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International Organizations or Institutions, Succession

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A. Definition and Characteristics

1 Succession of one international organization by another is commonly defined as a transfer of functions from that organization to the other. In comparison, the succession of States denotes the replacement of one State by another in respect of sovereignty over a given territory (see also → *State Succession in Other Matters than Treaties*; → *State Succession in Treaties*). The definitions reveal the major difference between these two types of succession: the succession of organizations is functional in nature, whereas the succession of States is linked to territory. State succession aims to minimize the danger of a legal vacuum being created as a result of a change of territorial → *sovereignty*. In contrast, the succession between international organizations is driven by the common interest of Member States to secure functional continuity for political and practical reasons. Consequently, the law of State succession, ie the legal consequence of the transfer of territory, cannot be applied lock, stock, and barrel to cases of succession between international organizations.

2 On the international plane, several international organizations with similar purposes and functions co-exist and co-operate without generating questions of succession (see also → *International Organizations or Institutions, External Relations and Co-operation*). For a transfer of functions to take place, a reduction of the predecessor's functions and the assumption of those roles by the successor must occur. The transfer of functions can occur in different situations: the replacement of one organization by another (see Sec. C.1 below), the transferral of specific functions to another organization (see Sec. C.2 below), the merger of two organizations into a new one (see Sec. C.3 below), the absorption of one organization by another (see Sec. C.4 below), and finally the legal separation of a formally subsidiary organ from the parent organization (see Sec C.5 below). The functional loss and assumption must be legally identical in content and nature, whereas the legal personalities of the predecessor and the successor organization must differ. In contrast, the identity of membership is not an essential characteristic of a succession (see Sec. E.1 below; → *International Organizations or Institutions, Membership*). The same is true for the transfer of assets and liabilities. Nevertheless, the transfer of assets is commonly linked to the devolution of functions and so is a strong indicator that a succession has occurred (see Sec. D.1 below). A special case of functional succession is the privatization of an international organization, eg → *INTELSAT*, the functions of which were transferred to the private corporation INTELSAT Ltd in 2001.

B. Succession and Identity

3 An indispensable prerequisite of any succession is the separate legal identity of predecessor and successor. In the case of international organizations, the determining factor regarding identity and distinctiveness, continuity and discontinuity of legal personality is, first and foremost, the will of Member States. If no explicit provision in the (amending) statute addresses the issue (eg, the legal identity of the European Organization of Economic Cooperation and the → *Organization for Economic Cooperation and Development (OECD)* according to Art.15 Convention on the OECD) further evidence must be taken into consideration. For example, the practice of Member States as well as the practice of the relevant organization regarding assets, prior secondary legislation, and prior international obligations towards third parties have to be considered. The change of an organization's name, the creation of additional organs, and the amendment of an organization's functions do not prima facie establish a new legal identity of the revised organization. For example, the European Community (EC) was legally identical to the European Economic Community despite the changes in name and competences introduced by the Maastricht Treaty in 1992 (→ *European [Economic] Community*; → *European Union, Historical Evolution*). When the Treaty of Lisbon entered into force on 1 December 2009,

the European Union (EU) 'replaced and succeeded the European Community' (Art. 1 (3) TEU). Whereas the language of Art. 1 (3) TEU highlights the separate legal personality of the dissolved EC and the 'Lisbon' EU, it leaves unanswered the question of whether the 'Lisbon' EU is legally identical with the 'Maastricht' EU. This is because the refusal of Member States to grant international legal personality to the 'Maastricht' EU made it necessary to establish a 'new' international organization, hinting at political continuity by using the previously introduced name.

C. Settings of Succession

1. Dissolution and Replacement

4 An international organization may be dissolved in three ways: by a unanimous decision of its organs, by consent of its Member States, or by mere disuse. Once the organization is dissolved, it ceases to exist as a subject of international law (→ *Subjects of International Law*). If a new international organization is established in order to fulfil the task of the dissolved one, the latter is generally fully replaced by the former. Examples of such all-embracing succession are provided by the International Institute of Agriculture (IIA) when replaced by the → *Food and Agriculture Organization of the United Nations (FAO)* in 1946 and by the Organization of the African Union when replaced by the newly established → *African Union (AU)* in 2002. That same year, all functions of the dissolved → *European Coal and Steel Community (ECSC)* were absorbed by the pre-existing EC, which in turn was replaced by the EU in 2009 (Art. 1 (3) TEU).

5 In practice, the functions of the replaced organization are at times divided among several other international organizations. In 1947, the → *United Nations Relief and Rehabilitation Administration (UNRRA)* transferred its functions to the → *International Refugee Organization (IRO)*, the → *World Health Organization (WHO)*, the FAO, and the → *United Nations Children's Fund (UNICEF)*. Another example of a partitioned succession is the liquidation of the → *League of Nations*, as the → *United Nations (UN)* was the main but not the sole successor organization.

2. Functional Rationalization

6 The simple transfer of functions from one organization to another does not, in itself, prejudice the international personality of the relinquishing organization. The streamlining of two or more international institutions by rearranging their functions is generally justified as a move towards functional → *effectiveness*. The need for such efforts grew in the second half of the 20th century when the proliferation of institutions led to a multiplication of efforts. For example, the overlapping social and cultural responsibilities of the → *Western European Union (WEU)* and the → *Council of Europe (COE)* gave rise to the transfer of the Social and Council Committee of the WEU to the COE in 1960. The related custodial and administrative functions of the WEU under international agreements were taken over by the COE provided that no specific amendments of those agreements were required. Forty years later, the WEU was subject to another transfer when the EU wanted to acquire the capacity of autonomous military actions in order to respond to international crises (Art. 42 TEU). In the ministerial meeting in November 2000, the WEU decided to transfer its peacekeeping and military crisis management functions (Petersberg tasks) to the EU. On 30 June 2011, the WEU officially ceased to exist.

3. Merger

7 The merger of two organizations is characterized by the dissolution of at least two organizations and the creation of a new subject in international law. The newly created international organization incorporates functions from each of the predecessor organizations. When the → *European Space Agency (ESA)* was created in 1975, the organization took over all rights and obligations of the European Space Research Organization and the European Launcher Development Organization (Art. XIX Convention for the Establishment of ESA ['ESA Convention']). Both predecessor organizations were declared dissolved on the day of entry into force of the ESA Convention (Art. XXI ESA Convention). Another historic example of an institutional merger is the fusion of the International Telegraph Union and the International Radiotelegraph Union into the → *International Telecommunication Union (ITU)* in 1934. Provided that over time the 'Maastricht' EU *de facto* developed into an international organization with international legal personality, despite the explicit will of its Member States to the contrary (see Sec. B above), the Lisbon Treaty merged the 'Maastricht' EU and the EC into a new international organization, the 'Lisbon' EU.

4. Integration

8 An international organization necessarily perishes when integrated into another international organization whose legal identity prevails. For example, in May 1946, the WHO and the Pan American Sanitary Organization ('PASO') signed an agreement on integration, according to which the PASO's bureau would continue to serve as a regional office, ie as an organ, of the WHO. In absorbing the functions of PASO, the WHO preserved its identity and acted as a successor organization of PASO. The same happened to the → *International Bureau of Education (IBE)*, whose integration into the institutional framework of → *United Nations Educational, Scientific and Cultural Organization (UNESCO)* was agreed between both organizations in 1968.

5. Separation

9 The creation of a new entity by the separation of an organ from its main organization is rare. An example is the separation of the → *United Nations Industrial Development Organization (UNIDO)* from the UN in 1985. The former was originally established by the → *United Nations, General Assembly* as its subsidiary organ (UNGA Res 2152 (XXI)). Under the transitional arrangements adopted by the General Assembly in 1979 (UNGA Res 34/96) it was decided to transform the organ into a separate agency of the UN (→ *United Nations, Specialized Agencies*). Nevertheless, such separation is not legally effective until the required number of accessions to the new organization's statute is reached.

D. Legal Basis of Succession

1. Concepts of Succession

10 As a general rule, the transfer of functions, ie succession, requires the mutual → *consent* of the predecessor organization or its members and the successor organization or its members. Consent-based succession—so-called conventional succession—dominates international practice. Much more controversial is the concept of automatic succession, which refers to the transfer of functions effectuated by international law when certain factual and legal requirements are met (see Sec. D.5 below).

2. Explicit Consent of All Member States

11 Provided that the membership of the predecessor organization and of the successor organization is identical, it is sufficient that the consent to succession is expressed in a single instrument. If a dissolved organization is fully replaced by a newly established one (see Sec. C.1 above), the transfer of functions is often included in the latter's constitution. This technique was used when the EC was replaced by the EU after the Lisbon Treaty entered into force in 2009 (Art. 1 (3) TEU) and when the Caribbean Free Trade Association was replaced by the → *Caribbean Community (CARICOM)* (Art. 71 Treaty Establishing the CARICOM).

12 The consent of both the members of the predecessor organization and the members of the successor organization is required if their memberships do not correspond. When the IIA was replaced by the FAO (see Sec. C.1 above), a special protocol ratified by all members of the IIA dealt with the transfer of functions. Due to differences in membership, it was a constitutional requirement (Art. XIII (3) Constitution of the FAO) that the consent of all FAO members be obtained as well. A unilateral declaration on functional transfer of the relinquishing organization constitutes a *res inter alios acta* for other organizations and their Member States and is therefore in the absence of explicit consent without any legal effect for the latter.

3. Explicit Consent of All Organizations Concerned

13 Most frequently, the transfer of functions is arranged by the organizations concerned. In these cases, both organizations, the predecessor organization and the successor organization acquiring the functions, must be competent, first, to decide upon the matter (internal competence) and, secondly, to enter into executive agreements (external competence). In some cases, these competences are granted *ad hoc* by all the Member States. For example, the competence of the International Patent Institute to conclude an international transfer agreement with the European Patent Organization was derived from a protocol signed by all its Member States (→ *European Patent System*). In other cases, the respective competences are set out in the successor organization's constitution (see, eg, Art. 72 Constitution of the WHO, Art. XIII (3) Constitution of the FAO, Art. XI (2) Constitution of UNESCO).

14 In the absence of such explicit provision, the competence to decide on the transfer of functions depends on the content and nature of the functions concerned. Bearing in mind that international organizations are obliged to perform the functions entrusted to them by their Member States, the transfer of functions needs special approval by Member States. With regard to the successor organization, taking over these functions might involve the enhancement of competences and capacities which exceed the organization's constitutional instrument. In such a case, the latter lacks the power to agree to the transfer because, as a rule, international organizations do not have the power to amend or change their constitutional documents. If the transfer does not demand any constitutional amendments, the organization may possess implied powers to decide on the transfer of functions and to carry out this decision (→ *International Organizations or Institutions, Implied Powers*).

15 As a matter of principle, both the predecessor organization and the successor organization must agree on the transfer of functions (but see Sec. D.5 below). The UN, for example, reserved its right to decide not to assume particular functions of the → *League of Nations* in its General Assembly Resolution 24 (I) of 12 February 1946. Accordingly, it

refused to assume the political functions and powers of the League of Nations gained under international treaties and other instruments.

4. Adoption by Tacit Approval

16 The approval of succession by all Member States may cause considerable delay in the execution of the transfer of functions, assets, and obligations. Therefore, in some cases, the absence of explicit and formal opposition to the transfer is considered sufficient for the purpose of approval. The dissolutions of the Office International d'Hygiène Publique and of the International Commission for Air Navigation provide examples of this procedural device.

17 The legal significance of Member States' tacit approval is of particular importance if the organization's consent to the succession exceeds its functions and powers (see Sec. D.3 above). In this case, the transfer of functions may be traced back to the consent of all Member States if the organization's decision was made unanimously and the Member States' subsequent practice confirms their approval. For example, when the League of Nations Assembly decided on the dissolution of the League of Nations and the → *Permanent Court of International Justice (PCIJ)*, it lacked the required competences in both cases. Nonetheless, the undisputed execution of the decisions revealed the tacit approval of all League of Nations and PCIJ Member States. Several decisions on dissolution and succession taken by general bodies have to be regarded as a declaratory manifestation of the respective will of the Member States (see, eg, the UNRRA's assembly decision on dissolution in 1947).

5. Automatic Succession

18 Automatic succession does not result from the consent of all parties involved but from the international legal order. The issue of automatic succession became vital when the Union of South Africa refused to place the territory of South West Africa under the UN's trusteeship, although the territory was entrusted to it under the League of Nations' mandates system (→ *Mandates*; → *Namibia*; → *United Nations Trusteeship System*). Two → *International Court of Justice (ICJ)* → *advisory opinions* on the issue stressed that the League of Nations' supervisory powers over the mandate were transferred by virtue of international law (see → *South West Africa/Namibia [Advisory Opinions and Judgments]*). The two opinions establish two essential requirements for automatic succession: *a*) a dissolved organization must have exercised essential functions intrinsically tied to an → *objective regime* (eg, the mandates system), and *b*) another organization with similar structures and powers as the dissolved one must be willing to take over the abandoned function.

19 So far, the case of *South West Africa* has proven to be unique. Therefore, one cannot suppose a rule of → *customary international law* based on international practice with regard to automatic succession.

E. Legal Consequences of the Transfer of Functions (Law of Succession)

1. Legal Consequences for the Successor Organization

20 The transfer of functions, ie the transfer of the obligation to fulfil a certain task, is closely connected to the legal rights and responsibilities attached to the respective function. Competences and powers which are indispensable to the exercise of the transferred function necessarily accompany that transferred function. Apart from that, the acquiring organization is not obliged to take over the full set of rights and responsibilities

related to the transferred function. Nevertheless, the successor organization cannot assume more or different rights and obligations than the predecessor enjoyed.

21 The authority of the successor organization to fulfil its new task rests upon the conventional or automatic transfer. However, the executive and legislative organs of the successor organization must act in accordance with their own constitution when fulfilling the new functions. In particular, the successor organization must follow its own procedural rules as highlighted by ICJ in the 1950 *South West Africa* advisory opinion (at 139).

22 In practice, the transfer of functions is often accompanied by a transfer of immovable and movable property, as well as assets and liabilities. This is especially true when the membership of the predecessor organization and the successor organization is, for the most part, identical. Nevertheless, such transfers are not a legal consequence of the transfer of functions but are a matter of convenience and utility. Thus, the successor organization possesses no legal title to the transfer of assets unless this has been separately agreed.

2. Legal Consequences for the Predecessor Organization

23 From the moment the functional transfer is effected, the predecessor organization is obliged to cease the administration of that task even though its constitutive instrument might not reflect the loss. Otherwise, the predecessor organization will be acting in breach of its international obligations towards the successor organization. The predecessor's legal relationship vis-à-vis the successor organization is governed by the law of treaties.

24 In the case of liquidation, all legally dependent subsidiary institutions share the fate of the dissolved organization even if their field of activities is transferred to the successor organization.

3. Legal Consequences for Member States

25 Due to the fact that conventional succession has to be traced back to the consent of all Member States in one way or another (see Secs D.2-D.4 above), Member States are bound to accept the loss and assumption of functions and the impact on voting rights, budget etc (→ *International Organizations or Institutions, Financing of*; → *International Organizations or Institutions, Voting Rules and Procedure*). Even though no consent is required, the same applies to cases of automatic succession (see Sec. D.5 above) as a result of the objective regime behind this scheme.

26 In the case of liquidation, all members of the dissolved organization have the right to a share in the material and liquid assets based on the proportion of each member's total contribution less debts. According to the common plan for the transfer of the League of Nations' assets to the UN, League of Nations members who were not members of the UN received their share in cash. The shares of UN members were credited in the books of the UN.

4. Legal Consequences for International Treaty Obligations

27 International → *treaties* concluded between States may entrust international organizations with certain functions, eg, judicial functions (compromissory clause; → *Compromis*), custodial functions (→ *Depositary*), or governmental functions (see the → *Versailles Peace Treaty [1919]* with regard to the League of Nations Saar Basin Administration 1922-35; → *Saar Territory*). If the entrusted organization transfers the function to another organization, all State parties to the treaty have to agree on the replacement of the entrusted organization. The law of treaties requires this consent as the replacement constitutes a modification of the treaty (Arts 39 and 40 → *Vienna Convention on the Law of Treaties [1969]*; see eg Arts 36 (5) and 37 Statute of the ICJ). If consent is

refused by single State parties, the legal consequences depend on the nature of the transferred function: eg, in cases of compromissory clauses, only the dissenting parties do not fall under the jurisdiction of the new judicial body. In contrast, one dissenting State party can thwart the transfer of governmental functions to a new organization. In this case, the organization is not entitled to succeed to the responsibilities of the predecessor organization unless the requirements of automatic succession are met (see Sec. D.5 above).

28 The succession between international organizations may affect those multinational and bilateral agreements (eg → *Host State Agreements*) to which the predecessor organization is a party. As a general rule, the successor organization does not automatically succeed to treaty rights and obligations even if they are within the scope of the transferred function. Eg, the Council of the EC and the European Coal and Steel Community ('ECSC'), respectively, considered it necessary to adopt a formal decision on the EC's succession with regard to the ECSC status under international agreements ratified by the ECSC before its dissolution in 2002 (Council Decision 2002/596/EC). State parties to these agreements were informed about the succession and were therefore afforded the opportunity to object to the replacement of the ECSC with the EC. In the unlikely event that one party to the relevant treaty refuses to agree on the succession—and this was not the case when the EC replaced the ECSC—the predecessor organization remains bound by the treaty in relation to the rejecting party unless it formally withdraws from the treaty or dissolves as an organization. By contrast, dissent cannot hinder automatic succession to a treaty (see Sec. D.5 above). If all parties accept the declaration of succession to the treaty, the declaration has retroactive effect to the moment from which the succession took place (compare Art. 23 (1) Vienna Convention on Succession of States in Respect of Treaties).

5. Legal Consequences for Staff Members

29 As a general rule, employment contracts with the dissolved organization are terminated the moment the organization ceases to exist. In particular, the successor organization is neither obliged to enter into old contracts of employment nor obliged to take over the predecessor organization's staff by concluding new contracts. The destiny of the predecessor's staff is usually subject to consultations between the predecessor and the successor organization. If the successor organization decides to take over employees, new contracts under its own terms and conditions of employment are signed (→ *Civil Service, International*).

6. Legal Consequences for Creditors

30 If it is agreed that the successor organization acquires the liabilities of the predecessor organization, creditors are confronted with a new debtor under the terms and conditions stipulated with the predecessor organization (→ *International Organizations or Institutions, Responsibility and Liability*). In practice, liabilities are usually settled by the predecessor organization. Occasionally, the successor organization agrees to complete the liquidation of the predecessor organization. In such cases, the successor organization acts as a trustee and does not assume any liability for debts of the dissolved organization. In the case of *Wencak v United Nations* (23 ILR 509), the Supreme Court of New York decided in 1956 that the UN had undertaken to administer the liquidation of the UNRRA but had not assumed the UNRRA's liabilities upon succession to its assets.

F. Evaluation

31 Succession between international organizations is an area of law of practical importance. Even though it was listed as a possible future topic in the 1996 Report of the → *International Law Commission (ILC)*, the ILC until now refuses to include it in their long-term programme. Indeed, the succession between international organizations is in almost all cases subject to detailed agreements tailored to the specific needs of both the predecessor and the successor organizations and their respective members. Therefore, little room is left for the application of codified customary laws beyond the law of treaties. In contrast, the field of automatic succession is riddled with many unsolved issues, unanimously highlighted by all academic commentaries on the two advisory opinions of the ICJ. In fact, both dicta of the ICJ were politically influenced by the international condemnation of the South African regime. With regard to the law of automatic succession, the litmus test in international practice is still due.

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