

Session of Vancouver - 2001

State Succession in Matters of Property and Debts

(Seventh Commission, Rapporteur : Mr Georg Ress)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Given the development of State practice since the United Nations Vienna Conference which adopted the Convention on Succession of States in respect of State Property, Archives and Debts in 1983, notably following the disintegration of the USSR, the Socialist Federal Republic of Yugoslavia and the Czech and Slovak Federal Republic as well as the unification of Germany ;

Convinced of the utility of reaffirming the rules and principles relative to State succession in respect of property and debts which have been confirmed by recent State practice ;

Convinced, equally, of the need to identify *de lege ferenda* the trends in developments and criteria of the regime in this domain in order better to guarantee legal certainty in international relations ;

Believing that the questions relating to State succession in respect of State property and debts are of particular importance for all States ;

Bearing in mind that the phenomena of integration and disintegration of States are universal in their appearance ;

Given the problems which arise due to the uncertainty which may prevail in the period before the process of succession has been completed and the legal status of the States concerned is determined ;

Considering that the self-determination of peoples, a principle recognised by the United Nations Charter, and the principle of democracy should play a significant role in this process ;

Affirming that all situations leading to a succession of States should take place in full conformity with public international law, and in particular with humanitarian law and human rights ;

Adopts the following guiding principles relating to the succession of States in respect of property and debts :

Part One : Categories of State Succession

Article 1 : Notion of State Succession

State succession is the replacement of one State by another in the responsibility for the international relations of a territory.

Article 2 : Categories of Succession

For the purpose of this Resolution, State succession includes situations of dissolution of a State (*discontinuity*); cession, that is, the transfer of a part of the territory of a State to another States (*continuity* of the two States, the predecessor State and the successor State) ; secession, that is the separation of a territory by constituting a new State (*continuity* of the predecessor State with the creation of a new State), as well as situations of unification of two or more States (*continuity* of a State with the incorporation of another State or *discontinuity* of two States and the creation of a new State).

Article 3 : Succession and Continuity of States

Succession and continuity of States are legal concepts which are not mutually exclusive. Continuity means that legal personality under international law subsists despite the changes in territory, population, political and legal regime and name. The fact that a State remains identical to itself in political and legal situations that are different to prior ones - sometimes deemed fictitious – supposes that the changes have not brought about a dissolution of the State.

Article 4 : Distinction between Discontinuity and Continuity of the State

The distinction between State secession (continuity of the predecessor State) and State dissolution (discontinuity) although clear in theory, is difficult to apply to complex situations of territorial changes. The qualification depends on the development of numerous factors over time.

Article 5 : Obligations of States during an Intermediate Period of Time

1. In determining the legal regime where the qualification of continuity or discontinuity of a State remains uncertain and in dispute, to the extent possible, the interests of the States concerned and the requirements of good faith and equity shall be taken into account. During such intermediate period of time, the provisional application of rules of succession is not excluded.
2. To clarify and improve the situation of individuals, the States concerned shall take into account, at least for the time being, the fact that territorial changes have taken place.

Part Two : Rules Common to Succession in Respect of Property and of Debts

Article 6 : Role of Agreements between States Concerned

1. In the event of succession, the States concerned should, in good faith, settle by agreement amongst themselves the apportionment of State property and debts bearing in mind the criteria for apportionment enunciated in this Resolution.
2. States concerned should act likewise towards private creditors with respect to the allocation of debts. Further, private creditors should cooperate with the States concerned in respect of the apportionment of State property held by them.

Article 7 : Passing of Property and Debts and Possibility of Compensation

1. The application of the rules relative to the passing of property and debts are without prejudice to any question of equitable compensation between (a) the predecessor State and the successor State or (b) between the successor States.
2. Such compensation is owed when the application of the criteria enunciated in this Resolution gives rise to serious disequilibria in the apportionment of property and debts.

Article 8 : Result of Apportionment

1. The result of the apportionment of property and debts must be equitable.
2. If the apportionment of property and debts does not produce an equitable result and cannot be otherwise corrected, the predecessor State and the successor State or successor States shall settle this matter by equitable compensation.
3. Unjust enrichment shall be avoided.
4. The apportionment of property and debts shall preserve the capacity of States concerned to survive as viable entities.

Article 9 : Correlation Between the Proportion of Property and of Debts in the Repartition Operations and Equity

1. In all cases of succession involving the passing of debts and property, a correlation should be ensured between the proportion of such property, rights and interests on the one hand, and State debts on the other. They shall pass together.
2. For the various categories of State succession, equity dictates that there be no difference of substance between the result of the apportionment of property and the result of the apportionment of debts.

Article 10 : Procedure for the Apportionment of State Property and Debts

1. Unless otherwise agreed by the States concerned or decided upon by an appropriate international body, property and debts pass from predecessor State to successor State with the rights and obligations *pro rata* of the apportionment of that property and debts. The apportionment shall take place according to a formula derived *inter alia* from the criteria set out in Article 11 of this Resolution. There is no joint and several liability of all the successor States.
2. In situations where the question of an automatic passage of certain property and debts to a successor State does not arise, the States concerned should be deemed to own the assets and be liable for the debts in common (*communio incidens*) from the outset of the apportionment procedure. If the States concerned do not succeed in reaching an agreement on the apportionment, any of them shall have the right to claim that a formula for the *pro rata* apportionment be determined by a national or international judicial or arbitral organ.
3. Successor States, as well as the predecessor State in case of continuity, shall negotiate between themselves the apportionment of property and debts in good faith.
4. States concerned shall tender all documents and information necessary for this apportionment procedure.
5. States concerned shall establish inventories of debts and property to which the succession relates and make known to each other, within a reasonable period, all elements which may be useful for the purpose of apportionment.
6. Without prejudice to paragraph 1 above, if States are unable to establish an apportionment in common, they should establish an apportionment procedure with a commission of independent experts, which shall be responsible for establishing the inventory of all the State property and debts and determine the apportionment amongst them.

Article 11 : Principles of Apportionment

1. Apportionment is to be carried out, first, according to the territoriality principle ; it shall, furthermore, be in conformity with the principle that any unjust enrichment is to be avoided.
2. Property and debts that cannot be apportioned in accordance with the territoriality principle shall be apportioned equitably, bearing in mind the result of the apportionment of other property or debts on the basis of the territoriality principle.
3. Amongst the criteria that may be used for the determination of an equitable apportionment, States should take into account :
 - a. any special connections existing between the areas affected by a State succession, on the one hand, and the activities to which the property and debts to be apportioned relate, on the other ;

- b. the connections between property, rights and interests that pass to successor States, on the one hand, and State debts, on the other ;
 - c. the respective parts in the Gross National Product (GNP) of the States concerned at the time of the succession or at the time of the decision or agreement on apportionment ;
 - d. the formula adopted by the IMF for the apportionment of quotas among the States concerned.
4. If the application of the above criteria does not lead to a satisfactory result the States concerned may take account, *inter alia*, the part of revenues of each State concerned which are derived from the exportation or the fact that certain amongst them have more than others contributed to the financing of or benefited from the exploitation of a specific project.

Part Three : State Property

Article 12 : Notion of State Property

1. In principle, the term “State property of the predecessor State” means all property, rights and interests which belong to the predecessor State at the date of the State succession pursuant to its domestic law and in conformity with international law.
2. The term “State property” equally covers property of public institutions but does not include property of private legal persons, even if they have been created with public funds.

Article 13 : Effect of Passing of State Property

1. State property shall normally pass from the predecessor State to the successor State without financial compensation.
2. The automatic and gratuitous passing of property, however, does not exclude the grant of financial compensation in order to avoid unjust enrichment of a predecessor or successor State.
3. The passing of State property from the predecessor State to the successor State entails extinction of the rights of the former and creation of rights of the latter. Without prejudice to other provisions of this Resolution, it entails a novation of their rights and obligations.
4. The successor State substituting itself for the predecessor State shall, in principle, take on the same rights and obligations as the predecessor State.

Article 14 : Information and Inventory

1. Without prejudice to Article 10 of this Resolution, States concerned shall cooperate and consult amongst themselves in order to reach agreement on an inventory of property and its apportionment.

2. They shall ensure for each other and for the competent international institutions the information necessary for the apportionment of property and debts. In case of disagreement, they shall have recourse to inadequate means for the settlement of disputes.

Article 15 : Date of Passing of State Property

The date of passing of State property of the predecessor State to the successor State is normally that of the State succession, unless otherwise agreed by the States concerned or decided upon by an appropriate body, for all or part of the property, notably in consideration of the effective exercise of certain rights or interests by the State claiming to be a successor.

Article 16 : Allocation of Property in Accordance with the Principle of Territoriality

1. State property that is closely connected to a territory passes with that territory to the successor State.

2. State property not having a close connection with a particular territory shall be apportioned equitably.

3. If the apportionment of property and debts in conformity with the preceding paragraphs leads to an inadequate result, a correction shall be made on the basis of equity. Such a correction can take place by means of transfer of certain property or by means of financial compensation.

4. In the application of the principle of equity no account shall, generally speaking, be taken of the prior physical or financial origin of property, whether movable or immovable.

5. Property that is of major importance to the cultural heritage of a successor State from whose territory it originates shall pass to that State. Such goods shall be identified by that State within a reasonable period of time following the succession. The passing shall be regulated by the States concerned.

6. Except for the preceding paragraph, this Resolution does not address the passing of State archives.

Article 17 : Absence of Effect of State Succession on Property of a Third State

Property rights or interests which, at the date of the succession of States, are situated in the territory of the predecessor State and which, at that date, are owned by a third State according to the internal law of the predecessor State, shall remain unaffected by the State succession.

Article 18 : Preservation of State Property

The States concerned shall take all measures necessary to prevent damage to, or the destruction of, property which passes, or may pass to another State.

Article 19 : Immovable State Property

1. Immovable property of the predecessor State situated on the territory to which the succession relates passes to the successor State on whose territory the property is located.
2. In the event of unification (disappearance of the predecessor States), immovable property situated outside their territories passes to the successor State. In the case of the incorporation of one State in another State, immovable property of the predecessor State situated outside its territory passes to the successor State.
3. In the case of dissolution (*discontinuity*), immovable property of the predecessor State situated outside its territory passes to the successor States in equitable proportions. The successor States shall reach an agreement as to the apportionment in an equitable manner, or, if not possible, apply the principle of compensation.
4. In the event of cession and secession (*continuity* of the predecessor State), immovable property of the predecessor State situated outside its territory remains, in principle, the property of the predecessor State. Nevertheless, successor States have the right to an equitable apportionment of the property of the predecessor State situated outside its territory.

Article 20 : Movable Property and other State Property

1. Movable property of the predecessor State connected to the activity of the predecessor State in relation to the territory to which the succession relates, passes to that successor State.
2. In the event of secession or dissolution an equitable proportion of any other movable property also passes to the successor State or to the successor States.
3. All other property, rights and interests passes according to the same rules (territorial link, equitable apportionment) to the successor State or States.
4. The rules contained in Article 19 of this Resolution on immovable property situated outside the territory of the States involved in the succession apply *mutatis mutandis* also to movable property and to other property.

Article 21 : Protection of property before its attribution to one of the States concerned

Before being attributed to one of the States concerned, property shall be protected in accordance with the law of the State on whose territory it is located. Rights acquired by third parties in respect of such property pursuant to that law shall be respected.

Part Four : State Debts

Article 22 : State Debts

The term “State debt” covers :

- a. any financial obligation of a predecessor State towards another State, an international organization or any other subject of international law, arising in conformity with international law ;
- b. any financial obligation of a predecessor State towards any natural or legal person under domestic law.

Article 23 : Effects and Date of Passing of Debts

1. For the effects of passing of State debts and for the date of passing, the rules applicable to property enunciated in Articles 13 and following of this Resolution are applicable *mutatis mutandis*.
2. Failing an agreement on the passing of State debts of the predecessor State, the State debt shall, in each category of succession, pass to the successor State in an equitable proportion taking into account, notably, the property, rights and interests passing to the successor State or successor States in relation with such State debt.

Article 24 : Effect of State Succession on Private Creditors and Debtors

1. A succession of States should not affect the rights and obligations of private creditors and debtors.
2. Successor States shall, in their domestic legal orders, recognise the existence of rights and obligations of creditors established in the legal order of the predecessor State.
3. Private creditors are under an obligation to participate in the negotiations between the States concerned on the apportionment of private debts. They shall provide such States with any information in their possession relating to the assets of the predecessor State that are the subject-matter of the succession. Such an obligation shall apply equally to foreign private creditors entering into separate debt collection agreements with any State taking part in the succession. The same obligation shall equally apply, *mutatis mutandis*, to predecessor and successor States in relation to their private debtors.

Article 25 : Acquired Rights

Successor States shall in so far as is possible respect the acquired rights of private persons in the legal order of the predecessor State.

Article 26 : Passing of State Debts in Equitable Proportions

1. In the event of cession of part of the territory as in the case of secession, the predecessor State and the successor State should settle the passing of debts by agreement between themselves ; with regard to private debts of the predecessor State, such agreement should be reached with the participation of the private creditors in its drafting and conclusion.
2. In the absence of such an agreement, the public State debts of the predecessor State shall pass to the successor State in an equitable proportion, taking into account, in particular, the property, rights and interests which pass to the successor State in relation to such State debts.
3. Paragraphs 1 and 2 equally apply when a part of the territory of a State separates there from and joins another State.

Article 27 : National Debts

1. State debts made by the predecessor State to the benefit of the whole State (national debts) are subject to the rules contained in Articles 22 and following of this Resolution.
2. The debts of public institutions and State owned enterprises which operate nationally are subject to the same rules regardless of the location of their registered office.

Article 28 : Localised Debts

1. State debts contracted by the predecessor State or a public institution or enterprise operating nationally, for particular projects or objects in a specific region (localised national debts), are governed by the rules contained in the previous Article.
2. However, the apportionment of this debt in accordance with the demands of equity shall take account of the passing of property (objects/installations) connected to the debt and any profit from these projects or objects benefiting the successor State on whose territory they are situated.

Article 29 : Local Debts

1. Debts of local public institutions (communes, regions, federal entities, departments, public utilities and other regional and local institutions) pass to the successor State on whose territory this public institution is situated.
2. The debt continues to attach to such local public institutions even after the succession and the financial burden remain to be charged with them.
3. The successor State shall not be liable for these debts, albeit jointly and severally with the institution, unless such liability previously existed in the predecessor State or if the successor State accepted such liability either directly or indirectly (for example through the modification of the statutes of the institution concerned).
4. This Article applies to private debts of local public institutions.

5. Article 9 of the present Resolution (correlation of the proportions between property and debts in the apportionment and equity) applies to local debts.

6. The predecessor State and the successor State or States may by agreement otherwise settle the passing of local debts. For settlements involving private debts, the private creditors shall participate in the drafting and conclusion of this agreement.

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