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Digest of Decisions of National Courts relating to Succession of States and Governments
Study prepared by the Secretariat

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SUCCESSION OF STATES AND GOVERNMENTS

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Introduction

(i) The present document, prepared by the Secretariat, contains a digest of decisions of national courts relating to succession of States and Governments. As indicated in paragraph 73 of the report of the International Law Commission covering the work of its fourteenth session,[1] the Secretary-General, by *notes verbales* of 21 June and 27 July 1962, has invited Member Governments to transmit to him, among other things, the texts of all pertinent domestic judicial decisions by 15 July 1963, a time limit which has not yet expired. At the time of the preparation of the present documents, no information on decisions of municipal courts had been received by the Secretariat. On receipt of the material thus requested and taking into account also other additional information which might be brought to its attention, the Secretariat will issue an addendum to the present document.

(ii) In compiling this digest an effort has been made to cover all the available relevant material since the end of the First World War. More extensive treatment has been given to decisions of the post-World War II period and, in particular, to the available case law of the Courts of the countries which have acceded to independence after 1945. Decisions relating to former colonies, including the former German colonies, have also been dealt with because they might be of particular topical interest.

(iii) The material has been arranged according to subject-matter as indicated in the headings of the various sections of the study. Within each section an attempt has been made to present the cases in a logical order, taking into account the substance of the problems discussed or decided and the trends discernible in various groups of decisions. Arrangements based on the " principal legal systems of the world ", on considerations of geography or on chronology have been adopted only where more relevant criteria did not appear to be available.

(iv) The present digest is based on information given in the various legal publications available, particularly in the " International Law Reports " and its predecessor, the " Annual Digest of International Law Cases ".

Part A: Succession of States

Chapter I. General problems of State succession

(A) *Date of transfer of sovereignty*

The Bathori (1933)
England, Judicial Committee of the Privy Council
47 Lloyd's List Law Reports, 123
Annual Digest, 1931-1932, Case 51

1. A claim for compensation for the illegal sinking of a Hungarian merchantman by the British Navy during World War I depended on the answer to the question whether the claim was barred by Article 232 of the Peace Treaty of Trianon, by which Hungary had renounced all claims which might be made by Hungarian subjects arising out of injuries done to them by the Allies. At the date of the signature of the Treaty of Trianon (4 June 1920), Fiume, the home port of the sunk steamer, was under the control of Gabriele d'Annunzio. From 1921 to 1924 it became a " Free State ", but in 1924 it was annexed to Italy by the Treaty of Rapallo,[2] and by the terms of the Treaty the claimant Company acquired Italian nationality. The Company had been domiciled in Fiume since April 1920.

2. The Court did not think it necessary to decide what was the status of Fiume at the date of the Treaty. In its view, the Treaty bound the people of Fiume irrespective of any future changes in the status of the city. Whether the plaintiffs were or were not Hungarian nationals at the effective date of the Treaty, the Court had come to the conclusion that the clause in question plainly was intended to cover them. It appeared reasonably clear that the intention of the parties was that for acts or omissions done to the property of Hungarian belligerents there should be no redress, whether the persons who had suffered damage did or did not continue to be Hungarian nationals up to the date of the Treaty.

3. Whether for acts done before the acquisition of a new nationality the new State can or will exercise protection or whether the former State can exercise protection, may be debatable the Court said; but in the circumstances attending a peace treaty it appears very natural that the former State should be required to renounce protection for its ex-nationals, and in the Treaty of Trianon it seems clear that Hungary did so act. If the Treaty operated by international law only, the tribunal in Prize might well have had to determine how far Hungary's attempt to affect the rights of ex-nationals could be treated as effective. But for an English court, whether in Prize or not, this question was precluded by the terms of the Treaty of Peace Act.

Change of Sovereignty (Taxation) Case (1921)
German Reichsfinanzhof (Reich Tribunal in Revenue Matters)
Juristische Wochenschrift, 1921, p. 1619
Annual Digest, 1919-1922, Case 57

4. The German Capital Levy Act of 1919 applied to persons who, on 30 June 1919, were of German nationality. The appellant had resided from 1906 in the province of Posen and moved to Germany after Polish troops occupied the province after the Armistice of 11 November 1918. In 1920 he was asked to make a declaration for the assessment of the Capital Levy Act. He contended that he was a Polish national and not, therefore, subject to the levy.

5. The *Reichsfinanzhof* held that the appellant was subject to the tax. Although he lost his German nationality by virtue of the Peace Treaty of Versailles, the change of nationality did not take place before 10 January 1920, on which day the Treaty entered into force. The mere signature of the Treaty did not impose on Germany the international obligation to treat the inhabitants of the ceded territories as aliens.

[1] *Official Records of the General Assembly*, Seventeenth Session, Supplement No. 9 (A/5209).

[2] Before and during World War I Fiume was under Hungarian sovereignty. After World War II Fiume, now Rijeka, was ceded by Italy to Yugoslavia (Peace Treaty with Italy of 10 February 1947).

Case of the application of Weimar Constitution to Danzig (1931)
High Court of Danzig
Danziger Juristische Monatsschrift, Vol. 10 (1931), p. 124
Annual Digest, 1931-1932, p. 86

6. The Court held that the German Constitution of 1919 had legal force in Danzig (now Gdansk), although Danzig was at the time about to be separated from Germany and created a Free City by virtue of the Peace Treaty of Versailles. It is not permissible to argue, the Court said, that in view of the impending separation of Danzig from the mother-country, the German Constitution had only a provisional effect in the territory of Danzig. This follows from the principle of the continuity of the legal order according to which there is a presumption in favour of the continued validity of legal provisions which were previously in force.

Application of German Law in Alsace-Lorraine Case (1924).
German Reichsgericht (Supreme Court of the German Reich)
Fontes Juris Gentium, A, II (1879-1929), No. 309

7. The Court held that the law applicable to a contract to transport goods from a city in Alsace-Lorraine, made in October 1919, was German commercial and currency law. The fact that under Art. 51 of the Peace Treaty of Versailles Alsace-Lorraine became part of France with effect from 11 November 1918 (the date of the Armistice) had no influence on private law relations entered into before the coming into effect of the Treaty (10 January 1920).[3]

L. and J. J. v. Polish State Railways (1948)
Supreme Court of Poland
Panstwo i Prawo, 3 (1948), Nos. 9-10, p. 144
International Law Reports, 1957, p. 77

8. The former Free City of Danzig and the part of the 1937 German territory east of the Oder and Neisse which was placed inder Polish administration by the Potsdam Conference decision of 2 August 1945 are referred to in Polish legislation as " the Recovered Territories ". A Polish Decree of 13 November 1945, effective as from 27 November 1945, provided that the whole body of law binding in the circuit of the District Court in Poznan should take effect in the Recovered Territories.

9. A special bench of the Supreme Court of Poland delivered the reply to the question " What were the provisions of civil law binding in the Recovered Territories, and particularly in the circuit of the Court of Appeal of Wroclaw, after the taking of those Territories by the Polish State but before the entry into effect of the Decree of 13 November 1945? " The Decree did not decide this question.

10. The Supreme Court held that after surrender the German State lost its sovereignty while the Recovered Territories were submitted to the sovereign possession and authority of the Polish State on the basis of the agreement concluded among the victorious Powers.

11. The whole German population of the Territories was subject to transfer in so far as it had not already left of its own accord. The Court stated that in exercising its rights the Polish State introduced in the Recovered Territories its own public administration and its own administration of justice without delay, and very rapidly re-settled the region leaving on the spot only the indigenous population of Polish origin. The German population, for all practical purposes, no longer played the role of a subject of law as it had lost any organizational bonds whatsoever. The Recovered Territories became united with the rest of the Polish State on a basis of complete equality. All provisions of law issued for all the Polish State also had binding force in the Recovered Territories, while all provisions contrary to the legal order recognized by the Polish State ceased to be binding. This principle, the Supreme Court said, follows from the very notion of State sovereignty.

12. For that part of the judgment which decided upon the legal system to be applied during the transitional period before 27 November 1945, see paragraphs 185 *et seq* below.

Germans beyond the Oder-Neisse Line (Nationality) Case (1951)
Oberlandesgericht (Court of Appeal) Celle, Federal Republic of Germany
Neue Juristishe Wochenschrift 1952, p. 475
(81) Journal du droit international (Clunet) (1954), p. 840

13. The jurisdiction of a Court of First Instance in the Federal Republic of Germany to entertain a petition for divorce was dependent on the question whether the petitioner was of German nationality. The respondent objected to the jurisdiction and contended that in 1946 or 1947, while resident in that part of Upper-Silesia which had remained German after 1922, the petitioner had applied for, and after the so-called verification procedure had been granted, Polish nationality.

14. The Court of Appeal held that it was irrelevant whether, during his stay in Upper-Silesia, the petitioner had acquired Polish nationality. The trial court would have jurisdiction even if the petitioner were a " *Doppelstaatler* " (a *sujet mixte*; a person having dual nationality). The relevant question was whether the petitioner had lost his German nationality which he had acquired at birth. The Court answered this question in the negative because the petitioner would not have lost his German nationality even if he should have acquired Polish nationality at his own request.

15. According to the German Nationality Act of 1913, the Court said, a German loses his German nationality by acquiring, at his own request, a foreign nationality only if he has neither his domicile nor his residence in Germany (orig.: " *im Inland* "). This requirement was not met in the present case. The territory to the East of the Oder-Neisse line continued to be German from the point of view of both Constitutional and International Law. The granting to Poland of the provisional administration (orig.: *voläufige Verwaltung*) did not make it foreign territory.

[3] See the decisions in *Chemin de fer d'Alsace-Lorraine v. Levy & Co.* and in *Espagne v. Chemin de fer d'Alsace-Lorraine*, paragraphs 136 and 137 below, concerning the effect of the cession of Alsace-Lorraine as from 11 November 1918 on the applicability and non-applicability, respectively, of the Berne Convention relating to the international transport of goods.

16. The rules of International Law relating to nationality in the case of State succession were not applicable. The granting to Poland of the provisional administration, being an interim arrangement (orig.: " *Provisorium* "), was not comparable to State succession.

In re Société Ultrabois (1958)
French Conseil d'Etat
Recueil, 1958, p. 39
Annuaire français de droit international (1959), p. 871

17. It was held that the cession of Tende and la Brigue by Italy to France took effect only when the Peace Treaty with Italy of 10 February 1947 entered into force, i.e., on 15 September 1947. The decision of the *Directeur des industries mécaniques et électriques au Ministère de la production industrielle,* taken on 21 July 1947, to transfer certain parts of a cable mountain railway was therefore illegal as the transferred goods were at the relevant time situated in foreign territory. In taking the decision to transfer the material, the *Directeur* had committed a *faute* for which the State was responsible.

Debendra Nath Bhattacharjee v. Amarendra Nath Bhattacharjee (1954)
High Court of Calcutta
Indian Law Reports, Calcutta Series 1956 — Vol. II, p. 270

18. By the Chandernagore (Application of Laws) Order, 1950, promulgated by the Government of India on 1 May 1950, the Civil Procedure Code [of India] had been made applicable to the Chandernagore Courts from 2 May 1950. In a partition suit instituted in the Indian Court of Alipore on 1 June 1951 which related, *inter alia,* to property situated in Chandernagore, the jurisdiction of the Court to adjudicate upon real property in the town of Chandernagore was objected to on the ground that Chandernagore was not on 1 June 1951 comprised within the territory of India.

19. On appeal the High Court of Calcutta noted that by a Treaty signed at Paris on 2 February 1951, France had transferred to India, in full sovereignty, the territory of the Free Town of Chandernagore. The Treaty provided that it should come into force on ratification. The instruments of ratification had been exchanged on 9 June 1952. In law, therefore, Chandernagore was foreign territory to India up to 8 June 1952.

20. The recognized rule of international law which the courts of India, in common with those of other countries, observed was that they did not exercise jurisdiction in suits directly involving the question of rights to real property situated in foreign countries. Consequently the Subordinate Judge's Court could not exercise jurisdiction, as regards the Chandernagore properties, on the date the suit had been instituted. The Chandernagore (Application of Laws) Order, 1950 (paragraph 18 *supra*), did not in the Court's opinion change this position. The Order did not make the ordinary rule of international law (para. 20 *supra*) inapplicable.

21. As Chandernagore had, in the meantime, become Indian territory, the Court thought it would be hypertechnical to insist on the plaintiff going through the formal procedure of amending the plaint to include the Chandernagore properties, and held that now the court below had jurisdiction and should proceed with the suit.

(B) *Transitional problems and arrangements.*

(i) *Problems of transition relating to nationality*
Nationality of residents of Israel cases [4]
International Law Reports, 1950, Case No. 27

22. The question of the effect of the termination of the Palestine Mandate upon the nationality status of former Palestine citizens who became resident in Israel gave rise, during the period between the establishment of the State in 1948 and the enactment of the Israel Nationality Law in 1952, to a conflict of judicial opinion.

23. In re Goods of *Shiphris,* decided by one judge of the Tel Aviv District Court on 13 August 1950, it was held, in an undefended probate action, that such persons were stateless (Pesakim Mehoziim, vol. 3 (1950-1951), p. 222).

24. In *Oseri v. Oseri,* decided by the Tel Aviv District Court on 7 August 1952, the Court stated that it was difficult to reach a deduction that the bond of loyalty between the Mandatory Government and its inhabitants could automatically devolve into a bond of loyalty between the State of Israel and its inhabitants. It held therefore that, in the period between the establishment of the State and the entry into force of the Nationality Law, the inhabitants of Israel were not Israel nationals within the legal meaning of the term national (Pesakim Mehoziim, vol. 8 (1953), p. 76).

25. The Supreme Court of Israel, in a decision of 6 November 1952, expressed the view that Palestinian citizenship no longer existed, and had not existed, after the establishment of the State of Israel (*Hussein v. Governor of Acre Prison, Piskei-Din,* vol. 6 (1952) p. 897).

26. However, in A. B. v. M. B., decided on 6 April 1951 by a judge other than the judge who had decided *In re Goods of Shiphris* (paragraph 23 *supra*), it was held that the point of view according to which there were no Israel nationals was not compatible with public international law. It was, the judge stated, the prevailing view that in the case of transfer of a portion of the territory from one State to another, every inhabitant of the ceded State becomes automatically a national of the receiving State. So long as no law had been enacted providing otherwise; every individual who, on the date of the establishment of the State, was resident in the territory which today constitutes Israel was also a national of Israel. Any other view would lead to the absurd result of a State without nationals — a phenomenon the existence of which had not yet been observed (Pesakim Mehoziim, vol. 3 (1950-1951) p. 263, at p. 272).

(ii) *Problems of transition relating to criminal law and procedure*

Nazar Mohammad and others v. The Crown (1948)
High Court of Lahore
Pakistan Law Reports, Lahore, Vol. I, 1948, pp. 19 et seq.
Annual Digest, 1948, Case 28

27. The following events took place before 15 August 1947, the day two independent Dominions, India and

[4] The digest contained in the text is based on the presentation in " *International Law Reports,* 1950 ", 1. c.

Pakistan, were set up. Five persons were convicted [5] by the Court at Karnal (now in India); three were sentenced to death, two to transportation for life. By warrant of the judge of Karnal they were transferred to the Central Jail, Lahore, then capital of the Punjab province in undivided India (now in Pakistan). The proceedings for confirmation of the death sentences were received by the Lahore High Court on 22 May 1947.

28. After the partition of India a petition was filed with the High Court of Lahore (now in Pakistan) urging that since Karnal was not a part of Pakistan, the detention of the accused in Pakistan was illegal.

29. The Court decided that the warrant did not lapse when Karnal ceased to be a part of Pakistan. Its decision was to a large extent based on an interpretation of the relevant provisions of municipal law. However, the Court also gave rulings on questions of International Law raised by the defence. The principle invoked by the petitioners that the penal laws and judgments of one State cannot be enforced in another State does not apply, the Court said, in a case where, at the time of the conviction and transfer to a jail, the seat of the court of first instance and the location of the jail were in one, still undivided country.

30. Commenting on the argument advanced on behalf of the petitioners that in the absence of an extradition agreement between the two Dominions they cannot be extradited to India, the Court said that if this contention had any force it might have afforded a further ground for holding that the appeals, the murder references and the revision must all be heard and decided by the Court at Lahore itself on their merits rather than that the accused should be, although guilty, set at liberty or kept infinitely in jail.[6]

Katz-Cohen v. Attorney-General of Israel (1949)
Supreme Court of Israel
Pesakim Elyonim, Vol. 2 (1949) 216
Annual Digest, 1949, Case 26

31. The appellant had killed his wife in Tel-Aviv in April 1948, i.e., before the establishment of the State of Israel on 15 May 1948. In his appeal against the conviction of manslaughter in September 1948 by the District Court of Tel-Aviv, then a Court of the State of Israel, the appellant argued that the Court was without competence to try his case since State of Israel was not competent to deal with crimes committed before it came into existence.

32. The Supreme Court held that after a change of sovereignty the new authorities were entitled to bring to trial criminal acts committed in their territory before the change of sovereignty. There was no principle of international law denying continuity of the power to punish in these circumstances, the Court said. It would be surprising if a man accused of murder or manslaughter in April 1948 should escape punishment because in May 1948 the State of Israel had come into existence. It was difficult to say that this war a reasonable argument or that a sense of justice and equity required such a conclusion. On the contrary, the sense of justice rose in revolt against a conclusion such as this, impying a gap in the criminal law caused by the transition from sovereign to sovereign.

33. While it was correct that it was not the individual but the injured community who demanded the punishment of the offender, that was no reason why the same community against whom the offence had been committed should not demand its punishment merely because in relation to that community the Government of Israel had replaced the Mandatory Government. The question was not one of the jurisprudential characteristics of criminal law as against those of civil law. The real question was whether in the event of a change of sovereignty the former sovereign's power of punishment disappeared and was not replaced by the new sovereign's power of punishment.

34. There was no need to decide whether the rules of State succession applied to the State of Israel, or to deal with the problem of what would pass by way of succession to the new sovereign. The question was what powers of government passed to him.

35. The Court accepted " the golden rule of continuity of the law despite a change of sevoreignty ".[7] The exception was in the case of laws which were incompatible with the constitution and laws of the new sovereign. Murder and manslaughter, as well as most other criminal offences, were such that continuity of law and continuity of power to punish from sovereign to sovereign were axiomatic. Public welfare demanded this result; the change of severeignty did not prevent did not prevent it. International law provided no authority against continuity after a change of sovereignty.

36. In *Wahib Saleh Kalil v. Attorney-General,* decided in 1950, the Supreme Court of Israel applied the principle of the *Katz-Cohen* case (paragraphs 31 to 35 supra) also in a case of murder committed in March 1948 at a place which did not become part of the territory of Israel on 15 May 1948, but which came into Israel's possession subsequently (Piskei-Din, vol. 4 (1950), p. 75, Pesakim Elyonim, vol. 3 (1950-1951), p. 41). It extended the principle in 1952 to violations of the customs legislation of Palestine (Piskei-Din, vol. 6 (1952), p. 412; Pesakim Elyonim, vol 8 (1952), p. 106). It said that goods smuggled Palestine remained smuggled goods even in relation to Israel; the offence of smuggling did not cease to be an offence, and the possession of the smuggled goods continued to be criminal. The Palestine Customs Ordinance could not be regarded as " foreign " law in Israel, but was part of the law of Israel, and therefore the question of giving effect to a fiscal law of a foreign State (Palestine under the Mandate) did not

[5] Neither the report in *Annual Digest* nor that in the *Pakistan Law Reports* states expressly where the crime had been committed. From the pleadings of the petitioners (*Pakistan Law Reports,* l.c., at pp. 21 and 23) it appears that the *locus delicti commissi* was outside the Dominion of Pakistan, i.e., in the present territory of India.

[6] See also two decisions by an Italian occupation court in Ethiopia reported in *Annual Digest,* 1935-1937, Cases 46 and 47 of 1937, and decisions of other Italian Courts referred to in *Annual Digest,* 1935-1937, p. 147. See also the decision of the Supreme Court of Israel in *Katz-Cohen* v. *Attorney-General* (paragraph 31 *et seq* of this paper).

[7] The Court quoted from Hyde, *International Law,* 2nd edition, Vol. I, pp. 394, 397.

arise. (Piskei-Din, vol. 6 (1952), p. 412; Pesakim Elyonim, vol. 8 (1952), p. 106).[8]

Attorney-General v. Eichmann (1961)
Israel, District Court of Jerusalem
Criminal Case No. 40/61

37. The question whether a new State may try crimes that were committed before it was established was among the many problems which were considered in the criminal proceedings against *Adolf Eichmann* in 1961. The trial court found the reply to this question in the decision of the Supreme Court of Israel in *Katz-Cohen* v. *Attorney-General* (paragraphs 31 to 35 supra) wherein it was decided that the Israeli Courts have full jurisdiction to try offences committed before the establishment of the State and that in spite of the changes in sovereignty there subsisted a continuity of law. The case of *Katz-Cohen* v. *Attorney-General* related to a crime committed in the country, but there is no reason, the District Court said, to assume that the law would be different with respect to foreign offences.[9] Eichmann's appeal against his conviction was dismissed and the judgement of the District Court affirmed by the Supreme Court of Israel in 1962.[10]

Arar. v. Governor of Tel Mond Prison (1952)
Supreme Court of Israel
Piskei Din 6 (1952), p. 368
International Law Reports, 1952, Case 30

38. At the time of the British mandate over Palestine the applicant was found guilty of murder committed in an Arab village which did not subsequently fall within the territory of the State of Israel and sentenced to death by the Court of Criminal Assizes of Palestine, sitting at Nablus. His appeal was rejected by the Court of Criminal Appeals, but the sentence had not been carried out by the time the Mandate came to an end. The applicant escaped from Acre prison in which he had been confined and was recaptured by the Israel police. The President of Israel commuted the death sentence to one of fifteen years' imprisonment.

39. In an application for an order of *habeas corpus*, the applicant argued that the State of Israel could not continue to act according to the judicial sentence relating to an act committed outside the present frontiers of Israel. The Court held, on the basis of the relevant legislation of the State of Israel, that the continued imprisonment of the applicant was lawful.

In re Schwend (1949)
Italy, Court of Cassation
Foro Italiano 72 (1950) Part I, p. 74
Giurisprudenza Italiana 102 (1950), Part II, p. 36
Annual Digest, 1949, Case 30

40. When Abbazia (ceded by the Peace Treaty of 10 February 1947 to Yugoslavia) was part of Italy the appellant was indicted for having committed a crime there. While the criminal proceedings were pending, the Peace Treaty went into effect and Abbazia (Opatija) became part of Yugoslavia. The Court of First Instance in Trent nevertheless convicted him.

41. On appeal, the Court of Cassation did not accept the argument by the Public Prosecutor that where Italian territory had been ceded to another country, jurisdiction to try and punish crimes committed within that territory prior to the act of cession remained with the Italian courts. It held that the territorial jurisdiction of the Italian courts had ceased in respect of acts committed in Abbazia. A criminal act committed there had assumed the character of a crime committed abroad. The Court of Cassation upheld the conviction on a ground not material for the present study, because in its opinion jurisdiction had been correctly assumed in virtue of a special provision of the Italian Criminal Code. (The victim was an Italian national resident in Italy and the accused was arrested in Italy).

42. On the question which is pertinent to the present paper, the Court stated that in international law the principle was generally recognized that a cession of territory in virtue of a treaty operated as an immediate transfer of sovereignty, including all rights appertaining to the ceded territories. With the sovereignty passed jurisdiction, which was an attribute of sovereignty and could only belong to the State which succeeded to the territory. Territory, sovereignty and jurisdiction were interdependent and indivisible. Territory constituted the objective element in space. Within its frontiers sovereignty reigned. From sovereignty derived jurisdiction as one of its principal attributes. If the area of the territory was curtailed, sovereignty over the last part ceased *ipso jure*, and thus jurisdiction could not be exercised any longer.

43. An exception could be created by treaty, when the State to whom territory was ceded agreed to delegate or re-assign the exercise of jurisdiction, normally for a period of transition only.

44. The Court of Cassation mentioned as an example of such a delegation the Treaty between Italy and the Holy See of 1929, when Italy was requested to try crimes committed in Vatican territory. Other examples, not necessarily in the field of criminal procedure, will be found in later decisions of the Italian Court of Cassation summarized in paragraph 57 *et seq* below.

(iii) *Problems of transition relating to jurisdiction and procedure in non-criminal matters*

In re Alsys (1930)
Supreme Court of Lithuania
Annual Digest 1929-1930, Case 42

45. On an application for the renewal of proceedings in an inheritance action brought before World War I before the Russian courts and interrupted as the result of the outbreak of war, the Court said that Lithuania was a sovereign State which did not derive its sovereignty from Russia. The Lithuanian courts were not successors to the Russian courts. Only a law enacted by the Lithuanian Government could enable the courts to continue the proceedings instituted before Russian courts. No such law had been passed.

[8] The information in paragraph 36 of the text is based on a *note* in *Annual Digest*, 1949, pp. 70 to 72.

[9] This summary is based on an unofficial English translation of the judgment of the District Court of 12 December 1961 (mimeographed version, p. 34).

[10] *Eichmann* v. *Attorney-General*. Judgment of the Supreme Court of 29 May 1962, Criminal Appeal No. 336/61; unofficial English translation (mimeographed).

Salonica Appeals Case (1923)
Greece, Areopagus, 1923 (No. 501)
Thémis, vol. 34, p. 501
Annual Digest, 1923-1924, Case 45

46. Before the annexation by Greece of the district where the land in litigation lay, the Court of Appeal of Salonica handed down a decision, and an appeal against that decision to the Ottoman Court of Cassation was entered. After the annexation the case was brought before the Areopagus at Athens which ruled that it had been substituted for the Ottoman Court of Cassation. In deciding the appeal, the Areopagus stated it must be guided by the Turkish law in force when the judgment of the Court of Appeal of Salonica was given.

A. v. Prussian Treasury (1923)
Reichsgericht (Supreme Court of the German Reich)
Entscheidungen des Reichsgerichts in Zivilsachen, Vol. 107, p. 382
Fontes Juris Gentium, A. II, Vol. I (1879-1929) No. 306
Annual Digest, 1923-1924, Case 30

47. In 1913 the Court of First Instance (*Landgericht*) in Danzig, now Gdansk awarded to the plaintiff part of a sum she claimed from the Prussian State for damage caused to her in consequence of some irrigation works undertaken by Prussia. Both parties appealed to the Court of Appeal (*Oberlandesgericht*) which had its seat in Marienwerder, a city which under the Treaty of Versailles remained with Germany. The Court of Appeal in Marienwerder dismissed the appeals of both parties by judgment of 22 June 1920. On further appeal to the *Reichsegericht* (Supreme Court of the German *Reich*), Prussia contended that, as Danzig, the seat of the court of first instance, was no longer in Prussia, the Prussian Court of Appeal in Marienwerder had no longer jurisdiction to deal with the matter. Prussia also contended that as the land in question was now situated in Poland, Poland was responsible for the amount claimed, and that German Courts could not assume jurisdiction in an action which was, in fact, an action against a foreign State.

48. The *Reichsegericht* held that as the action had already been pending before the Court of Appeal in Marienwerder when Danzig ceased to be part of Germany (10 January 1920), the jurisdiction of the Court of Appeal was not extinguished by the mere fact that the city where the court of first instance had its seat had become a Free City, no longer part of Germany.

49. From the fact that Poland had acquired all the property of Germany and of German States in the ceded territories, it did not follow that Poland, in the absence of a special agreement, was responsible for the payment of the sum claimed. The contention that a foreign State could not, without its consent, be sued before a German court was therefore not relevant for the case under consideration.

Case of the sale of real property in Wischwill (Memel Territory) (1924)
Reichsgericht (Supreme Court of the German Reich)
Decision V/76/23
Fontes Juris Gentium, A II, Vol. I (1879-1929), No. 308

50. In July 1919 the purchaser of a property and smithy in a village which subsequently, on 10 January 1920, became by virtue of the Peace Treaty of Versailles part of the Memel Territory ceded by Germany to Lithuania, sued the defendant who had sold the property to him earlier, for the document required to effect the formal transfer of ownership ("*Auflassung*").[11] The Court of First Instance in the case was the *Landgericht* in Tilsit; the Court of Second Instance to whom one of the parties appealed was the *Oberlandesgericht* (Court of Appeal) in Königsberg. Both Tilsit and Königsberg remained under the Peace Treaty of Versailles on German territory. On further appeal to the Supreme Court of Germany (*Reichsgericht*), the question was raised whether the Court of Appeal in Königsberg had jurisdiction as the sold property was no longer on German territory.

51. The Supreme Court held that although the Memel area had been separated from Germany with the coming in force of the Peace Treaty, that did not prevent residents of that territory from continuing previously instituted suits before the German Courts, provided that exclusive jurisdiction in the particular suit was not vested in the courts of the ceded territory. The Court found that this was not the case, as the issue in litigation was not an existing right in real property, but the signing of a legal instrument and the validity of a contract of sale.

X. v. German Reich (1922)
Reichsgericht (Supreme Court of the German Reich)
Decision VI 805/21
Fontes Juris Gentium, A II, Vol. I (1879-1929), No. 268

52. In a suit against the German *Reich* for breach of (a commercial) contract, the decision of the Court of First Instance (*Landgericht*) was rendered on 22 December 1919, when Danzig still belonged to Prussia and Germany. The appeal to the Court of Appeal (*Oberlandesgericht*) in Marienwerder was lodged on 2 February 1920, i.e., after 10 January 1920, when Danzig was already separated from the German *Reich*.

53. On further appeal, the *Reichsgericht* (Supreme Court of the German *Reich*) stated that if a private person and not the *Reich* had been the defendant in the case, the jurisdiction of a German Court would no longer exist. As according to the principles of international law — apart from cases of exclusive jurisdiction — no State could be compelled to accept the adjudication of, and be sued in, the courts of a foreign country, the case could be decided only by a German court of appeal.[12]

Haifa Leases Case (1925)
Court of Cassation of the Lebanon
Gazette des Tribunaux Libano-Syriens, December 1925, p. 187
Annual Digest, 1925-1926, Case 70

54. A judgment of the Court of First Instance in Haifa concerning land near Haifa, rendered in a law suit

[11] See, with regard to this instrument, the Advisory Opinion concerning *Settlers of German Origin in Territory Ceded by Germany to Poland* (1923) P.C.I.J., Series B, No. 6, summarized in A/CN.4/151, paragraphs 39 to 44.

[12] Considerations similar to those summarized in paragraph 53 had also been the basis of an earlier decision of the *Reichsgericht* in a suit against the German *Reich* (Decision of 1 July 1921 (VII 591/20) *Entscheidungen des Reichsgerichts in Zivilsachen*, 102, p. 304. *Fontes Juris Gentium, op. cit.*, No. 231).

initiated before World War I, was quashed by the Court of Cassation at Constantinople. The case was re-heard by the trial court and an appeal was taken to the Court of Appeal in Beyrouth, which gave its decision in December 1917. A further application for cassation was referred to a Special High Court in Beyrouth, established by the Allied Powers, on which the jurisdiction of the Court of Cassation in Constantinople had been conferred. Before the proceedings in cassation were completed, the Treaty of Lausanne (1923) fixed the frontier between Turkey and Syria, and Palestine was placed under the Mandate of Great Britain. On demurrer to the jurisdiction of the Court of Beyrouth, the Court of Cassation at Beyrouth held that in view of the transfer of the territory of Palestine from Turkey to Great Britain and the separation of Palestine from Syria (and the Lebanon), the Court at Beyrouth could no longer exercise jurisdiction in a case pending before it which concerned immovable property in Palestine.

Banin v. Laviani and Ellena (1949)
Court of First Instance, Milan
Foro Italiano 73 (1950) Part I, p. 227
Foro Padano (1949) Part I, p. 984
Annual Digest, 1949, Case 27

55. This case was decided on 10 October 1949, i.e., after the coming into force of the Italian Peace Treaty of 10 February 1947, but before the final disposal of the former Italian colonies envisaged in article 23 (3) of the Peace Treaty had taken place.

56. The Court held that the judgment of the Court of Asmara (Eritrea) given subsequent to the ratification of the Peace Treaty, by which the plaintiff was declared bankrupt and the defendants appointed receivers, was not the judgment of a foreign court.[13] Italy had renounced the sovereignty but this was not a case of dereliction of territory. The effects of this renunciation were those laid down by customary international law. While Italy had lost her sovereignty over these territories, she might, to a certain extent, continue to maintain her organs of government there. This, the Court said, is the position according to customary international law and implicitly confirmed by the Peace Treaty. It was irrelevant, for the purpose of the judgment under review, that neither this judgment nor any other judgment pronounced in Asmara could, as the Court assumed, be made the object of an appeal to the Court of Cassation in Rome.[14]

Sorkis v. Ahmed (1950)
Italy, Court of Cassation
Foro Italiano 72 (1950) I, 985
International Law Reports, 1950, Case 24

57. Differing from the view of the Court of Milan,[15] the Italian Court of Cassation held that it had jurisdiction to entertain an appeal from a decision of the Court of Appeal of Asmara (Eritrea) given on 10 April 1948 [after the entry into force of the Peace Treaty with Italy, but before the final disposal envisaged in Article 23 (3)].

58. The Court stated that the exercise of jurisdiction over a particular territory was not insolubly connected with the exercise of sovereignty over that territory. The possibility was not excluded that, having regard to the complexities and peculiarities of the situation, special provisions tempered or modified the general application of the severance of the territories concerned from the legal system of the State which had suffered the loss. The loss of rights on the part of Italy had not been accompanied by the immediate acquisition of title by another entity. The letter and the spirit of the Peace Treaty led to the conclusion that a unilateral renunciation and *derelictio,* not a cession in the true sense of the word in favour of a particular body, had been effected. The Peace Treaty (Art. 23 (3)) conferred upon the Big Four, in the first place, and then upon the United Nations, a mere power of decision. The renunciation established in law that Italy had lost her rights. The power which the Great Powers had reserved for themselves was comparable to that of an arbitrator in municipal law. An arbitrator did not base himself upon ownership in the thing which formed the object of his award. The Treaty did not envisage the immediate assumption of sovereignty on the part of some other subject of international law [i.e., other than Italy]. Instead it provided for a period of transition of short duration pending a final decision. The Court explained that there had been good reasons for not modifying the existing legal system and for not disturbing the ordinary development of private life and legal relations by successive changes at brief intervals.

59. As the previous legal order had remained during the period of transition, it was impossible to deny that the bodies which exercised jurisdiction in Eritrea were organs of the Italian Government and that they derived their powers from Italian law. The Italian authorities no longer exercised their jurisdiction in virtue of the sovereignty of Italy, but in virtue of the powers which were delegated to Italy implicitly by the Treaty of Peace. The Court concluded by stating that it followed that the Italian Court of Cassation, which formed the apex in the hierarchy of Italian courts, retained its jurisdiction in respect of decisions pronounced by the Courts in Eritrea, seeing that this jurisdiction was recognized by the Courts there.

Farrugia v. Nuova Compagna Generale Autolinee (1951)
Italy, Court of Cassation
Giurisprudenza Compl. Cass. Civile, 1951, No. 2792
International Law Reports, 1951, Case 32
American Journal of International Law (1955) p. 269

60. In this case, which was decided on 17 February 1951, i.e., after the entry into force of the Peace Treaty with Italy but before the establishment of the United Kingdom of Libya (24 December 1951), the Court of Cassation followed its decision in *Sorkis v. Ahmed* concerning appeals from the courts in Ecritrea,[16] and

[13] See also the decision of a Netherlands Court holding that bankruptcy ordered by a Netherlands Court retained its force in Indonesia after transfer of sovereignty (paragraph 90 below).

[14] See, however, the decisions of the Court of Cassation in paragraphs 57 *et seq.* below.

[15] See paragraph 56 *supra.*

[16] See paragraphs 57 *et seq. supra.*

resolved to entertain an appeal from a decision of the Court of Appeals in Tripoli.

61. After recalling its reasoning in the earlier case, the Court added that it was quite consistent with the principles of international law whereunder a State may, pursuant to treaty stipulations, continue to exercise sovereign functions in territory it has ceded, as historical examples show. In consequence, the decision of the Court of Appeals of Tripoli was to be regarded as an Italian decision.

Nicolo v. Creni (1952)
Italy, Court of Cassation
7 Foro Padano 278
American Journal of International Law (1954), p. 160

62. The judgment of the Court of Cassation in this case is dated 29 January 1952, i.e. about five weeks after the establishment of the United Kingdom of Libya (24 December 1951). It is clear that the Court of Cassation must have been seized of the case before that date.

63. The Court held that the loss of these territories imposed upon the Italian state by the Treaty of Peace did not prevent the previously established Italian judicial organs from continuing to exercise, even if temporarily, their jurisdiction. Their decisions had retained the character of Italian judicial actions and as such were subject to review by the Court of Cassation. For purposes of the power of a higher court to review, the important thing was not the fate which the territory had suffered in which a decision had been rendered, but the nationality of this decision.

Marzola v. Società Teavibra (1949)
Italy, Court of Cassation
Foro Italiano 72 (1949), Part I, p. 914
Giurisprudenza Italiana 102 (1950), Part I, pp. 1, 513
Annual Digest, 1949, Case 24

64. It was held that the Italian Court of Cassation retained jurisdiction to hear appeals from decisions of the Court of Appeal of Trieste pronounced before the Treaty of Peace of 10 February 1947 came into force (16 September 1947). The Court of Appeal of Trieste was undoubtedly an organ of the Italian judicial authorities having regard to the rule that military occupation does not change the legal status of the occupied territory. By the Armistice of September 1943 the Allied occupation of Trieste was transformed from belligerent occupation into occupation on the basis of an armistice. The jurisdiction of the Italian judicial authorities was not affected thereby.

Pre-Trusteeship Decisions of Somaliland Courts Case (1954)
Italy, Court of Cassation
38 Rivista di Diritto internazionale, 76
American Journal of International Law (1955), p. 584

65. The administration of the former Italian colony of Somaliland was transferred to Italy as Administering Power on 1 April 1950. The Court held that the Ordinance of the Trusteeship Administration providing for appeals to the Court of Cassation from decisions of the Courts of the Trust Territory was applicable also to decisions rendered prior to 1 April 1950.

Romano v. Trusteeship Administration of Somaliland under Italian Trusteeship (1957)
Italy, Council of State
Il Consiglio di Stato 1957, I, 343
(89) Journal du Droit International (Clunet) (1962), p. 222

66. In 1956 an Ordinance of the Italian Administrator of Somaliland created a Court of Justice for Somalia, with jurisdiction, *inter alia,* over appeals on the grounds of incompetence, illegality or *ultra vires,* against final administrative acts of the public authorities. The Italian Council of State held that its competence over such appeals had come to an end with the institution of this Court for Somalia. The Council stated that the old rules, vesting jurisdiction in it, provisionally kept alive in 1950, were expressly designed to expire on the promulgation " of the autonomous rules of the new State ", separate and distinct from that of Italy.

Passi v. Sonzogno (1953)
Italy, Court of Cassation
37 Rivista di Diritto internazionale, 579
American Journal of International Law, (1955), p. 584

67. The Court held that the jurisdiction of Italian Courts in Eritrea terminated as of 15 September 1952.[17]

Forer v. Guterman (1948)
Israel, District Court of Tel-Aviv
Hamishpat, Vol. IV, 1949, p. 55
Annual Digest, 1948, Case 21

68. An Order of the Judicial Committee of the Privy Council on appeal from the judgment of a Court of Palestine under British Mandate was made before 15 May 1948 (the date of the end of the Mandate and the establishment of the State of Israel), but reached the parties after that date. The Court found that the decision of the Judicial Committee was binding on the parties to the litigation. It was immaterial that the Order only reached Israel after that date. The essential fact was that on 15 May 1948 the rights of the parties had been regularly determined in a manner binding on all courts in Palestine.

(iv) *Problems of transition relating to the recognition and execution of judgments and equivalent titles*

(*a*) Cases where the title orginates in territory which was under foreign sovereignty and has become national territory

Pre-Annexation Judgment Case (1929)
Greece, Court of Athens
Thémis, 41, p. 342
Annual Digest, 1929-1930, p. 72

69. The Court treated as a Greek decision a judgment rendered by the authorities of the ceded province prior to its annexation by Greece.

Janina Mortgages Case (1931)
Greece, Areopagus
Thémis, vol. 42, p. 643
Annual Digest, 1931-1932, Case 36

70. A decision ordering the execution of a mortgage given during the Turkish régime, at Janina, which had

[17] The Constitution of Eritrea entered into force upon its ratification by the Emperor of Ethiopia on 11 September 1952. *Yearbook on Human Rights* for 1952, p. 62.

since become part of Greece, was to be regarded as a foreign title. According to a generally recognized principle of international law, whenever the execution of decisions emanating from an authority in annexed territory prior to annexation was requested in the territoy of the annexing State, the title was regarded as a foreign one. This followed from the principle of non-retroactivity of annexation.

Clements v. Texas Company (1925)
United States of America, Court of Civil Appeals of Texas (Galveston)
273 South Western Reporter 993 (1925)
Annual Digest, 1925-1926, Case 73

71. In a province of Mexico a judgment relating to land was rendered in a court of competent jurisdiction. Subsequently, the province became a part of the State of Texas which, through revolution, became independent of Mexico in 1836. The Court held that the judgment was not affected as a valid obligation. In the event of conquest or revolution, the Court said, the people change their allegiance. Their relation to the ancient sovereign is dissolved, but their relations to each other and their rights of property remain undisturbed.

72. The Court added that when a change of government took place, the judgment was not of itself enforceable as a judgment under the rule of the succeeding sovereignty and in its courts, but had to be recognized by the new sovereignty.

Chunilal Kasturchand Marwadi and another v. Dundappa Damappa Navalgi (1950)
India, High Court of Bombay
1950, Indian Law Reports, Bombay 640
International Law Reports, 1950, Case 23

73. In 1927 the appellants procured in a court in the Indian Province of Bombay a judgment for certain moneys owing against Damappa and a partnership to which he belonged. Damappa was a resident of the then independent State of Jamkhandi and did not submit to the jurisdiction of the Indian Court. Under the applicable provisions the Bombay Court did not have jurisdiction in the case against Damappa and neither he, nor his heir, entered any appearance at the trial.

74. In 1948 the judge of the Court in Jamkhandi dismissed the request for execution of the judgment of 1927 as the judgment of a foreign court which did not have jurisdiction and was not capable of enforcement in the Courts of Jamkhandi State.

75. On appeal it was held that the judgment could now be enforced because, in the meantime, the Jamkhandi State had acceded to India so that the Indian Court was no longer a foreign Court. The contention of the judgment debtor was that to plead a bar to the execution of the decree of a foreign Court was a substantive right which could not be retrospectively taken away. This contention was rejected by the Court which said that there had been no alteration of the law, but an alteration in the status of the judgment debtor and the character and authority of the Court. What had been a foreign Court had ceased by reason of the exercise of the sovereign authority of the Indian Dominion to be a foreign Court and the judgment debtor had ceased to be a foreigner in relation to the Court which had rendered the judgment.

Bhagwan Shankar v. Rajarum Bapu
India. High Court of Bombay
Indian Law Reports (1952) Bombay, 65
International Law Reports, 1951, Case 30

76. In the case of *Chunilal Kasturchand v. Dundappa,* summarized in paragraphs 73 to 75 above, the Court ordered the execution of a judgment of a Court of British India which had not had jurisdiction in the case against a judgment debtor who had been a resident of an independent princely State which eventually acceded to the Dominion of India. Now we are dealing with a case where it was sought to enforce against a defendant formerly resident in one princely State the judgment rendered by the Court of another princely State after both States had acceded to the Dominion of India. The full bench of the High Court of Bombay found that the case of *Chunilal Kasturchand v. Dundappa* had been rightly decided and applied the principle on which it was based.

77. Plaintiff had obtained an *ex parto* money decree in a court in the State of Sholapur in 1937. The Court did not have jurisdiction because the defendant was a resident and citizen of the State of Akalkot. The two lower courts of Akalkot refused the application for execution because of the lack of jurisdiction of the trial court. During the appeals proceedings the Akalkot State merged in the Province of Bombay. The High Court allowed the execution because the Court of Sholapur was no longer a foreign court and the defendant no longer a foreigner vis-a-vis that Court. The prejudice to the defendant had been caused by an Act of State.

78. It is noted in *International Law Reports,* 1951, p. 72, that the Pakistan High Court at Dacca on 4 May 1951 arrived at a conclusion which was the reverse of the Indian decision (*Fazal Ahmed v. Abdul Bari,* Pakistan Law Reports (1951) 1 Dacca 375).

Fischer v. Einhorn (1926)
Supreme Court of Poland
O.S.P. V, No. 211
Annual Digest, 1925/1926, Case 71

79. On 8 June 1920 the Czechoslovak Court at Trstená had given judgment against the defendant. At the time, the village in which the defendant was resident belonged to the district of that court. Later, the village was incorporated into Poland, but the Court remained on Czechoslovak territory. In proceedings for the execution of the Czechoslovak judgment, the Supreme Court held that at the time of the judgment the Court at Trstená had been the competent court. This was not changed by the subsequent incorporation of the village into Poland. The judgment must therefore be regarded as a domestic, not a foreign judgment.[18]

[18] In the case of *Fischer v. Einhorn* the Czechoslovak Court, a foreign court at the time of execution, had, at the time of the trial, had jurisdiction *rations loci.* This distinguishes this case from *Knoll v. Sobel* (paragraph 80 below), where the jurisdiction of the now foreign trial court (Vienna) had obviously been based on some ground unconnected with subsequently Polish territory.

(*b*) Cases where the title originates, as territory which was under the same sovereignty as the district where execution is to take place, and which has become foreign territory

Knoll v. Sobel (1925)
Supreme Court of Poland
O.S.P. IV, No. 547
Annual Digest, 1925/1926, Case 72

80. A dispute between the same parties had been decided by the Court of First Instance in Vienna and confirmed by the Court of Appeal in Vienna and by the Supreme Court in Vienna in 1917. In 1924 the judgment debtor resided in Stanislawow, a city which up to 1918 had belonged to Austria, and was now in Poland. It was held that the judgment of the Vienna Court of First Instance confirmed by the higher courts in Vienna was a foreign judgment which for lack of reciprocity was not enforceable in Poland. The Austrian Court in which the judgment had originated had no jurisdiction over the territory later ceded to Poland.

Polish State Treasury v. Kurzrock (1921)
Supreme Court of Poland
O.S.P. I, No. 496
Annual Digest, 1919-1922, Case 52

81. In 1915 the Courts of First and Second Instance in Vienna found for the Austrian State Treasury in a suit for the payment of certain sums owed to the Austrian military establishment. In 1921 the Polish Treasury applied to the Polish Court having jurisdiction in the district of the judgment debtor's residence for execution of the judgment and that Court granted the application.

82. The Polish Court of Second Instance dismissed the application mainly on the ground that the Polish Treasury had no title to collect debts owed to the Austrian Treasury.

83. The Supreme Court of Poland dismissed the Treasury's appeal. The judgments of the courts of first and second instance in Vienna, while in 1915 they were judgments of national courts from the point of the local court, must now be considered foreign judgments.

State Succession (Notarial Act) Case, 1919
Supreme Court of Austria
Entscheidungen des Obersten Gerichtshofs in Zivilrechtesachen
Vol. I (1919) No. 33, p. 115
Annual Digest, 1919-1922, Case 40

84. The parties had concluded in May 1918 in Lemberg (Lwów), then part of Austria, after World War I part of Poland, a contract of sale in the form of a deed established by a notary (*Notariatsakt*), which under Austrian law is a title for immediate execution. After October 1918 a court in Vienna ordered execution.

85. The Supreme Court dismissed the debtor's contention that the title to execution was a foreign title and execution in the Austrian Republic therefore not permissible. When the notarial deed was made, the Court said, Lemberg (Lwów) was part of Austrian territory. Relations of private law were not affected as the result of the extinction of States. Courts survived political changes. The dismemberment of the former territory of the Austrian Monarchy could not effect any changes in the execution of validly acquired titles.

Dominion of India v. Hiralal Bothra (1950)
All-India Reporter, 1950, Vol. 37
Calcutta Section, 12

86. The question before the Court was whether after 15 August 1947 it was competent for the Court of Small Causes, Calcutta, to entertain an application for starting proceedings in execution of a decree which had been passed, before the establishment of the two independent Dominions of India and Pakistan, by a court in Jamalpur, which was now in Pakistan. The Court held that the Court in Jamalpur was a foreign Court.

87. The Indian Independence Act, 1947, provided that the law of British India existing immediately before 15 August 1947, shall, so far as applicable and with the necessary adaptations, continue as the law of each of the new Dominions. The Judge of the lower Court believed that the old Indian Code of Civil Procedure was therefore still in force in both Dominions. The High Court held that this view was not correct.

88. Since 15 August 1947 two different Codes (though identical in contents) had been in existence. Courts which were not foreign Courts before the partition of India were now foreign Courts. British India, within which both Courts involved in the case had been situated, had ceased to exist. The test for determining whether a particular Court was or was not a foreign Court in relation to another was to be ascertained and determined with reference to the law now [1950] in force and as under the altered constitutional position. In accordance with the accepted principles of international law, the Dominions of India and Pakistan were now two separate Sovereign and Foreign States.

Golden Knitting Co. v. Mural Traders (1950)
India, Madras High Court
All-India Reporter, 1950, Vol. 37
Madras Section, 293

89. In this case, very similar to the case of *Dominion of India v. Hiralal* [19] the question was whether the District Court of Coimbatore (Dominion of India) had power to execute a decree passed before 15 August 1947 by a court in Karachi. The High Court of Madras held that the lower Indian Courts' opinion that it had the power was obviously wrong. For the reasons given by the High Court of Calcutta in *Dominion of India v. Hiralal* (with which the High Court of Madras agreed), the judgment of the Court at Karachi had become a foreign judgment.

Van Heynsbergen v. Nederlandsche [20] *Handelsmaatschappij (1957)*
District Court of Amsterdam
N. J. 1957, No. 553
International Law Reports, 1957, p. 76

90. On the basis of the general principle of law that a change in the international legal status of a territory

[19] See paragraphs 86 to 88 *supra*.
[20] See the decision of the Court of Milan in *Banin v. Laviani and Ellena*, paragraphs 55 and 56 *supra*.

shall not, or shall as little as possible, infringe upon the private law relations of its inhabitants, it must be accepted that the judgment ordering the bankruptcy of B preserved its " non-foreign " character and thus retained, after the transfer of sovereignty over the Netherlands Indies on 27 December 1949, the enforceability which it possessed under Netherlands Indian Law.

Rey v. Société commerciale pour l'équipement industriel et agricole (1959)
Annuaire français de droit international (1961), p. 917

91. After the accession of Morocco to full independence, the question of the execution of judgments was regulated by a Convention of 5 October 1957 on Judicial Assistance, *exequatur* of Judgments and Extradition. The question arose, however, which rules should apply to execution in France of judgments of Moroccan courts between the end of the French Protectorate and the entry into force of the convention. The Tribunal decided that the general statutory and case law (*règles légales et jurisprudentielles de droit commun)* should be applied, i.e., that the usual procedure of *exequatur* [of foreign judgments] was to be followed.

Chapter II. State succession in relation to treaties

(A) *The question of the succession of New States in relation to treaties*

In re J.Z. (1921)
Obergericht (Court of Appeal) of the Canton of Zurich, Switzerland
Blatter für zürcherische Rechtsprechung, Vol. XX, p. 23
Annual Digest, 1919-1922, Case 43

92. A Czechoslovak plaintiff in a civil action appealed against the decision of the lower court fixing a date by which he was to give security for costs, contending that Czechoslovakia continued to be a party to the Hague Convention on Civil Procedure of 1905.

93. According to information given to the Court by the Swiss Department of Justice, the Czechoslovak Republic refused to be regarded as the successor of former Austria and held that she was no party to treaties entered into by Austria-Hungary. In view of this information, it was impossible to accept the view that the Hague Convention on Civil Procedure was applicable to a citizen of Czechoslovakia.

In re M.O. (1921)
Obergericht (Court of Appeal) of the Canton of Zurich, Switzerland
Blatter für zürcherische Rechtsprechung Vol. XX, p. 354
Annual Digest, 1919-1922, Case 42

94. In a situation similar to the case summarized in paragraphs 92-93, a Polish plaintiff appealed against the order of the lower Court to give security for costs. The plaintiff relied on Art. 287 of the Treaty of Versailles, which laid down that the contracting parties should apply, as between themselves, the provisions of the Hague Convention on Civil Procedure of 1905.

95. The Zurich Court of Appeal pointed out, however, that Poland had not been represented at the Fourth Conference concerning private international law (which drew up the Convention) and could not by unilateral declaration become a party to it (art. 27 of the Convention) unless she had been admitted to it by a new international agreement. Such an admission could not be effected by the Peace Treaty, to which Switzerland was not a party.

Civil Procedure Convention (Galicia) Case (1919)
Upper District Court of Berlin
Juristische Wochenschrift, 1920, p. 393
Annual Digest, 1919-1922, p. 69

96. Notwithstanding the terms of the Hague Convention on Civil Procedure of 1905, the court required security for costs from a person domiciled in the formerly Austrian Province of Galicia, which after World War I became part of Poland, on the ground that the Austrian Monarchy had ceased to exist and that at the time of the judgment the fate of Galicia was still undecided.

97. The position would be different only if Poland could be regarded, according to the rules of international law, as the successor State of those States which were parties to the Convention and whose territories formed the present Polish State. The theory of international law pointed to the conclusion that a new State which had been formed by separation from another State derived neither rights nor obligations from the treaties entered into by the older State. The Hague Convention was not a treaty which, as to either obligational law pointed to the conclusion that a new State territory, as, for instance, might be the case in a treaty relative to river navigation.

Czechoslovak Co-operative Society v. Otten (1924)
District Court of Rotterdam
Weekblad von Het Recht, 1926, No. 11285
Annual Digest, 1923-24, Case 42

98. In the case of a Czechoslovak plaintiff against a Netherlands defendant the Court held that the Hague Convention on Civil Procedure of 1905 did not apply between Czechoslovakia and the Netherlands and the plaintiff was therefore not exempted from the requirement of depositing money into court as security for costs. Czechoslovakia was an independent State and had not retained the rights and obligations of the Austro-Hungarian Empire, which had been a party to the 1905 Convention. The signature attached to that Convention did not bind the new State formed out of part of the Empire.

Czechoslovakia as a Party to the Hague Convention of 1902 Case (1936)
Italy, Court of Appeal of Perugia
Foro Umbro (1936)
Annual Digest, 1935/37, p. 141

99. It was held that Czechoslovakia was a party to the Hague Convention of 12 June 1902 to which the Empire had been a party and which Czechoslovakia hat not denounced.[21]

[21] The *Annual Digest* does not state to which Hague Convention of 1902 the case refers.

In re Ungarische Kriegsprodukten-Aktiengesellschaft (1920)
Obergericht (Court of Appeal) of the Canton of Zurich, Switzerland
Blatter für zürcherische Rechtsprechung, Vol. XX, p. 267
Annual Digest, 1919-1922, Case 45

100. In a case analogous to those relating to Czechoslovak and Polish plaintiffs (see paras. 92 to 95 *supra*), but with a Hungarian plaintiff, the Zurich Court of Appeal decided that the plaintiff was not required to give security for costs. Austria-Hungary had signed the Hague Convention on Civil Procedure of 1905 in 1908 and deposited the instrument of ratification in 1909. Both Hungary and Austria, forming the Real Union of Austria-Hungary, had had international personality and each of them was a contracting State in the international treaties concluded by the common organs. Neither Austria nor Hungary had ceased, as a result of the dissolution of the Real Union in 1918, to be a party to the Convention of 1905. No importance could be attached to the fact that the Hungarian territory had been diminished by the Peace Treaty of Trianon. The Hungarian State of 1920 was the same person of international law as that which had signed and ratified the Convention.

Weltner v. *Cassutto (1931)*
Court of Appeal, Trieste
2 Il Foro delle Venezie 289 (1931)

101. In a case relating to the recognition of a divorce decree emanating from a Hungarian Court, the Court decided that post-Trianon Hungary continues to be considered a party to the Hague Convention to regulate Conflicts of Laws and Jurisdiction in the Matter of Divorce and Separation of 12 June 1902.

Del Vecchio v. Connio (1920)
Court of Appeal, Milan
46 Foro Italiano (I) 209, 226 (1921)

102. The Court held that the then existing " State of Fiume " (see paragraph 1 *supra*), which arose from the dismemberment of the Austro-Hungarian Monarchy, must be considered a party to the Convention of 1902 (on divorce and separation), as successor to Hungary which was a party to the Convention, since Fiume continues to apply the Hungarian legal system and has done nothing to signify the denunciation of the Convention.

Mrs. W. v. F.S. (1954)
Court of First Instance, Amsterdam
2 Nederlands Tijdschrift voor International Recht, 296
(50) American Journal of International Law (1956), pp. 440-441)

103. It was held that the Hague Convention on Civil Procedure had ceased to apply as between Germany and the Netherlands as a result of war. Its subsequent revival by agreement between the Netherlands and the Federal Republic of Germany did not affect the Saar, as the Saar was not (at the relevant time) part of the Federal Republic of Germany. Nor had France declared the Convention to be applicable to the Saar, and no special agreement between the Netherlands and the Saar had been concluded.[22]

Extradition (Germany and Czechoslovakia) Case (1921)
Reichsgericht (Supreme Court of the German Reich)
Entscheidungen des Reichsgerichts in Strafsachen, Vol. 55, p. 284
Annual Digest, 1919-1922, Case 182

104. The accused was extradited from Czechoslovakia to Germany on the charges of larceny and of being a habitual thief. If the pre-war extradition treaty between Germany and Austria-Hungary had been applicable, the trial of the extradited person in Germany would have been governed by the conditions stipulated in that treaty. If the pre-war treaty was not applicable between Germany and Czechoslovakia, the situation was governed by the relevant rules of international law which recognize, inter alia, the so-called principle of speciality. This principle applies, the Court said, also to extradition treaties or to *ad hoc* extradition agreements except when they contain provisions to the contrary.

105. The Court held that the pre-war extradition treaty between Germany and Austria was not applicable to Czechoslovakia, although her territory was largely composed of former Austrian territory. The States which had arisen on the territories of the Austrian Empire could not be regarded as succeeding automatically to the rights and duties of that Empire. As a consequence, the principle of speciality applied and the accused could not be convicted for an offence for which he had not been extradited.

N. v. Public Prosecutor of the Canton of Aargau (Switzerland)
Swiss Federal Court
Arrêts du Tribunal fédéral suisse, Vol. 79 (1953), IV, p. 49 et seq.
International Law Reports, 1953, p. 363

106. Switzerland has not concluded an extradition treaty with Czechoslovakia, the Court said; moreover, the Extradition Treaty between Switzerland and Austria-Hungary cannot, as the Federal Council stated in 1920 in reply to a request for extradition, be applied without Czechoslovakia as successor State. (B. Bl. 1921, II, 350.)[23]

Re Westerling (1950)
Singapore High Court
(1950), 1, M.L.R. 228
International Law Reports, 1950, Case 21

107. In support of the extradition of Westerling, who was accused of the commission of crimes in Java, the Government of Indonesia contended that it had succeeded to the rights of the Netherlands Government under the Anglo-Netherlands Extradition Treaty of 1898 and the related (British) Order-in-Council of 1899.

108. The Attorney-General informed the Court on the authority of the (United Kingdom) Secretary of State

[22] Decided before the referendum of 23 October 1955 on the Statute of the Saar and the Franco-German Treaty on the Settlement of the Saar Question of 27 October 1956.

[23] This statement was not necessary for the decision of the Court. The case is reproduced here to show that the Swiss Federal Court maintained in 1953 the attitude of the Swiss Courts of the year 1921 (*supra*, paragraphs 92 et seq.)

for Foreign Affairs that Indonesia had succeeded to the rights and obligations of the Netherlands under the Treaty of 1898 and that the Treaty now applied between the United Kingdom and Indonesia. Following a long line of decisions of British courts, the High Court of Singapore accepted all the matters set out in this statement of the Executive and treated them as conclusively established. It was also established that pursuant to the Treaty of 1898 the relevant sections of the British Extradition Act, 1870, had previously been applied to Java, albeit not to Java as such but only to Java as a colony of the Netherlands.

109. Notwithstanding the conclusive character of the statement as to Indonesia's succession to the rights flowing from the 1898 treaty, the Court examined instances furnished by the dissolution of the Austro-Hungarian Empire after World War I and its effect on the Extradition Treaty between the United Kingdom and Austria-Hungary of 1873. The Court noted that after the 1914-1918 war, notices reviving the Anglo-Austrian Treaty of 1873 were given to Austria and to Hungary and an extradition treaty between the United Kingdom and Serbia made in 1900 was continued between the United Kingdom and Yugoslavia. With Czechoslovakia, however, the case nearest to that of Indonesia, a new treaty (of 11 November 1924) and a new Order-in-Council transforming the Treaty into municipal law had been made in 1926.

110. From the statement of the Executive, it would appear, the Court said, that there may be at international law somewhat unknown to other law in the nature of a *haeres viventis*. Such a successor is contemporaneously existent with his predecessor.

111. The Court granted Westerling an Order of Prohibition, i.e., it decided that he must not be extradited to Indonesia. In municipal law, it said, extradition was dependent on the existence of a treaty (in this case affirmed by the statement of the Executive) and an appropriate Order-in-Council incorporating the treaty in municipal law. This second requirement was lacking in the case of Indonesia.

Gil v. Polish Ministry of Industry and Commerce (1923)
Supreme Administrative Court of Poland
O.S.P. II, No. 665
Annual Digest, 1923-1924, Case 41

112. In administrative proceedings relating to his right to carry on trade in textile goods in Lwów (at the time in that part of Poland which had formerly belonged to Austria) the appellant, a Russian national, had to prove reciprocity in this regard between Poland and Russia. The Treaty of Commerce of 1906 between Austria-Hungary and the Russian Empire declared that reciprocity was assumed to exist in fact. The appellant contended that the Treaty of Commerce continued in force between the Republic of Poland, as regards such parts as had been under Austrian [24] sovereignty, and the Soviet Union, and that consequently the reciprocity formerly assumed in the Treaty between Austria-Hungary and Russia relieved the plaintiff of the necessity of proving reciprocity.

113. The Supreme Administrative Court dismissed the appeal. International treaties, it said, being based on the mutual consent of the contracting parties, are not binding on a State for the sole reason that part of its territory formerly belonged to one of the contracting parties. There is lack of identity of the parties to the Treaty. The Austro-Russian Treaty of Commerce of 1906 was binding neither on Poland with regard to Russia, nor on Russia with regard to Poland.

Customs House (State Succession) Case (1922)
Reichsgericht (Supreme Court of the German Reich)
Entscheidungen des Reichsgerichts in Zivilsachen, Vol. 57, p. 61
Fontes Juris Gentium, A II, Vol. 1 (1879-1929) No. 261
Annual Digest, 1919-1922, Case 41

114. In a Treaty of Commerce between Germany and Austria-Hungary of 1891, renewed in 1905, the parties agreed that their respective customs houses on the frontier should, so far as possible, be established in one place to simplify proceedings. After October 1918 the régime of the common customs houses was maintained in a number of places on the German-Czechoslovak frontier.

115. The legality of the continued arrangement was challenged by a person accused of smuggling. The *Reichsgericht* decided that the conviction must stand. It was true that one of the parties to the Treaty (Austria-Hungary) had ceased to exist. This did not necessarily result in abolishing the legal position created by the Treaty. In this regard the will of the present participants was decisive. Although Czechoslovakia was not the successor of Austria-Hungary and was not bound by the Treaty, there was nothing to prevent her and Germany from maintaining the relation either by formal treaty or by tacit declarations of will. This actually happened as the result of Czechoslovakia deciding not to interfere with the activities on its territory of the Saxon [25] customs house. Both sides having thus manifested their wish that there should be no change either as to facts or as to law, everything has remained as it had been before from the point of view of both international law and constitutional law.

Advanced Customs Office in Troppau (Opava) case (1932)
Reichsgericht (Supreme Court of the German Reich) Entscheidungen des Reichsgerichts in Strafsachen (1932), No. 66
Fontes Juris Gentium, A II, Vol. 2 (1929-1945) No. 53

116. In a situation similar to that summarized in the preceding paragraphs the Supreme Court held that those provisions of the Treaty between Germany and Austria-Hungary concerning the facilitating of railway connexions of 14 March 1883 which related to the advanced German customs office *(vorgeschobene Zollstelle)* in Troppau (Opava) in Czechoslovakia applied also between the German Reich and the Czechoslovak Republic.

[24] The report contained in the *Annual Digest* says here " under Russian sovereignty ". It is suggested that " under Austrian sovereignty " might be correct in the context.

[25] Saxony was at the time one of the *Länder* of the German *Reich*.

Feldman & Feldman v. Polish State Treasury (1921)
Supreme Court of Poland
O.S.P. I, No. 16
Annual Digest, 1919-1922, Case 44

117. The Court held that although the Austrian Monarchy had been a party to the Berne Convention relating to the international transport of goods of 14 October 1890, that Convention did not continue in force with regard to territories formerly Austrian, but now (1921) under the sovereignty of a State not a party to that Convention.

Dabrai v. Air India Limited (1953)
High Court of Bombay
1954 Bombay Law Reporter 944
International Law Reports, 1953, p. 41

118. The Court held that carriage of goods by air from Karachi to Bombay in November 1947, i.e., after the partition, on 15 August 1947, of India, was " international carriage by air " within the meaning of the Warsaw Convention, 1929, and that the Convention was applicable. India, the Court said, did not sign the Convention, nor was there evidence of accession by India. The Court considered a notification by the Governor-General, under which " H.M. the King of Great Britain, Emperor of India " was described as the High Contracting Party as from February 1935, to be conclusive evidence of the matters certified.

119. The Court did not accept the opinion that the Commonwealth was a single High Contracting Party and travel within the Commonwealth therefore " inland travel ". Even before 15 August 1947, India had been a distinct State with an international personality separate from the United Kingdom and His Majesty was the Contracting Party *qua* each of the component States of the Commonwealth. Pre-partition India's rights and obligations under the Warsaw Convention devolved upon the Dominions of India and Pakistan.

Trésor Public v. Compagnie Aigle Azur (1960)
Tribunal de grande instance de la Seine
Revue française de droit aérien, 1960, 214
(88) Journal du droit international (Clunet) (1961) p. 1104

120. The French Treasury sued the defendant air line to recover compensation it had paid to the personal reprensentatives of two members of the French Air Force, who had been killed in a crash, in Laos, on a flight from Saigon (Vietnam) to Vientiane (Laos) in 1953. The defendant company contended that the claim was barred under article 29 of the Warsaw Convention, the action having been brought more than two years from the date of the flight. The Treasury maintained that at the date of the flight, Laos and Vietnam had both been under French sovereignty so that the flight had been " inland transport " and not " international carriage by air " to which the Warsaw Convention applied.

121. The Court held that the flight was " international carriage by air " because the " promotion (of Vietnam and Laos) to full and complete State personality " had been recorded by the general agreements of 8 March 1949 (Vietnam) and 19 July 1949 (Laos). The Convention of 1954 merely confirmed that independence by transferring competences and services in various matters, particularly in judicial, police and security matters.

122. The Court further held that Laos and Vietnam, which had been bound by the Warsaw Convention while they were under the sovereignty of France which had ratified without any reservation as to its colonies and protectorates, remained bound after their accession to independence in the absence of any express notice of denunciation of the commitments previously entered into in their name.

Heirs of Yurgevitch v. Egyptian Government (1930)
Egypt, Mixed Court of Appeal
Bulletin de législation et de jurisprudence egyptienne 42, p. 430
Gazette des Tribunaux mixtes d'Egypte. XX (1929-1930)
Annual Digest, 1929-1930, Case 84

123. The plaintiff claimed certain benefits for which foreign officials in the Egyptian civil service were eligible under the regulations in force at the time, provided they were nationals of a capitulatory Power. The plaintiff had been a citizen of Austria of Yugoslav origin; in 1918 his province of origin became part of Yugoslavia. Austria had renounced the rights of the régime of capitulations in the Peace Treaty of St. Germain. It was contended that this renunciation had no effect on persons who had become citizens of Yugoslavia.

124. The Court held that the rights and obligations flowing from a treaty, which is essentially personal to the contracting States, cannot be transmitted to another State. A new State built up from portions taken from previously existing States does not, as a rule, acquire any rights or obligations flowing from the treaties made by the dismembered State. Even if Austria had not withdrawn from the capitulations, a Yugoslav could only enjoy the rights and privileges flowing from treaties made by Yugoslavia. Yugoslavia was not a capitulatory country and her nationals could not take advantage of the capitulations.

Arab Bank v. Ahmed Daoud Abou Ismail (1950)
Egypt, Tribunal of Port Said (Full Court)
Revue égyptienne de droit international (1951) vol. 7, p. 191
International Law Reports, 1950, p. 314

125. On 19 March 1950 the plaintiff bank obtained from the Tribunal of Sichem (Palestine, now Jordan) a judgment against the defendant, rendered in the name of His Majesty King Abdullah of Jordan. The bank moved in the Court of First Instance, Port Said, for execution of the judgment basing itself on the Convention between Egypt and Palestine concerning the Enforcement of Judgments signed at Cairo on 12 January 1929.

126. The Full Bench of the Egyptian Court held that the Bank's application must fail. Palestine, in the sense contemplated by the Convention of 1929, no longer existed. The party with whom Egypt concluded the Convention no longer exercised any authority over Sichem and had been replaced by another State. In virtue of the rules of public international law, the Convention had ceased to exist.

Hanafin v. McCarthy (1948) [26]
United States of America, Supreme Court of New Hampshire
(42) American Journal of International Law (1948), p. 499

127. The Irish plaintiffs' rights relating to real property in the State of New Hampshire, United States of America, depended on whether or not the Convention relating to the Tenure and Disposition of Real and Personal Property, signed by the United States and the United Kingdom of Great Britain and Ireland on 2 March 1899, was effective between the Irish Free State (later Eire) and the United States.

128. The Court held that no serious doubt appeared concerning the binding effect of the treaty upon Ireland as a part of the United Kingdom, one of the original contracting parties. Since the signing of the treaty, the Free State of Ireland, later Eire, had been created out of Ireland in 1921/1922. The Irish Free State took the same constitutional status in the British Commonwealth as the Dominion of Canada and other Dominions. In none of the instruments relevant to this change was the status of existing treaties expressly adverted to. No action on the part of the Irish Free State, or Eire, was called to the Court's attention which would indicate repudiation by that government of the treaty of 1899.

129. The Court accepted the view expressed by writers that " on the creation of a new state, by a division of territory, the new State has a sovereign right to enter into new treaties and engagements with other nations, but until it actually does, the treaties by which it was bound as a part of the whole State will remain binding on the new State and its subjects " and that " a State formed by separation from another . . . succeeds to such treaty burdens of the parent State as are permanent and attached to the territory embraced in the new State ". The Court referred to the decision in *Techt v. Hughes,* 229 NY 222, where it had been pointed out that " until the political departments have acted, the courts, in refusing to give effect to treaties, should limit their refusal to the needs of the occasion and in determining whether a treaty survives, reach their conclusions in the light of such broad consideration as 'the dictates of fair dealing, and the honour of the nation'."

130. The Court invoked, in support of its conclusion that the Treaty was operative between Ireland and the United States, also the views expressed by the Irish, United States and British Governments that they regard the treaty of 1899 as being in force.

(B) *The principle of movable treaty frontiers (Le principe de la variabilité des limites territoriales des traités)*

Gastaldi v. Lepage Hemery (1927)
Italy, Court of Cassation
Rivista di diritto internazionale, XII (1930), p. 102
Annual Digest, 1927-1928, Case 61 and 1929/1930, Case 43 [27]

131. The Italian Court of Cassation held that the Franco-Sardinian Treaty of 24 March 1760 concerning the execution of judgments, confirmed by the Franco-Sardinian interpretative declaration of 11 September 1860, is effective as between France and Italy. It is unanimously admitted, the Court said, that an international convention with a State has full effect in regard to the new territories which it adds to its former territory and which combine to constitute the new national territory. The system of annexation, by which the unitarian Italian State was constituted, involves the automatic extension of international treaties, since the international personality of the contracting State does not change with the enlargement of its territory.

Ivancevic, Consul General of Yugoslavia v. Artukovic
Ware v. Artukovic (1954)
United States Court of Appeals, Ninth Circuit
Federal Reporter, Second Series, Vol. 211F 2d, p. 565
International Law Reports, 1954, p. 66

132. There was agreement by all parties to the proceedings concerning the extradition by the United States, to Yugoslavia, of one Artukovic that the changes from the " Kingdom of the Serbs, Croats and Slovenes " to the " Kingdom of Yugoslavia " in (1928) and thereafter to the " Federal People's Republic of Yugoslavia " (in 1945) were internal and political changes and did not affect the validity of any treaty which was effective under the " Kingdom of the Serbs, Croats and Slovenes ". The question to be decided was therefore whether the Extradition Treaty between the United States and the Kingdom of Serbia of 17 May 1902 had survived as an effective treaty when the Kingdom of the Serbs, Croats and Slovenes appeared on the international scene in 1918/1919.

133. After a review of the relevant diplomatic and constitutional documents and the consideration of the writings of publicists on the question whether Yugoslavia was a new State lacking continuity with Serbia, or whether Yugoslavia must be regarded as enlargement of the territory of Serbia, the Court of Appeal concluded that Yugoslavia had been formed by a movement of the (Southern) Slav people to govern themselves in one sovereign nation, with Serbia as the central or nucleus nation. Great changes were brought about, but the combination was not an entirely new sovereignty without parentage. But even if it is appropriate to designate the combination as a new country, the fact that it started to function under the Serbian Constitution as the home government and under Serbian legations and consular service in foreign countries, and has continued to act under Serbian treaties of Commerce and Navigation and the Consular Treaty is conclusive proof that if the combination constituted a new country, it was the successor of Serbia in its international rights and obligations. The United States-Serbian extradition treaty of 1902 is a valid and subsisting treaty between the United States and the Federal People's Republic of Yugoslavia.

134. The Court emphasized that its decision was based on the facts, independent of their political implications. It went on to say that it was not without realiza-

[26] Facts and decision before the enactment on 21 December 1948 of the Republic of Ireland Act 1948, No. 22 of 1948 and before its coming into force.

[27] The case appears in the *Annual Digest* twice: in the volume for 1927/1928 as case No. 61, dated 3 December 1927 and in the volume for 1929/1930 as case No. 43, dated 3 December 1929. The 1927 date is correct.

tion of the high importance of such implications and noted, in particular, that the President of the United States, in recognizing the continuing validity of treaties between the United States and Serbia, had acted upon a reasonable basis of fact peculiarly within his sphere of authority.

Kolovrat et al. v. Oregon (1961)
Supreme Court of the United States
United States Reports, Vol. 366, p. 187

135. Two residents of the State of Oregon (United States) died intestate in 1953. Their only heirs and next of kin were residents and nationals of Yugoslavia. The question to be decided was whether there was reciprocity between the United States and Yugoslavia as to the right of acquiring property by inheritance. If there had been no reciprocity, the property of the deceased would, under the relevant State law, have been taken by the State of Oregon as escheated property (*bona vacantia*). The existence of reciprocity depended on the reply to the question whether the Treaty of 1881 concluded between the United States and the Prince of Serbia and containing the most-favoured-nation clause was still in effect between the United States and Yugoslavia.

136. The Supreme Court of the State of Oregon recognized and the Supreme Court of the United States confirmed that the 1881 Treaty is still in effect. The Supreme Court also pointed out (*ibid.*, p. 190, note 4) that official recognition of this conclusion can be found in the Settlement of Pecuniary Claims Agreement between the United States and Yugoslavia of 1948.

Cases relating to the identity of post-Trianon Hungary with the Kingdom of Hungary

137. As to the identity of the international personality of Hungary after the Peace Treaty of Trianon with the former Kingdom of Hungary as one of the two partners in the Real Union of Austria-Hungary, see the decision of the Zurich Court of Appeal in *re* Ungarische Kriegsprodukten-Aktiengesellschaft (paragraph 100 *supra*) and the decision of the Court of Appeal of Milan in Del Vecchio v. Connio (paragraph 102 *supra*).

Société Lebrun et Cie v. Dussy and Lucas (1926)
Court of Appeal of Brussels
Pasicrisie belge, 1926, II, 189
(54) Journal du droit international (Clunet) (1927), p. 478
Annual Digest, 1925-1926, Case 64

138. The judgment debtor appealed against an order by a Belgian Court to enforce in Belgium a decision of the Court of Appeal of Colmar by virtue of the Franco-Belgian Convention on the Reciprocal Enforcement of Judgments concluded in 1899. The appellant contended that the Franco-Belgian Convention was not applicable to the territories of Alsace-Lorraine, annexed by France under the Peace Treaty of Versailles. He alleged that the Convention was based on the practical identity of the laws in force in Belgium and in France so that the provisional maintenance of the German legal system in Alsace and Lorraine ought to preclude the extension to those regions of the Treaty.

139. The Brussels Court of Appeal pointed out that it is not denied in principle that in case of annexation international treaties apply automatically to the annexed territories and that on the resumption of French sovereignty over Alsace-Lorraine the 1899 Convention *ipso facto* became applicable to those regions. If Belgium had considered that the provisional continuance in force of German laws in Alsace-Lorraine deprived her of the guarantees of the Convention, she had the right to denounce it and would not have failed to do so.

Chemin de fer d'Alsace-Lorraine v. Levy & Co. (1926)
France, Court of Cassation
(53) Journal du droit international (Clunet) (1926), p. 989
Annual Digest, 1925-1926, Case 62

140. In a case in which a consignment of goods sent after 11 November 1918, but before 10 January 1920, from near Paris to Mulhouse (in Alsace-Lorraine) was alleged to have arrived in a damaged condition, the Court of Cassation held that the Convention of Berne of 14 October 1890 relating to the international transport of goods ceased to operate as regards transport between France and Alsace-Lorraine as from 11 November 1918, on which day the Armistice Convention was concluded and on which day that territory was restored to France.[28]

Espagne v. Chemin de fer d'Alsace-Lorraine (1926)
Court of Colmar
(54) Journal du droit international (Clunet) (1927), p. 725
Gazette du Palais, 18 February 1927

141. The Court held that carriage of goods between Alsace-Lorraine and Germany had been, as from the date of restoration of Alsace-Lorraine, i.e. 11 November 1918, subject to the Berne Convention, to which France and Germany were both parties.

Extension of Marriage Convention to occupied Austria Case (1939)
Blätter für zürcherische Rechtsprechung, Vol. XL (1941), p. 47
Annual Digest, 1941-1942, p. 103

142. The District Court of Zurich held in a decision of 10 January 1939 that the Hague Convention concerning the Conclusion of Marriages of 12 June 1902, which had been signed by Switzerland and Germany but not by Austria, applied also to Austrian nationals who had become German citizens in consequence of the annexation of Austria by Germany.

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[28] Under article 51 of the Peace Treaty of Versailles, Alsace and Lorraine were restored to French sovereignty as from the date of the Armistice of 11 November 1918. The Treaty as such entered into force on 10 January 1920. In a decision reported in (53) *Journal du droit international (Clunet)* (1926), the Court of Bordeaux decided that the Berne Convention ceased to operate between France and Alsace-Lorraine only from 10 January 1920. See also paragraph 7 *supra* on the application of German law in Alsace-Lorraine between the conclusion of the Armistice and the entry into force of the Peace Treaty.

(C) *The question of the identity and continuity, or absence of continuity, of States in relation to treaties* [29]

Continuing Validity of Resolution of German Confederation Case (1932)
Reichsgericht (Supreme Court of the German Reich)
Deutsche Justiz, 1936, 560
Fontes Juris Gentium, A. II, Vol. 2 (1929-1945), No. 62

143. The Supreme Court held that until the coming into force, in 1930, of a new Austro-German Agreement relating to mutual assistance in criminal matters, the substantive law of extradition from Austria to Prussia was governed by a resolution of the Assembly of the German Confederation of 26 January 1854, which had not adopted the principle of speciality. The law laid down in that resolution remained in force between Austria and the Members of the German Confederation also after the dissolution of the Confederation. Nor did the fundamental territorial and constitutional changes to which both Germany and Austria were subjected in 1918 and 1919 affect the inter-State regulation of 1854.

Land Tax Immunities Case (1927)
German Reichsfinanzhof (Reich Tribunal in Revenue Matters)
"Steuer und Wirtschaft" VI, 1927
Annual Digest, 1927-1928, Case 56

144. The appellant claimed that his property could not be subjected to land tax because in the Treaties of Vienna [30] and of Prague,[30] Prussia undertook to exempt the properties in question from land taxation.

145. The Tribunal held that there was no rule of international law imposing upon Germany the duty to take over the obligations incurred by Prussia. There were at least three opinions as to the duty of Germany to take over those obligations. One was that the treaties concluded by Prussia before the establishment of the North German Confederation were automatically binding upon the Reich. Another, that no such obligations devolved upon Germany *ipso jure*. The intermediate views were that these obligations passed to the *Reich* if they related to matters in regard to which the *Reich* alone was competent, or if, having regard to the purpose of the treaty, the passing of the obligation on to the *Reich* ought to be assumed. Even if the appellant's main contention could be sustained, there still remained the question whether international treaties may not be rendered obsolete as the result of a change of circumstances and abolished without any express rescission.

The Sophie Rickmers Case (1930)
United States District Court, Southern District of New York, 45 F 2d. 413
Annual Digest, 1929/1930, Case 280

146. Treaties concluded by the United States with the Hanseatic Cities, including Hamburg, in 1827, and with Prussia in 1828, provided that vessels of those countries should be charged no higher tonnage duties than American vessels. By the Treaty of Peace between the United Staes and Germany of 11 November 1921, treaties not expressly revived were deemed to have lapsed. A later treaty between Germany and the United States provided again for equality with national vessels in the matter of tonnage duties. A Presidential Proclamation of 22 March 1922 suspended discriminatory duties against German ships after 11 November 1921. The owners of the *Sophie Rickmers* sued to recover the duties paid in September 1921, relying mainly on the Treaties of 1827 and 1828.

147. The Court decided that the Treaties of States which still retained a certain degree of international personality, such as the German States (after 1871), remained binding. Treaties with sovereign States which became constituent parts of the German Empire survived the foundation of the Empire.[31]

Flensburger Dampfercompagnie v. The United States (1932)
United States, Court of Claims
59 F (2d) 464
American Journal of International Law (1932), p. 618
Annual Digest, 1931-1932, Case 38

148. It was contended by the United States as defendant that the Treaty of 1828 between the United States and Prussia referred to in paragraph 142 *supra* and providing that no other or higher rate of duties should be imposed on vessels of Prussia than should be payable on vessels of the United States was obsolete and had been so since the formation of the German Empire in 1871. However, the Court noted that vessels from Prussia, flying the German flag, had entered the ports of the United States subsequent to 1871 without being subjected to tonnage duties or taxes as sued for in this case. This policy had at no time been interrupted except as a consequence of the outbreak of the First World War.

149. Both the Governments of the United States and of Germany had acted in the belief that the 1828 Treaty continued to be in force. The fact that Prussia had become a constituent State of an Empire was not calculated to change its status or character with respect to commercial intercourse between the two countries.

Abdouloussen et autres (1936)
France, Conseil d'Etat
Revue générale de droit international public, Vol. 45 (1938), p. 477

150. Residents of Madagascar of Indian origin challenged the validity of a decree issued in 1923 introducing a special tax on immigrants of Asian or African race who carry on trade in Madagascar. They contended that the decree was illegal because it was contrary to the principle of egality of taxation and because it was repugnant to a treaty of 1865 between the United Kingdom and the Kingdom of Madagascar.

151. The principle of equality of taxation, the Court held, does not exclude differential treatment to be applied to foreigners. As to the British-Madagascar Treaty, the *Conseil d'Etat,* consistently with its estab-

[29] See also the *Reich* Concordat case, Chapter VII, paragraph 464 below.

[30] The editors of the *Annual Digest* for 1927 and 1928, Dr. Arnold D. McNair and Dr. St. Lauterpacht (as they then were) observed that it was not clear to them which were the two treaties referred to. The Treaty of Vienna of 1864 and the Treaty of Prague of 1866 do not appear to contain any provision of this character.

[31] The case was also concerned with the effect of war on treaties, a subject which is outside the present study.

lished practice, declared that it did not come within its jurisdiction to evaluate the validity of, and to interpret, an international treaty. Only when the competent authority will have affirmed the Treaty's continued validity and interpreted it, will it be possible to exempt the appellants from the tax complained of.

Bertschinger v. Bertschinger (1955)
Swiss Federal Court, Civil Division
Arrêts du Tribunal fédéral suisse 81 (1955) II, p. 319
International Law Reports, 1955, p. 141

152. The problem before the Court was whether a Treaty between Switzerland and the Grand Duchy of Baden of 1856 which regulated, *inter alia*, questions of private international law and the jurisdiction of courts in matters of transfers on death was still valid, considering that the Grand Duchy of Baden had become a Member State (*Land*) of the German *Reich* in 1871, that a German law of 1934 had terminated the independent sovereignty of the German *Länder*, that after the Second World War and before the creation of the Federal Republic of Germany, a *Land* Baden came into existence in the southern part of the previous territory of Baden, and that this new *Land* Baden ceased to exist in 1953 upon the merging of the *Länder* of Baden, Württemberg-Baden and Württemberg-Hohenzollern.

153. The Court stated that the political authorities are alone competent to denounce a treaty or to order its temporary non-enforcement as a measure of retorsion. Such measures of the political authorities must accordingly be applied by the courts. For the rest, however, the courts must decide independently on the applicability of treaty provisions in cases before them, even where the question at issue is not whether a treaty is applicable to the facts of the case, or how it must be interpreted, but whether the treaty is in force. The position of the political authorities is, together with the views of writers and the practice of courts and administrative bodies, of considerable interest to the Court which however must arrive at its own conclusions.

154. There is no doubt, the Court said, that the Treaty of 1856 was still in force under the Constitutions of the German Reich of 1871 and 1919. Writers are divided on the question whether it lapsed when the German Law of 30 January 1934 concerning the reconstruction of the *Reich* withdrew their independent sovereignty from the *Länder* and made them into simple administrative districts.

155. The continued validity of the Treaty of 1856 cannot be deduced from the principle of international law that treaties of a regional nature (i.e. treaties which apply to a certain defined area) create rights and obligations for a successor State. In contrast to such treaties as, for instance, the Agreements between Baden and Switzerland concerning railway lines in the frontier zone, navigation on the Rhine, bird hunting on frontier waters, etc., the Treaty of 1856 laid down rules of private international law for the whole territory of the contracting parties and is thus not of a regional nature.

156. It can, however, be assumed that the relevant provisions of the Treaty have remained applicable as a result of the tacit renewal of the Treaty. Whether the Federal Republic of Germany or the *Land* Baden-Württemberg is considered to be the German contracting party is, the Court said, a question of purely academic interest.

Shehadeh et al. v. Commissioner of Prisons, Jerusalem (1947)
Supreme Court of Palestine under British Mandate (1947) 14 P.L.R. 461
Annual Digest, 1947, Case 16

157. In 1921 the " Provisional Agreement on the Extradition of Offenders " between Syria and the Lebanon on the one side and Palestine on the other was made. It was concluded between the High Commissioner of the French Republic for Syria and the Lebanon and the British High Commissioner for Palestine. In proceedings for extradition at the request of the Government of the Republic of Lebanon, the objection was raised by the persons whose extradition had been requested that the agreement made on behalf of Lebanon as a Mandated Territory was no longer effective between the Lebanese Republic and Palestine.

158. Proceeding from the uncontested principle that the form of Government prevailing before the change, whether it was despotic or democratic, monarchical or republican was immaterial, the Court said that it applied also even with regard to " that recent innovation known as Mandatory ". The important question was whether " legal sovereignty " to enable it to enter into treaty negotiations was vested in the previous State. The sovereignty, insofar as it affected treaty-making power, had rested in the French Republic in the case of the Lebanon and in the Mandatory in the case of Palestine, and their duly accredited representatives could lawfully make the treaty which, unless it was abrogated, bound the successor Government.

Re Nijdam, Deceased (1955)
Administrative Court of Austria
Amtliche Sammlung No. 1109 (F)
International Law Reports, 1955, p. 530

159. The court held that the pre-1938 Double Taxation Agreement between Austria and the Netherlands had not been revived after the reconstitution of an independent Austrian State.

Austria Double Taxation Agreement Case (1956)
Administrative Court of Austria
Verwaltungsgerichtshof (VwGH), No. 3335/54
International Law Reports, 1956, p. 213

160. The Austrian Administrative Court held that the provisions of the 1922 Double Taxation Agreement between Austria and the former German *Reich* lost their effect as the result of the loss by Austria of her legal personality in 1938 and the subsequent introduction of German revenue law in Austria. The legal position so created was not modified when in 1945 Austria regained her legal personality.

Infringement of Copyright (Austria) Case (1951)
Supreme Court of Austria
S Str., XXIV (1951), p. 106
International Law Reports, 1951, Case 19

161. In criminal proceedings instituted by an author of German nationality against an Austrian newspaper

editor for intentional infringement of the former's copyright, the accused appealed against his conviction, contending that the works of German authors were not entitled to copyright protection in Austria because Austria, after re-establishment of her independence in 1945, has failed to accede to the Berne Copyright Convention.

162. The Supreme Court noted that Austria had acceded to the Convention in 1920 and had belonged to the Berne Union also while forming part of the German *Reich*. After 1945 Austria did not at first appear in the official list of members published by the Bureau of the Union. However, in 1948, a statement by the Austrian Government was published in the official part of the publication of the Union that the Republic of Austria considered itself a member of the Union from the date of its accession in 1920. This statement was duly noted at a Union conference in 1948 and Austria unanimously (with one abstention) recognized as a Member of the Union.

163. The court held therefore that the uninterrupted membership of both Austria and Germany was established as an objective fact. Because of the doubts that had existed as to the status between the liberation of Austria and the 1948 Conference, the Supreme Court referred the case back to the trial court which was instructed to arrive at a finding as to the accused's *mens rea*.

Application of Copyright Convention to Czechoslovakia Case (1951)
Cederna v. Cya (1951)
Italy, Tribunal of Florence
Annali di Diritto Internazionale, IX (1951), p. 192
American Journal of International Law (1955), p. 270

164. The court held that Czechoslovakia was a party to the Berne Copyright Convention, having adhered again, with retroactive effect, after World War II. Prior to that the so-called Protectorate of Bohemia and Moravia had assumed the role of successor to Czechoslovakia and, as such, remained a party to the Convention.

Chapter III. State succession in relation to the legal system of the preceding State. State succession and "objective law"

165. The question whether, and to what extent, the legal system of the preceding State remains in force in ceded or annexed territory or on the territory of a newly independent state as law of the new sovereign is usually regulated by municipal legislation of the new sovereign, sometimes also in the treaty of cession or similar international instrument. The litigation in municipal courts is therefore mainly concerned with the interpretation of the municipal enactments and international conventions in question. The present chapter, and this study in general, are devoted mainly to such decisions of national courts as are based on rules which are not derived, or not derived exclusively from such international conventions and municipal enactments. Decisions of municipal courts which have a bearing on the question of the survival or otherwise of the legal system of the predecessor State under the new sovereign will also be found in other chapters of this digest.

(A) *Cases favouring the continued application of the objective law of the predecessor State, with or without modification*

Babu s/o Kalu v. Parsram s/o Salam (1951)
India, Madhya Bharat High Court
The Criminal Law Journal (of India), 1954, p. 795

166. In a criminal appeals case it was contended that on the principles of international law, in the event of State succession, the civil law of the former territorial sovereign continues in operation until new laws have been enacted. The Court held that this argument had a good deal of force. It invoked in support of this conclusion the precedents mentioned in the paragraphs which follow.

167. In the case of *Campbell v. Hall*[32] decided in 1774, it is stated that "If a king came to a kingdom by conquest, he may, at his pleasure, alter and change the laws of that kingdom; but, until he doth make an alteration, the ancient laws of that kingdom remain".

168. Where the territory was acquired by cession or conquest, more particularly where there was an existing system of law, it has always been considered that there was an absolute power in the Crown, so far as was consistent with the terms of cession, to alter the existing system of law, though until such interference the laws remained as they were before the territory was acquired by the Crown. (Decision of the Judicial Committee of the Privy Council, in *Edgar Sammut v. Strickland*).[33]

169. The Court also referred to its own decision in *Anand Balkrishua Behare v. Police Lashkar* (1949)[34], where it has held that in a ceded territory the old law continues until the new sovereign enacts new laws. In accordance with the principles of international law, old institutions have a right to function until a change is enacted.

Maricopa County Municipal Water Conservation District et al. v. Southwest Cotton Company et al. (1931)
United States, Supreme Court of the State of Arizona [39 Ariz. 65]
Annual Digest, 1931-1932, Case 43

170. The area which is now the State of Arizona was acquired by the United States from the Republic of Mexico in 1848 and 1853. The broad question involved in this case was which law governed the relative rights of ownership and use of subterranean and surface waters in Arizona, particularly whether the "doctrine of prior appropriation", which was not recognized by the common law of England, was applicable to percolating subterranean waters in Arizona.

171. The Court held that the Mexican law existing in Arizona at the time of its acquisition must — in the absence of action by the United States or the State of Arizona — be presumed to continue unchanged. The Court concluded, after discussing the applicable principles of Mexican law, that the doctrine of prior appropriation did not exist under Mexican law either.

[32] 20 State Tr. 239.
[33] All India Reporter (1939), PC 39A.
[34] 1949. Mahdya Bharat Law Reports, p. 160.

Annexation of Crete Case (1926)
Greece, Court of Cassation
Thémis, Vol. 33 (1927), p. 193
Annual Digest, 1925-1926. Case 69

172. In a dispute concerning inheritance, the Court of Appeal applied the law relating to juristic persons which was in force in Crete before its annexation to Greece, without requiring the content of that law to be proved before the court (which proof would have been necessary in the case of foreign law). The Court of Cassation affirmed. In case of annexation, the existing laws of the annexed territory were regarded as the laws of the annexing State which, as successor of the State to which the annexed territory had belonged, succeeded to its legal personality. Its laws, therefore, were not foreign laws which required proof.

Sames (Liability for Torts) Case (1924)
Greece, Court of the Aegean Islands
Thémis, Vol. 35, p. 294
Annual Digest, 1923/1924, Case 36

173. It was alleged that while Samos was an autonomous province of the Ottoman Empire, Turkish customs officials caused damage to the plaintiffs who, after the cession of Samos to Greece in 1913, sued the Greek State.

174. The Court held that the Greek State was substituted for the former Principality of Samos. As according to the relevant provision of the law of Samos the Principality was responsible for damage caused by its officials, the Greek State must be deemed to be responsible for the injurious act complained of.

Soto et al. v. United States (1921)
United States Circuit Court of Appeals, Third Circuit
The Federal Reporter, Vol. 273, August-September 1921, p. 628

175. The Virgin Islands, formerly the Danish West Indies, were ceded to the United States in 1917. The Act of Congress of 3 March 1917 locally known as " The Organic Act " provided that local laws in force and effect in the Islands on 17 January 1917 shall remain in force and effect in the Islands *insofar as compatible with the changed sovereignty.*

176. The District Court of St. Thomas and St. John in the Virgin Islands, after a trial conducted in accordance with the local laws as established by Denmark, found one of the appellants in this case guilty of murder and sentenced him to death; the other appellant was found guilty of being an accomplice and sentenced to imprisonment for six years

177. On appeal, the Circuit Court of Appeals came to the conclusion that the United States Congress, by the Organic Act referred to in paragraph 175, had wrought a change in the local Danish laws by providing that they remain in force only so far as they are compatible with the changed sovereignty. The change in sovereignty, the Court of Appeal said, brought to the Islands the right, guaranteed by the new sovereign, of " an accused to be confronted with the witnesses against him " and the right not to be " deprived of life, liberty, or property, without due process of law ". The essential element of the latter is the right to be heard. These principles were engrafted upon the Danish law of the Islands. Without these principles the local laws would not be compatible with the changed sovereignty. As, due perhaps to the very real difficulty of administering together two differents systems of jurisprudence, these rights were not extended to the dependants in their trial before the District Court, the Court of Appeal felt compelled in the administration of individual justice to reverse the judgment of the court below and to order a new trial in harmony with the views expressed in its opinion.

Brownell v. Sun Life Assurance Co. of Canada (1954)
Philippine Supreme Court
Vol. 10 (1954), p. 608
American Journal of International Law (1954), p. 95

178. One of the questions at issue in this case was the validity of United States legislation in the Philippines after independence. The court found the law in question valid in the Philippines by virtue of consent to its application clearly implied in the acts of the Executive Department of the Philippine Government and in the enactment of the Philippine Congress. The court indicated that without such consent the United States Act (known as the Philippine Property Act of 1946) would not be effective in the Philippines, but pointed out that international law does not require any special form of agreement between States.

179. In *Brownell v. Bautista* (1954) (Vol. 10 (1954), p. 846), the Supreme Court of the Philippines confirmed the principle underlying the decision in *Brownell v. Sun Life Assurance Co. of Canada,* referred to in the preceding paragraph.

State of Madhya Bharat v. Mohantal Motilal (1956)
India, High Court of Madhya Bharat
International Law Reports, 1957, p. 83

180. The accused was tried for offences under Indian Penal Statutes alleged to have been committed at the railway station at Mandsaur between November 1947, and May 1948. The Railway lands at Mandsaur had been *retroceded* to the former Gwalior State on 15 August 1947, and the Ruler of Gwalior extended by Ordinance all his laws to the retroceded territory in order to establish uniformity of law throughout his State. The court held that the Ruler, with perfect comprehension of his power, authority and jurisdiction, anxious to bring about legislative homogeneity between his pre-existing territories and the newly acquired territories, had by this Ordinance displaced the general presumption with regard to the continuance of laws of ceded territories until altered.

X. v. Jurrisen et al. (1950)
District Court of Maastricht
N.J. 1951, No. 280
International Law Reports, 1950, p. 82

181. After the Second World War strips of territory were transferred by the Commission for the Western Frontiers of Germany (United Kingdom, United States, Belgium, France, Luxembourg and the Netherlands) from Germany to the Netherlands.[35] The ships were annexed by the Netherlands.[36]

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[35] Protocol of 22 March 1949.

[36] Netherlands Act of 21 April 1949, *Staatsblad* No. J.180 and Royal Decree of 22 April 1949 (*ibid,* J.181) repealed and re-enacted by the Law on Frontier Correction of 26 September 1951 (*ibid.,* No. 434).

182. In an action against three persons for taking before the annexation, a horse and a cow in a village within the annexed strip, it was held that the defendants were liable for damages calculated in accordance with German law. In matters of tort the applicable law was that of the State in which the tort was committed. Although after the frontier changes the *locus delecti* had become Netherlands territory, the introduction of Dutch law did not affect civil rights acquired under formerly prevailing law.

In re X. (1952)
District Court of The Hague
N.J. 1952, No. 599
International Law Reports, 1952, Case 28

183. In Netherlands private international law, the law of the minor's nationality governs the law of guardianship; in the law of the Netherlands Indies (before the independence of Indonesia), the law of the minor's domicile applied. Before the transfer of sovereignty to Indonesia in 1949 it was generally held by Netherlands Courts that in matters involving inter-regional relations between the Netherlands and the Netherlands Indies, the principle of domicile should prevail over the principle of nationality.

184. After the establishment of Indonesia as a sovereign State, the District Court of The Hague refused to appoint a co-guardian for a minor of Dutch nationality who was domiciled in Indonesia. There was no reason to think, the court held, that the maintenance of the existing rules on the conflict of laws would be incompatible with the transfer of sovereignty or the relevant agreements. It was possible that the contents of the rules of private inter-regional law was determined by the fact that previously no separate Indonesian citizenship had existed side by side with Netherlands nationality. This did not, however, constitute a reason for setting aside the system of rules hitherto applied. It was desirable, in the absence of a definite legal principle to the contrary, as long as possible not to disrupt the continuity in the field of conflict of laws between the two countries.

(B) *Cases favouring the replacement of the objective law of the predecessor State by the law of the new sovereign*

Case of the Demolished House in Kuševjal (1931), Yugoslavia, Court of Cassation (Sadska praksa u 1931 godini sa Zbirkom Nacelnih odluha i mišljenka Opste sednice Kasacionog suda od 1931-33 godine No. 164, p. 201)
Annual Digest, 1931-1932, Case 41

185. The Yugoslav Court of Cassation held that the question whether an act committed in 1911 on Turkish territory ceded to Serbia in 1913 was a criminal offence or merely a tort (relevant for deciding whether or not a claim based on it was barred by a statute of limitation) had to be judged according to Yugoslav law, notwithstanding the fact that the alleged offence had been committed at the time of Turish sovereignty.

Springs of Samothrace Case (1932)
Greece, Court of Thrace
Thémis, vol. 43, p. 426

186. According to Turkish law, which applied in the Island of Samothrace before it was ceded by Turkey to Greece after the Balkan War, property in springs possessed of medicinal qualities belonged to the State. According to Greek law the property in springs of that nature belonged to the owner of the land.

187. The Court decided for the owner of the land. The Greek State having become subrogated to Turkey with regard to the property in the springs, the Greek law in question was fully effective in the island since its annexation.

Cie d'assurances Rhin et Moselle (1933)
France, Tribunal des Conflits
Revue générale de droit international public
Vol. XLII (1935), p. 220

188. The Conflicts Tribunal decided that the principle of the separation of powers and the rule of the lack of jurisdiction of the ordinary courts of the land in matters of defects of acts of the administration applied in the three Departments of Alsace and Lorraine which had been recovered by France in 1918. The Tribunal based its decision not so much on the principle of the extension of the legislation, and in particular of the constitutional law, of the annexing state to the annexed territory, but on the express provision of the French Act of 1 June 1924 concerning the introduction of French law in the " disannexed provinces ".

L. and J. J. v. Polish State Railways (1948)
Supreme Court of Poland
Panstwo i Prawo, 3 (1948), Nos. 9-10, p. 144
International Law Reports, 1957, p. 77

189. After having stated (see paragraphs 8 to 11 *supra*) that after the German surrender in 1945 the German State lost its sovereignty over the Recovered Territories and the territories were immediately submitted to the sovereign possession and authority of the Polish State and that, as a consequence following from the very notion of State sovereignty, Polish law had immediately replaced German law, the Court went on to say that the disappearance of German law was even more understandable in regard to private law, since the provisions of law are issued solely for, and binding in, an organized social group. Such provisions cannot have an existence separate from the group formerly residing in the territory or in a situation where the group previously inhabiting the territory was subject to an obvious and evident process of dissolution.

190. The Court referred to a provision of an earlier Decree (of 30 March 1945) on the establishment of the Danzig *voivodship* (including the former Free City of Danzig and a part of pre-war Polish territory) which was to the effect that all provisions of the legislation heretofore in force, i.e. the German legislation binding in Danzig, in view of their being contrary to the system of government of the Polish democratic State, shall cease to have effect. Thus the Polish State in a most categorical way had declared all German legislation to be incompatible with the legal order which the Polish State regarded as absolutely binding. It was hardly possible to think that the same State could continue to tolerate the same provisions in another territory over which it also extended, though somewhat later, its sovereign authority. Since the same legislator had already recognized (in the *voivodship* of Danzig De-

cree) that German law was contrary to the Polish legal order, it would have been superfluous to invalidate it again.

191. The rejection of the possibility of applying German law in the Recovered Territories followed equally from the rules of the social interpretation of law under which the judge is to be guided by the group interest. The group consciousness of the Polish nation categorically objected to applying German law to Poles and legal relations between Poles. Before the entry into force of the Decree of November 1945 there were no cases where any Polish organ or court had applied in the Recovered Territories German law with respect to Poles.

192. The Court also referred to the decision of its Penal Chamber of 26 March 1946 [37] where the Penal Chamber had stated that Polish citizens in the Recovered Territories were subject to Polish law regardless of whether it had been formally introduced therein.

193. As at the relevant time civil law legislation in force in the various territories of Poland, e.g. the law of real property, the law of succession, and family law, had not been made wholly uniform, the Court, guided by the social interest and applying the principle of teleological interpretation came to the conclusion that such provisions should be applied in the Recovered Territories as would correspond to the Polish legal system and would also approach, so far as possible, the law hitherto binding in the Territories. Best suited for these purposes was the law in force in the Western part of pre-war Poland, which included a considerable part of the old (pre-Nazi) German law.

Callamand ès-qual. v. Zerah (1958)
Cour d'Appel de Paris
J.P.C. 1959, II, 270
Annuaire français de droit international, 1960, p. 1003

194. The Franco-Tunisian judicial convention (Convention judiciaire) of 9 March 1957 drew, on the judicial level, the consequences from the political independence of Tunisia and decided upon the disappearance of every French jurisdiction. For practical reasons there were some exceptions provided for in the Convention, in particular in Art. 2, which provides that " Dans toutes les matières civiles et commerciales—et à défaut de texte tunisien—le texte français en vigueur en Tunisie à la date de l'application de la présente convention continuera à être appliqué devant les juridictions tunisiennes."

195. This signified that in regard to certain subjects French pre-independence legislation had remained applicable, but only as a consequence of an act of will of the Tunisian legislator which had explicitly referred to it; it was only supplementary and transitional legislation which was applicable only until the Tunisian legislation promulgated a text on the question. Subject to these reservations, the legislation applied to all, French as well as Tunisian.

[37] N.73/46, Zbiór urzedowy, No. I and II, item 51, p. 105, *International Law Reports*, 1957 p. 81.

Chapter IV. State succession in relation to private rights and concessions

196. Because of the great number of decisions of national Courts in which principles of law relating to state succession in regard to private rights and concessions have been interpreted, formulated and laid down, i.e. for a purely technical reason, it is proposed to present the material digested in this chapter according to the " principal legal systems of the world " on which the various judgments and rulings were based. In sub-section (A) decisions based on the British constitutional system and on the English Common Law will be summarized. In sub-section (B) the case law of the Courts of the United States of America will be digested, while sub-section (C) is devoted to the legal systems based on the civil law of ancient Rome and on the administrative concepts and institutions of the Continent of Europe.

(A) *Decisions based on the British constitutional system and the English Common Law*

Secretary of State for India v. Sardar Rustam Khan (1941), Judicial Committee of Privy Council on appeal from the Court of the Additional Judicial Commission in Balutchistan, Indian Appeals, Vol. 68 (1940/1941), p. 109, Annual Digest, 1941-1942, Case 21.

197. The question to be decided by the Board was what effect an agreement between the Khan of Kalat and the Government of British India, called the " Treaty of 1903 ", had upon the rights of the respondent, who claimed title to and possession of the lands in question. It was contended that by the " Treaty of 1903 " the territory where the land was situated had been ceded to the British Government; that the acquisition of territory was an act of state; that any pre-existing rights were irrelevant; that the British Government was not bound to recognize them; and that the municipal courts had no jurisdiction to try or determine the matter.

198. The Judicial Committee allowed the Government's appeal against the decision below which had been favourable to the respondent. The Board acted in accordance with the authorities to which it referred and which, following the Board's review of them, will be summarized in the following paragraphs of this study. The Board emphasized that in accordance with these authorities they have not considered whether the decision was just or unjust; politic or impolitic; and it must not be considered that they have had any material placed before them to indicate that it was, in the circumstances, either unjust or impolitic. The Board selected the following instances on the legal position that arises in such circumstances from the existing " wealth of weighty authority ".

199. In *Secretary of State in Council of India v. Kamachee Boye Sahaba* [38] the East India Company, who had in 1855 entered into treaties with the Rajah of Tanjore not dissimilar from the treaty in the present case, had seized the whole Raj of Tanjore on the death of the last Rajah without leaving issue male. It

[38] (1859) 7 Moo. I.A. 476.

was held by the Judicial Committee of the Privy Council that the East India Company were possessed of sovereign powers; that they had exercised those powers not under colour of law but as acts of state, and that they and their successors could not be impleaded in any municipal court for what was so done. The result is that the property now claimed by the respondent has been seized by the British Government, acting as a Sovereign power, through its delegate the East India Company; and that the act so done, with its consequences, is an act of state over which the Supreme Court of Madras has no jurisdiction. Of the propriety or justice of that act, neither the court below nor the Judicial Committee have the means of forming, or the right of expressing, if they had formed, any opinion. These are considerations into which the Court cannot enter. It is sufficient to say that, even if a wrong has been done, it is a wrong for which no municipal court of justice can afford a remedy.

200. In *Cook v. Sprigg* [39] the plaintiffs claimed to be grantees of concessions made to them by the paramount chief of Pondoland before annexation of Pondoland by the British Government. In its judgment the Judicial Committee said: " It is a well-established principle of law that the transactions of independent States between each other are governed by other laws than those which municipal courts administer. It is no answer to say that by the ordinary principles of international law private property is respected by the sovereign which accepts the cession and assumes the duties and legal obligations of the former sovereign with respect to such private property within the ceded territory. All that can be properly meant by such a proposition is that, according to the well understood rules of international law, a change of sovereignty by cession ought not to affect private property, but no municipal tribunal has authority to enforce such an obligation."

201. In *Secretary of State for India v. Bai Rajbai* [40] the circumstances were that in 1817 the Gaekwar had ceded the district of Ahmedabad to the British Government. In 1898 claims were made by the plaintiffs against the Government asserting permanent rights to lands within the district existing before the cession. The Judicial Committee came to the conclusion that the question entirely depended upon the extent to which the British Government had recognized pre-cession rights: " The relation in which they stood to their native sovereign before this cession, and the legal rights they enjoyed under them, are, save in one respect, entirely irrelevant matters. They could not carry on under the new regime the legal rights, if any, which they might have enjoyed under the old. The only legal enforceable rights they could have as against their new sovereign were those, and only those, which that new sovereign, by agreement express or implied, or by legislation, chose to confer upon them."

202. The case of *Vajesingji Joravarsingji v. Secretary of State for India* [41] related to territory in Gwalior ceded to the British Government by the Maharajah Scindia by a treaty which expressly provided that each Government should respect the conditions of existing leases. The appellants had brought a suit for a declaration that they were pre-cession proprietors of the lands in question. It was stated in the judgment: " A summary of the matter is this: when a territory is acquired by a sovereign state for the first time, that is an act of state. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that sovereign has, through his officers, recognized. Such rights as he had under the rule of predecessors avail him nothing. Nay, more, even if in a treaty of cession it is stipulated that certain inhabitants should enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal courts. The right to enforce remains only with the high contracting parties."

Amodu Tijani v. The Secretary, Southern Nigeria (1921)
Judicial Committee of the Privy Council on appeal from a judgment of the Supreme Court of Nigeria, Southern Province
English Law Reports (1921), A.C., Vol. II, p. 399

203. The Court said that in interpreting the title of the indigenous population to land, not only in Southern Nigeria, but in other parts of the British Empire, much caution is essential. In the various systems of indigenous jurisprudence there is no full division between property and possession. A very usual form of title is that of a usufructuary right which is a mere qualification of or burden on the radical or final title of the Sovereign. The title of the Sovereign is a pure legal estate, to which beneficial rights may or may not be attached.

204. As the result of cession to the British Crown (in 1861) by former potentates the radical title is now (1921) in the British Sovereign. But that title is throughout qualified by the usufructuary rights of communities, rights which, as the outcome of deliberate policy, have been respected and recognized and the cession has been made on the footing that these rights of property of the inhabitants were to be fully respected. This principle is a usual one under British policy and law when such occupation takes place. The general words of the cession are construed as having related primarily to sovereign rights only. A mere change in sovereignty is not to be presumed as meant to disturb rights of private owners.

Shingler v. Union Government (Minister of Mines), 1925
Supreme Court of South Africa, Appellate Div.
S.A.L.R. (1925), S.C. 556
Annual Digest, 1925-1926, Case 56

205. The plaintiff, who in 1895 had been granted certain mining rights by the Government of the (at the time of the proceedings) extinct South African Republic, claimed that the Union of South Africa as successor in title to the old Republic was bound to renew the licences. The Court held that any rights to which the

[39] (1899) A.C. 572.
[40] (1915) L.R. 42. I.A. 229.
[41] (1924) L.R. 51. I.A. 357.

plaintiff might be entitled were against the Government of the late South African Republic and were not enforceable in law against the Union Government. The Court adduced, in support of its judgment, *inter alia*, the decision in *Cook v. Sprigg*, summarized in paragraph 200 *supra*.

Vereeniging Municipality v. Vereeniging Estates Ltd. (1919)
Supreme Court of South Africa — Transvaal Provincial Division
South African Law Reports, 1919, Transvaal Provincial Division, p. 159
Annual Digest 1919/1922, Case 33

206. The defendant company claimed to have the right to erect wires in the plaintiff municipality derived from a contract entered into between the Government of the late South African Republic and the company's predecessor in title.

207. The Court held, in accordance with a long line of decisions of British Commonwealth and Empire Courts, that the contract, not having been specifically recognized by the British Government after annexation, was not binding upon that Government or its successor in title. Where a person had a personal right against the Government of the South African Republic, he could not vindicate that personal right in the courts of the Transvaal Colony after annexation. He could not set up a right that he had against the extinct Government in the courts of the conqueror because the conquest is an act of state. That act of state would regulate the relationship between the conqueror and the conquered; it is not a matter that can be inquired into by the courts of South Africa. It is true that other systems of jurisprudence may take a different view, but that is the view taken by the British and South African courts and the trial court is bound thereby.

Hoani Te Heuheu Tukino v. Aotea District Maori Land Board (1941)
Judicial Committee of the Privy Council on appeal from the Court of Appeal of New Zealand
English Law Reports (1941) A.C. 308

208. The appellant, the representative of Maori owners of land, challenged the constitutionality and legality of arrangements made by the Land Board in regard to their land. The appellant's contention relevant to the present study was that the New Zealand enactment under which the arrangements had been made was repugnant to the Treaty of Waitangi (1840) between the Queen of England and the chiefs and tribes of New Zealand and therefore *ultra vires* of the New Zealand legislative. By the Treaty a complete cession of all the rights and powers of sovereignty of the chiefs took place, while Great Britain confirmed and guaranteed to the chiefs and tribes and to the respective families and individuals thereof, the full exclusive and undisturbed possession of their lands, estates and properties.

209. The Board dismissed the appeal, applying the principle in *Vajesingji Joravarsingji* v. *Secretary of State for India* (see paragraph 202 *supra*) *Cook* v. *Sprigg* (see paragraph 200 *supra*) and *Sammut* v. *Strickland* (see paragraph 168 *supra*), and held that rights purporting to be conferred by a treaty of cession, such as the Treaty of Waitangi, could not be enforced in the courts.

Pales Ltd. v. Ministry of Transport (1955)
Supreme Court of Israel Piskei-Din, 9 (1955), p. 436
Pesakim Elyonim, 18 (1955), p. 304
International Law Reports, 1955, p. 113

210. The question at issue in this case was whether the Ministry of Transport of Israel was under an obligation to continue or to renew a concession for newspaper kiosks and bookstalls which had been granted to the appellants by a contract they concluded with the General Manager of the Palestine Railways in 1938. The Court of first instance [42] and the Supreme Court held that the Israel authorities were not bound by the contract. The decision turned mainly on the evaluation of the correspondence between the parties and on the interpretation of enactments of the State of Israel. However, the Justice of the Supreme Court in three different but in the result concurring opinions commented also on principles of international law.

211. Following the decisions in *Shimshon Palestine Portland Cement Factory Ltd. v. Attorney-General* (see para. 416 below) and *Sifri v. Attorney-General* (see para. 310 below), the Court proceeded from the proposition that Israel is not the successor of the Government of Palestine.

212. Upon the establishment of the State of Israel, one of the Justices stated, a new personality was created. This retains no signs of identification with the previous political body, which completely disappeared as May 14 1948, drew to its close. When the Mandate came to an end the appellant's right also came to an end. If there is doubt how far a successor State is bound by the contracts and concessions of its predecessor, how much the more is this so as regard a State which is not a successor.

213. Even if Israel was the " successor " of Mandated Palestine, another of the Justices said, even then it would not be burdened by obligations acquired in relation to any part of Palestine or its inhabitants who remained outside the boundaries of the State; but now that Israel is not the successor, how much the more is it not encumbered, except to the extent of its own volition, by rights acquired outside the present area of the State. To be precise, that is what was decided in *Shimshon v. Attorney-General.*

214. Had the Israel Legislature so desired it could have refrained from according any recognition whatsoever to any right acquired by any person during the period of the Mandate. There is no accepted rule of international law requiring an occupying State, or an emancipated State, to recognize in its domestic legislation any action performed by the previous authority — including acts creating private rights for the individual — and even if such a rule were to exist, there is grave doubt whether it would be binding upon the domestic courts as municipal law. In support of this opinion, the Justice referred to the literature on the subject (Oppenheim-Lauterpacht, I, 7th ed., p. 304; *Castren*, in Recueil des Cours, 78 (1951), p. 490) and to the English authorities of *West Rand Central Gold Mining Co. Ltd. v. The King* [43] and *Cook v. Sprigg* (see paragraph 200 *supra*). He

[42] See note in *International Law Reports*, 1950, p. 79.
[43] [1905 2 K.B. p. 391]. A summary of this decision will be found in the footnote to paragraph 238 of this study.

observed that the Israel Legislature did grant some recognition and the question to be decided reduced itself to a single point, namely, what the intention of the Legislature had been.

215. This problem is not unique to Israel, the Justice went on to say. " Every new State, or newly emancipated State, arranges these matters according to its needs and objective capability. There is no special virtue in precedents. A very vast literature — starting with Gentili and Grotius in the sixteenth and seventeenth centuries and ending with Feilchenfeld, Guggenheim and Kelsen in the midtwentieth — has been composed on the question of the legal consequences of State succession. We still have no firms rules, only a series of compilations of historical facts showing how one or other State settled these questions in practice. Therefore, in approaching the question before us, we have to decide it not on the basis of rules and precedents, but from a realistic standpoint, and to take due account of all the special features presented by that unique historical phenomenon, the establishment of the State of Israel."

Asrar Ahmed v. Durgeh Committee, Ajmer (1946)
Judicial Committee of the Privy Council, on appeal from the Court of the Judicial Commissioner of Ajmer-Merwaka (1947), All India Reporter (P.C.) I
Annual Digest, 1946, Case 17

216. The office of the secular head of a famous Mohammedan Shrine was alleged to be hereditary in the appellant's family on the basis of a grant dated 1813, and the appellant claimed a declaration to this effect.

217. The Board held that, on the cession, in 1818, of the State of Ajmer to the British Crown, whatever rights the inhabitants of that State may have against the Sovereign thereof avail them nothing against the succeeding Sovereigns. No claim could, therefore, be made against the British Government. The principle of previously decided cases (*including Vajeisingji Jaravasingji v. Secretary of State for India* [44] appears to be peculiarly applicable to an office to which material benefits appertain and which had consistently been regarded as within the disposition of the sovereign power.

Farid Ahmad and others v. Government of the United Provinces (1949)
India, Court of Civil Appeal, Allahabad Indian Law Reports, Allahabad Series, 1950, p. 1188
Annual Digest, 1949, Case 22

218. On the authority of the case of *Secretary of State for India v. Bai Rajbai* [45] the Court said in deciding an appeal regarding the ownership of a plot of land in a territory conquered by the British Army in 1803 that, whatever rights the original owners had in the lands, came to an end after the conquest unless by an express or implied agreement the new sovereign authority had elected to respect and recognize and be bound by the previous rights.

219. However, the British did not desire to interfere with private ownerships and allowed persons to remain in possession of land which was in their possession. The Court concluded from certain reports and facts that it may be implied that the British Government did not want to dispossess and that it recognized the old rights of the Fakirs. It was not necessary that there should be a written document executed by the sovereign authority transferring title to the occupiers.

Dalmia Dadri Cement Company v. Commissioner of Income Tax (1954) India
High Court of Patiala and East Punjab States Union (PEPSU) All India Reporter, 1955, PEPSU 3
International Law Reports, 1954, p. 51

220. In 1948 the Rulers of eight Indian States entered into a Covenant to establish the Patiala and East Punjab States Union (PEPSU). In 1938, the plaintiff company had entered into an agreement with one of the States (Jind State) which subsequently were united into PEPSU in which it was laid down that they will pay income tax at a fixed rate. On establishment of the new State, its Head introduced in its territory the Patiala Income Tax Act and the company was assessed under that Act disregarding the agreement of 1938.

221. It was held that it is not within the province of municipal courts to enforce or grant relief in respect of rights arising out of a treaty. Legislation otherwise validly made cannot be regarded as invalid or inoperative because it is not in consonance with or contravenes supposed principles of international law. The Covenant was brought into existence by the exercise of the sovereign power of the Rulers in the course of their relations with one another. It was an act of state and was not meant to be an instrument embodying the fundamental organic law or all the principles of government of the new State, and cannot in consequence acquire the status of a Constitution. As a consequence, a law otherwise validhy promulgated cannot be regarded as invalid or inoperative if it ignores, or is in contravention of, something contained in the Covenant. The appellant company cannot be heard to say that the subsequent law is invalid or inoperative so far as the rights under the agreement are concerned.

222. It is not possible to say that there is any universally and uniformly recognized rule of international law to the effect that an absorbing State is bound by rights and monopolies arising out of contracts with or concessions granted by the ceding State. The writers on the subject do not seem to be unanimous or uniform in their views. Under international law, obligations of the successor State with regard to private property of private individuals, particularly land as to which title had already been perfected before the conquest or annexation, are widely different from the obligations which arise in respect of personal rights under contracts. As regards the contractual obligations of the ceding State, it is for the new State to consider and decide which of them it is prepared to recognize and which others it will repudiate. The principles of international law as enunciated by various authorities do not insist on their wholesale recognition by the conquering or annexing State.

Mihan Sing v. Sub-Divisional Canal Officer (1954)
High Court of the Patiala and East Punjab States Union (PEPSU)
International Law Reports, 1954, p. 64

223. This case also arose out of the establishment, in 1948, of the Patiala and East Punjab States Union. (See

[44] See paragraph 202 (*supra.*)
[45] See paragraph 201 (*supra.*)

paragraph 220 *supra*.) The Ruler of *Nabha* State, which later merged into PEPSU, had made a grant of irrigation water in perpetuity to the petitioner's father. The Court held that the Canal Officer was prohibited from demanding payment of water rates by the petitioner. The grant was a personal law made by the Ruler in favour of the petitioner's father and his successors. The general PEPSU legislation did not abrogate the personal law.

224. The general legislation of the former Covenanting States ceased to have effect, but not the personal laws relating to the rights, privileges, and property of private individuals. This, coupled with the fact that the new Sovereign did not move to demand payment of water rates from the petitioner for nearly four years after the formation of the new State, is an indication that the new Sovereign accepted the position as it was as regards the rights of the petitioner. The new Sovereign could have expressly repealed the personal law, but did not do so.

DD Cement Company v. Commissioner of Income Tax (1954)
High Court of the Patiala and East Punjab State Union
All India Reporter, 1955, PEPSU 3, American Journal of International Law (1955), p. 572

225. This case, which is also concerned with the merger of eight Native States, into PEPSU (see paragraphs 220 and 233 *supra*), distinguished between obligations of a successor State as to land as to which the title has already been perfected before conquest and annexation, and obligations which arise in respect of personal rights by contracts. As to the latter, it is for the new State to consider and to decide which of them it is prepared to recognize.

Raja Rajinder Chaud v. Mst Sukhi and others (1956)
Supreme Court of India, All India Reporter, 1957, S.C. 286
International Law Reports, 1957, p. 74

226. The Supreme Court of India decided upon a claim by the plaintiff Raja that the sovereign rights of the former independent rulers of Kangra, including rights to certain trees, had descended to him.

227. The Court held that the rights of the last independent Ruler of Kangra had come to an end with the annexation of his territory by the Sikhs (1827-28). Appellant's predecessor received from the new sovereign [the Sikh Kingdom, later replaced by the East India Company and subsequently by the British Government] the grant of a " Jagir " (a share of the produce of a district as an annuity), but the last ruler's sovereign rights passed to the Sikhs and their successors in the sovereignty.

228. The Supreme Court emphasized that the judge below had failed to appreciate the distinction between the sovereign rights of an independent Ruler and the rights of the grantee under a grant made by the sovereign Ruler. It invoked the authority of the Privy Council decision in *Vajesingji Joravarsingji v. Secretary of State for India* (see paragraph 202 *supra*). The Court concluded that the grant to plaintiff's predecessor was a grant of land revenue, not of royal rights to all pine trees.

Virendra Singh and others v. State of Uttar Pradesh (1954)
Supreme Court of India, 1955, S.C.R. 415 International Law Reports, 1955, p. 131

229. In January 1948, the petitioners were granted certain rights in land by Rulers of two States which later were merged into a Union of 35 States (Vindhya Pradesh) which confirmed the grants in 1948. In December 1949, the 35 Rulers dissolved that State and the villages concerned were absorbed into the United Provinces (Uttar Pradesh) (January 1950). In 1952 the Government of Uttar Pradesh, in consultation with the Government of India, revoked the grant, the main reason being that the rights in the land had been granted by the Rulers to their near relations *mala fide*, the Rulers thereby indirectly increasing their privy purse.

230. The Supreme Court held that the grants had passed an indefeasible title to the grantees. The petitioners were citizens of India and the action taken against them by the Government cannot be defended. No Sovereign can exercise an Act of State against its own subjects. The doctrine of Act of State was not applicable. The Indian Constituent Assembly was not a meeting of conquerors and conquered, of those who ceded and those who absorbed.

231. In its judgment, the Court emphasized that jurists held divergent views on this matter. At one extreme was the view of the Privy Council expressed in a series of cases; the Court referred *inter alia* to the cases summarized in paragraphs 199 to 202 *supra*. At the other extreme were the views expressed by the Supreme Court of the United States.[46] The Court also quoted from the Advisory Opinion on *Certain Questions relating to Settlers of German Origin in the Territory ceded by Germany to Poland*.[47]

The Court did not express an opinion on the question whether the State would have the right to set aside these grants in the ordinary Courts of the land, or whether it can deprive the petitioners of these properties by legislative process.[48]

Gajjan Singh v. Union of India and others (1955)
Judicial Commissioner's Court of Himachal Pradesh
All India Reporter, 1956, H.P. 9
International Law Reports, 1956, p. 101

232. The judicial commissioner, following the decision of the Supreme Court of India in *Virendra Singh* v. *State of Uttar Pradesh* (paragraphs 229 et seq. *supra*) distinguished the decisions of the Privy Council summarized in paragraphs 199 *et seq. supra* on the ground that is was not possible for a sovereign to exercise an Act of State against his own subjects. As applied to acts of the Executive directed to subjects within the territorial jurisdiction, " act of state " had no special meaning and could give no immunity from the jurisdiction of the Court to inquire into the legality of the act.

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[46] *Untied States* v. *Percheman*, 32 U.S. 51 at 86, 87 (1883); *Shapleigh* v. *Mier*, 299 U.S. 468 at 470 (1937). For the jurisprudence of United States Courts, see paragraphs 239 et seq. below.

[47] P.C.I.J., Series B, No. 6; A/CN.4/151, paragraphs 39 *et seq.*

[48] This question was considered in the case of *Maharaj Umeg v. State of Bombay and others* (See paragraphs 233 *et seq.* below)

Mararaj Umeg Singh and others v. State of Bombay and others (1955)
Supreme Court of India, All India Reporter, 1955, S.C. 540
International Law Reports, 1955, p. 138

233. The facts in this case were similar to the case of *Virendra Singh* v. *Uttar Pradesh* (paragraphs 229 *et seq. supra*) except that here the expropriation had taken place by legislation, not by executive action. The petitioners contended that the State of Bombay was bound by all the obligations which had been undertaken by the Dominion Government under the Agreements of Merger and Letters of Guarantee and it could not lie in the mouth of the State of Bombay to repudiate the same.

234. The Court said that this argument was not without force, but did not consider it necessary to decide this question because even assuming that the State of Bombay was bound by these obligations, the question still remained how far the petitioners were entitled to enforce these obligations against the State of Bombay. The State of Bombay invoked the Privy Council decision in *Vajesingji Joravarsingji v. Secretary of State for India* [49] which had been quoted with approval in *Secretary of State* v. *Rustam Khan*; [50] the Supreme Court of India did not feel called upon to pronounce upon the validity or otherwise of these contentions because Art. 363 of the Constitution of India lays down that the Courts shall have no jurisdiction in any dispute out of agreements between a Ruler of an Indian State and the Government of India.

Indumati v. State of Saurashtra (1955), India, High Court of Saurashtra
All India Reporter, 1956, Saurashtra 32, International Law Reports, 1956, p. 109

235. A Covenant about the merging of States provided that the successor State would discharge the obligations of the covenanting Rulers. The Court held that Saurashtra State was bound to respect the obligation arising out of a lease. The State could not terminate that obligation by an executive order, but the State's legislative authority was not in any way curtailed by that obligation and it was open to the State to pass a law terminating the lease.

Bapu and Bapu v. Central Provinces (1955) India, High Court of Nagpur, 7 April 1955
All India Reporter, 1956, Nagpur 59, International Law Reports, 1956, p. 110

236. The question before the Court was whether the predecessors of the appellants had a good title to land the history of which was traced back to the time of the succession to a Princely State of the East India Company and subsequently the British Government.

237. The Court observed that although changes of sovereignty did not normally affect private rights in property, when territory previously in the occupation and under the rule of an Indian State passed to the British Government, all rights which the State had in the land came to an end and thenceforth the grant of the British Government alone formed the root to the title.

238. It was, no doubt, true that there was every presumption in favour of the proposition that a change of sovereignty would not affect private rights to property. The Court found no evidence, however, that the title to the disputed area rested with any private person at the date when the sovereignty of Nagpur territory passed to the East India Company in 1854. It was open to the East India Company on the ground of conquest or otherwise to annul rights of private property. The High Court of Nagpur also referred to the various English and earlier Indian decisions to which repeated references have been made in the previous paragraphs of this Chapter.[51]

B. *Decisions of American Courts*

Playa de Flor Land and Improvement Co. v. United States (1945)
United States District Court for the Canal Force Zone, 70 F. Supp. 281
Annual Digest, 1946, Case 16

239. In an action against the United States for just compensation to be paid for the taking of lands for purposes connected with the Panama Canal the Court stressed the obligation of the successor State to respect private rights based on principles which, it said, are plain, simple and easily understood and are grounded on common honesty, right and justice. It abstracted these principles from a long line of decisions of the Supreme Court of the United States in cases regarding the validity of land titles acquired under former sovereignty, and specifically the cases wherein the treaties with Spain and France affected land titles in Texas, Missouri, Alabama, Louisiana, Georgia, and other States. The Court held that these principles were applicable to the facts in the Panama Canal case. Among the cases summarized by the District Court for

[49] See paragraph 202 *supra*.
[50] See paragraph 197 *supra*.

[51] The decision in *West Rand Gold Mining Company* v. *The King* (1905), 2 K.B. 391, has been referred to in this and many other decisions digested in this chapter. Although it was rendered before the period covered by this digest, a summary of it follows:

An English company alleged that before the war between the late South African Republic and Great Britain (declared on 11 October 1899), gold owned by it had been taken from it by officials acting on behalf of the Government of the Republic. The British forces conquered the Republic and annexed the whole of its territories on 1 September 1900. The Company claimed that by reason of the annexation the British Government was liable for the debts of the former Republic.

The Court stated, *inter alia*, that there is no principle of international law by which, after annexation of conquered territory, the conquering State becomes liable, in the absence of express stipulation to the contrary to discharge financial liabilities of the conquered State incurred before the outbreak of war. We can well understand, the Court said, that if by public proclamation or by convention the conquering country has promised something that is inconsistent with the repudiation of particular liabilities, good faith should prevent such repudiation. We can see no reason at all why silence should be equivalent to a promise of universal novation of existing contracts with the Government of the conquered State.

On the question of the jurisdiction of municipal courts to adjudicate claims of this type, the Court emphasized that there was a series of authorities from the year 1793 down to the present (1905) holding that matters which fall properly to be determined by the Crown by treaty or as an Act of State are not subject to the jurisdiction of the municipal Courts, and that rights supposed to be acquired thereunder cannot be enforced by such Courts.

the Canal Zone were those mentioned in the paragraphs which follow.

240. *United States v. Arredondo,* 6 Pet. 691, 31, U.S. 691. This case related to land in Florida ceded to the United States by Spain. The Supreme Court said that it is the usage of all the civilized nations of the world, when territory is ceded to stipulate for the property of the inhabitants. If the land in controversy was the property of the claimants before the treaty, its protection is as much guaranteed by the laws of the Republic as by the ordinances of a Monarchy.

241. In the case of *Delassus v. United States,* 9 Pet. 117, 34, U.S. 117, the plaintiff had made a contract with the Spanish authorities by which he was to acquire title to land, but the title had not yet been perfected at the time of the occupation by the United States. It was held that even an inchoate title is a kind of property which must be recognized and perfected by the United States even if there were no treaty stipulation. While the sovereign may acquire full dominion, this dominion does not divest the vested rights of individuals to property. The people change their sovereign but their right to property remains unaffected.

242. In *Mitchel v. United States,* 9 Pet. 711, 34, U.S. 771, the Supreme Court again recognized the proposition that the inhabitants of a conquered or ceded country retain all the rights as to property which are not taken from them by the orders of the conquerors or the laws of the sovereign who acquires it by cession.

243. In *Carino v. Insular Government of the Philippine Islands,* 212, U.S. 449, the question arose, when the U.S.A. took over, whether the plaintiff had any rights that the United States must respect, since the plaintiff had not complied with the Spanish administrative regulations providing for a registration of title. Whatever the law on these points may be, the Supreme Court said, every presumption is and ought to be against the Government in a case like the present. If there is doubt or ambiguity in the Spanish law, the Court ought to give the applicant the benefit of the doubt.

244. In the case of *United States v. Anguisola,* 1 Wall. 352, 17, L.Ed. 613, the Supreme Court recalled that, in passing upon the rights of the inhabitants the tribunals are directed to be governed by the stipulations of the treaty, the law of nations, the laws, usages, and customs of the former government, the principles of equity and the applicable decisions of the Supreme Court. The tribunals should not conduct their investigations as if the rights of the inhabitants depended upon the nicest observance of every legal formality. The United States have desired to act as a great nation, not seeking, in extending their authority over the ceded country, to enforce forfeitures, but to afford protection and security to all just rights which could have been claimed from the government they superseded.

United States v. Fullard-Lee et al. (1946).
United States Circuit Court of Appeal, Ninth Circuit Federal Reporter, Second Series, 156, Federal Reporter, 2d. 756
Annual Digest, 1946, Case 15

245. The Federal Government of the United States had brought suit to quiet title to an island in Hawaii. The District Court for the (then) Territory of Hawaii decided against the Government. The Federal Circuit Court of Appeal, Ninth Circuit, confirmed the decision.

246. The facts were reminiscent, the Court of Appeals observed, of those involved in the case of *Carino* v. *Insular Government of the Philippines.*[52] The Court stressed the statement of the Supreme Court in the *Carino* case that the acquisition of the Philippines by America was not for the purpose of acquiring lands occupied by the inhabitants, but on the contrary, the Organic Act [53] expressly declared that property rights were to be administered for the benefit of the inhabitants.

247. Following this precedent the Circuit Court of Appeals stated that as regards Hawaii in like manner, despoilment was not the aim of annexation. It was the purpose of Congress, as expressed in the Organic Act [54] to leave the ceded public lands to be administered for the benefit of the people. There is in this benign programme no proper place for advantaging the United States at the expense of the inhabitants on grounds which, though having the semblance of legality, affront the sense of justice. Nothing is more at war with the United States policy than the assertion of title by the United States, in doubtful cases, to land long occupied by local inhabitants in good faith under claim of right. In such a situation the occupant is entitled to the benefit of every presumption and to have all doubts resolved in his favour.

Amaya et al. v. Stanolind Oil and Gas Co. (1946) United States, Circuit Court of Appeals, Fifth Circuit Federal Reporter, Second Series, Volume 158 F 2d, 554
Annual Digest, 1946, No. 81

248. Article VIII of the Treaty of Guadelupe Hidalgo of 1848, by which Mexico ceded Texas to the United States provided that title of Mexican citizens to certain lands should be " inviolably respected ". The Court regarded the phrase as a covenant on the part of the United States to respect thenceforth any title that Mexicans then had, or might thereafter acquire, to property within the region; but not that it would guarantee that those Mexicans would never lose their title to persons by foreclosure, sales under execution, trespasses, adverse possession and other non-governmental acts. There was nothing in the Treaty that suggested that the property of Mexican citizens would not be subjected to the valid and non-discriminatory property laws of the State of Texas.

249. The Treaty guaranteed that all Mexicans, whether presently owning or subsequently acquiring, property shall enjoy, with respect to it, guarantees as ample as those of citizens of the United States but not more. The principles of international law impose substantially the same obligation to respect property rights within annexed territory as did Art. VIII of the Treaty of Guadelupe Hidalgo. The obligation of the treaty was substantially the same as is required by international law. International law does not prohibit the successor

[52] See paragraph 243 *supra.*
[53] 32 Stat. 691.
[54] 48 U. S. C. A.

sovereign from subsequently enacting legislation as to title to lands.

250. The Court also referred to the Judgment of the Supreme Court of the United States in the case of *Leitensdorfer et al.* v. *Webb,* 20 How. 176, 61 U.S. 176, 15 L. Ed. 891, decided in 1857, discussing property rights after the acquisition, in 1846, by arms of the United States, of the Territory of New Mexico. In that case the Supreme Court had said that " by this substitution of a new supremacy, although the former political relations of the inhabitants were dissolved, their private relations, their rights vested under the government of their former allegiance, or those arising from contract or usage, remain in full force and unchanged, except so far as they were in their nature and character found to be in conflict with the Constitution and Laws of the United States, or with any regulations which the conquering and occupying authority should ordain."

Miller et al. v. Letzerich et al. Supreme Court of Texas (1932), 121 Tex. 248, 49 S.W. (2d) 404
Annual Digest, 1919-1942 (Supplementary Volume), Case 45

251. One of the issues raised in this case was whether the legislation of the States of Texas was applicable to property rights (in this case surface water rights) which had been acquired when the present State of Texas was under Mexican sovereignty.

252. In determining the power of the Legislature of Texas to pass laws affecting surface water rights for the state generally, the Court held it necessary to consider the effect of the grants made by each povereignty, in their relationship to the subject. Lands in Texas have been granted by four different governments, namely, Spain, Mexico, the Republic of Texas and the State of Texas. Eventually, the common law of England was introduced (in 1840).

253. It is elementary, the Court said, that a change of sovereignty does not affect the property rights of the inhabitants of the territory involved. After the revolution by which Mexico gained her independence, the Spanish civil law prevailed in connection with the decrees and statutes of the supreme government of Mexico. The Republic of Texas retained the civil law as the rule of decision. The statutes in force in the Republic of Texas before the adoption of the common law must be determined according to the civil law in effect at the time of the grants.

254. From a long line of decisions of Texas courts it is plain, the Court stated, that whatever title, rights, and privileges the inhabitants of Texas received by virtue of land grants from the Spanish and Mexican Governments, which were a part of the realty itself or were easements or servitudes in connection therewith, remained intact, notwithstanding the change in sovereignty and the subsequent adoption of the common law as a rule of decision.

Bolshanin et al. v. Zlobin et al. (1948)
United States District Court, Alaska Federal Supplement, Vol. 76 (1948), p. 281
American Journal of International Law (1948), p. 735

255. Members of the *Russian Church* at Sitka, Alaska, brought suit against the priest and Metropolitan of the *Greco-Russian Church* in America, claiming to be the true owners of the church buildings and land by virtue of the 1867 Treaty by which Russia ceded Alaska to the U.S.A. The Treaty of Cession, Art. II, provided " that the churches which have been built in the ceded territory by the Russian Government, shall remain the property of such members of the Greek Oriental Church resident in the territory, as may choose to worship therein ". The defendants claimed title under a patent of 1914 from the United States Government.

256. The Court noted that private rights of property, whether absolute or merely equitable are not affected by a change of sovereignty (Decision of the Supreme Court in Soulard v. United States, 4 Pet. 511, 74. Ed. 938). But the United States has always maintained that, although a title to land that was perfect and complete at the time of the cession would be fully protected, yet as to land to which the claim rested on an imperfect or incomplete title, the legal title remained in the United States until confirmed or patented. (Ainsa v. New Mexico and A.R. Co. 175 US 76). The only foundation for plaintiff's claim lay in the treaty itself which, the Court held, falls far short of constituting a grant.

257. As distinguished from imperfect and incomplete titles a grant from a former sovereign needs no confirmation.

In re Ameyund (1951) Surrogate's Court, Kings County, New York 108 N.Y.S 2d 326; 201 Misc. 547
International Law Reports, 1952, Case 25

258. The power of attorney granted before Indonesian independance to the Netherlands Consul-General in New York to represent a resident of Indonesia in probate proceedings is not affected by the change of sovereignty.

Claim of Silbert and Mogillawaski (1961)
United States Claims Settlement Commission
American Journal of International Law (1962), p. 544

259. The Commission stated that the transfer after World War II of sovereignty over previously Polish territory east of the Curzon line by Poland to the Soviet Union did not constitute a taking of the private property of individuals within the territory, and in itself did not disturb the title of private individuals to property.

C. *Decisions of Court of Civil Law Countries*

Astorga v. Fisco (1958)
Supreme Court of Chile 36 Revista de Derecho, Jurisprudencia y Ciencias Sociales, II, I, 58
Annual Digest, 1938-1940, Case 38

260. Under the Treaty of 20 October, 1904, part of Bolivian territory passed from Bolivia to Chile. The petitioner sought to inscribe his title to part of a nitrate deposit situated in the ceded territory which had been approved by Bolivian authorities in 1873. The Court of First Instance rejected the application, it having been argued that the requirements of Chilean mining and inscription laws have not been complied with.

261. The Court of Appeal and the Supreme Court of Chile found for the petitioner on the ground that the titles had been granted by the Government of Bolivia at the time when the lands involved in the concession were under the jurisdiction of that Government and recognized later by the Government of Chile by virtue of the Treaty of Peace and Friendship of 20 October, 1904.

Czario v. Valentinis (1927)
Italy, Court of Cassation. Foro delle nuove provinzie, 1927, 311-314
Annual Digest, 1927-1928, Case 52

262. The Court held that the Italian State as successor in former Austrian territory became a party to a contract of lease concluded between the Austrian authorities and a private party. The Italian sovereignty having succeeded to the Austrian in the annexed territories by force of arms, it is to be assumed that the Italian State replaces the Austrian with regard to juridical relations of private law existing between the latter State and private citizens.

Nisyros Mines Case (1952)
Greece, Council of State Revue hellenique de droit international, 7 (1954), p. 274
International Law Reports 1952, p. 135.

263. In 1908, under the Ottoman Empire, the appellants' predecessor was granted the concession to exploit a sulphur mine on the island of Nisyros in the Dodecanese. The Dodecanese islands were ceded to Italy by the Treaty of Lausanne, 1923, after having been under Italian military occupation for some time. In 1933 the Italian Governor of the Dodecanese enacted on the basis of an Italian Royal Decree of 1924 a Decree-Law repealing the Ottoman Law of 1906 concerning mines, introducing, with modifications, Italian mining legislation into the Dodecanese and providing, *inter alia,* that all concessions relating to mines are *ipso facto* null and void unless it is shown that they have been regularly exploited during the period of five years immediately preceding the entry into force of the Governor's decree. This provision was to apply even in case the failure to exploit the mine was due to *force majeure* or Act of God.

264. Upon the cession of the Dodecanese by Italy to Greece under the Peace Treaty with Italy of February 1947 the Greek Administrative Tribunal for Mines found that the mines in question had not been regularly exploited between 1919 and 1945 so that the rights relating to them had ceased to exist by virtue of the Italian Governor's Decree of 1933.

265. The Council of State reversed the judgment of the Administrative Tribunal. The doctrine of international law which has developed under the influence of Western civilization recognizes that the sovereign right of a successor State is not limited to substituting its own legislation for that in force in the annexed Territory, so far as acquired rights are concerned. As soon as the annexing State has established its sovereignty over the territory, it has the right to substitute its legislation in order to achieve consistency in its legislation as a whole. Nevertheless, in legislating concerning acquired rights the successor State should be inspired by, and act in conformity with, existing specific international conventions in force and more generally with the rules of international behaviour by which internationally recognized States are morally bound.

266. In any case where there is doubt on the question of the correct interpretation to be placed on a legal provision granting legislative power to the commander of annexed territory, that provision should be construed as being limited not only by the principles of public law of the State concerned but also as having to be in accordance with particular international conventions and, in general, with the rules of international law.

267. The Italian Decree of 1933 where it provides for the nullification of existing rights, is retroactive and does not even make an exception for the case of *force majeure.* This provisions is, therefore, contrary to the 1907 Hague Convention on the Laws and Customs of War which lays down legal rules which should be applied by custom even in States which have not ratified the Conventions. It also violates the rule laid down by Article 9 of Protocol XII of the Treaty of Lausanne which provides that Italy as the successor State is subrogated in all respects with regard to the rights and obligations of Turkey vis-a-vis nationals of other signatory Powers. The Court held that in enacting the provision of 1933 the Italian Governor of the Dodecanese exceeded the power conferred on him by the Italian Royal Decree of 1924.[55]

Theodorowicz v. Polish Ministry of Public Works (1923)
Supreme Administrative Court of Poland Zb. W.N.T.A., I, No. 243
Annual Digest, 1923-1924, Case 31

268. Before the First World War the Austrian Ministry of Cults and Education, with the agreement of the Ministry of Finance, notified the Armenian Catholic Archbishop of Lwów [56] of its decision to place a building owned by the Austrian State at the exclusive and unlimited disposal of the Archbishopric. After the war the Archbishop contended that the decision of the Austrian Ministry was an administrative act which was binding upon Poland as the successor State.

269. The Supreme Administrative Court, while not denying that the Government of a State is undoubtedly bound by the principles of succession with regard to acts of its predecessor, ruled that principle cannot be aplied *in extenso* where the allegiance of the territory changes. This applies *a fortiori* where the Government of a State which was the original sovereign (Poland) takes the place of a foreign Government (Austria). Many an administrative act of the foreign State might have been

[55] The reference by the Court to the Hague Rules of Land Warfare is due to the fact that the Italian Royal Decree of 28 August 1924, while issued at a time when Italy was already the sovereign and not only the belligerent occupant of the Dodecanese, maintained the Governor of the Dodecanese in his function and *provided that he should retain all the powers exercised by him heretofore,* i.e. the powers of the military commander of a belligerent occupant. The Governor's Decree-Law of 1933 was *ultra vires* of a belligerent occupant and therefore also an excess of the powers vested in the Governor in 1924.

[56] Before World War I in Austria; between the two world wars in Poland; now in the Ukrainian SSR.

directed against the interests of the territory. Poland must therefore have a free hand and need not recognize administrative acts or agreements of Austria, unless international treaties stipulate the contrary, which was not the case here. There was no legal basis for compelling the Polish Government by judicial proceedings to give effect to a decision of the former Austrian Government.

Niedzielski v. Polish Treasury (1925)
Supreme Court of Poland, Riv. III, 1485/26/1
Annual Digest, 1925-1926, Case 53

270. The decision was in an action arising out of a contract made with the authorities of the former Austrian Empire for work done prior to November 1918 in government buildings situated in territory ceded by Austria to Poland.

271. The Court said that in contradistinction to the older doctrine of international law, the modern law of nations no longer recognizes the private law principles of succession as applicable to the transfer of territory from one State to another. The successor State takes over the debts of its predecessor only insofar as it has expressly accepted them. No question of unjustified enrichment arises seeing that, apart from school buildings, hospitals and State forests, Poland had to pay for the properties taken over by a contribution to the cost of war to be paid to the Allied Powers.[57]

Maintenance of a School in Slovakia Case (1935)
Supreme Court of Czechoslovakia
Collection Vazny 14785 civ.
Annual Digest, 1938-1940, p. 102

272. The Court held that the Czechoslovak State, insofar as the obligations of the Hungarian State relating to territory now part of Czechoslovakia were concerned, was not the legal successor of Hungary and was not bound by an obligation created by a private contract between the Hungarian State and a parish, by which the State undertook to contribute to the costs of the maintenance of a school.

Struzek v. District Appeal Committee for War Cripples in Lodz (1931)
Supreme Administrative Court of Poland ZC. W.N.T.A. IX (1931) No. 462A, p. 369
Annual Digest, 1931-1932, Case 42

273. The appellant, a resident of what became Polish Upper Silesia, was declared by the German military medical authorities to have lost 25 per cent of his earning capacity owing to war service in the German armed forces. A new German law concerning war pensions was issued in May 1920; a new Polish law on the same subject on 18 March 1921. A plebiscite was held in Upper Silesia on 20 March 1921. In 1922 Poland assumed sovereignty over the part of Upper Silesia assigned to it after the plebiscite.

274. In 1926 the plaintiff was re-examined by the Polish medical authorities, who reduced his pension to the amount corresponding to a permanent disability of only 10 per cent. He claimed that the obligation undertaken by Poland in the Polish-German Convention (Geneva, 1922) which guaranteed the respect for private rights barred the reduction of his pension because the German law of 1920 prohibited reconsideration of definitely assigned pension rights.

275. The Court held that neither generally binding principles nor any single rule of international law can be found which oblige a State which takes a territory under its sovereignty to take over at the same time laws which until then had been in force there. Agreements in this field, forming special and exceptional law, must be interpreted most restrictively. The Geneva Convention of 1922 dealt partly with strictly specified rights, without mentioning war invalid pensions, and partly with private rights based on the German Civil Code. The latter was not applicable to war pensions, which belonged to the domain of public law.

In re Hospices Civils de Chambéry et al. (1947)
France, Conseil d'Etat
Sirey, 1948, III, p. 39
Annual Digest, 1948, Case 20

276. Several hospitals of the region of Savoy and Nice contended, against adverse administrative decisions, that they held licences from the King of Sardinia, ruler of the area before 1860, granting them the right to dispense drugs to the public, that this right was safeguarded by the treaty of cession, and that French law could not deprive them of it.

277. The Council of State held that the necessary and immediate effect of the change of sovereignty, in the absence of any reservation in the intervening treaty, was to submit the hospitals, for the present and for the future, to the laws governing public hospitals in France, in particular to the law relating to dispensaries. The closing of the dispensaries to the public could, accordingly, be ordered, without violating the Treaty of 1860.

Van Oostveen v. Van Oostveen and Others (1951)
Supreme Court of Holland
N.J. 1952, No. 291; ibid., 1953, No. 34
International Law Reports, 1952, Case 26

278. After the Second World War strips of territory were transferred from Germany to the Netherlands.[58] A resident of the transferred territory had, while it was part of Germany, executed an " *Erbvertrag* " (contract of inheritance), an institution of German law not known to Dutch law. Netherlands legislation of 1949 regulated in great detail a large number of questions of civil and criminal law of a transitional or " intertemporal " character.

279. The *de cujus* died in 1951. It was held by the courts of all three instances that the mandatory provisions of Netherlands law providing for a *pars legitima* for the decedent's children prevailed over the rights of the widow based on the " contract of inheritance " which, though irrevocable in principle, could, because of its *mortis causa* character, vest no rights in any person prior to the death of one of the spouses.

[57] See the note to paragraph 345 below on the compatibility of the decision in the *Nieldzielski* case with the *Silberzpic* case.

[58] See paragraph 181 *supra*.

Chapter V. State succession in relation to the status of public servants

In re Kremer (1936)
France, Conseil d'Etat
Dalloz, 1936, Part 3, p. 53;
Sirey, 1936, Part 3, p. 90
Revue générale de droit international public
Vol. XLV (1938), p. 479

280. Kremer was a judge of the Regional Court of Strasbourg when Alsace-Lorraine belonged to Germany. He was appointed for life with certain pension rights. In 1919 he was requested to resign his post. He acquired French nationality by the Treaty of Versailles. The *Conseil d'Etat* was called upon to decide upon Kremer's claim to a pension in respect of his services in Alsace.

281. The *commissaire du gouvernement* presented to the *Conseil d'Etat* the conclusion that with the change of sovereignty every legal nexus between the State and its functionaries immediately ceases to exist. The successor State must re-invest the officers whom it wants to retain in its service. It has an absolute and sovereign discretion to grant or to refuse retention. This is an essential prerogative of public power against which no acquired right can prevail.

282. While this is the rule deriving from the general principles of international law, treaties of cession usually provide for appropriate pensions, in the interest of the necessary continuity of social life and also in the interest of the individual inhabitants of the annexed territory. This, in the opinion of the *commissaire du gouvernement* involves a true obligation for the State and a certain right for the individual who is affected by the change of sovereignty. Kremer, he said, is entitled to reparation for the damage caused to him also because of the obligation of the successor State to assure, to the full extent that this is compatible with the exercise of its sovereign power, the protection of those who become its nationals. Such reparation granted not on the basis of a positive text but on general principles need not necessarily consist of the award of a pension. Any other means of equitable compensation can, subject to judicial review, be chosen by the State. The appellant's appointment, on recommendation of the French Government, to a position in the Saar together with a pension lower than that claimed by him appeared to be an equitable reparation for the loss he had suffered.

283. The Court agreed with the conclusions of the *commissaire du gouvernement*. While it did not express an opinion on Kremer's *right* to an indemnity, it accepted the general principles of international law as the source for the obligation of the French State to make reparation and agreed that the compensation the appellant had received was equitable.

Danzig Pension Case (1929)
Obergericht (Superior Court) Danzig
Zeitschrift für ausländisches öffentliches
Recht und Völkerrecht, II (1931), Part 2, p. 71
Annual Digest, 1929-1930, Case 41

284. The plaintiff who had been employed by the Prussian State in Danzig claimed a pension from the Free City of Danzig. The Court found in his favour.

285. The Court stated that according to international law the plaintiff's claim to a pension as established against Prussia passed to the defendant. The plaintiff's functions as an official had been limited to the territory of what became the Free City and he became its national immediately upon its creation.

286. The literature of international law, the Court went on to say, generally considered obligations with regard to pensions as administrative debts. According to rules of customary international law local administrative debts as well as general public State debts were governed by the principle that they passed to the successor State. A customary rule of international law had been developed to the effect that claims to pensions passed to the succeeding State if the claimant became a national of the succeeding State and did not opt for his former State. The fact that Article 254 of the Peace Treaty of Versailles referred to public debts only, made it necessary to apply to the obligation to pay a pension according to general principles of international law.

287. The Court found support for its conclusion that in the case of cession of parts of territory certain pension charges pass to the successor State in the provision of the Peace Treaty of Versailles (Art. 62) under which the German Government undertook to bear the expense of all civil and military pensions which had been earned in Alsace-Lorraine. Such an explicit treaty regulation was necessary only because without it the burden of this expense would, in accordance with general principles of international law, have fallen upon the successor State (France).

288. The territory of the Free City was ceded by Germany to the Allied and Associated Powers; they were to be regarded merely as trustees who undertook to establish and did establish, the Free City of Danzig. The Free City was therefore the successor State and the principles of international law in the matter of State succession applied to it.

Saar Territory Officials Case (1925)
Supreme Court of Saarlouis, Saar Territory
Entscheidungen des Obersten Gerichtshofes und des Oberverwaltungsgerichts des Saargebietes in Saarlouis, March 1926, p. 2
Annual Digest, 1925-1926, Case 68

289. A civil servant of a municipality in the Saar Territory, appointed for life by the Prussian Government, who had been relieved of his duties by the President of the Governing Commission of the Saar Territory claimed, *inter alia*, continued payment for life of his salary less any salary he might earn elsewhere.

290. The Court held that the Governing Commission could not be restricted in the choice of its officials by appointments made by the former Government. With the cessation of that Government, the legal basis of the appointment disappeared. There was, according to international law, no general obligation upon the successor State to take over the officials of the former State or to compensate them for the loss of their employment. The fact that writers on international law express the opinion that the successor State is bound to respect acquired rights is not decisive. For it is conceded even by those who put forward this view

that the nature of the public law in question determines which rights have to be disregarded, and that it is impossible to give effect to such private rights as are inconsistent with the public policy of the successor State. Nor is there a customary rule of international law to the effect that compensation has to be paid in such cases.

291. As to the contention that in case of cession local servants are, according to customary international law taken over by the successor State, the Court stated that the conception of " local servants " was as doubtful as the rule of international law in question.

Pensions (Prussia) Case (1923)
German Reichsgericht (Supreme Court of the German Reich)
Fontes Juris Gentium, A, II, Vol. 1 (1879-1929), No. 286
Annual Digest, 1923-1924, Case 28

292. The plaintiff had been an employee and later a pensioner of the Prussian province of Pozen (Poznan), by far the larger part of which was ceded by Germany to Poland by virtue of the Peace Treaty of Versailles. The administration of that part of the province which had become Polish stopped payment of pension to former officials who resided outside Poland, whereupon the plaintiff demanded payment from that part of the province which had remained German.

293. The German Supreme Court decided against the plaintiff. Neither a positive statutory provision nor general principles of public law justify the proposition that the German remainder of the former province continued its legal personality. The State as such continues, although large parts of its territory have been taken from it. Bodies like provinces, whose legal personality is not original, but was created by the State, do not survive radical territorial changes and the destruction of their organization caused thereby.

Salary due by the former Government (Czechoslovakia) Case (1921)
Supreme Administrative Court of Czechoslovakia
Collection Bohuslav 1041 adm.
Annual Digest, 1919-1922, Case 35

294. A former prisoner of war, taken over into the Czechoslovak Army after his return from captivity, claimed salary for the time of his captivity. The Supreme Administrative Court dismissed his appeal.

295. Even if there were succession of the Czechoslovak State to the rights and obligations of the former State, such succession would relate only to the taking over of the appellant into the Czechoslovak Army. From this taking over there cannot be deduced any obligation of the succeeding State to pay him his claims against the former State, as it is by no means self-evident that pecuniary obligations of public law pass *eo ipso* to the so-called succeeding State. Neither does international law recognize a transference of such claims. A claim could arise only if the Czechoslovak State had expressed, in a binding manner, the will to take over either generally or under certain conditions pecuniary obligations of public law resulting from public service in the extinguished State.

Austrian Officials in Czechoslovakia (Succession Case) (1922)
Supreme Administrative Court of Czechoslovakia
Collection Bohuslav 1255 adm.
Annual Digest, 1919-1922, Case 46

296. The appeal relating to a claim of an official of the former Austrian Ministry of Commerce for payment of salary for a certain period after the coming into existence of the Czechoslovak Republic (28 October 1918) was dismissed. The Court held that the appellant did not on 28 October 1918 become *ipso facto* an official of the Czechoslovak State. That State did not automatically enter as legal successor into the public service relationships of the old Austrian State. A public service relationship with regard to the Czechoslovak State could, as a rule, be established only by appointment by a competent Czechoslovak organ.

Hungarian Officials (Succession) Case (1926)
Supreme Administrative Court of Czechoslovakia
Collection Bohuslav 5435 adm.
Annual Digest, 1925/1926, Case 67

297. Following previous decisions, including that in the case referred to in the preceding paragraph, the Court stated that the Czechoslovak State was not a continuation of the former Hungarian State and it did not succeed to the legal position of the former Hungarian State. The Court decided against the appellant, a former Hungarian official who after return from captivity as a prisoner of war in October 1920, was taken over into the Czechoslovak Civil Service and received his salary from the date of the establishment of Czechoslovakia (28 October 1918), but claimed arrears of his salary for the period of his captivity prior to 28 October 1918. The appellant's claim against the Czechoslovak State for the fulfilment of the obligations of the former Hungarian State could arise, the Court said, only if the Czechoslovak State had expressed the will to take over that type of obligation of the former Hungarian State.

Hungarian Officials (Succession) Case No. II (1929)
Supreme Administrative Court of Czechoslovakia
Collection Bohuslav 8117 adm.
Annual Digest, 1929-1930, Case 44

298. The appellant was a Hungarian professor in the former Hungarian Faculty of Law at Bratislava. The Faculty was closed on 31 July 1921, and the appellant was awarded a pension from that date. He claimed a higher pension.

299. The Court dismissed the professor's appeal. The Czechoslovak State, it said, was not the successor to the Hungarian State and did not succeed *ipso facto* to the relation of service existing between the Hungarian State and its officials. The mere fact that the appellant was a Hungarian professor did not give him a cause of action against the Czechoslovak State on account of his salary or pension. The appellant could become a Czechoslovak official only as the result of an express act of the Czechoslovak State. This follows from the whole legislation [59] by which the Czechoslovak

[59] The relevant Czechoslovak legislation is summarized in *Annual Digest* 1925/1926, pp. 88-89.

State has regulated the legal status of the officials of the former Hungarian State.

Austrian Empire (Succession) Case (1919)
Constitutional Court of Austria
Sammlung der Erkenntnisse des oesterreichischen Verwaltungagerichtshofes, Vol. I (1919), No. 2, p. 5
Annual Digest, 1919-1922, Case 39

300. In a case decided on 11 March 1919, i.e., before the signature of the Peace Treaty of St. Germain-en-Laye, the Court dismissed the claim by a teacher against the Ministry of Education for payment of certain bonuses for work done from October 1917 to September 1918. In the territory of the defunct Austrian Monarchy, it said, new States have arisen which are not successors of the old State and not liable for its obligations. It is true that according to the principles of international law in cases in which a territory is ceded by one State to another or when several States arise out of one State, the States acquiring territory are bound do take over an appropriate part of the obligations in proportion to the assets which it or they have taken over. However, an international agreement is necessary to determine the extent of what each State will take over. Only after the share of the liability of the German Austrian Republic [60] has been determined will the plaintiff be entitled to bring an action.

Military Pensions (Austria) Case (1919)
Constitutional Court of Austria
Sammlung der Erkenntnisse des oesterreichischen Verwaltungsgerichtshofes, Vol. I (1919) No. 9, p. 17
Annual Digest, 1919-1922, Case 38

301. In this case, which was also decided before the signature of the Peace Treaty of St. Germain, the Court dismissed the claim for the granting of a pension allegedly due to the plaintiff according to the military laws of the former Austrian Monarchy. The Court based its decision on an express statutory provision and added that there was no rule of international law which lays down that the new State of the Republic of Austria is liable either jointly or severally for the obligations of the former State. The distribution of the assets and liabilities of the defunct State must be decided by an international agreement between the various States which have arisen in the territory of the former Monarchy.

Post Office Official (Austria) Succession Case (1920)
Constitutional Court of Austria
Sammlung der Erkenntnisse des osterreichischen Verfassungsgerichtshofes, Vol. II (1920), No. 50, p. 95
Annual Digest, 1919-1922, Case 47

302. On 15 July 1918, i.e., before the collapse of the Austrian Monarchy, the plaintiff was retired on pension by the Imperial Royal Postal Savings Bank. After the establishment of the Republic of Austria he claimed a higher pension.

303. The Court stated that the Republic had acquiesced in the legal position of the former Monarchy by continuing the payment of the plaintiff's pension. The Republic was not, however, the universal legal successor of the former State. It continues the relation of service of active officials of the defunct State only in regard to such officials as it has taken over individually and expressly. The plaintiff has no legal right to be taken over.

Case of an Official invoking the Peace Treaty of St. Germain (1921)
Constitutional Court of Austria
Sammlung der Erkentnisse des Verwaltungsgerichtshofes,
Vol. XLV (1921), Administrative Part No. 12796
Annual Digest, 1919-1922, p. 75

304. The Austrian Administrative Court dismissed the appeal by an official of the former Monarchy who claimed that he had a right to be taken over by the Republic of Austria on the ground that, according to the Peace Treaty of St. Germain, the Austrian Republic was the universal successor of the former Monarchy. There was no provision in the treaty, the Court said, which could be interpreted to the effect that the Austrian Republic was to be regarded as the successor to the Monarchy. Whenever the Treaty intended to impose upon the Austrian Republic obligations of the Austrian Monarchy, it said so expressly. It followed that there was no universal succession.

Ludwig v. Polish Ministry of Finance (1924)
Supreme Administrative Court of Poland
ZC Zb W.N.T.A. II, No. 298
Annual Digest, 1923-1924, Case 43

305. The Court dismissed the appellant's claim that his pension as an official of the Austrian Finance Administration which had been granted to him under the terms of a Polish statute of 1921 should be paid to him at the gold parity of the then Polish currency. Following a series of decisions to the same effect, the Court stated that the Polish State was not a successor State with regard to the Powers between which Poland had been partioned, the reconstitution of Poland not having taken place on the basis of succession. The Polish State did not have the duty to fulfil obligations of those three States beyond voluntary understandings on the part of Poland and beyond treaty obligations.

Hutnikiewioz v. Polish State Treasury (1927)
Supreme Court of Poland
P.P.A. 1928, 373
Annual Digest, 1927-1928, Case 64

306. The plaintiff was a State railway workman in Stryj (Galicia) until the downfall of the Austrian régime in 1918. Until May 1919 he continued to serve with the railway which was in the hands of the so-called Western Ukrainian Republic. The Polish Government, having taken over the railways, refused to employ him.

307. On his action claiming an indemnity and a pension, the Court of Appeal of Lwów decided against him. It said that although under general principles of international law the Polish Railway Administration had the duty of admitting to its service former Austrian employees if they had remained in Austrian employment until the railways were taken over by the Polish Railway administration, it was at least doubtful in the

[60] " Republik Deutschösterreich ", the designation used before the Peace Treaties of Versailles and St. Germain were signed and came into effect.

present case whether the facts warranted the application of this rule because the plaintiff had accepted employment with the Western Ukrainian Republic.

308. The Supreme Court dismissing the further appeal, held that plaintiff's contention that Austrian sovereignty over the territory in question had lasted until May 1919 and that the Austrian Emperor had, on 18 October 1918, assigned that sovereignty to the Ukrainian National Council, was entirely baseless. Poland was bound by obligations of the former Austrian State only insofar as by international treaty she has taken them over. The Supreme Court emphasized that the statement of the Court of Appeal of Lwów as to general principles of international law was quite baseless, and that no such obligation existed either on general principles or on the basis of the stipulations of the Treaty of St. Germain.

Kot v. Polish Ministry of Public Works
Supreme Administrative Court of Poland
Z.W.N.T.A. VI (1928), No. 1399, P.P.A. 1928, p. 546
Annual Digest, 1927-1928, Case 63

309. In the case of an official of the Austrian Roads Administration who had not been taken over into the service of the Polish State, the Court held that Polish authorities had the right to use their free discretion in accepting or not accepting for Polish service employees of the States responsible for the partitioning of Poland who were serving in the territories which came to Poland. Consequently, the admission of such an employee to the Polish service would require a distinct act on the part of the competent authority.

Sifri v. Attorney-General (1950)
Supreme Court of Israel
Piskei-Din, Vol. 4 (1950), p. 613
Pesakim Elyonim, Vol. 5 (1951/52), p. 197
International Law Reports, 1950, Case 22

310. The application for an order of *mandamus* to reinstate the applicant, an Arab civil servant of the Mandatory Government, was dismissed following the Court's ruling in *Shimshon v. Attorney-General* [61] On the termination of the Mandate the officials of the former Mandatory Government possessed no right to employment by the new State of Israel which is free to appoint its officials as it thinks best, whether from the ranks of the former officials or from among those who never had served the Mandatory Government. However, an Ordinance gave the Mandatory officials a special status inasmuch as they were taken over by the new Government temporarily. Reporting for duty within a period laid down was prerequisite to acquiring the special status created by the Ordinance. The applicant had not so reported.

Bergtal v. Schwartzman and Others (1950)
Supreme Court of Israel
Piskei-Din, vol. 4 (1950), p. 634
International Law Reports, 1950, p. 93

311. The applicant, a veterinary surgeon formerly in the employ of the Government of Palestine, remained in the service but was given notice of termination of employment. The Court followed the *Shimshon* case.[62]

312. But for the Ordinance referred to in paragraph 310 *supra,* the employment of all the officials of the Mandatory Government would have come to an end with the termination of the Mandate. The Ordinance conferred on certain officials a special status only if certain conditions were fulfilled.

313. The Government of Israel is not responsible for the debts of the Mandatory Government, and certainly there is no basis for the view that the Government of Israel took upon itself other obligations of the Mandatory Government and that it is bound to employ all the employees of that Government.

Albohar v. Attorney-General (1950)
Israel Tribunal for the Re-instatement of ex-Servicemen in their Previous Employment
Pesakim Mehoziim, Vol. 5 (1951/52), p. 96
International Law Reports, 1950, p. 94

314. The Tribunal dismissed the application of an employee of the Government of Palestine for re-instatement in the equivalent department of the Government of Israel. It said that the State of Israel was not the successor of the Palestine Government. It came into being as a result of the decision and the Declaration of the Provisional Government of Israel, as an independent State which neither received nor took over the authority of the Government of Palestine. The Mandatory Government left the country without transferring its authority to any other body. Furthermore, the State of Israel was established in only part of the territory which was formerly known as the mandated territory. There is no legal nexus having its origin either in a treaty between the two countries or in international law, between the former Mandatory Government and the State of Israel.

State of Madras v. Rajagopalan (1955)
Supreme Court of India
1955 S.C.R. 541
International Law Reports, 1955, p. 147

315. The Supreme Court of India examined in this case the status of the members of the pre-partition Indian Civil Service vis-à-vis the Government of the Dominion of India. It said that the question whether the Indian Independence Act, 1947, had brought about a full sovereign State for each and every purpose, was one of considerable importance and was not free from difficulty. The Court did not wish to decide that question on the present occasion.

316. The pre-partition Indian Civil Service had been at the pleasure of His Majesty and under the control of the United Kingdom Secretary of State for India. After independence the ultimate responsibility for the forming and maintenance of the conditions of service was no longer with the Secretary of State. In respect of such civil servants as were retained by the new Dominion Government the service continued to be under the Crown.[63] But this was only because in

[61] See paragraph 416 below.

[62] See paragraph 416 below.

[63] Until the coming into force of the Constitution of India of 26 November 1949.

theory the new Government of India was still to be carried on in the name of His Majesty. This was no more than a symbol of the continued allegiance to the Crown. The substance of the matter, however, was that while previously the Secretary of State's services were under the Crown in the sense that the ultimate authority and responsibility for these services was in the British Parliament and the British Government, this responsibility and authority vanished completely from and after 15 August 1947. Thus the essential structure of the Secretary of State's services was altered and the basic foundation of the contractual-cum-statutory tenure of the service had disappeared.

317. It follows that the contracts as well as the statutory protection attached thereto came to an automatic and legal termination on the emergence of the Indian Dominion.

Amar Singh v. State of Rajastan (1958)
Supreme Court of India
All-India Reporter (1958) S.C. 228
Journal du droit international (Clunet), 1960, p. 1080

318. On the integration of the Bikaner State in the State of Rajastan the appellant who had been a District and Sessions Judge in Bikaner was appointed a civil judge. This was, the appellant claimed, a change in rank. It was not a change in emoluments, increments and conditions of service. The appellant claimed the retention of his previous rank.

319. The Court of Appeal stated that when one State is absorbed in another, whether by accession, conquest or merger, all service contracts with the prior government terminate and those who elect to serve in the new State do so on terms imposed by the new State. Even assuming that the appellant could avail himself of the guarantee in the covenant among the rulers of the merging States it only predicated that the new conditions would not be less advantageous; it did not guarantee that they would be the same or better.

Poldermans v. State of the Netherlands (1956)
Holland, Court of Appeal of the Hague (December 1955)
N.J. 56, 120
Supreme Court (June 1956)
N.J.1959, No. 7

320. Poldermans was a schoolmaster in the Netherlands Indies and claimed salary for the period of his internment by Japanese occupation authorities. The plaintiff contended that the " Kingdom of the Netherlands " [64] and the " State of the Netherlands ", i.e., the *Realm in Europe* were liable.

321. The Netherlands Indies were a legal entity; its property, assets and obligations were distinct from those of the Netherlands. The obligation rested with the Netherlands Indies Government, and there was no scope for any obligation of the Kingdom as guarantor.

322. As a consequence of the transfer of sovereignty, the legal person known as the Netherlands Indies, as it had existed previously under Netherlands rule, had ceased to exist because that particular part of the Kingdom was thereby transformed into a new State. This was not a mere change of government or of form of government. 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 does not arise in the present case because the parties have regulated this matter by express agreement, under which all the rights and obligations of the Netherlands Indies were transferred to and rested in the Republic of the United States of Indonesia.

323. On further appeal the Supreme Court of the Netherlands pointed out that the terms used in the Netherlands-Indonesia Agreement made it clear that it was intended to lay down by the application of the accepted rules of international law that the Republic which succeeded to all the rights of the former Netherlands Indies should also have to bear all its obligations.

324. In the case of *Stichting tot Opeising Militaire Inkomsten von Krijgsgevangenen* (Foundation for Claiming Military Income of POW) v. *State of the Netherlands* (1955) (Hague Court of Appeal, Third Chamber, N.J. 1956, No. 12), to which reference is made in International Law Reports 1957, p. 72, the claims for the payment of the pay of a professional officer in the Royal Netherlands Army for the time of his captivity was rejected on grounds similar to those of the Poldermans case (*International Law Reports, 1957, p. 72*).

325. A similar conclusion was reached by the Court of Appeal of the Hague in *Van Os* v. *State of the Netherlands* in 1954 relating to a contract with the Netherlands Indies Government to join the Royal Netherlands Indies Army for a period of three years for services in Surinam or the Netherlands Antilles. The Royal Netherlands Indies Army was dissolved by virtue of the Transfer of Sovereignty and the Court held that the legal person of the Netherlands Indies had ceased to exist and the State of the Netherlands was not involved in the contract at all (*International Law Report, 1954, p. 77*).

CHAPTER VI. STATE SUCCESSION IN RELATION TO PUBLIC PROPERTY AND DEBTS

(A) *Public property*

Polish State Treasury v. von Bismarck (1923)
Supreme Court of Poland
O.S.P. II, No. 498
Annual Digest 1923-1924, Case 39

326. In 1912 defendant's husband, whose heir she was, had concluded with the Prussian Treasury a contract for the acquisition of certain property. The defendant had been entered in the land registry and had become the owner in September 1919, i.e. after the signing (28 June 1919) but before the coming into force (10 January 1920) of the Peace Treaty of Versailles. The Polish authorities demanded the ejection of the defendant and the Courts of all three instances decided in their favour.

[64] The Kingdom as a whole in its capacity of former sovereign over the Netherlands Indies.

327. The Supreme Court held that the transfer of ownership to the defendant after the signing of the Peace Treaty was contrary to the stipulation and the spirit of the Treaty. The Treaty does not oblige Poland to take over obligations of the German Empire or of Prussia on account of the acquisition of Prussian State property. Whatever view one takes of State succession in general the question is not governed by any generally accepted international custom. No generally recognized international custom prescribes that a State which is the successor to another State accepts solely by reason of State succession the obligation at private law of the State which was its predecessor.

328. The Court pointed out that the fact that Poland was a State re-established after a period of partitions was a special reason which entitled the Polish Government to rely on the absence of a generally recognized international custom compelling a State in case of succession to take over the debts of its predecessor. The reconstruction of Poland constituted only a restitution of the state of affairs which had existed before the partitions. The lands in question had never ceased to form part of Poland.

Polish State Treasury v. V. Osten (1922)
Supreme Court of Poland
O.S.P., 1, No. 504
Annual Digest, 1919-1922, Case 37

329. In an action to compel a lessee of formerly Prussian and, after 1 November 1918, Polish State real property to give up possession of the estate the Supreme Court decided for the Treasury. It stated that Poland had become the full owner of the property under the Treaty of Versailles and not under any act of civil law. The Treaty imposes on Poland no obligation to respect the contracts of lease concluded by Prussia; the Polish Republic has therefore acquired the property free of all charges.

330. It is not necessary to decide whether international custom to the contrary might give a different legal aspect to the case, as there is no general international custom ordering a State which acquires property under an international treaty to respect contracts of lease concluded by the predecessor State, unless there is a special treaty stipulation to that effect. Once ownership had thus been acquired on the basis of an international treaty, it was henceforth governed by the civil law of the country in which the property is situated and the new owner can on the rules of civil law ask the lessee to surrender the property to him. Accordingly it must be determined whether, although the contract of lease concluded between the Prussian Treasury and the defendant is not binding on the Polish Treasury, the defendant is not, nevertheless, entitled to rely on the Civil Code in bar of the plaintiff Treasury's claim. [65]

Graffowa and Wolanowski v. Polish Ministry of Agriculture and State Lands (1923)
Supreme Court of Poland
Zb. O.S.N. 1923, No. 30; O.S.P., III., No. 230
Annual Digest, 1923-1924, Case 26

[65] It appears that the Court arrived at a negative reply to this question of civil law. The part of the reasoning relating to this question is not reported in the *Annual Digest.*

331. Under the German occupation of the region of Warsaw during the First World War the German authorities placed certain cattle on the plaintiff's estate which the plaintiffs intended to keep as partial compensation for losses suffered. The Courts of all three instances decided, however, that the cattle had become the property of the Polish State, which *ipso facto* became owner of all German State property situated in that territory without regard to whether Poland had been at war with Germany or not. The Polish State was not responsible for the liabilities, vis-à-vis the plaintiffs, of Germany as an occupying Power.

332. The new State is not bound by the obligations of the old State on the ruins of which it had arisen or from which it has recovered a part of its territory. It does not take over obligations of that other State either in the domain of public law or in that of private law. It is a juridical person distinct from the old State, and as such, by an act of its sovereign power, it enters into possession of the public and private property of the old State, part of the territory of which it has taken over. The new State obtains its *imperium* not as a result of recognition by the older State or by other States, but as a result of having gained power over the territory and having suppressed the old power and organized the new power.

Polish Treasury v. Heirs of Dietl (1928)
Supreme Court of Poland
O.S.P. VIII, No. 120
Annual Digest, 1927-1928, Case 51

333. The Supreme Court of Poland laid down in (Graffowa v. Ministry of Agriculture paragraph 331 *supra*) that the Polish State, the moment its independence had been restored, had by virtue of its sovereignty become possessed of all public law and private law property of the partitioning State which was situated in the territories occupied by it (Poland). In the heirs of Dietl case it added that there was no basis for excluding from such property incorporeal hereditaments, such as claims arising out of a deed executed in 1889 by which defendants' decedent undertook to erect a school for the children of his factory workmen and certain others in formerly Russian territory.

Polish State Treasury v. District Community of Swiecie (1929)
Supreme Court of Poland
Zb. O.S.N.C. III (1929) No. 21
Annual Digest, 1929-1930, Case 30

334. In 1903 the Prussian State Treasury made an agreement with a District in the territory subsequently ceded to Poland by virtue of which the District was to pay to Prussia quarterly contributions towards the upkeep of a secondary school.

335. The Courts of all three instances decided that the claim of the Prussian Treasury had passed to the Polish State. Poland was not a successor of the Prussian State and for that reason had not become a party to the agreement of 1903. However, as she took advantage of the fact that the claim had passed to her, she could do so only within the limits of the agreement.

Polish State Treasury v. City of Gniezno (1930)
Zb. O.S.N.C., III (1930) No. 52
Supreme Court of Poland
Annual Digest 1929/30, Case 31

336. In 1866 the Prussian State had concluded with the defendant (a city ceded subsequently to Poland) an agreement similar to the one which was the subject matter of the decision summarized in the preceding paragraphs 334 and 335 by virtue of which the City was to pay quarterly contributions towards the secondary school at Gniezno. The Court decided that Poland having acquired all the property and possessions of the German States situated in her territory, had acquired also the rights which the Prussian State derived from the agreement of 1886 even if this were a right to demand payments to be made to a third party, the school having a separate legal personality. The Polish State has acquired the property and possession of Prussia and Germany *modo originario*; the liabilities have not passed to it at all.

Polish State Treasury v. Deutsche Mittelstandskasse (1929)
Supreme Court of Poland
Zb. O.S.N. III (1929) No. 26
Annual Digest, 1929-1930, Case 33

337. The acquisition of " all property and possessions " of the German States in the territories ceded to Poland included also a share in the capital of the defendant association. The sale of this share by the Prussian Treasury to a third party, agreed upon after the Peace Treaty of Versailles had been signed (28 June 1919), but before its entering into force was held to be invalid because under the Peace Treaty and the Armistice Convention the property was to pass to Poland within the limits which had existed on 11 November 1918.

Polish State Treasury v. Skibniewska (1928)
Supreme Court of Poland
P.P.A. 1928, p. 284
Annual Digest, 1927-1928, Case 48

and

Polish State Treasury v. Czosnowska (1929)
Supreme Court of Poland
Zb. O.S.N.C. III (1929), No. 207
Annual Digest, 1929-1930, Case 32

338. It was decided in these two cases that the " property and possession " which Poland had acquired include also pecuniary claims which were in a definite relationship to the acquired territory and therefore situated in that territory.

339. It was therefore held that the Polish Treasury was entitled to recover the debt owed to the Austrian Government by a farmer who during the First World War had received a government loan to buy livestock and equipment to replace those destroyed by operations of war.

340. Similarly the Polish State has acquired claims arising out of the supply by the Austrian Government, on credit, of agricultural machinery to farmers during the war.

Polish State Treasury v. Paduchowa and others (1927)
Supreme Court of Poland
P.P.A., 1927, p. 310
Annual Digest, 1927-1928, Case 49

341. A claim by the Polish Treasury for the repayment of a loan obtained from the Austrian State Treasury was no longer a claim of the former Austrian State, the Polish Treasury having acquired it not under private law but by international treaty. Therefore the defendants could not set off against this claim certain claims of a different character they alleged to have against the former Austrian State. As Poland has not acquired Austrian State property as a free gift, it would be contrary to the most elementary justice if she had to pay to the creditors of the former Austrian State. As to the fact that the private creditor would suffer a loss the Supreme Court said that this was always the case whenever a debtor became insolvent.

Knoll v. Polish State Treasury (1927)
Supreme Court of Poland
P.P.A. 1927, p. 312
Annual Digest, 1927-1928, p. 75

342. In 1917 the plaintiff built for the Austrian Government barracks for refugees, himself supplying building materials and labour. At the end of World War I the buildings became the property of the Polish Government.

343. It was held that the agreement of 1917 was not binding on the Polish Government as the acquisition by Poland of Austrian State property situated in Polish territory had been original (*modo originario*) not derivative.

Zilberszpic v. Polish Treasury (1928)
Supreme Court of Poland
Zb. O.S.N. 1928, No. 190
Annual Digest, 1927-1928, Case 55

344. A contractor had, before World War I, concluded an agreement with the Russian Orthodox Charitable Society of Kielce (in the part of Poland then under Russian rule) to build an apartment house on land belonging to it. The land had, after the Polish insurrection, been granted to the Society by the Russian Government in 1868 and became, after 1918, the property of the Polish Treasury. The contractor's assignee sued the Polish Treasury for the money due to him which had remained unpaid.

345. The Court stated that in this case the rule against unjustified enrichment at the expense of another (*actio de in rem verso*) applied. The land alone had been the object of the grant of 1868; the building itself had never formed Russian State property; the plaintiff's assignor had spent his own money on the construction of the building without being in contractual relations with the Polish Treasury, whose property the building has now become (*superficies solo cedit*). The plaintiff can, therefore, claim from the Polish Treasury that part of his expenditure which would not exceed the increase in the value of the land which was due to the construction of the building.[66]

[66] The principles underlying this decision must be distinguished from those on which the case of *Niedzielski* v. *Polish*

Attorney-General of Poland v. Serewicz (1923)
Supreme Court of Poland
O.S.P. II, No. 609
Annual Digest, 1923-1924, Case 25

346. On the basis of Polish statutes under which all leases of buildings *purchased by the Treasury* were to be dissolved on the date of the acquisition of the building by the State, the Attorney-General sought to recover possession from the defendant of an apartment in a house in Warsaw which was the property of the Polish Treasury but had formerly belonged to the Russian Treasury.

347. The Courts of all three instances decided against the Government. The Government contended that the Polish State had taken over the building from the Russian authorities by an " agreement " which brought the case within the scope of the statutes relating to leases in building *purchased by the Government*. The " agreement " on which the Government relied was the Treaty of Riga (1922).

348. The Court rejected this contention. The source of the passing of the building lay not in the Treaty of Riga but in the recovery of her independence by Poland and the consequent recovery of the buildings which had been Polish before the partitions, and in the taking over of buildings constructed by the Russians. The Treaty of Riga contained only a confirmation of these facts which had taken place before the conclusion of the Treaty.

Uszycka v. Polish State Treatury (1930)
Supreme Court of Poland
Zb. O.S.N.C.T. (1930), No. 43
G.S.W. 1930, p. 573
Annual Digest, 1929-1930, Case 289

349. The plaintiff's father had owned an estate in that part of Poland which was then under Russian rule. Following upon his participation in the Polish insurrection of 1863, the property was confiscated by the Russian State. Plaintiff brought the action to recover the estate from the Polish State. In an earlier case (Kulakowski v. Szumkowski) (1928) [67] the Court had decided in favour of the heirs of a participant in the Polish insurrection of 1863 whose property (including real property) had been confiscated by the Russian authorities and sold, in 1874, to the defendant's ancestor who had acquired the property in full knowledge of the facts at a nominal price. His acquisition of the property was not good in law, and could give him (and his heirs (the defendants)) no good title. All legislation and executive acts of the Russian Government (among them the confiscation of the property in question) must be considered not as legal acts, but as instances of simple violence.

350. In *Uszycka's* case the Court applied the doctrine of the *Kulakowski* case also in a situation where the Polish State would have been the beneficiary of the Russian confiscation measures. It held that the Polish Treasury would be able to claim to have acquired the estate (whether *ipso jure* owing to the recovery of independence by Poland, or by virtue of the Peace Treaty with Russia) only if the estate had belonged to the Russian Treasury. But the property had never ceased to form the property of the person from whom it had been taken by the Russian authorities.

Lempicki and Morawaka v. Polish Treasury (1932)
Supreme Court of Poland
Zb. O.S.N., I (1932), Part I, No. 27, p. 45
Annual Digest, 1931-1932, Case 29

351. This is another example of the application by the Supreme Court of Poland of the principle of Uszycka's case. After the Polish insurrection of 1831 the Russian Government confiscated the estate of a former General in the Polish forces. After the establishment of the Polish State in 1918 the general's descendants brought an action for the recovery of the estate which had been taken over by the Polish Government. The Courts of all three instances held that the plaintiffs were entitled to the estate.

352. The duty to restore to the successors of the rightful owner property confiscated by one of the partitioning Powers from a person who took part in the struggle for independence, is derived not from any law issued by the Polish State, but from the fact that the Polish nation has recovered its independence and that consequently there has come about such a change in public and private law as to cause the revival of the rights and titles of the rightful owners of confiscated property. Those relations at private law which had been illegally created by the invaders and which are inconsistent with the present state of things, fall to the ground.[68]

Cases relating to the succession of Czechoslovakia to claims for unpaid taxes
Supreme Administrative Court of Czechoslovakia

353. In a series of decisions the Court found that it was a consequence of territorial sovereignty that the Czechoslovak State has collected all rates and taxes payable on Czechoslovak territory but not yet paid on the day of the State's coming into existence, and that the Czechoslovak State does not recognize the payments which were made after the decisive date to foreign authorities.

354. In the " Succession in Taxes (Czechoslovakia) Case " reported in the *Annual Digest* 1925-1926 as Case 48 the appellant contended unsuccessfully that the Czechoslovak State was not entitled to collect a fee to which a claim of the former Austrian State had

Treasury (paragraph 270) was decided in 1925. In the *Niedzielski case there was a contractual debt on the part of* the *Austrian* State to pay for work on a building which belonged to the Treasury. Such contractual debts did not, according to the jurisprudence of the Court, pass to the State acquiring territory. Niedzielski could not base his claim on unjustified enrichment because Poland had undertaken in the Peace Treaty of St. Germain to pay for most of the Austrian State property to the credit of the Austrian reparations account. No such obligation existed with regard to the territories which before 1918 had been part of *Russia*. In these territories the *actio de in rem verso* was available in this type of case.

[67] *Annual Digest* 1927-1928, Case 375.

[68] Cf. in connexion with the *Kulakowski, Uszycka* and *Lempicki* cases (paragraphs 349 to 252 supra) the case of the *Tyre Shipping Company* v. the *Attorney-General of Israel* (paragraphs 373 to 374 below) where the Supreme Court of Israel proceeded on the basis of a similar principle.

arisen before 28 October 1918 and which had been paid to the authorities of the Austrian Republic in Vienna on 29 November 1918. The Court held that since 28 October 1918 the right to collect taxes on Czechoslovak territory including taxes due before that day belonged only to that State and that, consequently, the Austrian authorities had not been competent to collect the fee.

355. In the " Succession in Taxes (Czechoslovakia) Case No. II " reported in the *Annual Digest* 1927-1928 as Case 53 the facts related to the territory of Hlučin (Hultschin) which was ceded by Germany to Czechoslovakia by virtue of the Peace Treaty of Versailles and incorporated in Czechoslovakia in January 1920. The relevant Czechoslovak Statute provided for the law of the territory to remain in force as far as was consistent with the change of sovereignty.

356. Under the German law the Czechoslovak authorities demanded from the owner of coal mines in that territory the payment of coal duty due for a certain period prior to the incorporation. The Court held that the owner of the mines had to pay the duty for the period concerned. As, however, payment to the German Treasury would be inconsistent with the change of sovereignty it was necessary that the payment be made to the Czechoslovak Treasury.

Cases relating to the succession of Czechoslovakia to Austrian, Hungarian and Austro-Hungarian public property

Supreme Court of Czechoslovakia [69]

357. For the purpose of private law the Czechoslovak State cannot be considered the legal successor of the imperial and royal family in relation to the former former governing dynasty's property. The private law provisions concerning the assumption of debts and liabilities, together with the taking over of a property or enterprise (Section 1409 of the Civil Code) do not apply to property acquired by the Czechoslovak Republic, which formerly belonged to the Austrian and Hungarian States and to the joint Austro-Hungarian institutions (Collection Vážny 10320 civ. and 11735 civ.).

358. If before the change of sovereignty a contract was concluded between a firm and the former Austrian State Railways for the repair of a factory sidings and rolling stock, the Czechoslovak State Railways, which performed the repair after the change of sovereignty, are entitled to claim from the firm payment for the work done. The firm is not entitled, however, to deduct the deposit made before the change of sovereignty to the Austrian authorities. Section 1409 of the Civil Code does not apply (Collection Vážny 6311 civ.).

Schwerdtfeger v. Danish Government (1923)
Denmark, Eastern Provincial Court and *Supreme Court*
Ugeskrift for Retvaesen, 1924, pp. 64 et seq.
Annual Digest, 1923-1924, Case 40

359. In 1905 the Prussian authorities leased to the plaintiff for a period of eighteen years a farm which formed part of the domains of the Prussian State in the Island of Als (North Schleswig). In June 1919 (several years before the expiry of the lease) at the plaintiff's request the Prussian authorities agreed to renew the lease until 1940 and a written contract to this effect was made in July 1919.

360. As a result of the plebiscite held pursuant to the Treaty of Versailles, Northern Schleswig became part of Denmark effective 15 June 1920. After the transfer of sovereignty the Danish Ministry of Agriculture refused to recognize the validity of the renewal contract. An action thereupon brought by Schwerdtfeger against the Danish Government was dismissed by the Eastern Provincial Court of Denmark. Its judgment was confirmed by the Supreme Court.

361. The Danish Government's title to the domains in Schleswig, the Supreme Court said, is a matter of public international law, not a matter of private law. It is based on Germany's cession of the territory by treaty to the Allied and Associated Powers and the transfer of it by the latter to Denmark by treaty. Although it is widely assumed that the rights attaching to immovable property should be treated as a matter of private law in cases of transfer of territory, this could not be accepted in the case of leases made with an eye on an impending transfer of territory—particularly leases contracted for the purpose of securing additional rights to the leaseholder at the expense of the successor State and thus calculated to affect or weaken the significance of the forthcoming international cession.

362. The judgment also referred to the fact that the Danish Government had explicitly reserved its freedom of action with regard to this particular class of contracts in the Final Protocol of the Treaty with Germany regarding Northern Schleswig.

Amine Namika Sultan v. Attorney-General of Palestine (1947)
Supreme Court of Palestine under British Mandate (1947), 14 P.L.R.115
Annual Digest, 1947, Case 14

363. The Treaty of Lausanne of 1923, which was made part of the law of Palestine by an Ordinance of the Mandatory Government, provides in Art. 60, *inter alia,* that the States in favour of which territory was or is detached from the Ottoman Empire shall acquire, without payment, all the property and possessions of the Ottoman Empire situated therein. The Treaty also provides that it is understood that certain defined property and possessions are included among the property and possessions acquired by the States concerned, these States being subrogated to the Ottoman Empire in regard to the property and possessions in question.

364. The Court held that there was no indication in the Treaty that the properties were being taken over subject to private claims. The term " subrogation " means that the Government of Palestine stands in the shoes of the Ottoman State only for the purpose of enabling a subject to determine in the courts of Palestine whether any particular property did pass under certain Turkish instruments. The legislative history of the Treaty of Lausanne does not support a finding that there was any agreement to give effect to private claims. The property in suit was transferred to the Government

[69] The summaries in paragraph 357 *et seq.* and 401 *et seq.* are based on *Roučez-Sedlácek,* Commentary on the Czechoslovak Civil Code, Vol. VI *re:* section 1409 of the Code, pp. 225 *et seq.*

of Palestine without any reservation except in regard to wakfs, if any.

Fogarty and Others v. O'Donoghue and Others (1925)
Supreme Court of the Irish Free State (1926) Irish Reports, 351
Annual Digest, 1925-1926, Case 76

365. The Government of the Irish Free State became, upon the establishment of the Free State, absolutely entitled to all the property and assets of the Revolutionary Government upon which, as a foundation, it had been established and which had been the former *de facto* Government. The court said that this conclusion followed *a fortiori* from a series of English cases which establish the proposition that if the British Government had been completely successful in crushing the revolutionary movement in Ireland it could have claimed and recovered the funds which were the subject matter of the litigation as the successor of the revolutionary Government which had collected them. How much more is the Government which succeeded to that of the Revolutionary Government (the second Dail) entitled as the lawful successor to that Government.

Irish Free State v. Guaranty Safe Deposit Company (1927)
Supreme Court, New York County
215 N.Y. Supp. 255; 127 Misc. Rep. 86
Annual Digest, 1925-1926, Case 77

366. The New Court held that the Irish Free State succeeded to the Government of the United Kingdom of Great Britain and Ireland, the previous *de jure* Government of Ireland, not to the revolutionary organization which did not succeed in establishing a *de facto* Government. The Irish Free State cannot therefore show any derivative title to the funds in question. If any Government was entitled to these funds it was the British Government. As that Government has not claimed them the money was ordered to be returned to the original subscribers.

Haile Selassie v. Cable and Wireless Ltd.
English Court of Appeal (1938)
L. R. (1939) Ch. 182
Annual Digest, 1938-1940, Case 37

367. In December 1936, the King of Italy was recognized by the British Government as the *de facto* Sovereign of Ethiopia, while the Emperor Haile Selassie continued to be recognized as *de jure* Sovereign. In November 1938, the British Government recognized the King of Italy as *de jure* Emperor of Ethiopia and withdrew its recognition from the Emperor Haile Selassie.

368. The decision of the Court of First Instance had been given before the *de jure* recognition of the Italian conquest, while the Court of Appeal decided after that event. The Court of Appeal reversed the decision of the Chancery Division given in favour of the plaintiff and dismissed Emperor Haile Selassie's action. After the *de jure* recognition of the Italian conquest it was held that in the Courts of England the King of Italy as Emperor of Abyssinia is entitled by succession to the public property of the State of Abyssinia, and the late Emperor of Abyssinia's title thereto was no longer recognized as existent. It was further held that that right of succession is to be dated back at any rate to the date when *de facto* recognition of the King of Italy as Sovereign of Ethiopia had taken place.

Khayat v. Attorney-General (1954)
Israel, District Court of Haifa
Pesakim Mehoziim 9 (1954) p. 378
International Law Reports, 1955, p. 123

369. Plaintiff's land had been requisitioned by the British Army in Palestine in 1941-1944. The Army erected buildings upon the land. In June 1948 (i.e. after the establishment of the State of Israel) the British Army confirmed that the buildings were the property of the plaintiff. The Court found for the plaintiffs in their action for a declaration that the plaintiffs as owners of the land were owners of the building. It had been argued by the Attorney-General that with the end of the Mandate (15 May 1948) the British Army lost all authority to make any agreement affecting land held by it in Israel and that at the time of the agreement with plaintiffs the British Army which remained in Israel had the status of a trespasser only.

370. The Court held that on the day of the establishment of the State no change took place as regards the right of ownership of the British Army, that in June 1948 that Army was the legal owner of the buildings in question, that at the end of the Mandate the Mandatory Government was liable to the plaintiffs for rent and reinstatement, and that this liability did not pass to the Israel Government. Whether the British Army was a trespasser or not, it was the legal owner of the buildings.

Reingold and Others v. Administrator General (1951)
Supreme Court of Israel
Piskei-Din 5 (1951), p. 1180; Pesakim Elyonim 9 (1951), p. 73
International Law Reports, 1951, Case 31

371. In 1947 the Administrator General of Palestine (an organ created by Ordinance in 1944 as " a corporation sole . . . with perpetual succession . . .") commenced proceedings against the appellants for the return of certain moneys, in connexion with the winding up of the estate of a deceased person.

372. The Court referred to its decision in *Shimshon v. Attorney-General* [70] according to which there was no doubt that the Mandatory Government ceased to exist without leaving anybody to succeed to its rights and duties. With it, all its departments, whatever their legal form, also ceased to exist. The conclusion was that the Administrator General appointed by the Government of Israel is not identical with the Administrator General of the Mandate with the consequence that the Administrator General of Israel cannot continue with legal transactions commenced before the establishment of the State of Israel.

Tyre Shipping Co. Ltd. v. Attorney-General (1950)
Israel, Admiralty Court
Piskei-Din, vol. 4 (1950), p. 228
Pesakim Elyonim, vol. 4 (1951-1952), p. 55
International Law Reports, 1950, No. 25

373. A vessel having some six hundred immigrants on board who were not in possession of valid entry docu-

[70] See paragraphs 416 *et seq.* below.

ments into Palestine was in March, 1947, seized by a British naval vessel within the territorial waters of Palestine. The vessel had, with the knowledge of her skipper, owners or agents, been used to assist in performing, or in an attempt to perform, an act regarded as illegal under the Palestine Immigration Ordinance, 1941, as amended. She was confiscated and the confiscation confirmed by the Haifa District Court in December 1947. On the termination of the Mandate of Palestine (15 May 1948) the vessel was lying at Haifa. The plaintiff company claimed to be the owners of the vessel before confiscation.

374. The Court held that the Government of Israel is not the owner. The relevant provisions of the Palestine Immigration Ordinance were repealed immediately after the establishment of the State of Israel and it was enacted that any Jew who at any time entered Palestine in contravention of the laws of the Mandatory Government shall be deemed to be a legal immigrant retroactively from the date of his entry into Palestine. From the point of view of the post-1948 law, the vessel was never engaged in any illegal enterprise; the moral as well as the legal basis of the confiscation order have gone. There being no crime and no criminal, there was no instrument used for committing a crime. The confiscation order was retroactively null and void.[71]

(B) *Public debts*

Verein für Schutzgebeitsanleihen E. V. v. Conradie (1936)
Supreme Court of South Africa
S.A.L.R. (1937) App. Div. 113
Annual Digest, 1935-1937, Case 40

375. The appellant corporation claimed from the Administrator of the Mandated Territory of South-West Africa under South African Administration the payment of capital and interest due on bearer bonds issued before World War I by the German Imperial Government on behalf of the former German colonies.

376. The Court held that the Mandated Territory of South-West Africa was not the same juristic entity as the former German South-West Africa and therefore not liable for the loans raised for the benefit of the various former German Protectorates.

377. Although German South-West Africa was called a Protectorate, it was, the Court said, in fact a colony, not autonomous but subject in all respects to control of the Reich. But the accounts and financial arrangements were nevertheless kept separate from those of the Reich so that prior to the Treaty of Versailles the Protectorate was a separate juristic entity. That entity was liable in respect of the obligations relied on by the appellant.

378. By virtue of the Peace Treaty and the Mandate German sovereignty over the territory completely disappeared. The Juristic Persona of the territory which was created by the German Government did not survive the abolition of the old authority and the substitution of the new authority of a quite different type. The change was so complete and fundamental that so far as constitutional matters were concerned, there was at the date of the issue of the Mandate *tabula rasa.*

379. No inference contrary to the conclusion that there is no identity between the German Protectorate and the South African Mandate can be drawn from such limitations on the rights of sovereignty exercisable by the Mandatory as are expressed or implied in the terms of the Mandate or of Art. 22 of the Covenant of the League of Nations. There is no similarity between the position in which the territory formerly stood, as a colony, to the Government of the German Reich, where there was " no tutor and no ward ", and its position in relation to the Mandatory Power. No support for the contrary opinion can be derived, therefore, from the argument as to the identity of a ward remaining unaffected by a change of tutor.

380. As to the question of the liability of the Mandated Territory as a *successor to,* not as *identical with,* the German Protectorate, the Court followed the principles laid down by British Courts in *West Rand Central Mining Co.* v. *The King* and the decisions following it.[72]

Tanganyika Succession Case (1922)
German Reichsgericht (Supreme Court of the German Reich)
Entscheidungen des Reichsgerichts in Zivilsachen, Vol. 105, p. 260
Fontes Juris Gentium, A. II, Vol. 1 (1879 to 1929) No. 271
Annual Digest, 1919-1922, Case 34

381. Plaintiff sued the Treasury of the former German Protected Territory (colony) of German East Africa (now the independent State of Tanganyika) and the German Reich as joint debtors of the arrears of rent for property in Dar-es-Salaam, leased to the Treasury of German East Africa while that territory was under German rule.

382. The *Reichsgericht* decided that Germany was liable. It said that the decision cannot be based on considerations of private law; the constitutional and public international law aspects are decisive. When the Peace Treaty of Versailles entered into force the former colony ceased to exist and lost its legal status as a German protected territory. It was taken over, together with all its assets, by a foreign Power (England).[73] According to general principles of law, as a consequence of the transfer of the territory to England,[74] the annexing State would have become responsible for the private law liabilities of the former protected territory. However, the Treaty of Versailles expressly excluded the application of this principle. The protected territory's landed property and rights connected therewith passed to the annexing Power.

383. There have remained the Territory's rights, as well as immovable and movable property which were located in Germany and, mainly, its liabilities. It cannot be maintained, the *Reichsgericht* said, that the assets of the former Colony have now become without

[71] See the decisions of the Supreme Court of Poland summarized in paragraphs 349 to 352 *supra.*

[72] See paragraph 238 *supra* (footnote).
[73] The United Kingdom as Mandatory Power.
[74] The United Kingdom as Mandatory Power.

an owner, that the debtors have been freed of their liability, and the creditors have lost their rights owing to the disappearance of the debtors. Such a consequence would be inconsistent with what is required of a State under the rule of law. It is also incompatible with Germany's obligation to take care of an orderly winding-up of the affairs of the Territory.

384. The legal basis for the liability of the Reich is the fact that while independent economic and accounting systems for each colony had been established by German legislation, the constitutional separateness of the colonies from the Reich had, in a certain sense, been fictitious. The legal starting point is the close connexion between the Reich and the colonies, which was only covered up by the fiction of financial independence. Now, when the independence of the various Protectorate treasuries has disappeared, the necessary conclusion is, in logic and in law, to have recourse to Germany's financial responsibility which, in a sense, had only been pushed into the background.

385. Germany had in a number of cases undertaken to take over certain obligations of former East Africa, for instance, in the matter of pensions for officials and in regard to private law obligations. It was contended on behalf of the Reich that these obligations had been undertaken voluntarily for reasons of equity. The Court, however, saw in the assumption of these liabilities the express recognition and application of a general principle. The fact that the public authorities of the State have undertaken private law liabilities of East Africa cannot be justified without assuming that there were also reasons of a legal nature which prompted that course. The claim that the Reich must be free to determine which private law claims deserve consideration cannot be admitted. The defendant Reich overlooks that the Courts are called upon, and able, to decide and to examine claims with regard to their legal justification.

S. Th. v. German Treasury (1924)
German Reichsgericht (Supreme Court of the German Reich)
Entscheidungen des Reichsgerichts in Zivilsachen, Vol. 108, p. 298
Fontes Juris Gentium, A. II, Vol. 1 (1879-1929) No. 323
Annual Digest, 1923-1924, Case 29

386. During World War I, as an officer of the army of German East Africa, the plaintiff had, partly in response to a proclamation by the (German) Governor of East Africa inviting deposits to assist the conduct of the military operations, deposited with the District Fund a sum of money which, after the war, he claimed from the German Reich.

387. The Court re-examined the legal questions which had been the basis of its decision of 1922 in the " Tanganyika Succession Case " (summarized in paragraphs 381 *et seq.*) and confirmed the views it had expressed earlier. Even if it could be argued that the successor state is liable to take over purely administrative debts of this description by virtue of general principles of international law, such liability would in any case extend only to debts contracted for the purpose of ordinary peaceful administration of the territory. In no case would there be any liability on the part of the successor State with regard to debts arising out of the conduct of war or otherwise connected with the war. In the present case the plaintiff's money had been used for war purposes. According to principles of international law, the successor State cannot be asked to take over debts of this nature.

X. v. German Reich (Return of Bail, South West Africa) Case (1926)
German Reichsgericht (Supreme Court of the German Reich)
Entscheidungen des Reichsgerichts in Zivilsachen, Vol. 113, p. 281 [75]
Fontes Juris Gentium, A. II, Vol. 1 (1879-1929) No. 364

388. This was a claim against Germany to recover a sum of money deposited by the claimant as bail with the Imperial District Court in Windhuk, German South-West Africa in 1914. The appeal was decided by a chamber of the Supreme Court different from the chamber (the III. *Zivilsenat*) which in 1922 and 1924 respectively had decided the cases summarized in paragraphs 381 *et seq.* The chamber which was seized of the 1926 case was informed by the III. *Zivilsenat* that it no longer maintains its opinion that the German Reich was responsible for liabilities originating in the peaceful administration of the former protected territories.

389. The Court, abandoning the contrary opinion expressed in the earlier judgments, relied (*a*) on the German statute of 1892 providing that only the property of a Protected Territory was responsible for its administrative debts; (*b*) on the fact that the Peace Treaty had provided that neither the Territory nor the Mandatory Power shall be charged with any debt of the German Empire or State, but had not regulated the responsibility for the territories' own and (*c*) that the provision of the Peace Treaty absolving the successor State of responsibility must not be interpreted extensively. The territory of South-West Africa, while subject to the guardianship (Mandate) of the Union of South Africa, continues to be the subject of its own rights and obligations and has itself remained the debtor. The fact that the Mandatory Administration was collecting the debts which had arisen before the change of sovereignty appeared to support this conclusion.[76]

390. The German Supreme Court pointed out that it did not express an opinion on the question whom the plaintiff could sue and did not either confirm or reject the view of the lower Court that the Mandatory Power was liable under the generally recognized principles of international law governing the question of State succession.

391. In a decision of 1929 *(Höchstrichterliche Rechtsprechung 1930, No. 419, Fontes Juris Gentium* A, II, Vol. 2 (1929-1945) No. 14) the Supreme Court, after a new examination of the question, maintained its opinion (paragraph 390 *supra*) that the German Reich

[75] The decision of the lower Court, the *Kammergericht* (Court of Appeal) in this case is reported in *Annual Digest*, 1925-1926, No. 55, under the title " State Succession (Windhuk in South-West Africa) Case ".

[76] See the decision (to the contrary) of the Appellate Division of the Supreme Court of South Africa in paragraphs 375 to 380 *supra*.

was not responsible for administrative debts of the former German Protected Territories, which are unconnected with the waging of war. It extended the application of this principle to obligations arising out of other legal causes such as assumption of debt or the necessity of borrowing money (" Anleihebedurfnis ").

392. The principle negating the liability of Germany was again applied in 1930, when the Supreme Court of the German Reich held that the German Treasury was not liable for debts of German South-West Africa arising out of a contract with a railway company. The obligation undertaken by the administration of German South-West Africa was held to have been a purely personal one and limited to the assets of the territory. (*Annual Digest* 1929-1930, Case 35, " South West Africa " (Succession) Case).

Sch. v. Germany (1932)
Entscheidungen des Reichsgerichts in Zivilsachen, Vol. 137, p. 1
Juristische Wochenschrift, 1932, p. 2799
Fontes Juris Gentium, A. II, Vol. 2 (1929-1945)
Annual Digest, 1931-1932, Case 31

393. In a suit by a holder of bonds issued before the First World War on behalf of the German Colonies as the principal debtor and guaranteed by the German Reich, the German Supreme Court held that Germany was still liable as guarantor.

394. The German Colonies, the Court said, had neither themselves been German States, nor parts of the territory of the Empire. They were regarded as " appurtenances " (" *Pertinensen* ") of the Empire and were, by statute, recognized as capable of having independent rights and obligations. The Treaty of Versailles did not deprive the Colonies of their corporate capacity. Only their character as German Colonies had been lost. The principal debt, for which the German Empire stood surety, had therefore not been extinguished.

395. The defendant further contended that even if the principal debt has not been extinguished, Germany has ceased to be liable as surety by reason of the Colonies having been severed from the mother country. The Court did not accept the contention that it had been an implied condition of the guarantee that Empire and Colonies should be and remain connected.

Administration of Finances v. Ornstein (1926)
Administration of Finances v. Stier Netti (1926)
Romania, Court of Cassation
Journal de droit international (Clunet) (1927) p. 1166
Annual Digest, 1925-1926, Case 54

396. Romania is not responsible, as the result of the annexation of Bucovina, for the debts of the ceding State relating to that province, except to the extent laid down in the Peace Treaty of St. Germain. Apart from provisions of this kind, there is no universal succession by the annexing State, especially when not the whole State, but only a part of its territory, has been annexed.

Cases relating to the Succession of Czechoslovakia to obligations to repay taxes not owed
Supreme Administrative Court of Czechoslovakia
Annual Digest, 1925-1926, p. 71

397. In a decision of 1922 (Collection Bohuslav 850 fin.) the Court said that the legislator has recognized the principle of the [substantive] continuity of the [municipal] legal order before and after the revolution. Rates and taxes, fees and duties under existing laws are to be paid to the Czechoslovak Treasury. It results from this continuity between the former and the new state of the law that as regards the relation between the Treasury and the taxpayer the claim of the latter for the reimbursement of a fee wrongly paid before the coming into existence of the Czechoslovak State is not affected by the revolution provided that the claim has arisen in the territory now belonging to the Czechoslovak State.

Succession in Obligation (Fees paid in Error) Case (1925)
Supreme Administrative Court of Czechoslovakia
Collection Bohuslav 2573 fin.
Annual Digest, 1925-1926, Case 50

398. The appellant demanded the reimbursement of a fee paid in error to the former Hungarian authorities before the coming into existence of the Czechoslovak State. Referring to its decision (Boh. 850 fin. (para. 397 *supra*)) the Court held that the Treasury could not refuse to reimburse a fee paid in error on the ground only that it had been paid to the former Hungarian Treasury before the coming into existence of the Czechoslovak Republic.

Succession in Obligations (Advance Payment of Duty) Case (1928)
Supreme Administrative Court of Czechoslovakia
Collection Bohuslav 4501, fin.
Annual Digest, 1927-1928, Case 58

399. In a case where a taxpayer had paid to the Hungarian authorities a sum of money on account of duty on spirits which he intended to buy, but subsequently did not buy, the Court repeated that the Czechoslovak State, by virtue of its sovereignty is entitled to collect, in accordance with the legal provisions maintained in force, all rates and taxes, fees and duties, not yet paid, but that, on the other hand, it was a consequence of that sovereignty that the Czechoslovak State is responsible to the taxpayer for claims which had accrued to them in the period prior to the revolution of 1918.

400. This state of the law was, however, as the Court pointed out, substantially altered by the Czechoslovak Act No. 156/1926 which provided that the Czechoslovak State is not responsible for obligations arising from arrangements with the former Hungarian (and Austrian and Austro-Hungarian) Governments and their organs excepting obligations expressly provided for in the Peace Treaties. [A law of 1924, authorizing the Government to take over such claims and pay for them in accordance with the provisions of that law, remained in force. Act 236/1924; Annual Digest 1925/1926, p. 72.] [77]

Cases relating to the Succession of Czechoslovakia to debts of Austria, Hungary and Austria-Hungary
Supreme Court of Czechoslovakia

401. The Czechoslovak State is not liable to perform a contractual obligation of the former Austrian State

[77] The Supreme Court of Israel referred to this development of Czechoslovak law in *Shimson v. Attorney General* (1950); see paragraph 416 below.

to hand over factory rolling stock. The provisions of Section 1409 of the Civil Code,[78] obviously presuppose the transfer of property by virtue of a contract, by way of " singular succession ", i.e., alienation by tradition (handing over) by the previous owner and by the taking over by the acquiring party, while in the case of the acquisition which took effect on 28 October 1918 there was neither a contract nor a transfer nor a succession. It was an original (originární, originar) as distinct from derivative, acquisition, against the will of the previous owner. (Collection Vážny 5937 civ.)

402. The Czechoslovak Treasury as the acquirer of landed property under the Peace Treaty of St. Germain is liable for obligations relating to the transferred property by virtue of Section 1409 Civil Code. By the approval of the work by the Czechoslovak provincial administrative authority, approval is given not only as far as the technical aspect is concerned, but the work is being taken over as a whole and the acquirer of the building enters into the original contract between the builder and the former Austrian Treasury (přehled rozhodnutí 1923, p. 63).

403. The Czechoslovak Treasury is liable to pay for what was delivered to it after 28 October 1918 although the order was still made by the former Austrian Treasury (Collection Vážny 3864 civ.).

404. The Czechoslovak State is liable to pay what is due to an independent contractor for work done by virtue of a contract concluded by the contractor with representatives of the former Austro-Hungarian Monarchy if it relates to a state building which as a consequence of the change of sovereignty became the property of the Czechoslovak State, even if the work was completed before the change of sovereignty (Collection Vážny 2517 civ.).

Union of India v. Chinubhai Jeshingbai (1952)
India, High Court of Bombay
Indian Law Reports [1953] Bom. 113
International Law Reports 1952, Case 22

405. The sharing and distribution between India and Pakistan of the rights, property, assets and liabilities of undivided India has been regulated, under an enabling provision of the India Independence Act, 1947, by the Indian Independence (Rights, Property and Liabilities) Order, 1947. Land vested on 15 August 1947 in His Majesty "for the purposes of the Governor General in Council ". . . came when situated in India under the control of the Dominion of India; land situated in Pakistan under the control of the Dominion of Pakistan. Goods, coins, banknotes and currency notes situated in the Dominion of India fell under the control of the Dominion of India.

406. If a contract concluded before 15 August 1947 was, e.g., exclusively for the purposes of the Dominion of Pakistan, it was deemed to have been made on behalf of the Dominion of Pakistan, even if the contract had been entered into by the Governor General of undivided India with a citizen of India. The actual making of the contract by the Governor General of India was immaterial. The Order introduced a legal fiction and converted by that legal fiction a contract which was originally entered into by the Governor General of India to a contract for the purposes of one Dominion or the other. The Order determined not only the rights of the two Dominions *inter se,* but also the right of third parties.

Chaman Lal Loona & Co. v. Dominion of India (1952)
India, High Court of Punjab
Indian Law Reports [1953] VI Punjab 233
International Law Reports, 1952, Case 23

407. Applying the Indian Independence (Rights, Property and Liabilities) Order, 1947, the Court stated that the date on which a contract (with pre-partition India) was to be performed was immaterial. If any liability under the contract subsists, the contract is alive as a chose in action. In apportioning liability regard must be had to the purpose of the contract.

408. The High Court of Punjab was of the opinion that in the particular case relating to the supply of fodder to a military farm in Pakistan, the contract was not exclusively for the purposes of Pakistan because the Joint Defence Council had the power of allocating the goods among the two Dominions. It found, therefore, for the plaintiffs. On this point its decision was reversed by the Supreme Court of India in 1957 because the High Court had not properly appreciated the distinction between the " purpose of the contract " and the " ultimate disposal of the goods ". (*Union of India* v. *M/S. Chaman Lal Loona and Co.,* All India Reporter, 1957, S.C. 652, *International Law Reports,* 1957, p. 62).

409. Similar cases are listed and, in part, summarized in International Law Reports 1952, p. 129, including one where the Indian High Court of Calcutta held that under the 1947 Order where a cause of action had arisen and was pending before the partition of India, and arose wholly within the territory which after partition remained part of India, then the cause of action would continue to be exclusively against the Government of India and was not affected by the partition. [Ramesh Chandra Das v. West Bengal, *Indian Law Reports* [1953] 2 Cal. 249]. See also *op. cit.,* 1957, pp. 65-68.

410. In *Union of India v. Balwant Singh Jaswant Singh,* decided in 1957, the High Court of Punjab also held that when the Governor General of India in Council entered into a contract with a citizen of India in which he undertook liabilities and rights accrued to the citizen under that contract, if the contract was found to be on 15 August 1947 exclusively for the purposes of Pakistan then the contract was deemed to be a contract made by the Dominion of Pakistan. (All India Reporter [1957] Punjab 27, *International Law Reports,* 1957, p. 63).

Lakhmi Chand v. Punjab State (1953)
India, High Court of Punjab
Indian Law Reports [1954] VIII Punjab 61
International Law Reports, 1953, p. 91

411. Appellant, who before the partition of India had been resident in territory now forming part of Pakistan and after the partition took up residence on Indian

[78] Paragraph 357 *supra.*

territory, sued the Punjab State (India) to recover goods which, before partition had, allegedly illegally, been confiscated by the Crown. Applying the Indian Independence (Rights, Property and Liabilities) Order 1947, the Court held that the Punjab (India) Government was not liable as the cause of action had arisen wholly within the territories which now formed Pakistan.

All India Live Stock Supply Agency v. (1) Governor-General in Council (2) Dominion of India (3) Federation of Pakistan (1952)
Pakistan, Chief Court of Sind, Karachi
Pakistan L.R. (1952) Kar. 94
International Law Reports, 1952, Case 24

412. This was a case decided by a court of Pakistan under the Indian Independence (Rights, Property and Liabilities) Order, 1947, which was also the basis in Indian municipal law of the decisions of Indian Courts summarized in the preceding paragraphs.

413. Under an agreement entered into before 15 August 1947 with the Governor General of India (acting on behalf of the Government of undivided India), the plaintiffs had agreed to supply dairy products to a military farm near Karachi. They performed their part of the contract before partition. The Court held that the contract was for the exclusive purposes of Pakistan, that the fact that the goods had been delivered before 15 August 1947, i.e., that the contract had been " spent " was irrelevant and that therefore Pakistan was liable.

414. For other decisions of Pakistan Courts on the distribution between Pakistan and the Dominion of India of the assets and liabilities of prepartition India, see *International Law Reports,* 1952, p. 131.

G. S. Indulkar v. State of Bombay (1959)
All India Reporter (1959) Bom. 263
Journal du droit international (Clunet) 1960, p. 1082

415. Plaintiff was granted compensation for certain lands by the Ruler of Kolapur. When Kolapur was merged in the State of Bombay, it was held that the claim could not be enforced against that State. By whatever process the succession was effected, the successor State was under no liability to recognize liabilities of the former State. The merger agreement was between the Ruler and the Government of India and the State of Bombay was not a party to it.

Shimshom Palestine Portland Cement Factory Ltd. v. Attorney-General (1950)
Supreme Court of Israel
Piskei-Din, Vol. 4 (1950), p. 143; Pesakim Elyonim, Vol. 9 (1951), p. 16
International Law Reports, 1950, Case 19

416. In a law suit of the applicant company against the Government of Palestine for the return of an amount of Palestine Pounds customs drawback, the Haifa District Court gave judgment in favour of the applicant on 17 February 1948. The Attorney-General for Palestine appealed. On 15 May 1948 when the State of Israel came into existence, the appeal had not yet been heard. The application for an order that the Appeal should proceed between the Attorney-General as Appellant and the Applicant as Respondent was refused. Applicant had contended, *inter alia,* (i) that if the Government of Israel collected taxes due to the Government of Palestine, then it must also take upon itself the latter Government's debts, and (ii) that according to international law the debts of the previous Government have passed to the Government of Israel.

417. The Court held that there was no substitution of the Government of Israel for the Government of Palestine. The rejection of the argument under (i) was based on an interpretation of a municipal enactment. With regard to applicant's reliance on international law (*supra* ii) the Court proceeded from the assumptions (a) that a plaintiff in a municipal court cannot rely upon international law, and (b) that there was no rule commanding general assent in international law imposing on the State of Israel responsibility for the discharge of debts of the Mandatory Government of Palestine.

418. In regard to the proposition under (a) the Court relied on a number of decisions rendered by the superior courts of England, having regard to the facts that under the Palestine Order in Council of 1922 the general principles of English Common Law and Equity are, within certain limitations, to be applied in Palestine and that under the Israel Law and Administration Ordinance the law which was in force on 14 May 1948 was, subject to certain conditions and limitations, to remain in force.

419. The Court found that in the relationship between an Israeli company and the Government of Israel the essential elements which would justify the application of international law were lacking. The Court asked whether it could be asserted that Israel as responsible for the payment of all the debts of the Mandatory Government, even those which had been incurred during its struggle against the aspirations to bring about the whether it could be asserted that Israel was responsible for the debts due to former residents of Palestine who are not today residents of Israel. The Court pointed out that the territory of the State of Israel did not coincide with all the territory under the former Mandate and asked what the relative proportion of the obligations of the Mandatory Government which fall upon the State of Israel should be. It concluded that it clearly was not the task, nor within the capabilities of a court of law to give a reply to these questions.

420. In support of its statement concerning the differences existing on the question of the liability of a newly established or a cessionary State for the liabilities of the predecessor State the Court also referred to the award in the Ottoman Public Debt Arbitration (A/CN.4/151, paragraphs 108-109) and to the change in Czechoslovak legislation referred to in paragraph 400 *supra.*

Pamanoekau and Tjiasemlanden and Anglo-Dutch Plantations of Java v. State of the Netherlands (1952)
District Court of the Hague
N. J. 1954, No. 84
International Law Reports, 1952, Case 21

421. During the Second World War the plaintiffs continued paying their bank balances to the Netherlands Purchasing Commission of New York " expressing their confidence in eventually being generously treated by the Netherlands Indies Government ". After the war the Netherlands Government refused to remit to the plaintiffs the countervalue of their balances

out of the Netherlands Treasury on the ground that the debt attached to the Netherlands Indies and subsequently to the Indonesian Republic.

422. The Court held that the State of the Netherlands was not concerned with the debt. Only the Netherlands Indies were regarded as a party to the transaction. The Netherlands Indies, as a legal *persona* under private law, were legally represented in such transactions by either the Governor-General or the Minister for the Colonies. The only debtor, therefore, was the body corporate of the Netherlands Indies, first, and, subsequently, by way of succession, the Republic of Indonesia.

Montefiore et Association nationale des porteurs des valeurs mobilières v. Colonie du Congo belge et Etat belge (1961)
French Court of Cassation
Revue générale de Droit international public, 1962, p. 656
Journal du droit international (1962), p. 687

423. By Treaty of 28 November 1907 King Leopold II ceded the independent State of the Congo to Belgium. The Treaty provided that the cession included all the assets and financial liabilities of the independent State listed in an annex. However, a Belgian municipal statute of 18 October 1908 enacted the same day as the statute ratifying the cession, provided that the Belgian Congo has a legal personality distinct from that of metropolitan Belgium, that the assets and liabilities of the Colony remain separate and distinct, and that the debt service of Congolese loans remained therefore an exclusive responsibility of the Colony.

424. The French Court of Cassation quashed the decision of the Court of Appeal of Paris [79] which had proceeded on the assumption that the Congo Colony and Belgium had been merged. The Court of Cassation held that the Court of Appeal had misunderstood and misconstrued the clear and precise text of the Belgian statue which confirmed the distinction between the Belgian State and its colony and which provided that the colony was the sole debtor vis-à-vis the bearers of bonds of a loan floated by the independent State of the Congo in 1901.

425. The Court of Appeal whose decision was overruled by the Supreme Court had in its judgment referred to the fact that the statute appeared to contradict the Treaty of Cession, was essentially an internal measure which could not detract from the value and scope of the act of cession, which dominates the whole question and which had been accepted by the French Republic.

(C) *Responsibility for delicts and breach of contract in particular*

Kalmár v. Hungarian Treasury (1929)
Supreme Court of Hungary
Magánjog Tára, X, No. 75
Annual Digest, 1929/30, Case 36

426. In 1914 the plaintiff had been negligently wounded by gendarmes in Transylvania, then part of Hungary, and had been awarded by the Court a life annuity. After Transylvania had been ceded to Romania, he retained his Hungarian nationality and lived on the post-Trianon Territory of Hungary. The Hungarian currency having depreciated, the Court decided for the plaintiff in his action for valorization of the annuity.

427. There is no rule, the Hungarian Supreme Court said, according to which the Successor State, i.e. Romania, is liable to pay life annuities in favour of Hungarian citizens living in the present territory of Hungary in a case where the damage originated in the territory detached by the Peace Treaty. The objection raised by the Hungarian Treasury that the administrative liabilities of the ceded territories *ipso facto* fall on the successor State is unfounded.

Case relating to the Revalorization of Annuity awarded against Austrian Railways before World War I (1923)
Supreme Court of Austria
Entscheidungen des Obersten Gerichtshofs in Zivilrechtssachen
Vol. 5 (1923), No. 271, p. 666
Annual Digest, 1923-1924, Case 34

428. By judgment given in 1909 the plaintiff was awarded an annuity as damages for a railway accident for which the Austrian State Railways had been held responsible. Owing to the depreciation of the currency, the plaintiff claimed a valorization of his annuity.

429. The lower Court of Innsbruck dismissed the action on the ground that the Austrian Republic could not be regarded as the successor to the Treasury of the Austrian Monarchy. The Supreme Court confirmed the judgment. It is true, it said, that according to principles of international law, if territory is transferred from one State to another or if new States arise out of an old State, the acquiring State or the new States are bound to take over an appropriate part of the liabilities of the former State. But this liability must be laid down in detail either in a statute or in an international treaty, if it is to be effective.

Olpinski v. Polish Treasury (Railway Division) (1921)
Supreme Court of Poland, O.S.P.I. No. 14
Annual Digest, 1919-1922, Case 36

430. In a case arising out of a railway accident which occurred in August 1918, when certain Polish territories were still under Austrian rule, the plaintiff sued the Polish Treasury, the Polish State having taken over the Austrian State Railways on its territories.

431. The Court of First Instance and the Court of Appeal gave judgment for the plaintiff, on the ground that a railway enterprise is by its nature a private undertaking, so that the Polish Treasury is responsible for the debts and obligations which form an encumbrance on the railway property. This follows, the Court of First Instance said, also from international law, viz. from the recognized principles of legal continuity and of taking over obligations localized in territories which are taken or annexed by a new State. One cannot take over assets without taking over liabilities. The debt in question was not a State debt but one of a transport enterprise, in consequence governed by the Civil Code.

432. The Supreme Court, in a decision rendered before the ratification by Poland of the Peace Treaty of St. Germain found for the defendant Polish Treasury.

[79] The decisions of the lower courts have been reported in *International Law Reports* as follows: Decision of the Tribunal Civil de la Seine in Vol. 1955, p. 226, Decision of the Court of Appeal of Paris in Vol. 1956, p. 191.

Since the action is directed not against the Austrian but against the Polish Treasury, the plaintiff must prove a title under which the debt has passed. The rules of civil law do not find direct application to international relations. The plaintiff would have to sue the Austrian Treasury.

Co-operative Farmers in Tarnów v. Polish Treasury (1923)
Supreme Court of Poland
O.S.P. IV, No. 15
Annual Digest, 1923-1924, Case 32

433. The plaintiff had a claim against the Austrian State Railways for damage to goods. After the establishment of Poland and the taking over, by Poland, of the Austrian State Railways, they sued the Polish Treasury, basing themselves on the provisions of section 1409 of the Austrian Civil Code,[80] (still applicable in that part of Poland at the time) which provides that, subject to certain conditions, he who takes over property or a business becomes liable for its debts.

434. The Supreme Court of Poland dismissed the action because the provision of the Civil Code referred to relates only to questions of private law while the Polish State took over the Austrian State railways, by taking over supreme power in the territory in question, that is, by an act of public law.

Niemec and Niemec v. Bialobrodziec and Polish State Treasury (1923)
Supreme Court of Poland
O.S.P. II, No. 201
Annual Digest, 1923-1924, Case 33

435, The plaintiffs' buildings were destroyed in 1917 by a fire allegedly caused by sparks from the engine of a passing train. At the time of the accident, the territory in question was under Austrian rule and became Polish after World War I.

436. The Courts of all three instances held that the Polish Treasury could not be held responsible for damage caused before 1 November 1918; if the fire was caused by a spark from the passing engine, the former Austrian Treasury would be responsible. Since the rules of private law are not directly applicable to legal relations of international law, the Civil Code cannot be applied by analogy. Poland is not the successor of the Austrian State. The Treaty of St. Germain settled the problem of mutual accounting and relations in a way which determines that the Republic of Austria is the exclusive representative of the Austrian Monarchy.

Dzierzbicki v. District Electric Association of Czestochowa (1934)
Supreme Court of Poland
O.S.P. 1934, 288
Annual Digest, 1933-34, Case 38

437. The lower Court (Court of Appeal of Warsaw) had found for the plaintiff in this action in respect to an accident which before the First World War had occurred through the fault of the Russian railway authorities. The Court of Appeal held that the Polish State Treasury which had taken over the whole enterprise of the Russian Vistula Railway thereby assumed the obligations connected with the enterprise and ought to be responsible for its debts.

438. The Supreme Court, however, found that the Polish State is entirely free of obligations which were incumbent upon any of the partitioning Powers with the exception of such obligations as the Polish State has itself assumed. In accordance with the views of the contemporary science of international law, the new State is not the legal successor of the previous State from which it took over part of the territory, and is responsible for the charges and debts only insofar as it has expressly assumed them. There is no reason for not applying this principle to the obligations of the partitioning Powers arising from the responsibility for damage and losses caused in the course of running railways. This applies both to the former Austrian and to the former Russian State Railways.[81]

Sechter v. Ministry of the Interior (1929)
Romania, Court of Cassation
Jurisprudenta Română a Inaltei Curti de Casatie si Justitie, Vol. XVII, No. 4 (1930), p. 58
Annual Digest, 1929-1930, Case 37

439. The plaintiff had been commissioned by the governing authorities of Bessarabia (then part of Russia) to print the voting papers for the election of the Russian Constituent Assembly in 1917. In 1918 Romania annexed Bessarabia. The Romanian Courts of all three instances dismissed the plaintiff's claim that Romania as the successor to the former Russian province should pay the debt owed to him by the Bessarabian authorities.

440. International law, the Court of Cassation said, sanctioned the principle of universal succession to rights and obligations only in the case of a total annexation. With regard to partial annexation, the international practice established the rule that the question of debts should be settled by means of a direct arrangement between the States concerned. Consequently, in the absence of an arrangement between Romania and Russia, the claim could not be admitted.

Mordcovici v. General Administration of Posts and Telegraphs (1929)
Romania, Court of Cassation
Buletinul decisiumilor Inaltei Curti de Casatie, LXVI (1929); Part 2, p. 150
Annual Digest, 1929-1930, Case 38

441. Bessarabia was annexed by Romania on 8 April 1918; it had been occupied by Romanian troops earlier. While the territory was under Romanian occupation a sum of money sent from a post office in Bessarabia to another place in Bessarabia never reached its destination. The sender sued the Romanian Administration of Posts and Telegraphs.

442. The Court of Cassation, reversing the decision of the lower Court, held that the annexation of Bessa-

[80] See paragraphs 358 *et seq. supra* and paragraph 493 below.

[81] In the *Annual Digest*, 1933-1934, p. 89, it is stated that the Supreme Court " Held that the appeal must be dismissed ". However, the Supreme Court did not dismiss the appeal against the judgment of the Court of Appeal, but — for the reasons summarized *supra* — quashed the decision of the Court of Appeal (*Orzecznictwo Sadów Polskich*, Vol. 13, 1934, No. 288, at p. 290).

rabia to Romania did not cause a succession of the Romanian State to the obligations of the Russian State in respect of Bessarabia. There was no legal rule laying down a universal succession on this ground. Such succession could not take place except on the basis of a convention of the two States, or, failing a convention on the strength of a declaration of the Romanian State recognizing these obligations. Neither of these conditions had been fulfilled. The succession between the two States could not be regarded as a succession in the sense of the Civil Code seeing that the Russian State, of whom payment of the debt could be demanded, still existed.

443. The Romanian Court of Cassation rendered a decision to the same effect in 1931 in the case of

Vozneac v. Autonomous Administration of Posts and Telegraphs (1931)
Romania, Court of Cassation
Jurisprudenta Română a Inaltei Curti de Casatie si Justitie, 1932, pp. 36-38
(Annual Digest, 1931-1932, Case 30)

Part B: Succession of Governments

Chapter VII. Succession of governments

444. In this Chapter cases of various types are digested. Some of them relate to the problems raised by the replacement of governments by revolution and similar events, i.e. the " succession of governments " in a narrower sense. In others, courts were called upon to evaluate the validity, or otherwise, of acts of governments not recognized by the Government of the *forum*, of *de facto* and of so-called puppet governments. A considerable part of the summaries which follow deal with situations created, within and outside Germany, as a consequence of activities of the Hitler regime, the annexation of Austria and the replacement of the National Socialist Government by the post-1945 governmental organizations.

Union of Soviet Socialist Republics v. Onou (1925)
English High Court of Justice, King's Bench Division
Solicitors Journal (1935), p. 676
Annual Digest, 1925-1926, Case 74

445. The defendant had been appointed Russian Consul-General in London by the Russian Provisional Government (Kerensky) in 1917 and in that capacity had come into possession of certain archives and other property belonging successively or alternatively to the former Russian Imperial and Provisional Governments. The USSR Government after *de jure* recognition by the British Government claimed the delivery of the property and damages for its detention. The Court decided for the plaintiff Government.

Gdynia Ameryka Linie v. Bogulawski (1952)
England, House of Lords
(1952) 2 All Eng. Law Reports, 470
American Journal of International Law (1953), p. 155

446. British recognition of the Polish Government originally established in Dublin as from midnight of July 5/6, 1945, did not retroactively invalidate action taken by the London Polish Government in Exile awarding pay to Polish seamen, even though such action was taken after the British announcement that the London Polish Government would cease to be recognized and that the Dublin Government would be recognized. The Lords of Appeal differed as to how far recognition of the new Government might be given any retroactive effect, but agreed that it would not affect the actions of the Polish Government-in-Exile while the latter remained recognized.

Case arising out of the purported annexation of part of Yugoslavia by Italy (1954)
Court of First Instance, Milan
Foro Italiano I, 1358 (1954)
International and Comparative Law Quarterly (1955), p. 489

447. In 1941, without waiting for a peace treaty, Italy annexed North West Slovenia and made it the Italian " Province of Lubiana ". The Peace Treaty with Italy of 1947 provided that the frontiers of Italy shall remain those which existed on 1 January 1938 (apart from cessions by Italy). It was held that the implied declaration of the unlawfulness of the so-called annexations made by Italy after January 1938, contained in the Peace Treaty, has brought about, with the inclusion of the Peace Treaty in the Italian legal system, the invalidity and inefficacy of the rules of the Italian system relating to such annexations; and so in consequence has invalidated such status as was brought into being by the rules so abrogated.

Socony Vacuum Oil Company Claim
United States International Claims Commission
International Law Reports, 1954, p. 55

448. The Socony Vacuum Oil Company contended that the Independent State of Croatia between 1941 and 1945 carried away, or used, part of its movable property and used or otherwise interfered with its immovable property and that losses and damage resulting from such acts are compensable under the Agreement of 19 July 1948 between the Governments of the United States and Yugoslavia, as " taking by Yugoslavia of property ".

449. The Commission decided against the claimant because it found that the Kingdom of Croatia was created by German and Italian forces and threat of force; that during its entire four-year life it was subject to the will of Germany or Italy and that it ceased to exist upon the retreat of the German forces. The Yugoslav Government-in-Exile was the legitimate government of Yugoslavia until it was succeeded by the present government which is now the legitimate government of Yugoslavia. Yugoslavia and Croatia may not be viewed as the same entity and the words " taking by Yugoslavia " may not reasonably be construed to embrace " taking by Croatia ". The present Government of Yugoslavia has not been impressed with international responsibility for " takings by Croatia ".

450. Croatia is defined by contemporary writers as a " puppet state " or " puppet government " terms which appear to be of comparatively recent adoption in the field of international law. The Commission did not rely upon contemporary expressions with respect to the non-

liability of parent states for acts of " puppet states " because Croatia had all of the characteristics of a " local *de facto* government " or " government of paramount force ". The validity of the acts of a " local *de facto* government " both against the parent state and its citizens depends entirely upon its ultimate success. If it fails to establish itself permanently, all such acts perish with it. If those who engage in rebellion succeed, rebellion becomes revolution and the new government will justify its founders. If they fail, all their acts hostile to the rightful government originate no rights which can be recognized by the courts of the nation whose authority and existence have been alike assailed.

451. A " puppet state " or " local *de facto* government " such as Croatia also possesses characteristics of " unsuccessful revolutionists " and " belligerent occupants ". A state has no international legal responsibility to compensate for damage to or confiscation of property by either.

452. The Commission is in complete agreement with claimant's position that a successor government under the familiar and generally accepted principle of international law is liable for the acts of its predecessor, such as the taking of property of foreign nationals. However, it finds no basis for the application of the principle to the instant question because the Government of Yugoslavia is not factually or legally a successor to the Government of Croatia.

453. The United States International Claims Commission applied the view expressed in the Socony Vacuum Oil Company Case on the status of Croatia during World War II also on two other occasions when it repeated that under recognized tenets of international law the State of Croatia cannot be held to be a predecessor government of the present Yugoslav Government (*Popp* claim case and *Versic* claim case, *International Law Reports,* 1954, p. 63).

Galatioto v. Ochoa (1945)
Italy, Court of Cassation
Foro Italiano, 69 (1944-46), I, 217
Annual Digest, 1946, Case 18

454. After his dismissal as Duce and his escape from captivity and after the Italian Government entered into an armistice agreement with the Allies in September 1943, Mussolini established in Northern Italy, which was then under German occupation, under the aegis of Hitler a regime styled the Italian Social Republic. The Italian Court of Cassation held that enactments of a *de facto* government in enemy-occupied territory, such as the Italian Social Republic, retained their validity even after the legitimate government had recovered the territory, unless the enactments were of a purely political character or were annulled by the legitimate government.

455. The same principle was applied by other Italian Courts to sustain the binding force of judgments given by the courts set up by the Italian Social Republic (Pisati v. Pellizari, Court of First Instance of Brescia, 15 July 1946, Foro Italiano, 1947, X, 336; and a decision of the Court of First Instance of Cremona, 15 January 1946, Giurisprudenza Italiana, 1946, II, 113) (*Annual Digest,* 1946, p. 43). However, Italian judicial opinion was divided upon the status of the Italian Social Republic and the effect to be attributed to its acts, as will be seen from the case of *Rainoldi* v. *Ministero della Guerra,* below.

Rainoldi v. Ministero della Guerra (1946)
Court of First Instance of Brescia
Foro Italiano, 1947, I, 151; Foro Padano, 1946, I, 569
Annual Digest, 1946. Case 4

456. The Court decided that the Italian State was not responsible for the damage caused by a motor car employed by the army of the Italian Social Republic. There was no succession of the Italian State to the Italian Social Republic.

457. The Court indicated it may admit, although this is not universally accepted, that international law imposes upon the successor State the duty to assume the liabilities of the predecessor State both towards other States and private persons of foreign nationality and that the successor State owes a corresponding duty towards its own citizens to recognize the succession in domestic law. But, in order to establish succession of States (whether universal or partial), a State must completely absorb another State or must annex part of the territory which formerly belonged to another State. In the case of the Italian Social Republic neither form of succession exists. The Fascist Republican Government was established in Munich by a Splinter group of ex-leaders of the dissolved Fascist Party. It was only a delegated administration of the German armed forces. The Italian Social Republic was at most a group of insurgents with the status of belligerents. The territory where they operated was never that of their own State; the power which they exercised was never consolidated. The Italian declaration of war against Germany (13 October 1943) manifested that the Italian Government had no *animus derelinquendi* in respect of the invaded territories. The Republican Fascist Government did not set up a State, but only a *de facto* authority over a population which was really subject to the German military command. The legislation at present in force accords legal effects only to those acts of ordinary administration which were carried out by the so-called Italian Social Republic in the manner in which they would have been carried out by the legitimate Government.

458. In the *Annual Digest,* 1946, p. 9, reference is made, by way of contrast, to the case of *Costa* v. *Ministero della Guerra,* 26 March 1946, in which the Court of First Instance, Genoa, held that the members of the Government of the Italian Social Republic constituted a *de facto* government and that the legitimate Italian Government was liable for damage caused by a motor car of the Fire Brigade of the Italian Army which had been taken over by the Social Republic (Foro Italiano, 1947, I, 256).

De Republick Maluku Selatan v. De Rechtspersson Nieuw-Guinea (1952)
Netherlands, High Court of Justice for New Guinea
Nederlandse Jurisprudentie 1953, p. 161. No. 100
American Journal of International Law (1954), p. 511

459. In May 1950, the entity styled Republic of the South Moluccas shipped copra which was seized and sold by the authorities of (then) Netherlands New Guinea. In an action commenced on 8 February 1952,

the court held that the plaintiff entity was entitled to the proceeds of the sale. On the basis of the testimony of one who alleged that he was Prime Minister of the Republic of the South Moluccas which, at least until 30 October 1951, had its seat in the Island of Ceram, the court found that the plaintiff entity had established itself in April 1950, in the exercise of its right of self-determination; that it acted internally and externally as an autonomous and sovereign State; and that during a certain period of time it acted as a *de facto* independent state and therefore could not be denied legal personality. The Court further held that, as a result of the severance of the ties with the Republic of Indonesia, the plaintiff entity automatically succeeded to all the rights and powers of government, including those with respect to the native produce, and that, consequently the Republic of Indonesia or its Copra Authority retained no interest in the shipment in question.

460. The Court of Appeals of Amsterdam, in another case and after an extensive review of the facts, held that the Republic of the South Moluccas had standing to seek provisional relief in a summary proceeding, since in such a proceeding the question whether it was an existing state needed not to be conclusively determined; but that Dutch courts could not pass on the legality of acts done by the Republic of Indonesia *jure imperii*. Accordingly, the Court quashed a decree restraining a Netherlands shipping company from making its vessels available to the Republic of Indonesia for the purpose of transporting troops and supplies to the South Moluccas. (*N.V. Koninklijke Paketvaart Maatschappij* v. *de Repoeblik Maloekoe Salatan, Nederlandse Jurisprudentie,* 1951, p. 241, No. 129, 8 February 1951. [Note in *American Journal of International Law* (1954), p. 511])

Cases relating to the succession of funds collected by the Revolutionary Government of Ireland

461. In connection with the digest of decisions relating to *de facto* governments and related phenomena reference is made to the decisions in the *Fogarty* and *Garanty Safe Deposit Company* cases, see paragraphs 365 and 366 *supra.*

Ottoman Bank v. Jabaji (1954)
Supreme Court of Jordan
International Law Reports, 1954, p. 457.

462. A customer of the Ottoman Bank sued the Bank for the amount of the current account he had at the Jaffa branch and for the value of the articles he had deposited there during the British Mandate in Palestine. The Supreme Court of Jordan did not see any reason to interfere with the finding, of the lower court, that the failure of the Jaffa branch to transfer respondent's moneys to its Amman branch demanded before the termination of the Mandate for Palestine was a breach of the terms of the Bank's contract. The Bank was negligent insofar as it did not move the plaintiff's deposits from a place of danger to a place of safety.

463. The Court did not agree with the Bank's reliance on Jewish legislation as *force majeure*. It said " We should not recognize the legislation enacted by the unrecognized Jewish authorities as long as it harms the interests of a subject of the Kingdom of Jordan or is against the latter's public policy . . . ", the respondent is entitled " to sue for the value of his deposit as long as the Bank admits that it is prevented from delivering it to the owner because of an order of the Jewish authority (which, under the law of this Kingdom, is an illegal authority). Moreover, the Bank is in this position because of its failure to move the deposits outside the boundaries of this Authority."

The Reich Concordat Case (1957)
Bundesverfassungsgericht (Constitutional Court of the Federal Republic of Germany)
Entscheidungen des Bundesverfassungsgerichts, Vol. 6 (1957)
No. 22, p. 309, at p. 336

464. The Constitutional Court held that the Reich Concordat concluded in 1933 between the Hitler Government and the Holy See did not lose its validity with the collapse of the National Socialist terroristic distatorship. The German Reich was one of the contracting parties. The parties aimed at a permanent settlement. The argument which alleges that the Concordat is valid only for the duration of the National Socialist régime is not convincing. The legal character of the State party has, of course, undergone a fundamental change owing to the collapse of the régime of terror. According to the prevailing opinion, which the Court shares, this did, however, not affect the continued existence of the Reich and the continuing validity of the international treaties which the Reich had entered into, excepting treaties which, because of their contents, could not be deemed to survive the National Socialist régime of violence. This is not the case in regard to the Concordat.

465. The establishment, by the Basic Law of Bonn, of a state organization on the territory of the Western Zones of Occupation has not changed anything as far as the validity of the Reich Concordat between the two contracting parties was concerned. Although for the time being the organism created by the Basic Law is limited, in its validity to part of the territory of the Reich, the Federal Republic of Germany is nevertheless identical with the German Reich. It is, as a consequence, bound by the international treaties concluded by the Reich. This applies also to treaties the subject matter of which now comes within the jurisdiction of the *Länder* (Article 123 (2) of the Basic Law of 1949).

466. The argument is not well founded that as far as the Concordat provisions relating to education are concerned, the *Länder* have become parties to it. Normally only the contracting parties have rights and obligations under a treaty. It may happen that in the case of the disappearance of a party to a treaty another entity becomes a party in its place. The party " Germany " has not, however, disappeared. The fact that legislative power with regard to educational matters is now vested in the *Länder*, is of importance only internally, within the Federal Republic. Its Constitution does not make the *Länder* parties to the school provisions of the Concordat.

467. The ruling that the German Reich did not cease to exist owing to the collapse of the Hitler Government

and that the Federal Republic of Germany is identical with the German Reich was given also in decisions of the ordinary courts of Western Germany, some of which are summarized in the following paragraphs.

K. v. Schleswig-Holstein (1951)
Bundesgerichtshof (Supreme Court of the Federal Republic of Germany)
Entscheidungen des Bundesgerichtshofes in Zivilsachen, Vol. 4, No. 30, p. 266

468. After an attack in 1942 by Allied bombers on the city of W. and the destruction of the refrigeration plant of the city's slaughter house, the refrigerator of the plaintiff's butcher's shop was requisitioned on behalf of the Reich Government, the requisitioning authority committing the Reich to replace the refrigerator. After the collapse of the Hitler régime, the plaintiff sued the *Land* Schleswig-Holstein for the delivery of a refrigerator or for the payment of compensation. The *Landgericht* in Kiel and the *Oberlandesgericht* (Court of Appeal) *Schleswig* found for the plaintiff.

469. On further appeal, the Supreme Court quashed the judgment of the Court of Appeal and referred the plaintiff to the legislative settlement of the problem which was being expected. The decision turned on the question whether the defendant *Land* was the legal successor to the German Reich.

470. This was not a case of State succession, the Supreme Court said. State succession presupposes that a new sovereignty has established itself over territories heretofore subject to another sovereignty. According to the dominant opinion, shared by the Court, the German Reich did not cease to exist, although it became incapable of acting. As the Reich still exists, the *Länder* cannot have become its successors. Whether the Reich continues to exist after the establishment of the Federal Republic it is not necessary in this case to decide, because even if this were so, the successor would be the Federal Republic itself rather than the *Länder*.

471. A *Land* can, however, be considered to be legally the successor to the Reich in situations where it has assumed, and is exercising, concrete functions of the Reich. Where the *Länder* and, since its establishment, the Federal Republic, exercise the rights and powers of the Reich, they are also responsible for its obligations. This is the case in particular if the obligations relate to branches of the Administration for which special funds have been earmarked and where the new authority has taken over both these separate funds and the appurtenant administrative structure, in which case an " organizational State succession " (" *organisatorische Staatensukzession* ") has occurred.

472. As a consequence of this point of view, the Federal Supreme Court has already decided that the Federal Railways are identical with the Reich Railways. (Decision published in *Entscheidungen des Bundesgerichtshofs in Zivilsachen,* Vol. 1, 34). The principle of " organizational State succession " cannot, however, be applied in the present case as the subject does not come within the ordinary administrative tasks of the *Land* and special assets (Sondervermögen) for such purposes do not exist.

S. T. v. The Land N. (1952)
Bundesgerischtshof (Supreme Court of the Federal Republic of Germany)
Entscheidungen des Bundesgerichtshofes in Zivilsachen, Vol. 8, No. 22, p. 169

473. In July 1933 the plaintiff was sentenced to death by a Special Court of the Hitler régime for a crime allegedly committed in January 1933. The sentence was commuted to imprisonment for life. On 4 April 1945 the plaintiff was released. Subsequently, the criminal proceedings were reopened, the judgment of the Special Court of 1933 was quashed, the plaintiff was acquitted and it was also decided that the State is liable to compensate the plaintiff for the damage he had suffered. The plaintiff, who had received compensation in the amount of approximately DM 30,000 ($7,500) sued the defendant *Land* for additional damages, including a claim of compensation for pain and sufferings due to ill-treatment during his imprisonment.

474. The *Landgericht Lüneburg* and the *Oberlandesgericht* Celle found for the defendant *Land* which they held not to be liable for this debt of the Reich. The Supreme Court quashed the decision of the Court of Appeal and referred the matter back to the trial court.

475. The transformation of Germany after the collapse of the Hitler Government was not State succession within the meaning of international law. The principles of international law relating to the assumption of liabilities in the case of State succession are not, or at least are not directly, applicable. But even if the principle of international law relating to State succession were applied, this would not lead to the conclusion that the defendant *Land* is liable. According to the principles of international law, only the " relating debts " (die sogenannten " bezüglichen Schulden ") and administrative debts pass to the Successor State. " Relating debts " (" local debts ") are those which have arisen in the interest of the territory concerned (*res transit cum suo onere*) and those secured by mortage; administrative debts are those which have their origin in the ordinary course of administration and are authorized in the budget. The obligation in issue stems from a prohibited action and from legal responsibility for it, and does not come within either the concepts of " relative debts " or of "administrative debts ". It is exactly delictual obligations of this type which under the theory of international law do not *ipso facto* pass to the successor.

476. The Supreme Court found the solution to the question in analogies with private law. Who takes over assets or property is under certain conditions liable to the transferor's creditors (Section 419 of the German Civil Code). In the case of the winding up of a joint stock company, certain obligations pass to those who take over its enterprise. In such cases not the formal identity of the legal *persona* but the substantive identity of the organization and of its means and purposes is decisive. This continuity must, the Court said, prevail *a fortiori* in public life, where it is far more important for the community. Accidents, *ultra vires* decisions, violations of procedural rules and legally wrong judgments, cases of disregard for the proper care for prisoners and even their occasional ill-treatment, can and do occur in the course of the

administration of justice also when the greatest care is taken to avoid them. As the defendant *Land* has taken over the Reich's functions in the field of the administration of justice, it is on the basis of this continuity of functions (functional succession, *Funktionsnachfolge*) liable also for the Reich's debts of this type. The confidence in constitutional and legal guarantees in this field requires that they remain independent of changes in the subject exercising the function.

477. The decision was based on the consideration that the sentence of 1933, while wrong and unjust, had been passed in the forms applied by normal courts of justice. The Supreme Court did not express an opinion on the question of who is liable for acts of the Hitler régime when even the most elementary precepts were disregarded, and for ill-treatment, e.g., in concentration camps. For these cases, special legislation was required [and eventually enacted].

Civil Service (Lower Saxony) Case (1954)
Bundesgericht (Supreme Court of the Federal Republic of Germany)
J. Z. 9 (1954) p. 489
International Law Reports, 1954, p. 75

478. A former Prussian civil servant and later pensioner sued the *Land* Lower Saxony for arrears of his pension. The Federal Supreme Court stated that this was a case of so-called functional succession.[82] The newly constituted *Land* of Lower Saxony comprised the district in which the plaintiff had performed his services to the State of Prussia (now extinct) and was therefore liable to pay the arrears of plaintiff's pension. The concept of functional succession has been developed in the jurisprudence of the Federal Supreme Court. With regard to the liability of the State for the violation of official duties, the Court had in its case law, so far as concerns the disappearance of a juridical person of public law — including the factual disappearance of such a person as a result of the legal incapacity of the whole of the German Reich — adopted as the decisive criterion, not the formal identity of the juridical person, but the substantive identity of the organization, its means and its purposes, and it has held the functional successor liable for the obligations of the functional predecessor. This principle has also been applied to liabilities resulting from contracts with civil servants where such contracts have been made by the juridical person formerly responsible in the functional sense. The result has been that the liability of the *Länder* arising from functional succession has been extended so as to include the claims of civil servants who on 8 May 1945 occupied established positions within the territory of the *Land* concerned. There was no reason to distinguish in this regard between a civil servant holding office and a civil servant in retirement.

W.J. v. Land Niedersachsen (1955)
Bundesgerichtshof (Supreme Court of the Federal Republic of Germany)
Entscheidungen des Bundesgerichtshofes in Zivilsachen Vol. 16, No. 24, p. 184

479. On 8 May 1939 the plaintiff bought from the *Land* Prussia real property which had been owned by the publishers of a Social-Democratic newspaper and which Prussia had confiscated on the basis of the Hitler-German Act on the Confiscation of the Property of Enemies of the Nation and of the State dated 14 July 1933. In 1946/1947 the *Land* Prussia was dissolved by legislation of the Allied Control Council. The defendant *Land* Niedersachsen was established in 1946 by the merger of the former *Länder* Brunswick, Hanover, Oldenburg and Schaumburg-Lippe, of which it was expressly made the legal successor, and of parts of formerly Prussian territory.

480. The plaintiff was being sued by the owners of the confiscated property for its restitution and, in his turn, sued the *Land* Niedersachsen, demanding a declaratory judgment to the effect that the *Land* is responsible for the damage he will suffer if he will be required to make restitution of the property to the Social Democratic party.

481. The Courts of first and second instances found for the plaintiff, the Supreme Court rejected his demand. Niedersachsen was not the legal successor of Prussia. The principle of " Functional succession " which the Courts have elaborated (see paragraphs 471 and 476 *supra*) for reasons of social-policy in the interest of individuals the settlement of whose cases could not, also in the general interest, wait until a solution by statute was achieved, was an auxiliary construction which cannot, in general, be extended to claims based on private law of the type under consideration.

482. In the case of *S.H. v. Land Niedersachsen* (1955), Entscheidungen des Bundesgerichtshofes in Zivilsachen, Vol. 16, No. 25, where the facts were similar to those in *W.J. v. Land Niedersachsen,* the Supreme Court again held that the defendant *Land* was not liable.

483. In 1948, i.e., before the establishment of the Federal Republic, the Court of Appeal (*Oberlandesgericht*) of Hamburg, after stating that the Reich had remained a subject of general international law, stated that claims of the former Treasury of the German Navy *(Marinefiskus)* continue to be owned by the Reich. It rejected the argument that the property of the former German armed forces had become war booty of the Allies, in which case the consequences would have been that they were vested in the British Crown. (Monatsschrift für Deutsches Reicht (1949), p. 222; *Fontes Juris Gentium,* A, II, Vol. 3 (1945-1949)).

German-Alsatian Railway Accident Case (1954)
Bundesgerichtshof (Supreme Court of the Federal Republic of Germany)
J.Z. 10 (1955), p. 19
International Law Reports, 1954, p. 49

484. The plaintiff sustained personal injuries while travelling in 1942 in a train in Alsace where train services were then being operated by the Railway Administration of the German Reich. The Reich Railway Administration admitted liability. On the part of the plaintiff it was contended that the Railway Administration of the Federal Republic was identical in law with the Railway Administration of the Reich and that the former was therefore liable for the debts of the latter.

[82] See paragraphs 471 and 476, *supra*.

485. The Federal Supreme Court held that the defendant is not responsible for these liabilities. It is a condition of the liability of the Federal Railways that it has arisen from the operation of railway lines which form part of the assets of the Federal Railways. This does not apply to a liability which has arisen from the operation of railway lines situated outside the territory of the Federal Republic. There was no reason why the Legislature should have burdened the Federal Railways, which were able to take possession only of part of the assets of the Reich Railways with liabilities of the latter which are in no way connected with the present assets of the Federal Railways.

486. Even in cases of State succession, the liability of the new owner of the assets is by no means automatic. The concept of partial identity between the Reich Railways and the Federal Railways, as well as the concept of functional succession, presuppose that the liability in issue is one related to the assets which have been transferred.

Germany. Collision with postal motor vehicle in Upper Silesia (1951)
Court of Appeal of Cologne
N.J.W. 5 (1952), p. 1300
International Law Reports, 1951, Case 29

487. In 1943 plaintiff sustained personal injuries as a result of a collision with a motor vehicle owned by the Reich Postal Administration and operating in Upper Silesia.

488. The Court of Appeal held that the Federal Republic of Germany was not liable to the plaintiff in damages. The former Supreme Court of the British Zone and the Supreme Court of the Federal Republic have previously held, with regard to the Federal Railways whose legal position is akin to that of the Federal Postal Administration that there is partial identity between the Federal Railways and the former Reich Railways, viz. personal and legal identity subject to a limitation to the territory of the Federal Republic. In view of the fact that the alleged liability of the Reich Postal Administration vis-à-vis the plaintiff arose wholly outside that territory and has no connection whatsoever with the latter, any liability of the Federal Postal Administration is out of the question.

489. Insofar as concerns identity between the Federal Republic and the German Reich, the same principles must apply. Having regard to the fact that the Federal territory as now existing only constitutes a part of the territory of the Reich as it existed when the plaintiff's alleged claim arose, the practical result of holding the Federal Republic liable for all debts of the German Reich — regardless of when and where such debts arose — would indeed be untenable. Such unlimited liability cannot simply be founded on the doctrine of identity.

Steinberg et al, v. Custodian of German Property (1957)
Israel Supreme Court
Piskei-Din, II (1957) p. 426
Pesakim Elyonim 27 (1957) p. 414
International Law Reports, 1957, p. 771

490. The gist of this decision of the Supreme Court of Israel sitting as a High Court of Justice is included here because of its reference to the question of the status of German authorities. It related to a claim by Steinberg adjudicated upon by the German-Romanian Mixed Arbitral Tribunal in 1926. It is apparently correct, the Court said, that the custodian retains assets belonging to the German State, but is not clear to him if and to what extent the German State, the owner of the assets, can be identified with the German State which is the judgment debtor under the arbitral award. We cannot at all say, the Court observed, that this reasoning is false even though on the last question — that of identity of the State —the situation is equivocal. Consequently, the applicants would do well to bring their case before the competent court and prove their claim in the usual way.

491. A note in *International Law Reports, 1957*, p. 773, explains that the Supreme Court acted in this case, to some extent, as an administrative tribunal and was only concerned with the performance of his public duties by the Custodian for German property. The underlying issues of fact and law were properly for determination by the District Court.

Jordan v. Austrian Republic and Taubner (1947)
Supreme Court of Austria
Annual Digest, 1947, Case 15

492. The Supreme Court decided that the Republic of Austria is not responsible for the damage caused in 1943 by the negligence of the driver of a mail van belonging to the *German Reichspost* (Imperial Mail). In March 1938 Austria lost its independence and sovereignty as the result of its occupation by the German Reich; it recovered its sovereign rights in April 1945. From 1938 to 1945 the sovereign prerogatives in the territory of the Austrian Republic, including the administration of the postal services, were exercised by Germany. The Austrian Republic cannot be regarded as legal successor of the German Reich with regard to sovereign rights in Austrian territory.

German Railways Case (1949)
Landesgericht (Court of First Instance), Vienna
O.J.Z. 4 (1949) p. 623, No. 690
Annual Digest, 1949, Case 21

493. In a suit for payment for work done during the German rule in Austria, the Court held that Austria was not liable. Section 1409 of the Austrian Civil Code (see paragraphs 358 and 433 *supra*) did not apply. The appellant would be able to succeed against the Austrian Republic only if between 13 March 1938 and 27 April 1945 he had done work which was of benefit to Austria even after 27 April 1945.

Kleihs v. Austria (1948)
Supreme Court of Austria
Annual Digest, 1948, Case 18

494. The Courts of all three instances held the Republic of Austria liable in an action for payment for work commissioned by the German State Railways while Austria was incorporated in Nazi Germany. The work related exclusively to, and had been executed for, the benefit of the Austrian State Railways.

495. The Supreme Court stated that Austria was the owner of the Austrian State Railways, and that the assets of the Railways remained its property even when

it was deprived of possession by the arbitrary occupation of Austria by Germany. The Republic was restored to the full exercise of its rights. Admittedly, the German State Railways had not the intention, in commissioning the work here in dispute, to undertake it in the name of the Republic. Similarly, the plaintiff may not, in executing it, have intended to benefit the Republic of Austria. In actual fact, however, its work benefits the Republic as owner of the railway installations. The defendant admits that she utilizes the installations built by the plaintiff, but she contends that it cannot yet be said with certainty that she will have derived lasting benefit from them, for the principles governing the division of the assets of the German State Railways in Austria between Germany, Austria and the Allies, and the amount of compensation to be paid by the defendant, have not yet been settled. The claim to remuneration for work done for the benefit of another is not affected by the subsequent frustration of the benefit.

In re Police Constable P. (1949)
Supreme Court of Austria
O.J.Z. 4 (1949) p. 577, No. 655
Annual Digest, 1949, Case 23

496. The contention that there is no continuity in law between the constitutional structure of the Austrian State before 1938 and that after 1949 is, the Court ruled, erroneous. The continuity of the Austrian State before the occupation in 1938 and after the liberation in 1945 cannot be seriously contested having regard to Art. I of the Declaration of Independence of 1 May 1945. Therefore, no new oath of allegiance of a police constable is necessary.

Tax Legislation (Austria) Case (1949)
Administrative Court of Austria
Vw. G.H. (F) 4 (1949), p. 6
Annual Digest, 1949, Case 25

497. Doctrine and jurisprudence alike reject the view that the Republic of Austria is the legal successor of the German Reich. Both doctrine and jurisprudence are of opinion that Austrian sovereignty continued to exist during the occupation of Austria by the German Reich and that its exercise was merely in abeyance during that period. Appellant cannot off-set a customs export rebate (related to taxation only in form) against tax liabilities vis-à-vis the reconstituted Austrian State.

Schäcke and another v. Republic of Austria (1950)
Supreme Restitution Commission of Austria
International Law Reports, 1950, Case 11

498. After the incorporation of Austria in the German Reich, the German Secret State Police confiscated a factory owned by Austrian citizens. In 1939 the Ministry of Finance in Vienna sold the confiscated factory to the applicants. After the liberation of Austria in 1945, the applicants had to return the factory to its true owners who had been deprived of their property by virtue of the discriminatory legislation of the National Socialist régime. They sued the Republic of Austria for damages for non-performance of the 1939 contract contending that Austria was the successor of the entity from whom the applicants had bought the factory. It was held that Austria was not the successor of the sub-division of the German Reich which existed on its present territory at the relevant time, i.e., the " Land " or " Reichsgau " Austria or " Ostmark ".

Austrian State Institute v. X (1958)
Constitutional Court of Austria
Collection (1958) No. 3324
Journal du droit international (Clunet), 1962, p. 732

499. An Austrian State Institute for testing foodstuffs was in existence at the time of the *Anschluss* in 1938; it continued its activities between 1938 and 1945 as an Institute of the German Reich. The Institute demanded the payment of fees for tests performed between April 1944 and April 1945.

500. The Constitutional Court rejected the claim on the ground that the Republic of Austria does not consider itself as being the legal successor *(Rechtnachfolger, successeur juridique)* of the German Reich. For this reason, the Republic of Austria refuses to assume the liabilities of the Reich. The same conclusion must also be drawn regarding the transfer to Austria of claims of the Reich in the field of public law. General international law does not contain a rule to the effect that public law claims of this type pass to the territorial successor *(Gebietsnachfolger, successeur territorial)*. To effect such a passing of the claim, a special international law title *(ein besonderer völkerrechtlicher Titel; un titre particulier de droit international)*, would be required which does not exist in this case. The claim of the German Reich was located on Austrian territory, and indissolubly linked to the exercise of power by the German Reich within that territory. This claim lapsed with the collapse of this domination. So Art. 22 of the State Treaty (pertaining to the transfer of German property to Austria) cannot be applied to claims of this type.

German Assets in Austria (1959)
Administrative Court of Austria
Collection No. 5096 A
Journal du droit international (Clunet) (1962), p. 732

501. By the State Treaty of 1955 the Allies transferred to the Republic of Austria only the assets which are described in the Treaty as German property and are situated in Austria. This was not a universal legal succession *(Gesamtrechtsnachfolge, succession globale)* and accordingly the Republic of Austria did not become liable for the debts of the German Reich.