The question addressed in this Part was who from the continuing State or the successor State should have (after the date of succession) the right to claim reparation as a result of an internationally wrongful act committed by a third State before the date of succession. In other words, when an internationally wrongful act is committed by a third State against the predecessor State, can the right to reparation, for which the predecessor State is the creditor before the date of succession, be “transferred” to the successor State?

The present investigation distinguished two separate situations where the question arises. The first one is when the internationally wrongful act committed by a third State directly affected the predecessor State. The second one is when the act committed by a third State affected a national of the predecessor State. Such distinction is necessary, since the latter situation involves issues of diplomatic protection and the question whether or not the traditional rule of continuous nationality should apply.

For both situations, the response of the doctrine of non-succession is that there can be no transfer of the right to claim reparation from the predecessor State to the successor State and that, consequently, the successor State cannot submit a claim for reparation to the State responsible for the internationally wrongful acts committed before the date of succession.

In the context of internationally wrongful acts directly affecting the predecessor State, the reason invoked in doctrine for the theory of non-succession is that the right to claim reparation “belongs” only to the predecessor State as some kind of “personal” right. This argument has been strongly refuted in the present study. Thus, the consequences of an internationally wrongful act committed before the date of succession against the predecessor State will continue to have an impact even after the date of succession. If such impact is still suffered by the successor State after the date of succession, that State simply cannot be considered as a “third”
State with respect to the internationally wrongful act committed before the date of succession. There is, indeed, an undeniable connection between the new successor State and the commission of such act since it will affect both its territory and its population. The successor State should be considered as an “injured” State. It should, consequently, be allowed to submit a claim for reparation against the State responsible for the internationally wrongful act. In such cases, the internationally wrongful act committed should not remain unpunished.

In the other context of internationally wrongful acts affecting a national of the predecessor State, the reason invoked in doctrine in support of the theory of non-succession is based on the application of the traditional rule of diplomatic protection requiring continuous nationality. The application of this rule in the context of State succession results in neither the continuing State nor the successor State being able to exercise diplomatic protection on behalf of an individual which suffered damage as a result of an internationally wrongful act committed before the date of succession. Consequently, the internationally wrongful act committed before the date of succession will remain unpunished. This is certainly unjust for the injured individual, who will continue to be affected (after the date of succession) by the consequences of such an act. There is strong support for the proposition that the strict rule of continuous nationality is not appropriate in the context of State succession and should therefore not apply. This is indeed the proper solution. The successor State has the right to claim reparation on behalf of its new nationals against the State responsible for damage arising from an internationally wrongful act committed before the date of succession. The only exception concerns claims directed against the former State of nationality of the new nationals of the successor State.

These criticisms of the doctrine of non-succession are supported by the examination of relevant State practice and international case law.

In the context of internationally wrongful acts directly affecting the predecessor State, several cases were found where the successor State claimed compensation for internationally wrongful acts which occurred before the date of succession, at the time it did not exist as an independent State. Not a single case of State practice or international case law was found where a State actually objected to the claim submitted by a successor State based on the ground that it did not exist at the time the internationally wrongful act was committed. Also, no case was found where a judicial body rejected a claim by the successor State based on this ground. This may, however, be explained by the fact that in none of these cases examined did the successor State actually make use of the argument of succession to the right to reparation. It therefore seems that the theory of non-succession is more a doctrinal construction which, in fact, is never invoked by parties in their actual practice (with one exception)\(^\text{313}\) and never applied by international judicial bodies.

\(^{313}\) In fact, in the only case where the issue was explicitly mentioned by a State, that State refused to make use of the argument of succession to rights essentially for tactical reasons. This is the position of Slovakia in the *Case Concerning the Gabčíkovo-