

## **RESOLUTION No 3/2008**

### **ASPECTS OF THE LAW ON STATE SUCCESSION**

The 73rd Conference of the International Law Association, held in Rio de Janeiro, Brazil, 17-21 August, 2008:

**NOTES** the conclusions of the Committee on Aspects of the Law on State Succession arrived at in its final report reflecting the position of the Committee on the current status of the aspects of the law of state succession examined by it and which are annexed hereto.

## ANNEX

### CONCLUSIONS OF THE ILA COMMITTEE ON ASPECTS OF THE LAW OF STATE SUCCESSION

#### V. 1. Basic definitions

1. There is a general acceptance of the definition of State succession adopted by the Vienna Conventions of 1978 and 1983.
2. The classification of the different types of State succession adopted by those Conventions does not fully correspond with international practice. In particular, the distinctions between secession and dissolution and that between uniting of States and incorporation have not been drawn, leading to the proposition of the application of the same rules to both couples of situations, in contrast to what happened in recent times.
3. Recent international practice has shown the difficulties of adopting clear-cut criteria for the distinction between secession and dissolution of States, in cases in which there is no agreement amongst the directly concerned States. The existence or not of a continuator State is the key issue at stake. Changes in the structure, name, form of government, territory and population of the State usually does not imply a change of the international personality of the State concerned. Recognition can have a certain bearing but it is not a decisive factor either. Every State evaluates the position towards a new State/new government according to its own political considerations, using an instrument of recognition. Neither the secessionist States nor the international community can impose the dissolution of an existing State. The matter can only be solved through an objective analysis in the light of all the circumstances present on the ground.

#### VI. 2. Succession in treaties

4. As with regard to treaties, recent practice shows that in case of continuity to the legal personality, the State prefers to make a general declaration of continuity, although this is not a condition for the maintenance of the existing conventional links. This practice reflects the need of legal certainty by affirming the existence of a situation of continuity on the one hand, and by the clarification of the consequences thereof.
5. Recent State practice shows different approaches of the successor States with regard to treaties in cases of secession and dissolution. Although in their vast majority, successor States considered themselves as successor to the multilateral treaties, some of them adopted the clean slate rule, rendering that succession merely optional. Yet other States decided to accede to some multilateral treaties to which the predecessor State was a party. In principle, Article 34 of the 1978 Vienna Convention was referred to by most of the successor States, whereas for some others that Article does not reflect customary law.
6. The UN Secretary-General has requested to every successor State –no matter the type of State succession concerned- to produce specific declarations of succession to each multilateral treaty to which the UN is the depositary. This practice is also being followed by other depositaries, either States or international organizations. Remarkably, this practice corresponds to that set up by Article 22 to the 1978 Vienna Convention, only related to newly independent States. According to UN practice, the successor State must satisfy the conditions provided for by the treaty for becoming party to it.
7. In the case of incorporation of a State to another existing one, international practice departs from the partial spatial succession established by Article 31 of the 1978 Vienna Convention. Succession to the treaties concluded by the predecessor States seems to be the general rule in case of unification, whereas in the case of incorporation the trend is the termination of the treaties to which the predecessor State was a party, unless otherwise decided by the successor State or agreed between the parties.

8. With regard to bilateral treaties concluded by the predecessor State, practice shows that the fate of these treaties is generally decided through negotiation between the successor State and the other party, no matter the category of State succession involved. The *rebus sic stantibus* rule is sometimes invoked as a way to obtain the renegotiation of the treaty.
9. Case law and practice show that the rule of Article 11 related to succession to boundaries established by a treaty is largely followed. The same can be stated in relation with the rule upon other territorial regimes set up by Article 12 of the same Convention. The general rule of succession is particularly followed in relation to the successor State whose territory is directly concerned by the relevant territorial regime.
10. Succession with regard to disarmament treaties is governed by the object and purpose thereof. In some cases, this has led to the application of the non-succession rule to the successor States.
11. Treaties related to the protection of human rights are generally perceived by the doctrine as governed by the succession rule. However, international practice is not homogeneous. Some successor States opted to accede to those treaties. It seems that no specific rule has emerged thereon. Hence, general rules on State succession with regard to treaties remain applicable.
12. Treaties constituting international organizations are governed by what they establish in relation to membership. With the exception of the uniting of States and incorporation of existing member States, international practice shows a general application of the non-succession rule, although some particular international organizations— in particular those having a financial character— adopted the succession rule. Article 4 of the 1978 Vienna Convention proceeds to a conciliation of interests leading in practice to the exclusion of succession, unless explicitly admitted by the treaties constituting international organizations themselves.
13. Treaties adopted within international organizations follow the general rules related to succession, with the exception of those treaties which require membership as a condition to be parties to them. In the latter case, no automatic succession is permitted.

### **V. 3. Succession in property, debts and archives**

14. The 1983 Vienna Convention on Succession of States in respect of State property, archives and debts have generally adopted subsidiary rules, privileging agreement amongst the concerned States. The only exception is the applicable rules regarding the newly independent States, stating that agreements cannot overrule the principle of permanent sovereignty over natural resources. The favorable treatment accorded to these States led to the rejection of the 1983 Vienna Convention by many States.
15. According to the 1983 Vienna Convention, the transfer of immovable property to the successor State located in its territory is applicable in all types of State succession. If the predecessor State continues to exist, unless otherwise decided based on equitable considerations, there is no compensation. International practice follows these criteria.
16. In the cases of transfer, separation of part of the territory of a State or dissolution of it, the successor State acquires the part of the movable property connected with the predecessor's activities in the territory to which the State succession relates. Recent practice provides examples of different kind of agreements adopting particular solutions, not always going in the direction dictated by the 1983 Vienna Convention.
17. In the case of the uniting of States, the successor State acquires the whole property of the predecessor States. This logical solution embodied in Article 16 of the 1983 Vienna Convention does not raise any problem and is equally applicable to the cases of incorporation.
18. According to Article 15 of the 1983 Vienna Convention, newly independent States should receive not only the whole property of the former colonial power situated in the territory of the new State, but also that located abroad but having belonged to that territory and having become property of the predecessor State. If international practice corresponds to that foreseen for the former, it is not consistent with regard to the latter.
19. The provisions of the 1983 Vienna Convention adopting equitable principles for the sharing and distribution of property— including property abroad and debts— logically corresponded with the needs and have been followed, by agreements between the parties concerned.

20. Given their functional importance, archives deserve a specific treatment. Unless otherwise agreed, in cases of transfer, separation of part of the territory and dissolution, the successor State/s will receive the part of the archives necessary for the efficient administration of the territory concerned, as well as the archives related to the territory and at least copy of the best evidence of the title to the territory. Access to other archives should be ensured to the States involved, but the unity of historical archives should be maintained. According to the 1983 Vienna Convention, newly independent States are also entitled to obtain archives having belonged to their territories and having become property of the predecessor State during the period of dependence. It also contains limitations to the scope of agreement involving those States. These clauses are considered to be too favorable to the newly independent States. The cases of incorporation and of uniting of States are not controversial since they logically imply that the successor State acquires the archives of its predecessor/s.
21. With regard to debts, the main criteria established by the 1983 Vienna Convention are generally followed, i.e. the preeminence of agreement and equitable distribution. The exception is again the case of the newly independent States, for which non-succession is the general rule, unless otherwise agreed with regard to localized debts and providing that the agreement does not contradict the principle of permanent sovereignty over the people's wealth and their natural resources. The general principles of agreement and equitable share have been largely – although not universally - followed by recent practice. Practice related to newly independent States is not conclusive.