

## SUMMARY OF ARGUMENT

Jurisdiction over the present Application is founded on the Serb-Croat-Slovene Treaty of 1919, which called for the protection of minorities and which provided for the compulsory settlement of disputes by the Permanent Court of International Justice.

### THE SERB-CROAT-SLOVENE TREATY PROTECTS MINORITY RIGHTS.

The Court's jurisdiction over the instant Application is grounded, among other bases of jurisdiction, in the Treaty between the Allied and Associated Powers and the Kingdom of the Serbs, Croats and Slovenes (Protection of Minorities), signed at St. Germain-en-Laye, 10 September 1919. This Treaty entered into force July 16, 1920, and was registered with the Secretariat of the League of Nations as No. 39, on 21 October 1920. It is hereinafter referred to as the Serb-Croat-Slovene Treaty.

The purpose of the Serb-Croat-Slovene Treaty was to ensure the protection of minority populations within the Kingdom of the Serbs, Croats and Slovenes, a state only then being established. As recited in the Treaty's preamble, "the Prince Regent of Serbia and the Serbian Government have agreed to this union, and in consequence the Kingdom of the Serbs, Croats and Slovenes has been constituted and has assumed sovereignty over the territories inhabited by these peoples."

The Serb-Croat-Slovene Treaty was one of a number of treaties concluded after World War I between the Allied and Associated Powers with states newly created from the territory of the defeated powers. These new states contained substantial minority populations. The purpose of the treaties was to ensure the rights of these minorities, who were considered to be particularly at risk. J.W. Bruegel, "A Neglected Field of the Protection of Minorities," *Revue des droits de l'homme/Human Rights Journal*, vol. 4, p. 413, at p. 414 (1953).

This stipulation of protection for minorities was in keeping with historical practice, followed in particular in the Balkans, whereby rulers acquiring territory agreed to respect the rights of inhabitants, and in particular inhabitants of minority groups. C.A.

Macartney, "League of Nations' Protection of Minority Rights," in E. an Luard, ed., *The International Protection of Human Rights* (1967), p. 22.

The Permanent Court of International Justice required strict compliance with the post-World War I minority protection treaties. In *Minority Schools in Albania*, the only case brought to it that involved these treaties, the Permanent Court construed the state's obligation to require close protection of rights. *Minority Schools in Albania*, Permanent Court of International Justice, Series A-B, advisory opinion of 6 April 1935, pp. 22-23. The Permanent Court stated, "The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and co-operating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs." *Minority Schools in Albania*, p. 17.

In its Article 2, the Serb-Croat-Slovene Treaty stated the basic obligation being assumed by the Kingdom of the Serbs, Croats and Slovenes, namely, "The Serb-Croat-Slovene State undertakes to assure full and complete protection of life and liberty to all inhabitants of the kingdom without distinction of birth, nationality, language, race, or religion." The Treaty further called on the Kingdom to ensure equality of treatment before the law without distinction as to race, language or religion (Article 7), and provided for "security in law and in fact" to "racial, religious or linguistic minorities" (Article 8).

Specific provision was made in the Serb-Croat-Slovene Treaty for the Moslem population. Article 10 ensured "to the Mussulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with Mussulman usage." The Kingdom's compliance with its obligations under the Treaty was to be monitored by the Council of the League of Nations (Article 11).

II. THE SERB-CROAT-SLOVENE TREATY PROVIDED FOR THE COMPULSORY REFERENCE OF DISPUTES TO THE PERMANENT COURT OF INTERNATIONAL JUSTICE.

In the Serb-Croat-Slovene Treaty, the Kingdom of the Serbs, Croats and Slovenes and the Allied and Associated Powers agreed that any dispute over the performance of the Kingdom's obligation of just treatment of minorities could be adjudicated by the Permanent Court of International Justice:

The Serb-Croat-Slovene State further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Serb-Croat-Slovene State and any one of the Principal Allied and Associated Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Serb-Croat-Slovene State hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant (Article 11).

The dispute that is the subject of the instant Application relates to a difference on a question of both law and fact.

In addition, Article 16 of the Serb-Croat-Slovene Treaty broadened the circle of states enjoying rights under Article 11. Article 16 stated:

All rights and privileges accorded by the foregoing Articles to the Allied and Associated Powers shall be accorded equally to all States Members of the League of Nations.

Thus, any state member of the League of Nations was entitled to refer a dispute with the Kingdom to the Permanent Court of International Justice.

### III. THE PROVISIONS PROVIDING FOR JURISDICTION IN THE PERMANENT COURT OF INTERNATIONAL JUSTICE TODAY SIGNIFY JURISDICTION IN THIS COURT.

Under the Statute of the International Court of Justice, "[w]henver a treaty or convention in force provides for reference of a matter . . . to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice." I.C.J. Statute, Article 37. Thus, the jurisdiction conferred by the Serb-Croat-Slovene Treaty on the Permanent Court transferred to this Court.

### IV. AS A MEMBER STATE OF THE UNITED NATIONS, BOSNIA-HERZEGOVINA HAS THE RIGHT TO INVOKE THE JURISDICTION PROVISION OF THE SERB-CROAT-SLOVENE TREATY.

After the demise of the League of Nations, the General Assembly of the United Nations contemplated that the United Nations might assume powers entrusted to the League by treaties. By a resolution, the General Assembly stated:

The General Assembly will itself examine, or will submit to the appropriate organ of the United Nations, any request from the parties that the United Nations should assume the exercise of functions of powers entrusted to the League of Nations by treaties, international conventions, agreements and other instruments having a political character. General Assembly of the United Nations, Resolution 24(I), "Transfer of Certain Functions, Activities and Assets of the League of Nations," 29th plenary meeting, 12 February 1946, U.N. Document A/64, p. 35.

By a resolution of 18 April 1946, the League of Nations Assembly accepted the General Assembly's offer as reflected in Resolution 24(I).

Resolution 24(I) was part of a more general assumption by the United Nations of League functions. The General Assembly assumed control over the physical assets of the League. It also assumed the League's enforcement role regarding mandate territories, as recognized by this Court in its 1950 and 1971 rulings on the South West Africa mandate. One author, citing Resolution 24(I), states, "Thus, the principle of continuity

[between the League and the United Nations] was clearly established." Alexander Ostrower, *Language, Law and Diplomacy* (1965), vol. 2, p. 685.

Although no state party to the Serb-Croat-Slovene Treaty asked the General Assembly to assume the League's functions and powers regarding the Treaty, the General Assembly substituted itself for the League Council. The transfer, following Resolution 24(I), was automatic, despite the fact that Resolution 24(I) permitted states to make a request to the General Assembly if they so chose. Just as with respect to mandate territories and the League's physical assets, the General Assembly assumed for itself a power regarding League functions under treaties.

The U.N. Secretariat, in its 1950 study of the post-World War I minority treaties, affirmed that the United Nations had replaced the League of Nations regarding supervision of those treaties. It stated, with specific reference to these treaties, "that the United Nations has taken the place of the League of Nations and has assumed the general functions formerly performed by the League. Consequently, if a State were subject to abusive intervention on the part of another state, and were accused by the latter of failing to observe its obligations in respect of minorities, it would be justified in placing the matter before United Nations organs, and would benefit from the protection of the Charter." "Study of the Legal Validity of the Undertakings Concerning Minorities." U.N. Document E/CN.4/367, 7 April 1950, p. 17. The Secretariat said that the mandate system was "analogous," as regards U.N. assumption of League functions, to the system for protection of minorities. U.N. Document E/CN.4/367, p. 15. Thus, the United Nations, by virtue both of its very status as a universal international organization and of its Resolution 24(I), assumed the League's role regarding the protection of minorities under the post-World War I minority protection treaties.

That Resolution 24(I) operated of its own force to transfer functions to the General Assembly was agreed by states during Sixth Committee discussion in 1953 of another treaty with League supervision, namely, the Slavery convention of 1926. The United Kingdom delegate said that Resolution 24(I), without further action by any U.N. organ, sufficed to effect a transfer of League functions under the Slavery convention, and

his view elicited no objection. General Assembly, Sixth Committee, 369th meeting, 12 October 1953, U.N. Document A/C.6/SR.369, p. 48.

Bosnia-Herzegovina, as a member state of the United Nations, thus is in the position of the states described in Articles 11 and 16 of the Serb-Croat-Slovene Treaty, namely, the member states of the League, and thus its dispute with Yugoslavia (Serbia and Montenegro) is one over which this Court has jurisdiction.

#### V. THE SERB-CROAT-SLOVENE TREATY IS STILL IN FORCE.

The Treaty contained no time limitation on its validity and no denunciation provision, and thus the contemplation of the parties was that it would continue in force indefinitely. The Treaty has never been denounced by any party. There is a strong presumption that a treaty that is not by its terms limited in time shall continue in force. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention." Vienna Convention on the Law of Treaties, Article 42(2).

Termination is governed by Part V, Section 3 of the Vienna Convention, which lists the only possible ways in which a treaty obligation may be terminated (Articles 54 to 64). None of the circumstances there specified has occurred regarding the Serb-Croat-Slovene Treaty.

No party has withdrawn from or denounced the Treaty (Articles 54, 56). The number of parties has not been reduced lower than the minimum necessary (Article 55). The parties have not consented to a suspension (Articles 57, 58). No later treaty has been concluded between the parties evincing an intent to terminate the Treaty (Article 59). No state party has terminated for material breach (Article 60). No state party has invoked impossibility of performance (Article 61). No state party has invoked a fundamental change of circumstances (Article 62). There has been no severance of diplomatic or consular relations that would affect the Treaty's application (Article 63). No new peremptory norm of international law has emerged that might conflict with the Treaty (Article 64).

Desuetude may be a basis for states parties to decide to suspend or terminate a treaty, but desuetude does not operate of its own accord without action by the states parties, and here there has been no such action. The International Law Commission omitted desuetude from the Vienna Convention, having determined that desuetude "may be a factual cause of the termination of a treaty," but that "the legal basis of such termination, when it occurs, is the consent of the parties to abandon the treaty, which is to be implied from their conduct in relation to the treaty." The Commission said that this would occur under draft Article 51(b), "under which a treaty may be terminated 'at any time by consent of all the parties.'" Yearbook of the International Law Commission, 1966(2)), p. 237. In the final version of the Convention, draft Article 51 appears as Article 54, and the quoted phrase reads "at any time by consent of all the parties after consultation with the other contracting parties." Vienna Convention on the Law of Treaties, Article 54(b). Emphasis added. The addition of the emphasized phrase indicated that the consent to terminate must be explicit rather than tacit. Here no such consultation has occurred among the contracting parties, and there has been no expression by them of consent to terminate.

Before a treaty becomes invalid for desuetude, "[w]hat has to be proved is the clear intention of the parties to put an end to a valid treaty. Positive and conclusive evidence of intent must be produced. For instance, there must be sufficiently repeated instances of opposition by a party to the application of the treaty in question, when invoked by the other parties, and a final renunciation by the latter of their rights to insist on the performance of the treaty. The abrogative effect can surely not result from the conduct of the party alone nor simply for the fact that no practical use of the treaty provisions has been made over an extended period of time." Athanassios Varnvoulos, *The Termination of Treaties in International Law: The Doctrines of Rebus Sic Stantibus and Desuetude* (1985), p. 276.

Thus, under the Vienna Convention on the Law of Treaties, which reflects the customary law, there is no basis for finding that the Serb-Croat-Slovene Treaty has ceased being in force.

## VI. THE UNITED NATIONS SECRETARIAT FOUND THE SERB-CROAT-SLOVENE TREATY TO BE IN FORCE.

In 1950, the United Nations Secretariat found that the Serb-Croat-Slovene Treaty was in force. In 1948 the United Nations Commission on Human Rights had asked the Economic and Social Council to determine the status of the post-World War I minority protection treaties, stating in its request "that there is here involved a juridical situation which, owing to its implications and possible consequences, should in any event be elucidated, possibly through a request by the Economic and Social Council for an advisory opinion on this matter from the International Court of Justice." Commission on Human Rights, Report to the Economic and Social Council on the Second Session of the Commission, held at Geneva, from 2 to 17 December 1947, ¶37, U.N. Document E/600, 17 December 1947.

Instead of seeking an advisory opinion from this Court, E.C.O.S.O.C. solicited an opinion from the U.N. Secretariat, asking it to study the question of "whether and to what extent the treaties . . . relating to international obligations undertaken to . . . protect minorities . . . should be regarded as being still in force, at least in so far as they would entail between contracting states rights and obligations the existence of which would be independent of their guarantee by the League of Nations." The E.C.O.S.O.C. resolution listed, among others, the Serb-Croat-Slovene Treaty as one to be included in the study. E.C.O.S.O.C. Resolution 116 (VI) C, 1 March 1948, Resolutions adopted by the Economic and Social Council during its sixth session from 2 February to 11 March 1948, p. 18, U.N. Document E/777 (1948).

The reason that E.C.O.S.O.C. directed its request to the Secretariat, rather than to this Court, may lie in the fact that many treaties were involved, and thus no well-defined question could have been posed to the Court. As noted by Prof. Dr. Budislav Vukas, Professor of Law at the University of Zagreb, the fact that certain of these treaties might for one reason or another have ceased to be in force would not require a similar conclusion regarding all of them. Budislav Vukas, "Biljeska o sudbini ugovornih odredaba o zastiti manjina iz vremena Lige naroda," *Zbornik pravnog fakulteta u Zagrebu*, vol. 27, no. 4, p. 273 at p. 278 (1977).



The fact that the request was made to the Secretariat suggests that E.C.O.S.O.C. was asking about the guarantee system rather than about the validity of the treaties, since the Secretariat might be involved in devising a substitute to League machinery.

In 1950 the Secretariat, in response to the E.C.O.S.O.C. request, issued a study titled "Study of the Legal Validity of the Undertakings Concerning Minorities," U.N. Document E/CN.4/367, 7 April 1950. The Secretariat recited that the philosophy regarding protection of minorities had broadened from the post-World War I notion that only the ex-enemy states were required to ensure minority rights, to a post-World War II notion of a generalized obligation for all states to protect human rights, including those of minorities. "Reviewing the situation as a whole, therefore," said the Secretariat, "one is led to conclude that between 1939 and 1947 circumstances as a whole changed to such an extent that generally speaking, the system should be considered as having ceased to exist." U.N. Document E/CN.4/367, p. 71.

However, the conclusion that "the system" should be considered as having ceased to exist, namely, the guarantee system formerly provided by the League of Nations, did not mean that the treaties themselves had lapsed. The Secretariat, to the contrary, viewed the United Nations as succeeding to the role of the League and thus as undertaking the functions formerly exercised by the League under the minority treaties. "The obligations," said the Secretariat regarding the minority protection treaties, "were undertaken, not towards the League of Nations as a legal entity or towards the Members of the League of Nations individually, but towards the international community of which the League of Nations was then the organ. The League of Nations has disappeared, but the international community remains and has set up a new organ, which is the United Nations." U.N. Document E/CN.4/367, p. 14. Thus, while the Secretariat made the obvious finding that the League's enforcement system had ceased to function, it did not reject the validity of the obligations assumed under the post-World War I minority protection treaties. Inis Claude, *National Minorities: An international problem* (1955), p. 153.

The Secretariat cited the General Assembly's Resolution 24(I), which, as noted, provided for General Assembly assumption of League functions under the minority protection treaties, as an indication that the General Assembly considered these treaties

still to be in force. U.N. Document E/CN.4/367, p. 15. Obviously, the General Assembly would not assert for itself a role in guaranteeing the enforcement of treaties that were no longer in force.

As regards the continuing validity of the post-World War I minority protection treaties, the Secretariat in its Study did not reach a general conclusion applicable to all these treaties. Rather, it analyzed each treaty individually to determine whether it remained in force. It found that certain of the minority treaties had ceased to be in force, but it found the Serb-Croat-Slovene Treaty still valid. After reviewing possible circumstances that might affect the Treaty's continuing validity, the Secretariat concluded, "As regards the ordinary causes of extinction of obligations, there do not appear to be any which would have the effect of extinguishing Yugoslavia's obligations concerning the protection of minorities." U.N. Document E/CN.4/367, p. 64.

Thus, the Secretariat's conclusion about the Serb-Croat-Slovene Treaty was that no event had occurred that would have caused the Treaty to lapse. According to the Secretariat, Yugoslavia's obligations to minorities under the Serb-Croat-Slovene Treaty were still valid.

#### VII. AS FOUND BY THE UNITED NATIONS SECRETARIAT, NO INTERVENING EVENTS HAVE AFFECTED THE VALIDITY OF THE SERB-CROAT-SLOVENE TREATY.

The Secretariat said in its Study that the minority treaties, including the Serb-Croat-Slovene Treaty, were not abrogated by World War II. U.N. Document E/CN.4/367, p. 9. The Secretariat said that the treaties were not superseded by the United Nations Charter, with its human rights provisions. The Secretariat found "no reason to consider that the United Nations Charter implicitly abrogates the undertakings in the field of the protection of minorities." U.N. Document E/CN.4/367, p. 21. The Secretariat noted that minority protection was to some degree broader than the human rights guaranteed by the Charter. Specifically, minorities under the minority treaties had "the right to enjoy special privileges (for example, the right to use the minority language in the courts and in official documents) and to maintain special institutions (schools, etc.) . . . in order to

enable the minority group to retain its individual characteristics." U.N. Document E/CN.4/367, p. 19.

After World War II, rights protection provisions were inserted into peace treaties with the defeated east European states, namely, Bulgaria, Romania, and Hungary. The Secretariat said that the implication arising from these treaties was that "the former minorities protection regime has ceased to exist so far as concerns the ex-enemy countries with which those treaties have been concluded." U.N. Document E/CN.4/367, p. 70.

Regarding states like Yugoslavia, which was a victor state in World War, no such treaty was concluded, and thus no new minorities undertaking arose that might supersede the Serb-Croat-Slovene Treaty. Recounting the history of the period regarding states that were victor states in World War II, one commentator says, "The minority obligations of Greece, Poland and Yugoslavia would appear to have been unaffected by the course of events." Alan Renouf, "International Law - League of Nations - The Present Force of the Minorities Treaties," Canadian Bar Review, vol. 28, p. 804, at p. 811 (1950).

Treaty obligations, of course, run between and among the states parties. Even though the Serb-Croat-Slovene Treaty foresaw League enforcement, it was a treaty concluded among its parties, and they alone were in a position to terminate obligations under the Treaty. As indicated, none of the states parties has taken such action. This factor is particularly relevant to the Secretariat's analysis, which was based on the clausula rebus sic stantibus. It was on the strength of that concept that the Secretariat concluded that, with respect to certain of the minority protection treaties, the parties might be entitled to assert that there had been a lapse. For example, the Secretariat considered that the incorporation of the three Baltic states into the Soviet Union was a "radical change of circumstances" that affected the treaties protecting minorities in those states, because the states that had assumed obligations no longer existed. U.N. Document E/CN.4/367, p. 49.

If, indeed, the clausula rebus sic stantibus could be invoked regarding certain of the minority treaties, that did not mean that it could be revoked regarding others. Vukas, op. cit. p. 280. The Secretariat examined each treaty separately. The clausula rebus sic

stantibus is a limited doctrine. Only a substantial change of factual context will suffice. States have invoked the doctrine only rarely, and instances are difficult to find of a recognition of the doctrine by a party adversely affected, or by an independent decision maker.

Importantly, as indicated, the clausula rebus sic stantibus may be invoked only by a state party. Vienna Convention on the Law of Treaties, Article 62. Article 62(3) states: "If . . . a party may invoke a fundamental change of circumstances . . ." See also, Lord McNair, Law of Treaties (1961), pp. 681-691. The Secretariat, in its 1950 Study, recognized this fact. U.N. Document E/CN.4/367, p. 37. As indicated, none of the parties to the Serb-Croat-Slovene Treaty has invoked the clausula rebus sic stantibus.

#### VIII. AS FOUND BY THE UNITED NATIONS SECRETARIAT, THE LEAGUE OF NATIONS GUARANTEE WAS NOT A CONDITION NECESSARY TO THE TREATY'S VALIDITY, WHICH WAS NOT AFFECTED BY THE DEMISE OF THE LEAGUE.

The dissolution of the League of Nations did not affect the validity of the Serb-Croat-Slovene Treaty. The Treaty was concluded independently of the League, and League acceptance of the functions contemplated was not a condition necessary to the Treaty's validity. The League Council did, by resolution of November 29, 1920, accept these functions, and thereafter performed them. However, the Treaty did not recite that the League enforcement mechanism was essential to its validity. Moreover, even if the League's enforcement could be deemed an essential condition of the Treaty, this fact would be relevant only if a state party tried to denounce or withdraw from the Treaty. Vienna Convention on the Law of Treaties, Article 44, and, as indicated, no state party has done so.

The United Nations Secretariat, in its 1950 Study, found that the extinction of the League, and hence its ability to guarantee the minority protection treaties, did not affect the validity of those treaties. It stated, "the suppression of the guarantee formerly accompanying the obligations in respect of minorities has not extinguished those obligations themselves." U.N. Document E/CN.4/367, p. 17.

The Serb-Croat-Slovene Treaty's provisions on League enforcement were of a "procedural" nature. Vukas, *op. cit.*, p. 278. Thus, concludes Prof. Vukas, the termination of League enforcement did not terminate the material obligations under the Treaty to protect minority rights. Vukas, *op. cit.*, p. 278.

This conclusion is the more obvious if one considers the purpose of the Treaty. The purpose was humanitarian. Many treaties of a humanitarian character include both material and procedural provisions. Often states are more reluctant to accept procedural provisions than material provisions. Nonetheless, the effort of the international community has been to promote acceptance of material obligations, even where enforcement provisions were rejected. This Court made this point regarding the Genocide Convention, another rights protection treaty, noting the Convention's "humanitarian and civilizing purpose." Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (*adv. op.* 28 May 1951), 1951 I.C.J. at p. 23. On this basis, this Court concluded that states were permitted to make reservations that were consistent with the Convention's object and purpose. *Ibid.*, p. 24. The reservations at issue in that case related to procedural issues.

As this Court stated in the Namibia case, the fact that League supervision machinery disappeared (in that case it was League machinery for mandate territories) did not affect obligations under the treaties that included reference to such machinery. *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, 1971 I.C.J. at p. 32. This Court had made the same point in 1950, stating that since mandate obligations did not depend on the existence of the League of Nations, they could not be brought to an end merely because this supervisory organ ceased to exist." *International Status of South-West Africa*, 1950 I.C.J. at p. 133. As pointed out by Ostrower, who cites the Court's 1971 opinion as relevant to the question of minority treaties, the Court in the 1950 and 1971 cases found that the League functions regarding mandates automatically devolved onto the United Nations. Ostrower, *op. cit.*, p. 685.

As regards the minority treaties, the devolution was reinforced by the cited resolutions of both the United Nations General Assembly and the League Assembly. Thus, the devolution was even more clear than with regard to the mandates regime.

## IX. MINORITY PROTECTION TREATIES HAVE BEEN RELIED UPON SINCE WORLD WAR II.

The continuing validity of post-World War I minority protection treaties is demonstrated by the fact that certain of them have been invoked since World War II, to claim rights for particular minority groups. Regarding a post-World War I minority protection treaty with Czechoslovakia, the position was taken after World War II by Hungary, which was interested in the situation of the Hungarian minority in Slovakia, that the treaty was still in force. Bruegel, *op. cit.* p. 416. Claude, *op. cit.* p. 122.

The Serb-Croat-Slovene Treaty came into force contingent on the coming into force of the peace treaty between the Allied and Associated Powers and Austria. That treaty too contained minority rights provisions, aimed at protecting the Croat and Slovenian minorities in Austria. Those minority provisions survived World War II, as evidenced by reference to them in Article 149 of the Austrian constitution of 1929, which article continued in force after World War II and after the Austrian state treaty of 1955. Egon Schweib, "The Austrian State Treaty and Human Rights," *International and Comparative Law Quarterly*, vol. 5, p. 265, at p. 274 (1956); Theodor Veiter, *Das Recht der Volksgruppen und Sprachminderheiten in Österreich* (1970), p. 512. The Austrian treaty was cited before the European Commission of Human Rights in a case filed against Austria in 1962, and Austria did not contest the treaty's applicability. Franz Isop v. Austria, App. 808/60, Decision of 8 March 1962, *Yearbook of the European Convention on Human Rights*, vol. 5, p. 108 (1962). Thus, state practice since World War II indicates that the minority treaties did not lapse.

## 5. YUGOSLAVIA (SERBIA AND MONTENEGRO) HAS SUCCEEDED TO THE OBLIGATIONS OF THE KINGDOM OF THE SERBS, CROATS, AND SLOVENES UNDER THE SERB-CROAT-SLOVENE-TREATY

The Serb-Croat-Slovene Treaty is binding on Yugoslavia (Serbia and Montenegro), because Yugoslavia (Serbia and Montenegro) has succeeded to the treaty obligations of the Kingdom of the Serbs, Croats, and Slovenes. Yugoslavia (Serbia and Montenegro) has assumed the treaty obligations of the former Yugoslavia (Socialist Federal Republic of Yugoslavia). The former Yugoslavia, although with a change in name, was the same state as the Kingdom of the Serbs, Croats, and Slovenes.

Yugoslavia (Serbia and Montenegro) was established in 1992, its parliament declaring on 27 April 1992 that it would be bound by treaties of the former Yugoslavia: "The Federal Republic of Yugoslavia, continuing the state, international legal and political personality of the Socialist Federal Republic of Yugoslavia, shall strictly abide by all the commitments that the SFR of Yugoslavia assumed internationally." U.N. Document A/46/915, Annex II, 7 May 1992.

Also on 27 April 1992, and to the same effect, Yugoslavia (Serbia and Montenegro) delivered a "Note dated 27 April 1992 from the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General," stating, "Strictly respecting the continuity of the international personality of Yugoslavia, the Federal Republic of Yugoslavia shall continue to fulfil all the rights conferred to, and obligations assumed by, the Socialist Federal Republic of Yugoslavia in international relations, including its membership in all international organizations and participation in international treaties ratified or acceded to by Yugoslavia." U.N. Document A/46/915, Annex I, 7 May 1992. Although the claim of Yugoslavia (Serbia and Montenegro) of continuity with the former Yugoslavia has not been accepted by the United Nations, there is no question about its commitment to abide by treaties of the former Yugoslavia.

The former Yugoslavia (Socialist Federal Republic of Yugoslavia) was the same state as the Kingdom of the Serbs, Croats, and Slovenes. In 1929, the name of the state was changed from Kingdom of the Serbs, Croats, and Slovenes to Kingdom of Yugoslavia. After the end of the World War II occupation, the state was re-named the

Federated People's Republic of Yugoslavia (see Constitution of the Federated People's Republic of Yugoslavia, 31 January 1946). The name was subsequently changed to Socialist Federated Republic of Yugoslavia (see Constitution of the Socialist Federated Republic of Yugoslavia, 7 April 1963).

The United Nations Secretariat, in its 1950 study on minority treaties, found the Serb-Croat-Slovene Treaty to be binding on the Federated People's Republic of Yugoslavia, concluding, "As regards the ordinary causes of extinction of obligations, there do not appear to be any which would have the effect of extinguishing Yugoslavia's obligations concerning the protection of minorities." U.N. Document E/CN.4/367, p. 64.

Thus, Yugoslavia (Serbia and Montenegro), by virtue of its 1992 declaration accepting treaty obligations of the former Yugoslavia, is a party to the Serb-Croat-Slovene Treaty.

#### VI. CONCLUSION OF ARGUMENT: THE SERB-CROAT-SLOVENE TREATY PROVIDES JURISDICTION TO THIS COURT OVER THE INSTANT APPLICATION.

The Serb-Croat-Treaty remains in force. It calls for the compulsory submission of disputes to the Permanent Court of International Justice, hence to this Court. Bosnia-Herzegovina is a state to which the right to invoke the Court's jurisdiction applies. Thus, the Serb-Croat-Treaty provides for the jurisdiction of this Court over the instant application.



# INTERNATIONAL LEGISLATION

A COLLECTION OF THE TEXTS OF  
MULTIPARTITE INTERNATIONAL INSTRUMENTS  
OF GENERAL INTEREST

BEGINNING WITH THE COVENANT OF THE  
LEAGUE OF NATIONS

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v. 1

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French Republic, and of which authenticated copies will be transmitted to each of the Signatory Powers.

française et dont les expéditions authentiques seront remises à chacune des Puissances signataires du Traité.

(Signatures omitted.)

## No. 5

**TREATY between the Allied and Associated Powers and the Kingdom of the Serbs, Croats and Slovenes (Protection of Minorities). Signed at St. Germain-en-Laye, September 10, 1919.**

**TRAITÉ entre les puissances alliées et associées et le Royaume des Serbes, Croates et Slovènes (Protection des minorités). Signé à St. Germain-en-Laye, 10 septembre 1919.**

**EDITOR'S NOTE.** This treaty, envisaged in Article 51 of the Treaty of St. Germain of September 10, 1919, and in Article 24 of the Treaty of Trianon of June 4, 1920, is modeled on the treaty for the protection of minorities in Poland of June 28, 1919 (*ante*, No. 3). For the procedure followed by the Council of the League of Nations in dealing with minority questions, see *League of Nations Official Journal*, Special Supplement No. 73 (1929).

**RATIFICATIONS.** The Serb-Croat-Slovene State acceded to this treaty by a declaration signed at Paris, December 3, 1919. *British Treaty Series*, No. 8 (1920). Ratifications of this treaty were deposited at Paris by: British Empire, August 16, 1920; Japan, October 11, 1920; Italy, December 13, 1920; France, July 29, 1921.

**BIBLIOGRAPHY.** The text of this treaty is also published in 112 *Br. and For. St. Papers*, p. 514; 13 *Martens, N.R.C.* (3d ser.), p. 321. See general bibliography, *ante*, No. 3.

In force, July 16, 1920.

Text (English) from *British Treaty Series*, No. 17 (1919); (French) from *Journal officiel de la République française*, No. 145, May 29, 1922.

The United States of America, the British Empire, France, Italy, and Japan, the Principal Allied and Associated Powers, on the one hand;

And the Serb-Croat-Slovene State, on the other hand;

Whereas since the commencement of the year 1913 extensive territories have been added to the Kingdom of Serbia, and

Whereas the Serb, Croat and Slovene peoples of the former Austro-Hungarian Monarchy have of their own free will determined to unite

Les Etats-Unis d'Amérique, l'Empire Britannique, la France, l'Italie et le Japon, principales puissances alliées et associées, d'une part;

Et l'Etat Serbo-Croate-Slovene d'autre part;

Considérant que, depuis le commencement de l'année 1913, des territoires étendus ont été joints au royaume de Serbie;

Considérant que les Serbes, Croates et les Slovènes de l'ancienne monarchie austro-hongroise ont, de leur propre volonté, résolu de s'unir

<sup>1</sup> Registered with the Secretariat of the League of Nations, No. 39, October 21, 1920.

with Serbia in a permanent union for the purpose of forming a single sovereign independent State under the name of the Kingdom of the Serbs, Croats and Slovenes, and

Whereas the Prince Regent of Serbia and the Serbian Government have agreed to this union, and in consequence the Kingdom of the Serbs, Croats and Slovenes has been constituted and has assumed sovereignty over the territories inhabited by these peoples, and

Whereas it is necessary to regulate certain matters of international concern arising out of the said additions of territory and of this union, and

Whereas it is desired to free Serbia from certain obligations which she undertook by the Treaty of Berlin of 1878 to certain Powers and to substitute for them obligations to the League of Nations, and

Whereas the Serb-Croat-Slovene State of its own free will desires to give to the populations of all territories included within the State, of whatever race, language or religion they may be, full guarantees that they shall continue to be governed in accordance with the principles of liberty and justice:

For this purpose the High Contracting Parties have appointed as Plenipotentiaries:<sup>1</sup>

The President of the United States of America: Frank Lyon Polk, Henry White, Tasker H. Bliss.

His Majesty the King of the United Kingdom of Great Britain, Ireland and of the British Possessions beyond the seas, Emperor of India: Arthur James Balfour, Andrew Bonar Law, Viscount Milner, George Nicoll Barnes; and

Canada: Albert Edward Kemp;

Australia: George Foster

avec la Serbie d'une façon permanente dans le but de former un État indépendant et unifié sous le nom de royaume des Serbes, Croates et Slovènes;

Considérant que le prince régent de Serbie et le Gouvernement serbe ont accepté de réaliser cette union et qu'en conséquence il a été formé le royaume des Serbes, Croates et Slovènes, qui a assumé la souveraineté sur les territoires habités par ces peuples;

Considérant qu'il est nécessaire de régler certaines questions d'intérêt international qui sont soulevées du fait desdites acquisitions de territoires et de cette union;

Considérant qu'il est désirable de libérer la Serbie de certaines obligations auxquelles elle a souscrit par le traité de Berlin de 1878 vis-à-vis de certaines puissances et d'y substituer des obligations vis-à-vis de la Société des Nations;

Considérant que l'État serbo-croate-slovène a, de sa propre volonté, le désir de donner aux populations de tous les territoires compris dans cet État, de quelque race, langue ou religion qu'elles soient, la garantie absolue qu'elles continueront à être gouvernées conformément aux principes de liberté et de justice;

A cet effet, les Hautes Parties Contractantes ont désigné pour leurs plénipotentiaires, savoir:<sup>1</sup>

Le Président des États-Unis d'Amérique: Frank Lyon Polk, Henry White, Tasker H. Bliss;

S. M. le Roi du Royaume-Uni de Grande-Bretagne et d'Irlande et des territoires britanniques au delà des mers, Empereur des Indes: Arthur James Balfour, Andrew Bonar Law, Vicomte Milner, George Nicoll Barnes; et:

pour le Canada: Albert Edward Kemp;

pour l'Australie: George Foster

<sup>1</sup> The titles of plenipotentiaries are omitted.—Ed.

for Union of South Africa: Viscount Milner;

for New Zealand: Thomas Mackenzie;

for India: Baron Sinha;

The President of the French Republic: Georges Clemenceau, Stephen Pichon, Louis-Lucien Klotz, André Tardieu, Jules Cambon;

His Majesty the King of Italy: Tommaso Tittoni, Vittorio Scialoja, Maggiorino Ferraris, Guglielmo Marconi, Silvio Crispi;

His Majesty the Emperor of Japan: Viscount Chinda, K. Matsui, H. Ijuin;

His Majesty the King of the Serbs, the Croats, and the Slovenes: Nicholas P. Pachitch, Ante Trumbic, Ivan Zolger;

Who, after having exchanged their full powers, found in good and due form, have agreed as follows:

The Principal Allied and Associated Powers, taking into consideration the obligations contracted under the present Treaty by the Serb-Croat-Slovene State, declare that the Serb-Croat-Slovene State is definitely discharged from the obligations undertaken in Article 35 of the Treaty of Berlin of July 13, 1878.

#### CHAPTER I

ARTICLE 1. The Serb-Croat-Slovene State undertakes that the stipulations contained in Articles 2 to 8 of this Chapter shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

ART. 2. The Serb-Croat-Slovene State undertakes to assure full and complete protection of life and liberty to all inhabitants of the Kingdom without distinction of

pour l'Union Sud-Africaine: Viscount Milner;

pour la Nouvelle-Zélande: Thomas Mackenzie;

pour l'Inde: Baron Sinha;

Le Président de la République française: Georges Clemenceau, Stephen Pichon, Louis-Lucien Klotz, André Tardieu, Jules Cambon;

S. M. le Roi d'Italie: Tommaso Tittoni, Vittorio Scialoja, Maggiorino Ferraris, Guglielmo Marconi, Silvio Crispi;

S. M. l'Empereur du Japon: Viscount Chinda, K. Matsui, H. Ijuin;

S. M. le Roi des Serbes, des Croates et des Slovènes: N. P. Pachitch, Ante Trumbic, Ivan Zolger;

Lesquels, après avoir échangé leur pleins pouvoirs reconnus en bonne et due forme, ont convenu les dispositions suivantes:

Les principales puissances alliées et associées, prenant en considération les obligations contractées dans le présent traité par l'Etat serbe-croate-slovene, déclarent que l'Etat serbe-croate-slovene est définitivement libéré des obligations contenues dans l'Article 35 du Traité de Berlin du 13 juillet 1878.

#### CHAPTER I

ARTICLE 1. L'Etat serbe-croate-slovene s'engage à ce que les stipulations contenues dans les Articles 2 à 8 du présent chapitre soient reconnues comme lois fondamentales, à ce qu'aucune loi, aucun règlement ni aucune action officielle ne soient en contradiction ou en opposition avec ces stipulations et à ce qu'aucune loi, aucun règlement ni aucune action officielle ne prévalent contre elles.

ART. 2. L'Etat serbe-croate-slovene s'engage à accorder à tous les habitants pleine et entière protection de leur vie et de leur liberté sans distinction de naissance, de nation-

All inhabitants of the Kingdom of the Serbs, Croats, and Slovenes shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

Art. 3. Subject to the special provisions of the Treaties mentioned above the Serb-Croat-Slovene State admits and declares to be Serb-Croat-Slovene nationals *ipso facto* and without the requirement of any formality, Austrian, Hungarian or Bulgarian nationals habitually resident or possessing rights of citizenship (*pertinenzia, Heimatsrecht*) as the case may be at the date of the coming into force of the present Treaty in territory which is or may be recognised as forming part of the Serb-Croat-Slovene State under the treaties with Austria, Hungary or Bulgaria respectively, or under any treaties which may be concluded for the purpose of completing the present agreement.

Nevertheless, the persons referred to above who are over eighteen years of age will be entitled under the conditions contained in the said treaties to opt for any other nationality which may be open to them. Option by a husband will cover his wife and option by parents will cover their children under fifteen years of age.

Persons who have exercised the above right to opt must within the preceding twelve months transfer their place of residence to the State which they have opted. They will be entitled to retain their immoveable property in the territory of the Serb-Croat-Slovene State. They may carry with them their moveable property of every description. No export duties may be imposed upon them in connection with the removal of such property.

Art. 4. The Serb-Croat-Slovene State admits and declares to be Serb-Croat-Slovene nationals *ipso*

Tous les habitants du royaume des Serbes, Croates et Slovènes auront droit au libre exercice, tant public que privé, de toute foi, religion ou croyance, dont la pratique ne sera pas incompatible avec l'ordre public et les bonnes mœurs.

Art. 3. Sous réserve des traités ci-dessous mentionnés, l'Etat serbe-croate-slovène reconnaît comme ressortissants serbes, croates et slovènes, de plein droit et sans aucune formalité, les ressortissants autrichiens, hongrois ou bulgares ayant, selon le cas, leur domicile ou leur indigénat (*pertinenzia, Heimatsrecht*), à la date de la mise en vigueur du présent Traité sur le territoire qui est ou sera reconnu comme faisant partie de l'Etat serbe-croate-slovène en vertu des Traités avec l'Autriche, la Hongrie ou la Bulgarie respectivement ou en vertu de tous Traités conclus en vue de régler les affaires actuelles.

Toutefois, les personnes ci-dessus visées, âgées de plus de dix-huit ans, auront la faculté, dans les conditions prévues par lesdits Traités, d'opter pour toute autre nationalité qui leur serait ouverte. L'option du mari entraînera celle de la femme et l'option des parents entraînera celle de leurs enfants âgés de moins de dix-huit ans.

Les personnes ayant exercé le droit d'option ci-dessus devront, dans les douze mois qui suivront, transporter leur domicile dans l'Etat en faveur duquel elles auront opté. Elles seront libres de conserver les biens immobiliers qu'elles possèdent sur le territoire de l'Etat serbe-croate-slovène. Elles pourront emporter leurs biens meubles de toute nature. Il ne leur sera imposé de ce chef aucun droit de sortie.

Art. 4. L'Etat serbe-croate-slovène reconnaît comme ressortissants, serbes, croates et slovènes, de plein

*facto* and without the requirement of any formality persons of Austrian, Hungarian or Bulgarian nationality who were born in the said territory of parents habitually resident or possessing rights of citizenship (*pertinenza, Heimatsrecht*) as the case may be there, even if at the date of the coming into force of the present Treaty they are not themselves habitually resident or did not possess rights of citizenship there.

Nevertheless, within two years after the coming into force of the present Treaty, these persons may make a declaration before the competent Serb-Croat-Slovene authorities in the country in which they are resident, stating that they abandon Serb-Croat-Slovene nationality, and they will then cease to be considered as Serb-Croat-Slovene nationals. In this connection a declaration by a husband will cover his wife, and a declaration by parents will cover their children under eighteen years of age.

ART. 5. The Serb-Croat-Slovene State undertakes to put no hindrance in the way of the exercise of the right which the persons concerned have, under the Treaties concluded or to be concluded by the Allied and Associated Powers with Austria, Bulgaria or Hungary, to choose whether or not they will acquire Serb-Croat-Slovene nationality.

ART. 6. All persons born in the territory of the Serb-Croat-Slovene State who are not born nationals of another State shall *ipso facto* become Serb-Croat-Slovene nationals.

ART. 7. All Serb-Croat-Slovene nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Difference of religion, creed or confession shall not prejudice any Serb-Croat-Slovene national in mat-

droit et sans aucune formalité, les personnes de nationalité autrichienne, hongroise ou bulgare qui sont nées sur ledit territoire de parents y ayant, selon le cas, leur domicile ou leur indigénat (*pertinenza, Heimatsrecht*), encore qu'à la date de la mise en vigueur du présent Traité elles n'y aient pas elles-mêmes leur domicile ou, selon le cas, leur indigénat.

Toutefois, dans les deux ans qui suivront la mise du présent Traité, ces personnes pourront déclarer devant les autorités compétentes serbes-croates-slovénes dans le pays de leur résidence, qu'elles renoncent à la nationalité serbe-croate-slovéne et elles cesseront alors d'être considérées comme ressortissants serbes-croates-slovénes. A cet égard, la déclaration du mari sera réputée valoir pour la femme et celles de parents sera réputée valoir pour les enfants âgés de moins de dix-huit ans.

ART. 5. L'Etat serbe-croate-slovéne s'engage à n'apporter aucune entrave à l'exercice du droit d'option, prévu par les Traités conclus ou à conclure par les Puissances alliées et associées avec l'Autriche, la Bulgarie ou la Hongrie et permettant aux intéressés d'acquiescer la nationalité serbe-croate-slovéne.

ART. 6. La nationalité serbe-croate-slovéne sera acquise de plein droit, par le seul fait de la naissance sur le territoire de l'Etat serbe-croate-slovéne, à toute personne ne pouvant se prévaloir d'une autre nationalité de naissance.

ART. 7. Tous les ressortissants serbes-croates-slovénes seront égaux devant la loi et jouiront des mêmes droits civils et politiques sans distinction de race, de langage ou de religion.

La différence de religion, de croyance ou de confession ne devra nuire à aucun ressortissant serbe-croate-

ers relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

No restriction shall be imposed on the free use by any Serb-Croat-Slovene national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

Notwithstanding any establishment by the Serb-Croat-Slovene Government of an official language, adequate facilities shall be given to Serb-Croat-Slovene nationals of other speech than that of the official language for the use of their own language, either orally or in writing, before the courts.

ART. 8. Serb-Croat-Slovene nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Serb-Croat-Slovene nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

ART. 9. The Serb-Croat-Slovene Government will provide in the public educational system in towns and districts in which a considerable proportion of Serb-Croat-Slovene nationals of other speech than that of the official language are resident adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Serb-Croat-Slovene nationals through the medium of their own language. This provision shall not prevent the Serb-Croat-Slovene

slovène en ce qui concerne la jouissance des droits civils et politiques, notamment pour l'admission aux emplois publics, fonctions et honneurs ou l'exercice des différentes professions et industries.

Il ne sera édicté aucune restriction contre le libre usage par tout ressortissant serbe-croate-slovène d'une langue quelconque soit dans les relations privées ou de commerce, soit en matière de religion, de presse, ou de publications de toute nature, soit dans les réunions publiques.

Nonobstant l'établissement par le Gouvernement serbe-croate-slovène d'une langue officielle, des facilités raisonnables seront données aux ressortissants serbes-croates-slovènes de langues autres que la langue officielle pour l'usage de leur propre langue soit oralement, soit par écrit, devant les tribunaux.

ART. 8. Les ressortissants serbes-croates-slovènes appartenant à des minorités ethniques, de religion ou de langue, jouiront du même traitement et des mêmes garanties en droit et en fait que les autres ressortissants serbes-croates-slovènes. Ils auront notamment un droit égal à créer, diriger et contrôler à leurs frais des institutions charitables, religieuses ou sociales, des écoles et autres établissements d'éducation, avec le droit d'y faire libre usage de leur propre langue et d'y exercer librement leur religion.

ART. 9. En matière d'enseignement public, le Gouvernement serbe-croate-slovène accordera dans les villes et districts où reside une proportion considérable de ressortissants serbes-croates-slovènes de langues autres que la langue officielle des facilités appropriées pour assurer que, dans les écoles primaires, l'instruction sera donnée, dans leur propre langue, aux enfants de ces ressortissants serbes-croates-slovènes. Cette stipulation n'empêchera pas le Gouvernement serbe-croate-slovène de rendre obli-



Government from making the teaching of the official language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Serb-Croat-Slovene nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes.

The provisions of the present Article apply only to territory transferred to Serbia or to the Kingdom of the Serbs, Croats and Slovenes since the 1st January, 1913.

ART. 10. The Serb-Croat-Slovene State agrees to grant to the Mussulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with Mussulman usage.

The Serb-Croat-Slovene State shall take measures to assure the nomination of a *Reiss-ül-Ulema*.

The Serb-Croat-Slovene State undertakes to ensure protection to the mosques, cemeteries and other Mussulman religious establishments. Full recognition and facilities shall be assured to Mussulman pious foundations (*Wakfs*) and religious and charitable establishments now existing, and the Serb-Croat-Slovene Government shall not refuse any of the necessary facilities for the creation of new religious and charitable establishments guaranteed to other private establishments of this nature.

ART. 11. The Serb-Croat-Slovene State agrees that the stipulations in the foregoing Articles, so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of

gatoire l'enseignement de la langue officielle dans lesdites écoles.

Dans les villes et districts, où réside une proportion considérable de ressortissants serbes-croates-slovénes appartenant à des minorités ethniques, de religion ou de langue, ces minorités voudront assurer une part équitable dans le bénéfice et l'affectation des sommes, qui pourraient être attribuées sur les fonds publics par le budget de l'Etat, les budgets municipaux ou autres, dans un but d'éducation, de religion ou de charité.

Les dispositions du présent Article ne seront applicables qu'aux territoires transférés à la Serbie ou au Royaume des Serbes, Croates et Slovènes depuis le 1<sup>er</sup> janvier 1913.

ART. 10. L'Etat serbe-croate-slovene agree de prendre à l'égard des musulmans ou de qui concerne leur statut familial ou personnel toutes dispositions permettant de régler ces questions selon les usages musulmans.

Le Gouvernement serbe-croate-slovene provoquera également la nomination d'un *Reiss-ül-Ulema*.

L'Etat serbe-croate-slovene s'engage à accorder toute protection aux mosquées, cimetières et autres établissements religieux musulmans. Toutes facilités et autorisations seront données aux fondations pieuses (*wakoufs*) et aux établissements religieux ou charitables musulmans existants et le Gouvernement serbe-croate-slovene ne refusera, pour la création de nouveaux établissements religieux et charitables aucune des facilités nécessaires qui sont garanties aux autres établissements privés de cette nature.

ART. 11. L'Etat serbe-croate-slovene agrée que, dans la mesure où les stipulations des Articles précédents affectent des personnes appartenant à des minorités de race, de religion ou de langue, ces stipulations constituent des obligations d'intérêt international et seront placées sous la ga-

fied without the consent of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

The Serb-Croat-Slovene State agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

The Serb-Croat-Slovene State further agrees that any difference of opinion as to questions of law or fact arising out of these Articles between the Serb-Croat-Slovene State and any one of the Principal Allied and Associated Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 12 of the Covenant of the League of Nations. The Serb-Croat-Slovene State hereby consents that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

## CHAPTER II

ART. 12. Pending the conclusion of new treaties or conventions, all treaties, conventions, agreements and obligations between Serbia on the one hand, and any of the Principal Allied and Associated Powers, on the other hand, which were in force

Elles ne pourront être modifiées sans l'assentiment de la majorité du Conseil de la Société des Nations. Les Etats-Unis d'Amérique, l'Empire britannique, la France, l'Italie et le Japon s'engagent à ne pas refuser leur assentiment à toute modification desdits Articles, qui serait consentie en due forme par une majorité du Conseil de la Société des Nations.

L'Etat serbe-croate-slovene agrée que tout Membre du Conseil de la Société des Nations aura le droit de signaler à l'attention du Conseil toute infraction ou danger d'infraction à l'une quelconque de ces obligations, et que le Conseil pourra prendre telles mesures et donner telles instructions qui paraîtront appropriées et efficaces dans la circonstance.

L'Etat serbe-croate-slovene agrée en outre qu'en cas de divergence d'opinion, sur des questions de droit ou de fait concernant ces articles entre l'Etat serbe-croate-slovene et l'une quelconque des Principales Puissances alliées et associées ou toute autre Puissance, Membre du Conseil de la Société des Nations, cette divergence sera considérée comme un différend ayant un caractère international selon les termes de l'Article 12 du Pacte de la Société des Nations. L'Etat serbe-croate-slovene agrée que tout différend de ce genre sera, si l'autre partie le demande, déféré à la Cour permanente de Justice internationale. La décision de la Cour permanente sera sans appel et aura la même force et valeur qu'une décision rendue en vertu de l'Article 13 du Pacte.

## CHAPTER II

ART. 12. Jusqu'à la conclusion de nouveaux traités ou conventions, tout traité, convention ou accord dont la Serbie d'une part, et l'une quelconque des Principales Puissances alliées et associées, d'autre part, auraient été parties au 1<sup>er</sup> août

on the 1st August, 1914, or which have since been entered into, shall *ipso facto* be binding upon the Serb-Croat-Slovene State.

ART. 13. The Serb-Croat-Slovene State undertakes to make no treaty, convention or arrangement and to take no other action which will prevent her from joining in any general convention for the equitable treatment of the commerce of other States that may be concluded under the auspices of the League of Nations within five years from the coming into force of the present Treaty.

The Serb-Croat-Slovene State also undertakes to extend to all the Allied and Associated Powers any favours or privileges in customs matters which it may grant during the same period of five years to any State with which since August 1914 the Allied and Associated Powers have been at war, or to any State which in virtue of Article 222 of the Treaty with Austria has special customs arrangements with such States.

ART. 14. Pending the conclusion of the general convention referred to above, the Serb-Croat-Slovene State undertakes to treat on the same footing as national vessels or vessels of the most favoured nation the vessels of all the Allied and Associated Powers which accord similar treatment to Serb-Croat-Slovene vessels. As an exception from this provision, the right of the Serb-Croat-Slovene State or of any other Allied or Associated Power to confine its maritime coasting trade to national vessels is expressly reserved. The Allied and Associated Powers further agreed not to claim under this Article the benefit of agreements which the States obtaining territory formerly belonging to the Austro-

1914, ou postérieurement à cette date et également toutes obligations prises par la Serbie vis-à-vis des Principales Puissances alliées et associées avant et depuis cette date, engagera de plein droit l'Etat serbo-croate-slovene.

ART. 13. L'Etat serbo-croate-slovene s'engage à ne conclure aucun traité, convention ou accord, et à ne prendre aucune mesure qui l'empêcherait de participer à toute convention générale qui pourrait être conclue sous les auspices de la Société des Nations en vue du traitement équitable du commerce des autres Etats au cours d'une période de cinq années à partir de la mise en vigueur du présent Traité.

L'Etat serbo-croate-slovene s'engage également à étendre à tous les Etats alliés ou associés toute faveur ou privilège qu'il pourrait, au cours de la même période de cinq ans, accorder, en matière douanière, à l'un quelconque des Etats avec lesquels, depuis le mois d'août 1914, les Etats alliés ou associés ont été en guerre, ou à tout autre Etat qui en vertu de l'Article 222, du Traité avec l'Autriche, aurait avec ces mêmes Etats des arrangements douaniers spéciaux.

ART. 14. Jusqu'à la conclusion de la convention générale ci-dessus visée, l'Etat serbo-croate-slovene s'engage à accorder le même traitement qu'aux navires nationaux ou aux navires de la nation la plus favorisée, aux navires de tous les Etats alliés ou associés qui accordent un traitement analogue aux navires serbes-croates-slovenes.

Par exception à cette disposition, le droit est expressément reconnu à l'Etat serbo-croate-slovene et à tout autre Etat allié ou associé de réserver son trafic de cabotage aux navires nationaux.

Les Puissances alliées et associées consentent de plus à ne pas réclamer par cet Article le bénéfice d'accord que les Etats recevant un territoire appartenant précédemment à la

Hungarian Monarchy may conclude as regards coasting traffic between the ports of the Adriatic Sea.

ART. 15. Pending the conclusion under the auspices of the League of Nations of a general convention to secure and maintain freedom of communications and of transit, the Serb-Croat-Slovene State undertakes to accord freedom of transit to persons, goods, vessels, carriages, wagons and mails in transit to or from any Allied or Associated State over Serb-Croat-Slovene territory, including territorial waters, and to treat them at least as favourably as Serb-Croat-Slovene persons, goods, vessels, carriages, wagons and mails respectively of those of any other more favoured nationality, origin, importation or ownership, as regards facilities, charges, restrictions and all other matters.

All charges imposed in the territory of the Serb-Croat-Slovene State on such traffic in transit shall be reasonable having regard to the conditions of the traffic. Goods in transit shall be exempt from all customs or other duties.

Tariffs for transit across the Serb-Croat-Slovene State and tariffs between the Serb-Croat-Slovene State and any Allied or Associated Power involving through tickets or waybills shall be established at the request of the Allied or Associated Power concerned.

Freedom of transit will extend to postal, telegraphic and telephonic services.

Provided that no Allied or Associated Power can claim the benefit of these provisions on behalf of any part of its territory in which reciprocal treatment is not accorded in respect of the same subject matter.

monarchie austro-hongroise, pourraient conclure relativement au trafic de cabotage entre les ports de la mer Adriatique.

ART. 15. En attendant la conclusion, sous les auspices de la Société des Nations, d'une convention générale destinée à assurer et à maintenir la liberté de communication et du transit, l'Etat serbe-croate-slovene s'engage à accorder, sur son territoire, y compris les eaux territoriales, la liberté de transit aux personnes, marchandises, navires, voitures, wagons et courriers postaux transitant en provenance ou à destination de l'un quelconque des Etats alliés ou associés, et à leur accorder, en ce qui concerne les facilités, charges, restrictions ou toutes autres matières, un traitement au moins aussi favorable qu'aux personnes, marchandises, navires, voitures, wagons et courriers postaux serbes-croates-slovenes ou de toute autre nationalité, origine, importation ou propriété qui jouirait d'un régime plus favorable.

Toutes les charges imposées sur le territoire de l'Etat serbe-croate-slovene sur ce trafic en transit devront être raisonnables en égard aux conditions de ce trafic. Les marchandises en transit seront exemptes de tous droits de douane ou autres.

Des tarifs communs pour le trafic en transit à travers l'Etat serbe-croate-slovene, et des tarifs communs entre l'Etat serbe-croate-slovene et un Etat allié ou associé quelconque comportant des billets ou lettres de voitures directs seront établis si cette Puissance alliée ou associée en fait la demande.

La liberté de transit s'étendra aux services postaux, télégraphiques ou téléphoniques.

Il est entendu qu'aucun Etat allié ou associé n'aura le droit de réclamer le bénéfice de ces dispositions pour une partie quelconque de son territoire dans laquelle un traitement réciproque ne serait accordé en ce qui concerne le même objet.

If within a period of five years from the coming into force of the present Treaty no general convention as aforesaid shall have been concluded under the auspices of the League of Nations, the Serb-Croat-Slovene State shall be at liberty at any time thereafter to give twelve months' notice to the Secretary-General of the League of Nations to terminate the obligations of this Article.

ART. 16. All rights and privileges accorded by the foregoing Articles to the Allied and Associated Powers shall be accorded equally to all States Members of the League of Nations.

The present Treaty, in French, in English and in Italian, of which in case of divergence the French text shall prevail, shall be ratified. It shall come into force at the same time as the Treaty of Peace with Austria.

The deposit of ratifications shall be made at Paris.

Powers of which the seat of the Government is outside Europe will be entitled merely to inform the Government of the French Republic through their diplomatic representative at Paris that their ratification has been given; in that case they must transmit the instrument of ratification as soon as possible.

A procès-verbal of the deposit of ratifications will be drawn up.

The French Government will transmit to all the signatory Powers a certified copy of the procès-verbal of the deposit of ratifications.

In faith whereof the above-named Plenipotentiaries have signed the present Treaty.

Done at Saint Germain-en-Laye, the tenth day of September one thousand nine hundred and nineteen, in a single copy which will remain deposited in the archives of the French Republic, and of which

Si, au cours d'une période de cinq ans, à partir de la mise en vigueur du présent traité, la convention générale ci-dessus prévue n'a pas été conclue sous les auspices de la Société des Nations, le Gouvernement serbe-croate-slovene aura, à quelque moment que ce soit, le droit de mettre fin aux dispositions du présent Article, à condition de donner un préavis de douze mois au Secrétaire Général de la Société des Nations.

ART. 16. Tous les droits et privilèges accordés par les Articles précédents aux Puissances alliées et associées seront également acquis à tous les Etats membres de la Société des Nations.

Le présent Traité, rédigé en français, en anglais et en italien, et dont le texte français fera foi, en cas de divergence, sera ratifié. Il entrera en vigueur en même temps que le Traité de paix avec l'Autriche.

Le dépôt de ratification sera effectué à Paris.

Les Puissances dont le Gouvernement a son siège hors d'Europe auront la faculté de se borner à faire connaître au Gouvernement de la République française, par leur représentant diplomatique à Paris, que leur ratification a été donnée et, dans ce cas, elles devront en transmettre l'instrument aussitôt que faire se pourra.

Un procès-verbal de dépôt de ratification sera dressé.

Le Gouvernement français remettra à toutes les Puissances signataires une copie conforme du procès-verbal de dépôt de ratification.

En foi de quoi les Plénipotentiaires sus-nommés ont signé le présent Traité.

Fait à Saint-Germain-en-Laye, le dix septembre mil neuf cent dix-neuf, en un seul exemplaire qui restera déposé dans les archives du Gouvernement de la République française et dont les expéditions

10, 1919

Authenticated copies will be transmitted to each of the Signatory States. authentiques seront remises à chacune des Puissances signataires du Traité.

[Signatures omitted.]

No. 6

CONVENTION on the Control of Trade in Arms and Ammunition. Signed at St. Germain-en-Laye, September 10, 1919.<sup>1</sup>

CONVENTION relative au contrôle du commerce des armes et des munitions. Signée à St. Germain-en-Laye, 10 septembre 1919.<sup>1</sup>

EDITOR'S NOTE. This convention was designed to replace the Brussels Act of July 2, 1908. See *Dr. and For. St. Papers*, p. 55; 10 Martens, *N.R.G.* (2d ser.), p. 3. See also the Brussels Protocol of July 22, 1908. 101 *Dr. and For. St. Papers*, p. 170; 2 Martens, *N.R.G.* (2d ser.), p. 711. While a vigorous effort was made during several years to secure ratifications to this convention, it was not ratified by many of the arms-producing states; and it was in part superseded by the convention on the supervision of the international trade in arms and ammunition and in implements of war, signed at Geneva, June 17, 1925 (*Inst. No. 143*).

RATIFICATIONS. This convention was ratified or adhered to by Brazil, Bulgaria, Chile, China, Estonia, Finland, Greece, Guatemala, Haiti, Muscat, Persia, Peru, Portugal, Siam, Venezuela. See *League of Nations Document A 101a*, Annex, 1923.

BIBLIOGRAPHY. The text of this convention is also published in 7 *League of Nations Treaty Series*, p. 331; 112 *Dr. and For. St. Papers*, p. 909; 12 Martens, *N.R.G.* (3d ser.), p. 25. See 4 *Foreign Policy Association Information Service*, p. 429. On the history of the Convention, see Toynece, *Survey of International Affairs* (1920-1923), p. 390.

In force, March 30, 1921<sup>2</sup>

Text from *British Treaty Series*, No. 12 (1919), Cmd. 414.

Translational

The United States of America, Belgium, Bolivia, the British Empire, China, Cuba, Ecuador, France, Greece, Guatemala, Haiti, the Hedjaz, Italy, Japan, Nicaragua, Panama, Peru, Poland, Portugal, Roumania, the Serb-Croat-Slovene State, Siam and Czechoslovakia;

Les Etats-Unis d'Amérique, la Belgique, la Bolivie, l'Empire britannique, la Chine, Cuba, l'Equateur, la France, la Grèce, le Guatemala, Haiti, le Hedjaz, l'Italie, le Japon, le Nicaragua, le Panama, le Pérou, la Pologne, le Portugal, la Roumanie, l'Etat Serbe-Croate-Slovene, le Siam et l'Etat Tchéco-Slovaque;

Whereas the long war now ended, in which most nations have successively become involved, has led to

Considérant que la longue guerre qui vient de prendre fin et à laquelle ont été successivement mêlées la

<sup>1</sup> Some of the signatures were affixed at Paris.

<sup>2</sup> Registered with the Secretariat of the League of Nations, No. 200, January 9, 1922.