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Succession of States in respect of bilateral treaties - study prepared by the Secretariat

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CONTENTS

Note

To assist the International Law Commission in its work on the topic succession of States, the Secretariat has carried out research relative to succession in respect of bilateral treaties in some selected areas of inter-State relations. The materials gathered are of undoubted interest for the study of the topic, although the published practice on bilateral treaties does not allow the preparation of studies which are as comprehensive as those in the series "Succession of States to multilateral treaties".* Since the main purpose of the research is to ascertain recent practice, only a few earlier cases, going back to the end of the Frst World War, have been included.

The present document collects practice relevant to extradition treaties. The results of the research in other selected areas will be published either as addenda to this document or as separate documents. The sources of the information are varied, but in most of the cases official and primary. When a private or a secondary source has been used, that fact has been indicated, as appropriate.

The designations used, the dates mentioned, 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 the position which the States concerned may take with regard to the particular treaties or agreements mentioned.

I. Extradition treaties

INTRODUCTION

1. It is now generally accepted that international custom imposes no obligation on States to extradite alleged criminals to another State which wishes to prosecute them. In contemporary international law, extradition is accordingly mainly based on treaties.[1] In the overwhelming majority of cases, extradition treaties are concluded between two States, and the present study is limited to such bilateral treaties.

2. The great bulk of extradition treaties are very similar in content. Certain provisions have become, by reason of their uniformity and wide diffusion, "standard clauses".[2] Thus, an extradition treaty typically provides for the extradition of alleged fugitive offenders convicted or charged with listed or generally defined crimes, usually includes a number of basic principles (e.g., exemption of political offences, the specialty rule, the *non bis in idem* rule, the double criminality rule) and states certain procedures, to be followed by the parties. Most extradition treaties can be terminated by the giving of one year's notice or less.[3]

3. A considerable number of extradition treaties concluded in the nineteenth and twentieth centuries ere applicable, either automatically or by subsequent extension, to dependent territories of the parties which later became independent States. In addition, States parties to extradition treaties have sometimes undergone changes in international status (constitution of unions or federations, secession, annexation, restoration of independence, etc.) which have affected their participation in these treaties.

4. The collected cases are divided into two groups, namely "cases of independence of former non-metropolitan territories" (section A) and "cases other than cases of independence of former non-metropolitan territories" (section B). Section A is subdivided according to the State which was responsible for the international relations of the former non-metropolitan territories when they attained independence. Within each of the subdivisions, cases are generally listed chronologically. Cases in section B are listed chronologically. The grouping of the cases is made for reasons of convenience and is without prejudice to any particular situation.

5. A considerable amount of the practice set out below relates to States established in territories which were formerly administered by the United Kingdom. This is explained mainly by two factors. First, extradition is dependent, under British law—which has continued in effect in those States for at least some time after independence—or under the legislation enacted to replace that law, on the existence of a treaty. Accordingly, there is

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* See *Yearbook of the International Law Commission, 1968*, vol. II, p. 1, document A/CN.4/200 and Add. 1 and 2; *ibid., 1969*, vol. II, p. 23, document A/CN.4/210; and p. 61 above, document A/CN.4/225.

[1] The domestic law of a number of States does, however, allow extradition in the absence of a treaty; in such cases, extradition may also be based on comity or reciprocity.

[2] It has been said by one writer (Ch. de Visscher, *Théories et réalités en droit international public*, 3rd ed. [Paris, 1960], pp. 182 and 183), explaining his views on the elaboration of the rules of international law by bilateral treaties, that:

"This is the case with treaties of extradition, which are usually bilateral, but which contain typical provisions so commonly reproduced that they have become clauses of style. Their repetition proves that they express principles and not only individual and contingent considerations. For this reason they may develop into a sort of customary law on the questions with which they deal. It remains true, nevertheless, that the general preference for the merely bilateral form denotes the political interest that States attach to the matter of extradition and their will to retain a character of individuality in its regulation."

[3] For instance, of the eight "typical bipartite treaties of recent date" included in *American Journal of International Law*, vol. 29 (1935), Suppl. 1-2 (Harvard Law School, *Research in International Law*) "I-Extradition", appendix V, pp. 316-356, seven allow termination on the giving of six months' notice, while the eighth allows denunciation five years after the treaty's entry into force by the giving of one year's notice. The British legislation which is relevant to many of the treaties discussed in this study requires that treaties implemented by it provide for their termination by notice of no more than one year (Extradition Act 1870, s. 4 (1)).

a greater need in these States to determine whether the treaties are still in effect than there is in those States (for instance, those established in territories formerly administered by France) where treaties only supplement the basic power to extradite which is conferred by domestic law. Secondly, for a number of reasons, many Commonwealth countries have reviewed the parallel body of law regulating the rendition of fugitive criminals within the Commonwealth. The result of this review has generally been the closer assimilation of the law relating to such rendition to that concerning regular extradition, which has accordingly also been re-examined. This process, which has often led to the consolidation of the two bodies of law, has generally required the States to take a position in their new legislation on the extradition treaties applicable to their territory before independence.

A. Cases of independence of former non-metropolitan territories

(*a*) Former non-metropolitan territories for the international relations of which the United Kingdom was responsible [4]

1. *Australia, Canada, New Zealand* and *South Africa*

6. *General.* Australia, Canada, New Zealand and South Africa have generally claimed to be bound by treaties concluded by the United Kingdom and applicable to their territories.[5] They have also taken this position in relation to British extradition treaties. Thus, Australia, New Zealand and South Africa have recently enacted extradition legislation (replacing the Imperial Extradition Acts of 1870 and later) [6] which maintains in force in their domestic law the original British Orders-in-Council which give effect to the extradition treaties.[7] In a recent Parliamentary answer, the Australian Minister of External Affairs stated that Australia had extradition treaties with forty-three named States.[8] None of these were negotiated and signed independently by Australia. A Canadian Government statement made on the occasion of the signing of an extradition treaty with Austria in 1967 included the following passage:

> Canada is bound by extradition treaties with approximately 40 other countries but all of them are in whole or in part older British treaties which were extended to apply to Canada in the nineteenth century or in the early part of the twentieth century.[9]

7. The other parties to the treaties have also generally accepted this view favouring continuity. Thus, first,

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[4] The United Kingdom is currently party to about forty-four extradition treaties with non-Commonwealth countries (see the list on 7 November 1955, in *Parliamentary Debates*, Fifth Series, vol. 545, *House of Commons*, col. *146*. Since then, treaties have been concluded with the Federal Republic of Germany, Israel and Sweden). Those concluded before 1914 (about thirty-seven were then in force) generally applied to all the territories of the parties, including their colonies and foreign possessions. Later, provision was made in some cases for the extension of the treaties to other territories within the jurisdiction or protection of the British Crown, e.g. protectorates and mandated territories. Treaties concluded after 1914 again applied to "all His Majesty's dominions" but with the important exception of the self-governing Dominions (Canada, Australia, New Zealand, South Africa, the Irish Free State and Newfoundland) and India. They instead had the separate right of accession to and thereafter of withdrawal from the treaties. Again, provision was made for the application of the treaties to territories within the Crown's jurisdiction or protection. The end result has been that the extradition treaties concluded by the United Kingdom applied to most of the territories for the international relations of which it was responsible.

[5] See generally the Australian and New Zealand treaty lists (Australia, *Treaty Series, 1956, No. 1*, and New Zealand, *Treaty Series, 1948, No. 11*) and D. P. O'Connell, *State succession in Municipal Law and International Law* (1967), vol. II, pp. 122-127.

[6] Since a treaty is not, generally speaking, part of the law of the land in Commonwealth countries, legislation was necessary to give effect to the extradition treaties. This legislation can be divided into three groups: (*a*) the Extradition Acts 1870-1935 (United Kingdom) (applicable only within Her Majesty's dominions), and the Orders-in-Council made thereunder, (*b*) legislation enacted by legislatures of British possessions and merely modifying the details of the Imperial legislation, and (*c*) legislation, usually entitled Fugitive Criminals Surrender Ordinances, enacted by the legislatures of territories under British protection or jurisdiction.

The arrest of alleged criminals under this legislation and their delivery to the foreign State seeking their extradition are dependent, first, on the conclusion of an arrangement for extradition and, second, on the promulgation of an Order-in-Council applying the Act to that arrangement. Accordingly, Orders have been made under the legislation in respect of all the extradition treaties. These Orders were given the same geographic scope as the treaties they implement.

Until recently, extradition (or rendition) within the Commonwealth had a quite different basis: it depended solely on legislation which differed in several important respects from the extradition legislation. The basic statutes were the Fugitive Offenders Act 1881 and 1915 (United Kingdom), which, like the Extradition Acts, applied within Her Majesty's dominions. They could also be applied to any place outside those dominions where "her Majesty has jurisdiction" and, in fact, the legislation was extended to most British protected States, protectorates and mandated territories in Africa, the Middle East and the Pacific.

In 1966, the Commonwealth Law Ministers, taking into account the changes in the composition of the Commonwealth, drew up a Scheme relating to the Rendition of Fugitive Offenders within the Commonwealth (United Kingdom, Cmnd 3008). In accordance with the Scheme, most of the relevant legislation substantially or completely assimilates Commonwealth rendition to foreign extradition, usually with the important exception that no extradition agreement is required in the former case.

[7] Extradition (Foreign States) Act 1966, s. 9 (1) (Australia); Extradition Act 1965, s. 21 and Extradition Amendment Act 1967, s. 2 (relating to the United States) (New Zealand, e.g. the treaty lists, and for Canada, Department of External Affairs, *Treaties and Agreements affecting Canada in force between His Majesty and the United States of America with subsidiary Documents, 1814-1925* (1927), pp. 18, 73 and 163, and recent statements in *the Canadian Yearbook of International Law*, vol. 4 (1966), pp. 286 and 287, and vol. 5 (1967), pp. 273 and 274.

[8] *Australia, 1966 Parliamentary Debates, House of Representatives, No. 10*, p. 498. See also Ivan A. Shearer, "Extradition and Asylum in Australia" in D. P. O'Connell (ed.), *International Law in Australia* (1965), pp. 558, 560, 561, 583, 584, 595.

[9] *The Canadian Yearbook of International Law*, vol. 6 (1968), p. 269. See also the references to the treaties with Mexico and the United States of America, *ibid.*, pp. 267-269, 306.

since 1919, conventions supplementing earlier extradition treaties have been concluded by the United Kingdom with six States: Austria,[10] Denmark,[11] Hungary,[12] Iceland,[13] Portugal[14] and Switzerland.[15] Five of these supplementary conventions were open to separate accession by the other "members of the Commonwealth of Nations". These members included Australia, Canada, New Zealand and South Africa.[16] These Dominions other than Canada were original parties to the sixth (with Portugal). Such a power of accession and such participation clearly implied that those States remained bound by the extradition treaties which the conventions amended. The power of accession was exercised on several occasions.[17]

8. Secondly, between 1927 and 1937, Australia, New Zealand and South Africa agreed with the other party to more than thirty of the treaties that they be extended to their mandated territories [18] (these treaties were with Austria, Belgium, Bolivia, Chile, Colombia, Cuba, Denmark, Ecuador, El Salvador, Germany, Greece, Guatemala, Haiti, Hungary, Iceland, Liberia, Luxembourg, Monaco, Netherlands, Nicaragua, Norway, Panama, Paraguay, Peru, Portugal, Romania, San Marino, Spain, Switzerland, Thailand and Yugoslavia [19]). This action also proceeded on the basis that the treaties remained in force for Australia, New Zealand and South Africa.[20]

9. Further, some of the treaties have been invoked in practice.[21]

10. *Sweden and Norway—United Kingdom Treaty of 1873.*[22] In 1950 and 1951, Sweden gave notice of termination of the Extradition Treaty between Great Britain and Sweden and Norway signed at Stockholm on 26 June 1873 (this Treaty had remained binding on Sweden and Norway after the dissolution of their real union in 1905) and Additional Declaration of 2 July 1907[23] to the United Kingdom and to Canada, New Zealand, South Africa and Australia.[24] The relevant domestic legislation was consequentially revoked.[25]

11. *United Kingdom—United States Treaty of 1842.*[26] Since 1919, Canada and the United States have on three separate occasions amended, in their relations with each other, the article of the Webster-Ashburton Treaty of 1842 which regulates extradition.[27] Each amendment is stated to be an integral part of the earlier treaties.

12. The High Court of Ontario held in 1953 that the article of the 1842 Treaty relating to extradition was not affected by the enactment of the Statute of Westminster in 1931 (which removed the remaining substantial external restraints on Canada's legislative powers). The Treaty was still in force between Canada and the United States.[28]

13. The United Kingdom-United States Extradition Treaty of 1931, which applies to the United Kingdom and to the territories for the international relations of which it is responsible, provides that it supersedes the earlier extradition treaties "save that in the case of each of the Dominions and India those provisions [of the treaties] shall remain in force" unless these States accede to the 1931 Treaty or negotiate another one.[29] In fact,

[10] League of Nations, *Treaty Series*, vol. CLXV, p. 373. The original treaty was revived under the Treaty of St. Germain following the First World War.

[11] League of Nations, *Treaty Series*, vol. CLXIX, p. 337.

[12] *Ibid.*, vol. CLXXXI, p. 337. The original treaty was revived under the Treaty of Trianon following the First World War.

[13] League of Nations, *Treaty Series*, vol. CXCVIII, p. 147. In a list of Icelandic treaties published in 1964, it is stated that Iceland considers the Denmark-United Kingdom Treaty of 1873 still to be in force so far as Australia, Canada and New Zealand are concerned (see para. 111 below).

[14] League of Nations, *Treaty Series*, vol. CXLI, p. 267.

[15] *Ibid.*, vol. CLXIII, p. 103.

[16] The Irish Free State (see para. 18 below) and Newfoundland were the other members at the time.

[17] See e.g. the Australian and New Zealand treaty lists.

[18] In some cases, the treaties were also extended to the other party's mandated territories.

[19] League of Nations, *Treaty Series*, vol. LXXXIII, p. 495, p. 385, p. 473 and p. 485; vol. CX, p. 401; vol. CXXVI, p. 201; vol. LXIX, p. 135; vol. LXXXVIII, p. 404 (and see also vol. CLXXXIV, p. 437); vol. CVII, p. 557; vol. C, p. 268; vol. LXXXIII, p. 513; vol. XCII, p. 420; vol. LXXXIII, p. 465; vol. LXXXVIII, p. 400; vol. LXIX, p. 135; vol. LXXXIII, p. 477; vol. LXIX, p. 127 (see also vol. CXCI, p. 219); vol. CXXI, p. 39; vol. LXIX, p. 131; vol. LXXXVIII, p. 410; vol. XCII, p. 427; vol. LXXXIII, pp. 505, 509 and 500; vol. CLVI, p. 282; vol. LXXXIII, p. 480; vol. CLVI, p. 377; vol. LXXXIII, p. 469; vol. XCII, p. 432; vol. LXXXIII, pp. 516 and 490.

[20] See also the resolution of 15 September 1925 of the Council of the League of Nations (League of Nations, *Official Journal*, 1925, *No. 10*, p. 1363), in which the Council recommended the mandatory Powers and all States which had concluded special treaties or conventions with the mandatory Powers to agree if possible to extend the benefits of such treaties or conventions to the mandated territories.

[21] E.g., *Re Stegeman* (1966) 58 *Dominion Law Reports* (2d) 415; *U.S.A.* v. *Novick* (1960) 33 Can. Cr. R. 401; *International Law Reports*, vol. 32, p. 275 (requests by United States); *United States ex rel. Rauch* v. *Stockinger* (1959) 269 F. 2d 681; 361 U.S. 913 (request by Canada).

[22] *British and Foreign State Papers*, vol. 63, p. 175.

[23] *Ibid.*, vol. 100, p. 572.

[24] United Nations, *Treaty Series*, vol. 133, p. 380; vol. 200, p. 360.

[25] United Kingdom. *Statutory Instruments*, 1951, vol. I, No. 1384, p. 781; 1953, part I, No. 1220, p. 831 and No. 1221, p. 832.

[26] *British and Foreign State Papers*, vol. 30, p. 360.

[27] For a collection of the "Treaties and Conventions in force between Canada and the United States" relating to extradition see Canada, *Treaty Series*, 1952, No. 12, See also the motion of Mr. McKenzie King, the Prime Minister of Canada, that the House of Commons approve the 1925 amendment (Ridell (ed.), *Documents on Canadian Foreign Policy 1917-1939* (1962), pp. 724 and 725), and United States, *Treaties in Force* (1970), p. 37.

[28] *Ex parte O'Dell and Griffen* (1953), *Dominion Law Reports* 207; *International Law Reports*, vol. 19 (1952), p. 40.

[29] League of Nations, *Treaty Series*, vol. CLXIII, p. 59.

South Africa (which did not accede to the 1931 Convention) negotiated such an agreement in 1947. The new Agrement expressly states that the 1842 Treaty (in so-far as it applies to extradition) and its subsequent amendments are to "cease to have effect" between South Africa and the United States on the coming into force of the new Treaty.[30]

14. Similarly, when New Zealand and the United States signed a new Extradition Treaty on 12 January 1970, it was stated that it replaced the treaty of 1842 and its subsequent amendments.[31]

2. *Ireland*[32]

15. *General.* In 1933, the Prime Minister and Minister of External Affairs of the Irish Free State, in a general statement on the State's attitude towards United Kingdom treaties, said that a new State's

> acceptance or otherwise of the treaty relationships of the older State is a matter for the new State to determine by express declaration or by conduct (in the case of each individual treaty), as considerations of policy may require. The practice here has been to accept the position created by the commercial and administrative treaties and conventions of the late United Kingdom until such time as the individual treaties and conventions themselves are terminated or amended. Occasion has then been taken, where desirable, to conclude separate engagements with the States concerned.[33]

16. In 1965 the Irish Parliament enacted a new Extradition Act,[34] replacing the Imperial extradition and fugitive offenders legislation. The Act provides that any order made under the Extradition Act 1870 (giving effect to a British treaty) and in force immediately before the entry into force of the Act continues in force, unless earlier revoked, until 1 January 1972.[35] Between 1921, when it became independent, and 1965, when the Act was enacted, Ireland had not negotiated any new extradition treaties, although it had acceded (along with others of the British Dominions) to a number of United Kingdom extradition treaties concluded after 1921.[36]

17. Forty-three extradition treaties applied to Ireland immediately before it became independent.[37] One author in 1957-1958 addressed inquiries to all forty-three States. Of the eleven States which expressed a view on the continued force of the treaties in relation to Ireland, three (Ecuador, Luxembourg and Hungary) seemed to consider that the treaties were in force, one (Sweden) had expressly denounced its treaty with regard to Ireland, two (Austria and Switzerland) seemed to be favourable to the treaties being in force but made this dependent on a declaration by Ireland that it was willing to consider itself bound by the treaties, and five States (Cuba, Denmark, Guatemala, Italy and the Netherlands) considered that Ireland was not bound by these treaties. Of these five, two (Italy and the Netherlands) seemed to take the view that, if Ireland wished, it could continue the treaties' operation by a declaration to that effect.

18. Further, as noted,[38] several conventions supplementing pre-1921 British extradition treaties were open to accession by the other "members of the British Commonwealth of Nations". Since Ireland was at the relevant time a member,[39] and since there would be no point in its becoming a party to the supplementary convention alone, the possibility of its succession to the original treaties seems to have been accepted by those who drafted the supplementary conventions. In fact, Ireland apparently never acceded to the supplementary conventions.[40]

19. *Belgium—United Kingdom Treaty of 1901.*[41] Belgium has invoked this Treaty. The Irish Government did not deny its general applicability and invoked Article 7 of the Treaty, which exempted from surrender those charged with political offences.[42]

20. *Switzerland—United Kingdom Treaty of 1880.*[43] Ireland has invoked this treaty.[44]

21. *United Kingdom—United States Treaty of 1842.*[45] Ireland has invoked this treaty, which is listed under its name in United States, *Treaties in Force.*[46]

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[30] United Nations, *Treaty Series*, vol. 148, p. 85. The South African Government considers that South Africa's change from a monarchy to a republic had no effect on its treaties, and, in particular, on its extradition treaties (see South Africa, *House of Assembly Debates* 1962, vol. 4, col. 5557 and *Debates of the Senate* 1962, Second Session (first senate), col. 2296, in which the Minister of Justice cites sections 107 and 112 of the Republican Constitution).

[31] New Zealand, Department of External Affairs, press statement of 9 January 1970, and United States, *Department of State Bulletin*, vol. 62, p. 129.

[32] The agreement of 6 December 1921 between the Irish Free State and the United Kingdom provided that Ireland was to have the same constitutional status in the Community of Nations, known as the British Empire, as Canada, Australia, New Zealand and South Africa (League of Nations, *Treaty Series*, vol. XXVI, p. 9; also *ibid.*, vol. 27, pp. 449-450). The case of Ireland is considered in this section for reasons of convenience.

[33] Ireland, *Parliamentary Debates, Official Report*, vol. 48, cols. 2058-2059, as quoted by O'Higgins in "Irish Extradition Law and Practice", *British Year Book of International Law*, vol. 34 (1958); p. 297.

[34] Discussed by O'Higgins in *The International and Comparative Law Quarterly*, vol. 15 (1966), p. 369.

[35] The first and second orders made under the Act relate to the European Extradition Convention; they make no express reference to earlier bilateral treaties which that Convention replaces (Ireland, *Iris Oifigiúil*, 1966, No. 73. pp. 958-962; and 1967, No. 24, pp. 268-277).

[36] League of Nations, *Treaty Series*, vol. XLV, pp. 162 and 172; vol. LIX, p. 395; vol. LXIX, p. 106; and vol. LXXXIII, p. 421.

[37] See O'Higgins, *loc. cit.* (see foot-note 33 above), pp. 274, 296-300, 306-311.

[38] See para. 7 above.

[39] See the 1921 Agreement mentioned in foot-note 32 above; the description in the 1922 Constitution: "a co-equal member of the Community of Nations forming the British Commonwealth of Nations"; and its accession to extradition treaties concluded after 1921 as one of the six "self-governing dominions".

[40] See O'Higgins, *loc. cit.*, (foot-note 37 above).

[41] *British and Foreign State Papers*, vol. 94, p. 7. For amendments, see vol. 100, p. 472 and vol. 104, p. 131.

[42] See O'Higgins, *loc. cit.*, see foot-note 37 above.

[43] *British and Foreign State Papers*, vol. 71, p. 54. For amendment, see vol. 97, p. 92.

[44] See O'Higgins, *loc. cit.*, see foot-note 37 above.

[45] Foot-note 26 above.

[46] (1970), p. 117; see also O'Higgins, *loc. cit.*, see foot-note 37 above.

3. *India*

22. *General.* Most of the extradition treaties concluded by the United Kingdom also applied to India. In 1956, the Prime Minister and Minister of External Affairs of India, in answer to a Parliamentary question, tabled a "list of extradition treaties with foreign countries, concluded by the British Government on behalf of India before independence and which are still in force". Treaties with 45 countries were listed.[47] The question was also raised during the passage of the Extradition Bill in 1961 and 1962; the Minister of Law again took the position that the British extradition treaties remained in effect, despite some argument to the contrary.[48] Consistently with this, the Extradition Act, 1962,[49] (Chapter I, section 2 (*d*), reads as follows:

> "extradition treaty" means a treaty or agreement made by India with a foreign State relating to the extradition of fugitive criminals, and includes any treaty or agreement relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to, and is binding on, India.

The 1962 Act also applies to all Commonwealth countries, thus filling the gap created by the decision of the Supreme Court of India that, upon India becoming a "sovereign Democratic Republic", Part II of the Fugitive Offenders Act 1881 (United Kingdom), no longer applied to it.[50]

23. *Belgium - United Kingdom Treaty of 1901.*[51] By an exchange of notes of 3 August and 6 November 1954, the Belgian and Indian Governments "*se sont mis d'accord*" to consider that their relations in the matter of extradition, were regulated by the Belgium—United Kingdom Treaty of 1901, as amended in 1907 and 1911.[52]

24. *Denmark - United Kingdom Treaty of 1873.*[53] Both Iceland and India consider that this Treaty is in force between them.[54]

25. *Norway and Sweden—United Kingdom Treaty of 1873.*[55] Sweden, in 1951, gave notice, *inter alia*, to India of the termination of this extradition treaty. This notification was, in terms of the Treaty, effective after six months.[56]

26. *Russia - United Kingdom Treaty of 1886.*[57] In one case, which occurred shortly after the entry into force of the 1962 Indian Act—the request by the USSR for the extradition of one Tarasov [58]—no reference was apparently made by either State to the Anglo-Russian Treaty of 1886: the magistrate, who denied extradition, decided the case as one in which no treaty was in force. The Treaty was, however, included in the 1956 Indian list,[59] although it was not included in lists prepared in 1955 by the United Kingdom,[60] in 1962 by Sierra Leone,[61] in 1966 by Australia,[62] and in 1966 by Uganda.[63]

27. *United Kingdom - United States Treaty of 1931.*[64] The above Treaty is listed under "India" in United States, *Treaties in Force*, which also reproduces the relevant provisions of the Schedule to the Indian Independence (International Arrangements) Order, 1947.[65]

4. *Pakistan*

28. *General.* Pakistan addressed notes to at least three States (Argentina, Belgium and Switzerland) concerning the British extradition treaties which applied to India before partition.

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[47] India, *Lok Sabha Debates*, 12th session, 1956, vol. II, No. 21, part I, col. 1143; and appendix IV, annex No. 42. Also in International Law Association, *The Effect of Independence on Treaties* (1965), p. 109.

[48] India, *Lok Sabha Debates*, 14th session, 1961, vol. LVI, No. 8, cols. 2845-2880; 1962, 3rd series, vol. VI, No. 2, cols. 465-534; No. 3, cols. 697-711.

[49] Discussed by Saxena in *The International and Comparative Law Quarterly*, vol. 13, (1964), p. 116.

[50] *The State of Madras* v. *Menon and Another* (1954) *All India Reporter*, Supreme Court 517; see *International Law Reports*, vol. 21 (1954), pp. 46 and 47. Part II of the Act provided a summary procedure for the return of fugitives between groups of contiguous possessions; in this case, Singapore was seeking extradition.

[51] See foot-note 41 above.

[52] *Moniteur Belge*, 26 February 1955, p. 967. The 1901 treaty was later amended, in so far as it was applicable to relations between Belgium and India, by an exchange of notes of 30 May and 30 December 1958 (*ibid.*, 14 March 1959, p. 1866). Neither exchange was registered under Article 102 of the Charter (cf. para. 31 below), and neither exchange mentioned the amendments to the 1901 treaty in 1923 and 1928, whereby the treaty was applied to the Belgian Congo and Ruanda-Urundi.

[53] *British and Foreign State Papers*, vol. 63, p. 5.

[54] See para. 111 below.

[55] See foot-note 22 above.

[56] United Nations, *Treaty Series*, vol. 200, p. 360.

[57] *British and Foreign State Papers*, vol. 77, p. 107.

[58] "The Tarasov Extradition Case" in *the Indian Journal of International Law*, vol. 3 (1963), No. 3, p. 323; Saxena, "Extradition of a Soviet Sailor", *The American Journal of International Law*, vol. 57 (1963), p. 883.

[59] The Indian list also includes the 1842 Treaty with the United States (this was replaced by the 1931 Treaty, which was also listed), the 1873 Treaty with Austria, the 1872 Treaty with Brazil, and the 1872 Treaty with Germany. None of them appear in the United Kingdom, Australian, and New Zealand lists.

[60] Written answer by the Secretary of State for Foreign Affairs on 7 November 1955 (*Parliamentary Debates. Fifth Series*, vol. 545, *House of Commons*, col. *146*). Cf. the draft of a Proposed General Treaty between the USSR and the United Kingdom 1924, Article 3 (iii), Cmd. 2215.

[61] See para 58 below.

[62] See para. 6 above; also the Viks case, discussed by Ivan A. Shearer (see D. P. O'Connell, (Ed.) *International Law in Australia* (1965), p. 584).

[63] See para. 67 below. The United States also took the position that its extradition treaty with Russia of 1887 was no longer in effect; cf. United States, *Treaties in Force . . . on December 31, 1941* (ed. 1944) p. 93, with *The Department of State Bulletin*, vol. 16 (1947), p. 212; see also M. M. Whiteman, *Digest of International Law*, vol. 6, p. 733, and United States, *Treaties in Force* (1970), p. 226.

[64] League of Nations, *Treaty Series*, vol. CLXIII, p. 59.

[65] United States. *Treaties in Force* (1970), pp. 106, 108. For the Schedule, see also, United Nations Legislative Series, *Materials on Succession of States* (United Nations publication Sales No.: E/F.68/V/5), p. 138.

29. *Argentina - United Kingdom Treaty of 1889.*[66] According to the Argentine Government:

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

30. Referring to an earlier Pakistan inquiry, the Argentina note read in part as follows:

I have pleasure in informing you, since the *note verbale* in question implies the expression of a desire for the continuation, between the Argentine Republic and Pakistan, of the Treaty for the Mutual Extradition of Fugitive Criminals, my Government has no objection to regarding it as continued.

Pakistan, in turn, replied to this effect:

I am particularly pleased to learn from your note that the Government of the Argentine Republic has no objection to the continuation between the Argentine Republic and Pakistan of the aforementioned Treaty....[67]

31. *Belgium - United Kingdom Treaty of 1901.*[68] In its note to Belgium, Pakistan stated:

Since the partition of the subcontinent of India in 1947, the [above] Treaty has devolved on the Government of Pakistan, who wish to ascertain whether the Government of Belgium consider the provisions of the above-mentioned Treaty, as supplemented and amended by the Conventions of 5th March 1907 and 3rd March 1911, respectively, binding between Belgium and Pakistan.[69]

(The 1901 Treaty had been further amended in 1923 and 1928 by instruments extending to the Belgian Congo and Ruanda-Urundi existing Extradition Conventions between the United Kingdom and Belgium.[70] These instruments applied to India, but were not mentioned by Pakistan in the above note). In its reply, Belgium stated that it considers that the Treaty of Extradition concluded on 29 October 1901 between Belgium and the United Kingdom as supplemented and amended by the Conventions of 5 March 1907 and 3 March 1911, respectively, may be considered as binding in such matters between Belgium and Pakistan, the two Governments being in agreement on this matter.

The present note and the above-mentioned note from the Legation shall be regarded as evidence of this agreement.[71]

The Belgian Government registered this correspondence, under Article 102 of the Charter, as an exchange of notes constituting an arrangement between Belgium and Pakistan, which entered into force on 20 February 1952, the date of the Belgian reply. In the following year, a further exchange of notes constituting an arrangement extended to the Belgian Congo and Ruanda-Urundi the "Agreement on extradition recently concluded between Belgium and Pakistan".[72]

32. *Norway and Sweden-United Kingdom Treaty of 1873.*[73] Sweden gave notice to Pakistan in 1952 of its termination of this Treaty.[74] (According to the terms of the Treaty, this notice was effective six months later.

33. *Switzerland-United Kingdom Treaty of 1880.*[75] By an exchange of notes of 11 December 1954 and 28 November 1955, Switzerland and Pakistan agreed that the (Switzerland-United Kingdom Extradition Treaty of 1880, as amended on 29 June 1904, as also the Additional Convention of 19 December 1934, continued to be applicable in the relations between Pakistan and Switzerland.[76]

34. *United Kingdom-United States Treaty of 1931.*[77] This Treaty is listed under "Pakistan" in United States, *Treaties in Force*, which also reproduces the relevant provisions of the Indian Independence (International Arrangements) Order, 1947.[78]

5. *Ceylon*

35. *General.* At the end of 1968, the Imperial Extradition Acts and the Fugitive Offenders Act 1881 were still in force in Ceylon [79]. The only relevant recent enactment is the Extradition (India) Act 1954, which makes the Fugitive Offenders Act 1881, in so far as it is part of the law of Ceylon, applicable to India as if every reference

[66] *British and Foreign State Papers*, vol. 81, p. 1305.
[67] United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), pp. 6-8.
[68] See foot-note 41 above.
[69] United Nations, *Treaty Series*, vol. 133, p. 200.
[70] League of Nations, *Treaty Series*, vol. XXII, p. 375; and vol. LXXXIII, p. 385.
[71] United Nations, *Treaty Series*, vol. 133, p. 202.
[72] *Ibid.*, vol. 173, p. 408.
[73] See foot-note 22 above.
[74] See foot-note 56 above.
[75] *British and Foreign State Papers*, vol. 71, p. 54, and vol. 97, p. 92; also League of Nations, *Treaty Series*, vol. 163, p. 103.
[76] Switzerland, *Recueil officiel des lois et ordonnances de la Confédération suisse, nouvelle série*, 1955, p. 1168.
[77] See foot-note 29 above.
[78] United States, *Treaties in Force* (1970), pp. 174 and 175. For the Order, see United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 138.
[79] *The Legislative Enactments of Ceylon 1956*, Revised edition (1958), ch. 47 and 48 and *Supplements*. See also *In re Chockalingam Chettier*, 47 *All India Reporter* (Madras) 548 (1960), noted in *American Journal of International Law*, vol. 57, p. 937.

therein to a part of Her Majesty's dominions includes a reference to the territory of the Republic of India.[80]

36. *Denmark-United Kingdom Treaty of 1873.*[81] Both Ceylon and Iceland consider this Treaty to be in force between them. [82]

37. *United Kingdom Treaties with Finland of 1924,*[83] *with Hungary of 1873,*[84] *with Italy of 1873* [85] *and with Romania of 1893.*[86] Under the Peace Treaties signed on 10 February 1947, the Allied and Associated Powers were given the right to notify the former enemy States of the bilateral treaties which they wished to revive. Ceylon, which did not become independent until 4 February 1948, was not signatory to the treaties. Nevertheless, on 13 March 1948 the United Kingdom Ambassadors to Finland, Italy, Hungary and Romania, acting on the instructions of His Majesty's Government in Ceylon, notified the desire of the Government to bring into force or to revive several treaties and agreements which applied to Ceylon at the outbreak of war.[87] Included were the Extradition Treaty and declaration of 1873 with Italy, the Extradition Treaty of 1893 (amended in 1894) with Romania, the Extradition Treaty of 1924 with Finland and the Extradition Treaty of 1873 (as amended in 1936 and 1937) with Hungary. Each note concluded with the statement that

> the Government of Ceylon wish to reserve the right to open negotiations to alter or revoke any of these treaties or agreements, since they were signed prior to the attainment of independence by Ceylon.

38. *Norway and Sweden-United Kingdom Treaty of 1873.*[88] Sweden in 1951 gave notice to Ceylon of the termination of this Treaty.[89]

39. *United Kingdom-United States Treaty of 1931.*[90] This Treaty is listed under "Ceylon" in United States, *Treaties in Force*, which also reproduces the provisions of External Affairs Agreement between Ceylon and the United Kingdom dealing with the devolution of treaty obligations. [91]

6. *Israel*

40. *General.* Israel has adopted the general position that treaties binding upon Palestine, or extended by the Mandatory to include Palestine, do not commit the State of Israel.[92] It has also adopted this position in relation to extradition treaties. Since its establishment, Israel has negotiated several new extradition treaties.[93]

41. *Belgium-United Kingdom Treaty of 1901.*[94] In a note dated 8 February 1954 to Belgium, Israel stated that

> At the present time no [extradition] agreements exists between Israel and Belgium, since the extradition treaty concluded some years ago between Belgium and Great Britain is not binding upon the State of Israel.

It then referred to Israel's general position as set out above. The note went on to propose that the difficulty could be overcome by the two Governments agreeing that the 1901 Treaty between Belgium and the United Kingdom (as amended in 1911) should be provisionally reinstated, *mutatis mutandis*, as between Israel and Belgium, pending the conclusion of a new treaty. Belgium accepted this proposal, stating that the Israeli note and its reply were to "be deemed to constitute the agreement of the two Governments on the matter".[95] The two States concluded a formal Convention, replacing the provisional agreement (which had been extended on several occasions), in 1956.[96]

42. *France-United Kingdom Treaty of 1876.*[97] In an exchange of notes with France, in which it again adhered to its view that Israel was not bound by treaties applicable to Palestine, Israel agreed to the provisional reinstatement of the Extradition Treaty of 1876 between France and the United Kingdom.[98]

43. *Switzerland-United Kingdom Treaty of 1880.*[99] The Swiss *Recueil systématique des lois et ordonnances 1848-1947*, contains,[100] with reference to the Switzerland-United Kingdom Treaty of 1880 (which was extended to Palestine), the following note:

> Since the end of the British mandate for Palestine, on 14 May

[80] *The Legislative Enactments of Ceylon 1956*, revised edition (1958), ch. 48. The Fugitive Offenders Act speaks throughout of rendition within Her Majesty's dominions. Since its change to a Republic, it was arguable that the Act would no longer be applicable to India. The Indian Supreme Court so held in respect of Part II of the Act (which had applied between India and Ceylon) in *State of Madras* v. *Menon and Another* (see foot-note 50 above).

[81] See foot-note 53 above.

[82] See para. 111 below.

[83] League of Nations, *Treaty Series*, vol. XXXIV, p. 79.

[84] *British and Foreign State Papers*, vol. 63, p. 213.

[85] United Nations, *Treaty Series*, vol. 104, pp. 48 and 60.

[86] *Ibid.*, pp. 132 and 154.

[87] *Ibid.*, pp. 29, 35, 41, 117.

[88] See foot-note 22 above.

[89] See foot-note 56 above.

[90] See fot-note 29 above.

[91] United States, *Treaties in Force* (1970), pp. 43 and 44. For the agreement, see United Nations, *Treaty Series*, vol. 86, p. 25; and United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), pp. 21 and 167.

[92] Memorandum of 24 January 1950 submitted in response to an International Law Commission questionnaire (*Yearbook of the International Law Commission, 1950*, vol. II, pp. 214-217, document A/CN.4/19, paras. 19-28) and United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), pp. 41-43.

[93] E.g., Austria (United Nations, *Treaty Series*, vol. 448, p. 161), Italy (*ibid.*, vol. 316, p. 97), the Netherlands (*ibid.*, vol. 276, p. 153), South Africa (*ibid.*, vol. 373, p. 47), the United Kingdom (*ibid.*, vol. 377, p. 331) and see those with Belgium, Switzerland and the United States mentioned below.

[94] See foot-note 41 above.

[95] United Nations, *Treaty Series*, vol. 188, p. 251. It is noted *ibid.*, p. 253, foot-note 1, that the Agreement is not applicable (unlike the pre-independence arrangements) to the Belgian Congo and Ruanda-Urundi.

[96] United Nations, *Treaty Series*, vol. 260, p. 3.

[97] *British and Foreign State Papers*, vol. 67, p. 5.

[98] United Nations, *Treaty Series*, vol. 219, p. 215.

[99] See foot-note 43 above.

[100] Vol. 12, p. 142, note 1 and p. 143, note 2.

1948, Israel has declared that the Switzerland-United Kingdom Treaty is no longer applicable to its territory.

Israel and Switzerland have subsequently concluded an extradition treaty.[101]

44. *United Kingdom-United States Treaty of 1931.*[102] In 1949, Israel, in reply to an inquiry from the United States concerning the extradition of a person charged with an offence in New York, stated its general position concerning treaties applicable to Palestine and accordingly denied the continued force of the Extradition Treaty of 1931 between the United Kingdom and the United States, which had been applied to Palestine.[103] It subsequently concluded an extradition treaty with the United States.[104]

7. *Ghana*

45. *General.* The Extradition Act 1959 extended the application of the Imperial Extradition Acts 1870-1932, which give effect to Britain's extradition treaties, to the whole of Ghana. The legislation had previously applied only to the former colony of the Gold Coast and not to the other territories constituting Ghana. All this legislation and the legislation relating to fugitive offenders was repealed in 1960 by a new Extradition Act.[105] The operation of this statute is dependent on the making of a legislative instrument which gives effect to specific extradition treaties.[106] Section 3 of the Act provides, however, that, in addition, it will continue to apply to (*a*) Commonwealth countries (formerly covered by the Imperial Fugitive Offenders Act 1881) and (*b*) countries with which arrangements, in force immediately before the enactment of the Act, were made under the Extradition Acts 1870-1932. According to one 1967 report, both Liberia and Switzerland accept that the British extradition treaties remain in effect, but suggest that they should be renegotiated. "So far this has not been done and extradition has in fact been carried out on the basis of the pre-independence treaties. Former French African States, on the other hand, have declined to recognize a succession to the French-British extradition treaties and have sent drafts of proposed new treaties to Ghana."[107]

46. *United Kingdom-United States Treaty of 1931.*[108] In an exchange of notes in 1957-1958 Ghana and the United States agreed that, *inter alia*, the above treaty continued in force between them.[109] Ghana mentioned the inheritance agreement which it had concluded with the United Kingdom.[110]

8. *Malaysia*

47. *General.* Unlike much other Commonwealth legislation,[111] the Extradition Ordinance, 1958, which came into force on 1 December 1960,[112] contains no express provision keeping in effect existing orders made under the Extradition Acts 1870-1935 (which Acts are repealed by the Ordinance). In 1967, the Malaysian Legislature enacted the Commonwealth Fugitive Criminals Act, repealing the Imperial Fugitive Offenders Act 1881 and related legislation. Except in relation to Singapore, its operation is dependent on agreement with other Commonwealth countries.

48. *Thailand-United Kingdom Treaty of 1911.*[113] By the end of 1963, only one order had been made applying the Extradition Ordinance to a foreign State, consequent upon the conclusion of an agreement with that country. This order specified that "by an exchange of notes dated the 27th day of October 1959, an arrangement has been made between the Federation of Malaya and the Kingdom of Thailand for the mutual surrender of fugitive criminals in accordance with the provisions of the Treaty" of 1911 between the United Kingdom and Thailand, and, accordingly, applied the Ordinance to Thailand.[114]

49. *United Kingdom-United States Treaty of 1931.*[115] Malaya, in 1958, agreed with the United States that this Treaty, which had been applied before independence to its various constituent territories, was binding on it. In an *aide-mémoire* on the question, the United States mentioned the assumption by Malaya of treaty rights and

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[101] United Nations, *Treaty Series*, vol. 377, p. 305.

[102] See foot-note 29 above.

[103] United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 229; M.M. Whiteman, *Digest of International Law* (1963), vol. 2, pp. 972 and 973 and vol. 6, pp. 762 and 763.

[104] United Nations, *Treaty Series*, and vol. 484, p. 283.

[105] The Act was amended in 1966 by the Extradition Act, 1960 (Amendment Decree), 1966 [National Liberation Council Decree 65]. It excepted political offences, and stated the principle of specialty.

[106] See the order made in respect of a new arrangement with the Federal Republic of Germany, Extradition Act, 1960 (Extension of Application to Federal Republic of Germany) Order, 1966, Legislative Instrument 516. The Germany-United Kingdom Treaty of 1872 had not been revived at the time Ghana became independent.

[107] International Law Association, Committee on the Succession of New States to the Treaties and Certain Other Obligations of their Predecessors, Report of Study Tour of West Africa carried out on behalf of the Committee by Mr. I. A. Shearer, January-February 1967, pp. 22-23.

[108] See foot-note 29 above.

[109] United Nations, *Treaty Series*, vol. 442, p. 175; United Nations Legislative Series. *Materials on Succession of States* (United Nations publications, Sales No.: E/F.68.V.5), pp. 211-213.

[110] United Nations, *Treaty Series*, vol. 287, p. 233; United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 30.

[111] E.g., that enacted by Australia, India, Kenya, New Zealand, Sierra Leone, the United Republic of Tanzania and Uganda. See also the Irish and South African Acts. But cf. the Malawi and Nigerian legislation.

[112] Federation of Malaya, *Legal Notice 304, Federal Ordinances and State Enactments passed during the year 1958*, No. 2 of 1958, p. 7.

[113] Legal Notice 305 of the Federation of Malaya. D. Bardonnet says that Thailand admitted that the 1911 Treaty continued to apply (see "*La Succession aux Traités à Madagascar*", *Annuaire francais de Droit International*, vol. XII (1966), p. 593; p. 681, note 319); cf. D. P. O'Connell, *State Succession . . .* (*op. cit.*), p. 370; International Law Association, *The Effect of Independence on Treaties* (1965), pp. 192 and 193; and Ivan A. Shearer, "*La Succession d'Etats et les traités non localisés*", *Revue Générale de Droit International Public* (Paris), vol. 68, 3rd series, t. XXV, January-March 1964, No. 1, pp. 5 and 21.

[114] See foot-note 29 above.

obligations under the inheritance agreement signed by Malaya and the United Kingdom.[116]

9. *Cyprus*

50. *Italy-United Kingdom Treaty of 1873.*[117] In a note of 4 October 1967, the Cypriot Government stated that this Treaty as amended and others "continue to bind the Republic of Cyprus reciprocally to Italy by virtue of the 'devolution clause' of Article 8 of the Treaty concerning the Establishment of the Republic of Cyprus and the inheritance rules of Public International Law." The note requested a formal reply, but there is no indication of the terms of the reply.[118]

51. *United Kingdom-United States Treaty of 1931.*[119] This Treaty is listed under "Cyprus" in United States, *Treaties in Force*, which also reproduces the provision of the Treaty concerning the establishment of Cyprus, relating to Cyprus' treaty rights and obligations.[120]

10. *Nigeria*

52. *General.* The Extradition Decree 1966 applies (*a*) to those countries with which an agreement has been made by Nigeria for surrender (and in respect of which an order is made), and (*b*), subject to the provisions of the Decree, to every separate country within the Commonwealth. The Decree repeals the Imperial and related Nigerian legislation and contains no express provision keeping orders made under the Extradition Acts 1870-1935 in effect.[121]

53. Nigeria concluded a devolution agreement with the United Kingdom.[122] According to an official Nigerian publication, there are 334 international agreements deemed to be binding on Nigeria by virtue of the agreement.

> The State practice of Nigeria is to study each treaty or other international agreement with a view to its adoption, with or without modification, or to re-negotiate it with the other contracting party or parties.[123]

The publication lists treaties which have been so studied and adopted. The only extradition treaties which are accordingly listed as recognized as binding "by virtue of the United Kingdom's signature or ratification", are the Liberian and United States treaties with the United Kingdom.[124]

54. *Liberia-United Kingdom Treaty of 1892;*[125] *United Kingdom-United States Treaty of 1931.*[126] The first two orders made under the Decree referred to above were in respect of Liberia and the United States.[127] Both stated that the relevant Treaty with the United Kingdom "has been recognized as binding on Nigeria, subject to the modifications" specified in the order, and accordingly applied, provided that the Decree was to apply to extradition to and from Liberia and the United States. The modifications were mainly[128] consequential on the changes in the status of the parties; thus, in the United Kingdom-United States treaty the phrase "High Contracting Parties" was to be read as meaning Nigeria and the United States. The orders are consistent with the official list of treaties.

55. *Federal Republic of Germany-United Kingdom Agreement of 1960*[129] *and Israel-United Kingdom Agreement of 1960.*[130] By their terms, both these Agreements, which were signed before Nigeria became independent, were applicable to Nigeria. Similarly, the Orders in Council issued, before independence, to give effect to the Agreements applied to Nigeria. The Orders were not, however, brought to the attention of the Nigerian Government until shortly after Nigeria became independent.

56. The Agreement with Israel was ratified before independence but did not enter into force until after independence. That with the Federal Republic of Germany came into force before independenee.

57. The United Kingdom pointed out to the Nigerian authorities that both Agreements,

> which were signed before independence, were applicable as far as the United Kingdom Government were concerned to all those territories which made up the pre-independence

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[116] United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), pp. 229 and 230; M. M. Whiteman, *Digest of International Law*, vol. 2 (1963), p. 999 and vol. 6 (1968), pp. 763 and 764. See also United States, *Treaties in Force* (1970), p. 149.

[117] See foot-note 85 above.

[118] M. Giuliano, F. Lanfranchi and T. Treves, *Corpo-indice degli accordi bilaterali in vigore tra l'Italia e gli Stati esteri* (1968), pp. 97 and 98.

[119] See foot-note 29 above.

[120] United States, *Treaties in Force*, (1970), pp. 58 and 59. For the treaty, see United Nations, *Treaty Series*, vol. 382, p. 8; and United Nations Legislative Series, *Materials on succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 21.

[121] Note, however, that orders can be made in respect of agreements in force on the date of the coming into force of the Decree.

[122] United Nations, *Treaty Series*, vol. 384, p. 207; United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 119.

[123] Nigerian Federal Ministry of Justice, *Nigeria's Treaties in Force for the Period 1st October 1960 to 30th June [31st July] 1968* (1969), p. 5; see also statement by the Nigerian Minister of Justice, Mr. T. O. Elias, in *Yearbook of the International Law Commission*, 1962, vol. I, pp. 4 and 5; Nigerian Government notice No. 1881; p. 42 of the report by I. A. Shearer mentioned in foot-note 107 above.

[124] *Ibid.*, p. 12. The list also includes several judicial assistance agreements.

[125] *British and Foreign State Papers*, vol. 84, p. 103.

[126] See foot-note 29 above.

[127] Legal Notices 32 and 33 of 1967. See also United States, *Treaties in Force* (1970), p. 169.

[128] Cf. the modification to article X of the Liberian treaty.

[129] United Nations, *Treaty Series*, vol. 385, p. 39.

[130] *Ibid.*, vol. 377, p. 331.

Federation of Nigeria. It was further pointed out that the rights and obligations of the United Kingdom Government in relation to these Agreements, one of which had come into effect on 1 September 1960 and the other, which, although it had not into effect, had been ratified prior to independence, has been accepted by the Nigerian Government in accordance with the Exchange of Letters concerning treaty rights and obligations dated 1 October 1960 (the Inheritance Agreement).

The Nigerian authorities replied that the Anglo-Israel Agreement, which had not come into effect prior to independence, was not the type of international agreement that it was envisaged the Exchange of Letters should cover. As regards the Anglo-German Agreement, although they agreed that the Exchange of Letters provided for assumption of obligations and enjoyment of rights under existing international treaties and further that the Agreement in question fell into this class, they pointed out that the Agreement was a bilateral one under which the parties assumed obligations and became entitled to exercise rights *inter se*; it was their view that, this being so, the intention of the High Contracting Parties was that either party only should be entitled to request the return of a fugitive criminal. The conclusion they drew was that it could not have been the intention of the High Contracting Parties that an independent third party could come in and enjoy any rights under the Agreement without the consent of the parties. In the circumstances, the Nigerian authorities decided that Nigeria should give no effect to either of the Agreements under reference, but should negotiate separate extradition treaties with the two countries concerned.[131]

11. *Sierra Leone*

58. *General.* The Extradition Act, 1962, applies to the States listed in its three schedules. They are (*a*) Commonwealth countries, (*b*) Guinea,[132] and (*c*) forty-four listed non-Commonwealth countries. These forty-four countries are, with only a few exceptions, those in respect of which Orders-in-Council (implementing the relevant treaties) were in force under the pre-independence legislation.[133]

59. *United Kingdom-United States Treaty of 1931.*[134] This Treaty is listed under "Sierra Leone" in United States, *Treaties in Force*, which also reproduces the substance of the exchange of letters between Sierra Leone and the United Kingdom concerning Sierra Leone treaty rights and obligations.[135]

[131] United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), pp. 193 and 194.

[132] See also the Sierra Leone-Guinea Relations Act, 1966, which ratifies a Protocol concluded in July 1965 by the two countries relating, *inter alia*, to the procedure for extradition between them; also an earlier Agreement of 10 October 1964, ratified by Guinean Law No. 34 AN-64 of 20 November 1964 and promulgated by Décret No. 531 P.R.G. of 1 December 1964.

[133] Extraditions Acts 1870-1932 (U.K.) and Extradition Act and Fugitive Criminals Surrender Act (Sierra Leone).

[134] See foot-note 29 above.

[135] United States, *Treaties in Force* (1970), p. 200. For the exchange of letters, see also United Nations *Treaty Series*, vol. 420, p. 11; and United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 170.

12. *United Republic of Tanzania*

60. *General.* The pre-independence legislation in Tanganyika gave effect to Orders-in-Council made under the Imperial Extradition Acts and applying to Tanganyika.[136] Amendments to the Ordinance, consequential on Tanganyika becoming a Republic, were enacted in 1963. And, also in that year, notices were issued applying the Ordinance to the Democratic Republic of the Congo, the Kingdom of Burundi and the Republic of Rwanda.[137] As required by the Ordinance, these notices were based on arrangements reached with those three States. The terms of the arrangements are not set out in the notice. The Fugitive Offenders Act 1881 (United Kingdom), was amended in 1962, in so far as it applied to Tanganyika, to exclude political offenders from its scope.[138]

61. The Fugitive Criminals surrender Ordinance and the Fugitive Offenders Act were repealed in 1965 (along with the relevant Zanzibar legislation) by the Extradition Act. This Act provides for the surrender of persons sought by countries to which the Act has been applied. These countries are (*a*) those with which an agreement has been concluded (and in respect of which an order has been made), (*b*) those to which Part I of the Fugitive Offenders Act 1881 (as in force in the United Republic of Tanzania), applied immediately before the entry into force of the Act, and (*c*) those to which the Fugitive Criminals Surrender Ordinance (Tanganyika) applied immediately before the entry into force of the Act.

62. According to one account,[139] "the presumption" was that the British extradition treaties, as "non-localized" treaties, lapsed, in the case of Tanganyika two years after independence (i.e., after the end of the period fixed by the unilateral declaration):

With regard to the bulk of such treaties, the following extract is a specimen of a note sent to many countries.

"The legal advisers to the Ministry are of the opinion that under the rules of customary international law, the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Germany for the Extradition of Fugitive Criminals, done at Bonn [on] 23rd February 1960, would not survive the two-year period. Any rights and obligations which the Government of Tanganyika had therefore terminated on 8th December, 1963. The Government of Tanganyika is willing, however, to keep the said agreement in force until such time as a new agreement can be negotiated directly between Tanganyika and Germany. If the Government of the Federal Republic of Germany is in favour of such an arrangement, the Ministry has the honour to propose that this Note and the Note of the Government of the Federal Republic of Germany confirming such an arragnement shall constitute an agreement to that effect."

[136] *Revised Laws of Tanganyika*, cap. 22, Fugitive Criminals Surrender Ordinance, suppl. 58 (1959).

[137] *Government Notices* 1963, Nos. 129-131. See also the notices made under the ordinance in 1961 in respect of Germany and Israel (*Government Notices* 1961, Nos. 7 and 8).

[138] *Revised Laws of Tanganyika*, cap. 453, Judicature and Application of Laws Ordinance 1961 (Amendment) Act, No. 8 of 1962.

[139] Seaton and Maliti, "Treaties and Succession of States and Governments in Tanzania" in African Conference on International Law and African Problems (1967), pp. 76, 86. They then go on to describe the exchanges with Switzerland; see para. 65 below.

The result in all such cases was for all practical purposes the same as if the old agreement remained in force beyond the two years, if a confirmation was so received from the other party. The interesting question is, what would be the appropriate notice for termination if it was so desired? Presumably notice according to the terms of the treaty if any or if none, then notification by either of the Governments concerned that it is no longer willing to keep the treaty in force nor to continue negotiations for a new treaty.

63. *Belgium-United Kingdom Treaty of 1901.*[140] By an exchange of notes of 30 November 1963, 17 March and 30 October 1964, Belgium and the United Republic of Tanganyika and Zanzibar decided to maintain provisionally in effect the Belgium-United Kingdom Treaty of 1901, as amended in 1907 and 1911.[141]

64. *Netherlands-United Kingdom Treaty of 1898.*[142] On 2 April 1968, the Netherlands addressed a note to the United Republic of Tanzania referring to the Treaty of 1898 between the Netherlands and the United Kingdom, which was extended to Tanganyika by notes of 1 December 1927 and 27 January 1928. It proposed that "an understanding be established whereby the relations between the Kingdom of the Netherlands and the United Republic of Tanzania shall, in conformity with the legislation of both countries, be governed by the provisions of the said Treaty of 26 September 1898, pending the conclusion of a new extradition treaty between them." If the proposal was acceptable, it was further proposed that the note and the reply constitute an understanding which would take effect from the date on which the Netherlands advised the United Republic of Tanzania that the formalities constitutionally required in the Netherlands had been complied with. On 9 May 1968, the United Republic of Tanzania accepted the proposal. The agreement came into force on 27 December 1968.[143]

65. *Switzerland-United Kingdom Treaty of 1880.*[144] By an exchange of notes of 25 August and 28 September 1967, Switzerland and the United Republic of Tanzania agreed to maintain in force in their mutual relations, with effect from 9 December 1963,[145] the Switzerland-United Kingdom Treaty of 1880 as amended by a Convention of 1904 which was extended to Tanganyika in 1929, and the Additional Convention of 1934 which also applied to Tanganyika. By an exchange of notes in 1937, the Treaty and the two Conventions had been applied to Zanzibar.[146]

66. *United Kingdom-United States Treaty of 1931.*[147] In a note of 30 November 1965, the United States referred first to the note of the Tanganyikan Prime Minister dated 9 December 1961 to the Secretary-General of the United Nations, and second to the negotiations between the two countries concerning the continued effect of treaties. The United States considered it desirable to conclude a formal undertaking and accordingly proposed

> that for our mutual benefit the following United States and United Kingdom agreements and treaties be considered as remaining in force between the United States and [the United Republic of] Tanzania:
>
> 1. Extradition Treaty between the United States and the United Kingdom of December 22, 1931.
>
> ...

The United States further proposed that its note and the reply constitute an agreement effective 9 December 1963.[148] In its reply, the United Republic of Tanzania agreed that the listed treaties be considered as remaining in force. This reply was on the understanding that the United Republic of Tanzania intended in due course to re-open negotiations, but until such time as new arrangements were concluded the listed treaties would remain in force. The United Republic of Tanzania also agreed that the Agreement was effective 9 December 1963.[149]

13. *Uganda*

67. *General.* The Uganda legislature in 1964 enacted a new Extradition Act. Its operation is, with two exceptions, dependent on the conclusion of an arrangement with the country in question. The exceptions are, first, that the Act applies to those countries to which the Fugitive Offenders Act 1881, applied (i.e. Commonwealth countries) and, second, that the Act applies to countries with which an arrangement, in force immediately before the entry into force of the Act, was made under the previous legislation.[150] The Minister concerned can make a declaration under the Act listing these arrangements. This he has done (in accordance with a Cabinet decision), in a notice which declares that the arrangements listed with thirty-four countries are arrangements which are in force and to which the Act applies.[151] During the period (as extended) of the declaration which it made concerning its treaty rights and obligations, Uganda exchanged views with other interested States regarding the continued force of extradition treaties. It has been recorded that

> in general, extradition treaties were the most populary accepted treaties for outright acceptance of succession by the other

[140] See foot-note 41 above.
[141] *Moniteur Belge* of 27 January 1965, p. 847.
[142] *British and Foreign State Papers*, vol. 90, p. 51.
[143] United Nations, *Treaty Series*, vol. 676.
[144] See foot-note 43 above.
[145] This was that date on which the period fixed by the note of 9 December 1961 for reconsideration of treaties applying to Tanganyika expired.
[146] Switzerland. *Recueil officiel des lois et ordonnances de la Confédération Suisse*, 1968, vol. I, p. 169.
[147] See foot-note 29 above.
[148] See foot-note 145 above.
[149] United Nations, *Treaty Series*, vol. 592, p. 53.
[150] The Fugitive Criminals Surrender Ordinance, which gave effect in Uganda (which was a protectorate) to Orders made under the Imperial Extradition Acts and applying to Uganda. This Ordinance and the Acts (including that of 1881) are repealed by the 1964 Act.
[151] Extradition (Arrangements) (Enforcement) Instrument, 1966 (Statutory Instruments 1966 No. 103), and D. P. O'Connell, *State Succession., op. cit.*, p. 117.

parties. An exception was the Congo (Kinshasa) which asked for a draft of an entirely new treaty.[152]

68. *Netherlands-United Kingdom Treaty of 1898.*[153] The Netherlands, in a note of 30 September 1966, proposed that the relations between it and Uganda should, pending the conclusion of a new agreement, be governed by the Netherlands-United Kingdom Treaty of 26 September 1898, which had been extended to Uganda by a treaty of 17 August 1914. If this proposal were acceptable, the note and the Ugandan reply would constitute an agreement, entering into force on the date of the reply. This proposal was acceptable, and the agreement accordingly entered into force on 27 January 1967.[154]

69. *Switzerland-United Kingdom Treaty of 1880.*[155] By an exchange of notes of 14 January and 21 September 1965, Switzerland and Uganda agreed to maintain in force in their mutual relations with effect from 1 January 1965, the Switzerland-United Kingdom Treaty of 1880 (as amended by a Convention of 1904) which was applicable to the territory of Uganda by virtue of an exchange of notes of 1909, and the 1934 Convention, which also applied to the territory of Uganda. The Swiss Government noted that Uganda, following its independence, had first confirmed the Treaty's provisional operation until 31 December 1964.[156]

14. *Kenya*

70. *General.* The Kenya Extradition Act 1966, as originally enacted,[157] was, for present purposes, identical with the Ugandan Act; that is, it applied (*a*) to countries with which an agreement is made (and in respect of which an order is in effect); (*b*) to countries to which the Fugitive Offenders Act 1881 applied;[158] and (*c*) to countries to which the Fugitive Criminals Surrender Act applied immediately before the entry into force of the new Act.[159] At that time, the Fugitive Criminals Surrender Act applied, it seems, to forty-two countries.[160] At the end of 1967, no declaration had been made under the new Act listing the arrangements.[161]

71. *Netherlands-United Kingdom Treaty of 1898.*[162] In a note of 10 November 1967, the Netherlands proposed that the relations between Kenya and the Netherlands "shall, in conformity with their national legislation and pending the conclusion of a new treaty", be governed by this Treaty, which had been extended to Kenya by a Treaty of 17 August 1914.[163] If this proposal was acceptable, the agreement could enter into force when the Netherlands' constitutional requirements were satisfied. It was acceptable, and the agreement entered into force on 15 March 1968.[164]

72. *Switzerland-United Kingdom Treaty of 1880.*[165] By an exchange of notes of 19 May and 21 September 1965, Kenya and Switzerland agreed to maintain in force in their mutual relations the Swiss-United Kingdom Treaty of 1880, as amended by a Convention of 1904, which was applicable to Kenya by virtue of an exchange of letters of 1909, and the Additional Convention of 1934 which applied to the territory of Kenya. The Swiss Government has noted that, after independence, Kenya had first confirmed the Treaty's provisional operation until 12 December 1965.[166]

73. *United Kingdom-United States Treaty of 1931.*[167] In a note of 14 May 1965 to the United States, Kenya referred to this Treaty and stated

> that in the interest of continuity of treaty relations with the United States of America the Government of Kenya is willing to continue the application of the [Treaty] to the territory of the Republic of Kenya beyond the two-year period stipulated in Kenya's declaration to the United Nations Secretary-General[168] on the devolution of pre-independence treaty rights and obligations on Kenya ..., pending the negotiation of a new agreement on this subject....

An affirmative reply to the proposals would be regarded as constituting an agreement between the two countries.

74. In its reply of 19 August 1965, the United States confirmed that the Treaty "shall continue in force between the United States and the Republic of Kenya, pending the negotiation of a new agreement ...". The two notes constituted an agreement on the subject.[169]

15. *Malawi*

75. *General.* The operation of the Extradition Act, 1968, is dependent on the making of agreements with other countries for surrender. In addition, it provides that the three countries listed in a schedule to the Act are also

[152] I. A. Shearer, *loc. cit.*, (foot-note 107 above), p. 14. See also A. G. Mochi Onory, *La Succession d'Etats aux Traités* (1968), pp. 77, Nos. 30 and 122 (relating to Italy). As to the Democratic Republic of the Congo and Madagascar, see also paras. 100 and 107 below.

[153] See foot-note 142 above.

[154] United Nations, *Treaty Series*, vol. 608, p. 345.

[155] See foot-note 43 above.

[156] Switzerland, *Recueil officiel des lois et ordonnances de la Confédération Suisse*, 1966, vol. 2, p. 957.

[157] The only change since 1966 has been the enactment of the Extraction (Commonwealth Countries) Act. 1968.

[158] Now replaced by the Act referred to in the preceding foot-note.

[159] The 1966 Act also repealed the Imperial Extradition and Fugitive Offenders Acts and the Fugitive Criminals Surrender Act.

[160] See *Laws of Kenya* (revised edition, 1962), Cap. 77.

[161] D. P. O'Connell states that the Attorney-General advised that all extradition treaties should be continued (*State Succession ..., op. cit.*, p. 118).

[162] See foot-note 142 above.

[163] This was subject to the proviso that article XVIII (2) — relating to the procedure for requests in the case of colonial territories — was no longer applicable.

[164] United Nations, *Treaty Series*, vol. 645. See also *ibid.*, vol. 643 for a similar agreement relating to the judicial assistance convention of 1932.

[165] See foot-note 43 above.

[166] Switzerland, *Recueil officiel des lois et ordonnances de la Confédération Suisse*, 1966, vol. 2, p. 957. See also *ibid.*, p. 958, concerning a civil procedure convention.

[167] See foot-note 29 above.

[168] The period expired on 12 December 1965.

[169] United Nations, *Treaty Series*, vol. 574, p. 153.

subject to the Act. They are the United Kingdom, South Africa and Southern Rhodesia. The Act repeals the Fugitive Criminals Surrender Ordinance, the Extradition of Offenders (Republic of South Africa) Ordinance [170] and the Fugitive Offenders Act 1881.

76. *Federation of Rhodesia and Nyasaland-South Africa Treaty of 1962.*[171] In 1967, Malawi requested the extradition from South Africa of an alleged fugitive criminal. It based its request on the extradition treaty between South Africa and the Federation of Rhodesia and Nyasaland. The Federation had been dissolved in 1963, Malawi becoming independent in 1964. The South African Minister of Police and Prisons certified that the Government regarded South Africa as still bound by the treaty in relation to Malawi, notwithstanding the constitutional changes which that State had undergone. The Transvaal Provincial Division of the South African High Court agreed, and held, after noting the attitude and actions of the parties and the nature of the constitutional change, that the treaty was still in effect.[172]

77. *Netherlands-United Kingdom Treaty of 1898.*[173] The Netherlands, in a note of 21 November 1967 to Malawi, referred to the Extradition Treaty of 26 September 1898 between the Netherlands and the United Kingdom, which was extended to Nyasaland by a Treaty of 17 August 1914. The note proposed "that the relations between the two States shall, in conformity with the legislation of both countries, be governed by the provisions of the said Treaty . . ., pending the conclusion of a new extradition treaty between them". If this proposal were acceptable, the Netherlands proposed that its note and the Malawi reply constitute an agreement to that effect, which agreement would enter into force when the Netherlands advised that the formalities constitutionally required in the Netherlands had been complied with. On 28 June 1968, Malawi accepted the proposal. The exchange came into effect on 8 January 1969.[174]

78. *Switzerland-United Kingdom Treaty of 1880.*[175] By an exchange of notes of 6 January and 19 December 1967, Malawi and Switzerland agreed to maintain in force in their mutual relations, with effect from 6 January 1967, the Switzerland-United Kingdom Treaty of 1880, as amended by a Convention of 1904, which was applicable to the territory of Nyasaland by virtue of an exchange of notes of 1909, and the Additional Convention of 1934, which also applied to Nyasaland. The Swiss Government has noted that Malawi, after its accession to independence, had first confirmed the provisional continued maintenance in force of the instruments until 6 January 1967.[176]

79. *United Kingdom-United States Treaty of 1931.*[177] On 6 January 1967, Malawi, in a note to the United States, referred to this Treaty, "which was applied to the former territory of Nyasaland by the provisions of Article 16 and inherited by Malawi upon independence", and to two notifications to the United Nations by which Malawi had agreed to extend, on a reciprocal basis, all bilateral treaties which had been applied to Nyasaland until 6 January 1967, "on which date all such treaties lapse and terminate unless extended . . . by agreement". The note went on to propose that the Treaty

> shall continue in force as between the [two] Governments . . . on a reciprocal basis, that this Treaty shall be interpreted and applied in all respects as if originally concluded between the Governments of Malawi and the United States of America, and that this Treaty shall remain in force until a new agreement on extradition is concluded between the two Governments.

If this proposal was acceptable, the Malawi note and the United States reply would constitute on agreement on the matter.

80. In its reply of 4 April 1967, the United States concurred in the proposal that the Extradition Treaty, *inter alia*, "be considered as having continued in force between our two Governments".[178]

16. *Malta*

81. *Italy-United Kingdom Treaty of 1873.*[179] Malta, on 3 March 1967, declared that it remained bound by this Treaty.[180]

82. *United Kingdom-United States Treaty of 1931.*[181] This treaty is listed under Malta in United States, *Treaties in Force*, which also reproduces the terms of the exchange of letters between Malta and the United Kingdom concerning Malta's treaty rights and obligations.[182]

17. *Zambia*

83. *General.* A new Extradition Act, which repealed the Extradition and Fugitive Offenders Ordinance, the

[170] Enacted to enable effect to be given to an agreement between the Federation of Rhodesia and Nyasaland and the Republic of South Africa.

[171] United Nations, *Treaty Series*, vol. 458, p. 59.

[172] *S. v. Bull.*, 1967 (2) S.A. 636 (T), noted by C. J. R. Dugard in "Succession to Federal Treaties Revisited" in the *South African Law Journal*, vol. 84, part III (1967), p. 250. Cf. *S. v. Eliasov*, 1965 (2) S.A. 770 (T), where it was held that the same Treaty was not in force between Southern Rhodesia and South Africa; see also para. 132 below.

[173] See foot-note 142 above.

[174] United Nations, *Treaty Series*, vol. 668.

[175] See foot-note 43 above.

[176] Switzerland. *Recueil officiel des lois et ordonnances de la Confédération Suisse*, 1968, vol. 1, p. 168.

[177] See foot-note 29 above.

[178] United States, *United States, Treaties and other International Agreements* 6328, vol. 18, part 2, p. 1822.

[179] See foot-note 85 above.

[180] M. Giuliano, F. Lanfranchi and T. Sieves, *op. cit.*, p. 299; A. G. Mochi Onory, *op. cit.*, p. 123, note 107.

[181] See foot-note 29 above.

[182] United States, *Treaties in Force* (1970), pp. 150 and 151. For the exchange of letters, see also United Nations *Treaty Series*, vol. 525, p. 221; and United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 176.

Fugitive Offenders Act 1881[183] and the Extradition Acts 1870 to 1906 in their application to Zambia,[184] was enacted on 17 October 1968. As at the end of 1968, its main provisions had not entered into force. The Act is dependent for its operation, so far as extradition to non-Commonwealth countries is concerned, on the making of an order which in turn requires the existence either of an extradition agreement "to which the Republic is a party" or of reciprocal facilities in the other country for surrender.[185] No such orders were made before the end of 1968.

84. *Federation of Rhodesia and Nyasaland-South Africa Treaty of 1962.*[186] According to one writer,[187] Zambia, after independence, expressly terminated this Treaty in its relations with South Africa.

85. *France-United Kingdom Treaty of 1876.*[188] Zambia has adopted a general position favouring the continuity of treaty rights and obligations.[189] But France has, it seems, been reluctant to acknowledge that the above Treaty continues to govern its relations with Zambia.[190]

86. *United Kingdom-United States Treaty of 1931.*[191] On the other hand, the United States District Court for the District of Columbia, at the request of Zambia, on 29 March 1966, in the case of the extradition of Zwagendaba Jere, upheld the continued application to Zambia of the 1931 Treaty between the United Kingdom and the United States.[192] The Treaty is also listed under "Zambia" in United States series, *Treaties in Force*.[193]

[183] See also the Fugitive Offenders (Interim Provisions) Act 1966 and the Presidential instrument issued thereunder (Statutory Instrument 371/66), suspending the operation of the Act in relation to Southern Rhodesia. It will also be repealed by the new Act.

[184] It appears that Orders-in-Council in respect of 43 countries are in force in Zambia under the legislation which is to be repealed (see Ch. 10 of the *Laws of Zambia*, 1965 revised edition). It is not clear whether the Orders-in-Council and gazette notices implementing the treaties would remain in effect after the repeal; see the Interpretation and General Provisions Ordinance (ch. 1 of the 1965 revised laws), s. 15 of which provides that "statutory instruments" made under repealed Acts remain in effect if not inconsistent with the repealing Act, but it is not clear whether the relevant instruments are "statutory instruments" as defined.

[185] An order is also required in respect of Commonwealth countries, but the Act does not expressly make the existence of an agreement or reciprocity a condition for the issue of the order.

[186] See also with regard to this Treaty para. 76 above and paras. 132 and 133 below.

[187] D. P. O'Connell, *State Succession . . ., op. cit.*, p. 177. Cf. C. J. R. Dugard, *loc. cit.* (foot-note 172 above), p. 253.

[188] See foot-note 97 above.

[189] See its note of 1 September 1965 to the Secretary-General of the United Nations.

[190] D. Bardonnet, *loc. cit.*, (see foot-note 114 above) p. 676, note 304.

[191] See foot-note 29 above.

[192] D. P. O'Connell, *State Succession . . ., op. cit.*, p. 115; International Law Association, *Interim Report of the Committee on the Succession of New States . . .* (1968), p. 33; Rosenne, "Succession of States and the Codification of the Law of Treaties", in *Revista Espanola de Derecho Internacional*, vol. XXI, No. 1 (January-March 1968), pp. 416-429.

[193] United States, *Treaties in Force* (1970), p. 255.

18. *Singapore*

87. *General.* On 30 May 1968, Singapore enacted a new Extradition Act.[194] It provides for extradition, *inter alia*, to foreign States[195] in respect of which an Order in Council, applicable to Singapore, was in force under the Imperial Extradition Acts 1870 to 1935[196] immediately before the coming into force of the Act. Moreover, "extradition treaty" is interpreted, for the purposes of the Act, as including an extradition treaty made before 9 August 1965 which extends to, and is binding on, Singapore. Generally, extradition to non-Commonwealth countries is dependent on the existence of a treaty.

88. *Italy-United Kingdom Treaty of 1873.*[197] The Italian Ministry of Foreign Affairs considers that this Treaty is in force with Singapore, since the Constitution of that State stipulates that agreements concluded by the United Kingdom and applicable to Singapore are to remain in force.[198]

89. *United Kingdom-United States Treaty of 1931.*[199] In a note of 23 April 1969 to the United States, Singapore stated that under the Extradition Act "it is in effect provided that the United States is a foreign State to which . . . the Act applies subject to such conditions as may be contained in the [above] Treaty . . .". The note went on to point out that since extradition must necessarily work on the basis of reciprocity and in view of the changed constitutional position of Singapore to that of sovereign independent State, it was necessary to have confirmation from the United States Government that the Treaty "still continued to be binding on our two countries, subject to such necessary formal amendments". On 10 June 1969, the United States replied that "the Government of the United States considers the Treaty . . . to be in full force and effect between the United States and the Republic of Singapore."[200]

19. *Botswana*

90. *General.* The Botswana Parliament enacted a new Extradition Act on 6 September 1968, replacing the Fugitive Offenders Act 1881 (other than Part II, which regulates rendition to neighbouring Commonwealth countries) and the Fugitive Criminals Surrender Proclamations which had given effect to the Imperial Extradition Acts and Orders. Extradition is dependent on the application of the Act to the country requesting extradition. The Act applies (*a*) to countries in respect of which the

[194] Republic of Singapore, *Government Gazette*, No. 13, 1968, Act. No. 14 of 1968.

[195] Special provisions are made for extradition within the Commonwealth and to and from Malaysia.

[196] These Acts and the Fugitive Offenders Act 1881, in so far as they apply to and operate as part of the law of Singapore, are repealed.

[197] See foot-note 85 above.

[198] M. Giuliano, F. Lanfranchi and J. Treves, *op. cit.*, p. 399.

[199] See foot-note 29 above.

[200] United States, *Treaties and other International Acts Series* 6744. The Treaty had previously been listed in United States, *Treaties in Force* (1969), pp. 195 and 196, along with the constitutional provisions concerning Singapore's succession to treaties.

Minister, having regard to reciprocal provisions under the law of that country, makes an order, (*b*) to all Commonwealth countries, and (*c*) to countries with which an extradition arrangement has been made and in respect of which an order is made. No express provision is made for keeping the earlier Orders-in-Council in force.

91. *United Kingdom-United States Treaty of 1931.*[201] Botswana, on 30 September 1966, addressed a note to the United States reading as follows:

> The Government of Botswana, wishing to maintain existing legal relationships in conformity with international law, desires to continue to apply, on a basis of reciprocity, within its territory the terms of the following treaties and agreements between the United States of America and the United Kingdom of Great Britain and of Northern Ireland for a period of 24 months from the date of independence of Botswana [30 September 1966].
>
> ...
>
> Treaty Concerning Extradition (... 1931)
>
> ...
>
> 2. For this stipulated period, it is proposed that the treaties listed be considered as continuing in force between the Government of the United States of America and the Government of Botswana until terminated in accordance with their provisions or until replaced.

The United States reply of the same date stated that it concurred in the proposal and considered the treaties and agreements as continuing in force as proposed in the Botswana note.[202]

20. *Lesotho*

92. *United Kingdom-United States Treaty of 1931.*[203] On 4 October 1966, Lesotho, in a note to the United States, stated that it was

> desirous of continuing to apply within its territory on a basis of reciprocity the terms of the following agreement for a period of twelve months from the date of Lesotho's independence [4 October 1966]:
>
> ...
>
> 3. Extradition Treaty
>
> ...

It accordingly proposed that the treaties be considered as continuing in force for that period unless terminated in accordance with their provisions or replaced by mutual agreement. The United States, in a note of the same date, concurred in the proposal and stated that it would consider the treaties as continuing in force during the twelve month period.[204]

93. In a note of 5 October 1967, the United States referred to the above agreement and to a note from Lesotho to the Secretary-General concerning Lesotho's treaty rights and obligations,[205] and advised Lesotho that the Government of the United States of America "understands that the agreements referred to in the Agreement of October 4, 1966, shall, in view of the note of March 22, 1967, continue in force until October 4, 1968, unless terminated earlier in accordance with their provisions or unless replaced by mutual agreement". In its reply of 26 October 1967, Lesotho confirmed the above understanding.[206]

21. *Swaziland*

94. *General.* A new Extradition Act came into effect on 9 August 1968, less than a month before independence.[207] The Act is dependent for its operation on the existence of an agreement between the Government of Swaziland and another State, but it is further provided that any extradition arrangement made between the United Kingdom and another State in respect of which the former Swaziland legislation[208] applied and which was in force at the entry into force of the Act shall be deemed to be such an agreement, to which the Act will apply without further notice. The Swaziland Independence Order[209] provided for the general continuance of pre-independence legislation.[210]

95. *South Africa-Swaziland Agreement of 1968.*[211] This

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[201] See foot-note 29 above.

[202] United Nations Treaty registration No. 9682. "An extension of this agreement was under negotiation as of January 1, 1969" (United States, *Treaties in Force* (1969) p. 20, note 1). It should be added that on 6 October 1966 the Government of Botswana, in a note to the Secretary-General of the United Nations, stated, *inter alia*, that

> "2. As regards bilateral treaties validly concluded by the Government of the United Kingdom on behalf of the former Bechuanaland Protectorate, or validly applied or extended by the said Government to the territory of the former Bechuanaland Protectorate, the Government of Botswana is willing to continue to apply within its territory, on a basis of reciprocity, the terms of all such treaties for a period of twenty-four months from the date of independence (i.e., until October 1, 1968), unless abrogated or modified earlier by mutual consent. At the expiry of that period, the Government of Botswana will regard such of these treaties [as] could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated."

[203] See foot-note 29 above.

[204] United Nations Treaty registration No. 9684.

[205] This note, dated 22 March 1967, stated, *inter alia*, that Lesotho was "willing to continue to apply, within its territory, on a basis of reciprocity, the terms of all [bilateral] treaties [validly concluded on behalf of Basutoland or validly applied or extended to Basutoland] for a period of twenty-four months from the date of independence (i.e., until October 4. 1968), unless abrogated or modified earlier by mutual consent. At the expiry of that period, the Government of Lesotho will regard such of these treaties [as] could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated."

[206] United States, *United States Treaties and Other International Agreements*, 6383, vol. 18, part 3, p. 2923. An extension of the 1966 agreement was under negotiation as at 1 January 1970 (see United States, *Treaties in Force* (1970), p. 140, note 1).

[207] Act No. 13 of 1968 (*Swaziland Government Gazette*, vol. VI, 9 August 1968, part B, suppl. p. S 18.

[208] The Fugitive Criminals Surrender Proclamation (Cap. 37), in *The Laws of Swaziland* (revised edition 1959), vol. 2, which is in all other respects repealed.

[209] United Kingdom, *Statutory Instruments*, 1968, Part II, sect. 2, No. 1377, p. 3838.

[210] So far as extradition within the Commonwealth is concerned, see the Fugitive Offenders (Commonwealth) Bill, in *Swaziland Government Gazette*, vol. VI, 29 November 1968, part A. Bill No. 46 of 1968, p. S.1.

[211] *Ibid.*, vol. VI, 13 September 1968, part C, Legal Notice No. 51 of 1968, p. S 27.

Agreement was signed by the Government of the Kingdom of Swaziland, acting with the authority and consent of the Government of the United Kingdom, one day before Swaziland became independent. By its terms, it entered into force on 5 October 1968 and can be terminated on six month's notice.

96. *United Kingdom-United States Treaty of 1931.*[212] This Treaty is listed under Swaziland in United States, *Treaties in Force*, which also reproduces part of a Swaziland note dated 22 October 1968 to the Secretary-General of the United Nations concerning Swaziland's treaty rights and obligations.[213]

22. *Barbados, Burma, Gambia, Guyana, Jamaica, Mauritius and Trinidad and Tobago*

97. *United Kingdom-United States Treaty of 1931.* This treaty is listed under each of the above States in United States, *Treaties in Force*.[214] This list also reproduces in each case the relevant provisions of either the devolution arrangements concluded by the new State (Burma, Gambia, Jamaica and Trinidad and Tobago)[215] or the statement made by the new State to the Secretary-General of the United Nations concerning its treaty rights and obligations (Barbados, Guyana and Mauritius). In addition, in the case of Gambia, it is noted that

> The Government of the United States of America has taken cognizance of this exchange of notes between the Government of Gambia and the Government of the United Kingdom and is currently reviewing its own position on this matter.

The foreword to *Treaties in Force* states that

> In the case of new countries, the absence of a listing for the country or the absence of any particular treaty should not be regarded as an absolute determination that a certain treaty or certain treaties are not in force.

(*b*) Former non-metropolitan territories for the international relations of which France was responsible

23. *Lebanon*

98. *Syria and Lebanon-Palestine Provisional Agreement of 1921.*[216] In 1947, Lebanon invoked the Provisional Agreement signed in 1921, i.e. when all three territories were subject to the Mandates System. The Palestine Government assented to the extradition, and argued that the Agreement remained in force, notwithstanding Lebanon's change of status. The Palestine Supreme Court, sitting as a High Court, agreed that the Agreement was still in force.[217]

24. *Tunisia*

99. *France-United Kingdom Treaty of 1876.*[218]

In 1959 [the United Kingdom] Government informed the Tunisian Government that they considered the 1889 treaty [between France and the United Kingdom extending the 1876 Extradition Treaty[219] to Tunis] and the 1909 supplementary treaty[220] to be still binding on the ground that [Tunisia] was formerly a protectorate and therefore enjoyed a separate international personality.

The Tunisian Government replied in a Note dated 22 May 1959 that it did not consider itself bound by the treaties. Her Majesty's Government therefore informed [Tunisia] that they were treating the Tunisian Note as notice of termination of the agreement and waiving the requirement of six months' notice to terminate.[221]

25. *Madagascar*

100. *France-United Kingdom Treaty of 1876.*[222] In 1965, Uganda claimed that the treaty of 1876 between France and the United Kingdom (as amended in 1896 and 1908) applied to the relations between Malagasy and Uganda.[223] The result of this approach is not recorded but a commentator says that, in the light of the position adopted by Madagascar relevant to the treaty between France and the United States and discussed below,

> it seems clear that the Malagasy position is already established and that the Malagasy Republic will not in any event agree to the continuance of the France-United Kingdom extradition convention.[224]

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[212] See foot-note 29 above.

[213] United States, *Treaties in Force* (1970), pp. 210 and 209.

[214] *Ibid.*, pp. 14, 28, 84, 99, 126, 152 and 220. See similarly paras. 27, 34, 39, 49, 51, 54, 59, 82, 86, 90 and 96 above. The Treaty is also listed under "Nauru", which also made a statement concerning its treaty rights and obligations (*ibid.*, p. 159). M. M. Whiteman, in her *Digest of International Law*, vol. 6 (February 1968), p. 764, states that "in view of their assumption, on gaining independence, of the rights and obligations of agreements between the United Kingdom and third States the Extradition Treaty of 1931 ... is considered by the United States as constituting an extradition treaty in force between the United States" and twenty-three named Commonwealth countries.

[215] The arrangements are also to be found in: (Burma) United Nations, *Treaty Series*, vol. 70, p. 183; and United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 163; (Gambia) International Law Association, *loc cit.* (see foot-note 192); (Jamaica) United Nations, *Treaty Series*, vol. 457, p. 117, and *Materials on Succession of States* (*op. cit.*), p. 172; and (Trinidad and Tobago) United Nations, *Treaty Series*, vol. 457, p. 123; and *Materials on Succession of States* (*op. cit.*), p. 174.

[216] The Agreement was signed by the High Commissioner of the French Republic for Syria and the Lebanon and by the High Commissioner of His Britannic Majesty for Palestine. For the text (as amended in 1933), see Robert H. Drayton (ed.), *Laws of Palestine 1933*, vol. 1, p. 687. See also *ibid.*, p. 689, and League of Nations, *Treaty Series*, vol. XXXVI, p. 343, for a similar provisional agreement with Egypt.

[217] *Shehadeh and others*, v. *Commissioner of Prisons, Jerusalem* (1947), in *International Law Reports*, vol. 14, p. 42; and *Yearbook of the International Law Commission, 1963*, vol. II, p. 113, document A/CN.4/157, paras. 157 and 158.

[218] *British and Foreign State Papers*, vol. 81, p. 55.

[219] See foot-note 97 above.

[220] *British and Foreign State Papers*, vol. 102, p. 87.

[221] United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 184.

[222] See foot note 97 above.

[223] This was one of a set of inquires by Uganda, wich had decided to keep in force all extradition treaties. See para 67 above.

[224] See D. Bardonnet, *loc. cit.* foot note 114 above, pp. 678 and 679.

101. *France-United States Treaty of 1909.*[225] Following the attainment of its independence, Madagascar denied that this Treaty continued to bind it.[226] In reply to a United States inquiry,[227] it said that

> in general there is no uniform practice with regard to the future of extradition treaties in the event of a change which affects the territory of the contracting States, although the termination of the former conventional relationship seems to be the solution most frequently applied ... More particularly, it appears that the established tendency of the United States is not habitually to regard the treaties concluded by it with States which have undergone territorial changes as legally in force with regard to new States.

Accordingly, there was no need to give the assurance which the United States sought.

102. The United States, in its response, drew attention to the following position adopted by Madagascar on 4 December 1962 in a note to the United States:

> No official act specifies, in the agreements with the French Republic, the juridical position of the Malagasy Republic with regard to the rights and obligations contracted for Madagascar in the treaties, agreements, and conventions signed by France prior to Madagascar's accession to international sovereignty. In accordance with usage, the Malagasy Republic considers itself implicitly bound by such texts unless it explicitly denounces them. The Ministry of Foreign Affairs informs the Embassy of the United States of America that, in order to avoid any ambiguity, the Malagasy Republic transmits, as soon as it is in a position to reach an affirmative decision on each of the texts in question, a formal declaration in which it declares itself bound by the Treaty, the Agreement or the Convention under consideration.[228]

It drew from it the following conclusion:

> The Government of the United States has taken the view that the France-United States agreements on extradition remain valid between the United States and the Malagasy Republic.

The Madagascar Government, however, confirmed its refusal to be bound by the Treaty, stating again the views set out above and adding that, on the practical level, the procedures envisaged by the Treaty would cause serious difficulties, and would have to be adapted to the new conditions resulting from independence. At the same time, Madagascar renewed its suggestion that a new treaty, based on that of 1909 as modified, should be negotiated.[229]

[225] United States, *Treaty Series*, No. 561.

[226] See D. Bardonnet, *loc. cit.* (foot-note 114 above), pp. 671-679, on which the following account is based.

[227] The United States inquiry arose in part from its attempt to get assurances from those States with which it had extradition treaties that they would not attempt to effect the extradition of persons who were in the United States in response to a United Nations invitation. See *Official Records of the General Assembly, Eighteenth Session, Fourth Committee*, 1475th meeting, paras. 2-5 (the United States' statement is reproduced in full in *American Journal of International Law*, vol. 58, p. 457); and *United Nations Juridical Yearbook, 1963*, (United Nations publication, Sales No.: 65.V.3), p. 164.

[228] See D. Bardonnet, *loc. cit.* (foot-note 114 above), pp. 653 nd 654; in English translation in United States, *Treaties in Force* (1970), p. 147.

[229] United States, *Treaties in Force* (1963), (1964) and (1965) listed the extradition treaty (and quoted the note of 4 December 1962) under "Madagascar". The 1966 list excludes it.

26. *Ivory Coast*

103. *France-United States Treaty of 1909.*[230]

The Director of Political Affairs in the Ministry of Foreign Affairs of the Ivory Coast officially stated that "France and the Ivory Coast had agreed that the Ivory Coast would assume all the rights and obligations of treaties made applicable to the Ivory Coast prior to its independence", and that "it was also agreed that the Ivory Coast would formally associate or dissociate itself from these commitments as soon as possible thereafter". Later, however, with regard to the question of extradition, the Ministry of Foreign Affairs stated: "Despite the fact that there is almost undoubtedly a Franco-American extradition treaty, which probably included the former territories of AOF within its terms, the GOIC would not feel bound by that treaty and desires that such matters be raised *de novo* ...".[231]

27. *Congo (People's Republic of the)*

104. *France-United States Treaty of 1909.*[232] The United States lists this treaty (as amended) under "Congo ((Brazzaville)" in *Treaties in Force.*[233] Also listed is a Congolese-United States exchange of notes in which the Congolese Ministry of Foreign Affairs stated:

> In accordance with the practices of international law and because of the circumstances under which the Republic of the Congo attained international sovereignty, the latter considers itself to be a party to the treaties and agreements signed prior to its independence by the French Republic and extended by the latter to its former overseas territories, provided that such treaties or agreements have not been expressly denounced by it or tacitly abrogated by a text replacing them.[234]

(*c*) Former non-metropolitan territory for the international relations of which the Netherlands was responsible

28. *Indonesia*

105. *Netherlands-United Kingdom Treaty of 1898.*[235] Indonesia applied in February 1950 for the extradition of Westerling from Singapore. It stated then and later in 1950 that it assumed the rights and obligations of the Netherlands Government under the Extradition Treaty between the Netherlands and the United Kingdom of 1898.[236] The British Government also stated that

> the Republic of the United States of Indonesia has succeeded to the rights and obligations of the Kingdom of the Netherlands under the ... Treaty ... in respect of Indonesia and that the

[230] See foot-note 225 above.

[231] M. M. Whiteman, *Digest of International Law*, vol. 2 (1963), p. 983. No extradition treaty is listed in United States, *Treaties in Force* (1970), p. 125.

[232] See foot-note 225 above.

[233] (1970), p. 55.

[234] United States, *United States Treaties and other International Agreements*, 5161, vol. 13, part 2, p. 2065.

[235] See foot-note 142 above.

[236] United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), pp. 185 and 186. Compare Indonesia's later general attitude, *ibid.* and p. 37.

said Treaty now applies between her Majesty's Government in the United Kingdom and the Republic of the United States of Indonesia.

The High Court of the Colony of Singapore accepted this statement as conclusive, but held that the domestic legislation relevant to the Treaty was ineffective to apply the Treaty to Indonesia and accordingly stayed the extradition proceedings.[237]

106. *Netherlands-United States Convention of 1887.*[238] United States, *Treaties in Force* (which reproduces the provision of the Round Table Agreement relating to the devolution of Netherlands treaty obligations to Indonesia) states that the above convention as extended is "deemed to be in force between the United States and Indonesia."[239]

(*d*) Former non-metropolitan territory for the international relations of which Belgium was responsible

29. *Congo (Democratic Republic of)*

107. *Independent State of the Congo-Liberia Treaty of 1894.*[240] In June 1966, Liberia, requested the extradition of one Sabbe from the Democratic Republic of the Congo, basing its request on the Treaty of 21 November 1894 between itself and the Independent State of the Congo. The claim was recognized as competent by the Foreign Ministry of the Democratic Republic of the Congo.[241]

B. Cases other than cases of independence of former non-metropolitan territories

1. *Secession of Finland, 1917*

108. *Russia-Sweden Treaty of 1860.* In an exchange of notes on 11 November 1919, Finland and Sweden declared that thirteen listed treaties concluded between Sweden and Russia "shall, after the separation of Finland from Russia, be deemed to have been valid and to continue to be valid as between Sweden and Finland . . ."[242] Among the treaties was a Convention regarding the reciprocal surrender of vagrants of 1860.[243]

109. *Russia-United Kingdom treaties.* When the Republic of Finland was established in 1917, the United Kingdom Government took the following position:

> [In reply to your inquiry] whether former treaties with Russia can be held to be in force between His Majesty's Government and the Finnish Government, I am advised that in the case of a new State being formed out of part of an old State there is no succession by the new State to the treaties of the old one, though the obligations of the old State in relation to such matters as the navigation of rivers, which are in the nature of servitudes, would normally pass to the new State. Consequently there are no treaties in existence between Finland and this country.[244]

Accordingly, the United Kingdom and Finland negotiated and concluded new treaties relating, *inter alia*, to extradition.[245] Denmark, Norway, Sweden and the United States also negotiated extradition treaties with Finland;[246] they apparently did not consider that their extradition treaties with Russia [247] applied to Finland.

2. *Association of Iceland with Denmark in a real union, 1918; dissolution of the union, 1944*

110. *General.* In 1918, Iceland ceased to be an integral part of Denmark, and became associated with it in a real union. In 1944, the union was dissolved. The 1918 law provided that treaties between Denmark and other States which affected Iceland would continue to bind it.[248] This position seems to have been accepted in 1918 and 1944 both generally and so far as extradition treaties were concerned.[249]

111. Thus, a list published by the Icelandic Foreign Ministry of its treaties in force as at 31 December 1964 [250] includes extradition treaties which were concluded by Denmark before 1914 with Belgium, France, Germany (listed under "Federal Republic of Germany"), Italy, Luxembourg, Netherlands, Norway, Spain, the United Kingdom (also listed under Australia, Canada, Ceylon, India and New Zealand)[251] and the United States. In

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[237] *Re Westerling* (1950), Malayan Law Reports, vol. 1, p. 228; *International Law Reports*, vol. 17, p. 82; United Nations Legislative Series, *Materials on Succession of States* (United Nations publication, Sales No.: E/F.68.V.5), p. 194 and *Yearbook of the International Law Commission, 1963*, vol. II, pp. 107 and 108, document A/CN.4/157, paras. 107-111.

[238] Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers*, vol. II, p. 1266. For the treaty of 1904 extending the convention, *ibid.*, p. 1271.

[239] United States, *Treaties in Force* (1970), p. 111. For the Round Table Agreement, see also United Nations, *Treaty Series*, vol. 69, p. 200; United Nations Legislative Series, *Materials on Succession of States*, (United Nations publication, Sales No.: E/F.68.V.5.), p. 34.

[240] *British and Foreign State Papers*, vol. 85, p. 561. Belgium, on acquiring sovereignty over the Independent State of the Congo, agreed to recognize the treaties concluded by it.

[241] In A. Shearer, *loc. cit.*, foot-note 107 above, pp. 14 and 15, 45-57 (judgment of Cour d'Appel of Leopoldville of 8 February 1966); International Law Association, *loc. cit.* (see foot-note 192) (1968), p. 33. There is some confusion about the final stage of this case: Shearer states that the Court, *inter alia*, on the basis of the Treaty, ordered extradition (see also D. P. O'Connell, *State Succession . . . op. cit.*, p. 140), but the judgment reproduced by Shearer rejects the request on the ground of insufficiency of evidence.

[242] *British and Foreign State Papers*, vol. 112, p. 1023.

[243] *Ibid.*, vol. 53, p. 958.

[244] A. D. McNair, *The Law of Treaties* (1961), p. 605.

[245] *Ibid.*, and League of Nations, *Treaty Series*, vol. XXXIV, p. 79.

[246] League of Nations, *Treaty Series*, vol. XVIII, p. 33; vol. XLIII, p. 381; vol. XXIII, p. 33; and vol. XXXIV, p. 103.

[247] Denmark, 1866, *British and Foreign State Papers*, vol. 58, p. 767; Sweden and Norway, 1860, *ibid.*, vol. 53, p. 958; and United States, 1887, *ibid.*, vol. 78, p. 1037.

[248] G. F. de Martens, ed., *Nouveau Recueil général de traités*, 3rd series, vol. XII, p. 3.

[249] D. P. O'Connell *State Succession . . ., op. cit.*, pp. 111 and 112.

[250] *Stjórnartidindi C 2-1964*, pp. 86-123.

[251] See also the supplementary Conventions signed in 1937 and 1938. Australia and New Zealand acceded separately to the latter (League of Nations, *Treaty Series*, vol. CXCVIII, p. 147).

each case, it is also indicated that the other listed countries consider that the treaty is in force.[252]

3. *Peace settlement following the First World War, 1919*

(*a*) *Austria and Hungary*

112. *General.* Article 241 of the Treaty of Saint-Germain and article 224 of the Treaty of Trianon provided that

> Each of the Allied and Associated Powers ... shall notify to Austria [Hungary] the bilateral agreements of all kinds which were in force between [it] and the former Austrian-Hungarian Monarchy, and which [it], wishes should be in force between [it] and Austria [Hungary].

Only those treaties so notified would be in effect between the Allied and Associated Powers and Austria and Hungary.[253] So far as bilateral treaties concluded by Austria-Hungary with other States are concerned, Austria seems to have taken a generally negative view of the question of succession or continuity, Hungary a more positive one.[254]

113. *Austria/Hungary-Bulgaria Treaty of 1911.*[255] Thus, in notes which, *mutatis mutandis*, were identical, the Bulgarian and Hungarian Governments on 17 May 1929 agreed with one another's view that this Extradition Treaty was "in force between" Bulgaria and Hungary.[256]

114. *Austria/Hungary-Netherlands Treaty of 1880.* It has been said that the Netherlands rejected the Austrian argument that it was a new State, but, while not resolving this difference, the two States seem to have agreed that pre-1918 treaties should remain in effect.[257] Thus, a convention of 1 December 1921,[258] which entered into force on 4 January 1922, the day following its ratification, contains the following passage in its preamble:

> Her Majesty the Queen of the Netherlands and the President of the Austrian Republic, being anxious to obtain the application of the treaty for the extradition of criminals concluded on 24 November, 1880, between the Netherlands and the former Austro-Hungarian Monarchy, pending the conclusion of a new treaty between their two countries for the extradition of criminals ...

and article 1 provided that

> the treaty for the extradition of criminals ... [of 1880] shall be applied by the High Contracting Parties.

115. *Austria/Hungary-Sweden and Norway Treaty of 1873.* The Swedish collection of treaties published in 1927 includes the above Treaty under "Hungary", but not under "Austria".[259] It also reproduces the following statement made in 1922 by the Hungarian Government:

> Hungary, from the point of view of Hungarian constitutional law, is identical with the former Kingdom of Hungary, which during the period of dualism formed, with Austria, the other constituent part of the former Austro-Hungarian monarchy. Consequently, the dissolution of the monarchy, that is, the termination of the constitutional link as such between Austria and Hungary, has not altered the force of the treaties and conventions which were in force in the Kingdom of Hungary during the period of dualism.[260]

116. *Austria/Hungary-Switzerland Treaty of 1896.* The Swiss collection of treaties includes this 1896 Extradition Treaty under both "Austria" and "Hungary".[261] The collection records that the 1873 Treaty remains in effect for Hungary, according to an exchange of notes of 15 January 1921.[262] In the case of Austria, the two States,

> both anxious to obtain the application between Switzerland and the Republic of Austria of the treaties concluded between Switzerland and the former Austro-Hungarian Monarchy concerning the regulation of conditions for establishment, the reciprocal extradition of criminals and the legalization of public acts,

concluded a treaty, which entered into force on 7 March 1926, and article 1 of which read:

> The treaties concluded between Switzerland and the former Austro-Hungarian Monarchy on 7 December 1875 concerning the regulation of conditions for establishment, on 10 March 1896 concerning the reciprocal extradition of criminals, and on 21 August 1916 concerning the legalization of public acts drawn up by the Swiss or Austrian authorities shall be applied by the contracting parties.[263]

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[252] *Stjórnartidindi C 2-1964*, pp. 95, 99, 107, 101, 102, 100, 103, 105, 96, 92, 102, 97 and 98, 100, 103, and 93. Sierra Leone and Uganda have also indicated that they consider the relevant treaty still to be in force between them and Iceland (see paras. 58 and 67 above).

[253] For the United States, see its Treaty of 24 August 1921 with Austria in United States, *Treaty Series*, No. 659, and its Treaty with Hungary in United States, *Treaty Series*, No. 660.

[254] As to Austria, see, e.g., Ch. Rousseau, *Droit international public* (1953), p. 283 and Udina, "*La Succession d'Etats quant aux obligations internationales autres que les dettes publiques*", in Académie de droit international de la Haye, *Recueil des Cours*, (1933), II, t. 44, pp. 665 and 687; as to Hungary, see particularly the statement in para. 115 below.

[255] *British and Foreign State Papers*, vol. 104, p. 720.

[256] League of Nations, *Treaty Series*, vol. XCII, p. 197.

[257] R. W. de Muralt, *The Problem of State Succession with Regard to Treaties* (1954), pp. 89 and 90.

[258] League of Nations, *Treaty Series*, vol. IX, p. 167.

[259] Comte Sten Lewenhaupt, *Recueil des traités, conventions et autres actes diplomatiques de la Suède entièrement ou partiellement en vigueur au 1er janvier 1926*, vol. II, p. 562. It does include, under "Austria", a treaty of commerce and navigation of 1873, but see the exchange of notes with Austria of 1924: *ibid.*, pp. 87 and 93.

[260] *Ibid.*, p. 559, note *.

[261] Switzerland, *Recueil systématique des lois et ordonnances 1848-1947*, vol. XII, pp. 72 and 175.

[262] *Ibid.*, vol. XII, p. 72, note 1 referring to *Feuille fédérale 1921*, vol. 1, p. 215.

[263] *Ibid.*, vol. II, p. 575; see also item (*f*) in para. 1 of the exchange of notes of 6 March 1926, *ibid.*, p. 577. Note also that the Supreme Court of Germany held in 1932 that a resolution of the Assembly of the German Confederation of 26 January 1854 relating to extradition from Austria to Prussia was not affected by the fundamental territorial and constitutional changes to which Austria was subjected in 1918 and 1919. See *Continuing Validity of Resolution of German Confederation Case. Fontes Iuris Gentium*, A. II, vol. 2, No. 62; and *Yearbook of the International Law Commission, 1963*, vol. II, p. 112, document A/CN.4/157, para. 143. See similarly a Swiss decision relating to the Hague Convention on Civil Procedure 1905, *In Re Ungarische Kriegsprodukten — Aktiengesellschaft* (1920), in *Annual Digest of Public International Law Cases*, vol. 1, p. 72, and *Yearbook of the International Law Commission, 1963*, vol. II, p. 107, document A/CN.4/157, para. 100.

(b) *Czechoslovakia and Poland*

117. *General.* The Treaties concluded after the First World War between the Allied and Associated Powers and Poland,[264] and Czechoslovakia[265] contain no preambular provisions stressing the continuity or revival of bilateral treaties previously in force for the territories constituting the new States.[266] On the other hand, Poland and Czechoslovakia expressly undertook "to adhere" to several multilateral conventions, some at least of which would have applied to their constituent territories.

118. This suggestion of non-continuity is largely supported by practice.[267] The Swiss Department of Justice in 1921 advised a Swiss Court that Czechoslovakia refused to be regarded as the successor of the former Austria and held that it was not party to treaties entered into by Austria-Hungary.[268] The negotiations between Czechoslovakia and the United States for an extradition treaty in 1922-1925 appear to have proceeded on the footing that there was no treaty in force between them.[269] The United States also apparently did not consider that Poland was bound by the extradition treaties previously applicable to its territory.[270] Sweden and Switzerland concluded extradition treaties in 1930 and 1937 with Poland; again, neither referred to earlier treaties.[271]

119. *Austria/Hungary-Germany Treaty.* A German Court held in 1921 that an Extradition Treaty between Austria-Hungary and Germany was not applicable to Czechoslovakia, although its territory was largely composed of former Austrian territory; the States which had arisen on the territories of the Austro-Hungarian Empire could not be regarded as succeeding automatically to the rights and duties of that Empire.[272]

120. *Austria/Hungary-Switzerland Treaty.* In 1953, the Swiss *Cour de Cassation* affirmed in an *obiter dictum* that

> The Extradition Treaty between Switzerland and Austria-Hungary cannot, as the Federal Council stated in 1920 in reply to a request for extradition, be applied [automatically] to Czechoslovakia as successor State (B.Bl. 1921, II, 350).[273]

(c) *Yugoslavia*

121. *General.* Article 12 of a treaty [274] signed on 10 September 1919 at St. Germain-en-Laye between the Principal Allied and Associated Powers (the United States of America, the British Empire, France, Italy and Japan) and the Serb-Croat-Slovene State, entitled "*Traité en vue de régler certaines questions soulevées du fait de la formation du Royaume des Serbes, Croates et Slovenes*", read as follows:

> Pending the conclusion of new treaties or conventions, all treaties, conventions, agreements and obligations between Serbia, on the one hand, and any of the Principal Allied and Associated Powers, on the other hand, which were in force on the 1st August, 1914, or which have since been entered into, shall *ipso facto* be binding upon the Serb-Croat-Slovene State.

All the signatories, other than the United States, ratified or acceded to the Treaty, which entered into force on 16 July 1920. The Serb-Croat-Slovene State appears to have adopted the above position generally and not merely in relation to the parties to the Treaty. Thus, on 29 September 1921, its Chargé d'Affaires in the United States addressed a note to the Secretary of State, reading in part as follows:

> ... the Government of the Kingdom of the Serbs, Croats and Slovenes considers the treaties and conventions concluded between the Kingdom of Serbia and the United States as applicable to the whole territory of the Serbs, Croats and Slovenes as constituted at the present.[275]

122. *Serbia-Switzerland Treaty of 1887.* The Swiss Collection of Laws and Ordinances 1848-1947 [276] includes

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[264] M. O. Hudson, *International Legislation*, vol. 1, p. 283.

[265] United Kingdom, *Treaty Series* (1919), No. 20.

[266] Except that they could exercise the power of revival vis-à-vis the former Central Powers, see e.g. International Law Association, *loc. cit.* (see foot-note 47 above), pp. 11-21.

[267] Generally, see D. P. O'Connell, *State Succession . . ., op. cit.*, pp. 179-182 and 346-349.

[268] *In re J. Z.* (1921), *Annual Digest of Public International Law Cases*, vol. 1, p. 71; and *Yearbook of the International Law Commission 1963*, vol. II, p. 106, document A/CN.4/157, para. 93.

[269] United States, *Foreign Relations of the United States 1925*, vol. II, pp. 32 and 33. A Treaty of Extradition between Austria-Hungary and the United States was signed on 3 July 1856 (Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers.*, vol. I, p. 36).

[270] Thus, no extradition treaty was included under "Poland" in Malloy's compilation. In 1927, a new treaty was concluded between Poland and the United States. It makes no reference to earlier treaties (Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers*, vol. IV, p. 4561).

[271] League of Nations, *Treaty Series*, vol. CXXIX, p. 283, and vol. CXCV, p. 297.

[272] *Extradition (Germany and Czechoslovakia) Case (1921)*, *Annual Digest of Public International Law Cases*, vol. I, p. 259; and *Yearbook of the International Law Commission 1963*, vol. II, p. 107, document A/CN.4/157, paras. 104 and 105.

[273] *N. v. Public Prosecutor of the Canton of Aargau* (1953), in *International Law Reports*, vol. 20, p. 363; and *Yearbook of the International Law Commission, 1963*, vol. II, p. 107, document A/CN.4/157, para. 106.

[274] United Kingdom, *Treaty Series* (1919) No. 17; G. F. de Martens, ed., *Nouveau recueil général de traités*, 3rd. series, vol. 13, p. 521. The preamble of the Treaty reads, in part, as follows:

> "Whereas since the commencement of the year 1913 extensive territories have been added to the Kingdom of Serbia, and
>
> "Whereas the Serb, Creat and Slovene peoples of the former Austro-Hungarian Monarchy have of their own free will determined to unite with Serbia in a permanent union for the purpose of forming a single sovereign independent State under the title of the Kingdom of the Serbs, Croats and Slovenes, and
>
> "Whereas the Prince Regent of Serbia and the Serbian Government have agreed to this union, and in consequence the Kingdom of the Serbs, Croats and Slovenes has been constituted and has assumed sovereignty over the territories inhabited by these peoples, and
>
> "Whereas it is necessary to regulate certain matters of international concern arising out of the said additions of territory and of this union, and
>
> "Whereas it is desired to free Serbia from certain obligations which she undertook by the Treaty of Berlin of 1878 to certain Powers and to substitute for them obligations to the League of Nations, . . ."

[275] G. H. Hackworth, *Digest of International Law*, vol. V, pp. 374 and 375.

[276] Switzerland, *Recueil systématique des lois et ordonnances 1848-1947*, vol. 12, p. 238; also *ibid.*, note 1, and *ibid.*, vol. II, pp. VII and VIII.

the Serbia-Switzerland Treaty of 1887 as a treaty in force between Switzerland and Yugoslavia. Further, in 1951, the Yugoslav Government made a request for extradition. The Swiss Federal Tribunal said, *inter alia*, that

> The question whether the request for extradition must be granted must be decided in conformity with the Federal Law concerning Extradition... and the Extradition Treaty between Switzerland and Serbia of November 28, [1887]; since the Kingdom of Yugoslavia and now the Federal Republic of Yugoslavia are the successor ["*haben die Nachfolge*"] of the Kingdom of Serbia, and have taken over international conventions concluded by it.

The Tribunal went on to reject the request on the ground, prescribed in the Treaty, that the offences charged were political.[277]

123. *Serbia-United Kingdom Treaty of 1900.*[278] The United Kingdom,[279] Australia,[280] New Zealand,[281] India,[282] Sierra Leone,[283] and Uganda [284] have taken the position that the 1900 Extradition Treaty between Serbia and the United Kingdom remains in effect for Yugoslavia.

124. *Serbia-United States Treaty of 1901.*[285] In the course of exchanges of views about the revising and replacement of the Treaty of Commerce and Navigation and the Consular Convention between Serbia and the United States of 1901, the Government of the Kingdom of the Serbs, Croats and Slovenes suggested the negotiation of conventions relating, *inter alia*, to extradition. The United States response was that

> the extradition convention between the United States and Serbia, which is regarded both by this Government and the Government of the [Kingdom of the] Serbs, Croats and Slovenes as being applicable to the whole territory of the Kingdom, is a modern and comprehensive convention.

Accordingly, pending the receipt of more specific information, the Department of State was unwilling to consider the negotiation of a new treaty on that subject.[286] The Government of the Kingdom of the Serbs, Croats, and Slovenes did not further press the question.

125. In 1951, the Yugoslav Government sought the extradition of one Artukovic under the 1901 Treaty. The United States Government agreed that the Treaty was still in force.[287] The District Court held, however, that the Treaty was not in force between Yugoslavia and the United States, because, *inter alia*, the Serb-Croat-Slovene State was a new State.[288] This decision was reversed by the Court of Appeals.[289] The Court first recorded the agreement of the parties that the changes in title and in governmental structure in 1928 and 1945 were internal and political changes having no effect on the validity of any treaty binding on the former Government of the "Kingdom of the Serbs, Croats and Slovenes". After reviewing the historical facts surrounding the establishment of the Kingdom at the end of the First World War and after quoting the United States and Yugoslav views, the Court held that

> the combination of countries into the Kingdom of the Serbs, Croats and Slovenes... was formed by a movement of the Slav people to govern themselves in one sovereign nation, with Serbia as the central or nucleus nation.... the combination was not an entirely new sovereignty without parentage. But even if it is appropriate to designate the combination as a new country, the fact that it started to function under the Serbian constitution as the home government and under Serbian legations and consular service in foreign countries, and has continued to act under Serbian treaties of Commerce and Navigation and the Consular treaty, is conclusive proof that if the combination constituted a new country it was the successor of Serbia in its international rights and obligations.[290]

Accordingly, the case was remanded to the District Court with instructions to find that the Treaty of 1901 between the United States and Serbia was a present, valid and effective treaty between the United States and the Federal People's Republic of Yugoslavia.[291] The treaty is listed in United States, *Treaties in Force*.[292]

4. *Annexation of Austria (1938) and restoration of its independence*

126. *General.* The State Treaty for the Re-establishment of an Independent and Democratic Austria, signed on

[277] *In re Kavic, Bjelanovic and Arsenijevic* (1952), *Arrets du Tribunal Fédéral Suisse*, vol. 78, pp. 39 and 45 (text in German) (English translation in *International Law Reports*, vol. 19, p. 371).

[278] *British and Foreign State Papers*, vol. 92, p. 41.

[279] List cited in foot-note 4 above.

[280] List cited in foot-note 5 above.

[281] List cited in foot-note 5 above.

[282] List cited in foot-note 47 above.

[283] See para. 58 above.

[284] See para. 67 above.

[285] W. M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers*, vol. II, p. 1622.

[286] United States, *Foreign Relations of the United States 1927*, vol. III, pp. 828-865. See also G. H. Hackworth, *loc. cit.* (foot-note 277 above), p. 375.

[287] *Artukovic* v. *Boyle*, in United States, *Federal Supplement*, vol. 107, p. 11 and p. 20, note 6 (1952, District Court, Southern District, California).

[288] *Ibid.*, especially, in pp. 30-33.

[289] *Ivancevic* v. *Artukovic*, in United States, *Federal Reporter, second series*, vol. 211 F 2nd, p. 565 (1954, Court of Appeals, 9th Circuit); and *Yearbook of the International Law Commission, 1963*, vol. II, pp. 110 and 111, document A/CN.4/157, paras. 132-134.

[290] United States, *Federal Reporter, second series*, vol. 211 F 2nd, pp. 572 and 573 (foot-note, quoting Grotius and Crandall, omitted).

[291] For subsequent judicial action, which proceeded on the above basis, see United States, *United States Reports*, vol. 348, p. 818 (*certiorari* denied); vol. 348, p. 889 (rehearing denied); *Artukovic* v. *Boyle*, in United States, *Federal Supplement*, vol. 140, p. 245 (1956) (offences held to be of a political character); *Karadzole* v. *Artukovic*, in United States, *Federal Reporter, second series*, vol. 247 F 2nd, p. 198 (1957) (affirming District Court ruling); United States, *United States Reports*, vol. 355, p. 393 (1958) (judgement vacated and matter remanded for further hearing); *United States ex rel. Karadzole* v. *Artukovic*, in United States, *Federal Supplement*, vol. 170, p. 383 (1959) (surrender of defendant denied: insufficient evidence; offences of political character). See also M. M. Whiteman, *Digest of International Law*, vol. 2, pp. 940-949; vol. 6, pp. 819-826.

[292] United States, *Treaties in Force* (1970), p. 253. See also Péritch, "*Conception du droit international privé d'après la doctrine et la pratique en Yougoslavie*", in Académie de droit international de la Haye, *Recueil des Cours*, (1929), t. 28, pp. 299, 402 and 403. He also discusses the significance for Yugoslavia of the earlier treaties of Austria-Hungary, Bulgaria and Turkey (*ibid.*, pp. 404-410).

15 May 1955,[293] refers in the preamble, *inter alia*, to the Moscow Declaration of 1 November 1943 in which the Governments of the Union of Soviet Socialist Republics, the United Kingdom and the United States of America declared that they regarded the annexation of Austria by Germany as null and void and affirmed their wish to see Austria re-established as a free and independent State, and in article 1 provides that

> The Allied and Associated Powers recognize that Austria is re-established as a sovereign, independent and democratic State.

The frontiers are those existing on a January 1938 (article 5). No comprehensive provision is made in the treaties applicable to Austria before 1938 and between 1938 and 1945, but it appears to follow from the Treaty [294] and to be widely accepted that the treaties concluded before 1938 are, in general, now in effect. Some specific practice also seems to support this position.[295]

127. The cases recorded below are concerned with the effect, as seen in 1938, of the annexion of Austria on relevant treaties.

128. *Austria/Hungary-United Kingdom and Germany-United Kingdom Treaties.* In a note of 6 May 1938, the British Ambassador at Berlin, said, with reference to "the position with regard to treaties affecting Austria, in consequence of the German law of the 13th March, 1938, relating to the union of Austria with the German Reich":

> 2. There are certain bilateral Treaties between the United Kingdom and Austria which correspond very closely to the similar Treaties between the United Kingdom and Germany, and where the latter Treaties are of such a kind that their provisions can be applied to Austria as a part of the Reich without the necessity of any adaptation, His Majesty's Government assume that, in accordance with the ordinary legal principles in the case of these Treaties, the Treaty between the United Kingdom and Germany may be held now to cover Austria, and the corresponding Treaty between the United Kingdom and Austria may be held to have lapsed.
>
> 3. The Treaties referred to in the preceding paragraph of this Note between the United Kingdom and Germany, which in the view of His Majesty's Government in the United Kingdom may henceforth be deemed to apply without amendment to Austria as well as to Germany, include the following:
>
> ...
>
> Anglo-German Treaty of Extradition of the 14th May, 1872.
>
> Anglo-German Treaty of Extradition of the 17th August, 1911.
>
> ...
>
> 4. The corresponding Treaties between the United Kingdom and Austria, which are assumed to have been replaced by the foregoing Treaties with Germany, are the following:
>
> ...
>
> Anglo-Austrian Treaty of Extradition of the 3rd December, 1873.
>
> Anglo-Austrian Declaration of the 26th June, 1901, amending the Extradition Treaty of 1873.
>
> Anglo-Austrian Supplementary Extradition Convention of the 29th October, 1934.
>
> ...
>
> 6. His Majesty's Government in the United Kingdom will be glad if the German Government will be good enough to confirm that they concur in the views expressed in the previous paragraphs of this Note.

On 10 September 1938, the Minister of Foreign Affairs of Germany replied:

> (3) The German Reich Government further confirms that in place of the Anglo-Austrian Agreements regarding the extradition of criminals, viz:
>
> (*a*) The State Treaty of the 3rd December, 1873, between the Austro-Hungarian monarchy and the United Kingdom of Great Britain and Ireland, regarding the Reciprocal Extradition of Criminals;
>
> (*b*) The Supplementary Declaration of the 26th June, 1901, regarding the amendment of the last paragraph of Article XI of the Treaty of the 3rd December, 1873;
>
> (*c*) The Supplementary Convention of the 29th October, 1934, regarding the Reciprocal Extradition of Fugitive Criminals;
>
> the corresponding Anglo-German Agreements are applicable in the State of Austria; these are:
>
> (1) The Anglo-German Extradition Treaty of the 14th May, 1872;
>
> (2) The Anglo-German Extradition Treaty of the 17th August, 1911;
>
> and the following agreements (not mentioned in Your Excellency's note of the 6th May), viz:
>
> (3) The Anglo-German Agreement of the 10th December, 1928, regarding the application of the Anglo-German Extradition Treaty of the 14th May, 1872, to certain mandated territories; and
>
> (4) The understanding of the 28th February, 1933, regarding Extradition Facilities between the German Reich and Trans-Jordan.[296]

129. *Austria-United States and Germany-United States Treaties of 1930.* On 22 July 1939, the German Chargé d'Affaires in Washington, in a note to the Secretary of State, said:

> The Government of the German Reich considers the Extradition Treaty between the Republic of Austria and the United States of America, of January 31, 1930,[297] to have ceased to exist in consequence of the reunion of Austria with the German Reich. Since that time, the German Extradition Law has been introduced into the State of Austria by the order of April 26, 1939 ...
>
> The Government of the German Reich therefore proposes that the operation of the Extradition Treaty of July 12, 1930,[298]

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[293] United Nations, *Treaty Series*, vol. 217, p. 223.

[294] See also articles 25 (10) and 28 (2).

[295] See e.g.: (*a*) An exchange of notes between Austria and France in 1958, in which France referred to the absence of a provision in the State Treaty concerning earlier treaties and said that it considered that certain treaties (including extradition treaties) "are [at present] in force between the two States". Austria, in reply, agreed (see *Recueil des traités et accords de la France*, 1960 No. 19) (*b*) The listing of pre-1938 treaties under "Austria" in United States, *Treaties in Force* (1970), p. 11; (*c*) The similar listing in the Icelandic treaty list prepared in 1964 (see foot-note 250 above). Note, however, that the United Kingdom (see para. 128 below) does not appear to adhere to this position so far as extradition is concerned; see the 1955 list (foot-note 4 above), which is reflected in the Sierra Leone and Uganda lists (paras. 58 and 67 above) and *Halsbury's Statutes of England*, (third edition) vol. 13, p. 250.

[296] League of Nations, *Treaty Series*, vol. CXCIV, p. 313.

[297] *Ibid.*, vol. CVI, p. 379.

[298] *Ibid.*, vol. CXIX, p. 247.

between the German Reich and the United States of America . . ., shall now extend also to the territory in which the former Austro-American Treaty was effective.

On 2 November the United States Government agreed to the proposal.[299]

5. *Establishment of the United Arab Republic, 1958*

130. *General.* The Constitution of the United Arab Republic and a letter from the Republic's Foreign Minister to the Secretary-General of the United Nations both affirmed that all international treaties and agreements concluded by Egypt and Syria would remain valid within their regional limits.[300]

131. *Ottoman Empire-United States Treaty of 1874.*[301] The United States continued to list this Treaty, which it considers to be in force between Egypt and the United States, in *Treaties in Force*, after the establishment of the United Arab Republic.[302] The relevant constitutional provision was also included in the 1960 and 1961 issues of *Treaties in Force*.

6. *Dissolution of the Federation of Rhodesia and Nyasaland, 1963*

132. *Federation of Rhodesia and Nyasaland-South African Treaty of 1962.*[303] In notes exchanged prior to the dissolution of the Federation on 31 December 1963, South Africa and Southern Rhodesia agreed that the Treaty would continue to apply between them.[304] At the relevant time, this exchange had not, however, been published as required under South African law, and was of no effect in South African law. Southern Rhodesia in 1965 sought the extradition of one Eliasov and was accordingly obliged to depend, in the South African courts, solely on the treaty of 1962. The Transvaal Provincial Division of the South African High Court held that

> The Federation as a whole was a State with treaty-making capacity. That State was dissolved into three territories and so ceased to exist. With it ceased its treaties. That is the natural and normal sequel.[305]

Accordingly the request for extradition was rejected. The exchange of notes has now been published as required by South African law.[306]

133. On the other hand, Malawi was later held to have remained bound by the treaty after independence,[307] and, according to one writer, the third former member of the Federation—Zambia—expressly denounced the treaty after independence.[308] Further. Zambia and Malawi seem to consider themselves bound by United Kingdom extradition treaties which applied to their territories before the creation of the Federation.[309]

Summary

Cases of independence of former non-metropolitan territories

134. At least twenty-six new States and thirty-five of the other parties have taken the position that for one reason or another, some of which are explored below, the bilateral extradition treaties in question have effect for new States to the territory of which they were applicable before independence. This continuity has been achieved or recognized on the procedural level by several devices which will now be summarized.

135. First, there have in many cases been exchanges of views on the diplomatic level. It should be noted that the views of the parties to the exchanges have not always been in precise accord as to the basis of continuity. They have taken the following forms:

(*a*) The interested State has taken the position that the pre-independence treaty in question is no longer in effect and has accordingly, in some cases, suggested that a completely new agreement be concluded (for instance, Israel in its notes to Belgium, and France; Tanganyika generally; Madagascar in notes to the United States and Uganda. See also Argentina–Pakistan; Belgium–Pakistan; and African States formerly administered by France–Ghana). In some of these cases, however, it was subsequently agreed that the pre-independence treaty would apply to relations between the parties or would apply provisionally between them pending the conclusion of a new treaty.

(*b*) The interested State, without expressly indicating what view it takes of the continued force of the pre-independence treaty, has proposed that, by an agreement constituted by the proposal and the reply, the treaty,

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[299] United States *Foreign Relations of the United States 1939*, vol. II, pp. 566-567. Cf. a decision of the German Supreme Court (in Civil Matters) in 1939 that the provisions of an Austro-German Treaty concerning the administration of guardianships remained in effect after the annexation of Austria, in *Annual Digest and Reports of Public International Law Cases*, vol. 10, p. 103.

[300] Article 69 of the Provisional Constitution, and note, of 1 March 1958 reproduced in *Yearbook of the International Law Commission, 1962*, vol. II, p. 104, document A/CN.4/149 and Add. 1, para. 18.

[301] W. M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers*, vol. II, p. 1341.

[302] United States, *Treaties in Force* (1958), p. 51; (1959), p. 165; (1960), p. 174; (1961), p. 180; (1962), p. 192.

[303] United Nations, *Treaty Series*, vol. 458, p. 59. The treaty was made necessary by South Africa's withdrawal from the Commonwealth; it was no longer part of Her Majesty's dominions for the purposes of the Fugitive Offenders Act 1881.

[304] For the text, see schedule to South African Proclamation No. R.151, 1965, (in South Africa, *Government Gazette Extraordinary*, No. 1156 of 25 June 1965 (Regulation Gazette, No. 507).

[305] *S.* v. *Eliasov* 1965 (2) S.A. 770 (T), 773, noted by C. J. R. Dugard, "Succession to Federal Treaties on the Dissolution of a Federation", in *The South African Law Journal*, vol. 82, part III, (1965), p. 430.

[306] See foot-note 304 above, and *S.* v. *Eliasov* 1967 (4) S.A. 583 (American Developments).

[307] *S.* v. *Bull.*, discussed in para. 76 above.

[308] D. P. O'Connell, *State Succession . . ., op. cit.*, p. 177; cf. C. J. R. Dugard, *op. cit.* (foot-note 172 above), p. 253.

[309] See paras. 75-80 and 83-86 above.

from some future date (the date of the reply or the date on which notice is given of compliance with constitutional formalities), should govern the relations between the parties, pending the conclusion of a new treaty (the Netherlands–Tanzania, Uganda, Kenya and Malawi).[310] In each case the proposal was accepted.

(*c*) In the bulk of the instances of an exchange of diplomatic correspondence on the question, the States concerned have, without being explicit about the prior continued effect of the pre-independence treaties,[311] agreed that the treaties should continue to have effect between them; in some cases, they have agreed to maintain the treaty in force (or to consider it as remaining in force), with effect from an earlier date (Tanzania-Switzerland, and the United States; Switzerland-Malawi, and Uganda; Botswana-the United States); and in others, they have agreed, with no indication of the effective date, either to consider them to be in force, or that the treaties shall regulate their relations (Belgium-India; Switzerland-Pakistan; Malaya-Thailand; Belgium-Tanzania (agreement to maintain provisionally in effect); and Kenya-Switzerland, and the United States).

(*d*) The States concerned have taken positions in the exchanges recognizing the continuing effect of the pre-independence treaties (Pakistan-Argentine, and Belgium, Liberia and Switzerland and Ghana; Ghana-United States;[312] United States-Malaya; Malawi-United States; Singapore-United States; Iceland-Australia, Canada, Ceylon, India and New Zealand; the conventions supplementary to the British treaties, to which the self-governing Dominions could accede, the instruments extending the treaties to mandated territories, the Canada-United States amendments to the British treaties and the United States treaties with New Zealand and South Africa replacing the earlier British treaties might also be mentioned here).

Some of the more formal aspects of these exchanges may also be relevant to an assessment of their legal significance; thus, in several cases the original proposal and reply were expressly stated to constitute an agreement; in other cases domestic constitutional processes may also be relevant; and some of the exchanges were registered with the Secretariat of the United Nations under Article 102 of the Charter.

136. Secondly, interested States have taken appropriate unilateral action on the international level (sometimes, by virtue of the other State's response, the action can be said to be bilateral and could be included in para. 135 above). Thus, one State has formally given notice of termination of a treaty to States to which the treaty had been extended before independence (Sweden-Australia, Canada, Ceylon, India, Ireland, New Zealand, Pakistan and South Africa, but not, it seems, Burma; also, United Kingdom–Tunisia). Others have formally invoked the treaty in question without, it appears, any relevant prior action (Canada–United States; Ireland–Belgium, Switzerland and the United States; Malawi–South Africa; Zambia–United States; Lebanon–Palestine; Indonesia–United Kingdom; Liberia–Democratic Republic of the Congo). In other cases, a State has indicated in a note to the other interested State (apparently without response) that it considers the treaty to be still in effect (Cyprus and Malta–Italy). In another group of cases. the new State exercised rights under peace treaties to revise extradition treaties extended to it before independence (Ceylon–Finland, Hungary, Italy and Romania).

137. Thirdly, unilateral action has been taken by interested States at the national level. Thus, a number of countries have prepared treaty lists or collections which either include treaties which were applied to them before independence (Australia, Canada, India, New Zealand and Nigeria) or list treaties, to which they were original parties, having reference to some of the States to the territory of which the treaty was applicable before independence (Iceland and the United States). In many other cases, this national action has taken legislative form; several States have enacted extradition legislation the effect of which is to keep in effect the legislation implementing pre-independence extradition treaties. It appears to be assumed that the treaties themselves have remained in effect (for instance, Australia, Ghana, India, Kenya, New Zealand, Sierra Leone, Singapore, South Africa, Swaziland, Uganda; cf., however, the legislation enacted by Botswana, Malawi, Malaya, Nigeria and Zambia).[313] In two cases, further executive action taken under this legislation has listed the countries with which, it is considered, treaties are in force (Sierra Leone and Uganda).

138. The practice of denying continuity of the treaty, reviewed above, has occurred primarily in bilateral exchanges,[314] first, between the new State and the other party to the treaty (Ivory Coast and the United States; Madagascar and Uganda and the United States; France and Uganda; Tanganyika in general (but note that the United Republic of Tanzania has concluded several agreements concerning the continued force of the treaties); and Tunisia and the United Kingdom); and, secondly, between the new State and the predecessor State (Nigeria and the United Kingdom, concerning the treaties, with the Federal Republic of Germany and Israel).

139. Many of these unilateral and bilateral actions indicate only that the State in question considers that the treaty is or is not in effect. As noted, however, the actions in some instances go further and some of the relevant elements can be mentioned here.

140. First, in a few cases the intention of the interested States has been invoked. Thus, in one, case it was said that it was the intention of the parties to the extradition treaty that only either party and not an independent third party should be able to invoke it (Nigeria and the

[310] There were some variations in the wording of the proposals; three were subject to the legislation of the countries and one proposed that "an understanding be established".

[311] See, however, para. 143 below on the effect of unilateral statements concerning treaty rights and obligations.

[312] See also para. 142 below.

[313] Cf., however, also the list of orders published in the *Laws of Zambia*, 1965 revised edition.

[314] That unilateral negative practice which consists of acts of omission rather than of commission (e.g., non-listing in treaty lists) has not been covered in the paper.

United Kingdom, concerning the treaty with the Federal Republic of Germany). On the other hand, it would appear to have been the intention of the interested States that a treaty signed a day before the independence of one of the parties would have effect after independence (South Africa–Swaziland).

141. Secondly, in other cases there have been direct references to the rules of international law. Thus, one State has asserted that a treaty continues to bind it by virtue of a devolution clause and "the inheritance rules of public international law" (Cyprus–Italy). On the other hand, another State has declared that there is no uniform practice as to the effect on extradition treaties of modifications of the territory of a party, but the extinction of the relationship is the most common solution (Madagascar–the United States; see also the United Republic of Tanzania's position on extradition treaties).

142. Thirdly, in several cases account has been taken of devolution agreements concluded between the new State and the State which was formerly responsible for its international relations. Thus, in one case the other party to the treaty expressed the view that "the assumption by" the new State of all obligations and responsibilities by the devolution agreement "extends the treaty into force between" it and the new State (United States–Malaya, but note Malaya's reply; see also Italy's view vis-à-vis Singapore). A new State, in one instance, also declared that an extradition treaty continued to bind it "by virtue of the devolution clause" of a treaty with the predecessor State and the inheritance rules of public international law (Cyprus–Italy; see also Ghana–the United States). On the other hand, one new State took the position that an extradition agreement which was signed and ratified but not in force before independence was "not the type of international agreement that it was envisaged the [devolution] agreement should cover". It agreed that another extradition agreement which was in force fell into the class of treaties the rights and obligations of which were to be assumed, but considered, for reasons already mentioned,[315] that it was not bound by it (Nigeria–the United Kingdom).

143. Fourthly, interested States have, in a number of cases, taken account of the unilateral statements made by several new States concerning their treaty rights and obligations. Thus, one new State has taken the position that the extradition treaty would remain in effect only until the end of the period covered by the unilateral declaration and has proposed that the treaty be kept in force thereafter by agreement. In two cases at least, the other parties have concluded agreements whereby it is established that the treaty remains in effect from that date (United Republic of Tanzania–Switzerland, and the United States). In the case of three other new States, exchanges of diplomatic correspondence have recorded that extradition treaties remain in effect from the date on which the unilateral declaration ceases to have effect. The other States involved appear to have accepted that the treaty had continued to be in force during the prescribed period (Uganda–Switzerland; Kenya–Switzerland, and the United States; and Malawi–Switzerland, and the United States). In at least one other case, notes were exchanged to confirm that an extradition treaty fell within the scope of a particular unilateral declaration (Lesotho–United States).

144. Fifthly, in a number of cases, the exchanges have expressly established that one of the parties could enter into negotiations about the treaty and/or that it would remain in effect until replaced by a new agreement between the parties (for instance: Ceylon; Ghana–United States; United Republic of Tanzania; Netherlands; Switzerland).

145. The introduction made the point that the extradition treaties have become composed in many respects of a set of standard clauses. This general acceptability of the substantive content of extradition treaties is reflected in new legislation enacted since independence by a large number of Commonwealth States; that legislation retains basic elements of the old scheme, often provides for the continued domestic implementation of the pre-independence treaties, and, in addition, extends that body of law to apply also to rendition within the Commonwealth.[316] Extradition between many of the territories formerly subject to French administration and between France and those territories is governed by a network of treaties negotiated since independence.[317]

B. Cases other than cases of independence of former non-metropolitan territories

146. The practice reviewed above seems to indicate that the impact of the establishment and dissolution of unions or federations, secession, annexation, restoration of independence, etc. on pre-existing bilateral extradition treaties varied according to the intention of the States concerned, the nature of the change involved, and the circumstances surrounding the particular case in question.

147. Iceland, which moved constitutionally to independence, is generally considered to have remained bound by extradition treaties, while Czechoslovakia, Finland and Poland were generally not considered to be bound by extradition treaties applied formerly to their respective territories. The practice of Austria and Hungary with States other than Allied and Associated Powers seems to suggest, that the existing extradition treaties continue in the case of the dissolution of a union, if there is a clear continuity of the entity involved. Austria tended to deny that continuity and was generally held not to be bound by the extradition treaties of the Dual Monarchy, whereas Hungary, which considered itself the same entity as during the Dual Monarchy, did remain bound. The

[315] See para. 140 above.

[316] One basic difference is that the Commonwealth scheme is not dependent on the conclusion of treaties.

[317] See (*a*) the General Convention for Co-operation in Matters of Justice of 12 September 1961 (*Journal officiel de la République Malgache* of 23 December 1961, p. 2242) and (*b*) the bilateral agreements with France for co-operation in matters of justice, listed conveniently in D. P. O'Connell, *State Succession . . ., op. cit*, vol. I, pp. 83-88.

extradition treaties concluded by the former Serbia were generally considered to be binding upon the Serb–Croat–Slovene State and to be applicable to the whole of the territory of the new State. Practice relating to the annexation of Austria and the restoration of its independence suggests that the extradition treaties of the new sovereign State are extended to the annexed territory and that extradition treaties applicable to that territory before the annexation do not have effect during the duration of the annexation, although they may be revived after the restoration of the independence of the annexed territory. In accordance with the position explicity taken by the United Arab Republic, treaties applicable to Egypt or Syria were generally considered to have remained in force unaffected by the changes in 1958 and 1961. With regard to the constitution and dissolution of the former Federation of Rhodesia and Nyasaland, it should be mentioned that the changes involved territories which were not at the relevant times (1953 and 1963) independent, although Southern Rhodesia before 1953, and the Federation during its existence, did have limited treaty-making capacity.

148. In some instances, the interested States have regulated questions of succession in respect of pre-existing treaties by formal agreements. Thus, peace treaties(those of Allied and Associated Powers with Austria and Hungary) and other multilateral agreements concluded in the context of the peace settlement which followed the First World War (those of the Allied and Associated Powers with the Serb–Croat–Slovene State) laid down general rules governing the matter between the parties. Cases are also recorded where two States concluded a bilateral treaty whereby they agreed to apply between themselves specific pre-existing extradition treaties (Austria and the Netherlands, and Switzerland). The procedure of the exchange of notes has frequently been used to ascertain the effects of a change in the international status of a given country on pre-existing extradition treaties (Hungary and Bulgaria, and Switzerland; Finland and Sweden; Germany and the United Kingdom and the United States; South Africa and Southern Rhodesia). When the States concerned acknowledge continuity, the exchanges use expressions such as "the treaty is in force", "the treaty remains in effect" or "the treaty continues to be valid".

149. The recorded unilateral official statements (Hungary; Serb–Croat–Slovene State) and decisions of national courts (Switzerland and the United States with regard to Yugoslavia), the negotiation and conclusion of new extradition treaties (for instance, Czechoslovakia, Finland, Poland) and the date contained in official national collections of treaties (Iceland, Sweden, Switzerland, the United States) seem to confirm that the position of the States concerned with regard to continuity or discontinuity in the application of a given pre-existing extradition treaty varied according to factors such as those indicated in paragraph 146 above.