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Succession of States with Respect to International Treaties: Current Challenges and Unresolved Issues

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Abstract

The law of state succession to international treaties remains one of the most contested and undertheorized areas of international law, caught between the stability demanded by *pacta sunt servanda* and the sovereign freedom claimed by newly emergent states. Despite the adoption of the 1978 Vienna Convention on Succession of States in Respect of Treaties, its low ratification rate (fewer than 25 states parties), its controversial distinction between decolonized states (which enjoy a clean slate — *tabula rasa*) and other successor states (which are presumed to continue treaties), and inconsistent state practice stemming from the dissolutions of the USSR (1991), Czechoslovakia (1993), and the Socialist Federal Republic of Yugoslavia (1991–1992) have left critical questions unresolved. Modern challenges include whether human rights treaties (e.g., ICCPR, ICESCR) and environmental treaties automatically bind successor states to prevent legal vacuums and protect fundamental rights of affected populations; the profound uncertainty surrounding bilateral investment treaties (BITs) in investor-state arbitration, particularly whether a successor state is bound by BITs concluded by its predecessor and whether it may terminate them unilaterally without causing expropriation claims; and the growing reliance on *ad hoc* succession agreements (such as the 1992 Minsk Agreement or the 1993 Czech-Slovak succession arrangements) that effectively bypass the Vienna framework and undermine its customary status. Boundary treaties (land and maritime borders) remain the sole area of settled customary law, as confirmed by the International Court of Justice in the Libya/Chad case (1994) and consistently upheld in state practice. The article argues that international law has no universally applicable solution for state succession to treaties, forcing future secessions toward pragmatic, case-specific political arrangements rather than codified rules, and highlights the need for further development of international law in this area.

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Keywords

State succession, international treaties, 1978 Vienna Convention, clean slate (*tabula rasa*), treaty continuity, dissolution of states, bilateral investment treaties (BITs), human rights treaties, *pacta sunt servanda*.

Introduction

The field of state succession to treaties is often described by international lawyers as one of the most opaque and undertheorized areas of international law. It is a domain where the neat, abstract principles of *pacta sunt servanda* collide with the raw, messy reality of political upheaval, territorial reconfiguration, and the birth or death of states. While the 1978 Vienna Convention on Succession of States in Respect of Treaties (VCSST) represents the most ambitious attempt at codification, its patchy ratification, its controversial distinctions between different types of state succession, and the sheer volume of modern state practice that operates outside its framework, have left a legacy of unresolved issues and continuing doctrinal instability. This article will delve into this intricate landscape, moving beyond a rigid structure to explore the persistent challenges, the fault lines in contemporary scholarship, and the urgent questions that remain unanswered at the intersection of sovereignty, continuity, and legal obligation in a volatile international system.

The core difficulty in state succession to treaties is not merely technical but profoundly political. It pits the established international legal order's desire for stability, predictability, and respect for acquired rights against the principle of a new state's sovereignty, which arguably includes the freedom to start anew in its international engagements. The very definition, provided in the 1978 Vienna Convention, seems sterile and deceptively simple: *«succession of States means the replacement of one State by another in the responsibility for the international relations of territory»*. Yet, this clinical description shrouds a vast array of potential events—decolonization, the dissolution of federations, cession, annexation, secession—each with unique legal and factual characteristics. The legal consequences for treaties can vary dramatically depending not only on how a state comes into being but also on the nature of the treaty in question: treaty categories relevant to succession include boundary and territorial regimes, human rights instruments, environmental accords, or bilateral investment treaties (BITs) [United Nations, 1978, ect.32].

Main part

The VCSST was a product of its time, conceived in an era dominated by the «profound transformation of the international community brought about by the decolonization process». It sought to find a middle ground between the old, absolutist doctrines of «universal succession» (where a new state automatically inherits all treaty obligations of its predecessor) and the «clean slate» or *tabula rasa* (where it inherits none except for certain localized obligations).

The Convention's most controversial, and perhaps most revealing, feature is its distinction between «newly independent states» (former colonies) and all other new states (cases of separation). For the former, Article 16 clearly enshrines the **clean slate rule**: *«a newly independent State is not bound to maintain in force... any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates»*. For the latter, in cases of separation or dissolution, Article 34(1)(a) imposes a presumption of **continuity**: *«any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed»*.

This two-speed system has been a source of profound discord. While it was a political necessity to secure the agreement of newly independent states in the Global South, it is seen by many Western legal scholars as arbitrary and without basis in customary international law. The article explores whether this anachronism, born of a specific historical moment, has rendered the Convention obsolete for modern succession events like the dissolution of federations (Czechoslovakia, Yugoslavia, the USSR) or future

separatist movements in Spain, Ukraine, or elsewhere. Indeed, as of February 2025, the VCSST has only 23 state parties—a far cry from the universal acceptance of the 1969 Vienna Convention on the Law of Treaties. This low ratification rate casts a long shadow of doubt and signals widespread discomfort with the Convention's approach, forcing international lawyers to rely on fragmented customary law, case-specific agreements, and contextual arguments [O'Connell, 1967, ect.17].

The decolonization of Africa, Asia, and the Caribbean served as the primary impetus for the ILC's work. For states like Tanzania, Jamaica, or Fiji, the *tabula rasa* approach provided a politically potent tool. By disowning the treaties of the imperial predecessor, a new nation could assert its foreign policy independence, refuse to be bound by agreements that might perpetuate economic subservience, and renegotiate its position on the global stage. As scholars in the Third World Approaches to International Law (TWAIL) tradition argue, the very legal framework of succession was tainted by its colonial origins, and the «clean slate» was a necessary corrective. However, the practical picture was always messier than the doctrine. Many newly independent states, in a pragmatic move, issued «blanket notifications» of succession to large bodies of multilateral treaties, especially those concerning humanitarian law or technical cooperation, indicating that abstract sovereignty often yields to functional bureaucratic necessity [Dumberry, 2018, ect.60].

The wave of state dissolutions in the early 1990s provided the most significant and chaotic test cases for the rules of succession outside the colonial context.

The dissolution of Czechoslovakia on January 1, 1993 was remarkably orderly. Both the Czech Republic and Slovakia agreed in advance on the principle of continuity for multilateral treaties and developed a notification system for bilateral treaties. This practice informed both scholarship and jurisprudence. In the landmark **Gabčíkovo-Nagymaros Project** case before the ICJ, Slovakia argued that «State practice in cases of dissolution tends to support continuity as the rule to be followed with regard to bilateral treaties». The case involved the 1977 Treaty between Hungary and Czechoslovakia for the construction of a dam system on the Danube. When Czechoslovakia dissolved, Slovakia claimed to be its natural successor to the treaty. Although the Court navigated the issue without a definitive ruling on this point of succession law, the case clearly demonstrates how modern practice leans toward a continuity solution in dissolutions to prevent a wholesale collapse of treaty relations.

The dissolution of the Soviet Union in 1991 presented a unique scenario: *continuation* rather than clean-slate secession. The Russian Federation claimed to continue the international legal personality of the USSR, including the USSR's membership in the UN Security Council. On the other hand, the other 14 newly independent states emerged as successor states and had to negotiate their treaty relationships. While Russia assumed most of the USSR's global treaties automatically, the record of the new states is mixed. Some, like Ukraine, issued general notifications of succession to multilateral treaties, while others adopted a selective approach. The case of **Azerbaijan** and **Armenia** and their succession to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) perfectly demonstrates the complexities of this approach, as discussed below [Craven, 1999, ect.76].

The dissolution of the Socialist Federal Republic of Yugoslavia (SFRY) was the exact opposite of the orderly Czechoslovak model. It was a violent, contested process marked by war and fragmentation. Unlike in the USSR, no single state claimed to be the sole continuator of the SFRY. This deadlock led to the exceptional **Agreement on Succession Issues**, signed in Vienna on June 29, 2001, which entered into force on June 2, 2004. This agreement is a testament to the fact that, in the absence of clear international rules, states will create their own bespoke, contractual framework through negotiation. It meticulously divided the SFRY's assets, archives, property, and liabilities among the five successor states (Bosnia and Herzegovina, Croatia, North Macedonia, Slovenia, and the Federal Republic of Yugoslavia—later Serbia and Montenegro). It did not, however, neatly resolve all treaty succession

issues, leaving many questions to be settled by subsequent notifications or bilateral agreements.

Beyond the categories of succession, the modern debate is shaped by the *subject matter* of the treaties at stake. International community's expectations and state practice vary dramatically across different areas of international law.

The only area where a robust customary rule has crystalized is for treaties establishing a boundary or a territorial regime (e.g., demilitarized zones). As the 1978 Convention codifies in Article 11 and 12, a succession does not affect such treaties. This is necessitated by overriding practical considerations: international borders cannot flicker in and out of existence based on political events in the capital. This is a rule that commands near-universal acceptance as a custom, as demonstrated by consistent state behavior and international jurisprudence on matters like river delimitations. In this limited sense, the old «universal succession» principle survives for a specific, narrow category of treaties.

This is perhaps the most fiercely debated area. The doctrine of automatic succession for human rights treaties is the principal challenger to the residual *tabula rasa* principle. The core argument is teleological: given the *erga omnes* or community-interest nature of human rights obligations and the profound vulnerability of populations during times of political transition, a legal vacuum or a «grace period» before a new state confirms its intentions is unacceptable. If a successor state were allowed a clean slate, individuals could be stripped of their protections overnight. Consequently, human rights treaty bodies like the UN Human Rights Committee have, in General Comment No. 26 on the International Covenant on Civil and Political Rights (ICCPR), argued in favor of automatic succession. They suggest that successor states are bound from the moment of succession, and their formal notification is merely a *confirmatory* act, not a constitutive one.

This view, however, is not universally shared. In state practice, especially following the dissolution of the USSR, many new states did not automatically consider themselves bound and instead submitted explicit declarations of succession to human rights treaties, clearly treating them as a *new consent*. The CERD cases brought by Armenia and Azerbaijan against each other at the ICJ illustrate the importance of this. Both states are successors to the USSR, which had ratified CERD in 1969. Armenia deposited its succession to CERD in 1993, and Azerbaijan in 1996. The Court's jurisdictional rulings now hinge on whether acts of discrimination that occurred in the gap period between the USSR's dissolution and each state's formal succession can be adjudicated under the Convention. This ambiguity provides a concrete legal battleground for the theory of automatic succession [International Court of Justice, 1997, ect.17].

Scholars and practitioners are increasingly asking whether treaties that protect the global commons (the climate, biodiversity, the ozone layer) or limit weapons proliferation should automatically bind successor states. The reasoning is similar to that for human rights: these obligations are not merely contractual; they are for the benefit of the international community as a whole. An emerging body of practice suggests that, as with human rights, a presumption in favor of automatic continuity is arising for these categories. The recent ICJ advisory opinion on the climate system, which underscores existing state obligations to protect the climate, could strengthen the argument that a successor state cannot claim a «clean slate» from its predecessor's environmental baseline. However, as with human rights, the evidence for a new custom is still contested and far from settled.

The question of a successor state's obligations under BITs signed by its predecessor is perhaps the most practically important unresolved issue for international economic law and dispute resolution. BITs are the primary instruments for the international protection of foreign investors and are a cornerstone of global economic governance. The practice of states and the awards of arbitral tribunals reveal a chaotic picture.

The 1978 Convention's clear distinction between multilateral and bilateral treaties is of little help. Tribunals deciding investor-state disputes in the context of state succession (e.g., against Russia, the Czech Republic, or Serbia) have been forced to piece together answers from custom, the agreement of the parties, and general principles of law. The trend in arbitral case law is to find that, in the absence of a contrary intention, a successor state does not automatically succeed to a bilateral treaty. The reasoning is that a BIT is an inherently consensual and reciprocal bargain between two specific states. A successor state is not a party to that original bargain, and imposing it without consent could violate its sovereignty. However, this conclusion creates a potential «investment vacuum» and severe legal uncertainty for foreign investors.

Tribunals often resolve this by looking at specific contexts:

- 1) Continuator states (like Russia after the USSR): They are generally considered bound by all BITs of the predecessor.
- 2) States formed by dissolution or secession: No universal rule applies. Instead, tribunals and legal advisors must meticulously examine whether:
 - The successor has made a formal declaration of succession to the BIT.
 - A succession agreement exists (like the one for former Yugoslavia) that addresses the issue.
 - The BITs were, de facto, applied after the succession, implying tacit consent.

The BIT is otherwise impliedly continued based on the need for legal stability and the protection of acquired rights [United Nations, 1978, ect.39].

This remains a deeply unsatisfactory state of affairs for investors seeking certainty and for states seeking to avoid unforeseen liabilities. It is foreseeable that this area will continue to generate significant arbitration.

- 1) The Law of State Responsibility is the New Frontier: The ILC is now actively working on the topic of »Succession of States in respect of State Responsibility«. The collapse of the SFRY and the USSR left a host of unanswered questions: When a predecessor state (e.g., the USSR) committed an internationally wrongful act (e.g., environmental damage or human rights violations), can the successor states be held liable? Conversely, if a predecessor state was the victim of a wrongful act, can the successor state claim reparation? Remarkably, there are still few primary rules governing this, and the ILC's effort to fill the gap is crucial.
- 2) The «Kosovo Conundrum»: What Constitutes State Practice for Treaty Succession? The contested status of Kosovo has wide-ranging implications. If a state's status is disputed, to which treaties is its territory bound? Is it bound by the treaties of the parent state (Serbia) until a final legal determination of its status is made? The ICJ's 2010 Advisory Opinion, which found that Kosovo's declaration of independence did not violate international law, created as many questions as it answered, particularly regarding the binding force of treaties for entities of contested sovereignty. The recognition or non-recognition of new states by the international community directly impacts the universality and applicability of treaties on their territory.
- 3) The Perpetual Imbalance of the 1978 Convention: The central political and legal schism in the VCSST—the different rules for former colonies and other new states—is increasingly unsustainable. Given the virtual completion of decolonization, this distinction is now functionally obsolete for most future successions. The key question is whether the *continuity* principle of Article 34 has ripened into a general customary rule for all cases of succession, or whether a *presumption* for human rights and environmental treaties is overtaking the VCSST framework entirely.

The «Fragmentizing» Effect of Bespoke Succession Agreements: Increasingly, states are ignoring the Vienna framework and negotiating *ad hoc* political solutions. The 2001 Yugoslav Succession Agreement is the masterful example of this. These bespoke agreements have the advantage of providing

legal certainty and political closure, but they undermine the project of creating a universally applicable set of rules [Dumberry, 2018, ect.95].

Conclusion

The law of state succession to treaties remains an unfinished cathedral. The 1978 Vienna Convention stands as an impressive, but partially constructed, blueprint. The most severe unresolved issues—automatic succession for human rights treaties, the nullity of BITs for new states, the rules for state responsibility, and the ambiguous borderline cases of secession—reveal the profound tension between the desire for a stable, rule-based order and the political reality of state discontinuities. As the international community faces potential future state births in places like Scotland, Catalonia, or elsewhere, the doctrinal debates explored here will cease to be abstract academic exercises. They will become pressing, high-stakes legal and political questions demanding pragmatic answers. The messy, inconsistent, and often contradictory state practice of the last three decades suggests that, for the foreseeable future, the law in this area will be defined less by codified conventions and more by the context of each unique political rupture.

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Правопреемство государств в отношении международных договоров: современные вызовы и нерешённые вопросы

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Аннотация

Право правопреемства государств в отношении международных договоров остаётся одной из наиболее спорных и теоретически слабо разработанных областей международного права, находящейся между требованием стабильности, вытекающим из принципа *pacta sunt servanda*, и суверенной свободой, на которую претендуют вновь возникшие государства. Несмотря на принятие Венской конвенции о правопреемстве государств в отношении договоров 1978 года, её низкий уровень ратификации (менее 25 государств-участников), вызывающее споры разграничение между деколонизированными государствами (которые

пользуются «чистым листом» — *tabula rasa*) и иными государствами-преемниками (в отношении которых предполагается продолжение действия договоров), а также противоречивая государственная практика, обусловленная распадом СССР (1991 г.), Чехословакии (1993 г.) и Социалистической Федеративной Республики Югославия (1991–1992 гг.), оставляют критические вопросы без ответа. Современные вызовы включают: вопрос об автоматическом связывании государств-преемников договорами в области прав человека (например, МПГПП, МПЭСКП) и экологическими договорами в целях предотвращения правовых вакуумов и защиты основных прав затронутого населения; глубокую неопределённость, касающуюся двусторонних инвестиционных договоров (ДИД) в арбитраже между инвестором и государством, в частности, вопрос о том, связано ли государство-преемник ДИД, заключёнными его предшественником, и может ли оно расторгнуть их в одностороннем порядке без возникновения требований об экспроприации; а также растущую опору на специальные соглашения о правопреемстве (например, Минское соглашение 1992 года или чехословацкие договорённости о правопреемстве 1993 года), которые фактически обходят Венскую систему и подрывают её обычный статус. Договоры о границах (сухопутных и морских) остаются единственной областью устоявшегося обычного права, что подтверждено Международным Судом ООН в деле Ливия/Чад (1994 г.) и последовательно поддерживается в государственной практике. В статье утверждается, что международное право не имеет универсально применимого решения для правопреемства государств в отношении договоров, что вынуждает будущие сецессии обращаться к прагматичным, основанным на конкретных обстоятельствах политическим договорённостям, а не к кодифицированным нормам, и подчёркивается необходимость дальнейшего развития международного права в этой области.

Для цитирования в научных исследованиях

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Ключевые слова

Правопреемство государств, международные договоры, Венская конвенция 1978 года, «чистый лист» (*tabula rasa*), континуитет договоров, распад государств, двусторонние инвестиционные договоры (ДИД), договоры о правах человека, *pacta sunt servanda*.

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