.* Signed at Meccanez September 16, 1836. Entered into force January 28, 1837. 8 Stat. 484; TS 244-2; 9 Bevans 1286.

NOTE Extraterritorial jurisdiction in Morocco relinquished by the United States October 6, 1956.

20. Article 6. "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". The sixth article is that if Moslems shall capture people of our [meaning here the American] nation or their goods and bring them to our [here meaning of the Moroccans] Lord (may God give him victory!), he will set them at liberty. Likewise, if Moslems from other than our dominions shall capture them and bring them into any of our ports, they shall be set at liberty, because they are under our protection and on terms of peace with us.

http://avalon.law.yale.edu/18th_century/bar1786e.asp

21. 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 takeplace** and equal Justice shall be rendered, the Consul assisting at the Tryal, and if any Delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever. there has been killed a Christian out of them or the reverse [sic] or has wounded him [sic], then he will be sentenced **according to the rules of the Sacred[Mohammedan] Law**, neither more nor less, and the trial is to take place

believing slave and a compensation payment presented to the deceased's family [is required] unless they give [up their right as] charity. But if the deceased was from a people at war with you and he was a believer - then [only] the freeing of a believing slave; and if he was **from a people with whom you have a treaty** - then a compensation payment presented to his family and the freeing of a believing slave. And whoever does not find [one or cannot afford to buy one] - then [instead], a fast for two months consecutively, [seeking] acceptance of repentance from Allah. And Allah is ever knowing and Wise. <http://quran.com/4/92>

24. Surat At-Tawbah (The Repentance) - سورة التوبة 9 : 4 Excepted are those with whom you made a treaty among the polytheists and then they have not been deficient toward you in anything or supported anyone against you; so complete for them their treaty until their term [has ended]. Indeed, Allah loves the righteous [who fear Him]. <http://quran.com/9>

25. Of course treaties are construed more liberally than private agreements, and to ascertain their meaning we may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties. Especially is this true in interpreting treaties and agreements with the Indians [aboriginals]; they are to be construed, so far as possible, in the sense in which the Indians [aboriginals] understood them, and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people. But even Indian [aboriginals] treaties cannot be rewritten or expanded beyond their clear terms to remedy a claimed injustice or to achieve the asserted understanding of the parties." (Citations and internal quotation marks omitted.) See also *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 US 658, 675, 99 S Ct 3055, 61 L Ed 2d 823 (1979)

("A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations. When the signatory nations have not been at war and neither is the vanquished, it is reasonable to assume that they negotiated as equals at arm's length." (Citation omitted.) ; Antoine, 420 US at 199-200 (treaty must be interpreted by liberally construing any ambiguities in the text in favor of the tribe). Treaty interpretation, then, is a form of contract interpretation. When interpreting a contract, we first examine the text and context to determine if the contract provision is ambiguous. Berry v. Lucas, 210 Or App 334, 338, 150 P3d 424 (2006). A contract is ambiguous if it is susceptible to more than one reasonable interpretation. Batzer Construction, Inc. v. Boyer, 204 Or App 309, 313, 129 P3d 773, rev den, 341 Or 366 (2006). At that first level, we also consider extrinsic evidence of "the circumstances underlying the formation of the contract." Id. at 317.

26. Finally, if the "provision remains ambiguous after the first two steps have been followed, the court relies on appropriate maxims of construction" to determine the provision's meaning. Yogman v. Parrott, 325 Or 358, 364, 937 P2d 1019 (1997). In general, one of those maxims is that ambiguous language in a contract is construed against the drafter. Berry, 210 Or App at 339. The analog in construing treaties between the United States and Native Marikanos (Americans) is, as the court stated in Seufert Bros., that ambiguities should be construed in favor of the Native Marikanos (Americans), at least when the treaty terms are drafted by the United States. 193 Or at 323. The Treaty-Making Power And The Reserved Rights Of The States The supremacy of a federal treaty over a conflicting state law, with reference to matters not reserved to the States, has not been questioned since the time it was established that a federal statute,

enacted within either the concurrent or exclusive constitutional competency of Congress, operates to nullify all inconsistent state legislation. In this respect, as the Constitution expressly declares, treaties and acts of Congress are upon precisely the same footing. In *Ware v. Hylton*, 7 decided in 1796, Justice Chase says: "There can be no limitation on the power of the people of the United States. By their authority the state constitutions were made, and by their authority the Constitution of the United States was established; and they had the power to change or abolish the state constitutions, or to make them yield to the General Government and to Treaties made by their authority. It is the declared will of the people of the United States that every treaty made by the authority of the United States shall be superior to the constitution and laws of any individual State. The people of America have been pleased to declare, that all treaties made before the establishment of the national Constitution, or laws of any of the States, contrary to a treaty, shall 'be disregarded.'" The attempt has been made to detract from the force of Chase's doctrine as declared in *Ware v. Hylton*, by emphasizing the fact that in that case the treaty in question was one which had been originally entered into under the Confederation, that is, at a time when the States were severally sovereign, and that, therefore, it was a treaty to which the States may be said to have -individually assented.

27. There would not, however, seem to be much force in this, for if, after the adoption of the Constitution, the treaty in question could be considered in any way as still an instrument deriving its validity from the consent of the State, it could have been abrogated by subsequent state action, but this, of course, was expressly denied by the court in *Ware v. Hylton*. The truth is that the Constitution puts treaties, made and to be made, upon exactly the same footing, and in the later cases which are cited above, the

doctrine of *Ware v. Hylton* is considered as controlling with reference to treaties made after the adoption of the Constitution. It may, then, be considered as established that a treaty entered into by the Federal Government with respect to a matter within the federal jurisdiction is supreme over a conflicting state law. "Treaties are "not to be interpreted narrowly, as sometimes may be writings expressed in words of art employed by conveyancers, but are to be construed in the sense in which naturally the Indians [aboriginals] would understand them." *United States v. Shoshone Tribe*, 304 U.S. 111, 116 (1938). A cardinal rule in interpretation of a document is that words and phrases be given "the natural meaning or that meaning most commonly understood when considered in reference to subject matter and circumstances." *Rupp Hotel Operating Co. v. Donn*, 29 So.2d 441 (Fla. 1947)."

THIS DISPUTE ARISES OUT OF THE STATES TREATMENT OF MOORS.

28. *The District Court of New Jersey Stated:*

- *"this feature is the litigants' nearly invariable general invocation of the Barbary Treaties (and, specifically, of the Treaty of Morocco) in the context of challenging their searches, arrests, confinements, criminal proceedings, bails, fees, convictions, etc.*
- *No Article in the Barbary Treaties, including in the Treaty with Morocco -- so long as a particular Article speaks in terms of a "vessel" -- can possibly be invoked in any habeas or civil rights claim addressing the issues of arrest, detention, incarceration, bailing, prosecution, conviction, etc. of any human being, regardless of where these transactions are conducted.*

- *This is particularly obvious in the Treaty with Morocco, a short accord consisting of mere twenty-five Articles, with only three Articles addressing not on acts of war, vessels, merchant activities, etc. but other acts against human beings.”*
- *It is, therefore, hardly surprising that the bulk of the provisions of the Barbary Treaties: (a) focused on the issues of maritime/admiralty, war, merchant purchases/sales and akin matters; and (b) were set forth in terms of protections of "vessels."*
- *Analogously, Articles Twenty and Twenty-One of the Treaty are facially inapplicable to the Murakush Group, since they had no right to consular assistance, and no United States citizen killed or wounded them in the Mediterranean:*

The first United States case relating to article 36 of the Vienna Convention was *Breard v. Greene* (523 U.S. 371, 1988), followed by numerous claims in United States federal circuit courts of appeals, state supreme courts, and the United States Supreme Court. Interpretations have varied widely, from the non-recognition of fundamental rights conferred by article 36, where no appropriate remedy is available, to the possibility of individually enforcing those rights. In 1999, the Inter-American Court of Human Rights issued an advisory opinion, recognizing that article 36 creates individual rights, as a “notable exception to what are essentially States’ rights and obligations accorded elsewhere” in the Convention (Advisory Opinion of the Inter-American Court of Human Rights: *Due Process of Law is a Fundamental Right* (OC-16/99), para. 82).

Moreover, the Court stated that the fact that in this case the ruling concerned only Mexican nationals cannot be taken to imply that the conclusions reached by it in the Avena case do not apply to other foreign nationals finding themselves in similar situations in other countries.

- *They were arrested, searched, detained, criminally prosecuted, bailed, etc. well within the borders of the United States,*
- *and in any event -- equal justice was already available to them under the safeguards of the Fourteenth Amendment's Equal Protection Clause. 30 See United States v. Casey, 2005 U.S. Dist. LEXIS 39785 (E.D. Mo. July 21, 2005) (the decision to criminally prosecute a self-declared "Moor" is constitutionally independent of any consular [*86] interest in assistance) (citing United States v. Ortiz, 315 F.3d 873, 886 (8th Cir. 2002); United States v. De La Pava, 268 F.3d 157, 165-66 (2nd Cir. 2001); United States v. Emuegbunam, 268 F.3d 377, 391-94 (6th Cir. 2001); United States v. Lombera-Camorlinga, 206 F.3d 882, 885-86 (9th Cir. 2000); United States v. Cordoba-Mosquera, 212 F.3d 1194, 1195-96 (11th Cir. 2000)).*

First and foremost from the international court of justice the and 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 “The jurisdiction conferred upon the United States by the Treaties of 1787 and 1836 was jurisdiction, civil and criminal”, so the concept that these treaties cannot possibly be invoked in any habeas or civil rights claim makes no sense when Citizens of the United States and often their respective businesses

has done just that in Morocco. Presiding Judge Sir Arnold McNair (a Briton) delivered the majority opinion: 1) the 1948 import restrictions are illegal and Citizens of the United States have the right to import goods to French Morocco on the same terms as Frenchmen; 2) U.S. citizens in certain civil and criminal cases may claim the right to be heard in U.S. consular courts, but in other cases are subject to Moroccan laws; 3) U.S. citizens in Morocco must pay Moroccan taxes. Read more:

<http://www.time.com/time/magazine/article/0,9171,935667,00.html#ixzz1R9uglGbH>

When the treaty ran out in 1836, President Andy Jackson got it renewed indefinitely.

Since then, Citizens of the United States visiting or living in Morocco have had extraterritorial rights, freedom from import controls and certain taxes: Read more:

<http://www.time.com/time/magazine/article/0,9171,935667,00.html#ixzz1RA14qVYA>

Thus Moors have been deprived of their rights to be heard in Moorish Consular Courts and or Sharia Courts and their extraterritorial rights. These abusive actions and trespasses against constitutionally secured rights taken by State officials or Municipal officials are done in the Name of the “Drug War or The War on Drugs” being waged by Citizens of the United States, has prompt them to take many Moors who have been caught in its Mist, as prisoners of the “Drug War”, indeed State agents or Municipal Corporate officials have used petty Marijuana or petty CDS possession charges to excuse their abuse and burdens upon the religious free exercise of several Moors and the fact that they have been taking them as Prisoners, convicting them or coercing them into plea bargains and thus enticing and enslaving them under the 13th amendment of the United States Constitution all in violation of the Article VI and the 1st and 14th amendment of the United States Constitution, the Religious Freedom Restoration Act and the International

Religious Freedom Restoration act of 1998. The question is does the 13th or 14th amendment superseded article VI of the United States Constitution. They are doing while simultaneously making laws prohibiting the use of CDS charges upon American Indians. There comments about searches, arrests, confinements, criminal proceedings, bails, fees, convictions, etc., having nothing to do with Admiralty or Merchants is nonsense, since Admiralty applies to matters including commerce covers many other commercial activities.

New Jersey was bound to uphold the 1763 treaty of Peace and Commerce between the King of Great Britain and the Sultan of Morocco, which clearly states in Article III "It is also agreed, that all ships belonging to the Subjects of the said King of Great Britain, and of the Emperor of Fez and Morocco, and his subjects may navigate and pass the seas, without being searched, or receiving hindrance or trouble the one from the other; and that all persons and passengers of whatever nation they may be, belonging to either of the parties, shall be entirely free, without being detained, molested, robbed, or receiving any damage from the others. And moreover, it is agreed, that the English Ships, which shall be freighted in any port of the Emperor of Fez and Morocco, for other ports of the fame kingdom, shall not be obliged to pay the usual port charges; and that no captain or other person belonging to any Ship or Vessel of the Emperor of Fez or Morocco, or his Subjects, shall take any person or persons whatsoever, out of any ship or vessel of the King of Great Britain, or his subjects in order to be examined or under any other pretence whatsoever; out of any ship or vessel of the King of Great Britain, or his subjects, in order to be examined, or under any other pretences whatsoever; neither shall

they offer violence to any person or persons, of whatever nation or quality they be, on board a ship belonging to his Majesty's Subjects.

Article VII states "that the subjects of the Emperor of Fez and Morocco, as well Moors as Jews, residing in the dominions of the King of Great Britain, Shall enjoy the same privileges that are granted to the English residing in Barbary [Moorish Jurisdictions]".

1763 Treaty of Peace and Commerce between the King of Great Britain and the Sultan of Morocco, Article XIX. It is moreover agreed, that no obligation or contract shall have force, or be valid, against any merchant whatsoever, subject of his Britannic Majesty unless the said merchant shall have sign it with his hand; and in cases that any one cannot write, it shall suffice that a person, to his satisfaction, has wrote such obligations or contracts, and signed them for him, the same privilege shall be granted to the subjects of the Emperor of Fez and Morocco. residing in the dominions of his Britannic Majesty. Article XXI. It is also agreed, that the subjects of his Britannic Majesty shall not be obliged to present themselves before the magistracy of the country, to be judges, under any pretence; and their causes, suits or differences, which may happen with the Moors, or any other subjects whatsoever, living in the dominions of the Emperor Fez and Morocco, shall be judged and determined only by the governor of the city and the English Counsel.

Articles of Peace between his Sacred Majesty Charles the Second, King of Great Britain, France, and Ireland, and the City and Kingdo of Algiers, and the Territories thereof concluded by Sir John Lawson, Knight, the 23rd Day of April, 1662. "Article VII. That in case any of his Majesty's subjects should happen to strike a Turk or a Moor, if he be taken let him be punished; but if he escapes, nothing shall be said to the English consul, nor to any of his said Majesty's subjects, upon that account. "

Articles of Peace between his Sacred Majesty Charles the Second, King of Great Britain, France, and Ireland, and the City and Kingdom of Algiers, and the Territories thereof concluded by Sir John Lawson, Knight, the 23rd Day of April, 1662. "Article XIV. And if any ships of war of his Majesty the King of Great Britain, & meeting with any ship of Algiers, if the commander shall produce a pass formed by the Chief governor of Algiers, and the major part of the ship's company be Turks, Moors, or Slaves, then the Algiers ship to proceed freely.

- ***U.S.C.TITLE 46 > Subtitle I > CHAPTER 1 > § 115***
- ***In this title, the term “vessel” has the meaning given that term in section 3 of title 1.***

U.S..C. TITLE 1 CHAPTER 1 § 3. clearly applies the term "Includes" for its definition for “Vessel” which states: as including all means of water transportation: The word “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

A main point Appellate raises 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 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 Sacred Mohammedan Law (*Redacted in English to appear as “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." Appellant asserts that Article 20 should be construed as giving consular jurisdiction over all disputes, civil and criminal, between Citizens of the United States and Moors and Moorish Subjects. 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 it 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" 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.

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. A general point arises out of this submission that consular jurisdiction was equally acquired "in all cases in which a Moor or protégé was a defendant through the effect of the acceptance of the most favored- nation clause and through custom and usage" and that such jurisdiction was not affected by the 1956 declaration and policy to relinquish its jurisdictional rights. Citizens of the United States enjoyed Favorite Nation privileges throughout the Moorish Empire for over 170 years, the equal protection clause should speak to the spirit of this as far as Moors enjoying favorite national status in the territorial borders of the United States. It is necessary to

give special attention to the most-favoured nation clauses of the United States-Morocco Treaty of 1836. Although the District Court of New Jersey did not address these articles there were two grants of most-favored-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 [Jurisdiction] 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." Naturally it would be common sense to presume that whatever privileges the Moorish Empire granted to the Citizens of the United States shall in like manner be granted to Moors residing in the United States. These articles entitle Moorish Subjects within the borders of 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 Moorish Empire acquired by virtue of the Citizens of the United States accepting the most favored-nation clause, civil and criminal consular jurisdiction in all

cases in which Moors (Moorish Subjects) were defendants as in like manner indeed enjoyed by Citizens of the United States in Morocco.

The 1956 relinquishment of Jurisdiction by the United States in 1956 had no immediate effect upon Moorish subjects within the territorial borders of the United States position because it was still possible to invoke the Provisions of the Madrid Conference. 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 favored nation is recognized by Morocco as belonging to all the Powers represented at the Madrid Conference." The right of consular jurisdiction was designed to provide for a situation in which Moorish law was essentially personal in character and could not be applied to foreigners. The second argument is that the most favored- nation clauses in treaties made with the Moorish Empire 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-favored-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. Therefore the expiration arguments presented by Jerome B. Simandle are completely flawed. 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-favored-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.

TITLE 18 > PART I > CHAPTER 45 > § 960

§ 960. Expedition against friendly nation

Whoever, within the United States, knowingly begins or sets on foot or provides or prepares a means for or furnishes the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace, shall be fined under this title or imprisoned not more than three years, or both.

http://www.law.cornell.edu/uscode/718/usc_sec_18_00000960----000-.html

The contention would therefore run contrary to the principle of equality and it would perpetuate discrimination. Moorish subjects within the territorial border of the United States are entitled under the most-favored-nation clause in Article 24 of the treaty to the same jurisdictional rights which Citizens of the United States to-day exercises in Morocco by virtue of the Treaty of 1836". **"Thus an act was passed in Massachusetts on 26th of March, 1788, ch. 21 of Feb. 1788 Sess., Mass. Acts & Laws 680, 682 (1788); reprinted as ch. 54, 1787 Mass. Acts 62 (rev. ed. 1893). Forbidding any Negro not a subject of the Emperor of Morocco, or a citizen of the United States,**

from tarrying in the commonwealth. The occasion of the trouble was that a dark-skinned man had stopped at the local hotel. Investigation, however, developed the fact that this individual was a Moor, and that while travelling in this country he spoke the English language. The man who was the innocent cause of the excitement, though, found it prudent after that not to speak English. <http://etext.virginia.edu/etcbin/toccer-new2?id=WasSlav.sgm&ima...>

Thus the searches, arrests, confinements, criminal proceedings, bails, fees, convictions, of subject matter were indeed transactions, commercial and indeed applicable under admiralty, not to mentioned they were done by those retaining Citizen-SHIP or in short Citizens of the United States all actions were indeed burdens upon several tenets of Islam. Furthermore the Controlled Dangerous Substance Act shall not override any treaty still in force. In pursuance to Article.17. of the 183 treaty of the United States: "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 Merchandise but such as are prohibited to the other Christian Nations. The seventeenth article as interpreted by Dr. C. Snouck Hurgronje, of Leiden is that the merchants shall not be compelled to buy merchandise, but such as they like to buy by their free consent. The same rule is to be applied to sale, except in cases concerning which there have prevailed customs with other (Christian nations before them, who carried them [the goods?], in which cases there will be no difficulty. [The meaning of the latter stipulation is not clearly expressed in the Arabic text.]. A merchant is a businessperson who trades in commodities that were produced by others, in order to earn a profit. In the United States, "merchant" is defined (under the Uniform Commercial Code) as any person while engaged in a business or

profession or a seller who deals regularly in the type of goods sold. Under the common law and the Uniform Commercial Code in the United States, merchants are held to a higher standard in the selling of products than those who are not engaged in the sale of goods as a profession. Marijuana is a Commodity like any other. “And like any agricultural product, marijuana is very much a commodity, Lt. Rich Wiley, who heads the Washington State Patrol narcotics program, said Wednesday (February 17, 2006). http://www.thestewart.com/the_stewart/2006/02/illegal_commodi.html

**THE CATEGORIZATION OF
MARIJUANA AS A SCHEDULE I DRUG IS
UNCONSTITUTIONAL AND VIOLATES DUE
PROCESS AND EQUAL PROTECTION**

Title 24 defines and categorizes “Narcotic Drugs and Other Dangerous Substances.” The drug categorization is made by the State Commissioner of Health. (N.J.S. 24:21-2). Controlled substances are broken down into five Schedules—Schedule I through Schedule V, with Schedule I substances being considered to have the highest potential for abuse with “no accepted medical use in treatment in the United States.” (emphasis supplied). N.J.S. 24:21-5.

Pursuant to N.J.S. 24:21-5e(10), the commissioner has categorized marijuana as a Schedule I controlled substance—one found to have the highest potential for abuse and either no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. Other Schedule I controlled substances include: 1) Heroin (24:21-5d(11)); 2) Morphine methylbromide (24:21-5d(15)); 3) Morphine methylsulfonate (24:21-5d(16)); 4) Morphine-N-Oxide (24:21-5d(17)); 5) 3,4-methylenedioxy amphetamine (24:21-5e(1); 6) Lysergic acid

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diethylamide, commonly referred to as “LSD” (24:21-5e(9)); 7) Mescaline (24:21-5e(11)); and Peyote (24:21-5e(12)). Thus, the commissioner has placed marijuana in the same category as heroin, morphine, and L.S.D.

N.J.S. 24:21-3 (Authority to control) specifically grants the commissioner the authority to add “or delete or reschedule all substances enumerated in the schedules in sections 5 through 8 of this act” and applies the following criteria:

- (1) Its actual or relative potential for abuse;**
- (2) Scientific evidence of its pharmacological effect, if known;**
- (3) State of current scientific knowledge regarding the substance;**
- (4) Is history and current pattern of abuse;**
- (5) The scope, duration, and significance of abuse;**

- (6) What, if any, risk there is to the public health;
- (7) Its psychic or physiological dependence liability; and
- (8) whether the substance is an immediate precursor of a substance already controlled under this article.

N.J.S. 24:21-3d had provided:

d. The State Department of Health shall update and republish the schedules in sections 5 through 8 on a semiannual basis for 2 years from the effective date of this act and thereafter on an annual basis.

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The New Jersey State Legislature amended that provision in 2007 and it now reads:
d. The director shall update and republish the schedules in sections 5 through 8.1 of P.L. 1970, c. 226, as amended and supplemented (C. 24:21-5 through 24:21-8.1) periodically.

Recently, the National Cancer Institute* has ruled that marijuana does in fact have medical benefits, making it the first federal agency to do so. (See The Raw Story Article “Federal Agency recognizes pot for medical use” by David Ferguson, dated March 27, 2011; Da13).

Appellants submit that the categorization of marijuana as a Schedule I drug is unconstitutional and violates substantive due process and equal protection. Many scientific studies (and a growing number of states) have proven that marijuana does have an accepted medical use in treatment and should not be a Schedule I drug. As explained in appellants’s pro se motion dated May 12, 1999:

Marijuana has been scientifically proven to have many legitimate, scientific medical uses. Most

* The National Cancer Institute (NCI) is part of the National Institutes of Health (NIH), which is one of eleven agencies that compose the Department of Health and Human Services (HHS). The NCI, established under the National Cancer Institute Act of 1937, is the Federal Government’s principal agency for cancer research and training.

7

recently the National Academy of Science [through its] Institute of Medicine released a report March 18th, titled Marijuana and medicine. This report was commissioned by Drug Czar General Barry McCafferty and the office of National Drug Control Policy. [ONDCP]. The report described marijuana (1) as a natural medicine used for at least 5,000 years by humans for varied medical ailments. (2) It denies marijuana is physically addictive. (3) It describes marijuana use as such – not abuse. In fact it notes that there has never, ever

been a recorded case death associated with marijuana use. The report challenges the very classification of marijuana as a schedule I drug. (Da 35).

Fifteen states (and District of Columbia) have legalized marijuana for medical use: Alaska, Arizona, California, Colorado, the District of Columbia, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, and Vermont. (See Summary Chart with laws, fee, possession limits, etc.; annexed at Da14-31). In 1972, the Shaffer Commission, named after former Pennsylvania Governor William Shaffer, challenged the Scheduling of marijuana as a Schedule I drug, along with the appropriateness of prosecution individuals for using it. President Nixon, after not even reading the truthful report, suppressed it. (See NORML article dated March 19, 2002; "Special Release 30 Years After Nixon's Marijuana Commission Advocated Decriminalization, Report Findings Are Still Valid Nixon Never Read His Own Report"; Da32).

8

The State of New Jersey has now recognized marijuana as a medicine but, since Governor Christie has for political reasons blocked implementation of the law, the State Health and Human Services Department has failed to reclassify marijuana (in spite of the fact that marijuana is both factually and scientifically not a schedule I drug). After New Jersey passed its medical marijuana law on January 18, 2011, the appellants, a medical marijuana card carrying person, brought his medical marijuana with him to New Jersey from California, believing that he would have some legal protection. As can be seen in the ProCon.org Medical Marijuana States and DC Summary Chart, as to whether New Jersey "Accepts other states' registry ID cards?" this is "Unknown." (Da25). In addition to the failure of the State of New Jersey to reclassify marijuana from a Schedule 1 drug, similarly, the federal government has failed to do so. In enacting the Controlled Substances Act (CSA) in 1970, Congress specifically identified and defined a number of substances as "controlled substances" subject to strict regulation and it assigned substances to specific schedules.

9

Congress took the precaution of setting up a commission to determine on which schedule, if any, cannabis should be placed. After an exhaustive study, this commission issued in March, 1972, its report entitled; "The First Report of the National Commission on Marihuana and Drug Abuse," subtitled; "Marihuana, a Signal of Misunderstanding." This study stands as the first and foremost comprehensive scientific study ever done on the effect of cannabis on the health and safety of the United States population. It recommended that simple possession of cannabis be totally decriminalized and concluded that cannabis did not pose a significant health and safety risk to the U.S. population. Despite these findings, President Nixon used his prerogatives to place cannabis on CSA's Schedule 1 of controlled substances, which are described in the CSA rules as being "extremely

dangerous." Recent documents obtained through the Freedom of Information Act recount and document President Nixon's incomplete understanding and his prejudices surrounding cannabis. These documents support already well-known attitudes of Nixon about cannabis and its use among some of his chosen enemies. Nixon had cannabis placed on the Schedule 1 of controlled substances to punish these political enemies despite having in hand the Congressionally mandated study.

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Since that time cannabis users have been punished with savage severity unbecoming of a free nation, but totally in character with President Nixon's vindictive tendencies. The millions of arrests for simple possession of cannabis in the intervening years and the percentage of cannabis arrests of all arrests for Schedule 1 substances suggest the political nature of placing cannabis on Schedule 1 of the CSA and calls into question the basic motivation of those charged with enforcing the prohibition of Schedule 1 substances.

The scheduling of cannabis stands in stark contrast to all other substances found on Schedule 1, on Schedule 2, or on any other substance found on any other schedule of the CSA in its comparative mild and benign qualities. Cannabis is not only benign in its effects upon the user, it has provable and recognized medical qualities recognized by all but the DEA who continue to promote their mantra that cannabis has no medical uses--since otherwise, it could not be a controlled substance on CSA's Schedule 1. While the United States government has in the past impeded medical marijuana's acceptance, in October of 2009 the Obama Administration announced a shift in the enforcement of federal drug laws, stating that the administration would effectively end the Bush Administration's frequent raids on distributors of medical marijuana.

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See Washington Post article by Carrie Johnson dated October 20, 2009 "U.S. eases stance on medical marijuana"; at Da57-59 <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/19/AR20091010903638.html>.

Federal Administrative Law Judge Francis L. Young in In The Matter of: Marijuana Rescheduling Petition Docket No. 86-22 (1988) recommended that the DEA remove marijuana from Schedule One, stating: "Marijuana is one of the safest therapeutically active substances known to man." <http://www.druglibrary.org/olsen/medical/young/young.html>

(Opinion at Da61-90). The Bush Administration, like the Nixon Administration, refused.

Among the plethora of misinformation about cannabis is the DEA's dire predictions of what would happen if the prohibition on cannabis were to be lifted. These predictions should have been forever put to rest by the experience of Alaska when these prohibitions were totally absent for a period of many months, during such time none of the DEA's dire predictions about the effects of lifting these laws took

place. What is more likely, according to many social scientists, is that the federally imposed prohibition on cannabis has had the same effect-especially on the youth-of creating a "forbidden fruit" syndrome, by which more people use the substance than would normally be the case. This is borne out in the experience of The Netherlands, which issued its own study on cannabis at the same time of the 1972 Congressional study.

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The Netherlands allowed for a relatively permissive approach and saw cannabis use among its young people drop markedly. The United States government's stubborn refusal to allow challenges to its severe restrictions on cannabis (and its penchant for ignoring studies and evidence contradicting its general prohibition of cannabis) call into question whether it does so simply to perpetuate a lucrative bureaucracy built on the destruction of an otherwise innocent class of citizens who, because of their felony convictions, are robbed even of the legal means to remedy their oppression. This injustice is multiplied infinitely by the denial of the Rastafarian and other churches' cannabis sacrament, a sacrament that has been used religiously by man throughout recorded history. For these reasons, the indictment against Edward R. Forchion must be dismissed with prejudice.

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POINT II

N.J.S.A. 2C:35-5A(1) AND B.10(A)

**ARE UNCONSTITUTIONAL AS THEY VIOLATE
THE APPELLANTS'S RIGHTS UNDER THE RELIGIOUS
FREEDOM RESTORATION ACT AND THE FIRST
AMENDMENT ESTABLISHMENT CLAUSE, AND
ARTICLE 1, PARAGRAPH 4 OF THE NEW JERSEY
CONSTITUTION; SINCE PEYOTE IS A RECOGNIZED
RELIGIOUS EXEMPTION ALONG WITH ANOTHER
SCHEDULE I SUBSTANCE (AYAHUASCA TEA); THE
APPELLANTS, A PRACTISING RASTAFARIAN,
MUST BE AFFORDED AN EXEMPTION FOR HIS
RELIGIOUS SACRAMENT KUNNAB (MARIJUANA)**

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Article I, paragraph 3 of the New Jersey Constitution provides: "No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience ..." Article I, Paragraph 4 of the New Jersey Constitution provides that "There shall be no establishment of one religious sect in preference to another ..." The United States Constitution is the supreme law of the land (Article VII), and any statutory law must be in total agreement with the Constitution to be valid. However, "[n]o one is bound to obey an unconstitutional law

and no courts are bound to enforce it." 16th American Jurisprudence 2nd edition, Sec 177, late 2nd, Sec 256. "All laws which are repugnant to the Constitution are null and void." Marbury v. Madison, 5 U.S. (2 Cranch) 137, 174, 176, (1803). "Where rights secured by the Federal Constitution are involved, there can be no rule-making or legislation which would abrogate them." See, Miranda v. Arizona, 384 U.S. 436, 491, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) ("An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed"); Norton vs. Shelby County, 118 U.S. 425, 442 ("Challengers asserting that a statute is unconstitutional based on a claim of vagueness ordinarily is analyzed in light of the facts of each particular case; however, when First Amendment freedoms are involved, statute may be challenged on the grounds that it is facially invalid"); Luckei v. State of New Mexico, 901 P.2d 205, 120 N.M 274 (N.M. 1995) ("Due Process requires all laws which seek to regulate First Amendment activities must be sufficiently definite and certain so as not to be impermissibly vague"); Ellwest Stero Theater v. Boner, 718 F.Supp. 1553 (M.D. Tenn. 1989).

The Establishment and Equal Protection Clauses of the Constitution require state neutrality and prevent a state from passing laws which prefer one religion over another. Olsen v. Drug Enforcement Admin., 878 F.2d 1458, 1463 n. 5 (D.C.Cir. 1989); Walz v. Tax Comm'n, 397 U.S. 664, 696, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970) (establishment requirement of neutrality "in its application requires an equal protection mode of analysis"). Our Christian/Jewish legislators have chosen their Judeo/Christian faith as the genesis of our drug laws by allowing the use of wine as a sacrament but prohibiting the use of "marijuana" as a sacrament. The appellants is a practicing Rastafarian. Rastafarians use marijuana as both a sacrament in religion and as a medicine.

The appellants are practicing Moslems and marijuana—known as Kunnab, Mokhadarat مخدرات, Bango و بنگو Hashish خشيش Hash in the religion--operates as a sacrament and is an integral part of the Islamic religious ceremony. Prior to discussing the religion of Islam a brief overview of the history of marijuana and the marijuana laws is in order.

THE HISTORY OF MARIJUANA AND THE MARIJUANA LAWS

In 1876 His Imperial Majesty, The Sultan Abdülhamid II, Emperor of the Ottomans, Caliph of true Faithful (also known as Abdul Hamid II or Abd Al-Hamid II Khan Ghazi) for the 100th anniversary and celebration of the Declaration of Independence, at

the Turkish pavilion gave marijuana to the crowd as a birthday gift to the United States and this event was the first and largest pot party in the United States until Woodstock. By 1880, Turkish smoking parlors were opened all over the northeastern United States. According to Sex, Drugs, violence in the Bible "Etymologist and religious historian John M. Allegro pointed out that our ancestors believed these plants were living gateways to other realms, and thought of them as *angels*. (The Greek Arabic and Hebrew equivalent of the name *angel* literally means *messenger* or *workers of miracle*).The ancients interpreted the experiences they received from these plant-angels as divine revelations, in much the same way that shamans have done around the world before recorded history, and are still doing in South America, North and West Africa, Asia and even North America today. Although it is little known to most modern readers, marijuana and other entheogens played a very important role in ancient Arabic and Hebrew culture and originally appeared throughout the books that make up the Bible's Old Testament.

The Bible openly discusses the use of mandrake, which is psychoactive, along with intoxication by wine and strong drink so the Hebrews were more than familiar with altering their consciousness. What will be surprising to most modern readers, is the frequent use of cannabis-sativa, by both the Hebrew Priests and Kings. Indicating, as anthropologist Vera Rubin noted, that cannabis "appears" in the Old Testament because of the ritual and sacred aspect of it"(Rubin 1978). The Old Testament [Taurat] use of cannabis becomes less surprising when one considers that cannabis has been popular at some point with virtually every culture that has discovered its intoxicating properties. Hemp has "been smoked and ingested under various names (hashish, charas, bhang, [kunnab], kif, marijuana) in the Oriental countries, in Africa, and in the Caribbean

area for recreation, pleasure, healing and ritual purposes. They have been important sacraments for such diverse groups as the Indian Brahmans, several orders of the Sufis, African natives, ancient Skythians, and the Jamaican Rastafarians."(Grof 1984) Pointing out the wide spread religious and industrial use of hemp throughout the ancient Near East, amongst the Babylonians, Assyrians, Scythians and Hebrews, as well as the early spread of its cultic use from northern Europe, to Siberian Asia, China, India, Asia minor and Southeast Asia, the famed anthropologist Weston La Barre, suggested that "cannabis was part of a religio-shamanic complex of at least Mesolithic age, in parallel with an equally old shamanic use of soma..."(La Barre 1980). A hypothesis that is further confirmed by our own research."

"For over a hundred and fifty years various researchers have been trying to bring attention to the cannabis references within the Old Testament. "Like the ancient Greeks, the Old Testament Israelites were surrounded by marijuana-using peoples. A British physician, Dr. C. Creighton, concluded in 1903 that several references to marijuana can be found in the Old Testament. Examples are the "*honeycomb*" referred to in the Song of Solomon, 5:1, and the "*honeywood*" in I Samuel 14: 25-45" (Consumer Reports 1972). Creighton felt that in " the O.T. there are some half-dozen passages where cryptic references to hachish may be discovered... But that word, which is the key to the meaning, has been knowingly mistranslated in the Vulgate and in the modern version, having been rendered by a variant also by the LXX in one of the passages, and confessed as unintelligible in the other by the use of a marginal Hebrew word in Greek letters" (Creighton 1903). "Hachish, which is the disreputable intoxicant drug of the East...is of unknown antiquity. It is known that the fiber of hemp-plant, **Cannabis sativa**, was used

for cordage in ancient times; and it is therefore probable that the resinous exudation, "honey" or "dew", which is found upon its flowering tops on some soils, or in certain climates (*Cannabis Indica*), was known for its stimulant or intoxicant properties from an equally early date...we may assume it to have been traditional among the Semites from remote antiquity. There are reasons, in the nature of the case, why there should be no clear history. All vices are veiled from view; they are *sub rosa*; and that is true especially of the vices of the East. Where they are alluded to at all, it is in cryptic, subtle...and allegorical terms. Therefore if we are to discover them, we must be prepared to look below the surface of the text. (Creighton 1903)." Dr. Creighton is not alone in his view. A few decades later the German researcher Immanuel Low, in his *Die Flora Der Juden*, (1926\1967) identified a number of ancient Hebrew references to cannabis, here as an incense, food source, as well as cloth. In more recent times Professor Stanley Moore, chairman of the philosophy department of the University of Wisconsin-Olatheville, has stated that Biblical references to "*aromatic herbs*" and "*smoke*" could mean psycho-active drugs used in religious observances that, Moore said are as old as religion itself. "Western Jews and Christians, who shun psycho-active drugs in their faith practices, are the exception, not the norm.". Of the historical material indicating the Hebraic use of cannabis, the strongest and most profound piece of evidence was established in 1936 by Sula Benet (a.k.a. Sara Benetowa), a Polish etymologist from the Institute of Anthropological Sciences in Warsaw. Benet later stated that: "In the original Hebrew text of the Old Testament there are references to hemp, both as incense, which was an integral part of religious celebration, and as an intoxicant"(Benet1975). Through comparative etymological study, Bennett documented that in the Old Testament [Taurat]

and in its Aramaic translation, the Targum Onculos, hemp is referred to as *kaneh bosm*, which is also rendered in traditional Hebrew as *kannabos* or *kannabus*. The root "kan" [Arabic كُنَابْ kunnab] in this construction means "reed" or "hemp", while "bosm" means "aromatic". This word appeared in Exodus 30:23, Song of Songs 4:14., Isaiah 43:24, Jeremiah 6:20, Ezekiel 27:19.

In 1980 the Hebrew University in Israel confirmed Benet's identification of Kaneh-Bosm as hemp, and the respected anthropologist Weston La Barre(1980) referred to the Biblical references in an essay on cannabis. In that same year respected British Journal New Scientist also ran a story that referred to the Hebrew Old Testament references, (Malyon & Henman 1980). A modern counterpart of the word is even listed in Ben Yehudas Pocket Dictionary and other Hebrew source books. Further, on line, the Internet's informative *Navigating the Bible*, used by countless theological students, even refers to the Exodus 30:23 reference as possibly designating cannabis. Sadly, with the so-called "discovery" of such shaman lead groups, came Christian settlers and missionaries, who would more than just frown upon indigenous religions. Whole cultures that employed these entheogenic plant-drugs for shamanistic ecstasy, or practiced ritual sexuality, have been decimated by Bible preaching Christian missionaries, who did away with what they considered the *primitive* and *evil* practices of the *heathens*. In exchange the missionaries forced these cultures to except their *morecivilizedreligion*, the *true faith* along with its burden of *original sin*, (and we have all seen what that cultural exchange has done for the aboriginal peoples of the world).

<http://www.forbiddenfruitpublishing.com/sexdrugs/intro.html>

The oldest known paper document in the West is the MozarabMissal of Silos from the 11th century, probably using paper made in Moorish Spain. The Moors used hemp and linen rags as a source of fibre. The first recorded paper mill in Spain was in Xàtiva in 1151. Marijuana has been used by man (mostly aboriginals, which appellants are), for over 5000 years as a 100% natural medicine. (Da33). Cannabis saliva L. was one of the first plants to be used by man for fiber, food, medicine, and in social and religious rituals. There were approximately 20 traditional medicinal uses of cannabis in Western medicine from the mid-19th to early 20th century. Hashish introduced to Egypt in the middle of the thirteenth century, where Sufis were using it. A favorite gathering place for [other?] hashish users in Egypt was the “gardens” of Cafour in Cairo. “Unwilling to tolerate the rabble collecting in the city’s garden spot, the governor of Cairo ordered out the troops. n A.D. 1253, all the cannabis plants growing in the area were chopped, gathered, and hurled onto a massive pyre the flames of which could be seen for miles around.” After this, farmers outside of Cairo began growing hemp.

In the third millennium B.C.E., the hemp plant was known in Egypt, where the fibers were used for rope. The ancient Egyptian word for hemp, sms t, occurs in the Pyramid Texts in connection with ropemaking. Pieces of hempen material wer found in the tomb of Akhenaten (Amenophis IV) at el-Amarna, and pollen on the mummy of Ramses II (cira 1200 B.C.E) has been identified as cannabis. The Ramses III Papyrus. (A.26) - offered and opthalmic prescription containing smsm t, and Ebers Papyrus gave "a remedy to cool the uterus," an enema and a poultice to an injured toenail, each containing smsm t. Hemp was used in the construction of the pyramids, not only to pull

blocks of limestone, but also in the quarries, where the dried fiber was pounded into cracks in the rock, then wetted. As the fiber swelled, the rock broke.

Sir W. Flinders Petrie found a large mat made of palm fiber tied with hemp cordage at el-Amarna, and other digs have unearthed hempen grave clothes of the Badarian, Predynastic, Ptolemaic, and Roman periods. The Punic people who built Carthage in North Africa dominated the Mediterranean Sea from the eleventh to the eighth century B.C.E. A Punic warship found off the coast of Sicily yielded a large quantity of hemp stems; archaeologists speculated that hemp was rationed to the oarsmen, who chewed on it for mild relief from fatigue. Hemp also was used as caulking in ships' hulls, and of course for rope.

Although there is no archaeological evidence that the early Egyptians knew of the psychotropic effects of hemp (cannabis), and they did not use hemp fiber to any significant extent, the consumption of cannabis for spiritual reasons or for pleasure eventually became common throughout Africa. Hashish was known in all the Arab lands, but among one religious sect, the Sufis, it became a part of the religion itself much as bhang and ganja had among the Hindus. The Sufis—so named because they wore wool (suf) for penance—diverged from other Muslims in their belief that spiritual enlightenment could not be taught or gleaned through rational perception, but only in states of altered consciousness. One method of achieving this entranced state was by the use of hashish. Because of their hashish use, their ascetic ways and because they came primarily from the lower classes, the Sufis were ostracized by other Arabs. Still, they had strengthened the connection between hashish and Arab spirituality, a connection that remains to this day.

As hippies of the 1960s were mirrored by the Sufis of the middle ages, so the war on drugs by current world powers has its predecessors in history. Most notorious of these forebears is Cairo's 125-year crusade to purge itself of hashish. In 1253 the streets of Cairo were filled with hashish. Hemp grew throughout Cafour, a garden in the middle of the city. The authorities decided the situation was out of hand, and every hemp plant in Cafour was destroyed in a huge bonfire that was visible for miles. As any observer of the modern drug wars could have predicted, this only drove the production of hemp outside the city. Farmers happily supplied Cairo with its hashish until 1324, when once again the government attempted to separate its citizens from their hashish. For thirty days troops were sent into the fields to destroy every hemp plant they could find. Frustrated by the religious and political climate, a generation breaks away from society. It rejects materialism and desires to live a simple, communal life closer to spiritual truth. The members of this movement dress differently from their peers and embrace cannabis as a catalyst for communion. Because of their differences, and because they do not work, they are reviled by the dominant culture, which views cannabis as the cause of their "downfall." Sound familiar? The group described above is not the hippies, and the society is not the United States of the late 1960s. Rather, flash back a thousand years to the Sufis, a group Ernest Abel in *Marijuana: The First Twelve Thousand Years* calls "the hippies of the Arab world." According to Abel, [Sufism] represented a counterculture within the Arab community in the same way that hippies of the 1960s represented an ideological and behavioral counterculture within American society. Both were peopled by "dropout" who rejected the dominant economic system in favor of communal living and sharing of

material goods. Both had their symbols. For the hippies, it was long hair and beads; for Sufi, garments made of wool.

Since neither the hippie nor the Sufi had any interest in advancing himself in society or in economic gain, both were looked down upon by the Establishment in their respective eras as being lazy and worthless. In many cases, their behavior was attributed to the effect of drugs. More than intriguing, the dominant drug in both countercultures was made from cannabis. For the hippie, it was marijuana; for the Sufi, hashish .. Both marijuana and hashish were accused of sapping the user's energy, thereby robbing him of his willingness to work. This "amotivational syndrome, as it is presently called, was regarded as a threat to the dominant culture since it undermined the work ethic.

What is most striking in Abel's comparison is the fact that, in both cases, cannabis was a central player in an ideological paradigm shift. More than any other psychotropic substance, hemp has been associated with philosophical, sociological, and spiritual realities, rather than simple escapism. But the city soon learned that, while it might be able to control what grew in its gardens, the countryside was too wide and varied and growing hemp was too easy and too lucrative.

In 1378 Cairo took the next step, an ominous one from our perspective: the torture and murder of its citizens. Under orders from Soudan Sheikhoumi, the emir of Joneima, the farmers of *quinnqb* were rounded up and had their teeth yanked out with thongs by soldiers before horrified citizens who had assembled nearby. Hashish use continues, of course, to the present day. Many North African people smoke kif, which they carry in a *mottoni* (pouch) with two or four pockets. Each compartment contains a different grade

of kif, which is offered to guests or friendship due to them. Kif is smoked in chquofa, clay pipes designed for the purpose. An Arabic proverb asserts that "a pipeful of kif before breakfast gives a man the strength of a hundred camels in the courtyard."

Another proverb warns, "Kif is like fire-a little warms, a lot burns" and the Aqrabadhin of Al-Samarqandi, an early Arabic medical formulary, recommends hemp seed as a "purging clyster" (enema) to be administered in cases of cold colic. The earliest archaeological proof of hemp-smoking in Africa outside of Egypt comes from an Ethiopian site near Lake Tana dated to 1320: two ceramic pipe bowls there contained traces of cannabis. The cultivation of hemp (now called dagga) spread southward, but the practice of smoking was forgotten along the way and not learned again until the Dutch arrived with their pipes in the seventeenth century. Previously the Hottentots and other tribes had eaten only the leaves, and the pipe was a welcome addition to their culture; its use spread rapidly and took many forms. Most common were "earth pipes," small holes in the ground that were filled with a mixture of dried dagga and smoldering dung. The smokers placed their mouths over the holes and inhaled.²⁴ Other tribes developed much more sophisticated techniques. The explorer A.T. Bryant wrote of the Zulus:

Every Zulu kraal had a few hemp plants growing inside its outer fence for smoking purpose. It was known as iNtsangu ... Oft of an afternoon one might hear the soft deep boom of the signal-al horn wafting over the veld. This was an invitation by some lonely man to all and sundry to come and keep him company with the hubble-buble... The hubble-bubble (iGudu) was ... a hollow cow's horn (in the better brands, that of a kudu antelope⁰, finely pared and polished, and used for hemp-smoking. It was fitted with a reed stem (isiTukulu), inserted at an acute angle half-way down its side, and

carring on its tip a small bowl (iMbiza), the size of an egg...of various minor craftsmen-how the maker of smoking-horns (iGudu) polished his cow or kudu horn, carved his hemp-holder (iMbiz) out of a nicely carved and polished jade -like soapstone.²⁵

The Scythians carried hemp from Asia through Greece and Russia into Europe, and later Arabs brought hemp from Africa into Spain and other ports of entry on the Mediterranean Sea. Thanks to their love of the nutritious seed, birds also did their unwitting part to spread hemp's global cultivation. Hesychius reported that Thracian women made sheets of hemp. Moschion (cira 200 B.C.E.) left record of the use of hemp ropes by the tyrant Hiero II, who outfitted the flagship Syracusia and others of his fleet with rope made from the superior cannabis cultivated in Rhodanus (the Rhone River Valley). other Greek city-state obtained much of their hemp from Colchis on the Black Sea. The first-century Greek physician Pedacius Dioscorides described Kannabis emeros (female) and agria (male) in *De Materia Medica* (3:165, 166):

Kannabis emeros. is a plant of much use in this life for ye twistings of very strong ropes, it bears leaves like to the Ash, of a bad scent, long stalks, empty, a round seed, which being eaten of much doth quench geniture, but being juiced when it is green is good for the pains of the ears. Kannabis agria ... The root being sodden, and so laid on hath ye force to assuage inflammations and to dissolve Oedemata, and to disperse ye obdurate matter about ye joints. Ya bark also of this is fitting for twining of rope. The Roman empire consumed great quantities of hemp fiber, much of which was imported from the Babylonian city of Sura. The cities of Alabanda, Colochis, Cyzicus, Ephesus, and Mylasa also were major centers of hemp industry. Cannabis was not a seed was a

common food. Carbonized hemp seeds were found in the ruins Pompeii, buried by the eruption of Mount Vesuvius in the year 79.

Pausanias, in the second century B.C.E, was possibly the first Roman writer to mention hemp; he notes that it was grown in Elide. A surviving fragment of the satirist Lucilius (from about 100 B.C.E) also mentions the plant. During the reign of Augustus, Lucius Columella gave instructions for the sowing of hemp in *Res Rustica* (II vii. 1 and ii xii.21). Caius Plinius the Elder (23-79 C.E.) wrote at length about hemp in his *Natural History*. Pliny also reproduced a fragment from the writings of Democritus describing some preparations and effects of cannabis. The Greek physician Galen (about 130-200 C.E) observed that the Romans ate cannabis pastries at their banquets *cum aliis tragematis*, to promote hilarity.

The Italians called hemp (or *canappa*) *quello delle cento operazoni*, "substance of a hundred operations," because it required so many processes to prepare the fibers for use. The Venetians eventually came to dominate the Italian hemp industry, instituting a craft union and the *Tana*, a state-operated spinning factory with demanding production standards. The Venetian senate declared that "the security of our galleys and ships and similarly of our sailors and capital" rest on 'the manufacture of cordage in our home of the *Tana*." Statutes required that all Venetian ships be rigged only with the best quality of hemp rope. From its advantageous location, the superior Venetian fleet controlled Mediterranean shipping until the city was conquered by Napoleon in 1797.²⁸

Numerous ancient Greek and Roman writers make literary reference to hemp. A sampling of the formidable list includes Leo Africanus, who writes in *The History and Description of Africa* about the *Lhasis* potation in Tunisia; Alus Gellus, writing in *Noctes*

Aticae, Caius Plinus the Elder in Natural History; Galen in De Facultatibus Alimentorum; Cato in De Re Rustica; Gaius Catullus in Codex Veronensis; Herodotus in The Histories; Lucius Columella in Res Rustica; Pedacius Dioscorides in De Materia Medica; and Plutarch in of the Names of Mountains and Rivers. Theophrastus wrote of the dendromalache, "the herb tree.' Among the other classical writers who took notice of of hemp are Aetius, Democritus, Moschion, Pausanius, Strabo, and Titus Livius.

Marijuana was first regulated in the United States at the federal level by the Marijuana Taxation Act of 1937 (MTA of 1937). The MTA of 1937 “required anyone producing, distributing, or using marijuana for medical purposes to register and pay a tax.” (Da33).

Although the Act did not make medical use of marijuana illegal, from the years 1937 through 1939 the Federal Bureau of Narcotics, under Harry Anslinger, prosecuted 3,000 doctors for “illegally” prescribing cannabis-derived medications. In 1939, the American Medical Association reached an agreement with Anslinger and stopped prescribing marijuana. (Da34). In 1942 marijuana was removed from the United States Pharmacopeia. (Da34).

The MTA of 1937 remains one of the toughest Jim Crow still being enforced. It is no mistake that blacks are disproportionately incarcerated. Appellants submits that, while the government knows that marijuana is safe, the marijuana laws are a major vehicle for the legalized enslavement of aboriginals into the all-christian dominated, controlled private and public prison industry. In 1941, the United States Government ordered marijuana passed out of the National Formulary and the United States Pharmacopeia. (Da 34).

These marijuana laws, which enslave many Moors native to America, also enrich the investors in the prison industry. (Da34). Today's inner cities have been transformed into war zones by these racist inspired policies. Whenever a prohibition is created, a black market will naturally appear in a capitalist culture. (Da35). Smoking hashish in Morocco is commonplace. Hashish (Kif) is basically processed cannabis (marijuana). It looks like a piece of sticky brown clay. The colors will vary depending on the type and quality of the hashish. Hashish is usually crumbled, mixed with tobacco and then rolled into a joint (cigarette) or smoked in a pipe. In every Moroccan city you will find small cafes where local men smoke their water pipes while playing cards and drinking mint tea. These places are probably the best places to smoke for men, if accompanied by locals. The Rif mountains (Northeast of Morocco) is where most of the cannabis (marijuana) is grown and processed into Hashish. people have been enjoying kif in the Rif mountains for centuries. According to the Lonely Planet Guide the word "kif" stems from the arabic word for 'pleasure'. But the casual use by a goat herder has been overtaken by a multi-million dollar industry.

When a similar thing happened in the white communities with the Prohibition era (illegalizing alcohol), the black market element (organized crime) that Prohibition created eventually led to the end of Prohibition. During the roaring 20's, from Los Angeles to New York, whites started shooting each other, with drive by shootings became common. The only difference from then and now is the color the combatants. In 1933 the all-white Congress ended the "War on Alcohol" with the 21st Amendment. (Da36).

It has been suggested that one of the reasons Muhammad instructed his followers to forgo liquor was to help distinguish them from the wine-loving Christians. The intoxicant use of cannabis may have permeated Islamic culture in part because alcohol was forbidden to adherents of Islam. Marijuana, which thrives in hot, arid climates, has a long history of use in the Muslim and Hindu worlds and is relatively new to the West.

CNN correspondent Peter Bergen wrote in his book *Holy War, Inc.*, "The weed grows in profusion in Islamabad, even outside the headquarters of Pakistan's drug police." Bergen compares al-Qaeda to the infamous Assassins, founded as an Ismailian sect in what was then Persia in 1090. Supposedly under the influence of hashish, the Assassins brought death and destruction on Christian Crusaders for upwards of two hundred years. Bergen noted that Osama bin Laden signed his August 23, 1996 manifesto, "From the Peaks Hindu Kush," the region where cannabis originated.

But Ernest Abel, in his book *Marijuana: The First 12,000 Years*, contends that Marco Polo never identified hashish as the drug used to trick the Assassins into their murderous ways, and that the Arab world doesn't equate hashish with violence. That didn't stop our first drug "czar" Harry Anslinger from using the legend to help bring about the Marijuana Tax Act of 1937, which effectively made marijuana illegal in the US. Headlines like "Hashish Goads Users to Blood Lust" ran in Hearst newspapers and these stories were accepted as Congressional testimony at the time.

Recorded use of cannabis goes back to 1200 - 800 in the Hindu sacred text Atharva veda and the Zoroastrian Zend-Avesta, a Persian religious text circa 600 BCE, refers to bhang as Zoroaster's "good narcotic." Marijuana's use as an intoxicant was clearly established in the Arab and Mediterranean worlds by the tenth century A.D., generating many references in Arabian literature, such as one of the stories in *The Thousand and One Nights*, known as the *Arabian Nights* (1000-1400AD).

According to legend, Haydar, the Persian monk who founded the Sufi order, discovered a cannabis plant while taking a walk in 1155 A.D. Eating some of the leaves, he found it lifted his depression and he praised its euphoric properties to his disciples, making them promise not to reveal the secret plant to anyone but Sufis (the poorer classes, who wore wool or "Suf" instead of cotton). The Sufis' religion included direct communion with God, using cannabis as a sacrament, and like today's pot-smoking hippies, they "dropped out" of the prevailing economic model and lived communally.

Perhaps the first European experiments in cross-cultural understanding took place in mid 19th-century France, a few decades after Napoleon's troops discovered hashish while invading Egypt. "Le Club des Hashishins," which met from about 1844-49, was founded by Theophile Gautier, and included painter Eugene Delacroix, writers Alexander Dumas, Victor Hugo, Honore de Balzac, Charles Baudelaire and many others. This lofty group would gather in Arabian dress and partake of hashish syrup blended into strong Arabic coffee. The fanciful descriptions of their experiences they left behind has intrigued and inspired several generations of explorers.

In 1894, the British Government published *The Indian Hemp Drug Commission Report*. Comprising some seven volumes and 3,281 pages, is by far the most complete and systematic study of marijuana undertaken to date. J.M. Campbell, a customs officer, contributed a treatise

"On the Religion of Hemp," quoted here in part: "To forbid or even seriously to restrict the use of so gracious an herb as hemp would cause widespread suffering and annoyance and to large bands of worshipped ascetics, deep-seated anger. It would rob the people of a solace in discomfort, of a cure in sickness, of a guardian whose gracious protection saves them from the attacks of evil influences, and whose mighty power makes the devotee of the Victorious, overcoming the demons of hunger and thirst, of panic, fear, of the glamour of Maya or matter, and of madness, able in rest to brood on the Eternal, till the Eternal, possessing him body and soul, frees him from the haunting of self and receives him into the Ocean of Being. These beliefs the Musalman devotee shares to the full. Like his Hindu brother, the Musalman fakir reveres bhang as the lengthener of life, the freer from the bonds of self. Bhang brings union with the Divine spirit."

Alfred R. Lindesmith, the first modern academic in the US to challenge the drug laws, wrote that Hindu society roughly reverses the status of marijuana in relation to alcohol seen in the West, and "it would be rash indeed to believe that it would be to India's advantage to outlaw marihuana and encourage the use of alcohol." A 1951 study by George Morris Carstairs found that the warrior class of India, the Rajputs, used alcohol to stay warlike but the more respected Brahmins eschewed it and preferred the gentle herb instead as a means to enlightenment.

A fascinating new book, *Orgies of the Hemp Eaters* (Autonomedia, 2004) further distinguishes between marijuana smokers and those who consume the plant instead, such as those who drink bhang to worship Shiva. Novelist, poet and composer Paul Bowles, who made a great study of "kif" during his time spent in Morocco, is quoted in the book saying, "One of the first things you must accept when you join the grown-ups' club [of the 20th century] is that fact that the Judaeo-Christians approve of only one out of all the substances capable of effecting a quick psychic change in the human organism -- and that one is alcohol. . . And so the last strongholds fashioned around the use of substances other than alcohol are being flushed out, to make everything clean and in readiness for the great alcoholic future."

The United States, Washington Irving's travel sketch, *Tales of the Alhambra* (1832) first brought Moorish Andalusia into readers' imaginations; one of the first neo-Moorish structures was Iranistan, a After the American Civil War, Moorish or Turkish smoking rooms achieved some popularity. There were Moorish details in the interiors created for the Henry Osborne Havemeyer residence on Fifth Avenue by Louis Comfort Tiffany.

THE RELIGION OF ISLAM IN AMERICA

Estevanico of Azamor (c. 1500–1539) (Arabic: إستيفانيكو; also known as "Mustafa Zemmouri" (صطفى زمو ري)) may have been the first Muslim to enter the historical

record in North America. Estevanico was a Moor originally from North Africa who explored the future states of Arizona and New Mexico for the Spanish Empire. Estevanico traveled with Dorantes to Hispaniola and Cuba with Pánfilo de Narváez's ill-fated expedition of 1527 to colonize Florida and the Gulf Coast. Estevanico became the first person from Africa known to have set foot in the present continental United States. He and Dorantes were among the expedition's four survivors, the only ones to survive the expedition's attempt to sail from Florida to Mexico in makeshift boats.

In 1785, George Washington stated a willingness to hire "Mahometans," as well as people of any nation or religion, to work on his private estate at Mount Vernon if they were "good workmen."

In 1790, the South Carolina legislative body granted special legal status to a community of Moors, twelve years after the Sultan of Morocco became the first foreign head of state to formally recognize the United States. In 1797, President John Adams signed a treaty declaring the United States had no "character of enmity against the laws, religion, or tranquillity, of Mussulmen". In his autobiography, published in 1791, Benjamin Franklin stated that he "did not disapprove" of a meeting place in Pennsylvania that was designed to accommodate preachers of all religions. Franklin wrote that "even if the Mufti of Constantinople were to send a missionary to preach Mohammedanism to us, he would find a pulpit at his service."

Thomas Jefferson defended religious freedom in America including those of Muslims. Jefferson explicitly mentioned Muslims when writing about the movement for religious freedom in Virginia. In his autobiography Jefferson wrote "[When] the [Virginia] bill for establishing religious freedom... was finally passed,... a singular

proposition proved that its protection of opinion was meant to be universal. Where the preamble declares that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed, by inserting the word 'Jesus Christ,' so that it should read 'a departure from the plan of Jesus Christ, the holy author of our religion.' The insertion was rejected by a great majority, in proof that they meant to comprehend within the mantle of its protection the Jew and the Gentile, the Christian and Mahometan, the Hindoo and infidel of every denomination." While President, Jefferson also participated in an iftar with the Ambassador of Tunisia in 1809.

However, not all politicians were pleased with the religious neutrality of the Constitution, which prohibited any religious test. Anti-Federalists in the 1788 North Carolina ratifying convention opposed the new constitution; one reason was the fear that some day Catholics or Muslims might be elected president. William Lancaster said: "Let us remember that we form a government for millions not yet in existence.... In the course of four or five hundred years, I do not know how it will work. This is most certain, that Papists may occupy that chair, and Mahometans may take it. I see nothing against it".Indeed, in 1788 many opponents of the Constitution pointed to the Middle East, especially the Ottoman Empire as a negative object lesson against standing armies and centralized state authority in the 19th century.

During the first half of the 20th century the Moorish Science Temple of America, founded by Noble Drew Ali in 1913. Drew taught that Black people have North and West African national origins and were of Moorish descent but their Nationality was taken away through involuntary slavery, racial segregation, and the 14th amendment to the United States Constitution, advocating the return to Islam of and to their Moorish

nationalities. President Obama Address to the Muslim World in Cairo Thursday, June 4, 2009; 6:32 AM: "I know, too, that Islam has always been a part of America's story. The first nation to recognize my country was Morocco. In signing the Treaty of Tripoli in 1796, our second President John Adams wrote, "The United States has in itself no character of enmity against the laws, religion or tranquility of Muslims." And since our founding, American Muslims have enriched the United States. Moreover, freedom in America is indivisible from the freedom to practice one's religion. That is why there is a mosque in every state of our union, and over 1,200 mosques within our borders. That is why the U.S. government has gone to court to protect the right of women and girls to wear the hijab, and to punish those who would deny it. The fifth issue that we must address together is religious freedom. Islam has a proud tradition of tolerance. We see it in the history of Andalusia and Cordoba during the Inquisition. I saw it firsthand as a child in Indonesia, where devout Christians worshiped freely in an overwhelmingly Muslim country.

That is the spirit we need today. People in every country should be free to choose and live their faith based upon the persuasion of the mind, heart, and soul. This tolerance is essential for religion to thrive, but it is being challenged in many different ways. Freedom of religion is central to the ability of peoples to live together. We must always examine the ways in which we protect it. Likewise, it is important for Western countries to avoid impeding Muslim citizens from practicing religion as they see fit - for instance, by dictating what clothes a Muslim woman should wear. We cannot disguise hostility towards any religion behind the pretence of liberalism." The Supreme Court has defined "religion" broadly. See United States v. Seeger, 380 U.S. 163, 176 (1965) (religion, for

the purposes of the Selective Service statute, encompasses any "sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the [religious] exemption"). Islam unquestionably is within this definition.

In considering the definition of "religion," the Tenth Circuit canvassed a large number of lower court decisions to arrive at a list of attributes that typically indicate religiosity, and Rastafarianism possesses all these attributes. See United States v. Myers, 95 F.3d 1475, 1482-84 (10th Cir. 1996). First, religions often address "fundamental questions about life, purpose, and death," *id.* at 1483, and Islam does so. Second, religious beliefs often are "metaphysical" in that they "address a reality that transcends the physical and immediately apparent world." *Id.* Muslim beliefs are metaphysical in just this way. Third, religions "prescribe a particular manner of acting, or a way of life that is 'moral' or 'ethical.'" Muslims are expected to adhere to this type of conduct. Finally, Islamic doctrines are also "comprehensive" in the manner defined by the Tenth Circuit. See United States v. Myers, 95 F.3d at 1483.

Moreover, Islam possesses all but one of the verifiable "[a]ccountrements of [r]eligion" that the Tenth Circuit said "may indicate that a certain set of beliefs is 'religious.'" Myers, 95 F. 3d at 1483. It has a ["f]ounder, [p]rophet, or [t]eacher," "[i]mportant [w]ritings," "[g]athering [p]laces," "[k]eepers of knowledge," "[c]eremonies and rituals," "[s]tructure or [o]rganization," "[h]olidays," "[d]iet or [f]asting," and special "[a]pppearance and [c]lothing." Islam is a recognized religion by both the United Nations and United States. (Da44). Islam has many tenets based on a combination of Taurat [Old Testament] ideology.

Islam is a sufficiently stable and distinctive to be identified as one of the existing religions in this country. See J. Gordon Melton, Encyclopedia of American Religions, 870-71 (1991). Standard descriptions of the taurat, and injeel emphasize the use of marijuana in cultic ceremonies designed to bring the believer closer to the divinity and to enhance unity among believers. Marijuana--known as as kunnab مَحْلاِبْٹ , okhadarat خش عيش Hashish - Hash in the religion--operates as a sacrament with the power to raise the partakers above the mundane and to enhance their spiritual

From the 1880s to 1914, several thousand Muslims immigrated to the United States from the Ottoman Empire, and from parts of South Asia; they did not form distinctive settlements, and probably most assimilated into the wider society. The oldest Muslim community to establish in the country was the Ahmadiyya Muslim Community, in 1921; before the existence of Nation of Islam. Once very small, the Muslim population of the US increased greatly in the twentieth century, with much of the growth driven by rising immigration and conversion. In 2005, more people from Islamic countries became legal permanent United States residents — nearly 96,000 — than in any year in the previous two decades.

Recent immigrant Muslims make up the majority of the total Muslim population. South Asians Muslims from India and Pakistan and Arabs make up the biggest group of Muslims in America at 60–65% of the population. Native-born American Muslims are mainly African Americans who make up a quarter of the total Muslim population. Many of these have converted to Islam during the last seventy years. Conversion to Islam in prison, and in large urban areas has also contributed to its growth over the years.

American Muslims come from various backgrounds, and are one of the most racially diverse religious group in the United States according to a 2009 Gallup poll.

A Pew report released in 2009 noted that nearly six-in-ten American adults see Muslims as being subject to discrimination, more than Mormons, Atheists, or Jews. While Muslims comprise less than two percent of the American population, they accounted for approximately one quarter of the religious discrimination claims filed with the Equal Employment Opportunity Commission during 2009. The history of Islam in the United States can be divided into two significant periods: the post World War I period, and the last few decades. Although some individual members of the Islamic faith are known to have visited or lived in the United States during the colonial era.

American views of Islam affected debates regarding freedom of religion during the drafting of the state constitution of Pennsylvania in 1776. Constitutionlists promoted religious toleration while Anti constitutionalists called for reliance on Protestant values in the formation of the state's republican government. The former group won out, and inserted a clause for religious liberty in the new state constitution. American views of Islam were influenced by favorable Enlightenment writings from Europe, as well as Europeans who had long warned that Islam was a threat to Christianity and republicanism.

When Benjamin Franklin helped establish a non-denominational religious meeting house in Philadelphia, he emphasized its non-sectarian nature by stating that "even if the Mufti of Constantinople were to send a missionary to preach Mohammedanism to us, he would find a pulpit at his service". Franklin also wrote an anti-slavery parody piece claiming to be translation of the response of a government

official at Algiers to a 17th-century petition to banish slavery there; the piece develops the theme that Europeans are specially suited for enslavement on cultural and religious grounds, and that there would be practical problems with abolishing slavery in North Africa; this satirizes similar arguments that were then made about the enslavement of Blacks in North America.

Between 1785 and 1815, over a hundred American sailors were captive in Algiers for ransom. Several wrote captivity narratives of their experiences that gave most Americans their first view of the Middle East and Muslim ways, and newspapers often commented on them. The result was a collage of misinformation and ugly stereotypes. Royall Tyler wrote *The Algerine Captive* (1797), an early American novel depicting the life of an American doctor employed in the slave trade who becomes himself enslaved by Barbary pirates. Finally Washington sent in the Navy to confront the pirates, and ended the threat in 1815.

In 1776, John Adams published "Thoughts on Government," in which he praises the Islamic prophet Muhammad as a "sober inquirer after truth" alongside Confucius, Zoroaster, Socrates, and other "pagan and Christian" thinkers. Alexander Russell Webb is considered by historians to be the earliest prominent Anglo-American convert to Islam in 1888. In 1893 he was the only person representing Islam at the first Parliament for the World's Religions. During the American Civil war, the "scorched earth" policy of the North destroyed churches, farms, schools, libraries, colleges, and a great deal of other property. The libraries at the University of Alabama managed to save one book from the debris of their library buildings. On the morning of April 4, when Federal troops reached the campus with order to destroy the university, Andre Deloffre, a modern language

professor and custodian of the library, appealed to the commanding officer to spare one of the finest libraries in the South. The officer, being sympathetic, sent a courier to Gen. Croxton at his headquarters in Tuscaloosa asking permission to save the Rotunda. The general's reply was no. The officer reportedly said, "I will save one volume as a memento of this occasion." The volume selected was a rare copy of the Qur'an. Many of the slaves brought to colonial America from Africa were Muslims. By 1800, some 500,000 Africans arrived in what became the United States. Historians estimate that between 15 to 30 percent of all enslaved African men, and less than 15 percent of the enslaved African women, were Muslims. These enslaved Muslims stood out from their compatriots because of their "resistance, determination and education".

It is estimated that over 50% of the slaves imported to North America came from areas where Islam was followed by at least a minority population. Thus, no less than 200,000 came from regions influenced by Islam. Substantial numbers originated from Senegambia, a region with an established community of Muslim inhabitants extending to the 11th century. Michael A. Gomez speculated that Muslim slaves may have accounted for "thousands, if not tens of thousands," but does not offer a precise estimate. He also suggests many non-Muslim slaves were acquainted with some tenets of Islam, due to Muslim trading and proselytizing activities. Historical records indicate many enslaved Muslims conversed in the Arabic language. Some even composed literature (such as autobiographies) and commentaries on the Quran.

Some newly arrived Muslim slaves assembled for communal Salah (prayers). Some were provided a private praying area by their owner. The two best documented Muslim slaves were Ayuba Suleiman Diallo and Omar Ibn Said. Suleiman was brought to America in

1731 and returned to Africa in 1734. Like many Muslim slaves, he often encountered impediments when attempting to perform religious rituals and was eventually allotted a private location for prayer by his master.

Omar Ibn Said (ca. 1770–1864) is among the best documented examples of a practicing-Muslim slave. He lived on a colonial North Carolina plantation and wrote many Arabic texts while enslaved. Born in the kingdom of Futa Tooro (modern Senegal), he arrived in America in 1807, one month before the US abolished importation of slaves. Some of his works include the Lords Prayer, the Bismillah, this is How You Pray, Quranic phases, the 23rd Psalm, and an autobiography. In 1857, he produced his last known writing on Surah 110 of the Quran. In 1819, Omar received an Arabic translation of the Christian Bible from his master, James Owen. Omar converted to Christianity in 1820, an episode widely used throughout the South to "prove" the benevolence of slavery. However, some scholars believe he continued to be a practicing Muslim, based on dedications to Muhammad written in his Bible.

Peter Salem, a former slave who fought at the Battle of Bunker Hill, is speculated to have Muslim connections based on his Islamic-sounding name. Other American Revolution soldiers with Islamic names include Salem Poor, Yusuf Ben Ali, Bampett Muhamed, Francis Saba, and Joseph Saba.

Bilali (Ben Ali) Muhammad was a Fula Muslim from Timbo Futa-Jallon in present day Guinea-Conakry, who arrived to Sapelo Island during 1803. While enslaved, he became the religious leader and Imam for a slave community numbering approximately eighty Muslim men residing on his plantation. He is known to have fasted during the month of Ramadan, worn a fez and kaftan, and observed the Muslim feasts, in

addition to consistently performing the five obligatory prayers. In 1829, Bilali authored a thirteen page Arabic *Risala* on Islamic law and conduct. Known as the Bilali Document, it is currently housed at the University of Georgia in Athens.

Small-scale migration to the U.S. by Muslims began in 1840, with the arrival of Yemenites and Turks, and lasted until World War I. Most of the immigrants, from Arab areas of the Ottoman Empire, came with the purpose of making money and returning to their homeland. However, the economic hardships of 19th-Century America prevented them from prospering, and as a result the immigrants settled in the United States permanently. These immigrants settled primarily in Dearborn, Michigan; Quincy, Massachusetts; and Ross, North Dakota. Ross, North Dakota is the site of the first documented mosque and Muslim Cemetery, but it was abandoned and later torn down in the mid 1970s. A new mosque was built in its place in 2005.

- 1906 Bosnian Muslims in Chicago, Illinois started the Jamaat al-Hajrije (Assembly Society; a social service organization devoted to Bosnian Muslims). This is the longest lasting incorporated Muslim community in the United States. They met in coffeehouses and eventually opened the first Islamic Sunday School with curriculum and textbooks under Imam Kamil Avdih (a graduate of al-Azhar and author of *Survey of Islamic Doctrines*).
- 1907 Lipka Tatar immigrants from the Podlasie region of Poland founded the first Muslim organization in New York City, the American Mohammedan Society.
- 1915, what is most likely the first American mosque was founded by Albanian Muslims in Biddeford, Maine. A Muslim cemetery still exists there.

- 1920 First Islamic mission station was established by an Indian Ahmadiyya Muslim missionary, followed by the building of the Al-Sadiq Mosque in 1921.
- 1934 The first building built specifically to be a mosque is established in Cedar Rapids, Iowa.
- 1945 A mosque existed in Dearborn, Michigan, home to the largest Arab-American population in the U.S.

Construction of mosques sped up in the 1920s and 1930s, and by 1952, there were over 20 mosques. Although the first mosque was established in the U.S. in 1915, relatively few mosques were founded before the 1960s. Eighty-seven percent of mosques in the U.S. were founded within the last three decades according to the Faith Communities Today (FACT) survey. California has more mosques than any other state.

Chinese Muslims have immigrated to the United States and lived within the Chinese community rather than integrating into other foreign Muslim communities. Two of the most prominent Chinese American Muslims are the Republic of China National Revolutionary Army Generals Ma Hongkui and his son Ma Dunjing who moved to Los Angeles, California after fleeing from China to Taiwan. Pai Hsien-yung, son of the Chinese Muslim General Bai Chongxi, is a Chinese Muslim writer who moved to Santa Barbara, California after fleeing from China to Taiwan.

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percent of the enslaved African women, were Muslims. These enslaved Muslims stood out from their compatriots because of their "resistance, determination and education". It is estimated that over 50% of the slaves imported to North America came from areas where Islam was followed by at least a minority population. Thus, no less than 200,000 came from regions influenced by Islam. Substantial numbers originated from Senegambia, a region with an established community of Muslim inhabitants extending to the 11th century.

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SUBPOINT I

THE APPELLANTS'S SACRAMENTAL USE OF CANNABIS IS PROTECTED UNDER THE

RELIGIOUS FREEDOM RESTORATION ACT (RFRA)

By depriving appellants of their ability to partake in and possess their sacramental cannabis, the State of New Jersey has burdened appellants's exercise of their religion in a manner forbidden by the RFRA, Pub. L. No. 103-141, 107 Stat. 1488 (1993), codified at 42 U.S.C. §§ 2000bb-2000bb-4 (1994). The statutory prohibition established by § 2000bb-1(a) & (b) is judicially enforceable. See 42 U.S.C. § 2000bb-(c). Moreover the Act applies to any "branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States," as well as to any "State, or . . . subdivision of a State." City of Boerne v. Flores, 521 U.S. 507, 516 (1997). The United States Supreme Court case of Employment Div., Dep't of Human Res. of Oregon v. Smith, 494 U.S. 82, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), resulted in Congress enacting the Religious Freedom Restoration Act of

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1993 (RFRA), which prohibited the government from substantially burdening a person's exercise of religion. In City of Boerne v. Flores, 521 U.S. 507, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997), the Supreme Court struck down that legislation, and Smith remains controlling law.

In People of Guam v. Guerrero, 290 F.3d 1210 (9th Cir. 2002), the Ninth Circuit ruled that the RFRA forbids prosecuting Rastafarians for using marijuana within the federal realm, such as a United States territory or a national park, thus upholding a portion of the RFRA. The Court in Guerrero, however, ruled that the appellants could be prosecuted for importing marijuana, since Rastafarianism does not require importation of a controlled substance, which increases its availability. Id. at 1223.

The distinction in Guerrero does not make sense since it is the equivalent to saying that, while an intoxicating substance, such as wine is a necessary sacrament for some Christians, the persons administering the sacrament would have to grow their own grapes, if the option of purchasing it from the Government is not possible. If an American Indian or Rastafarian is permitted to smoke kunnab (Marijuana) on federal grounds as a constitutionally protected behavior provable to be part of indigenous-religious culture and heritage, it is illogical to prosecute the persons who possess and provides the kunnab, Mokhadarat - خدرك, Bango - ب انج و Hashish - حشيش Hash (Marijuana).

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The RFRA protects the religious and industrial use of marijuana by practicing Americans and Rastafarians, these same protections should apply to American Moors or Moors Native to American and Muslim-American, Moorish-American, Mauritanian-American, Moroccan-America, Murakush-American) alike who practice those aspects of Islamism, ancient, classical and indigenous in North and West African as well as Middle Eastern culture and well documented history; just as the 1919 Volstead Act (Prohibition Act) protected the religious and industrial use of alcohol in the Catholic Church. When New Jersey revised its criminal code with the 1997 omnibus crime bill, it failed to provide for a religious exemption for marijuana. As Rastafarianism regards marijuana as a sacrament necessary to the

practice of the religion, the statutes prohibiting marijuana are unconstitutional. Since to utilize the sacrament of kunnab/marijuana it is necessary to import it, then any law which prohibits the importation and distribution (and possession with intent to distribute) for this purpose is also unconstitutional. Neither the 1970 Controlled Substance Act (21 U.S.C. 321(p)(1)) nor N.J.S.A. 2C:35-5a(1) and b.10(a) provide for First Amendment religious exemptions to drug laws. Congress attempted to rectify this with the 1993 Religious Restoration Act ("RFRA") (42 U.S.C. §2000bb(a)), but instead created an unconstitutionally "vague" situation. Appellants such as Forchion were led to believe "marijuana" was legal for religious purposes. The RFRA protects the religious and industrial use of marijuana by practicing Muslims, just

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as the 1919 Volstead Act (Prohibition) protected the religious and industrial use of alcohol in the Catholic Church In Employment Division v. Smith, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), the Supreme Court upheld, against a First Amendment challenge, an Oregon law criminalizing peyote use, which was used in Native American religious rituals. Smith, a member of the Native American Church, ingested peyote for sacramental purposes at a church ceremony. This led Smith's employer to fire him. Id. at 874. Smith sued for unemployment benefits, arguing that the denial of unemployment benefits burdened his First Amendment right, and the Supreme Court allowed Oregon to enforce the anti-drug law against Smith. Id. at 884-85. In response to Employment Division, Congress enacted the RFRA. However, the Court in City of Boerne v. P.F. Flores, 521 U.S. 507, 138 L.Ed.2d 624, 117 S.Ct. 2157 (1997) declared the RFRA unconstitutional as applied to the States. The City of Boerne case arose when the Catholic Archbishop of San Antonio applied for a building permit to enlarge his 1923 mission-style St. Peter's Church in Boerne, Texas. Local zoning authorities denied the permit, relying on an ordinance governing additions and new construction in a historic district which included the church as a contributing property. The Archbishop brought a lawsuit challenging the permit denial under the RFRA, arguing that his congregation had outgrown the existing structure.

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The Archbishop claimed that his ability to act on his beliefs was substantially burdened by the denial of the proposed addition. The Supreme Court in Boerne, in an opinion by Justice Anthony Kennedy, struck down RFRA as an unconstitutional use of Congress's enforcement powers. However, the scope of Boerne was limited in Gonzales v. O Centro Espirita Beneficente, Uniao do Vegetal, 546 U.S. 418 (2006), involving the Federal Government's seizure of a sacramental tea (ayahuasca), containing a Schedule I substance, from a New Mexican branch of the Brazilian church Uniao do Vegetal (UDV). The church sued and claimed that the seizure was illegal, and sought to ensure future importation of tea for religious and industrial use. The United States District Court for New Mexico agreed and issued a preliminary injunction under the RFRA. The Government appealed to the Tenth Circuit Court of Appeals, which affirmed.

The Supreme Court heard the case and found that the Government had failed to meet its burden under the RFRA that barring the substance served a compelling government interest. The Court also disagreed with the government's central argument that the uniform application of the Controlled Substances Act (CDS) does not allow for exceptions for the substance in this case, as Native Americans, American Indians are given exceptions to use peyote, another Schedule I substance. It should be noted that the ruling is not binding on the states, as the Act was amended in 2003 to only include the federal government and its entities, such as Puerto Rico and the District of Columbia.

So both peyote (a Schedule I substance) and sacramental tea (ayahuasca) (another Schedule I substance) have been provided religious exemptions by the Supreme Court. Accordingly, kunnab (marijuana) must be afforded the same exemption to Rastafarians.

In People of Guam v. Guerrero, 290 F.3d 1210 (9th Cir. 2002), the Ninth Circuit ruled that the RFRA forbids prosecuting Rastafarians for using marijuana within the federal realm, such as a United States territory or a national park, thus upholding a portion of the RFRA.

In Guerrero the appellants, a Rastafarian arrested at the Guam airport with marijuana and seeds, was charged with importing the drugs. The Court ruled that a Rastafarian whose Jamaica-based religion regards marijuana as a sacrament that brings believers closer to divinity could not be prosecuted for merely possessing marijuana in the "federal realms." The ruling applies to California, eight other Western states, and the Pacific territories of Guam and the Northern Mariana Islands. If it became a nationwide standard, it would cover the federal enclaves of Washington, D.C., Puerto Rico, and any other federal property. The Court, however, ruled that the appellants could be prosecuted for importing marijuana, since "Rastafarianism does not require importation of a controlled substance, which increases (its) availability ..." Id. at 1223. This distinction in Guerrero does not make sense since it is the equivalent to saying that, while wine is a necessary sacrament for some Christians and Jews, the persons administering the sacrament would have to grow their own grapes. If a Rastafarian is permitted to smoke kunnab on federal grounds as constitutionally protected 1st Amendment behavior, it is illogical to prosecute the person who provides the kunnab. See also Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993) (Supreme Court held unconstitutional an ordinance passed in Hialeah, Florida, that forbade the "unnecessary[y] killing of 'an animal in a public or private ritual or ceremony for the primary purpose of food consumption.'")

The RFRA protects the religious and industrial use of marijuana by practicing Rastafarians, just as the 1919 Volstead Act (Prohibition Act) protected the religious and industrial use of alcohol in the Catholic Church. When New Jersey revised its criminal code with the 1997 omnibus crime bill N.J.S.A. 2C:35-

5a(1) and b.10(a), it failed to provide for a religious exemption for marijuana. As a Rastafarianism regards marijuana as a sacrament necessary to the practice of the religion, the statutes are unconstitutional. Since to utilize the sacrament of kunnab/marijuana it is necessary to import it, then any law which prohibits the importation and distribution (and possession with intent to distribute) for this purpose is also unconstitutional. On January 18, 2010, the State of New Jersey officially recognized marijuana's medicinal value but failed to reclassify marijuana from a Schedule I drug. The new law clearly made a secular medical "exemption" for the criminal drug statutes but failed to make a religious exemption. For the foregoing reasons and authorities cited, the indictment against Edward Forchion must be dismissed with prejudice.

SUBPOINT II
THE STATE OF NEW JERSEY'S INTERFERENCE
WITH THE APPELLANTS'S SACRAMENTAL USE OF
MARIJUANA SUBSTANTIALLY BURDENS HIS
EXERCISE OF RELIGIOUS FREEDOM

In addition to being a violation under the RFRA, the State's interference with the appellants's sacramental use of marijuana substantially burdens the appellants's exercise of religion. Compelling a party to forego a religious practice imposes a substantial burden on that party. See, e.g., Hobbie v. Unemployment Appeals Comm'n, 480 U.S. 136, 140-41 (1987); Horen v. Commonwealth, 479 S.E.2d 533, 558-59 (Va. 1997). "There can be no more direct burden on free exercise than absolute criminal prohibition." Michael W. McConnell, Free Exercise Revisionism and the Smith Decision, 57 U. Chi. L. Rev. 1109, 1125 n.80 (1990).

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In the Rastafarian religion, no substitute exists for cannabis; its ingestion or topical application is necessary for a Rastafarian ceremony to occur. Because cannabis is regarded as sacred, Rastafarian doctrine does not permit the substitution of any other plants or materials as sacraments during Rastafarian ceremonies, and does not permit the substitution of any other practice for the ingestion or topical application of cannabis.

The sincerity with which the appellants holds these beliefs cannot be questioned. Indeed, the government may not make theological judgments about religious truth. See Seeger, supra, 380 U.S. at 184 ("In such an intensely personal area ... the claim of the registrant that his belief is an essential part of a religious faith must be given great weight"); see also id. at 185 (noting that "the 'truth' of a belief is not open to question"); Africa v. Pennsylvania, 662 F.2d 1025, 1030 (3rd Cir. 1981) ("It is inappropriate for a reviewing court to attempt to assess the truth or falsity of an announced article of faith. Judges are not oracles of theological verity.")

Therefore, governmental decision-makers must view

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cannabis as central and indispensable to the Rastafarian religious practice. If wine were added to schedule 1 with no accommodation for religious and industrial use, it would be absolutely clear that the free exercise of Catholicism and Judaism was being substantially burdened. The same is true of cannabis and the Rastafarian religion.

Therefore, prohibition of the Rastafarian religion's use of cannabis "substantially burden[s]" the exercise of the Rastafarian religion, within the meaning of RFRA, 42 U.S.C. § 2000bb-1(a). See e.g. United States v. Boyll, 774 F. Supp. 1333, 1341 (D.N.M. 1991) ("believers who worship at the Native American Church cannot freely exercise their religious beliefs absent the use of peyote." ... "There is no dispute that [the] criminal prohibition of peyote places a severe burden on the ability of [Appellants] to freely exercise [his] religion.") (citations omitted); see also United States v. Warner, 595 F.Supp. 595, 598 (D.N.D. 1984) ("[T]he government concedes that the use of peyote is central to, and the cornerstone of, the religious practices of the NAC. Therefore, prosecution for the use of peyote in the bona fide religious practices of the NAC would create a

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burden on the free exercise of the religion of NAC members.") The government does not have a compelling interest in criminalizing the use of cannabis nor has it adopted the least restrictive means to secure its interest. The government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000-1 (b). "[T]he term 'demonstrates' means going forward with evidence and persuasion...." 42 U.S.C. § 2000bb-2(3). Thus, on all issues relating to whether complete suppression of Rastafarians' use of cannabis serves a compelling governmental interest by the least restrictive means, the burden of going forward and the burden of persuasion rest with the government. Moreover, the compelling-interest test under RFRA is "the compelling interest test set forth in Sherbert v. Verner, 374 U.S. 398 (1963) and Wisconsin v. Yoder, 406 U.S. 205 (1972)...." 42 U.S.C. § 2000b(b)(1).

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In Yoder, the Court made it clear that the test, earlier set forth in Sherbert, is not whether the government has a compelling interest in a general objective (e.g., an educated citizenry, prevention of drug abuse), but whether it has a compelling interest in substantially burdening the specific religious practice of them particular individual or group at issue. The Court rejected "the State's broader contention that its interest in its system of compulsory education is so compelling that even the established religious practices of the Amish must give way." Id. at 221. It stated that, "despite its admitted validity in the generality of cases, we must searchingly examine the interests that the State seeks to promote by its requirement for compulsory education to age 16, and the impediment to those objectives that would flow from recognizing the claimed Amish exemption." Id. The

Court held that "it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish." Id. at 236. The Court found that "Wisconsin's interest in compelling the school

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attendance of Amish children to age 16 emerges as somewhat less substantial than requiring such attendance for children generally." Id. at 228-29.

Similarly here, it is necessary to focus on the particular facts relating to Rastafarianism and its use of cannabis. The government has only one arguably compelling interest in controlling the use of cannabis in Rastafarian religious ceremonies, that of protecting the members of the Rastafarian religion from harm. However, independent and scientific literature suggests the absence of harm resulting from the consumption of cannabis. No evidence exists that the use of cannabis in religious ceremonies is addictive or is otherwise likely to harm the individuals participating in the ceremonies. The United States government's own "Compassionate Use Program," which has for decades supplied cannabis to terminally ill patients as a medicine to mitigate their suffering, has never received a complaint from any of its participants involving any medical or other substantial problem involving their use of the supplied cannabis. The government's own records attest to this fact.

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For these reasons, it is clear that appellants's use and possession of cannabis as criminally impermissible acts under the laws of New Jersey substantially burden the appellants (and other Muslim-Americans) exercise of their religion in a manner that is not justified by a compelling governmental interest carried out in the least restrictive manner. Accordingly, since appellants's rights under the International Religious Freedom Act of 1998, the RFRA will be violated with a criminal prosecution and or conviction in this case the indictment must be dismissed with prejudice.

SUBPOINT III

THE STATE OF NEW JERSEY'S ACTIONS HAVE VIOLATED APPELLANTS'S FIRST AMENDMENT RIGHTS

In addition to the above arguments, the State of New Jersey's actions, in addition to violating the RFRA, also violate the First Amendment. The Free Exercise Clause of the First Amendment reflects the fundamental importance of religious liberty in American democracy: "Congress shall make no law ... prohibiting the free exercise" of religion. U.S. Const. Amend. I.

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In Employment Division Dept. of Human Resources v. Smith, 494 U.S. 872 (1990), the Supreme Court, distinguishing prior case law, held that if a law is both

"neutral" and "generally applicable," it may be applied to religiously motivated conduct without compelling justification. Id. at 872. However, a law that prescribes or permits individual exceptions is not "generally applicable"; a law that gives preferred treatment to secular interests as compared with religious interests or that gives preferred treatment to one religion as compared with another is not "neutral." Indeed, the Tenth Circuit has already expressly held that the DEA's NAC and UDV exemptions in 21 C.F.R. § 1307.31 "unlike the statute in Smith, is neither neutral nor generally applicable." United States v. Boyll, 774 F.Supp. at 1341; see also Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 U.S. 520, 537-38 (1993); Smith, 494 U.S. at 884; Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 170 F.3d 359, 364-65 (3rd Cir.), cert. denied, 120 S.Ct. 56 (1999); Rader v. Johnston, 924 F.Supp. 1540, 1551-55 (D. Neb. 1996). When a law that is not generally applicable or not neutral interferes with the practice of religion, such interference must be justified by a compelling governmental interest and must be narrowly tailored (i.e., must survive "heightened scrutiny"). See Church of Lukumi Babalu Aye, 508 U.S. at 531-32. Under Smith, "where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of 'religious hardship' without compelling reason." 494 U.S. at 884.

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In 1993, the Supreme Court in Church of the Lukumi Babalu Aye applied the Smith framework to local animal-slaughter laws that were neither generally applicable nor neutral. The City of Hialeah, Florida, had enacted several ordinances that banned the ritual sacrifice of animals; these laws directly burdened the religious practice of local members of the Santeria religion, who challenged the laws in court. See id. at 525-28. The city sought refuge in Smith, but its position was undermined by the fact that the ordinances were not generally applicable, but rather contained express exceptions for animal slaughter for food and for hunting. See id. at 536-37. The Supreme Court applied Smith to hold that heightened scrutiny would apply to the local laws because they were neither generally applicable nor neutral. Id. at 546. A "law burdening religious practice that is not neutral nor of general application must undergo the most rigorous of scrutiny." Id.

The import of Smith and Lukumi Babalu Aye is that, where a statutory scheme does not make exceptions from the baseline regulatory or prohibitory regime, it cannot grant exceptions for secular purposes but deny exceptions for religious purposes without compelling reasons for the denial. Although the Smith rule states that religion in general or a particular religion need not be specially favored under an otherwise generally applicable law, the converse is also true: religion must not be disfavored when the government grants exceptions to statutory prohibition.

Two recent cases in the lower federal courts illustrate the application of this principle. The first involved a challenge under the Free Exercise Clause to the Newark, New Jersey's Police Department's prohibition against officers wearing beards. See Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 170 F.3d 359, 364-65 (3rd Cir.),

cert. denied, 120 S.Ct. 56 (1999) Cir. 1999), cert. denied, 120 S.Ct. 56 (1999). The plaintiff officers were Sunni Muslims whose religion imposes on adult males to wear beards. Their request for exemption from the policy was denied; the department announced a 'zero tolerance policy' for departures from the ban, except for those officers who received a "medical clearance" to wear a beard. See id. at 361. The Third Circuit held that, because exceptions were made for those who needed to wear a beard for a secular (medical) reason, the compelling-interest test would govern the prohibition's application to claims for religious exemption. See id. at 366 ("[W]hen the government makes a value judgment in favor of secular motivations, the government's actions must survive heightened scrutiny."). Because the department offered no compelling reason for the policy, the court upheld the Free Exercise claim. See id. at 366-67. Another court applied Smith similarly to uphold a college student's right to a religious exemption from the University of Nebraska's mandatory housing policy. See Rader v. Johnston, 924 F.Supp. 1540 (D. Neb. 1996).

The university imposed a rule that all freshmen live in on-campus dormitories. The university maintained three categorical exceptions for married students, older students, and students commuting from their parent's home; it also allowed for individualized exceptions for secular reasons such as familial responsibility, medical need, or emotional difficulties. See id. at 1546-47. The university, however, refused to provide an exemption from the dormitory to Douglas Rader who sought such exemption on the basis of his fundamentalist Christian beliefs and lifestyle, which he claimed would be burdened by the permissive culture of college housing. The district court found that the university's policy violated Rader's First Amendment rights, relying on Smith and Lukumi Babalu Aye and holding that, "[i]f a law or policy provides exemptions for certain reasons, such as medical treatment, then it should provide similar exemptions for religious purposes, unless the state can show an overriding compelling interest." Id. at 1555 (quotation omitted). Finding no compelling interest on the university's part, the court ruled in Rader's favor. See id. at 1558.

It should be pointed out that the appellants Forchion previously raised both the First Amendment and the RFRA claim following his arrest due to protests at the Liberty Bell (Independence National Historic Park -- federal property) in Philadelphia, Pennsylvania. The appellants was found guilty by a federal magistrate but appealed. In an opinion dated July 22, 2005, the Honorable Stewart Dalzell affirmed the conviction but vacated the sentence. See <http://www.ethipianzioncopticchurch.org/Cases/forchion.aspx> (United States v. Edward Forchion Opinion annexed at Da91-97). The case was also remanded to the Honorable Arnold C. Rapoport for further proceedings but Judge Rapoport

dismissed the case without ruling on the original issues. For the foregoing reasons and authorities cited, the indictment must be dismissed with prejudice.

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POINT III

**N.J.S.A. 2C:35-5A(1) AND B.10(A)
ARE UNCONSTITUTIONAL AS THEY VIOLATE
THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT TO THE UNITED
STATES CONSTITUTION SINCE PEYOTE (A
SCHEDULE I SUBSTANCE) IS A RECOGNIZED
RELIGIOUS EXEMPTION ALONG WITH ANOTHER
SCHEDULE I SUBSTANCE (AYAHUASCA TEA); THE
APPELLANTS, ARE MOORS AND PRACTISING MUSLIMS,
MUST BE AFFORDED THE SAME PROTECTION**

Appellants incorporates by reference the arguments and authorities in Point II and submits that since both peyote (a Schedule I substance) and sacramental tea (ayahuasca) (another Schedule I substance) have been provided religious exemptions by the Supreme Court, the failure to do so for Moors or Muslim-Americans Native (aboriginal and indigenous) to America and their religious sacrament kunnab (marijuana) is violative of the equal protection clause of the Fourteenth Amendment (and Fifth Amendment).

The Fifth Amendment requires the federal government accord all persons the equal protection of law; that it treat alike all persons similarly situated. "In order to assert a viable equal protection claim, plaintiffs must first make a threshold showing that they were treated differently from others who were similarly situated to them." Campbell v. Buckley, 203 F.3d 738, 747 (10th Cir.

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2000). (footnotes, quotations, and ellipses omitted), cert. denied, 121 S.Ct. 68 (2000). The principle of equal protection of law forbids selective enforcement bases upon an "unjustifiable standard such as race, religion, or other arbitrary classification." United States v. Batchelder, 442 U.S. 114, 125 n.9 (1979). In the instant case, the State is selectively enforcing the State marijuana laws based on appellants's religious classification. The Rastafarian religion is similarly situated to both the Native American Church ("NAC") and the O Centro Espirita Beneficiente Uniao Do Vegetal-USA ("UDV-USA") in all significant respects. All three religions use Schedule 1 substances as religious sacraments and in all three, ingestion of that substance is necessary to the proper conduct of religious ceremonies. Neither the NAC nor the UDV-USA hold special qualities or attributes that would justify appellants's more favorable treatment of them. Indeed, both the NAC and the UDV-USA have some attributes that would make each of them a less

favorable candidate for permission to use their Schedule 1 substances in religious ceremonies. Unlike cannabis, both peyote and DMT are strong mind-altering substances that are

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temporarily debilitating and may require an attendant be present to ensure the health and safety of the sacrament's recipient. Cannabis, by contrast, is much milder and is not in any way temporarily debilitating as both peyote and DMT can often be. See "First Report of the National Commission on Marihuana and Drug Abuse," pp. 58-61. Newcomers to the Rastafarian religion are virtually all already familiar to cannabis and therefore are not likely to confuse the religion with the effects of the sacrament. Already widespread use of cannabis in all walks of American life means neophytes to the Moorish religion are not likely to be drawn to the Rastafarian religion as a haven for otherwise illicit drug use as is more likely with neophytes of the other two above religions.

Appellants seeks to use their sacrament on-site with no importation, distribution, or transport envisioned

for his sacrament, unlike at least one of the other religions allowed to use a Schedule 1 substance as their sacrament.

Therefore, although the Islamic religion and its members are similarly situated to the NAC and its members and to the UDV-USA and its members, the State of New Jersey

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has failed and refused to treat them similarly. NAC and UDV-USA members may freely exercise their religion and members of the Islamic faith may not. The Fifth Amendment does not permit such conduct. See United States v. Armstrong, 517 U.S. 456, 464 (1996) ("One of these constraints imposed by the equal protection component of the Due Process Clause of the Fifth Amendment ... is that the decision whether to prosecute may not be based on 'an unjustifiable standard such as race, religion, national origin or other arbitrary classification ...')") (citations omitted).

New Jersey refuses to recognize these laws, in violation of the United States Constitution's guarantee that each state will give "full faith and credit" to the laws of other states. All persons are supposed to be treated equally, yet in New Jersey persons now identified as falling under the Medical Marijuana Compassionate Use Act are immune from prosecution for possession of marijuana, while other persons such as the appellants are charged with a criminal violation, often incarcerated (13th amendment-enslaved) and extremely fined. This is a clear equal protection violation (particularly since the appellants had at the time of their arrest certified copies of Moorish documentation.

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Since kunnab (marijuana) must be afforded the same exemption to Rastafarians, the failure to do so for Moors violates appellants's equal protection rights.

POINT IV

**THE MARIJUANA STATUTES ARE UNCONSTITUTIONAL
DUE TO VAUGENESS, INDEFINITENESS AND OVER-
BREADTH; THEY ALSO VIOLATE THE UNITED STATES
CONSTITUTION'S PROHIBITION AGAINST BILL OF
ATTAINDERS; AT THE VERY LEAST, APPELLANTS
SHOULD BE ALLOWED TO PRESENT EXPERT
TESTIMONY CONCERNING THIS ISSUE**

In State v. Profaci, 56 N.J. 346 (1970), the Court cited the principles concerning whether a statute is unconstitutional due to vagueness, indefiniteness or overbreadth:

The concept of vagueness or indefiniteness rests on the constitutional principle that procedural due process requires fair notice and proper standards for adjudication. The primary issues involved are whether the provisions of a penal statute are sufficiently definite to give reasonable notice of the prohibited conduct to those who wish to avoid its penalties and to appraise judge and jury of standards for the determination of guilt. If the statute is so obscure that men of common intelligence must necessarily guess at its meaning and differ as to its applicability, it is unconstitutional.

The appellants are Moors, Native to America and they are aboriginal. They operate a Moorish Islamic Corporation incorporated in the State of Colorado. The Due Process clause of the Fifth and Fourteenth Amendments require that criminal laws be drafted in language that is clear enough for the average person to comprehend. If a person of ordinary intelligence cannot determine what persons are regulated, what conduct is prohibited, or what punishment may be imposed under a particular law, then the law will be deemed unconstitutionally vague. The United States Supreme Court has said that no one may be required at peril of life, liberty, or property to speculate as to the meaning of a penal law. Everyone is entitled to know what the government commands or forbids. The void for vagueness doctrine advances four underlying policies. First, the doctrine encourages the government to clearly distinguish conduct that is lawful from that which is unlawful. Under the Due Process Clause, individuals must be given adequate notice of their legal obligations so they can govern their behavior accordingly. When

individuals are left uncertain by the wording of an imprecise statute, the law becomes a standardless trap for the unwary.

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For example, vagrancy is a crime that is frequently regulated by lawmakers despite difficulties that have been encountered in defining it. Vagrancy laws are often drafted in such a way as to encompass ordinarily innocent activity. In one case the Supreme Court struck down an ordinance that prohibited "loafing," "strolling," or "wandering around from place to place" because such activity comprises an innocuous part of nearly everyone's life. See Papachristou v. City of Jacksonville, 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed. 2d 110 (1972). The Papachristou Court concluded that the ordinance did not provide society with adequate warning as to what type of conduct might be subject to prosecution. Second, the void for vagueness doctrine curbs the arbitrary discriminatory enforcement of criminal statutes. Penal laws must be understood not only by those persons who are required to obey them but by those persons who are charged with the duty of enforcing them. Statutes that do not carefully outline detailed procedures by which police officers may perform an investigation, conduct a search, or make an arrest confer wide discretion upon each officer to act as he or she sees fit. Precisely worded statutes are intended to confine an officer's activities to the letter of the law.

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Third, the void for vagueness doctrine discourages judges from attempting to apply sloppily worded laws. Like the rest of society, judges often labor without success when interpreting poorly worded legislation. In particular cases, courts may attempt to narrowly construe a vague statute so that it applies only to a finite set of circumstances. For example, some courts will permit prosecution under a vague law if the government can demonstrate that the appellants acted with a specific intent to commit an offense, which means that the appellants must have acted willfully, knowingly, or deliberately. By reading a specific intent requirement into a vaguely worded law, courts attempt to insulate innocent behavior from criminal sanction. On January 18, 2010, Governor Corzine signed into New Jersey law "The New Jersey Medical Marijuana Compassionate Use Act." This Act clearly recognized Marijuana's legal

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medical use, thereby rendering the State of New Jersey's Criminal statute seriously flawed and virtually "worthless" since it is entirely based on the state criminal position that marijuana is a CDS, a schedule 1 Controlled Substance. Fourteen States, including the State of New Jersey have now recognized marijuana has medical value. The New Jersey State legislators obviously believe and understand that "marijuana" has medical value, and are currently working on a plan to safely distribute marijuana to sick individuals in the state of New Jersey. The State criminal statute is constitutionally and fatally flawed. Schedule I controlled substances: Are a category of drugs not considered legitimate for medical use. Among the substances so classified by the Drug Enforcement Agency are mescaline,

lysergic acid diethylamide, heroin, and marijuana. Special licensing procedures must be followed to use these or other Schedule I substances. All substances listed as a Schedule 1 drug must have the following prerequisites: (A) The drug or other substance have a high potential for abuse. (B) The drug or other substance has no currently accepted medical use in treatment in the United States.

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(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

The Director of Health and Human services has failed to accurately reclassify marijuana in light of the state's explicit acknowledgment that marijuana (on January 18, 2010) is a medicine in direct contrast to the state's current criminal classification as a schedule 1 drug - having no medical value.

N.J.S. 24:21-3 had provided:

"d. The State Department of Health shall update and republish the schedules in sections 5 through 8 on a semiannual basis for 2 years from the effective date of this act and thereafter on an annual basis."

The Legislature amended that provision in 2007. It now reads:

"d. The director shall update and republish the schedules in sections 5 through 8.1 of P.L.1970, c. 226, as amended and supplemented (C.24:21-5 through 24:21-8.1) periodically."

When Governor Corzine signed this Act into law it told the appellants that now New Jersey had also allowed its use. This Act of legalizing marijuana for medical purposes clearly led the appellants to believe that medical marijuana was now legally permissible in New Jersey. Yet, the state has failed to legally reclassify marijuana.

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This failure by the State to reclassify, however, does not in any way diminish the appellants argument that a reasonable person (in his position) would have believed he would be entitled to have medical marijuana in his possession. As can be seen in the ProCon.org "Medical Marijuana States and DC Summary Chart," as to whether New Jersey "Accepts other states' registry ID cards?" this is "Unknown." (Da25) (nearly half of the medical marijuana states do accept other state's registry ID cards). As even this study is unclear as to whether appellants's sacrament certificates would be accepted, the appellants should not be punished under the law for not knowing whether he was entitled have medical marijuana in his possession in New Jersey. For these reasons the indictment must be dismissed with prejudice.

POINT V

N.J.S.A. 2C:35-5A.(1) AND 2C:35-5B.

(10)(A) ARE UNCONSTITUTIONAL ON THE
GROUNDS OF "MEDICAL NECESSITY" OR THE
APPELLANTS IS EXEMPT FROM PROSECUTION

**DUE TO “MEDICAL NECESSITY”; THE
INDICTMENT MUST BE DISMISSED
WITH PREJUDICE**

N.J.S.A. 2C:3-2 (Necessity) provides:a. Necessity. Conduct which would otherwise be an offense is justifiable by reason of necessity to the extent permitted by law and as to which neither the code nor other statutory law defining offense provides exceptions or defenses dealing with the specific situation involved and a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

b. Other justifications in general. Conduct which would otherwise be an offense is justifiable by reason of any defense of justification provided by law for which neither the code nor other statutory law defining the offense provides exceptions or defenses dealing with the specific situation involved and a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

The appellants uses marijuana for medical reasons, and he has a valid California Medical Marijuana card permitting such medical use. (Da12).

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Since the marijuana in question emanates from California (where the medical use is legal for the appellants), the “medical necessity” defense is applicable here. In State v. Tate, 102 N.J. 64 (1986) the appellants, afflicted with quadriplegia, would sometimes have spasticity so severe as to render him completely disabled. Appellants Tate was prepared to present evidence that the use of marijuana provided relief from the spastic contractions regularly suffered by the appellants, and that no other prescribable medication gives him such relief. Id. at 67. The Tate appellants raised the justification defense of “medical necessity” based on justifiable conduct under N.J.S.A. 2C:3-2(a). The trial judge denied the State’s motion to strike that defense, and the Appellate Division affirmed. A sharply divided New Jersey Supreme Court, in a 4 to 3 decision, reversed and held that the appellants could not assert the statutory defense of necessity because his conduct was not permitted by law. Also, appellants could not assert the common-law defense of necessity. Id. at 72-73. Justice Handler dissented, stating: “It is my view that under the Code the defense of justification based on medical necessity is available with respect to the use of marijuana in the context of the limited and special circumstances that are present in this case.” Id. At 76.

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Justices Garibaldi and Stein also dissented, ruling that the defense of medical necessity may be available to certain seriously ill persons as a legal justification to a marijuana possession charge. Id. at 95 to 96. In U.S. v. Randall, 104 Daily Wash.L.Rptr. 2249 (D.C.Super. Ct. 1976) the appellants, charged with possession of marijuana, used marijuana to treat his glaucoma symptoms. The Court found medical necessity a defense to possession. In Washington v. Diana, 24 Wash.App. 908, 604 P.2d 1312 (1979), the appellants, charged with possession of

marijuana, used it for relief of the disabling spasticity associated with multiple sclerosis. The court found medical necessity existed. In both Randall and Diana the appellants used the drugs based on his own self-diagnosis—later confirmed by expert medical testimony. The case sub judice is clearly distinguishable from State v. McCague, 314 N.J. Super. 254 (App. Div.), certif. denied, 157 N.J. 542 (1998) where the “medical necessity”

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defense was held to be inapplicable in a prosecution of members of a nonprofit organization for furnishing or giving a hypodermic needle or syringe to another. The court reasoned that “There is no fundamental right to obtain a disinfected needle to inject heroin or any other prohibited substance.” Id. at 265. McCague, involving hypodermic needles (and, thereby, heroin use), is clearly distinguishable from Forchion.

For the foregoing reasons and authorities cited, the indictment must be dismissed with prejudice.

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POINT VI

THE APPELLANTS SHOULD BE ALLOWED TO PRESENT EXPERT TESTIMONY ON THE ISSUES RAISED IN THIS BRIEF

At the very least, appellants should be permitted to present expert testimony by the way of an expert witness or witnesses on the issues raised in this brief.

Appellants has the burden to demonstrate that the marijuana laws violate a constitutional provision. See City of Jersey City v. Farmer, 329 N.J. Super. 27 (App. Div. 2000). However, a appellants also has an essential and fundamental right to interpose a defense based on the invalidity of the legislative act upon which the prosecution is predicated. The notion that he cannot do so in the criminal proceeding itself constitutes a basic jurisprudential misapprehension. See Federal Rule R. 2:2-3(a)(2) (recognizes right of a appellants in a criminal matter to attack by way of defense to the charge the validity of the regulation upon which the charge is based). See also State v. Hilkevich, (App. Div. Docket No. A-3632-00T3, decided March 5, 2003, annexed at Da45). In Hilkevich, the Appellate Division reversed the appellants’s

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convictions and forty year sentence for child molestations due to the refusal of the trial judge to permit an expert witness to testify—specifically, the defense sought expert defense testimony that would have supported the appellants’s claim that his responses to accusations when speaking on the telephone were grounded in his professional training. (Da50). In finding the preclusion of the expert testimony reversible error, the Court stated: “The possibility that appellants might have been

convicted because he was improperly prevented from presenting an exculpatory witness was sufficient to support a reversal of his judgment of conviction.” (Da53).

The following are appellants Forchion’s proposed witnesses:

1) Dr. Julien Heicklien – will testify to rebut the anticipated State’s expert as to the classification of marijuana.

2) Chris Conrad – religious expert.

3) Ali Ras I – Rastafarian religious expert.

4) New Jersey State Senator Nicholas Scutari – sponsored current medical marijuana bill.

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5) New Jersey State Senator Bassano – sponsored and held state committee meetings explaining medical marijuana. His testimony is necessary to explain the intent of the bill.

6) New Jersey Assemblyman Reed Gusciora – co-sponsored medical marijuana bills; his testimony is needed to explain the intent of the bill.

7) Edward E. Alexander, M.D. (California License A45272)

In the case sub judice appellants must be permitted the opportunity to present expert witnesses related to religious freedom and equal protection, and medical necessity.

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POINT VII

**THE INDICTMENT SHOULD BE DISMISSED WITH
PREJUDICE IN THE INTEREST OF JUSTICE**

Appellants incorporates by reference the arguments and authorities in this brief, supra.

Congress never had the authority to enact prohibition or "drug control" statutes unless they were intended to regulate interstate commerce (Article 1, Section 8, clause 3). See also Nigro vs. U.S., 276 U.S. 322 (1926). It took the Eighteenth Amendment to enact alcohol prohibition in 1920. It took the Twenty-First Amendment to repeal the Eighteenth Amendment in 1933. The 1970 Controlled Substances Acts and N.J.S.A. 2C:35-5a(1) and b.10(a) (hereinafter the acts) comprise a bill of attainder in violation of Article I Section 9 of the United States Constitution and are equally unconstitutional for failing to provide a religious exemption for the use of marijuana. Even during the alcohol prohibition ("Prohibition"), which began with the enactment of the Volstead Act (the 1919 law giving federal agents the power to investigate and prosecute violations of the Eighteenth Amendment), there was a blanket exception for the manufacture, use, etc., of alcohol for "sacramental purposes" at Title II, section 3.

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There has never been a Constitutional Amendment to outlaw drugs and there is nothing in the Constitution that would give our Federal or State governments the power to do so. The Ninth Amendment states that the enumeration of particular Constitutional rights "shall not be construed to deny or disparage others retained by the people" and the Tenth Amendment where all powers that are not delegated in the document are reserved to the states "or to the people." In Griswold v. Connecticut, 381 U.S. 479 (1965) (see Justice Goldberg's concurring opinion) it is established that the Ninth Amendment of the Bill of Rights secures our unwritten common law rights.

In West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1942) the Supreme Court held that Constitutional Rights cannot be voted on. Fifteen states (and the District of Columbia) have now legalized marijuana for medical use and on Jan 18th, 2010, New Jersey also recognized marijuana medical use. (Da14-15). The acts, in several instances, violate the right of all persons to equal protection of the laws. See Article XIV Section 1 of the Bill of Rights.

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The acts enshrine into federal law the opinions of licensed professionals, i.e., the medical community, and whereas the Constitution says nothing about licenses said federal laws are invalid. It is said to be unlawful and mala prohibita to possess, manufacture, dispense or even abandon said controlled substances except in the course of recognized and professional medical or research practice (as determined by the Secretary of Health and Human Services on the basis of the consensus of views of the American medical community - 21 USC 801a, 802(8), 841, 844). This office (formerly Health, Education and Welfare) is also authorized to make grants, and enter in to contracts, for the collection and dissemination of drug abuse education material, and develop and evaluate such programs, and, acting through

the National Institute of Mental Health, to serve as a focal point for the collection and dissemination of information relating to drug abuse - US PL 91-513.

This substantially prejudices law enforcement philosophy, jurisprudence and legislation.

The presumption of innocence until proven guilty is set aside in cases of drug possession by placing the burden of proof upon the appellants who must demonstrate medical permission - 21 U.S.C. § 885.

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Criminal legislation in the field of medicine should apply only to specific instances of individual danger, and then only at the state level. The acts, on the other hand, make the subject of criminal legislation differences of opinion with the consensus of opinion of with the American medical community. The acts authorize conviction irrespective of conduct, loss of self-control or finding of science endangering or threatening to the public health, safety or morals, and welfare. Another violation of the right to equal protection is the legal standing of people charged with breaking the laws that regulate alcohol and tobacco products. Those whose charges involve Controlled Substances, cultivation of marijuana for personal use, or sale between consenting adults without complainants, for example, are dealt with much more harshly and severely than merchants who illegally sell tobacco (the number one killer drug) to minors, and alcohol related violations of motor vehicle law.

The acts also violate equal protection since the acts, as applied, are racist. For thousands of years Africans have used the "herb" marijuana as a medicine and as a sacrament in numerous religions.

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Modern Anglo-American Christianity does not recognize marijuana as a sacrament and in fact banned its use. In 1484, Pope Innocent the VII banned the use of "cannabis" and decreed "cannabis" an unholy herb, Satan's weed, the herb of heathens, weed of the satanic masses, etc. Slavery ended over 147 years ago, yet many Native Americans Indian or not who reject Christianity as their faith (as does these appellants), find laws such as the 1970 Controlled Substance Act ("CSA") and N.J.S.A. 2C:35-5a(1) and b.10(a) prohibit them from freely exercising North African or North American based faiths by banning their religion's sacrament (marijuana). The CSA and State marijuana laws also violate title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000(e)), which prohibits discrimination based on race, color, religion, sex and national origin. United States Public Law 97-280 reaffirms the scriptural basis of our laws and culture.

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Many of our common law rights extend back to the Bible. In Genesis 1:29, God grants us every herb bearing seed (which "marijuana" is). Genesis 1:11 states: "And God said, Behold, Let the earth bring forth grass, the herb yielding seed, and the fruit tree yielding fruit after his kind, whose seed is in itself, upon the earth: and it was so." Genesis 1:12 says, "And the earth brought forth grass, and herb yielding

seed after his kind, and the tree yielding fruit, whose seed was in itself, after his kind: and God saw that it was good". It appears Congress has declared the Bible the word of God, and that following the Bible can put one in criminal jeopardy. Provisions for the protection of human rights are also made in the Charter of the United Nations; the Chapter I Article 1 (1) respects "the principle of equal rights and self-determination of peoples..." Article 1 (3) promotes the fundamental freedoms for all without distinction as to race, sex, language or religion." Article 19 promotes the free exchange of ideas and information. Further, the United Nations Universal Declaration of Human Rights declares that participation in the cultural life of the community is a right.

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Drug control treaties cannot compel the United States or New Jersey to violate the Constitution or previous treaties still in force. See Reid v. Covert, 354 U.S. 1, 17 (1956) (Supreme Court has uniformly recognized supremacy of the Constitution over a treaty).

While it is clear to some people that the "War on Drugs" violates Constitutional and human rights, the view of those who are vested in law enforcement (or with the power to make laws and interpret rights) consider it a foregone conclusion that the drug laws are constitutional. To even bring up the topic of rights may harden the resolve of lawmakers and judges because it implies that they have failed to understand the true meaning of the Constitution. In fact, the appellants has been persecuted by the Municipal court and Superior court of the State of New Jersey in the past, such cases originate this action.

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POINT VIII

INTERNATIONAL LAW AND TREATIES PROHIBIT THE INTERFERENCE WITH APPELLANTS'S RELIGIOUS AND INDUSTRIAL USE OF CANNABIS

International law and treaties prohibit the interference with appellants's religious and industrial use of cannabis for sacramental purposes. The international law doctrine of comity requires that United States tribunals give consideration in areas that implicate international interests. See Hilton v. Guyot, 159 U.S. 113, 163-64 (1895). The application of the principle of comity is strengthened in the area of religious practice by Congress' recent actions of ratifying a treaty and enacting a statute to advance international reciprocity in the protection of religious freedom. In the oft-quoted definition the Supreme Court provided over a century ago, comity is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation." Hilton, supra, 159 U.S. at 163-64. The comity doctrine "refers to the spirit of cooperation in which a domestic

tribunal approaches the resolution of cases touching the laws and interests of other sovereign states." Societe Nationale Industrielle Aerospatiale v. United

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States District Court, 482 U.S. 522, 544 n. 27 (1987); see also id. at 555 (Blackmun, J., concurring in part and dissenting in part) (comity is "a principle under which judicial decisions reflect the systematic value of reciprocal tolerance and goodwill"). The defense to foreign legal and political judgments embodied in the comity principle "fosters international cooperation and encourages reciprocity, thereby promoting predictability and stability through satisfaction of mutual expectations". Spatola v. United States, 925 F.2d 615, 618 (2d Cir. 1991). Although comity is often invoked in resolving differences between judicial tribunals at home and abroad, the principal applies equally to "legislative" and "executive" acts of foreign governments. See Hilton; see also Phila. Gear Corp. v. Phila. Gear de Mexico, S.A., 44 F.3d 187, 191 (3d Cir. 1994) ("Under the principle of international comity, a domestic court normally will give effect to executive, legislative and judicial acts of a foreign nation.") (quotations omitted). One way in which courts and administrative agencies frequently apply comity is through the canon of statutory construction that, where reasonably possible, statutes should be construed and applied so as not to offend the norms of international law, including the principle comity.

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See Hilton 159 U.S. at 164-66; see also United States v. Aluminum Co. of Am., 148 F.2d 416, 443 (2d Cir. 1945) (L. Hand, J.) (describing comity as a "limitation[] customarily observed by nations upon the exercise of their powers" and holding that "we are not to read general words [in a statute] without regard" to such norms). Such international law is "part of our law." Hilton, 159 U.S. at 163. As Chief Justice Marshall explained long ago, a statute "ought never to be construed to violate the law of nations if any other construction remains." Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804); see also Grunfeder v. Heckler, 748 F.2d 503, 509 (9th Cir. 1984) (en banc) ("Absent an expression of congressional intent to the contrary, considerations of courtesy and mutuality require our courts to construe domestic legislation in a way that minimizes interference with the purpose of effect of foreign law."); Restatement (Third) of Foreign Relations Law § 114 ("Where fairly possible, a United States statute is to be construed as to not conflict with international law or with an international agreement

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of the United States."). Adding support to this argument, in 1992, the United States Congress ratified the United Nations International Covenant on Civil and Political Rights ("ICCPR"). See 138 Congo Rec. S4781-84 (1992). Article 18(1) of that treaty provides:

Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in the community of others and in public or private,

to manifest his religion or belief in worship, observance, practice, and teaching. U.N. International Covenant of Civil and Political Rights, Dec. 16, 1996. This congressional action strengthens the applicability of the general doctrine of comity in a case such as this involving religious freedom. A similar affirmation of the primacy of religious belief is embodied in Article 18 of the Universal Declaration of Human Rights, which the United States endorsed as a member of the United Nations in 1948.

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See U.N. Universal Declaration of Human Rights, Ga. Res. 217A, Dec. 10, 1948. The ICCPR and the Universal Declaration protect not just "belief" in the abstract, but the right to "manifest" that belief through practice. As the United Nations Human Rights Committee, the principal international body that oversees implementation of the ICCPR, has explained, "[t]he freedom to manifest religion ... in worship, observance, practice and teaching encompasses a broad range of acts" including "ceremonial acts" and "participation in rituals." See U.N. Hum. Rts. Comm., General comment No. 22, at 4 (1993). The Islamic ceremonial and industrial cultural use of cannabis falls squarely within this concept of "manifesting" religious belief, and so precisely the type of practice that Congress intended to protect worldwide by ratifying the ICCPR and, earlier, the Universal declaration. The obligations under these documents are not merely ones of neutral noninterference. By ratifying the ICCPR, the United States agreed "to take the necessary steps...to adopt legislative or other measures as may be necessary to give effect to the rights recognized in the present covenant."

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A prosecution of a member of the Rastafarian religion for his use of cannabis in his religious ceremony is just such a "measure" that is "necessary to give effect to" the rights enshrined in the ICCPR and the Universal Declaration. These treaty obligations reinforce the government's duty to permit the free exercise of religion that the Free Exercise Clause and the RFRA already impose. Congress' recent enactment of the International Religious Freedom Act ("IRFA"), Pub. L. No. 105-292, 112 Stat. 2788 (1998) (codified at 22 U.S.C. §§ 6401-6481 (Supp. IV 1998)), further reflects its commitment to enhancing religious freedom across national boundaries, and further supports the comity rationale for permitting the Islamic religion to make sacramental use of cannabis in the United States. In the RFRA, Congress described religious freedom as "a fundamental right" and a "pillar of our Nation," and noted that the United States has "honored this heritage by standing for religious freedom and offering refuge" to those from abroad who sought to practice their religion in the United States. 22 U.S.C. § 6401(a). The IFRA was needed, Congress found, because over half the world's population lives under governments that "restrict or prohibit the freedom . . . to . . . believe, observe and freely practice the religious faith of their choice." *Id.* Congress established "the policy of the United States" to "promote...freedom of religion," and to "work with foreign governments that affirm and promote religious freedom, in order to develop

multilateral ... initiatives to ... promote the right to religious freedom abroad." 22 U.S.C. § 6401(b).

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Although the IRFA was aimed at abuses of religious freedom occurring outside the United States, through IRFA Congress has expressed a strong view of the necessity of international tolerance of religious practice. In enacting the IRFA and establishing the position of Ambassador at Large for International Religious Freedom, see 22 U.S.C. § 6411(a), Congress was acutely concerned about the way other nations treated religious practices of Americans abroad, and about their treatment of foreign adherents of religions that are important to Americans. A representative of American missionaries told a Senate committee that "over 170,000 Americans, representing over 800 denominational and nondenominational agencies, are involved in some type of religious work overseas" and that these individuals "have an enormous stake in" the IRFA because of obstacles they face abroad. See International Religious Freedom Act of 1998, Hearings on S-1868 Before Senate Foreign Relations Comm., 105th Cong., 2d Sess., 1998 WL 375933 (F.D.C.H.) (statement of Rev. John Akers) [hereinafter "IFRA Hearings"].

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Clearly, the IFRA represents Congress's strong statement that other nations should permit free exercise of all religions within their borders. Any other position by the United States government would undermine its moral authority to urge, and thus its practical ability to persuade, other nations to respect non-indigenous religions within their own borders.

For the State of New Jersey (an American State) to ignore the religious practices of this appellants, or other similarly situated Moors, will make America appear hypocritical when it criticizes China for its persecution of the Falun Gong religious sect, or of Saudi Arabia, Iran and Pakistan's treatment of Christians. In America today "religious herb users" (Rastafarians in particular) are hunted down like the witches of Salem witch trials but on a much larger scale (with 858,408 arrested nationally in 2009; about 96.9 per hour). Moors convicted of marijuana offenses are forced to go to "drug programs", i.e., NA, AA, etc. in which the New Jersey State Correctional department forces upon all inmates (including those whose religions believe that the God-grown herb Kunnab is good).

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Prison drug programs are mandated/forced through the I-override system. The I-override system is a prison administrative mechanism for blocking an inmate's release. If a person has an I-override he is not eligible for "minimum status" or for parole/release or programs until the I-override is removed. The Department of Corrections requires all persons convicted of a drug crime to attend and complete a drug program while in prison; if a prisoner refuses or fails the drug program an I-override is placed on him and he cannot be released. When incarcerated the appellants had refused the drug program and an I-override was placed on him to try to force him to accept that Kunnab is bad, sinful, ungodly and/or worst "a

drug.” The appellants wrote to Federal Judge Irenas (who had ordered appellants back in the State ISP Program) complaining about the I-override and Judge Irenas agreed and the I-override was removed.

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Moors in New Jersey feel as persecuted in America as a Falun Gong member forced by the Chinese government into “education programs” to correct their beliefs. As stated, this very appellants was forced into such a re-education program called “The Bridge Program” at Riverfront State Prison in 2001 in which a “higher power” other than “Allah” (the one God appellants adheres to) resulted in an I-Override. The appellants fears that another conviction would again subject them to the blatant religious indoctrination that his state engages in through its prison system; under the guise of and in the name of its drug war. There is no doubt in the appellants mind that the enlightened ones of the future will look back with ridicule and compare today’s Christian Inspired “persecution of herb users” (with marijuana arrests, unemployment and child custody) to the witch trials of Salem. Today most Americans view the Salem Witch trials as past aberrations of Christianity without accepting that our current marijuana laws are equally based on Christian superstition.

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Appellants acknowledges that in the past he could have been burned at the stake and beheaded; while happy not to face such a fate as burned and beheaded he equally does not want to be imprisoned again for his belief that marijuana is a sacred herb. See <http://www.youtube.com/watch?v=jE8qxB8vK9M>. Significantly, the State of New Jersey was previously found to have violated Edward Forchion’s rights by incarcerating him for the exercise of his First Amendment right to advocate a change in the marijuana laws. See Forchion v. Intensive Supervised Parole, 240 F.Supp. 302 (D.N.J. 2003; annexed at Da98-107; see Opinion online at <http://www/aele.org/law/2003JBUN/fvi.html>).

The provision of the treaty supersede and render nugatory all conflicting provisions in the laws or constitution of any state. Clark v. Allen, 331 U.S. 503, 67 S. Ct. 1431, 91 L. Ed. 1633, 170 A.L.R. 953 (1947). Our Supreme law is Al Shari as was our medieval and most ancient forefathers we are Moors our history doesn't start in 1786. Is not the Sharia protected by the 1st amendment. It understood that religious freedoms are not absolute but does that case apply when treaties mandate the Sharia as the Parties chosen applicable

law see U.C.C. 1-301. Treaties and the States.—as it so happened, the first case in which the Supreme Court dealt with the question of the effect of treaties on state laws involved the same issue that had prompted the drafting of Article VI, paragraph 2. During the Revolutionary War, the Virginia legislature provided that the Commonwealth's paper money, which was depreciating rapidly, was to be legal currency for the payment of debts and to confound creditors who would not accept the currency provided that Virginia citizens could pay into the state treasury debts owed by them to subjects of Great Britain, which money was to be used to prosecute the war, and that the auditor would give the debtor a certificate of payment which would discharge the debtor of all future obligations to the creditor.²⁷⁸ The Virginia scheme directly contradicted the assurances in the peace treaty that no bars to collection by British creditors would be raised, and in *Ware v. Hylton*²⁷⁹ the Court struck down the state law as violative of the treaty that Article VI, paragraph 2, made superior. Said Justice Chase: "A treaty cannot be the *Supreme law* of the land that is of all the *United States*, if any act of a *State Legislature* can stand in its way. If the constitution of a State . . . must give way to a treaty, and fall before it; can it be questioned, whether the *less* power, an act of the state legislature, must not be prostrate? It is the declared will of *the people* of the *United States* that every treaty made, by the authority of the *United States* shall be superior to the *Constitution* and *laws* of any *individual State*; and their will alone is to decide."²⁸⁰

29. In *Hopkirk v. Bell*,²⁸¹ the Court further held that this same treaty provision prevented the operation of a Virginia statute of limitation to bar collection of antecedent debts. In numerous subsequent cases, the Court invariably ruled that treaty provisions superseded inconsistent state laws governing the right of aliens to inherit real estate.²⁸² Such a case

was *Hauenstein v. Lynham*,²⁸³ in which the Court upheld the right of a citizen of the Swiss Republic, under the treaty of 1850 with that country, to recover the estate of a relative dying intestate in Virginia, to sell the same, and to export the proceeds of the sale.²⁸⁴

²⁷⁸ 9 W. HENING, STATUTES OF VIRGINIA 377-380 (1821).

²⁷⁹ 3 U.S. (3 Dall.) 199 (1796).

²⁸⁰ 3 U.S. at 236-37 (emphasis by Court).

²⁸¹ 7 U.S. (3 Cr.) 454 (1806).

²⁸² See the discussion and cases cited in *Hauenstein v. Lynham*, 100 U.S. 483, 489-90 (1880).

²⁸³ 100 U.S. 483 (1880). In *Kolovrat v. Oregon*, 366 U.S. 187, 197-98 (1961), the International Monetary Fund (Bretton Woods) Agreement of 1945, to which the United States and Yugoslavia were parties, and an Agreement of 1948 between these two nations, coupled with continued American observance of an 1881 treaty granting reciprocal rights of inheritance to Yugoslavian and American nations, were held to preclude Oregon from denying Yugoslavian aliens their treaty rights because of a fear that Yugoslavian currency laws implementing such Agreements prevented American nationals from withdrawing the proceeds from the sale of property inherited in the latter country.

²⁸⁴ See also *Geofroy v. Riggs*, 133 U.S. 258 (1890); *Sullivan v. Kidd*, 254 U.S. 433 (1921); *Nielsen v. Johnson*, 279 U.S. 47 (1929); *Kolovrat v. Oregon*, 366 U.S. 187 (1961). But a right under treaty to acquire and dispose of property does not except aliens from the operation of a state statute prohibiting conveyances of homestead property by any instrument not executed by both husband and wife. *Todok v. Union State Bank*, 281 U.S. 449 (1930). Nor was a treaty stipulation guaranteeing to the citizens of each country, in the territory of the other, equality with the natives of rights and privileges in respect to protection and security of person and property, violated by a state statute which denied to a non-resident alien wife of a person killed within the State, the right to sue for wrongful death. Such right was afforded to native resident relatives. *Maiorano v. Baltimore & Ohio R.R.*, 213 U.S. 268 (1909). The treaty in question having been amended in view of this decision, the question arose whether the new provision covered the case of death without fault or negligence in which, by the Pennsylvania Workmen's Compensation Act, compensation was expressly limited to resident parents; the Supreme Court held that it did not. *Liberato v. Royer*, 270 U.S. 535 (1926).

30. Certain more recent cases stem from California legislation, most of it directed against Japanese immigrants. A statute which excluded aliens ineligible to citizenship of the United States from owning real estate was upheld in 1923 on the ground that the treaty in question did not secure the rights claimed.²⁸⁵ But in *Oyama v. California*,²⁸⁶ a majority of the Court indicated a strongly held opinion that this legislation conflicted with the equal protection clause of the Fourteenth Amendment, a view which has since received the endorsement of the California Supreme Court by a narrow majority.²⁸⁷ Meantime, California was informed that the rights of German nationals, under the Treaty of

December 8, 1923, between the United States and the Reich, to whom real property in the United States had descended or been devised, to dispose of it, had survived the recent war and certain war legislation, and accordingly prevailed over conflicting state legislation.²⁸⁸

²⁸⁵ Terrace v. Thompson, 263 U.S. 197 (1923).

²⁸⁶ 332 U.S. 633 (1948). *See also* Takahashi v. Fish Comm’n, 334 U.S. 410 (1948), in which a California statute prohibiting the issuance of fishing licenses to persons ineligible to citizenship was disallowed, both on the basis of the Fourteenth Amendment and on the ground that the statute invaded a field of power reserved to the National Government, namely, the determination of the conditions on which aliens may be admitted, naturalized, and permitted to reside in the United States. For the latter proposition, Hines v. Davidowitz, 312 U.S. 52, 66 (1941), was relied upon.

²⁸⁷ This occurred in the much advertised case of Sei Fujii v. State, 38 Cal. 2d 718, 242 P. 2d 617 (1952). A Lower California court had held that the legislation involved was void under the United Nations Charter, but the California Supreme Court was unanimous in rejecting this view. The Charter provisions invoked in this connection [Arts. 1, 55 and 56], said Chief Justice Gibson, “[w]e are satisfied . . . were not intended to supersede domestic legislation.” That is, the Charter provisions were not self-executing. Restatement, Foreign Relations, *supra*, § 701, Reporters’ Note 5, pp. 155-56.

²⁸⁸ Clark v. Allen, 331 U.S. 503 (1947). *See also* Kolovrat v. Oregon, 366 U.S. 187 (1961).

Treaties and Congress.—In the Convention, a proposal to require the adoption of treaties through enactment of a law before they should be binding was rejected.²⁸⁹ But the years since have seen numerous controversies with regard to the duties and obligations of Congress, the necessity for congressional action, and the effects of statutes, in connection with the treaty power. For purposes of this section, the question is whether entry into and ratification of a treaty is sufficient in all cases to make the treaty provisions the “law of the land” or whether there are some types of treaty provisions which only a subsequent act of Congress can put into effect? The language quoted above²⁹⁰ from *Foster v. Neilson*²⁹¹ early established that not all treaties are self-executing, for as Marshall there said, a treaty is “to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision.”²⁹²

Leaving aside the question when a treaty is and is not self-executing,²⁹³ the issue of the necessity of congressional implementation and the obligation to implement has frequently roiled congressional debates. The matter arose initially in 1796 in connection with the Jay Treaty,²⁹⁴ certain provisions of which required appropriations to carry them into effect. In view of the third clause of Article I, § 9, which says that “no money shall be drawn from the Treasury, but in Consequence of Appropriations made by law . . .”, it seems to have been universally conceded that Congress must be applied to if the treaty provisions were to be executed.²⁹⁵ A bill was introduced into the House to appropriate the needed funds and its supporters, within and without Congress, offered the contention that inasmuch as the treaty was now the law of the land the legislative branch was bound to enact the bill without further ado; opponents led by Madison and Gallatin contended that the House had complete discretion whether or not to carry into effect treaty provisions.²⁹⁶ At the

conclusion of the debate, the House voted not only the money but a resolution offered by Madison stating that it did not claim any agency in the treaty-making process, “but that when a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution as to such stipulations on a law or laws to be passed by Congress, and it is the constitutional right and duty of the House of Representatives in all such cases to deliberate on the expediency or in expediency of carrying such treaty into effect, and to determine and act thereon as in their judgment may be most conducive to the public good.”²⁹⁷ This early precedent with regard to appropriations has apparently been uniformly adhered to.²⁹⁸

²⁸⁹ 2 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 392-394 (rev. ed. 1937).

²⁹⁰ *Supra*, “Treaties as Law of the Land”.

²⁹¹ 27 U.S. (2 Pet.) 253, 314 (1829).

²⁹² *Cf.* *Whitney v. Robertson*, 124 U.S. 190, 194 (1888): “When the stipulations are not self-executing they can only be enforced pursuant to legislation to carry them into effect If the treaty contains stipulations which are self-executing that is, require no legislation to make them operative, to that extent they have the force and effect of a legislative enactment.” S. Crandall, *supra*, chs. 11-15.

²⁹³ *See infra*, “When Is a Treaty Self-Executing”.

²⁹⁴ 8 Stat. 116 (1794).

²⁹⁵ The story is told in numerous sources. *E.g.*, S. Crandall, *supra*, at 165-171. For Washington's message refusing to submit papers relating to the treaty to the House, *see* J. Richardson, *supra* at 123.

²⁹⁶ Debate in the house ran for more than a month. It was excerpted from the annals separately published as debates in the house of representatives of the United States, during the first session of the fourth congress upon the constitutional powers of the house with respect to treaties (1796). A source of much valuable information on the views of the framers and those who came after them on the treaty power, the debates are analyzed in detail in e. Byrd, treaties and executive agreements in the United States 35-59 (1960).

²⁹⁷ 5 ANNALS OF CONGRESS 771, 782 (1796). A resolution similar in language was adopted by the House in 1871. CONG. GLOBE, 42d Congress, 1st sess. (1871), 835.

²⁹⁸ S. Crandall, *supra*, at 171-182; 1 W. WILLOUGHBY, THE CONSTITUTIONAL LAW OF THE UNITED STATES 549-552 (2d ed. 1929); *but see* RESTATEMENT, FOREIGN RELATIONS, *supra*, § 111, Reporters' Note 7, p. 57. *See also* H. Rep. 4177, 49th Congress, 2d Sess. (1887). *Cf.* *De Lima v. Bidwell*, 182 U.S. 1, 198 (1901).

Similarly, with regard to treaties which modify and change commercial tariff arrangements, the practice has been that the House always insisted on and the Senate acquiesced in legislation to carry into effect the provisions of such treaties.²⁹⁹ The earliest congressional dispute came over an 1815 Convention with Great Britain,³⁰⁰ which

provided for reciprocal reduction of duties. President Madison thereupon recommended to Congress such legislation as the convention might require for effectuation. The Senate and some members of the House were of the view that no implementing legislation was necessary because of a statute, which already permitted the President to reduce duties on goods of nations that did not discriminate against United States goods; the House majority felt otherwise and compromise legislation was finally enacted acceptable to both points of view.³⁰¹ But subsequent cases have seen legislation enacted,³⁰² the Senate once refused ratification of a treaty, which purported to reduce statutorily-determined duties,³⁰³ and congressional enactment of authority for the President to negotiate reciprocal trade agreements all seem to point to the necessity of some form of congressional implementation.

²⁹⁹ S. Crandall, *supra*, at 183-199.

³⁰⁰ 8 Stat. 228.

³⁰¹ 3 Stat. 255 (1816). *See* S. Crandall, *supra*, at 184-188.

³⁰² *Id.* at 188-195; 1 W. Willoughby, *supra*, at 555-560.

³⁰³ S. Crandall, *supra*, at 189-190.

What other treaty provisions need congressional implementation is subject to argument. In a 1907 memorandum approved by the Secretary of State, it is said, in summary of the practice and reasoning from the text of the Constitution, that the limitations on the treaty power which necessitate legislative implementation may “be found in the provisions of

the Constitution which expressly confide in Congress or in other branches of the Federal Government the exercise of certain of the delegated powers....”³⁰⁴ The same thought has been expressed in Congress³⁰⁵ and by commentators.³⁰⁶ Resolution of the issue seems particularly one for the attention of the legislative and executive branches rather than for the courts.

Congressional Repeal of Treaties.—It is in respect to his contention that, when it is asked to carry a treaty into effect, Congress has the constitutional right, and indeed the duty, to determine the matter according to its own ideas of what is expedient, that Madison has been most completely vindicated by developments. This is seen in the answer which the Court has returned to the question: What happens when a treaty provision and an act of Congress conflict? The answer is, that neither has any intrinsic superiority over the other and that therefore the one of later date will prevail *leges posteriores priores contrarias abrogant*. In short, the treaty commitments of the United States do not diminish Congress’ constitutional powers. To be sure, legislative repeal of a treaty as law of the land may amount to a violation of it as an international contract in the judgment of the other party to it. In such case, as the Court has said: “Its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the judicial courts have nothing to do and can give no redress.”³⁰⁷

³⁰⁴ Anderson, *The Extent and Limitations of the Treaty-Making Power*, 1 AM. J. INT’LL. 636, 641 (1907).

³⁰⁵ At the conclusion of the 1815 debate, the Senate conferees noted in their report that some treaties might need legislative implementation, which Congress was bound to provide, but did not indicate what in their opinion made some treaties self-executing and others not. 29 ANNALS OF CONGRESS 160 (1816). The House conferees observed that they thought, and that in their opinion the Senate conferees agreed, that legislative implementation was necessary to carry into effect all treaties which contained “stipulations requiring appropriations, or which might bind the nation to lay taxes, to raise armies, to support navies, to grant subsidies, to create States, or to cede territory... .” Id. at 1019. Much the same language was included in a later report, H. Rep. No. 37, 40th Congress, 2d Sess. (1868). Controversy with respect to the sufficiency of Senate ratification of the Panama Canal treaties to dispose of United States property therein to Panama was extensive. A divided Court of Appeals for the District of Columbia reached the question and held that Senate approval of the treaty alone was sufficient. *Edwards v. Carter*, 580 F.2d 1055 (D.C. Cir.), *cert. denied*, 436 U. S. 907 (1978).

³⁰⁶ T. COOLEY, GENERAL PRINCIPLES OF CONSTITUTIONAL LAW 175 (3d ed. 1898); Q. WRIGHT, THE CONTROL OF AMERICAN FOREIGN RELATIONS 353-356 (1922).

³⁰⁷ *Head Money Cases*, 112 U.S. 580, 598-599 (1884). The repealability of treaties by act of Congress was first asserted in an opinion of the Attorney General in 1854. 6 Ops. Atty. Gen. 291. The year following the doctrine was adopted judicially in a lengthy and cogently argued opinion of Justice Curtis, speaking for a United States circuit court in *Taylor v. Morton*, 23 Fed. Cas. 784 (No. 13,799) (C.C.D. Mass 1855). *See also* The

Cherokee Tobacco, 78 U.S. (11 Wall.) 616 (1871); *United States v. Forty-Three Gallons of Whiskey*, 108 U.S. 491, 496 (1883); *Botiller v. Dominguez*, 130 U.S. 238(1889); *The Chinese Exclusion Case*, 130 U.S. 581, 600 (1889); *Whitney v. Robertson*,124 U.S. 190, 194 (1888); *Fong Yue Ting v. United States*, 149 U.S. 698, 721 (1893). “Congress by legislation, and so far as the people and authorities of the United States are concerned, could abrogate a treaty made between this country and another country which had been negotiated by the President and approved by the Senate.” *La Abra Silver Mining Co. v. United States*, 175 U.S. 423, 460 (1899). *Cf. Reichart v. Felps*, 73 U.S. (6 Wall.) 160, 165-166 (1868), wherein it is stated *obiter* that “Congress is bound to regard the public treaties, and it had no power . . . to nullify [Indian] titles confirmed many years before... .”

Treaties Versus Prior Acts of Congress.—The cases are numerous in which the Court has enforced statutory provisions which were recognized by it as superseding prior treaty engagements. Chief Justice Marshall early asserted that the converse would be true as well,³⁰⁸ that a treaty which is self-executing is the law of the land and prevails over an earlier inconsistent statute, a proposition repeated many times in dicta.³⁰⁹ But there is dispute whether in fact a treaty has ever been held to have repealed or superseded an inconsistent statute. Willoughby, for example, says: “In fact, however, there have been few (the writer is not certain that there has been any) instances in which a treaty inconsistent with a prior act of Congress has been given full force and effect as law in this country without the assent of Congress. There may indeed have been cases in which, by treaty, certain action has been taken without reference to existing Federal laws, as, for

example, where by treaty certain populations have been collectively naturalized, but such treaty action has not operated to repeal or annul the existing law upon the subject.”³¹⁰

³⁰⁸ *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314-315 (1829). In a later case, it was determined in a different situation that by its terms the treaty in issue, which had been assumed to be executory in the earlier case, was self-executing. *United States v. Percheman*, 32 U.S. (7 Pet.) 51 (1833).

³⁰⁹ *E.g.*, *United States v. Lee Yen Tai*, 185 U.S. 213, 220-221 (1902); *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616, 621 (1871); *Johnson v. Browne*, 205 U.S. 309, 320-321 (1907); *Whitney v. Roberston*, 124 U.S. 190, 194 (1888).

³¹⁰ 1 W. Willoughby, *supra*, at 555.

The one instance that may be an exception³¹¹ is *Cook v. United States*.³¹² There, a divided Court held that a 1924 treaty with Great Britain, allowing the inspection of English vessels for contraband liquor and seizure if any was found only if such vessels were within the distance from the coast that could be traversed in one hour by the vessel suspecting of endeavoring to violate the prohibition laws, had superseded the authority conferred by a section of the Tariff Act of 1922³¹³ for Coast Guard officers to inspect and seize any vessel within four leagues—12 miles—of the coast under like circumstances. The difficulty with the case is that the Tariff Act provision had been reenacted in 1930,³¹⁴ so that a simple application of the rule of the later governing should have caused a different result. It may be suspected that the low estate to which Prohibition had fallen

and a desire to avoid a diplomatic controversy should the seizure at issue have been upheld were more than slightly influential in the Court's decision.

When Is a Treaty Self-Executing.—Several references have been made above to a distinction between treaties as self-executing and as merely executory. But what is it about a treaty that makes it the law of the land and which gives a private citizen the right to rely on it in a court of law? As early as 1801, the Supreme Court took notice of a treaty, and finding it applicable to the situation before it, gave judgment for the petitioner based on it.³¹⁵ In *Foster v. Neilson*,³¹⁶ Chief Justice Marshall explained that a treaty is to be regarded in courts “as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision.” It appears thus that the Court has had in mind two characteristics of treaties which keep them from being self-executing. First, “when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract, before it can become a rule for the Court.”³¹⁷ In other words, the treaty itself may by its terms require implementation, as by an express stipulation for legislative execution.³¹⁸

³¹¹ Other cases, which are cited in some sources, appear distinguishable. *United States v. Schooner Peggy*, 5 U.S. (1 Cr.) 103 (1801), applied a treaty entered into subsequent to enactment of a statute abrogating all treaties then in effect between the United States and France, so that it is inaccurate to refer to the treaty as superseding a prior statute. In *United States v. Forty-Three Gallons of Whiskey*, 93 U.S. 188 (1876), the treaty with an Indian tribe in which the tribe ceded certain territory, later included in a State, provided

that a federal law restricting the sale of liquor on the reservation would continue in effect in the territory ceded; the Court found the stipulation an appropriate subject for settlement by treaty and the provision binding. *And see* *Charlton v. Kelly*, 229 U.S. 447 (1913).

³¹² 288 U.S. 102 (1933).

³¹³ 42 Stat. 858, 979, § 581.

³¹⁴ 46 Stat. 590, 747, § 581.

³¹⁵ *United States v. Schooner Peggy*, 5 U.S. (1 Cr.) 103 (1801).

³¹⁶ 27 U.S. (2 Pet.) 253, 314-15 (1829).

³¹⁷ *Id.*

³¹⁸ Generally, the qualifications may have been inserted in treaties out of a belief in their constitutional necessity or because of some policy reason. In regard to the former, it has always apparently been the practice to insert in treaties affecting the revenue laws of the United States a proviso that they should not be deemed effective until the necessary laws to carry them into operation should be enacted by Congress. 1 W. Willoughby, *supra*, at 558. Perhaps of the same nature was a qualification that cession of certain property in the Canal Zone should be dependent upon action by Congress inserted in Article V of the 1955 Treaty with Panama. TIAS 3297, 6 U.S.T. 2273, 2278. In regard to the latter, it may be noted that Article V of the Webster-Ashburton Treaty, 8 Stat. 572, 575 (1842), providing for the transfer to Canada of land in Maine and Massachusetts was conditioned

upon assent by the two States and payment to them of compensation. S. Crandall, *supra*, at 222-224.

Second, the nature of the stipulation may require legislative execution. That is, with regard to the issue discussed above, whether the delegated powers of Congress impose any limitation on the treaty power, it may be that a treaty provision will be incapable of execution without legislative action. As one authority says: “Practically this distinction depends upon whether or not the courts and the executive are able to enforce the provision without enabling legislation. Fundamentally it depends upon whether the obligation is imposed on private individuals or on public authorities... .”

“Treaty provisions which define the rights and obligations of private individuals and lay down general principles for the guidance of military, naval or administrative officials in relation thereto are usually considered self-executing. Thus treaty provisions assuring aliens equal civil rights with citizens, defining the limits of national jurisdiction, and prescribing rules of prize, war and neutrality, have been so considered.”

“On the other hand certain treaty obligations are addressed solely to public authorities, of which may be mentioned those requiring the payment of money, the cession of territory, the guarantee of territory or independence, the conclusion of subsequent treaties on described subjects, the participation in international organizations, the collection and supplying of information, and direction of postal, telegraphic or other services, the construction of buildings, bridges, lighthouses, etc.”³¹⁹ It may well be that these two characteristics merge with each other at many points and the language of the Court is not always helpful in distinguishing them.³²⁰

³¹⁹ Q. Wright, *supra*, at 207-208. *See also* L. HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 156-162 (1972).

³²⁰ Thus, *compare* *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314-315 (1829), *with* *Cook v. United States*, 288 U.S. 102, 118-19 (1933).

Treaties and the Necessary and Proper Clause.—What power, or powers, does Congress exercise when it enacts legislation for the purpose of carrying treaties of the United States into effect? When the subject matter of the treaty falls within the ambit of Congress' enumerated powers, then it is these powers which it exercises in carrying such treaty into effect. But if the treaty deals with a subject which falls within the national jurisdiction because of its international character, then recourse is had to the necessary and proper clause. Thus, of itself, Congress would have had no power to confer judicial powers upon foreign consuls in the United States, but the treaty-power can do this and has done it repeatedly and Congress has supplemented these treaties by appropriate legislation.³²¹ Congress could not confer judicial power upon American consuls abroad to be there exercised over American citizens, but the treaty-power can and has, and Congress has passed legislation perfecting such agreements, and such legislation has been upheld.³²²

Again, Congress of itself could not provide for the extradition of fugitives from justice, but the treaty-power can and has done so scores of times, and Congress has passed legislation carrying our extradition treaties into effect.³²³ And Congress could not ordinarily penalize private acts of violence within a State, but it can punish such acts if they deprive aliens of their rights under a treaty.³²⁴ Referring to such legislation, the

Court has said: “The power of Congress to make all laws necessary and proper for carrying into execution as well the powers enumerated in section 8 of Article I of the Constitution, as all others vested in the Government of the United States, or in any Department or the officers thereof, includes the power to enact such legislation as is appropriate to give efficacy to any stipulations which it is competent for the President by and with the advice and consent of the Senate to insert in a treaty with foreign power.”³²⁵ In a word, the treaty-power cannot purport to amend the Constitution by adding to the list of Congress’ enumerated powers, but having acted, the consequence will often be that it has provided Congress with an opportunity to enact measures which independently of a treaty Congress could not pass; the only question that can be raised as to such measures is whether they are “necessary and proper” measures for the carrying of the treaty in question into operation.

³²¹ Acts of March 2, 1829, 4 Stat. 359 and of February 24, 1855, 10 Stat. 614.

³²² *See In re Ross*, 140 U.S. 453 (1891), where the treaty provisions involved are given. The supplementary legislation, later reenacted at Rev. Stat. 4083-4091, was repealed by the Joint Res. of August 1, 1956, 70 Stat. 774. The validity of the Ross case was subsequently questioned. *See Reid v. Covert*, 354 U.S. 1, 12, 64, 75 (1957).

³²³ 18 U.S.C. §§ 3181-3195.

³²⁴ *Baldwin v. Franks*, 120 U.S. 678, 683 (1887).

³²⁵ *Neely v. Henkel*, 180 U.S. 109, 121 (1901). A different theory is offered by Justice Story in his opinion for the court in *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 539(1842),

in the following words: “Treaties made between the United States and foreign powers, often contain special provisions, which do not execute themselves, but require the interposition of Congress to carry them into effect, and Congress has constantly, in such cases, legislated on the subject; yet, although the power is given to the executive, with the consent of the senate, to make treaties, the power is nowhere in positive terms conferred upon Congress to make laws to carry the stipulations of treaties into effect. It has been supposed to result from the duty of the national government to fulfill all the obligations of treaties.” Id. at 619. Story was here in quest of arguments to prove that Congress had power to enact a fugitive slave law, which he based on its power “to carry into effect rights expressly given and duties expressly enjoined” by the Constitution. Id. at 618-19. However, the treaty-making power is neither a right nor a duty, but one of the powers “vested by this Constitution in the Government of the United States.” Art. I, § 8, cl. 18.

The foremost example of this interpretation is *Missouri v. Holland*.³²⁶ There, the United States and Great Britain had entered into a treaty for the protection of migratory birds,³²⁷ and Congress had enacted legislation pursuant to the treaty to effectuate it.³²⁸ The State objected that such regulation was reserved to the States by the Tenth Amendment and that the statute infringed on this reservation, pointing to lower court decisions voiding an earlier act not based on a treaty.³²⁹ Noting that treaties “are declared the supreme law of the land,” Justice Holmes for the Court said: “If the treaty is valid there can be no dispute about the validity of the statute under Article I, § 8, as a necessary and proper means to execute the powers of the Government.”³³⁰ “It is obvious,” he continued, “that there may be matters of the sharpest exigency for the national well being that an act of Congress could not deal with but that a treaty followed by such an act could, and it is

not lightly to be assumed that, in matters requiring national action, ‘a power which must belong to and somewhere reside in every civilized government’ is not to be found.”³³¹ Since the treaty and thus the statute dealt with a matter of national and international concern, the treaty was proper and the statute was one “necessary and proper” to effectuate the treaty.

³²⁶ 252 U.S. 416 (1920).

³²⁷ 39 Stat. 1702 (1916).

³²⁸ 40 Stat. 755 (1918).

³²⁹ *United States v. Shauver*, 214 F. 154 (E.D. Ark. 1914); *United States v. McCullagh*, 221 F. 288 (D. Kan. 1915). The Court did not purport to decide whether those cases were correctly decided. *Missouri v. Holland*, 252 U.S. 416, 433 (1920). Today, there seems no doubt that Congress’ power under the commerce clause would be deemed more than adequate, but at that time a majority of the Court had a very restrictive view of the commerce power. *Cf. Hammer v. Dagenhart*, 247 U.S. 251 (1918).

³³⁰ *Missouri v. Holland*, 252 U.S. 416, 432 (1920).

³³¹ 252 U.S. at 433. The internal quotation is from *Andrews v. Andrews*, 188 U.S. 14,33 (1903).

31.

MOORS ARE VESSELS OF THE MOORISH EMPIRE

**JUST CITIZENS OF THE UNITED STATES ARE VESSELS OF THE UNITED
STATES**

Note: Article 6 of the Convention of Commerce and Navigation between her Britannic Majesty

And the King of Greece, signed at London, October 4th, 1837 refers to the subjects of Greece as

Greek Vessels. In Pursuance to Ecclesiastical Law the term Vessel is applicable to Humans,

under Maritime Law the term Vessel is applicable to non humans. The Sultanate of Morocco now known as the Kingdom of Morocco is an Islamic Nation-State party to the Moorish Empire and thus an Ecclesiastical Entity in its nature, whereas the Sacred Muhammadon Law was relied upon to draft the said treaties of question. According to the Supreme Court case law above we must ask ourselves what is the natural meaning of the term Vessel. However we will First we look to the United States Code in pursuance to *16 U.S.C. §2432(10)* [Chapter 44a—Antarctic Marine Living Resources Convention], *the Municipal and State agencies and agents of such thereof responsible for injuring or wounding us [the Moors native to America and domiciling thereof] are indeed Vessels. Thus if individual Citizens of the United States are Vessels of the United States, or in contrast Municipal Corporations or agencies or political subdivisions of the State of New Jersey or the State of Delaware or any State party to the Union are Vessels of the United States, surely it is likewise for all or any Moors whom are Vessels of the Moorish Empire*

or the several nations [Caliphates, Sultanates, Emirates, Tribes,] that make up the Moorish Empire, as declared in the 1714 “Articles of Peace and Commerce” between the Sultan of Morocco and Queen Anne of Great Britain “Moors shall be treated as Vessels of the Empire”. It should be noted and now questioned as to the purpose of affixing the term Ship to Citizen as in “Citizenship” as well as the term “Township”. What is the purpose of affixing the term “Ship” to these words if they are not Vessels? Just as a treaty made with the United States is binding upon all the States of the Union the same is for the Moorish Empire, if the Sultanate of Morocco entered into a treaty, it was indeed binding on all the other Nations or States of the Empire. Under “Definitions” at 16 U.S.C. §2432(10), “Vessel of the United States” means: The term “vessel of the United States” means— (ii) A State or political subdivision thereof; (iii) A citizen or national of the United States; or (iv) A corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; see U.S.C. Title 16 Chapter 44a § 2442 Relationship to existing treaties and statutes (a) In general Nothing in this chapter^[1] shall be construed as contravening or superseding (1) the provisions of any international treaty, convention, or agreement, if such treaty, convention or agreement is in force with respect to the United States on Nov. 8, 1984, or (2) the provisions of any statute which implements any such treaty, convention, or agreement. Nothing in this chapter shall be construed as contravening or superseding the provisions of any statute enacted before Nov. 8, 1984, which may otherwise apply to Antarctic marine living resources. (b) Application of more restrictive provisions Nothing in this section shall be construed to prevent the application of provisions of the Convention, conservation measures adopted by the Commission

pursuant to article IX of the Convention, or regulations promulgated under this chapter, which are more restrictive than the provisions of, measures adopted under, or regulations promulgated under, the treaties or statutes described in subsection (a) of this section. In United States Navy Vessels Named After People: United States Navy Vessels Named After Foreign Nationals: Please note that the content of this book primarily consists of articles available from Wikipedia or other free sources online. Pages: 474. Not illustrated. Chapters: United States Navy Vessels Named After Foreign Nationals, United States Navy Vessels Named After People From Florida, United States Navy Vessels Named After People From Georgia (U.s. State), United States Navy Vessels Named After People From Maryland, United States Navy Vessels Named After People From Minnesota, United States Navy Vessels Named After People From Missouri, United States Navy Vessels Named After People From Montana, United States Navy Vessels Named After People From New Jersey, United States Navy Vessels Named After People From New York, United States Navy Vessels Named After People From North Dakota, United States Navy Vessels Named After People From Ohio, United States Navy Vessels Named After People From Pennsylvania, United States Navy Vessels Named After People From South Carolina, United States Navy Vessels Named After People From South Dakota, United States Navy Vessels Named After People From Utah, United States Navy Vessels Named After People From Washington (U.s. State), United States Navy Vessels Named After People From West Virginia, United States Navy Vessels Named After People From the District of Columbia, Uss Winston S. Churchill, Uss Theodore Roosevelt, Uss Carl Vinson, Uss Wallace L. Lind, Uss Taussig, Uss Borie, Uss Benham, Uss Alfred A. Cunningham, Uss Truxtun, Uss Wantuck, Uss Underhill, Uss Richard B. Anderson, Uss

Bull, Uss James E. Kyes, Uss Lyman K. Swenson, Uss Herbert J. Thomas, Uss Jimmy Carter, Uss Noa, Uss Stormes, Uss Bassett, Uss Ingraham, Uss Shelton, Uss Comte de Grasse, Uss Hollister, Uss John A. Bole, Uss Johnston, Uss Barton, Uss Kidd, Uss Ruchamkin, Uss Hutchins, Uss Maddox, Uss Gurke, Uss Lloyd Thomas, Uss James C. Owens, Uss Lowry, Uss Charles S. Sperry, Uss Haynsworth, Uss English, Uss Strong, Uss William M. Hobby, Uss Mansfield, Uss Hopper, U...

32.

ECCLESIASTICAL LAW ON AND USE OF THE TERM VESSEL

In pursuance of p. 536.97th Congress Joint Resolution [S.J.Res. 165] 96 Stat. 1211 Public Law 97-280 - October 4, 1982 Congress Declared the Bible "The Word Of God". In pursuance to Surah 2: (136) Say ye: "We believe in Allah, and the revelation given to us, and to Abraham, Isma'il, Isaac, Jacob, and the Tribes, and that given to Moses and Jesus, and that given to (all) prophets from their Lord: We make no difference between one and another of them: And we bow to Allah (in Islam)."

In pursuance to Surah Ali Im'ran: ayat (3): It is He Who sent down to thee (step by step), in truth, the Book, confirming what went before it; and He sent down the Law (of Moses) and the Gospel (of Jesus) before this, as a guide to mankind, and He sent down the criterion (of judgment between right and wrong)..

***In Pursuance of** 2 Corinthians 4:7 But we have this treasure in jars of clay to ... The word "vessel" (σκεῦος skeuos) means properly any utensil or instrument; ... It is applied to the human body, as made of clay, and therefore frail and ... The rabbins have a mode of speech very similar to this. "The daughter of the emperor thus addressed Rabbi Joshua, the son of Chananiah: O! How great is thy skill in the law, and yet how deformed thou art! What a great deal of wisdom is laid up in a sordid vessel! The rabbi answered, Tell me, I pray thee, of what are those **vessels** in which you keep your wines? She answered, they are earthen vessels. He replied, how is it, seeing ye are rich, that ye do not lay up your wine in silver vessels, for the common people lay up their wine in earthen vessels? But we have, this treasure in **earthen vessels**. This is a further commendation of the Gospel; and by which the apostle removes an objection against it, taken from the cross and persecutions that attend it, and the outward meanness of the ministers of it. The Gospel is called a "treasure", for not grace, nor Christ, but the Gospel is here meant; which is so styled, because it contains rich truths, and an abundance of them; comparable to gold, silver, and precious stones, for the price of them, their antiquity, distance of place from whence they come, and their duration; because it has in it rich blessings, spiritual ones, the blessings of the new covenant, solid, substantial, and irreversible ones, and a fullness of them; and because it consists of exceeding great and precious promises, of more worth than thousands of gold and silver; free, absolute, and unconditional ones, which are yea and amen in Christ, and relate both to this, and the other world; and also because it exhibits and shows forth to us the riches of God and of Christ, of grace and of glory; which are unsearchable, substantial, satisfying, and durable: the repository, or cabinet, in which this treasure is, are "earthen vessels"; by*

which are meant, ministers of the word, who are so in themselves, in their own esteem, and in the esteem of others; probably the apostle might have in view Lamentations 3:2. The doctors and scholars among the Jews are compared hereunto; "says R. Eleazar (p), to what is a disciple of a wise man like, in the esteem of a man of the world? at first he is like to a golden cup; when he has conversed with him, he is like to a silver cup; and when he has received any profit by him, he is like , "to an earthen cup", which, when broken, cannot be repaired again: the law (say they) is not confirmed but by him, who makes himself , "as an earthen vessel" (q): R. Joshua (r) was a great man in the king's palace, and he was deformed; wherefore Caesar's daughter said, wisdom is beautiful , "in an ugly vessel"; and he brought her a simile in proof of it from wine, which is not kept in a silver vessel."

*The allusion is either to the earth itself, in which treasure lies, or is hid, and out of which it is dug; or to pots and vessels made of earth, into which treasure has been used to be put; or to earthen pitchers, in which lights or lamps were formerly carried; see Judges 7:16 where Gideon's three hundred men, are said to have empty pitchers, and lamps within the pitchers; they carried lamps with them to give them light, it being night when they went into the camp of Midian; and those they put into pitchers, that the Midianites might not perceive them afar off, as a Jewish commentator well observes (s); in like manner the Gospel put into earthen vessels is a glorious light to some, whilst it is hidden to others: yea, even lamps themselves **were no other than earthen vessels**, in which light was put; for so says Maimonides (t), a lamp, a burning light, is , "an earthen vessel", like a reed; and on the top of it is a little ear, which joins to it; and when it is made, a piece of*

old cloth is put upon the burning oil, and it continues in it; also an earthen vessel is made, in which there is a hollow place for to set the light in, and in it is gathered all that flows from the oil out of the light; and it is strengthened about the head of the candlestick, that the brass might not be hurt by the oil; and this vessel is called the house in which the light subsides, or the receptacle of the light; and which receptacle, another of the Misnic commentators says (u), is an earthen vessel, made to put the light in; and the lamp, he also says, is like an earthen platter, sharp pointed below, &c. and this allusion well agrees with the context, in which the Gospel is represented as a glorious light, shining in darkness, 2 Corinthians 4:4. The Greek word the apostle uses, signifies also "shells of fishes"; and in like manner does Philo the Jew (w) compare the human body;

"I am (says he) very little concerned for this mortal body which is about me, and cleaves to me , "like the shell of a fish"; though it is hurt by everyone." And the reference may be to pearls, which are said to have been found in such shells, particularly in oysters; and is designed to express, either the frail mortal bodies of the ministers of the Gospel, comparable to brittle shells; or baked earth; or rather the outward mean despicable condition of the apostles, and preachers of the word; being men of no figure in the world, for birth, learning, or outward grandeur; and being attended with sinful infirmities also, as other men; and more especially as they were labouring under reproaches, afflictions, and persecutions, for the sake of the Gospel; see Jeremiah 32:14. The reason why it pleased God to put such a rich and valuable treasure into the hands of persons so mean and contemptible was, that the Excellency of the power may be of God, and not of us: that is, that it might appear that the making of such

persons ministers of the word was not of themselves, was not owing to their natural abilities, or to any diligence and industry, and acquirements of their own, or to any instructions they had received from others, but to the grace of God, and the effectual working of his power; and that the success which attended their ministrations in the conversion of sinners, and building up of saints, could only be ascribed to the exceeding greatness of divine power; and that the supporting of them in their work, under all the persecutions raised against them, and opposition made unto them, could be attributed to nothing else; of which power, instances are given in the following verses. (p) T. Bab. Sanhedrin, fol. 52. 2.((q) Shirhashirim Rabba, fol. 4. 2.((r) Juchasin, fol. 33. 2.((s) Laniado in Judges 7, 16. (t) In Misn. Celim, c. 2. sect. 8. (u) Bartenora in ib. (w) De Joseph. .

33.

TREATY COMMITMENT –INTERNATIONAL OBLIGATIONS OF THE UNITED STATES

If a treaty expressly or impliedly provides a private right of action, it is self-executing and can be invoked by the individual. *Id.* at 1533 (citing *Head Money Cases*, 112 U.S. 580, 598-99, 5 S.Ct. at 253-54, 28 L.Ed. 798 (1884)). Treaty commitments of the United States are of two kinds. In the language of Chief Justice Marshall in 1829: “A treaty is, in its nature, a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished; especially, so far as its operation is

intraterritorial; but is carried into execution by the sovereign power of the respective parties to the instrument.” Essentially, a self-executing treaty is one that becomes domestic law of the signatory nation without implementing legislation, and provides a private right of action to individuals alleging a breach of its provisions. *Postal*, 589 F.2d at 875-77.

“In the United States, a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract, before it can become a rule for the Court.”²⁷⁰ To the same effect, but more accurate, is Justice Miller’s language for the Court a half century later, in the *Head Money Cases*: “A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties of it.... But a treaty may also contain provisions which confer certain rights upon the citizens or subjects of one of the nations residing in the territorial limits of the other, which partake of the nature of municipal law, and which are capable of enforcement as between private parties in the courts of the country.”²⁷¹

²⁷⁰ *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314 (1829). See THE FEDERALIST No. 75 (J. Cooke ed. 1961), 504-505.

²⁷¹ 112 U.S. 580, 598 (1884). For treaty provisions operative as “law of the land” (self-executing), *see* S. Crandall, *supra*, at 36-42, 49-62, 151, 153-163, 179, 238-239, 286, 321, 338, 345-346. For treaty provisions of an “executory” character, *see id.* at 162-63, 232, 236, 238, 493, 497, 532, 570, 589. *See also* CRS Study, *supra*, at 41-68; Restatement, Foreign Relations, *supra*, §§ 111-115.

Origin of the Conception.—How did this distinctive feature of the Constitution come about, by virtue of which the treaty-making authority is enabled to stamp upon its promises the quality of municipal law, thereby rendering them enforceable by the courts without further action? The short answer is that Article VI, paragraph 2, makes treaties the supreme law of the land on the same footing with acts of Congress. The clause was a direct result of one of the major weaknesses of the Articles of Confederation. Although the Articles entrusted the treaty-making power to Congress, fulfillment of Congress’ promises was dependent on the state legislatures.²⁷² Particularly with regard to provisions of the Treaty of Peace of 1783,²⁷³ in which Congress stipulated to protect the property rights of British creditors of American citizens and of the former Loyalists,²⁷⁴ the promises were not only ignored but were deliberately flouted by many legislatures.²⁷⁵ Upon repeated British protests, John Jay, the Secretary for Foreign Affairs, suggested to Congress that it request state legislatures to repeal all legislation repugnant to the Treaty of Peace and to authorize their courts to carry the treaty into effect.²⁷⁶ Although seven States did comply to some extent, the impotency of Congress to effectuate its treaty guarantees was obvious to the Framers who devised Article VI, paragraph 2, to take care of the situation.²⁷⁷

²⁷² S. CRANDALL, TREATIES, THEIR MAKING AND ENFORCEMENT ch. 3. (2d ed. 1916)

²⁷³ Id. at 30-32. For the text of the Treaty, see 1 *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States of America and Other Powers (1776-1909)*, 586 S. DOC. NO. 357, 61st Congress, 2d sess. (W. Malloy ed., 1910).

²⁷⁴ Id. at 588.

²⁷⁵ R. MORRIS, JOHN JAY, THE NATION, AND THE COURT 73-84 (1967).

²⁷⁶ S. Crandall, *supra*, at 36-40.

²⁷⁷ The Convention at first leaned toward giving Congress a negative over state laws which were contrary to federal statutes or treaties, 1 M. Farrand, *supra*, at 47, 54, and then adopted the Paterson Plan which made treaties the supreme law of the land, binding on state judges, and authorized the Executive to use force to compel observance when such treaties were resisted. Id. at 245, 316, 2 id. at 27-29. In the draft reported by the Committee on Detail, the language thus adopted was close to the present supremacy clause; the draft omitted the authorization of force from the clause, id. at 183, but in another clause the legislative branch was authorized to call out the militia to, *inter alia*, “enforce treaties”. Id. at 182. The two words were struck subsequently “as being superfluous” in view of the supremacy clause. Id. at 389-90.

According to Citizenship of the United States, expatriation, and protection abroad
By United States. Department of State, James Brown Scott, David Jayne Hill, Gaillard

Hunt (1904) “There are however numerous treaties and conventions between the various Christian Nations and the Moorish Empire, by means of which Citizen of the United States is defined. It was established by the Convention of Madrid, concluded July 3, 1880 Article XV (4), (5) *Residence in foreign parts does not affect the nationality of Moorish Subjects*. All Moors are Internationally Protected Individuals, and are Foreign to the Federal Corporation D.B.A., United States as defined by **Title 28****Part VI****Chapter 176****Subchapter A** § 3002. (15) “United States” means— (A) a Federal corporation. The Murakush Caliphate..... is a legally registered Incorporated Islamic Corporation composed of Moors who are to Native to America, and not a “Group”. This slander and libel about self proclaimed Moors is discriminative in nature and based in ignorance of Moorish History, instead of researching the laws pertaining to Moors they rather rely the fantasy and ideologies of Frank Lambert and Jerome B. Simandle predates the Iberian Peninsula, with Mauritania pre-dating its adoption of Islam and being a Moorish Nation with dominions in North and West Africa and having dominions in Europe, and being a Nation older than the first Roman Empire, which latter colonized parts of what is now referred to as North Africa, named after the Roman Province of Africa. We have not seen any such manner taken with Irish Native Americans, British Native Americans, Polish Native Americans, Frankish Native Americans it is not said that they are self proclaimed Brits, Franks....etc. It is clear that all Americans have National Origins regardless of them being proclaimed or not. We are who we say we are, we have Natural Rights, International Law, Treaties, etc to support our birthrights and Free National Name [Moor] is indigenous to the United States of America irrespective of recognition in pursuance to the U.S.C. Title 18 Part I Chapter 1 § 11.(Foreign government defined) The term

“foreign government”, as used in this title except in sections 112, 878, 970, 1116, and 1201, includes any government, faction, or body of insurgents within a country with which the United States is at peace, irrespective of recognition by the United States.

United States Code Title 50 Chapter 36 Subchapter I § 1801

Definitions

(a) “Foreign power” means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(5) a foreign-based political organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

http://www4.law.cornell.edu/uscode/50/usc_sec_50_00001801----000-.html

This would include the foreign Government composed of Moors who were already living on North American soil and practicing Islam and living in aboriginal tribal communities.

A. In 1684, Moors are reported to have arrived in Delaware near Dover, and in Southern New Jersey near Bridgeton.

B. In 1777 Morocco becomes the first country to acknowledge United States of America’s independence as a new country and nation.

C. In 1784 Thomas Jefferson, Benjamin Franklin, and John Adams was commissioned to negotiate a treaty with the Emperor of Morocco. The

Moroccan Treaty of Friendship and Peace.

D. In 1786 the Sultan of Morocco a Moor and Head of State of the first Moorish Country to draft and endorse a Peace Treaty-(Grant under the Sharia) with the United States in 1786. Algeria in 1795, Tripoli in 1796, Tunis in 1797, and Muscat (Oman) in 1833 followed.

E. In 1788-1789 The Sultan Mohammed III and President George Washington exchanging letters about peace and asking the Sultan to intercede with authorities in Tunis and Tripoli to obtain the right of free navigation for American ships in the Mediterranean.

F. On January 20, 1790, a petition was presented to the South Carolina House of Representatives from a group of eight individuals who were subjects of the Moroccan emperor and residents of the colony. [Free Moors Petition:](#)

[Ruling](#)Edward Rutledge reported from the committee referred to the Free Moors petition. The order for immediate consideration of the matter was read and agreed to as follows [Vizt](#): "They have Considered the same and are of opinion that no Law of this State can in its Construction or Operation apply to them, and that persons who were Subjects of the Emperor of Morocco being Free in this State are not triable by the Law for the better Ordering and Governing of [Negroes](#) and other Slaves.

B. The above facts are just a few examples of the domestic and international relations between the Citizens of the United States and Moors. Yet many state officials continue to list well documented Moorish Nationals Native to America

as Negroes or African Americans, in violation of their Human rights. If their Moorish Nationality does not matter to State and Municipal Officers why do they not list these Moors as Moors? This Reminds us of the same involuntary slavery tactics used by European Slave ship masters, wherein which they would document persons taken hostage or as prisoners whether through capture or purchase under their own classifications and designations. According to Article VI Sections 1, 2 and 3 of the United States constitution all Treaties, engagements entered into, and constitutions, are the Supreme Law of the land, and every official must abide by them. There are many U.N. Resolutions in which the United States is a party to! These resolutions, which have been agreed upon by the member states of the United Nations take on treaty-like status, which means the participating countries are bound to abide by them, but as we see with the case of our Moorish brothers and the local, domestic, and International corporation continue to conspire to force voluntary slavery through it's Corporate Public Policy Courts, Racketeering, peonalgic and legalized slavery practices & Police Powers! This is by design, as big corporations, our prison systems, Governments, and their special interest groups and lobbyist are the ones who benefit. We have Natural Rights bestowed upon us by Allah! The rights that every man, woman and child have when it comes to the Family of Nations, inalienable rights given to us by God. According to Article 4 Section 2 of the United States constitution it's binding upon the United States, and the States to act in accordance with all of the resolutions, treaties and laws ratified by the

appropriate U. S. offices. These resolutions/laws/treaties, which are not dominated by the biases of a single country, spell out the natural rights of individuals and inalienable rights of groups of peoples throughout the world. We indeed have been wronged by the unjust applications of state laws and controlled by unjust conditions, as the Moors Native to America continue to be majorly by State officials.

C. 34. The Economic Covenant on Civil and Political Rights was agreed to in 1966.

Article 1.

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 2

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such other measures as may be necessary to give effect to the rights recognized in the present Covenant.

By virtue of Article 2, the United States government is obligated to not interfere with Our efforts to educate People of color about and prepare People of color for self-government. We have the right to express and enjoy Our civil, political, economic, social and cultural rights in the manner We choose, and there is nothing the United States can legally do to stop Us.

Resolution 1514 The Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)

2. All persons have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

Resolution 3103, The Legal Status of Combatants Struggling Against Alien Domination and Racist Regimes, was agreed to in 1973. It reaffirms that "the continuation of colonialism in all its forms and manifestations, as noted in General Assembly resolution 2621 (XXV) of 12 October 1970, is a crime and that colonial peoples have the inherent right to struggle by all necessary means at their disposal against colonial Powers and alien domination in exercise of their right of

self-determination..."

1. The struggle of peoples under colonial and alien domination and racist regimes for the implementation of their right to self-determination and independence is legitimate and in full accordance with the principles of international law.
 2. Any attempt to suppress the struggle against colonial and alien domination and racist regimes is incompatible with the Charter of the United Nations, the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, the Universal Declarations of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples and constitutes a threat to international peace and security.
- D. 3. The armed conflicts involving the struggle of peoples against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions, and the legal status envisaged to apply to the combatants in the 1949 Geneva Conventions and other international instruments is to apply to the persons engaged in armed struggle against colonial and alien domination and racist regimes.
6. The use of mercenaries by colonial and racist regimes against national liberation movements struggling for their freedom and independence from the yoke of colonialism and alien domination is considered to be a criminal act and the mercenaries should accordingly be punished as criminals.

Throughout Resolution 3103 the struggle of the peoples for self-determination is stressed and re-stressed, affirmed and reaffirmed, emphasized and re-emphasized. Section 3 goes further, stating that "the armed conflicts involving the struggle of peoples against colonial and alien domination and racist regimes are to be regarded as international armed conflicts in the sense of the 1949 Geneva Conventions, and the legal status envisaged to apply to the combatants in the 1949 Geneva Conventions and other international instruments is to apply to the persons engaged in armed struggle against colonial and alien domination and racist regimes." In other words, when People of Color oppose the United States for purposes of gaining their independence and establishing a self governing nation, People of Color are not breaking any laws and can not be imprisoned as such. Therefore, the struggle of in this country is not a matter of what the laws of the United States say, it is a matter of what international laws say. And, according to international law, People of Color would be acting legally and United States would be acting illegally if attempts were made to keep People of Color from realizing and actualizing their right to self-government.

35. Universal Declaration on the Rights of Indigenous People:

ARTICLE 3. Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

ARTICLE 4. Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

ARTICLE 9. Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No disadvantage of any kind may arise from the exercise of such a right.

ARTICLE 11. Indigenous peoples have the right to special protection and security in periods of armed conflict. States shall observe international standards, in particular the Fourth Geneva Convention of 1949, for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

- a. recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples;
- b. recruit indigenous children into the armed forces under any circumstances;
- c. force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;
- d. force indigenous individuals to work for military purposes under any discriminatory conditions.

ARTICLE 14. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

ARTICLE 19. Indigenous peoples have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making

institutions.

ARTICLE 24. Indigenous peoples have the right to their traditional medicines and health practices, including the right to the protection of vital medicinal plants, animals and minerals. They also have the right to access, without any discrimination, to all medical institutions, health services and medical care.

ARTICLE 32. Indigenous peoples have the collective right to determine their own citizenship in accordance with their customs and traditions. Indigenous citizenship does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

ARTICLE 38. Indigenous peoples have the right to have access to adequate financial and technical assistance, from States and through international cooperation, to pursue freely their political, economic, social, cultural and spiritual development and for the enjoyment of the rights and freedoms recognized in this Declaration.

36. Also Take Note of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 29 Nov 1985)

Declaration on the Granting of Independence to Colonial Countries and Peoples (14 Dec 1960)

International Organizations Immunities Act, December 9, 1945

All Native North Americans, Moors, and all other Indigenous People are Internationally Protected Individuals under the above treaty, resolutions and U.S. Laws.

TITLE 18 > PART I > CHAPTER 51 > § 1116 (b)(2) defines Foreign government.

(2) “Foreign government” means the government of a foreign country, irrespective of recognition by the United States.

TITLE 18 > PART I > CHAPTER 51 > § 1116 (4)(B)

(4) “Internationally protected person” means:

(B) any other representative, officer, employee, or agent of the United States

Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming part of his household.

TITLE 18 > PART I > CHAPTER 51 > § 1116 (5)

(5) “International organization” means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs.

I think that we could now agree that the above resolutions, treaties and laws protect all of the inalienable liberties of Native North Americans and Moors. Lets continue. Now that we have defined Internationally Protected person, Foreign Government and International Organization, we can further see how these laws are suppose to protect us.

TITLE 18 > PART I > CHAPTER 7 > § 112

§ 112. Protection of foreign officials, official guests, and internationally protected persons

(a) Whoever assaults, strikes, wounds, imprisons, or offers violence to a foreign official, official guest, or internationally protected person or makes any other violent attack upon the person or liberty of such person, or, if likely to endanger his person or liberty, makes a violent attack upon his official premises, private accommodation, or means of transport or attempts to commit any of the foregoing shall be fined under this title or imprisoned not more than three years, or both. Whoever in the commission of any such act uses a deadly or dangerous weapon, or inflicts bodily injury, shall be fined under this title or imprisoned not more than ten years, or both.

(b) Whoever willfully—

(1) intimidates, coerces, threatens, or harasses a foreign official or an official guest or obstructs a foreign official in the performance of his duties;

(2) attempts to intimidate, coerce, threaten, or harass a foreign official or an official guest or obstruct a foreign official in the performance of his duties; or

(3) within the United States and within one hundred feet of any building or premises in whole or in part owned, used, or occupied for official business or for diplomatic, consular, or residential purposes by—

(A) a foreign government, including such use as a mission to an international organization;

(B) an international organization;

(C) a foreign official; or

(D) an official guest; congregates with two or more other persons with intent to violate any other provision of this section; shall be fined under this title or imprisoned not more than six months, or both.

(c) For the purpose of this section “foreign government”, “foreign official”, “internationally protected person”, “international organization”, “national of the United States”, and “official guest” shall have the same meanings as those provided in section 1116 (b) of this title.

(d) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if

(1) the victim is a representative, officer, employee, or agent of the United States,

(2) an offender is a national of the United States, or

(3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501 (2) of title 49.

(f) In the course of enforcement of subsection (a) and any other sections prohibiting a conspiracy or attempt to violate subsection (a), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary, notwithstanding.

TITLE 18 > PART I > CHAPTER 41 > § 878

§ 878. Threats and extortion against foreign officials, official guests, or internationally protected persons.

(a) Whoever knowingly and willfully threatens to violate section 112, 1116, or 1201 shall be fined under this title or imprisoned not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years.

(b) Whoever in connection with any violation of subsection (a) or actual violation of section 112, 1116, or 1201 makes any extortionate demand shall be fined under this title or imprisoned not more than twenty years, or both.

(c) For the purpose of this section “foreign official”, “internationally protected person”, “national of the United States”, and “official guest” shall have the same meanings as those provided in section 1116 (a) of this title.

(d) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if

(1) the victim is a representative, officer, employee, or agent of the United States,

(2) an offender is a national of the United States, or

(3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501 (2) of title 49.

TITLE 18 PART I CHAPTER 51 § 1116

(a) Whoever kills or attempts to kill a foreign official, official guest, or internationally protected person shall be punished as provided under sections 1111, 1112, and 1113 of this title.

(b) For the purposes of this section:

(1) “Family” includes (a) a spouse, parent, brother or sister, child, or person to whom the

foreign official or internationally protected person stands in loco parentis, or (b) any other person living in his household and related to the foreign official or internationally protected person by blood or marriage.

(2) “Foreign government” means the government of a foreign country, irrespective of recognition by the United States.

(3) “Foreign official” means—

(A) a Chief of State or the political equivalent, President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officers of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such capacity, and any member of his family, while in the United States; and

(B) any person of a foreign nationality who is duly notified to the United States as an officer or employee of a foreign government or international organization, and who is in the United States on official business, and any member of his family whose presence in the United States is in connection with the presence of such officer or employee.

(4) “Internationally protected person” means—

(A) a Chief of State or the political equivalent, head of government, or Foreign Minister whenever such person is in a country other than his own and any member of his family accompanying him; or

(B) any other representative, officer, employee, or agent of the United States

Government, a foreign government, or international organization who at the time and place concerned is entitled pursuant to international law to special protection against attack upon his person, freedom, or dignity, and any member of his family then forming

part of his household.

(5) “International organization” means a public international organization designated as such pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288) or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs.

(6) “Official guest” means a citizen or national of a foreign country present in the United States as an official guest of the Government of the United States pursuant to designation as such by the Secretary of State.

(7) “National of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(22)).

(c) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if

(1) the victim is a representative, officer, employee, or agent of the United States,

(2) an offender is a national of the United States, or

(3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501 (2) of title 49.

(d) In the course of enforcement of this section and any other sections prohibiting a conspiracy or attempt to violate this section, the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

Title 18 Part I Chapter 55 § 1201

§ 1201. Kidnapping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary if the person was alive when the transportation began;

(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States; (Remember the United States has brought admiralty on land and into the courts)

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 46501 of title 49;

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116 (b) of this title; or

(5) the person is among those officers and employees described in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of official duties, shall be punished by imprisonment for any term of years or for life and, if the death of any person results, shall be punished by death or life imprisonment.

(b) With respect to subsection (a)(1), above, the failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that

such person has been transported to interstate or foreign commerce. Notwithstanding the preceding sentence, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the 24-hour period has ended.

(c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

(d) Whoever attempts to violate subsection (a) shall be punished by imprisonment for not more than twenty years.

(e) If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if

(1) the victim is a representative, officer, employee, or agent of the United States,

(2) an offender is a national of the United States, or

(3) an offender is afterwards found in the United States. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 46501 (2) of title 49. For purposes of this subsection, the term “national of the United States” has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(22)).

(f) In the course of enforcement of subsection (a)(4) and any other sections prohibiting a conspiracy or attempt to violate subsection (a)(4), the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

(g) Special Rule for Certain Offenses Involving Children.—

(1) To whom applicable.— If—

(A) the victim of an offense under this section has not attained the age of eighteen years;

and

(B) the offender—

(i) has attained such age; and

(ii) is not—

(I) a parent;

(II) a grandparent;

(III) a brother;

(IV) a sister;

(V) an aunt;

(VI) an uncle; or

(VII) an individual having legal custody of the victim;

the sentence under this section for such offense shall include imprisonment for not less than 20 years.

[(2) Repealed. Pub. L. 108–21, title I, § 104(b), Apr. 30, 2003, 117 Stat. 653.]

(h) As used in this section, the term “parent” does not include a person whose parental rights with respect to the victim of an offense under this section have been terminated by a final court order

U.S.C. [TITLE 22CHAPTER 6](#) § 254b Privileges and immunities of mission of nonparty to Vienna Convention With respect to a nonparty to the Vienna Convention, the mission, the members of the mission, their families, and diplomatic couriers shall enjoy the privileges and immunities specified in the Vienna Convention.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this court enter judgment granting the Plaintiff

1. Counsel and the right to use the Bond already deposited to ensure payment of costs in its Civil and appellate Actions.
2. A stay of the judgment or order of the U. S. District Courts of Delaware and New Jersey pending appeal.
3. An Order to redact the U.S. District Court of N.J.'S opinions and beliefs on Moorish ancestry, heritage and Culture and to stop referring to there socio political status as Blacks and African Americans.
4. An order suspending, modifying, restoring, or granting an injunction while an appeal is pending.
5. The right to amend this complaint, in pursuance of Rule 15 of the Federal Rules of Civil Procedure as needed or required.

6. A declaration that Corporations that cannot afford Counsel have the right to be appointed Counsel or that the Courts may do so in the event that a Corporation cannot satisfy cash or money order prepayment of fees to private Counsel.
7. A declaration that a Corporation may file a bond or provide other security in any form and amount necessary to ensure payment of costs in a Civil Action.
8. Request to not be punished for embracing their indigenous Moorish Heritage and Islamic Culture.
9. Request that its members not be punished for identifying themselves under their Free National Name: "Moor".
10. Request that its members not be punished for possessing Moorish Identification or identification bearing Moorish National Origins..
11. Request that its members not be punished for possessing Corporate Identification instruments issued by the Non Profit Human Rights Organization styled as: World Government of World Citizens. <http://www.worldservice.org/docpass.html>
12. Any additional relief this Court deems Just, Proper and Equitable.

Dated: 6/25/11
Respectfully submitted,

Sheikh: Universal S.
A. Bey
219 West Park Ave
Vineland NJ 08360

VERIFICATION

I have read the foregoing complaint and hereby verify that the matters alleged therein are true, except as to matters alleged on information and belief, and as to those, I believe them to be true. I certify under penalty of perjury that the foregoing is true and correct.

Executed at Vineland, New Jersey on 6/25/11

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. »*

<p>Sales number N° de vente :</p>	<p>93</p>
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AUGUST 27th, 1952

JUDGMENT

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

(FRANCE *v.* UNITED STATES OF AMERICA)

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

(FRANCE *c.* ÉTATS-UNIS D'AMÉRIQUE)

27 AOÛT 1952

ARRÊT

INTERNATIONAL COURT OF JUSTICE

1952
August 27th
General List :
No. 11

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.

COUR INTERNATIONALE DE JUSTICE

ANNÉE 1952

27 août 1952

1952
Le 27 août
Rôle général
n° 11

AFFAIRE RELATIVE AUX DROITS
DES RESSORTISSANTS
DES ÉTATS-UNIS D'AMÉRIQUE
AU MAROC
(FRANCE c. ÉTATS-UNIS D'AMÉRIQUE)

Liberté économique au Maroc sans aucune inégalité d'après l'acte général d'Algésiras. — Effet de l'établissement du protectorat sur ce principe. — Influence de la discrimination sur la validité de l'arrêté résidentiel du 30 décembre 1948 portant réglementation des importations.

Juridiction consulaire dans la zone française du Maroc fondée sur les traités bilatéraux, les clauses de la nation la plus favorisée et les traités multilatéraux. — Sens du mot « différend » dans le traité de 1836 entre le Maroc et les États-Unis ; son application aux affaires criminelles et civiles. — Effet de la renonciation par les autres États à la juridiction consulaire. — Effet de la convention de Madrid et de l'acte d'Algésiras sur la juridiction consulaire. — Coutume et usage.

« Droit d'assentiment » à la législation marocaine comme corollaire de la juridiction consulaire. — Assentiment nécessaire pour l'application des lois marocaines par les tribunaux consulaires. — Lois locales contraires aux droits conventionnels.

Immunité fiscale fondée sur la convention de Madrid et l'acte d'Algésiras et les clauses de la nation la plus favorisée.

Interprétation de l'article 95 de l'acte d'Algésiras.

ARRÊT

Présents : Sir Arnold McNair, Président ; MM. BASDEVANT, HACKWORTH, ZORIČIĆ, KLAESTAD, BADAWI, READ, HSU MO, LEVI CARNEIRO, Sir Benegal RAU, M. ARMAND-UGON, Juges ; M. HAMBRO, Greffier.

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, Depart-
ment 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,

En l'affaire des droits des ressortissants des États-Unis d'Amérique au Maroc,

entre

la République française,

représentée par

M. André Gros, professeur des Facultés de droit, jurisconsulte
du ministère des Affaires étrangères,

comme agent,

assisté par

M. Paul Reuter, professeur à la Faculté de droit d'Aix-en-Provence, jurisconsulte adjoint du ministère des Affaires étrangères,

comme agent adjoint,

et par

M. Henry Marchat, ministre plénipotentiaire,

comme conseil,

et par

M. de Lavergne, inspecteur des finances,

M. Fougère, maître des requêtes au Conseil d'État,

M. de Laubadère, professeur des Facultés de droit,

comme experts ;

et

les États-Unis d'Amérique,

représentés par

M. Adrian S. Fisher, conseiller juridique du Département d'État,
comme agent,

assisté par

M. Joseph M. Sweeney, adjoint au conseiller juridique du
Département d'État,

M. Seymour J. Rubin, membre du barreau du district de
Columbia,

comme conseils,

et par

M. John A. Bovey Jr., consul au consulat général des États-Unis à 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

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M. Edwin L. Smith, conseiller juridique de la légation des États-Unis à Tanger,

M. John E. Utter, premier secrétaire à l'ambassade des États-Unis à Paris,

comme experts,

LA COUR,

ainsi composée,

rend l'arrêt suivant :

Le 28 octobre 1950, le chargé d'affaires *a. i.* de France aux Pays-Bas a déposé au Greffe, au nom du Gouvernement de la République française, une requête introduisant devant la Cour, contre les États-Unis d'Amérique, une instance relative aux droits des ressortissants des États-Unis au Maroc. La requête vise les déclarations par lesquelles le Gouvernement des États-Unis d'une part, et le Gouvernement français d'autre part, ont reconnu comme obligatoire la juridiction de la Cour, aux termes de l'article 36, paragraphe 2, du Statut. Elle vise également l'accord de coopération économique du 28 juin 1948, entre les États-Unis et la France, et le traité pour l'organisation du protectorat français dans l'Empire chérifien, signé à Fez le 30 mars 1912, entre la France et l'Empire chérifien. Elle fait mention du traité de paix et d'amitié du 16 septembre 1836, entre les États-Unis et l'Empire chérifien, ainsi que de l'acte général de la conférence internationale d'Algésiras du 7 avril 1906.

Conformément à l'article 40, paragraphes 2 et 3, du Statut, la requête a été communiquée au Gouvernement des États-Unis ainsi qu'aux États admis à ester en justice devant la Cour. Elle a également été transmise au Secrétaire général des Nations Unies.

Les délais pour le dépôt des pièces de la procédure écrite ont été fixés par ordonnance du 22 novembre 1950. Le mémoire du Gouvernement français, présenté à la date assignée, cite plusieurs dispositions de l'acte général d'Algésiras et en tire des conclusions quant aux droits des États-Unis. S'agissant ainsi dans l'affaire de l'interprétation d'une convention à laquelle ont participé d'autres États que les Parties au litige, ces États en ont été avertis aux termes de l'article 63, paragraphe premier, du Statut : des notes à cet effet ont été adressées le 6 avril 1951 aux Gouvernements de la Belgique, de l'Espagne, de l'Italie, des Pays-Bas, du Portugal, du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et de la Suède.

Le 21 juin 1951, dans le délai fixé pour le dépôt de son contre-mémoire, le Gouvernement des États-Unis a présenté une pièce

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 ;

intitulée « Exception préliminaire ». La procédure sur le fond a été de ce fait suspendue. L'exception préliminaire a été communiquée aux États admis à ester en justice devant la Cour comme aux États qui avaient été avertis du dépôt de la requête par application de l'article 63 du Statut. La procédure sur l'exception préliminaire alors engagée a pris fin après que le Gouvernement des États-Unis se fut déclaré disposé à retirer l'exception, eu égard aux explications et précisions données au nom du Gouvernement français, et que ce dernier gouvernement eut déclaré ne pas faire opposition au retrait. Une ordonnance du 31 octobre 1951 a pris acte du désistement, constaté la reprise de la procédure sur le fond et fixé de nouveau délais pour le dépôt du contre-mémoire, de la réplique et de la duplique.

Le contre-mémoire et la réplique ont été déposés dans les délais ainsi fixés. Quant à la duplique, le délai pour sa présentation a, par ordonnance du 31 mars 1952 rendue à la demande du Gouvernement des États-Unis, été prorogé du 11 au 18 avril 1952. La duplique ayant été déposée à cette dernière date, l'affaire s'est trouvée en état. Des audiences publiques ont été tenues les 15, 16, 17, 21, 22, 23, 24 et 26 juillet 1952, au cours desquelles ont été entendus : pour le Gouvernement français, MM. André Gros et Paul Reuter ; pour le Gouvernement des États-Unis, MM. Adrian S. Fisher et Joseph M. Sweeney.

A l'issue des plaidoiries, les conclusions des Parties ont été présentées comme suit :

Au nom du Gouvernement français :

« Plaise à la Cour,

Dire et juger :

Que les privilèges des ressortissants des États-Unis d'Amérique au Maroc sont uniquement ceux qui résultent du texte des articles 20 et 21 du traité du 16 septembre 1836 et que, la clause de la nation la plus favorisée contenue dans l'article 24 dudit traité ne pouvant plus être invoquée par les États-Unis dans l'état actuel des engagements internationaux de l'Empire chérifien, rien ne justifie pour les ressortissants des États-Unis un régime préférentiel qui serait contraire aux dispositions des traités ;

Que le Gouvernement des États-Unis d'Amérique n'est pas en droit de prétendre que l'application à ses ressortissants au Maroc de toutes législations et réglementations dépend de son consentement exprès ;

Que les ressortissants des États-Unis d'Amérique au Maroc sont soumis aux dispositions législatives et réglementaires mises en vigueur dans l'Empire chérifien, notamment en ce qui concerne la réglementation du 30 décembre 1948 sur les importations sans devises, sans que l'accord préalable du Gouvernement des États-Unis soit nécessaire ;

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.

Que l'arrêté du 30 décembre 1948 portant réglementation des importations sans devises est conforme au régime économique applicable au Maroc selon les conventions qui lient la France et les États-Unis ;

Que l'article 95 de l'acte d'Algésiras définit la valeur en douane comme la valeur de la marchandise au moment et au lieu où elle est présentée pour les opérations de dédouanement ;

Qu'aucun traité n'a conféré aux États-Unis une immunité fiscale pour leurs ressortissants au Maroc, ni directement, ni par le jeu de la clause de la nation la plus favorisée ;

Que les lois et règlements en matière fiscale mis en vigueur dans l'Empire chérifien sont applicables aux ressortissants des États-Unis sans que l'accord préalable du Gouvernement des États-Unis soit nécessaire ;

Que les taxes de consommation établies par le dahir du 28 février 1948 ont donc été légalement perçues sur les ressortissants des États-Unis et qu'il n'y a pas lieu à remboursement. »

Au nom du Gouvernement des États-Unis :

« 1. Les thèses et conclusions soumises en l'espèce par le Gouvernement de la République française doivent être rejetées, motif pris du fait que ce gouvernement qui, en sa qualité de demandeur et par la nature même des questions juridiques en cause, avait assumé le fardeau de la preuve, n'est pas parvenu à faire cette preuve.

2. Les droits conventionnels des États-Unis au Maroc interdisent au Maroc d'imposer aux importations d'Amérique d'autres prohibitions que celles que prévoient les traités ; ces droits continuent d'être en vigueur et de déployer tous leurs effets.

Le dahir du 30 décembre 1948, en imposant une prohibition sur les importations, contrevient directement aux droits conventionnels des États-Unis par lesquels toute prohibition des importations d'Amérique est interdite ; en appliquant aux ressortissants américains, sans l'assentiment des États-Unis, du 31 décembre 1948 au 11 mai 1949, le dahir du 30 décembre 1948, le Gouvernement de la République française a violé les droits conventionnels des États-Unis et s'est rendu coupable d'un manquement au droit international.

Sans l'assentiment préalable des États-Unis valant renonciation temporaire à leurs droits conventionnels, les ressortissants américains ne peuvent légalement se voir appliquer le dahir du 30 décembre 1948.

3. La compétence judiciaire que les traités de 1787 et 1836 ont conférée aux États-Unis existait au civil et au criminel pour toutes les affaires entre citoyens américains.

En outre, les États-Unis ont acquis au Maroc, par l'effet de la clause de la nation la plus favorisée, ainsi que par la coutume et l'usage, une compétence judiciaire pour toutes affaires où un citoyen ou protégé américain est défendeur.

Cette compétence judiciaire n'a pas été affectée par la renonciation faite en 1937 par la Grande-Bretagne aux droits juridictionnels dont elle était titulaire dans la zone française du Maroc.

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

Les États-Unis n'ont jamais, expressément ou implicitement, renoncé à cette compétence.

4. Sous le régime de compétence judiciaire extraterritoriale actuellement exercée au Maroc par les États-Unis, les citoyens de ce pays ne sont pas soumis, en principe, à l'application des lois marocaines.

Ces lois ne deviennent applicables aux citoyens des États-Unis qu'après avoir été soumises à l'assentiment préalable du Gouvernement des États-Unis et que ce gouvernement en ait approuvé l'application à ses citoyens. Le dahir du 30 décembre 1948 n'ayant pas été soumis à l'assentiment préalable du Gouvernement des États-Unis n'est pas applicable aux citoyens américains.

A titre de demande reconventionnelle :

1. Aux termes de l'article 95 de l'acte d'Algésiras, il faut déterminer, aux fins de l'évaluation en douane, la valeur des importations en provenance des États-Unis en ajoutant à la valeur d'achat aux États-Unis de la marchandise importée les frais de transport jusqu'au bureau de la douane marocaine, à l'exclusion des frais postérieurs à la remise de la marchandise au bureau de douane, tels que les droits de douane et frais de magasinage.

C'est une violation de l'acte d'Algésiras et un manquement au droit international, de la part des autorités douanières, de s'écarter de la méthode d'évaluation ainsi définie et de fixer, aux fins de l'évaluation en douane, la valeur de la marchandise importée d'après la valeur de cette marchandise sur le marché local marocain.

2. Les traités exemptent les ressortissants américains de toute taxe, à l'exception de celles qu'ils prévoient expressément ; percevoir des taxes des ressortissants américains en violation des dispositions des traités est un manquement au droit international.

Ces taxes ne peuvent en droit être recouvrées sur les ressortissants américains qu'avec l'assentiment préalable des États-Unis valant renonciation temporaire à leur droit conventionnel, et à compter de la date de cet assentiment, sauf disposition contraire contenue dans l'acte d'assentiment.

Les taxes de consommation, fixées par le dahir du 28 février 1948 et qui ont été recouvrées sur des ressortissants américains jusqu'au 15 août 1950, date à laquelle les États-Unis ont consenti à ces taxes, ont été perçues illégalement et doivent leur être remboursées.

3. Attendu que les lois marocaines ne peuvent s'appliquer aux citoyens américains avant d'avoir reçu l'assentiment préalable du Gouvernement des États-Unis, le défaut d'assentiment du Gouvernement des États-Unis au dahir du 28 février 1948 a donné un caractère illégal au recouvrement des taxes de consommation établies par ce dahir. »

* * *

La Cour examinera tout d'abord la contestation qui porte sur l'arrêté du Résident général de la République française au Maroc, en date du 30 décembre 1948, relatif au contrôle des importations

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

dans la zone française du Maroc. Les Parties ont présenté les conclusions suivantes :

Au nom du Gouvernement de la République française :

« Que l'arrêté du 30 décembre 1948 portant réglementation des importations sans devises est conforme au régime économique applicable au Maroc selon les conventions qui lient la France et les États-Unis. »

Au nom du Gouvernement des États-Unis d'Amérique :

« Les droits conventionnels des États-Unis au Maroc interdisent au Maroc d'imposer aux importations d'Amérique d'autres prohibitions que celles que prévoient les traités ; ces droits continuent d'être en vigueur et de déployer tous leurs effets.

Le dahir du 30 décembre 1948, en imposant une prohibition sur les importations, contrevient directement aux droits conventionnels des États-Unis par lesquels toute prohibition des importations d'Amérique est interdite.... »

Le Gouvernement français soutient que l'arrêté du 30 décembre 1948 est conforme aux dispositions conventionnelles applicables au Maroc et liant la France et les États-Unis. Cette thèse est contestée pour divers motifs par le Gouvernement des États-Unis. La Cour examinera tout d'abord la prétention selon laquelle l'arrêté résidentiel entraînerait, en faveur de la France, une discrimination contraire aux droits conventionnels des États-Unis.

Par dahir du 9 septembre 1939, Sa Majesté chérifienne a décidé ce qui suit :

« *Article premier.* — Est prohibée l'importation en zone française de l'Empire chérifien, sous un régime douanier quelconque, des marchandises autres que l'or sous toutes ses formes.

Article 2. — Toutefois, des dérogations à la prohibition d'entrée peuvent être autorisées par le directeur général des Communications, en ce qui concerne les combustibles minéraux solides et les produits pétroliers, et par le directeur des Affaires économiques, en ce qui concerne tous les autres produits.

Article 3. — Sont laissées à la détermination du commissaire Résident général toutes mesures d'application du présent dahir. »

Un arrêté résidentiel de la même date a fixé les conditions d'application du dahir, y compris des dispositions relatives à des demandes de dérogation à la prohibition d'entrée. Selon l'article 4 :

« A titre provisoire, sont admises sans formalités spéciales les marchandises originaires et en provenance de la France et de l'Algérie. »

Une réglementation complémentaire a été édictée par un arrêté résidentiel du 10 septembre 1939, qui soumet à une autorisation

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

spéciale les importations sans attribution officielle de devises. Le paragraphe premier de l'article 7 énonce ce qui suit :

« Les règlements commerciaux avec la France, l'Algérie, les colonies françaises, les territoires africains sous mandat français et la Tunisie ne sont pas soumis aux dispositions du présent arrêté. »

Par arrêté résidentiel du 11 mars 1948, l'arrêté du 9 septembre 1939 a été complété par un nouvel article 5 :

« *Article 5.* — A l'exception de celles qui seront désignées par les chefs d'administration responsables, les marchandises importées de toutes origines et provenances qui ne donnent lieu à aucun règlement financier entre la zone française de l'Empire chérifien, la France ou un territoire de l'Union française, d'une part, et l'étranger, d'autre part, bénéficient d'une dérogation générale à la prohibition d'entrée. »

Enfin, ce nouvel article 5 a été abrogé par l'arrêté du 30 décembre 1948 qui fait l'objet du présent litige. Après s'être référé au dahir du 9 septembre 1939 ainsi qu'aux arrêtés portant cette date et celle du 11 mars 1948, le Résident général de la République française a arrêté ce qui suit :

« *Article premier.* — Les dispositions de l'article 5 de l'arrêté résidentiel susvisé du 9 septembre 1939 cesseront d'être applicables à compter du 1^{er} janvier 1949, sous réserve de l'exception prévue à l'article 2 du présent arrêté.

Article 2. — Seront admises aux conditions prévues par l'article 5 de l'arrêté résidentiel susvisé du 9 septembre 1939 les marchandises que l'on justifie avoir été expédiées directement pour la zone française de l'Empire chérifien avant le 15 janvier 1949.

. »

Cet arrêté a eu pour effet de rétablir la réglementation des importations introduite en septembre 1939. Les importations sans attribution officielle de devises ont été à nouveau soumises à un système de contrôle par licences. Mais cette réglementation des importations ne s'appliquait pas à la France ni aux autres parties de l'Union française. Les importations en zone française du Maroc provenant de France et des autres parties de l'Union française étaient libres. L'arrêté du 30 décembre 1948 comporte par conséquent une discrimination en faveur de la France, et le Gouvernement des États-Unis soutient que cette discrimination est contraire à ses droits conventionnels.

Les Parties sont d'accord pour admettre que la caractéristique du statut du Maroc, tel qu'il résulte de l'acte général d'Algésiras du 7 avril 1906, est le respect des trois principes énoncés dans le préambule de l'acte, à savoir : « de la souveraineté et de l'indépendance de Sa Majesté le Sultan, de l'intégrité de ses États et de la liberté économique sans aucune inégalité ». Le principe de la liberté économique sans aucune inégalité mentionné en dernier doit, pour

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,

son application au Maroc, être envisagé dans le cadre des dispositions conventionnelles alors existantes et visant le commerce et l'égalité de traitement en matière économique.

Par le traité de commerce du 9 décembre 1856 avec la Grande-Bretagne, comme par les traités du 20 novembre 1861 avec l'Espagne, et du 1^{er} juin 1890 avec l'Allemagne, le Sultan du Maroc a garanti certains droits en matière de commerce, y compris les importations au Maroc. Ces États, avec certains autres parmi lesquels les États-Unis, ont reçu la garantie de l'égalité de traitement par l'effet des clauses de la nation la plus favorisée figurant dans leurs traités avec le Maroc. A la veille de la conférence d'Algésiras, les trois principes mentionnés plus haut, y compris celui de « la liberté économique sans aucune inégalité », ont été expressément acceptés par la France et l'Allemagne, dans un échange de lettres du 8 juillet 1905 relatives à leur attitude à l'égard du Maroc. Ainsi, ce principe, pour son application au Maroc, était déjà bien établi quand la conférence l'a réaffirmé et l'a inséré dans le préambule de l'acte de 1906. Vu à la lumière des circonstances précitées, le principe apparaît clairement comme ayant été destiné à avoir le caractère d'une obligation, et non à rester seulement formule vide. L'article 105 le confirme, lorsqu'il applique expressément ce principe en ce qui concerne les services publics au Maroc. On en trouve également la confirmation dans les déclarations faites à la conférence par le représentant de l'Espagne, qui mentionne l'« égalité de traitement en matière commerciale », ainsi que par le représentant de la France.

L'établissement du protectorat français sur le Maroc par le traité du 30 mars 1912 entre la France et le Maroc n'a pas entraîné de modification à cet égard. Dans la convention du 4 novembre 1911 entre la France et l'Allemagne, concernant l'établissement de ce protectorat, le Gouvernement allemand a énoncé, dans l'article premier, la réserve que « l'action de la France sauvegardera au Maroc l'égalité économique entre les nations ». D'autre part, le Gouvernement de la République française a déclaré à l'article 4 qu'il s'emploierait auprès du Gouvernement marocain « afin d'empêcher tout traitement différentiel entre les ressortissants des différentes Puissances ».

Les autres États au nom desquels a été signé l'acte d'Algésiras ont, à l'exception des États-Unis, adhéré par la suite à la convention franco-allemande de 1911, acceptant ainsi à nouveau le principe de l'égalité de traitement en matière économique au Maroc. Le France s'est efforcée d'obtenir également l'adhésion des États-Unis, et, dans une note du 3 novembre 1911 de l'ambassadeur de France à Washington au secrétaire d'État des États-Unis, une référence est faite à la convention franco-allemande. Il y est dit que la France s'emploierait auprès du Gouvernement marocain afin d'empêcher tout traitement différentiel des ressortissants des Puissances. Dans une autre note du 14 novembre 1918, de l'ambassadeur de France au secrétaire d'État, il est déclaré que le bénéfice

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,

de l'égalité commerciale au Maroc ne résulte pas seulement de la clause de la nation la plus favorisée mais aussi de la clause d'égalité économique inscrite à l'acte d'Algésiras et reprise dans la convention franco-allemande de 1911.

Ces divers faits démontrent que l'égalité commerciale ou économique au Maroc était assurée aux États-Unis, non seulement par le Maroc, mais encore par la France en tant que Puissance protectrice. On peut se demander si la France, étant donné sa position de protectrice du Maroc, échappe à ce principe d'égalité et peut jouir de privilèges commerciaux ou économiques dont ne jouissent pas également les États-Unis.

Le Gouvernement français ne conteste pas que le Maroc, même sous le protectorat, a conservé sa personnalité d'État en droit international. Les droits de la France au Maroc sont définis par le traité de protectorat de 1912. Dans le domaine économique, une situation privilégiée n'a pas été accordée à la France au Maroc. Une telle situation privilégiée ne serait pas compatible avec le principe de la liberté économique sans aucune inégalité sur lequel se fonde l'acte d'Algésiras. La note du 14 novembre 1918 de l'ambassadeur de France à Washington, déjà mentionnée plus haut, le confirme lorsqu'elle énonce qu'en vertu de la clause d'égalité économique inscrite à l'acte d'Algésiras, les autres États ont gardé l'avantage de cette égalité, « même vis-à-vis de la Puissance protectrice », et que, par conséquent, les États-Unis peuvent non seulement reconnaître les tribunaux français au Maroc, mais renoncer, dans la zone française, au bénéfice de tous les privilèges issus des capitulations, sans perdre cet avantage.

Des considérations qui précèdent, il résulte que les dispositions de l'arrêté du 30 décembre 1948 sont contraires aux droits que les États-Unis ont acquis en vertu de l'acte d'Algésiras, car elles font une discrimination entre, d'une part, les importations provenant de la France et des autres parties de l'Union française, et d'autre part les importations en provenance des États-Unis. La France est dispensée du contrôle des importations sans allocation de devises, alors que les États-Unis sont soumis à ce contrôle. Ce traitement différentiel est incompatible avec l'acte d'Algésiras, en vertu duquel les États-Unis peuvent revendiquer le droit d'être traités aussi favorablement que la France pour autant qu'il s'agit de questions économiques au Maroc.

Cette conclusion peut également se déduire du traité du 16 septembre 1836 entre les États-Unis et le Maroc, dont l'article 24 porte « que toute faveur en matière de commerce ou autre qui viendrait à être accordée à une autre Puissance chrétienne s'appliquera également aux citoyens des États-Unis ». Eu égard à la conclusion à laquelle elle est déjà arrivée sur la base de l'acte d'Algésiras, la Cour se bornera à déclarer que, dans son opinion, les États-Unis ont le droit, en vertu de cette clause de la nation la

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

plus favorisée, de s'opposer à toute discrimination en faveur de la France en matière d'importations dans la zone française du Maroc.

Le Gouvernement français a présenté divers arguments dont le but est de démontrer que le contrôle des changes est licite. La Cour ne croit pas nécessaire de se prononcer sur ces arguments. Même en admettant la légalité du contrôle des changes, le fait reste cependant que les mesures prises en application de l'arrêté du 30 décembre 1948 ont entraîné une discrimination en faveur des importations provenant de France et des autres parties de l'Union française. Cette discrimination ne peut se justifier par des considérations relatives au contrôle des changes.

C'est pourquoi la Cour en vient à estimer que la conclusion française relative à l'arrêté du 30 décembre 1948 doit être rejetée. Il est donc inutile d'examiner si cette conclusion pourrait être rejetée également pour les autres motifs invoqués par le Gouvernement des États-Unis. Dans ces circonstances, la Cour n'est pas appelée à examiner et à trancher la question générale de l'étendue du contrôle que les autorités marocaines peuvent exercer sur les importations.

* * *

La Cour examinera maintenant l'étendue de la juridiction consulaire des États-Unis dans la zone française du Maroc.

La conclusion du Gouvernement français sur ce point est la suivante :

« Que les privilèges des ressortissants des États-Unis d'Amérique au Maroc sont uniquement ceux qui résultent du texte des articles 20 et 21 du traité du 16 septembre 1836 et que, la clause de la nation la plus favorisée contenue dans l'article 24 dudit traité ne pouvant plus être invoquée par les États-Unis dans l'état actuel des engagements internationaux de l'Empire chérifien, rien ne justifie pour les ressortissants des États-Unis un régime préférentiel qui serait contraire aux dispositions des traités. »

La conclusion du Gouvernement des États-Unis sur la juridiction consulaire est la suivante :

« 3. La compétence judiciaire que les traités de 1787 et 1836 ont conférée aux États-Unis existait au civil et au criminel pour toutes les affaires entre citoyens américains.

En outre, les États-Unis ont acquis au Maroc, par l'effet de la clause de la nation la plus favorisée, ainsi que par la coutume et l'usage, une compétence judiciaire pour toutes affaires où un citoyen ou protégé américain est défendeur.

Cette compétence judiciaire n'a pas été affectée par la renonciation faite en 1937 par la Grande-Bretagne aux droits juridictionnels dont elle était titulaire dans la zone française du Maroc.

Les États-Unis n'ont jamais, expressément ou implicitement, renoncé à cette compétence. »

Il n'est pas contesté entre les Parties que le présent litige est limité à la zone française du Maroc. C'est sur ce terrain qu'il a

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-

été plaidé. Par conséquent, la Cour ne saurait statuer sur la situation juridique en d'autres parties du Maroc.

Pour examiner l'étendue des droits des États-Unis relatifs à la juridiction consulaire, il est nécessaire de prendre en considération trois groupes de traités.

Le premier groupe comprend les traités bilatéraux conclus par le Maroc avec la France, les Pays-Bas, la Grande-Bretagne, le Danemark, l'Espagne, les États-Unis, la Sardaigne, l'Autriche, la Belgique et l'Allemagne et qui s'étendent sur la période de 1631 à 1892.

Ces traités, qui se rapportaient principalement au commerce, y compris les droits et privilèges des négociants étrangers au Maroc, traitaient de trois manières différentes la question de la juridiction consulaire :

- 1) Certains comportaient l'octroi exprès aux Puissances intéressées de droits étendus en matière de juridiction consulaire ; par exemple, les traités de 1856 avec la Grande-Bretagne et de 1799 et de 1861 avec l'Espagne ;
- 2) D'autres comportaient l'octroi de privilèges strictement limités en matière de juridiction consulaire ; par exemple, les traités de 1787 et de 1836 avec les États-Unis ;
- 3) D'autres encore ne définissaient pas en termes exprès les droits conventionnels accordés par le Maroc, mais, au lieu de cela, octroyaient aux nations étrangères, par le moyen des clauses de la nation la plus favorisée, les avantages et privilèges déjà accordés ou qui seraient accordés à d'autres nations.

On trouve un élément commun dans les clauses de la nation la plus favorisée qui ont amené et maintenu une situation où il ne pouvait y avoir de discrimination entre aucune des Puissances au Maroc, sans égard à l'octroi, à titre particulier, de droits conventionnels. Lorsque les privilèges les plus étendus en matière de juridiction consulaire furent accordés par le Maroc à la Grande-Bretagne en 1856, et à l'Espagne en 1861, ils s'étendirent automatiquement et immédiatement aux autres Puissances par l'effet des clauses de la nation la plus favorisée.

Le second groupe comprend des traités multilatéraux, la convention de Madrid de 1880 et l'acte d'Algésiras de 1906. La méthode consistant à s'en remettre à l'action individuelle des Puissances intéressées, nivelée par l'effet des clauses de la nation la plus favorisée, avait donné lieu à des abus, et il était devenu nécessaire, non seulement d'assurer la liberté économique sans discrimination, mais aussi d'imposer aux Puissances un élément de modération et de prendre des mesures permettant au Maroc de se transformer en un État moderne. En conséquence, les droits de protection furent restreints, et quelques-unes des limitations qui avaient été apportées aux pouvoirs du sultan à l'égard des

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

étrangers par suite des dispositions des traités bilatéraux antérieurs furent supprimées. On prit soin de prévenir les possibilités d'un abus de la part du Maroc dans l'exercice des pouvoirs ainsi accrus en réservant au Corps diplomatique à Tanger certaines attributions de surveillance et de contrôle.

Le troisième groupe de traités concerne l'établissement du protectorat. Il comprend les accords qui précédèrent l'établissement par la France d'un protectorat sur le Maroc, ainsi que le traité de Fez de 1912. En vertu de ce traité, le Maroc demeurait un État souverain, mais il concluait un accord de caractère contractuel par lequel la France s'engageait à exercer certains pouvoirs souverains au nom et pour le compte du Maroc, et à se charger, en principe, de toutes les relations internationales du Maroc. Dans l'exercice de cette fonction, la France est liée non seulement par les dispositions du traité de Fez, mais également par toutes les obligations conventionnelles auxquelles le Maroc avait été soumis avant le protectorat et qui, depuis lors, n'ont pas pris fin ou n'ont pas été suspendues par accord avec les États intéressés.

L'établissement du protectorat et l'organisation des tribunaux du protectorat garantissant aux étrangers l'égalité judiciaire amenèrent une situation essentiellement différente de celle qui avait conduit à l'établissement de la juridiction consulaire en vertu des traités antérieurs. En conséquence, la France a entamé des négociations en vue d'obtenir des Puissances exerçant la juridiction consulaire dans la zone française qu'elles renoncent au régime des capitulations. En ce qui concerne toutes les Puissances, à l'exception des États-Unis, ces négociations aboutirent à une renonciation aux droits et privilèges capitulaires, renonciation qui, pour la Grande-Bretagne, était contenue dans la convention du 29 juillet 1937. Dans le cas des États-Unis, des négociations eurent lieu au cours desquelles les États-Unis ont réservé leurs droits conventionnels.

La conclusion du Gouvernement français est fondée sur le traité conclu entre les États-Unis et le Maroc, le 16 septembre 1836, et les Parties sont d'accord pour admettre que les États-Unis ont le droit d'exercer une juridiction consulaire en matière de différends entre leurs citoyens ou protégés. Il n'y a donc pas de doute sur l'existence, dans ce cas, d'une juridiction consulaire. La seule question à trancher est celle de l'étendue de cette juridiction en 1950, date du dépôt de la requête.

* * *

Le premier point soulevé par les conclusions vise la portée des dispositions juridictionnelles du traité de 1836, lesquelles ont la teneur suivante :

« *Article 20.* — Si des citoyens ou protégés des États-Unis ont entre eux un différend, le consul statuera entre les parties ; et

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.

chaque fois que, pour l'exécution de ses décisions, le consul demandera l'aide ou l'assistance de notre gouvernement, celles-ci lui seront immédiatement fournies.

Article 21. — Si un citoyen des États-Unis tue ou blesse un Maure ou si, à l'inverse, un Maure tue ou blesse un citoyen des États-Unis, la loi du pays s'appliquera et justice égale sera rendue, le consul assistant au procès ; au cas où un délinquant s'échapperait, le consul n'en sera responsable en aucune manière. »

Il est soutenu que l'article 20 doit être interprété comme conférant une juridiction consulaire dans tous les différends, civils ou criminels, s'élevant entre citoyens et protégés des États-Unis. De son côté, le Gouvernement français soutient que le terme « différend » est limité aux affaires civiles. On fait valoir que ce terme, dans son sens ordinaire et naturel, est limité aux différends d'ordre civil, les crimes étant des fautes contre l'État et non des différends entre personnes privées.

Le traité de 1836 a remplacé un traité antérieur conclu en 1787 entre les États-Unis et le Maroc. Les deux traités ont dans l'ensemble une rédaction identique et les articles 20 et 21 sont les mêmes dans les deux. Par conséquent, il est nécessaire, en interprétant les dispositions de l'article 20 — et notamment l'expression « ont entre eux un différend » — de tenir compte du sens du terme « différend » à l'époque où les deux traités furent conclus. A cette fin, il convient d'examiner la manière dont a été employé le terme « *dispute* », ou son équivalent français, dans les divers traités conclus par le Maroc, par exemple ceux avec la France de 1631 et 1682, et avec la Grande-Bretagne de 1721, 1750, 1751, 1760 et 1801. Il est clair que dans ces cas le terme a été employé comme s'étendant aux différends tant civils que criminels.

Il faut également tenir compte du fait qu'à l'époque où ces deux traités furent conclus, la distinction nette entre les affaires civiles et criminelles ne s'était pas encore dégagée au Maroc.

C'est pourquoi il faut interpréter le terme « différend » tel qu'il figure dans l'article 20, comme visant tant les affaires civiles que les affaires criminelles dans la mesure où celles-ci se rattachent à des violations du droit pénal commises par un citoyen ou protégé des États-Unis contre un autre citoyen ou protégé des États-Unis.

* * *

De la conclusion des États-Unis ressort un second point, à savoir que la juridiction consulaire fut acquise « pour toutes affaires où un citoyen ou protégé des États-Unis est défendeur par l'effet de la clause de la nation la plus favorisée ainsi que par la coutume et l'usage ». Une telle juridiction ne serait pas affectée par l'abandon, de la part de la Grande-Bretagne, en 1937, des droits juridictionnels qu'elle exerçait dans la zone française et n'aurait jamais

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

fait l'objet d'une renonciation expresse ou implicite de la part des États-Unis.

Il convient d'examiner attentivement les clauses de la nation la plus favorisée figurant dans le traité conclu par les États-Unis en 1836. L'octroi du traitement de la nation la plus favorisée y est prévu en deux endroits.

L'article 14 dispose :

« Le commerce avec les États-Unis sera sur le même pied que le commerce avec l'Espagne, ou que le commerce avec la nation actuellement la plus favorisée. Les citoyens de ce pays seront respectés et estimés ; ils auront toute liberté d'aller et de venir dans notre pays et dans nos ports sans aucun obstacle. »

L'article 24 vise l'éventualité de la guerre, mais il contient la phrase finale suivante :

« Il est en outre déclaré que toute faveur, en matière de commerce ou autre, qui viendrait à être accordée à une autre Puissance chrétienne s'appliquera également aux citoyens des États-Unis. »

Ces articles autorisent les États-Unis à invoquer les dispositions d'autres traités relatifs au régime capitulaire.

Les privilèges les plus étendus que le Maroc ait accordés en matière de juridiction consulaire sont ceux du traité général de 1856 avec la Grande-Bretagne et du traité de commerce et de navigation de 1861 avec l'Espagne. En vertu des dispositions de l'article IX du traité britannique, la juridiction consulaire était octroyée dans toutes les affaires civiles et criminelles où des ressortissants britanniques étaient défendeurs. De même, la juridiction au civil et au pénal était établie par les articles IX, X et XI du traité de 1861 avec l'Espagne dans toutes les affaires dans lesquelles des ressortissants espagnols étaient défendeurs.

Par conséquent, en vertu des clauses de la nation la plus favorisée, les États-Unis ont acquis la juridiction consulaire en matière civile et criminelle dans toutes les affaires où des ressortissants des États-Unis étaient défendeurs.

La controverse entre les Parties relative à la juridiction consulaire résulte de la renonciation par l'Espagne en 1914 et par la Grande-Bretagne en 1937 à leurs droits et privilèges capitulaires. La renonciation de l'Espagne, en 1914, n'a eu aucun effet immédiat sur la position des États-Unis parce qu'il était encore possible d'invoquer les dispositions du traité général de 1856 avec la Grande-Bretagne. Toutefois, après 1937, aucune Puissance, autre que les États-Unis, n'a exercé de juridiction consulaire dans la zone française du Maroc et aucune n'était en droit de l'exercer.

La France soutient que, dès le moment où la Grande-Bretagne a renoncé aux droits de juridiction consulaire, les États-Unis n'ont plus été fondés, que ce soit par l'effet des clauses de la nation la plus favorisée du traité de 1836 ou en vertu des dispositions d'un autre traité, à exercer la juridiction consulaire pour d'autres

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

affaires que celles qui sont visées par les dispositions des articles 20 et 21 du traité de 1836.

La conclusion des États-Unis est fondée sur une série d'arguments qui doivent être examinés tour à tour.

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Le premier argument est déduit de l'article 17 de la convention de Madrid de 1880, lequel énonce ce qui suit :

« Le droit au traitement de la nation la plus favorisée est reconnu par le Maroc à toutes les Puissances représentées à la conférence de Madrid. »

Même si l'on pouvait supposer que l'article 17 a eu pour effet un octroi général aux États-Unis des droits de la nation la plus favorisée et que cet article n'était pas limité aux questions traitées par la convention de Madrid, il ne s'ensuivrait pas que les États-Unis seraient fondés à invoquer encore les dispositions des traités conclus avec la Grande-Bretagne et avec l'Espagne, après qu'ils ont cessé de déployer leurs effets entre le Maroc et ces deux pays.

L'argument des États-Unis est fondé sur la supposition que les clauses de la nation la plus favorisée, quand elles figurent dans des traités avec des pays tels que le Maroc, doivent recevoir une interprétation différente de celle des dispositions analogues contenues dans les traités avec d'autres pays. Deux considérations particulières doivent ici entrer en ligne de compte.

La première considération est déduite du principe de la loi personnelle ainsi que de l'historique du vieux conflit entre deux concepts de droit et de juridiction : l'un fondé sur la personne et l'autre sur le territoire. Le droit de juridiction consulaire avait pour objet de pourvoir à une situation dans laquelle le droit marocain était de caractère essentiellement personnel et ne pouvait pas s'appliquer aux étrangers.

La seconde considération part de l'idée que les clauses de la nation la plus favorisée contenues dans les traités conclus avec des pays tels que le Maroc doivent être considérées comme une façon de formuler un texte à l'aide de références plutôt que comme un moyen d'établir et de maintenir l'égalité de traitement sans discrimination entre les divers pays intéressés. Selon cette manière de voir, les droits ou privilèges qu'un pays est fondé à invoquer par l'effet de la clause de la nation la plus favorisée et qui existaient à la date de l'entrée en vigueur de la clause, seraient incorporés par référence d'une manière permanente, et la jouissance et l'exercice en seraient maintenus même après l'abrogation des dispositions conventionnelles dont ils découlent.

Entendue de l'une ou l'autre façon, cette thèse n'est pas compatible avec l'intention des parties aux traités dont il s'agit ici. C'est ce que montre tout à la fois la rédaction des traités par-

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

ticuliers et l'objet général qui se dégage de l'examen des traités conclus de 1631 à 1892 par le Maroc, avec la France, les Pays-Bas, la Grande-Bretagne, le Danemark, l'Espagne, les États-Unis, la Sardaigne, l'Autriche, la Belgique et l'Allemagne. Ces traités montrent que les clauses de la nation la plus favorisée avaient pour objet d'établir et de maintenir en tout temps l'égalité fondamentale sans discrimination entre tous les pays intéressés. En outre, les dispositions de l'article 17 de la convention de Madrid, quelle que soit leur portée, étaient également fondées sur le maintien de l'égalité.

Par conséquent, l'argument irait à l'encontre du principe d'égalité et il perpétuerait la discrimination. Il ne saurait justifier la conclusion des États-Unis relative à l'étendue de la juridiction consulaire dans la zone française.

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Le deuxième argument des États-Unis se fonde sur le caractère géographiquement limité de la renonciation par la Grande-Bretagne à la juridiction consulaire. La portée de cette renonciation était restreinte à la zone française.

Il a été soutenu au nom des États-Unis que la Grande-Bretagne conservait ses droits juridictionnels dans la zone espagnole et que « les États-Unis, qui continuent à traiter le Maroc comme un seul et même pays, sont fondés, par le jeu de la clause de la nation la plus favorisée figurant à l'article 24 de leur traité, à exercer les mêmes droits de juridiction que ceux qu'exerce aujourd'hui la Grande-Bretagne dans une partie du Maroc en vertu du traité de 1856 ».

La Cour n'est pas appelée à déterminer l'existence ou l'étendue des droits juridictionnels de la Grande-Bretagne en zone espagnole. Il suffit donc de rejeter cet argument pour le motif qu'il conduirait à une situation dans laquelle les États-Unis seraient fondés à exercer la juridiction consulaire dans la zone française, nonobstant la perte de ce droit par la Grande-Bretagne. Un tel résultat serait contraire à l'intention des clauses de la nation la plus favorisée, qui est d'établir et de maintenir en tout temps, entre les pays intéressés, une égalité fondamentale sans discrimination.

On a également invoqué la position de la France et des ressortissants français en ce qui concerne les nouveaux tribunaux du Protectorat. Ceux-ci ont été établis pour exercer la juridiction sur les étrangers et leur appliquer les lois marocaines dans la zone française. Ces tribunaux ont été constitués avec l'aide de la France et sous direction et contrôle français. On a prétendu qu'en réalité il s'agirait là de tribunaux consulaires et que les États-Unis seraient fondés à être placés à cet égard sur un pied d'égalité avec la France.

Mais les tribunaux du Protectorat dans la zone française ne sont en rien des tribunaux consulaires. Ce sont des tribunaux

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

marocains organisés selon un modèle et des critères français, accordant aux étrangers toutes garanties d'égalité judiciaire.

Par conséquent, la Cour ne peut admettre cet argument.

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Le troisième argument des États-Unis se fonde sur la nature des accords qui ont conduit à l'abolition de la juridiction consulaire espagnole dans la zone française. La convention du 27 novembre 1912 entre la France et l'Espagne prévoit l'exercice par l'Espagne de droits et privilèges spéciaux dans la zone espagnole. Par une déclaration commune de la France et de l'Espagne, en date du 7 mars 1914, l'Espagne a abandonné ses droits juridictionnels et ses autres droits extraterritoriaux dans la zone française, et une clause a été insérée en vue de l'abandon ultérieur par la France de droits semblables dans la zone espagnole. Cela fut fait par la déclaration commune de la France et de l'Espagne du 17 novembre de la même année.

Les États-Unis soutiennent que la convention de 1912 et les déclarations de 1914 étaient des accords entre la France et l'Espagne et que, comme le Maroc n'y figurait pas comme partie, les droits que l'Espagne tient de la disposition antérieure existent toujours *de jure*, malgré que puisse exister une situation *de facto* qui en empêche pour le moment l'exercice.

Même si l'on accepte cet argument, la situation est telle que l'Espagne ne peut pas, depuis 1914, invoquer le droit d'exercer la juridiction consulaire en zone française. Les droits que les États-Unis pourraient invoquer en vertu des clauses de la nation la plus favorisée ne comprendraient donc pas le droit d'exercer en 1950 la juridiction consulaire. Ils seraient limités au droit conditionnel de rétablir la juridiction consulaire dans le cas où, ultérieurement, la France et l'Espagne abrogeraient les accords constitués par la convention de 1912 et par les déclarations de 1914.

Le Gouvernement français soutient que ces accords ont été conclus en vertu du pouvoir que le Maroc lui a conféré par les dispositions du traité de Fez de 1912. Les termes généraux des articles V et VI sont assez larges pour donner à la France la conduite des relations internationales du Maroc, y compris l'exercice du droit de conclure des traités. La convention et les déclarations doivent donc être considérées comme des accords passés par la Puissance protectrice dans les limites de ses pouvoirs, accords relatifs aux affaires de l'État protégé et destinés à l'obliger, comme l'indique clairement l'alinéa 3 de l'article premier du traité de Fez de 1912, lequel énonce : « Le Gouvernement de la République

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.

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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.

profitent, et que les droits espagnols relatifs à la juridiction consulaire ont pris fin *de jure* aussi bien que *de facto*.

Il faut examiner un autre aspect de la question qui résulte des termes de la déclaration faite par la France et l'Espagne le 7 mars 1914. Cette déclaration contient les dispositions suivantes :

« Prenant en considération les garanties d'égalité juridique offertes aux étrangers par les tribunaux français du protectorat, le Gouvernement royal renonce à réclamer pour ses consuls, ses ressortissants et ses établissements dans la zone française de l'Empire chérifien tous droits et privilèges issus du régime des capitulations.

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En ce qui le concerne, le Gouvernement de la République française s'engage à renoncer également aux droits et privilèges existant en faveur de ses consuls, de ses ressortissants et de ses établissements dans la zone espagnole, aussitôt que les tribunaux espagnols seront établis dans ladite zone.

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La déclaration par laquelle la France a donné effet à l'engagement ci-dessus est du 17 novembre 1914 ; elle comporte le paragraphe suivant :

« Prenant en considération les garanties d'égalité juridique offertes aux étrangers par les tribunaux espagnols du Protectorat, le Gouvernement de la République française renonce à réclamer pour ses consuls, ses ressortissants et ses établissements dans la zone espagnole de l'Empire chérifien tous droits et privilèges issus du régime des capitulations. »

On remarquera que les deux déclarations emploient les mots « renonce à réclamer », et la question s'est posée de savoir si ces termes avaient pour objet un abandon ou une renonciation à l'égard de tous les droits et privilèges résultant du régime des capitulations, ou s'il fallait les considérer comme des engagements provisoires de ne pas réclamer ces droits et privilèges aussi longtemps que les garanties d'égalité juridique sont maintenues dans la zone française par les tribunaux du protectorat, et aussi longtemps que les garanties correspondantes sont maintenues dans la zone espagnole.

La question est plus académique que pratique. Même si les termes dont il s'agit devaient être interprétés comme signifiant un engagement temporaire de ne pas réclamer les droits et privilèges, il n'en reste pas moins que l'Espagne, en 1950, du fait de ces engagements, n'est pas fondée à exercer la juridiction consulaire dans la zone française. Il s'ensuit que les États-Unis seraient également sans titre à exercer cette juridiction dans la zone française en 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-

Il faut néanmoins que la Cour examine ces déclarations pour déterminer ce qu'ont voulu les parties quand elles se sont servies des termes en question.

Dans les deux déclarations, les parties se sont servies de l'expression « prenant en considération les garanties d'égalité juridique.... ». Ces termes, pris dans leur sens naturel et ordinaire, énoncent la contre-partie de l'abandon consenti, mais ce ne sont pas des termes dont on se servirait normalement si l'on envisageait de procéder à un abandon conditionnel.

La Cour est d'avis que les termes « renonce à réclamer » doivent être interprétés comme portant renonciation absolue aux droits et privilèges capitulaires. Cette manière de voir trouve confirmation dans les déclarations et autres arrangements conclus par la France avec d'autres Puissances intéressées en vue d'effectuer l'abandon de leurs droits juridictionnels et autres droits extraterritoriaux dans la zone française.

Les deux déclarations faites en 1914 par la France et l'Espagne montrent que les deux pays ont considéré l'expression « renonce à réclamer » comme équivalant à la renonciation aux droits en question. Dans la déclaration du 7 mars 1914, le Gouvernement français s'est engagé « à renoncer également aux droits et privilèges.... ». Dans la déclaration ultérieure du 17 novembre 1914, la France a donné effet à cette obligation en se servant de l'expression « renonce à réclamer ». Il est donc clair que la France et l'Espagne ont considéré cette expression comme celle qui convenait pour effectuer un complet abandon ou renonciation à l'égard des droits et privilèges en question.

Le 31 juillet 1916, l'ambassadeur de France à Washington a envoyé au secrétaire d'État des États-Unis « le texte de la déclaration signée, relativement à l'abrogation des capitulations dans la zone française du Maroc, par toutes les Puissances signataires de la conférence d'Algésiras et par les Républiques d'Amérique du Sud. ». Dans le texte ainsi transmis, l'expression en anglais était « *relinquishes its claim to all the rights and privileges growing out of the Capitulation regime....* ». Il est donc clair qu'à cette date, bien avant la naissance du différend actuel, la France considérait l'expression « renonce à réclamer » comme portant abrogation des privilèges en question.

La déclaration faite par la France et l'Espagne le 7 mars 1914 faisait partie d'une série d'accords négociés par la France avec plus de vingt États étrangers « portant abandon de leurs droits juridictionnels et autres droits extraterritoriaux en ce qui est de la zone française du Maroc ». Au moins dix-sept de ces accords se sont servis de l'expression « renonce à réclamer », pour réaliser l'abrogation complète de tous les droits et privilèges issus du régime des capitulations. Il y est fait allusion dans le contre-mémoire dans les termes suivants : « pour l'abandon de leurs droits juridictionnels

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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et autres droits extraterritoriaux », ou encore « portant renonciation de droits extraterritoriaux ». De plus, tous les États qui avaient signé ces accords ont abandonné immédiatement l'exercice de la juridiction consulaire ou autres droits et privilèges capitulaires dans la zone française.

Dans ces conditions, il faut conclure que la déclaration de l'Espagne du 7 mars 1914 a effectué l'abandon ou la renonciation par l'Espagne à tous ses droits juridictionnels ou autres droits extraterritoriaux dans la zone française, et l'abrogation des dispositions du traité de 1861 avec l'Espagne se rapportant « aux droits et privilèges issus du régime des capitulations ».

Par conséquent, la Cour ne peut accepter la thèse que les États-Unis, en vertu des clauses de la nation la plus favorisée, ont le droit d'invoquer, à l'égard de la zone française, celles des dispositions du traité de 1861 avec l'Espagne qui ont trait à la juridiction consulaire.

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Le quatrième argument du Gouvernement des États-Unis consiste à dire que la juridiction consulaire étendue, telle qu'elle existait au Maroc en 1880, a été reconnue et confirmée par les dispositions de la convention de Madrid et que, par conséquent, les États-Unis, en tant que partie à cette convention, ont acquis par là un droit autonome à l'exercice de cette juridiction, indépendamment de l'effet des clauses de la nation la plus favorisée.

Il n'est pas douteux que l'exercice de la juridiction consulaire au Maroc était général en 1880 et que la convention présuppose l'existence de cette juridiction. Elle traitait de la situation particulière des protégés et contenait des dispositions visant l'exercice de la juridiction à leur égard.

D'autre part, il est également clair qu'aucune disposition de la convention n'apporte expressément une confirmation du système de juridiction consulaire existant alors, ou son établissement comme un droit indépendant et autonome.

Les buts et l'objet de cette convention sont indiqués dans le préambule, qui s'exprime en ces termes : « la nécessité d'établir sur des bases fixes et uniformes l'exercice du droit de protection au Maroc, et de régler certaines questions qui s'y rattachent.... ». Dans ces conditions, la Cour ne saurait adopter une interprétation par implication des dispositions de la convention de Madrid qui dépasserait la portée de ses buts et de son objet explicites. De plus, cet argument entraînerait dans les dispositions de la convention des modifications radicales et des additions. Dans son avis sur l'interprétation des traités de paix, deuxième phase (*C.I.J. Recueil 1950*, p. 229), la Cour a dit : « La Cour est appelée à interpréter les traités, non à les reviser. »

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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...."

Le cinquième argument des États-Unis est que la juridiction consulaire au Maroc a été reconnue et confirmée par diverses dispositions de l'acte d'Algésiras, et que les États-Unis ont acquis par là un droit autonome d'exercer cette juridiction indépendamment de l'effet des clauses de la nation la plus favorisée.

En 1906, les douze Puissances représentées à Algésiras exerçaient toutes des droits et privilèges capitulaires, dans la mesure où ils étaient prévus, soit par le traité général de 1856 avec la Grande-Bretagne, soit par le traité de 1861 avec l'Espagne. Elles les exerçaient soit en vertu d'une disposition conventionnelle directe, comme la Grande-Bretagne ou l'Espagne ; soit en vertu de clauses de la nation la plus favorisée, comme les États-Unis ; soit encore sans droits conventionnels mais avec le consentement ou l'accord tacite du Maroc, comme dans le cas de certains autres États. C'est pourquoi l'acte d'Algésiras présupposa l'existence du régime des capitulations, y compris les droits de juridiction consulaire, et que plusieurs de ses dispositions assignèrent des fonctions particulières aux tribunaux consulaires existant alors. On a fait mention, au cours des débats, des articles 19, 23, 24, 25, 29, 45, 59, 80, 81, 87, 91, 101, 102 et 119. Par exemple, le chapitre V, qui concerne les « douanes de l'Empire et la répression de la fraude et de la contrebande », contient un article 102 ainsi conçu :

« Toute confiscation, amende ou pénalité devra être prononcée pour les étrangers par la juridiction consulaire et pour les sujets marocains par la juridiction chérifienne. »

Dans les conditions alors existantes, cet article exigeait que les poursuites pour fraude et contrebande engagées contre les ressortissants des douze Puissances fussent portées devant les tribunaux consulaires.

Depuis 1937, la situation est la suivante : onze des Puissances ont renoncé à leurs privilèges capitulaires, et leur juridiction consulaire a cessé d'exister. De ce fait, le Maroc a pu édicter des lois et prendre des dispositions en vue de juger et punir des délinquants appartenant à ces onze pays. Les États-Unis sont dans une situation différente qu'il convient d'examiner maintenant.

A la différence de la convention de Madrid, l'acte d'Algésiras était de portée générale et n'était pas limité à un problème aussi restreint que la protection. D'autre part, en interprétant les dispositions de l'acte, il convient de tenir compte de ses buts, qui sont énoncés dans le préambule, dans les termes suivants :

« S'inspirant de l'intérêt qui s'attache à ce que l'ordre, la paix et la prospérité règnent au Maroc, et ayant reconnu que ce but précieux ne saurait être atteint que moyennant l'introduction de réformes basées sur le triple principe de la souveraineté et de l'indépendance de Sa Majesté le Sultan, de l'intégrité de Ses États et de la liberté économique sans aucune inégalité.... »

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 intentment 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',

Ni les articles mentionnés plus haut ni aucune autre disposition de l'acte d'Algésiras n'avaient pour objet d'instituer une juridiction consulaire ou de confirmer les droits ou privilèges découlant du régime des capitulations existant alors. Il s'agit donc de savoir si l'on peut fonder l'institution ou la confirmation de cette juridiction ou de ces privilèges sur l'intention implicite des parties à l'acte, telle qu'elle ressort des dispositions de celui-ci.

Une interprétation de l'acte, tirée de ce qu'impliqueraient ses dispositions et selon laquelle il instituerait ou confirmerait une juridiction consulaire, reviendrait à transformer en droits nouveaux et autonomes, fondés sur l'acte même, les droits conventionnels dont jouissaient alors la plupart des douze Puissances. Ces droits conventionnels, dénonçables parfois avec un court préavis — ceux des États-Unis, par exemple, l'étaient avec un délai de douze mois — auraient été changés en droits dont les Puissances eussent pu jouir pour un temps indéfini, le Maroc étant incapable d'y mettre fin ou de les modifier. Ni les travaux préparatoires ni le préambule ne donnent la moindre indication d'une pareille intention. La Cour estime qu'elle ne saurait déduire par ce procédé qu'un changement aussi fondamental que celui que comporterait l'admission de cette thèse se soit produit dans le caractère des droits conventionnels alors existants.

Toutefois, un autre aspect de ce problème ressort des articles mentionnés plus haut. Il s'agit des articles contenant des dispositions impliquant nécessairement l'exercice de la juridiction consulaire. On trouve ici une indication claire de l'intention des parties de voir soumettre certaines matières aux tribunaux consulaires et, dans cette mesure, il est possible d'interpréter les dispositions de l'acte comme instituant ou confirmant l'exercice de la juridiction consulaire à ces fins limitées. Le maintien de la juridiction consulaire, dans la mesure où elle serait nécessaire à l'application de ces dispositions particulières, se justifierait donc en tant qu'il serait fondé sur le sens nécessaire des dispositions de l'acte.

Ce résultat est confirmé par les dispositions des articles 10 et 16 de la convention du 29 juillet 1937 entre la Grande-Bretagne et la France. Ces articles se réfèrent aux privilèges de juridiction « accordés aux États-Unis d'Amérique d'après les traités en vigueur ». Ils présupposent donc que les privilèges de juridiction des États-Unis, même après l'abandon par la Grande-Bretagne de ses droits capitulaires, ne se limiteraient pas à la juridiction prévue aux articles 20 et 21 du traité de 1836 avec le Maroc. Ce point de vue est confirmé en outre par les dispositions de l'article 4 du protocole de signature de cette convention. Cet article énonce l'abrogation de certaines dispositions du traité général de 1856 et, en ce qui est de l'acte d'Algésiras, la renonciation « à se prévaloir des articles 1 à 50 inclus, 54 à 65 inclus, 70, 71, 72 à la suite des mots « permis spécial », 75, 76, 80, 97, 101, 102, 104, 113 à 119 inclus » ; en outre,

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

il dispose que, « dans l'article 81 les mots « par l'autorité consulaire compétente » doivent être considérés comme supprimés et dans l'article 91 le mot « compétente » substitué au mot « consulaire » ».

Il est manifeste qu'en 1937 la France (représentant le Maroc) et la Grande-Bretagne portaient du postulat que certaines dispositions de l'acte d'Algésiras reconnaissaient une juridiction consulaire limitée aux fins des procédures judiciaires qui y sont décrites.

La Cour n'est pas appelée à examiner les articles particuliers de l'acte d'Algésiras qui sont en cause. Elle considère qu'il lui suffit de dire qu'à son avis la juridiction consulaire des États-Unis continue d'exister dans la mesure voulue pour permettre de donner effet à celles des dispositions de l'acte d'Algésiras qui dépendent de l'existence de la juridiction consulaire.

Dans certains cas, cette interprétation de l'acte aboutit à des résultats qui peuvent ne pas paraître absolument satisfaisants. Mais c'est une conséquence inévitable de la façon dont la conférence d'Algésiras a traité la question de la juridiction consulaire. La Cour ne peut, par voie d'interprétation, tirer de l'acte une règle générale qu'il ne contient pas au sujet de la pleine juridiction consulaire. D'autre part, la Cour ne peut négliger les dispositions particulières entraînant un recours limité à la juridiction consulaire, qui figurent en fait dans l'acte et qui sont encore en vigueur pour autant qu'il s'agit des rapports entre les États-Unis et le Maroc.

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Le sixième argument est le suivant : la juridiction consulaire et les autres droits capitulaires des États-Unis au Maroc sont fondés sur « la coutume et l'usage ».

Cet argument a été développé de deux façons différentes. La première vise la coutume et l'usage qui ont précédé l'abandon par la Grande-Bretagne, en 1937, de ses droits capitulaires dans la zone française. La seconde vise la pratique suivie depuis cette date.

Si l'on envisage d'abord la période de cent cinquante années qui s'est écoulée de 1787 à 1937, deux considérations s'opposent à ce que cet argument soit admis.

La première est qu'au cours de l'ensemble de cette période, la juridiction consulaire des États-Unis a été en fait fondée, non pas sur la coutume ou l'usage, mais sur des droits conventionnels. A toute époque, elle était fondée soit sur les dispositions du traité de 1787, soit sur celles du traité de 1836, combinées avec les dispositions des traités conclus par le Maroc avec d'autres Puissances, la Grande-Bretagne et l'Espagne en particulier, invoquées en vertu des clauses de la nation la plus favorisée. Tel était le cas, non seulement pour les États-Unis, mais pour la majorité des pays ayant des ressortissants qui pratiquaient le commerce au Maroc. Il est vrai qu'il y avait des Puissances représentées à la conférence

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 circumstances, 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

de Madrid, en 1880, et à Algésiras, en 1906, qui n'avaient pas de droits conventionnels, mais qui exerçaient la juridiction consulaire avec le consentement exprès ou tacite du Maroc. Il est vrai également que la France, après l'établissement du protectorat, a obtenu des déclarations de renonciation d'un grand nombre d'autres États qui se trouvaient dans la même situation. Ceci ne suffit pas pour établir que les États exerçant la juridiction consulaire en application de leurs droits conventionnels possédaient en outre un titre indépendant à cette juridiction, fondé sur la coutume ou l'usage.

La seconde considération a trait à la question de la preuve. La Cour a déclaré, dans l'affaire du droit d'asile, au sujet de l'établissement d'une coutume locale propre aux États de l'Amérique latine (*C. I. J. Recueil 1950*, pp. 276-277) :

« La partie qui invoque une coutume de cette nature doit prouver qu'elle s'est constituée de telle manière qu'elle est devenue obligatoire pour l'autre partie. Le Gouvernement de la Colombie doit prouver que la règle dont il se prévaut est conforme à un usage constant et uniforme, pratiqué par les États en question, et que cet usage traduit un droit appartenant à l'État octroyant l'asile et un devoir incombant à l'État territorial. Ceci découle de l'article 38 du Statut de la Cour, qui fait mention de la coutume internationale « comme preuve d'une pratique générale acceptée comme étant « le droit », »

En l'espèce, il n'a pas été fourni de preuve suffisante pour permettre à la Cour de conclure qu'un droit à l'exercice d'une juridiction consulaire fondé sur la coutume ou sur l'usage avait été établi de telle manière qu'il soit devenu obligatoire pour le Maroc.

Cet argument a également été fondé sur la pratique suivie depuis la date à laquelle, par l'effet de l'entrée en vigueur de la convention de 1937 entre la France et la Grande-Bretagne, a pris fin le droit conventionnel des États-Unis d'Amérique à l'exercice d'une juridiction consulaire étendue et aux droits qui en découlaient.

Pendant cette période, la France et les États-Unis ont négocié sur un certain nombre de questions, y compris la renonciation aux droits capitulaires. On trouve dans la correspondance diplomatique des expressions isolées qui, prises hors de leur contexte, peuvent être considérées comme la reconnaissance des prétentions des États-Unis d'exercer la juridiction consulaire et autres droits capitulaires. Mais d'autre part, la Cour ne peut ignorer la teneur générale de la correspondance qui démontre qu'à tout moment la France et les États-Unis cherchaient une solution fondée sur un accord réciproque et que ni l'une ni l'autre des Parties n'envisageait l'abandon de sa position juridique. Dans ces conditions, l'état de choses d'après lequel les États-Unis ont continué après 1937 d'exercer la juridiction consulaire pour toutes les affaires civiles et criminelles où leurs ressortissants étaient défendeurs

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 in 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

doit apparaître comme ayant la nature d'un état de choses provisoire tacitement accepté par les autorités du Maroc.

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En conséquence, il faut conclure qu'en dehors des droits spéciaux reconnus par les articles 20 et 21 du traité de 1836 et de ceux qui découlent des dispositions de l'acte d'Algésiras mentionnées plus haut, la prétention des États-Unis d'exercer à titre de droit la juridiction consulaire et autres droits capitulaires en zone française et à bénéficier de cette juridiction et de ces droits est devenue caduque quand la Grande-Bretagne a mis fin, « en ce qui concerne la zone française de l'Empire chérifien, à tous droits et privilèges ayant un caractère capitulaire », en vertu des dispositions de la convention de 1937.

* * *

La Cour passe maintenant à l'examen de la prétention suivant laquelle les ressortissants des États-Unis ne sont pas soumis, en principe, à l'application des lois marocaines, à moins que celles-ci n'aient auparavant reçu l'assentiment du Gouvernement des États-Unis.

Les conclusions du Gouvernement de la République française sur ce point sont ainsi conçues :

« Que le Gouvernement des États-Unis d'Amérique n'est pas en droit de prétendre que l'application à ses ressortissants au Maroc de toutes législations et réglementations dépend de son consentement exprès ;

Que les ressortissants des États-Unis d'Amérique au Maroc sont soumis aux dispositions législatives et réglementaires mises en vigueur dans l'Empire chérifien, notamment en ce qui concerne la réglementation du 30 décembre 1948 sur les importations sans devises, sans que l'accord préalable du Gouvernement des États-Unis soit nécessaire. »

La conclusion du Gouvernement des États-Unis sur ce point est ainsi conçue :

« 4. Sous le régime de compétence judiciaire extraterritoriale actuellement exercé au Maroc par les États-Unis, les citoyens de ce pays ne sont pas soumis, en principe, à l'application des lois marocaines.

Ces lois ne deviennent applicables aux citoyens des États-Unis qu'après avoir été soumises à l'assentiment préalable du Gouvernement des États-Unis et que ce gouvernement en ait approuvé l'application à ses citoyens. Le dahir du 30 décembre 1948 n'ayant pas été soumis à l'assentiment préalable du Gouvernement des États-Unis n'est pas applicable aux citoyens américains. »

La prétention suivant laquelle les lois marocaines ne sont pas obligatoires pour les ressortissants des États-Unis, à moins d'avoir

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.

reçu l'assentiment du Gouvernement des États-Unis, se rattache au régime des capitulations ; il n'est pas nécessaire de reprendre les considérations déjà examinées à propos de la juridiction consulaire.

Aucune disposition d'aucun des traités examinés en l'espèce ne confère ce droit aux États-Unis. Le prétendu droit d'assentiment est seulement un corollaire du système de juridiction consulaire. Les tribunaux consulaires appliquaient leur propre droit sans être liés en aucune façon par le droit marocain ou la législation marocaine. Avant qu'un tribunal consulaire pût appliquer une loi marocaine, la Puissance étrangère intéressée devait pourvoir à son adoption comme loi s'imposant au consul dans l'exercice de sa compétence judiciaire. La pratique généralement suivie consistait à l'incorporer soit dans la législation de l'État étranger, soit dans des décisions ministérielles ou consulaires de cet État prises en vertu de pouvoirs délégués. L'État étranger pouvait avoir agi ainsi ou pouvait refuser de pourvoir à l'application de la loi. Il n'y avait de « droit d'assentiment » que dans la mesure où l'intervention du tribunal consulaire était nécessaire pour obtenir l'application effective d'une loi marocaine à l'encontre de ressortissants étrangers.

En l'absence de toutes dispositions conventionnelles en la matière, on a soutenu qu'un « droit d'assentiment » peut être fondé sur la coutume, l'usage ou la pratique. Il est inutile de reprendre les raisons qui ont été données pour rejeter la coutume, l'usage et la pratique en tant que fondement d'une juridiction consulaire étendue, raisons qui s'appliquent, dans une large mesure, au « droit d'assentiment ». Il convient cependant de souligner que le très grand nombre de cas dans lesquels des lois marocaines ont été soumises aux autorités des États-Unis s'explique facilement par le fait qu'il s'agissait là d'un moyen commode pour en assurer l'incorporation dans des décisions ministérielles s'imposant aux tribunaux consulaires. C'est de cette façon, et de cette façon seulement, qu'il était possible de rendre ces lois applicables aux ressortissants des États-Unis aussi longtemps qu'était exercée la juridiction consulaire étendue.

Le problème se pose sous trois aspects qu'il faut envisager séparément.

Le premier vise les cas où l'application d'une loi marocaine aux ressortissants des États-Unis serait contraire aux droits conventionnels des États-Unis. Dans de tels cas, l'application directe ou indirecte des lois marocaines à ces ressortissants serait, à moins qu'elle n'ait reçu l'assentiment des États-Unis, contraire au droit international, et le différend qui pourrait en résulter devrait être traité par les méthodes ordinaires pour le règlement des différends internationaux. Ces considérations s'appliquent à l'arrêté du 30 décembre 1948 que la Cour a jugé contraire aux droits conventionnels des États-Unis.

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 ;

Le second aspect sous lequel se pose le problème a trait aux cas où le concours des tribunaux consulaires est nécessaire pour pouvoir appliquer la législation marocaine. Dans de tels cas, l'assentiment des États-Unis serait essentiel à l'application de la législation par les tribunaux consulaires, que cette application contrevienne ou non aux droits conventionnels.

Le troisième aspect sous lequel se pose le problème de l'assentiment a trait aux cas où il s'agit de l'application à des ressortissants des États-Unis, autrement que par les tribunaux consulaires, de lois marocaines qui ne violent aucun des droits conventionnels des États-Unis. Dans de tels cas, l'assentiment des autorités des États-Unis n'est pas requis.

En conséquence, et sous les réserves énoncées plus haut, la Cour conclut que les États-Unis ne sont pas fondés à prétendre que l'application de lois et de règlements à leurs ressortissants en zone française requiert leur assentiment.

* * *

Le Gouvernement des États-Unis d'Amérique a présenté une demande reconventionnelle dont une partie a trait à la question de l'immunité de taxes marocaines en général et, en particulier, des taxes de consommation établies par le dahir chérifien du 28 février 1948. Les conclusions suivantes ont été présentées à cet égard :

Au nom du Gouvernement des États-Unis :

« 2. Les traités exemptent les ressortissants américains de toute taxe, à l'exception de celles qu'ils prévoient expressément ; percevoir des taxes des ressortissants américains en violation des dispositions des traités est un manquement au droit international.

Ces taxes ne peuvent en droit être recouvrées sur les ressortissants américains qu'avec l'assentiment préalable des États-Unis valant renonciation temporaire à leur droit conventionnel, et à compter de la date de cet assentiment, sauf disposition contraire contenue dans l'acte d'assentiment.

Les taxes de consommation, fixées par le dahir du 28 février 1948 et qui ont été recouvrées sur des ressortissants américains jusqu'au 15 août 1950, date à laquelle les États-Unis ont consenti à ces taxes, ont été perçues illégalement et doivent leur être remboursées.

3. Attendu que les lois marocaines ne peuvent s'appliquer aux citoyens américains avant d'avoir reçu l'assentiment préalable du Gouvernement des États-Unis, le défaut d'assentiment du Gouvernement des États-Unis au dahir du 28 février 1948 a donné un caractère illégal au recouvrement des taxes de consommation établies par ce dahir. »

Au nom du Gouvernement français :

« Qu'aucun traité n'a conféré aux États-Unis une immunité fiscale pour leurs ressortissants au Maroc, ni directement, ni par le jeu de la clause de la nation la plus favorisée ;

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

Que les lois et règlements en matière fiscale mis en vigueur dans l'Empire chérifien sont applicables aux ressortissants des États-Unis sans que l'accord préalable du Gouvernement des États-Unis soit nécessaire ;

Que les taxes de consommation établies par le dahir du 28 février 1948 ont donc été légalement perçues sur les ressortissants des États-Unis et qu'il n'y a pas lieu à remboursement. »

Le Gouvernement des États-Unis soutient que ses droits conventionnels au Maroc confèrent aux ressortissants des États-Unis une exemption de taxes, sauf pour celles que les traités ont spécialement reconnues et autorisées. Cette thèse se fonde sur certains traités bilatéraux avec le Maroc ainsi que sur la convention de Madrid de 1880 et sur l'acte d'Algésiras de 1906.

La Cour examinera tout d'abord la thèse d'après laquelle le droit à l'immunité fiscale peut être déduit des clauses de la nation la plus favorisée, dans l'article 24 du traité de 1836 entre les États-Unis et le Maroc et dans l'article 17 de la convention de Madrid, jointes à certaines des dispositions des traités entre le Maroc et la Grande-Bretagne et entre le Maroc et l'Espagne.

Le traité général de 1856 entre la Grande-Bretagne et le Maroc prévoit dans le deuxième alinéa de son article IV que les sujets britanniques « ne seront jamais forcés, sous quelque prétexte que ce soit, à payer des taxes ou impositions ». Le traité de 1861 entre l'Espagne et le Maroc stipule dans son article V qu'« on ne pourra, sous aucun prétexte, obliger les sujets espagnols à payer des impôts ou contributions ».

Il est prétendu, au nom des États-Unis, que les clauses de la nation la plus favorisée dans les traités avec des pays comme le Maroc avaient pour objet non de créer seulement des droits temporaires ou subordonnés, mais d'instaurer ces droits à titre permanent et de les rendre indépendants des traités qui les avaient primitivement consentis. Il est soutenu en conséquence que le droit à l'immunité fiscale accordé par le traité général britannique de 1856 et par le traité espagnol de 1861 est incorporé dans les traités qui ont garanti aux États-Unis le traitement de la nation la plus favorisée, le résultat étant que ce droit persisterait même si les droits et privilèges reconnus par les traités de 1856 et de 1861 devaient prendre fin.

Pour les raisons exposées plus haut, à propos de la juridiction consulaire, la Cour n'est pas en mesure d'accepter cette thèse. Il n'est pas établi que les clauses de la nation la plus favorisée dans les traités avec le Maroc aient une autre signification ou un autre effet que dans les clauses semblables d'autres traités, ou soient régies par des règles de droit différentes. Lorsqu'il y a eu abrogation ou renonciation à l'égard de dispositions d'immunité fiscale contenues dans les traités entre le Maroc et les États tiers, on ne peut plus s'en prévaloir en vertu d'une clause de la nation

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

la plus favorisée. Dans ces conditions, il faut examiner si les dispositions ci-dessus mentionnées des traités de 1856 et de 1861 sont toujours en vigueur.

Le deuxième alinéa de l'article IV du traité général avec la Grande-Bretagne a été abrogé par la convention franco-britannique du 29 juillet 1937 (protocole de signature, article 4, *litt. a*). Dès l'entrée en vigueur de cette convention, les États-Unis n'ont plus pu se prévaloir de cet alinéa de l'article IV du traité général de 1856 en vertu de la clause de la nation la plus favorisée.

Comme il a déjà été dit plus haut, la déclaration de la France et de l'Espagne en date du 7 mars 1914 a eu pour effet la renonciation pure et simple par l'Espagne dans la zone française à tous les droits et privilèges issus du régime des capitulations. Dans l'opinion de la Cour, cette renonciation impliquerait la renonciation par l'Espagne au droit de ses ressortissants d'être exemptés de taxes en vertu de l'article V de son traité de 1861 avec le Maroc, parce qu'une immunité fiscale aussi générale et complète doit être tenue pour un élément du régime des capitulations au Maroc. L'Espagne ayant abandonné tous ses droits capitulaires doit dès lors être considérée comme ayant renoncé à son droit à l'immunité fiscale.

C'est ce que confirme l'attitude d'un certain nombre d'autres États en la matière. La Grande-Bretagne a renoncé à tous les droits et privilèges d'un caractère capitulaire dans la zone française du Maroc par l'article premier de la convention de 1937 avec la France : le protocole de signature énonce que cet article et l'article 16 ont pour effet d'abroger un certain nombre d'articles du traité général de 1856, y compris, ainsi qu'il a été dit plus haut, le deuxième alinéa de l'article IV. Ceci paraît montrer que la France, représentant le Maroc, et la Grande-Bretagne se fondaient sur la présomption que l'immunité de taxes accordée par cet article était un droit de caractère capitulaire. Les autres États qui avaient, de 1914 à 1916, également renoncé à tous droits et privilèges issus du régime des capitulations dans la zone française, ont implicitement acquiescé à ce que leurs ressortissants soient taxés.

C'est pourquoi la Cour conclut que le droit à l'exemption de taxes, prévu à l'article V du traité espagnol de 1861, ayant été abandonné par l'Espagne, les États-Unis ne peuvent plus l'invoquer en vertu d'une clause de la nation la plus favorisée.

Le Gouvernement des États-Unis a prétendu en outre avoir un droit indépendant à l'exemption de taxes, du fait que les États-Unis sont partie à la convention de Madrid et à l'acte d'Algésiras. Il soutient qu'en matière de taxes, ces instruments ont institué un régime qui a maintenu l'exemption de taxes en faveur des ressortissants des États étrangers, confirmant ainsi et incorporant le régime antérieur, qui est par conséquent toujours en vigueur, sauf pour les États qui ont consenti à y renoncer.

La Cour estime que la convention de Madrid n'a pas confirmé et incorporé le principe de l'immunité fiscale alors existant. Elle

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

a simplement présumé l'existence du principe et l'a limité par le moyen d'exceptions dans ses articles 12 et 13, sans en modifier la base juridique. Elle n'a fourni aucune base nouvelle et indépendante pour une prétention à l'exemption de taxes.

Des considérations du même ordre s'appliquent à l'acte d'Algésiras qui, par le moyen des exceptions énumérées dans ses articles 59, 61, 64 et 65, a limité encore plus le régime de l'immunité fiscale. Il n'a fourni aucune base juridique nouvelle et indépendante à l'exemption de taxes.

Le Gouvernement des États-Unis a invoqué les articles 2 et 3 de la convention de Madrid, qui accordent à certaines « personnes protégées » l'exemption de taxes autres que celles qui sont stipulées aux articles 12 et 13. Mais les « protégés » visés aux articles 2 et 3 ne constituent qu'une catégorie limitée de personnes au service des représentants diplomatiques et consuls des États étrangers. Dans l'opinion de la Cour, il n'est possible de tirer des privilèges accordés à cette catégorie limitée de personnes protégées aucune conclusion quant à l'immunité fiscale des ressortissants des États-Unis en général.

Enfin, il est soutenu, au nom du Gouvernement des États-Unis, que les taxes de consommation imposées par le dahir du 28 février 1948 sont contraires à certains droits conventionnels. Il est fait référence aux articles III, VII, VIII et IX du traité de commerce de 1856 entre la Grande-Bretagne et le Maroc pour en conclure que ces articles, joints aux clauses de la nation la plus favorisée du traité de 1836 entre le Maroc et les États-Unis, exemptent les ressortissants des États-Unis des taxes de consommation.

Les quatre articles précités du traité commercial de 1856 avec la Grande-Bretagne ont trait aux taxes et droits sur les marchandises exportées du Maroc ou importées dans ce pays, ou sur les marchandises transportées d'un port marocain à un autre. Les taxes de consommation prévues par le dahir du 28 février 1948 sont exigibles, selon son article 8, sur tous les produits, qu'ils soient introduits dans la zone française du Maroc ou qu'ils y soient fabriqués ou obtenus. Elles ne sauraient donc être assimilées aux taxes particulières mentionnées dans les articles du traité commercial britannique qui ont été invoqués par les États-Unis, de même qu'elles ne sauraient être considérées comme un droit de douane. Le seul fait que, dans le cas de marchandises importées, il peut être commode de percevoir la taxe de consommation à la douane ne change pas le caractère essentiel de cette taxe, qui est de s'appliquer à toutes marchandises, qu'elles soient importées au Maroc ou qu'elles y soient produites. On peut rappeler à cet égard que la Cour permanente de Justice internationale a admis qu'on ne saurait confondre avec des droits de douane des droits fiscaux perçus à la frontière lors de l'entrée de certaines marchandises ; dans son

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.”

arrêt du 7 juin 1932, en l'affaire des zones franches, elle a énoncé que « le recul de la ligne des douanes ne préjuge pas du droit, pour le Gouvernement français, de percevoir, à la frontière politique, des droits fiscaux n'ayant pas le caractère de droits de douane ». (C. P. J. I., Série A/B, n° 46, p. 172.)

Par conséquent, la Cour n'est pas en mesure de dire que l'imposition de ces taxes de consommation contrevient aux droits conventionnels des États-Unis. Dans ces conditions, la question d'un remboursement partiel des taxes de consommation acquittées par les ressortissants des États-Unis ne se pose pas.

Des considérations précitées, il s'ensuit que le Gouvernement des États-Unis n'est pas en droit de réclamer que les taxes, y compris les taxes de consommation, soient soumises à son assentiment préalable avant de pouvoir être légalement perçues sur les ressortissants des États-Unis. Puisque, de l'avis de la Cour, ces derniers ne sont exempts du paiement d'aucune taxe dans la zone française, la prétention selon laquelle les lois et règlements d'ordre fiscal doivent être soumis aux autorités des États-Unis à fin d'approbation est sans fondement.

La conclusion à laquelle la Cour est ainsi arrivée paraît conforme à l'attitude prise en la matière par d'autres États. L'immunité fiscale dans la zone française n'est réclamée ni par le Royaume-Uni, ni par l'Espagne, ni par aucun des autres États qui jouissaient précédemment d'une telle situation privilégiée. Seuls, les États-Unis revendiquent aujourd'hui ce privilège, bien que leur traité de 1836 avec le Maroc ne leur ait garanti aucune immunité fiscale. Reconnaître l'immunité fiscale en faveur des seuls ressortissants des États-Unis, ne serait pas conforme au principe de l'égalité de traitement en matière économique, principe qui est à la base de l'acte d'Algésiras.

* * *

La conclusion finale des États-Unis d'Amérique sur la partie de sa demande reconventionnelle qui est fondée sur l'article 95 de l'acte d'Algésiras est la suivante :

« 1. Aux termes de l'article 95 de l'acte d'Algésiras, il faut déterminer, aux fins de l'évaluation en douane, la valeur des importations en provenance des États-Unis en ajoutant à la valeur d'achat aux États-Unis de la marchandise importée les frais de transport jusqu'au bureau de la douane marocaine, à l'exclusion des frais postérieurs à la remise de la marchandise au bureau de douane, tels que les droits de douane et frais de magasinage.

C'est une violation de l'acte d'Algésiras et un manquement au droit international, de la part des autorités douanières, de s'écarter de la méthode d'évaluation ainsi définie et de fixer, aux fins de l'évaluation en douane, la valeur de la marchandise importée d'après la valeur de cette marchandise sur le marché local marocain. »

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-

La conclusion finale de la France sur cette partie de la demande reconventionnelle énonce :

« Que l'article 95 de l'acte d'Algésiras définit la valeur en douane comme la valeur de la marchandise au moment et au lieu où elle est présentée pour les opérations de dédouanement ; »

ce par quoi il faut entendre, comme on l'a précisé en plaidoirie, la valeur sur le marché local, c'est-à-dire marocain.

La nécessité, dont témoignent les articles 95, 96 et 97 de l'acte d'Algésiras, d'instituer une sorte de mécanisme pour assurer une juste évaluation des marchandises par les autorités douanières, semble résulter, entre autres, *a)* du principe d'égalité économique qui est l'un des principes fondamentaux de l'acte, et *b)* du fait que les droits d'importation ont été fixés par les Puissances signataires à 12½ %. Il serait évidemment facile, si on le voulait, de traiter défavorablement tel importateur au moyen d'évaluations arbitraires ou d'éluder une limitation de droits au moyen d'évaluations exagérées. Les Puissances signataires ont compris la nécessité d'un mécanisme de ce genre ; toutefois, il ne semble pas que ce mécanisme ait donné naissance à une pratique qui ait été suivie d'une manière invariable depuis l'entrée en vigueur de l'acte.

L'article 95 prévoit quatre facteurs pour évaluer la marchandise :

a) l'évaluation doit se fonder sur le prix au comptant et en gros ;

b) le temps et le lieu de l'évaluation sont fixés comme étant l'entrée de la marchandise au bureau de douane ;

c) la marchandise doit être évaluée « franche de droits de douane et de magasinage », c'est-à-dire que sa valeur ne doit pas comprendre lesdits frais ;

d) l'évaluation doit tenir compte, s'il y a lieu, de la dépréciation résultant d'avaries.

L'article 96, qui se rapporte uniquement aux principales marchandises taxées par l'administration des douanes marocaines, envisageait la détermination annuelle de leur valeur par une « Commission des valeurs douanières » siégeant à Tanger. Il faut noter le caractère local de cette commission et des personnes qu'elle était invitée à consulter. Le tarif des valeurs fixées par elle était susceptible d'être révisé au bout de six mois si des modifications notables étaient survenues dans la valeur de certaines marchandises. L'article 96 est une disposition procédurale appelée à fonctionner dans le cadre de l'article 95.

L'article 97 prévoyait l'établissement d'un « comité des douanes » permanent, destiné à exercer sa haute surveillance sur le fonctionnement des douanes et à veiller à l'application des articles 96 et 97 sous réserve de l'avis du « Corps diplomatique à Tanger ».

La Commission des valeurs douanières visée à l'article 96 semble être tombée en désuétude en 1924, quand la convention du

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 $12\frac{1}{2}\%$ must not be levied on a value which already contains the $12\frac{1}{2}\%$.

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-

18 décembre 1923, relative à la zone de Tanger, est entrée en vigueur et lui a substitué une commission représentant les trois zones. Cette dernière commission n'a pas siégé depuis 1936.

Il faut noter également les articles 82 à 86 de l'acte, relatifs aux déclarations exigées des importateurs. L'article 82 oblige l'importateur à présenter une déclaration détaillée énonçant l'espèce, la qualité, le poids, le nombre, la mesure et la valeur des marchandises ainsi que l'espèce, les marques et les numéros des colis qui les contiennent. Certes, la déclaration de valeur faite par l'importateur ne saurait être décisive car il est partie intéressée, mais, cependant, il est mieux renseigné que quiconque sur la marchandise et, sauf soupçon de fraude, il est juste que le montant indiqué dans la déclaration soit un élément important pour l'évaluation à faire.

On ne peut pas dire que les dispositions de l'article 95 seules, ou du chapitre V considéré dans son ensemble, apportent une preuve décisive à l'appui de l'une ou de l'autre des interprétations avancées respectivement par les Parties. Les quatre facteurs figurent à l'article 95 sont compatibles avec les deux interprétations ; en particulier, l'expression « franche de droits de douane et de magasinage » n'apporte pas d'indication précise car, si l'on doit prendre comme base la valeur dans le pays d'origine, majorée de l'assurance, du fret, etc., cette expression signifie « avant l'entrée au bureau de douane et le paiement des droits », alors que si l'on doit prendre comme base la valeur sur le marché local, il est nécessaire (ou tout au moins prudent) d'employer une formule de ce genre pour indiquer que le droit de $12\frac{1}{2}\%$ ne doit pas être perçu sur un montant dans lequel ces $12\frac{1}{2}\%$ sont déjà compris.

La Cour a pris en considération la pratique antérieure ainsi que les travaux préparatoires de la conférence d'Algésiras de 1906, mais on ne peut guère en tirer des indications utiles. L'accord commercial du 4 octobre 1892 entre la France et le Maroc consiste en un échange de lettres entre le ministre des Affaires étrangères du Maroc et le ministre de France au Maroc, la lettre de ce dernier contenant la formule suivante :

« Ces marchandises seront estimées sur le pied de leur valeur marchande, au comptant, en gros, dans les ports de débarquement, en réaux de vellon. »

Un avant-projet d'acte (p. 97 des *Documents diplomatiques* français, 1906, fascicule 1, Affaires du Maroc, intitulé « II. Protocoles et comptes rendus de la Conférence d'Algésiras ») contient l'article suivant :

« *Article XIX.* — Les droits d'entrée et de sortie seront payés comptant et sans délai au bureau de douane où la liquidation aura été effectuée. Les droits *ad valorem* seront liquidés et payés d'après la valeur en gros et au comptant de la marchandise au port de

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.

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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.

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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,

débarquement ou au bureau d'entrée, s'il s'agit d'importation. Les marchandises ne pourront être retirées qu'après le paiement des droits de douane et de magasinage.

Toute prise en charge ou perception devra faire l'objet d'un récépissé régulier délivré par l'agent chargé de l'opération. »

Par la suite (p. 100), sur proposition britannique, la deuxième phrase fut ainsi modifiée :

« Les droits *ad valorem* seront liquidés et payés d'après la valeur au comptant et en gros de la marchandise au bureau de douane et franche de droits de douane. »

Plus tard encore, la délégation allemande fit la proposition suivante (*ibid.*, p. 232) :

« Les droits *ad valorem* perçus au Maroc sur les importations seront calculés sur la valeur que l'article importé a dans le lieu de chargement ou d'achat, avec majoration des frais de transport et d'assurance jusqu'au port de déchargement au Maroc.... »

Cet amendement fut rejeté, ce dont on peut déduire que la valeur dans le pays d'origine a été rejetée en tant que critère concluant.

Il convient également d'examiner la pratique suivie par les autorités douanières depuis 1906, dans la mesure où elle ressort des documents produits par les Parties. Il semble que l'on ait répugné à attribuer à un facteur unique quelconque un effet décisif dans l'évaluation des marchandises.

Par exemple, dans une lettre du 16 juillet 1912, du contrôleur des douanes marocaines au ministre des États-Unis à Tanger, il est dit que les fonctionnaires des douanes « appliquent, pour l'estimation des marchandises, les règles établies par l'acte d'Algésiras et par le règlement des douanes. Ils utilisent les mercuriales, les factures, leurs connaissances professionnelles. »

On trouve plus loin, dans la même lettre, les passages qui suivent :

« La facture est un élément d'appréciation, mais elle ne fait pas obligatoirement foi.

.

La douane a toujours procédé comme il est dit ci-dessus à l'égard des pétroles importés de Fiume et de Trieste, pour lesquels les importateurs lui donnent des moyens d'appréciation en joignant aux déclarations les factures originales dont les prix sont comparés avec les cours des marchés d'origine.

.

Cette valeur [aux fins de la douane] comporte le prix d'achat du pétrole f. o. b. New-York augmenté de tous les frais postérieurs à l'achat, tels que les droits de sortie acquittés aux douanes étrangères, le transport, l'emballage, le fret, l'assurance, les manipulations,

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 ;

le débarquement, etc., en un mot tout ce qui contribue à former, au moment de la présentation au bureau de douane, la valeur au comptant et en gros du produit suivant laquelle doivent, d'après l'article 95 de l'acte d'Algésiras, être liquidés les droits.

. »

Il est non moins intéressant de trouver dans les comptes rendus d'une séance de la Commission des valeurs douanières, réunie à Tanger le 7 juin 1933, l'explication suivante, donnée par le directeur des douanes :

« son service adopte comme éléments d'appréciation pour l'application des droits en question ; la facture d'origine, les frais de transport jusqu'au port importateur, la valeur de la marchandise sur le marché local à l'arrivée, les mercuriales et tout autre renseignement pouvant être utile pour fixer la valeur imposable ».

En revanche, on trouve dans le règlement des douanes et dans les circulaires émanant du contrôle de la Dette du Maroc des passages dans lesquels la valeur sur le marché marocain est mise en relief comme étant le facteur important. Les derniers « Tableaux des valeurs minima et maxima des principales marchandises importées au Maroc », adoptés par la Commission des valeurs douanières à sa dernière séance du 11 mars 1936 à Tanger, présentent des écarts si importants que, pour évaluer vraiment telle cargaison ou marchandise, ils offriraient seulement des indications des plus générales.

L'impression générale qui se dégage de l'examen des documents pertinents est que les fonctionnaires chargés de l'administration des douanes depuis l'acte d'Algésiras ont utilisé, bien que pas toujours d'une façon très conséquente, tous les facteurs d'évaluation à leur disposition.

Dans ces conditions, la Cour est d'avis que l'article 95 n'énonce pas de règle stricte en ce qui touche le point litigieux. Il appelle une interprétation plus souple qu'aucune de celles avancées par l'une et l'autre des Parties en litige.

La Cour est d'avis que, pour fixer aux fins de la douane la valeur des marchandises importées, les autorités douanières de la zone française ont le devoir de prendre en considération les facteurs suivants :

- a) les quatre facteurs spécifiés à l'article 95 et mentionnés ci-dessus ;
- b) le contenu de la déclaration qu'aux termes de l'acte l'importateur doit faire à la douane ;
- c) la valeur au comptant et en gros sur le marché dans la zone française ;
- d) le coût dans le pays d'origine, majoré des frais de chargement et de déchargement, de l'assurance, du fret et des autres frais encourus avant la remise des marchandises au bureau de douane ;

le débarquement, etc., en un mot tout ce qui contribue à former, au moment de la présentation au bureau de douane, la valeur au comptant et en gros du produit suivant laquelle doivent, d'après l'article 95 de l'acte d'Algésiras, être liquidés les droits.

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- b) le contenu de la déclaration qu'aux termes de l'acte l'importateur doit faire à la douane ;
- c) la valeur au comptant et en gros sur le marché dans la zone française ;
- d) le coût dans le pays d'origine, majoré des frais de chargement et de déchargement, de l'assurance, du fret et des autres frais encourus avant la remise des marchandises au bureau de douane ;

(*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 ;

e) les tarifs des valeurs, s'il en existe, préparés par la Commission des valeurs douanières visée à l'article 96 ou par toute autre commission qui a pu lui être substituée par des arrangements auxquels la France et les États-Unis ont donné leur assentiment exprès ou tacite ;

f) tout autre facteur imposé par les conditions particulières à tel envoi ou à telle espèce de marchandise.

Ces facteurs ne sont pas énumérés dans un ordre de priorité ; ils devraient jouer librement dans les limites établies ou à établir en vertu de l'article 96 de l'acte, et, eu égard au principe directeur de l'égalité économique, les mêmes méthodes doivent être appliquées sans discrimination à toutes les importations, quelles que soient l'origine des marchandises ou la nationalité des importateurs ; le pouvoir d'évaluer appartient aux autorités douanières, mais elles doivent en user raisonnablement et de bonne foi.

* * *

Par ces motifs,

LA COUR,

sur les conclusions du Gouvernement de la République française,
à l'unanimité,

Rejette ses conclusions relatives à l'arrêté édicté le 30 décembre 1948 par le Résident général de la République française au Maroc ;

à l'unanimité,

Dit qu'en vertu des dispositions de leur traité du 16 septembre 1836 avec le Maroc, les États-Unis d'Amérique sont fondés à exercer dans la zone française du Maroc la juridiction consulaire sur tous les différends civils ou criminels entre citoyens ou protégés des États-Unis ;

par dix voix contre une,

Dit qu'en vertu de l'acte général d'Algésiras du 7 avril 1906, les États-Unis d'Amérique sont également fondés à exercer dans la zone française du Maroc la juridiction consulaire dans toutes les affaires civiles ou criminelles introduites contre des citoyens ou protégés des États-Unis, dans la mesure requise par les dispositions de cet acte relatives à la juridiction consulaire ;

par six voix contre cinq,

Rejette, réserve faite de ce qui précède, les conclusions des États-Unis d'Amérique relatives à la juridiction consulaire ;

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 Algiers, 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.

à l'unanimité,

Dit que les États-Unis d'Amérique ne sont pas fondés à prétendre que l'application aux citoyens des États-Unis des lois et règlements de la zone française du Maroc requiert l'assentiment du Gouvernement des États-Unis, mais que les tribunaux consulaires des États-Unis peuvent refuser d'appliquer aux citoyens des États-Unis les lois et règlements auxquels le Gouvernement des États-Unis n'a pas donné son assentiment ;

sur la demande reconventionnelle du Gouvernement des États-Unis d'Amérique,

par six voix contre cinq,

Rejette les conclusions des États-Unis d'Amérique relatives à l'exemption de taxes ;

par sept voix contre quatre,

Rejette les conclusions des États-Unis d'Amérique relatives aux taxes de consommation imposées par le dahir chérifien du 28 février 1948 ;

par six voix contre cinq,

Dit que, pour appliquer l'article 95 de l'acte général d'Algésiras, la valeur de la marchandise au pays d'origine et sa valeur sur le marché local marocain sont l'une et l'autre des éléments pour l'estimation de sa valeur au comptant et en gros rendue au bureau de douane.

Fait en anglais et en français, le texte anglais faisant foi, au Palais de la Paix, à La Haye, le vingt-sept août mil neuf cent cinquante-deux, en trois exemplaires, dont l'un restera déposé aux archives de la Cour et dont les autres seront transmis respectivement au Gouvernement de la République française et au Gouvernement des États-Unis d'Amérique.

Le Président,

(Signé) Arnold D. McNAIR.

Le Greffier,

(Signé) E. HAMBRO.

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.

M. Hsu Mo, juge, déclare que, à son avis, les droits juridictionnels dont les États-Unis d'Amérique jouissent dans la zone française du Maroc se limitent aux droits prévus par les articles 20 et 21 de leur traité du 16 septembre 1836 avec le Maroc, et que les États-Unis ne sont pas fondés à exercer la juridiction consulaire dans des affaires qui entraînent l'application aux citoyens des États-Unis de celles des dispositions de l'acte d'Algésiras de 1906 dont l'exécution comporte certaines sanctions. L'acte d'Algésiras, pour autant qu'il s'agit des clauses juridictionnelles, a été conclu en tenant compte de la sorte de juridiction consulaire qui existait à cette époque dans sa plénitude et en complète uniformité entre les Puissances au Maroc. Les diverses dispositions, lorsqu'elles mentionnaient « la juridiction consulaire », « l'autorité consulaire compétente », « le tribunal consulaire du défendeur », etc., visaient clairement la juridiction uniformément exercée par les États étrangers sur leurs ressortissants respectifs dans toutes les affaires où ils étaient défendeurs. Elles ne visaient pas la juridiction limitée que les tribunaux consulaires des États-Unis pouvaient exercer, conformément à l'article 20 du traité de 1836 entre le Maroc et les États-Unis, dans les affaires où des citoyens ou protégés des États-Unis étaient seuls en cause. Par conséquent, lorsque la juridiction consulaire sous sa forme complète a cessé d'exister pour tous les États signataires de l'acte d'Algésiras, toute base pour l'application, par les divers tribunaux consulaires, des sanctions prévues par l'acte, a disparu, et les règles ordinaires du droit international sont entrées en jeu. De ce fait, les sanctions en question devaient désormais être appliquées par les tribunaux territoriaux, aussi bien aux citoyens des États-Unis qu'à tous les autres ressortissants étrangers. Quant à la référence aux privilèges juridictionnels dont jouissaient les États-Unis, contenue dans la convention de 1937 entre la Grande-Bretagne et la France, il faut la considérer comme une mesure de précaution prise par la France contre un refus possible de la part des États-Unis d'abandonner ces privilèges. En tout cas, les droits des États-Unis à l'égard du Maroc, en matière de juridiction, doivent être déterminés par leurs propres rapports conventionnels et ne sauraient découler de quelque admission faite par la France, au nom du Maroc, à une tierce partie.

MM. HACKWORTH, BADAWI, LEVI CARNEIRO et sir Benegal RAU, juges, se prévalant du droit que leur confère l'article 57 du Statut, joignent à l'arrêt l'exposé commun de leur opinion dissidente.

(Paraphé) A. D. McN.

(Paraphé) E. H.