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COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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

(FRANCE c. ÉTATS-UNIS D'AMÉRIQUE)

VOLUME I

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INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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

(FRANCE *v.* UNITED STATES OF AMERICA)

VOLUME I

Application.—Pleadings



COUR INTERNATIONALE DE JUSTICE

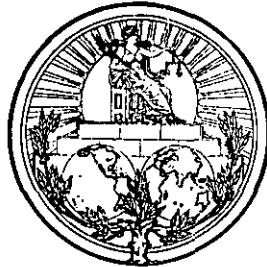
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DES RESSORTISSANTS
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ARRÊT DU 27 AOÛT 1952

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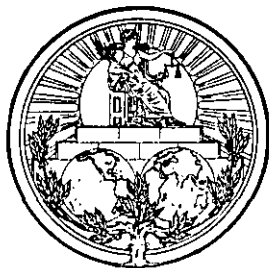
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VOLUME I
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PREMIÈRE PARTIE

PIÈCES DE LA PROCÉDURE ÉCRITE

PART I

PLEADINGS

SECTION A.—APPLICATION INSTITUTING
PROCEEDINGS

I.—THE CHARGÉ D'AFFAIRES A. I. OF FRANCE
IN THE NETHERLANDS
TO THE REGISTRAR OF THE COURT

[*Translation by the Registry*]

No. 18

The Hague, October 28th, 1950.

Sir,

I have the honour to inform you that my Government has decided to submit to the International Court of Justice a dispute with the Government of the United States of America concerning the rights of United States nationals in Morocco.

Professor André Gros, Legal Adviser, and Professor Paul Reuter, Assistant Legal Adviser, in the French Ministry for Foreign Affairs, have been officially appointed as Agent and Assistant Agent respectively for the Government of the Republic in this case.

I enclose herewith the Application instituting proceedings on behalf of the French Government, together with a letter from Professor Gros.

I have, etc.

(*Signed*) OLIVIER MANET.

II.—THE AGENT OF THE GOVERNMENT OF THE FRENCH
REPUBLIC TO THE REGISTRAR OF THE COURT

[*Translation by the Registry*]

Paris, October 27th, 1950.

Sir,

I have the honour to transmit to you, on behalf of the Government of the French Republic, an Application instituting proceedings before the International Court of Justice relating to a dispute with the Government of the United States of America concerning the rights of American nationals in Morocco.

I have, etc.

(*Signed*) ANDRÉ GROS.

III.—APPLICATION INSTITUTING PROCEEDINGS
ON BEHALF OF THE GOVERNMENT OF THE FRENCH
REPUBLIC

[*Translation by the Registry*]

To the President,

And the Judges of the International Court of Justice,

The undersigned, having been duly authorized by the Government of the French Republic, and having chosen the French Embassy at The Hague as their address for service,

Having regard to Article 36, paragraph 2, of the Statute of the Court, and the acceptance of the compulsory jurisdiction of the Court by the Government of the United States on the 26th August 1946, and by the Government of the French Republic on the 18th February 1947,

Having regard to Article 10 of the Agreement of 28th June 1948 between France and the United States of America,

Having regard to the Treaty of the 30th March 1912 between the Government of the French Republic and the Shereefian Empire,

Having regard to Article 40, paragraph 1, of the Statute of the Court,

Have the honour to submit to you the following Application :

On 30th December 1948, the Shereefian Government adopted measures subjecting to licence certain imports which do not involve an *official allocation of currency*, and limiting such imports to a certain number of products indispensable to the economic system of Morocco.

The Government of the United States has declared, in a series of notes, that this measure, which was adopted in pursuance of the exchange control régime established in 1939, affected, in an essential point, the rights which the American Government regards as appertaining to it under its treaties with Morocco.

Thus, the Government of the United States contends that no Moroccan law or regulation can be applied to American nationals in Morocco without its previous consent. The problem raised by the regulations of 30th December 1948, concerning imports not involving an allocation of currency, is therefore only a special case of a difficulty of a more general character which places the Government of the French Republic, in the exercise of its right under the *Protectorate Treaty of the 30th March 1912*, in opposition to the Government of the United States, which relies on the *Treaty of the 16th September 1836*, between the United States and the Emperor of Morocco.

In spite of numerous efforts on the part of the Government of the French Republic to arrive at an amicable solution of the various problems raised by the regulations of the 30th December 1948, the Government of the United States only consented to a provisional and temporary agreement which was to terminate on the 10th December 1949, but was extended by an arrangement dated 31st December 1949; in a note of 3rd October 1950, the Government of the United States indicated its intention of denouncing the agreement.

The position of the Government of the United States in regard to these problems was set forth, in particular, in a note delivered on the 9th October 1949, by the United States diplomatic agent at Tangier to the Resident General of France in Morocco : the Government of the United States made its definitive agreement dependent on new conditions ; these conditions appeared to the French Government, which rejected them, as contrary to the existing treaties.

The first condition was the refund of the consumers-tax paid by American nationals up to that date.

This reimbursement, which would involve a preferential treatment of American nationals, would in fact have been extremely unfair, because the taxes in question, having been incorporated in the selling price of the products, had been paid by the consumers, so that the result would really have been a free gift to American importers alone, a privilege for which there could be no justification.

The Government of the United States based this claim on the principle that any Shereefian regulations to which it had not agreed in advance were inapplicable to its nationals. The American nationals in Morocco, supported by their diplomatic representative, are seeking in this way to escape the effect of regulations, other than those of the 30th December 1948, concerning imports not involving an allocation of currency ; the French Government proposes to elaborate these points before the Court in due course.

In view of the fact that the Government of the United States formally recognized the protectorate of France over Morocco in its notes of the 2nd January and 20th October 1917, the Government of the French Republic feels unable to accept claims which would in fact prevent it from discharging the mission which it has assumed, and which most other States had recognized long before 1917, either by adhering to various treaties which defined the international status of Morocco, or by formally recognizing the protectorate assumed by France.

The only reservations which have ever been formulated by the United States are as follows : they did not, like some other States, accede to all the instruments which defined the international status of Morocco, but, when they formally recognized the French protectorate over Morocco, they expressed a desire, in a note dated 2nd January 1917, to "consider separately the question of the recognition of the protectorate and the question of [the United States of America's] capitulatory and other rights in Morocco".

The Government of the French Republic will ask the International Court of Justice to declare that this sole reservation concerning "capitulatory and other rights" of the United States never covered, and could not cover, the extension which the Government of the United States of America is now seeking to give it. The Treaty concluded between the United States of America and the Emperor of Morocco on the 16th September 1836 provides, in its Articles 20 and 21, only for exemptions from the local jurisdiction limited to specified cases, and the Government of the United States cannot deduce therefrom a right to exclude the application of all laws and regulations to its nationals in Morocco except with its express consent.

On the other hand, it is only through the operation of the most-favoured-nation clause that the United States nationals were able to enjoy other privileges than those provided in Articles 20 and 21 of the Treaty of September 16th, 1836; but as all foreign States have renounced the privileges provided in favour of their nationals in the separate treaties, the most-favoured-nation clause could no longer justify the extension of such privileges to nationals of the United States.

In the second place, the Government of the United States claims to find in the General Act of the International Conference of Algenciras of April 7th, 1906, proof that France, in her conduct of affairs in Morocco, had departed from the principle of economic liberty without any inequality, which is laid down in the Preamble of that diplomatic instrument. According to the Government of the French Republic, the actual meaning of the principle of economic liberty without any inequality must be determined in the light of the information revealed by international practice, as it is shaped by economic development and as it results from the interpretation of other treaties containing the same principle. The great international instruments by which the States, after the last conflict, tried to restore the freedom of exchanges and to eliminate discrimination (in particular, the Agreements of Bretton Woods of July 22nd, 1944, the Agreements on customs tariffs and trade of October 30th, 1947, and the Charter of Havana of 24th March 1948) authorize a State to take such measures as are necessary to avoid a crisis which would gravely threaten the foundations of its economic equilibrium and its monetary stability.

That is why the Government of the United States, in a note delivered to the French Embassy on 29th July 1949, itself recognized "the need for French Morocco to control its imports, in view of the present economic conditions of the world"¹. Thus the Government of the United States recognizes that the freedom which is claimed by American nationals in Morocco cannot be an absolute freedom, and that the rule of economic liberty without

¹ Translation by the Registry.

any inequality must be interpreted in the light of other principles, among which may be cited those which that Government saw fit to include in its Agreement with France of 28th June 1948, relating to the application of the European recovery programme, as well as in the multilateral conventions mentioned above.

Having resorted, without success, to diplomatic negotiations on all the preceding points, the Government of the French Republic has decided to bring the whole of the questions on which it differs from the Government of the United States of America before the International Court of Justice.

Consequently, and without prejudice to any memorial, counter-memorial, and in general all other arguments and evidence which may subsequently be submitted to the Court,

MAY IT PLEASE THE COURT,

To note that the Agent of the Government of the French Republic has selected the French Embassy at The Hague as an address for service at the seat of the Court, for all notifications and communications relating to the case ;

To communicate to the Government of the United States of America the present Application, in accordance with Article 40, paragraph 2, of the Statute of the Court ;

To judge and declare, either in the absence or in the presence of the said Government, and after such interval of time as the Court may decide, subject to an agreement between the Parties :

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

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

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

That the *dahir* 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.

The Agent of the Government
of the French Republic,
(Signed) ANDRÉ GROS.

The Assistant Agent of the Government
of the French Republic,
(Signed) PAUL REUTER.
