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Self-Determination and Secession Under International Law

- **Self-determination** and **secession** pose major challenges for international lawyers-the former for its ambiguity and difficulties of operationalization and the latter for the uncertainty of its status, since it is neither permitted nor prohibited under international law.
- The concept of self-determination is virtually as old as the concept of statehood itself. Since its inception self-determination has undergone dramatic alterations in many aspects, from a concept initially conservatively applied to issues such as **decolonization**, to a justification for the **break-up of multi-ethnic states**.
- Self-determination refers to "**the right claimed by a 'people'** to control their destiny." This is despite the fact that such a people have not yet achieved "statehood" under international law.
- The **United Nations General Assembly Resolution 1514 (1960)** states that;- All peoples have the right to self-determination; by virtue of that right they may freely determine their **political status and freely pursue their economic, social and cultural development**.

Criteria for the right to self-determination

A. The internal aspect implies the right of the people of a **state already recognized by international law** to determine their own form of government or the pursuit of a people's political, economic and social development within the framework of an existing state.

B. The external aspect concerns itself with the right of a people to determine their **nationality and statehood**.

C. integrated with another state after having freely expressed its will to do so.

The **theory of self-determination**, as justifying the secession of a people from its existing mother state as a matter of last resort only, in situations where the people is **oppressed** or where the mother state's government does not legitimately represent **the people's interests**, has remained constant throughout the 20th century development of international law.

N.B

The law of state succession is still developing and there is also scarcity of international customary norms

- The international aspects of succession are governed through the rules of customary international law. **There are two relevant Conventions.**

- The Vienna Convention on Succession of States in Respect of Treaties, 1978, which entered into force in 1996. **Signatories 19. Parties : 23 as of 2023.**

- The Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 1983, which is not yet in force. **Signatories : 7. Parties : 7 as of 2023. Condition:15 ratifications**

- However, many of the provisions contained in these Conventions reflect existing international law.

“PEOPLE” DEFINED

Many in the international community agree that defining the term “people” for the purposes of self-determination is a difficult task. **No international treaty has ever defined the term,** although most in the international community agree that “people” as linked to the idea of self-determination connotes that **a group with a common identity and a link to a specific territory should be entitled to decide its political fate in a democratic fashion.**

Scholars have elaborated that the criteria for **peoplehood involve a subjective and an objective element.**

The subjective element consists of a commonly held belief, by all members of a group, that they constitute a unit and that they share a common history, language, culture, heritage, and political aspirations. The objective elements examine whether members of a particular group share commonalities, such as those mentioned previously (language, culture, ethnicity, political will).

Moreover, most agree that peoples are different from minorities—the right to self-determination attaches to the former but not the latter. Minorities have been defined as follows:

- a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, religion or language.

- It should be noted that In **Africa**, where decolonization obviously was a paramount concern for decades, it is the principle of territorial integrity that has been supreme in practice.
- In 1964, at the second Assembly of Heads of State and Government, the Organization of African Unity (with the notable exception of Somalia, which had irredentist claims against Ethiopia) decided to accept the existing colonial frontiers as definitive.
- The first international legal case to be heard regarding self-determination was the *Aaland Islands case of 1920*. The Aaland Islands were a small island nation situated between Finland and Sweden, belonging to the former and seeking to reunite with the latter. The Aalanders claimed that they were ethnically Swedish, and that they wished to break off from Finland and to become a part of Sweden. In an **advisory opinion, the second Commission of Rapporteurs operating within the auspices of the League of Nations** held, first, that this issue was properly of international, not domestic jurisdiction, and second, that the Aalanders had a right to a cultural autonomy, which had to be exercised within Finland. Only if Finland disrespected their ethnic and cultural autonomy would the Aalanders' right to separate from Finland be triggered.

- The Commission also suggested that secession could be available as a “last resort when the State lacks either the will or the power to enact and apply just and effective guarantees” for minority group rights.

State succession

State succession can be defined as “*The replacement of one state by another in the responsibility for the international relation of territory*” **Article 2(1)(b) of the Vienna convention on Succession of States in Respect of Treaties, 1978 .**

The parent state is called the **predecessor** state the new state formed out of it is called **successor** state.

- How?

Dismemberment of Existing State

- Soveiet Union to Russian Federation
- Yugoslavia into Croatia, Kosovo, Serbia, Slovenia, Bosnia Montenegro among others

Secession- Withdrawing from a Territory

Southern Sudan from Sudan

Belgium)1830) from Netherland

Bangladesh from Pakistan

Union of existing States

- Yemen Arab Republic and People's Democratic Republic of Yemen merged and became the Republic of Yemen
- German Democratic Republic (GDR) and Federal Republic of Germany (FRG) Merged and remained the FRG (Continuation)

Annexation of territory

- Crimean Peninsula

Decolonization

Southern Sudan became a totally new state (clean Slate).

- **Universal succession/ Popular continuity theory:** Both this theory are identical to one another. This is the oldest form of succession theory given by Grotius.
- According to this theory, the right and duties of the predecessor state transfer automatically to the succession state without any obstruction and alteration.
- This issue had came up with regard to events concerning the **Soviet Union and Yugoslavia**. In the former case, upon the demise of the USSR, the Russian Federation took the position that it was the continuation of that state. This was asserted particularly with regard to membership of the UN. it is clear that Russia's claim to be the continuation of the USSR (albeit within different borders of course) was supported by the other former Republics and was accepted by international practice.

- In contrast to this situation, the issue of Yugoslavia has been more complicated and tragic. The collapse of the **Socialist Federal Republic of Yugoslavia (the SFRY)**. The process was regarded as having been completed in the view of the **Arbitration Commission on Yugoslavia by the time of its Opinion No. 8 issued on 4 July 1992**. The Commission noted that a referendum had been held in **Bosnia and Herzegovina** in February and March 1992 producing a majority in favour of independence, while **Serbia and Montenegro** had established ‘a new state, the “Federal Republic of Yugoslavia”’ on 27 April 1992.
- The Commission noted that the common federal bodies of the SFRY had ceased to function, while **Slovenia, Croatia and Bosnia** had been recognized by the member states of the European Community and other states and had been admitted to membership of the UN. The conclusion was that the former SFRY had ceased to exist.

- Nevertheless, the Federal Republic of Yugoslavia (Serbia and Montenegro) continued to maintain that it constituted not a new state, but the continuation of the former SFRY. This claim was opposed by the other former republics of the SFRY and by the international community.
- The Security Council, for example, in resolution 777 (1992) declared that ‘the state formerly known as the Socialist Federal Republic of Yugoslavia has **ceased to exist**’ and that ‘the Federal Republic of Yugoslavia (Serbia and Montenegro) **cannot continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations**’. However, the Yugoslav position changed in 2000 and it requested admission to the UN as a new member.

- **Succession to treaties**

Categories of treaties: territorial, political and other treaties

Treaties may for succession purposes be generally divided into the following;-
The first relates to **territorially grounded treaties**, under which rights or obligations are imposed directly upon identifiable territorial units. The prime example of these are agreements relating to territorial definition.

Waldock, in his first Report on Succession of States and Governments in Respect of Treaties in 1968, declared that ‘the weight both of opinion and practice seems clearly to be in favor of the view that **boundaries established by treaties remain untouched by the mere fact of a succession**. The opinion of jurists seems, indeed, to be unanimous on the point . . . [and] State practice in favour of the continuance in force of boundaries established by treaty appears to be such as to justify the conclusion that a general rule of international law exists to that effect. (see, **other special rapporteur twentieth, twenty-second, twenty-fourth and twenty-sixth sessions, in 1968, 1970, 1972 and 1974, respectively**).

- For reasons relating to the maintenance of international stability, this approach has been clearly supported by state practice. The concept of *uti possidetis juris*, explicitly laid down in **Resolution 16 of the meeting of Heads of State and Government of the Organization of African Unity in 1964**, by which all member states pledged themselves to respect colonial borders as well as Latin American respected this doctrine.
- The International Court dealt with succession to boundary treaties generally in the **Libya/Chad case, ICJ Reports, 1994, pp. 6, 37; 100 ILR, pp. 1, 36**, where it was declared that ‘once agreed, the boundary stands, for any other approach would vitiate the fundamental principle of the stability of boundaries, the importance of which has been repeatedly emphasized by the Court’.

- **Political or ‘personal’ treaties** establish rights or obligations deemed to be particularly linked to the regime in power in the territory in question and to its political orientation. Examples of such treaties would include treaties of alliance or friendship or neutrality. Such treaties do not bind successor states for they are seen as exceptionally closely tied to the nature of the state which has ceased to exist.
- However, it is not at all clear what the outer limits are to the concept of political treaties and difficulties over definitional problems do exist. Apart from the categories of territorial and political treaties, where succession rules in general are clear, other treaties cannot be so easily defined or categorized for succession purposes and must be analyzed separately.

- **Newly independent states**
- **Article 16 of the Vienna Convention on Succession of States in Respect of Treaties is an international treaty opened for signature in 1978 laid down the general rule that such states were not bound to maintain in force or to become a party to any treaty by reason **only of the fact that the treaty had been in force regarding the territory in question at the date of succession.****
- **A number of colonial powers, particularly the United Kingdom, adopted the practice of concluding devolution agreements by which certain treaties signed on behalf of the **territory becoming independent continued to apply to the newly independent state.** While such agreements would be considered with regard to third states, they were of value *res inter alios* in establishing the appropriate framework for **relations between the former colonial power and the new state.****



THANK YOU