

State Responsibility as respects Human Rights' Violation amidst Succession

Ridhima Johari, and Mudit Dubey

Abstract—The subject of State succession in appreciation of human rights treaties is specifically compelling. Monstrous human rights violations regularly happen definitely throughout the times of political precariousness which result in State succession. The State responsibility in these circumstances is to be determined earnestly and to an exact degree. In the landmark case of *Bijelic v. Montenegro and Serbia*, the Court held that Montenegro was to be regarded as a party to the Convention for the Protection of Human Rights and Fundamental from the date of its declaration of independence from the State Union of Serbia and Montenegro, and that Montenegro alone could be held responsible for violations of these instruments occurring in the territory of the State Union that began before March 2004¹ but continuing through 2009.

A series of questions which arise is: What is the consequence of an international breach committed by a state, after which it ceases to exist? Does the responsibility devolve to a new state that occupies part of the territory of an old state? Can the newly formed state be held accountable for violations that took place before the treaty entered into force with respect to that state? The research examines the European Court of Human Rights' encounter with the law of state succession, specifically succession to treaty obligations and succession to responsibility for wrongful acts of a predecessor state. It also addresses the question whether a successor State is bound by the obligations held in global human rights instruments that were tying on the Predecessor State or if it is allowed to acknowledge or not to acknowledge those obligations. The research would be relevant from both ends, that is from the state point of view and of the international community's. With a background of Vienna Convention on Law of Treaties and the exceptional character of human rights treaties, the article first analyzes the state of mind embraced by global associations and then investigates the disposition towards human rights treaties received by the successor States.

Keywords—State Succession, Human Rights, State responsibility

I. INTRODUCTION

AS there is no consistent state practice in respect of treaties, State succession has been an uncertain field of international law. State practice on succession to international treaties involving 23-odd successor States has suddenly become extremely vibrant. The concept of State succession is

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¹ The date of ratification of the Convention and Protocol 1 by the State Union

very broad; the subject of State succession in respect of human rights treaties is of particular interest to the people who become subjects to this particular situation. In this article the key question which is pondered into is whether a successor state is bound by the obligations contained in international human rights instruments that were binding on the Predecessor State or whether it is free to accept or not to accept those obligations.² It then analyzes the outlook towards human rights treaties adopted by the successor States. While the emphasis is on human rights treaties *stricto sensu* reference will also be made to humanitarian treaties in a wider sense, i.e. treaties on international humanitarian law and international labour law.

The cases of USSR, FRY and CSSR which had been parties to the main UN human rights treaties have been familiar to one and all, so the pertinent question which arises is that were the successor states emerging from these three states automatically bound by these treaties? The 1978 Vienna Convention on Succession of States in Respect of Treaties provides for the continuity of obligations in respect of all treaties that had been binding on the predecessor state.³ This continuity of obligations under human rights treaties occurs automatically, *ipso jure*, and therefore does not require formal notification by the successor state.⁴ Since 1993, the question of the continuity or otherwise of obligations arising out of human rights treaties has been addressed by a wide range of international authorities, including the UN Commission on Human Rights, the UN human rights treaty bodies and the International Court of Justice.⁵

In 1993, 1994 and 1995, the UN Commission on Human Rights adopted three successive resolutions, introduced by the Russian Federation and adopted without a vote, entitled 'Succession of States in respect of international human rights treaties'⁶. In those resolutions the Commission referred to the 'special nature' of human rights treaties and their 'continuing applicability' to successor states. The supervisory bodies of

² D.P. O'Connell, 'Reflections on the State Succession Convention', 39 *ZaoRV* (1979) 725,726.

³ Art. 31-35, Vienna Convention on Succession of States in Respect of Treaties, adopted 22 August 1978, entered into force 6 November 1996, 1946 UNTS 3, reproduced at 17 *ILM* (1978) 1488.

⁴ Kamminga, 'State Succession in Respect of Human Rights Treaties', 7 *EJIL* (1996) 469, 482-483.

⁵ International Court of Justice, Case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Preliminary Objections) (*Bosnia-Herzegovina v. Yugoslavia*), judgment of 11 July 1996, par. 21.

⁶ Resolutions 1993/23, 1994/16 and 1995/18.

human rights treaties have adopted a series of general statements in support of automatic state succession in respect of the treaties within their purview.

II. THE VIENNA CONVENTION REGIME

The heading endeavor to systematize and continuously create the International law concerning State succession in appreciation of settlements is the 1978 Vienna Convention on Succession of States in Respect of Treaties.⁷ Most of this Convention, on the other hand, is dedicated to the position of the recently free State or an independent state. This idea is characterized as a successor State the region of which promptly before the succession of States was a ward domain for the international relations of which the predecessor was dependable.⁸ The Convention offers just little direction to a successor State which is not recently free. While the 'clean slate' tenet applies to recently autonomous States, the guideline of congruity of bargain commitments applies to other successor States. Essentially, no Western State hosts as of recently turn into a get-together. This attitude is captivating in light of the fact that very much a couple of recent successor States have energetically grasped the Convention.

III. EUROPEAN CONVENTION

Indeed doubters concur that practice under the European Convention on Human Rights with state succession in appreciation of human rights treaties⁹. On 1 January 1993, the Czech and Slovak Federal Republic broke up into two Free states: the Czech Republic and the Slovak Republic. Gathering, just members of the Council of Europe could get to be gatherings to the Convention new states as part's Seamless congruity of commitments under the Convention.¹⁰ The graph of marks and approvals of the Council of Europe's Treaty Office records the Czech Republic and Slovakia dates of mark and confirmation recorded are by the previous Czech and Slovak Federal Republic.

IV. THE SPECIAL CHARACTER OF HUMAN RIGHTS TREATIES

One sign of the irreversible character of human rights commitments is that human rights treaties don't hold termination clauses. With not many exemptions (Greece's provisional withdrawal from the European Convention on Human Rights between 1969 and 1974), no state has ever ended a human rights treaty, significantly after a radical change of government.¹¹ All things considered, the Court

found that private rights, including property rights, could be truly conjured against the successor state.¹² As a matter of fact, private rights may comprise of property rights as well as of cases against different people and cases against the state. The principle of acquired rights accordingly applies a fortiori regarding human rights.¹³

The international community has an evident enthusiasm toward the continuity of obligations held in human rights treaties. The UN Commission on Human Rights has in progressive resolutions accentuated the special nature of international human rights settlements and it has approached successor States to affirm to proper depositaries that they keep on being bound by commitments under worldwide human rights treaties¹⁴. In these resolutions the Commission likewise asked for human rights arrangement bodies to consider further the proceeding pertinence of universal human rights settlements to successor States. The primary of these resolutions even considered that 'as successor States they should succeed to worldwide human rights bargains'. Most fundamentally, in September 1994, the fifth gathering of persons leading UN human rights bargain bodies brought up 'that successor States were naturally bound by commitments under worldwide human rights instruments from the individual date of freedom and that recognition of the commitments ought not rely on upon a statement of affirmation made by the Government of the successor State.'¹⁵

V. CASE STUDY : USSR

From the point of view of State succession, the USSR dissolved into four categories of States.¹⁶

The first category consists of the Russian Federation, a State which claims to be the continuation of the former USSR. Unlike the similar claim made by the Federal Republic of Yugoslavia, this claim has been widely accepted by other States. This obviously includes human rights treaties.

The second category consists of the Ukraine and Belarus, two founding members of the United Nations which existed already as sovereign States at the time of the break-up of the USSR. The break-up obviously has not affected their obligations under these treaties.

The third category comprises Estonia, Latvia and Lithuania, three States which are claiming to have restored the independence they lost when they were occupied by the USSR

⁷ Art. 34(1), Vienna Convention on Succession of States in Respect of Treaties, adopted 22 August 1978, not yet in force, reproduced in 17ILM (1978) 1488.

⁸ Article 2(1)(f).

⁹ Rasulov, at 165-167.

¹⁰ See J.F. Flauss, 'Convention européenne des droits de l'homme et succession d'Etats aux traités: une curiosité, la décision du Comité des Ministres du Conseil de l'Europe en date du 30 juin 1993 concernant la République tchèque et la Slovaquie', 6 RUDH (1994) 1-5.

¹¹ Article 60(5) of the Vienna Convention on Law of Treaties, which provides that provisions relating to the protection of the human person

contained in treaties of a humanitarian character may not be terminated or suspended in response to a breach by another party.

¹² German Settlers in Poland, (Advisory Opinion) 10 September 1923, PCLJ Series B, No. 6, at 36.

¹³ See R. Miullerson, International Law, Rights and Politics (1994) 154-157.

¹⁴ Resolutions 1993/23, 1994/16 and 1995/18

¹⁵ UN Doc. E/CN.4/1995/80, at 4.

¹⁶ See M. Bothe and C. Schmidt, 'Sur quelques questions de succession posees par la dissolution de l'URSS et celle de la Yougoslavie', 96 RGDIP (1992) 811-842.

in 1940.¹⁷ They therefore do not regard themselves as new States but as States re-exercising the sovereignty of which they had been illegally deprived.¹⁸ The question of State succession therefore does not arise.

The attitude adopted by the Baltic States has some merit when it argues that, as a matter of principle, treaties adhered to by the USSR are from their perspective *res inter alios acta*.

The fourth and largest category consists of Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan. This group presents the least coherent picture with regard to treaty succession. None of them has succeeded to a human rights treaty. As in the case of the Baltic States, the apparent preference of these States for accession rather than succession to human rights treaties to which the USSR had been a party is disappointing.

VI. CONCLUSION

The approach taken by the supervisory bodies of human rights treaties in respect of state succession is not based on the provisions of their respective treaties but on general international law. This special nature entails that the protection accorded by human rights treaties devolves with territory and is not affected by state succession. Successor states therefore remain bound by human rights treaties from their date of independence and this is not independent on any confirmation made by them. According to Articles 11 and 12 of the Vienna Convention on Succession of States in Respect of Treaties, treaties providing for such regimes are not affected by a succession of states. The European Court of Human Rights followed suit by holding the two new states accountable for any breaches committed by the predecessor state.

The UN human rights treaty bodies have generally been more restrained in their attitude to state succession. The repeated calls upon successor state to 'confirm' their obligations under human rights treaties by political bodies such as the UN Commission on Human Rights and expert bodies such as the UN treaty bodies would be evidence of such an interpretation.

Significantly, the three resolutions on state succession in respect of human rights treaties adopted by the UN Commission on Human Rights in which states were called upon to 'confirm' that they continue to be bound, also refer to the 'special nature' of human rights treaties and their 'continuing applicability' to successor states.

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¹⁷ On the history of the occupation, see R. Yakemtchouk, 'Les igpubliques bakes en droit international. Echec d'une annexion opfree en violation du droit des gens', 37 AFDI(99) 259-289.

¹⁸ On the legal position of the Baltic States, see, generally, R. Miillerson, 'New Developments in the Former USSR and Yugoslavia', 33 Va.J.Int'l L (1993) 299, at 308-310. Mullerson was Deputy Foreign Minister of Estonia from 1991-1992.

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