State Succession in Treaties
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A. Notion

1 State succession refers to ‘the replacement of one State by another in the responsibility for the international relations of territory’ (see, eg Art. 2 (1) (b) Vienna Convention on Succession of States in Respect of Treaties [‘VCSS-T’]; Art. 2 (1) (a) 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts; Art. 2 (a) → International Law Commission [ILC] Articles on Nationality in Relation to the Succession of States; see also the decision of the arbitral tribunal in the Case concerning the Arbitral Award of 31 July 1989 [Guinea-Bissau v Senegal] 83 ILR 31; → Maritime Boundary between Guinea-Bissau and Senegal Arbitration and Case [Guinea-Bissau v Senegal]. It may take place in the form of → cession of territory, the separation of part or parts of the territory of a State to form one or more → States, the complete dismemberment of a State (→ Dismemberment of States), the incorporation of one State into another, or finally the merger of two or more States leading to the creation of a new State (→ New States and International Law). Logically, State succession has therefore to be distinguished from situations of State continuity where a State undergoes significant changes but where no change of title to territory occurs (→ Continuity of States). In particular no State succession occurs where a State is subject to military occupation (→ Occupation, Belligerent; see also → Territorial Integrity and Political Independence), where a revolution or coup d’état takes place, or where, as in a situation of a failed State, no effective government is in existence (→ Failing States).

2 Once faced with instances of State succession the logical question arises whether → treaties which beforehand applied to a given territory would then continue to do so or whether instead, at least in the case of a cession of territory or in the case of an incorporation of one State into another, the treaties of the predecessor State would then extend to the territory which was subject to the respective territorial change (see also → Territorial Change, Effects of).

B. Historical Development

3 Ever since the modern concept of sovereign States developed (→ Sovereignty; → States, Sovereign Equality), instances of territorial changes and accordingly of State succession have occurred. One might refer, inter alia, to the independence of the United States of America and of the former Spanish colonies (see also → Decolonization; → Decolonization: Spanish Territories), as well as to several important cessions such as the cession of Alaska in 1867, or cases of unification such as those of Italy or Germany in the 19th century. After World War I the law of State succession was largely influenced by the creation of new States given the dissolution of both the Austro-Hungarian Empire and the Ottoman Empire (see also → History of International Law, World War I to World War II; → New States and International Law). After 1945 a large number of former dependent territories gained independence, which brought about the question whether such ‘newly independent States’ would continue to be bound by treaties previously entered into by their respective predecessor State (see also → History of International Law, since World War II). It was in light of these developments that the United Nations General Assembly (→ United Nations [UN]; → United Nations, General Assembly) requested the ILC to codify the law of State succession with regard to treaties which finally in 1978 led to the adoption of the VCSS-T (see also → International Law Development through International Organizations, Policies and Practice). The convention, however, only entered into force in 1996, and, besides, has so far only 19 contracting parties, one main reason being that the text significantlyfavours the interests of former dependent territories, ie so-called newly independent States. After 1990 the dissolution of the Union of Soviet Socialist Republics (‘USSR’; → Russia; see also → Commonwealth of Independent States [CIS]), the former Yugoslavia, (→ Yugoslavia, Dissolution of) and Czechoslovakia (‘CSFR’; → Czechoslovakia, Dissolution of), as well as the
(re)unification of Germany (→ Germany, Unification of; see also → Germany, Legal Status after World War II) and Yemen constituted more recent cases of State succession and further developed applicable norms of → customary international law.

C. General Features of the Law of State Succession with regard to Treaties

4 Generally speaking, the law of State succession with regard to treaties is characterized by two features. First, and unlike in the case of the general law of treaties, no generally accepted codification exists (→ Codification and Progressive Development of International Law). Second, → State practice is somewhat scarce and lacks uniformity and is to a large extent influenced by political considerations, given that instances of State succession most often occur in a conflict-ridden environment. Accordingly there are only very few rules which can be characterized as having undoubtedly reached the status of customary international law. Notwithstanding, certain rules may be said to have clearly acquired the status of customary international law as will be outlined below. Yet any application of such rules is subject to the proviso that their application may not be incompatible with the object and purpose of the treaty concerned (→ Treaties, Object and Purpose), nor that it fundamentally alters the conditions for its operation, nor that the States concerned agree otherwise. Finally, both the States involved in the process of succession, as well as third States which are contracting parties to the treaties concerned, are under a general obligation to settle peacefully questions arising in the context of the succession by → negotiation or any other agreed method of their choice (→ Peaceful Settlement of International Disputes).

5 The law on State succession with regard to treaties has for a long time been dominated by the dichotomy between an alleged principle of universal succession on the one hand and a tabula rasa approach on the other. While the former favours the interests of third States in the upholding of treaty relations, the latter corresponds to a rather strict understanding of sovereignty. Neither of the two principles can however offer a practicable solution for various scenarios where State succession takes place. Accordingly, under customary international law more nuanced solutions have been developed in the past or, at the least, are in the process of being formed.

6 Given these uncertainties, States involved in a succession process, ie the respective predecessor State and the successor State, have in the past frequently concluded so-called devolution agreements according to which the treaties of the predecessor State would devolve upon the successor States. Yet, as Art. 8 (1) VCSS-T confirms, such a devolution agreement does not, as such, bring about a succession. Instead, the successor States willing to succeed to multilateral treaties of their predecessor State can, by way of a unilateral → declaration addressed to the respective → depositary, confirm their succession (→ Unilateral Acts of States in International Law). It remains doubtful, however, whether such declarations are of a declaratory or a constitutive nature depending on what position one takes as to the principle of automatic succession. In any case, taking into account the practice of various depositaries, such declarations of succession are only considered to bring about succession provided they are not of a general character, but instead list specific treaties to which the successor State wants to succeed. That does not exclude, however, that such a general declaration could produce a binding effect under other rules of general international law, such as, for example, the principle of → estoppel or related concepts. Besides, any declaration of succession, even when specifically dealing
with a given treaty, may only bring about succession in cases where the treaty, given its character and content, is open for adherence by the successor State.

D. Specific Categories of State Succession

1. Cession of Territory

8 With regard to cession of territories the so-called moving treaty frontiers principle, as codified in Art. 15 VCSS-T, applies. Accordingly treaties of the predecessor State cease to be in force in respect of the ceded territory while treaties of the successor State generally extend ipso facto to this territory. This approach was most recently followed with regard to the transfer of → Hong Kong, → Macau, and → Walvis Bay.

2. Incorporation of One State into Another and Merger of Two States

9 Where one State voluntarily decides to be incorporated into another, as was the case with the German Democratic Republic, which became part of the Federal Republic of Germany as of 3 October 1990, the former ceases to exist as a subject of international law (→ Subjects of International Law), while the territory of the latter extends to that of the incorporated State. In such a scenario the treaties of the incorporating State extend to the absorbed territory while the treaties of the incorporated State, with the notable exception of localized treaties, ipso facto lapse unless the parties involved decide otherwise. In contrast, where two States merge to form a new State, as was the case with regard to the Yemenite unification, the model provided for in Art. 31 VCSS-T, at least by and large, applies. Accordingly all treaties entered into by either of the two predecessor States, both of which cease to exist as of the time of unification, continue to be in force, albeit with their territorial scope of application of such treaties being limited to the territory to which they had already been applied beforehand.

3. Complete Dissolution of a State

10 When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist, Art. 34 VCSS-T provides that, as a matter of principle, the treaties of the predecessor State automatically continue in force in respect of each successor State. Recent State practice, and in particular that concerning the dissolution of the Socialist Federal Republic of Yugoslavia, as well as that concerning the CSFR, at least somewhat tends to confirm the customary law nature of this rule. In addition, the Arbitration Commission of the Peace Conference on the Former Yugoslavia (→ Badinter Commission [for the Former Yugoslavia]), set up under the auspices of the Peace Conference for the former Yugoslavia, considered the principles of international law embodied in the VCSS-T to constitute at least a starting point for its considerations.

4. Separation

11 Unlike in the case of a complete dismemberment, a mere separation presupposes that one of the entities existing on the territory of the predecessor State continues its legal personality and is, as such, identical, although in a limited geographical way, with that predecessor State. The most important recent example has been the case of the USSR, where the Russian Federation is generally considered to continue the legal personality of that State. Accordingly the continuing State automatically continues all treaty relations of the predecessor State unless such treaties are localized on the territory of a successor State, a result enshrined in Art. 35 VCSS-T. It is less clear, however, whether the successor States which separated from the rump State are automatically bound by all treaties previously entered into by their predecessor State. Recent State practice is, in that regard, even less uniform than that in cases of complete dissolution of a State. In any case such a successor State has the right, by way of a unilateral declaration of succession, to become ex
5. Newly Independent States

The VCSS-T, in line with previous State practice, defined the category of so-called newly independent States in its Art. 2 (e) by referring to successor States as ‘the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible’. It thus covers mainly former colonies (→ Colonialism). In line with the post-independence practice of many former dependent territories Art. 16 VCSS-T, applying the clean slate or tabula rasa principle, provides that any such newly independent State is not bound to maintain in force, or to become a party to, any treaty of its predecessor State, but that it may establish its status as a party to any such treaty by way of a unilateral declaration. The relatively few dependent territories which came into existence after 1978 have, by and large, followed the model prescribed by the convention and have in particular claimed a right to apply the terms of individual treaties inherited from their predecessor provisionally until such time as they inform the depository or (in the case of bilateral treaties) the respective other party otherwise. With the definite end of the historical process of decolonization, the very concept of newly independent States has however lost its relevance.

E. Specific Questions

1. Border Treaties

Both State practice up to and after the VCSS-T, as well as Art. 11 VCSS-T itself, as well as various decisions of international (arbitral) tribunals (→ Arbitration) confirm that a succession of States does not, as such, affect a land or maritime boundary established by a treaty (→ Boundaries). This is even true where otherwise the respective successor State would not succeed to the treaties of its predecessor State. This is in line with the general interest of the → international community in the stability and inviolability of boundaries, which is also enshrined in the → uti possedetis doctrine.

2. Other Forms of Localized Treaties

Recent State practice also demonstrates that other forms of localized, dispositive, or real treaties—sometimes also referred to as treaties running with the land—ie treaties which relate to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question are similarly subject to an ipso iure succession regime by the successor State to whose territory they relate. This principle, already contained in Art. 12 VCSS-T, was confirmed by the → International Court of Justice [ICJ] in its 1997 judgment in the → Gabčíkovo-Nagymaros Case (Hungary/Slovakia).

3. Human Rights and Related Treaties

The practice of supervisory bodies established in accordance with the various human rights treaties, such as the → Human Rights Committee, indicates that successor States are in all circumstances bound by treaty obligations entered into by their respective predecessor State in the field of → human rights, even where otherwise no State succession with treaties would take place. This approach has however so far not been followed uniformly in recent instances of State succession, in particular where new States have been created. It therefore still remains somewhat doubtful whether, at this stage, a new rule of customary international law has already been created, even more so since the ICJ has so far avoided tackling the issue in the various cases concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide (→ Application of the Conventions)
Convention on the Prevention and Punishment of the Crime of Genocide Case [Bosnia and Herzegovina v Serbia and Montenegro]. Any such assumption of automatic succession with regard to human rights treaties would however be buttressed by their specific character, namely the fact that they grant individual rights and that they have been concluded with due regard to Art. 55 → United Nations Charter. State practice also seems to indicate that → concordats as well as treaties in the field of international humanitarian law (→ Humanitarian Law, International), like human rights treaties, might also be considered treaties which are subject to automatic succession.

4. Membership in International Organizations

The almost uniform practice of international organizations, including that of the UN, demonstrates that in cases of separation or dismemberment, no succession with regard to membership takes place (→ International Organizations or Institutions, Membership). If one of the successor States, however, continues the legal identity of a given Member State of the organization, that State also inherits the membership in the organization, as was, for example, the case with regard to the Russian Federation. It is for that reason that the Federal Republic of Yugoslavia’s claim to continued membership in the UN was not accepted so that it finally had, like the other successor States of the former Yugoslavia, to apply for admission as a new member. In contrast thereto, where two Member States of an international organization unify in one way or another, be it by way of a merger or be it by way of absorption, the respective successor State always continues one single amalgamated membership. In contrast to the practice of other international organizations, both the → International Monetary Fund (IMF) and the World Bank (→ International Bank for Reconstruction and Development [IBRD]) as well as → regional development banks such as the Asian Development Bank, the Inter-American Development Bank, or the European Bank for Reconstruction and Development, have normally accepted the possibility of successor States acquiring membership status through succession, provided however that the relevant organ of the organization in question has beforehand determined that the successor States fulfils the necessary requirements for membership including taking over, where applicable, a share of the → debts incurred by its predecessor State.

5. Succession with regard to Treaties Not Yet in Force at the Time of Succession

Under current customary international law, States may succeed to both the status of a contracting State, as well as to the status of a signatory State. Where a necessary quorum has not been reached ex ante, declarations of succession are also counted towards such requirement.

6. Succession concerning Reservations and Objections to Reservations

Recent State practice demonstrates that where States automatically succeed to treaties of their predecessor State, they might not enter new reservations (→ Treaties, Multilateral, Reservations to). Instead they may only, if they so wish, retain reservations previously entered into by their predecessor State. With regard to a possible succession to objections to reservations of third States, no clear pattern of State practice can yet be perceived, although there is at least a certain tendency that with regard to such objections, too, a succession takes place.
F. Assessment

19 After the end of the era of decolonization it had seemed that issues of State succession had somewhat become moot. Yet developments occurring in Eastern Europe in relation to the disintegration of the USSR, the CFSR, and the former Yugoslavia, and also the transfer of sovereignty with regard to Hong Kong and Macau demonstrate its continued relevance. It therefore cannot be excluded that further instances of State succession will sooner or later take place. Besides, it is noteworthy that the increased practice of States has significantly reinforced the customary law character of at least certain rules of State succession with regard to treaties, such as, for example, the moving boundary rule in cases of cession of territory or the principle of automatic succession to boundary and other localized treaties. It remains to be seen whether the tendency to accept universal succession to treaties in cases of separation or complete dismemberment of a State, which as of today can be considered a rule of customary international law in *statu nascendi*, and the rule according to which human rights treaties are always subject to automatic succession, will be further confirmed in the future.

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