Obligations of states arising from the dismemberment of another state *)

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If new states arise in the territories of other states and become members of the family of nations, they acquire all the general rights and duties which, according to the law of nations, pertain to international persons. Besides, they may have special rights and duties deriving from the fact that they exercise sovereign power in a territory which formerly belonged to another international person. The defining of these special rights and duties is a question relating to so-called *state succession.* The elucidation of this question is rendered difficult by the absence of general international treaties and in view of the great instability in the practice observed by different states in different periods. It is, therefore, not surprising to find that differences of opinion, even with regard to certain fundamental aspects of the problem, prevail in the doctrine of the law of nations. The difficulties are augmented by the fact that no unanimity has been reached as to the legal character of the territorial changes themselves, and that undue attention is still being given to certain analogies from civil law, the application of which to international relations is often more than doubtful.

In estimating the legal effects of the territorial changes taking place within the sphere of the state, we must, above all, keep in mind that territorial changes comprise, in fact, nothing but a devolution of competency or sovereignty with regard to the territory in question, and that the new state exercises there its own independent rights. This, however, does not necessarily mean that the new state has no duties whatever to answer for obligations undertaken by the previous sovereign of the territory with regard to the same; for it is possible that custom has here created rules of some kind,

*) I have dealt more extensively with these problems in an article concerning state succession, published in 1947–1948 in the *Nordisk Tidsskrift for international Ret (Acta scandinavica juris gentium)* and in a book entitled »Kansainvälinen oikeusseuraanto» (State Succession), published in 1950 at Vammala, Finland.

although practice, as already pointed out, has been rather vague and, especially in recent times, mostly taken a negative direction.

The rise of new states in the territory of other states may take place under different forms. The most important question from the viewpoint of state succession is whether the state which has sustained territorial losses still continues the same state – which is a matter of consideration and depends on the extent of its losses and the eventual preservation of its original territories and centre of action –, or whether it is entirely dismembered into new portions. In the latter case the subject of rights and duties disappears, for which reason it would be particularly desirable to create a new one in its stead.

In the compass of a short article it is impossible to give a detailed review of the practice of states in different periods, however useful and instructive that might be. I am also compelled to pass over the newest history, such as the events of both world wars, and restrict my attention to certain *arrangements concerning Finland*.

The problems of state succession cannot be solved on the basis of some general formulae or theories, so much the less as they are bound up with a great diversity of other questions, the most important of which deal with the fate of treaties, state property and state debts and with the conditions in the ceded territory and the legal status of its population.

When a state is dismembered into new independent states, its *treaties* as a rule become null and void without descending to the new states. Treaties are generally personal in so far as they presuppose, in addition to the territory, also the existence of a certain sovereign over the territory. To the succeeding states the treaties concluded by the former state are *res inter alios acta*. Many treaties are indivisible, and the transference of the rights and duties therein to one of the new states or to all of them jointly might, for several reasons, be unfair and inexpedient. Other treaties than those distinctly political are also nullified, since most treaties still have a certain political colouring. It may even be questioned whether treaties directly bearing upon the territory of the succeeding state devolve. In the first place, the difference between these and other treaties is quite vague owing to the fact that the former often have, besides a territorial, also a general import. And they, too, have the individual origin and character bound up with given states. A special position might be occupied only by such territorial restrictions as have been introduced and recognised in the public interest and thus become, in one way, a norm of general international law [1]). This, however, has

[1]) In the opinion of the commission appointed by the League of Nations, in 1920, to

little to do with state succession in the strict sense of the word. It has often been maintained that a devolution of rights and duties arises, at any rate, in the case of so-called *international servitudes;* yet it must be observed that the very concept of international servitudes is rather doubtful and that it is uncertain whether such servitudes have ever occurred in practice. Many writers limit the legal power of servitudes to concern the contracting parties only, whereby the binding effect of the servitude takes its character from the law of legal obligations – and so we again drift away from the sphere of state succession in a strict sense. That the new state is obliged to respect the treaties which settle its boundaries against third states is a consequence of the inviolability of the territorial sovereignty of these states – not of any devolution of rights. As a rule the succeeding state continues to observe traffic agreements in its own interest or for political reasons, but it is doubtful whether it is legally compelled to do so, unless it has had a part in the conclusion of such treaties.

If a state disintegrates but still continues to exist, even though its territory has been reduced, its treaties usually remain in force within its new boundaries; and then there is still less reason to demand a devolution of rights and duties with regard to international treaties[2]). If, however, the member-states of a federation have had, within certain fields, a right to conclude treaties according to a system of their own, and these member-states later become independent, their treaties will remain in force.

In solving succession problems relative to *state property* and state debts, due attention must first be paid to the fact that rights of property are generally easy to divide and transfer. At the dismemberment of a state, succeeding states may divide its property between themselves according to where it is situated or which of the succeeding states it is otherwise bound up with. As regards the division of property abroad a special agreement is required, unless one of the successors can be considered a continuation of the former state, in which case the property belongs to this state exclusively. The same rule should, in this last-mentioned case, be applied also to so-called fiscal property in the succeeding states, but in virtue of their effective power the succeeding states usually take over such property too, sometimes with compensation to the former sovereign of the territory[3]).

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report on the Aaland Islands, the non-fortification of the islands as stipulated by the Paris peace treaty in 1856, was a territorial restriction of this kind.

[2]) So, for instance, when Finland had become independent in 1917, there was an exchange of notes with Sweden, in which Finland declared herself released from all obligations included in the treaties between Sweden and the Russian Empire. At the same time Finland v o l u n t a r i l y consented still to apply certain of these treaties.

[3]) In the case of Finland and Soviet Russia, the principal rule observed at the con-

State debts are either civil loans contracted for various purposes and under different forms, or public debts deriving from the administration of the state. Owing to the fact that the solvency of a state depends on its economic resources and not on its political unity, succession with regard to state debts is not only possible, but from the point of view of equity, in general desirable. The private creditors of a state are often perfectly innocent of the territorial changes. And he who becomes the owner of state property and other resources in a ceded territory is also best able to answer for the debts encumbering such property. This principle, however, has but seldom been respected in the practice of states.

When a state is dismembered into new states the position of the creditors is very precarious; the original debtor has disappeared and equity demands that a substitute be found. As there can be no question of joint responsibility, the debt must be divided between the succeeding states on the basis of the area of their territories, on the size of their population, or, preferably, their economic potential estimated *e. g.* on the ground of assessable income. There is no reason to limit the responsibility in accordance with the value of the property found in the territory of each new state, since the value of an area may be such as cannot be estimated in terms of money, for example if it is a military base. In most unions of states the member-states retain their financial autonomy, so that when the union is dissolved, the member-states must continue to answer for their debts[4]). The succeeding state, however, is not liable to respect loans raised and used by its predecessors for injuring it – *e. g.* for the purpose of quelling its independence movement. On account of their strictly personal nature, compensation claims based on international delinquencies and the like, do not devolve either.

In practice it is usual that only foreign creditors have to be satisfied, as the law of nations has not up to now protected the nationals of a country against their own country without special arrangements. The succeeding state has generally assumed responsibility for claims arising from public officials' salaries, pensions, insurances and current expenditure for administration when the creditor through the change of territory has become a national of that state.

If the dismemberment of a state has taken place in such a way that one of the succeeding states is to be considered a continuation of the former state,

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clusion of the Dorpat peace treaty in 1920 allowed each party to retain, without compensation, every kind of state property found in its territory.

[4]) Since Finland, for instance, had been financially autonomous while forming a political union with Russia, she continued, as an independent state, to answer for her own debts but did not consider herself to be obliged to participate in the liquidation of the state debts of the Russian Empire.

the main rule is that the reduced state thenceforth too remains alone responsible for its general debt. If the reduction of the territory involves a heavy economic loss, the succeeding states, for reasons of equity, ought to assume at least partial responsibility for the economic burden in accordance with the foregoing principles.

If a loan has been raised for the special need and exclusive benefit of a ceded portion of territory, such a local or special debt has devolved on the succeeding state, at least according to earlier usage. Under present-day conditions of centralized administration such loans have nevertheless become rare. Comparatively rare also are the cases when the financial autonomy of a district is so complete that it can negotiate loans or that it is administered as a distinct economic unit. When the sovereignty to such a territory changes the debts which encumber it must also be transferred[5]). In Anglo-American doctrine in particular, the opinion is held that mortgaged or pledged debts are protected to the value of the security even in cases of territorial changes. Much more controversial is the question whether such debts as are secured in taxation or customs revenue are protected.

If we finally turn to examine the effect of a territorial change on the legal status of the *population,* we can first of all establish the fact that the *nationality* of the native population changes in general *eo ipso* at the devolution, unless the succeeding state grant it the right of option[6]), which, however, it is not expressly obliged to do. Some writers maintain that a new state, on the other hand, is under no obligation to grant citizenship even to persons who want to change their former nationality. In virtue of its territorial and personal sovereignty the succeeding state has great possibilities of regulating conditions in the territory acquired and of determining freely the legal status of the new citizens. The existing provisions of civil law and legal order in general – except constitutional provisions and the like which are no longer applicable – remain in force until they change[7]).

Foreign *concessions* and *acquired rights* shall, in principle, remain in force notwithstanding a change of sovereignty, but the new territorial state has possibilities of introducing certain regulations with regard even to them. It is generally maintained that the successor can cancel concessions and acquired rights if these have been granted for the purpose of injuring him, if they are imcompatible with the new conception of law or are contrary to good

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[5]) Cf. what has been said about this question in connection with the dissolution of a union of states.

[6]) This right was granted in the case of territorial cession involved in the Dorpat peace treaty.

[7]) Since Finland had a complete internal autonomy even while being in political union with Russia, her becoming independent caused no radical or sudden changes in this respect.

order, or if a cancellation becomes necessary by reason of an important general need. In such cases a fair compensation must be paid, the effect of which may not be nullified, for example, by payment in depreciated currency [8]).

The continued activities of courts of justice and administrative authorities and the legal force and execution of resolutions already made, as well as the legal status of public officials and other questions connected with the territorial changes shall, in general, be settled with a view to continuity and practical needs.

[8]) Independent Finland has always respected the inviolability of property both native and foreign.