aspect of "international constitutional law" or "international administrative law." The writer shares the view of Professor Gooch that legislative rules of procedure possess a true legal character and that this is equally true of the rules of procedure of international organs like the principal organs of the United Nations. In this sense, international parliamentary law may be considered a part of public international law.

PHILIP C. JESSUP

THE END OF AMERICAN CONSULAR JURISDICTION IN MOROCCO

The relinquishment by the United States on October 6, 1956, of its consular jurisdiction in Morocco marks in several respects the end of an era. Not only did the action specifically terminate privileges in the Sharifian Empire which the United States had enjoyed in varying measure for 170 years; the steps taken had also a wider significance, since in effect they extinguished in American law the institution of consular jurisdiction in its classic form. The manner of its passing would seem to deserve at least brief notice in this JOURNAL.

American jurisdiction in Morocco in recent years rested in the first instance on the Moroccan-American treaty of September 16, 1836, which was substantially similar to the original treaty signed in Morocco in 1786.[1] This basic grant was supplemented by rights secured under two multilateral conventions relating to Morocco to which the United States was a party: the Convention of Madrid of July 3, 1880,[2] and the General Act of Algeciras of April 7, 1906.[3] Former American claims to a still wider jurisdiction, based on custom and usage and through a most-favored-nation clause in Moroccan treaties with other states which were no longer in force, were declared untenable in proceedings before the International Court of Justice in 1952.[4] As one result of these proceedings, American jurisdiction in Morocco after 1952 was confined in practice to cases between Americans—the original grant made in the 1836 treaty—although the theoretical jurisdiction under the Act of Algeciras and the Convention of Madrid was somewhat more extensive. In the Tangier Zone the United States not only maintained its own extraterritorial jurisdiction, but also from 1953 onwards participated in the mixed judicial system established there.[5]

With the trend of events in Morocco pointing definitely to its complete independence in the immediate future, the Department of State in January, 1956, declared it to be the policy of the United States to relinquish its jurisdictional rights there at the appropriate time.[6] To accomplish this

[1] 2 Miller, Treaties of the United States 185; 4 *ibid.* 33.

[2] 1 Malloy, Treaties of the United States 1220; 6 A.J.I.L. Supp. 18 (1912).

[3] 2 Malloy, *op. cit.* 2157; 1 A.J.I.L. Supp. 47 (1907).

[4] Case concerning Rights of Nationals of the United States of America in Morocco (France *v.* the United States), [1952] I.C.J. Rep. 176; 47 A.J.I.L. 136 (1953).

[5] U. S. Treaty Series, No. 2893; G. H. Stuart, The International City of Tangier 166–167 (2d ed., 1955).

[6] 34 Department of State Bulletin 204 (1956). This policy had been foreshadowed in the United States pleadings before the International Court.

end two possible courses were open to the Department: either to seek a revision of the treaty terms through negotiations with the Moroccan Government, or to obtain prior Congressional approval for the President to renounce American jurisdictional rights unilaterally at such time as he might deem appropriate. The latter alternative was the one selected, and draft legislation embodying the views of the Department was sent to the Senate in March, 1956.

Three hearings on the subject were subsequently held by the Senate Committee on Foreign Relations, at which Mr. George V. Allen, Assistant Secretary for Near Eastern, South Asian, and African Affairs, and other officials appeared on behalf of the Department. In their testimony two principal reasons were advanced to support the choice of the legislative rather than the treaty method of termination. The first was that it was in accord with precedent: In 1874, the President had sought and received Congressional approval in advance to "suspend" such part of American consular jurisdiction in Egypt as might be taken over by the Mixed Courts then being planned.[7] The second reason was that by the same Congressional action the statutory provisions governing the exercise of consular jurisdiction could also be repealed, thus clearing the statute book tidily of obsolete matter. Other influential factors in the choice of method may have been a desire to retain unilateral control over the precise time of relinquishment, and perhaps a desire not to open the door at that moment to possible sweeping revisions of Moroccan-American treaty arrangements in general.

The only opposition to the proposals voiced before the Committee came from Mr. Robert Emmet Rodes, representing various groups of American residents and businessmen in Morocco. He submitted that relinquishment would have the effect in fact of putting Americans in Morocco in a less favorable position than nationals of other states, particularly those of France and Spain; and further, that a modification of treaty terms could be accomplished Constitutionally only by renegotiation and subsequent ratification with Senate advice and consent. The Department persuasively rebutted the validity of these contentions, but perhaps its most telling point was the fact that the treaty of 1836 by its terms could be denounced by either party on one year's notice. Since Morocco could thus destroy at will the cornerstone of American jurisdiction, such jurisdiction could obviously not be maintained for long in any case in the face of Moroccan opposition.

The Foreign Relations Committee, agreeing with the Department, reported favorably to the Senate on the proposed joint resolution.[8] Passed

[7] Act of March 23, 1874, 18 Stat. 23, 22 U.S.C. sec. 182. The authority granted was exercised by the President in 1876 and again in 1937, when the original regime of the Mixed Courts was replaced by the transitional regime established by the Montreux Convention of that year. 2 Hackworth, Digest of International Law 516. But it may be noted that a recent precedent existed for the use of the treaty method: the Chinese-American treaty of Jan. 11, 1943, relinquishing American extraterritorial rights in China. U. S. Treaty Series, No. 984; 37 A.J.I.L. Supp. 65 (1943). This was not referred to during the hearings.

[8] S.Rep. 2274, 84th Cong., 2d Sess.

in due course by the Senate and the House of Representatives, it became law on August 1, 1956.[9] As adopted, its text reads as follows:

> Whereas the laws of the United States invest the ministers and consuls of the United States in certain countries, including Morocco, with judicial authority so far as the exercise of the same is allowed by treaty with such countries and in accordance with usage in such countries; and
>
> Whereas the consuls of the United States in Morocco are permitted to exercise jurisdiction over American nationals under the treaty between the United States and Morocco signed September 16, 1836, and the Act of Algeciras signed April 7, 1906; and the [*sic;* to?] exercise by custom and usage the same jurisdiction over subjects of Morocco or others who may be designated as "proteges" under the Convention of Madrid signed July 3, 1880; and
>
> Whereas Morocco is now the only foreign country where the consuls of the United States exercise such jurisdiction; and
>
> Whereas it is the policy of the United States to discontinue the exercise of extraterritorial jurisdiction in Morocco at such time as it becomes appropriate: Therefore be it
>
> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the relinquishment by the President, at such time as he considers this appropriate, of the consular jurisdiction of the United States in Morocco is hereby approved and sections 1693, 4083 to 4091, inclusive, 4097 to 4122, inclusive, and 4125 to 4130, inclusive, of the Revised Statutes, as amended, are repealed effective upon the date which the President determines to be appropriate for the relinquishment of such jurisdiction, except so far as may be necessary to dispose of cases then pending in the consular courts in Morocco.

With Congressional approval thus secured, American jurisdictional rights in Morocco under the treaties referred to were formally relinquished on October 6, 1956, effective the same day.[10] Later the same month an international conference at Tangier, in which the United States took part, recognized the abolition of the international regime of the Tangier Zone and the full reinstatement of the Sultan's authority therein.[11]

So much for the history of the relinquishment of American rights in Morocco. But it will be noticed that the Congressional resolution quoted above went beyond mere approval of that action. It also repealed in their entirety those sections of the Revised Statutes which governed the exercise of consular jurisdiction not only in Morocco, but in all countries where the United States had acquired such jurisdiction by treaty and usage.[12] As indicated in the preamble, this was done because Morocco was the only

[9] Public Law 856, 84th Cong., 2d Sess.; 70 Stat. 773.

[10] See note addressed by the American Ambassador at Rabat to the Moroccan Foreign Minister, 35 Dept. of State Bulletin 844 (1956) reprinted below, p. 466.

[11] Final Declaration of the Conference, Oct. 29, 1956. T.I.A.S., No. 3680; 35 Department of State Bulletin 842 (1956); reprinted below, p. 460.

[12] The sections of the Revised Statutes specified in the resolution correspond to 22 U.S.C. secs. 141–143, 145–174, 176–181, and 183 inclusive.

foreign country where American consuls still *exercised* such jurisdiction; and this is no doubt technically correct. Curiously enough, however, a *right* of consular jurisdiction still survives in the Sultanate of Muscat, under the terms of a treaty made in 1833 and still in force.[13] The right seems rarely to have been exercised and is probably of little practical importance, although, because of oil exploration activities, there are probably more Americans in Muscat territory today than ever before. Yet it is distressing to find Department spokesmen giving somewhat erroneous information on the matter to the Senate Committee in the course of its hearings on the resolution.

In 1937, the Chief of the Near Eastern Division of the Department declared categorically that the United States "possesses extraterritorial rights" in Muscat, but that there were no American representatives there and that the extraterritorial jurisdiction "is not exercised at this time."[14] In 1956, with no apparent change in the treaty relationship, the Assistant Secretary of State testified only that

> . . . perhaps if we examined our treaty with Muscat with a fine-toothed comb, we could sustain the contention that we have extraterritorial rights in Muscat.
>
> It was a treaty negotiated by a naval captain in 1846. We did many of our negotiations with Siam and other areas by naval captains going out with letters from the President authorizing them to negotiate treaties here and there. But we never have had a consulate in Muscat during all of this time and we never exercised any jurisdiction.[15]

For the sake of accuracy, it may be pointed out that the treaty was negotiated in 1833, not 1846; that the negotiator was not a naval officer, but a civilian special agent (who had also negotiated the first treaty with Siam);[16] that the United States did in fact maintain a consular office in Muscat for many years prior to 1915, when the office was closed; and that consular jurisdiction was apparently exercised in at least one case during that period.[17]

Such errors of detail, though regrettable in formal expert testimony, are hardly matters of great moment. Nor is the repeal of the legislation governing consular jurisdiction likely to affect adversely the interests

[13] 3 Miller, Treaties of the United States 789. In the English version of the treaty, Art. 9 reads in part: "The President of the United States may appoint Consuls to reside in the Ports of the Sultan where the principal commerce shall be carried on; which Consuls shall be the exclusive judges of all disputes or suits wherein American Citizens shall be engaged with each other. . . ."

[14] 2 Hackworth, Digest of International Law 530.

[15] Hearings before the Senate Committee (committee print), April 10, 1956, p. 4.

[16] 3 Miller, Treaties of the United States 801.

[17] R. H. Sanger, The Arabian Peninsula 191 (1954), quoting a 1913 despatch to the Department from the Consul at Muscat reviewing the business of the Consulate. *Cf.* G.N. (later Lord) Curzon, Persia and the Persian Question, Vol. 2, p. 443 (1892): "America is the only other Power, besides Great Britain, that is represented at Muscat by a Consul; an English merchant filling that post, and presumably having nothing to do but superintend the despatch of cargoes of dates, when the gathering season comes round."

of the United States in Muscat. Yet it would seem that an opportunity may have been missed to do in Muscat what was done in Morocco: to win good will at a critical time by formal relinquishment of outmoded privileges. The joint resolution of 1956 does not approve relinquishment in Muscat, so presumably further steps must some day be taken—perhaps through a new treaty—to erase finally from the books what appear to be the last rights of consular jurisdiction held anywhere by the United States.

While a faint shadow of the old regime may thus linger on for a time despite the actions of the past year, there can be no doubt that the epitaph of American consular jurisdiction in its classic nineteenth-century form has now been written. That it should come to an end is only proper in the world of today, for its connotations of colonialism and inequality make it no longer tolerable in modern international relations. Yet it should be noted that this does not mean that extraterritorial jurisdiction in all respects is also a thing of the past. On the contrary, as the many existing agreements on the status of forces abroad bear witness, it possesses great current importance. But unlike the older system, the new is based on mutual respect, and represents no more than arrangements of courtesy and convenience between equal friends and allies.

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