

Definition of the term - the concept of "succession of states" in modern international law

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Abstract: author analysis and gives new comprehension of contemporary problems of states' succession in international law, elaboration of recommendations to improve legislation in force both on international and national levels etc.

In legal sciences of the Republic of Uzbekistan it was the first attempt undertaken to explore the contemporary trends in theory and practices regarding the settlement of modern issues of the succession of states and its application in international law. The example of Uzbekistan was also analyzed.

Key words: state assets, archives, debts, agreements, predecessor state, successor state, interested state, international organization, the moment of succession, new independent state, secession, reservation, states' succession, notification, transfer, cession, affirmation, property, third state, ratification.

The emergence of new subjects and the cessation of the existence of "old" subjects has always created and creates certain problems in international relations between subjects of international law. This, the emergence of a new entity automatically creates problems in relation to the territory, state borders, international treaties, state ownership, state archives, citizenship, membership in international organizations and other objects of succession.

Y.D. Ilyin said that this is one of the most important institutions of international law, but at the same time for various reasons, the least developed in scientific terms. And life clearly shows that the issues of succession are far from being theoretical. [1].

According to V.N. Likhachev "Problems in international law are socially determined phenomenon denoting the insufficiency of international law native law, incompleteness or absence of legal norms in which existing or possible connections of subjects of international communication, which are in the sphere of international legal regulation, must be fixed with objective necessity". [2].

Modern views on the problems of the succession of states require their consideration in view of the changes that have taken place in the world, including those that took place in the field of progressive development of international law.

Special developments on the codification of problems of the succession of states in international law were more actively designated after the Second World

War, especially in 50-70-s of the XX century, when the dependent territories began to acquire the status of sovereign states.

Nevertheless, with all the controversies, it is impossible not to admit that in real life it turned out that new states defended their right to be able to freely understand the set of rights and obligations that they inherited in the process of succession. Of course, the Western legal doctrine did not want this. It was widely used, and now used civilized designs. The traditional definition of succession in civil law says that the rights and obligations acquired by members of civil society are transferred to each other in the manner prescribed by internal law. The essence of it is simplified to the fact that, by taking over the succession of law, the subject of civil law also assumes obligations, and the court establishes the relationship between one and the other in the event of a dispute.

When transferring this approach to international law, the following scheme was obtained: if a new state accepts the entire set of rights of the former subject, then it also accepts all of its obligations; in case of disagreement of those subjects of international law whom it concerns, the dispute is submitted to the court. [3]. This, taking into account the importance of the problem of the succession of states, the UN General Assembly recommended that the Association of International Law include in the list of priorities, which requires immediate consideration. [4].

In 1962, the UN International Committee of Commerce established a subcommittee on the succession of states and governments to study the above-mentioned problems.

Known authorities in the field of international law H. Waldock (United Kingdom of Great Britain and Northern Ireland), who represented five reports in 1968-1972, were appointed as Special Rapporteurs of the UNICC on the topic: "Succession in relation to treaties"; F. Vallat (Wales) presented the second reading of the draft in the light of the comments of participating States; M. Bedjaoui (Algeria) on the topic: "Succession in relation to rights and obligations arising from other than contracts, sources", which in 1968-1969 presented two reports. Later, M. Bedjaoui, presented thirteen reports from 1968 to 1981 on the issue of the succession of state property, state archives and debts. [5].

In 1961, the Association of International Law has established a Special Committee of 14 experts to study the problem of "succession of States in respect of new agreements and certain other obligations of their predecessors" (chaired by S. Rousseau (France), rapporteur D. O 'Connell (New Zealand), which was discussed in the work of the 52-nd (1966, Finland) and the 53-rd conference (1968, Argentina).

The constructive work of the Association of International Law on the study of the problems of the succession of states continued actively in the following years, evidenced by the numerous reports, speeches and monographs that are still relevant today. [6].

Currently, the problems of succession of states are codified in the Vienna Conventions: "On the succession of states in respect of treaties" as of August 23, 1978; [7], "On State succession in relation to state property, state archives and public debt" as of April 8, 1983; [8], "On the law of treaties between states and international organizations or between international organizations" as of March 21, 1986. [9].

However, according to A.N. Talalaev "... in international law there are no treaty rules on succession that would be binding on all states. The theory and practice of states on this issue are quite contrary. On the base of above-mentioned, the issues of succession are settled by special agreements of two or more interested States." [10].

"There are no common rules for all cases of succession, I. Blischenko believes, in each case it is necessary to solve the issue through negotiations." [11].

D. Desjardin and K. Gendron (Canada) note that the 1983 Convention cannot be considered as authoritative legal source in the matter of succession of states, but at the same time believe that some of its provisions could be applied in the course of possible negotiations between Québec and Canada, except for its most contradictory provisions (for example, the succession of states during decolonisation). [12].

Regarding the 1978 and 1983 Conventions, it may be noted that although they are not yet generally binding norms for the succession of states. However, states in their practice are increasingly turning to their provisions, which then find their applicability in bilateral and many third-party agreements.

With reference to the CIS, the succession of states means, according to V.V. Tsybukov, the transfer of rights and obligations from the predecessor state (USSR) to the successor states formed on its territory. [13].

For the practice of Uzbekistan and other CIS countries, problems of succession after the collapse of the USSR appear to be absolutely new and relevant. [14].

In the domestic theory of international law, research into the problems of the succession of states is not given, but gives general characteristics. [15].

It is also important to note that the definition of succession and its features that dominated the laws and customs of the time correspond to each period.

So, L. Oppenheim defined the presence of "... succession between international persons when one or more international persons take the place of another international person as a result of certain changes in the position of the latter." [16].

Critical of such a definition of actual situations N.V. Zakharova and others, who believed that the replacement of one person by another is incorrect. [17].

D. O'Connell notes: "Succession does not necessarily imply that the acquiring state legally taking the place of the former sovereign in the complex system of rights and obligations created by the latter." [18].

Y.G. Barsegov, in the preface to the monograph of D. O'Connell, writes that earlier the question of succession arose predominantly in connection with the annexation, debellation, enslavement or cession, which often covered up the violent seizure of Territory.

As D. O'Connell notes, "... the most characteristic form of succession of states is Xia succession associated with the separation of colonial areas or the acquisition of enslaved territories of complete sovereignty." [19].

Based on the analysis of the formation of new states, D.I. Baratashvili concludes that succession means the adoption by the new subject of international law of the powers and obligations that the former subject owned. It should not be a passive succession, since this would be the preservation of colonialism or a certain form of neo-colonialism. Succession should be active, that is, there should be a perception of the rights and obligations that affirm the international legal personality of the new independent states.

In this regard, D.I. Baratashvili notes that most of the rights that acquire the new independent countries, freed from colonial oppression, are not the result of assuming the rights and obligations of the institution of succession, but their acquisition by virtue of international legal personality and taking into account the legitimate rights and interests of the State assignee. [20].

According to N.V. Zakharova succession of states means "... the transfer of rights and obligations from one state to another, in the case of the birth of a new state, changes in the status of international law subjectivity of a state associated with a change in its international treaty competence, the incorporation of a state into another without preserving its international subjectivity, as well as the transfer of part of the territory from one state to another.

In case of succession by the state of the contract, there occurs (in the above situations) the transfer of rights and obligations established by the contract." [21].

According to the Diplomatic Dictionary, succession means the transfer of rights and obligations from one state to another. [22].

In the past, prejudging the succession of states, they considered the problem from the point of view of influencing the treaties concluded by the predecessor state of events of various categories, namely:

- annexation of the territory of the pre-state by another state;
- voluntary transfer of territory to another state;
- formation of one or several new independent states as a result of the separation of part or parts of the territory of the state;
- the formation of a union of states;
- the establishment of a protectorate of another state over a given state and the termination of such protectorate;
- expansion or loss of territory.

Subsequently, in order to codify the studied problem of the succession of states in Contracts were grouped into three main categories:

- a) in respect of part of the territory;
- b) new independent states STB;
- c) unification and separation of states. [23].

D.I. Baratashvili notes that the range of issues that need to be resolved includes:

- succession in the field of international treaties;
- concession rights of foreign citizens on their own responsibility;
- rights to the country's natural wealth and resources;
- other areas between national law, especially with regard to international debt and other issues that go beyond the internal competence of the successor State. [24].

I.A. Shearer, defines the general cases in which there are external changes in the sovereignty of a territory when:

I. A part of the territory of state A is united with the territory of state B, or is divided between several states B, C, D and others.

II. Part of the territory of state A is the basis of the new state.

III. The territory of state A is united with the territory of state B, state A ceases to exist.

IV. The territory of state A is divided between several states B, C, D and others, and state A ceases to exist.

V. The territory of state A is the basis of several new states.

VI. The territory of state A becomes part of the territory of any one state, while state A ceases to exist.

These cases of external change of sovereignty in no way exhaust the various situations that may arise.

Further, believes I.A. Shearer, there may be differences in the way sovereignty changes, which may arise due to joining, the decision of an international conference, voluntary transfer, division or revolution.

Much may depend on the size of the territory in question, population size, social and economic interests, which play an important role in the states with their complex structure today. In the end, the specifics of the individual rights and obligations to be transferred must be considered.

Originality I.A. Shearer, lies in the fact that he is trying to substantiate the incorrect use of the term "succession of states", as it implies, according to analogues of private law, applied between subjects of death, bankruptcy, etc., where rights and obligations pass from the dead and incapable people to other personalities. However, in international law there are no basic principles of continuity between states, as well as the principle of legal replacement of the old state that has lost its independence with the new one.

A state that takes possession directly becomes a subject of international law, simply as a state, and not on the occasion of any theory of continuity. [25].

Y.D. Ilyin classifies the succession of states in the case of:

- I. Social Revolutions.
- II. With the formation of several states on the territory of their predecessor.
- III. With the formation of a new state by combining two or more states.
- IV. With the emergence of new states as a result of the national liberation struggle.
- V. With territorial changes. [26].

According to M.N. Kopylov, the succession of states arises:

- I. When social revolutions, when there is a change of socio-economic formations.
- II. When a new independent state emerges as a result of the exercise of the right to self-determination.
- III. With territorial changes.
- IV. As a result of the unification of two or more states into one, or the division of one state into parts, each of which forms an independent state. [27].

As we see, each author is individual and, at the same time, proceeds from his experience, practice and interests, first of all, from his own country, and such differences in views could be considered infinitely.

Conventions of 1978 and 1983 Articles 2 identically define the “succession of States” as the replacement of one state by another in the responsibility for the international relations of a territory.

Further it should be said that the Convention of 1978 and 1983. in Articles 2 and identical to define the terms "predecessor State", "successor State", "date of the succession of States" and "new independent States", which feature consists in the fact that they are connected to each other through the primary term, the concept of "succession States." [28].

Thus, the term-concept "predecessor State" means a State which has been replaced other States in the case of State succession.

The term-the term "successor State" means the Sovereign GUSTs which has replaced another State on the occurrence of State succession.

The term-the term "new independent State" means a successor State the territory of which immediately need date of the succession of States was a dependent territory for the international relations of which the State was responsible predecessor.

The term “third state” means any state that is neither a predecessor state nor a successor state.

Regarding the term "third state" in the 1978 Convention is not mentioned, but was used in the 1969 Convention as a technical term to designate a state "... not a party to the treaty." However, in connection with the draft articles on state succession in relation to state property, state archives and public debts, the ILC recognized that the expression “third state” is the simplest and most clear to refer to any state that is neither a predecessor state nor successor. [29].

As a binder in the 1978 and 1983 Conventions. The term is also used, the term "date of the succession of States", which means the date of the change of the State replaced the predecessor State in the responsibility for the international relations of the territorians to which the succession of States.

Obviously, the change event of your country of va another in the responsibility for the international relations of the territory of the complex and often lengthy process. Moment is a succession of States seems to be considered the date of completion of the process. However, what is considered a so that, for example, in the case of transfer of part of the territory of the State to another: the effective date of the contract of the transfer or the date of execution of this contract?

So, what is considered the date of separation of the state, for example, the USSR:

the date of the proclamation of sovereignty by the newly formed states;
the date of the agreement on such a division, if any;
or the date of decision of the State No-authorities of the State to terminate its predecessor with its rationale existence and so on? [30].

Thus, in our opinion, the succession of states should be understood as the consequences of a change of individual rights and obligations from one or several legal entities to another or other legal entities in responsibility in the event of a territorial change in accordance with international legal principles and norms.

Conventions of 1978 and 1983 Consider cases belonging to certain categories of state succession:

- I. Transfer of part of the territory.
- II. New independent states.
- III. Association of States.
- IV. Separation of parts or parts of the state.
- V. The division of the state.

Articles 3 and 6 of the Convention of 1978 and 1983 identically titled "Cases of succession of States covered by the present Convention" and establish their application only to the facts that are taking place, or to situations that are carried out in accordance with international law and, in particular, in accordance with the Principles of international law, embodied in the UN Charter. [31].

Meanwhile, a succession of States occurs between your country of CMV by the predecessor and the successor State by reason of the existence of a real connection - territorial. The territory of the successor state or its part before the event of succession was either the national territory of the predecessor state or was ruled by it as a dependent territory, this is one of the problems of succession in modern international law.

In this regard, G.G. Shinkaretskaya indicates such objects (objects, areas) pravoprem ARISING States in respect of membership in international

organizations, citizenship, territory, state border [32], return of cultural and historical values, foreign property (church, waqf). [33].

The objects (objects, areas) of the succession of A. Aymanbetova include territories and borders, international treaties, state property, public debts, state archives, membership in international organizations, etc. [34].

R.A. Kalamkaryan and Y.I. Migachev asserts that the object (subject, area) of modern international law is international relations, regarding which international law exercises a regulatory effect. [35].

In turn, Article 1 of the 1978 Convention, that area of succession determines - agreements between your country of you, and article 1 of the Convention in 1983 - State Property, Archives and Debts.

From the above, it follows that the subject of the succession of States under the Convention of 1978 and 1983 are agreements between states, your country of property, archives and debts.

The overall outcome of the consideration of the subject of succession in international law is that about which the rules on the succession of states are codified in the Conventions of 1978 and 1983.

It must be said that the legal problems of the succession of States are governed by the rules codified Conventions of 1978 and 1983 between all parties to the international of the community, because any of them could have a smiling face legal succession.

Rightly in our opinion the latter, firstly, because of the international society of states does not consider any of them to the number of empiretive, mandatory.

Secondly, because the provisions of the Convention of 1978 and 1983. Possibilities appear for an agreement between the States concerned in by the parties, or is it meant.

Conventions of 1978 and 1983 have (in time for action) identical in content to Articles 7 and 4, which are built on the model of Article 4 of the 1969 Convention, but are formulated taking into account the provisions contained in Article 28 on the absence of retroactivity of treaties.

The need for the above-mentioned articles is that the basic term-concept Conventions "pravopre emstvo states" expresses the fact in most cases the image of Bani of the new state, under the condition of the legality of this event. However, a new state before its birth cannot physically sign these conventions, or become a contracting state or party.

The new state will not be able, as a matter of priority, to solve problems of succession, due to the formation of state power, insufficient competence, lack of specialists Later it odd or him strongly legally required to settle the problem of the succession states that emerged since its formation. But apply the Convention of 1978 and 1983. new sovereigns can not, on the grounds that:

Firstly, according to the 1969 Convention, the contract is not yet wish to set up binding for the State, if it is not a party to it;

Secondly, Article 28 of the 1969 Convention provides that in the absence of a different intention "... provisions do not bind a party in relation to act or fact which took place prior to the date the treaty in force for a specified grantee ...".

In addition Conventions of 1978 and 1983 apply "... only in respect of a succession of states occurring after its (their) enters into force, the if not agreed otherwise."

Paragraphs 2-4 of Article 7 and 4 Conventions of 1978 and 1983 establish mechanisms for the agreements in the form of statements of the successor State and other States concerned agree with the statements of that successor State.

Next comes the detail of this mechanism for two different cases.

Paragraph 2 is based on the fact that this Convention has entered into force (adoption of the statement by the State party's successor Convention). The successor State ratifies the Convention, becomes a Contracting State and makes the required declaration (one cannot do without it). [36].

Other interested Contracting State agrees that the state or the participant agrees with the statement of your country of all-successor and the Convention begins to apply from the date of approval of consent, but in retrospect since the emergence of the new state, including the newly independent state.

But among the other states that have ratified the Convention, in addition to the successor State can not be other only States concerned will be present or of them.

It should be noted that the problems of great powers states are very complex and delicate, sometimes actors in their resolution began to nod with very conflicting interests. It takes years and decades to resolve them, sometimes even after enough time some of the problems remain unsolved.

According to J. Brownlie, the succession of states is an area of great doubts and disputes. In part, he explains this by the fact that most of the provisions for its implementation in practice are ambiguous and can be explained on the basis of a special agreement and various rules different from the category of state succession. [37].

Conventions of 1978 and 1983 are an essential tool to States which have problems of succession, although they are by no means solve all the related legal issues, and resolve not called, since they set out general provisions on succession in relation to the states.

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