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Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, 1983

Extended-Session II

The relevant international law in this area is based upon customary law. The Vienna Convention on Succession to State Property, Archives and Debts, 1983 **is not currently in force**.

The primary rule with regard to the allocation of assets (including archives) and debts in succession situations **is that the relevant parties should settle such issues by agreement**. Virtually all of the rules that are formulated, for example in the Vienna Convention, 1983, are deemed to **operate only where such agreement has not taken place**.

In addition, the Arbitration Commission on Yugoslavia declared in Opinion No. 9 that 'the successor states to the **Socialist Federal Republic of Yugoslavia (**SFRY) must together settle all aspects of the succession by agreement' and reinforced this approach in Opinion No. 14, declaring that 'the first principle applicable to state succession is that the successor states should consult with each other and agree a settlement of all questions relating to the succession'.

State property

The classic rule proposes that only the public property of the predecessor state passes automatically to the successor state, but this, of course, raises the question of the ***definition of public property***.

The distinction between public and private property is to some extent based upon the conceptual differences between public and private law. Although in many cases there will be a relevant agreement to define what is meant by public property in this context, this does not always occur and recourse to **municipal law is often required**.

Under **Article 8 of the Vienna Convention, 1983** provides that state property for the purposes of the Convention means 'property, rights and interests which, at the date of the succession of states, were, according to the internal law of the predecessor state owned by that state' and this can be taken as reflective of **customary law**.

- The **Arbitration Commission on Yugoslavia** reiterated this position by declaring that 'to determine whether the property, debts and archives belonged to the SFRY, **reference should be had to the domestic law of the SFRY in operation at the date of succession'**. The relevant date for the passing of the property is **the date of succession and this is the date of independence**, although difficulties may arise in the context of the allocation of assets and debts **where different dates of succession occur for different successor states**. **Such problems would need to be resolved on the basis of agreement between the relevant parties**.
- Under **2 of Vienne Convention 1983** defined the "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

- **Distinction between movable and immovable property**
- Immovable property within the territory passes to the successor state. Based on the state practice of ***lex situs- Where Assets Are Located***
- However if the immovable property is located outside the territory of the successor state, then in customary international law it will remain with predecessor state.
- This can be illustrated under **article 15 of the Vienna Convention** on Succession of States in respect of State Property, Archives and Debts 1983 which provides that

(a) Immovable State property of the predecessor State situated in the territory to which the succession of States relates shall pass to the successor State;

(b) Movable State property of the predecessor State connected with the activity of the predecessor State in respect of the territory to which the succession of States relates shall pass to the successor State.

- Although such rule can be modified by agreement;

- **If predecessor state no longer exists then the property is divided between successor states**

- However, particular **kinds of property may be dealt with differently**. For example, the Yugoslav Agreement on Succession Issues provides that the rule is not to apply to tangible state property of great importance to the **cultural heritage** of one of the successor states and which originated there, even though situated elsewhere at the date of independence. **Such property is to go to the state whose cultural heritage it is.** Secondly, **military property** is to be made the subject of special arrangements.
- The history of mankind knows an infinite number of examples of systematic cultural cleansing pursued in the name of ethnic, national and more precisely cultural purity‘, driven by ideological foundations of power and statehood. In the same way, the symbolic significance of cultural heritage often leads to opposite tendencies aimed at restoring and/or (re)constructing national identities and collective memories through physical repatriation‘ of cultural treasures, despoiled or disparaged in the past.

State Debts

This is an area of **particular uncertainty and doubt** has been expressed as to whether there is a rule of succession in such circumstances. As in other parts of state succession, political and economic imperatives play a large role and **much practice centers upon agreements made between relevant parties**.

The public debt (or national debt) is that debt assumed by the central government in the interests of the state as a whole. It constitutes a particularly **sensitive issue since third parties are involved who are often reluctant to accept a change in the identity of the debtor**. This encourages an approach based on the continuing liability for the debt in question and in situations where a division of debt has taken place for that situation to continue with the successor state being responsible to the predecessor state (where this continues, of course) for its share rather than to the creditor directly.

Under **Article 33 of VC 1983** states that, for the purposes of the articles in the present Part, "**State debt**" means any financial obligation of a predecessor State arising in conformity with international law towards another State, an international organization or any other subject of international law.

- Issues related to debts and loans also arises as who will re-pay it. The best way to resolve this issue is by making agreement of bilateral nature between the predecessor state and the successor state as to how the loan will be paid back to the donor agencies or any other entities. But the rules related for the same is not codified and hence complexity arises.
- As per the **article 36 of the Vienna Convention, 1983 notes**, a succession of states does not as such affect the rights and obligations of creditors or ***lenders***.
- Public debt can be divided into **national debts and local debts**. The debt owed by national governments is usually referred to as the national debt and is thus distinguished from the public debt of state and local government bodies or sub-governmental territorial unit.
- **Local debts clearly pass under customary international law to the successor state**, since they constitute arrangements entered into by sub-governmental territorial authorities now transferred to the jurisdiction of the successor state and a succession does not directly affect them. In effect, they continue to constitute debts borne by the specific territory in question.
- **There appears to be no definitive answer to the question as to the allocation of the national debt as such**.

In the case of **merger**, the expanding or newly created state respectively will simply take over the national debt of the extinguished state.

According to international law a State becomes **extinct with the disappearance of one of the criteria of Statehood**, either because it has physically ceased to exist or has merged into larger, or split up into smaller units, thereby removing the social foundation of the former State

The German unification example is instructive. **Article 23 of the Unification Treaty 1990** provided that the total national budget debt of the German Democratic Republic was to be assumed by a special Federal fund administered by the Federal Minister of Finance. The Federal Government was to be liable for the obligations of the special fund which was to service the debt and might raise loans inter alia to redeem debts and to cover interest and borrowing costs.

In the case of separation where the predecessor state ceases to exist, some form of apportionment of the public debt is required and **the provision in article 41 for an equitable division** taking into account in particular the property, rights and interests which pass to the successor states in relation to that debt, is reasonable and can be taken to reflect international practice.

The basis for any equitable apportionment of debts would clearly depend upon the parties concerned and would have to be regulated by agreement. A variety of possibilities exists, including taxation ratio, extent of territory, population, nationality of creditors, taxable value as distinct from actual revenue contributions, value of assets and contributions of the territory in question to the central administration.

The Yugoslav Agreement on Succession Issues, 2001 provides that 'allocated debts', that is external debts where the final beneficiary of the debt is located on the territory of a specific successor state or group of successor states, are to be accepted by the by the successor state on the territory of which the final beneficiary is located.

In common with the other parts of the 1983 Convention, a specific article is devoted to the situation of the ‘**newly independent state**’. **Article 38 provides that ‘no state debt of the predecessor state shall pass to the newly independent state’ in the absence of an agreement between the parties providing otherwise**, ‘in view of the link between the state debt of the predecessor state connected with its activity in the territory to which the succession of states relates and the property, rights and interests which pass to the newly independent state’.

State succession and issues of nationality

The terms under which a state may award nationality are solely within its control but problems may arise in the context of a succession. In principle, the issue of nationality will depend upon the **municipal regulations of the predecessor and successor states**. The laws of the **former** will determine the extent to which the inhabitants of an area to be ceded to another authority will retain their nationality after the change in sovereignty, while the laws of the successor state will prescribe the conditions under which the new nationality will be granted.

The general rule would appear to be that nationality will change with sovereignty and control, although it will be incumbent upon the new sovereign to declare the pertinent rules with regard to people born in the **territory or resident** there, or born abroad of parents who are nationals of the former regime.

Similarly, the ceding state may well provide for its former citizens in the territory in question to retain their nationality, thus creating a situation of **dual nationality**.

Some states acquiring territory may provide for the inhabitants to obtain the new nationality **automatically** while others may give the inhabitants an **option** to depart and retain their original nationality.

According to the **guidelines laid by UN the newly formed state** have the right to choose their nationality, but he reality speaks something else.

1. Right to a nationality It was considered that the right to a nationality in the context of a succession of States as embodied in article 1 constituted a fundamental rule of the draft which marked significant progress in the international protection of human rights and an improvement in the positive sense of the principle embodied in article 15 of the Universal Declaration of Human Rights

- Alternatively it may happen when a part of a state breaks away to form a new state, as in the case of **Eritrea and South Sudan**. State succession also occurs when sovereignty over a territory is transferred from one territory to another, as has happened to the **Bakassi Peninsula between Nigeria and Cameroon.**

- State succession raises particular issues for citizenship. The default rule in international law is that a person should, in the absence of other agreement, acquire or retain a nationality based on habitual residence. Every person who was the national of a predecessor state should have the nationality of at least one successor state. But there are many cases where these rules protecting against **statelessness** have not been respected.


THANK YOU