

STATE SUCCESSION TO INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS UNDER THE INTERNATIONAL PUBLIC LAW

*Nasty Marian VLĂDOIU**

PhD, Professor,
Faculty of Law, "Transilvania" University,
Braşov, Romania

Abstract:

Under the international public law there are three aspects of state succession namely, state succession in respect of treaties, succession in respect of matters other than treaties and successions in respect of membership of international organizations.

In this scientific approach we aim to address the topic of state succession to international organization, which unlike the other two aspects of state succession has been neglected although it is a matter of great interest considering the current situation where the power of international organizations in the world becomes increasingly bigger.

Keywords: *state succession, international public law, intergovernmental organizations, member of international organizations, successor state, continuing state, Convention on Succession of States in respect of Treaties, Convention on Succession of States in Respect of State Property, Archives and Debts.*

1. Diachronic considerations

Since ancient times we can talk about the existence of some state associations, organized as entities under a common goal, most of them having as basis of establishment the principle of equality between members as well as the freedom of adhesion (eg. Delian League from 5th century BC, who was a political and military association with permanent nature).

However, first international organizations were established having as common interest the communications on international rivers. Thus were formed the river commissions such as, the Central Commission for Navigation on the Rhine and the European Commission of the Danube, and only subsequently were created organizations in other areas such as services like the International Telecommunication Union (ITU); Universal Postal Union (U.P.U.); International Bureau of Weights and Measures etc.

* E-mail : vladoiu.nasty@gmail.com.

It is easy to notice that prior to the onset of World War I, the already established international organizations aimed mainly the technical-economic field, and that only later, in the period between the two world wars other type of organizations were born. Thereby was created the first political organization of universal jurisdiction, the League of Nations, and subsequently more others as, the International Labour Organisation (ILO), the Permanent Court of International Justice (PCJI) and the International Commission on Air Navigation(ICAN) were set up, organizations that were closely related and in collaboration with the League of Nations.

The end of World War II has brought remarkable changes in terms of international intergovernmental organizations, on June 26, 1945, in San Francisco, being adopted the United Nations Charter, which led to the establishment of the United Nations (UN).

2. Definition of international organizations and the constituent elements

A first definition of international organizations was proposed by the International Law Commission according to which, an international organization is "a collectivity of states established by the Treaty, endowed with a constitution and common organs, possessing its own legal personality distinct from that of Member States".

Although the definition was largely accepted by the doctrine, the Vienna Convention on the law of treaties from 1969, in Article 2, defines international organizations as "intergovernmental organizations", being preferred a more general formulation, with focus on the quality of participants in the organization, which must necessarily be states¹.

International organizations are the result of mutual agreement of the states establishing them, being classified under the public international law as secondary legal subjects².

But the mere agreement of the states will be not sufficient to qualify an organization as an international organization. Therefore, it shall be fulfilled several conditions:

- First, the states have to be members of that organization. Therefore, the international organization must be an association of states, primary legal subjects of international law. This element distinguishes the international intergovernmental organizations from governmental international organizations consisting of natural or legal persons of national law of the states on whose territory were created.

- Secondly, the states should join under a multilateral constitutive treaty, regardless of the name it has: Bylaws, Charter, Constitution, Pact etc.

¹ R.M. Beșteliu, *International Public Law*, Vol. I, All Beck Publishing House, Bucharest, 2005, p. 49.

² A. Năstase, B. Aurescu, *International Public Law. Synthesis*, 6th Edition, C.H. Beck Publishing House, Bucharest, 2011, p. 115.

- Thirdly, under the constitutive treaty, the organization shall have its own institutional structure carrying out specific activities for the fulfillment of the objectives and mission of the organization.

Given these three elements, we draw the conclusion that international organizations thus constituted will therefore have international legal personality, distinct from that of its members (the founding states). Since the organization is created by agreement of the states, it will acquire functional autonomy, which will turn it into a separate subject of international law³.

3. State succession to international organizations under the international legal order

3.1. The concept of succession in public international law

The institution of succession was taken from civil law, where we find it in the form of transfer of rights and obligations either after the death of an individual (assigning an inheritance) or after the termination of a legal person (by bankruptcy).

In international law, however, the term succession is used only in terms of its conventional meaning because it was not possible to arrive at a sum of rules, of principles able to regulate the transfer of sovereignty over a territory from one state to another⁴.

Therefore, we learn an initial idea, namely that, in international law the concept of succession has no counterpart in terms of private individuals or legal entities, but refers only to the transfer between states.

The topic of succession under public international law is an extremely complex one, being attempted to encode all succession situations.

In this regard, within the UN International Law Commission, were negotiated and adopted two multilateral treaties aiming to identify and regulate the general trends used in practice in terms of solving various situations of state succession. These are the *Convention on Succession of States in respect of Treaties* and *Convention on Succession of States in Respect of State Property, Archives and Debts*, both adopted in Vienna in 1978, respectively 1983. The latter though, so far, has not fulfilled the required number of ratifications to enter into force.

These conventions have the merit to establish the first definition of succession under the international law according to which, "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory".

The definition expressed coincide thus with what was stated also before in doctrine, by succession occurring a substitution of the exercise of sovereignty of a state with another, on a certain territory⁵.

³ A. Năstase, B. Aurescu, *op. cit.*, p. 115.

⁴ R.M. Beșteliu, *op. cit.*, p. 42.

⁵ *Idem*, p. 43.

3.2. The principles of state succession

Under the international law, when we refer to state succession, we take into consideration not only the actual transmission of rights and duties from one state to another but also the continuation of their existence "in the hands" of the other state.

In doctrine it has been even distinguished between the successor state and continuing state.

The first one will supersede the predecessor state, its succession to the treaties, assets and liabilities, being dependent on the enforcement of state succession rules, and its succession or participation in international organizations being subject to the admittance rules of any new member in the organization. The continuing state shall be considered to be the same as the predecessor state, despite some factual changes, assuming all the rights and obligations arising from international treaties signed by the predecessor state and continuing to participate as a member of the international organizations to which the predecessor state was party⁶.

It has been established that are principles of state succession under the international law, the following:

1) Replacing the international legal order – refers to the fact that regardless of how a territory changes, within that territory, the legal order of the predecessor state shall be replaced with the legal order of the successor state;

2) The principle of sovereignty – the successor state is not the continuator of predecessor state's sovereignty, each one having its own international legal personality;

3) The decisions are not compulsory – the successor state does not remain bound by previous decisions taken by the predecessor state in international legal relations where it was a party;

4) The successor state is not obliged to completely replace the international legal order established by the predecessor state. There may be an interest for the successor state in keeping certain elements of the old legal order, for example, maintaining certain international commitments;

5) While in case of merger and dismantling operates the continuity of treaties on the territory for which they were concluded or on the entire territory, in case of transfer, as a general rule, the treaties that have been concluded by the transferor state cease to have effect on the ceded territory, and only those concluded on the ceded territory shall remain valid. Also, as a general rule, political treaties disappear and the technical's are kept⁷.

3.3. Succession in international organizations

A particular application of the rule of state succession to treaties is the succession of states in international organizations.

⁶ A. Năstase, B. Aureescu, *op. cit.*, p. 92-93.

⁷ *Ibidem.*

The state continuity subject typically occurs in cases where an element of the state has undergone some significant changes (such as territorial transformation or conversion of form of government). A claim of continuity is essentially a request to continue its existence as a state, independently, in order to not disturb, despite these radical changes, the international legal order.

Although the use of the concepts "continuity" and "state succession", as well as the distinction between them have been criticized because they make a difficult problem become even more confused by masking various circumstances and also due to the complexity of the legal issues that arise in practice, it is however recognized, that in certain areas of international law, the distinction is fundamental and necessary. Whilst in the recent practice of states has been drew a line between continuity and succession, the distinction between these two concepts is more important in those cases where certain rights and obligations, as a rule, do not transfer from the predecessor state to the successor. For example, in traditional international law is clearly ruled that there is no succession in case of liability of states and membership to international organisations⁸.

Between membership and succession should be made, however, the following distinction: the membership is a corollary of the status of being party to a treaty by which it is established an international organization, when succession to the constituent treaty automatically imply obtaining membership in that organization. Thus, the succession to the constituent treaty, *prima facie* an issue of the legality of state succession to treaties, violates the rule of acquiring membership after having performed the normal procedures for admittance as member in an international organization.

Since international organizations can be classified in various ways, in terms of acquiring membership there should be also made two important distinctions.

First, a distinction should be made between the categories of members who may be "full members" and these have all the rights deriving from membership of the organization, or can be "associate members", in this case having only some limited rights.

Typically, except few particular cases, in most international organizations, full membership is attributed solely to sovereign and independent states (eg. UN, IAEA, IFAD, ILO, IMO, UNESCO, WIPO etc.), to nations (eg. FAO) or countries (eg. IMF, IBRD, IFC, Berne Union), while independent territories, since they are not responsible for their conduct in international relations may become only associate members⁹.

Secondly, in many constituent instruments of international organizations, a distinction is made between the rules for acquiring membership. It is distinguished between founding members, initial or original.

⁸ K.G. Buhler, *State Succession and Membership in International Organizations: Legal Theories versus Political Pragmatism*, Kluwer Law International, Hague, 2001, p. 7- 8.

⁹ K.G. Buhler, *op. cit.*, p. 19-20.

To get to know if a successor state has the right to participate in the international organization to which the predecessor state was a party, we should first understand the process of acquiring membership in an international organization.

In most international organizations acquiring membership for others than original members it is done following a formal process of admission. It can be a dual process or a bilateral act, which requires a formal application or a statement of acceptance from the state concerned, as well as a decision of admittance from the competent organ of the organization.

An eloquent example of the requirement of following a formal process for membership we can find stated in Article 4 of the UN Charter according to which:

„1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.”

In general, however, many of the instruments of incorporation of international organizations (eg, FAO, ITU, UNESCO, ILO, IMO, Council of Europe) provide a bilateral procedure for admission of new members, that requires an approval, an invitation, a formal request and an acceptance or accession obtained from a qualified majority of the member states in the organization.

On the other hand, there are international organizations such as the World Bank Group (IBRD, IFC, IDA) providing certain rules of exception. In these cases, although admission of new members is subject to approval by states parties, the competent organs have also the flexibility in admittance of new members.

In case of succession to international organisations, we are talking about a successor state which, in order to gain membership in the organization to which the predecessor state was a member, must express its desire to become part in the organization's founding treaty and then follow the procedures for admission of any new member.

Therefore, we can assert that in case of succession to international organizations, the general rule is that the successor state is not the continuator of predecessor state in terms of membership in the international organization, and must satisfy by its own account the necessary conditions to become in turn member in that organization.

However, over time, there have been cases in which the general rule has not been applied. Such are the cases of Russia and Yugoslavia.

The dissolution of the Soviet Union led to a profound political change in Central and Eastern Europe around 1990. This transformation has raised legal issues relating to the disappearance of the state, the continuity of the state and the succession of the state.

In this context, one of the constituent republics of the Soviet Union, Russia, was declared continuator of USSR on the grounds that it comprises 51% of the population USSR had and 77% of its territory. As a consequence, Russia has agreed to be the continuator of the USSR as a permanent member of the UN Security Council. Moreover, it could not be otherwise, because "if it would not be accepted Russia's identity with that of the former USSR it should have been probably revised the UN Charter, since it would have been difficult to set up a succession right regarding the permanent membership in the Security Council"¹⁰.

On the other hand, other constituent states of the former Soviet Union, known as the "the Baltic states" had a different destiny.

In his book¹¹, Malksoo asserted that the Baltic example illustrates the dilemma between the legal fiction of continuity and the practical reality where the Soviet Union occupied and completely managed the Baltic States. He observed, however, that despite the fact that the Baltic States are recognized as continuators of the pre-attached international legal personality, the continuity of legal personality does not lead to the continuity of all important legal rights and obligations. Determination of rights and relations was made more on the basis of political factors and not by law enforcement¹².

Thus, an important principle of modern states of Estonia, Latvia and Lithuania is that their incorporation in the Soviet Union from 1940 to 1991 represents *de facto* an illegal occupation. In 1991, when each Baltic country regained its independence these three countries demanded recognition of continuity based on their status before 1940. Many other countries have embraced the same view and were disregarded as not being successor states of the USSR. Starting from these reasons, the Baltic States were able to restore their diplomatic relations with various countries, to reaffirm the treaties before 1940 that were still into force, and to resume membership in many international organizations¹³.

As we already stated, the Yugoslavia example is another exception from the rule. After separation of the constituent states of the Socialist Federal Republic of Yugoslavia in 1991 and 1992, the former state, renamed the Federal Republic of Yugoslavia, claimed to be continuator of Yugoslavia, despite the objections raised by the new, now independent, republics. Therefore, representatives from Belgrade continued to hold the seat of former Yugoslavia in the United Nations, although the United States refused to recognize them this status.

As a consequence, since the remaining territory was less than half the population and territory of the former federation, on 19 September 1992 the Security Council (Resolution 777), and on 22 September the General Assembly,

¹⁰ R.M. Beșteliu, *op. cit.*, p. 45.

¹¹ A se vedea L. Malksoo, *Illegal Annexations and State Continuity: The Case of the Incorporation of the Baltic States by USSR*, Leiden, Boston: Martinus Nijhoff, 2003.

¹² *Ibidem*.

¹³ K.G. Buhler, *op. cit.*, p. 177.

decided to refuse permission to the new federation to occupy a seat under the name "Yugoslavia" in the General Assembly, arguing that the Socialist Federal Republic of Yugoslavia was dissolved.

The Federal Republic of Yugoslavia (later renamed Serbia and Montenegro) was admitted as a new member of the United Nations in 2000, upon request of the new Yugoslav president and after going through the usual procedure of new member's admission.

In 2006, Montenegro declared its independence, so Serbia continued to hold the chair of the federation.

4. Conclusions

The International Law Commission (ILC) expressed its opinion on state succession topic and divided it in three main areas: a) state succession in respect of treaties; b) succession in respect of rights and duties resulting from other sources than treaties (revised in 1968 to read "succession of states in respect of matters other than treaties"); c) succession in respect of membership of international organizations.

Whilst the first two were assiduously discussed, which led ultimately to the adoption of the two conventions mentioned, the 1978 Vienna Convention Succession of States in respect of Treaties and the 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, the third aspect, regarding the succession in respect of membership of international organizations has been completely neglected and was not assigned to a Special Rapporteur.

The same approach we found also under the Committee on Aspects of the Law of State Succession of the International Law Association (ILA), where the topic of succession in respect of membership of international organizations is only mentioned in a preliminary report submitted in 1996 to the Helsinki Conference.

However, what is important in our present endeavour, in order to understand the complexity of state succession, is to remember that under the Public International Law, the term "succession" has a different meaning than in civil law, an official definition of "state succession" being expressed in Article 2 (1)(b) of the Vienna Convention of 1978, according to which, "succession of States means the replacement of one State by another in the responsibility for the international relations of territory".

This definition however, takes into account the territorial aspect of state succession, the constituent nature of international organizations making membership a personal right.

Throughout time, several countries have experienced significant changes in their state. Whether the status was amended by extending the territory as a result of winning state independence, whether a sovereign and independent state

suffered a "capitis deminutio" at the international level, despite the loss of status or its extension, the continuator state remains subject of the internationally taken rights and obligations¹⁴.

Concluding the above, in respect of state succession to international intergovernmental organization topic, the general rule is that a successor state must show willingness to be member in the international organization concerned and also, must go through the new member's admission procedures, the state cannot be automatically considered as continuator of the predecessor state and, moreover, party in the organization. Although, as we have seen, in practice there have been exceptions to the rule, participation in international organizations of the new state will not be achieved without respecting the specified international legal order.

References

- [1] R.M. Beșteliu, *International Public Law*, Vol. I, All Beck Publishing House, Bucharest, 2005;
- [2] K.G. Buhler, *State Succession and Membership in International Organizations: Legal Theories versus Political Pragmatism*, Kluwer Law International, Hague, 2001;
- [3] B. Selejan-Guțan, L.M. Crăciunean, *International Public Law*, 2nd Edition, Hamangiu Publishing House, 2014;
- [4] Malksoo, *Illegal Annexations and State Continuity: The Case of the Incorporation of the Baltic States by USSR*, Leiden, Boston: Martinus Nijhoff, 2003
- [5] A. Năstase, B. Aurescu, *International Public Law. Synthesis*, 6th Edition, C.H. Beck Publishing House, Bucharest, 2011;
- [6] R.A. Wessel, *Dissolution and succession: The transmigration of the soul of international organizations*, Twente University.

¹⁴ K.G. Buhler, *op. cit.*, p. 7.