The United States, being in the nature of a corporate entity has a common law right to acquire property. A foreign government may therefore, by assignment, transfer property rights to this government.

The People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics presumptively has power to alienate the proprietary rights or interests of his nation.

It will be presumed that People's Commissar for Foreign Affairs of the Union of Soviet Socialist Republics Litvinoff had authority to make to this Government an assignment on behalf of his Government from his designation, recognition and the acceptance of the assignment by the President of the United States.

The political branch of this Government, not the Judicial Department, decides who is authorized to represent a foreign government. Our courts must accept the assertion of the Government of the United States as to the effect of an assignment to it by a foreign government.

The acceptance of the assignment of Russian claims is not a matter of treaty but is exclusively within the executive powers of the President of the United States.

The agreement of the Soviet Government "not to make any claim with respect to: (a) judgments rendered or that may be rendered by American courts . . ." is construed not to mean that the United States may not continue an appeal of an action instituted by the State of Russia. The intent of the Soviet Government was to assign all claims due it to the United States "and it agreed to leave undisturbed diplomatically final non-appealable judgments and decrees of the American courts touching Russian affairs and non-judicial acts done in good faith by and with the officials of the previously recognized Government of Russia."

It will be noted that this decision does not deal with the merits of the claim, which is the subject matter of the action, but merely with the validity and effect of the assignment by the Russian Government of its interests therein, which form part of the consideration for the recognition of that Government by the Government of the United States.

CHANDLER P. ANDERSON

LEGAL EFFECT OF UNREGISTERED TREATIES IN PRACTICE, UNDER ARTICLE 18 OF THE COVENANT

Article 18 of the Covenant of the League of Nations has introduced two important innovations. First, it provides for the registration with the Secretariat of the League of Nations of "every treaty or international engagement" (Fr., *tout traité ou engagement international*), entered into by any member of the League of Nations after January 10, 1920, with the sanction added that "no such treaty or international engagement shall be binding until so registered" (Fr., *aucun de ces traités ou engagements internationaux ne sera obligatoire avant d'avoir été enregistré*). Second, it provides for the publication by the Secretariat of the League of Nations of treaties and engagements registered, thus realizing an aim which had previously baffled attempts at international action.[1] The second of these innovations has been

[1] In 1892, the *Institut de Droit International* elaborated a draft convention and regulations

most successfully carried out,[2] and the problems which arise with reference to it are not legal problems. The first innovation, on the other hand, has created two difficult legal questions: (1) what is a treaty or international engagement, within the extent of the obligation to register assumed by members of the League of Nations? and (2) what is the legal effect of an unregistered treaty or engagement to which the obligation extends?

The answer to the first of these questions has been the subject of much discussion;[3] it must depend upon the interpretation given to Article 18 by the members of the League of Nations in practice, and perhaps sufficient time has not yet elapsed to enable one to say that the practice has clearly established the categories of treaties and engagements to be registered. Certain instruments will fall, unquestionably, into those categories, however, and after almost fourteen years of experience it cannot be said that all of these have been registered; in a relatively few cases, the clear and indisputable obligation to register has not been performed. Hence the second question arises, as to the legal effect of non-registration where registration is prescribed. Here, also, practice will doubtless furnish the ultimate guide for the interpretation of the provision in Article 18; but the cases are rare in which the issue is squarely presented, and such practice therefore accumulates very slowly. Opinions of great variety have been expressed by writers, in the face of which no dogmatic conclusion seems to be possible. Yet a review of the practice to date may serve to throw some light on the effect to be given to the sanction in Article 18.

The writer has been able to learn of but two cases in which the problem under consideration has been discussed in practice; it is important, also, to refer to the practice in the Permanent Court of International Justice.

(1) *The French-Mexican Claims Convention of September 25, 1924.* In 1928, before a French-Mexican Claims Commission set up under a convention signed at Mexico, D. F., on September 25, 1924,[4] a contention was made by the Mexican Agent that the convention was not "binding" in view of the failure of the French Government to show that it had been presented for registration with the Secretariat in fulfilment of Article 18 of the Covenant. The contention was made after Mexico had coöperated in setting up the

concerning the creation of an international union for the publication of treaties. *Annuaire de l'Institut*, 1892–94, pp. 234, 237, 252. An international conference held at Berne in 1894, failed to reach any agreement, however. See *Actes de la Conférence diplomatique concernant la création d'une union internationale pour la publication des traités* (1894).

[2] The League of Nations Treaty Series now comprises 144 volumes containing 3223 numbered instruments. See Hudson, "The Registration and Publication of Treaties," this JOURNAL, Vol. 19 (1925), pp. 273–292; "The Registration of Treaties of the United States," *id.*, Vol. 22 (1928), p. 852; "The Registration of Treaties," *id.*, Vol. 24 (1930), p. 752; "Registration of United States Treaties at Geneva," *id.*, Vol. 28 (1934), p. 342.

[3] See Koenig, *Volksbefragung und Registrierung beim Völkerbund* (1927), pp. 52–56.

[4] Ratifications were exchanged at Mexico, D. F., Dec. 29, 1924. An additional convention was signed on March 12, 1927, ratifications being exchanged on Oct. 22, 1927.

Claims Commission, three years after the organization of the commission, and after the oral argument of other cases. Mexico was not at that time a member of the League of Nations.[5] On August 4, 1928, the convention of 1924 was registered with the Secretariat at the request of the French Government, and the additional convention of 1927 was registered a few days later.[6]

The contention based on Article 18 of the Covenant was advanced by the Mexican Agent in the course of the oral arguments in the case of France (Pablo Nájera) *v.* Mexico, July 2–12, 1928. Apparently no such point was made in the course of the written proceedings. The Mexican Agent seems to have denied the receivability of the claims of Pablo Nájera, a Lebanese, without clearly stating the sense in which he deemed Article 18 of the Covenant to be applicable. On October 19, 1928, the President of the commission rendered an opinion (Fr., *sentence*) upholding the receivability of the claims, in which he dealt with the contention at some length; on October 20, 1928, the French Commissioner gave an opinion, in which he found it unnecessary to pass on the contention which seemed to him to have been made "only incidentally"; on November 2, 1928, the Mexican Commissioner gave a dissenting opinion (Sp., *voto disidente*) in which no mention was made of this contention.[7] When he wrote his opinion, the President (Verzijl) does not seem to have been informed of the registration effected on August 4, 1928, and the fact was not taken into account. The President understood the Mexican Agent's position to be that the registration had not been duly proved before the commission, not that the registration had not been effected; and the French Agent seems to have contended that the formality required by Article 18 had been observed.[8] The President's comment on the effect of Article 18 was in part as follows:

[5] Mexico became a member of the League of Nations on Sept. 12, 1932. See this JOURNAL, Vol. 26 (1932), p. 114.

[6] 79 League of Nations Treaty Series, pp. 417, 424.

[7] The three opinions are reproduced in a volume entitled *La Réparation des Dommages causés aux étrangers par des mouvements révolutionnaires, Jurisprudence de la Commission Franco-Mexicaine des Réclamations* (1924–1932), published by A. Pedone, Paris, 1933. A *précis* of the President's opinion is published in Annual Digest of International Law Cases, 1927–28, Case No. 271, pp. 393–394. No final decision was given on the claims of Pablo Nájera; the commission was forced to suspend its work in 1929, and on Aug. 2, 1930, the French and Mexican Governments concluded a new convention by which the convention of 1924 was superseded. Apparently the new convention has not been registered with the Secretariat of the League of Nations; for the text, see *Memoria de la Secretaría de Relaciones Exteriores* (Mexico), 1929–1930, p. 36. The claim of Pablo Nájera was listed in the annex to the 1930 convention, as one of those which were to be decided by a new commission, and the listing indicates that the claim was considered admissible in view of the determination of the nationality of Pablo Nájera by the earlier decision. The claim by Pablo Nájera was finally denied by the new commission. See *id.*, 1931–1932, Appendix, p. 697.

[8] *La Réparation des Dommages*, p. 160. Apparently, agreements between Mexico and certain other states creating claims commissions, were not registered, though their work proceeded without the point being raised.

La raison pour laquelle, entre membres de la Société des Nations, une convention non enregistrée ne saurait être considérée comme obligatoire, pas même par un tribunal international indépendant de la Société, consiste en ceci que les Parties contractantes sont, l'une et l'autre, liées par la même règle de droit impérative (*jus cogens*), qui prévaut sur leur liberté d'agir en matière de traités internationaux. Mais cette raison n'existe pas, en ce qui concerne les traités conclus entre un Etat membre et un Etat non membre, et non enregistrés. Il va de soi qu'un tribunal international indépendant n'a pas, comme les organes de la Société des Nations, la mission de coopérer *ex officio* à l'accomplissement, par les membres de ladite Société, de leurs obligations vis-à-vis de celle-ci, et d'en frapper l'inobservation par des sanctions, qui ne découlent pas également des principes généraux du droit. Or, il me paraît impossible d'interpréter la sanction prévue à l'article 18 du Pacte, comme constituant l'application d'un principe général de droit. Cela pourrait être le cas, si la disposition dudit article 18 impliquait une *capitis deminutio* des membres de la Société des Nations, en ce sens que, après la naissance de celle-ci, ses membres seraient limités dans leur capacité juridique traditionnelle de contracter des engagements internationaux (*internationale Handlungsfähigkeit*), comme c'est le cas, par exemple, d'Etats souverains entrés dans une fédération, ou s'étant soumis au protectorat d'un autre Etat. Mais évidemment, pareille situation ne se présente pas ici. L'article 18 ne limite en rien ladite capacité juridique. Il frappe seulement d'une sanction nouvelle, une règle de droit nouvelle qui ne produit ses effets, *erga omnes*, et notamment vis-à-vis d'un tribunal arbitral indépendent, qu'entre membres de la Société, mais qui, entre un Etat membre et un Etat non membre, ne les produit qu'en ce qui concerne la seule Société et ses organes.

(2) *The Central American Treaty of 1923.* On February 7, 1923, a General Treaty of Peace and Amity was signed at Washington, on behalf of the five Central American Republics.[9] Its formal provisions were so ineptly drawn that many questions may be raised as to the legal force of the treaty. Though both the Spanish and English versions of the treaty were original, the Spanish version was made authoritative by a resolution of the conference.

Article 20 provided that the "original" (Sp., *ejemplar original*) should "be deposited in the archives of the Pan American Union at Washington," but no administrative function was conferred upon the Union; a certified copy of the treaty was to be sent to each government by the Secretary General of the conference. Article 19 provided that "the exchange of ratifications" should be "made through communications addressed by the governments to the Government of Costa Rica in order that the latter may inform the other contracting states," and notice of Costa Rica's ratification was also to be communicated to other states; in other words, no deposit or exchange of ratifications was provided for, but the Costa Rican Government was to act as an information bureau and its notifications of ratifications were to serve in lieu of deposits and notifications thereof. Article 17 provided that the treaty should "take effect [Sp., *entrará en vigor*] with respect to the parties that have rati-

[9] For the text, see Conference on Central American Affairs (Washington, 1923), p. 287; 2 Hudson, International Legislation, p. 901; Supplement to this JOURNAL, Vol. 17 (1923), p. 117.

fied it, from the date of its ratification by at least three of the signatory states." Article 18 provided that the treaty should remain in force until January 1, 1934, after which date it might be denounced on one year's notice; and under Article 18, any signatory failing to ratify might later adhere.

The treaty was ratified by each of the five republics: by Nicaragua, March 15, 1923; by Guatemala, May 24, 1924; by Costa Rica, November 24, 1924; by Honduras, February 2, 1925; by El Salvador (with reservations), June 22, 1925.[10] Under Article 17, it would therefore have entered into force, according to its terms, either on November 24, 1924, or on the date when the other governments were informed of the Costa Rican ratification. The ratification by El Salvador was subject to certain reservations: [11] as to Article 1, an exception was made of the latter part of the article;[12] as to Article 2, an exception was made of that part of the second paragraph following the first sentence; [13] as to Article 5, an exception was made as to the Vice-President.[14] By a letter of June 10, 1925, the Under Secretary of State of El Salvador informed the Minister for Foreign Affairs of Costa Rica that the National Assembly had approved the treaty, enclosing a copy of the *Diario Oficial* which

[10] U. S. Treaty Information Bulletin, No. 39, p. 4.

[11] 98 *Diario Oficial* (El Salvador), p. 1216.

[12] Art. 1 reads as follows: The Republics of Central America consider as the first of their duties, in their mutual relations, the maintenance of peace; and they bind themselves always to observe the most complete harmony and to decide any differences or difficulties that may arise amongst them, in conformity with the conventions which they have signed on this date for the establishment of an International Central American Tribunal and for the establishment of International Commissions of Inquiry.

[13] Art. 2 reads as follows: Desiring to make secure in the Republics of Central America the benefits which are derived from the maintenance of free institutions and to contribute at the same time toward strengthening their stability, and the prestige with which they should be surrounded, they declare that every act, disposition or measure which alters the constitutional organization in any of them is to be deemed a menace to the peace of said republics, whether it proceed from any public power or from the private citizens.

Consequently, the governments of the contracting parties will not recognize any other government which may come into power in any of the five republics through a *coup d'état* or a revolution against a recognized government, so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country. And even in such a case they obligate themselves not to acknowledge the recognition if any of the persons elected as President, Vice-President or Chief of State designate should fall under any of the following heads:

(1) If he should be the leader or one of the leaders of a *coup d'état* or revolution, or through blood relationship or marriage, be an ascendant or descendant or brother of such leader or leaders.

(2) If he should have been a Secretary of State or should have held some high military command during the accomplishment of the *coup d'état*, the revolution, or while the election was being carried on, or if he should have held this office or command within the six months preceding the *coup d'état*, revolution, or the election.

Furthermore, in no case shall recognition be accorded to a government which arises from election to power of a citizen expressly and unquestionably disqualified by the Constitution of his country as eligible to election as President, Vice-President or Chief of State designate.

[14] Art. 5 reads as follows: The contracting parties obligate themselves to maintain in their respective Constitutions the principle of non-reëlection to the office of President and Vice-President of the republic; and those of the contracting parties whose Constitutions permit

set forth the reservations.[15] On June 22, 1925, the Minister for Foreign Affairs of Costa Rica acknowledged the receipt and stated that the other governments had been informed of the ratification, no reference being made to the reservations.[16] In this situation, it may possibly be assumed that El Salvador's ratification became effective, though any other party to the treaty might have precluded this by objecting to the reservations. Though the five Central American States were members of the League of Nations in 1923, and all but Costa Rica have continued to be members,[17] the treaty has not been registered with the Secretariat of the League of Nations.

Late in 1931, General Martinez assumed the Presidency of El Salvador by a *coup d'état*. On February 4, 1932, the National Assembly of El Salvador voted a decree declaring retroactively that the accession of General Martinez was constitutional and legal; the preamble of the decree placed reliance on the reservations which had been made in El Salvador's ratification of the treaty, and Article 5 recited that "the Treaty of Peace and Amity concluded at Washington on February 7, 1923, between the Central American Republics, can by no means affect the legitimacy of the government legally presided over by General Martinez."[18] Other Central American Governments did not promptly enter into formal relations with the Martinez Government, however; if after the National Assembly's resolution of February 4, 1932, they were not obligated to withhold "recognition," they were certainly not under any duty to accord "recognition."

The situation produced a hostility to the 1923 treaty in El Salvador, which led to the Government's denunciation of it by an executive decree on December 26, 1932, the denunciation to be effective on January 1, 1934, "in accordance with Article 18" of the treaty.[19] This action was promptly notified to the other states on December 27, 1932.[20] In 1933, confirmatory but inconsistent action was taken by the National Assembly; on August 25, 1933, by unanimous vote, the National Assembly declared the treaty to be non-existent, on the ground that it had not been registered with the Secretariat of the League of Nations.[21] The treaty had also been denounced by Costa Rica on December 23, 1932,[22] and the Government of El Salvador was recognized by Costa Rica. Under the terms of Article 18 of the treaty, it still remains in force for Guatemala, Honduras and Nicaragua, though on January 25, 1934, the Government of El Salvador was recognized also by Guatemala, Honduras and Nicaragua.[23]

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such reëlection, obligate themselves to introduce a constitutional reform to this effect in their next legislative session after the ratification of the present treaty.

[15] *Boletín del Ministerio de Relaciones Exteriores* (El Salvador), 1925, p. 248.

[16] *Id.*, p. 249.

[17] Costa Rica ceased to be a member of the League of Nations on Jan. 1, 1927.

[18] 112 *Diario Oficial*, p. 197.

[19] 113 *id.*, p. 2333.

[20] *Memoria* (*Relaciones Exteriores*, etc.), Feb. 22, 1933, p. 15.

[21] 115 *Diario Oficial*, pp. 1826, 1835.

[22] U. S. Treaty Information Bulletin, No. 39, p. 4.

[23] U. S. Department of State Press Releases, Jan. 27, 1934, p. 51. The Government of

(3) *Unregistered Treaties before the Permanent Court of International Justice.* Unfortunately, the Permanent Court of International Justice has not made it a practice to refer to the registration of treaties which it may be called upon to interpret or apply, or to give citations to the League of Nations Treaty Series. It has not addressed itself to the possible legal effect of non-registration, and it has not refused to give effect to any instrument because of its not having been registered.[24] On the other hand, it has on several occasions given effect to unregistered treaties, though in each case a state not a member of the League of Nations was one of the parties to the treaty.

In the Mavrommatis Palestine Concessions Case, the court took jurisdiction of part of an application by the Greek Government and based its jurisdiction in part upon the protocol concerning concessions signed at Lausanne, July 24, 1923. The deposit of the ratifications of this protocol, necessary to bring the protocol into force, was completed on August 6, 1924, and the judgment of the court was given on August 30, 1924. In the judgment the court said that the protocol had "become applicable as regards Great Britain and Greece,"[25] yet the protocol was not registered at Geneva until September 5, 1924.[26] It is to be noted, however, that Turkey, which was a party to the Lausanne Protocol, was not then a member of the League of Nations.

In the advisory opinion on Polish Postal Service in Danzig, given in 1925,[27] great reliance was placed on the so-called Warsaw Agreement between Danzig and Poland of October 24, 1921, which was not registered with the Secretariat until May 5, 1931;[28] yet no reference was made to the fact of the non-registration of the Warsaw Agreement. It is to be noted, however, that Danzig is not a member of the League of Nations, and that the Warsaw Agreement had been communicated to the Council of the League of Nations which took note of it on January 12, 1922.[29]

This review of practice, which is probably not exhaustive, gives little indication as to the construction to be placed on the sanction established by Article 18. That construction must await future applications of the article, pending which the divergent opinions which have been expressed carry only the weight of the personal views of the writers. MANLEY O. HUDSON

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the United States, though not a party to the Central American Treaty of 1923, had followed a policy based on its provisions; on Jan. 24, 1934, it established normal relations with the Government of El Salvador, however.

[24] The court has exercised jurisdiction in several cases in which the jurisdiction was based upon an unregistered special agreement between states members of the League of Nations. Indeed, only the special agreement relating to the Case of the Brazilian Loans and that relating to the Jurisdiction of the International Commission of the Oder have been registered.

[25] Series A, No. 2, p. 33.

[26] 28 League of Nations Treaty Series, p. 203.

[27] Series B, No. 11.

[28] 116 League of Nations Treaty Series, p. 5.

[29] League of Nations Official Journal, 1922, pp. 97, 145. See, also, the advisory opinion on the Jurisdiction of Danzig Courts, in which the court expressed an opinion that the Danzig courts had jurisdiction to apply the unregistered *Beamtenabkommen* of Oct. 22, 1921. Series B, No. 15.