

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 1949¹

(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 consideration 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 measures 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

<i>Countries</i>	<i>Trade agreements term</i>	<i>Monetary agreements term</i>	<i>Term of notice</i>
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.	from 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.	—

<i>Countries</i>	<i>Trade agreements term</i>	<i>Monetary agreements term</i>	<i>Term of notice</i>
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 2½%, 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.

. . .

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 aircraft 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 of Indonesia were, in the eyes of the Republic of the United States of Indonesia, citizens of the Republic of 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 of 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-Netherlanders) 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 (uithemse Nederlandse onderdanen-niet-Netherlanders) 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 (uithemse Nederlandse onderdanen-niet-Netherlanders) 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.

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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 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 1954¹

[*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 3¹ 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 1954²

[*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 1955²

[*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.

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 implying 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 1962²

. . .

(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.