

**ASSIGNMENT OF CLAIMS BY THE RUSSIAN GOVERNMENT TO THE UNITED STATES**

The value from a legal point of view of one of the obligations undertaken by the Russian Government as a condition for recognition by the United States in the notes exchanged in November last, as a result of which recognition was granted, has already been challenged in a law suit pending in the United States Circuit Court of Appeals, and its validity has been sustained by the decision of that court.

The stipulation referred to is embodied in the note of November 16, 1933,<sup>1</sup> addressed by the Russian Commissar Maxim M. Litvinoff to President Roosevelt, and, in terms, is as follows:

The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter-claims between the Government of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigation for the amounts admitted to be due or that may be found to be due it . . . from American nationals, including corporations, companies, partnerships, or associations, . . . and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

The Government of the Union of Soviet Socialist Republics further agrees . . . not to make any claim with respect to: (a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or claim to have an interest.

It so happened that at that time there was pending in the United States Circuit Court of Appeals in the Second Circuit (N. Y.) an appeal from a decision of the lower court in a case brought by the "State of Russia against the National City Bank of New York with the Bankers Trust Company Impleaded" for recovery of a certain fund on deposit with the National City Bank. Thereafter, by virtue of the assignment above referred to, a motion was made in that case for the substitution of the United States of America in the place of the State of Russia as plaintiff. This motion was opposed by the defendants on the ground of the invalidity of the assignment for various reasons, some of which are of interest from an international law point of view. The court granted the motion.

Without going into an analysis of the decision, the objections raised in opposition to the motion under consideration, and the disposition made of them by the court, are set forth briefly but sufficiently for the purposes of this editorial comment in the official syllabus of the decision, which is as follows:

<sup>1</sup> This JOURNAL, Vol. 28 (1934), p. 90; *id.*, Supp., p. 10.

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.

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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.<sup>1</sup> The second of these innovations has been

<sup>1</sup> In 1892, the *Institut de Droit International* elaborated a draft convention and regulations