NEWLY INDEPENDENT STATES AND THE PROBLEM OF STATE SUCCESSION

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I. Introduction

Since the end of World War II, and especially within the last few years, an increasing number of newly independent States have made their appearance on the international scene, or are preparing to do so. These new nations were not created out of a void, but their number is made up of territories which were subjected, in one way or another, to the sovereignty of other States. Independence came as a result of constitutional development, popular referenda or rebellion against the metropolitan State.

Once the question of transfer of power and recognition of the new State have been regulated, various problems of State Succession arise. Various rights and duties, formerly the concern of the »mother State« now devolve upon the new Nation. Recognition of the latter, for instance, is granted by the world community only in return for the expectancy that it will observe the norms of customary international law. The new government takes over responsibility vis-à-vis the population and with it comes a host of rights and obligations.

However, the question with which we will be concerned mostly in this instance is that of the continuance of international obligations incurred by virtue of treaties concluded by the metropolitan States and whose effect has been extended to territories for whose international relations they were responsible. To what extent, and under which circumstances, must the new States be held bound to observe international treaties, especially those of a multilateral and humanitarian character, entered into on their behalf before independence? The problem, so delimited, is seen to be one of State Succession in International Law and, as a start, an attempt will therefore be made to shortly state the main rules as are most widely accepted in this field.

*) The views expressed in this article are those of the author and do not necessarily reflect the opinion of any Organisation or Office with which he is connected.
II. State Succession in General

The problem of State Succession has forever been a subject of serious doctrinal differences and extremely varied State practice. For this reason, attempts at codification of this part of International Law have, so far, met with little success. Nor, except in a few isolated cases dealing with certain aspects of the subject, have the International Courts had an opportunity to make far-reaching pronouncements.

The term »Succession of States« has two meanings. Firstly, it is generally used to denote the actual substitution of one or more international persons for another (or others), and a distinction is made here between »universal« and »partial« succession. Secondly, »State Successions« is often also taken to mean the actual devolution of certain legal rights and duties from one State (or States) to another. There have been writers who maintained that no succession ever takes place, holding that with the extinction of an international person all rights and duties disappear or are modified in accordance with the new situation. However, present-day doctrine and the practice of States, while not admitting general or complete succession, does allow for certain rights and obligations to pass with the transfer of sovereignty.

Although no clear and universally recognized rules exist as to the nature of the rights and duties which pass nor to the extent to which they pass in the various types of substitution that exist, an attempt will be made to lay down briefly such rules as might be considered as commanding the most authority.

1. When a State is merged into another State, voluntarily or involuntarily, or when a State breaks up into fragments which in turn become international persons (case of »universal succession«), the original State is extinguished and the law can be formulated as follows:

(a) Political rights and duties. Because of their very nature, these do not pass to the successor State or States. Under this heading belong international treaties of an essentially political character which, in principle, can only bind the subjects who are parties to them.

(b) Local rights and duties. Such international rights and duties as are essentially of a local or regional character, i.e. tied to a certain part of the territory of the original State, are generally held to pass to the succeeding State. Some writers require such rights to be of a »real« nature, such as e.g. conventions concerning boundaries, concessions, rivers or communications in general.