

FOURTEENTH COMMISSION

Succession of States in Matters of International Responsibility

Rapporteur : M. Kohen

RESOLUTION
(FINAL TEXT)

The *Institute of International Law*,

Noting that the work of codification and progressive development carried out in the field of succession of States has not covered matters relating to international responsibility of States, and that work in the latter field has set aside matters relating to succession of States,

Convinced of the need for the codification and progressive development of the rules relating to succession of States in matters of international responsibility of States, as a means to ensure greater legal security in international relations,

Bearing in mind that cases of succession of States should not constitute a reason for not implementing the consequences arising from an internationally wrongful act,

Taking into account that different categories of succession of States and their particular circumstances may lead to different solutions,

Considering that law and equity require the identification of the States or other subjects of international law to which, after the date of succession of States, pertain the rights and obligations arising from internationally wrongful acts committed by the predecessor State or injuring it,

Noting that the principles of free consent, good faith, equity and *pacta sunt servanda* are universally recognized,

Recalling the principles of international law embodied in the Charter of the United Nations, such as the principles of the equal rights and self-determination of peoples, of the sovereign equality and independence of all States, of non-interference in the domestic affairs of States, of the prohibition of the threat or use of force, and of universal respect for, and observance of, human rights and fundamental freedoms for all,

Noting that respect for the territorial integrity and political independence of any State is required by the Charter of the United Nations,

Adopts the following Resolution:

CHAPTER I: GENERAL PROVISIONS

Article 1: Use of terms

For the purposes of this Resolution:

- a) “Succession of States” means the replacement of one State by another in the responsibility for the international relations of territory.
- b) “Predecessor State” means the State which has been replaced by another State on the occurrence of a succession of States.
- c) “Successor State” means the State which has replaced another State on the occurrence of a succession of States.
- d) “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.
- e) “Newly independent State” means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible.
- f) “Devolution agreement” means an agreement, concluded by the predecessor State and the successor State or a national liberation, insurrectional or other movement, or an entity or organ that later becomes the organ of the successor State, providing that rights and/or obligations of the predecessor State shall devolve upon the successor State.
- g) “Internationally wrongful act” means conduct consisting of an action or omission which:
(i) is attributable to the State or another subject under international law; and (ii) constitutes a breach of an international obligation of the State or the other subject. The characterization of an act as internationally wrongful is governed by international law.
- h) “international responsibility” refers to the legal consequences of an internationally wrongful act.

Article 2: Scope of the present Resolution

1. The present Resolution applies to the effects of a succession of States in respect of the rights and obligations arising out of an internationally wrongful act that the predecessor State committed against another State or another subject of international law prior to the date of

succession, or that a State or another subject of international law committed against the predecessor State prior to the date of succession.

2. The present Resolution applies only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations.

3. The present Articles do not govern the situations resulting from political changes within a State, including changes in the regime or name of the State.

CHAPTER II: COMMON RULES

Article 3: Subsidiary character of the guiding principles

The guiding principles mentioned below apply in the absence of any different solution agreed upon by the parties concerned by a situation of succession of States, including the State or other subject of international law injured by the internationally wrongful act.

Article 4: Invocation of responsibility for an internationally wrongful act committed by the predecessor State before the date of succession of States

1. International responsibility arising from an internationally wrongful act committed before the date of succession of States by a predecessor State falls on this State.

2. If the predecessor State continues to exist, the injured State or subject of international law may, even after the date of succession, invoke the international responsibility of the predecessor State for an internationally wrongful act committed by that State before the date of succession of States and request from it reparation for the injury caused by that internationally wrongful act.

3. In conformity with the following Articles, the injured State or subject of international law may also or solely request reparation from a successor State for the injury caused by an internationally wrongful act of the predecessor State.

Article 5: Invocation of responsibility for an internationally wrongful act committed against the predecessor State before the date of succession of States

1. The predecessor State which after the date of succession of States continues to exist may invoke the international responsibility of another State or subject of international law for an internationally wrongful act committed against it before that date by that State or subject and may request reparation for the injury caused by this act.

2. If the injury caused by an internationally wrongful act committed before the date of succession of States against a predecessor State affected the territory or persons which, after this date, are under the jurisdiction of a successor State, the successor State may request reparation for the injury caused by such act, as provided in the following Articles, unless reparation was already obtained in full before the date of succession of States.

Article 6: Devolution agreements and unilateral acts

1. Devolution agreements concluded before the date of succession of States between the predecessor State and an entity or national liberation movement representing a people entitled to self-determination, as well as agreements concluded by the States concerned after the date of succession of States, are subject to the rules relating to the consent of the parties and to the validity of treaties, as reflected in the Vienna Convention on the Law of Treaties. The same principle applies to devolution agreements concluded between the predecessor State and an autonomous entity thereof that later becomes a successor State.
2. The obligations of a predecessor State arising from an internationally wrongful act committed by it against another State or another subject of international law before the date of succession of States do not become the obligations of the successor State towards the injured State or subject only by reason of the fact that the predecessor State and the successor State have concluded an agreement, providing that such obligations shall devolve upon the successor State.
3. The obligations of a predecessor State in respect of an internationally wrongful act committed by it against another State or another subject of international law before the date of succession of States do not become the obligations of the successor State towards the injured State or subject only by reason of the fact that the successor State has accepted that such obligations shall devolve upon it.
4. Where the injured State or subject of international law does not accept the solution envisaged by the devolution agreement or unilateral act, good faith negotiations must be pursued by the States or subjects concerned. If these negotiations do not succeed within a reasonable period of time, the solution envisaged by the relevant Article of Chapter III of the present Resolution is applicable.

Article 7: Plurality of successor States

1. In case of succession in which it is not possible to determine a single successor State, all the successor States will enjoy the rights or assume the obligations arising from the commission of an internationally wrongful act in an equitable manner, unless otherwise agreed by the States or subjects of international law concerned.
2. In order to determine an equitable apportionment of the rights or obligations of the successor States, criteria that may be taken into consideration include the existence of any special connections with the act giving rise to international responsibility, the size of the territory and of the population, the respective contributions to the gross domestic product of the States concerned at the date of succession, the need to avoid unjust enrichment and any other circumstance relevant to the case.
3. Negotiations in good faith must be pursued by the successor States, with the goal of reaching a solution within a reasonable time.

Article 8: States or subjects of international law concerned

For the purposes of Articles 6 and 7, “States or subjects of international law concerned” are:

- a) in the case of an internationally wrongful act committed by the predecessor State, the injured State or subject of international law and all the successor States;
- b) in the case of an internationally wrongful act committed against the predecessor State, all the successor States.

Article 9: Internationally wrongful acts having a continuing or composite character performed or completed after the date of succession of States

1. When a successor State continues the breach of an international obligation constituted by an act of the predecessor State having a continuing character, the international responsibility of the successor State for the breach extends over the entire period during which the act continues and remains not in conformity with the international obligation.
2. When a successor State completes a series of actions or omissions initiated by the predecessor State defined in the aggregate as a breach of an international obligation, the international responsibility of the successor State for the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.
3. The provisions of the present Article are without prejudice to any responsibility incurred by the predecessor State if it continues to exist.

Article 10: Diplomatic protection

1. A successor State may exercise diplomatic protection in respect of a person or a corporation that is its national at the date of the official presentation of the claim but was not a national at the date of injury, provided that the person or the corporation had the nationality of the predecessor State or lost his or her previous nationality and acquired, for a reason unrelated to the bringing of the claim, the nationality of the successor State in a manner not inconsistent with international law.
2. A claim in exercise of diplomatic protection initiated by the predecessor State may be continued after the date of succession of States by the successor State under the same conditions set out in paragraph 1 of this Article.
3. A claim in exercise of diplomatic protection initiated by a State against the predecessor State may be continued against the successor State if the predecessor State has ceased to exist. In the case of a plurality of successor States, the claim shall be addressed to the successor State having the most direct connection with the act giving rise to the exercise of diplomatic protection. When it is not possible to determine a single successor State having such a direct connection, the claim may be continued against all the successor States. The provisions of Article 7 apply *mutatis mutandis*.
4. Where the predecessor State continues to exist and the individual or corporation possesses the nationality of both the predecessor and the successor States, or the nationality of a third State, the question is governed by the rules of diplomatic protection concerning dual or multiple nationality.

CHAPTER III: PROVISIONS CONCERNING SPECIFIC CATEGORIES
OF SUCCESSION OF STATES

Article 11: Transfer of part of the territory of a State

1. With the exception of the situations referred to in the following paragraphs, the rights and obligations arising from an internationally wrongful act in relation to which the predecessor State has been either the author or the injured State do not pass to the successor State when part of the territory of the predecessor State, or any territory for the international relations of which this State is responsible, becomes part of the territory of the successor State.
2. The rights arising from an internationally wrongful act committed against the predecessor State pass to the successor State if there exists a direct link between the consequences of this act and the territory transferred and/or its population.
3. If particular circumstances so require, the obligations arising from an internationally wrongful act pass to the successor State when the author of this act was an organ of the territorial unit of the predecessor State that has later become an organ of the successor State.

Article 12: Separation of parts of a State

1. With the exception of the situations referred to in paragraphs 2 to 4 of the present Article, the rights and obligations arising from an internationally wrongful act in relation to which the predecessor State has been either the author or the injured State do not pass to the successor State or States when a part or parts of the territory of a State separate to form one or more States and the predecessor State continues to exist.
2. The rights arising from an internationally wrongful act committed against the predecessor State pass to the successor State or States if there exists a direct link between the consequences of this act and the territory or the population of the successor State or States.
3. If particular circumstances so require, the obligations arising from the commission of an internationally wrongful act by the predecessor State pass to the successor State when the author of that act was an organ of a territorial unit of the predecessor State that has later become an organ of the successor State.
4. If particular circumstances indicated in paragraphs 2 and 3 of this Article so require, the obligations arising from an internationally wrongful act committed before the date of succession of States are assumed by the predecessor and the successor State or States.
5. In order to determine an equitable apportionment of the rights or obligations of the predecessor and the successor States, criteria that may be taken into consideration include the existence of any special connections with the act giving rise to international responsibility, the size of the territory and of the population, the respective contributions to the gross domestic product of the States concerned at the date of succession of States, the need to avoid unjust enrichment and any other circumstance relevant to the case. The provisions of Article 7 apply *mutatis mutandis*.

6. The internationally wrongful act of an insurrectional or other movement which succeeds in establishing a new State on part of the territory of the predecessor State or in a territory under the administration of this latter State shall be considered an act of the new State under international law. Consequently, the predecessor State incurs no responsibility for the acts committed by the insurrectional or other movement.

Article 13: Merger of States

When two or more States unite and form a new successor State, and no predecessor State continues to exist, the rights or obligations arising from an internationally wrongful act of which a predecessor State has been either the author or the injured State pass to the successor State.

Article 14: Incorporation of a State into another existing State

When a State is incorporated into another existing State and ceases to exist, the rights or obligations arising from an internationally wrongful act of which the predecessor State has been the author or the injured State pass to the successor State.

Article 15: Dissolution of a State

1. When a State dissolves and ceases to exist and the parts of its territory form two or more successor States, the rights or obligations arising from an internationally wrongful act in relation to which the predecessor State has been the author or the injured State pass, bearing in mind the duty to negotiate and according to the circumstances referred to in paragraphs 2 and 3 of the present Article, to one, several or all the successor States.

2. In order to determine which of the successor States becomes bearer of the rights described in the preceding paragraph, a relevant factor will in particular be the existence of a direct link between the consequences of the internationally wrongful act committed against the predecessor State and the territory or the population of the successor State or States.

3. In order to determine which of the successor States becomes bearer of the obligations described in paragraph 1, a relevant factor will in particular be, in addition to that mentioned in paragraph 2, the fact that the author of the internationally wrongful act was an organ of the predecessor State that later became an organ of the successor State.

Article 16: Newly independent States

1. When the successor State is a newly independent State, the obligations arising from an internationally wrongful act committed by the predecessor State shall not pass to the successor State.

2. When the successor State is a newly independent State, the rights arising from an internationally wrongful act committed against the predecessor State pass to the successor State if that act has a direct link with the territory or the population of the newly independent State.

3. The conduct, prior to the date of succession of States, of a national liberation movement which succeeds in establishing a newly independent State shall be considered the act of the new State under international law.

4. The rights arising from an internationally wrongful act committed before the date of the succession of States by the predecessor State or any other State against a people entitled to self-determination shall pass after that date to the newly independent State created by that people.
