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Alemnew Gebeyehu

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In public international law which seems the most disregarded area is succession of international organizations. Public international law after recognizing international organizations as prime actors before international law next to states, it has ignored their issues of dissolution and succession. Neither general rules and principles nor customary rules developed in this area. As a result, once we use analogical interpretation and try to use rules governing succession of states and another time we try to take minimal and inconsistent practices. However, none of them are helpful to settle succession matters, especially transfer of assets, debts, mission and purpose in international organizations. Taking this predicament into consideration, this paper tries to discuss issues pertaining to dissolution and succession of international organizations, consequential matters, governing rules and practices, procedures, transfer of assets and debts as well as mission and purpose are discussed and areas of practical and legal gaps are indicated there too.

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# Dissolution and Succession of International Organizations

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## I. ABSTRACT

*In public international law which seems the most disregarded area is succession of international organizations. Public international law after recognizing international organizations as prime actors before international law next to states, it has ignored their issues of dissolution and succession. Neither general rules and principles nor customary rules developed in this area. As a result, once we use analogical interpretation and try to use rules governing succession of states and another time we try to take minimal and inconsistent practices. However, none of them are helpful to settle succession matters, especially transfer of assets, debts, mission and purpose in international organizations. Taking this predicament into consideration, this paper tries to discuss issues pertaining to dissolution and succession of international organizations, consequential matters, governing rules and practices, procedures, transfer of assets and debts as well as mission and purpose are discussed and areas of practical and legal gaps are indicated there too.*

**Keywords:** dissolution, succession, international organizations, assets, debts, functions/mission and purpose, constitutions, international law, treaties, practices.

## II. INTRODUCTORY NOTES

Normally, international organizations are established/formed for longer periods of time without fixing any definite time period. However, this doesn't mean that they are managed to survive indefinitely. As such, some organizations disappear without being succeeded to in any way

and others are reestablished /remodeled to cope with new or unexpected demands, or are succeeded by new ones with similar services or functions to their predecessors.

Such succession of International Persons occurs when one or more International Persons take the place of another International Person, as a result of certain changes in the latter's condition. Like in the case of States succession that arises when one State is completely absorbed by another, breaks into parts, or loses a part of its territory...etc scenarios, various similar questions of succession of international organizations, that is, the transfer of functions, rights and duties, arises in the arena of international organizations when one is dissolved and another succeeded for identical or similar purposes, or its functions are taken over by an existing organization; or integrated into another organization. If so, the main legal questions arising here is whether an organization dissolves or is succeeded to, issues pertain to the functions, personnel, and assets and liabilities of the predecessor organization. For this, this paper deals with whether the functions, personnel, and assets and liabilities will disappear, continue to exist, be distributed, how, if at all...? And whether dissolution (and succession) are possible to begin with, and by what modalities, who has the power to decide on such issues as dissolution (member-states, or the organization itself)? And other related issues are corpus of the discussion.

### III. WHEN DOES DISSOLUTION AND SUCCESSION ISSUES ARISE?

#### 3.1. Dissolution

The constitutions of some international organizations inculcate express provisions concerning dissolution. For this, Article VI(5) of the Articles of Agreement of the International Bank for Reconstruction and Development (the World Bank) stipulates provisions for dissolution by a vote of the majority of Governors exercising a majority of total voting, and other consequential matters are dealt too. Concerning Payment of creditors and claims, for instance, are given precedence or priority over asset distribution, and the distribution of assets will take place on a proportional or pro rata basis to shareholding. However, different organizations having express provisions take different stand with regard to the type of majority required for dissolution. If an organization has been established for a limited period, the constitution is expected to provide for dissolution upon the expiry of that period.

If there are no specific provisions concerning dissolution, it is likely that an organization's highest representative body decides over the matter of. Here the decision of the General Assembly in the League of Nations without the need for individual assent by each member can be a good example. Nevertheless, regarding requirement of unanimity or degree of majority required under the constitution of the particular organization for the determination of important questions is subject to debate. And the actual process of liquidating the assets and dealing with the liabilities of dissolved organizations is expected to be stipulated by the organization itself either in the constitutional documents or by special measures adopted on dissolution.

#### 3.2. Succession

Up to now, the law of international organizations have not yet developed distinct general rules and principles on the dissolution and succession of its objects. So, the variety of forms, processes and solutions regarding succession go without the

existence of such general rules. Moreover, there has not been practices that able to develop into customary rules pertaining to the legal basis for dissolution, the decision-making procedure, the form of a succession as well as the consequences, which should apply in the absence of written rules. Only, what is obtained from practice is sense of continuity, where dissolution gives rise to new life by succession of another; thereby the soul of the predecessor devolves to the successor.

Despite the fact that neither general rules or principles developed in the realm of international organizations' law nor customary rules created from practices; succession of international organizations is taking place during change of constitutions, integration, separation, and dissolution.

Moreover, the following note wrote concerning succession. It reads us that succession of international organizations can be proceeded by agreement and this implicates silence of the international law on succession of international organizations. The full note also reads as follows:

*Succession between international organizations takes place when the functions and (usually) the rights and obligations are transferred from one organization to another. This may occur by way of straightforward replacement, or by absorption, or by merger, or by effective secession of part of an organization, or by simple transfer of certain functions from one organization to another. This is achieved by agreement and is dependent upon the constitutional competence of the successor organization perform the functions thus transferred of the former organization. In certain circumstances, succession may proceed by way of implication in the absence of express provision. The precise consequences of such succession will depend upon the agreement concerned between the parties in question. In general, assets of the predecessor organization will go to the successor organization, as well as archives. Whether the same rule applies to debts is unclear.*

#### IV. IF NO GOVERNING RULES AS TO THE ISSUE OF SUCCESSION, WHAT IS OUR OPTION?

By using the traditional criteria that an international entity could be regarded an international organization since it is formed by international agreement, it is possible to argue that dissolution and succession of international agreements is a question to be settled by the general rules of treaty law. Actually, the law of treaties may still play a role when conflicts between the contracting parties arise with regard to for instance the possibilities to terminate or suspend a treaty. However, practically, *“in almost all cases of dissolution and succession arguments are drawn from the constitutive document of the organization or from ‘international institutional law’, the body of rules and principles representing the ‘unity in diversity’ 11 of the law of international organization.”*

Anyway, due to the fact that international organizations have international legal personality, it plausible to argue that dissolution or succession of international organizations should be made in accordance with their constitution or on the basis of the (perceived) rules and principles of the organization rather than the law of treaties. So dissolution is indeed should be made by the ‘rules of the organization’, in the Vienna Convention on the Law of Treaties defined as ‘[...] the constituent instruments, decisions and resolutions adopted in accordance with them, and established practice of the organization’ that are used to make an end to that same organization. This implies that dissolution and succession issue are to be resolved by international organizations’ constitution and other mutual agreements more conveniently.

All in all, by analogy to State succession, the question of international organization succession may arise in cases of constitutional changes, integration, separation or dissolution as it has tried to discuss above. In practice, however, only in the event of dissolution that question of succession actually arise. An international organization is different from a State in that an

international organization is the creation of a multilateral treaty. It obtains its international status and competence from that treaty, and it can't contradict its constitution. Any fundamental change in the status of the organization like termination of its international personality, questions a revision or abolition of its constitution-a multilateral treaty-for which the consent of the contracting parties is determinant. But, during integration, it is doubtful whether the organization to be integrated is constitutionally competent to conclude such an agreement, which would terminate its international personality or, in other words, would in fact substantially revise its constitution. Furthermore, as a matter of policy, it seems that if a vital change in an international organization is intended, the States parties would be reluctant to use such a simple procedure to achieve their end.

In the same fashion, in the case of separation, it is not clear whether an international organization is constitutionally competent to create another separate and independent organization. And, for policy reasons, it is not sound that an organization should be established upon such a tenuous basis. Hence, whenever the creation of a separate international organization is intended, States are required to act through the conclusion of a multilateral treaty than through the decision of an existing international organization.

#### V. PROCEDURES OF SUCCESSION FOR TRANSFER OF ASSETS, DEBTS, MISSION AND PURPOSE

So as to effect, the procedures governing the transfer of rights, duties and functions are made through a combination of methods involving agreements in different forms. As such there are formal agreements, inter se agreements, and parallel resolutions.

##### 5.1. Formal Agreements

The common procedure used for settling the question of transfer between organizations is the conclusion of one or more formal agreements

between between/among organizations. For example, the transfer between the LN and the UN was affected, inter alia, by a number of agreements: the first of such agreements was signed on July 19, 1946. An arrangement to give effect to certain provisions of the above agreement was agreed upon on July 31, 1946. Two protocols were signed on August 1, 1946. Again, four additional protocols were concluded between the two organizations during 1947. Similar agreements of transfer were concluded between the UNRRA and the UN, the IIC and the UNESCO, the OIHP and the WHO, the IIA and the FAO, 44. etc.

The constitutional basis for concluding the transfer agreement is in the case of the successor organization, the authority to enter such an agreement may be referred in its Constitution. For example, Article 4, paragraph 6, of the 1945 FAO Constitution provided that the Conference may by a two-thirds majority of the votes cast agree to discharge any other functions consistent with the purposes of the Organization which may be assigned to it. by any arrangement between the organization and any other public international organization. In the same way, Article 26 (c) of the WMO Constitution, Article 72 of the WHO Constitution, Article 11 (2) of the UNESCO Constitution, Article 3 (5) of the UNRRA Constitution, and Article 14 (2) of the IRO Constitution has made similar statements. However, this not the case as we have discussed above, other transfer agreements had been concluded without such express constitutional authority. For this, most notable example is what has been done between the LN and the UN. When we come to the predecessor organization's authority to conclude the transfer agreement, it may be based either on the resolutions adopted by the competent organ of the organization concerned, or on a treaty signed by the parties to the constitution of that organization. The conclusion of the transfer agreement is in the nature of a termination or revision of the organization's constitution; thus, in either of the above mentioned methods of giving the necessary

authority, the question may arise whether either method can be reconciled with the often-asserted rule of customary international law that " *a treaty may not be terminated or revised without the consent of all of the parties.*

### 5.2. *Inter se Agreements*

By the time functions assigned/given to an international organization under multilateral agreements are transferred to other organizations, it is customarily done by concluding multilateral agreements amending the conventions concerned. The choice of arrangement to effect such a transfer between the organizations concerned, whether by way of a formal agreement or parallel resolutions is to be determined case by case basis. However, in no way functions been transferred merely by agreement between the organizations concerned. Best examples to this case are: the narcotic conventions, International sanitary conventions, and Jurisdiction of the PCIJ under various agreements or declarations.

### 5.3. *Parallel Resolutions*

In some circumstances, the transfer of duties and functions between international organizations have been carried out by one or more parallel resolutions made by the respective competent organs of the respective organizations. Parallel resolutions are helpful in effecting one or more transactions between or among international organizations in a simplified form. Here parallel resolutions are used as a subsidiary method. From the practice, the operation of the secretariat between the LN and the UN was disposed of by a series of parallel resolutions adopted by the Assemblies of the respective organizations. And the transfer between the IMO and the WMO can be mentioned.

## VI. TRANSFER OF ASSETS, DEBTS OR CLAIMS AND LIABILITIES: ARE THERE LAWS GOVERNING THE TRANSFER?

As repeatedly discussed above, there are no rules governing transfer of assets, debts or other claims

and liabilities in the arena of international law. So, this discussion is subjected to contentions. The first argument lies in the fact that if an international organization is an international person, capable of possessing international rights and duties, then it may reasonably be argued that the transfer can be made by concluding an international agreement like the case of states. Another argument is that the headquarters area of an international organization remains the territory of the host country, so that any legal transaction of assets, debts or claims and liabilities must comply with the law of the host country, unless excluded from the jurisdiction of the host country in the arrangement or agreement concerning the headquarters.

Finally, the practice of international organizations in relation to the transfer of assets, claims, and liabilities has been performed either by way of concluding an international agreement or by way of parallel resolutions. In these transfers the host country doesn't raise objections. As a result, it may be safely concluded such transfers are not governed by any municipal law, hence, organizations concerned may adopt any appropriate procedure to give effect to such transfers.

## VII. MEMBERS' SHARE IN THE ASSETS OF THE DISSOLVED INTERNATIONAL ORGANIZATION AND MISCELLANEOUS QUESTIONS CONCERNING CLAIMS AND LIABILITIES

Concerning member's share of assets in a dissolved international organization, there is no any uniform practice. Some analogically applies domestic corporation's share division among shareholders, while others perform to the contrary. In the case of the LN, shares in the LN assets belonging to members now members of the UN were to be credited to them on the books of the UN. The shares of members were to be calculated in proportion to the total amount of their contributions since the LN's establishment.

Those shares of members of the LN, which were not members of the UN were to be disposed of by agreement with the States concerned. This arrangement appears to assume that the property of the LN was owned in common by its members rather than by the LN as a separate and independent international person. On the other way round, the IIA and the OIHP followed a different way. However, in both cases, they similarly transferred their assets to the successor organizations, and no separate agreement with members now not members to the successor organizations was concluded.

When a predecessor organization assigns its claims against a third person, or against former employee, then the successor organization can assert the claim under all the available methods of international law. It can bring an action before a municipal court to satisfy the claim and the person against whom the claim is directed has no right to object to such assignment. The same applies when the assignee is former member state. In doing so, the successor organization usually sets up a limit of its responsibility in administering such claims. In addition, the claimant must settle his or her claim under the procedure provided by the successor organization; If not the latter is in no way responsible for the claim concerned.

## VIII. TRANSFER OF FUNCTIONS (MISSION AND PURPOSE)

As it is ostensibly known, an international organization may assume a variety of functions, powers or activities and at its dissolution, it transfers the successor organization those functions, powers, mission, purpose or other activities. For ease of understanding, we have taken the term *function* to mean powers, mission, purpose or other related activities. Why we have included mission and purpose under the term function is that by functions of organizations may not be different from its mission and purpose in which it is established. Functions may be of four kinds; these are:

- a) Functions entrusted to an organization by a multilateral treaty;
- b) Functions entrusted to an organization by a bilateral treaty to which the organization is not a party;
- c) Functions entrusted to an organization by a treaty between that organization and a State; and
- d) Functions assumed by an organization under its own constitution or in pursuance of a resolution of its competent organ.

And these functions can be transferred to the successor organization either via the conclusion of treaty consensually or conclusion of a treaty without consent (dispositive treaty-this is made to delimit sovereign competence).

#### IX. HOW A CERTAIN COUNTRY BECOME A MEMBER TO A SUCCESSOR (BUT NOT THE PREDECESSOR CONCERNING DEBTS AND LIABILITIES)

It is quite common that there is almost always the problem of different membership. Where the successor organization does not have membership identical to the predecessor organization, agreement is the best tool to reconcile with the basic idea of consent. However, when a country which is a member of the successor but not the predecessor, there is no any succinctly known practice that enables us to decide issues pertaining to the debt and liability that country regarding debts and liabilities of the predecessor state.

Nevertheless, there are practical gaps as to determining such scenario, we are kindly want to appraise conclusion of parallel resolutions to resolve such matter. As we have tried to expound before, parallel resolutions are type of agreements concluded between the predecessor and successor organizations respective competent organs for subsidiary matters in a simplified form. So, here our case concerns both the predecessor and successor states, and so as to enable the former members in the predecessor organization to have

a say and take a fairly made decision to new members parallel resolution is found better. Although the question is open to debate and to be determined case by case basis, such countries should not fully assume all the debts and liabilities which is transferred from a predecessor state. However, if such country is allowed to fully own or share all the assets and benefits accrue to former members, it is sound to impose debts and liabilities on such new member without any favor to her.

#### X. CONCLUDING REMARKS

The following note best explains the general, but more sensitive problems pertaining to succession of international organizations what we have discussed up to know. The full note reads as follows:

*“The practice of international organizations appears to indicate that there is no general rule of law which obliges the successor organization to take upon itself rights, duties or functions of the It is true that as a matter of convenience predecessor organization. or necessity, successor organizations have in practice assumed some rights, duties or functions of the predecessor organizations, but the succession to any of these items has been the voluntary act of the successor organization. Thus, whatever rules do exist with respect to such rights, duties or functions, require to be established pragmatically in each instance, and cannot be deduced from any general principle. However, even if we look pragmatically at each instance, the practices in a particular area are, except in the procedure of transfer, so diverse that they do not warrant the establishment of any substantive rule from those instances. Despite the above observations, however, it must be admitted that an extensive examination of the practice of international In our study, it has been organizations is not entirely instructive. possible to discover some basic considerations- which lie behind the practice, and the relevant legal problems which should be noted in the*

*course of transfer. These are matters to which, as the past practice indicates, the international organizations concerned have not paid sufficient attention. In conclusion, the author of this paper is of opinion that any succession questions between international organizations should be governed by agreement between them; and by giving sufficient attention to the relevant legal problems involved, the question can be conveniently solved without establishing any new principle in this respect."*

Despite the fact that succession of international organizations have been exercised like succession of states, there is neither international principles rules developed nor practices gives rise to customary rules. This is because, various practices were not carried out in consistent and uniform manner and different constitutions or agreements and decisions of international organizations related to succession do end with identical approach. As such succession of international organizations have remained a very elusive discourse. For this, both practically and in the academic discourse, it is so tedious to reach at finding the best method of settling questions arise from succession issues under the realm of international organizations.

So, the only option we have seen to settle succession issues is via the help of constitution, different agreements concluded between and/or among different organizations and the decision of their highest competent authority. And finally we would like to provide an idea that international organizations should have to incorporate provisions concerning the dissolution and succession issues as they have come with their establishment. And it would be better if international organizations or peace-loving countries of of the world to adopt conventions or treaties concerning succession of international organizations like the case of states. Moreover, if states, courts and organizations themselves begin to practice entertaining like cases in like manner, customary international law will be developed on this difficult area of international law.

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