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# International Law as Practiced in State Courts

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# INTERNATIONAL LAW AS PRACTICED IN STATE COURTS

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Many lawyers assume that only in international courts or in national courts do important questions of international law arise. Many cases, however, arising in state courts present interesting and important questions of international law. Some of these questions are: the existence of war including its beginning and its termination; conflicts between treaties and state laws; the rights of aliens; validity of foreign judgments; and suits by or against foreign sovereigns.

The question of the existence of war comes before the state courts most often because of life insurance policies which have war clauses. These policies often contain provisions for the payment of double indemnity in case of accidental death but such payment of double indemnity is excluded if the insured was engaged in military or naval service in time of war. The first of these cases arising from World War II was *West v. Palmetto State Life Insurance Co.*[1] before the Supreme Court of South Carolina. The life of Broadus F. West was insured under two policies issued by the appellant. The policies provided double indemnity in case of accidental death but excluded such double indemnity if the insured was "engaged in military or naval service in time of war," together with other reductions of the liability of the company in such case. The insured was enlisted in the United States Navy and was killed at Pearl Harbor on December 7, 1941, by Japanese bombers together with approximately thirty-five hundred others.

The South Carolina Court held that the insured was not killed in time of war and that the beneficiary could therefore collect the double indemnity benefits of the policy. The Court said:[2]

> It is seen from the following authorities that the declaration by Congress of War on Japan on December 8 was the only legal way in which the country could be placed

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1. 202 S. C. 422, 25 S. E. 2d 475 (1943).
2. 202 S. C. 422, 427, 25 S. E. 2d 475, 477 (1943).

> in a state of war with that aggressor nation. The Constitution so provides, Art. I, Sec. 8, *supra*. That the policy contracts were entered into in contemplation of that clear law, and subject to it, cannot be denied; and they are bound by it.

The holding of the South Carolina Court was followed in Idaho,[3] Hawaii,[4] and in one federal court.[5] In the Idaho case, however, Justice Ailshie wrote a strong dissenting opinion[6] in which he quoted President Roosevelt's Message to Congress as follows:

> I ask that the Congress declare that, since the unprovoked and dastardly attack by Japan on Sunday, December 7, a state of war has existed between the United States and the Japanese Empire.[7]

The opposite view of the beginning of the war was taken by the Circuit Court of Appeals of the Tenth Circuit in *New York Life Insurance Co. v. Bennion*[8] and this decision was affirmed by the United States Supreme Court when it denied the petition for appeal.[9] Justice Murrah cited the *Prize Cases*[10] which had held that President Lincoln's Proclamation of the Blockade of the Southern States commenced the War between the States without any declaration of war by Congress. He also stated that the battles of Palo Alta and Resada de la Palma had been fought before the passage of the Act of Congress declaring War on Mexico on May 13, 1846 which recognized "a state of war as existing by the act of the Republic of Mexico."[11]

The Supreme Court of Massachusetts in *Stankus v. New York Life Ins. Co.*[12] had reached the same opinion as the U. S. Circuit Court in *New York Life Insurance Co. v. Bennion.*[13] This Massachusetts case was an action by the beneficiary to

3. Rosenau v. Idaho Mut. Ben. Ass'n, 65 Idaho 408, 145 P. 2d 227 (1944).
4. Pang v. Sun Life Assur. Co., 37 Hawaii 208, 14 C. C. H. LIFE CODES 496 (1945).
5. Savage v. Sun Life Assur. Co. of Canada, 57 F. Supp. 620 (W. D. La. 1944).
6. Rosenau v. Idaho Mut. Ben. Ass'n, 65 Idaho 408, 145 P. 2d 227 (1944).
7. 87 CONG. REC. 9504-9505 (1941).
8. 158 F. 2d 260 (10th Cir. 1946).
9. 331 U. S. 811 (1947).
10. 67 U. S. (2 Black) 635 (1862).
11. 9 STAT. 9 (1846).
12. 312 Mass. 366, 55 N. E. 2d 687 (1942).
13. See note 8, *supra*.

recover double indemnity under a policy of life insurance which provided that such double indemnity could not be recovered if "insured's death resulted directly or indirectly, from . . . war or any act incident thereto." The insured, a seaman in the U. S. Navy and a member of the crew of the destroyer U. S. S. Rueben James, was lost at sea when his ship was torpedoed during the night of October 30, 1941, while convoying in the North Atlantic west of Iceland. The court held that the death was due to the war going on which the United States had not as yet entered. Justice Ronan, however, stated:

> But the existence of war is not dependent upon a formal declaration of war. Wars are being waged today that began without any formal declaration of war. The attack by the Japanese on Pearl Harbor on December 7, 1941 is the latest illustration. This is not a modern method for it has been said that, from out of one hundred and eighteen wars that occurred between 1700 and 1872, in hardly ten did formal declarations precede the commencement of hostilities. (Phillipson, International Law and the Great War, p. 53.)

Although Justice Ronan's opinion might be considered dictum since the above case was not decided upon the question of whether the United States had entered the war, yet it is submitted that his opinion is excellent international law.

It is seen that we are faced with a lack of uniformity among the state and federal court decisions as to when World War II started. If the beneficiaries of a soldier or sailor were to sue for recovery of double indemnity in the courts of South Carolina, Idaho, Hawaii, or one of the District Courts of Louisiana on the life of an insured who was killed at Pearl Harbor on December 7, 1941, they could recover such double indemnity even though there were a war clause because these courts have decided that the United States was not at war on December 7, 1941. Other beneficiaries, holding the same insurance policy and under the same conditions, could not recover if they sued in the Massachusetts courts or in other federal courts. It is true that in the case of doubt as to the interpretation of insurance policies, such policies are to be interpreted in favor of the beneficiary, but it is submitted that according to international law there is no reasonable doubt but that World War II commenced with the Japanese

attack on Pearl Harbor and not subsequently with the declaration of war on December 8, 1941.

*Lauterpacht's Oppenheim*[14] points out that war commences upon the commission of an act of force under the authority of the state which is done with hostile intent or if not done with hostile intent is accepted by the state which is attacked as an act of war by repelling the force or by declaration which in the absence of a statement designating the time of commencement is retroactive to the first act of force.[15] Oppenheim[16] points out that the following wars started with no formal declaration of war, namely: (1) The Russo-Japanese War of 1904 which began when Japanese torpedo boats attacked Russian men-of-war at Port Arthur; (2) the war between Italy and Abyssinia of 1935 which was never declared and which started with an attack by Italian forces; (3) Japan with China in 1937; (4) Germany with Poland (1939); (5) Russia with Finland (1939); and (6) Japan with the United States, commencing with the attack on Pearl Harbor of December 7, 1941.

Hyde[17] points out that war may come into existence by hostile acts directed by one country against another with the design of making war. He says that a state may suddenly attack without warning another state and employ its whole military strength against the defending state as a means of obtaining what it could not obtain by a declaration, namely the element of surprise.

Borchard[18] in commenting upon the commencement of World War II states:

> All the Congressmen who spoke before 4:10 P.M. on December 8, assumed that war was in existence and the request of the President had read 'I ask that Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, a state of war has existed between the United States and the Japanese Empire'.

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14. 2 Oppenheim, INTERNATIONAL LAW 236 (6th rev. ed. 1944).
15. *Cf.* McNair in 11 GROTIUS SOCIETY 45 (1926); and Rumpf in 18 B. U. L. REV. 686-714 (1938).
16. 2 Oppenheim, *op. cit. supra* note 14, at 236.
17. 3 C. C. Hyde, INTERNATIONAL LAW CHIEFLY AS INTERPRETED AND APPLIED BY THE U. S. 1693 (1947).
18. Edwin Borchard, *When Did the War Begin*, 41 AM. J. INT'L L. 621 (1947).

The President and Congress clearly intended that the Declaration of War should be retroactive to the attack on Pearl Harbor. The President made this clear in his Message to Congress asking Congress to declare war.[19] Congress in its Declaration of War[20] stated:

> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that the state of war between the United States and the Imperial Government of Japan which has been thrust upon the United States is hereby formally declared.

It is believed that the intentions of the President and Congress in this respect should be binding upon the courts but since some state courts have decided that a war does not commence until Congress formally declares it, it would be advisable for attorneys employed by insurance companies to advise their clients that in place of the war clause limiting recovery in double indemnity that an attack clause should be inserted in future life insurance contracts which would read as follows:

> No double indemnity will be paid for accidental death if such death results directly or indirectly from military, naval, aerial, or atomic attacks upon the United States or its military, naval, or aerial bases and fortifications.

It is unlikely that any future world war will commence by formal declaration because of the importance of surprise to an aggressor state and the devastation that could be brought about by an aerial atomic attack. Minor wars may be commenced by formal declaration.

Another question which has puzzled the state courts is the termination of war. In *Greenville Enterprise v. Jennings*,[21] the South Carolina Legislature had passed a statute[22] providing that it should be lawful to exhibit publicly motion pictures, athletic sports, and musical concerts on Sunday in counties wherein the United States Government had established and maintained permanent or temporary army forts, naval or marine bases. The act was to expire six months after the present war ended. A group of persons, including ministers, sought in 1947 to bring these Sunday amusements to an end in South Carolina by claiming that the war had ended

19. 87 CONG. REC. 9504-9505 (1941).
20. 87 CONG. REC. 9750 (1941).
21. 210 S. C. 163, 41 S. E. 2d 868 (1947).
22. S. C. CODE 1942, § 1737-1.

more than six months previously and that therefore the permissive act had expired. After quoting its decision in *West v. Palmetto State Life Insurance Co.*[23] that war can only come into being by a formal declaration of war by Congress and that the commencement of war is at the time that Congress declares it, a concept contrary to international law, the South Carolina Supreme Court found that the war had not yet come to an end because Congress had not formally declared an end to the war. Although the reasoning in the case based upon a formal declaration by Congress of the commencement of war is erroneous according to international law, yet the Court was correct in finding that an armistice did not end the war and that some more formal action was necessary.

In *Mutual Life Ins. of New York v. Davis*[24] which was decided by the Court of Appeals of Georgia, an army officer was killed as a result of an explosion of an ammunition dump in Germany on August 19, 1945, or four days after the surrender of Japan. The Court held that the insured was not killed in time of war within the meaning of the life policy excluding double indemnity if the death of the "insured resulted from military or naval service in time of war or from any act incident to war."

*Lauterpact's Oppenheim*[25] states that war may be terminated in three different ways: (1) By abstention from further acts of war without making peace through a special treaty; (2) By a special treaty of peace; and (3) Through complete subjugation of the adversary. Hyde[26] adds a fourth method, namely, formal declaration of the termination of war by one party and gives as an example the joint resolution passed by Congress on May 15, 1920, terminating the state of war with Germany. This was followed by the Treaty of Berlin signed on August 25, 1921.[27]

The final surrender terms with Germany were signed in Berlin on May 8, 1945.[28] This was the armistice. Japan signed the armistice with the United States aboard the battleship

23. 202 S. C. 422, 25 S. E. 2d 475, 45 A. L. R. 1461 (1943).
24. 79 Ga. App. 336, 53 S. E. 2d 571 (1949).
25. 2 Oppenheim, INTERNATIONAL LAW 464 (6th rev. ed. 1944).
26. 2 Hyde, *op. cit. supra* note 17, para. 905.
27. *Cf.* 16 AM. J. INT'L L. Suppl. 10-13 (1922), and Hudson, 39 HARV. L. REV. 1029-1045 (1926). On Sept. 3, 1919, the Parliament of China resolved that a state of peace between Germany and China had been restored, and this was followed by a treaty between Germany and China on May 20, 1921. (L. N. T. S., p. 272).
28. 39 AM. J. INT'L L. 581 (1945).

Missouri on September 2, 1945.[29] Although the armistice with Germany was signed in 1945, the war between the United States and Germany continued for six more years until it was finally terminated on October 19, 1951, by Joint Resolution of Congress.[30] The War Between the United States and Japan continued for almost seven years after the Armistice was signed until April 28, 1952, when it was brought to an end by the coming into force of the Japanese Peace Treaty.[31] It was on this date that President Truman issued his Proclamation of Peace with Japan,[32] and his Proclamation Terminating the State of National Emergency in Respect to Japan.[33] The Japanese Peace Treaty provided in Article I that the war would end on the date when the Treaty came into force in accordance with Article 23. Article 23[34] of the Treaty provided that it should go into effect when instruments of ratification had been deposited by Japan and by a majority, including the United States of America as the Principal Occupying Power, of the following states, namely Australia, Canada, Ceylon, France, Indonesia, the Kingdom of the Netherlands, New Zealand, Pakistan, the Republic of the Philippines, the United Kingdom of Great Britain and Northern Ireland and the United States of America. This Treaty of Peace, therefore, went into effect on April 28, 1952.

As Oppenheim points out,[35] armistices or truces should not be confused with peace. Armistices are merely a temporary cessation of hostilities which may be resumed at any time. Therefore, the conditions of war remain in effect between the belligerents and between belligerents and neutrals on all points beyond the mere cessation of hostilities.

The arrival of the Korean crisis involved the state courts in additional questions as to whether war existed or not, and therefore whether beneficiaries could collect double indemnity benefits in the case of the death of the insured while he was serving in the armed forces. In *Western Reserve Life Insurance Co. v. Meadows*,[36] the Supreme Court of Texas reversed

29. 40 AM. J. INT'L L. 186 (1946).
30. 46 AM. J. INT'L L. 13 (1952), Public Law 181, 82 Cong. 1st Session, 65 STAT. 451 (1951).
31. 46 AM. J. INT'L L. 71 (1952).
32. *Id.* at 96.
33. *Id.* at 97-98.
34. *Id.* at 82.
35. 2 Oppenheim, *op. cit. supra* note 25, at 433.
36. 152 Texas 559, 261 S. W. 2d 554 (1953).

the Court of Civil Appeals of Fort Worth, Texas. The Supreme Court held that the strife in Korea was war within the meaning of an insurance policy because it was war in fact though undeclared by Congress.

The Court stated:[37]

> But every forcible contest between two governments *de facto*, or *de jure*, is war. War is an existing fact, and not a legislative decree. Congress alone may have power to declare it beforehand and thus cause or commence it. But it may be initiated by other nations, or by traitors; and then it exists, whether there is any declaration or not.

The Supreme Court of the United States denied certiorari on this case on March 15, 1954.[38]

The Pennsylvania Supreme Court in a similar insurance case held that double indemnity for accidental death could be collected because no war existed in Korea. In *Beley v. Pennsylvania Mutual Life Insurance Company*[39] the Court pointed out:

> The existence or nonexistence of a 'state of war' is a political, not a judicial question, and it is only if and when a formal declaration of war has been made by the political department of the Government that judicial cognizance may be taken thereof, and that such determination becomes binding upon the judiciary. Insured's beneficiary had the right to collect life insurance because there was no war in Korea. It was a United Nations 'police action'.

In pointing out that military struggles are not necessarily war, the Pennsylvania Court stated:[40]

> It has been pointed out in a report of the Committee on Foreign Affairs of the House of Representatives that during the period between 1798 and 1945 there were some 150 or more occasions on which our military forces were engaged in various countries, notably in China, Mexico, Central American and Caribbean Republics, in the course of some of which incidents there were really serious engagements and many casualties.

37. *Id.* at 557.
38. 347 U. S. 928 (1954).
39. 373 Pa. 231, 95 A. 2d 202, 205 (1953).
40. *Ibid.*

The Court give a similar decision in *Harding v. Pennsylvania Mutual Life Insurance Co.*[41]

In discussing the question as to whether war existed in Korea, it is not enough to describe casualties, battles and bloodshed to make it war according to international law. Contention by armed forces may be simply reprisals as in the naval strife between the United States and France, 1791-1800.[42] It may be insurgency as in the civil strife in Spain.[43] It may be aggression as the Japanese in Manchuria and in China prior to the attack on Pearl Harbor[44] or Italy in Ethiopia.[45] The intent of the parties is very important.[46] In case of aggression, third states are obligated to come to the assistance of the victim of the aggression rather than remain neutral as in case of war.[47]

The intent of the United States is quite clear. There was no declaration of war by Congress. President Truman soon after the attack on South Korea stated that the United States was "not at war". He called United States combat operations in Korea as police action for the United Nations.[48] Mr. Truman later in 1952 still characterized the Korean fighting as "police action".[49] In his National Emergency Proclamation, issued December 16, 1950, President Truman declared the Communists were aggressors but made no mention of war.[50] It seems clear that the intent of Congress and the President was that the action in Korea was not war but international police action against communist aggression. It is suggested that if life insurance companies desire to protect themselves from such risks as Korea that they incorporate aggression,

41. 373 Pa. 270, 95 A. 2d 221 (1953).
42. See Gray v. United States, 21 Ct. Cl. 340 (1886); Perrin v. United States, 4 Ct. Cl. 543 (1868), involving the bombing and burning of Greytown, Nicaragua by Commander Hollins of the U. S. N.; and for reprisals in general, see Hindmarsh, FORCE IN PEACE (1933).
43. Norman J. Padelford, INTERNATIONAL LAW AND DIPLOMACY IN THE SPANISH CIVIL STRIFE (1939). For further discussions of insurgency, see G. G. Wilson, *Insurgency and International Maritime Law*, 1 AM. J. INT'L L. 46 (1907); G. G. Wilson, *Lectures on Insurgency*, U. S. Naval War College (1900).
44. Quincy Wright, *The Transfer of Destroyers to Great Britain*, 34 AM. J. INT'L L. 680-689 (1940), and see *Draft Convention on Rights and Duties of States in Case of Aggression*, Harvard Draft, 33 AM. J. INT'L L. 821.
45. *Ibid.*
46. *Ibid.*
47. *Ibid.*
48. N. Y. Times, June 30, 1950, p. 1.
49. FACTS-ON-FILE, p. 379 (1952).
50. 64 STAT. 454 (1950).

insurgency and reprisals in the war clause.

A question that at times comes before state courts but more often before federal courts is the question of a conflict between a state law and a treaty. Article VI, Sec. 2 of the United States Constitution provides that the Constitution, the Laws of the United States and all Treaties made under the authority of the United States shall be the supreme law of the Land; and every judge in every state is to be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The first state law to be invalidated by the Supreme Court was not the Maryland law in *McCullock v. Maryland*[51] but a Virginia law which was contrary to a treaty in *Ware v. Hylton*[52] just seven years after the adoption of the Constitution. A debt due before the war by an American to a British subject was during the Revolutionary War paid into the loan office of the State of Virginia in accordance with a state law of December 20, 1777. The law provided that such payment discharged the debt. The Supreme Court held that the Virginia law was invalid as being in conflict with the fourth article of the Treaty of Peace between Great Britain and the United States of September 3, 1783. The debt was revived and a right of recovery given to the creditor against the debtor in spite of the prior payment to the state loan office of the State of Virginia. In this case the defendant who was the debtor was represented by John Marshall, later known for his nationalistic interpretation of the Constitution, who argued that the Virginia statute was valid against the Treaty.

In *Hopkirk v. Bell*,[53] the Supreme Court held that this same treaty provision prevented the operation of a Virginia statute of limitation to bar collection of antecedent debts. The Court held in a number of cases that treaty provisions invalidate inconsistent state laws governing the right of aliens to inherit real estate. A Treaty with France was held to supersede conflicting laws in *Chirac v. Chirac*[54] and *Carneal v. Banks*.[55] The British Treaty of 1794 was upheld in *Hughes v. Edwards*.[56] John C. Calhoun in discussing the treaty power said:

51. 17 U. S. (4 Wheat.) 316 (1819).
52. 3 U. S. (3 Dall.) 199 (1796).
53. 7 U. S. (3 Cranch) 454 (1806).
54. 15 U. S. (2 Wheat.) 259 (1817).
55. 23 U. S. (10 Wheat.) 181 (1825).
56. 22 U. S. (9 Wheat.) 489 (1824).

> Within these limits all questions which may arise between us and foreign powers, be the subject matter what it may, fall within the treaty making power and may be adjusted by it.[57]

In case of a conflict between a treaty and a statute passed by Congress the one of later date prevails and will be enforced by the courts.[58] In the case of state statutes, the treaty takes precedence regardless of whether it is antecedent or subsequent to the statute.[59] In *Sei Fujii v. State,*[60] the California courts were confronted with the question as to the validity of the California alien land laws in respect to the United Nations Charter. The California alien land law prohibited aliens who were ineligible for citizenship from owning land in California unless they were granted such rights by treaty. Sei Fujii brought action against the State of California to determine whether an escheat had occurred under provisions of the alien land law as to realty acquired by plaintiff in July, 1948. The Superior Court of Los Angeles County adjudged that the property had escheated to the State on the date of the deed and the plaintiff appealed. The District Court of Appeal, Emmet H. Wilson, Justice, held that the provisions of the Alien Land Law were inconsistent with the Charter of the United Nations.[61] Justice Wilson stated:[62]

> The Charter has become the 'supreme law of the land; and the judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary notwithstanding'. U. S. Constitution, Article VI, sec. 2 . . . .
>
> Among the Purposes and Principles found in Article I of Chapter I are 'To develop friendly relations among nations based on respect for the principle of equal rights. To achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.' In Article II it is affirmed

57. John C. Calhoun, "A Discourse on the Constitution and Government of the U. S.," *The Works of Calhoun,* Richard K. Crulle, ed., Columbia, S. C. (1851), vol. 1, 204.

58. Whitney v. Robertson, 124 U. S. 190 (1888).

59. Hackworth, Digest . . . . vol. 5, 185-186; Memorandum of Secretary of State Hughes, Oct. 8, 1921, 324-326; Hyde II, 1463 ff.

60. 217 P. 2d 481 (Cal. App. 1950), *rehearing denied,* 218 P. 2d 595 (Cal. App. 1950), *reversed,* 38 Cal. 2d 718, 242 P. 2d 617 (1952).

61. 217 P. 2d 481 (Cal. App. 1950).

62. *Id.* at 486.

> that the organization and its members 'shall fulfill in good faith the obligations assumed by them in accordance with the present Charter'.
>
> It is agreed in Chapter IX, Article 55 that 'The United Nations shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'.[63]

The State of California petitioned for a rehearing in the District Court but the Court affirmed its previous decision invalidating the California law[64] and stated that the fact that Japan was not a member of the United Nations did not render its nationals ineligible to the guarantees extended to all persons without exception.[65]

The State appealed this decision to the California Supreme Court which rendered its opinion on April 17, 1952.[66] Chief Justice Gibson, although admitting that the United Nations Charter was a treaty, pointed out that the parts of the Charter claimed to be inconsistent with the California Alien Law, namely, the Preamble and Articles 1, 55, and 56 of the Charter, were not self-executing. Chief Justice Marshall was quoted in *Foster v. Neilson*[67] to the effect that a treaty could only supersede a statute when it was self-executing without the aid of any legislative provision. In the case of a non-self-executing treaty, such treaty does not have the force of law until the legislature has executed the contract and fulfilled the treaty.[68] The California Alien Law was, however, held unconstitutional as being contrary to the equal protection and due process of law clauses of the 14th Amendment.

In addition to treaties, executive agreements at times are contrary to state laws. When the United States recognized the Soviet Union, Litvinov entered into an executive agreement with President Roosevelt wherein he assigned certain Russian assets in the United States to the United States Government. In *U. S. v. Belmont,*[69] decided in 1937, the issue was whether a federal district court could dismiss an action brought by the United States, as assignee of certain monies which were once the property of a Russian metal corporation

63. *Id.* at 487.
64. 218 P. 2d 595 (Cal. App. 1950).
65. *Id.* at 596.
66. 38 Cal. 2d 718, 242 P. 2d 617 (1952).
67. 27 U. S. (2 Pet.) 253, 314 (1829).
68. Sei Fujii v. State, 38 Cal. 2d 718, 242 P. 2d 619-20 (1952).
69. 301 U. S. 324 (1937).

whose assets had been appropriated by the Soviet Government. The Supreme Court in an opinion written by Justice Sutherland held that the executive agreement was an international compact which, although entered into without the consent of the Senate, was equally as binding upon federal courts and state courts notwithstanding contrary state laws or policies as a treaty would be since the complete power over international affairs is in the national government and cannot be subject to any curtailment on the part of the several states, citing The Federalist No. 64. The Court held that the lower court could not, therefore, dismiss the claim of the United States for the Russian assets.

Another case involving the Litvinov Assignment came before the New York courts in *Moscow Fire Insurance Co. v. Bank of New York and Trust Company.*[70] In April, 1939, the New York Court of Appeals refused extraterritorial effect to the Soviet confiscatory decrees upon which the alleged title of the United States was based. The United States Supreme Court granted certiorari and on February 12, 1940, affirmed the decision of the New York Court of Appeals by an equally divided court.[71] Justices Stone, Reed and Murphy took no part in the decision.

In *United States v. Pink*[72] the United States instituted suit in the Supreme Court of New York to recover the assets of the First Russian Insurance Co., which had deposited certain assets with the New York Superintendent of Insurance. The defendant maintained, among other things, that if the Russian decrees were to be given extraterritorial effect within the State of New York, they would be confiscatory and therefore contrary to public policy of the State of New York and unconstitutional. On May 17, 1940, the Appellate Division of the Supreme Court of New York dismissed the suit of the United States without opinion on the basis of the Moscow case decision by the U. S. Supreme Court. On December 31, 1940, the New York Court of Appeals affirmed the dismissal and summary judgment.[73] The United States Supreme Court granted certiorari.[74] The Court held that the executive agreement between the United States and the Soviet Union

70. 280 N. Y. 286, 20 N. E. 2d 758 (1939).
71. 309 U. S. 624 (1940).
72. 259 App. Div. 871, 20 N. Y. S. 2d 665 (1940).
73. 284 N. Y. 555, 32 N. E. 2d 552 (1940).
74. 313 U. S. 553 (1941).

was binding upon the State of New York regardless of its policy or disapproval. No state could rewrite our foreign policy to conform to its own domestic policies. Such an executive agreement need not be exercised so as to conform to state laws, constitutions or judicial decrees.[75] Justice Douglas made it clear in his opinion in this case that in the field of foreign affairs which includes executive agreements, the will of the National Government is not only supreme but exclusive.

One of the questions which frequently comes before state courts involving international law is the right of an alien to inherit, purchase, hold and convey real estate. In *Tucker v. Atlantic Coast Lumber Co.*[76] the South Carolina Court held that an assignee of an alien, such assignee being a citizen of South Carolina, could enforce in the courts of South Carolina the specific performance of a contract to convey more than 500 acres of land although aliens were forbidden to hold more than 500 acres of land by South Carolina statute. Justice Hydrick in discussing the rights of aliens to hold real estate in South Carolina stated:[77]

> At the common law an alien's title was good against the world until 'office found'. The State has the exclusive right to question the alien's birth, and right to the possession of the land to which he had acquired title. I know of no instance in the history of judicial proceedings in this State, where a direct proceeding was instituted on the part of the State to escheat the lands of an alien owner in possession. It was only when an alien had to appeal to the law to acquire title or get possession that he was denied the aid of the courts. That doctrine rests upon the principle, that the law will not with one hand invest him with property and with the other divest him of it. *Nil frusta agit lex.* Hence the rule that an alien can acquire title to, and possession of, real property in any mode by which a citizen can, except by act and operation of the law. While he cannot go into court and invoke the aid of the law to get title or possession, he can, if brought into court, defend them against all claimants except the State.[78]

It is believed that the above is a good statement of the gen-

75. 315 U. S. 203 (1942).
76. 78 S. C. 134, 59 S. E. 859 (1906).
77. *Id.* at 135, 59 S. E. at 859.
78. *Ibid.*

eral practice in most states. Although the State could bring action to escheat property to the State, such action is never or only very rarely undertaken, but if the alien tries to enforce title at law, the court will in many cases refuse to grant it. In *Joseph Groves v. Robert Gordon,*[79] Justice Colcock held that an alien who held real estate by purchase contrary to South Carolina law could convey the property because he could only be divested of title by office found and no action had been brought by the State. The Court said, however, that an alien could not inherit under the laws of the State.

In *Laurens v. Jenney,*[80] the South Carolina Court held that an alien could hold by purchase any real estate except against the State but that if he were out of possession, he could maintain no action to recover it. In *Meeks v. Richbourgh,*[81] the Court declared that a grant of land made to an alien by the State was void because of his alienage and because he had not declared his intention to become a citizen of the United States as the statute of 1807 provided. In *Ennas v. Franklin,*[82] the South Carolina Court held that an alien could not inherit at law real estate from an American citizen, and that the Treaty between the United States and Great Britain of 1794, Article 9, did not apply because grantee was not a British citizen.

The state statutes in respect to the rights of aliens to inherit, purchase, hold, and devise real estate differ greatly. Some states seem to give aliens equal rights with citizens. The New York Code specifies that aliens have the same right to take, hold, transmit and dispose of real estate as native born citizens.[83] Alabama[84] and North Carolina[85] have similar

79. 3 Brev. 245 (S. C. 1812).
80. 1 Speers 356 (S. C. 1843).
81. 1 Mill 411 (S. C. 1817).
82. 2 Brev. 398 (S. C. 1810).
83. The listing of the state laws which follow is not inclusive but only lists certain states as examples. NEW YORK CODE ANN. (1945), Real Property Law § 10-2, "Aliens are empowered to take, hold, transmit, and dispose of real property within this state in the same manner as native-born citizens and their heirs and devisees take in the same manner as citizens."
84. ALABAMA CODE, 1940 § 47-1: "An alien, resident or non-resident, may take, and hold, property, real and personal in this state, either by purchase, descent, or devise, and may dispose of, and transmit the same by sale, descent, or devise, as a native citizen."
85. GENERAL STATUTES OF NORTH CAROLINA (1950), Chap. 64: "It is lawful for aliens to take both by purchase and descent or other operation of law, any lands, tenements or hereditaments, and to hold and convey the same as fully as citizens of this State, can or may do, any law or usage to the contrary notwithstanding."

provisions as that of New York. Virginia,[86] Georgia,[87] and Maryland[88] grant the same rights to friendly aliens but not to enemy aliens. Mississippi[89] allows resident aliens the same rights to land as citizens of the State but forbids non-resident aliens from holding land. South Carolina law prohibits an alien or a corporation controlled by aliens from owning or controlling more than five hundred thousand acres of land within the State.[90] This was changed from five hundred to five hundred thousand acres by Special Session of the South Carolina Legislature on June 4-8, 1956. Illinois[91] allows aliens of the age of 21 or over to hold title to real estate for six years after they acquire such property. The State's attorney in Illinois is to bring suit to compel the sale of land and return the money from the sale to the State.[92] Arizona[93] allows

86. CODE OF VIRGINIA (1950) § 55-1: "Any alien, not an enemy, may acquire by purchase or descent and hold real estate in this State; and the same shall be transmitted in the same manner as real estate held by citizens."

87. GEORGIA CODE ANN. (1935), § 79-303: "Aliens, the subjects of governments at peace with the United States and this State, as long as their governments remain at peace, shall be entitled to all the rights of citizens of other States resident in this state, and shall have the privilege of purchasing, holding and conveying real estate in this State."

88. 1 MARYLAND 280, CODE OF 1939: "Aliens, not enemies, may take and hold lands, tenements and hereditaments acquired by purchase, or to which they would, if citizens, be entitled by descent; and may sell, devise or dispose of the same, or transmit the same to their heirs, as fully and effectually and in the same manner, as if by birth, they were citizens of this state."

89. MISSISSIPPI CODE, 1942, Section 842: "Resident aliens may acquire and hold land, and may dispose of it and transmit it by descent, as citizens of the state may; but non-resident aliens shall not hereafter acquire or hold land."

90. Formerly, an alien or alien corporation could own or control no more than five hundred acres. CODE OF LAWS OF SOUTH CAROLINA, 1952, § 57-103. This was changed in 1956 because of the desire of the Bowaters Paper Company, a British Corporation, to build a paper mill in South Carolina. *Cf.* Acts and Joint Resolutions of South Carolina, 1956, p. 2972, Law No. 1131, an Act to amend Section 57-103 CODE OF LAWS OF SOUTH CAROLINA 1952 as amended by Act No. 69 of the Acts of 1955, relating to ownership of land by aliens.

91. ILLINOIS REVISED STATUTES (1951) 6--1-8, Act of June 1, 1899: "(1) All aliens may, subject to the further provisions of this act, acquire and hold title in fee simple, or otherwise, to lands, tenements and hereditaments situate in this state, by deed, devise, or descent. . . . (2) If any alien shall at the time of acquiring title to lands situate in this state be of the age of 21 years or upwards, he may hold title to the same for six years from and after the time of acquiring such title."

92. It is the author's understanding that this is never done in Illinois.

93. ARIZONA CODE OF 1939, 71-201: "All aliens eligible to citizenship under the laws of the United States may acquire, possess, enjoy, transmit and inherit real property, or any interest therein, the same as citizens of the United States, except as otherwise expressly provided by law. All other aliens may acquire, possess, enjoy and transfer real property or any interest therein, only to the extent and for the purpose prescribed

only aliens eligible for citizenship to hold or transfer real estate unless they are allowed to do so by treaty with a foreign state. California had a similar law but it was held unconstitutional under the equal protection clause of the 14th Amendment.[94] Texas prohibits any alien or alien corporation from owning any lands in the State with certain exceptions.[95] Other states which are quite restrictive in granting aliens the right to hold and transmit real property are: Idaho,[96] Indiana,[97] North Dakota,[98] and Oregon.[99]

Some of the state statutes which restrict the rights of aliens to take, hold and transmit real property do and will conflict with treaties or agreements between the United States and foreign countries. These treaties may be called Treaties of Friendship, Commerce and Amity, Treaties of Peace, Status of Aliens, Treaties Concerning Disposition of Real and Personal Property, and Consular Treaties.[100]

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by any treaty now existing between the United States and the nation or country of which such alien is a citizen or subject, and not otherwise." Japanese held ineligible, Takiguchi v. State, 47 Ariz. 302.

94. See Sei Fujii v. State, *supra*, 242 P. 2d 617.

95. VERNONS' TEXAS STATUTES (1936), Article 166: "No alien or alien corporation shall acquire any interest, right or title either legal or equitable in or to any lands in the State of Texas, except as hereinafter provided."

96. IDAHO CODE, 1932, Sections 23-101—23-112.

97. INDIANA BURNS' STATUTES (1933), para. 56-501—56-507.

98. N. DAKOTA COMP. LAWS (1929), para. 5256.

99. OREGON CODE (1930), para. 19-101—19-111.

100. The best source for these treaties is probably MALLOY'S TREATY SERIES. Vols. 1 and 2, 1776-1909 (1910), 2 vols. 61st Cong. 2nd Sess., S. Doc. 351, Serial Nos. 5646-5647. Vol. 3, 1910-1923, Compiled by C. F. Redmond, (1923), 67th Cong. 4th Sess., Sen. Doc. 348, Serial No. 8167. Vol. 4, 1923-1937, Compiled by E. J. Trenwith, (1938), 75th Cong. 2nd Sess., S. Doc. 134, Serial No. 10239. It is to be hoped that the State Dept. will soon publish a fifth volume to bring this collection up to date. Another collection is TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES, edited by Hunter Miller and published by the Government Printing Office. This series while being very scholarly and having texts in other languages as well as English is far behind the Malloy Series chronologically. Until 1950, the treaties of the United States were published in STATUTES AT LARGE OF THE UNITED STATES in the same year that they were promulgated by the President. Since 1950, the treaties are no longer published in the Statutes but are published separately by the Dept. of State in TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES. Volume 1 of this Series was published in 1953 and was about three years behind the Statutes which makes it inconvenient. See 28 DEP'T STATE BULL. 242 (1953). For current information, the Dept. of State issues the treaties separately in its TREATY AND OTHER INTERNATIONAL ACTS SERIES. These are separately numbered. The texts of these treaties may also be found in the League of Nations Treaty Series during this organization's existence and since the founding of the United Nations in the United Nations Treaty Series.

From time to time the State Dept. publishes a list of treaties in force. The last one was TREATIES IN FORCE — A LIST OF TREATIES AND OTHER

INTERNATIONAL ACTS OF THE UNITED STATES IN FORCE ON DECEMBER 31, 1941. It would be well for the State Dept. to bring this up to date with a new edition.

An admittedly incomplete but it is hoped useful list of treaties affecting the rights of aliens by countries would be as follows:

Albania: Agreement Relating to Most-Favored-Nation Treatment and Other Matters. Signed at Tirana, June 23 and 25, 1922. Not Printed.

Argentina: Treaty of Friendship, Commerce, and Navigation. Signed at San Jose, July 27, 1853. 10 STAT. (Pt. 2), 16. T. S. 4. I Treaties (Malloy) 20. Miller, Treaties, VI, 269.

Australia: Supplementary Convention Amending Article IV and second paragraph of Article VI of the Convention Concerning the Tenure and Disposition of Real and Personal Property of March 2, 1899 between the United States and Great Britain. Signed at Washington May 27, 1936. 55 STAT. (Pt. 2) 1101. T. S. 964.

Belgium: Treaty of Commerce and Navigation. Signed at Washington, March 8, 1875. 19 STAT. 628. T. S. 28. I Malloy 90. Consular Convention. Signed at Washington, March 9, 1880. 21 STAT. 776. T. S. 29. I Treaties (Malloy) 94.

Bolivia: Treaty of Peace, Friendship, Commerce and Navigation. Signed at La Paz May 13, 1858. 12 STAT. 1003; 18 STAT. (Pt. 2) 68. T. S. 32. I Treaties (Malloy) 113. Miller, Treaties VII, 733.

Borneo: Convention of Amity, Commerce and Navigation. Signed at Brunei, June 23, 1850. 10 STAT. 909. 18 STAT. (Pt. 2) 79. T. S. 33. I Treaties (Malloy) 130.

Brazil: Treaty of Peace, Friendship, Commerce, and Navigation. Signed at Rio de Janeiro, Dec. 12, 1828. 8 STAT. 390; 18 STAT. (Pt. 2) 81. T. S. 34. 1 Treaties (Malloy) 133. Miller, Treaties III, 451.

Canada: (Great Britain) Supplementary Convention Providing for the Accession of the Dominion of Canada to the Convention of March 2, 1899, between the United States and Great Britain Concerning Tenure and Disposition of Real and Personal Property. Signed at Washington, Oct. 21, 1921. 42 STAT. (Pt. 2) 2147. T. S. 663 (printed with T. S. 146). III Treaties (Redmond) 2657. 12 LEAGUE OF NATIONS TREATY SERIES 426.

Chile: Treaty of Peace, Amity, Commerce, and Navigation, and Additional and Explanatory Convention. Signed at Santiago, May 16, 1832 and Sept. 1, 1833. 8 STAT. 434, 456. 18 STAT. (Pt. 2) 104. T. S. 40. I Treaties (Malloy) 171, 181. Miller, Treaties III, 671. This treaty has been terminated for the most part.

China: Treaty of Peace, Amity, and Commerce. Signed at Wang Hija July 3, 1844. 8 STAT. 592; 18 STAT. (Pt. 2) 116. T. S. 45. I Treaties (Malloy) 196. Miller, Treaties, IV, 559. Treaty of Peace, Amity and Commerce. Signed at Tientsin, June 18, 1858. 12 STAT. 1023. 18 STAT. (Pt. 2) 129. T. S. 46. I Treaties (Malloy) 211. Miller, Treaties, VII, 793. Additional Articles to the Treaty between the United States and China of June 18, 1858. 16 STAT. 739; 18 STAT. (Pt. 2) 147. T. S. 48. I Treaties (Malloy) 234. Supplemental Treaty Concerning Commercial Intercourse and Judicial Procedure. Signed at Peking, Nov. 17, 1880. 22 STAT. 828. T. S. 50. I Treaties

(Malloy) 239. Treaty to Extend Further the Commercial Relations. Signed at Shanghai, October 8, 1903. 33 STAT. (Pt. 2) 2208. T. S. 430. I Treaties (Malloy) 261. Treaty of Friendship. Signed Nov. 29, 1948. T. I. A. S. 1871.

Colombia: (New Grenada) Treaty of Peace, Amity, Navigation, and Commerce. Signed at Bogota, Dec. 12, 1846. 9 STAT. 881; 18 STAT. (Pt. 2) 550. T. S. 54. I Treaties (Malloy) 302. Miller Treaties, V, 115. Consular Convention. Signed at Washington, May 4, 1850. 10 STAT. 900; 18 STAT. (Pt. 2) 560. T. S. 55. I Treaties (Malloy) 314. Miller, Treaties, V, 803.

Costa Rica: Treaty of Friendship, Commerce and Navigation. Signed at Washington, July 10, 1851. 10 STAT. 916. 18 STAT. (Pt. 2) 159. T. S. 62. I Treaties (Malloy) 341. Miller, Treaties, V, 985.

Cuba: Treaty of Relations. Signed at Washington, May 29, 1934. 48 STAT. (Pt. 2) 1682. T. S. 866. IV Treaties (Trenwith) 4054. Consular Convention. Signed at Habana, April 22, 1926. 44 STAT. (Pt. 3) 2471. T. S. 750. IV Treaties (Trenwith) 4048. 60 LEAGUE OF NATIONS TREATY SERIES 371.

Denmark: Convention of Friendship, Commerce, and Navigation. Signed at Washington, April 26, 1826. 8 STAT. 340. 18 STAT. (Pt. 2) 167. T. S. 65. I Treaties (Malloy) 373. Miller, Treaties, III, 239.

Ecuador: Treaty of Peace, Friendship, Navigation, and Commerce. 8 STAT. 534; 18 STAT. (Pt. 2) 187. T. S. 76. I Treaties (Malloy) 421. Miller, Treaties, IV, 207. This treaty has been terminated for the most part. Signed at Quito, June 13, 1839.

El Salvador: Treaty of Friendship, Commerce, and Consular Rights. Signed at San Salvador, Feb. 22, 1926. 44 STAT. (Pt. 2) 2817. T. S. 827. IV Treaties (Trenwith) 4615. 134 LEAGUE OF NATIONS TREATY SERIES 207.

Ethiopia: Treaty of Commerce. Signed at Addis Ababa, June 27, 1914. 41 STAT. (Pt. 2) 1711. T. S. 647. III Treaties (Redmond) 2578. Treaty of Friendship and Commerce. Signed Sept. 7, 1951. Not printed yet. 30 DEP'T STATE BULL. 443 (1953).

Finland: Treaty of Friendship, Commerce, and Consular Rights, and Protocol. Signed at Washington, Feb. 13, 1934. 49 STAT. (Pt. 2) 2659. T. S. 868. IV Treaties (Trenwith) 4138. 152 LEAGUE OF NATIONS TREATY SERIES 45.

France: Convention of Navigation and Commerce. Signed at Washington, June 24, 1822. 8 STAT. 278. 18 STAT. (Pt. 2) 243. T. S. 87. I Treaties (Malloy) 521. Miller, Treaties, III, 77. Agreement Modifying the Provisions of Article VII of the Convention of Navigation and Commerce of June 24, 1822. Signed at Washington, July 17, 1919. 41 STAT. (Pt. 2) 1723. T. S. 650. III Treaties (Redmond) 2594. Consular Convention. Signed at Washington, February 23, 1853. 10 STAT. 992; 18 STAT. (Pt. 2) 249. T. S. 92. I Treaties (Malloy) 528. Miller, Treaties, VI, 169.

Germany: Treaty of Friendship, Commerce, and Consular Rights. Signed at Washington, Dec. 8, 1923. 44 STAT. (Pt. 3) 2132. T. S. 725. IV Treaties (Trenwith) 4191. Agreement Terminating Parts of Article VII of the Treaty of Friendship, Commerce, and Consular Rights of December 8, 1923. Signed at

Washington, June 3, 1935. 49 STAT. (Pt. 2) 3258. T. S. 897. IV Treaties (Trenwith) 4221. 163 LEAGUE OF NATIONS TREATY SERIES 415. Treaty of Friendship and Commerce. Signed June 3, 1953. Entered into force Oct. 22, 1954. 31 DEP'T STATE BULL. 712 (1954). Not printed yet.

Great Britain: Convention to Regulate Commerce and Navigation. Signed at London July 3, 1815. 8 STAT. 228. 18 STAT. (Pt. 2) 292. T. S. 110. I Treaties (Malloy) 624. Miller, Treaties, II, 595. Commercial Convention. Signed at London, August 6, 1827. 8 STAT. 361. 18 STAT. (Pt. 2) 311. T. S. 117. I Treaties (Malloy) 645. Miller, Treaties, III, 315. Convention Concerning Tenure and Disposition of Real and Personal Property. Signed at Washington, March 2, 1899. 31 STAT. 1939. T. S. 146. I Treaties (Malloy) 774. Supplementary Convention Relative to Tenure and Disposition of Real and Personal Property. Signed at Washington, Jan. 13, 1902. 32 STAT. (Pt. 2) 1914. T. S. 402 (printed with 146). I Treaties (Malloy) 776. Consular Convention. Signed June 6, 1951. T. I. A. S. 2494.

Greece: Consular Convention. Signed at Athens, Nov. 19/Dec. 2, 1902. 33 STAT. (Pt. 2) 2122. T. S. 424. I Treaties (Malloy) 855. Treaty of Friendship and Commerce. Signed Aug. 3, 1951. In force Oct. 13, 1954. Not printed yet.

Guatemala: Treaty of Peace, Friendship, Commerce and Navigation. Signed at Guatemala, Mar. 3, 1849. 10 STAT. 873; 18 STAT. (Pt. 2) 378. I Treaties (Malloy) 861. Miller, Treaties, V, 547. This treaty is terminated for the most part. Convention Relative to Tenure and Disposition of Real and Personal Property. Signed at Guatemala City, Aug. 27, 1901. 32 STAT. (Pt. 2) 1944. T. S. 412. I Treaties (Malloy) 876.

Honduras: Treaty of Friendship, Commerce, and Consular Rights. Signed at Tegucigalpa, Dec. 7, 1927. 45 STAT. (Pt. 2) 2618. T. S. 764. IV Treaties (Trenwith) 4306. 87 LEAGUE OF NATIONS TREATY SERIES 421.

Hungary: Treaty of Friendship, Commerce, Consular Rights, and Exchange of Notes. Signed at Washington, June 24, 1925. 44 STAT. (Pt. 3) 2441. T. S. 748. IV Treaties (Trenwith) 4318. 58 LEAGUE OF NATIONS TREATY SERIES 111.

Iran: Provisional Agreement Effected by Exchange of Notes (Regarding Diplomatic. Consular, Tariff and Other Relations). Signed at Teheran, May 14, 1928. 47 STAT. (Pt. 2) 2644. E. A. S. 19. 107 LEAGUE OF NATIONS TREATY SERIES 375.

Iraq: Treaty of Commerce and Navigation. Signed at Baghdad, Dec. 3, 1938. 54 STAT. (Pt. 2) 1790. T. S. 960.

Ireland: Treaty of Friendship and Commerce. Signed Jan. 21, 1950. T. I. A. S. 2155.

Israel: Treaty of Friendship and Commerce. Signed Aug. 23, 1951. 30 DEP'T STATE BULL. 803 (1953). Not printed yet.

Italy: Temporary Commercial Arrangement. Signed at Rome, Dec. 16, 1937. 51 STAT. 361. E. A. S. 116. 187 LEAGUE OF NATIONS TREATY SERIES 15. Treaty of Friendship and Commerce. Signed Feb. 2, 1948. T. I. A. S. 1965. Consular Convention. Signed at

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| | Washington, May 8, 1878. 20 STAT. 725. T. S. 178. I Treaties (Malloy) 977. |
| Japan: | Treaty of Friendship and Commerce. Signed April 2, 1953. T. I. A. S. 2863. |
| Liberia: | Treaty of Friendship, Commerce, and Navigation. Signed at Monrovia, August 8, 1938. 54 STAT. (Pt. 2) 1739. T. S. 956. Consular Convention. Signed at Monrovia, Oct. 7, 1938. 54 STAT. (Pt. 2) 1751. T. S. 957. |
| Morocco: | Treaty of Peace and Friendship. Signed at Meccanez, Sept. 16, 1836. 8 STAT. 484; 18 STAT. (Pt. 2) 521. T. S. 244-2. I Treaties (Malloy) 1212. Miller, Treaties, IV, 33. |
| Muscat: | Treaty of Amity and Commerce. Signed at Muscat, Sept. 21, 1833. 8 STAT. 458; 18 STAT. (Pt. 2) 528. T. S. 247. I Treaties (Malloy) 1228. Miller, Treaties, III, 789. |
| Nepal: | Treaty of Friendship and Commerce. Signed April 25, 1947. T. I. A. S. 1585. |
| Netherlands: | Convention of Commerce and Navigation. Signed at Washington, Aug. 26, 1852. 10 STAT. 982. 18 STAT. (Pt. 2) 544. T. S. 252. I Treaties (Malloy) 1248. Miller, Treaties, VI, 75. Consular Convention. Signed at The Hague, Jan. 22, 1855. 10 STAT. 1150; 18 STAT. (Pt. 2) 546. T. S. 253. II Treaties (Malloy) 1251. Miller, Treaties, VII, 3. |
| Norway: | Treaty of Commerce and Navigation. Concluded at Stockholm, July 4, 1827. 8 STAT. 346; 18 STAT. (Pt. 2) 736. T. S. 348. II Treaties (Malloy) 1748. Miller, Treaties, III, 283. This treaty has been terminated in part by succeeding treaty. Treaty of Friendship, Commerce, and Consular Rights, and Additional Article. Signed at Washington, June 5, 1928, and Feb. 25, 1929. 47 STAT. (Pt. 2) 2135. T. S. 852. IV Treaties (Trenwith) 4527. 134 LEAGUE OF NATIONS TREATY SERIES 81. |
| Paraguay: | Treaty of Friendship, Commerce, and Navigation. Signed at Asuncion, Feb. 4, 1859. 12 STAT. 1091; 18 STAT. (Pt. 2) 594. T. S. 272. II Treaties (Malloy) 1364. |
| Poland: | Treaty of Friendship, Commerce, and Consular Rights. Signed at Washington, June 15, 1931. 48 STAT. (Pt. 2) 1507. T. S. 862. IV Treaties (Trenwith) 4572. 139 LEAGUE OF NATIONS TREATY SERIES 395. |
| Rumania: | Consular Convention. Signed at Bucharest, June 5/17, 1881. 23 STAT. 711. T. S. 297. II Treaties (Malloy) 1505. |
| Saudi Arabia: | Provisional Agreement in Regard to Diplomatic and Consular Representation, Juridical Protection, Commerce, and Navigation. Signed at London, November 7, 1933. 48 STAT. (Pt. 2) 1826. E. A. S. 53. 142 LEAGUE OF NATIONS TREATY SERIES 329. |
| Spain: | Treaty of Friendship and General Relations. 33 STAT. (Pt. 2) 2105. T. S. 422. II Treaties (Malloy) 1701. |
| Sweden: | Consular Convention. Signed at Washington, June 1, 1910. 37 STAT. (Pt. 2) 1479. T. S. 557. III Treaties (Redmond) 2846. |
| Switzerland: | Convention of Friendship, Commerce, and Extradition. Signed at Berne, Nov. 25, 1850. 11 STAT. 587; 18 STAT. (Pt. 2) 748. T. S. 353. II Treaties (Malloy) 1763. Miller, Treaties, V, 845. |

The Convention as to Tenure and Disposition of Real Property between the United Kingdom and the United States[101] concluded March 2, 1899, in Article 1 provided that in case of the death of any person within the territories of one of the Contracting Parties, when such person holds real property which would pass to a citizen or subject of the other Contracting Party, were he not disqualified by the laws of the country where such property is situated, that such heir shall be allowed three years to sell such property.[102] Article V of the same Treaty provides reciprocal most favored nation treatment in the disposal of all kinds of property.[103]

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| Thailand: | Treaty of Friendship, Commerce, and Navigation. Final Protocol, and Exchange of Notes. Signed at Bangkok, Nov. 13, 1937. 53 STAT. (Pt. 3) 1731. T. S. 940. 192 LEAGUE OF NATIONS TREATY SERIES 247. |
| Tonga: | Treaty of Amity, Commerce, and Navigation. Signed at Nukualofa, Oct. 2, 1886. 25 STAT. 1440. T. S. 357. II Treaties (Malloy) 1781. This treaty is largely abrogated. |
| Turkey: | Treaty of Commerce and Navigation. Signed at Ankara, Oct. 1, 1929. 46 STAT. (Pt. 2) 2743. T. S. 813. IV Treaties (Trenwith) 4667. 114 LEAGUE OF NATIONS TREATY SERIES 499. |
| U. S. S. R.: | Agreement Regulating the Position of Corporations and Other Commercial Associations. Signed at St. Petersburg, June 25/12, 1904. 36 STAT. (Pt. 2) 2163. T. S. 526. II Treaties (Malloy) 1534. Agreement Regarding Commercial Relations and Related Notes According Most-Favored-Nation Treatment. Signed at Moscow, Aug. 4, 1937. 50 STAT. (Pt. 2) 1619. E. A. S. 105. 182 LEAGUE OF NATIONS TREATY SERIES 113. Agreement Continuing in Force Until August 6, 1942 the Agreement of August 4, 1937 Regarding Commercial Relations. 55 STAT. (Pt. 2) 1316. E. A. S. 215. |
| Yemen: | Treaty of Friendship and Commerce. Signed May 4, 1946. T. I. A. S. 1535. |
| Yugoslavia: | Treaty of Commerce and Navigation. Signed at Belgrade, Oct. 2/14, 1881. 22 STAT. 963. T. S. 319. II Treaties (Malloy) 1613. Consular Convention. Signed at Belgrade, Oct. 2/14, 1881. 22 STAT. 968. T. S. 320. II Treaties (Malloy) 1618. |
| Zanzibar: | Treaty of Amity and Commerce between the United States and Muscat, 1833. 8 STAT. 458. 18 STAT. (Pt. 2) 528. T. S. 247. I Treaties (Malloy) 1228. Miller, Treaties, III, 789. |

101. 31 STAT. 1939, T. S. 146.

102. Article 1 "Where on the death of any person holding real property (or property not personal), with in the territories of one of the Contracting Parties, such real property would, by the laws of the land, pass to a citizen or subject of the other, were he not disqualified by the laws of the country where such real property is situated, such citizen or subject shall be allowed a term of three years in which to sell the same...."

103. Article V "In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the

Article VII of the Consular Convention with France of February 23, 1853[104] provides that in the various States of the Union, Frenchmen shall have the same rights of holding personal and real property as citizens of the United States where existing laws permit.[105] The President is to recommend to the various States that they enact laws permitting aliens to hold and enjoy real property.

The Treaty of Friendship, Commerce and Consular Rights with Germany of December 8, 1923[106] provides in Article I that the nationals of each of the Contracting Parties shall have the right to own and erect and occupy appropriate buildings and to lease lands for residential, scientific, religious, philanthropic, manufacturing, commercial and mortuary purposes upon the same terms as nationals of the State of residence or as nationals of the nation hereafter to be most favored.[107] In case of inheritance of real property by nationals of one Contracting Party in the territory of the other Contracting Party where the alien is unable to inherit because of the laws of the country, the alien shall be allowed a term of three years which may be reasonably prolonged in order to sell such property and withdraw the proceeds.[108]

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High Contracting Parties shall in the Dominion of the other enjoy the rights which are or may be accorded to citizens or subjects of the most favored nation."

104. 10 STAT. 992, 18 STAT. (Pt. 2) 249, T. S. No. 92.

105. Article VII "In all the States of the Union, whose existing laws permit it, so long and to the same extent as the said laws shall remain in force, Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as the citizens of the United States . . . .

As to the States of the Union, by whose existing laws aliens are not permitted to hold real estate, the President engages to recommend to them the passage of such laws as may be necessary for the purpose of conferring this right."

106. 44 STAT. 2132, T. S. No. 725 (1923). This treaty is now in effect according to an Agreement signed at Bonn, Germany, on June 3, 1953. 28 DEP'T STATE BULL., 877-78 (1953).

107. Article 1 "The nationals of each of the High Contracting Parties shall be permitted to enter, travel, and reside in the territories of the other; to exercise liberty of conscience and freedom of worship; to engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind without interference; to carry on every form of commercial activity which is not forbidden by local law; to own, erect or lease and occupy appropriate buildings, and to lease lands for residential, scientific and religious, philanthropic, manufacturing, commercial and mortuary purposes; to employ agents of their choice, and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the state of residence or as nationals of the nation hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established."

108. Article IV "Where, on the death of any person holding real or

The Treaty of Friendship, Commerce and Navigation with Japan of 1953, provides that nationals of each Contracting Party shall be accorded within the territories of the other Contracting Party[109] national treatment with respect to leasing land, buildings, and other immoveable property and other rights in immoveable property permitted by the applicable laws of the other Party.[110] Nationals of each Party are to be permitted to inherit freely all types of property, and if laws probihit them from receiving national treatment because of alienage, such nationals are to be permitted at least five years to dispose of such property.[111] Most of the other treaties in respect to the rights of aliens to own or inherit real property are similar. The new Treaty of Friendship, Commerce and Navigation with Israel of August 23, 1951,[112] however, has a new approach in that Americans have only such rights in respect to real property in Israel as their States allow nationals of Israel.[113]

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other immoveable property or interests therein within the territories of one High Contracting Party, such property or interest therein, would, by the laws of the country or by a testamentary disposition, descend or pass to a national of the other High Contracting Party, whether resident or non-resident, were he not disqualified by the laws of the country where such property or interests therein is or are situated, such national shall be allowed a term of three years in which to sell the same. . . ."

109. T. I. A. S. 2863. Article IX "Nationals and companies of either Party shall be accorded within the territories of the other Party: (a) National treatment with respect to leasing land, buildings and other immoveable property appropriate to the conduct of activities in which they are permitted to engage pursuant to Articles VII and VIII and for residential purposes and with respect to occupying and using such property; and (b) Other rights in immoveable property permitted by the applicable laws of the other Party."

110. *Ibid.*

111. (3) "Nationals and companies of either Party shall be permitted freely to dispose of property within the territories of the other Party with respect to the acquisition of which through testate or intestate succession their alienage has prevented them from receiving national treatment, and they shall be permitted a term of at least five years in which to effect such disposition."

112. The text of this treaty may be found in 83rd Cong. 1st Sess., Part 7, pp. 9317-8321. Consented to by the U. S. Senate July 21, 1953.

113. Article IX (b) "Other rights in immoveable property permitted by the applicable laws of the States, Territories, and possessions of the United States of America. (2) Nationals and companies of the United States of America shall be accorded, within the territories of Israel, national treatment with respect to acquiring by purchase, or otherwise, and with respect to owning, occupying and using land, buildings and other immoveable property. However, in the case of any such national domiciled in, or any such company constituted under the laws of any State, Territory or Possession of the United States of America that accords less than national treatment to nationals and companies of Israel in this respect, Israel shall not be obligated to accord treatment more

The case of *Sei Fujii v. State* involving the validity of the California Alien Land Law in respect to the United Nations Charter has already been discussed.[114] Although the Supreme Court of California ultimately decided that the California alien land law was invalid as being contrary to the equal protection clause of the 14th Amendment, yet the question of the conflict between the state statute and a treaty had been raised and the state statute had been held invalid in the lower courts as being contrary to the United Nations Charter.[115] In Canada in a similar case, the Canadian court declared invalid a restrictive covenant[116] annexed to land which provided that land was "not to be sold to Jews or to persons of objectionable nationality" on the grounds that such a covenant was contrary to public policy. The court cited the United Nations Charter to show that the restrictive covenant was contrary to the policy of the Dominion Government since the Dominion Parliament had ratified the Charter.[117]

In *Dutton v. Donahue,*[118] the Supreme Court of Wyoming held that non-resident aliens in England could inherit and dispose of real property under the Treaty with Great Britain[119] although under Wyoming law the real property would have escheated to the State in the absence of the treaty. In *Goos v. Brocks,*[120] the Supreme Court of Nebraska decided that Article 14 of the Treaty with Prussia concluded May 1, 1828 (8 Stat. 384) and Article 7 of the Treaty with Hamburg concluded December 20, 1827 (8 Stat. 370) conferred the right on German non-resident aliens to inherit real estate even though contrary to Nebraska law and even though the United States and Germany were at war when the deceased died intestate. Justice Good, writing the opinion for the Court, held that the war did not abrogate these treaties.

In California a similar case occurred. In *In re Knutzen's Estate,*[121] Alfred Carl Knutzen, a resident of San Joaquin County, California, died intestate. He left surviving him one

favorable in this respect than such State, Territory or possession accords to nationals and companies of Israel."

114. *Cf. supra,* notes 61, 64, 66.
115. *Ibid.*
116. Re Drummond Wren, [1945] 4 D. L. R. 674 (Canada).
117. *Id.* at 677.
118. 44 Wyo. 52, 8 P. 2d 90 (1932).
119. 31 STAT. 1939.
120. 117 Neb. 750, 223 N. W. 13 (1929).
121. 161 P. 2d 598 (Cal. App. 1945).

brother, Theodore J. Knutzen, living in Gatos, California, and one brother and two sisters living in Sylt, Schlesswig-Holstein, Germany. The German heirs sought to inherit under the terms of Article IV of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany. (44 Stat. 2132.) The Probate Code of California, Section 259 provided that non-resident aliens could only inherit if the country of their nationality allowed American citizens a reciprocal right. The California court held that the Treaty made state law paramount in the matter of descent and that since the German heirs had failed to prove reciprocity by Germany that the German heirs could not inherit. On appeal to the Supreme Court of California,[122] Chief Justice Gibson reversed the decision of the District Court of Appeal and held that the German heirs could inherit without proving German reciprocity since the Treaty of 1925 took precedence over the California law which was in conflict with the treaty.

The most-favored-nation clause in treaties dealing with the right of aliens to hold, own, occupy and inherit real estate increases the complications involved in cases of this kind. It may be that even though the treaty does not confer the right to an alien to hold or inherit real estate contrary to the law of the State, that nevertheless the alien may do so, not under the treaty between the United States and the state of which he is a national but under another treaty between the United States and another state of which he is not a national. He may take advantage of this second treaty because of a most-favored-nation clause in the treaty between the United States and the state of which he is a national.

In *Rizzotto v. Grima*,[123] the Supreme Court of Louisiana decided that in the case of a citizen of Italy who died intestate in Louisiana leaving real property which was sold to pay creditors, that because of Article 22 of the Treaty of 1871 between the United States and Italy which contained a most-favored-nation clause that the Treaty of 1899 between the United States and Great Britain should have been applied and the Italian consul notified. Since the heirs suffered no disadvantage, the title was not disturbed.

Another instance in which international law questions may

122. 31 Cal. 2d 573, 191 P. 2d 747 (1948).
123. 164 La. 1, 113 So. 658 (1927).

come up in state courts is the licensing of professions by the states. According to Senator Hickenlooper about half of the states in the United States have neither a constitutional nor a statutory limitation against aliens practicing professions if they meet the other qualifications.[124] About half of the states, however, have such limitations. Most of the states which have limitations limit the rights of aliens to practice law and medicine. Illinois, for instance, provides that an applicant for the medical examination must either be a citizen of the United States or have made a declaration of intention to become a citizen of the United States.[125] If he has made a declaration, he must have filed a petition of naturalization within 30 days after becoming eligible to do so.[126]

Some of the later treaties of friendship specify that alienage shall not be a bar to the practice of the professions. The Treaty of Friendship, Commerce and Navigation of January 21, 1950 with Ireland[127] provides in Article 6 that the nationals and companies of either Party are to be accorded, within the territories of the other national treatment with respect to the practice of professional activities with the exception of the practice of law.[128] The Treaty of 1953 with Japan[129] provided that if otherwise qualified Japanese nationals could practice the professions on the same basis as United States nationals.[130] Similar provisions were incorporated in treaties signed with Colombia, April 26, 1951; Israel, August 23, 1951; Ethiopia, September 7, 1951; Italy, September 26, 1951; Denmark, October 11, 1951 and Greece, August 3, 1951.[131] Public hearings were held on these treaties on May 9, 1952 but the Subcommittee did not report them out

124. CONG. REC., 83 Cong., 1st Sess., Part 7, p. 9314.
125. ILLINOIS REV. STAT., 1951 § 91-4. Medical Practice Act of June 30, 1923.
126. *Id.*, (d).
127. T. I. A. S. 2155, Article VI.
128. (1) "Nationals and companies of either party shall be accorded, within the territories of the other Party, national treatment with respect to: (a) engaging in commercial, manufacturing, processing and financial activities, subject to paragraph 4 of the present article, and in publishing, scientific, educational, religious, philanthropic and professional activities, except the practice of law."
129. T. I. A. S. 2863.
130. Article VIII (2) "Nationals of either Party shall not be barred from practicing their professions within the territories of the other Party merely by reason of their alienage; but they shall be permitted to engage in professional activities therein upon compliance with the requirements regarding qualifications, residence and competence that are applicable to nationals of such other Party."
131. 27 DEP'T STATE BULL. 588 (1952).

immediately because of opposition to the national treatment of aliens engaged in professions.[132] The Treaty with Colombia was returned to the President as requested by him in his message of June 22, 1953.[133] The United States Senate made reservations to the Japanese, Israeli, and Danish treaties which provided that national treatment should not extend to professions which involved the performance of functions in a public capacity or in the interest of public health and safety and were reserved by statute or constitution exclusively to citizens of the United States.[134] The most-favored-nation clause was not to apply to such professions. The denial of the most-favored-nation clause was evidently necessary in this respect because the Treaty with Ireland had accorded national treatment to all citizens of Ireland in practicing their professions in the United States with the exception of law. Therefore, other aliens whose states had most-favored-nation treaties with the United States in respect to professions could have taken advantage of the Irish Treaty and practiced medicine and related professions if properly qualified without discrimination because of their alienage.

The validity of divorces granted by foreign states often comes before state courts. One of the most important considerations involved in the validity of such divorces is the jurisdiction of the foreign courts. In *Bethune v. Bethune*,[135] the Supreme Court of Arkansas refused to recognize the validity of a Mexican divorce on the grounds that the Mexican court lacked jurisdiction since the husband resided in Mexico only nine days and appeared in court only once without giving any testimony. The Supreme Court of California refused to recognize another Mexican divorce in *Ryder v. Ryder*[136] because neither the husband or wife had resided in Mexico during the year when the divorce was granted. In *Ferrett v. Ferrett*[137] the New Mexican court held that a Mexican divorce was valid

132. *Ibid.*
133. CONG. REC., 83 Cong., 1st Sess., Part 6, p. 7675.
134. *Id.* Part 7, p. 9321 and 9329. For instance, in the Japanese Treaty, Article VIII (2). "Article VIII, paragraph 2, shall not extend to professions which, because they involve the performance of functions in a public capacity or in the interest of public health and safety, are state licensed and reserved by statute or constitution exclusively to citizens of the country, and no most-favored-nation clause in the said treaty shall apply to such professions."
135. 192 Ark. 811, 94 S. W. 2d 1043 (1936).
136. 2 Cal. App. 2d 426, 37 P. 2d 1069 (1935).
137. 55 N. M. 565, 327 P. 2d 594 (1951).

unless it could be shown that the Mexican court did not have jurisdiction because of lack of domicile.

A Cuban divorce decree was upheld by the New York Court[138] so far as the divorce was concerned but was held invalid as to custody of a child who was not within the Cuban court's jurisdiction.

In *Newman v. Newman*[139] the New York Supreme Court refused to issue a temporary injunction to restrain a husband from obtaining a Mexican mail order divorce because such a divorce would be invalid in New York since the Mexican court lacked jurisdiction. Justice Hallinan in the above case pointed out that Mexican mail order divorces had been uniformly held invalid because the jurisdiction of the Mexican courts was lacking.[140] He also pointed out that foreign divorces were recognized in the United States by state courts merely as a matter of comity.[141] Justice Desdmond in *In Re Rathscheck's Estate*[142] held, however, that a wife who obtained an invalid Mexican mail order divorce by collusion with her husband was prevented by New York statute from inheriting her share of the estate if her husband died intestate. In his dissenting opinion[143] Justice Conway differed from the majority opinion because he believed that the New York statute applied to other states of the United States and not to foreign countries.

In *Ruderman v. Ruderman*[144] the court held a Mexican divorce invalid even though both parties were married and lived there together for short periods of time because matrimonial domicile was never established there. In another decision, a little more than a year later, the same court in *Oettgen v. Oettgen,*[145] held that lack of domicile in a foreign country was not necessarily a bar to recognition of a divorce granted in such foreign country by the courts of New York where the parties were German aliens, were married there, and were

138. Quintana v. Quintana, 101 N. Y. S. 2d 593 (1950).
139. 44 N. Y. S. 2d 525 (1943).
140. Citing Matter of Alsmann v. Maher, 231 App. Div. 139, 246 N. Y. S. 60; Bauman v. Bauman, 250 N. Y. 382, 165 N. E. 819; May v. May, 251 App. Div. 63, 295 N. Y. S. 599; Vose v. Vose, 280 N. Y. 779, 21 N. E. 2d 616.
141. 44 N. Y. S. 2d 525 (1943).
142. 300 N. Y. 346, 90 N. E. 2d 887 (1950).
143. *Id.* at 891.
144. 82 N. Y. S. 2d 479 (1948).
145. 94 N. Y. S. 2d 168 (1949).

represented by counsel there. In *Gould v. Gould*[146] the Court of Appeals of New York held that a divorce granted by the Civil Tribunal of Versailles, Department of Seine-et-Oise, Republic of France, was valid. The divorce was granted there on the ground of the adultery of the wife. Both parties were American citizens, and at the time of the divorce the legal domicile of the parties was in New York. The Court held that the parties were within the jurisdiction of the French Court and that the decision of the French court was in accordance with public policy in New York. It would seem from the above decision that a divorce in a foreign country could be impeached on the ground that it was contrary to the public policy of the State within which recognition was sought. This might mean that if certain grounds for divorce were valid in a foreign country but were not valid in the State in which recognition was sought that recognition might not be granted because the grounds were contrary to public policy of the recognizing state.

In addition to divorce judgments of foreign countries, there are at times the question of the recognition by the state courts of other foreign judgments. Although the United States Supreme Court in *Hilton v. Guyot*[147] held that a judgment of the Tribunal of Commerce, a French court having jurisdiction over suits between merchants, should be tried *de novo* in the courts of the United States because France did not grant reciprocal recognition to the decrees of American courts, the New York Court of Appeals in *Johnston v. Compagnie Generale Transatlantique*[148] held that an adjudication of the Tribunal of Commerce at Paris was conclusive unless impeached for fraud or lack of jurisdiction. The court refused to base its decision upon reciprocity and stressed in its opinion the merit of the decision itself.

A state is under no obligation to recognize the judgments of an unrecognized foreign government. Since the foreign government has not been recognized *de facto* or *de jure* by the United States Government, it is as though the foreign government does not exist. In *Sokoloff v. National City Bank*,[149] the New York Court of Appeals refused to recognize a decree of the Russian Socialist Federated Soviet Republic national-

146. 235 N. Y. 14, 138 N. E. 490 (1923).
147. 159 U. S. 113 (1895).
148. 242 N. Y. 381, 152 N. E. 121 (1926).
149. 239 N. Y. 158, 145 N. E. 917 (1924).

izing all private banks within the Soviet Union. The plaintiff in this case had paid the National City Bank a sum of money which was to be deposited in rubles in the Petrograd branch of the bank. After the nationalization, the bank refused to pay the plaintiff any further either in dollars or rubles. The court held that the National City Bank had no right to refuse to honor drafts because the acts of the Soviet Government were not recognized in the United States since the Soviet Government was an unrecognized government and the National City Bank operated under American law.

A foreign government recognized *de facto* is in general entitled to the recognition of its decrees issued within its jurisdiction. In *Salimoff and Co. v. Standard Oil of New York,*[150] the New York Court of Appeals upheld the Soviet Government's decree nationalizing oil lands within its jurisdiction. The former owners of the property, Russian nationals, sued in the New York courts for an accounting, claiming that since the Soviet Government was not recognized *de jure* by the United States that the decree of nationalization should not be recognized by the New York courts. The Court of Appeals decided, however, that since at the time of the decision, the Soviet Government had been recognized *de facto,* the nationalization of the oil was legal according to Russian laws; and the complaints of the plaintiffs were dismissed.

A foreign government recognized *de jure* by the United States has also in general a right to have its decrees and judgments recognized in the state courts. In *Daugherty v. Equitable Life Insurance Co.,*[151] the New York court upheld the decrees of the Russian Government nationalizing private insurance companies within the Soviet Union. The Equitable Life Insurance Company was licensed to do business in Russia. The plaintiff demanded return of premiums with interest in New York but the New York court refused on the grounds that private insurance companies in Russia had been nationalized. In *United States v. Pink*[152] the United States Supreme Court reversed the New York Court of Appeals[153] and upheld the validity of Soviet decrees nationalizing insurance com-

150. 262 N. Y. 220, 186 N. E. 679, 89 A. L. R. 345 (1933). For an excellent discussion of this point see the English case Luther v. Sagor, [1921] 3 K. B. 532 (C. A.).
151. 266 N. Y. 71, 193 N. E. 897 (1934).
152. 315 U. S. 203 (1942).
153. 284 N. Y. 555, 32 N. E. 2d 552 (1940).

panies, extending the effect of such decrees to funds held by the New York Insurance Commissioner, even though the New York Court had held such decrees as being invalid in New York because contrary to the public policy of the state.

Cases sometimes arise in the state courts as to the right of foreign sovereigns to sue and be sued in the state courts. In general, recognized foreign sovereigns may sue in the state courts. In *Republic of Honduras v. Soto*,[154] the New York Court of Appeals upheld the right of Honduras to sue a private individual for the recovery of certain monies which such individual had allegedly converted to his own use. In *King of Prussia v. Kuepper's Adm'r*,[155] Justice Scott held that a foreign government recognized by the U. S. may sue in the state courts if it elects and that although the federal courts have jurisdiction, such jurisdiction is concurrent and not exclusive with the federal courts. The Sultan of Turkey in *Sultan of Turkey v. Tiryakian*[156] sued in the New York courts to recover a legacy owed to a subject of Turkey. A foreign state may sue in the state courts in order to demand an accounting of funds allegedly illegally seized and in the possession of a former official of the government who is within the jurisdiction of the state court.[157]

Although a recognized sovereign may sue in the state courts for redress, an unrecognized state may not sue because of a lack of comity and because it would be contrary to public policy.[158] When an unrecognized state lacks the capacity to sue in state courts, the individual members of a subordinate governmental body of that government have no better or greater rights than the principal.[159]

The general principle of international law is that a foreign state cannot be sued without its consent. In *French Republic v. Board of Supervisors of Jefferson County*,[160] the Board of Supervisors had sought to collect taxes on certain tobaccos owned by the tobacco monopoly of the French Government. An action was brought to place a lien against the tobacco until the taxes were paid. Justice Clay pointed out that the French

154. 112 N. Y. 310, 19 N. E. 845 (1889).
155. 22 Mo. 550 (1856).
156. 213 N. Y. 429, 108 N. E. 72 (1915).
157. State of Yucatan v. Argumedo, 157 N. Y. S. 219 (1915).
158. Russian Socialist Federated Soviet Republic v. Cibrario. 235 N. Y. 255, 136 N. E. 259 (1923).
159. Preobazhenski v. Cibrario, 192 N. Y. S. 275 (1922).
160. 200 Ky. 18, 252 S. W. 124 (1923).

Republic was not suable in the state courts without its consent and that the tobacco itself could not be subjected to the tax. If the assessment were upheld, there would be no way of collecting the tax. The State of Kentucky has no power either to negotiate or declare war. Kentucky might ask the State Department to open international negotiations, or seek to persuade Congress to declare war for the purpose of collecting the taxes. The State of Kentucky would thus be helpless in seeking to collect a tax from a foreign sovereign. In a suit by an individual against the Intercolonial Railroad of Canada[161] in the Supreme Court of Massachuestts, Chief Justice Knowlton refused to allow suit for personal injury against the railroad since it belonged to Edward VII, King of the United Kingdom and of the Dominion of Canada. A foreign sovereign could not be sued against his consent in a foreign court. In a suit by an individual for compensation for legal services against a Nicaraguan railroad, the Supreme Court of Maine likewise dismissed the suit because the railroad was owned by the Government of Nicaragua which was not subject to suit without its consent.[162]

An unrecognized foreign government cannot be sued in the state courts for an exercise of sovereignty within its own territory.[163] The reasoning of the New York Court seemed to be based on the fact that a *de facto* foreign government, whether recognized or not, exists and has sovereign immunity. In this case the plaintiff was bringing suit to recover furs confiscated within the Soviet Union and not within the jurisdiction of the court. The lower New York court had allowed suit against the unrecognized Russian government but was reversed by the Court of Appeals.[164]

A foreign government or mixed corporation may, however, be sued in state or federal courts under certain conditions. A sovereign state may be sued if it waives its sovereign immunity. In *U. S. of Mexico v. Rask*,[165] the District Court of Appeal of California upheld a shipwright's lien for repair

161. Mason v. Intercolonial Ry. of Canada, 197 Mass. 349, 83 N. E. 876 (1908).
162. Miller v. Ferrocarrill del Pacifico de Nicaragua, 137 Me. 251, 18 A. 2d 688 (1941).
163. Wolfsohn v. Russian Socialist Federated Soviet Republic, 234 N. Y. 372, 138 N. E. 24 (1923).
164. 202 App. Div. 421, 195 N. Y. S. 472 (1922).
165. 118 Cal. App. 21, 4 P. 2d 981 (1931). See this opinion for a fine review of sovereign immunity.

of a Mexican patrol boat. Justice Marks in his opinion held that the Mexican Government had waived its sovereign immunity by (1) bringing action to recover the patrol boat and (2) because no representations of sovereign immunity were made by Mexican diplomats or the United States Department of State and that the attorney for the Mexican Government had no authority to claim sovereign immunity for the Mexican Government. If a foreign state brings suit, it waives its sovereign immunity to a counter claim even if such counter claim is not based on the subject matter of the foreign government's suit.[166]

Suit may be brought against a mixed corporation, i. e. a corporation the stock of which is jointly owned by governmental and private interests. In *Molina v. Comision Reguladora del Mercado de Henequin*[167] the Supreme Court of New Jersey held that property could be attached even though part of the interest in a sisal corporation was owned by the State of Yucatan. The theory of this case would seem to be that in case of a mixed corporation organized for profit, that the private ends overcome the public ends and that the foreign state has waived its immunity. It is to be hoped that in the interest of justice that both state and federal courts will tend to limit the sovereign immunities of public corporations. Public corporations when organized for profit would seem to have waived their sovereign immunity particularly when they have property within the jurisdiction of the court.

The Constitution of the United States does not exclude the jurisdiction of state courts over cases involving ambassadors, public ministers and consuls. In *Wilcox v. Lupo*,[168] the Supreme Court of California pointed out that Section 2 of Article III of the Constitution of the United States which declares that "In all cases affecting ambassadors, other public ministers and consuls, . . . the Supreme Court shall have original jurisdiction", did not mean that the Supreme Court had exclusive jurisdiction but that lower federal courts and the state courts had concurrent jurisdiction according to the will of Congress. The court held that the state court could render judgment on a note made by the Consul General of

166. National City Bank of N. Y. v. Republic of China, 348 U. S. 356 (1955).
167. 91 N. J. L. 382, 103 A. 397 (1918).
168. 118 Cal. 639, 50 Pac. 758 (1897).

Chile residing in San Francisco. In *Redmond v. Smith*,[169] the Court of Civil Appeals of Texas reached a similar decision. In *Scott v. Hobe*[170] the Supreme Court of Wisconsin held that the defendant who was vice-consul of Sweden and Norway residing at St. Paul, Minnesota, was within the jurisdiction of the Wisconsin courts because of a business agreement entered into in Wisconsin. In *De Give v. Grand Rapids School Furniture Co.*,[171] the Supreme Court of Georgia held that the Belgian consul residing in Atlanta, Georgia, could be sued in the state courts to recover an alleged debt.

Under the United States Constitution, the state courts also have jurisdiction over criminal actions against consuls unless Congress by statute has excluded state jurisdiction. In *State v. De La Foret*,[172] the Constitutional Court of South Carolina stated that the South Carolina courts in the absence of a contrary federal statute had criminal jurisdiction over the French consul in Charleston. The defendant consul had been indicted in the Circuit Court of Charleston for an assault and battery. He pled to the jurisdiction of the court claiming diplomatic immunity and his plea was sustained by the presiding judge. Justice Huger in his learned opinion pointed out that consuls were not diplomats and had only such immunities as were granted by treaties. After pointing out that consuls did not represent governments but were only commercial agents, the justice learnedly quoted Vattel, Barbeyrac, Benkershoek, and Martens to substantiate his opinion. Justice Huger knew and understood international law. He also ruled that the federal government did not have exclusive jurisdiction over such cases since the Supreme Court had original jurisdiction according to the Constitution, but that the defendant could not be legally tried in the Supreme Court for the violation of state law since the Supreme Court does not use a jury.[173]

The United States Judicial Code of 1911,[174] however, gave exclusive jurisdiction in cases involving ambassadors, public ministers and consuls to federal courts. This exclusive jurisdiction in the federal courts was continued by the Judicial Act of 1948.[175] Justice Holmes in *Ohio ex rel. Popovici v.*

169. 22 Tex. Civ. App. 323, 54 S. W. 636 (1899).
170. 108 Wis. 239, 84 N. W. 181 (1900).
171. 94 Ga. 605, 21 S. E. 582 (1894).
172. 2 Nott and McCord 217 (S. C. 1820).
173. *Ibid.*
174. 36 STAT. 1160 (1911) § 28; U. S. C. 371 (1952).
175. U. S. C. A. (1950) Title 28, § 1251; Act of June 25, 1948, Ch.

*Agler*,[176] however, stated that it was not the intent of Congress in the Judicial Act of 1911 to give exclusive jurisdiction to the federal courts in divorce cases involving a foreign consul since the matter of domestic relations was reserved to the States by the United States Constitution. In this case, the Vice-Consul of Roumania was seeking a divorce. It must be supposed according to Justice Holmes' decision in the above case that the same reasoning would apply to the Judiciary Act of 1948, and that, therefore, a consul or his wife could still bring a bill for divorcement into the state courts.

It can be seen from the cases cited, that a lawyer practicing in the state courts may come upon numerous cases which will involve a knowledge of international law. The study of international law in law schools is not merely a luxury; it is a necessity, even though the lawyer practices exclusively in state courts.

646; 62 STAT. 927. This section reads as follows: "(A) The Supreme Court shall have original and exclusive jurisdiction of: . . . . (2) All actions or proceedings against ambassadors or other public ministers of foreign states or their domestics or domestic servants, not inconsistent with the law of nations. (b) The Supreme Court shall have original but not exclusive jurisdiction of: (1) All actions or proceedings brought by ambassadors or other public parties; . . . . " U. S. C. A. (1950) Title 28, § 1351 states: "The district courts shall have original jurisdiction exclusive of the courts of the States, of all actions and proceedings against consuls or vice consuls of foreign states. Act of June 25, 1948, c. 646, 62 STAT. 934 amended May 24, 1929, Ch. 139, § 80 (c), 63 STAT. 10. The amendment of May 24, 1949, amended this section by substituting "of all actions and proceedings" in lieu of "of any civil action".

176. 280 U. S. 379 (1930). For the decision in the state court see 119 Ohio St. 484, 164 N. E. 524 (1928).