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Secession of States and Self-determination in contemporary International Law

Secession and Succession of States: What relationship?

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Abstract: The succession of States has been facing serious difficulties relating to the ambiguity of its legal regime and to the low acceptance of general rules by the international community. The emergence, since the 90s of the 20th century, of new States as a consequence of secessionist processes has increased the complexity of State succession. Defining the relationship between secession and State succession is, thus, a challenge for contemporary international law, which affects even the concept of sovereignty and the principle of effectiveness of statehood. This article offers some reflections on this issue.

Keywords: Succession of States – Secession – Effects of secession on nationality – Effects of secession on international organisation membership

INTRODUCTION

It does not seem possible to address the topic of secession in contemporary international law without simultaneously reflecting on the succession of States. At the very least, it is undeniable that every secession process is ultimately aimed at creating a new State and, as a result, brings about new situations that are directly linked to the issue of succession of States. However, it is also true that, during the 20th century, the thought and interest of both scholars and States in the institution of succession of States has been particularly linked to the decolonization process and, therefore, separated or- at least- not directly linked to the occurrence of secession, understood as the separation of part of the territory and people of an existing State for the purpose of creating a new State.

Nevertheless, the international context emerging since the last decade of the 20th century regarding the birth of new States has changed significantly, as evidenced by a series of events, among which one could mention in particular the dismemberment of the former Yugoslavia and the Soviet Union, the separation of Eritrea from Ethiopia, the unilateral declaration of independence of Kosovo, the birth of South Sudan, or the complex situation in Crimea. In view of these new realities, the question of the succession of States in the case of secession acquires a new meaning capable of re-opening the debate and reflection on this institution of

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international law, but this time from a different perspective that is related to the principle of sovereign equality of States and the respect of territorial integrity understood as part of that principle.

From this perspective, the following pages will be devoted to reviewing the response given by the international community to the issue of State succession, especially through the codification of international law (A), to offering a general reflection on the applicability of the rules pertaining to succession in cases of secession (B), and finally to identifying the issues involved in any succession of States process particularly relevant to secession (C).

(A) THE PROCESS OF CODIFICATION OF STATE SUCCESSION

As pointed out above, the interest of the international community in State succession has been originally linked to the process of decolonization. Therefore, it is not surprising that the codification of the rules governing this institution took place during the 60s and 70s decades of last century. However, the new secession cases have given rise to the re-emergence of the issue of succession in the last two decades, both from the perspective of official and private codification. A case in point is the recent work on State succession with respect to international responsibility.

Focusing on the so-called "official codification", it should be remembered that the process of codification has essentially taken place within the International Law Commission[1], in whose works three different phases can be identified from the point of view of time and substance. These three phases are an accurate reflection of the changes in the approach of the international community to the issue of succession of States.

During the first phase, ongoing during the 1960s and 1970s, the work of the ILC on State succession focused on three issues: succession in respect to treaties, succession with regard to State property, debt and archives, and succession in respect to membership of international organizations. Only the first two of these three points of attention were followed up by the Commission, which adopted two Draft Articles in 1974[2] and 1981[3]. On the contrary, work on the succession to membership of international organizations was soon abandoned by the

[1] The topic "Succession of States and Governments" was selected by the Commission in 1949 as one of the topics for codification, but without including it in the list of topics to which it gave priority. Only in 1962, after the General Assembly asked the ILC to give priority to this topic, the Commission undertook the study of the Succession of States. It was in 1967 when the ILC decided the appointment of two Special Rapporteurs in charge of succession in respect to treaties and in respect of matters other than treaties. On that occasion, the Commission stressed the importance which State succession had for new States and the international community in view of the phenomenon of decolonization.

[2] See "Draft articles on succession of States in respect of treaties", in *Yearbook of the International Law Commission*, 1974, vol. II, Part One.

[3] See "Draft articles on succession of States in respect of State property, archives and debt", in *Yearbook of the International Law Commission*, 1981, vol. II, Part Two.

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Commission[4]. With regard to the two questions it did address, it is obvious that the Commission had to tackle the special problems brought about by the process of decolonization, with a view to responding to a new reality that had caused serious practical problems that, to a great extent, had not been solved when the Commission began its work. Nevertheless, the Commission did not confine its work to addressing "postcolonial" succession with respect to treaties and with respect to State property, archives and debt. On the contrary, it advanced "all-inclusive" proposals, which will be referred to below.

It was only twelve years later that the interest of the ILC on this issue was revived. It focused on the special problems relating to State succession with respect to nationality[5]. Work on State succession not having a direct link to the process of decolonization was thus initiated. It ended in 1999 with the adoption in second reading of the "Draft Articles on Nationality of Natural Persons in relation to the succession of States"[6]. The different framework in which succession in respect of the nationality of natural persons takes place resulted in the incorporation of certain differences with regard to the previous work of the Commission, namely on the final form of the outcome of the work, and on the types of succession considered by the ILC[7].

Lastly, in 2017 the Commission decided to include the topic of Succession of States in respect of State responsibility in its program of work. This topic is still under study and the work of the Commission may perhaps continue beyond the current *quinquennium*. The topic was taken up by the ILC after the Institute of International Law adopted its 2015 resolution on this same topic[8], in a very specific historical context that relates to the dismemberment of several Eastern European countries and the specific succession-related questions that arise in this situation. At any rate, it cannot be overlooked that the Commission's decision to start dealing with this topic has not been without controversy. Considerable criticism has been voiced by some members of the ILC with regard to the timeliness and appropriateness of addressing this topic from the perspective of codification because of, among other reasons, the casuistry of the practice and of the close links of this problem to the succession processes that took place in Europe at the end of the last century. In any case, be that as it may, it is evident that the decision to address the topic of succession in respect of State responsibility is another step towards an all-inclusive approach to succession that is not directly linked to

4 See *infra*, Section C.

5 The ILC inscribed the topic "Nationality in relation to the succession of States" in its agenda in 1993, and in 1994 appointed a Special Rapporteur. In 1997 it took the decision to limit the scope of the study to the topic "Nationality of natural persons in relation to the succession of States".

6 See *Yearbook of the International Law Commission*, 1997, vol. II, Part Two.

7 See *infra*, Section C.

8 See Resolution on "State Succession in Matters of State Responsibility", in *Yearbook of the Institute of International Law*, Tallinn Session, Vol. 76.

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the process of decolonization (and that is even unrelated to it). It thus reveals even more clearly the importance the succession of States may have with regard to secession.

At any rate, if the works of the Commission are considered as a whole, it must be highlighted that, in dealing with this topic, the Commission has clearly worked under a constant dialectic tension between the definition of general concepts and unifying rules, on the one hand, and the recognition of the diversity of legal regimes depending on the different causes and origins of succession, on the other. On the first level is the very concept of succession, understood as "the replacement of one State by another in the responsibility for the international relations of territory"[9]. On the contrary, an ascertainment of the diversity of factual situations has been reflected in the definition of the legal regime applicable to succession. In this framework, the Commission has not been able to deliver a single and uniform legal regime applicable to any succession with regard to each and every topic that has analysed, and has rather preferred to differentiate- in particular- between succession caused by: i) the separation in respect of part of territory; ii) the appearance of "newly independent States"[10]; iii) uniting and separation of a State; iv) succession in cases of separation of part of a State; and v) dissolution of a State.

The end result of this process of codification that started within the ILC in the 1960s has also been uneven. While the first Draft Articles have become international treaties[11], the Draft Articles on succession in respect of the nationality of natural persons is one of the products of the Commission regarding which the General Assembly has simply taken note[12]. Moreover, even in the two cases where the codification work of the ILC has resulted in the adoption of treaties, it should not be disregarded that the support given by States to such treaties has been scarce and varying, as evidenced by the fact that the Vienna Convention on Succession

9 This definition was included for the first time in the Draft articles on the succession of States in respect of treaties, article 2.1 (b). The same has been reproduced in the Draft articles on succession of States in respect of State property, archives and debts (article 2.1 (a)); on Nationality of Natural Persons in relation to the succession of States (article 2 (a)) and more recently in draft article 2(a) proposed by the Special Rapporteur on succession and State responsibility. The same drafting has been used for defining "succession of States" in the Vienna Convention of 1978 (article 2.1 (a)) and 1983 (article 2.1 (a)) and in the Council of Europe Convention on the avoidance of Statelessness in relation of Station Succession of 2006 (article 1). The Institute of International Law used the same definition in the 2015 Tallinn Resolution (article 2 (a)).

10 With the only exception of Draft articles on Nationality of Natural persons, when the succession caused by the birth of a "newly independent State" was not considered as an autonomous category of succession.

11 See Vienna Convention on Succession of States in respect of Treaties of 23 August 1978, in force since 6 November 1996, and Vienna Convention on Succession of States in respect of State Property, Archives and Debt of 8 April 1983.

12 Regarding the Draft articles on Nationality, the ILC has changed its previous practice and only recommended to the General Assembly to adopt these Draft Articles as a General Assembly Declaration, not as a treaty. However, the General Assembly did not adopt such a Declaration and decided merely to annex the text of the Draft Articles to Resolution 55/153, adopted in 2001.

of States in respect of Treaties has only obtained 22 ratifications, and that the level of support is even lower in the case of the Vienna Convention of Succession of States in respect of State Property, Archives and Debt, which has only obtained 7 ratifications and has not even entered into force.

In the light of these data, and beyond other considerations, it must be highlighted that States seem to have a limited interest in establishing general rules of treaty law concerning State succession. This is reflected, first, in the small number of ratifications obtained by the above-mentioned conventions, but also in the remarkable absence of many States among those that have ratified or acceded to such instruments[13], which is evidence of an existing gulf between the newly independent States and the rest of States- especially the former colonial powers- with regard to the problems of succession. It is even clearer that States have a prudent approach to the issue of establishing a uniform legal regime applicable to succession in respect of the nationality of natural persons. Thus, as has been mentioned above, the General Assembly has decided to simply take note of the Draft Articles, and recommend its consideration, as appropriate, by States when dealing with issues of nationality of natural persons in relation to the succession of States. Moreover, while the General Assembly initially maintained the topic on its agenda, resuming it every three years, it has finally decided not to continue its active consideration unless requested by a State and in light of the development of State practice in these matters[14]. Lastly, regarding the ongoing work on succession in respect of State responsibility, it must be recalled that it is still in an incipient phase and, therefore, it is not possible to assess the final response of the General Assembly. Nevertheless, it should be stressed that there exist different positions on the issue within the Sixth Committee of the General Assembly and that a certain number of States have expressed doubts as to the convenience of codifying this matter.

Setting aside other considerations, it cannot be denied that this brief description of the codification work on State succession reveals at least that this is a highly controversial matter, possibly because it concerns the existence and the very essence of States, and because historical elements of considerable importance come into play. In any case, it must be borne in mind that in spite of the limited interest of States in the codification of general rules relating to succession, it is also true that succession raises important practical problems that

[13] The list of States parties in both Conventions is very illustrative. The Vienna Convention on Succession of States in respect of treaties has been ratified by Bosnia-Herzegovina, Croatia, Cyprus, Czech Republic, Dominica, Ecuador, Egypt, Estonia, Ethiopia, Iraq, Lithuania, Montenegro, Morocco, Moldova, Serbia, Seychelles, Slovakia, Slovenia, Saint Vincent and the Grenadines, Macedonia, Tunisia and Ukraine. The Vienna Convention on Succession of States in respect of State Property, Archives and Debt has been ratified by Croatia, Estonia, Georgia, Liberia, Slovenia, Macedonia and Ukraine.

[14] See General Assembly Resolution 66/92 (2011).

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the States concerned have been forced to tackle, and for which- on most occasions- specific solutions have been sought that were adequate in view of the particular circumstances under which succession took place in each case. The recent approach adopted by the Czech Republic and Slovakia after the dissolution of the former Czechoslovakia and, in particular, by the new republics that emerged after the dismemberment of the former Yugoslavia are good examples of how difficult it is to establish general rules governing all aspects of succession, but also of how necessary it is to establish such rules, especially in connection with a process of secession.

(B) STATE SUCCESSION AND SECESSION: COMPATIBILITY OR MUTUAL EXCLUSION OF LEGAL REGIMES?

As explained above, the process of codification of State succession has duly considered the diversity of cases in which succession can take place, and —in addition to the succession caused by the decolonization process (newly independent States)— the ILC has clearly distinguished between situations where the predecessor State disappears (dissolution) and situations where it continues to exist. Within this latter situation, the codification work has differentiated two distinct cases, namely the transfer of part of the territory of a State and the separation of part of a State. However, in none of the texts adopted so far has an express reference been made to "secession" as a specific form of succession. Far from that, this term has been carefully avoided in the work of the International Law Commission and in other instruments and treaties relating to State succession, and has been expressly excluded this year on the occasion of the ILC debate about the draft article 7 on succession and responsibility of State proposed by Special Rapporteur Sturma[15]. This is no doubt due to the semantic load of the term "secession", and to its being usually associated with cases of creation or modification of States against, or in disregard of, the principles of international law. This, in turn, has resulted in other, more neutral, terms being considered preferable.

Under these circumstances the issue must be raised whether the rules pertaining to State succession apply or not in cases of secession. The answer to this question is not simple, and must face the added difficulty that all international instruments relating to State succession

[15] Draft article 7 is entitled "secession (separation of part of a State)". As a basis for this proposal, the Special Rapporteur stated in his Second Report that "[c]ases of secession seem to be among the most typical situation of succession (...)", adding that even if the "doctrine usually refers to secession, while the 1978 and 1983 Vienna Convention use the term "separation of part or parts of the territory of a State" (...), there are no different meanings given to these terms. Therefore, they can be used interchangeably" (See A/CN.4/719, paras. 78-79, pp. 21-22). However, this proposal has been the object of important criticism from several members of the ILC, who suggested to omit from draft article 7 any reference to "secession", because the term might be interpreted as including unlawful succession (see, *International Law Commission Report on its 70th session*, 2018, A/73/10, par. 244, p. 278).

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have included a "scope clause" according to which they "apply only to the effects of a succession of States occurring in conformity with international law and, in particular, the principles of international law embodied in the Charter of the United Nations"[16].

The wording of this clause is unclear and might lead to the conclusion that, following a literal interpretation, every change in the international responsibility over the territory of a State that is against the principles of international law falls outside the rules pertaining to succession and, as a result, is in a situation of legal anomie. This, in practical terms, would result in the recognition to the States involved of an absolute freedom to regulate the different problems derived from succession, a freedom unbounded by any limits. These States would thus be recognized as having a privileged position that is even more favourable than that recognized to the newly independent States that have emerged from the decolonization process.

Although it is obvious that this interpretation of the scope clause cannot have been intended by the International Law Commission or willed by States, the truth is that it is not possible to find elements that sufficiently account for, or explain why, the Works of the ILC included this provision, or the intended meaning thereof. In practice, a detailed analysis of the debates on the issue held by the Commission in 1972 and 1974 only confirms that opinions were greatly divided on the convenience of keeping or not this provision. And, nevertheless, the ILC finally decided to include it in the Draft articles on State succession in respect of treaties, and decided again to include it in the Draft articles on State succession with respect to State property, archives and debt in 1981, and in the Draft articles on nationality with regard to succession in 1999.

Moreover, the Commission's commentaries to the above draft articles do not contain enough information to explain the reasons for and against keeping or including the provision, and the reasons given by States were not compelling. It can be concluded from such commentaries, if only indirectly, that some of the ILC members were unwilling to accept under the concept of "State succession" the cases in which the transfer of a territory takes place against the rules of international law. For its part, only one State (the United States) intended to derive practical consequences from this provision and pointed out in its commentaries to the Draft articles on succession in respect of treaties that, in case it was kept, it should be made clear that by virtue of that provision a new State whose succession is not in accordance with international law would be bound by the obligations arising from

[16] For the works of the ILC, see Draft Articles on succession of States in respect to treaties, art. 6; Draft articles on succession of States in respect of State property, archives and debt, art. 3; Draft articles on nationality of natural persons in relation to the succession of States, art. 3; and draft article 5 on succession and State responsibility. This clause has been incorporated in the 1978 and 1983 Vienna Conventions (arts. 6 and 3, respectively), and in the IDI Resolution of 2015 (art. 2.2).

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succession, but could not enjoy the rights arising therefrom. At any rate, it must be recalled that such a distinction was not retained in the commentaries[17].

Therefore, the question of the meaning of this scope clause remains open to this day. It has not been elucidated, either, by the International Law Commission when it recently dealt with State succession in respect of international responsibility. During the debates on draft article 5 proposed by the Special Rapporteur, the same debate that took place in 1972 has been re-enacted, and no new contributions have been provided as to what the true meaning of this clause should be, with the sole exception of the assertion contained in the Second Report by the Special Rapporteur that "[p]erhaps, articles 6 and 3 of the 1978 and 1983 Vienna Convention should be best understood as referring to the principle that "no territorial acquisition resulting from the threat or use of force shall be recognized as legal""[18]. In any case, it must be stressed that, once again, the opinions of the members of the ILC have been divided[19].

At any rate, if all the circumstances surrounding the adoption of the scope clause, as well as the very content of the international legal instruments governing succession, are considered, it cannot be deduced from the scope clause that a succession originated in an act of secession falls outside the rules governing State succession. This is due to a number of reasons that will be briefly listed: i) the rules of succession are meant to apply once the emergence or modification of a State has occurred and is effective, and therefore "the replacement of one State by another in the responsibility for the international relations of territory" has taken place; ii) the rules relating to succession are not intended to assess the legality of the emergence or modification of a State, but only to establish the legal consequences of succession; iii) secession is not to be necessarily understood, under all circumstances, as being contrary to international law, because it may have been permitted by the predecessor State or agreed upon by the predecessor State and the new State; and iv) where secession results in the emergence or modification of a State by virtue of the application of the principle of effectiveness, a replacement in the aforementioned international responsibility must have taken place, and such a change can only be classified as a case of State succession.

The central issue in the relationship between succession and secession is a different one, namely what type of succession would secession be and, therefore, which legal regime would be applicable thereto. From this perspective, the answer must necessarily remain open and will require a case-by-case analysis, with the sole exception of the "newly independent States",

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17 See *Yearbook of the International Law Commission*, 1974, Vol. II, Parte One, p. 181.

18 See A/CN.4/719, par. 29, pp. 9-10.

19 See *ILC Report on its 70th Session*, A/73/10, para 240, p. 276.

a case which has been defined to apply to the former colonial and non-autonomous territories and which, by definition, does not imply the separation of part of the sovereign territory of a pre-existing State[20]. Likewise, the rules relating to the Unification of States would neither seem to be applicable, but the rules governing succession in cases of separation of parts of a State, transfer of part of the territory of a State and dissolution of a State would apply.

(C) PARTICULARLY RELEVANT QUESTIONS RELATING TO SECESSION

Once it is admitted that the rules of State succession apply to cases of secession, it does not seem possible- in principle- to exclude the application of some of its legal manifestations. Far from that, in a case of State succession originated in a secession the matters that would be affected and require a legal response would be the same as in any other case. However, it is true that recent practice has revealed that State succession in cases of secession is particularly problematic with regard to two specific topics, namely the nationality of natural persons and membership of international organizations. In none of these two topics a treaty has been adopted to date at universal level, and with regard to the second topic not even a process of codification has been carried out within the International Law Commission, or any other body. For this reason, a more detailed examination of these two topics can be found below.

With regard to succession in respect of nationality, it must be stressed that this topic has been addressed both at the universal and the regional level. At the universal level, as pointed out above, the ILC adopted the Draft articles on State succession in respect of the nationality of natural persons in 1999. At the regional level, the issue of nationality has been addressed in particular in the Council of Europe, as a consequence of the problems that emerged after the dismemberment of the Soviet Union and the Former Yugoslavia. In this framework, the European Commission for Democracy through Law (Venice Commission) has addressed the issues related to nationality in respect to succession of States since 1991, and has adopted a number of interesting documents, among which the "Guidelines for State practice in the field of Nationality and State Succession"[21] and the "Declaration on the consequences of State succession for nationality of natural persons"[22] must be highlighted. From a normative perspective, these works have been reflected in the adoption of the "European Convention of

[20] "Newly independent State" has been defined as "a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible" (see, 1974 Vienna Convention, art. 2.1 (f) and 1983 Vienna Convention, art. 2.1. (e)).

[21] Doc. CDL-NAT (1996) 001 rev.

[22] Doc. CDL-NAT (1996) 007 rev. See also the "Explanatory report on the declaration", doc. CDL-NAT (1996) 008 rev. For a general overview of the work of the Venice Commission on this topic, see "Consequences of State succession for nationality", doc. CDL-INF (97) 1.

Nationality" of 1997[23], and the "Council of Europe Convention on the avoidance of Statelessness in relation to State succession" of 2006[24].

Both at universal and regional level, the question of succession in respect of nationality has been addressed outside of the process of decolonization, so the emphasis has not been put on the case of newly independent States, and the question has undergone important changes in the aftermath of the fall of the Berlin wall and the dismemberment of the Soviet Union and the former Yugoslavia. In any case, neither at the universal level nor at the regional level has a wide positive reaction of States taken place.

Be that as it may, in both cases the approach to the topic of succession in respect of nationality has adopted a common pattern of identification of the basic criteria applying to this topic, which can be summarized as follows: i) referral to the place of habitual residence as the basic criterion to determine the nationality of natural persons; ii) exclusion of any link between citizenship and ethnic, religious or political affiliation of individuals as valid basis for the acquisition or rejection of nationality; iii) recognition of the choice of the individual as the primary rule in case of existence of more than one possible nationality; and iv) prohibition of discrimination and avoidance of statelessness as a result of the process of succession. Due to the application of the above criteria, in case of separation of part of the territory of a pre-existing State the general rule would be a kind of clean slate principle that would favour the extinction of the nationality of the predecessor State, and its replacement by the nationality of the successor State, except if the individuals concerned embraced a different option. At any rate, this general rule would have to be applied in a way that prevents discrimination and the appearance of cases of statelessness. The application of these criteria is directly affected by the need to guarantee the full enjoyment of human rights, so that the change of nationality of natural persons does not result in a violation of their fundamental rights.

Nevertheless, the identification of an applicable general rule has not prevented the emergence of important problems in practice, especially as a result of the independence of the Baltic republics and, above all, in the context of the process of dismemberment of the former

[23] The European Convention on Nationality (Convention 166) entered into force on 1st March 2000, having been ratified until now by 21 States (Austria, Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Finland, Germany, Hungary, Iceland, Luxembourg, Montenegro, Netherlands, Norway, Portugal, Republic of Moldova, Romania, Slovak Republic, Sweden, The former Yugoslav Republic of Macedonia and Ukraine). The Convention refers to nationality as a hole, setting up some general rules on succession of States and nationality in Chapter VI.

[24] The Council of Europe Convention on avoidance of Statelessness in relation to State succession (Convention 200) built on the principles set up by the European Convention on Nationality. The Convention entered into force on 1st may 2009, having been ratified by seven States (Austria, Hungary, Luxembourg, Montenegro, Netherlands, Norway, and Republic of Moldova).

Yugoslavia, which have produced an increase of statelessness in some of the successor States as a result of the application of their domestic legislation. A good example of this negative practice has been the case of Slovenia where "erasure legislation" led to a pronouncement by the European Court which considered national legislation and practice as being contrary to the European Convention of Human Rights[25].

This problem has arisen again in connection with the claims of secession of Scotland and Catalonia, where —nonetheless— succession formulas in respect of nationality have been sought that are hardly compatible with the rules of international law, since they are based on the unilateral establishment of cases of dual nationality[26]. Moreover, the secessionist claims of these two territories have given rise to a new set of problems, namely the effects that the change of nationality of natural persons would have on the legal regime that would apply to the concerned individuals within the European Union. These problems can only be solved from the perspective of the loss of the "citizen-of-the-Union" status, even if from both pro-secession territories "bridge" formulas have been proposed that would allegedly permit the preservation of that privileged legal status of natural persons in spite of secession.

The interest of the international community on the relationship between succession and membership of an international organization has been very reduced. As already mentioned in the introduction to this article, the problem of State succession in membership of an international organization was included in the first program of work of the International Law Commission on State succession. This, however, yielded a mere study by the General Secretariat that was not followed up by the ILC[27]. In fact, when the Commission addressed this topic, the problem of the acquisition of membership of an international organization by new States was closely linked to the process of decolonization, and the approach to this question was determined by the willingness of the organized international community to promote the full application of the right to self-determination of peoples. From this perspective, the admission of new members, especially to the United Nations, took place automatically, in a manner completely detached from the concept of State succession.

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[25] See *Kurić and Others v. Slovenia*, application nº 26828/06, Grand Chamber, Judgement of 26 June 2012.

[26] Such a rule of dual nationality has been included in article 9 of the so-called Law of the Catalonian Parliament 20/2017, of 8 September, of Juridical Transition and founding of the Republic, declared as null and unconstitutional by Judgment 124/2017, of 8 November, of the Constitutional Court.

[27] See "The succession of States in relation to membership in the United Nations: memorandum prepared by the Secretariat", doc. A/CN.4/149 y Add. 1, in *Yearbook of the International Law Commission*, 1962, vol. II. In 1967, the Commission decided to leave aside for the time being this topic, because it was considered that this aspect of the general topic of Succession of States and Governments related both to succession in respect of treaties and to relations between States and international organizations, two topics already in the Program of work of the ILC (See, *Yearbook of the International Law Commission*, 1967, vol. II, Chapter III, paras. 36-41).

By contrast, the new situations that emerged in the last decade of the last century have forced international organizations to consider the issue of membership also in connection with State succession. However, this social context has not given rise to the adoption of a uniform legal regime applicable to State succession with regard to membership of international organizations. On the contrary, the response given by international organizations has continued to be characterized by a case-by-case approach, in which political considerations have prevailed when establishing the process of admission as new members of the States emerging from the dismemberment of former member States, or from the secession of part of the territory of a pre-existing member State. For instance, the different treatment given within the United Nations to the admission of States that emerged from the dismemberment of the Soviet Union and to the admission of the successor States of the former Yugoslavia, or to the States emerging from the dismemberment of the former Czechoslovakia, is a good example of this case-by-case approach essentially based on political considerations. On the other hand, the application to South Sudan of rules similar to those applied in the process of admission of newly independent States is evidence of the essentially political dimension characterizing the question of State succession in relation to membership of an international organization.

In this context, it is extremely difficult to envisage international organizations as being about to modify this approach vis-a-vis the new secessionist claims in certain European territories like Scotland, Catalonia or Kosovo. With regard to the first two cases, the reaction of the EU Institutions has revealed the full rejection of any conceivable rule of State "succession" if secession became effective in any of these territories. On the other hand, the practice shows how, even in the case of an effective secession, as in Kosovo, the acquisition of membership is not dependent on any rule of succession- a discarded solution- but on the application of the ordinary rules of admission of new members, which submits the final decision of the organization to the political will of member States.

FINAL CONSIDERATIONS

As can be inferred from the content of the preceding pages, the institution of State succession still faces serious problems relating to the lack of definition of its legal regime and to acceptance by part of the international community in this first part of the 21st century. Its close link to the concept of the State and the variety of causes giving rise to State succession no doubt helps to account for the multi-faceted image of succession, and favour what is basically a case-by-case approach to every situation of succession to be found in practice.

Moreover, the concept of secession and its legal regime do not follow a uniform model and are not met with the same response from States, probably because of their close relation to,

and impact on, basic principles of contemporary international law such as sovereign equality, territorial integrity and non-intervention in internal affairs. At any rate, one cannot ignore the fact that every secession process is meant to result in the emergence of a State and the modification of a pre-existing State. And that, therefore, the necessary conditions are present to understand that secession, when effective, can result in State succession.

Defining the relationship between secession and State succession is a challenge for contemporary international law which affects even the concept of sovereignty and the principle of the effectiveness of statehood. Nevertheless, in spite of this (or perhaps precisely because of this), it does not seem possible to find a response to this problem that radically departs from the case-by-case approach that has prevailed to date. Perhaps, as in so many other areas of social reality, the wisest and most prudent approach is to look for specific solutions to specific cases, and to avoid an attempt to generalization which, in practice, could create more problems than it could solve.

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