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**The Succession of States in relation to Membership in the United Nations -
Memorandum prepared by the Secretariat**

Topic:
Succession of States and Governments

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SUCCESSION OF STATES AND GOVERNMENTS

DOCUMENT A/CN.4/149 AND ADD.1

The succession of States in relation to membership in the United Nations: memorandum prepared by the Secretariat

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I. INTRODUCTION

1. At a meeting of the Sub-Committee on the Succession of States and Governments held during the fourteenth session of the International Law Commission, the Secretary of the Commission stated that the Secretariat would undertake the preparation of a memorandum on the problem of succession of States in relation to membership of the United Nations. The Commission took note of this statement in its report.¹

2. This memorandum is accordingly submitted for the use of the Sub-Committee and of the Commission. In this regard there are three significant cases. The first is that of the admission of Pakistan in 1947; that was the first occasion on which a new State whose territory had formerly formed part of a Member of the United Nations was admitted to the Organization. Though the issue of succession was raised, Pakistan went through the usual procedure for admission, and that procedure has been followed by all other new States which formerly were parts of Members and which have been admitted to the United Nations. The second case is the formation in 1958 of the United Arab Republic by union between Egypt and Syria. The third case is the departure of Syria from the United Arab Republic in 1961.

II. THE ADMISSION OF PAKISTAN TO MEMBERSHIP, 1947²

3. In August 1947, an original Member of the United Nations divided into two States, India and Pakistan. Before the arrival of the date set for this change (15 August 1947), the Secretariat, for the purposes of its administrative functions, was obliged to consider the legal consequences in regard to membership and representation in the United Nations. A legal opinion of 8 August 1947 by the Assistant Secretary-General for Legal Affairs was approved and made public by the Secretary-General.³ This legal opinion was as follows:

"The Indian Independence Act provides that on the fifteenth day of August, 1947, two Independent Dominions shall be set up in India to be known respectively as India and Pakistan. Under this Act, the new Dominion of India will consist of all the

territories of British India except certain designated territories which will constitute Pakistan.

"What is the effect of this development on membership and representation of India in the United Nations?

"From the legal standpoint, the Indian Independence Act may be analysed as effecting two separate and distinct changes;

"1. From the viewpoint of international law, the situation is one in which a part of an existing State breaks off and becomes a new State. On this analysis, there is no change in the international status of India; it continues as a State with all the treaty rights and obligations, and consequently, with all the rights and obligations of membership in the United Nations. The territory which breaks off, Pakistan, will be a new State; it will not have the treaty rights and obligations of the old State, and it will not, of course, have membership in the United Nations.

"In international law, the situation is analogous to the separation of the Irish Free State from Great Britain, and of Belgium from the Netherlands. In these cases, the portion which separated was considered a new State; the remaining portion continued as an existing State with all the rights and duties which it had before.

"2. Apart from the question of separation, the Independence Act has effected a basic constitutional change in India. The existing State of India has become a Dominion, and consequently, has a new status in the British Commonwealth of Nations, independence in external affairs, and a new form of government. It is clear, however, that this basic constitutional change does not affect the international personality of India, or its status in the United Nations. The only question it raises is whether new credentials should be requested for the Indian representatives in the organs of the United Nations. Although there is no precedent for this situation in the United Nations, there is some basis in diplomatic practice for requesting new credentials in cases of States which have undergone a change of sovereignty, as from a monarchy to a republic. It would, therefore, seem appropriate for the Secretary-General to suggest to the Government of India that in view of the change in sovereignty, it would be desirable to have new credentials issued to the Indian representatives by the Head of the Government or the Foreign Minister of the new Dominion of India.

"In conclusion, the effect of the Independence Act may be summarized as follows:

¹ *General Assembly, Official Records, Seventeenth Session, Supplement No. 9 (A/5209), para. 72.*

² The facts of this case are also summarized in the *Repertory of Practice of United Nations Organs*, vol. I, Article 4, paras. 32-37.

³ United Nations Press Release PM/473, 12 August 1947 (English only).

"1. The new Dominion of India continues as an original Member State of the United Nations with all rights and obligations of membership.

"2. Pakistan will be a new non-member State. In order for it to become a Member of the United Nations, it would have to apply for admission pursuant to Article 4 of the Charter, and its application would be handled under the pertinent rules of procedure of the General Assembly and the Security Council.

"3. The representatives of India on the Economic and Social Council and the representative of India participating in the discussion of the Indonesian case in the Security Council should be requested to submit new credentials after August 15 issued by the Head of Government, or the Foreign Minister of the new Dominion of India."

4. In the meanwhile, the representatives of India and Pakistan had been considering the problem of the devolution of international rights and obligations, and arrived at an agreement which, though reached on 6 August, was not promulgated until 14 August, and was communicated to the United Nations only on 27 August 1947, in a letter from the representative of India.⁴ The agreement was promulgated by the Governor-General in the Schedule to the Indian Independence (International Arrangements) Order, 1947, which provided that:

"The agreement set out in the Schedule to this Order shall, as from the appointed day, have the effect of an agreement duly made between the Dominion of India and the Dominion of Pakistan."

5. The agreement read as follows:

"Agreement as to the devolution of international rights and obligations upon the Dominions of India and Pakistan"

"1. The international rights and obligations to which India is entitled and subject immediately before 15 August 1947, will devolve in accordance with the provisions of this agreement.

"2. (a) Membership of all international organizations together with the rights and obligations attaching to such membership, will devolve solely upon the Dominion of India.

"For the purposes of this paragraph any rights or obligations arising under the Final Act of the United Nations Monetary and Financial Conference will be deemed to be rights or obligations attached to membership of the International Monetary Fund and to membership of the International Bank for Reconstruction and Development.

"(b) The Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organization as it chooses to join.

"3. (a) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of India will devolve upon that Dominion.

"(b) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of Pakistan will devolve upon that Dominion.

"4. Subject to articles 2 and 3 of this agreement, rights and obligations under all international agreements to which India is a party immediately before the appointed day will devolve both upon the Dominion of India and upon the Dominion of Pakistan, and will, if necessary, be apportioned between the two Dominions."

6. On 15 August 1947, the date on which Pakistan became independent, the Minister for Foreign Affairs of Pakistan sent the following cable to the Secretary-General:⁵

"On behalf of the Government of Pakistan, I have the honour to say that in my Government's view both the Dominions of India and Pakistan should become Members of the United Nations, automatically, with effect from 15 August. If, however, this view is not accepted, I hereby apply for the admission of Pakistan as a Member of the United Nations. Pakistan is prepared to accept the obligations contained in the Charter of the United Nations."

7. The Security Council took up the application of Pakistan on 18 August 1947.⁶ The Council decided to consider the matter directly, without previous reference to its Committee on the Admission of New Members. The claim of Pakistan to succession to the membership of India was not specifically considered, but after a brief discussion in which the representative of India supported "the application of Pakistan for membership", the Council voted unanimously in favour on "the question of admitting Pakistan to membership in the United Nations". The representative of Poland then remarked that the vote could not be used as a precedent to omit consideration by the Committee on the Admission of New Members. He continued:

"The state of affairs is not clear to us. We do not fully know whether Pakistan was born out of India or whether two new States have come into being. Of course, we accept India as a Member and we welcome Pakistan, but this precedent cannot be cited in the future as justification in the event another State should split up into several States and all of them should ask for automatic admission, thereby depriving the Council of the privilege of making recommendations with regard to new Members."

8. Thereafter the President of the Council and the Secretariat prepared a draft resolution which the Council discussed and adopted on 21 August 1947.⁷ In its operative part the resolution provided that the Council recommended

"to the General Assembly that it admit to membership in the United Nations the following applicants: "Yemen and Pakistan."

9. This resolution was transmitted to the General Assembly,⁸ which referred the item to the First Committee. At the opening of the debate in that Committee⁹ on 24 September 1947, the representative of Argentina declared that in his view Pakistan was already a Member of the United Nations since with India it inherited

⁵ S/498; Security Council, *Official Records, Second Year*, No. 78, pp. 2027-2028.

⁶ 186th meeting; Security Council, *Official Records, Second Year*, No. 78, pp. 2027-2031, 2052-2055.

⁷ 190th meeting; Security Council, *Official Records, Second Year*, No. 81, pp. 2136-2141.

⁸ A/350; General Assembly, *Official Records, Second Session, First Committee*, p. 529, annex 1.

⁹ 59th meeting; *ibid.*, pp. 3-8.

⁴ A/C.6/161; General Assembly, *Official Records, Second Session, Sixth Committee*, pp. 308-310, annex 6c.

the original membership held by the previous Indian Government. He would have had no objection if the United Nations had decided that both India and Pakistan were new States, and should submit applications for membership; but not to treat both Dominions on the same footing constituted an unfounded discrimination, since both should have been regarded as original Members, or, alternatively, both should have been considered new Members. Accordingly he submitted a draft resolution¹⁰ whereby the General Assembly would declare Pakistan a Member of the United Nations as from 15 August 1947, and would also declare that the positions occupied by the representatives of India in commissions, committees and sub-committees up to 15 August 1947 should be understood "as being occupied as from that date by the representatives of the Dominion of India".

10. The representative of Australia said that he did not believe the procedure which had been followed was incorrect; since India retained membership in the Economic and Social Council, it seemed to have been tacitly agreed that it had assumed the international rights and obligations of the former State of India. He submitted a draft resolution¹¹ by which the Assembly would decide to admit Pakistan and Yemen as Members.

11. In the ensuing discussion some representatives supported the views of Argentina and others those of Australia, but it was generally agreed that it was undesirable to delay the participation of Pakistan in the Organization. The Committee unanimously adopted the draft resolution submitted by Australia, but decided to refer the legal problem raised by the representative of Argentina to the Sixth Committee for consideration and report; the opinion of the Sixth Committee was, however, to be for use in future cases only and would have no bearing on the recommendation of the First Committee concerning the admission of Pakistan.¹²

12. On 30 September 1947 the General Assembly considered and adopted¹³ the draft resolution recommended by the First Committee deciding to admit Pakistan and Yemen as Members; it became resolution 108 (II). The resolution provided:

"The General Assembly,

"Taking note of the applications for membership submitted to the United Nations by Pakistan and Yemen, and of the recommendation of the Security Council that the Assembly admit Pakistan and Yemen to membership,

"Determines that Pakistan and Yemen are, in its judgement, peace-loving States, within the meaning of Article 4 of the Charter, and are able and willing to carry out their obligations under the Charter, and consequently,

"Decides to admit Pakistan and Yemen as Members of the United Nations."

13. In depositing his country's instrument of adherence to the Charter at the same meeting, the representative of Pakistan declared:¹⁴

"In one sense, the admission of Pakistan to the United Nations is not the admission of a new Member. Until 15 August of this year, Pakistan and India constituted one State. On 15 August they agreed to constitute themselves into two separate sovereign States. One chose to continue to call itself by the old name of India, which had applied to the whole of the country, and the other elected to call itself by the name of Pakistan.

"Inasmuch as Pakistan had been a part of India, it was, in effect under the latter name, a signatory to the Treaty of Versailles and an original Member of the League of Nations . . . In the same sense, Pakistan, as a part of India, participated in the San Francisco Conference in 1945 and became a signatory to the United Nations Charter. Therefore Pakistan is not a new Member of the United Nations, but a co-successor to a Member State which was one of the founders of the Organization."

14. The Sixth Committee on 6 and 7 October 1947¹⁵ considered the general question put to it by the First Committee, which was worded as follows:

"What are the legal rules to which, in the future, a State or States entering into international life through the division of a Member State of the United Nations should be subject?"

15. The discussion opened with a statement by the Rapporteur of the Committee, Mr. Georges Kaeckenbeeck (Belgium),¹⁶ who suggested three paragraphs summarizing the governing principles. The Committee adopted these principles, which were transmitted in a letter of 8 October 1947 from the Chairman of the Sixth Committee to the Chairman of the First Committee.¹⁷

16. The letter read in part as follows:

"...After having considered the problem, the Sixth Committee agreed on the following principles:

"1. That, as a general rule, it is in conformity with legal principles to presume that a State which is a Member of the Organization of the United Nations does not cease to be a Member simply because its Constitution or its frontier have been subjected to changes, and that the extinction of the State as a legal personality recognized in the international order must be shown before its rights and obligations can be considered thereby to have ceased to exist.

"2. That when a new State is created, whatever may be the territory and the populations which it comprises and whether or not they formed part of a State Member of the United Nations, it cannot under the system of the Charter claim the status of a Member of the United Nations unless it has been formally admitted as such in conformity with the provisions of the Charter.

"3. Beyond that, each case must be judged according to its merits.

¹⁰ A/C.1/187; *ibid.*, p. 582, annex 14e.

¹¹ A/C.1/188; *ibid.*, p. 582, annex 14f.

¹² Report of the First Committee (A/399); *General Assembly, Official Records, Second Session, Plenary Meetings*, pp. 1450-1451, annex 3.

¹³ 92nd plenary meeting; *ibid.*, pp. 311-320.

¹⁴ *Ibid.*, p. 317.

¹⁵ 42nd and 43rd meetings; *General Assembly, Official Records, Second Session, Sixth Committee*, pp. 37-44.

¹⁶ A/C.6/162; *ibid.*, pp. 306-308, annex 6b.

¹⁷ A/C.1/212; *General Assembly, Official Records, Second Session, First Committee*, pp. 582-583, annex 14g.

"4. It was agreed by the Sixth Committee that these principles are to be transmitted to the First Committee as suitable to give general guidance to the United Nations in connexion with future cases, with the understanding that each case will be considered in accordance with its particular circumstances."

III. FORMATION OF THE UNITED ARAB REPUBLIC, 1958

17. The following note, dated 24 February 1958, was sent to the Secretary-General by the Foreign Minister of the United Arab Republic:¹⁸

"The plebiscite held in Egypt and Syria on 21 February 1958 having made clear the will of the Egyptian and Syrian people to unite their two countries in a single State, the Minister for Foreign Affairs of the United Arab Republic has the honour to notify the Secretary-General of the United Nations of the establishment of the United Arab Republic, having Cairo as its capital, and the election, in the same plebiscite, of President Gamal Abdel Nasser as President of the new Republic."

18. A further note of 1 March 1958 from the Foreign Minister to the Secretary-General stated as follows:¹⁹

"The Minister for Foreign Affairs presents his compliments to H.E. the Secretary-General of the United Nations and, in pursuance of his note dated 24 February 1958, regarding the formation of the United Arab Republic and the election of President Gamal Abdel Nasser, has the honour to request the Secretary-General to communicate the content of the above-mentioned note to the following:

- "1. All the States Members of the United Nations;
- "2. Other principal organs of the United Nations;
- "3. Subsidiary organs of the United Nations, particularly those on which Egypt or Syria, or both, are represented.

"It is to be noted that the Government of the United Arab Republic declares that the Union is a single Member of the United Nations, bound by the provisions of the Charter, and that all international treaties and agreements concluded by Egypt or Syria with other countries will remain valid within the regional limits prescribed on their conclusion and in accordance with the principles of international law."

19. In accordance with the request, the Secretary-General on 7 March 1958 transmitted the two notes to all Members of the United Nations and to principal and subsidiary organs of the Organization. The Secretary-General's note of transmittal stated:²⁰

"... The Secretary-General has now received credentials for Mr. Omar Loutfi as Permanent Representative of the United Arab Republic to the United Nations, signed by the Minister for Foreign Affairs of the Republic. In accepting this letter of credentials the Secretary-General has noted that this is an action within the limits of his authority, undertaken without prejudice to and pending such action as other

Organs of the United Nations may take on the basis of notification of the constitution of the United Arab Republic and the Note of 1 March 1958."

20. The Trusteeship Council was then in session. The President of the Council, at the end of a meeting on the morning of 7 March 1958,²¹ read out the note from the Secretary-General, and stated that the Secretariat would make the necessary administrative arrangements for the next meeting of the Council. At the beginning of the following meeting,²² a number of representatives welcomed the representative of the United Arab Republic to the Council; a few reserved their position, but there was no objection to the seating of the United Arab Republic. Thereafter the representatives of the Republic without objection took their seats in all the organs of the United Nations of which Egypt or Syria, or both, had been members.

21. The First United Nations Conference on the Law of the Sea was also in session, and the *note verbale* of the Secretary-General, with the two annexed notes from the United Arab Republic, was circulated as a Conference document.²³ At a plenary meeting on 18 March 1958,²⁴ the President of the Conference, after referring to the notes, welcomed the leader of the delegation of the United Arab Republic, who was subsequently welcomed also by a number of delegations.

IV. RESUMPTION OF INDEPENDENCE BY SYRIA, 1961

22. A revolution broke out on 28 September 1961 in the Syrian Region of the United Arab Republic, and soon established control of the whole territory of the Region. By a cable dated 30 September 1961,²⁵ the new President of the Council of Ministers and Minister for Foreign Affairs of the Syrian Arab Republic informed the President of the General Assembly that he had taken office at noon on the previous day. On 5 October 1961 the President of the United Arab Republic announced on the radio that his Government would not oppose the readmission of Syria to the United Nations. On 8 October 1961, the Prime Minister of Syria again cabled the President of the General Assembly as follows:²⁶

"I have the honour to refer to my cable dated 30 September 1961 in which I informed you I had been named President of the Council of Ministers and Minister of Foreign Affairs of the Syrian Arab Republic and assured you of the firm adherence of my Government to the principles of the United Nations and of my Government's desire to exercise its international relations on the basis of justice and peace. It may be recalled that the Syrian Republic was an original Member of the United Nations under Article 3 of the Charter and continued its membership in the form of joint association with Egypt under the name of United Arab Republic. In resuming her formal status as an independent State the Govern-

²¹ 879th meeting, para. 52.

²² 880th meeting.

²³ A/CONF.13/L.4.

²⁴ Fifth plenary meeting; *United Nations Conference on the Law of the Sea, Official Records* (A/CONF.13/38; United Nations publication, Sales No.: 58.V.4), vol. II, p. 7.

²⁵ A/4913 — S/4957.

²⁶ A/4914 — S/4957.

¹⁸ S/3976, annex I; *Security Council, Official Records, Thirteenth Year, Supplement for Jan., Feb., and Mar. 1958*, p. 31.

¹⁹ S/3976, annex II; *ibid.*, p. 32.

²⁰ See, for example, S/3976, *loc. cit.*

ment of the Syrian Arab Republic has the honour to request that the United Nations take note of the resumed membership in the United Nations of the Syrian Arab Republic. By separate communication I am submitting the credentials of the Delegation of Syria to the sixteenth session of the General Assembly. I also have the honour to request that the contents of this cable be communicated to the following:

“(1) All Members of the United Nations;

“(2) Principal and subsidiary organs of the United Nations.”

23. The two cables were published on 9 October 1961 as documents of the General Assembly and the Security Council. At a meeting of the General Assembly on the morning of 13 October 1961,²⁷ the President of the Assembly drew attention to the communications from Syria, and stated:

“I have consulted many delegations on this question and the consensus seems to be that, in view of the special circumstances of this matter, Syria, an original Member of the United Nations, may be authorized to be represented in the General Assembly as it has specifically requested. The numerous consultations that I have held lead me to believe that there is no objection to such a course on the part of any delegation. Therefore, if no objection is raised before the beginning of this afternoon’s plenary meeting, I shall request the Secretariat to take the necessary measures so that the delegation of the Syrian Arab Republic may take its seat in the General Assembly as a Member of the United Nations.”

24. At the following meeting on the afternoon of the same day,²⁸ the President of the General Assembly announced that:

“... following the declaration that I made this morning at the beginning of the meeting, I have received no objection on the part of any delegation or of any Member State of our Organization. Accordingly, the necessary measures have been taken, and the delegation of the Syrian Arab Republic has taken its seat in the Assembly as a Member of our Organization, with all the obligations and rights that go with that status.”

25. Thereafter Syria became a member of all organs composed of all Members of the Organization. The United Arab Republic retained all its memberships in organs. Syria again participated in the Advisory Commission of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, of which Syria had become a member before the United Arab Republic was formed in 1958.

V. THE ADMISSION OF MALI AND SENEGAL TO MEMBERSHIP, 1960

26. There is a fourth case which, while not relating to succession to an already existing membership in the United Nations, should nevertheless be mentioned in this memorandum. That is the case in which the Fed-

eration of Mali, after having been recommended by the Security Council for membership, divided into the two separate Republics of Mali and of Senegal. The Security Council thereafter made new recommendations for the admission of Mali and Senegal, and the earlier recommendation respecting the Federation of Mali was treated as without effect. The details are given below.

27. By a telegram dated 23 June 1960,²⁹ the Government of the Federation of Mali informed the Secretary-General that the Federation, having acceded to full independence on 20 June 1960, had decided to apply for membership in the United Nations. The Security Council, at its 869th meeting on 28 June 1960, adopted a resolution³⁰ recommending to the General Assembly that the Federation be admitted to membership.

28. On 20 August 1960 the Government of Senegal cabled the Secretary-General³¹ that on the same day the Legislative Assembly of Senegal had adopted an Act declaring the withdrawal of Senegal from the Federation and proclaiming the independence of the Republic; in the same telegram the new Republic requested admission to the United Nations. The request for admission was renewed in telegrams of 23 August and 22 September 1960.³²

29. On 20 September 1960 the General Assembly admitted a number of States to membership, but postponed the consideration of the Security Council’s recommendation concerning the Federation of Mali.³³

30. By a letter and a telegram, both dated 22 September 1960,³⁴ the Secretary-General was informed that the Sudanese Republic, which had been a part of the Federation of Mali, had adopted the name Republic of Mali and had proclaimed its independence; the new Republic requested admission to the United Nations.

31. The Security Council, at its 907th meeting on 28 September 1960, considered the separate applications by the two new Republics. After a discussion in which two representatives expressed the view that the division of the federation into two States had “nullified” the Council’s resolution of 28 June 1960,³⁵ the Security Council adopted two resolutions³⁶ recommending the admission of Senegal and Mali, respectively. On the same day, 28 September, the General Assembly adopted resolutions 1490 (XV) and 1491 (XV), admitting Senegal and Mali to membership in the United Nations.

²⁹ S/4347; *Security Council, Official Records, Fifteenth Year, Supplement for April, May and June 1960*, p. 34.

³⁰ S/4357; *ibid.*, p. 37.

³¹ S/4470, annex I; *Security Council, Official Records, Fifteenth Year, Supplement for July, August and September 1960*, pp. 120-121.

³² S/4470, annex III, and S/4530 and Corr.1; *ibid.*, pp. 121 and 175.

³³ 864th plenary meeting, paras. 55 and 56.

³⁴ S/4534 and S/4535; *Security Council, Official Records, Fifteenth Year, Supplement for July, August and September 1960*, pp. 205, 206.

³⁵ 907th meeting, paras. 32 and 88.

³⁶ S/4543 and S/4544; *Security Council, Official Records, Fifteenth Year, Supplement for July, August and September 1960*, pp. 207, 208.

²⁷ 1035th plenary meeting.

²⁸ 1036th plenary meeting.