

LAWXPERTS.

WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.

GETTING A GRIP OVER STATE SUCCESSION

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WHAT ARE WE GOING TO LEARN IN THIS PRIMER:

1. CONCEPT OF STATE SUCCESSION
2. WHY SS
3. TWO INDISPENSABLE PRINCIPLES OF SS
4. TWO TREATIES

1) CONCEPT OF STATE SUCCESSION :

- One of the most disputed areas of International law. *Espionage Prosecution Case*.
- Replacement of X state by State Y. ----Change is only phenomena that doesn't change.
- New states appear + old states disappear.
- Role of IL : is to regulate such events with *minimum disruption + instability*.
- Factual change in sovereign authority over a particular territory.

2) WHY SS ?

Kingdoms are clay : W. Shakespeare, *Antony and Cleopatra*.

Coz of

- Decolonisation
- Dismemberment of an existing state
- Secession
- Annexation
- Merger

Trick: SAM bought DD.

What is the issue WITH SS ?

- How far the new state will be bound by - treaties, contracts, archives , debts- entered by the previous sovereign state.
- Inhabitants- nationality issue ?
- Public property ?
- to membership of international organisations ?

SOME SETTLED PRINCIPLES : General principles deduced from Customary International law for the successor state:

1. No automatic succession to political treaties.
2. Automatic succession to territorial treaties. *Gabcikovo-Nagymaros case*.
3. Successor state will be bound by Human rights treaties.

3) Indispensable Two principles:

#1 - continuity principle by inheritance :

Origin: Roman law

Concept: new state has to saddle the burden + benefits of its predecessor.

- Not accepted widely.
- Example: India is a continuation of British India whereas Pakistan is new state altogether.
- Cession/ secession of a territory will not affect existing state. Eg: Pak remains as a state even after independence of Bangladesh.

Relevance of this principle :

You can easily continue membership in intl organs of your predecessor.
Eg: USSR dissolution; Russian federation took its membership.

SOME COMPLICATIONS:

➤ **Implication of restoration of territory:**

1940 - Baltic state : came under USSR control after 1940 until 1990. In 1991, after dissolution of USSR , Baltic STs declared independence. Question was : whether it will continue with R&D of USSR or can be restored with R& D of Baltic STs as on 1940 . The latter will be the case.

- **Case of dissolution of Yugoslavia :** Two dismembered sts. of yugo federation - maintained that it's a continuation of its predecessor ; but intl community didn't accept it. Then it changed its position & requested UN for membership & be treated as a new member.

#2 - Clean slate principle:

Origin: Positivism trends.

Concept: I am a new born child. I have my own style.

- *"a new state is not bound to maintain in force, or become a party to, 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"* Article 16 of the VCS 1978.
- Accepted by U.S. & U.K.

4) Two treaties :

Although Customary international law (CIL) plays major role in SS

- 1978 : Vienna Convention on the Sucession of the states in resp of the treaties (VCST78)
- 1983: VCS in respect of State property (VCSSP) - not entered into force.

THE END.