

- (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 1949¹

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.

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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 1962¹

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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 UNTEA² 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.

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Article XXII

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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 1949¹

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 DJAKARTA¹

[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 1904²
2. International Convention for the Suppression of the White Slave Traffic of 4 May 1910³

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 1910¹
4. Convention for the Suppression of the Circulation of and Traffic in Obscene Publications of 12 September 1923²
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

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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".