

submitted, in the provision of Article 71, which declares that "The provisions of the present articles shall not affect conventions or other international agreements in force as between States parties to them," and the clear implication of its Commentary that this applies to future as well as to past consular treaties and agreements.³¹ The granting of consular privileges and immunities more extensive than those provided for in the Commission's draft is not excluded by Article 70 when such privileges and immunities are granted on the basis of reciprocity, *i.e.*, at the least, on the basis of an implied agreement. The insertion in the convention of a provision relating to matters declared to be beyond its scope betrays confusion of thought: action outside the convention is not in "application" of its provisions, and whether or not such action is discriminatory cannot be determined by an admittedly inapplicable treaty.

The writer would answer in the negative the question posed in the opening sentence of this editorial.

HERBERT W. BRIGGS

THE STATE OF SYRIA: OLD OR NEW?

Among events in the fall of 1961 was the reappearance on the international scene of a state of Syria. The result of a successful *coup d'état*, it marked the disruption in fact of the original United Arab Republic created by the union of Syria and Egypt in 1958 under the presidency of Gamal Abdel Nasser. One problem immediately raised by the change was whether the new Syrian Arab Republic of 1961 was or was not identical in international personality with the Republic of Syria which had existed prior to 1958. The answer was of practical concern because of its effect on Syria's position in the United Nations and on its international obligations in other respects.

The facts of the situation were briefly these. Early in the morning of September 28, 1961, a group of Syrian officers of the United Arab Republic's First Army seized the radio station and Army headquarters in Damascus. Styling themselves the "Supreme Arab Revolutionary Command of the Armed Forces," their avowed intent was "to end corruption and tyranny and to restore legal rights to the people."¹ At the outset there was apparently some hope that these goals might be achieved within the framework of the United Arab Republic; but after fruitless discussions during the day, followed by a denunciation of the group by President Nasser over Radio Cairo, the insurgents resolved to seek complete independence for the Syrian Region of the United Republic.

By the morning of September 29, the authority of the Revolutionary Command had been established in the principal cities and was spreading rapidly and without opposition throughout the rest of the country. By

³¹ *Ibid.*

¹ Communiqué broadcast over Radio Damascus at 6:30 a.m., Sept. 28, 1961. The account in the text is based on contemporary press and radio reports, including Radio Damascus and Radio Cairo.

that evening, its success was signalized by President Nasser's broadcast declaration from Cairo recognizing the accomplished fact and affirming that, since the unity of Syria and Egypt had resulted from the will of the people, it should not be enforced against them by military means. The entire operation had taken less than forty-eight hours.

The Revolutionary Command, disclaiming any intent to impose a military regime upon the country, moved with equal speed to organize a civil government. On the morning of September 29, Dr. Mahmud Kuzbari was charged with forming a cabinet "which will be entrusted with the administration of the affairs of the country preparatory to the restoration of constitutional life therein."² Dr. Kuzbari named an all-civilian cabinet the same day, retaining for himself the premiership and the Ministries of Defense and Foreign Affairs.³ On October 29 the transitional cabinet promulgated an electoral law to govern the choice of a constituent assembly. Elections thereunder were held on December 1-2, at which time the voters also approved a brief Provisional Constitution. Article 1 of this instrument declared the Syrian Arab Republic to be "an independent sovereign state, forming part of the great Arab homeland"; the remaining seven articles provided for the organization of the government and for the preparation of a permanent constitution by the Assembly within six months.⁴

The changes in Syria caused prompt reactions on the international front. The revolutionary regime was recognized by Jordan on the morning of September 29 and by Turkey later the same day. By October 10, the date on which the United States extended recognition,⁵ some sixteen states had already taken such action, including the Soviet Union. The United Kingdom and the Vatican followed suit shortly after. Syria was seated in the United Nations General Assembly on October 13, as discussed below; and on October 28 it took its place without objection as a member of the Arab League at a meeting of the League Council in Cairo.⁶

On these facts there can be no doubt about the re-emergence of a state of Syria as an international person, with all the usual attributes of sovereignty, independence, and equality. But is it the same state as the pre-1958 Republic of Syria? The mere establishment of an independent state in territory which has been at an earlier date the situs of another independent state does not necessarily involve a continuity of identity between the two. To take a current example, it is unlikely that the present Republic of the Congo (Leopoldville) considers itself to be identical in

² Communiqué No. 17 of the Revolutionary Command, as broadcast over Radio Damascus.

³ Decree No. 1, published in the Official Gazette of the Syrian Arab Republic, No. 1, Oct. 5, 1961.

⁴ The text of the provisional constitution was printed in the Official Gazette, No. 11, Nov. 15, 1961.

⁵ Text of U. S. announcement in 45 Dept. of State Bulletin 715 (1961).

⁶ In taking his seat, the Syrian delegate referred to the United Arab Republic as "the eldest sister . . . which will always continue to be dear to us." Egyptian Gazette (Cairo), Oct. 29, 1961.

personality with the sovereign Congo Free State fathered by Leopold II in the 1880's. Where a feeling of national identity is strong, however, a re-establishment of independence may well be regarded as effecting a revival of a state personality which had been merely dormant in the intervening period. Thus the Austria of today is the same state which existed prior to its 1938 *Anschluss* with Germany—a view confirmed by the Austrian State Treaty of 1955, which expressly recognized Austria as being “re-established as a sovereign, independent and democratic State” within the frontiers it possessed on January 1, 1938.⁷

The union of Syria and Egypt in the United Arab Republic, which was proclaimed on February 1, 1958, and approved in a plebiscite on February 21, created a single state and a single Member of the United Nations where there had previously been two.⁸ Syria was thereby extinguished, at least for the time being, as an international personality. Yet it is clear that the revolutionary group which effectively broke up the union in September, 1961, viewed itself as restoring the state which had existed prior to 1958. This was evidenced by many of its actions at home and abroad: for example, Article 8 of the new Provisional Constitution directed that executive authority for the time being should be exercised in accordance with the provisions of the Syrian Constitution of 1950. These actions reinforced an already strong sense of continuity based on popular feeling, on the fact that the old and new republics comprised the same territory and population, and on the fact that much of the older Syria's law and administrative organization survived through the period of union into the new era.

The official attitude of the new government as to the juridical nature of Syria's international position was indicated in a message despatched by Premier Kuzbari to the President of the United Nations General Assembly on October 8, 1961. This read in part:

. . . It may be recalled that the Syrian Republic was an original member of the United Nations under Article Three of the Charter and continued its membership in the form of joint association with Egypt under the name of United Arab Republic. In resuming her formal status as an independent state the Government of the Syrian Arab Republic has the honour to request that the United Nations take note of the resumed membership in the United Nations of the Syrian Arab Republic. By separate communication I am submitting the

⁷ Arts. 1 and 5 of the Treaty of May 15, 1955, 6 U. S. Treaties 2369, 49 A.J.I.L. Supp. 163 (1955); Kunz, “The State Treaty with Austria,” 49 A.J.I.L. 535, 541 (1955). After World War I, on the other hand, there was considerable difference of opinion on the question whether the new Austrian Republic was the same international person as the prewar state. 1 Oppenheim, *International Law* (8th ed., by Lauterpacht) 155, note. Cf. the case of The Netherlands, cited note 15 below.

⁸ This result may be contrasted with the subsequent “federation” on March 8, 1958, of Yemen with the United Arab Republic under the style of the United Arab States, in which both parties retained their international identities. The federation was never more than nominal, and was itself dissolved on U.A.R. initiative as an aftermath of the Syrian breakaway.

credentials of the delegation of Syria to the Sixteenth Session of the General Assembly. . . .⁹

The question of Syrian membership posed by this communication was without precise precedent in United Nations practice. The closest previous situation had arisen in 1947 when India, an original Member of the United Nations, was divided into the two states of India and Pakistan; but in that case there had been no history of prior United Nations membership held by the component parts. Viewed in the abstract, three possibilities could be envisaged as open to the General Assembly for the treatment of the request:

- (1) As proposed in the Syrian message, the applicant state should be regarded as identical with the original Member, and entitled as such to occupy the place of the original Member automatically;
- (2) Even if not identical with the former Syrian state, the applicant should be seated automatically as the successor in Syria of the United Arab Republic, a United Nations Member;
- (3) The applicant should be treated as a wholly new state, subject to the regular admission procedures laid down in the Charter.

The theory that the successors of a divided United Nations Member automatically inherit membership had been advanced by Pakistan in 1947; but it had declared at the time its readiness to apply for membership, if this view were not acceptable. In that instance Pakistan was admitted to membership by the General Assembly upon the recommendation of the Security Council without either body taking a clear-cut decision on the legal point. No action at all was taken with respect to India, which simply continued in its existing seat.¹⁰ For future guidance, however, the Sixth Committee of the Assembly was asked at the same session to clarify the legal principles involved. In its report the Committee said in part:

. . . .

2. That when a new State is created, whatever may be the territory and the populations which it comprises and whether or not they formed part of a State Member of the United Nations, it cannot under the system of the Charter claim the status of a Member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter.

3. Beyond that, each case must be judged according to its merits.¹¹

⁹ U.N. Doc. A/4914, Oct. 9, 1961. In an earlier message of Sept. 30, Dr. Kuzbari had notified the President of his appointment as Prime Minister and Foreign Minister of the Syrian Arab Republic. U.N. Doc. A/4913, Oct. 9, 1961.

¹⁰ United Nations, 1 Repertory of United Nations Practice 175.

¹¹ *Ibid.* 176. In June, 1960, the Federation of Mali, comprising the former French territories of Senegal and French Sudan, was recommended to the Assembly by the Security Council for U.N. membership. Before the Assembly acted, the Federation broke up into the two independent republics of Senegal and Mali. Both were admitted as new Members by the Assembly on Sept. 28, 1960, without any further recommenda-

In the light of this opinion, the only way in which Syria in 1961 could be seated without going through the regular admission process was on the theory of identity with the earlier Syria. This was the view in fact accepted by the Assembly, although regrettably without illuminating discussion. On October 13 the President, Mr. Mongi Slim, called the Syrian message to the attention of a plenary meeting and observed:

I have consulted many delegations on this question and the consensus seems to be that, in view of the special circumstances of this matter, Syria, an original Member of the United Nations, may be authorized to be represented in the General Assembly as it has specifically requested.

Therefore, if no objection were raised prior to the plenary meeting that afternoon, he would arrange for the seating of the Syrian Arab Republic "as a Member of the United Nations."¹² No objection was made, and the Syrian Delegation was duly seated that afternoon.¹³ The identification of the new Syria with the old thus became the view not only of the Syrian Government itself but also of the world community.

If the present Syrian Arab Republic is the same state as pre-1958 Syria, it must be bound by the treaties and agreements entered into by the latter, insofar as these have not lapsed or been terminated on other grounds. Any other result would be inequitable, for the present Republic cannot be entitled to benefits derived from the old Syria, such as immediate seating in the United Nations, without assuming its obligations as well: it cannot pick and choose. It is true that the treaties of a state which loses its international personality through merger are generally held to be terminated by that fact;¹⁴ but it would seem that this rule should not apply when the state in question is subsequently revived and is generally accepted as being the same international person before and after the interruptions. The treaties, like the state itself, should be viewed as having been in a sort of suspended animation.¹⁵ In the present case, however,

tion from the Security Council. It thus appears that, while a successor state cannot inherit membership, it can benefit from the recommendation for membership made with respect to its predecessor.

¹² U.N. General Assembly, Provisional Verbatim Record of the 1035th Meeting, U.N. Doc. A/P.V. 1035, Oct. 13, 1961, pp. 2-3.

¹³ *Ibid.*, 1036th Meeting, U.N. Doc. A/P.V.1036, Oct. 13, 1961, pp. 21-22.

¹⁴ Jones, "State Succession in the Matter of Treaties," 24 Brit. Yr. Bk. of Int. Law 360, 365 (1947); but practice is not wholly consistent: see 2 Hyde, *International Law* 1529 ff. (2d ed., rev.).

¹⁵ At the time of Austria's absorption by Germany in 1938 the Department of State apparently viewed American treaties with Austria as having been terminated. 2 Hyde, *op. cit.* 1533. Currently, however, several pre-war treaties with Austria are listed by the Department as being in force. Department of State, *Treaties in Force* January 1, 1961, pp. 8-10; McIntyre, *Legal Effect of World War II on Treaties of the United States* 321. The 1955 Austrian State Treaty contained no provisions on the status or revival of pre-war treaties. By way of contrast, mention may be made of the treaty of October 8, 1782, between the United States and the United Netherlands. The latter state was afterward subjugated by Napoleon and in 1815 incorporated in the larger Kingdom of The Netherlands. Because of this history, it was eventually agreed

it is unnecessary to decide the point because of the position taken on the matter by the United Arab Republic at the time of its creation.

This position was stated in the following terms in Article 69 of the Provisional Constitution of the United Arab Republic of March 5, 1958:

The coming into effect of the present Constitution shall not infringe upon the provisions and clauses of the international treaties and agreements concluded between either Syria or Egypt and foreign powers. These treaties and agreements shall remain valid in the regional spheres for which they were intended at the time of their ratification, according to the principles of international law.¹⁶

From this it is clear that existing Syrian treaties were unaffected by the establishment of the union; and since they never went out of force, the question of their revival in 1961 does not arise. It should also be remarked that the regime which came to power upon the restoration of Syrian independence has given no indication of adopting any other view. On the contrary, it has affirmed its respect for Syria's international commitments.¹⁷

The question of treaty continuity is of particular interest from the American standpoint. Among the agreements binding on the pre-1958 Republic was a Syrian-American exchange of notes of September 7-8, 1944,¹⁸ which substantially reaffirmed a French-American Convention of April 4, 1924,¹⁹ relating to the then French-mandated territories of Syria and Lebanon. This earlier instrument embodied important provisions for the protection of American interests, including a most-favored-nation clause and assurances of respect for vested rights, which are of continuing significance. Both the 1924 and the 1944 agreements were regarded by the Department of State as being in force under the United Arab Republic regime,²⁰ and there can be no doubt that they have been carried over into the new situation.

The case may be different with agreements concluded by the United Arab Republic in the period between February, 1958, and September, 1961. States which arise through a successful act of secession or dissolution do not normally inherit the treaty obligations of the state from which they came;²¹ but there may be an exception in the case of obligations relating only to territory or interests lying within the new state. It does not appear that this problem is of major consequence in the present context.

that there had been such a substantial change in party that the treaty had lost its binding force. 5 Moore, *Digest of International Law* 344-345.

¹⁶ As quoted in Department of State, *Treaties in Force* January 1, 1961, p. 178. Assurances to the same effect were given in a note addressed by the U.A.R. Ministry of Foreign Affairs to the Secretary General of the United Nations on March 1, 1958.

¹⁷ "We shall respect all international commitments, as can be gathered from the Ministerial Declaration of the Government of the Republic." Mr. Chalaoui (delegate of Syria) in the General Assembly, Oct. 13, 1961. U.N. Doc. A/P.V.1036, Oct. 13, 1961, p. 22.

¹⁸ 58 Stat. 1491; U. S. Executive Agreement Series, No. 434.

¹⁹ 43 Stat. 1821; U. S. Treaty Series, No. 695; 19 A.J.I.L. Supp. 1 (1925).

²⁰ Department of State, *Treaties in Force* January 1, 1961, p. 180.

²¹ Jones, *loc. cit.* note 14 above, p. 366.

The important conclusion to be drawn from this history is that the Syrian Arab Republic of today is, from the international standpoint, the same state as the pre-1958 Republic of Syria, and possesses in general the same rights and obligations.

RICHARD YOUNG

THE CHANGING SCIENCE OF INTERNATIONAL LAW

Πάνια βεῖ.
Heraklitos.

I

Half a century ago this writer began his life-long studies of international law at the Vienna University Law School under the great scholars, Heinrich Lammasch and Leo Strisower. Looking back for a moment at these fifty years, it is amazing to compare international law and its science as they then were and as they are today.¹ Then, in 1911 international law was at the peak but also close to the end of its "classic" period. Now, in 1961 the "new" international law, which by 1920 had entered a turning-point of its history without undergoing a revolutionary break with its past, has seen a first era of change during the League of Nations period, followed by a period of much more far-reaching change since 1945. There can be no doubt that international law at present is not only in an era of full transformation, but is also in a profound crisis.

Corresponding to this changing law of nations, of course, is a changing science of international law. It reflects this crisis, all the progressions and retrogressions of international law, all its hopes and disillusion, all its contradictions, its uncertainty, inadequacy, its often experimental and sometimes ephemeral character. It is the science of an international law in a period of transition from the "classic" law of nations, which is definitely gone, to some "new" international law which has not yet arrived and the exact shape of which we do not yet know.

Hence the great changes and very different patterns of the science of international law everywhere. There are some particularities in this country because of the legal and political background, because of worldwide contacts and because the leadership of the democratic world has fallen upon the United States. The present international law of transition has influenced the science of international law in every scientific and technical aspect. The question of what the scientific character of this science consists is again under full discussion. Is its first duty objectivity and the impartial search for truth? There are today, more than ever, the dangers of wishful thinking, of a confusion of methods, by presenting one's own wishes, mere proposals *de lege ferenda*, as the law actually in force. The whole question of the correct methods of this science is again under debate. The continuous expansion of international law as to its

¹ Compare, *e.g.*, in German, the then celebrated treatise on international law by Franz von Liszt with the 1959 treatise by Alfred Verdross, or, in English, the first edition of Oppenheim's treatise with the latest edition by Lauterpacht.