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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

Requête. — Pièces écrites

INTERNATIONAL COURT OF JUSTICE

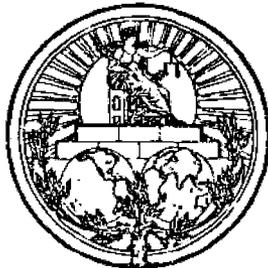
PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

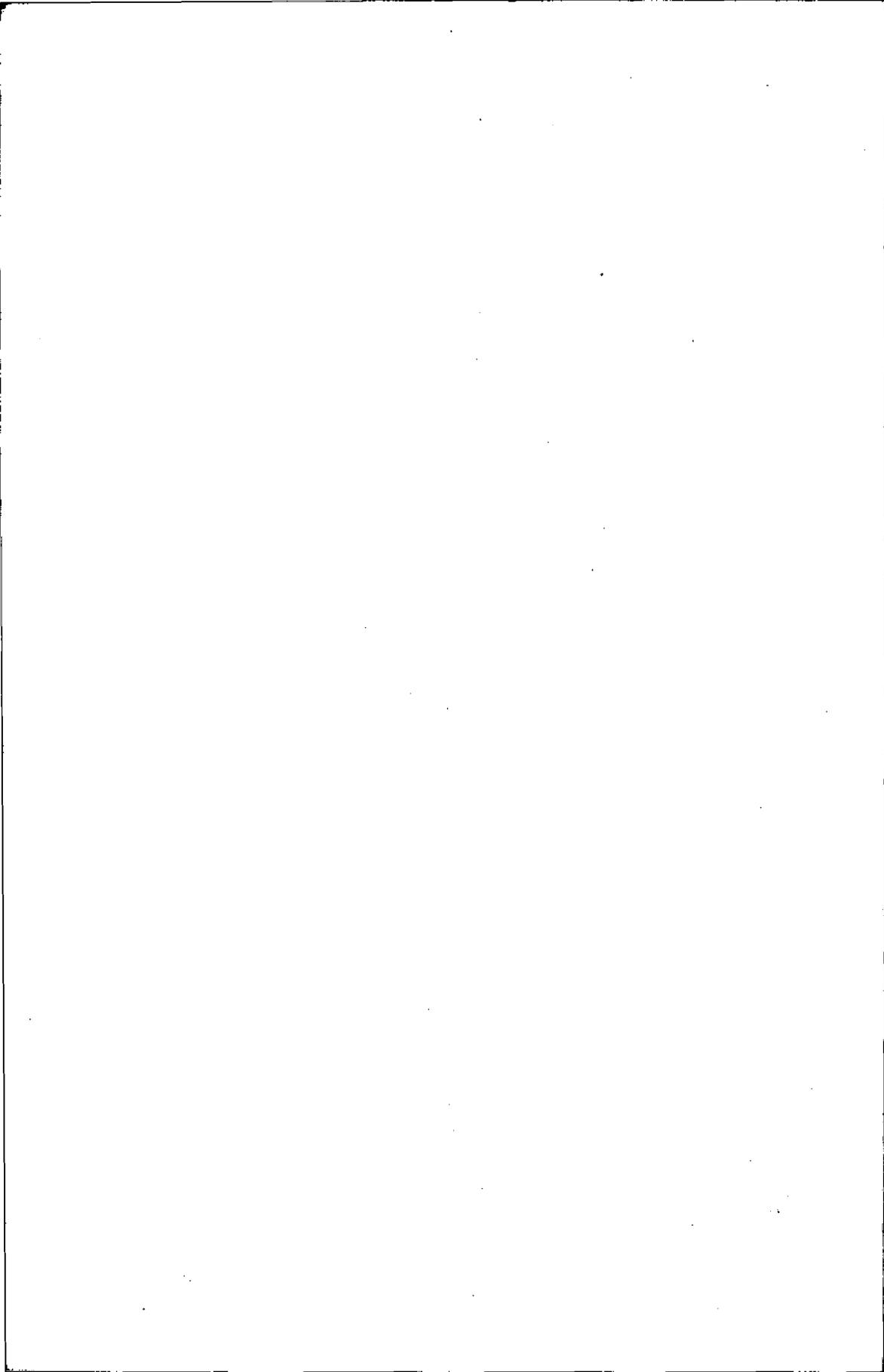
CASE CONCERNING RIGHTS OF
NATIONALS OF THE UNITED STATES
OF AMERICA IN MOROCCO

(FRANCE v. UNITED STATES OF AMERICA)

VOLUME I

Application.—Pleadings





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CASE CONCERNING RIGHTS OF NATIONALS
OF THE UNITED STATES OF AMERICA
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DES RESSORTISSANTS
DES ÉTATS-UNIS D'AMÉRIQUE
AU MAROC

(FRANCE c. ÉTATS-UNIS D'AMÉRIQUE)

ARRÊT DU 27 AOÛT 1952

VOLUME I
Pièces écrites



INTERNATIONAL COURT OF JUSTICE

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CASE CONCERNING RIGHTS OF
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JUDGMENT OF AUGUST 27th, 1952

VOLUME I
Pleadings





2. PRELIMINARY OBJECTION FILED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The proceedings in this case were instituted by an Application filed on behalf of the Government of the French Republic on October 28, 1950. On November 22, 1950, the Court issued an order fixing the time-limits for presentation by the Parties of the written proceedings. Pursuant to this order, the French Government filed its Memorial on March 1, 1951. The United States Counter-Memorial was required to be filed by July 1, 1951.

Before filing a Counter-Memorial and before entering the case on the merits, the Government of the United States has found it necessary to file a Preliminary Objection in accordance with the provisions of Article 62 of the Rules of Court.

The Government of the United States noted, when the Application instituting proceedings was filed by the French Government in October 1950, that the Application did not clearly specify the parties to the proceedings other than the United States of America. My Government hoped that this lack of specification might be only a formal defect, which would be corrected through a fuller and more definite statement in the Memorial. When copies of the Memorial had been received by the Government of the United States in March 1951, it was observed that the Memorial, like the Application, was still not clear and definite in specifying the parties to the case other than the United States of America.

In the view of the United States, the Application and the Memorial submitted by the French Government admit of three alternative possibilities in regard to the identity of the parties in whose name the present proceedings have been instituted: (1) the case may be brought by the Government of the French Republic in the name of and on behalf of the French Republic in its own right and capacity; (2) the case may be brought by the Government of the French Republic in the name of the French Republic as Protector of the State of Morocco under the Treaty of Fez, dated March 30, 1912, on behalf of the State of Morocco; or (3) the case may be brought by the Government of the French Republic both in the name of and on behalf of the French Republic in its own right and capacity and as Protector of the State of Morocco under the Treaty of Fez, dated March 30, 1912, on behalf of the State of Morocco.

Having noted the ambiguity in the Application and in the Memorial filed by the Government of the French Republic, the Government of the United States sought in discussions with representatives of the French Government to clarify the identity of the

party or parties in whose name and on whose behalf the case concerning the rights of American nationals in Morocco had been brought. These discussions continued over a number of weeks, and it was the hope of my Government that a clarification of the point would be obtained so as to make unnecessary the filing of any Preliminary Objection in this case. The Government of the United States had suggested to the French Government that clarification might be effected either through an amendment of the Application or Memorial, or by a written communication addressed to the Government of the United States which could be incorporated in the written proceedings of the case. However, representatives of the French Government informed representatives of the United States Government on June 9, 1951, that the French Government was not prepared to make any formal statement concerning the identity of the parties in whose name and on whose behalf the present case has been brought. The representatives of the French Government stated that the Application and the Memorial did not require clarification.

The Government of the United States refers to Article 40, paragraph 1, of the Statute of the International Court of Justice. This paragraph provides :

"1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated."

Similarly, Article 32 of the Rules of Court provides, in part :

"2. When a case is brought before the Court by means of an application, the application must, as laid down in Article 40, paragraph 1, of the Statute, indicate the party making it, the party against whom the claim is brought and the subject of the dispute...."

In the view of the Government of the United States, the Application in the present case, as supplemented by the Memorial, does not accord with the above requirements.

The United States is concerned to secure an exact identification of the parties to the present case in order to know in advance what States (and in what capacity so far as France is concerned) would be bound by the judgment of the Court in the present case. This case concerns the rights of American nationals in Morocco under bilateral treaties between the United States and Morocco, and under certain multilateral treaties—the Convention of Madrid of July 3, 1880, and the Act of Algeciras of April 7, 1906—to which France as well as the United States and Morocco are parties. The United States of America would be bound by the judgment of the Court. My Government is concerned that the State of Morocco and also the French Republic, both in its own right and capacity and as Protector of Morocco, should be bound by the judgment of the Court in determining the rights of American.

nationals in Morocco. My Government refers in this connection to Article 59 of the Statute of the Court, which provides :

"The decision of the Court has no binding force except between the parties and in respect of that particular case."

The Government of the United States observes that the Government of the French Republic in the past has drawn a distinction between the capacity of France in its own right and France as Protector of Morocco. For example, in a note to the Secretary of State dated January 19, 1917 (Annex A), the French Ambassador, replying to the note in which the Government of the United States had recognized "the establishment of the French Protectorate over the French Zone of the Shereefian Empire", said :

"In reality the Protectorate established by France in Morocco, with the assent of its ruler, covers the whole of that country, as evidenced by the terms of the Treaty of March 1912, a copy of which I had the honor of transmitting to you on January 3, 1913. The Spanish rights are mentioned in it (Art. 1) as being to be defined by an agreement between the Governments, not of Morocco, but of France and of Spain. Every Power, Spain included, has recognized that our Protectorate was coextensive with the total area of Morocco."

This note thus makes the point that France may choose to engage in international acts with respect to Morocco in its own right and capacity, without regard to its capacity as Protector of Morocco.

In a comparable situation, in the convention concluded by France and Great Britain on July 29, 1937 (Annex B), it was stated in the first paragraph of the Preamble that the President of the French Republic was "acting in his own name and on behalf of His Majesty the Sultan of Morocco". In the latter case, therefore, the French Government made it clear that its international act in concluding the convention was intended to and did bind Morocco.

The Government of the United States also draws attention to the case concerning phosphates in Morocco (Italy/France, before the Permanent Court of International Justice). In its Application, the Government of Italy requested that the Court "notify the present Application, in conformity with Article 40, paragraph 2, of the Court's Statute, to the Government of the French Republic, as such, and as Protector of Morocco....". *Case concerning Phosphates in Morocco* (Italy/France), Series C, No. 84, page 15 (1936).

Should the determination of the Court, in disposing of this Preliminary Objection, be otherwise than that both the State of Morocco and the French Republic, in its own right and capacity and as Protector of Morocco, are parties to the present case and would be bound by the judgment of the Court on the merits, the Government of the United States would wish to consider the inclusion of a counter-claim or counter-claims in its Counter-

Memorial, pursuant to Article 63 of the Rules of Court. Should it be determined, pursuant to that article, that under such circumstances a counter-claim of this character could not be joined to the original proceedings, the Government of the United States would have to consider what other steps it must take to safeguard its rights and interests.

The Government of the United States desires to make the following submissions to the Court :

MAY IT PLEASE THE COURT :

(1) To communicate to the Government of the French Republic the present Preliminary Objection ;

(2) To note that the proceedings on the merits have been suspended ;

(3) To decide whether the party or parties in whose name and on whose behalf the present proceedings have been instituted consist of

(a) The French Republic in its own right and capacity,

(b) The French Republic as Protector of Morocco on behalf of the State of Morocco, or

(c) The French Republic in its own right and capacity and as Protector of Morocco on behalf of the State of Morocco ;

(4) To determine, in the event that the answer to (3) above is other than as stated in (c), whether under Article 63 of the Rules of Court the Government of the United States would be entitled to present a counter-claim or counter-claims designed to ensure that the judgment of the Court on the merits would be binding on the State of Morocco and on the French Republic both in its own right and capacity and as Protector of Morocco ;

(5) To note that, pending a decision by the Court on this Preliminary Objection and without prejudice to the position which the United States may believe it necessary to take in light of the decision, the Government of the United States reserves all rights it now possesses, including the right to file further preliminary objections.

(Signed) ADRIAN S. FISHER,
Agent of the Government
of the United States of America.

June 15, 1951.

ANNEXES

Annex A

THE SECRETARY OF STATE TO THE FRENCH AMBASSADOR

DEPARTMENT OF STATE

Washington, January 15, 1917.

Excellency,

Referring to my informal note of the 2nd instant and Your Excellency's reply of the 8th instant in regard to the recognition of the French Protectorate in Morocco, I have the honor to inform you that the Government of the United States, taking into consideration the political relations of the Government of the French Republic to the Government of Morocco, has concluded to recognize, and hereby formally recognizes, the establishment of the French Protectorate over the French Zone of the Sheriffian Empire. The Government of the United States is moved to take this action notwithstanding the present conflict in Europe in order to meet the wishes of the French Government and the French people, for whom the Government and people of the United States entertain a traditional and sincere friendship.

I have the honor to request the customary courtesy of Your Excellency in bringing the foregoing to the attention of the French Government.

Accept, etc.

(Signed) ROBERT LANSING.

THE FRENCH AMBASSADOR TO THE SECRETARY OF STATE

FRENCH EMBASSY

Washington, January 19, 1917.

Dear Mr. Secretary,

I am instructed by my Government to express to you its sincere appreciation of the decision of the Government of the United States to recognize our Protectorate in Morocco. The terms in which you were so good as to notify it to us enhanced the value of this token of good will, and my Government is confident that the traditional and sincere friendship between our two countries alluded to in your letter of the 15th will be still increased by this recognition.

On one passage of your letter, I am asked to draw your attention, the wording of which being not in exact conformity with facts. It is stated there that the Government of the United States "recognizes the establishment of the French Protectorate over the French Zone of the Sheriffian Empire".

In reality the Protectorate established by France in Morocco, with the assent of its ruler, covers the whole of that country, as evidenced by the terms of the Treaty of March 1912, a copy of which I had the honor of transmitting to you on January 3, 1913. The Spanish rights are mentioned in it (Art. 1) as being to be defined by an agreement between the Governments, not of Morocco, but of France and of Spain. Every Power, Spain included, has recognized that our Protectorate was coextensive with the total area of Morocco.

My Government would be much obliged to you if you would kindly cause this involuntary error to be amended and the text of your letter of recognition to be so worded as to refer to the French Protectorate, as concerning Morocco itself, and not simply to the French Zone thereof.

Believe me, etc.

(Signed) JUSSERAND.

Annex B

CONVENTION BETWEEN HIS MAJESTY IN RESPECT OF THE
UNITED KINGDOM AND THE PRESIDENT OF THE FRENCH
REPUBLIC FOR THE ABOLITION OF CAPITULATIONS IN
MOROCCO AND ZANZIBAR

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, and the President of the French Republic, acting in his own name and on behalf of His Majesty the Sultan of Morocco ;

Whereas the present special régime applicable in the French Zone of the Shereefian Empire to British consuls, nationals and institutions is no longer in accordance with the present state of that zone ;

And whereas His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, in view of the convention signed at Montreux on the 8th day of May, 1937, relating to the abolition of the Capitulations in Egypt, desires to give effect as regards the French Zone of Morocco to the Declaration of the 8th April, 1904, relating to Egypt and Morocco ;

And whereas both High Contracting Parties are also desirous of modifying certain treaties applicable to Zanzibar so as to render them more in conformity with existing conditions ;

Have accordingly decided to conclude a convention for this purpose and have appointed as their plenipotentiaries :

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India (hereinafter referred to as His Majesty the King) :

For Great Britain and Northern Ireland :

The Right Honourable Anthony Eden, M.C., M.P., His Majesty's
Principal Secretary of State for Foreign Affairs ;

The President of the French Republic :

His Excellency Monsieur Charles Corbin, Ambassador Extraordinary and Plenipotentiary of the French Republic in London ;

Who, having deposited their full powers, found in good and due form, have agreed as follows :

Article 1

His Majesty the King renounces all rights and privileges of a capitulatory character in the French Zone of the Shereefian Empire.

Article 2

British subjects, British-protected persons and British companies in the French Zone of the Shereefian Empire shall be subject to the jurisdiction of the same tribunals as French citizens and French companies.

In their recourse to such tribunals British subjects, British-protected persons and British companies shall be subject to the same conditions as French citizens and French companies.

After the expiry of ten years from the date of the coming into force of the present Convention, the provisions of the second paragraph of this article cannot be invoked, unless the subjects of His Majesty the Sultan of Morocco and companies duly incorporated under the law of the French Zone of the Shereefian Empire enjoy in the United Kingdom the treatment of the most-favoured nation as regards the matter referred to in that paragraph.

Article 3

In respect of matters occurring before the entry into force of the present Convention, laws and regulations of the French Zone of the Shereefian Empire shall only be applied to British subjects, British-protected persons, British companies and British ships in cases where in accordance with the existing practice such laws and regulations were then applicable to them.

Duties and taxes, however, payable under legislation, enacted less than one year before the date of the entry into force of the present Convention and not yet made applicable by regulations of the British consular authorities, may be recovered from British subjects, British-protected persons and British companies.

British subjects, British-protected persons and British companies shall not be sued in the courts of the French Zone for taxation or duties of any kind which became due more than two years before the coming into force of this Convention.

Article 4

The British courts at present exercising jurisdiction in the French Zone of the Shereefian Empire shall continue to deal with the cases regularly instituted before them before the entry into force of the present Convention until these cases are finally completed.

Decisions, given by the said courts within the limits of their jurisdiction and which are final, shall be recognized as having the force of *res judicata* by the authorities of the French Zone of the Shereefian Empire. Certificates given by the British consular officers to the effect that the said decisions are final will be accepted.

His Majesty the King undertakes to retain in Morocco all the judicial records of the British consular courts. These records shall be made available to the tribunals of the French Zone of the Shereefian Empire wherever these tribunals require them for the purpose of cases within their jurisdiction. Certified copies of these records will be furnished on request to the said tribunals, the competent authorities of the zone and to any other properly interested party.

Article 5

Subject to the provisions of paragraphs 2 and 3 below, no person owing allegiance to His Majesty the Sultan of Morocco can claim in the French Zone of the Shereefian Empire the protection of His Majesty the King.

Natives of the French Zone of the Shereefian Empire, who at the date of the entry into force of the present Convention enjoy British protection, either as employees of a British consulate or as *semsars*, shall for the remainder of their life be justiciable by the French tribunals of the Shereefian Empire except as regards matters coming within the jurisdiction of the Moslem or Jewish religious courts. A list of these persons shall be drawn up within six months of the coming into force of the present Convention by agreement between the French Residency-General and the British Consulate-General at Rabat. This list shall include the wives and minor children of these persons living under the same roof, and the provisions of this paragraph shall apply in the case of the wives during the lifetime of their husbands, and in the case of the children until the death of their fathers or until their majority, whichever happens earliest.

The persons enumerated in the Annex to the present Convention shall also enjoy the benefit of the provisions of paragraph 2 above.

Article 6

The British post offices in the French Zone of the Shereefian Empire will be closed at the date which shall be notified to the Residency-General at Rabat by the British Consulate-General and in any case not later than thirty days after the entry into force of the present Convention.

Article 7

British subjects, British-protected persons and British companies will enjoy in the French Zone of the Shereefian Empire the same personal and private rights (*droits privés*) as French citizens and French companies. They shall have the same guarantees for the protection of person and property.

Article 8

British subjects and British-protected persons shall not be subject in the French Zone of the Shereefian Empire to any compulsory personal military service nor to any tax or payment in lieu of such service.

After the expiry of ten years from the date of the entry into force of the present Convention, the provisions of the present article cannot be invoked unless the subjects of His Majesty the Sultan of Morocco enjoy in the United Kingdom the treatment of the most-favoured nation as regards the matter referred to in this article.

Article 9

Extracts from "casier judiciaire" shall be delivered to British subjects and British-protected persons resident in the French Zone of Morocco in the same conditions as to French citizens. In order to enable the competent authorities of the zone to deliver such extracts, the British consular authorities in the zone will supply to these authorities certificates as regards convictions, if any, pronounced by the British consular courts in Morocco.

Article 10

His Majesty the King shall have the right to maintain consulates at any place in the French Zone of the Shereefian Empire where British consulates are at present established. The establishment of new consulates at other places in the said zone shall be subject to the agreement of the Governments of both High Contracting Parties.

British consular officers in the French Zone shall enjoy privileges and immunities not less favourable than those accorded to British consular officers in France or to the consular officers of any other Power in Morocco.

Neither this article nor Article 20 of the General Treaty signed at Tangier on the 9th December 1856, on behalf of Her late Majesty the Queen of the United Kingdom of Great Britain and Ireland and His late Majesty the Sultan of Morocco and Fez, shall, however, entitle His Majesty the King to claim jurisdictional privileges accorded on the basis of existing treaties concluded by His Majesty the Sultan of Morocco and the United States of America.

Article 11

British schools of every grade shall continue to enjoy in the French Zone, especially in regard to the teaching of English, the same liberty as hitherto. They will be subject to the laws relating to State control which are applicable to all European schools in the French Zone.

Article 12

Article 4, paragraph 1, of the General Treaty signed at Tangier on the 9th December 1856 does not affect the right of the authorities of the French Zone of the Shereefian Empire to regulate admittance and immigration into the territory or to expel persons for reasons of police or public order or to apply immigration regulations, provided that there is no discrimination against British subjects or British-protected persons.

Nevertheless, British subjects and British-protected persons who have been resident in the French Zone of Morocco for more than five years shall not be expelled unless :

- (a) They have committed a crime or offence punishable with more than three months' imprisonment ;
- (b) They have been guilty of conduct prejudicial to public safety, public order, good morals or public health ;
- (c) They are in such a state of indigence as to be a burden to the State.

The provisions of paragraph 2 of this article may be terminated at any time after the expiry of twenty years from the date of the coming into force of this Convention by six months' notice.

Article 13

The powers conferred on British consular officers in the French Zone of the Shereefian Empire in matter of the estates of deceased persons by Article 18 of the General Treaty signed at Tangier on the 9th December 1856 are maintained.

Any disputes arising as regards the estates referred to in the said article shall be determined by the competent tribunals of the said zone in conformity with the provisions of laws of general application.

The provisions of this article may be terminated at any time after the expiry of twenty years from the date of the entry into force of the present Convention by six months' notice.

Article 14

The High Contracting Parties agree that the French decree of the 8th November 1921, relating to French nationality in the French Zone of the Shereefian Empire, and the Dahir of the same date, relating to Moroccan nationality, are not applicable to British subjects or protected persons born before the date of the entry into force of the present Convention.

If the French or Moroccan Governments should enact measures which would result in conferring French or Moroccan nationality by reason of birth or residence in the French Zone of the Shereefian Empire in any case where the above-mentioned decree would not have conferred French nationality, British subjects and protected persons affected by these enactments shall be freed from French or Moroccan nationality if they make a request to this effect in the year which follows their majority.

Article 15

The subjects of His Majesty the Sultan of Morocco and Moroccan vessels shall enjoy the same rights as French citizens and French ships in the United Kingdom of Great Britain and Northern Ireland, British colonies and in territories under the protection of His Majesty the King, and in mandated territories administered by the Government of the United Kingdom.

The expression "Moroccan vessels" means ships duly registered as such in a port of the French Zone of the Shereefian Empire.

Article 16

The provisions of all earlier Acts, treaties and conventions which are contrary to the preceding provisions of the present Convention are abrogated as between the High Contracting Parties so far as the French Zone of the Shereefian Empire is concerned.

Articles 13 and 20 of the General Treaty signed at Tangier on the 9th December 1856 cannot be invoked by His Majesty the King to claim the jurisdictional privileges enjoyed by the United States of America under treaties at present in force.

His Majesty the King renounces all rights in the French Zone of the Shereefian Empire under the Convention of Madrid of 1880.

Article 17

The French Republic renounces all rights and privileges of a capitulatory character in the territories of His Highness the Sultan of Zanzibar.

Article 18

French nationals (citizens, subjects and protected persons) and French companies shall be subject in the territories of the Sultan of Zanzibar to the jurisdiction of the same courts as British subjects and British companies.

In their recourse to such courts French nationals and French companies shall be subject to the same conditions as British subjects and British companies for so long as British subjects, British-protected persons and British companies enjoy in the French Zone of the Shereefian Empire the benefit of paragraph 2 of Article 2 of the present Convention.

Article 19

French nationals (citizens, subjects and protected persons) and French companies will enjoy in the territories of His Highness the Sultan of Zanzibar the same rights as those accorded in the French Zone of the Shereefian Empire to British subjects, British-protected persons and British companies under Articles 7, 8 and 12 above and subject to the same conditions.

Article 20

French consuls in the territories of His Highness the Sultan of Zanzibar shall enjoy privileges and immunities not less favourable than those accorded to French consular officers in the United Kingdom or those accorded to the consuls of any other Power in the territories of His Highness the Sultan of Zanzibar.

Neither Article 2 nor Article 5 of the treaty signed at Zanzibar on the 17th November 1844 with His Highness the Sultan of Muscat and dependencies, shall entitle the French Republic to claim in the territories of His Highness the Sultan of Zanzibar jurisdictional privileges or personal privileges for French consuls or French nationals on the basis of privileges claimed or granted to other Powers in virtue of existing treaties concluded by His Highness the Sultan of Muscat.

Article 21

French schools shall continue to enjoy in the territories of the Sultan of Zanzibar the same freedom as in the past, particularly in regard to the teaching of French. They shall be subject to the laws relating to State control which are applicable to all European schools.

Article 22

The powers reserved by the Government of the French Republic as regards estates of deceased nationals for the benefit of French consuls in the territories of His Highness the Sultan of Zanzibar by the letter of the 13th May 1904 shall be maintained.

All disputes that may arise as regards such estates shall be determined in the territories of His Highness the Sultan of Zanzibar by the competent tribunals in accordance with the provisions of laws of general application. French consuls shall not in any matter be cited before a native court in this capacity as administrator or liquidator of the estate of a French national.

The provisions of the present article may be terminated at any time after the expiry of twenty years from the date of the entry into force of the present Convention by six months' notice.

Article 23

The following provisions of the treaty signed at Zanzibar on the 17th November 1844, with His Highness the Sultan of Muscat and dependencies, namely, Articles 3, 4, 6, 7, 8 and 9, are abrogated so far as the territories of His Highness the Sultan of Zanzibar are concerned.

Article 24

For the purposes of this Convention the expression "British companies" means any company duly incorporated under the law of any territory under the sovereignty of His Majesty the King or of any territory under his protection, suzerainty or mandate, and the expression "British ships" means any ship duly registered in any of the above-mentioned territories.

The expression "French companies" means any company duly incorporated under the law of France or any French colony, protectorate or territory under mandate, and the expression "French ships" means any ship duly registered in any of the above-mentioned territories.

The expression "subject of His Majesty the Sultan of Morocco" only includes those of His Majesty's subjects who enjoy French diplomatic protection abroad.

The expression "territories of His Highness the Sultan of Zanzibar" means the territories referred to in the notes exchanged on the 13th and 18th May 1904 between the Government of the United Kingdom and the Government of the French Republic.

Article 25

Any dispute between the High Contracting Parties relating to the interpretation or application of the provisions of the present Convention,

which they are unable to settle by diplomatic means, shall, on the application of one of them, be submitted to the Permanent Court of International Justice unless the High Contracting Parties agree on another method of settlement.

Article 26

The present Convention shall be ratified.

The instruments of ratification shall be exchanged at Paris.

The present Convention shall enter into force one calendar month after the date of the exchange of ratifications.

In faith whereof the above-named plenipotentiaries have signed the present Convention.

Done this 29th day of July 1937, at London, in duplicate, in English and French, both texts being equally authentic.

ANTHONY EDEN.

CHARLES CORBIN.