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INTRODUCTION

The International Law Commission, at its fourteenth session held in 1962, included the "Succession of States and Governments" on its priority list of topics for codification and progressive development as recommended by the General Assembly in resolution 1686 (XVI) of 18 December 1961.

For the use of the International Law Commission in its work on the topic and, in particular, to facilitate the task of the Special Rapporteur or Rapporteurs who might be eventually appointed, it was decided to collect legal materials relating to the existing practice of States on the matter. By circular notes dated 21 June and 27 July 1962 and 15 July 1963, the Secretary-General invited Governments of Member States to transmit to him the texts of any treaties, laws, decrees, regulations, decisions of national courts and copies of diplomatic correspondence, concerning the process of succession as it affects States which have attained their independence since the Second World War.

The present volume of the *United Nations Legislative Series*, prepared by the Codification Division of the Office of Legal Affairs of the Secretariat of the United Nations, contains the relevant materials provided or indicated by Governments in response to the request addressed to them by the Secretary-General. No material has been added to that supplied or mentioned by Governments. The materials consist of the texts of treaty provisions, unilateral declarations, laws and decrees, decisions of national courts and copies of diplomatic correspondence, as well as information in the form of observations, notes, summaries or excerpts, which have a direct bearing on the process of State succession. The materials are reproduced in English or French; where the original version was in a language other than English or French it has been translated into English.

The materials are presented under the name of the country of the replying Government, countries' names being listed in alphabetical order. The material under each country's name is divided in five sections under the following headings: "Observations", "Treaties", "Declarations", "Laws and Decrees", "Decisions of National Courts" and "Diplomatic Correspondence". Within sections and subsections the material has so far as possible been arranged chronologically. The section "Treaties" includes the texts of treaty provisions and of unilateral declarations made by new States in relation to treaties applied to their territories prior to independence, as well as notes on practice concerning State succession to treaty rights and obligations. Statements of policy by States on succession matters are grouped under "Declarations". The section "Decisions of National Courts" contains, either the full texts of judgments, or summaries of, notes on, or extracts from, the decisions of national courts.

A detailed table of contents and an index, prepared by the Secretariat, have been added to help in the consultation of the assembled material. Further references have been given in editorial footnotes and subheadings in brackets where appropriate.

INTRODUCTION

0

La Commission du droit international, au cours de sa quatorzième session tenue en 1962, a inscrit la « Succession d'Etats et de gouvernements » dans la liste de ses travaux prioritaires de codification et de développement progressif, ainsi qu'il avait été recommandé par l'Assemblée générale dans sa résolution 1686 (XVI) du 18 décembre 1961.

Afin d'aider la Commission du droit international dans les travaux qu'elle doit entreprendre sur cette question et, notamment, pour faciliter la tâche du Rapporteur ou des Rapporteurs spéciaux qui pourraient être nommés par la suite, il a été décidé de rassembler de la documentation de caractère juridique concernant la pratique actuelle des Etats dans ce domaine. Par des notes circulaires en date des 21 juin et 27 juillet 1962, et du 15 juillet 1963, le Secrétaire général a prié les Gouvernements des Etats Membres de lui faire parvenir les textes de tous traités, lois, décrets, règlements, décisions judiciaires internes et des copies de toute correspondance diplomatique ayant trait au processus de la succession intéressant les Etats qui ont accédé à l'indépendance après la deuxième guerre mondiale.

Le présent volume de la *Série législative des Nations Unies*, préparé par la Division de la Codification du Service juridique du Secrétariat des Nations Unies, contient la documentation pertinente fournie ou indiquée par les Gouvernements en réponse à l'invitation qui leur avait été adressée par le Secrétaire général. Seule a été reproduite la documentation émanant des Gouvernements. Il s'agit de dispositions de traités, déclarations unilatérales, lois et décrets, décisions judiciaires internes et copies de correspondance diplomatique, ainsi que d'observations, notes, résumés ou extraits ayant directement trait au processus de la succession d'Etats. Cette documentation est publiée soit en anglais soit en français; les textes initialement rédigés dans une langue autre que l'anglais ou le français ont été traduits en anglais.

La documentation est présentée sous le nom du pays du Gouvernement qui a envoyé la communication, dans l'ordre alphabétique du nom des pays. Elle est répartie pour chaque pays sous les cinq rubriques suivantes : « Observations », « Traités », « Déclarations », « Lois et décrets », « Décisions judiciaires internes » et « Correspondance diplomatique ». Dans chaque section et sous-section, la documentation est dans la mesure du possible présentée dans l'ordre chronologique. La section « Traités » reproduit les dispositions de traités et les déclarations unilatérales faites par des Etats nouveaux au sujet de traités dont l'application avait été étendue à leur territoire avant leur accession à l'indépendance, ainsi que des notes sur la pratique en matière de succession d'Etats aux droits et obligations découlant des traités. Les déclarations de principes faites par des Etats sur des questions relatives à la succession ont été

reproduites sous la rubrique « Déclarations ». La section « Décisions judiciaires internes » contient soit le texte intégral des jugements, soit des résumés ou extraits de décisions judiciaires internes, ou des notes s'y rapportant.

Pour que le volume soit plus aisé à consulter, le Secrétariat a établi une table de matières détaillée et un index. En outre, des renseignements supplémentaires ont été fournis, le cas échéant, dans des notes en bas de page et dans des sous-titres entre crochets.

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Afghanistan

Transmitted by a note verbale *of the Permanent Mission to the United Nations received on 11 September 1963*

A. OBSERVATIONS

[The question of succession by Pakistan to British treaty rights and to the Anglo-Afghan Treaty for the establishment of neighbourly relations, signed at Kabul on 22 November 1921 — 1947 Referendum in Pakhtunistan — Colonial treaties — Scope of the study on the law of State succession to be undertaken by the International Law Commission]

1. At the conclusion of the Third Anglo-Afghan War of 1919, a treaty was negotiated and finally signed on 22 November 1921, in Kabul, by Mahmud Tarzi, Chief of the Afghan Mission, and Henry R. C. Dobbs, Chief of the British Mission, a copy of which is enclosed along with a supplementary letter attachcd to it. (See section B, below.) This treaty, as is noted in the Preamble, was a treaty of friendship between Afghanistan on the one hand and the British Government (not the Indian Government) on the other.

2. Article II of this treaty deals with the so-called Durand Line which was imposed on Afghanistan in 1893, for dividing the spheres of influence of Afghanistan and the United Kingdom in the Tribal Area mentioned in the colonial Durand Treaty[1] imposed by political and military force on Afghanistan. History is a witness to the purpose of the British in establishing certain spheres of influence, that is to say, the military purpose for the preservation of her Indian colony.

Article XIV of this treaty states:

> "The provisions of this treaty shall come into force from the date of its signature, and shall remain in force for three years from that date. In case neither of the High Contracting Parties should have notified, twelve months before the expiration of the said three years, the intention to terminate it, it shall remain binding until the expiration of one year from the day on which either of the High Contracting Parties shall have denounced it. This treaty shall come into force after the signatures of the Missions of the two Parties, and the two ratified copies of this shall be exchanged in Kabul within 2 1/2 months after the signatures."

It was in accordance with this provision that Afghanistan, on 21 November 1953, notified the British Government of the termination of the Anglo-Afghan Treaty of 22 November 1921.

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[1] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XXXIV, p. 646. Signed at Kabul on 12 November 1893.

3. When Pakistan came into being in August 1947, as a consequence of the division of India into India and Pakistan, she claimed to be successor to the treaty rights of the United Kingdom, and therefore to the Anglo-Afghan Treaty of 22 November 1921. Afghanistan maintains that this claim is legally unfounded on the following grounds:

(*a*) Pakistan is not a successor to British treaty rights because Pakistan is a new State. In accordance with international law, when a part of a State breaks off and becomes a new State, it does not have the treaty rights and obligations of the old State. It was on this basis that the Secretary-General of the United Nations, on the request of Pakistan for admission to membership in the United Nations, denied the right of succession,[1] and the General Assembly and the Security Council acted on the question of the request of Pakistan as a new State, undertaking completely new obligations.

(*b*) Even if Pakistan were a successor to British treaty rights, which she is not, and Afghanistan having implemented its right as a party to the Treaty under Article XIV of the Treaty of 22 November 1921, no treaty remains to which Pakistan can succeed.

4. No bilateral treaty will be transferable to a third party by the unilateral action of one party to a treaty without the consent of the other original party to the treaty, and there is no provision in the 1921 treaty under which Afghanistan has given prior acceptance to the transfer of the treaty to a third party, in this case, Pakistan.

5. The Indian Independence Act of 15 August 1947 also states in regard to the Pakhtun areas of the so-called North-West Frontier Province of India, which were separated from Afghanistan by British military and colonial intervention, that a referendum will take place, and thus all treaties between Afghanistan and Britain concerning this region were terminated. (See section D, below.) It should be mentioned that the referendum of 1947, contrary to the Indian Independence Act, did not leave any alternative open to the Pakhtun people to vote for their national independence, as demanded by their political leaders, and they were forced to choose, against their natural aspirations, annexation to India or Pakistan. This arrangement was opposed to the last moment, and more than fifty per cent of the population in the so-called administered part did not participate in the referendum. Such forcible

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[1] The following extract from the legal opinion by the Secretary-General was annexed by the Government of Afghanistan to its observations:

"1. From the viewpoint of international law, the situation is one in which part of an existing State breaks off and becomes a new State. On this analysis there is no change in the international status of India; it continues as a State with all treaty rights and obligations of membership in the United Nations. The territory which breaks off, Pakistan, will be a new State, it will not have the treaty rights and obligations of the old State, and it will not of course have membership in the United Nations.

"In international law the situation is analogous to the separation of the Irish Free State from Britain, and of Belgium from the Netherlands. In these cases the portion which separated was considered a new State; the remaining portion continued as an existing State with all the rights and duties which it had before." [*Legal opinion of 8 August 1947 by the Assistant Secretary-General for Legal Affairs, approved and made public by the Secretary-General in United Nations Press Release PM/473, 12 August 1947* (*Yearbook of the International Law Commission*, 1962, vol. II, p. 101).]

imposition make the so-called referendum completely void of any legal or human value. It should also be noted here that this "referendum" was thus imposed in occupied Pakhtunistan alone, with no consideration of the views of Free Pakhtunistan. The majority of the people of occupied Pakhtunistan, and the predominant party which was then in office, boycotted the referendum because of its strictly conditioned nature. Any results claimed by such a referendum are therefore null and void, and can by no means be recognized as the decision of the Pakhtunistan nation. It was a colonial decision enforced under the colonial election act of 1925.

6. Afghanistan believes that colonial treaties which have been imposed by military force are invalid on the basis of the new waves of emancipation of colonial peoples in recent years, and particularly after the adoption of resolutions 1514 [(XV), Declaration on the granting of independence to colonial countries and peoples] and 1654 [(XVI), The situation with regard to the implementation of resolution 1514 (XV)] by the General Assembly of the United Nations.

7. Afghanistan believes that the colonial treaties of Lahore, 1838,[1] Gandamak, 1879,[2] and finally of Kabul [establishing the Durand Line between India and Afghanistan], 1893,[3] because of the circumstances under which they were imposed on Afghanistan, are illegal according to various principles of international law, particularly those adopted by the International Law Commission during its fifteenth session, contained in article 33 on fraud, articles 35 and 36 on coercion of States or their representatives, article 37 on *jus cogens*, article 38 on termination of treaties through the operation of their own provisions, article 43 on impossibility of performance and article 44 on fundamental change of circumstances (*rebus sic stantibus*).[4]

8. Afghanistan generally believes that the International Law Commission should take into account the fact that in the law of treaties a new field has emerged, the law of State succession. World War II brought a number of frontier changes, and many nations in Asia and Africa and

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[1] De Martens, *Nouveau Recueil de Traités*, tome XV, p. 620. Signed on 26 June 1838.

[2] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome IV. p. 536. Signed on 26 May 1879.

[3] *Ibid.*, tome XXXIV, p. 646. Signed on 12 November 1893.

[4] See *Yearbook of the International Law Commission*, 1963, Vol. II, pp. 194-211. In final text of draft articles on the Law of Treaties adopted by the International Law Commission, at its eighteenth session (1966), these articles were revised and renumbered as follows: article 33 (Fraud) became article 46; article 35 (Coercion of a representative of the State) became article 48; article 36 (Coercion of a State by the threat or use of force) became article 49; article 37 (Treaties conflicting with a peremptory norm of general international law (*jus cogens*)) became article 50; article 38 (Termination of treaties through the operation of their own provisions) became article 51 (Termination of or withdrawal from a treaty by consent of the parties) and article 52 (Reduction of the parties to a multilateral treaty below the number necessary for its entry into force); article 43 (Supervising impossibility of performance) became article 58; and article 44 (Fundamental change of circumstances) became article 59. [See *Official Records of the General Assembly, Twenty-first Session, Supplement No. 9* (A/6309/Rev.1), pp. 73-78 and 84-88.]

other parts of the world achieved independence and assumed new obligations in the expanding community of nations. A number of frontier and territorial changes took place by force or by agreement. New circumstances were created and it became necessary to find the effects of treaties after cession, annexation, fusion with another State, entry into federal union, dismemberment, partition, and finally separation or secession. The question of the codification of the law of State succession therefore needs very careful study. The solution of such problems cannot be left to the mercy of the strong nations, or the bargaining of military powers. As in private law such problems have found solution, it is much more important to find means and devices for the solution of this important question. The International Law Commission should search practical devices. The term "State succession" should not be used vaguely or loosely, but should be used in questions of territorial re-organization accompanied by a change of sovereignty. The scope of the study on State succession should be limited and precise, and must cover the essential elements which are necessary for the creation of practical devices to solve the present difficulties arising out of the results of colonialism and the imposition of territorial and boundary changes which were contrary to the will of the inhabitants and in contradiction to the right of self-determination. It is important also that these devices be studied on the basis of those treaties of "personal" nature, because the treaty falls to the ground at the same time as the State. This question is particularly important because the fate of many treaties concluded by colonial powers depends on it. The aftermath of independence has created many problems which should be solved. It is also necessary for any special rapporteur to search on the main road, which is the "personality of the State", and changed conditions and the will of the contracting parties, about the right of succession.

B. TREATIES

Treaty between the Government of Afghanistan and His Britannic Majesty's Government for the establishment of neighbourly relations. Signed at Kabul, on 22 November 1921[1]

Preamble

The British Government and the Government of Afghanistan with a view to the establishment of neighbourly relations between them have agreed to the Articles written hereunder whereto the undersigned duly authorised to that effect have set their seals:

Article I

The British Government and the Government of Afghanistan mutually certify and respect each with regard to the other all rights of internal and external independence.

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[1] League of Nations, *Treaty Series*, Vol. XIV, p. 47. Articles III to XIII, which are not reproduced here, provide for the rights and obligations of the parties relating to such matters as diplomatic and consular relations, importation of goods and arms, customs exemption, trade agents, postal arrrangements and an advance notice on military operations to be given to frontier tribes.

Article II

The two High Contracting Parties mutually accept the Indo-Afghan frontier as accepted by the Afghan Government under Article 5 of the Treaty concluded at Rawalpindi on August 8, 1919, corresponding to the 11th Ziqada, 1337 Hisra and also the boundary West of the Khiber laid down by the British Commission in the months of August and September 1919, pursuant to the said Article, and shown on the map attached to this treaty by a black chain line; subject only to the realignment set forth in Schedule I annexed, which has been agreed upon in order to include within the boundaries of Afghanistan the place known as Tor Kham, and the whole bed of the Kabul River between Shilman Khwala Banda and Palosai and which is shown on the said map by a red chain line. The British Government agrees that the Afghan authorities shall be permitted to draw water in reasonable quantities through a pipe which shall be provided by the British Government from Landi Khana for the use of Afghan subjects at Tor Kham, and the Government of Afghanistan agrees that British officers and tribesmen living on the British side of the boundary shall be permitted without let or hindrance to use the aforesaid portion of the Kabul River for purposes of navigation and that all existing rights of irrigation from the aforesaid portion of the river shall be continued to British subjects.

. . .

Article XIV

[See above, section A, paragraph 2]

APPENDIX

. . .

IV. *Letter from the British Representative to Sardar-i-Ala, the Afghan Foreign Minister*

After compliments — As the conditions of the frontier tribes of the two Governments are of interest to the Government of Afghanistan I inform you that the British Government entertains feelings of good will towards all the frontier tribes and has every intention of treating them generously, provided they abstain from outrages against the inhabitants of India. I hope that this letter will cause you satisfaction. (Usual ending.)

C. DECLARATIONS

STATEMENT BY THE GOVERNMENT OF THE UNITED KINGDOM, 3 JUNE 1947

. . .

North-West Frontier Province

11. The position of the North-West Frontier Province is exceptional. Two of the three representatives of this Province are already participating in the existing Constituent Assembly. But it is clear, in view of its geographical situation, and other considerations, that if the whole or any part of the Punjab decides not to join the existing Constituent Assembly, it will be necessary to give the North-West Frontier Province an opportunity to reconsider its position. Accordingly, in such an event, a referen-

dum will be made to the electors of the present Legislative Assembly in the North-West Frontier Province to choose which of the alternatives mentioned in paragraph 4 above they wish to adopt. The referendum will be held under the aegis of the Governor-General and in consultation with the provincial Government.

. . .

The Tribes of the North-West Frontier

17. Agreements with tribes of the North-West Frontier of India will have to be negotiated by the appropriate successor authority.

D. LAWS AND DECREES

INDIAN INDEPENDENCE ACT, 1947

[See below PAKISTAN, section B. Laws and Decrees, 1. Indian Independence Act, 1947, 2(2) and 7(1)]

Argentina

Transmitted by a letter dated 13 March 1963 of the Permanent Mission to the United Nations[1]

A. OBSERVATIONS

[Succession of States in the case of partition of British India — Extradition Treaty of 22 May 1889 between Argentina and the United Kingdom extended to Pakistan by virtue of a new agreement — The question of India's claim to enjoy the benefits of the Treaty of Amity, Commerce and Navigation of 1825 between Argentina and the United Kingdom]

1. The problems which the Argentine Government has encountered in the matter of succession of States relate specifically to the independence of India and Pakistan and to the partition between those two countries.

2. In 1953 it was agreed with the Government of Pakistan that the extradition treaty signed with the United Kingdom in 1889[2] would be regarded as being in force in relation to Pakistan. It should be explained, however, that the Argentine Ministry of Foreign Affairs had previously, in 1952, informed the Embassy of the Republic at Washington that the extradition treaty concluded between the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland could not be considered to be in force with Pakistan because the latter was an independent State. The following year, the Government of Pakistan requested the Argentine Government to reconsider the view it had expressed concerning the validity of the extradition treaty. This approach was regarded by the Argentine Government as the expression of a wish that the treaty in question should remain in force between Pakistan and

[1] Original Spanish. Translation by the Secretariat of the United Nations.

[2] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XX, p. 193. Signed at Buenos Aires on 22 May 1889.

the Argentine Republic. The principle on which the Argentine Ministry of Foreign Affairs based its position was that the Government of the new independent State of Pakistan should be allowed freedom of action.

3. Later, in 1958, the Argentine Government departed from this principle in connexion with a request made by India that section XIII of the Treaty of Amity, Commerce, and Navigation signed in 1825 between the United Kingdom and Argentine Governments should be kept in force. The principle underlying this new position was stated as follows: "Treaties concluded by a State do not extend *ipso jure* to its colonies. In the Argentine-United Kingdom Treaty of 1825, no reference was made to the colonies apart from the statement in article 2 that 'there shall be between all the Territories of His Britannic Majesty *in Europe*, and the Territories of the United Provinces of Rio de la Plata...'. Hence, it must be concluded that India could in no way claim the right to enjoy the benefits of a Treaty to which it was never a party and which was not even applicable to its territory." Moreover, the legal continuity between British India and present-day India is very much open to question. While it is true that India remained in the United Nations as a Member after becoming independent, it must be remembered that this was a compromise solution, which was not recommended by the Legal Committee of the Organization (see A/C.1/212 of 11 October 1947). Furthermore, the Argentine Republic stated in the First Committee at that time that the partition between India and Pakistan had meant the extinction of British India and that, therefore, neither of the new States should be regarded as the successor (see A/C.6/156 of 2 October 1947).

4. Thus it may be concluded that, although the position taken and the principle applied have not always been the same with regard to treaties whose validity is in dispute in relation to countries that have recently gained independence and that were formerly colonies of the countries with which those treaties were originally concluded, the validity of the extradition treaty signed by the Argentine Republic with the United Kingdom was in fact extended to Pakistan by virtue *of a new agreement* signed in 1953 and formalized by an exchange of notes.

B. TREATIES

Exchange of letters concerning the status as between Argentina and Pakistan of the Anglo-Argentine Extradition Treaty of 22 May 1889. Washington, 23 and 28 December 1953

I

A.E.253 Washington, 23 December 1953

Sir,

I have the honour to refer to your Embassy's note No. F.62/53/4 of 17 September 1953 requesting information concerning the views of the Argentine Government as to whether the Treaty for the Mutual Extradition of Fugitive Criminals, signed by the United Kingdom and the Government of the Argentine Republic on 22 May 1889, is in force between the Argentine Republic and Pakistan.

I have pleasure in informing you that, since the *note verbale* in question implies the expression of a desire for the continuation, between the

Argentine Republic and Pakistan, of the Treaty for the Mutual Extradition of Fugitive Criminals, my Government has no objection to regarding it as continued.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) Hipolito J. PAZ
Ambassador

His Excellency, the Ambassador of Pakistan
Mr. Syed Amjad Ali
Embassy of Pakistan
Washington, D.C.

II

F.62/53/10 28 December 1953

Sir,

I have the honour to refer to your note No. A.E. 253 of 23 December 1953 concerning the views of the Argentine Government as to whether the Treaty for the Mutual Extradition of Fugitive Criminals, signed by the United Kingdom and the Government of the Argentine Republic on 22 May 1889, is in force between the Argentine Republic and Pakistan.

I am particularly pleased to learn from your note that the Government of the Argentine Republic has no objection to the continuation between the Argentine Republic and Pakistan of the aforementioned Treaty for the Mutual Extradition of Fugitive Criminals. I have transmitted this information to my Government.

Accept, Sir, the assurances of my highest consideration.

(*Signed*) S. AMJAD ALI
Ambassador

His Excellency Mr. Hipolito J. Paz
Ambassador Extraordinary and Plenipotentiary of Argentina
Embassy of Argentina
Washington, D.C.

Australia

Transmitted by a note verbale *dated 27 May 1963 of the Permanent Mission to the United Nations*

A. TREATIES

EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN THE GOVERNMENTS OF AUSTRALIA AND THE NETHERLANDS (ACTING ON BEHALF OF THE GOVERNMENT OF INDONESIA) CONCERNING THE FINAL SETTLEMENT OF CLAIMS THAT HAVE ARISEN OR MAY IN FUTURE ARISE IN RELATION TO FACTS, MATTERS AND THINGS OCCURRING UP TO AND INCLUDING 31 DECEMBER 1948. CANBERRA, 12 AUGUST 1949[1]

1. The Government of Indonesia shall pay to the Government of Australia and the Government of Australia shall accept in full settlement

[1] United Nations, *Treaty Series*, vol. 34, p. 213. Came into force on 12 August 1949.

of all claims against the Government of Indonesia the sum of eight million five hundred thousand pounds in Australian currency (£A8,500,000) of which the sum of five hundred thousand pounds in Australian currency (£A500,000) shall be paid in three equal annual instalments of one hundred and sixty-six thousand six hundred and sixty-six pounds, thirteen shillings and fourpence in Australian currency (£A166,666.13.4) the first of such instalments to be paid on the 1st January, 1950, and the balance of eight million pounds in Australian currency (£A8,000,000) shall be paid in seven equal annual instalments of one million one hundred and forty-two thousand eight hundred and fifty-seven pounds, two shillings and tenpence in Australian currency (£A1,142,857.2.10) the first of such instalments to be paid on the 1st January, 1953. The Government of Indonesia may, however, at any time prior to the 1st January, 1960, make payments additional to those specified in the foregoing provisions, or may at any time during the currency of this Agreement pay the total amount then outstanding.

2. In consideration of the acceptance by the Government of Australia of the amount specified in Section 1 of this Agreement in full settlement of the claims therein referred to, the Government of Indonesia shall not make or pursue any claim against the Government of Australia arising up to or on 31st December, 1948, and shall release the Government of Australia irrevocably from all claims which but for this Agreement could or might have been made.

3. This Agreement shall embrace all claims and counter claims (excluding claims under the Agreement[1] of 24th January, 1947, which is referred to in Clause 9 hereof) as between the two Governments that have arisen or may in future arise in relation to facts, matters and things occurring up to and including 31st December, 1948. No further issues for settlement or negotiation for settlement in respect of claims or counter claims between the two Governments prior to 1st January, 1949, shall hereafter be raised.

4. Nothing in this Agreement shall affect in any way any payments already made to the Government of Australia by the Government of Indonesia or its agents or by the Royal Netherlands Navy.

5. In consideration of the settlement effected by this Agreement, the Government of Indonesia shall acquire title to all works and installations (including Royal Australian Air Force installations and surplus property at Morotai) provided by the Australian Armed Forces in the Territories of the Netherlands Indies or Indonesia prior to and following the cessation of hostilities in the 1939-45 war.

6. (i) The Government of Australia shall not be responsible nor under any obligation to satisfy claims for compensation, damages or otherwise arising from enemy action or acts or omissions by members of the Australian Forces whether in the course of their duty or otherwise in the Netherlands Indies or Indonesian Territories which occurred prior to or after the cessation of hostilities in the 1939-45 war up to and including the 31st december, 1948.

(ii) The Government of Indonesia shall not be responsible nor under any obligation to satisfy claims for compensation, damages or otherwise

[1] United Nations, *Treaty Series*, vol. 10, p. 77. Came into force on 24 January 1947.

arising from enemy action or acts or omissions by members of the Netherlands Indies or Indonesian Forces whether in the course of their duty or otherwise in Australia which occurred prior to or after the cessation of hostilities in the 1939-45 war up to and including 31st December, 1948.

7. In respect of currency transactions the Government of Australia:

(*a*) shall return free of charge to the Government of Indonesia all Indonesian notes and coin acquired by the Government of Australia on behalf of the Australian Defence Services up to and including the 31st December, 1948, and held by the Government of Australia on that date;

(*b*) shall release free of charge to the Government of Indonesia any moneys deposited in any bank in Indonesia for the purposes of the Australian Defence Forces which shall stand to the credit of the Government of Australia or any person on behalf of the Government of Australia and which represents moneys deposited prior to the 10th March, 1942.

8. The Government of Australia and the Government of Indonesia agree that all liabilities and claims relating to supplies delivered to or services rendered on account of the Royal Netherlands Navy shall be regarded as a charge against the Government of Indonesia and accordingly included in the claims and liabilities settled in the terms of this Agreement.

9. The Government of Australia acknowledges that all moneys payable under and by virtue of the Agreement effected by the Exchange of Notes on 24th January 1947, between the Government of Australia and the Government of the Kingdom of the Netherlands have been paid to the Government of Australia and such Agreement shall be deemed to be terminated on the date of the coming into force of this Agreement.

10. The Government of the Kingdom of the Netherlands guarantees the payment of all moneys payable to the Government of Australia under this Agreement.

B. LAWS AND DECREES

NATIONALITY AND CITIZENSHIP ACT, 1948-1960

• • •

7. (1) A person who, under this Act, is an Australian citizen or, by an enactment for the time being in force in a country to which this section applies, is a citizen of that country shall, by virtue of that citizenship, be a British subject.

(2) The countries to which this section applies are

(*a*) The United Kingdom and Colonies;
(*b*) Canada;
(*c*) New Zealand;
(*d*) The Union of South Africa;
(*e*) India;
(*f*) Pakistan;
(*g*) Ceylon;
(*h*) The Federation of Rhodesia and Nyasaland;
(*i*) Ghana;
(*j*) The Federation of Malaya;
(*k*) The State of Singapore,

and any other country declared by the regulations[1] to be a country within the Commonwealth of Nations to which this section applies.

8. (1) An Irish citizen who, immediately prior to the date of commencement of this act, was also a British subject shall not by reason of anything contained in the last preceding section be deemed to have ceased to be a British subject if at any time he gives notice in the prescribed form and manner to the Minister claiming to remain a British subject on all or any of the following grounds:

(*a*) that he is or has been in the service under an Australian government;

(*b*) that he is the holder of an Australian passport issued by the Australian government; or

(*c*) that he has associations by way of descent, residence or otherwise with Australia or New Guinea.

(2) A claim under the last preceding sub-section may be made on behalf of a child who has not attained the age of sixteen years by a person who satisfies the Minister that he is the responsible parent or the guardian of the child.

(3) Where, under the law for the time being in force in a country to which section seven of this Act applies, provision corresponding to the foregoing provisions of this section is made for enabling Irish citizens to claim to remain British subjects, a person who is, by virtue of that law, a British subject shall be deemed also to be a British subject by virtue of this section.

. . .

Cambodge

Renseignements communiqués par note verbale en date du 20 août 1962 du Secrétaire d'Etat aux Affaires étrangères

TRAITÉS

1. ACCORD (AVEC ÉCHANGE DE LETTRES) ENTRE LE GOUVERNEMENT ROYAL DU CAMBODGE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE RELATIF AU TRANSFERT AU GOUVERNEMENT ROYAL DU CAMBODGE DES COMPÉTENCES ET SERVICES DE POLICE ET DE SÛRETÉ. FAIT À PHNOM-PENH, LE 29 AOÛT 1953[2]

Article premier

Le Gouvernement de la République Française transfère au Gouvernement Royal du Cambodge la totalité des compétences en matière de Police et de Sûreté qu'il exerçait jusqu'à ce jour au Cambodge.

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[1] By 1 May 1963, Cyprus, Nigeria and Sierra Leone had been so declared. See Statutory Rules 1961, No. 120.

[2] Royaume du Cambodge, Ministère des Affaires étrangères et des Conférences, *Accords, protocoles, conventions et échanges de lettres relatifs au transfert de toutes les compétences par le Gouvernement de la République Française au Gouvernement Royal du Cambodge*, Année 1953-1954, p. 5. Entré en vigueur le 29 août 1953.

Article 2

Le Gouvernement de la République Française transfère au Gouvernement Royal du Cambodge:

1° — la totalité des locaux de service occupés par le Service Français de Sécurité, à Phnom-Penh et en province;

En ce qui concerne les immeubles domaniaux, spécialement ceux relevant du domaine privé colonial, il est précisé que le présent transfert ne saurait préjuger de la question de leur propriété qui sera réglée par la Convention générale sur le Domaine.

. . .

2. PROTOCOLE (AVEC ÉCHANGE DE LETTRES) ENTRE LE GOUVERNEMENT ROYAL DU CAMBODGE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE RELATIF AU TRANSFERT AU GOUVERNEMENT ROYAL DU CAMBODGE DES COMPÉTENCES JUDICIAIRES EXERCÉES PAR LA FRANCE SUR LE TERRITOIRE DU ROYAUME. FAIT À PHNOM-PENH, LE 29 AOÛT 1953[1]

. . .

Article premier

Le Gouvernement de la République Française transfère au Gouvernement Royal du Cambodge toutes les compétences qu'il exerçait jusqu'à ce jour en matière judiciaire sur le territoire du Royaume du Cambodge.

Article 2

Ce transfert aura effet à compter du 29 Août 1953 en ce qui concerne tous les justiciables des juridictions françaises au Cambodge. Il deviendra définitif dès la ratification du présent protocole par les instances législatives françaises

Article 3

A la date indiquée à l'article 2, le Gouvernement Cambodgien acquerra la jouissance des biens meubles et immeubles appartenant aux Services judiciaires français du Cambodge, ainsi que des immeubles utilisés par eux à usage administratif. Les inventaires et états des lieux en seront dressés et annexés au présent protocole.

Les questions de propriété tant mobilières qu'immobilières seront réglées en même temps que les autres questions relatives au domaine.

. . .

[1] Royaume du Cambodge, Ministère des Affaires étrangères et des Conférences, *op. cit.*, p. 15.

I

Phnom-Penh, le 29 Août 1953
N° 2754/C

Le Haut-Commissaire de la République Française au Cambodge
à Son Excellence le Premier Ministre
Délégué Royal à la Direction du Gouvernement

Phnom-Penh

Excellence,

J'ai l'honneur de vous prier de bien vouloir me préciser comment le Gouvernement Royal entend résoudre les conflits de lois qui pourront se produire devant les juridictions nationales cambodgiennes par suite du transfert des compétences judiciaires au Gouvernement Royal ainsi que les problèmes relatifs au statut personnel des justiciables ressortissants de l'Union Française.

. . .

(*Signé*) Jean RISTERUCCI

II

N° 100-PCM/SM

Phnom-Penh, le 29 Août 1953

Le Premier Ministre
Délégué Royal à la Direction du Gouvernement
à Monsieur le Haut-Commissaire de France au Cambodge

Phnom-Penh

Monsieur le Haut-Commissaire,

Comme suite à votre lettre n° 2754/C du 29 Août 1953, j'ai l'honneur de porter à votre connaissance que le Gouvernement Royal entend appliquer les règles de Droit International privé pour résoudre les conflits de lois qui pourraient se produire devant les juridictions cambodgiennes. Le statut personnel des ressortissants de l'Union Française sera soumis, suivant les règles de Droit International privé, à leur loi nationale.

. . .

(*Signé*) PENN-NOUTH

III

Phnom-Penh, le 29 Août 1953
N° 2752/C

Le Haut-Commissaire de la République Française au Cambodge
à Son Excellence le Premier Ministre
Délégué Royal à la Direction du Gouvernement

Phnom-Penh

Excellence,

Par suite du transfert au Gouvernement Royal du Cambodge des compétences judiciaires jusqu'alors détenues par le Gouvernement de la

République Française, des difficultés pourront survenir dans l'exécution des décisions de justice (arrêts, jugements, ordonnances, mandats, etc.) rendues par les juridictions de l'un de nos deux pays et destinées à être exécutées dans l'autre. La procédure d'exequatur du Droit International paraît fort compliquée et est de nature à ralentir considérablement le cours de la justice. Pour éviter les inconvénients majeurs entre deux pays amis, j'ai l'honneur de vous proposer la conclusion entre nos deux Gouvernements d'une convention établissant une procédure d'exequatur simplifiée et des mesures d'assistance judiciaire réciproque.

. . .

(*Signé*) J. RISTERUCCI

IV

N° 101-PCM/SM — Phnom-Penh, le 29 Août 1953

Le Premier Ministre
Délégué Royal à la Direction du Gouvernement
à Monsieur le Haut-Commissaire de France au Cambodge

Phnom-Penh

Monsieur le Haut-Commissaire,

Comme suite à votre lettre n° 2752-C du 29 Août 1953, j'ai l'honneur de porter à votre connaissance que le Gouvernement Royal, devant les difficultés que vous nous avez signalées, est disposé à conclure avec le Gouvernement de la République une convention sur une procédure d'exequatur simplifiée et sur l'aide réciproque en matière judiciaire.

Je vous serais très obligé de bien vouloir me faire tenir dès que possible un projet de la convention préconisée.

. . .

(*Signé*) PENN-NOUTH

V

Phnom-Penh, le 29 Août 1953
N° 2753/C

Le Haut-Commissaire de la République Française au Cambodge
à Son Excellence le Premier Ministre
Délégué Royal à la Direction du Gouvernement

Phnom-Penh

Excellence,

Afin de permettre l'exécution dans les pays relevant de l'autorité du Gouvernement Français des jugements rendus par les juridictions françaises avant le transfert des compétences judiciaires au Gouvernement Royal, j'ai l'honneur de proposer à votre agrément la procédure suivante:

Les expéditions de tels jugements seront établies par le greffe des juridictions cambodgiennes disposant des archives transférées, envoyées au Haut Commissariat pour apposition de la formule exécutoire et retournées au greffe qui délivrera la grosse ainsi complétée à la partie intéressée.

. . .

(*Signé*) J. RISTERUCCI

VI

N° 102-PCM/SM

Phnom-Penh, le 29 Août 1953

Le Premier Ministre
Délégué Royal à la Direction du Gouvernement
à Monsieur le Haut-Commissaire de France au Cambodge

Phnom-Penh

Monsieur le Haut-Commissaire,

J'ai l'honneur de vous faire connaître que le Gouvernement Royal donne son accord à la procédure proposée dans votre lettre n° 2753-C du 29 Août 1953 et ainsi conçue:

[Voir lettre V, 2e paragraphe]

. . .

(*Signé*) PENN-NOUTH

. . .

3. CONVENTION ENTRE LE GOUVERNEMENT ROYAL DU CAMBODGE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE DÉTERMINANT LE STATUT PARTICULIER EN MATIÈRE JUDICIAIRE ACCORDÉ PAR LE GOUVERNEMENT ROYAL DU CAMBODGE AUX NATIONAUX FRANÇAIS. FAIT À PHNOM-PENH, LE 9 SEPTEMBRE 1953[1]

Article premier

Des magistrats français sont mis à la disposition du Gouvernement Royal en qualité d'experts auprès de la Justice Cambodgienne dans les conditions déterminées ci-après.

Article 2

L'avis de ces experts pourra être demandé toutes les fois que les autorités judiciaires Khmères l'estimeront utile; cet avis est donné par des magistrats experts différents pour chaque degré de juridiction.

Cet avis sera obligatoirement demandé et donné toutes les fois qu'un intérêt français sera en cause d'une manière certaine en matière civile, commerciale et pénale, en outre en matière pénale, chaque fois qu'un Français sera impliqué comme prévenu, partie civilement responsable ou partie lésée.

La consultation de l'expert se fera au moment de la clôture de l'instruction et pour les jugements et arrêts.

En cas d'incarcération préventive d'un Français, une consultation sera demandée et donnée aussitôt après cette incarcération.

L'expert placé auprès du Ministère de la Justice émettra un avis à propos des mesures gracieuses concernant les nationaux français.

. . .

[1] Royaume du Cambodge, Ministère des Affaires étrangères et des Conférences, *op. cit.*, p. 27.

4. PROTOCOLE (AVEC ÉCHANGE DE LETTRES) ENTRE LE GOUVERNEMENT ROYAL DU CAMBODGE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE RELATIF AU TRANSFERT AU GOUVERNEMENT ROYAL DU CAMBODGE DES COMPÉTENCES EN MATIÈRE MILITAIRE. FAIT À PHNOM-PENH, LE 17 OCTOBRE 1953[1]

Article premier

Le Gouvernement de la République Française transfère au Gouvernement Royal du Cambodge toutes les compétences en matière militaire dans les conditions fixées par le présent Protocole ainsi que ses annexes.

Article 2

Le Gouvernement de sa majesté le roi du Cambodge exerce dans la plénitude de sa Souveraineté, toutes les compétences en matière militaire et le Commandement Militaire sur tout le Territoire du Royaume.

. . .

Article 11

Les immeubles relevant du Domaine de l'Etat Français restent propriété de cet Etat. En attendant l'établissement d'une Convention Générale sur le Domaine, les immeubles à usage collectif nécessaires à l'exercice des compétences transférées feront l'objet d'un prêt à usage qui sera constaté par un acte particulier impliquant location gratuite avec toutes charges d'entretien à la partie prenante. Un inventaire des immeubles prêtés sera établi contradictoirement et annexé au présent Protocole.

Les immeubles à usage particulier resteront à la disposition des Services Français.

Les immeubles loués à l'amiable seront remis à leurs propriétaires sauf si le Gouvernement Cambodgien désire en conserver l'usage.

. . .

5. PROTOCOLE (AVEC ÉCHANGE DE LETTRES) ENTRE LE GOUVERNEMENT ROYAL DU CAMBODGE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE RELATIF AU TRANSFERT DE L'AÉRONAUTIQUE CIVILE, DE L'INFRASTRUCTURE AÉRONAUTIQUE ET DU SERVICE DE LA MÉTÉOROLOGIE. FAIT À PHNOM-PENH, LE 16 JANVIER 1954[2]

Article premier

Le Gouvernement de la République Française transfère au Gouvernement Royal du Cambodge:

— Les Services d'Aéronautique Civile et Commerciale, de l'Infrastructure Aéronautique et de la Météorologie, avec les matériels et installations existants.

— Les compétences et les responsabilités qui lui sont dévolues en ces matières sur toute l'étendue du Territoire du Cambodge.

. . .

Article 4

La question de la répartition et du règlement financier des investis-

[1] Royaume du Cambodge, Ministère des Affaires étrangères et des Conférences, *op cit.*, p. 29.

[2] *Ibid.*, p. 47. Entré en vigueur le 16 janvier 1954.

sements faits sur le territoire du Cambodge en matière d'Aéronautique Civile, d'Infrastructure Aéronautique et de Météorologie sera réglée par la Convention Générale sur le Domaine. Il en est de même des investissements de toutes natures faits sur le territoire de l'Indochine dans l'intérêt et pour l'usage commun des Services transférés.

En attendant ce règlement, réserve est faite:

— des droits du Vietnam et du Laos;

— des droits antérieurement acquis par des personnes privées, physiques ou morales.

La même réserve est faite en ce qui concerne les droits du Cambodge et de ses ressortissants (personnes privées physiques ou morales) quant aux investissements réalisés sur les territoires des deux autres Etats.

. . . I

Phnom-Penh, le 16 Janvier 1954
N° 92/C

Monsieur Raymond Offroy, Ministre Plénipotentiaire
Représentant le Gouvernement de la République Française
à Son Excellence le Président du Conseil des Ministres
du Gouvernement Royal du Cambodge

Phnom-Penh

Excellence,

En vue de résoudre les problèmes techniques de personnel, d'infrastructure et d'équipement qui vont se poser à votre Gouvernement à la suite des transferts des compétences en matière d'Aéronautique Civile, d'Infrastructure Aéronautique et de Météorologie, j'ai l'honneur de vous faire connaître que le Gouvernement de la République Française consent à prendre les engagements ci après:

1° — Faciliter, si le Royaume du Cambodge le désire, son adhésion à l'Organisation de l'Aviation Civile Internationale et à l'Organisation Météorologique Mondiale;

(*Signé*) Raymond OFFROY

. . .

II

Phnom-Penh, le 16 Janvier 1954

N° 87-PCM/AP/X

Le Président du Conseil des Ministres
à Monsieur Raymond Offroy, Ministre Plénipotentiaire
Représentant le Gouvernement de la République Française

Monsieur le Ministre,

J'ai l'honneur de porter à votre connaissance que le Gouvernement Royal est d'accord sur les termes de votre lettre n° 92-C du 16 Janvier 1954.

. . .

(*Signé*) CHAN-NAK

. . .

6. PROTOCOLE (AVEC ÉCHANGE DE LETTRES) ENTRE LE GOUVERNEMENT ROYAL DU CAMBODGE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE RELATIF AU TRANSFERT DE LA MARINE MARCHANDE. FAIT À PHNOM-PENH, LE 16 JANVIER 1954[1]

. . .

Article premier

La France reconnaît que l'Indépendance du Cambodge lui confère des droits souverains en matières de Marine Marchande.

Article 2

Le Gouvernement Royal du Cambodge et le Gouvernement de la République Française se consulteront pour étudier les modalités d'adhésion du Cambodge aux Conventions Internationales auxquelles la France a adhéré dans ce domaine.

. . .

7. ACCORD FRANCO-KHMER RELATIF À LA RÉGLEMENTATION DES CONVOIS FLUVIAUX. FAIT À PHNOM-PENH, LE 16 FÉVRIER 1954[2]

. . .

Article premier

A la suite du transfert des compétences militaires au Gouvernement Royal, la réglementation des convois fluviaux sur les voies d'eau du Cambodge relève désormais de l'autorité cambodgienne.

Article 2

Pendant la période d'hostilités, en vue d'assurer la sécurité et le contrôle des convois fluviaux sur les itinéraires intéressant le Cambodge et le Viet-Nam et tant que la Marine Française conservera les responsabilités qu'elle exerce au Viet-Nam, le Haut-Commandement Français prendra en relation avec les autorités vietnamiennes des mesures appropriées pour assurer dans le cadre de la réglementation en vigueur la complète liberté et la sécurité de la navigation, sur les voies d'eau du Viet-Nam.

Réciproquement, le Gouvernement du Cambodge prendra les mesures appropriées pour assurer, dans le cadre de la réglementation en vigueur, la complète liberté et la sécurité de la navigation sur les voies d'eau du Cambodge.

Les Autorités Cambodgiennes se concerteront avec les Autorités Navales Françaises ou les Autorités Vietnamiennes, pour régler toutes questions intéressant la coopération nécessaire en matière de régulation fluviale.

. . .

8. PROTOCOLE ENTRE LE GOUVERNEMENT ROYAL DU CAMBODGE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE CONCERNANT LE TRANSFERT DES COMPÉTENCES RELATIVES AUX RÉGIES DE PRODUCTION ET DE DISTRIBUTION D'ÉNERGIE ÉLECTRIQUE. FAIT À PHNOM-PENH, LE 26 FÉVRIER 1954[3]

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[1] Royaume du Cambodge, Ministère des Affaires étrangères et des Conférences, op. cit., p. 55.

[2] *Ibid.*, p. 75.

[3] Royaume du Cambodge, Ministère des Affaires étrangères et des Conférences. op. cit., p. 83.

Article 2

Sont et demeurent transférées au Gouvernement Cambodgien les attributions précédemment exercées par le Service des Travaux Publics en ce qui concerne les régies de production et de distribution de l'Electricité au Cambodge.

Article 3

Les régies transférées, et qui étaient affiliées à l'Office de rééquipement et de distribution de l'Energie Electrique, doivent continuer à assurer sous le contrôle du Gouvernement Cambodgien l'amortissement industriel du matériel mis à leur disposition par l'Office de rééquipement et de distribution de l'Energie Electrique.

La répartition de l'actif et du passif de l'Office de rééquipement et de distribution de l'Energie Electrique qui a été mis en liquidation à compter du 1er Janvier 1953 par arrêté du Commissaire Général de France en Indochine N° 350/2088 du 16 Décembre 1953, interviendra ultérieurement sur la proposition du Conseil d'Administration de cet organisme.

Article 4

Le Gouvernement du Cambodge, qui possède en toute souveraineté les pouvoirs en matière de concession antérieurement dévolus au Gouvernement de la République Française, est substitué à ce Gouvernement pour exercer tous les droits et assumer les obligations découlant des Conventions, Cahiers des Charges et Avenants signés par l'Autorité Française et qui figurent au tableau annexé au présent Protocole[1].

Le Cambodge, en tant qu'Etat concédant, assume toutes les obligations et exerce tous les pouvoirs qui découlent des principes généraux du droit public international.

9. ECHANGE DE LETTRES ENTRE LE PRÉSIDENT DU CONSEIL DES MINISTRES DU ROYAUME DU CAMBODGE ET LE MINISTRE PLÉNIPOTENTIAIRE REPRÉSENTANT LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE RELATIF AU TRANSFERT DES COMPÉTENCES EN MATIÈRE D'HYGIÈNE ET DE SANTÉ PUBLIQUE. PHNOM-PENH, LE 16 FÉVRIER 1954[2]

I

N° 299-PCM/APX Phnom-Penh, le 16 Février 1954

Le Président du Conseil des Ministres
à Monsieur Raymond Offroy, Ministre Plénipotentiaire
Représentant le Gouvernement de la République Française

Monsieur le Ministre,

J'ai l'honneur de porter à votre connaissance que l'Accord Franco-Khmer du 15 Juin 1950 en matière d'Hygiène et de Santé Publique ne

[1] Non reproduits.

[2] Royaume du Cambodge, Ministère des Affaires étrangères et des Conférences, *op. cit.*, p. 105.

paraît plus en accord avec la situation actuelle du Cambodge. C'est ainsi que nos Gouvernements ont mis fin à la Convention hospitalière provisoire conclue, en application de l'article 6 de l'accord susvisé, entre le Service de Santé des F.T.E.O. et le Gouvernement Royal le 17 Juillet 1946, et modifiée par l'avenant du 12 Février 1952.

En vue de permettre au Gouvernement du Cambodge d'exercer en toute souveraineté les compétences que le Gouvernement de la République Française lui a transférées en 1950 en matière d'Hygiène et de Santé Publique, je vous prie de bien vouloir considérer comme caduques toutes dispositions de l'accord sus-mentionné, qui ne sont pas relatives à ce transfert et à la subrogation du Gouvernement Cambodgien au Gouvernement Français dans les droits et obligations découlant des accords et conventions conclus antérieurement par la France au nom du Cambodge.

Les dispositions de l'Accord Franco-Khmer du 15 Juin 1950 ayant trait au traitement des nationaux et à la liberté d'établissement reconnus aux ressortissants français, seront éventuellement adaptés aux principes qui seront arrêtés à Paris et qui présideront aux futures relations entre nos deux pays.

Il reste entendu que les modalités d'établissement et d'exercice de profession à caractère sanitaire ou médicale sont régies par les lois et règlements territoriaux.

. . .

(*Signé*) CHAN-NAK

II

Phnom-Penh, le 16 Février 1954
N° 264/CX

Monsieur Raymond Offroy, Ministre Plénipotentiaire
Représentant le Gouvernement de la République Française
à Son Excellence le Président du Conseil des Ministres
du Gouvernement Royal du Cambodge

Phnom-Penh

Excellence,

J'ai l'honneur d'accuser réception de votre lettre N° 299/PCM/APX du 16 Février 1954 et de porter à votre connaissance que le Gouvernement de la République Française est d'accord sur les dispositions qu'elle contient.

. . .

(*Signé*) Raymond OFFROY

Ceylon

Transmitted by a note verbale *dated 19 March 1963 of the Chargé d'Affaires of the Permanent Mission to the United Nations*

TREATIES

EXTERNAL AFFAIRS AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CEYLON-SIGNED AT COLOMBO ON 11 NOVEMBER 1947[1]

. . .

(6) All obligations and responsibilities heretofore devolving on the Government of the United Kingdom which arise from any valid international instrument shall henceforth, in so far as such instrument may be held to have application to Ceylon, devolve upon the Government of Ceylon. The reciprocal rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Ceylon, shall henceforth be enjoyed by the Government of Ceylon.

. . .

Cyprus

Transmitted by a note verbale *dated 30 January 1965 of the Ministry of Foreign Affairs*

A. TREATIES

TREATY CONCERNING THE ESTABLISHMENT OF THE REPUBLIC OF CYPRUS BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, GREECE AND TURKEY OF THE ONE PART AND CYPRUS OF THE OTHER. SIGNED AT NICOSIA, ON 16 AUGUST 1960[2]

. . .

Article 8

(1) All international obligations and responsibilities of the Government of the United Kingdom shall henceforth, in so far as they may be held to have application to the Republic of Cyprus, be assumed by the Government of the Republic of Cyprus.

(2) The international rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of their application to the territory of the Republic of Cyprus shall henceforth be enjoyed by the Government of the Republic of Cyprus.

. . .

[1] United Nations, *Treaty Series*, vol. 86, p. 25. Came into force on 4 February 1948. For full text of the agreement see below: UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, section A.I (*b*), 3, p. 167.

[2] United Nations, *Treaty Series*, vol. 382, p. 8. Came into force on 16 August 1960.

ANNEX E

Section 1

1. Save as provided in Annex B to this Treaty and in the next following paragraph, all property of the Government of the Colony of Cyprus shall on the date of entry into force of this Treaty become, subject to the provisions of the Constitution of the Republic of Cyprus, the property of the Republic of Cyprus.

2. Save as provided in Annex B to this Treaty, the following property of the Government of the Colony of Cyprus shall on that date become the property of the appropriate authorities of the United Kingdom, that is to say—

(*a*) immovable property situate in the Akrotiri Sovereign Base Area or the Dhekelia Sovereign Base Area;

(*b*) tangible movable property which normally is in the Akrotiri Sovereign Base Area or the Dhekelia Sovereign Base Area;

(*c*) intangible movable property which is necessary for the enjoyment of or otherwise relates to any property specified in sub-paragraph (*a*) or (*b*) of this paragraph or which relates to any other immovable property situate in the Akrotiri Sovereign Base Area or the Dhekelia Sovereign Base Area, to the extent that it so relates.

3. The transfer of property under this Section shall not affect the rights of other persons or groups of persons in respect of that property.

4. In this Section:

(*a*) "property" means—

(i) property, whether movable or immovable, tangible or intangible; and

(ii) rights of every description;

(*b*) a reference to specific property includes a reference to rights in, over, or related to that property; and

(*c*) "property of the Government of the Colony of Cyprus" means property vested in that Government or in Her Britannic Majesty for the purposes of that Government or in some other person or authority on behalf of that Government immediately before the date of entry into force of this Treaty. It is understood that the property of public utility corporations does not fall within this sub-paragraph.

Section 2

1. Save as provided in Annex B to this Treaty and in the next following paragraph, and except in so far as special arrangements may have been made before the date of entry into force of this Treaty to discharge certain such liabilities, all legal liabilities, and obligations incurred by or on behalf of the Government of the Colony of Cyprus and subsisting immediately before the date of entry into force of this Treaty shall have effect as from that date as if they were incurred by or on behalf of the Republic of Cyprus.

2. Save as provided in Annex B to this Treaty, legal liabilities and obligations incurred by or on behalf of the Government of the Colony of Cyprus and subsisting as aforesaid shall, to the extent that they were incurred in relation to property which passes to the United Kingdom

under this Annex, take effect as from the date aforesaid as if they were incurred by or on behalf of the United Kingdom.

3. In this Section, "legal liabilities and obligations incurred by or on behalf of the Government of the Colony of Cyprus"

(*a*) means—

(i) any liability or obligation which, at the time when it was incurred, would, under the law of the Colony of Cyprus, have been enforceable by an action against the Crown in right of the Government of that Colony, whether or not it would have been enforceable without the consent of the Governor of the Colony; and

(ii) any liability or obligation which, at the time when it was incurred, gave rise, under the law of the Colony of Cyprus, to a cause of action in tort against a servant of the Crown in right of the Government of that Colony and in respect of which the Crown would, in practice, have stood behind that servant for the purpose of satisfying any judgment against him; and

(*b*) includes any obligations undertaken by the Government of the Colony of Cyprus in respect of—

(i) annual payments to the authority for the time being responsible for the *Evcaf* Office and *vakfs*, made under and in accordance with legislation in force immediately before the date of entry into force of this Treaty, for or in respect of the abolition of *vakfs idjaretein* and *arazi mevkoufe takhsisat;* and

(ii) loans made by the Government of the United Kingdom under certain United Kingdom statutes, namely, the Colonial Development and Welfare Acts, 1940 to 1959, and the Colonial Development and Welfare Act, 1959.

Section 3

Nothing in this Treaty contained shall preclude any person from claiming through the court any remedy to which he may have been entitled immediately before the date of entry into force of this Treaty in respect of any *chiftlik* compulsorily acquired by or on behalf of the Government of the Colony of Cyprus. Nothing in this Section shall be construed as giving any right of action against the Government of the United Kingdom.

Section 4

Nothing in Sections 1 and 2 of this Annex shall prevent the conclusion of any special agreement or arrangement by the Republic of Cyprus and the United Kingdom with respect to the transfer or apportionment of any particular property, liability or obligation that was immediately before the date of entry into force of this Treaty property or a liability or obligation of the Government of the Colony of Cyprus.

Section 5

The arrangements concerning the pensions and other rights of or in respect of certain public officers who prior to the date of entry into force of this Treaty were or had been in the public service of the Colony of Cyprus, and concerning the conditions of service, pensions and other rights of and in respect of certain public officers who continue on or

after that date to serve in the public service of the Republic of Cyprus shall be those set out in the Schedule[1] to this Annex.

B. LAWS AND DECREES

CONSTITUTION OF THE REPUBLIC OF CYPRUS PROMULGATED ON 16TH AUGUST 1960

. . .

Article 188

1. Subject to the provisions of this Constitution and to the following provisions of this Article, all laws in force on the date of the coming into operation of this Constitution shall, until amended, whether by way of variation, addition or repeal, by any law or communal law, as the case may be, made under this Constitution, continue in force on or after that date, and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution.

2. Save where otherwise provided in the Transitional Provisions of this Constitution no provision in any such law which is contrary to, or inconsistent with, any provision of this Constitution and no law which under Article 78 requires a separate majority shall so continue to be in force:

Provided that the laws relating to the municipalities may continue to be in force for a period of six months after the date of the coming into operation of this Constitution and any law imposing duties or taxes may continue to be in force until the 31st day of December, 1960.

3. In any such law which continues in force under paragraph 1 of this Article, unless the context otherwise requires —

(*a*) any reference to the Colony of Cyprus or to the "Crown" shall, in relation to any period beginning on or after the date of the coming into operation of this Constitution be construed as a reference to the Republic;

(*b*) any reference to the Governor or the Governor in Council shall, in relation to any such period, be construed as a reference to the President and the Vice-President of the Republic, separately or conjointly, according to the express provisions in this Constitution, to the House of Representatives in matters relating to exercise of legislative power other than those expressly reserved to the Communal Chambers, to the Communal Chamber concerned in all matters within its competence under this Constitution, and to the Council of Ministers in matters relating to exercise of executive power;

(*c*) any reference to the Administrative Secretary or the Financial Secretary, shall in relation to any such period, be construed as a reference to the Ministry or Independent Office of the Republic for the time being charged with responsibility for the subject in relation to which reference is made;

(*d*) any reference to the Attorney-General or the Solicitor-General, shall, in relation to any such period, be construed as a reference to the Attorney-General of the Republic or the Deputy-General of the Republic respectively;

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[1] Reproduced in United Nations, *Treaty Series*, vol. 382, p. 134.

(*e*) any reference to any other person holding a public office or to any authority or body, shall, in relation to any such period, be construed as a reference to the corresponding public officer or corresponding authority body or office of the Republic.

4. Any court in the Republic applying the provisions of any such law which continues in force under paragraph 1 of this Article, shall apply it in relation to any such period, with such modification as may be necessary to bring it into accord with the provisions of this Constitution including the Transitional Provisions thereof.

5. In this Article —
"law" includes any public instrument made before the date of the coming into operation of this Constitution by virtue of such law;
"modification" includes amendment, adaptation and repeal.

. . .

Article 190

1. Subject to the ensuing provisions of this Article any court existing immediately before the date of the coming into operation of this Constitution shall, notwithstanding anything in this Constitution, as from that date and until a new law is made regarding the constitution of the courts of the Republic and in any event not later than four months from that date, continue to function as hitherto but constituted, as far as practicable, in accordance with the provisions of this Constitution:

Provided that any pending proceedings, civil or criminal, part heard on the date of the coming into operation of this Constitution shall continue and be disposed of, notwithstanding anything contained in this Constitution, by the court as constituted in such a case.

2. Notwithstanding anything in this Constitution and until the Supreme Constitutional Court established thereunder is constituted within a period not later than three months of the date of the coming into operation of this Constitution, the Registry of the High Court shall be the registry of the Supreme Constitutional Court.

3. The registry of the High Court shall be deemed to be the registry of the Supreme Constitutional Court for all its purposes, including a recourse, until such Court is constituted; the constitution of such Court shall be effected not later than three months of the date of the coming into operation of this Constitution.

4. In computing any time with regard to a recourse to the Supreme Constitutional Court under the provisions of this Constitution, the period between the date of the coming into operation of this Constitution and the constitution of such Court as aforesaid shall not be counted.

5. The Supreme Court existing immediately before the date of the coming into operation of this Constitution shall be deemed to be the High Court as established under this Constitution until the constitution of such Court under the provisions thereof; the constitution of such Court shall be made not later than three months of the date of the coming into operation of this constitution:

Provided that a reference to the Chief Justice shall be a reference to the senior member of such Court, and such Court shall be deemed to be validly constituted during such period notwithstanding that its membership shall be below four.

Article 191

Any proceedings pending on the date of the coming into operation of this Constitution in which the Attorney-General on behalf of the Government of the Colony of Cyprus or any Department or officer thereof is a party shall continue, on and after such date, with the Republic or its corresponding office or officer being substituted as a party.

Article 192

1. Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date.

2. Subject to paragraph 1 of this Article the judges of the Supreme Court other than the Chief Justice and the judges and magistrates of the subordinate courts holding office immediately before the date of the coming into operation of this Constitution shall, notwithstanding anything contained in Articles 153 and 157, as from that date continue to hold their respective offices as if they had been duly appointed thereto under the provisions of those Articles until an appointment is made under the provisions of those Articles and the provisions of this Constitution shall apply to them accordingly.

3. Where any holder of an office mentioned in paragraphs 1 and 2 of this Article is not appointed in the public service of the Republic he shall be entitled, subject to the terms and conditions of service applicable to him, to just compensation or pension on abolition of office terms out of the funds of the Republic whichever is more advantageous to him.

4. Subject to paragraph 5 of this Article any holder of an office mentioned in paragraphs 1 and 2 of this Article whose office comes, by the operation of this Constitution, within the competence of a Communal Chamber, may, if he so desires, waive his rights under paragraph 3 of this Article and choose to serve under such Communal Chamber and in such a case such holder of such office shall be entitled to receive from the Republic any retirement pension, gratuity or other like benefit to which he would have been entitled under the law in force immediately before the date of the coming into operation of this Constitution in respect of the period of his service before such date if such period by itself or together with any period of service under such Communal Chamber would, under such law, have entitled him to any such benefit.

5. Any teacher who, immediately before the date of the coming into operation of this Constitution, was a serving teacher and was in receipt of remuneration out of the public funds of the Colony of Cyprus and whose office comes, by the operation of this Constitution, within the competence of a Communal Chamber shall be entitled to receive from the Republic any retirement pension, gratuity or other like benefit to which he would have been entitled under the law in force before the date of the coming into operation of this Constitution in respect of the period of his service before such date if such period by itself or together with any period of

service under such Communal Chamber would, under such law, have entitled him to any such benefit.

6. Any person who, immediately before the date of the coming into operation of this Constitution, being in the public service of the Colony of Cyprus is on leave prior to retirement therefrom or on transfer from that service to any service other than that of the Republic shall, irrespective of whether he is a citizen of the Republic or not, continue to be entitled to the same terms and conditions of service as were applicable to him under such circumstances before that date and such terms and conditions shall not be altered to his disadvantage.

7. For the purposes of this Article —

(*a*) "public service" in relation to service before the date of the coming into operation of this Constitution means service under the Government of the Colony of Cyprus and in relation to service after that date means service in a civil capacity under the Republic and includes service as a member of the security forces of the Republic;

(*b*) "terms and conditions of service" means, subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits.

8. Save as provided in paragraph 6 of this Article nothing in this Article shall apply to a person who is not a citizen of the Republic.

Article 193

Any person who, immediately before the date of the coming into operation of this Constitution, was in receipt of any pension or other retirement benefit out of the public Funds, including the Widows' and Orphans' Pension Fund, of the Colony of Cyprus shall on and after the date of the coming into operation of this Constitution, continue to be paid such pension or other retirement benefit out of the public Funds of the Republic under the same terms and conditions as were applicable to such pensions or other retirement benefits immediately before the date of the coming into operation of this Constitution or under terms and conditions made thereafter not less favourable to that person and applicable to his case.

Article 194

The eligibility of any person to receive a pension under the Widows' and Orphans' Pension Fund shall, on and after the date of the coming into operation of this Constitution, continue to be subject to the same terms and conditions as were in force immediately before the date of the coming into operation of this Constitution and shall not be altered to the disadvantage of any such person so long as such eligibility remains.

. . .

Article 197

1. Any movable or immovable property, or any right or interest thereon, which, immediately before the date of the coming into operation of this Constitution, was vested in, held by, or registered in the name of, the Government of the Colony of Cyprus, or any other person or body, for and on behalf of, or in trust for, any school, or other body or institu-

tion which come, by or under the provisions of this Constitution, within the competence of the Communal Chambers shall, as from that date, be vested in, and be held by such person, body or authority as provided by a law of the respective Communal Chamber subject to such terms and conditions as such communal law may provide:

Provided that no such law shall direct that any such property shall vest in, or be held by, the Communal Chamber itself.

2. Nothing in this Article contained shall apply to any bequest or other donation administered by trustees or to any *vakf* in connexion with any educational purposes.

Dahomey

Renseignements communiqués par note verbale en date du 21 mai 1963 du Ministère des Affaires étrangères

A. OBSERVATIONS

[Evolution constitutionnelle et politique du Dahomey et de certains autres anciens territoires de l'Afrique francophone vers la souveraineté internationale et l'indépendance]

1. Sous le régime de la Constitution française de 1946, la catégorie juridique de « *Territoire d'Outre-Mer* » était conférée au Dahomey, territoire de l'A.-O.F. (Afrique-Occidentale Française). Une décentralisation politique fut mise en œuvre par la loi-cadre du 23 juin 1956 et ses décrets d'application.

2. Mais la crise constitutionnelle et politique qui survint le 13 mai 1958 déclencha un mouvement général d'émancipation dans les anciennes colonies françaises et depuis cette date *l'évolution s'est faite de plus en plus rapidement*. L'année 1958, notamment par la Constitution du 4 octobre 1958, allait marquer une *étape essentielle* de l'évolution constitutionnelle et politique des territoires de l'Afrique noire francophone.

3. La France voulut en effet établir une association durable avec les Etats africains dans le cadre d'une « Communauté » et tous ceux-ci sauf la Guinée, lors du référendum organisé sur le projet de Constitution, le 28 septembre 1958, choisirent le Statut d'Etats autonomes, *membres de la Communauté*. Les Etats membres bénéficiaient de l'autonomie interne, définie par l'article 77 de la Constitution[1], et dans le cadre de ce principe se donnèrent des constitutions: le Dahomey adopta sa première constitution le 14 février 1959. Mais rapidement, les Républiques africaines éprouvèrent le légitime désir de devenir totalement *indépendantes*. Que prévoyait donc en la matière la Constitution de 1958?

4. En pratique, une seule voie: l'article 86 de la Constitution stipulait que si la France pouvait exclure de la Communauté un Etat indésirable,

[1] « Dans la Communauté instituée par la présente Constitution, les Etats jouissent de l'autonomie; ils s'administrent eux-mêmes et gèrent démocratiquement et librement leurs propres affaires.

Il n'existe qu'une citoyenneté de la Communauté.

Tous les citoyens sont égaux en droit, quelles que soient leur origine, leur race et leur religion. Ils ont les mêmes devoirs. »

par contre un Etat membre pouvait demander l'indépendance après accomplissement de trois formalités:

Demande présentée par l'Assemblée législative de l'Etat intéressé;
Référendum local confirmant cette demande;
Accord approuvé par le Parlement français et le Sénat de la Communauté.

Mais l'article 78, troisième alinéa, instituait un autre système, voie détournée que choisit la Fédération du Mali le 29 novembre 1959. Cet article prévoyait que « des accords particuliers [pouvaient] créer d'autres compétences communes ou régler *tout transfert de compétence de la Communauté à l'un des ses membres* ».

5. Dans les mois qui suivirent, les autres Etats africains déposèrent des demandes dans le même sens: en particulier, le 3 juin 1960, le Premier Ministre du Dahomey demanda conjointement avec les autres Chefs d'Etat du Conseil de l'Entente l'obtention de la souveraineté internationale. Une revision constitutionnelle était donc indispensable et finalement l'article 86 fut modifié: le nouveau texte prévoyait que la Communauté pouvait comprendre plusieurs Etats indépendants et que cette indépendance entraînait le plein exercice des compétences étatiques. En outre, le troisième alinéa de l'article 86 ouvrait une nouvelle voie pour l'accession à l'indépendance, qui pouvait être obtenue « *par voie d'accords* ».

6. Après de nombreuses négociations, l'indépendance des Etats africains membres de la Communauté intervint, et en particulier l'indépendance du Dahomey, qui fut proclamée le 1er août 1960. Lors de son accession à la pleine souveraineté internationale, le Dahomey modifia fondamentalement sa constitution et adopta l'actuelle Constitution, le 25 novembre 1960.

B. TRAITÉS

ACCORD PARTICULIER ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE DU DAHOMEY ET LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE PORTANT TRANSFERT DES COMPÉTENCES DE LA COMMUNAUTÉ. FAIT À PARIS, LE 11 JUILLET 1960

. . .

Article premier

La République du Dahomey accède, en plein accord et amitié avec la République Française, à la souveraineté internationale et à l'indépendance par le transfert des compétences de la Communauté.

Article 2

Toutes les compétences instituées par l'article 78 de la Constitution du 4 octobre 1958 sont, pour ce qui la concerne, transférées à la République du Dahomey, dès l'accomplissement par les parties contractantes de la procédure prévue à l'article 87 de ladite Constitution.

. . .

Ghana

Transmitted by a note verbale *dated 17 September 1963 of the Minister of Foreign Affairs of Ghana*

A. TREATIES

EXCHANGE OF LETTERS BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND GHANA RELATIVE TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF GHANA. ACCRA, 25 NOVEMBER 1957[1]

. . .

(i) All obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument shall henceforth, in so far as such instrument may be held to have application to Ghana, be assumed by the Government of Ghana;

(ii) The rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to the Gold Coast shall henceforth be enjoyed by the Government of Ghana.

. . .

B. LAWS AND DECREES

GHANA (CONSTITUTION) ORDER IN COUNCIL, 1957[2]

PART I

Preliminary

. . .

3. (1) The Gold Coast (Constitution) Order in Council, 1954[3] as amended by the Gold Coast (Constitution) (Amendment) Order in Council, 1955[4], the Gold Coast (Constitution) (Amendment No. 2) Order in Council, 1955[5] and the Gold Coast (Constitution) (Amendment) Order in Council, 1956[6] is revoked to the extent set out in the second column of Part I of the First Schedule to this Order, but without prejudice to anything lawfully done thereunder.

(2) The amendments set out in Part II to the First Schedule to this Order shall be effected to the Fourth Schedule of the said Gold Coast (Constitution) Order in Council, 1954.

(3) The Northern Territories of the Gold Coast Orders in Council, 1950 and 1954[7] and the Togoland under United Kingdom Trusteeship Orders in Council, 1949 to 1954[8] shall cease to have effect but without prejudice to anything lawfully done thereunder.

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[1] United Nations, *Treaty Series*, vol. 287, p. 233. Came into force on 25 November 1957.

[2] Statutory Instruments [hereinafter cited as S.I.], 1957, No. 1. Sections 77, 90, 91 and Second Schedule came into operation on 23 February 1957, and the remainder on 6 March 1957, the day on which the Gold Coast attained fully responsible status within the British Commonwealth under the name of Ghana.

[3] S.I. 1954/551; 1954 II, p. 2788.

[4] S.I. 1955/1218; 1955 II, p. 3150.

[5] S.I. 1956/1219; 1955 II, p. 3156.

[6] S.I. 1956/997.

[7] S.I. 1950/2095; 1950 II, p. 96. S.I. 1954/553; 1954 II, p. 2825.

[8] S.I. 1949/1997; 1949 I, p. 1892. S.I. 1950/2096; 1950 II, p. 1036. S.I. 1954/552; 1954 II, p. 2827.

(4) The continued operation of any law in force in Ghana or any part thereof immediately before the appointed day shall not be affected by reason only of the provisions of this section.

(5) The jurisdiction of any court, having jurisdiction before the appointed day in any part of Ghana, shall not be affected by reason only of the provisions of this section.

. . . PART VIII

Finance

58. The Funds of Ghana not allocated by law to specific purposes shall form one Consolidated Fund into which shall be paid the produce of all taxes, imposts, rates and duties and all other revenues of Ghana not allocated to specific purposes.

. . . PART XI

Transitional Provisions

. . .

74. (1) Save as otherwise provided by this Order, any person appointed to any office under the provisions of the existing Orders and holding that office immediately prior to the appointed day shall be deemed to have been duly appointed thereto in pursuance of this Order.

. . .

75. All compensation, pensions, gratuities and other like allowances granted in accordance with the provisions of section 58 and the Fourth Schedule of the Gold Coast (Constitution) Order in Council, 1954 shall be charged on and paid out of the Consolidated Fund.

76. (1) On and after the appointed day, the Supreme Court of the Gold Coast shall be known as the Supreme Court of Ghana and such Court shall, subject to any law for the time being in force, continue to have throughout Ghana the same jurisdiction and powers as heretofore.

. . .

(3) The Chief Justice and other Judges of the Supreme Court appointed to office prior to the appointed day and in office on that date shall, subject to the provisions of section 77 of this Order, be deemed to have been duly appointed to the Supreme Court of Ghana . . .

77. (1) The provisions contained in the Second Schedule to this Order shall apply to the Judges (including the Chief Justice) referred to in the said Schedule in respect of their retirement from office and the grant to them of compensation, pensions, gratuities and other like allowances.

(2) All compensation, pensions, gratuities and other like allowances granted in accordance with the provisions of subsection (1) of this section and the Second Schedule shall be charged on and paid out of the Consolidated Fund.

. . .

80. Where any Ordinance or other instrument of a legislative character was, prior to the appointed day, enacted or made and the coming into operation thereof was suspended, such Ordinance or instrument may, on or after the appointed day, come into operation on the date specified therein or as may be specified by the Governor-General or other authority empowered to bring it into operation and in such case, the Ordinance or instrument shall from that date take effect as part of the law of Ghana.

81. Save as expressly provided by this Order, nothing in this Order shall be construed as affecting the validity or continued operation of any Proclamation, Order, Regulation or other instrument made under the existing Orders and in force immediately prior to the appointed day without prejudice however to any power to amend, revoke or replace the same.

. . .

89. The Governor-General may, before the expiry of a period of one year from the appointed day, by proclamation published in the *Gazette* make such provision as he is satisfied is necessary or expedient in consequence of the provisions of this Order, for modifying, adding to or adapting any law which refers, in whatever terms to the Governor or to any public officer or authority, or otherwise for bringing any law into accord with the provisions of this Order and of the existing Orders, as amended by this Order, or for giving effect to those provisions.

. . .

THE FIRST SCHEDULE

(Section 3)

PART I

COLUMN 1 *Orders*	COLUMN 2 *Extent of Revocation*
The Gold Coast (Constitution) Order in Council, 1954[1] as amended by the Gold Coast (Constitution) (Amendment) Order in Council, 1955,[2] the Gold Coast (Constitution) (Amendment No. 2) Order in Council, 1955,[3] and the Gold Coast (Constitution) (Amendment) Order in Council, 1956.[4]	Sections 4 to 55. Section 59. Subsections (1), (2), (3) and (4) of section 60. Sections 61 to 69. The words "and the provisions of section 6 of this Order shall apply accordingly to the exercise of such functions" where they occur in section 70. Sections 71 to 73. The First, Second and Third Schedules.

PART II

Amendments to the Fourth Schedule to the Gold Coast (Constitution) Order in Council, 1954

. . .

3. The following new paragraph shall be inserted immediately after paragraph 17 —

"18 (*a*) An overseas officer, who substantively held a public office on pensionable terms on the day immediately prior to the date of commencement of the Ghana Independence Act, 1957, which office ceased to exist on such date by virtue of the revocation of the Gold

[1] S.I. 1954/551; 1954 II, p. 2788.
[2] S.I. 1955/1218; 1955 II, p. 3150.
[3] S.I. 1955/1219; 1955 II, p. 3156.
[4] S.I. 1956/997.

Coast Colony and Ashanti Letters Patent, 1954 and 1955, shall retire on the date at which any unexpired leave earned at such date expires.

"(*b*) An officer to whom sub-paragraph (*a*) of this paragraph applies shall be entitled on the date of his retirement to such pension and gratuity or to such gratuity as an 'entitled officer' is eligible to receive and in addition at his option either to compensatory pension or to compensation for loss of career.

". . ."

THE SECOND SCHEDULE

(*Section 77*)

[Text not reproduced here. This Schedule contains detailed provisions relating to the entitlement of certain overseas officers (who were appointed, on or before 4 May 1954, Judges of the Supreme Court of the Gold Coast) to the compensatory pension, compensation for loss of career, earned pension or gratuity and so forth.]

Guatemala

Transmitted by a letter dated 10 January 1963 of the Permanent Mission to the United Nations[1]

OBSERVATIONS

[Requirements for recognition of new States and Governments]

1. In the course of the past few years the Government of Guatemala has recognized new States in a simple and straightforward manner, in no case imposing any conditions and, in the case of recognition of new States in succession to others, stipulating only the satisfaction of the requirements which have traditionally been considered essential for that purpose and abiding as a general rule by the declaratory doctrine.

2. The essential elements for the existence of a State have been considered to be that the State should possess the following:

(*a*) The human element, in the form of a distinct population;

(*b*) Its own territory;

(*c*) A constituted Government;

(*d*) Economic resources;

(*e*) A complete legal system;

(*f*) Independence and the capacity to enter into relations with other States.

3. In the case of recognition of Governments, Guatemala has likewise granted such recognition without imposing any obligations or securing any special advantages, confining itself to simple recognition and stipulating only that the requirements which have traditionally been considered essential for that purpose should be satisfied in each case.

4. Guatemala has maintained the traditional view that the recognition of new Governments requires that such entities should be able to show the following characteristics:

[1] Original Spanish. Translation by the Secretariat of the United Nations.

(*a*) Control of the administration of the State;

(*b*) The consent of the population, which is proved if the governed obey the orders of the Government;

(*c*) Acceptance by the new Government of its international obligations;

(*d*) That the Government was formed in accordance with international law, for where a Government is set up through the use of force by a foreign army of occupation there is no obligation to recognize it.

5. To the foregoing, the following might be added:

(1) Recognition should be granted only to States constituted in territories which are not the subject of controversy or dispute on the part of a third Power and concerning which no territorial claim is outstanding;

(2) Before recognition is granted, the new State should show that, in addition to being viable and satisfying the requirements prescribed by international law, it does not remain subject in any way to the former metropolitan Power if it was constituted in a colonial territory;

(3) Before recognition is granted, the instruments which the new State signed with the former metropolitan Power at the time of attaining independence should be examined, since such instruments indicate any limitations imposed on its external and internal sovereignty;

(4) Before recognition is granted, the political constitutions of new States should be examined, since any limitations imposed on their political sovereignty are reflected in such constitutions.

Indonesia

Transmitted by a note verbale *dated 14 January 1964 of the Permanent Representative to the United Nations*

A. TREATIES

I. Texts

1. Draft Agreement on Transitional Measures attached to the Covering Resolution accepted at the Second Plenary Meeting of the Round Table Conference between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia, at The Hague, on 2 November 1949[1]

. . .

[1] United Nations, *Treaty Series*, vol. 69, p. 266. The following footnotes appear in said volume: (*a*) "The ratification of the Agreement provided for in paragraph IV of the Covering Resolution, was recorded in The Protocol signed at Amsterdam on 27 December 1949. In accordance with paragraph V of the Covering Resolution, the Agreement came into force on 27 December 1949, upon the transfer of sovereignty executed by the Act of Transfer of Sovereignty and Recognition, signed on that date at Amsterdam." [See op. cit., p. 200, footnote 1.] (*b*) "Note from the Netherlands Government: The Covering Resolution with attached draft agreements and exchanges of letters has been adopted by the Round Table Conference at The Hague in plenary session on 2 November 1949. As this resolution has been accepted on the one hand by the Kingdom of the Netherlands and on the other hand by the territories which have entered into the former Republic of the United States of Indonesia and therefore the documents affixed to this resolution have been ratified — as was

Article 5

1. The Republic of the United States of Indonesia and the Kingdom of the Netherlands understand that, under observance of the provisions of paragraph 2 hereunder, the rights and obligations of the Kingdom arising out of treaties and other international agreements concluded by the Kingdom shall be considered as the rights and obligations of the Republic of the United States of Indonesia only where and inasmuch as such treaties and agreements are applicable to the jurisdiction of the Republic of the United States of Indonesia and with the exception of rights and duties arising out of treaties and agreements to which the Republic of the United States of Indonesia cannot become a party on the ground of the provisions of such treaties and agreements.

2. Without prejudice to the power of the Republic of the United States of Indonesia to denounce the treaties and agreements referred to in paragraph 1 above or to terminate their operation for its jurisdiction by other means as specified in the provisions of those treaties and agreements, the provisions of paragraph 1 above shall not be applicable to treaties and agreements in respect of which consultations between the Republic of the United States of Indonesia and the Kingdom of the Netherlands shall lead to the conclusion that such treaties and agreements do not fall under the stipulations of paragraph 1 above.

. . .

2. AGREEMENT BETWEEN THE REPUBLIC OF INDONESIA AND THE KINGDOM OF THE NETHERLANDS CONCERNING WEST NEW GUINEA (WEST IRIAN). SIGNED AT THE HEADQUARTERS OF THE UNITED NATIONS, NEW YORK, ON 15 AUGUST 1962[1]

. . .

Article XI

To the extent that they are consistent with the letter and spirit of the present Agreement, existing laws and regulations will remain in effect. The UNTEA[2] will have the power to promulgate new laws and regulations or amend them within the spirit and framework of the present Agreement. The representative councils will be consulted prior to the issuance of new laws and regulations or the amendment of existing laws.

. . .

Article XIV

After the transfer of full administrative responsibility to Indonesia, Indonesian laws and regulations will in principle be applicable in the territory,[3] it being understood that they be consistent with the rights and freedoms guaranteed to the inhabitants under the terms of the

formally established at Amsterdam on December 27, 1949 — the word "draft", wherever appearing in the opening lines of the following documents, should be deleted." [See op. cit., p. 202, footnote 1.] See below in section A, II, the text of the note provided by the Government of INDONESIA.

[1] United Nations, *Treaty Series*, vol. 437, p. 273. Came into force on 21 September 1962.

[2] United Nations Temporary Executive Authority.

[3] West New Guinea (West Irian), as referred to in the preamble of the Agreement.

present Agreement. New laws and regulations or amendments to the existing ones can be enacted within the spirit of the present Agreement. The representative councils will be consulted as appropriate.

. . .

Article XXII

. . .

2. The UNTEA will take over existing Netherlands commitments in respect of concessions and property rights.

3. After Indonesia has taken over the administration it will honour those commitments which are not inconsistent with the interests and economic development of the people of the territory. A joint Indonesian-Netherlands commission will be set up after the transfer of administration to Indonesia to study the nature of the above-mentioned concessions and property rights.

Article XXV

The present Agreement will take precedence over any previous agreement on the territory. Previous treaties and agreements regarding the territory may therefore be terminated or adjusted as necessary to conform to the terms of the present Agreement.

II. Notes

Round Table Conference Agreements of 2 November 1949

[The draft agreement on transitional measures referred to above], as well as all other agreements of the Round Table Conference, have been abrogated by the Republic of Indonesia as of 15 February 1956 (Law No. 13 of the Year 1956 concerning the abrogation of the Indonesian-Netherlands relations based on the Round Table Conference Agreements, enacted on 22 May 1956, retroactive to 15 February 1956).

B. LAWS AND DECREES

1. Constitution of the Republic of Indonesia of 1945

Article II of the Transitional Articles

All existing official institutions and regulations (prior to the Proclamation of Independence on August 17, 1945) shall remain in force until new ones shall have been instituted in accordance with the present Constitution.

2. Constitution of the United States of Indonesia of 1949[1]

Article 192

(1) The existing laws and other administrative regulations at the time

[1] *Note by the Government of Indonesia*: "On 17 August, 1950, Indonesia changed its federal system back to its original unitary system and its name from 'the United States of Indonesia' to 'the Republic of Indonesia'. Thus, on 17 August, 1950, the Constitution of the United States of Indonesia was replaced by the Provisional Constitution of the State of the Republic of Indonesia of 1950. With the re-proclamation of the Constitution of 1945 on 5 July 1959, the 1950 Provisional Constitution was again replaced by the 1945 Constitution."

the present Constitution comes into force (will) remain in effect as laws and regulations of the United States of the Republic of Indonesia if and as long as the laws and regulations have not been withdrawn, appended or amended by laws and administrative regulations under the authority of this Constitution.

(2) The continuation of the existing laws and administrative regulations as enunciated in paragraph 1 will be in effect only as long as the laws and regulations are not in contradiction with the provisions of the Charter of the Transfer of Sovereignty, Statute of the Union, Transitional Agreement or other agreements related to the transfer of sovereignty, and as long as the laws and regulations are not in contradiction with the provisions of the present Constitution which do not require regulation by law or executive actions.

C. DIPLOMATIC CORRESPONDENCE

1. Note dated 18 October 1963 of the Department of Foreign Affairs of the Republic of Indonesia in reply to a request for information from the Embassy of the Federal Republic of Germany in Djakarta[1]

[International Agreement for the Suppression of the White Slave Traffic of 18 May 1904, International Convention for the Suppression of the White Slave Traffic of 4 May 1910, Agreement for the Suppression of the Circulation of Obscene Publications of 4 May 1910, Convention for the Suppression of the Circulation of and Traffic in Obscene Publications of 12 September 1923, International Convention relative to Motor Traffic of 24 April 1926.]

The Department of Foreign Affairs of the Republic of Indonesia presents its compliments to the Embassy of the Federal Republic of Germany and, with reference to the Embassy's verbal note dated April 2, 1958, No. 65/58, has the honour to inform the Embassy that article 5 of the "Overgangsovereenkomst" 1949 (Transitional Agreement) between the Republic of Indonesia and the Kingdom of the Netherlands does not cause by itself the automatic application to the Republic of Indonesia of international agreements, which were applicable to the territory of the former Netherlands Indies.

For the continued application of such international agreements a further step is required on the part of the Indonesian Government, i.e. the sending of a declaration to the other contracting party (-ies) or depositary, as the case may be, that the Indonesian Government wishes to be regarded as a party to the agreement concerned in the place of the former Netherlands Indies.

As regards the 5 conventions mentioned in the Embassy's note, namely:

1. International Agreement for the Suppression of the White Slave Traffic of 18 May 1904[2]
2. International Convention for the Suppression of the White Slave Traffic of 4 May 1910[3]

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[1] Unofficial translation supplied by the Government of Indonesia.

[2] League of Nations, *Treaty Series*, vol. I, p. 83.

[3] De Martens, *Nouveau Recueil Général de Traités*, troisième série, tome VII, p. 252.

3. Agreement for the Suppression of the Circulation of Obscene Publications of 4 May 1910[1]
4. Convention for the Suppression of the Circulation of and Traffic in Obscene Publications of 12 September 1923[2]
5. International Convention relative to Motor Traffic of 24 April 1926,[3]

no such declaration has ever been made by the Indonesian Government to the depository of those conventions. Consequently, the Republic of Indonesia is not a party of the said conventions.[4]

. . .

Israel

Transmitted by a note verbale *dated 29 July 1963 of the Permanent Mission to the United Nations*

A. OBSERVATIONS

1. The following material, which has been prepared pursuant to a request of the International Law Commission, is submitted for information only and is without prejudice to the position adopted by the Government of Israel on questions of "Succession" as appears hereafter. Account has also been taken of General Assembly resolution 1765 (XVII) of 20 November 1962, which refers specifically to the views of States which have achieved independence since the Second World War, and to the Report of the Sub-Committee on the Succession of States and Governments (A/CN.4/160), which has been adopted by the International Law Commission.

I. Origin of "succession"

2. The origin of "succession" in the case of Israel is the termination of the Mandate for Palestine promulgated by the Council of the League of Nations on 24 July 1922. The Mandate contained no general provisions regarding "succession" in the event of its termination except that, by Article 28, the Mandatory was obliged to "use its influence for securing, under the guarantee of the League, that the Government of Palestine will fully honour the financial obligations legitimately incurred by the Administration of Palestine during the period of the Mandate, including the rights of public servants to pensions or gratuities". As is known, the question of the future government of Palestine was referred to the General Assembly in April 1947 by the Mandatory Government. The General Assembly adopted, on this question, its resolution 181 (II) on 29 November 1947. To that resolution was attached a Plan of Partition with Economic Union. That Plan envisaged an orderly transfer of power and authority from the Mandatory authorities to the Governments of the

[1] De Martens, *Nouveau Recueil Général de Traités*, troisième série, tome VII, p. 266. See also: League of Nations, *Treaty Series*, vol. XI, p. 438.

[2] League of Nations, *Treaty Series*, vol. XXVII, p. 213.

[3] *Ibid.*, vol. CVIII, p. 123.

[4] As indicated by the Government of Indonesia "similar notes have also been sent to several other foreign Embassies in Djakarta concerning the interpretation of article 5 of the Agreement on Transitional Measures of 1949".

two States the creation of which it proposed. That orderly transition would have created a set of reciprocal rights and duties between the Mandatory Government and the successor Governments, and between the successor Governments themselves. See, for example, Part C of the Plan of Partition with Economic Union. However, events took a different turn; the Arabs rejected the plan; the Mandatory refused to implement it; the Arab State never came into existence; and the reciprocal obligations, which would have rested on a treaty basis, were never assumed.

3. There was in fact no systematic transfer of power and authority from either the United Kingdom Government or the Government of Palestine to the Government of Israel, and certain statements made on behalf of the outgoing power were understood, at the time at least, as implying that no orderly transition was being contemplated.[1] This also explains why some time elapsed until diplomatic relations between the United Kingdom and the State of Israel were normalized. The British Government, which had abstained on the vote of General Assembly resolution 181 (II), recognized Israel *de facto* on 29 January 1949, and *de jure* on 27 April 1950 i.e. four weeks after the signing of a Financial Agreement with Israel. This is also relevant to an understanding of the development of the attitude of the Government of Israel towards questions of State succession.

4. Since there was no orderly transfer of power and authority, from the legal point of view there occurred two disconnected actions. The first of these, chronologically speaking, was an Act of the United Kingdom Parliament known as the Palestine Act, 1948.[2] This provided that on 15 May 1948, "the date on which the Mandate will be relinquished, all jurisdiction of His Majesty in Palestine shall terminate, and His Majesty's Government in the United Kingdom shall cease to be responsible for the government of Palestine". This Act gave effect to the British Government's policy which, including the date on which it was to take effect, had been announced on several occasions after the adoption of resolution 181 (II) of 29 November 1947.

5. The second of these disconnected actions, chronologically speaking, was the Declaration on the Establishment of the State of Israel[3] proclaimed, after the adoption of resolution 181 (II), by the members of the Jewish Provisional Council of Government which had been created with the recognition of the U.N. Palestine Committee set up by that resolution. On account of the Jewish Sabbath, the Declaration, dated 14 May 1948, proclaimed that "with effect from the moment of the termination of the Mandate, being tonight, the eve of Sabbath", the State of Israel was established. This Declaration was accompanied by a Proclamation,[4]

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[1] See, e.g., statements by the representatives of the United Kingdom, in the *General Assembly* on 3 May 1948 (*Official Records of the General Assembly, Second Session, First Committee*, 136th meeting) and statements made in the House of Commons by the Attorney-General (Parliamentary Debates, House of Commons, vol. 448.)

[2] *British and Foreign State Papers*, 150 (1948), Part I, p. 278.

[3] *Laws of the State of Israel*, authorized translation from the Hebrew (hereinafter cited as "Laws of the State of Israel"), 1 (5708-1948), p. 3.

[4] Ibid., p. 6.

the significant provision of which, for present purposes, was for the continuance in force of the law which existed in Palestine on 14 May 1948, subject to the amendments and repeals therein specified. This in turn was followed on 19 May 1948 by the Law and Administration Ordinance, 5708-1948,[1] with retroactive effect to 15 May, dealing with the governance of Israel. This Law, which has been amended several times since, contains a number of provisions dealing with transition and the assumption of power and the exercise of authority by the Israel Government and its organs, and therefore it is relevant to the topic of "succession". A consolidated text of the relevant provisions of this enactment appears as an Annex to this Memorandum.

6. As stated, the independence of Israel was not immediately followed by either recognition or the establishment of diplomatic relations between Israel and the United Kingdom. However, on 18 May 1949, a few months after recognition *de facto*, the United Kingdom Government proposed formal negotiations with the Government of Israel on "a number of questions arising out of the termination of the United Kingdom Mandate in Palestine which will require detailed discussion between His Majesty's Government and the successor authorities in Palestine". Besides referring to matters such as the public debt, various liabilities of the former Palestine Government and its obligations to public servants, the United Kingdom Government mentioned specifically the following five questions which should be included in the agenda of the proposed negotiations:

(1) The determination of the proportion of the assets and liabilities in Palestine of the Government of Palestine to be taken over by the successor authorities;
(2) Certain problems connected with the assets, claims and liabilities in Palestine of H.M. Government in the United Kingdom;
(3) Certain problems connected with the assets in Palestine of Germans and others whose property was formerly under the care of the Custodian of Enemy Property in Palestine;
(4) Private claims and property rights in Palestine;
(5) Treaties and other international agreements binding upon the former Mandatory Government of Palestine.

With regard to the criterion for apportionment, the hope of the United Kingdom Government was expressed that the Government of Israel would be willing to take over the liabilities of the former Palestine Government in the same proportion as they took over the assets of that Government. Finally, apart from any assets and liabilities of the Palestine Government, the United Kingdom Government intimated its willingness to dispose of certain other assets in Palestine which the United Kingdom Government would wish to offer for sale to the Israel Government.

7. The proposed agenda was accepted in principle by the Government of Israel. The negotiations commenced in Israel in the middle of 1949. Difficulties arose on general questions of principle since, having regard to the history of the matter, the Government of Israel could not see its way to commit itself to the view of the British representatives, that there existed a general doctrine of universal succession and that such

[1] *Laws of the State of Israel*, 1 (5708-1948), p. 7.

a doctrine was automatically applicable to Israel. Particularly relevant, in this connexion, was the absence of orderly and systematic transfer of power and authority prior to the termination of the Mandate as envisaged by the General Assembly in resolution 181 (II). In the circumstances, the negotiations broke down, but were resumed later in London. At the resumed negotiations, the matters were discussed on a pragmatic basis not related to any theoretical issues of succession; and as a result there was signed at London on 30 March 1950 a bilateral Agreement for the Settlement of Financial Matters Outstanding as a Result of the Termination of the Mandate for Palestine.[1] It will be observed that this Agreement deals exclusively with certain financial assets and liabilities in Israel belonging to the former Government of Palestine or the Government of the United Kingdom, and with certain other miscellaneous material assets and liabilities, including those in the hands of the Palestine Custodian of Enemy Property (see paras. 26-28 below).

8. In the light of all the circumstances, the Government of Israel, by 1949, had reached the conclusion that the rules of State succession, at all events as traditionally expounded in the leading textbooks on the subjests, could not have application. It was observed that in the major instances of succession to which reference is normally made, particularly those of the twentieth century, the practical problems had been regulated by appropriate international treaty, being either a Peace Treaty, or a treaty itself forming part of the broader political transaction of which the grant of independence was the central feature; and that the relevant international and national jurisprudence was intimately connected with those international treaties. This factor of agreement was missing in the present case. This development was itself the consequence of a series of political events, in which the absence of orderly transfer of authority from the United Kingdom and the Palestine Governments to the Government of Israel was a phase.

9. That was the position adoptcd on the political level, and which, in the view of the Government of Israel, prevailed in the negotiations which preceded the Agreement of 30 March 1950. The same view was adopted independently by the Supreme Court of Israel in its two leading decisions on the topic, namely *Shimshon Palestine Portland Cement Factory Ltd.* v. *the Attorney-General*[2] and *Sifri* v. *the Attorney-General.*[3]

II. Ratione materiae

(a) *Treaties*

10. The position of the Government of Israel regarding the antecedent treaty obligations incumbent upon the mandated territory of Palestine is set forth in a Memorandum of 24 January 1950 submitted in response to an earlier questionnaire of the International Law Commission.[4] The

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[1] United Nations, *Treaty Series*, vol. 86, p. 231.

[2] *International Law Reports*, 17 (1950), p. 72; *Digest of decisions of national courts relating to succession of States and Governments* (hereinafter cited as "*Digest*") (in *Yearbook of the International Law Commission, 1963*, vol. II, p. 95), para. 416.

[3] *International Law Reports*, 17 (1950), p. 92; *Digest*, para. 310

[4] *Yearbook of the International Law Commission*, 1950, vol. II, p. 206, with particular reference to paras. 19 *et seq.*

position stated in that Memorandum continues to reflect the position of the Government of Israel.

11. The policy there explained, based upon non-recognition by the Government of Israel of any automatic "succession" to the treaty obligations of Palestine, coupled with a willingness to examine that treaty position and to accede *de novo* to such international treaties as were found to be appropriate, whether or not the mandated territory of Palestine was previously bound by them, has not given rise to serious difficulties. It has been applied both to multilateral and to bilateral treaties. For example, in 1951, by an exchange of notes with France, a Franco-British Extradition Treaty of 1876, which (on the basis of the Mandate) had been applicable to Palestine, was provisionally brought into force *mutatis mutandis* as between Israel and France and effect has been given to it by the Courts.[1] Similarly, an Agreement between Israel and the United Kingdom of 10 February 1950 — prior to the Agreement of 30 March 1950 — brings into force as between Israel and the United Kingdom an arrangement originally made in 1947 between the United Kingdom Government and the Government of Palestine for the Avoidance of Double Taxation.[2]

12. Having regard to its own position of principle on the question of "succession" and the law of treaties, the Government of Israel has had no difficulty in accepting the different positions adopted by other new States on the same topic. The Government of Israel is prepared to recognize that some new Governments may wish to regard themselves as bound by the totality of the treaty obligations binding their territories before independence while other Governments may wish to adopt other attitudes.

13. In paragraphs 12 and 13 of the Memorandum of 24 January 1950 reference was made to the problem which could arise from the fact that a domestic law passed in order to give internal effect to an international treaty binding upon Palestine remained on the Statute Book although the international treaty itself was not binding upon Israel. The view was expressed that the disappearance of the international obligations removed the basis upon which the domestic law was operative. A decision of the Supreme Court has since confirmed that full effect may be restored to such a domestic law whenever Israel assumes the international obligations which the domestic law is designed to reflect. This means that

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[1] United Nations, *Treaty Series*, vol. 219, pp. 215, 220, 224, 228. This Agreement was renewed from time to time until replaced by a new Extradition Treaty. For judicial decision see *Waskerz* v. *Attorney-General*, *International Law Reports*, 21 (1954), p. 236.

[2] United Nations, *Treaty Series*, vol. 86, p. 211. See also the exchange of notes of 10 December 1950 regarding the application between the two countries of Article 4 of the Industrial Property Convention of 2 June 1934 in United Nations, *Treaties Series*, vol. 88, p. 211, amended on 25 January 1951, ibid., p. 218. It has to be pointed out that by virtue of the constitutional law of Israel an international agreement is not part of the law of the land except in so far as it has been incorporated in domestic legislation. See United Nations Legislative Series, *Law and practices concerning conclusion of treaties* (ST/LEG/SER.B/3), p. 67 at p. 71. This has been applied of course in litigation arising out of this Agreement. See, for instance, *Association for the Protection of Bondholders* v. *the Minister of Finance*, *International Law Reports*, 18 (1951), p. 398; *Richuk* v. *the State of Israel*, to be published in the 1959 volume of the same series.

in principle the operation of those domestic laws becomes suspended during the period in which there is in existence no corresponding international obligation, and that the full effect of the law can be restored by the assumption of the international obligation.[1]

(b) *Nationality*

14. The Israel Nationality Law of 1952[2] was passed by the Knesset on 1 April 1952 and entered into force on 14 July 1952. Palestine nationality had been regulated by the Palestine Citizenship Orders-in-Council, 1925-1942. Bearing in mind the conditions, to be described subsequently (para. 30 below), for the continuity of the law in Israel, some doubts had been expressed whether the Palestine Citizenship Orders-in-Council could, in the interval, be read as legislation governing Israeli nationality.[3] However, these doubts were later set at rest by the Israel Nationality Law which, after it had come into force, formally repealed the Mandatory legislation with effect from 15 May 1948, and provided that any act done by the Israel authorities between 15 May 1948 and 14 July 1952 should be deemed to be valid if it would have been valid had the Nationality Law been in force at the time it was done.

15. With reference to the possible extra-territorial effects of these internal developments in the matter of nationality, this Government is unable to give an overall picture of the positions taken by other legal systems on the question of the effect of the termination of the Mandate and the establishment of Israel in 1948, and the enactment of the Israel Nationality Law in 1952, as regards the nationality status of former Palestine citizens who became Israeli nationals under the Law.[4]

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[1] *See Yakimovitz* v. *Rubashitz*, *International Law Reports*, 23 (1956), p. 471. That case concerned the operation of the Convention on the Execution of Foreign Arbitral Awards of 26 September 1927, which Israel signed in 1951 and ratified in 1952. That Convention had previously been applied to Palestine under Article 19 of the Mandate. See paragraph 8 of the Memorandum of 24 January 1950. The domestic law required a formal announcement by the Government regarding the States in relation to which the Convention was operative. Since no such announcement had been made by the Government of Israel in due form, the Supreme Court, in this case, declined to give effect to the Convention on the internal level. The *Waskerz* case (see footnote 1 on p. 42) provides another instance, where all the necessary domestic requirements imposed by earlier legislation had been met.

[2] United Nations Legislative Series, *Laws concerning nationality* (ST/LEG/SER.B/4), p. 263, and supplement (ST/LEG/SER.B/9), p. 66.

[3] See the following cases: *Goods of Shipris*, *International Law Reports*, 17 (1950), *Digest*, para. 23; *AB* v. *MB*, *International Law Reports*, 17 (1950), *Digest*, para. 24; *Oseri* v. *Oseri*, *International Law Reports*, 17 (1950), p. 111, *Digest*, para. 25; and *Hussein* v. *Governor of Acre Prison*, *International Law Reports*, 17 (1950), p. 112. See also *Naqara* v. *Minister of the Interior* regarding non-existence of Palestinian nationality after the termination of the Mandate and the effect of the termination of the Mandate on Palestinian passports, *International Law Reports*, 20 (1953), p. 49.

[4] But see *Kletter* v. *Dulles*, *International Law Reports*, 20 (1953), p. 251. This case also refers to some questions of succession and citizenship with regard to the establishment of the Mandate for Palestine and the Treaty of Lausanne. For previous litigation regarding the same person, and the relationship of Palestine citizenship to United Kingdom nationality, see *The King* v. *Ketter*, in *Annual Digest and Reports of International Law Cases* (hereinafter cited as "Annual Digest"), 10 (1938-40), case No. 21.

(c) *Public property*

16. The basic principle of the Agreement of 30 March 1950 was that title to property of the Palestine Government in Israel was to pass to the Government of Israel, and that property of the United Kingdom Government in Israel was either to be purchased or to be taken by the Government of Israel, in accordance with the terms of the Agreement. This basic principle is reflected in Section 2 of the State Property Law, 5711-1951, which provides (retroactively) that property of the Palestine authorities situate in Israel is property of the State of Israel as from 15 May 1948. "Property of the Palestine authorities" is defined as including: "(1) all immovable property; (2) all mines and minerals, of whatever kind, situate in or on land or in, on or under water, including rivers, lakes, inland seas and coastal waters; (3) all movable property; (4) all rights, whether vested or contingent, which on 14 May 1948 were held by the Government of Palestine or any of its departments or services, or by the High Commissioner, whether as trustee for the Government of Palestine or otherwise, or by some other functionary of the Government of Palestine in virtue of his office, whether as trustee for the Government of Palestine or any of its departments or services or otherwise than as trustee."[1]

(d) *Concessionary rights*

17. Although the agenda for the negotiations with the United Kingdom Government included the question of concessionary rights, the Agreement of 30 March 1950 makes no reference to them. The Government of Israel continued to respect existing concessionary rights relating to its territory in so far as these had been previously granted or recognized by the Government of Palestine, and in the course of time has proceeded to negotiate with the concessionnaires the adaptation of concessionary rights to the new conditions. The reference here is to concessionary rights possessing an international, or at least a general, character as commonly understood, the terms of most of which were incorporated in domestic legislation passed by the Government of Palestine. These must be distinguished from other private law property rights and interests which will be discussed later. This Government has occasionally been approached regarding similar concessionary rights allegedly granted by the Ottoman authorities before 1917, but in the absence of any recognition of those concessions by the Mandatory Government, has declined to deal with them.

(e) *Public debt*

18. Israel assumed responsibility for a share of the public debt of Palestine by virtue of Article 2 of the Agreement of 30 March 1950. By Article 4 of that Agreement the Israel Government became entitled to receive repayments by Municipal Corporations and the like in Israel of loans furnished them by the Government of Palestine and which were a charge on the assets which formed part of the public debt of Palestine, in return for which the Government of Israel assumed responsibility for the discharge of various liabilities likewise occasioned by certain loans floated by the Government of Palestine. By Artiele 6 of the same Agree-

[1] *Laws of the State of Israel*, 5 (5711-1950/51), p. 45.

ment, the Government of the United Kingdom, while not admitting any liability whatever in respect of claims against the Mandatory Government, undertook to give sympathetic consideration to such claims properly brought by persons who, on 30 March 1950, were resident in Israel, provided that the decision as to whether any particular claim should be paid, the amount of which should be paid in respect thereof, and the manner of payment, should be in the sole discretion of the Government of the United Kingdom. The Agreement also makes provision for the disposal of various funds, including funds held in trust by the Government of Palestine, for local purposes. No difficulty was experienced with regard to those funds intended for use in what subsequently became the territory of Israel. With regard to funds which did not have a defined territorial application, arrangements were made for the apportionment of most of such funds. The Government of Israel also regards this Agreement as conclusive in regard to any claims against Palestine and based upon the former Ottoman public debt.

(f) *Other questions of public law*

19. The most significant other questions of public law which have arisen include the following:

(*a*) Public officials;

(*b*) Problems arising out of the Second World War and the liquidation of the functions of the Custodian of Enemy Property;

(*c*) Miscellaneous financial matters.

(g) *Public officials*

20. The question of pensions and gratuities due to former officials of the Mandatory Government not resident in Israel on 30 March 1950 was regulated by the Government of the United Kingdom. With regard to the pensions and gratuities of officials of the former Mandatory Government resident in Israel, by Article 2 (*c*) of the Agreement of 30 March 1950, the Government of Israel indertook to pay their pensions up to an amount not excccding 200,000 Israel Pounds annually, the capitalized value of which was estimated at 2,400,000 pounds Sterling; and by Article 3 of that Agreement the Government of Israel undertook to reimburse the United Kingdom Government in respect of certain payments made by the United Kingdom Government to those officials between 15 May 1948 and 31 May 1950. The implementation of these provisions has given rise to certain difficulties in Israel following various devaluations of the Israel Pound, but these are not, strictly speaking, questions of "succession".[1]

21. The Government of Israel does not regard itself as being under any other obligation towards former officials of the Mandatory Government resident in Israel other than those of a financial character which it has undertaken by virtue of the Agreement of 30 March 1950. By the Palestine Government Employees Ordinance, 5708-1948,[2] every person who on 14 May 1948 was in the service of the Government of Palestine and whose ordinary place of residence was on that date within the territory of Israel, was to serve temporarily in accordance with the

[1] See *Richuk* v. *State of Israel* (cited).

[2] *Laws of the State of Israel*, 1 (5708-1948), p. 19.

instructions of the Government of Israel unless, before the publication of the Ordinance (3 June 1948), he was otherwise notified. By the Ordinance, the Government was given discretion to terminate the service of any such Government employee or to transfer him to another post within six months of the promulgation of the Law. Special provisions applied to members of the Police Force.[1]

(h) *Problems arising out of the Second World War*

22. As is known, the question whether territories under League of Nations Mandate could formally be a belligerent in a war in which the Mandatory Government was a belligerent has given rise to doctrinal controversy. As far as concerns Palestine, a formal proclamation was issued in the *Palestine Gazette* by the High Commissioner, announcing that "war has broken out between His Majesty and Germany". Similar proclamations were later issued regarding the outbreak of war with Italy, Finland, Hungary, Rumania, Japan, Bulgaria and Thailand.[2] The Peace Treaties of 1946 and 1947 came into force prior to the termination of the Mandate, and notifications regarding the termination of the state of war with Thailand, Italy, Rumania, Bulgaria, Hungary and Finland were likewise promulgated in the *Palestine Gazette*.[3] On 30 April 1948 a formal notice was made regarding the termination of the state of war with Austria as from 16 September 1947, but this was not promulgated in the *Palestine Gazette* although it appeared in a pamphlet of ungazetted legislation to which reference will be made in paragraph 31 below.

23. With regard to Germany, in October 1950 the Government of Israel was officially informed of certain intentions of the Governments of the United States, the United Kingdom and France regarding the Government of the Federal Republic of Germany, and particularly of their intention "to take the necessary steps in their domestic legislation to terminate the state of war with Germany". Those three Governments expressed the hope that the Government of Israel would find it possible to take similar action. Following is the text of the reply of 9 January 1951:

> "The Ministry for Foreign Affairs presents its compliments to the British Legation and has the honour to refer to the Legation's Note of 24 October 1950 concerning decisions reached by the Foreign Ministers of the United Kingdom, the United States and France at their meeting in New York in September last.
>
> "The Ministry has particularly noted the decision of the three Governments to take the necessary steps in their domestic legislation to terminate the state of war with Germany, and their affirmation that

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[1] For judicial decisions regarding former officials of the Palestine Government see *Sifri* v. *Attorney-General, International Law Reports*, 17 (1950), p. 92; *Bergtal* v. *Schwartzman and Others*, ibid., p. 93; *Albohar* v. *Attorney-General*, ibid., p. 94; *Digest*, paras. 310, 311, 314 respectively.

[2] See *Palestine Gazette* Extraordinary No. 929, Supplement No. 2, 11 September 1939, p. 807; same, No. 1020, 14 June 1940, p. 793; same, No. 1150, 8 December 1941, p. 1867; same, No. 1151, 9 December 1941, p. 1869; same, No. 1161, 8 January 1942, p. 83; same, No. 1169, 19 February 1942, p. 317.

[3] See *Palestine Gazette* No. 1467, 21 February 1946, p. 179; same, No. 1617, 2 October 1947, p. 1073.

any action by the Occupying Powers as is more particularly described in the said Note in no way prejudices the final peace settlement.

"In the Note the hope was expressed that the Government of Israel if it saw fit, would find it possible to take action similar to that decided upon by the Governments of the United Kingdom, the United States and France, whose view it was that such action would create a firmer foundation for the developing structure of friendly relationships and would remove disabilities to which German nationals were subject. The Ministry for Foreign Affairs desires to inform the British Legation that in the view of the Government of Israel, which has given the matter its most careful consideration, the exceptional circumstances of this country do not warrant action on the lines suggested.

"In bringing the above to the notice of the Legation, the Ministry for Foreign Affairs desires to point out that the Government of Israel reserves fully its rights and position in relation to Germany and its claims against that country."

24. During the Second World War Jewish (and Arab) Palestinians enlisted in the British armed forces and a Jewish Brigade Unit was formed in the British Army and fought against the Germans on the Italian front. The territory of Palestine was subjected on several occasions to air attack by Axis forces, particularly the cities of Tel Aviv and Haifa. For the purposes of the application of the German and Italian Prize Codes (and it is understood for other purposes of "economic warfare") Palestine was treated as enemy territory and Palestinians as enemy subjects[1] and, conversely, by virtue of the United Kingdom Prize Act, 1939[2] the Supreme Court of Palestine was commissioned to act as a Prize Court. It is thus seen that the mandated territory of Palestine was fully integrated into the United Nations war effort, both militarily and economically, and, regardless of theoretical considerations, was regarded by both sides as being belligerent territory. The termination of the Mandate took place before any of the immediate effects of the war had been liquidated. Two matters in particular are relevant to a consideration of the topic of "succession", namely the assumption by Israel of the power to punish Nazi criminals, and the disposal of property held

[1] See, for instance, in the Italian Tribunale delle Prede, *Ministero della Marina* c. *Palestine Cooperative Wholesale Society (Beatrice C)*, (1941) *Bollettino del Tribunale delle Prede* (1941-5), Parte II, p. 25; *Same* c. *Anglo-Palestine Bank Ltd., (Beatrice C)*, ibid., p. 106; *Same* c. *Braslawsky (Cilicia)*, (1941), ibid., p. 179; *Same* c. *Magazinik (Cilicia)*, (1941), ibid., p. 189; *Same* c. *Meshi Saks (Cilicia)*, (1941), ibid. p. 198; *Same* c. *Barclays Bank, D.C.O. Tel Aviv (Cilicia)*, (1941), ibid., p. 203; *Same* c. *Hanau (Cilicia)*, (1941), ibid., p. 207; *Same* c. *Lichtenstein (Cilicia)*, (1941), ibid., p. 211; *Same* c. *Goodrich (Cilicia)*, (1941), ibid., 218; *Same* c. *Palestine Gas Co., (Cilicia)*, (1941), p. 223; *Same* c. *Anglo-Palestine Bank Ltd. (Cilicia)*, (1941), ibid, p. 227; *Same* c. *The Cultivated Home (Cilicia)*, (1941), ibid., p. 237; *Same* c. *Glickmann (Cilicia)*, (1941), ibid., p. 242; *Same* c. *Hereuth, Tel Aviv (Cilicia)*, (1941), ibid., p. 246; *Same* c. *Rosy (Cilicia)*, (1941), ibid., p. 250; *Same* c. *Air Liquide, Haifa (Cilicia)* (1941), ibid., p. 255; *Same* c. *Taya (Cilicia)*, (1941), ibid., p. 269; *Same* c. *S.C.T.T. Groupages (Cilicia)*, (1941), ibid., p. 272; *Same* c. *Banca Misrahi (Cilicia)*, (1941), ibid., p. 277; *Same* c. *Chemo Orient Ltd., Tel Aviv (Cilicia)*, (1941), ibid., p. 285; *Same* c. *Allern's Bank (Cilicia)*, (1942), ibid., p. 297; *Same* c. *Anglo-Palestine Bank (Cilicia)*, (1942), ibid., p. 370; With regard to Germany, see *Sammlung des Wehrrechts, Prisenordnung und Prisengerichtsordnung* (1942), p. 39.

[2] *British and Foreign State Papers*, 143 (1939), p. 169.

by the Custodian of Enemy Property. In this connection, it might be noted that for certain purposes, legislation of the Federal Republic of Germany also recognizes that Israel, and Israeli nationals, may be regarded as other United Nations as regards special measures dealing with the consequences of the War. See, for instance, Allied High Commission Laws Nos. 54 and 55 of 31 May 1951.

(i) *Nazi criminals*

25. The power to try and punish Nazi criminals was assumed by the Nazis and Nazi Collaborators (Punishment) Law, 5710-1950,[1] and has been applied in several instances.[2] The significant feature of this Law, from the point of view of "succession", is that it assumes power to try and punish these criminals for acts—violations of international law—committed in enemy territory during the period of the Second World War, and even before. The material provisions of the enactment are based upon the London Charter of 8 August 1945, the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis. In that Law, the period of the Second World War is defined as beginning on 1 September 1939 (although the United Kingdom only entered the war on 3 September 1939), and ending on 14 August 1945; and enemy country is defined as Germany during the relevant period, any other Axis State during the period of the war between it and the Allied Powers and territory which was *de facto* under the rule of Germany or of any Axis State during the relevant period; and Allied Powers is defined by reference to the signatories of the Washington Declaration of the United Nations of 1 January 1942, or the States which acceded to it during the period of the Second World War.

(j) *Custodian of enemy property*

26. This functionary had been established by the Palestine Trading with the Enemy Ordinance, 1939, which substantially followed the United Kingdom Trading with the Enemy Act, 1939. The termination of the formal state of war with a number of belligerent countries shortly before the termination of the Mandate had not been followed immediately by the liquidation of the functions of the Custodian of Enemy Property as regards those countries, nor indeed had the Mandatory Custodian been able to divest himself of property belonging to nationals or residents of territory occupied by the enemy during the War, and which came within the scope of the Trading with the Enemy legislation. The question of the future of the Custodian of Enemy Property, with particular reference to international obligations assumed by the United Kingdom Government immediately following the unconditional surrender of Germany, was inconclusively discussed in the Palestine Commission set up by virtue of resolution 181 (II). Immediately on the establishment of Israel, an Israeli Custodian of Enemy Property was appointed, the 1939 Ordinance itself remaining unchanged. The Agree-

[1] *Laws of the State of Israel*, 4 (5710-1950/1), p. 154.

[2] See *War Crimes* cases (Israel), *International Law Reports*, 18 (1951) Case No. 169; the *Eichmann* case (to be published in a future volume of the same series), *Digest*, para. 37.

ment of 30 March 1950 with the United Kingdom deals, in Article 5, with the liquidation of the functions of the Custodian of Enemy Property as regards Allied property, technically enemy, and enemy property as far as concerns those States with which a treaty of peace had already entered into force. Special provisions appear in that Article regarding German property. The functions of the Custodian of Enemy Property with regard to all property except German property were thereafter progressively liquidated, in accordance with the responsibilities which the Government of Israel took upon itself under the Agreement, for the most part on a bilateral, and inter-Custodial, basis. For the sake of completeness, it might be added that no particular problems arose regarding the liquidation of the Custodian of Enemy Property's functions in relation to Japanese property.

27. The position with regard to German property covered by the Trading with the Enemy Ordinance was more complicated. By the German Property Law of 1950,[1] the functions of the Custodian of Enemy Property as regards German property were transferred to the newly appointed Custodian of German Property. On 19 September 1952 an Agreement was signed between Israel and the Federal Republic of Germany by which provision was made for the payment by the Federal Republic of Germany of global recompense in respect of the criminal acts which were perpetrated against the Jewish people during the National-Socialist regime of terror.[2] At the same time, it was agreed that negotiations for the settlement of certain German claims relating to property in Israel which during the War had been sequestered by the Palestine Custodian of Enemy Property would be undertaken. These claims related to German nationals, resident in Palestine, who had been resettled outside the country by the Mandatory Authorities prior to the termination of the Mandate. Those negotiations were completed only by an agreement signed on 1 June 1962.[3]

28. Apart from these questions of administration, the Courts have had to consider generally the effects of the termination of the Mandate on the nature of the functions performed by the Israeli Custodian of Enemy Property. The Court based its decision, in a case concerning Jewish property which during the War was technically alien as belonging to a citizen of one of the German occupied countries, on the change in the very nature of the Custodian's function which followed from the termination of the Mandate, in respect to Jewish owned property which, during the War, had come within the scope of the Trading with the Enemy Ordinance.[4]

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[1] *Laws of the State of Israel*, 4 (5710-1950/1), p. 142.

[2] United Nations, *Treaty Series*, vol. 162, p. 205.

[3] *Ibid.*, vol. 448, p. 227.

[4] See *Diamond* v. *Minister of Finance and Another*, *International Law Reports*. 17 (1950), Case No. 28. And for a curious case of double succession, arising from a claim against the Custodian of German Property based on the non-execution by Germany of an award rendered in 1926 by the Rumanian-German Mixed Arbitral Tribunal established under the Treaty of Versailles, see *Steinberg and Another* v. *Custodian of German Property*, *International Law Reports*, 24 (1957), p. 771. Subsequently the Custodian of German Property reached an out-of-Court settlement with the claimant in that case.

(k) *Miscellaneous financial matters*

29. By Section 21 of the Law and Administration Ordinance, 5708-1948, all taxes and payments which had not been paid to the Government of Palestine by 14 May 1948 were to be paid to the Government of Israel. In this connection attention is drawn to the case of *Farkas* v. *Attorney-General*, in which the appellant was convicted, after the termination of the Mandate, for smuggling goods into Palestine before the termination of the Mandate without payment of customs duty.[1] *L.* v. *Inspector of Income Tax* deals with the collection of income tax due but unpaid before the termination of the Mandate.[2] *Attorney-General* v. *Levitan* considers the capacity of the Attorney-General of Israel to sue on an executor's bond given in favour of the Attorney-General of Palestine.[3]

(l) *Questions of private law and law in general*

30. Section 11 of the Law and Administration Ordinance, 5709-1948, lays down that the law which existed in Palestine on 14 May 1948 should remain in force in so far as there was nothing therein repugnant to that Ordinance or to the other Laws which might be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as might result from the establishment of the State and its authorities. Section 13 repealed certain sections of the Immigration Ordinance, 1941, and certain regulations of the Defence (Emergency) Regulations, 1945, dealing with what, in the Mandatory period, was regarded as "illegal" Jewish immigration, and laid down that any Jew who, at any time, had entered Palestine in contravention of the laws of the Mandatory Government should, for all intents and purposes, be deemed to be a legal immigrant retroactively from the date of his entry into Palestine. At the same time the Land Transfers Regulations, 1940, were repealed retroactively from 18 May 1939, the date of their enactment, and it was provided that no judgment given on the basis of those Regulations should be a bar to the lodging of a new claim in the same matter. These repeals related specifically to legislation which had been enacted pursuant to the so-called White Paper policy of 1939, the legality of which had been consistently contested by the Jewish Agency for Palestine, the body recognized by Article 4 of the Mandate to represent Jewish interests in the implementation of the Mandate with its emphasis on the establishment of the Jewish National Home. Section 12 of the Ordinance nullified any privileges or special powers granted by the law previously in force to British functionaries as such; Section 14 provided for the devolution of all powers vested by law in the King of England or any of the Secretaries of State or High Commissioner or the Government of Palestine to the Government of Israel and vested powers which the law conferred on British Consuls and the like on similar officials to be appointed by the Government of Israel; and by Section 15 a general amendment was made to substitute "Israel" for "Palestine" wherever appearing in any law.

31. Among the more general problems which are of interest to the topic of "succession" the following may be mentioned:

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[1] *Annual Digest*, 16 (1949), Case No. 26, at p. 71.
[2] See *International Law Reports*, 18 (1951), Case No. 28, at p. 67.
[3] *Ibid.*, Case No. 28.

(*a*) It may be noted that while in the premises the Mandate for Palestine terminated as an international instrument or treaty, it continued to remain in force as part of the law of Israel for certain limited purposes. In the leading case of *Leon and Others* v. *Gubernik*,[1] the Supreme Court, in one of its earliest decisions, intimated that it was prepared to examine the Mandatory legislation for its consistency with the terms of the Mandate; and in *Ahmed Shauki al-Karbutli* v. *Minister of Defence* the same Court decided that it regarded itself as being under the duty of examining whether any given antecedent legislation was *ultra vires* as being repugnant to the provisions of the Mandate.[2]

(*b*) The generality of Section 11 of the Law and Administration Ordinance was based on the assumption, following the general practice of the Mandatory Government and Article 24 of the Mandate, that all legislation, including subsidiary legislation, had been regularly promulgated in the *Palestine Gazette*. Shortly after the termination of the Mandate it transpired that, under special powers assumed by virtue of the Palestine Act, 1948, some legislation had not been promulgated in the *Palestine Gazette* and indeed, so far as was known to the Israel Government, had not been promulgated in Palestine at all. For shortly after the termination of the Mandate there appeared in the United Kingdom a brochure containing the texts of over forty miscellaneous pieces of ungazetted legislation. In order to remove doubts regarding the scope of the application of Section 11, that Section was amended by the Law and Administration Ordinance (Amendment) Law, 5709-1949, to the effect that "an unpublished law has no effect and never had any effect", an unpublished law being defined as a law which, between 29 November 1947 (the date of the adoption of the General Assembly resolution 181 (II)) and 15 May 1948, was not published in the *Palestine Gazette*, despite its being a law of a category publication of which in the Palestine Gazette was, immediately prior to that period, obligatory or customary.[3]

32. Among miscellaneous judicial decisions, the following may be mentioned. In *Forer* v. *Guterman* it was held that an Order in judicial proceedings made by the Privy Council (which was the ultimate court of appeal from the Courts of Palestine during the period of the Mandate) before the termination of the Mandate but which reached the parties in Israel after the termination of the Mandate, was binding on the parties and could be executed in Israel. The Court intimated that the position might have been different had the decision of the Privy Council been given after the termination of the Mandate.[4] In *Tyre Shipping Company Ltd.* v. *Attorney-General* it was held that, following the repeal of the White Paper legislation, a vessel engaged in the transport of illegal immigrants and which had been confiscated by the Palestine Govern-

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[1] *Annual Digest*, 15 (1948), at p. 42.

[2] *Ibid.*, 16 (1949), Case No. 19. For an instance of such examination in which criminal legislation against polygamy was examined in the light of the freedom of conscience provisions of the Mandate, see *Yosipof* v. *Attorney-General*, *International Law Report*, 1951. Case No. 58.

[3] *Laws of the State of Israel*, 3 (5709-1949), p. 73.

[4] *Annual Digest*, 15 (1948), Case No. 21, *Digest*, para. 68. By Section 2 (1) of the Palestine Act, 1948, appeals from Palestine pending before the Privy Council on the termination of the Mandate abated on the termination of the Mandate.

ment did not on the termination of the Mandate become the property of the Israel Government.[1] In *Feingold* v. *Administrator-General* it was held that where proceedings had been commenced in 1947 by the Administrator-General of Palestine (the local equivalent of the Public Trustee), but the hearing took place only after the termination of the Mandate, the Administrator-General of Israel was not the substitute or successor of the Administrator-General of Palestine and the action could not be continued.[2] In *Khayat* v. *Attorney-General* it was held, interpreting Article 7 of the Agreement of 30 March 1950, that the termination of the Mandate did not affect a title in Israel to property which, prior to the termination of the Mandate was owned by the British Army.[3] In *Pales Ltd.* v. *Ministry of Transport* it was held that the Israel Railways Administration was not bound by a local concession for newspaper kiosks and book-stalls on Haifa Central Railway Station which had been granted to a local firm by a contract dating from 1938 made with the General Manager of the Palestine Railways.[4]

33. With regard to the criminal law, the question which arose in *Katz-Cohen* v. *the Attorney-General*[5] was whether a person could be tried and convicted by the Israeli Courts in respect of murder or manslaughter committed in Tel Aviv before the termination of the Mandate. The Court held that despite the change of sovereignty the authorities of Israel were entitled to bring the man to trial and that in the circumstances there was no principle of international law to deny continuity of law and continuity of the power to punish in these circumstances. The Court based its conclusion on the nature of the offence charged and not on any general question of "succession". In *Saleh Khalil* v. *Attorney-General*[6] the rule was extended with regard to an offence which had been committed prior to the termination of the Mandate in a place which came within the jurisdiction of Israel as a result of one of the General Armistice Agreements of 1949. By the General Amnesty Ordinance, 5709-1949, an amnesty was granted to persons undergoing punishment, and pending criminal proceedings were discontinued in respect to offences committed before 10 February 1949.[7] In consequence, there has been no further jurisprudence on this point. However, some other aspects of the administration of criminal law have been decided by the Courts. In *Abu Ras* v. *Minister of the Interior* it was held that preventive measures taken for political reasons by the authorities of the Palestine Government prior to the termination of the Mandate afforded no ground for depriving an individual of his right of residence in Israel.[8] In *Arar* v. *Governor of Tel Mond Prison* the applicant had been convicted in 1947 on a charge of murder and had been condemned to death. The sentence had not been carried out by the termination of the Mandate. The applicant escaped from prison and was recaptured and re-impris-

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[1] *International Law Reports*, 17 (1950), Case No. 25, *Digest*, paras. 373 *et seq.*
[2] *International Law Reports*, 18 (1951), Case No. 31, *Digest*, para. 371.
[3] *International Law Reports*, 22 (1955), p. 123, *Digest*, para. 369.
[4] *International Law Report*, 22 (1955), p. 113. *Digest*, para. 210.
[5] *International Law Report*, 16 (1949), Case No. 26, *Digest*, paras. 31, 37.
[6] *Annual Digest*, 16 (1949), p. 70.
[7] *Laws of the State of Israel*, 2 (5709-1948/9), p. 115.
[8] See *Piskei Din*, 6 (1952), p. 480. No English translation of this judgment has been published.

oned by the Israel Police, and the President of Israel commuted the sentence to one of fifteen years imprisonment. On an application for an order of *habeas corpus*, on the ground that the continued imprisonment was unlawful, it was held, partly on the basis of certain transitional legislation, that there was nothing unlawful about the continued imprisonment of the applicant.[1] In *Stampfer* v. *Attorney-General* the Israeli Court exercised jurisdiction with respect to a crime committed on the high seas on a vessel of Israeli nationality. In the course of its judgment the Court had to interpret the United Kingdom Admiralty Offences (Colonial) Act, 1849, which itself only referred to "Colonies". The Court interpreted the word "Colony" as embracing territories under mandate. Since the Act of 1849 had been part of the law in force in Palestine before the termination of the Mandate, it was regarded as part of the law in force in Israel.[2]

III. Ratione personae

34. It follows from the preceding survey that all questions concerning rights and obligations between Israel and the Palestine Government or the United Kingdom Government arising out of "succession" have been regulated on the basis of the Agreement of 30 March 1950. Similar questions have not arisen between Israel and third States, except in so far as that Agreement contains *stipulations pour autrui* relevant to the matter, for instance as regards the Custodian of Enemy Property. As far as individuals are concerned, the matter is regulated exclusively by the internal Law of Israel. In *Shimshon Palestine Portland Cement Factory Ltd.* v. *the Attorney-General* (previously cited), which related to a claim for customs drawback based on payments made to the Mandatory Government, the Supreme Court drew attention to the necessity of establishing as a preliminary question, in all domestic litigation in which contentions based on "succession" are raised, that the general principles of international law are applicable. In particular it refused to regard as applicable any general questions of international law in litigation between an Israeli citizen and the Israeli Government.

35. In this connection, when, in 1950, Israel accepted the compulsory jurisdiction under Article 36 (2) of the Statute of the International Court of Justice, the jurisdiction was limited, *inter alia*, to disputes "which do not involve a legal title created or conferred by a government or authority other than the Government of the State of Israel or an authority under the jurisdiction of that Government". This limitation has been retained in the second Declaration of 3 October 1956 accepting the compulsory jurisdiction.[3]

IV. Territorial effects

36. Since, as far as is known, the Government of Palestine held no assets and was under no liabilities in third States (other than its assets and liabilities in the United Kingdom), the question has not arisen for the Government of Israel.

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[1] *International Law Reports*, 19 (1952), Case No. 30, *Digest*, para. 35.

[2] *International Law Reports*, 23 (1956), p. 284.

[3] For the two Declarations see: United Nations, *Treaty Series*, vol. 108, p. 239 and *ibid.*, vol. 252, p. 301.

B. LAWS AND DECREES

1. LAW AND ADMINISTRATIVE ORDINANCE (AS ON 1 MARCH 1963)[1]

. . .

Chapter four: The law

Existing law

11. The Law which existed in Palestine in the 5th Iyar, 5708 (14th May, 1948) shall remain in force, in so far as there is nothing therein repugnant to this Ordinance or to the other laws which may be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as may result from the establishment of the State and its authorities.

Unpublished laws

11A. [As added August 24, 1948]

(*a*) An unpublished law has no effect and never had any effect.

(*b*) "Unpublished law", in this section, means a law within the meaning of the Interpretation Ordinance, 1945, which purported to have been enacted during the period between the 16th Kislev, 5708 (29th November, 1947) and the 6th Iyar, 5708 (15th May, 1948) and which was not published in the *Palestine Gazette* despite its being a law of a category publication of which in the *Palestine Gazette* was, immediately prior to that period, obligatory or customary.

Termination of dependence on Britain

12. (*a*) Any privilege granted by law to the British Crown, British officials or British subjects, is hereby declared to be null and void.

(*b*) Any provision in the law whereunder approval or consent of any of the Secretaries of State of the King of England is required or which imposes a duty to do anything in pursuance of his directions, is hereby declared to be null and void.

(*c*) Any power assigned by the law to judges, officers or members of the Police Force by reason of their being British, shall henceforth vest in judges, officers or members of the Police Force who are holders of the same office or rank in the State of Israel.

Repeal of enactments of the White Paper of 1939

13. (*a*) Sections 13 to 15 of the Immigration Ordinance, 1941, and regulations 102 to 107C of the Defence (Emergency) Regulations, 1945, are hereby repealed. Any Jew who at any time entered Palestine in contravention of the laws of the Mandatory Government shall, for all intents and purposes, be deemed to be a legal immigrant retroactively from the date of his entry into Palestine.

(*b*) The Land Transfers Regulations, 1940, are hereby repealed retroactively from the 29th Iyar, 5699 (18th May, 1939). No judgment

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[1] Basic Hebrew text in *Iton Rishmi* (Official Gazette), No. 2, 21 May 1948. Subsequent amendments are indicated at their place.

given on the basis of such Regulations shall be a bar to the lodging of a new claim in the same matter.

Devolution of powers

14. (*a*) Any power vested under the law in the King of England or in any of his Secretaries of State, and any power vested under the law in the High Commissioner, the High Commissioner in Council, or the Government of Palestine, shall henceforth vest in the Provisional Government, unless such power has been vested in the Provisional Council of State by any of its Ordinances.

(*b*) Any power vested under the law in British consuls, British consular officers or British passport control officers, shall henceforth vest in consuls and officers to be appointed for that purpose by the Provisional Government.

Further adaptations of law

15. (*a*) "Palestine", wherever appearing in the law, shall henceforth be read as "Israel".

(*b*) Any provision in the law requiring the use of the English language is repealed.

New version

16. (*a*) The Minister of Justice may publish in *Reshumot* a draft of a new version of any law which existed in Palestine immediately before the establishment of the State and is still in force in the State. Such a version shall embody all the changes resulting from the establishment of the State and its authorities and all the amendments, changes and additions which occurred in that law, by virtue of legislation, after the establishment of the State.

(*b*) The Minister of Justice shall establish Advisory Boards of three members, one of whom — the chairman — shall be a judge appointed by the President of the Supreme Court, another the Attorney General or his representative, and the third a representative of the Bar Association or a representative of the Hebrew University.

(*c*) Within a time determined by the Minister of Justice, by notice published in *Reshumot*, in respect of each draft of a new version, an Advisory Board shall examine the draft version, and submit in writing to the Constitution, Legislation and Juridical Committee of the Knesset its recommendations as to the corrections which in its opinion should be made in order to bring the draft version into conformity with the original law.

(*d*) The Constitution, Legislation and Juridical Committee of the Knesset shall determine the new version in the light of the recommendations of an Advisory Board, and such version shall come into force on being published in *Reshumot* with the signature of the Minister of Justice.

(*e*) Upon a new version as aforesaid coming into force it shall become the binding law, and no other version of that law shall thenceforth have effect, and the plea that the new version deviates from the original law shall not be entertained.

(*f*) Where amendments have been made in a law enacted in the State, the Minister of Justice may publish such law in *Reshumot* in a version embodying all the amendments made therein, and he may, in so doing, remember, divide or combine sections.

Chapter five: Law courts

Law courts

17. So long as no new law concerning law courts has been enacted, the law courts existing in the territory of the State shall continue to function within the scope of the powers conferred upon them by law.

. . .

Chapter seven: Transitional provisions

Saving of orders, etc.

19. (*a*) Any order, direction, notice, demand, certificate, instrument, authorisation, licenee, patent, design, trade mark and any other right or concession, and any debt, obligation or liability made, given or imposed by the High Commissioner, the High Commissioner in Council, the Government of Palestine or its authorities or officers, and which was in force in the territory of the State on the 5th Iyar, 5708 (14th May, 1948), shall continue in force until varied, amended or revoked, unless otherwise provided in any of the Ordinances of the Provisional Council of State.

(*b*) Regulations, orders, notices and directions published between the 16th Kislev, 5708 (29th November, 1947) and the date of publication of this Ordinance, by the Jewish Agency for Palestine, the General Council (Vaad Leumi) of the Jewish Community in Palestine, the People's Administration, or by any of their departments, in order to secure the maintenance of supplies and essential services or other economic objects, shall continue in force until varied, amended or revoked by or on behalf of the Provisional Council of State.

Companies, etc.

20. (*a*) Any company, partnership or co-operative society which on the 5th Iyar, 5708 (14th May, 1948) was registered in Palestine and which had on that date a registered office or place of business in the territory of the State, shall henceforth be deemed to be registered in the State.

(*b*) Any company, partnership or co-operative society which on the 5th Iyar, 5708 (14th May, 1948) was registered in Palestine but did not have on that date a registered office or place of business in the territory of the State, may apply for its registration in the State, without payment of fees within three months from the date of publication of this Ordinance.

(*c*) This section also applies *mutatis mutandis* to societies under the Ottoman Law of Societies, registered business names, and registered ships.

(*d*) The Minister of Justice shall make regulations for the implementation of this section.

Payment of taxes, etc.

21. The taxes and payments of every kind whatsoever which had not been paid to the Government of Palestine by the 5th Iyar, 5708 (14th May, 1948) shall be paid to the Provisional Government.

Title

22. This Ordinance may be cited as the "Law and Administration Ordinance, 5708-1949".

Commencement

23. This Ordinance shall have effect retroactively as from the eve of the Sabbath, 6th Iyar, 5708 (15th May, 1948) and its provisions amplify and interpret the provisions of the Proclamation of the Provisional Council of State of the 5th Iyar, 5708 (14th May, 1948).

David BEN-GURION
Prime Minister
Felix ROSENBLUETH
Minister of Justice

10th Iyar, 5708 (19th May, 1948)

2. LAW AND ADMINISTRATION (FURTHER PROVISIONS) ORDINANCE NO. 13 OF 5708-1948[1]

The Provisional Council of State hereby enacts as follows:

Additional powers of Prime Minister and Ministers

1. The Prime Minister or any Minister may assume any power which the laws within his scope of authority vest in certain officers for the purpose of their implementation.

Construction of laws

2. For the removal of doubts it is hereby declared:

(*a*) where any law enacted by or on bchalf of thc Provisional Council of State is repugnant to any law which was in force in Palestine on the 5th Iyar, 5708 (14th May, 1948), the earlier law shall be deemed to be repealed or amended even if the new law contains no express repeal or amendment of the earlier law.

(*b*) Where any law enacted by or on behalf of the Provisional Council of State amends a law which was in force in Palestine on the 5th Iyar, 5708 (14th May, 1948), or is in any way related to such a law, the new law shall be construed as one with the earlier law, even where the earlier law and the new law use different expressions for the same concept.

Validation of Ordinances

3. Ordinances of the Provisional Council of State signed by the Prime Minister prior to his election and by a Minister prior to the determination of his functions are hereby validated retroactively.

Validation of Defence Army Ordinance

4. The Defence Army of Israel Ordinance, 5708-1948, is hereby validated retroactively as if it were an Ordinance of the Provisional Council of State.

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[1] Published in the *Official Gazette*, No. 13 of the 30th Sivan 5708 (7th July, 1948).

Validation of acts of Prime Minister and Ministers

5. Acts done by the Prime Minister and by Ministers prior to the conferment of their powers by the Provisional Government are hereby given effect retroactively.

Acts of officers

6. No act done by any judge, police officer, government officer or competent authority shall be invalidated on the ground that it was done by him before he was appointed in accordance with the law or before he received authority to do such act.

Application of Ordinances

7. Sections 3, 5 and 6 of this Ordinance apply to Ordinances signed and acts done between the 6th Iyar, 5708 (15th May, 1948) and the date of the coming into force of this Ordinance.

Title

8. This Ordinance may be cited as the "Law and Administration (Further Provisions) Ordinance, 5708-1948".

David BEN-GURION
Prime Minister

Felix ROSENBLUETH
Minister of Justice

24th Sivan, 5708 (1st July, 1948)

Japan

Transmitted by a note verbale *dated 15 June 1964 of the Permanent Mission to the United Nations*

A. TREATIES

(a) MULTILATERAL INSTRUMENTS

TREATY OF PEACE WITH JAPAN. SIGNED AT SAN FRANCISCO, ON 8 SEPTEMBER 1951[1]

. . .

Article 2

(*a*) Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.

(*b*) Japan renounces all right, title and claim to Formosa and the Pescadores.

. . .

Article 4

(*a*) Subject to the provisions of paragraph (*b*) of this Article, the disposition of property of Japan and of its nationals in the areas referred to

[1] United Nations, *Treaty Series*, vol. 136, p. 45. Came into force intially on 28 April 1952.

in Article 2, and their claims, including debts, against the authorities presently administering such areas and the residents (including juridical persons) thereof, and the disposition in Japan of property of such authorities and residents, and of claims, including debts, of such authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities. The property of any of the Allied powers or its nationals in the areas referred to in Article 2 shall, in so far as this has not already been done, be returned by the administering authority in the condition in which it now exists. (The term nationals whenever used in the present Treaty includes juridical persons.)

(*b*) Japan recognizes the validity of dispositions of property of Japan and Japanese nationals made by or pursuant to directives of the United States Military Government in any of the areas referred to in Articles 2 and 3.

(*c*) Japanese owned submarine cables connecting Japan with territory removed from Japanese control pursuant to the present Treaty shall be equally divided, Japan retaining the Japanese terminal and adjoining half of the cable, and the detached territory the remainder of the cable and connecting terminal facilities.

(b) Bilateral instruments

Treaty of Peace between the Republic of China and Japan. Signed at Taipei, on 28 April 1952[1]

. . .

Article II

It is recognized that under Article 2 of the Treaty of Peace with Japan[2] signed at the city of San Francisco in the United States of America on September 8, 1951 (hereinafter referred to as the San Francisco Treaty), Japan has renounced all right, title and claim to Taiwan (Formosa) and Penghu (the Pescadores) as well as the Spratly Islands and the Paracel Islands.

Article III

The disposition of property of Japan and of its nationals in Taiwan (Formosa) and Penghu (the Pescadores), and their claims, including debts, against the authorities of the Republic of China in Taiwan (Formosa) and Penghu (the Pescadores) and the residents thereof, and the disposition in Japan of property of such authorities and residents and their claims, including debts, against Japan and its nationals, shall be the subject of special arrangements between the Government of Japan and the Government of the Republic of China. The terms nationals and residents whenever used in the present Treaty include juridical persons.

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[1] United Nations, *Treaty Series*, vol. 138, p. 3. Came into force on 5 August 1952.

[2] See section A, (a) above.

B. LAWS AND DECREES

CIRCULAR DATED 19 APRIL 1952 OF THE DIRECTOR OF THE CIVIL AFFAIRS BUREAU, MINISTRY OF JUSTICE, ON THE HANDLING OF MATTERS CONCERNING THE NATIONALITY AND FAMILY REGISTRATION OF THE KOREANS AND FORMOSANS AFTER THE CONCLUSION OF THE PEACE TREATY.[1]

With the forthcoming entry into force of the Peace Treaty (hereinafter referred to as the Treaty) the matters concerning the nationality and family registration shall be handled by the following principles. . .:

(1) Korea and Formosa

(i) As Korea and Formosa are to be detached from the Japanese territory as from the date of entry into force of the Treaty, all Koreans and Formosans including those residing in Japan proper, shall lose their Japanese nationality, *ipso facto*, as of this date.

(ii) Those who are Koreans or Formosans by origin but with whom grounds have subsequently arisen to be entered in the Family Register of Japan through such personal procedures as marriage with or adoption by Japanese effected prior to the entry into force of the Treaty are regarded as Japanese, and shall retain their Japanese nationality without going through any procedures after the entry into force of the Treaty.

(iii) Those who are Japanese by origin but who have had grounds to be removed from the Family Register of Japan through such personal procedures as marriage with or adoption by Koreans or Formosans effected prior to the entry into force of the Treaty are regarded as Korean or Formosan and shall lose their Japanese nationality with the entry into force of the Treaty.

No entry will be necessary in the Family Register, from which the persons mentioned above have been removed, of the fact of the loss of Japanese nationality.

(iv) After the entry into force of the Treaty, the former procedures will be abolished, according to which a Japanese by origin is transferred to the Korean or Formosan Family Register and a Korean or Formosan is transferred to the Family Register of Japan, as the case may be, through such personal procedures as adoption, marriage, dissolution of adoption or divorce.

(v) After the entry into force of the Treaty, a Korean or Formosan can only acquire Japanese nationality through the procedures of naturalization for aliens in general, according to the provisions of the Nationality Law of Japan.

In the case of the aforementioned naturalization, a Korean or Formosan (those of Japanese origin mentioned in (iii) above excepted) shall not come under "those who were of Japanese nationality" as stipulated in Article 2, Paragraph 2 of the Nationality Law nor under "those who lost Japanese nationality" as stipulated in Article 6 Paragraph 4 of the same law.

. . .

[1] Homo-fu Minji-ko No. 438.

C. DECISIONS OF NATIONAL COURTS

SUMMARIES AND EXTRACTS FROM DECISIONS

1. *Cases involving Koreans*

(a) *Kôbe District Court*

Pai Ho Sun v. *Shin Chan Shik: Decision of 25 April 1952 (Divorce (Ta) 14 of 1951)*[1]

Nationality of a Korean residing in Japan prior to the conclusion of the Peace Treaty

A petition by the plaintiff for conciliation procedures for divorce at Kobe Family Court having failed, an action for divorce was instituted by the same.

Held: "As the nationality of Koreans who have been continuously residing in Japan since September 2, 1945, is pending until the final decision is made at the Peace Conference and a treaty is subsequently concluded between Japan and Korea after the Peace Conference, the parties concerned hold the Japanese nationality and are therefore subject to laws of Japan." The Court applied the Civil Affairs Ordinance for Koreans, in accordance with Article 2 of *Kyôtsûhô* (the Law concerning the Principles of Application of Laws for Civil and Criminal Affairs between the subjects of the territories under differing legal systems but under the sovereignty of Japan; promulgated in 1918) and *Hôrei* (the Law concerning the Application of Laws).

(b) *Nagoya District Court*

Tàmako Arai v. *Shakusai Arai: Decision of 20 May 1952 (Divorce (Wa) 44 of 1951)*[2]

Nationality of a Korean residing in Japan prior to the conclusion of the Peace Treaty — Nationality of a Japanese woman married to a Korean.

Plaintiff suing for divorce entered into cohabitation with a Korean in 1942 and went through the formality of registration of marriage in March 1945.

Held: "Both the plaintiff and the defendant are aliens." The Court applied the laws of Japan on the grounds that it was unable to ascertain the contents of the laws enforced in Korea in April 1947, *lex patriae* of the husband at the time of occurring of the cause of divorce.

(c) *Nagoya District Court*

Haruko Iwamoto v. *Tokuji Iwamoto: Decision of 29 May 1954 (Divorce (Ta) 6 of 1953)*[3]

The Peace Treaty and nationality of Koreans — Nationality of a Japanese woman married to a Korean

The plaintiff, a Japanese woman married to the Korean defendant prior to the conclusion of the Peace Treaty, sued for divorce from the latter.

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[1] III Kakyû Saibansho Minji Saitan Rei Shû [Collection of Lower Court Civil Cases] (hereinafter cited as "Ka Min Shû") 580.

[2] III Ka Min Shû 676.

[3] V Ka Min Shû 788.

Held: "Japan recognized the eventual independence of Korea through the acceptance of the Potsdam Declaration in the Instrument of Surrender, and the territories to be alienated to Korea were actually detached from Japan. It recognized the independence of Korea by virtue of Article 2 (*a*) of the Treaty, but the Treaty contains no provisions concerning the nationality of Koreans after the independence; nor does there exist any treaty concluded between Japan and Korea. It is to be concluded, however, that since Japan has recognized the independence of Korea, all Koreans shall *ipso facto* acquire the Korean nationality and lose the Japanese nationality with the entry into force of the Peace Treaty, and that even those Japanese by origin who have been removed from the Family Register of Japan through marriage with a Korean before the entry into force of the Treaty, shall acquire the Korean nationality and lose the Japanese nationality as well with the entry into force of the Treaty."

(d) *Hiroshima District Court*

Heijutsu Hirayama v. *Otsurei Hirayama: Decision of 23 September 1955 (Divorce (Ta) 11 of 1954)*[1]

Nationality of Korean residents in Japan before the entry into force of the Peace Treaty.

This is a case involving the question of determining the proper law for the case, *lex patriae* of the plaintiff in the autumn of 1948, the time of occurrence of the cause of divorce.

Held: "Prior to April 28, 1952, the date of the entry into force of the Peace Treaty, the laws of Japan shall apply to Korean residents in Japan, since they are regarded as holding the Japanese nationality as before. Therefore, the laws of Japan shall be considered *lex patriae* of the plaintiff." The Court decided on the basis of *ratio legis*, on the ground that the proper law, the Civil Affairs Ordinance for Koreans, being out of effect by the time, there existed no *lex patriae* to apply to the Korean residents in Japan.

(e) *Nagoya District Court*

Chung Sun Dong v. *Kim Pen Ryon: Decision of 30 October 1956 (Divorce (Ta) 22 of 1956)*[2]

Acquisition and loss of territory and laws concerning personal status

The parties involved, both of whom are Koreans, were legally married in Japan proper in 1938 according to the formalities of Japan. Immediately after the end of the war in 1945 the defendant left the plaintiff saying that she would return to Korea alone. But she had since been neither seen nor heard except that she seemed to have moved to Kyoto in April 1950, and has been considered missing for more than three years.

Held: "The fact that the Government of Korea was established on August 4, 1948, that the inauguration of her independence was celebrated on the 15th of that month, that Japan recognized the independence of Korea by virtue of Article 2 of the Peace Treaty, and that

[1] VI Ka Min Shû 2048.
[2] VII Ka Min Shû 3071.

Treaty entered into force on April 28, 1952, . . . does not affect the applicability of the laws of Japan regulating heretofore the personal status of those Koreans, who were residents in Japan before October 1945, the year of the cessation of hostilities as well as of those Koreans who have been residents in Japan continuously since before the war. The reason is that on the occasion of independence of a part of a country, the detachment of territory or the change of nationality does affect the sovereign jurisdiction but laws concerning personal status which regulate social life of individual citizens cannot be affected *ipso facto* by such detachment or change." The court stated further: "the question as to whether the Civil Code of Japan or the Korean Race Law, both of which were laws of Japan at the time, is to be applied in the case, should be solved by the principles governing the conflict between the State law and a district law, now that the *Kyotsuho* has become out of effect due to Japan's having been placed under the Allied Powers' Control."

The Court, however, applied, in accordance with Article 16 of *Hôrei* [the Law for Application of Laws of Japan], the Korean Race Law as proper law of divorce without demonstrating that this is the *lex patriae* of the plaintiff, the husband.

(*f*) *Kumamoto Family Court*

Choe Ryong Chon v. *Choe I Su*: *Decision of 24 December 1956 (Conciliation procedures on the confirmation of nullity of recognition (Ka-I) 25 of 1956)*[1]

Peace Treaty and Nationality of Koreans residing in Japan

The petitioner is a child born out of wedlock between the deceased third party A and the deceased third party B. When A married respondent, the petitioner, a child born in her previous cohabitation with B, was maintained by respondent. The latter recognized the former as his own child, and the petitioner requested the Court to confirm that the recognition is null and void. Article 18 of *Hôrei* [the Law for Application of Laws of Japan] provides that the recognition of a child is governed by *lex patriae* of the father. In this case, therefore, the question was which law was *lex patriae* at the time of recognition of the child by the respondent.

Held: "The Korean residents in Japan lost Japanese nationality with the entry into force of the Peace Treaty", and the Korean Civil Affairs Ordinance, i.e. *lex patriae* of the father at the time of recognition went out of effect, and therefore is not applicable in this case. The Court decided the case on the basis of *ratio legis*.

(*g*) *Sendai High Court*

Japan v. *O. Gyong Hi*: *Decision of 13 March 1958 (Case of the use of counterfeit official document and seal and the violation of the Alien Registration Law (U) 566 of 1957)*[2]

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[1] 9 Katei Saibansho Geppo [Monthly Report of Family Court] 32.

[2] 11 Kôtô Saibansho Keiji Hanrei Shû [Collection of High Court Criminal Cases] (hereinafter cited as "Kô Sai Kei Shû") 163.

Independence of Korea and nationality

This is a case of a violation of the Alien Registration Law. The defendant, son of a Korean by origin, contended that he had not actually lost his Japanese nationality.

Held: "In cases where part of the territory of a State has become independent, seceding from the rule of the mother State, the change in nationality of some of the inhabitants in that territory *ipso facto* follows. It is usual that with independence of part of the territory of a State, the nationality of those originated and residing in that part changes; but this is not necessarily the case with those who originated from the newly independent part but residing within the territory of the mother country. There is no established principle of international law on this point, and the question as to who among those people should be subject to change of nationality is usually determined by a treaty between the parties concerned. There has been, however, no treaty concerning the question of nationality between Japan and Korea (whether the Republic of Korea or the Democratic People's Republic of Korea). Nevertheless, since recognition by Japan of the independence of Korea under the provisions of the Peace Treaty is no other than its recognition of the restoration of Korean independence lost by the annexation by Japan of the formerly independent Korean State, Japan must admit by this recognition of independence that all Koreans, including those who held Korean nationality at the time of annexation and those who are considered naturally to have had it if there had been no annexation, should lose Japanese nationality, irrespective of whether or not they now reside in Korea or in Japan. Accordingly, it can be concluded that after the entry into force of the Peace Treaty all Koreans have lost the Japanese nationality and aquired the status of aliens at least for the purposes of domestic laws of Japan, without regard to the conclusion of a treaty between Japan and Korea concerning the question of nationality of Koreans."

(*h*) *Tokyo High Court*

Japan v. *Chung Sam Ja: Decision of 8 August 1959 (Violation of the Alien Registration Law (U) 1773 of 1957)*[1]

Status of Korea before the Conclusion of the Peace Treaty — Peace Treaty and Nationality of Koreans — Nationality of a Japanese woman married to a Korean

The defendant was married to a Korean on 19 October, 1950, and was resident in Japan ever since. She was prosecuted for failure to apply for an Alien Registration certificate as required by the law, after the entry into force of the Peace Treaty.

Held: "Although Korea was actually not under the Japanese administration during the period from the cessation of hostilities to the entry into force of the Peace Treaty, it was still under the sovereignty of Japan in the eyes of the laws of Japan, and the Koreans had the Japanese nationality." . . . "With the entry into force of the Treaty, however, all Koreans are considered to have lost the Japanese nationality and to have become aliens, by virtue of the provisions of Article 2 (*a*), regaining their status before the annexation. It is proper to consider that the

[1] 12 Kô Sai Kei Shû 692.

Koreans referred to herein include, first, all those who had Korean nationality at the time of annexation and, second, all those who would have had the Korean nationality if there had been no annexation; that those referred to in the second category shall be those who were entered in the Korean Family Register and those who had cause to be entered in the said Register after the annexation." Accordingly, it was held that the defendant, a Japanese woman who was married to a Korean prior to the entry into force of the Peace Treaty "had become an alien losing her Japanese nationality".

(*i*) *Tokyo High Court*

Japan v. *Tori Kim: Decision of 8 August 1959 (Violation of the Alien Registration Law (U) 2350 of 1957)*[1]

Peace Treaty and Nationality of Koreans

Defendant is a Japanese woman who had become *de facto* wife of a Korean before the entry into force of the Peace Treaty and was removed from the Family Register, in which she was originally entered, on the ground that she would bear the family name of the husband. Their marriage, however, was not entered in the Korean Family Register at the place of the permanent domicile of her husband. In the trial the Defendant's nationality was discussed.

Held: "Even after the cessation of hostilities the Koreans continued to hold the Japanese nationality, until the time when Japanese sovereignty over Korea became extinct with the conclusion of the Peace Treaty. . . . Upon the entry into force of the Treaty all Koreans are considered to have lost their Japanese nationality and have become aliens regaining the status before the annexation."

(*j*) *Oita District Court*

Soe Shibata v. *Eiji Yoshinari: Decision of 12 July 1960 (Divorce (Ta) of 1960)*[2]

Nationality of Koreans before the conclusion of the Peace Treaty — Existence of two governments in Korea

The plaintiff, a Japanese woman, married the defendant, a Korean, in January 1948 and went through the registration of marriage as required by the law of Japan. The defendant was a man of loose morals and cohabited with another woman begetting a child by her in 1956. Later, he lived with another woman again and transferred residence to another prefecture together with this woman, and had since been missing. The plaintiff, therefore, sued for divorce.

Held: "It can be construed that on 2 September 1945 Korea seceded from the sovereignty of Japan and regained the status of an independent country and thereupon the Koreans lost Japanese nationality and regained or acquired Korean nationality." The Court took the view that the *Kyotsuho* which had hitherto been in force for the regulation of legal relations between Japan and Korea had *ipso facto* lost its force, and with respect to legal relations between Japanese and Korean nationals, *Hôrei* should apply as the rules regulating the conflict of laws. Under

[1] 227 Hanrei Jihô [Law Times Report] 36.
[2] XI Ka Min Shû 1470.

Article 13 of *Hôrei* the validity of a marriage in 1948 should be decided by *lex patriae* of both parties. "In investigating the *lex patriae* of the defendant, the fact must be taken into consideration that there now exist two governments in Korea, each of which claims to be the legitimate government of the whole Korea, and that in reality each of them respectively exercises control over North and South Korea divided by 38th parallel of latitude. Accordingly, it is proper to apply *mutatis mutandis* Article 27, Paragraph 3 of *Hôrei* in determining which is *lex patriae* of the defendant. Since his permanent domicile exists in South Korea, the area which is under the control of the Republic of Korea, and since in the present case there are no special circumstances to take into consideration, e.g. that the defendant was repatriated to North Korea of his own accord, the law of the Republic of Korea can be accepted as the proper law in the present case."

(*k*) *Tokyo High Court*

Japan v. *Kino Yamamura: Decision of 30 November 1960 (Violation of the Alien Registration Law (U) 906 of 1960)*[1]

Personal status of Korean residents in Japan before the conclusion of the Peace Treaty — Treaty and the nationality of Koreans — Nationality of a Japanese woman married to a Korean

The defendant was married to a Korean in Japan before the entry into force of the Peace Treaty. She was prosecuted for failure to apply for the alien registration as required by the law of Japan.

Held: Under the Korean Family Registration Ordinance (applicable to the entry into the Family Register of this couple), as well as under the Korean Civil Affairs Ordinance (applicable to the defendant's marriage to a Korean), the defendant had become a Korean, and hence had been obligated to go through the procedure of applying for alien registration under Article 4 and other related provisions of the Alien Registration Law of 1947.

The Court stated: "The question of nationality as is at issue in this case should be settled formally by an international treaty to be concluded between Japan and Korea, whose independence has been recognized by Japan under the Peace Treaty. Until such formal settlement, a case involving the question of nationality has to be decided under the domestic laws of Japan, by reference to the relevant provisions of the Peace Treaty and to the State practice in international law concerning the problem as to who should become nationals of the newly independent State which has attained its independence by the cession of territory and other causes, i.e. the problem of acquisition of the new nationality and of loss of the former nationality." And the Court stated further: "Since Korea's independence was recognized by Japan by virtue of the provisions of the Peace Treaty, it is proper to consider, in accordance with State practice in the matter of international law and having regard to the contents of the Potsdam Declaration which Japan has accepted and the Cairo Declaration referred to therein, as well as having regard to the circumstances of the annexation of Korea by Japan, that the Koreans

[1] 13 Kô Sai Kei Shû 718.

who are to acquire Korean nationality and lose Japanese nationality shall include all those who held Korean nationality at the time of annexation and also all those who would have acquired Korean nationality if Korea had not been annexed to Japan; and that those who would have held the Korean nationality if there had been no annexation shall include those who were entered in the Korean Family Register and those who had cause for being entered in it after the annexation."

(*l*) *Supreme Court (Grand Bench)*

Masako Kanda v. *Japan: Decision of 5 April 1961 (Case of the confirmation of holding Japanese nationality (0) 890 of 1955)*[1]

Nationality of a Japanese woman married to a Korean — Recognition of the independence of Korea by the Peace Treaty resulted in loss of Japanese nationality by Koreans

The appellant, a Japanese by origin, was married to a Korean in 1935. She obtained a decree for divorce on the ground of wilful desertion at the Tokyo District Court in 1952. However, the responsible officer for the Family Register in Tokyo declined to reeeive the application for the registration of divorce based on the said decree, holding that she had lost her Japanese nationality in accordance with the Circular dated 19 April 1952 of the Director of the Civil Affairs Bureau of the Ministry of Justice.[2] The appellant thereupon brought this suit for a decision to confirm her Japanese nationality, After failing in the Court of the second instance, to which the State appealed from the decision of the Court of the first instance in her favour, she appealed to the Supreme Court.

Held: "There is no doubt that a change in nationality is provided by an alteration in territory. There is no established principle in international law with regard to such change of nationality. It is customary that the question is settled, either expressly or implicitly as the case may be, by provisions in a treaty. Accordingly, it is proper to construe that the Constitution of Japan purports to recognize that the change of nationality accompanying the transfer of territory may be effected by a treaty.

"Article 2 (*a*) of the Peace Treaty provides, in short, that Japan recognizes the independence of Korea and renounces the sovereignty over the territory belonging to Korea. There is no doubt that by these provisions Japan renounces not only the territorial sovereignty (*dominium*) over the territory belonging to Korea, but also the personal sovereignty (*imperium*) over those persons who are to belong to Korea . . .

"This means that those persons who are to belong to Korea shall lose the Japanese nationality. It is proper to consider that those persons who are to belong to Korea are those who have had the legal status of Koreans under the laws of Japan after the annexation of Korea by Japan. Those who have had the legal status of Koreans are those who were subject to the Korean Family Registration Ordinance and were in fact entered in the Korean Family Register . . .

"In the case where a Japanese woman was married to a Korean, was

[1] XV Saikô Saibansho Minji Hanrei Shû [Collection of Supreme Court Civil Cases] 657.

[2] See section B above.

entered thereby in the Korean Family Register and removed from the Japanese Family Register . . ., she must be considered in law to have lost her Japanese nationality and to have acquired the Korean nationality. . . . During the period when Japan was under the control of the Allied Powers, there was a legal distinction between those who had the legal status of Koreans and those who had the legal status of Japanese. . . . Thus the distinction was consistently maintained from the time of the annexation of Korea by Japan and remained unchanged during the period of occupation. The Peace Treaty was concluded in this legal situation, and Japan recognized the independence of Korea and renounced the sovereignty over the people who were to belong to Korea, causing them to lose their Japanese nationality. Such being the case, it is proper to consider that those who are to lose Japanese nationality are those who have had the legal status of Koreans under the Japanese law.

"The appellant in the present case is a woman of Japanese origin, but the fact that she was married to a Korean and was entered in the Korean Family Register on July 16, 1935 is confirmed in the decision of the first instance. The appellant thereby acquired under the law the legal status of Korean and lost that of Japanese. By virtue of the provisions of the Peace Treaty, Japan recognised the independence of Korea and caused all those who should belong to Korea to lose their Japanese nationality. Those who should belong to Korea are, as stated above, those who have had the legal status of Koreans. The appellant had this legal status and must therefore be considered to have lost Japanese nationality."

2. *Cases involving Formosans*

(*a*) *Yamagata District Court*

Lin Yuan v. *Wang Chin Tung: Decision of 7 September 1951 (Divorce (Ta) 7 of 1951)*[1]

Application of Japanese law to the matters relating to personal status of Formosans before the final determination of sovereignty over Formosa

The parties concerned, both of whom are Formosans, were married at Tsuruoka City in 1946 and went through the formality of registration of their marriage at the Chinese Residents Affairs Office of the Chinese Mission of the Allied Powers in Japan. This is a case in which the plaintiff sues for divorce from the defendant.

Held: "After the surrender of Japan in this war, the Formosans were placed outside the sovereignty of Japan. It is accordingly natural that the actual political situation which has taken place in Formosa may cause the Formosans to be treated substantially as aliens in certain cases. But the sovereignty over the Formosan territory being not yet finally determined today, matters relating to their personal status in the field of private law, which have nothing to do with the exercise of sovereignty must be decided by maintaining the existing legal system of Japan and applying it as it stands."

[1] II Ka Min Shû 1075.

(*b*) *Nagasaki District Court*

Yang Shizuko v. *Yang Mao Sheng: Decision of 19 February 1956 (Divorce (Ta) 20 of 1955)*[1]

Nationality of a Japanese woman married to a Formosan

The plaintiff, a Japanese woman, and the defendant, a Formosan, were married at Shanghai and went through the formality of registration of marriage with the Consul-General of Japan in Shanghai in 1943. The parties moved to Taipei in 1947. The defendant left by himself for Hongkong or thereabouts in 1948 and had since been missing. The plaintiff returned to Japan and brought an action for divorce.

Held: "It is recognized that the defendant is a Formosan and the plaintiff is a Japanese . . . since it is accepted that even after Formosa has been detached from Japan, a Japanese who is married to a Formosan does not lose her Japanese nationality." With regard to the applicable law for the present case of divorce, the Court held that the fact of wilful desertion, which took place before the detachment of Formosa from Japan pursuant to the entry into force of the Peace Treaty, has continued up to now and hence this fact as the cause for divorce still exists and that therefore the proper law to govern the present case is "*lex patriae* of the defendant, i.e. the Civil Code of the Rebublic of China".

(*c*) *Tokyo District Court*

Shozo Azuma and Yoshiko Azuma v. *Japan: Decision of 11 September 1958 (Confirmation of Japanese nationality (Gyô) 11 of 1955)*[2]

Status of Formosa and Nationality of Formosans during the period from the surrender to the conclusion of the Peace Treaty

The plaintiff, Shozo Azuma, who was a Formosan by birth, was married in 1929 to A, the third party, who was a Japanese woman by origin; he was entered in the Family Register of his wife as an incoming husband. Later, he was divorced from her by agreement in March 1946, and changed his family name to the present one. The defendant claimed that since the plaintiff should have formed a new Family Register of his own in Formosa consequent upon this divorce, he had lost the Japanese nationality with the entry into force of the Peace Treaty.

Held: "The Instrument of Surrender [signed on 2 September 1945] has not only effected the cessation of hostilities but also politically determined, except for certain small islands, the extent of territories to be retained by Japan . . . During the period between the signing of this instrument and the conclusion of the Peace Treaty, Japan was under the control of the Allied Powers and did not exercise her sovereignty over Formosa. Under the Allied policy of control over Japan, the Formosans were treated as so-called liberated nation and distinguished from the Japanese. Further, Article 2 (*b*) of the Peace Treaty provides that Japan renounces all right, title and claim to Formosa and the Pescadores. Judging from these facts, it is proper to consider that as far as Formosa is concerned Japan already renounced its sovereignty over that island

[1] VII Ka Min Shû 300.

[2] IX Gyôsei Jiken Saiban Rei Shû (collection of judicial precedents concerning administrative cases) 2087.

by accepting the Potsdam Declaration and that the conclusion of the Treaty is the confirmation of this fact". And as to the determination of the nationality of Formosans, the Court, referring to the contents of paragraph 3 of the Cairo Declaration, took the view that "the Formosans are those who would have had Chinese nationality if Japan had not annexed Formosa . . . Accordingly, it must be concluded that the Formosans have lost their Japanese nationality as a result of the signing of the Instrument of Surrender above referred to". Thus it was concluded that "a Formosan who acquired the personal status of a Japanese by reason of marriage as an incoming husband with a woman who was a Japanese by origin when the *Kuôtsûhô* was in force, from analogy of the provisions of Article 5 item 2 of the former Nationality Law then in force, should not be deemed to have lost his Japanese nationality as a result of the signing of the Instrument of Surrender; and the question as to whether the said Formosan has lost his Japanese nationality by the later change if his personal status should be decided by the application of the Nationality Law as applied to the aliens in general. The Court, by applying Article 19 of the former Nationality Law of 1946, decides that since the plaintiff has not acquired Chinese nationality, he still retains the Japanese nationality which he acquired by the marriage as an incoming husband".

(*d*) *Tokyo High Court*

Japan v. *Lai Chin Jung: Decision of 24 December 1959 (Violation of the Immigration Control Ordinance (U) 1714 of 1958)*[1]

Peace Treaty between Japan and the Republic of China — Nationality of Formosans

The defendant, who was born in Formosa in 1932 as eldest son of a Formosan who had permanent domicile on that island, was living there until his unlawful entry into Hongkong in 1956. He was prosecuted on the ground of unlawful entry into Japan, and in connection with the applicability of the Immigration Control Ordinance to the defendant, the question arose as to his nationality.

Held: "Apart from the discussion as to whether the Formosans have lost their Japanese nationality *ipso facto* with the entry into force of the Peace Treaty concluded at San Francisco, Formosa and the Pescadores came to belong to the Republic of China, at any rate on August 5, 1952, when the Treaty between Japan and the Republic of China came into force; and the Formosans who hold Chinese nationality in accordance with the laws of the Republic of China must have lost the Japanese nationality and are to be treated *ipso facto* as nationals of the Republic of China . . . In the Republic of China the Formosans living in Formosa are known to have regained the status of citizenship of that Republic since October 25, 1945, in accordance with the Ordinance for Determination of Nationality of the Formosans residing abroad. Accordingly, the defendant, who is a Formosan by birth and is living on that island, is considered to have acquired the Chinese nationality under the said Ordinance, and, by virtue to the provisions of the Peace Treaty between Japan and the Republic of China he shall *ipso facto* have lost the Japanese nationality and must be treated as a national of the Republic of China holding the citizenship of that country."

[1] X Tokyo Kôtô Saibansho Keiji Hanketsu Jihô [Law Times Report of the Tokyo High Court Criminal Cases] 473.

(e) Osaka District Court

Chang Fukue v. *Chang Chin Min: Decision of 7 June 1960 (Divorce (Ta) 100 of 1959)*[1]

Those who had been entered in the Formosan Register of Personal Status acquired Chinese nationality with the entry into force of the Peace Treaty

The plaintiff, a Japanese woman by birth, went through the ceremony of marriage in March 1946 with the defendant, who had his permanent domicile in Formosa and had been living in Japan proper since before the end of the war. The plaintiff sued for divorce from the defendant on the ground of wilful desertion. The plaintiff had been removed from the Family Register at her permanent domicile by this marriage and yet had not been entered in the family register of the defendant at his permanent domicile.

Held: "Where a man, having his permanent domicile in Formosa and residing in Japan, marries a woman having her permanent domicile in Japan proper and residing therein prior to the entry into force of the Peace Treaty concluded in 1952, the determination as to whether the parties have lost the Japanese nationality they had once held should be made on the basis of the Formosan Register of Personal Status established for the Formosans as a special category, separately from the Family Register of Japan, ever since the establishment of Japanese sovereignty over Formosa. It is therefore proper to understand that those who held such personal status in the Register referred to above have lost Japanese nationality and acquired the nationality of the Republic of China with the establishment of permanent sovereignty of the Republic of China, i.e., with the entry into force of the Peace Treaty in 1952 when the *de jure* change of sovereignty over that territory occurred . . . It must be admitted that since the defendant is a so-called Formosan with his permanent domicile in Formosa, he now holds the nationality of the Republic of China. However, when the plaintiff was married to the defendant, they both had the Japanese nationality; and even if the permanent domicle of the plaintiff be unknown at present, she has not been entered in the Formosan Family Register. Besides, there is no special circumstance to be taken into account, such as the fact that the plaintiff has lost her Japanese nationality, For these reasons, the plaintiff must be a Japanese national".

[1] 241 Hanrei Jihô [Law Times Report] 36.

Laos

Renseignements communiqués par note verbale en date du 3 août 1963 du Ministre des Affaires étrangères

TRAITÉS

TRAITÉ D'AMITIÉ ET D'ASSOCIATION ENTRE LE ROYAUME DU LAOS ET LA RÉPUBLIQUE FRANÇAISE. FAIT À PARIS, LE 22 OCTOBRE 1953[1]

. . .

Article premier — La République Française reconnaît et déclare que le Royaume du Laos est un Etat pleinement indépendant et souverain. En conséquence, il est substitué à la République Française dans tous les droits et obligations résultant de tous traités internationaux, ou conventions particulières, contractés par celle-ci au nom du Royaume du Laos ou de l'Indochine Française, antérieurement à la présente convention.

. . .

Malaysia

Transmitted by a note verbale *dated 16 August 1962 of the Ministry of External Affairs of the Federation of Malaya and by a* note verbale *dated 23 January 1964 of the Permanent Mission of Malaysia to the United Nations*

A. TREATIES

1. FEDERATION OF MALAYA AGREEMENT OF 5 AUGUST 1957[2]

AGREEMENT dated the 5th day of August, 1957, and made between Sir Donald Charles MacGillivray, G.C.M.G., M.B.E., on behalf of Her Majesty of the one part and His Highness Tunku Ismail ibni Sultan Ibrahim, D.K., S.P.M.J., S.P.M.K., K.B.E., C.M.G., the Regent of Johore, on behalf of His Highness Ibrahim ibni Almarhum Sultan Abu Bakar, D.K., S.P.M.J., G.C.M.G., K.B.E. (Mil.), G.B.E., G.C.O.C. (I), Sultan of the State and Territory of Johore, His Highness Abu Bakar Ri'ayatu'd-Din Al-Muadzam Shah, ibni Almarhum Almu'tasim Bi'llah Sultan Abdullah G.C.M.G.,

[1] Entré en vigueur le 22 octobre 1953.

[2] Under the Constitutions of the States of Johore, Pahang, Kedah, Perlis, Kelantan and Trengganu it was unlawful for the Ruler to enter into any negotiation relating to the cession or surrender of the State or any part thereof. In consequence it was necessary, in order to make it clear that the Ruler of each of these States had authority to enter into this Agreement, to amend the State Constitutions to that effect. These amendments came into force on August 5, 1957 (the Agreement itself being signed on that date) and in general provided that it should not be "unlawful for the Ruler to enter into an agreement with Her Majesty and Their Highnesses the Rulers of the Malay States revoking the Federation of Malaya Agreement and the State Agreement, of 1948, and providing for the constitution and government of a new and independent federation, within the British Commonwealth of Nations, of the Malay States and the Settlements of Malacca and Penang and such further territories as may from time to time be admitted to such federation". The Agreement was published in a Supplement to the *Gazette* of December 11, 1957, as Notification No. (New Series) 888.

Sultan of the State of Pahang, His Highness Tuanku Abdul Rahman ibni Almarhum Tuanku Muhammad, G.C.M.G., the Yang di-Pertuan Besar of the State of Negri Sembilan, Dato' Klana Petra Mohamed Kassim bin Dato' Nika Haji Abdul Rashid, Undang of Sungei Ujong, Dato' Mendika Mentri Akhirzaman Shahmaruddin bin Abdulrahman, Undang of Jelebu, Dato' Johan Pahlawan Lela Perkasa Setiawan Abdul Manap bin Tolok, Undang of Johol, Dato' Lela Maharaja Haji Ipap bin Abdullah, Undang of Rembau, and Tengku Syed Idrus bin Tengku Syed Mohammad, Tengku Besar of Tampin, the Ruling Chiefs of the State of Negri Sembilan, His Highness Hisamuddin Alam Shah ibni Almarhum Sultan Ala-Iddin Sulaiman Shah, K.C.M.G., Sultan of the State of Selangor, His Highness Tunku Badlishah ibni Almarhum Sultan Abdul Hamid Halimshah, K.C.M.G., K.B.E., Sultan of the State of Kedah, His Highness Syed Putra ibni Almarhum Syed Hassan Jamalullail, K.C.M.G., the Raja of Perlis, His Highness Tengku Ibrahim ibni Almarhum Sultan Mohamed, IV, D.K., S.P.M.K., S.J.M.K., D.K. (Johore), K.C.M.G., Sultan of the State of Kelantan, His Highness Sultan Ismail Nassiruddin Shah ibni Al-Marhum Sultan Zainal Abidin, K.C.M.G., Sultan of the State of Trengganu and his Highness Paduka Sri Sultan Yussuf 'Izzuddin Shah ibni Almarhum Sultan Abdul Jalil Radziallah Hu-'an-hu, K.C.M.G., O.B.E., Sultan of the State of Perak, of the other part, for Themselves and Their Successors:

WHEREAS by the Federation of Malay Agreement, 1948, provision was made for the establishment of a Federation of Malaya comprising the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak, and the Settlements of Penang and Malacca:

AND WHEREAS the Federation of Malaya Agreement, 1948, has the force of law in the territories of the said Federation:

AND WHEREAS there now subsist between Her Majesty and each of Their Highnesses the Rulers of the said Malay States (in the case of Negri Sembilan between Her Majesty and His Highness the Yang di-Pertuan Besar and the Ruling Chiefs) divers Agreements relating to the government of the several States of Their Highnesses:

AND WHEREAS it has been represented to Her Majesty and Their Highnesses and the Ruling Chiefs of Negri Sembilan that fresh arrangements should be made for the peace, order and good government of the territories within the said Federation; and Her Majesty and Their Highnesses and the said Ruling Chiefs have agreed that the said Federation should become an independent country within the Commonwealth with the Constitution hereinafter provided for:

AND WHEREAS by the Federation of Malaya Independence Act, 1957, the approval of the Parliament of the United Kingdom was given to the conclusion of such Agreement as is herein contained:

NOW THEREFORE, it is agreed and declared as follows:

Citation

1. This Agreement may be cited as the Federation of Malaya Agreement, 1957.

Construction

2. In this Agreement, unless the context otherwise requires—

"the existing Federation" means the Federation of Malaya established by the Federation of Malaya Agreement, 1948;

"Federal Ordinance" means an Ordinance of the Legislature of the existing Federation;

"Their Highnesses the Rulers" means the persons who are for the time being the Sultan of the State and Territory of Johore, the Sultan of the State of Pahang, the Yang di-Pertuan Besar of the State of Negri Sembilan, the Sultan of the State of Selangor, the Sultan of the State of Kedah, the Raja of the State of Perlis, the Sultan of the State of Kelantan, the Sultan of the State of Trengganu, and the Sultan of the State of Perak;

"the Malay States" means the States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak, and all dependencies, islands and places which, immediately before the thirty-first day of August, nineteen hundred and fifty-seven, are administered as part thereof, and the territorial waters adjacent thereto;

"the Settlement of Penang" and "the Settlement of Malacca" include all islands and places which, immediately before the thirty-first day of August, nineteen hundred and fifty-seven, are administered as part of those Settlements, and the territorial waters adjacent thereto;

"the Settlements" means the Settlement of Penang and the Settlement of Malacca.

Establishment of new Federation: Federal Constitution

3. As from the thirty-first day of August, nineteen hundred and fifty-seven, the Malay States and the Settlements shall be formed into a new Federation of States by the name of Persekutuan Tanah Melayu, or in English, the Federation of Malaya, under the Federal Constitution set out in the First Schedule to this Agreement; and thereupon the said Settlements shall cease to form part of Her Majesty's dominions and Her Majesty shall cease to exercise any sovereignty over them, and all power and jurisdiction of Her Majesty or of the Parliament of the United Kingdom in or in respect of the Settlements or the Malay States or the Federation as a whole shall come to an end.

Constitutions of Penang and Malacca

4. The Constitutions set out in the Second and Third Schedules to this Agreement shall be the Constitutions of Penang and Malacca respectively as States of the new Federation.

Revocation of previous Agreements

5. Subject to the provisions of the said Federal Constitution and to the Fourth Schedule to this Agreement, the Federation of Malaya Agreement, 1948, and all other agreements subsisting between Her Majesty and the other Parties to this Agreement or any of them immediately before the said thirty-first day of August shall be revoked as from that day, but nothing in this Clause shall affect any provision in any agreement by which provision any disposition of territory was made.

Approval of this Agreement by Legislatures

6. The foregoing provisions of this Agreement are conditional upon the approval of the said Federal Constitution by Federal Ordinance and by an Enactment of each of the Malay States.

Languages of the Agreement

7. This Agreement shall be expressed in both the English and the Malay languages; but, for purposes of interpretation, regard shall be had only to the English version.

IN WITNESS WHEREOF Sir Donald Charles MacGillivray. G.C.M.G., M.B.E. has hereunto set his hand and seal on behalf of Her Majesty; and Their Highnesses the Rulers of the States of Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak and the Ruling Chiefs of the State of Negri Sembilan and His Highness Tunku Ismail ibni Sultan Ibrahim, D.K., S.P.M.J., S.P.M.K., K.B.E., C.M.G., the Regent of Johore, on behalf of His Highness the Sultan of the State and Territory of Johore, have hereunto set their hands and seals.

DONE the 5th day of August, 1957, corresponding to the 9th day of Muharram, 1377.

First schedule

[This consists of the Constitution of the Federation of Malaya. For relevant provisions see *infra* section B4]

Second schedule

[This consists of the Constitution of Penang. Not reproduced]

Third schedule

[This consists of the Constitution of Malacca. Not reproduced]

Fourth schedule[1]

The following provisions shall apply in respect of the Treaty made on the sixth day of May, eighteen hundred and sixty-nine. between Her

[1] Cf. Article 167 of the Constitution of the Federation of Malaya, *infra* section B4. The two Articles referred to in this Schedule are as follows:

Article II

The Governor of the British Colony of the Straits Settlements shall pay annually to His Highness the Iang de per Tuan of Quedah, ten thousand dollars, as long as Her Britannic Majesty shall continue in possession of Pulo Penang and the country on the opposite coast hereafter mentioned.

Article III

His Highness the Iang de per Tuan of Quedah agrees that the Dominions of Her Britannic Majesty on the mainland, opposite the Island of Penang, shall comprise the Territories bounded as follows: that is to say, on the West by the Sea, on the North by thc right bank of the River Mudah, on the South by the right bank of the River Kurreen (Kreean), and on the East by a line running South from a spot on the right bank of the River Mudah, opposite the existing Frontier pillar at Sematool, in a straight line to a point on the extreme eastern end of the Maratajam range of Hills. Thence along the top ridge of the Punchore Hill to the existing Frontier pillar on the right bank of the River Kurreen, about 400 English yards above and East of Bukit Tungal. A map

Majesty of the one part and The King of Siam of the other part relative to the State of Kedah:

(*a*) All obligations under Article II of the said Treaty shall, on and after the thirty-first day of August, nineteen hundred and fifty-seven, be discharged as is provided in Article 167 of the First Schedule to this Agreement, and accordingly no liability whatsoever under the said Article II shall attach to Her Majesty on or after the said thirty-first day of August.

(*b*) Article III of the said Treaty shall immediately before the said thirty-first day of August have the effect that the obligations of Her Majesty thereunder are obligations of Her Majesty in respect of Her Government of the Settlement of Penang, and all such obligations shall, on and after the said thirty-first day of August be discharged as is provided in Article 167 of the First Schedule to this Agreement, and accordingly no liability whatsoever under the said Article III shall attach to Her Majesty on or after the said thirty-first day of August.

2. EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATION OF MALAYA. KUALA LUMPUR, 12 SEPTEMBER 1957[1]

. . .

(*i*) All obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument are, from 31 August 1957, assumed by the Government of the Federation of Malaya in so far as such instruments may be held to have application to or in respect of the Federation of Malaya.

(*ii*) The rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to or in respect of the Federation of Malaya are, from 31 August 1957, enjoyed by the Government of the Federation of Malaya.

. . .

B. LAWS AND DECREES

1. THE FEDERATION OF MALAYA INDEPENDENCE ACT, 1957 — AN ACT TO MAKE PROVISION FOR AND IN CONNECTION WITH THE ESTABLISHMENT OF THE FEDERATION OF MALAYA AS AN INDEPENDENT SOVEREIGN COUNTRY WITHIN THE COMMONWEALTH[2]

. . .

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showing the eastern Boundary above described, in annexed to the present Treaty, and signed by the respective Commissioners.

The British Authorities engage to respect the Royal burying grounds at Kotah Prye within the ceded Territory, and to consider them still the property of His Highness the Iang de per Tuan of Quedah, but subject nevertheless to British jurisdiction in other respects, provided always that the Mudah River shall at all times be free to the peaceful navigation of the subjects of His Majesty the King of Siam.

[1] United Nations, *Treaty Series*, vol. 279, p. 287. Came into force on 12 September 1957. Cf. Article 169 of the Constitution of the Federation of Malaya, *infra* section B4.

[2] 5 and 6 Eliz. 2, Chapter 60. Enacted by the British Parliament on 31 July 1957.

Provision for establishment of the Federation as an independent sovereign country

1. (1) Subject to the provisions of this section, the approval of Parliament is hereby given to the conclusion between Her Majesty and the Rulers of the Malay States of such agreement as appears to Her Majesty to be expedient for the establishment of the Federation of Malaya as an independent sovereign country within the Commonwealth.

(2) Any such agreement as aforesaid may make provision—

(a) for the formation of the Malay States and of the Settlements of Penang and Malacca into a new independent Federation of States under a Federal Constitution specified in the agreement, and for the application to those Settlements, as States of the new Federation, of State Constitutions so specified;

(b) for the termination of Her Majesty's sovereignty and jurisdiction in respect of the said Settlements, and of all other Her power and jurisdiction in and in respect of the Malay States or the Federation as a whole, and the revocation or modification of all or any of the provisions of the Federation of Malaya Agreement, 1948, and of any other agreements in force between Her Majesty and the Rulers of the Malay States.

(3) Any such agreement shall be conditional upon the approval of the new Federal Constitution by enactments of the existing Federal Legislature and of each of the Malay States; and upon such approval being given Her Majesty by Order in Council[1] may direct that the said Federal and State Constitutions shall have the force of law within the said Settlements, and, so far as She has jurisdiction in that behalf, elsewhere within the Federation, and may make such other provision as appears to Her to be necessary for giving effect to the agreement.

(4) Any Order in Council under this section shall be laid before Parliament after being made.

(5) In this Act "the appointed day" means such day as may be specified by Order in Council under this section as the day from which the said Federal Constitution has the force of law as aforesaid.

Operation of existing laws

2. (1) On and after the appointed day, all existing law to which this section applies shall, until otherwise provided by the authority having power to amend or repeal that law, continue to apply in relation to the Federation or any part thereof, and to persons and things in any way belonging thereto or connected therewith, in all respects as if no such agreement as is referred to in subsection (1) of section one of this Act had been concluded:

Provided that—

(a) the enactments referred to in the First Schedule to this Act shall have effect as from the appointed day subject to the amendments made by that Schedule (being amendments for applying in relation to the Federation certain statutory provisions applicable to Commonwealth countries having fully responsible status within Her Majesty's dominions)

(b) Her Majesty may by Order in Council make such further adaptations in any Act of the Parliament of the United Kingdom passed before the appointed day, or in any instrument having effect under any such

[1] See the Federation of Malaya Independence Order in Council, 1957, *infra* section B2.

Act, as appear to Her necessary or expedient in consequence of the agreement referred to in subsection (1) of section one of this Act;

(c) in relation to the Colonial Development and Welfare Acts, 1940 to 1955, this subsection shall have effect only so far as may be necessary for the making of payments on or after the appointed day in pursuance of schemes in force immediately before that day and in respect of periods falling before that day;

(d) nothing in this section shall be construed as continuing in force any enactment or rule of law limiting or restricting the legislative powers of the Federation or any part thereof.

(2) An Order in Council made under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) An Order in Council made under this section may be varied or revoked by a subsequent Order in Council so made and may, though made after the appointed day, be made so as to have effect from that day.

(4) In this section "existing law" means any Act of Parliament or other enactment or instrument whatsoever, and any rule of law, which is in force on the appointed day or, having been passed or made before the appointed day, comes into force after that day; and the existing law to which this section applies is law which operates as law of, or of any part of, the United Kingdom, Southern Rhodesia, or any colony, protectorate or United Kingdom trust territory except that this section:

(a) does not apply to any law passed by the Federal Legislature of Rhodesia and Nyasaland;

(b) applies to other law of, or of any part of, Southern Rhodesia so far only as concerns law which can be amended neither by a law passed by the Legislature thereof nor by a law passed by the said Federal Legislature; and

(c) applies to other law of, or of any part of, Northern Rhodesia or Nyasaland so far only as concerns law which cannot be amended by a law passed by the said Federal Legislature.

(5) References in subsection (4) of this section to a colony, a protectorate and a United Kingdom trust territory shall be construed as if they were references contained in the British Nationality Act, 1948.

. . .

First Schedule

CONSEQUENTIAL AMENDMENTS OF ENACTMENTS

Nationality and Citizenship

1. Subsection (3) of section one of the British Nationality Act. 1948[1] (which specifies the Commonwealth countries whose citizens are British

[1] Section 1 of the United Kingdom British Nationality Act, 1948, provides for British nationality by virtue of citizenship, as follows:

"(1) Every person who under this Act is a citizen of the United Kingdom and Colonies or who under any enactment for the time being in force in any country mentioned in sub-section (3) of this section is a citizen of that country shall by virtue of that citizenship have the status of a British subject.

"(2) Any person having the status aforesaid may be known either as a British subject or as a Commonwealth citizen; and accordingly in this Act and in any other enactment or instrument whatever, whether passed or made before or after the commencement of this Act, the expression 'British subject' and the expression 'Commonwealth citizen' shall have the same meaning.

subjects or Commonwealth citizens) shall have effect as if for the words "and Ghana" there were substituted the words "Ghana and the Federation of Malaya"; and the British Protectorates, Protected States and Protected Persons Order in Council, 1949, made in pursuance of sections thirty and thirty-two of that Act, shall have effect as if the references to the Malay States in section eight of that Order and in the Second Schedule thereto were omitted.

Armed forces

2. (1) References in the Army Act, 1955, the Air Force Act, 1955, and the Naval Discipline Act, 1957, to a colony or to territory under Her Majesty's protection shall not include any part of the Federation, and section two hundred and eighteen of the Army Act, 1955, section two hundred and sixteen of the Air Force Act, 1955, and subsection (3) of section one hundred and twenty-seven of the Naval Discipline Act, 1957, shall cease to have effect.

(2) In the definitions of "Commonwealth force" in subsection (1) of section two hundred and twenty-five of the Army Act, 1955, and in subsection (1) of section two hundred and twenty-three of the Air Force Act, 1955, and in the definition of "Commonwealth country" in subsection (1) of section one hundred and thirty-five of the Naval Discipline Act, 1957, for the words "or Ghana" there shall be substituted the words "Ghana or the Federation of Malaya".

(3) Until the coming into force of the Naval Discipline Act, 1957 sub-paragraph (2) of this paragraph shall have effect as if for the reference to the definition of "Commonwealth country" in subsection (1) of section one hundred and thirty-five of that Act there were substituted a reference to the definition of "Commonwealth force" in section eighty-six of the Naval Discipline Act, as amended by the Revision of the Army and Air Force Acts (Transitional Provisions) Act, 1955.

3. Section four of the Visiting Forces (British Commonwealth) Act, 1933 (which deals with attachment and mutual powers of command), and the definition of "visiting force" for the purposes of that Act which is contained in section eight of that Act, shall apply in relation to forces raised in the Federation as they apply in relation to forces raised in Dominions within the meaning of the Statute of Westminster, 1931.

4. (1) In subsection (1) of section one of the Visiting Forces Act, 1952 (which specifies the countries to which that Act applies), for the words "or Ghana" there shall be substituted the words "Ghana or the Federation of Malaya"; and in paragraph (*a*) of subsection (1) of section ten of that Act the expression "colony" shall not include any part of the Federation.

(2) Until express provision with respect to the Federation is made by Order in Council under section eight of the said Act of 1952 (which relates to the application to visiting forces of law relating to home forces), any such Order for the time being in force shall be deemed to apply to visiting forces of the Federation.

"(3) The following are the countries hereinbefore referred to, that is to say Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, the Federation of Rhodesia and Nyasaland, Ceylon, Ghana, the Federation of Malaya, and the State of Singapore."

Diplomatic immunities

5. In section four hundred and sixty-one of the Income Tax Act, 1952 (which relates to exemption from income tax in the case of certain Commonwealth representatives and their staffs) for the words "or Ghana in both places where those words occur, there shall be substituted the words "Ghana or the Federation of Malaya".

6. In subsection (6) of section one of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act, 1952, after the word "Ghana" there shall be inserted the words "the Federation of Malaya".

Financial

7. As respects goods imported after such date as Her Majesty may by Order in Council appoint, section four of the Import Duties Act, 1932, and section two of the Isle of Man (Customs) Act, 1932 (which relate to imperial preference other than colonial preference) shall apply to the Federation.

8. (1) The Colonial Stock Acts, 1877 to 1948, shall apply in relation to stock of the Federation as they apply in relation to stock of a Dominion within the meaning of the Colonial Stock Act, 1934, but as if in paragraph (*a*) of subsection (1) of section one of the said Act of 1934 for any reference to Her Majesty's Government in the Dominion, to the Parliament of the Dominion or to the Royal Assent, there were substituted a reference to the Government or the Legislature of the Federation or to the Assent of the Head of the Federation.

(2) During any period on and after the appointed day during which there is in force as part of the law of the Federation any instrument passed or made before that day which makes provision corresponding to the undertaking required by the said paragraph (*a*), paragraphs (*a*) and (*b*) of the said subsection (1) shall be deemed to have been complied with in the case of the Federation.

Ships and aircraft

9. The Merchant Shipping Acts, 1894 to 1954, shall apply in relation to the Federation as they apply in relation to the Commonwealth countries mentioned in subsection (3) of section one of the British Nationality Act, 1948.

10. Without prejudice to the generality of the last foregoing paragraph:

(*a*) in subsection (2) of section four hundred and twenty-seven of the Merchant Shipping Act, 1894, as substituted by section two of the Merchant Shipping (Safety Convention) Act, 1949, for the words "or Ghana" there shall be substituted the words "Ghana or the Federation of Malaya"; and

(*b*) in the proviso to subsection (2) of section six of the Merchant Shipping Act, 1948, for the words "or Ghana" there shall be substituted the words "Ghana or the Federation of Malaya".

11. In the definitions of "Dominion ship or aircraft" contained in subsection (2) of section three of the Emergency Powers (Defence) Act, 1939, and in Regulation one hundred of the Defence (General)

Regulations, 1939, the expression "a Dominion" shall include the Federation.

12. The Ships and Aircraft (Transfer Restriction) Act, 1939, shall not apply to any ship by reason only of its being registered in, or licensed under the law of the Federation; and the penal provisions of that Act shall not apply to persons in the Federation (but without prejudice to the operation with respect to any ship to which that Act does apply of the provisions thereof relating to the forfeiture of ships).

13. In the Whaling Industry (Regulation) Act, 1934, the expression "British ship to which this Act applies" shall not include a British ship registered in the Federation.

Copyright

14. The references in section thirty-one of the Copyright Act, 1956, to a colony or to a country outside Her Majesty's dominions in which Her Majesty has jurisdiction shall not include any part of the Federation.

15. If the Copyright Act, 1911, so far as in force in the law of any part of the Federation, is repealed or amended by that law at a time when sub-paragraph (2) or paragraph 39 of the Seventh Schedule to the Copyright Act, 1956 (which applies certain provisions of that Act in relation to countries to which the said Act of 1911 extended) is in force in relation to that part of the Federation, the said sub-paragraph (2) shall thereupon cease to have effect in relation thereto.

Second Schedule

ENACTMENTS REPEALED

Session and Chapter	*Short Title*	*Extent of Repeal*
9 & 10 Geo. 6. c. 37.	The Straits Settlements (Repeal) Act, 1946.	The whole Act so far as it relates to the Settlements of Penang and Malacca.
3 & 4 Eliz. 2. c. 18.	The Army Act, 1955.	Section two hundred and eighteen.
3 & 4 Eliz. 2. c. 19.	The Air Force Act, 1955.	Section two hundred and sixteen.

2. THE FEDERATION OF MALAYA INDEPENDENCE ORDER IN COUNCIL, 1957[1]

WHEREAS by the Federation of Malaya Independence Act, 1957, the approval of Parliament was given to the conclusion between Her Majesty and the Rulers of the Malay States of such agreement as appears to Her Majesty to be expedient for the establishment of the Federation of Malaya as an independent sovereign country within the Commonwealth:

AND WHEREAS the said Act provides that any such agreement as aforesaid may make provision—

(*a*) for the formation of the Malay States and of the Settlements of Penang and Malacca into a new independent Federation of States under

[1] Statutory Instruments, 1957, No. 1533. Made at the Court at Balmoral on 23 August 1957 and came into operation on 31 August 1957.

a Federal Constitution specified in the Agreement, and for the application to those Settlements, as States of the new Federation, of State Constitutions so specified;

(*b*) for the termination of Her Majesty's sovereignty and jurisdiction in respect of the said Settlements, and of all other Her power and jurisdiction in and in respect of the Malay States or the Federation as a whole, and the revocation or modification of all or any of the provisions of the Federation of Malaya Agreement, 1948, and of any other agreements in force between Her Majesty and the Rulers of the Malay States:

AND WHEREAS the said Act further provides that any such Agreement shall be conditional upon the approval of the new Federal Constitution by enactments of the existing Federal Legislature and of each of the Malay States; and that upon such approval being given Her Majesty by Order in Council may direct that the said Federal and State Constitutions shall have the force of law within the said Settlements, and, so far as She has jurisdiction in that behalf, elsewhere within the Federation, and may make such other provision as appears to Her to be necessary for giving effect to the Agreement:

AND WHEREAS the Agreement set out in the Annex to this Order (hereinafter called "the Agreement") was concluded on the 5th day of August, 1957, between Her Majesty and the Rulers of the Malay States:

AND WHEREAS the Federal Constitution which is set out in the First Schedule to the Agreement has been approved by enactments of the existing Federal Legislature and of each of the Malay States:

NOW, THEREFORE, Her Majesty, by virtue and in exercise of the powers by section 1 of the said Act or otherwise in Her vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

Citation, commencement, application and construction

1. (1) This Order may be cited as the Federation of Malaya Independence Order in Council, 1957, and shall come into operation immediately before the 31st day of August, 1957.

(2) This Order extends to the Settlements of Penang and Malacca and, so far as Her Majesty has jurisdiction therein, to the other territories of the Federation of Malaya.

(3) The Interpretation Act, 1889, shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

Constitutions to have force of law

2. The Federal Constitution set out in the First Schedule to the Agreement, and the State Constitutions set out in the Second and Third Schedules thereto, shall have the force of law—

(a) in the case of the said Federal Constitution, as from the 31st day of August, 1957;

(b) in the case of the said State Constitutions, as from the commencement of this Order.

Revocation

3. (1) The Federation of Malaya Orders in Council, 1948 to 1956, are hereby revoked.

(2) Nothing in this section shall prejudice the continuance in operation of any provision of the said Orders in Council, to the extent provided for by the Federal and State Constitutions referred to in section 2 of this Order, as part of those Constitutions.

3. THE FEDERAL CONSTITUTION ORDINANCE, 1957[1] — AN ORDINANCE TO APPROVE THE FEDERAL CONSTITUTION SET OUT IN THE FEDERATION OF MALAYA AGREEMENT, 1957

WHEREAS by the Federation of Malaya Agreement, 1948, provision was made for the establishment of a Federation of Malaya comprising the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak and the Settlements of Penang and Malacca:

AND WHEREAS by an Agreement, hereinafter referred to as the Federation of Malaya Agreement, 1957, made the fifth day of August, 1957, between Her Majesty of the one part and Their Highnesses the Rulers of the States of Johore, Pahang, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak, and His Highness the Yang di-Pertuan Besar and the Ruling Chiefs of the State of Negri Sembilan of the other part fresh arrangements have been agreed upon for the peace, order and good government of the territories comprised in the Federation of Malaya:

AND WHEREAS by the Federation of Malaya Agreement, 1957, it is agreed by the parties thereto that as from the thirty-first day of August, 1957, the Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak and the Settlements of Penang and Malacca shall be formed into a new Federation of States by the name of Persekutuan Tanah Melayu (in English the Federation of Malaya), under the Federal Constitution set out in the First Schedule to the said Agreement; and that thereupon the Settlements of Penang and Malacca shall cease to form part of Her Majesty's dominions and Her Majesty shall cease to exercise any sovereignty over them and all power and jurisdiction of Her Majesty or of the Parliament of the United Kingdom in or in respect of the Settlements or the Malay States or the Federation as a whole shall come to an end; and that, subject to the provisions of the said Federal Constitution and to the Fourth Schedule to the said Agreement, the Federation of Malaya Agreement, 1948, and all other agreements subsisting between Her Majesty and Their Highnesses the Rulers or any of them immediately before the said thirty-first day of August shall be revoked as from that day; and that the provisions of the said Agreement are conditional upon the approval of the said Federal Constitution by Federal Ordinance and by an Enactment of each of the Malay States:

NOW IT IS HEREBY ENACTED by the High Commissioner of the Federation of Malaya and Their Highnesses the Rulers of the Malay States, with the advice and consent of the Legislative Council, as follows:

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[1] Ordinance No. 55 of 1957. Enacted by the High Commissioner of the Federation of Malaya and the Rulers of Malay States on 27 August 1957. Each of the former Malay States enacted legislation in similar terms to the present Ordinance.

Short title

1. This Ordinance may be cited as the Federal Constitution Ordinance, 1957.

Approval of Federal Constitution

2. The Federal Constitution set out in the First Schedule to the Federation of Malaya Agreement, 1957, is hereby approved and shall on and after the thirty-first day of August, 1957, have the force of law throughout the Federation.

4. CONSTITUTION OF THE FEDERATION OF MALAYA, 1957[1]

Part I

THE STATES, RELIGION AND LAW OF THE FEDERATION

The name, States and territories of the Federation

1. (1) The Federation shall be known by the name of Persekutuan Tanah Melayu (in English the Federation of Malaya).

(2) The States of the Federation are Johore, Kedah, Kelantan, Negri Sembilan, Pahang, Perak, Perlis, Selangor and Trengganu (formerly known as the Malay States) and Malacca and Penang (formerly known as the Settlements of Malacca and Penang).

(3) The territories of each of the States mentioned in Clause (2) are the territories of that State immediately before Merdeka Day.[2]

Admission of new territories into the Federation

2. Parliament may by law—

(a) admit other States to the Federation;

(b) alter the boundaries of any State;

but a law altering the boundaries of a State shall not be passed without the consent of that State (expressed by a law made by the Legislature of that State) and of the Conference of Rulers.

. . .

Part XIII

TEMPORARY AND TRANSITIONAL PROVISIONS

Existing laws

162. (1) Subject to the following provisions of this Article and Article 163, the existing laws shall, until repealed by the authority having power to do so under this Constitution, continue in force on and after Merdeka Day, with such modifications as may be made therein under this Article and subject to any amendments made by federal or State law.

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[1] First Schedule of the Federation of Malaya Agreement, 1957, dated 5 August 1957 [section A 1 above] which was approved by the Federal Constitution Ordinance, 1957, dated 27 August 1957 [section B 3 above]. Came into force on 31 August 1957.

[2] 31 August 1957.

. . .

(4) The Yang di-Pertuan Agong may, within a period of two years beginning with Merdeka Day, by order make such modifications in any existing law, other than the Constitution of any State, as appear to him necessary or expedient for the purpose of bringing the provisions of that law into accord with the provisions of this Constitution; but before making any such order in relation to a law made by the Legislature of a State he shall consult the Government of that State.

(5) Any order made under Clause (4) may be amended or repealed by the authority having power to make laws with respect to the matter to which the order relates.

(6) Any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provisions of this Constitution.

(7) In this Article "modification" includes amendment, adaptation and repeal.

. . .

Temporary functions of Legislative Council

164. (1) The Legislative Council established under the Federation of Malaya Agreement, 1948,[1] shall remain in being on and after Merdeka Day and shall not be dissolved before the first day of January, nineteen hundred and fifty-nine.[2]

. . .

Succession of property

166. (1) Subject to the provisions of this Article, all property and assets which immediately before Merdeka Day were vested in Her Majesty for the purposes of the Federation or of the colony or Settlement of Malacca or the colony or Settlement of Penang, shall on Merdeka Day vest in the Federation or the State of Malacca or the State of Penang, as the case may be.

(2) Any land in the State of Malacca or the State of Penang which immediately before Merdeka Day was vested in Her Majesty shall on that day vest in the State of Malacca or the State of Penang as the case may be.

(3) Any land vested in the State of Malacca or the State of Penang which immediately before Merdeka Day was occupied or used by the Federation Government or Her Majesty's Government or by any public authority for purposes which in accordance with the provisions of this Constitution become federal purposes shall on and after that day be occupied, used, controlled and managed by the Federal Government or, as the case may be, the said public authority, so long as it is required for federal purposes, and—

(*a*) shall not be disposed of or used for any purposes other than federal purposes without the consent of the Federal Government, and

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[1] Statutory Instruments 1948, vol. I, pp. 1276-1339.

[2] The Legislative Council was in fact dissolved on 27 June 1959 [see *Gazette* Notification 2279 of 1959].

(*b*) shall not be used for federal purposes different from the purposes for which it was used immediately before Merdeka Day without the consent of the Government of the State.

(4) Any State land which, immediately before Merdeka Day, was occupied or used, without being reserved, by the Federation Government for purposes which become federal purposes on that day, shall on that day be reserved for those federal purposes.

(5) All property and assets which immediately before Merdeka Day were vested in the Federation Government or some other person on its behalf for purposes which on that day continue to be federal purposes, shall on that day vest in the Federation.

(6) Property and assets which immediately before Merdeka Day were vested in the Federation Government or some person on its behalf for purposes which on that day become purposes of any State shall on that day vest in that State.

(7) Property and assets other than land which immediately before Merdeka Day were used by a State for purposes which on that day become federal purposes shall on that day vest in the Federation.

(8) Any property which was, immediately before Merdeka Day, liable to escheat to Her Majesty in respect of the government of Malacca or the government of Penang shall on that day be liable to escheat to the State of Malacca or the State of Penang, as the case may be.

Rights, liabilities and obligations

167. (1) Subject to the provisions of this Article, all rights, liabilities and obligations of—

(*a*) Her Majesty in respect of the government of the Federation, and

(*b*) the Government of the Federation or any public officer on behalf of the Government of the Federation,

shall on and after Merdeka Day be the rights, liabilities and obligations of the Federation.

(2) Subject to the provisions of this Article, all rights, liabilities and obligations of—

(*a*) Her Majesty in respect of the government of Malacca or the government of Penang,

(*b*) His Highness the Ruler in respect of the government of any State, and

(*c*) the Government of any State,

shall on and after Merdeka Day be the rights, liabilities and obligations of the respective States.

(3) All rights, liabilities and obligations relating to any matter which was immediately before Merdeka Day the responsibility of the Federation Government but which on that date becomes the responsibility of the Government of a State, shall on that day devolve upon that State.

(4) All rights, liabilities and obligations relating to any matter which was immediately before Merdeka Day the responsibility of the Government of a State but which on that day becomes the responsibility of the Federal Government, shall on that day devolve upon the Federation.

(5) In this Article, rights, liabilities and obligations include rights, liabilities and obligations arising from contract or otherwise, other than rights to which Article 166 applies.

(6) The Attorney General shall, on the application of any party in-

terested in any legal proceedings, other than proceedings between the Federation and a State, certify whether any right, liability or obligation is by virtue of this Article a right, liability or obligation of the Federation or of a State named in the certificate, and any such certificate shall for the purposes of those proceedings be final and binding on all courts, but shall not operate to prejudice the rights and obligations of the Federation and any State as between themselves.

(7) The Federation shall make the like annual payments as fell to be made before Merdeka Day under Article II of the Treaty made on the sixth day of May, eighteen hundred and sixty-nine, between Her Majesty of the one part and the King of Siam of the other part relative to the State of Kedah.

Legal proceedings

168. (1) Subject to the provisions of this Article, any legal proceedings pending in any court immediately before Merdeka Day in which Her Majesty or any servant of Her Majesty is a party in respect of the colony or Settlement of Malacca or the colony or Settlement of Penang shall continue on and after Merdeka Day with the State of Malacca or the State of Penang, as the case may be, substituted as a party.

(2) Subject to the provisions of this Article, any legal proceedings pending in any court immediately before Merdeka Day in which the Federation Government or a State Government or any officer of either Government is a party shall continue on and after Merdeka Day with the Federation or, as the case may be, the State substituted as a party.

(3) Any legal proceedings pending in any court immediately before Merdeka Day in which the Federation Government or any officer thereof is a party shall, if the subject matter falls within the executive authority of a State, be continued on and after that day with that State substituted as a party.

(4) Any legal proceedings pending in any court immediately before Merdeka Day in which a State or any officer thereof is a party shall, if the subject matter falls within the executive authority of the Federation, be continued on and after that day with the Federation substituted as a party.

(5) The Attorney General shall, on the application of any party to any proceedings referred to in this Article, certify whether the Federation or a State is in accordance with this Article to be substituted as a party in those proceedings, and any such certificate shall, for the purposes of those proceedings, be final and binding on all courts, but shall not operate to prejudice the rights and obligations of the Federation and any State as between themselves.

International agreements, etc. made before Merdeka Day

169.[1] For the purposes of Article 76 (1)[2]—

(*a*) any treaty, agreement or convention entered into before Merdeka Day between Her Majesty or her predecessors or the Government

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[1] Cf. Exchange of letters dated 12 September 1957 between the United Kingdom and the Federation of Malaya [section A 2 above].

[2] Article 76 (1) reads in part:

"Parliament [of the Federation of Malaya] may make laws with respect to

of the United Kingdom on behalf of the Federation or any part thereof and another country shall be deemed to be a treaty, agreement or convention between the Federation and that other country;

(*b*) any decision taken by an international organisation and accepted before Merdeka Day by the Government of the United Kingdom on behalf of the Federation or any part thereof shall be deemed to be a decision of an international organisation of which the Federation is a member.

Temporary provisions for persons qualified for registration as citizens under Federation of Malaya Agreement, 1948, Clause 126

170. (1) Subject to the provisions of this Article, any person who, immediately before Merdeka Day, was qualified to make application for registration as a citizen of the Federation under Clause 126 of the Federation of Malaya Agreement, 1948,[1] shall be entitled, upon making application to the registration authority within the period of one year beginning with that day, to be registered as a citizen.

(2) A person who has absented himself from the Federation for a continuous period of five years within the ten years immediately preceding his application under this Article shall not be entitled to be registered thereunder unless it is certified by the Federal Government that he has maintained substantial connection with the Federation during that period.

. . .

Existing courts

172. The Supreme Court in existence immediately before Merdeka Day shall be the Supreme Court for the purposes of this Constitution; and, without prejudice to the generality of Article 162, any other court then exercising jurisdiction and functions shall, until federal law otherwise provides, continue to exercise them.

Pending appeals to Privy Council

173. Any appeal or application for leave to appeal from the Supreme Court to Her Majesty in Council which is pending immediately before Merdeka Day shall on and after Merdeka Day be treated as an appeal or application for leave to appeal under Article 131.

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any matter enumerated in State List, but only as follows, that is to say —

"(a) for the purpose of implementing any treaty, agreement or convention between the Federation and any other country, or any decision of an international organisation of which the Federation is a member;".

[1] Clause 126 reads in part:

"Subject as hereinafter provided, a person of full capacity, born in the Federation who—

"(a) is not a citizen of the Federation of Malaya; and

"(b) is a citizen of the United Kingdom and Colonies,

"shall, on making application therefor to the High Commissioner in the prescribed manner, be entitled, on taking the oath set out in Form VIII in the First Schedule to this Agreement, to be registered as a citizen of the Federation of Malaya."

Judicial appointments and Attorney General

174. (1) The Chief Justice and other judges of the Supreme Court holding office immediately before Merdeka Day shall, notwithstanding anything in Article 123, be the Chief Justice and the other judges of the Supreme Court on that day and shall hold office on terms and conditions not less favourable than those applicable to them immediately before that day.

(2) The person holding the office of Attorney General immediately before Merdeka Day shall continue to hold that office on terms and conditions not less favourable than those applicable to him immediately before Merdeka Day and shall, notwithstanding anything in Article 123, be qualified for appointment as a judge of the Supreme Court.

(3) A person who immediately before Merdeka Day was a member of the judicial and legal service of the Federation and would be qualified for appointment as a judge of the Supreme Court if he were a citizen shall be so qualified notwithstanding that he is not a citizen.

. . .

Transfer of officers

176. (1) Subject to the provisions of this Constitution and any existing law, all persons serving in connection with the affairs of the Federation immediately before Merdeka Day shall continue to have the same powers and to exercise the same functions on Merdeka Day on the same terms and conditions as were applicable to them immediately before that day.

(2) This Article does not apply to the High Commissioner or the Chief Secretary.

. . .

Preservation of pensions, etc.

180. (1) The Tenth Schedule to the Federation of Malaya Agreement, 1948[1], shall continue in force on and after Merdeka Day, but with the modification that any reference therein to the High Commissioner shall be construed as a reference to the Yang di-Pertuan Agong.

5. Constitution of Malaysia, 1963[2]

Part I

THE STATES, RELIGION AND LAW OF THE FEDERATION

The name, States and territories of the Federation [*Subs. 26 of 1963*]

1. (1) The Federation shall be known, in Malay and in English, by the name Malaysia.

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[1] This schedule provides for pensions, gratuities or other like allowances granted to persons serving in connection with the affairs of the Federation.

[2] *The Federal Constitution of Malaysia together with the Malaysia Act*, compiled in the Attorney-General's Chambers, Kuala Lumpur (1964), p. 1.

(2) The States of the Federation shall be—

(*a*) the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu; and

(*b*) the Borneo States, namely, Sabah and Sarawak; and

(*c*) the State of Singapore.

(3) The territories of each of the States mentioned in Clause (2) are the territories comprised therein immediately before Malaysia Day.[1]

Admission of new territories into the Federation

2. [See section B4, Article 2 above]

. . .

Part XII

GENERAL AND MISCELLANEOUS

Operation of transitional provisions of Malaya Act [*Add. 26 of 1963*]

159A. The provisions of Part IV of the Malaysia Act (which contains temporary and transitional provisions in connection with the operation of that Act) shall have effect as if embodied in this Constitution, and shall have effect notwithstanding anything in this Constitution as amended by that Act; and the provisions of this Constitution, and in particular Clause (1) of Article 4 and Articles 159, 161E and 161H, shall have effect in relation thereto accordingly.

Part XIII

TEMPORARY AND TRANSITIONAL PROVISIONS

Existing laws

162. (1) [See section B4, Article 162 above]

. . .

(4) (Repealed by Amend. 25 of 1963)

(5), (6) and (7) [See section B4, Article 162 above]

. . .

Succession to property

166. (1) and (2) (Repealed by Amend. 25 of 1963)

(3) [See section B4, Article 166 above]

(4), (5), (6), (7) and (8) (Repealed by Amend. 25 of 1963)

Rights, liabilities and obligations

167. (1), (2), (3), (4) and (5) (Repealed by Amend. 25 of 1963)

(6) and (7) [see section B4, Article 167 above]

Legal proceedings

168. (Repealed by Amend. 25 of 1963)

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[1] 13 September 1963.

International agreements, etc. made before Merdeka Day [Add. 26 of 1963]

169. For the purposes of Article 76 (1)—
(*a*) [See section B4, Article 169 above]
(*b*) [See section B4, Article 169 above]
(*c*) in relations to the Borneo States and to Singapore paragraphs (*a*) and (*b*) shall apply with the substitution of references to Malaysia Day for the references to Merdeka Day and of references to the territories comprised in those States or any of them for the references to the Federation or any part thereof.

Registration as citizens

170. (Repealed by Amend. 25 of 1963)

Existing courts

172. (Repealed by Amend. 25 of 1963)

Appeal to Privy Council

173. (Repealed by Amend. 25 of 1963)

Judicial appointments and Attorney-General

174. (Repealed by Amend. 26 of 1963)

. . .

Transfer of Officers

176. [See section B4, article 176 above]

. . .

Preservation of pensions, etc.

180. [See section B4, article 180 above]

6. MALAYSIA ACT. 1963[1]

Part IV

TRANSITIONAL AND TEMPORARY

Chapter 1—General

Continuation and effect of present laws

73. (1) Subject to the following provisions of this Part of this Act and to any law passed or made on or after Malaysia Day, all present laws shall, on and after Malaysia Day, have effect according to their tenor, and be construed as if this Act had not been passed:

Provided that references to the Federation (except in relation to a time before Malaysia Day) shall be construed as references to Malaysia, and expressions importing such a reference shall be construed accordingly.

[2] *The Federal Constitution of Malaysia together with the Malaysia Act*, compiled in the Attorney General's Chambers, Kuala Lumpur (1964), p. 153.

(2) Any present law of the Federation passed or made on or after the day this Act is passed shall extend to any part of Malaysia to which it is expressed to extend; but save as aforesaid no present law of the Federation shall extend to any of the Borneo States or to Singapore, unless or until it is so extended by a law passed or made as aforesaid.

(3) Subject to the following provisions of this Part, the present laws of the Borneo States and of Singapore shall, on and after Malaysia Day, be treated as federal laws in so far as they are laws which could not be passed after Malaysia Day by the State Legislature, and otherwise as State laws.

(4) This section shall not validate or give effect to any provision contained in the present law of the Federation which is inconsistent with the Constitution, or any provision of present law which is invalid for reasons other than inconsistency with the Constitution.

(5) In this Part of this Act "present laws" means the laws of the Federation, of each of the Borneo States, and of Singapore passed or made before Malaysia Day, but does not include the Constitution of the Federation or any of those States or this Act.

Temporary power to modify and apply present laws

74. (1) Subject to the provisions of this section the Yang di-Pertuan Agong may by order make such modifications as appear to him necessary or expedient in consequence of the passing of this Act in any present law relating to matters about which Parliament has power to make laws.

. . .

Succession to property

75. (1) Subject to sections 78 and 79, any land which on Malaysia Day is vested in any of the Borneo States or in the State of Singapore, and was on the preceding day occupied or used by the government of the United Kingdom or of the State, or by any public authority other than the government of the State, for purposes which on Malaysia Day become federal purposes, shall on and after that day be occupied, used, controlled and managed by the Federal Government or, as the case may be, the said public authority, so long as it is required for federal purposes; and that land—

(*a*) shall not be disposed of or used for any purposes other than federal purposes without the consent of the Federal Government; and

(*b*) shall not by virtue of this sub-section be used for federal purposes different from the purposes for which it was used immediately before Malaysia Day without the consent of the government of the State and, where it ceases to be used for those purposes and that consent is not given, shall be offered to the State accordingly.

(2) For the purposes of sub-section (1) "federal purposes" includes the provision of government quarters for the holders of federal office or employment; but that sub-section shall not apply to any land by reason of its having been used by any government for providing government quarters other than those regarded by that government as institutional quarters.

(3) Property and assets other than land which immediately before Malaysia Day were used by the government of a Borneo State or of Singapore in maintaining government services shall be apportioned between the Federation and the State with regard to the needs of the Federal and State governments respectively to have the use of the property and assets for Federal or State services, and subject to any agreement to the contrary between the governments concerned a corresponding apportionment as at that date shall be made of other assets of the State (but not including land) and of the burden, as between the Federation and the State, of any financial liabilities of the State (including future debt charges in respect of those liabilities); and there shall be made all such transfers and payments as may be necessary to give effect to any apportionment under this sub-section.

(4) In this section references to the government of a State include the government of the territories comprised therein before Malaysia Day.

Succession to rights, liabilities and obligations

76. (1) All rights, liabilities and obligations relating to any matter which was immediately before Malaysia Day the responsibility of the government of a Borneo State or of Singapore, but which on that day becomes the responsibility of the Federal Government, shall on that day devolve upon the Federation, unless otherwise agreed between the Federal Government and the government of the State.

(2) This section does not apply to any rights, liabilities or obligations in relation to which section 75 has effect, nor does it have effect to transfer any person from service under the State to service under the Federation or otherwise affect any rights, liabilities or obligations arising from such service or from any contract of employment; but, subject to that, in this section rights, liabilities and obligations include rights, liabilities and obligations arising from contract or otherwise.

(3) The Attorney-General shall on the application of any party interested in any legal proceedings, other than proceedings between the Federation and a State, certify whether any right, liability or obligation is by virtue of this section a right, liability or obligation of the Federation or of a State named in the certificate, and any such certificate shall for the purposes of those proceedings be final and binding on all courts, but shall not operate to prejudice the rights and obligations of the Federation and any State as between themselves.

(4) In this section references to the government of a State include the government of the territories comprised therein before Malaysia Day.

Succession as to criminal and civil proceedings

77. (1) Subject to the provisions of this section, neither any transfer or surrender on Malaysia Day of jurisdiction in relation to a Borneo State or Singapore, nor anything contained in this Act, shall affect any person's liability to be prosecuted and punished for offences committed before Malaysia Day, or any proceedings brought or sentence imposed before that day in respect of any offence; but the powers mentioned in Article 42 of the Constitution (which relates to pardons, etc.) shall in

the Borneo States and Singapore extend to offences committed and sentences imposed before Malaysia Day.

(2) In any legal proceedings pending on Malaysia Day (whether civil or criminal) there shall be made such substitution of one party for another as may be necessary to take account of any transfer or surrender on that day of jurisdiction or executive authority in a Borneo State or Singapore or of any transfer under this Act of rights, liabilities or obligations.

(3) Any appeal brought on or after Malaysia Day against a decision given in any legal proceedings before that day may be brought by or against the party who should, by virtue of sub-section (2), have been the appellant or respondent if the proceedings had continued after Malaysia Day; but if it is not so brought, sub-section (2) shall apply to it as it applies to proceedings pending on Malaysia Day.

(4) Sub-section (3) shall apply with the necessary modifications to proceedings for leave to appeal as it applies to an appeal.

(5) The Attorney-General shall, on the application of a party to any proceedings, certify whether any, and if so what, substitution of one party for another is to be made by virtue of sub-sections (2) to (4) in those proceedings or for the purpose of any appeal arising out of them, and any such certificate shall for purposes of the proceedings or any such appeal, be final and binding on all courts, but shall not operate to prejudice the rights and obligations of the Federation and any State as between themselves.

Succession on future transfers of responsibility

78. (1) Where in a Borneo State or in Singapore the State government on Malaysia Day retains responsibility for any matter by reason—

(*a*) of the matter being included for a limited period in the Concurrent List; or

(*b*) of the making of an order under Article 95c of the Constitution empowering the State Legislature to pass laws about the matter;

but the matter would otherwise have become on Malaysia Day the responsibility of the Federal Government, then (subject to federal law) on that matter becoming the responsibility of the Federal Government sections 75 and 76 and sub-sections (2) to (5) of section 77 shall apply in connection with the transfer of responsibility for that matter with the substitution of references to the day on which it does so for the references to Malaysia Day.

(2) Where in a Borneo State or in Singapore the State government retains responsibility for any matter under a present law of the State continued in force under section 73, but the matter would otherwise have become on that day the responsibility of the Federal Government, then—

(*a*) the purposes of that law shall not be treated as federal purposes within the meaning of section 75 so long as the State government retains the responsibility thereunder; and

(*b*) sub-section (1) shall apply as it applies where the State government retains responsibility for the reasons there mentioned.

Chapter 2 — State officers

Preservation of pensions

81. (1) Article 147 of the Constitution shall have effect as if any reference to the public services included the public services before Malaysia Day in the territories comprised in a Borneo State or in Singapore.

(2) In relation to awards granted to or in respect of persons who were members of those services that Article shall have effect with the substitution for references to Merdeka Day and to the thirtieth day of August, 1957, of references to Malaysia Day and the day before Malaysia Day.

(3) For the purposes of that Article as it applies in relation to the former public services in Sarawak, there shall be treated as having had the force of law on the day before Malaysia Day, any administrative regulations providing for the payment of pensions, gratuities or allowances and any resolution of Council Negri relating to the amount of any pension or allowance then in payment.

. . .

Chapter 3 — The Courts and the Judiciary

Temporary provision as to jurisdiction, etc. of superior courts

87. (1) Until other provision is made by or under federal law, the appellate jurisdiction of the Federal Court and the jurisdiction of the High Courts, and (so far as may be) the practice and procedure to be followed by those Courts in the exercise of that jurisdiction, shall, subject to the provisions of this section, be the same as that exercised and followed in the like case immediately before Malaysia Day in the Supreme Court of the Federation, the Supreme Court of Sarawak, North Borneo and Brunei or the Supreme Court of Singapore, as the case may be:

Provided that this sub-section shall not confer on any court any jurisdiction which immediately before Malaysia Day was derived from any law of the State of Brunei.

(2) Until other provision is made by or under federal law, the practice and procedure to be followed by the Federal Court in the exercise of its original and consultative jurisdiction, and the practice and procedure of other courts in connection therewith, shall, subject to the provisions of this section, be the same as nearly as may be as that followed in the like case immediately before Malaysia Day in and in connection with the exercise of the corresponding jurisdiction by the Supreme Court of the Federation.

(3) Until other provision is made by or under federal law—

(*a*) the Federal Court and each of the High Courts shall adopt and use as its seal such seal or stamp as may be approved by the Lord President, in the case of the Federal Court, or the Chief Justice, in the case of a High Court; and

(*b*) there shall be in and for the purposes of those courts the like offices as there were immediately before Malaysia Day in the case of the said Supreme Courts, and the holders of those offices shall dis-

charge the functions belonging thereto with such modifications as are required to give effect to sub-sections (1) and (2).

(4) Sub-sections (1) to (3) shall not affect the powers conferred by section 74, but subject to any order under that section and to the following provisions of this section all present laws affecting the jurisdiction, practice or procedure of the said Supreme Courts shall apply to the Federal Court and the High Courts with such modifications as may be necessary to give effect to sub-sections (1) to (3).

(5) Sub-sections (1) to (4) shall not have effect so as to prevent the amendment or revocation of any rules of court in force immediately before Malaysia Day, or the making of new rules of court, under the powers conferred by any present law as applied by sub-section (4); but, until other provision is made by federal law, the powers so conferred as regards the practice and procedure of the Federal Court and the practice and procedure of other courts in matters incidental to the exercise of any jurisdiction of the Federal Court, shall be exercised by the Lord President after consultation with the Chief Justices of the High Courts.

(6) Until other provision is made by or under federal law, the present law relating to appeals to the Yang di-Pertuan Agong from the Court of Appeal of the Federation, and the practice and procedure followed in connection therewith immediately before Malaysia Day, shall, subject to any order under section 74 and to any new rules of court, apply with any necessary modifications for the purpose of appeals to the Yang di-Pertuan Agong from the Federal Court.

(7) For the purposes of this section the right of audience in a court shall be deemed to be a matter of the practice of the court; but in the Federal Court any advocate of a High Court shall have that right, if and so long as it depends on this section.

(8) For the purposes of this section the Court of Criminal Appeal in Singapore shall be treated as having been a division of the Court of Appeal.

(9) This section has effect subject to Article 161B of the Constitution.

Continuity of subordinate courts and of jurisdiction

88. (1) Subject to any order under section 74 any subordinate court exercising jurisdiction and functions immediately before Malaysia Day in the territories comprised in a Borneo State or in the State of Singapore shall, until federal law otherwise provides, continue to exercise them.

(2) The validity on or after Malaysia Day of anything done before that day in or in connection with or with a view to any proceedings in a court in those territories shall not be affected by the court becoming on that day a court of the Federation, but anything so done shall be of the like effect as a thing done by or in relation to the court in the exercise of its jurisdiction as a court of the Federation.

(3) Anything done before Malaysia Day in or in connection with or with a view to any proceedings in the Court of Appeal of the Federation, or of Sarawak, North Borneo and Brunei, or of Singapore, or the Court of Criminal Appeal in Singapore, shall on and after that day be of the like effect as if that court were one and the same court with the Federal Court.

(4) Anything done before Malaysia Day in or in connection with or

with a view to any proceedings in the High Court of the Federation, or of Sarawak, North Borneo and Brunei, or of Singapore shall on and after that day be of the like effect as if those High Courts were respectively one and the same court with the High Court in Malaya, the High Court in Borneo and the High Court in Singapore.

(5) Where in any court mentioned in sub-section (3) or (4) the hearing of a case has been begun but the case has not finally been disposed of before Malaysia Day, and any judge sitting to deal with the case does not on Malaysia Day become a judge of the court in which the further proceedings in the case are to be had under that sub-section, he shall in relation to the case have the same powers as if he had for the purpose thereof been duly appointed to act as judge of that court.

(6) References in this section to things done in connection with proceedings in a court shall include appeals from the court or a judge thereof, and shall apply to appeals to the Yang di-Pertuan Agong; and any appeal to Her Britannic Majesty from the Supreme Court of Sarawak, North Borneo and Brunei or from the Supreme Court of Singapore or Court of Criminal Appeal in Singapore, and anything done with a view to such an appeal, shall for purposes of this section be treated as an appeal to the Yang di-Pertuan Agong or, as the case may be, as done with a view to such an appeal.

(7) Without prejudice to the generality of sub-sections (3) and (4), all records of the courts there mentioned which are in existence immediately before Malaysia Day shall on and after that day be held, continued and used as if they were records of the corresponding courts there mentioned which are established on Malaysia Day; and any such record, in so far as it is on that day incomplete with respect to the period before that day, shall be made up as if this Act had not been passed.

(8) Any process, pleading, recognizance or other document may be amended to conform with its operation under this section, but shall have effect in accordance with this section whether or not it is so amended.

Continuance in office of existing judges

89. (1) Subject to the provisions of this section, on Malaysia Day the persons holding office immediately before that day as judges of the Supreme Court of the Federation, of the Supreme Court of Sarawak, North Borneo and Brunei and of the Supreme Court of Singapore shall become judges of the Federal Court and of the High Courts as follows:

(*a*) the Chief Justice of the Federation shall become Lord President of the Federal Court, the Chief Justice of Sarawak, North Borneo and Brunei shall become Chief Justice of the High Court in Borneo and the Chief Justice of Singapore shall become Chief Justice of the High Court in Singapore;

(*b*) the judges of the Court of Appeal of the Federation shall become judges of the Federal Court;

(*c*) the other judges shall become respectively judges of the High Courts in Malaya, in Borneo and in Singapore according to the place in which they were judges before Malaysia Day.

(2) The first Chief Justice of the High Court in Malaya shall be appointed from among the persons holding office immediately before Malaysia Day as judges of the Supreme Court of the Federation, and

if a judge of the Court of Appeal is appointed, sub-section (1) shall have effect subject to that appointment and to any appointment made in consequence of it.

(3) In connection with any such appointment as is mentioned in sub-section (2), any requirement of Article 122B of the Constitution as to consultation with the Lord President of the Federal Court or a Chief Justice may be satisfied by consultation with the person designated or appointed under this section to hold that office.

(4) The term of office under sub-section (1) of a judge who immediately before Malaysia Day held his then office for a fixed term shall not expire before the end of that term; and, subject to that, the term of office under sub-section (1) of any judge of the Supreme Court of Sarawak, North Borneo and Brunei who becomes a judge of the High Court in Borneo under that sub-section shall be such fixed period, whether or not expiring after he attains the age of sixty-five, as may have been notified to him before Malaysia Day by or with the authority of the Federal Government.

(5) Subject to sub-section (4) a person becoming judge of the Federal Court or a High Court under sub-section (1) (including the Lord President or a Chief Justice) shall hold that office on terms and conditions not less favourable than those applicable to him in the office he holds immediately before Malaysia Day.

(6) A person becoming judge of a High Court under sub-section (1) shall not be transferred to another High Court under Article 122C of the Constitution except with his consent.

. . .

Pensions of certain judges from Borneo States

91. Where a judge of the Supreme Court of Sarawak, North Borneo and Brunei, or a compensable member of the State service of a Borneo State (within the meaning of section 83) becomes a judge of the Federal Court or of a High Court, then—

(*a*) for the purposes of any compensation (within the meaning of that section), or pension, gratuity or other like allowance, payable to or in respect of him, he shall be treated as if he had while serving as a judge of the Federal Court or of a High Court remained a member of the same service as immediately before Malaysia Day; and

(*b*) no such pension, gratuity or allowance becoming payable by the Federal Government on or by reference to his ceasing (whether by death or retirement) to be such a judge shall be withheld, suspended or reduced in the exercise of any discretion conferred by the law relating thereto.

Existing officers of Supreme Courts and judges of subordinate courts

92. (1) Subject to sub-sections (2) and (3), all persons who immediately before Malaysia Day hold any office in the Supreme Court of the Federation (not being judges of the Court) and, if seconded to the public service of the Federation, all persons who immediately before that day hold any office in the Supreme Court of Sarawak, North Borneo and Brunei or in the Supreme Court of Singapore or any judicial office in the territories comprised in a Borneo State or Singapore before Malaysia

Day (not being judges of the Supreme Court) shall on that day continue in the like offices, subject to any appointment of any of them to another office.

(2) Sub-section (1) shall not apply to offices in the Court of Appeal in those Supreme Courts; but a person who under that sub-section becomes on Malaysia Day an officer of a High Court shall, unless or until other provision is made under this Part or by or under federal law, discharge in that office the like functions, as nearly as may be, in relation to the Federal Court as immediately before that day he discharged in any office held by him in a Court of Appeal, as if that office had immediately before Malaysia Day been amalgamated with his office in the High Court.

(3) This section shall apply to an office in a Supreme Court as such as if it had been an office in the High Court.

Netherlands

Referred to in a note verbale *dated 2 October 1963 of the Permanent Representative of the Netherlands to the United Nations*

A. TREATIES

1. Round Table Conference Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of Indonesia of 2 November 1949[1]

(a) Charter of Transfer of Sovereignty

Article 1

1. The Kingdom of the Netherlands unconditionally and irrevocably transfers complete sovereignty over Indonesia to the Republic of the United States of Indonesia and thereby recognizes said Republic of the United States of Indonesia as an independent and sovereign State.

2. The Republic of the United States of Indonesia accepts said sovereignty on the basis of the provisions of its Constitution which as a draft has been brought to the knowledge of the Kingdom of the Netherlands.

3. The transfer of sovereignty shall take place at the latest on 30 December 1949.

Article 2

With regard to the residency of New Guinea it is decided:

a. in view of the fact that it has not yet been possible to reconcile the views of the parties on New Guinea, which remain, therefore, in dispute,

b. in view of the desirability of the Round Table Conference concluding successfully on 2 November 1949,

c. in view of the important factors which should be taken into account in settling the question of New Guinea,

[1] United Nations, *Treaty Series*, vol. 69, p. 200. Came into force on 27 December 1949 upon the transfer of sovereignty executed by the Act of Transfer of Sovereignty and Recognition signed on that date at Amsterdam.

d. in view of the limited research that has been undertaken and completed with respect to the problems involved in the question of New Guinea,

e. in view of the heavy tasks with which the Union partners will initially be confronted, and

f. in view of the dedication of the parties to the principle of resolving by peaceful and reasonable means any differences that may hereafter exist or arise between them,

that the status quo of the residency of New Guinea shall be maintained with the stipulation that within a year from the date of transfer of sovereignty to the Republic of the United States of Indonesia the question of the political status of New Guinea be determined through negotiations between the Republic of the United States of Indonesia and the Kingdom of the Netherlands.

(b) UNION STATUTE WITH APPENDIX AND ATTACHED AGREEMENTS

(i) *Union Statute*

The Kingdom of the Netherlands and the Republic of the United States of Indonesia,

having resolved on a basis of free will, equality and complete independence to bring about friendly co-operation with each other and to create the Netherlands Indonesian Union with a view to effectuate this future co-operation,

have agreed to lay down in this Statute of the Union the basis of their mutual relationship as independent and sovereign States,

thereby holding that nothing in this Statute shall be construed as excluding any form of co-operation not mentioned therein or co-operation in any field not mentioned therein, the need of which may be felt in the future by both partners.

Character of the Union

Article 1

1. The Netherlands Indonesian Union effectuates the organized co-operation between the Kingdom of the Netherlands and the Republic of the United States of Indonesia on the basis of free will and equality in status with equal rights.

2. The Union does not prejudice the status of each of the two partners as an independent and sovereign State.

Purpose of the Union

Article 2

1. The Union aims at co-operation of the partners for the promotion of their common interests.

2. This co-operation shall take place with respect to subjects lying primarily in the field of foreign relations and defence, and as far as necessary, finance, and also in regard of subjects of an economic and a cultural nature.

. . .

(ii) *Agreement (attached to the Union Statute) between the Republic of the United States of Indonesia and the Kingdom of the Netherlands to regulate their co-operation in the field of foreign relations*

Article 1

The Netherlands Indonesian Union shall effectuate co-operation in the field of foreign relations.

Where both partners feel that it is in their interest and so decide, the conference of ministers may provide for joint or common representation in international intercourse.

Article 2

On the primary considcration of the principle that each of the partners conducts his own foreign relations and determines his own foreign policy, they shall aim at co-ordinating their foreign policy as much as possible and at consulting each other thereon.

Article 3

Neither partner shall conclude a treaty, nor shall he perform any other juridical act in international intercourse, involving the interests of the other partner, unless after consultation with said partner.

Article 4

In case one of the partners has not accredited a diplomatic representation in a foreign country, he shall have his interests represented by preference by the diplomatic representation of the other partner to said foreign country.

(iii) *Financial and Economic Agreement (attached to the Union Statute) with Appendix: List of Trade and Monetary Agreements in which Indonesia participates*

Section A

RIGHTS, CONCESSIONS, LICENCES AND OPERATION OF BUSINESS ENTERPRISE

Article 1

1. In respect of the recognition and restoration of the rights, concessions and licences properly granted under the law of the Netherlands Indies (Indonesia) and still valid on the date of transfer of sovereignty, the Republic of the United States of Indonesia will adhere to the basic principle of recognizing such rights, concessions and licences. The Republic of the United States of Indonesia also recognizes, in so far as this has not yet been done, that the rightful claimants be restored to the actual exercise of their rights under the proviso referred to in the following paragraphs of this article.

2. The Republic of the United States of Indonesia reserves the right to conduct an investigation in respect of important rights, concessions and licences granted after 1 March 1942 which may influence the economic policy of the Republic of the United States of Indonesia, for the purpose of considering whether the application of article 2 is desirable.

3. Account shall be taken of:

a. The situation resulting from the fact that, during the Japanese occupation and the subsequent period of revolution, estate grounds, on which the crops were removed for the benefit of food-cultivation or to make way for housing, were occupied by the population — with the approval of the Japanese authorities during the occupation — and that in certain cases the removal of the population concerned from these grounds without further consideration and the return of such grounds to the estates concerned would create too much unrest and that such a return is often impossible. Each case shall be judged on its own merits and a solution shall be sought acceptable for all parties concerned.

b. The necessity that certain private properties remain (are) temporarily requisitioned against indemnity for government service in the interest of the country.

c. The withdrawal under the Undang-Undang Republik Indonesia 1948 Nr. 13 of the conversion rights in the residencies of Jogjakarta and Surakarta which was necessitated by changed conditions in general and changed views of the population in particular. In this case, the Republic of the United States of Indonesia will arrange for the legal provisions required to ensure the enterprises concerned the greatest possible security in respect of the acquisition of the lands required for these enterprises.

4. The possibility that public utilities, such as privately owned rail- and tramways and powerplants (gas and electricity) will be nationalized by the Republic of the United States of Indonesia which will be carried out by way of expropriation c.q. "naasting", shall have no influence upon the reinstatement of the rightful claimants in the actual exercise of their rights. In this legal restoration, account may be taken of the form of management of the rail- and tramways at the time of transfer of sovereignty.

Article 2

The rights, concessions and licences referred to in article 1, paragraph 1, may be infringed upon only in the public interest, including the welfare of the people, and through amicable settlement with the rightful claimants, and if the latter can not be achieved, by expropriation for the public benefit such in accordance with the provisions of article 3.

Article 3

Expropriation, nationalization, liquidation, compulsory cession or transfer of properties or rights, shall take place exclusively for the public benefit, in accordance with the procedure prescribed by law and, in the absence of an agreement between the parties, against previously enjoyed or guaranteed indemnity to be fixed by judicial decision at the real value of the object involved, such in accordance with provisions to be prescribed by law.

The conditions of previously received or previously guaranteed indemnity due do not apply in cases where war, threat of war, insurrection, fire, floods, earthquake, volcanic eruption or other emergencies require immediate seizure.

Article 4

On behalf of existing and new enterprises and estates, the possibility will be made available for an extension, a renewal or the granting of

rights, concessions and licences required for their operation. This will take place at such conditions, and for a period and at a time so as to enable the enterprises remaining or being operated on a sound business basis and the lawful owners being guaranteed a continuity making possible the investments required for normal long term business operations, except in those cases which are in contravention with the public interest including the general economic policy of the Republic of the United States of Indonesia.

Article 5

The enterprises and estates will co-operate with and enable participation of Indonesian capital subject to this being justified from a business point of view.

Article 6

The Republic of the United States of Indonesia will make the provisions required to safeguard the lawful owners exercising their rights, concessions and licences referred to in article 1, first paragraph, to promote resumption and lastingness of economic activity. In this respect, however, it shall be borne in mind that the general economic policy to be pursued by the Republic of the United States of Indonesia shall in the first place be focused on the economic building up of the Indonesian community as a whole, in the sense that the interests and material and spiritual progress of the Indonesian people as a whole are best served by creating a maximum of effective purchasing power and raising the standard of living of the people.

Article 7

In regard to all rights, concessions and licenses referred to in article 1, paragraph 1, which could not be exercised as a result of the war, occupation and the subsequent abnormal conditions, the possibility will be made available that at the request of the lawful owners, these rights, concessions and licences be extended for a corresponding period except in those cases where such an extension is in contravention with the public interest including the general economic policy of the Republic of the United States of Indonesia.

. . .

Section B

FINANCIAL RELATIONS

. . .

Article 15

As long as the Republic of the United States of Indonesia has not yet acquired membership to the International Monetary Fund, the Republic of the United States of Indonesia shall adhere to the rules to be observed by a member of the Fund.

Furthermore consultations shall be held between the Netherlands and the Republic of the United States of Indonesia to enable the latter to

become at the earliest possible date a member of the International Monetary Fund.

. . .

Article 19

1. As long as the Republic of the United States of Indonesia has liabilities toward the Netherlands including the guarantees given by the Netherlands on behalf of the liabilities of Indonesia, the Republic of the United States of Indonesia shall consult the Netherlands in advance, both regarding intended alterations in the Coinage Act and the Java Bank Act prevailing at the time of transfer of sovereignty and regarding a new coinage act and circulation bank act to be enacted by the Republic of the United States of Indonesia and possible alterations to be made therein.

Furthermore, the Republic of the United States of Indonesia shall, as long as the liabilities referred to exist, consult the Netherlands in general should the former consider taking important meàsures in the monetary and financial field in so far as the interests of the Netherlands are concerned.

Section C

RELATIONS AND CO-OPERATION IN TRADE POLICY

Article 20

1. In accordance with the principles of independence and sovereignty, the Governments of the Netherlands and the Republic of the United States of Indonesia shall bear the ultimate responsibility for their own trade policy, both domestic and foreign.

. . .

Article 21

. . .

7. The trade and monetary agreements in force at the transfer of sovereignty shall, as far as these agreements concern Indonesia, be taken over and implemented by the Government of the Republic of the United States of Indonesia. An enumeration of these agreements is contained in the attached list.

APPENDIX TO THE DRAFT FINANCIAL AND ECONOMIC AGREEMENT

List of trade and monetary agreements in which Indonesia participates

Countries	*Trade agreements term*	*Monetary agreements term*	*Term of notice*
1. Argentina	1- 4-'48 — 31-12-'52	1- 4-'48 — 31-12-'52.	—
2. Belgium	1- 7-'49 — 30- 6-'50	21-10-'43 — indefinite; terminable from 1-1-'49 on the 1st January of each year.	2 years
3. Bulgaria	1- 1-'49 — 31-12-'49	1- 1-'49 — 31-12-'49 implying yearly renewal.	3 months
4. Denmark	1- 7-'49 — 30- 6-'50	31- 1-'46 — indefinite.	3 months
5. Eastern-Germany	1- 7-'49 — 30- 6-'50	1- 7-'49 — 30-6-'50.	—

Countries	*Trade agreements term*	*Monetary agreements term*	*Term of notice*
6. Western-Germany	1- 9-'49 — 31- 8-'50	1- 9-'49 — 31-12-'50 implying six monthly renewal.	2 months
7. United Kingdom	1- 1-'49 — 31-12-'49	7- 9-'45 — 7-9-'50.	3 months
8. Finland	1- 6-'49 — 31- 5-'50	1- 6-'49 — indefinite.	6 months
9. France	1- 8-'49 — 30- 6-'50	9- 4-'46 — indefinite.	3 months
10. Hungary	1- 1-'49 — 31-12-'49	1- 1-'49 — 31-12-'49 with a one-year renewal subject to notice.	3 months
11. Israel	1- 2-'49 — 31- 1-'50	1- 2-'49 — 31-1-'50.	3 months
12. Italy	1- 4-'49 — 31- 3-'50	30- 6-'48 — indefinite.[3]	1 month
13. Yugoslavia	1- 6-'49 — 31-10-'49[1]	1- 2-'48 — indefinite (notice can be given before 1-2-'51).	—
14. Norway	1- 1-'48 — 31-12-'49	6-11-'45 — 1 year implying indefinite renewal.	12 months
15. Austria	4-12-'48 — 7- 2-'50	3-12-'46 — indefinite.	—
16. Poland	1- 1-'49 — 31-12-'49	1- 1-'49 — 31-12-'49 implying renewal.	3 months before the end of each year
17. Portugal	1- 7-'49 — 30- 6-'50	1- 3-'46 — 1 year implying renewal.	3 months
18. Russia	10- 6-'48 — 10- 6-'49[2]	10- 6-'48 — indefinite.	3 months
19. Spain	1- 6-'49 — 31- 5-'50	21-10-'46 — indefinite.	6 months
20. Czechoslovakia	10- 5-'49 — 1- 5-'50	15-11-'46 — indefinite.	2 months
21. Sweden	1- 3-'49 — 28- 2-'50	30-11-'45 — 31-12-'49, unless otherwise agreed.	3 months
22. Switzerland	1-10-'49 — 30- 9-'50	24-10-'45 — for 3 years, thereafter implying yearly renewal.	3 months
23. Brazil	—	1- 9-'48 — indefinite: provisional agreement.	2 months
24. Uruguay	15- 7-'48 — indefinite	12- 6-'47 — 1 year implying renewal.	3 months
25. Turkey	6- 9-'49 — 1- 7-'50	6- 9-'49 — 1-7-'50 subject to implying renewal.	3 months
26. Canada	—	28- 1-'48 — indefinite.[3]	—

[1] Negotiations on a new treaty are now being held.

[2] Pending future negotiations the commodity quotas continue indefinitely.

[3] Services.

Section D

SETTLEMENT OF DEBTS

Article 25

The Republic of the United States of Indonesia shall assume the following debt:

. . .

B. The debts to third countries, calculated as of 31 December 1949:

1. Loan Export-Import Bank on behalf of Indonesia within the framework of the E.C.A. aid (Agreement of 28 October 1948). Amount outstanding as of 31 December 1949 U.S. $15,000,000.—. Remaining duration 24 years. Interest at the rate of $2^1/_2$%, as from 30 June 1952.

2. A line of credit granted by The United States Government to the Netherlands Indies Government for the purchase of United States Surplus Property (Agreement of 28 May 1947). Amount outstanding

as of 31 December 1949, U.S. $62,550,412.—. Remaining duration 31½ years. Interest at the rate of 2%.

3. Loan from Canada (Agreement of 9 October 1945). Amount outstanding as of 31 December 1949, Can. $15,452,188.21. Remaining duration 6 years. Interest at the rate of 2¼%.

4. Settlement between the Government of Australia and the Government of Indonesia (Agreement of 17 August 1949). Amount outstanding as of 31 December 1949, A.£8,500,000/—/—. Remaining duration 10 years. Free of interest.

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D. All internal debts of Indonesia at the date of transfer of sovereignty.

(c) AGREEMENT ON TRANSITIONAL MEASURES WITH ATTACHED AGREEMENTS

(i) *Agreement on Transitional Measures*

Article 3

1. The Kingdom of the Netherlands and the Republic of the United States of Indonesia recognize and accept that all powers and obligations of the Governor-General of Indonesia, arising out of the contracts concluded by him with self-governing territories shall, by virtue of the transfer of sovereignty, be transferred to the Republic of the United States of Indonesia or to any of its component States in case the constitutional law of the Republic of the United States of Indonesia so provides.

. . .

Article 4

1. The Kingdom of the Netherlands and the Republic of the United States of Indonesia recognize and accept that all rights and obligations of Indonesia, under private and public law, are ipso jure transferred to the Republic of the United States of Indonesia, unless otherwise provided for in the special agreements included in the Union Statute.

2. The Republic of the United States of Indonesia shall be responsible for the fulfilment of the obligations of the public bodies which previously had a legal status in Indonesia and which are now merged in the Republic of the United States of Indonesia or in its component parts and further guarantees the fulfilment of the obligations of public bodies which continue to exist as such, unless otherwise provided for in the financial and economic agreement.

3. The provision in the preceding paragraphs is not applicable to the residency of New Guinea in view of the fact, as set forth in article 2 of the Charter of Transfer of Sovereignty, that it has not yet been possible to reconcile the views of the parties on New Guinea.

Article 5

[See INDONESIA, section A 1]

. . .

Article 8

1. All stipulations in existing legal regulations and administrative ordinances inasmuch as they are not incompatible with the transfer of

sovereignty or with the provisions of the Union Statute, or of the present Agreement on Transitional Measures or of any other agreement concluded between the parties, remain in force without modification as regulations and ordinances of the Kingdom of the Netherlands and of the Republic of the United States of Indonesia respectively, as long as they are not revoked or modified by the competent organs of the Kingdom of the Netherlands or the competent organs of the Republic of the United States of Indonesia respectively.

2. Whenever these legal regulations and administrative ordinances mention Netherlands subjects, this term shall be held to mean citizens of the Kingdom of the Netherlands and of the Republic of the United States of Indonesia.

3. Whenever these legal regulations and administrative ordinances refer to ships or aircraft entitled to fly the Netherlands flag, they refer equally to ships or aireraft entitled to fly the flag of the Kingdom of the Netherlands and to those entitled to fly the flag of the Republic of the United States of Indonesia.

(ii) *Agreement (attached to the Agreement of Transitional Measures) concerning the assignment of citizens*

The Kingdom of the Netherlands and the Republic of the United States of Indonesia,

considering that at the transfer of sovereignty it shall be determined whether persons who up to that time were subjects of the Kingdom of the Netherlands including those who, under the law of the Republic Indonesia were, in the eyes of the Republic of the United States of Indonesia, citizens of the Republic Indonesia, are to be assigned Netherlands or Indonesian nationality;

agree, that at the transfer of sovereignty the following provisions shall come into effect.

Article 1

Under the terms of the present agreement are deemed to be of age those who have reached the age of eighteen years or those who were married at an earlier age.

Those whose marriage was dissolved before they had reached the age of eighteen years shall continue to be deemed of age.

Article 2

Where the present agreement applies to persons who, under the law of the Republic Indonesia on nationality are citizens of the latter Republic immediately before the transfer of sovereignty, the Republic of the United States of Indonesia understands that the terms "acquiring" or "preserving" Indonesian nationality, as hereafter used in the present agreement imply that Republican nationality shall be converted into Indonesian nationality; and that the terms "retaining" the Netherlands nationality and "rejecting" Indonesian nationality as hereafter used in the present agreement imply the loss of Republican nationality.

Article 3

Netherlands nationals who are of age shall retain their nationality, but, if born in Indonesia or if residing in Indonesia for at least the last

six months, they shall, within the time limit therefor stipulated, be entitled to state that they prefer Indonesian nationality.

Article 4

1. Without prejudice to the provisions of paragraph 2 below, Netherlands subjects-non-Netherlanders (Nederlandse onderdanen-niet-Nederlanders) who are of age and who, immediately before transfer of sovereignty belonged to the indigenous population (orange jang asli) of Indonesia shall acquire Indonesian nationality but if they are born outside Indonesia and reside in the Netherlands or in a territory not under the jurisdiction of either partner in the Union, they shall, within the time limit therefor stipulated, be entitled to state that they prefer Netherlands nationality.

2. The subjects of the Netherlands referred to in paragraph 1 above who are residents of Surinam or of the Netherlands Antilles shall

a. if they were born outside the Kingdom, acquire Indonesian nationality but may, within the time limit therefor stipulated, state that they prefer Netherlands nationality;

b. if they were born within the Kingdom, retain Netherlands nationality but may, within the time limit therefor stipulated, state that they prefer Indonesian nationality.

Article 5

Persons who, immediately before the transfer of sovereignty, are of age and are Netherlands subjects of foreign origin-non-Netherlanders (uitheemse Nederlandse onderdanen-niet-Nederlanders) and who were born in Indonesia or reside in the Republic of the United States of Indonesia shall acquire Indonesian nationality but may, within the time limit therefor stipulated, reject Indonesian nationality;

if, immediately before the transfer of sovereignty, such persons had no other nationality than the Netherlands nationality, they shall regain Netherlands nationality;

if, immediately before the transfer of sovereignty such persons possessed simultaneously another nationality, they shall, when rejecting Indonesian nationality, regain Netherlands nationality only on the strength of a statement made by them to that effect.

Article 6

Persons who, immediately before the transfer of sovereignty, are of age and are Netherlands subjects of foreign origin-non-Netherlanders (uitheemse Nederlandse onderdanen-niet-Nederlanders) and who were not born in Indonesia and reside within the Kingdom, shall retain Netherlands nationality but may, within the time limit therefor stipulated, state that they prefer Indonesian nationality and reject Netherlands nationality;

those who, at the transfer of sovereignty simultaneously possess a foreign nationality, may simply reject Netherlands nationality, on the understanding that the right to reject Netherlands nationality, connected or not with the right to prefer Indonesian nationality, shall not belong to inhabitants of Surinam of Indian or Pakistani origin.

Article 7

Those who, at the transfer of sovereignty are of age and are Netherlands subjects of foreign origin-non-Netherlanders (uitheemse Nederlandse onderdanen-niet-Nederlanders) and who reside outside a territory under the jurisdiction of either partner in the Union and who were born in the Netherlands, in Surinam or the Netherlands Antilles, shall retain Netherlands nationality;

if these persons are born from parents who were Netherlands subjects by birth in Indonesia, they may, within the time limit therefor stipulated, state that they prefer Indonesian nationality and reject Netherlands nationality;

if, at the transfer of sovereignty, these persons simultaneously possess a foreign nationality, they may simply reject Netherlands nationality.

If these persons are born outside a territory under the jurisdiction of either partner in the Union, they fall under the terms of the present article or under the terms of article 5 above, according to the place of birth of either father or mother, with due observance of the distinctions established by the provisions of article 1 of the Act of 1892 on Netherlandership and residentship (ingezetenschap);

if the parents were also born outside a territory under the jurisdiction of either partner in the Union, the place of birth of the father or of the mother shall be decisive.

Article 8

With due observance of the distinctions established by the provisions of article 1 of the Act of 1892 referred to in article 7 above, persons not of age shall follow the nationality of their father or mother, provided either parent is a Netherlands subject and living at the transfer of sovereignty.

Article 9

With due observance of the distinctions established by the provisions of article 1 of the Act of 1892 referred to in articles 7 and 8 above, persons not of age whose father or mother is, at the transfer of sovereignty, not a Netherlands subject, or is deceased, shall fall directly under the terms of the preceding articles;

if these persons have no living parent, their domicile shall be deemed to be their place of actual residence and, in all cases where a statement on their part is provided for, such statements may be made on their behalf by their lawful representative. In the absence of a lawful representative the above provisions shall become applicable at the time such a lawful representative is appointed.

Article 10

The married woman shall follow the status of her husband. In case the marriage is dissolved she shall, within the time limit of one year thereafter, be entitled to make a statement by which she may acquire or reject the nationality she would or could have acquired or rejected by a statement, had she not been married at the transfer of sovereignty.

Article 11

The exercise of the right to prefer or reject a nationality shall not nullify any act previously performed and which would be valid if this right had not been exercised according to the above provisions.

(iii) *Agreement (attached to the Agreement on Transitional Measures) concerning the position of civil government officials in connexion with the transfer of sovereignty*

Article 1

At the transfer of sovereignty the Government of the Republic of the United States of Indonesia shall take over into its service all civil government officials then employed by the Government of Indonesia in permanent or temporary service or on a short-term contract, including the personnel of the autonomous communities instituted on the footing of articles 119, 121 and 123 of the Indies Fundamental Law (Indische Staatsregeling), as far as this personnel resorts under the Government of Indonesia.

Article 2

Subject to the provisions in articles 3, 4 and 5, the Government of the Republic of the United States of Indonesia shall accept all rights and obligations which Indonesia has at the transfer of sovereignty in respect of the government officials referred to in article 1 and the former government officials and also the surviving dependants of these officials and former officials.

Article 3

The Government of the Republic of the United States of Indonesia shall, for a period of two years after the transfer of sovereignty, make no unfavourable alterations in the provisions prevailing at the transfer of sovereignty, concerning the legal position of the government officials referred to in article 1, in so far and as long as they have Netherlands nationality.

Article 4

The Government of the Republic of the United States of Indonesia shall have the right to regroup and select the civil government officials referred to in article 1 immediately after the transfer of sovereignty.

. . .

2. AGREEMENT BETWEEN THE REPUBLIC OF INDONESIA AND THE KINGDOM OF THE NETHERLANDS CONCERNING WEST NEW GUINEA (WEST IRIAN). SIGNED AT THE HEADQUARTERS OF THE UNITED NATIONS, NEW YORK, ON 15 AUGUST 1962

[See INDONESIA, section A 2]

B. DECISIONS OF NATIONAL COURTS

SUMMARIES OF THE DECISIONS

1. *Hof (Court of Appeal) The Hague*

Van Os v. *State of the Netherlands: Judgment of 7 April 1954*[1]

[*Extinction of the legal person of the Netherlands East Indies — Rights and obligations of the Netherlands deriving from the Transfer of Sovereignty Indonesia Act*]

On 31 October 1949, the plaintiff entered into a contract with the General Officer in Command of the Netherlands Antilles Army, acting on behalf of the Netherlands Indies Government, under the terms of which he was to join the K.N.I.L. (Royal Netherlands East Indies Army) for a period of three years for service in Surinam or the Netherlands Antilles. However, before the contract was terminated the K.N.I.L. had been dissolved in consequence of the Transfer of Sovereignty Indonesia Act. The plaintiff had left the army in order to avoid repatriation to the Netherlands, where he would have been dismissed because of the army having been dissolved. He sued the State of the Netherlands for damages in the Court of First Instance at The Hague. The Court disallowed his claim and the Court of Appeal upheld its judgment.

The plaintiff argued that the Transfer of Sovereignty Indonesia Act did not create an obligation for the Netherlands Government to dissolve the whole K.N.I.L. but only those contingents of the army stationed in Indonesia; and that since he did not belong to these units but to those serving in the Netherlands Antilles, the Netherlands Government had no right to dismiss him when it decided to dissolve the K.N.I.L. In answer to this plea the Court argued as follows:

At the transfer of sovereignty, the legal person of the Netherlands Indies ceased to exist, and in its place the Sovereign Republic of the United States of Indonesia came into being. As a consequence the K.N.I.L., which was considered in Indonesia as an exponent of the colonial system, had to cease to exist. This principle found expression in article 31, paragraph 4 of the Regulations on the land forces in Indonesia under Netherlands command after the transfer of sovereignty,[2] which is one of the instruments agreed upon at the Round Table Conference. As appears from the general terms in which this provision is couched, and in view of the historical importance of the transfer of sovereignty, it can have no other meaning but that the K.N.I.L. had to cease to exist in its entirety and irrespective of the parts of the world where the units of the army were stationed. It is true that there are provisions in the Regulations which enable personnel of the K.N.I.L. stationed in Indonesia to be transferred from the service of this army

[1] N.J. 1954, No. 599; *Nederlands Tijdschrift voor Internationaal Recht*, vol. II (1955), p. 295.

[2] United Nations, *Treaty Series*, vol. 69, p. 304. Article 31, paragraph 4 reads:

"4. On completion of the reorganization the Royal Netherlands Indonesian Army shall cease to exist. If after the completion of the reorganization a further winding up of the armed forces referred to in article 4 proves necessary, the Government of the Kingdom of the Netherlands and the Republic of the United States of Indonesia shall consult each other on this matter in good time."

into that of the Republic. It is obvious, however, that these provisions were made with a view to giving Indonesians serving with the K.N.I.L. an opportunity to join the land forces of the Republic. Although the Explanatory Memorandum on the said Regulations defines the status of the K.N.I.L. during the period of reorganization as that of Netherlands armed forces in the process of being disbanded, it does not necessarily follow from this that the K.N.I.L. had become part of the Netherlands Land Forces and that the plaintiff must be regarded as a member thereof. Neither can a plea based on article 31, paragraph 3[1] of the Regulations be of any avail, since there is no evidence that the plaintiff belonged to the group of persons referred to in that provision. The plaintiff, furthermore, pleaded that the authorities when entering into a service contract with him, knew that the K.N.I.L. was going to be disbanded. This plea, too, cannot be entertained, because the State of the Netherlands, which he sued, was not a party to the contract, and consequently could not have committed an unlawful act against the plaintiff.

2. *Rechtbank (Court of First Instance) Amsterdam*

Mrs. W. qualitate qua v. *t.S.*: *Judgment of 8 April 1954*[2]

[*Applicability of the Convention on Civil Procedure of 1905 to the Saar Territory—The effect of war on treaties*]

On behalf of her minor daughter and the latter's child, the plaintiff instituted paternity proceedings against a Dutchman. Both the daughter and her child were Saar nationals. In giving judgment the Court stated that the plaintiff had improperly been admitted to sue in *forma pauperis*. The Court gave the following reasons:

The child in question could, as an alien, lay a claim to free legal aid pursuant to articles 20 to 23 of the Convention on Civil Procedure of 17 July 1905,[3] only if that Convention can be deemed still to be in force with respect to the autonomous Saar territory, or if a new agreement to the same effect has been reached between that territory and the Netherlands. The Convention was in force with respect to Germany inclusive of the Saar until the outbreak of World War II. As a result of the state of war between Germany and the Netherlands it ceased to apply. Subsequently, by way of an exchange of notes dated 31 January 1952,[4] the Governments of the Netherlands and the Federal Republic of Germany agreed to have the Convention re-applied between their countries as from 1 January 1952. The Saar Territory is not, however, a part of the Federal Republic. Nor has the Convention been declared to be applicable for the Saar by France which is entrusted with the

[1] Article 31, paragraph 3 reads:

"3. In mutual consultation the Governments of the Kingdom of the Netherlands and of the Republic of the United States of Indonesia may determine that after the completion of the reorganization certain services or sections of services will be continued for the performance of certain tasks and for a definite period."

[2] N.J. 1954, No. 639; *Nederlands Tijdschrift voor Internationaal Recht*, vol. II (1955), p. 296.

[3] De Martens, *Nouveau Recueil Général de Traités*, troisième série, tome II, p. 243.

[4] *Tractatenblad*, 1952, No. 37 *juncto* No. 70, p. 8.

conduct of foreign relations of this Territory according to its Constitution referred to in Article 11 of the "Convention Générale entre la France et la Sarre" of 3 March 1950. Finally, there is no evidence to show that any agreement on the subject of free legal aid has been concluded between the Saar and the Netherlands.[1]

3. *Hof (Court of Appeal) The Hague*

Stichting tot Opeising Militaire Inkomsten van Krijgsgevangenen (Foundation for Claiming Military Income of War Prisoners) v. *State of the Netherlands: Judgment of 30 November 1955*[2]

[*Responsibility of the Netherlands for obligations of the Netherlands East Indies — Acts of State cannot be impugned before a civil court*]

The matter at issue in this case was whether the payment of salary of a professional non-commissioned officer in the Royal Netherlands Indies Army should have continued during the whole time that he was in Japanese captivity. The Court of Appeal held, on the grounds similar to those accepted by the Court of Appeal in the Poldermans case below, that the State of the Netherlands was not responsible for the debts of the Netherlands East Indies.

The appellant in this action also made an additional attempt to base the liability of the State of the Netherlands on the particular acts of States (i.e. the transfer of sovereignty) as a consequence of which the Netherlands East Indies were lost as a part of the Kingdom of the Netherlands. The Court dismissed this new argument on the ground that the acts or course of conduct to which the appellant referred concerned the conduct of international relations and that such conduct could not be impugned before a civil court.

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[1] The following note appears after the above summary in *Nederlands Tijdschrift voor Internationaal Recht*, vol. II (1955) p. 297:

. . .

"2. In the case summarized above the Court could just as well have left the question of the effect of the war entirely out of consideration. Also without war having occurred the Convention on Civil Procedure would not have been applicable as between The Netherlands and the Saar Territory for the reasons stated above.

"However this may be, the finding of the Court that the applicability of the Convention on Civil Procedure between The Netherlands and the German Reich had lapsed as a result of the state of war between the two countries, must not be construed as impying that that state of war should have brought about a definitive extinction of the Convention. The terminology used by the Court rather tends to show that it was of the opinion that the state of war had only suspended the execution of the Convention as between the two countries. This is in accordance with the principle that had been accepted elsewhere with regard to the effect of war on the Hague Convention on Civil Procedure of 1905. . . Very clear Dutch judicial decisions in this sense are: Court of First Instance Rotterdam, June 15th, 1946, N.J. 1946, No. 695 and Court of First Instance Breda, February 4th, 1948, N.J. 1948, No. 786."

[2] N.J. 1956, No. 121; *Nederlands Tijdschrift voor Internationaal Recht*, vol. III (1956), p. 406.

4. *Hof (Court of Appeal) The Hague*

Poldermans v. *State of the Netherlands: Judgment of 8 December 1955*[1]

[*Responsibility of the Kingdom and/or the State of the Netherlands for obligations of the Netherlands East Indies — Rights and obligations of the Kingdom as a whole in regard to its component territories and of those component territories inter se — Extinction of the legal person "Indonesia" after transfer of sovereignty*]

When war broke out between the Netherlands and Japan, Poldermans was a civil servant employed by the Government of the Netherlands East Indies. His claim for salary for the period of his internment (in the years 1942 to 1945) by the Japanese occupation authorities was dismissed by the Court of First Instance at The Hague. On appeal Poldermans contended that the Netherlands Indies Government was under an obligation to pay him his salary during the period of his internment; that the Government of the Kingdom of the Netherlands (i.e., the Kingdom as a whole), in its capacity of the former sovereign over the Netherlands Indies, must be held liable for non-compliance with that obligation; and that the same applied to the State of the Netherlands (i.e. the Realm in Europe) which, although not identical in law with the Kingdom, nevertheless had the same Government.

The Court first dealt with the question whether the Kingdom as a whole or the Realm in Europe was to be considered defendant. The Court held that, although the Kingdom was a real subject of international law and was also a distinct legal entity under Netherlands constitutional law, it was not a separate body corporate under private law because it had no property assets of its own which could be severed from those of the component parts, in particular from those of the Realm in Europe. Any action based on the liability of the Kingdom for tort or wrongful acts allegedly committed by it, therefore, lacked substance. This did not mean, however, that the present action must be declared inadmissible, since the defendant was summoned as the "State of the Netherlands" which, pursuant to settled judicial practice, was equivalent to the "Realm in Europe".

On the merits the Court held that the former Netherlands East Indies were under legal obligation to continue payment of the salaries of its officials during the period of their internment, but it dismissed the claim against the State of the Netherlands because it could not accept Poldermans' proposition that the Government of the Kingdom, which at the same time was also the Government of the Realm in Europe, ought to have directed the Governor-General of the Netherlands East Indies to ensure that the Netherlands East Indies Government paid the salaries of its officials who had been interned.

The plaintiff's further argument that the defendant had not performed the surety obligation which allegedly rested with the Kingdom of the Netherlands as the former sovereign of the Netherlands East Indies was also dismissed by the Court. The notion of sovereignty as an expression of the highest authority, the Court observed, was not a useful criterion for the determination of the rights and obligations either of the entity, the Kingdom as a whole in regard to its component territories,

[1] N.J. 1956, No. 120; *Nederlands Tijdschrift voor Internationaal Recht*, vol. III (1956), p. 404.

or of these component territories *inter se*. These rights and obligations could only be ascertained from the relevant rules of positive law. Under the relevant provisions of the Netherlands East Indies Accountability Act, the properties, benefits and burdens of the Netherlands East Indies, a legal entity, were distinct from those of the Netherlands; the finances of the former were completely separated from those of the latter. This entailed in principle the obligation of the Government of the Netherlands East Indies to pay the salaries of its officials and left no scope for any surety obligation of the Kingdom.

The Court further dismissed the plaintiff's argument that there was an obligation to give surety or a guarantee attached either to the Kingdom or to the State pursuant to the transfer of sovereignty to the Republic of the United States of Indonesia in 1949.

As a consequence of the transfer of sovereignty, the Court said, the legal person Indonesia, as it had been in existence before under Netherlands rule, ceased to exist because this particular part of the Kingdom was thereby transferred to a new State which then was in the process of taking shape for the first time. It would be a fallacy to hold the point of view of the defendant according to which Indonesia, in its capacity of a legal entity under civil law, simply continued to exist in another form as the Republic of the United States of Indonesia. The question to what extent, by way of succession of States in this particular form, the rights and obligations of a formerly dependent territory pass to the new sovereign State under the general principles of the law of nations required no answer in the present case, because the parties have regulated this matter by express agreement: under Article 4 of their Agreement on Transitional Measures,[1] both parties recognized that all rights and obligations of Indonesia were transferred to and vested in the Republic of the United States of Indonesia. This also applied to the debts in question.

New Zealand

Transmitted by a note verbale *dated 28 June 1963 of the Permanent Representative to the United Nations*

A. TREATIES

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF WESTERN SAMOA CONSTITUTING AN AGREEMENT RELATIVE TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF WESTERN SAMOA. APIA, 30 NOVEMBER 1962[2]

. . .

(i) All obligations and responsibilities of the Government of New Zealand which arise from any valid international instrument are, from 1 January 1962, assumed by the Government of Western Samoa in so

[1] See section A 1(c) (i) above.

[2] United Nations, *Treaty Series*, vol. 476, p. 3. Came into force on 30 November 1962.

far as such instrument may be held to have application to or in respect of Western Samoa.

(ii) The rights and benefits heretofore enjoyed by the Government of New Zealand in virtue of the application of any such international instrument to or in respect of Western Samoa are, from 1 January 1962, enjoyed by the Government of Western Samoa.

. . .

B. LAWS AND DECREES

1. CONSTITUTION OF THE INDEPENDENT STATE OF WESTERN SAMOA, 1962[1]

. . .

Part XII

TRANSITIONAL

Existing law to continue

114. Subject to the provisions of this Constitution—

(*a*) the existing law shall until repealed by Act, continue in force on and after Independence Day: and

(*b*) all rights, obligations and liabilities arising under the existing law shall continue to exist on and after Independence Day and shall be recognized, exercised and enforced accordingly; and

(*c*) proceedings in respect of offences committed against the existing law may be instituted on and after Independence Day in that court, established under the provisions of this Constitution, having the appropriate jurisdiction, and offenders shall be liable to the punishments provided by the existing law.

. . .

Existing legal proceedings

119. (1) All legal proceedings pending in the High Court immediately before Independence Day shall, on and after that day, stand transferred to, and be deemed to be pending for determination before, that court, established under the provisions of this Constitution, having the appropriate jurisdiction.

(2) All appeals from the High Court which immediately before Independence Day lay to, or were pending in, any court having jurisdiction to hear such appeals shall, on and after that day, lie to or stand transferred to, and be deemed to be pending for determination before, the Court of Appeal.

(3) Any decision of the High Court or of any court having jurisdiction to hear appeals from the High Court shall have the same force and effect as if it had been delivered or made by the Supreme Court or the Court of Appeal, respectively.

. . .

[1] Adopted by the Constitutional Convention of the people of Western Samoa on 28 October 1960. Came into force on 1 January 1962, the independence day of Western Samoa, in accordance with article 113 of the Constitution.

Laws not brought into force before Independence Day

121. Where any Ordinance was enacted or made by the Legislative Assembly of the Trust Territory and the coming into force of that Ordinance was suspended; that Ordinance may, on or after Independence Day, come into force on the date specified therein or as may be specified by any authority empowered to bring it into force; and, in such case, the Ordinance shall, on and after that date, take effect as an Act of Parliament.

Adaptation of existing law

122. Where in the existing law reference is made to Her Majesty the Queen in right of the Trust Territory of Western Samoa, to the Crown in right of the Trust Territory of Western Samoa, to the Trust Territory of Western Samoa, to Western Samoa or to Samoa, that reference shall, unless the context otherwise requires, be construed as a reference to Western Samoa.

Vesting of property

123. (1) All property which immediately before Independence Day is vested in Her Majesty the Queen in right of the Trust Territory of Western Samoa or in the Crown in right of the Trust Territory of Western Samoa shall, on Independence Day, vest in Western Samoa.

(2) Subject to the provisions of Clause (3), land which immediately before Independence Day is, under the provisions of the Samoa Act 1921, Samoan land, European land or Crown land shall, on and after Independence Day, be held, under the provisions of this Constitution, as customary land, freehold land or public land, respectively.

(3) All land in Western Samoa which immediately before Independence Day is vested in the Crown in right of the Government of New Zealand shall, on Independence Day, become freehold land held by Her Majesty the Queen in right of the Government of New Zealand for an estate in fee simple.

2. WESTERN SAMOA ACT, 1961 — AN ACT TO MAKE PROVISION IN CONNECTION WITH THE ATTAINMENT OF INDEPENDENCE BY THE PEOPLE OF WESTERN SAMOA[1]

. . .

2. Commencement—(1) Except where this Act otherwise provides, this Act shall come into force at the hour of eleven o'clock in the evening on the first day of January, nineteen hundred and sixty-two, being the time in New Zealand corresponding to the commencement of the first day of January, nineteen hundred and sixty-two, in Western Samoa (that date being the date appointed by the General Assembly of the United Nations for the termination of the Trusteeship Agreement for the Territory of Western Samoa).

(2) The period of twenty-four hours following the commencement of this Act is hereinafter referred to as Independence Day.

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[1] Enacted by the General Assembly of New Zealand on 24 November 1961. Came into force on the date of enactment.

3. Independence of Western Samoa—It is hereby declared that on and after Independence Day Her Majesty in right of New Zealand shall have no jurisdiction over the Independent State of Western Samoa.

4. Future New Zealand Acts not to be in force in Western Samoa — No Act of the Parliament of New Zealand passed on or after Independence Day or passed before Independence day and coming into force on or after Independence Day shall be in force in Western Samoa.

5. New Zealand law to apply as if Western Samoa a member of the Commonwealth — On and after Independence Day all law for the time being in force in New Zealand — that is to say, all law whether it is a rule of law or a provision of an Act of any Parliament or a provision of any other enactment or instrument whatsoever — shall, subject to any express provision to the contrary in that law, and unless express provision to the contrary is subsequently made by the authority having power to alter that law, have the same operation in relation to the Independent State of Western Samoa as it would have if the Independent State of Western Samoa were part of Her Majesty's dominions and a member of the Commonwealth.

6. Citizens of Western Samoa not required to register as aliens — The Aliens Act 1948 is hereby amended by inserting, before section 6 and under the heading "*Registration*", the following section:

"5A. In sections 6 to 13 of this Act the term 'alien' does not include a citizen of the Independent State of Western Samoa."

. . .

3. EXISTING LAW ADJUSTMENT ORDINANCE, 1961 — AN ORDINANCE TO MAKE PROVISION FOR THE APPLICATION OF THE EXISTING LAW DEFINED IN ARTICLE 111 OF THE CONSTITUTION OF WESTERN SAMOA[1]

. . .

3. Application of Ordinance — The provisions of this Ordinance shall apply to the existing law defined in Article 111 of the Constitution and continuing in force on and after Independence Day as provided in Article 114 of the Constitution.

4. Application of existing law and documents to Western Samoa — (1) Unless inconsistent with the context, in any existing law, or in any contract, agreement, deed, instrument, application, licence, notice, or other document whatsoever existing at the commencement of this Ordinance—

(*a*) references to any office, department, board or corporation shall, in relation to Western Samoa, be read as references to the corresponding office, department, board or corporation in Western Samoa, or, as the case may be, the Court constituted in Western Samoa having appropriate jurisdiction;

(*b*) powers, duties and functions conferred on any person or department shall, in relation to Western Samoa, be construed as powers, duties, and functions conferred on or to be exercised or carried out by the person or department entrusted with corresponding powers, duties and functions in Western Samoa.

(*c*) generally, provisions that require modification to make them ap-

[1] Enacted by the Legislative Assembly of Western Samoa on 29 December 1961. Came into force in 1 January 1962.

plicable to circumstances and conditions for the time being existing in Western Samoa shall, subject to any regulations made under section five hereof, be read with all modifications necessary to apply such provisions to Western Samoa pursuant to Article 114 of the Constitution.

. . .

5. Regulations — (1) The Head of State may from time to time by Order in Council make all regulations which may in his opinion be necessary or expedient for giving full effect to the provisions of Article 114 of the Constitution and this Ordinance.

(2) The power conferred on the Head of State by subsection one of this section shall include the power to revoke any regulations made by him or the Council of State or the High Commissioner of Western Samoa before or after the coming into force of this Ordinance.

Nigeria

Transmitted by notes verbales *dated 8 October 1962 and 2 April 1963 of the Permanent Mission to the United Nations*

A. TREATIES

EXCHANGE OF LETTERS CONSTITUTING AN AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATION OF NIGERIA RELATIVE TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF THE FEDERATION OF NIGERIA. LAGOS, 1 OCTOBER 1960[1]

. . .

(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument shall henceforth, in so far as such instrument may be held to have application to Nigeria, be assumed by the Government of the Federation of Nigeria;

(ii) the rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Nigeria shall henceforth be enjoyed by the Government of the Federation of Nigeria.

. . .

B. LAWS AND DECREES

1. NIGERIA INDEPENDENCE ACT, 1960[2]

1. — (1) On the first day of October, nineteen hundred and sixty (in this Act referred to as "the appointed day"), the Colony and the Protectorate as respectively defined by the Nigeria (Constitution)

[1] United Nations, *Treaty Series*, vol. 384, p. 207. Came into force on 1 October 1960.

[2] 8 and 9 Eliz. 2, Chapter 55. Enacted by the British Parliament on 29 July 1960.

Orders in Council, 1954 to 1960, shall together constitute part of Her Majesty's dominions under the name of Nigeria.

(2) No Act of the Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to Nigeria or any part thereof as part of the law thereof, and as from that day—

(*a*) Her Majesty's Government in the United Kingdom shall have no responsibility for the government of Nigeria or any part thereof; and

(*b*) the provisions of the First Schedule to this Act shall have effect with respect to legislative powers in Nigeria.

(3) Without prejudice to subsection (2) of this section, nothing in subsection (1) thereof shall affect the operation in Nigeria or any part thereof on and after the appointed day of any enactment, or any other instrument having the effect of law, passed or made with respect thereto before that day.

Consequential modifications of British Nationality Acts

2. — (1) As from the appointed day, the British Nationality Acts, 1948 and 1958, shall have effect as if—

(*a*) in subsection (3) of section one of the said Act of 1948 (which provides for persons to be British subjects or Commonwealth citizens by virtue of citizenship of certain countries) the word "and" in the last place where it occurs were omitted, and at the end there were added the words "and Nigeria";

(*b*) in the First Schedule to the British Protectorates, Protected States and Protected Persons Order in Council, 1949, the words "Nigeria Protectorate" were omitted:

Provided that a person who immediately before the appointed day is for the purposes of the said Acts and Order in Council a British protected person by virtue of his connection with the Nigeria Protectorate shall not cease to be such a British protected person for any of those purposes by reason of anything contained in the foregoing provisions of this Act, but shall so cease upon his becoming a citizen of Nigeria under the law thereof.

(2) Subject to the subsequent provisions of this section, any person who immediately before the appointed day is a citizen of the United Kingdom and Colonies shall on that day cease to be such a citizen if—

(*a*) under the law of Nigeria he becomes on that day a citizen of Nigeria; and

(*b*) he, his father or his father's father was born in any of the territories comprised in Nigeria.

(3) Subject to subsection (8) of this section, a person shall not cease to be a citizen of the United Kingdom and Colonies under the last foregoing subsection if he, his father or his father's father—

(*a*) was born in the United Kingdom or in a colony; or

(*b*) is or was a person naturalised in the United Kingdom and Colonies; or

(*c*) was registered as a citizen of the United Kingdom and Colonies; or

(*d*) became a British subject by reason of the annexation of any territory included in a colony.

(4) A person shall not cease to be a citizen of the United Kingdom and Colonies under subsection (2) of this section if he was born in a

protectorate, protected state or United Kingdom trust territory, or if his father or his father's father was so born and is or at any time was a British subject.

(5) A woman who is the wife of a citizen of the United Kingdom and Colonies shall not cease to be such a citizen under subsection (2) of this section unless her husband does so.

(6) Subsection (2) of section six of the British Nationality Act, 1948 (which provides for the registration as a citizen of the United Kingdom and Colonies of a woman who has been married to such a citizen) shall not apply to a woman by virtue of her marriage to a person who ceases to be such a citizen under subsection (2) of this section, or who would have done so if living on the appointed day.

(7) Subject to the next following subsection, the reference in paragraph (*b*) of subsection (3) of this section to a person naturalised in the United Kingdom and Colonies shall include a person who would, if living immediately before the commencement of the British Nationality Act, 1948, have become a person naturalised in the United Kingdom and Colonies by virtue of subsection (6) of section thirty-two of that Act (which relates to persons given local naturalisation before that commencement in a colony or protectorate).

(8) Any reference in subsection (3) or (4) of this section to a territory of any of the following descriptions, that is to say, a colony, protectorate, protected state or United Kingdom trust territory, shall, subject to the next following subsection, be construed as a reference to a territory which is of that description on the appointed day; and the said subsection (3) shall not apply to a person by virtue of any certificate of naturalisation granted or registration effected by the governor or government of a territory outside the United Kingdom which is not on that day of one of those descriptions.

(9) The protectorates of Northern Rhodesia and Nyasaland shall be excepted from the operation of any reference in subsection (4) or (8) of this section to a protectorate.

(10) Part III of the British Nationality Act, 1948 (which contains supplemental provisions) shall have effect for the purposes of subsections (2) to (9) of this section as if those subsections were included in that Act.

2. Nigeria (Constitution) Order in Council, 1960[1]

Existing laws

3. — (1) Subject to the provisions of this section, the existing laws shall, notwithstanding the revocation of the Orders specified in the First Schedule to this Order, have effect after the commencement of this Order as if they had been made in pursuance of this Order and shall be read and construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

(2) The Governor-General of the Federation of Nigeria may by order at any time within six months after the commencement of this Order make such amendments to any existing law, to the extent that it relates

[1] Supplement to Official Gazette Extraordinary No. 62, vol. 47 (30 September 1960)— Part B. Made at the Court at Balmoral on 12 September 1960. Came into force 1 October 1960.

to any matter with respect to which the Parliament of the Federation has power to make laws, as may appear to the Governor-General to be necessary or expedient—

(*a*) for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions; or

(*b*) for giving effect or enabling effect to be given to the provisions of any agreement between Her Majesty's Government in the United Kingdom and Her Majesty's Government of the Federation of Nigeria made for the purpose of facilitating the administration of the Southern Cameroons or the Northern Cameroons after the commencement of this Order.

(3) The Governor of a Region of the Federation of Nigeria may by order at any time within six months after the commencement of this Order make such amendments to any existing law, to the extent to which it relates to any matter with respect to which the legislature of that Region has power to make laws, as may appear to the Governor to be necessary or expedient—

(*a*) for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions; or

(*b*) for giving effect or enabling effect to be given to the provisions of any agreement between Her Majesty's Government in the United Kingdom and Her Majesty's Government of the Federation of Nigeria made for the purpose of facilitating the administration of the Southern Cameroons or the Northern Cameroons after the commencement of this Order.

(4) The provisions of this section shall be without prejudice to any powers conferred by this Order upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

(5) Where any matter falls to be prescribed under this Order by the Parliament of the Federation of Nigeria, the legislature of a Region of the Federation or any other person or authority that matter shall be regarded as being so prescribed if it is prescribed by any existing law, as amended under this section or otherwise to such extent, if any, as may be necessary or expedient to meet the circumstances of the case.

(6) Any existing law enacted before the first day of October, 1954, that relates to a matter with respect to which both the Parliament of the Federation of Nigeria and the legislatures of the Regions of the Federation have power to make laws and that immediately before the commencement of this Order had effect by virtue of the Orders revoked by this Order as if it had been enacted by the Legislature of the Federation of Nigeria shall have effect after the commencement of this Order as if it were an Act of Parliament.

(7) For the purposes of this section "the existing laws" mean all Ordinances, Laws, rules, regulations, orders and other instruments having the effect of law made or having effect as if they had been made in pursuance of the Orders in Council revoked by this Order and having effect as part of the law of the Colony and Protectorate of Nigeria or any part thereof immediately before the commencement of this Order.

Existing offices, courts and authorities

4. — (1) Subject to the provisions of this section, all offices, courts of law and authorities established under the Orders in Council revoked by this Order for the Colony and Protectorate of Nigeria and existing immediately before the commencement of this Order shall, so far as is consistent with the provisions of this Order, continue after the commencement of this Order as if they were offices, courts and authorities established under this Order for Nigeria; and all persons who immediately before the commencement of this Order are holding or acting in offices established by or under the Orders revoked by this Order for the Colony and Protectorate or are members of the courts and authorities established by or under those Orders for the Colony and Protectorate shall, so far as is consistent with the provisions of this Order, continue in office as if they had been appointed, elected or otherwise selected thereto under this Order in the manner prescribed by this Order and had taken any necessary oaths under this Order:

Provided that—

(*a*) any member of a legislative house who has been appointed, elected or otherwise selected to represent any area that after the commencement of this Order is wholly outside Nigeria shall vacate his seat in that house at the commencement of this Order;

(*b*) any member of any authority who would have been required to vacate his office at the expiration of any period or upon his attainment of any age prescribed by or under the Orders revoked by this Order shall vacate his office accordingly;

(*c*) no person who was a member of any legislative house or President, Deputy President, Speaker or Deputy Speaker thereof immediately before the commencement of this Order shall be regarded as disqualified by this Order from continuing as a member of that house or as President, Deputy President, Speaker or Deputy Speaker, as the case may be, until the next dissolution of that house by reason only that he also continues to hold any other office by virtue of any appointment made before the commencement of this Order; and

(*d*) the legislative houses shall, unless sooner dissolved, stand dissolved on the respective dates on which they would have been required to be dissolved by the Orders revoked by this Order.

(2) The provisions of this section shall be without prejudice to any powers conferred by this Order upon any person or authority to make provision for any matter, including the establishment and abolition of offices, courts of law and authorities and the appointment, election or selection of persons to hold or act in any office or to be members of any court or authority and their removal from office.

Pending legal proceedings

5. — (1) Any proceedings pending immediately before the commencement of this Order before any court of law established by the Orders revoked by this Order for the Colony and Protectorate of Nigeria may be continued before the courts established by this Order for Nigeria having jurisdiction in relation to the matter to which those proceedings relate as if they had been initiated before those courts after the commencement of this Order.

(2) Any proceedings pending immediately before the commencement of this Order before Her Majesty in Council or any court of law established by or under the Orders revoked by this Order for the Colony and Protectorate of Nigeria may be continued after the commencement of this Order notwithstanding that, by reason of the terms of this Order, no such proceedings could be initiated after the commencement of this Order.

. . .

Outstanding debts

17. Any debt of the Federation that immediately before the commencement of this Order was by the Orders revoked by this Order charged on the Consolidated Revenue Funds of the Regions of the Federation of Nigeria as well as on the Consolidated Revenue Fund of the Federation shall after the commencement of this Order be secured on the revenues and assets of the Regions as well as the revenues and assets of the Federation.

. . .

The second schedule

Chapter II

CITIZENSHIP

Persons who become citizens on 1st October, 1960

7. — (1) Every person who, having been born in the former Colony or Protectorate of Nigeria, was on the thirtieth day of September, 1960, a citizen of the United Kingdom and Colonies or a British protected person shall become a citizen of Nigeria on the first day of October, 1960.

Provided that a person shall not become a citizen of Nigeria by virtue of this subsection if neither of his parents nor any of his grandparents was born in the former Colony or Protectorate of Nigeria.

(2) Every person who, having been born outside the former Colony and Protectorate of Nigeria, was on the thirtieth day of September, 1960, a citizen of the United Kingdom and Colonies or a British protected person shall, if his father was born in the former Colony or Protectorate and was a citizen of the United Kingdom and Colonies or a British protected person on the thirtieth day of September, 1960 (or, if he died before that date, was such a citizen or person at the date of his death or would have become such a citizen or person but for his death) become a citizen of Nigeria on the first day of October, 1960.

Persons entitled to be registered as citizens

8. — (1) Any person who, but for the proviso to subsection (1) of section 7 of this Constitution, would be a citizen of Nigeria by virtue of that subsection shall be entitled, upon making application before the first day of October, 1962, in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not make

an application under this subsection himself but an application may be made on his behalf by his parent or guardian.

(2) Any woman, who on the thirtieth day of September, 1960, was a citizen of the United Kingdom and Colonies or a British protected person and who is or has been married to a person—

(*a*) who becomes a citizen of Nigeria by virtue of section 7 of this Constitution; or

(*b*) who, having died before the first day of October, 1960, would, but for his death, have become a citizen of Nigeria by virtue of that section,

shall be entitled, upon making application in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria.

(3) Any woman who is or has been married to a person who becomes a citizen of Nigeria by registration under subsection (1) of this section and is at the date of such registration a citizen of the United Kingdom and Colonies or a British protected person shall be entitled, upon making application within such time and in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria.

(4) Any woman who on the thirtieth day of September, 1960, was a citizen of the United Kingdom and Colonies or a British protected person and who has been married to a person who, having died before the first day of October, 1960, would, but for his death, be entitled to be registered as a citizen of Nigeria under subsection (1) of this section, shall be entitled, upon making application before the first day of October, 1962, in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria.

(5) The provisions of subsections (2), (3) and (4) of this section shall be without prejudice to the provisions of section 7 of this Constitution.

Persons naturalized or registered before 1st October, 1960

9. Any person who on the thirtieth day of September, 1960, was a citizen of the United Kingdom and Colonies—

(*a*) having become such a citizen under the British Nationality Act, 1948 (*a*), by virtue of his having been naturalized in the former Colony or Protectorate of Nigeria as a British subject before that Act came into force; or

(*b*) having become such a citizen by virtue of his having been naturalized or registered in the former Colony or Protectorate of Nigeria under that Act,

shall be entitled, upon making application before the first day of October, 1962, in such manner as may be prescribed by Parliament, to be registered as a citizen of Nigeria:

Provided that a person who has not attained the age of twenty-one years (other than a woman who is or has been married) may not make an application under this subsection himself but an application may be made on his behalf by his parent or guardian.

Persons born in Nigeria after 30th September, 1960

10. Every person born in Nigeria after the thirtieth day of September, 1960, shall become a citizen of Nigeria at the date of his birth:

Provided that a person shall not become a citizen of Nigeria by virtue of this section if at the time of his birth—

(*a*) neither of his parents was a citizen of Nigeria and his father possessed such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to the Federation; or

(*b*) his father was an enemy alien and the birth occurred in a place then under occupation by the enemy.

Persons born outside Nigeria after 30th September, 1960

11. A person born outside Nigeria after the thirtieth day of September, 1960, shall become a citizen of Nigeria at the date of his birth if at that date his father is a citizen of Nigeria otherwise than by virtue of this section or subsection (2) of section 7 of this Constitution.

Dual citizenship

12. Any person who, upon his attainment of the age of twenty-one years, was a citizen of Nigeria and also a citizen of some country other than Nigeria shall cease to be a citizen of Nigeria upon his attainment of the age of twenty-two years (or, in the case of a person of unsound mind, at such later date as may be prescribed by Parliament) unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who is a citizen of Nigeria by virtue of subsection (2) of section 7 of this Constitution, has made such declaration of his intentions concerning residence or employment as may be prescribed by Parliament:

Provided that where a person cannot renounce his citizenship of the other country under the law of that country he may instead make such declaration concerning that citizenship as may be prescribed by Parliament.

Pakistan

Transmitted by notes verbales *dated 10 December 1962 and 14 July 1965 of the Permanent Mission to the United Nations*

A. OBSERVATIONS

[Achievement of independence by Pakistan]

Pakistan did not achieve independence by any treaty, decree or regulation. The Indo-Pakistan sub-continent was a part of the British Empire. The British Parliament, on 18 July 1947, passed an Act known as the Indian Independence Act, 1947 (10 and 11 Geo. 6 Chap. 30) whereby from the 14th day of August 1947, the sub-continent was divided into two independent dominions, viz. India and Pakistan. Under the authority of this legislation, the Constituent Assembly of Pakistan, in 1956, enacted its own Constitution as a result of which Pakistan became a Republic within the Commonwealth.

B. LAWS AND DECREES

1. INDIAN INDEPENDENCE ACT, 1947[1] — AN ACT TO MAKE PROVISION FOR THE SETTING UP IN INDIA OF TWO INDEPENDENT DOMINIONS, TO SUBSTITUTE OTHER PROVISIONS FOR CERTAIN PROVISIONS OF THE GOVERNMENT OF INDIA ACT, 1935, WHICH APPLY OUTSIDE THOSE DOMINIONS, AND TO PROVIDE FOR OTHER MATTERS CONSEQUENTIAL ON OR CONNECTED WITH THE SETTING UP OF THOSE DOMINIONS

1. *The new Dominions.*—(1) As from the fifteenth day of August, nineteen hundred and forty-seven, two independent Dominions shall be set up in India, to be known respectively as India and Pakistan.

(2) The said Dominions are hereafter in this Act referred to as "the new Dominions", and the said fifteenth day of August is hereafter in this Act referred to as "the appointed day".

2. *Territories of the new Dominions.*—(1) Subject to provisions of subsections (3) and (4) of this section, the territories of India shall be the territories under the sovereignty of His Majesty which, immediately before the appointed day, were included in British India except the territories which, under subsection (2) of this section, are to be the territories of Pakistan,

(2) Subject to the provisions of subsections (3) and (4) of this section, the territories of Pakistan shall be—

(a) the territories which, on the appointed day, are included in the Provinces of East Bengal and West Punjab, as constituted under the two following sections;

(b) the territories which, at the date of the passing of this Act, are included in the Province of Sind and the Chief Commissioner's Province of British Baluchistan; and

(c) if, whether before of after the passing of this Act but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the North West Frontier Province are in favour of representatives of that Province taking part in the Constituent Assembly of Pakistan, the territories which, at the date of the passing of this Act, are included in that Province.

(3) Nothing in this section shall prevent any area being at any time included in or excluded from either of the new Dominions, so, however, that—

(a) no area not forming part of the territories specified in subsection (1) or, as the case may be, subsection (2), of this section shall be included in either Dominion without the consent of that Dominion; and

(b) no area which forms part of the territories specified in the said subsection (1) or, as the case may be, the said subsection (2), or which has after the appointed day been included in either Dominion, shall be excluded from that Dominion without the consent of that Dominion.

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[1] 10 and 11 Geo. 6 Chap. 30. Evaluated by the British Parliament on 18 July 1947.

(4) Without prejudice to the generality of the provisions of subsection (3) of this section, nothing in this section shall be construed as preventing the accession of Indian States to either of the new Dominions.

3. *Bengal and Assam.* — (1) As from the appointed day—

(a) the Province of Bengal, as constituted under the Government of India Act, 1935, shall cease to exist; and

(b) there shall be constituted in lieu thereof two new Provinces, to be known respectively as East Bengal and West Bengal.

(2) If, whether before of after the passing of this Act, but before the appointed day, the Governor-General declares that the majority of the valid votes cast in the referendum which, at the date of the passing of this Act, is being or has recently been held in that behalf under his authority in the District of Sylhet are in favour of that District forming part of the new Province of East Bengal, then, as from that day, a part of the Province of Assam shall, in accordance with the provisions of subsection (3) of this section, form part of the new Province of East Bengal.

(3) The boundaries of the new Provinces aforesaid and, in the event mentioned in subsection (2) of this section, the boundaries after the appointed day of the Province of Assam, shall be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined—

(a) the Bengal Districts specified in the First Schedule to this Act, together with, in the event mentioned in subsection (2) of this section, the Assam District of Sylhet, shall be treated as the territories which are to be comprised in the new Province of East Bengal;

(b) the remainder of the territories comprised at the date of the passing of this Act in the Province of Bengal shall be treated as the territories which are to be comprised in the new Province of West Bengal; and

(c) in the event mentioned in subsection (2) of this section, the District of Sylhet shall be excluded from the Province of Assam.

(4) In this section, the expression "award" means, in relation to a boundary commission, the decisions of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission's proceedings.

4. *The Punjab.* — (1) As from the appointed day—

(a) the Province of the Punjab, as constituted under the Government of India Act, 1935, shall cease to exist; and

(b) there shall be constituted two new Provinces, to be known respectively as West Punjab and East Punjab.

(2) The boundaries of the said new Provinces shall be such as may be determined, whether before or after the appointed day, by the award of a boundary commission appointed or to be appointed by the Governor-General in that behalf, but until the boundaries are so determined—

(a) the Districts specified in the Second Schedule to this Act shall be treated as the territories to be comprised in the new Province of West Punjab; and

(b) the remainder of the territories comprised at the date of the passing of this Act in the Province of the Punjab shall be treated as

the territories which are to be comprised in the new Province of East Punjab.

(3) In this section, the expression "award", means, in relation to a boundary commission, the decisions of the chairman of that commission contained in his report to the Governor-General at the conclusion of the commission's proceedings.

. . .

7. *Consequences of the setting up of the new Dominions.* — (1) As from the appointed day—

(a) His Majesty's Government in the United Kingdom have no responsibility as respects the government of any of the territories which, immediately before that day, were included in British India;

(b) the suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the rulers of Indian States, all functions exercisable by His Majesty at that date with respect to Indian States, all obligations of His Majesty existing at that date towards Indian States or the rulers thereof, and all powers, rights, authority or jurisdiction exercisable by His Majesty at that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise; and

(c) there lapse also any treaties or agreements in force at the date of the passing of this Act between His Majesty and any persons having authority in the tribal areas, any obligations of His Majesty existing at that date to any such persons or with respect to the tribal areas, and all powers, rights, authority or jurisdiction exercisable at that date by His Majesty in or in relation to the tribal areas by treaty, grant, usage, sufferance or otherwise:

Provided that, notwithstanding anything in paragraph (b) or paragraph (c) of this subsection, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as is therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters, until the provisions in question are denounced by the Ruler of the Indian State or person having authority in the tribal areas on the one hand, or by the Dominion or Province or other part thereof concerned on the other hand, or are superseded by subsequent agreements.

(2) The assent of the Parliament of the United Kingdom is hereby given to the omission from the Royal Style and Titles of the words "Indiae Imperator" and the words "Emperor of India" and to the issue by His Majesty for that purpose of His Royal Proclamation under the Great Seal of the Realm.

. . .

10. *Secretary of State's services, etc.* — (1) The provisions of this Act keeping in force provisions of the Government of India Act, 1935, shall not continue in force the provisions of that Act relating to appointments to the civil services of, and civil posts under, the Crown in India by the Secretary of State, or the provisions of that Act relating to the reservation of posts.

(2) Every person who—

(a) having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof; or

(b) having been appointed by His Majesty before the appointed day to be a judge of the Federal Court or of any court which is a High Court within the meaning of the Government of India Act, 1935, continues on and after the appointed day to serve as a judge in either of the new Dominions,

shall be entitled to receive from the Governments of the Dominions and Provinces or parts which he is from time to time serving or, as the case may be, which are served by the courts in which he is from time to time a judge, the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit, as that person was entitled to immediately before the appointed day.

(3) Nothing in this Act shall be construed as enabling the rights and liabilities of any person with respect to the family pension funds vested in Commissioners under section two hundred and seventy-three of the Government of India Act, 1935, to be governed otherwise than by Orders in Council made (whether before or after the passing of this Act or the appointed day) by His Majesty in Council and rules made (whether before or after the passing of this Act or the appointed day) by a Secretary of State or such other Minister of the Crown as may be designated in that behalf by Order in Council under the Ministers of the Crown (Transfer of Functions) Act, 1946.

. . .

15. *Legal proceedings by and against the Secretary of State.* — (1) Notwithstanding anything in this Act, and, in partieular, notwithstanding any of the provisions of the last preceding section, any provision of any enactment which, but for the passing of this Act, would authorise legal proceedings to be taken, in India or elsewhere, by or against the Secretary of State in respect of any right or liability of India or any part of India shall cease to have effect on the appointed day, and any legal proceedings pending by virtue of any such provision on the appointed day shall, by virtue of this Act, abate on the appointed day, so far as the Secretary of State is concerned.

(2) Subject to the provisions of this subsection, any legal proceedings which, but for the passing of this Act, could have been brought by or against the Secretary of State in respect of any right or liability of India, or any part of India, shall instead be brought—

(a) in the case of proceedings in the United Kingdom, by or against the High Commissioner;

(b) in the case of other proceedings, by or against such person as may be designated by order of the Governor-General under the preceding provisions of this Act or otherwise by the law of the new Dominion concerned,

and any legal proceedings by or against the Secretary of State in respect of any such right or liability as aforesaid which are pending immediately

before the appointed day shall be continued by or against the High Commissioner or, as the case may be, the person designated as aforesaid;

Provided that, at any time after the appointed day, the right conferred by this subsection to bring or continue proceedings may, whether the proceedings are by, or are against, the High Commissioner or person designated as aforesaid, be withdrawn by a law of the Legislature of either of the new Dominions so far as that Dominion is concerned, and any such law may operate as respects proceedings pending at the date of the passing of the law.

(3) In this section, the expression "the High Commissioner" means, in relation to each of the new Dominions, any such officer as may for the time being be authorised to perform in the United Kingdom, in relation to that Dominion, functions similar to those performed before the appointed day, in relation to the Governor-General in Council, by the High Commissioner referred to in section three hundred and two of the Government of India Act, 1935; and any legal proceedings which, immediately before the appointed day, are the subject of an appeal to His Majesty in Council, or of a petition for special leave to appeal to His Majesty in Council, shall be treated for the purposes of this section as legal proceedings pending in the United Kingdom.

. . .

18. *Provisions as to existing laws, etc.* — (1) In so far as any Act of Parliament, Order in Council, order, rule, regulation or other instrument passed or made before the appointed day operates otherwise than as part of the law of British India or the new Dominions, references therein to India or British India, however worded and whether by name or not, shall, in so far as the context permits and except so far as Parliament may hereafter otherwise provide, be construed as, or as including, references to the new Dominions, taken together, or taken separately, according as the circumstances and subject matter may require:

Provided that nothing in this subsection shall be construed as continuing in operation any provision in so far as the continuance thereof as adapted by this subsection is inconsistent with any of the provisions of this Act other than this section.

(2) Subject to the provisions of subsection (1) of this section and to any other express provision of this Act, the Orders in Council made under subsection (5) of section three hundred and eleven of the Government of India Act, 1935, for adapting and modifying Acts of Parliament shall, except so far as Parliament may hereafter otherwise provide, continue in force in relation to all Acts in so far as they operate otherwise than as part of the law of British India or the new Dominions.

(3) Save as otherwise expressly provided in this Act, the law of British India and of the several parts thereof existing immediately before the appointed day shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions and the several parts thereof until other provision is made by laws of the Legislature of the Dominion in question or by any other Legislature or other authority having power in that behalf.

(4) It is hereby declared that the Instruments of Instructions issued before the passing of this Act by His Majesty to the Governor-General and the Governors of Provinces lapse as from the appointed day, and nothing in this Act shall be construed as continuing in force any provi-

sion of the Government of India Act, 1935, relating to such Instruments of Instructions.

(5) As from the appointed day, so much of any enactment as requires the approval of His Majesty in Council to any rules of court shall not apply to any court in either of the new Dominions.

. . .

2. PAKISTAN (CONSEQUENTIAL PROVISION) ACT, 1956[1] — AN ACT TO MAKE PROVISION AS TO THE OPERATION OF THE LAW IN RELATION TO PAKISTAN AND PERSONS AND THINGS IN ANY WAY BELONGING TO OR CONNECTED WITH PAKISTAN, IN VIEW OF PAKISTAN'S BECOMING A REPUBLIC WHILE REMAINING A MEMBER OF THE COMMONWEALTH

WHEREAS on the twenty-third day of March, nineteen hundred and fifty-six, Pakistan is to become a Republic while remaining a member of the Commonwealth:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. — (1) On and after the date of Pakistan's becoming a Republic, all existing law, that is to say, all law which, whether being a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever, is in force on that date or has been passed or made before that date and comes into force thereafter, shall, until provision to the contrary is made by an authority having power to alter that law and subject to the provisions of subsection (3) of this section, have the same operation in relation to Pakistan, and to persons and things in any way belonging to or connected with Pakistan, as it would have had if Pakistan had not become a Republic.

(2) This Act extends to law of, or of any part of, the United Kingdom, Southern Rhodesia, a colony, a protectorate or a United Kingdom trust territory:

Provided that this Act—

(*a*) does not extend to any law passed by the Federal Legislature of Rhodesia and Nyasaland;

(*b*) extends to other law of, or of any part of, Southern Rhodesia so far only as concerns law which can be amended neither by a law passed by the Legislature; and

(*c*) extends to other law of, or of any part of, Northern Rhodesia or Nyasaland so far only as concerns law which cannot be amended by a law passed by the said Federal Legislature.

The references in this subsection to a colony, to a protectorate and to a United Kingdom trust territory shall be construed as if they were references contained in the British Nationality Act, 1948.

(3) Her Majesty may by Order in Council make provision for such modification of any existing law to which this Act extends as may appear to her to be necessary or expedient in view of Pakistan's becoming a Republic while remaining a member of the Commonwealth, and sub-

[1] 4 and 5 Eliz. 2 Chap. 31. Enacted by the British Parliament on 15 March 1956.

section (1) of this section shall have effect in relation to any such law as modified by such an Order save in so far as the contrary intention appears in the Order.

An Order in Council under this section—

(*a*) may be made either before or after Pakistan becomes a Republic, and may be revoked or varied by a subsequent Order in Council; and

(*b*) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

2. This Act may be cited as the Pakistan (Consequential provision) Act, 1956.

C. DECISIONS OF NATIONAL COURTS

TEXTS OF JUDGMENTS

Supreme Court of Pakistan (Appellate Jurisdiction)

Yangtze (London) Limited v. *Barlas Brothers (Karachi) and Co.: Judgment of 6 June 1961 (Civil appeal No. 139 of 1960)*

[Incorporation of international agreements into municipal law — Operation of the "Arbitration (Protocol and Convention) Act 1937" in Pakistan subject to fulfilment by its Central Government of special conditions laid down in Section 2 of the said Act — Fresh notifications by Pakistan required — Succession to treaty rights and obligations under international law — Succession by Pakistan to international rights and obligations of British India under the "Indian Independence Act, 1947" and the "Indian Independence (International Arrangements) Order, 1947" — Suecession to rights and obligations deriving from British India's membership of international organizations — The question of Pakistan's adherance to the "1923 Protocol on Arbitration Clauses" and the "1927 Convention on the Execution of Foreign Arbitral Awards" — State's sovereignty implies the right to decide on the establishment of treaty relations with other States — Role of the Judiciary in matters pertaining to the conduct of international relations]

"This is a certificated appeal from the judgment and order of a Division Bench of the High Court of West Pakistan sitting at Karachi whereby an order of a learned Single Judge of the Chief Court of Sind directing that an award of the London Court of Arbitration be made a rule of the said Court and a decree be passed in terms thereof was set aside.

The appellant, which is a company registered in England under the English Companies Act and carries on business in London, entered into various contracts during the years 1948 to 1950 with the respondent firm carrying on business at Karachi for the purchase of sheep casings. These contracts were in the first instance made by cablegrams but some used to be sent in duplicate by the appellant to the respondent firm for it to sign and return one of the said forms.

In relation to six of these contracts, however, differences and disputes arose between the parties, and the appellant, in terms of the arbitration clause contained in each of the said printed contract forms, referred the disputes relating to all the said six contracts to the arbitration of the London Court of Arbitration on the 12th April, 1951. The respondent

firm, it appears, had not signed three out of the abovementioned six contract forms with regard to which disputes were alleged to have arisen though it does not deny having entered into the contracts which they purported to confirm. But when the London Court of Arbitration called upon the respondent firm to file its preliminary comments it denied having ever agreed to any arbitration or to have any knowledge of the nature of the disputes raised by the appellant and demanded photostatic copies of the confirmations of the said contracts in order to satisfy itself that they bore its signatures.

The Court of Arbitration furnished the respondent firm with a copy of the appellant's letter concerning the disputes and the photostatic copies of the three signed contracts and also informed the respondent firm that after its statement is filed the said court would decide as to whether it had jurisdiction to arbitrate in respect of the disputes arising from the unsigned contracts. The respondent firm neither filed any statement nor gave any reply to Court of Arbitration which, thereupon, nominated an arbitrator and gave notice by registered post to the respondent firm to file its statement of defence. The latter refused to accept the registered notices and letters sent to it but in answer to a cablegram intimating that the 28th February 1952 had been fixed as the date of hearing before the arbitrator, maintained that even the three signed contracts had become null and void as the appellant had failed to open the requisite letters of credit stipulated for in the said contracts.

The respondent firm was again informed that all questions of jurisdiction sought to be raised by it would be decided by the arbitrator but the said firm thereafter neither acknowledged any of the communications received from the London Court of Arbitration nor took any part in the proceedings before the arbitrator. In the circumstances an *ex parte* award was made against the respondent firm on the 18th April, 1952, for £11,417-13-7d. with costs assessed at £378. This was the award which the appellant sought to enforce as a foreign award in the then Sind Chief Court under the provisions of the Arbitration (Protocol and Convention) Act 1937 by applying on the 12th July, 1952 to file the said award in Court in terms of Section 5 thereof. This application was opposed by the respondent firm on, *inter alia*, the grounds that the Arbitration (Protocol and Convention) Act 1937, was not applicable to Pakistan and that in any event the award was not a foreign award within the meaning of the said Act. The Sind Chief Court took the view that the preamble to the Act itself clearly indicated that the Act applied to the Provinces and the Capital of the Federation of Pakistan and that the award was enforceable in Pakistan as the respondent firm had failed to show that it suffered from any of the defects, mentioned in Section 7 (2) of the said Act, which alone could render a foreign award, to which the Act applied, unenforceable. Hence it ordered the award to be filed and passed a decree in terms thereof.

The preamble to the said Act reads as follows:—

"Whereas India was a State signatory to the Protocol on Arbitration Clauses[1] set forth in the first Schedule, and to the Convention on

[1] League of Nations, *Treaty Series*, vol. XXVII, p. 158. Signed at Geneva on 24 September 1923. Came into force on 28 July 1924.

the Execution of Foreign Arbitral Awards[1] set forth in the Second Schedule, subject in each case to a reservation of the right to limit its obligations in respect thereof to contracts which are considered as commercial under the law in force in the provinces and the Capital of the Federation:

And whereas it is expedient, for the purpose of giving effect to the said Protocol and of enabling the said Convention to become operative in the provinces and the Capital of the Federation, to make certain further provisions respecting the law of arbitration."

Presumably because the second paragraph of the Preamble quoted above manifested an intention to give effect to the Protocol on Arbitration Clauses and the Convention on the Execution of Foreign Arbitral Awards appended as schedules to the said Act in the Provinces and Capital of the Federation the Sind Chief Court took the view that by such express adaptation the Act had been made appliable to Pakistan. Furthermore since under a Notification published by the Government of India in the Gazette of India on the 8th June, 1938 Great Britain was one of the countries declared by the Government of India to be a party to the Convention the award made in London was held to be enforceable in accordance with the provisions of the said Act, after its adaptation, in Pakistan also.

On appeal, however, a Division Bench of the High Court of West Pakistan reversed this decision and held that the award in question was not enforceable in Pakistan. After a careful and exhaustive examination of certain rules of International Law and the provisions of the Protocol, the Convention, the Arbitration (Protocol and Convention) Act 1937 and the Indian Independence Act 1947 the learned Judges of the Division Bench came to the conclusion that even though the Act of 1937 as adapted continued as existing law for Pakistan it could not become operative until and unless the special conditions laid down in Section 2 thereof for its own operation were fulfilled.

Section 2 of the Arbitration (Protocol and Convention) Act provides:—

"2. In this Act 'foreign award' means an award on differences relating to matters considered as commercial under the law in force in the provinces and the Capital of the Federation, made after the 28th day of July, 1924,

(*a*) in pursuance of an agreement for arbitration to which the protocol set forth in the First Schedule, applies, and

(*b*) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Second Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and

(*c*) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may by like notifications, declare to be territories to which the said

[1] League of Nations, *Treaty Series*, vol. XCII, p. 302. Signed at Geneva on 26 September 1927. Came into force on 25 July 1929.

Convention applies, and for the purposes of this Act an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made."

It will be observed from this that before an award can be enforced as a "foreign award" under the said Act it must be shown, amongst other things:

(i) to have been made in respect of differences between persons who are subject to the jurisdiction of Powers which have been declared by notification published in the Official Gazette by the Central Government to be parties to the convention mentioned in the Act; and

(ii) to have been made in a territory which has been similarly declared to be a territory to which the said convention applies.

No such notification was produced either before the Chief Court or the High Court. In the absence, therefore, of any such notification it was presumed that reciprocal provisions for the enforcement of awards made in Pakistan did not exist in England, where the award under consideration was made and hence the main condition for the operation of the Act in Pakistan had not been fulfilled. The High Court appears, furthermore, to have held the view that since Pakistan was a separate international entity it had to ratify the convention and adhere to the Protocol independently, for, according to the rules of International Law Pakistan did not automatically succeed to all the international rights and obligations of British India.

It is against this decision that the appellant has now come up on appeal to this Court and it is contended on its behalf that the High Court had erred in taking the view that notwithstanding the provisions of Section 18 of the Indian Independence Act and clause 4 of the Indian Independence (International Arrangements) Order 1947, the Arbitration (Protocol and Convention) Act 1937 was not operative in Pakistan or that any fresh notification was required to be issued in Pakistan under section 2 of the said Act. According to the appellant's contention by reason of the abovementioned provisions the rights and obligations arising out of all international agreements to which British India was a party devolved upon both India and Pakistan and such agreements should have been treated as operative in Pakistan as if she was a party to the same.

This argument though apparently plausible does not bear scrutiny. It fails to take into account that under the system of law which prevailed in British India and now prevails in this country international arrangements affecting private rights and obligations do not become operative of their own force but require some legislative or other sanction. Such international arrangements are recognised and enforced in our national Courts only to the extent they are incorporated into the municipal or domestic laws of our country and subject to the conditions, if any, therein specified. Thus the Protocol on Arbitration Clauses and the Convention on the Execution of Foreign Arbitral Awards had to be incorporated in the Arbitration (Protocol and Convention) Act 1937 and the conditions therein prescribed had to be complied with, by issuing the notification of the 8th June, 1938, before they could become operative even in British India.

The question now is whether having become operative in British India the said Protocol and Convention were also operative in Pakistan after she was carved out of the parent state of British India and established as an independent state. The learned counsel for the appellant has, of course, argued that that is what was sought to be achieved by the provisions of section 18 of the Indian Independence Act and clause 4 of the Indian Independence (International Arrangements) Order 1947. The first provided that the law existing in British India before the appointed day, i.e., 15th August, 1947, shall continue, with necessary adaptations, as the law of Pakistan until repealed or altered by a competent authority. The second incorporated an agreement arrived at between India and Pakistan for the devolution of international rights and obligations whereby it was, *inter alia*, agreed that rights and obligations arising under international agreements which did not have an exclusive territorial application will devolve on both on India and Pakistan and will, if necessary, be apportioned between the two.

It is no doubt correct that the Arbitration (Protocol and Convention) Act 1937 was an existing law so far as British India was concernced and, as such, it was continued in force in Pakistan by reason of the Provisions of sub-section (3) of section 18 of the Indian Independence Act. Indeed it was even suitably adapted for the avowed purpose of giving effect to the said Protocol and to enable the said Convention to become operative in the Provinces and the Capital of the Federation under the Pakistan (Adaptation of Existing Pakistan Laws) Order 1947. But this by itself was not sufficient to make the Protocol and Convention operative as the Act itself prescribed that before an award can be treated as "foreign award" for the purposes of the said Act it must have been made in a territory declared by notification to be a territory to which the Convention applied and upon differences between persons who are subjects of Powers declared by notification to be parties to the said Convention. No such notification has been published as yet by the Government of Pakistan but it is contended that no such notification was necessary for the Act having been continued in Pakistan as an existing law the notifications issued thereunder prior to the appointed day must also be deemed to have been continued, particularly, since under the Indian Independence (International Arrangements) Order 1947 the rights and obligations arising under the Protocol and Convention had also devolved upon Pakistan.

With this, however, we are unable to agree for more than one reason. Firstly, because, the Indian Independence (International Arrangements) Order 1947 did not and, indeed, could not provide for the devolution of treaty rights and obligations which were not capable of being succeeded to by a part of a country, which is severed from the parent state and established as an independent sovereign power, according to the practice of States. We advisedly use the expression "practice of States" in this regard for there appear to be no settled rules of International Law governing the succession of States. But as far as it can be gathered the consensus of opinion amongst international jurists seems to be in favour of the view that as a general rule a new State so formed will succeed to rights and obligations arising only under treaties specifically relating to its territories, e.g., treaties relating to its boundaries or regulating the navigation of rivers or providing for guarantees or concessions but not to rights and obligations under treaties, affecting the

State, as such, or its subjects, e.g. treaties of alliance, arbitration or commerce. An examination of the provisions of the said Order of 1947 also reveals no intention to depart from this principle. The relevant provisions thereof are as follows:

"*Schedule*

"AGREEMENT AS TO THE DEVOLUTION OF INTERNATIONAL RIGHTS AND OBLIGATIONS UPON THE DOMINIONS OF INDIA AND PAKISTAN

"1. The international rights and obligations to which India is entitled and subject immediately before the 15th day of August, 1947, will devolve in accordance with the provisions of this agreement.

"2. (1) Membership of all international organisations together with the rights and obligations attaching to such membership, will devolve, solely upon the Dominion of India.

"For the purposes of this paragraph any rights or obligations arising under the Final Act of the United Nations Monetary and Financial Conference will be deemed to be rights or obligations attached to membership of the International Monetary Fund and to membership of the International Bank for Reconstruction and Development.

"(2) The Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organisations as it chooses to join.

"3. (1) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of India will devolve upon that Dominion.

"(2) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of Pakistan will devolve upon that Dominion.

"4. Subject to Articles 2 and 3 of this agreement rights and obligations under all international agreements to which India is a party immediately before the appointed day will devolve both upon the Dominion of India and upon the Dominion of Pakistan and will, if necessary, be apportioned between the two Dominions."

Under these provisions it is significant that Pakistan does not succeed to the membership of international organisations or the rights and obligations attaching to such membership but has to apply to become a member of any organisation she chooses to join. Thus she did not automatically become a member of the United Nations nor did she succeed to the rights and obligations which attached to India by reason of her membership of the League of Nations at Geneva or the United Nations. It is difficult therefore, to appreciate how clause 4 of the said Order can be said to be applicable to all kinds of international agreements or that it intended to provide for the succession to rights and obligations of the parent State which did not normally devolve upon a State established by succession from the parent State under the rules of International Law or which attached to the parent State as a consequence of her membership of an international organisation.

The Protocol on Arbitration Clauses, it appears, was filed sometime in the year 1923 with the League of Nations at Geneva but then it was only in the nature of a proposal which was to remain open for acceptance

by ratification by any member State wishing to avail of it and until at least two States so ratified the same it could not come into effect. It was at a much later stage that the Convention on the Execution of Foreign Arbitral Awards came to be adopted for the ratification of the Protocol by member States desiring to adhere to it and it was only thereafter that the Protocol was ratified and the ratifying States took steps to give effect to it in their own respective territories by suitable legislation. The ratification could thus be made by only a member State and had to be deposited with the Secretary-General of the League of Nations. In the circumstances if Pakistan could not under the Indian Independence (International Arrangements) Order succeed to the rights and obligations acquired by British India by virtue of her membership of the League of Nations or its successor organisation — the United Nations — it follows that Pakistan could not be deemed to have succeeded to the right of ratification that British India possessed as a member of the League of Nations and the ratification of the Protocol by British India could not ennure to the benefit of Pakistan. The earlier notification of 1938, therefore, even under the scheme of devolution incorporated in the abovementioned Order, could not continue to be operative in Pakistan which had to signify its adherence to the Protocol after becoming a member of the United Nations and acquiring the right to so adhere to the Protocol. So far, however, as the national Courts of Pakistan are concerned they could be made aware of such adherenee only by the issuance of the notification mentioned in section 2 of the Arbitration (Protocol and Convention) Act 1937 by the Central Government of Pakistan.

Secondly, because, the said Order being in the nature of an agreement between India and Pakistan was not binding upon other States which may have earlier adhered to the protocol and ratified the Convention. They may or may not have chosen to enter into the reciprocal arrangements contemplated thereunder with the newly established State. Thus the Indian Independence (International Arrangements) Order 1947, even if it intended to lay down a different rule of devolution, could not effectuate that purpose unless and until the other contracting States agreed to have such reciprocal arrangements with Pakistan. The old notification of 1938, therefore, could not by any means be treated as continuing to be valid in spite of such a vital change of circumstances. A fresh notification was, in this view of the matter, necessary to indicate that the foreign Power whose subject wished to enforce an award made outside Pakistan was a party to the Convention and the place where the award was made was situated in a territory to which the Convention applied. In the absence of such a notification it is not possible for national Courts of Pakistan to hold that the award sought to be enforced is a "foreign award" within the meaning of section 2 of the Arbitration (Protocol and Convention) Act 1937, for, the satisfaction thereunder as to the existence of reciprocal provisions has to be of the Central Government of Pakistan and not of the Court. Unless such satisfaction is evidenced in the manner indicated in the Act the Courts in this Country are helpless and are not in a position to hold that the conditions necessary for making such an award enforceable in Pakistan under the provisions of the said Act have been shown to have been fulfilled by the party seeking to enforce the award, on whom the initial onus clearly lies to show that the award is a "foreign award" of the nature contemplated under the Act.

In this connection it might also be pointed out that for determining if the conditions mentioned in section 2 of the Act have been fulfilled it is neither necessary nor proper for the national Court to enter upon any investigation as to whether reciprocal provisions have in fact been made in the country where the award sought to be filed was made for the enforcement of awards made in Pakistan. In matters pertaining to international arrangements the Courts should act in aid of executive authority and should neither say nor do anything which might cause embarrassment to that authority in the conduct of its international relations. Thus if the notification contemplated under the Act had been issued the national Courts would have been bound to hold that the conditions prescribed for treating an award as a foreign award had been fulfilled and would not have been entitled to go behind the notification and investigate whether reciprocal provisions did in fact also exist in the notified country.

In this view of the matter it is not necessary for us, in the present case, to go into the question as to whether reciprocal provisions have in fact been made in England for the enforcement of awards made in Pakistan or whether Pakistan considers herself to have adhered to the Protocol or become a signatory to the Convention. It is sufficient for us to say that in the absence of any notification by the Central Government of Pakistan declaring England to be a party to the Convention and her territories to be territories to which the said Convention applies the award in question cannot be held to be a "foreign award" within the meaning of Section 2 of the Arbitration (Protocol and Convention) Act 1937 and cannot, therefore, be allowed to be filed in any Court in Pakistan or enforced like an award made in an arbitration proceeding in Pakistan.

Another reason that has weighed with us for coming to the conclusion that the notification of the 8th June 1938 cannot be treated as continuing in operation is that to hold otherwise would be tantamount to denying to Pakistan her sovereign right as a "Power" to decide for herself as to which of the signatory States, if any she would like to continue to have reciproeal arrangements with for the enforcement of arbitral awards made in each other's territories in accordance with the simplified procedure indicated in the Arbitration (Protocol and Convention) Act 1937. It may well be that Pakistan may not, on becoming an independent state, have chosen to continue to have diplomatic relations with one of the other of the countries mentioned in the earlier notification and in such event could she, nevertheless, be considered to be still bound to enforce awards made in such countries merely because the name of such a country appeared in the notification issued by the Government of India in 1938? We think, not.

This does not, however, mean that the appellant has no remedy open to it, for, awards made by foreign arbitrators could, even before the Arbitration (Protocol and Convention) Act 1937 was enacted, be enforced by action on the award provided the agreement to submit the differences to arbitration was made within the jurisdiction of the local courts.

Having held that the award sought to be filed by the appellant in the then Sind Chief Court at Karachi was not enforceable in Pakistan in the same manner as an award to which the Arbitration Act 1940 applied we do not propose to express any opinion on the other point raised in the

grounds of appeal as it was not argued at the Bar and a decision thereon is not necessary for the disposal of this appeal.

The result, therefore, is that this appeal is dismissed with costs.

(*Signed*) A. R. CORNELIUS C.J.
S. A. RAHMAN J.
F. AKBAR J.
Hamoodur RAHMAN J.

Philippines

Transmitted by a note verbale *dated 22 July 1963 of the Philippine Mission to the United Nations*

A. LAWS AND DECREES

CONSTITUTION OF THE PHILIPPINES, 1935[1]

Article I. — The National Territory

SECTION 1. The Philippines comprises all the territory ceded to the United States by the Treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight,[2] the limits of which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington, between the United States and Spain on the seventh day of November, nineteen hundred,[3] and in the treaty concluded between the United States and Great Britain on the second day of January, nineteen hundred and thirty,[4] and all territory over which the present Government of the Philippine Islands exercises jurisdiction.

. . .

Article XVII. — Special Provisions Effective upon the Proclamation of the Independence of The Philippines

SECTION 1. Upon the proclamation of the President of the United States recognizing the independence of the Philippines:[5]

(1) The property rights of the United States and the Philippines shall be promptly adjusted and settled, and all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippines.

(2) The officials elected and serving under this Constitution shall be constitutional officers of the free and independent Government of the Philippines and qualified to function in all respects as if elected directly

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[1] Adopted by the constitutional convention of the Filipino people on 8 February 1935, approved by the President of the United States on 23 March 1935, and accepted by the voters of the Philippines by referendum on 14 May 1935.

[2] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XXXII, p. 74.

[3] *Ibid.*, p. 82.

[4] League of Nations, *Treaty Series*, vol CXXXVII, p. 297.

[5] Proclaimed on 4 July 1946.

under such Government, and shall serve their full terms of office as prescribed in this Constitution.

(3) The debts and liabilities of the Philippines, its provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent Government of the Philippines; and where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any province, city or municipality therein, the Government of the Philippines will make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be first lien on all taxes collected.

(4) The Government of the Philippines will assume all continuing obligations of the United States under the Treaty of Peace with Spain ceding the Philippine Islands to the United States.

. . .

B. DECISIONS OF NATIONAL COURTS

NOTES ON THE DECISIONS

1. *Effect of change of sovereignty*

(a) *On political laws of conquered territory:*

Roa v. *Insular Collector of Customs, 23 Philippine Reports (hereinafter cited as "Phil.") 315* — Upon the transfer of territory, either by conquest or otherwise, the political laws of the conquered territory immediately cease to have effect, except in so far as they are continued in force by express consent of the new sovereign.

(b) *On municipal or non-political laws of conquered territory:*

(i) *Roa* v. *Insular Collector of Customs* (see *supra*) — Municipal laws of the transferred territory, however, not in conflict with the laws of the new sovereign continue in force without express consent of the new sovereign.

(ii) *Vilas* v. *City of Manila, 42 Phil. 963* — That there is a total abrogation of the former political relations of the inhabitants of the ceded region is obvious. That all laws therefore in force which are in conflict with the political character, constitution or institutions of the substituted sovereign lose their force, is also plain. (Alvarez *v.* United States, 216 U.S. 167) But it is equally settled in the same public law that that great body of municipal law which regulates private and domestic rights continues in force until abrogated or changed by the new ruler.

2. *Effects of military occupation*

(a) *On political laws of occupied territory:*

Co Cham v. *Tan Keh, 75 Phil. 113* — Laws of a political nature or affecting political relations, such as among other things the right of assembly, the right to bear arms, the freedom of the press, and the right to travel freely in the territory occupied, are considered as suspended or held in abeyance during the military occupation.

(b) *On municipal laws of occupied territory:*

Co Cham v. *Tan Keh* (see *supra*) — Unless absolutely prevented by the circumstances prevailing in the occupied territory, the municipal laws in force in the country, that is, those laws which enforce public order and regulate the social and commercial life of the country, shall be deemed continued and enforced.

(c) *Upon citizens' allegiance to the legitimate government:*

Laurel v. *Misa, 44 Official Gazette 1176* — The absolute and permanent allegiance of the inhabitants of a territory occupied by the enemy to their legitimate government or sovereign is not abrogated or severed by the enemy occupation, because the sovereignty of the government or sovereign "de jure" is not transferred thereby to the occupier, and if it is not transferred to the occupant it must necessarily remain vested in the legitimate government. What may be suspended is the exercise of the rights of sovereignty when the control and government of the territory occupied by the enemy passes temporarily to the occupant.

3. *Status of the Governments established in the Philippines during the Japanese military occupation*

(a) *The Philippine Executive Commission:*

Co Cham v. *Tan Keh*, (see *supra*) — The Philippine Executive Commission, which was organized by Order No. 1, issued on 23 January 1942 by the Commander of the Japanese forces was a civil government established by the Military forces of occupation and therefore a "de facto" government of the second kind (government of paramount force). It was not different from the government established by the British in Castine, Maine, or by the United States in Tampico, Mexico.

(b) *Republic of the Philippines:*

Co Cham v. *Tan Keh*, (see *supra*) — The so-called Republic of the Philippines apparently established and organized as a sovereign state independent from any other government by the Filipino people, was, in truth and reality, a government established by the belligerent occupant or the Japanese forces of occupation. It was of the same character as the Philippine Executive Commission and the ultimate source of its authority was the same — the Japanese military authority and government. The so-called Republic of the Philippines, even if it had been established by the free will of the Filipino people who, taking advantage of the withdrawal of the American forces from the Islands, and the occupation thereof by the Japanese forces of invasion, had organized an independent government under that name with the support and backing of Japan, such government would have been considered as one established by the Filipinos in insurrection or rebellion against the parent state or the United States. And as such, it would have been a "de facto" government similar to that organized by the confederate states during the war of succession and recognized as such by the Supreme Court of the United States in numerous cases, and similar to that short-lived government established by the Filipino insurgents in the Island of Cebu during the Spanish-American war, recognized as a "de facto" government by the Supreme

Court of the United States in the case of MacLeod *v.* United States, 229 U.S. 416.

4. *Effects of Japanese military occupation*

(a) *On United States sovereignty in the Philippines during the Japanese occupation:*

Co Cham v. *Tan Keh,* (see *supra*) — Japan had no legal power to grant independence to the Philippines or transfer the sovereignty of the United States to, or recognize the latent sovereignty of, the Filipino people, before its military occupation and possession of the Islands had matured into an absolute and permanent dominion or sovereignty by a treaty of peace or other means recognized in the law of nations. For it is a well-established doctrine in international law, recognized in Article 45 of [Annex to] the Hague Convention of 1907 [concerning the laws and customs of war on land][1] (which prohibits compulsion of the population of the occupied territory to swear allegiance to the hostile power), that belligerent occupation, being essentially provisional, does not serve to transfer sovereignty over the territory controlled although the "de jure" government is during the period of occupancy deprived of the power to exercise its rights as such. (Thirty Hogshead of Sugar *v.* Boyle, 9 Cranch 191; U.S. *v.* Rice, 4 Wheat 246; Fleming *v.* Page, 9 Howard 603; Downes *v.* Bidwell, 182 U.S. 345).

(b) *On the Philippine Commonwealth Constitution:*

(i) *Peralta* v. *Director of Prisons, 75 Phil. 285* — The Constitution of the Commonwealth was not in force during the period of the Japanese military occupation. Nor may the said Constitution be applied upon its revival at the time of reoccupation of the Philippines by virtue of the principle of *postliminium,* because a constitution should operate prospectively only, unless the words employed show a clear intention that it should have a retrospective effect.

(ii) *Banaag* v. *Singson Encarnacion* et al., *General Records No. L-493, 19 April 1949* — The question here is whether the Commonwealth Government can revoke the contract (of lease executed in favour of Banaag by the Philippine Executive Commission) even before the expiration of its terms after the liberation of the Philippines. *Held*: The Commonwealth Government has every right to revoke the privilege on the ground that the occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forest and agricultural works belonging to the hostile state and situated in the occupied territory. This is based on the principle that the government of occupation can lease lands and buildings, including fisheries, and make contracts in reference to them only for such time as it is in occupation. After the occupation ceases said contracts shall be deemed cancelled and terminated.

[1] De Martens, *Nouveau Recueil Général de Traités,* troisième série, tome III, p. 486.

5. *Legal effect, after liberation, of laws adopted during the Japanese military occupation by the Philippine Executive Commission and the (Puppet) Republic of the Philippines*

(a) *Proclamation of General MacArthur dated 23 October 1944:*[1]

(i) *Co Kim Chow* v. *Tan Keh, 75 Phil. 371* — All acts of the (Japanese) military government whether legislative, executive or judicial, if within its competence under the laws of war, are good and valid even after the restoration of the legitimate government. (To the same effect is the ruling in Montebon *v.* Director of Prisons, 78 Phil. 427.)

(ii) *Peralta* v. *Director of Prisons* (see *supra*) — Decisions promulgated during the Japanese occupation in civil or criminal cases without political colour were regarded as valid and enforceable even after liberation. However, upon restoration of the legitimate government, political acts fall through as a matter of course, whether they introduce any positive change into the organization of the country, or whether they only suspend the working of that already in existence.

(iii) *Luz* v. *Court of First Instance, 77 Phil. 679* — On the other hand, General MacArthur's proclamation rendered of no force and effect, from and after the promulgation of the proclamation, the liberal divorce law promulgated by the Chairman of the Philippine Executive Commission. (See also Baptista *v.* Castañeda, 76 Phil. 461.)

République Centrafricaine

Renseignements communiqués par note verbale en date du 25 octobre 1962 du Ministre des Affaires étrangères

A. OBSERVATIONS

[Maintien en vigueur de la législation interne antérieure à la promulgation de la Constitution de la République Centrafricaine du 9 février 1959 — Position de la République Centrafricaine en ce qui concerne les traités conclus au nom des territoires d'outre-mer avant leur accession à l'indépendance]

En République Centrafricaine il n'existe qu'un seul texte réglant la question des successions d'Etat et de Gouvernement. Il s'agit de l'article 39 de la Constitution du 9 février 1959 . . .

En matière de relations internationales, les traités conclus par l'ancienne puissance colonisatrice au nom de ses territoires d'Outre-Mer ne peuvent être considérés comme restant en vigueur que dans leurs clauses qui ne sont pas incompatibles avec l'indépendance des Etats devenus souverains. En conséquence, la République Centrafricaine se réserve le droit de dénoncer les traités qui lui paraîtraient ne pas tenir compte de sa nouvelle souveraineté. Cette position est d'ailleurs corroborée par la

[1] Proclamation reads *inter alia*: "All laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control."

position d'organismes internationaux qui exigent que les Etats ayant accédé à l'indépendance adhèrent à nouveau aux conventions qui les régissent.

En conclusion, il n'existe de doctrine en matière d'Etat qu'en ce qui concerne la législation interne.

B. LOIS ET DÉCRETS

CONSTITUTION DE LA RÉPUBLIQUE CENTRAFRICAINE DU 9 FÉVRIER 1959

. . .

Article 39

Les lois et les règlements antérieurs à la date de promulgation de la présente Constitution demeurent en vigueur en tout ce qui n'est pas contraire aux dispositions qui précèdent tant qu'ils n'ont pas été abrogés ou modifiés par les autorités compétentes.

. . .

Rwanda

Renseignements communiqués par note verbale en date du 4 septembre 1963 du Ministère des Affaires étrangères

TRAITÉS

DÉCLARATION FAITE PAR LE PRÉSIDENT DE LA RÉPUBLIQUE DU RWANDA CONCERNANT LES INSTRUMENTS INTERNATIONAUX S'APPLIQUANT AU RWANDA AVANT SON ACCESSION À L'INDÉPENDANCE

. . .

Le Ministère signale que le Ministère belge des Affaires étrangères s'est chargé, fin juillet 1962, de communiquer à tous Etats intéressés, et à l'Organisation des Nations Unies elle-même, le texte de la déclaration suivante, faite en date du 24 juillet 1962 par Son Excellcnce le Président de la République.

« La République Rwandaise s'engage à respecter les traités et accords internationaux, conclus par la Belgique et s'appliquant au Rwanda, qui ne seront pas dénoncés par Elle ou qui n'auront pas fait l'objet d'observations de Sa part. »

« Parmi ces traités et accords internationaux, le Gouvernement de la République déterminera ceux qu'il estime devoir s'appliquer au Rwanda indépendant; il s'inspirera à cette fin de la pratique internationale. »

Lesdits traités et accords on fait et font l'objet d'un examen progressif détaillé.

. . .

Sudan

Transmitted by a note verbale *dated 16 October 1962 of the Permanent Mission of Sudan to the United Nations*

A. TREATIES

AGREEMENT BETWEEN EGYPT AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING SELF-GOVERNMENT AND SELF-DETERMINATION FOR THE SUDAN. SIGNED AT CAIRO, ON 12 FEBRUARY 1953[1]

The Egyptian Government and the Government of the United Kingdom of Great Britain and Northern Ireland (hereinafter called the "United Kingdom Government"), firmly believing in the right of the Sudanese people to Self-Determination and the effective exercise thereof at the proper time and with the necessary safeguards, have agreed as follows:—

Article 1

In order to enable the Sudanese people to exercise Self-Determination in a free and neutral atmosphere, a transitional period providing full Self-Government for the Sudanese shall begin on the day specified in Article 9 below.

Article 2

The transitional period, being a preparation for the effective termination of the dual Administration, shall be considered as a liquidation of that Administration. During the transitional period the sovereignty of the Sudan shall be kept in reserve for the Sudanese until Self-Determination is achieved.

Article 3

The Governor-General shall, during the transitional period, be the supreme constitutional authority within the Sudan. He shall exercise his powers as set out in the Self-Government Statute with the aid of a five-member Commission, to be called the Governor-General's Commission, whose powers are laid down in the terms of reference in Annex I[2] to the present Agreement.

. . .

Article 9

The transitional period shall begin on the day designated as "the appointed day" in Article 2 of the Self-Government Statute.[3] Subject to the completion of Sudanisation as outlined in Annex III[4] to this

[1] Special Legislative Supplement, dated 21 March 1953, to *Sudan Government Gazette*, No. 854; See also United Nations, *Treaty Series*, vol. 161, p. 157.

[2] Not reproduced.

[3] Article 2 of the Self-Government Statute (Special Legislative Supplement, dated 21 March 1953, to *Sudan Government Gazette*, No. 854) reads: "The appointed day means the day upon which the Governor-General by writing under his hand certifies that the self-governing institutions intended to be hereby created, namely the Council of Ministers, the House of Representatives, and the Senate, have been duly constituted in accordance with the provisions of this Order."

[4] Not reproduced.

Agreement, the two Contracting Governments undertake to bring the transitional period to an end as soon as possible. In any case this period shall not exceed three years. It shall be brought to an end in the following manner. The Sudanese Parliament shall pass a resolution expressing their desire that arrangements for Self-Determination shall be put in motion and the Governor-General shall notify the two Contracting Governments of this resolution.

Article 10

When the two Contracting Governments have been formally notified of this resolution the Sudanese Government, then existing, shall draw up a draft law for the election of the Constituent Assembly which it shall submit to Parliament for approval. The Governor-General shall give his consent to the law with the agreement of his Commission. Detailed preparations for the process of Self-Determination, including safeguards assuring the impartiality of the elections and any other arrangements designed to secure a free and neutral atmosphere shall be subject to international supervision. The two Contracting Governments will accept the recommendations of any international body which may be set up to this end.

. . .

Article 12

The Constituent Assembly shall have two duties to discharge. The first will be to decide the future of the Sudan as one integral whole. The second will be to draw up a constitution for the Sudan compatible with the decision which shall have been taken in this respect, as well as an electoral law for a permanent Sudanese Parliament. The future of the Sudan shall be decided either:

(a) by the Constituent Assembly choosing to link the Sudan with Egypt in any form, or
(b) by the Constituent Assembly choosing complete independence.

Article 13

The two Contracting Governments undertake to respect the decision of the Constituent Assembly concerning the future status of the Sudan and each Government will take all the measures which may be necessary to give effect to its decision.

B. LAWS AND DECREES

1. The Transitional Constitution of Sudan, 1956[1]

. . .

Chapter XI

TRANSITIONAL PROVISIONS

Article 111. — Subject to the provisions of this Constitution, (1) The Houses functioning as the Parliament immediately before the commencement of this Constitution shall continue to function as

[1] Came into force on 1 January 1956.

such, and shall exercise all the powers and perform all functions conferred by the provisions of this Constitution upon the Houses of Parliament. Provided that for the purpose of Articles 55 and 56 [relating to the duration of the Houses and the rules for filling the seats of elected members and/or nominated members of the Houses] the period during which the two Houses have been functioning under the self-Government Statute shall be reckoned as part of their duration under this Constitution; provided further that the Supreme Commission may, on the advice of the Council, order that the said Parliament shall continue for a further period of not more than six months in addition to the period of three years specified by Articles 55 and 56.

(2) The Speakers, Deputy Speakers and the Clerks of the two Houses, holding office immediately before commencement of this Constitution, shall continue in office as if appointed under this Constitution.

(3) The Standing Orders of the Two Houses in force immediately before the commencement of this Constitution shall continue in force as if made under this Constitution.

ARTICLE 112. — A Bill which immediately before the commencement of this Constitution was pending in either House of Parliament shall be continued in that House as if the proceedings taken with reference to the Bill had been taken in that House in accordance with this Constitution.

ARTICLE 113. — Subject to the provisions of this Constitution, all the laws in force in the Sudan immediately before the commencement of this Constitution shall continue in force until altered, replaced or amended by Parliament or other competent authority.

Explanation I

The expression "law in force" in this Article includes a law which may not have been brought into operation either at all or in any particular area.

Explanation II

Nothing in this Article shall be construed as continuing any law beyond the date, if any, fixed therein for its expiry.

ARTICLE 114. — All persons holding office as Ministers immediately before the commencement of this Constitution shall on such commencement become and shall continue to hold office as members of the Council of Ministers under this Constitution.

ARTICLE 115. — All persons holding office as Parliamentary Under-Secretaries immediately before the commencement of this Constitution shall continue to hold office as Parliamentary Under-Secretaries under this Constitution.

ARTICLE 116. — (1) All Members of the Judiciary holding office immediately before the commencement of this Constitution shall, subject to the provisions of this Constitution, continue in office, and all regulations made by the Chief Justice shall continue in force as if made under this Constitution.

(2) All powers vesting in the Chief Justice immediately before the commencement of this Constitution shall continue to vest in him, subject to other provision made by Parliament by Law, in this behalf.

ARTICLE 117. — The members of Public Service Commission holding office immediately before the commencement of this Constitution shall continue to hold office under this Constitution, and all regulations made relating to them, and all matters pending before them shall continue as if such regulations were made under this Constitution, and such matters were dealt with by them in accordance with the provisions of this Constitution.

ARTICLE 118. — All Courts and other Authorities, and all Officers, executive and ministerial, of the Government of Sudan, existing or holding office immediately before the commencement of this Constitution, shall continue to exercise their respective functions subject to the provisions of this Constitution.

ARTICLE 119. — The Auditor General holding office immediately before the commencement of this Constitution shall continue in office in accordance with this Constitution subject to his taking an oath or making a declaration as set forth in the schedule.

2. ACTS RATIFYING AND AFFIRMING MULTILATERAL TREATIES, 1957[1]

(a) *1957 Act No. 10 (Signed on 10 June 1957)*

. . .

2. The Constitution of the Food and Agricultural Organization of the United Nations,[2] made in May 1943 at Hot Springs, Virginia (U.S.A.), is hereby ratified and affirmed, with effect from September 10th, 1956.

(b) *1957 Act No. 11 (Signed on 10 June 1957)*

. . .

2. The Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO)[3] made in London, November 16, 1945, is hereby ratified and affirmed with effect from November 26, 1956.

(c) *1957 Act No. 12 (Signed on 10 June 1957)*

. . .

2. The Constitution of the World Health Organization,[4] made in New York, July 22, 1946 is hereby ratified and affirmed, with effect from 8th May, 1956.

(d) *1957 Act No. 13 (Signed on 17 June 1957)*

. . .

2. The Charter of the United Nations is hereby ratified and affirmed with effect from 12.11.1956.

3. The Declaration set out in the Schedule[5] hereto recognizing the compulsory jurisdiction of the International Court of Justice, subject to the restrictions set out therein, is hereby ratified.

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[1] *Special Legislative Supplement to the Republic of the Sudan Gazette No. 910 (dated 25 July 1957): Supplement No. 1 (General Legislation).*

[2] *United States Treaties and Other International Agreements*, vol. 12, p. 980.

[3] United Nations, *Treaty Series*, vol. 4, p. 275.

[4] *Ibid.*, vol. 14, p. 185.

[5] Not reproduced.

(e) *1957 Act No. 14 (Signed on 17 June 1957)*

. . .

2. The Constitution of the International Labour Organisation made in 1919, as last amended by the International Labour Conference at its 36th Session held in Geneva on 25th June, 1953, and the International Labour Conventions set out in the Schedule hereto, are hereby ratified and affirmed, with effect from 12th of June 1956.

THE SCHEDULE

Convention No.	*Title*
(1) No. 2	Unemployment Convention 1919.[1]
(2) No. 19	Equality of Treatment (Accident Compensation) 1925.[2]
(3) No. 26	Minimum Wage-Fixing Machinery, (1928).[3]
(4) No. 29	Forced Labour Convention, 1930.[4]
(5) No. 98	Right to Organize and Collective Bargaining Convention 1949.[5]

(f) *1957 Act No. 15 (Signed on 17 June 1957)*

. . .

2. The Convention on International Civil Aviation[6] made in Chicago on 7th December, 1944, as set out in the Schedule[7] hereto, and adhered to by the Government of the Sudan is hereby affirmed and ratified with effect from 29th July 1956.

(g) *1957 Act No. 16 (Signed on 25 June 1957)*

. . .

2. The Geneva (Red Cross) Conventions, concluded on 12th of August 1949, as set out in the Schedule hereto, are hereby ratified and confirmed.

SCHEDULE

(1) Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;[8]
(2) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;[9]
(3) Geneva Convention relative to the Treatment of Prisoners of War;[10]
(4) Geneva Convention relative to the Protection of Civilian Persons in time of War.[11]

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[1] United Nations, *Treaty Series*, vol. 38, p. 41.
[2] *Ibid.*, p. 257.
[3] *Ibid.*, vol. 39, p. 3.
[4] *Ibid.*, p. 55.
[5] *Ibid.*, vol. 96, p. 257.
[6] *Ibid.*, vol. 15, p. 295.
[7] Not reproduced.
[8] United Nations, *Treaty Series*, vol. 75, p. 31.
[9] *Ibid.*, p. 85.
[10] *Ibid.*, p. 135.
[11] *Ibid.*, p. 287.

(h) *1957 Act No. 17 (Signed on 25 June 1957)*

. . .

2. The World Meteorological Organization Convention,[1] made in Washington in 1947, is hereby ratified and affirmed, with effect from December 3rd., 1956.

C. DIPLOMATIC CORRESPONDENCE

1. LETTER DATED 1 JANUARY 1956 WITH A DECLARATION RECOGNIZING THE INDEPENDENCE OF SUDAN, FROM THE PRIME MINISTER OF EGYPT ADDRESSED TO THE PRIME MINISTER OF SUDAN[2]

Prime Minister's Office
Cairo

His Excellency, The Prime Minister,
Sudan Government.

After Greetings,

The Egyptian Government in accordance with their declared intention and efforts for the achievement of freedom for the Sudanese People, do hereby declare the recognition forthwith of the Independence of the Sudan as a Sovereign State.

Consequently the Egyptian Government have issued the attached Declaration and have also authorized Miralai Abdel Fattah Hassan to communicate same to you.

On behalf of myself and the Egyptian Government, I have the honour to congratulate you on this memorable day in the history of the Sudan and pray to God to help you in your present and future.

With my highest regards.

(*Signed*) Gamal Abdel NASER,
Prime Minister,
Egyptian Republic Government.

Cairo: 1st January, 1956

DECLARATION

In response to the Resolutions which were passed by the Sudanese Parliament on 19th and 22nd December, 1955 declaring that the Sudan is to become a fully independent Sovereign State and requesting the Co-Domini to recognise this declaration.

The Egyptian Government do hereby recognise as from 1st January, 1956 that the Sudan is an independent Sovereign State.

In recognizing the independence of the Sudan, the Egyptian Government trust that the Government of the Sudan will continue to give full effect to the agreements and conventions made on behalf, or applied to, the Sudan by the Co-Domini and will be grateful for confirmation that this is the intention of the Sudan Government.

The Egyptian Republic Government hope that the Government of

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[1] United Nations, *Treaty Series*, vol. 77, p. 143.

[2] *The First Parliament of the Sudan: Weekly Digest of Proceedings in the House of Representatives*, No. 14 — Third Session (26 December 1955 to 1 January 1956); p. 670.

the Sudan will co-operate with them in all steps necessary to wind up the affairs of the Condominium Rule in the Sudan.

(*Signed*) Gamal Abdel NASER

2. LETTER DATED 1 JANUARY 1956 FROM THE SECRETARY OF STATE FOR FOREIGN AFFAIRS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND TO THE PRIME MINISTER OF SUDAN

[See UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, section C]

Tchad

Renseignements communiqués par lettre en date du 11 décembre 1962 du Ministre des Affaires étrangères

A. TRAITÉS

1. ACCORD PARTICULIER ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE DU TCHAD PORTANT TRANSFERT À LA RÉPUBLIQUE DU TCHAD DES COMPÉTENCES DE LA COMMUNAUTÉ. SIGNÉ À PARIS, LE 12 JUILLET 1960[1]

. . .

Article 1er

La République du Tchad accède, en plein accord et amitié avec la République Française, à la souveraineté internationale et à l'indépendance par le transfert des compétences de la Communauté.

Article 2

Toutes les compétences instituées par l'article 78 de la Constitution du 4 octobre 1958 sont, pour ce qui la concerne, transférées à la République du Tchad.

Article 3

Chacune des parties contractantes notifiera à l'autre l'accomplissement des procédures requises par sa Constitution pour la mise en vigueur du présent accord. Celui-ci prendra effet à la date de la dernière de ces notifications.

. . .

2. ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE DU TCHAD RELATIF AUX DISPOSITIONS TRANSITOIRES APPLICABLES JUSQU'À L'ENTRÉE EN VIGUEUR DES ACCORDS DE COOPÉRATION ENTRE LA RÉPUBLIQUE FRANÇAISE ET LA RÉPUBLIQUE DU TCHAD. SIGNÉ À PARIS, LE 12 JUILLET 1960[1]

. . .

[1] Entré en vigueur le 10 août 1960.

Article 1er

Jusqu'à l'entrée en vigueur des accords de coopération intervenus en chaque matière, les dispositions ci-après seront appliquées.

Article 2

La République Française continuera d'assurer la protection diplomatique des ressortissants de la République du Tchad à l'étranger.

Article 3

Les forces armées françaises continueront d'assurer les missions qui leur sont actuellement assignées selon les règles et procédures applicables à la date d'entrée en vigueur du présent accord.

Le Comité de défense prévu au projet d'accord de défense, paraphé en date de ce jour, sera constitué sans délai pour préparer la mise sur pied des forces armées de la République du Tchad.

Article 4

Les modalités de coopération au sein de la Zone Franc, les régimes des échanges, de l'émission monétaire, de l'organisation générale des transports maritimes et aériens et des télécommunications ainsi que le statut du Domaine actuellement en vigueur continueront d'être appliqués.

Article 5

Le présent accord entrera en vigueur en même temps et dans les mêmes conditions que l'accord particulier portant transfert à la République du Tchad des compétences de la Communauté.

. . .

3. ACCORD ENTRE LE GOUVERNEMENT DE LA RÉPUBLIQUE FRANÇAISE ET LE GOUVERNEMENT DE LA RÉPUBLIQUE DU TCHAD RELATIF AUX DISPOSITIONS TRANSITOIRES EN MATIÈRE DE JUSTICE ENTRE LA RÉPUBLIQUE FRANÇAISE ET LA RÉPUBLIQUE DU TCHAD. SIGNÉ À PARIS, LE 12 JUILLET 1960 [1]

Article 1er — Jusqu'à l'installation par la République du Tchad de juridictions de cassation compétentes pour connaître des recours formés contre les décisions rendues par les juridictions tchadiennes de l'ordre administratif et de l'ordre judiciaire, ces recours continueront d'être portés devant les formations ordinaires du Conseil d'Etat et de la Cour de Cassation siégeant à Paris, lesquelles statueront en outre sur les recours formés à la date d'entrée en vigueur du présent accord.

En cas de cassation, l'affaire sera renvoyée devant une juridiction de la République du Tchad. Si la juridiction de renvoi est celle dont la décision est annulée, elle devra être autrement composée. La juridiction de renvoi sera tenue de se conformer, sur le point de droit jugé, à la décision de cassation.

Article 2 — Les décisions rendues par les juridictions siégeant sur le Territoire de la République française ou sur le Territoire de la Répu-

[1] Entré en vigueur le 10 août 1960.

blique du Tchad continueront, jusqu'à la fin de la période transitoire prévue à l'article 1er, à être exécutées sur le Territoire de l'autre Etat selon la procédure appliquée lors de l'entrée en vigueur de l'accord particulier portant transfert à la République du Tchad des compétences de la Communauté.

Article 3 — A la fin de la période transitoire prévue à l'article 1er, alinéa 1, un accord entre la République française et la République du Tchad déterminera les conditions dans lesquelles seront réglées les instances pendantes devant le Conseil d'Etat et la Cour de Cassation.

Article 4 — La transmission et la remise des actes judiciaires et extrajudiciaires, la transmission de l'exécution des commissions rogatoires, la comparution des témoins en matière pénale, les formalités relatives à l'inscription au casier judiciaire et à la demande des extraits de casier judiciaire, les inscriptions et les formalités relatives à l'état civil, les dispenses de légalisation seront règlées, jusqu'à la signature d'un accord entre les parties, selon la procédure en vigueur avant le transfert des compétences de la Communauté.

Article 5 — Le présent accord entrera en vigueur en même temps et dans les mêmes conditions que l'accord particulier portant transfert à la République du Tchad des compétences de la Communauté.

4. ECHANGE DE LETTRES ENTRE LE PREMIER MINISTRE DE LA RÉPUBLIQUE FRANÇAISE ET LE PREMIER MINISTRE DE LA RÉPUBLIQUE DU TCHAD RELATIF À LA SIGNATURE ET À LA MISE EN VIGUEUR DES ACCORDS ENTRE LA RÉPUBLIQUE FRANÇAISE ET LA RÉPUBLIQUE DU TCHAD. PARIS, LE 12 OCTOBRE 1960

I

Le Premier Ministre de la République française, à Monsieur le Premier Ministre de la République du Tchad

Monsieur le Premier Ministre,

Au moment où viennent d'être signés l'accord portant transfert, pour ce qui la concerne, à la République du Tchad de l'ensemble des compétences instituées par l'article 78 de la Constitution du 4 Octobre 1958, l'accord sur la participation de la République du Tchad à la Communauté et les accords relatifs aux dispositions transitoires, j'ai l'honneur de vous donner l'assurance que le Gouvernement de la République française engagera avant la clôture de l'actuelle session du parlement les procédures constitutionnelles nécessaires en vue de permettre, dans les plus brefs délais, la mise en vigueur simultanée de ces actes, mise en vigueur qui marquera l'accession de la République du Tchad à l'Indépendance.

Je vous serais obligé de bien vouloir, en accusant réception de cette communication, me confirmer que dès la proclamation de l'Indépendance de la République du Tchad, le Gouvernement de la République du Tchad procédera à la signature des accords de coopération, de l'accord particulier sur les conditions de la participation de la République à la Communauté et de la Convention d'établissement, actes dont le texte a été paraphé en date de ce jour, et qu'il prendra aussitôt les mesures propres à assurer leur prompte entrée en vigueur. Il va de soi qu'il en sera de même de la part du Gouvernement de la République française.

Je vous serais obligé de bien vouloir également me confirmer que le Gouvernement de la République du Tchad engagera dans le même temps les procédures nécessaires pour permettre, dès la proclamation de l'Indépendance, l'adhésion de la République du Tchad à la convention sur la conciliation et la cour d'arbitrage et à l'accord multilatéral sur les droits fondamentaux des nationaux des Etats de la Communauté.

Je vous prie, Monsieur le Premier Ministre, d'agréer l'expression de mes sentiments de très haute considération.

II

Le Premier Ministre de la République du Tchad, à Monsieur le Premier Ministre de la République française

Monsieur le Premier Ministre,

J'ai l'honneur d'accuser réception de la lettre par laquelle vous avez bien voulu me faire savoir que le Gouvernement de la République française engagera avant la clôture de l'actuelle session du parlement les procédures constitutionnelles nécessaires en vue de permettre dans les plus brefs délais la mise en vigueur simultanée de l'accord signé en date de ce jour et portant transfert, pour ce qui la concerne, à la République du Tchad de l'ensemble des compétences instituées par l'article 78 de la Constitution du 4 Octobre 1958, de l'accord sur la participation de la République du Tchad à la Communauté et des accords relatifs aux dispositions transitoires qui doivent prendre effet en même temps que ledit accord, mise en vigueur qui marquera l'accession de la République du Tchad à l'Indépendance.

En vous remerciant de cette communication, je tiens à vous confirmer que, dès la proclamation de l'Indépendance de la République du Tchad, le Gouvernement de la République du Tchad procédera à la signature des accords de coopération, de l'accord particulier sur les conditions de participation de la République du Tchad à la Communauté et de la convention d'établissement, actes dont le texte a été paraphé en date de ce jour, et qu'il prendra aussitôt les mesures propres à assurer leur prompte entrée en vigueur. J'enregistre avec satisfaction les assurances analogues que vous avez bien voulu me donner à ce sujet au nom du Gouvernement de la République française.

Je tiens également à vous confirmer que le Gouvernement de la République du Tchad engagera, dans le même temps, les procédures nécessaires pour permettre, dès la proclamation de l'Indépendance, l'adhésion de la République du Tchad à la Convention sur la conciliation et la cour d'arbitrage et à l'accord multilatéral sur les droits fondamentaux des nationaux des Etats de la Communauté.

J'ajoute que le Gouvernement de la République du Tchad ne voit aucune objection à ce que la présente lettre soit portée à la connaissance du parlement français en même temps que l'ensemble des textes signés ou paraphés en date de ce jour.

Je vous prie, Monsieur le Premier Ministre, d'agréer l'expression de mes sentiments de très haute considération.

B. LOIS ET DÉCRETS

LOI CONSTITUTIONNELLE DE LA RÉPUBLIQUE DU TCHAD DU 16 AVRIL 1962[1]

. . .

TITRE IV — Des pouvoirs législatifs et réglementaires

. . .

Article 41

Les matières qui ne sont pas du domaine de la loi ont un caractère réglementaire et revêtent la forme soit de décrets, soit d'arrêtés, soit de décisions.

Les textes de forme législative intervenus en ces matières antérieurement à l'entrée en vigueur de la présente Constitution, peuvent être modifiés par décrets organiques.

. . .

TITRE XIV — Les dispositions transitoires

. . .

Article 86

Les autorités établies dans la République continueront d'exercer leurs fonctions et les institutions actuelles seront maintenues jusqu'à la mise en place des autorités et institutions nouvelles.

Article 87

La législation et la réglementation actuellement en vigueur au Tchad restent applicables, sauf intervention de textes nouveaux, en ce qu'elles ne sont pas contraires à la présente Constitution.

Union of Soviet Socialist Republics

Transmitted by a note verbale *dated 7 December 1963 of the Permanent Mission to the United Nations*[2]

A. DECLARATIONS

1. STATEMENT DATED 9 AUGUST 1956 OF THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE QUESTION OF SUEZ CANAL[3]

. . . Egypt took an entirely lawful and justified step when it assumed responsibility for ensuring the normal functioning of a canal passing through Egyptian territory and built by Egyptian labour. The fact that the Suez Canal had for several decades been in the hands, not of Egypt,

[1] Adoptée par l'Assemblée Nationale de la République du Tchad le 14 avril 1962. Promulguée par le Chef de l'Etat le 16 avril 1962 par un acte contresigné par les Ministres en exercice.

[2] Original Russian. Translation by the Secretariat of the United Nations.

[3] Published by the Ministry of Foreign Affairs of the USSR in *The USSR and the Arab countries, 1917-1960*, Gospolitizdat, Moscow (1961), pp. 147-49.

but of a company in which British and French capital predominated and which used the Egyptian canal for its own enrichment and for interference in Egypt's domestic affairs cannot serve as an argument justifying the continuance of such an abnormal situation.

Account must be taken of the fact that relations created in the past by conquest and occupation are inappropriate to our time and conflict with the principles of co-operation between sovereign States enjoying equal rights, with the principles and purposes of the United Nations. Inasmuch as the Governments of the United Kingdom and France, and of the United States of America, accept the lofty principles of the United Nations and declare that they welcome the changes which have taken place in their relations with countries formerly in a state of colonial dependence, they should not impede the exercise by these countries of their sovereign rights. . . .

Arab countries whose territories are in the immediate vicinity of the Canal and which are vitally interested in a correct settlement of this question — Syria, Lebanon, Saudi Arabia, Jordan, Sudan, Libya, Yemen, Iraq, Morocco and Tunis — have not been invited to the Conference. It should be noted that most of the Arab countries are likewise successors of the former Ottoman Empire, which was a party to the 1888 Convention.[1]

2. Statement of the Government of the Union of Soviet Socialist Republics on the liquidation of the international administration in Tangier, 11 December 1956[2]

In its statement of 9 October 1956[3] on the convening of a conference of nine countries in October at Fedala (Morocco) concerning the

[1] "Convention destinée à garantir en tous temps et à toutes les Puissances le libre usage du canal maritime de Suez", signée à Constantinople le 29 octobre 1888 [De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XV, p. 557].

[2] *Izvestia*, 11 December 1956.

[3] The text of the statement (published in *Izvestia*, 9 October 1956) is as follows:

"On the proposal of the Moroccan Government, there was convened on 8 October 1956 at Fedala (Morocco) a conference of the representatives of eight countries parties to the special Tangier Statute, including the representatives of France, Spain, the United Kingdom, the United States of America and Italy and representatives of the Moroccan Government. The conference was to complete the liquidation of the international administration in Tangier, and the reunification of Tangier with the Moroccan State.

"It will be remembered that, in the Paris Convention on the Tangier Statute of 1923 and in the Agreement of 1928, Tangier was declared an international zone with a régime of permanent neutrality. While remaining formally under the sovereignty of the Sultan of Morocco, Tangier was governed by an international administration consisting of the representatives of a number of countries. As the Government of a country which had signed the 1906 Act of Algeciras concerning Moroccan questions and on the basis of a decision of the Four-Power Paris Conference of 1945 on the question of Tangier, the Soviet Government had been invited to take part in the international administration of the Tangier Zone but had not exercised that right, since it did not wish to infringe the national sovereignty of Morocco.

"The Soviet Government welcomed the peaceful settlement of the Moroccan problem, culminating in the proclamation of Morocco's independence. It was natural that after the proclamation of the independence of French and Spanish Morocco the question of the country's unification should have arisen, and in

liquidation of the international administration in Tangier and the abolition of the international régime of the Tangier Zone, the Government of the Union of Soviet Socialist Republics welcomed the initiative of the Moroccan Government designed to achieve the reunion of Tangier and Morocco.

The Soviet Government — as the Government of a country which signed the 1906 Act of Algeciras,[1] participated in the Paris Conference of 1945, and is inspired by the lofty principles of the equal rights and self-determination of peoples and by appreciation of the Moroccan people's just desire for their country's independence and unification — states that the Soviet Union fully recognizes Morocco's sovereign rights in regard to Tangier and therefore considers that, so far as it is concerned, the international agreements on the Tangier régime have lost their force.

The Soviet Government is convinced that the abolition of the international régime in Tangier and the restoration of Morocco's sovereign rights in regard to Tangier will promote the strengthening of peace and friendship between peoples and the development of international co-operation based on the principle of equal rights and mutual respect for State sovereignty.

The Government of the Union of Soviet Socialist Republics wishes the Moroccan people every success in the development of its country's revival and prosperity.

3. MEMORANDUM DATED 26 SEPTEMBER 1961 OF THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION OF THE DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES[2]

. . .

It is, however, important to ensure that this independence should not be fictitious and that the newly independent States should not, directly or indirectly, remain the vassals of the former metropolitan countries. On this point, too, the United Nations must express itself clearly and forcefully and must demand the unconditional revocation of all agreements, including secret agreements, concluded with colonies and Trust Territories and designed to restrict the sovereignty of the future independent States. All instruments designed to ensure the union of colonies or Trust Territories with the administering countries, in

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particular the question of Tangier's reunification with Morocco and of a change in the existing régime in the Tangier Zone.

"The Soviet Union, appreciating the just national aspirations of the Moroccan people and warmly sympathizing with the cause of the independence and unification of the Moroccan State, welcomes the Moroccan Government's initiative for the reuniting of Tangier with Morocco. It expresses the hope that the conference convened at Fedala will not impede the speedy and genuine uniting of Tangier with Morocco, will end the régime of so-called international administration in the Zone, which has infringed the rights of the Moroccan people, and will promote the final settlement of the Tangier question on the basis of complete respect for Morocco's sovereign rights in regard to Tangier."

[1] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XXXIV, p. 238.

[2] Published by the Ministry of Foreign Affairs of the USSR in *The USSR and the countries of Africa*, 1946-1962, Gospolitizdat, Moscow (1963) vol. II, p. 423.

whatever form, must also be unconditionally revoked. No ways in which colonial territories might be seized and retained, including pretended union with the metropolitan territory, should be permitted.

. . .

4. STATEMENT OF THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE LIQUIDATION OF THE COLONIAL RULE OVER WEST IRIAN, 9 FEBRUARY 1962[1]

. . .

The Netherlands Government has suggested the idea of according the so-called right of self-determination to the population of West Irian. Yet it is common knowledge that the people of West Irian determined its future together with the whole Indonesian people on that historic day, 17 August 1945, when throughout the territory of the former Netherlands East Indies the independent Republic of Indonesia was proclaimed. To whatever manœuvres Netherlands ruling circles may resort, the Netherlands will have to vacate the Indonesian territory occupied by it.

The Soviet Government proceeds from the unchallengeable position that West Irian is an inalienable part of the Republic of Indonesia. Now as before, the Soviet Union supports the lawful demand of the Indonesian people and its Government that West Irian should be reunited with Indonesia without delay and that Netherlands colonial rule over this part of Indonesian territory should be liquidated. The Soviet people deems it its duty to support all peoples fighting for removal of the colonial yoke and for consolidation of their national independence. It fully understands and sincerely sympathizes with the just struggle of the Indonesian people for the liberation of West Irian.

. . .

B. DIPLOMATIC CORRESPONDENCE

LETTER DATED 26 JULY 1943 FROM I. M. MAISKY, AMBASSADOR OF THE USSR TO THE UNITED KINGDOM, TO NAHAS PASHA, MINISTER FOR FOREIGN AFFAIRS OF EGYPT[2]

[Repudiation of agreements, capitulations and special privileges benefiting the Czarist Government]

Sir,

I have informed the Soviet Government of the contents of your letter of 6 July 1943.[3]

As regards recognition of Egypt's new international status deriving

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[1] *Izvestia*, 9 February 1962.

[2] Published by the Ministry of Foreign Affairs of the USSR in *The USSR and the Arab Countries, 1917-1960*, Gospolitizdat, Moscow, 1961, pp. 81-82.

[3] The letter of 6 July 1943 from Nahas Pasha, Minister for Foreign Affairs of Egypt, to I. M. Maisky, Ambassador of the USSR to the United Kingdom, read:

"In connexion with this renewal of diplomatic relations, the Egyptian Government deems it necessary to recall that the Montreux Convention not only abolished the capitulations but recognized for Egypt a new international status with which the old agreements concluded by the Czarist State, and the old capitulation privileges relating more particularly to the Mixed

from the Montreux Convention of 8 May 1937, and the fate of the old capitulation privileges relating particularly to the Mixed Courts, the Health Board and the *Caisse de la Dette*, the Soviet Government — as pointed out in your note — in the very first days of its life, and on the principle of equal rights for all nations, spontaneously repudiated, once and for all, any agreements, capitulations, special privileges etc. benefiting the Czarist Government which were incompatible with the principle of equal rights.

This repudiation naturally applied, and continues to apply, in the case of Egypt.

United Kingdom of Great Britain and Northern Ireland

Transmitted by a letter dated 26 February 1965 from the Permanent Representative of the United Kingdom to the United Nations

A. TREATIES

I. Texts

(a) *Multilateral instruments*

1. FINAL DECLARATION OF THE INTERNATIONAL CONFERENCE IN TANGIER. SIGNED AT TANGIER ON 29 OCTOBER 1956[1]

. . .

I

. . .

Have agreed to recognize the abolition of the international régime of the Tangier Zone and hereby declared abrogated, in so far as they have participated therein, all acts, agreements and conventions concerning the said régime.

. . .

Courts, the Health Board and the *Caisse de la Dette*, are incompatible. It will be readily understood that this stipulation, which has been accepted by all States, should likewise be accepted by the Soviet Government, which from its inception has proclaimed the principle of the abolition of capitulations wherever they existed."

[1] United Nations, *Treaty Series*, vol. 263, p. 165. Came into force on 29 October 1956, the date of signature. The Declaration is signed by the Governments of Belgium, Spain, the United States of America, France, Italy, Morocco, the Netherlands, Portugal and the United Kingdom of Great Britain and Northern Ireland.

2. TREATY CONCERNING THE ESTABLISHMENT OF THE REPUBLIC OF CYPRUS BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, GREECE AND TURKEY OF THE ONE PART AND THE REPUBLIC OF CYPRUS OF THE OTHER. SIGNED AT NICOSIA ON 16 AUGUST 1960

[See CYPRUS, section A]

(b) *Bilateral instruments*

1. AGREEMENT AS TO THE DEVOLUTION OF INTERNATIONAL RIGHTS AND OBLIGATIONS UPON THE DOMINIONS OF INDIA AND PAKISTAN [SCHEDULE TO THE INDIAN INDEPENDENCE (INTERNATIONAL ARRANGEMENTS) ORDER, 1947][1]

1. The international rights and obligations to which India is entitled and subject immediately before the 15th day of August, 1947, will devolve in accordance with the provisions of this agreement.

2. (1) Membership of all international organisations together with the rights and obligations attaching to such membership, will devolve solely upon the Dominion of India.

For the purposes of this paragraph any rights or obligations arising under the Final Act of the United Nations Monetary and Financial Conference will be deemed to be rights or obligations attached to membership of the International Monetary Fund and to membership of the International Bank for Reconstruction and Development.

(2) The Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organisations as it chooses to join.

3. (1) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of India will devolve upon that Dominion.

(2) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of Pakistan will devolve upon that Dominion.

4. Subject to Articles 2 and 3 of this agreement, rights and obligations under all international agreements to which India is a party immediately before the appointed day will devolve both upon the Dominion of India and upon the Dominion of Pakistan, and will, if necessary, be apportioned between the two Dominions.

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[1] *Gazette of India Extraordinary*, 14 August 1947. *The Indian Independence (International Arrangements) Order, 1947*, reads as follows:

"WHEREAS the agreement set out in the Schedule to this Order has been reached at a meeting of the Partition Council on the 6th day of August, 1947;

"AND WHEREAS it is intended that, as from the 15th day of August, 1947, the said agreement shall have the force and effect of an agreement between the Dominions of India and Pakistan;

"NOW THEREFORE in exercise of the powers conferred upon him by section 9 of the Indian Independence Act, 1947 and of all other powers enabling him in that behalf, the Governor-General hereby orders as follows:—

"1. This Order may be cited as the Indian Independence (International Arrangements) Order, 1947.

"2. The agreement set out in the Schedule to this Order shall, as from the appointed day, have the effect of an agreement duly made between the Dominion of India and the Dominion of Pakistan. *Schedule* [text reproduced above]. (*Signed*) Mountbatten of Burma, Governor-General, K. V. K. Sundaram, Officer on Special Duty."

2. Treaty (with Exchange of Notes) between the Government of the United Kingdom of Great Britain and Northern Ireland and the Provisional Government of Burma regarding the Recognition of Burmese independence and related matters. Signed at London, on 17 October 1947[1]

Article 1

The Government of the United Kingdom recognise the Republic of the Union of Burma as a fully independent sovereign State.

The contracting Governments agree to the exchange of diplomatic representatives duly accredited.

Article 2

All obligations and responsibilities heretofore devolving on the Government of the United Kingdom which arise from any valid international instrument shall henceforth, in so far as such instrument may be held to have application to Burma, devolve upon the Provisional Government of Burma. The rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Burma shall henceforth be enjoyed by the Provisional Government of Burma.

Article 3

Any person who at the date of the coming into force of the present Treaty is, by virtue of the Constitution of the Union of Burma, a citizen thereof and who is, or by virtue of a subsequent election is deemed to be, also a British subject, may make a declaration of alienage in the manner prescribed by the law of the Union, and thereupon shall cease to be a citizen of the Union.

The Provisional Government of Burma undertake to introduce in the Parliament of the Union as early as possible, and in any case within a period of one year from the coming into force of the present Treaty legislation for the purpose of implementing the provisions of this Article

• • •

Article 5

The Provisional Government of Burma reaffirm their obligation to pay to British subjects domiciled on the date of the coming into force of the present Treaty in any country other than India and Pakistan all pensions, proportionate pensions, gratuities, family pension fund and provident fund payments and contributions, leave salaries and other sums payable to them from the revenues of Burma or other funds under the control of the executive authority of Burma, in virtue of all periods of service prior to that date under the rules applicable immediately prior thereto.

. . .

[1] United Nations, *Treaty Series*, vol. 70, p. 184. Came into force on 1 January 1948.

Article 7

(*a*) All contracts other than contracts for personal service made in the exercise of the executive authority of Burma before the coming into force of the Constitution of the Union of Burma to which any person being a British subject domiciled in the United Kingdom or any Company, wherever registered, which is mainly owned, or which is managed and controlled by British subjects so domiciled, was a party, or under which any such person or company was entitled to any right or benefit, shall as from that date, have effect as if made by the Provisional Government of Burma as constituted on and from that date; and all obligations that were binding on the Provisional Government of Burma immediately prior to the said date, and all liabilities, contractual or otherwise, to which that Government was then subject, shall, in so far as any such person or company as aforesaid is interested, devolve on the Provisional Government of Burma as so constituted.

(*b*) In so far as any property, or any interest in any property vested in any person or authority in Burma before the coming into force of the Constitution of the Union of Burma, or the benefit of any contract entered into by any such person or authority before that date, is thereafter transferred to, or vested in the Provisional or any successor Government of Burma, it shall be so transferred or vested subject to such rights as may previously have been created and still subsist therein, or in respect thereof, in favour of any person or company of the status or character described in the preceding sub-article.

Article 8

The contracting Governments being resolved to conclude at the earliest possible date a mutually satisfactory Treaty of Commerce and Navigation have agreed for a period of two years from the date of the coming into force of the present Treaty or until the conclusion of such a Treaty of Commerce and Navigation to conduct their commercial relations in the spirit of Nos. 1-3 of the Exchange of Notes annexed hereto, provided that, at any time after six months from the date of the coming into force of the present Treaty, either party may give three months' notice to terminate the undertaking set out therein.

Article 9

The contracting Governments agree to maintain postal services, including Air Mail services and Money Order services, on the existing basis, subject to any alteration in matters of detail which may be arranged between their respective Postal Administrations as occasion may arise.

. . .

Article 11

The contracting Governments will accord to each other the same treatment in civil aviation matters as heretofore, pending the conclusion of an Agreement in regard to them, provided that this arrangement may be terminated on six months' notice given by either side.

EXCHANGE OF NOTES

No. 1

Mr. C. R. Attlee to Thakin Nu

10 Downing Street,
London, 17th October, 1947

Sir,

WITH a view to the most friendly commercial relations with the new independent State of Burma, the Government of the United Kingdom are desirous to conclude a Commercial Treaty with the least possible delay, but realise that the complex nature of such a Treaty makes it impossible to hope to complete negotiations before the coming into force of the Constitution of the Union of Burma. At the same time the Government of the United Kingdom are sure that the Provisional Government of Burma share their view that the commercial relations of the two countries should not be left entirely unregulated in the meantime and that suitable transitional arrangements cannot but help the conclusion of a mutually satisfactory Treaty at as early a date as possible.

2. I have therefore to express the hope that the Provisional Government of Burma will not during this interim period take action which would prejudicially affect existing United Kingdom interests in Burma in the legitimate conduct of the businesses or professions in which they are now engaged, and that if the Provisional Government of Burma, in the formulation of national policy, are convinced that such action must be taken in any particular case they will consult with the Government of the United Kingdom in advance with a view to reaching a mutually satisfactory settlement. For their part the Government of the United Kingdom will be glad to observe the same principles in regard to the treatment of Burman interests in the United Kingdom.

3. If the Provisional Government of Burma agree with the foregoing proposals, I suggest that this letter and your reply should constitute an understanding between our two Governments to that effect.

I have, &c.
(*Signed*) C. R. ATTLEE.

No. 2

Thakin Nu to Mr. C. R. Attlee

Sir, *London, 17th October, 1947*

I have the honour on behalf of the Provisional Government of Burma to acknowledge receipt of your letter of to-day's date. The Provisional Government of Burma share the view of the Government of the United Kingdom that the commercial relations of the two countries should not be left entirely unregulated during the period which will elapse between the coming into force of the Constitution of the Union of Burma and the conclusion of a mutually satisfactory Treaty of Commerce and Navigation. The Provisional Government of Burma therefore agree, subject to paragraph 2 below, that they will not take action which would prejudicially affect existing United Kingdom interests in Burma in the legitimate conduct of the businesses or professions in which they are now engaged. The Provisional Government of Burma also agree that

if convinced of the necessity of such action in any particular case they will consult with the Government of the United Kingdom in advance with a view to reaching a mutually satisfactory settlement, although there may be occasional cases of emergency in which full prior consultation is impracticable and only short notice can be given to the United Kingdom Ambassador. The Provisional Government of Burma note with satisfaction that the Government of the United Kingdom will observe the same principles in regard to the treatment of Burman interests in the United Kingdom.

2. I have however to explain that the undertaking given in the preceding paragraph must be read as subject to the provisions of the Constitution of the Union of Burma as now adopted, and in particular to the policy of State socialism therein contained to which my Government is committed. If however the implementation of the provisions of Articles 23 (4) and (5), 30, 218, or 219 of the Constitution should involve the expropriation or acquisition in whole or in part of existing United Kingdom interests in Burma, the Provisional Government of Burma will provide equitable compensation to the parties affected.

3. Finally I suggest that, in so far as questions arise which, in the opinion of either Government, do not appropriately fall within the scope of the preceding paragraphs of this letter, these should be discussed by representatives of our two Governments, and decided in accordance with the generally accepted principles of international law and with modern international practice.

I have, &c.
(*Signed*) THAKIN NU

No. 3

Mr. C. R. Attlee to Thakin Nu

10 Downing Street,
London, 17th October, 1947

Sir,

I have the honour, on behalf of the Government of the United Kingdom, to acknowledge receipt of your letter of to-day's date. The Government of the United Kingdom welcome both the Provisional Government of Burma's acceptance of the suggestion contained in my previous letter and their assurance of equitable compensation to United Kingdom interests in the circumstances set out in paragraph 2 of your letter. The Government of the United Kingdom readily accept the suggestion contained in paragraph 3 of your letter.

I have, &c.
(*Signed*) C. R. ATTLEE.

3. EXTERNAL AFFAIRS AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND CEYLON. SIGNED AT COLOMBO ON 11 NOVEMBER 1947[1]

Whereas Ceylon has reached the stage in constitutional development at which she is ready to assume the status of a fully responsible member of the British Commonwealth of Nations, in no way subordinate in any aspect of domestic or external affairs, freely associated and united by common allegiance to the Crown;

And whereas the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ceylon are desirous of entering into an agreement to provide for certain matters relating to external affairs;

Therefore the Government of the United Kingdom and the Government of Ceylon have agreed as follows:—

(1) The Government of Ceylon declares the readiness of Ceylon to adopt and follow the resolutions of past Imperial Conferences.

(2) In regard to external affairs generally, and in particular to the communication of information and consultation, the Government of the United Kingdom will, in relation to Ceylon observe the principles and practice now observed by the Members of the Commonwealth, and the Ceylon Government will for its part observe these same principles and practice.

(3) The Ceylon Government will be represented in London by a High Commissioner for Ceylon, and the Government of the United Kingdom will be represented in Colombo by a High Commissioner for the United Kingdom.

(4) If the Government of Ceylon so requests, the Government of the United Kingdom will communicate to the Governments of the foreign countries with which Ceylon wishes to exchange diplomatic representatives proposals for such exchange. In any foreign country where Ceylon has no diplomatic representative the Government of the United Kingdom will, if so requested by the Government of Ceylon, arrange for its representatives to act on behalf of Ceylon.

(5) The Government of the United Kingdom will lend its full support to any application by Ceylon for membership of the United Nations, or of any specialised international agency as described in Article 57 of the United Nations Charter.

(6) . . .

[See CEYLON above]

(7) This Agreement will take effect on the day when the constitutional measures necessary for conferring on Ceylon fully responsible status within the British Commonwealth of Nations shall come into force.

. . .

[1] United Nations, *Treaty Series*, vol. 86, p. 25. Came into force on 4 February 1948.

4. PUBLIC OFFICERS AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND CEYLON. SIGNED AT COLOMBO ON 11 NOVEMBER 1947[1]

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ceylon have agreed as follows:—

(1) In this Agreement:—

"officer" means a person holding office in the public service of Ceylon immediately before the appointed day, being an officer—

(*a*) who at any time before the 17th day of July, 1928, was appointed or selected for appointment to an office, appointment to which was subject to the approval of a Secretary of State, or who, before that day, had entered into an agreement with the Crown Agents for the Colonies to serve in any public office for a specified period; or

(*b*) who on or after the 17th day of July, 1928, has been or is appointed or selected for appointment (otherwise than on agreement for a specific period) to an office, appointment to which is subject to the approval of a Secretary of State; or

(*c*) who, on or after the 17th day of July, 1928, has entered or enters into an agreement with the Crown Agents for the Colonies to serve for a specific period in an office, appointment to which is not subject to the approval of a Secretary of State, and who, on the appointed day, either has been confirmed in a permanent and pensionable office or is a European member of the Police Force;

"the appointed day" means the day when the constitutional measures necessary for conferring on Ceylon fully responsible status within the British-Commonwealth of Nations shall come into force;

"pension" includes a gratuity and other like allowance.

(2) An officer who continues on and after the appointed day to serve in Ceylon shall be entitled to receive from the Government of Ceylon the same conditions of service as respects remuneration, leave and pension, and the same rights as respects disciplinary matters or, as the case may be, as respects the tenure of office, or rights as similar thereto as changed circumstances may permit, as he was entitled to immediately before the appointed day, and he shall be entitled to leave passages in accordance with the practice now followed; but he shall not be entitled to exemption from any general revision of salaries which the Government of Ceylon may find it necessary to make.

(3) Any officer who does not wish to continue to serve in Ceylon, being an officer described in paragraph (a) of the definition of "officer" in Clause 1, may retire from the service at any time; and in any other case may retire from the service within two years of the appointed day. On such retirement he shall be entitled to receive from the Government of Ceylon a compensatory pension in accordance with the special regulations made under Section 88 of the Ceylon (State Council) Order in Council, 1931, in force on the appointed day; but an officer who leaves the Ceylon service on transfer to the Public Service in any colony, protectorate or mandated or trust territory shall not be entitled to receive such a pension.

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[1] United Nations, *Treaty Series*, vol. 86, p. 31. Came into force on 4 February 1948.

(4) Pensions which have been or may be granted to any persons who have been, and have ceased to be, in the public service of Ceylon at any time before the appointed day, or to the widows, children or dependants of such persons, shall be paid in accordance with the law under which they were granted, or if granted after that day, in accordance with the law in force on that day, or in either case in accordance with any law made thereafter which is not less favourable.

5. TRAITÉ ENTRE LA FRANCE ET LE MAROC FAIT À RABAT LE 20 MAI 1956 ET SIGNÉ À PARIS LE 28 MAI 1956[1]

. . .

Article 11

Le Maroc assume les obligations résultant des traités internationaux passés par la France au nom du Maroc, ainsi que celles qui résultent des actes internationaux relatifs au Maroc qui n'ont pas donné lieu à des observations de sa part.

. . .

6. EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATION OF MALAYA RELATING TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF THE FEDERATION OF MALAYA. KUALA LUMPUR, 12 SEPTEMBER 1957

[See MALAYSIA, section A 2]

7. EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF GHANA RELATIVE TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF GHANA. ACCRA, 25 NOVEMBER 1957

[See GHANA, section A]

8. TREATY OF FRIENDSHIP (WITH EXCHANGE OF NOTES) CONCLUDED BETWEEN ITALY AND SOMALIA. MOGADISCIO, ON 1 JULY 1960[2]

. . .

Note from the Head of the Italian Delegation addressed to the Head of the Somali Delegation

With reference to the Treaty of Friendship concluded this day between our two countries, I have the honour to inform Your Excellency as follows:

(1) It is agreed that upon the entry into force of the aforesaid Treaty

[1] *Revue Générale de Droit International Public*, troisième série, tome LX, 1956, p. 481. Une version en anglais de ce traité a été publiée dans *The American Journal of International Law*, vol. 51,1957, p. 679.

[2] English translation provided by the Government of the United Kingdom. For original Italian text see: *Diritto Internazionale*, vol. XVI, 1962, pp. 440-442 and *Bollettino Ufficiale della Repubblica Somala*, Anno II, 31 Dicembre 1961, Suppl. N. 9 al N. 12, pp. 5-9.

the Government of Somalia shall succeed the Italian Government in all the rights and obligations arising out of international instruments concluded by the Italian Government in its capacity as the Administering Authority for the Trust Territory, in the name of and on behalf of Somaliland up to June 30, 1960;

(2) In accordance with the purposes and the principle of Article 12 of the Trusteeship Agreement for Somaliland of January 27, 1950, the Italian Government considers itself bound to provide the attached list of the multilateral agreements entered into by Italy before 1950 on humanitarian, social, health, legal and administrative matters and applied to Somaliland;[1]

Upon the accession of Somalia to independence, all responsibilities and all obligations assumed by the Italian Government under these agreements, in so far as they extend to Somalia, shall cease with regard both to the Somali Government and to third States.

This note, the list which accompanies it, and the reply which Your Excellency will kindly send me, shall constitute an agreement between the two Governments and shall form an integral part of the aforesaid Treaty.[2]

9. EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FEDERATION OF NIGERIA RELATIVE TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF THE FEDERATION OF NIGERIA. LAGOS, 1 OCTOBER 1960

[See NIGERIA, section A]

10. EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF SIERRA LEONE RELATING TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF SIERRA LEONE. FREETOWN, 5 MAY 1961[3]

Letter from the High Commissioner for the United Kingdom in Sierra Leone to the Minister of External Affairs of Sierra Leone

Freetown,
5th May, 1961

Sir,

I have the honour to refer to the Sierra Leone Independence Act, 1961, under which Sierra Leone has assumed independent status within the Commonwealth of which Her Majesty the Queen is Head, and to state that it is the understanding of the Government of the United Kingdom of Great Britain and Northern Ireland that the Government of Sierra Leone agree to the following provisions:

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[1] The Italian Note was accompanied by a list of nineteen multilateral conventions entered into by Italy and extended to Somalia before the beginning of the Trusteeship.

[2] The text of the Somali Note has not been provided by the Government of the United Kingdom. For the Italian text of the Somali Note see: *Diritto Internazionale*, op. cit., p. 442 and *Bollettino Ufficiale della Repubblica Somala*, op. cit., p. 9. The Somali Government agrees with the content of paragraph 1 of the Italian Note and takes note of the information provided in accordance with paragraph 2.

[3] United Nations, *Treaty Series*, vol. 420, p. 11. Came into force on 5 May 1961.

(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument shall be assumed by the Government of Sierra Leone as from 27th April, 1961, in so far as such instrument may be held to have application to Sierra Leone;

(ii) the rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Sierra Leone shall, as from 27th April, 1961, be enjoyed by the Government of Sierra Leone.

I shall be grateful for your confirmation that the Government of Sierra Leone are in agreement with the provisions aforesaid and that this note and your reply shall constitute an agreement between the two Governments.

I have the honour to be,
Sir,
Your most obedient humble Servant,
(*Signed*) J. B. JOHNSTON
High Commissioner

Letter from the Minister of External Affairs of Sierra Leone to the High Commissioner for the United Kingdom in Sierra Leone

Freetown,
5th May, 1961

Sir,

I have the honour to acknowledge the receipt of your note of today's date which reads as follows:

Sir,

I have the honour to refer to the Sierra Leone Independence Act, 1961, under which Sierra Leone has assumed independent status within the Commonwealth of which Her Majesty the Queen is Head, and to state that it is the understanding of the Government of the United Kingdom of Great Britain and Northern Ireland that the Government of Sierra Leone agree to the following provisions:

(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument shall be assumed by the Government of Sierra Leone as from 27th April, 1961, in so far as such instrument may be held to have application to Sierra Leone;

(ii) the rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Sierra Leone shall, as from 27th April, 1961, be enjoyed by the Government of Sierra Leone.

I shall be grateful for your confirmation that the Government of Sierra Leone are in agreement with the provisions aforesaid and that this note and your reply shall constitute an agreement between the two Governments.

I have the honour to be,
Sir,
Your most obedient humble Servant,
(*Signed*) J. B. JOHNSTON

I have pleasure in confirming that the Government of Sierra Leone are in agreement with the provisions set out in your note of today's date, and that Your Excellency's note and this reply shall constitute an agreement between the two Governments.

I have the honour to be,

Sir,

Your most obedient humble Servant,

(*Signed*) J. KAREFA-SMART

Minister of External Affairs

11. EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF JAMAICA RELATING TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF JAMAICA. KINGSTON, 7 AUGUST 1962[1]

Letter from the British High Commissioner in Jamaica to the Prime Minister of Jamaica

Kingston
7th August, 1962

Sir,

I have the honour to refer to the Jamaica Independence Act, 1962, under which Jamaica has assumed independent status within the Commonwealth of which Her Majesty the Queen is Head, and to state that it is the understanding of the Government of the United Kingdom of Great Britain and Northern Ireland that the Government of Jamaica agree to the following provisions:

(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument (including any such instrument made by the Government of the Federation of the West Indies by virtue of authority entrusted by the Government of the United Kingdom) shall as from 6th August, 1962 be assumed by the Government of Jamaica, in so far as such instrument may be held to have application to Jamaica;

(ii) the rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Jamaica shall as from 6th August, 1962 be enjoyed by the Government of Jamaica.

I shall be grateful for your confirmation that the Government of Jamaica are in agreement with the provisions aforesaid and that this Note and your reply shall constitute an agreement between the two Governments.

I have the honour to be,

Sir,

Your most obedient, humble servant,

(*Signed*) A. F. MORLEY

High Commissioner

[1] United Nations, *Treaty Series*, vol. 457, p. 117. Came into force on 7 August 1962.

Letter from the Prime Minister of Jamaica to the British High Commissioner in Jamaica

Kingston
7th August, 1962

Your Excellency,

I have the honour to acknowledge receipt of your Note of today's date which reads as follows:—

"Sir,

"I have the honour to refer to the Jamaica Independence Act, 1962, under which Jamaica has assumed independent status within the Commonwealth of which Her Majesty the Queen is Head, and to state that it is the understanding of the Government of the United Kingdom of Great Britain and Northern Ireland that the Government of Jamaica agree to the following provisions:

"(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument (including any such instrument made by the Government of the Federation of the West Indies by virtue of authority entrusted by the Government of the United Kingdom) shall as from 6th August, 1962 be assumed by the Government of Jamaica, in so far as such instrument may be held to have application to Jamaica;

"(ii) the rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Jamaica shall as from 6th August, 1962 be enjoyed by the Government of Jamaica.

"I shall be grateful for your confirmation that the Government of Jamaica are in agreement with the provisions aforesaid and that this Note and your reply shall constitute an agreement between the two Governments.

"I have the honour to be,

"Sir,

"Your most obedient, humble servant,

"A. F. MORLEY

"*High Commissioner*"

I have pleasure in confirming that the Government of Jamaica are in agreement with the provisions set out in your Note of today's date, and that Your Excellency's Note and this reply shall constitute an agreement between the two Governments.

I have the honour to be,

Sir,

Your most obedient, humble servant,

(*Signed*) Alexander BUSTAMANTE

Prime Minister and Minister of External Affairs and Defence

12. EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF TRINIDAD AND TOBAGO RELATING TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF TRINIDAD AND TOBAGO. PORT OF SPAIN, 31 AUGUST 1962[1]

Letter from the British High Commissioner in Trinidad and Tobago to the Prime Minister of Trinidad and Tobago

Port of Spain
31st August, 1962

Sir,

I have the honour to refer to the Trinidad and Tobago Independence Act, 1962, under which Trinidad and Tobago has assumed independent status within the Commonwealth of which Her Majesty the Queen is Head, and to state that it is the understanding of the Government of the United Kingdom of Great Britain and Northern Ireland that the Government of Trinidad and Tobago agree to the following provisions:—

(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument (including any such instruments made by the Government of the Federation of the West Indies by virtue of authority entrusted by the Government of the United Kingdom) shall henceforth be assumed by the Government of Trinidad and Tobago, in so far as such instruments may be held to have application to Trinidad and Tobago;

(ii) the rights and benefits which heretofore were enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Trinidad and Tobago shall henceforth be enjoyed by the Government of Trinidad and Tobago.

2. I shall be grateful for your confirmation that the Government of Trinidad and Tobago are in agreement with the provisions aforesaid, and that this letter and your reply shall constitute an agreement between the two Governments.

I have the honour to be,

Sir,
Your most obedient humble servant,

(Signed) N. E. COSTAR
High Commissioner

[1] United Nations, *Treaty Series*, vol. 457, p. 123. Came into force on 31 August 1962.

Letter from the Prime Minister of Trinidad and Tobago to the British High Commissioner in Trinidad and Tobago

Port of Spain
31st August, 1962

Your Excellency,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

"I have the honour to refer to the Trinidad and Tobago Independence Act, 1962, under which Trinidad and Tobago has assumed independent status within the Commonwealth of which Her Majesty the Queen is Head, and to state that it is the understanding of the Government of the United Kingdom of Great Britain and Northern Ireland that the Government of Trinidad and Tobago agree to the following provisions:—

"(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument (including any such instruments made by the Government of the Federation of the West Indies by virtue of authority entrusted by the Government of the United Kingdom) shall henceforth be assumed by the Government of Trinidad and Tobago, in so far as such instruments may be held to have application to Trinidad and Tobago;

"(ii) the rights and benefits which heretofore were enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Trinidad and Tobago shall henceforth be enjoyed by the Government of Trinidad and Tobago.

"2. I shall be grateful for your confirmation that the Government of Trinidad and Tobago are in agreement with the provisions aforesaid, and that this letter and your reply shall constitute an agreement between the two Governments."

I have pleasure in confirming that the Government of Trinidad and Tobago are in agreement with the provisions set out in your letter of today's date, and that Your Excellency's letter and this reply shall constitute an agreement between the two Governments.

I have the honour to be,

Sir,
Your most obedient humble servant,

(*Signed*) Eric WILLIAMS
Prime Minister

13. EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF MALTA RELATING TO THE INHERITANCE OF INTERNATIONAL RIGHTS AND OBLIGATIONS BY THE GOVERNMENT OF MALTA. FLORIANA AND VALLETTA, 31 DECEMBER 1964[1]

Letter from the High Commissioner for the United Kingdom to the Prime Minister of Malta

Floriana
31 December, 1964

Sir,

I have the honour to refer to the Malta Independence Act 1964 and to state that it is the understanding of the Government of the United Kingdom that the Government of Malta are in agreement with the following provisions:—

(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument shall, as from the 21st September, 1964, be assumed by the Government of Malta in so far as such instruments may be held to have application to Malta;

(ii) the rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Malta shall, as from the 21st September, 1964, be enjoyed by the Government of Malta.

I shall be grateful for your confirmation that the Government of Malta are in agreement with the provisions aforesaid and that this letter and your reply shall constitute an agreement between the two Governments.

I have the honour to be, Sir,
Your most obedient,
humble Servant,
High Commissioner

Letter from the Prime Minister of Malta to the High Commissioner for the United Kingdom in Malta

Valletta,
31 December 1964

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's letter of 31st December, 1964, which reads as follows:

"I have the honour to refer to the Malta Independence Act 1964 and to state that it is the understanding of the Government of the United Kingdom that the Government of Malta are in agreement with the following provisions:—

(i) all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument shall, as from the 21st September, 1964, be assumed

[1] United Nations, *Treaty Series*, vol. 525, p. 221. Came into force on 31 December 1964.

by the Government of Malta in so far as such instruments may be held to have application to Malta;

(ii) the rights and benefits heretofore enjoyed by the Government of the United Kingdom in virtue of the application of any such international instrument to Malta shall, as from the 21st September, 1964, be enjoyed by the Government of Malta.

I shall be grateful for your confirmation that the Government of Malta are in agreement with the provisions aforesaid and that this letter and your reply shall constitute an agreement between the two Governments."

I have pleasure in confirming that the Government of Malta are in agreement with the provisions set out in your letter and that your letter and this reply shall constitute an agreement between the two Governments.

I have the honour to be,
With the highest consideration,
Your Excellency's obedient servant,
Prime Minister

II. Notes

(a) *Unilateral declarations made by new States concerning international instruments applied to their territories prior to independence*

1. *Tanganyika*

In a letter dated 9 December 1961, the Prime Minister of Tanganyika declared to the Secretary-General of the United Nations:

"The Government of Tanganyika is mindful of the desirability of maintaining, to the fullest extent compatible with the emergence into full independence of the State of Tanganyika, legal continuity between Tanganyika and the several States with which, through the action of the United Kingdom, the territory of Tanganyika was prior to independence in treaty relations. Accordingly, the Government of Tanganyika takes the present opportunity of making the following declaration:

"As regards bilateral treaties validly concluded by the United Kingdom on behalf of the territory of Tanganyika or validly applied or extended by the former to the territory of the latter, the Government of Tanganyika is willing to continue to apply within its territory, on a basis of reciprocity, the terms of all such treaties for a period of two years from the date of independence (i.e., until 8 December 1963) unless abrogated or modified earlier by mutual consent. At the expiry of that period, the Government of Tanganyika will regard such of these treaties which could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.

"It is the earnest hope of the Government of Tanganyika that during the aforementioned period of two years, the normal processes of diplomatic negotiations will enable it to reach satisfactory accord with the States concerned upon the possibility of the continuance or modification of such treaties.

"The Government of Tanganyika is conscious that the above

declaration applicable to bilateral treaties cannot with equal facility be applied to multilateral treaties. As regards these, therefore, the Government of Tanganyika proposes to review each of them individually and to indicate to the depositary in each case what steps it wishes to take in relation to each such instrument — whether by way of confirmation of termination, confirmation of succession or accession. During such interim period of review any party to a multilateral treaty which has prior to independence been applied or extended to Tanganyika may, on a basis of reciprocity, rely as against Tanganyika on the terms of such treaty."[1]

The Text of this declaration was circulated to all Members of the United Nations; and on 2 July 1962, the Permanent Representative of the United Kingdom replied as follows:

"I have the honour . . . to refer to the Note dated 9 December 1961, addressed to Your Excellency by the then Prime Minister of Tanganyika, setting out his Government's position in relation to international instruments concluded by the United Kingdom, whose provisions applied to Tanganyika prior to independence. Her Majesty's Government in the United Kingdom hereby declare that, upon Tanganyika becoming an independent Sovereign on the 9th of December 1961, they ceased to have the obligations or rights, which they formerly had, as the authority responsible for the administration of Tanganyika, as a result of the application of such international instruments to Tanganyika."

In the course of 1962 Tanganyika informed the United Nations that the rights and obligations of the United Kingdom in respect of Tanganyika, arising out of 42 international instruments relating to GATT, were to be considered as the rights and obligations of Tanganyika as from the date of independence; that she, Tanganyika, considered herself bound by the 1946 Convention on the Privileges and Immunities of the United Nations; and that she also was bound by the 1947 Convention on the Privileges and Immunities of the Specialized Agencies.[2]

The attitude of Her Majesty's Government to the question of the inheritance of treaty rights and obligations by Tanganyika may be summarised as follows. In March 1961 the British Government suggested to the Government of Tanganyika that it should, on independence, exchange letters with the British Government in order that Tanganyika would continue to enjoy the rights and obligations under treaties made by the British Government on behalf of Tanganyika. This had been the recent practice when other territories dependent on the British Crown became sovereign States.

If this procedure had been agreed to by the Government of Tanganyika other States would no doubt have accepted that Tanganyika, by assuming all the obligations and responsibilities under such treaties, would be entitled to enjoy all the rights and benefits under such treaties.

The Tanganyika Government understood that the effect of an agreement as mentioned above might be to enable third States to call upon Tanganyika to perform certain treaty obligations from which Tanganyika would otherwise have been released by her emergence into in-

[1] *Yearbook of the International Law Commission, 1962*, vol. II, p. 121.
[2] *Ibid.*

dependent statehood. They were advised that such an agreement would probably not, by itself, enable them to insist that third States discharge towards Tanganyika the obligations which they had assumed under treaties with the United Kingdom.

The British Government recognised that the decision whether to enter into an inheritance agreement was entirely one for the Tanganyikan Government. Now that the Tanganyikan Government had published its intentions in a letter to the Secretary-General, the British Government must also make its position clear.

2. *Uganda*

Uganda, to which full sovereign status was granted by the 1962 Uganda Independence Act, became a fully independent member of the Commonwealth on 9 October 1962.

Uganda did not sign an Exchange of Letters concerning treaty rights and obligations on independence but instead elected to follow the precedent set by Tanganyika. Notice of Uganda's intention concerning treaties applicable in respect of its territory immediately before independence was given by means of a unilateral declaration by the Uganda Government which was sent to the Secretary-General of the United Nations and circulated to Members by him. This was followed by a disclaimer of responsibility by the United Kingdom also sent to the Secretary-General and circulated by him.

As far as the United Kingdom Government is concerned the same considerations apply in this case as in the case of Tanganyika.

The texts of the declaration (I) addressed by the Prime Minister of Uganda to the Secretary-General of the United Nations, dated 12 February 1963, and the disclaimer (II) contained in a letter from the Permanent Representative of the United Kingdom to the Secretary-General of the United Nations, dated 3 April 1963, are as follows:

I

"Prior to Uganda attaining independence on 9th October, 1962, treaty relationships were entered into, on its behalf, by the Government of the United Kingdom. The Government of Uganda now wishes to make clear its position in regard to obligations arising from those treaties entered into prior to 9th October, 1962, by the protecting Government. The Government of Uganda accordingly makes the following declarations.

"2. In respect of all treaties validly concluded by the United Kingdom on behalf of the Uganda Protectorate, or validly applied or extended by the former to the latter, before the 9th October, 1962, the Government of Uganda will continue on a basis of reciprocity to apply the terms of such treaties from the time of its independence, that is to say 9th October, 1962, until the 31st December, 1963, unless such treaties are abrogated, or modified by agreement with the other high contracting parties before 31st December, 1963. At the expiry of this period, or of any subsequent extension of the period which may be notified in like manner, the Government of Uganda will regard such treaties, unless they must by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.

"3. The declaration in the previous paragraph extends equally to multilateral treaties; and during this period of review any party to a multilateral treaty which was validly applied or extended to Uganda before the 9th October, 1962, may on a basis of reciprocity as indicated above, rely on the terms of such treaty as against the Government of Uganda.

"4. It is the earnest hope of the Government of Uganda that during the aforementioned period, the normal processes of diplomatic negotiations will enable it to reach satisfactory accord with the States concerned upon the possibility of the continuance or modification of such treaties. In the case of multilateral treaties, the Government of Uganda intends, before the 31st December, 1963, or such later date as may be subsequently notified in like manner, to indicate to the depository in each case the steps it wishes to take, whether by way of confirmation of termination, or confirmation of succession or accession, in regard to each such instrument.

"5. It would be appreciated if Your Excellency would arrange for the text of this declaration to be circulated to all Members of the United Nations."

II

I have the honour by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to refer to the Note dated the 12th of February, 1963, addressed to Your Excellency by the Prime Minister of Uganda, setting out his Government's position in relation to international instruments concluded by the United Kingdom, whose provisions applied to Uganda prior to independence.

Her Majesty's Government in the United Kingdom hereby declare that, upon Uganda becoming an independent Sovereign State on the 9th of October, 1962, they ceased to have the obligations or rights, which they formerly had, as the Government responsible for the international relations of Uganda, as a result of the application of such international instruments to Uganda.

I am to request that this statement should be circulated to all Members of the United Nations.

(b) *Multilateral instruments*

1. *Convention for the Unification of certain Rules relating to International Carriage by Air, signed at Warsaw, on 12 October 1929*[1]

(i) *Burma*

Article 2 of the Treaty between the United Kingdom and the Provisional Government of Burma regarding the Recognition of Burmese Independence and Related Matters, concluded in London on 17 October 1947,[2] dealt with the question of obligations and responsibilities arising out of international instruments.

In 1947-48 it had been decided not to press the Burmese to notify their accession to international agreements to which His Majesty's Government had at one time or another acceded on their behalf. At

[1] League of Nations, *Treaty Series*, vol. CXXXVII, p. 11.

[2] See section A, I (*b*) 2, above.

that time the United Kingdom was primarily concerned to safeguard His Majesty's Government against any claims by third countries in respect of such agreements. It was considered that provided the United Kingdom's agreements with Burma were registered with the United Nations and were published, no more needed to be done. His Majesty's Government had always recognised, however, that Article 2 of the 1947 Anglo-Burmese Treaty could not bind third countries to accept the transfer of all treaty rights and obligations to Burma and that there was consequently always a possibility of some third country taking a different view from the United Kingdom and Burma on that matter. The Burmese themselves seemed to think that Article 2 of the Treaty was sufficient.

His Majesty's Government concluded that it would be expedient to leave most cases until a concrete instance arose. It was suggested that the Burmese should accede formally to the Warsaw Convention, pointing out to them at the same time that since Article 2 of the 1947 Treaty was legally binding only on the parties to that Treaty they might wish to take similar action in respect of other international instruments as and when the occasion arose.

(ii) *Nigeria*

Prior to the making of the Carriage by Air (Parties to Convention) Order 1961, which revised the previous similar Orders of 1958, the appropriate Nigerian authorities were informed of our intention that the Federation of Nigeria should no longer appear in Part I of the Schedule as a territory in respect of which the United Kingdom was a High Contracting Party to the Warsaw Convention of 1929.

Instead, it was explained that, in the view of the British Government, the effect of the Exchange of Letters concerning treaty rights and obligations dated 1 October 1960 (the Inheritance Agreement)[1] was that Nigeria was a separate High Contracting Party to the Convention and should therefore appear as such. Further, the date on which the Convention came into force with respect to Nigeria would continue to be shown as 3 March 1935, which was 90 days after the Convention was ratified by the United Kingdom on behalf of Nigeria.

The Nigerian authorities replied that, in their view, the relevant date should not be 3 March 1935 but such date as is notified to the other High Contracting Parties by the Government of the Republic of Poland, the custodian power, such date being 90 days after the Polish Government had received the Nigerian instrument of accession to the Convention.

The British Government reiterated their view that the effect of the Inheritance Agreement was that Nigeria had agreed to accept the rights and obligations arising under all treaties, conventions etc. signed by the United Kingdom prior to independence and applicable to Nigeria.

On reconsideration, the Nigerian authorities accepted this view and decided that no further action by Nigeria was necessary.

(iii) *Tanganyika*

Prior to the making of the Carriage by Air (parties to Convention) Order 1962, which revised the previous similar Order of 1961, the

[1] See NIGERIA, section A.

Tanganyika Government were informed of our intention that Tanganyika should no longer appear in Part I of the Schedule as a territory in respect of which the United Kingdom was a Contracting Party to the 1929 Warsaw Convention on International Carriage by Air.

Instead, it was explained that in the view of the British Government, the effect of the unilateral declaration made to the Secretary-General of the United Nations by the then Prime Minister of Tanganyika, Mr. Nyerere, concerning Tanganyika's intentions with regard to treaty rights and obligations, was that Tanganyika could now appear as a separate High Contracting Party and that the date on which the Convention came into force with respect to Tanganyika would remain the same as before, namely 3 March 1935, being 90 days after the Convention was ratified by the United Kingdom on behalf of Tanganyika.

2. *Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946*;[1] *Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on 21 November 1947*;[2] *and certain international instruments relating to GATT.*

Tanganyika

[See section A, II(*a*), 1 above]

3. *Convention on Road Traffic signed at Geneva on 19 September 1949*[3] *and Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, done at Geneva on 7 September 1956.*[4]

Cyprus

Article 8 of the Treaty concerning the Establishment of the Republic of Cyprus[5] deals with the question of international rights and obligations. Cyprus has indicated[6] that she considers herself bound by the following treaties which were made applicable to her by the United Kingdom:

(*a*) 1949 Convention on Road Traffic;

(*b*) 1956 Supplementary Convention on Slavery.

In the course of correspondence between the British High Commission in Nicosia and the Cyprus Ministry of Foreign Affairs concerning the applicability of the Convention on Road Traffic 1949 to the Republic, the Ministry forwarded the view that in their opinion a limited interpretation should be given to Article 8 of the Treaty of Establishment.

In their view, the mere fact that the United Kingdom had extended the application of a Convention or Treaty to Cyprus, while the latter was a Colony, did not necessarily mean that they were then bound by it. Article 8 should be confined to international instruments entered into

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[1] United Nations, *Treaty Series*, vol. I, p. 15.
[2] *Ibid.* vol. 33, p. 261.
[3] *Ibid.* vol. 125, p. 22.
[4] *Ibid.*, vol. 266, p. 3.
[5] See CYPRUS, section A.
[6] *Yearbook of the International Law Commission, 1962*, vol. II, p. 116, para. 77.

by the United Kingdom, with particular and localised reference to the territory of Cyprus.

They felt they were bound, in particular, by the Convention on Road Traffic because it was an international agreement and had the nature of international "legislation", regulating a particular international subject. Its law-making character and its multilateral nature indicated that the international community would expect any new member to abide by it.

In discussion between the two Governments on the interpretation of Article 8 it was argued that under customary international law a territory which has been carved out of the territories of an existing State, on becoming a new Sovereign State succeeded automatically to those rights and obligations of the existing State under international instruments which refer specifically to the territory of the new State. Such instruments concern local rights and duties and related, in general, to boundaries, rivers, etc. Consequently, in the view of the United Kingdom Government, Article 8 would have been quite unnecessary, if it only referred to such instruments as referred specifically to the territory of the Republic. Hence it could not have been the intention that Article 8 should have the limited interpretation suggested by the Cyprus Ministry of Foreign Affairs. The intention of the United Kingdom Government in relation to Article 8, as in relation to previous exchanges of letters concerning treaty rights and obligations with other former dependent territories, was that it should cover *all* international instruments which before independence bound the United Kingdom in respect of the territory of the Republic.

It was agreed that the view previously expressed by the Cyprus Ministry of Foreign Affairs was too limited and that the Ministry of Foreign Affairs should be advised accordingly.

4. *Treaty of Peace with Japan, signed at San Francisco on 8 September 1951*[1]
India and Pakistan

Article 11 of the Treaty of Peace with Japan provided, *inter alia*, that in the case of persons tried and sentenced by the International Military Tribunal for the Far East, the power to grant clemency, to reduce sentences and to parole, with respect to such persons may not be exercised except on the decision of a majority of the Governments represented on the Tribunal, on the recommendation of Japan.

In the view of the British Government, the power conferred under Article 11 was a right conferred by the Treaty and therefore came within the scope of the operation of Article 25. The language of these two Articles taken together was considered to exclude all but the Allied Powers as defined in the Treaty from participation in the exercise of this right. This in effect meant only those Powers which had signed and ratified the Treaty.

India, as territorially defined at present, was not a member of the original International Military Tribunal of the Far East. British India which then consisted of what is now India and Pakistan was, however, a member. India did not sign or ratify the Treaty. Pakistan did both.

We informed the Japanese Government that, in the opinion of the

[1] United Nations, *Treaty Series*, vol. 136, p. 45.

British Government, Pakistan and India were the legal successors of British India: that, as successor states, they both were qualified to exercise rights under Article 11, but only if they were parties to the Treaty: that only Pakistan, and not India, was such a party by virtue of the former's signature and ratification of the Treaty.

The Indian Government contested this view in a Note delivered to the British Government and claimed that when the Tribunal was set up in 1946, India was undivided but partition took place before the Tribunal's decisions in 1948. According to Article 2 (1) of the Agreement set out in the Schedule to the Indian Independence (International Arrangements) Order, 1947,[1] membership of all International Organisations together with the rights and obligations attaching to such membership devolved solely on India. The International Military Tribunal was such an Organisation and therefore the right of voting on questions of granting clemency etc. which was inherent in the nations represented on the Tribunal, devolved, by virtue of the above agreement, on India and not on Pakistan. Article 11 of the Treaty recognised this position and stated that the power to grant clemency etc. rested with those Governments represented on the Tribunal and India was so represented, not Pakistan. Article 25 did not affect the position because India's rights came into existence prior to and independently of the Treaty. Article 11 recognised the right but did not create it.

The British Government maintained their original view and replied to the Indian Government accordingly.

(c) *Bilateral instruments*

1. *Treaty of 31 December 1889*[2] *and Supplementary Treaty of 29 July 1909*[3] *between France and the United Kingdom of Great Britain and Northern Ireland extending to Tunisia the provisions of the Anglo-French Extradition Treaty of 14 August 1876*[4]

Tunisia

The provisions of the 1876 Extradition Treaty between France and the United Kingdom were extended to Tunis by a treaty of 1889.

In 1959 Her Majesty's Government informed the Tunisian Government that they considered the 1889 treaty and the 1909 supplementary treaty to be still binding on the grounds that Tunis was formerly a protectorate and therefore enjoyed a separate international personality.

The Tunisian Government replied in a Note dated 22 May 1959 that it did not consider itself bound by the treaties. Her Majesty's Government therefore informed Tunis that they were treating the Tunisian Note as notice of termination of the agreement and waiving the requirement of six months' notice to terminate.

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[1] See section A, I (*b*) 1, above.

[2] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XVI, p. 885.

[3] *Ibid.*, troisième série, tome III, p. 803.

[4] *Ibid.*, deuxième série, tome II, p. 456.

2. *Treaty of 14 May 1897*[1] *and Agreement of 29 November 1954*[2] *between Ethiopia and the United Kingdom of Great Britain and Northern Ireland*

Somalia

In the House of Commons on April 11, 1960, the Prime Minister, in answer to the question whether the 1897 Treaty and the 1954 Agreement between the United Kingdom and Ethiopia would apply to the proposed union between the Somaliland Protectorate [under the British administration] and Somalia [a United Nations Trusteeship territory under the Italian administration], replied:

> "Following the termination of the responsibilities of H.M. Government for the Government of the Protectorate, and in the absence of any fresh instruments, the provisions of the 1897 Anglo-Ethiopian Treaty should, in our view, be regarded as remaining in force as between Ethiopia and the successor State. On the other hand, Article III of the 1954 Agreement, which comprises most of what was additional to the 1897 Treaty, would, in our opinion, lapse."

3. *Anglo-Dutch Extradition Treaty of 26 September 1898*,[3] *Anglo-Dutch Convention regarding legal proceedings in civil and commercial matters of 31 May 1932*[4] *and other treaties and agreements concluded between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland prior to 27 December 1949*

Indonesia

The position of Indonesia as a successor State with regard to treaties was covered, so far as the Netherlands was concerned, in the Agreement on Transitional Measures (especially Article 5) which was part of the overall settlement reached at the Round Table Conference, 1949.[5] It is there laid down that the rights and obligations of the Netherlands arising out of treaties concluded by them shall be considered as the rights and obligations of the Republic of the United States of Indonesia "only where and inasmuch as such treaties and agreements are applicable to the jurisdiction of the Republic of the United States of Indonesia and with the exception of rights and duties arising out of treaties and agreements to which the Republic of the United States of Indonesia cannot become a party on the grounds of the provisions of such treaties

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[1] The Anglo-Ethiopian Treaty with Annexes, signed at Addis Ababa on 14 May 1897 (U.K. Treaty Series No. 2 (1898), C. 8715) defines the boundary between the Somaliland Protectorate and Ethiopia and provides for the rights and obligations of the parties on such matters as commercial activities across the frontier and through the caravan route open to both nations, import duties and local taxation, transit of arms, prohibition of the frontier-crossing of armed bands, the use of grazing-grounds by the tribes occupying either side of the frontier, and free access to the nearest wells by these tribes.

[2] The Agreement between the United Kingdom and Ethiopia, signed at London on 29 November 1954 (Cmnd. 9348), in part, stipulates the implementation of the provisions of the 1897 Anglo-Ethiopian Treaty, relating to grazing rights.

[3] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XXIX, p. 145.

[4] League of Nations, *Treaty Series*, vol. CXL, p. 287.

[5] See INDONESIA, section A, I, 1.

and agreements". However, as far as can be made out, neither the Indonesians nor the Dutch have ever made it clear precisely what treaties the former were deemed to have inherited from the latter. The Protocol and Exchange of Letters of 1954 about the abolition of the Dutch-Indonesian Union was not explicit on this point, and in any case this Protocol was never ratified. Nor is any clarification to be found in the Indonesian Law of 1956 which unilaterally abrogated the Round Table Conference Agreements.

The only positive indications that the United Kingdom has on the attitude of the Indonesians to the matter of succession are:

(1) In February 1950 the Indonesians applied for the extradition of Westerling from Singapore for murder and other crimes. They stated that they had assumed the rights and obligations of the Netherlands Government in respect of their territory under the 1898 Anglo-Dutch Extradition Treaty. Later the same year the Indonesian Prime Minister affirmed in writing that his Government considered the Anglo-Dutch treaty binding on Indonesia. The application for Westerling's extradition failed in fact because the Singapore High Court decided that the Order in Council of 1899, applying the 1898 treaty, did not cover Indonesia.[1] The Indonesians do not appear to have made any other application since then.

(2) In July 1952 the Legal Department of the Indonesian Ministry for Foreign Affairs told H.M. Embassy that the Anglo-Dutch Civil Procedure Convention, extended to the Netherlands East Indies in March 1935[2] was not considered as being in force in Indonesia and that they would like a new Convention to be drawn up.

(3) In January 1961 the Indonesian Ministry for Foreign Affairs, in reply to a United Kingdom enquiry relating to the continuance in force of treaties and agreements concluded between the Kingdom of the Netherlands and the United Kingdom prior to December 27, 1949, and previously applicable to the former Netherlands Indies, stated that of such agreements they considered as still in force only those which either Government had expressed a wish to continue and the other had agreed thereto.

4. *Treaty between the Government of Afghanistan and His Britannic Majesty's Government for the establishment of neighbourly relations, signed at Kabul on 22 November 1921*[3]

India and Pakistan

The Treaty concluded at Kabul on 22 November 1921 between the Governments of Afghanistan and the United Kingdom guaranteed, *inter alia*, Afghan independence and the status of the Indo-Afghan frontier as accepted by the Afghan Government under Article 5 of the treaty concluded at Rawalpindi on 8 August 1919.

In the course of 1947 it became apparent from indications in the Afghan press and elsewhere that the Afghan Government might base a claim to the North-West Frontier Province on the legal doctrine of *rebus sic stantibus*, putting forward the argument that the boundary

[1] See section B below.
[2] League of Nations, *Treaty Series*, vol. CLVI, p. 276.
[3] *Ibid.*, vol. XIV, p. 47.

defined in Article 2 of the 1921 Treaty had been agreed to on the basis of the continuance of a certain state of facts, namely British rule in India, and that because of the grant of independence to India and Pakistan the 1921 Treaty lapsed.

The Foreign Office were advised that the splitting of the former India into two States — India and Pakistan — and the withdrawal of British rule from India had not caused the Afghan Treaty to lapse and it was hence still in force. It was nevertheless suggested that an examination of the Treaty might show that some of its provisions being political in nature or relating to continuous exchange of diplomatic missions were in the category of those which did not devolve where a State succession took place. However, any executed clauses such as those providing for establishment of an international boundary or, rather, what had been done already under executed clauses of the Treaty, could not be affected, whatever the position about the Treaty itself might be.

5. *Convention between Great Britain and Belgium with a view to facilitating Belgian traffic through the territories of East Africa, signed at London on 15 March 1921,*[1] *and Agreement between the Government of Belgium and the Government of the United Kingdom of Great Britain and Northern Ireland, relative to the construction of a deep-water quay at the port of Dar es Salaam, signed at London on 6 April 1951*[2]

Tanganyika

Shortly before Tanganyika became independent, the Belgian Embassy in London approached the Foreign Office on the question of the future of the Agreement of 15 March 1921 concerning the traffic of goods and persons across East Africa. It was pointed out that the trusteeship territories of Ruanda and Urundi had an interest in the Agreement and that Belgium was still responsible for the safeguard of this interest until the independence of the two territories. Furthermore, the Belgian Government took the view that Belgium had a direct interest in the Agreement.

Accordingly, the British Government, who, as one of the signatories of the Agreement, also had an interest in it, enquired of the Tanganyika Government their views on the future of the Agreement of 1921 and also the Belbase Agreement of 1951 which accorded to the Belgian Government certain port facilities in Tanganyika.

We were informed that it was the intention of the Tanganyika Government to treat both the 1921 and 1951 Agreements as void; that they intended to resume possession of the sites in the ports of Dar-es-Salaam and Kigoma after giving reasonable notice; and that they considered that the Government of the Congo and those of Ruanda and Urundi, through the Government of Belgium, should be so informed and invited to frame a claim for compensation should they so wish.

At the request of the Tanganyika Government, these views were passed to the Belgian Embassy in London and through our Embassy in Leopoldville to the Government of the Congo. At the same time, each Government was informed that we had made a formal reply to the Tanganyika Government's views in which it was stated that the British

[1] League of Nations, *Treaty Series*, vol. V, p. 319.
[2] United Nations, *Treaty Series*, vol. 110, p. 3.

Government did not subscribe to the view that the provisions of the 1921 and 1951 Anglo-Belgian Agreements were void but that the international consequences of the Tanganyika Government's views would not, after independence, be the concern of the United Kingdom Government.

6. *Convention between the United Kingdom of Great Britain and Northern Ireland and France respecting legal proceedings in civil and commercial matters, signed at London on 2 February 1922*[1]

(i) *Cambodia*

The Civil Procedure Convention between France and the United Kingdom, concluded on 2 February 1922, was extended to French Indo-China on 1 January 1933 though the Supplementary Convention of 15 April 1936[2] was not so extended.

In 1958, Her Majesty's Embassy at Phnom Penh approached the Cambodian Foreign Ministry in order to ascertain whether Cambodia, as a successor of French Indo-China, would agree to continue the Convention. In 1959, however, the Cambodian Ministry of Foreign Affairs informed Her Majesty's Embassy that "because of the independence of Cambodia and of the friendly relations between our two countries", they would like to negotiate a new convention on legal procedure in civil and commercial matters. The position is still unresolved.

(ii) *Laos*

In a Note dated 15 March 1961, the Laotian Ministry of Foreign Affairs informed Her Majesty's Embassy at Vientiane that Laos considered the Anglo-French Civil Procedure Convention of 1922 (this had been extended to French Indo-China in 1933) to be still in force between the United Kingdom and the Kingdom of Laos as a consequence of the Treaty of Friendship and Association concluded between France and Laos on 22 October 1953.[3] Article 1 of this Treaty states:

> "The French Republic recognises and declares that the Kingdom of Laos is a fully independent and sovereign State. Consequently it succeeds the French Republic in all the rights and obligations deriving from all international treaties and special conventions contracted by France prior to the present convention on behalf of Laos or French Indo-China."

Her Majesty's Government were willing to regard the Anglo-French Civil Procedure Convention of 1922 as continuing to apply as between the United Kingdom and the Kingdom of Laos, but wished it to be understood that the Convention continued in force not by virtue of the 1953 Franco-Laotian Treaty of Friendship, but because Her Majesty's Government and the Government of Laos were agreed that the 1922 Anglo-French Civil Procedure Convention should continue in force as between the United Kingdom and Laos. The Laotian Government accepted this view in a Note dated 26 December 1962.

Her Majesty's Government did not consider that there was any auto-

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[1] League of Nations, *Treaty Series*, vol. X, p. 447.
[2] *Ibid.*, vol. CCIII, p. 123.
[3] See Laos above.

matic succession by newly independent territories to the rights and obligations under civil procedure conventions or treaties of a similar nature entered into by their mother country on their behalf before independence. Any agreement between the mother country and the newly independent State to the effect that the independent State should succeed to the rights and duties under treaties entered into by the mother country on their behalf was binding upon the Contracting Parties to that agreement, but not necessarily on States which had entered into Agreements with the mother country in respect of the territory which had now become independent. Consequently there must be some act after independence of "novation" between the newly independent State and the other Contracting Party.

(iii) *Lebanon*

In a Note dated 31 October 1952, the Government of the Lebanon informed H.M. Embassy at Beirut that they recognised the Anglo-French Civil Procedure Convention of 2 February 1922 as continuing to apply to the United Kingdom.

(iv) *Viet-Nam*

Article 2 of the Treaty of Independence signed in June 1954, between Viet-Nam and the French Republic reads:

> "Viet-Nam takes over from France all rights and obligations resulting from international treaties or conventions contracted by France in the name of the State of Viet-Nam, and all other treaties and conventions concluded by France in the name of French Indo-China in so far as these affect Viet-Nam."

The Viet-Namese stated in 1959 that they did not consider the Anglo-French Civil Procedure Convention of 1922 as being in force between the United Kingdom and Viet-Nam.

7. *Convention between His Majesty in respect of the United Kingdom and the President of the United States of America regarding the boundary between the Philippine Archipelago and the State of North Borneo, signed at Washington on 2 January 1930*[1]

Philippines

The administration of the Turtle and Mangsee Islands was transferred from the Government of North Borneo to the Philippine Government in 1948. The recent history of this small group of islands is briefly as follows.

In an exchange of Notes between the British Ambassador in Washington and the United States Secretary of State on 3 July and 10 July 1907,[2] the United States agreed to leave the British North Borneo Company undisturbed in the administration of the above islands, sovercignty over which was indisputably recognized as pertaining to the United States of America, until the two Governmcnts could by treaty delimit the boundary between their respective domains in that area or until the expiry of one ycar from the date when notice of termination could be given by either to the other.

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[1] League of Nations, *Treaty Series*, vol. CXXXVII, p. 297.
[2] *Ibid.*, p. 314.

In a Convention signed at Washington on 2 January 1930, between the Governments of the United States and Great Britain, the two Governments agreed to delimit the boundary of the Philippine Archipelago and the State of North Borneo by drawing a line which passed through the Turtle and Mangsee Islands. It was agreed that all islands to the north and east of that line and all islands and rocks traversed by the line should belong to the Philippine Archipelago and all islands to the south and west of the line should belong to the State of North Borneo. Seven of the Turtle and Mangsee Islands fell to the north and east of this line. However, the United States agreed that the North Borneo Company should continue to administer the islands in question "unless or until the United States Government give notice to HMG of their desire that the administration of the islands should be transferred to them". Such transfer would be effected within one year after such notice was given on a day and in a manner to be arranged mutually.

In July 1946 the Republic of the Philippines came into existence; and later in the year served notice to the British Government of the desire of the Philippine Government to take over the administration of the Turtle and Mangsee Islands. In a Note dated 24 September 1946 and addressed to the Philippine Secretary of Foreign Affairs, the British Government acknowledged that as a result of the Act of Independence "the Government of the Republic of the Philippines has succeeded to the rights and obligations of the United States under the Notes of 1930".

8. *Treaty of commerce and navigation between Great Britain and Siam, signed at Bangkok on 23 November 1937*[1]

India and Pakistan

During the course of negotiations with the Siamese Government concerning the Anglo-Siam Treaty of Commerce and Navigation signed at Bangkok on 23 November 1937, the United Kingdom Government reminded the Siamese Government that if the latter agreed to the proposals forwarded by the United Kingdom Government concerning the above Treaty, it would apply in respect of all territories to which it had been previously made applicable either under Article 23 or Article 24 thereof.

This applied to both India and Pakistan, the Governments of which were successor Governments of undivided India, as the latter was constituted at the time when the 1937 treaty was made applicable to India.

The Siamese Government would not agree that the 1937 Treaty was applicable to Pakistan. In their view, a new State was not bound by the treaties of Commerce and Navigation concluded by the State of which it was formerly an integral part. They had, however, no objection to Pakistan acceding to the 1937 Treaty in accordance with the relevant provisions thereof.

The United Kingdom Government, in reply, reiterated their view that the Government of Pakistan equally with the Government of India was a successor Government to the former Government of undivided India as constituted at the time when the 1937 Treaty was made applicable to India. The readiness and desire of the Government of Pakistan to succeed to the international obligations and rights of the former

[1] League of Nations, *Treaty Series*, vol. CLXXXVIII, p. 333.

Government of undivided India was made clear in the Indian Independence (International Arrangements) Order, 1947.[1] The United Kingdom Government found it hard to understand how the Siamese Government differentiated between India and Pakistan since both were former parts of undivided India and both alike should have been entitled to succeed to the rights and obligations of the 1937 Treaty.

The United Kingdom Government also stated that if the Siamese Government were not prepared to recognise Pakistan's rights as a co-equal successor State with India, then the position of Pakistan would seem otherwise only to be analogous to that of the old dominions when they became separate international persons. In the case of the "old dominions", they were generally recognised as succeeding to the rights and obligations which had been assumed by the United Kingdom Government on behalf of the territories from which the new States were constituted. This applied not only to treaties which referred to the territories concerned but also to treaties, such as commercial treaties, whose provisions applied territorially to the whole Empire.

The Siamese Government, however, adhered to their original view, namely denying the right of Pakistan to succeed to the Treaty but expressing willingness that she should accede. The Government of Pakistan did not, in the event, accede to the Treaty and the matter was dropped.

During the course of consultations with the Government of Pakistan concerning these same negotiations, they expressed the view, *inter alia*, that *by virtue of* the Indian Independence (International Arrangements) Order, 1947, rights and obligations under all agreements to which the Government of undivided India was a party, had devolved upon both the Governments of Pakistan and of India except in so far as any such agreement could be held to have had an exclusive territorial application to an area now comprised in either of the two new territories. The Anglo-Siam Treaty of 1937 had been applied generally to undivided India and did not therefore come within the terms of the exception.

The United Kingdom Government, while agreeing in general with the views of the Government of Pakistan, pointed out, however, to the latter that the position of Pakistan vis-à-vis Siam could not be *governed* by the 1947 Order which only had, and only could have, validity as between Pakistan and India. The United Kingdom Government would have hoped, however, that the Siamese Government would have accepted the position as set out in the Order.

9. *Agreement between France and the United Kingdom of Great Britain and Northern Ireland relating to air transport between British and French territories, signed at London on 28 February 1946*[2]

Ghana

On 25 November 1957, an Exchange of Notes[3] took place between the Government of the United Kingdom and the Government of Ghana with reference to the inheritance of international rights and obligations by the Government of Ghana . . .

[1] See section A, I (*b*) 1, above.
[2] United Nations, *Treaty Series*, vol. 27, p. 173.
[3] See GHANA, section A.

As a consequence of certain difficulties with the French over air services in West Africa, the Ghana Government inquired of the United Kingdom Government whether as a result of the exchange of letters concerning treaty rights and obligations signed on independence, the Ghana Government inherited obligations under various bilateral air agreements undertaken by the United Kingdom which were relevant to the territory of Ghana.

The United Kingdom Government in reply stated that, in their view, the exchange of letters referred to, covered air services agreements, including the Anglo-French Agreement of 1946. The French Government, by exercising in Ghana rights under the Agreement, had tacitly accepted the inheritance by Ghana of the former obligations of the United Kingdom under the Agreement and were thereby estopped from maintaining that Ghana could not claim any rights on her side under the said Agreement.

10. *Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Norwegian Government for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at London, on 2 May 1957*[1]

British territories

In April 1963, the Norwegian Embassy in London inquired of the Foreign Office whether Her Majesty's Government considered the term of the Anglo-Norwegian Double Taxation Agreement (1951) as remaining in force between Norway and certain Commonwealth countries to which the Convention had been extended by Exchange of Notes (1955)[2] and which had since become independent.

At the time of the inquiry, seven of the territories to which the Convention had been extended had become independent and with each we had concluded an "Inheritance Agreement" concerning treaty rights and obligations.

The Foreign Office replied to the effect that the Inheritance Agreements concluded between the United Kingdom and those countries now independent were thought to show that the Governments of those countries would accept the position that the rights and obligations under the Double Taxation Agreement should still apply to those countries but that the question whether the Agreement was, in fact, still in force between those countries and Norway was a matter to be resolved by the Norwegian Government and the Governments of those countries.

[1] United Nations, *Treaty Series*, vol. 106, p. 101.

[2] *Ibid.*, vol. 219, p. 340. A table of territories to which the Convention is to be extended is annexed to the Note sent by Her Britannic Majesty's Ambassador to the Royal Norwegian Ministry for Foreign Affairs.

11. *Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Germany for the extradition of fugitive criminals, signed at Bonn, on 23 February 1960*[1] *and Agreement between Israel and the United Kingdom of Great Britain and Northern Ireland for the reciprocal extradition of criminals, signed at London on 4 April 1960*[2]

Nigeria

On 23 February 1960 the United Kingdom signed an Extradition Agreement with the Federal German Republic. Article 2 (*c*) of the Agreement applied it to "all British Colonies (except Southern Rhodesia) for the international relations of which the Government of the United Kingdom are responsible". Article 2 (*d*) applied the Agreement to the various British Protectorates, among them Nigeria Protectorate. Article 7 stated *inter alia*: "The date on which this Agreement shall come into force shall be agreed upon by an Exchange of Notes." On 16 July 1960 an Exchange of Notes took place between the two Governments[3] in which it was agreed that the Agreement should enter into force on 1 September 1960.

Article 2 (*d*) and (*e*) of the Agreement with Israel, signed on 4 April 1960, applied it in the same phraseology to the same territories as did Article 2 (*c*) and (*d*) of the Agreement with Germany above. The Agreement with Israel was to enter into force "three months after the date of the exchange of ratifications". These were exchanged on 26 July 1960, and the Agreement duly came into force on 26 October 1960.

Orders in Council, giving effect to the Agreements, were issued, in the case of the Agreement with Germany, on 3 August 1960 and, in the case of the Agreement with Israel, on 12 September 1960. Both Orders listed the Colony of Nigeria as a territory to which the Orders applied. It so happened that, as the Orders applying the Agreements were made such a short time before Nigerian independence, they were not brought to the attention of the Nigerian Government until after independence had been attained on 1 October 1960.

Shortly after Nigeria became independent, it was pointed out to the Nigerian authorities that because of Article 2 (*c*) and (*d*) of the Anglo-German Extradition Treaty of 23 February 1960 and Article 2 (*d*) and (*e*) of the Anglo-Israeli Extradition Treaty of 4 April 1960, both Agreements, which were signed before independence, were applicable as far as the United Kingdom Government were concerned to all those territories which made up the pre-independence Federation of Nigeria. It was further pointed out that the rights and obligations of the United Kingdom Government in relation to these agreements, one of which had come into effect on 1 September 1960 and the other, which although it had not come into effect, had been ratified prior to independence, had been accepted by the Nigerian Government in accordance with the Exchange of Letters concerning treaty rights and obligations dated 1 October 1960 (the Inheritance Agreement).

The Nigerian authorities replied that the Anglo-Israeli Agreement which had not come into effect prior to independence was not the type

[1] United Nations, *Treaty Series*, vol. 385, p. 39.
[2] *Ibid.*, vol. 377, p. 331.
[3] See NIGERIA, section A.

of international agreement that it was envisaged the Exchange of Letters should cover. As regards the Anglo-German Agreement, although they agreed that the Exchange of letters provided for assumption of obligations and enjoyment of rights under existing international treaties and further that the agreement in question fell into this class, they pointed out that the agreement was a bilateral one under which the parties assumed obligations and became entitled to exercise rights *inter se*: it was their view that, this being so, the intention of the High Contracting Parties was that either party only should be entitled to request the return of a fugitive criminal. The conclusion they drew was that it could not have been the intention of the High Contracting Parties that an independent third party could come in and enjoy any rights under the Agreement without the consent of the parties. In the circumstances, the Nigerian authorities decided that Nigeria should give no effect to either of the Agreements under reference, but should negotiate separate extradition treaties with the two countries concerned.

B. DECISIONS OF NATIONAL COURTS

TEXTS OF JUDGMENTS

High Court of the Colony of Singapore (Island of Singapore)

Re Westerling: Judgment of 15 August 1950[1]

[The question whether British "Extraditions Acts" apply to the Republic of Indonesia under the "1898 Anglo-Netherlands Extradition Treaty"[2] and the related Order-in-Council of 2 February 1899 — Incorporation of international agreements into municipal law — Inheritance agreements and third States — Effects of recognition — Role of the Judiciary in matters relating to the conduct of international relations — Effects of a statement by the Executive on succession to treaty rights]

"This is an application for an Order of Prohibition directed to the District Judge and First Magistrate Singapore to stay Extradition proceedings brought on behalf of the United States of Indonesia for the surrender of Raymond Paul Pierre Westerling on account of crimes said to have been committed in the island of Java.

"No objection has been taken to the nature of the Order asked, but a preliminary objection was taken by Sir Roland Braddell, appearing for the Republic of the United States of Indonesia, to the form of the application on account of certain irregularities, or of non-conformity with the procedure prescribed.

"Counsel contended that these irregularities deprived the court of jurisdiction to hear the matter which had come before it. He pointed to section 10 of the Administration of Justice (Miscellaneous Provisions) Act 1938,[3] which provides that rules shall be made prescribing the procedure to be followed in obtaining the order substituted for the Prerogative Writs. This provision he contended is mandatory. Even if this provision be mandatory on the Rule making body, a question which, I

[1] I Malayan Law Reports 228.

[2] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XXIX, p. 145.

[3] 1 and 2 Geo. VI. c. 63.

think, might be disputed, yet it would not, for that reason, alter in any way the character of the rules made, which are more rules of procedure indistinguishable from other rules of that kind. The jurisdiction of this Court is inherent in it at Common Law, or is conferred by statute or by a combination of Statute and Common Law, and is not in my opinion to be taken away by any ordinary rule of procedure. In considering the nature and gravity of any non-observance of a rule of procedure, it is always right to bear in mind that the principal purpose of such rules is to bring the necessary parties before the court, with a knowledge of the points at issue and in a position to reply thereto. If therefore the proper parties are before the court with an opportunity of being heard and on proper notice any non-observance would seem to me of minor importance. No allegation was made that any party was taken by surprise, or put to any expense and no adjournment was asked.

"The substance of the objection was that the motion paper for the leave to apply was not accompanied by a Statement in accordance with Order 59 rule 3 (2) Rules of the Supreme Court which here apply. This statement, it is said, is in the nature of a pleading, and the applicant is strictly confined to the grounds of his application set out therein. In this case the motion paper set out as the one and only ground of the application that 'the said Extradition case No. 1 of 1950 relates to an application at the suit of the Government of the United States of Indonesia for the extradition (pursuant to the Extradition Acts 1870 to 1906 of the United Kingdom) of the said Raymond Paul Pierre Westerling to the said United States of Indonesia which is a country and/or territory to which the said Extradition Acts 1870 to 1906 of the United Kingdom do not apply, and that the arrest of the said Raymond Paul Pierre Westerling pursuant to the above-mentioned Warrant and the proceedings against him in the First Criminal District Court of the Colony of Singapore as abovementioned are therefore illegal for want of jurisdiction'.

"The extent of this pleading is, therefore, very limited. Sir Roland Braddell referred to the Practice Note in Weekly Notes of 4th March 1939 at page 76 which itself refers to a case of non-observance of this rule. In that case the affidavit merely stated that the matters set out in the statement were true, and did not further verify the facts relied on. The court required an affidavit exhibiting the statement and not only (as it would seem) referring thereto.

"In this case the affidavit filed refers specifically to no statement, there being none. Some matters contained are according to certain of the applicant's contentions matters of law and might be regarded as the grounds. According to the Attorney General's contention these matters are in this court matters of fact. Though the facts may not be peculiarly within the deponent's knowledge, they are the facts on which he relies and no real objection was taken to the substance of the affidavit. Sir Roland did allege that he was prejudiced by the grounds being unconfined, by their speaking incorrectly of the Acts applying to a country and by the reference to Extradition Acts 1870-1906 instead of 1870-1932, but I could find no real prejudice in this. I intimated that I was prepared to treat the portion of the paper setting out the relief and the ground as a statement, by which means the parties would seem sufficiently protected from enlargement of the claim, and in these circumstances, having regard to the very limited ground and the counsel responsible for the application not wishing to amend, I thought it proper

to hear the arguments of parties. Sir Roland stated that he did not waive his objection and might renew it, and this, of course, he is perfectly free to do. He later objected — or wanted an objection noted — to an affidavit filed by the applicant at the desire of the Attorney General and correspondence exhibited thereto. Little turns on these letters.

"The ground was argued in two ways arising from the scheme of the Extradition Acts 1870-1932, of which Acts, however, that of 1870 alone is relevant. That Act does not deal with a purely internal matter or one which can be regulated by Municipal law alone. Extradition imports two states, one requiring extradition and one from which the surrender of an alleged offender is required. It also touches the personal liberties of the alleged offender. The Act, though it may be capable of general application, of itself may be said to apply to nothing. Before it can be made to apply, there must be states agreeing to mutual extradition. The Act, therefore, contemplates a Treaty, or arrangement, entered into with another state desiring to establish a system of extradition, and it accordingly goes on to authorise His Majesty in Council to make an order, reciting or embodying the Treaty, and applying the Acts in the case of that state which is the other party thereto. Any act taken by officers of the state, or by others, for the purpose of Extradition against an individual must be under and in accordance with the Statute so applied.

"The applicant alleged that there was neither Treaty, nor Order in Council with the United States of Indonesia, the requisitioning state in this case, under or in respect of which any action could be taken under the Statute. It is not disputed that there is no specific Treaty entered into with the United States of Indonesia for this purpose, and, consequently, there is no Order in Council applying the acts to that country in regard to that treaty. The argument on the first point was partly in anticipation of possible cases to be made, and partly in reply to a statement in the correspondence to which I have referred, that the United States of Indonesia is a 'successor' of the Netherlands. The argument was necessarily nebulous, as there were several points, such as the date, and mode, of His Majesty's recognition of the United States of Indonesia, and whether His Majesty's Government has consented to any devolution of rights which might be affected by Article 5 of the Draft Agreement on Transitional Measures made at the Round Table Conference at the Hague on 2nd November 1949, on which, it was suggested, the court would have to seek information in some way or another. At an early stage I raised the question of how far these matters could be tried by this court, since the view of His Majesty's Government would seem to be clearly inferable from the action already taken, and of how far they were relevant to the matter before it. Counsel however contended (and rightly) that, if there were no treaty, the Acts could not be invoked, and the matter should be determined beyond doubt. He argued that the United States of Indonesia was a new, and sovereign state and that whatever the Netherlands might have done to give it 'succession' to itself, the acts of these two states could not affect a third.

"I do not propose to set out, or to consider, these arguments at length, as, in my opinion, they are completely answered by the contentions put forward by the Attorney General, and by the statement read, and put in, by him as a certificate of the view of His Majesty. This statement is to the following effect.

'I have to inform the Court on the authority of the Secretary of State for Foreign Affairs that the Republic of the United States of Indonesia has succeeded to the rights and obligations of the Kingdom of the Netherlands under the Anglo-Netherlands Extradition Treaty of 1898 in respect of Indonesia and that the said Treaty now applies between His Majesty's Government in the United Kingdom and the Republic of the United States of Indonesia'.

"The Attorney General contended that the question of whether the Crown is in Treaty relations with a foreign state is a matter on which the court should seek guidance from the appropriate department of the Executive, and whatever may be certified as His Majesty's view of the matter in reply is, not merely evidence of the fact, but is conclusive evidence. The views of His Majesty may be ascertained not only in reply to specific inquiries by the court but may be volunteered to the court, and, in any matter in which the King's Attorney General appears and makes a statement of those views, such statement is equally conclusive. The court is so bound by the views of His Majesty on all matters affecting the Crown's relations with Foreign States and on all questions of International Law.

"In support of the first proposition he cited numerous dicta in the Duff Development Company *v.* Government of Kelantan,[1] Mighell *v.* Sultan of Johore[2] and other cases to which it is necessary for me to refer. This point is one which was recently debated, and contested, at length in these courts in The Sultan of Johore *v.* Tungku Abubakar and Ors.,[3] and in that case I expressed an opinion which was entirely in accordance with the view put forward by the Attorney General, and from which I see no reason to retract. On his second proposition he referred to Engelke *v.* Musmann,[4] and the Gagara,[5] and other cases. While the courts have in some cases referred to an established procedure of reference by the court, as Lord Cave in the Duff Development case (page 805) spoke of the established practice of the courts seeking information in this way when any question of the sovereignty of a foreign state is raised; yet this does not imply that no other procedure is open, or that one mode of procedure is peculiarly applicable to a specific subject of inquiry. In Luther *v.* Sagor,[6] Roche J. himself caused inquiries to be so made, although letters from the Foreign Office had been obtained by the parties and were before him, but he did so, not to comply with any practice, but in case ampler or further information might then be available. There can be no doubt that a concurrent practice of accepting in the same sense information conveyed to the court by the Law Officers existed and was in fact followed in the Parlement Belge[7] which is perhaps the most important case on these matters, and in which the question raised as to the international convention and as to the possession of the vessel by a reigning sovereign were accepted on the Attorney General's pleading, and this is a question closely analogous to that referred to by

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[1] 1924 A.C. 797.
[2] 1894 1 Q.B. 149.
[3] 1950 16 M.L.J. 21.
[4] 1928 A.C. 433.
[5] 1919 P. 95.
[6] 1921 1 K.B. 456.
[7] 4 P.D. 129; 5 P.D. 197.

Lord Cave. It seems that there is no prescribed form of proof, but the court is bound by any intimation of His Majesty's view by whatever channel he pleases to communicate it.

"Sir Roland Braddell in dealing with the same matter spoke of foreign affairs as the subject of such enquiry and conclusive evidence. He went on to discuss Acts of State which could not be questioned by legal process as giving rise to no right of action in tort or contract. He did not, as I understood him, contend that such a plea could defeat a subject, in respect, at least, of an act in this country, or that the applicant, being an alien, his arrest might be so excused. He went on to consider the King's Treaty making powers and spoke of their making as acts of state. He admitted that such treaties could not alter the law, but urged that the Government making them, would probably be in a position to obtain any necessary change of the law from Parliament. No question, however, of His Majesty's power to make Treaties, has been raised, the only question is whether the necessary treaty has, in this case, been made — or more generally whether such treaty relations exist.

"The Attorney General's third proposition goes further than Sir Roland's arguments. It is thought necessary in order to cover the statement that the Republic has succeeded to the rights and obligations of the Kingdom of the Netherlands under the Treaty of 1898. This might be regarded as a conclusion drawn from the application of rules of International Law, and the application of rules of law might be thought a function of the courts. He rested this proposition on Foster *v.* Globe Venture Syndicate[1] and The Zamora.[2] I do not think these cases give his proposition much support. The subject of inquiry in the first was where a boundary exists in fact, without, it would seem to me, any reference to ownership, as the Attorney General suggests, or to the legal title at any law to land on either side thereof. It might be a boundary of sovereignty, and not of ownership, nor of legal possession. The second case seems rather against him. The question turns on what is here meant by International Law. Counsel for applicant had referred to the definition of Lord Russell of Killowen adopted by Lord Alverstone and the Divisional Court in West Rand Central Gold Mining Company Ltd. *v.* The King[3] 'it is the sum of the rules or usages which civilized States have agreed shall be binding upon them in their dealings with one another'. From which and from a general view, it might be thought that, apart from express agreement, it is not a law having moral authority, or as embodying ethical principles commanding obedience, but more historical generalisations from conduct. It would, in a fuller investigation, be necessary to enquire how far 'rules' are anything more than deductions from repeated acts, or from usual conduct. As to such rules and as to usage, the generality of the conduct would be immaterial as the courts would be bound to accept His Majesty's views of such acts, and, in general, the acts of His Majesty's government. In this view there would, therefore, be little difference between the first propositions and the third. On the other hand the proposition in its full extent seems directly con-

[1] 1900 1 C.H. 811.
[2] 1916 2 A.C. 77.
[3] 1905 2 K.B. 407.

trary to the principal point in the Zamora case[1] cited, which I should have understood to be the Privy Council's rejection of Lord Stowell's dictum in the Fox (3) that Orders in Council in the prize court are analogous to Statutes in the Common Law courts, and of the apparent opinion that the Crown could legislate by Order in Council, and its acceptance of his other opinion in the Maria[2] that the Prize Court is a court applying International Law, though there are passages suggesting that the Privy Council's opinion is confined to cases in which the Crown is a party. The contrary proposition was Lord Robert Cecil's second proposition in West Rand Central Gold Mining Company Ltd. *v.* Rex[3] which there received but very partial acceptance. The proposition may be too wide, but it might be accepted for the purposes of this case, for if the court be bound by the Crown's recognition of the Republic, it must also accept what the Republic is recognized as; only such full acceptance would seem to me consistent with the full meaning of the majority opinions in the Duff Development Case. I think that all the matters set out in the statement quoted must be accepted and are conclusively established.

"The Attorney General went on to argue on an assumption that the statement was not accepted as conclusive. It would be unnecessary to follow those arguments, and his examples of succession, were it not that they throw some light on the application of the Acts, and introduced some illuminating cases not, in my opinion, very helpful to his case. It is not, nor could it be, disputed that the Extradition Acts were applied to what are now the territories of the Republic, and in particular, to Java. The Attorney General referred to sections, 2, 5 and 25 of the Act of 1870. There can be no doubt that under these sections the Acts were applied to Java, but they were not applied to Java as such but only as being a colony of the Netherlands. Had it not been a colony the provisions would not have operated. The Attorney General argued that the Acts were applied to those territories, and continued to apply. The Act does not speak of territories, it speaks consistently of 'states' by which I can only understand sovereign states including therein such areas as section 25 requires.

"In this connexion he referred among other instances to some furnished by the dissolution of the Austro-Hungarian Empire. A treaty was made on 3rd December 1873 with the Emperor of Austria, King of Bohemia etc. and Apostolic King of Hungary and an order in council applying the acts was made on 17th March 1874. After the 1914-18 war notices were given to Austria and Hungary reviving this treaty. We have no clear information as to these notices, but they are understood to be designed to prevent, or remedy, any abrogation affected by war. In the same way a Treaty was made with Serbia on 6th December 1900, which continued with Yugoslavia. Later orders in Council, including No. 971 of 30th July 1923 recited such Treaty as still existing. The Attorney General referred to several examples. The Attorney General was arguing, on the assumption that Austria after the war was a different person at International Law from the party to the treaty, that a treaty made with one party might continue with another, and submitted that a recital in

[1] 1916 2 A.C. 94-97; 2 Eng. P.C. 61.
[2] 1 C. Rob. 340.
[3] 1905 2 K.B. 391.

an Order in Council, relying on a dictum in the Zamora[1] is binding on the court.

"I am unaware of any authority for the view that there is a breach in the historical continuity of the Austrian or Hungarian state; changes of constitution, of name, or of area, are of varying importance and would not necessarily change the personality of a state. To me the cases would seem to imply the opposite, and the only apparently relevant case among the successors to the Austro-Hungarian Empire, would have seemed to be Czechoslovakia. On that case we have no more certain guidance than that in Sir Arnold McNair's book Law of Treaties at page 453 where he says that he believes that in the view of the British Government Czechoslovakia despite reference in a Treaty of 1919 with the Allies to the Kingdom of Bohemia Markgraviate of Moravia and Duchy of Silesia is no successor to the Austro-Hungarian Empire, but he gives no reason for that belief; and also that guidance afforded by the making of a new treaty and a new Order in Council with Czechoslovakia on 11th November 1924 and on 20th November 1926.

"It might seem hard to draw such distinction between the Republic and Czechoslovakia as to rights of succession. The latter had been in the nature of an ally in the preceding war, and was named in a form as King of Bohemia etc. in the treaty in question. The treaty applied to the Republic merely as a colony. It remains in some treaty relations with the Netherlands called a Union, but is a separate Sovereign State. The cases would seem to show three possibilities: a continuing state, a 'successor' contemporaneous with its predecessor and a new state which is not a successor. The Austrian cases on this point may not therefore be strictly opposite, but on the other hand, the question of succession being concluded, they may yet provide some analogy as to this theory of the continuing territorial application of the act.

"My conclusions from all this are the opposite of those of the Attorney General. It would seem to me that, in the case of Austria and Hungary, the same treaty and order continued, although originally made jointly with a dual monarchy, and despite the reduction in size; while, in the case of Serbia, the same state under the same king was recognized as continuing in Yugoslavia. In Czechoslovakia where a new state arose a new treaty and a new Order were made, although had that state merely been recognized as a 'successor' all that would have seemed needed, according to the Attorney General's case, would have been a notice similar to those given to Austria and Hungary. Taking the territory of the Empire, before the war the acts were applied in respect of all in accordance with the Imperial treaty. There was, however, no continuing application to territory, except where there was continuing state personality, but in Czechoslovakia where the acts had presumably ceased to apply new provisions had to be made, while in those parts absorbed by Serbia an old, and, in a sense, competing, treaty and order took the place of the Imperial treaty and its corresponding order. In my opinion, application depends on the existence of an appropriate Treaty and on appropriate Order in Council. The statement affirms such a Treaty.

"From this Statement it would also appear that there may be at International Law some one, unknown, I believe, to other law, in the nature of a *haeras viventis*. It may not be for this court to discuss his

[1] 1916 a A.C. 77-98.

qualities, but such a successor must, it would seem, be a still more separate and distinct person than the more usual person claiming by succession; for he is contemporaneously existent with his predecessor. The word succession otherwise suggests an analogy to natural persons. It is by no means unusual for a successor to be determined by a deceased person's personal law, or the law of his domicile, but the construction of a grant to the predecessor, or of his contracts, would be determined by the law of the land. The fact that a successor may be determined elsewhere by International Law presents no great difficulty. None of the parties had much to say as to the Order in Council, though it appears a matter of first practical importance. The only Order in Council on which the Republic could rely is that of 2nd February 1899, corresponding with the treaty referred to in the Statement. Mr. Massey drew attention to the Order in Council and to the operative penultimate paragraph which applies the Acts to the State of the Netherlands only; for it reads:

> 'Now, therefore, Her Majesty, by and with the advice of Her Privy Council, and in virtue of the authority committed to Her by the said recited Acts, doth order, and it is hereby ordered, that from and after the fourteenth day of March, 1899, the said Acts shall apply in the case of the Netherlands, and of the said Treaty with the Queen of the Netherlands'.

"Sir Roland Braddell seemed unwilling to refer to the Order in Council except in answer to questions. He contended, as I understood him, that the treaty was the most important, and only really operative instrument; and he rcpeatedly referred to that part of section 2 of the Act of 1870 which provides 'Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement'.

"It may be conceded that the treaty is the most important instrument without which the Act would be a dead letter, and no Order in Council called for. Nevertheless, by itself, it affects nothing practical, and on it no man under the protection of the law could be arrested, and against him no proceeding could be brought. The powers to extradite all flow from the Act, and until the Act is applied the treaty remains in the clouds, or, at least, its existence and force are confined to the realms of international law. To look at the matter from a practical point of view; proceedings can only be instituted through sections 6 and 7. If requisition be made the question at once arises whether the requisition be made by a state to which the Act has been applied, and, to determine this, recourse must be had for the reasons stated, not to the Treaty, but to the Order in Council. It must be read to be understood, and it must be construed to ascertain its full meaning.

"This Order in Council is an ordinary instrument of subordinate legislation, it is to be construed by this court, and in accordance with the ordinary canons of legal construction. So read I should have thought its meaning beyond doubt. The state in the case of which the Act is applied thereby is the Netherlands and no other. It is not in the case of the Republic of Indonesia, nor in that of the Netherlands and its successors, contemporaneous or by substitution. The Order in Council, just as that in the case of Austria, is still capable of application. The court might be obliged to construe the treaty as part of the Order in Council, but for this purpose, it does not seem necessary to go beyond

the penultimate paragraph. It is a principal canon of interpretation, which has been called the golden rule, that the grammatical and ordinary sense of the words is to be adhered to and by this means the intention of the maker or lawgiver must be sought. The ordinary meaning of Netherlands would seem clear enough. I can find nothing here, or for that matter in the rest of the Order, which could lead one to suppose that the draftsman, or the persons making the order, contemplated the successors of the State of the Netherlands or any state other than the Netherlands. It would seem to me quite clear that they have not used language capable of including any one else. The provision is, in essence, tantamount to a grant of the rights, powers and facilities afforded by the Act, and that grant is to one person only, by name, which person still exists. It may well be that diplomatic language is sufficiently elastic to include the Republic in the benefits of the Treaty, but there seems to be no Order in Council applying the Act to the Republic in respect of this Treaty, or of any other treaty.

"My opinion is confirmed by other considerations. The powers under the Extradition Acts are statutory powers, and should be exercised strictly in accordance with that statute whether it be powers of officers acting under Section 6, or of making orders under section 2. Parliament, in committing the application of the acts to the Executive, has yet required that all orders made should within six weeks be laid before Parliament. It does not, as Sir Francis Piggot states,[1] in a passage quoted by Sir Roland Braddell, expressly reserve any powers of modifying the order, but there can be no doubt that it has full power to secure the revocation of any order it disliked. What use is made of this provision is immaterial, there is yet a tacit assent to every Order in Council. I agree with Mr. Massey that to treat the Acts as applied to a state, whose name has never appeared in any Order laid before Parliament, would vitiate this procedure and be an abuse of the power of applying the Statute. It is true that an objection to an order on this ground might be an objection to its validity, and so barred by section 5 of the Act of 1870, as, it is said, and I think wrongly, is my mere construing of the Order. Just as there is no evidence of any intention by the King in Council to apply the acts to the Republic, so also I can see no corresponding tacit assent of Parliament. Moreover, the contrary contentions would render the law liable to change by what the Attorney General tells us, I think rightly, is a legal use of the prerogative, in violation of those very principles which Sir Roland Braddell cited from pages 15, 29 and 32 of Sir Francis Piggot's book. It would also imply that the law is no longer to be ascertained from a perusal of the instruments in which it is supposed to be embodied, but can only be surely ascertained by what is, in practice, an application to the Foreign Office for its latest opinion of what certain terms mean. This is obviously contrary to all sound legal principles, and to all the history of our jurisprudence.

"In these circumstances it would seem to me that any proceedings based on a contrary assumption are mis-conceived and I think that the Order applied for should be made.

"(*Signed*) L. E. C. EVANS,
"*Puisne Judge*,
"Singapore"

[1] Extradition p. 40.

C. DIPLOMATIC CORRESPONDENCE

CORRESPONDENCE BETWEEN THE PRIME MINISTER OF THE SUDAN AND THE FOREIGN SECRETARY OF THE UNITED KINGDOM RELATING TO THE TREATIES MADE ON BEHALF OF, OR APPLIED TO, THE SUDAN BY THE CO-DOMINI, JANUARY 1956

Communication, dated 1 January 1956,[1] *addressed to the Prime Minister of the Sudan by the Secretary of State for Foreign Affairs of the United Kingdom*

Excellency,

The Government of the United Kingdom of Great Britain and Northern Ireland have received the resolution passed by the Sudanese Parliament declaring that the Sudan is to become a fully independent sovereign State and requesting the Co-Domini to recognise this declaration. In response I am authorised by the Government of the United Kingdom to inform you that they recognise, as from today's date, that the Sudan is an independent sovereign State.

In recognising the independence of the Sudan, the Government of the United Kingdom trust that the Government of the Sudan will continue to give full effect to the agreements and conventions made on behalf of, or applied to, the Sudan by the Co-Domini and will be grateful for confirmation that this is the intention of the Sudan Government. The Government of the United Kingdom hope that the Government of the Sudan will co-operate with them in all steps necessary to wind up the affairs of the Condominium in the Sudan.

I avail myself of this opportunity to convey Your Excellency the assurance of my highest consideration, etc.

(*Signed*) Selwyn LLOYD

H.E., Sayed Ismail el Azhari,
Prime Minister of the Sudan

On the following day the Prime Minister of the Sudan replied to the above communication and said *inter alia*:

Reference has been made in Your Excellency's above-quoted letter to giving effect to the Agreements and Conventions made on behalf of, or applied to, the Sudan by the Co-Domini. Since the Sudan Government have only now assumed powers in regard to external matters I beg that Your Excellency may make specific mention to the Agreements and Conventions contemplated in your above-mentioned letter so that I may be in a position to comply with Your Excellency's request.

No doubt the Sudan Government had and will sincerely co-operate with the Government of the United Kingdom in all steps necessary to wind up the affairs of the Condominium in the Sudan.

May I take this opportunity to express to the Government of the United Kingdom the deep gratitude for the magnificent role played to fulfil their pledges and bring about this happy result in the smoothest and friendly way. Etc.

Ismail EL AZHARI

H.E., Secretary of State for Foreign Affairs,
United Kingdom

[1] The day on which the Sudan became independent. For a similar communication from the Prime Minister of Egypt see: SUDAN, section C 1.

United States of America

Transmitted by a note verbale *dated 24 December 1963 of the United States Mission to the United Nations*

A. TREATIES

I. Texts

1. Exchange of notes constituting an agreement between Lebanon and the United States relating to the rights of American nationals. Beirut, 7 and 8 September 1944[1]

I

Legation of the
United States of America
September 7, 1944

Excellency:

I have the honor to inform Your Excellency that my Government has observed with friendly and sympathetic interest the accelerated transfer of governmental powers to the Lebanese and Syrian Governments since November 1943 and now takes the view that the Lebanese and Syrian Governments may now be considered representative, effectively independent and in a position satisfactorily to fulfil their international obligations and responsibilities.

The United States is, therefore, prepared to extend full and unconditional recognition of the independence of Lebanon, upon receipt from Your Excelleney's Government of written assurances that the existing rights of the United States and its nationals, particularly as set forth in the treaty of 1924 between the United States and France,[2] are fully recognized and will be effectively continued and protected by the Lebanese Government, until such time as appropriate bilateral accord may be concluded by direct and mutual agreement between the United States and Lebanon.

. . .

G. Wadsworth

His Excellency
Selim Bey Takla,
Minister for Foreign Affairs of the
Republic of Lebanon,
Beirut.

II

République Libanaise
Ministère des Affaires Étrangères
N° 2162 Beyrouth, le 8 Septembre 1944

Sir,

I have the honour to inform you that I have received with satisfaction your note dated 7th September, 1944, in which you conveyed

[1] United States, *Executive Agreement Series* 435. Came into force on 8 September 1944.

[2] United States, *Treaty Series* 695.

the view of the United States Government that the Lebanese Government may now be considered representative, effectively. independent and in a position satisfactorily to fulfil his international obligations and responsibilities; and that therefore the United States is prepared to extend full and unconditional recognition of the independence of Lebanon upon receipt of written assurances that the existing rights of the United States and its nationals, particularly as set forth in the Treaty of 1924 between the United States and France, are fully recognised and will be effectively continued and protected by the Lebanese Government until such time as appropriate bilateral accord may be concluded by direct and mutual agreement between the United States and Lebanon.

The Lebanese Government have taken note of the friendly attitude of the United States Government, and they highly appreciate this noble geste. It is my pleasant task to convey to you the assurances of the Lebanese Government that the existing rights of the United States and its nationals particularly as set forth in the Treaty of 1924 between the United States and France, are fully recognised and will be effectively continued and protected, until such time as appropriate bilateral accord may be concluded by direct and mutual agreement between Lebanon and the United States.

. . .

Sélim TAKLA
Minister for Foreign Affairs

His Excellency Mr. George WADSWORTH
United States Diplomatic Agent,
Beirut

2. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN SYRIA AND THE UNITED STATES RELATING TO THE RIGHTS OF AMERICAN NATIONALS. DAMASCUS, 7 AND 8 SEPTEMBER 1944[1]

I

Legation of the
United States of America
September 7, 1944

Excellency:

I have the honor to inform Your Excellency that my Government has observed with friendly and sympathetic interest the accelerated transfer of governmental powers to the Syrian and Lebanese Governments since November 1943 and now takes the view that the Syrian and Lebanese Governments may now be considered representative, effectively independent and in a position satisfactorily to fulfil their international obligations and responsibilities.

The United States is, therefore, prepared to extend full and unconditional recognition of the independence of Syria, upon receipt from Your Excellency's Government of written assurances that the existing rights of the United States and its nationals, particularly as set forth

[1] United States, *Executive Agreement Series* 434. Came into force on 8 September 1944.

in the treaty of 1924 between the United States and France,[1] are fully recognized and will be effectively continued and protected by the Syrian Government, until such time as appropriate bilateral accord may be concluded by direct and mutual agreement between the United States and Syria.

. . .

G. WADSWORTH

His Excellency Jamil BEY MARDAM BEY,
Minister for Foreign Affairs of the
Republic of Syria,
Damascus.

II

République Syrienne
Ministère des Affaires Etrangères

No.— DAMAS, le 8/9/44

Sir,

I have the honour to inform you that I have received with satisfaction your note dated 7th September, 1944, in which you conveyed the view of the United States Government that the Syrian Government may now be considered representative, effectively independent and in a position satisfactorily to fulfil her international obligations and responsibilities; and that therefore the United States is prepared to extend full and unconditional recognition of the independence of Syria, upon receipt of written assurances that the existing rights of the United States and its nationals, particularly as set forth in the Treaty of 1924 between the United States and France, are fully recognised and will be effectively continued and protected by the Syrian Government, until such time as appropriate bilateral accord may be concluded by direct and mutual agreement between the United States and Syria.

The Syrian Government have taken note of the friendly attitude of the United States Government, and they highly appreciate this noble geste. It is my pleasant task to convey to you the assurances of the Syrian Government that the existing rights of the United States and its nationals, particularly as set forth in the Treaty of 1924 between the United States and France, are fully recognised and will be effectively continued and protected, until such time as appropriate bilateral accord may be concluded by direct and mutual agreement between Syria and the United States.

. . .

Jamil MARDAM BEY

His Excellency Mr. George WADSWORTH,
United States Diplomatic Agent,
Damascus.

[1] United States, *Treaty Series*, 695.

3. Treaty of General Relations between the Philippines and the United States. Signed at Manila, on 4 July 1946[1]

The United States of America and the Republic of the Philippines, being animated by the desire to cement the relations of close and long friendship existing between the two countries, and to provide for the recognition of the independence of the Republic of the Philippines as of July 4, 1946 and the relinquishment of American sovereignty over the Philippine Islands, have agreed upon the following articles:

Article I

The United States of America agrees to withdraw and surrender, and does hereby withdraw and surrender, all right of possession, supervision, jurisdiction, control or sovereignty existing and exercised by the United States of America in and over the territory and the people of the Philippine Islands, except the use of such bases, necessary appurtenances to such bases, and the rights incident thereto, as the United States of America, by agreement with the Republic of the Philippines, may deem necessary to retain for the mutual protection of the United States of America and of the Republic of the Philippines. The United States of America further agrees to recognize, and does hereby recognize, the independence of the Republic of the Philippines as a separate self-governing nation and to acknowledge, and does hereby acknowledge, the authority and control over the same of the Government instituted by the people thereof, under the Constitution of the Republic of the Philippines.

. . .

Article IV

The Republic of the Philippines agrees to assume, and does hereby assume, all the debts and liabilities of the Philippine Islands, its provinces, cities, municipalities and instrumentalities, which shall be valid and subsisting on the date hereof. The Republic of the Philippines will make adequate provision for the necessary funds for the payment of interest on and principal of bonds issued prior to May 1, 1934 under authority of an Act of Congress of the United States of America[2] by the Philippine Islands, or any province, city or municipality therein, and such obligations shall be a first lien on the taxes collected in the Philippincs.

Article V

The United States of America and the Republic of the Philippines agree that all cases at law concerning the Government and people of the Philippines which, in accordance with Section 7 (6) of the Independence Act of 1934,[3] are pending before the Supreme Court of the United States of America at the date of the granting of the independence of the Republic of the Philippines shall continue to be subject to the review of the Supreme Court of the United States of America for such period

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[1] *United States Statutes at Large*, vol. 61, p. 1174. Came into force on 22 October 1946.

[2] *United States Statutes at Large*, vol. 48, p. 456.

[3] *Ibid*, p. 462.

of time after independence as may be necessary to effectuate the disposition of the cases at hand. The contracting parties also agree that following the disposition of such cases the Supreme Court of the United States of America will cease to have the right of review of cases originating in the Philippine Islands.

Article VI

In so far as they are not covered by existing legislation, all claims of the Government of the United States of America or its nationals against the Government of the Republic of the Philippines and all claims of the Government of the Republic of the Philippines and its nationals against the Government of the United States of America shall be promptly adjusted and settled. The property rights of the United States of America and the Republic of the Philippines shall be promptly adjusted and settled by mutual agreement, and all existing property rights of citizens and corporations of the United States of America in the Republic of the Philippines and of citizens and corporations of the Republic of the Philippines in the United States of America shall be acknowledged, respected and safeguarded to the same extent as property rights of citizens and corporations of the Republic of the Philippines and of the United States of America respectively. Both Governments shall designate representatives who may in concert agree on measures best calculated to effect a satisfactory and expeditious disposal of such claims as may not be covered by existing legislation.

Article VII

The Republic of the Philippines agrees to assume all continuing obligations assumed by the United States of America under the Treaty of Peace between the United States of America and Spain concluded at Paris on the 10th day of December, 1898,[1] by which the Philippine Islands were ceded to the United States of America, and under the Treaty between the United States of America and Spain concluded at Washington on the 7th day of November, 1900[2].

. . .

[1] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XXXII, p. 74. Came into force on 11 April 1899.

[2] De Martens, *Nouveau Recueil Général de Traités*, deuxième série, tome XXXII, p. 82. Came into force on 23 March 1901.

4. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN INDIA AND THE UNITED STATES RELATING TO THE CONTINUANCE OF COPYRIGHT RELATIONS. WASHINGTON, 21 OCTOBER 1954[1]

I

Embassy of India
Washington, D.C.
October 21st, 1954

F.35/54

Excellency,

In accordance with instructions from my Government, I have the honor to refer to the recent conversations held in New Delhi between representatives of our two Governments with respect to the copyright relations between India and the United States after August 15, 1947, the date of the transfer of power pursuant to the Indian Independence Act, 1947. It is my understanding, that, upon receipt of affirmative assurances that after August 15, 1947, as before that date, Indian Law has granted to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, your Government is prepared to have issued a Presidential Proclamation under Section 9(*b*) of Title 17, United States Code, being the Copyright Law, to continue to grant the protection of that law to citizens of India after August 15, 1947, thereby providing for and affirming the continued existence of copyright relations between our two countries as established prior to the change in the legal status of India.

The legal obligation of India to extend the protection of its Copyright Law to citizens of the United States was not altered by the transfer of power on August 15, 1947. Section 18(3) of the Indian Independence Act, 1947, provided for the continuation, except as otherwise expressly provided, of all laws which existed immediately before the transfer of power. Similarly, the legal obligations of India with respect to copyright were not altered by the creation of the Republic of India on January 26, 1950. Article 372(1) of the Constitution of India provided for continuation of all laws in force immediately before India became a Republic. In view of this, my Government has instructed me to state its assurances that after August 15, 1947, as before that date, citizens of the United States have been and continue to be entitled to the benefits of copyright in India on substantially the same basis as citizens of India, including rights similar to those provided by section 1(*e*) of the aforesaid Title 17.

Accept, Excellency, etc.

G. L. MEHTA
(G. L. Mehta)
Ambassador of India

The Honourable
The Secretary of State
Department of State,
Washington, D.C.

[1] *United States Treaties and other International Agreements*, vol. 5, p. 2525. Came into force on 21 October 1954.

II

Department of State
Washington
Oct. 21, 1954

Excellency:

I have the honor to acknowledge the receipt of your note of today's date, in which you refer to the recent conversations held in New Delhi between representatives of our two Governments with respect to the copyright relations between India and the United States after August 15, 1947.

You state in your note that the legal obligation of India to extend the protection of its Copyright Law to citizens of the United States was not altered by the transfer of power on August 15, 1947, since Section 18(3) of the Indian Independence Act, 1947, provided for the continuation, except as otherwise expressly provided, of all laws which existed immediately before the transfer of power. You state that similarly the legal obligations of India with respect to copyright were not altered by the creation of the Republic of India on January 26, 1950, since Article 372(1) of the Constitution of India provided for continuation of all laws in force immediately before India became a Republic. You state that in view of this, your Government has instructed you to state its assurances that after August 15, 1947, as before that date, citizens of the United States have been and continue to be entitled to the benefits of copyright in India on substantially the same basis as citizens of India, including rights similar to those provided by Section 1(*e*) of Title 17 of the United States Code.

I have the honor to inform you that with a view to affirming the continuance of copyright relations between our two countries, as established prior to the change in the legal status of India, the President of the United States of America has issued today a Proclamation, a copy of which is enclosed herewith,[1] declaring and proclaiming, pursuant to the provisions of Section 9(*b*) of the said Title 17 on the basis of the assurances set forth in your note, that After August 15, 1947, as before that date, the conditions specified in Section 9(*b*) and 1(*e*) of the said Title 17 have existed and have been fulfilled with respect to citizens of India, and that citizens of India, after August 15, 1947, as before that date, have been entitled to all the benefits of the said Title 17.

Accept, Excellency, etc.

Herbert Hoover, Jr.
Acting Secretary

Enclosure:
Proclamation.

His Excellency
Gaganvihari Lallubhai Mehta,
Ambassador of India.

[1] Not reproduced.

5. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN GHANA AND THE UNITED STATES RELATING TO THE CONTINUED APPLICATION TO GHANA OF CERTAIN TREATIES CONCLUDED BETWEEN THE UNITED STATES AND THE UNITED KINGDOM. ACCRA, 4 SEPTEMBER AND 21 DECEMBER 1957 AND 12 FEBRUARY 1958[1]

I

Embassy of the
United States of America
September 4, 1957

No. 7

Excellency:

I have the honor to refer to the informal statement of Minister Gbedemah and the Secretary of the External Affairs Department to the Chargé d'Affaires of the American Embassy on or about February 20, 1957 that the Government of Ghana would regard treaties and agreements between the Governments of the United Kingdom and Northern Ireland and the United States of America affecting Ghana as remaining in effect for three months following March 6, 1957, pending the conclusion of more permanent arrangements. The Minister responsible for External Affairs informed me orally on June 28, 1957, that the Government of Ghana considered this informal undertaking remained in force.

In the view of my Government, it would be desirable to replace the existing informal agreement by a formal undertaking, which might be appropriately registered with the United Nations Organization. Since certain treaties or agreements between the United Kingdom and the United States of America may be either inapplicable or out of date, my Government proposes that consideration be given at this juncture only to continuing in force the following treaties and agreements. I understand that the Chargé of this Embassy transmitted copies of these treaties to the Ministry of External Affairs in April of this year.

Arrangement of March 28 and April 5, 1935 relating to pilot licenses to operate civil aircraft (Executive Agreement Series 77).

Air services agreement, and Final Act of the Civil Aviation Conference, signed February 11, 1946 (Treaties and Other International Acts Series 1507).

Consular convention, and protocol of signature, signed June 6, 1951 (Treaties and Other International Acts Series 2494).

Mutual Defense assistance agreement of January 27, 1950 (Treaties and Other International Acts Series 2017).

Economic cooperation agreement of July 6, 1948, as amended (Treaties and Other International Acts Series 1795, 2036, 2277 and 2815).

Extradition treaty of December 22, 1931 (Treaty Series 849).

Agreement of March 12, 1937 for the reciprocal reduction of passport visa fees for non-imigrants.[2]

Convention of March 2, 1899 relating to tenure and disposition of real and personal property, with supplements (Treaty Series 146, 462 and 964).

[1] *United States Treaties and Other International Agreements*, vol. 13, p. 240. Came into force on 12 September 1958.

[2] Not printed.

Declaration of October 24, 1877 affording reciprocal protection to trade-marks (Treaty Series 138).

Conventions of July 3, 1815 (art. IV[1] only) and August 6, 1827 to regulate commerce (Treaty Series 110 and 117).

If the foregoing proposal is agreeable to the Government of Ghana, my Government will consider this note and your replying note concurring therein as concluding an agreement between our respective Governments on this subject.

Accept, Excellency, etc.

(*Signed*) Wilson C. FLAKE
American Ambassador

His Excellency
Dr. Kwame NKRUMAH,
Prime Minister,
Minister of Defence and External Affairs,
Accra.

II

Ministry of Defence and External Affairs
Ghana

Accra
21st December, 1957

BD. 172

Sir,

I have the honour to refer to His Excellency Wilson C. Flake's letter No. 7 dated September 4, 1957, addressed to the Honourable the Prime Minister about the attitude of the Ghana Government towards the treaties and agreements entered into between the Governments of the United Kingdom and Northern Ireland and the United States of America and applied to the Gold Coast before March 6, 1957. I am sorry it has not been possible to address you on this earlier.

The Governments of the United Kingdom and Ghana have, by exchange of notes,[2] recently entered into an agreement whereby the International rights and obligations under Treaties and agreements entered into between the Government of the United Kingdom and Northern Ireland on the one hand and any other Government on the other and applied to the Gold Coast have been formally transferred to Ghana with effect from March 6, 1957 in so far as their nature admits of such transfer. The agreement will shortly be published as a Ghana Government White Paper and registered with the United Nations Organization under Article 102 of the Charter of the United Nations.[3]

Perhaps I should mention that this agreement does not preclude the possibility of negotiating about the continuing in force of any particular clause or clauses of any existing Treaties or of any reservations that either party might wish to raise at some future date. I should be grateful if you would confirm that the procedure outlined above is acceptable to the

[1] Superseded by the consular convention of 6 June 1951, listed above.
[2] Dated 25 November 1957.
[3] See GHANA, section A.

Government of the United States of America and that the specific treaties mentioned in your letter under reference are considered as covered by the Agreement.

Accept, Your Excellency, etc.

A. L. ADU
Permanent Secretary

Peter RUTTER, Esq.,
Chargé d'Affaires,
United States Embassy,
Accra.

III

Embassy of the
United States of America
Accra
February 12, 1958

No. 8

Excellency:

I have the honor to express my Government's appreciation for the Permanent Secretary's note No. BD 172 of December 21, 1957 regarding the agreement recently concluded between the Governments of the United Kingdom and Ghana whereby the international rights and obligations under treaties and agreements entered into between the Government of the United Kingdom and Northern Ireland on the one hand and any other Government on the other and applied to the Gold Coast have been formally transferred to Ghana with effect from March 6, 1957 in so far as their nature admits of such transfer.

I hereby confirm that the proccdure outlined in the Permanent Secretary's note of December 21, 1957 is acceptable to the Government of the United States of America and that the agreement as described therein is considered to cover the specific treaties mentioned in my note of September 4, 1957.

Accept, Excellency, etc.

(*Signed*) Wilson C. FLAKE
American Ambassador

His Excellency
Dr. Kwame NKRUMAH,
Prime Minister,
Minister of Defence and External Affairs
Accra.

6. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN ITALY AND THE UNITED STATES AMENDING THE AGREEMENT OF 28 JUNE 1954 FOR A TECHNICAL COOPERATION PROGRAM FOR THE TRUST TERRITORY OF SOMALILAND, ROME, 30 JUNE 1960[1]

I

American Embassy
Rome
June 30, 1960

No. 766

Excellency:

I have the honor to refer to recent conversations concerning the desirability, in light of the fact that the Somali Republic will attain independence on July 1, 1960, of amending the Agreement for a Technical Cooperation Program for the Trust Territory of Somaliland under Italian administration between the Government of Italy and the Government of the United States of America, signed at Rome, June 28, 1954,[2] as amended by the exchange of notes signed at Rome, December 24, 1959.[3]

In accordance with these conversations, I now have the honor to propose that the Agreement of June 28, 1954, as amended, be further amended by the addition after Article XII of the following new Article XIII:

"*Article XIII*

"1. Subject to the provisions of this Article, for the purpose of permitting the completion of programs and projects initiated but not completed under this Agreement prior to July 1, 1960, the date upon which the Somali Republic will attain independence, this Agreement, anything herein to the contrary notwithstanding, shall remain in force until thirty days after receipt of notification by either Government of the intention of the other to terminate it or until December 31, 1961, whichever is the earlier.

"It is understood that after June 30, 1960: (*a*) operations under this Agreement shall be conducted in the Somali Republic only as concurred in, or consented to, by appropriate representatives of the Government of the said Republic; (*b*) the Government of the United States will assume responsibility for paying expenses of the type mentioned in the last sentence of paragraph 1 of Article V which are incurred after June 30, 1960; and (*c*) the provisions of Article VIII shall not constitute obligations of the Government of Italy.

"After June 30, 1960, the Government of Italy shall be under no obligation to make contributions to the Somalia Development Fund, nor shall it otherwise be responsible for costs incurred after June 30, 1960, in connection with this Agreement, unless our two Governments should determine it to be necessary to incur costs in excess of amounts available in the Somalia Development Fund to liquidate programs or projects initiated under this Agreement prior to June 30, 1960.

[1] *United States Treaties and Other International Agreements*, vol. 12, p. 3163. Came into force on 30 June 1960.

[2] *United States Treaties and Other International Agreements*, vol. 5, p. 2922.

[3] *Ibid.*, vol. 10, p. 3014.

"2. The rights and obligations of the Government of Italy and the Administering Authority under this Agreement shall, subject to the terms of this Article and notwithstanding any other provisions of this Agreement, cease and terminate and the Government of the Somali Republic shall succeed to such rights and obligations, if and when the said Government, after June 30, 1960, shall give appropriate written notification to the Government of the United States[1] and the Government of Italy of its assumption of such rights and obligations; and from the date of such notification this Agreement shall be deemed to be an Agreement between the Government of the United States and the Government of the Somali Republic. Prerequisite to appropriate notification by the Government of the Somali Republic for purposes of this Article will be the acceptance by that Government of the following conditions: (*a*) the Committee established under Article III and the Development Fund established Article IV shall be agencies of the Government of the Somali Republic; (*b*) the Committee shall be composed of one representative each from the Government of the Somali Republic and the Government of the United States; (*c*) the Government of the United States and the Government of the Somali Republic shall each designate one person to serve as a Co-director of the Somalia Development Fund; (*d*) the rights and privileges provided for in Article VIII and the undertakings of the Government of Italy provided for in Article IX shall be assured or performed by the Government of the Somali Republic; (*e*) the rights and privileges to accrue to personnel and to agencies of the Government of the United States under the first and second paragraphs of Article VIII shall be no less than the rights and privileges which are generally enjoyed by governmental divisions and agencies of the Government of the Somali Republic or personnel of such divisions and agencies; and (*f*) the rate at which funds deposited by the Government of the United States to the credit of the Somalia Development Fund shall be, in accordance with paragraph 8 of Article V, converted to Somali currency, shall be that providing the largest number of units of Somali currency per United States dollar which at the time the conversion is made is not unlawful in the Republic of Somalia."

I have the honor to propose that, if the foregoing proposal is acceptable to the Government of Italy, the present note and Your Excellency's note in reply concurring therein shall constitute an Agreement between our two Governments further amending the Agreement of June 28, 1954, as amended, which shall be effective as of June 30, 1960.

Accept, Excellency, etc.

J. D. ZELLERBACH

His Excellency
Antonio SEGNI,
Minister for Foreign Affairs,
Rome.

---

[1] *United States Treaties and Other International Agreements*, vol. 12, p. 3138.

II[1]

Ministry of Foreign Affairs
Rome
June 30, 1960

Excellency:

By a note of this date you were good enough to inform me of the following:

[For the English language text of the note, see letter I]

I have the honor to inform you that the Italian Government agrees to the foregoing.

I take pleasure, etc.

SEGNI

His Excellency
James David ZELLERBACH,
Ambassador of the
United States of America,
Rome.

7. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN THE SOMALI REPUBLIC AND THE UNITED STATES RELATING TO THE ASSUMPTION BY THE SOMALI REPUBLIC OF RIGHTS AND OBLIGATIONS UNDER THE UNITED STATES-ITALY TECHNICAL COOPERATION AGREEMENT OF 28 JUNE 1954 AS AMENDED. MOGADISCIO, 28 JANUARY AND 4 FEBRUARY 1961[2]

I

Embassy of United States of America
Mogadiscio
January 28, 1961

Dear Mr. Minister:

With reference to our conversation of January 26, 1961, I am pleased officially to inform you that the exchange of notes between the Government of Italy and the Government of the United States of America,[3] amending the 1954 Technical Co-operation Agreement between Italy and the United States for the Trust Territory of Somaliland under Italian Administration,[4] was effected in Rome on June 30, 1960. A copy of the Amendment which consisted of a new Article, No. XIII, I delivered to you on January 21, 1961.

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[1] Translation from Italian by the Department of State of the United States.

[2] *United States Treaties and other International Agreements*, vol. 12, p. 3138. Pending the conclusion of negotiations for a new formal agreement, this Technical Cooperation Agreement, which originally was due to expire on 31 December 1961, was subsequently extended three times by exchanges of letters between the Somali Republic and the United States. [See *United States Treaties and Other International Agreements*, vol. 14, p. 400.]

[3] *United States Treaties and Other International Agreements*, vol. 12, p. 3163.

[4] *Ibid.*, vol. 5, p. 2922.

I would appreciate it if you would inform me if the Government of the Somali Republic wishes to succeed to this Agreement.

Sincerely yours,

Andrew G. LYNCH
American Ambassador

His Excellency
Abdullahi ISSA MOHAMUD,
Minister of Foreign Affairs,
Mogadiscio.

II[1]

Somali Republic
Ministry of Foreign Affairs
The Minister
Mogadiscio, February 4, 1961

Mr. Ambassador:

I have the honor to refer to the Agreement for a Technical Cooperation Program for the Trust Territory of Somaliland under Italian Administration between the Government of Italy and the Government of the United States of America signed on June 28, 1954, as amended in Rome by exchange of notes between the two Governments, first on December 24, 1959[2] and then on June 30, 1960. I further refer to paragraph 2 of Article XIII, by virtue of which the rights and obligations formerly assumed by the Italian Government are transferred to the Government of the Somali Republic, effective June 30, 1960; from that date, the Agreement so amended shall be considered an agreement between the Government of the Somali Republic and the Government of the United States of America.

Further, I have the honor to inform you that the Government of the Somali Republic hereby notifies the Government of the United States of America that it is assuming the rights and obligations of the Italian Government and the Administering Authority, as provided in the aforesaid Agreement. Notice to this effect has also been given to the Italian Government. Moreover, the Government of the Somali Republic accepts the conditions specified in paragraph 2 of Article XIII of the Agreement, acceptance of these conditions being a prerequisite to notification by the Somali Government of its assumption of the rights and obligations of the Italian Government and the Administering Authority under the terms of the Agreement.

Accept, Mr. Ambassador, etc.

Abdullahi Issa

His Excellency
Andrew G. LYNCH,
Ambassador of the United States
of America,
Mogadiscio.

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[1] Translation from Italian by the Department of State of the United States.
[2] *United States Treaties and Other International Agreements*, vol. 10, p. 3014.

8. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN THE REPUBLIC OF CONGO (BRAZZAVILLE) AND THE UNITED STATES RELATING TO THE CONTINUED APPLICATION TO CONGO (BRAZZAVILLE) OF CERTAIN TREATIES CONCLUDED BETWEEN FRANCE AND THE UNITED STATES. BRAZZAVILLE, 12 MAY AND 5 AUGUST 1961[1]

I

Embassy of the United States of America,
Brazzaville,
May 12, 1961

The Ambassador of the United States of America presents his compliments to His Excellency the Minister of Foreign Affairs of the Republic of Congo and has the honor to request the views of the Ministry on the present applicability of international agreements concluded by the Government of France on behalf of the Congo territory prior to the independence of the Republic of Congo.

W. W. B.

II[2]

Republic of Congo
Ministry of
Foreign Affairs

No. 976/ETR.
PD/JM — 4.8.61

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States of America and has the honor to refer to its note No. 78 of May 12, 1961.

In accordance with the practices of international law and because of the circumstances under which the Republic of Congo attained international sovereignty, the latter considers itself to be a party to the treaties and agreements signed prior to its independence by the French Republic and extended by the latter to its former overseas territories, provided that such treaties or agreements have not been expressly denounced by it or tacitly abrogated by a text replacing them.

. . .

S. TCHICHELLE
Minister of Foreign Affairs

Brazzaville, August 5, 1961
Embassy of the
United States of America,
Brazzaville.

[1] *United States Treaties and Other International Agreements*, vol. 13, p. 2065. Came into force on 5 August 1961.

[2] Translation from French by the Department of State of the United States.

9. EXCHANGE OF NOTES ACCOMPANYING AN AGREEMENT BETWEEN THE DEMOCRATIC REPUBLIC OF THE CONGO AND THE UNITED STATES RELATING TO INVESTMENT GUARANTIES. LEOPOLDVILLE, 25 OCTOBER AND 17 NOVEMBER 1962[1]

I

Embassy of the United States of America,
Leopoldville, October 25, 1962

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of the Congo and refers to the agreement relating to guaranties, which agreement was effected by exchange of notes of today's date.

It is the understanding of the Government of the United States of America that all obligations, rights, or actions arising from the application to the Congo of Article III of the Economic Cooperation Agreement between the United States and Belgium, signed at Brussels on July 2, 1948,[2] as amended, and of the agreement relating to guaranties under Section 111 (*b*) (3) of the Economic Cooperation Act of 1948,[3] as amended, effected by exchange of notes between the United States and Belgium signed at Washington on May 7 and 12, 1952,[4] remain in force with respect to the Republic of the Congo until all obligations in connection with any guaranties issued by the Government of the United States in accordance with the said application of the agreements to the Congo shall have been discharged.

The Government of the United States would appreciate a confirmation of the concurrence of the Government of the Republic of the Congo in this view.

D F M

II[5]

Republic of the Congo
Ministry of Foreign Affairs

No. 12/130/1187/CAB/AE/62.

The Ministry of Foreign Affairs of the Republic of the Congo presents its compliments to the Embassy of the United States of America and has the honor to refer to the Embassy's memorandum of October 25, 1962 the French translation of which follows:

[See note I above]

In the name of the Government of the Republic of the Congo, the Ministry of Foreign Affairs confirms the agreement set forth in the note of October 25, 1962, from the Embassy of the United States and avails

[1] *United States Treaties on Other International Agreements*, vol. 14, p. 285. Came into force on 17 November 1962.
[2] *United States Statutes at Large*, vol. 62, p. 2174.
[3] *Ibid.*, p. 144.
[4] *United States Treaties and Other International Agreements*, vol. 3, p. 4285.
[5] Translation from French by the Department of State of the United States.

itself of this occasion to renew to the Embassy of the United States of America the assurances of its highest consideration.

[SEAL]

Leopoldville, November 17, 1962.

[*Initialed*]

Embassy of the United States of America,
Léopoldville.

10. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN TRINIDAD AND TOBAGO AND THE UNITED STATES RELATING TO THE CONTINUED APPLICATION OF CERTAIN AVIATION AGREEMENTS TO SCHEDULED SERVICES BETWEEN THE UNITED STATES AND THE CARIBBEAN AREA. PORT OF SPAIN, 27 SEPTEMBER 1962 AND ST. ANN'S, 8 OCTOBER 1962[1]

I

The Chargé d'Affaires ad interim of the United States of America presents his compliments to the Minister of External Affairs of the Government of Trinidad and Tobago and has the honor to refer to the Air Transport Services Agreement of 1946,[2] as amended, between the United States and the United Kingdom, and to the collateral exchange of notes dated November 22, 1961.[3]

With the assumption by the Government of Trinidad and Tobago of pertinent international civil aviation rights and obligations of the United Kingdom, it is understood that the provisions of the agreements under reference will continue to apply to the operation of scheduled services between the United States and the Caribbean area by the airlines of the United States and Trinidad and Tobago pending the conclusion of a new air transport agreement between the two Governments. While the Government of the United States of America wishes to register its willingness to negotiate a new agreement with the Government of Trinidad and Tobago at a mutually convenient future date, there is no urgency with respect to the basic Agreement, which is of indefinite duration. On the other hand, with the expiration of the collateral exchange of notes on October 1, 1962, it appears beneficial to both Governments to make some interim arrangement assuring the temporary continuance of the rights exercised thereunder.

Therefore, the Government of the United States of America proposes extension of the rights accorded by the mentioned exchange of notes until they are superseded by other mutually agreed arrangements. If this proposal is acceptable, it is suggested that this note and the reply thereto indicating concurrence by the Government of Trinidad and Tobago constitute an agreement to that effect entering into force on the date of the note in reply.

Accordingly, concerning the current application before the United States Civil Aeronautics Board by British West Indian Airways for renewal of authority to operate scheduled airline services over the route Antigua-New York, the Government of the United States of America, to the extent of its legal powers, will be prepared to concur in the con-

[1] *United States Treaties and Other International Agreements*, vol. 13, p. 2463. Came into force on 8 October 1962.

[2] *United States Statutes at Large*, vol. 60, p. 1499.

[3] *United States Treaties and Other International Agreements*, vol. 13, p. 171.

tinuation of such services by the flag carrier of Trinidad and Tobago, pending conclusion of suitable underlying intergovernmental arrangements.

Embassy of the United States of America,
Port of Spain,
September 27, 1962.

II

The Minister of External Affairs presents his compliments to the Chargé d'Affaires ad interim of the United States and has the honour to refer to his Note I dated 27th September, 1962, concerning the Air Transport Services Agreement of 1946, as amended, between the United States and the United Kingdom and the collateral exchange of Notes dated November 22, 1961.

The Government of Trinidad and Tobago is gratified by the expression of willingness on the part of the Government of the United States of America to negotiate a new Agreement at a mutually convenient future date and to make some interim arrangement assuring the temporary continuance of the rights exercised under the collateral exchange of Notes which expires on October 1st, 1962.

Accordingly the Government of Trinidad and Tobago hereby states that the proposal made by the Government of the United States of America to extend the rights accorded by the mentioned exchange of Notes until they are superseded by other mutually agreed arrangements is acceptable and concurs in the suggestion that this present exchange of Notes constitute an Agreement to that effect entering into force on the date of this Note.

The Minister of External Affairs avails himself of this opportunity to renew to the Chargé d'Affaires ad interim of the United States of America the assurances of his high consideration.

[SEAL]

Ministry of External Affairs,
Old Governor-General's Secretariat,
St. Ann's.
8th October, 1962.

11. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN JAMAICA AND THE UNITED STATES RELATING TO THE CONTINUED APPLICATION OF CERTAIN AVIATION AGREEMENTS TO SCHEDULED SERVICES BETWEEN JAMAICA AND THE UNITED STATES. KINGSTON, 25 OCTOBER AND 29 NOVEMBER 1962[1]

I

Kingston, October 25, 1962

No. 33

Excellency:

I have the honor to refer to the Air Transport Services Agreement of 1946,[2] as amended, between the United States and the United

[1] *United States Treaties and Other International Agreements*, vol. 13, p. 2719. Came into force on 29 November 1962.

[2] *United States Statutes at Large*, vol. 60, p. 1499.

Kingdom, and to the collateral exchange of notes dated November 22, 1961.[1]

With the assumption by the Government of Jamaica of the pertinent international civil aviation rights and obligations of the United Kingdom, it is understood that the provisions of the referenced documents will continue to be applicable to the operation of scheduled air services between the United States and Jamaica, pending conclusion of a new air transport agreement between the two Governments. While the basic Agreement is of indefinite duration, and thus the Governments of the United States and Jamaica may defer its renegotiation until a mutually convenient future date, the referenced exchange of notes will expire on October 1, 1962. It appears advantageous to both Governments to conclude an interim arrangement assuring a temporary continuance of present services by the respective airlines.

The United States therefore proposes the extension of the rights accorded by the referenced exchange of notes, in so far as applicable to Jamaica, pending conclusion of a bilateral air transport agreement between the United States and Jamaica, or until other mutually agreed arrangements supersede them. If this proposal is acceptable, it is suggested that this note and the reply thereto indicating concurrence by the Government of Jamaica constitute an agreement to that effect entering into force on the date of the note in reply.

Accordingly, it would be understood that the Government of Jamaica would assent to the continuance of present airline services operated between New York and Jamaica by Pan American World Airways, Inc. It is further understood that, pending conclusion of a bilateral air transport agreement, or other suitable arrangements, the United States Government, to the extent of its legal powers, would pose no objection to the continuance for the time being of airline services to the United States originating in Jamaica and operated by British West Indian Airways, although the latter bears the nationality of Trinidad and Tobago.

Accept, Excellency, etc.

Irving G. CHESLAW
Chargé d'Affaires ad interim

His Excellency
Sir Alexander BUSTAMANTE,
Prime Minister of Jamaica and
Minister of External Affairs,
Kingston.

[1] *United States Treaties and Other International Agreements*, vol. 13, p. 171.

II

Jamaican Foreign Service
29th November, 1962

81/01

Sir,

I have the honour to acknowledge the receipt of your Note No. 33 of the 25th of October, 1962, which reads as follows:—

[See note I above]

I have pleasure in confirming that the Government of Jamaica are in agreement with the provisions set out in your Note, and that your Note and this reply shall constitute an agreement between the two Governments.

Please accept etc.

Alexander BUSTAMANTE
Prime Minister
and Minister of External Affairs and Defence

His Excellency
William C. DOHERTY,
Ambassador,
American Embassy,
Kingston.

12. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN JAMAICA AND THE UNITED STATES RELATING TO INVESTMENT GUARANTIES. KINGSTON, 11 DECEMBER 1962 AND 4 JANUARY 1963[1]

. . .

6. The present Agreement shall, as between the parties to this Agreement, terminate and replace the provisions of Article III, as amended, of the Economic Cooperation Agreement between the United States of America and the United Kingdom signed at London on July 6, 1948,[2] relating to guaranties of convertibility; provided that all obligations, rights, or actions arising from that Article prior to its termination shall remain in force beyond the date of termination of that Article until all obligations in connection with any guaranties issued by the Government of the United States of America in accordance with the said Article shall have been discharged, as between the parties to the present Agreement.

. . .

[1] *United States Treaties and Other International Agreements*, vol. 14, p. 1. Came into force on 4 January 1963.

[2] *United States Statutes at Large*, vol. 62, p. 2596; *United States Treaties and Other International Agreements*, vol. 1, p. 184; vol. 2, p. 1292; vol. 11, p. 2680.

13. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT BETWEEN TRINIDAD AND TOBAGO AND THE UNITED STATES RELATING TO INVESTMENT GUARANTIES. PORT OF SPAIN, 8 AND 15 JANUARY 1963[1]

. . .

6. The present Agreement shall, as between the parties to this Agreement, terminate and replace the provisions of Article III, as amended, of the Economic Cooperation Agreement between the United States of America and the United Kingdom signed at London on July 6, 1948[2] relating to guaranties of convertibility; provided that all obligations, rights, or actions arising from that Article prior to its termination shall remain in force beyond the date of termination of that Article until all obligations in connection with any guaranties issued by the Government of the United States of America in accordance with the said Article shall have been discharged, as between the parties to the present Agreement.

. . .

II. NOTES

Examples of United States practice as depositary of multilateral conventions in cases of State succession

The depositary practice of the United States with respect to newly independent States has been, in general, to recognize the right of such States to declare themselves bound uninterruptedly by multilateral treaties of a non-organizational type concluded in their behalf by the parent State before the new State emerged to full sovereignty. The United States likewise recognizes the right of a newly independent State to deposit its own instrument of acceptance of such treaties, effective from the date of deposit of the new instrument. With respect to organizational type treaties, it has been customary practice to accept from a newly independent State an instrument of acceptance in its own name, whereby the new State is admitted to separate membership in the organization in accordance with the provisions of the treaty.

The following are some representative examples of United States practice as depositary:

(a) *International Air Services Transit Agreement. Signed at Chicago on 7 December 1944*[3]

1. Several newly independent States have stated they consider themselves bound by earlier acceptance by the parent State, either from the date of such prior acceptance or from the date of attainment of independence. They have not been required to deposit a new instrument of acceptance.

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[1] *United States Treaties and Other International Agreements*, vol. 14, p. 113. Came into force on 15 January 1963.

[2] *United States Statutes at Large*, vol. 62, p. 2596; *United States Treaties and Other International Agreements*, vol. 1, p. 184; vol. 2, p. 1292; vol. 11, p. 2680.

[3] *United States Statutes at Large*, vol. 59, p. 1963. See also: United Nations *Treaty Series*, vol. 84, p. 389. Came into force on 30 January 1945.

(i) *Pakistan*

The United States received a note dated 24 March 1948 from the Ambassador of Pakistan stating that:

> ". . . by virtue of the provisions in clause 4 of the Schedule of the Indian Independence (International Arrangements) Order, 1947, the International Air Services Transit Agreement signed by United India continues to be binding after the partition on the Dominion of Pakistan."

This was considered as binding the State of Pakistan from the date of partition from India, i.e. 15 August 1947.

(ii) *Ceylon*

The *Chargé d'Affaires ad interim* of Ceylon informed the Secretary of State by a note dated 1 April 1957 that:

> ". . . although no notice was given by Ceylon of adherence to the Transit Agreement, the Government of Ceylon considers itself a party to the International Air Services Transit Agreement since 31st May, 1945, the date on which the United Kingdom Government accepted the Agreement . . ."

Ceylon has been listed, since receipt of that note, on the official status list as a party to the Transit Agreement as of 31 May 1945.

(iii) *Malaya*

The Ministry of External Affairs of the Federation of Malaya notified the Secretary of State by note dated 15 September 1959 that:

> ". . . with reference to the International Air Services Transit Agreement . . . signed on behalf of Malaya by the United Kingdom on 31st May, 1945, . . . the Federation of Malaya accepts the Agreement and the obligations resulting thereby."

In reply to a query from the Department whether this note was intended as a "new" acceptance to be effective on receipt or as confirming that Malaya considered itself a party to the agreement since 31 May 1945, the date of acceptance by the United Kingdom, the Minister of External Affairs stated that:

> ". . . the Federation of Malaya considers itself a party to this Agreement as from 31st May, 1945."

Malaya is accordingly listed on the official status list as a party from 31 May 1945.

2. Some newly independent States, although stating they considered themselves bound by the earlier action of the parent State, have accepted the agreement with a new instrument which has been deemed effective from the date of its receipt.

(iv) *Dahomey*

The Foreign Ministry of Dahomey notified the United States Embassy at Cotonou by note dated 12 April 1963 of the adherence of Dahomey to the Transit Agreement, in conformance with Article VI. The note states that:

"The Dahomean Government has always considered itself bound by

the agreement, application of which had been extended by France to its territory before its accession to independence."

The notification was received in the Department on 23 April 1963 and the Dahomean acceptance has been considered effective on that date.

(v) *Madagascar*

The Ministry of Foreign Affairs of Madagascar by note dated 28 April 1962 informed the United States that:

". . . the Malagasy Republic has decided to consider itself bound by the International Air Services Transit Agreement, signed at Chicago on December 7, 1944, the application of which was extended to the territory of the Malagasy Republic before its accession to independence."

The Department accepted the note as a notification of acceptance pursuant to Article VI, effective upon the date of its receipt in the Department, 14 May 1962.

3. Many of the newly independent States have declared in their own name their acceptance of the agreement without reference to the prior action of the parent State. Their notifications have been accepted in accordance with Article VI, effective on the date of receipt. Several such accepting countries are listed below:

	Date of deposit
Cameroun	3 March 1960
Nigeria	25 January 1961
Senegal	8 March 1961
Ivory Coast	20 March 1961
Cyprus	12 October 1961
Tunisia	26 April 1962
Trinidad and Tobago	13 April 1963

(b) *Convention of the World Meteorological Organization. Signed at Washington, on 11 October 1947*[1]

Most of the newly independent States have acceded to the WMO Convention, each in its own name. None has claimed to be a party by reason of a former parent State's ratification. In many cases the Convention had been previously applied to the respective territories by the State responsible for their international relations. Some territories were "Territory Members", such as Madagascar and Tunisia; others comprised a part of such a "Territory Member", such as Uganda which was included in the "Territory Member" of "British East African Territories". In either case, the Convention was being applied in that area before the newly independent State acceded in its own name.

Among the countries which have recently deposited accessions, effective 30 days after deposit, are:

[1] *United States Treaties and Other International Agreements*, vol. 1, p. 281. See also: United Nations, *Treaty Series*, vol. 77, p. 143. Came into force on 23 March 1950.

	Date of deposit
Ivory Coast	31 October 1960
Madagascar	15 December 1960
Trinidad and Tobago	1 February 1963
Rwanda	4 February 1963
Uganda	15 March 1963
Algeria	4 April 1963
Cyprus	11 April 1963
Jamaica	29 May 1963

(c) *International Wheat Agreement, 1959. Opened for signature at Washington, from 6 April through 24 April 1959*[1]

Nigeria and Sierra Leone

Article 22 of the Agreement provides for the continuation in being of the International Wheat Council, established by the International Wheat Agreement of 1949, providing that "each exporting country and each importing country shall be a voting member of the Council and may be represented at its meetings by one delegate, alternates, and advisers." Namely, this is an "organizational" type of agreement.

Article 37, paragraph (3) provides that any Government may, at any time after its acceptance of or accession to the Agreement, by notification to the Government of the United States of America, declare that its rights and obligations under the Agreement shall apply in respect of all or any of the non-metropolitan territories for the international relations of which it is responsible.

By a notification dated 24 November 1959, the United Kingdom made such a declaration in behalf of a number of its territories, including the Federation of Nigeria and Sierra Leone.

After gaining its independence, the Federation of Nigeria acceded to the Agreement in its own name on 16 June 1961 by the deposit of an instrument of accession. The instrument, which was signed and sealed by the Prime Minister of Foreign Affairs and Commonwealth Relations of the Federation of Nigeria, stated that:

> ". . . the Government of the Federation of Nigeria, having considered the Agreement aforementioned, hereby accede to the same and undertake faithfully to carry out all the stipulations therein contained."

Sierra Leone similarly acceded to the Agreement by an instrument of accession deposited on 30 November 1961. The instrument was signed "For and on Behalf of the Government of Sierra Leone" by the Minister of External Affairs, and stated that:

> "The Government of Sierra Leone hereby states that it accepts the obligations of an importing country as contained in the provisions of the said Agreement."

[1] *United States Treaties and Other International Agreements*, vol. 10, p. 1477. See also: United Nations, *Treaty Series*, vol. 349, p. 167. Parts, I, III to VIII of the Agreement came into force on 16 July 1959, and Part II on 1 August 1959.

(d) *Convention on International Civil Aviation. Signed at Chicago on 7 December 1944*[1]

The following newly independent States have adhered to this Convention, which established the International Civil Aviation Organization (ICAO), by depositing instruments of adherence in their own name, effective 30 days after date of deposit:

	Date of deposit
Pakistan	6 November 1947
Ceylon	1 June 1948
Ghana	9 May 1957
Federation of Malaya	7 April 1958
Guinea	27 March 1959
Cameroun	15 January 1960
Ivory Coast	31 October 1960
Mali	8 November 1960
Senegal	11 November 1960
Nigeria	14 November 1960
Cyprus	17 January 1961
Niger	29 May 1961
Dahomey	29 May 1961
Central African Republic	28 June 1961
Congo (Leopoldville)	27 July 1961
Sierra Leone	22 November 1961
Mauritania	13 January 1962
Gabon	18 January 1962
Upper Volta	21 March 1962
Madagascar	14 April 1962
Tanganyika	23 April 1962
Congo (Brazzaville)	26 April 1962
Chad	3 July 1962
Trinidad and Tobago	14 March 1963
Jamaica	26 March 1963[2]
Algeria	7 May 1963

[1] *United States Statutes at Large*, vol. 61, p. 1180. See also: United Nations, *Treaty Series*, vol. 15, p. 295. Came into force on 4 April 1947.

[2] The Jamaican Embassy note transmitting the instrument of adherence asks if the date on which this notification is received by the United States Government could be indicated as early as possible, in order that the date on which adherence by the Government of Jamaica becomes effective can be determined. The note continues: "For the purposes of record, it is indicated that prior to achieving Independence Jamaica was a party to the Convention concerned by virtue of the adherence thereto by the United Kingdom." The Department replied: "In accordance with . . . Article 92 of the Convention, the adherence of Jamaica thereto will take effect on April 25, 1963. It is observed in this connection that, as indicated in the Embassy's note, the Convention was in force in Jamaica prior to its independence, by virtue of the previous signature and ratification thereof by the Government of the United Kingdom and Northern Ireland."

B. DIPLOMATIC CORRESPONDENCE

1. Memorandum of 26 September 1949 from the Government of Israel to the American Embassy in Tel-Aviv on the applicability to Israel of the Extradition Treaty between the United States and Great Britain of 22 December 1931[1]

In response to informal inquiries, the Government of Israel sent to the Consular Section of the American Embassy the following memorandum, which had been prepared by the Office of the Chief Legal Adviser, Ministry of Foreign Affairs of Israel and approved by the United States Division of that Ministry:

1. It is the view of the Government of Israel that, generally speaking, treaties to which Palestine was a party, or which the Mandatory Government had applied to Palestine, are not in force in relation to the Government of Israel. This applies to the Extradition Treaty of 22 December 1931 between the United States of America and Great Britain, which is not in force in relation to Israel.

2. In normal cases and pending the conclusion of new extradition treaties, the Government of Israel would be prepared to consider favourable an *ad hoc* arrangement for the extradition of a criminal.

3. The procedure in matters of extradition is regulated by the Extradition Ordinance (Drayton, Laws of Palestine, Chapter 56), which of course was continued in force as part of the internal law of Israel, by virtue of Section 11 of the Administration and Justice Ordinance 5708-1948, mentioned in the last paragraph of the informal inquiry. As this Section only referred to the law which was in force in Palestine on the 14 May, 1948, it did not have the effect of prolonging the validity of international treaties by which Palestine was bound.

4. The United States Consulate is accordingly advised to discuss the matter direct with the Ministry of Justice, who will be able to indicate whether the alleged offence is extraditable, and if so what is the precise procedure to be followed.

2. Correspondence between the Ministry of External Affairs of the Federation of Malaya and the American Embassy in Kuala Lumpur relating to the continuation in force of the Extradition Treaty between the United States and Great Britain of 1931, 15 October and 17 November 1958[2]

I

Aide-Mémoire *dated 15 October 1958 from the American Embassy in Kuala Lumpur*

With reference to the conversation on October 15, 1958 between Inche Abdul Hamid bin Pawancheek, Assistant Seeretary of the Ministry of External Affairs and Mr. Michael E. C. Ely, Second Secretary of the Embassy of the United States of America, it will be recalled that

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[1] *United States Statutes at Large*, vol. 47, p. 2122. See also: League of Nations, *Treaty Series*, vol. CLXIII, p. 59.

[2] *United States Statutes at Large*, vol. 47, p. 2122. See also: League of Nations, *Treaty Series*, vol. CLXIII, p. 59. Came into force on 24 June 1935.

Mr. Ely made the following remarks concerning extradition between the United States of America and the Federation of Malaya.

In 1931, the United States of America and Great Britain signed a treaty of extradition, which by virtue of Article 2 extended to Malacca and Penang as part of the former Crown Colony of the Straits Settlements. The 1931 treaty was extended, pursuant to Article 17 thereof, to the Federated Malay States of Perak, Selangor, Negri Sembilan and Pahang, and to the unfederated Malay States of Johore, Kedah, Kelantan Perlis and Trengganu, as specified by note of July 31, 1939, from the British Ambassador to the United States of America to the Secretary of State.

It is therefore the view of the Department of State that the extradition treaty of 1931 between the United States of America and Great Britain extended to all the States and former Colonies which now constitute the Federation of Malaya. It is further the view of the Department of State that the assumption by the Government of the Federation of Malaya by the Agreement of September 12, 1957, between the Federation and the United Kingdom, of all obligations and responsibilities of the Government of the United Kingdom which arise from any valid international instrument, extends the 1931 treaty into force between the United States of America and the Federation of Malaya.

Embassy of the United States of America,
Kuala Lumpur,
October 15, 1958

II

Note dated 17 November 1958 from the Ministry of External Affairs of the Federation of Malaya

The Ministry of External Affairs, Federation of Malaya, presents its compliments to the Embassy of the United States of America and with reference to the latter's *Aide-Mémoire* dated October 15, 1958 setting out the view of the Department of State regarding the validity of the extradition treaty of 1931 between the United States of America and the Federation of Malaya, has the honour to say that the Federation government concurs with the view of the State Department stated therein.

The Federation government accepts the responsibilities and obligations of the extradition treaty of 1931 concluded between the United Kingdom and the United States and regards the treaty as binding between the latter and the Federation of Malaya.

Your *Aide-Mémoire* of 15th October, 1958 and this Note is to be regarded as constituting the agreement in this matter.

The Ministry of External Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

[SEAL]

Kuala Lumpur,
17th November 1958

3. NOTE FROM THE BRITISH AMBASSADOR TO SECRETARY OF STATE OF THE UNITED STATES CONVEYING THE VIEW OF THE GOVERNMENT OF TANGANYIKA CONCERNING THE APPLICATION OF THE AGREEMENT OF 1951 FOR TECHNICAL COOPERATION IN RESPECT OF BRITISH DEPENDENCIES. WASHINGTON ON 7 DECEMBER 1961[1]

British Embassy
Washington D.C.
December 7, 1961

Sir,

I have the honour to refer to my Note No. 296 of the 14th of July, 1961, which notified the application of the Agreement for Technical Cooperation to certain British dependencies in East Africa.

2. I now have the honour, upon instruction from Her Majesty's Principal Secretary of State for Foreign Affairs, to convey to you the views of the Government of Tanganyika concerning the application of the Agreement to that country following its attainment of independence on the 9th of December 1961. The Tanganyika Government considers the Agreement is not one to which it would be obliged to succeed automatically after independence. In particular, before entering into a fresh agreement with the United States Government, it would wish to secure a modification of the provision relating to exemptions from taxation and customs duties contained in Article 4(*d*) of the existing Agreement. The Tanganyika Government wishes therefore to suggest that negotiations for a fresh agreement be initiated in Dar es Salaam at the earliest opportunity. Her Majesty's Government in the United Kingdom endorses the request of the Tanganyika Government.

3. I avail myself of this opportunity to renew to you, Sir, the assurance of my highest consideration.

(*Signed*) David ORMBY GORE

The Honourable Dean RUSK,
Secretary of State of the United States of America,
Washington D.C.

[1] *United States Treaties and Other International Agreements*, vol. 2, p. 1307. See also: United Nations, *Treaty Series*, vol. 105, p. 71. Came into force on 13 July 1951.

4. EXCHANGE OF NOTES DATED 2 APRIL AND 24 AUGUST 1962 BETWEEN THE PRIME MINISTER'S OFFICE OF TANGANYIKA AND THE AMERICAN EMBASSY IN DAR ES SALAAM CONCERNING THE CONVENTION OF 10 FEBRUARY 1925 BETWEEN THE UNITED KINGDOM AND THE UNITED STATES RELATING TO THE RIGHTS OF THE GOVERNMENTS OF THE TWO COUNTRIES AND THEIR RESPECTIVE NATIONALS IN THE FORMER GERMAN COLONY OF THE EAST AFRICA[1]

I

Prime Minister's Office,
P.O. Box 9000
Dar es Salaam
Tanganyika

Ref. No. PMC. 210/088

2nd April, 1962

Sir,

I have the honour to refer to the Convention signed by the United States of America and the United Kingdom in 1925, respecting the "Rights of the Governments of the two Countries and their respective Nationals in the former German Colony of East Africa".

2. This Convention recites the Mandate for Tanganyika, and its purpose was to secure to United States nationals the same rights and benefits enjoyed by nationals of Member States of the League of Nations under the terms of the Mandate.

3. It would appear that the Convention from its very nature lapsed on the attainment of independence by Tanganyika. I would assume that this is also the view of your Government, but would nevertheless be glad to have confirmation of this from you.

I have the honour to be, with high consideration, Sir, your obedient servant,

(*Signed*) F. M. MIFSUD
for Permanent Secretary,
External Affairs and Defence

The American Chargé d'Affaires,
U.S. Embassy,
Dar es Salaam

II

Dar es Salaam
August 24, 1962

No. 4

Sir,

I have the honor to refer to your note of April 2, 1962 (your reference No. PMC. 210/088), on the Convention between the United States of America and Great Britain concerning the rights of their respective nationals in the former Germany Colony of East Africa, signed at London on February 10, 1925.

[1] League of Nations, *Treaty Series*, vol. LV, p. 119. Came into force on 8 July 1926.

I also have the honor to inform you that the Government of the United States of America considers that the aforementioned Convention has not continued in force after the attainment of independence by Tanganyika.

Accept, Sir, the renewed assurances of my high consideration.

Thomas R. BYRNE
Chargé d'Affaires ad interim

Dr. V. K. KYARUSI,
Permanent Secretary,
External Affairs and Defence,
Prime Minister's Office
Dar es Salaam

5. NOTE DATED 4 DECEMBER 1962 FROM THE MINISTRY OF FOREIGN AFFAIRS OF MADAGASCAR TO THE AMERICAN EMBASSY IN TANANARIVE RELATING TO THE RIGHTS AND OBLIGATIONS CONTRACTED FOR MADAGASCAR IN TREATIES SIGNED BY FRANCE PRIOR TO MADAGASCAR'S ACCESSION TO INTERNATIONAL SOVEREIGNTY[1]

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States of America and has the honor to inform it, with reference to its Note No. 107 dated October 29, 1962, that no official act specifies, in the agreements with the French Republic, the juridical position of the Malagasy Republic with regard to the rights and obligations contracted for Madagascar in the treaties, agreements, and conventions signed by France prior to Madagascar's accession to international sovereignty.

In accordance with usage, the Malagasy Republic considers itself implicitly bound by such texts unless it explicitly denounces them.

The Ministry of Foreign Affairs informs the Embassy of the United States of America that, in order to avoid any ambiguity, the Malagasy Republic transmits, as soon as it is in a position to reach an affirmative decision on each of the texts in question, a formal declaration in which it declares itself bound by the Treaty, the Agreement or the Convention under consideration. This procedure has already been applied at various times, particularly to Conventions deposited with the Secretary General of the United Nations. All useful particulars concerning this point may be found in the published editions of the document entitled *Status of Multilateral Conventions*, published by the United Nations.

The same applies to other Conventions, such as those of Chicago and Warsaw on air navigation.

The Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurance of its high consideration.

For the Minister of Foreign Affairs and Relations with the States of the Community:
(*Signed*) Calvin TSIEBO
Vice President of the Government and Acting Foreign Minister

[Seal of Ministry for Foreign Affairs]

[1] Translation from French by the Department of State of the United States.

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