

Part II
RELATIONS BETWEEN STATES
AND INTERNATIONAL ORGANIZATIONS

Deuxième partie
RELATIONS ENTRE ETATS
ET ORGANISATIONS INTERNATIONALES

Section I
GENERAL COMMENTS

Section I
COMMENTAIRES GENERAUX

1. International Labour Organisation¹

Le projet d'articles sur la succession d'Etats en matière de biens d'Etats tel qu'il a été soumis à la 26^e session de la Commission du droit international (6 mai-27 juillet 1974)² prévoit, à la suite de l'article 11, trois articles numérotés X, Y, Z. Ces articles ne visent à strictement parler que les biens des Etats-tiers. Il peut cependant se produire que les organisations internationales soient, elles aussi, propriétaires de biens sur un territoire faisant l'objet d'une succession d'Etats.

Ces biens peuvent avoir été introduits dans le territoire au titre de la coopération technique ou bien avoir été acquis aux fins des activités officielles de l'Organisation elle-même.

Vous savez en effet que, selon l'Accord-type de coopération technique, les titres de propriété du matériel utilisé dans les projets de coopération technique sont transférés aux gouvernements selon les termes et conditions convenus de cas en cas. L'un de ces termes est, en général, que les biens transférés continuent à être utilisés aux mêmes fins que pendant l'exécution du projet de coopération technique. Dans cette mesure, il me paraît clair que la succession d'Etats porte en réalité sur l'exécution d'un traité international et échappe au sujet du rapport que je suis appelé à commencer. En revanche, il peut aussi se produire que la succession d'Etats a lieu pendant l'exécution du projet de coopération technique ou après celui-ci, avant que les biens aient été transférés à l'Etat. Il me paraît clair que, dans un cas pareil, l'article Z devrait être applicable *mutatis mutandis*.

Quant aux biens ayant été acquis aux fins des activités officielles de l'Organisation elle-même (par exemple, voitures, immeubles, mobiliers, etc.), ils relèvent très probablement, ainsi que le marquent les paragraphes 32 et 33, des commentaires du document A/CN.4/282 du statut de l'Organisation dans l'Etat dont il s'agit. On pourrait donc considérer que, là aussi, il s'agit d'un problème de succession d'Etats en matière de traités, le traité étant en l'espèce l'Accord de siège ou une Convention sur les privilèges et immunités des organisations internationales. Si l'on n'admettait pas cette manière de voir, il conviendrait sans doute que, là aussi, l'article Z soit rendu applicable *mutatis mutandis* aux organisations internationales.

¹ Observations transmises par lettre du 18 septembre 1974 du Sous-Directeur général et Conseiller juridique du Bureau international du Travail.

² *Annuaire de la Commission du droit international*, 1974, vol. II, document A/CN.4/282, p. 91.

L'application de l'article Z entraînerait bien évidemment des modifications correspondantes aux articles X et Y.

2. International Bank for Reconstruction and Development¹

The enclosed memorandum summarizes the practise of the Bank Group² and illustrates this practice by reference to documents published in the United Nations *Treaty Series*.

With respect to the excerpt of Mr. Bedjaoui's second report,³ attached to your letter, I should like to comment as follows. In paragraph 146, it is stated:

"Lastly, it may be noted that the International Bank for Reconstruction and Development, in its Loan Regulation No. 4, stipulates that the metropolitan country shall guarantee loans granted to dependent Territories. The guarantee is always provided by the Power of which the Territory granted the loan is a dependency. This system has the effect of negating the principle of the localization of debts. In particular, it means that when the Territory becomes independent, two States are legally responsible for payment of the debt—the successor State as the principal debtor, and the predecessor State as the guarantor. For example, IBRD called upon Belgium, as the contractual guarantor, to settle the debt not paid by the Congo."

In fact, the guarantee requirement stems not from the Bank's Loan Regulations (since replaced by the General Conditions Applicable to Loan and Guarantee Agreements dated January 31, 1969 (691 UNTS 300)) but from its Articles of Agreement which provide in Article III, Section 4 (i) that the Bank may make loans to any member or any political subdivision thereof and any business, industrial, agricultural enterprise in the territories of a member, subject, *inter alia*, to the condition that "[w]hen the member in whose territories the project is located is not itself the borrower, the member of the central bank or some comparable agency of the member which is acceptable to the Bank, fully guarantees the repayment of the principal and the payment of interest and other charges on the loan." As a matter of practice, the Bank has always required the guarantee of the member itself.

This provision of the Articles is mandatory on the Bank and has thus been adhered to even in cases where a loan was made to a dependent territory at a time when, and with the knowledge that, independence was imminent. The loan to the State of Singapore for a power project made on May 16, 1968 to which reference is made in the memorandum is a case in point. This being the

¹ Observations transmitted by letter of 25 March 1974 from the General Counsel of the IBRD.

² International Bank for Reconstruction and Development (IBRD), International Development Association (IDA) and International Finance Corporation (IFC).

³ *Yearbook of the International Law Commission*, 1969, vol. II, document A/CN.4/216/Rev.1, p. 69.

case, I do not believe it is entirely accurate to state that the guarantee requirement negates the principle of the localization of debts. As stated in the memorandum, the Bank has taken the position that as a matter of international law the liabilities of the dependent territory arising out of loan or guarantee agreements with the Bank continue as liabilities of the independent state. While it is true that the guarantee of the metropolitan state continues in effect after the independence of a former territory, the Bank would look in the first instance to the newly independent state for the debt service on loans made to it when it was still a dependency.

Memorandum

The Bank group has been confronted with the problem of state succession in its lending operations and in respect of its membership.

As far as lending operations are concerned, the problem has presented itself in a number of configurations. A common case is that in which the Bank has entered into a loan or guarantee agreement with a dependent territory which subsequently has become independent. The Bank has taken the position that as a matter of international law the liabilities of the dependent territory arising out of loan or guarantee agreements with the Bank continue as liabilities of the independent state. By the same token, with only a very few exceptions, territories on becoming independent states have continued to service the loans made to them by the Bank and to carry out all other obligations to the Bank incurred while they were dependent territories. The Articles of Agreement of the Bank require that a loan to a dependent territory be guaranteed by the metropolitan state and this guarantee remains in effect after the independence of the territory.

3. International Monetary Fund¹

the Articles of Agreement of the Fund [see sub-section (a) below], govern the Fund's relationship with its member countries. This relationship gives rise to certain financial rights or interests as well as obligations, but the Fund does not have similar relationship with non-members or with private parties. In view of this, information on the rights and interests of the nature described in your letter must be limited to those that arise in the Fund's relations with members.

There is no express provision in the Articles of Agreement for determination of questions related to succession as such. There are provisions, such as Article II and Article XII, Section 2 (b), that have a bearing on questions that might be thought of as related to doctrines of succession. The effect of these provisions, however, is to make it doubtful that the Articles permit succession in the sense that membership, or any rights and obligations that compose membership, can pass by operation of law from an international entity that disappears to a new international entity. Under the Articles, a new entity must apply for membership. There have been occasions,

¹ Observations transmitted by letter of 23 October 1974 from the General Counsel of the International Monetary Fund.

however, on which the Fund has determined that an existing entity that is a member of the Fund continues to exist notwithstanding territorial or constitutional changes. It may be questioned whether "continuity" can be subsumed under "succession". The cases that are discussed in the attached note contain many ambiguities and it is not clear how they affect this question.

In the attachment [see sub-section (b) below], there are set forth the details of certain circumstances in which the question of continuity arose. In general, the Fund came to conclusions compatible with those reached by the United Nations

(a) *Articles of agreement of the International Monetary Fund*

Article II. Membership

Section 1. Original members

The original members of the Fund shall be those of the countries represented at the United Nations Monetary and Financial Conference whose governments accept membership before the date specified in Article XX, Section 2 (e).

Section 2. Other members

Membership shall be open to the governments of other countries at such times and in accordance with such terms as may be prescribed by the Fund.

Article XII. Organisation et administration

Section 2. Conseil des gouverneurs

(b) The Board of Governors may delegate to the Executive Directors authority to exercise any powers to the Board, except the power to:

- (i) Admit new members and determine the conditions of their admission.
- (ii) Approve a revision of quotas.
- (iii) Approve a uniform change in the par value of the currencies of all members.
- (iv) Make arrangements to co-operate with other international organizations (other than informal arrangements of a temporary or administrative character).
- (v) Determine the distribution of the net income of the Fund.
- (vi) Require a member to withdraw.
- (vii) Decide to liquidate the Fund.
- (viii) Decide appeals from interpretations of this Agreement given by the Executive Directors.

**(b) Practice of the International Monetary Fund
with respect to continuity of membership**

ATTACHMENT

Introduction

The members of the Fund consist of original members, that is, those countries referred to in Schedule A¹ to the Articles of Agreement that became members on or before December 27, 1945, and other countries that have been admitted to membership in accordance with terms prescribed by the Fund. A member accepts the Articles on its own behalf and in respect of "all their colonies, overseas territories, all territories under their protection, suzerainty, or authority and all territories in respect of which they exercise a mandate".²

4. Universal Postal Union³

... Vous avez manifesté le désir d'être documenté sur les problèmes de la succession d'Etat par rapport aux dettes de droit public.

Nous n'avons pas de documents ou d'études à vous remettre à ce sujet. Cependant, il nous a paru utile de vous signaler qu'au cours de ses cent ans d'existence, l'Union postale universelle n'a pas rencontré de difficultés réelles en ce qui concerne le paiement des parts contributives dues par les Pays-membres qui avaient changé de régime politique ou par les colonies lorsque celles-ci ont accédé à l'indépendance et sont devenues Pays-membres à part entière.

5. Inter-American Development Bank⁴

...
The Inter-American Development Bank has not had, since its creation, cases dealing with succession of States and legal substitution among its member countries. Consequently, no documents or papers have been issued on that subject.

May we point out, however, that even though the Agreement Establishing the Inter-American Development Bank does not deal specifically with problems of legal substitution in those cases in which member countries disappear either through absorption into others or by breaking up, or through the transfer of territorial authority from one state to another, it does contain certain clauses that would be applicable should a case of succession occur.

¹ "Annexe A" dans le texte français, Nations Unies, *Recueil des Traités*, vol. 2, p. 121 à 123.

² Article XX, sect. 2, *g, ibid.*, p. 107.

³ Observations transmises par lettre du 25 novembre 1974 du Directeur général de l'UPU.

⁴ Observations transmitted by letter dated 13 March 1974, from the President of the Bank.

Article II, Section 3 (dealing with subscription of shares of the capital stock of the Bank by member countries) establishes in sub-paragraph (e) that "Shares of stock shall not be pledged or encumbered in any manner, *and they shall be transferable only to the Bank* (*italics added*). Article IX, Section 3 (dealing with settlement of accounts between the Bank and countries that have ceased to be members) has various provisions setting forth the procedure to be followed in case of repurchase of capital stock by the Bank from countries that have ceased to be members (see especially sub-paragraphs (b), (c) and (d)).

Agreement establishing the Interamerican Development Bank

ARTICLE II. MEMBERSHIP IN AND CAPITAL OF THE BANK

Section 3. Subscription of Shares

(a) Each member shall subscribe to shares of the capital stock of the Bank. The number of shares to be subscribed by the original members shall be those set forth in Annex A of this Agreement, which specifies the obligation of each member as to both paid-in and callable capital. The number of shares to be subscribed by other members shall be determined by the Bank.

(b) In case of an increase in capital pursuant to Section 2, paragraph (c) or (e) of this article, each member shall have a right to subscribe, under such conditions as the Bank shall decide, to a proportion of the increase of stock equivalent to the proportion which its stock theretofore subscribed bears to the total capital stock of the Bank. No member, however, shall be obligated to subscribe to any part of such increased capital.

(c) Shares of stock initially subscribed by original members shall be issued at par. Other shares shall be issued at par unless the Bank decides in special circumstances to issue them on other terms.

(d) The liability of the member countries on shares shall be limited to the unpaid portion of their issue price.

(e) Shares of stock shall not be pledged or encumbered in any manner, and they shall be transferable only to the Bank.

Section 4. Payment of Subscriptions

(a) Payment of the subscriptions to the capital stock of the Bank as set forth in Annex A shall be made as follows:

(i) Payment of the amount subscribed by each country to the paid-in capital stock of the Bank shall be made in three installments, the first of which shall be 20 per cent, and the second and third each 40 per cent, of such amount. The first installment shall be paid by each country at any time on or after the date on which this Agreement is signed, and the instrument of acceptance or ratification deposited, on its behalf in accordance with Article XV, Section 1, but not later than September 30, 1960. The remaining two installments shall be

paid on such dates as are determined by the Bank, but not sooner than September 30, 1961, and September 30, 1962, respectively.

Of each installment, 50 per cent shall be paid in gold and/or dollars and 50 per cent in the currency of the member.

- (ii) The callable portion of the subscription for capital shares of the Bank shall be subject to call only when required to meet the obligations of the Bank created under Article III, Section 4 (i) and (iii) on borrowings of funds for inclusion in the Bank's ordinary capital resources or guarantees chargeable to such resources. In the event of such a call, payment may be made at the option of the member either in gold, in United States dollars, or in the currency required to discharge the obligations of the Bank for the purpose for which the call is made.

Calls on unpaid subscriptions shall be uniform in percentage on all shares.

ARTICLE IX. WITHDRAWAL AND SUSPENSION OF MEMBERS

Section 3. Settlement of Accounts

(a) After a country ceases to be a member, it no longer shall share in the profits or losses of the Bank, nor shall it incur any liability with respect to loans and guarantees entered into by the Bank thereafter. However, it shall remain liable for all amounts it owes the Bank for its contingent liabilities to the Bank so long as any part of the loans or guarantees contracted by the Bank before the date on which the country ceased to be a member remains outstanding.

(b) When a country ceases to be a member, the Bank shall arrange for the repurchase of such country's capital stock as a part of the settlement of accounts pursuant to the provisions of this section; but the country shall have no other rights under this Agreement except as provided in this section and in Article XIII, Section 2.

(c) The Bank and the country ceasing to be a member may agree on the repurchase of the capital stock on such terms as are deemed appropriate in the circumstances, without regard to the provisions of the following paragraph. Such agreement may provide, among other things, for a final settlement of all obligations of the country to the Bank.

(d) If the agreement referred to in the preceding paragraph has not been consummated within six months after the country ceases to be a member or such other time as the Bank and such country may agree upon, the repurchase price of such country's capital stock shall be its book value, according to the books of the Bank, on the date when the country ceased to be a member. Such repurchase shall be subject to the following conditions:

- (i) As a prerequisite for payment, the country ceasing to be a member shall surrender its stock certificates, and such payment may be made in such installments, at such times and in such available currencies as the Bank determines, taking into account the financial position of the Bank.

- (ii) Any amount which the Bank owes the country for the repurchase of its capital stock shall be withheld to the extent that the country or any of its subdivisions or agencies remains liable to the Bank as a result of loan or guarantee operations. The amount withheld may, at the option of the Bank, be applied on any such liability as it matures. However, no amount shall be withheld on account of the country's contingent liability for future calls on its subscription pursuant to Article II, Section 3 (a) (ii).
 - (iii) If the Bank sustains net losses on any loans or participations, or as a result of any guarantees, outstanding on the date the country ceased to be a member, and the amount of such losses exceeds the amount of the reserves provided therefor on such date, such country shall repay on demand the amount by which the repurchase price of its shares would have been reduced, if the losses had been taken into account when the book value of the shares, according to the books of the Bank, was determined. In addition, the former member shall remain liable on any call pursuant to Article II, Section 4 (a) (ii), to the extent that it would have been required to respond if the impairment of capital had occurred and the call had been made at the time the repurchase price of its shares had been determined.
- (e) In no event shall any amount due to a country for its shares under this section be paid until six months after the date upon which the country ceases to be a member. If within that period the Bank terminates operations all rights of such country shall be determined by the provisions of Article X, and such country shall be considered still a member of the Bank for the purposes of such article except that it shall have no voting rights.

6. Common Afro-Malagasy and Maurician Organization¹

J'ai l'honneur de vous faire connaître que l'OCAM n'a pas encore eu à se pencher sur les problèmes se rapportant à la succession d'Etats dans les biens publics ou ceux des entreprises ou organismes à caractère public. Toutefois, une convention a été adoptée qui régit la propriété des immeubles construits ou acquis pour le compte de l'Organisation et de ses institutions spécialisées.

Aux termes de cette convention, tout Etat membre abritant le siège cède à l'Organisation, en toute propriété, les terrains nécessaires à la construction de ses immeubles. Les terrains cédés avec les constructions, les immeubles bâtis ou acquis, demeurent propriétés de l'Organisation. Ainsi, l'Etat membre qui décide de se retirer ne peut prétendre à un remboursement ou à l'indemnisation du versement effectué pour sa contribution dans la constitution du patrimoine immobilier de l'Organisation, sauf cas de dissolution.

En cas de cette dissolution ou d'intégration de l'OCAM dans une organisation plus vaste, il peut être décidé, après règlement de son passif et ces charges, le transfert immobilier restant à une organisation poursuivant les mêmes objectifs que l'OCAM ou à celle où l'OCAM est intégrée.

¹ Observations transmises par lettre du 22 avril 1974 du Directeur de département, chargé de l'intérim de l'Organisation commune africaine malgache et mauricienne (OCAM).

ANNEXE

Convention sur la propriété des biens immeubles, conclue entre la République fédérale du Cameroun, la République centrafricaine, la République du Congo, la République démocratique du Congo, la République de Côte d'Ivoire, la République du Dahomey, la République gabonaise, la République de Haute-Volta, la République malgache, la République du Niger, la République rwandaise, la République du Sénégal, la République du Tchad et la République togolaise. Faite à Tananarive le 27 juin 1966. Modifiée à Kinshasa le 28 janvier 1969.

Article 1^{er}. – L'Etat membre de l'Organisation commune africaine et malgache sur le territoire duquel a été décidé la construction d'un ou plusieurs immeubles destinés à abriter le Siège de l'Organisation ou de tout organisme spécialisé de celle-ci, doit céder à l'Organisation, en toute propriété les terrains nécessaires à la construction desdits immeubles.

Article 2. – Sont propriétés de l'Organisation, les terrains ainsi cédés, avec les constructions, les immeubles bâtis ou acquis par l'Organisation.

Article 3. – L'Etat membre qui viendrait à quitter l'Organisation ne peut prétendre à un remboursement et à l'indemnisation du versement qu'il a effectué pour sa contribution dans la constitution du patrimoine immobilier et mobilier de l'Organisation qu'en cas de dissolution de l'Organisation.

Ce remboursement et cette indemnisation sont proportionnels à sa contribution dans la constitution du patrimoine immobilier de l'Organisation.

Article 4. – En cas de dissolution de l'Organisation, le Conseil des Ministres préside à la liquidation du patrimoine de cette dernière et statue sur le sort à réserver aux immeubles compte tenu également des dispositions des articles 3 et 5.

Article 5. – En cas de dissolution de l'Organisation, le Conseil des Ministres peut, après règlement du passif et des charges de l'Organisation, décider le transfert immobilier restant à une organisation poursuivant les mêmes buts que l'Organisation commune africaine et malgache.

Il en est de même en cas d'intégration de l'Organisation commune africaine et malgache dans une organisation plus vaste.

Article 6. – Les opérations de liquidation sont assurées sous le contrôle du Conseil des Ministres, par une commission composée de cinq experts désignés par celui-ci, dont obligatoirement un, présenté par l'Etat de la situation des biens.

Article 7. – La présente Convention sera applicable de droit à tous les Etats membres de l'OCAM qui l'auront signée et ratifiée.

Article 8. – L'adhésion à la présente Convention d'un nouvel Etat s'effectuera par le dépôt d'un instrument auprès du Secrétaire général de l'Organisation.

La Convention entrera en vigueur à l'égard de cet Etat à la date de notification par le Secrétaire général de la réception de l'Instrument.