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FIFTH REPORT ON SUCCESSION IN RESPECT OF TREATIES

by

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Article 20

Dissolution of a Union of States

Alternative A

1. When a Union of States is dissolved and one or more of its constituent political divisions become separate States:

(a) any treaty concluded by the Union with reference to the Union as a whole continues in force in respect of each such State;

(b) any treaty concluded by the Union with reference to any particular political division of the Union which has since become a separate State continues in force in respect only of that State;

(c) any treaty binding upon the Union under article 19 in relation to any particular political division of the Union which has since become a separate State continues in force only in respect of that State.

2. Sub-paragraphs (a) and (b) of paragraph 1 do not apply if the object and purpose of the treaty are compatible only with the continued existence of the Union of States.

3. When a Union of States is dissolved only in respect of one of its constituent political divisions which becomes a separate State, the rules in paragraphs 1 and 2 apply also in relation to this State.

Alternative B

1. When a Union of States is dissolved and one or more of its constituent political divisions become separate States, treaties binding upon the Union at the date of its dissolution continue in force between any such successor State and other States parties thereto if:

(a) in the case of multilateral treaties other than those referred to in article 7 (a), (b) and (c), the successor State notifies the other States parties that it considers itself a party to the treaty;

(b) in the case of other treaties, the successor State and the other States parties

(i) expressly so agree; or

(ii) must by reason of their conduct be considered as having agreed to or acquiesced in the treaty's being in force in their relations with each other.

2. When a Union of States is dissolved only in respect of one of its constituent political divisions which becomes a separate State, the rules in paragraph 1 apply also in relation to this State.

Commentary

1. The resolution of the International Law Association on this question reads:

> "In cases of dissolution of unions or federations, the separate components of the composite State may invoke or have invoked against them treaties of the composite State to the extent to which these are consistent with the changed circumstances resulting from the dissolution."

and the "Note" of the Committee of the Association appended to this resolution comments:

> "The Committee finds that the practice of States supports the devolution of treaties of a composite State upon the constituent members in the event of the composite State dissolving."

Thus, in the context of dissolution as in the context of formation, the Association groups together unions of States and States composed merely of two or more constituent territories. But it again seems desirable to examine these two categories separately and the present article and commentary are therefore concerned primarily with the dissolution of unions of States.

2. The resolution also speaks without distinction of "treaties of the composite State" and it therefore presumably covers both treaties concluded by the union during its existence and any pre-union treaties of a constituent territory which continued in force after the formation of the union as treaties binding upon the union in relation to the particular territory concerned. Moreover, the rule laid down in the resolution appears to be a rule of ipso jure continuity.

3. One of the older precedents usually referred to in this connexion is the dissolution of the Union of Colombia in 1829-31. This union had been formed some ten years earlier by the three States of New Granada, Venezuela and Quito (Ecuador) and during its existence the union had concluded certain treaties with foreign powers. Among these were treaties of amity, navigation and commerce concluded with the United States in 1824 and with Great Britain in 1825.1/ After the dissolution, it appears that the United States and New Granada considered the union treaty of 1824 to continue in force as between those two countries. It further appears that Great Britain and Venezuela and Great Britain and Ecuador, if with some hesitation on the part of Great Britain, acted on the basis that the union treaty of 1825 continued in force in their mutual relations. In advising on the position in regard to Venezuela the British Law Officers, it is true, seem at one moment to have thought the continuance of the treaty required the confirmation of both Great Britain and Venezuela; but they also seem to have felt that Venezuela was entitled to claim the continuance of the rights under the treaty.

1/ See McNair, Law of Treaties (1961) pp. 606-611; D. P. O'Connell, British Yearbook of International Law (1963) vol.39, pp. 117-121.

4. Another of the older precedents usually referred to is the dissolution of the Union of Norway and Sweden in 1905.2/ During the union these States had been recognized as having separate international personalities, as is illustrated by the fact that the United States had concluded separate extradition treaties with the Governments of Norway and Sweden. The King of Norway and Sweden had, moreover, concluded some treaties on behalf of the union as a whole and others specifically on behalf of only one of them. On the dissolution of the union each State addressed identic notifications to Foreign Powers in which they stated their view of the effect of the dissolution. The relevant passage of the Swedish Note to Great Britain 3/ ran as follows:

> "Le Gouvernement suédois se tient donc pour dégagé de toute responsabilité du chef des obligations stipulées dans les dites Conventions et Arrangements communs, et qui concernent la Norvège. Pour ce qui est des Traités ou autres Arrangements conclus au nom de sa Majesté le Roi de Suède et de Norvège séparément pour la Norvège, il est évident que le Gouvernement de Sa Majesté n'est aucunement, après la séparation des deux Etats, des obligations qui en résultent pour la Norvège.
>
> De l'autre côté, le Gouvernement Suédois est d'avis que les Actes susmentionnés conclus en commun par la Suède et la Norvège continuent à sortir leurs effets pour ce qui concernent les rapports entre la Suède et la Norvège modifie en aucune manière les dispositions qui ont règlé jusqu'à présent ces rapports."

These notifications, analogous to some more recent notifications, thus informed other Powers of the position which the two States took in regard to the continuance of the union's treaties: those made specifically with reference to one State would continue in force only as between that State and the other States parties; those made for the union as a whole would continue in force for each State but only in relation to itself.

5. Great Britain accepted the continuance in force of the union treaties vis à vis Sweden only "pending a further study of the subject", declaring that the dissolution of the union "undoubtedly affords his Majesty's Government the right to examine, de novo, the Treaty engagements by which Great Britain was bound to the Dual Monarchy".4/ Both France and the United States, on the other hand, appear to have shared the view taken by Norway and Sweden that the treaties of the former union continued in force on the basis set out in their Notes.5/

2/ See generally D. P. O'Connell, British Yearbook of International Law (1963) vol. 39, pp. 122-123; De Muralt, The Problem of State Succession with regard to Treaties (1954), pp. 87-88.

3/ British and Foreign State Papers, vol. 98, pp. 33-34; reproduced in McNair, Law of Treaties (1961), p. 614.

4/ McNair, Law of Treaties (1961) p. 615.

5/ See Hackworth, Digest of International Law, vol. V, p. 362 and De Muralt, op. cit., p. 88.

6. The termination of the Austro-Hungarian Empire in 1919 appears to be a case of dissolution of a union in so far as it concerns Austria and Hungary and a dismemberment in so far as it concerns the other territories of the Empire. The dissolution of the dual monarchy is complicated as a precedent for present purposes by the fact that it took place after the 1914-1918 war in which Austria-Hungary had been a belligerent and that the question of the fate of the Dual Monarchy's treaties was regulated by the peace treaties.6/ The position was summed up by one writer as follows: 7/

> "It appears to be the view of the parties to the peace treaties (including Austria and Hungary themselves) that, apart from any provision to the contrary in them or in other treaties, those two countries are respectively the direct successors of the Austro-Hungarian Empire and are entitled to the rights, and subject to obligations, of the treaties to which it was a party, and both Austria and Hungary have made declarations to this effect. This matter is, however, not free from controversy and there has been much litigation involving the question whether or not the personality of Austria and Hungary was destroyed in 1918, with the result that they started as new States free from earlier obligations except in so far as they might accept them by treaty".

Austria in her relations with States outside the peace treaties appears to have adopted a more reserved attitude towards the question of her obligation to accept the continuance in force of Dual Monarchy treaties. According to a Netherlands writer, 8/ although in practice agreeing to the continuance of Dual Monarchy treaties in her relations with the Netherlands, Austria persisted in the view that she was a new State not ipso jure bound by those treaties. Hungary, on the other hand, appears generally to have accepted that she should be considered as remaining bound by the treaties ipso jure.

7. The same difference of approach in the attitudes of Austria and Hungary is reflected in the Secretariat's studies of succession in respect of bilateral treaties. Thus, in the case of an extradition treaty, Hungary informed the Swedish Government in 1922 as follows: 9/

> "Hungary, from the point of view of Hungarian constitutional law, is identical with the former Kingdom of Hungary, which during the period of dualism formed, with Austria, the other constituent part of the former Austro-Hungarian monarchy. Consequently, the dissolution of the monarchy, that is, the termination of the constitutional link as between Austria and Hungary, has not altered the force of the treaties and conventions which were in force in the Kingdom of Hungary during the period of dualism.

6/ De Muralt, op. cit. pp. 88-91.

7/ McNair, Law of Treaties (1961) p. 616.

8/ De Muralt, op. cit. pp. 89-91.

9/ Succession of States in respect of Bilateral Treaties (A/CN.4/229), para. 115 [Yearbook of the International Law Commission, 1970, vol. II, p. 123]

Austria, on the other hand, appears to have regarded the continuity of a Dual Monarchy extradition treaty with Switzerland as dependent on the conclusion of an agreement with that country.10/ Similarly, in the case of trade agreements the Secretariat study observes: 11/ "In so far as the question was not regulated by specific provisions in the Peace Settlement, Austria took a generally negative view of treaty continuity, and Hungary a positive one". And this observation is supported by references to the practice of the two countries in relation to the Scandinavian States, the Netherlands and Switzerland, which were not parties to the Peace Settlement. Furthermore, those differing attitudes of the two countries appear also in their practice in regard to multilateral treaties, as is shown by the Secretariat study of succession in respect of the Hague Conventions of 1899 and 1907 for the Pacific Settlement of International Disputes.12/

8. Between 1918 and 1944 Iceland was associated with Denmark in a Union of States under which treaties made by Denmark for the union were not to be binding upon Iceland without the latter's consent.13/ During the union Iceland's separate identity was recognized internationally; indeed, in some cases treaties were made separately with both Denmark and Iceland. At the date of dissolution there existed some pre-union treaties which had continued in force for the union with respect to Iceland as well as further treaties concluded during the union and in force with respect to Iceland. Subsequently, as a separate independent State, Iceland considered both categories of union treaties as continuing in force with respect to herself and the same view of her case appears to have been taken by the other States parties to those treaties.14/ Thus, according to the Secretariat study of the Extradition treaties: 15/

> "A list published by the Icelandic Foreign Ministry of its treaties in force as of 31 December 1964 includes extradition treaties which were concluded by Denmark before 1914 with Belgium, France, Germany (listed under the Federal Republic of Germany), Italy, Luxembourg, Netherlands, Norway, Spain, the United Kingdom (also listed under Australia, Canada, Ceylon, India and New Zealand) and the United States. In each case it is also indicated that the other listed countries consider that the treaty is in force."

10/ Ibid. para. 116.

11/ Succession of States in respect of Bilateral Treaties, (A/CN.4/243 Add.1), para. 110.

12/ Succession of States to Multilateral Treaties (A/CN.4/200), paras. 110-112 [Yearbook of the International Law Commission, 1968, vol. II, pp. 28-29]

13/ See McNair, Law of Treaties (1961), p.620.

14/ D. P. O'Connell, State Succession in Municipal Law and International Law (1967) p. 111-112.

15/ Succession of States in respect of Bilateral Treaties (A/CN.4/229), para. 111 [Yearbook of the International Law Commission, 1970, vol. II, p. 122]

Again, according to the Secretariat study of Trade Agreements 16/, the same Icelandic list

> "Includes treaties and agreements concerning trade concluded before 1914 by Denmark with Belgium, Chile, France, Hungary, Italy, Liberia, Netherlands, Norway, Sweden, Switzerland and the United Kingdom (also listed under Canada, Ceylon, India and South Africa), and trade treaties and agreements concluded between 1918 and 1944 with Austria, Bolivia, Brazil, Czechoslovakia, Finland, Greece, Haiti, Poland, Romania, Spain, the USSR and the United States. Seventeen of the twenty-seven listed States have also confirmed that the treaties in question remain in effect. The remainder appear to have taken no position."

As to multilateral treaties, it is understood that, after the dissolution, Iceland considered herself a party to any multilateral treaty which had been applicable to her during the union. But the provision in the constitution of the union that treaties made for the union were not to be binding upon Iceland without her consent was strictly applied; and a good many multilateral treaties made by Denmark during the union, including treaties concluded under the auspices of the League of Nations, were not in fact subscribed to by Iceland. This seems to be the explanation of why in "Multilateral Treaties in respect of which the Secretary-General performs depositary functions" Denmark is in a number of cases listed today as a party to a League of Nations treaty, but not Iceland.17/ In some cases, moreover, Denmark and Iceland are given separate entries indicating either that Denmark and Iceland are both bound by the treaty or that Denmark is bound and the treaty is open to accession by Iceland.18/ The practice in regard to multilateral treaties thus only serves to confirm the separate international personality of Iceland during the union.

9. The effect of the formation of the United Arab Republic on the pre-union treaties of Syria and Egypt has been considered in the commentary to article 19 (paragraphs 12-17). Some two and a half years after its formation the union was dissolved through the withdrawal of Syria. The Syrian Government then passed a decree providing that, in regard to both bilateral and multilateral treaties, any treaty concluded during the period of union with Egypt was to be considered in force with respect to the Syrian Arab Republic.19/ It communicated the text of this decree to the Secretary-General, stating that in consequence "obligations contracted by the Syrian Arab Republic under multilateral agreements and conventions during the period of the union with Egypt

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16/ Succession in respect of Bilateral Treaties, (A/CN.4/243/Add.1), para. 109.

17/ E.G. Protocol of 1930 relating to Military Obligations in Certain Cases of Double Nationality, Protocol of 1923 on Arbitration Clauses, Convention of 1929 for the Execution of Foreign Arbitral Awards, etc. (see ST/Leg/SER.D/2, Part II, Nos. 5,6,7, etc.)

18/ Signatures, ratifications and accessions in respect of agreements and conventions concluded under the auspices of the League of Nations (League of Nations, Official Journal, Special Supplement No. 193, Geneva, 1944).

19/ See Whiteman, Digest of International Law, vol. 2, p. 987.

remain in force in Syria". In face of this notification the Secretary-General adopted the following practice as described in a footnote 20/ in "Multilateral Treaties in respect of which the Secretary-General performs Depositary Functions":

> "Accordingly, in so far as concerns any action taken by Egypt or subsequently by the United Arab Republic in respect of any instrument concluded under the auspices of the United Nations, the date of such action is shown in the list of States opposite the name of the United Arab Republic. The dates of actions taken by Syria, as also are the dates of receipt of instruments of accession or notification of application to the Syrian Province deposited on behalf of the United Arab Republic during the time when Syria formed part of the United Arab Republic."

In other words, each State was recorded as remaining bound in relation to its own territory by treaties of the United Arab Republic concluded during the period of the union as well as by treaties to which it had itself become a party prior to the union and which had continued in force in relation to its own territory during the union.

10. Syria, it will be observed, prior to the formation of the United Arab Republic as shown opposite the name of Syria, made a unilateral declaration as to the effect of the dissolution on treaties concluded by the union during its existence. At the same time, she clearly assumed that the pre-union treaties to which the former State of Syria had been a party would automatically be binding upon her and this seems also to have been the understanding of the Secretary-General. Egypt, the other half of the union, made no declaration. Retaining the name of the United Arab Republic, she apparently regarded Syria as having in effect seceded, and the continuation of her own status as a party to multilateral treaties concluded by the union as being self-evident. And she also clearly assumed that the pre-union treaties to which Egypt had been a party would automatically continue to be binding upon the United Arab Republic. This treaty practice in regard to Syria and the United Arab Republic has to be appreciated against the background of the treatment of their membership of international organizations.21/ Syria, in a letter to the President of the General Assembly, simply requested the United Nations to "take note of the resumed membership in the United Nations of the Syrian Arab Republic." The President, after consulting many delegations and after ascertaining that no objection had been made, authorized Syria to take her seat again in the Assembly. Syria, perhaps because of her earlier existence as a separate Member State, was therefore accorded different treatment from Pakistan in 1947 who was required to undergo admission as a New State. No question was ever raised as to the United Arab Republic's right to continue her membership after the dissolution of the union. Broadly speaking, the same solution was adopted in other international organizations.

20/ ST/LEG.SER.D/2, p. 4.

21/ See commentary to article 19, paras. 12-17 [Fifth report on Succession in respect of treaties (A/CN.4/256/Add.1)].

11. Other practice in regard to multilateral treaties is in line with that followed by the Secretary-General, as can be seen from the Secretariat studies of the Conventions for the Protection of Literary and Artistic Works, 22/ the Conventions for the Protection of Industrial Property 23/ and the Geneva Humanitarian Conventions.24/ This is true also of the position taken by the United States, as depositary of the Statute of the International Atomic Energy Agency, in correspondence with Syria concerning the latter's status as a Member of that Agency.25/ As to bilateral treaties, the Secretariat studies of Air Transport 26/ and Trade 27/ Agreements confirm that the practice was similar.

12. The dissolution of the Mali Federation in 1960 is sometimes cited in the present connexion. But the facts concerning the dissolution of that extremely ephemeral federation are thought to be too special for it to constitute a precedent from which to derive any general rule. In 1959 representatives of four autonomous territories of the French Community adopted the text of a constitution for the "Federation of Mali," but only two of them - Soudan and Senegal - ratified the constitution.28/ In June 1960 France, Soudan and Senegal reached agreement on the conditions of the transfer of competence from the Community to the Federation and the attainment of independence. Subsequently, seven agreements of co-operation with France were concluded in the name of the Federation of Mali. But in August Senegal annulled her ratification of the constitution and was afterwards recognized as an independent State by France; and in consequence the newborn federation was, almost with its first breath, reduced to Soudan alone. Senegal, the State which had in effect dissolved or seceded from the Federation, entered into an exchange of notes with France 29/ in which she stated her view that:

> "by virtue of the principles of international law relating to the succession of States, the Republic of Senegal is subrogated, in so far as it is concerned, to the rights and obligations deriving from the co-operation agreements of 22 June 1960 between the French Republic and the Federation of Mali, without prejudice to any adjustments that may be deemed necessary by mutual agreement."

22/ Succession of States to Multilateral Treaties, (A/CN.4/200), paras. 50-51 [Yearbook of the International Law Commission, 1968, vol. II, p. 18]

23/ (A/CN.4/200/Add.1), paras. 296-297 [Ibid., pp. 67-68].

24/ (A/CN.4/200), para. 211 [Ibid., pp. 49-50].

25/ Whiteman, Digest of International Law, vol. 2, pp. 987-990.

26/ Succession of States to Bilateral Treaties (A/CN.4/243), paras. 152-175.

27/ (A/CN.4/243/Add.1), paras. 161-165.

28/ See D. P. O'Connell, State Succession in International Law and Municipal Law (1967), vol. II, pp. 170-172.

29/ See Succession in respect of Bilateral Treaties (A/CN.4/243), para. 176.

To which the French Government replied that it shared this view. Mali, on the other hand, who had contested the legality of the dissolution of the federation by Senegal and retained the name of Mali, declined to accept any succession to obligations under the co-operation agreements. Thus succession was accepted by the State which might have been expected to deny it and denied by the State which might have been expected to assume it. But in all the circumstances, as already observed, it does not seem that any useful conclusions can be drawn from the practice in regard to the dissolution of this federation.

13. Although there are some inconsistencies in the practice (e.g. Austria and Mali), it is thought to give general support to the thesis that, on the dissolution of a union, a former constituent State remains bound by:

(a) treaties concluded by the union government which have reference to that State; and

(b) treaties which were in force for that State when it entered the union and continued in force for it during the union. At least some of the practice, on the other hand, seems explicable on the basis of the consents of the interested States. Accordingly, as in the case of the previous article, the Special Rapporteur has prepared alternative texts for the Commission's consideration: alternative A formulated in terms of a rule of ipso jure continuity; and alternative B formulated in terms of continuity by consent.