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SUCCESSION OF STATES IN INTERNATIONAL LAW

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Abstract

It is not uncommon for one state to cede territory to another, whether through force, peaceful means, or any other means. A state may lose control of a territory and be replaced by another state or a group of states. In such cases, concerning issues may arise, which public international law addresses and attempts to resolve. The legal norms, and the practice that must be followed in order to solve these issues are referred to as "succession of states", which is a theory and practice of international law that has evolved in a new direction, particularly since the end of World war I. In comparison to other institutions of international law, however, this sector still lacks a comprehensive legal structure to govern numerous disputes between nations. The Vienna Convention on the Succession of Nations of 1978 and 1983 is the sole instrument that attempts to govern numerous concerns when new states are formed within the international community. Therefore, this article provides conceptual and practical insights into the subject of international law so that the reader may become acquainted with this institute of international law which is no less important today.

Keywords: state succession, international agreements, citizenship, public goods.

1. Succession and its types

Political entities are not immutable. They are subject to change, new states are born and some others disappear. Even in our days, especially after the end of the Second World War we see that the international community has changed a lot by annexing to those new entities which have arisen as a result of the dissolution of a state into several states or the division of a state into two states or secession of a territory and annexation of that territory to another state. These changes have produced conflicts as well. The dissolution of the former USSR, former Yugoslavia, the separation of Czechoslovakia, the reunification of Germany after the fall of the Berlin Wall are some of the examples that speak for themselves that the international community is not static.This is also indicated by the number of members of the United Nations Organization, while at the San Francisco Conference there were 51 member states, today the number of members in this organization has reached 193, which means that many entities after the Second World War by invoking the principle of self-determination of peoples have gained independence.It is natural that when such developments occur, there are problems of different kinds, problems with which international law deals and tries to give solutions to them. The legal norms of international law that are required to achieve a solution to these problems are known as the succession of states. So, the succession of states constitutes an important field of international law that comes to fore in situations when new states appear within the international community.

In international law, when talking about the institution of succession, all authors agree that we still do not have a precisely specified norm which would regulate the various problems that would appear during the creation of new states. However, even though we say this, the international community has made efforts not to leave aside the field related to the succession of states and as a result of this, two conventions related to the succession of states have been

adopted in Vienna, the Vienna Convention on Succession of States of 1978 and the Vienna Convention on Succession of States of 1983. So, these two Conventions are sources which are put to use in the practice of international law in cases where we have succession. This field of international law in the future remains to be elaborated more, especially by the Commission for Codification of International Law in order to provide solutions to the various problems during the creation of new states.

In the Glossary of Justice by the author Nijazi Uka, the succession of states is defined as a set of political-legal issues and the choices related to the transfer of a part of the state territory of a state under the power of another existing or newly created state.1

The Vienna Convention on Succession of States provides this definition: the succession of states is a replacement of a state by another in the responsibility for international relations.2

Even in the Opinion of the Badinter Commission on the Former Yugoslavia of 1991, when it talks about succession is noticed that it is based on the Vienna Convention on Succession of States of 1978. In item 1.e. is stated: "that, in compliance with the accepted definition in international law, the expression "state succession" means the replacement of one state by another in the responsibility for the international relations of territory. This occurs whenever there is a change in the territory of the state..."

Succession means when one or more entities of international law replace another international entity, in which case the rights and obligation of the old entity that have previously existed are transferred to the newly created entity or entities.

Depending on the type of succession, succession can be found as universal and partial succession. Universal/total succession occurs when an international entity is completely extinguished through the division of that entity into other entities, when two or more entities merge into one entity or when this entity is annexed by a neighboring entity. The case of the former USSR; Yugoslavia 1991-1992; Czechoslovakia; the union of Egypt and Syria during 1958 and 1961 to create the Union of Arab Republics; the reunification of the German Democratic Republic and the Federal Republic of Germany in 1990, are examples of this type of succession. Partial succession occurs when a part of the territory of an international entity gains independence and becomes an international entity on its own. The case of Pakistan from India in 1947; Bangladesh from Pakistan in 1971; Eritrea from Ethiopia in 1993. Also, partial succession occurs when an international entity acquires from another international entity a part of the territory through cession, if a fully sovereign states loses part of its independence by becoming part of a federal state or when a not fully sovereign state becomes fully sovereign.The case of Haiti that became an independent state from a French colony in 1804; the cession of Louisiana by the USA through its purchase from France in 1803; the cession of St. Naum by Yugoslavia in 1925, are some of the examples of partial succession.

So, in international law the notion of succession of states is related to those rules of international law that regulate the legal consequences arising from the change of sovereigntyover a certain territory.

This institution of international law which in essence has the replacement of one state by another state and the transfer of the rights and obligations has gained a special importance after the Second World War and this as a result of the effects caused by the succession and the obligations that arise for the states in these cases. It is also possible that, as a result of the succession, the rights and obligations affect any other entity. To what degree the rights and obligations of the

[1] U, Nijazi (2011), *Glossary of Justice*, Ilari, Tirana. Pg. 709.

[2]Article 2, Paragraph b of the Vienna Convention on Succession of States of 1978.

successor state will be affected depends on the issues that are put up for discussion and which may vary from situation to situation.

As issues that can be raised when succession occurs are:

- Rights and obligations arising from treaties in the case of succession
- Succession and international organizations
- Succession and public debts
- Succession and citizenship
- Succession and public goods

1.1. Rights and obligations arising from treaties in the case of succession: According to the Vienna Convention on the Law of Treaties, a treaty means an international agreement in written form and governed by international law, which, regardless of its specific name is embodied in a single document or two or more documents related to each other.[3]Any treaty in force is binding upon the parties to it and must be performed by them in good faith.[4]Treaties can be divided into several categories: multilateral treaties, including the categories of special treaties dealing with the international protection of human rights, treaties dealing with territorial delimitation, bilateral treaties and treaties which are considered "political" under certain circumstances.[5]

The rules regarding the succession of treaties are the rules of customary law, as well as the rules of the Vienna Convention on Succession of States of 1978, which entered into force in 1996 and apply to cases of succession that occur after the entry into force of this Convention.[6]

The practice of international law teaches us that the practice is not similar in relation to obligations from treaties when succession occurs. Various cases indicate that sometimes the new state has not recognized as its own the treaties that were not concluded by it. Professor Gruda shows this through examples, Austria has not considered itself legally bound by the agreements on trade and extradition, concluded by the Austro-Hungarian monarchy; Germany acted in the same way after the Anschluss of Austria etc.[7]In some cases the provisions that emerge from them are also recognized by the new state, for example the Treaty of Berlin (1878) expressly kept in force the agreements on trade and navigation for Serbia, Montenegro and Bulgaria, concluded between European states and Turkey. After 1919, Yugoslavia has declared that it considers as its own the liabilities stipulated by trade agreements that Serbia has previously concluded etc.[8]

For reasons related to the preservation of international stability and security this approach is clearly supported by the practice of states. The concept of Latin America *uti possidetis juris*, by which the administrative parts of the former Spanish Empire would define the borders of the newly independent states in South America during the XIX century was the first internationally accepted point of view of this approach.[9]

When cession occurs, i.e. when a part of the territory of a state becomes part of the territory of another state, as a rule, the treaties of the state of which that territory was part of cease to apply and the treaties of the territory of the state of which that territory has become a part apply.

[3]Article 2 of the Vienna Convention on the Law of Treaties of 1969.

[4]Article 26, ibid.

[5]Sho, N.M (2008). *Меѓународно право.* Просветно Дело ад. Скопје (translation in Macedonian language). pg. 828-829.

[6]Ibid. Pg. 829.

[7]Gruda. Z. (2002), Public International Law, Pristina, Pg. 93.

[8]Gruda. Z. (2002), Public International Law, Pristina, Pg. 93.

[9]Sho, N.M (2008). *Меѓународно право.* Просветно Делоад. Скопје (translation in Macedonian language). pg..829.

In the event that an international entity is extinguished, an important issue that arises is whether the treaties concluded by the entity that has been extinguished will be transferred to the newly created entity or entities. In this regard, there are different opinions. According to one position, the new state cannot be considered bound by treaties which have not been concluded by it. Based on this, Austria has not considered itself legally bound by the trade and extradition agreements concluded by the Austro-Hungarian monarchy; Germany has acted in the same way after the Anschluss of Austria etc. Such a practice has not excluded other solutions. So, for example the Treaty of Berlin of 1878 expressly kept in force the agreements on trade and navigation for Serbia, Montenegro and Bulgaria, concluded between European states and Turkey. After 1919, Yugoslavia has declared that it considers as its own the liabilities stipulated by trade agreements that Serbia has previously concluded etc.[10]The practice also shows that treaties which are concluded by one state also extend to the territory that has annexed to the other state. Thus, for example during the annexation of Hawaii by the USA in 1898, the commercial treaties concluded by the USA and Belgium extended their action to the islands which were annexed by the USA. The same happened with the region of Alsace -Lorraine while this region was part of Germany, the treaties that were concluded Germany with other states applied in these areas, but after this region joined France with the Treaty of Versailles in 1919, in this region the treaties that were concluded by France with other states were extended to operate.

Even the Organic Statute of Albania11has kept in force the international treaties, conventions and agreements that the Ottoman Empire has concluded with other states. In the first chapter of this act is underlined: "international treaties, conventions and agreements of any nature concluded between the Porte and foreign powers remain in force in the Principality of Albania. The maintenance, modification or removal of immunities and privileges granted to foreigners under capitulations is left to a decision which the Great Powers may take."12

The practice of American states is oriented towards the recognition of treaties which have been previously concluded by an entity that has been replaced by another entity.

Unlike the American experience, the Soviet Union, after the Revolution has not recognized the treaties that has been concluded by former governments.

China, in 1949, has declared that it will study all the treaties and agreements concluded by the previous government and depending on the content will accept, cancel or conclude them anew.13

In principle, the rights and obligations arising from treaties of a political nature do not transfer to the new state. Boundary delimitation treaties remain in force regardless of territorial changes.

In terms of these issues, the solutions offered can be grouped into three groups, namely:

a). Treaties that are not passed on to descendants. These are political treaties.

b). Legal treaties are treaties that are concluded for the general good of all mankind and these treaties are passed on to descendants and remain in force as such.

c). Treaties related to the territory, such as: for international servitudes, river navigation, treaties for the leasing of military bases also remain in force.

[10]Gruda. Z. (2002), Public International Law, Pristina, Pg. 80

[11]The Organic Statute of Albania is an act drafted by the International Control Commission on April 10, 1914. This document is actually a Constitution in form and content. But, the members who drafted this act named it as the Organic Statute of Albania.

[12]Article 4 of the Organic Statute of Albania. See on: https://constitutions.albasio.eu/ëp-content/themes/costituzioni/vieëer.php?url=https://constitutions.albasio.eu/ëp-content/themes/costituzioni&file=https://constitutions.albasio.eu/ëp-content/uploads/costituzioni/STATUTI-ORGANIK-I-SHQIP%C3%8BRIS%C3%8B%201914.pdf

[13]Gruda. Z. (2002). Public International Law. Pristina. Pg. 95.

1.2. Succession and international organizations: In case of succession of states, problems are created for international organizations and for the respective states themselves. It is known that if an entity is extinguished and two or more new entities are created in its territory, then the membership of the extinguished entity in the international organizations of which the entity was a part before the separation is automatically terminated. Such a case was Czechoslovakia, where the Czech and Slovak authorities, by agreement between them, decided that from January 1, 1993 Czechoslovakia would be divided into two states, the Czech Republic and Slovakia, which meant that it would no longer continue to be a member state in the UN.

But, what happens if a part of the territory of one state secedes and gains political independence? In such a situation, the state does not lose its membership in the organizations of which it has been a part. Such a case is India after the secession of Pakistani in 1947. In this case, India continued to be a normal member of the UN, a similar case is the secession of Bangladesh from Pakistani in 1971. Pakistani continued to be a member of the UN.

In the case of dissolution of a state, the matter is more complicated. We say so because in such cases the states that are created from the dissolved state have different views on who will be the successor state. We had such a case after the disintegration of the former USSR. In this case the states which were created after the dissolution of the Soviet Federation, solved the issue of participation in international organizations through joining these organizations. Russia was the only state that did not fill out such a request, as a result of a compromise reached through an agreement between the member states of the former federation to recognize its status as the successor of the former USSR.

In the case of the former Yugoslavia, an attempt was made to follow the example of the former USSR, but the states that made up the Yugoslav Federation did not recognize Serbia and Montenegro as successor states.

In case of the merger of two states into one state, the new state created as a result of the merger is not required to rejoin the international organizations of which they were part before the merger. This was the case with the Federal Republic of Germany, after the reunification of the two German states in 1990.

1.3. Succession and public debts: Public debts are those debts which are taken by the government of a state for various interests of the state as a whole.

Public debts can be divided into national state debts, which are debts that the state has taken as a whole, debts which are owed by local self-governments and another form of debt is debts which local government units take from the central government for the realization of various projects.

Regarding local debts, the author of international law, Malcolm N. Shaw says: "*It is clear that local government debts are subject to the customary law of the predecessor state, since they are agreements entered into under the jurisdiction of the local authorities of that state, which are already transferred to the jurisdiction of the successor state, and the succession does not directly affect those debts. In general, they continue to be debts owed by the specific territory in questions."*[14]So as it can be seen, the debts of the local government units are closely related to the notion of territory and as such these are transferred to the new state if that territory is subject to succession.

In cases where several states merge into one state, as a rule, the successor state takes over the debts that the predecessor state previously had. This is the case with Germany after the

[14]Shaw, N.M (2008). *Меѓународно право.(translation in Macedonian language).* Просветно Дело ад. Скопје.Pg.848.

reunification. Article 23 of the Unification Treaty made it possible for the debt of the German Democratic Republic to be taken a special specialized fund to be managed by the German Minister of Finance.[15]

Also, the matter of public debts of the state being extinguished is not defined. During the XIX century the prevailing opinion was that debts should be passed on to the successors. In the XX century such a thing was denied. Even the solutions offered so far are not the same. The Treaty of Paris on the peace of September 3, 1783 between Great Britain and the American Colonies, by which Great Britain recognizes the United States of America in Article 4 provides for the payment of all debts by the United States of America.[16]The colonies that became independent in Latin America (1820-1825) have also voluntarily accepted the payment of part of Spain's public debt. The USA, after the American-Spanish war (1898), refused to assume responsibility for any part of the Spanish debt.

From the past, we can note that the issue of public debts has been resolved through special agreements. With the Treaty of Versailles it was decided that part of Germany's debts to be transferred to the states that have inherited parts of the territories of the German state. The Treaty of Saint Germain provided that each state that inherited parts of Austro-Hungary should receive part of the debts of this state. Even the Agreement on Succession Issues of SFRY of June 10, 1999, foresees that the five signatory republics are equal holders of the succession of SFRY. Kosovo is not mentioned anywhere in this agreement. It is worth noting that with the Martti Ahtisaari Package for the Kosovo Status Settlement is foreseen that the part of the debt of Kosovo to be determined through negotiations between Kosovo and the Republic of Serbia. According to Ahtisaari's Proposal, as long as the debt is not redistributed by agreement, Kosovo will compensate the Republic of Serbia for the certain part of its debt.[17]

1.4. Succession and citizenship: When territorial changes occur, a separate issue is the issue of the population that lives in those territories that have been the subject of succession. In these cases, the issue that must be discussed is the issue of citizenship. In such cases, usually the people who have their place of residence in that territory receive the citizenship of the successor.

Practice has taught us that not always these territorial changes have been welcomed by the population that has been affected the most by this issue. In order to reduce the various consequences that appear during the transfer of the territory, international law has foreseen the plebiscite and the right of option as mechanisms which can be put into operation in these circumstances. Contemporary International Law, as an opportunity to reduce the consequences that appear during the transfer of the territory also foresees the guarantee and protection of national minorities for the population that lives in the territory that has been attached to another state through the transfer.

A plebiscite is a general consultation of the people in which residents are allowed to express their will as to which state they wish to belong to.[18]

The plebiscite as an institution in international law is mentioned since the XV century, but it really started to be implemented since the French Bourgeois Revolution, when France included some territories in its territory, after consulting the population of those territories. The right of option is the possibility to allow the residents of a territory to choose the citizenship of the state

[15]Ibid. Pg.948.

[16]Article 4 of the Treaty of Paris 1783. For more, see on: https://ëëë.archives.gov/milestone-documents/treaty-of-paris

[17]For more see on: https://www.vetevendosje.org/wp-content/uploads/2019/01/ahtsaari_shqip1494294054.pdf. Comprehensive Proposal for the Kosovo Status Settlement (26 March 2007).

[18]Gruda. Z. (2002), Public International Law, Pristina, Pg. 83.

that made the cession and the successor within a period.[19]The right of option is contained in the agreement between France and Germany of 1871 and several treaties concluded by the states of the First and Second World Wars.

1.5. Succession and public goods: When succession occurs, as a rule, public goods are passed on to the successors. Thus, roads, railways, public buildings, archives, factories, if the succession is general, pass on to the successor state. In these cases, the successor state assumes both the various rights and obligations over all this state property. When the succession is partial, special agreements are concluded through which the division of these assets is determined.

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