

VIENNA CONVENTION ON THE SUCCESSION OF STATES IN RESPECT OF STATE PROPERTY, ARCHIVES AND DEBTS

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In 1967, the International Law Commission ('the Commission') began work on the topic of the succession of States in respect of State property, archives and debt. In 1981, the Commission submitted to the United Nations General Assembly a final set of draft articles on the topic with a recommendation that the Assembly should convene a conference of plenipotentiaries to study the draft articles and conclude a convention on the subject. The General Assembly adopted resolutions 36/113 of 10 December 1981 and 37/11 of 15 November 1982 to this effect by which it accordingly decided to convene a United Nations Conference on Succession of States in respect of State Property, Archives and Debt ('the Conference') to be held at Vienna from 1 March to 8 April 1983. On 7 April 1983, the Conference adopted the Vienna Convention on the Succession of States in respect of State Property, Archives and Debts ('the 1983 Convention').

Some twenty-six years after its adoption, however, the 1983 Convention has yet to enter into force. The 1983 Convention requires only fifteen States to consent to be bound by it to enter into force, but, as of 5 August 2009, only seven States have so consented. Although six States signed the 1983 Convention before the 1984 deadline for signature, they have not yet ratified it in accordance with its relevant provisions. Since then, nothing happened until 1991 to 2002 during which time six other States expressed their consent to be bound: Croatia, Estonia, Georgia, the former Yugoslav Republic of Macedonia, Slovenia and Ukraine (in 2005, Liberia also expressed its consent to be bound). The six States may have seen the 1983 Convention as relevant to the settlement of their own succession issues, but only three of the former republics of the Socialist Federal Republic of Yugoslavia (SFRY) thought it worth expressing their consent to be bound (we will see below how their problems were actually resolved). The weaknesses of what became the 1983 Convention were evident at the Conference that led up to its adoption. The Conference was not able to improve much on the final draft articles produced by the Commission in 1981, as was demonstrated by the vote on adoption: 54 to 11, with 11 abstentions.

As with the final draft articles produced by the Commission, the 1983 Convention contained provisions representing progressive development of international law. Thus, it neither fully reflected customary law, nor made new law that would be generally acceptable. It may be that the subject was simply not amenable to prescriptive treatment. As with succession to bilateral treaties, it may be something that has to be dealt with on a case-by-case basis.

One of the main flaws of the Commission's work on the draft text was the heavy reliance throughout on equity as a guiding, but supplementary, principle for the distribution and apportionment of tangible property. This was entirely understandable as a matter of principle, but it contributed to the general lack of effectiveness of the 1983 Convention, making it too vague for application to specific situations. States have to agree on distribution of assets, yet the 1983 Convention gives them no clear or precise guidance how to do it. It is true that, in its Opinions Nos. 1 and 9, the Arbitration Commission of the Conference for Peace in Yugoslavia (also known as the 'Badinter Commission') referred to the 1983 Convention as embodying principles of international law relevant to the settlement of disputes between the successor States of the SFRY. However, in the later succession negotiations between the former Yugoslav republics, the principle of equity was of little practical help; old-fashioned horse-trading was the technique most used.

Another defect of the 1983 Convention is the undue emphasis on succession of States in the simple case of independence, typically from a colonial power. Thus, the 1983 Convention was not a useful guide to settling the complex problems of succession resulting from the break-up of a State. Before the fall of the Milošević regime, the negotiations for a settlement dragged on, largely because the Federal Republic of Yugoslavia (FRY) persisted in maintaining the attitude that it was not a successor State to the SFRY, but its continuation, in the same way as the Russian Federation was (though in its case correctly) the continuation of the Soviet Union.

The 1983 Convention also gave further scope for delaying tactics. Article 8 provides that “State property” of the predecessor State is the property owned by it according to its internal law. The SFRY had claimed to be the purist communist State in believing (or so it said) that all property was owned by the people. Under the particular terms of the constitution of the SFRY, property was in “social ownership”, replacing ownership by the State with ownership by society as a whole. Another complication was that the date of succession differed for each of the former republics, and, in each case, it was not easy to determine the exact date.

Eventually, following the fall of Milošević, the (then) five successor States of the former Yugoslavia concluded, on 29 June 2001, the Agreement on Succession Issues. It entered into force on 29 June 2004. In practice, although some of the articles of the 1983 Convention concerning State archives were of some assistance, the rest were less helpful, the settlement of the issue of State debts being achieved by lengthy and shrewd bargaining. The real substance of the Agreement is in the fifty pages of detailed annexes. The Agreement does not mention the 1983 Convention. A less complicated example of State succession in respect of State property, archives and debt can be found in the so-called velvet dissolution of Czechoslovakia. The successor States to the former Czechoslovakia favoured a settlement in rough proportion (2:1) to the size of their respective populations, a solution inspired by the equitable principles contained in the 1983 Convention.

Related Materials

A. Legal Instruments

Agreement on Succession Issues, Vienna, 29 June 2001, United Nations, *Treaty Series*, vol. 2262, p. 251.

B. Jurisprudence

Arbitration Commission of the Conference for Peace in Yugoslavia (‘Badinter Commission’), *Opinion No. 1 on Questions Arising from the Dissolution of Yugoslavia* (reproduced in *International Legal Materials*, vol. 31 (1992), p. 1497).

Arbitration Commission of the Conference for Peace in Yugoslavia (‘Badinter Commission’), *Opinion No. 9 on Questions Arising from the Dissolution of Yugoslavia* (reproduced in *International Legal Materials*, vol. 31 (1992), p. 1523).

C. Documents

Report of the International Law Commission on the work of its thirty-third session, 4 May – 24 July 1981, Official Records of the General Assembly, Thirty-sixth session, Supplement No. 10

(A/36/10, reproduced in *Yearbook of the International Law Commission, 1981*, vol. II (Part Two), chapter II.)

United Nations Conference on Succession of States in respect of State Property, Archives and Debts, Vienna, 1 March - 8 April 1983, *Official Records*, Vol. I: Summary Records of the Plenary Meetings and of the Meetings of the Committee of the Whole (A/CONF.117/16).

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D. Doctrine

A. Aust, *Handbook of International Law*, Cambridge, Cambridge University Press, 2005, pp. 401-403 (2nd edition forthcoming 2010).

M. Shaw, *International Law*, 6th ed., Cambridge, Cambridge University Press, 2008, pp. 985 *et seq.*

A. Watts, *The International Law Commission 1949-1998*, vol. II, Oxford, Oxford University Press, 2000, pp. 987 *et seq.*

A. Watts, "State Succession: Some Recent Practical Problems", in V. Goetz, P. Selmer and R. Wolfrum (eds.), *Liber amicorum Günther Jaenicke*, Berlin, Springer Verlag, 1998, pp. 405-426.