State Succession

Since World War II, State succession has become increasingly important as it affects more States and more legal relationships than ever before. Approximately 100 new States emerged with the end of decolonization. Recently, Germany reunified, while the Soviet Union, Yugoslavia and Czechoslovakia dissolved.

These changes affected more legal relationships than the earlier decolonization process. These newly formed European States are more integrated into the political, economic and legal global framework and are of greater importance, than were the former dependent territories that became new States.

Moreover, there are legal issues involved when the political map changes and control over territory shifts from one State to another. Even if the international community unanimously recognizes a new State, there remain certain “succession” issues, or in other words issues over how property, rights and duties will be transferred from the predecessor State to successor States.

Definition of State Succession

- **“Succession of States”** means the replacement of one State by another in the responsibility for the IRs of territory; a “*predecessor*” State is the parent State from which the new State is formed via merger or absorption of one state by another state or states or territory transferred; and a “*successor*” State is the new State, the “child” of the predecessor (or the State that inherits territory)

- **<u>Kinds of State Succession</u>**

- Universal Succession
- Partial Succession

Universal Succession: If the legal identity of a community is completely destroyed there is said to be universal succession of states. Universal succession takes place when a state is completely absorbed by another, either through subjugation or through voluntary merger. Universal succession takes place under the following circumstances:

- When the territory of a state is forcibly annexed by other state.
- When a state voluntary merges into one or several states.
- When one state is divided into several states and several states are formed.

➢ **Partial Succession:** When as a result of civil war or war of liberation, a part of state breaks off and takes up an independent position. Partial succession takes place under the following circumstances:

- When a part of the state revolts and after achieving freedom becomes a separate international person.
- When a part of state is ceded to another state.

Theories of State Succession

1. Universal /Continuity Theory State Succession

Under the continuity theory, rights and duties may still pass to states that have lost extensive portions of their territories and/or have undergone radical changes in government as long as they are considered to have inherited the essential legal identity of the former member. In this regard, a distinction must be made between the concepts of continuity and state succession. In the former, the same state is deemed to continue to exist, while in the latter, one or more successor states are deemed to have replaced the former state.

- This approach is a derivative of the Roman law concept of inheritance in civil law, in which the hires (the appointed successors) acquire **not merely single res**, but an aggregate of rights and liabilities called a iuris universitas.

- **In short, the continuity theory *holds that the successor State should assume all the rights and obligations of the predecessor State.***

- ***Will the new State inherit the treaty obligations of its predecessor? Will the new State inherit membership in IOs? Will the new State inherit assets and debts of the predecessor? Will the new State be responsible for wrongs committed by the predecessor State?***

2. The Tabula rasa/ Clean Slate Theory

- clean-slate theory is an anti-thesis to the continuation theory of state succession. According to this theory succession of state never takes place, as rights and duties of a state disappeared with the extinguish of state or become modified, according to modifications of state underwent via losing parts of its sovereignty.

To put in simple, according to, “clean slate,” theory the successor State should assume none of the rights and obligations of the predecessor State. The successor State starts its life afresh with a “clean slate,” or in other words with none of the baggage from the predecessor State.

- The main argument of the clean slate doctrine is that treaties are generally burdensome restrictions to sovereignty and that a new State should be free to reconsider the predecessor state's treaties. The rationale being that a fundamental change of circumstances results in the formation of a new state and it is **not** the upholder of the obligations entered into by its predecessor as it is against the principle of state sovereignty.
- As noted before, even though IL in this area is hopelessly confusing, there are two international conventions on the law of state succession that have been adopted by ILC.

- The first, the Vienna Convention on Succession of States in Respect of Treaties, was completed in 1978. It has some seventeen members (including Ethiopia) and has entered into force for these members. The second, the Vienna Convention on Succession of States in Respect of State Property, Archives, and Debts, was completed in 1983.
- The ILC deals with SS under four categorical headings:
  1) Treaties: the Vienna CSS in Respect of Treaties (Vienna I)
  2) State property, State debt and State archives: the Vienna SS in Respect of State Property Archives and Debts (Vienna II);

  3) Membership to IOs: The ILC Rapporteur recommended a report to provide illustrations for resolving different categories of problems

The Rapporteur also failed to find any prospects for codification and recommended on ILC report or a UNGA draft declaration setting minimum standards for the automatic acquisition of nationality. These minimum standards would serve as guidelines for State legislation concerned with State succession.

In addition, there are certain general principles apply succession of state in respect of treaty:

- The application of a treaty ***should not*** be prejudicial the rights of these innocent parties to the treaty
- the principle of uti possidetis (keep what you had." By this is meant that former colonies, on gaining independence, will keep the borders established previously by the colonizing power. So the new State will be bound by colonial treaties

❖ The principle of pacta sunt servanda for instance the 1983 Vienna Convention to require that the successor states were bound by the debt of the predecessor state and to dictate or consent to an allocation of that debt.

State Territory and Borders

- The formation of a new State inevitably brings with it the query of where the new State's boundaries will be. And such query particularly in Africa addressed the principle of ***uti possidetis.***
- The principle of ***uti possidetis a latin word which refers keep what you had.*** It is a principle of customary international law that serves to preserve the boundaries of colonies emerging as States. Originally applied to establish the boundaries of decolonized territories in Latin America, ***uti possidetis*** has become a rule of wider application, notably in Africa. The policy behind the principle has been explained by the International Court of Justice in the Frontier Dispute (Burkina Faso/Mali) Case(read the resolution of ICJ)