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**Supplement prepared by the Secretariat to "Materials on Succession of States"
(ST/LEG/SER.B.14)**

Topic:
Succession of States with respect to treaties

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Introduction

1. At its twenty-first session, in 1969, the International Law Commission decided to ask the Secretary-General to circulate again a note inviting Governments of Member States to submit the texts of any treaties, laws, decrees, regulations and diplomatic correspondence relating to the process of succession and affecting States which have attained their independence since the Second World War, which had not been transmitted pursuant to the Secretary-General's notes of 27 July 1962 and 15 July 1963, as well as any additional documentation evidencing the practice followed by States in that respect.^{1/}
2. By a circular note dated 29 October 1969, the Secretary-General invited Governments of Member States to transmit to him the materials referred to in the decision of the International Law Commission mentioned in the preceding paragraph. The present document contains the relevant materials provided or indicated by Governments in response to that circular note. It supplements those transmitted earlier by Governments, in response to the Secretary-General's circular notes of 27 June 1962 and 15 July 1963, which have been published in volume 14 of the United Nations Legislative Series, entitled "Materials on Succession of States" (ST/LEG/SER.B/14).^{2/}
3. The materials contained in the present document have been arranged along the same lines as those in volume 14 of the United Nations Legislative Series. Therefore, the indications given in that respect in the Introduction to the said volume apply likewise to this document. As the amount of the materials received does not justify the publication of a new volume in the United Nations Legislative Series, it was decided to circulate them in the present form, namely as a document of the current session of the Commission.
4. Finally, it should be noted that the Governments of Chad, Finland, Iraq, Kuwait and the Netherlands indicated that they did not have any relevant materials to be transmitted or any materials additional to those included in volume 14 of the United Nations Legislative Series.

^{1/} The decision is recorded in paragraph 63 of the Commission's report on the work of its twenty-first session (document A/7610/Rev.1) [Yearbook of the International Law Commission, 1969, vol. II, page 229].

^{2/} United Nations Publication, Sales Number E/F.68.V.5.

ARGENTINA

Transmitted by a letter dated 3 March 1971 of the
Permanent Mission to the United Nations^{1/}

OBSERVATIONS

[Opinion issued by the Office of Legal
Affairs of the Ministry for Foreign
Affairs and Worship of the Argentine
Republic on the question of State
succession in respect of treaties]

"The Argentine Republic holds the view that treaties concluded with a State do not apply automatically to its colonies, mandated territories, trust territories or protectorates when any of these territories accedes to independence.

For agreements concluded by the metropolitan State to pass to the State which becomes independent, the latter State must express its will to that effect, and third States which were bound by treaty to the former metropolitan States will likewise decide whether they wish to maintain in force with the new State, the treaty which bound them to the metropolitan State".

^{1/} Original Spanish. Translation by the Secretariat of the United Nations. Information transmitted earlier may be found in United Nations Legislative Series : Materials on Succession of States (ST/LEG/SER.B/14) pp. 6-8.

BELGIUM

Transmitted by a note verbale dated 11 December 1969
of the Permanent Mission to the United Nations^{1/}

OBSERVATIONS

[Accession to independence of Burundi, Rwanda and Zaire]

When the Congo (Kinshasa) [Zaire], Rwanda and Burundi acceded to independence, Belgium did not conclude any treaties and took no measures by law, decree or regulations, relating to the process of the succession of States. Nor is there in existence any diplomatic correspondence exchanged on the subject between the parties concerned.

Belgium considered that the general principle and generally accepted international practice were sufficient to settle the question of succession with respect to international agreements.

^{1/} Original French. Translation by the Secretariat of the United Nations.

CYPRUS

Transmitted by a note verbale dated 5 November 1969
of the Ministry of Foreign Affairs^{1/}

A. OBSERVATIONS

[Practice followed by Cyprus]

As regards characteristic correspondence of the Government of the Republic of Cyprus regarding this item, the Legal Counsel of the United Nations may refer to the Cyprus Government's correspondence to him, regarding the continued applicability of the various international conventions, concluded under the auspices of the United Nations, which the Cyprus Government considers as binding upon it, by virtue of the fact that they were extended to it, by the Government of the United Kingdom, before independence.

The Ministry of Foreign Affairs of the Republic of Cyprus, wishes to assure the Legal Counsel of the United Nations, that it will not fail to supply him with any further documentation which would be indicative of the practice of States succession, followed by the Government of the Republic of Cyprus, by virtue of Article 82^{2/} of the Treaty concerning the Establishment of the Republic of Cyprus and the "inheritance rules" of Public International Law, as they exist today.

B. TREATIES

1. Note by the Secretariat

Cyprus became independent on 16 August 1960 and was admitted to the United Nations on 20 September 1960. By letters of 28 February and 6 December 1961 the Secretary-General, referring to the agreement on devolution of treaty rights and obligations upon Cyprus embodied in the Treaty concerning the Establishment of the Republic of Cyprus, stated that it was his understanding that Cyprus considered itself bound by the treaties whose application had been extended to it by the United Kingdom before independence and requested confirmation of that understanding.^{3/} The list of treaties^{4/} given in the letters was as follows:

^{1/} Information transmitted earlier may be found in United Nations Legislative Series: Materials on Succession of States (ST/LEG/SER.B/14), pp. 21-28.

^{2/} United Nations, Treaty Series, vol. 382, p. 8. Came into force on 16 August 1960. Article 8 is reproduced in the volume of the United Nations Legislative Series: Materials on succession of States (ST/LEG/SER.B/14), p. 21.

^{3/} See "Succession of States in relation to general multilateral treaties of which the Secretary-General is the depositary: memorandum prepared by the Secretariat" (A/CN.4/150) [Yearbook of the ILC, 1962, vol. II, pp. 115-116].

^{4/} In the citations, United Nations, Treaty Series is abbreviated as U.N.T.S., and League of Nations, Treaty Series as L.N.T.S.

- i. Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946. U.N.T.S., vol. 1, p. 15.
- ii. Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly of the United Nations on 21 November 1947. U.N.T.S., vol. 33, p. 261.
- iii. Convention relating to the Status of Refugees, done at Geneva on 28 July 1951. U.N.T.S., vol. 189, p. 137.
- iv. International Opium Convention, done at The Hague on 23 January 1912. L.N.T.S., vol. VIII, p. 187.
- v. International Opium Convention, with Protocol, signed at Geneva on 19 February 1925, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946. Unamended Convention : L.N.T.S., vol. LXXXI, p. 317. Protocol of amendment : U.N.T.S., vol. 12, p. 179. Convention as amended : doc. E/NT/2 (Sales No. : 47.XI.4).
- vi. Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, with Protocol of Signature, signed at Geneva on 13 July 1931, as amended by the Protocol signed at Lake Success on 11 December 1946. Unamended Convention: L.N.T.S., vol. CXXXIX, p. 301. Protocol of amendment: U.N.T.S., vol. 12, p. 179. Convention as amended: doc. E/NT/3 (Sales No.: 47.XI.6).
- vii. Protocol signed at Paris on 19 November 1948, Bringing under International Control Drugs Outside the Scope of the Convention of 13 July 1931 for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs, as amended by the Protocol signed at Lake Success, New York, on 11 December 1946. U.N.T.S., vol. 44, p. 277.
- viii. Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921. L.N.T.S., vol. IX, p. 415.
- ix. International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, as amended by the Protocol signed at Lake Success, New York, on 4 May 1949. Unamended Agreement: L.N.T.S., vol. I, p. 83, Protocol of Amendment: U.N.T.S., vol. 30, p. 23. Agreement as amended: U.N.T.S., vol. 92, p. 19.
- x. International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910, as amended by the Protocol signed at Lake Success, New York, on 4 May 1949. Convention as amended: U.N.T.S., vol. 98, p. 101.

- xi. Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications, concluded at Geneva on 12 September 1923, as amended by the Protocol signed at Lake Success, New York, on 12 November 1947. Convention as amended: U.N.T.S., vol. 46, p. 201.
- xii. Agreement for the Suppression of the Circulation of Obscene Publications, signed at Paris on 4 May 1910, as amended by the Protocol signed at Lake Success, New York, on 4 May 1949. Agreement as amended: U.N.T.S., vol. 47, p. 159.
- xiii. International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, done at Geneva on 7 November 1952. U.N.T.S., vol. 221, p. 255.
- xiv. Convention concerning Customs Facilities for Touring, done at New York on 4 June 1954. U.N.T.S., vol. 276, p. 191.
- xv. Additional Protocol to the Convention concerning Customs Facilities for Touring, relating to the Importation of Tourist Publicity Documents and Material, done at New York on 4 June 1954. U.N.T.S., vol. 276, p. 191.
- xvi. Customs Convention on the Temporary Importation of Private Road Vehicles, done at New York on 4 June 1954. U.N.T.S., vol. 282, p. 249.
- xvii. Customs Convention on Containers, done at Geneva on 18 May 1956. U.N.T.S., vol. 338, p. 103.
- xviii. Customs Convention on the Temporary Importation of Commercial Road Vehicles, done at Geneva on 18 May 1956. U.N.T.S., vol. 327, p. 123.
- xix. Customs Convention on the Temporary Importation for Private Use of Aircraft and Pleasure Boats, done at Geneva on 18 May 1956. U.N.T.S., vol. 319, p. 21.
- xx. Convention on Road Traffic, signed at Geneva on 19 September 1949. U.N.T.S., vol. 125, p. 22.
- xxi. Agreement on the Importation of Educational, Scientific and Cultural Materials, opened for signature at Lake Success, New York, on 22 November 1950. U.N.T.S., vol. 131, p. 25.
- xxii. Convention on the Nationality of Married Women, done at New York on 20 February 1957. U.N.T.S., vol. 309, p. 65.
- xxiii. Slavery Convention, signed at Geneva on 25 September 1926, as amended by the Protocol opened for signature at the Headquarters of the United Nations on 7 December 1953. U.N.T.S., vol. 212, p. 17.

- xxiv. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, done at Geneva on 7 September 1956. U.N.T.S., vol. 266, p.3.
- xxv. Convention on the Territorial Sea and the Contiguous Zone, done at Geneva on 29 April 1958. U.N.T.S., vol. 516, p. 205.
- xxvi. Convention on the High Seas, done at Geneva on 29 April 1958. U.N.T.S., vol. 450, p. 82.
- xxvii. Convention on Fishing and Conservation of the Living Resources of the High Seas, done at Geneva on 29 April 1958. U.N.T.S., vol. 559, p.285.

The Government of Cyprus in a series of communications has notified the Secretary-General that it considers itself bound by sixteen of the twenty-seven treaties mentioned in the letters of the Secretary-General. Those treaties in the foregoing list which the Cyprus Government considers as binding upon it are listed below with the date of communication and date of receipt shown in parentheses:

No. xxiv (9 May 1962, 11 May 1962)

No. xx (29 June 1962, 6 July 1962)

Nos. iii, iv, viii, ix, x, xi, xii, xiii,
xiv, xv, xvi, xxi (14 May 1963, 16 May 1963)

No. i (1 November 1963, 5 November 1963)

No. ii, in respect of the following specialized agencies:

World Health Organization,

International Civil Aviation Organization,

International Labour Organisation,

Food and Agricultural Organization of the United Nations,

United Nations Educational, Scientific and Cultural
Organization,

Universal Postal Union,

International Telecommunication Union,

World Meteorological Organization, and

Inter-Governmental Maritime Consultative Organization

(29 April 1964, 6 May 1964)

The Government of Cyprus has also notified the Secretary-General in a series of communications that it considers itself bound by the following six international conventions extended to its territory prior to independence but not mentioned in the letters of the Secretary-General referred to above (the date of communication and date of receipt shown in parentheses):

- (a) International Convention relating to the Simplification of Customs Formalities, and Protocol, signed at Geneva on 3 November 1923. L.N.T.S., vol. XXX, p. 371. (26 April 1964, 6 May 1964)
- (b) Convention and Statute on the International Regime of Maritime Ports and Protocol of Signature, signed at Geneva on 9 December 1923. L.N.T.S., vol. LVIII, p. 285. (5 November 1964, 9 November 1964)
- (c) Convention on the Stamp Laws in connexion with Bills of Exchange and Promissory Notes, and Protocol, signed at Geneva on 7 June 1930, subject to the limitations contained in Section D of the Protocol. L.N.T.S., vol. CXLIII, p. 337. (14 February 1968, 5 March 1968)
- (d) Convention on the Stamp Laws in connexion with Cheques, and Protocol, signed at Geneva on 19 March 1931. L.N.T.S., vol. CXLIII, p. 7. (14 February 1968, 5 March 1968)
- (e) Convention on Certain Questions relating to the Conflict of Nationality Laws, signed at The Hague on 12 April 1930. L.N.T.S., vol. CLXXIX, p. 89. (27 March 1970, 27 March 1970)
- (f) Protocol relating to Military Obligations in Certain Cases of Double Nationality, signed at The Hague on 12 April 1930. L.N.T.S., vol. CLXXVIII, p. 227. (27 March 1970, 27 March 1970)

2. Excerpts from some relevant communications of the Government of Cyprus

The following passages are excerpted from some relevant communications of the Government of Cyprus in reply to the letters of 28 February and 6 December 1961 of the Secretary-General requesting confirmation that Cyprus considered itself bound by the twenty-seven treaties included in the list mentioned in section 1 above:

[Communication dated 9 May 1962]

"I have been instructed by my Government to refer to your letter dated 6 December 1961 reference number LE 242, addressed to the Ministry of Foreign Affairs, and to inform you that the competent Legal Department of the Government is at present engaged in a study of the Conventions, Agreements and Protocols enumerated in your letter of 28 February 1961, with a view to determining their application to the Republic of Cyprus under Article 8 of the Treaty of Establishment.

In this connexion I have the honour to further inform you that, as a result of the study referred to above, the Government of Cyprus considers itself bound by the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery done at Geneva on 7 September 1956."

[Communication dated 14 May 1963]

"I have the honour to make further reference to the letter dated 6 December 1961, File number LE 242, addressed on behalf of Your Excellency to the Minister of Foreign Affairs of Cyprus and to inform, upon directives received, that the Government of Cyprus considers itself bound by the conventions contained in the appended list.

The final decision of the Government of Cyprus regarding the remaining Conventions, Agreements and Protocols, listed in your letter under reference, will be communicated to Your Excellency in due course."

[Communication dated 29 April 1964]

"I have the honour to refer to the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947 and to state, upon instructions, that the provisions of this Convention having been extended to the territory of Cyprus by the United Kingdom prior to independence, the Government of Cyprus considers itself bound by the said Convention insofar as the International Labour Organisation and the International Telecommunication Union are concerned." ^{1/}

[Communication dated 5 November 1964]

"The Minister of Foreign Affairs of the Republic of Cyprus presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that the Convention and Statute on the International Regime of Maritime Ports and Protocol of Signature, of

^{1/} By a communication of 15 July 1964 the Government of Cyprus clarified this communication by stating that it considered itself bound by the above-mentioned Convention also in respect of FAO, UNESCO, WHO, ICAO, UPU, WMO and IMCO.

Geneva, of 9 December 1923, which was signed by the United Kingdom and extended to the then Colony of Cyprus on 22 September 1925, continues to bind the Republic of Cyprus by virtue of the devolution clause of Article 8 of the Treaty concerning the Establishment of the Republic of Cyprus and the inheritance rules of International Law."

[Communication dated 27 January 1968]

"Of the above two international conventions^{1/} the first one was acceded to by the United Kingdom on 18 April 1934, and the second one was ratified by the United Kingdom on 13 January 1932, and both were extended to Cyprus by the United Kingdom, on 18 July 1936, when Cyprus was still a British Colony.

The Government of the Republic of Cyprus having examined these two conventions, hereby notifies the Secretary-General of the United Nations that, since these conventions were extended to Cyprus by the United Kingdom before the independence of the Republic of Cyprus, on 18 July 1936, the Republic of Cyprus considers itself bound by these conventions by virtue of the 'devolution clause' of Article 8 of the Treaty concerning the Establishment of the Republic of Cyprus and the 'inheritance rules' of Public International Law."

^{1/} See Conventions (c) and (d), supra, page 8.

IVORY COAST

Transmitted by a letter dated 17 March 1970 1/
of the Permanent Representative to the United Nations

LAWS AND DECREES

CONSTITUTION OF THE REPUBLIC OF THE IVORY COAST (LAW No. 60-356
OF 3 NOVEMBER 1960, AMENDED BY LAW No. 63-1 OF 11 JANUARY 1963)

.....

TITLE XIII

GENERAL PROVISIONS AND TRANSITIONAL PROVISIONS

Article 74

The provisions necessary for the application of this Constitution shall be enacted in laws voted by the National Assembly.

The President of the Republic shall take up his duties and the National Assembly shall meet not later than 12 December 1960.

Article 75

The authorities established in the Republic shall continue to perform their functions and the present institutions shall be maintained until new authorities and institutions are set up.

Article 76

Subject to the adoption of new laws, the legislation now in force in the Ivory Coast shall remain applicable in so far as it does not conflict with this Constitution.

JAPAN

Transmitted by a letter dated 1 May 1970 of the Permanent Representative
to the United Nations 1/

A. TREATIES

1. AGREEMENT ON THE SETTLEMENT OF PROBLEMS CONCERNING PROPERTY AND CLAIMS AND ON ECONOMIC CO-OPERATION (WITH PROTOCOLS, EXCHANGES OF NOTES AND AGREED MINUTES) BETWEEN JAPAN AND THE REPUBLIC OF KOREA. SIGNED AT TOKYO, ON 22 JUNE 1965 2/

Japan and the Republic of Korea,

Desiring to settle [the] problem concerning property of the two countries and their nationals and claims between the two countries and their nationals; and

Desiring to promote the economic co-operation between the two countries;

Have agreed as follows:

1/ Information transmitted earlier may be found in United Nations Legislative Series: Materials on Succession of States (ST/LEG/SER.B/14), pp.58-71.

2/ United Nations, Treaty Series, vol. 583, p.257. Came into force on 18 December 1965, the date of the exchange of the instruments of ratification at Seoul. The following footnote to the English translation of the Agreement appears in the United Nations, Treaty Series, vol. 583, p.150:

"Translation by the Government of Japan. The Secretariat also received an English translation of this agreement from the Government of the Republic of Korea which on certain points differs from that provided by the Government of Japan. At the request of the Government of the Republic of Korea, these differences have been shown by printing in italics the pertinent word or phrase in the translation of the Government of Japan and providing in square brackets the corresponding expression in the translation by the Government of the Republic of Korea."

Article I

1. To the Republic of Korea Japan shall:

(a) Supply the products of Japan and the services of the Japanese people, the total value of which will be so much in yen as shall be equivalent to three hundred million United States dollars (\$300,000,000) at present computed at one hundred and eight billion yen (¥108,000,000,000), in grants [on a non-repayable basis] within the period of ten years from the date of the entry into force of the present Agreement. The supply of such products and services in each year shall be limited to [shall be such] such amount in yen as shall be equivalent to thirty million United States dollars (\$30,000,000) at present computed at ten billion eight hundred million yen (¥10,800,000,000); in case the supply of any one year falls short of the said amount, the remainder shall be added to the amounts of the supplies for the next and subsequent years. However, the ceiling on [*] the amount of the supply for any one year can be raised [increased] by agreement between the Governments of the Contracting Parties.

(b) Extend long-term and low-interest loans up to such amount in yen as shall be equivalent to two hundred million United States dollars (\$200,000,000) at present computed at seventy-two billion yen (¥72,000,000,000), which the Government of the Republic of Korea may request and which shall be used for the procurement by the Republic of Korea of the products of Japan and the services of the Japanese people necessary in implementing the projects to be determined in accordance with arrangements to be concluded under the provisions of paragraph 3 of the present Article, within the period of ten years from the date of the entry into force of the present Agreement. Such loans shall be extended by the Overseas Economic Co-operation Fund of Japan, and the Government of Japan shall take necessary measures in order that the said Fund will be able to secure the necessary funds for implementing the loans evenly each year.

The above-mentioned supply and loans should be such that will be conducive to the economic development of the Republic of Korea.

2. The Governments of the Contracting Parties shall establish, as an organ of consultation between the two Governments with powers to recommend on matters concerning the implementation of the provisions of the present Article, a Joint Committee composed of representatives of the two Governments.

3. The Governments of the Contracting Parties shall conclude necessary arrangements for the implementation of the provisions of the present Article.

* / Does not appear in the English translation provided by the Government of the Republic of Korea.

Article II

1. The Contracting Parties confirm that [the] problem concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, including those provided for in Article IV, paragraph (a) 1/ of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, is settled completely and finally.

2. The provisions of the present Article shall not affect the following (excluding those subject to the special measures which the respective Contracting Parties have taken by the date of the signing of the present Agreement):

(a) Property, rights and interests of those nationals of either Contracting Party who have ever resided in the other country in the period between August 15, 1947 and the date of the signing of the present Agreement;

(b) Property, rights and interests of either Contracting Party and its nationals, which have been acquired or have come within the jurisdiction of the other Contracting Party in the course of normal contacts on or after August 15, 1945.

3. Subject to the provisions of paragraph 2, no contention shall be made with respect to the measures on property, rights and interests of either Contracting Party and its nationals which are within the jurisdiction of the other Contracting Party on the date of the signing of the present Agreement, or with respect to any claims of either Contracting Party and its nationals against the other Contracting Party and its nationals arising from the causes which occurred on or before the said date.

1/ United Nations, Treaty Series, vol.156, p.45. Came into force initially on 28 April 1952. Article IV, paragraph (a) reads:

"Subject to the provisions of paragraph (b) of this Article, the disposition of property of Japan and of its nationals in the areas referred to in Article 2 [Korea, among others], and their claims, including debts, against the authorities presently administering such areas and the residents (including juridical persons) thereof, and the disposition in Japan of property of such authorities and residents, and of claims, including debts, of such authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities. The property of any of the Allied Powers or its nationals in the areas referred to in Article 2 shall, in so far as this has not already been done, be returned by the administering authority in the condition in which it now exists. (The term nationals whenever used in the present Treaty includes juridical persons)"

SECOND PROTOCOL

At the time of the signing of the Agreement on the Settlement of [the] Problem Concerning Property and Claims and on the Economic Co-operation between Japan and the Republic of Korea (hereinafter referred to as "the Agreement"), the undersigned, being duly authorized by their respective Governments, have further agreed on the following provisions which shall be considered integral parts of the Agreement:

Article I

The Republic of Korea shall repay forty-five million seven hundred and twenty-nine thousand three hundred and ninety-eight dollars and eight cents in United States dollars (\$45,729,598.08), confirmed between the Governments of the Contracting Parties as the balance, in favour of Japan, of the Open Account between Japan and the Republic of Korea in the exchange of notes dated April 22, 1961, in the following instalments within the period of ten (10) years from the date of the entry into force of the Agreement. In this case, no interest shall be charged.

The amount of each of the first nine annual instalments: four million five hundred and seventy-three thousand United States dollars (\$4,573,000).

The amount of the tenth annual instalment: four million five hundred and seventy-two thousand three hundred and ninety-eight dollars and eight cents in United States dollars (\$4,572,598.08).

Article II

In the case request is made by the Republic of Korea with respect to an annual instalment referred to in the preceding Article, the supply of the products and services under the provisions of Article I, paragraph 1 (a) of the Agreement and the payments of the instalments under the provisions of the preceding Article shall be deemed as having been carried out to the amount equivalent to that so requested. The amount of the supply of products and services under the provisions of Article I, paragraph 1 (a) of the Agreement and the ceiling on the amount of the supply for the year concerned shall be thereby deducted by the said amount of money, notwithstanding the provisions of paragraph 1 (a) of the said Article.

Article III

Concerning the repayment of the Balance in favour of Japan referred to in Article I, the Republic of Korea shall pay the first annual instalment on the date of the entry into force of the Agreement, and the second and subsequent annual instalments shall be paid on or before the same date each year as that for the first payment.

Article IV

In view of the fiscal practices of Japan, the request by the Government of the Republic of Korea mentioned in Article II shall be made, with respect to the instalment to be paid on the date provided for in the preceding Article, by October 1 of the year preceding the calendar year in which the Japanese fiscal year, to which such date for payment belongs, begins. Request, however, with respect to the first payment (and to the second payment in case the provisions of the foregoing sentence are not applicable) shall be made on the date of the entry into force of the Agreement.

Article V

The request by the Republic of Korea may be made with respect to the whole or part of the instalment for each year referred to in Article I.

Article VI

In the event that the Republic of Korea does not make such request by the date provided for in Article IV and fails to make the payment of the whole or part of the instalment by the date for payment provided for in Article III, it shall be deemed that the Republic of Korea has made the request mentioned in Article II with respect to the whole or part of the said instalment.

. . .

AGREED MINUTES TO THE AGREEMENT ON THE SETTLEMENT OF PROBLEM CONCERNING PROPERTY AND CLAIMS AND ON THE ECONOMIC CO-OPERATION BETWEEN JAPAN AND THE REPUBLIC OF KOREA

The representatives of the Governments of Japan and the Republic of Korea have reached the following understandings concerning the Agreement on the Settlement of [the] Problem of Property and Claims and on the Economic Co-operation between Japan and the Republic of Korea (hereinafter referred to as "the Agreement"), signed today, and the related documents thereto:

. . .

2. Re Article II of the Agreement:

(a) It is understood that "property, rights and interests" means all kinds of substantial rights which are recognized under law to be of property value;

(b) It is understood that "special measures" means for Japan all post-war disposal measures taken in Japan on or after August 15, 1945 to meet the situations that arose as a result of the termination of the state of hostilities of World War II (including the measures taken in anticipation of special arrangements under the provisions of Article IV paragraph (a) of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951);

(c) It is understood that "have resided" means having resided in that country continuously for more than a year until any time during the period stipulated in paragraph 2 (a);

(d) It is understood that "normal contacts" do not include those contacts under the special circumstances that arose after the termination of hostilities, such as transactions by persons who are nationals of one country and who were repatriated from the other (including juridical persons who closed their branch offices) as a result of the termination of the state of hostilities of World War II, with nationals of the other until the time of repatriation;

(e) It is agreed that measures to be taken in accordance with the provisions of paragraph 5 mean the internal measures of the respective countries which would be taken for the settlement of problem concerning property, rights and interests of the two countries and their nationals and problem concerning the claims between the two countries and their nationals, referred to in paragraph 1;

(f) The Korean representative expressed the hope that careful consideration should be given to immovable property owned in Japan by the nationals of the Republic of Korea who returned home before August 15, 1947, after the termination of the state of hostilities of World War II, and the Japanese representative replied by saying that the matter would be carefully studied;

(g) It is confirmed that problem concerning property, rights and interests of the two countries and their nationals and concerning the claims between the two countries and their nationals, which is settled completely and finally as mentioned in paragraph 1, includes any claim falling within the scope of the "Outline of the Claims of the Republic of Korea against Japan" (the so-called "Eight Items"), which was submitted by the Korean side at the Japan-Republic of Korea negotiations and that, therefore, no contention can be made with respect to the above-mentioned Outline of the Claims of the Republic of Korea against Japan;

(h) It is confirmed that problem concerning property, rights and interests of the two countries and their nationals and concerning the claims between the two countries and their nationals, which is settled completely and finally as mentioned in paragraph 1, includes any claim arising from the seizure by the Republic of Korea of the Japanese fishing vessels on or before the date of the signing of the Agreement, and that, therefore, no such claim can be raised against the Government of the Republic of Korea.

...

2. AGREEMENT ON THE LEGAL STATUS AND THE TREATMENT OF THE NATIONALS OF THE REPUBLIC OF KOREA RESIDING IN JAPAN (WITH AGREED MINUTES AND RECORD OF DISCUSSIONS) BETWEEN JAPAN AND THE REPUBLIC OF KOREA, SIGNED AT TOKYO, ON 22 JUNE 1965 ^{1/}

Japan and the Republic of Korea,

Considering that nationals of the Republic of Korea residing in Japan for many years have come to have special relations with Japanese society; and

Recognizing that enabling these nationals of the Republic of Korea to lead a stabilized life under the social order of Japan will contribute to the promotion of friendly relations between the two countries and their peoples;

Have agreed as follows:

Article I

1. The Government of Japan shall give permission for permanent residence in Japan to a national of the Republic of Korea falling under either of the following categories, if he applies for such permission within five years from the date of the entry into force of the present Agreement in accordance with the procedure to be established by the Government of Japan for the implementation of the present Agreement:

^{1/} United Nations, Treaty Series, vol. 584, p.51. Came into force on 17 January 1966, the thirtieth day following the exchange of the instruments of ratification at Seoul, on 18 December 1965. A footnote identical to the one reproduced supra (p.15, footnote 2) appears in the United Nations, Treaty Series, vol. 584, p.32.

(a) A person residing in Japan since August 15, 1945, or a date prior thereto, continuously until the time of his application; or

(b) A person born in Japan on or after August 16, 1945 and before the period of five years from the date of the entry into force of the present Agreement expires, as a lineal descendant of a person falling under (a) above, and residing in Japan continuously until the time of his application.

2. The Government of Japan shall give permission for permanent residence in Japan to a national of the Republic of Korea who is born in Japan after the lapse of five years from the date of the entry into force of the present Agreement as a child of a person who is given permission for permanent residence in Japan in accordance with the provisions of paragraph 1 above, if such child applies for such permission within sixty days from the date of birth in accordance with the procedure to be established by the Government of Japan for the implementation of the present Agreement.

3. Notwithstanding the provisions of paragraph 1 above, the application period for permission for permanent residence shall be sixty days from the date of birth in the case of a person who falls under paragraph 1 (b) above and is born after the lapse of four years and ten months from the date of the entry into force of the present Agreement.

4. No fee shall be levied for the above mentioned applications and permissions.

Article II

1. With respect to the residence in Japan of the nationals of the Republic of Korea born in Japan as lineal descendants of the persons who are given permission for permanent residence in Japan in accordance with the provisions of Article I, the Government of Japan agrees, if requested by the Government of the Republic of Korea, to holding consultations until twenty-five years will have elapsed [by the lapse of twenty-five years] from the date of the entry into force of the present Agreement.

2. In the consultations under the preceding paragraph, the spirit and purposes which form the basis of the present Agreement shall be respected.

Article III

A national of the Republic of Korea who is given permission for permanent residence in Japan in accordance with the provisions of Article I shall not be deported from Japan unless he comes to fall under any of the following categories by his act [acts] committed on or after the date of the entry into force of the present Agreement:

(a) A person who, for crimes concerning insurrection or crimes concerning foreign aggression, is sentenced in Japan to imprisonment or to a heavier punishment (except a person who is granted the suspension of execution of such sentence or who is sentenced for reasons of responding to an agitation or following the lead of another in an insurrection);

(b) A person who, for crimes concerning foreign relations, is sentenced in Japan to imprisonment or to a heavier punishment, or a person who, for his criminal acts committed against the head of a foreign state, a diplomatic envoy or his official premises, is sentenced to imprisonment or to a heavier punishment and thereby prejudice vital interests of Japan in its foreign relations;

(c) A person who, by violating the laws and regulations in Japan concerning control of narcotics with profitmaking intents, is sentenced to penal servitude or imprisonment for life or for not less than three years (except a person who is granted the suspension of execution of such sentence), or a person who, by violating the laws and regulations in Japan concerning control of narcotics, is sentenced to penalties not less than three times (twice in the case of a person who was sentenced to penalties not less than three times by his acts committed prior to the date of the entry into force of the present Agreement); or

(d) A person who, by violating the laws and regulations in Japan, is sentenced to penal servitude or to imprisonment for life or for more than seven years.

Article IV

The Government of Japan shall pay due consideration to the following matters:

(a) Matters concerning education, livelihood protection and national health insurance in Japan for the nationals of the Republic of Korea who are given permission for permanent residence in Japan in accordance with the provisions of Article I; and

(b) Matters concerning taking property with them and remitting funds to the Republic of Korea in the event that nationals of the Republic of Korea, who are given permission for permanent residence in Japan in accordance with the provisions of Article I (including persons who are qualified to apply for permission for permanent residence in accordance with the provisions of the said Article), renounce their intention of residing permanently in Japan and return to the Republic of Korea.

Article V

It is confirmed that, with regard to all matters, including entry into and exit from Japan and residence in Japan, the nationals of the Republic of Korea who are given permission for permanent residence in Japan in accordance with the provisions of Article I shall be subject, unless specifically provided for in the present Agreement, to the laws and regulations in Japan applicable equally to all aliens.

...

AGREED MINUTES TO THE AGREEMENT ON THE LEGAL STATUS AND THE TREATMENT OF THE NATIONALS OF THE REPUBLIC OF KOREA RESIDING IN JAPAN BETWEEN JAPAN AND THE REPUBLIC OF KOREA

The representatives of the Governments of Japan and the Republic of Korea have reached the following understandings concerning the Agreement on the Legal Status and the Treatment of the Nationals of the Republic of Korea Residing in Japan between Japan and the Republic of Korea signed today:

Re Article I:

1. For the purpose of certifying that a person who applies for permission for permanent residence in accordance with the provisions of paragraph 1 or 2 of the Article has the nationality of the Republic of Korea

(i) Such person shall produce his passport or a certificate in lieu thereof, or shall submit a written statement that he has the nationality of the Republic of Korea; and

- (ii) The competent authorities of the Government of the Republic of Korea will reply in writing in case the competent authorities of the Government of Japan make inquiries in writing.

2. For the purposes of paragraph 1 (b) of the Article, "a person falling under (a)" will [shall] include a national of the Republic of Korea residing in Japan since August 15, 1945 or a date prior thereto, continuously until the time of his death.

Re Article III:

1. For the purposes of (b) of the Article, "his official premises" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used as embassy or legation (including the residence of the diplomatic envoy).

2. The Government of Japan will [shall], when it intends to deport a person falling under (c) or (d) of the Article, take into consideration the composition of his family and other circumstances from a humanitarian standpoint.

3. The Government of the Republic of Korea will, in accordance with [shall, at the request of] the request of the Government of Japan, co-operate in accepting a person who is to be deported from Japan under the provisions of the Article.

4. It is the policy of the Government of Japan that, when deportation procedures are taken with respect to a person qualified to apply for permission for permanent residence in accordance with the provisions of Article I of the Agreement, it will, taking into account that should he be given permission for permanent residence he shall not be deported from Japan unless he falls under either of (a) through (d) of Article III, withhold the enforcement of his deportation:

- (i) in case he has already applied for permission for permanent residence, until decision is given on his application; or
- (ii) in case he has not applied for permission for permanent residence, until whether or not he intends to apply is confirmed, and in case he applies, until decision is given on his application.

Re Article IV:

1. In accordance with the laws and regulations, the Government of Japan will [shall], when nationals of the Republic of Korea who are given permission for permanent residence in Japan in accordance with the provisions of Article I of the Agreement wish to enter a public primary or secondary school of Japan, take such measures as it deems necessary so that such entrance may be permitted, and will [shall], when they finish a secondary school of Japan, recognize their qualification for applying for higher schools of Japan.

2. The Government of Japan will [shall] have for the time being the present livelihood protection for the nationals of the Republic of Korea who are given permission for permanent residence in accordance with the provisions of Article I of the Agreement continued.

3. The Government of Japan will [shall] take such measures as it deems necessary in order to insure under the National Health Insurance the nationals of the Republic of Korea who are given permission for permanent residence in Japan in accordance with the provisions of Article I of the Agreement.

4. When the nationals of the Republic of Korea who are given permission for permanent residence in Japan in accordance with the provisions of Article I of the Agreement (including persons who are qualified to apply for permission for permanent residence) renounce their intention of residing permanently in Japan and return to the Republic of Korea, the Government of Japan will [shall] permit in principle that they may take all their property with them or remit all their funds.

For this purpose:

- (i) with respect to their taking their property with them, the Government of Japan will [shall], within the scope of the laws and regulations, permit their taking with them their personal effects, household goods and professional tools and equipments, and pay due consideration as much as possible in authorizing their exportation; and
- (ii) with respect to their taking with them or remitting their funds, the Government of Japan will [shall], within the scope of the laws and regulations, permit their taking with them or remitting their funds not exceeding ten thousand United States dollars per family at the time of their returning home, and their taking with them or remitting the exceeding amount as the case may be.

Tokyo, June 22, 1965.

E. S.

T. W. L.

RECORD OF DISCUSSIONS

In the course of the negotiations for conclusion of the Agreement on the Legal Status and the Treatment of Korean Nationals residing in Japan, the following statements were made respectively by the Japanese and Korean sides:

Japanese Representative:

(a) In the application of the provisions of paragraph 1 (a) of Article I of the Agreement, it is the policy of the Government of Japan to regard the period between the departure from Japan for military service or for compulsory labour recruitment and the arrival in Japan under the repatriation programme as the period of continued residence in Japan.

(b) The following will be included among those which a person applying for permission for permanent residence in accordance with the provisions of Article I of the Agreement is to submit or produce:

- (i) Application for permission for permanent residence
- (ii) Photograph

- (iii) Statement on family relations and residence record in Japan
- (iv) Certificate of alien registration.

(c) The term "such measures as it deems necessary" referred to in paragraph 1 of the part of the Agreed Minutes to the Agreement regarding Article IV of the Agreement means guidance, advice and recommendation given by the Ministry of Education in accordance with the laws and regulations presently in force.

(d) The term "such measures as it deems necessary" in paragraph 5 of the part of the Agreed Minutes to the Agreement regarding Article IV of the Agreement includes amendment of the ordinance of the Ministry of Welfare. However, since a preparatory period of considerable length will be necessary for taking such measures, the Government of Japan will ensure that those Korean nationals will be insured under the National Health Insurance as from the first day of the fiscal year following the fiscal year to which the first day after the lapse of one year from the date of the entry into force of the Agreement belongs.

(e) The Republic of Korea is designated in the notification under the Cabinet Order concerning the Acquisition of Properties by Aliens as a country to which the said Order shall not apply, and the Government of Japan has no intention to delete it upon the entry into force of the Agreement.

(f) It is the policy of the Government of Japan that, when a national of the Republic of Korea who is given permission for permanent residence in Japan in accordance with the provisions of Article I of the Agreement intends to leave Japan and applies for re-entry permission, it will, within the scope of the laws and regulations, handle such application as favourably as possible.

Korean Representative:

(a) It is the policy of the Government of the Republic of Korea that, after the entry into force of the Agreement, it will co-operate with the Government of Japan in accepting nationals of the Republic of Korea to be deported from Japan under the laws and regulations of Japan concerning immigration control.

(b) The Government of the Republic of Korea, while recognizing that a preparatory period of considerable length will be necessary for taking "such measures as it deems necessary" referred to in paragraph 5 of the part of the Agreed Minutes to the Agreement regarding Article IV of the Agreement, expects that such measures will be taken as soon as possible.

(c) The Government of the Republic of Korea is prepared to consider with the Government of Japan measures for co-operating with the latter to the extent possible at the latter's request in order to stabilize the life of the nationals of the Republic of Korea residing in Japan and relieve the poor among them.

M. Y.

K. H. L.

B. LAWS AND DECREES

1. LAW CONCERNING MEASURES ON PROPERTY RIGHTS OF THE REPUBLIC OF KOREA, ETC., TO BE TAKEN FOR THE ENFORCEMENT OF ARTICLE II OF THE AGREEMENT ON THE SETTLEMENT OF PROBLEMS CONCERNING PROPERTY AND CLAIMS AND ON THE ECONOMIC CO-OPERATION BETWEEN JAPAN AND THE REPUBLIC OF KOREA (LAW No.144, PROMULGATED ON 17 DECEMBER 1965) 1/

1. The property rights of the Republic of Korea or its nationals (including juridical persons; hereinafter the same) as specified hereinunder, which come under the property, rights and interests under paragraph 3 of Article II of the Agreement on the Settlement of Problem concerning Property and Claims and on the Economic Co-operation between Japan and the Republic of Korea (hereinafter referred to as "the Agreement"), 2/ except for those to which the provision of the following paragraph shall apply, shall be regarded as having been extinguished on June 22, 1965, provided that those property rights which were subject to the rights of third persons on that date (other than those coming under the property, rights and interests under paragraph 3 of the said Article), shall be regarded as not having been extinguished to the extent that they are necessary for the exercise of such rights:

- (1) Claims against Japan or its nationals;
- (2) Security rights which have been created on things (including the rights embodied in securities; the same in the following paragraph) or claims possessed by Japan or its nationals.

2. Things of the Republic of Korea or its nationals held in the custody of Japan or its nationals as of June 22, 1965, which come under the property, rights and interests under paragraph 3 of Article II of the Agreement shall be regarded as having been vested in their custodian on the said date. In this case, as to the shares in respect of which no share certificates have been issued, their issuing company shall be regarded as holding the share certificates in its custody.

3. As to the right embodied in the securities possessed by the Republic of Korea or its nationals which come under the property, rights and interests under paragraph 3 of Article II of the Agreement, with the exception of those to which the provisions of the preceding two paragraphs shall apply, the Republic of Korea or its nationals who come under paragraph 3 of the said Article shall not make any claim under such rights on and after June 22, 1965.

2. SPECIAL LAW FOR IMMIGRATION CONTROL ESTABLISHED IN CONSEQUENCE OF THE ENFORCEMENT OF THE AGREEMENT ON THE LEGAL STATUS AND THE TREATMENT OF THE NATIONALS OF THE REPUBLIC OF KOREA RESIDING IN JAPAN BETWEEN JAPAN AND THE REPUBLIC OF KOREA (LAW No.146, PROMULGATED ON 17 DECEMBER 1965) 1/

Permanent Residence under the Agreement

Article 1. 1. The national of the Republic of Korea as provided for in paragraphs 1 and 2 of Article 1 of the Agreement on the Legal Status and the Treatment of the

1/ "Unofficial translation" supplied by the Government of Japan.

2/ See section A, 1 above.

Nationals of the Republic of Korea residing in Japan between Japan and the Republic of Korea (hereinafter referred to as "the Agreement") 1/ may reside permanently in Japan (the term "Japan" means Japan as provided for in the Immigration Control Order (Cabinet Order No.319 of 1951)) with the permission of the Minister of Justice.

2. The Minister of Justice shall, in case the person mentioned in the preceding paragraph has applied for the permission under the preceding paragraph within the period prescribed in paragraphs 1 to 3 inclusive of Article 1 of the Agreement, grant permission to such application.

Application

Article 2. 1. The applicant shall make the application for the permission mentioned in the preceding Article by presenting himself at the office of the city, town or village where he resides (the ward in the case of the area where the special wards of Tokyo Metropolis are situated and the designated city under item 1 of paragraph 19 of Article 252 of the Local Autonomy Law (Law No.67 of 1947); hereinafter the same) and by submitting an application for permission for permanent residence and other relevant papers and his photograph, as prescribed by the Ministry of Justice Ordinance. However, no photograph shall be required to be submitted in the case of a person under fourteen years of age.

2. Application for the permission under the preceding Article in the case of a person under fourteen years of age shall be made on his behalf by a person who exercises parental power over him or his guardian.

3. If, in the case contemplated in paragraph 1, the applicant is unable to present himself on account of illness or any other physical disorder, he may cause his representative to appear, as prescribed by the Ministry of Justice Ordinance.

4. The mayor of city or head of town or village shall, in the event that the papers and the photograph under paragraph 1 have been submitted, send these papers (excluding the papers prescribed by the Ministry of Justice Ordinance) and the photograph to the Minister of Justice through the Metropolitan, Hokkaido or prefectural governor after examining whether or not the applicant is residing in the place of residence under application and whether or not the papers submitted are genuine.

Inquiry

Article 3. 1. The Minister of Justice may cause the Immigration Inspector or the Immigration Control Officer to inquire into the facts, when he finds it necessary to do so in order to examine whether or not the applicant for the permission under Article 1 comes under paragraph 1 of the said Article.

1/ See section A, 2 above.

2. The Immigration Inspector or the Immigration Control Officer may request the persons concerned to appear, ask them questions or to produce documents, when it is found necessary to do so for the conduct of the inquiry under the preceding paragraph.

3. In regard to the inquiry under paragraph 1, the Immigration Inspector or the Immigration Control Officer may send inquiries to the public offices, or public or private organizations and request them to report on matters deemed pertinent.

Delivery of Permit for Permanent Residence and Entry in Alien Registration Card, etc.

Article 4. 1. The Minister of Justice shall, in the event that he has granted the permission under Article 1, deliver the permit for permanent residence to the applicant through the Metropolitan, Hokkaido or prefectural governor or the mayor of city or head of town or village.

2. The Metropolitan, Hokkaido or prefectural governor or the mayor of city or head of town or village shall, in the case of a person granted the permission under Article 1, enter in the copy of his alien registration card as prescribed by the Alien Registration Law (Law No.125 of 1952) or his alien registration card or registration certificate as prescribed by the said Law the fact that the permission under the said Article has been granted.

Nullification of Permission Granted

Article 5. In the event that a person who is granted the permission under Article 1 has lost his Korean nationality, the permission shall lose its effect.

Deportation

Article 6. 1. In the case of a person who is granted the permission under Article 1 deportation may be effected under Article 24 of the Immigration Control Order only when the person falls under any one of the following items by performing an act on and after the date of the coming into force of the present Law:

- (1) A person who has been subjected to punishment heavier than imprisonment for a crime as provided for in Chapter II or III of Book II of the Penal Code (Law No.45 of 1907), provided that this shall not apply to a person in respect of whom a sentence suspending the execution of punishment has been pronounced and a person who has been subjected to punishment for a crime under item 3 of paragraph 1 of Article 77 of the said Code;
- (2) A person who has been subjected to punishment heavier than imprisonment for a crime as provided for in Chapter IV of Book II of the Penal Code;
- (3) A person who has been subjected to punishment heavier than imprisonment for a criminal act committed against the head of a foreign State, members of a foreign diplomatic mission or the premises of the mission and whose criminal act has been found by the Minister of Justice to have prejudiced the vital diplomatic interests of Japan;

- (4) A person who, for profit making purposes, has committed a crime under the Narcotics Control Law (Law No.14 of 1953), Taima Control Law (Law No.124 of 1948), Opium Law (Law No.71 of 1954) or Chapter XIV of the Penal Code, and has been subjected to penal servitude for life or for a period of not less than three years, provided that this shall not apply to a person in respect of whom the sentence suspending the execution of a sentence has been pronounced;
- (5) A person who has been subjected to punishment for crimes as stipulated under the Narcotics Control Law, Taima Control Law, Opium Law or Chapter XIV of the Penal Code three times or more (twice or more in the case of a person who was subjected to punishment not less than three times for these crimes committed by the acts prior to the enforcement of this Law);
- (6) A person who has been subjected to penal servitude or imprisonment for life or for a period of not less than seven years.

2. In making the finding of facts under item 3 of the preceding paragraph, the Minister of Justice shall hold a prior consultation with the Minister for Foreign Affairs.

3. In the case of a person who is granted the permission under Article 1, the term "any one of the items of Article 24 in Article 27, paragraph 3 of Article 31, paragraph 1 of Article 39, paragraph 1 of Article 43, paragraph 1 of Article 45, paragraphs 1 and 2 of Article 47, paragraph 1 of Article 62 and paragraph 1 of Article 63 of the Immigration Control Order shall mean "any one of the items of paragraph 1 of Article 6 of the Special Law for Immigration Control Established in Consequence of the Enforcement of the Agreement on the Legal Status and the Treatment of the Nationals of the Republic of Korea Residing in Japan between Japan and the Republic of Korea".

Application of Immigration Control Order

Article 7. The entry or departure and residence of a person who is granted the permission under Article 1 shall, except as specifically provided for in this Law, be governed by the Immigration Control Order.

Entrustment to Ministerial Ordinance

Article 8. The procedures for the enforcement of this Law and other matters essential to its execution shall be prescribed by the Ministry of Justice Ordinance.

Penal Provisions

Article 9. A person coming under any one of the following items shall be punished with penal servitude for a period of not more than one year or with the imposition of a fine not exceeding thirty thousand yen:

- (1) A person who has been granted or has caused to be granted the permission under Article 1 by making a false application;
- (2) A person who has prevented the application for the permission under Article 1 by intimidation.

MALAWI

Transmitted by a note verbale dated 7 April 1970 of the Permanent
Mission to the United Nations

A. TREATIES

Unilateral declaration made by Malawi concerning international instruments
applied to its territory prior to independence

1. LETTER DATED 24 NOVEMBER 1964 FROM THE PRIME MINISTER AND MINISTER OF EXTERNAL AFFAIRS OF MALAWI ADDRESSED TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

Zomba, Malawi

24th November, 1964.

Sir,

The Government of Malawi is mindful of the desirability of maintenance, to the fullest extent compatible with the emergence into full independence of the State of Malawi, legal continuity between Malawi and the several States with which, through the action of the Government of the United Kingdom or of the former Government of the Federation of Rhodesia and Nyasaland, the former Nyasaland Protectorate enjoyed treaty relations. Accordingly, the Government of Malawi takes the present opportunity of making the following declaration:

As regards bilateral treaties validly concluded by the Government of the United Kingdom or by the Government of the former Federation of Rhodesia and Nyasaland, on behalf of the former Nyasaland Protectorate, or validly applied or extended by either of the said Governments to the territory of the former Nyasaland Protectorate, the Government of Malawi is willing to continue to apply within its territory, on a basis of reciprocity, the terms of all such treaties for a period of eighteen months from the date of independence (i.e. until January 6, 1966), unless abrogated or modified earlier by mutual consent. At the expiry of that period, the Government of Malawi will regard such of these treaties which could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.

It is the earnest hope of the Government of Malawi that during the aforementioned period of eighteen months, the normal processes of diplomatic negotiations will enable it to reach satisfactory accord with the States concerned upon the possibility of the continuance or modification of such treaties.

The Government of Malawi is conscious that the above declaration applicable to bilateral treaties cannot with equal facility be applied to multilateral treaties. As regards these, therefore, the Government of Malawi

proposes to review each of them individually and to indicate to the depositary in each case what steps it wishes to take in relation to each such instrument - whether by way of confirmation of termination, confirmation of succession or accession. During such interim period of review, any party to a multilateral treaty which has, prior to independence, been applied or extended to the former Nyasaland Protectorate may, on a basis of reciprocity, rely as against Malawi on the terms of such treaty.

It would be appreciated if Your Excellency would arrange for the text of this declaration to be circulated to all Members of the United Nations.

Please accept, Sir, the assurance of my highest consideration.

(Signed) H. Kamuzu Banda
Prime Minister and Minister of
External Affairs

2. LETTER DATED 5 JANUARY 1966 FROM THE PRIME MINISTER AND MINISTER OF EXTERNAL AFFAIRS OF MALAWI ADDRESSED TO THE SECRETARY-GENERAL OF THE UNITED NATIONS

Office of the Prime Minister
Zomba, Malawi.
5 January 1966.

Your Excellency,

The Government of Malawi refers to the letter dated 24th November 1964 addressed to Your Excellency by the Prime Minister and Minister of External Affairs of Malawi setting out his Government's position in relation to international instruments whose provisions, through the action of the Government of the United Kingdom or of the former Government of the Federation of Rhodesia and Nyasaland, applied to Malawi prior to independence.

Due to the present status of negotiations, the Government of Malawi wishes to extend the period of application in respect of bilateral treaties for a further period of twelve months. Therefore the Government of Malawi is willing to continue to apply within its territory, on a basis of reciprocity, the terms of all such treaties for a period of thirty months from the date of independence (i.e. until January 6th 1967), unless abrogated or modified earlier by mutual consent. At the expiry of that period, or of any subsequent extension of the period which may be notified in like manner, the Government of Malawi will regard such of these treaties which could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.

In respect of multilateral treaties, the Government of Malawi is continuing to review each one of them individually in accordance with the letter dated 24th November 1964.

It would be appreciated if Your Excellency would arrange for the text of this letter to be circulated to all Members of the United Nations.

Please accept, Your Excellency, the assurance of my highest consideration.

(Signed) H. Kamuzu Banda
Prime Minister and Minister of
External Affairs

B. LAWS AND DECREES

1. THE REPUBLIC OF MALAWI (CONSTITUTION) ACT, 1966 - AN ACT TO CONSTITUTE THE REPUBLIC OF MALAWI AND TO PROVIDE FOR MATTERS INCIDENTAL THERETO OR CONNECTED THEREWITH 1/

.....

Interpretation

2. (1) In this Act, unless the context otherwise requires -

"the appointed day" means the 6th day of July, 1966;

"the Constitution" means the Constitution established by section 4, and set forth in the Second Schedule;

"the existing laws" means all Acts, Orders in Council, laws, rules, regulations, resolutions, orders or other instruments in writing having the effect of law in any part of Malawi immediately before the appointed day;

"the former Protectorate" means the former Protectorate of Nyasaland;

"the Government" means the authority, for the time being, in which is vested (whether before or after the appointed day) the executive power of Malawi.

(2) Except where the context otherwise requires, expressions used in this Act have the same meaning as in the Constitution, and the provisions of section 98 of the Constitution shall apply for the purposes of interpreting this Act as they apply for the purposes of interpreting the Constitution.

(3) Except where expressly otherwise provided, the Interpretation and General Clauses Ordinance shall apply, with any necessary adaptations, for the purpose of interpreting the Constitution, and otherwise in relation thereto, as it applies for the purpose of interpreting, and in relation to, Ordinances or Acts of Parliament.

Revocation and repeal of specified existing laws

3. The existing laws specified in Column 1 of the First Schedule are revoked or repealed to the extent specified in Column 2 of the Schedule.

1/ Act No. 23 of 1966 enacted by the Parliament of Malawi. Came into operation on 6 July 1966.

Establishment of Constitution

4. Subject to the provisions of this Act, the Constitution shall come into effect in Malawi on the appointed day.

Existing laws

5. (1) Subject to the provisions of this section, and so far as is consistent with the provisions of the Constitution, the existing laws shall continue in force after the appointed day as if they had been made in pursuance of the Constitution, but they shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution, and in particular any reference therein to the Crown shall be construed as a reference to the Government.

(2) The President may, by an order under his hand made at any time before the 6th July, 1967, make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Act or the Constitution, or otherwise for enabling effect to be given to those provisions.

(3) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the appointed day, by or under the provisions revoked or repealed by section 3 of this Act, that prescription or provision shall, as from the appointed day, have effect as if it had been made under the Constitution by Parliament or, as the case may be, by the other authority or person.

(4) The provisions of this section shall be without prejudice to any powers conferred by this Act or the Constitution upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

Existing offices

6. (1) Where any office has been established by or under the provisions revoked by section 3 of this Act and the Constitution establishes a similar or an equivalent office, any person who immediately before the appointed day holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed to have been appointed, elected or designated as from the appointed day to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken any necessary oath under the Constitution:

Provided that any person who, under the provisions revoked by section 3 of this Act or under any existing law, would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office at the expiration of that period or upon the attainment of that age.

(2) The provisions of this section shall be without prejudice to:

(a) the provisions of section 7; and

(b) any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices or the removal of persons holding or acting in any office.

.....
.....

Transitional Provisions

9. (1) All rights and obligations under conventions, treaties or agreements which were exercisable by or binding upon the Government immediately before the appointed day shall continue to be so exercisable and binding.

(2) All functions which immediately prior to the appointed day were vested in the Governor-General or in any other authority, shall as far as the same continue in existence and are capable of being exercised after the appointed day be vested in the President, or in the authority exercising similar functions under the Constitution, as the case may be, except such functions as are by this Act or any other law vested in some other authority.

Prerogatives and privileges

10. Where under any existing law, constitutional custom or convention any prerogatives or privileges are vested in Her Majesty in respect of Malawi or in the Governor-General on behalf of Her Majesty, they shall with effect from the appointed day vest in the President and, subject to the provisions of the Constitution or any other law, the President shall have power to do all things necessary for the exercise thereof.

Succession to property by the Government

11. Subject to the provisions of this Act, and the Constitution, all property of every nature and kind whatsoever and all assets that, immediately before the appointed day, were vested in, or held in trust for, Her Majesty or the Governor-General or in any other person in right of the Government of Malawi, shall on and after the appointed day be vested in or, as the case may be, held in trust for the Government.

Provided that such vesting or trust interest shall be subject to:

(a) any rights in respect of any property or assets referred to in this section that, by or under any law, were granted, leased or otherwise disposed of to, or were recognized as being vested in, any person before the appointed day and that were subsisting immediately before the appointed day; and

(b) any rights in respect of any property or assets referred to in this section that may, subject to any law, be granted, leased or otherwise disposed of to, or in trust for, any person on or after the appointed day by the Government, or by any person authorized in that behalf by the Government or by or under any law.

Continuance of rights, liabilities and obligations

12. All rights, liabilities and obligations, howsoever arising, of Her Majesty, the Governor-General or any public officer in respect of the Government of Malawi before the appointed day shall, on and after the appointed day, be rights, liabilities and obligations respectively of the Government.

Confirmation of titles and interests in land, etc.

13. All estates, interests or rights in or over land, minerals or mineral oils which the Governor of the former Protectorate, the Governor-General or any other officer or authority, acting in exercise or purported exercise of any power in that behalf conferred by any law, had at any time before the appointed day validly created, granted or recognized, are hereby confirmed.

Legal proceedings

14. (1) All proceedings that, immediately before the appointed day, are pending before any court established by or under the provisions revoked by section 3 may be continued and concluded after the appointed day before the corresponding court established by or under the Constitution.

(2) Any decision, order or sentence given before the appointed day by any such court as aforesaid shall, for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the appointed day as if it were a decision of the corresponding court established by or under the Constitution.

Exercise of jurisdiction of High Court and other courts

15. Until Parliament otherwise provides, the civil and criminal jurisdiction of the Supreme Court of Appeal, the High Court and of all subordinate courts (including Local Courts) shall, subject to the provisions of this Act and of any law in force in Malawi, be exercised in conformity with the existing laws and the substance of the common law and the doctrines of equity.

THE FIRST SCHEDULE

Provisions Revoked or Repealed
by This Act

Column 1

Column 2

S.I. 1964/ 916	The Malawi Independence Order, 1964 <u>1</u> /	All sections, other than sections 11 and 12 of the Order and sections 105 and 106 of the Constitution of Malawi set out in Schedule 2 to that Order <u>2</u> /
No.1 of 1964	The Constitution of Malawi (Amendment) Act, 1964	The whole Act.
No.41 of 1965	The Constitution of Malawi (Amendment) Act, 1965	The whole Act.
No.49 of 1965	The Constitution of Malawi (Amendment)(No.2) Act, 1965	The whole Act.
S.I. 1964/ 269	The Nyasaland (Electoral Provisions) Order in Council, 1964	The whole Order

1/ Made at the Court at Buckingham Palace on 23 June 1964 and came into operation immediately before 6 July 1964.

2/ For the text of sections 11 and 12 of the Order and sections 105 and 106 of the Constitution of Malawi set out in Schedule 2 to that Order see pages 34-37 below.

THE SECOND SCHEDULE

THE CONSTITUTION OF THE REPUBLIC OF
MALAWI

CHAPTER I

The Republic

Declaration of the Republic

1. (1) Malawi shall on the appointed day become a sovereign democratic Republic.

....

Fundamental principles of Government

2. (1) Subject to the provisions of this Constitution, the Government of the Republic shall be founded upon the following principles -

....

(iii) The Government and the people of Malawi shall continue to recognize the sanctity of the personal liberties enshrined in the United Nations Universal Declaration of Human Rights, and of adherence to the Law of Nations;

....

The national territory

3. The national territory of the Republic shall consist of all the territory which was comprised in Malawi immediately before the appointed day, and shall include all the islands, inland waters and air space of Malawi, and shall include any territory lawfully acquired thereafter by adjustment of boundaries or otherwise.

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CHAPTER II

Citizenship

Continuation of citizenship of Malawi after the appointed day

7. (1) Subject to the provisions of any law, every person who immediately before the appointed day was under any existing law a citizen of Malawi, shall continue to be a citizen of the Republic after the appointed day.

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CHAPTER IX
MISCELLANEOUS

.....

Interpretation

98. (1) In this Constitution, unless the context otherwise requires -

"Act of Parliament" means any law made by Parliament, either before or after the appointed day, and includes any existing law continued in force by section 5 of the Republic of Malawi (Constitution) Act, 1966

"appointed day" means the 6th day of July, 1966;

"appropriate Service Commission" means, as the context or circumstances of the case may require, the Public Service Commission, the Judicial Service Commission or the Police Service Commission, provided for in this Constitution;

"armed forces" means the armed forces of the Republic;

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2. THE MALAWI INDEPENDENCE ORDER, 1964^{1/}

.....
.....

Appeals in respect of certain decisions affecting pensions and like benefits

11. (1) The following provisions of this section shall have effect for the purpose of enabling any officer to whom this section applies or his personal representatives to appeal against a decision to which this section applies, that is to say, a decision within any of the following classes:-

- (a) a decision of the appropriate Commission to give such concurrence as is required by section 106 of the Constitution in relation to the refusal, withholding, reduction in amount or suspension of any benefits in respect of such officer's service as a public officer;
- (b) a decision by any authority to remove such an officer from office if the consequence of the removal is that any benefits cannot be granted in respect of the officer's service as a public officer;
- (c) a decision by any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is to reduce the amount of any benefits that may be granted in respect of the officer's service as a public officer.

^{1/} See page 32 above.

(2) Where any decision such as is referred to in subsection (1) of this section is taken by any authority, the authority shall cause to be delivered to the officer concerned, or his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

...

(7) This section applies to any officer who is the holder of a pensionable public office and -

- (a) is designated under the Overseas Service Aid Scheme;
- (b) is a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary; or
- (c) whose conditions of service include an entitlement to free passages from Malawi for the purpose of leave of absence upon the completion of a tour of duty.

Compulsory retirement to facilitate appointment of local candidates

12. (1) If the Prime Minister so requests, the authorities having power to make appointments in any branch of the public service shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in, that branch than there are vacancies in that branch that could appropriately be filled by such local candidates; and those authorities, if satisfied that such is the case, shall, if so requested by the Prime Minister, select officers in that branch to whom this subsection applies and whose retirement would in the opinion of those authorities cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the Prime Minister of the number of officers so selected; and if the Prime Minister specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), those authorities shall nominate that number of officers from among the officers so selected and by notice in writing require them to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(2) Any notice given under subsection (1) of this section requiring any officer to retire from the public service shall -

- (a) in the case of an officer who, when he receives the notice, is on leave of absence upon the completion of a tour of duty, specify the date upon which he shall so retire which shall be not earlier than the expiration of six months from the date when he receives the notice or, if his leave of absence would otherwise expire later, when it would otherwise expire; and
- (b) in the case of any other officer, specify the period, which shall be not less than six months from the date when he receives the notice, at the expiration of which he shall proceed upon leave of absence pending retirement:

Provided that, with the consent of the officer, the notice may specify an earlier date or, as the case may be, a shorter period.

(3) This section applies to any officer who holds a pensionable public office and -

- (a) is designated under the Overseas Service Aid Scheme;
- (b) is a member of Her Majesty's Overseas Civil Service or Her Majesty's Overseas Judiciary;
- (c) whose conditions of service include an entitlement to free passages from Malawi for the purpose of leave of absence upon the completion of a tour of duty; or
- (d) is an overseas officer who, after the commencement of this Order, is appointed to any public office (otherwise than on promotion or transfer from another public office) and who is notified at the time of his appointment that this section will apply to him.

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SCHEDULE 2 TO THE ORDER
THE CONSTITUTION OF MALAWI

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CHAPTER VII
THE PUBLIC SERVICE

...

Pension laws and protection of pension rights

105. (1) The law to be applied with respect to any pensions benefits that were granted to any person before 6th July 1964 shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which subsection (1) of this section applies) shall -

- (a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 6th July 1964, be the law that was in force on 5th July 1964; and
- (b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 6th July 1964, be the law in force on the date on which that period of service commenced.

or any law in force at a later date that is not less favourable to that person.

...

Power of Commissions in relation to pensions etc.

106. (1) Where under any law any person or authority has a discretion -
- (a) to decide whether or not any pensions benefits shall be granted; or
 - (b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under subsection (1) or subsection (2) of this section in action taken on the ground that any person who holds or has held the office of a judge of the Supreme Court of Appeal, a judge of the High Court, the Director of Public Prosecutions or the Auditor-General has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

....

MAURITIUS

Transmitted by a note verbale dated 28 September 1970 of the
Ministry of External Affairs, Tourism and Emigration

TREATIES

Note relating to the unilateral declaration made by Mauritius
concerning international instruments applied to its territory
prior to independence

The Ministry of External Affairs, Tourism and Emigration wished to refer to the declaration 1/ the Government of Mauritius deposited with the Secretary-General of the United Nations on the 12th March, 1968, regarding rights and obligations arising under treaties extended to Mauritius by the Government of the United Kingdom of Great Britain and Northern Ireland before the accession of Mauritius to independence. In that declaration the Government of Mauritius stated that, in principle, it acknowledged that treaty rights and obligations of the former colony of Mauritius would be inherited by Mauritius upon independence. Since it was likely that some of these treaties may have lapsed upon the attainment of independence by virtue of customary international law or a fundamental change in circumstances, the Government of Mauritius felt that it was essential that each treaty should be subjected to examination.

The exercise regarding the examination of each treaty is almost complete for multilateral treaties inasmuch as the Government has notified the depositories of the various treaties of its stand in nearly all the cases. The Government is proposing to perform a similar exercise in relation to bilateral treaties as soon as possible.

1/ For the text of the declaration see infra UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND; 8. Mauritius, p.56.

SINGAPORE

Transmitted by a note verbale dated 4 September 1970 of the
Permanent Mission to the United Nations

TREATIES

AGREEMENT (WITH ANNEXES) BETWEEN MALAYSIA AND SINGAPORE RELATING
TO THE SEPARATION OF SINGAPORE FROM MALAYSIA AS AN INDEPENDENT
AND SOVEREIGN STATE. SIGNED AT KUALA LUMPUR ON 7 AUGUST 1965. 1/

An Agreement dated the 7th day of August, 1965, and made between the Government of Malaysia of the one part and the Government of Singapore of the other part.

WHEREAS Malaysia was established on the 16th day of September, 1963, by a federation of the existing states of the Federation of Malaya and the States of Sabah, Sarawak and Singapore into one independent and sovereign nation;

AND WHEREAS it has been agreed by the parties hereto that fresh arrangements should be made for the order and good government of the territories comprised in Malaysia by the separation of Singapore from Malaysia upon which Singapore shall become an independent and sovereign state and nation separate from and independent of Malaysia and so recognized by the Government of Malaysia;

NOW therefore it is agreed and declared as follows:

Article I

This Agreement may be cited as the Independence of Singapore Agreement, 1965.

Article II

Singapore shall cease to be a State of Malaysia on the 9th day of August, 1965, (hereinafter referred to as "Singapore Day") and shall become an independent and sovereign state separate from and independent of Malaysia and recognized as such by the Government of Malaysia; and the Government of Malaysia will proclaim and enact the constitutional instruments annexed to this Agreement in the manner hereinafter appearing.

Article III

The Government of Malaysia will declare by way of proclamation in the form set out in Annex A to this Agreement that Singapore is an independent and sovereign state separate from and independent of Malaysia and recognized as such by the Government of Malaysia.

1/ United Nations, Treaty Series, vol. 563, p.89. Came into force on 9 August 1965.

Article IV

The Government of Malaysia will take such steps as may be appropriate and available to them to secure the enactment by the Parliament of Malaysia of an Act in the form set out in Annex B to this Agreement and will ensure that it is made operative as from Singapore Day, providing for the relinquishment of sovereignty and jurisdiction of the Government of Malaysia in respect of Singapore so that the said sovereignty and jurisdiction shall on such relinquishment vest in the Government of Singapore in accordance with this Agreement and the constitutional instruments annexed.

Article V

The parties hereto will enter into a treaty on external defence and mutual assistance providing that:-

- (1) the parties hereto will establish a joint defence council for purposes of external defence and mutual assistance;
- (2) the Government of Malaysia will afford to the Government of Singapore such assistance as may be considered reasonable and adequate for external defence, and in consideration thereof, the Government of Singapore will contribute from its own armed forces such units thereof as may be considered reasonable and adequate for such defence;
- (3) the Government of Singapore will afford to the Government of Malaysia the right to continue to maintain the bases and other facilities used by its military forces within Singapore and will permit the Government of Malaysia to make such use of these bases and facilities as the Government of Malaysia may consider necessary for the purpose of external defence;
- (4) each party will undertake not to enter into any treaty or agreement with a foreign country which may be detrimental to the independence and defence of the territory of the other party.

Article VI

The parties hereto will on and after Singapore Day co-operate in economic affairs for their mutual benefit and interest and for this purpose may set up such joint committees or councils as may from time to time be agreed upon.

Article VII

The provisions of Annex J and K of the Agreement relating to Malaysia dated the 9th day of July, 1963, are hereby expressly rescinded as from the date of this Agreement.

Article VIII

With regard to any agreement entered into between the Government of Singapore and any other country or corporate body which has been guaranteed by the Government of Malaysia, the Government of Singapore hereby undertakes to negotiate with such country

or corporate body to enter into a fresh agreement releasing the Government of Malaysia of its liabilities and obligations under the said guarantee, and the Government of Singapore hereby undertakes to indemnify the Government of Malaysia fully for any liabilities, obligations or damage which it may suffer as a result of the said guarantee.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement.

Done this 7th day of August, 1965, in two copies of which one shall be deposited with each of the Parties.

ANNEX "A"

PROCLAMATION ON SINGAPORE

In the name of God, the Compassionate, the Merciful. Praise be to God, the Lord of the Universe, and may the benediction and peace of God be upon Our Leader Muhammad and upon all His Relations and Friends.

WHEREAS Malaysia was established on the 16th day of September, 1963, by a federation of the existing states of the Federation of Malaya and the States of Sabah, Sarawak and Singapore into one independent and sovereign nation;

AND WHEREAS by an Agreement made on the 7th day of August in the year one thousand nine hundred and sixty-five between the Government of Malaysia on the one part and the Government of Singapore on the other part it was agreed that Singapore should cease to be a state of Malaysia and should thereupon become an independent and sovereign state and nation separate from and independent of Malaysia;

AND WHEREAS it was also agreed by the parties to the said Agreement that, upon the separation of Singapore from Malaysia, the Government of Malaysia shall relinquish its sovereignty and jurisdiction in respect of Singapore so that the said sovereignty and jurisdiction shall on such relinquishment vest in the Government of Singapore;

NOW in the name of God the Compassionate, the Merciful, I, TUNKU ABDUL RAHMAN PUTRA AL-HAJ IBNI ALMARHUM SULTAN ABIDUL HAMID HALIM SHAH, Prime Minister of Malaysia, with the concurrence and approval of His Majesty the Yang di-Pertuan Agong of Malaysia, DO HEREBY DECLARE AND PROCLAIM that, as from the 9th day of August in the year one thousand nine hundred and sixty-five, Singapore shall cease to be a State of Malaysia and shall forever be an independent and sovereign state and nation separate from and independent of Malaysia, and that the Government of Malaysia recognizes the present Government of Singapore as an independent and sovereign government of Singapore and will always work in friendship and co-operation with it.

ANNEX "B"

A BILL
INTITULED

AN ACT TO AMEND THE CONSTITUTION OF MALAYSIA AND THE MALAYSIA ACT

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Ra'ayat in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the Constitution and Malaysia (Singapore Amendment) Act, 1965.

Provision for Singapore to leave Malaysia

2. Parliament may by this Act allow Singapore to leave Malaysia and become an independent and sovereign state and nation separate from and independent of Malaysia.

Separation of Singapore from Malaysia, independence, sovereignty and recognition

3. Singapore shall cease to be a State of Malaysia on the 9th day of August, 1965, (hereinafter called "Singapore Day") and shall thereupon become an independent and sovereign state and nation separate from and independent of Malaysia and recognized as such by the Government of Malaysia; and accordingly the Constitution of Malaysia and the Malaysia Act shall thereupon cease to have effect in Singapore except as hereinafter provided.

Retention of Singapore's executive and legislative powers

4. The Government of Singapore shall on and after Singapore Day retain its executive authority and legislative powers to make laws with respect to those matters provided for in the Constitution.

Transfer of executive and legislative powers of Parliament

5. The executive authority and legislative powers of the Parliament of Malaysia to make laws for any of its constituent States with respect to any of the matters enumerated in the Constitution shall on Singapore Day cease to extend to Singapore and shall be transferred so as to vest in the Government of Singapore.

Transfer of sovereignty and jurisdiction etc.

6. The Yang di-Pertuan Agong shall on Singapore Day cease to be the Supreme Head of Singapore and his sovereignty and jurisdiction, and power and authority, executive or otherwise in respect of Singapore shall be relinquished and shall vest in the Yang di-Pertuan Negara, the Head of State of Singapore.

Continuation and effect of present laws

7. All present laws in force in Singapore immediately before Singapore Day shall continue to have effect according to their tenor and shall be construed as if this Act had not been passed in respect of Singapore subject however to amendment or repeal by the Legislature of Singapore.

Temporary provision as to jurisdiction and procedure of Singapore Courts

8. Until other provision is made by the Legislature of Singapore, the jurisdiction, original or appellate, and the practice and procedure of the High Court and the subordinate Courts of Singapore shall be the same as that exercised and followed immediately before Singapore Day, and appeals from the High Court shall continue to lie to the Federal Court of Appeal of Malaysia and then to the Privy Council in like manner.

Transfer of property and succession to rights, liabilities and obligations

9. All property, movable and immovable, and rights, liabilities and obligations which before Malaysia Day belonged to or were the responsibility of the Government of Singapore and which on that day or after became the property of or the responsibility of the Government of Malaysia shall on Singapore Day revert to and vest in or devolve upon and become once again the property of or the responsibility of Singapore.

Transfer of Singapore officers

10. (a) All persons, including members of the Armed Forces, the Police Force, the Courts and the Judiciary, and all others who immediately before Malaysia Day were officers employed by the Government of Singapore and who on that day or after became officers employed by the Government of Malaysia shall on Singapore Day become once again officers employed by the Government of Singapore.

(b) All persons who between Malaysia Day and Singapore Day were engaged by the Government of Malaysia for employment in those departments which were departments of the State of Singapore before Malaysia Day shall on Singapore Day become forthwith officers employed by the Government of Singapore.

Singapore Senators and members of Parliament

11. The two Senators and fifteen Members of Parliament from Singapore shall on Singapore Day cease to be members of the Senate and the House of Representatives respectively.

Singapore citizenship

12. A citizen of Singapore shall on Singapore Day cease to be a citizen of Malaysia.

International agreements etc. relating to Singapore

13. 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 Article 169 ^{1/} of the Constitution of Malaysia shall

^{1/} For the text of Article 169 of the Constitution of Malaysia see United Nations Legislative Series: Materials on Succession of States (ST/LEG/SER B/14), pp. 87, 88 and 91.

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.

In particular as regards the Agreement on External Defence and Mutual Assistance between the Government of the United Kingdom and the Government of the Federation of Malaya of 12 October 1957, and its annexes which were applied to all territories of Malaysia by Article VI of the Agreement Relating to Malaysia of 9 July 1963, subject to the provision of Annex F thereto (relating primarily to Service lands in Singapore), the Government of Singapore will on and after Singapore Day afford to the Government of the United Kingdom the right to continue to maintain the bases and other facilities occupied by their Service authorities within Singapore and will permit the Government of the United Kingdom to make such use of these bases and facilities as that Government may consider necessary for the purposes of assisting in the defence of Singapore and Malaysia and for Commonwealth defence and for the preservation of peace in South-East Asia.

Mutual government guarantees of water agreements

14. The Government of Singapore shall guarantee that the Public Utilities Board of Singapore shall on and after Singapore Day abide by the terms and conditions of the Water Agreements dated 1 September 1961, and 29 September 1962, entered into between the City Council of Singapore and the Government of the State of Johore.

The Government of Malaysia shall guarantee that the Government of the State of Johore will on and after Singapore Day also abide by the terms and conditions of the said two Water Agreements.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Transmitted by a note verbal dated 5 April 1971 of the Permanent Representative to the United Nations 1/

TREATIES

Notes reproducing the text of unilateral declarations by new States concerning international instruments applied to their territories prior to independence and of disclaimers of responsibility by the predecessor State.

1. Kenya

Kenya became a fully independent member of the Commonwealth on 12 December 1963. Notice of Kenya's intention concerning treaties applicable in respect of its territory immediately before independence was given by means of a unilateral declaration by the Kenyan Government which was sent to the Secretary-General of the United Nations and circulated to Members by him. This was followed by a disclaimer of responsibility by the United Kingdom also sent to the Secretary-General and circulated by him.

The texts of the declaration (I) addressed by the Prime Minister of Kenya to the Secretary-General of the United Nations, dated 25 March 1964, and the disclaimer (II) contained in a letter from the Permanent Representative of the United Kingdom to the Secretary-General of the United Nations, dated 4 June 1964, are as follows:

I

"The Government of Kenya wishes to make the following Declaration to the Members of the United Nations on the subject of Succession to Treaties extended or applied to Kenya by the Government of the United Kingdom and Northern Ireland prior to Independence.

In so far as bilateral treaties concluded by the United Kingdom on behalf of the territory of Kenya or validly applied or extended by the former to the territory of the latter are concerned, the Government of Kenya is willing to be a successor to them subject to the following conditions:

- (a) that such treaties shall continue in force for a period of two years from the date of Independence (i.e. until December 12th, 1965);
- (b) that such treaties shall be applied on a basis of reciprocity; and
- (c) that such treaties may be abrogated or modified by mutual consent of the other contracting party before 12th December, 1965.

At the expiry of the aforementioned period of two years the Government of Kenya will consider those treaties which cannot be regarded as surviving

1/ Information transmitted earlier may be found in United Nations Legislative Series: Materials on Succession of States (ST/LEG/SER.B/14), pp.161-203.

according to the rules of customary International Law as having terminated. The period of two years is intended to facilitate diplomatic negotiations to enable the interested parties to reach satisfactory accord on the possibility of the continuance or modification or termination of the treaties.

As regards multilateral treaties the Government of Kenya intends within two years from the date of Independence, or such later date as may be notified, to indicate to the depositary in each case the step it wishes to take in regard to each instrument - whether by way of confirmation of termination, confirmation of succession or accession. During the interim period of review any party to a multilateral treaty applied or extended to Kenya prior to Independence, may on a basis of reciprocity, rely as against Kenya on the terms of such treaty.

Nothing in this Declaration shall prejudice or be deemed to prejudice the existing territorial claims of the State of Kenya against third parties and the rights of a dispositive character initially vested in the State of Kenya under certain international treaties or administrative arrangements constituting agreements.

It would be appreciated if Your Excellency would arrange for the text of this Declaration to be circulated to all Members of the United Nations."

II

"I have the honour by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, to refer to the Note dated the 25th of March, 1964, addressed to Your Excellency by the Prime Minister of Kenya, setting out his Government's position in relation to international instruments concluded by the United Kingdom, whose provisions applied to Kenya prior to independence.

Her Majesty's Government in the United Kingdom hereby declare that, upon Kenya becoming an independent Sovereign State on the 12th of December, 1963, they ceased to have the obligations or rights, which they formerly had, as the Government responsible for the international relations of Kenya, as a result of the application of such international instruments to Kenya.

I am to request that this statement should be circulated to all Members of the United Nations."

2. Malawi

Malawi became a fully independent member of the Commonwealth on 6 July 1964. Notice of Malawi's intention concerning treaties applicable in respect of its territory immediately before independence was given by means of unilateral declarations by the Malawi Government which were sent to the Secretary-General of the United Nations and circulated to Members by him. A disclaimer of responsibility by the United Kingdom was also sent to the Secretary-General and circulated by him.

The texts of the declaration (I) addressed by the Prime Minister and Minister of External Affairs of Malawi to the Secretary-General of the United Nations, dated 24 November 1964, the disclaimer (II) contained in a letter from the Deputy Permanent

Representative of the United Kingdom to the Secretary-General of the United Nations, dated 28 January 1965, and the declaration (III) addressed by the Prime Minister and Minister of External Affairs of Malawi to the Secretary-General of the United Nations, dated 5 January 1966, are as follows:

I

[See MALAWI, A. Treaties, 1]

II

"I have the honour by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, to refer to the Note dated the 24th of November, 1964, addressed to Your Excellency by the Prime Minister and Minister of External Affairs of Malawi setting out his Government's position in relation to international instruments concluded by the United Kingdom, whose provisions applied to Malawi prior to independence.

Her Majesty's Government in the United Kingdom hereby declare that, upon Malawi becoming an independent Sovereign State on the 6th of July, 1964, they ceased to have the obligations or rights, which they formerly had, as the authority responsible for the administration of Malawi, as a result of the application of such international instruments to Malawi.

I am to request that this statement should be circulated to all Members of the United Nations."

III

[See MALAWI, A. Treaties, 2]

3. Zambia

Zambia became a fully independent member of the Commonwealth on 24 October 1964. Notice of Zambia's intention concerning treaties applicable in respect of its territory immediately before independence was given by means of a unilateral declaration by the Zambian Government which was sent to the Secretary-General of the United Nations and circulated to Members by him. This was followed by a disclaimer of responsibility by the United Kingdom also sent to the Secretary-General and circulated by him.

The texts of the declaration (I) addressed by the Minister of Foreign Affairs of Zambia to the Secretary-General of the United Nations, dated 1 September 1965, and the disclaimer (II) contained in a letter from the Deputy Permanent Representative of the United Kingdom to the Secretary-General of the United Nations, dated 29 December 1965, are as follows:

I

"I have the honour to inform you that the Government of Zambia, conscious of the desirability of maintaining existing legal relationships, and conscious of its obligations under international law to honour its treaty commitments acknowledges that many treaty rights and obligations of the Government of the United Kingdom in respect of Northern Rhodesia were succeeded to by Zambia upon independence by virtue of customary international law.

Since, however, it is likely that in virtue of customary international law certain treaties may have lapsed at the date of independence of Zambia, it seems essential that each treaty should be subjected to legal examination. It is proposed after this examination has been completed, to indicate which, if any, of the treaties which may have lapsed by customary international law the Government of Zambia wishes to treat as having lapsed.

The question of Zambia's succession to treaties is complicated by legal questions arising from the entrustment of external affairs powers to the former Federation of Rhodesia and Nyasaland. Until these questions have been resolved it will remain unclear to what extent Zambia remains affected by the treaties contracted by the former Federation.

It is desired that it be presumed that each treaty has been legally succeeded to by Zambia and that action be based on this presumption until a decision is reached that it should be regarded as having lapsed. Should the Government of Zambia be of the opinion that it has legally succeeded to a treaty, and wishes to terminate the operation of the treaty, it will in due course give notice of termination in the terms thereof.

The Government of Zambia desires that this letter be circulated to all Members of the United Nations, so that they will be effected with notice of the Government's attitude."

II

"I have the honour by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to refer to the Note dated 1 September 1965 addressed to Your Excellency by the Minister of Foreign Affairs of Zambia setting out his Government's position in relation to the succession by Zambia to treaty rights and obligations of the Government of the United Kingdom in respect of Northern Rhodesia. The Zambian Government's Note was circulated to Permanent Missions by the Secretariat on 29 September 1965.

The Government of the United Kingdom hereby declare that, upon Northern Rhodesia becoming an independent Sovereign State under the name of Zambia on 24 October 1964, they ceased to have the obligations or rights which they formerly had, as the authority responsible for the administration of Northern Rhodesia, by virtue of any international instrument applying to Northern Rhodesia.

I am to request that this statement should be circulated to all Members of the United Nations and the United Nations Specialized Agencies."

4. Guyana

Guyana became a fully independent member of the Commonwealth on 26 May 1966. Notice of Guyana's intention concerning treaties applicable in respect of its territory immediately before independence was given by means of a unilateral declaration by the Guyanese Government which was sent to the Secretary-General of the United Nations and circulated to Members by him. This was followed by a disclaimer of responsibility by the United Kingdom also sent to the Secretary-General and circulated by him.

The texts of the declaration (I) addressed by the Prime Minister of Guyana to the Secretary-General of the United Nations, dated 30 June 1966, and the disclaimer (II) contained in a letter from the Permanent Representative of the United Kingdom to the Secretary-General of the United Nations, dated 21 September 1966, are as follows:

I

"I have the honour to inform you that the Government of Guyana, conscious of the desirability of maintaining existing legal relationships, and conscious of its obligations under international law to honour its treaty commitments, acknowledges that many treaty rights and obligations of the Government of the United Kingdom in respect of British Guiana were succeeded to by Guyana upon independence by virtue of customary international law.

2. Since, however, it is likely that by virtue of customary international law certain treaties may have lapsed at the date of independence of Guyana, it seems essential that each treaty should be subjected to legal examination. It is proposed after this examination has been completed, to indicate which, if any, of the treaties which may have lapsed by customary international law the Government of Guyana wishes to treat as having lapsed.

3. As a result, the manner in which British Guiana was acquired by the British Crown, and its history previous to that date, consideration will have to be given to the question which, if any, treaties contracted previous to 1804 remain in force by virtue of customary international law.

4. It is desired that it be presumed that each treaty has been legally succeeded to by Guyana and that action be based on this presumption until a decision is reached that it should be regarded as having lapsed. Should the Government of Guyana be of the opinion that it has legally succeeded to a treaty and wishes to terminate the operation of the treaty, it will in due course give notice of termination in the terms thereof.

5. The Government of Guyana desires that this letter be circulated to all States Members of the United Nations and the United Nations Specialized Agencies, so that they will be effected with notice of the Government's attitude."

II

"I have the honour by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to refer to the Note dated 30 June 1966, addressed to Your Excellency by the Prime Minister of Guyana setting out his Government's position in relation to the succession by Guyana to treaty rights and obligations of the Government of the United Kingdom in respect of British Guiana.

The Government of the United Kingdom hereby declare that, upon British Guiana becoming an independent Sovereign State under the name of Guyana on 26 May 1966, they ceased to have the obligations or rights which they formerly had, as the authority responsible for the administration of British Guiana, by virtue of any international instrument applying to British Guiana.

I am to request that this statement should be circulated to all States Members of the United Nations and the United Nations Specialized Agencies."

5. Botswana

Botswana became a fully independent member of the Commonwealth on 30 September 1966. Notice of Botswana's intention concerning treaties applicable in respect of its territory immediately before independence was given by means of unilateral declarations by the Botswana Government which were sent to the Secretary-General of the United Nations and circulated to Members by him. A disclaimer of responsibility by the United Kingdom was also sent to the Secretary-General and circulated by him.

The texts of the declaration (I) addressed by the President of Botswana to the Secretary-General of the United Nations, dated 6 October 1966, the disclaimer (II) contained in a letter from the Permanent Representative of the United Kingdom to the Secretary-General of the United Nations, dated 10 February 1967, and the declaration (III) addressed by the Acting President of Botswana to the Secretary-General of the United Nations, dated 11 September 1968, are as follows:

I

"The Government of Botswana is mindful of the desirability of maintenance, to the fullest extent compatible with the emergence into full independence of the Republic of Botswana, legal continuity between Botswana and the several States with which, through the action of the Government of the United Kingdom the former Bechuanaland Protectorate enjoyed treaty relations. Accordingly, the Government of Botswana takes the present opportunity of making the following declaration:

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

3. It is the earnest hope of the Government of Botswana that during the aforementioned period of twentyfour months, the normal processes of diplomatic negotiations will enable it to reach satisfactory accord with the States concerned upon the possibility of the continuance or modification of such treaties.

4. The Government of Botswana is conscious that the above declaration applicable to bilateral treaties cannot with equal facility be applied to multilateral treaties. As regards these, therefore, the Government of Botswana proposes to review each of them individually and to indicate to the depositary in each case what steps it wishes to take in relation to each such instrument - whether by way of confirmation of termination,

confirmation of succession or accession. During such interim period of review, any party to a multilateral treaty which has, prior to independence, been applied or extended to the former Bechuanaland Protectorate, may, on a basis of reciprocity, rely as against Botswana on the terms of such treaty.

5. It would be appreciated if Your Excellency would arrange for the text of this declaration to be circulated to all Members of the United Nations."

II

"I have the honour by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to refer to the Note dated 6 October 1966 addressed to Your Excellency by the President of Botswana setting out his Government's position in relation to the succession by Botswana to treaty rights and obligations of the Government of the United Kingdom in respect of Bechuanaland Protectorate.

The Government of the United Kingdom hereby declare that, Bechuanaland Protectorate having become an independent Sovereign State under the name of Botswana on 30th September 1966, they ceased to have the obligations or rights which they formerly had, as the authority responsible for the administration of Bechuanaland Protectorate, by virtue of any international instrument applying to Bechuanaland Protectorate.

I am to request that this statement should be circulated to all Members of the United Nations."

III

"The Government of Botswana wishes to refer to its Presidential Note, reference PM 8/7 I of the 6th October, 1966, in which it made a declaration that inter alia it would continue to apply, on a basis of reciprocity, all bilateral Treaties entered into by the Government of the United Kingdom on behalf of, or which were extended to, the former Bechuanaland Protectorate, for a period of twenty-four months from the date of Independence, that is, the 30th September, 1966, and in which it stated that, at the expiry of that period, the Government of Botswana would regard such of these Treaties which could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.

Although the Government of Botswana has considered the possibility of reaching accord with the States concerned on the continuance or modification of certain of these Treaties it has not yet been possible to complete diplomatic negotiations to this end. Accordingly the Government of Botswana takes the present opportunity to make the following further declaration:

Notwithstanding the terms of the declaration made by the Government of Botswana as conveyed by the said Presidential Note to Your Excellency dated the 6th of October 1966, the Government of Botswana will, as regards bilateral Treaties entered into by the Government of the United Kingdom on behalf of, or which were extended to, the former Bechuanaland Protectorate, apply within its territory on the basis of reciprocity all such Treaties relating to:

- (a) the extradition of fugitive offenders;
- (b) the abolition of visas and visa fees;
- (c) the avoidance of double taxation and the avoidance of fiscal evasion with respect of taxes on income;
- (d) reciprocal notification of arrest and imprisonment

for a further period of twelve months from the 30th of September, 1968, unless abrogated or modified earlier by mutual consent. At the expiry of that period, the Government of Botswana will regard such of these Treaties which could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.

It is the earnest hope of the Government of Botswana that during the aforementioned period of twelve months, the normal processes of diplomatic negotiations will enable it to reach satisfactory accord with the State concerned upon the possibility of the continuance or modification of such Treaties.

It would be appreciated if Your Excellency would arrange for the text of this declaration to be circulated to all Members of the United Nations."

6. Lesotho

Lesotho became a fully independent member of the Commonwealth on 4 October 1966. Notice of Lesotho's intention concerning treaties applicable in respect of its territory immediately before independence was given by means of unilateral declarations by the Lesotho Government which were sent to the Secretary-General of the United Nations and circulated to Members by him. A disclaimer of responsibility by the United Kingdom was also sent to the Secretary-General and circulated by him.

The texts of the declaration (I) addressed by the Prime Minister of Lesotho to the Secretary-General of the United Nations, dated 22 March 1967, the disclaimer (II) contained in a letter from the Permanent Representative of the United Kingdom to the Secretary-General of the United Nations, dated 25 May 1967, and the declaration (III) addressed by the Prime Minister and Minister of Foreign Affairs of Lesotho to the Secretary-General of the United Nations, dated 5 March 1969, are as follows:

I

"The Government of the Kingdom of Lesotho is mindful of the desirability of maintenance, to the fullest extent compatible with the emergence into full independence of the Kingdom of Lesotho, legal continuity between Lesotho and the several States with which, through the action of the Government of the United Kingdom the country formerly known as Basutoland enjoyed treaty relations. Accordingly, the Government of the Kingdom of Lesotho takes the present opportunity of making the following declaration:

2. As regards bilateral treaties validly concluded by the Government of the United Kingdom on behalf of the country formerly known as Basutoland, or validly applied or extended by the said Government to the country formerly

known as Basutoland, the Government of the Kingdom of Lesotho is willing to continue to apply within its territory, on a basis of reciprocity, the terms of all such treaties for a period of twentyfour months from the date of independence (i.e. until October 4, 1968) unless abrogated or modified earlier by mutual consent. At the expiry of that period, the Government of the Kingdom of Lesotho will regard such of these treaties which could not by the application of the rules of customary international law be regarded as otherwise surviving, as having terminated.

3. It is the earnest hope of the Government of the Kingdom of Lesotho that during the aforementioned period of twentyfour months, the normal processes of diplomatic negotiations will enable it to reach satisfactory accord with the States concerned upon the possibility of the continuance or modification of such treaties.

4. The Government of the Kingdom of Lesotho is conscious that the above declaration applicable to bilateral treaties cannot with equal facility be applied to multilateral treaties. As regards these, therefore, the Government of the Kingdom of Lesotho proposes to review each of them individually and to indicate to the depositary in each case what steps it wishes to take in relation to each such instrument - whether by way of confirmation of termination, confirmation of succession or accession. During such interim period of review, any party to a multilateral treaty which has, prior to independence, been applied or extended to the country formerly known as Basutoland, may, on a basis of reciprocity, rely as against Lesotho on the terms of such treaty.

5. It would be appreciated if Your Excellency would arrange for the text of this declaration to be circulated to all Members of the United Nations."

II

"I have the honour by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to refer to the Note dated the 22nd of March, 1967 addressed to Your Excellency by the Prime Minister of Lesotho setting out his Government's position in relation to the succession by Lesotho to treaty rights and obligations of the Government of the United Kingdom in respect of Basutoland.

The Government of the United Kingdom hereby declare that, upon Basutoland becoming an independent Sovereign State under the name of Lesotho on the 4th of October, 1966, they ceased to have the obligations or rights which they formerly had, as the authority responsible for the administration of Basutoland, by virtue of any international instrument applying to Basutoland.

I am to request that this statement should be circulated to all Members of the United Nations and the United Nations Specialized Agencies."

III

"Reference is made to the Declaration of the Government of the Kingdom of Lesotho in relation to its treaty relationships dated 22 March 1967.

As regards bilateral treaties validly concluded by the Government of the United Kingdom on behalf of the country formerly known as Basutoland, or validly applied or extended by the said Government to the country known as Basutoland, the Government of the Kingdom of Lesotho, it will be recalled, willingly undertook to apply within its territory, on a basis of reciprocity, the terms of all such treaties for a period of twenty-four months from the date of independence, that is, until October 4, 1968, unless abrogated or modified earlier by mutual consent. That time has now expired without the Government of the Kingdom of Lesotho being able within that period to evaluate all the treaties.

The Government of the Kingdom of Lesotho, mindful of the desirability of continuity of treaty relationships consistent with its independent status, and desirous of entering negotiations with the various states concerned in relation to the possible modification or continuance of such treaties, has decided to extend the period during which it will apply, on a basis of reciprocity and in accordance with its declaration of 22 March 1967, the terms of such bilateral treaties from October 4, 1968 until October 4, 1970.

Under the terms of the Government's declaration of 22 March 1967 it is not necessary to extend the period in relation to multilateral treaties. As represented in that Declaration, the Government of the Kingdom of Lesotho will review each of the multilateral treaties which has been applied or extended to the country formerly known as Basutoland and indicate to the depositary concerned what steps it desires to take in relation to such instrument.

During this period of review, as stated in the Declaration of 22 March 1967, any party to a multilateral treaty which has, prior to independence, been applied or extended to the country formerly known as Basutoland, may, on a basis of reciprocity, rely as against Lesotho on the terms of such treaty. The Government of the Kingdom of Lesotho wishes it to be understood that this is merely a transitional arrangement. Under no circumstances should it be implied that by this Declaration Lesotho has either acceded to any particular treaty or indicated continuity of any particular treaty by way of succession.

It would be appreciated if Your Excellency would arrange for the text of this extension to the Declaration of 22 March 1967 to be circulated to all Members of the United Nations."

7. Barbados

Barbados became a fully independent member of the Commonwealth on 30 November 1966. Notice of Barbados' intention concerning treaties applicable in respect of its territory immediately before independence was given by means of a unilateral declaration by the Barbados Government which was sent to the Secretary-General of the United Nations and circulated to Members by him. This was followed by a disclaimer of responsibility by the United Kingdom also sent to the Secretary-General and circulated by him.

The texts of the declaration (I) addressed by the Prime Minister and Minister of External Affairs to the Secretary-General of the United Nations dated 16 March 1967, and the disclaimer (II) contained in a letter from the Permanent Representative of the United Kingdom to the Secretary-General of the United Nations, dated 16 December 1967, are as follows:

I

"I have the honour to inform you that the Government of Barbados, conscious of the desirability of maintaining existing legal relationships, and conscious of its obligation under international law to honour its treaty commitments, acknowledges the many treaty rights and obligations of the Government of the United Kingdom in respect of Barbados (including treaty rights and obligations in respect of the former Federation of the West Indies) were succeeded to by Barbados upon independence by virtue of customary international law.

2. Since, however, it is likely that by virtue of customary international law certain treaties may have lapsed at the date of independence of Barbados, it seems essential that each treaty should be subjected to legal examination. It is proposed after this examination has been completed, to indicate which, if any, of the treaties which may have lapsed by customary international law the Government of Barbados wishes to treat as having lapsed.

3. It is desired that it be presumed that each treaty has been legally succeeded to by Barbados and that action be based upon this presumption until a decision is reached that it should be regarded as having lapsed. Should the Government of Barbados be of the opinion that it has legally succeeded to a treaty and wishes to terminate the operation of the treaty, it will in due course give notice of termination in the terms thereof.

4. The Government of Barbados desires that this letter be circulated to all States Members of the United Nations and the United Nations Specialized Agencies, so that they will be effected with notice of the Government's attitude."

II

"I have the honour by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to refer to the Note dated the 16th of March, 1967 addressed to Your Excellency by the Prime Minister and Minister for External Affairs of Barbados setting out his Government's position in relation to the succession by Barbados to treaty rights and obligations of the Government of the United Kingdom in respect of Barbados.

The Government of the United Kingdom hereby declare that, upon Barbados becoming an independent Sovereign State on 30 November 1966, they ceased to have the obligations or rights which they formerly held, as the authority responsible for the administration of Barbados, by virtue of any international instrument applying to Barbados.

I am to request that this statement should be circulated to all States Members of the United Nations, and United Nations Specialized Agencies."

8. Mauritius

Mauritius became a fully independent member of the Commonwealth on 12 March 1968. Notice of Mauritius' intention concerning treaties applicable in respect of its territory immediately before independence was given by means of a unilateral declaration by the Mauritius Government which was sent to the Secretary-General of the United Nations and circulated to Members by him. This was followed by a disclaimer of responsibility by the United Kingdom also sent to the Secretary-General and circulated by him.

The texts of the declaration (I) addressed by the Prime Minister and Minister of External Affairs of Mauritius to the Secretary-General of the United Nations, dated 12 March 1968, and the disclaimer (II) contained in a letter from the Permanent Representative of the United Kingdom to the Secretary-General of the United Nations, dated 23 May 1968, are as follows:

I

"I have the honour to inform you that the Government of Mauritius, conscious of the desirability of maintaining existing legal relationships, and conscious of its obligation under international law to honour its treaty commitments, acknowledges that many treaty rights and obligations of the Government of the United Kingdom in respect of Mauritius were succeeded by Mauritius upon independence by virtue of customary international law.

Since, however, it is likely that by virtue of customary international law certain treaties may have lapsed at the date of independence of Mauritius, it seems essential that each treaty should be subjected to legal examination. It is proposed after this examination has been completed, to indicate which, if any, of the treaties which may have lapsed by customary international law the Government of Mauritius wish to treat as having lapsed.

It is desired that it be presumed that each treaty has been legally succeeded to by Mauritius and that action be based upon this presumption until a decision is reached that it should be regarded as having lapsed. Should the Government of Mauritius be of the opinion that they have legally succeeded to a treaty but subsequently wish to terminate its operation, they will in due course give notice of termination in the terms thereof.

The Government of Mauritius desire that this letter be circulated to all States Members of the United Nations and the United Nations Specialized Agencies, so that they will be effected with notice of the attitude of the Government of Mauritius."

II

"I have the honour by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland to refer to the Note dated 12 March 1968 addressed to Your Excellency by the Prime Minister and Minister of External Affairs of Mauritius setting out his Government's position in relation to the succession by Mauritius to treaty rights and obligations of the Government of the United Kingdom in respect of Mauritius.

The Government of the United Kingdom hereby declare that Mauritius having become an independent Sovereign State on 12 March 1968, they ceased to have the obligations or rights which they formerly had, as the authority responsible for the administration of Mauritius, by virtue of any international instrument applying to Mauritius.

I am to request that this statement should be circulated to all Members of the United Nations and the United Nations Specialized Agencies."

9. Swaziland

Swaziland became a fully independent member of the Commonwealth on 6 September 1968. Notice of Swaziland's intention concerning treaties applicable in respect of its territory immediately before independence was given by means of a unilateral declaration by the Swaziland Government which was sent to the Secretary-General of the United Nations and circulated to Members by him. This was followed by a disclaimer of responsibility by the United Kingdom also sent to the Secretary-General and circulated by him.

The texts of the declaration (I) addressed by the Minister of State of Swaziland to the Secretary-General of the United Nations, dated 22 October, 1968, and the disclaimer (II) contained in a letter from the Deputy Permanent Representative of the United Kingdom to the Secretary-General of the United Nations, dated 22 July 1969, are as follows:

I

"I have the honour, by direction of the Prime Minister to whom His Majesty the King of Swaziland has assigned responsibility for Foreign Affairs, to declare on behalf of the Government of the Kingdom of Swaziland that for a period of two years with effect from the 6th September, 1968, the Government of the Kingdom of Swaziland accepts all treaty rights and obligations entered into prior to independence by the British Government on behalf of the Kingdom of Swaziland, during which period the treaties and international agreements in which such rights and obligations are embodied will receive examination with a view to determining, at the expiration of that period of two years, which of those rights and obligations will be adopted, which will be terminated, and which of these will be adopted with reservations in respect of particular matters."

II

"I have the honour, by direction of Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland, to refer to the Note dated the 22nd of October 1968 addressed to Your Excellency by the Minister of State of the Government of the Kingdom of Swaziland setting out his Government's position in relation to the succession by the Kingdom of Swaziland to treaty rights and obligations of the United Kingdom in respect of Swaziland.

The Government of the United Kingdom hereby declare that the Kingdom of Swaziland having become an independent Sovereign State on the 6th of September 1968, the Government of the United Kingdom ceased to have the obligations or rights which they formerly had, as the authority responsible for the administration of Swaziland, by virtue of any international instrument applying to Swaziland.

I am to request that this statement should be circulated to all Members of the United Nations."

10. Tonga

Tonga became a fully independent member of the Commonwealth on 4 June 1970. Notice of Tonga's intention concerning treaties applicable in respect of its territory immediately before independence was given by means of a unilateral declaration by the Tongan Government which was sent to the Secretary-General of the United Nations and circulated to Members by him.

The texts of the declaration (I) addressed by the Prime Minister and Minister of Foreign Affairs of Tonga to the Secretary-General of the United Nations, dated 18 June 1970 and the Exchange of Notes (II) referred to in the first paragraph of that declaration are as follows:

I

"I have the honour to inform you that the Government of the Kingdom of Tonga has given consideration to the question of the effect upon its treaty relations with other countries of the Exchange of Notes between it and the United Kingdom pursuant to which the United Kingdom ceased on 4 June 1970 to have any responsibility for the external relations of the Kingdom of Tonga.

2. Relations between Her Britannic Majesty's Government in the United Kingdom and the Government of the Kingdom of Tonga have been governed by -

The Treaty of Friendship of 29 November 1879;1/

The Treaty of Friendship of 18 May 1900;2/

The Agreement of 18 January 1905;3/

The Agreement of 7 November 1928;4/

The Agreement of 20 May 1952;5/

The Treaty of Friendship of 26 August 1958;6/

The Treaty of Friendship of 30 May 1968.7/

3. Although those of the above instruments of date earlier than 26 August 1958 did not define the powers of the United Kingdom with respect to the external relations of the Kingdom of Tonga, the latter acknowledged in practice that the relationship between States of protection is one which necessarily implies acceptance by the State enjoying protection of limitations of its sovereignty in the sphere of external relations. At the time of negotiation of the Treaty of 18 May 1900, an undertaking was given in unpublished instruments by the King of Tonga to conduct his relations with foreign Powers under the sole advice and through the channels of the United Kingdom, and this undertaking constituted the basis on which the external affairs of Tonga were conducted until 26 August 1958.

4. Article III of the Treaty of 26 August 1958 provided that the external relations of the Kingdom of Tonga should be conducted by and be the responsibility of the Government of the United Kingdom, except in so far as the conduct of such relations might be entrusted by the Government of the United Kingdom to the Government of the Kingdom of Tonga. By a Despatch on External Relations of the same date the Government of the Kingdom of Tonga was authorised:

1/ British and Foreign Papers, vol.70, p.9.

2/ British and Foreign State Papers, vol.107, p.521.

3/ Not published, according to British and Foreign State Papers, vol.163, p.683, footnote 4.

4/ British and Foreign State Papers, vol.128, p.272.

5/ British and Foreign State Papers, vol.159, p.257.

6/ British and Foreign State Papers, vol.163, p.683.

7/ Cmnd. 3654.

- (a) to negotiate and conclude agreements of purely local concern (other than agreements relating to matters of defence and security and civil aviation) with the administrations of neighbouring Pacific Islands and the Governments of Australia and New Zealand, including arrangements with them for the exchange of representatives;
- (b) to negotiate and conclude trade agreements, whether bilateral or multilateral, relating solely to the treatment of goods;
- (c) to become a member of any international technical organisation for membership of which the Kingdom of Tonga is eligible under the terms of the instrument constituting the organisation; and to conduct any external relations (not being relations excluded from the competence of that Government by international law) arising out of any such agreement concluded by the Government of Tonga or out of membership of any international organisation.

5. Paragraph (2) of the said Article III placed on the Government of the United Kingdom the general obligation to consult the Government of Tonga regarding the conduct of its external relations, and paragraph (3) laid the responsibility on the sovereign of the Kingdom of Tonga to take such steps as might be necessary to give effect to international agreements entered into on behalf of the Government of Tonga.

6. Article II of the Treaty of 30 May 1968 provided that the Government of the United Kingdom should have full and sole responsibility for, and for the conduct of, the external relations of the Kingdom of Tonga -

- (a) with the United Nations;
- (b) with all international organisations of which neither the United Kingdom nor the Kingdom of Tonga was for the time being a member;
- (c) with respect to the accession or adherence by the Kingdom of Tonga to any alliance or political grouping of States;
- (d) with respect to defence;
- (e) with respect to establishment matters, merchant shipping and civil aviation,

except in so far as the Government of the United Kingdom might declare that responsibility for, or responsibility for the conduct of, such relations should be vested in the Government of the Kingdom of Tonga.

7. Where, in accordance with the said Article, the Government of the United Kingdom had full and sole responsibility for, or for the conduct of, the external relations of the Kingdom of Tonga, paragraph (3) of that Article provided that they should consult with the Government of Tonga regarding the conduct of such external relations, and in particular should consult with the Government of Tonga before entering into any international agreement in respect of the Kingdom of Tonga.

8. Subject to the provisions of the said Treaty, paragraph (4) of the said Article provided that the external relations of the Kingdom of Tonga should be the responsibility of, and should be conducted by, the Government of Tonga, except in so far as the Government of the United Kingdom might, at the request of the Government of Tonga, undertake responsibility for, or responsibility for the conduct of, such relations.

9. The Government of the Kingdom of Tonga, conscious of the desirability of maintaining existing legal relationships, and conscious of its obligations under international law to honour its treaty commitments, acknowledges that treaties validly made on behalf of the Kingdom of Tonga by the Government of the United Kingdom pursuant to and within the powers of the United Kingdom derived from the above recited instruments and subject to the conditions thereof bound the Kingdom of Tonga as a Protected State, and in principle continue to bind it in virtue of customary international law after 4 June 1970 and until validly terminated.

10. However, until the treaties which the United Kingdom purported to make on behalf of the Kingdom of Tonga have been examined by it, the Government of the Kingdom of Tonga cannot state with finality its conclusions respecting which, if any, such treaties were not validly made by the United Kingdom within the powers derived from and the conditions agreed to in the above recited instrument, and respecting which, if any, such treaties are so affected by the termination of the arrangements, whereby the United Kingdom exercised responsibility for the international relations of the Kingdom of Tonga, or by other events, as no longer to be in force in virtue of international law.

11. It therefore seems essential that each treaty should be subjected to legal examination. It is proposed, after this examination has been completed, to indicate which, if any, of the treaties which the United Kingdom purported to make on behalf of the Kingdom of Tonga in the view of the Government thereof do not create rights and obligations for the Kingdom of Tonga by virtue of the above mentioned circumstances and in virtue of international law.

12. It is desired that it be presumed that each treaty continues to create rights and obligations and that action be based on this presumption until a decision is reached that the treaty should be regarded as not having been validly made for the Kingdom of Tonga or as having lapsed. Should the Government of the Kingdom of Tonga be of the opinion that it continues to be legally bound by the treaty, and wishes to terminate the operation of the treaty, it will in due course give notice of termination in the terms thereof.

13. With respect to duly ratified treaties which were entered into by the Kingdom of Tonga before the United Kingdom undertook the responsibility for the foreign relations thereof, the Government of the Kingdom of Tonga acknowledges that they remain in force to the extent to which their provisions were unaffected in virtue of international law by the above recited instruments entered into between the United Kingdom and the Kingdom of Tonga or by other events.

14. The Government of the Kingdom of Tonga desires that this letter be circulated to all members of the United Nations, so that they will be effected with notice of the Government's attitude."

II

Premier's Office
Nuku'alofa
Tonga

19 May, 1970.

Sir,

I have the honour to refer to the Treaty of Friendship between Her Britannic Majesty and His Majesty which was signed at Nuku'alofa on the 30th of May, 1968, and to paragraph (3) of Article VIII of the Treaty which provides that if at any time the Government of the United Kingdom shall cease to have any responsibility for the external relations of the Kingdom of Tonga, the provisions of Articles II, III, IV and V of the Treaty shall cease to have effect.

In order that Tonga may become a fully sovereign and independent State on the 4th of June, 1970, it is necessary that those Articles of the Treaty should cease to have effect.

Accordingly I have the honour to propose that as from the 4th of June, 1970, the Government of the United Kingdom should cease to have any responsibility for the external relations of the Kingdom of Tonga.

I have the honour to be,
Sir,
Your Obedient Servant,

TU' IPELEFAKE

Premier of the Kingdom of Tonga

A.C. Reid, Esq., C.M.G., C.V.O.,
Her Britannic Majesty's Commissioner and Consul
Nuku'alofa

Nuku'alofa

19th May 1970

Your Royal Highness,

I have the honour to refer to Your Royal Highness's letter of the 19th of May, 1970, concerning the Treaty of Friendship which was signed at Nuku'alofa on the 30th of May, 1968.

I am instructed by the Government of the United Kingdom to signify their agreement that as from the 4th of June, 1970, they shall cease to have any responsibility for the external relations of the Kingdom of Tonga.

I have the honour to be,
Your Royal Highness's Obedient Servant,

A.C. REID

Her Britannic Majesty's Commissioner
and Consul

His Royal Highness Prince Tu'ipelehake, C.B.E.,
Premier of the Kingdom of Tonga
Nuku'alofa