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Succession of States to multilateral treaties: studies prepared by the Secretariat

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Introduction

1. In order to assist the International Law Commission in its work on the topic of the succession of States, the Codification Division of the Office of Legal Affairs of the United Nations Secretariat has for some time been conducting research on the succession of States to multilateral treaties with respect to a number of selected international organizations, agencies and unions, and on the succession of States to various multilateral treaties concerning some of these bodies.

2. At its nineteenth session in 1967, the International Law Commission decided to divide the topic of the succession of States into three headings and confirmed its decision of 1963 to give priority to succession in respect of treaties. For this reason, the Commission also decided to advance the work under the heading "Succession in respect of treaties" as rapidly as possible at its twentieth session in 1968.[1] Following this decision of the Commission, the Secretariat in turn decided to start publishing the results of the Codification Division's research on the succession of States to multilateral treaties.

3. This document describes the research carried out with regard to the International Union for the Protection of Literary and Artistic Works: Berne Convention of 1886 and subsequent Acts of revision, the Permanent Court of Arbitration and the Hague Conventions of 1899 and 1907, the Geneva Humanitarian Conventions of 1864, 1906, 1929 and 1949 and the International Red Cross, the International Union for the Protection of Industrial Property: Paris Convention of 1883 and subsequent Acts of revision and special agreements, and the General Agreement on Tariffs and Trade and its subsidiary instruments. The designations employed and the presentation of the material in this document do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country or territory or of its authorities.

[1] See *Yearbook of the International Law Commission, 1967*, vol. II, document A/6709/Rev.1 and Rev.1/Corr.1, paras. 38-41.

I. International Union for the Protection of Literary and Artistic Works: Berne Convention of 1886 and subsequent Acts of revision [2]

A. *The Berne Convention of 1886 and subsequent revisions*

1. ESTABLISHMENT OF THE INTERNATIONAL UNION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS: ORGANS OF THE UNION

4. The International Union for the Protection of Literary and Artistic Works, known as the Berne Union, developed by stages. Its original charter was the *Berne*

[2] The following study covers the period up to September 1967. All questions of succession of States to the Berne Convention of 1886 have hitherto arisen when either the Berlin Act, the Paris Act or the Brussels Act was in force and when the Berne Union still had a traditional structure. Only those

Convention of 9 September 1886,[3] which came into force on 5 December 1887. This Convention was amended and supplemented in Paris on 4 May 1896, by an *Additional Act* and an *Interpretive Declaration,*[4] put into operation on 9 December 1897. A thorough overhaul took place at Berlin on 13 November 1908. The *Berlin Act*[5]—the *International Convention relative to the Protection of Literary and Artistic Works revising that signed at Berne on 9 September 1886*—came into force on 9 September 1910. On 20 March 1914, an *Additional Protocol* to the revised Berne Convention of 1908 was signed at Berne.[6] This Protocol came into force on 20 April 1915. The Berlin text, in its turn, was revised at Rome. The *Rome Act*[7] signed on 2 June 1928, has been in force since 1 August 1931. Another revision of the Berne Convention took place in Brussels. The *Brussels Act*,[8] signed on 26 June 1948, has been in force since 1 August 1951. Lastly, a further revision of the Berne Convention was recently adopted in Stockholm. The *Stockholm Act* of 14 July 1967 has not yet come into force.[9]

5. The first article of the Brussels text states that "The countries to which this Convention applies constitute a Union".[10] The purpose of the Convention and the Union is International protection of copyright, but they are not identical.[11] The Union has a more territorial and organic character. The Convention is the legal instrument which creates the Union and establishes the body of common rules for the protection of the various intellectual works enumerated in article 2 of the Berne Convention. The nature of the Convention and the structure of the Union determine the conditions for the succession of States in the organization.

6. The Berne Union was established in 1886 in response to certain definite needs. It is traditional in structure and has the following organs: an International Office,[12] a High Supervisory Authority,[13] the Revision Conferences[14] and a Permanent Committee.[15]

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texts and that structure are dealt with in this study. Nevertheless, it should be borne in mind that in future the succession of States to the Berne Convention and Acts of revision will be effected within a substantially altered framework. The instruments adopted at the Intellectual Property Conference of Stockholm, 1967 provide for major changes in both the regulations and the structure of the Berne Union.

[3] *Le Droit d'Auteur*, 1888, p. 4.

[4] *Ibid.*, 1896, p. 77.

[5] *Ibid.*, 1908, p. 141.

[6] *Ibid.*, 1914, p. 45.

[7] *Ibid.*, 1928, p. 73.

[8] *Ibid.*, 1948, p. 73.

[9] *Copyright*, 1967, pp. 165-178. The general features of the reform adopted at the Stockholm Conference are as follows: (*a*) the Unions of Berne and Paris retain their complete independence and their own tasks; between revision conferences each Union is placed under the exclusive authority of the Assembly of the member States of that Union; (*b*) a new organization, the World Intellectual Property Organization (WIPO) is set up alongside the Unions; all States members of a Union, and States that satisfy certain conditions indicated in the Convention, may become members of the organization. The organization is entrusted essentially with the co-ordination of the administrative activities of the Unions and the promotion of the protection of intellectual property throughout the world; (*c*) the secretariat of the Unions and of the organization is provided by a joint body, the International Bureau of Intellectual Property, which is a continuation of the United International Bureaux for the Protection of Intellectual Property (BIRPI). The Director-General of the International Bureau is invested with new rights enabling him to represent the organization and the Unions at the international level; (*d*) depending on its various activities, the International Bureau is placed under the authority of the organs of the Unions or of the organization. However, it is the General Assembly of the member States of the Unions that exercises the main supervision (*Copyright*, 1967, p. 155). For the text of the Convention establishing the World Intellectual Property Organization of 14 July 1967, see *Copyright*, 1967, pp. 146-152.

[10] Until the Rome Convention, the first article was as follows: "The Contracting States are constitued into a Union". The Rome Conference replaced the term "Contracting States" by "countries to which the [present] Convention applies" in order to bring the terminology of the Convention into harmony with the conceptions of British constitutional law, as laid down by the Imperial Conference of 1926, and in order to stress the territorial character of the Union. The same procedure was applied to the term "contracting country", which was replaced in the Convention by "country of the Union". See *"La Conférence de Rome. Les modifications secondaires apportées à la Convention"*, *Le Droit d'Auteur*, 1928, p. 91.

[11] Francesco Ruffini, *"De la protection internationale des droits sur les œuvres littéraires et artistiques"*, *Recueil des Cours*, 1926, vol. 12, pp. 471 *et seq.* For a recent analysis of the problems of intellectual property see: G. H. C. Bodenhausen, *"Problèmes actuels de la propriété industrielle, littéraire et artistique"*, *Recueil des Cours*, 1949, vol. 74, pp. 383 *et seq.*

[12] The International Office is a permanent organ which collects information on the protection of the rights of authors and communicates it to [member] States, undertakes the study of questions of general interest and edits a monthly review, *Le Droit d'Auteur*, on questions which concern the Union. Since January 1965, the review has been published in English also under the title of *Copyright*. The contents of the two editions are identical. The Office also draws up annual reports on its administration which are communicated to the members of the Union, assists the administrations of countries organizing the Revision Conferences and places itself at the disposal of members of the Union in order to provide them with any special information which they might require. The head of the Office is a Director [arts. 21, 22, 23 and 24 (2) of the Berlin, Rome and Brussels texts]. As part of its duties under the Convention, the Government of the Swiss Confederation decided on 11 November 1892 to put the International Office for Industrial Property and the International Office for Literary and Artistic Property under one administration with the name "United International Bureaux for the Protection of Industrial, Literary and Artistic Property" (Georges Béguin, "L'organisation des Bureaux internationaux réunis pour la protection de la propriété industrielle, littéraire et artistique", *Le Droit d'Auteur*, 1962, pp. 11-19).

[13] The Office is placed under the High Authority of the Swiss Government, "which shall regulate its organisation and supervise its working". The High Authority supervises the expenditure of the Office, makes the necessary advances and draws up the annual account, which is communicated to the administrations of the countries of the Union. It also receives from, and communicates to, States all declarations on the application of the various conventional instruments (ratifications, accessions, denunciations, extension to Non-Self-Governing Territories, entry into force of a convention, etc...) [arts. 21, 23 (5), 25 (2) and (3), 26, 28, 29 (1) and 30 of the Rome and Brussels texts].

[14] The purpose of the diplomatic and periodic Revision Conferences held in the countries of the Union is to revise the Conventions with a view to introducing "improvements intended to perfect the system of the Union", and to consider questions which "in other respects concern the development of the Union". They also fix the ceiling for the expenses of the International Office. The Conferences are subject to the rule of unanimity [arts. 23 (1) and 24 of the Rome and Brussels texts].

7. The traditional structure of the Berne Union has helped to create uncertainty as to the treatment of some cases of succession of States which have taken place within the Union and it has made the adoption of prompt, uniform and generally acceptable solutions difficult. As it is a Union of a "dependent type",[16] with no permanent representative organs of the member States with extensive powers, with an international legal status which has not been generally recognized [17] and an International Office with executive and informational functions, the organs of management and administration, namely, the Swiss Government as supervisory authority and the International Office, have often been confronted by situations created by the succession of States which it was beyond their competence to solve under the Convention. These difficulties and uncertainties may be discerned by an analysis of the circulars from the Swiss Government to the Governments of the countries of the Union and of the general studies and editorial notes of the International Office published in *Le Droit d'Auteur*. Sometimes the Swiss Government has been of the opinion that specific cases concerning the succession of States should be solved by the Revision Conference, the only diplomatic organ in which all the countries of the Union are represented.[18] But as the Revision Conference only meets at widely spaced intervals (1908, 1928, 1948, 1967), a definite solution of controversial cases may take a long time.[19]

2. PROCEDURE FOR BECOMING A CONTRACTING PARTY

8. The Berne Convention is an open Convention. Any "country outside the Union" may accede thereto, by acceding to the last revision open to accession, merely by notifying the Swiss Government.[20] The Convention does not require the previous agreement of the contracting States for the accession of another State, and does not prescribe any admission procedure before an organ of the Union. As for the "countries of the Union", they may accede to the revised texts by signature, followed by ratification or by accession if they have not signed or deposited their ratifications within the prescribed time-limit.[21] All ratifications and accessions are communicated by the Swiss Government to the Governments of the other countries of the Union.[22]

9. But, while the Berne Convention as an open Convention does not present any major problems of accession to other States, whether they are new, successor or other, the effectiveness of the protection it establishes depends to a large extent upon the continuity of its application and presupposes a minimum of uniform internal legislation.[23] Starting from the principle of the assimilation of the foreign to the national, the essential points of the Convention's provisions constitute a kind of international body of minimum, common and imperative rules, which oblige contracting States to accord foreigners a certain treatment and certain rights determined by their national laws and certain rights determined "*jure conventionis*".[24] One of the chief reasons for the conclusion of the Convention was precisely the need to eliminate divergencies among national laws on

[15] Since the diplomatic Conference which revised the Berne Convention at Brussels in 1948 the Berne Union has a new organ known as the "Permanent Committee", composed of representatives from twelve member States of the Union designated by the Conference "with due regard to equitable representation of the various parts of the world". The Permanent Committee's sole duty is to "assist the Office" in the co-operation which the latter must afford the Administration of a State in which a Revision Conference is to be held in preparing the programme of the Conference (resolution adopted on 26 June 1948 by the diplomatic Conference at Brussels) (*Le Droit d'Auteur*, 1948, p. 117). A third of the Committee is eligible for re-election every three years, according to methods which it shall establish, having due regard to the principle of equitable representation. See "*Un nouvel organe de l'Union internationale pour la protection des œuvres littéraires et artistiques*" (*Le Droit d'Auteur*, 1948, p. 123).

[16] See: Jacques Secretan, "Structural Evolution of the International Unions for the Protection of Intellectual Property", *Le Droit d'Auteur*, 1962, p. 122, and "*La structure traditionnelle des unions internationales pour la protection de la propriété intellectuelle*", *Les Unions internationales pour la protection de la propriété industrielle, littéraire et artistique*, Geneva, 1962, p. 11; Georges Béguin, *op. cit.*, p. 9; Robert Plaisant, "*L'évolution des conventions de propriété intellectuelle*", *Les Unions internationales pour la protection de la propriété industrielle, littéraire et artistique*, Geneva, 1962, p. 47; G. H. C. Bodenhausen, "*The Evolution of the United International Bureaux*", *Le Droit d'Auteur (Copyright)*, 1963, p. 91. In all these works the need to go beyond the traditional organic structure of the Union is stressed.

[17] At the present time the legal status of the Unions and the Bureaux and the requisite privileges and immunities have not been formally recognized by the member States as a body; in Switzerland, however, the Federal Council has accorded unilateral recognition of the aforementioned legal status and privileges and immunities (Jacques Secretan, "*La structure traditionnelle des Unions internationales pour la protection de la propriété intellectuelle*", *op. cit.*, p. 43, note 1).

[18] See below, the case of Austria, paras. 39-41.

[19] According to Guillaume Finniss, "*Une étape importante*", *Le Droit d'Auteur*, 1963, pp. 26 and 28, the Swiss Government has accepted the principle of the reorganisations and transformation of the Unions and Bureaux. In their letter of 24 May 1962, the Federal authorities indicated very explicitly that they were not concerned to preserve their present role of supervisory authority and declared themselves very much in favour of the idea of a more active participation of the States in the management, operation and modernization of the Unions and BIRPI. It was in these circumstances that in 1962, for the first time, the Swiss Government decided to consult the States of the Union about the replacement of the Director of BIRPI.

[20] Article 25 of the Rome and Brussels texts. The only condition mentioned is that the country in question should make provision for "the legal protection of the rights forming the object of this Convention".

[21] Articles 27 (3) and 29 (1) of the Rome and Brussels texts and 29 (3) of the Brussels text.

[22] Articles 25 (2) and 28 (2) of the Rome and Brussels texts.

[23] Francesco Ruffini, *op. cit.*, p. 477; Potu, *La Convention de Berne*, Paris, 1914, art. 16, p. 16.

[24] On the other hand, according to the principle of minimum protection, when the internal law of the country importing the work contains less favourable provisions, the obligatory rules of the Convention apply *ipso jure* to authors from countries members of the Union.

copyrights.[25] Moreover, it must not be forgotten that the Convention sometimes leaves to the national legislation of the countries of the Union the determination, or the conditions of enjoyment, of certain rights that it accords. Hence the concern of countries of the Union for the maintenance of "Unionist treatment", and the internal legislation which to a certain extent accompanies it, in the case of the birth of a new State, detached from a State member of the Union or of the transformation of a colony or territory member of the Union into an independent State. It may be of equal concern for the newly independent State.

3. RELATIONSHIP BETWEEN THE REVISED TEXTS OF THE CONVENTION

10. Although "countries outside the Union" may, since 1 July 1951, accede only to the Brussels Instrument,[26] article 27 of this text states that so far as "the countries of the Union" are concerned, "The Instruments previously in force shall continue to be applicable in relations with countries which do not ratify" or do not accede to that Instrument. The same article of the Rome text contains a similar provision. On 10 July 1967, the fifty-eight countries of the Union,[27] and the territories for whose international relations they are responsible and to which the Convention has been extended,[28] applied either the Rome text of 1928, or the Brussels text of 1948, or even Berlin text of 1908.[29] There are at the present time three texts simultaneously governing the relations between countries of the Union. At the beginning of each year the *Droit d'Auteur (Copyright)* indicates the field of application of the various texts in force between the countries of the Union.

11. As for relations between States which now enter the Union by acceding to the Brussels text and the other countries of the Union which still apply the Rome text, or even the Berlin text, the Office maintains a thesis based on the general principle of the unity and continuity of the Berne Convention. According to this thesis, the Office considers that the relations of a State which now accedes to the Convention—necessarily the Brussels instrument—with States which have ratified the Brussels instrument or have acceded to it are governed by that text, and its relations with other States which are not bound by the Brussels text are governed by the earlier texts which these various States have ratified or to which they have acceded.[30] Efforts are being made to avoid fragmentation in the relations between countries of the Union and to organize their relations within the Union in the simplest possible way.[31]

12. The diversity of the texts of the Convention in force may, moreover, raise problems in cases of succession. In principle, a State only succeeds to the instrument to which the predecessor State was a party. Unionist territories which have become independent States may succeed to the instruments declared applicable to their territories by the former metropolitan country. New States which were former Unionist territories to which the Rome text was extended may remain in the Berne Union by succession to that instrument to which accession is no longer possible today. In the case of new States which were former territories of members of the Union and to which the Rome and Brussels texts were extended, the question remains to be determined whether they may enter the Union as contracting States by succeeding only to the Rome instrument. The Brussels text introduced innovations and changes which some new States may find less favourable than the provisions of the Rome text.[32]

4. FORMULATION OF RESERVATIONS

13. "Countries outside the Union" which accede directly to the Rome or to the Brussels text may formulate only one reservation, concerning the right of transla-

[25] "In spite [of the] reservations, the Convention ... seems to afford by its basic principles an ideal protection with which national laws are tending slowly to come into line" ... "Thus, in countries offering most protection, the Convention appears to be an instrument which could be improved by more extensive safeguards, and in countries offering less protection a model for the legislator's efforts. The Convention is thus a kind of magnet for national laws". (Robert Plaisant, "*L'évolution des conventions de propriété intellectuelle*", *Les Unions internationales pour la protection de la propriété industrielle, littéraire et artistique*, Geneva, 1962, pp. 47-51.

[26] Article 28 (3) of the Brussels text.

[27] Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Ceylon, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Czechoslovakia, Dahomey, Denmark, Federal Republic of Germany, Finland, France, Gabon, Greece, Holy See, Hungary, Iceland, India, Ireland, Israel, Italy, Ivory Coast, Japan, Lebanon, Liechtenstein, Luxembourg, Madagascar, Mali, Mexico, Monaco, Morocco, Netherlands, New Zealand, Niger, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Senegal, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom, Upper Volta, Uruguay and Yugoslavia. The Office indicates that "the number of countries of the Union is fifty-nine if Eastern Germany or the German Democratic Republic is considered a party to the Berne Convention. Member States have been unable to agree on this question". (*Le Droit d'Auteur*, 1956, pp. 105, 117 and 169, and *Copyright*, 1967, p. 6, foot-note 2.)

[28] Australia: Nauru, New Guinea, Papua and Northern Territory; France: Overseas Departments and Territories; Netherlands: Surinam and Netherlands Antilles; South Africa: South-West Africa; United Kingdom: colonies, possessions and certain protectorates.

[29] "State of the International Union on 1 January 1967", *Copyright*, 1967, pp. 2-6.

[30] Information provided by the Director of BIRPI.

[31] See, for example, the editorial notes accompanying the accessions of the Philippines and Turkey, *Le Droit d'Auteur*, 1950, pp. 97 and 98, *ibid.*, 1951, pp. 133 and 134 and "*L'Union internationale au commencement de 1952*", *Le Droit d'Auteur*, 1952, p. 15.

[32] For conventional instruments applicable between new States which were former territories of members of the Union see: G. Ronga "*Situation dans l'Union de Berne des pays devenus récemment indépendants*", *Le Droit d'Auteur, 1960*, pp. 320-324. The Brussels text made changes of substance to the Rome text in articles 2, 4 (3), 4 (5), 6 (2), 6 *bis*, 7, 8, 10, 10 *bis*, 11, 11 *bis*, 11 *ter*, 12, 13, 14, 14 *bis*, and 15.

tion.[33] But the older countries of the Union which were Parties to the Rome or Brussels instruments may retain the benefit of the reservations which they have previously formulated, if they make a declaration to that effect at the time of ratification or accession.[34] The option of formulating reservations is an innovation of the Berlin text of 1908 and has no precedent either in the Berne Convention of 1886 or in the Paris text of 1896. When the Berlin Conference redrafted the Convention, the countries of the Union received the right to indicate, in the form of reservations, which provisions of the first text of 1886 or of the Additional Act of 1896 they intended to substitute for the corresponding provisions of the 1908 Convention.[35] Thus, a new State which becomes a Contracting Party by succession may continue to benefit by the reservations formulated by the predecessor State. The same applies to the former territories of Union members to which the former metropolitan country applied the Convention with reservations.

B. *Participation in the Union and territorial extent of the Union*

1. CONTRACTING STATES

14. All contracting States, that is, all States Parties to one or other of the revised texts of the Convention, take part in the Union and the Union's territorial scope is that of their metropolitan territories. In addition to protection of copyright under the Convention, the participation of Contracting States in the Union comprises, for example: (*a*) the sending of delegations to the periodic and diplomatic Revision Conferences;[36] (*b*) sharing in the expenses of the Office in the class in which the State concerned has asked to be placed;[37] (*c*) exchange of notes with the Swiss Government on the application of the conventional instruments; (*d*) exchange of communications with the International Office on matters dealt with by the Union; (*e*) receipt of the annual reports on administration communicated by the International Office; and (*f*) the right to designate or to be designated as a member of the Permanent Committee since it was set up by the Brussels Conference of 1948.[38]

[33] Article 25 (3) of the Rome and Brussels texts. This, for instance, is true in the case of Iceland, which acceded to the Rome text in 1947 while exercising the option to make a reservation concerning the right of translation.

[34] Articles 27 (2) and (3) and 28 (3) of the Rome and Brussels texts.

[35] For a list of the States of the Union which have formulated reservations, those which have later abandoned them, and the field of application of the reservations which are still valid, see: *Le Droit d'Auteur*, 1953, pp. 1-5.

[36] Article 24 (2) of the Rome and Brussels texts.

[37] Article 23 of the Rome and Brussels texts.

[38] Every six months *Copyright* publishes a summary of the state of the Union comprising an analysis of the field of application of the various revised texts of the Berne Convention and a table containing a list of the contracting countries and of the territories for whose international relations they are responsible and to which the international agreements of the Union are applicable.

2. DEPENDENT TERRITORIES OF CONTRACTING STATES

15. While dependent territories of contracting States do not have the capacity of contracting State or country, they may belong to the Berne Union as recipients of the juridical rules in the Convention. These territories may be "incorporated into the Union" and become "countries to which the Convention applies" while not being contracting countries.[39] Many dependent overseas territories of a contracting State belong and have always belonged to the Berne Union. Thus, the territorial extent of the Union is not limited to the metropolitan territories of the contracting States.

16. All the Revision Conferences have remained faithful to the rule expressed in article 26 of the Brussels text, namely:

> (1) Any country of the Union may at any time in writing notify the Swiss Government that this Convention shall apply to its overseas territories, colonies, protectorates, territories under its trusteeship, or to any other territory for the international relations of which it is responsible, and the Convention shall therefore apply to all the territories named in such notification, as from a date determined in accordance with Article 25, paragraph (3). In the absence of such notification, the Convention shall not apply to such territories.
>
> (2) Any country of the Union may at any time in writing notify the Government of the Swiss Confederation that this Convention shall cease to apply to all or any of the territories which have been made the subject of a notification under the preceding paragraph and the Convention shall cease to apply in the territories named in such notification twelve months after its receipt by the Government of the Swiss Confederation.
>
> (3) All notifications given to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of this Article shall be communicated by that Government to all the countries of the Union.[40]

17. Thus, each of the contracting States may extend the application of the Convention to its overseas territories, colonies, protectorates, territories under its trusteeship, or to any other territory for the international

[39] See for example G. Ronga "*Les colonies et l'Union de Berne*", *Le Droit d'Auteur*, 1956, p. 21, and (the) "Position in the Berne Union of the Countries which recently became Independent", *Le Droit d'Auteur*, 1960, p. 320.

[40] This article differs from the one in the Rome text of 1928 only in the terminology used to describe dependent territories. The Rome text speaks of colonies, protectorates, territories under mandate, under sovereignty authority or suzerainty. The Berlin text was more flexible. It authorized the metropolitan Government acceding for its colonies, protectorates, etc... either to declare its accession applicable to all the territories or to name specifically those comprised therein, or else to indicate those which were to be excluded. The Rome and Brussels texts are more precise. They start with the idea that a country with a colonial empire does not accede on behalf of that empire unless it expressly says so. But it may give notice that the Convention shall apply to all or part of the said empire, and the instrument in question will then apply to all the territories specified in the notification. To sum up, it is no longer possible to extend the application of the Convention to colonies, protectorates, etc., in an indirect way, by enumerating the possessions which are to be excluded from the application ("*La Conférence de Rome, Les modifications secondaires apportées à la Convention*", *Le Droit d'Auteur*, 1928, p. 90).

relations of which it is responsible. This is a right of which the contracting States may make use, and not an automatic application of the Convention to the aforementioned territories. In the absence of notification by the contracting State to the Swiss Government, the Convention is not applicable automatically to the dependent territories of the contracting State concerned.

18. Several States of the Union, such as France, the United Kingdom, the Netherlands, Belgium, New Zealand, Australia, South Africa, Spain and Portugal have at the appointed time given notice that the Brussels text or earlier texts of the Convention were applicable to the countries for whose international relations they were then responsible. The extension of the application of the Convention to the dependent territories of certain contracting States has often been accompanied by promulgation of the internal legislation necessary to adapt the copyright regulations in force in those territories to the requirements of the Berne Convention.

19. The question of the succession of States arises within the Berne Union above all from the point of view of the accession to independence of former territories of members of the Union. New independent States which were formerly territories of members of the Union may, of course, accede to the Berne Convention, but the general interest of the States of the Union requires assurance of continuity of the legal bonds in so far as possible. However, in the absence of declarations defining the position of the new States which were formerly colonies of members of the Union, their situation in the Union remains uncertain.

C. *Cases comprising elements related to the succession of States*

20. After the Second World War the Berne Union had to deal with a number of cases comprising elements related to the succession of States and some States in fact became contracting countries by succession. The Swiss Government and the International Office sometimes had to take decisions in situations which arose when new States attained independence. Those decisions were taken as specific situations arose. Sometimes, too, member States of the Union made their views known in notes addressed to the Swiss Government. In one case the Revision Conference itself was asked to settle the matter. In 1960, as a result of the attainment of independence by a considerable number of former colonial territories within the Union, the director of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property asked the Governments of many former Union colonial territories which had become independent States to define their position vis-à-vis the Union. Following this request, several former territories of Union members became contracting States, either by succession, on the basis of a declaration of continuity, or by accession. It must be added that cases concerning the succession of States had arisen in the Berne Union before the Second World War.

21. For convenience, all these cases have been arranged as follows: (1) cases occurring before the Second World War; (2) cases occurring from the end of the Second World War until the request of the director of BIRPI in 1960; and (3) cases occurring after the request of the director of BIRPI in 1960 to the Governments of the new States, formerly territories of Union members.

1. CASES OCCURRING BEFORE THE SECOND WORLD WAR

(*a*) Former territories of Union members which became contracting States by succession

22. *Australia, British India, Canada, New Zealand* and *South Africa,* as British possessions, had been members of the Berne Union from the beginning.[41] As from 1928, all these Union territories became contracting countries participating in the Revision Conferences and sharing in the expenses of the Office. Their change of status within the Union followed notes from the British Government to the Swiss Government expressing the desire of each of the countries to be "considered as having acceded" to the Berne Convention. The notes were transmitted by a circular from the Swiss Federal Council to the Governments of the countries of the Union. The text of the Swiss Federal Council's circular, announcing the change in the status of the countries, reads:

> . . . by note of the . . ., His Britannic Majesty's Legation at Berne has informed the Swiss Federal Council of the desire of the Government of [name of the country in question] to be considered as having acceded ["as from . . ." being added in some cases] in the . . . class in respect of its share of the expenses of the International Office.
>
> This two-fold declaration implies a change in the status of [name of the country in question] in the Union. As from . . ., the date of the British note (or the date indicated in the British note), [name of the country in question] has in fact become a contracting country, whereas it formerly belonged to the Union only as a non-self-governing British colony. . . .[42]

23. These countries are considered to have joined the Union as contracting countries from the date of the note addressed by the British Government to the Swiss Government (in the case of Australia, 14 April 1928; of Canada, 10 April 1928) or from the date indicated in the British note (in the case of British India, 1 April 1928; of New Zealand, 24 April 1928; of South Africa, 3 October 1928). All these countries have continued to be bound by the Berlin text of 1908 which the United Kingdom had extended to their territories. Although the British Government's notes invoked the accession procedure laid down in article 25 of the Berlin text on the accession of "countries outside the Union", notification of accession was not required of each of the countries concerned in order to confirm

[41] Since 5 December 1887.

[42] See for *Australia, Canada, British India, New Zealand* and *South Africa, Le Droit d'Auteur,* 1928, pp. 57, 58, 78 and 133.

their change of status in the Union. The change was made in fact by succession.[43]

24. Since joining the Union as contracting countries, Australia, Canada and New Zealand have acceded to the Rome text,[44] and South Africa and India have acceded to the Rome and Brussels texts.[45]

(*b*) A FORMER TERRITORY OF A CONTRACTING STATE WHICH BECAME A CONTRACTING STATE BY ACCESSION

25. After the conclusion of the Treaty of 6 December 1921 between Great Britain and Ireland, the latter acceded to the Berne Union as an independent State with effect from 5 October 1927 by a note of the same date from His Britannic Majesty's Legation at Berne to the Swiss Government.[46] The Swiss Federal Council, by a circular dated 21 October 1927, informed the countries of the Union of the accession of the *Irish Free State*.[47] In an editorial note accompanying the Swiss Government circular, the Office considered the Irish Free State's accession to the Convention as "proof that, on becoming an independent territory, if had left the Union".[48] There was no succession.[49]

2. CASES OCCURRING FROM THE END OF THE SECOND WORLD WAR UNTIL THE REQUEST OF THE DIRECTOR OF THE UNITED INTERNATIONAL BUREAUX IN 1960

(*a*) FORMER TERRITORIES OF UNION MEMBERS

(i) *Territories which became contracting States by succession*

a. *Transfer of sovereignty with a bilateral agreement containing a general clause concerning succession to treaties: denunciation of the Convention*

26. On 27 December 1949, the Netherlands abandoned its sovereignty over the Netherlands East Indies and the independence of *Indonesia* was proclaimed. On 15 January 1913, the Netherlands had given notice, in accordance with article 26 of the Berne Convention, that the Convention would be applicable to the Netherlands East Indies from 1 April 1913. The Netherlands Government had also declared in 1931 that the Rome text of 1928 would also apply to the Netherlands East Indies.[50]

27. After the proclamation of its independence in 1949, Indonesia's status in the Berne Union gave rise to misunderstanding which was only finally cleared up in 1956 following a *démarche* by the Netherlands Government to the Swiss Government. In 1950, in its annual report on the state of the Union, the International Office stated that, pending instructions from the competent authorities, no change had been made under the heading "Netherlands" in the list of contracting countries.[51] Later, in 1952, the Office stated that a communication received from the Netherlands Ministry of Foreign Affairs left no doubt about the rupture of ties between the Literary and Artistic Union and independent Indonesia and it added: "We have reason to hope, however, that the Republic of the United States of Indonesia will accede to the Berne Convention at a more or less early date. We are engaged in talks with the Jakarta Government to this end".[52]

28. The situation was clarified by a note dated 23 February 1956 from the Royal Netherlands Legation at Berne to the Swiss Federal Political Department. After referring to the provisions of article 5 of the Agreement on Transitional Measures concluded between the Netherlands and Indonesia, the Netherlands Government expressed the view that Indonesia remained bound

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[43] The Office, in a report entitled "*L'Union internationale au seuil de 1929*", commented as follow: "... Five territories which, as British possessions, were members of the Union from the beginning became contracting countries of the Union during 1928... The independence conferred, in the Union, on large British colonies or dominions is only natural: the same situation exists in the League of Nations and other international unions (the postal and telegraph unions, for example)..." (*Le Droit d'Auteur*, 1929, pp. 3 and 4).

[44] Australia, 18 January 1935; Canada, 1 August 1931; New Zealand, 4 December 1947 (*Le Droit d'Auteur* [*Copyright*], 1964, pp. 6 and 7).

[45] South Africa acceded to the Rome text on 27 May 1935 and to the Brussels text on 1 August 1951; India to the Rome text on 1 August 1931 and to the Brussels text on 21 October 1958 (*ibid.*).

[46] The note specified the class in which the new State wished to be placed for the purpose of sharing the expenses of the International Office.

[47] *Le Droit d'Auteur*, 1927, pp. 125 and 126.

[48] *Ibid.* The note stated further: "... when there is dismemberment of a State, that is to say when a part of its territory is detached from the whole either to become a new State or to become part of another State (annexation), treaties concluded by the renouncing or ceding State *cease* to be applicable to the area over which a change of sovereignty occurred. The new or annexing State does not succeed to the rights and obligations arising from the agreements signed by the renouncing or ceding State if those agreements do not create a right to the thing that is the object of the renunciation of the cession. Since treaties are motivated by considerations which are entirely personal to the contracting States, the rights and obligations arising therefrom cannot be transmitted to other States. The new or annexing State cannot be bound by conventions in which it did not participate as a contracting party".

[49] The accession of the *Irish Free State* concerned the Berne Convention, revised at Berlin in 1908, and the additional Protocol of 20 March 1914 to that Convention. Subsequently, Ireland acceded to the Rome text with effect from 11 June 1935 and to the Brussels text with effect from 5 July 1959. *Le Droit d'Auteur (Copyright)*, 1964, pp. 5 and 6. Ireland took part in the Revision Conferences at Rome (1928) and Brussels (1948).

[50] The application of the Rome text to the Netherlands East Indies took effect from 1 October 1931 (*Le Droit d'Auteur*, 1932, p. 41).

[51] *Le Droit d'Auteur*, 1950, p. 7.

[52] *Ibid.*, 1952, p. 15. Nevertheless, the transfer of sovereignty from the Netherlands to Indonesia did not include *Netherlands New Guinea*. From 1951 until 1963 the Office included Netherlands New Guinea in place of Indonesia in the list of Union territories for the international relations of which the Netherlands was responsible. Following its transfer to Indonesia on 1 May 1963, after a period of direct United Nations administration which began on 1 October 1962, Netherlands New Guinea was no longer included in the list of Netherlands territories in the Berne Union published by the Office in January 1964.

by the Berne Convention although it had not yet deposited a formal declaration of continuity. In consequence of the transfer of sovereignty, Indonesia should no longer be included in the list of Netherlands territories in the Union but should be placed in the list of contracting countries of the Berne Union. Here is the text of the Netherlands note:

> The Royal Government hereby declares that the former Netherlands East Indies, later called Indonesia, were part of the Berne Union and were bound by the Rome Text of 22 June 1928 (see *Le Droit d'Auteur*, 1949, pp. 2 and 3).
>
> Her Majesty's Government considers that the fact that it has transferred sovereignty over the territory to the Government of the Republic of Indonesia has not altered the situation, bearing in mind the Charter of the Transfer of Sovereignty dated 27 December 1949. Indeed, article 5 [53] of the transitional agreement concluded on the occasion of the transfer was adopted precisely with a view to situations such as this.
>
> The Royal Government believes that there can be no doubt that the Republic of Indonesia should be considered a member of the Berne Union, particularly in the case of an open multilateral treaty which can be denounced after a period of one year (article 26, paragraph 2, and article 29, paragraph 1, of the Convention).
>
> The Netherlands Government regrets that its communication dated 20 January 1950 gave rise to a misunderstanding on the part of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property at Berne.
>
> Whereas the sole purpose of this communication was to point out that, since the transfer of sovereignty, Indonesia should no longer appear as a dependency of the Netherlands in the list of countries of the Union, the Bureaux came to the conclusion that Indonesia should not appear in the list at all.
>
> Consequently, the Royal Government would be greatly obliged if the Government of the Swiss Confederation would be good enough to lend its valuable assistance so that the Republic of Indonesia may be inscribed again on the list of countries which are members of the Berne Union and to arrange for this communication to be transmitted to the other countries members of the Union.
>
> The Netherlands Government considers that this procedure should be adopted, although Indonesia has evidently not yet deposited a declaration of continuity in respect of the Berne Convention as it did in respect of the Paris Convention for the Protection of Industrial Property (see *La propriété industrielle*, of November 1950, p. 222).
>
> The Netherlands Government considers that the fact that Indonesia remains bound to a treaty such as the Berne Convention does not depend on the formal deposition of such a declaration.[54]

29. The Swiss Government accepted the Netherlands Government's view and by a circular dated 15 May 1956 it notified the Governments of the countries of the Union that Indonesia belonged to the Berne Union as an independent member State. The text of the circular which reproduced the Netherlands Government's note concluded:

> . . . In view of the legal situation described above, there are grounds for considering Indonesia, since it attained the status of an independent State, as being bound by the Berne Convention for the Protection of Literary and Artistic Works, in the Rome revision of 2 June 1928, and as a member of the International Union for the Protection of Literary and Artistic Works. . . .[55]

30. The Swiss Government thus agreed that the general clause relating to succession to international treaties in force on Indonesian territory before its independence, as set forth in the bilateral agreement between the Netherlands and Indonesia at the time of transfer of sovereignty, applies to the Berne Convention.[56] From 1957 to 1959, Indonesia was mentioned by the Office, among the contracting countries of the Berne Union, as having acceded to the Rome text on 1 October 1931.[57] But throughout this period, Indonesia did not indicate in which class it would like to be placed for the purpose of sharing the expenses of the Union.[58]

31. Although it had succeeded to the Berne Convention, revised at Rome, Indonesia still had the right, of course, to denounce the Convention. It did so in a note dated 19 February 1959 from the Indonesian Embassy at Berne and with effect from 19 February 1960.[59] Indonesia's denunciation implicitly confirmed the Netherlands Government's view, wich was accepted by the Swiss Government, that Indonesia had become a member State of the Union by succession.

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[53] Article 5 of the agreement reads:

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

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

[54] *Le Droit d'Auteur*, 1956, pp. 93 and 94.

[55] *Ibid.*

[56] G. Ronga, "*Les colonies et l'Union de Berne. Situation particulière de l'Indonésie après son accession à l'autonomie*", *Le Droit d'Auteur*, 1956, pp. 21-26.

[57] *Le Droit d'Auteur*, 1957, p. 2; *ibid.*, 1958, p. 2; *ibid.*, 1959, p. 2.

[58] *Ibid.*, foot-note 12.

[59] For the text of the note of denunciation of the communication from the Swiss Government to the countries of the Union, see: *Le Droit d'Auteur*, 1959, pp. 79 and 80. See also G. Ronga, (the) "Position in the Berne Union of the countries which recently became undependent", *Le Droit d'Auteur*, 1960, p. 321. The Berne Convention remains in force for a specified time (Rome text) or without limitation of duration (Brussels text) but it can be denounced at any time by notification addressed to the Swiss Government. Denunciation takes effect in respect of the country making it one year after notification (art. 29 of the Rome text and the Brussels text).

b. *Notification of accession considered as a declaration of continuity*

32. *Ceylon* was in the list of British colonies, possessions and protectorates to which the Berne Convention, revised at Rome (1928), became applicable from 1 October 1931.[60] The country gained its independence on 4 February 1948 and the Prime Minister, in a letter of 20 July 1959 to the Swiss Federal Political Department, gave notice of his country's accession to the Berne Convention, revised at Rome, and at the same time transmitted the instrument of accession to the Convention.[61] Here are the relevant passages from the letter and from the instrument of accession:

. . . I have the honour to forward herewith an Instrument of Accession to the International Convention for the Protection of Literary and Artistic Works signed at Rome on 2 June 1928 and to inform you that the Government of Ceylon, while acceding to the said Convention reserves for itself the right to enact local legislation for the translation of educational, scientific and technical books into the national language.

I have also to inform . . . that Ceylon acceded to this Convention with effect from 1 October 1931, when she was a British Colony, and I am glad to inform you that the Government of Ceylon has now decided to accede to it in its own right as an independent nation.

In terms of article 23 (4) of the International Convention for . . ., I have the honour to inform Your Excellency that the Government of Ceylon wishes to be placed in the 6th class for the purposes of the payment of contributions . . . [instrument of accession attached].[62]

33. The Swiss Government, in its notification of 23 November 1959 to the countries of the Union, stated that Ceylon's instrument of accession "constituted in fact a declaration of continuity" since it confirmed, in respect of Ceylon, the United Kingdom declaration concerning the application of the Berne Convention, as revised at Rome, "to a number of British colonies and protectorates and territories under British mandate, including Ceylon, with effect from 1 October 1931". The Swiss notification continued: "Ceylon, which became independent in 1948, has therefore been a participant in the Convention as from that date and without interruption". Thus, the Swiss Government considered that Ceylon had become a contracting State by succession and not by accession. This interpretation has since been confirmed by the International Office, which reported Ceylon as having acceded to the Rome text on 1 October 1931 and as having joined the Union as a contracting country on 30 July 1950, the date of transmittal of the Ceylonese Prime Minister's letter.[63]

(ii) *Part of a territory which became a contracting State by accession*

34. After the First World War, the United Kingdom extended the Berne Convention to Palestine, then under United Kingdom Mandate, the extension to take effect on 21 March 1924.[64] The *State of Israel* was immediately proclaimed when the Mandate ended on 15 May 1948. The Israel Government, wishing Israel to succeed Palestine in the Berne Union without interruption as far as its territory was concerned, desired to accede retroactively to the Berne Convention, i.e., as from the date when the State of Israel was proclaimed independent. The Israel Government's intentions were notified to the contracting countries by a circular of 24 February 1950 from the Swiss Federal Council to the Governments of the contracting countries, as follows:

. . . in a note dated 14 December 1949 the Israel representative at the European Office of the United Nations at Geneva gave notice of the accession of his Government to the Berne Convention for the Protection of Literary and Artistic Works.

At present, the accession of the Israel Government applies to the Text of the Berne Convention agreed at Rome on 2 June 1928, the Text drawn up at Brussels on 26 June 1948 not yet being enforceable. The accession will apply *de plano* to this latter Text, as soon as it comes into force, in accordance with article 28 of the Brussels Text.

The State of Israel will share the expenses of the International Office as a contracting country of the fifth class (article 23 of the Rome Text of the Berne Convention).

As to the date from which this accession shall take effect, it would appear from a further statement from the Ministry of Foreign Affairs at Hakirya, on 1 December 1949, that the Israel Government considers itself bound by the provisions of the Rome Text of the Berne Convention as from 15 May 1948, the day the State of Israel was proclaimed independent. The Ministry bases its argument on "the special situation of the State of Israel, on the formal obstacles to its earlier accession and on the fact that Palestine belonged to the Literary and Artistic Union.

The Political Department and the Office of the International Union for the Protection of Literary and Artistic Works consider this formula convenient since it avoids any interruption between the terms of accession, on 21 March 1924, of Palestine (as a country under United Kingdom Mandate), and those of Israel's accession which is hereby notified. In agreement with the International Office, the Political Department therefore proposes, unless advised to the contrary before 24 March 1950, that the accession of the State of Israel take effect from 15 May 1948. . . .[65]

[60] *Le Droit d'Auteur*, 1931, p. 106; *ibid.*, 1932, p. 39.

[61] *Ibid.*, 1959, pp. 205 and 206.

[62] *Ibid.*

[63] *Copyright*, 1965, p. 4. Until 1964 the Office regarded Ceylon as having joined the Union of 1 October 1931. Since 1965 the practice more recently followed in the case of Union territories which became contracting countries by succession has been applied to Ceylon. The date of Ceylon's joining the Union was accordingly changed to the date of notification of the declaration of continuity.

[64] This was the Berlin text of 1908 and the Protocol of 1914. The Rome text became applicable to Palestine on 1 September 1931. The United Kingdom gave notice of Palestine's accession to the Convention. In a circular letter to the Governments of the countries of the Union, the Government of the Swiss Confederation made the following observation: "... it (the accession) took place under article 19 of the Palestine Mandate. The United Kingdom Goverment, in the circumstances, does not consider it necessary to establish whether it comes within the scope of article 25 of the Convention... or, as has been the procedure under modern Conventions of this kind in the case of territories in an identical situation, within the scope of article 26 relating to colonies and foreign possessions..." (*Le Droit d'Auteur*, 1924, p. 97).

[65] *Le Droit d'Auteur*, 1950, p. 25.

35. The Political Department of the Swiss Confederation and the International Office therefore did not oppose retroactive accession, but because the Berne Convention did not provide for such accession, the matter was submitted for the approval of the contracting countries.[66] As the unanimity needed for acceptance of the Israel request was not forthcoming, the Swiss Federal Council notified Governments of countries of the Union of the situation in a further circular on 20 May 1950, as follows:

> . . . the proposal to allow this accession, as the Israel Government requested, with retroactive effect from 15 May 1948, has not been accepted with the necessary unanimity by the contracting countries.
>
> In the circumstances, the accession cannot occur except under the provisions of article 25 (3) of the said Convention, that is, with effect from *24 March 1950*. . . .[67]

36. Consequently, the accession of Israel took effect one month after the dispatch of the first circular, dated 24 February 1950, from the Swiss Government, in other words, on 24 March 1950. The Territory of Israel is deemed to have remained outside the Union during the period between midnight on 14 May 1948, the date on which the United Kingdom Mandate for Palestine expired, and 24 March 1950.

37. At the time of Israel's accession, the Brussels text had not come into effect. To avoid confusion, and following the precedent established by Yugoslavia in 1930,[68] the State of Israel declared its accession to the Rome text and the Brussels text simultaneously. The latter text, of course, became enforceable in Israel only from the time when the Brussels text itself came into force, that is from 1 August 1951.[69]

(*b*) Former territory of a contracting State which became a contracting State by accession

38. *Pakistan* was a Union State before it became independent, because it had been part of British India which had been a Union State from the beginning, at first as a British possession, and then, from 1 April 1928, as a contracting country.[70] British India had acceded to the Rome text from 1 August 1931.[71] But despite its status as a Union territory, it was considered that, because of its separation from India, Pakistan had ceased to belong to the Berne Convention from the date it became independent, 14 August 1947. In fact, on 4 June 1948, Pakistan issued a declaration of accession to the 1928 Rome text of the Berne Convention, in accordance with article 25 of the text.[72] The Swiss Federal Council informed Governments of the members of the Union on 5 June 1948, and Pakistan's accession became effective from 5 July 1948.[73] According to the International Office:

> when Pakistan formed part of India, it was *ipso facto* a party to the Union; subsequently it left the Union when India and Pakistan were separated. On 5 July 1948, it again became a member of the Union as a contracting country.[74]

(*c*) Contracting States

(i) *Restoration of independence after annexation by another contracting State: Decision taken by the Brussels Revision Conference*

39. *Austria* joined the Berne Union by accession to the Berlin text on 1 October 1920.[75] After the Second World War, the International Office ruled that Austria was no longer a contracting country of the Union. According to the International Office, "the dismemberment suffered by Germany as a result of the reconstitution of Austria did not affect the rights and obligations devolving on the former from treaties which it had signed. Austria, on the other hand, did not automatically inherit the said rights and obligations from Germany". The International Office therefore concluded that Austria should "accede on its own behalf to the treaties from which it intended to benefit".[76] This view was not accepted by the Austrian Government, which considered that the proclamation of freedom in April 1945 marked a return to its legal position before the *Anschluss,* with restoration of the formal responsibilities and advantages of the treaties to which Austria was signatory in March 1938—the date of its incorporation into Germany.[77] In a note dated 1 April 1948, Austria requested the Swiss Government to ask the International Office to publish a statement on its membership of the Berne Union in *Le Droit d'Auteur.* The statement read:

> . . . the Republic of Austria considers it has enjoyed uninterrupted membership of the International Union for the Protection of Literary and Artistic Works under the Berne Convention of 9 September 1886, revised at Berlin on 13 November 1908 and at Rome on 2 June 1928, since its accession on 1 October 1920. This applies equally to all the conditions implied in its uninterrupted membership of the Union, the continuity of Austrian rights in this respect not having been affected by German occupation of Austrian territory.
>
> As regards its sharing the expenses of the International Office, the Republic of Austria considers it should still be placed in the

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[66] "The International Union at the beginning of 1952" (*Le Droit d'Auteur,* 1952, p. 14).

[67] *Le Droit d'Auteur,* 1950, pp. 62 and 63.

[68] *Le Droit d'Auteur,* 1930, p. 85. In a note dated 17 June 1930, the Yugoslav Government notified the Swiss Federal Council of its accession to the Berlin text of 1908 and the Rome text of 1928 with effect from the date when the latter came into force. On that date, 17 June 1930, the Rome text not yet being effective, Yugoslavia decided to register both these accessions, one with immediate effect, the other in advance. (*Le Droit d'Auteur,* 1950, p. 98, editor's note.)

[69] *Ibid.,* 1952, p. 14; *Le Droit d'Auteur (Copyright),* 1964, p. 6.

[70] *Le Droit d'Auteur,* 1949, p. 14.

[71] *Ibid.,* 1932, p. 40.

[72] *Ibid.,* 1948, p. 61.

[73] Article 25 (3) of the Rome text of the Berne Convention.

[74] *Le Droit d'Auteur (Copyright),* 1964, pp. 6 and 7, footnote 9.

[75] *Ibid.,* p. 6.

[76] *Le Droit d'Auteur,* 1946, p. 8.

[77] *Ibid.,* 1948, p. 4.

sixth class of countries in the Union, under article 23 of the Convention.[78]

40. This idea that Austria had belonged to the Union continuously was accepted by the Brussels Revision Conference and its decision, as the supreme authority of the Union, was final.

41. At the first plenary session of the Conference on 5 June 1948, the Austrian delegation made a statement similar to that published in *Le Droit d'Auteur*. After recalling that Austria had paid its contributions, it asked to be admitted to the Conference as it had been to "other international meetings of a similar character". After a brief discussion, in which the French, Swiss, Italian and Belgian delegations as well as the Director of the International Office took part, the Conference decided to uphold the Austrian position by 27 votes in favour and 1 abstention (Yugoslavia).[79]

(ii) *Accession to independence without change of status within the Union*

42. *Tunisia* and *Morocco (French zone)* joined the Berne Union on 5 December 1887,[80] and 16 June 1917,[81] through notification to the Swiss Government on their behalf by France. Within the Union they have always ranked as contracting and contributing countries, taking part with voting rights in Revision Conferences—unlike colonies and possessions for which the mother country acts. Tunisia acceded to the Rome text on 22 December 1933 and Morocco on 25 November 1934.[82]

43. By note dated 23 October 1951,[83] France gave notice that the Brussels text was applicable to a large number of overseas territories, colonies, protectorates, territories under its trusteeship and the like, including Tunisia and Morocco. This note, addressed to the Belgian Government in its capacity as depositary, was transmitted by the latter to the Swiss Government, which communicated it by circular to the Governments of the countries members of the Union. The circular from the Swiss Government was published in *Le Droit d'Auteur* along with an editorial note from the Office, which contained the following clarification:

> . . . On 26 June 1948, Morocco and Tunisia signed the Brussels Text. The notification from the French Government, dated 23 October 1951, should be interpreted, in so far as it mentions the two French Protectorates in North Africa, as a notification of accession made "in the form provided for by article 25" of the Brussels Text [see this Text, article 28, para. (3)], and not as being made in pursuance of article 26 (reserved for colonies) On the other hand, the overseas territories, territories under trusteeship and the Franco-British condominium have acceded in accordance with the procedure provided for in article 26. . . .[84]

44. In the opinion of the Office, therefore, since Morocco (French zone) and Tunisia had been contracting countries since their entry into the Union, the only way they could have been bound by the Brussels text was through their accession, in accordance with articles 25 and 28 (3) of that instrument. France's notification of the territorial application of the text was regarded as having the legal validity of an accession with effect from 22 May 1952. This is confirmed by the fact that the attainment of independence by Morocco and Tunisia did not bring any change in their status within the Berne Union. They did not have to make any kind of declaration of continuity or of new accession. Their respective dates of entry into the Union and of accession to both the Rome and the Brussels texts are still the same as before their independence. The legal status of a protectorate had no consequences for Morocco and Tunisia within the Berne Union other than those deriving from the fact that France was responsible for their international relations (diplomatic correspondence; appointment of plenipotentiaries to Revision Conferences; notification of accessions).[85]

(iii) *Separation of two countries forming a single contracting State after their accession to independence*

45. By a note dated 18 June 1924 France stated that *"the group of States of Syria and Lebanon"* had acceded to the 1908 Berlin text of the Berne Convention.[86] According to the provisions of article 25 of this text, this accession became effective as of 1 August 1924, the date of the Swiss Federal Council's circular notifying the States in the Union of the above-mentioned accession. The French Government did not merely extend the application of the Berlin text to Syria and Lebanon, at that time under French Mandate, but made a declaration of accession on their behalf. Moreover, the accession was made jointly for the two countries with a view to creating within the Berne Union a single contracting State, "the Group of States of Syria and Lebanon". This is confirmed by the French request that this "Group of States" should be placed in the sixth class for contribution to the expenses of the Inter-

[78] *Ibid.*, p. 61.

[79] The International Union for the Protection of Literary and Artistic Works, *Documents of the Brussels (Revision) Conference from 5-26 June 1948*, Berne, 1951, pp. 71 and 72. See also *Le Droit d'Auteur*, 1949, p. 15.

[80] *Copyright*, 1965, p. 5.

[81] *Le Droit d'Auteur*, 1917, p. 73.

[82] *Le Droit d'Auteur (Copyright)*, 1964, pp. 5 and 6.

[83] *Le Droit d'Auteur*, 1952, p. 49.

[84] *Ibid.*, p. 50.

[85] Spain had declared that the Rome text was applicable to Morocco (Spanish zone) as from 23 March 1933 (*Le Droit d'Auteur*, 1934, p. 133). On 12 August 1926, a law was enacted for the *Tangier zone* concerning the protection of literary and artistic property, based directly on the Berlin text of 1908 (*Le Droit d'Auteur*, 1927, pp. 4 and 53).

[86] *Le Droit d'Auteur*, 1924, p. 85. By an Order dated 19 July 1923, an office for the protection of commercial, industrial, artistic, literary, and musical property was set up in the High Commissariat of the French Republic in Syria and Lebanon (*Ibid.*, p. 98). From 1925 to 1927, the Office included among the member countries of the Union, immediately after "France, together with Algeria and its colonies", "Countries under mandate: Syria and Lebanon" as applying the Berlin text (*Ibid.*, 1925, pp. 1 and 2). "The States of Syria and Greater Lebanon" participated as a single entity in the Rome Revision Conference, their plenipotentiaries being appointed by the President of the French Republic (*Ibid.*, 1928, p. 75). During the period 1928-1946 these countries appeared, under the heading "Syria and the Lebanese Republic (countries under French mandate)", in the list which the Office drew up of countries members of the Union (*Ibid.*, p. 2).

national Office. As the status of mandated countries had not of course been anticipated in 1908 when the Berlin text was drawn up, the Swiss Government's circular to the member States of the Union drew attention to this fact in the following terms:

> . . . we believe it our duty to point out that, as the status of mandated countries was not clarified in the system of the literary Union either from the point of view of their rights (representation at diplomatic revision conferences), or from that of their obligations (financial contributions), it seems appropriate that a uniform decision for all countries in this category should be taken at the next revision Conference provided for in article 24 of the Convention. . . .

46. In 1925 France acceded on behalf of Syria and Lebanon to the Additional Protocol of 20 March 1914 to the Berne Convention with effect from 28 March 1925.[87] Syria and Lebanon have also acceded to the Rome text by notification made by France with effect from 22 December 1933.[88]

47. After the Second World War, Syria and Lebanon became separate and independent States. By a note dated 19 February 1946, *Lebanon* notified the Swiss Government of its accession to the Berne Convention, as revised at Rome. In informing the Governments of countries members of the Union of the Lebanese note, the Swiss Government said that "in accordance with article 25 of the Convention, the accession in question shall take effect one month after the date of the present notification, that is from 30 September 1947".[89] However, in an editorial note accompanying the publication of the Swiss Government's circular in *Le Droit d'Auteur,* the Office made the following observations:

> The accession of Lebanon to the Berne Convention . . . must not be interpreted as meaning that Lebanon joined the Union . . . on 30 September 1947. That is the date on which the separation of Lebanon from Syria became effective in so far as the above-mentioned Union is concerned. Up to 30 September 1947, Syria and Lebanon together formed a single contracting country . . .
>
> . . .
>
> The Lebanese Government now declares its accession to this same Convention [Rome Text]. . . . This is explained by the fact that the separation of Syria and Lebanon made it necessary to clarify the position of each of the two parts henceforward separate of what had previously formed a whole. The Lebanese Government has decided to remain in the Union; this is how we interpret the Swiss Federal Council's circular of 30 August 1947 . . .
>
> . . .
>
> It was obviously necessary . . . to inform the other contracting parties of the separation of Syria and Lebanon into two individual contracting countries in the Union . . . but a single notification in respect of one of the two countries formerly united was sufficient for this purpose. . . .[90]

48. Lebanon and Syria have always been regarded as having joined the Union on 1 August 1924 and as having acceded to the Rome text on 24 December 1933, that is, on the dates on which they formed a single contracting country. They became separate contracting countries from 30 September 1947, the date mentioned in the Lebanese notification.[91] Subsequently, Lebanon and Syria participated, as two separate contracting States, in the Brussels Revision Conference of 1948.[92] Syria ceased to be a member of the Berne Union in 1962.[93]

(iv) *Union with a non-contracting State: denunciation of the Convention: later dissolution of the unified State*

49. *Syria* became a Contracting State separately from Lebanon on 30 September 1947. That did not give rise to any new situation in respect of the text of the Convention of the Berne Union then in force on Syrian territory, namely the Rome text of 1928, to which Syria had acceded with Lebanon, with effect from 24 December 1933.[94]

50. After the union of Egypt with Syria and the proclamation of the *United Arab Republic,* the latter notified the Swiss Government, on 12 January 1961, of the denunciation by Syria of the Berne Convention, as revised at Rome. Syria had then become a province of the United Arab Republic.[95] The denunciation, which became effective as from 12 January 1962, was communicated by the Swiss Government to the Governments of the countries members of the Union.[96]

51. Since then, however, Syria has resumed its full independence under the name of the *Syrian Arab Republic.* According to information appearing in *Le Droit d'Auteur,* the Damascus Government was asked, in 1964, whether it intended to regard the denunciation made on its behalf as null and void and to resume its place in the Berne Union. As no official reply has been received, Syria still does not appear on the list of contracting countries of the Union which the Office has drawn up. The *Syrian Arab Republic* has settled its arrears of contributions, but has not yet taken in respect of copyright a decision similar to that which enabled it to re-enter the Paris Union for the Protection of Industrial Property.[97]

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[87] *Ibid.*, 1925, p. 49.

[88] *Ibid.*, 1933, p. 133.

[89] *Ibid.*, 1947, p. 109. Lebanon asked to be included in the sixth class for participation in the expenses of the Office.

[90] *Le Droit d'Auteur*, 1947, p. 109.

[91] In this connexion, the Office made the following comment in 1948: "Two States, which had previously constituted a unit within the Literary and Artistic Union, decide to put an end to this situation; they split up but neither of them appears to have been strengthened at the expense of the other as a result of the separation. Neither Syria nor Lebanon has been 'dismembered'; each of them has expressed a wish to have the matter of their membership in our Union settled separately and individually. Moreover, if the theory of dismemberment were strictly applied, it would be necessary to consider, from the terms of the Lebanese note, that Lebanon had detached itself from Syria, which, for its part, has continued to be a member of the Union. On this view, Lebanon would be held to have left the Union and to have immediately rejoined it: Thus, this theory would have the same consequences as the one we have adopted..." (*Le Droit d'Auteur,* 1948, p. 5).

[92] *Le Droit d'Auteur,* 1948, p. 73.

[93] See para. 51 below.

[94] See para. 45 above.

[95] *Le Droit d'Auteur,* 1961, p. 70.

[96] *Ibid.*

[97] Claude Masouyé, "The International Union on the Threshold of 1964", *Le Droit d'Auteur (Copyright),* 1964, p. 9.

3. CASES OCCURRING AS A RESULT OF THE REQUEST OF THE DIRECTOR OF THE UNITED INTERNATIONAL BUREAUX, IN 1960, TO NEW STATES FORMERLY TERRITORIES OF UNION MEMBERS

52. By letters dated 31 March 1960 and 5 December 1960, the Director of BIRPI asked countries which had attained independence in recent years to confirm whether they proposed to continue to apply the rules of the Berne Convention on their territories. The States in question are former dependent territories to which the Berne Convention had been extended in accordance with article 26, by the States which were then responsible for their international relations. The Director transmitted in the above-mentioned letters information and details about the purpose of the Berne Convention and the benefits it provided. The new States which were formerly dependent territories and which confirm their membership in the Union are required to share in the administrative expenses of the Office only from the date of confirmation of such membership.[98]

53. The Office has prepared a list of these countries, with accompanying information on the date of accession to independence, the date of the application of the Berne Convention (article 26 of the Convention), the text of the Berne Convention last applied and other relevant particulars.[99]

54. The initiative on the part of the Director of BIRPI prompted the newly independent States that were formerly dependent territories to state their position with regard to the Berne Convention without further delay. Some of the countries consulted notified the Director that they no longer considered themselves bound by the Berne Convention or that the matter was under study, whereas others gave an affirmative reply. The latter became contracting States either by accession or by succession.

55. The representations have been continued since then and on several occasions the Director of BIRPI has approached the Governments of the States which were formerly dependent territories. At the same time he offers them technical and legal assistance, particularly in the preparation of national copyright legislation.[100]

(*a*) States consulted which have become contracting States by succession

56. As a result of the initiative taken by the Director of the United International Bureaux, five new African States, formerly French colonies or territories, namely, *Cameroon, Congo (Brazzaville), Dahomey, Madagascar, Mali, Niger,* as well as the *Democratic Republic of the Congo* and *Cyprus* have declared themselves Contracting States of the Berne Convention by means of succession. The procedure they have followed has been to address a letter to the Government of the Swiss Confederation, containing a "declaration of continuity". The Swiss Government has subsequently notified the Governments of the member States of the Union of the declarations of continuity communicated to it.[101]

57. In their "declarations of continuity" the States in question notify the Swiss Government that they are continuing to apply the Berne Convention on their territories and indicate at the same time the class in which they wish to be placed for the purpose of sharing in the expenses of the Office.

58. The following letter dated 3 January 1961 from the Prime Minister of the Republic of Dahomey to the Swiss Federal Political Department is an example:

> . . . the Republic of Dahomey continues without interruption to be a member of the Berne Union for the Protection of Literary and Artistic Works, to which Dahomey is a party as a result of the accession made by France in accordance with article 26 of the Berne Convention.
>
> Thus, Dahomey continues to apply on its territory the Berne Convention of 9 September 1886, last revised at Brussels on 26 June 1948, and retains the rights it acquired under the former régime.
>
> Lastly, my Government wishes Dahomey to be placed in class VI for the purposes of its contribution.
>
> I should be grateful if you would communicate this declaration of continuity to all the member States of the Berne Union. . . .[102]

59. In addition to Dahomey, Mali, on 19 March 1962,[103] Niger, on 2 May 1962,[104] Congo (Brazzaville), on 8 May 1962,[105] the Democratic Republic of the Congo, on 8 October 1963,[106] Cyprus, on 24 February 1964,[107] Cameroon, on 21 September 1964,[108] and Madagascar, on 11 February 1966,[109] have also transmitted more or less similar "declarations of continuity" to the Swiss Government.

60. The notifications of the Swiss Government to the Governments of the countries members of the Union are worded, except for a few details, as follows:

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[98] *Le Droit d'Auteur,* 1960, p. 336.

[99] *Ibid.* The same list of countries which have become independent; containing information on the dates of application of the Berne Convention, has been reproduced in *Le Droit d'Auteur,* 1961, p. 28. The thirty-one countries listed are the following in the order and according to the names used by the Office: Burma, Cambodia, Cameroon, Central African Republic, Cyprus, Congo (Leopoldville), Congo (Brazzaville), Korea (North), Korea (South), Ivory Coast, Dahomey, Formosa, Gabon, Ghana, Guinea, Upper Volta, Jordan, Laos, Madagascar, Malaysia, Mali, Mauritania, Niger, Nigeria, Federation of Rhodesia and Nyasaland, Senegal, Somalia (formerly British) and Somalia (formerly Italian), Chad, Togo, Viet-Nam (North) and Viet-Nam (South).

[100] Information supplied by the Director of BIRPI.

[101] *Copyright,* 1965, pp. 4 and 5.

[102] *Le Droit d'Auteur,* 1961, p. 70.

[103] *Le Droit d'Auteur (Copyright),* 1962, pp. 88 and 89.

[104] *Ibid.,* p. 104.

[105] *Ibid.,* p. 88.

[106] *Ibid.,* 1963, p. 228.

[107] *Ibid.,* 1964, p. 88.

[108] *Ibid.,* p. 176.

[109] *Copyright,* 1966, p. 90.

. . . The Republic of [name of the State in question] has transmitted to the Swiss Government a declaration of continuity of membership in the Berne Convention for the Protection of Literary and Artistic Works, of 9 September 1886, last revised at Brussels on 26 June 1948.

This declaration confirms, with regard to [name of the State in question] a notification which was made earlier under article (26) 1 of the Berne Convention.

With regard to its participation in the expenses of the International Office of the Union, this State is placed, according to its request, in the . . . class of contribution by virtue of article 23 of the Berne Convention revised at Brussels. . . .[110]

61. In the case of the former French territories of Cameroon, Congo (Brazzaville), Dahomey, Madagascar, Mali and Niger, France gave notice on 23 October 1951 that the Berne Convention revised at Brussels would apply with effect from 22 May 1952.[111] The Berne Convention revised at Rome had been extended by France to Congo (Brazzaville), Dahomey, Mali and Niger from 26 May 1930.[112]

62. In the case of the Democratic Republic of the Congo, the former Belgian Congo, Belgium gave notice on 20 November 1948 that the Berne Convention revised at Rome would apply from 20 December 1948[113] and on 14 December 1951 that the Berne Convention revised at Brussels would apply from 14 February 1952.[114]

63. The United Kingdom gave notice that the Rome text would apply to Cyprus from 1 October 1931.[115] The Cyprus declaration, however, after affirming that "the Republic . . . continues without interruption to be a member of the Berne Union . . . to which Cyprus is a party consequent to the adhesion made by the United Kingdom" (art. (1) of the Berne Convention), continues:

Consequently, the Republic of Cyprus continues to apply on its territory the Convention of Berne signed on September 9, 1886, and as last revised at Brussels on June 26, 1948, and thereby retains all rights acquired under the former regime. . . .[116]

64. The Swiss Government communicated the Cyprus declaration to the Governments of the members of the Union in the following terms:

. . . the Republic of Cyprus has transmitted to the Swiss Government a declaration of continued adherence, regarding the membership of this Republic in the Berne Convention for the Protection of Literary and Artistic Works, of 9 September 1886, last revised at Brussels on 26 June 1948.

Consequently, this declaration confirms, with regard to Cyprus, a notification which has been earlier effected, according to article 26 (1) of the Berne Convention. . . .[117]

Since the United Kingdom had made no declaration about the application of the Brussels text to Cyprus before its independence, the Office clarified the declaration of continuity of Cyprus to the Brussels text as follows:

It may be deduced . . . that this declaration confirms the adherence of Cyprus to the Rome Text of the Berne Convention without interruption since 1 October 1931 . . . and, at the same time, constitutes a notification of accession to the Brussels Text. As far as countries of the Union which have not yet adhered to the Brussels Text are concerned, the Rome Text will of course continue to be applicable as regards their relations with the Republic of Cyprus[118]

65. The report on the State of the International Union on 1 January 1965, said that "Cyprus has addressed a declaration of continued adherence concerning the Rome text and, at the same time, a notification of accession to the Brussels text".[119]

(*b*) States consulted which have become contracting States by accession

66. Following the consultations undertaken by the director of the United International Bureaux, a number of former territories which are now independent States have become contracting States by accession. These are the former French colonies or territories of the *Ivory Coast, Gabon, Upper Volta* and *Senegal*.[120]

67. The accession of these new States was communicated by each of them to the Swiss Government and by the latter to the Governments of the countries of the Union, in accordance with the provisions of article 25 of the Berne Convention. The *Ivory Coast*,[121] *Gabon*,[122] and *Senegal*[123] made known their accession by letter only, indicating also the class in which they wished to be placed for the purposes of participation in the expenses of the Office. Upper Volta's communication[124] was also by a note, but the formal instrument of accession[125] and a further note specifying the form of participation in the Office's expenses[126] were subsequently transmitted. The Swiss Government's notification of these accessions to the countries of the Union indicated the date on which the accessions would take effect, in accordance with article 25, paragraph (3), of the Berne Convention.[127]

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[110] *Le Droit d'Auteur*, 1961, p. 70; *Le Droit d'Auteur (Copyright)*, 1962, pp. 88, 89 and 104; *ibid.*, 1963, p. 228; *ibid.*, 1964, pp. 88 and 176.

[111] *Le Droit d'Auteur*, 1952, pp. 49 and 50.

[112] *Ibid.*, 1930, p. 73.

[113] *Ibid.*, 1948, p. 141.

[114] *Ibid.*, 1952, p. 13.

[115] *Ibid.*, 1932, p. 39.

[116] *Le Droit d'Auteur (Copyright)*, 1964, p. 88.

[117] *Ibid.*

[118] *Copyright*, 1965, p. 3.

[119] *Ibid.* This is an opposite case from that of Ceylon (see para. 32 above). Ceylon's accession was considered a declaration of continuity. Cyprus's declaration of continuity was considered an accession in so far as the Brussels text was concerned.

[120] *Le Droit d'Auteur (Copyright)*, 1964, p. 9.

[121] *Le Droit d'Auteur*, 1961, pp. 257 and 258.

[122] *Le Droit d'Auteur (Copyright)*, 1962, p. 44.

[123] *Ibid.*, pp. 104 and 105.

[124] *Ibid.*, 1963, p. 114.

[125] *Le Droit d'Auteur*, 1963, p. 182.

[126] *Le Droit d'Auteur (Copyright)*, 1963, p. 180.

[127] *Le Droit d'Auteur*, 1961, p. 257; *Le Droit d'Auteur (Copyright)*, 1962, pp. 44 and 104; *ibid.*, 1963, p. 114.

68. In accordance with article 28, paragraph (3), of the Convention revised at Brussels, the Ivory Coast, Gabon, Upper Volta and Senegal have acceded to the Brussels text, since from 1 July 1951 countries outside the Union may accede only to that text. Under the terms of article 25, paragraph (3), of the Convention, these accessions shall take effect "one month after the date of notification made by the Government of the Swiss Confederation to the other countries of the Union, unless some later date has been indicated by the acceding country". The accessions of Gabon, Upper Volta and Senegal took effect one month after the notification by the Swiss Government to the countries of the Union, namely 26 March 1962, 19 August 1963 and 25 August 1962 respectively. That of the Ivory Coast took effect on 1 January 1962, the date indicated in the letter of accession.

(c) States consulted which no longer consider themselves bound by the Berne Convention

69. *Cambodia,* the *Republic of Korea,* the *Republic of Viet-Nam* and the *Republic of China,* (for the *Island of Formosa*), replied to the Director of BIRPI that, in their opinion, any prior commitments undertaken by the Powers responsible for the international relations of their respective territories had ceased to be effective and that they no longer considered themselves bound by the provisions of the Berne Convention. The Republic of Korea, the Republic of Viet-Nam and the Republic of China indicated at the same time that they had not yet decided whether to accede to the Convention. Cambodia, on the other hand, ruled out the possibility for the present. Here is the gist of their replies:

Cambodia: . . . the Royal Government does not apply to Cambodia the Berne Convention of 1886 . . . and, for the present, is not considering requesting its continued application. . . .[128]

Republic of Korea: . . . the Government . . . considers the accession made by the Japanese Government . . . as ineffective on the territory of the Republic of Korea as from 15 August 1945.

[The] Government therefore considers that formal arrangements will have to be made for a new accession if it decides to re-establish relations with the Berne Union. [The] Government expects to state its official point of view on this subject in the near future. . . .[129]

Republic of Viet-Nam: . . . the undertaking given by France is not effective in the Republic of Viet-Nam since that country's attainment of independence.

That also appears to be the opinion of the Union, which did not mention "Viet-Nam" in the list of member States [130] and which did not require Viet-Nam to pay its contribution towards the expenses of the Office of the Union.

The question of Viet-Nam's accession to the Convention is under study however, and I shall not fail to keep you informed of any decision with regard to this . . .[131]

Republic of China (for the *Island of Formosa*): . . . the Government considers that the declaration made by Japan in 1932, extending the application of the said Convention to "Formosa", has ceased to be effective from 25 October 1945, the date on which Taiwan was restored to the Republic of China.

The Government . . . has not yet taken a decision concerning China's accession to the said Convention. . . .[132]

(d) States consulted whose position is under study

70. The *Federation of Malaya, Ghana,* and *Nigeria* have informed the Director of BIRPI that the question of their accession to the Union is under study. The *Federation of Malaya,* in its reply, commented that the international protection of copyright had not been studied, but added that it could not yet give its opinion as to the intentions of its Government concerning "accession" to the Berne Union. *Ghana,* after replying to the Director of BIRPI, took steps for the national and international protection of copyright which had no connexion with the Berne Convention. These three States are not included in the list of contracting States to the Berne Convention drawn up by the Office.[133]

Ghana: . . . [the] question is under study.[134] This reply by Ghana is dated 22 August 1960. It should be pointed out, however, that Ghana subsequently adopted new legislation, Act 85 of 1961 relating to copyright [135] and on 22 May 1962 acceded to the Universal Copyright Convention of 6 September 1952.[136]

Federation of Malaya: . . . the Government . . . is at present studying new legislation designed to protect copyright on the territory of the Federation; it has not yet studied the question of the international protection of copyright. The Minister for Foreign Affairs is therefore not yet in a position to express an opinion as to his Government's intentions concerning his country's accession to the Union. . . .[137]

Nigeria: . . . the Government . . . is at present studying the question of the Federation's accession to various international

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[128] See *Le Droit d'Auteur,* 1960, p. 338. France had extended the application of the Berne Convention, in the text revised at Rome, to Cambodia from 26 May 1930, in accordance with article 26 of the Convention. (*Le Droit d'Auteur,* 1930, p. 7).

[129] See *Ibid.,* 1960, p. 337. Japan had declared that the Berne Convention revised at Rome applied to Korea from 1 Augustus 1931, in accordance with article 26 of the Convention. (*Le Droit d'Auteur,* 1932, p. 40.)

[130] See above, foot-note 27.

[131] *Le Droit d'Auteur,* 1960, p. 337. France had declared that the Berne Convention revised at Rome would apply to Viet-Nam as from 26 May 1930, in accordance with article 26 of the Convention (*Le Droit d'Auteur,* 1930, p. 73).

[132] *Ibid.,* 1961, pp. 27 and 28. Japan had declared that the Berne Convention revised at Rome was applicable to Formosa as from 1 August 1931 (*Le Droit d'Auteur,* 1932, p. 40). See also "*L'Union internationale au commencement de 1950*" (*Le Droit d'Auteur,* 1950, p. 7).

[133] *Copyright,* 1965, pp. 4 and 5.

[134] *Le Droit d'Auteur,* 1960, p. 337. The United Kingdom had extended the application of the Berne Convention revised at Rome to Ghana (then the Gold Coast) on 1 October 1931, in accordance with article 26 of the Convention (*Le Droit d'Auteur,* 1932, p. 39).

[135] *Le Droit d'Auteur (Copyright),* 1962, p. 89. Under the 1961 Act, the copyright countries are, in the first place, the parties to the Universal Copyright Convention (see articles 2, 14 and part I of the schedule to the Act). This Act repeals the United Kingdom Copyright Act of 1911 as well as the Copyright Ordinance (cap. 126) (see art. 17 of the Act).

[136] With effect from 22 August 1962, in accordance with article IX, paragraph 2, of the Universal Copyright Convention [*Le Droit d'Auteur (Copyright),* 1962, p. 99.]

[137] *Le Droit d'Auteur,* 1961, p. 134.

organizations, including your Organization. We will inform you as soon as a decision is reached concerning the Federation's membership of your Organization. . . .[138]

D. *General questions concerning cases of succession*

1. WAYS IN WHICH THE STATES CONCERNED MANIFEST THEIR CONSENT

71. Generally speaking, the Swiss Government has not expressed a definite opinion about the relations between States and the Berne Union, except in so far as it has received communications from the States concerned. The fact is that a number of new States, territories of members of the Union before they attained independence, which have not yet stated their position with regard to the Berne Union, are not included in the list pertaining to the "Field of application of the Rome and Brussels Conventions" prepared by the Office and published in *Copyright*.[139] However, in 1960, the Director of BIRPI took the initiative of consulting all the new States which were formerly territories of members of the Union.

72. New States, formerly territories of members of the Union, have manifested their desire to remain in the Union by succession in various ways. The most common has recently been for a new State, formerly a territory of a member of the Union, to become the successor State by communicating "a declaration of continuity" directly to the Swiss Government. That course has been followed by *Cameroon, Cyprus, Congo (Brazzaville), Ceylon,*[140] *Dahomey, Democratic Republic of the Congo, Madagascar, Mali* and *Niger.*

73. In other cases, succession has taken place in accordance with a communication from the metropolitan contracting State to the Swiss Government. That was the case before the Second World War of the United Kingdom dominions: *South Africa, Australia, Canada, India,* and *New Zealand;* and, after the Second World War, of *Indonesia.* In the case of Indonesia, the Netherlands drew the attention of the Swiss Government to the general clause on succession to treaties in the bilateral agreement on the transfer of sovereignty concluded between Indonesia and the Netherlands. With the exception of misunderstanding which arose in that case and which was subsequently dispelled,[141] the Swiss Government and the Office have accepted the two forms of manifesting consent described above and there have been no objections from the contracting States members of the Union.

74. In the case of certain States which had been contracting States members of the Union before attaining independence, the advent of independence was not accompanied by notifications concerning their status in the Union. That applies to *India, Syria, Tunisia* and *Morocco.* On the other hand, *Lebanon* gave notification of accession, which was regarded by the Office as a declaration whereby the country in question manifested its desire to remain in the Union "as a separate part of Syria", with which, before it attained independence, it had constituted a single contracting State member of the Union.[142]

75. Restitution of the rights in the Union of one contracting State, *Austria,* which recovered its independence after having been annexed to another contracting State, was effected by a declaration by the Austrian Government about its membership in the Union which was approved by the Brussels Revision Conference.[143]

76. The former territories of members of the Union which did not adopt the method of succession but acceded to the Berne Convention notified their accession directly to the Swiss Government (the *Ivory Coast, Gabon, Senegal, Upper Volta*). The same procedure was followed by States detached from a contracting State or from a dependent territory of a contracting State: they subsequently acceded to the Convention *(Ireland, Israel, Pakistan).*

77. A new State which becomes a contracting country of the Union by succession must choose the class in which it wishes to be placed for the purpose of sharing the expenses of the Office. As a general rule, the class is indicated in the declaration of continuity or in the communication from the former metropolitan country. However, since the choice of a class is a very different action from the declaration of continuity, it may be made after the declaration by a separate notification to the Swiss Government. The new State is regarded as a contracting country whether or not it has indicated its choice of class. After the Netherlands has approached the Swiss Government, *Indonesia* was included among the contracting countries until its denunciation of the Convention, although, during the period of its membership in the Union, a choice of class had not been notified to the Swiss Government.[144]

2. CONTINUITY IN THE APPLICATION OF THE CONVENTIONS AND PARTICIPATION IN THE UNION AS A CONTRACTING STATE

78. Continuity in the application of the Conventions is undoubtedly one of the most important results of succession. That continuity was fully recognized under the Berne Union. The instrument or instruments to

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[138] *Ibid.*

[139] In 1962, in a foot-note to the list, it is expressly stated that "This list should be completed by adding certain countries which have recently attained independence and to which the revised Berne Convention had previously been applied in virtue of article 26... We shall add the names of these countries to the list as soon as we have all the necessary information...". (*Le Droit d'Auteur,* 1962, p. 5, note (*a*)). The note does not appear from 1963 on.

[140] Ceylon notified its accession, but the notification was interpreted as a declaration of continuity by the Swiss Government (see above, para. 33).

[141] See above, paras. 26-31.

[142] See above, para. 47.

[143] See above, paras. 39-41.

[144] The same principles apply in the case of accession. *Upper Volta* was to accede without specifying choice of class; the choice was made later and communicated by the Swiss Government to the Governments of the countries of the Union (*Le Droit d'Auteur (Copyright),* 1963, p. 180).

which former territories of members of the Union which became contracting countries after independence succeed, are regarded as applying to the countries in question as from the date or dates when that instrument or those instruments were extended to their territories by the former metropolitan country. There is no break in continuity in the legal relationships binding the successor States.[145]

79. On the other hand, there is a break in continuity when a former dependent territory of a contracting State, or a new State detached from a contracting State or from a territory of a member of the Union chooses the method of accession, because for a State to accede, it must no longer be bound by the instrument to which it accedes. The legal relationship is interrupted between the date of the State's independence and the date of its accession.[146]

80. An examination of the cases discussed in the Union proves that retroactive accession was not permitted. The retroactive accession requested by the State of *Israel* was opposed by certain members of the Union and finally was not accepted by the Swiss Government.[147] In the case of Ceylon, its notification of its intention to accede from the date when the United Kingdom had declared the Convention applicable to its territory was interpreted by the Office as a declaration of continuity.[148] *Lebanon's* notification of accession after it attained independence was regarded by the Office as a declaration that it wished to continue its membership in the Union as a contracting country separate from *Syria.*[149] Nor was there any question of any kind of retroactive accession in the case of *Austria.*[150]

81. Succession and accession also have different effects with regard to the date of admission to the Union as a contracting country. The acceding State today becomes a contracting country (*a*) one month after notification by the Swiss Government to the Governments of the countries of the Union,[151] or (*b*) at a later date indicated by the acceding country.[152] A successor country enters the Union on: (*a*) the date of notification of continuity; [153] (*b*) a date prior to that notification specified in the declaration of continuity; [154] (*c*) the date of the country's attainment of independence;[155] (*d*) the date of notification of the change in the territory's status by the former metropolitan country;[156] or (*e*) on the date specified in the notification of the change in the territory's status by the former metropolitan country.[157] The date of admission to the Union under (*d*) and (*e*) is governed by the Berlin text. At the present time, the date of notification of the declaration of continuity is the one usually adopted. In the case of a successor State which has not made a declaration of continuity because the succession took place in accordance with a general succession clause in a bilateral agreement for the transfer of sovereignty, the Swiss Government appears to have regarded the date of accession to independence as the date of admission to the Union.[158]

82. However, it should be pointed out that the distinction between the date of succession to the conventional instruments and the date of admission to the Union has only been clearly drawn by the Office in recent years. Until 1964 *Ceylon* was included in the list drawn up by the Office of States which had acceded to the Rome text and entered the Union on the same date, i.e., on 1 October 1931. From 1965 on, the date of Ceylon's admission to the Union was regarded as being the date of notification of the declaration of continuity, i.e., 20 July 1959.[159] Likewise, from 1957 to 1959, *Indonesia* was listed as having been admitted to the Union on 1 April 1913, the date of the application of the Berlin text to the Netherlands East Indies by the Government of the Netherlands.[160]

3. QUESTION OF CONVENTIONAL RELATIONS BETWEEN A STATE WHICH HAS SUCCEEDED TO A PARTICULAR REVISED TEXT AND STATES PARTIES TO A PREVIOUS TEXT SIMULTANEOUSLY IN FORCE

83. A successor State which was formerly a territory of a member of the Union succeeds to the revised texts applied to its territory by the former metropolitan country. In 1928, *South Africa, Australia, Canada, India* and *New Zealand* succeeded to the 1908 Berlin text. After the Second World War, *Ceylon, Cyprus* and

[145] See the table on the field of application of the Convention and its revised texts published in *Copyright*, 1967 pp. 2 and 3. Thus, for example, *Ceylon* and *Cyprus* are listed as having acceded to the Rome text on 1 October 1931; the *Democratic Republic of the Congo*, on 20 December 1948 to the Rome text and on 14 February 1952 to the Brussels text; *Cameroon, Congo (Brazzaville), Dahomey, Mali* and *Niger* on 22 December 1933 to the Rome text and on 22 May 1952 to the Brussels text. *Indonesia*, before denouncing the Convention, was regarded as having acceded to the Rome text on 1 October 1931 (*Le Droit d'Auteur*, 1957, p. 2).

[146] This applies to the *Ivory Coast, Gabon, Senegal* and *Upper Volta* on the one hand, and to *Ireland, Pakistan* and *Israel* on the other.

[147] See above, paras. 34-37.

[148] See above, paras. 32 and 33.

[149] See above, paras. 45-48.

[150] See above, paras. 39-41.

[151] *Gabon, Upper Volta, Senegal, Israel* and *Pakistan.*

[152] The *Ivory Coast.* The accession of *Ireland* took effect from the date of notification by the United Kingdom Government to the Swiss Government, that is, on 5 October 1927, and not a month after notification by the Swiss Government to the countries of the Union nor at any specified later date. The reason is that Ireland acceded under the terms of the Berlin text, article 25 of which did not specify when accession took effect, whereas that specification was made subsequently in the Rome and Brussels texts in the terms given above.

[153] *Cyprus, Ceylon, Cameroon, Congo (Brazzaville), Democratic Republic of the Congo, Dahomey, Mali* and *Niger.*

[154] *Madagascar.*

[155] *Indonesia.*

[156] *Australia* and *Canada.*

[157] *South Africa, India* and *New Zealand.*

[158] See above, para. 29.

[159] *Copyright, 1965*, p. 4.

[160] *Le Droit d'Auteur*, 1957, p. 3; *ibid.*, 1958, p. 3; and *ibid.*, 1959, p. 3.

Indonesia succeeded to the Rome text of 1928 and *Cameroon, Congo (Brazzaville), Dahomey, Madagascar, Mali, Niger* and the *Democratic Republic of the Congo* succeeded to the Brussels text of 1948. In all these cases, the revised text to which they succeeded had previously been extended to the territories of these States by their former metropolitan countries, the United Kingdom, Netherlands, France and Belgium respectively. The Office's interpretation of *Cyprus's* declaration of continuity is instructive on this point. The note from Cyprus referred specifically to the Rome and Brussels texts. Since the Brussels text had not been applied to Cyprus before its independence, the Office considered that the note from Cyprus was tantamount to a declaration of continuity with respect to the Rome text and of accession to the Brussels text.[161]

84. The declarations of continuity of the *Congo (Brazzaville), Dahomey, Mali* and *Niger* specifically state that these Republics, in acceding to the Brussels text, retain the rights they had acquired under the previous régime.[162] The declaration of *Madagascar* states that the Government of the Malagasy Republic considers itself bound "by the Berne Convention of September 1886, as last revised at Brussels on 26 June 1948".[163] The *Cameroonian* declaration does not contain that phrase, but neither does it state that Cameroon was succeeding to any specific text. Cameroon states that it "regards itself as bound by the Convention ... which had been extended to the territory of the Republic before its attainment of independence".[164] *Ceylon* and *Cyprus* succeeded to the text which had been extended to their respective territories before independence, that is, the Rome text. The *Democratic Republic of the Congo* states in its declaration of continuity that it is succeeding to the Brussels text and says nothing about the Rome text, which Belgium had also applied to its territory. The Office appears to have felt that succession to the last revised text applied to the former territory of a member of the Union by the metropolitan country included succession to previous texts which had also been extended to the territory of the successor State before its attainment of independence.[165]

85. The diversity of legal relations within the Union resulting from the existence of several revisions simultaneously in force raises the question whether a new State to which the Rome and Brussels texts have been applied can now become contracting country by succeeding to the Rome text instead of the Brussels text. In addition, there is the problem of the legal régime to be applied to relations between a State which has succeeded to a given revision and the contracting States which have not yet become parties to that text. Some aspects of the latter problem resemble that of the relations between States which have acceded to the latest revision opened for accession and the old members of the Union which have not yet acceded to the revision in question. It seems that no definitive solution to this problem has yet been found within the Berne Union.[166]

4. RESERVATIONS

86. Colonies, possessions or overseas territories which form part of the Berne Union not as contracting countries but as dependent territories of their respective metropolitan countries follow the régime applied to the latter so far as reservations are concerned, except where otherwise stated.[167] That régime has been maintained after independence in the cases of succession which have occurred within the Berne Union.

87. Belgium entered no reservation under the régime of the Berlin text, the Rome text or the Brussels text. In extending the Rome and Brussels texts to the former Belgian Congo, Belgium did not formulate any reservations for that territory. The *Democratic Republic of the Congo* joined the Union by succession and succeeded to the Brussels text without reservations.

88. The *United Kingdom* entered a reservation under the régime of the Berlin text. Its accession to that text, which was extended to "all the British colonies and foreign possessions, with the exception of the following: India, the Dominion of Canada, the Federation of Australia, the Dominion of New Zealand ..., the Union of South Africa ..." was accompanied by a reservation concerning retroactivity.[168] The United Kingdom subsequently acceded on behalf of the *Commonwealth of Australia,*[169] *India,*[170] the Dominion of New Zealand,[171] and the *Union of South Africa,*[172] with the same reservation on retroactivity. On the other hand, the United Kingdom's accession on behalf of *Canada* does not refer to that reservation.[173] When ratifying the Rome text in 1931 the United Kingdom abandoned its reservation with regard to the Berlin text,[174] thus becoming a

[161] *Copyright*, 1965, p. 3, and above, paras. 63-65.

[162] See above, para. 58.

[163] *Copyright*, 1966, p. 90.

[164] *Le Droit d'Auteur (Copyright)*, 1964, p. 176.

[165] *Ibid.*, pp. 6 and 7.

[166] See *Copyright*, 1965, pp. 4 and 5, and G. Ronga, (the) "Position in the Berne Union of the countries which recently become independent", *Le Droit d'Auteur*, 1960, pp. 322-324.

[167] *Le Droit d'Auteur*, 1953, p. 4.

[168] Article 18 of the Berlin text was replaced by article 14 of the Berne Convention and No. 4 of its Closing Protocol, amended by the Additional Act of Paris of 1896 (*Le Droit d'Auteur*, 1912, p. 90).

[169] Note of 13 November 1913 (*Le Droit d'Auteur*, 1913, p. 165).

[170] Note of 4 February 1914 (*Le Droit d'Auteur*, 1914, p. 33).

[171] Note of 30 March 1914 (*Le Droit d'Auteur*, 1914, p. 46).

[172] Note of 28 April 1920 (*Le Droit d'Auteur*, 1920, p. 49).

[173] Note of 7 January 1924 (*Le Droit d'Auteur*, 1924, p. 13). The only restriction accompanying the accession on behalf of Canada is the following: "Pursuant to the Additional Protocol of 1914, the Dominion of Canada restricts the protection of copyright with regard to the United States of America; the restrictions to which copyrights coming within the jurisdiction of this country are subject are established by articles 13, 14, 15 and 27 of the 1921 Copyright Act".

[174] A country renouncing its reservations when accepting the latest revision may, of course, extend the effects of that renunciation to countries governed by the previous text or texts. In principle, however, the reservations remain valid for countries still bound by the previous text or texts. (*Le Droit d'Auteur*, 1953, p. 4).

country with no reservations, but Australia, Canada, India, New Zealand and South Africa succeeded to the Convention in April and October 1928 under the régime of the Berlin text, for the Rome text had not yet come into force. Hence, *Australia, India, New Zealand* and *South Africa* joined the Union by succession, as reserving countries, with the reservation on retroactivity formerly entered on their behalf by the United Kingdom, whereas *Canada* joined the Union by succession as a country having no reservations.

89. *Australia, India, New Zealand* and *South Africa* abandoned their reservations, as did the United Kingdom, when ratifying or acceding to the Rome text as contracting countries of the Union. In 1959 and 1964 respectively, *Ceylon* and *Cyprus* became contracting countries of the Union under the régime of the Rome text without reservation, as the United Kingdom had formulated no reservation under that text.[175]

90. Under the régime of the Berlin text, *France*, together with Algeria and its colonies, had entered a reservation relating to works of applied art.[176] France maintained that reservation when acceding to the Rome text, but dropped it on ratifying the Brussels text. France extended the Berlin, Rome and Brussels texts to its overseas colonies and territories. *Cameroon, Congo (Brazzaville), Dahomey, Madagascar, Mali* and *Niger,* on becoming contracting States of the Union by succession, inherited France's reservation relating to works of applied art as far as the Berlin and Rome texts are concerned. They have no reservations as far as the Brussels text is concerned.[177]

91. The Netherlands, together with the Netherlands East Indies, had reserved its position under the Berlin text. It had entered three reservations on translation rights,[178] the content of newspapers and magazines[179] and representation and performing rights.[180] The Netherlands dropped these reservations when it ratified the Rome text. When *Indonesia* joined the Union by succession, it became a country with no reservations with respect to the Rome text.[181]

92. In acceding to the Brussels text, new States separated from a contracting State, or former territories of members of the Union, which choose to join the Union as contracting countries by accession after attaining independence, can enter only the reservation on translation rights which that text authorizes for "countries outside the Union". None of these States, that is Gabon, Ireland, Israel, Ivory Coast, Pakistan, Senegal, and Upper Volta, has used its right to formulate a reservation on translation rights.[182]

E. *Summary*

93. Fifty-eight contracting States are now members of the Berne Union.[183] Of these, fourteen became contracting States by succession,[184] five before the Second World War[185] and nine after the war.[186] All these last States had been territories of members of the Union. The five States which joined the Union by succession before the Second World War were dominions of the United Kingdom. The States which joined the Union by succession after the Second World War were formerly dependent territories of Belgium, France, the Netherlands and the United Kingdom. Eight of these States became contracting States as a result of the steps taken in 1960 by the director of BIRPI.[187]

94. Although all the States which became contracting States by succession had previously been territories of members of the Union, not all former territories of members of the Union, chose the method of succession. Four States which were formerly territories dependent on France joined the Union by accession.[188] Likewise, three States separated from certain contracting States, or separated from former Unionist territories dependent on a contracting State, have themselves become contracting countries by accession.[189]

95. Some States which were contracting countries before independence have not changed their position in the Union as a result of independence.[190] However, two of those States, which formerly constituted a single

[175] However, *Ceylon,* in its declaration of accession, interpreted as a declaration of continuity by the Swiss Government, stated that it "reserves for itself the right to enact local legislation or the translation of educational, scientific and technical books into the national language" (see above, para. 32). The Rome and Brussels texts state that "countries outside the Union" which accede directly to those texts may enter a reservation regarding the right of translation into the language or languages of that country. They may substitute article 5 of the Berne Convention of 1886 revised at Paris in 1896 for article 8 of the Rome and Brussels texts (see above, para. 13). In the list of contracting States drawn up by the Bureau, *Ceylon* figures as a country having no reservations (*Le Droit d'Auteur (Copyright),* 1964, p. 6).

[176] Article 2.4 of the Berlin text was replaced by article 4 of the Berne Convention of 1886 (*Le Droit d'Auteur,* 1953, pp. 2-5).

[177] *Copyright,* 1965, pp. 4 and 5.

[178] Article 8 of the Berlin text, replaced by article 5 of the Berne Convention, as amended by the Additional Act of Paris of 1896 (*Le Droit d'Auteur,* 1953, pp. 2 and 3).

[179] Article 9 of the Berlin text, replaced by article 7 of the Berne Convention of 1886, as amended by the Additional Act of Paris of 1896 *(Ibid.).*

[180] Article 11 of the Berlin text, replaced by article 9.2 of the Berne Convention of 1886 *(Ibid.).*

[181] *Le Droit d'Auteur,* 1957, p. 2.

[182] *Le Droit d'Auteur (Copyright),* 1964, pp. 6 and 7.

[183] See above, foot-note 27.

[184] *Australia, Cameroon, Canada, Ceylon, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Dahomey, India, Madagascar, Mali, New Zealand, Niger* and *South Africa. Indonesia* also became a contracting State by succession, but subsequently denounced the Convention and is no longer a member of the Union.

[185] *Australia, Canada, India, New Zealand* and *South Africa.*

[186] *Cameroon, Ceylon, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Dahomey, Madagascar, Mali* and *Niger.*

[187] *Cameroon, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Dahomey, Madagascar, Mali* and *Niger.*

[188] *Gabon, Ivory Coast, Senegal* and *Upper Volta.*

[189] *Ireland, Israel* and *Pakistan.*

[190] *Lebanon, Morocco, Syria* and *Tunisia.*

contracting country, became two separate contracting States after attaining independence.[191] After uniting with a non-contracting State, one of these States left the Union and denounced the Convention.[192]

96. A contracting State annexed by another contracting State had its rights within the Union restored by the Revision Conference, after regaining its independence.[193]

97. Some former territories which have become independent no longer consider themselves bound by the Berne Convention and have left the Union.[194] Others are studying the question.[195]

98. In addition, twenty-four new States to whose territories the Berne Convention applied before they became independent have not yet taken a decision.[196] Their position in the Berne Union remains uncertain, even if sometimes some of these new States continue to apply, with or without minor modifications, the domestic legislation promulgated in harmony with the Berne Convention by the former metropolitan country.[197]

II. Permanent Court of Arbitration and the Hague Conventions of 1899 and 1907 [198]

A. *The Hague Conventions of 1899 and 1907*

1. ESTABLISHMENT OF THE PERMANENT COURT OF ARBITRATION: ORGANS OF THE COURT

99. The Permanent Court of Arbitration was established by the Convention for the Pacific Settlement of International Disputes concluded at The Hague on 29 July 1899, at the First Peace Conference. The Convention was revised and added to some years later, following the Second Peace Conference, by the Convention of the same title, signed at The Hague on 18 October 1907.[199] Articles 20-29 of the 1899 Convention and articles 41-50 of the 1907 Convention, concerning the establishment, maintenance, competence, composition and organization of the Court, constitute a chapter of the part concerning international arbitration, which also deals with the system and procedure of arbitration. Other chapters of the Conventions deal with the subjects of good offices and meditation, and of international commissions of inquiry.

100. Each Contracting Power selects four persons at the most as members of the Court, who are inscribed in a list by an International Bureau serving as registry for the Court. A Permanent Administrative Council, composed of the diplomatic representatives of the Contracting Powers accredited to H.M. the Queen of the Netherlands and the Minister for Foreign Affairs of the Netherlands, who acts as President, is charged with the direction and control of the International Bureau.[200]

2. PROCEDURE FOR BECOMING PARTY TO THE CONVENTIONS

101. This question, which had already claimed attention earlier, particularly in the period preceding the Second Peace Conference and that following the First World War, came up again after the Second World War and its practical importance has grown constantly in recent years with the appearance of an ever greater number of new States as a result of decolonization.[201]

102. The Hague Conventions are general multilateral treaties, in the sense that they are concerned with general rules of international law and deal with questions of general interest for all States. However, States which did not take part in their preparation can only become parties with the subsequent consent of the Contracting States.

(*a*) Distinction between States which were represented at or invited to the Peace Conferences and those which were not

103. The final provisions of the two Conventions distinguish two categories of States: the Powers which were "represented at" or "invited to" the First or Second Peace Conference and those which were not. States belonging to the first category can become parties to the Convention by signature followed by ratification or by accession if they did not sign. The instruments of ratification or accession are to be deposited with

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[191] *Lebanon* and *Syria.*

[192] *Syria.*

[193] *Austria.*

[194] *Cambodia, Republic of China* (for the *Island of Formosa*), *Republic of Korea* and *Republic of Viet-Nam.*

[195] *Ghana, Federation of Malaya* and *Nigeria.*

[196] *Algeria, Burma, Burundi, Central African Republic, Chad, Democratic People's Republic of Korea, Democratic Republic of Viet-Nam, Gambia, Guinea, Jamaica, Jordan, Kenya, Laos, Malawi, Malta, Mauritania, Rwanda, Sierra Leone, Somalia, Togo, Trinidad and Tobago, United Republic of Tanzania, Uganda, Western Samoa* (see: Office of the Berne Union, *Répertoire des documents officiels*, 1948 and *Le Droit d'Auteur*, 1948, p. 141; *ibid.*, 1952, pp. 13 and 49; *Le Droit d'Auteur (Copyright)*, 1963, pp. 112 and 180.

[197] See *Copyright Laws and Treaties of the World*, Washington, D.C., 1956, supplements from 1958 to 1962, sections on each of the new States and the Berne Union; Spanish edition: *Repertorio universal de legislación y convenios sobre derecho del autor*, Madrid, 1960; French edition: *Lois et traités sur le droit d'auteur*, Paris, 1962 and *Le Droit d'Auteur*, 1944-1964, sections entitled "National Legislation".

[198] The following study covers the period up to 29 March 1967.

[199] For the texts of the two Conventions, see James Brown Scott, *The Hague Conventions and Declarations of 1899 and 1907* (1915), pp. 41-88. An official United Kingdom text of the 1907 Convention and Declaration appeared in *H.M.S.O. Miscellaneous, No. 6 (1908), Cd. 4175.*

[200] Articles 20-29 of the 1899 Convention and articles 41-50 of the 1907 Convention. See James Brown Scott, *op. cit.*, pp. 57-63.

[201] See Daniel Bardonnet, "*L'état des ratifications des Conventions de La Haye de 1899 et de 1907 sur le règlement pacifique des conflits internationaux*", *Annuaire français de droit international* (1961), pp. 726-733.

the Government of the Netherlands, which acts as depositary.[202]

(*b*) Procedure open to States not represented at or invited to the Peace Conferences

(i) *Formal procedure laid down in the Conventions*

104. For States not represented at or invited to the Peace Conference, the procedure for participation is established in article 60 of the 1899 Convention and article 94 of the 1907 Convention, as follows: "The conditions on which the Powers... not represented at [invited to] the... Conference may adhere to the present Convention shall form the subject of a subsequent agreement between the Contracting Powers." Accession is thus the procedure which States not represented at or invited to the Peace Conference must employ to become parties to the 1899 or 1907 Convention, but it is subject to the agreement of the States parties to the Convention in question. Without their agreement, a State not represented at or invited to the Peace Conference cannot deposit an instrument of accession to the Convention.[203] These provisions have been applied in a number of cases in the past.[204]

(ii) *Decisions of the Administrative Council of the Court*

105. Since 1955, the Administrative Council of the Court has taken a series of decisions, which, applying for certain cases the procedure for succession to treaties, have resulted in a number of States being added to those in the list of Contracting States. Instead of a special agreement by all Contracting Parties being required for each new State, a simplified procedure is followed, by means of decisions of the Administrative Council of the Court. This procedure involves agreement in advance by States parties to the Conventions of 1899 and 1907 to the participation of new States in those Conventions. This agreement, moreover, is general, in the sense that it applies to certain categories of States rather than to individual States. It is sufficient for certain newly independent States to give notice of their desire to become parties to the Conventions in reply to an invitation made to them. They simply have to address a letter or diplomatic note to that effect to the Government of the Netherlands, which is the depositary State. It should be pointed out, however, that the Administrative Council, in its decisions, has carefully avoided speaking of "succession" or "successor States", merely inviting the States concerned to signify whether they consider themselves Contracting Parties to the Conventions in question.

3. RELATIONSHIP BETWEEN THE TWO CONVENTIONS

106. According to article 91 of the 1907 Convention "the present Convention, duly ratified, shall replace, as between the contracting Powers, the Convention for the pacific settlement of international disputes of the 29th July, 1899". Among the Contracting Parties, therefore, the 1907 Convention has replaced the 1899 Convention, but the legal systems established by the two Conventions are both valid at the same time.

B. *Participation in the Permanent Court of Arbitration*

1. STATES ABLE TO PARTICIPATE IN THE COURT'S ACTIVITIES

107. For a State to be able to participate in the activities of the Permanent Court of Arbitration, it must become party either to the 1899 or to the 1907 Convention.[205] Participation in one or other of these Conventions is sufficient qualification for a State to participate in the

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[202] Articles 58 and 59 of the 1899 Convention and articles 92 and 93 of the 1907 Convention. See James Brown Scott, *op. cit.*, pp. 77 and 78.

[203] The accession of States represented at or invited to the Peace Conferences which did not sign the Conventions is not subject to the subsequent agreement of States parties to the Convention (article 59 of the 1899 Convention and article 93 of the 1907 Convention). Thus, for example, *Nicaragua* acceded to the 1907 Convention on 16 December 1909 without the prior agreement of the Contracting Parties being required. *Nicaragua* had been invited to the Second Peace Conference and had participated in it, signing the Final Act of the Conference. For *Nicaragua*, which had been invited to the Conference, the 1907 Convention was not a closed Convention.

[204] This procedure was first applied on the very eve of the Second Peace Conference. It enabled certain Latin American States to become parties to the 1899 Convention. The *United States* and *Mexico*, the only American Powers represented at the First Conference (Brazil had been invited but declined the invitation), were authorized on 15 January 1902 by the Second Pan American Conference, which met at Mexico, "to negotiate with the other signatory Powers of the Convention for the adherence thereto of the American nations so requesting and not now signatory to the said Convention". An agreement was reached among the States which had ratified the 1899 Convention and a Protocol was signed by those States at The Hague on 14 June 1907 "to enable the States that were not represented at the First Peace Conference and were invited to the Second to adhere to the aforesaid Convention" (the Latin American States had been invited to the Second Conference). As had been agreed in the Protocol, a procès-verbal of adhesions, which was to take effect immediately, was drawn up and opened for signature by the Minister for Foreign Affairs of the Netherlands on 15 June 1907. On that day and the days following, the procès-verbal received the accession of seventeen Latin American States, which thus became parties to the 1899 Convention (James Brown Scott, *op. cit.*, pp. viii, xxxii and xxxiii). They were the following: *Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Nicaragua, Panama, Paraguay, Peru, Uruguay* and *Venezuela*. The accessions of *Czechoslovakia* (12 June 1922), *Finland* (9 June 1922) and *Poland* (26 May 1922) to the 1907 Convention, following the First World War (*Rapport du Conseil Administratif de la Cour Permanente d'Arbitrage pour l'année 1922*, p. 5) were also preceded by an agreement among the Contracting Powers.

[205] Although participation in the Court's activities is confined to the Contracting Powers, the jurisdiction of the Court is open "within the conditions laid down in the regulations" to non-contracting Powers (art. 26 of the 1899 Convention and art. 47 of the 1907 Convention). See James Brown Scott, *op. cit.*, p. 61.

activities of the Court.[206] However, although the Government of the Netherlands, the depositary State of the Conventions, and the International Bureau of the Court consider that a State which recognizes itself to be party to one of the Conventions is automatically a "member" of the Permanent Court of Arbitration, there are certain States which do not accept this thesis and make a distinction between the idea of being a "Contracting State or Party" and that of being a "State member of the Court".[207]

2. STATES PARTICIPATING IN PRACTICE IN THE COURT'S ACTIVITIES

108. Any State which participates in practice in the activities of the Permanent Court of Arbitration, other than those directly related to the settlement of specific disputes, is invited to: (*a*) select four persons at the most disposed to accept the duties of arbitrator, as members of the Court; (*b*) attend proceedings of the Administrative Council of the Court and participate in its decisions; (*c*) share the expenses of the International Bureau, which are borne by the contracting Powers in the proportion fixed for the International Bureau of the Universal Postal Union.

C. *Cases comprising elements related to the succession of States*

1. BEFORE THE SECOND WORLD WAR

(*a*) Formation of Yugoslavia

109. *Serbia* and *Montenegro* had signed and ratified the 1899 Convention and signed that of 1907 and participated as independent States in the Permanent Court of Arbitration. Serbia's ratification of 11 May 1901 seems to have been considered binding on *Yugoslavia*.[208] Thus, since 1921, diplomatic representatives of *Yugoslavia* have participated in the proceedings of the Administrative Council in place of representatives of the former *Serbia*.[209] Since 1920, *Yugoslavia* has replaced *Serbia* on the list of countries sharing the expenses of the International Bureau and members of the Court selected by *Yugoslavia* have taken the place of those selected by *Serbia*.[210] As far as *Montenegro* is concerned, members of the Court selected by that State appeared in the reports of the Administrative Council until 1923,[211] but from 1921 onwards *Montenegro* no longer shared the expenses of the International Bureau, the Government of H.M. the King of the Serbs, Croats and Slovenes having given notice that the State in question was now part of *Yugoslavia*.[212] *Montenegro* as such therefore ceased to participate in the Permanent Court of Arbitration as a result of its incorporation into *Yugoslavia*.

(*b*) Dissolution of Austria-Hungary

110. *Austria-Hungary* ratified the 1899 Convention on 4 September 1900 and the 1907 Convention on 27 November 1909 and participated thereafter in the activities of the Permanent Court of Arbitration. It ceased to participate after the conclusion of the treaties of Saint-Germain and Trianon. In the report of the Administrative Council of the Court for 1919, *Austria-Hungary* no longer appears in the table giving the apportionment of the expenses of the International Bureau[213] and from 1920 onwards the list of arbitrators no longer gives any members of the Court selected by *Austria-Hungary*.[214] From 1919 onwards, there are no longer any diplomatic representatives of *Austria-Hungary* to be found among those taking part in the proceedings of the Administrative Council.[215]

111. In 1921, the Hungarian Government gave notice, by means of a communication from the Chargé d'Affaires of *Hungary* at The Hague that it considered "Hungary to be still bound by The Hague Convention of 18 October 1907 for the Pacific Settlement of International Disputes, since despite the fact that *Austria-Hungary* appears as a signatory Power of the Convention, the Convention was nevertheless concluded by the two States which formed the Monarchy and, after being ratified in accordance with the Constitution, became Hungarian law".[216] The *Rapport du Conseil administratif de la Cour pour 1923* stated that "Hungary is to be considered a signatory Power [of the 1907 Convention] in view of the fact that under Hungarian constitutional law, the Hungary of today, whose boundaries were demarcated by the Treaty of Trianon, is identical with the former Kingdom of Hungary, which, at the time of the dual system, formed with Austria the Austro-Hungarian Monarchy",[217] and the report for 1923 added

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[206] This is the case with *Italy*, for example, which ratified the 1899 Convention on 4 September 1900, but did not ratify the 1907 Convention. *Italy* nevertheless continues to participate in the Permanent Court of Arbitration, since it has never denounced the 1899 Convention. The *United Kingdom* and *Bulgaria* also ratified the 1899 Convention but not the 1907 Convention. *Italy*, the *United Kingdom* and *Bulgaria*, however, have always appeared among the States participating in the Court in the list reproduced in the annual reports of the Administrative Council of the Permanent Court of Arbitration.

[207] Information provided by the Secretary-General of the Permanent Court of Arbitration.

[208] Up to 1920, the names "*State or Kingdom of the Serbs, Croats and Slovenes*" and "*Yugoslavia*" were used indiscriminately in the reports of the Administration Council, but since then the reports have only used the latter.

[209] *Rapport du Conseil Administratif de la Cour Permanente d'Arbitrage pour 1921*, p. 10.

[210] *Ibid.*, pp. 10 and 21.

[211] *Rapports du Conseil administratif pour 1919, 1920, 1921, 1922*, p. 8, and *Rapport pour 1923*, p. 9.

[212] *Rapport du Conseil administratif de la Cour Permanente d'Arbitrage pour 1921*, p. 20, note 1.

[213] *Ibid.*, p. 18, note 1.

[214] *Ibid.*, p. 6 and *Rapport du Conseil administratif pour 1920*, p. 6.

[215] *Rapport du Conseil administratif pour 1919*, p. 14.

[216] *Rapport du Conseil administratif pour 1921*, p. 20, note 2.

[217] *Ibid.*, p. 5.

also that for the same reasons *Hungary* was to be considered as having ratified the 1907 Convention.[218] Since 1922, members selected by *Hungary* have figured among the members of the Court, Hungarian diplomatic representatives have participated in the proceedings of the Administrative Council and *Hungary* has contributed to the expenses of the International Bureau.

112. As far as *Austria* is concerned, it was not until 14 December 1937 that it recognized itself as bound by the 1899 and 1907 Conventions. On that date the Federal Chancellor of *Austria* declared "that Austria recognizes itself to be bound by the Conventions of 1899 and 1907 since they were signed and ratified in the past in the name of the Austro-Hungarian Monarchy".[219] It was only in 1957, however, that *Austria* began to participate in practice in the activities of the Permanent Court,[220] as a result of certain decisions taken by the Administrative Council of the Court, which will be discussed below.

2. AFTER THE SECOND WORLD WAR

(*a*) Decisions of the Administrative Council of the Court (1955-1957) and States participating in the Conventions of 1899 and 1907 and in the activities of the Court as a result of those decisions

113. Cases with elements relating to the succession of States had thus already occurred in the context of the 1899 and 1907 Conventions long before the decisions taken in 1955 by the Administrative Council of the Court. What seems to be new is the adoption by the Council of a general procedure of consultation designed to regularize the situation resulting from the appearance of new States or from changes in the status of former Contracting States. Also new is the fact that the Government of the Netherlands, as depositary State for the Conventions, and organs of the Court such as the Council and the Bureau have been used for the application of this procedure. In this connexion, the *Rapport du Conseil administratif pour 1957* states the following:

> In 1955, the Ministry of Foreign Affairs of the Netherlands, the depositary State for the Hague Conventions for the Pacific Settlement of International Disputes of 1899 and 1907, expressed the opinion that certain States which could be considered High Contracting Parties were not participating in the work of the Court. Those States were not represented on the Administrative Council (article 28 of 1899, article 49 of 1907), they did not share the expenses of the Bureau (article 29 of 1899, article 50 of 1907) and they had not selected persons to perform the duties of arbitrator (article 23 of 1899, article 44 of 1907). They included, among others, States which had been part of one of the High Contracting Parties at the time when the Conventions in question had been ratified, but which had subsequently gained full sovereignty.
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> The Administrative Council of the Permanent Court of Arbitration, composed of the diplomatic representatives accredited to The Hague of the States Parties to the 1899 or the 1907 Convention, was of the opinion that this situation needed to be regularized. The Council had requested the Government of the Netherlands, as the depositary State, to approach the High Contracting Parties in order to seek their approval for a recognition of the States in question as Parties to one or the other of the two Conventions. If they agreed, an invitation would be sent to those States by the International Bureau of the Court to appoint representatives to the Administrative Council, to select arbitrators and to share the expenses of the Bureau.
>
> At the Council's meeting of 15 March 1957, the President of the Council, Minister for Foreign Affairs of the Netherlands, announced that a very large number of Governments had replied, expressly stating that they would not raise any objection to the States in question being considered High Contracting Parties to one or other of the Conventions of 1899 and 1907. No Government had expressed a contrary opinion. In those circumstances, the depositary State was of the opinion that those States could be considered High Contracting Parties to one or other of the Conventions.
>
> Having taken note of that statement, the Administrative Council decided to recognize as High Contracting Parties those of the States in question which expressed a desire to that effect.
>
> The Administrative Council therefore invited the States in question:
>
> 1. To appoint representatives to the Administrative Council;
>
> 2. To select four persons at the most disposed to accept the duties of arbitrator in accordance with article 23 of the 1899 Convention (article 44 of the 1907 Convention); and
>
> 3. To share the expenses of the Bureau, in accordance with article 29 of the 1899 Convention (article 50 of the 1907 Convention), beginning on 1 January 1957.[221]

114. These decisions of the Administrative Council of the Court concerned two kinds of States. Firstly, there were States formed as a result of the profound political and/or territorial changes undergone by former Contracting Parties to the 1899 and 1907 Conventions. Secondly, there were States which had been united with one of the Contracting Parties or had been part of its overseas territories or possessions at the time when the Conventions had been ratified, but which had since become independent and sovereign States.

(i) *Former dependent territories of a Contracting State*

a. *which have considered themselves Contracting Parties and participate in the Court's activities*

115. As a result of the decisions taken by the Administrative Council of the Court (1955-1957), nine States *(Australia, Cambodia, Canada, Ceylon, Iceland, India, Laos, New Zealand, Pakistan)*, which at the time of the ratification of the 1899 or 1907 Convention had been dependent territories of a Contracting Party, became Contracting Parties to the 1899 and 1907 Conventions or to the former alone.

116. At some point before or after the decisions taken by the Administrative Council, all those States had expressed the desire to become Contracting Parties

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[218] *Ibid.*, p. 6.

[219] Information provided by the Secretary-General of the Permanent Court of Arbitration.

[220] *Rapport du Conseil administratif de la Cour pour 1957*, p. 6, *in fine.*

[221] *Ibid.*, p. 6.

to the Conventions. Three signified that they wished to be Contracting Parties to both the 1899 and 1907 Conventions, namely, *Iceland* (8 December 1955), *Laos* (18 July 1955), and *Cambodia* (4 January 1956). Until 1944, the date of the dissolution of the Danish Icelandic Union, *Iceland* had been united with *Denmark,* which ratified the Convention or 1899 on 4 September 1900 and that of 1907 on 27 November 1909. In the case of *Cambodia* and *Laos, France* had ratified the 1899 Convention on 4 September 1900 and the 1907 Convention on 7 October 1910. In addition, six members of the Commonwealth indicated their desire to become Contracting Parties to the 1899 Convention, ratified by the *United Kingdom* on 4 September 1900. They were *India* (29 July 1950), *Pakistan* (5 August 1950), *Ceylon* (9 February 1955), *New Zealand* (10 February 1959), *Australia* (1 April 1960) and *Canada* (19 August 1960).[222]

117. All these new Contracting States have since been participating in the activities of the Court. *Cambodia* and *India* have done so since 1957,[223] *Laos* and *Pakistan* since 1958.[224] *Iceland, New Zealand,* and *Ceylon* since 1959 [225] and *Canada* and *Australia* since 1960.[226]

b. *which have not considered themselves Contracting Parties*

118. The Government of the *Philippines* stated "that it did not consider itself bound by the Convention of 1899 or that of 1907" [227] despite the fact that the *United States of America* had ratified the 1899 Convention on 4 September 1900 and the 1907 Convention on 27 November 1909.

(ii) *States which were formed as a result of political and/or territorial changes undergone by former Contracting Parties and which have considered themselves bound by the Conventions and participate in the Court's activities*

119. This was the case with *Austria* and the *Union of Soviet Socialist Republics. Austria,* as indicated above,[228] declared itself bound by the 1899 and 1907 Conventions before the Second World War, on 14 December 1937. It was not until 1957, however, that it began to participate in practice in the work of Permanent Court, as a result of the approaches made by the Internatinoal Bureau in accordance with the decisions taken by the Administrative Council. Since 1957 also, the *Union of Soviet Socialist Republics* has participated in the activities of the organs of the Court.[229] The Soviet Government had previously sent a note, dated 7 March 1955, stating that the *Union of Soviet Socialist Republics* considered itself bound by the 1899 and 1907 Conventions "in so far as they are not at variance with the Charter of the United Nations and have not been amended or replaced by subsequent international agreements".[230]

(*b*) Decision of the Administrative Council dated 2 December 1959 and States Members of the United Nations participating in the 1899 and 1907 Conventions and in the Court's activities as a result of that decision

120. More recently, the Administrative Council, at its meeting of 2 December 1959, considered the situation of States Members of the United Nations which were not yet participating in the Court's activities and decided unanimously:

> ... to request the Government of the Netherlands, the depositary State for the 1899 and 1907 Conventions, to approach the High Contracting Parties in order to seek their approval for the issuing of an invitation to the Governments of States Members of the United Nations which do not yet participate in the Court to state:
>
> 1. Whether they consider themselves a Contracting Party to either the 1899 Convention or the 1907 Convention;
>
> 2. If not, whether they were willing to accede to the Conventions or to one of them.
>
> If it appears from the replies that a State considers itself a Contracting Party to one of the Conventions by reason of the fact that it was formerly part of a State which ratified it or acceded to it, the State in question shall *ipso facto* be considered a High Contracting Party. If, however, a State considers that it does not belong to that category of States, but declares itself willing to accede to one of the Conventions, it shall be required to transmit an act of accession to the Government of the Netherlands. In either case, the State shall only be requested to share the expenses of the Bureau from the year in which it makes its statement.
>
> The High Contracting Parties have authorized the Netherlands Government to take the necessary action in this connexion.[231]

121. The decision of the Administrative Council of the Court of 1959 relates not only to new States which were formerly dependent territories of a Contracting Party to the 1899 and 1907 Conventions, but also to other States Members of the United Nations. For these latter States, the Administrative Council's decision has the legal force of the "subsequent agreement" provided for in the final clauses of the 1899 and 1907 Conventions, to enable States which had not been represented

[222] *Tractatenblad van het Koninkrijk der Nederlanden,* 1963, No. 157, pp. 21-22 and No. 158, p. 35.

[223] *Rapport du Conseil administratif de la Cour pour 1957,* pp. 6 and 7.

[224] *Rapport du Conseil pour 1958,* p. 6.

[225] *Rapport du Conseil pour 1959,* p. 6.

[226] *Rapport du Conseil pour 1960,* p. 4. The report also stated that discussions were being held with *Ireland* and the *Union of South Africa.*

[227] *Rapport du Conseil pour 1960,* p. 4.

[228] See para. 112.

[229] *Rapport du Conseil administratif de la Cour pour 1957,* p. 6, *in fine.*

[230] *Tractatenblad van het Koninkrijk der Nederlanden,* 1963, No. 157, p. 21, and No. 158, p. 35. For the text, see Daniel Bardonnet, *op. cit.,* p. 736. *Russia* had ratified the 1899 Convention on 4 December 1900 and the 1907 Convention on 27 November 1909.

[231] *Rapport du Conseil administratif de la Cour pour 1960,* p. 5.

at or invited to the Peace Conference to deposit their instruments of accession and become Parties to the Conventions. However, it is in the solution given to the problem of the new States which were formerly dependent territories of Contracting States that the main interest of the decision taken in 1959 by the Administrative Council of the Court resides. The new States which have become Members of the United Nations in recent years are for the most part former dependent territories of Powers Parties to the 1899 and 1907 Conventions.[232] In the case of these new Members of the United Nations, the Administrative Council's decision made it possible for them to become parties to the Conventions by succession. They need only send the Netherlands Government a simple declaration of continuity. If these States do not use the succession method, they can always become parties to the Conventions by accession. At the end of June and the beginning of July 1960, the Netherlands Government wrote to about twenty-five States Members of the United Nations which were affected by the Administrative Council's decision.[233]

(i) *States which have considered themselves Contracting Parties and participate in the Court's activities*

122. Five States *(Byelorussian Soviet Socialist Republic, Cameroon, Congo (Democratic Republic of), Ukrainian Soviet Socialist Republic* and *Upper Volta)* gave notice of the fact that they considered themselves Contracting Parties to the 1899 and 1907 Conventions.[234] *Cameroon* and *Upper Volta* acknowledged themselves to be bound by the Conventions by notifying the Netherlands Government to that effect on 1 August 1961 and 30 August 1961 respectively, *France* having ratified the two Conventions.[235] The *Congo (Democratic Republic of)* gave such notification on 25 March 1961, *Belgium* having ratified the 1899 Convention on 4 September 1900 and the 1907 Convention on 8 August 1910. In the case of the *Byelorussian Soviet Socialist Republic* and the *Ukrainian Soviet Socialist Republic,* whose notifications were dated 4 June 1962 and 4 April 1962 respectively, the *Union of Soviet Socialist Republics* had declared itself bound by the 1899 and 1907 Conventions by a note dated 7 March 1955.[236] All these States now participate in the activities of the Permanent Court of Abitration.[237]

(ii) *States which have acceded to the Conventions and participate in the Court's activities*

123. The procedure of accession was adopted by three new States, *Israel, Uganda* and the *Sudan,* which gave notice of their accession to the 1907 Convention on 18 April 1962, 30 April 1966 and 2 December 1966, respectively, and have since participated in the activities of the Court. In accordance with article 95 of the Convention, these accessions became effective sixty days after notification.[238]

D. *General questions concerning cases of succession after the Second World War*

1. WAYS IN WHICH THE STATES CONCERNED MANIFEST THEIR CONSENT

124. The Contracting States showed their consent to the procedure followed by the Administrative Council by participating in the decisions taken by the Council, the organ of the Court in which those States are represented. The decisions were preceded by consultations between each of them and the depositary State. The Bureau or the depositary State was subsequently given the task of making the necessary approaches to the States affected by the Council's decisions. Those States expressed their desire to be considered Contracting States simply by means of a diplomatic note or letter.[239] In no case was any objection raised and the States in question became Contracting States and later participated in practice in the Court's activities.

2. CONTINUITY IN THE APPLICATION OF THE CONVENTIONS AND PARTICIPATION IN THE COURT'S ACTIVITIES AS A CONTRACTING STATE

125. In the table of signatures, ratifications, accessions and denunciations of the 1899 and 1907 Conventions drawn up by the Netherlands Ministry of Foreign Affairs, the successor State appears as having become a party on the date of ratification or accession by the predecessor State [240] and not on the date of the successor

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[232] Daniel Bardonnet, *op. cit.,* p. 731.

[233] In accordance with the spirit and the letter of the Administrative Council's decision, the Netherlands Government appears to be continuing "its efforts to increase the number of States participating in the work of the Permanent Court of Arbitration", taking into account the increase in the number of Members of the United Nations which has occured since the Council's decision (*Rapport du Conseil administratif pour 1963,* p. 4).

[234] *Tractatenblad van het Koninkrijk der Nederlanden,* 1963, No. 157, p. 22, and No. 158, p. 35.

[235] See para. 116 above.

[236] For the declaration by the *Union of Soviet Socialist Republics,* see para. 119 above.

[237] *Rapport du Conseil administratif de la Cour pour 1961,* p. 4, and *pour 1962,* p. 4.

[238] *Tractatenblad van het Koninkrijk der Nederlanden,* 1963, No. 158, p. 35. *Honduras* has also acceded to the 1899 and 1907 Conventions and *Costa Rica* has signified its intention of becoming party to them, but neither of these States, of course, is a new one (*Rapport du Conseil administratif pour 1960,* p. 5, and *pour 1961,* p. 4). *Honduras* did not take part in the First Peace Conference. The 1899 Convention was therefore a closed Convention for *Honduras.* But *Honduras* was invited to the Second Peace Conference, although it did not send a representative (James Brown Scott, *op. cit.,* p. viii). As a Power invited to the Second Conference, it was always able to accede to the 1907 Convention without needing the subsequent agreement of the Contracting Powers (article 93 of the Convention). For *Honduras* the 1907 Convention was not a closed Convention.

[239] Accession always entails the deposit of a formal instrument with the depositary.

[240] Daniel Bardonnet, *op. cit.,* pp. 731 and 738-741. A State which accedes does not become a party until sixty days after the deposit of its instrument of accession (article 95 of the 1907 Convention).

State's independence or the date on which it signifies its desire to be considered a Contracting State. There thus seems to be some confusion between the question of continuity in the application of the Conventions, and that of the date when a former dependent territory of a Contracting State having become an independent State is considered to be a Contracting State. On the other hand, it should be noted that the date of succession to the Conventions should not be confused with the initial date of participation in the Court's activities. The continuity of legal relations only applies to succession to the Conventions. A successor State's participation in the Court's activities only begins after its declaration that it considers itself a Contracting State. Thus, for example, *Canada* stated that its participation in the Court could be considered to take effect from 1 January 1960,[241] whereas according to the table referred to above, it became party to the 1899 Convention "as the United Kingdom", i.e., on 4 September 1900, the date of the ratification of that Convention by the United Kingdom.

126. States which declare themselves bound by the Conventions only share the expenses of the International Bureau from a date close to that of their respective declarations. The Administrative Council's decision of 15 March 1957 fixed 1 January 1957 as the date on which all invited States would begin to share the expenses. Its decision of 2 December 1959 adopted a more flexible criterion, that of the year during which the State in question made its declaration that it considered itself bound by the Conventions a criterion which, moreover, also applies in cases of accession.

E. *Summary*

127. On 29 March 1967, the number of States parties to the Conventions of 1899 and/or 1907 participating in the Permanent Court of Arbitration was sixty-five.[242] Fifteen of these States, former dependent territories of a Contracting State, have become Parties to the 1899 or 1907 Convention and have participated in the Court's activities since the Council adopted the above-mentioned decisions. Of these fifteen States, twelve have become parties to the 1899 or 1907 Convention by succession [243] and three by accession.[244] In addition, *Austria*, the *Byelorussian Soviet Socialist Republic*, the *Ukrainian Soviet Socialist Republic* and the *Union of Soviet Socialist Republics* have considered themselves bound by the 1899 and 1907 Conventions and are participating in the Court's activities. One State, the Philippines, declared that it did not consider itself bound by the 1899 and 1907 Conventions.

III. The Geneva Humanitarian Conventions and the International Red Cross [245]

A. *The Geneva Conventions (1864, 1906, 1929 and 1949)*

128. The Geneva Conventions (1864, 1906, 1929 and 1949) are one of the main sources of the substantive law of the Red Cross. They are multilateral instruments binding the States Parties and codifying the international law of the Red Cross.[246] Concluded under the auspices of the "International Red Cross" and in particular of the International Committee of the Red Cross, they were all prepared at *ad hoc* diplomatic congresses or conferences. They may be classified according to their subject in the following categories:

(a) *Wounded and sick in armed forces in the field*

1. Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 August 1864;
2. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, 6 July 1906;

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[241] *Rapport du Conseil administratif de la Cour pour 1959*, p. 6.

[242] *Argentina, Australia, Austria, Belgium, Byelorussian Soviet Socialist Republic, Bolivia, Brazil, Bulgaria, Cambodia, Cameroon, Canada, Ceylon, Chile, China, Colombia, Congo (Democratic Republic of), Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Federal Republic of Germany, Finland, France, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, India, Iran, Israel, Italy, Japan, Laos, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Romania, Spain, Sudan, Sweden, Switzerland, Thailand, Turkey, Uganda, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela* and *Yugoslavia* (*Rapport du Conseil administratif pour 1966*, pp. 4 and 5).

[243] *Australia, Cambodia, Cameroon, Canada, Ceylon, Congo (Democratic Republic of), Iceland, India, Laos, New Zealand, Pakistan* and *Upper Volta.*

[244] *Israel, Sudan* and *Uganda.*

[245] The following study covers the period up to the end of 1967.

[246] The Geneva Conventions (1864, 1906, 1929 and 1949) are not the only multilateral instruments codifying the substantive law of the Red Cross. In addition, the *Handbook of the International Red Cross*, Tenth Edition, Geneva, 1953 reproduces the following conventions: (1) The Hague Convention of 29 July 1899 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864 (Convention No. III of 1899); (2) The Hague Convention of 21 December 1904 concerning Hospital Ships; (3) Regulations respecting the Laws and Customs of War on Land, Annex to the Hague Convention of 18 October 1907 (Convention No. IV of 1907); (4) The Hague Convention of 18 October 1907 respecting the Rights and Duties of Neutral Powers and Persons in case of War on Land (Convention No. V of 1907); (5) The Hague Convention of 18 October 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 6 July 1906 (Convention No. X of 1907; (6) Geneva Protocol of 17 June 1925 for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare; (7) Convention of 12 July 1927 to Establish the International Relief Union. The substantive law of the Red Cross is also based on other sources, including the recommendations and resolutions of the Consultative Conference of 1863 and of the International Conferences of the Red Cross, separate decisions and acts of the various constituent elements of the Red Cross, and separate decisions and acts of the various Governments of the States Parties to the humanitarian conventions.

3. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 27 July 1929;
4. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949;

(b) *Wounded, sick and shipwrecked members of armed forces at sea* [247]

5. Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949;

(c) *Prisoners of war*

6. Geneva Convention relative to the Treatment of Prisoners of War, 27 July 1929;
7. Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949;

(d) *Civilians*

8. Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949.

129. The diplomatic conferences at which the Geneva Conventions were adopted were convened and organized by the Swiss Federal Council, which became the depositary and administrator of these Conventions.[248] The 1929 Diplomatic Conference adopted Conventions (3) and (6) and the 1949 Diplomatic Conference adopted Conventions (4), (5), (7) and (8).

1. RELATIONSHIP BETWEEN THE VARIOUS GENEVA CONVENTIONS

130. Each of the Geneva Conventions is a separate instrument and differs from the others both as regards its content and as regards the States which are parties to it. In the case of conventions on the same subject, each of the new conventions replaces the earlier convention(s) only in relations between the Contracting States. The new convention has mandatory force only between States which are parties to it. The successive conventions on the same subject therefore coexist. The latest convention does not abrogate the earlier Geneva Conventions or the Hague Conventions. The States which are parties to the earlier Conventions but not to the most recent convention continue to be bound by those earlier conventions, which also govern the mutual relations between States which are parties to the earlier Conventions only and those which are parties both to the latest convention and earlier ones.[249]

131. For example, article 59 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949, reads:

> The present Convention replaces the Conventions of August 22, 1864, July 6, 1906, and July 27, 1929, in relations between the High Contracting Parties.[250]

132. Article 134 of the Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949, contains a similar rule regarding the Convention relative to the Treatment of Prisoners of War concluded at Geneva on 27 July 1929.[251] Similarly, article 58 of the Convention of 12 August 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea states that the said Convention replaces, in relations between the Contracting States, the Hague Convention of 18 October 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 1906.[252] Lastly, in the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, article 154 states that "In the relations between the Powers who are bound by the Hague Conventions respecting the Laws and Customs of War on Land, whether that of July 29, 1899, or that of October 18, 1907, and who are parties to the present Convention (of 12 August 1949), this last Convention shall be supplementary to Sections II and III of the Regulations annexed to the above-mentioned Conventions of The Hague".[253]

2. NATURE OF THE GENEVA CONVENTIONS: PROCEDURE FOR BECOMING A CONTRACTING PARTY

133. The Geneva Conventions are pre-eminently treaties open to all.[254] Today they are formally binding on 117 States and are among the treaties with the most universal participation. In accordance with the final

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[247] The Hague Conventions of 29 July 1899 and 18 October 1907 dealt with the adaptation to maritime warfare of the principles of the Geneva Conventions of 22 August 1864 and 6 July 1906, respectively.

[248] Articles 10 of the 1864 Convention, 29, 32 and 33 of the 1906 Convention; 32 and 36 to 38 of the 1929 Convention on the wounded and sick in armed forces in the field; 91 and 94 to 96 of the 1929 Convention on prisoners of war; 55, 57 and 61 to 63 of the 1949 Convention on the wounded and sick in armed forces in the field; 54, 56 and 60 to 62 of the 1949 Convention on wounded, sick and shipwrecked members of armed forces at sea; 133, 137 and 140 to 142 of the 1949 Convention on prisoners of war; and 150, 152 and 156 to 158 of the 1949 Convention on the protection of civilians.

[249] See: *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949*, Geneva 1952, p. 407.

[250] Similar provisions are contained in article 34 of the Convention of 27 July 1929 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field with regard to the Conventions of 22 August 1864 and 6 July 1906, and in article 31 of the Convention of 6 July 1906 for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field with regard to the Convention of 22 August 1864.

[251] Article 135 settles the question of the relationship with the Hague Conventions in the following manner: "In the relations between the Powers which are bound by the Hague Convention respecting the Laws and Customs of War on Land, whether that of 29 July 1899, or that of 18 October 1907, and which are parties to the present Convention, this last Convention shall be complementary to Chapter II of the Regulations annexed to the above-mentioned Conventions of the Hague."

[252] Article 25 of the Hague Convention of 18 October 1907 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 6 July 1906 contains a similar provision with regard to the Hague Convention of 29 July 1899 for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of 22 August 1864.

[253] See foot-note 246 above.

[254] *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, op. cit.*, p. 408.

clauses of these Conventions, any State may become a party to them. This principle, which was already included in the 1864 Convention, has been maintained in all the Geneva Conventions concluded subsequently. A distinction is made between States, however, as regards the methods of becoming a party to the Conventions in question. These methods are signature followed by ratification, or accession. The Conventions are silent on the procedure of succession, but this procedure has been sanctioned by recent practice.

134. The Convention of 22 August 1864 specified that it "shall be ratified" and added that the Contracting Parties would communicate the Convention "with an invitation to accede thereto to Governments unable to appoint Plenipotentiaries to the International Conference at Geneva. The Protocol has accordingly been left open."[255] After specifying that it "shall be ratified", the Convention of 6 July 1906 states that it may, up to a certain date, "be signed by the Powers represented at the Conference... and by the Powers not represented at [the] Conference but signatory to the Convention of 1864"; those Powers "which have not signed the... Convention" by the date set "shall be free to accede to it at a later date", and the Convention adds: "Other Power may apply for accession in the same manner, but their applications shall only be given effect if, during an interval of one year from the date of notification to the Federal Council, no opposition to the accession shall have been received by the latter from any of the Contracting Powers".[256] This provision concerning opposition to the accessions of States which did not participate in the Geneva Conferences or Conventions concluded in 1929 and 1949.

135. The Conventions of 1929 and 1949 follow a similar system. This consists in making a distinction between the method of signature by a certain date with subsequent ratification, which is reserved for States which participated in the Conference concerned or which are parties to certain earlier Conventions and the method of accession which, from the date of the entry into force of the Convention, is open to "any Power in whose name [the] Convention has not been signed".[257]

136. The instruments of ratification must be deposited and the accessions notified to the Swiss Federal Council.[258] In the 1929 and 1949 Conventions, ratifications take effect six months after the deposit of the the instrument of ratification and accessions six months after the date on which the notifications are received by the Swiss Federal Council.[259] The Swiss Federal Council has to draw up a procès-verbal of the deposit of the instruments of ratification and transmit a certified copy to the States which have signed or acceded to the Convention in question. In addition, it has to communicate accessions to those same States, but the Conventions do not require a procès-verbal of the accessions. The Swiss Federal Council also transmits to the Secretariat of the United Nations a certified copy of the deposit of the instruments of ratification and a copy of the notifications of accession and of the declarations of continuity, for registration purposes.[260]

3. TERRITORIAL APPLICATION OF THE GENEVA CONVENTIONS

137. The Geneva Conventions (1864, 1909, 1929 and 1949) contain no territorial application clauses.[261] In practice, the States parties to the Geneva Convention apply them to all the territories for whose external

[255] Articles 9 and 10 of the Convention.

[256] Articles 29 and 32 of the Convention.

[257] Articles 31, 32 and 35 of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 27 July 1929; 90, 91 and 93 of the Convention relative to the Treatment of Prisoners of War of 27 July 1929; 56, 57 and 60 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; 55, 56 and 59 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949; 136, 137 and 139 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949; and 151, 152 and 155 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

[258] Articles 29, 30 and 32 of the 1906 Convention; 32, 33 and 36 of the Convention of 27 July 1929 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; 91, 92 and 94 of the Convention of 27 July 1929 relative to the Treatment of Prisoners of War; 57, 58 and 61 of the Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; 56, 57 and 60 of the Convention of 12 August 1949 for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; 137, 138 and 140 of the Convention of 12 August 1949 relative to the Treatment of Prisoners of War; and 152, 153 and 156 of the Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War.

[259] The 1864 Convention does not specify intervals of time. The 1906 Convention specifies an interval of six months for ratifications, fixes no intervals for States which accede although they could have signed and ratified, and specifies an interval of one year for other acceding States, if in the meantime no opposition had been expressed by any of the Contracting Parties.

[260] On the subject of registration, the two 1929 Conventions had stated that a certified copy would be deposited in the archives of the League of Nations, to which the Swiss Federal Council had to communicate ratifications accessions and denunciations. The functions entrusted to the League of Nations by those two Conventions were assumed by the Secretariat of the United Nations, under the terms of United Nations General Assembly resolution XIV of 12 February 1946. The four 1949 Conventions were registered with the Secretariat of the United Nations by the Swiss Federal Council. The English and French texts of the 1929 Conventions were published in League of Nations, *Treaty Series*, vol. CXVIII, pp. 303 and 343, and those of the 1949 Conventions were published in United Nations, *Treaty Series*, vol. 75, pp. 31, 85, 135 and 287.

[261] Sometimes, however, States have made declarations concerning the territorial application of the General Conventions. The United Kingdom, for example, on depositing its instrument of ratification of the 1949 Geneva Conventions, declared:

"The United Kingdom of Great Britain and Northern Ireland will apply each of the above-mentioned Conventions in the British Protected States of Bahrain, Kuwait, Qatar and the Trucial States to the extent of Her Majesty's powers in relation to those territories." (Procès-verbal of the deposit of the instrument of ratification by the United Kingdom of the 1949 Geneva Conventions. United Nations, *Treaty Series*, vol. 278, pp. 266-268.)

relations they are responsible. In the event of armed conflict, the Geneva Conventions have been applied in the protectorates, colonies and other dependent territories of the States parties. This territorial application of the Geneva Conventions is today confirmed by the fact that a considerable number of new States—former dependent territories of the States parties to the Geneva Convention—have signified, by means of a declaration of continuity, that the said Conventions were applicable in their territories by virtue of the ratification or accession effected, at the time, by the former metropolitan countries. This procedure has not given rise to any opposition from the States parties to the Geneva Conventions.

4. FORMULATION OF RESERVATIONS

138. The final clauses of the Geneva Conventions do not mention reservations. However, twenty-four States—20 per cent of the Contracting States—have made their participation in the Conventions subject to reservations. In the procès-verbal of deposit of an instrument of ratification or in the notification of an accession, the Swiss Federal Council mentions any reservations made by the State concerned and any opposition it has expressed to reservations previously made by another State. The Swiss Federal Council informs the United Nations Secretariat of reservations or opposition to reservations concerning the 1929 and 1949 Geneva Conventions. In the case of new States which become parties to the Geneva Conventions by succession, by means of a declaration of continuity, the question arises whether, in the absence of an explicit declaration on their part, they also succeed to the reservations made by their predecessors.

B. *The International Red Cross: its constituent elements and its organs*

139. The "International Red Cross" is not an organization established by a treaty or an international convention.[262] Nor were the Geneva humanitarian conventions, which, from 1864 on, have codified the substantive law of the Red Cross, concluded by States at international conferences of the Red Cross. However, constituent elements or organs of the Red Cross have always acted as promoters of the humanitarian conventions and guardians of its spirit, as has been recognized by States and is today confirmed by the Statutes of the International Red Cross. In addition, specific rights and functions have been expressly vested by certain humanitarian conventions in these constituent elements and organs[263] and the International Red Cross has associated the States parties to certain humanitarian conventions with its organic system. The study of the succession of States to the Geneva humanitarian Conventions accordingly concerns the States parties to and the depositary of these Conventions as well as the International Red Cross.

140. International Conferences of the Red Cross have been held several times since 1867 but it was not until 1928, during the XIIIth International Conference of the Red Cross at The Hague, that the *Statutes of the International Red Cross* were adopted. Revised at Toronto in 1952, the 1928 Statutes remain today the organic law of the "International Red Cross".[264] These statutes describe and systematize the composition of the "International Red Cross" and the nature and functions of its organs. They maintain the organic independence of the constituent elements within the "International Red Cross" movement, while emphasizing their moral solidarity in the performance of the common task.

141. The constituent elements of the International Red Cross are the duly recognized National Red Cross Societies, the International Committee of the Red Cross and the League of Red Cross Societies.[265] The International Committee, historically the promoter of the work of the Red Cross, is "an independent insti-

[262] "... the International Red Cross movement differs both in its methods and in its history from other international bodies which were based at outset on conventions and have predetermined technical or other duties" (Paul Ruegger, "The Juridical Aspects of the Organization of the International Red Cross", *Recueil des Cours*, 1953, I, vol. 82, p. 526). The International Red Cross has a certain official character which is explained by the very nature of the functions performed by its constituent elements and by the co-operation and recognition extended to the latter by States in the course of the empirical historical development of the organization (see, for example: Frédérique Noailly, *La Croix-Rouge au point de vue national et international. Son histoire, son organisation*, Paris, 1935). For the historical and legal development of the International Red Cross, see also: Eugène Borel, *"L'Organisation internationale de la Croix-Rouge"*, *Recueil des Cours*, 1923, vol. 1, pp. 573-604; Jean S. Pictet, *"La Croix-Rouge et les Conventions de Genève"* (extract from *Recueil des Cours*, Paris, 1950); Henri Coursier, *"La Croix-Rouge internationale"* (*"Que sais-je?"*, collection, Paris, 1959) and *"Cours de cinq leçons sur les Conventions de Genève"*, Geneva, 1963; Pierre Boissier, *"Histoire du Comité international de la Croix-Rouge"* (vol. 1, *"De Solferino à Tsoushima"*), Paris, 1963.

[263] "The fact that the Red Cross organization—that is, in the period of which we speak first, the movement's founder organ, the Geneva International Committee—was purposely and by that Committee's own wish not mentioned in the 1864 Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, in the revised Convention of 1906 or even in the revised Convention of 1929, in other words over six and a half decades of humanitarian work ... is no coincidence. For a very long time, the Geneva International Committee's power of persuasion and capacity for action grew precisely because its activities were not defined or even touched on in the texts rooted in written and almost universal conventional law". See: Paul Ruegger, *op. cit.*, p. 527).

[264] The presence at the 1928 Hague Conference "of representatives of the Governments of the countries which had acceded to the Geneva Convention and the sanction given by their active participation in the International Conference, which now has the power to take decisions that will in principle be binding on them within the context of the Red Cross, means that these Governments gave their agreement to the statutes then adopted. Although they have no diplomatic status, these statutes therefore do constitute an international instrument binding on Governments and, so far as they alone are concerned, binding them in their mutual relations, in the manner of a gentleman's agreement" (Auguste-Raynald Werner, *"La Croix-Rouge et les Conventions de Genève. Analyse et synthèse juridiques"*, Geneva, 1943, p. 79).

[265] Article I of the Statutes of the International Red Cross (*Handbook of the International Red Cross, op. cit.*, p. 305).

tution, governed by its own Statutes and recruited by co-optation from among Swiss citizens".[266] The League of Red Cross Societies, established in 1919, is "the international federation of the National Red Cross, Red Crescent and Red Lion and Sun Societies".[267]

142. The Statutes of the "International Red Cross" state that the "International Conference" is "the supreme deliberative body of the International Red Cross".[268] Composed of delegations of National Societies, of the International Committee, of the League and of the States parties to certain Geneva Conventions (see below, section C, para. 145), the "International Conference" ensures unity in the work of the constituent elements of the International Red Cross and may "make proposals concerning the humanitarian Conventions and other international Conventions relating to the Red Cross".[269] The rules of procedure of the International Conference in force were adopted by the Conference held at Brussels in 1930 and revised by the Conference held at Toronto in 1952.[270] The 1928 Statutes established a Standing Commission which, during the interval between sessions of the Conference and subject to any final decision the Conference may take, settles any difference of opinion which may arise as to the interpretation and application of the Statutes.[271] The International Conference is convened and organized by the Central Committee of a National Society or by the International Committee or by the League, under a mandate conferred for the purpose by the previous Conference or by the Standing Commission.[272]

C. *Participation of States in the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field and the International Red Cross*

143. In order to perform its task, the "International Red Cross" is anxious to obtain the widest possible participation of States in the Geneva Conventions. In addition, under the Statutes of the International Red Cross, the International Conference, the Standing Commission or the International Committee are sometimes required to take decisions based on the participation of States in the Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1864, 1906, 1929 or 1949). Only Governments of States parties to these Conventions have the right to send delegates to the International Conferences of the Red Cross and, in order to be recognized by the International Committee, all National Societies must be constituted on the territory of a State party to one of these Conventions. The decisions on this subject taken by the International Conference or by the International Committee are undoubtedly important for the study of the succession of States.

1. PARTICIPATION OF DELEGATES OF GOVERNMENT AND DELEGATES OF NATIONAL RED CROSS SOCIETIES IN INTERNATIONAL CONFERENCES OF THE RED CROSS

144. The participation of Governments in International Conferences of the Red Cross dates from the very foundation of the movement. The 1863 Consultative Conference, which was the constituent conference, was already composed of representatives of States meeting in a private capacity under the auspices of the newly established International Committee. Since then, delegates of Governments have always taken part in the International Conferences of the Red Cross together with delegates of the constituent elements of the International Red Cross.[273]

145. Article 1 of the Statutes of the International Red Cross states:

> The International Conference of the Red Cross shall be composed of delegations of duly recognized National Red Cross, Red Crescent and Red Lion and Sun Societies, delegations of the States parties to the Geneva Conventions and delegations of the International Committee of the Red Cross and of the League of Red Cross Societies,[274]

[266] Article VI of the Statutes of the International Red Cross (*op. cit.*, p. 307). See also: Statutes of the International Committee of the Red Cross of 10 March 1921, as amended on 12 October 1928, 28 August 1930, 2 March 1939, 22 June 1945, 22 February and 26 March 1946 and 25 September 1952 (*Handbook of the International Red Cross, op. cit.*, p. 321).

[267] Article VII of the Statutes of the International Red Cross (*op. cit.*, p. 308). See also: Constitution of the League of Red Cross Societies, revised text, adopted by the Board of Governors of the League in 1950 (*Handbook of the International Red Cross, op. cit.*, p. 325). For a report on the establishment of the League, see: *Revue générale de droit international public*, 1919, tome XXVI, pp. 484-493.

[268] Article I, paragraph 2 (*Handbook of the International Red Cross, op. cit.*, p. 305).

[269] Article II, paragraph 3, of the Statutes (*op. cit.*, p. 306). However, it is not the role of the International Conference to legislate: The Conferences adopt resolutions and recommendations, never binding ordinances. They play an important role, in that they feel the pulse of the expanding world of the Red Cross at regular intervals; they also play a considerable role by ensuring that the same goal is pursued and seeking common principles to govern the action of the national groups. In addition, the value and moral force of the resolutions of the regular International Conferences are undoubtedly enhanced by the participation of the delegates of the States signatory to the Geneva Conventions, who are officially members of the Conference. (See: Paul Ruegger, *op. cit.*, pp. 510-512).

[270] *Handbook of the International Red Cross, op. cit.*, p. 312.

[271] Articles IX and X of the Statutes (*op. cit.*, pp. 309 and 310). The Standing Commission is composed of five members elected in a personal capacity by the Conference, two representatives of the International Committee and two representatives of the League. During each International Conference there is a meeting of a Council of Delegates (article IV of the Statutes). The Council of Delegates is composed of the delegates of National Societies, of the International Committee and of the League.

[272] Articles III and X of the Statutes of the International Red Cross (*op. cit.*, pp. 306 and 310) and article 4 of the rules of procedure of the international Conference of the Red Cross (*op. cit.*, p. 313). The Standing Commission fixes the date and place of the International Conference, should this not have been already decided by the preceding Conference or should exceptional circumstances so require.

[273] See: Auguste-Raynald Werner, *op. cit.*, pp. 84 and 85.

[274] *Handbook of the International Red Cross, op. cit.*, p. 305.

and in article 1 of the rules of procedure of the International Conference of the Red Cross we read:

> The following shall be members of the International Conference with the right to take part in all discussions and to vote:
>
> ...
>
> (*b*) the delegates of the States parties to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1864, 1906, 1929 or 1949)....[275]

146. The Statutes of the International Red Cross and the rules of procedure of the International Conference of the Red Cross have therefore sanctioned the traditional participation of delegates of Governments in the International Conferences of the Red Cross. At the International Conference, the delegates of Governments, who have the right to attend meetings and to vote, are placed on an equal footing with the delegates of National Societies, of the International Committee and of the League of Red Cross Societies.

147. Since participation in the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1864, 1906, 1929 or 1949) is a condition which States must meet in order to participate in the International Conferences, it is the responsibility of the organization—National Society, International Committee or League—which, in agreement with the Standing Commission, is to convene and organize the International Conference,[276] to make a list of the States parties to the Geneva Conventions and of the National Societies entitled to participate in the Conference in question. Certain controversial cases or situations have given rise to difficulties and the Standing Commission and the International Conference itself have on occasion been required to rule on cases or situations which involved elements relating to the succession of States or Governments.

2. INTERNATIONAL RECOGNITION OF NATIONAL RED CROSS SOCIETIES BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS

148. Red Cross Societies must be recognized by the Governments of their respective countries as services auxiliary to the military health services or, in States which do not maintain armed forces, as voluntary aid services, auxiliary to the public authorities and acting for the benefit of the civilian population. This is known as "national recognition". In order to acquire the status of a "National Red Cross Society", organizations enjoying national recognition must then be recognized as such by the International Committee of the Red Cross. This is known as "international recognition". The National Red Cross Societies are thus organizations which enjoy both the national recognition of the Government of their country and the international recognition of the International Committee. When this recognition is given by the International Committee, which notifies the existing National Societies of the constitution of the new Societies, it has the effect of integrating the latter into the International Red Cross.[277]

149. Article VI (3) of the Statutes of the International Red Cross establishes the function of recognition of new National Red Cross Societies by the International Committee.[278] Under this article, the International Committee:

> After having assembled all pertinent data, ... announces the recognition of any newly established or reconstituted National Red Cross Society which fulfils the conditions for recognition in force.[279]

150. Under the Statutes of the International Committee of the Red Cross, it is one of the Committee's functions:

> to recognize any newly established or reconstituted National Red Cross Society which fulfils the conditions for recognition in force, and to notify other National Societies of such recognition.[280]

151. In order to be recognized by the International Committee, a National Society must meet ten conditions and in particular must "be constituted on the territory of an independent State where the Geneva Convention relative to the Relief of Sick and Wounded (1864, 1906, 1929 or 1949) is in force".[281] When a National Society requests recognition by the International Committe, the latter must see whether the Society in question fulfils the conditions for recognition and in particular whether it has been constituted on the territory of a State party to the said Geneva Conventions, whether it has first been "recognized by its legal Government" and whether it extends "its activities to the entire country and its dependencies". The International Committee has recently granted recognition to the National Societies of new States, former dependent territories of a State party to the Conventions mentioned, on the basis of the rules of succession to treaties and, in some cases, even before a declaration of continuity has been received by the Swiss Federal Council.

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[275] *Ibid.*, p. 312.

[276] See above, para. 142.

[277] Auguste-Raynald Werner, *op. cit.*, pp. 30, 31, 36 and 37.

[278] All the National Red Cross Societies have a common international status. The principles formulated by the International Committee in 1887, following the Karlsruhe International Conference, to serve as conditions for the international recognition of new societies, are one of the corner-stones of the International Red Cross.

[279] *Handbook of the International Red Cross, op. cit.*, p. 308.

[280] Article 4 (*b*) of the Statutes of the International Committee (*Handbook of the International Red Cross, op. cit.*, p. 322).

[281] *Handbook of the International Red Cross, op. cit.*, pp. 319 and 320. The conditions in force for the international recognition of National Societies were drawn up by an *ad hoc* joint Commission of the International Committee and of the League and approved by the XVIIth International Red Cross Conference held at Stockholm in 1948.

D. *Cases comprising elements related to the succession of States*

1. PARTICIPATION OF STATES IN THE GENEVA CONVENTIONS [282]

(*a*) CONVENTION OF 22 AUGUST 1864 [283]

152. Austria-Hungary was a party to the 1864 Convention as of 21 July 1866. However, the *Handbook of the International Red Cross,* published in 1953, cites only *Austria* as a party to the Convention; Hungary is not mentioned.[284] In addition, Serbia, on 24 March 1876, and Montenegro on 29 November 1875, had also become parties to the 1884 Convention, but *Yugoslavia* is not listed in the *Handbook* as one of the parties to that Convention.[285]

153. The *Union of Soviet Socialist Republics* is also mentioned as a party to the 1864 Convention. Russia had become a party to the Convention on 10/22 May 1867.[286] The Council of People's Commissars of the Russian Soviet Federative Socialist Republic promulgated a decree "recognizing all the international Conventions of the Red Cross", published on 4 June 1918 in the *Izvestia* of the All-Russian Central Executive Committee. This decree "informs the International Committee of the Red Cross at Geneva and the Governments of all States which have recognized the Geneva Convention that the said Convention in its original version and in all subsequent versions, and all the other international agreements and conventions which concern the Red Cross and were recognized by Russia up to October 1915, are recognized and will be observed by the Russian Soviet Government, which reserves all the rights and prerogatives resulting from them...".[287]

(*b*) CONVENTION OF 6 JULY 1906 [288]

154. In the *Handbook of the International Red Cross, Australia, Canada, India,* the *Irish Free State* and *South Africa* are listed as parties to the 1906 Convention as of 1926.[289] However, the *Handbook* does not specify either the exact date or the method of participation of these five States in the Convention. Great Britain had ratified the Convention on 16 April 1907.[290]

155. From a comparison of the list of States parties to the 1864 and 1906 Conventions with the list of States which participated in the Geneva Diplomatic Conference of July 1929 it would appear that these five countries became parties to the 1906 Convention by succession. The list of States parties to the 1864 and 1906 Conventions reproduced in the *Actes de la Conférence diplomatique de 1929* does not include these five States among those which ratified or acceded to the said Conventions. On the other hand, article 1 of the rules of procedure of the Conference specifies that the Conference "is composed of all the delegates of the countries parties to the Geneva Conventions of 22 August 1864 and 6 July 1906" [291] and *Australia, Canada, India,* the *Irish Free State* and *South Africa* appear in the list of States participating in the Conference. All these countries signed the Final Act of the Conference and the Conventions adopted.[292] The participation of these British Dominions in the 1906 Convention and in the Diplomatic Conference is explained by the internal evolution of the Commonwealth, which allowed certain dominions to become members of the League of Nations and to participate separately in international agreements and conventions. In this connexion, it should be emphasized that Great Britain signed the Final Act and the Conventions of 1929 for "any part of the British Empire not a separate Member of the League of Nations".*

156. *Australia, Canada, India,* the *Irish Free State* and *South Africa* therefore became parties to the 1906 Convention by succession. They did not accede to the

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[282] For the participation of States divided *de jure* or *de facto* (China, Germany, Korea and Viet-Nam) see below, paras. 185-187.

[283] At the request of the International Committee of the Red Cross, the Swiss Federal Council sent the invitations to participate in the Geneva Diplomatic Conference which was held from 8 to 22 August 1864. For a list of the Powers represented see: C. Lueder, *La Convention de Genève au point de vue historique, critique et dogmatique,* Erlangen 1876, pp. 374 and 375. See also: G. Moynier, *Etude de la Convention de Genève* (1864 and 1868), Geneva 1870. When, in 1966, the Republic of Korea acceded to the four Geneva Conventions of 1949 (United Nations, *Treaty Series,* vol. 575, pp. 284 and 285), the Convention of 22 August 1864 became a historical document. The Republic of Korea was the last State party to the 1864 Geneva Convention which had not acceded to any of the later humanitarian treaties (*International Review of the Red Cross,* 1966, September, p. 481).

[284] *Op. cit.,* pp. 9, 10 and 300-302.

[285] *Ibid.*

[286] *Ibid.,* pp. 9 and 10.

[287] International Committee of the Red Cross, *Recueil de textes relatifs à l'application de la Convention de Genève et à l'action des Sociétés nationales dans les Etats parties à cette Convention,* Geneva, 1934, p. 768 (translation from the French by the United Nations Secretariat). See also: *Report of the International Committee of the Red Cross on its activities during the Second World War,* Geneva, 1948, p. 405, *in fine.*

* Translation from the French by the United Nations Secretariat.

[288] See: (1) *Convention de Genève: Actes de la Conférence de révision réunie à Genève du 11 juin au 6 juillet 1906* (in particular: *Rapport* by L. Renault on behalf of the Drafting Committee); (2) E. Roethlisberger, *Die Neue Genfer Konvention vom 6 Juli 1906,* Berne, 1908. Costa Rica and Uruguay are the only States partics to the 1906 Convention which are not yet bound by the 1919 and 1949 Conventions (*International Review of the Red Cross,* 1966, July, p. 386).

[289] *Handbook of the International Red Cross, op. cit.,* pp. 300-302.

[290] *Ibid.,* p. 26.

[291] See: *Actes de la Conférence diplomatique de Genève de 1929,* Geneva, 1930, pp. 4, 8, 9, 37, 64, 672-680, 713-720 and 732-740.

[292] *South Africa* could also have been invited to the 1929 Diplomatic Conference by virtue of its separate participation in the 1864 Convention. The Republic of South Africa had acceded to that Convention on 30 September 1896 (*Handbook of the International Red Cross, op. cit.,* pp. 9, 10 and 300-302). *New Zealand* also participated in the 1929 Diplomatic Conference. However, it is not included among the States parties to the 1864 or 1906 Conventions mentioned in the *Handbook of the International Red Cross.*

Convention when their international status was altered. The *Handbook of the International Red Cross* considers these States to be separate parties to the Convention from the time when, after the change in their international status, they acquired the capacity to conclude international treaties in their own name.[293]

157. The references made in the *Handbook of the International Red Cross* to the Commonwealth States were the subject of a communication dated 26 July 1956 addressed to the Director for General Affairs of the International Committee of the Red Cross by the Consul-General of Great Britain at Geneva. This communication contains the following passage:

> . . . In the list of ratifications of the 1906 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, it would be preferable for the date of ratification by the Commonwealth countries and the Irish Republic to be 16 April 1907, because not having repudiated them, the Commonwealth countries are bound by the international obligations deriving from the ratification of the Convention by the United Kingdom. If this proposal were accepted, it might be appropriate to add one explanatory foot-note referring to all the Commonwealth countries or separate foot-notes stating "By virtue of the United Kingdom ratification on April 16, 1907." In addition, Ceylon, New Zealand and Pakistan should be added to complete the list.... (Translation by the United Nations Secretariat.)

158. According to this communication, the United Kingdom considers that *Australia, Canada, India,* the *Irish Republic* and *South Africa* became parties to the 1906 Convention by succession, by virtue of the ratification by Great Britain on 16 April 1907. In addition, the United Kingdom considers that *Ceylon, New Zealand* and *Pakistan* also became parties to the 1906 Convention by succession.

159. Lastly, the table in the *Handbook of the International Red Cross* lists *Hungary,* the *Union of Soviet Socialist Republics* and *Yugoslavia* as parties to the 1906 Convention. Austria-Hungary had ratified the Convention on 27 March 1908, Serbia on 9 October 1909, and Russia on 9 February 1907.[294] A decree dated 16 June 1925 of the Council of People's Commissars of the Union of Soviet Socialist Republics recognizes the 1906 Convention and brings it into force in the Union of Soviet Socialist Republics.[295] The Kingdom of the Serbs, Croats and Slovenes participated in the 1929 Diplomatic Conference.

(c) Conventions of 27 July 1929[296]

(i) *Cases of succession*

a. *Former non-metropolitan territories for whose international relations the United Kingdom was responsible*

160. *Burma,* which as part of India participated in the two 1929 Conventions, was separated from the Indian Empire on 1 April 1937 and acquired the status of a British oversea territory. At the time of the separation, the United Kingdom made a declaration of application of the 1929 Conventions to Burma "in virtue of the United Kingdom's signature and ratification thereof" on 23 June 1931.[297] The *Handbook of the International Red Cross* considers that Burma became a party to the 1929 Conventions separately, on 1 April 1937.[298] After becoming independent State on 4 January 1948, *Burma* was invited to and participated in the 1949 Geneva Diplomatic Conference and signed the Final Act of the Conference.[299]

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[293] When the Dominions acquired this new status, the Red Cross organizations existing on their territories asked for recognition by the International Committee of the Red Cross, which was granted in 1927 to *Canada* and *Australia,* in 1928 to *South Africa* and in 1929 to *India.* In circular No. 274 of 17 November 1927, announcing the recognition of the Australian Red Cross, the International Committee stated:

> "The Imperial Conference, held in October-November 1926, defined the status of Great Britain and the Dominions in the following terms: 'autonomous communities..., equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs'.
>
> "The British Government, for its part, has informed the Swiss Minister in London that the 1906 Geneva Convention (ratified by Great Britain on 16 April 1907) remains in force throughout the British Empire. The Dominions are therefore considered to be subject to the rights and obligations resulting from the Geneva Convention.
>
> "In a letter of 5 April 1927, the International Committee requested the British Red Cross to inform it whether, as a result of the change in the status of the communities composing the British Empire, the position of the Red Cross Societies of the British Dominions had undergone changes enabling them to be recognized by the International Committee as independent National Societies.
>
> "In reply to this request, the British Red Cross has informed the International Committee that the National Red Cross Societies of Canada, Australia, New Zealand, South Africa and British India are no longer branches of the British Red Cross but independent Societies and that the British Red Cross requests that they be recognized." (Information provided by the International Committee of the Red Cross.)

[294] *Handbook of the International Red Cross, op. cit.,* pp. 26, 27 and 300-302.

[295] See: *Recueil de textes relatifs à l'application de la Convention de Genève et à l'action des Sociétés nationales dans les Etats parties à cette Convention, op. cit.,* p. 770.

[296] See: Paul des Gouttes, *Commentaire de la Convention de Genève pour l'amélioration du sort des blessés et des malades dans les armées en campagne du 27 juillet 1929,* Geneva, 1930. Burma, Bolivia and Ethiopia are parties to the 1929 Conventions but are not yet bound by the 1949 Conventions (*International Review of the Red Cross,* 1966, July, p. 386).

[297] League of Nations, *Treaty Series,* vol. CXCIII, pp. 270 and 271. Following the separation of the *colony of Aden* from the Indian Empire, on 1 April 1937, the United Kingdom made a declaration relating to the application of the 1929 Conventions to Aden. The British declaration specified that the colony of Aden was "now to be considered a Party to the [Conventions] in virtue of the United Kingdom's signature and ratification thereof" (League of Nations, *Treaty Series,* vol. CXCVI, pp. 417 and 418). Despite the terms of this declaration, the colony of Aden is not listed among the States parties to the 1929 Conventions and it did not participate separately in the 1949 Geneva Diplomatic Conference. Since Aden was a British colony at the time, the declaration made by the United Kingdom seems more like a declaration of territorial application of the 1929 Conventions to the colony.

[298] *Handbook of the International Red Cross, op. cit.,* pp. 69 and 96.

[299] Swiss Federal Political Department, *Actes de la Conférence diplomatique de Genève de 1949,* tome I, p. 196.

161. Under the terms of a communication from the Ministry of Foreign Affairs of the Hashemite Government of Transjordan, received by the Swiss Federal Council on 20 November 1948 and supplemented by a cable dated 9 March 1949, the two Geneva Conventions of 27 July 1929 are applicable to Transjordan in pursuance of the royal decree of 15 March 1932, published in Official Journal No. 345 of 31 May 1932. In notifying the Tranjordanian communication to the States parties and to the United Nations Secretariat, the Swiss Federal Council made the following classification:

The Transjordanian Government, assuming the obligations resulting from the accession effected on behalf of Transjordan in April 1932 by the United Kingdom Government, declares that it accedes separately to these Conventions as a Contracting State, on the basis of the proclamation of the independence of Transjordan and of the provisions of article 8, paragraph 2, of the Treaty of Alliance concluded on 22 March 1946 between the United Kingdom and the Kingdom of Transjordan. The notifications of the Transjordanian Government, which are in the nature of a declaration of continuity, take effect on the abovementioned dates of 20 November 1948, for the first Convention, and 9 March 1949 for the second.[300]

162. The Swiss Federal Council therefore considered that the communications of the Transjordanian Government were in fact declarations of continuity and not notifications of accession. This is confirmed by the dates of entry into force of the Transjordanian communications: 20 November 1948 in the case of the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field and 9 March 1949 for the Convention relative to the Treatment of Prisoners of War. In other words, the Transjordanian communications took effect on the date on which they were received by the Swiss Federal Council and not six months later, as prescribed in the case of accessions in articles 36 and 94 of the Conventions in question.

b. *Former non-metropolitan territory for whose international relations the Netherlands was responsible*

163. On 5 June 1950, the High Commissioner of the Republic of the United States of *Indonesia* in the Netherlands signed a declaration, on behalf of his Government, in the Swiss Federal Political Department at Berne to the effect that the Republic of the United States of *Indonesia*: *

(1) Recognizes that [the two Geneva Conventions of 27 July 1929] continue to be in force within the territory of the Republic of the United States of Indonesia;

(2) undertakes to respect them and apply them;

(3) requests the Swiss Federal Council to notify the Governments concerned that the Republic of the United States of Indonesia, as an independent and sovereign State, is a party separately to the 1929 Geneva Conventions.

164. On 7 November 1950, the Swiss Federal Council transmitted to the United Nations Secretariat a circular note dated 9 June 1950 concerning the Indonesian Government's declaration, without mentioning the date from which *Indonesia* should be considered as being a party separately to the Conventions in question. In the United Nations, *Treaty Series*,[301] the declaration of Indonesia is registered as "continuance of application within the territory of the Republic of the United States of Indonesia in the name of that State" of the 1929 Geneva Conventions, and no reference is made there either to the date on which the Indonesian declaration took effect. It appears that the Conventions were binding on Indonesia as from its accession to independence, i.e., there was no interruption in the application of the Conventions to Indonesian territory. The Netherlands became a party to these Conventions on 5 October 1932 and Indonesia attained independence on 28 December 1949.

(ii) *Cases of accession*

a. *Part of a former British Mandated Territory*

165. After the Second World War, the State of *Israel*, established on part of the former British Mandated Territory of Palestine, became a Party to the two 1929 Geneva Conventions by accession. The accession of the Provisional Government at Berne on 3 August 1948 through the Legation of Uruguay at Berne, took effect on 3 February 1949.[302]

b. *Former territory of British India*

166. On 31 January 1948, the Secretary of State for Foreign Affairs of *Pakistan* cabled his country's accession to the 1929 Conventions. The Swiss federal authorities received the Pakistan communication on 2 February 1948. The accession of Pakistan took effect on 2 August 1948.[303] Pakistan's notification of accession contains the following passage:

... irrespective of this request Pakistan as one of the successor States to the late Government of India which ratified both conventions June 23rd 1931 considers itself automatically a contracting party.

167. However, this clarification by the Pakistan Government had no effect as regards the participation of Pakistan in the 1929 Conventions as a separate party. *Pakistan* became a party by accession and not by succession; indeed, this was in accordance with

* Translation from the French by the United Nations Secretariat.

[300] United Nations, *Treaty Series*, vol. 31, pp. 495 and 497.

[301] *Ibid.*, vol. 76, pp. 286 and 287.

[302] *Ibid.*, vol. 31, pp. 495 and 497. When giving notice of Israel's accession, the Federal Political Department stated that:

"... In its capacity as administrator of the Geneva Conventions of 27 July 1929, the Swiss Government is obliged, by the provisions of article 36 of the first of these Conventions and by those of article 94 of the second, to notify new accessions to the Governments of all countries on whose behalf the Conventions have been signed or whose accession has been notified. In the performance of this duty, the Political Department informs the States bound by the Geneva Conventions of 27 July 1929 of the declaration in question...".

[303] United Nations, *Treaty Series*, vol. 31, pp. 495 and 497.

Pakistan's own wishes as expressed in its communication to the Swiss federal authorities.

c. *Former French Mandated Territories*

168. *Lebanon* and *Syria* have become parties to only one of the Geneva Conventions of 27 July 1929—the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Although France is a party to the Convention, the two States used the method of accession.[304] The accession of *Lebanon* was communicated by a note from its Legation at Berne dated 12 June 1946 and entered into force six months later, on 12 December 1946. The accession of *Syria,* communicated by a note of 20 June 1946 from the Syrian Legation in Paris to the Swiss Legation in France, was received by the Swiss federal authorities on 4 July 1946 and entered into force six months later, on 4 January 1947.

d. *Former territory associated with the United States*

169. The *Philippines* announced its accession to the 1929 Convention in a note dated 17 March 1947 from its Washington Embassy addressed to the Swiss Legation in Washington. The accession of the *Philippines* took effect on 1 October 1947.[305] The United States had become a party to the Conventions on 4 February 1932.

(*d*) Conventions of 12 August 1949 [306]

(i) *Cases of succession*

a. *Former non-metropolitan territories for whose international relations the United Kingdom was responsible*

170. Five new States—former non-metropolitan territories for whose international relations the United Kingdom was responsible—became parties to the four 1949 Geneva Conventions by succession: *Gambia, Jamaica, Nigeria, Sierra Leone* and *Tanganyika.* In a letter received by the Swiss federal authorities on 20 June 1961, *Nigeria* stated that the Geneva Conventions of 12 August 1949, previously ratified by the United Kingdom, were binding on Nigeria as from the date on which it attained independence, i.e., as from 1 October 1960.[307] The terms of this letter were as follows:

> ... I have the honour to refer to the exchange of cablegrams on the subject of the accession by the Federation of Nigeria to the Four Geneva Conventions of 12th August, 1949.
>
> ...
>
> 2. I declare herewith the wish of the Government of the Federation of Nigeria that the ratification of the said Conventions by the Government of the United Kingdom of Great Britain and Northern Ireland on September 23rd, 1957 is considered binding by the Federation of Nigeria as from October 1st, 1960, when the Federation attained her independence and sovereignty....

171. A governmental communication from *Tanganyika* declaring that the four 1949 Geneva Conventions were applicable to that country was received by the Swiss federal authorities on 12 December 1962.[308] In notifying the declaration of Tanganyika to the United Nations Secretariat, the Swiss Observer to the United Nations said that the Conventions concerned had entered into force for Tanganyika on the date on which it attained independence, 9 December 1961. The communication from Tanganyika was worded as follows:

> ... I have the honour to request that you take formal note of the fact that the Government of Tanganyika recognizes that it continues to be bound by the Geneva Conventions of August 12th, 1949, which were applied to the Territory of Tanganyika by the United Kingdom prior to independence....

172. On 17 July 1964, *Jamaica* also sent the Swiss federal authorities a declaration of continuity concerning the application of the four 1949 Geneva Conventions.[309] These Conventions entered into force for Jamaica on the date on which it attained independence, 6 August 1962. The declaration of Jamaica was worded as follows:

> I have the honour to bring to your notice that the four Conventions signed in Geneva on August 12, 1949, concerning the protection of war victims are lawfully applicable to the territory of Jamaica by virtue of their ratification by Great Britain on September 23, 1957. However, my Government hereby wishes to confirm its accession to these four Conventions, namely....
>
> In requesting you to be good enough to bring the foregoing to the notice of the countries which are parties to these Conventions....

173. In a communication addressed to the Swiss Federal Council on 31 May 1965, the Government of *Sierra*

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[304] *Ibid.,* p. 495.

[305] *Ibid.,* pp. 495 and 497.

[306] The *Byelorussian Soviet Socialist Republic* and the *Ukrainian Soviet Socialist Republic,* Members of the United Nations, participated in the 1949 Geneva Diplomatic Conference. At the proposal of Switzerland, the Conference adopted the following draft resolution: "whereas the USSR has signed the 1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; whereas a desire has been expressed that the Byelorussian SSR and the Ukrainian SSR should be allowed to participate separately in the work of the Conference, [the Conference] requests the Swiss Federal Council to invite the Governments of Byelorussia by delegates". Consequently, article 1 of the rules of procedure of the Conference relating to its composition was amended in order to add to the delegates of States parties to the Geneva Conventions of 1864, 1906 and 1929 and to the Hague Conventions of 1899 and 1907 for the Adaptation to Marine Warfare of the Principles of the Geneva Conventions, "delegates representing any other countries to which, at the request of the Conference, the Swiss Federal Council has sent an invitation." (*Actes de la Conférence diplomatique de Genève de 1949,* tome I, p. 183 and tome II, pp. 14, 19, 20 and 24-28.) In October 1967, the States which had specifically become parties to the 1949 Conventions numbered 116 (*International Review of the Red Cross,* 1967, October, p. 539).

[307] United Nations, *Treaty Series,* vol. 404, pp. 322-325. The letter from Nigeria, dated 9 June 1961, is signed by the Prime Minister and Minister for Foreign and Commonwealth Affairs.

[308] United Nations, *Treaty Series,* vol. 470, pp. 374 and 376. The communication from Tanganyika, dated 12 December 1962, is signed by the Foreign Secretary.

[309] United Nations, *Treaty Series,* vol. 511, p. 266. The letter from Jamaica, dated 17 July 1964, is signed by the Prime Minister and Minister for Foreign Affairs.

Leone [310] declared itself bound by the four 1949 Geneva Conventions in the following terms:

The Government of Sierra Leone by virtue of the United Kingdom's ratification on September 23, 1957, of the following Geneva Conventions of 1949 for the Protection of War Victims, hereby declares their applicability to Sierra Leone and tenders this as the instrument of ratification....

In his communication to the United Nations Secretariat of 26 August 1965, the Observer of Switzerland to the United Nations stated that "these Conventions entered into force for Sierra Leone on 27 April 1961, in other words on the date on which that country attained independence". Although the communication from Sierra Leone was entitled "instrument of ratification", it was considered as a declaration of continuity—which, indeed, was consistent with its wording.

174. The *International Review of the Red Cross* for December 1966 [311] announces that on 20 October 1966 the Swiss federal authorities received a declaration of continuity from *Gambia*.

b. *Former non-metropolitan territories for whose international relations France was responsible*

175. *Cameroon,* the *Central African Republic,* the *Congo (Brazzaville), Dahomey, Gabon,* the *Ivory Coast, Madagascar, Mauritania,* the *Niger, Senegal, Togo* and the *Upper Volta* became parties, separately, to the 1949 Geneva Conventions by succession. The declarations of continuity communicated by these States to the Swiss federal authorities confirm that the Conventions are applicable to their territories by virtue of their ratification by France.[312]

176. Some of these declarations of continuity were not worded very precisely. For example, the declaration of *Dahomey,* received by the Swiss federal authorities on 14 December 1961, was worded as follows: *

... the Republic of Dahomey, succeeding in so far as it is concerned to the rights and obligations previously assumed by France, considers itself bound by the French signature affixed to the Geneva Conventions of 12 August 1949 for the protection of war victims...; [313]

The declaration of the *Ivory Coast,* communicated by the Embassy of the Ivory Coast in Berne to the Federal Political Department on 28 December 1961 stated: *

... The Embassy of the Ivory Coast presents its compliments to the Federal Political Department and, applying the procedure of declaration of continuity and accession, has the honour to submit to it a request by the Republic of the Ivory Coast for accession to the Geneva Conventions for the protection of war victims...; [314]

The declaration of the *Niger,* addressed to the Swiss federal authorities on 16 April 1964, stated: *

... the Republic of the Niger considers itself bound by the signature affixed by France to the four Conventions mentioned above. As France ratified these Conventions on 28 June 1951, they have been applicable to the territory of the Niger as from that date.[315]

177. On the other hand, the declarations of continuity of the *Upper Volta,*[316] *Togo,*[317] *Mauritania,*[318] *Senegal,*[319] *Madagascar* [320] and *Cameroon,*[321] received by the Swiss authorities on 7 November 1961, 26 January 1962, 27 October 1962, 23 April 1963, 13 July 1963 and 16 September 1963, respectively, and those of *Gabon,*[322] the *Central African Republic,*[323] the *Congo (Brazzaville)* [324] addressed to the Swiss authorities on 20 February 1965, 23 July 1966 and 30 January 1967, respectively, contain a much more precise wording. This wording is as follows:

... I have the honour, on behalf of my Government, to draw your attention to the following:

* Translation from the French by the United Nations Secretariat.

[310] United Nations, *Treaty Series,* vol. 544, p. 286. The declaration of Sierra Leone is signed on behalf of the Government of that country.

[311] Page 651.

[312] France deposited its instrument of ratification on 28 June 1951. The Convention entered into force for France on 28 December 1951.

[313] United Nations, *Treaty Series,* vol. 423, pp. 300-303. The declaration of Dahomey, signed by the Minister for Foreign Affairs, is dated 14 December 1961. The text of the declaration of Dahomey is not reproduced.

* Translation from the French by the United Nations Secretariat.

[314] United Nations, *Treaty Series,* vol. 423, pp. 300-303. The letter is dated 28 December 1961. The text of the communication from the Ivory Coast is not reproduced.

[315] United Nations, *Treaty Series,* vol. 502, pp. 364 and 366-368. The letter of the Niger, signed by the President of the Republic, is dated 21 March 1964.

[316] United Nations, *Treaty Series,* vol. 421, pp. 292, 294, 296 and 298. The letter from the Upper Volta, signed by the Minister for Foreign Affairs, is not dated. The text of the communication from the Upper Volta is not reproduced.

[317] United Nations, *Treaty Series,* vol. 423, pp. 300-303. The letter from Togo, signed by the President of the Republic, is dated 6 January 1962. The text of the declaration of Togo is not reproduced.

[318] United Nations, *Treaty Series,* vol. 445, pp. 313-317. The letter from Mauritania, signed by the President of the Republic, is dated 27 October 1962. The text of the declaration is not reproduced.

[319] United Nations, *Treaty Series,* vol. 470, pp. 374, 376, 378 and 380. The letter from Senegal, signed by the President of the Republic, is dated 23 April 1963. The text of the declaration of Senegal is not reproduced.

[320] United Nations, *Treaty Series,* vol. 478, pp. 414, 416, 418 and 420. The letter from Madagascar, signed by the Minister for Foreign Affairs, is dated 13 July 1963.

[321] United Nations, *Treaty Series,* vol. 480, pp. 320, 322, 324 and 326. The letter from Cameroon, signed by the Deputy Minister for Foreign Affairs, is dated 16 September 1963.

[322] United Nations, *Treaty Series,* vol. 535, p. 408. The letter from Gabon is signed by the Vice-President of the Government.

[323] United Nations, *Treaty Series,* vol. 573, p. 304. The letter from the Central African Republic is signed by the Minister for Foreign Affairs.

[324] United Nations, *Treaty Series,* vol. 600 (not yet published). The letter from the Congo (Brazzaville) is signed by the Minister for Foreign Affairs.

The four 1949 Geneva Conventions for the protection of war victims are lawfully applicable within the territory of the Republic of [name of the country in question], by virtue of their ratification by France on 28 June 1951.

The Government of the Republic of . . . wishes, however, to confirm by this communication its participation in these four Conventions:

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949;

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949;

Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949;

Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949.

In requesting you to be good enough to bring the foregoing to the notice of the States parties to these Conventions. . . .*

178. All the declarations of continuity of these States —former French territories—came into force on the date of their independence. These dates, which are usually specifically indicated in the notifications that the Permanent Observer of Switzerland to the United Nations sends to the United Nations Secretariat, are as follows:

Cameroon, 1 January 1960
Central African Republic, 13 August 1960
Congo (Brazzaville), 15 August 1960
Dahomey, 1 August 1960
Gabon, 17 August 1960
Ivory Coast, 7 August 1960
Madagascar, 26 June 1960
Mauritania, 28 November 1960
Niger, 3 August 1960
Senegal, 20 August 1960
Togo, 27 April 1960
Upper Volta, 5 August 1960.

c. *Former non-metropolitan territories for whose international relations Belgium was responsible*

179. *The Democratic Republic of the Congo* and *Rwanda* became parties to the 1949 Geneva Conventions by succession, by virtue of their previous ratification by Belgium.[325] Belgium's ratification specified that the application of the Conventions had been extended to the Belgian Congo and Ruanda-Urundi. *The Democratic Republic of the Congo* confirmed its participation in the 1949 Conventions by a letter received by the Swiss Federal Political Department on 24 February 1961.[326] In the notification sent to the United Nations Secretariat, the Permanent Observer of Switzerland to the United Nations specified that "according to the communication received from Leopoldville, the participation of the Republic of the Congo in the Geneva Conventions took effect on the date on which that country became independent, namely 30 June 1960". The letter from the Democratic Republic of the Congo was worded as follows:

. . . At the request of the representatives of the International Committee of the Red Cross at Leopoldville, I have the honour to confirm that the Republic of the Congo is effectively bound by the so-called Geneva Conventions of 1949.

Belgium acceded to these Conventions on behalf of the Congo. By the very fact that it has attained independence, our country is therefore bound, without any further action on our part being necessary.

I should be grateful if you would kindly take note of this assurance. . . .*

180. *Rwanda* sent its declaration of continuity to the Swiss federal authorities on 21 March 1964,[327] the conventions having entered into force for Rwanda on the date when that country became independent, 1 July 1962. Rwanda's declaration was similar in wording to the declarations reproduced in paragraph 177 above.

(ii) *Cases of accession*

a. *Former condominium and other former non-metropolitan territories for whose international relations the United Kingdom was responsible*

181. The Geneva Conventions of 12 August 1949 entered into force on 21 October 1950 but the United Kingdom did not deposit its instrument of ratification until 23 September 1957, and the Conventions entered into force for that country six months later, i.e., on 23 March 1958.[328] Thus, some former United Kingdom territories which became independent States before the Conventions entered into force for the United Kingdom could only become parties to the 1949 Conventions by accession. That is, for example, the case of the *Sudan* and *Ghana.* On 23 September 1957 the Swiss Embassy at Cairo received from the Government of the *Sudan* a declaration of accession which took effect on the same date as the United Kingdom ratification, 23 March 1958.[329] *Ghana's* instrument of accession to the four 1949 Conventions was received by the Swiss Consulate-General at Accra on 2 August 1958, and the Conven-

* Translation from the French by the United Nations Secretariat.

[325] United Nations, *Treaty Series,* vol. 139, pp. 461 and 462. Belgium deposited its instrument of ratification on 3 September 1952. The Belgian ratification became effective on 3 March 1953.

[326] United Nations, *Treaty Series,* vol. 392, pp. 339-342. The letter from the Democratic Republic of the Congo, dated 20 February 1961, was signed by the Minister for Foreign Affairs.

* Translation from the French by the United Nations Secretariat.

[327] United Nations, *Treaty Series,* vol. 502, pp. 364 and 366-368. The letter from Rwanda, signed by the Minister for Foreign Affairs, is dated 21 March 1964.

[328] United Nations, *Treaty Series,* vol. 278, pp. 259-262, and 266-268. The United Kingdom ratification is accompanied by reservations and declarations.

[329] United Nations, *Treaty Series,* vol. 278, pp. 259-262. Sudan's declaration of accession is dated 7 September 1957. Before it became independent, the Sudan was legally an Anglo-Egyptian condominium.

tions entered into force for Ghana six months later, on 2 February 1959.[330]

182. Other States which were formerly United Kingdom territories and which attained independence after the United Kingdom ratified the 1949 Geneva Conventions—namely *Cyprus, Kenya, Kuwait,* the *Federation of Malaya, Trinidad and Tobago, Uganda* and *Zambia*—also used the accession procedure. The instrument of accession of *Cyprus* to the four 1949 Conventions was received by the Swiss authorities on 23 May 1962 and took effect on 23 November 1962.[331] *The Federation of Malaya* submitted its declarations of accession on 24 August 1962, and they took effect on 24 February 1963.[332] The declaration of accession of *Trinidad and Tobago* to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field was received by the Swiss federal authorities on 17 May 1963 and took effect on 17 November 1963; that State's declaration of accession to the three other Geneva Conventions of 1949 was received on 24 September 1963 and took effect on 24 March 1964.[333] *Uganda's* instruments of accession to each of the four Conventions were received by the Swiss authorities on 18 May 1964, and the Conventions entered into force for Uganda on 18 November 1964.[334] In a letter received on 2 September 1967, *Kuwait* notified the Swiss Federal Council of its accession to the four 1949 Conventions, and its accession took effect on 2 March 1968.[335] A notification of *Kenya's* accession[336] to the four Conventions was received at Berne on 20 September 1966, and an instrument of accession to those Conventions from *Zambia*[337] was deposited with the Swiss authorities on 19 October 1966.

b. *Former Department, former protectorates and other former non-metropolitan territories for whose international relations France was responsible*

183. Various former territories and protectorates for whose international relations France was responsible, having attained independence after France ratified the 1949 Conventions, used the accession procedure to become separate parties to those Conventions. *Cambodia, Laos, Mali, Morocco* and *Tunisia* became parties to the 1949 Conventions by sending notifications of acccssion to the Swiss federal authorities: that of *Morocco,* dated 26 July 1956, took effect on 26 January 1957;[338] that of *Laos,* dated 29 October 1956, took effect on 29 April 1957;[339] that of *Tunisia,* dated 4 May 1957, took effect on 4 November 1957;[340] that of *Cambodia,* dated 8 December 1958, became effective on 8 June 1959;[341] and that of *Mali,* dated 24 May 1965, became effective on 24 November 1965.[342]

184. *Algeria,* too, used the accession method in order to become a party to the 1949 Conventions. The procedure followed was quite exceptional. Although *Algeria* did not attain independence until 3 July 1962, it notified its accession to the 1949 Conventions on 20 June 1960. The Swiss Federal Council notified the accession of the "Provisional Government of the Algerian Republic", which had been transmitted to it through the Prime Minister and Minister for Foreign Affairs of the United Kingdom of Libya. The Swiss Federal Council communicated the accession, taking particular account of the fact that it related to humanitarian conventions which were to be applied immediately in the armed conflict then going on in Algeria. When communicating the accession, the Swiss Federal Council formulated certain reservations concerning its own position with regard to the "Provisional Government of the Algerian Republic".[343] This notification of accession has not been registered with the United Nations Secretariat. Algeria is still deemed to have become a party to the 1949 Conventions on 20 June 1960.

(*e*) CONVENTIONS OF 1864, 1906, 1929 AND 1949: SPECIAL CASES OF PARTICIPATION

185. The *Republic of Viet-Nam,*[344] the *Democratic Republic of Viet-Nam,*[345] the *Federal Republic of Ger-*

[330] United Nations, *Treaty Series,* vol. 310, pp. 336-339. Ghana's instrument of accession is dated 28 July 1958.

[331] United Nations, *Treaty Series,* vol. 445, pp. 313 and 315-317. The instrument of accession of Cyprus is dated 13 May 1962.

[332] United Nations, *Treaty Series,* vol. 445, pp. 313 and 315-317. The declarations of accession of the Federation of Malaya are dated 14 August 1962.

[333] United Nations, *Treaty Series,* vol. 480, pp. 320, 322, 324 and 326. The declaration of accession of Trinidad and Tobago to the first Convention is dated 8 May 1963 and that relating to the three other Conventions is dated 16 September 1963.

[334] United Nations, *Treaty Series,* vol. 503, pp. 328-331. Uganda's instruments of accession are dated 17 April 1964.

[335] United Nations, *Treaty Series,* vol. 608 (not yet published) and *International Review of the Red Cross,* 1967, October, p. 539.

[336] *International Review of the Red Cross, 1966,* December, p. 651.

[337] *Ibid.*

[338] United Nations, *Treaty Series,* vol. 248, pp. 362-365. Morocco's notification of accession, dated 18 July 1956, refers to the "joint Franco-Moroccan declaration of 2 March 1956, and the joint Hispano-Moroccan declaration of 7 April 1956, establishing the unity and independence of Morocco".

[339] United Nations, *Treaty Series,* vol. 253, pp. 337-340. The notification of Laos is dated 23 October 1956.

[340] United Nations, *Treaty Series,* vol. 269, pp. 283-286. Tunisia's instrument of accession is dated 26 April 1957.

[341] United Nations, *Treaty Series,* vol. 320, pp. 334-337.

[342] *Ibid.,* vol. 540, p. 332.

[343] Information provided by the International Committee of the Red Cross. *India* and *Burma* also constitute cases of participation in the Geneva Conventions (see above, paras. 154-158 and 160) before the attainment of full independence. However, India was at the time a Member of the League of Nations, and the participation of India and Burma in the Geneva Conventions as Contracting States took place at the request of the United Kingdom.

[344] United Nations, *Treaty Series,* vol. 181, pp. 349-352. Received by the Swiss federal authorities on 14 November 1953 and took effect on 14 May 1954.

[345] United Nations, *Treaty Series,* vol. 274, pp. 335-342. Received by the Swiss authorities on 28 June 1957 and took effect on 28 December 1957.

many,[346] the *German Democratic Republic*,[347] the *Republic of Korea*,[348] and the *Democratic People's Republic of Korea*[349] have acceded to the four Geneva Conventions of 12 August 1949.[350] Before acceding to the 1949 Conventions in 1966, the *Republic of Korea* was bound by the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field of 22 August 1864[351] by virtue of Korea's accession to that Convention on 8 January 1903.[352]

186. Before the Second World War, Germany became a party to the 1864 Convention on 12 June 1906, to the 1906 Convention on 27 May 1907 and to the 1929 Convention on 21 February 1934.[353]

187. China is a party to the 1864 Convention (29 June 1904) and to the 1929 Convention (19 November 1935).[354] After the Second World War, a delegation from the *Republic of China* participated in the 1949 Geneva Diplomatic Conference and signed the Final Act and the four Conventions drawn up by the conference. Subsequently, on 28 December 1956, the People's Republic of China deposited instruments of ratification of the four 1949 Conventions with the Swiss Federal Political Department.[355] The ratification of the 1949 Conventions by the *People's Republic of China* took effect on 28 June 1957. The *People's Republic of China* had previously communicated to the Swiss Federal Council a declaration by its Minister for Foreign Affairs, dated 13 July 1952, confirming the signature by the delegates of the Republic of China and announcing its intention of subsequently ratifying the 1949 Geneva Conventions. The declaration quoted the text of article 55 of the programme adopted by the Consultative Political Conference of the *People's Republic of China*, which reads as follows:

> The central people's Government of the People's Republic of China shall examine the treaties and agreements concluded between [China before the establishment of the People's Republic of China] and Foreign Governments, and shall in accordance with their contents, recognize, abrogate, revise or reconclude them respectively.

As requested in the declaration itself, the Swiss Federal Council then transmitted it to the States parties to the Geneva Convention. (Information provided by the International Committee of the Red Cross.)

2. PARTICIPATION IN INTERNATIONAL CONFERENCES OF THE RED CROSS

188. Delegates of Governments and of National Societies take part in the International Conferences of the Red Cross. The preparation of the list of Governments and National Societies having the right to participate in the Conferences is the responsibility of the Standing Commission, which in performing this function must take into consideration the participation of States in the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1864, 1906, 1929 or 1949) an the international recognition of National Societies by the International Committee.

189. At the International Conferences held at *Toronto* (1952) and *New Delhi* (1957), protests were raised by the Government and Red Cross of the *People's Republic of China* and by the Government and Red Cross of the *Republic of China*. These protests concerned: (*a*) the right of the Governments and Red Crosses of the People's Republic of China and the Republic of China to take part in the International Conferences; and (*b*) the title and quality by virtue of which the Government and Red Cross of the Republic of China had been invited. During the discussion of the protests, delegates of the participating Governments expressed their views on participation in International Conferences of the Red Cross by Governments and National Societies of States parties to the Geneva Conventions, and the Chairman of the Standing Commission explained the principles followed by the Commission in drawing up the list of Governments and National Societies.

190. At the *Toronto* Conference (1952), the question was discussed at the first and second plenary meetings and the Chairman of the Standing Commission made the following statement:

> . . . I now propose to outline to you the principles that the Standing Commission has followed. These principles are: any government exercising authority over territories where the Conventions are applicable is automatically a member of the Conference. In virtue of this, the Government of Formosa is a member of the Conference, for the territory over which its authority is exercised. Similarly, the Government of the People's Republic of China is also a member of the Conference. The Peking National Red Cross Society, continuing, as it does, to carry out Red Cross activities in the territory of continental China, has been recognized by the International Committee and by the League as the *de facto* successor of the Chinese Red Cross. It

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[346] United Nations, *Treaty Series*, vol. 199, pp. 329-332. Received by the Swiss authorities on 3 September 1954 and took effect on 3 March 1955.

[347] United Nations, *Treaty Series*, vol. 257, pp. 364-371. Received by the Swiss authorities on 30 November 1956 and took effect on 30 May 1957.

[348] United Nations, *Treaty Series*, vol. 575, pp. 284-287. Received by the Swiss authorities on 16 August 1966 and took effect immediately.

[349] United Nations, *Treaty Series*, vol. 278, pp. 259-265. Received by the Swiss authorities on 27 August 1957 and took effect on 27 February 1958.

[350] When depositing its instrument of ratification of the 1949 Conventions, Australia made the following declaration: "... I am further instructed by the Government of the Commonwealth of Australia to refer to notifications concerning the 'German Democratic Republic', the 'Democratic People's Republic of Korea', the 'Democratic Republic of Viet-Nam' and the 'People's Republic of China'. While the Government of the Commonwealth of Australia does not recognize any of the foregoing it has taken note of their acceptance of the provisions of the Conventions and their intention to apply them..." (United Nations, *Treaty Series*, vol. 314, pp. 334-336.)

[351] *The Republic of Korea* was invited to and took part in the International Conferences of the Red Cross held at Toronto (1952), New Delhi (1957) and Vienna (1965). There were no objections to its participation (see *Proceedings* of the XVIIIth (Toronto), XIXth (New Delhi) and XXth (Vienna) International Conferences of the Red Cross, pp. 14, 12 and 16 respectively).

[352] *Handbook of the International Red Cross, op. cit.*, p. 9.

[353] *Ibid.*, pp. 9, 26, 69 and 96.

[354] *Ibid.*, pp. 9, 69 and 96.

[355] United Nations, *Treaty Series*, vol. 260, pp. 438-445.

was accordingly invited as a member with full voting rights. The activities of the Formosa Red Cross are limited to Formosa; this Society cannot, therefore, claim to be the Chinese Red Cross. It has not lodged a request for recognition as the Formosan Red Cross. We suggested such a course to it; we said: if you agree to being considered as the Formosan Red Cross, you will be invited here with full voting rights. But the Formosan Red Cross would not agree to this. We therefore invited it in an advisory capacity, which means that it is entitled to attend all our sessions as well as all commission meetings, that it may take the floor to express its opinions and to endeavour to have these shared by the audiences before which it speaks. For the reasons I have just stated, however, it is debarred from voting. It is not incidentally the only Society participating in an advisory capacity; several other Societies are in the same position, they fall under the category of observers who, after all, have most prerogatives except that of voting, which is not, perhaps the most important. The Formosan Red Cross was therefore invited together with several other Societies who have not made a request for recognition or who do not fulfil the conditions for recognition. Among these, I particularly draw your attention to condition No. 7 which requires that, to be recognized, a Society shall extend its activities to the entire territory of its country. . . .[356]

191. Thus, according to the principles enumerated by the Chairman of the Standing Commission, a given Government must exercise effective authority over the territory of a State party to the Geneva Conventions in order to have the right to take part in the International Conference. Similarly, when a National Society duly recognized by the International Committee exercises effective activity in the territory controlled by its Government, it has the right to participate with full rights in the International Conference as the National Society of the State concerned. At the proposal of its Bureau, the Conference adopted a resolution confirming "the action taken by the Standing Commission in extending invitations to both Governments and Societies and indicating the respective capacities in which they should attend" the Conference.[357] After the vote, the delegation of the Republic of China withdrew from the International Conference.[358]

192. During the preparations for the XIXth International Conference, the letter of invitation intended for the Government of the Republic of China was addressed to the Government of the Republic of Formosa. That Government first accepted the invitation but subsequently decided to go back upon its acceptance and refused to take part in the Conference.[359] The XIXth International Conference, which met at *New Delhi* in 1957, again discussed various aspects of the question at its first, second, third, fourth and seventh plenary meetings.

193. Several draft resolutions were submitted to the Conference, which adopted those submitted by the delegations of Switzerland and the United States. The Swiss draft resolution, which became resolution XXXV of the Conference, is entitled "Procedure for Invitations to International Conferences of the Red Cross" and reads as follows:

The XIXth International Conference of the Red Cross,

having taken note of the invitations issued, according to the Statutes of the International Red Cross, by the Standing Commission, to Governments parties to the Geneva Conventions, to the Red Cross Societies and International Organizations of the Red Cross, as well as to other Organizations;

having noted also the observations made, at its first Meeting, on the subject of these invitations;

expresses its thanks to the Standing Commission for the work which it has accomplished;

reaffirms the general principle that the National Society which offers its hospitality to an International Conference acts in accordance with the Statutes in transmitting the invitations merely as an intermediary and that, therefore, all members must refrain from addressing themselves in this matter to the inviting National Society as such;

desires that, also in future, the invitations to all International Conferences of the Red Cross be issued in a spirit of broad universality and include in the interest of Humanitarian Law, all Governments exercising authority over territories where the Geneva Conventions are applicable, this regardless of whether these Governments enjoy recognition by other signatories;

underlines that, in the field of the Red Cross, the criteria of recognition customary in the intercourse between States do not apply, and that consequently the decisions regarding the invitations to Red Cross Conferences do not and cannot set a precedent in other fields.[360]

194. The United States draft resolution, which became resolution XXXVI of the Conference, is entitled "Invitations to International Conferences of the Red Cross" and is worded as follows:

The XIXth International Conference of the Red Cross,

having in mind the report of the Chairman of the Standing Commission,

confirming the statement of the Chairman of the Standing Commission that the Red Cross is not concerned with juridical and political questions regarding the status of governments,

resolves in accordance with the traditional principles of the Red Cross that it is the sense of the Conference that all parties invited to attend the Conference be addressed according to their own official titles.[361]

195. Following the adoption of the United States draft resolution, the delegations of Governments and National Societies of the People's Republic of China, India, the USSR, Czechoslovakia, Romania, Bulgaria, Hungary, Albania, the German Democratic Republic, the Democratic Republic of Viet-Nam, Poland, Yugoslavia, Indonesia, Syria and Egypt withdrew from the Conference, while the delegates of the Republic of China were seated.[362]

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[356] Statement by Mr. A. François-Poncet, Chairman of the Standing Commission, *XVIIIth International Conference of the Red Cross, Toronto, 1952, Proceedings,* second plenary meeting, pp. 57 and 58. For the discussion of the question, see pp. 48-70 of the Proceedings, first plenary meeting.

[357] *XVIIIth International Conference of the Red Cross, Proceedings, op. cit.,* p. 68. The resolution was adopted by 58 votes to 25, with 5 abstentions.

[358] *Ibid.,* third plenary meeting, p. 69.

[359] See statement by Mr. A. François-Poncet, Chairman of the Standing Commission, *XIXth International Conference of the Red Cross, New Delhi, 1957, Proceedings,* pp. 48 and 49.

[360] *Ibid.,* p. 161.

[361] *Ibid.*

[362] The United States draft resolution was adopted at the last plenary meeting of the Conference.

196. The delegates of the Governments and National Societies of the *Federal Republic of Germany,* the *German Democratic Republic,* the *Republic of Korea,* the *Democratic People's Republic of Korea,* the *Republic of Viet-Nam* and the *Democratic Republic of Viet-Nam* took part in the Toronto and New Delhi Conferences: the Government and Red Cross of the Federal Republic of Germany participated in both Conferences; the Government and Red Cross of the German Democratic Republic took part in the New Delhi Conference; the Governments of the Republic of Korea and the Democratic People's Republic of Korea took part in both Conferences and their National Societies participated in the Toronto Conference as observers and in the New Delhi Conference with full powers; the Governments and Red Crosses of the Republic of Viet-Nam and the Democratic Republic of Viet-Nam took part in the New Delhi Conference.

197. During the XXth International Conference of the Red Cross (*Vienna,* 1965), the President of the Conference received a number of communications concerning the participation of the German Democratic Republic, the Republic of China, and the Republic of Viet-Nam and the Red Cross of the Republic of Viet-Nam.[363] Delegates of the Government of the Republic of China took part in the Conference, and because of this the Government and Red Cross of the People's Republic of China were absent. The Government and Red Cross of the Democratic Republic of Viet-Nam did not participate in the Conference either. These absences prompted statements by the delegates of the Governments of Albania, Bulgaria, Cuba, Czechoslovakia, France, the German Democratic Republic, Hungary, the Democratic People's Republic of Korea, Mongolia and the Union of Soviet Socialist Republics. The delegate of the Republic of China also made a statement.[364] Delegates of the Governments and Red Crosses of the Federal Republic of Germany, the German Democratic Republic, the Republic of Korea, the Democratic People's Republic of Korea and the Republic of Viet-Nam took part in the Conference.

198. Most of the Governments and National Societies of the new States which became Parties by succession to the Geneva Conventions for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field were unable to participate in the Toronto and New Delhi Conferences, which took place before those States attained their independence. However, *Indonesia* and *Burma* were parties by succession to the 1929 Convention, and the former took part in the Toronto Conference while the latter participated in the New Delhi Conference. The Vienna Conference (1965) was attended by delegates of the Governments and National Red Cross Societies of eight new States which became parties to the 1949 Geneva Conventions by succession *(Cameroon, Central African Republic, Congo (Democratic Republic of), Dahomey, Ivory Coast, Senegal, Togo, Upper Volta)* and by delegates of the National Societies of five States which succeeded to those Conventions *(Madagascar, Niger, Nigeria, Sierra Leone, Tanzania).* No objections were made to their participation.[365]

3. RECOGNITION OF NATIONAL SOCIETIES BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS

199. The International Committee of the Red Cross informs National Red Cross Societies of the recognition of a new Society by means of circulars which are reproduced in the *International Review of the Red Cross,* published each month in Geneva by the International Committee. The circulars specify the method by which the State in whose territory the Society concerned has been established became a party to the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1864, 1906, 1929 and 1949), i.e., signature followed by ratification, accession or succession. In recent years, the International Committee has tried to develop the method of succession in the case of new States which were formerly dependent territories of a State party to the Geneva Conventions concerned. In 1962, the International Committee made the following comments on the participation of the new African States in the 1949 Geneva Conventions:

> Since the Geneva Conventions were signed on August 12, 1949, the International Committee of the Red Cross has endeavoured to make these texts universal since they constitute the basis of humanitarian law. Recently, it has put the emphasis on their dissemination in Africa because, in the critical phase which this continent is going through, it seems particularly desirable that all African States feel themselves bound by these treaties.
>
> However, a problem arises when the country concerned has previously been under Colonial administration: Is the State which has recently acceded to independence bound by the international acts of the Power which was previously exercising sovereignty over its territory?
>
> Certain treaties of a political nature, such as alliances, obviously lose their validity in the newly independent State, but other conventions of public or general interest can remain valid. In the ICRC's view, this is the case with the Geneva Conventions to which the governments have acceded in the interest of all people placed under their sovereignty. If these people accede to independence, they will be at a disadvantage if the Geneva Conventions are no longer applicable to them. The latter must therefore retain their validity.

[363] See the list of these communications in *XXth International Conference of the Red Cross, Report, Vienna, 1965,* pp. 115 and 116.

[364] For all the statements see *ibid.,* pp. 37-46.

[365] Delegates of the Governments of *Malawi* and *Chad* also took part in the Vienna Conference (1965). At that time those States had formally become parties to the Geneva Conventions. *Malawi* subsequently acceded to the 1949 Conventions on 5 January 1968.

Participation of newly independent States in the Geneva Conventions can therefore be admitted as implied by virtue of the signature of the former Colonial Power. It is considered advisable, however, that they officially confirm their participation in the Conventions by notifying the administering State, that is to say the Federal Council at Berne. This is a question neither of accession nor of ratification, but of confirmation of participation or of declaration of continuity. . . .[366]

200. This has sometimes led the International Committee to make a distinction for the purposes of the recognition of a new Society, between "participation" and "formal" or "express participation" in the Geneva Conventions. While recommending that new States which are former dependent territories of a State party to the Geneva Conventions should officially confirm their participation in those Conventions by notifying the Swiss Federal Council, the International Committee has in some cases recognized a new Society without waiting for the State in whose territory the Society concerned was established to confirm formally its participation in the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.[367] For the purposes of the recognition of new Societies, the International Committee has therefore considered some new States as having succeeded to their former metropolitan countries which were parties to the Geneva Conventions, even before those new States had notified the Swiss Federal Council of their desire to become parties to them.[368]

201. The International Committee's adoption of a flexible criterion for determining which States are parties to the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field for the purpose of the international recognition of National Red Cross Societies is justified not only by the very nature of the Geneva humanitarian Conventions, but also by the specific mandates which the Committee has received from International Conferences of the Red Cross requesting it to intervene when necessary to ensure that the Geneva Conventions are complied with and at the same time to do all it can to secure the successive accession of all Powers to those Conventions.[369]

(*a*) Recognition after the State of the applicant Society has formally become a party to the Geneva Conventions

202. This is the usual procedure. For example, in recent years the International Committee recognized the following National Societies after their respective States had notified the Swiss Federal Council of their participation in the Geneva Convention of 12 August 1949 for the Amelioration of the Condition of the Wounded and the Sick in Armed Forces in the Field:

1959—Society of *Ghana*[370]
1960—Society of *Cambodia*[371]
1962—Society of *Upper Volta*[372]
1963—Societies of the *Federation of Malaya*, the *Democratic Republic of the Congo, Algeria, Ivory coast, Senegal, Trinidad and Tobago, Tanganyika, Dahomey* and *Madagascar*[373]
1964—Society of *Jamaica*[374]
1965—Societies of *Uganda* and *Niger*[375]
1966—Societies of *Kenya* and *Zambia*[376]

203. In the case of the National Societies mentioned above which were established in the territory of a State which became a Party to the 1949 Geneva Convention by accession *(Algeria, Cambodia, Federation of Malaya, Ghana, Kenya, Uganda* and *Zambia)*, the International Committee circulars concerning their recognition reported their accession in the following terms:

. . . [name of country concerned] acceded on [date when the Swiss Federal authorities received the notification of accession] to the Geneva Conventions of 1949. . . .

When the States of the National Societies mentioned above became Parties to the 1949 Geneva Convention by succession *(Dahomey, Ivory Coast, Jamaica, Madagascar, Niger, Senegal* and *Tanganyika)*, the International Committee circulars announced the event in the following terms:

. . . The Government of [name of country concerned] confirmed on [date when the Swiss Federal authorities received the declaration of continuity] that the Republic [or the State] was party to the Geneva Conventions of 1949, by virtue of their ratification by [name of the former metropolitan State] in [year in which the former metropolitan State deposited the instrument of ratification]. . . .

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[366] *International Review of the Red Cross*, 1962, April, pp. 207 and 208.

[367] *Ibid.*, 1961, May, p. 244.

[368] "... the ICRC has always considered that a territory achieving independence remains bound by agreements of public or general interest signed by the Power formerly exercising sovereignty there. Then the Geneva Conventions remain in force, unless the new State expressly revokes these agreements signed by the State to which it has succeeded. ... However, the ICRC hopes that the governments of these States, following the example of many others which found themselves in the same position, confirm, either by a declaration of continuity or by accession, their participation in the Conventions, in order to avoid all misunderstanding." (*International Review of the Red Cross*, 1966, July, p. 386.)

[369] See, for example, resolution No. IV of the IInd International Conference (Berlin, 1869) (*Compte-rendu des Travaux de la Conférence Internationale (Berlin, 1869)*, p. 254) and resolution No. XVI of the Xth Conference (Geneva, 1921) (*Dixième Conférence Internationale de la Croix Rouge (Genève, 1921), Compte-rendu*, pp. 221 and 222).

[370] International Committee circular No. 424 (*Revue Internationale de la Croix Rouge*, 1959, March, pp. 132 and 133).

[371] International Committee circular No. 431 (*Revue Internationale de la Croix Rouge*, 1960, November, pp. 603 and 604).

[372] International Committee circular No. 438 (*International Review of the Red Cross*, 1962, December, pp. 649 and 650).

[373] International Committee circulars Nos. 443, 445, 446, 447, 448, 449, 450, 453 and 454 (*International Review of the Red Cross*, 1963, August, September and October, pp. 429 and 430, 433-436, 457-464, 536-539).

[374] International Committee circular No. 459 (*International Review of the Red Cross*, 1964, November, pp. 578 and 579).

[375] International Committee circulars Nos. 461 and 462 (*International Review of the Red Cross*, 1965, October, pp. 519 and 520, and 1966, January, pp. 17 and 18).

[376] International Committee circulars Nos. 464 and 465 (*International Review of the Red Cross*, 1966, December, pp. 645 and 646, and 1967, January, pp. 17 and 18).

Or

. . . [name of country concerned] confirmed on [date when the Swiss Federal authorities received the declaration of continuity] that it is bound by the Geneva Conventions of 1949. . . .

204. It should be noted, however, that the International Committee circulars are sometimes inaccurate with regard to the method by which the State of the applicant Society became a party to the 1949 Geneva Convention. Among the Societies mentioned above, this is the case for the *Democratic Republic of the Congo, Trinidad and Tobago* and *Upper Volta.* According to the International Committee circulars, the *Democratic Republic of the Congo* and *Upper Volta* acceded to the 1949 Conventions, whereas in fact they became parties to them by succession.[377] On other hand, *Trinidad and Tobago,* which acceded to the 1949 Geneva Convention, is described by the International Committee circular as a State "bound by the Geneva Conventions of 1949, by virtue of their ratification by Great Britain in 1957".[378]

205. The interval between the date on which a State becomes a party to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 and the date on which the National Society of that State is recognized by the International Committee of the Red Cross varies greatly from case to case.

206. For example, the interval was less than four months for *Jamaica, Kenya, Madagascar, Senegal, Trinidad and Tobago* and *Zambia,* between seven months and one year for *Ghana,* the *Federation of Malaya, Niger, Tanganyika, Uganda,* and *Upper Volta* and between seventeen months and two years for *Cambodia, Dahomey* and the *Ivory Coast,* about twenty-nine months for the *Democratic Republic of the Congo* and about three years for *Algeria.*

(*b*) Recognition before the State of the applicant Society has formally become a party to the Geneva Conventions

207. Some National Societies established in the territory of new States which were formerly dependent territories of a State Party to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 have been recognized by the International Committee before their respective States formally became parties to the Convention. This is true of the National Societies of *Nigeria, Togo, Sierra Leone, Cameroon* and *Burundi.*

208. The National Society of *Nigeria* was recognized by the International Committee in circular No. 434 of 15 May 1961,[379] which stated that:

. . . Nigeria acceded to the Geneva Conventions of 1949 by virtue of their ratification by Great Britain in 1957. The application of these Conventions was proclaimed by a Government ordinance also published on September 29, 1960. . . .*

However, *Nigeria's* declaration of continuity relating to the Conventions concerned did not reach the Swiss Federal Council until 20 June 1961.[380]

209. The recognition of the National Red Cross Societies of Togo [381] and Cameroon [382] was announced in International Committee circulars Nos. 435 and 444 of 7 September 1961 and 4 July 1963. In these circulars, the International Committee indicates that *Togo* "is a party to" and that *Cameroon* "is bound by" the 1949 Geneva Conventions by virtue of their ratification by France in 1951. In fact, it was not until 26 January 1962 and 16 September 1963 respectively that *Togo* and *Cameroon* transmitted to the Swiss Federal Council their declarations of continuity confirming their participation in the 1949 Geneva Conventions by virtue of their previous ratification by France.[383] The International Committee recognized the National Society of *Sierra Leone* by circular No. 439 of 1 November 1962.[384] The circular stated that *Sierra Leone* "is a Party to" the 1949 Geneva Conventions by virtue of their ratification by Great Britain in 1957. However, Sierra Leone did not send its declaration of continuity to the Swiss Federal Council until 31 May 1965.[385] The National Society of *Burundi* was recognized by International Committee circular No. 452, dated 22 August 1963.[386] The circular states that *Burundi* "is bound by" the 1949 Geneva Conventions by virtue of their ratification by Belgium in 1952. So far, however, *Burundi* has not sent the Swiss Federal authorities a notification of accession or a declaration of continuity concerning those Conventions.

210. According to information received from the International Committee of the Red Cross, the latter has now decided not to grant recognition unless participation in the Geneva Conventions has been expressly confirmed by accession or by a declaration of continuity. Once recognition has been granted the Committee can no longer use the powerful lever of recognition to obtain formal participation in the Geneva Conventions.

(*c*) Fusion of National Societies when two parties to the Geneva Conventions become one State and subsequent separation following dissolution of the unified State

211. For the Red Cross, the union of *Egypt* and *Syria* in one State resulted in a fusion of the Egyptian

[377] See above, paras. 177 and 179.

[378] See above, para. 182.

[379] *International Review of the Red Cross,* 1961, June, pp. 133 and 134.

* Translation from the French by the United Nations Secretariat.

[380] See above, para. 170.

[381] *International Review of the Red Cross,* 1961, October, pp. 380 and 381.

[382] *Ibid.,* 1963, August, pp. 431 and 432.

[383] See above, para. 177.

[384] *International Review of the Red Cross,* 1962, December, pp. 651 and 652.

[385] See above, para. 173.

[386] *International Review of the Red Cross,* 1963, October, pp. 534 and 535.

Red Crescent, established in 1912, and the Syrian Red Crescent, established in 1942. The unified Society took the name of Red Crescent of the *United Arab Republic*, and had its headquarters in Cairo. The International Committee notified national Red Cross Societies of this situation in the following terms:

> . . . Considering that this case does not concern the establishment of a new Society but rather the unification of two existing Societies, the International Committee decided that there was no need for it to grant recognition anew. It did, however, decide to transfer to the Red Crescent of the United Arab Republic the recognition previously granted to the Egyptian and Syrian Red Crescents. . . .* [387]

After the dissolution of the unified State, the International Committee of the Red Cross, in circular No. 436 of 31 July 1962, announced that the Syrian Red Crescent Society and the Red Crescent Society of the United Arab Republic (formerly Egypt) had once more become two separate Societies and were therefore entitled to participate separately in International Conferences of the Red Cross.[388]

E. *General questions concerning cases of succession*

1. WAYS IN WHICH THE STATES CONCERNED MANIFEST THEIR CONSENT

212. The Geneva Conventions are open for participation by all States. The method of accession may be followed by any new State, whether or not it is a former dependent territory of a State party to the Geneva Conventions. However, when the State wishing to participate in the Geneva Conventions is a former dependent territory of a State party, it may choose between accession and succession. The Conventions do not provide for the latter alternative, but it has been sanctioned by custom. Analysis of the cases concerned shows that new States have very often used the succession method, and that this participation procedure has not been challenged by the States parties to the Conventions concerned or by the Swiss Federal Council. The successor State need only indicate that it considers itself bound by the Conventions by virtue of the fact that they were ratified or acceded to by the predecessor State.

213. However, study of participation by States in the Geneva Conventions shows that some United Kingdom dominions became contracting States before they attained full independence. This is true, for example, of *India*, which became a party to the 1906 Convention by succession (1926) [389] and to the 1929 Conventions by signature followed by ratification (1931), and of *Burma*, which became a party to the 1929 Conventions by succession (1937).[390] These States have always been considered as contracting States and took part in the 1949 Geneva Diplomatic Conference in that capacity. After attaining independence they did not explicitly reaffirm the desire to remain bound by the Conventions.

214. Within the framework of the Geneva Conventions, consent by accession is expressed in simplified forms which have some similarity to those used for the expression of consent in the case of succession. Accession procedures are as simple in form as those used for the declarations of continuity characteristic of succession, for the Geneva Conventions call only for the submission of a notification of accession to the Swiss Federal Council, the deposit of a formal instrument being required only in the case of ratification. The Conventions do not prohibit a State wishing to accede from transmitting an instrument of accession—and in practice this has sometimes occurred—but the State concerned may validly express its desire to be bound by the Conventions by submitting a simple notification of accession. Even if the acceding State submits an instrument of accession, the Swiss Federal Council is not called upon to draw up a record of the deposit as it is in the case of ratification. The procedure for notification of accession is thus as simple as that for declarations of continuity.

215. Generally speaking, States express their desire to become parties to the Geneva Conventions by succession by a declaration of continuity. However, in some cases of succession to the 1929 Conventions, that desire was expressed by a "declaration of application" *(Burma)* or by "a declaration of continuance of application" *(Indonesia)*.[391] Nevertheless, the expression "declaration of continuity" already used by the Swiss Federal Council in connexion with *Transjordan's* succession to the 1929 Conventions,[392] is now used in the case of succession to the 1949 Conventions *(Cameroon, Central African Republic, Congo (Brazzaville), Congo (Democratic Republic of), Dahomey, Gabon, Gambia, Ivory Coast, Jamaica, Madagascar, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone Tanganyika, Togo, Upper Volta)*. Declarations of continuity like notifications of accession, must be communicated to the Swiss Federal Council, which registers them with the United Nations Secretariat.

216. The declarations are sent to the Swiss Federal Council by the competent authorities of the successor State. *Burma's* "declaration of application" concerning the 1929 Conventions was an exception: it was communicated by the United Kingdom authorities, because Burma became a separate party to those Conventions before attaining full independence.[393] Declarations of continuity may be contained in a letter *(Cameroon, Central African Republic, Congo (Brazzaville), Congo (Democratic Republic of), Gabon, Jamaica, Madagascar, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra*

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* Translation from the French by the United Nations Secretariat.

[387] *Revue Internationale de la Croix Rouge*, 1959, October, pp. 499 and 500.

[388] See *International Review of the Red Cross*, 1962, pp. 362 and 363.

[389] See above, paras. 154-158.

[390] See above, para. 160.

[391] See above, paras. 163 and 164.

[392] See above, paras, 161 and 162.

[393] See above, para. 160.

Leone, Togo, Upper Volta), a note *(Dahomey, Ivory Coast, Tanganyika)*, a communication *(Transjordan)* or even a cable *(Transjordan,* 1929 Convention relative to the Treatment of Prisoners of War). They are sent by the Head of State *(Mauritania, Niger, Senegal, Togo)*, the Head of Government *(Jamaica, Nigeria)*, the Vice-President of the Government *(Gabon)*, the Minister for Foreign Affairs *(Cameroon, Central African Republic, Congo Brazzaville), Congo (Democratic Republic of), Dahomey, Madagascar, Rwanda, Tanganyika, Transjordan, Upper Volta)* and sometimes even by authorized diplomatic representatives *(Indonesia, Ivory Coast). Indonesia's* declaration concerning the 1929 Conventions was signed at the Federal Department in Berne by the High Commissioner of Indonesia to the Netherlands.[394]

217. Study of the various cases of succession shows that States may and very often do make a single declaration of continuity in order to succeed to all the Geneva Conventions concluded at the same diplomatic conference. The declarations relating to the 1929 Conventions mention the two Conventions concluded in that year and those relating to the 1949 Conventions the four Conventions concluded at the 1949 Diplomatic Conference. Thus, States succeed to more than one Convention by the same declaration of continuity. There is no example of a declaration of continuity relating to both the 1929 Conventions and the 1949 Conventions. When *Transjordan* succeeded to the two 1929 Conventions it began by communicating a declaration relating only to the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; this declaration was subsequently extended to the Convention relative to the Treatment of Prisoners of War.[395]

218. A distinction may be drawn between the declarations of continuity containing a comprehensive general formula *(Burma, Congo (Democratic Republic of), Dahomey, Indonesia, Ivory Coast, Nigeria, Tanganyika, Transjordan)* and those which list the Conventions concerned *(Cameroon, Central African Republic, Congo (Brazzaville), Gabon, Jamaica, Madagascar, Mauritania, Niger, Rwanda, Senegal, Sierra Leone, Togo, Upper Volta).* It is specified that the successor State considers itself a party to the Conventions concerned by virtue of their ratification by the predecessor State *(Cameroon, Central African Republic, Congo (Brazzaville), Gabon, Jamaica, Madagascar, Mauritania, Niger, Nigeria, Rwanda, Sierra Leone, Togo, Upper Volta)* signature and notification by the predecessor State *(Burma)*, accession on its behalf by the predecessor State *(Congo (Democratic Republic of), Transjordan)*, signature by the predecessor State *(Dahomey)* or the application of the Conventions to its territory by the predecessor State *(Tanganyika)*. Some declarations state that the Conventions remain in force in the territory of the successor State, without mentioning the predecessor State *(Indonesia, Ivory Coast).*[396] In some cases, the declaration recalls that the successor State has attained independence *(Congo (Democratic Republic of), Indonesia, Nigeria, Tanganyika, Transjordan). Transjordan's* declaration of continuity relating to the 1929 Conventions mentions, in support of succession, a treaty concluded with the predecessor State.[397]

2. CONTINUITY IN THE APPLICATION OF THE CONVENTIONS AND DATE ON WHICH A STATE BECOMES A CONTRACTING STATE

219. Succession ensures continuity in the application of the Geneva Conventions. The Federal Council now considers a successor State as a contracting State from the date on which it attains independence. An acceding State does not become a party until six months after the Swiss federal authorities have received the notification of accession, in accordance with the final provisions of the Geneva Conventions. This makes it possible to determine, in case of doubt, whether a new State became a party by succession or by accession. The declaration of continuity confirms that the Conventions continue to apply in the State concerned. The notification of accession, on the other hand, results in an interruption in participation in the Conventions, which may lead to an interruption in the application of the Conventions by the State concerned. The interruption begins with the attainment of independence and ends six months after the Swiss authorities receive the notification of accession.

220. The following tables show that the interruption sometimes lasts for several years:

	Accession	*Independence*	*Duration of interruption*
1929 Conventions			
Israel	3 Feb. 1949	15 May 1949	8 months, 18 days
Lebanon [398]	12 Dec. 1946	22 Nov. 1943	35 months, 20 days
Pakistan	2 Aug. 1958	15 Aug. 1947	11 months, 18 days
Philippines	1 Oct. 1947	4 July 1946	14 months, 27 days
Syria [398]	4 Jan. 1947	1 Jan. 1944	36 months, 4 days
1949 Conventions			
Cambodia	8 June 1959	9 Nov. 1953 [399]	67 months
Cyprus	23 Nov. 1962	16 Aug. 1960	27 months, 7 days
Federation of Malaya	24 Feb. 1963	31 Aug. 1957	65 months, 24 days
Kenya	2 Mar. 1968	12 Dec. 1963	50 months, 19 days
Kuwait	20 Mar. 1967	19 June 1961	69 months, 1 day
Laos	29 April 1957	29 Dec. 1954 [400]	28 months
Mali	24 Nov. 1965	20 June 1960 (Federation of Mali) 22 Sep. 1960 (Republic of Mali)	65 months, 4 days
Morocco	26 Jan. 1957	2 Mar. 1956	10 months, 24 days
Uganda	18 Nov. 1964	9 Oct. 1962	25 months, 9 days
Trinidad and Tobago	17 Nov. 1963	31 Aug. 1962	14 months, 17 days
Tunisia	4 Nov. 1957	20 Mar. 1956	19 months, 15 days
Zambia	19 April 1967	24 Oct. 1964	29 months, 26 days

[394] See above, para. 163.

[395] See above, paras. 161 and 162.

[396] See above, paras. 163 and 176 respectively.

[397] See above, para. 161.

[398] 1929 Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field only,

[399] Date communicated in a letter of 27 June 1968 addressed to the Secretary-General by the Permanent Representative of Cambodia.

[400] Date of transfer of final powers.

221. In the case of succession there is no interruption in the application of the Conventions to the territories of the successor States, which are considered as contracting States from the date on which they attained independence. The date on which Swiss Federal Council receives the declaration of continuity is not the date on which the successor State becomes a party to the Conventions. In the case of *Burma's* participation in the 1929 Conventions, the United Kingdom stated that Burma should be considered a party to the Conventions as from its separation from India, i.e., from 1 April 1937, although the declaration of application communicated by the United Kingdom was received by the Swiss federal authorities at a later date.[401] The retroactive effect of declarations of continuity is shown clearly in the following table relating to the participation of successor States in the 1949 Conventions:

	Declaration	*Date on which the country became independent and the declaration took effect*
Cameroon	16 Sept. 1963	1 Jan. 1960
Central African Republic	23 July 1966	13 Aug. 1960
Congo (Brazzaville)		15 Aug. 1960
Congo (Democratic Republic of)	24 Feb. 1961	30 June 1960
Dahomey	14 Dec. 1961	1 Aug. 1960
Gambia	20 Oct. 1966	18 Feb. 1965
Gabon	20 Feb. 1965	17 Aug. 1965
Ivory Coast	28 Dec. 1961	7 Aug. 1960
Jamaica	17 July 1964	6 Ang. 1962
Madagascar	13 July 1963	26 June 1960
Mauritania	27 Oct. 1962	28 Nov. 1960
Niger	16 April 1964	3 Aug. 1960
Nigeria	20 June 1961	1 Oct. 1960
Rwanda	21 Mar. 1964	1 July 1962
Senegal	23 April 1963	20 Aug. 1960
Sierra Leone	31 May 1965	27 April 1961
Tanganyika	12 Dec. 1962	6 Dec. 1961
Togo	26 Jan. 1962	27 April 1960
Upper Volta	7 Nov. 1961	5 Aug. 1960

222. When the Swiss Federal Council registers declarations of continuity with the United Nations Secretariat, it now usually indicates the date of independence, on which the new State became a contracting party to the Conventions. This was not always done in the past. For example, the registration of *Indonesia's* declaration relating to the 1929 Conventions, which refers to "continuance of application", does not indicate the date on which Indonesia, as an independent and sovereign State, became a party to the 1929 Conventions.

223. There is one exception to the practice described thus far, namely *Transjordan's* declarations of continuity concerning the 1929 Conventions. The Swiss Federal Council considered that those declarations took effect on the date on which it received them (20 November 1948 and 9 March 1949) and not on the date on which *Transjordan* attained independence (22 March 1946). This exception is perhaps due to the existence at that time of one of the situations which according to the final provisions of the Conventions concerned made it possible to give immediate effect to accessions or ratifications.

224. The date on which the United Kingdom Dominions *(South Africa, Australia, Canada, India, New Zealand, Pakistan* and *Ceylon)* and the *Irish Free State* became States parties to the 1906 Convention does not seem to have been established with absolute certainty.[402] In that connexion, a distinction should be drawn between the continuity of application of the Conventions to the territories of those countries and the latter's participation in the Conventions as contracting parties.

3. QUESTION OF CONVENTIONAL RELATIONS BETWEEN A STATE WHICH HAS SUCCEEDED TO A PARTICULAR CONVENTION AND STATES PARTIES TO A PREVIOUS CONVENTION ON THE SAME SUBJECT SIMULTANEOUSLY IN FORCE

225. The declarations of continuity of successor States specifically mention the Geneva Convention or Conventions to which the State concerned wishes to succeed.[403] Thus, for example, the declarations of *Burma, Indonesia* and *Transjordan* stipulate that these States are succeeding to the 1929 Conventions and do not mention the Conventions of 1864 and 1906. The same is true of the declarations of continuity relating to the 1949 Conventions submitted by new States which were formerly United Kingdom, French or Belgian territories. Thus, the declarations of continuity of *Cameroon, Central African Republic, Congo (Brazzaville), Congo (Democratic Republic of), Dahomey, Gabon, Jamaica, Madagascar, Mauritania, Niger, Rwanda, Senegal, Sierra Leone, Tanganyika, Togo* and *Upper Volta* refer generally to the Geneva Conventions of 12 August 1949 or enumerate separately the four Geneva Conventions of 12 August 1949. The declaration of continuity of the *Ivory Coast* is the only exception, for it mentions only "the Geneva Conventions for the protection of war victims". The Swiss Federal Council nevertheless registered the Ivory Coast declaration with the United Nations Secretariat as relating to the 1949 Conventions only.[404]

226. Generally speaking, therefore, the declarations of successor States mention only the last Convention or

[401] *Burma,* like *British India,* became a contracting party to the 1929 Conventions before attaining independence. With regard to its participation in the 1929 Convention, the separation from India produced effects which are normally the corollary of the attainment of full independence, which in the case of Burma did not take place until 4 January 1948.

[402] See above, paras. 154-158.

[403] This is true also of ratifications and accessions. For example, Somalia, notified the Swiss federal authorities of its accession "to the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1864, 1906, 1929 and 1949)". In reply to a note verbale from the Swiss Federal Political Department, *Somalia* explained that it wished to notify its accession "to the four Geneva Conventions of 1949" (exchange of notes communicated to the United Nations Secretariat by the Swiss authorities).

[404] See above, para. 176.

Conventions concluded by the predecessor State and do not refer to any other Geneva Conventions to which the predecessor State may have been a party. Because of that omission, and because some States are still parties to the 1906 Convention only (Costa Rica, Uruguay) or to the 1929 Conventions only (Burma, Bolivia, Ethiopia), the solution of the problem of the legal relationship between the various Geneva Conventions is clearly of interest to new States.[405] That solution will determine the existence or absence of treaty relations between a new State which is a party to the 1949 Conventions and a State which, although a party to one of the Geneva Conventions, is not yet a party to those of 1949. In that connexion, the *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949,* published by the International Committee of the Red Cross, contains the following observations:

> . . . In strict law, they are not bound . . . by any Convention . . . But the very nature of the Geneva Conventions demands a less academic and more humane interpretation. Everything points to the fact that we are not considering a number of different Conventions, but successive versions of one and the same Convention the Geneva Convention, whose principles are concepts of natural law and which merely gives expression to the dictates of the universal conscience . . . the two States must therefore consider themselves bound, at any rate morally, by everything which is common to the two Conventions, beginning with the great humanitarian principles which they contain. An effort should be made to settle by special agreement matters dealt with differently in the two Conventions; in the absence of such an agreement, the Parties would apply the provisions which entailed the least extensive obligations.[406]

227. When a new State decides to participate in the 1949 Conventions while remaining silent with regard to its participation in the Geneva Conventions concluded before that date, the way in which it became a party to the 1949 Conventions may be an important element in determining its treaty relations with States which are parties to the Geneva Conventions concluded before 1949 only. The succession method tends towards the "less academic interpretation" recommended by the International Committee of the Red Cross, for it involves an element of continuity which is lacking in the case of accession.

4. RESERVATIONS

228. So far as the Geneva Conventions are concerned, the problem of succession to reservations arises only in the case of new States which were formerly United Kingdom territories and became parties by succession to the Convention relating to the Protection of Civilian Persons of 12 August 1949.[407] In ratifying that Convention, the *United Kingdom* maintained the reservation it had made at the time of signature with respect to article 68, paragraph 2.[408] Since *Gambia, Jamaica, Nigeria, Sierra Leone* and *Tanganyika* suceeded to the United Kingdom with regard to the Convention of 12 August 1949 relative to the protection of Civilian Persons,[409] the question arises to what extent these five new States have inherited the United Kingdom reservation. Their declarations of continuity are silent on this point, and the United Kingdom reservation is not mentioned in the communications relating to the registration of the declarations received by the United Nations Secretariat.

229. Examination of the cases of succession to the Geneva Conventions thus provides no example that would make it possible to say with certainty whether or not it is necessary to confirm in declarations of continuity the reservations formulated by the predecessor State in order to be able to take advantage of them. Furthermore, in practice there are no cases of application of the Convention relating to the Protection of Civilian Persons in which the legal problem of the succession of new States to reservations formulated by a predecessor State has been raised by States parties to that Convention.

F. *Summary*

230. New States now participate in the Geneva Conventions by virtue of the principles governing the succession of States. The former British Dominions of *Australia, Canada, India* and *South Africa,* and also the *Irish Free State* were the first to use the succession method to participate separately in the 1906 Convention.[410] Three States—*Burma, Indonesia* and *Transjordan*—subsequently became parties to the two 1929 Conventions by succession.[411] In recent years, participation in the 1949 Conventions by succession has become the general practice. From 1961 onwards, many new States adopted the succession method to become parties to the four 1949 Conventions. Of these new States, five were former United Kingdom territories: *Gambia, Jamaica, Nigeria, Sierra Leone* and *Tanganyika;* twelve were former French territories: *Cameroon, Central African Republic, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal, Togo* and *Upper Volta;* and two were former Belgian territories: the *Democratic Republic of the Congo* and *Rwanda.*[412]

231. Recognition by the International Committee of the Red Cross of the National Societies of new States

[405] It should be remembered that a State party may denounce a given Convention. If the State concerned is also a party to previous Conventions, they remain in force as far as that is concerned unless it denounces them too.

[406] Page 408.

[407] See: Claude Pilloud. "Reservations to the 1949 Geneva Conventions", *Revue Internationale de la Croix Rouge,* 1957 (August) and *International Review of the Red Cross,* 1965 (July).

[408] United Nations, *Treaty Series,* vol. 278, pp. 266-268. Analogous reservations were confirmed by *Australia* and *New Zealand.*

[409] See above, paras, 170-174.

[410] See above, paras. 154-158. It seems that *New Zealand, Pakistan* and *Ceylon* should also be considered as States parties by succession to the 1906 Convention (see above, paras. 157 and 158).

[411] See above, paras. 160-164.

[412] See above, paras. 170-180.

parties to the Geneva Conventions by succession has raised no difficulties.[413] In the past, the International Committee has in some cases even proceeded with recognition before the New State in which the applicant Society is situated has formally notified the Swiss Federal Council that it considers itself bound by the Geneva Conventions. Furthermore, the succession method has not given rise to any challenge at the International Conferences of the Red Cross. Thus, for example, *Indonesia* took part in the Toronto Conference (1952) and *Burma* took part in the New Delhi Conference (1957) by virtue of their participation by succession in the 1929 Conventions. Delegates from Governments or National Societies of thirteen new States parties to the 1949 Conventions by succession *(Cameroon, Central African Republic, Congo (Democratic Republic of), Dahomey, Ivory Coast, Madagascar, Niger, Nigeria, Sierra Leone, Senegal, Tanzania, Togo* and *Upper Volta)* took part in the Vienna Conference in 1965.

232. The *Federal Republic of Germany*, the *German Democratic Republic*, the *Republic of Viet-Nam*, the *Democratic Republic of Viet-Nam*, the *Republic of Korea*, the *Democratic People's Republic of Korea* and the *People's Republic of China* are parties to the 1949 Conventions. The People's Republic of China has ratified the 1949 Conventions which were previously signed by the *Republic of China.*[414] The *Republic of China* has taken part in International Conferences of the Red Cross by virtue of China's participation in the Conventions of 1864 and 1929. All these States, with the exception of the *Republic of China,* have National Societies duly recognized by the International Committee of the Red Cross. Furthermore, they have sometimes sent delegations to International Conferences of the Red Cross. However, participation in these International Conferences by the Governments and National Societies of the *People's Republic of China* and the *Republic of China* has given rise to controversy.[415]

IV. International Union for the Protection of Industrial Property: Paris Convention of 1883 and subsequent Acts of revision and special agreements [416]

A. *The Paris Convention and the International Union for the Protection of Industrial Property*

233. The "International Union for the Protection of Industrial Property", commonly referred to as the "Paris Union", was established by the Paris Convention of 20 March 1883.[417] The Paris Convention has been revised six times at the general conferences of members of the Paris Union held at Brussels (*Act of Brussels* of 14 December 1900),[418] at Washington (*Act of Washington* of 2 June 1911),[419] at The Hague (*Act of The Hague* of 6 November 1925),[420] at London (*Act of London* of 2 June 1934),[421] at Lisbon (*Act of Lisbon* of 31 October 1958)[422] and at Stockholm (*Act of Stockholm* of 14 July 1967).[423] Each of the Acts of revision supersedes its immediate forerunner in relations between the countries of the Union which became parties to it.[424]

234. The Paris Convention is twofold in its function. It is not only a constituent instrument setting up

[413] See above, paras. 199-211.

[414] See above, paras. 185-187.

[415] See above, paras. 189-195.

[416] The present study covers the period prior to November 1967. All questions of succession of States to the Convention of Paris of 1883 and its Acts of revision have, thus far, arisen prior to the adoption of the Stockholm Act and within the traditional framework of the Paris Union. It must be borne in mind that in the future succession of States to the Paris Convention and its Acts of revision will occur within a framework substantially modified. The instruments adopted in the course of the 1967 Conference of Stockholm anticipate significant changes both in the regime and in the structure of the Paris Union.

[417] Convention of Paris for the Protection of Industrial Property (*BIRPI, Manual of Industrial Property Conventions,* Paris Convention, Section A1. French text also published in *British and Foreign State Papers,* vol. 74, p. 44, and De Martens, *Nouveau Recueil général de Traités,* deuxième série, tome X, p. 133).

[418] *BIRPI, op. cit.,* Paris Convention, Section B1. French text also published in *British and Foreign State Papers,* vol. 92, p. 807, and De Martens, *Nouveau Recueil général de Traités,* deuxième série, tome XXX, p. 465.

[419] *BIRPI, op. cit.,* Paris Convention, Section C1. French text also published in *British and Foreign State Papers,* vol. 104, p. 116, and De Martens, *Nouveau Recueil général de Traités,* troisième série, tome VIII, p. 760.

[420] *BIRPI, op. cit.,* Paris Convention, Section D1. French text and English translation also published in Leage of Nations, *Treaty Series,* vol. LXXIV, pp. 289-315.

[421] *BIRPI, op. cit.,* Paris Convention, Section E1. French text and English translation also published in League of Nations, *Treaty Series,* vol. CXCII, pp. 17-45.

[422] *BIRPI, op. cit.,* Paris Convention, Section F1. See also French text in *La Propriété industrielle,* 1958, p. 202, and English translation in *Industrial Property Quarterly,* January 1959, pp. 6-29.

[423] Not yet in force. For the main features of the reorganization of the Paris Union approved at the 1967 Stockholm Conference, see note 9, above.

[424] Article 18 of the Act of Lisbon reads in part as follows:

"...

"3) The present Act shall, as regards the relations between the countries to which it applies, replace the Convention of Paris of 1883 and the subsequent acts of revision.

"4) As regards the countries to which the present Act does not apply, but to which the Convention of Paris revised at London in 1934 applies, the latter shall remain in force.

"5) Similarly, as regards countries to which neither the present Act nor the Convention of Paris revised at London, nor the Convention of Paris revised at The Hague in 1925 shall remain in force.

"6) Similarly, as regards countries to which neither the present Act nor the Convention of Paris revised at London, nor the Convention of Paris revised at The Hague apply, the Convention of Paris revised at Washington in 1911 shall remain in force."

Article 18 of the Acts of 1911, 1925 and 1934 contains *mutatis mutandis* similar provisions. The Paris Convention of 1883 and the Act of Brussels of 1900 are no longer applied by any country in view of the fact that, following successive revisions, all the members of the Paris Union are at present bound by more recent Acts.

the organs of the Paris Union [425] and providing for the rights and duties of its members, but it is also a general multilateral treaty laying down substantive rules on the protection of patents, utility models, industrial designs and models, trademarks, service marks, trade names and indications of source or appellations of origin, and the repression of unfair competition.[426] Under article 17 of the Convention, member countries are bound to ensure the application of these substantive rules by way of domestic enactment; and under article 2 they are required to grant the same rights to nationals of other countries of the Union as they give to their own nationals.[427]

235. The Paris Convention and its subsequent Acts of revision are open to accession by any country not member of the Union.[428] Under article 16, any accession shall be notified through diplomatic channels to the Government of the Swiss Confederation and by it to Governments of all other countries of the Union. The accession takes effect one month after the dispatch of such notification by the Swiss Government unless a subsequent date is indicated in the request for accession by the acceding country.[429]

236. Territorial application is optional. Article 16*bis* reads: [430]

1) Any country of the Union may at any time notify in writing the Government of the Swiss Confederation that the present Convention is applicable to all or part of its colonies, protectorates, territories under mandate or any other territories subject to its authority, or any territories under its sovereignty, and the Convention shall apply to all the territories named in the notification one month after the dispatch of the communication by the Government of the Swiss Confederation to the other countries of the Union unless a subsequent date is indicated in the notification. Failing such a notification, the Convention shall not apply to such territories.

2) Any country of the Union may at any time notify in writing the Government of the Swiss Confederation that the present Convention ceases to be applicable to all or part of the territories that were the subject of the notification under the preceding paragraph, and the Convention shall cease to apply in the territories named in the notification twelve months after the receipt of the notification addressed to the Government of the Swiss Confederation.

3) All notifications sent to the Government of the Swiss Confederation in accordance with the provisions of paragraphs (1) and (2) of the present article shall be communicated by that Government to all the countries of the Union.

237. The Swiss Government has been entrusted with most of the functions which are normally assumed by the depositary of multilateral treaties, even though the authentic text and instruments of ratification of the Paris Convention and its subsequent Acts of revision (excepting the Act of Lisbon) were deposited with the Government of the country in which a revision conference took place.[431] All notification circulars on entry into force, accessions and denunciations, as well as declarations and observations made by parties to the Paris Convention have been sent by the Swiss Government ever since beginning of the Paris Union.

238. The International Bureau of the Union,[432] operating under the authority of the Swiss Government, publishes all the notification circulars sent by the Swiss Government in its official publications, e.g. *La Propriété industrielle* (monthly publication in French, since 1885), Industrial Property Quarterly (quarterly in English, 1957-1961 inclusive) and *Industrial Property* (monthly

[425] The main organs are: (*a*) a diplomatic conference for revision of the Convention (article 14 of the Paris Convention and its Acts of revision); (*b*) a conference of representatives of all member countries which meets every three years in order to draw up a report on the foreseeable expenditure of the International Bureau for each three-year period and to consider certain questions in the interval between diplomatic conferences (article 14 (5) of the Act of Lisbon of 1958); (*c*) an International Bureau placed under the high authority of the Government of the Swiss Confederation (article 13 of the Paris Convention and its Acts of revision).

[426] See articles 4 to 12 of the Paris Convention. *BIRPI, op. cit.*, Section A1, pp. 2 and 4.

[427] Nationals of countries not forming part of the Union, who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union, are treated in the same manner as nationals of the country of the Union (article 3 of the Paris Convention and its Acts of revision). *BIRPI, op. cit.*, Section A1, p. 2.

[428] According to articles 18 and 19 of the London and Lisbon Acts, the countries of the Union may become parties to these Acts by signature followed, within a certain period of time, by ratification or if that period has elapsed, by accession under the terms of article 16. See *BIRPI, op. cit.*, Sections E1 and F1.

[429] Article 16 has remained essentially the same since 1883.

[430] Article 16 *bis* of the London text (1934), which remained the same in the Lisbon text (1958). Article 16 *bis* of the Washington text (1911) states:

> "The contracting countries shall, at any time, have the right to accede to the present Convention on behalf of all or part of their colonies, possessions, dependent territories and protectorates.
> "They may, for this purpose, make either a general declaration of adhesion that includes all their colonies, possessions, dependencies and protectorates, or expressly indicate only those which are included, or which are excluded.
> "This declaration shall be notified in writing to the Government of the Swiss Confederation, and by it to all the other Governments.
> "The contracting countries may, in the same way, denounce the Convention on behalf of all their colonies, possessions, dependent territories and protectorates, or on behalf of some of them."

The main changes introduced in the Washington text (1911) by The Hague text (1925) were the addition of a reference to " territories administered by virtue of a mandate of The League of Nations" and the replacement of the words "a general declaration of adhesion" by the words "a general declaration". The texts adopted at Paris (1883) and at Brussels (1900) did not contain any territorial application clause.

[431] The authentic text and ratification instruments of the Lisbon text are deposited with the Swiss Government (articles 18 and 19). See *Industrial Property Quarterly*, January 1959, pp. 28 and 29.

[432] The Bureau of the Paris Union shares with the International Bureau of the Berne Union the same Director and secretariat with the little "United International Bureaux for the Protection of Intellectual Property" (BIRPI). See G. Béguin, *"L'Organisation des Bureaux Internationaux réunis pour la protection de la propriété industrielle, littéraire et artistique"*, *La Propriété industrielle* (1961), pp. 203-213 and note 12, above.

publication in English, since 1962).[433] The Bureau occasionally makes an editorial note clarifying any ambiguities contained in such circulars and periodically puts out a list showing the status of the Paris Convention and its Acts of revision and certain other multilateral agreements administered within the framework of the Paris Union. The expenses of the Paris Union, that is, ordinary expenditures of the Bureau and expenses relating to conferences, special works, and publications, are borne by the member countries, which have the option to declare in which class of contribution from among the six classes enumerated in the Convention they wish to be placed.[434]

B. *Special unions*

239. Within the framework of the Paris Union, several "special unions" [435] have been established in accordance with article 15 of the Paris Convention which reads: [436]

> It is understood that the countries of the Union reserve the right to make separately between themselves special arrangements for the protection of industrial property, in so far as these arrangements do not contravene the provisions of the present Convention.

240. There are five special unions established by the following multilateral agreements:

The Agreement of Madrid of 14 April 1891, for the prevention of false or misleading indications of source on goods, revised at Washington (1911), at The Hague (1925), at London (1934), at Lisbon (1958) and at Stockholm (1967) (hereinafter referred to as the "Madrid Agreement (false indications of source)"; [437]

The Agreement of Madrid of 14 April 1891 concerning the international registration of trademarks, revised at Brussels (1900), at Washington (1911), at The Hague (1925), at London (1934), at Nice (1957) and at Stockholm (1967) (hereinafter referred to as the "Madrid Agreement (registration of trademarks"; [438]

The Agreement of the Hague of 6 November 1925 concerning the international deposit of industrial designs, revised at London (1934) and at The Hague (1960), with the additional Act of Monaco (1961) and the complementary Act of Stockholm (1967) (hereinafter referred to as "The Hague Agreement"); [439]

The Agreement of Nice of 15 June 1957 concerning the international classification of goods and services to which trademarks are applied, revised at Stockholm (1967) (hereinafter referred to as the "Nice Agreement"); [440] and

The Agreement of Lisbon of 31 October 1958 for the protection of appellations of origin and their international registration, revised at Stockholm (1967) (hereinafter referred to as the "Lisbon Agreement").[441]

241. Membership in these special unions is contingent on membership in the Paris Union, and territorial application is optional. In fact, each of the above-mentioned multilateral agreements contains the following clause with some minor variations: [442]

> Member countries of the Union for the Protection of Industrial Property which are not parties to this Agreement shall be permitted to accede to it at their request and in the manner prescribed in articles 16 and 16*bis* of the Convention of Paris.

242. As in the case of the Paris Convention, each revised text of the two Madrid Agreements and The Hague Agreement supersedes its immediate forerunner in the relations between member countries accepting it.[443]

243. The Bureau of the Paris Union is entrusted with administrative services in the matter of registration and publication of trademarks, industrial designs and appellations of origin which are deposited or registered with the Bureau by nations of the members of the special unions.

244. The expenses incurred by the Bureau in connexion with the special union set up by the Nice Agreement are apportioned among the members of that Union in the same way as expenses are apportioned among the members of the Paris Union.[444] On the other hand, the expenses incurred in connexion with the special unions established by the Madrid Agreement (registration of trademarks) and The Hague Agreement are financed by fees and charges collected from the individ-

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[433] BIRPI has also published a *Manual of Industrial Property Conventions (Manuel des Conventions concernant la Propriété industrielle) (Manual de Tratados de la Propiedad Industrial).* The English and Spanish versions of the *Manual* do not reproduce all revised texts of certain special arrangements relating to restricted unions.

[434] See article 13, paras. 6-9. *BIRPI, op. cit.,* Section E1, p. 16.

[435] In contrast with the Paris Union which is often called the "General Union *(L'Union générale),* these "special unions" *(unions particulières)* are also called "restricted unions" *(unions restreintes)* in the official publications of the Bureau.

[436] The wording of article 15 has remained essentially the same since 1883.

[437] *British and Foreign State Papers,* vol. 96, pp. 837 and 852; *ibid.,* vol. 104, pp. 137-139; League of Nations, *Treaty Series,* vol. LXXIV, pp. 319-323; *ibid.,* vol. CXCII, pp. 10-15; *La Propriété industrielle,* 1958, p. 211; *BIRPI,* op. cit.

[438] *British and Foreign State Papers,* vol. 96, pp. 839 and 848; *ibid.,* vol. 108, p. 404; League of Nations, *Treaty Series,* vol. LXXIV, pp. 327-329; *ibid.,* vol. CCV, pp. 163-175; *Industrial Property Quarterly,* July 1957, pp. 6-21; *BIRPI, op. cit.*

[439] League of Nations, *Treaty Series,* vol. LXXIV, pp. 341-351; *ibid.,* vol. CCV, pp. 179-189; *La Propriété industrielle,* December 1960, pp. 230-236; *ibid.,* November 1961, pp. 249 and 251; *BIRPI, op. cit.*

[440] *La Propriété industrielle,* 1957, p. 116; *BIRPI, op. cit.*

[441] *La Propriété industrielle,* 1958, p. 212; *BIRPI, op. cit.* This Agreement entered into force on 2 September 1966.

[442] Article 11 of the Lisbon Agreement. See also article 5 of the Madrid Agreement (false indications of source), article 11 of the Madrid Agreement (registration of trademarks), article 22 of The Hague Agreement and articles 6 and 10 of the Nice Agreement.

[443] See article 6 of the Madrid Agreement (false indications of source), article 12 of the Madrid Agreement (registration of trademarks) and article 23 of The Hague Agreement.

[444] See article 5 of the Nice Agreement.

ual applicants for registration or any other persons who avail themselves of the Bureau's service; and the annual net revenue from the fees and charges is apportioned among the members after deducting the joint expenses occasioned by the execution of the Agreement.[445]

245. In addition to the twenty-nine multilateral instruments administered by the Paris Union (herein referred to as the "Paris Union instruments",[446] the members of the Paris Union concluded two multilateral treaties concerning conservation and restoration of industrial property rights following two world wars.[447] The status of these treaties, however, is not presented periodically in the official publications of the Paris Union probably because these treaties had a limited signifiance only for a certain post-war period. Owing to the inadequacy of information on their status, the positions taken by States and organs of the Paris Union concerning succession to these treaties will be excluded from the present study.

C. *Description of cases comprising elements related to succession of States*

246. Cases relating to the succession of States to multilateral instruments concluded within the Paris Union and to the Union itself, concern either *countries of the Union* (contracting countries)[448] or *former dependent territories* of a country of the Union. In this connexion, it is necessary to bear in mind that within the Paris Union the status of country of the Union (contracting country) has been and is still at present occasionally recognized not only to States but also to certain other entities not fully independent and sovereign. All cases concerning changes (formation and dissolution of a union with another country; transfer of sovereignty; annexation; dismemberment; etc.) undergone by countries of the Union (contracting countries), whether sovereign States or not, have been grouped in section 2. On the other hand, all cases concerning former dependent territories to which—as it is expressly provided for in article 16*bis* of the Paris Convention since the Act of Washington (1911)[449] the application of instruments of the Paris Union had been extended before independence by the country of the Union (contracting country) responsible at the time for their international relations have been grouped in section 1. From among such dependent territories about thirty-one new States have emerged by the end of October 1967 and twenty-four of them have, at present, joined the Paris Union and become parties to its instruments as countries of the Union (contracting countries).

247. The description of each particular case given below is based on the relevant circular notes sent by the Swiss Government to other countries of the Union concerning the exchange of communications between the Government of the States or countries concerned and the Swiss Government, as well as on the official list of members of the Union and parties to its multilateral instruments and other additional information provided by the Bureau. The circular notes of the Swiss Government, the lists of members and parties and the additional information given by the Bureau are printed in *La Propriété industrielle*. The lists of members and parties are included in the January issue of the latter official publication of the Union.[450]

1. FORMER DEPENDENT TERRITORIES TO WHICH MULTILATERAL INSTRUMENTS ADMINISTERED BY THE PARIS UNION HAVE BEEN APPLIED BY COUNTRIES OF THE UNION

(*a*) CASES WHERE THE CONTINUITY IN THE APPLICATION OF THE INSTRUMENTS SEEMS TO BE RECOGNIZED

(i) *Non-metropolitan territories for the international relations of which the United Kingdom was responsible*

Australia, Canada, New Zealand

248. The territorial application of the Paris Convention was initially extended by the *United Kingdom* to *Australia, Canada* and *New Zealand* as follows:[451]

Australia—Brussels text (1900), as from 5 August 1907;

Canada—Washington text (1911), as from 1 September 1923;

New Zealand—Paris text (1883), as from 7 September 1891.

249. These three entities were dependent territories of the United Kingdom and were not regarded as

[445] See article 5 *ter* to 8 of the Madrid Agreement (registration of trademarks) and articles 15 to 17 of The Hague Agreement. Article 7 of the Lisbon Agreement provides for a method of financing by collecting charges as well as by apportioning expenses among its members.

[446] Namely, the original texts of six multilateral treaties and twenty-three texts embodying revisions of some of these treaties.

[447] *Arrangement de Berne du 30 juin 1920 pour la conservation et le rétablissement des droits de propriété industrielle atteints par la guerre mondiale* (see text in *La Propriété industrielle*, 1920) and *Arrangement du 8 février 1947 concernant la conservation ou la restauration des droits de propriété industrielle atteints par la deuxième guerre mondiale. (Actes de la Conférence réunie à Neuchatel du 5 au 8 février 1947.)*

[448] In the London (1934) and Lisbon (1958) texts of the Paris Convention the expression "countries of the Union" is the most frequently used, while the Washington (1911) and The Hague (1925) texts use more often the expression "contracting countries". Expressions such as "contracting States", "States of the Union", "States members of the Union" and "Unionist States" are found in the original Paris (1883) text and in the Brussels (1900) text but are no longer used as from the Washington (1911) text. Other expressions used at times are "contracting Parties" (Paris text), "High Contracting Parties" (Paris and Brussels texts), and "members of the Union" (Washington, The Hague, London and Lisbon texts). The countries to which all these expressions referred are separate members of the Paris Union and separate parties to the multilateral instruments concluded within the Paris Union.

[449] See para. 236, above.

[450] See para. 238, above.

[451] *La Propriété industrielle*, 1891, p. 124; *ibid.*, 1907, p. 157; and *ibid.*, 1923, p. 125.

separate members or contracting countries of the Paris Union. As the Swiss Government's circulars quoted below will indicate, these territories subsequently became members of the Union when the British Government stated that the entity concerned should be regarded as "*partie contractante*" or "*pays contractant*" and that it should be placed in a certain class of contribution.

Circular of 12 May 1925 from the Swiss Federal Council to the States of the Union explaining Canada's status with regard to the International Union for the Protection of Industrial Property [452]

By a note of 21 August 1923, the Legation of His Britannic Majesty notified the Swiss Federal Council that the Government of the Dominion of Canada acceded on 1 September 1923 to the Convention of Paris for the Protection of Industrial Property of 20 March 1883, revised at Brussels on 14 December 1900 and at Washington on 2 June 1911. The Governments of the countries of the Union were informed of this accession by a *note-circulaire* of 1 September 1923.

Further to this notification, the Legation of His Britannic Majesty informed the Swiss Federal Council by a note of 22 April 1925 that with regard to accession Canada should be considered as a contracting Party, under article 16 of the Convention of Paris, and that in accordance with article 13 of that instrument it should be placed in the Second Class in respect of its contribution to the expenses of the International Bureau.

...

Circular of 10 September 1925 from the Swiss Federal Council to the States of the Union explaining the status of the Commonwealth of Australia with regard to the International Union for the Protection of Industrial Property and stating that that country acceded to the text of that Convention as revised at Washington on 2 June 1911 [453]

By notes of 30 July and 20 August 1925, the Legation of His Britannic Majesty has stated that the Government of the Commonwealth of Australia accedes to the Convention signed at Washington on 2 June 1911, which amends the Convention of Paris for the Protection of Industrial Property of 20 March 1883, revised at Brussels on 14 December 1900, and wishes to be considered as a contracting country of the Industrial Union, to which it acceded as a colony on 5 August 1907.

In accordance with article 13 of the Convention, the Australian Government wishes to be placed in the Third Class in respect of its contribution to the expenses of the International Bureau.

...

Circular of 29 June 1931 from the Swiss Federal Council to the countries of the Union concerning the accession of New Zealand . . . to the Hague text of the Convention [454]

We have the honour to inform you that by a note dated 10 June 1931, the Legation of Great Britain at Berne informed the Swiss Federal Council of the accession of the Government of His Britannic Majesty in the Dominion of New Zealand to the Convention for the Protection of Industrial Property of 20 March 1883, revised at The Hague on 6 November 1925, in accordance with article 16 of that instrument.

...

The Legation added that the Government of His Britannic Majesty in New Zealand wished that Dominion to be placed in the fourth of the classes provided for in article 13 of the Convention in respect of its contribution to the expenses of the International Bureau.

In accordance with the aforementioned article 16, [this accession will take effect] one month after the dispatch of this notification, i.e., on 29 July 1931.

It should be noted that the British note implies that New Zealand is joining the Union as a contracting country; in fact, that Dominion, which was admitted to the Union as a British colony on 7 September 1891, has hitherto been bound by the text of the Convention as revised at Washington on 2 June 1911.

...

250. In addition to the Paris Convention, the Madrid Agreement (false indications of source) had been made applicable to *New Zealand* (as from 20 June 1913) [455] when the change of status of *New Zealand* within the Paris Union was effected by the above circular dated 29 June 1931. With regard to the relations of *New Zealand* to the special union established by this Madrid Agreement, the Bureau added the following editorial note [456] to the above circular:

Since 20 June 1913 the Dominion of New Zealand, as a British possession, has also been a member of the restricted Union formed by the Agreement of Madrid of 14 April 1891 for the prevention of false or misleading indications of source on goods. For the time being it is bound by the text signed at Washington on 2 June 1911. The above note from the British Legation does not change the position of the Dominion of New Zealand with regard to that Agreement.

New Zealand, thenceforth, has been listed as a separate party to this Madrid Agreement and not as among the territories to which the United Kingdom extended its application.[457]

251. Starting with the 1926 January issue of *La Propriété industrielle*, the Bureau has listed *Australia* and *Canada* as separate parties to the Paris Convention, mentioning for the dates of their "*adhésion à l'Union*" the dates of initial territorial application by the United Kingdom, namely 5 August 1907 for *Australia* and 1 September 1923 for *Canada*. Likewise, *New Zealand* had been listed as a separate party to the Paris

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[452] *Ibid.*, 1925, p. 85 (translation from the French by the United Nations Secretariat). In the "*note circulaire*" of 1 September 1923 mentioned in the present circular, Canada was referred to as "*Colonie du Canada*" and a specific reference was made to article 16 *bis* (which concerns territorial application), whereas the present circular refers to Canada as "*Dominion*" and mentions article 16 (which concerns accession of a new member).

[453] *La Propriété industrielle*, 1925, p. 174 (translation from the French by the United Nations Secretariat).

[454] *Ibid.*, 1931, p. 84 (translation from the French by the United Nations Secretariat). Moreover, the circular contains the following paragraphs concerning the territorial application to Western Samoa of the Hague text (1925) of the Paris Convention:

"... Pursuant to article 16 *bis* of the Convention, the Legation [of Great Britain] also stated that Western Samoa, which was placed under the mandate of the Dominion [New Zealand] had acceded to that international act.

"...

"Furthermore, according to the Legation statement, Western Samoa had joined the Union as a territory placed under the mandate of New Zealand [as from 29 July 1931]..."

[455] *La Propriété industrielle*, 1913, p. 66.

[456] *Ibid.*, 1931, p. 84 (translation from the French by the United Nations Secretariat).

[457] See January issues of *La Propriété industrielle* for the years 1932 on.

Convention since the January issue of 1932, along with the date 7 September 1891. The list of parties presented as from January 1965, however, has replaced these dates of initial territorial application by the effective dates of accession mentioned in the three circulars quoted above as dates of "*adhésion à l'Union*", that is to say, 12 June 1925 for *Canada*, 10 October 1925 for *Australia* and 29 July 1931 for *New Zealand*. The dates of initial territorial application are now mentioned in a foot-note. *New Zealand* is also considered to be a separate party to the Madrid Agreement (false indications of source) as from 10 January 1933.[458]

Ceylon

252. The United Kingdom first extended to its colony of *Ceylon* territorial application of the Paris Convention as from 10 June 1905 and the Madrid Agreement (false indications of source) as from 1 September 1913.[459] When *Ceylon* became independent on 4 February 1948 the Washington texts (1911) of the Paris Convention and Madrid Agreement were in force in its territory.

253. In October 1952 the Prime Minister of Ceylon deposited an instrument of accession to the London texts (1934) of the Paris Convention and Madrid Agreement (false indications of source) with the Swiss Government. Accession took effect on 29 December 1952, one month after the date of the circular sent by the Swiss Government. In acceding to the above instruments *Ceylon* chose the sixth class of contribution.[460]

254. During the intervening period between independence in 1948 and 1951, the Bureau continued to list Ceylon under the name of the United Kingdom along with other territories to which the United Kingdom extended territorial application, i.e., Tanganyika, Trinidad and Tobago, and Singapore.[461]

255. Since 1953, however, the Bureau lists Ceylon as having acceded to the Paris Union and being a separate party to the London texts (1934) of the Paris Convention and the Madrid Agreement (false indications of source) as from the effective date of accession, namely as from 29 December 1952. A note appended to the list of parties in the January issue of *La Propriété industrielle* mentions, since 1965, that prior to the attainment of independence by Ceylon the Paris Convention and the Madrid Agreement (false indications of source) had been applied to Ceylon as a territory of a contracting country as from 10 June 1905.[462]

Tanzania

256. The territorial application of The Hague text (1925) of the Paris Convention was extended to the territory of Tanganyika as from 1 January 1938, and its London text (1934) was made applicable as from 28 January 1951.[463]

257. About fifteen months after attaining independence on 9 December 1961, *Tanganyika* acceded to the Lisbon text (1958) of the Paris Convention. As the Swiss Government's circular below indicates, the accession became effective on 16 June 1963.[464]

> In compliance with the instructions of the Swiss Federal Political Department dated 16 May 1963, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that its Government has received on 2 April 1963, the instrument of adhesion of the Republic of Tanganyika to the Convention of Paris for the Protection of Industrial Property of 20 March, 1883, as last revised at Lisbon on 31 October 1958.
>
> In application of Article 16 (3) of the said Convention, the adhesion of Tanganyika will take effect on 16 June 1963.
>
> With regard to its contribution to the common expenses of the International Bureau of the Union, this State is placed, at its request, in the Sixth Class, in accordance with Article 13 (8) and (9) of the Convention of Paris as revised at Lisbon.

258. In the January 1962 issue of *La Propriété industrielle*, the Bureau listed Tanganyika under the United Kingdom along with territories such as Trinidad and Tobago and Singapore; but in the January 1963 issue, Tanganyika was not mentioned at all.[465] Since 1965, the Bureau has listed *Tanzania* (the union formed by Tanganyika and Zanzibar on 27 April 1964) as having acceded to the Paris Union and as being a party to the Lisbon text (1958) of the Paris Convention as from 16 June 1953. In listing *Tanzania* as such, the Bureau has indicated in a foot-note the territorial application of the Paris Convention made by the United Kingdom to Tanganyika as from 1 January 1938.[466]

Trinidad and Tobago

259. The United Kingdom extended to its colony of *Trinidad and Tobago* territorial application of the Paris Convention as from 14 May 1908 and of the Madrid Agreement (false indications of source) as from 1 September 1913.[467] When *Trinidad and Tobago* attained independence on 31 August 1962, the Hague texts (1925) of these two instruments had been made applicable to its territory.[468]

260. Nearly two years after independence, *Trinidad and Tobago* addressed a communication to the Swiss Government confirming its "*appartenance à l'Union internationale de Paris*" and notifying its accession to the Lisbon text (1958) of the Paris Convention. This communication summarized in the Swiss Government's

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[458] *Industrial Property*, January 1967, p. 8.

[459] *La Propriété industrielle*, 1905, p. 73, and *ibid.*, 1913, p. 105.

[460] *Ibid.*, 1952, p. 177.

[461] See January issues of *La Propriété industrielle*, 1949-1951 inclusive.

[462] See January issues of *La Propriété industrielle*, 1953-1967 inclusive.

[463] *La Propriété industrielle*, 1951, pp. 1 and 3.

[464] *Industrial Property*, 1963, p. 94.

[465] *Ibid.*, January 1962, p. 2 and *ibid.*, 1963, p. 2.

[466] *Ibid.*, 1965, p. 6; *ibid.*, 1966, p. 7; and *ibid.*, 1967, p. 7. According to the Bureau, the question whether the Paris Convention has become applicable also to the former Zanzibar is under investigation.

[467] *La Propriété industrielle*, 1908, p. 49 and *ibid.*, 1913, p. 105.

[468] *Industrial Property*, 1962, pp. 2 and 3.

circular which appeared in the July 1964 issue of *Industrial Property* as follows: [469]

Trinidad and Tobago: Declaration of Membership of the International Union of Paris for the Protection of Industrial Property and of Adhesion to the Lisbon Text of the Convention

According to a communication received from the Federal Political Department, the following note was addressed by the Embassies of the Swiss Confederation in the countries of the Paris Union to the Ministries of Foreign Affairs of those countries:

> In compliance with the instructions of the Swiss Federal Political Department dated 1 July 1964, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Government of Trinidad and Tobago in a letter of May 14, 1964 (a copy of which is enclosed) has confirmed to the Swiss Government the membership of its country in the International Union of Paris for the Protection of Industrial Property by virtue of a declaration of application previously made in accordance with Article 16*bis* of the International Convention for the Protection of Industrial Property.
>
> According to the above-mentioned letter the Government of Trinidad and Tobago further declares its adhesion to the Convention of Paris, as revised at Lisbon on October 31, 1958 In application of Article 16 (3) of the said Convention, the adhesion of Trinidad and Tobago will take effect on August 1, 1964.
>
> With regard to its contribution to the common expenses of the International Bureau of the Union, this State is placed, according to its request, in the Sixth Class, for the purposes of Article 13 (8) and (9) of the Convention of Paris as revised at Lisbon.

As the last paragraph of the above note indicates, the Bureau considers *Trinidad and Tobago* as a new member of the Paris Union as from 1 August 1964, i.e., the effective date of accession. However, in the January issues of *La Propriété industrielle* for the years 1965 on, it is mentioned that the Convention had been applied to *Trinidad and Tobago* as a territory as from 14 May 1908.

261. It does not appear that *Trinidad and Tobago* mentioned territorial application formerly made by the United Kingdom of the Madrid Agreement (false indications of source) in the aforesaid communication, nor has it ever since stated its position as to whether the application of that Agreement lapsed upon independence. Since 1963, the Bureau has not listed *Trinidad and Tobago* as a party to this Madrid Agreement.[470]

(ii) *Non-metropolitan territory for the international relations of which the Netherlands was responsible*

Indonesia

262. The Netherlands first extended territorial application of the Paris Convention as from 1 October 1888, and the Hague Agreement, as from 1 June 1928, to the territory of Indonesia which was formerly called the Netherlands Indies.[471] About eigth months after attaining independence, *Indonesia* sent two communications the content of which is summarized in the following circular of 24 November 1950 sent by the Swiss Government.[472]

> The Federal Political Department has the honour to inform the Ministry of Foreign Affairs that, on the basis of article 5 of the Act of Transfer of Sovereignty concluded between the Kingdom of the Netherlands and the Republic of the United States of Indonesia on 27 December 1949, the Ministry of Foreign Affairs of that Republic has sent it two communications, dated 15 August and 20 October 1950 copies of which are attached hereto stating that the Convention for the Protection of Industrial Property, signed at Paris on 20 March 1883 and revised at London on 2 June 1934, the Agreement concerning the international deposit of industrial designs, signed at The Hague on 6 November 1925 and revised at London on 2 June 1934, and the Agreement concerning the conservation and restoration of industrial property rights affected by the Second World War, signed at Neuchâtel on 8 February 1947, together with the Final Protocol and the Additional Final Protocol annexed thereto,[473] remain in force in the territory of that Republic, which considers itself bound separately, as an independent and sovereign State, by these Agreements concerning industrial property as from 27 December 1949, and wishes to be placed in the Fourth Class in respect of its contribution to the expenses of the International Bureau, according to the provisions of article 13 of the General Convention.
>
> ...

263. In the January issue of *La Propriété industrielle* of the following year, *Indonesia* was listed as a party to the Paris Convention as from 1 October 1888, and it was regarded as having been bound by its London text as from 5 August 1948. Likewise, *Indonesia* was regarded as a party to the Hague Agreement as from 1 June 1928 and as having been bound by its London text as from 5 August 1948. The following explanatory note, however, was added to the list of parties.[474]

> It should be noted that Indonesia is bound separately, as an independent and sovereign State, by this instrument as from 27 December 1949, the date of the Act of Transfer of Sovereignty concluded between the Netherlands and Indonesia. It was formerly bound as a colony of the Netherlands, under the name of Netherlands East Indies.

264. The Bureau, however, seems to have changed its view lately. Since 1965, according to the list of parties in the January issue of *La Propriété industrielle, Indonesia* is regarded as having acceded to the Paris Union and been a party to the London texts of the Paris

[469] Page 139.

[470] *Industrial Property*, 1967, p. 8.

[471] The effective date of territorial application of the revised texts of the Paris Convention to the Netherlands Indies was as follows: Washington text (1911) as from 1 May 1913; The Hague text (1925) as from 1 June 1928; London text (1934) as from 5 August 1948. Application of the London text (1934) of The Hague Agreement took effect on 5 August 1948. (*La Propriété industrielle*, 1948, p. 125).

[472] *La Propriété industrielle*, 1950, p. 222 (translation from the French by the United Nations Secretariat).

[473] See para. 13, above and *La Propriété industrielle*, 1948, p. 126.

[474] *La Propriété industrielle*, 1951, pp. 1 and 2 (translation from the French by the United Nations Secretariat).

Convention and the Hague Agreement only as from 24 December 1950, i.e. one month after the date of notification by the Swiss Government, although it is also indicated in a foot-note the dates as from which initial territorial application of the Paris Convention (1 October 1888) and of the Hague Agreement (1 June 1928) was made to Indonesia prior to the attainment of its independence.[475]

(iii) *Non-metropolitan territories for the international relations of which France was responsible*

265. Territorial application of the Paris Union instruments by France to its non-metropolitan territories (i.e. overseas departments, territories and dependences) has been indicated in several different ways in the list of parties presented in the January issues of *La Propriété industrielle*. Until 1897, non-metropolitan territories of France to which the Paris Convention applied were specifically enumerated as follows: *

France, together with Martinique, Guadeloupe and dependencies, Réunion and dependency (Sainte-Marie de Madagascar), Cochin China, St. Pierre and Miquelon, Guiana, Senegal and dependencies (Rivières-du-Sud, Grand Bassam, Assinie, Porto-Novo and Cotonou), the Congo and Gabon, Mayotte, Nossi Bé, the French settlements in India (Pondicherry, Chandernagore, Karikal, Mahe, Yanam), New Caledonia, the French settlements in Oceania (Tahiti and dependencies), Obock and Diego Suarez.[476]

266. The following note appended to the list of parties to the two Madrid Agreements implies that these instruments, to which France is an original party, also applied to the non-metropolitan territories of France; *

Note. The two Agreements are also applicable in the respective colonies of the acceding countries designated as participating in the General Union of 1883.[477]

267. The above-mentioned specific enumeration was replaced by the expression "France, together with Algeria and its colonies" in the January issue of 1898, and since 1955 by the expression "France, including Algeria and all the Overseas Departments; Overseas Territories". After the formation of the French Community, the expression was changed to "France, including Overseas Departments and Territories, Algeria and States members of the Community" in 1960, and once again to "France, including metropolitan Departments, Algerian Departments, Saharan Departments, Departments of Guadeloupe, Guiana, Martinique and Réunion; Overseas Territories" in 1962.[478]

268. Since the end of the Second World War about nineteen new States have emerged out of these non-metropolitan territories of France to which the Paris Union instruments seemed to have been made applicable as from the following dates: 7 July 1884, in respect of the Paris Convention; 15 July 1892 in respect of the two Madrid Agreements; and 20 October 1930 in respect of the Hague Agreement. By the end of 1964, twelve of these nineteen new States have recognized, in one way or the other, the continued application of the Paris Convention in their territories; and one of these twelve, i.e. Viet-Nam alone, recognized such application not only in respect of the Paris Convention but also of three other special agreements.

Viet-Nam

269. From the wordings of the circular quoted below,[479] it appears that accession to the four instruments administered by the Paris Union communicated by *Viet-Nam* was construed by the Swiss Government as a declaration of continuity whereby accession previously given by France was replaced by accession of Viet-Nam without interruption:

Note of 8 November 1956 from the Swiss Federal Council (Federal Political Department) concerning the accession of Viet-Nam to the Acts of the International Union for the Protection of Industrial Property (declaration of continuity)

In compliance with the instructions of the Swiss Federal Political Department dated 8 November 1956, the Swiss Legation has the honour to inform the Ministry of Foreign Affairs that the Secretary of State for Foreign Affairs of the Republic of Viet-Nam has notified the President of the Swiss Confederation, in a letter dated 17 September 1956. . ., that Viet-Nam has acceded to the following Agreements:

1. The Convention for the Protection of Industrial Property, signed at Paris on 20 March 1883;

2. The Agreement for the prevention of false or misleading indications of source on goods, signed at Madrid on 14 April 1891;

3. The Agreement concerning the international registration of trademarks, signed at Madrid on 14 April 1891;

4. The Agreement concerning the international deposit of industrial designs, signed at The Hague on 6 November 1925.

The attached communication also constitutes a declaration of continuity, for now that Viet-Nam has become independent this accession replaces the accession of France to the aforementioned Acts (London texts of 2 June 1934), which in 1939 * was also given in respect of the French Overseas Territories. Viet-Nam will thus participate without interruption in the Union of Paris for the Protection of Industrial Property and the restricted Unions Established by the Agreements of Madrid and The Hague.

Furthermore, the Ministry will note that Viet-Nam wishes to be placed in the Third Class for the purposes of its contribution to the expenses of the International Bureau for the Protection of Industrial Property.

...

* This accession took effect on 25 June 1939.

270. In the January issue of 1957, the Bureau regarded Viet-Nam as having been bound by the four instruments mentioned above as from 25 June 1939. In the Janu-

* Translation from the French by the United Nations Secretariat.

[475] *Industrial Property*, 1967, pp. 6 and 7.

[476] *La Propriété Industrielle*, 1896, p. 1.

[477] *Ibid.* This note later disappears from the list of parties as the territories to which the Madrid Agreements applied were mentioned under the names of individual parties to the Agreement. See, for example, *La Propriété industrielle*, 1926, pp. 1 and 2.

[478] See for instance, *La Propriété industrielle*, 1955, pp. 1 and 2, and circular note concerning the ratification by France of the Lisbon texts (1958) of the Paris Convention and the Madrid Agreement (false indications of source) and the Lisbon Agreement (*La Propriété industrielle*, 1961, pp. 97 and 98).

[479] *La Propriété industrielle*, 1956, p. 213 (translation from the French by the United Nations Secretariat).

ary issues of 1958 to 1964 inclusive, however, the Bureau regarded Viet-Nam as having been bound by the four instruments as from the dates of their original entry into force. In the 1965 January issue, the Bureau once again changed its listing with regard to Viet-Nam; the Bureau listed Viet-Nam as having acceded to the Paris Union and been a separate party to the London texts (1934) of the four instruments referred to above as from 8 December 1956, i.e., one month after the dates of the aforementioned notification by the Swiss Government. As far as the date of the initial territorial application is concerned, the Bureau indicated in the 1967 January issue: (*a*) that the Paris Convention was applied to Viet-Nam as a territory (without mentioning the effective date); (*b*) that the dates from which the territorial application of the Madrid Agreements commenced in Viet-Nam were "*en cours de vérification*": (*c*) that the application of the Hague Agreement in Viet-Nam dates from 20 October 1930.[480]

Cameroon, Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Laos, Madagascar, Mauritania, Niger, Senegal, Togo, Upper Volta

271. From the wording of the circulars sent by the Swiss Government on the actions taken by these fourteen new States born out of former non-metropolitan territories of France, it appears that such new States communicated their confirmation of the continued application of the London text (1934) of the Paris Convention previously made applicable to their territories by France and at the same time their accession to its Lisbon text (1958). For the purpose of reference, two notes published in *La Propriété industrielle* on the cases of the *Congo (Brazzaville)* and the *Ivory Coast* are reproduced below because of some difference in the wordings employed therein.

Declaration of Continuity and of Adhesion of the Republic of the Congo (Brazzaville) to the Paris Convention for the Protection of Industrial Property (London and Lisbon Texts) [481]

The following communication has been received from the Swiss Federal Political Department:

> In compliance with the instructions of the Swiss Federal Political Department dated 2 August 1963, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Government of the Republic of the Congo (Brazzaville), in a letter dated 26 June 1963, addressed to the President of the Swiss Confederation, declared the Paris Convention for the Protection of Industrial Property, signed at Paris on 20 March 1883, and revised at Brussels on 14 December 1900, at Washington on 2 June 1911, at The Hague on 6 November 1925, and at London on 2 June 1934, applicable to that State by virtue of its former ratification by France.
>
> In the above-mentioned letter, the Congolese Government further declares its adhesion to the Convention of Paris, as revised at Lisbon on 31 October 1958. In application of Article 16 (3) of the said Convention, the adhesion of the Republic of the Congo will take effect on 2 September 1963.
>
> With regard to its contributions to the common expenses of the International Bureau of the Union, this State is placed, at its request, in the Sixth Class, for the purpose of Article 13 (8) and (9) of the Convention of Paris as revised at Lisbon.

Ivory Coast: Declaration of Membership of the International Union of Paris for the Protection of Industrial Property and of Adhesion to the Lisbon Text of the Convention [482]

The following communication has been received from the Swiss Federal Political Department:

> In compliance with the instructions of the Swiss Federal Political Department dated 23 September 1963, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Government of the Republic of the Ivory Coast, in a letter dated 9 August 1963, addressed to the President of the Swiss Confederation, has confirmed the membership of this State to the International Union of Paris for the Protection of Industrial Property by virtue of a declaration of application previously made in accordance with Article 16*bis* of the International Convention for the Protection of Industrial Property.
>
> According to the above-mentioned letter, the Government of the Ivory Coast further declares its adhesion to the Convention of Paris, as revised at Lisbon on 31 October 1958. In application of Article 16 (3) of the said Convention, the adhesion of the Republic of the Ivory Coast will take effect on 23 October 1963.
>
> With regard to its contribution to the common expenses of the International Bureau of the Union, this State is placed, at its request, in the Sixth Class, for the purposes of Article 13 (8) and (9) of the Convention of Paris as revised at Lisbon.

272. The information on the positions taken by the twelve other new States was given in similar wording to that employed in the above note on the *Ivory Coast*. Some relevant data on all these former territories, e.g., the dates of communication by new States, dates of circulars sent by the Swiss Government and so forth, are presented in table I.

273. The Bureau listed in the January issue of 1964 those new States which communicated their declaration on continuity and accession during the year 1963 as having acceded to the Paris Union as members as from the effective dates of their accession to the Lisbon text (1958) of the Paris Convention, i.e., one month after the dates of circulars shown in table I. The listing is presented in a similar way in the January issue of 1965 with an editorial note that the commencement dates of territorial application made prior to their independence are "*en cours de vérification*". The 1966 and 1967 January issues indicate that the Paris Convention was applied to these former territories "*à partir de dates diverses*".[483]

274. Inasmuch as these fourteen new States have not yet stated their position vis-à-vis three other instruments i.e. two Madrid Agreements and the Hague Agreement the London texts of which had previously

[480] *Ibid.*, 1930, p. 193; *Industrial Property*, January 1966, pp. 7-10; *ibid.*, January 1967, pp. 7-10.

[481] *Industrial Property*, 1963, p. 167.

[482] *Ibid.*, 1963, p. 214. Note that the expression "Membership of the International Union" is used for the French phrase "*appartenance à l'Union internationale*".

[483] See *Industrial Property*, 1966, pp. 6 and 7, and *ibid.*, 1967, pp. 6 and 7.

Table I

Dates of communication from new States and circulars of the Swiss Government

	(a)	(b)	(c)	(d)
Cameroon	10 Feb. 1964	President	10 Apr. 1964	('64) p. 66
Central African Republic	5 Oct. 1963	President	19 Oct. 1963	('63) p. 214
Chad	11 Sept. 1963	President	19 Oct. 1963	('63) p. 214
Congo (Brazzaville)	26 June 1963	Government	2 Aug. 1963	('63) p. 166
Dahomey	22 Sept. 1966	President	10 Dec. 1966	('66) p. 283
Gabon	16 Nov. 1963	President	29 Jan. 1964	('64) p. 22
Ivory Coast	9 Aug. 1963	Government	23 Sept. 1963	('63) p. 214
Laos	17 Sept. 1963	Foreign Minister	19 Oct. 1963	('63) p. 214
Madagascar	7 Oct. 1963	Government	21 Nov. 1963	('63) p. 235
Mauritania	26 Oct. 1964	President	11 Mar. 1965	('65) p. 46
Niger	10 Sept. 1963	Government	5 June 1964	('64) p. 118
Senegal	16 Oct. 1963	Government	21 Nov. 1963	('63) p. 235
Togo	11 July 1967	President	10 Aug. 1967	('67) p. 203
Upper Volta	17 Sept. 1963	President	19 Oct. 1963	('63) p. 214

Notes:
(a) Dates of communication from new States on *"continuité et adhésion"*.
(b) Organs of new States which addressed the above communication. Cases where such organ is not mentioned in the circular are shown with "Government".
(c) Dates of circulars sent by the Swiss Government.
(d) *Source reference:* ('63), ('64), etc., are meant *Industrial Property*, 1963 and *ibid.*, 1964, etc.

been made applicable to their territories as from 25 June 1939, the present status of these instruments in their territories remains uncertain.

275. With regard to the case of *Cameroon*, it may be added that the British Government never extended territorial application of the Paris Union instruments to the former "Southern Cameroon", part of the Trust Territory administered by the British Government, which was united with Cameroon (independent since 1 January 1960), to become the present internal division known as "West Cameroon" as from 1 October 1961.

(*b*) Cases where the territorial application of the instruments lapsed as from the date of independence of new States

(i) *Part of a former British mandate*

Israel

276. In accordance with article 16*bis* the United Kingdom extended territorial application of the Hague texts (1925) of the Paris Convention and Madrid Agreement (false indications of source) to Palestine (excluding Transjordan) as from 12 September 1933.[484]

277. About a year and a half after the proclamation of independence (15 May 1948), *Israel* communicated its accession to the London texts (1934) of the above two instruments along with a declaration whereby the Israel Government considered itself bound by the instruments retroactively as from 15 May 1948. Some reasons given by *Israel* for making such declaration and the views of the Bureau and Swiss Government are summarized in the circular dated 24 February 1950 which reads in part: [485]

> The Federal Political Department has the honour to inform the Ministry of Foreign Affairs that, in a note dated 14 December 1949, the Israel representative at the European Office of the United Nations gave notice of the accession of his Government to the Paris Convention for the Protection of Industrial Property and the Madrid Agreement for the prevention of false or misleading indications of source on goods, as revised at London on 2 June 1934, and to the Neuchâtel Agreement of 8 February 1947 concerning the conservation or restoration of industrial property rights affected by the Second World War [see para. 13 above].
>
> With regard to the sharing of the expenses of the International Bureau, the State of Israel wishes to be placed in the fifth of the classes provided for in article 13 (8) of the Convention.
>
> As to the date from which these accessions shall take effect, it would appear from a further statement from the Ministry of Foreign Affairs at Hakirya, on 1 December 1949, that the Israel Government considers itself bound by the aforementioned texts as from 15 May 1948, the day on which the State of Israel was proclaimed independent. The Ministry bases its argument on the special situation of the State of Israel, on the formal obstacles to its earlier accession and on the fact that Palestine was a party to the Convention and to the Agreements of Madrid and Neuchâtel.
>
> The Political Department and the Bureau of the International Union for the Protection of Industrial Property consider this declaration convenient, since it avoids any interruption between the terms of accession of Palestine, which as a country under United Kingdom Mandate, acceded to the Paris Convention and the Madrid Agreement on 12 September 1933 and to the Neuchâtel Agreement on 19 May 1947, and those of the accession hereby notified by the State of Israel. In agreement with the International Bureau, the Political Department therefore pro-

[484] *La Propriété industrielle*, 1933, p. 129.

[485] *Ibid.*, 1950, p. 23 (translation from the French by the United Nations Secretariat).

poses, unless advised to the contrary before 24 March 1950, that *the accessions of the State of Israel shall take effect from* 15 May 1948.

...

278. As the circular quoted below indicates, the Israel declaration did not receive unanimous approval of the contracting countries, and therefore 24 March 1950 was considered to be the effective date of accession by Israel: [486]

Circular
(dated 27 May 1950)

Further to its note of 24 February last relating to the proposal to allow the State of Israel to accede to the Paris Convention for the Protection of Industrial Property, revised at London on 2 June 1934, with retroactive effect from 15 May 1948, the Federal Political Department has the honour to inform the Ministry of Foreign Affairs that this proposal has not been accepted with the necessary unanimity by the contracting countries.

In the circumstances, the accession cannot occur except under the provisions of article 16 (3) of the said Convention, that is, with effect from 24 March 1950.

The accession of the State of Israel to the Madrid Agreement for the prevention of false or misleading indications of source on goods, as revised at London on 2 June 1934, and to the Neuchâtel Agreement of 8 February 1947 concerning the conservation or restoration of industrial property rights affected by the Second World War became effective on the same date.

279. In the January issues of 1949 and 1950, the Bureau continued to list as before Palestine (excluding Transjordan) among the territories under the name of the United Kingdom and it was regarded as having been bound by the Hague texts of the Paris Convention and Madrid Agreement (false indications of source) as from 12 September 1933. Starting with the 1951 January issue of *La Propriété industrielle,* however, the Bureau has listed *Israel* as a separate member of the Paris Union and a separate party to the London texts of these instruments as from 24 March 1950. Furthermore, an editorial note appended to Israel in the list of parties since the 1965 January issue observes that the territorial application to Palestine (excluding Transjordan) lasted for the period 12 September 1933 to 15 May 1948.[487]

(ii) *Former French department*

Algeria

280. By virtue of territorial application made by France, various texts of the five instruments enumerated in table II had been applicable to *Algeria* prior to its independence on 3 July 1962.

Table II

Territorial application of Paris Union instruments to Algeria made prior to its independence

	Text (year)	*Effective date*	*Source reference*
Paris Convention, 1883	Lisbon (1958)	4 Jan. 1962	('61) pp. 97 and 98
Madrid Agreement (false indications), 1892	London (1934)	25 Jun. 1939	('39) p. 86
Madrid Agreement (registration), 1892 .	London (1934)	25 Jun. 1939	('39) p. 86
The Hague Agreement, 1925	London (1934)	25 Jun. 1939	('39) p. 86
Nice Agreement, 1957	Nice (1957)	29 Apr. 1962	('62) p. 98

Note — Source reference: by ('61), ('39) and ('62) are meant *Industrial Property Quaterly,* 1961, *La Propriété Industrielle,* 1939 and *Industrial Property,* 1962.

281. In addition, the Lisbon text (1958) of the Madrid Agreement (false indications of source), the Nice text (1957) of the Madrid Agreement (registration of trademarks) and the original text of the Lisbon Agreement (1958) were accepted by France on behalf of its overseas departments and territories including Algerian departments.[488] These particular texts, however, did not enter into force before *Algeria* attained independence.

282. As indicated in the notification of the Swiss Government quoted below, the Government of Algeria acceded to the Lisbon text of the Paris Convention during September 1965.[489]

In compliance with the instructions of the Federal Political Department, dated November 5, 1965, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Embassy of the Democratic and Popular Republic of Algeria in Berne, in a note dated September 16, 1965, informed the Political Department of the adhesion of its country to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958.

In accordance with Article 16 (3) of the said Convention and at the express request of the Algerian Government, this adhesion will take effect on *March 1, 1966.*

[486] *Ibid.,* p. 117 (translation from the French by the United Nations Secretariat).

[487] *Industrial Property,* January 1965, pp. 5-7.

[488] Ratification of the Lisbon text (1958) of Madrid Agreement (false indications of source) and Lisbon Agreement (1958) given by France on 22 March 1961 included declaration of territorial application (see *Industrial Property Quarterly,* July 1961, p. 147). Territorial application of the Nice text (1957) of Madrid Agreement (registration of trademarks) was communicated by France on 25 January 1962 (see *Industrial Property,* 1962, p. 90).

[489] *Industrial Property,* 1965, p. 239.

With regard to its contribution to the expenses of the International Bureau of the Union, this State is placed, at its request, in the Fourth Class for the purposes of Article 13 (8) and (9) of the Paris Convention as revised at Lisbon.

283. Inasmuch as the Government of Algeria did not make a declaration of continuity regarding the former territorial application of the Lisbon text of the Convention, it appears that such application lapsed as of the date of independence. The Bureau of the Paris Union lists Algeria as a member of the Union and a party to the Lisbon text (1958) of the Paris Convention as of 1 March 1966 and does not refer to the former territorial application.[490]

(c) Cases where the application of the instruments is uncertain

(i) *Non-metropolitan territories for the international relations of which France was responsible*

Cambodia, Guinea, Mali

284. The London texts (1934) of the Paris Convention, the two Madrid Agreements and the Hague Agreement were made applicable by France to the territories of *Cambodia, Guinea* and *Mali,* as from 25 June 1939.[491] Since independence these three new States have not as yet stated their position vis-à-vis the Paris Union instruments, and the names of these States have never appeared on the list of parties prepared by the Bureau.

(ii) *Non-metropolitan territory for the international relations of which the United Kingdom was responsible*

Singapore

285. The territorial application of the London text (1934) of the Paris Convention was extended to *Singapore* by the United Kingdom as from 12 November 1949.[492] The Government of Malaysia, which was formed out of former Malaya, Sabah, Sarawak and Singapore on 16 September 1963, did not express its position as to the territorial application previously made to Singapore. Since its independence from Malaysia, the Government of Singapore has not pronounced its position as to the fate of the territorial application of the London text of the Paris Convention.

(iii) *Former Trust Territory of New Zealand*

Western Samoa

286. Territorial application of the Hague text (1925) of the Paris Convention was first extended to Western Samoa as from 29 July 1931,[493] and the London texts (1934) of the Paris Convention and the Madrid Agreement (false indications of source) were made applicable as from 14 July 1946 and 17 May 1947, respectively.[494] Since independence (i.e., 1 January 1962), Western Samoa has not yet stated its position on these two instruments formerly applied in its territory.

(iv) *Non-metropolitan territories for the international relations of which Japan was responsible*

Formosa, Korea

287. The London text (1934) of the Paris Convention was made applicable to Korea and Formosa from 1 August 1938. The Bureau continued to list these territories under the name of Japan until 1951; and in the 1951 January issue of *La Propriété industrielle* a foot-note *"Situation incertaine"* was added to their names. Since then no reference has been made to Formosa and Korea in the list of members and parties published in the January issues of *La Propriété industrielle.*[495]

2. COUNTRIES OF THE UNION OR CONTRACTING COUNTRIES [496]

(a) Continuity in membership and in the application of multilateral instruments administered by the Paris Union

(i) *Dissolution of a State grouping two contracting countries*

Austrian-Hungarian Empire

288. In 1908 the Legation of *Austria-Hungary* at Berne notified the Swiss Government of the accession of Austria and Hungary to the Brussels texts (1900) of the Paris Convention and the Madrid Agreement (registration of trademarks); their accession took effect on 1 January 1909.[497] With regard to the class of contribution, the notification reads: "... *Chacun des deux pays doit être rangé dans la première classe*". Inasmuch as *Austria* and *Hungary* were thus already participating in the Paris Union as two separate members, dismemberment of *Austria-Hungary* following the First World War did not affect their status within the Paris Union and the restricted union established by the Madrid Agreement (registration of trademarks).[498]

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[490] *Ibid.*, 1967, p. 6.

[491] *La Propriété industrielle,* 1939, p. 86.

[492] *Ibid.*, 1949, p. 154.

[493] See note 454, above.

[494] *La Propriété industrielle,* 1946, p. 169, and *ibid.*, 1947, p. 49.

[495] From a brief, unofficial notice gazetted in *La Propriété industrielle,* 1958, p. 100, it would appear that a Japanese patent was susceptible of being revalidated in *Formosa* provided that it had been issued on application made before 30 September 1951.

[496] For divided *Germany* see *La Propriété industrielle,* 1950, pp. 21, 22 and 150; *ibid.*, 1951, pp. 37 ff; *ibid.*, 1955, p. 198; *ibid.*, 1956, pp. 21 ff, 41 ff, 153, 154 and 193; *ibid.*, 1957, pp. 3 and 4; *Industrial Property,* 1964, p. 254; and *ibid.*, 1967, pp. 6-10 and 75; and *Industrial Property Quarterly,* 1956, pp. 9 and 10; and *ibid.*, 1957, pp. 2-8. In connexion with the *Saar* see *La Propriété industrielle,* 1950, pp. 124, 128, 238 and 245, *ibid.*, 1958, p. 223; and *ibid.*, 1959, p. 1, note 4 and p. 169.

[497] *La Propriété industrielle,* 1908, p. 173.

[498] *Ibid.*, 1919, pp. 1 and 2.

(ii) *Restoration of independence of a contracting country after annexation by another contracting country*

Austria

289. When the annexation of *Austria* by Germany took place on 13 March 1938, both *Austria* and Germany had been party to the Hague text (1925) of the Paris Convention and the original text (1891) of the Madrid Agreement (registration of trademarks) as from 1 May 1928.[499] Germany, however, had also been party to the original text (1891) of the Madrid Agreement (false indications of source) as from 12 June 1925 and to the Hague Agreement (1925) as from 1 June 1928.[500] After the annexation Germany became party to the London texts (1934) of the Paris Convention and the Madrid Agreement (false indications of source) as of 1 August 1938, and to the London texts (1934) of the Madrid Agreement (registration of trademarks) and the Hague Agreement as of 13 June 1939.[501]

290. After the restoration of *Austria's* independence following World War II, the Austrian Government deposited an instrument of accession to the London texts (1934) of the Paris Convention and the Madrid Agreement (registration of trademarks) which took effect as of 19 August 1947.[502] Since January 1848, the International Bureau lists *Austria* as a member of the Paris Union and the restricted union established by the Madrid Agreement (registration of trademarks) as from 1 June 1928, even though *Austria* was not listed among the members in the January issues of *La Propriété industrielle* of the intervening years, i.e., from 1939 to 1947 inclusive. Application of the Madrid Agreement (false indications of source) and the Hague Agreement in the territory of *Austria,* which was implied by German acceptance of these instruments as from 1 August 1938, did not survive the restoration of the independence of *Austria. Austria* is not listed by the Bureau as a party to the Madrid Agreement (false indications of source) and the Hague Agreement.[503]

(iii) *Attainment of independence by a contracting country*

Tunisia

291. *Tunisia,* which had been a French protectorate for the period 1881 to 1956, became a member of the Paris Union by way of accession dated 20 March 1884.[504] At the time of the Madrid Conference held in 1890, *Tunisia* was represented by France, and the plenipotentiary from France signed the two Madrid Agreements in 1891 in the name of Tunisia as well as on behalf of France.[505] *Tunisia* ever since has been regarded as an original party to the Madrid Agreements. *Tunisia* also became a party to the Hague Agreement of 1925 by virtue of accession made by France on its behalf in 1930.[506] All the revised texts of the above-mentioned four instruments, i.e., the Paris Convention, the two Madrid Agreements and the Hague Agreement, subsequently adopted in 1900, 1925 and 1934 whereever applicable, have been likewise accepted by France in the name of *Tunisia.*[507]

292. After attaining independence *Tunisia* continued to be listed by the Bureau as a separate member of the Paris Union as from 7 July 1884, of the two restricted Unions established by both Madrid Agreements as from 15 July 1892 and of the restricted union established by the Hague Agreement as from 20 October 1930. Its accession to the London texts (1934) of all these instruments is considered effective since 4 October 1942.[508] Recently *Tunisia* acceded to the Nice Agreement (1957), with effect from 29 May 1967,[509] and ratified the Nice text (1957) of the Madrid Agreement (registration of trademarks), with effect from 28 August 1967.[510]

(iv) *Attainment of independence by a contracting country and incorporation in the new independent State of another contracting country and a former territory of the Union*

Morocco

293. When an independent Moroccan State was formed in 1956 out of three separate territorial entities formerly called the "French zone of Morocco", the "Spanish zone of Morocco" and the "International zone of Tangier",[511] the Paris Convention, Madrid Agreement (false indications of source), Madrid Agreement (registration of trademarks) and the Hague Agreement had been in force in these three entities. In the French zone of Morocco (which had been a separate party to the Paris Convention ever since it acceded to the Washington text (1911) in 1917)[512] and in Tangier (which had been a separate party to the Paris Convention ever since it acceded to the Hague text (1925) in 1936),[513] the London texts (1934) of the aforementioned four instru-

[499] *Ibid.,* 1928, p. 98.

[500] *Ibid.,* 1929, pp. 1 and 2.

[501] *Ibid.,* 1940, pp. 1 and 2.

[502] *Ibid.,* 1947, pp. 129 and 130.

[503] *Industrial Property,* 1967, pp. 8 and 9.

[504] *Actes de la Conférence réunie à Bruxelles (1897 et 1900),* p. 11. This date of accession, incidentally, was before the Paris Convention entered into force on 15 July 1884.

[505] *Procès-verbaux de la Conférence de Madrid de 1890 suivis des Actes signés en 1891 et ratifiés en 1892,* pp. 5, 191 and 198.

[506] *La Propriété industrielle,* 1930, p. 193.

[507] *Ibid.,* 1942, pp. 1 and 2; *ibid.,* 1947, pp. 1 and 2; and *ibid.,* 1958, pp. 1 and 2.

[508] *Industrial Property,* 1967, pp. 6-10.

[509] *Ibid.,* p. 103.

[510] *Ibid.,* p. 161.

[511] Upon relinquishing administrative powers of the French zone, France recognized Moroccan independence as of 2 March 1956. Administrative powers of Spain in the Spanish zone were transferred to Morocco as of 7 April 1956. Following the Fedala Conference held on 8 October 1956, the international zone of Tangier came under Moroccan control as of 29 October 1956.

[512] *La Propriété industrielle,* 1917, p. 81.

[513] *Ibid.,* 1936, pp. 21-23.

ments had been in force since 1941 and 1939, respectively; and in the Spanish zone of Morocco the Hague texts (1925) of the same four instruments had been in force since 1928 by virtue of a declaration of territorial application made by Spain.[514]

294. The January 1957 issue of *Industrial Property Quarterly*[515] carried the following memorandum prepared by the Bureau of the status of *Morocco* in the Paris Union:

Considerable changes have taken place in North Africa following recent events which have substantially altered the political status of the Protectorates of French Morocco and Spanish Morocco, and Tangier. These changes affect their relationship to the International Union, but the provisions of the Convention and the Arrangements will continue to apply in each of the former territories.

As a consequence of the Franco-Moroccan Treaty of 2nd March, 1956, and the Spanish-Moroccan Treaty of 7th April, 1956, the former French Zone and the former Spanish Morocco have ceased to exist and these territories have become fully independent of France and Spain.

Furthermore, at the International Conference of Fedala on the 8th October, 1956, it was decided that the former International Control of Tangier was to be abolished.

Henceforth all three territories will together form the independent Cherifian Empire of Morocco.

French Morocco and Tangier were already full members of the International Union and Spanish Morocco was a territory to which the Convention had been applied as a Protectorate of Spain. It therefore seems clear that, so far as the Union is concerned, Tangier will cease to be an independent member of the Union but that the reorganized State of Morocco will continue to be a member as it has been since 1917. The territory of the new State will include all the territory to which the Convention formerly applied.

We are informed that the Patent Office at Tangier will shortly cease to function and that the industrial property administration will be placed under the Ministry of Commerce of the Moroccan Government.

295. The January issues of *La Propriété industrielle* of 1957 to 1967 inclusive list *Morocco* as a party to the Paris Convention, Madrid Agreement (false indications of source) and Madrid Agreement (registration of trademarks) as from 30 July 1917,[516] and to the Hague Agreement as from 20 October 1930[517] as well as having acceded to the London texts (1934) of all these instruments with effect as from 21 January 1941.[518] In 1967 *Morocco* acceded to the Lisbon texts (1958) of the Paris Convention and the Madrid Agreement (false indications of source) with effect as from 15 May 1967. Following the Swiss Government's circular notes on the accession of *Morocco* to the above-mentioned Lisbon texts, the April 1967 issue of *Industrial Property* explains[519] that *"as a result of these notifications, Morocco is now bound by the Acts of Lisbon, as well as the previous Acts"*.

(v) *Formation and dissolution of a State by two contracting countries*

United Arab Republic

296. The position taken by the *United Arab Republic* (formed by the Union of Egypt and Syria on 22 February 1958, and dissolved on 28 September 1961) is indicated in the two notes reproduced below (translations from the French by the United Nations Secretariat):[520]

Notes of the Swiss Federal Council (Political Department) concerning the United Arab Republic (the first note is dated 16 June 1960)

In compliance with the instructions of the Swiss Federal Political Department dated 16 June 1960, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that according to the note dated 2 February 1960 addressed to the Swiss Embassy at Cairo by the Ministry of Foreign Affairs of the United Arab Republic, a copy of which is attached, that Republic will henceforth replace Egypt and Syria as a member country of the Paris Union for the Protection of Industrial Property. With regard to its contribution to the expenses of the Bureau of the Union, the Government of the United Arab Republic has chosen the fourth of the classes provided for in article 13 (8) of the Paris Convention for the Protection of Industrial Property, as revised at London on 2 June 1934.

The effects of this merger must logically be extended to the restricted Union of Madrid for the prevention of false or misleading indications of source on goods. With regard to the restricted Union of Madrid for the international registration of trademarks and the restricted Union of The Hague for the international deposit of industrial designs, of which only Egypt was hitherto a member, the Swiss Government will address further inquiries to the Government of the United Arab Republic regarding the exact territorial scope of the constitutive Agreements of these two Unions. Unless a contrary view is expressed by the Government of the United Arab Republic, there would be grounds for concluding that the Agreements in question will apply only to the Egyptian Province of that Republic. . . .

Supplementary note

Further to its note of . . . concerning the merger of Egypt and Syria in a single member country of the Paris Union for the Protection of Industrial Property, the Swiss Embassy has the honour to transmit herewith to the Ministry of Foreign Affairs copies of two further notes concerning this question, dated 27 April and 3 May 1960 respectively, which have been addressed to the Swiss Embassy at Cairo by the Ministry of Foreign Affairs of the United Arab Republic.

The first of these communications confirms that the Madrid Agreement concerning the international registration of trademarks and The Hague Agreement concerning the international deposit of industrial designs, both revised at London on

[514] *Ibid.*, 1928, pp. 145 and 214.

[515] Page 10.

[516] The date on which the French zone of Morocco became party to the Washington texts (1911) of these three instruments (see *La Propriété industrielle*, 1917, p. 81).

[517] The date on which the French zone of Morocco became party to the Hague text (1925) of this Agreement (see *La Propriété industrielle*, 1930, p. 193).

[518] *Industrial Property*, January 1967, pp. 6-10. The following note, appended to the "List of Member States" in the January issues from 1957 until 1964, has not appeared in the January issues since 1965:

"The Industrial Property Laws and the Offices of the three parts of this Unionist country (former French and Spanish Protectorates and Zone of Tangier) have not yet been co-ordinated."

[519] *Industrial Property*, April 1967, p. 74.

[520] *La Propriété industrielle*, 1960, p. 102.

2 June 1934, still apply only to the Egyptian Province of the United Arab Republic. The second communication states that the financial consequences of the merger took effect on 1 January 1959. . . .

297. So far as the listing of the parties in *La Propriété industrielle* is concerned, *Egypt* and *Syria* were listed separately as before in the January issue of 1959; in the January issues of 1960 and 1961, the *United Arab Republic* was listed along with its subdivisions, *"Province d'Egypte"* and *"Province de Syrie"* with regard to the Paris Convention and the Madrid Agreement (false indications of source), and with one of its subdivisions, i.e., *"Province d'Egypte"* in respect of the Madrid Agreement (registration of trademarks) and The Hague Agreement. It appears that since the dissolution of the union on 28 September 1961 no communication has been received by the Swiss Government from the *Syrian Arab Republic* (formerly *Province de Syrie*). However, *La Propriété industrielle* listed since 1962 the *Syrian Arab Republic* and the *United Arab Republic* (formerly *Province d'Egypte*) as separate members of the Paris Union and separate parties to the Madrid Agreement (false indications of source) and the *United Arab Republic* as a party to the Madrid Agreement (registration of trademarks) and The Hague Agreement.[521] The *Syrian Arab Republic* is considered as having acceded to the Paris Union and been bound by the Madrid Agreement (false indications of source) as from 1 September 1924 and as having acceded to the London texts (1934) of the Paris Convention and the Madrid Agreement (false indications of source) with effect from 30 September 1947.[522] The *United Arab Republic* is considered as former Egypt to be a member of the Paris Union to the London text (1934) of the Paris Convention since 1 July 1951 and to be bound by the London texts (1934) of the Madrid Agreement (false indications of source), the Madrid Agreement (registration of trademarks) and The Hague Agreement as from 1 July 1952. Recently, the *United Arab Republic* acceded to the Nice text (1957) of the Madrid Agreement (registration of trademarks) with effect from 15 December 1966.

(*b*) Change in membership and continuity in the application of multilateral instruments administered by the Paris Union

(i) *Division of a contracting country into two separate contracting countries following the attainment of their independence*

Lebanon and *Syria*

298. By a note dated 18 June 1924 the Government of France communicated accession to the Washington texts (1911) of the Paris Convention and the Madrid Agreement (false indications of source) on behalf of a group of countries called *"Etats de la Syrie et du Liban"*, which had been under mandate of the League of Nations as from 23 September 1923. In the same note the French Government requested that this group of countries should be placed in the sixth class of contribution to the expenses of the Bureau. The Swiss Government, however, made the following observation concerning the status of this group of countries in the régime of the Paris Union: [523]

> . . . we believe it our duty to point out that, as the status of mandated countries was not clarified in the system of the Industrial Union either from the point of view of their rights (representation), or from that of their obligations (financial contributions), it seems appropriate that a uniform decision regarding the two aspects should be taken for all countries in this category at the next revision Conference provided for in article 14 of the General Convention.*

299. One paragraph relevant to the above question may appropriately be quoted below from the report of the first Sub-Committee of the Hague Conference held in 1925: [524]

> The Chairman opened the discussion on the amendment to article 16*bis* proposed by Great Britain.[525] The Director of the International Bureau explained that countries under League of Nations mandate did not pay contributions as members of the Union and did not have the right to vote, being represented for those purposes by the Mandatory Power concerned. No objections were raised to that explanation or to the amendment proposed by Great Britain. The Chairman therefore stated that the amendment was accepted unanimously.*

In fact, *Syria* and *Lebanon* were not represented at the Hague Conference, although the Hague texts (1925) of the Paris Convention and the Madrid Agreement (false indications of source) were signed on their behalf by the French delegate at the close of the Conference.[526] Accession to these two instruments was later made by France in the name of *Syria* and *Lebanon* in 1930.[527]

300. After becoming independent, *Lebanon* and *Syria* acceded to the London texts (1934) of the above-mentioned two multilateral instruments by way of a note dated 19 February 1946 and 5 July 1947, respectively. These accessions became effective as from 30 September 1947. Part I of the circular of the Swiss Government concerning accession by Lebanon, dated 30 August 1947, reads: [528]

> The Federal Political Department, International Organizations, has the honour to inform the Ministry of Foreign Affairs that

[521] *Industrial Property*, 1967, pp. 6-9.

[522] See paras. 298-301, below.

* Translation from the French by the United Nations Secretariat.

[523] *La Propriété industrielle*, 1924, pp. 149 and 150.

[524] *Acte de la Conférence réunie à La Haye (1925)*, p. 420.

[525] By this amendment countries under the League Mandate were added to various categories of dependencies mentioned in the territorial application clause of article 16 *bis* (see note 430, above).

[526] *Acte de la Conférence réunie à La Haye (1925)*, pp. 371 and 599 ff. The situation was the same at the time of the London Conference (1934) (see *Actes de la Conférence réunie à Londres* (1934), pp. 311 and 540 ff.).

[527] *La Propriété industrielle*, 1930, p. 222.

[528] Part II concerning accession by *Syria* repeats *mutatis mutandis* the same statement as part I (*La Propriété industrielle*, 1947, p. 150).

by a note dated 19 February 1946, the Legation of Lebanon in France has notified the Swiss Federal Council of the accession of the Lebanese Government to the Paris Convention for the Protection of Industrial Property of 20 March 1883, last revised at London on 2 June 1934, and to the Madrid Agreement for the prevention of false or misleading indications of source on goods, of 14 April 1891, last revised at London on 2 June 1934.

In accordance with articles 16 and 18 (2) of the Paris Convention (London text), the two accessions in question shall take effect one month after the date of the present notification, that is from 30 September 1947.

So far the Lebanese Republic has been bound by the Hague texts of these Agreements, of 6 November 1925.

With regard to its contribution to the expenses of the International Bureau, the Lebanese Government wishes Lebanon to be placed in the Sixth Class. . . .*

301. Since January 1947, the International Bureau has listed *Lebanon* and *Syria* as two separate members of the Union and two separate parties to the Paris Convention and to the Madrid Agreement (false indications of source), and they are regarded as having been bound by these two instruments continuously as from 1 September 1924, i.e., the effective date of original accession made by France on behalf of a group of countries called *"Etats de la Syrie et du Liban"*.

(ii) *Division of a contracting country into three separate contracting countries*

Malawi, Rhodesia (Southern) and *Zambia*

302. *The Federation of Rhodesia and Nyasaland,* which was formed in 1953, as a semi-autonomous member of the Commonwealth, acceded to the Paris Union and the London text (1934) of the Paris Convention as from 1 April 1958, date requested in the communication sent to the Swiss Government.[529] The Federation elected to be placed in the sixth class of contribution. The Federation sent its own delegate to the diplomatic Conference held at Lisbon.[530] According to the Swiss Government's circular dated 16 May 1963, the instrument of ratification of this text of the Paris Convention by the Federation was deposited with the Swiss Government on 21 March 1963.[531]

303. After the dissolution of the Federation on 31 December 1963, the following note was gazetted in the February 1964 issue of *Industrial Property:* [532]

Communication concerning the former Federation of Rhodesia and Nyasaland

We have received from the Registrar of Patents of Southern Rhodesia a copy of the following circular of the Patent Institute of Rhodesia and Nyasaland.

Dear Sirs,

Dissolution of the Federation of Rhodesia and Nyasaland

We wish to advise that upon the dissolution of the Federation on the 31st December 1963, the Patent Office, situated in Salisbury, will be taken over and operated by the Southern Rhodesian Government with effect from the 2nd January 1964. All Federal records will be retained in that Office.

The Order in Council made under the Rhodesia and Nyasaland Act, 1963, of the United Kingdom, provides that all Federal rights existing up to 31st December 1963, shall be of full force and effect in Southern Rhodesia, Northern Rhodesia, and Nyasaland, unless the respective legislatures of those territories provide otherwise.

The Southern Rhodesia Legislature has made the Patents (modification and adaptation) Regulations 1963 G.N. 793/1963, the Trade Marks (modification and adaptation) Regulations 1963 G.N. 806/1963, and the Registered Designs (modification and adaptation) Regulations 1963 G.N. 802/1963, which were published in the Southern Rhodesian *Gazette* of the 27th December 1963. These Regulations apply the Federal Patents, Trade Marks, and Registered Designs Acts to Southern Rhodesia with the necessary adjustments, and they will henceforth be administered by the Southern Rhodesian Government through the Salisbury Patent Office.

The Southern Rhodesia Government has notified through diplomatic channels its adherence to the Paris Convention, and has forwarded a declaration of continuity with the notification.* This procedure should ensure the preservation of all existing Convention rights until Southern Rhodesia's accession to the Convention is finalised.

The Government of Northern Rhodesia has requested the Southern Rhodesia Government to permit it to make use of the services of the Salisbury Registry on an Agency basis for a period and on terms to be negotiated. It is understood that the Northern Rhodesia Government is taking similar steps as Southern Rhodesia to adhere to the Paris Convention, and to make similar Regulations under the Order in Council modifying and adapting the three Federal industrial property Acts.

With effect from 2nd January, 1964, therefore, the Salisbury Patent Office will operate in respect of Southern Rhodesia, and on an Agency basis for Northern Rhodesia, but separate applications and separate fees will be required in respect of each territory.

With regard to all pending matters up to and including the 31st December, 1963, these will be processed and completed in terms of the respective Federal Acts.

It is understood that Nyasaland wishes "to go it alone", and will set up its own Registry, but it is not known what steps are being or will be taken to this end. The Salisbury Office will have no jurisdiction whatsoever in respect of Nyasaland, and no application of any description in respect of that territory can be entertained.

Yours faithfully,

(*Signed*) F. B. d'ENIS
Administrative Officer

304. As the communication of the Swiss Government quoted below indicates,[533] the Government of Southern Rhodesia, in September 1964, made a declaration of continuity relative to the participation of *Southern Rhodesia* in the Paris Convention, as last revised at

* Translation from the French by the United Nations Secretariat.

[529] *La Propriété industrielle,* 1957, p. 229 and *ibid.,* 1959, p. 15. See note of the Swiss Government, dated 9 December 1957, reproduced in the January 1958 issue of the *Industrial Property Quarterly,* p. 3.

[530] *La Propriété industrielle,* 1958, p. 210.

[531] *Industrial Property,* 1963, p. 94. In accordance with article 18, the ratification took effect on 16 June 1963.

[532] Pp. 23 and 24.

* We understand from the Swiss Federal Political Department that this notification and declaration has not yet been received. (*Ed.*).

[533] *Industrial Property,* March 1965, p. 43.

Lisbon in 1958, and, at the same time, notified accession of Southern Rhodesia to the Paris Union:

The Swiss Embassy presents its compliments to the Ministry of Foreign Affairs and has the honour to send herewith a copy of a letter, dated September 2, 1964, addressed to the Head of the Federal Political Department by the Ministry of External Affairs of *Southern Rhodesia.*

In this letter, which reached the Department through the intermediary of the Embassy of the United Kingdom of Great Britain and Northern Ireland in Berne, the Government of Southern Rhodesia makes a declaration of continuity relating to the participation of that country in the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958.

The above-mentioned letter also informed the Swiss Government of the adhesion of Southern Rhodesia to the Paris Convention. In application of Article 16 (3) of the said Convention, this adhesion will take effect on 6 April 1965.

With regard to its contribution to the expenses of the International Bureau of the Union, Southern Rhodesia is placed in the Sixth Class, for the purposes of Article 13 (8) and (9) of the Paris Convention as revised at Lisbon.

305. In the January issues of *Industrial Property,* 1966 and 1967, the Bureau of the Paris Union listed *Rhodesia* (instead of Southern Rhodesia) as having acceded as a separate member to the Paris Union and been a separate party to the Lisbon text (1958) of the Paris Convention as from 6 April 1965, the effective date of accession mentioned in the above communication. The Bureau, at the same time, noted that the Paris Convention had been applied to *Rhodesia,* as an integral part of the former Federation of Rhodesia and Nyasaland as from 1 April 1958, the date on which accession to the London text (1934) by the Federation took effect.[534]

306. In August 1964, the Government of Northern Rhodesia, which later became the independent State of *Zambia* on 24 October 1964, declared through the intermediary of the British Government its position regarding its continued participation in the Paris Conventions, as last revised at Lisbon in 1958, not only for the period between the date of the dissolution of the Federation of Rhodesia and Nyasaland and the date of independence of Zambia but also for the period after the prospective date of independence of Zambia *i.e.,* 24 October 1964. As the communication of the Swiss Government quoted below indicates, this undertaking by the Government of Northern Rhodesia was later confirmed by the Government of *Zambia* on 31 December 1964.[535]

The Swiss Embassy has the honour to send herewith to the Ministry of Foreign Affairs a copy of a letter from the Ministry of Commerce and Industry of Northern Rhodesia dated August 26, 1964, which was transmitted to the Head of the Federal Political Department through the intermediary of the Embassy of the United Kingdom of Great Britain and Northern Ireland in Berne.

As the Ministry will note from the above-mentioned letter, it contains declarations of continuity of the Government of Northern Rhodesia relating to the participation, as from January 1, 1964—the Federation of Rhodesia and Nyasaland having been dissolved on December 31, 1963—to October 23, 1964, in respect of Northern Rhodesia and as from October 24, 1964, in respect of the Republic of Zambia in the International Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958.

The above-mentioned letter also informed the Swiss Government of the adhesion of the Republic of Zambia to the Paris Convention, which declaration has been confirmed by a communication from the Ministry of Commerce and Industry of the Republic of Zambia, addressed to the Head of the Political Department on December 31, 1964. In application of Article 16 (3) of the said Convention, this adhesion will take effect on April 6, 1965.

With regard to its contribution to the expenses of the International Bureau of the Union, Zambia is placed in the Sixth Class, for the purposes of Article 13 (8) and (9) of the Paris Convention as revised at Lisbon.

307. In the January issues of *Industrial Property,* 1966 and 1967, the Bureau listed Zambia as having acceded as a separate member to the Paris Union and been a separate party to the Lisbon text (1958) of the Paris Convention as from 6 April 1965, the effective date of accession mentioned in the above communication.[536]

308. The Government of *Malawi,* former Nyasaland, which attained independence on 6 July 1964, addressed to the Swiss Government a declaration of continuity dated 24 May 1965. As indicated in the communication of the Swiss Government quoted below, *Malawi* was considered by the Swiss Government as having been bound by the Lisbon text (1958) of the Paris Convention as from the date of its independence.[537]

The Swiss Embassy presents its compliments to the Ministry of Foreign Affairs and has the honour to enclose herewith a copy of a declaration by the Prime Minister of External Affairs of Malawi, dated May 24, 1965, and received on October 6, 1965, by the Federal Political Department through the High Commission of that State in London.

With reference to the adhesion in 1963 of the Federation of Rhodesia and Nyasaland to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised at Lisbon on October 31, 1958, the Government of Malawi declares that since this adhesion came into force on June 16, 1963, the above-mentioned Convention has not ceased to be applied on its territory and continues to be so applied.

According to its declaration of continuity, Malawi is considered to be bound by the Paris Convention, as revised at Lisbon on October 31, 1958, from the date of its accession to independence, on July 6, 1964.

With regard to its contribution to the expenses of the International Bureau of the Union, Malawi is placed, at its request, in the Sixth Class for the purposes of Articles 13 (8) and (9) of the Paris Convention as revised at Lisbon.

309. Unlike the cases of Southern Rhodesia and Zambia, the Bureau listed *Malawi* as having acceded as

[534] *Ibid.,* January 1966, p. 7 and *ibid.,* 1967, p. 7.

[535] *Ibid.,* 1965, p. 43.

[536] *Ibid.,* 1966, pp. 6 and 7 and *ibid.,* 1967, p. 7.

[537] *Ibid.,* November 1965, p. 239.

a separate member to the Paris Union and been a separate party to the Lisbon text (1958) of the Paris Convention as of the date of independence, while it also noted that the application of the Paris Convention to *Malawi* as an integral part of the former Federation of Rhodesia and Nyasaland dated back to 1 April 1958, the date on which accession by the Federation to the London text (1934) took effect.[538]

D. *Summary*

1. FORMER DEPENDENT TERRITORIES

310. With regard to new States emerging from former dependent territories to which multilateral instruments administered by the Paris Union have been applied, continuity in the application of the Paris Convention and its revised texts seems to have been recognized in twenty-two cases: *Australia, Cameroon, Canada, Central African Republic, Ceylon, Chad, Congo (Brazzaville), Dahomey, Gabon, Indonesia, Ivory Coast, Laos, Madagascar, Mauritania, New Zealand, Niger, Senegal, Tanzania, Trinidad and Tobago, Togo, Upper Volta* and *Viet-Nam.* In some instances, continuity in the application of special agreements establishing restricted unions seems also assured: (1) Madrid Agreement (false indications of source) *(Ceylon, New Zealand, Viet-Nam)*; (2) Madrid Agreement (registration of trademarks) (Viet-Nam); (3) The Hague Agreement *(Indonesia, Viet-Nam).* Seven former dependent territories have not yet made clear their position: *Cambodia, Formosa, Guinea, Korea, Mali, Singapore* and *Western Samoa.* In two cases only continuity in the application of the instruments seems to have lapsed: *Algeria* and *Israel.* The retroactive accession by *Israel* was not unanimously approved by the Contracting countries. After attaining independence *Algeria* communicated to the Swiss Government its accession to a text of the Paris Convention (Lisbon text) which had been previously extended to it by France.

311. Continuity in the application of the instruments requires the consent of the new State concerned. Normally, the consent of the new State is communicated to the Swiss Government by the competent authorities of such State. In three exceptional cases *(Austria, Canada, New Zealand)* the communication has been transmitted by the contracting country which previously extended the territorial application of the instruments. Following the reception of such communications, the Swiss Government sends circulars to the countries of the Union explaining the status of the country in question within the Paris Union. Frequently, the circulars refer to the communications as *"déclarations d'appartenance à l'Union" (Cameroon, Central African Republic, Chad, Dahomey, Gabon, Ivory Coast, Laos, Madagascar, Mauritania, Niger, Senegal, Togo, Trinidad and Tobago, Upper Volta)* and occasionally as *"déclarations de continuité" (Congo (Brazzaville) Viet-Nam).* With the exception of *Canada, Indonesia,* and *Viet-Nam,* these communications notify at the same time the accession of the new State concerned to a revised text of the Paris Convention not extended to their territories prior to independence; and they are in fact *"déclarations de continuité et d'adhésion".*

312. Normally, the Bureau considers today that new States emerging from former dependent territories which made declarations of continuity (express or tacit; formal or informal) become separate members of the Paris Union—and of the special unions—and separate parties to its instruments one month after the date of the relevant circular sent by the Swiss Government to the countries of the Union. In the framework of the Paris Union, the declarations of continuity of new States are made with the intent to assure continuous application of the instruments by preventing the former territorial application from lapsing as of independence day. When a declaration of this kind exists, the territorial application of the instruments continues beyond independence day until the date when the new State becomes a separate party to the instrument in question. In the absence of a declaration of continuity *(Algeria, Israel),* the new State becomes also a separate member and a separate party one month after the date of the Swiss Government's circular, but the territorial application of the instruments lapses as from independence day until the date when the State concerned becomes a separate member and party. Finally, when continuity in the application of the instruments has been assured, the Bureau seems to recognize such continuity as from the date of the initial territorial application made by the contracting country responsible at the time for the international relations of the territory in question. The date of the initial territorial application of the instruments in *non-metropolitan territories for the international relations of which the Netherlands and the United Kingdom were responsible* is expressly mentioned in the 1967 January issue of *Industrial Property,* while in the case of *Viet-Nam and other non-metropolitan territories for the international relations of which France was responsible* this initial date is not mentioned and seems to have not yet been clearly established in all cases.

2. COUNTRIES OF THE UNION OR CONTRACTING COUNTRIES

313. Continuity in membership and in the application of multilateral instruments administered by the Paris Union has been assured with regard to *Austria, Hungary, Morocco,* the *Syrian Arab Republic, Tunisia* and the *United Arab Republic.* The changes undergone by these countries of the Union did not alter either their status within the Paris Union or their participation in its instruments. They continue to be considered countries of the Union and parties to its instruments as from the date of the original accession or ratification. After attaining independence, *Morocco* and *Tunisia* exercise themselves the rights and duties of membership that prior to independence had been exercised on their behalf by France. Once restored to its independence, *Austria* continues to be a member and a party as it was before the annexation. Likewise, following the dissolution of

[538] *Ibid.*, 1966, pp. 6 and 7 and *ibid.*, 1967, p. 7.

its union with Egypt, the *Syrian Arab Republic* recovered the place of Syria in the Union such as it was before the formation of the union.

314. In two cases the division of a contracting country *("Groupe d'Etats de la Syrie et du Liban"*; Federation *of Rhodesia and Nyasaland)* has resulted in a change in the list of members of the Union and parties to its instruments, inasmuch as each part of the former single contracting country became a separate member and a separate party. However, even in these two cases continuity in the application of the instruments has been assured. With regard to *Lebanon* and *Syria,* this continuity has been safeguarded, making retroactive the date when they become separate members and parties. Both countries are considered to be separate members and parties as from the date of the original accession by the contracting country called *"Groupe d'Etats de la Syrie et du Liban"*. In the case of each of the three parts into which the *Federation of Rhodesia and Nyasaland* has been divided *(Malawi, Rhodesia (Southern), Zambia)* continuity in the application of the instruments has been assured by means very similar to those used for former dependent territories of a country of the Union. *Malawi, Rhodesia (Southern)* and *Zambia* made declarations of continuity that had the effect of preventing a lapse of the instruments applied to the Federation of Rhodesia and Nyasaland after the date of their separation from the Federation. *Rhodesia (Southern)* and *Zambia* (former Northern Rhodesia) are considered to be separate members and separate parties as from a month after the date of the relevant circular sent by the Swiss Government to countries of the Union. In the case of *Zambia,* the declaration of continuity was first made by Northern Rhodesia and was confirmed by *Zambia* after attaining its independence. In accordance with the terms of its declaration of continuity, *Malawi* is listed as a separate member of the Union and a separate party to its instruments as from the date of its independence. *Malawi's* declaration has been interpreted as establishing separate membership as from the date of independence.

V. The General Agreement on Tariffs and Trade (GATT) and its subsidiary instruments [539]

A. *The GATT multilateral instruments*

315. The General Agreement on Tariffs and Trade (hereinafter referred to as the "General Agreement") was adopted at Geneva on 30 October 1947 at the conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment.[540] By the Protocol of Provisional Application of the General Agreement signed at Geneva on the same day the signatories to the Protocol undertook to apply provisionally on and after 1 January 1948 "(*a*) Parts I and III of the General Agreement on Tariffs and Trade, and (*b*) Part II of that Agreement to the fullest extent not inconsistent with existing legislation".[541] The contracting parties to the General Agreement (i.e. the governments which "make effective such provisional application" under the said Protocol or protocols of accession), acting jointly towards the reduction of tariffs and other trade barriers on a reciprocal and multilateral basis, form in effect an international organization known as "GATT". As the Agreement on the Organization for Trade Cooperation drawn up in 1955 has not entered into force, GATT still lacks a permanent organizational framework. Yet GATT has various organs, e.g., a general representative body called the "annual session of CONTRACTING PARTIES",[542] a Council of Representatives, periodic Tariff Conferences, a secretariat under the direction of a Director-General (formerly called "Executive Secretary"), etc., and its annual budget is financed by the contributions from the members of GATT and other Governments which participate in the work of GATT under special agreements.[543]

316. The CONTRACTING PARTIES, among other functions, adopt multilateral instruments which are called "Protocol", "Procès-Verbal", "Declaration" or "Agreement".[544] These instruments, as they enter into force, amend or supplement certain provisions of the General Agreement, provide for, rectify or modify the schedules of tariff concessions, and stipulate the terms of accession of new members.[545] The General Agree-

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[539] The present study covers the period prior to January 1968.

[540] For the original text see United Nations, *Treaty Series,* vol. 55, p. 194. The text as amended by several protocols of 1948 and 1949 was published in GATT, *Basic Instruments and Selected Documents,* vol. I (1952), p. 11, and with further amendments in *ibid.,* vol. III (1958). A volume IV of GATT, *Basic Instruments and Selected Documents,* with the addition of Part IV introduced in 1966, will be published in 1969.

[541] United Nations, *Treaty Series,* vol. 55, p. 308.

[542] Depending on the context in which it appears in the official documents of GATT, the term "CONTRACTING PARTIES" in capital letters stands either for this representative body or for "GATT" as an organization constituted by parties to the General Agreement. For the sake of convenience, CONTRACTING PARTIES hereinafter stands for the former only and individual contracting parties hereinafter are referred to as "members" of GATT.

[543] For the status of GATT and its relationship with the United Nations, see *Final Act of the United Nations Conference on Trade and Employment,* pp. 71 and 72 and "The Developing Countries in GATT" in *Proceedings of the United Nations Conference on Trade and Development,* vol. V, p. 433, para. 18.

[544] All these multilateral instruments adopted by the CONTRACTING PARTIES are drawn up and opened for acceptance but are not binding upon members unless accepted by them. "Decisions" are in a different category; they do not normally require signature by individual Governments and therefore these are not listed in PROT/2 (see note 545) as instruments deposited with the Director-General of GATT. Exceptionally, as shown in ST/LEG/SER.D/1 (see note 545), the Decisions of 21 April 1951 on the accession of six countries were opened for signature and were deposited with the Secretary-General of the United Nations, but that is a procedure which has not been followed on other occasions.

[545] By the end of the twenty-fourth session held in November 1967, the CONTRACTING PARTIES had drawn up and opened for acceptance 108 subsidiary instruments. The Secretary-General of the United Nations is depositary of the General Agreement and 27 subsidiary instruments and the Director-General of GATT of 81 subsidiary instruments (see: *Multilateral treaties in respect of which the Secretary-General performs depository functions* (ST/LEG/SER.D/1), chap. X;

ment as well as the subsidiary instruments have been applied since 1948-1949 in almost all of the dependent territories of Belgium, France, the Netherlands and the United Kingdom.[546] Of the new States emerging from these former dependent territories since 1948, forty-three [547] have joined GATT, have acceded provisionally or are applying the General Agreement on a *de facto* basis.

B. *Methods of becoming members of GATT available to new States*

(*a*) Procedure laid down in article XXVI, paragraph 5 (*c*), for former customs territories in respect of which a member of GATT has accepted the General Agreement

317. The General Agreement contains a special clause which is directly relevant to a change in international status of member's territories to which the GATT instruments (i.e. the General Agreement and subsidiary instruments) are applicable. Article XXVI, paragraph 5 (*c*) reads: [548]

> If any of the customs territories, in respect of which a contracting party has accepted this Agreement, possesses or acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement, such territory shall, upon sponsorship through a declaration by the responsible contracting party establishing the above-mentioned fact, be deemed to be a contracting party.

318. Although it does not appear that this special clause was originally intended by drafters to deal with issues arising from the formation of a new State,[549] it has provided convenient formulas for dealing with such issues, because the date of acquiring full autonomy in external commercial relations almost always coincided with the date of attaining full independence. In fact, it is through this procedure of article XXVI that a large majority of new States born out of members' territories have joined GATT acknowledging themselves continuously bound by the GATT instruments formerly made applicable to their territories.[550]

(*b*) Accession in accordance with article XXXIII

319. The territories acquiring independence have an alternative method of becoming members of GATT which is often called "accession through negotiation". Article XXXIII of the General Agreement provides:

> A government not party to this Agreement, or a government acting on behalf of a separate customs territory possessing full autonomy in the conduct of its commercial relations and of the other matters provided for in this Agreement, may accede to this Agreement, on its own behalf or on behalf of that territory, on terms to be agreed between such government and the CONTRACTING PARTIES. Decisions of the CONTRACTING PARTIES under this paragraph shall be taken by a two-thirds majority.

320. When a government wishes to accede through this procedure, arrangements are made for the conduct of tariff negotiations and, upon their conclusion, a protocol of accession is drawn up whereby the acceding government becomes a contracting party.[551]

GATT, *Status of Multilateral Protocols of which the Director-General acts as Depositary* (PROT/2) (August 1968); *Official Records of the General Assembly, Nineteenth Session, Annex No. 13,* document A/5886, p. 34; GATT, L/2356 (11 February 1965). The Director-General of GATT acts as depositary of all the GATT instruments concluded after 1 February 1955.

[546] See United Nations, *Treaty Series,* vol. 55, p. 194. The latest published list of the dependent territories to which the General Agreement is applied (a revision of the list appearing in GATT, document G/5) is in GATT, *Basic Instruments and Selected Documents,* Fourteenth Supplement (1966), pp. 1-5. Belgium, the Netherlands and France applied schedules embodying tariff concessions to most of their dependent territories whereas, with a few exceptions, no tariff schedules were applied to dependent territories of the United Kingdom (see United Nations, *Treaty Series,* vols. 56, 59 and 60).

[547] Algeria, Barbados, Botswana, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo (Democratic Republic of), Cyprus, Dahomey, Gabon, Gambia, Ghana, Guyana, Indonesia, Israel, Ivory Coast, Jamaica, Kenya, Kuwait, Lesotho, Madagascar, Malawi, Malaysia, Maldive Islands, Mali, Malta, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Singapore, Tanzania, Togo, Trinidad and Tobago, Tunisia, Uganda, Upper Volta and Zambia.

[548] This clause was originally article XXVI, para. 4, section proviso (United Nations, *Treaty Series,* vol. 55, p. 274) in almost identical wording, which became para. 4 (*c*) pursuant to an amending protocol of 13 August 1949 (United Nations, *Treaty Series,* vol. 62, p. 116) and then para. 5 (*c*) pursuant to the Protocol Amending the Preamble and Parts II and III of the General Agreement which entered into force on 7 October 1957 (United Nations, *Treaty Series,* vol. 278, p. 204). There has been no change in article XXVI since 1957.

[549] When the General Agreement was drafted by the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment in September 1947, the above special clause was inserted in the Agreement upon the recommendation of the *Ad Hoc* Sub-Committee of the Tariff Agreement Committee. The *Ad Hoc* Sub-Committee dealt with the question whether Burma, Ceylon and Southern Rhodesia, which according to the British Government were possessed of autonomy in external commercial relations, could be admitted to participate as full contracting parties to the General Agreement. When answering the above question in the affirmative, the *Ad Hoc* Sub-Committee also recommended inclusion of the aforementioned special clause in order to deal with similar cases in the future. (See *Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment,* documents E/PC/T/198 and 205, and verbatim reports of meetings (E/PC/T/TAC/PV/13, 24, 25 and 28 (1947)).)

[550] A new State becoming a GATT member in this fashion has to accept the tariff concessions which its predecessor has negotiated on its behalf, but is free to have recourse to the various provisions contained in articles XVIII and XXVIII in order to modify these concessions once it has become a member (see "The Developing Countries in GATT", *op. cit.*).

[551] See GATT, *Basic Instruments and Selected Documents,* vol. III (1958), p. 58. A favourable decision having been taken under article XXXIII, the protocol of accession is opened for acceptance by the acceding Government. A protocol of accession enters into force thirty days after it has been accepted by the acceding Government.

C. *Provisional application of the GATT instruments by new States after attaining independence*

(*a*) CONTINUED APPLICATION ON A "DE FACTO" BASIS

321. In order to give to new States, former customs territories in respect of which the GATT instruments were applicable, some time for reviewing their commercial policy after attaining independence, the CONTRACTING PARTIES devised in 1957 a procedure of "*de facto* application" of the General Agreement pending final decisions as to the future relations of these new States with GATT. By that procedure members of GATT continue to apply *de facto* the General Agreement in their relations with any territory which requires autonomy in the conduct of its external commercial relations and of other matters provided for in the General Agreement, provided that the new State, former customs territory, continues to apply *de facto* the Agreement to them. The procedure of "*de facto* application" has been laid down in successive recommendations adopted by the CONTRACTING PARTIES.

322. The first Recommendation approved by the CONTRACTING PARTIES on 1 November 1957 reads: [552] reads: [552]

The CONTRACTING PARTIES recommend that:

1. As soon as a customs territory in respect of which a contracting party has accepted the Agreement, or has made effective the provisional application of the Agreement, acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in the Agreement, the responsible contracting party should notify the Executive Secretary of that fact;

2. At their next ordinary session, the CONTRACTING PARTIES, after consultation with the representatives of the responsible contracting party and of the territory in question, should set a reasonable period during which the contracting parties should continue to apply *de facto* the Agreement in their relations with that territory, *provided* that that territory also continues to apply *de facto* the Agreement to them; and

3. At the same session, the CONTRACTING PARTIES, without prejudice to the rights conferred by Article XXVI: 5 (*c*), should make it clear that, if the sponsorship provided for in that sub-paragraph has not taken place with respect to the territory in question before the end of the period mentioned in (*b*) above, the contracting parties would not be expected to continue to apply *de facto* the Agreement in their relations with that territory.

In adopting the above Recommendation the CONTRACTING PARTIES agreed that if the sponsorship provided for in Article XXVI: 5 (*c*) were to take place at a time when the CONTRACTING PARTIES are not in session, the CONTRACTING PARTIES, at their next ordinary session, should record the legal effects of such sponsorship in an appropriate declaration.

323. By a new Recommendation of 18 November 1960 the CONTRACTING PARTIES decided that "a reasonable period" of *de facto* application should be two years from the date of acquiring full autonomy in external commercial relations. This Recommendation states the following: [553]

Considering that paragraph 5 (*c*) of Article XXVI of the General Agreement provides that if a territory, in respect of which the General Agreement has been applied, acquires full autonomy in the conduct of its external commercial relations and of other matters provided for in the Agreement such territory may be deemed to be a contracting party,

Considering that the CONTRACTING PARTIES, on 1 November 1957, adopted a recommendation as to procedure to be followed in cases in which a territory has acquired such full autonomy,

Considering that a number of territories, for which certain contracting parties had international responsibility and to which they applied the General Agreement, have recently acquired such full autonomy and that the Executive Secretary has entered into consultations in accordance with the said procedure with the governments of these newly independent territories,

Considering further that other territories may acquire such full autonomy in the near future, and

Recognizing that the governments of newly independent territories will normally require some time to consider their future commercial policy and the question of their relations with the General Agreement, and that it is desirable that meanwhile the provisions of the General Agreement should continue to be applied to trade between these territories and the contracting parties to GATT,

The CONTRACTING PARTIES

Recommend that contracting parties should continue to apply *de facto* the General Agreement in their relations with any territory which has acquired full autonomy in the conduct of its external commercial relations and of other matters provided for in the General Agreement, for a period of two years from the date on which such autonomy was acquired, provided that the territory continues to apply *de facto* the Agreement to them.

324. On 9 December 1961 the CONTRACTING PARTIES further recommended that "*de facto* application" should be continued for a further year in respect of any new State, former territory, which so requests. When reviewing the operation of the arrangement annually the CONTRACTING PARTIES have also, on request and by Decisions, extended, on an *ad hoc* basis, the period of *de facto* application of the GATT beyond the three-year period provided for in the Recommendations of 18 November 1960 and 9 December 1961. In some cases, it has been operative for more than six years.[554]

325. Recently, at its twenty-fourth session, the CONTRACTING PARTIES adopted on 11 November 1967 a new Recommendation which provides for continuing *de facto* application without a specific time-limit. The text of this Recommendation is reproduced below: [555]

[552] GATT, *Basic Instruments and Selected Documents*, Sixth Supplement (1958), pp. 11 and 12.

[553] *Ibid.*, Ninth Supplement (1961), pp. 16 and 17.

[554] *Ibid.*, Tenth Supplement (1962), p. 17; *ibid.*, Eleventh Supplement (1963), pp. 53 and 54 and *ibid.*, Twelfth Supplement (1964), p. 34. For an analysis of *de facto* application of the General Agreement, see Kunugi, "*State Succession in the Framework of GATT*", American Journal of International Law (1965), pp. 268-290.

[555] GATT, L/2946 (1 December 1967). The Recommendation was adopted on the basis of a draft recommendation annexed to a note by the Director-General of GATT (GATT, L/2757 (8 March 1967)). The said note contains the following explanatory paragraph:

"It is evident from experience under these Recommendations that many territories which acquire such autonomy require

Considering that paragraph 5 (*c*) of Article XXVI of the General Agreement provides that if a customs territory, in respect of which a contracting party has accepted the Agreement, "acquires full autonomy in the conduct of its external commercial relations and of the other matters provided for in the Agreement", such territory may be "deemed" to be a contracting party,

Considering that the CONTRACTING PARTIES have recognized that the governments of territories which acquire such autonomy will normally require some time to consider their future commercial policy and the question of their relations with the General Agreement and that it is desirable that meanwhile the provisions of the Agreement should continue to be applied between such territories and the contracting parties, and accordingly recommended on 18 November 1960 that contracting parties should continue to apply *de facto* for a period of two years the General Agreement in their relations with any such territory, provided that the territory continued to apply *de facto* the Agreement to its trade with contracting parties, and

Considering that many such territories have requested repeated prolongations of this arrangement for the *de facto* application of the Agreement to their trade and that the CONTRACTING PARTIES have granted all such requests,

The CONTRACTING PARTIES

Recommend that contracting parties should continue to apply *de facto* the General Agreement in their relations with each territory which acquires full autonomy in the conduct of its external commercial relations and in respect of which a contracting party had accepted the Agreement, provided such territory continues to apply *de facto* the Agreement to its trade with the contracting parties;

Decide that, on the request of any contracting party, they will review the application of this Recommendation in respect of any such territory; and

Request the Director-General to submit at the end of three years from the date of this Recommendation a report on its application.

(*b*) Resumed application on a new provisional basis

326. In some instances, special arrangements have been made in order to allow members of GATT and a particular new State, former customs territory to which the GATT instruments were applied prior to its independence, to re-establish treaty relations under the General Agreement on a provisional basis (declarations of provisional application or provisional accession) pending full accession by the new State in question under article XXXIII. Following a decision by the CONTRACTING PARTIES, the General Agreement has also been applied on a *de facto* basis to relations between members of GATT and a new State in preparation for full accession.

D. *Exceptions or quasi-reservations to the general rules provided for in the GATT instruments*

327. No reservation as such is considered permissible under the General Agreement or its subsidiary instruments. However, some exceptions or quasi-reservations to the general rules provided for in the GATT instruments may be made by members of GATT on certain conditions prescribed therein. Two types of such quasi-reservations made by a predecessor State in connexion with non-application of the General Agreement between particular contracting parties (art. XXXV) and exceptions to the rule of non-discrimination (art. XIV, para. 1 (*d*) and Annex J) have been inherited by certain new States, former customs territories to which the GATT instruments have been applied.

(*a*) Non-application of the General Agreement between particular contracting parties (article XXXV)

328. Article XXXV of the General Agreement reads: [556]

1. This Agreement, or alternatively Article II of this Agreement shall not apply as between any contracting party and any other contracting party if:

(*a*) the two contracting parties have not entered into tariff negotiations with each other, and

(*b*) either of the contracting parties, at the time either becomes a contracting party, does not consent to such application.

2. The CONTRACTING PARTIES may review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendations.

329. Article XXXV was added to the General Agreement in 1948 when article XXXIII was amended in order to provide that accession of a new member should be approved by a two-thirds majority instead of by unanimity (see para. 319, above). It was then pointed out that otherwise two-thirds of the contracting parties would oblige a contracting party to enter a trade agreement with another country without its consent.[557]

some considerable time to decide upon their future commercial policy and their relations with the GATT. It may be that many, particularly those whose participation in international trade is relatively small, may wish to wait for a rather lengthy period before assuming the full responsibilities which devolve upon contracting parties, but may nevertheless wish to benefit from, and to apply on a reciprocal basis, the provisions of the GATT, and, in particular, the rules for most-favoured-nation treatment. In these circumstances, the contracting parties might wish to consider an arrangement whereby the *de facto* application of the GATT could be continued without the necessity of addressing communications each year to the governments concerned enquiring whether they had reached a decision as to their future relations with the GATT. Provision could be made for the Director-General to submit a report after three years on the application of the arrangement."

[556] See GATT, *Basic Instruments and Selected Documents*, vol. III (1958), p. 58.

[557] See: GATT, "Origins of article XXXV and Factual Account of its Application in the case of Japan: Report by the Executive Secretary" (L/1466) and "The Developing Countries in GATT", *op. cit.*, p. 436, para. 44.

(*b*) EXCEPTIONS TO THE RULE OF NON-DISCRIMINATION (ARTICLE XIV, PARAGRAPH 1 (*d*) AND ANNEX J)

330. Paragraph 1 (*d*) of article XIV of the General Agreement reads as follows: [558]

...

(*d*) Any contracting party which before July 1, 1948, has signed the Protocol of Provisional Application agreed upon at Geneva on October 30, 1947, and which by such signature has provisionally accepted the principles of paragraph I of Article 23 of the Draft Charter submitted to the United Nations Conference on Trade and Employment by the Preparatory Committee, may elect, by written notice to the CONTRACTING PARTIES before January 1, 1949, to be governed by the provisions of Annex J of this Agreement, which embodies such principles, in lieu of the provisions of sub-paragraphs (*b*) and (*c*) of this paragraph. The provisions of sub-paragraphs (*b*) and (*c*) shall not be applicable to contracting parties which have so elected to be governed by the provisions of Annex J; and conversely, the provisions of Annex J shall not be applicable to contracting parties which have not so elected.

...

331. Annex J [559] embodies the requirements and principles according to which a contracting party may apply import restrictions consistent with the exceptions provided for under such annex. Annex J was deleted from the General Agreement with effect from 15 February 1961, following the revision of provisions of paragraph 1 of article XIV provided for in sections J (i), HH and QQ of the Protocol Amending the Preamble and Parts II and III of the General Agreement.[560]

E. *Description of cases comprising elements related to succession of States*

332. Cases relating to the succession of States to the GATT multilateral instruments concern either former customs territories to which the instruments have been applied before attaining their independence or members of GATT (contracting parties). Cases relating to former territories have been grouped in section 1, while cases involving a change (formation and dissolution of unions) in the status of a member of GATT have been grouped in section 2. A distinction has been made in section 1 between cases where the continued application has been secured, or assured on a *de facto* basis, and cases where the application of the instruments has been discontinued after independence. Section 1 includes also cases of inheritance of exceptions or quasi-reservations by new States, former customs territories. The description of each particular case given below is based on relevant GATT official documents and the United Nations *Treaty Series*.

1. CASES CONCERNING FORMER TERRITORIES TO WHICH THE GATT MULTILATERAL INSTRUMENTS HAVE BEEN APPLIED BY MEMBERS OF GATT

(*a*) CONTINUED APPLICATION OF GATT MULTILATERAL INSTRUMENTS AFTER INDEPENDENCE, IN ACCORDANCE WITH THE PROCEDURE LAID DOWN IN ARTICLE XXVI, PARAGRAPH 5 (*c*)

(i) *Continued application secured by sponsorship of the member of GATT formerly responsible for the territory, the consent of the new State and a declaration by the CONTRACTING PARTIES*

Indonesia

333. At the Fourth Session of the CONTRACTING PARTIES held in 1950, the Netherlands Government proposed that *Indonesia*, to the territory of which the Netherlands had applied certain GATT instruments prior to its independence, should become a contracting party. The CONTRACTING PARTIES so agreed unanimously on 24 February 1950, but did not specify exactly when *Indonesia* should become a contracting party. In the Declaration of 1 April 1950 on tariff Schedule XXI (Indonesia), the CONTRACTING PARTIES took note that *Indonesia* had become a contracting party under the provisions of article XXVI and that consequently the tariff concessions contained in "Sections C of Schedule II (Schedule II annexed to the General Agreement and Schedule II in Annex A of the Annecy Protocol) have in effect become separate schedules relating to Indonesia..." [561] About two years later it was noted in an official publication of GATT that "Indonesia, having acquired independent status, became a contracting party in its own right on 24 February 1950." [562]

334. Soon after *Indonesia* was thus recognized as having become a contracting party, a question arose as to whether *Indonesia* should be regarded as having automatically succeeded to the rights and obligations under the subsidiary instruments signed of otherwise accepted by the Netherlands prior to its independence; and if so, what actions should be taken to clarify the matter. After consulting with the Director of the Division of Immunities and Treaties of the United Nations Secretariat, the Director-General requested *Indonesia* to address a formal declaration to the United Nations Secretary-General recognizing itself to be bound by the undertakings given on its behalf by the Netherlands. By a communication dated 21 November 1950, which was received by the Secretary-General on 24 November 1950, the Indonesian Government recognized itself as bound by the following ten subsidiary instruments, including the three (shown with an asterisk) which had been signed by the Netherlands but had not entered into force by that time:

[558] GATT, *Basic Instruments and Selected Documents*, vol. III (1958), pp. 26 and 27.

[559] *Ibid.*, pp. 80 and 81.

[560] See corrigendum, p. 26-28, 70, 80 and 81, vol. III of GATT, *Basic Instruments and Selected Documents* (GATT, INT (61) 34).

[561] GATT, *Basic Instruments and Selected Documents*, vol. II (1952), pp. 15 and 16.

[562] *Ibid.*, First Supplement (1953), p. 6.

Protocol modifying certain provisions of the General Agreement [563]
Special Protocol modifying article XIV [564]
Special Protocol relating to article XXIV [565]
Protocol modifying part I and article XXIX [566]
Protocol modifying part II and article XXVI [567]
* Protocol replacing Schedule I (Australia) [568]
* Protocol replacing Schedule VI (Ceylon) [569]
First Protocol of Rectifications [570]
* Third Protocol of Rectifications [571]
Annecy Protocol of Terms of Accession [572]

335. Upon receipt of this communication the Secretary-General accordingly notified, by way of a circular note, Members of the United Nations and other States which were associated with GATT.

Ghana and Federation of Malaya

336. With respect to *Ghana* which became independent on 6 March 1957, the CONTRACTING PARTIES declared on 17 October 1957, taking note of the sponshorship given by the United Kingdom on the same date, that the "Government of Ghana shall henceforth be deemed to be a contracting party".[573] A similar declaration was made on 24 October 1957 concerning the *Federation of Malaya* which became independent on 31 August 1957.[574]

337. By notifications addressed to the Secretary-General of the United Nations, dated 16 October 1957 and 8 November 1957 [575] respectively, the Governments of *Malaya* and *Ghana* acknowledged themselves to be bound by the following subsidiary instruments:

Protocol modifying certain provisions of the General Agreement [576]
Special Protocol modifying article XIV [577]
Special Protocol relating to article XXIV [578]
Protocol modifying part I and article XXIX [579]
Protocol modifying part II and article XXVI [580]
Protocol modifying article XXVI [581]
First Protocol of Rectifications [582]
Second Protocol of Rectifications [583]
Third Protocol of Rectifications [584]
Fourth Protocol of Rectifications [585]
Fifth Protocol of Rectifications [586]
First Protocol of Modifications [587]
Protocol replacing Schedule I (Australia) [588]
Protocol replacing Schedule VI (Ceylon) [589]
First Protocol of Rectifications and Modifications [590]
Second Protocol of Rectifications and Modifications [591]
Third Protocol of Rectifications and Modifications [592]
Annecy Protocol of Terms of Accession [593]
Torquay Protocol [594]

338. By way of notification addressed to the Director-General of GATT, the Governments of *Ghana* and the *Federation of Malaya* also declared themselves to be bound by eight other subsidiary instruments previously made applicable to their territories.[595]

Nigeria, Sierra Leone, Tanganyika, Trinidad and Tobago and *Uganda*

339. In the foregoing cases of Ghana and the Federation of Malaya, the wording "henceforth be deemed a contracting party" used in the declarations made by the CONTRACTING PARTIES seems to leave some ambiguity as to exactly when these two new States became contracting parties. In the following five cases, however, this ambiguity does not seem to exist because the CONTRACTING PARTIES made the effect of their declarations under article XXVI, paragraph 5 (*c*) retroactive as from the date of independence of the new State concerned. For example, the Declaration of 18 December 1960 concerning *Nigeria* reads in part: [596]

> . . . the Government of the Federation of Nigeria is deemed to be a contracting party to the General Agreement on Tariffs and Trade as from 1 October 1960 [i.e. the date of its independence] and to have acquired the rights and obligations under the General Agreement of the Government of the United Kingdom . . . in respect of its territory as from that date.

340. Likewise, *Sierra Leone*,[597] *Tanganyika*,[598] *Trinidad*

[563] United Nations, *Treaty Series*, vol. 62, p. 30.
[564] *Ibid.*, p. 40.
[565] *Ibid.*, p. 56.
[566] *Ibid.*, vol. 138, p. 334.
[567] *Ibid.*, vol. 62, p. 80.
[568] *Ibid.*, vol. 107, p. 83.
[569] *Ibid.*, vol. 138, p. 346.
[570] *Ibid.*, vol. 62, p. 2.
[571] *Ibid.*, vol. 107, p. 311.
[572] *Ibid.*, vol. 62, p. 121.
[573] GATT, *Basic Instruments and Selected Documents*, Sixth Supplement (1958), p. 9.
[574] *Ibid.*, pp. 9 and 10.
[575] United Nations, *Treaty Series*, vol. 280, p. 350 and vol. 281, p. 394.
[576] *Ibid.*, vol. 62, p. 30.
[577] *Ibid.*, p. 40.
[578] *Ibid.*, p. 56.
[579] *Ibid.*, vol. 138, p. 334.
[580] *Ibid.*, vol. 62, p. 80.
[581] *Ibid.*, p. 113.
[582] *Ibid.*, p. 2.
[583] *Ibid.*, p. 74.
[584] *Ibid.*, vol. 107, p. 311.
[585] *Ibid.*, vol. 138, p. 398.
[586] *Ibid.*, vol. 167, p. 265.
[587] *Ibid.*, vol. 138, p. 381.
[588] *Ibid.*, vol. 107, p. 83.
[589] *Ibid.*, vol. 138, p. 346.
[590] *Ibid.*, vol. 176, p. 2.
[591] *Ibid.*, vol. 321, p. 245.
[592] *Ibid.*, p. 266.
[593] *Ibid.*, vol. 62, p. 121.
[594] *Ibid.*, vol. 142, p. 34.
[595] See Declarations of *Malaya* and *Ghana* in respect of multilateral protocols Nos. 5, 6, 7, 8, 10, 11, 15 and 16 which are mentioned in GATT, PROT/1, 1963.
[596] GATT, *Basic Instruments and Selected Documents*, Ninth Supplement (1961), pp. 13 and 14.
[597] *Ibid.*, Tenth Supplement (1962), pp. 11 and 12.
[598] *Ibid.*, pp. 14 and 15.

and Tobago[599] and *Uganda*[600] were deemed to be contracting parties as from the dates of their independence. In the preambular part of the declarations on the above five new States, the CONTRACTING PARTIES took note that the Government of the United Kingdom established the fact that these new States were qualified, in the sense of paragraph 5 (*c*) of article XXVI, to become contracting parties and that they wished to be deemed contracting parties.[601] As in earlier cases, soon after these declarations were made the new States acknowledged themselves to be bound by all the subsidiary instruments previously made applicable to their territories, by way of notifications addressed to the Secretary-General of the United Nations and to the Director-General of GATT.[602]

(ii) *Continued application secured by sponsorship of the member of GATT formerly responsible for the territory and the consent of the new State certified by a letter of the Director-General, following the adoption by the CONTRACTING PARTIES of a recommendation concerning* de facto *application of the General Agreement*

Barbados, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Cyprus, Dahomey, Gabon, Gambia, Guyana, Ivory Coast, Jamaica, Kenya, Kuwait, Madagascar, Malawi, Malta, Mauritania, Niger, Rwanda, Senegal, Togo and *Upper Volta*

341. The above-mentioned twenty-four new States to which article XXVI, paragraph 5 (*c*), and the general policy recommendation of 18 November 1960 (see para. 323 above) was applicable, advised the Director-General that they wished to be deemed contracting parties. When the communications to that effect were received from these new States, the CONTRACTING PARTIES were not in session. For the purpose of dealing with these cases without delay, the Director-General of GATT immediately sent letters of certification to the Secretary-General of the United Nations, the members of GATT and other States which are associated with GATT under special arrangements. Sometimes the letters of certification made express reference to the Recommendation of 18 November 1960, as in the letter of certification concerning *Niger* quoted below:[603]

On 5 August 1960 the Government of France advised that the Government of Niger had acquired, as from 3 August 1960, full responsibility for matters covered by the General Agreement in its territory. Thus the French Government established the fact that Niger was qualified, in the sense of paragraph 5 (*c*) of Article XXVI, to become a contracting party.

The Government of Niger has been applying the General Agreement on a *de facto* basis, pursuant to the Recommendation of the CONTRACTING PARTIES of 18 November 1960, and has now advised that it wishes to be deemed a contracting party to the General Agreement under the provisions of Article XXVI: 5 (*c*). Since the conditions required by Article XXVI: 5 (*c*) have been met, Niger has become a contracting party; its rights and obligations date from 3 August 1960.

The concessions specified in Section C of Schedule XI will henceforth comprise a new Schedule LIII relating to Niger and formal provision for the establishment of this new schedule will be made through the procedure for certification of rectifications and modifications to the Schedules to the General Agreement.

342. In other cases, however, the letters of certification by the Director-General of GATT do not mention any relevant recommendation relating to *de facto* application of the General Agreement, as in the following certification concerning Rwanda.[604]

On 1 July 1962 Rwanda acquired full responsibility for matters covered by the General Agreement and became qualified, in the sense of paragraph 5 (*c*) of Article XXVI, to become a contracting party [see GATT/AIR/302 of 2 October 1962].

By letter dated 5 November 1965 the Government of Rwanda has advised that it wishes to be deemed, as from 1 January 1966, a contracting party to the General Agreement under the provisions of Article XXVI: 5 (*c*). Since the conditions required by Article XXVI: 5 (*c*) have been met, Rwanda will become a contracting party as from 1 January 1966; its rights and obligations will date from 1 July 1962.

The concessions specified in Section B of Schedule II will thereafter comprise a new Schedule LVI relating to Rwanda and formal provisions for the establishment of this new Schedule will be made through the procedure for certification of rectifications and modifications to the Schedule to the General Agreement.

and *Guyana*:[605]

On 5 July 1966 the Government of the United Kingdom advised that on 26 May 1966 British Guiana acquired full autonomy in the conduct of its external commercial relations and other matters provided for in the General Agreement and is now known as "Guyana". Thus the United Kingdom Government has established the fact that the new State of Guyana is qualified, in the sense of paragraph 5 (*c*) of Article XXVI, to become a contracting party.

The Government of Guyana has advised that it wishes to be deemed a contracting party to the General Agreement under the provisions of Article XXVI: 5 (*c*). Since the conditions required by Article XXVI : 5 (*c*) have been met, Guyana has become a contracting party; its rights and obligations date from 26 May 1966.

343. The independence dates of these twenty-four States and the dates of the certification made by the Director-General of GATT are the following:

[599] *Ibid.*, Eleventh Supplement (1963), pp. 44 and 45.

[600] *Ibid.*, pp. 45 and 46.

[601] It was soon before attaining independence that the Governments of *Nigeria, Tanganyika* and *Uganda* sent letters to the Director-General of GATT expressing their wish to be deemed contracting parties. The United Kingdom gave sponsorship at the same time.

[602] See United Nations, *Treaty Series*, vol. 377, p. 396; *ibid.*, vol. 405, p. 298; *ibid.*, vol. 419, p. 344; and sections on multilateral protocols Nos. 5-8, 10, 11, 15, 16, 19, 23-26, 28-30 in GATT, PROT/1 (1963).

[603] GATT, L/2102 (31 Decembre 1963).

[604] GATT, L/2514 (24 November 1965).

[605] GATT, L/2669 (7 July 1966).

New States	*Independence date* *	*Certification date* **
Barbados	30 Nov. 1966	20 Feb. 1967
Burundi	1 July 1962	13 Mar. 1965
Cameroon	1 Jan. 1960	3 May 1963
Central African Republic	13 Aug. 1960	3 May 1963
Chad	11 Aug. 1960	12 July 1963
Congo (Brazzaville)	15 Aug. 1960	3 May 1963
Cyprus	16 Aug. 1960	15 July 1963
Dahomey	1 Aug. 1960	12 Sept. 1963
Gabon	17 Aug. 1960	3 May 1963
Gambia	18 Feb. 1965	22 Feb. 1965
Guyana	26 May 1966	7 July 1966
Ivory Coast	7 Aug. 1960	31 Dec. 1963
Jamaica	6 Aug. 1962	31 Dec. 1963
Kenya	12 Dec. 1963	5 Feb. 1964
Kuwait	18 June 1961	3 May 1963
Madagascar	25 June 1960	30 Sept. 1963
Malawi	6 July 1964	28 Aug. 1964
Malta	21 Sept. 1964	17 Nov. 1964
Mauritania	28 Nov. 1960	30 Sept. 1963
Niger	3 Aug. 1960	31 Dec. 1963
Rwanda	1 July 1962	1 Jan. 1966
Senegal	20 June 1960	27 Sept. 1963
Togo	27 April 1960	20 Mar. 1964
Upper Volta	5 Aug. 1960	3 May 1963

Notes:

* Dates of acquiring full autonomy in external commercial relations always coincided with the dates of independence in cases listed here. Dates are shown in order to indicate the period of *de facto* application in each case.

** As the date of notification from a new State, or the date of its receipt by the Director-General, is not always indicated in the certification letter, the date of certification alone is presented here.

344. As the Director-General's statement quoted below indicates, the effect of certification is to clarify the fact that the new States concerned acquired the rights and obligations of the General Agreement retroactively as from their respective independence dates. Yet no retroactive assessment has been made as to their contributions to the annual budget of GATT. A note by the Director-General on the assessment of additional contributions, dated 1 May 1964, reads in part: [606]

1. Following the accession of Ivory Coast, Niger, Togo and Jamaica (documents L/2095, L/2102, L/2111 and L/2194), it is proposed that the following contributions to the 1964 budget be assessed on these Governments:

	Contribution in U.S. Dollars
Ivory Coast	6,600
Niger	2,500
Togo	2,500
Jamaica	—

2. Pursuant to Recommendations of the CONTRACTING PARTIES, the above countries have applied the General Agreement on a *de facto* basis since 1960 (Jamaica 1962). Although, following their accession in 1964, these countries acquired the rights and obligations of the General Agreement retroactively from 1960 (Jamaica 1962), it is proposed that in their case no retroactive assessment will be made in accordance with the proposals contained in document L/2051 adopted by the CONTRACTING PARTIES on 5 March 1964.

3. ...

[606] GATT, L/2214 (1 May 1964).

345. In respect of these twenty-four new States whose relations with GATT were certified by the Director-General, the CONTRACTING PARTIES have dispensed with the adopting of the declarations which they made in cases referred to in paragraphs 333-340 above. On the other hand, none of these States has sent a declaration to the Secretary-General of the United Nations and the Director-General of GATT acknowledging its rights and obligations under specific GATT subsidiary multilateral instruments made applicable to their territories prior to independence.[607] The CONTRACTING PARTIES take the view that such acknowledgement is implied by a new State's declaration [608] wishing to be deemed a contracting party in accordance with article XXVI, paragraph 5 (*c*), and that if a new State wished to accede to GATT on any other conditions it would have to apply for accession under article XXXIII. In fact, these new States are considered as having been parties to a number of instruments as from the dates of their independence in the official publication of GATT, *PROT/2: Status of Multilateral Protocols of which the Executive Secretary acts as Depositary* (1964).

(iii) *Continued application provisionally assured on a* de facto *basis, pending final decisions of new States concerned as to their future commercial policy*

Algeria, Botswana, Congo (Democratic Republic of), Lesotho, Maldive Islands, Mali, Singapore and *Zambia*

346. At present, the above-mentioned eight new States are listed as countries to whose territories the General Agreement has been applied and which now, as independent States, maintain a *de facto* application of the General Agreement pending final decisions as to their future commercial policy.[609] Before the adoption of the Recommendation of 11 November 1967 (see para. 325 above), the CONTRACTING PARTIES agreed to extend *de facto* application of the General Agreement beyond the three-year period provided for in the Recommendations of 18 November 1960 and 9 December 1961 in respect to certain countries when requested by the new State concerned. Such extensions have been granted several times to *Algeria, Congo (Democratic Republic of)* and *Mali*,[610] the independence

[607] The Director-General sent to these States the text of the General Agreement, advising whenever necessary that the text would be amended when certain protocols enter into force and that the protocols had been accepted by the former metropolitan Power; and advising further whenever necessary that certain other instruments were open to acceptance by the new States.

[608] The following declaration dated 14 December 1963 made by the *Ivory Coast* is typical of all the others:

"The Government of the Republic of the Ivory Coast, which enjoys complete autonomy with regard to the subject-matter of the General Agreement, applies the General Agreement on a *de facto* basis, in accordance with the Recommendation of the CONTRACTING PARTIES of 18 November 1960.

It wishes to be deemed a contracting party to the General Agreement under the provisions of Article XXVI: 5 (*c*)."

[609] See GATT press release (GATT/1005, 18 October 1967).

[610] See for instance, GATT, L/2420 (31 March 1965), L/2580 (14 March 1966) and L/2645 (27 April 1966).

day of these States being respectively 3 July 1962, 30 June 1960 and 20 June 1960.

347. With regard to *Zambia* which became independent on 24 October 1964, the initial recommended two-year period of *de facto* application (Recommendation of 18 November 1960) was extended, pursuant to the Recommendation of 9 December 1961, for one year more, until 24 October 1966.[611] In 1965, the GATT secretariat issued the following note concerning the status of *Zambia* and *de facto* application of the General Agreement.[612]

The Executive Secretary has been informed by the Government of the United Kingdom that on 24 October 1964 the territory of Northern Rhodesia (Zambia) acquired full autonomy in the conduct of its external commercial relations and of other matters provided for in the General Agreement. The Government of Zambia has advised that it has not yet decided how it wishes to accede to the GATT (i.e. under Article XXVI: 5 (*c*) or under Article XXXIII) and would therefore like to enjoy *de facto* status until a decision has been taken on this matter.

Accordingly, the Recommendation of 18 November 1960 (9S/16), providing for the *de facto* application of the GATT for a period of two years as between the contracting parties and a territory which acquires autonomy, is applicable in respect of Zambia.

Addendum

Referring to the application of the Recommendation of 18 November 1960 in respect of Zambia, the Government of Zambia has written as follows:

. . . this Government will apply the General Agreement on Tariffs and Trade on a *de facto* basis, to the extent which it is possible for it to do so. Our future commercial policy is still very much in the process of formulation however, and I am sure that it will be appreciated by contracting parties that it may well be necessary for us to make certain changes which will necessitate a departure from the *status quo* which we inherited on attaining full autonomy in the conduct of our external commercial relations and of other matters provided for in the General Agreement. Nevertheless, it is hoped that whatever changes are made will not be considered by contracting parties as grounds for ceasing to apply the General Agreement, either in whole or in part to Zambia. It is felt by this Government that such questions, if they arise at all, could better be left to be dealt with if and when Zambia seeks accession to the Agreement.

348. Contracting parties were advised in November 1965 of the communication quoted below from the Government of Malaysia concerning the status of *Singapore*, following its separation from Malaysia dated 7 August 1965, and *de facto* application of the General Agreement to the new independent State of Singapore: [613]

The Director-General has received the following communication from the Government of Malaysia:

I have the honour to inform you that as from 9 August 1965 Singapore has ceased to be one of the component State of Malaysia and has thereupon become a sovereign nation separate from and independent of Malaysia. The Government of Malaysia is accordingly no longer responsible for the conduct of external commercial relations and other matters provided for in the General Agreement in respect of Singapore.

I have further to inform you that by virtue of the Agreement relating to the separation of Singapore from Malaysia dated 7 August 1965, the provisions of Annex J of the Malaysia Agreement relating to the Malaysian Common Market are expressly rescinded. The Governments of Malaysia and Singapore however have undertaken to co-operate closely in economic affairs for their mutual benefit and interest as provided for in Article VI of the Separation Agreement.

Accordingly, the Recommendation of 18 November 1960 (9S/16), providing for the *de facto* application of the GATT for a period of two years as between the contracting parties and a territory which acquires autonomy, is applicable in respect of Singapore.

349. Accordingly, the GATT secretariat indicated in 1966 that the Recommendation of 18 November 1960 was applicable to *Singapore* until 9 August 1967. In a communication of 8 February 1966, the Government of *Singapore* confirmed that "pending a decision of the question of Singapore's accession to the General Agreement, the Government of Singapore is prepared to continue to apply the provisions of the Agreement on a *de facto* basis to the trade of the contracting parties".[614]

350. As far as the status of the *Maldive Islands, Botswana* and *Lesotho* is concerned, the GATT secretariat issued in 1966 the following notes concerning *de facto* application of the General Agreement to these new States:

The Director-General has been informed by the Government of the United Kingdom that on 26 July 1965 the Maldive Islands acquired full autonomy for their external commercial relations.

Accordingly, the Recommendation of 18 November 1960 (9S/16), providing for the *de facto* application of the GATT as between the contracting parties and a territory which acquires autonomy, is applicable in respect of the Maldive Islands; [615]

The Director-General has been informed by the Government of the United Kingdom that on 30 September 1966 Bechuanaland acquired full autonomy in the conduct of its external commercial relations and of the other matters provided for in the General Agreement, and is now known as Botswana.

Accordingly, the Recommendation of 18 November 1960 (9S/16), providing for the *de facto* application of the GATT as between the contracting parties and a territory which acquires autonomy, is applicable in respect of Botswana; [616]

The Director-General has been informed by the Government of the United Kingdom that on 4 October 1966 Basutoland acquired full autonomy in the conduct of its external commercial relations and of the other matters provided for in the General Agreement, and is now known as Lesotho.

Accordingly, the Recommendation of 18 November 1960 (9S/16), providing for the *de facto* application of the GATT as between the contracting parties and a territory which acquires autonomy, is applicable in respect of Lesotho.[617]

[611] GATT, L/2420 (31 March 1965) and L/2705 (14 November 1966).

[612] GATT, L/2343 and Add.1 (22 January and 7 May 1965).

[613] GATT, L/2495 (5 November 1965).

[614] GATT, L/2580 (14 March 1966) and L/2645 (27 April 1966).

[615] GATT, L/2673 (12 July 1966).

[616] GATT, L/2700 (28 October 1966).

[617] GATT, L/2701 (28 October 1966).

(*b*) APPLICATION OF GATT MULTILATERAL INSTRUMENTS DISCONTINUED AFTER INDEPENDENCE

(i) *Discontinuity resulting from the accession procedure provided for in article XXXIII*

Israel

351. After the establishment of *Israel* as an independent State the CONTRACTING PARTIES on 9 May 1949 declared the following: [618]

Whereas the Government of the United Kingdom, in the course of negotiations leading to the drawing up of the General Agreement on Tariffs and Trade in Geneva in 1947, negotiated on behalf of the mandated territory of Palestine for concessions to be accorded to products originating in such territory and for concessions to be accorded to the products of other contracting parties entering such territory, and,

Whereas the Government of the United Kingdom ceased to be responsible for the mandated territory of Palestine on 15 May 1948,

The CONTRACTING PARTIES

Declare that since the United Kingdom ceased, as from 15 May 1948, to be a contracting party in respect of the territory formerly included in the Palestine mandate,

1. Section E shall be deemed to be no longer a part of Schedule XIX;
2. ...

352. The treaty relations under the General Agreement were re-established on a provisional basis between *Israel* and certain members of GATT when the Declaration on the Provisional Application of *Israel*, dated 29 May 1959, entered into force on 9 October 1959. This Declaration was later superseded by the Protocol for Accession of *Israel*, dated 6 April 1962, which entered into force on 5 July 1962.[619]

Cambodia and *Tunisia*

353. *Cambodia* and *Tunisia* after independence revised their tariffs and preferred to negotiate on the basis of these tariffs rather than maintain the commitments negotiated by France on their behalf in 1947. Accordingly, *de facto* application which was expected to last until October 1958 in respect of *Cambodia* and until October 1959 as to *Tunisia* under the Recommendation of 22 November 1957 [620] was terminated and some special arrangements were made in preparation for full accession under article XXXIII.

354. The Protocol for the Accession of *Cambodia* [621] was concluded on 6 April 1962. However, the Government of Cambodia has advised that it does not, for the moment, envisage accepting the Protocol for the Accession. It hopes that *Cambodia*, pending the first results of the implementation of the new economic and financial reforms, can continue in the capacity of a "provisional member" of GATT in accordance with the Decision of 17 November 1958 on "arrangements for the accession of Cambodia" adopted by the CONTRACTING PARTIES.[622] In paragraph 3 of that Decision, contracting parties which are prepared to continue *de facto* application of the General Agreement in their relations with *Cambodia*, until such time as *Cambodia* accedes to the General Agreement, are invited to notify the Executive Secretary of GATT. Fifty-eight members of GATT have given notification pursuant to paragraph 3 of the Decision of 17 November 1955 and are, at present, applying the General Agreement on a *de facto* basis in their relations with Cambodia.[623]

355. A part of the treaty relations under GATT instruments resumed application in respect of *Tunisia* when the Declaration on the Provisional Accession of *Tunisia*, concluded on 12 November 1959, entered into force on 21 May 1960, namely, thirty days after the acceptance of said Declaration by *Tunisia* and eight members of GATT, and initially only among those nine States accepting the Declaration.[624] At present, the Declaration on Provisional Accession of *Tunisia* is accepted by sixty-three members of GATT. The time-limit has been extended on four occasions and now runs until 31 December 1968.[625] The Government of *Tunisia* has announced its intention to negotiate for full accession under article XXXIII in 1968.

356. *Cambodia* and *Tunisia* have been contributing to the annual budget of GATT.[626]

(ii) *Application of GATT multilateral instruments lapsed after a certain period of* de facto *application or immediately upon independence*

Guinea and *Laos*

357. In accordance with the Recommendation of 22 November 1957 [627] the *de facto* application in respect of *Laos* lasted until 15 October 1958; and in accordance with the Recommendation of 19 November 1959 [628] it lasted until 1 December 1961 with regard to *Guinea*. Inasmuch as no request for extension of the time-limit was made by these new States, *de facto* application lapsed as of the above-mentioned dates.

Somalia and *Viet-Nam*

358. The General Agreement was applied to former British Somaliland but was never applied to former Italian Somalia. Since independence the *Somali Repub-*

[618] GATT, *Basic Instruments and Selected Documents*, vol. 2, pp. 14 and 15.

[619] GATT, PROT/2 (1964), pp. 34 and 46.

[620] GATT, *Basic Instruments and Selected Documents*, Sixth Supplement (1958), pp. 10 and 11.

[621] *Ibid.*, Eleventh Supplement (1963), p. 12.

[622] *Ibid.*, Seventh Supplement (1959), pp. 17 and 18.

[623] GATT, L/2271 (13 October 1964) and Add.1-3.

[624] United Nations, *Treaty Series*, vol. 362, pp. 328 and 330.

[625] See "Fourth Procès-verbal extending the Declaration of the Provisional Accession of Tunisia" (GATT, L/2933 (27 November 1967)). The Procès-verbal is open for acceptance at the office of the secretariat of GATT. See also GATT, L/2127 (Decision of 18 December 1963) and L/2368 (Status of Declaration on Provisional Accession).

[626] See "Financial Arrangements" in GATT, *Basic Instruments and Selected Documents*, Seventh to Fifteenth Supplements inclusive.

[627] GATT, *Basic Instruments and Selected Documents*, Sixth Supplement, pp. 10 and 11.

[628] *Ibid.*, Eighth Supplement, p. 8.

lic has been maintaining preferential arrangements contrary to the GATT principles with its main trading partner and has not so far wished to join GATT. Since independence, *Viet-Nam* has not expressed its wish to participate in the work of GATT. In these two cases, therefore, the application of the GATT instruments [629] (including a tariff schedule in the case of Viet-Nam) made by the predecessor States lapsed upon the independence of the new States.

(c) Inheritance of exceptions or quasi-reservations

(i) *Invocation of article XXXV*

359. When *Japan* became a member of GATT through the accession procedure in 1955, the Governments of *Belgium, France* and the *United Kingdom*, among others, invoked article XXXV, paragraph 1, and thereby withheld the application of the General Agreement in their trade relations with Japan.[630]

360. Some thirty new States emerging from the former dependencies of Belgium, France and the United Kingdom since 1957 have claimed inheritance of the invocation of article XXXV, paragraph 1. Pursuant to paragraph 2 of the said article, Japan requested a review of the operation of paragraph 1, which was done by a working party in 1961. With regard to those new States whose predecessors had formerly invoked paragraph 1, the report of the working party, which was submitted to the CONTRACTING PARTIES in November 1961, suggested that the Government concerned "would wish to reconsider the question in the light of the changed circumstances resulting from its acquisition of full autonomy", possibly through an exchange of views with the Japanese Government.[631] The subject was also discussed at the Meetings of Ministers in November 1961 [632] and at the subsequent sessions of the CONTRACTING PARTIES, and yet the solution has been left mainly to bilateral talks.

361. The United Kingdom, France and Belgium withdrew invocation of paragraph 1 in May 1963, January 1964 and October 1964, respectively. *Malaya, Ghana* and *Madagascar* did the same in August 1960, March 1962 and December 1964, respectively.[633]. Since 1964 *Barbados, Guyana* and *Trinidad and Tobago* have disinvoked article XXXV in respect of Japan.[634] On 1 May 1967, the invocation of article XXXV in respect of Japan "inherited" by members of GATT upon becoming contracting parties under article XXVI, paragraph 5 (*c*), was still operative with regard to the following new States: [635]

Burundi	Gabon	Nigeria
Cameroon	Gambia	Rwanda
Central African Republic	Ivory Coast	Senegal
	Jamaica	Sierra Leone
Chad	Kenya	Tanzania
Congo (Brazzaville)	Kuwait	Togo
	Malta	Uganda
Cyprus	Mauritania	Upper Volta
Dahomey	Niger	

(ii) *Election of Annex J*

362. Although *Ghana* and the *Federation of Malaya* do not seem to fall in the category of the contracting parties as defined in paragraph 1 (*d*) of article XIV; [636] the CONTRACTING PARTIES declared, on 17 Octobed 1957 in respect of *Ghana*, and on 24 October 1957 with regard to the *Federation of Malaya*, that "the election of the Government of the United Kingdom under article XIV: 1 (*d*) on 31 December 1948 to be governed by Annex J shall be deemed to apply to" the Government of Ghana and to the Government of Malaya.[637]

2. CASES INVOLVING A CHANGE IN THE STATUS OF A MEMBER OF GATT

(a) Formation and dissolution of the Federation of Rhodesia and Nyasaland

363. *Southern Rhodesia* was an original contracting party to the Protocol Provisional Application of the General Agreement.[638] After the formation of the *Federation of Rhodesia and Nyasaland* as a semi-autonomous member of the Commonwealth,[639] the Governments of the United Kingdom and Southern Rhodesia sent joint Declarations of 22 September and 6 November 1953 to the members of GATT informing them that the Federation had acquired full responsibility for matters covered by the General Agreement. The CONTRACTING PARTIES adopted a declaration on 29 October 1954, which read in part: [640]

...

Considering that, by the said Declarations, the Government of the United Kingdom has established the fact that the Federation is qualified, in the sense of paragraph 4 (*c*) of Article XXVI of the Agreement, to become a contracting party in respect of the territories of Northern Rhodesia and Nyasaland, on behalf of which the Government of the United Kingdom had accepted the Agreement, and

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[629] United Nations, *Treaty Series*, vol. 55, pp. 194, 286-288 and 306, and GATT, G/5, "The Territorial Application of the General Agreement" (1952).

[630] See paras. 328 and 329, above.

[631] GATT, L/1545 (report of the Working Party on article XXXV review).

[632] GATT, *Proceedings of the Meeting of Ministers* (1961).

[633] GATT, *The Activities of GATT*: 1961/1962, and L/1992 (17 April 1963), L/2308 (19 November 1964) and L/2331 (30 December 1964).

[634] GATT, L/2671 (8 July 1966), L/2665 (29 June 1966) and L/2754 (21 February 1967).

[635] See GATT, INT(67)128.

[636] See paras. 330 and 331, above.

[637] GATT, *Basic Instruments and Selected Documents*, Sixth Supplement (1958), pp. 9 and 10.

[638] United Nations, *Treaty Series*, vol. 55, p. 308.

[639] The Federation was established by the Act of the British Parliament dated 24 March 1953 which became effective on 1 August 1953.

[640] GATT, *Basic Instruments and Selected Documents*, Third Supplement (1955), pp. 29 and 30.

Considering further that, by the said Declarations, the Government of Southern Rhodesia has notified the Contracting Parties that the Federal Government has succeeded to the rights and obligations under the Agreement formerly accepted by Southern Rhodesia,

The CONTRACTING PARTIES

Declare:

1. that the Government of the Federation of Rhodesia and Nyasaland shall henceforth be deemed to be a contracting party . . . and to have acquired the rights and obligations under the General Agreement of the Government of Southern Rhodesia and of the Government of the United Kingdom. . . .

364. By a notification received on 12 January 1956, the Government of the *Federation of Rhodesia and Nyasaland* notified the Secretary-General of the United Nations that: [641]

. . . the Government of the Federation of Rhodesia and Nyasaland, acting in its capacity of contracting party to the General Agreement on Tariffs and Trade, acknowledges that the rights and obligations of Southern Rhodesia and of the United Kingdom in respect of Northern Rhodesia and Nyasaland arising out of the signature of acceptance of the following instruments relating to the General Agreement on Tariffs and Trade are to be considered as rights and obligations of the Federation of Rhodesia and Nyasaland in as much as such instruments are applicable to the jurisdiction of the Federation of Rhodesia and Nyasaland.

(There follows the list of the nineteen GATT multilateral instruments reproduced in paragraph 337, above with the addition of the "Declaration on the Continued Application of Schedules of 24 October 1953" (United Nations, *Treaty Series*, vol. 183, p. 351).)

365. All of the twenty instruments had been applied to Southern Rhodesia, as a contracting party, and to Northern Rhodesia and Nyasaland, as dependent territories of the United Kingdom, prior to the formation of the Federation of Rhodesia and Nyasaland.

366. Shortly before the dissolution of the *Federation of Rhodesia and Nyasaland*, a joint Declaration by the Governments of the United Kingdom and the Federation of Rhodesia and Nyasaland was received by the Director-General of GATT on 19 December 1963 with a request that it be circulated for the information of contracting parties. The joint Declaration reads as follows: [642]

As contracting parties will no doubt be aware the Federation of Rhodesia and Nyasaland is to be dissolved at the end of 1963. The three constituent territories will thereafter have separate Customs and Tariff administrations.

On 1 January 1964, Southern Rhodesia will resume direct control of its external commercial relations and of the other matters provided for in the General Agreement and will from that date resume its former status as a contracting party to the GATT. The responsible authority for Southern Rhodesia's rights and responsibilities under the GATT will then be the Government of Southern Rhodesia.

On the same date the British Government will resume direct responsibility for the external commercial relations of Northern Rhodesia and Nyasaland, including their rights and obligations under the GATT.

367. The following submission made by the Government of *Southern Rhodesia* for the information of contracting parties was circulated by the GATT secretariat on 4 March 1964: [643]

Following the dissolution of the Federation of Rhodesia and Nyasaland on 31 December 1963 and the resumption by the Southern Rhodesian Government on 1 January 1964 of its former status as a contracting party to the General Agreement, the Southern Rhodesian Government wishes to inform contracting parties that it has adapted to its own use the former Federal customs and excise legislation and, for its part, is applying on a provisional basis the terms and provisions of the trade agreements concluded by the former Federal Government with the Governments of the Commonwealth of Australia, the Republic of South Africa, the Bechuanaland Protectorate, Swaziland and Basutoland, Canada, Portugal and Japan.

The Southern Rhodesian Government would also inform contracting parties that in so far as trade with Northern Rhodesia and Nyasaland is concerned its objective has been to disturb as little as possible the trading arrangements which existed up to 31 December 1963 . . .

In resuming its former status as a contracting party to the GATT, the Southern Rhodesian Government accepts, in respect of the territory of Southern Rhodesia

(i) the rights and obligations incurred by the former Federal Government under various protocols, declarations and recommendations, including the disinvocation of Article XXXV in respect of Japan;

(ii) that Schedule XVI once again becomes Southern Rhodesia's Schedule in the GATT and that the rights and obligations of the former Federal Government in relation to the concessions negotiated with other contracting parties will be applicable to Southern Rhodesia; and

(iii) the base date provisions of the Decision of 19 November 1960 and the provisions of the further Decision of 19 November 1960 relative to the Customs Treatment for Products of United Kingdom Dependent Territories.

368. As earlier mentioned, after attaining independence, *Malawi* (former Nyasaland) became a separate member of GATT [644] and *Zambia* (former Northern Rhodesia) has been in the period of *de facto* application.[645]

(*b*) Formation of Malaysia

369. As stated above,[646] after attaining independence in 1957 the Federation of Malaya became a member of GATT (contracting party) in accordance with the procedure laid down in article XXVI, paragraph 5 (*c*). Following the formation of *Malaysia* on 16 September 1963, the Indonesian Government, by way of communication dated 12 October 1963 addressed to the Director-General, requested that the following note should be communicated to all contracting parties.[647]

[641] United Nations, *Treaty Series*, vol. 226, p. 342.

[642] GATT, L/2110 (23 Decembre 1963).

[643] GATT, L/2167 (4 March 1964).

[644] See para. 343, above.

[645] See para. 347, above.

[646] See paras. 336-338, above.

[647] GATT, L/2076 (29 October 1963).

The Government of the Republic of Indonesia officially protests the participation of the Government of the so-called "Malaysia" in the Working Group on Preferences which took place from the 7th until the 11th of October 1963 in Room XV of the Palais des Nations based on the fact that prior to the meeting of this Working Group the Government of the so-called "Malaysia" was not officially recognized by the CONTRACTING PARTIES to the GATT as a member of the General Agreement on Tariffs and Trade and hence had not the right to take part in any discussion concerning the work of the GATT.

370. The Director-General received the following communication dated 24 October 1963 from the United Kingdom: [648]

. . . as from 16 September 1963, the Government of the United Kingdom has relinquished responsibility for the conduct of the external commercial relations and of other matters provided for in the General Agreement in respect of Singapore, North Borneo and Sarawak. The territories have now federated with the States of the Federation of Malaya in Malaysia. The responsible authority will in future be the Government of Malaysia.

371. *Malaysia* for its part made the following statement in the communication dated 22 October 1963 addressed to the Director-General: [649]

. . . as from 16 September 1963 the Government of the former Federation of Malaya has now become the Government of Malysia. As from that date the Government of Malaysia has assumed responsibility for the conduct of external commercial relations and other matters provided for in the General Agreement in respect of Singapore, North Borneo (now known as Sabah) and Sarawak.

It is intended to secure uniformity in the customs tariffs of the States of Malaysia. This process will take some years and it is proposed in the meantime that the individual customs tariffs in force in the former Federation of Malaya, Sabah, Sarawak and Singapore will continue to operate in the respective States of Malaysia. It is also provided in the agreement relating to Malaysia that in order to ensure the balanced development of all the States concerned a common market should progressively be established for all goods or products produced, manufactured or assembled and consumed in significant quantities in Malaysia with the exception of goods and products of which the principal terminal markets lie outside Malaysia. For this purpose the Government of Malaysia has established a tariff advisory board to advise the Government generally on the establishment of the common market including the establishment and maintenance of a common external tariff for the protection (where required) of goods for which there is to be a common market. Should the CONTRACTING PARTIES consider it necessary to examine these arrangements in the light of the provisions of the General Agreement, the Government of Malaysia will be glad to give all possible assistance.

The Government of Malaysia wishes it to be understood that the commitments which the United Kingdom Government had undertaken on behalf of Singapore, Sarawak and North Borneo (Sabah) prior to Malaysia would continue to be binding on these States but will not be extended to the States of the former Federation of Malaya. One such commitment is the Declaration on export subsidies which the United Kingdom Government signed in 1961, on behalf of all its dependent territories (except Kenya), and to which the former Federation of Malaya was not a party.

As regards other commitments it is to be noted that the former Federation of Malaya had bound its export duty on tin ore and tin concentrates with the United States. The Government of Malaysia will take over this commitment in respect of States in the former Federation of Malaya only. The States of Singapore, Sarawak and Sabah will be bound at such time as they have aligned their tariffs with the tariff of the former Federation of Malaya.

372. Following its separation from Malaysia, *Singapore* became an independent State and has been in the period of *de facto* application of the GATT instruments.[650]

(c) Formation of the United Republic of Tanzania

373. Tanganyika was a member of GATT, or contracting party, as from the date of its independence.[651] On 7 October 1964, the following note entitled "Status of Zanzibar" was issued by the GATT secretariat: [652]

The Government of the United Kingdom has advised that "Zanzibar became independent on 10 December 1963 and since that date Her Majesty's Government has not been responsible for Zanzibar's external commercial relations".

The Government of the United Republic of Tanganyika and Zanzibar has advised that "under the Articles of Union the United Republic is now solely responsible for all external trade relations of the two countries and should consequently be deemed a single contracting party to the General Agreement".

F. *Summary*

1. FORMER CUSTOMS TERRITORIES

374. Continuity in the application of the GATT multilateral instruments has been secured in the case of thirty-two new States: *Barbados, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Cyprus, Dahomey, Federation of Malaya, Gabon, Gambia, Ghana, Guyana, Indonesia, Ivory Coast, Jamaica, Kenya, Kuwait, Madagascar, Malawi, Malta, Mauritania, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, Tanganyika, Trinidad and Tobago, Togo, Uganda* and *Upper Volta.* Continued application is for the time being assured on a *de facto* basis in eight cases: Algeria, Botswana, Congo (Democratic Republic of), Lesotho, Maldive Islands, Mali, Singapore, and Zambia. *Israel* became a member of GATT by accession and *Cambodia* and *Tunisia* are in the process of acceding, applying in the meantime the GATT instruments on a new *de facto* or provisional basis. The application of the GATT instruments lapsed in four cases only: *Guinea, Laos, Somalia* and *Viet-Nam.*

375. In the thirty-two cases where continued application of the GATT multilateral instruments has been secured, the new States were former customs territories to which the member of GATT (contracting party) responsible for their foreign and commercial relations had

[648] GATT, L/2077 (30 October 1963).

[649] *Ibid.*

[650] See paras. 348 and 349, above.

[651] See paras. 339 and 340, above.

[652] GATT, L/2268 (7 October 1964).

applied the GATT instruments before the attainment of their independence. This allowed full use to be made of the procedure laid down in article XXVI, paragraph 5 (*c*), of the General Agreement. A feature common to all succession cases within GATT is precisely that the succession process takes place in conformity with a provision embodied in the General Agreement itself. In that sense it is a conventional succession. On the other hand, to facilitate the participation of new States in the GATT multilateral instruments, under article XXVI, paragraph 5 (*c*), the CONTRACTING PARTIES have elaborated, by way of general recommendations and specific decisions, a procedure of *de facto* application of the GATT instruments. This procedure, which has been fully implemented during the last years, allows the continued *de facto* application of the GATT instruments as far as a new State (former customs territory) is concerned, pending final decisions as to its future economic and commercial policy. Thus, the GATT provisions continue to operate on a *de facto* and *quid pro quo* basis in the relations between the members of GATT and the new State in question after independence, giving to the new State a time-period of reflection to decide whether or not it wants to join GATT as a member (contracting party) under article XXVI, paragraph 5 (*c*), accede in conformity with article XXXIII, or end its relations with GATT.

376. The procedure laid down in article XXVI, paragraph 5 (*c*), requires: (1) the sponsorship of the member of GATT (contracting party) formerly responsible for the territory; (2) the consent of the new State concerned; (3) the acknowledgement by the CONTRACTING PARTIES of the fact established in the declaration of sponsorship and of the wish of the new State to join GATT as a contracting party. In earlier cases *(Indonesia, Federation of Malaya, Ghana, Nigeria, Sierra Leone, Tanganyika, Trinidad and Tobago, Uganda),* the CONTRACTING PARTIES adopted a declaration taking note of the sponsorship and of the wish of the new State and indicating that the new State was therefore deemed to be a member of GATT (contracting party). Such declarations by the CONTRACTING PARTIES made express reference to article XXVI, paragraph 5 (*c*). In all those cases, soon after the declarations by the CONTRACTING PARTIES were made, the new States recognized themselves to be bound by GATT subsidiary instruments previously made applicable to their territories, by way of formal declarations or notifications addressed to the Secretary-General of the United Nations and the Director-General of GATT.

377. Recently, and following the adoption by the CONTRACTING PARTIES of recommendations relating to *de facto* application of GATT multilateral instruments, the procedure referred to in the preceding paragraph for the implementation of article XXVI, paragraph 5 (*c*), has been somewhat modified. The CONTRACTING PARTIES have dispensed with the making of declarations. Acknowledgement is now made by a letter of certification issued by the Director-General of GATT, after consultations with the new State concerned and the receipt of the declaration of sponsorship *(Barbados, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Cyprus, Dahomey, Gabon, Gambia, Guyana, Ivory Coast, Jamaica, Kenya, Kuwait, Madagascar, Malawi, Malta, Mauritania, Niger, Rwanda, Senegal, Togo, Upper Volta).* The letters of certification mention the wish of the new State to be deemed a member of GATT and, normally, the declaration of sponsorship. Also, they refer expressly to article XXVI, paragraph 5 (*c*), and, sometimes, to relevant recommendations concerning the *de facto* application of the GATT multilateral instruments. Finally, the new States which became members of GATT in accordance with article XXVI, paragraph 5 (*c*), are at present deemed by the CONTRACTING PARTIES to be bound by the GATT subsidiary instruments applicable to their territories prior to independence. Formal declarations or notifications addressed to the Secretary-General of the United Nations and the Director-General of GATT are no longer required to become a party to such subsidiary instruments.

378. A new State (former customs territory), which becomes a member of GATT under article XXVI, paragraph 5 (*c*), assumes the obligations accepted on its behalf by the State which has ceased to have responsibility for its international relations. The succession implied in such a procedure has retroactive effects as far as the date from which the new State is deemed to be a contracting party is concerned: the new State is considered to be a contracting party as from the date of its independence. With the exception of the declaration concerning the three first cases *(Indonesia, Federation of Malaya, Ghana),* the declarations adopted by the CONTRACTING PARTIES and the letters of certification issued by the Director-General of GATT clarify that the new State concerned acquired the rights and obligations of a contracting party as from its independence date, that date being expressly mentioned in the declaration or letter of certification. This retroactivity, however, does not entail any kind of retroactive assessment as to the contributions of the new State to the annual budget of GATT.

379. Another effect of the succession implied in the procedure laid down in article XXVI, paragraph 5 (*c*), is the "inheritance" of exceptions or quasi-reservations. As has been recorded, some new States which became contracting parties under article XXVI, paragraph 5 (*c*), inherited the invocation of article XXXV in respect to Japan made by the United Kingdom, France and Belgium. The "inheritance" of the said invocation is still operative with regard to twenty-four new States, former customs territories (see para. 361, above). The election of Annex J made by the United Kingdom, under article XIV, paragraph 1 (*d*), was also applied to the *Federation of Malaya* and *Ghana.*

2. MEMBERS OF GATT

380. Continued application of the GATT multilateral instruments has also been secured in cases where members of GATT (contracting parties) underwent

changes in their status as a result of the formation and dissolution of unions. The three cases of formation of unions relate to a contracting party, sovereign State *(Federation of Malaya, Tanganyika)* or not *(Southern Rhodesia),* and former customs territories to which another contracting party *(United Kingdom)* had previously applied the GATT multilateral instruments. The case of dissolution of a union *(Federation of Rhodesia* and *Nyasaland)* concerns a contracting party which was not a sovereign independent State.

381. When *Malaysia* was formed, continued application of the GATT multilateral instruments in the former Federation of Malaya and in the territories of North Borneo, Sarawak and Singapore was assured despite objections made by Indonesia. Following the establishment of the union, the Government of the United Kingdom and the Government of Malaysia sent communications to the Director-General of GATT whereby the United Kingdom relinquished its responsibilities as regards North Borneo, Sarawak and Singapore, and Malaysia assumed responsibility for the conduct of the external commercial relations of the Federation of Malaya and the territories of North Borneo, Sarawak and Singapore. Prior commitments undertaken by the Federation of Malaya and the United Kingdom were maintained by *Malaysia* with respect to the parts of the union to which such commitments had been made applicable before the formation of the union.

382. Following the independence of Zanzibar, the United Kingdom relinquished its responsibilities with regard to that former customs territory. After a short period of independence, Zanzibar joined Tanganyika, a contracting party, in the *United Republic of Tanzania.* The Government of the union communicated to GATT the assumption of responsibility for the external trade relations of both Tanganyika and Zanzibar and the *United Republic of Tanzania* became a single contracting party to GATT.

383. In the case of the *Federation of Rhodesia and Nyasaland,* established in 1953 by the union of a contracting party (Southern Rhodesia) and two territories (Northern Rhodesia, Nyasaland), continued application of the GATT multilateral instruments was secured under the procedure laid down in article XXVI, paragraph 5 (*c*), as in the cases of former customs territories referred to above. After the establishment of the Federation, through joint declarations, the Government of the United Kingdom established the fact that the *Federation of Rhodesia and Nyasaland* was qualified to become a contracting party "in respect of the territories of Northern Rhodesia and Nyasaland" and the Government of Southern Rhodesia notified that the Federation had succeeded to the rights and obligations "formerly accepted by Southern Rhodesia". Thereafter, the CONTRACTING PARTIES adopted a declaration stating that the *Federation of Rhodesia and Nyasaland* "shall henceforth be deemed to be a contracting party" and "... [has] acquired the rights and obligations... of the Government of Southern Rhodesia and the Government of the United Kingdom". Finally, the Government of the *Federation of Rhodesia and Nyasaland* notified the Secretary-General of the United Nations that the Federation was bound by the GATT subsidiary instruments previously applied to Southern Rhodesia as well as to Northern Rhodesia and Nyasaland.

384. Shortly before the dissolution of the Federation of Rhodesia and Nyasaland, the Government of the United Kingdom and the Government of the Federation communicated to the Director-General of GATT, by way of a joint declaration, that as from the date immediately after such dissolution *Southern Rhodesia* "will resume its former status as a contracting party to the GATT" and the *United Kingdom* "will resume direct responsibility for the external commercial relations of Northern Rhodesia and Nyasaland, including its rights and obligations under GATT". After the dissolution of the Federation, *Southern Rhodesia* informed the contracting parties that in resuming its former status as a member of GATT it accepted, in respect to its territory, rights and obligations incurred by the former Government of the Federation of Rhodesia and Nyasaland.