



## UNDERSTANDING THE CONCEPT OF STATE SUCCESSION AND ITS LEGAL ISSUES

*By Adarsh Dubey  
From Jindal Global Law school*

### ABSTRACT

The concept of perpetuity is not attributable to political entities. As a result of which, State successions have become a common phenomenon. State succession refers to the branch of international law which deals with the consequences of change of sovereignty over a given territory. When there is a change in the political sovereignty over a given territory, a number of issues with respect to international or municipal law may arise. This paper aims to highlight those issues. The paper attempts to diagnose the role that the international law plays in resolving the aforesaid issues. The paper intends to elucidate the difficulties that might rise when state succession takes place, in the background of the two international conventions namely, The 1978 Vienna Convention on the Succession of States in Respect of Treaties and the 1983 Vienna Convention on the Succession of States in Respect of Property, Archives and Debts. Finally, the paper concludes that the concept of state succession has been and still continues to be a highly politicized issue, and it has been influenced by its interactions with the other fields of law.

### INTRODUCTION

State succession takes place when one state is definitively replaced by another state in respect of sovereignty over a given territory, and when such a replacement is in conformity with the international law.<sup>1</sup> Replacement of this kind occurs due to a number of reasons such as dismemberment of an existing state, secession of part of a state, cession or annexation of territory, merger of states and decolonization.<sup>2</sup> Succession occurs only in case of permanent displacement of sovereign power and not when there are temporary changes as a result of hostile occupation, agency, or exclusive possession of territory resulting from a treaty.<sup>3</sup>

When state succession takes place, one can see that a number of issues arises as a result of it. Some of these are as follows: Is the successor state bound by the treaties entered into by the predecessor state? Whether the inhabitants of the predecessor state automatically acquire the nationality of the successor state? Do the international claims involving the predecessor state such as predecessor's national debt etc, have any effect on the successor state or not? The intention behind using the phrase "State Succession" has always been to describe an "area", and the use of the same does not give rise to any presumption regarding the transmission or succession of legal rights

<sup>1</sup>James Crawford, Brownlie's Principles of Public International Law (Eighth Edition, Oxford University Press 2013) 423

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.



and duties in a particular case. State succession as a concept is quite uncertain and controversial. In order to rectify the above issues, efforts have been made by the ILC towards codification of laws relating to the practice of State Succession. As a result of this, two conventions were formed namely: The 1978 Vienna Convention on the Succession of States in Respect of Treaties and the 1983 Vienna Convention on the Succession of States in Respect of Property, Archives and Debts.<sup>4</sup> But unfortunately, the aforesaid treaties were victim of serious criticisms due to its departure from the well-established International Law. This is quite visible from the fact that the 1978 Convention came into force on 1996 and has 22 parties whereas, on the other hand, the 1983 Convention is still not in force.<sup>5</sup> However, in the last two decades, there have been instances where the parties involved in the territorial transformation have relied on the provisions proscribed in the abovementioned conventions to resolve various controversial questions. When new states are formed as result of multilateral peace treaties, it has been observed that the parties often try to regulate the succession problems as part of the territorial rearrangement. For e.g. The responsibility of the successor states of Austro-Hungarian monarchy with respect to its Public Debts was clearly provided in the Treaty of St. Germain.<sup>6</sup> Mostly, the subject matter of the agreements between the successor and predecessor states have been the devolution of treaty rights and obligations. One cannot deny that there is some sort of relationship between the form

of territorial change and the transmissibility of rights and obligations. According to the doctrine of “moving treaties boundaries”, the transfer of territory from one state to another is presumed not to affect the existing treaties.<sup>7</sup>

Also, one should not confuse the concept of state succession with that of state continuity. While the former deals with the replacement of a given territory from one state to another, the latter refers to cases the same state continues to exist.<sup>8</sup> State continuity reflects stability in legal relations, and in case a state continues to exist, then the question of succession does not arise for that particular state, that is, the question of state continuity precedes that of succession.<sup>9</sup>

The law relating to the succession of states is quite controversial and uncertain, but there are certain principles that have been recognized to have general application in most of the issues in this field. These are:

- I. There is not automatic succession to a treaty by a new state, if the subject matter of such a treaty is closely linked to the relations of the predecessor state with other parties.<sup>10</sup>
- II. After succession, the new state automatically succeeds to all the treaties and legal situations created by them in respect of matters such as status of territory, boundaries, navigation of rivers etc.<sup>11</sup>

<sup>7</sup> Ibid. at p.425

<sup>8</sup> Ibid. at p.427

<sup>9</sup> Ibid.

<sup>10</sup> Anthony Aust, Handbook of International Law (Second Edition, Cambridge University Press 2011) 365

<sup>11</sup> Ibid. at p. 366

<sup>4</sup> Ibid. at p.424

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.



- III. When a state has been acquired by another state, then mostly all the treaties entered into by the acquired state will either lapse or will require discussion regarding the fate of the same with the other party.<sup>12</sup> But when the principal of the “Moving Boundary” is applied, all the treaties of the absorbing state extends to the absorbed state, and the treaties entered into by the predecessor state ceases to exist.<sup>13</sup> However, if there is a true union of states such as Yemen, most existing treaties will continue to bind the successor state, and you can also see this approach under art.31 of the 1978 Convention.<sup>14</sup>
- IV. There is no automatic succession by the new state in respect of multilateral treaties. Many theorists have argued that those treaties which embody accepted principles of international law, are binding on the successor states by the virtue of the principle of acquired rights or vested rights of the inhabitants of the state.<sup>15</sup>
- V. There is no automatic succession by the new state in respect of bilateral treaties, except in matters of territorial treaties and suchlike as mentioned above.<sup>16</sup>

state, (b) the continuity of the legal arrangement, (c) Private property rights, and (d) issues of nationality.<sup>17</sup> It is presumed that the Municipal law of the predecessor state continues to be in force until changes are made by the new sovereign. This is also known as the principle of Vested or Acquired rights, which states that change of sovereignty does not affect the acquired or vested rights of a foreign national.<sup>18</sup> The Tribunals have also affirmed the aforesaid principle. But, at the same time, it also gives rise to a lot of confusion and questions, as the same serves as a basis to a variety of propositions. Some feel that the principle does not allow the private rights to get affected by the change of sovereign, while others see it as some kind of a limitation on the powers of the successor state in respect of the private rights of the aliens in addition to the established principles of international law, which regulates the treatment that is meted out to the aliens in cases not involving succession. The new sovereign is awarded the same sort of sovereignty that the transferor possessed before state succession which includes powers related to legislature, jurisdiction etc., and also the continuity of the old law depends on the consent of the new sovereign. Thus, the principle tries to promote the interests of the individuals by protecting their acquired rights from being affected to large extent due to change in sovereignty, and states that the alteration or termination of such rights must take place in conformity with the minimum standards of international law.

**STATE SUCCESSION AND ITS LEGAL ISSUES**

State succession gives rise to a number of issues with respect to the Municipal law. Some of them are: (a) the fate of the property belonging to the ceding or former

**(A) STATE PROPERTY**

<sup>12</sup> Ibid.  
<sup>13</sup> Ibid.  
<sup>14</sup> Ibid.  
<sup>15</sup> Ibid.  
<sup>16</sup> Ibid.

<sup>17</sup>Supra at note 1 at p.429  
<sup>18</sup>Ibid.



The accepted practice is that succession in matters relating to public property of the predecessor state, which is situated on the territory in question, is a principle of international customary law, and the same finds support from the jurisprudence of the Permanent Court of International Justice.<sup>19</sup>

Another way of looking at it would be to say that the principle gives rise to an assumption that the acquisition of the state property is inherent in the grant of territorial sovereignty and should be viewed as a natural consequence of such grant. This position has been affirmed by the 1983 Vienna Convention on the Succession of States in Respect of Property, Archives and Debts.<sup>20</sup> It has been observed that partition of state property among the successors may give rise to difficulties, which are mostly resolved by negotiations and bilateral agreements based on the principle of equity. There may be conflicts with respect to opinions regarding the form of change in sovereignty for the purposes of governing the succession of property, and in some cases regarding the very definition of the phrase "state property." For e.g. After the USSR's break up, there were questions regarding the division of nuclear forces and other military property, which required immediate attention, as there was significant deviation from both the principles of territoriality and equity.<sup>21</sup> But after a lot of negotiation and guarantee of compensation, they eventually reached to an agreement that Russia would continue to control all the nuclear weapons, whereas other members of the Commonwealth of Independent States, that is, Belarus, Kazakhstan and Ukraine, in

whose territories the nuclear weapons were situated, would agree to total nuclear disarmament.<sup>22</sup>

### (B) CLAIMS RELATING TO PUBLIC LAW AND PUBLIC DEBT

From the above discussion, it is clear that the successor state has the right to take up the fiscal claims belonging to the predecessor state with respect to the territory in question. There has been a lot of controversy regarding the fate of the public debt of the replaced state, and it must be noted that there's no well-established rule with respect to the same. However, theorists have believed that in cases involving annexation or dismemberment (as opposed to cession), the successor state is bound by the public debts of the extinct state.<sup>23</sup> But in practice, it has been observed that the municipal courts will enforce the debts belonging to the predecessor state against the successor state only after the latter has recognized the same, and such recognition can take the form of unqualified continuation of the legal arrangement under which the obligation arises. The 1983 Vienna Convention on the Succession of States in Respect of Property, Archives and Debts provides for the transfer of the public debts to the successor state with reduction to an equitable proportion, and the same is followed as the general norm in cases involving transfer of part of a state, dissolution of a state or succession (Art. 36, 37, 39 to 41).<sup>24</sup> However, the above principle has no application in cases where the successor state is a newly independent

<sup>19</sup>Ibid. at p. 430

<sup>20</sup>Ibid.

<sup>21</sup> Ibid. at p. 431

<sup>22</sup> Ibid.

<sup>23</sup>Ibid.

<sup>24</sup> Ibid. at p.432



state. In such cases, the public debt will not pass, unless there is an agreement regarding the same (Art. 38).<sup>25</sup> But the distinction between the successor state and a newly independent state has been a problematic one, especially with respect to its Categorical effects.

### (C) STATE CONTRACTS AND CONCESSIONS

Like in cases of all rights acquired by the predecessor under the municipal law, the rights arising out of state contracts and concessions are also subject to changes by the new sovereign. However, many theorists state the principle that the rights acquired by a concessionaire must be respected by the successor.<sup>26</sup> Also, there have been certain confusions regarding the selection of concessions which are going to be beneficiaries of the above principle, which may be related to other matters such as contracts of employment, pension rights etc.<sup>27</sup> It is necessary that the judiciary while upholding the principle that a mere change of sovereign does not cancel the concessions rights, do not propound the doctrine of acquired rights in manner that after the old sovereign has been replaced by a new one, all the rights of the aliens over the property acquired before such a change is maintained by the new sovereign.<sup>28</sup> In short, a territorial change of itself does not cancel or confer any special status on the private right, and they do not gain any immunity after the succession, but they will continue to be

subject to the international minimum standard of protection.<sup>29</sup>

### (D) NATIONALITY

State succession also creates problems with respect to the nationality of the inhabitants of the transferred territory. However, the law of succession has not been very helpful in resolving the same. Many came out in support of the view that the population should follow the change of sovereignty in matters of nationality, and it is not surprising to find works of authorities stating the same.<sup>30</sup> However, this view has received a lot of criticism, especially by Weis, who said that there is no such rule under international law which permits the national of the predecessor state to acquire the nationality of the successor state, and one cannot assume International Law to have such a direct effect.<sup>31</sup> So, according to Weis, the presumption that the state will confer their nationality to the former nationals of the predecessor state will hold true only if there is no statutory provisions of municipal law regarding the same.<sup>32</sup> But he failed to realize the fact that if the international law can create a presumption, then it can create a rule. There is also uncertainty regarding the fate of the nationality of those nationals of the predecessor state, who at the time of transfer, are residing outside the territory of the sovereignty of which changes. In such cases, the general rule has been that unless the nationals of the predecessor state possess a domicile in the transferred territory, they do not acquire the nationality of the

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid. at p.433

<sup>30</sup> Ibid.

<sup>31</sup> Ibid. at p.434

<sup>32</sup> Ibid. at p.435



successor state.<sup>33</sup> The intention behind having such a rule is that the person whose nationality is in question must have a substantial connection with the territory concerned either by citizenship or by residence in that given territory.<sup>34</sup>

One must remember that when the word “sovereignty” is used with respect to a state, it denotes certain responsibilities of a state towards its population.<sup>35</sup> So, a mere change of sovereignty does give the new sovereign the right to dispose of the population at its discretion.<sup>36</sup> It is presumed that the population follows the territory. The position is that the population has a local or territorial status, which remains unaffected whether there is a partial or universal successor, or whether there is a cession or a relinquishment by one state followed by disposition by an international authority.<sup>37</sup>

Also, in cases where the state claims continuity, the results are not very different than in cases of succession.<sup>38</sup>

## CONCLUSION

The recent state successions have highlighted the attempts that have been made to re-engage with the law of state succession in a different political and historical background. Most of these successions were based on consistent state practices that have been accumulated over the past two decades. Laws relating to state succession has always been a highly

politicized issue, and it has been influenced by its interactions with the other fields of law. But, despite all of this, one cannot rule out the possibility of discerning certain legal principles or rules. Many critics of the law of state succession have argued that the field of state succession is mostly dominated by the politically motivated agreements rather than generalized rules, and they believe that such successions mostly depend on the will of the new states, and recognition by other parties rather than the general rules of automaticity.<sup>39</sup> Nevertheless, such traditional critiques of law of state succession have continued to retain their

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid. at p.436

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup>Ibid. at p.444