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SUCCESSION OF STATES:
(a) Succession in respect of treaties
[Agenda item 2(*a*)]

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Succession of States in respect of bilateral treaties: second and third studies prepared by the Secretariat [Air transport agreements and Trade agreements]

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ABBREVIATIONS

BOAC	British Overseas Airways Corporation (United Kingdom)
ECA	Economic Commission for Africa
GATT	General Agreement on Tariffs and Trade
ICAO	International Civil Aviation Organization
KLM	Royal Dutch Airlines (Netherlands)
Misrair	Egyptian Airlines
MOCI	*Moniteur officiel du commerce et de l'industrie* As from 1961: *Moniteur officiel du commerce international*, France
SABENA	Société anonyme belge d'exploitation de la navigation aérienne (Belgian World Airlines)
SAS	Scandinavian Airlines System (Denmark, Norway, Sweden)

Note

To assist the International Law Commission in its work on the topic "Succession of States and Governments", the Secretariat has carried out some research relative to succession in respect of bilateral treaties in selected areas of inter-State relations for the purpose of ascertaining recent practice in the field. A first study, entitled "Extradition treaties", was published in 1970 as a document of the twenty-second session of the Commission. [1] The present document contains the second and third studies of the series, entitled "Air transport agreements" and "Trade agreements" respectively.

As in the case of the first study, these new studies on succession of States in respect of bilateral treaties cannot be said to be exhaustive. Published practice on bilateral treaties does not allow of the preparation of studies as comprehensive as those in the series "Succession of States to multilateral treaties". [2] Though the sources of the information are varied, in most cases they are official and primary. When private or secondary sources have been used, that has been indicated.

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 have with regard to the particular treaties or agreements mentioned.

[1] See *Yearbook of the International Law Commission 1970*, vol. II, p. 102, document A/CN.4/229.

[2] *Ibid., 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 *ibid., 1970*, vol. II, p. 61, document A/CN.4/225.

II. Air transport agreements

(Document A/CN.4/243)

Introduction

1. Article 6 of the Convention on International Civil Aviation, concluded at Chicago in 1944 [3] states:

> No scheduled international service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the term of such permission or authorization.

The attempts made at the Chicago Conference to conclude a viable *multilateral* agreement granting such authorizations were, in the end, unsuccessful. The only widely accepted agreement relating to air transport rights, the International Air Services Transit Agreement (Chicago, 1944), [4] requires its parties to grant the first two freedoms of the air (relating to transit rights) in respect of scheduled international air services namely, the "privilege to fly across [the Parties'] territory without landing" and the "privilege to land for non-traffic purposes". It does not, however, grant the other three other freedoms of the air (relating to traffic rights) which are commercially valuable and which are set out in the International Air Transport Agreement (1944), article I, section 1: [5]

> (3) The privilege to put down passengers, mail and cargo taken on in the territory of the State whose nationality the aircraft possesses;
>
> (4) The privilege to take on passengers, mail and cargo destined for the territory of the State whose nationality the aircraft possesses;
>
> (5) The privilege to take on passengers, mail and cargo destined for the territory of any other contracting State and the privilege to put down passengers, mail and cargo coming from any such territory.

[3] United Nations, *Treaty Series*, vol. 15, p. 295.

[4] *Ibid.*, vol. 84, p. 389. Seventy-eight States parties to the Agreement are listed in United States of America, Department of State, *Treaties in Force—A list of Treaties and other International Agreements of the United States in Force on January 1, 1971* Department of State publication 8567 (Washington, D.C., U.S. Government Printing Office), p. 276.

[5] United Nations, *Treaty Series*, vol. 171, p. 387.

The International Air Transport Agreement (1944) failed to obtain general acceptance [6] and, as a result, a vast network of bilateral agreements granting traffic rights was subsequently negotiated.

2. The great majority of these agreements are in almost every respect virtually identical and follow the standard agreement recommended by the Chicago Conference (Recommendation VIII of the Final Act) [7] as supplemented by the Bermuda Agreement of 1946 between the United Kingdom and the United States of America. [8] In fact, of the more than 1,100 intergovernmental air transport agreements registered with the International Civil Aviation Organization [9] as at 1 January 1969, about 90 per cent are classified as agreements of the "Chicago type"; [10] many of the remainder are agreements concluded by States not members of ICAO. In the foreword to the *Handbook on Administrative Clauses in Bilateral Air Transport Agreements* (1962) [11] it is stated that the ICAO secretariat's analysis "shows that there is on the whole a large measure of uniformity in the drafting of the administrative and technical clauses in the bilateral agreements concluded between ICAO States". [12]

3. These agreements usually consist of two parts: the agreement itself and the schedule to the agreement. The schedule to the agreement sets out the routes on which the designated airlines of the parties are entitled to exercise traffic rights. The route lists the stopping places in the territories of the parties and, in some cases, other points between and beyond those territories. The agreement itself usually consists of about fourteen or fifteen articles which set out the conditions on which the rights are to be exercised: designation of airlines, grant of operating authorization, exemption from customs duties etc. of supplies used by the airline, provision and sharing of capacity, change of gauge, tariffs, exchange control, statistics, consultation, settlement of disputes, and modification, termination and registration of the agreement. Although differences sometimes arise in relation to the frequency of flights, the sharing of traffic, [13] and the fixing of tariffs [14] it is the route schedules annexed to the agreement which more often give rise to difficulties both at the time of negotiation and during the agreement's application.

4. On the other hand, the agreements generally incorporate certain provisions which have become "standard provisions" in bilateral air transport agreements. One of the standard provisions defines "territory" for the purposes of the agreements either as "the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship or [the] State", or simply by reference to article 2 of the Chicago Convention which contains an almost identical definition. [15]

5. It accordingly follows that the question of succession arises in the case of every territory which has undergone a change of status, if the State formerly or newly responsible for its international relations is a party to a bilateral air transport agreement containing a standard provision such as that mentioned above. Particularly, it arises for the States which have become independent since 1946, with regard to bilateral air transport agreements concluded by States formerly responsible for their international relations. However, three factors limit the practical significance of this: first, the most important element in the agreement—the route annex—would not necessarily grant traffic rights to, from and through all the non-self-governing territories of the parties; [16] secondly, since first and second freedom rights are granted by the multilateral Air Services Transit Agreement, mentioned in paragraph 1 above,

[6] Twenty-nine states signed the International Air Transport Agreement, but few of them were major carriers; see United Nations, *Treaty Series*, vol. 171, p. 388. At 31 December 1970, the following twelve States were parties to the Agreement: Bolivia, Burundi, Costa Rica, El Salvador, Ethiopia, Greece, Honduras, Liberia, Netherlands, Paraguay, Sweden, Turkey; see ICAO document 7965.

[7] Provisional Civil Aviation Organization, *International Civil Aviation Conference Final Act and Related Documents* (Doc. 2187), pp. 19-20.

[8] United Nations, *Treaty Series*, vol. 3, p. 253. The Bermuda Agreement, especially its annex setting out the routes, has been amended on several occasions, but its fundamental principles are unchanged.

[9] Article 83 of the Chicago Convention requires parties to register "arrangement not inconsistent with" it, with the Council of ICAO forthwith.

[10] ICAO, *Aeronautical Agreements and Arrangements—Fourth Annual Supplement (for the year 1968) to "Tables of Agreements and Arrangements registered with the Organization" (Documents 8473—LGB/215) and to First Supplement (Doc 8563—LGB/228), Second Supplement (Doc 8648—LGB/239), Third Supplement (Doc 8727—LGB/252)*, Doc 8789—LGB/265 Montreal, January 1969), pp. 19-20. (Hereinafter referred to as "Fourth Annual Supplement (1968).)

[11] ICAO, Circular 63-AT/6 *Handbook on Administrative Clauses in bilateral air transport agreements* (Montreal, 1962 (hereinafter referred to as the "Handbook")).

[12] *Handbook*, p. 4. See also the study preparer by the Legal Studies Section of ICAO, *Bilateral agreements "Chicago Type"* (23 October 1947), document 4798-AT/526, especially paras. 1-6 and 61.

[13] See ICAO, Circular 72-AT, *Handbook on Capacity Clauses in Bilateral Air Transport Agreements* (Montreal, 1965); and e.g. the Exchange of Notes between India and the United States of America relating to capacity (United Nations, *Treaty Series*, vol. 533, p. 334). In that case, the Bermuda model had not been followed. See O. J. Lissitzyn, "Bilateral agreements on air transport" in *The Journal of Air Law and Commerce* (Dallas, Texas), vol. 30 (summer, 1964), pp. 248 and 250-252. See also the 1960 Amendment to the Netherlands-Pakistan Agreement (United Nations, *Treaty Series*, vol. 412, p. 318).

[14] Fares are, in fact, usually dealt with largely outside the framework of the bilateral agreement by the International Air Transport Association, whose role is indeed recognized in many bilateral agreements. See also the International Agreement on the Procedure for the Establishment of Tariffs for Scheduled Air Services (Paris, 10 July 1967 in United Kingdom, *Treaty Series*, No. 79, Cmnd. 3746 (London, H.M.S.O., 1968).

[15] The Chicago Convention refers to mandated rather than to trust territories.

[16] See, for example, the original Bermuda Agreement (referred to in paragraph 2 above); of United Kingdom administered territories which have since become independent, it gave United States airlines third, fourth and fifth freedom rights only in Trinidad, Tobago, British Guiana, Jamaica, Singapore, Lydda, Accra and Lagos.

to which many new States have become parties either by acceptance or succession, [17] the grant of these rights in bilateral agreements seems unnecessary in t hose cases;[18] and thirdly, the remaining provisions of the agreements being largely standard, they are, in most cases, included without change in the bilateral agreements concluded by new States; that is to say, the networks of rights and obligations—the routes apart—will in all probability be the same, whether the old agreement remains in effect or a new one is negotiated. Thus it is not surprising that most of the relevant available practice concerning succession problems and bilateral air transport agreements relates to the comparatively limited number of cases where a point in a territory, the status of which has been changed, was specifically included in the route referred to in the schedule to the agreement in question.

6. Before examining this practice, a number of other general points may be mentioned. In some situations, it may be difficult to carve out of the route schedule to a bilateral agreement a set of reciprocal routes giving the new State and the other party to the agreement roughly similar rights and obligations. Thus, under the original Bermuda Agreement between the United States of America and the United Kingdom, [19] United States carriers were authorized to fly between New York and Accra. United Kingdom carriers, however, had no comparable route. On becoming independent, Ghana accordingly had no obvious route on which its carriers could operate to the United States. On the other hand, there were comparable routes in the Caribbean; [20] and, in several other cases, separate airlines, domiciled in a dependent territory, have operated on the routes assigned to the administering State, in respect of traffic to, through and from the territory. Assignments of routes to the predecessor State granting it traffic rights to and from its dependent territories—third and fourth freedom rights—become, on independence, fifth freedom rights (although their continued exercise would be dependent on the consent of the former dependent territory which might, of course, wish to exercise the rights itself). The other party might argue that it never intended to grant such rights and that the routes should consequentially be amended. That is to say, independence may create problems for the predecessor State, as well as for the successor. On the other hand, traffic between points within the former dependent territories of one of the parties will no longer be cabotage and as such forbidden —by the usual, express provision of the agreement— to the carriers of the other party.

7. The great majority of bilateral agreements provide that a party to the agreement may withhold the exercise of rights by an airline designated by the other party, if it is not satisfied that substantial ownership and effective control of the airline are vested in the contracting party designating the airline or in its nationals. [21] These provisions are discretionary and do not appear to relate to the nationality of the aircraft, [22] nevertheless, they could conceivably cause difficulties for new States which may, instead of owning and operating their own airlines, take part in some pooling or other co-operative arrangement as provided for by chapter XVI of the Chicago Convention. [23]

8. The statistics show that foreign carriers have continued to operate on the routes provided for in air transport agreements which applied to the territories of new States before they became independent. Thus a study entitled *Air Transport in Africa* prepared in 1964 by ICAO and ECA, [24] shows that, according to the information then available, 34 non-African carriers were providing intercontinental services to Africa. Moreover, the traffic volume continued to grow at a high rate, [25] although not as fast as economic factors and demand seemed to require. [26]

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[17] See United Nations, *Materials on Succession of States* (United Nations publication, Sales No. E/F.68.V.5) (hereafter referred to as *Materials on Succession of States*); pp. 224-226; and United States of America, Department of State, *Treaties in Force...1969*, Department of State publication 8432 (Washington, D.C., U.S. Government Printing Office), p. 264.

[18] See B. Cheng, *The Law of International Air Transport* (London, Stevens, 1962), pp. 291-292; *Shawcross and Beaumont on Air Law*, 3rd ed., (London, Butterworth, 1966), p. 286; and paragraphs 3 and 4 of the 1953 revised schedule to the United Kingdom-France Agreement (United Nations, *Treaty Series*, vol. 175, p. 350); and paragraph 2 of the note dated 27 November 1961 addressed by Czechoslovakia to Mali (*ibid.*, vol. 466, p. 62).

[19] See foot-note 8 above.

[20] See below as to Jamaica and Trinidad and Tobago.

[21] See e.g. *Handbook*, pp. 26-33; Bin Cheng, *op. cit.*, pp. 375-379.

[22] Bin Cheng, *op. cit.*, pp. 375-376. See also the exchange of letters between Tunisia, on the one hand, and the Netherlands, Norway and Switzerland, on the other, wherein it was agreed that "effective control" in the above formula did not refer to the technical and commercial management of any designated airline (United Nations, *Treaty Series*, vol. 497, pp. 61, 77 and 109).

[23] Air Afrique, operated by 12 African States under the Treaty of Yaoundé of 28 March 1961; Central Airways Corporation (Malawi, Zambia and Southern Rhodesia), dissolved on 31 August 1967; East African Airways Corporation (Kenya, Tanzania and Uganda); Malayan Airways Ltd. and Malaysia-Singapore Airlines Ltd. See also *Summary of Material Collected on Co-operative Agreements and Arrangements* (1967) ICAO, Circular 84 - AT/14 for the forms this co-operation may take. The introduction suggests that the material might be of particular value to developing countries, since they have a great interest in such arrangements. See also para. 33 (*f*) (vi) and table 11 of the study cited in foot-note 24 below; and the *Report of the African Air Transport Conference* (Addis Ababa, November 1964) (ICAO document 8462-AT/719 - ECA document E/CN.14/TRANS/26), paras. 19-24.

[24] ECA document E/CN.14/TRANS/20 — ICAO document 8419-AT/718, p. 67.

[25] *Ibid.*, para. 20. See also ICAO, *Digest of Statistics No. 135, Traffic 1960-1967*, Series T, No. 27, p. 80.

[26] One writer has observed:

"Almost all newly independent States have continued the air policies of their predecessors for a period after independence, although the wish to become their own flag-carriers gradually leads towards restriction upon foreign carriers. The latter have not been immediately interfered with in the exercise of existing commercial rights, and there is normally a 'twilight' period without any particular termination date, during which new agreements are negotiated to replace the old, or new permits are accepted by the carriers. There has, therefore, been an almost universal continuity of air transport agreements, enduring for the least the period normally covered by termination (D.P. O'Connell, *State Succession in*

9. Although the traffic statistics published by ICAO show for the most part both continuity and expansion, of air transport services, [27] especially by the airlines of the new States, Governments seem only rarely to have taken a public position on the continuity of air transport agreements formerly applicable to territories which have become independent. Thus few of the many new agreements which often grant identical or similar traffic rights to those accorded by pre-independence agreements refer to the earlier agreements, or instance, by expressly revoking them. Also there are few published instances of exchanges of diplomatic correspondence on the subject.

10. The present study records, as appropriate, (*a*) such specific relevant diplomatic practice as has been discovered and (*b*) evidence of continued or discontinued air services between the countries concerned. The value as evidence of continued or discontinued services is relative; it may reveal the legal position of the countries concerned vis-à-vis the agreement in question, but it may also be due to other reasons, including reasons quite unrelated to succession problems. The collected materials are divided into two groups "Cases of independence of former non-metropolitan territories" (section A) and "Cases other than cases of independence of former non-metroplitan territories" (section B). Section A is subdivided according to the State which was responsible for the international relations of the former non-metropolitan territories at the time when they attained independence. Within each of the subdivisions, cases are generally listed chronologically. Cases in section B are listed chronologically. The grouping has been made simply for reasons of convenience and without prejudice to any particular situation.

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

1. *India and Pakistan*

11. Air transport agreements were concluded by the Government of India with France, the Netherlands and the United States of America between 14 November 1946 and 15 August 1947, the date on which the two independent States of India and Pakistan were established. Each of the agreements was signed for the Government of India by the Indian members for External Affairs and for Communications "in agreement with His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States". All provided for their termination on the giving of 12 months' notice.

France—India Agreement of 1947 [28]

12. The Agreement relating to air services was signed and came into force on 16 July 1947. It authorized French carriers *inter alia,* to operate, from France or Tunis via various points to Karachi, Delhi, Calcutta and beyond. Indian carriers were authorized to operate from points in India to Marseilles and Paris and beyond, and from India to Hanoi and Saigon and beyond. The Indian and, it appears, the French carriers were not exercising rights on these routes at the time of partition and independence. [29] Subsequently, however, Air France began operating on routes from Paris and Tunis which included Karachi and Calcutta, and was exercising traffic rights there, [30] while an Indian carrier later began operating through, and exercising traffic rights at, Paris. [31]

13. In 1950, France and Pakistan concluded a new agreement relating to air services [32] French rights were almost identical with those granted in the 1947 Agreement, which is not mentioned, but with the addition of one new route. Pakistan's rights were identical except that Karachi and Dacca replaced India as the points of departure for the routes.

14. In relations between France and India, the 1947 Agreement was amended in 1961. [33] The Agreement, as thus amended in the case of India, was still listed under both India and Pakistan in the 1965 ICAO list of aeronautical agreements and arrangements. [34]

Netherlands—India Agreement of 1947 [36]

15. The Agreement relating to air services which was signed and entered into force on 31 May 1947, gave Netherlands carriers *inter alia,* the right to operate, from Europe via intermediate points to Karachi, Delhi and Calcutta and points beyond. KLM was operating on a route which included Karachi and Calcutta before independence. [36] After a suspension of services about the time of independence, it began operating through, and,

Municipal Law and International Law (Cambridge, University Press, 1967), vol. II, p. 329). The usual period for termination is one year (*Handbook,* pp. 93-98). See also International Law Association, *The Effect of Independence on Treaties* (London, Stevens, 1965), p. 3; but cf. Lester, in *Shawcross and Beaumont on Air Law,* pp. 35 and 36.

[27] See e.g. the *Digest of Statistics* cited in foot-note 25 above.

[28] United Nations, *Treaty Series,* vol. 27, p. 325.

[29] See ICAO, *Digest of Statistics, No. 17, Traffic Flow - September 1947* Series TF, No. 2, *Supplement* (Supplementary Data), pp. 16 *a* - 16 *b;* there is no entry for French carriers.

[30] *Ibid., No. 23 Traffic Flow - March 1948,* Series TF, No. 3, pp. 22 and 148; *ibid., No. 24, Traffic Flow - September 1948,* series TF No. 4, pp. 21 and 174; and *ibid.,* No. 26, Series TF No. 5, pp. 32 and 187.

[31] *Ibid., No. 82, Traffic Flow - March 1960,* Series TF, No. 27, Add.1, p. 37 *a.*

[32] United Nations, *Treaty Series,* vol. 96, p. 23.

[33] *Ibid.,* vol. 496, p. 319.

[34] ICAO, *Aeronautical Agreements and Arrangements—Tables of Agreements and Arrangements registered with the Organization (January 1st - December 31st 1964)* Document 8473—LGB/215, (Montreal, January 1965) (hereafter referred to as *Tables of Agreements* (1964)), pp. 29 and 48.

[35] United Nations, *Treaty Series,* vol. 17, p. 65.

[36] See ICAO, *Digest of Statistics, No 16, Traffic Flow - March 1947,* Series TF, No. 1, pp. 18 and 19.

it seems, exercising traffic rights at, Karachi and Calcutta a few months later. [37]

16. An agreement was concluded between the Netherlands and Pakistan in 1952. [38] It provided for somewhat different routes. An exchange of notes accompanying the new agreement stated and confirmed in the following terms the "understanding" of the Governments with regard to the 1947 Indian—Netherlands Agreement: [39]

[The agreement] which continued to be binding on the Government of Pakistan by virtue of the Indian Independence (International Arrangements) Order, 1947, will cease to be effective between Pakistan and the Netherlands with the coming into force of the Agreement signed today.

In 1951 India and the Netherlands concluded a new air transport agreement [40] which, according to ICAO, [41] replaces the 1947 instrument.

United States—India Agreement of 1946 [42]

17. The Agreement relating to air services, signed on 14 November 1946, authorized United States airlines *inter alia,* to operate to, through and from Karachi. The route for the Indian carrier was to be agreed later. In a note of 1 June 1948 to the United States, Pakistan confirmed

that under the Indian Independence (International Agreements) Order, the Air Agreement, which was concluded and signed before the partition of India on behalf of the United India and the United States of America, should be deemed to have been concluded between Pakistan and United States of America. The Government of Pakistan consider themselves bound by the provisions of that Agreement and request... a similar confirmation on behalf of the Government of the United States of America... [43]

The United States in its reply recalled that the United States had, in September 1947, stated that it considered the 1946 Agreement to be in effect as between Pakistan and the United States, thereby permitting the carriage of air traffic between Pakistan and India. It reaffirmed that

United States considers itself bound to comply with the terms of the ... agreement developing upon Pakistan under the Indian Independence (International Arrangements) Order of 1947. [44]

18. The statistics confirm this continuity of service by one of the two United States carriers and also show that the United States carrier was carrying fifth freedom traffic on routes between Pakistan and India, traffic which before independence was prohibited to it as cabotage. [45] In 1961 Pakistan designated Pakistan International Airlines under the Agreement and proposed a specific route to the United States. The two Governments agreed to a route. [46]

19. On 14 January 1954, India gave notice of the termination of the 1946 Agreement, which accordingly ceased to have effect a year later. [47]

2. *Ceylon*

UnitedStates—United Kingdom Agreement of 1946 [48]

20. By an exchange of notes of 14 January 1948, [49] the United Kingdom and the United States "formalized" the right of United States airlines to enjoi all five freedoms in Ceylon by adding "a point in Ceylon" on two of the routes scheduled to the Bermuda Agreement as a destination in United Kingdom territory. (The United Kingdom had no parallel rights.) Ceylon became independent only 21 days later, on 4 February 1948. A United States Civil Aeronautics Board document states that "air rights at... Ceylon became ineffective upon... acquisition of dominion status by Ceylon". [50] And the ICAO statistics indicate that United States carriers exercised no rights at all at Colombo either immediately before or immediately after independence. [51] Nevertheless, the Bermuda Agreement and the 1948 modification are still listed under Ceylon in *Treaties in Force.* [52]

[37] *Ibid.,No., 17, Traffic Flow - September 1947,* Series TF, No. 2, p. 124 (KLM operated through Colombo at that time); *ibid., No. 23 Traffic Flow - March 1948,* Series TF No. 3, pp. 35, 36 and 151; *ibid., No. 24, Traffic Flow - September 1948,* Series TF, No. 4, pp. 35-36; and ICAO, *Statistical Summary, No. 14, Origin and Destination of Passengers - March and September [1947 and] 1948,* document 7094-AT/708, pp. 127, 158, 162, 168, 191, 193, 202-203 and 218.

[38] United Nations, *Treaty Series,* vol. 150, p. 277.

[39] *Ibid.,* p. 294. Note also that on 5 September 1951, the Government of the Netherlands stated to ICAO that the 1947 agreement was still in force between the Netherlands and Pakistan (*ibid.,* vol. 108, p. 152, note 1).

[40] United Nations, *Treaty Series,* vol. 108, p. 151.

[41] *Ibid.,* p. 152, note 1 and *Tables of Agreements (1964),* p. 29.

[42] United Nations, *Treaty Series,* vol. 22, p. 55.

[43] *Ibid.,* vol. 235, p. 30.

[44] *Ibid.,* p. 32.

[45] ICAO, *Digest of Statistics No. 16, Traffic Flow - March 1947,* Series TF, No. 1, pp. 73-74 and 95; *ibid., No. 17, Traffic Flow* - September 1947, Series TF, No. 2, pp. 82, 109 and 111; *ibid., No. 23, Traffic Flow - March 1948,* Series TF, No. 3, pp. 104-105; *Statistical Summary No. 14, Origin and Destination of Passengers - March and September [1947 and] and 1948,* document 7094-AT/708, pp. 158 and 202. The second United States carrier ceased operating through Karachi between September 1947 and March 1948.

[46] United Nations, Treaty Series, vol. 410, p. 310.

[47] United States of America, *Department of State Bulletin* (Washington, D.C.), vol. XXXII, No. 813 (24 January 1955), p. 157. A new agreement was concluded in 1956 (United Nations, *Treaty Series,* vol. 272, p. 75).

[48] *Ibid.,* vol. 3, p. 253.

[49] *Ibid.,* vol. 71, p. 264.

[50] Bureau of International Affairs, Civil Aeronautics Board, "Route Grants in United States Bilateral Air Transport Agreements" in United States of America, Senate *Air Laws and Treaties of the World* (Washington, D.C., U.S. Government Printing Office, 1965) (89th Congress, 1st session), vol. III, pp. 4401 and 4421).

[51] ICAO, *Digest of Statistics, No. 16, Traffic Flow - March 1947,* Series TF, No. 1, pp. 133 and 136; *ibid., No. 17, Traffic Flow - September 1947,* Series TF, No. 2, pp. 143, 145 and 147; *ibid., No. 23 Traffic Flow - March 1948,* Series TF, No. 3, pp. 171 and 176; and *Statistical Summary No. 14, Origin and Destination of Passengers, March and September [1947 and] 1948,* document 709-AT/708, pp. 104-105.

[52] United States of America, Department of State, *Treaties in Force... 1971,* Department of State publication 8567 (Washington, D.C., U.S. Government Printing Office), p. 43.

So far as relations between the United Kingdom and the United States are concerned, the route schedule was revised in 1966 and no longer contains the routes including Ceylon. [58]

3. *Israel*

Netherlands—United Kingdom Agreement of 1946 [54]

21. In October 1947 the Agreement of 13 August 1943 was further amended [55] to authorize a carrier designated by the Netherlands to operate to Lydda. It appears that KLM ceased to exercise these rights between March and September 1948. [56]

United States—United Kingdom Agreement of 1946 [57]

22. The Bermuda Agreement gave United States airlines specific routes to, through and from Lydda. The United States Civil Aeronautics Board document mentioned above with reference to Ceylon notes that these rights too "became ineffective upon establishment of the independent State of Israel. . .". [58] Trans World Airlines stopped operating through Lydda at about the date of the independence of Israel. [59]

23. The United States and Israel concluded an agreement on 13 June 1950, [60] under which airlines designated by both countries were authorized to operate between —and in the case of the United States beyond—their territories.

24. When the United Kingdom and the United States revised the schedule to their 1946 Agreement in 1966, [61] they omitted those routes which included Lydda as a stopping place.

4. *Ghana*

France—United Kingdom Agreement of 1946 [62]

25. Under the Agreement of 28 February 1946, as amended in 1953, French designated carriers had traffic rights between Dakar and Douala, on the one hand, and Accra, on the other. United Kingdom carriers could operate between the Gold Coast and Fort Lamy and Abéché. According to the United Kingdom Government:

> As a consequence of certain difficulties with the French over air services in West Africa, the Ghana Government inquired of the United Kingdom Government whether as a result of the exchange of letters concerning treaty rights and obligations signed on independence, the Ghana Government inherited obligations under various bilateral air agreements undertaken by the United Kingdom which were relevant to the territory of Ghana.
>
> The United Kingdom Government in reply stated that, in their view, the exchange of letters referred to covered air services agreements, including the Anglo-French Agreement of 1946. The French Government, by exercising in Ghana rights under the Agreement, had tacitly accepted the inheritance by Ghana of the former obligations of the United Kingdom under the Agreement and were thereby estopped from maintaining that Ghana could not claim any rights on her side under the said Agreement. [63]

United Kingdom—Lebanon Agreement of 1951 [64]

26. Under this Agreement signed on 15 August 1951, carriers designated by Lebanon were permitted to operate on a route including Beirut, Khartoum, Kano and Accra. The designated carrier continued to provide services after Ghana attained independence. [65] When the schedule to the Agreement was revised by Lebanon and the United Kingdom in 1959, [66] Accra was omitted from the relevant route.

United States—United Kingdom Agreement of 1946 [67]

27. Under the Bermuda Agreement, United States airlines had traffic rights from New York and Boston via specified points to Accra, Lagos or Kano and beyond to Léopoldville and Johannesburg. On 19 June 1957, the Permanent Secretary of the Ghanaian Ministry of External Affairs wrote as follows to the American *Chargé d'Affaires* at Accra:

> I have the honour to address you on the subject of the international scheduled air services operated by Pan American Airways which call at Accra Airport.
>
> 2. As you will be aware, these services operate through Ghana under the terms of bilateral Agreement made between your Government and that of the United Kingdom. It is the desire of my Government that these arrangements should continue until such time as a bilateral Agreement is concluded between our Governments or until they are otherwise varied by mutual agreements. [68]

28. Ghanaian officials had earlier stated that they would regard United Kingdom—United States treaties

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[53] United Nations, *Treaty Series*, vol. 573, p. 274.

[54] *Ibid.*, vol. 4, p. 367 and vol. 11, p. 407.

[55] *Ibid.*, vol. 17, p. 358.

[56] See ICAO, *Digest of Statistics, No. 17, Traffic Flow - September 1947*, Series TF, No. 2, pp. 21 and 124; *ibid., No. 23, Traffic Flow - March 1948*, Series TF No. 3, pp. 43 and 153; *ibid., No. 24, Traffic Flow - September 1948*, Series TF, No. 4, pp. 177 and 179.

[57] See foot-note 48 above.

[58] Bureau of International Affairs, *op. cit.*, p. 4421.

[59] See ICAO, *Digest of Statistics, No. 23, Traffic Flow - March 1948*, Series TF, No. 3, pp. 133, 135, and 176; and *ibid., No. 24, Traffic Flow - September 1948*, Series TF, No. 4, pp. 160, 162 and 206.

[60] United Nations, *Treaty Series*, vol. 212, p. 93.

[61] See foot-note 53 above.

[62] United Nations, *Treaty Series*, vol. 27, p. 173; *ibid.*, vol. 175, p. 346.

[63] United Nations, *Materials on Succession of States*, p. 192.

[64] United Nations, *Treaty Series*, vol. 160, p. 327.

[65] ICAO, *Digest of Statistics, No. 68, Traffic Flow, - September 1956*, Series TF, No. 20, p. 128; *ibid., Nos. 69-70, Traffic Flow - March and September 1957*, Series TF, Nos. 21-22, p. 93 (Corr.1) and *ibid., No. 74, Traffic Flow - September 1958*, Series TF, No. 24, p. 90.

[66] United Nations, *Treaty Series*, vol. 351, p. 406.

[67] See foot-note 48 above.

[68] Ch. I. Bevans, "Ghana and United States-United Kingdom agreements", in *American Journal of International Law* (Washington, D.C.), vol. 59, No. 1 (January 1965), pp. 93-94 and International Law Association, *op. cit.*, pp. 382-383. Bevans adds:

> "The Ghanaian request appears to have been made in anticipation of a request from Pan American Airways for certain route and schedule changes for its services operating through Ghana."

affecting Ghana as remaining in effect for three months from 6 March 1957, the date of independence, pending the conclusion of more permanent arrangements. [69] This informal understanding remained in effect after that time and on 4 September 1957 the United States proposed that a formal undertaking should replace the informal agreement and that certain treaties, which it listed, should be continued in force. Included in the list was the Bermuda Agreement. In its reply, Ghana referred to its devolution agreement of 25 November 1957 with the United Kingdom [70] whereby, it said,

> the international rights and obligations under treaties and agreements entered into between the Government of the United Kingdom of Great Britain and Northern Ireland on the one hand and any other Government on the other and applied to the Gold Coast have been formally transferred to Ghana with effect from 6 March 1957 in so far as their nature admits of such transfer.

The Ghanaian note concluded by pointing out that the devolution agreement did not "preclude the possibility of negotiating about the continuing in force of any particular clause or clauses of any existing treaties or any reservations that either party might wish to raise at some future date," and by asking the United States to confirm that this procedure was acceptable to it, and also that the specific treaties listed by the United States in its note were considered as covered by the devolution agreement. [71] In its reply, the United States confirmed both that the procedure was acceptable and that the devolution agreement was considered to cover the treaties listed in the earlier note dated 4 September 1957. [72] The statistics show that Pan American Airways flights continued on the same route (New York—Boston—Santa Maria—Lisbon—Dakar—Robertsfield—Accra—Léopoldville—Johannesburg) after independence, with an increasing frequency and capacity through Accra. [73]

5. *Federation of Malaya*

Thailand—United Kingdom Agreement of 1950 [74]

29. Under the Agreement for air services signed on 10 November 1950, the airlines designated by Thailand were authorized to operate between Bangkok and Singapore via optional intermediate points (Songkhla, Penang and Kuala Lumpur). The United Kingdom routes included Singapore to Bangkok and points beyond, via Penang, Songkhla, Mergui and Kuala Lumpur. [75] The Thai airline continued to provide services on a route which included Bangkok and Penang after the Federation of Malaya became independent on 31 August 1957, at approximately the same frequency. [76]

6. *Cyprus*

United Kingdom—Greece Agreement of 1945 [77]

30. Under a 1950 amendment, [78] to the Agreement for air services in Europe (of 26 November 1945), United Kingdom carriers were authorized to operate services on the route Nicosia—Rhodes or Crete—Athens (the intermediate stop could be omitted if desired), while Greek carriers were authorized to operate services on the same route and on either the route Athens—Rhodes or Crete—Nicosia—Lydda or the route Athens—Rhodes or Crete—Nicosia—Beirut; a choice had to be made within a prescribed period. In fact in March 1960, Cyprus Airways, the airline designated by the United Kingdom, was operating on the Athens—Nicosia route and also to points beyond, while Olympic Airways, designated by Greece, was operating on both the Athens—Nicosia—Beirut and the Athens—Nicosia—Tel Aviv routes. [79] Services on substantially similar routes at similar frequencies were operated by both airlines following the attainment of independence by Cyprus in 1960: Cyprus Airways continued to operate between Athens and Nicosia and beyond, while Olympic Airways continued to operate services on the Athens—Nicosia—Beirut route and between Athens and Tel Aviv without calling at Nicosia. This practice is in accordance with the 1950 amendment to the Greece—United Kingdom Agreement. [80]

31. On 23 December 1961, Greece and Cyprus concluded an Agreement on Commercial Scheduled air transport which stated in aticle 18:

> The present Agreement shall supersede and cancel any previous agreements concerning air services between the Contracting Parties. [81, 82]

The routes assigned were similar to those fixed in the 1950 amendment for Greece.

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[69] United Nations, *Materials on Succession of States (op. cit.)*, pp. 211-212.

[70] United Nations, *Treaty Series*, vol. 287 and *Materials on Succession of States (op cit.)*, p. 30.

[71] United Nations, *Materials on Succession of States (op. cit.)*, pp. 212-213.

[72] *Ibid.*, pp. 211 and 213.

[73] See ICAO, *Digest of Statistics, No. 68, Traffic Flow - September 1956*, Series TF, No. 20, p. 295; and *ibid., Nos. 69-70, Traffic Flow - March and September 1957*, Series TF, Nos. 21-22, pp. 287-288.

[74] United Nations, *Treaty Series*, vol. 96, p. 77.

[75] Kuala Lumpur was added by amendments accepted in 1960 and 1961 (*ibid.*, vol. 412, p. 312 and vol. 420, p. 342).

[76] See ICAO, *Digest of Statistics, Nos. 69-70, Traffic Flow - March and September 1957*, Series TF, Nos. 21-22, p. 197, and *ibid., No. 72, Traffic Flow - March 1958*, Series TF, No. 23, p. 173. These statistics do not indicate whether Malayan Airways, which was operating a service on the Penang-Bangkok route before independence, continued to do so immediately afterwards.

[77] United Nations, *Treaty Series*, vol. 35, p. 163.

[78] *Ibid.*, vol. 77, p. 352.

[79] ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, pp. 36 and 102.

[80] *Ibid., No. 84, Traffic Flow - September 1960*, Series TF No. 28, pp. 29 and 45 and *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, pp. 27 and 35.

[81] United Nations, *Treaty Series*, vol. 497, p. 336.

[82] No provision to this effect is to be found in the following agreements concluded by Cyprus with States whose airlines had no traffic rights in that country before it became independent: with Denmark, on 27 April 1963 (United Nations, *Treaty Series*, vol. 529, p. 255); with Hungary, on 2 June 1964 (*ibid.*, vol. 602, p. 3); with Norway, on 5 March 1963 (*ibid.*, vol. 563, p. 305); and with the USSR on 29 February 1964 (*ibid.*, vol. 602, p. 45).

United Kingdom—Israel Agreement of 1950 [83]

32. Airlines designated by the United Kingdom and Israel under the Agreement for air services of 6 December 1950 had the right to provide air services between Cyprus and Israel. Cyprus Airways and El-Al continued to operate on this route after the attainment of independence by Cyprus. [84]

United Kingdom—Lebanon Agreement of 1951 [85]

33. The Agreement of 15 August 1951, as amended in 1959, [86] authorized a United Kingdom designated carrier to operate on the route: Doha—Bahrein—Kuwait —Basra or Baghdad or Amman—Damascus—Beirut —Nicosia. The Lebanese airline was authorized to provide services between Beirut, Nicosia and Ankara. (Intermediate points might be omitted provided the services began in United Kingdom and Lebanese territory respectively.)

34. Cyprus Airways was operating on the above United Kingdom route immediately before, and continued to operate at about the same frequency after, the attainment of independence by Cyprus. [87] Air Liban and Middle East Airlines, designated by Lebanon, also continued to exercise traffic rights at Nicosia. [88]

35. Apparently, no new agreement has been concluded between Cyprus and Lebanon. [89] When Lebanon and the United Kingdom further revised the schedule to their 1951 Agreement in 1962, i.e. following Cyprus's accession to independence, Nicosia was omitted from the relevant routes. [90]

United Kingdom—Syria Agreement of 1954 [91]

36. The Agreement of 30 January 1954 for scheduled civil air services provided, *inter alia,* that designated United Kingdom airlines might operate, on the following routes:

Nicosia—Damascus—Bagdad—Basra or Abadan—Kuwait—Bahrain;
Nicosia—Aleppo and/or Damascus.

(As usual, intermediate points on any route might be omitted.) Syrian designated carriers were to operate from Syria to United Kingdom territory and beyond on routes to be determined later. In the period prior to the independence of Cyprus, Cyprus Airways, a carrier designated by the United Kingdom, was operating on a route which included Nicosia and Damascus. [92] Following independence it was providing a direct Nicosia—Damascus service. [93]

37. On 22 December 1964, Cyprus and the Syrian Arab Republic concluded an agreement article 20 of which provides that

> The present Agreement shall supersede and cancel any previous agreements concerning air services between the Contracting Parties. [94, 95]

Carriers designated by the Syrian Arab Republic may operate on the Syria—Nicosia route and beyond to certain specified cities; Cypriot airlines may operate on the following routes: points in Cyprus—Damascus or Aleppo; points in Cyprus—Damascus or Aleppo—Bahrain—Doha—Dubai; points in Cyprus—Damascus or Aleppo—Baghdad—Bahrain.

United Kingdom—Turkey Agreement of 1946 [96]

38. By amendments of 1948 [97] and 1951 [98] to the Agreement for air services of 12 February 1946, carriers designated by the United Kingdom and by Turkey were authorized to operate on the Nicosia—Ankara—Istanbul route and on the Istanbul and/or Ankara—Nicosia—Beirut and/or Damascus—Cairo route, respectively. Cyprus Airways, which was designated by the United Kingdom before Cyprus attained independence, [99] continued to operate on the first route after independence [100] at the same frequency and capacity.

7. *Nigeria*

Belgium—United Kingdom Agreement of 1951 [101]

39. Under the Agreement for air services of 8 May 1951, the Belgian carrier SABENA had non-traffic rights through Kano. (United Kingdom carriers had no equivalent route.) SABENA continued to provide services through Kano after Nigeria became independent. [102]

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[83] *Ibid.*, vol. 151, p. 33.

[84] ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960,* series TF, No. 27, pp. 43 and 102; *ibid., No. 84, Traffic Flow - September 1960,* Series TF, No. 28, p. 29 and Add.1, p. 54 *b* and *ibid., No. 88, Traffic Flow - March 1961,* Series TF, No. 29, pp. 27 and 44.

[85] United Nations, *Treaty Series,* vol. 160, p. 327.

[86] *Ibid.*, vol. 351, p. 406.

[87] ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960,* Series TF, No. 27, p. 102; *ibid. No. 84, Traffic Flow - September 1960,* Series TF, No. 28, p. 29; and *ibid., No. 88, Traffic Flow - March 1961,* Series TF, No. 29, p. 27.

[88] *Ibid., No. 82, Traffic Flow - March 1960,* Series TF, No. 27, Add.1, p. 48 *a* and Add.2, p. 48 *a* and *ibid.,* No. 84, *Traffic Flow - September 1960,* Series TF, No. 28, Add.1, p. 58 *a* and *c* and *ibid., No. 88, Traffic Flow - March 1961,* Series TF, No. 29, Add.1, p. 50 *a, b* and *c.*

[89] None appears either in the *Tables of Agreements* (1964) or in any of its four annual supplements (1965-1969).

[90] United Nations, *Treaty Series,* vol. 457, p. 302.

[91] *Ibid.*, vol. 449, p. 47.

[92] ICAO, *Digest of Statistics, No. 78, Traffic Flow - September 1959,* Series TF, No. 26, p. 111 and *ibid., No. 82, Traffic Flow - March 1960,* Series TF, No. 27, p. 102.

[93] *Ibid., No. 84, Traffic Flow - September 1960,* Series TF, No. 28, p. 29 and *ibid., No. 88, Traffic Flow - March 1961,* Series TF, No. 29, p. 27.

[94] United Nations, *Treaty Series,* vol. 602, p. 40.

[95] See also para. 31 and foot-note 82 above.

[96] United Nations, *Treaty Series,* vol. 6, p. 79.

[97] *Ibid.*, vol. 35, p. 364.

[98] *Ibid.*, vol. 108, p. 310.

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

[100] ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960,* Series TF, No. 27, p. 102; *ibid., No. 84, Traffic Flow - September 1960,* Series TF. No. 28, p. 29 and *ibid., No. 88, Traffic Flow - March 1961,* Series TF, No. 29, p. 27

[101] United Nations, *Treaty Series,* vol. 158, p. 451.

[102] ICAO, *Digest of Statistics, No. 84, Traffic Flow - September 1960,* Series TF, No. 28, p. 8; and *ibid., No. 88, Traffic Flow - March 1961,* Series TF, No. 29, p. 10.

According to one writer,[108] Nigeria then negotiated a more liberal permit, without questioning the validity of the earlier one.

United Kingdom—Federal Republic of Germany Agreement of 1955 [104]

40. Under the Agreement for air services of 22 July 1955, carriers designated by the United Kingdom could operate services on a route: points in the United Kingdom—Frankfurt, Dusseldorf, Munich—via intermediate stops to points in West Africa and in South Africa. West African Airways Corporation (Nigeria) operated services on a route including London, Frankfurt, Kano and Lagos before Nigeria became independent and continued to do so afterwards. Apparently no carrier was designated by the Federal Republic of Germany for the parallel route. When the routes in the 1955 Agreement were revised by the United Kingdom and the Federal Republic of Germany in 1962, after Nigeria became independent, the two routes mentioned above were deleted. [105]

United Kingdom—Ghana Agreement of 1958 [106]

41. Several of the routes assigned to Ghanaian and United Kingdom carriers by the Agreement for air services of 24 September 1958 allowed traffic between Accra and Lagos/Kano and beyond at either end. West African Airways Corporation (Nigeria) and Ghana Airways continued to provide services on these routes after Nigeria had become independent. [107]

United Kingdom—Lebanon Agreement of 1951 [108]

42. Under the 1959 revised schedule,[109] carriers designated by Lebanon were permitted to operate on a route including Beirut, Khartoum, Kano and Lagos and beyond. Lebanese carriers continued to provide this service after the independence of Nigeria at the same frequency. [110] When the schedule was again revised by Lebanon and the United Kingdom in 1962, [111] the above route was deleted.

United Kingdom—Libya Agreement of 1953 [112]

43. Two of the routes assigned to United Kingdom carriers by the Agreement for air services of 21 February 1953 were: "London—Rome—Tripoli—Kano—Lagos —Accra—Freetown", and "Points in British West Africa—Tripoli". West African Airways Corporation (Nigeria) did not apparently exercise these rights at Tripoli before September 1960, [113] but it did subsequently (at about the time Nigeria became independent) start to provide services on a Lagos—Tripoli—London route. [114] Kingdom of Libya Airlines did not commence international operations until 1965. [115]

United Kingdom—Portugal Agreement of 1945 [116]

44. Under the Agreement for air services of 6 December 1945, as revised in 1952, [117]—carriers designated by Portugal were permitted to operate on a route including Lisbon, Kano, Luanda and Lourenço Marques. The airlines designated by Portugal continued to provide this service after Nigeria became independent. [118]

United Kingdom—Spain Agreement of 1950 [119]

45. The 1959 schedule [120] to the Agreement for air services of 20 July 1950 authorized an air carrier designated by the United Kingdom to provide services on a route including London, Frankfurt, Barcelona, Kano and Lagos. A Spanish carrier was authorized to operate on a route including Madrid—Monrovia—Lagos or Kano. [121] West African Airways Corporation (Nigeria) continued to operate on the above-mentioned route for a United Kingdom designated air carrier following Nigeria's accession to independence. [122]

United States—United Kingdom Agreement of 1946 [123]

46. Under this Agreement, carriers designated by the United States were authorized to operate from New York via specified points to Lagos and beyond to Léopoldville and Johannesburg. Pan American apparently did not operate services on this route in the period imme-

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[103] D.P. O'Connell, *op. cit.*, pp. 329-330.

[104] United Nations, *Treaty Series*, vol. 269, p. 189.

[105] *Ibid.*, vol. 449, p. 10.

[106] *Ibid.*, vol. 411, p. 145.

[107] ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, p. 105; *ibid., No. 84, Traffic Flow - September 1960*, Series TF, No. 28, p. 116 and *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, Add.1, p. 66 *a* and Add.3, p. 34 *a*.

[108] See foot-note 85 above.

[109] See foot-note 86 above.

[110] ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27 Add.2, p. 48 *a* and *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, Add.1, p. 50 *a*.

[111] United Nations, *Treaty Series*, vol. 457, p. 302.

[112] *Ibid.*, vol. 311, p. 115.

[113] ICAO, *Digest of Statistics, No. 77, Traffic Flow - March 1959*, Series TF, No. 25, p. 101; *ibid., No. 78, Traffic Flow - September 1959*, Series TF, No. 26, p. 113; *ibid., No. 82, Traffic Flow - March 1960*, Series TF, No. 27, p. 105; *ibid., No. 84, Traffic Flow - September 1960*, Series TF, No. 28, p. 116.

[114] *Ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, Add.1, p. 66 *a*.

[115] *Ibid., No. 135, Traffic, 1960-1967*, Series T, No. 27, p. 457.

[116] United Nations, *Treaty Series*, vol. 6, p. 3.

[117] *Ibid.*, vol. 136, p. 378.

[118] ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, p. 68; *ibid., No. 84, Traffic Flow - September 1960*, Series TF, No. 28, p. 78; *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, p. 71 and *ibid., No. 92, Traffic Flow - September 1961*, Series TF, No. 30, p. 89.

[119] United Nations, *Treaty Series*, vol. 398, p. 101.

[120] *Ibid.*, p. 130.

[121] Apparently none was operating services on the prescribed route at the time Nigeria became independent.

[122] ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, p. 105; *ibid., No. 84, Traffic Flow - September 1960*, Series TF, No. 28, p. 116 and *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, Add.1, p. 66 *a*.

[123] See foot-note 48 above.

diately before Nigeria became independent, [124] but it did subsequently provide them. [125] The United States Civil Aeronautics Board has stated that Nigeria, on 1 October 1960, agreed to assume the applicable provisions of international agreements of the United Kingdom "including the United States—United Kingdom Air Transport Agreement. . .". [126]

8. *Jamaica and Trinidad and Tobago*

United Kingdom—Canada Agreement of 1949 [127]

47. Air carriers designated by Canada under the Agreement for air services of 19 August 1949 were permitted to operate on routes from Toronto and Montreal to Jamaica and Trinidad. Trans-Canada Air Lines continued to operate at the same frequency the services it had been providing from Toronto before the independence of Jamaica and Trinidad and Tobago, and later provided services from Montreal as well. [128]

France—United Kingdom Agreement of 1946

48. The 1946 Agreement, as amended in 1953, [129] provided for French routes between Fort-de-France and Barbados, Trinidad and British Guiana and to certain points beyond. The United Kingdom carrier was permitted to operate from Trinidad via specified points to Guadeloupe and Martinique and beyond to specified points, and from British Guiana via Paramaribo to Cayenne and beyond to Brazil.

49. Prior to the accession of Trinidad and Tobago to independence, British West Indian Airways was operating on two routes which included Guadeloupe and Martinique. It continued to provide almost identical services, at the same frequency, following the attainment of independence by Trinidad and Tobago. [130]

50. On 12 October 1964, Trinidad and Tobago concluded an air transport agreement with France providing for similar routes; [131] this agreement does not mention the earlier France—United Kingdom Agreement. Trinidad and Tobago has since concluded an agreement with the United Kingdom [132] in which its right to operate to points in United Kingdom territories on the above routes is provided for.

Netherlands—United Kingdom Agreement of 1946 [133]

51. Under this Agreement, Netherlands carriers were authorized to operate services on a route Curaçao, Trinidad, Georgetown to Paramaribo. KLM, which had been operating services on this route and other in the Caribbean prior to the independence of Trinidad and Tobago, continued to provide services at the same frequency. [134]

52. On 3 July 1967, the Netherlands and Trinidad and Tobago concluded an Agreement for the establishment and operation of air services. [135] This Agreement authorized Dutch carriers to operate services on the routes provided for in the 1946 Agreement, together with some new routes. The 1967 Agreement also gave rights to Trinidad and Tobago, more extensive than those allowed to United Kingdom carriers in the 1946 Agreement. The new Agreement did not refer to the 1946 Agreement.

United States—United Kingdom Agreement of 1946 [136]

53. Under the Bermuda Agreement as amended up to 1956, airlines designated by the United Kingdom had traffic rights between various points in its Caribbean territories, including Trinidad and Jamaica, and various points in the United States. United States carriers had rights between various United States cities and, among other territories Jamaica and Trinidad. In June 1961, delegations representing the West Indies, the United Kingdom and the United States reached provisional agreement on additional air services. The United States was given the right to operate service on two new routes to Jamaica. According to a United States press statement at the time,

> A route between Antigua and New York is granted to the United Kingdom until the West Indies achieves independent status, now scheduled to take place May 31, 1962. At the time, it will become a route for the West Indies [. . .]
>
> This arrangement will run until October 1, 1962, and is subject to further extension by mutual agreement of the West Indies and the United States. [137]

By an exchange of notes of 22 November 1961, the Governments of the United Kingdom and the United

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124 ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960,* Series TF, No. 27, pp. 116-117 and *ibid., No. 84, Traffic Flow - September 1960,* Series TF, No. 28, p. 128.

125 *Ibid., No. 95, Traffic Flow - March 1962,* Series TF, No. 31, p. 138.

126 Bureau of International Affairs, *op. cit.,* p. 4414; also *ibid.,* pp. 4430 and 4439, note 7. The Agreement is also listed under Nigeria in United States of America, *Treaties in Force... 1971,* p. 172, which also reproduces the relevant provisions of the Agreement of 1 October 1960 between Nigeria and the United Kingdom concerning the devolution of treaty obligations. The United States Civil Aeronautics Board statement appears to refer to this Agreement.

127 United Nations, *Treaty Series,* vol. 44, p. 223.

128 ICAO, *Digest of Statistics, No. 95, Traffic Flow - March 1962,* Series, TF, No. 31, p. 19; *ibid., No. 98, Traffic Flow - September 1962,* Series TF, No. 32, p. 20; and *ibid., No. 105, Traffic Flow - March 1963,* Series TF, No. 33, p. 18.

129 See foot-note 62 above.

130 ICAO, *Digest of Statistics, No. 95, Traffic Flow - March 1962,* Series TF, No. 31, Add.1, p. 114 *a* and *ibid., No. 98, Traffic Flow - September 1962,* Series TF, No. 32, p. 108. The only difference is that, in September, one of the routes included an additional stop in a territory for the international relation of which the United Kingdom was responsible.

131 United Nations, *Treaty Series,* vol. 535, p. 25.

132 *Ibid.,* vol. 606, p. 149.

133 See foot-note 54 above.

134 ICAO, *Digest of Statistics No. 95, Traffic Flow - March 1962,* Series TF, No. 31, p. 71; *ibid., No. 98, Traffic Flow - September 1962,* Series TF, No. 32, p. 77 and *ibid., No. 105, Traffic Flow - March 1963,* Series TF, No. 33, p. 80.

135 United Nations, *Treaty Series,* vol. 646, p. 117.

136 See foot-note 48 above.

137 United States of America, *Department of State Bulletin* (Washington, D.C.), vol. XLV, No. 1151 (17 July 1961), pp. 118-119.

States of America confirmed this agreement. [138] In fact, however, the Federation of the West Indies was dissolved and did not become independent as a single entity. Instead, Jamaica and Trinidad and Tobago became separate, independent States and Antigua (which was to have become part of the independent Federation) remained a territory administered by the United Kingdom.

54. Following their accession to independence in August 1962, Trinidad and Tobago and Jamaica exchanged notes with the United States of America relating to the continued application of the 1946 Agreement, as amended, and the collateral exchange of notes dated 22 November 1961. The United States note to Trinidad and Tobago, after referring to the 1946 and 1961 instruments, reads in part as follows:

> With the assumption by the Government of Trinidad and Tobago of pertinent international civil aviation rights and obligations of the United Kingdom, it is understood that the provisions of the agreements under reference will continue to apply to the operation of scheduled services between the United States and the Caribbean area by the airlines of the United States and Trinidad and Tobago pending the conclusion of a new air transport agreement between the two Governments. While the Government of the United States of America wishes to register its willingness to negotiate a new agreement with the Government of Trinidad and Tobago at a mutually convenient future date, there is no urgency with respect to the basic Agreement, which is of indefinite duration. On the other hand, with the expiration of the collateral exchange of notes on October 1, 1962, it appears beneficial to both Governments to make some interim arrangement assuring the temporary continuance of the rights exercised thereunder. [139]

The United States note to Jamaica contains a similar passage. [140] In both, the United States proposed an extension of the rights accorded, until a further agreement should supersede them.

55. In its note to Trinidad and Tobago, the United States "accordingly" undertook to concur in the continuation of services by British West Indian Airways between New York and Antigua "pending conclusion of suitable underlying intergovernmental arrangements". [141]

56. In its note to Jamaica the United States concluded:

> Accordingly, it would be understood that the Government of Jamaica would assent to the continuance of present airline services operated between New York and Jamaica by Pan American World Airways, Inc. It is further understood that, pending conclusion of a bilateral air transport agreement, or other suitable arrangements, the United States Government, to the extent of its legal powers, would pose no objection to the continuance for the time being of airline services to the United States originating in Jamaica and operated by British West Indian Airways, although the latter bears the nationality of Trinidad and Tobago. [142]

57. Both Trinidad and Tobago and Jamaica agreed to the proposal for the extension of the rights accorded under the earlier arrangements. Delta Airlines and Pan American (designated by the United States) and British West Indian Airways continued to provide substantially the same services as before independence. [143]

58. On 27 May 1966 the United Kingdom and the United States revised the schedule (as amended) to the 1946 Agreement. [144] The new schedule contains no United States routes corresponding to those discussed above.

9. *Kenya*

Agreements of 1952 and 1946 between the United Kingdom and Denmark, Norway and Sweden [145]

59. Under these Agreements, the carrier designated by Denmark, Norway and Sweden (SAS) was authorized to operate services on a route from points in Scandinavia via specified European and Middle Eastern points, Khartoum, Nairobi, to Durban or Johannesburg. SAS had been providing a service on this route before Kenya became independent and continued to provide it afterwards at the same frequency and capacity. [146]

United Kingdom—Ethiopia Agreement of 1958 [147]

60. Under this Agreement, air lines designated by Ethiopia and the United Kingdom were authorized, *inter alia,* to operate services between Nairobi and Addis Ababa, Ethiopian Air Lines continued to operate services on this route after Kenya became independent. [148]

United Kingdom—Israel Agreement of 1950 [149]

61. Under this Agreement, an airline designated by Israel was authorized to operate from Lydda via Nairobi

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138 United Nations, *Treaty Series,* vol. 425, p. 296.

139 United Nations, *Materials on Succession of States (op. cit.),* p. 220.

140 *Ibid.,* pp. 221-222.

141 *Ibid.,* pp. 220-221.

142 *Ibid.,* p. 222. Jamaica and the United States, on 2 October 1969, concluded a new agreement which "superseded prior agreements relating to air transport agreements in effect between the United States of America and Jamaica", with a reservation in respect of existing services (United States of America, *Department of State Bulletin* (Washington, D.C.) vol. LXI, 1969, p. 430).

143 ICAO, *Digest of Statistics, No. 95, Traffic Flow - March 1962,* Series TF, No. 31, pp. 132, 141-142, 143-144, 148; and Add.1, p. 114 *a*; *ibid., No. 98, Traffic Flow - September 1962,* Series TF, No. 32, pp. 108, 141, 148, 150, 151, 156-157; *ibid., No. 105, Traffic Flow - March 1963,* Series TF, No. 33, pp. 110, 143, 149, 150-151, 157.

144 United Nations, *Treaty Series,* vol. 573, p. 274.

145 Agreement between the United Kingdom and Denmark for air services between and beyond their respective territories, signed on 23 June 1952 (United Nations, *Treaty Series,* vol. 151, p. 3), amended in 1953 (*ibid.,* vol. 172, p, 392); Agreement between the United Kingdom and Norway for air services between and beyond their respective territories, signed on 23 June 1952 (*ibid.,* vol. 151, p. 81); amended in 1953 (*ibid.,* vol. 172, p. 396); Agreement between the United Kingdom and Sweden relating to air services, signed on 27 November 1946 (*ibid.,* vol. 11, p. 229, vol. 35, p. 367 and vol. 53, p. 408), amended in 1952 (*ibid.,* vol. 150, p. 336) and in 1953 (*ibid.,* vol. 172, p. 328).

146 ICAO, *Digest of Statistics, No. 108, Traffic Flow - September 1963,* Series TF, No. 34, p. 107 and *ibid., No. 112, Traffic Flow - March 1964,* Series TF, No. 35, p. 104.

147 United Nations, *Treaty Series,* vol. 331, p. 3.

148 ICAO, *Digest of Statistics, No. 98, Traffic Flow - September 1962,* Series TF, No. 32, p. 26 and *ibid., No. 112, Traffic Flow - March 1964,* Series TF, No. 35, p. 35.

149 See foot-note 83 above.

to Johannesburg. After Kenya became independent, [150] El-Al continued to provide this service at about the same frequency.

10. *Botswana and Lesotho*

United States—United Kingdom Agreement of 1946 [151]

62. This Agreement was covered by the exchange of notes between the United States and Botswana, of 30 September 1966, [152] the date when Botswana attained independence, and the exchange of notes between the United States and Lesotho of 4 October 1966, [153] the date when Lesotho attained independence, concerning the continuance in force of agreements which applied to Botswana and Lesotho before they became independent. Under the terms of these exchanges of notes, the 1946 Bermuda Agreement was to remain in force for twenty-four months, i.e., until 30 September 1968 in the case of Botswana, and for twelve months, subsequently extended to twenty-four, i.e., until 4 October 1968, in the case of Lesotho. The United States publication *Treaties in Force... 1969* listed the Bermuda Agreement under both Botswana and Lesotho, and noted in each case, that an extension of the Agreement relating to the continuance of treaties was under negotiation as at 1 January 1969. [154] *Treaties in Force... 1970* and *Treaties in Force... 1971* continue to list the Agreement, with the same note, but only under Botswana. [155]

63. The United States was not granted any traffic rights in either Botswana (formerly Bechuanaland Protectorate) or Lesotho (formerly Basutoland) by the Bermuda Agreement.

11. *Gambia*

United Kingdom—Portugal Agreement of 1945 [156]

64. Under this Agreement the carrier designated by Portugal was authorized to operate between Lisbon and Lourenço Marques via Bathurst. According to one report, [157] Portugal continued to exercise these rights after Gambia became independent. Gambia has not denied continuity but it may wish to reserve its position so far as the possible future termination of the agreement is concerned.

12. *Guyana*

Netherlands—United Kingdom Agreement of 1946 [158]

65. Carriers designated by the Netherlands under this Agreement were authorized to operate on a route including Curaçao, Trinidad, Georgetown and beyond. After Guyana became independent, KLM continued to operate services on this route at the same frequency. [159]

United States—United Kingdom Agreement of 1946 [160]

66. The Bermuda Agreement authorized carriers designated by the United States to operate on a route from New York and Miami, with certain optional intermediate points, to a number of points including British Guiana and beyond. Pan American continued to operate services, at the same frequency, through Georgetown after Guyana became independent on 26 May 1966. [161] The Agreement was listed under Guyana in the 1970 and 1971 editions of *Treaties in Force*. [162] When the schedule to the 1946 Agreement was revised by the United Kingdom and the United States on 27 May 1966, [163] this route was no longer included.

13. *Barbados*

United Kingdom—Canada Agreement of 1949 [164]

67. Under this Agreement a carrier designated by Canada had the right to fly on a route from Toronto or Montreal to Barbados and beyond. Air Canada continued to provide this service after Barbados became independent. [165]

United Kingdom—United States Agreement of 1946

68. One of the United States routes in the schedule to the Bermuda Agreement as revised on 27 May

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150 ICAO, *Digest of Statistics, No. 108, Traffic Flow - September 1963*, Series TF, No. 34, p. 70 and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, p. 69. According to O'Connell (*op. cit.*, vol. II, p. 332), Israel sought negotiations, but they were discontinued, and El-Al operates under a provisional licence.

151 See foot-note 48 above.

152 For the relevant passage of the exchange of notes, see *Yearbook of the International Law Commission, 1970*, vol. II, p. 119, document A/CN.4/229, para. 91.

153 *Ibid.*, para. 92.

154 United States of America, Department of State, *Treaties in Force...* 1969, pp. 20 and 136.

155 Id., *Treaties in Force... 1970* (Washington, D.C., U.S. Government Printing Office pp. 20 and 140; *Treaties in Force... 1971*, pp. 22 and 143.

156 See foot-note 116 above

157 International Law Association, *op. cit.*, p. 37. See also Shearer, "La Succession d'Etats et les traités non localisés", in *Revue générale du droit international public* (Paris, 3e série, t. XXXV, No. 1 (January-March 1964) pp. 20-21.

158 See foot-note 54 above.

159 ICAO, *Digest of Statistics, No. 125, Traffic Flow - March 1966*, Series TF, No. 39, table 144; *ibid., No. 130, Traffic Flow - September 1966*, Series TF, No. 40, tables 147 and 148; *ibid., No. 134, Traffic Flow - March 1967*, Series TF, No. 41, tables 144 and 145.

160 See foot-note 48 above.

161 ICAO, *Digest of Statistics, No. 125, Traffic Flow - March 1966*, Series TF, No. 39, table 272; *ibid., No. 130, Traffic Flow - September 1966*, Series TF, No. 40, table 283; *ibid., No. 134, Traffic Flow - March 1967*, Series TF, No. 41, table 282.

162 United States of America, Department of State, *Treaties in Force... 1970*, p. 99 and *ibid. ... 1971*, p. 101, in which is set out the Statement made by Guyana concerning on 27 May 1966 by the United Kingdom and the United States is also listed.

163 United Nations, *Treaty Series*, vol. 573, p. 274.

164 See foot-note 127 above.

165 ICAO, *Digest of Statistics, No. 130, Traffic Flow - September 1966*, Series TF, No. 40, table 33; *ibid., No. 134, Traffic Flow - March 1967*, Series TF, No. 41, tables 32 and 33.

1966 [166]—about six months before Barbados became independent—was New York via various intermediate points to Barbados. Pan American continued to provide flights on this route after Barbados became independent. [167]

14. *Cyprus, Gambia, Malta, Mauritius, Sierra Leone, Swaziland, United Republic of Tanzania and Zambia*

United States—United Kingdom Agreement of 1946 [168]

69. This Agreement, with any relevant amendments, is listed under each of the above States [169] in the United States publication, *Treaties in Force*. [170] The list also reproduces in each case the relevant provisions of either the devolution agreement concluded by the new State (Cyprus, Gambia, Malta, Sierra Leone) [171] or the unilateral declaration by the new State, addressed to the Secretary-General of the United Nations, concerning its treaty rights and obligations, (Mauritius, Swaziland, United Republic of Tanzania and Zambia. [172] An Assistant Legal Adviser to the United States Department of State has described the practice as follows:

> Where a new State has signed a devolution agreement with the parent country or otherwise undertaken in general terms to acknowledge the continuance in force of agreements applied to it as a territory, that fact is noted in "Treaties in Force". The Department of State undertakes, with due regard for practical considerations, to determine which bilateral agreements of the parent country with the United States may clearly be considered as covered by the new State's general acknowledgement. These are listed under the name of the new State in "Treaties in Force". [173]

The foreword to United States *Treaties in Force* reads, in part, as follows:

> In 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. [174]

70. A document published in 1965, prepared by the United States Civil Aeronautics Board, [175] lists among others, agreements with Ghana, Nigeria and Pakistan. [176] The differences between this partial list and that in United States *Treaties in Force* may be explained partly by the fact that they were prepared at different times, but more importantly by the fact that the Civil Aeronautics Board list is limited to route grants. It accordingly does not include countries such as Cyprus and Sierra Leone where the United States, under its 1946 Agreement with the United Kingdom, had no traffic rights.

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

15. *Senegal*

71. One commentator [177] has said that, pending negotiations concerning air transport agreements, Senegal has considered that the agreements concluded by France remain provisionally applicable.

Argentina—France Agreement of 1948 [178]

72. Thus on 19 February 1962, the Senegalese Ambassador at Paris wrote to the Argentine Ambassador at Paris as follows:

> The Senegalese Government provisionally recognizes certain rights at Dakar granted to Aerolineas Argentinas by France by the Agreement between Argentina and France of 30 January 1948.

The letter add that this authorization was precarious and revocable and without prejudice to any future negotiations.

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166 See foot-note 163 above.

167 ICAO, *Digest of Statistics, No. 130, Traffic Flow - September 1966*, Series TF, No. 40 table 284; *ibid., No. 134, Traffic Flow - March 1967*, Series TF, No. 41, tables 282 and 286.

168 See foot-note 48 above.

169 Also Botswana (para. 62 above), Ceylon (para. 20 above). Ghana (para. 25 above), Guyana (para. 66 above), Jamaica (until a new agreement was concluded in 1969) (para. 54 above), Nigeria (para. 46 above) and Trinidad and Tobago (para. 54 above).

170 United States of America, Department of State, *Treaties in Force... 1971*, pp. 61, 85, 153, 155, 212, 218 and 259. The Relevant air transport agreements concluded by the United States with Belgium and France respectively, are also listed under the People's Republic of the Congo, the Democratic Republic of the Congo and Madagascar (*ibid.*, pp. 55 and 150). In the case of Gambia, it is also noted that the United States has taken cognizance of the Gambia-United Kingdom devolution agreement and is currently reviewing its own position in the matter.

171 For the full texts of the agreements, see United Nations, *Treaty Series*, vol. 382, p. 8; vol. 420, p. 11; vol. 525, p. 221; *Materials on Succession of State*, pp. 21 and 176.

172 For the text of the unilateral declarations, see *Materials on Succession of States*, p. 177 and the second report on succession in respect of treaties, by Sir Humphrey Waldock, Special Rapporteur, (*Yearbook of the International Law Commission, 1969*, vol. II, pp. 62-65, document A/CN.4/214 and Add.1 and 2, section II, paras. 1 to 11 of the commentary to article 4).

173 Ch. I. Bevans, *op. cit.*, p. 97.

174 United States of America, Department of State, *Treaties in Force - A List of Treaties and other International Agreements of the United States in Force* (Washington, D.C., U.S. Government Printing Office, p. iii.

175 Bureau of International Affairs, *op cit.*

176 Also the People's Republic of the Congo and the Democratic Republic of the Congo.

177 See J.-C. Gautron, "Sur quelques aspects de la succession d'Etat au Sénégal", in *Annuaire français de droit international 1962*, vol. VIII, pp. 845 and 846, on which the paragraphs relating to the agreements concluded with Argentina, the Federal Republic of Germany and Italy are largely based. See also Blondel, "Problèmes posés par le développement de l'aviation en Afrique" in *Université de Dakar, Annales africaines, 1962, No. 1, Colloques des facultés de droit de mai 1962*, "Développement économique et évolution juridique" (Paris, Pedone, 1963), pp. 139 and 147, who notes, in addition, that Iberia was operating from Santa Isabel to Douala, and that KLM and South Africa Airways were operating services through Brazzaville on routes from Johannesburg to Europe.

178 See Argentina, *Instrumentos Internacionales Suscritos por Argentina*, vol. 3, p. 1929 and D. P. O'Connell, *op. cit.*, vol. II, p. 330.

France—Federal Republic of Germany Agreement of 1955 [179]

73. Under an exchange of notes, pursuant to the Air Transport Agreement of 4 October 1955, determining the routes of the airlines of the two parties, the German carrier had, it seems, rights in Dakar. [180] On 7 June 1961, the Senegalese Ministry of Transport wrote as follows to Lufthansa, the carrier designated by the Federal Republic of Germany:

> The Government of Senegal recognizes the rights acquired by Germany under the Agreement between the French Republic and the Federal Republic of Germany of 4 October 1955. It does not consider that additional commercial rights can be granted without further negotiations.

Accordingly, the Lufthansa flights continued at the same frequency, as before. [181]

France-Italy Agreement of 1949 [182]

74. On 21 March 1961 Senegal replied to the Italian *Chargé d'Affaires* that, pending future negotiations, the provisions of the France—Italy Agreement would provisionally continue in force.

France—Switzerland Agreement of 1945 [183]

75. Before the attainment of independence by the Federation of Mali and later by Senegal, Swissair enjoyed traffic rights at Dakar. [184] They excluded third and fourth freedom traffic, but included the right to load and unload traffic to and from South America. This traffic continued at the same frequency after Senegal became independent. [185] Under on Agreement between Senegal and Switzerland signed on 23 January 1963 [186] which makes no mention of the earlier Agreement, the Swiss designated airline has rights to, through and from Dakar on a route from Switzerland to South and Central America. The Senegal airline has rights from Dakar to Switzerland and beyond.

France—United Kingdom Agreement of 1946 [187]

76. Under this Agreement, as amended in 1953, carriers designated by the United Kingdom were authorized to operate services from points in the United Kingdom via intermediate points to Dakar and beyond to South America BOAC continued to provide this service, at the same frequency and capacity, after Senegal became independent. [188]

77. A second route available for airlines designated by the United Kingdom was between points in Nigeria and Dakar/Abidjan. A French designated airline was also authorized to operate between Dakar and Kano/Lagos and Douala and Lagos. Before Nigeria became independent in October 1960, the former set of routes was operated by West African Airways Corporation (Nigeria) Ltd. (WAAC), [189] which continued to provide the service at the same frequency and capacity after Nigeria and Senegal became independent. [190]

United States—France Agreement of 1946 [191]

78. An airline designated by the United States was authorized by the Agreement relating to air services, signed on 27 March 1946, as revised in 1959, [192] to operate between the United States and, among other points, Dakar and beyond. Pan American continued, after the attainment of independence by the Federation of Mali and the subsequent dissolution of the Federation, to operate this service at the same frequency. [193] In a document prepared by the United States Civil Aeronautics Board in the early 1960s, it was stated that Pan American was operating these services in the absence of an air transport agreement. [194]

16. *Madagascar*

France—United Kingdom Agreement of 1946 [196]

79. Under this Agreement, as amended in 1953, carriers designated by the United Kingdom were authorized to operate from British East Africa via Portuguese East Africa to Madagascar and the Comoro Islands and beyond to Mauritius. These rights were not exercised before Madagascar became independent. [196] This fact was cited by Madagascar in refusing BOAC rights to

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179 United Nations, *Treaty Series*, vol. 353, p. 203.

180 See also e.g., ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, p. 33.

181 *Ibid., No. 84, Traffic Flow - September 1960*, Series TF, No. 28, p. 44 and *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, p. 34.

182 Italy, *Gazetta Ufficiale della Repubblica Italiana* (Rome, 20 April 1953), 94th year, No. 91, part one, p. 1502 and *Tables of Agreements, 1964*, p. 24.

183 Annuaire suisse de droit international, 1946, vol. III, p. 217, and *Tables of Agreements, 1965*, p. 24.

184 ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, p. 80; D. P. O'Connell, *op. cit.*, p. 330.

185 ICAO, *Digest of Statistics, No. 84, Traffic Flow - September 1960*, Series TF, No. 28, p. 90, and *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, pp. 82-83.

186 United Nations, *Treaty Series*, vol. 524, p. 23.

187 See foot-note 62 above.

188 ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, pp. 95-96; *ibid., No. 84, Traffic Flow, - September 1960*, Series TF, No. 28, pp. 109-110 and *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, p. 95.

189 This company, controlled by the Nigerian Government, was formed in 1958 to take over the Nigerian activities of WAAC, at the time when Ghana Airways Ltd. was established (see Cheng, *op. cit.*, pp. 261-262).

190 ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, p. 105; *ibid., No. 84, Traffic Flow - September 1960*, Series TF, No. 28, p. 116 and *ibid., No. 88, March 1961*, Series TF, No. 29, Add.1 and Corr. 1, p. 66 *a*.

191 United Nations, *Treaty Series*, vol. 139, p. 114.

192 *Ibid.*, vol. 358, p. 274.

193 ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, p. 105; *ibid. No. 84 Traffic Flow - September 1960*, Series TF, No. 28, p. 128 and *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, p. 121.

194 Bureau of International Affairs, *op. cit.*, pp. 4422 and 4440.

195 See foot-note 62 above.

196 See Bardonnet, "La succession aux traités à Madagascar", in *Annuaire français de droit international, 1966* (Paris, 1967), vol. XII, p. 663, note 263 on which this paragraph is largely based.

operate services on a route Nairobi—Madagascar—Mauritius.

United States—France Agreement of 1946 [197]

80. This Agreement, as amended, is listed under Madagascar in *United States, Treaties in Force.* [198]

17. *People's Republic of the Congo*

United States—France Agreement of 1946 [199]

81. The United States considers that this Agreement is in force between it and the People's Republic of the Congo. [200] It will be recalled that the People's Republic of the Congo stated in a note of 5 August 1961 to the United States that it considered itself to be a party to the treaties and agreements signed by France and extended to it before it became independent. [201]

82. The Agreement authorizes the United States designated carriers to operate from the United States via intermediate points to Dakar, Pointe Noire, Brazzaville and beyond to South Africa. It would appear that no United States carrier was designated to operate through Brazzaville at the relevant time. [202]

(*c*) FORMER NON-METROPOLITAN TERRITORY FOR THE INTERNATIONAL RELATIONS OF WHICH BELGIUM WAS RESPONSIBLE

18. *Democratic Republic of the Congo*

United States—Belgium Agreements of 1946 [203]

83. Under the Agreement relating to air services of 1 February 1946, United States carriers were authorized to operate services from the United States via specified intermediate points to Léopoldville and beyond, via intermediate points, to South Africa. Pan American continued to operate services on this route at the same frequency following the independence of the Democratic Republic of the Congo. [204] According to the publication of the United States Civil Aeronautics Board already quoted:

> On October 16, 1969, the former Belgian Congo recognized informally the rights and obligations of the United States—Belgium Air Transport Agreement... [205]

(*d*) FORMER NON-METROPOLITAN TERRITORY FOR THE INTERNATIONAL RELATIONS OF WHICH NEW ZEALAND WAS RESPONSIBLE

19. *Western Samoa*

United Kingdom—New Zealand Agreement of 1961 [206]

84. In this Agreement, signed on 13 June 1961, "for air services between and beyond United Kingdom Territory and the Trust Territory of Western Samoa", "territory", contrary to the usual practice,[207] was defined in relation to New Zealand as meaning Western Samoa alone. Designated airlines of the two parties had the right to operate services between Fiji and Western Samoa. The Agreement could be terminated at one year's notice. Under the New Zealand practice then current, such an agreement would not have been concluded without consultation of the Western Samoan authorities. Western Samoa became independent—as had been expected for some time [208]—just over six months later, on 1 January 1962. The airlines designated under the Agreement continued to operate after that date. [209]

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

1. UNION OF NEWFOUNDLAND WITH CANADA (1949)

85. From 1933 until 1949 Newfoundland was a territory for the international relations of which the United Kingdom Government was responsible. [210] On 31 March 1949, following two referendums, it became the tenth province of Canada. [211] According to the Legal Division of the Canadian Department of External Affairs:

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197 See foot-notes 191 and 192 above.

198 United States of America, Department of State, *Treaties in Force... 1971*, p. 150, which also reproduces the Madagascar note of 4 December 1962, stating Madagascar's position with regard to treaties concluded by France before Madagascar became independent. See *Yearbook of the International Law Commission, 1970*, vol. II, p. 121, document A/CN.4/229, para. 102.

199 See foot-notes 191 and 192 above.

200 See United States of America, Department of State, *Treaties in Force... 1971*, p. 55; Bureau of International Affairs, *op. cit.*, pp. 4405-4406.

201 See *Yearbook of the International Law Commission, 1970*, vol. II, p. 121, document A/CN.4/229, para. 104.

202 See e.g., Bureau of International Affairs, *op. cit.*, pp. 4426 and 4440 and ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, p. 117.

203 United Nations, *Treaty Series*, vol. 4, p. 125.

204 ICAO, *Digest of Statistics, No. 82, Traffic Flow - March 1960*, Series TF, No. 27, p. 117; *ibid., No. 84, Traffic Flow - September 1960*, Series TF, No. 28, p. 128 and *ibid., No. 88 - March 1961*, Series TF, No. 29, p. 121.

205 Bureau of International Affairs, *op. cit.*, p. 4406; see also p. 4430 and 4439, note 8. The Agreement is also listed under Democratic Republic of the Congo in United States of America, Department of State, *Treaties in Force...1971*, p. 56.

206 United Nations, *Treaty Series*, vol. 497, p. 293.

207 See para. 4 above.

208 See e.g. General Assembly resolution 1569 (XV) of 18 December 1960.

209 D.P. O'Connell, *op. cit.*, p. 163. See also ICAO, *Digest of Statistics No. 135, Traffic 1960-1967*, series T, No. 27, p. 414.

210 See the Newfoundland Act 1933 (21 December 1933) (*The Public General Acts and the Church Assembly Measures, 1933-1934*, (London, H.M.S.O., 24 Geo.5, chap, p. 5). Newfoundland had previously enjoyed Dominion status; see e.g. the Statute of Westminster 1931 (11 December 1931) (*ibid.*, 1931-1932, 22 Geo. 5, chap. 4, p. 13).

211 British North America Act 1949 (23 March 1949) (*ibid.*, 1949. vol. I, 12 and 13 Geo.6, chap. 22, p. 52), to which are annexed the terms of union agreed to by Canada and Newfoundland.

... The view of the Government on the question of Newfoundland treaty succession has in the past been that Newfoundland became part of Canada by a form of cession and that consequently, in accordance with the appropriate rules of international law, agreements binding upon Newfoundland prior to Union lapsed, except for those obligations arising from agreements locally connected which had established proprietary or quasi-proprietary rights, and Newfoundland became bound by treaty obligations of general application to Canada. ... [212]

86. The air transport agreements concluded before Newfoundland became part of Canada, by the United Kingdom with China, France, Ireland, Italy, the Netherlands, Norway, Sweden and the United States, and, it seems, Belgium, [213] all allowed airlines designated by these countries to operate through and, in some cases, to and from Gander. Carriers designated by China, Ireland and Italy were not exercising any rights at the relevant time and those designated by France were making only a non-traffic stop at Gander. [214] Accordingly, the agreements with those countries [215] are not further considered here.

87. Before 31 March 1949, Canada had concluded air transport agreements with four of the above countries: Ireland, [216] the Netherlands, [217] Sweden, [218] and the United States of America. [219] These agreements provided for the grant of third and fourth freedom rights between Montreal and the territory of the other party, and in the case of the agreement with the Netherlands, for fifth freedom rights for the carrier designated by the Netherlands. [220]

88. Canada had also concluded air transport agreements with Newfoundland. [221] It was accepted that they were terminated by the union of Newfoundland with Canada. [222]

89. The "Terms of Union" signed by Canada and Newfoundland provided that Canada was to take over responsibility for civil aviation, including Gander airport which became the property of Canada. [223] Canada declared its intention to apply in Newfoundland the same policy concerning international agreements and the granting of commercial rights. It accordingly entered into discussions with those countries whose carriers already operated through Gander with a view to bringing previous agreements applying to Newfoundland into line with Canadian policy. [224]

90. As an interim measure, arrangements were made, covering a three-months period ending 30 June 1949, allowing foreign airlines to continue to exercise their traffic rights. Any exercise of traffic rights after that date would be dependent upon the reciprocal agreements which the Government of Canada might make before then with these Governments in cases when Canada wished to receive reciprocal rights in foreign territory. [225]

91. In fact, the important right for the foreign carriers operating through Gander was the second freedom, the freedom to stop for non-traffic purposes on flights from Europe to North America. Except for flights between Gander and the United States of America, they exercised the rights of picking up and discharging passengers at Gander comparatively rarely. [226] This second freedom was ensured by Canada's and their own States acceptance of the multilateral International Air Services Transit Agreement (1944) which, after the union, would apply to Newfoundland as it applied to the remainder of Canada. [227] Nevertheless there was some exercise of third, fourth and fifth freedoms at Gander and the relevant practice is reviewed below.

Belgium—United Kingdom Agreement [228]

92. According to one writer, [229] this Agreement conferred certain rights on Belgian carriers at Gander. It is possible that, immediately before the union of Newfoundland with Canada, SABENA exercised traffic rights at Gander on its Brussels—Shannon—Gander—New York route. [230] By an agreement of 30 August

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[212] Letter of 27 November 1967, quoted in *Canadian Yearbook of International Law, 1968* (Vancouver, B.C., 1968) vol. VI, p. 276.

[213] See D. P. O'Connell, *op. cit.*, p. 66, who also mentions an unpublished agreement with Switzerland. This is not discussed here, as no Swiss carrier was operating services on the relevant route at the time of Newfoundland's change of status.

[214] ICAO, *Statistical Summary No. 14, Origin and Destination of Passengers - March and September [1947 and] 1948*, document 7094-AT/708, pp. 195 and 196.

[215] China, 23 July 1947 (United Nations, *Treaty Series*, vol. 9, p. 207); Ireland, 5 April 1946 (*ibid.*, vol. 72, p. 57); Italy, 25 June 1948 (*ibid.*, vol. 94, p. 239); France, 24 February 1946 (*ibid.*, vol. 27, p. 173).

The agreement for air services concluded on 1 August 1950 between Canada and France (*ibid.*, vol. 73, p. 21) contains the usual provisions granting non-traffic rights in the territory of the other party (article II, paragraph 2 (*b*)), but otherwise grants no rights at Gander.

The agreement for air services between Ireland and Canada, concluded on 8 August 1947 (see foot-note 216 below), was amended on 9 July 1951, *inter alia* to grant the airlines designated by Ireland traffic rights at Gander (United Nations, *Treaty Series*, vol. 128, p. 294).

[216] 8 August 1947 (*ibid.*, vol. 28, p. 47).

[217] 2 June 1948 (*ibid.*, vol. 32, p. 215).

[218] 27 June 1947 (*ibid.*, vol. 27, p. 312).

[219] 17 February 1945 (*ibid.*, vol. 122, p. 261); and 10 and 12 April 1947 (*ibid.*, p. 229)

[220] See, however, the exchange of notes accompanying the agreement (*ibid.*, vol. 32, p. 224).

[221] E.g., Agreement of 29 July 1946 (*ibid.*, vol. 17, p. 169).

[222] e.g., *Tables of Agreements* (1965), pp. 156, 158 and 164.

[223] Terms 31 and 33.

[224] Dominion of Canada, *Twentieth Parliament, 5th Session, Official Report of Debates, House of Commons* (16 February 1949) (Ottawa, Controller of Stationery, 1949), vol. 266, p. 597.

[225] *Ibid.*, (29 March 1949), vol. 268, p. 2105.

[226] ICAO, *Statistical Summary No. 14, Origin and Destination of Passengers - March and September [1947 and] 1948*, document 7094-AT/708, pp. 85, 89, 97, 101, 117, 119, 127 136, 145, 148, 156, 158, 164, 168, 190, 194-196, 205, 218, 229, 234, 245 and 254.

[227] See e.g. the statement in the letter from the Canadian Department of External Affairs (para. 85 above).

[228] It seems that the Agreement has not been published.

[229] D. P. O'Connell, *op. cit.*, p. 66.

[230] ICAO, *Digest of Statistics, No. 26, Traffic Flow - March 1949*, Series TF, No. 5, p. 10.

1949, [231]—the Belgian airline was granted third and fourth freedom rights at Gander. [232] The airline designated by Canada was authorized to exercise third and fourth freedom rights between Canada and Belgium.

Netherlands—United Kingdom Agreement of 1946 [233]

93. The carrier designated by the Netherlands was authorized by this Agreement to operate from Amsterdam via intermediate points to Gander and New York. Under its Agreement of 2 June 1948 with Canada, Netherlands airlines had traffic rights at Montreal and non-traffic rights "in Canada". [234] Before 31 March 1949, KLM exercised third, fourth and fifth freedom rights at Gander, [235] it is not clear whether it exercised those rights afterwards. [236] Canada and the Netherlands did not, it seems, amend their 1948 Agreement to take account of Newfoundland's change of status. [237]

United Kingdom—Norway Agreement of 1946 [238] *and United Kingdom-Sweden Agreement of 1946* [239]

94. Under the agreement concerning air communications to, through and from Great Britain and Norway, signed on 31 August 1946, and the agreement between the United Kingdom and Sweden relating to air services, signed on 27 November 1946, airlines designated by Norway and Sweden had the right to operate on routes from Stockholm, Oslo and Copenhagen via Prestwick and Gander to New York, other points and beyond. Under the agreement for air services concluded between Canada and Sweden on 27 June 1947, [240] the airline designated by Sweden also had third and fourth freedom rights between Stockholm and Montreal. It did not in fact exercise these latter rights until 1958, [241] but SAS was, at the time of Newfoundland's change of status, exercising very limited traffic as well as non-traffic rights at Gander. [242]

95. On 30 June 1949 (that is, at the end of the three months extension of existing rights mentioned in paragraph 90 above), Sweden in a note to Canada advised that SAS was not yet in a position to exercise the rights at Montreal granted by their 1947 Agreement, and proposed that the Stockholm—Montreal route be replaced by the route from Stockholm to Gander and points beyond. [243] On 5 July Canada accepted this proposal, [244] and SAS continued to operate through Gander to New York, occasionally exercising traffic rights at Gander. [245]

96. Canada subsequently (in 1949 and 1950) concluded agreements with Denmark [246] and Norway [247]—exchanging similar third and fourth freedom rights.

United Kingdom—United States Bases Agreement of 1941 [248]

97. The Agreement of 27 March 1941, relating to the Naval and Air Bases leased to the United States of America, provided for the lease to the United States of certain bases, including bases in Newfoundland. Article XI, paragraph 5 of the Agreement provides:

> Commercial aircraft will not be authorized to operate from any of the Bases (save in case of emergency or for strictly military purposes under the supervision of the War or Navy Departments) except by agreement between the United States and the Government of the United Kingdom; provided that in the case of Newfoundland, such agreement shall be between the United States and the Government of Newfoundland.

98. Canada has acknowledged that the Agreement remains in effect, notwithstanding the fact that Newfoundland has become a province of Canada. Thus the Canadian Prime Minister on 8 February 1949 stated:

> The leases are in existence. The government of the United Kingdom, the government of Newfoundland and the government of Canada alone can do nothing to modify those terms. They create a condition for years in certain areas in Newfoundland; and they must me respected, ... [249]

99. In a note of 4 June 1949, the United States, after referring to the 1941 Agreement and quoting the provision from it reproduced in paragraph 97 above, went on to say:

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231 United Nations, *Treaty Series*, vol. 53, p. 221.

232 Again it appears that very limited use was made of these rights: ICAO, *Digest of Statistics, No. 27, Traffic Flow - September 1949*, Series TF, No. 6, pp. 15 and 16.

233 See foot-note 54 above.

234 United Nations, *Treaty Series*, vol. 32, p. 222.

235 ICAO, *Statistical Summary, No. 14, Origin and Destination of Passengers, March and September [1947 and] 1948*, document 7094-AT/708, p. 23. The origin and destination statistics for March and September 1949 do not record any figures for KLM. ICAO, *Digest of Statistics, No. 26, Traffic Flow - March 1949*, Series TF, No. 5, suggests that passengers were picked up at Gander on the outward flight.

236 ICAO, *Digest of Statistics, No. 27, Traffic Flow - September 1949*, Series TF, No. 6, pp. 43-45, shows exactly the same number of passengers being carried into and out of Gander by KLM in that month. This is not conclusive, since equal numbers may have embarked and disembarked. As noted, the origin and destination statistics do not include KLM figures. R. W. G. de Muralt (*The Problem of State Succession with regard to Treaties* (The Hague, Stockum and Zoon, 1954), pp. 118-119), says that Netherlands commercial aircraft no longer exercised commercial rights at Gander. See also D. Rauschning, *Das Schicksal Völkerrechtlicher Verträge bei der Änderung des Status ihrer Partner* (Kiel, Heitmann, 1963), pp. 127-128 and D. P. O'Connell, *op. cit.*, p. 66.

237 *Tables of Agreements 1964*, pp. 13 and 42 records only the 1948 Agreement.

238 United Nations, *Treaty Series*, vol. 6, p. 235.

239 *Ibid.*, vol. 11, p. 229.

240 *Ibid.*, vol. 27, p. 313.

241 *Ibid.*, vol. 353, p. 312.

242 ICAO, *Statistical Summary No. 14, Origin and Destination of Passengers, March and September [1947 and] 1948*, document 7094-AT/708, pp. 12, 13 and 194; ICAO, *Digest of Statistics, No. 24, Traffic Flow - September 1948*, Series TF, No. 4, p. 66 and *ibid., No. 26, Traffic Flow, - March 1949*, Series TF, No. 5 p. 69.

243 United Nations, *Treaty Series*, vol. 53, p. 424.

244 *Ibid.*, p. 426.

245 ICAO, *Digest of Statistics, No. 27, Traffic Flow - September 1949*, Series TF, No. 6, pp. 72-73.

246 United Nations, *Treaty Series*, vol. 72, p. 247.

247 *Ibid.*, vol. 53, p. 329.

248 League of Nations, *Treaty Series*, vol. CCIV, p. 15.

249 Canada, Department of *External Affairs*, (Ottawa, Controller of Stationery), vol. I, No. 3 (March 1949), p. 24.

As a result of the Union which became effective on April 1, 1949 the Government of Canada has replaced the Government of Newfoundland in the making of laws for certain purposes including the regulation of civil aviation, [250]

and proposed that an Agreement be concluded providing for the use by civil aircraft of the United States military air bases in Newfoundland. It then set out its terms. Canada accepted the proposals.

United States—United Kingdom Agreement of 1946 [251]

100. The Bermuda Agreement did not provide for traffic rights at Gander, which was listed only as an intermediate stop. A supplementary agreement [252] granting United States carriers traffic rights at Gander was concluded on 21 and 23 May 1947; it also provided for a reciprocal route for an airline designated by the United Kingdom on behalf of Newfoundland. This agreement dealt explicitly with the question of change of status of Newfoundland. If as a result of such a change, the Government of the United Kingdom were to cease to act for Newfoundland in aviation matters, the United Kingdom agreed that the Agreement should no longer apply. A new agreement should be negotiated between the United States, on the one hand, and Newfoundland or the State responsible for it, on the other.

101. The new agreement was concluded on 4 June 1949 between the United States of America and Canada [253] before the end of the three months period during which rights existing on 31 March continued. The agreement authorized United States carriers to operate on the route United States—Gander—Europe (including the Azores) and beyond. Canadian carriers were also granted additional rights to operatee between Canadian and United States territory. United States traffic rights could be exercised at any of the specified points (including, of course, Gander). Accordingly, the carriers designated by the United States continued to exercise traffic rights at Gander. [254]

2. *Formation of Malaysia (1963) and separation of Singapore (1965)*

102. The Federation of Malaya became independent on 31 August 1957. It was joined on 16 September 1963 by the State of Singapore and by the British dependencies of Sabah (North Borneo) and Sarawak, and became Malaysia. On 9 August 1965, Singapore withdrew from Malaysia.

103. Foreign and local air carriers were exercising traffic rights in relation to the relevant territories under air transport agreements at each of these three dates. Before the practice is reviewed, three possibly relevant constitutional provisions may be noted.

104. First, under the Malaysian Constitution in force in 1963 and later, the Federal Legislature has exclusive authority to enact legislation to implement treaties and legislation relating to communications and transport, including airways, aircraft and air navigation.

105. Secondly, article 104 of the 1963 Constitution of Singapore provided as follows:

All rights, liabilities and obligations of Her Majesty in respect of the Government shall on and after the coming into operation of this Constitution be rights, liabilities and obligations of the State. [255]

106. Thirdly, article 13 of the Constitution and Malaysia (Singapore Amendment) Act 1965 (Malaysia), which in bill form was annexed to the Agreement between Malaysia and Singapore for the independence of Singapore, states in part:

Any treaty, agreement or convention entered into before Singapore Day between the Yang di-Pertuan Agong or the Government of Malaysia and another country or countries, including those deemed to be so by Articles 169 of the Constitution of Malaysia shall in so far as such instruments have application to Singapore, be deemed to be a treaty, agreement or convention between Singapore and that country or countries, and any decision taken by an international organization and accepted before Singapore Day by the Government of Malaysia shall in so far as that decision has application to Singapore be deemed to be a decision of an international organization of which Singapore is a member... [256]

107. Some facts about the carrier designated by Malaysia and Singapore should also be noted. In 1960 the Annual Report of BOAC stated:

Since April 1, 1958,... BOAC Associated Companies, Limited, and Qantas Empire Airways Limited, have had equal shareholdings in this company and between them hold the majority interest. The Malayan, Singapore and Borneo Governments are the main shareholders of the balance: [257]

108. The company, which had its headquarters in Singapore, became Malaysian Airways Limited on the formation of the Federation in 1963. Following the independence of Singapore in August 1965, it became Malaysia-Singapore Airways Limited (MSA). MSA, registered in Singapore, is jointly owned and operated by Malaysia and Singapore. [258]

(a) *Effect of formation of Malaysia*

109. The relevant agreements can be further divided into two categories: (1) those which granted rights in respect of the Federation of Malaya (Malayan agree-

[250] United Nations, *Treaty Series*, vol. 200, p. 202.

[251] See foot-note 48 above.

[252] United Nations, *Treaty Series*, vol. 11, p. 211.

[253] *Ibid.*, vol. 122, p. 237. See also paragraph 92 above.

[254] ICAO, *Digest of Statistics, No. 27, Traffic Flow - September 1949*, Series TF, No. 6, pp. 126-128, 138-143 and 170-173.

[255] Singapore, *State of Singapore Government Gazette - Subsidiary Legislation, Supplement No. 1* (Singapore), September 1963, p. 38. See also article 169 of the Constitution of Malaysia 1963 and section 76 of the Malaysia Act, in United Nations, Materials on Succession of States (*op. cit.*,), pp. 87 and 93.

[256] Singapore, *State of Singapore Government Gazette Extraordinary*, (Singapore, 9 August 1965), vol. VII, No. 66, p. 2198.

[257] British Overseas Airways Corporation, *Annual Report and Accounts for the Year ended 31st March 1959* (London, H.M.S.O., 1959), p. 19 and *id., Annual Report... 31st March 1960* (London, H.M.S.O, 1960), pp. 18-19, as quoted by B. Cheng, *op. cit.*, p. 259.

[258] ICAO, *Digest of Statistics, No. 142, Traffic 1960-1968*, Series T, No. 28, pp. 142 and 482.

ments with Australia [259] and the United Kingdom, and the Thailand—United Kingdom agreement); and (2) those which granted rights in respect of the new territory added to Malaya (United Kingdom agreements with Australia, Ceylon, India, Indonesia, Japan, the Netherlands, Thailand and the United States of America).

(i) *Agreements granting rights in respect of the territory of the Federation of Malaya*

United Kingdom—Federation of Malaya Agreement of 1957 [260]

110. The Agreement for air services, concluded on 18 October 1957, authorized both Malayan and United Kingdom carriers to operate from points in the Federation to Singapore and Hong Kong. Various intermediate points and points beyond were also provided for. A note to the Schedule, recognizing that the structure of Malayan Airways Limited was such that substantial ownership and control was not vested in either Malaya or the United Kingdom, recorded the parties' agreement that they nevertheless would not object to the designation of the company to operate those routes. Further, United Kingdom carriers could operate from points in the United Kingdom via intermediate points to Kuala Lumpur, Penang ("Points in the territory of the Federation of Malaya ...") and to "points beyond". Traffic rights could not be exercised between Kuala Lumpur or Penang and Singapore on some (including this final route)—but not all—of the above routes. BOAC continued to operate its services from London via various intermediate points to Kuala Lumpur and Singapore and beyond at increasing frequency and capacity. Canadian Pacific Airlines likewise continued to operate similar services, *inter alia* between Hong Kong, Kuala Lumpur and Singapore. At about the time of the establishment of Malaysia, Malaysian Airways began operating from Singapore via Kuala Lumpur to Hong Kong. [261]

Thailand—United Kingdom Agreement of 1950 [262]

111. This Agreement authorized Thai carriers to operate between Bangkok and Singapore via the optional intermediate points, Songkhla, Penang and Kuala Lumpur. The United Kingdom routes included Singapore to Bangkok and beyond via Penang, Songkhla, Mergui and Kuala Lumpur. [263]

112. It would appear that the Thai carriers continued to operate to and through Singapore after the formation of Malaysia. [264] Malaysia Airlines also continued to operate between Penang and Medan and Bangkok and at about the time of the formation of Malaysia began to operate on a route Bangkok—Kuala Lumpur—Singapore. [265]

(ii) *Agreements granting rights in respect of other territories of Malaysia* [266]

United Kingdom—Australia Agreement of 1958 [267]

113. Under the Agreement for air services of 7 February 1958, the airlines designated by Australia were authorized to operate on routes from Australia via specified intermediate points to Singapore, and from Australia via Singapore and other intermediate points to London.

114. Qantas was operating on routes from Australia via Singapore and other points to London and exercising traffic rights at Singapore a the time Singapore became part of the Federation. It continued to exercise these rights, at the same frequency, after that time. [268]

115. On 19 March 1964 Australia concluded a new agreement with Malaysia. [269] This agreement, which did not mention the Australian agreements with Malaya and the United Kingdom, authorized Australian carriers to operate from points in Australia via Djakarta (if desired) to Kuala Lumpur and Singapore and beyond, and from points in Australia to Jesselton and beyond to Manila and Hong Kong and other points. The Malaysian

[259] This agreement (Agreement relating to air services, of 29 September 1959), (United Nations, *Treaty Series*, vol. 357, p. 29), authorized carriers designated by Australia to operate on a route including Australia, Singapore to Kuala Lumpur, Penang and beyond. The agreement prohibited the exercise of traffic rights between Singapore and Kuala Lumpur and Penang. Accordingly, there was no question of Australia having cabotage rights after 1963. In fact, no Australian carrier was operating to Kuala Lumpur or Penang at the time (ICAO, *Digest of Statistics No. 105, Traffic Flow - March 1963*, Series TF, No. 33, pp. 3-4; and *ibid., No. 108, Traffic Flow - September 1963*, Series TF, No. 34, pp. 4-5). A new agreement with Malaysia was concluded in 1964 (see paras. 126-128 below).

[260] United Nations, *Treaty Series*, vol. 335, p. 3.

[261] ICAO, *Digest of Statistics, No. 105, Traffic Flow - March 1963*, Series TF, No. 33, pp. 136-138, 151 and Add.2, p. 78 *a*; and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, pp. 127-129, 140 and Add.2, p. 79 *a*.

[262] See foot-note 74 above.

[263] Kuala Lumpur was added by 1960 and 1961 amendments to the Agreement (see foot-note 75 above).

[264] ICAO, *Digest of Statistics, No. 108, Traffic Flow - September 1963*, Series TF, No. 34 and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, contain no information for Thai International, but a comparison of the services provided in March 1963 (*ibid., No. 105, Traffic Flow - March 1963*, Series TF, No. 33, p. 108) with those provided in September 1964 (*ibid., No. 114, Traffic Flow - September 1964*, Series TF, No. 36, p. 107), together with its mounting traffic in the years 1963-1964 (*ibid., No. 142, Traffic 1960-1968*, Series T, No. 28, p. 364) suggest that it continued to operate through Singapore.

[265] ICAO, *Digest of Statistics, No. 105, Traffic Flow - March 1963*, Series TF, No. 33, p. 70; *ibid., No. 108, Traffic Flow - September 1963*, Series TF, No. 34, Add.2, p. 78 *a*; and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, Add.2, p. 79 *a*.

[266] For Agreement between Thailand and the United Kingdom, see paragraphs 111 above and 148-149 below; for the Agreement between the Federal Republic of Germany and the United Kingdom, see paragraph 133 below. The Agreement of 5 April 1950 between Switzerland and the United Kingdom (United Nations, *Treaty Series*, vol. 99, p. 107) granted Swiss carriers rights at Singapore, but no subsequent practice has been discovered and the case is not discussed.

[267] United Nations, *Treaty Series*, vol. 335, p. 23.

[268] ICAO, *Digest of Statistics, No. 105, Traffic Flow - March 1963*, Series TF, No. 33, p. 3; *ibid., No. 108, Traffic Flow - September 1963*, Series TF, No. 34, p. 4 and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, p. 6.

[269] Australia, *Treaty Series*, No. 9, 1964.

carriers were authorized to operate from points in Malaysia via Djakarta (if desired) to Darwin, Perth and Sydney.

United Kingdom—Ceylon Agreement of 1949 [270]

116. Under the Agreement for air services of 5 August 1949, airlines designated by Ceylon were authorized to operate, between Ceylon and Singapore and from Ceylon to Singapore and beyond to specified points. Airlines designated by the United Kingdom were authorized to provide services between Singapore and Colombo.

117. At the time Malaysia was formed, Air Ceylon was operating on a route Singapore—Kuala Lumpur—Colombo via intermediate points to London. It continued after that time to provide the same service at the same frequency. [271]

India—United Kingdom Agreement of 1951 [272]

118. Under the Agreement relating to air services, of 1 December 1971, airlines designated by India were authorized to operate on routes from India to Singapore via specified intermediate points and beyond to specified points. Immediately before the formation of Malaysia, Air India was operating on routes to, from and through Singapore and exercising traffic rights there. It continued to operate substantially the same services at much the same frequency after that date. [273]

United Kingdom—Indonesia Agreement of 1960 [274]

119. Under the Agreement for air services signed on 23 November 1960, airlines designated by the United Kingdom were authorized to operate, on the route Singapore—Penang—Medan and on a route including Singapore and Djakarta. Those designated by Indonesia were authorized to provide services on the routes Medan—Singapore and Djakarta—Singapore and beyond to specified points.

120. Malayan Airlines was operating on the Penang—Medan and Singapore—Djakarta routes at the time of the formation of Malaysia but it is not clear whether the services continued after that time; certainly by March 1964 none were being provided. [275] Similarly, the Indonesian Airline was providing services on several of the above routes at the time the Federation was formed, but it is not clear whether these services continued after that date; and again, by March 1964, no services were being provided. [276]

121. As will be seen, both the Indonesian Airline and Malaysia—Singapore Airways began operations on the above routes again in 1966-67. [277]

United Kingdom—Japan Agreement of 1952 [278]

122. One of the routes to be operated by the designated Japanese airline or airlines under the Agreement for air services of 29 December 1952 was as follows: "Tokyo—Osaka—Fukuoka—Okinawa—points on the mainland of China to be agreed and/or on the island of Formosa—Hong Kong—Saigon or Bangkok—[Kuala Lumpur [279]]—Singapore—Djakarta". Any of these points could be omitted provided the service stated from Japan. The designated United Kingdom airline or airlines had the right to operate on substantially similar routes. [280] In accordance with the schedule, Japan Air Lines began to operate on the Singapore route in 1958 and in 1962 extended its service to Djakarta. [281] Following the formation of Malaysia in 1963, the question arose whether Malaysia was obliged to recognize Japan's traffic rights in Singapore. One writer has noted:

> The Government of Japan maintained that its traffic rights into Singapore had been conceded in return for the rights conceded by Japan to the United Kingdom, and that in so far as the rights conceded by Japan to the United Kingdom remained intact. Japan's traffic rights into Singapore should also remain intact. Moreover, Article 104 of the Constitution of the State of Singapore provided that: "All rights, liabilities and obligations of Her Majesty in respect of the Government shall on and after the coming into operation of this Constitution be rights, liabilities and obligations of the State." Thus also Japan asserted that its traffic rights into Singapore should remain uninterrupted until a new agreement could be concluded between Japan and Malaysia.
>
> In response, the Government of Malaysia informed Japan on October 18, 1963, that Malaysia hoped to enter into a new agreement regulating air services between the two countries. Japan was also notified that "... pending the conclusion of the agreement the traffic rights to be exercised by the national

[270] United Nations, *Treaty Series*, vol. 35, p. 137.

[271] ICAO, *Digest of Statistics, No. 105, Traffic Flow - March 1963*, Series TF, No. 33, p. 19; *ibid., No. 108, Traffic Flow - September 1963*, Series TF, No. 34, p. 26; *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, p. 25. See also para. 129 below.

[272] United Nations, *Treaty Series*, vol. 128, p. 39.

[273] ICAO, *Digest of Statistics, No. 105, Traffic Flow - March 1963*, Series TF, No. 33, p. 56; *ibid., No. 108, Traffic Flow - September 1963*, Series TF, No. 34, p. 61; and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, p. 60. See also para. 136 below.

[274] United Nations, *Treaty Series*, vol. 398, p. 71.

[275] ICAO, *Digest of Statistics, No. 105, Traffic Flow - March 1963*, Series TF, No. 33, p. 70; *ibid., No. 108, Traffic Flow - September 1963*, Series TF, No. 34, Add.2, p. 78 *a*; and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, Add.2, p. 79 *a*.

[276] *Ibid., No. 105, Traffic Flow - March 1963*, Series TF, No. 33, Add.2, p. 57*a*; *ibid., No. 108, Traffic Flow - September 1963*, Series TF, No. 34, p. 63; and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, p. 62.

[277] Para. 137 below.

[278] United Nations, *Treaty Series*, vol. 175, p. 129.

[279] Added in the revision to the schedule referred to in foot-note 280 below.

[280] The schedule was revised by an Exchange of Notes of 22 August 1967 (United Kingdom, *Treaties Series*, No. 103, Cmnd. 3469 (London, H.M.S.O., 1967)).

[281] See S. Tabata, "The Independence of Singapore and her succession to the agreement between Japan and Malaysia for Air Services", in *The Japanese Annual of International Law*, 1968 (Tokyo, 1968), No. 12, pp. 36-38, on which much of the remainder of this section is based. See also S. Oda and H. Owada, "Annual review of Japanese practice in international law", *ibid., 1967* (Tokyo, 1967), pp. 72-74; ICAO, *Digest of Statistics No. 74, Traffic Flow - September 1958*, Series TF, No. 24, p. 87; and *ibid., No. 98, Traffic Flow - September 1962*, Series TF, No. 32, Add.4, p. 64 *a*.

airline of Japan will be limited from 1st January, 1964 to third and fourth freedom rights between points in Japan and Singapore." That is to say, the so-called fifth freedom right would not be recognized, with the result that Japan would be limited to the direct transportation of passengers and goods between points in Japan and Singapore and would not be allowed to transport the same between points in Hong Kong, Bangkok, Jakarta, and Singapore. Japan replied by maintaining that its rights under the Japan-United Kingdom Agreement should be respected as vested rights, even after the establishment of Malaysia. Malaysia then agreed tentatively to withdraw the the above-mentioned restriction until a new agreement could be reached. [282]

The statistics show the exercise of traffic rights and continuity of service at the same frequency and capacity as before the formation of Malaysia. [283]

123. Following the temporary suspension of negotiations for a new agreement, Malaysia, in accordance with article 17 of the 1952 Agreement, gave notice of the termination of the Agreement. In its notice, Malaysia referred to its "voluntary" acceptance of the obligations of the United Kingdom Agreement. The notice would become effective on 23 March 1965, one year after Japan received it. Negotiations were resumed and a new agreement was signed between Japan and Malaysia, subject to ratification, on 11 February 1965. [284]

Netherlands—United Kingdom Agreement of 1946 [285]

124. The carriers designated by the Netherlands were authorized by the Agreement regarding certain air services, signed on 13 August 1968, to operate from Amsterdam via specified points to Singapore and beyond to a specified point. KLM was operating on such a route immediately before the formation of Malaysia and continued to provide substantially the same service after that time, at the same frequency and capacity. It also continued to exercise traffic rights at Singapore. [286] On 7 April 1964 Malaysia concluded an agreement with the Netherlands. [287]

United States—United Kingdom Agreement of 1946 [288]

125. One of the routes for carriers designated by the United States of America, under this Agreement, was San Francisco and Los Angeles via various intermediate points to Singapore and, optionally, beyond. There was a similar United Kingdom route. After the formation of Malaysia in 1963, [289] Pan American Airways continued to provide service on this route at about the same frequency and capacity and to exercise traffic rights. On 1 June 1965, the Government of Malaysia gave notice of the termination of the 1946 Agreement. [290]

(b) *Effect of separation of Singapore*

Australia—Malaysia Agreement of 1964 [291]

126. This Agreement, it will be recalled, authorized Australian carriers to operate on various routes to and through Kuala Lumpur and Singapore. [292] Qantas was still operating on the routes from Australia to Singapore and beyond to London immediately before Singapore became independent in 1965, and continued to provide the same services afterwards. [293]

127. According to the Australian Government, the 1964 Agreement "had to be revised after the separation of Singapore from the Federation of Malaysia in August 1965". As a result, revised agreements were concluded with Malaysia and Singapore in 1967. [294]

128. Neither agreement makes any express reference to the 1964 Agreement. That with Malaysia authorizes Australian flights from points in Australia via Indonesia and Singapore to Kuala Lumpur and beyond and that with Singapore for a route from Australia via Indonesia to Singapore and beyond (including Kuala Lumpur). The airlines designated by Malaysia and Singapore have rights which are slightly more extensive than those granted in the 1964 Agreement.

United Kingdom—Ceylon Agreement of 1949 [295]

129. It will be recalled that, after the formation of Malaysia, Air Ceylon continued to operate from Singapore and Kuala Lumpur to Colombo and beyond. Such a route was provided for in the above Agreement. Air Ceylon also continued to provide substantially the same service (with slightly increased capacity) after Singapore became independent in August 1965. [296] There appear to have been no relevant agreements concluded be-

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[282] S. Tabata, *op. cit.*, pp. 38-39.

[283] ICAO, *Digest of Statistics, No. 105, Traffic Flow - March 1963*, Series TF, No. 33, p. 68; *ibid., No. 108, Traffic Flow - September 1963*, Series TF, No. 34, p. 77; and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, p. 76.

[284] See paras. 138-143 below.

[285] See foot-note 54 above.

[286] ICAO, *Digest of Statistics No. 105, Traffic Flow - March 1963*, Series TF, No. 33 p. 76; *ibid., No. 108, September 1963*, Series TF, No. 34; p. 86; and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, p. 85.

[287] See paras. 144-146 below.

[288] See foot-note 48 above.

[289] ICAO, *Digest of Statistics No. 105, Traffic Flow - March 1963*, Series TF, No. 33, p. 156; *ibid., No. 108 Traffic Flow - September 1963*, Series TF, No. 34, p. 180; and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, p. 166.

[290] United States of America, *Department of State Bulletin*, Vol. LIII, No. 1362 (Washington, D.C.) (2 August 1965), p. 222.

[291] See foot-note 269 above.

[292] See para. 115 above.

[293] ICAO, *Digest of Statistics No. 118, Traffic Flow - March 1965*, Series TF, No. 37, p. 5; *ibid., No. 121, Traffic Flow - September 1965*, Series TF, No. 37, pp. 6-7; and *ibid., No. 125, Traffic Flow - March 1966*, Series TF, No. 39, tables 6-7.

[294] Australia, *Department of External Affairs, Annual Report 1 July 1966-30 June 1967* (Canberra, 1967), p. 39. The Agreement with Malaysia was signed on 9 October and that with Singapore on 3 November (Australia, *Treaty Series*, Nos. 23 and 25, 1967).

[295] See foot-note 270 above.

[296] ICAO, *Digest of Statistics No. 118, Traffic Flow - March 1965*, Series TF, No. 37, p. 23; *ibid., No. 121, Traffic Flow - September 1965*, Series TF, No. 38, p. 29; and *ibid., No. 125, Traffic Flow - March 1966*, Series TF, No. 39, Table 38.

tween Ceylon on the one hand and Malaysia and Singapore on the other. [297]

Denmark—Malaysia Agreement [298] *and Norway—Malaysia Agreement* [299] *of 1965*

130. Denmark and Norway concluded agreements for air services with Malaysia on 26 March 1965. Both entered into force on signature and authorized the carrier designated by Denmark and Norway to operate from points in Scandinavia via specified intermediate points to Kuala Lumpur and/or Singapore and beyond. The understanding that SAS had the right to operate the service on the route was confirmed by an exchange of letters.

131. SAS did not in fact exercise these rights through Singapore before Singapore became independent, and on 27 and 28 May 1966, respectively, both Malaysia and Singapore gave twelve months' notice to Denmark and Norway of the termination of their 1965 Agreements. [300]

132.. Several new agreements have since been concluded between the Scandinavian countries and Singapore and Malaysia. [301] They provide for similar services by the airlines designated by the Scandinavian countries. Unlike the earlier agreements, they do not provide any routes for the Malaysian and Singapore airlines.

United Kingdom—Federal Republic of Germany Agreement of 1955 [302]

133. One of the routes made available to German carriers by the 1962 amendment to this Agreement was from points in the Federal Republic via specified intermediate points to Singapore and beyond to Indonesia and Australasia. The German airline began operating on a route from Frankfurt to Singapore and, in some cases, beyond to Darwin and Sydney at about the time that Singapore withdrew from Malaysia and continued operating at the same frequency after that time. [303]

France—Malaysia Agreement of 1964 [304]

134. The Agreement relating to air services, of 21 May 1964, which did not mention the France—United Kingdom Agreement of 1946 (which, as amended in 1953, conferred traffic rights on French carriers at Noumea), [305] authorized French carriers to operate from France via specified intermediate points to Kuala Lumpur and/or Singapore and beyond to Djakarta, Biak, Sydney, Auckland or Christchurch to Noumea. [306] There were some restrictions on fifth freedom traffic. A French carrier began operating on this route and continued to exercise traffic rights, with increasing frequency, after Singapore became independent. [307]

135. On 27 May 1966, Malaysia gave notice of the termination of the 1964 Agreement, and Singapore did so on 28 May 1966. This notice was, under the terms of the Agreement, effective twelve months later. [308] On 22 May 1967 and 29 June 1967 France concluded new agreements with Malaysia and Singapore respectively.[309] These agreements, which are similar to one another and to the 1964 Agreement, authorized the French carriers to operate on routes almost identical with those provided for in that Agreement.

India—United Kingdom Agreement of 1951

136. It will be recalled that this Agreement authorized airlines designated by India to operate on routes from India to Singapore and beyond, and that Air India continued to operate to, from and through Singapore. [310] Air India also continued to provide similar services through Singapore after Singapore became independent in August 1965. [311] India does not appear to have

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297 ICAO, "Chart of Air Transport Agreements registered with ICAO 1 January 1969" in *Fourth Annual Supplement 1968*.

298 United Nations, *Treaty Series*, vol. 540, p. 205.

299 *Ibid.*, vol. 602, p. 157.

300 ICAO, *Aeronautical Agreements and Arrangements - Second Annual Supplement (for the year 1966) to "Tables of Agreements and Arrangements registered with the Organization" (Doc. 8473 - LGB/215) and to First Supplement (Doc. 8563 - LGB/228)*, Document 8648 - LGB/239 (Montreal, January 1967), pp. 10 and 32. (This publication will be referred to hereafter as "Second Annual Supplement (1966)".)

301 Agreement between Denmark and Singapore for air services, signed on 20 December 1966 (United Nations, *Treaty Series*, vol. 593, p. 125); Agreement between Singapore and Norway for air services, signed on 20 December 1966 (*ibid.*, vol. 646, p. 3); Agreement between Singapore and Sweden for air services, signed on 20 December 1966 (*ibid.*, p. 25); Agreement between Denmark and Malysia for air services, signed on 19 October 1967 (United Nations, *Treaty Series*, vol, 614, p. 25); Agreement of 19 October 1967, between Norway and Malaysia (ICAO registration No. 2037); Agreement of 19 October 1967 between Sweden and Malaysia (ICAO registration No. 2006).

302 See foot-notes 104 and 105 above.

303 ICAO, *Digest of Statistics, No. 121, Traffic Flow - September 1965*, Series TF, No. 38, p. 58; and *ibid.*, No. 125, Traffic Flow - March 1966, Series TF, No. 39, tables 86 and 87.

304 France, *Journal officiel de la République française, Lois et décrets* (Paris, 3 July 1964), 96th year, No. 154, p. 5814.

305 No French airline was operating through Singapore at the time Malaysia was established. ICAO, *Digest of Statistics No. 105, Traffic Flow - March 1963*, Series TF, No. 33, pp. 32-46; *ibid., No. 108, Traffic Flow - September 1963*, Series TF, No. 34, pp. 38-40; and *ibid., No. 112, Traffic Flow - March 1964*, Series TF, No. 35, pp. 38-51.

306 Rights were also granted to Malaysian carriers, but they were not exercised.

307 ICAO, *Digest of Statistics No. 118, Traffic Flow - March 1965*, Series TF, No. 37, p. 44; *ibid., No. 121, Traffic Flow - September 1965*, Series TF, No. 38, p. 55; *ibid., No. 125, Traffic Flow - March 1966*, Series TF, No. 39, table 79.

308 See *Second Annual Supplement (1966)*, p. 32.

309 France, *Journal officiel de la République française, Lois et décrets*, Paris, 5 August 1967, 99th year, No. 181, p. 7836; 11 October 1967, 99th year, No. 237, P.10005.

310 See para. 118 above.

311 ICAO, *Digest of Statistics No. 118, Traffic Flow - March 1965*, Series TF, No. 37, Add. 1, p. 51 *b; ibid., No. 121, Traffic Flow - September 1965*, Series TF, No. 38, p. 69; and *ibid., No. 125, Traffic Flow - March 1966*, Series TF, No. 39, table 103.

concluded an agreement with Malaysia;[312] it has however concluded one with Singapore.[313]

United Kingdom—Indonesia Agreement of 1960

137. This Agreement, it will be recalled, granted Indonesian carriers rights in Singapore and United Kingdom carriers rights in Medan and Djakarta.[314] Malayan Airways and the Indonesian airline ceased operating on routes including these stops in 1963-1964. Following the independence of Singapore, services were renewed by the airline designated by Indonesia in late 1966 or early 1967,[315] and by Malaysia—Singapore Airways later in 1967.[316] Malaysia, but not Singapore,[317] has (in 1968) concluded a new agreement with Indonesia.[318]

Japan—Malaysia Agreement of 1965[319]

138. The Agreement for air services was signed, subject to ratification, on 11 February 1965. By an exchange of notes it was agreed that the Agreement should, pending ratification (if later than 23 March), be provisionally implemented. Under the Agreement, the designated Japanese airline or airlines may operate the following route in both directions: points in Japan—Taipei—Hong Kong—Manila—Saigon—Bangkok—Kuala Lumpur—Singapore—Djakarta—Darwin—Sydney. The Malaysian route is as follows: points in Malaysia—Bangkok—Saigon—Hong Kong—Manila—Taipei—Osaka—Tokyo. The services are to begin in the territory of the designating party, but other points can be omitted. The Agreement was not ratified and did not formally enter into force until November, some months after Singapore separated from Malaysia.

139. In a letter to the Japanese Government the Malaysian Foreign Ministry took the view, that:

> The Agreement between the Government of Malaysia and the Government of Japan for Air Services falls under paragraph 13 of the Constitution of Malaysia (Singapore Amendment) Act, 1965, since the Agreement was signed and ratified by both Governments before Singapore Day and an exchange of instruments of ratification merely constitutes a ceremonial formality.[320]

140. The Japanese Government on 25 August 1965 addressed a letter to the Singapore Government, which read in part:

> The Japanese Government and the Malaysian Government are now exchanging views on whether the above-mentioned Agreement falls under Paragraph 13 Annex B of the Agreement relating to the separation of Singapore from Malaysia as an independent and sovereign State. The Japanese Government takes the stand that the Agreement comes into effect at a date when the instruments of ratification shall be exchanged in accordance with the provisions of the Agreement which has not yet taken place. The Malaysian Government takes the stand that since the Agreement was signed and ratified by both Governments before Singapore Day, and because an exchange of instruments of ratification merely constitutes a ceremonial formality, it shall be construed as an "agreement entered into before Singapore Day between the Government of Malaysia and another country".
>
> The Japanese Government would like to know whether the Government of Singapore shares the above-mentioned understanding of the Government of Malaysia and whether the Government of Singapore takes the stand that she shall be bound by the provisions of the Agreement if the Agreement comes into effect between the Japanese Government and the Malaysian Government. If so, I would be very grateful if Your Excellency could let me know whether you have any objection to the attached draft of a letter to be sent by me to Your Excellency.[321]

141. In its reply of 20 September 1965, the Singapore Government confirmed that it accepted the Agreement as an agreement between it and the Japanese Government, notwithstanding the fact that the instruments of ratification had not been exchanged. Further, on the date of ratification, the Singapore Government also exchanged letters with Japan in which it was stated that:

> ... the understanding has been reached between the Government of Japan and the Government of Singapore that both Japan and Singapore shall be bound, as from the 4th November, 1965, by the provisions of the Agreement between the Government of Japan and the Government of Malaysia for Air Services signed at Kuala Lumpur on 11th February, 1965.[322]

142. Japan appears to take the view that this exchange did no more than confirm the position under the law. Thus an official publication of the Japanese Ministry of Foreign Affairs stated that:

> The [air services] Agreement... was succeeded to by the Government of the Republic of Singapore on the basis of the Agreement of Independence from Malaysia... For the purpose of confirming this succession, [the above] letters were exchanged...[323]

The statistics show that the Japanese carrier continued to operate through Singapore at approximately the same frequency and capacity.[324]

143. Finally, on 28 May 1966, the Singapore Government gave notice of the termination of the 1965 Agreement, which it said it had voluntarily accepted.[326] A new Agreement for air services was signed on 14 February 1967.[326] The traffic points in this Agreement are

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312 See the chart in *Fourth Annual Supplement (1968)*, pp. 19 and 20.

313 Agreement of 23 January 1968 (ICAO registration No. 2057).

314 See para. 119 above.

315 ICAO, *Digest of Statistics No. 134, Traffic Flow - March 1967*, Series TF, No. 41, tables 105-106.

316 *Ibid., No. 138, Traffic Flow - September 1967*, Series TF, No. 42, tables 165-166.

317 See *Fourth Annual Supplement (1968)* pp. 9 and 19-20.

318 Agreement of 6 May 1968 (ICAO registration No. 2078).

319 United Nations, *Treaty Series*, vol. 666, p. 49. See also para. 123 above.

320 Tabata, *op. cit.*, p. 41.

321 *Ibid.*, pp. 41-42.

322 *Ibid.*, pp. 42-43.

323 Japan, Ministry of Foreign Affairs, *Waga Gaiko no Kynkyo* [Annual Report of the Japanese Diplomacy], vol. 10, (1966), p. 115, quoted by Oda and Owada, *op. cit.*, p. 74.

324 ICAO, *Digest of Statistics No. 118, Traffic Flow - March 1965*, Series TF, No. 37, p. 64; *ibid. No. 121, Traffic Flow - September 1965*. Series TF, No. 38, p. 85; and *ibid., No. 125, Traffic Flow - March 1966*, Series TF, No. 39, tables 126-127.

325 Tabata, *op. cit.*, p. 44.

326 United Nations, *Treaty Series*, vol. 646, p. 33.

substantially the same as those in the 1952 and 1965 Agreements: for the airlines designated by Japan, points in Japan—Taipei—Hong Kong—Manila—Saigon—Bangkok—Kuala Lumpur or Singapore—Djakarta; and for that designated by Singapore, Singapore—points in Malaysia—Bangkok—Saigon—Hong Kong—Manila—Taipei—Tokyo—Seoul. Moreover, the Agreement provided that the services were to begin in the territory of the party designating the airline, provided, however, that if Singapore and Malaysia designated the same airline, that airline could originate its services in Malaysia and operate through Singapore. [327] On 14 March 1967, Japan and Malaysia exchanged notes amending the routes to their 1965 Agreement. The amendments were in part consequential on the separation of Singapore from Malaysia.

Netherlands—Malaysia Agreement of 1964 [328]

144. The Agreement for air services of 7 April 1964, which did not refer to the Netherlands—United Kingdom Agreement of 1946, [329] provided for substantially the same services as the 1946 Agreement for the Netherlands carrier, with the addition that it could also stop at Kuala Lumpur. The Malaysian carrier was also authorized to operate on substantially the same route.

145. KLM continued to provide services on the routes through Singapore after Singapore became independent. At that time it increased the frequency of the flights and began to exercise its rights through Kuala Lumpur. [330]

146. On 27 and 28 May 1966, Malaysia and Singapore gave notice of the termination of this 1964 Agreement. [331] In accordance with the Agreement's provisions, the notice would become effective twelve months later. New agreements were signed later in 1966. [332] That with Malaysia provides for substantially the same services by Netherlands carriers as the 1964 Agreement; one difference is, of course, that Singapore is now a "point beyond" and not a point in Malaysia. It provides for no route for Malaysia, however.

Malaysia—New Zealand Agreement of 1965 [333]

147. This Agreement, which entered into force on 27 July 1965, the date of signature, authorized carriers designated by New Zealand to operate between points in New Zealand and Kuala Lumpur, Singapore and Jesselton and beyond. The New Zealand carrier did not in fact exercise these rights, [334] and on 28 May 1966 both Malaysia and Singapore gave notice of their termination of the Agreement. [335] In accordance with its provisions, the Agreement terminated one year later. New agreements were concluded with Malaysia on 29 February 1968 [336] and Singapore on 4 March 1968. [337] Together they confer rights on New Zealand, Malaysian and Singapore airlines which are similar to, although not identical with, those conferred by the earlier Agreement.

Thailand—United Kingdom Agreement of 1950 [338]

148. It will be recalled that following the establishment of Malaysia. Thai carriers continued or began to operate on routes prescribed in the above Agreement.

149. Following Singapore's attainment of independence. Thai International continued to operate on routes Bangkok—Singapore and Bangkok—Kuala Lumpur—Singapore and beyond to Djakarta. [339] Similarly, Malaysian Airways (later Malaysia-Singapore Airways) continued to provide services on the Singapore—Penang—Bangkok and Singapore—Kuala Lumpur—Bangkok routes at an increasing frequency. [340] Both Malaysia and Singapore have subsequently concluded new agreements with Thailand. [341]

United States—United Kingdom Agreement of 1946

150. It will be recalled that this Agreement granted United States carriers certain rights in Singapore and that Pan American Airways had continued to exercise such rights after the formation of Malaysia. [342] It also continued to provide substantially the same service on

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[327] Notwithstanding this indirect reference to Malaysia-Singapore Airlines Ltd., the Agreement contains, in article 3, paragraph 4, the usual provision concerning substantial ownership and effective control.

[328] United Nations, *Treaty Series*, vol. 524, p. 81.

[329] See para. 124 above.

[330] ICAO, *Digest of Statistics, No. 118, Traffic Flow - March 1965*, Series TF, No. 37, pp. 71-72; *ibid., No. 121, Traffic Flow - September 1965*, Series TF, No. 38, pp. 97; and *ibid., No. 125, Traffic Flow - March 1966*, Series TF, No. 39, table 149.

[331] See *Second Annual Supplement (1966)*, p. 32.

[332] Agreement of 15 December between Malaysia and the Netherlands relating to air services (Netherlands, *Tractatenblad van het Koninkrijk der Nederlanden* (The Hague, 1967) No. 14); Agreement of 29 December 1966 between Singapore and the Netherlands relating to air services (*ibid.*, No. 15) (ICAO registration No. 1947).

[333] New Zealand, Department of External Affairs, *Treaty Series*, 1965, No. 7, Publication No. 316 (Wellington 1965).

[334] See e.g. ICAO, *Digest of Statistics No. 121, Traffic Flow - September 1965*, Series TF, No. 38, p. 103; *ibid., No. 125, Traffic Flow - March 1966*, Series TF, No. 39, tables 155 and 156; *ibid., No. 134, Traffic Flow - March 1967*, Series TF, No. 41, tables 160 and 161; *ibid., No. 138, Traffic Flow - September 1967*, Series TF, No. 42, tables 189 and 190.

[335] New Zealand, Department of External Affairs, *Treaty Series*, 1968, No. 5, publication No. 350 (Wellington, 1968), p. 3.

[336] *Ibid.*, No. 5 .

[337] *Ibid.*, No. 6, publication No. 35 (Wellington, 1968).

[338] See foot-note 74 above.

[339] ICAO, *Digest of Statistics No. 114, Traffic Flow - September 1964*, Series TF, No. 36, p. 107; *ibid., No. 118, Traffic Flow - March 1965*, Series TF, No. 37, p. 103; *ibid., No. 121, Traffic Flow - September 1965*, Series TF, No. 38, p. 135; *ibid.*, No. 125, *Traffic Flow - March 1966*, Series TF, No. 39, table 197.

[340] *Ibid., No. 114, Traffic Flow - September 1964*, Series TF, No. 36, Add.2, p. 67 *a; ibid., No. 121, Traffic Flow - September 1965*, Series TF, No. 38, p. 90; *ibid., No. 125, Traffic Flow - March 1966*, Series TF, No. 39, table 133.

[341] Agreement of 18 November 1966 between Malaysia and Thailand (ICAO registration No. 1918); Agreement of 2 September 1968 between Singapore and Thailand (ICAO registration No. 2076).

[342] See para. 125 above.

the route after the attainment of independence by Singapore in August 1965. [343]

151. It was also noted that on 1 June 1965, the Government of Malaysia gave notice of the termination of the 1946 Agreement. This notice, which took effect one year later, was apparently accepted by the United States as terminating the Agreement for Singapore as well, although in the interim Singapore had become independent. [344] Notwithstanding the termination of the Agreement and the fact that no new agreement was immediately concluded, Pan American Airways continued to provide substantially the same services to, from and through Singapore. [345] Subsequently, on 2 February 1970, an Air Transport Agreement was concluded between Malaysia and the United States of America. [346] This agreement authorizes an airline or airlines designated by the United States to operate on the following route: from the United States via intermediate points in Japan, Hong Kong, Thailand, South Viet-Nam and Cambodia to Kuala Lumpur and beyond, Singapore, Indonesia, Australia, New Zealand and, via points in the South Pacific, to the United States in both directions.

3. Formation of the United Arab Republic (1958) and separation of the Syrian Arab Republic (1961)

152. Following the establishment of the United Arab Republic, its Foreign Minister, in a note of 1 March 1958 addressed to the Secretary-General of the United Nations, stated *inter alia* that:

> ... all international treaties and agreements concluded by Egypt or Syria with other countries will remain valid within the regional limits prescribed on their conclusion and in accordance with the principles of international law. [347]

153. Article 69 of the provisional constitution of the United Arab Republic of 5 March 1958 [348] also provided that:

> The coming into effect of the present Constitution shall not infringe upon the provisions and clauses of the international treaties and agreements concluded between each of Syria and Egypt or the foreign powers.
>
> These treaties and agreements shall remain valid in the regional spheres for which they were intended at the time of their conclusion, according to the rules and regulations of the international law.

154. At the end of September 1961, Syria separated from the United Arab Republic and resumed its independence under the name, Syrian Arab Republic. Legislative Decree No. 25 of 13 June 1962 provided as follows:

Article 1

> The obligations assumed under any bilateral international treaty, agreement or convention during the period of the Union with Egypt are considered to be in force in the Syrian Arab Republic until such instrument is amended or denounced by the Syrian Arab Republic or by the other Parties in accordance with its provisions.

Article 2

> The obligations assumed under any multilateral treaty, agreement, convention or instrument of participation in an international institution or organization during the period of the Union with Egypt are considered to be in force in the Syrian Arab Republic until such instrument is denounced in accordance with its provisions. [349]

155. According to ICAO records, [350] at the time of the formation of the United Arab Republic, Egypt was party to air transport agreements with the following nineteen States: Australia, Belgium, Ceylon, Denmark, France, Greece, India, Iraq, Jordan, Netherlands, Norway, Pakistan, Sweden, Switzerland, Syria, Turkey, United Kingdom, United States of America and Yugoslavia. Syria at that time was party to such agreements with the following eleven States: Czechoslovakia, Denmark, Egypt Greece, Netherlands, Norway, Sweden, Switzerland, Turkey, United Kingdom and the United States. Between the time of the formation of the United Arab Republic and of Syria's withdrawal from it, the United Arab Republic concluded air transport agreements with seven States: Bulgaria, Czechoslovakia, the Federal Republic of Germany, Ghana, Japan, Romania and Switzerland: [351] rights were not always exercised under these agreements at the relevant times, and not all the information concerning the exercise of rights is available. It may be noted that in 1965 ICAO listed the agreements concluded by Egypt and Syria before

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[343] ICAO, *Digest of Statistics, No. 118, Traffic Flow - March 1965*, Series TF, No. 37, pp. 153-154; *ibid., No. 121, Traffic Flow - September 1965*, Series TF, No. 38, p. 187; and *ibid., No. 125, Traffic Flow - March 1966*, Series TF, No. 39, tables 276-277.

[344] Thus, the Agreement is not listed under Singapore in United States of America, Department of State, *Treaties in Force... 1970*, p. 200, although other pre-1965 agreements are listed.

[345] See United States of America, *Treaties in Force... 1970*, under Malaysia (p. 349) and Singapore (p. 201), and *Fourth Annual Supplement (1968)*, pp. 19-20. See also ICAO *Digest of Statistics, No. 134, Traffic Flow - March 1967*, Series TF, No. 41, table 277; and *ibid., No. 138, Traffic Flow - September 1967*, Series TF, No. 42, table 320.

[346] United Nations, *Treaty Series*, vol. 740 (not yet issued), No. 10620). The English text of the agreement also appears in United States of America, Department of State, *United States Treaties and Other International Agreements* (Washington, D.C., U.S. Government Printing Office, 1970), vol, 21, part 1, p. 379.

[347] See *Yearbook of the International Law Commission, 1962*, vol. II, p. 104, document A/CN.4/149 and Add.1, paragraph 18. See also. Cotran, "Some legal aspects of the formation of the United Arab Republic and the United Arab States" in *International and Comparative Law Quarterly* (London, 1959), vol. 8, p. 346; and United States of America, Department of State, *Digest of International Law*, Department of State publication 7553 (Washington, D.C., U.S. Government Printing Office, 1963), vol. 2, pp. 232-233, and 957-964.

[348] Cotran, *op. cit.*, p. 380.

[349] *Yearbook of the International Law Commission, 1962*, vol. II, p. 128, document A/CN.4/150, annex, No. 13.

[350] ICAO, *Aeronautical Agreements and Arrangements - Tables of Agreements and Arrangements registered with the Organization* (1 January 1946-31 December 1959) Document 8066 - LGB/155 (Montreal, January 1960), pp. 20-21.

[351] It also entered into an agreement with Sweden modifying the Egypt-Sweden agreement of 1949, and an agreement with Switzerland modifying the Egypt-Switzerland agreement of 1950 (see paras. 168-170 below).

1958 and by the United Arab Republic between 1958 and 1961 as in force, except in so far as they had been superseded by later instruments. [352]

Australia—Egypt Agreement of 1952 [353]

156. Under the Agreement for the establishment of scheduled air services, as amended in 1955, [354] the airlines designated by Australia had the right to operate from Australia via specified points in Asia and the Middle East to Cairo and optionally beyond via Rome and Frankfurt to the United Kingdom and/or other points in Western Europe. [355] They were permitted to exercise traffic rights at Cairo. Qantas provided such a service before the formation of the United Arab Republic and, after a period in which it provided no service, began to operate through Cairo at about the time the United Arab Republic was established at much the same frequency and capacity as before. It also once again exercised traffic rights there. [356]

Belgium—Egypt Agreement of 1949 [357]

157. Under the Agreement relating to regular air transport services, as amended in 1956, [358] Belgian carriers were authorized to operate services on the following routes: "Belgian territory—intermediate points —Egyptian territory—and points beyond"; and the Egyptian carrier on the following: "Egyptian territory—intermediate points—Belgian territory—and points beyond." SABENA, the Belgian carrier, did not, it seems, exercise these rights before the formation of the United Arab Republic, [359] but at about the beginning of 1959 it began to provide services on routes including Cairo, at which it also exercised traffic rights. [360]

Ceylon—Egypt Agreement of 1950 [361]

158. Under the Agreement for the establishment of scheduled air services, as amended in 1957, [362] the airlines designated by Ceylon were authorized to exercise traffic rights at Cairo on a route from Colombo via specified points to London and Amsterdam. [363] Air Ceylon was operating on such a route before the formation of the United Arab Republic and continued to exercise traffic rights and to provide its services at the same frequency after that time. [364]

Egypt—Sweden Agreement of 1949; Egypt—Norway and Egypt—Denmark Agreements of 1950; Syria—Denmark Agreement of 1955; Syria-Norway Agreement of 1956 [365]

159. Under the Scandinavian-Egyptian Agreements SAS was authorized to operate from points in Scandinavia via various points in Europe to Cairo and beyond to points in Africa and Asia. The agreements with Syria provided for routes from Scandinavia via European points to Syria and other Middle Eastern points and to Egypt and beyond. [366]

160. SAS was operating through Damascus and to, through and from Cairo when the United Arab Republic was established, and was exercising traffic rights in both places. It continued to provide these services after that time and after Syria separated from the United Arab Republic in 1961. [367] On 28 May 1958, the Swedish Embassy, in a note to the Minister for Foreign Affairs of the United Arab Republic, referred to an understanding that had been reached between the aeronautical authorities of Sweden and those of the Egyptian province of the United Arab Republic concerning amendment of the 1949 Agreement between Egypt and Sweden. It then proposed that the Agreement be amended in accordance with this understanding; the Minister accepted this proposal on 28 May 1958. [368]

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[352] See *Tables of Agreements (1964)* and annual supplements.

[353] United Nations, *Treaty Series*, vol. 173, p. 241.

[354] *Ibid.*, vol. 335, p. 302.

[355] The Egyptian route, between Egypt and Australia, was to be agreed at a later date.

[356] ICAO, *Digest of Statistics No. 68, Traffic Flow - September 1956*, Series TF, No. 20, pp. 26-27; *ibid., No. 69-70, Traffic Flow - March and September 1957*, Series TF, No. 21-22, pp. 7-9; and *ibid., No. 72, Traffic Flow - March 1968*, Series TF, No. 23, pp. 6-7.

[357] United Nations, *Treaty Series*, vol. 137, p. 189.

[358] *Ibid.*, vol. 271, p. 395.

[359] See e.g., ICAO, *Digest of Statistics Nos. 69-70, Traffic Flow - March and September 1957*, Series TF, Nos. 21-22, pp. 13-21; *ibid., No. 74, Traffic Flow - September 1958*, Series TF, No. 24, pp. 8-18.

[360] *Ibid., No. 77, Traffic Flow - March 1959*, Series TF, No. 25, p. 4; *ibid., No. 78, Traffic Flow - September 1959*, Series TF, No. 26, p. 7; and *ibid., No. 82, Traffic Flow - March 1960*, Series TF, No. 27, pp. 9-10.

[361] United Nations, *Treaty Series*, vol. 192, p. 53.

[362] *Ibid.*, vol. 327, p. 370.

[363] The Egyptian routes were to be determined later.

[364] ICAO, *Digest of Statistics Nos. 69-70, Traffic Flow - March and September 1957*, Series TF, Nos. 21-22, p. 38; *ibid., No. 72, Traffic Flow - March 1958*, Series TF, No. 23, p. 38; and *ibid., No. 74, Traffic Flow - September 1958*, Series TF, No. 24, p. 38.

[365] Agreement of 12 December 1949 between Egypt and Sweden for the establishment of scheduled air services (United Nations, *Treaty Series*, vol. 108, p. 15), amended in 1952 (*ibid.*, vol. 150, p. 389), in 1954 (*ibid.*, vol. 200, p. 302) and in 1957 (*ibid.*, vol. 327, p. 56); Agreement of 11 March 1950 between Egypt and Norway for the establishment of scheduled air services (*ibid.*, vol. 95, p. 157), amended in 1952 (*ibid.*, vol. 163, p. 370, and in 1954 (*ibid.*, vol. 200, p. 284); Agreement of 14 March 1950 between Egypt and Denmark for the establishment of scheduled air services (*ibid.*, vol. 95, p. 197), amended in 1952 (*ibid.*, vol. 150, p. 374) and in 1954 (*ibid.*, vol. 200, p. 291); Agreement of 20 October 1955 between Denmark and Syria concerning regular air transport services (*ibid.*, vol. 95, p. 197) and Agreement of 25 February 1956 between Norway and Syria concerning scheduled air services (*ibid.*, vol. 463, p. 217).

[366] The ban on traffic rights between Egypt and Syria resulting from the exclusion of Syria as a point on the routes in the Egyptian agreements was made explicit in an exchange of notes accompanying Syria's agreement with Norway.

[367] ICAO, *Digest of Statistics Nos. 69-70, Traffic Flow - March and September 1957*, Series TF, Nos. 21-22, pp. 160-163 and 168-169; *ibid., No. 72, Traffic Flow - March 1958*, Series TF, No. 23, pp. 145-148 and 152-153; *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, p. 74; *ibid., No. 92, Traffic Flow - September 1961*, Series TF, No. 30 pp. 92-94 and *ibid., No. 95, Traffic Flow - March 1962*, Series TF, No.31, pp. 84-85.

[368] United Nations, *Treaties Series*, vol. 392, p. 348.

Egypt—France Agreement of 1950 [369]

161. French carriers designated under the Agreement of 6 August 1950 relating to regular air transport services were authorized to operate on the following routes (amongst others): Paris—Cairo or Alexandria (direct); Paris—Rome—Cairo or Alexandria; and Paris—Rome and/or Athens—Cairo to various specified points in Africa. Air France had exercised these rights before the establishment of the United Arab Republic and, after a period, began to operate again at about the beginning of 1959, i.e. after the formation of the United Arab Republic. [370]

Egypt—Greece Agreement of 1950 [371]

162. Under the Agreement of 24 April 1950 for the establishment of scheduled air services, the carriers designated by the Greek Government were authorized to operate from points in Greece to Alexandria and Cairo. The Greek carrier continued to operate on these routes after the formation of the United Arab Republic, at approximately the same frequency. [372] The Egyptian airlines were authorized to operate from points in Egypt to Athens and points beyond. Misrair continued to operate at about the same frequency, from Cairo and Alexandria to Athens, after the formation of the United Arab Republic, and subsequently began to exercise rights beyond. [373] By an exchange of notes of 29 November 1962 and 6 May 1963, Greece and the United Arab Republic agreed to amend the schedule to the 1950 agreement. [374]

India—Egypt Agreement of 1952 [375]

163. Carriers designated by India had, under the Agreement of 14 June 1952 for the establishment of scheduled air services, the right to operate from points in India via specified intermediate points to Cairo or Alexandria and beyond to specified European points. Air India continued to exercise these rights (including traffic rights) after the formation of the United Arab Republic. [376]

Iraq—Egypt Agreement of 1955 [377]

164. The Iraqi carriers were authorized by the Agreement of 23 March 1955 for the establishment of scheduled air services to operate, *inter alia,* from Baghdad to Cairo direct or via Beirut and/or Damascus. The Iraqi carrier continued to operate on this route, and for a short time to exercise traffic rights between Cairo and Damascus. Later, however, it operated between Baghdad and Cairo direct without a stop in Damascus and between Baghdad and Damascus. [378] The Egyptian carriers were authorized to operate between Cairo and Baghdad (either direct or via Beirut and for Damascus) and beyond to specified points. Misrair continued to operate between Cairo and Baghdad via Damascus, at about the same frequency, following the establishment of the United Arab Republic. [379]

Egypt—Jordan Agreement of 1952 [380]

165. The Egyptian designated airlines were authorized by the Agreement of 2 January 1952 for the establishement of scheduled air services to operate between Cairo and Jerusalem and/or Amman and to specified points beyond. Misrair continued to operate from Cairo to Jerusalem after the formation of the United Arab Republic, and also began to operate to specified points beyond Jerusalem. [381] The airlines designated by Jordan were authorized to operate from Amman or Jerusalem to Cairo and/or Alexandria and beyond to specified points. The Royal Jordanian Carriers, which did not commence operations until the end of 1961, [382] included Amman—Cairo, Jerusalem—Cairo and Amman—Jerusalem—Cairo in their services. [383]

Egypt—Netherlands Agreement of 1949 [384] *and Netherlands—Syria Agreement of 1950* [385]

166. Under the Agreement for the establishment of scheduled air services concluded between Egypt and the Netherlands on 8 December 1949, as amended, [386] the carriers designated by the Netherlands were authorized to operate from the Netherlands via specified European and Middle Eastern points (not including Syria) to Cairo and to specified points beyond and from the Netherlands via Cairo to Iraq, Pakistan and India or to Aden and Ceylon and beyond in both cases. The Egyptian airlines were to operate on a route to be determined at

[369] United Nations, *Treaty Series,* vol. 127, p. 293.

[370] ICAO, *Digest of Statistics No. 68, Traffic Flow - September 1956,* Series TF, No. 20, pp. 73-74 and 79-81; *ibid., No. 77, Traffic Flow - March 1959,* Series TF, No. 25, p. 25 and *ibid., No. 78 Traffic Flow - September 1959,* Series TF, No. 26, p. 27.

[371] United Nations, *Treaty Series,* vol. 163, p. 229.

[372] ICAO, *Digest of Statistics Nos. 69-70, Traffic Flow - March and September,* Series TF, Nos. 21-22, p. 59; and *ibid., No. 72, Traffic Flow - March 1958,* Series TF, No. 23, pp. 69-70.

[373] *Ibid.* pp. 42 and 40 respectively; *ibid., No. 78, Traffic Flow - September 1959,* Series TF, No. 26, Add.1, p. 93 *a.*

[374] United Nations, *Treaty Series,* vol. 533, p. 324.

[375] *Ibid.* vol. 173, p. 209. See also the amendment, (*ibid.,* p. 236).

[376] ICAO, *Digest of Statistics Nos. 69-70, Traffic Flow - March and September 1957,* Series TF, Nos. 21-22, p. 59; *ibid., No. 77, Traffic Flow - March 1959,* Series TF, No. 25, p. 34.

[377] United Nations, *Treaty Series,* vol. 311, p. 199.

[378] ICAO, *Digest of Statistics Nos. 69-70, Traffic Flow - March and September 1957,* Series TF, Nos. 21-22, p. 70; *ibid., No. 72, Traffic Flow - March 1958,* Series TF, No. 23, p. 72 and *ibid., No. 74, Traffic Flow - September 1958,* Series TF, No. 24, p. 71.

[379] *Ibid., Nos. 69-70, Traffic Flow - March and September 1957,* Series TF, Nos. 21-22, p. 41; *ibid., No. 74, Traffic Flow - September 1958,* Series TF, No. 24, p. 205 and *ibid., No. 75, Traffic Flow - March 1959,* Series TF, No. 25, p. 82.

[380] United Nations, *Treaty Series,* vol. 192, p. 157.

[381] ICAO, *Digest of Statistics No. 68, Traffic Flow - September 1956,* Series TF, No. 20, pp. 61-63 and *ibid., No. 72, Traffic Flow - March 1958,* Series TF, No. 23, pp. 40-42.

[382] *Ibid., No. 135, Traffic 1960-1967,* Series T, No. 27, p. 457.

[383] *Ibid., No. 112, Traffic Flow - March 1964,* Series TF, No. 35, p. 77.

[384] United Nations, *Treaty Series,* vol. 95, p. 123.

[385] *Ibid.,* vol. 108, p. 53.

[386] In 1953 (*ibid.,* vol. 163, p. 379), 1954 (*ibid.,* vol. 200, p. 278) and 1956 (*ibid.,* vol. 311, p. 338).

a later date. Under the Agreement relating to civil services between their respective territories, concluded between the Netherlands and Syria on 13 February 1950, as amended, [387] carriers designated by the Netherlands were entitled to operate from the Netherlands via specified intermediate points to Syria, to specified points in the Middle East and Asia and beyond. Egypt was not included in the specified points. The details of the Syrian routes were to be agreed later. KLM was operating on several routes to, from and through Cairo and Damascus before the establishment of the United Arab Republic and it continued to provide services and to exercise traffic rights after that time. It also continued to exercise rights at Damascus after Syria withdrew from the United Arab Republic. [388]

167. On 5 August 1965, the Netherlands and the United Arab Republic concluded a new air transport Agreement. [389] In an exchange of notes accompanying the Agreement, it was agreed that the new Agreement superseded that concluded between Egypt and the Netherlands in 1949.

Egypt—Switzerland Agreement of 1950 [390] *and Switzerland—Syria Agreement of 1954* [391]

168. Carriers designated by Switzerland were authorized by the Agreement concerning regular air transport services, concluded between Egypt and Switzerland on 15 May 1950, to operate between Zurich and Geneva via specified optional points in Europe and North Africa to Alexandria and Cairo, and beyond to specified points in the Middle East and Africa. The specified points did not include Syria. The Egyptian carriers were authorized to operate from Cairo and Alexandria via specified points in Europe to Geneva and beyond to London and beyond. Under the Agreement concerning regular civil air services concluded between Syria and Switzerland on 26 May 1954, as amended in 1957, [392] the Swiss airlines were authorized to operate from Switzerland via specified points to Damascus and beyond to specified points including Egypt.

169. Swissair continued to provide services, at the same frequency, to and from Damascus and to, through and from Cairo, after the formation of the United Arab Republic. It also continued to operate, at the same frequency, to and from Damascus after Syria left the United Arab Republic. [393] Misrair was not exercising its rights in Switzerland at the time of the formation of the United Arab Republic, but it subsequently began to exercise them. [394]

170. The continuation in force of the Agreement between Egypt and Switzerland after the formation of the United Arab Republic is confirmed by subsequent diplomatic action. By an exchange of letters of 16 February and 13 April 1959, Switzerland and the United Arab Republic agreed to the terms of a new schedule to that Agreement. [395] The schedule gave Swiss carriers rights only in Cairo and Alexandria and not in the Syrian region.

Egypt—United Kingdom Agreement of 1951 [396] *and United Kingdom—Syria Agreement of 1954* [397]

171. Carriers designated by the United Kingdom were authorized by the Agreement with Egypt to operate to and through specified points in Egypt and beyond on several routes. Egyptian carriers were also given several routes to and through United Kingdom territory. United Kingdom carriers designated under the Agreement with Syria (Agreement for scheduled civil air services of 30 January 1954) were entitled to operate to and through Damascus and Aleppo. The Syrian route or routes were to be determined later.

172. United Kingdom carriers had exercised these rights prior to the formation of the United Arab Republic [398] subsequently, after a period in which they provided no service, they began operating again through

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[387] In 1952 (*ibid.*, vol. 163, p. 379) and in 1956 (*ibid.*, vol. 311, p. 340).

[388] ICAO, *Digest of Statistics Nos. 69-70, Traffic Flow - March and September 1957*, Series TF, Nos. 21-22, pp. 100-103, 105-107, 124 and 136-139; *ibid., No. 72, Traffic Flow - March 1958*, Series TF, No. 23, pp. 86-90, 92-95, 105 and 117-120; *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, pp. 56-58; *ibid., No. 92, Traffic Flow - September 1961*, Series TF, No. 30, p. 75 and *ibid., No. 95, Traffic Flow - March 1962*, Series TF, No. 31, p. 66.

[389] Netherlands, *Tractatenblad van het Koninkrijk der Nederlanden* (The Hague, 1965) No. 175.

[390] United Nations, *Treaty Series*, vol. 95, p. 255.

[391] *Ibid.*, vol. 255, p. 145.

[392] *Ibid.*, vol. 602, p. 314.

[393] ICAO, *Digest of Statistics Nos. 69-70, Traffic Flow - March and September 1957*, Series TF, Nos 21-22, p. 186-187, 189-190; *ibid., No. 72, Traffic Flow - March 1958*, Series TF, No. 23, pp. 164, 166 and 168; *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, p. 83; *ibid., No. 92, Traffic Flow - September 1961*, Series TF, No. 30, pp. 103-104; and *ibid., No. 95, Traffic Flow - March 1962*, Series TF, No. 31, pp. 94-95.

[394] E.g., *ibid., No. 72, Traffic Flow - March 1958*, Series TF, No. 23, pp. 40-42; *ibid., No. 78, Traffic Flow - September 1959*, Series TF, No. 26, Add.1, p. 93 *a* and *ibid., No. 92, Traffic Flow - September 1961*, Series TF, No. 30, p. 106.

[395] United Nations, *Treaty Series*, vol. 496, p. 345. A new Agreement, which was concluded on 14 July 1960 and entered into force on 30 April 1962, made no references to the earlier agreements with Egypt and Syria (*ibid.*, vol. 497, p. 161). The ICAO document *Tables of Agreements, 1964*, however, lists the 1950 Agreement with Egypt (and its 1959 amendment) as superseded by the 1960 Agreement (p. 161). The 1954 Agreement with Syria (as amended) is still listed under Syria; routes in the 1960 Agreement with the United Arab Republic for both parties included points in the United Arab Republic.

[396] Cmnd. 8319. It appears that this agreement, which was to enter into force when the Egyptian Government notified the British Government that the constitutional requirements had been fulfilled, has not entered into force. Thus the ICAO document *Tables of Agreements 1964* (pp. 21 and 66) lists no date of entry into force for it (although under the Rules for Registration with ICAO of aeronautical agreements and arrangements, only agreements which are in force are registrable (*ibid.*, p. xiiii) and the agreement was indeed registered. It has not been published in the United Kingdom *Treaty Series*, and has not been registered under Article 102 of the Charter of the United Nations.

[397] United Nations, *Treaty Series*, vol. 449, p. 47.

[398] e.g., ICAO, *Digest of Statistics No. 68, Traffic Flow - September 1956*, Series TF, No. 20, pp. 226, 230, 231, 240, 241-242, 248-251.

Damascus and Cairo. [399] The carrier operating through Damascus also continued to exercise traffic rights there after Syria withdrew from the United Arab Republic. [400] It will be recalled that Cyprus Airways had continued to operate between Nicosia and Damascus—a route granted by the 1954 Agreement between Syria and the United Kingdom—after Cyprus became independent. It maintained this service after Syria's separation from the United Arab Republic. [401] Misrair was not exercising the rights granted by the Egypt—United Kingdom Agreement at the time that the United Arab Republic was established, but it subsequently began to operate between Cairo and London. [402]

United States—Egypt Agreement of 1946 [403] *and United States—Syria Agreement of 1947* [404]

173. United States carriers designated under the Air Transport Agreement of 15 June 1946 with Egypt, as amended in 1957, [405] were authorized to operate from the United States to Cairo and beyond to specified points in the Middle East, Europe and North Africa. These points did not include Syria. The Air Transport Agreement of 28 April 1947 with Syria, as amended in 1956 and 1957, [406] authorized United States carriers to operate from the United States via Europe and Turkey to Syria and beyond, via intermediate points.

174. The two United States carriers operating to, from and through Cairo and through Damascus continued to provide the same services after the formation of the United Arab Republic. [407] Both Agreements continued to be listed in the United States publication, Treaties in Force. [408] That which was operating through Damascus ceased to do so before Syria withdrew from the United Arab Republic. [409] The 1947 Agreement was still listed after that time in Treaties in Force. [410]

175. On 5 May 1964 the United Arab Republic and the United States concluded a new Air Transport Agreement, [411] article 17 of which provided that it was to replace that signed in 1946 by Egypt and the United States which was thereby terminated.

4. *Dissolution of the Federation of Mali (1960)*

France—Federation of Mali Agreement of 1960 [412]

176. This Agreement (Constituent Agreement between the French Republic and the Federation of Mali) of 22 June 1960, concluded a few days after the Federation had attained independence, was concerned with co-operation in matters relating to civil aviation; it did not grant traffic rights. Following the dissolution of the Federation, Senegal, in a note of 16 September 1960, stated that it:

> [...] considers that, by virtue of the principles of international law relating to the succession of States, the Republic of Senegal is subrogated, in so far as it is concerned, to the rights and obligations deriving from the co-operation agreements of 22 June 1960 between the French Republic and the Federation of Mali, without prejudice to any adjustments which may be deemed necessary by mutual agreement. [413]

In its reply [414] the French Government stated that it shared this view.

Summary

A. Cases of independence of former non-metropolitan territories

177. At least 14 new States and 24 parties to bilateral air transport agreements—other than predecessor States—have taken the position that for one reason or other airlines designated by the new State and the party concerned had the right to continue, at least for a certain period, to provide services in accordance with agreements concluded before independence between that party and the predecessor State and involving the exercise of air traffic rights in the dependent territory which later on became the new State.

178. This continuity of services has been achieved or recognized by several procedural devices related to the subject-matter of succession in respect of treaties. In some cases there have been exchanges of views, either on the diplomatic or technical level, between the new State and the party concerned. These exchanges have

[399] e.g., *ibid., No. 72, Traffic Flow - March 1968*, Series TF, No. 23, pp. 190, 191-192, 194-195, 210-212; and *ibid., No. 88, Traffic Flow - March 1961*, Series TF, No. 29, pp. 86, 95-98.

[400] *Ibid.*, p. 97; *ibid., No. 92, Traffic Flow - September 1961*, Series TF, No. 30, p. 115; and *ibid., No. 95, Traffic Flow - March 1962*, Series TF, No. 31, pp. 105 and 108.

[401] *Ibid., No. 92, Traffic Flow - September 1961*, Series TF, No. 30, p. 27; and *ibid., No. 95, Traffic Flow - March 1962*, p. 23. See also paragraphs 36 and 37 above.

[402] *Ibid., No. 92, Traffic Flow - September 1961*, Series TF, No. 30, p. 106.

[403] United Nations, *Treaty Series*, vol. 71, p. 157.

[404] *Ibid.*, vol. 262, p. 121.

[405] *Ibid.*, vol. 290, p. 303.

[406] *Ibid.*, vol. 283, p. 332.

[407] ICAO, *Digest of Statistics, Nos. 69-70, Traffic Flow - March and September 1957*, Series TF, Nos. 21-22, pp. 299 and 324; *ibid., No. 72, Traffic Flow - March 1958*, Series TF, No. 23, pp. 245-246 and 287-288; and *ibid., No. 77, Traffic - March 1959*, Series TF, No. 25, pp. 116 and 125.

[408] United States of America, Department of State, *Treaties in Force - A List of Treaties and other International Agreements of the United States in Force on January 1, 1959*, Department of State publication 6762, (Washington, D.C., U.S. Government Printing Office), p. 165; *Treaties in Force... 1960*, Department of State publication 6959, p. 173; *Treaties in Force... 1961*, Department of State Publication, 7132, p. 179. *Treaties in Force... 1960* and *Treaties in Force... 1961* also set out the relevant constitutional provisions.

[409] ICAO, *Digest of Statistics No. 88, Traffic Flow - March 1961*, Series TF, No. 29, p. 123; *ibid., No. 92, Traffic Flow - September 1961*, Series TF, No. 30, p. 142 and United States of America, Bureau of International Affairs, *op. cit.*, p. 4428.

[410] United States of America, Department of State, *Treaties in Force... 1962*, Department of State publication 7327 (Washington, D.C., U.S. Government Printing Office), p. 182, *Treaties in Force... 1963*, Department of State Publication 7481, p. 201.

[411] United Nations, *Treaty Series*, vol. 531, p. 229.

[412] France, *Journal officiel de la République française, Lois et décrets*, Paris, 20 July 1960, 92nd year, No. 167, p. 6640. The Federation of Mali became independent on 20 June 1960.

[413] *Ibid.*, 2 June 1961, 93rd year No. 129, p. 4971.

[414] *Ibid.*

taken several forms, such as the following: (*a*) the new State has stated its desire, on condition of reciprocity, to continue to apply the agreement in question, and the other State has agreed (for instance, Botswana—United States of America and Lesotho—United States of America); (*b*) the new State and the other State have amended or extended the pre-independence agreement and have acknowledged that it remained in effect at least up until its abrogation (for instance, France—India; Pakistan—United States of America; Pakistan—Netherlands; Jamaica and Trinidad and Tobago—United States of America; see also the agreements between Cyprus and Greece and Cyprus and Syria).

179. In other cases, interested States have taken unilateral action concerning the continuation in force of the pre-independence agreement. Thus, two States have given formal notice of the termination of agreements which were applicable to them before independence (India and Malaya to the United States of America). Another, through diplomatic correspondence with the other States, has recognized, in some instances provisionally, the rights of the foreign carriers under pre-independence agreements (Senegal with Argentina and Italy). [415] On the national level, one State (the United States of America) lists as still in force pre-independence agreements to which it was an original party, with regard to some new States to which the agreements were applicable before independence.

180. In most cases, no express statement, of either a bilateral or unilateral character has been discovered. Evidence, however, has been recorded in those cases that the air carriers in question have continued, or have begun, to exercise rights as provided for in pre-independence agreements, although what weight ought to be attached from a legal standpoint, to this continuity of services is, of course, open to question.

181. Finally, in many cases also, a new agreement has been concluded some time after independence. The contents of these new agreements, which only rarely refer to the pre-independence agreement, are, in most cases, very similar to the contents of earlier agreements. In fact, the substantive part of the large majority of bilateral air transport agreements follows a standard form, and the route schedules to new agreements are usually much the same as those to pre-independence agreements.

182. Cases of formal denial of continuity which have been collected are limited in number. In one instance the denial was made in bilateral exchanges on the basis of the non-exercise of rights before independence (Madagascar and the United Kingdom). In another instance the position of the new State (the United States with regard to Israel). [416]

183. No instances of a clear invocation of general principles were discovered, except in the Senegal note to France concerning the treaties concluded by the Federation of Mali with France, in which the Government of Senegal considered that, by virtue of the principles of international law concerning State succession, the Republic of Senegal was subregarded to the rights and obligations deriving from those treaties.

184. Sometimes the States concerned have referred to a devolution agreement concluded by the new State with the predecessor State; thus it was stated that a pre-independence air transport agreement continued to be binding on the new State by virtue of the devolution agreement (Pakistan—Netherlands; Pakistan—United States of America; Ghana—United States of America). [417] Reference has been made in one case to a unilateral declaration made by a new State concerning its treaty rights and obligations; the parties concerned, in an exchange of notes, confirmed that the air transport agreement fell within the scope of the statement (Lesotho—United States of America).

185. It may also be noted that, in a number of cases an agreement has been concluded by the predecessor State with the participation, in one form or another, of officials of the dependent territory, shortly before the territory's independence (for instance, India (in agreement with His Britannic Majesty's Representative)—France, Netherlands and the United States of America; United Kingdom—United States of America concerning the West Indies; New Zealand—United Kingdom concerning Western Samoa).

186. Finally, it may be briefly recalled that the change in the international status of territory has other effects with respect to bilateral air transport agreements. Thus, traffic on routes between territories under the sovereignty or administration of the predecessor State and the territory of the new State which was previously prohibited as cabotage becomes fifth freedom traffic which, depending on the terms of the agreement, can now be carried by foreign carriers (see the practice relevant to India and Pakistan). On the other hand, the original agreement often needs to be amended, so far as the original parties are concerned, in order to delete references to points within the territory of the new State.

187. Bilateral air transport agreements, as has been noted, include a set of provisions which seem generally acceptable and which are or have been applicable, whether as a matter of law or of fact, to a large part of the air transport relations of the new States. One possible exception to this general acceptability arises from the common provision, mentioned in the introduction, that the parties to the agreement are entitled to reject carriers designated by the other party if the carrier is not under the substantial ownership and effective control of that party or of its nationals. [418] Several new States have found it convenient to enter into co-operation arrangements of various kinds, including the joint ownership and operation of airlines. If

[415] Note also the informal recognition by the Democratic Republic of the Congo of the United States rights.

[416] Note also the position taken by the United States Civil Aeronautics Board concerning Ceylon and Senegal.

[417] See also the reference to the devolution provisions in the relevant constitutional instruments in the exchanges between Japan and Malaysia and between Japan and Singapore.

[418] See para. 7 above.

such an airline were designated, it would be possible for the other State, if the pre-independence agreement regulated the question, to refuse to allow the airline to exercise rights in its territory. In fact, however, so far as is known, this has happened only once; South Africa, it has been said, terminated the traffic rights of East African Airways when it ceased to be under the effective control of the United Kingdom and came under the effective control and ownership of Kenya, Tanganyika and Uganda through the East African Common Services Organization. [419] In many agreements, provisions have been included qualifying the ownership and control provision in the case of certain joint operations: thus in an agreement with France, Senegal, referring to articles 77 and 79 of the Chicago Convention and to the Yaoundé Convention of 1961, reserved its right to designate Air Afrique which is jointly owned by twelve States. [420] Cameroon, People's Republic of the Congo, Ivory Coast, Kenya, Malawi, Malaysia, Mali, Singapore, the United Republic of Tanzania and Uganda have included similar provisions in their agreements. [421]

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

188. The number of cases recorded within this section is not sufficient to allow a general summary concerning practices relating to bilateral air transport agreements in cases other than cases of independence of non-metropolitan territories. However, one or two points may be made.

189. So far as the Malaysian (1963) and, to a much lesser extent, the Newfoundland cases are concerned, [422] it seems that the rule that the treaties of the predecessor State are replaced by the successor's treaties should be treated, in some situations at least, with caution. The continuance in effect of some treaties in the cases of Malaysia and Newfoundland tends to support the proposition that certain kinds of rights created by some treaties, including air transport agreements, may survive the change in the international status of the territory in question.

190. In the case of the formation of the United Arab Republic (1958), notwithstanding the formation of a unitary State with no relevant power reserved for constituent parts, the air transport agreements of Egypt and Syria continued to have effect; and this was consistent with the declared position of the United Arab Republic. This practice might support the point suggested above that certain treaty rights may survive in situations where the State party to them forms a union with another State or becomes incorporated in another State.

191. The cases of Senegal, Syria and Singapore tend to support the proposition that, in principle, an air transport agreement remains in force for a State which secedes, as an independent State, from another State which was bound by the agreement.

192. The Japan—Malaysia and Japan—Singapore cases throw some light on the question of succession to a treaty which is in existence but not formally in effect at the relevant date. The cases suggest, consistently with other practice, [423] that succession is possible in such situation.

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[419] D. P. O'Connell, *op. cit.*, pp. 333-334 and cf. ICAO, *Digest of Statistics No. 108, Traffic Flow - September 1963*, Series TF, No. 34, p. 156 and *ibid., No. 114, Traffic Flow - September 1964*, Series TF, No. 36, p. 36.

[420] Air Transport Agreement of 15 June 1962 (United Nations, *Treaty Series*, vol. 524, p. 3), article 13. See also the Czechoslovakia—Senegal Agreement of 20 June 1962 (*ibid.*, vol. 498, p. 145), article 12; the Senegal—Switzerland Agreement of 23 January 1963 (*ibid.*, vol 524, p. 23), article 14, and the Senegal—Mali Agreement of 7 February 1963 (*ibid.*, p. 41), article 14.

[421] See e.g., the Cameroun—Israel Agreement of 9 August 1963 (*ibid.*, vol. 499, p. 121), article XIV; the Ivory Coast—Mali Agreement of 9 July 1964 (*ibid.*, vol. 524, p. 121), article 14; the Kenya—France Agreement of 28 July 1964 (France, *Journal officiel de la République française, Lois et décrets* (Paris, 25 November 1965), 97th year, No. 273, p. 10403), article 3; the Malawi—Ghana Agreement of 4 March 1965 (United Nations, *Treaty Series*, vol. 541, p. 163), article 3; the Mali—Niger Agreement of 15 January 1964 (*ibid.*, vol. 499, p. 197), exchange of notes; the Uganda—France and Tanzania—France Agreements of 28 July 1964 (France, *Journal officiel...* 25 November 1965), pp. 10401 and 10406), article 3, and the Denmark—Republic of the Congo Agreement of 27 February 1967 (United Nations, *Treaty Series*, vol. 600, p. 189), article 4.

[422] The case of Newfoundland is somewhat different, partly because of Canada's grant of three months' period of grace, and partly because the principal right being exercised in Newfoundland before and after the union was also granted by the International Air Services Transit Agreement (1944) to which Canada and the other interested States were parties.

[423] See (*a*) the declarations of succession made by Jamaica, Nigeria and Sierra Leone in respect of three of the Conventions on the Law of the Sea: those declarations, which were made before the Conventions entered into force (but, of course, following the United Kingdom's ratification which preceded independence) were included in the twenty-two "ratifications and succession" for the purpose of determining the date of entry into force of the Conventions (*Multilateral Treaties in respect of which the Secretary-General performs Depositary Functions: List of Signatures, Ratifications, Accessions, etc. as at 31 December 1968* (United Nations publication, Sales No. E.69.V.5), pp. 333-334, 339-340 and 345; (*b*) the similar statements made by Pakistan in respect of the Special Protocol concerning Statelessness of 1930 (*ibid.*, p. 363) and by Cameroon, the Central African Republic, the Democratic Republic of the Congo, the Ivory Coast and the People's Republic of the Congo concerning the Protocol for Limiting and Regulating the Cultivation of the Poppy Plant, the Production of, International and Wholesale Trade in, and Use of Opium of 1953 (*ibid.*, pp. 128-129); the former instrument is considered not yet to have entered into force (see *Yearbook of the International Law Commission, 1962*, vol. II, p. 123, document A/CN.4/150, para. 143); (*c*) the declarations made in 1961 and 1962 by Cameroon, Dahomey, Ivory Coast, Madagascar, Niger and the People's Republic of the Congo in respect of the 1955 Hague Protocol to the Warsaw Convention on Carriage by Air (1929), prior to the entry into force of the Protocol in 1963 (ICAO, *Annual Report of the Council to the Assembly for 1962, Supporting Documentation for the Fifteenth Session of the Assembly*, document 8317 A 15-P/1, April 1963, p. 90); (*d*) a decision of the Tribunal de grande instance de la Seine that Senegal, which became independent in 1960, was a party to the Hague Protocol, although the Protocol, ratified by France, in 1958, did not enter into force until 1963 (Veuve Mackinnon *v.* Air France, *Revue française de droit aérien*, Paris, vol. 18, July-September 1964, p. 402).

III. Trade agreements

(Document A/CN.4/243/Add.1)

Introduction

1. A wide range of treaties falls within the scope of the present study on bilateral trade agreements; nevertheless, three main categories can be distinguished. In the first category are full-scale treaties of amity, commerce and navigation which often go beyond the narrow areas of trade. The second category comprises trade or commercial conventions or agreements regulating various aspects of trade between the parties, usually by reference to most-favoured-nation treatment, national treatment, and reciprocity. The third category consists of short and long-term trade agreements (usually one to five years) which may contain most-favoured-nation provisions but which are generally limited to determining the volume and nature of the two parties' exports to each other and to establishing procedures for such determinations in the future.

2. Several factors militate against extensive evidence concerning succession to bilateral trade agreements. First, the General Agreement on Tariffs and Trade with its provisions for most-favoured-nation and national treatment in the areas of tariffs and other trade restrictions supersedes in practice many provisions of the full-scale treaties of amity, commerce and navigation and many of the trade of commercial conventions. [1] Accordingly, given the wide membership of GATT and the procedures which have been developed for the continued participation in it of new States, [2] it will often not be necessary for new States and the States parties to pre-independence treaties to take any position concerning such bilateral treaties. Second, comparatively few treaties falling within the first and second categories mentioned above have been concluded by new States; accordingly, they have had less occasion to adopt an express position concerning any relevant earlier treaty. Third, since many of the treaties in the third category are short-term, they might expire around the time of independence without the interested States taking any explicit position: they can merely conclude new treaties, which they have done in considerable numbers. [3] Fourth, some States having responsibility for the international relations of dependent territories (for instance, the United Kingdom) appear to have concluded only a few trade agreements falling within that third category. And, finally, many of the agreements are not published in regular treaty series or registered with the United Nations.

3. Nevertheless, there is some relevant treaty practice which is of undoubted interest for the study of succession problems: (*a*) some pre-GATT practice; (*b*) practice concerning the British preferential system, based to some extent on bilateral treaties and permitted by GATT; [4]

[1] See, for example, the exchanges between the United Kingdom and Chile, Denmark and Greece (United Nations, *Treaty Series*, vol. 109, p. 332; *ibid.*, vol. 68, p. 105; and *ibid.*, vol. 88, p. 205); and New Zealand, Department of Statistics, *Official Yearbook, 1968*, 73rd issue (Wellington, Shearer, 1968), pp. 675-676.

[2] See *Yearbook of the International Law Commission, 1968*, vol. II, pp. 72 *et seq.*, document A/CN.4/200 and Add.1-2, paras. 315 *et seq.*

[3] ". .. since 1955, African countries have become partners to some three hundred bilateral [trade and payments] agreements" ("Bilateral trade and payments agreements in Africa", E/CN.14/STC/24/Rev.1, para. 3). The Ghana *Treaty Series* for 1961-1963 sets out nineteen trade agreements and several supplementary protocols.

[4] Article T, sub-paragraphs 2 (*a*) and 2 (*b*), of GATT exempts from the general most-favoured-nation provision of article I, paragraph 1, preferences in force exclusively between two or more of the territories listed in four annexes to the Agreement. It is this provision which allowed the preferential systems. (For the text of GATT, see United Nations, *Treaty Series*, vol. 55, p. 187. For the annexes, see *ibid.*, pp. 284 *et seq.*). Annex A to the Agreement lists the territories of the British preferential system including "dependent territories" of the United Kingdom, of Australia and of New Zealand; annex B lists the territories of the French Union including French Equatorial Africa, French West Africa, Cameroons under French Mandate, French Somali Coast and Dependencies, Indo-China, Madagascar and Dependencies, Morocco (French Zone), Togo under French Mandate and Tunisia; and annex C lists the territories of the Benelux Customs Union including Belgian Congo, Ruanda Urundi, and Netherlands Indies. The coming to independence of "dependent territories" of the United Kingdom has not affected generally the exemption from the general most-favoured-nation treatment. Thus, for annex A, the Treaty concerning the Establishment of the Republic of Cyprus, of 16 August 1960 (*ibid.*, vol. 382, p. 8), *inter alia*, undertook in annex F, part II (*ibid.*, p. 144) to treat United Kingdom, Greek and Turkish trade on a most-favoured-nation basis, provided that Cyprus was not obliged by this provision to extend the preferences it granted to listed Commonwealth countries (including Ceylon, Ghana, Malaya, Pakistan, Rhodesia and Nyasaland), Burma and Ireland. See also, by way of example, the Pakistan agreements mentioned in section 6 below, and the following trade agreements : Japan-Malaya, 10 May 1960 (United Nations, *Treaty Series*, vol. 383, p. 293), Cyprus-Greece, 23 August 1962 (*ibid.*, vol. 609, p. 15), Israel-Singapore, 24 April 1968 (*ibid.*, vol. 642, p. 235) and India-Switzerland, 14 August 1948 (*ibid.*, vol. 33, p. 3). For annex B (the French customs area) see, for example , article 5, paragraph 1, of the Albania-France treaty of commerce and navigation, of 14 December 1963 (France, *Journal officiel de la République française* (Paris), 97th Year, No. 93 (19, 20 and 21 April 1965), p. 3101) and the many agreements concluded between France and its former dependent territories providing for preferences. For annex C, see for example, the trade agreement between the Benelux and the Philippines, of 14 March 1967 (Netherlands, *Tractatenblad van het Koninkrijk der Nederlanden*, Year 1967, No. 49).

In several treaties this point has been met by a specific provision. Thus the Treaty of Friendship, Commerce and Navigation between the United States of America and Ireland, of 21 January 1950 (United Nations, *Treaty Series*, vol. 206, p. 269) expressly provides in paragraph 13 of the Protocol (*ibid.*, p. 302) that the preferences conferred on Puerto Rico by the United States shall continue to apply regardless of any change in Puerto Rico's political status. For further examples, see

(Continued on p. 150)

(*c*) the positions taken by some States, including new States, concerning pre-independence treaties of amity, commerce and navigation; and (*d*) some practice relevant to short-term trade agreements. Some of the relevant treaty practice is available elsewhere than in the regular treaty series. [5]

4. As in previous studies of the series, the collected materials 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 sub-divided 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 sub-divisions, cases are in principle 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.

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

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

5. Until 1880 commercial treaties concluded by the United Kingdom were frequently applicable to all British possessions ("territories", "dominions", "foreign possessions"). [6] By 1882 it was established that the self-governing colonies—Canada, Newfoundland, the colonies in South Africa and Australia, and New Zealand—were not to be bound by commercial treaties unless they consented, usually within a year. In 1899 it was agreed further that the self-governing colonies should also have a separate right of withdrawal from commercial treaties concluded in the future. This right was also granted in respect of several treaties concluded before 1899, by separately negotiated protocols. [7]

6. Although they might not be bound by the commercial treaties either because they had not acceded to them or because they had withdrawn, the self-governing colonies in some cases had rights under them: first, the treaties often conferred rights on "British subjects" and since British nationality law made no distinction depending on the part of the Empire in which a British subject lived or was born, it was argued that the "British subjects" who benefited from these provisions included those who were inhabitants of those non-self-governing territories to which the treaty in question had not been extended. [8] In some cases this wide scope of the phrase "British subject" was made express by the definition in the treaty. Thus the Treaty of Friendship and Mutual Co-operation between His Majesty in respect of the United Kingdom and of India and the King of Yemen of 11 February 1934, which confers certain rights on the subjects of the high contracting parties, defines British subjects as "all subjects of His Majesty wherever domiciled, all the inhabitants of countries under His Majesty's protection. . .". [9] This practice appears to have ceased, for the most part, around 1945-1947. [10] The second way in which a self-governing colony which had not acceded to a commercial treaty could obtain rights under it was by invoking the so-called " nevertheless" clause which was incorporated in many commercial treaties after 1880. [11] Under this provision, goods from territories which had not acceded to the treaty would nevertheless enjoy in the territory of the other party

(Footnote 4 continued)

the Treaty of Amity and Economic Relations between the United States of America, and Togo, of 8 February 1966 (United States of America, Department of State, *United States Treaties and Other International Agreements* (Washington D.C., U.S. Government Printing Office, 1968), vol. 18, part 1 (1967), p. 1). the Treaty of Amity and Economic Relations between the United States of America and Thailand, of 29 May 1966 (*ibid.*, (Washington D.C., U.S. Government Printing Office, 1969), vol. 19, part 5 (1968), p, 5843), and the Treaty of Amity, Economic Relations and Consular Rights between the United States of America and Muscat and Oman, of 20 December 1958 (United Nations, *Treaty Series*, vol. 380, p. 181). In the last three treaties, provisions are more general than in the treaty between the United States and Ireland: they apply to all the territories and possessions of the United States.

[5] No extensive use has been made, however, of national laws. The customs law and especially the tariffs, would often show whether pre-independence tariffs were still being applied. See, for example, the publications of the International Customs Tariffs Bureau.

[6] See R. B. Stewart, *Treaty Relations of the British Commonwealth of Nations* (New York, Macmillan, 1939), pp. 96-97, who cites the list of treaties of commerce and navigation between Great Britain and foreign Powers (United Kingdom, *British Parliamentary Papers*, Commercial No. 27, 1879, C.2424).

[7] See R. B. Stewart, *op. cit.*, pp. 97-106; D. P. O'Connell, *State Succession in Municipal Law and in International Law*, (Cambridge, University Press, 1967) , vol. I, pp. 41-43; Canada, Department of External Affairs, *Documents on Canadian External Relations* (Ottawa, 1967) vol. I 1909-1918), pp. 255-266.

[8] See, for example, the view taken by the British Government in 1899, on the advice of the Law Officers of the Crown, concerning the Treaty of Commerce and Navigation with Japan, of 16 July 1894 (New Zealand, *New Zealand Gazette* (1900), vol. I, p. 552, and D. P. O'Connell, *op. cit.*, vol. II, pp. 321-322); but cf. the view expressed by the United States Supreme Court in the Sullivan *v.* Kidd case (United States Supreme Court, *United States Reports*, vol. 254: *Cases Adjudged in the Supreme Court at October Term, 1920* (New York, Banks Law Publishing, 1921), p. 433).

[9] United Kingdom, *Treaty Series* (London, H.M.S.O., 1934), No. 34 (1934), Cmd. 4752.

[10] In 1946 Canada enacted an Act establishing a separate Canadian citizenship. A Commonwealth conference on nationality was held in 1947 and in subsequent years most Commonwealth countries have enacted nationality laws which, while often maintaining some common status (Commonwealth citizen, British subject) established separate citizenships.

[11] See, for example, R. B. Stewart, *op. cit.*, pp. 107-108; D. P. O'Connell, *op. cit.*, vol. II, pp. 319-323. The "nevertheless" clause was sometimes included in the declarations providing for withdrawal by the self-governing colonies. See the declarations with Greece, Liberia, Paraguay and Sweden in United Kingdom, Foreign Office, *Handbook of Commercial Treaties, etc., between Great Britain and Foreign Powers*, 3rd ed. (London, H.M.S.O., 1924), pp. 417, 475, 609 and 836 respectively.

complete and unconditional most-favoured-nation treatment so long as [the territories] accord to goods [from the other party] treatment as favourable as it is given to the similar produce or manufacture of any other foreign country. [12]

7. Before the practice is considered it is convenient to note one point about the drafting of the most-favoured-nation clause in British treaties: it is almost invariably [13] drafted in terms of the most favoured *foreign* nation, which is interpreted, on occasion by an express provision, as excluding from the scope of the clause preferences granted within the Commonwealth. [14]

8. The Australian and New Zealand *Treaty Lists* and lists of commercial treaties prepared by the Canadian Government include, as still in force, those commercial treaties which were concluded by the United Kingdom before 1919, which applied to them and which have not been denounced. The Australian *List* records treaties with Argentina (1825), Ethiopia (1897 and 1909), Iran (1857), Morocco (1856), Peru (1850), Switzerland (1855, certain articles only), and Venezuela (1834, confirming an 1825 treaty with Colombia). [15] The New Zealand *List* contains all these treaties and, in addition, those with Colombia (1866 and 1912), Costa Rica (1849 and 1913), France (1826, certain articles only, and 1912), Iran (1903), Liberia (1848 and 1908), Nicaragua (1805) and Sweden (1826). [16] The explanation of the differences between the two lists is that between 1910 and 1920 Australia withdrew from the treaties concluded with all those latter States [17] other than with Nicaragua and that the treaty with that country was never applicable to Australia. In addition, both *Lists* note that treaties with Bolivia (1911) and Portugal (1914) give Australia and New Zealand, although they are not parties, most-favoured-nation treatment on the basis of reciprocity (the "nevertheless" clause). [18]

Canadian lists prepared in 1930 and 1968 [19] vary somewhat from the Australian and New Zealand lists: they include treaties with Denmark (1660-1661 and 1670) and Norway (1826) [20] and do not include the treaties with Ethiopia, France and Nicaragua. As it will be seen, Canada terminated relevant treaties with France, and the Nicaragua treaty was never applicable to it.

9. Australia exercised in 1919-1920 the power of separate withdrawal with regard to some trade or commercial treaties concluded by the United Kingdom; [21] and, in the 1930s, New Zealand indicated also its withdrawal from several such treaties. [22] New Zealand, by exchanges of notes in 1933, 1935 and 1938, agreed to reciprocal most-favoured-*foreign*-nation treatment of commerce with Norway, Sweden, and Switzerland respectively. [23] Treaties with those States had earlier been terminated.

10. In 1934, the then Canadian Prime Minister, in rebutting arguments that the 1932 Ottawa agreements would load to retaliation pointed out that in the case of the more than twenty treaties including most-favoured-nation clauses that had been in force for years, no country had asked that they be abrogated. [24] Between 1919 and 1932 Canada had concluded trade agreements with Belgium and Luxembourg Czechoslovakia, France, Italy and the Netherlands.

Colombia—United Kingdom Treaty (1825) as confirmed by United Kingdom—Venezuela Convention on Amity, Commerce and Navigation (1834) [25]

11. Canada, Australia and New Zealand have negotiated with Venezuela under these treaties. In 1941 Canada concluded a new commercial treaty, Venezuela considering that the 1825 Treaty was not sufficiently comprehensive. It seems that Venezuela in 1953 and 1956 took the position that the treaty did not apply to

[12] Commercial Convention, Protocol and Declaration between the United Kingdom and Bulgaria, 9 December 1905 (United Kingdom, *Treaty Series* (London, H.M.S.O., 1908), No. 1 (1908), Cd. 3858, p. 12). See also, for example, the treaties of commerce and navigation concluded by the United Kingdom with Finland, Austria, Czechoslovakia, Hungary and the Kingdom of the Serbs, Croats and Slovenes (League of Nations, *Treaty Series*, vol, XXIX, p. 129; vol. XXXV, p. 175; vol. XXIX p. 377; vol. LXVII, p. 183; and vol. LXXX, p. 165).

[13] The exceptions are the treaties with Belgium of 1862 and Germany of 1865. See R. B. Stewart, *op. cit.*, chap. III, and United Kingdom, *British and Foreign State Papers, 1902-1903* (London, H.M.S.O., 1906), vol. XCVI, pp. 323-368.

[14] It has been already noted in foot-note 4 above that GATT provides for a similar exception.

[15] Australia, *Treaty Series*, 1956, No. 1.

[16] New Zealand, Department of External Affairs, *New Zealand Treaty List, 31 March 1948*, New Zealand, Treaty Series, 1948, No. 11 (Wellington, 1948), publication No. 63. See also New Zealand, Department of Statistics, *Official Yearbook 1968* (*op. cit.*), p. 675.

[17] See the Australian *Treaty List*.

[18] The Australian list also states, with reference to Portugal, that in 1930 both countries gave assurances that most-favoured-nation treatment was accorded.

[19] See Canada, Department of Trade and Commerce, *Empire Tariff Preferences on Canadian Goods* (1930), pp. 33-34, and International Law Association (Canadian Branch), *The Canadian Yearbook of International Law, 1969* (Vancouver, 1969), vol. VII (1969), pp. 321-322. See also International Law Association. *The Effect of Independence on Treaties* (London, Stevens, 1965) p. 56, and Canada, Department of External Affairs, *Treaties and Agreements affecting Canada in force between His Majesty and the United States of America, 1814-1925* (Ottawa, 1927) pp. 9 and 17.

[20] The 1930 list (see preceding foot-note) includes a treaty with Japan (1911) and treaties with the United States of America relating particularly to Canada.

[21] See United Kingdom, *British and Foreign State Papers, 1920* (London, H.M.S.O., 1923), vol. CXIII, p. 318, and Australia, *Treaty List*, pp. 113 and 119-120.

[22] See United Kingdom, *British and Foreign State Papers, 1933* (London, H.M.S.O., 1938), vol. CXXXVI, pp. 327, 412, 440 and 461.

[23] League of Nations, *Treaty Series*, vol. CXLIX p. 428, vol. CLIX, p. 143, vol. CLXXXIX, p. 167.

[24] See W. A. Riddell, ed, *Documents on Canadian Foreign Policy 1917-1939* (Toronto, Oxford University Press, 1962), pp. 629-630. The United Kingdom also took the view that the Dominions remain bound by commercial treaties: see United Kingdom, Foreign Office, *Handbook of Commercial Treaties... (op. cit.,)*.

[25] United Kingdom, *British and Foreign State Papers, 1833-1834* (London, 1847), vol. XXII, p. 151. For the 1825 treaty, see D. P. O'Connell, *op. cit.*, vol. II, pp. 165-167, and A. D. McNair, *The Law of Treaties* (Oxford, Clarendon Press, 1961), pp. 606-612.

its relations with Australia and New Zealand. [26] As noted, [27] Australia and New Zealand list the treaty in their *Treaty Lists*.

Colombia—United Kingdom Treaty of Commerce and Navigation (1866) [28]

12. In 1938 Colombia and New Zealand exchanged Notes prolonging this treaty [29] which, as noted above, [30] is included in the New Zealand *Treaty List*.

Denmark—Great Britain Treaties of Peace and Commerce of 1660-1661 and 1670 [31]

13. South Africa in 1928 acknowledged in a Note to the Danish Ministry of Foreign Affairs that the above two treaties were in force between South Africa and Denmark. Iceland also considers that the treaties are in force between it and South Africa and Canada. Canada is also of this view. New Zealand withdrew from the treaties. [32]

France—United Kingdom Convention respecting the Commercial Relations between Canada and France (1907) and Supplementary Convention (1909) [33]

14. In 1918 France gave notice of denunciation of twelve commercial treaties with the United Kingdom including two conventions concerning commercial relations between France and Canada. [34] It proposed however that after the denunciation period, the treaties should remain in effect subject to the giving of three months' notice. This proposal having been accepted, Canada, on 19 March 1920, gave notice of the termination of the two conventions. [35]

Honduras—United Kingdom Treaty of Commerce and Navigation (1910)

15. This treaty was denounced by Honduras in 1929. The notification of denunciation referred to the fact that New Zealand as well as certain specific British colonies and protectorates had acceded to the treaty and noted that it would remain in force until 16 December 1930. [36]

Italy—United Kingdom Treaty of Commerce and Navigation (1883) [37]

16. In an Exchange of Notes supplementary to a commercial agreement which they signed on 21 May 1935, [38] Italy and South Africa stated their understanding that the concessions made to Italy in the agreement were made

> subject to the continuing in force of the grant of most-favoured-nation treatment by [the two] countries to each other under the Italian-British Treaty of 1883, in so far as it applies between the Union and Italy.

Muscat—United Kingdom Treaty of Friendship, Commerce and Navigation (1891) [39]

17. This treaty, which provided, *inter alia*, for most-favoured-nation treatment in matters of trade was open to accession by the self-governing colonies. It also applied generally to "subjects of Her Britannic Majesty". Natal, Queensland, Newfoundland and Canada acceded. The treaty was never specifically amended to allow colonies the right of separate withdrawal. However, in a series of agreements to prolong the treaty, signed every year from 1923 to 1938, [40] the parties stated their understanding that it was open to the Dominion of Canada, the Commonwealth of Australia, the Irish Free State and South Africa (in respect of Natal, the Transvaal and Orange Free State), [41] to withdraw by the giving of notice to Muscat. (The rights of Canada and Australia were first accorded in 1923, that of the Irish Free State in 1925, and that of South Africa in 1932.) Australia and South Africa exercised these rights in 1923 and 1932 respectively. [42] The treaty expired on

[26] D. P. O'Connell, *op. cit.*, vol. II, pp. 125-126, and "New Zealand in the Law of State succession", in Northey, ed., *The A. G. Davis Essays in Law* (1965), pp. 180 and 186.

[27] See para. 8 above.

[28] United Kingdom, *British and Foreign State Papers, 1865-1866* (London, 1870), vol. LVI, p. 13.

[29] D. P. O'Connell, "New Zealand in the law of State succession" (*loc. cit.*), pp. 180 and 185.

[30] See para. 8 above.

[31] United Kingdom, *British and Foreign State Papers, 1812-1814* (London, 1841), vol. I, part I, pp. 375 and 381.

[32] Ireland, *Treaty List*, pp. 102 and 105; for Canada and New Zealand, see paras. 8 and 9 above, respectively.

[33] United Kingdom, *British and Foreign State Papers, 1907-1908* (London, H.M.S.O., 1912), vol. CI, p. 764, and *ibid., 1908-1909* (London, H.M.S.O., 1913), vol. CII, p. 81.

[34] *Ibid., 1917-1918* (London, H.M.S.O., 1921) vol. CXI, p. 197.

[35] *Ibid., 1920* (London, H.M.S.O., 1923), vol. CXIII, pp. 64 and 280.

[36] League of Nations, *Treaties Series*, vol. C, p. 265.

[37] United Kingdom, *British and Foreign State Papers, 1882-1883* (London, 1890), vol. LXXIV, p. 63.

[38] League of Nations, *Treaty Series*, vol. CLXXXIX, p. 31.

[39] United Kingdom, *British and Foreign State Papers, 1890-1891* (London, H.M.S.O., 1897), vol. LXXXIII, p. 11.

[40] Signed on 11 February of each year from 1923 to 1937. (The agreement for 1938 was signed on 27 November 1937 and took effect from 11 February 1938.) See United Kingdom, *British and Foreign State Papers, 1923* (London, H.M.S.O., 1926), vol. CXVII, p. 336; *ibid., 1924* (London, H.M.S.O., 1927, vol. CXIX, p. 447; *ibid., 1925* (London H.M.S.O., 1929), vol. CXXI, p. 816; *ibid., 1926* (London, H M S O., 1931) vol. CXXIII, p. 544; *ibid., 1927* (London, H.M.S.O., 1932), vol. CXXVI, p. 269; *ibid., 1928* (London, H.M.S.O., 1932), vol. CXXVIII, p. 322; *ibid., 1929* (London, H.M.S.O., 1934), vol. CXXX, p. 171; *ibid., 1930* (London, H.M.S.O., 1935), vol. CXXXII, p. 305; *ibid., 1931* (London H.M.S.O., 1936), vol. CXXXIV, p. 284; *ibid., 1932* (London, H.M.S.O., 1937), vol. CXXXV, p. 296; *ibid., 1933* (London, H.M.S.O., 1938) vol. CXXXVI, p. 411; *ibid., 1934*, (London, H.M.S.O., 1939), vol. CXXXVII, p. 176; *ibid., 1935* (London, H.M.S.O., 1948), vol. CXXXIX, p. 204; *ibid., 1937* (London, H.M.S.O., 1950), vol. 141, p. 399; *ibid., 1938* (London, H.M.S.O., 1951), vol. 142, p. 156.

[41] Neither of the latter two territories had the right of accession to the Treaty of 1891. But article 21 provided that it was to apply to all the colonies and foreign possessions of Her Britannic Majesty (except those which could separately accede) and the United Kingdom took the general position that treaties applied to subsequently acquired territory.

[42] See, for example, United Kingdom, *British and Foreign State Papers, 1933* (London, H.M.S.O., 1938), vol. CXXXVI, p. 411.

11 February 1939 when a new treaty, under which British subjects were again given certain rights came into force. [43]

Switzerland—United Kingdom Treaty of Friendship, Commerce and Reciprocal Establishment (1855) [44]

18. A Canadian note of 19 May 1947 [45] to Switzerland began "As you are aware the [above] Treaty [. . .] is applicable to Canada.", referred to an additional convention of 1914, and proposed that their most-favoured-nation provisions be applied also to Liechtenstein which since 1923 had been an integral part of the Swiss Customs Union. Switzerland accepted this proposal. Australia and New Zealand withdrew from two articles of the treaty in 1920 and 1933 respectively. [46]

2. *Ireland* [47]

Italy—United Kingdom Treaty of Commerce and Navigation (1883) [48] *and Portugal—United Kingdom Treaty of Commerce and Navigation (1914)* [49]

19. The treaty with Italy applied to all territories, colonies and possessions of the United Kingdom except the self-governing colonies (in India, North America, South Africa and Australasia). Notice of the extension of the treaty to self-governing colonies could, however, be given within twelve months. The treaty with Portugal did not extend to any of the dominions, colonies, possessions or protectorates of either contracting party unless notice of such extension was given within twelve months. The treaty also contained a "nevertheless" clause. Separate notice of termination could be given by either contracting party in respect of the dominions etc., to which the treaty had been extended. No such termination provision appears to have been drawn up in respect of the treaty with Italy. On 14 April 1927, Ireland gave notice of its withdrawal from the 1883 treaty with Italy. The notice would be effective one year later, but the two States agreed in about 1929 to prolong the treaty indefinitely pending the conclusion of a new treaty between them. [50] On 26 September 1929, Ireland gave notice to Portugal of its withdrawal from the 1914 Treaty. [51]

United Kingdom—United States Convention of Commerce and Navigation (1815) [52]

20. This convention provided for reciprocal liberty of commerce and most-favoured-nation treatment in certain respects, between the territories of the United States and "all the territories of His Britannic Majesty in Europe". [53] During discussions in 1938 of Irish-American trade, the Government of Ireland referred to this Convention, based on most-favoured-nation treatment, to show that this policy had long been in effect between the two countries. [54] On 21 January 1950, Ireland and the United States negotiated a new Treaty of Friendship, Commerce and Navigation. [55] Article XXIV of this Treaty, which according to the United States, "replaces, greatly expands and modernizes several old treaties concluded by Great Britain with the United States which previously governed Irish-American economic relations", [56] provided in part:

> The present Treaty shall replace the following agreements concluded between the United States of America and the United Kingdom of Great Britain and Ireland, in so far as the provisions thereof are in force between the United States of America and Ireland: Convention of Commerce and Navigation [. . .] 1815, as continued in force . . .

Later in the year, but some time before the 1950 Treaty of Friendship entered into force, Ireland and the United States concluded a Consular Convention (1 May 1950)[57] article 29 of which provided, *inter alia,* that

> The provisions of Article IV of the Treaty of Commerce and Navigation . . . 1815 . . . are hereby superseded as regards relations between the High Contracting Parties in respect of the territories to which this Convention applies. [58]

[43] See para. 26 below.

[44] United Kingdom, *British and Foreign State Papers* (London), vol. XLV, p. 21.

[45] United Nations, *Treaty Series,* vol. 43, p. 103.

[46] See para. 9 above. See also Switzerland, Chancellerie fédérale, *Recueil systématique des lois et ordonnances, 1848-1947* (Berne, 1953), vol. 14, pp. 358, 390, 545 and 659.

[47] The case of Ireland is considered in this section for reasons of convenience.

[48] United Kingdom, *British and Foreign State Papers, 1882-1883* (London, 1890), vol. LXXIV, p. 63.

[49] *Ibid., 1914,* part II (London, H.M.S.O., 1918), vol. CVIII, p. 369.

[50] *Ibid., 1927,* part I (London, H.M.S.O., 1932), vol. CXXVI, p, 266, and *ibid., 1929,* part I (London, H.M.S.O., 1934), vol. CXXX, p. 168.

[51] *Ibid., 1929,* p. 175.

[52] United States of America, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers, 1776-1909* [W. M. Malloy, comp.] (Washington D.C., U.S. Government Printing Office, 1910), vol. I, p. 624. The convention was continued in force on 6 August 1827 (*ibid.,* p. 645).

[53] Article III relating to trade and vessel applied to various British territories in Asia and is discussed below (see foot-note 77 below). Article IV provided, without territorial restriction, for the appointment of consuls: it is still considered by the United States to be in force for several Commonwealth States which were not subject to the 1951 United Kingdom-United States Convention relating to consular officers (United Nations, *Treaty Series,* vol. 165, p. 121) or which have not concluded new consular conventions with the United States. See United States of America, Department of State, *Treaties in Force: A List of Treaties and Other International Agreements of the United States in Force on January 1, 1970,* Department of State Publication 8513 (Washington D.C., U.S. Government Printing Office, 1970), pp. 7, 28, 34, 44, 107, 165 and 203.

[54] See United States of America, Department of State, *Foreign Relations of the United States: Diplomatic Papers 1938,* vol. II: *The British Commonwealth, Europe, Near East and Africa* (Washington D.C., U.S. Government Printing Office, 1955), p. 191.

[55] United Nations, *Treaty Series,* vol. 206, p. 269.

[56] United States of America, Department of State, *Department of State Bulletin,* Publication 3976 (Washington D.C.), vol. XXIII, No. 587 (2 October 1950), pp. 550-551.

[57] United Nations, *Treaty Series,* vol. 222, p. 107.

[58] The United Kingdom was apparently of the view that the Irish Free State remained bound, after its establishment, by trade agreements; thus it is listed (in United Kingdom, Foreign Office, *Handbook of Comercial Treaties, etc. . . (op. cit.,)*

(Continued on p. 154)

3. *Iraq*

France—United Kingdom San Remo Oil Agreement (1920) [59] *and France—United Kingdom Convention (1920) concerning the Mandates for Syria and the Lebanon, Palestine and Mesopotamia (1920)* [60]

21. In a protocol to the San Remo Agreement, signed on 10 October 1932, [61] the Governments of France, Iraq and the United Kingdom stated that they were agreed

> in recognizing that the rights and obligations devolving upon the Government of the United Kingdom under the [above agreements] ... are henceforth transferred to the Government of Iraq in so far as the provisions of those instruments relate to Iraq.

4. *Jordan*

Syria and Lebanon—Transjordan Customs Agreement (1923) [62]

22. This agreement was signed by "The Representative of the Country under French Mandate" and by "The Representatives of the Government of Transjordan". In a 1950 Agreement between Jordan and Syria relating to the transport of supplies for refugees, [63] Syria expressly waived its rights under the 1923 Agreement and permitted certain transport procedures. In 1953 Syria and Jordan entered into a new Agreement of Commerce and Transit, [64] article 24 of which provided: "This Agreement shall, upon its entry into force, supersede the Customs Agreement of 10 May 1923 ...".

5. *India*

23. The list of treaties drawn up for the partition proceedings in 1947 included several treaties concerning commerce. The earliest were the Great Britain—Denmark Treaty of Peace and Commerce of 1660-1661, the Sweden—United Kingdom Treaty of Commerce and Alliance of 1766, and the Nepal—English Company Commercial Treaty of 1792. Most of the treaties applied automatically or by extension to British India as part of the United Kingdom's colonial territory while the remainder were negotiated specifically for India. [65]

Argentina—United Kingdom Treaty of Amity, Commerce and Navigation (1825) [66]

24. In 1958 the Argentine Government in response to a request that Article XIII of this Treaty be kept in force took the following position:

> "Treaties concluded by a State do not extend *ipso jure* to its colonies. In the Argentine-United Kingdom Treaty of 1825, no reference was made to the colonies apart from the statement in article 2 that 'there shall be between all the Territories of His Britannic Majesty *in Europe*, and the Territories of the United Provinces of Rio de la Plata...'. Hence, it must be concluded that India could in no way claim the right to enjoy the benefits of a treaty to which it was never a party and which was not even applicable to its territory." Moreover, the legal continuity between British India and present-day India is very much open to question. While it is true India remained in the United Nations as a Member after becoming independent. it must be remembered that this was a compromise solution, which was not recommended by the Legal Committee of the Organization (see A/C.1/212 of 11 October 1947). Furthermore, the Argentine Republic stated in the First Committee at that time that the partition between India and Pakistan had meant the extinction of British India and that, therefore, neither of the new States should be regarded as the successor (see A/C.6/156 of 2 October 1947). [67]

Denmark—Great Britain Treaty of Peace and Commerce (1960-1961) [68]

25. Both India and Iceland consider this treaty to be in force between them. [69]

Treaty of Friendship, Commerce and Navigation between Great Britain and Northern Ireland and India and Muscat (1939) [70]

26. This treaty, which replaced the 1891 Treaty, as prolonged, [71] was signed for India as well as for Great Britain and provided, *inter alia*, for most-favoured-nation treatment. In March 1950, according to the Permanent Representative of India to the United Nations

> the Government of the United Kingdom informed the Government of India that His Highness the Sultan of Muscat had given a formal notice of termination of the Treaty on the expiry of its twelve years, i.e., 11th February 1951. In view of the constitutional changes in India, the Sultan had also expressed a desire to enter into a new and separate Treaty with India. India, accordingly, entered into a Treaty with the Sultan to replace the old Treaty. [72]

The new Treaty of Friendship, Commerce and Navigation was signed on 15 March 1953. [73]

(Foot-note 58 continued)

among the territories to which all pre-1921 agreements which had applied to the United Kingdom of Great Britain and Ireland are currently applicable.

[59] United Kingdom, *British and Foreign State Papers, 1920* (London, H.M.S.O., 1923), vol. CXIII, p. 350.

[60] *Ibid.*, p. 355.

[61] *Ibid., 1932* (London, H.M.S.O., 1937) vol. CXXXV, p. 293.

[62] Syria, Office arabe de presse et de documentation, Bureau des documentations syriennes et arabes, *Recueil des accords internationaux conclus par la Syrie depuis 1946*, 4th ed. (Damas, Bureau des documentations syriennes et arabes, 1953), VII.

[63] *Ibid.*,

[64] *Ibid.*, XXIV.

[65] See International Law Association, *The Effect... (op. cit.)*, p. 36. See also Samuel, comp., *India Treaty Manual* (1966), which lists—often with references to the partition proceedings—many old commercial agreements.

[66] United Kingdom, *British and Foreign State Papers, 1824-1825* (London, 1846), vol. XII, p. 29.

[67] United Nations, *Materials on Succession of States* (United Nations publication, Sales No. E/F.68.V.5), p. 7.

[68] See foot-note 31 above.

[69] Ireland, *Treaty List*, p. 100.

[70] League of Nations, *Treaty Series*, vol. CXCVI, p. 303.

[71] See para. 17 above.

[72] *Official Records of the General Assembly, Nineteenth Session, Annexes*, annex No. 16, document A/5846, para. 415. For the termination of the 1939 Treaty, see United Nations, *Treaty Series*, vol. 149, p. 430.

[73] United Nations, *Treaty Series*, vol. 190, p. 69. A treaty concluded by the United Kingdom in 1951 (*ibid.*, vol. 149, p. 247) accorded limited rights to Commonwealth subjects including Indian citizens. These rights were abrogated in 1958,

Nepal—United Kingdom agreements

27. Article 9 of the Treaty of Trade and Commerce signed by India and Nepal on 31 July 1950 [74] provides:

> So far as matters dealt with herein are concerned this Treaty cancels all previous treaties, agreements or engagements concluded between the British Government on behalf of India and the Government of Nepal.

Thailand—United Kingdom Treaty of Friendship, Commerce and Navigation (1937)

28. Thailand agreed with India in 1948 to apply this treaty provisionally until a new treaty could be negotiated. It has been said that this action negatived the suggestion of succession. Thailand also took the position that Indian citizens were not "British subjects" within the 1937 Treaty. [75]

United Kingdom—United States Convention of Commerce and Navigation (1815) [76]

29. In discussions in 1939 concerning American-Indian trade, the United States Secretary of State, referring to this Convention, made the point that it was now obsolete and inadequate, [77] and suggested that it be brought up to date. [78] The relevant article of the Convention is listed in United States *Treaties in Force*. [79]

6. *Pakistan*

30. As in the case of other members of the Commonwealth, Pakistan continued after independence to participate in the preference system allowed by article I, paragraph 2 (*a*), of the General Agreement on Tariffs and Trade and based, at least in part, on bilateral agreements. One instance of an agreement recognizing this is the exchange of letters constituting a commercial agreement with the Belgium-Luxembourg Economic Union (15 March 1952), [80] paragraph 4 (*d*) of which excepted from the most-favoured-nation obligations in the agreement

> the favours, advantages, concession or exemptions which derive from any special arrangements that exist or may exist between Pakistan and any other Commonwealth country and between Pakistan and India as recognized in the General Agreement on Tariffs and Trade.

India—Poland Convention (1931)

31. On 4 April 1949, Pakistan and Poland concluded a Trade Agreement. [81] Its preamble read in part as follows:

> Whereas the [two Governments] are desirous of developing trade between their respective countries on a mutually advantageous basis in conformity with the Convention of May 8, 1931, signed between Poland and India...

India—United Kingdom Agreement (1939)

32. On 2 April 1951, Pakistan and the United Kingdom signed a new Trade Agreement. [82] Article XIV provided, in part, that

> On the coming into force of the present Agreement, the Agreement concluded between the United Kingdom Government and the Government of India in London on the 20th March, 1939, shall cease to have effect in relation to Pakistan.

A British letter of the same date opened with a reference to the "Trade Agreement which has been signed to-day, to replace the United Kingdom/India Agreement, 1939". [83]

Thailand—United Kingdom Treaty of Friendship, Commerce and Navigation (1937) [84]

33. This treaty provided for the reciprocal and most-favoured-nation treatment of the nationals of the two parties in a wide range of activities. It applied, on the British side, to Great Britain and Northern Ireland and to any territories to which the treaty was extended or which acceded. (The right of accession was reserved to members of the British Commonwealth of Nations; the power to extend applied to any of the colonies, overseas territories or protectorates of the King and to any mandated territory in respect of which the mandate was exercised by the United Kingdom.) It was also provided that so long as the treaty was not applicable to such territories, most-favoured-nation treatment would be applied to the goods produced or manufactured in those territories on a basis of reciprocity. Further, "subjects" of a high contracting party meant, in relation to Britain, "all the subjects of His Majesty and all persons under His Majesty's protection". [85] "Vessels were also

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so far as India was concerned, by an Exchange of Notes between India, Muscat and Oman and the United Kingdom (*ibid.*, vol. 305, p. 430).

74 *Ibid.*, vol. 104, p. 3.

75 See International Law Association, *The Effect... (op. cit.)*, p. 193, and D. P. O'Connell, *op. cit.*, vol. II, pp. 6-7, footnote 1. For further discussion of the 1937 Treaty, see paras. 33-35 below.

76 See para. 20 above.

77 The Convention, so far as trade was concerned, relates mainly to United Kingdom territories in Europe. Article III (concerning shipping) applied to certain ports in India. Article IV (relating to consuls) is of general geographic scope and is listed under India in United States of America, Department of State, *Treaties in Force... 1970 (op. cit.)*, p. 107.

78 See United States of America, Department of State, *Foreign Relations of the United States: Diplomatic Papers 1939*, vol. II: *General—The British Commonwealth and Europe* (Washington D.C., U.S. Government Printing Office, 1956), pp. 350-351.

79 United States of America, Department of State, *Treaties in Force... 1970 (op. cit.)*, p. 109,

80 United Nations, *Treaty Series*, vol. 316, p. 65. See also, for example, Pakistan's agreements with Egypt, 22 May 1949 (Pakistan, *Treaty Series (1949)*, No. 7, p. 73); with France, 29 November 1949 (*ibid.*, No. 19, p. 141); with the Federal Republic of Germany, 4 March 1950 (*ibid.*, (1950), No. 3 (i), p. 5); with Italy, 29 June 1950 (*ibid.*, No. 10, p. 64); with Austria, 19 October 1950 (*ibid.*, No. 22 (i) p. 172); with Spain, 22 January 1951 (*ibid.*, *(1951)*, No. 3, p. 8); with Iraq, 31 March 1951 (*ibid.*, No. 8, p. 47); with Italy 18 December 1951 (*ibid.*, No. 28, p. 157); with Syria, 18 December 1955 (*ibid.*, *(1855)*, No. 32); and with Italy, 8 February 1956 (*ibid. (1956)*, No. 2).

81 Pakistan, *Treaty Series (1949)*, No. 4, p. 50.

82 United Nations, *Treaty Series*, vol. 168, p. 281.

83 *Ibid.*, p. 302.

84 League of Nations, *Treaty Series*, vol. CLXXXVIII, p. 333.

85 *Ibid.*, p. 352.

defined in these wide terms. Under the above provisions the treaty was applied, *inter alia,* to the Straits Settlements, the Federated and Unfederated Malay States, [86] India, [87] Ceylon,[88] and Burma. [89]

34. In an Agreement of 1 January 1946 for the termination of the state of war between the United Kingdom, India and Siam, [90] Siam undertook to negotiate as soon as practicable a new treaty of establishment, commerce and navigation with the United Kingdom and a new treaty of commerce and navigation with India. Pending the conclusion of these treaties, Siam undertook to observe the 1937 Treaty. This undertaking was to terminate within three years if the new treaties were not concluded. "British" subjects was again defined as meaning all subjects of His Majesty the King of Great Britain, Ireland and the British Dominions beyond the seas, Emperor of India, and all persons under His Majesty's protection. No record has been found of the treaties foreshadowed in the above agreement. Rather, in 1952 the United Kingdom and Thailand further extended the 1937 Treaty indefinitely subject to the right of either party to terminate it by the giving of twelve months' notice, [91] and by an Exchange of Notes in 1948 India and Thailand agreed to apply the treaty pending the conclusion of a new treaty between them. [92]

35. The United Kingdom Government has stated as follows.

During the course of negotiations with the Siamese Government concerning the Anglo-Siam Treaty of Commerce and Navigation signed at Bangkok on 23 November 1937, the United Kingdom Government reminded the Siamese Government that if the latter agreed to the proposals forwarded by the United Kingdom Government concerning the above Treaty, it would apply in respect of all territories to which it had been previously made applicable either under Article 23 or Article 24 thereof.

This applied to both India and Pakistan, the Governments of which were successor Government of undivided India, as the latter was constitued at the time when the 1937 Treaty was made applicable to India.

The Siamese Government would not agree that the 1937 Treaty was applicable to Pakistan. In their view, a new State was not bound by the treaties of Commerce and Navigation concluded by the State of which it was formerly an integral part. They had, however, no objection to Pakistan acceding to the 1937 Treaty in accordance with the relevant provisions thereof.

The United Kingdom Government, in reply, reiterated their view that the Government of Pakistan equally with the Government of India was a successor Government to the former Goveernment of undivided India as constitued at the time when the 1937 Treaty was made applicable to India. The readiness and desire of the Government of Pakistan to succeed to the international obligations and rights of the former Government of undivided India was made clear in the Indian Independence (International Arrangements) Order, 1947. The United Kingdom Government found it hard to understand how the Siamese Government differentiated between India and Pakistan since both were former parts of undivided India and both alike should have been entitled to succeed to the rights and obligations of the 1937 Treaty.

The United Kingdom Government also stated that if the Siamese Government were not prepared to recognize Pakistan's rights as a co-equal successor State with India, then the position of Pakistan would seem otherwise only to be analogous to that of the old dominions when they became separate international persons. In the case of the "old dominions", they were generally recognized as succeeding to the rights and obligations which had been assumed by the United Kingdom Government on behalf of the territories from which the new States were constituted. This applied not only to treaties which referred to the territories concerned but also to treaties, such as commercial treaties, whose provisions applied territorially to the whole Empire.

The Siamese Government, however, adhered to their original view, namely denying the right of Pakistan to succeed to the Treaty but expressing willingness that she should accede. The Government of Pakistan did not, in the event, accede to the Treaty and the matter was dropped.

During the course of consultations with the Government of Pakistan concerning these same negotiations, they expressed the view, *inter alia,* that *by virtue of* the Indian Independence (International Arrangements) Order, 1947, rights and obligations under all agreements to which the Government of undivided India was a party, had devolved upon both the Governments of Pakistan and of India except in so far as any such agreement could be held to have had an exclusive territorial application to an area now comprised in either of the two new territories. The Anglo-Siam Treaty of 1937 had been applied generally to undivided India and did not therefore come within the terms of the exception.

The United Kingdom Government, while agreeing in general with the views of the Government of Pakistan, pointed out, however, to the latter that the position of Pakistan vis-à-vis Siam could not be *governed* by the 1947 Order which only had, and only could have, validity as between Pakistan and India. The United Kingdom Government would have hoped, however, that the Siamese Government would have accepted the position as set out in the Order. [93]

36. Thailand concluded a new commercial treaty with Pakistan on 28 August 1956. [94]

7. *Ceylon*

Denmark—Great Britain Treaties of Peace and Commerce of 1660-1661 and 1670 [95]

37. Both Iceland and Ceylon consider these treaties to be in force between them. [96]

United Kingdom Treaties of Commerce and Navigation with Finland, Hungary and Romania [97]

38. These were amongst the treaties which Ceylon,

[86] *Ibid.,* p. 370.

[87] *Ibid.,* vol. CXCVII, p. 402.

[88] *Ibid.,* p. 404.

[89] *Ibid.,* vol. CC, p. 563, and United Nations, *Treaty Series,* vol. 2, p. 215.

[90] United Nations, *Treaty Series,* vol. 99, p. 131.

[91] *Ibid.,* vol. 173, p. 31.

[92] D. P. O'Connell, *op. cit.,* vol. II, pp. 6-7, foot-note 1.

[93] United Nations, *Materials an Succession of States (op. cit.),* pp. 190-191.

[94] See foot-note 92 above.

[95] See para. 13 above.

[96] Iceland, *Treaty List,* p. 97.

[97] With Finland, 14 December 1923 (League of Nations, *Treaty Series,* vol. XXIX, p. 129); with Hungary, 23 July 1926 (*ibid.,* vol. LXVII p. 183); and with Romania, 6 August 1930 (*ibid.,* vol. CXXIII, p. 307).

through the United Kingdom, requested should be kept in force or revived under the Peace Treaties of 1947. It will be recalled [98] that Ceylon reserved the right to enter into negotiations to alter or revoke the treaties so kept in force or revived, since they were signed before Ceylon became independent. [99]

8. *Ceylon, Ghana and Malaya*

Ottawa Agreements concluded by the United Kingdom with other Commonwealth countries (1932) [100]

39. The Agreements concluded by the United Kingdom at Ottawa in 1932 provided broadly speaking for the grant of the same preferences, as established in the Agreements, by and to its colonies, on a basis of reciprocity. Subsequent practice suggests that these preferences continued after Ceylon, Ghana and Malaya became independent.

40. In 1957 (before Ghana and Malaya became independent), Australia concluded a new trade agreement with the United Kingdom replacing the 1932 instrument. [101] This agreement provided in article 11:

> The provisions of this Agreement do not affect the Agreement between the United Kingdom Government and the Australian Government signed at Ottawa on 20 August, 1932, as in force between the Governments of Ceylon and Australia.

41. New Zealand and the United Kingdom concluded a new trade agreement in 1959. [102] The 1932 Agreement was not affected, according to article 17, in so far as any of its provisions "may be" in force in respect of Ceylon, Ghana and Malaya; the New Zealand official publication setting out the 1959 Agreement states that despite constitutional changes these three States continue to have rights and obligations under the 1932 Agreement. [103]

42. Next, in 1958, Australia and Malaya signed a trade agreement. [104] Its agreed minutes record that

> the two Governments agree that with the entry into force of this Agreement the provisions of the United Kingdom and Australia Trade Agreement, 1932, no longer have applications [*sic*] as between the Federation and Australia. [105]

43. The Malayan-New Zealand Agreement of 1961 [106] is more cautiously worded. It supersedes and replaces any provisions of the Ottawa Agreement which "may hitherto have been in force in relations between" the two countries (article XV, para. 2).

9. *Burma*

Denmark—Great Britain Treaties of Peace and Commerce of 1660-1661 and 1670 [107]

44. By Notes of 29 April 1948 and 17 April 1950 between the Danish and Burmese Ambassadors in London, it was established that these Treaties, including their most-favoured-nation clauses, were in effect between Burma and Denmark, since Burma had succeeded to them; the Burma-United Kingdom Treaty of 17 October 1947 [108] (which contains an inheritance provision) was mentioned. [109]

10. *Sudan*

45. On 1 January 1956 both Egypt and the United Kingdom, when recognizing the independence of the Sudan, stated:

> ... the [Egyptian/United Kingdom] Government trust that the Government of the Sudan will continue to give full effect to the agreements and conventions made on behalf of, or applied to, the Sudan by the Co-Domini and will be grateful for confirmation that this is the intention of the Sudan Government. [110]

According to one writer, the customs agreements concluded between Egypt and the United Kingdom are in force in the Sudan. [111]

11. *Nigeria*

Liberia—United Kingdom Treaty of Friendship and Commerce (1848) [112]

46. Following the conclusion of a devolution agreement with the United Kingdom, the Nigerian authorities have undertaken a study of those treaties applicable to Nigeria before independence. Among those recognized as binding "by virtue of United Kingdom's signature or ratification" is the above treaty. [113]

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[98] See *Yearbook of the International Law Commission, 1970*, vol. II, p. 111, document A/CN.4/229, para 37.

[99] United Nations, *Treaty Series*, vol. 104, pp. 29, 35 and 117.

[100] See United Kingdom, *Imperial Economic Conference at Ottawa, 1932: Summary of the Proceedings and Copies of Trade Agreements* (Cmd. 4174) (London, H.M.S.O., 1932).

[101] United Nations, *Treaty Series*, vol. 265, p. 197. See also the note under Ceylon in the 1966 Supplement to the Australian *Treaty List*, p. 7 (Australia, *Treaty Series* (1966), No. 21).

[102] United Nations, *Treaty Series*, vol. 354, p. 161.

[103] New Zealand, Department of External Affairs, *Trade Agreement between the Government of New Zealand and the Government of the United Kingdom...*, New Zealand Treaty Series, 1959, No. 4 (Wellington, 1959), publication No. 202, p. 24. Note that the new agreement also did not affect the continued operation of the 1932 Agreement between New Zealand and any territory in the Federation of Rhodesia and Nyasaland.

[104] United Nations, *Treaty Series*, vol. 325, p. 253.

[105] *Ibid.*, p. 270.

[106] New Zealand, Department of External Affairs, *Trade Agreement between the Government of New Zealand and the Government of the Federation of Malaya*, New Zealand Treaty Series, 1961, No. 6 (Wellington, 1961), publication No. 242.

[107] See para. 13 above.

[108] United Nations, *Treaties Series*, vol. 70, p. 183.

[109] Denmark, *Lovtidende for Kongeriget Danmark, 1950*, Part C: *Danmarks Traktater* (Copenhagen, 1951), p. 316, No. 37.

[110] United Nations, *Materials on Succession of States (op. cit.)*, pp. 152 and 203. It is not known what, if any, substantive response the Sudan made. See *ibid.*, p. 203 for a Sudan reply to the United Kingdom seeking further information.

[111] A. G. Mochi Onory, *La succession d'Etats aux traités et notes sur la succession entre organisations internationales* (Milano, Giuffrè, 1968), p. 126.

[112] United Kingdom, *British and Foreign State Papers, 1847-1848* (London, H.M.S.O., 1861), vol. XXXVI, p. 394.

[113] Nigeria, Federal Ministry of Justice, *Nigeria's Treaties in Force for the Period 1st October 1960 to 30th June 1968*

(Continued on p. 158)

12. *Tanganyika* [114]

47. Tanganyika's practice and position with regard to commercial treaties have been described as follows:

53. There were seventeen bilateral commercial treaties which, prior to independence, had been concluded on behalf of, or had been extended to, Tanganyika. Because of the vicissitudes of trade and commerce, treaties dealing with such matters are generally regarded as having a less than permanent character, even though containing no express provision for termination.

54. It was observed that these treaties had been concluded with British, rather than Tanganyika particular needs and desires in mind. Many were outdated or with countries with which Tanganyika shared no strong ties or desire for association. After independence, *notes verbales* were sent to each of the other parties to the bilateral treaties notifying them that Tanganyika did not consider itself bound by such arrangements.

55. Many of the third parties who were the addressees of the notes relating to the commercial treaties replied merely taking note of the Tanzania Government's communication. There were some addressees who replied expressing the wish that the treaties be kept in force until such time as new agreements could be negotiated between the two Governments concerned.

56. In some instances, it was considered desirable to continue the treaties in force and arrangements were made for so doing, while negotiations proceeded for the conclusion of a new treaty. Thus in the cases of Czechoslovakia, the Soviet Union and Yugoslavia, the old commercial treaties signed by them with Britain replaced by post-independence treaties which entered into force on 20th September 1963, 2nd December 1963, and 8th January 1964, respectively.

57. Where no further treaty relationships were desired, the Tanganyika Government, by note addressed to the third party prior to the expiration of two-year grace period, indicated its view that the continuation in force of the treaties concerned would benefit neither of the two Governments. The Tanganyika Government also, where appropriate, pointed out that the pre-existing treaty in question was a comprehensive document designed to fit the needs of a major trading partner of the United Kingdom. Were Tanganyika to be substituted for the United Kingdom as one of the parties, large portions of the treaty would become devoid of meaning and impossible of fulfilment.

58. An example of such a case was the 1928 Treaty which had been concluded between His Majesty in respect of the United Kingdom and the President of the Government of the Republic of China. On 23rd November 1963, the Tanganyika Government addressed a Note to the Government of the People's Republic of China, through its Embassy in Dar-es-Salaam, referring to the statement of the Prime Minister of Tanganyika in the National Assembly of 30th November 1961.

59. The note expressed the view of the Tanganyika Government that under the rules of customary international law, this treaty would not survive the attainment of independence by Tanganyika. The Government of the People's Republic of China were therefore informed that, as from 8th December 1963, the Government of Tanganyika considered it had neither rights nor obligations under the treaty which would have no force and effect in Tanganyika from the date. (The Note referred in the same terms to two other treaties, namely, the 1904 Convention between the United Kingdom and China respecting the Employment of Chinese Labour in British Colonies and Protectorates, and a 1943 treaty between His Majesty in respect of the United Kingdom and India and His Excellency the President of the National Government of the Republic of China for the Relinquishment of Extra-Territorial Rights in China.)

60. It does not appear that any of the third parties to these commercial treaties objected to the views expressed therein by the Tanganyika Government as to the legal consequences of succession. In some cases, strong appeals were reiterated for the continuation of treaty arrangements pending negotiation of new treaties in substitution, despite the expressed unwillingness of the Tanganyika Government. The appeals were not successful. By 25th April 1964, when Tanganyika and Zanzibar merged to become a United Republic, there were none of the old treaties relating to commerce or trade which were recognized by the Tanganyika Government as being valid or any longer applicable to Tanganyika. [115]

13. *Guyana, Jamaica and Trinidad and Tobago*

Canada—West Indies Trade Agreement (1925) [116]

48. In May 1964, the Canadian Government stated that this agreement—as well as an agreement of 1958 concerning economic development—was still in force, *inter alia,* for Jamaica and Trinidad and Tobago. [117] On 8 July 1966, Canada and several Commonwealth Caribbean countries, including Guyana, Jamaica and Trinidad and Tobago, signed a Protocol to it. [118] The parties to the Protocol recognized the important changes which had taken place in their trade relations since 1925, agreed to examine the 1925 Agreement with a view to its further amendment or renegotiation, and to continue it in force, with certain modifications, for the meantime.

(Foot-note 113 continued)

(Lagos Federal Ministry of Information 1969), p. 9. See also the statement by Dr. T. O. Elias, Nigerian Minister of Justice, in *Yearbook of the International Law Commission, 1962,* vol. I, pp. 4-5, 629th meeting, paras. 25-27, and Nigerian Government Notice No. 1881.

[114] The effect of the formation of the United Republic of Tanzania is discussed in section B, 11, below.

[115] E. E. Seaton and S. T. M. Maliti [both of Tanzania's Department of External Affairs], "Treaties and succession of States and governments in Tanzania", in *African Conference on International Law and African Problems* (Lagos, 1967), pp. 84-85. At the beginning of their paper they state that the views in it are personal and do not necessarily reflect the official position of the Tanzanian Government (*ibid.*, p. 79). The "old commercial treaties" mentioned in paragraph 56 quoted above are not identified but the agreement with Czechoslovakia appears to be the Trade and Financial Agreement signed on 28 September 1949 (United Nations, *Treaty Series,* vol. 86, p. 141): see, in particular, articles 3 and 6; see also the 1923 Treaty of Commerce mentioned in the preamble to the 1949 Agreement (*ibid.*, p. 142). The agreement with the USSR appears to be the Five Year Trade Agreement signed on 24 May 1959 (*ibid.*, vol. 374, p. 305); and that with Yugoslavia, the Trade Agreement of 26 December 1949 (*ibid.*, vol. 87, p. 71). For the new Trade Agreement (signed on 14 August 1963) between Tanganyika and USSR, see *ibid.*, vol. 493, p. 195. This agreement does not expressly refer to pre-independence treaties.

[116] United Kingdom, *British and Foreign State Papers, 1926, Part I* (London, H.M.S.O., 1931), vol. CXXIII, p. 578.

[117] *The Canadian Yearbook of International Law, 1966* (Vancouver B. C., 1966), vol. IV. pp. 255-256.

[118] Canada, *Treaties Series,* 1966, No. 15.

14. *Kenya*

Commercial treaties of the United Kingdom with Czechoslovakia, Egypt, Hungary, Poland, Romania and the USSR

49. According to one writer, the position as at 31 December 1964, was that

> All [these] treaties ... had been renegotiated. Of these countries, only Romania had taken the position that Kenya had not succeeded to the relevant United Kingdom treaty, and therefore this did not need to be expressly superseded in the new agreement. No action had been taken with respect to other commercial treaties, but their termination by notice was envisaged. [119]

15. *Malawi* [120]

Japan—Federation of Rhodesia and Nyasaland Trade Agreement

50. On 6 October 1964 Malawi wrote to Japan stating that it hoped to conclude a trade agreement in the future, but would "within the scope of the laws and regulations of Malawi, continue to apply in practice, *mutatis mutandis*, the provisions" [121] of the above agreement.

Nyasaland—Southern Rhodesia Agreement (1964) [122]

51. This agreement, which was signed at a time when it was expected that Nyasaland would become independent on 6 July 1964 [123] provided for its termination on the giving of six months' notice. The Agreement was amended on 31 January 1964, 2 July 1964, 11 June 1965 and 11 August 1965; in the two latter cases both the Malawi and Southern Rhodesian Notes referred to the "Trade Agreement between the Government of Malawi and the Government of Southern Rhodesia". [124] On 26 November 1965 Salisbury announced that

> notwithstanding the provisions of Article IX of the Trade Agreement between the Government of Malawi and the Government of Rhodesia, the Government of Malawi has terminated the said agreement with effect from the 18th November, 1965. [125]

United Kingdom and Federation of Rhodesia and Nyasaland—Portugal Trade Agreements

52. On 19 August 1964 Malawi stated:

> In the past, this country's trade relationship with Portugal has been governed by agreements entered into with Portugal by the British Government and subsequently the Federal Government. Now that Malawi is independent it is necessary for it to negotiate its own trade agreements. [126]

Pending negotiation, Malawi continued the preferential treatment due under the Federal agreements. [127]

16. *Malta*

United Kingdom—United States Convention of Commerce and Navigation (1815) [128]

53. It will be recalled that the general trade provisions of this Convention applied only to His Majesty's territories in Europe. [129] The Convention (along with the 1827 Convention) is listed under Malta in the United States publication *Treaties in Force*, which also sets out the substance of the Exchange of Notes between Malta and the United Kingdom concerning the former's treaty rights and obligations. [130]

17. *Zambia*

54. At the end of 1965 Zambia gave notice of the termination of the trade agreements made by the Federation of Rhodesia and Nyasaland other than that mentioned in paragraph 55 below. That with Australia required previous consultation and Australia took the attitude that Zambia should have consulted it before issuing the notice. One effect was the abolition, so far as Zambia was concerned, of Commonwealth preference. [131]

Federation of Rhodesia and Nyasaland—South Africa Trade Agreement [132]

55. In December 1964 Zambia gave twelve months' notice, in terms of the above agreement, of its intention to terminate it. [133]

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[119] D. P. O'Connell, *op cit.*, vol. II, p. 118, O'Connell notes United Kingdom treaties with Czechoslovakia, 1925 (*Cmd.* 2254); Egypt, 1930 (*Cmd.* 3662); Hungary, 1926 (*Cmd.* 2933); Poland, 1923 (*Cmd.* 2219); Romania, 1930 (*Cmd.* 3945) and USSR, 1934 (*Cmd.* 4567) (*ibid.*, foot-note 2).

[120] For the effect of the formation and dissolution of the Federation of Rhodesia and Nyasaland on treaties applicable to Nyasaland, see section B, 8, below. Following the dissolution of the Federation, the United Kingdom acted on behalf of Nyasaland in confirming the continuity of all federal commercial treaties except that with Japan (D. P. O'Connell, *(op. cit.*, vol. II, p. 175).

[121] D. P. O'Connell, *op. cit.*, vol. II, p. 175.

[122] Southern Rhodesia Government Notice No. 25 A (1964).

[123] An announcement by the British Government to this effect was made on 27 September 1963: see *Keesing's Contemporary Archives (London)*, vol. XIV (1963-1964), 23-30 November 1963, p. 19758 A.

[124] Southern Rhodesia Government Notice No. 238 (1964); No. 601 (1964); No. 506 (1965); and No. 594 (1965).

[125] *Idem*, Notice No. 782 (1965).

[126] Malawi Press Release No. 1339 (1964), quoted in D. P. O'Connell, *op. cit.*, vol. II, p. 175.

[127] D. P. O'Connell, *op. cit.*, vol. II, p. 176.

[128] See foot-note 52 above.

[129] See para. 20 above.

[130] See United States of America, Department of State, *Treaties in Force ... 1970 (op. cit.)*, pp. 150-151. The Convention is not listed under Cyprus (*ibid.*, pp. 60-61). Malta came under British sovereignty in 1813, i.e. before the Convention was signed. Sovereignty over Cyprus was acquired in 1915. Note that the article concerning consuls, which was of general geographic scope, is listed under States which came under British sovereignty after 1815, (*ibid.*, pp. 28, 44, 165). The Malta-United Kingdom Exchange of Notes is published in United Nations, *Treaty Series*, vol. 525, p. 221.

[131] D. P. O'Connell, *op. cit.*, vol. 115, foot-note 1.

[132] Federation of Rhodesia and Nyasaland, Federal Government Notice No. 172 (1960).

[133] D. P. O'Connell, *op. cit.*, vol. II, p. 115.

18. *Botswana and Lesotho*

Basutoland, Bechuanaland Protectorate and Swaziland-South Africa Trade Agreement (1910)

56. South African legislation enacted on 24 October 1966 shortly after Botswana (previously the Bechuanaland Protectorate) and Lesotho (formerly Basutoland) became independent, treated the above agreement as still in force. [134]

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

19. *Lebanon and Syria* [135]

France—United States Convention concerning Rights in Syria and the Lebanon (1924) [136] *and Exchange of Notes constituting an Agreement regarding Customs Privileges for Educational, Religious and Philanthropic Institutions in Syria and Lebanon (1937)* [137]

57. In the 1924 Convention the United States of America consented to the administration by France of Syria and the Lebanon under the Mandate (which was set out in the Convention). The United States and its nationals were to have the same rights as members of the League of Nations and their nationals, and vested American property rights were to be respected. The Mandate required the mandatory to see that there was no discrimination against the nationals of members of the League, as compared with its own nationals or with the nationals of any foreign State, in matters concerning taxation or commerce, the exercise of professions or industries, navigation, or in the treatment of ships or aircraft. Goods originating in, or destined for, such States were also not to be discriminated against. The 1937 Exchange of Notes stated in detail, by reference to a Decree enacted in Syria and Lebanon and subsequently modified, the treatment which the United States and France agreed the United States was entitled to: the Exchange spoke of "satisfactory interpretations" [138] of the rights granted by the Convention.

58. Following the establishment of the Syrian and Lebanese Governments in November 1943, the United States exchanged Notes with them concerning the recognition of the independence of the two States. [139] The United States Notes contained the following passage:

> The United States is, therefore, prepared to extend full and unconditional recognition of the independence of Lebanon [Syria], upon receipt from Your Excellency's Government of written assurances that the existing rights of the United States and its nationals, particularly as set forth in the treaty of 1924 between the United States and France, are fully recognized and will be effectively continued and protected by the Lebanon [Syrian] Government, until such time as appropriate bilateral accord may be concluded by direct and mutual agreement between the United States and Lebanon [Syria]. [140]

The replies which were, *mutatis mutandis*, identical read, in part, as follows:

> It is my pleasant task to convey to you the assurances of the Lebanese [Syrian] Government that the existing rights of the United States and its nationals, particularly as set forth in the Treaty of 1924 between the United States and France, are fully recognized and will be effectively continued and protected, until such time as appropriate bilateral accord may be concluded by direct and mutual agreement between Lebanon [Syria] and the United States. [141]

59. The United States continues to list the 1924 Convention and the 1937 Exchange of Notes under Lebanon and the Syrian Arab Republic. [142] In the introduction to the Lebanese Treaty Series of 1951 the general statement is made that most pre-1943 treaties "are no longer relevant, having been denounced or implicitly cancelled by independence or by subsequent actions." [Translation from French.] [143]

The above-mentioned treaties are not included in the collection.

20. *Cambodia, Laos and Viet-Nam*

60. Article 17 of the Convention on Foreign Trade signed by the three States and France in December 1950 reads:

> The foreign trade agreements already concluded by the Government of the French Republic, which are listed in the annex, shall remain in force until their expiry.
>
> The part of these agreements concerning Cambodia, Laos and Viet-Nam shall be applied in the manner specified in this Convention.

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[134] Customs and Excise Act 1964, section 51 (3), as enacted by the Customs and Excise Amendment Act 1966, section 7 (*b*).

[135] For Syria, see also paras. 21 and 22 above.

[136] United States of America, *Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers*, vol. IV: 1923-1937 [preface by E. J. Trenwith] (Washington D. C., U. S. Government Printing Office, 1938), p. 4169.

[137] League of Nations, *Treaty Series*, vol. CLXXXIV, p. 479.

[138] *Ibid.*, p. 480.

[139] United Nations, *Treaty Series*, vol. 124, pp. 187 and 251.

[140] *Ibid.*, pp. 188 and 252.

[141] *Ibid.*, pp. 190 and 254. The United States had for some years been pressing for the recognition of its treaty rights after the granting of independence to the two territories. In 1941, General Catroux, the Free Delegate General and Plenipotentiary in Syria and Lebanon, declared that each of the two States, in becoming independent "assumes of course the rights and obligations heretofore subscribed to in its name". See, for example, United States of America, Department of State, *Foreign Relations of the United States: Diplomatic Papers 1941*, vol. III: *The British Commonwealth, the Near East and Africa* (Washington D.C., U.S. Government Printing Office, 1959), pp. 785-813; M. M. Whiteman, *Digest of International Law* (Washington D.C., U.S. Government Printing Office, 1963), vol. 2, pp. 218-225; and D. P. O'Connell, *op. cit.*, vol. II, p. 158.

[142] See United States of America, Department of State, *Treaties in Force ... 1970 (op cit.)*, pp. 139, 140 and 215. For the effect of the changes in Syria's status in 1958 and 1961 on its treaty obligation, see paras. 149-166 below.

[143] Lebanon, Ministry of Justice and Foreign Affairs, *Recueil des traités et conventions bilatérales* (Beirut, 22 November 1951), p. vi.

The Government of the French Republic undertakes to facilitate the accession of Cambodia, Laos and Viet-Nam to international trade conventions. [Translation from French.] [144]

The annex to the article listed short-term trade agreements with nineteen countries. [145]

61. The Legal Committee of the French Union on 13 April 1950 expressed the following opinion:

In both cases whether we are concerned with States which are new, transformed or even subjected to changes in the circumstances of the exercise of their international capacity, the general principles of international law yield a conclusion. Treaties regularly concluded under the previous régime and which were hitherto applicable to these States continued to bind them as a matter of law despite subsequent changes.

...

The maintenance in force of treaties recognized by this principle does not deprive interested States of all legal means to disengage themselves from previous treaty obligations.

In the first place it is clear that in acceding to the exercise of international competences the associated States can, according to the conditions to which they are accustomed in the negotiation and signature of international agreements utilise on their own account the faculties of denunciation which have been inserted in previous treaties.

In the second place, in addition to this right included in the express terms of the treaties, the importance of the changes which have occurred in their constitution and in their relations with foreign powers could eventually justify in certain cases the invocation by the States of Indo China of the clause *rebus sic stantibus* in order to disengage themselves from a treaty which would have ceased to correspond with the circumstances contemplated after performance. The operation of this clause of course is subjected to the customary conditions which international law imposes on its exercise. [146]

21. *Morocco*

Morocco—Sardinia Treaty of Friendship and Commerce (1825)

62. In the opinion of the Italian Ministry of Foreign Affairs, this Treaty must be deemed to be still in force, together with the Notes exchanged at Tangier and Tetuan on 9 March and 10 and 16 May 1857 concerning the extension to Sardinia of the privileges provided for in the British-Moroccan Treaty of 9 December 1856. Nevertheless, the provisions of articles 18 and 22 on consular jurisdiction, abolished after Italy's renunciation in a declaration signed at Paris on 9 March 1916, have definitely lapsed. [147]

Morocco-United Kingdom Convention of Commerce and Navigation (1856) [148]

63. This Convention granted British subjects and the British Government certain rights and privileges in respect of Moroccan trade. [149] In a Note of 1 March 1957 it was stated that

... Her Majesty's Government in the United Kingdom renounce their rights under Article 7 of the Convention of Commerce and Navigation signed on December 9, 1856, since they recognise that the limitations imposed by this Article on the right of the Moroccan Government to determine rates of custom duties and other charges imposed on or in connexion with the importation of products of the United Kingdom and its dependent territories into the Shereefian Empire are inappropriate to existing political and economic conditions. [150]

In its reply, Morocco noted this declaration and proposed (*a*) that article 7 of the Convention should be regarded as abrogated; (*b*) that a new treaty of commerce and navigation should be negotiated; (*c*) rules to regulate trade in the meantime. The United Kingdom accepted these proposals. [151]

Morocco—United States Treaty of Peace and Friendship (1836) [152]

64. This treaty, *inter alia,* placed United States commerce on the same footing as Spain's, or the most favoured nation's and granted the United States consular jurisdiction over certain questions. Early in 1956 the United States announced that it was following closely the progress which France and Morocco were making in working out their future relationships:

We consider that to modernize our own treaty relationship with Morocco [including the 1836 Treaty] with respect to extra-territorial rights would be the only course in keeping with this evolution. [153]

Following the recognition by France and Spain of Morocco's independence, [154] the United States, in October 1956, "in keeping with the desire to modernize [the consular jurisdiction] aspect of the treaty relationship

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[144] France, Ministère d'Etat chargé des relations avec les Etats associés, *La Documentation française: Notes et études documentaires* (Paris, 24 January 1951), No. 1,425 (Série Outre-Mer XXIX), p. 27.

[145] No practice relevant to these trade agreements and concerning Cambodia, Laos and Viet-Nam has been discovered.

[146] Reproduced in International Law Association, *The Effect ... (op. cit.),* pp. 168-169. See also the *general* bilateral provisions relating to succession: France—Laos, Traité d'Amitié et d'Association, 22 October 1953 (United Nations, *Materials on Succession of States (op. cit.),* pp. 72 and 188); France—Viet-Nam, Traité d'Indépendence, 4 June 1954 (France, Ministère des affaires étrangères, *La Documentation française: Articles et documents* (Paris, 15 June 1954), No. 067 (Documents de politique internationale XCVII-XCVIII), p. 1).

[147] M. Giuliano, F. Lanfranchi and T. Treves, *Corpo-indice degli accordi bilaterali in vigore tra l'Italia e gli stati esteri* (Milano, Giuffrè, 1968), p. 303.

[148] G. F. de Martens, ed., *Nouveau Recueil général de Traités* (Göttingen, Dietrich, 1861), t. XVII, part I, p. 143.

[149] These provisions were given general effect by the Act of Algeciras.

[150] United Nations, *Treaty Series,* vol. 310, p. 4.

[151] *Ibid.,* pp. 6 and 8. On 22 November 1956 the United Kingdom had renounced certain rights conferred, so far as the Spanish zone of Morocco was concerned, by treaties of 1721, 1760 and 1824. See United Kingdom, Central Office of Information, *Commonwealth Survey: A Record of United Kingdom and Commonwealth Affairs,* vol. 2, No. 24 (27 November 1956), pp. 1034-1035.

[152] United States of America, *Treaties, Conventions, International Acts ... 1776-1909 (op. cit.),* vol. I, p. 1212. The continued force of the Treaty during the period of the French protectorate was affirmed by the International Court of Justice in the Case concerning rights of nationals of the United States of America in Morocco (*I.C.J. Reports 1952,* p. 176).

[153] United States of America, Department of State, *Department of State Bulletin* (Washington D.C.), vol. XXXIV, No. 867 (6 February 1956), p. 204.

[154] *Ibid.,* No. 873 (19 March 1956), pp. 466 and 667.

between Morocco and the United States", accordingly relinquished its jurisdictional rights. [155] The 1836 Treaty is still listed in United States, *Treaties in Force*, with a note about the relinquishment of extraterritorial jurisdiction. [156] United States *Treaties in Force* also cites the provision of the France-Morocco Agreement on general relations concerning Morocco's treaty rights and obligations (article 11). [157]

22. *Tunisia*

France—Tunisia Economic and Financial Convention (3 June 1955) and Protocol of Application of the Economic and Financial Agreement in respect of the Customs Union [158]

65. The Convention is listed in Duparc's list of treaties in force for France as at 1 January 1958. [159] In 1959 France and Tunisia concluded a new trade convention which abrogated the customs union and replaced it by a most-favoured-nation régime. [160] In an Exchange of Notes accompanying the new Convention the two parties, referring to the fact that the territory of the customs union had been defined by the 1955 protocol of application, agreed that the new Convention would apply to the same territory. [161]

23. *Morocco and Tunisia*

French trade agreements

66. France was party to at least seventeen "accords commerciaux" [162] which, it appears, affected Morocco and Tunisia at the time they became independent in 1956. [163] In nearly all these cases the agreement itself or an instrument amending or renewing the original agreement was concluded only a few months before independence, in a period when independence was in prospect.

67. In several cases Morocco and Tunisia continued to participate in the application of the agreements. This continued participation took several forms. First, in some instances the mixed commissions established under the agreements to draw up lists of goods, meeting after independence, have prepared lists which applied to Morocco or Tunisia or both. Secondly, post-independence renewals of some of the agreements applied to Morocco or Tunisia or both. Thirdly, some of the agreements were expressly abrogated in relations between the States involved by later agreements applicable to Morocco or Tunisia or both. Fourthly, some post-independence agreements which were applicable to Morocco or Tunisia or both referred to earlier agreements in a way which indicated that they continued to be in effect for Morocco or Tunisia or both. These groups of cases are now considered in turn.

(i) *Drawing up of new lists of goods within the framework of the pre-independence agreements*

68. Several of the agreements provided for the establishment of a Mixed Commission which was to meet regularly and draw up new or supplementary lists of goods for import and export. In a number of cases these subsequent texts have affected Morocco or Tunisia or both. Thus the Agreement of 5 August 1955 with the Federal Republic of Germany was originally concluded for the period 1 April 1955 to 30 September 1958. Within that time the Mixed Commission met on 21 June 1956, 15 December 1956 and 18 October 1957. [164] Annexed to the original Agreement was list C

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[155] *Ibid.*, vol. XXXV, No. 909 (26 November 1956), p. 844.

[156] United States of America, *Treaties in Force ... 1970 (op. cit.)*, p. 159 and foot-note 1.

[157] *Ibid.*, p. 158. Article 11 is also reproduced in *Yearbook of the International Law Commission, 1962*, vol. II, p. 127, document A/CN.4/150, annex No. 6.

[158] France, *Journal officiel de la République française: Lois et décrets* (Paris), 87th Year, No. 210 (6 September 1955), p. 8933, and *ibid.*, 87th Year, No. 307 (30 December 1955), p. 12737.

[159] See P. Duparc, *Traités et accords en vigueur : Liste des engagements bilatéraux souscrits par la France en vigueur au 1er janvier 1958* (Paris, Pedone, 1962), p. 106. Mr. Duparc was the archivist of the French Ministry of Foreign Affairs. The list is not, however, official (see "Engagements internationaux en vigueur souscrits par la France" in *Revue générale de droit international public* (Paris), 3rd series, t. XXIX, No. 2 (April-June 1958), p. 277, foot-note1).

[160] *Recueil des traités et accords de la France, 1959*, No. 37.

[161] *Ibid.*,

[162] For a brief account of the distinction, under French constitutional law between "accords commerciaux" and more formal treaties of commerce involving amendments to the tariff, see D. Bardonnet, "La succession aux traités à Madagascar", in *Annuaire français de droit international* (Paris 1967), vol. XII (1966), pp. 593 and 664. See also K. Holloway, *Modern Trends in Treaty Law* (London Stevens, 1967), pp. 156-172 and 341. It seems that many of the constitutions of new States formerly administered by France contain similar provisions (*ibid.*, pp. 202-208).

[163] Agreements with *Austria* of 9 November 1955 (France, Ministère des finances et des affaires économiques, *Moniteur officiel du commerce et de l'industrie*[a] (Paris), No. 1743 (24 November 1955), p. 3779); *Brazil* of 1946 and 1953 (see para. 70 below); *Chile* of 16 September 1955 (*MOCI*, No. 1732 (17 October 1955), p. 3358); *Czechoslovakia* of 25 June 1955 (*ibid.*, No. 1703 (7 July 1955), p. 2210); *Federal Republic of Germany* of 5 August 1955 (*ibid.*, No. 1715 (18 August 1955), p. 2689); *Greece* of 28 June 1955 (*ibid.*, No. 1705 (14 July 1955), p. 2309); *Iceland* of 1951 (see para. 69 below); *Israel* of 10 July 1953 (*MOCI*, No. 1556 (23 July 1953), p. 1943; see also *ibid.*, No. 1642 (6 December 1954) p. 3460), and the Agreement of 16 May 1955 (*ibid.*, No. 1703 (7 July 1955), p. 2209); *Italy* of 14 May 1955 (*ibid.*, No. 1690 (23 May 1955), p. 1661); see also *ibid.*, No. 1742 (21 November 1955), p. 3743, and *ibid.*, No. 1745 (1 December 1955), p. 3872); *The Netherlands* of 1955, (see para. 68 below); *Norway* of 1951 *(idem)*; *Pakistan* of 17 October 1955 (*MOCI*, No. 1708 (25 July 1955), p. 2411, and *ibid.*, No. 1734 (24 October 1955), p. 3440; *Portugal* of 16 March 1956 (after the independence of Morocco but before that of Tunisia) (*ibid.*, No. 1780 (2 April 1956), p. 1103); *Spain* of 10 November 1955 (*ibid.*, No. 1741 (17 November 1955), p. 3701); *Sweden* of 1949 and 1951 (see para. 68 below); and *Switzerland* of 29 October 1955 (*ibid.*, No. 1737-1738 (7 November 1955), p. 3567). See also the general list of 25 October 1956 (*ibid.*, No. 1839 (25 October 1956), pp. 3462-3463).

[a] As from 1961, the title of this publication became *Moniteur officiel du commerce international*. Both titles are hereinafter referred to as MOCI.

[164] *MOCI*, No. 1812 (23 July 1956), p. 2387; *ibid.*, No. 1858 (28 December 1956), p. 4183; *ibid.*, No. 1945 (30 October 1957), p. 3423. See also the prorogation in March 1956 (*ibid.*, No. 1777 (22 March 1956), p. 997).

providing for German imports into Morocco, Tunisia and other territories. In the December 1956 Protocol this list was divided and became C1 (Morocco), C2 (Tunisia) and C3 (Territoires d'Outre-Mer and Départements d'Outre-Mer). This pattern was continued in the 1957 *procès-verbal* of the Mixed Commission. There is no indication that the Moroccan and Tunisian authorities participated directly in the Mixed Commission when it drew up the new lists. The practice relevant to the Agreements with the Netherlands, [165] Norway, [166] Spain [167] and Sweden [168] appears to be similar.

(ii) *Renewal or amendment of pre-independence agreements which were about to expire*

69. In November 1955 France and Austria signed a commercial agreement which included lists for Austrian exports to Morocco and Tunisia. [169] In October 1956 the Agreement was prorogued for a further three months and *all* the lists were augmented *pro rata*. [170] On 19 January 1957 Austria and France and Morocco, following a meeting of the Mixed Commission established under the 1955 Agreement, concluded a new agreement which, *inter alia*, was applicable to Tunisia. Morocco and Austria at the same time signed a separate Protocol. [171] Similarly the 1951 Agreement with Iceland has been prorogued on several occasions with application to Morocco and Tunisia. [172]

(iii) *Negotiation of new agreements which expressly replace pre-independence agreements*

70. A commercial agreement signed by Czechoslovakia and France and Morocco on 29 December 1956 expressly replaced the 1955 Agreement. [173] A subsequent prorogation of the 1956 Agreement was stated not to be applicable to those provisions of the agreement affecting Morocco and Tunisia. [174] 1946 and 1953 Agreements between Brazil and France were similarly replaced in August 1956. [175]

(iv) *References in post-independence agreements to pre-independence agreements*

71. Most cases could be said to fall under this heading. But there are other instances which do not come under categories (i), (ii) and (iii) above, and which might be mentioned. For instance, the Agreement with Czechoslovakia of December 1956 provides that payments under the Agreement be made in accordance with a 1946 Agreement as amended. [176] The agreements of June 1956 between France and Greece [177] and of December 1956 between France and Poland [178] contain a similar provision. Two other cases should finally be noted. In both, the pre-independence agreement which was applicable to Morocco and Tunisia expired, by its own terms, some months after their independence; and in both cases at about that time a new agreement, applying to Morocco and Tunisia, was concluded. [179]

24. *Cameroon, Central African Republic, Chad, Congo (People's Republic of), Dahomey, Gabon, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Senegal, Togo, Upper Volta*

French trade agreements

72. At the time when many of its African territories were becoming independent, France was party to more

[165] Mixed Commission, established under the 1949 Agreement, supervised the operation of an Agreement signed on 28 May 1956 and applicable to Morocco and Tunisia (*MOCI*, No. 1798 (4 June 1956), p. 1837). See the renewal of 1957 (*ibid.*, No. 1891 (24 April 1957), p. 1335); but note that the 1958 renewal did not apply to Morocco and Tunisia (*ibid.*, No. 1995 (23 April 1958) p. 1359).

[166] French and Norwegian delegations meeting in accordance with the 1951 Agreement on 2 May 1956, signed a Protocol applying to the "Territoires d'Afrique du Nord" (*MOCI*, No. 1794 (21 May 1956), p. 1678).

[167] Mixed Commission, established under the 1955 Agreement, met in March and July 1956 and augmented the 1955 lists. The new lists applied at least to Tunisia (*MOCI*, No. 1782 (9 April 1956), p. 1188, and *ibid.*, No. 1811 (19 July 1956), p. 2345). A new Agreement initialled on 2 November 1956, applied to neither Morocco or Tunisia (*ibid.*, No. 1846 (19 November 1956), p. 3727).

[168] Mixed Commission, established under 1949 and 1951 Agreements, met in March 1956. A protocol was signed on 30 March 1956 which included a list for "Afrique du Nord" (*MOCI*, No. 1782 (9 April 1956), p. 1181). It is not clear whether later renewals applied to Morocco and Tunisia (*ibid.*, No. 1891 (24 April 1957), p. 1335; *ibid.*, No. 1991 (9 April 1958), p. 1207; *ibid.*, No. 2110 (30 May 1959), p. 1819). The 1959 list is for "other States and Territories of the Franc Zone".

[169] *MOCI*, No. 1743 (24 November 1955), p. 3779.

[170] *Ibid.*, No. 1839 (25 October 1956), p. 3461.

[171] *Ibid.*, No. 1866 (28 January 1957), pp. 308 and 313. A 1959 agreement (see para. 81 below) applied, *inter alia*, to the "Etats et Territoires d'Outre Mer". (*MOCI*, No. 2115 (17 June 1959), p. 2059).

[172] e.g. Agreement of September 1956 (*MOCI*, No 1832 (1 October 1956), p. 3169); the Agreement continued to be applicable to Morocco until at least 1966. See also the renewals of the Agreements with Chile, Portugal and Switzerland, all of which applied to Tunisia and Morocco. It is not clear whether the renewals after independence also applied to Morocco and Tunisia (*ibid.*, No. 1732 (17 October 1955), p. 3358; No. 1903 (5 June 1957), p. 1839; No. 2108 (23 May 1959), p. 1756; No. 1780 (2 April 1956), p. 1103; No. 1991 (9 April 1958), p. 1207; No. 1737-8 (7 November 1955), p. 3567; and No. 2102 (2 May 1959), p. 1513.

[173] *Ibid.*, No. 1860 (7 January 1957), p. 58.

[174] *Ibid.*, No. 1944 (26 October 1957), p. 3375.

[175] *Ibid.*, No. 1826 (10 September 1956), p. 2935.

[176] See foot-note 163 above.

[177] *MOCI*, No. 1811 (19 July 1956), p. 2353.

[178] *Ibid.*, No. 1852 (10 December 1956), p. 3971.

[179] *Italy:* Agreement of May 1955 effective to 31 March 1956 (*MOCI*. No. 1690 (23 May 1955), p. 1661; some of the quotas fixed in a *procès-verbal* signed in November applied for the whole year: *ibid.*, No. 1742 (21 November 1955), p. 3743, and No. 1745 (1 December 1955), p. 3872); Agreement of 21 April 1956, effective from 1 April 1956 (*ibid.*, No. 1788 (30 April 1956), p. 1430 (see also the later prorogation: *ibid.*, 1891 (24 April 1957) p. 1335; *Pakistan:* Agreement of July 1955, effective to 30 June 1956 (*ibid.*, No. 1734 (24 October 1955), p. 3440); Agreement of June 1956 (*ibid.*, No. 1801 (14 June 1956), p. 1981). (The 1958 renewal was not applicable to Morocco and Tunisia: *ibid.*, No. 1978 (22 February 1958) p. 655). The Agreements with *Greece* of 1955 and 1956 appear to provide a similar case (*ibid.*, No. 1705 (14 July 1955), p. 2309 and No. 1811 (19 July 1956), p. 2353.) See also the Agreement concluded between *Austria* and Morocco in 1957 following the expiration of the 1955 Austria-Morocco Agreement (para. 69 above).

than thirty "accords commerciaux", some long-term, others short-term. [180] Nineteen of these appear to have applied to its territories in Africa. [181] France was also party to several financial agreements, regulating trade payments. Some of the long-term trade agreements provided for the negotiation (usually annually) of lists of goods in respect of which import licences would be granted; other agreements were automatically renewed from year to year in the absence of denunciation, while others were for a short fixed term of one or two years. The newly independent States have continued to participate in the operation of the agreements. The continued participation has taken, generally speaking, the same forms as in the case of Morocco and Tunisia.

(i) *Drawing up of new lists of goods within the framework of the pre-independence agreements*

73. The Mixed Commission established by the France—Sweden Agreement of 3 March 1949, [182] and by a 1956 Agreement, met in 1959 and established lists for the period 1 April 1959 to 31 March 1960. [183] Further lists including one providing for Swedish exports, *inter alia*, to the "States of the Community" were drawn up in March 1960. This instrument was effective until 31 December 1960. [184] The Mixed Commission next met in March 1961 and its *procès-verbal* was signed by representatives of Sweden and by representatives of France and certain African States. [185] The *procès-verbal* stated that it applied to Cameroon, the Central African Republic, Chad, the Congo (Brazzaville), Dahomey, Gabon, the Ivory Coast, Madagascar, Mauritania, Niger, Senegal and Upper Volta. The agreed Swedish exports to those countries were listed, but it was stated that the list was only "indicative". Cameroon, Gabon, Ivory Coast, Mauritania, Niger and Upper Volta, authorized France to represent them in the Mixed Commission and to sign the instrument; the other six States signed on their own behalf.

74. This 1961 Agreement was subsequently extended for each of the years 1962 to at least 1966. [186] Ivory Coast and Senegal did not participate in these renewals; Cameroon and Niger were not party to the 1963 and later renewals; and Madagascar did not sign the 1964 extension. The remaining seven States—Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Mauritania and Upper Volta—were party to subsequent renewals, including that of 1966.

75. The history of the France—Israel Agreement of 10 July 1953 provides a similar case of the negotiation of new lists under a pre-independence agreement and their prorogation after independence. [187]

76. Also similar is the history of the Bulgaria—France Commercial Agreement of 28 July 1955 [188] which was concluded for a year, but which was to be automatically renewed unless denounced. The two parties met in March 1960, the Government of the Republic of France acting on behalf of France and the Community, and drew up, with reference to the 1955 Agreement, new lists which were to be effective for the period 1 August 1960-31 July 1963. [189] Later Protocols, in the framework of the 1955 and 1960 Agreements, were signed on 16 July 1960 (by France again on behalf of the Community), [190] 29 June 1961 (by France and ten newly independent States) [191] and on 17 September 1962. [192]

(ii) *Renewal or amendment of pre-independence agreements which were about to expire*

77. The Czechoslovakia—France Agreement of 23 November 1959, concluded by France in its own name and in the name of the Community was originally valid for the period 1 November 1959 to 31 October 1960. [193] One of the lists provided for Czech exports, *inter alia*, to the Community and to Togo and Cameroon. By an Exchange of Letters in October 1960 and October 1961, France and Czechoslovakia prorogued the Agreement for a further year. [194] In 1962 the Mixed Commission established by the 1959 Agreement met and renewed for 1961-1962, with certain modifications, the 1959 Agreement. This renewal was expressly stated to be applicable to the Central African Republic, Chad, Dahomey, Gabon, Madagascar, Mauritania and Upper Volta. [195] With the exception of Dahomey, these States

[180] See the lists in *MOCI*, No. 2175 (13 January 1960), pp. 118-119 and *ibid.*, No. 22 (22 April 1961), pp. 1008-1009.

[181] Those with Austria, Bulgaria, Czechoslovakia, Denmark, Finland, Greece, Hungary, Iceland, Ireland, Israel, Japan, Norway, Poland, Portugal, Spain, Sweden, Switzerland, the USSR and Yugoslavia.

[182] *MOCI*, No. 1338 (10 March 1949), p. 451.

[183] *Ibid.*, No. 2110 (30 May 1959), p. 1819.

[184] *Ibid.*, No. 2199 (6 April 1960), p. 1107.

[185] *Ibid.*, No. 10 (11 March 1961), p. 457.

[186] *Ibid.*, No. 138 (2 June 1962), p. 2034; No. 215 (27 February 1963), p. 816; No. 323 (11 March 1964), p. 1037; No. 441 (22 April 1965), p. 1650 and No. 567-8(13 and 16 July 1966),

[187] Agreement (*MOCI*, No. 1566 (23 July 1953), p. 1943), Protocols of Mixed Commission of 21 January 1960 for 1960 (*ibid.*, No. 2185 (17 February 1960), p. 531), of 29 December 1960 for 1961 (twelve African State parties: Central African Republic, Chad, Gabon, Madagascar—these four States signed on their own behalf—Cameroon, Congo (Brazzaville), Dahomey, Ivory Coast, Mali, Niger, Senegal and Upper Volta—these eight States authorized France to sign for them); the French authorities advised that Mauritania wished no longer to participate in the Agreement (*ibid.*, No. 2280 (14 January 1961), p. 148); Protocols of 5 December 1961 for 1962 (applied to the above-mentioned twelve States with the exception of Ivory Coast, Mali and Senegal) (*ibid.*, No. 94 (*30 December* 1961), p. 4248); and of 9 April 1965 for 1965 (applied to Central African Republic, Chad, Congo (Brazzaville), Dahomey and Gabon) (*ibid.*, No. 448 (22 May 1965, p. 1949).

[188] *MOCI*, No. 1714 (15 August 1955), p. 2657.

[189] *Ibid.*, No. 2193 (16 March 1960), p. 877.

[190] *Ibid.*, No. 2232 (30 July 1960), p. 2369.

[191] *Ibid.*, No. 43 (5 July 1961), p. 2003.

[192] *Ibid.*, No. 169 (19 September 1962), p. 3385 (which refers only to "Certain African States and Malagasy"). See further *ibid.*, No: 184 (10 November 1962), p. 4030. For the subsequent history of the Agreement, see para. 83 below.

[193] *Ibid.*, No. 2163 (2 December 1959), p. 3992.

[194] *Ibid.*, No. 2260 (5 November 1960), p. 3425; and No. 77 (1 November 1961), p. 3478.

[195] *Ibid.*, No. 144 (23 June 1962), p. 2295.

were also parties to the renewal of the Agreement for 1962-1963. [196] With the exception of Madagascar and Dahomey, these States and the Congo (Brazzaville) were parties to a new two-year commercial agreement signed on 16 January 1964. [197] Payments under the agreement were to be effected, until 1 March 1964, in accordance with a payments agreement of 1946 and, thereafter, by the new payments agreement concluded at the same time.

78. The France—Denmark Agreement of 29 March 1959, [198] which originally had effect until 31 December 1960, was similarly prorogued for 1961, 1962, 1963, 1964, 1965 and 1966 [199] by instruments to which several of the new States were parties: Cameroon, the Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal and Upper Volta, to the 1961 prorogation; these States, with the exception of the Ivory Coast Niger and Senegal, to the 1962 prorogation; these States, with the added exception of Cameroon, to the 1963 prorogation; and these States, with the further exception of Madagascar, to the 1964, 1965 and 1966 prorogations. These States were not, however, parties to a 1969 modification of the 1966 Agreement. [200]

79. The Finland—France Agreement of 23 December 1958 [201] was similarly prorogued by agreements, to which several African States were parties, in 1961, 1962, 1963, 1964 and 1965: [202] Cameroon (1961-1963), Central African Republic (1961-1965), Chad (1961-1965), Congo (Brazzaville) (1961-1965), Dahomey (1961-1963), Gabon (1962-1965), Ivory Coast (1961), Madagascar (1961-1962), Mauritania (1961-1965), Niger (1961-1962), Senegal (1961) and Upper Volta (1961-1963).

80. Practice relevant to France's Agreements concluded before independence with Hungary, [203] Iceland, [204] Ireland, [205] Japan, [206] Norway, [207] Spain, [208] and Switzerland [209] is similar. [210]

[196] *Ibid.*, No. 180 (27 October 1962), p. 3863; see also No. 289 (13 November 1963), p. 4423.

[197] *Ibid.*, No. 310 (25 January 1964), p. 341. Note the Protocols signed by specific African States. See also the Agreement signed on 29 June 1965 and its 1967 and 1969 renewals; the Central African Republic and Gabon are parties (*ibid.*, No. 467 (28 July 1965), p. 2792; No. 604 (26 November 1966), p. 4487; and No. 804 (2 December 1968), p. 4610).

[198] *Ibid.*, No. 2115 (17 June 1959), p. 2057.

[199] *Ibid.*, No. 14 (25 March 1961), p. 652; No. 147 (4 July 1962), p. 2430; No. 215 (27 February 1963), p. 814; No. 332 (11 April 1964), p. 1485; No. 441 (28 April 1965), p. 1652; and No. 564 (2 July 1966), p. 2648.

[200] *Ibid.*, No. 838 (31 March 1969), p. 1398.

[201] *Ibid.*, No. 2070 (10 January 1959), p. 111; see also No. 2175 (13 January 1960), p. 115.

[202] *Ibid.*, No. 8 (4 March 1961), p. 361 (five of the new States signed the Agreement; the remaining five indicated their wish to see the régime apply) No. 101, (24 January 1962), p. 309; No. 208 (2 February 1963), p. 459; No. 318 (22 February 1964), p. 725; No. 428 (13 March 1965). p. 1045 (in 1962-1965 the new States signed separately).

[203] Agreement of 17 April 1959 (*MOCI*, No. 2108 (23 May 1959), p. 1747); extensions of May and October 1960 (*ibid.*, No. 2214 (28 May 1960), p. 1682, and No. 2269 (7 December 1960), p. 3773); Agreement of 18 May 1961 (Cameroon, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal and Upper Volta) (*ibid.*, No. 32 (27 May 1961), p. 1465); Agreement of 17 June 1963 (Central African Republic, Congo (Brazzaville), Chad, Gabon, Ivory Coast and Upper Volta) (*ibid.*, No. 249 (26 June 1963), p. 2476); prorogation for 1964-1965 of 1963 Agreement, 15 May 1964 (*ibid.*, No. 345 (27 May 1964), p. 2126); prorogation for three months, 8 December 1965 (*ibid.*, No. 505 (8 December 1965), p. 4461); long-term Agreement of 15 February 1966 (Central African Republic, Chad, Gabon, Mauritania and Upper Volta) (*ibid.*, No. 528 (26 February 1966), p. 861); Additional Protocols of 12 May 1967 and 10 May 1968 (same five African State parties) (*ibid.*, No. 656 (27 May 1967), p. 2309, and No. 757-758 (12 and 15 June 1968), p. 2158); and Additional Protocol of 29 April 1969 (Central African Republic, Chad and Gabon) (*ibid.*, No. 850 (12 May 1969), p. 1920).

[204] Agreement of 6 December 1951 prorogued for further nine months to 31 December 1960 by Agreement of 7 July 1960 (*MOCI*, No. 2227 (13 July 1960), p. 2209); for 1961 by an Exchange of Letters of 5 May 1961 (Cameroon, Mauritania, Niger, Senegal, as well as Morocco) (*ibid.*, No. 29 (17 May 1961), p. 1339); for 1962 by an Exchange of Letters of 24 May 1962 (Cameroon, Central African Republic, Congo Brazzaville), Dahomey, Gabon, Mauritania, Niger, Upper Volta as well as Morocco) (*ibid.*, No. 138, 2 June 1962), p. 2035); for 1963 by an Agreement of 5 April 1963 (same nine States with the exception of Upper Volta and Niger) (*ibid.*, No. 227 (10 April 1963), p. 1383); for 1964, *ibid.*, No. 323 (11 March 1964), p. 1040); for 1965 by an Agreement of 9 June 1965 (same States with additional exception of Cameroon) (*ibid.*, No. 460 (3 July 1965), p. 2473); and for 1966 by Agreement of 24 May 1966 (same parties, renewable tacitly) (*ibid.*, No. 566 (9 July 1966), p. 2738).

[205] Agreement of 10 November 1959 prorogued by Letters of 7 July 1960 until 31 December 1960; by Letters of 24 May 1961 for 1961 (Cameroon, Chad, Central African Republic, Congo (Brazzaville), Dahomey, Ivory Coast, Madagascar, Mauritania, Niger, Senegal and Upper Volta) (*MOCI*, No. 36 10 June 1961), p. 1658); by Letters of 10 May 1962 for 1962 (same parties with the exception of Chad, Ivory Coast and Senegal, and the addition of Gabon) (*ibid.*, No. 136 (26 May 1962), p. 1948); by Letters of 8 July 1964 for 1964; of 11 February 1965 for 1965, and of 20 June 1966 for 1966 (in all three years same parties with additional exceptions of Cameroon, Madagascar, Niger and Upper Volta) (*ibid.*, No. 364 (1 August 1964), p. 3017; No. 424 (27 February 1965), p. 854; and No. 567-568 13 and 16 July 1966), p. 2823); and by Letters of 22 December 1967 for 1967 and 1968 (Congo (Brazzaville), Dahomey, Gabon and Mauritania) (*ibid.*, No. 728 (10 February 1968), p. 603).

[206] Agreement of 10 July 1959 between France and the Community and Japan (applicable to all States members of the Community—Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal, Sudan, Upper Volta—and to Cameroon and Togo) (*MOCI*, No. 2131 (12 August 1959), p. 2684); prorogued to 30 September 1960 (*ibid.*, No. 2227 (13 July 1960), p. 2209); prorogued until 31 March 1961, by an Exchange of Letters of 28 October 1960 between France and Japan and stated to be applicable to all the above States (*ibid.*, No. 2261 (9 November 1960), p. 3480); prorogued until 30 September 1961 by an Exchange of Letters of 28 April 1961 stated to be applicable to all the above States other than Mali and Togo; (Central African Republic, Dahomey, Gabon, Madagascar, Senegal and Upper Volta signed the relevant note); prorogued until 30 September 1962 by a Protocol of 23 January 1962 (same parties as to 1961-1962 prorogation with the added exception of Cameroon, (*ibid.*, No. 104 (3 February 1962), p. 443); prorogued until 31 March 1963 by an Agreement of 14 December 1962 (same parties with added exceptions of Dahomey, Ivory Coast, Niger and Senegal) (*ibid.*, No. 196 (22 December 1962), p. 4549). The Agreement of 14 May 1963 does not apply to any African States (*ibid.*, No. 237 (15 May 1963), p. 1873).

(Foot-notes continued on p. 166)

(iii) *Negotiation of new agreements which expressly replace pre-independence agreements* [211]

81. The Austria—France Agreement of 29 May 1959 which regulated, *inter alia,* Austrian exports to the French "États et Territoires d'Outre-Mer" was automatically prorogued until notice of termination was given. [212] On 26 July 1963 a new Commercial Agreement was initialled by Austria and France, the Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Mauritania and Upper Volta. [213] It expressly stated that it replaced the 1959 Agreement.

82. The Agreement of 29 September 1959 between France (acting on behalf of France and the French Community) and Yugoslavia fixed the terms of trade, *inter alia,* for the Community, the overseas territories and Cameroon and Togo for the year 1 October 1959 to 30 September 1960. [214] On 28 December 1960 a new Agreement was negotiated for the year 1 October 1960 to 30 September 1961. [215] Twelve African States —Cameroon, Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal and Upper Volta— were parties to the agreement, which expressly stated that it replaced the 1959 Agreement. This new agreement was prorogued on several occasions with application to certain new States. [216]

83. In June 1963 Bulgaria and France and several African States negotiated a long-term agreement (for 1963-1965). The new agreement expressly replaced the 1955 and 1960 agreements discussed above. [217] The parties to the new agreement were Bulgaria and France, the Central African Republic, Chad, Congo (Brazzaville), Ivory Coast and Gabon. [218] This agreement was supplemented and prorogued by instruments signed in 1964 and 1965. [219] A further long-term agreement was concluded in 1966. [220] The Central African Republic, Chad, Gabon, and Mauritania were among the parties. These States, with the exception of Mauritania, have also participated in the 1968 and 1969 Protocols to the agreement. [221]

(iv) *References in post-independence agreements to pre-independence agreements*

84. Most cases come also within this category. Here it remains to note some other cases which do not fit into categories (i), (ii) and (iii), above. The Czechoslovak Agreement of 16 January 1964 [222] (to which six African States were parties) provided that payments were to be made, up to a certain point of time, under the 1946 payments agreement. The Hungary agreement of 1961 [223] (eleven African States parties) contains a similar reference to a 1953 payments agreement as amended in

(Foot-notes from p. 165 continued)

[207] Protocol of 2 April 1960 valid to 31 December 1960 (*MOCI*, No. 2200 (6 April 1960), p. 1139): prorogued for 1961 by Letters of 23 March 1961 (Cameroon, Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mauritania, Niger, Senegal and Upper Volta) (*ibid.*, No. 14 (25 March 1961), p. 649; prorogued for 1962 by Letters of 24 May 1962 (same parties with the exception of Ivory Coast and Senegal) (*ibid.*, No. 138 (2 June 1962), p. 2031); prorogued for 1963 and 1964 by Letters of 2 February 1963 and 6 December 1964 respectively (same parties with added exceptions of Cameroon and Niger) (*ibid.*, No. 215 (27 February 1963), p. 813 and No. 315 (12 February 1964), p. 607); prorogued for 1966 (same parties with added exceptions of Madagascar and Upper Volta) (*ibid.*, No. 560 *(18 June 1966)*, p. 2404). For 1965 see *ibid.*, No. 435 (7 April 1965), p. 1404 (no indication of any African parties). This Agreement might also be included under category (i) above: the 1961 and 1966 Agreements indicate that the Protocol and extensions may have been negotiated in the framework of an Agreement of 26 March 1956.

[208] 1959 Agreement renewed on 17 October 1960 by Agreement of France and Spain (France apparently represented at least some of its former dependent territories on this occasion); subsequent France-Spain Agreements did not, however, apply to the African States, some of which in 1961 concluded *separate* agreements with Spain: see J.-C. Gautron, "Sur quel ques aspects de la succession d'Etat au Sénégal" in *Annuaire français de droit international* (Paris, C.N.R.S.), vol. VIII (1962), pp. 844-845; *MOCI, No. 1* (8 February 1961), p. 31; No. 15 (29 March 1961), p. 702; No. 78 (4 November 1961), p. 3514; France, Secrétariat Général du Gouvernement, *La Documentation française : Chroniques étrangères - Espagne*, No. 237 (30 November 1961), p. 19; and *ibid.*, No. 249 (30 November 1962), p. 23.

[209] 1955 Agreement (*MOCI* No. 1737-8 (7 November 1955), p. 3567) prorogued for 1961 by an Agreement of 22 December 1960 (Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Senegal and Upper Volta), (*ibid.*, No. 2274 (24 December 1960), p. 3958); for 1962 by an Agreement of 14 December 1961 (same parties plus Cameroon, with the exception of Ivory Coast, Mali, Niger and Senegal) (*ibid.*, No. 91 (20 December 1961), p. 4131); for 1963 by Letters of 30 March 1963 (same parties with added exception of Cameroon) (*ibid.*, No. 227 (10 April 1963), p. 1379); for 1964 by Letters of 23 December 1963 (*ibid.*, No. 306 (11 January 1964), p. 143); for 1965 by Agreement of 23 April 1965 (same parties with added exceptions of the Congo (Brazzaville) and Madagascar) (*ibid.*, No. 441 (28 April 1965), p. 1647). The 1968 Agreement applies to France and Switzerland only (*ibid.*, Nos. 715-716 (27 and 30 December 1967), p. 5589.

[210] According to D. Bardonnet ("La succession aux traités à Madagascar", in *Annuaire français de droit international* (Paris, 1967), vol. XII (1966), pp. 666-668), the pre-independence agreements with Romania were also prorogued with application to certain new States.

[211] See also the France-Bulgaria Agreement discussed in para. 76 above.

[212] *MOCI*, No. 2115 (17 June 1959), p. 2059; see also *ibid.*, No. 2175 (9 January 1960), p. 120.

[213] *Ibid.*, No. 260 (3 August 1963), p. 3022.

[214] *Ibid.*, No. 2148 (10 October 1959), p. 3370.

[215] *Ibid.*, No. 2278 (7 January 1961), p. 53. See also the earlier prorogation for three months of the 1959 Agreement (*ibid.*, No. 2252 (5 October 1960), p. 3105).

[216] *Ibid.*, No. 71 (11 October 1961), p. 3183; No. 174 (6 October 1962), p. 3582; No. 193 (12 December 1962), p. 4416. Six African States were parties to this final (1963) instrument. See also the six year Agreement of 25 January 1964 to which six African States are parties (*ibid.*, No. 312 (1 February 1964), p. 433).

[217] See para. 76 above.

[218] *MOCI*, No. 252 (6 July 1963), p. 2633. Note that Gabon, which was not a party to the 1961 Protocol, signed this new agreement.

[219] *Ibid.*, No. 355 (1 July 1964), p. 2621 and No. 472 (14 August 1965),

[220] *Ibid.*, No. 538 (2 April 1966), p. 1360.

[221] *Ibid.*, No. 761 (26 June 1968), p. 2928 and No. 845 (24 April 1969), p. 1736.

[222] See para. 77 above.

[223] *MOCI*, No. 32 (27 May 1961), p. 1465.

1956. Norwegian agreements of 1961 and 1966 (twelve and six African parties respectively) [224] affirmed the role of the Mixed Commission set up under an agreement of 1956. The Polish Agreements of December 1960, 1962, 1963 and 1964-1965 [225] (thirteen, nine, five and six African States parties respectively) provided for payments in accordance with a financial convention of February 1960. It might also be noted that the Greece and Iceland agreements [226] provided for payments in accordance with the European Payments Convention of 1955.

85. Agreements concluded by France with three other countries might finally be mentioned. [227] They provide cases of the negotiation of new agreements, applicable to the new States, taking the place of—although not expressly abrogating—pre-independence agreements which applied to the territories in question. A commercial agreement concluded on 17 February 1960 [228] for 1960 between Poland and the French Republic and the Community (the Government of France acted on behalf of both) granted Poland the right to export listed goods, *inter alia*, to the Community. In a new agreement signed on 10 December 1960 [229] Poland and France, Cameroon, the Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Mauritania, Madagascar, Mali, Niger, Senegal and Upper Volta determined their trade arrangements for 1961. Protocols concluded for 1962, for 1963, and for 1964 and 1965 [230] were also signed by several of the above African States: all the above listed thirteen States other than the Ivory Coast, Mali, Niger and Senegal in 1962; the Central African Republic, Chad, Congo (Brazzaville), Gabon and Madagascar in 1963; and the Central African Republic, Chad, Congo (Brazzaville), Gabon, Mauritania and Upper Volta in 1964.

86. A somewhat similar chain of events resulted from the expiry in 1960 of the France—Portugal Agreement of 5 August 1959. [231] France and Portugal on 11 July 1960 signed a Protocol which, like the Agreement, applied to the whole of the Franc zone other than Morocco and Tunisia, and which had effect to the end of the year. [232] In 1961 a further protocol was signed to regulate commerce for that year. [233] It applied to Cameroon, the Central African Republic, Chad, Congo (Brazzaville), Dahomey, Gabon, Ivory Coast, Mauritania, Madagascar, Niger, Senegal and Upper Volta. France signed for five of these States (Cameroon, Ivory Coast, Mauritania, Niger and Upper Volta). The remainder signed the protocol themselves. [234]

87. An agreement between France (acting on behalf of France and the Community) and Greece, effective for the period 1 July 1960-30 June 1961, was signed on 28 June 1960 (during the period in which the French African territories were becoming independent). [235] The new agreement, regulating trade between 1 July 1961 and 30 June 1962, [236] was signed by Cameroon, Central African Republic, Chad, Dahomey, Ivory Coast, Mauritania, Madagascar, Niger, Senegal and Upper Volta.

(v) *Denial of continued participation in pre-independence agreements*

88. Continued participation of new States in commercial agreements applied to their territories, before they became independent, seems to have been denied by the other party with regard to the long-term France-USSR Agreement of 15 July 1953. According to one commentator (writing about Madagascar):

> During the colonial period, [commercial relations] were governed by the long-term France-USSR Agreement of 15 July 1953, which had been renewed periodically and supplemented in the meantime. The protocol, applicable to 1960, had been signed in Moscow, on 1 December 1959 "for the French Republic and the Community". Since no negotiations were held for 1961, the quotas were fixed on the basis of the provisions in the earlier protocol. On 29 December 1961, the Malagasy Government agreed to participate in the negotiations between France and the Soviet Union to decide the quotas for 1962. When the plenipotentiaries met in Paris in February 1962, however, the Soviet delegates refused to negotiate with the African and Malagasy representatives, because the African and Malagasy States had become independent since the signature of the previous protocol and no longer had to negotiate on a Franco-African basis. A few days later, a member of the Soviet Embassy in Paris contacted a Malagasy delegate and explained the Soviet viewpoint to him. In particular, he suggested that a bilateral trade agreement should be concluded between the USSR and Madagascar, based in principle on balanced trade but with the possibility of exceptions in favour of Madagascar, and that there should be a "strictly commercial" Soviet delegation at Tananarive. A decision had to be taken, since the Franco-Soviet protocol existing on 31 December 1961 could be considered as applicable until 31 December 1962, in so far as the foreign currency needed for the application of the protocol in 1962 had been set aside under the import programme. After lengthy consideration of the economic and political issue involved, the Council of Ministers decided to continue the negotiations with the Soviet Union and a trade agreement for a period of three years renewable by tacit consent for a further period of three years unless denounced six months before its

224 See foot-note 207 above.

225 *MOCI*, No. 102 (27 January 1962), p. 345; No. 220 (16 March 1963), p. 1037; and No. 296 (7 December 1963), p. 4761. See further No. 496 (3 and 6 November 1965), p. 4009; No. 712 (16 December 1967), p. 5431; No. 834 (17 March 1969), p. 1174.

226 See foot-notes 204 above and 235 below.

227 The Agreement with Hungary (foot-note 223 above) could be included here as well.

228 *MOCI*, No. 2187 (24 February 1960), p. 621.

229 *Ibid.*, No. 2275 (28 December 1960), p. 4006.

230 See foot-note 225 above.

231 *MOCI*, No. 2131 (12 August 1959), p. 2679; see also No. 2212 (21 May 1960), p. 1605.

232 *Ibid.*, No. 2227 (13 July 1960), p. 2201; see also No. 2283 (25 January 1961), p. 288 (extension to 31 March 1961 by Exchange of Letters between French Ambassador at Lisbon and Portuguese authorities).

233 *Ibid.*, No. 24 (29 April 1961), p. 1101.

234 *Ibid.*, No. 101 (24 January 1962), p. 311 and No. 313 (February 1964), p. 513.

235 *Ibid.*, No. 2228 (16 July 1960), p. 2241.

236 *Ibid.*, No. 52 (5 August 1961), p. 2406.

expiry, was eventually signed at Tananarive on 23 October 1964. [237]

Summary

89. The fourteen States in Africa for the international relations of which France was responsible and which became independent during 1960 have, since independence, participated in actions affecting pre-independence commercial agreements concluded by France, and, in some cases, payments agreements which formerly applied to their territory. [238] This practice, supporting the continued application of these pre-independence agreements which, it will have been noted, were often concluded when independence was in prospect, is consistent with the following views expressed by two commentators who have examined the practice of *Madagascar* and *Senegal*:

> In principle, the Malagasy Government did not expressly reject any of France's trade agreements when it attained independence. [239]

> It appears that, upon attaining independence, Senegal did not expressly reject any trade agreement; indeed, several agreements were renewed, which presupposes implicit accession to the original agreements concluded by France. This situation is gradually disappearing, as Senegal concludes new agreements with third States. [240]

As seen above, it seems that generally the other parties to the agreements (along with France) have accepted that these newly independent African States continue to participate in the commercial agreements in question.

90. The means of participation of most African States could be summarized as follows: (*a*) agreements concluded as late as October 1960 [241] were signed by France alone or on behalf of itself and the Community or on behalf of all the countries of the Franc zone other than Morocco and Tunisia; (*b*) thereafter either French representatives were expressly authorized to represent and sign the agreements on behalf of the new States or the agreements were signed by representatives of new States. When a new State decided not to participate in the renewal of an agreement, a separate agreement was frequently negotiated with the other party to the original agreement.

91. So far as the substance of the agreements is concerned, it might be noted that the list of goods in respect of which import licences were to be granted by the new States was often subject to a provision to the following effect:

> Because of the changes which have taken place in the pattern of trade of these States, the quotas in this list are merely indicative.

Nevertheless, those States usually recorded their intention to maintain traditional commercial patterns. [242]

92. One factor which may be relevant to the continued participation of the new States in the above agreements is their undertaking, in agreements with France, to co-operate, *inter alia*, in the field of trade. Thus, several declared their wish to pursue their development in close association with France, while benefiting from the trade possibilities offered by other countries, and all undertook either to co-ordinate their external economic, monetary and financial policies, or to consult with this end in view. Provision was made in some cases for the establishment of a mixed commission to supervise this process. At the same time each State retained intact, according to the agreements, the economic, monetary and financial powers of sovereign States. [243] Further, in diplomatic conventions, treaties of co-operation and agreements of co-operation concerning foreign policy, each of the new States agreed with France that the latter would, at the State's request, "represent it in relations with States and organizations in which it does not have its own representation". In such cases, the French diplomatic and consular agents

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[237] D. Bardonnet, *op. cit.*, pp. 668-669. For the long-term Agreement of 11 February 1957 and Protocols of 14 November 1958 and 21 January 1961 (applicable to 1959 and 1960-1962), see: *MOCI*, No. 1872 (18 February 1957), p. 547; No. 2056 (22 November 1958), p. 3769; and No. 2282 (21 January 1961), p. 229.

[238] Togo would appear to have been involved in only two of the above cases. It was a trust territory and not a part of the Community (see, for example, annex I, paragraphs 3 and 4, to the France-Israel Protocol of 21 January 1960, *MOCI*, No. 1566 (23 July 1953), p. 1943). Cameroon however was a party to several of the later instruments. It might be noted here that Algeria did not participate in any of the above subsequent actions after it became independent in July 1962.

[239] D. Bardonnet, *op. cit.*, p. 664. He reviews the various steps which have been taken relevant to the pre-independence agreements.

[240] J.-C. Gautron, *op. cit.*, p. 845.

[241] See its agreements with Hungary of 30 October 1960 (*MOCI*, No. 2269 (7 December 1960), p. 3773); and with Japan of 28 October 1960 (*ibid.*, No. 2261 (9 November 1960), p. 3480).

[242] Agreement with Denmark of 22 March 1961 (*MOCI*, No. 14 (25 March 1961), p. 652). Similar provisions are to be found in the agreements for 1962, 1963, 1964, 1965 and 1966. See also the Agreements with Austria of 1963; with Finland of 1961, 1962, 1963, 1964, and 1965; with Ireland of 1961, 1962, 1964, 1966 and 1967; with Norway of 1961, 1962, 1963 and 1966; with Portugal of 1961; with Sweden of 1961, 1963 and 1965; with Switzerland of 1961, 1963 and 1965 and with Yugoslavia of 1964.

[243] See the agreements on co-operation in economic monetary, and financial matters concluded by France with Cameroon, 13 November 1960 (France, *Journal officiel de la République Française : Lois et décrets* (Paris), 93rd Year, No. 186 (9 August 1961), p. 7429); Central African Republic, Chad and Congo (Brazzaville), 13 August 1960 (*ibid.*, 92nd Year, No. 273 (24 November 1960), p. 10459); Dahomey, 24 April 1961 (*ibid.*, 94th Year, No. 30 (6 February 1962), p. 1277); Gabon, 17 August 1960 (*ibid.*, 92nd Year, No. 273 (24 November 1960), p. 10480); Ivory Coast, 24 April 1961 (*ibid.*, 94th Year, No. 30 (6 February 1962), p. 1262); Madagascar 27 June 1960 (*ibid.*, 92nd Year, No. 167 (20 July 1960), p. 6612); Federation of Mali, 22 June 1960 (*ibid.*, p. 6634) [after the breakdown of the Federation, *Senegal* declared that it considered itself bound, *inter alia*, by this Agreement; *Mali* denounced the Agreements and later, in March 1962, concluded a new Agreement on Co-operation in Economic, Monetary and Financial Matters (*ibid.*, 95th Year, No. 185 (8 August 1963), p. 7354)]; Mauritania, 19 June 1961 (*ibid.*, 94th Year, No. 30 (6 February 1962), p. 1328); Niger, 24 April 1961 (*ibid.* p. 1292); Togo, 10 July 1963 (*ibid.*, 96th Year, No. 134 (10 June 1964), p. 5000); and Upper Volta, 24 April 1961 (*ibid.*, 94th Year, No. 30 (6 February 1962), p. 1307).

were to act in accordance with the directions and instructions of the new State. [244]

93. These agreements were concluded in most cases some little time after independence, and after some of the events set out above occurred. However, several of the new States, on independence, also signed agreements containing transitory provisions intended to remain in effect until co-operation agreements entered into force. They contained an article to the following effect:

> The existing régimes for trade and the issue of currency, the arrangements for co-operation within the franc zone, the status of property and the general organization of sea and air transportation and telecommunications shall remain the same. [245]

The significance of this close relationship of co-operation is emphasized by the fact that in some instances post-independence agreements have been applicable to particular States which were not parties to intervening post-independence instruments.

25. *Madagascar*

France—United States Convention of Commerce and Navigation (1822) [246]

94. This Convention, which became applicable to Madagascar in 1896, [247] is listed in United States, *Treaties in Force,* which also reproduces the Malagasy Note of 4 December 1962 concerning succession to treaties. [248]

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

26. *Indonesia*

95. The Financial and Economic Agreement signed by Indonesia and the Netherlands at their Round Table Conference in December 1949 provided, in article 21, paragraph 7, that

> The trade and monetary agreements in force at the transfer of sovereignty shall, as far as these agreements concern Indonesia, be taken over and implemented by the Government of the Republic of the United States of Indonesia. [249]

The Agreement then listed trade agreements with twenty-four States and monetary agreements with twenty-six. Most of the trade agreements were short term: only two were indefinite in term and, of the remainder, only one lasted beyond 1950. The list does not include long-term treaties and conventions of commerce and navigation.

96. In 1955 it was said that in the majority of cases the nomination of an Indonesian delegation to the mixed commissions established under the Netherlands commercial agreements has been recognized by the other party. Also, Indonesia has always taken the necessary steps to give effect to the commercial and monetary agreements concluded by the Netherlands. [250] In 1956 the Republic of Indonesia adopted a law purporting to abrogate all the agreements adopted at the Round Table Conference of 1949. [251]

Czechoslovakia—Netherlands Commercial Arrangement (1949)

97. A Protocol signed by Czechoslovakia, Indonesia and the Netherlands on 15 July 1950 [252] began

> In accordance with articles 1, 2 and 22 of the Statute of the Union between the Republic of the United States of Indonesia and the Kingdom of the Netherlands and by virtue of article 21 of the Financial and Economic Agreement attached thereto; ... with which the Government of the Czechoslovak Republic is familar ...

an Indonesian delegation had participated in the commercial negotiations. Article 1 of the resulting Protocol provided that the provisions of the 1949 Agreement "shall also apply" to the exchange of goods between Czechoslovakia and Indonesia. Under article 2, the Mixed Commission provided for in the 1949 Agreement

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244 The relevant conventions, agreements and treaties were signed at the same time as, and published in the *Journal officiel* along with, the agreements listed in the previous footnote.

245 Article 4 of the France—Madagascar Agreement of 2 April 1960 (France, *Journal officiel ... (op cit.),* 92nd Year No. 153 (2 July 1960), p. 5968). For similar examples, see the Agreements with the Central African Republic, 12 July 1960 (*ibid.,* 92nd Year, No. 176 (30 July 1960), p. 7042); Chad, 12 July 1960 (*ibid.,* p. 7044); Congo Brazzaville), 12 July 1960 (*ibid.,* p. 7043); Gabon, 15 July 1960 (*ibid.,* p. 7048); 92nd Year, No. 153 (2 July 1960), p. 5969).

246 United States of America, *Treaties, Conventions, International Acts ... 1776-1909 (op. cit.),* vol. I, p. 521.

247 When France annexed Madagascar it stated that the annexation abrogated the Madagascar-United States Treaty of 1881 which was "inconsistent with the present order of things", and had the effect of extending to Madagascar, France-United States treaties. See United States of America, Department of State, *Papers relating to the Foreign Relations of the United States, with the Annual Message of the President Transmitted to Congress December 7, 1896, and the Annual Report of the Secretary of State* (Washington D.C., U.S. Government Printing Office, 1897, pp. 117-135 (especially pp. 123 and 133); see also A.-Ch. Kiss, *Répertoire de la pratique française en matière de droit international public* (Paris, C.N.R.S, 1966), t. II, pp. 437-439.

248 See United States of America, Department of State, *Treaties in Force ... 1970 (op cit.),* p. 147. For the text of the Malagasy Note, see also *Yearbook of the International Law Commission; 1970,* vol. II, p. 121, document A/CN.4/229, para. 102.

249 United Nations, *Treaty Series,* vol. 69, p. 248. See also the more general provision in article 5 of Agreement on Transitional Measures (*ibid.,* p. 268).

250 H. F. Van Panhuys, "La succession de l'Indonésie aux accords internationaux conclus par les Pays-Bas avant l'indépendence de l'Indonésie", in *Nederlands Tijdschrift voor Internationaal Recht* (Netherlands International Law Review) (Leyden), vol. II (1955), January 1955, pp. 55, 70 and 73.

251 See United Nations, *Materials on Succession of States (op. cit.),* p. 36. Note also that according to one writer it appears that no question has ever been officially raised in Indonesia that [the treaties concerning shipping and commerce which affected it at the time of independence] are not still in force ..." D. P. O'Connell, *op. cit.,* vol. II, p. 138, who refers to a list of treaties prepared by an official of the Netherlands Indies Ministry of Shipping, Luiking, *De Dienst van Scheepvaart in Indonisië* (n.d.) pp. 259-282).

252 Netherlands, *Tractatenblad van het Koninkrijk der Nederlanden* (The Hague 1951), vol. II, No. 163, p. 2.

would consist of Czechoslovak, Indonesian and Netherlands delegations. Further, under article 9, payments between Czechoslovakia and the Netherlands "shall be made" according to the rules agreed to by Czechoslovakia and the Netherlands in 1946 and 1949. As in the Danish and Swedish agreements discussed below, it was provided that Indonesia could end its participation in the Protocol after 31 December 1950 by giving timely notice. When the Mixed Commission next met in April and May 1951, it consisted only of Czechoslovakia and Netherlands delegations. [253]

Denmark—Netherlands Commercial Agreement (1946)

98. This agreement provided for the establishment of a joint commission which was to meet each year to determine the quotas of imports and exports between the two countries. The Commission met in May 1950 under this provision. Its Protocol concerning the Exchange of Commodities [254] read, in part, as follows:

> In accordance with Articles 1, 2 and 22 of the Union Statute between the Kingdom of the Netherlands and the Republic of the United States of Indonesia of December 27th, 1949 and in virtue of Article 21 of the Financial and Economic Agreement attached thereto of which instruments the Royal Danish Government, after due notification, has taken note, a delegation representing the Republic of the United States of Indonesia has participated in the work as a member of the Commission.
>
> ...
>
> If the Republic of the United States of Indonesia as a result of the consultation foreseen in Article 21 of the Financial and Economic Agreement with the Kingdom of the Netherlands should not be in a position to participate in the Protocol after December 31st, 1950, the Indonesian Delegation will notify the Danish Delegation to that effect before November 30th, 1950. In that case the quotas agreed upon between the two countries shall only be applicable with half of the amounts or quantities indicated in lists III and IV.

The operative provisions of the Protocol recorded the undertakings, *inter alia,* of Denmark and Indonesia relating to the volume of trade between them and lists annexed to it stated the goods, their quantities and their values. The Commissions which met in 1951 and 1952 consisted of representatives of Denmark and the Netherlands only. [255]

Hungary—Netherlands Payments Agreements (1947)

99. By an Exchange of Notes of 31 July and 14 August 1950 between Hungary and the Netherlands a Protocol drawn up by the delegations of Hungary, Indonesia and the Netherlands was confirmed. Under this Protocol, payments between Hungary and Indonesia were to be effected in accordance with the arrangements in the above agreement in force between Hungary and the Netherlands. Further, on 18 April 1951, in a Payments Protocol, Hungary and the Netherlands made provision for the establishment of an account, "Compte marchandise indonésien". [256]

Netherlands—Norway Trade Agreement (1947)

100. Following Indonesia's accession to independence it participated in the operations of the Mixed Commission established under above agreement. In particular, an Indonesian delegation was a party to the negotiations which led to the conclusion of the Protocol of July 1950. A new Protocol of 1951 however was signed only by the delegations of the Netherlands and Norway. [257]

Netherlands—Sweden Commercial Agreement (1947)[258]

101. This agreement also provided for the establishment of a joint commission which would prepare the list of goods to be traded between the two countries. The agreement applied, *inter alia,* to the Netherlands Indies, and remained in effect after 1 January 1949 subject to the right of either party to terminate it by the giving of three months' notice. [259]

102. When the joint commission met in February 1950 it included a delegation representing the Republic of the United States of Indonesia. [260] The Protocol drawn up by the Commission contained passages identical, *mutatis mutandis,* to that already quoted from the Protocol of May 1950 between Denmark, Indonesia and the Netherlands. [261] The provisions in the Protocol were to remain in effect for the Netherlands and Sweden until 1 March 1951 and for Indonesia and Sweden until 1 January 1951. Indonesia was to advise Sweden in the course of November 1950 whether it wished the Protocol to continue to 1 March 1951, in which event the quotas as between those two countries would be increased by one fifth. Again, two of the lists set out the proposed items of trade between Denmark and Indonesia.

103. In April 1951 Indonesia and Sweden concluded a commercial agreement [262] which in structure is very similar to the 1947 Netherlands-Swedish Agreement. The 1951 Agreement—which made no reference to the earlier arrangement—had effect from 1 March 1951. Lists were drawn up by Indonesian-Swedish joint commissions under this 1951 Agreement. [263] At about the same time the Netherlands-Swedish commission met

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[253] *Ibid.*, p. 5

[254] United Nations, *Treaty Series,* vol. 74, p. 95.

[255] Denmark, *Lovtidende for Kongeriget Danmark, 1951,* Part C: *Danmarks Traktater* (Copenhagen, 1952), p. 1124, No. 36, and *ibid., 1952,* Part C: *Danmarks Traktater* (Copenhagen, n.d.), p. 614, No. 33.

[256] Netherlands, *Tractatenblad van het Koninkrijk der Nederlanden* (The Hague, 1951), vol. II, No. 95.

[257] *Ibid.*, No. 77.

[258] Sweden, *Sveriges Överenskommelser med Främmande Makter, 1947* (Stockholm, Norstedt, 1948), No. 48, p. 583.

[259] See also article 6 of the Protocol of 17 November 1949 (*ibid., 1949* (Stockholm, Norstedt, 1952), No. 67, p. 625).

[260] *Ibid., 1950* (Stockholm, Norstedt, 1950), No. 38, p. 781 and note on p. 816.

[261] See para. 98 above.

[262] *Sweden, Sveriges Överenskommelser med Främmande Makter, 1951* (Stockholm, Norstedt, 1953), No. 24, p. 193.

[263] e.g. *ibid.*, and *ibid., 1952* (Stockholm, Norstedt, 1954), No. 26, p. 265.

under the 1947 Agreement and drew up new lists for 1951-1952. [264]

Netherlands—United Kingdom Agreement concerning the Regulation of Trade and Payments between Singapore and the Federation of Malaya and the Netherlands Indies (1948) [265]

104. In 1961, the United Kingdom gave notice to Indonesia, on behalf of Singapore, of the termination of this agreement. The termination was effective on 29 June 1961, [266] on which day the new Basic Arrangements on Trade and Economic Relations signed by Indonesia and Singapore became effective. [267] (The Agreement was not listed in the 1949 Indonesia-Netherlands Financial Economic Agreement.) [268]

(*d*) FORMER NON-METROPOLITAN TERRITORY FOR THE INTERNATIONAL RELATIONS OF WHICH THE UNITED STATES OF AMERICA WAS RESPONSIBLE

27. *Philippines*

Switzerland—United States Trade Agreements

105. In a Note of 2 July 1946, the Minister of Switzerland stated:

> ... in the meantime Switzerland will continue to apply the agreements and regulations which governed the commerce between the two countries prior to the Philippine Declaration of Independence. [269]

In a memorandum of 28 September 1946, the Philippine Secretary of Foreign Affairs expressed agreement with the Swiss statement. [270]

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

1. SECESSION OF FINLAND (1917)

Russia—Sweden Agreements

106. The Exchange of Notes of 11 November 1919[271] by which Finland and Sweden declared that certain agreements concluded between Russia and Sweden were to be deemed to have been valid and to continue to be valid as between Finland and Sweden, listed among those agreements an Exchange of Notes of 26 June 1900 regarding the duty-free importation of consular requisites, [272] and an Agreement of 29 May 1915 regarding the recognition of limited companies. [273]

Russia—United Kingdom Agreements

107. It will be recalled [274] that the United Kingdom was advised that Finland was not bound by the treaties concluded by Russia. Amongst those treaties was one regulating commercial relations between Russia and Zanzibar. [275]

2. ASSOCIATION OF ICELAND WITH DENMARK IN A REAL UNION (1918); DISSOLUTION OF THE UNION (1944)

108. It appears to have been generally accepted [276] that Iceland's constitutional development from an integral part of Denmark, *via* the real union, to full independence had no effect on the continued force of treaties.

109. The list prepared by the Icelandic Foreign Ministry of the treaties in force as of 31 December 1964 includes treaties and agreements concerning trade concluded before 1914 by Denmark with Belgium, Chile, France, [277] Hungary, Italy, Liberia, Netherlands, Norway, Sweden, Switzerland and the United Kingdom [278] (also listed under Canada, Ceylon, India and

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[264] *Ibid., 1951* (Stockholm, Norstedt, 1953), No. 36, p. 253. See similarly the 1952 Protocol (*ibid., 1952* (Stockholm, Norstedt, 1954), No. 11, p. 167).

[265] United Nations, *Treaty Series*, vol. 66, p. 183.

[266] United Kingdom, *Treaty Series* (London, H.M.S.O., 1962), No. 119 (1961), Cmnd. 1627, p. 15.

[267] United Nations, *Treaty Series*, vol. 443, p. 255.

[268] Cf. para. 95 above.

[269] H. B. Yorak, comp., *Philippine Treaty Series: A Collection of the Texts of Treaties and Other International Agreements to which the Philippines is a Party* (Law Center, University of the Philippines, 1968), vol. I (1944-1948), p. 319.

[270] *Ibid.*, p. 320. The correspondence does not indicate what the agreements in question were. Article XIII, paragraph 2, of the 1936 Trade Agreement between Switzerland and the United States of America provided for the most-favoured-nation treatment of trade between the Philippines and Switzerland (United States of America, *The Statutes at Large of the United States of America from January 1935 to June 1936*, vol. XLIX, Part 2 (Washington D.C., U.S. Government Printing office, 1936), p. 3917).

[271] United Kingdom, *British and Foreign State Papers, 1919* (London H.M.S.O., 1922), vol. CXII, p. 1023; see also *Yearbook of the International Law Commission, 1970*, vol. II, p. 122, document A/CN.4/229, para. 108.

[272] S. Lewenhaupt, *Recueil de traités, conventions et autres actes diplomatiques de la Suède entièrement ou partiellement en vigueur au 1er janvier 1926* (Stockholm, Norstedt, 1927), t. II, p. 362. The preface to the second volume of the collection (published by Count Sten Lewenhaupt, Conseiller de Légation, Chef de Section, at the Swedish Ministry of Foreign Affairs) contains the following passages of general import:

> "With regard to the validity of treaties for States created by the dismemberment of other States, the position of the Swedish Government is well known: in the absence of a special and explicit stipulation to the contrary, when a State came into being by breaking away from a political unit already existing, the treaty rights and obligations of that unit vis-à-vis foreign Powers pass *de plano* to the said State, except in the case of agreements which by their very nature can be binding only on the Government of the State which concluded them.
>
> "Nevertheless, this collection reproduces the text of agreements of this kind only when it was clear that their applicability continued to be recognized by both parties concerned.

[273] *Ibid.*, p. 366.

[274] See *Yearbook of the International Law Commission, 1970*, vol. II, p. 122, document A/CN.4/229, para. 109.

[275] See D. P. O'Connell, *op. cit.*, vol. II, p. 99.

[276] See *Yearbook of the International Law Commission, 1970*, vol. II, p. 122, document A/CN.4/229, para. 110.

[277] See also P. Duparc, *op. cit.*, pp. 64-65.

[278] See also article 4 of a 1933 Trade Agreement between Iceland and the United Kingdom:

> "Nothing in this Agreement shall be deemed to affect the rights and obligations arising out of any treaty at present in force between the United Kingdom and Iceland and, in

(*Continued on p. 172*)

South Africa), and trade treaties and agreements concluded between 1918 and 1944 with Austria,[279] Bolivia, Brazil, Czechoslovakia, Finland, Greece,[280] Haiti, Poland, Romania, Spain, the USSR and the United States of America.[281] Seventeen of the twenty-seven listed States have also confirmed that the treaties in question remain in effect. The remainder appear to have taken no position.[282]

3. Peace settlement following the First World War (1919)

(a) *Austria and Hungary*

110. In so far as the question[283] was not regulated by specific provisions in the Peace Settlement, Austria took a generally negative view of treaty continuity[284] and Hungary a positive one.[285] Practice relevant to trade and similar agreements reflects the suggested difference in position of the two States.

Austria/Hungary—Denmark Trade and Navigation Convention (1887)

111. By Notes of 27 and 30 June 1923 Austria and Denmark stated that they were agreed that thenceforward the provisions contained in the above Convenion were to apply to their commercial relations. The exchange was accompanied by an amendment and understanding.[286] Iceland lists the treaty as in force under Hungary—but not under Austria—in its Treaty List.[287]

Austria/Hungary—Germany Commercial and Customs Treaty (1905)

112. The preamble to a provisional agreement concluded by Germany and Hungary on 1 June 1920 to regulate their economic relations read in part as follows:

> Whereas the conditions prevailing at the time of the conclusion of the [above] Treaty [...] have, as a result of the world-war, undergone profound changes which clearly render the continuance of this Treaty impracticable, the [two] Governments ... have decided to enter into the following provisional Agreement...[288]

Austria—Netherlands Treaty of Friendship and Commerce (1867)[289]

113. In Notes of 3 and 5 September 1923, the Dutch and Austrian Governments confirmed that they were in agreement

> in ... stating that, in the commercial relations between the Netherlands and the Austrian Republic, the provisions contained in the [above] Treaty ..., in so far as they have not been modified by the Consular Convention dated November 6, 1922 [290] shall continue ["continuent"] to be applicable.[291]

Austria/Hungary—Sweden and Norway Treaty of Commerce and Navigation (1873) as modified in 1892 and 1911[292]

114. In Notes of 10 November 1924 Austria and Sweden declared that in commercial relations between them the above Treaty "shall continue in force..." with an amendment and understanding.[293] The Treaty with its amendments is accordingly reproduced under Austria in the Swedish collection of treaties in force as at 1 January 1926.[294] That collection also includes the Treaty with its amendments under Hungary, along with a statement made in 1922 by the Hungarian Government to the effect that Hungary, which is said to be identical to the former Kingdom of Hungary, remains bound by the treaties which were in force during the time of the Dual Monarchy.

Austria/Hungary—Switzerland Treaty of Commerce (1906)

115. By its own terms this treaty was to remain in effect until 31 December 1917 and would remain operative thereafter being subject to termination by the giving of one year's notice. Notice to take effect from 6 March

(Foot-note 278 continued)

particular, the Treaty of Peace and Commerce signed at Whitehall on 13 February 1660/1, or the Treaty of Peace and Commerce signed at Copenhagen on 11 July 1670, including the Declaration amending the said treaties signed at Copenhagen on 9 May 1912."

United Kingdom, *Treaty Series* (London, H.M.S.O., 1933), No. 16 (1933), Cmd. 4331, p. 4.

279 See also the Exchange of Notes in 1923 between Denmark ("which is responsible for the conduct of the foreign affairs of Iceland") and Austria, in which they stated their agreement that thenceforward and pending a definitive agreement the Austria-Hungary-Denmark trade and shipping Convention of 1887 was to be applied in relations between Austria and Iceland (League of Nations, *Treaty Series*, vol. XVIII, p. 195). This exchange and the related one concerning Austria-Denmark relations were mainly, if not solely, concerned with the effect of the dissolution of the Dual Monarchy.

280 Article 3 of the Treaty of Commerce and navigation of 28 January 1930 provided that tonnage measurement was to be regulated by a declaration of 18/30 November 1895 (League of Nations. *Treaty Series*, vol. CXVIII, p. 285).

281 The agreement (Trade Agreement of 27 August 1943), concluded between the Regent of Iceland and the President of the United States of America, was signed and entered into force shortly before the termination of the Union. It provided that it was to remain in force for at least three years (United Nations, *Treaty Series*, vol. 29, p. 317). It was amended in 1963 (*ibid.*, vol. 527, p. 45).

282 Bolivia, Brazil, Chile, Czechoslovakia, Finland, Greece, Haiti, Hungary, Liberia and Poland.

283 See *Yearbook of the International Law Commission, 1970*, vol. II, p. 123, document A/CN.4/229, para. 112.

284 See, for example, Ch. Rousseau, *Droit international public* (Paris, Sirey, 1953), p. 283.

285 See, for example, the note addressed by Hungary to Sweden (*Yearbook of the International Law Commission, 1970*, vol. II, p. 123, document A/CN.4/229, para. 115..

286 League of Nations, *Treaty Series*, vol. XVIII, p. 189. See the similar exchange concerning Iceland (*ibid.*, p. 195).

287 Iceland, *Stjórnartídindi, 1964*, (Reykjavik), C 2, No. 17 (31 December 1964), p. 107.

288 League of Nations, *Treaty Series*, vol. VII, p. 219.

289 United Kingdom, *British and Foreign State Papers, 1867-1868* (London, Foreign Office, 1873), vol. LVIII, p. 646.

290 League of Nations, *Treaty Series*, vol. XVII, p. 375. The Convention makes no express references to the 1867 treaty.

291 *Ibid.*, vol. XX, p. 149.

292 S. Lewenhaupt, *op. cit.*, pp. 87 and 91.

293 League of Nations, *Treaty Series*, vol. XXXI, p. 59.

294 See foot-note 272 above.

1920 was given on 7 March 1919, but Hungary and Switzerland, by an Exchange of Notes of April 1921, kept the treaty in effect. At the same time they agreed to abrogate the annexes to the agreement. The treaty, as thus amended, was included in the collection of Swiss laws 1848-1947 under Hungary with a note stating that it is in effect only for Hungary. [295]

Austria/Hungary—Switzerland Treaty of Establishment (1875) [296]

116. By a treaty of 1925, Austria and Switzerland agreed that the 1875 Treaty and others "shall be applied" by the parties. [297] The Treaty is included under Hungary in the Swiss collection of laws 1848-1947. There is no reference to any agreement to keep the treaty in force. [298]

(b) *Czechoslovakia and Poland*

117. The treaties concluded in 1919 relevant to Czechoslovakia and Poland do not suggest the continuity or succession for them of the treaty rights and obligations of Austria-Hungary. [299] This suggestion of non-continuity is also confirmed by practice relating to commercial treaties. Both Czechoslovakia and Poland concluded a great number of treaties of commerce and navigation and trade and customs conventions with States which had concluded similar treaties with Austria-Hungary. These new treaties made no reference to such earlier treaties. [300] Courts in Germany and Poland also agreed that, in the absence of action to the contrary by interested States, Czechoslovakia and Poland would not be bound by Austria-Hungary's treaties.

Austria/Hungary—Germany Treaty of Commerce (1891)

118. This treaty regulated the collection of customs on the border between the two countries. In a case in which it was argued that the treaty was no longer in effect so far as the border between Czechoslovakia and Germany was concerned, the *Reichsgericht* (Supreme Court of the German Reich) held that it was true that as a result of the dissolution of Austria-Hungary one of the parties to the treaty ceased to exist. Czechoslovakia was not the successor to Austria-Hungary. But there was nothing to prevent either Czechoslovakia or Germany from maintaining the contractual relation; this could be expressly agreed; but it could also be achieved tacitly. The Court held that this had actually happened as a result of the actions of the Czechoslovak State. [301]

Austria/Hungary—Russia Treaty of Commerce (1906)

119. The Polish Supreme Administrative Court held that this treaty was not in effect between the Republic of Poland and the Soviet Union as regards such parts of Polish territory as had been under Austro-Hungarian sovereignty: there was a lack of identity of the parties to the treaty; the treaty was binding neither on Poland with regard to Russia nor on Russia with regard to Poland. [302]

Austria/Hungary—Switzerland Treaty of Commerce (1906)

120. In this case the usual pattern appears not to have been followed. On 7 March 1919 (before the Peace Treaties were signed) the Swiss Envoy in Vienna gave notice of the denunciation of the above treaty of commerce. The notice was to take effect one year later. On 6 March 1920, however, Czechoslovakia and Switzerland agreed that the treaty was "re-validated" for successive three-month periods, with the possibility of termination by the giving of one month's notice. [303]

(c) *Yugoslavia*

121. So far as the Allied and Associated Powers were concerned, the question of the continued force of the treaties concluded by Serbia was resolved by treaty in favour of their continuity and their extension to the

[295] League of Nations, *Treaty Series*, vol. VII, p. 235; Switzerland, Chancellerie fédérale, *Recueil systématique ... (op. cit.)*, p. 497. Switzerland and Austria, on 17 August 1946, concluded a Trade Agreement, which makes no reference to the 1906 Treaty (*ibid.*, p. 369).

[296] Switzerland, Chancellerie fédérale, *Recueil systématique ... (op. cit.)* (Berne, 1953), vol. 11, p. 569.

[297] See *Yearbook of the International Law Commission, 1970*, vol. II, p. 123, document A/CN.4/229, para. 116. See also the Agreement between Austria and Switzerland of 5 January 1950 concerning the validity of earlier treaties. It states that the two Governments "have agreed that the following treaties [...] shall remain in force". Amongst the treaties is that of 1875 (Switzerland, *Recueil officiel des lois et ordonnances de la Confédération suisse, Année 1950* (Berne, 1951), p. 87).

[298] Switzerland, Chancellerie fédérale, *Recueil systématique ... (op. cit.)*, vol. 11, p. 639.

[299] See *Yearbook of the International Law Commission, 1970*, vol. II, p. 124, document A/CN.4/229, para. 117.

[300] e.g. Czechoslovakia-Italy (League of Nations, *Treaty Series*, vol. XXXII, p. 183); Denmark-Poland (*ibid.*, vol. XXXI, p. 13); Iceland-Poland (*ibid.*, p. 35); Czechoslovakia-Sweden (*ibid.*, vol. XXXVI, p. 289); Czechoslovakia-Romania (*ibid.*, vol. XV, p. 235); Poland-Switzerland (*ibid.*, vol. XII, p. 305); Czechoslovakia-Greece (*ibid.*, vol. XXI, p. 217 and vol. XXXVIII, p. 291; Czechoslovakia-Netherlands (*ibid.*, vol. XXXI, p. 93); Czechoslovakia-United Kingdom (*ibid.*, vol. XXIX, p. 377); Czechoslovakia-Norway (*ibid.*, vol. XX, p. 355); Bulgaria-Poland (*ibid.*, vol. LX, p. 103); Italy-Poland (*ibid.*, vol. LIX, p. 293); Czechoslovakia-France (*ibid.*, vol. XLIV, p. 21); Czechoslovakia-Switzerland (*ibid.*, vol. LXIV, p. 7).

[301] Customs House (State Succession) Case (1922). See J. Fischer Williams and H. Lauterpacht, ed., *Annual Digest of Public International Law Cases, 1919-1922* (London, 1932), vol. I, p. 68 and *Yearbook of the International Law Commission, 1963*, vol. II, p. 108, document A/CN.4/157, paras. 114-115. For a further decision of the Reichsgericht in a similar case in 1932, see *ibid.*, para. 116.

[302] Gil *v.* Polish Ministry of Industry and Commerce (1923). See J. Fischer Williams and H. Lauterfracht, ed, *Annual Digest ... (op. cit.), 1923-1924* (London, 1933), vol. 2, p. 83 and *Yearbook of the International Law Commission, 1963*, vol. II, p. 108, document A/CN.4/157, paras. 112-113.

[303] International Law Association, *The Effect ... (op. cit.)*, p. 20. For related action by Hungary and Switzerland concerning the same treaty, see para. 115 above.

whole of the territory of the Kingdom. [304] The same attitude seems to have been taken generally by the Kingdom of Serbia. Croats and Slovenes and by those States which were not Allied and Associated Powers.[305]

Norway—Serbia Declaration concerning Commercial Relations (1909) [306]

122. On 1 February 1923, the Serb-Croat-Slovene Minister in London asked the Norwegian Minister whether his Government recognized the above treaty as now being applicable to the whole of the Kingdom or as relating only to that part which concerned Serbia. [307] In his reply the Norwegian Minister stated that his Government considered that the Declaration applied to the whole Kingdom; it would remain in force until denounced. The Serb-Croat-Slovene Minister confirmed that his Government agreed with the Norwegian view.

Serbia—Sweden Declaration concerning Commercial Relations (1907)

123. This Declaration, which provides for reciprocal most-favoured-nation treatment, is listed, under the Kingdom of the Serbs, Croats and Slovenes, in the Swedish collection of treaties in force on 1 January 1926. [308]

Serbia—Switzerland Convention concerning Establishment and Consuls (1888)

124. This Convention is included under Yugoslavia in the Swiss collection of laws 1848-1947. [309]

Serbia—Switzerland Treaty of Commerce (1907)

125. This Treaty, which was included in the Swiss collection of laws 1848-1947 under Yugoslavia, [310] was expressly replaced by a Treaty of Commerce of 27 September 1948. [311]

Serbia—United States Treaty of Commerce (1881) [312]

126. Yugoslavia and the United States of America have acknowledged on several occasions that this treaty remained in effect after 1919. Thus in 1927 there were discussions—ultimately unsuccessful—for the revision of the treaty. [313] At the time of the granting of independence to the Philippines, the United States wished to grant it certain trade preferences. This policy required the beneficiaries of certain of the most-favoured-nation treaties to agree to a waiver of their rights in favour of the Philippines. One of the States which the United States of America approached for such a waiver was Yugoslavia, and both agreed that

> the most-favoured-nation provisions of the Treaty for Facilitating and Developing Commercial Relations between the United States and Yugoslavia signed October 2/14, 1881, shall not be understood to require the extension to Yugoslavia of advantages accorded by the United States to the Philippines. [314]

Article 5 of the United States of America-Yugoslavia Agreement regarding pecuniary claims of the United States and its nationals (19 July 1948) [315] contains the following provision:

> The Government of Yugoslavia agrees to accord to nationals of the United States lawfully continuing to hold, or hereafter acquiring assets in Yugoslavia, the rights and privileges of using and administering such assets and the income therefrom within the framework of the controls and regulations of the Government of Yugoslavia, on conditions not less favourable than the rights and privileges accorded to nationals of Yugoslavia, or of any other country, in accordance with the Convention of Commerce and Navigation between the United States of America and the Prince of Serbia, signed at Belgrade, October 2-14, 1881.

The 1881 Treaty is listed in United States, *Treaties in Force*. [316] Several United States courts have recognized the continued force of the treaty. Thus, the Supreme Court in 1961, referring to the 1948 Agreement, affirmed that the 1881 Treaty was still in effect between the United States and Yugoslavia. [317]

4. Establishment of the Mandate for Western Samoa (1920)

Convention between the United States, Great Britain and Germany, relating to Samoa (1899) [318]

127. Under this Convention, United States nationals in Western Samoa were entitled to national treatment in

[304] See *Yearbook of the International Law Commission, 1970*, vol. II, p. 124, document A/CN.4/229, para. 121; and, for example, the Exchange of Notes of 18 June 1926 between the United Kingdom and the Serb-Croat-Slovene State (League of Nations, *Treaty Series*, vol. LVII, p. 23).

[305] See, for example, the passage from the Serb-Croat-Slovene Note of 29 September 1921 to the United States of America, quoted in *Yearbook of the International Law Commission, 1970*, vol. II, p. 124, document, A/CN.4/229, para. 121.

[306] G. F. de Martens, ed., *Nouveau Recueil général de traités* (Leipzig, Weicher, 1911), 3rd series, t. V, p. 461.

[307] *Ibid.*, (Leipzig, Weicher, 1931), 3rd series, t. XXIV, p. 651.

[308] S. Lewenhaupt, *Recueil des traités ... 1926 (op. cit.)*, vol. II, p. 899.

[309] Switzerland, Chancellerie fédérale, *Recueil systématique ... (op. cit.)*, vol. 11, p. 724.

[310] *Ibid.*, vol. 14, p. 665.

[311] Switzerland, *Recueil officiel des lois et ordonnances de la Confédération suisse, Année 1948* (Berne, 1948), p. 986.

[312] United States of America, *Treaties, Conventions, International Acts ... 1776-1909 (op. cit.)*, vol. II, p. 1613.

[313] United States of America Department of State, *Foreign Relations of the United States, 1927*, vol. III (Washington D.C., *U.S. Government Printing Office, 1942)*, pp. 828-865. See also G. H. Hackworth, *Digest of International Law* (Washington D.C., Government Printing Office, 1943), vol. V, p. 375.

[314] Exchange of Notes of 4 May and 3 October 1946 (United Nations, *Treaty Series*, vol. 13, pp. 86 and 88).

[315] *Ibid.*, vol. 89, p. 43.

[316] United States of America, Department of State, *Treaties in Force ... 1970 (op. cit.,)* p. 254.

[317] Kolovrat *v.* Oregon (1961). See United States Supreme Court, *United States Reports*, vol. 366: Cases Adjudged in the Supreme Court at October Term, 1960 (Washington D.C., U.S. Government Printing Office, 1961), pp. 187, 190 and foot-note 4; and *Yearbook of the International Law Commission, 1963*, vol. II, p. 111, document A/CN.4/157, paras. 135-136. See also the court decisions mentioned by M. M. Whiteman (*op. cit.*, p. 944).

[318] United States of America, Department of State, *Papers relating to the Foreign Relations of the United States, with*

certain respects. Following the First World War, Samoa, until then a German colony, became a mandated territory administered by New Zealand. New Zealand introduced a preferential tariff system which, it was said, discriminated against United States nationals, contrary to the provisions of the Convention. In the dispute which followed, New Zealand deferred to the opinion of the Law Officers of the Crown in England that Samoa's transition from German sovereignty to mandated status did not affect the obligations created by the Convention. [319]

5. Annexation of Ethiopia (1936) and restoration of its independence

Ethiopia—France Treaty of Friendship and Commerce (1908) [320]

128. The Ethiopian Ministry of Foreign Affairs informed the American Legation by a Note of 6 June 1944 that

> ... this [Ethiopian] Government has no other alternative but to hold that the Convention of the 10th January, 1908, between the Empire of Ethiopia and the Republic of France has been terminated by act of the latter contracting party.

The Minister of the Legation commented that

> The act referred to was the recognition by France of the Italian conquest of Ethiopia, the Treaty being held to have become void by the disappearence of one of the parties thereto, namely Ethiopia, and not to have been revived automatically by the liberation and reconstitution of the country, or by the restoration of the Emperor to his rule and sovereignty, followed by formal recognition of that status by France. [321]

6. Annexation of Austria (1938) and restoration of its independence

129. The State Treaty for the re-establishment of an independent and democratic Austria, signed on 15 May 1955, [322] contains no express comprehensive provision concerning the treaties applicable to Austria before 1938 and between 1938 and 1945, but it appears to follow from the Treaty and to be widely accepted that the treaties concluded before 1938 are, in general, now in effect. [323] The cases recorded below are concerned with the effect, as seen in 1938, of the annexation of Austria on relevant treaties.

Austria—France and France—Germany treaties

130. The legal department of the French Foreign Ministry expressed the following view on 18 March 1938 concerning the situation created by the incorporation of Austria into the German Reich:

> 1. Austria has, in fact, ceased to exist as an independent State.
>
> 2. The Reich in fact exercises its authority over Austria, which it has incorporated by making it a region—which is roughly equivalent to a province—even if this does not preclude at least temporary survival of separate legal, customs, financial and other arrangements.
>
> ...
>
> IV. Fate of treaties concluded with Austria ...
>
> ...
>
> (*b*) If we admit that Austria no longer exists, the consequence is that, in principle and with few exceptions, treaties concluded by Austria have lapsed.
>
> (*c*) If, in addition, we recognize the authority of the Reich in Austria, the consequence is that, in principle and with certain exceptions, the effect of treaties concluded by the Reich would extend to Austria, whether or not this is to our advantage.
>
> Concequences (*b*) and (*c*) may be modified by any special agreements which we may conclude with Germany. [324]

Austria—Netherlands and Germany—Netherlands treaties

131. Following the incorporation in 1938 of Austria into the Reich, Germany and the Netherlands, in an Arrangement signed at Berlin on 25 May 1938, [325] agreed that the German Government was to advise the Dutch Government of the day on which the customs frontier between the former State of Austria and the other parts of the German Reich ceased to exist. From that date, it was agreed,

> the treaties concluded between Germany and the Kingdom of the Netherlands ... shall apply equally to the territory of the former Federal State of Austria save in so far as hereinafter otherwise agreed [article 1].

A further provision stated that the Germany-Netherlands Treaty concerning Clearing Transactions [326] was to apply to the territory of the former Federal State of Austria from 1 June 1938. Finally it was provided that the Government Committees established under the Dutch-German economic treaties were to make any necessary adjustments to quotas.

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the *Annual Message of the President Transmitted to Congress, December 5, 1899* (Washington D.C., U.S. Government Printing Office, 1901), p. 667.

[319] United States of America, Department of State, *Papers relating to the Foreign Relations of the United States, 1924*, vol. II, (Washington D.C., U.S. Government Printing Office, 1939, pp. 245-246. See further *ibid., 1927*, vol. II, (Washington D.C., U.S. Government Printing Office, 1942), pp. 760-775; *ibid., 1928*, vol. II (Washington D.C., U.S. Government Printing Office, 1943), pp. 982-985; *ibid., 1934*, vol. I (Washington D.C., U.S. Government Printing Office, 1951), pp. 1003-1010; and *ibid., 1936*, vol. I: *General: The British Commonwealth* (Washington D.C., U.S. Government Printing Office, 1953), pp. 852-854. New Zealand, it would appear, maintained the discriminatory tariff, but on the ground that because of United States non-compliance with another provision of the Convention New Zealand was released from its obligations, and not on the ground that the Convention had not survived Samoa's change of status.

[320] G. F. de Martens, ed., *Nouveau Recueil général de traités* (Leipzig, Weicher, 1910), 3rd series, t. II, p. 833.

[321] M. M. Whiteman, *op. cit.*, pp. 937-938. The Treaty is listed, however, in P. Duparc, *op. cit.*, p. 46.

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

[323] See *Yearbook of the International Law Commission, 1970*, vol. II, p. 125, document A/CN.4/229, para. 126.

[324] Ch. Kiss, *op. cit.*, p. 435.

[325] League of Nations, *Treaties Series*, vol. CXCII, p. 143.

[326] *Ibid.*, vol. CXC, p. 29.

Austria—United Kingdom Treaty of Commerce and Navigation (1924) [327] *and Germany—United Kingdom Treaty of Commerce and Navigation 1924* [328]

132. In the Notes exchanged between Germany and the United Kingdom "in consequence of the German Law of the 13th March, 1938, relating to the union of Austria with the German Reich" [329] the two Governments confirmed that the German Treaty extended to cover Austria and that the Austrian Treaty had lapsed.

Austria—United States Treaty of Friendship, Commerce and Consular Rights (1928) [330] *and Germany—United States Treaty of Friendship, Commerce and Consular Rights (1923)* [331]

133. Under both Treaties the parties promised to accord to the exports of the other most-favoured-nation treatment. By an amendment to the German Treaty this right was withdrawn in 1935. [332] On the other hand, Austria had continued to obtain the benefit of most-favoured-nation treatment. On 14 April 1938 the German Embassy wrote as follows to the State Department:

> Despite reunion with the Reich, Austria has remained for the present an independent tariff area, at the border of which tariffs are collected according to Austrian laws and treaties. Even for imports from Germany, the tariff line has been maintained for the time being. In this state of affairs, according to Article 2 of the Law on the Reunion, all Austrian treaties with third states concerning trade and payments actually continue to be applied, on the presupposition of reciprocity.
>
> Under these circumstances, the German Government therefore considers itself justified in expecting that upon importation into the United States of America, Austrian goods will continue to be granted the tariff concessions on the basis of the "Trade Agreement Act". The United States Government will be notified in due time by the German Government of the time at which the German tariff and exchange regulations will be extended to Austria.
>
> The German Ambassador would be obliged to the Secretary of State of the United States if all steps required under these circumstances were taken to bring it about that the country of Austria is, up to that time left on the list of those countries enjoying the tariff concessions of the "Trade Agreement Act", the instructions issued to the Treasury Department being changed. [333]

134. In its reply, the Department of State referred to the fact that it had notified the other Departments of the United States Government and the German Government that "for all practical purposes the disappearance of the Republic of Austria as an independent State and its incorporation in the [German Reich] must be accepted as a fact". And the reply continued:

> It is in this relation that the President's letter of April 6 directed the elimination of Austria from the list of countries to the products of which the duties proclaimed on March 15, 1938, in connection with the Trade Agreement signed on March 7, 1938, with Czechoslovakia, and all other duties therefore proclaimed in connection with trade agreements (other than the trade agreement with Cuba signed on August 24, 1934, and the trade agreements with Nicaragua signed on March 11, 1936) signed under the authority of the Trade Agreements Act shall be applied.
>
> In view of the above-stated facts regarding the incorporation of Austria into the German Reich, the Government of the United States does not regard as conclusive on, or even as pertinent to, the execution of the Trade Agreements Act the extent to which German tariff and exchange regulations have been extended to Austria. [334]

The reply went on to point out that in any event the German and Austrian authorities had taken certain steps, which were specified, to reduce Austrian customs autonomy.

135. In a further Note of 27 March 1939, the German Embassy informed the Department of State that the special transitional customs régime applicable to Austria would terminate on 1 April 1939 when a new German tariff applicable to the whole of Germany would go into effect.

> In view of this state of affairs, the German Government believes itself to be in agreement with the Government of the United States, that from that time on the German-American Commercial Treaty of December 8, 1923 ... will apply with all its provisions also to the territory of the former Federated State of Austria ... [335]

136. At present, the 1928 Austrian Treaty is listed under Austria in United States, *Treaties in Force.* [336]

7. Union of Newfoundland with Canada (1949)

Australia—Newfoundland Trade Agreement (1929) [337]

137. The Australian Treaty List of 1956 notes that the above Agreement lapsed following the union of Newfoundland with Canada in 1949 and that the Canada-Australia Trade Agreement of 1931 [338] became applicable to Newfoundland. [339] This is consistent with the general position adopted by Canada concerning the effect of the Union of Newfoundland with Canada on the former's treaties. [340]

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[327] *Ibid.*, vol. XXXV, p. 175.

[328] *Ibid.*, vol. XLIII, p. 89.

[329] *Ibid.*, vol. CXCIV, p. 313. the text of the Notes is set out in *Yearbook of the International Law Commission, 1970*, vol. II, p. 126, document A/CN.4/229, para. 128.

[330] United States of America, *Treaties, Conventions, International Acts...*, vol. IV: *1923-1937 (op.cit.)*, p. 3930.

[331] *Ibid.*, p. 4191.

[332] *Ibid.*, p. 4221.

[333] G. H. Hackworth, *op. cit.*, p. 370.

[334] *Ibid.*, p. 371. See also United States of America, Department of State, *Foreign Relations of the United States: Diplomatic Papers 1938*, vol. II *(op cit.)*, pp. 504-505.

[335] G. H. Hackworth, *op cit.*, p. 377. The United States response, if any, is not reproduced.

[336] United States of America, Department of State, *Treaties in Force ... 1970 (op. cit.)*, p. 13.

[337] Australia, *The Acts of the Parliament of the Commonwealth of Australia, 1939*, (vol. XXXII (Canberra, Commonwealth Government Printer, 1939), p. 151, No. 49.

[338] *Ibid., 1931*, vol. XXIX (Canberra, Commonwealth Government Printer, 1931), p. 33, No. 13; Canada, *Treaty Series, 1931*, No. 5 (Ottawa, 1933).

[339] Australia, *Treaty Series* 1956, No. 1, p. 95,

[340] See above, p. 132, document A/CN.4/243, para. 85.

8. The formation (1953) and dissolution (1963) of the Federation of Rhodesia and Nyasaland

138. Southern Rhodesia, before the formation of the Federation, had certain limited treaty-making powers and had, in its own right, concluded at least three trade agreements which were still in force at the time of the establishment of the Federation. [341] The United Kingdom had also concluded several trade agreements which were either expressly applicable to the constituent territories of the Federation or applied generally to all non-self-governing territories. [342] Accordingly when the Federation was formed the question of succession arose in relation to both groups of treaties. The Federation, although not independent, had limited treaty-making capacity. During the time it was in existence it concluded trade agreements with at least six countries. [343] Agreements with all six were still in force when the Federation was dissolved on 31 December 1963 and accordingly the question of succession arose again at that point. The practice reviewed below relates, first, to the effect of the formation of the Federation and, second, to the effect of its dissolution.

(a) *Effect of formation of the Federation on existing treaties*

Australia—Southern Rhodesia Trade Agreement (1941); [344] *Australia—United Kingdom Trade Agreement (1932)* [345]

139. On 30 June 1955 Australia and the Federation concluded a new trade agreement. [346] According to statements made by the Australian and Federation Governments, the new Agreement replaced the 1941 Agreement and those provisions of the 1932 Agreement which related to the exchange of tariff preferences between Australia and Northern Rhodesia and Nyasaland. [347]

Customs Agreement (1915) between Northern and Southern Rhodesia, on the one hand, and Basutoland, the Bechuanaland Protectorate and Swaziland, on the other, and the Agreement of 1937 (as amended) between Southern Rhodesia and the Bechuanaland Protectorate [348]

140. On 29 June 1955 the High Commissioner of the Federation in London, in a Note [349] to the British Secretary of State for Commonwealth Relations, pointed out that, with the introduction of a new federal customs tariff on 1 July, the above Customs Agreement would become difficult to apply. He proposed a temporary understanding largely based on the above arrangement: the agreement with Bechuanaland would, for that provisional period, apply to the whole of the Federation (other than, in the case of imports, the Congo Basin treaty area),[350] and the existing arrangement with Basutoland and Swaziland would continue. The Secretary of State agreed to this proposal. [351]

New Zealand—United Kingdom Trade Agreement (1932) [352]

141. The principal provisions of this agreement applied only to trade between the metropolitan territories of the two parties. In addition, however, New Zealand undertook, in article 12, to accord, *inter alia,* to the non-self-governing colonies and protectorates certain preferences, on condition of reciprocity. New Zealand and the United Kingdom concluded a new trade agreement in 1959 [353] which, for the most part, [354] superseded the 1932 Agreement. However, the 1959 Agreement provided (article 16) that it was not to have any effect in relation to any territory in the Federation

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341 Agreements with Australia, the Bechuanaland Protectorate, and South Africa.

342 Thus the *Handbook of Commercial Treaties* (see above, foot-note 11) contains many statements to the effect that the treaties in question apply to Northern and Southern Rhodesia and Nyasaland. It appears, however that few if any of these older bilateral treaties were considered to be of practical significance at the relevant times. Thus an ECA paper entitled "Bilateral trade and payments agreements in Africa" (E/CN.14 STC/24 (4 November 1963) and E/CN.14/STC/24/Rev.1 (25 June 1965)), prepared on the basis, *inter alia,* of information provided by the Federation, lists none of them. It was suggested earlier that most of them would in practice be superseded by the GATT (see para. 2 above) and no practice relevant to them has been discovered. Notice, however, that the 1932 Ottawa Agreements concluded by the United Kingdom and other Commonwealth countries (see above, foot-note 100) gave preferences *beyond* those due under the most-favoured-nation clause to be found in the GATT.

343 Australia, the High Commission territories (Basutoland, Bechuanaland Protectorate and Swaziland), Canada, Japan, Portugal and South Africa. See paras. 144-148 below and "Bilateral trade and payments agreements in Africa" (E/CN.14/STC/24 and E/CN.14/STC/24/Rev.1). The revision, although published eighteen months after the dissolution of the Federation, does not indicate the effect of dissolution on the listed treaties.

344 Australia, *The Acts of the Parliament of the Commonwealth of Australia, 1941,* vol. XXXIX (Canberra, Commonwealth Government Printer, 1941), p. 43, No. 10; GATT document L/48 (10 October 1955), annex III, p. 17.

345 Cf. paras. 39-40 above.

346 United Nations, *Treaty Series,* vol. 226, p. 215.

347 GATT, document L/394 (24 August 1955); see also Australia, *Treaty Series,* 1956, No. 1, p. 108.

348 Both reproduced in Federation of Rhodesia and Nyasaland Notice No. 153 of 1955.

349 *Ibid.,* See also the extension (*ibid.,* No. 193 of 1955).

350 This exception is to be found generally in the trade agreements of the Federation before 1963; it was accepted that the treaty of 1885 relating to the Congo Basin (General Act of the Conference of Berlin (26 February 1885): see G. F. de Martens, ed., *Nouveau Recueil général de traités* (Göttingen, Dieterich, 1885-1886), 2nd series, t. X, p. 414) continued to have effect notwithstanding the various changes in the status of the territories affected by it. See for example, in addition to the bilateral agreements, GATT document L/293 (1 December 1954). By 1963 the Contracting Parties to GATT had agreed that the Federation could apply a common tariff to its whole area, thus removing the internal barriers which had existed under the treaty of 1885. See, for example, Federation of Rhodesia and Nyasaland, *Federal Government Gazette Extraordinary* (Salisbury, Government Printer), vol. XI (1963) No. 54 (10 December 1963), p. 498.

351 See foot-note 349 above.

352 United Kingdom, *Imperial Economic Conference at* Ottawa, 1932 ... *(op. cit.).*

353 See foot-note 102 above.

354 See also para. 41 above.

and accordingly, in so far as any provisions of the [1932] Agreement ... may apply in relation to any such territory, they shall continue to be applicable until such time as their application may be terminated in accordance with that Agreement, or until other arrangements are made as a result of discussions between the New Zealand Government and the Government of the Federation of Rhodesia and Nyasaland.

A note in the New Zealand official publication of the Agreement [355] states that the 1932 Agreement and, in particular, article 12 referred to above, applied in respect of the territories now (i.e. in 1959) comprising, *inter alia,* Northern Rhodesia and Nyasaland. The note goes on to explain that notwithstanding the change in constitutional status of these territories (the Federation "enjoys a wider measure of self-government including the responsibility for the conduct of some of its external relations"), the rights and obligations set out in article 12 of the 1932 Agreement continue to have effect pending the making of other arrangements.

Portugal—United Kingdom Agreement (1950) [356]

142. In 1958 the Federation and Portugal, acting pursuant to the provisions of the above agreement which called for negotiations between "the Contracting Parties" to conclude such agreements, signed a trade agreement. [357]

United Kingdom (Southern Rhodesia)—Union of South Africa Customs Union (Interim) Agreement (1948)[358]

143. This agreement provided that it was to remain in effect for five years and that, unless terminated by notice at the end of that time, it would be tacitly renewed for a further five years. On 1 October 1953 the parties, noting that with the formation of the Federation responsibility for trade would pass to the federal authorities, agreed that the agreement would continue until the federal Government established its economic policy, and that the agreement could be terminated at any time on six months' notice. [359] In October 1954 the Governments of the Federation and of South Africa advised GATT that it had not been possible for them to submit by 1 July 1954 a definite plan for the establishment of a customs union, as required by the decision taken by the Contracting Parties in 1949 in reference to the South Africa-Southern Rhodesia Agreement. They requested postponement of any further consideration of the question. [360] In other words they considered that not only the agreement but also the decision continued in effect. [361] Finally, in a joint statement, the two Governments advised that as a result of the forthcoming introduction of its new tariff, the Federation had given the stipulated six months notice of the termination of the 1948 Agreement. [362] A new agreement was accordingly negotiated and was signed on 28 June 1955. [363]

(b) *Effect of dissolution of the Federation on existing treaties*

Australia—Federation of Rhodesia and Nyasaland Trade Agreement (1955)

144. By Notes exchanged on 27 and 30 December 1963, [364] Australia and the Federation agreed that the 1955 Agreement, as amended, would "continue to apply on a provisional basis as between Southern Rhodesia and the Commonwealth of Australia". The two Notes were said to constitute an Agreement between the Government of Australia and the Government of Southern Rhodesia. On 31 December 1965, Salisbury announced that the provisions of the 1955 Agreement, as amended, "which have been continued by the Government of Rhodesia since the dissolution of the said Federation shall cease to have effect as from the 31st December, 1965". [365]

Agreements between the High Commission Territories (Basutoland, Bechuanaland Protectorate and Swaziland) and the Federation of Rhodesia and Nyasaland

145. On 14 and 27 November 1963 the Federation, which was to be dissolved a few weeks later, and the Bechuanaland Protectorate concluded a new agreement. [366] On 23 June 1964 Southern Rhodesia proposed that this agreement continue to apply to Southern Rhodesia, with effect from the dissolution of the Federation and with the reduction of Southern Rhodesia's import quota depending on the quotas of Northern Rhodesia and Nyasaland. This proposal was accepted. [367]

[355] For the reference, see foot-note 103 above.

[356] See GATT document L/914 (14 November 1958), where it is noted that with the creation of the uniform Federal tariff the application of the earlier arrangements between Southern Rhodesia and Mozambique was necessarily extended to the whole Federation.

[357] GATT document L/1026 (7 August 1959).

[358] United Nations, *Treaty Series,* vol. 118, p. 183; see also foot-note 363 below as to the 1930 Trade Agreement, between Northern Rhodesia and South Africa (text in GATT document L/418 (10 October 1955), annex II, p. 9).

[359] GATT Document L/152 (1 October 1953).

[360] GATT document L/259/Rev.1 (28 October 1954).

[361] The Contracting Parties and the Executive Secretary also shared this view concerning the decision: see, for example, (*a*) the decision of the Contracting Parties of 17 November 1954 in which they took into consideration the exceptional circumstances which prevented the Governments of South Africa and of the Federation of Rhodesia and Nyasaland, "which succeeded to the rights and obligations of Southern Rhodesia under the Agreement," from submitting the plan required by the 1949 decision, and authorized the two Governments to continue to avail themselves of that decision until the next session of the Contracting Parties (GATT documents L/288 (23 November 1954) and G/91 (29 March 1955), p. 8); and (*b*) the Executive Secretary's view that the termination of the 1948 Agreements "renders invalid" the 1949 decision relating to it (GATT document L/426 (19 October 1955), p. 5).

[362] GATT document L/345 (4 March 1955).

[363] United Nations, *Treaty Series,* vol. 267, p. 270. It may be that this agreement replaced the 1930 Northern Rhodesia-South Africa Agreement: the Executive Secretary in his note on the new tariff and the agreements with Australia and South Africa expressly states that it did (GATT document L/426 (19 October 1955)).

[364] Australia, *Treaty Series,* 1964, No. 2.

[365] Rhodesia, Government Notice No. 895 (1965).

[366] Federation of Rhodesia and Nyasaland, Government Notices Nos. 372 and 373 of 1963.

[367] Southern Rhodesia, Government Notice No. 602 (1964).

Canada—Federation of Rhodesia and Nyasaland Trade Agreement (1958) [368]

146. In this agreement, the Federation, in consideration of Canada's continuing to extend the benefits of the British preferential tariff to it, made certain trade concessions. Following the dissolution of the Federation, the Canadian Government took the view that the Territories were bound by the Federation's treaties and that accordingly an exchange confirming devolution (such as those between Southern Rhodesia and Australia and South Africa) was unnecessary. [369] On 31 December 1965, Salisbury announced that the provisions of the 1958 Agreement "which have been continued by the Government of Rhodesia since the dissolution of the said Federation shall cease to have effect as from the 31st December, 1965". [370]

Japan—Federation of Rhodesia and Nyasaland Trade Agreement 1963

147. This agreement, which was concluded at a time when the dissolution of the Federation was already planned, provided that it would remain in effect until 1 August 1964 and that thereafter it could be further extended by agreement. In a Note of 1 August 1964 Southern Rhodesia proposed, in accordance with this provision, that the agreement "which is now in force between two Governments" should be extended until the end of the year. Japan agreed to this proposal. [371]

Federation of Rhodesia and Nyasaland—Union of South Africa Trade Agreement (1960) as amended [372]

148. On 23 December 1963 the Governments of South Africa and Southern Rhodesia agreed, in view of the pending dissolution of the Federation and the reversion to the Southern Rhodesian Government of functions relating to customs and excise, that the above Agreement "continue to apply as between Southern Rhodesia and the Republic of South Africa" until new terms were agreed upon. [373] On 30 November 1964 Southern Rhodesia and South Africa concluded a trade agreement, [374] article 15 of which provided in part as follows:

> on the coming into operation of this Agreement, the provisions of all former agreements relating to trade between the countries of the parties shall cease to have force or effect.

The subsidiary legislation enacted to give effect to this agreement in Southern Rhodesia [375] indentifies the 1960 Agreement (as amended) as the "former agreements" and repeals the legislation giving effect to them.

368 United Nations, *Treaty Series*, vol. 392, p. 27.

369 D. P. O'Connell, *op. cit.*, vol. II, p. 175.

370 Rhodesia, Government Notice No. 894 (1965).

371 Southern Rhodesia, Government Notice No. 1183 (1964).

372 United Nations, *Treaty Series*, vol. 376, p. 217; amendment of 2 February 1961 (*ibid.*, vol. 394, p. 314), amendment of 27 February 1963 (GATT document L/1993 (23 April 1963).

373 GATT document L/2211 (21 April 1964).

374 Southern Rhodesia, Government Notice No. 811 (1964).

375 *Ibid.*

9. Formation of the United Arab Republic (1958) and separation of the Syrian Arab Republic (1961)

149. It will be recalled that the United Arab Republic and the Syrian Arab Republic took the general position in domestic instruments and in diplomatic correspondence that the formation of the Union in 1958 and the separation of Syria in 1961 had no effect on the continued application of the treaties concluded before either of those two dates. This general position is supported by specific practice relating to commercial treaties.

Bulgaria—Syria Trade Agreement (1956)

150. A long-term trade agreement signed by Bulgaria and the Syrian Arab Republic on 12 June 1966 [376] provided that it replaced the 1956 Agreement.

Ceylon—United Arab Republic Trade and Payments Agreement (1960)

151. A Trade and Payments Agreement signed by Ceylon and the Syrian Arab Republic on 9 October 1966 provided that upon its coming into force the 1960 Agreement and a related Exchange of Notes "shall cease to be valid in so far as they apply to the Syrian Arab Republic". [377]

Chinese People's Republic—Egypt Commerce Agreement (1955) and Payments Agreement (1956); and Chinese People's Republic—Syria Commerce Agreement and Payments Agreement (1955) as modified

152. On 15 December 1958, the Chinese People's Republic and the United Arab Republic signed new commerce and payments agreements. They expressly state that they replace the agreements listed above. [378]

Czechoslovakia—Egypt Trade Agreement (1930) [379] *and Czechoslovakia—Syria Treaty of Commerce (1952)*

153. A Treaty of Commerce and Navigation, providing for most-favoured-nation treatment, was signed by Czechoslovakia and the United Arab Republic on 7 February 1959. [380] It expressly provided that the above two agreements "shall cease to be valid" on the entry into force of the Treaty.

Czechoslovakia—Egypt Payment and Trade Agreements (1955 and 1957) and Czechoslovakia—Syria Long-Term Trade Agreement (1957)

154. Czechoslovakia and the United Arab Republic concluded new payments and trade agreements on 28 October 1959. [381] The payments agreement expressly replaced the 1955 Czechoslovakia-Egypt Payments Agreement. The trade agreements of 1955 and 1957

376 *Recueil des accords internationaux syriens*, No. 252.

377 *Ibid.*, No. 265.

378 *Ibid.*, No. 109. Note that the 1958 Agreement referred to the 1956 Agreement between the *Ex*-Republic of Egypt ... etc.

379 League of Nation, *Treaty Series*, vol. CVII, p. 179.

380 United Nations, *Treaty Series*, vol. 372, p. 243.

381 *Recueil des accords internationaux syriens*, No. 120.

were also replaced by the new trade agreement, with limited exceptions: scientific and technical co-operation would still be governed by the Protocol annexed to the Syrian Agreement (and by the Czechoslovakia-Egypt Agreement of 6 May 1957), a further provision of the Syrian Agreement would remain in effect, and contracts already entered into would remain subject to the old agreements.

Egypt—German Democratic Republic Long-Term Agreement (1955) and German Democratic Republic —Syria Commerce and Payment Agreement (1955)

155. On 13 December 1958, the German Democratic Republic and the United Arab Republic concluded a long-term agreement for the development of commercial exchanges. It expressly provided that it replaced the above 1955 instruments.[382] At the same time a new payments agreements was signed. In 1965, the German Democratic Republic and the Syrian Arab Republic concluded new long-term trade and payments agreements which expressly replaced the 1958 instruments.[383]

Egypt—Greece Trade Agreement (1955)[384]

156. The Mixed Commission established by this agreement continued to meet after the formation of the United Arab Republic. Thus on 3 August 1961 the Greece—United Arab Republic (Egyptian Region) Commission concluded an Additional Protocol No. 3.[385]

Egypt—United States Provisional Commercial Agreement (1930)[386]

157. This Agreement is listed in United States, *Treaties in Force.*[387]

Egypt—Union of Soviet Socialist Republics Trade Agreement (1954) and Payments Agreement (1953)

158. Trade and payments agreements concluded by the United Arab Republic and the USSR on 23 June 1962 expressly superseded the above Agreements.[388]

France—United States Convention concerning Rights in Syria and Lebanon (1924),[389] *Syria—United States Exchange of Notes (1944),*[390] *and France—United States Exchange of Notes constituting an Agreement regarding Customs Privileges for Educational, Religious and Philanthropic Institutions in Syria and Lebanon (1937)*[391]

159. As noted above[392] these agreements are listed under the Syrian Arab Republic in United States, *Treaties in Force.*[393]

Hungary—Syria Trade Agreement (1956) and Egypt—Hungary Financial Agreement (1949)

160. On 2 April 1959, Hungary and the United Arab Republic signed long-term trade and payments agreements. The trade agreement expressly stated that, for the Syrian province, it replaced the 1956 Agreement, and the payments agreement provided that, from its entry into force, the 1949 Agreement would no longer be valid.[394]

Iraq—United Arab Republic Trade and Payments Agreements (1958)

161. Iraq and the Syrian Arab Republic concluded a new agreement on economic co-operation on 3 November 1961.[395] It provides (article 7, para. 1) that the 1958 Payments Agreement "shall, in so far as relates to the Syrian Arab Republic, be deemed to be in force until the date on which effect is given to the present Agreement". Second, it states (article 12) that the 1958 Trade Agreement "shall remain in force with respect to commercial exchanges between the two Contracting Parties until the entry into force of the present Agreement".

Jordan—Syria Economic Agreement (1953); Jordan—Syria Agreement concerning questions of Transport and Transit (1950);[396] *and Jordan—United Arab Republic Agreement (1959)*

162. The 1959 Agreement apparently determined the details of the application of, *inter alia,* the 1950 Agreement. Further, on 26 April 1965 Jordan and the Syrian Arab Republic concluded an agreement amending the existing agreement for economic exchanges, transport and transit. This was stated to be without prejudice to the 1950 and 1959 Agreements and specifically amended the lists annexed to the 1953 Agreement.[397]

Pakistan—United Arab Republic Trade and Payments Agreement (1960)

163. A trade agreement concluded by Pakistan and the Syrian Arab Republic in August 1969 provided that the 1960 Agreement would be terminated from the entry into force of the new agreement.[398]

Romania—Syria Commerce and Payments Agreement (1956)

164. In November and December 1964 the Mixed Commission established by this agreement met and drew up a Protocol which, along with an Exchange of Letters,

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382 *Ibid.,* No. 108. Note also the Exchange of Letters accompanying the Agreements: the trade missions of the two parties were to be renamed, and that in Damascus was changed in status.

383 *Ibid.,* Nos. 237 and 238.

384 United Nations, *Treaty Series,* vol. 256, p. 17.

385 *Ibid.,* vol. 483, p. 317.

386 League of Nations, *Treaty Series,* vol. CXVII, p. 419.

387 United States of America, Department of State, *Treaties in Force ... 1970 (op cit.),* p. 229.

388 United Nations, *Treaty Series,* vol. 472, pp. 19 and 43.

389 Foot-note 136 above.

390 United Nations, *Treaty Series,* vol. 124, p. 251.

391 League of Nations, *Treaty Series,* vol. CLXXXIV, p. 479.

392 Para. 59 above.

393 United States of America, Department of State, *Treaties in Force ... 1970 (op. cit.),* p. 215.

394 *Recueil des accords internationaux syriens,* No. 116.

395 United Nations, *Treaty Series,* vol. 489, p. 45. The Agreement entered into force on 20 December 1961.

396 As to this agreement, see also para. 22 above.

397 *Recueil des accords internationaux syriens.* No. 211.

398 *Ibid.,* No. 398.

was to be considered as an integral part of the 1956 Agreement. [399]

Saudi Arabia—United Arab Republic (Northern Province) Trade Agreement (20 January 1961)

165. On 16 November 1961, Saudi Arabia and the Syrian Arab Republic concluded a new agreement on economic co-operation. [400] It provided that, from its entry into force, it would supersede the agreement concluded in January 1961.

Syria—Union of Soviet Socialist Republics Trade and Payments Agreement (1955) [401]

166. A long-term commerce agreement concluded on 4 November 1965 expressly replaced the above agreement. [402]

10. Dissolution of the Federation of Mali (1960)

France—Federation of Mali Agreement for Co-operation on Economic, Monetary and Financial Questions (1960) [403]

167. As has already been noted [404] Senegal, following the dissolution of the Federation, in a Note of 16 September 1960 (with which France agreed), stated that it considered that as a result of the principles of international law concerning State succession it was "so far as it was concerned, bound by the rights and obligations" resulting from the co-operation agreements. [405]

11. Formation of the United Republic of Tanzania (1964)

Muscat—United States Treaty of Amity and Commerce (1833); Zanzibar—United States Treaty relating to Consuls and Import Duties (1886); United Kingdom—United States Treaty relating to the Establishment of Import Duties (1902); and United Kingdom (on behalf of the Sultan of Zanzibar)—United States Treaty, amending the 1833 Agreement (1903) [406]

168. The above treaties are listed, with others, under Tanzania in United States, *Treaties in Force,* which notes that as of 1 January 1968 the continuance in force of certain of the agreements listed there was under negotiation between the United States and Tanzania. *Treaties in Force* also reproduces the substance of the declarations made in 1961 by Tanganyika and in 1964 by the United Republic of Tanzania concerning their treaty obligations. [407] The latter provided for the continuance in effect of treaties in force between Tanganyika or Zanzibar and other States

> to the extent that their implementation is consistent with the constitutional position established by the Article of Union, [...] within the regional limits prescribed on their conclusion and in accordance with the principles of international law. [408]

The view that these treaties continued in effect during the period of the protectorate and after Zanzibar's accession to independence has been advanced by Tanzanian officials. However, they have expressed the following opinion on the effect of the revolution in Zanzibar and its union with Tanganyika:

> It is not considered that any of the pre-existing commercial and trade treaty relationships affecting Zanzibar survived the revolution. They were incompatible with the new patterns of trade and financing which accompanied the establishment of a socialist system in the Republic of Zanzibar. Hence, none of these pre-existing treaties were inherited by the Union after 12 April, 1964. [409]

On the other hand, they take the view that the three commercial agreements concluded by Tanganyika before 1964 continued in force within the Tanganyika region. [410]

Summary

A. Cases of independence of former non-metropolitan territories

169. In the light of the relevant materials collected in the present study, about forty new States and thirty-four original parties, other than predecessor States, have taken a position concerning the continued force of bilateral trade agreements which were applicable to former non-metropolitan territories before independence. In most of the recorded cases continuity has been achieved or recognized at least during a certain period of time after independence.

170. To assure of recognize continuity several procedural devices have been followed. In many cases, there have been exchanges of views on the diplomatic level between the interested States. These have taken several forms:

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[399] *Ibid.*, No. 199. See also the 1968 Technical and Economic Co-operation Agreement which provided for certain actions to be taken in accordance with the 1956 Agreement (*ibid.*, No. 340).

[400] United Nations, *Treaty Series*, vol. 491, p. 163.

[401] *Ibid.*, vol. 259, p. 71.

[402] *Recueil des accords internationaux syriens*, No. 235. Note also the reference in the payments agreement to a shipping agreement of 18 September 1958: it is treated as still being in force.

[403] France, *Journal officiel de la République française:* Lois et décrets (Paris), 92nd Year, No. 167 (20 July 1969), p. 6634.

[404] See above, foot-note 243 and p. 146 document A/CN.4/243, para. 176.

[405] Apparently, Mali denied that it remained bound by the agreements of 22 June 1960 (see R. Cohen, "Legal problems arising from the dissolution of the Mali Federation" in *British Year Book of International Law 1960* (London, 1961), pp. 375 and 382).

[406] United States of America, *Treaties, Conventions, International Acts ... 1776-1909 (op cit.)*, vol. I, p. 1228; *ibid.*, vol. II, p. 1899 and *ibid.*, vol. I, pp. 784 and 785, respectively.

[407] United States of America, Department of State, *Treaties in Force ... 1970 (op cit.)*, pp. 215-217.

[408] *Ibid.*, p. 215.

[409] See, for example, E. E. Seaton and S. T. M. Maliti, *loc. cit.*, p. 85, para. 63.

[410] *Ibid.*

(*a*) Sometimes the new State gave assurances to the original party concerned that the rights set forth in a pre-independence agreement between that party and the predecessor State were fully recognized and would be continued (Lebanon and Syria to the United States of America); or in some instances, the new State and the original party other than the predecessor State stated that they were prepared in the meantime to continue to apply the pre-independence agreements (Philippines-Switzerland); in other instances, the original parties and the new State stated that they were agreed in recognizing that the relevant rights and duties of one of the original parties were thenceforth transferred to the new State (France-Iraq-United Kingdom); and in other cases the new State and the original party other than the predecessor State established that the agreements were in effect between themselves since the new State had succeeded to them (Burma-Denmark).

(*b*) In a number of cases the interested States have, at about the time the pre-independence agreement ceased to have effect, concluded a new agreement which makes no reference to the pre-independence instrument but which is to similar effect (Indonesia, Morocco, Tunisia and the States formerly under French administration which became independent in 1960).

(*c*) In several cases the new State and the original party other than the predecessor State have negotiated amendments to the pre-independence agreement (Canada-Switzerland; Morocco-United Kingdom; Morocco, Tunisia and the States formerly under French administration which became independent in 1960; Canada-Guyana, Jamaica and Trinidad and Tobago; Malawi-Southern Rhodesia. [411]

(*d*) In some cases, the original parties have recognized that a territory to which the treaty had applied before independence was a party to it (Muscat-United Kingdom (grant of right of withdrawal); Australia-United Kingdom and New Zealand-United Kingdom with reference to Ceylon, Ghana, and Malaya).

(*e*) In several cases, one or both of the original parties and the new State have, within the framework of the pre-independence agreement, negotiated new agreements (Indonesia, Morocco, Tunisia and the States formerly under French administration which became independent in 1960).

(*f*) In a number of instances, the new State and the original party, other than the predecessor State have negotiated a new agreement expressly replacing the pre-independence agreement in question (Ireland-United States; Jordan-Syria; Nepal-India; Pakistan-Poland; Pakistan-United Kingdom; Australia-Malaya; New Zealand-Malaya; and Morocco, Tunisia and the States formerly under French administration which became independent in 1960).

(*g*) In several cases a new agreement concluded by one or both of the original parties and the new State has referred to a pre-independence agreement as still in force (Italy-South Africa; Jordan-Syria; and Morocco, Tunisia and the States formerly under French administration which became independent in 1960).

(*h*) The original parties and the new State on a number of occasions renewed the pre-independence agreement (Morocco, Tunisia and the States formerly under French administration which became independent in 1960).

171. In some instances interested States have taken unilateral action concerning the continued force of the pre-independence agreement. Thus a number have given notice terminating the agreement in accordance with its terms (Australia; New Zealand; Ireland; Muscat and Oman to India; United Kingdom to Indonesia). Others have referred to the agreements as still in force in negotiations (Ireland to United States of America; United States of America to India). Several interested States have listed the agreements as still in effect (Australia; Canada; New Zealand; Iceland; India; United States of America; see also the position adopted by the United Kingdom in respect of Australia, Canada, Ireland, New Zealand and South Africa). Other States, following the independence of a State formerly under protection relinquished certain of their rights vis-à-vis that State (United Kingdom and United States of America-Morocco). And one new State exercised the right under peace treaties (to which it was not a formal party) to revive trade agreements applicable to it before independence (Ceylon).

172. The recorded practice denying continuity has occurred mainly in a bilateral context (Venezuela to Australia, Canada and New Zealand; Argentina to India; Thailand to Pakistan; USSR to States formerly under French administration which became independent in 1960). In all those cases, the denial of continuity has been invoked by the interested original party to the pre-independence agreement. Only one of the forty new States referred to above [412] seems to have taken it as a general view that pre-independence bilateral trade agreements applicable to its territory were no longer in effect after independence (Tanganyika). It is possible, however, that other new States also take this position; for instance, Algeria and Guinea have not participated in the renewal, etc., of the short-term trade agreements concluded by France.

173. In some of the above instances express reference has been made to some further relevant elements which can be mentioned. First, there has been some reference to general principles. Thus one State (Argentina) denied succession by a formerly dependent territory arguing that the legal continuity between the new State and the previous entity was much open to question. In its view the prior entity had been extinguished by the partition of the former dependent territory. [413] Another State (Thailand) argued that a new State was not bound by treaties of commerce and navigation concluded by the

[411] Note also the renegotiation by Kenya of pre-independence treaties.

[412] See para. 169.

[413] Argentina's position was also based on the view that the treaty in question was not applicable to British India before the partition.

State of which it was formerly a part. This was met by the contention that the new State, which had moreover indicated its readiness and desire to succeed, was a successor (Pakistan). One new State (Tanganyika) has claimed that it was not bound by the pre-independence commercial treaties since, it seems (*a*) they are generally regarded as being less than permanent; (*b*) they were concluded with the interests of the predecessor State and not those of the new State in mind; (*c*) in some cases, if the new State were substituted for the predecessor in the treaty, large parts of the treaty would become devoid of meaning and impossible of fulfilment; and (*d*) in other cases, the agreements were obsolete.

174. Reference to general principles in the cases where continuity has been recognized or ensured has, it seems, been rare, [414] but in one case the United Kingdom stated that the old British Dominions (Australia, Canada, Ireland, New Zealand, Newfoundland, and South Africa) were generally recognized as succeeding to the rights and obligations which had been assumed by the United Kingdom on behalf of the territories from which the new States were constituted; no distinction was drawn in this regard between treaties which specifically mentioned the territories concerned and those which applied territorially to the whole Empire.

175. In a number of cases, States have referred to the devolution agreement concluded between the new State and the predecessor State. In one group of cases (Indonesia) the original parties to the treaty and the new State, acting within the framework of the earlier treaty, concluded instruments which recited that the new State had participated in the negotiations, *inter alia,* by virtue of the devolution agreement of which the original party other than the predecessor State had taken note. In another instance the new State (Pakistan) expressed the view that *by virtue of* the devolution agreement the treaty rights and obligations had devolved. The predecessor State (United Kingdom) pointed out, however, that the relations between the new State and the other original party (Thailand) to the treaty in question could not be *governed* by the devolution agreement. In a further case the new State and the original party other than the predecessor State, in establishing that the pre-independence treaty was in force, referred to a treaty containing a devolution provision (Burma-Denmark). One State, in compiling its treaty list, has also taken account of devolution agreements (United States of America).

176. In one instance weight has been given to a unilateral declaration made by the new State concerning its treaty rights and obligations. The new State in question (Tanganyika) stated that under customary international law the treaty would not survive that State's attainment of indepedence. It nevertheless took the position that under at least some of the pre-independence treaties it continued to have rights and duties for the period fixed by the unilateral declaration.

[414] Of course, it could be said that in many of the cases reviewed in paragraphs 170 (especially sub-paras. (*c*) to (*h*) and 171 above, a general position is clearly implied.

177. The economic relations established at the time of independence, often on a treaty basis, between the new State and the predecessor State, appear to have been of significance—at least procedurally—to the continued participation of new States in the pre-independence agreements in three groups of cases (Indonesia; Morocco and Tunisia; and the States formerly under the administration of France which became independent in 1960).

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

178. Generally, the practice reviewed above suggests, as in the case of extradition treaties, [415] that the effect of secession, the formation and dissolution of a union or of a federation, annexation and the other forms of change of sovereignty (or of treaty-making power) on pre-existing bilateral trade agreements depends on the intention of the parties, the nature of the change and the circumstances surrounding the particular case.

179. The specific practice relative to trade agreements also tends to be parallel to, and confirm, that concerning extradition treaties. Thus it appears that trade agreements applicable to a State or territory which is annexed or ceded no longer have effect (Ethiopia (1936), Austria (1938) and Newfoundland). It also appears to be accepted in practice that the trade agreements of the new sovereign will extend to the newly added territory if their terms are generally applicable (the Serb-Croat-Slovene State, Austria (1938) and Newfoundland). [416]

180. The practice relating to cases of *secession of metropolitan territory* suggests that it is probably necessary to distinguish between evolutionary, constitutional secessions (Iceland) and other secessions (Finland) and to take account of the relationship of the new State to the pre-secession entity (Hungary considered itself to be the same entity during and after the Dual Monarchy; compare the cases of Poland and Czechoslovakia), as well as of its relationship to the State from which it seceded (Iceland).

181. The cases of the establishment and break-up of various forms of relationships between two or more territories are—apart from the cases of dissolution of a union discussed in the next paragraph—rather heterogeneous: Iceland and Denmark (1918), Federation of

[415] See *Yearbook of the International Law Commission, 1970,* vol. II, p. 129, document A/CN.4/229, para. 146.

[416] Note also that in this practice the States formerly administered by the United Kingdom do not appear to distinguish between those treaties concluded before and those concluded after they became part of the British Empire, and that the *Handbook of Commercial Treaties (op. cit.)* (see foot-note 11 above) records treaties as applicable to the Dominions and colonies without distinction based on the date of their conclusion. In the one instance reviewed above of the effect of the establishment of a mandate on a pre-existing treaty it was accepted that the treaty remained in effect (Western Samoa: see para. 127 above). This case is perhaps to be explained by reference to the nature of the treaty in question. In no other instances has practice been found indicating that trade agreements concluded by the former colonial Power continued after the establishment of the mandate.

Rhodesia and Nyasaland (1953 and 1963), United Arab Republic (1958 and 1961), Federation of Mali (1960), United Republic of Tanzania (1964). The first is the case of the formation of a union between an entity formerly an integral part of a metropolitan State and that State; the second, the formation and dissolution of a federation which was not independent but which had limited treaty-making capacity and which comprised three territories which were not independent, but one of which had limited treaty-making capacity before the formation of the federation and after its dissolution, the other two becoming some time after the dissolution independent States; the third the joining of two States into a united republic having rather the character of a unitary State, but with special provision being made concerning the treaties of the two States, and the subsequent departure by one of the two original States from the new State; the fourth the break-up of a federation; and the fifth, the formation by two States of a united republic, with special provision again being made in respect of the treaties of the two constituent States. The cases are perhaps too different to enable any general points to be made. But it is possible first to note that in the three cases of the formation of a new relationship between previously separate entities most of the practice [417] supports the view that the previous treaties continue within their original territorial limits. [418] Second it can be noted that in the four cases of the termination of the relationship the trade agreements applicable prior to termination generally continued.

182. Again as in the case of extradition treaties, limited practice tends to support the proposition that in general the members of a *union* remain bound by the trade agreements of the union following its *dissolution*, at least if there is a clear continuity of the entity involved. Thus the practice of Hungary and Iceland can be compared with that of Austria.

183. In some instances, the interested States have regulated questions of treaty continuity by formal agreements. Thus treaties concluded by the Allied and Associated Powers with the Serb-Croat-Slovene State established general rules governing the matter between the parties. In other instances two States agreed in a bilateral agreement to apply the treaty in their mutual relations (Austria with Denmark, the Netherlands, Sweden and Switzerland; Czechoslovakia with Switzerland; Southern Rhodesia with Australia, Bechuanaland Protectorate and South Africa). Exchanges of notes and letters on the diplomatic level have also been used to ascertain or confirm positions of the interested States concerning the force of particular trade agreements (Finland and Sweden; Germany and the United Kingdom and the United States of America concerning Austria; France and Senegal). In other cases the existence or the continued or discontinued effect of the treaties in question has been acknowledged in new agreements concluded between the States involved: these may refer to the old treaty, amend it or abrogate it (Iceland and United Kingdom; Austria and the United States of America; Yugoslavia and Switzerland and the United States of America; Portugal and the Federation of Rhodesia and Nyasaland; the United Arab Republic and Chinese People's Republic, Czechoslovakia, German Democratic Republic and Hungary; United Arab Republic and the USSR; Syria and Iraq, Jordan, Ceylon, Pakistan and Saudi Arabia; and Syria and Romania; Bulgaria and the USSR). Parties to trade agreements have, after the relevant constitutional change, taken action to terminate them (Austria and Switzerland; Southern Rhodesia and Australia; Canada and Malawi). The position of interested States has also been expressed in unilateral statements (e.g. Ethiopia) and in national treaty lists and collections (Australia, Iceland, Sweden, Switzerland, the United States of America).

[417] Some of the agreements relating to specific territories of the Federation of Rhodesia and Nyasaland became applicable to the whole Federation, especially after the establishment of a common tariff.

[418] On the other hand, when one of the entities involved in the establishment of a State can be said to be central and predominant in the relationship, the treaties previously applicable to it may become applicable to the whole territory of the State (Serb-Croat-Slovene State).