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Succession of States in Respect of Treaties

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Abstract: Although the issue of regulating the succession of states was forcefully expressed especially after the Second World War, in terms of emergence of new states after the decolonization process, this institution has not lost its actuality, not even in the early 21st century. The transformations, which occur within the international society and affecting the sovereignty, generate legal consequences, regarding the succession of the successor state to the treaties of the predecessor state. We have analyzed in this paper the issue of succession of states to the international treaties related to the Vienna Convention on the Law of Treaties from 1969 and The Vienna Convention on Succession of States in respect of Treaties from 1978. To the traditional framework of solving situations of state succession to treaties we have added recent and concrete dimensions that states have chosen to use in this matter. For the elaboration of the paper we have used as research methods, the analysis on issues related to the mentioned problems referring to the doctrinal views expressed in treaties and scientific papers, documentary research, interpretation of legal norms in the matter.

Keywords: international law; sovereignty; Vienna Convention on the Law of Treaties; international legal order

1. Introduction

The succession of states issue remains a “*domain of great uncertainty and controversy*” (Brownlie, 1990, p. 655) and that is because the feature of its legal and political institution involves not only applying a set of rules of law in order to solve issues arising from the change occurred in the international society, but also taking into consideration the political dimension (Duculescu, 1982, p 13) of these international relations.

The succession of states can be viewed from three perspectives: the succession to treaties and to international organizations reflected by the relations established between the successor state and the other subjects of the international community; succession to property, archives, debts regarding the relations between state successor and predecessor State; succession referring to relations between the successor state and citizens. Only the first mentioned dimension of the state succession represents the subject of this paper, a complete analysis would require a larger space, being determined by the complexity of this issue.

The complexity of the succession of States issue for international public law is given by the fact it is needed to take into consideration not only “*two partners - the predecessor State and the successor State - as it was erroneously claimed by some authors in the specialized domain, but a considerable number of third party states engaged in an extensive network of international agreements.*” (Duculescu, 2002, p. 442)

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The constant changes¹ that took place in the life's community, such as changes in the structure of the states, the creation of new states on the territories of former colonies, social revolutions with implications in internal legal order of some states (Corlăţean, 2012, p.7) affect the legal relations between topics of international law, whose content consists of exercising the rights and fulfilling the assumed international obligations. All these changes affect the sovereignty² of a state over a particular territory. It is the role of the international law to regulate such situations in order to ensure the stability of the state. Within the UNO there were negotiated and adopted two multilateral treaties relating to solving situations arising from the succession of states: The Convention on Succession of States in respect of Treaties adopted in Vienna in 1978³, and the Convention on Succession of States in respect of State Property, Archives and Debts, adopted on Vienna in 1983.⁴

For the elaboration of the paper we have used as research methods the analysis on issues related to the mentioned problems referring to the doctrinal views expressed in treaties and scientific papers, documentary research and interpretation of legal norms in the matter.

2. The Definition of the Succession of States

The specialized literature has recorded numerous definitions of the concept of succession of States, this theme represents the subject of much debate and controversy, but also subject of ruling of the some conventions and treaties, being the cause of many misunderstandings and international disputes.

In international law, the term "succession of States" is used to name the set of rules of international law governing the legal consequences resulting from the change of sovereignty over a territory.

The succession of States in international law represents the substitution between the two countries on the same territory, as a result of the disappearance of a State as a subject of international law (the predecessor State) and its replacement by a new state (the successor state), or other mutations that a territory is likely to experience.

The name "succession of States" has its origin in the law (Ciuvăţ & Lupu, 2006, p. 170) and it was considered by some authors as being "wrong" (Starke, 1984, pp. 310-311), "inaccurate" (Rousseau, 1970, p. 166), but the International Law Commission used it as such in the two conventions adopted in Vienna in 1978 and 1983. Vienna Convention of 1978 (article 2, point 1, letter b) and the Vienna Convention of 1983 (article 2, point 1, letter a) define the succession of states in legal terms as "*by the expression succession of states we understand replacing a state in the place of another, in terms of responsibility for the international relations of a territory*".

The diplomatic dictionary (Alexie, Androne, Antal, & al., 1979, p. 829) states that the succession in international relations represents the transmission of rights and obligations of a state onto another state, which can intervene whenever changes occur in the structure of a state, in the meaning of changing the sovereignty over a territory.

¹ After the Second World War, due to the process of decolonization over 100 independent states have arisen; the events in the 90s of last century led for example to the reunification of Germany, or the dissolution of Yugoslavia or the former Soviet Union, which has generated much discussion in matters of succession; there are political, legal and not least doctrinal disputes also regarding Crimea joining Russia.

² The holder of the sovereignty is the state. It belongs to the state as a whole. The content of sovereignty has two aspects: external sovereignty, called independence or sovereignty of the state and internal sovereignty, also called sovereignty in state.

³ It came into force on 6 November 1996, after almost two decades since its adoption.

⁴ It has not yet entered into force; article 50 provides that "*the present Convention shall enter into force on the thirtieth day following the date of deposit of the fifteenth instrument of ratification or accession*".

The succession of state institution was created by analogy after the succession model of civil law, but ruled by the international law.

What determines the succession of a state is the change that occurs regarding the sovereignty exercised over a territory and determined by replacing a state with another, within the limits of that territory.

In terms of this replacement there is the issue of the position of the new state towards the pre-existing rights and obligations: they will be automatically transmitted to the successor state or the new state has the right to decide whether it takes or rejects some of them. The successor State, under its sovereignty, has the right to decide whether to maintain the legal relations of the predecessor State, to determine according to its interests and the framework established by its internal and external policy, the system of legal relationships with other subjects of international law taking, rejecting or confirming the international rights and obligations of the predecessor state.

3. The Succession of States to Treaties

3.1. International Treaty and the Law of Treaties

The International Treaty represents a legal instrument of particular importance within the international society, which by its normative function grants accurateness and stability in the international legal relations and it contributes to the development of interstate cooperation, in all areas of international life.

Vienna Convention on the Law of Treaties¹ of 1969 defines the treaty in article 2, paragraph 1, letter a) as “*an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.*”

In the Romanian specialized literature the treaty is considered as being: “*an agreement of will between two or more States or between other subjects of international law intended to produce legal effects and submitted to the rules of international law*” (Geamănu, 1983, p 63) or “*any consensual commitment made under the international law and it represents one of the means by which the international law subjects acquire rights and assume, to one another, obligations by which they bond in accordance with the international law*”. (Anghel, 1994, p. 3)

Charles Rousseau considered that we can call a treaty any “*agreement between the international community members which is intended to produce certain legal effects.*” (Rousseau, 1970, pp. 61 and the next)

The Law of Treaties contains all norms, principles, rules of substance and form ruling the conclusion, the application, the observance, interpretation, amendment and termination of treaties. A. Maresca (1971, p 82) noted, referring to the Law of Treaties, that the rules in this area deal with all phases of the existence of a treaty, from its emergence to its termination, and scope of implementing these rules extended to all categories of international treaties, whatever their name, object and nature. The Law of Treaties therefore comprises also the rules on the succession of States to international treaties.

¹ Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, *Treaty Series*, vol. 1155, p. 331.

3.2. The Succession of States to Treaties

The relationship between the law of treaties and the succession of states institution appears as evident if we consider that the succession can be either a cause for termination of applying a treaty, or a means by which the state becomes a party to such an international legal instrument. (Duculescu, 2000, p. 41)

The convention of coding the Law of Treaties of 1969 contains a single article on the cases of succession of States, article 73: “*the provisions of the present Convention shall not prejudice any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States*”. It is clear that the regulation was not intended at that time the regulation of treaties’ termination as a result of the succession of States to treaties, considering that there is no succession of states in this matter, arguing the idea of tabula rasa on the independent states and the right of peoples to self-determination on the states of the former colonies. But the Convention of 1969, nevertheless, was designed to solve this issue. Thus, article 26 establishes the principle of *pacta sunt servanda*, according to which “*every treaty in force is binding upon the parties to it...*”. This means that the successor state is third party compared to the parties to the treaty making it operable regarding the effects of the provisions of article 34¹ requiring the consent of the third State. Article 29 regulates the territorial application of the Treaties and it establishes the rule according to which “*unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory*”. If this territory undergoes changes, this has appropriate effects on the extent of the applicability scope of that treaty as well.

Following the activity of the International Law Commission of the United Nations and following the work of the Vienna Conference, in 1978 it was adopted the text of the 1978 Convention relating to the succession of States to treaties. The scope of this Convention is expressly stated in article 1: “*the present Convention applies to the effects of a succession of States in respect of treaties between States.*” The Convention rules only the succession between states, and not the one between the states and other subjects of international law, it regards only the treaties concluded in written form and, subject to the rules set out within an international organization; the treaties represent the constitutive act of an organization, and also the treaties adopted within such an organization.

The Regulations of the 1978 Convention have codified the practice of states and they established doctrinal views regarding the succession of states to treaties identifying two main situations:

- A) the succession in the situation of the newly emerged independent states after the decolonization process;
- B) the succession in the case of unification or separation of states.

The United Nations Organization has expressed a concern presented to support former colonial states on asserting their independence. In this regard, the UN General Assembly adopted on December 14, 1960 the document entitled “*Declaration on the Granting of Independence to Colonial Countries and Peoples*”² where it is stated the intention of taking immediate action “*in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely*

¹ “*A treaty does not create either obligations or rights for a third State without its consent.*”

² Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by General Assembly resolution 1514 (XV) of 14 December 1960, <http://www.un.org/en/decolonization/declaration.shtml>.

expressed will and desire, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom”.

The succession of independent states is established in Part III of the 1978 Convention, articles 16-30. These regulations are subject to a fundamental principle of international law, the right of every people to decide their own fate. Therefore, when acquiring independence all treaties mandating colonial dependence have ceased; and the situation of the other treaties was solved in States' practice, either by agreements between the new member and the former metropolis, or through unilateral declarations of the successor state. For example, the Treaty of Amity and Association between the Kingdom of Laos and the French Republic in 1953 stated that the French Republic acknowledged and declared the Kingdom of Laos as fully independent and sovereign state. Article 1 of this Agreement provides explicitly that the new State “*substitutes French Republic in all the rights and obligations resulting from the international treaties or private conventions contracted by the latter on behalf of the Kingdom of Laos or French Indochina prior to this Convention*” (apud Corlăţean, 2012, pp. 24-25). Regarding the unilateral declarations of the new independent states, they may include the consent of the successor states to continue the former metropolis agreements or their rejection, the new states stating that they do not consider themselves as related to any of the former metropolis agreements. There were also states such as Cameroon or Nigeria, which unilaterally declared that they consider themselves as related only to specific treaties. Convention of 1978 established two situations in article 8 and article 9 relating to *Agreements for the devolution of treaty obligations or rights from a predecessor State to a successor State*, respectively, *Unilateral declaration by a successor State regarding treaties of the predecessor State*.

It is important in terms of the succession of the new independent states the differentiation between the succession to bilateral treaties and the multilateral treaties. The participation to multilateral treaties in force at the date of the succession requires, as a rule, the transmission of a notification by the new state to the Depositary by which it is established the status of party to those treaties. Exceptions to this rule are cases where the treaty does not apply to the new state as the application would be incompatible with the object and purpose of the treaty, or the application requires to obtain by the new state the status of party to the treaty status of the agreement of all parties concerned (article 17). The participation to treaties that are no longer in force at the date of succession is regulated in article 18 of the Convention of 1978, to establish the status as contracting state to a multilateral treaty that is no longer current, if, on the date of the succession of States, the predecessor State was a contracting State regarding the territory which is the subject of the succession of States. Likewise it is solved also the situation of treaties signed by the predecessor State, subject to ratification, acceptance or approval (article 19).

Important aspects entail the succession to treaties regarding the reservations. The reservations to a treaty represent, according to the 1969 Vienna Convention on the law of treaties, Article 2 paragraph 1 letter d) a unilateral statement, whatever its content or its name, made by a State when signing or approving a treaty or accede to it, by which it expresses the intention to exclude or modify the legal effect of certain provisions of the Treaty on their application to that State. The reservation to treaty was the subject of another paper (Maftci, 2012), so we will not dwell upon issues related to the effects of reservations or substantive and procedural requirement that have to be met, and we will refer only to the possible actions that a successor State can take regarding the reservations formulated by the predecessor state. In connection to these aspects, the Convention of 1978 establishes that a successor

state is entitled to become a party to a multilateral treaty¹ only on the basis of a notification of succession, achieved under article 17 or 18 of the Convention.

From the interpretation of Article 20 of the 1978 Convention it results that there are three possibilities for action of the successor state in matters of succession to treaties on reservations: a) to become party to the treaty without maintaining the reservations or reservations formulated by the predecessor; b) maintain the reservations formulated by the predecessor State; c) issuing new reservations.

In the first case, the fact that the successor state may decide to become party to a treaty without maintaining the formulated reservation by the predecessor state does not contradict the general law of treaties. 1969 Vienna Convention on the Law of Treaties established in article 22 point 1 that if the treaty otherwise provides, a reservation may be withdrawn at any time without having the consent of the State which has accepted the reservation. Moreover, the successor state has the right to decide likewise by the notification of succession.

In the event that the successor state chooses to maintain the reservations formulated by the predecessor state, it may mention this explicitly in the notification of succession. Although such statement was not in the notification, it operates the assumption of the existence of the reservation maintenance, except in those reservations, which by their nature are applicable exclusively to the predecessor state (Anghel, 2000, p. 670).

The third situation puts the successor state in a position similar to that in which they decide to become a party to that Treaty by accession, during which it would be entitled to make reservations. The formulated reservation in the notification of succession must fulfill the requirements provided for in article 19-23 of the 1969 Vienna Convention.

The new independent state establishes a party to a multilateral treaty by a notification of succession. Article 22 of the Convention of 1978 establishes the requirement of the written form of this document and its signature by the president or head of government or by the Ministry of Foreign Affairs. These persons are considered as representing their State under which they hold functions (article 7, paragraph 2 of the 1969 Vienna Convention). In the situation where this condition is not met, the state representative who makes the communication must have full powers, i.e. a document emanating from the competent authority of a state in which a person or more are entitled to represent the state in order to bind that State by a treaty or to perform any other act regarding to the Treaty (article 2, paragraph 2, letter c) of the 1969 Vienna Convention). The new independent state must send the notification to the depositary, and where there is no depositary, it should be sent to the parties of the Treaty.

Regarding the succession to a bilateral treaty in force to the date of the succession regarding the territory to which the succession is related, article 24 of the Convention of 1978 states that the application of the principle of continuity were tacitly or expressly accepted, if from their behavior it results that they agreed as such, the regulations of this treaty will be considered in force from the date of succession, if from their agreement it does not show a different intention or otherwise determined.

The succession issue to the existent Conventional commitments exists in the case of the new states formed by the merger of two or more states, by the dismantling of a state in two or more states. The recorded events in the evolution of the international society highlighted by the actions of the states, which under their sovereignty and as subjects of international law have decided either their union (such as the unification of Germany), or the separation and the formation of new independent states (such as the collapse of the USSR or Yugoslavia), raises important issues concerning the applicability,

¹ The reserve to treaty may be made only in the cases of multilateral treaties.

the amendment or termination of international treaties previously concluded regarding the respective territories.

The practice of the states' association illustrates forms of a great diversity and each situation must be analyzed separately according to the legal status of the new formed entity. The doctrinaire solutions offered after examining the concrete analyzed situations regard:

- personal union, where the treaties in force for those States are not affected (McNair, 1961, p. 671);
- the real union, a situation that will lead to the extinction of all political treaties concluded before the creation of the union (Castrén, 1951, p. 441);
- the Confederation of states, involving the completing of only the treaties incompatible with the purpose of the confederation;
- Federal state; the constitution of the federal state will lead to the extinction of treaties concluded by Member States before their entry into the Federation.

The establishment of a unitary state by transforming the federal state will not affect previous treaties, except for the treaties regarding the federal structure. (Corlăţean, 2012, p. 45)

If the unitary state (Negrut, 2008, p. 11) consists of two or more distinct states, the new state entity is a new subject of international law again; as such it will not take and it will not answer for previous treaties concluded by the concerned States.

Creating and strengthening the European Union, the European integration process, which is “dynamic and unlimited” (Marchis, 2010, p 143), implies also the need for harmonization of Member States' conventional practice with the perspective of community construction, which involves correlating the concluded treaties independently of the Member States (before and after accession) with the imperatives of EU treaties.

Legal solutions offered by the Convention of 1978 on the effects of the states' unification on treaty express international practice tendencies and it is established, in articles 31-33, the principle of continuing the treaties, with certain exceptions.

Regarding the formation of the states as a result of the detachment of certain territories from the independent states and their establishment as independent states, the Vienna Convention of 1978 adopted the continuity principle of international commitments (articles 34-37) offers the following solutions: in the case where a part or some parts of the territory of a State is separated in order to form one or more States, whether the predecessor State continues to exist, any treaty in force at the time of the succession of the State on the entire territory of the predecessor State shall remain in force on each successor State so formed; any treaty in force at the time of the succession of State only on part of the territory of the predecessor State which has become the successor state remain in effect only regarding that successor State.

If after separating any part of the territory of a State, the predecessor State continues to exist, any treaty which at the date of the succession of States was in force, regarding the predecessor state, remains in effect upon the rest of the territory, unless the States concerned agree otherwise or it is determined that the treaty relates only to the territory that separated from the predecessor State; or resulting from the treaty or it is otherwise determined that the application of the Treaty on the predecessor State would be incompatible with the object and purpose of the treaty or it would radically change its operating conditions.

The Convention of 1978 covered the situation where a part of the territory of a state or when any territory for whose international relations a state is responsible, not being part of the territory of that state, it becomes part of the territory of another State. Since it is about a substitution of sovereignty, article 15 establishes that the treaties of the predecessor State ceases to be in force on the territory to which the succession of States relates from the date of the succession of states, extending the effects of the treaties of the successor state that are in force regarding the territory to which the succession of States relates, except the case in which from the treaty does not appear or is otherwise established or their application would be inconsistent with the object and purpose of those treaties.

4. Conclusions

The importance of succession of States in international law has resulted in the encoding of the rules referring to the institution of international law in the wording of the two conventions, The Vienna Convention on Succession of States in respect of Treaties from 1978 and the Conference on Succession of States in Respect of State Property, Archives, and Debts, adopted in Vienna in 1983. Both conventions are a synthesis of international practice and they represent the general international law in this matter. Only the 1978 Convention became operational, by its entry into force and the rules identified in this international legal instrument may be summarized as follows:

A) succession to international treaties of the new independent states arising from the liberation struggle of the colonial peoples are subject to the rule laid down by article 16 under which *a newly independent State is not obliged to maintain a treaty or to become party to a treaty only for the simple fact that at the time of the succession of State the treaties were in force regarding the territory to which that succession refers;*

B) succession in international treaties matter in the case of the union of two or more States; the general rule that applies is the continuity of the validity of international treaties of the predecessor states for the successor state, mentioning the case *where the states in question decide otherwise;*

C) succession in matters of international treaties in the case of a division into several states; the successor states take the treaties of the predecessor State, if they decide otherwise;

D) in the case of crossing a territorial area under the sovereignty of a state which is under the sovereignty of another state, it applies the rule of territorial validity to the territorial international treaties.

Citing a work by Jennings, Matthew Craven stated in a study that the succession of states is *“the subject is largely confused and resistant to simple exposition”* and *“the overriding impression is that the more that is written on the subject, the less clear or coherent the whole becomes.”* (Craven, 1998, p. 143)

But the rules of the Vienna Convention of 1978 and the Vienna Convention of 1983 are insufficient to ensure a balance in international society and to avoid conflicts. Recent events such as the incorporation of Crimea, part of the territory of Ukraine, to Russia generated reactions of the international actors who have described this situation as a violation of the international law.

We consider that the problem of the succession of State to treaties should be seen not only from the point of view of the parties to the treaty, but its analysis should be related to the international legal order, to the necessity of ensuring its stability and consistency, to ensuring the international security.

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