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Introduction

1. In pursuance of the decision recorded in the report of the International Law Commission on the work of its twenty-first session,[1] the Secretariat has prepared the present document which brings up to date the "Digest of the decisions of international tribunals relating to State succession".[2] The document covers the pertinent decisions of international tribunals whose awards are contained in the volumes of the *Reports of International Arbitral Awards*, published since the preparation of the Digest,[3] and the decision of the Indo-Pakistan Western Boundary Case Tribunal which has come to the knowledge of the Secretariat.

2. Most of the cases dealt with in the present document were concerned only incidentally with questions of State succession or were largely determined in the light of particular provisions of treaties or other international instruments. In view of the purpose of the document, attention had been concentrated on those parts of the decisions which have relevance as indications of the general principles of State succession.

[1] See *Yearbook of the International Law Commission, 1969*, vol. II, pp. 229, document A/7610/Rev. 1, para. 63.

[2] *Ibid., 1962*, vol. II, p. 131, document A/CN.4/151.

[3] *Reports of International Arbitral Awards*, published by the United Nations under the following sales numbers: vol. XII: 63.V.3; vol. XIII: 64.V.3; vol. XIV: 65.V.4; vol. XVI: E/F. 69.V.1. Some arbitral awards contained in volume XII of the *Reports* were already covered by the Secretariat's Digest.

I. General

DUFAY AND GIGANDET AND OTHER COMPANIES CLAIM (1962)

France v. *Italy*

Franco-Italian Conciliation Commission established under the Treaty of Peace with Italy, of 10 February 1947: Decision No. 284 of 9 July 1962

Reports of International Arbitral Awards, vol. XVI, p. 197.

3. In behalf of Dufay and Gigandet and six other companies, the French Government claimed compensation for loss or damage sustained during the war by their property in the former Italian colonies in Africa, in particular, Eritrea and Italian Somalia. The Italian Government raised a preliminary objection as to the receivability of the case, contending, *inter alia*, that these former colonies did not constitute the ceded territory within the meaning of the relevant provisions of the Treaty of Peace with Italy, 1947. The Commission held that the claim must succeed.

4. In the view of the Italian Government, "cession" in the sense of international law consisted of two elements, namely, renunciation of territorial sovereignty, on the one hand, and the immediate establishment of territorial sovereignty by another State, on the other; and, since the Italian Peace Treaty reserved the definitive fate of the Italian colonies in Africa, the second element was lacking. However, the Commission said:

[Translation from French]

[. . .] this point of view cannot be accepted, in the view of the Conciliation Commission, since the term "cede" or "ceded territories" has not, in International Law, the meaning the Italian Government attaches to it. The legal phenomenon of "cession" in International Law, is characterized by the fact that an already existing State withdraws its territorial competence from a territory over which it exercised it, while another State, the cessionary State—whether already existing or new—*immediately or later* extends its territorial competence to the territory in which competence was hitherto exercised by the ceding State. In these conditions, "cession means nothing more than the undertaking to evacuate the ceded territory, so that the cessionary State may occupy it in its turn".[4] In other words, for cession to occur it is necessary that the predecessor State should definitively have "ceded" legislative and executive competence in the "ceded territory" to another State, that is to say, *should have undertaken to evacuate it.* In the case of the former Italian colonies, determination of the moment of the start of the exercise of territorial sovereignty by the cessionary States themselves, or of the transfer to another person in international law of this territorial sovereignty acquired by the States which have obtained control over the said territory, is reserved for agreements and resolutions to be concluded between the States or the United Nations, which control the ceded territory by virtue of the Peace Treaty, and the entity which is to become the ultimate exerciser of territorial sovereignty over the ceded territory; there is nothing here contrary to the notion of cession as we have stated it.

[. . .]

[. . .]

[. . .]

In conclusion, therefore, in order for there to be territorial "cession", in International Law, it is necessary that the person of the ceding State and the territory forming the subject of the cession be clearly established in the Treaty. Furthermore, the ceding State must undertake to evacuate the ceded territory in favour of the subjects of law authorized to exercise control over it. It is by no means necessary that the *ultimate recipient* of the territory should be referred to in the contractual arrangement relating to the "cession". There is accordingly room for provisional administration of the territory between its evacuation by the ceding State and the definitive transfer.[5]

Rann of Kutch Arbitration (1968) [6]

Indo-Pakistan Western Boundary Case Tribunal (Gunnar Lagergren, Chairman and Aleš Bebler and Nasrollah Entezam, members), constituted pursuant to the Agreement of 30 June 1965

5. The Tribunal was asked to determine the border between India and Pakistan in the area of the Rann of Kutch. The Tribunal held that little weight was to be given to events occurring after the independence of the parties, which in large measure also accepted this view. Thus the case was decided primarily on the basis of events prior to 1947, in particular, events before the conquest of Sind and the consequent acquisition of sovereignty by the British in 1819 and the establishment by treaty of British suzerainty over Kutch and other neighbouring Indian States in 1843, and events after those dates and prior to 1947. These events, which the parties developed at length in the pleadings, included such matters as statements made by government officials, government publications, maps, tax and police action, the placing of boundary markers, and the use of areas for the purposes of grazing. These actions included those of the Kutch and Sind authorities and of the British Government whether acting as sovereign (in the Sind) or suzerain (in the Indian States).

6. The Chairman of the Tribunal (in whose judgement Mr. Entezam joined) held, with reference to the parties' arguments on the law, that the factual material was to be assessed in the light of the following three issues:

The first is whether the boundary in dispute is a historically recognised and well-established boundary. Both Parties submit that the boundary as claimed by each of them is of such a character.

The second main issue is whether Great Britain, acting either as territorial sovereign, or as Paramount Power, must be held by its conduct to have recognised, accepted or acquiesced in the claim of Kutch that the Rann was Kutch territory, thereby precluding or estopping Pakistan, as successor of Sind and thus of the territorial sovereign rights of Great Britain in the region, from successfully claiming any part of the disputed territory. One question which arises in considering this issue is the true meaning of "the Rann" in the context of related documents.

The third main issue is whether the British Administration in Sind and superior British authorities, acting not as Paramount Power but as territorial sovereigns, performed acts, directly or indirectly, in assertion of rights of territorial sovereignty over the disputed tract which were of such a character as to be sufficient in law to confer title to the territory, or parts thereof, upon Sind, and thereby upon its successor, Pakistan, or, conversely, whether such exercise of sovereignty on the part of Kutch and the other States abutting upon the Great Rann, to whose rights India is successor, would instead operate to confer title on India to the territory, or to parts thereof.[7]

7. The Chairman held that there was no historically recognized and well-established boundary. He held, however, that the absence of such boundary did not in the context of the case imply that the disputed territory was *terra nullius.* On the basis of his examination of the second and third issues and of the facts relevant to them, he concluded that the boundary lay between the lines claimed respectively by India and Pakistan.

II. State succession in relation to treaties

Franco-Tunisian Arbitration (1957)

France v. *Tunisia*

Arbitrator (Vedel) President of the Mixed Franco-Tunisian Arbitral Tribunal established under the General Convention of 3 June 1955

[4] P. Guggenheim, *Traité de droit international public* (Geneva, Librairie de l'Université, Georg et Cie S. A., 1953), vol. I, p. 443.

[5] *Reports of International Arbitral Awards*, vol. XVI, pp. 211-212.

[6] See *Keesing's Contemporary Archives* (London, Keesing's Publications Limited, 1968), vol. XVI (1967-1968), p. 22838, and *International Legal Materials* (Washington, D.C., American Society of International Law, 1968), vol. VII, No. 3, p. 633.

[7] See *Keesing's Contemporary Archives, op. cit.*, p. 22838, or *International Legal Materials, op. cit.*, p. 667.

Reports of International Arbitral Awards, vol. XII, p. 271

8. In December 1956, the Government of France filed an application with the Mixed Franco-Tunisian Arbitral Tribunal to determine a dispute between France and Tunisia. The Tunisian arbitrators took the view that the General Convention of 3 June 1955, under which the Tribunal had been set up, had become null and void by reason of Tunisia's accession to independence on 20 March 1956, and they refused to take their seats on the Tribunal.

9. The President of the Tribunal, in his decision of 2 April 1957, held that in the absence of a formal denunciation of the Convention by Tunisia, one of the two High Contracting Parties, the abstention of the Tunisian arbitrators must be treated as a resignation and dealt with in accordance with article 16, paragraph 2 of the Convention, which provided for the replacement of arbitrators who have resigned. Pending such replacement, the proceedings instituted by France were suspended and the rights of the parties were reserved.

Flegenheimer Case (1958)

United States v. *Italy*

Italian-United States Conciliation Commission established under the Treaty of Peace with Italy of 10 February 1947: Decision No. 182 of 20 September 1958

Reports of International Arbitral Awards, vol. XIV, p. 327.

10. In behalf of Albert Flegenheimer, the United States requested cancellation of the forced sale in 1941, at an undervalue, of certain property of the claimant in Italy. The Italian contention that the claimant was not a "United Nations national" within the meaning of article 78, paragraph 9 (*a*) of the Italian Peace Treaty (1947), was upheld by the Conciliation Commission, and the request was rejected on grounds of inadmissibility.

11. One of the points considered by the Commission was whether or not the claimant's legal position was governed by the Bancroft Treaties relative to acquisition and loss of nationality concluded by the United States with the Grand Duchy of Baden on 19 July 1868 and with Württemburg on 27 June 1868. In deciding that the treaties were applicable, the Commission stated:

It should not be denied that, in confederation of States and in federated States, the member States of which have maintained a limited international sovereignty permitting them to conclude agreements with foreign States in certain spheres, the treaties binding on a particular State cannot be extended to another member of the Union, even if this latter member were linked with that same foreign State by a treaty containing similar provisions.

The legal position was not modified by the establishment of the German Empire, on January 18, 1871, because the United States did not conclude similar treaties with all the members of the new federative State, but only with the States of the old Confederation of North Germany and the other four [i.e. Grand Duchy of Baden, Bavaria, Grand Duchy of Hess and Württemburg] [. . .] [8]

III. State succession in relation to private rights and concessions

Colias and Michel Claims (1953)

France v. *Italy*

Franco-Italian Conciliation Commission established under the Treaty of Peace with Italy of 10 February 1947: Decision No. 146 of 21 January 1953

Reports of International Arbitral Awards., vol. XIII, p. 303.

12. In 1860 the firm Collas and Michel, composed of two French nationals, obtained from the Ottoman Government a concession for the construction and service of lighthouses along the coast of the Ottoman Empire. Under the Treaty of Lausanne, 1923, the concession was kept in force with regard to the successor States of the Ottoman Empire and, in particular, Italy as exercising sovereignty over the Dodecanese, the islands which were subsequently ceded to Greece by the Treaty of Peace with Italy (1947). The French Government claimed compensation on behalf of the firm of Collas and Michel which had been placed under sequestration in 1940 by the Italian Government and whose lighthouses in the Dodecanese had been mostly destroyed as the result of warlike action.

13. The case chiefly turned on the interpretation of article 78 (7) of the Italian Peace Treaty, concerning the responsibility of Italy for the restitution of, or the compensation for loss or damage sustained by, property belonging to United Nations nationals, and paragraph 14 of annex XIV of the Peace Treaty, providing for freeing from sequestration or measures of Italian control property of United Nations nationals.

14. The Commission rejected Italy's contention that the obligation of Italy to pay compensation was limited by the fact that the claimants' property was in ceded territory and held that the claim must succeed. The Commission said:

[*Translation from French*]

Paragraph 14 of Annex XIV imposes on the United Nations in the capacity of successor State an obligation towards Italy—that of freeing from sequestration or measures of control taken by Italy property of United Nations citizens situated on the territory ceded to that successor State and of restoring it to its owners in its present condition. To the extent of that obligation, Italy is relieved of its responsibility towards that one of the United Nations whose national is the owner of the property in question: if the successor State does not restore the property in its present condition, Italy cannot be called upon to effect restitution or be ordered to put right damage resulting from default in restitution; but it can be proceeded against for compensation for damage or for the loss sustained by the property not restored as the result of war or by reason of special measures

[8] *Reports of International Arbitral Awards*, vol. XIV, p. 358.

applied before the coming into force of the Peace Treaty. That, if the full scope of the Treaty is taken into account, is the only true meaning of the last sentence of article 78 (7): the successor State replaces Italy as regards the obligation to restore the property in the condition in which it now is, and Italy cannot be held responsible for the maintenance by the successor State, after the coming into force of the Peace Treaty, of a measure of sequestration or control taken by Italy against the property in question.[9]

IV. State succession in relation to public property and public debts, including apportionment of *biens communaux*

Decision of 31 January 1953 (general list No. 1)

Italy v. *United Kingdom and Libya*

United Nations Tribunal in Libya established by General Assembly resolution 388 (V) of 15 December 1950

Reports of International Arbitral Awards, vol. XII, p. 363

15. Libya became independent on 24 December 1951, two days after the Italian Government instituted proceedings against the United Kingdom, claiming the restoration to Italy of the administration of properties comprised in the categories specified in article I of the United Nations General Assembly resolution 388 (V) of 15 December 1950 entitled "Economic and financial provisions relating to Libya". The Tribunal, in its decision of 18 February 1952 in the Request for Interim Measures,[10] considered the Government of Libya as a co-defendant and also rejected the Libyan Government's exception of lack of jurisdiction, having ruled that the instant action had been properly brought before the Tribunal.

16. One of the Italian Government's claims was that the administration of the properties constituting the *patrimonio disponibile* in Tripolitania and Cyrenaica should be returned to Italy. This claim turned on the interpretation of article I in General Assembly resolution 388 (V), which reads in part:

Article I

1. Libya shall receive, without payment, the movable and immovable property located in Libya owned by the Italian State, either in its own name or in the name of the Italian administration of Libya.

2. The following property shall be transferred immediately:

(*a*) The public property of the State (*demanio pubblico*) and the inalienable property of the State (*patrimonio indisponibile*) in Libya, as well as the relevant archives and documents of an administrative character or technical value concerning Libya or relating to property the transfer of which is provided for by the present resolution;

(*b*) The property in Libya of the Fascist Party and its organizations.

3. In addition, the following shall be transferred on conditions to be established by special agreement between Italy and Libya:

(*a*) The alienable property (*patrimonio disponibile*) of the State in Libya and the property in Libya belonging to the autonomous agencies (*aziende autonome*) of the State.

The Tribunal stated that paragraph 1 of the above-quoted article I set forth the general objective that title to all State property in Libya should be vested in the Libyan Government; that paragraph 2 established Libya's right to full and immediate ownership of its *demanio pubblico* and *patrimonio indisponibile*; and that paragraph 3 (*a*) made the transfer to the Libyan Government of the *patrimonio disponibile* dependent on the special agreement between Italy and Libya. In this connexion, the Tribunal referred to the following excerpts from Fauchille's *Traité de droit international public*, which it endorsed as constituting a generally accepted rule of international law, and the Tribunal said that paragraph 2 of the above-mentioned article I was in line with this rule:

[*Translation from French*]

When a dismembered State cedes a portion of its territory, property which constitutes *public* property, namely property which by its nature is used for a public service, existing on the annexed territory, passes with its inherent characteristics and legal status to the annexing State; being devoted to the public service of the ceded province, it should belong to the sovereign power which is henceforward responsible for it ...

...

As regards *private* State property, i.e., property which the State possesses in the same manner as a private person, in order to derive income from it, it must be noted that failing any special provisions it does not become part of the property of the annexing State. In spite of the loss the dismembered State has suffered, it remains the same person as before and does not, any more than a private person, cease to be the owner of the things it possesses in the annexed territory and there is no principle preventing it from having the ownership of immovable property in that territory.[11]

17. The Tribunal went on to examine the nature of the transfer of the *patrimonio disponibile* in Libya which should take place in accordance with article I, paragraph 3, of the General Assembly resolution, and referred to the circumstances that Italy agreed to the transfer of the *patrimonio disponibile* in Libya, as well as in Eritrea and in the territories which Italy ceded to France, Greece and Yugoslavia, and concluded that, in so far as the properties constituting the *patrimonio disponibile* in Libya were concerned, all that had yet to be transferred to Libya by means of the special agreement called for in article I, paragraph 3 (*a*), was title to the said properties. The Italian Government's claim was therefore rejected and, pending the special agreement, the Libyan Government was to abstain from disposing of any of the said properties and to maintain the present administrative agency entrusted with the custodianship of the said properties.

18. In this connexion, it may be relevant to recall the Tribunal's decisions of 3 July 1954 and 27 June 1955 (General List No. 2)[12] where disputes relating to the

[9] *Ibid.*, vol. XIII, pp. 306-307.
[10] *Ibid.*, vol. XII, p. 359.
[11] *Ibid.*, pp. 365-366. For the original French text, see P. Fauchille, *Traité de droit international public*, 8th ed. (Paris, Rousseau et Cie, Editeurs, 1922), t. I, pp. 360-361.
[12] *Reports of International Arbitral Awards*, vol. XII, p. 373.

transfer to Libya of the rights in certain Italian institutions, companies and associations were settled mainly on the basis of the interpretation of the provisions of General Assembly resolution 388 (V) aforementioned and of an Agreement of 28 June 1951 between Italy and the United Kingdom concerning the disposal of Italian property in Libya, which had been in the custody of the British Military Occupation Administration.

Postal Arbitration (1956)

Postal Administration of Portugal
v. *Postal Administration of Yugoslavia*

Arbitrators (Postal Administrations of the Netherlands and Denmark) appointed under the Universal Postal Convention of 11 July 1952 [13]

Reports of International Arbitral Awards, vol. XII, p. 339

19. The Portuguese Postal Administration claimed from the Yugoslav Postal Administration the dues for reply coupons issued in 1943 in the then independent State of Croatia a debt which had been acknowledge by the Croatian Administration in 1944—and the transit charges for mails from occupied Yugoslavia in 1941. The Yugoslav Administration refused to pay the dues and charges, contending, *inter alia*, that the actions of the former Croatian State under the patronage of the occupying Power could in no way commit the Yugoslav Administration and that during the occupation (from 18 April 1941 onwards) Yugoslavia had not been able to perform any valid act in relation with a foreign country either in its own name or on its own account. The Portuguese Administration argued that, since the territory on which the Croatian Administration and the German occupation authorities operated was an integral part of the present Yugoslavia, the latter should be held as the rightful successor to the authorities who exercised power on the same territory during the Second World War.

20. The Arbitrators decided that the claim of the Portuguese Administration must fail. They argued:

The settlement of debts through compensation is subject to certain conditions. In particular, the creditor does not have the power to replace the original debtor by another whom he considers to be the rightful successor *if this succession is not recognized either by the new debtor or by a special international arrangement or an uncontested rule of public international law.*

Since in this specific case, this rightful succession is contested by Yugoslavia and no special international arrangement or uncontested rule of public international law recognizes the succession, as the instances competent to solve questions of this kind have not yet made a judgement in this respect, compensation cannot be effected.[14]

Case concerning the interpretation of article 78, paragraph 7, of the Treaty of Peace with Italy (1956)

France v. *Italy*

Franco-Italian Conciliation Commission established under the Treaty of Peace with Italy of 10 February 1947: Decision No. 201 of 16 March 1956

Reports of International Arbitral Awards, vol. XIII, p. 636

21. The question before the Conciliation Commission was whether the provisions of article 78, paragraph 7, of the Treaty of Peace with Italy, relating to the responsibility of Italy for loss or damage sustained during theb war by property in ceded territory or in the Free Territory of Trieste, were applicable to Ethiopian territory. The Commission decided on the question in the negative, almost exclusively on the basis of the interpretation of the relevant provisions of the Peace Treaty. In the course of its opinion, the Commission referred to the question of succession to State debts and said:

[*Translated from French*]

In the matter of succession to State debts where there are territorial changes, the teachings of international doctrine and practice are inconsistent (cf. Rousseau, *Droit International Public* [15] pp. 275 *et seq.*) and must in any case yield to contractual solutions when the question has, as in this case, been settled by treaty.[16]

Case concerning the apportionment of property of frontier communes (1953)

France v. *Italy*

Franco-Italian Conciliation Commission established under the Treaty of Peace with Italy of 10 February 1947: Decision No. 163 of 9 October 1953

Reports of International Arbitral Awards, vol. XIII, p. 503

22. By an exchange of notes of 27 September 1951,[17] France and Italy agreed to submit to the Franco-Italian Conciliation Commission a number of questions relating to the apportionment of the property of the frontier communes whose areas had been divided as a result of modifications of the frontier made by article 2 of the Treaty of Peace with Italy (1947). The Commission made a series of decisions regarding the exact line of the frontier and allocation of property of local authorities *(biens communaux)*. The Commission also heard argument and reached certain conclusions on questions of law relating to succession to property rights.

23. Contrary to the Italian contention, the Commission held that, under annex XIV, paragraph 1, of the Italian Peace Treaty, the successor State was to receive not

[13] United Nations, *Treaty Series*, vol. 169, p. 3.
[14] *Reports of International Arbitral Awards*, vol. XII, pp. 347-348.
[15] Ch. Rousseau, *Droit international public* (Paris, Librairie du Recueil Sirey, 1953), t. I.
[16] *Reports of International Arbitral Awards*, vol. XIII, pp. 657-658.
[17] *Ibid.*, p. 22.

only State property but also other public property, including *biens communaux*, situated in territory ceded to it, and that it was for the successor State to determine the fate of property thus transferred, either by express municipal law enactment or by implicitly recognizing, for example, that the local authority amenable to its sovereignty which had succeeded the Italian local authority should be regarded as the owner of the property.

24. The Commission, however, found it understandable that, as regards the property of communes whose areas had been divided by the new frontier, the Allied and Associated Powers permitted, by paragraph 18 of the above-mentioned annex XIV, a derogation from the principle of annex XIV, paragraph 1, and were moreover moved by respect for acquired rights. The Commission went on to say:

[*Translation from French*]

The most authoritative doctrine, while recognizing that the effects of territorial changes upon property rights [*droits patrimoniaux*] are determined in the first instance by the Treaty which stipulated the loss of or accretion to the detriment or advantage of a State, holds that territorial changes should leave unimpaired property rights duly acquired before the change, and in particular recommends the application of that rule to the property rights of communes or other local authorities which are part of the State affected by the territorial change (see chapters 3 and 4 of resolution II adopted by the Institute of International Law at Siena during its session of 17-26 April 1952 . . . [18]).[19]

25. Aethough no question concerning archives of documents had been raised in the present case, the Commission made the following statement for the record:

[*Translated from French*]

The communal property [*biens communaux*] to be apportioned under paragraph 18 should be deemed not to include archives and all relevant documents of an administrative character or historical value'; such archives and documents, even if they belong to a commune whose area is divided by a frontier established under the terms of the Treaty, pass to what is termed the successor State if they concern the territory ceded or relate to property transferred (Annex XIV, para. 1); if these conditions are not fulfilled, they [i.e. the archives and documents] are not liable either to transfer under paragraph 1 or to apportionment under paragraph 18, but remain the property of the Italian commune. What is decisive, in the case of property in a special category of this kind, is the ideal link with other property or with a territory.[20]

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[18] *Annuaire de l'Institut de droit international, Siena Session (April, 1952)* [Bâle, Editions juridiques et sociologiques S. A., 1952], vol. 44, t. II, pp. 471-472.

[19] *Reports of International Arbitral Awards*, vol. XIII, p. 516.

[20] *Ibid.*, pp. 516-517.