

Anikó Szalai¹:

Effect of the World Wars on International Treaties of Hungary

The effect of war on international treaties has been a recurring question in legal doctrine and in the life of the international community. The most recent analysis of the topic is conducted by the United Nations' International Law Commission (ILC).² Since 2004 the examination of the effect of armed conflicts is part of the ILC's work programme with the 'leadership' of Ian Brownlie.³ Hitherto the only well-grounded declaration that can be made is that armed conflicts do not necessarily terminate international treaties. Following World War II some major studies were published, especially in relation to the practice of the United States of America, but in conjunction with Hungary none came to light.⁴

In the present article this issue is elaborated with the help of conducting a scientific investigation of the peace treaties, the exchange of notes following the wars and certain international practices. Hungary had a very unfortunate participation both in the first and the second world wars. After the First World War, in 1920 the Peace Treaty of Trianon was concluded between the former belligerents, in which Articles 217-230 settled the fate of the multilateral and bilateral international treaties. In comparison to these detailed provisions, the Peace Treaty of Paris, 1947 provided only a few sentences on this topic, mainly at Article 10.

I. Treaty of Peace between the Allied and Associated Powers and Hungary, signed at Trianon, June 4, 1920 (Hereinafter: Peace Treaty of Trianon)

The Peace Treaty of Trianon – identically to the other peace treaties concluded after World War I – separated the questions of multilateral and bilateral treaties.⁵

¹ Szalai, Anikó is a PhD student at the Faculty of Law, University of Szeged, her 'Doctor Vater' (supervisor) is Professor Bodnár, László.

² See: Report of the International Law Commission on the Work of its Fifty-seventh Session, UN Doc. A/60/10 (2005) Ch V, paras 108-191.; Report of the International Law Commission on the Work of its Fifty-ninth Session, UN Doc. A/62/10 (2007) Ch VII, paras 266-324.

³ See: Brownlie, Ian: *First Report on the Effects of Armed Conflicts on Treaties*, UN Doc. A/CN.4/552 (2005); Brownlie, Ian: *Second Report on the Effects of Armed Conflicts on Treaties*, UN Doc. A/CN.4/570 (2006); Brownlie, Ian: *Third Report on the Effects of Armed Conflicts on Treaties*, UN Doc. A/CN.4/578 (2007)

⁴ Lenoir, J. J.: 'The Effect of War on Bilateral Treaties, with Special Reference to Reciprocal Inheritance Treaty Provisions', 34 *Georgetown Law Journal* (1946) 129-177.; De La Pradelle, A.: 'The Effect of War on Private Law Treaties', 2 *International Law Quarterly* (1948) 555-576.; McIntyre, Stuart Hull: *Legal Effect of World War II on Treaties of the United States* (Martinus Nijhoff: The Hague, 1958)

⁵ Treaty of Peace between the Allied and Associated Powers and Hungary, signed at Trianon, 4 June 1920, in force 26 July 1921, 6 *League of Nations Treaty Series*

1. Multilateral treaties

In Articles 217-221 it contained a long list of all those multilateral agreements which are revived by the peace treaty and shall be applicable again.

Article 217 enumerates agreements of an economic or technical character (altogether twenty-three), such as (1) Convention of July 5, 1890, regarding the publication of customs tariffs and the organisation of an International Union for the publication of customs tariffs, (2) Convention of June 7, 1905, regarding the creation of an International Agricultural Institute at Rome, (3) Convention of May 4, 1910, regarding the suppression of obscene publications, (4) Convention of September 26, 1906, for the suppression of nightwork for women, and (5) Convention of October 29, 1888, regarding the establishment of a definite arrangement guaranteeing the free use of the Suez Canal.

Articles 218-219 specify the postal and telegraphic conventions, Article 220 regulates the protection of industrial property and trademarks, in Articles 221-223 Hungary undertakes to adhere to several conventions, such as the Convention of December 31, 1913, regarding the unification of commercial statistics.

All those multilateral treaties which are not listed in the Peace Treaty of Trianon shall be regarded as terminated by the war. This shows that in case of the multilateral treaties termination is not the general effect of war. However, certain multilateral treaties are missing from the list and certainly those are not terminated either. No reference to agreements which were intended to be in effect during wartime, such as the 1899 and 1907 Hague Conventions, the 1906 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, the 1868 Saint Petersburg Declaration or the 1856 Paris Declaration Respecting Maritime Law.⁶ All these – and some other – agreements codifying humanitarian law or law of war were in effect in respect of Hungary during and after World War I notwithstanding the *lex specialis* character of the peace treaty.

Nevertheless there are examples for some multilateral treaties being terminated by the war – expressly by the above-mentioned rule of the peace treaty: the 1839 Treaty of London guaranteeing independence and neutrality for Belgium was considered terminated by the war in respect of Germany, Austria, Hungary, but in respect of the other contracting parties (Great Britain and France) the May 22, 1926 Belgian Neutrality Treaty abrogated it.⁷

⁶ Altogether 12 Hague Conventions, see: <http://www.icrc.org/ihl.nsf/INTRO?OpenView> (22. 05. 2008); Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, Geneva, 6 July 1906, 99 *British and Foreign State Papers* 968 or <http://www.icrc.org/ihl.nsf/INTRO/105?OpenDocument> (22. 05. 2008); Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight, Saint Petersburg, 29 November 1868, <http://www.icrc.org/ihl.nsf/INTRO/130?OpenDocument> (22. 05. 2008); Declaration Respecting Maritime Law, Paris, 16 April 1856, <http://www.icrc.org/ihl.nsf/INTRO/105?OpenDocument> (22. 05. 2008);

⁷ Lachs, Manfred: *A többoldalú nemzetközi szerződések / Multilateral International Treaties /* (Közgazdasági és Jogi Könyvkiadó, Budapest, 1962) at 233.

2. *Bilateral treaties*

Article 224 of the Peace Treaty of Trianon provides the regulations of bilateral treaties: 'Each of the Allied or Associated Powers, being guided by the general principles or special provisions of the present Treaty, shall notify to Hungary the bilateral agreements of all kinds which were in force between her and the former Austro-Hungarian Monarchy, and which she wishes should be in force as between her and Hungary.'

Only those bilateral agreements which have been the subject of such a notification shall be put in force between the Allied and Associated Powers and Hungary.'

This obligation to notify was a relatively new idea, proving that a changed practice was occurring, i.e. war does not terminate automatically all bilateral treaties, there might be cases when this is not beneficial at all. This process best can be examined in the practice of Great Britain: In 1817, Lord Stowell said treaties 'are perishable things, and their obligations are dissipated by the first hostility.'⁸ Sir J. D. Harding, the Queens Advocate in 1854 wrote that 'by the Law of Nations war abrogates all treaties between the belligerents.'⁹ However if the treaty contained an express provision on the applicability in case of war the principle of *pacta sunt servanda* prevailed, for example the British Government continued to pay Russia loan payments despite the outbreak of the Crimean war in 1854, because the treaty establishing the loan, the Convention of 19 May 1815 expressly provided for that.¹⁰

In accordance with the above-mentioned article of the Peace Treaty of Trianon an exchange of notes took place between the British Empire and the Kingdom of Hungary in October, 1921.¹¹ By force of the note a 1873 Extradition Treaty and its amendment in the year 1901 were revived, these were the only valid bilateral international treaties between the parties in 1914.¹² The diplomatic and consular relations were regulated by customary international law. Consequently it can be declared that the practice of Great Britain had changed in relation to the effect of war and a similar alteration is also typical of many other states.

II. Treaty of Peace with Hungary¹³, signed at Paris, on 10 February 1947

At the end of World War II the Allied and Associated Powers, namely the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Australia, the Byelorussian Soviet Socialist Republic, Canada, Czechoslovakia,

⁸ Lord McNair, *The Law of Treaties* (Oxford University Press, 1961) at 699.

⁹ *Ibid.* at 700.

¹⁰ *Ibid.* at 696-697.

¹¹ Exchange of Notes relative to the notification to the Hungarian Government, in accordance with Article 224 of the Treaty signed at Trianon, June 4, 1920, reviving certain bilateral treaties between the British Empire and Hungary. Budapest, October 24 and 30, 1921, 8 *League of Nations Treaty Series* 376.

¹² Treaty signed at Vienna on December 3, 1873, between Great Britain and Austria-Hungary for the mutual surrender of fugitive criminals and Declaration signed at London on June 26, 1901, amending Article 11 of the Treaty between Great Britain and Austria-Hungary for the mutual surrender of fugitive criminals, 63 *British and Foreign State Papers* 213 and 94 *British and Foreign State Papers* 5.

¹³ Hereinafter: Peace Treaty of Paris

India, New Zealand, the Ukrainian Soviet Socialist Republic, the Union of South Africa and the People's Federal Republic of Yugoslavia signed a treaty of peace with Hungary.¹⁴ Apart from these states Hungary was in a state of war for a short time with one other, namely Germany, but owing to the 'complicated' statehood of Germany between May 1945 and 1949, the issue of German-Hungarian bilateral treaties exceeds the frame of the present article.

Article 10 of the Peace Treaty of Paris provides for the effect of war, laying down a general rule:

1. Each Allied or Associated Power will notify Hungary, within a period of six months from the coming into force of the present Treaty, which of its pre-war bilateral treaties with Hungary it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall, however, be deleted from the above-mentioned treaties.
2. All such treaties so notified shall be registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.
3. All such treaties not so notified shall be regarded as abrogated.'

There are a few articles representing *lex specialis* to Article 10, such as Article 25 providing the express annulment of the agreements in relation to the Vienna Award of November 2, 1938, or Annex V on the contracts of enemy natural and legal persons. However, in comparison to the regulations of the Peace Treaty of Trianon it can be declared that the Allied and Associated Powers did not pay significant attention to the elaboration of the effect of the war on treaties. Furthermore an examination of the confusing and sometimes contradictory statements of the legal advisers in the Paris Peace Conference can lead only to the conclusion that they did not take a definite stand as to the effect of war on the pre-war treaties and were only concerned with what treaties should exist after peace was restored.¹⁵ The Peace Treaty of Paris defines no rule about the force of multilateral treaties after World War II, and in case of bilateral treaties the general rule is termination, except for those referred to in the notifications.

1. Multilateral treaties

It might be presumed that the reason for the lack of provision about multilateral treaties is the practice of the states, since the First World War, which excluded abrogation in this case. Notwithstanding it would have been beneficial to define the effect of war, because certainly many multilateral treaties were not applied or suspended during the state of war.

It seems that no multilateral treaty was terminated by the war, not even the 1928 Kellogg-Briand Pact (which is in effect still nowadays) in which the parties condemn recourse to war and undertake to settle their disputes by pacific means.¹⁶ Moreover the Kellogg-Briand Pact was not

¹⁴ Treaty of Peace with Hungary, Paris, 10 February 1947, 41 *United Nations Treaty Series* 166.

¹⁵ The effect of armed conflict on treaties: an examination of practice and doctrine, Memorandum by Secretariat, UN Doc. A/CN.4/550 (1 February 2005) at 6.

¹⁶ General Treaty for Renunciation of War as an Instrument of National Policy, signed at Paris, 27 August 1928, entry into force 24 July 1929, 94 *League of Nations Treaty Series* 57.

even considered suspended by the war, because responsibility of the German war criminals was grounded also on it by the Nuremberg Tribunal.¹⁷

In relation to most of the multilateral treaties the Hungarian viewpoint after the war was that they shall be applied as if there had been no war before. The regulation of aviation serves a good example: Hungary was party to the 1919 Paris Convention relating to the regulation of aerial navigation, the 1929 Warsaw Convention for the unification of certain rules and had bilateral aviation agreements with several states.¹⁸ In the Second World War Hungary's total flight park was destroyed, at the spring of 1945 the reorganization of aviation had started with the leadership of the Hungarian Ministry of Transportation. The Ministry established a contact with the Provisional International Civil Aviation Organization (PICAO), the predecessor of International Civil Aviation Organization (ICAO) until the latter started operation in 1947. The rules of reorganization were in compliance with the provisions of the 1919 Paris Convention and the 1929 Warsaw Convention both of them were considered still to be in effect. Furthermore the 1944 Chicago Convention was determinant also, in spite of the fact that Hungary adhered to it only in 1969.¹⁹

2. Bilateral treaties

Under Article 10 of the Peace Treaty of Paris all bilateral treaties shall be considered terminated if no notification had taken place, but the examination of the international relations and practice of Hungary and the Allied Powers presents a more sophisticated image.

Union of Soviet Socialist Republics

Between the two world wars Hungary didn't have 'smooth' relations with the Soviet Union, in 1934 an agreement was signed which established mutual diplomatic missions, but when Hungary acceded to the Anti-Comintern Pact (in February, 1939) the Soviet Union broke off the diplomatic relations. These relations were restored in September, 1939 after the conclusion of the Molotov-Ribbentrop Pact.²⁰ A year later two international treaties were signed by Hungary and the Soviet Union: a commerce and navigation treaty and a trade treaty. However this friendly connection severed again in June 24, 1941 two days subsequent to Germany's aggression toward the Soviet Union, which was followed by a declaration of war on her. One of the most important

¹⁷ Charter of the International Military Tribunal of Nuremberg annexed to the London Agreement of 8 August 1945, concluded by the Government of the United States of America, the Provisional Government of the French Republic, the Government of the United Kingdom of Great Britain and Ireland, and the Government of the Union of Soviet Socialist Republics for the Prosecution and Punishment of the Major War Criminals of the European Axis, 82 *United Nations Treaty Series* 278.

¹⁸ Convention relating to the Regulation of Aerial Navigation, signed at Paris, 13 October 1919, 11 *League of Nations Treaty Series* 173.; Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, 12 October 1929, 137 *League of Nations Treaty Series* 13.

¹⁹ Convention on International Civil Aviation, signed at Chicago, 7 December 1944, 15 *United Nations Treaty Series* 294. Adherence by Hungary: 30 September 1969, 730 *United Nations Treaty Series* 402.

²⁰ Anti-Comintern Pact, 25 November 1936, originally between Germany and Japan; Molotov-Ribbentrop Pact refers to the Treaty of Non-aggression between Germany and the Union of Soviet Socialist Republics, signed in Moscow, 23 August 1939

provisions of the commerce treaty was the order of twelve ships to be produced by the Ganz-factory within three years.²¹ Owing to the war the performance of the treaty was suspended. The Hungarian Ministry of Foreign Affairs in 1942 prepared a note on the treaty which included that 'Hungary might be obliged to perform her obligations after the end of the war. And if the Ganz-factory is not capable of production, the Soviet Union might have a claim for damages, which is approximately equivalent to the full capital of the factory.'²² This proves that although already being at war for a year Hungary still considered this bilateral treaty valid.

Following the war the first detailed trade agreement was concluded with the Soviet Union (August, 1945) which entailed the exchange of goods in the value of 30 million \$. Shortly after that the Soviet Union urged the Hungarian Government to arrange a long-term and close economic co-operation agreement. The Hungarian Government informed the British and the American Government on the preparations of the agreement and the poor economical situation and requested them to establish economical relations with Hungary. The British Government refused the request, explaining that first they would like Hungary to fulfil its earlier obligations (pre-war loan, reparation, etc.). As the American Government gave no reply, the Hungarian-Soviet Economic Co-operation Agreement was concluded in 15 October 1945. A few days later both Great-Britain and the United States expressed their disagreement and declared that this co-operation agreement is in conflict with the equal treatment policy which has to be exercised by Hungary under their friendship, commerce and consular treaties. (In 1925, Hungary concluded a friendship, commerce and consular treaty with the United States of America, then in 1926 with Great-Britain.)²³ Apart from the protestation they made no real proposition. A few months later the Government of the United States notified Hungary that according to them the conclusion of bilateral commercial treaties shall be done only after the signature of the peace treaty.²⁴ In 1946 Hungary established complex economical and commercial relations with the Soviet Union, which might be one explanation for the lack of notification from the Soviet Union. Two possibilities can be imagined: the first one is that this new treaty revised the 1940 treaties, because the subject of them is the same (in this case war had not terminated the treaties), the second possibility is that war had terminated the 1940 treaties and thus a new one had to be concluded. So there were no treaties about which a notification could have been made. However, an interesting issue is that the Soviet Union made no notification to any other states. The other peace treaties of 1947, signed with Italy, Romania, Bulgaria and Finland also contained the provisions of Article 10, but the Soviet Union notified none of them. This information might lead to the deduction that the Soviet Union considered all the pre-war bilateral treaties terminated by war.

²¹ Ganz and Partner Electric, Machinery, Wagon and Ship Factory Co. was founded by Abraham Ganz in Budapest, in 1844, its name today: Ganz Transelektro Electric and Transport Ltd.

²² Magyarország külkereskedelme 1919-1945 /Foreign Trade of Hungary 1919-1945/ (Közgazdasági és Jogi Könyvkiadó, Budapest, 1961) at 303.

²³ Treaty of friendship, commerce and consular rights between the Kingdom of Hungary and the United States of America, signed in Washington, 24 June 1925, 58 *League of Nations Treaty Series* 111. and 141 *United Nations Treaty Series* 412.; Treaty of commerce and navigation between Great-Britain and Hungary, signed in London, 23 July 1926, 67 *League of Nations Treaty Series* 183.

²⁴ Balogh, Sándor *A népi demokratikus Magyarország külpolitikája 1945-1947* /Foreign Policy of the Democratic People's Republic of Hungary 1945-1947/ (Kossuth Könyvkiadó, Budapest, 1982) at 66-69.

People's Federal Republic of Yugoslavia

Many technical agreements, especially for the regulation of border control, transportation, civil proceedings and health care were concluded between Yugoslavia and Hungary between the world wars, but the most significant three were the Treaty of Commerce, the Agreement of Tourism and the Treaty of Eternal Friendship, all made in 1940. At the end of March 1941 it becomes an open secret that Germany would soon attack Yugoslavia. On 31 March 1941 the Prime Minister of Hungary, Count Teleki informed London and Washington that the only reason for the possible intervention in Yugoslavia would be in the interest of the Hungarian minority living there. On 1 April 1941 the Hungarian Government decides that the Hungarian Army would attack Yugoslavia only if the Hungarian-populated areas become *terra nullius* owing to the German attack, because in this case Yugoslavia should be considered dissolved and thus the Treaty of Eternal Friendship is terminated. On 3 April 1941 Count Teleki, when realizing that his politics were taking Hungary to the war, committed suicide.²⁵ Nonetheless on 11 April 1941 the Hungarian Army joined to the invasion of the German troops which started on 6 April and occupied certain territories next to the Hungarian border and annexed it to Hungary.

Though the previous explanation for the termination of the 1940 treaties seems to be convincing, probably the real legal effect of these events is the termination by war. This presumption is also proved by the fact that the unconditional surrender and full dismemberment of Yugoslavia happened on the 17 April, more than a week later than the attack. The notification sent by the Yugoslav Government on 10 March 1948 lists nine treaties but makes no reference to the three conventions of 1940.²⁶ These treaties, concluded just shortly before the war were terminated by it. This is especially true for the treaty of friendship, since on 8 December 1947 a new Yugoslav-Hungarian Treaty of Friendship, Co-operation and Mutual Assistance had been signed.²⁷ The subject of the revived treaties varies, dealing with transportation, protection of frontier roads and bridges, civil matters, such as guardianship and curatorship, healthcare and prevention of double taxation.²⁸

²⁵ On this subject for example: Time Magazine: End of a Tightrope Walk, April 14, 1941 <http://www.time.com/time/magazine/article/0,9171,932216,00.html> (23 November 2007)

²⁶ Note not published in the United Nations Treaty Series. See: Law Decree 6300/1948. (June 9) on those pre-war bilateral treaties between the two countries, which Yugoslavia desires to keep in force, 10 March 1948. (In Hungarian: 6300/1948. (VI. 9.) Korm. Rendelet a Jugoszláv Szövetségi Népköztársaság részéről érvényben tartott kétoldalú nemzetközi egyezmények újbóli alkalmazásáról)

²⁷ Not published in the United Nations Treaty Series, authentic text only in Hungarian and Serb-Croat. See: Act IV of 1948 (in Hungarian: 1948. évi IV. törvény a Budapesten 1947. évi december hó 8. napján aláírt magyar-jugoszláv barátsági, együttműködési és kölcsönös segítségnyújtási szerződés becikkelyezéséről)

²⁸ The list of treaties revived by the note, since it is not available in English:

1-4. Convention between the Kingdom of Hungary and the Kingdom of the Serbs, Croats and Slovenes, Settling Certain Questions of Common Concern between the Two Countries, Belgrade, 24 July 1926, Annex B – Convention regarding the Maintenance of the Iron Bridges Connecting the Railway Lines of the Two Countries, Annex C – Convention regarding the Use of Gola Station, Annex D – Convention regarding the Administration and Maintenance of the Highways, Roads and Bridges on the Frontier, Annex E – Convention regarding the Protection and Upkeep of the Boundary-stones, Pillars and Marks Indicating the Frontier, 97 *League of Nations Treaty Series* 165.

5. Convention between the Kingdom of Hungary and the Kingdom of Yugoslavia regarding the Settlement of Questions relating to Funds of Minors and Persons under Disability and certain Questions relating to Guardianship and Curatorship, Belgrade, 22 February 1928, 87 *League of Nations Treaty Series* 363.

6. Convention for the Prevention of Double Taxation as regards Direct Taxes, Belgrade, 22 February 1928, 100 *League of Nations Treaty Series* 331.

There is one treaty missing from the notification, which notwithstanding has not been terminated and was applied until 1960, when revision took place: Convention between the Kingdom of Hungary and the Kingdom of the Serbs, Croats and Slovenes concerning the Extradition of Criminals and Judicial Co-operation in Criminal Matters, Belgrade, 22 February 1928.²⁹

Czechoslovakia

In accordance with the provisions of Article 10 of the Peace Treaty of Paris the Czechoslovak Government notified Hungary in early 1948 about three bilateral conventions which should remain in force: one on settlement of debts, the second on rules of procedure of the arbitration commission set up in relation to the prior convention and the third one on the settlement of technical and economic questions on certain section of the Danube and River Tisza.³⁰

All the treaties which were concluded after the dissolution of Czechoslovakia (starting in 1938, then several times during the war) were considered invalid by the Peace Treaty of Paris. For example: Convention on Social Security between Slovakia and Hungary, signed in Budapest, 22 July 1942. The commercial and customs treaties signed prior to the war, like a general agreement on commercial relations in 1923 and a detailed customs tariff agreement on 1927 were abrogated by either the dissolution or the war itself.³¹

United States of America

After the First World War the United States declared that all bilateral treaties concluded prior to the war are in effect again, though with respect to the principle of continuity with changed territorial scope. Between 1921 and 1939 several conventions were signed and all of them were revived in 1948. The Government of the United States notified the Hungarian Government on twelve agreements, such as the 1856 Extradition Treaty, the 1912 Copyright Convention, the 1924 Debt-funding Agreement, the 1925 Treaty of Friendship, Commerce and Consular Rights,

7. Convention between the Kingdom of Hungary and the Kingdom of the Serbs, Croats and Slovenes with regard to Reciprocal Assistance to Sick Persons, Belgrade, 22 February 1928, 110 *League of Nations Treaty Series* 40.

8. Convention regarding the Prevention of Infectious Diseases, Belgrade, 22 February 1928, 113 *League of Nations Treaty Series* 49.

9. Convention regarding Certain Questions of Civil Procedure and Private Law, Belgrade, 11 November 1929, 111 *League of Nations Treaty Series* 197.

²⁹ 104 *League of Nations Treaty Series* 151.

³⁰ Notification: Verbal Note by which the Czechoslovak Government in pursuance of Article 10 of the Peace Treaty with Hungary, notified the Hungarian Government of those pre-war bilateral treaties between the two countries, which Czechoslovakia desires to keep in force, 27 February 1949, 26 *United Nations Treaty Series* 120. The three conventions which remain in force: Convention between the Czechoslovak Republic and the Kingdom of Hungary regarding the settlement of debts and claims expressed in former Austrian and Hungarian crowns, Budapest, 26 May 1928, 101 *League of Nations Treaty Series* 265.; Rules of procedure of the arbitration commission set up under article 13, paragraph 5, of the convention dated 26 May 1928 between the Czechoslovak Republic and the Kingdom of Hungary regarding the settlement of debts and claims expressed in former Austrian and Hungarian crowns, 26 *United Nations Treaty Series* 130.; Convention between the Czechoslovak Republic and the Kingdom of Hungary concerning the settlement of technical and economic questions on the Czechoslovak-Hungarian frontier section of the Danube and on that of the Tisza below the confluence of the Szamos, concluded at Budapest on 24 August 1937, 189 *League of Nations Treaty Series* 403.

³¹ *Supra* note 20. at 97-99.

the 1929 Arbitration Treaty, the 1929 Conciliation Treaty, the 1937 Passport Visa Fees Agreement, three postal conventions, etc.³²

The practice of the United States toward Hungary corresponds to her practice in relation to all the other states with whom she signed a peace treaty.

United Kingdom of Great Britain and Northern Ireland

Prior to the outbreak of World War II Hungary had the most extensive economic and commercial relations – apart from Germany – with Great Britain. This had ended when the British Government broke off the diplomatic relations with Hungary owing to the attack on Yugoslavia in 7 April 1941. In November 1941 the British Government delivered an ultimatum that Great Britain would declare a state of war on Hungary if the Hungarian Government wouldn't retrieve her troops from the territory of the Soviet Union. The state of war was established on 7 December 1941 and existed until the conclusion of the Armistice Agreement in 20 January 1945.³³

At autumn 1945 Great Britain protested against the Hungarian-Soviet Economic Co-operation Agreement, which was concluded in 15 October 1945, claiming that this treaty was not in conformity with the principle of equal treatment provided by the 1926 British-Hungarian Treaty of Commerce. According to the note of the British Government this 1926 treaty 'was technically terminated owing to the war but the armistice agreement replaced us into our rights gained prior to the war.'³⁴ This is a new perspective, because the law of treaties has no rule on 'technical termination' which can be later reversed like that. The rules of suspension are which fit in here, and in case of suspension the rights and obligations could be continued when the reason for the suspension is over. The armistice agreement could be the action which ends the suspension, but in the present case the Armistice Agreement of 20 January 1945 had no provision on the pre-war treaties. Furthermore arises the question of recognition of the government, because Great Britain recognized the newly elected Hungarian Government only in November 1945, which entailed that official diplomatic relations were re-established only after that date. Thus several dates could be imagined for the end of the suspension, moreover adding that according to the Peace Treaty of Paris and the notification the date of the revival was the date of the issue of the note.

Under the notification, delivered on 12 March 1948, the Mutual Surrender of Criminals Treaty of 1873 and its amendments of 1901, 1927, 1934, 1937 and 1938, the 1925 Agreement on Money Orders, the 1926 Treaty of Commerce and Navigation, the 1932 Parcel Post Agreement, the 1935 Convention on Legal Proceedings in Civil and Commercial Matters and the 1937 Convention on Air Navigation were revived.³⁵ Apart from the short-term commercial treaties all pre-war treaties were kept in force.

³² See: Note by which the Government of the United States of America, in pursuance of article 10 of the Treaty of Peace with Hungary, signed at Paris on 10 February 1947, notified the Hungarian Government of those pre-war bilateral treaties between the two countries which the United States of America desires to keep in force or revive, Budapest, 9 March 1948, 183 *United Nations Treaty Series* 2. (text of all the revived treaties included)

³³ Armistice Agreement with Hungary, Moscow, 20 January 1945.

³⁴ *Supra* note 12. at 73.

³⁵ Note by which the Government of the United Kingdom of Great Britain and Northern Ireland, in pursuance of article 10 of the Treaty of Peace with Hungary, signed at Paris on 10 February 1947, notified the Hungarian

Australia

Some of the bilateral treaties between the United Kingdom and Hungary had been extended to Australia and other dominions, all of these were revived through the notification delivered on 7 January 1949. These treaties were the Mutual Surrender of Criminals Treaty of 1873 and its amendments and the 1935 Convention on Legal Proceedings in Civil and Commercial Matters.³⁶

Union of South Africa

The British Legation acting on the instructions of His Majesty's Government in the Union of South Africa declared in their notification of 16 November 1948 that they wish to keep in force the Mutual Surrender of Criminals Treaty of 1873 and its amendments.³⁷

This was the only valid bilateral treaty between the Union of South Africa and Hungary prior to World War II.

Canada, New Zealand, India

Though Canada, New Zealand and India were signatories of the Peace Treaty of Paris they did not deliver a note on the revival of any bilateral treaty.

III. Hungarian experiences in comparison with the general one

The Hungarian experiences fit into the picture, when 'global' analysis is conducted. The Secretariat of the United Nations prepared a Memorandum to help the work of the ILC in conjunction with the effect of armed conflicts on treaties.³⁸ Its fourth chapter deals with the unique case of the Second World War and summarizes its effect. Treaties guaranteeing private rights, regulating customs tariffs, payment of international debt, intellectual property rights, communications conventions, maritime and air transportation agreements remained valid, though suspended. Humanitarian law and conduct of war treaties were fully in force, likewise conventions against slavery and trade in women. Multilateral treaties creating permanent regimes, such as the 1920 Spitsbergen Convention, or establishing international organizations were not affected by World War II either.³⁹

Government of those pre-war bilateral treaties between the two countries which the United Kingdom desires to keep in force or revive, Budapest, 12 March 1948, 104 *United Nations Treaty Series* 34.

³⁶ Note by which the Government of Australia, in pursuance of article 10 of the Treaty of Peace with Hungary, signed at Paris on 10 February 1947, notified the Hungarian Government of those pre-war bilateral treaties between the two countries which Australia desires to keep in force or revive, London, 7 January 1949, 189 *United Nations Treaty Series* 232.

³⁷ Note by which the Government of the Union of South Africa, in pursuance of article 10 of the Treaty of Peace with Hungary, signed at Paris on 10 February 1947, notified the Hungarian Government of those pre-war bilateral treaties between the two countries which the Union of South Africa desires to keep in force or revive, Budapest, 16 November 1948, 225 *United Nations Treaty Series* 64.

³⁸ Memorandum, *supra* note 13.

³⁹ *Ibid.* at 48-51.

Although the aims of the friendship, commerce and navigation treaties are inherently incompatible with the state of war, most of them were not abrogated by the Second World War. For example the United States until 1940 concluded approximately one hundred such treaties and after the war the United States declared them to be in force again. In some cases this led to a disagreement, like in respect of Germany, who considered it terminated.⁴⁰

The Memorandum highlights that most of the bilateral and multilateral treaties remained in force however most of them were not applied, apart from those expressly applicable at wartime.⁴¹

The doctrinal question is not whether treaties were abrogated or not – because it's evident that they were not – but whether the treaties were suspended or not applied.⁴² Non-application can occur in respect of two cases, either there's no event or possibility to apply it or an illegal non-performance takes place. Obviously the first case of non-application induces no issues of responsibility in comparison to the latter one which implies liability on the side of the state committing breach of the treaty. With respect to these legal consequences at the occasion of a war suspension seems to be the most accepted solution to evade the undesired legal detriments.

This examination of the influence of Second World War proves a shift from the earlier determinant factor of the number of the parties to a treaty toward the subject of the treaty and intention of the parties.

Examination of the effect of armed conflicts remains a difficult issue for jurists, but for the proper understanding of the legal effects of today's armed conflicts first we have to be familiar with the detailed historical background.

⁴⁰ Ibid. at 44-45.

⁴¹ Ibid. at 48.

⁴² Ibid. at 51: The only state which expressly refused to revive its treaties was China, in 1952, when concluding the peace treaty China emphasized that the war has rendered all treaties between China and Japan null and void.