What Happens Next? The Law of State Succession

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Introduction

A handbook on secession naturally covers the important legal and political issues that arise in the course of an entity's transition to statehood. In this chapter, however, I consider what happens next. In other words, I will discuss the law of state *succession*. The chapter will proceed as follows. First, I provide a brief overview of the development and central tenets of the law of succession. Just like the creation of states, the law of state succession is a fundamental, foundational part of international law. When instances of state succession occur, in whatever form, the entire panoply of international legal rights and obligations applicable to the successor state (as well as any continuing state) potentially are affected.

It is obviously not possible to consider all such rights and obligations here, so instead the chapter will focus on four main areas, state succession in relation to (a) treaties, (b) state property, archives and debts, (c) nationality, and (d) state responsibility. Finally, a more general critical evaluation of the current state of the law and how it may look in the future are considered. I argue that the law of state succession, if one accepts that the purpose of the law is to guide action,[1] in its current form suffers from some serious defects and arguably does not fulfil this role. Rather, the transition to statehood is most often governed by ad hoc agreements between succeeding and continuing states. This suggests that the best way forward is to bolster a duty to negotiate such agreements in good faith, and to conclude *pacta de contrahendo* if agreement cannot be reached immediately, rather than persist with the development of general one-size-fits-all rules.

[1] For a defence of this aspect of the nature of law see Joseph Raz, 'The Rule of Law and its Virtue' in *The Authority of Law: Essays on Law and Morality* (OUP 1979) 217; Andrei Marmor and Alexander Sarch, 'The Nature of Law', Stanford Encyclopedia of Philosophy (2019).

1. The Legal Concept of State Succession

In this contribution I will adopt the most widely accepted definition of state succession,[2] that common to the ILC's codification efforts on this topic,[3] namely 'the replacement of one State by another in the responsibility for the international relations of territory'.[4] This is a helpful definition as it is broad enough to accommodate the fact that state succession is not one single kind of event, but rather can take a number of forms.[5] In what follows, a 'successor state' is any state which comes into existence as a result of the aforementioned replacement of one state by another in the responsibility for the international relations of territory such as (but not limited to) secession, or a state which has acquired territory as a result of state succession. A 'predecessor state' is a state which has lost territory. If a predecessor state is recognised as possessing the same international legal personality despite a change in its circumstances caused by succession, it is a 'continuator state'.

Analyses of state succession have identified a useful taxonomy that will help us to critically examine issues relating to state succession in its various forms.[6] The first of these categories is transfer of territory, where one part or parts of the territory of a state is transferred to become part of the territory of another state.[7] The second category is that of unification,

[2] See, for instance, Andreas Zimmermann, *Staatennachfolge in Völkerrechtliche Verträge* (Springer 2000); Andreas Zimmermann and James G. Devaney, 'Succession to treaties and the inherent limits of international law' in Christian J. Tams et al (eds) *Research Handbook on the Law of Treaties* (Elgar 2014; Andreas Zimmermann and James G. Devaney, 'State Succession in Treaties', (2020) MPEPIL <https://opil.ouplaw.com/home/mpil> ; Andreas Zimmermann and James G. Devaney, 'State Succession in Matters Other Than Treaties (2020) MPEPIL, < https://opil.ouplaw.com/home/mpil>;).

[3] Vienna Convention on Succession of States in Respect of State Property, Archives and Debts, art 1 (1) (a); Vienna Convention on Succession of States in Respect of Treaties art 2 (1) (b); United Nations International Law Commission 'Draft Articles on Nationality of Natural Persons in Relation to the Succession of States' of 1999, art 2 (a); UN ILC 'Draft Articles on Succession of States in Respect of State Responsibility', art 2 (a);

[4] See also the decision of the arbitral tribunal in the Case concerning the Arbitral Award of 31 July 1989 [Guinea- Bissau v Senegal] 83 ILR 31

[5] Matthew Craven, 'The Problem of State Succession and the Identity of States under International Law' (1998) 9 EJIL 142; Gerhard Hafner and Gregor Novak, 'State Succession in Respect of Treaties' in Duncan Hollis (ed), The Oxford Guide to Treaties (OUP 2012) 399.

[6] See, for instance, Andreas Zimmermann, Staatennachfolge in völkerrechtliche Verträge—zugleich ein Beitrag zu den Möglichkeiten und Grenzen völkerrechtlicher Kodifikation (2000); Daniel Patrick O'Connell, State Succession in Municipal and International Law, (2 vols, 1967). Resolution on Aspects of the Law of State Succession, reprinted in ILA, Report of the Seventy Third Conference, Rio de Janeiro (2008) <http://www.ila-hq.org/en/committees/index.cfm/cid/11>; Zimmermann (n 1), Zimmermann and Devaney (n 1).

[7] Examples in this regard include the transfer of Alaska from Russia to the USA in 1867, the 1871 transfer of Alsace and Lorraine to Germany from France, the treaties of Versailles in 1919 (Versailles, St Germain and Trianon) and treaties following World War II concerning Germany, Italy, Romania and Hungary; see also the transfer of West New Guinea from the Netherlands in 1962, the transfer of Walvis Bay from South Africa to Namibia in 1994 and the transfers of Hong Kong to China from Great Britain and Macao from Portugal to China in 1997 and 1999 respectively.

which contains within it two sub-categories: (i) incorporation of one state into another,[8] and (ii) merger of multiple states to form one.[9] The third and fourth categories are the ones of greatest interest for readers of this handbook. These are the separation of one part of a state to form another state or states,[10] and the complete dissolution of a state into a new state or states.[11] The final category, which is of limited practical relevance today, is the special category of newly independent states which have emerged from colonial rule. I will refer to this taxonomy of succession when considering discrete aspects of succession in what follows. However, before turning to such discrete issues, it is necessary to consider a fundamental distinction upon which 'the whole law of State succession depends'.[12]

1.1. Identity and State Continuity

Which particular facts must attain for an entity to become subject to international legal norms on state succession? State succession is the result of a rupture in the international legal personality of a pre-existing state or states. The law of state succession, in other words, regulates the legal *effects* of a change in responsibility for international relations of a territory caused by a transfer of territory, unification, separation and so on. Crucially, the law of state succession is not principally concerned with the international legal personality of any continuator state which, despite a rupture in its international legal personality is recognised as carrying on as the same state as before, by virtue of possessing the same identity.[13]

For instance, were Scotland to vote to become an independent state in the coming years, the United Kingdom would not disappear as a state in international law, but rather England, Wales and Northern Ireland would continue on as the UK, albeit with a (quite significantly)

[8] See, historically, the incorporation of Texas into the United States in 1856 and the unification of Italy in 1860; and more recently the incorporation of the German Democratic Republic into the Federal Republic of Germany in 1990.

[9] Historical examples of merger include that of Egypt and Syria to form the United Arab Republic in 1958; the merger of Tanganyika and Zanzibar to form Tanzania in 1964 and merger of the Yemen Arab Republic and the People's Democratic Republic of Yemen to form the state of Yemen that exists today.

[10] Including the separation of Eritrea from Ethiopia in 1993, and the separation of some States that had formed the USSR at the end of the Cold War, as well as more recently the separation of Montenegro.

[11] Including Czechoslovakia and Yugoslavia.

[12] Ineta Ziemele, 'Is the Distinction between State Continuity and State Succession Reality or Fiction? The Russian Federation, the Federal Republic of Yugoslavia and Germany' (2001) 1 BYIL 191, 214: James Crawford, *The Creation of States in International Law* (Clarendon Press 1979) 390.

[13] Christian J. Tams, 'State Succession to Investment Treaties: Mapping the Issues', (2016) ICSID Review, Vol. 31, No. 2, 314. In such cases, in accordance with Article 35 of the VCSST, the continuing state's treaty obligations are unaffected, apart from such treaties which are localised to territory which no longer forms part of its state, having been separated to form another state.

reduced territory. [14] In this scenario, the UK would be the continuator state, and it is unlikely that any real controversy would arise regarding its status as such. The UK would be responsible for all of the treaty obligations it has bound itself to, and its diplomats would still enjoy the same immunities they currently do under conventional and customary international law. This scenario, in which a state can carry on with its legal rights and obligations largely unaffected (and most often without having to reapply for membership of international organizations, although membership of international organizations is a particular issue, explored at section XX below) is one which is attractive to states, and explains why certain entities such as the Russian Federation or the Federal Republic of Yugoslavia have in the past gone to great lengths to argue that, despite a rupture in their international legal personality, they should be considered the continuator state.

As such, the question arises as how to evaluate such claims under the law. While no unanimously-accepted criteria exist in this regard, a number of core issues are clear. The legal personality of a state is unaffected by a mere change in its territory,[15] belligerent occupation,[16] or even the breakdown of effective government.[17] There exists a presumption in favour of the continuation of states.[18] And furthermore, even in certain contexts, state succession may leave behind an entity which possesses and is recognised as having the same international legal personality that it had before the succession occurred, the so-called continuator states. Ultimately, whether the rules of state succession apply in a particular situation turns on this crucial distinction between state continuity and state succession, in which practice shows that recognition by other states plays an important role.[19] Having considered which factors determine when the law of state succession becomes applicable, we can turn our attention to examining the substance of the law itself.

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[14] Andreas Zimmermann, 'The International Court of Justice and State Succession to Treaties: Avoiding Principled Answers to Questions of Principle' in Christian J Tams and James Sloan (eds), The Development of International Law by the International Court of Justice (OUP 2013) 54.

[15] Zimmermann and Devaney (n 1); Tams (n 13).

[16] For a discussion see Eyal Benvenisti, 'Belligerent Occupation', MPEPIL <https://opil.ouplaw.com/home/mpil>.

[17] Andreas Zimmermann, 'State Continuity', MPEPIL <https://opil.ouplaw.com/home/mpil>.

[18] Crawford, Creation of States (n 12) 400, James Crawford, *Brownlie's Principles of Public International Law* (8th edn, OUP 2012) 128 et seq and 143 et seq.

[19] As Caflisch has stated, 'the State preserves its identity, at least in international law, by virtue of a legal fiction, provided its competence *ratione loci* and *personae* remains essentially unaltered, and provided this state of affairs is acknowledged by the other States', Lucius Caflisch, 'The Law of State Succession Theoretical Observations' (1963) 10 Netherlands Intl L Rev, 344; see also Rein Müllerson, 'The Continuity and Succession of States by Reference to the Former USSR and Yugoslavia', (1993) ICLQ 42, 473; Malcolm Shaw, 'State Succession Revisited' (1994) Finnish Yearbook of International Law 5, 34.

2. State Succession to Treaties – The VCSST between *Tabula Rasa*, Automatic Succession and the Deep Blue Sea

State succession is a notoriously opaque area of international law. This can be attributed to not just one, but a combination of a number of factors, including its highly political nature,[20] and the lack of a multilateral treaty or treaties which states have widely subscribed to.[21] The unsettled and often unhelpful state of the law has been lamented by international legal scholars,[22] domestic courts,[23] and the International Law Commission (ILC) alike.[24] Despite much academic attention, and several attempts at codification on the part of the ILC, Craven has described the law of state succession as being dominated by 'an almost total doctrinal schism.'[25]

By far the most well-developed area of state succession,[26] most likely due to the central role that they play in quotidian international law, is that of succession in respect of treaties. However, despite this practical importance, any international lawyer would be hard pressed to give a confident answer to the most pertinent question for readers of this handbook; 'when an entity secedes and establishes itself as a new state, on day one of its existence what treaty obligations is it bound by, if any?' I would imagine that a furrowed brow or a shrug of the shoulders is more likely than a confident reply. The answer to this and other similar questions, and how confident one can be in giving such answers, depends greatly on the form of

[20] Akbar Rasulov, 'Revisiting State Succession to Humanitarian Treaties: Is There a Case for Automaticity?' (2003) 14 EJIL 148, Crawford (n 12), at 18. This is compounded by the fact state succession often occurs in the wake of massive political upheaval and often armed conflict, see Matthew Craven, *The Decolonization of International Law: State Succession and the Law of Treaties* (OUP, 2009) 208.

[21] Interestingly, this is the case despite the fact that there have been significant studies and attempts at codification and progressive development of this area of international law by the International Law Association, and the ILC, Institut de droit international, *State Succession in Matters of Property and Debts*, Vancouver Session (2001); International Law Commission, Committee on Aspects of the Law of State Succession, Final Report, Rio de Janeiro Conference (2008), at 27, 54 <www.ila-hq.org/en/committees/index.cfm/cid/11>.

[22] Zimmermann and Devaney (n 1); Rasulov (n 20) 141; Tams (n 13); William Edward Hall, *A Treatise on International Law* (Higgins, 1924) 116; Caflisch (n 19); J Weiss, 'Succession of States in Respect of Treaties Concluded by the European Communities' (1994) SEW 661, 670; T Maluwu, 'Succession to Treaties in Post-Independence Africa' (1992) AJICL 791.

[23] BVerfGE vol 96, 68, 79; Alfred Verdross and Bruno Simma, *Universelles Völkerrecht* (Duncker & Humblot, 1984) 608.

[24] Yearbook of the ILC (1974) vol II, Part I, para 51.

[25] Craven (n 5) 143.

[26] Rasulov (n 20) 147.

succession. For this reason, in this section I will describe the contours of the law of state succession in respect of treaties, although this survey is necessarily selective, and priority will be given to issues relating to the topic of the present handbook.

A tension lies at the heart of the law of state succession to treaties between the principle of consent, the cornerstone of the international legal order, and the objective of ensuring the continuity of treaty obligations.[27] This tension has produced the aforementioned 'doctrinal schism' between two conceptual mechanisms of state succession, *tabula rasa* and universal succession.[28] *Tabula rasa* is the voluntarist proposition that any state which emerges as a result of state succession is not automatically bound by any treaty obligations, but rather must take active steps in order to do so.[29] Universal succession, on the other hand is the notion that a successor state automatically becomes bound by the treaty obligations to which it was previously bound and is the older of the two positions.[30] I would point out at this stage that we should be careful not to conflate universal succession with automatic succession. Universal succession entails succession to all pre-existing treaty obligations and is necessarily automatic in nature. However, states may automatically succeed to certain treaties, such as treaties which run with the land as we will see below, even in situations in which universal succession does not accurately describe practice (perhaps because a state has proactively taken steps towards acceding to or opting out of the operation of a particular treaty). Scholarship on state succession has been dominated by these competing conceptions, despite the fact neither satisfactorily explains practice.

Any examination of such practice requires more careful examination of the ILC's codification efforts in this area, and consideration of the extent to which the ILC was successful in bringing coherence to the law through the VCSST. On the face of it, the fact that only 23 states have become party to the VCSST since it was adopted in 1978, that it only came into force almost twenty years later in 1996, would suggest that the ILC came up short.[31] Indeed, it

[27] ibid.
[28] Craven (n 5) 142.
[29] ibid.
[30] Zimmermann and Devaney (n 1) 516; Rein Mullerson, 'New Developments in the Former USSR and Yugoslavia', (1993) 33 VJIL 299; James Crawford, ASIL Proceedings (ASIL, 1992) 21; Hersch Lauterpacht, 'Succession of States with Respect to Private Law Obligations' in E Lauterpacht (ed), *International Law Being the Collected Papers of Hersch Lauterpacht* (vol 3, CUP, 1977).
[31] See, e.g. Arman Sarvarian, 'Codifying the Law of State Succession: A Futile Endeavour?' (2016) EJIL Vol. 27 (3) 802, ILA (n 40).

is common to hear of the VCSST's 'poor participation, indecisive normativity and infrequent application in practice.'[32]

Of course, another ILC project, namely its Articles on the Responsibility of States for Internationally Wrongful Acts was never adopted in the form of a multilateral treaty, and yet is widely seen as regulating in large part the law of state responsibility, and many of its provisions have even achieved customary international law status.[33] As such, one cannot so quickly dismiss the VCSST, but rather an examination of practice is necessary in order to determine the content of customary international law (if any) that exists in this area.[34]

2.1. The State of the Law

Practice in relation to certain forms of state succession is more settled than in others. Since issues of separation and dissolution of states are of greatest interest for readers of this particular handbook, succession to treaties in cases of transfer of territory,[35] unification of states,[36] and newly independent states[37] will be left to one side. The VCSST's central and most contentious provision is the general rule in Article 34 in favour of automatic succession in these circumstances. Article 34 provides that, unless otherwise agreed,[38] when part or parts of the territory of a state separate to become one or more new states, the treaties of the predecessor state automatically continue in force with regard to each successor state.[39] Article 34 provides that this is the case no matter whether or not the predecessor state continues to

[32] Sarvarian ibid 802, Martti Koskenniemi, 'Report of the Director of Studies', in Pierre Michael Eisemann and Martti Koskenniemi (eds), *State Succession: Codification Tested against the Facts* (Brill Publishers 2000) 54.
[33] UNGA Res 62/62, A/62/62, 1 February 2007, Add.1; A/65/76, 30 April 2010.
[34] See generally Stefan Talmon, 'Determining Customary International Law: The ICJ's Methodology between Induction, Deduction and Assertion', (2015) EJIL Vol 26 (2) 417.
[35] Practice here is relatively consistent, and generally reflects the relevant provision of the VCSST, Article 15; see Zimmermann and Devaney (n 1); See also, to some extent, Article 29 VCLT.
[36] Unification must be separated into two separate sub-categories: (i) incorporation of one state into another, and (ii) merger of two states. The former was not envisaged by the VCSST, and there is only one example in practice. The second category, merger, was envisaged by the VCSST in Article 31, and practice would appear to be in relative conformity, see Article 31(2) VCSST - creating a so-called 'split regime' which cannot be described as particularly elegant, given that a state may find itself having diverging treaty obligations on different parts of its territory, and individuals in certain parts of a state's territory potentially enjoying unequal rights.
[37] Practice here seems to conform to Article 16 VCSST to a large extent, with newly independence states claiming a right to pick and choose the treaties to which they wished to be bound, at first on a provisional basis, then subsequently through more formal acts of accession. Today this special regime can be said to have lost its practical relevance.
[38] Article 34(2)(a) VCSST.
[39] Unless succession would be incompatible with the object and purpose of the treaty, Article 34(2)(b) VCSST.

exist. While Article 34 is attractively straightforward, its one-size-fits-all approach has been widely criticised,[40] and has failed to find support in practice.[41]

Admittedly, two of the major post-1978 examples of succession which ultimately led to the complete dissolution of the predecessor state, namely the breakup of the former Yugoslavia and Czechoslovakia, appear to support Article 34, with the successor states in these cases seemingly to automatically succeed to the treaty obligations of their predecessor states.[42] However, in cases of separation, practice is markedly less consistent.

Practice regarding the former USSR and Eritrea, for example, diverges from Article 34, undermining the force of the general rule of automatic succession, and preventing the formation of a norm of customary international law.[43] And indeed, the ICJ confirmed as much in *Gabčíkovo-Nagymaros*, demurring from confirming its customary status.[44] Practice is characterised by the apparent desire of states themselves to tailor the application of their treaty rights and obligations, rather than adherence to a general legal norm such as Article 34.[45] Such desire can be seen in the substantial body of negotiated agreements with treaty partners, unilateral statements (made, for example, upon the deposit of an instrument of accession to a multilateral treaty) or may be inferred from states' actions.[46] One can discern from practice a desire of states to maintain stable treaty relations,[47] however states have certainly demonstrated a preference to do so through whichever modality they see fit. This practice, in turn, precludes the customary international law status of the general rule of automatic succession as set out in Article 34 VCSST. Does this mean that any lawyer advising a successor state can counsel its political leadership that they will enjoy a completely

[40] Zimmermann and Devaney (n 1); Crawford (n 18) 438; Hafner and Novak (n 5) 413; Anthony Aust, *Modern Treaty Law and Practice* (2nd edn, CUP 2007) 368; Detleu F Vagts, 'State Succession: The Codifiers' View' (1993) 33 Virginia J Intl L 275, 283; Patrick Dumberry, 'An Uncharted Question of State Succession: Are New States Automatically Bound by the BITs Concluded by Predecessor States Before Independence?' (2015) 6 J Intl Dispute Settlement 78; O'Connell (n 6) 726.

[41] Tams (n 13) 326, 'in retrospect, it seems clear that, for a treaty seeking to attract wide participation, the 1978 Vienna Convention may have adopted too straightforward an approach.'

[42] Sarvarian (n 31) 811.

[43] Jan Klabbers, 'Cat on a Hot Tin Roof: The World Court, State Succession and the Gabcikovo-Nagymaros Case', (1998) 11 Leiden J Intl L 345, 348; Sarvarian, (n 31);

[44] *Application of the Genocide Convention (Bosnia and Herzegovina v. Yugoslavia)*, Preliminary Objections, 11 July 1996, ICJ Reports (1996) 595, at 611–612; *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Merits, 25 September 1997, ICJ Reports (1997) 7, at 71.

[45] Tams (n 13).

[46] ILA, Report of the Seventy Third Conference, Rio de Janeiro (2008) <http://www.ila-hq.org/en/committees/index.cfm/cid/11> 27.

[47] ILA, ibid.

clean slate upon achieving statehood? Not quite. The answer to this question must be a predictably lawyerly 'it depends', owing to the 'nuances'[48] of specific forms of treaties, explored in the next section.

2.2. Specific Forms of Treaties

With regard to border treaties, for instance, state and judicial practice both before and after the VCSST (as well as Article 11 VCSST itself) shows that international agreements which regulate land or maritime boundaries are unaffected by instances of state succession.[49] Such agreements, which due to their nature are seen as playing a particularly important role in maintaining stability in the international legal order, retain their legal effect regardless of whether or not the other treaty obligations of a successor or continuing state will have changed as a result of succession.[50] The underlying rationale, and motivation for the general acceptance of the law applicable to border treaties, has been said to lie not only in the common interest of the community of states, but also in well-established doctrines including the stability and inviolability of boundaries, and the *uti possedetis* doctrine.[51] In addition, relatively more recent state practice also indicates that other treaties which 'run with the land', such as localised, dispositive or *real* treaties also remain in force despite state succession.[52] This is the position envisaged in Article 12 of the VCSST and was confirmed by the ICJ in the *Gabčíkovo-Nagymaros Case*.[53]

Perhaps more interestingly, it has also been argued that certain other categories of treaties, most notably international human rights and international humanitarian law treaties,[54] should also retain their legal effect despite state succession. [55] This position has found support not

[48] Zimmermann (n 1) para 5; Zimmermann and Devaney (n 1) 516.
[49] *Case Concerning the Temple of Preah Vihear (Cambodia v Thailand)*, Merits, Judgment, ICJ Rep 1962 (15 June), 6, 34; *Frontier Dispute*, Judgment, ICJ Rep 1986, 554, 567; ILA, Report of the Seventy Third Conference, Rio de Janeiro (2008) <http://www.ila-hq.org/en/committees/index.cfm/cid/11> 27, 71, para 9.
[50] Zimmermann and Devaney (n 1), 532.
[51] Ibid; see also Article 62(2)(a) VCLT. This is an interesting and somewhat paradoxical fact given that the doctrine of *uti possedetis* is sometimes cited as a significant obstacle to lawful secession in international law as a result of the tension between this doctrine and the right to self-determination. However, see Jan Klabbers, 'The Right to be Taken Seriously: Self-determination in International Law' (2006) 28 Human Rights Quarterly 195 who argues that this view is incorrect.
[52] These are treaties which specifically govern the use of territory in particular, in relation to which another state has rights in accordance with that treaty.
[53] *Gabçiíkovo- Nagymaros Project (Hungary/Slovakia), Judgment, ICJ Rep 1997, 7,* para 123.
[54] Rasulov (n 20) 144; Zimmermann and Devaney (n 1) 533.
[55] Menno T. Kamminga, 'State Succession in Respect of Human Rights Treaties' (1996) 7 EJIL 469; Mullerson (n 30) 319; Malcolm Shaw (n 19) 84.

only in international legal scholarship but also in individual opinions in cases before the ICJ[56] and perhaps most famously in the Human Right Committee's General Comment No. 26.[57]

Extensive engagement with the necessary doctrinal and conceptual issues relating to automatic succession to human rights treaties falls outside the scope of the present contribution. That said, it must be noted that practice is far from uniform in this area, again precluding the customary status of any norm to this effect (at least at this moment in time).[58] In fact, successfully making the argument for automatic succession of human rights treaties is no mean task, owing to the fact that 'in order to qualify for automatic succession, the treaty or treaties at issue must be, by virtue of their purpose and functions, directly related to international values of the greatest importance, sufficient to override the principles of sovereignty and consent.'[59] Rasulov's extensive survey of practice on this issue reveals scant evidence that supports the proposition that states currently conceive of such treaties in this way. On the contrary, in fact, there is widespread evidence of successor states taking proactive steps to bind themselves to human rights treaties.[60]

As such, state practice is insufficiently clear to justify treating human rights as automatically applying to successor states. The idea that human rights treaties should cease to have legal effect, stripping individuals of their rights, because of a change of responsibility for the international relations in a territory beyond the control of an individual is decidedly unpalatable. [61] This is particularly so given that, as we already seen, there is sufficient support among states for the automatic succession of another category of treaties, namely border and real treaties. Nevertheless, arguments continue to be made seeking to ensure that human rights protection survives instances of state succession. Such arguments include, perhaps most

[56] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina v. Yugoslavia), Judgment on Preliminary Objections*, ICJ Reports (1996) 595, Separate opinion of Judge Weeramantry, at 654; and Separate opinion of Judge Shahabuddeen, at 637.
[57] Human Rights Committee, General Comment No. 26 (61) (1997) UN Doc CCPR/C/21/Rev.1 para 4.
[58] The ICJ avoided this issue in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro), Judgment, ICJ Rep 2007.*
[59] Rasulov (n 20) 151
[60] ibid 157.
[61] Tams (n 13); Devaney/Zimmermann (n 1); and their conclusion in accordance with Article 55 of the UN Charter.

promisingly, an analogy with the doctrine of acquired rights,[62] which has a long pedigree in international law.[63]

More controversially, a number of recent investment arbitrations[64] have sparked interest in whether bilateral investment treaties (BITs) may also be a type of treaty which may be subject to automatic succession.[65] The rationale for automatic succession to BITs is undoubtedly markedly different from that applicable to human rights and international humanitarian law treaties. This has not, however, prevented such arguments being made with regard to BITs. Here, despite the bilateral nature of such treaties (which would seem to mitigate against the continuing legal effect of such treaties[66]), familiar rights-based arguments (in this case the rights of foreign investors) have been made and found a level of support.[67] The rights-based arguments, citing acquired rights[68] or even human rights by analogy[69] traditionally made in support of the continuation of treaties have also been made in this context. However, here too, practice is far from consistent, and despite the practical appeal for investors of the continuity of such treaties, states continue to prefer to control the operation of their international agreements, negotiating with treaty partners on a case-by-case basis.

Taken together, then, it is clear that at least one category of treaties, namely border or real treaties, are subject to automatic succession. Debate with regard to other categories including human rights treaties and BITs is at a much earlier stage, and while practice does not

[62] Rasulov (n 20) 168, See Kamminga (n 55) 473 , stating that the acquired rights doctrine is a fortiori applicable to humanitarian treaties.
[63] See *Settlers of German Origin in the Territory Ceded by Germany to Poland*, 1923 PCIJ Series B, No. 6; Lauterpacht (n 30) 136; Georg Schwarzenberger and Edward Duncan Brown, *A Manual of International Law* (6th ed., 1976) 70). O'Connell (n 6) 237.
[64] *Sanum Investments Limited v Laos*, UNCITRAL (PCA Case No 2013-13), Award on Jurisdiction, 13 December 2013; *Lao Holdings NV v Lao Peoples Democratic Republic* (ICSID Case No ARB(AF)/12/6); *Lao People's Republic v. Sanum Investments Limited*, Judgment, [2015] SGHC 15; LE Petersen, 'In a dramatic holding, UNCITRAL tribunal finds that Kazakhstan is bound by terms of former USSR BIT with Canada', Investment Arbitration Reporter, 28 Jan 2016 (at http://www.iareporter.com/articles/in-a-dramatic-holding-uncitral-tribunal-finds-that-kazakhstan-is- bound-by-terms-of-former-ussr-bit-with-canada/).
[65] Tams (n 13); Naomi Hart and Sriram Srikumar, 'Investor-State Arbitration before the High Court of Singapore: Territoriality, Nationality and Arbitrability', Cambridge Journal of International and Comparative Law (2015) 4, 191; Guiguo Wang, *International Investment Law: A Chinese Perspective* (2014), 568; Michael Hwang and Aloysius Chang, Case Comment: Government of the Lao People's Democratic Republic v Sanum Investments Ltd: A Tale of Two Letters, ICSID Review 30 (2015), 506; Debby Lim, Case Comment: Government of the Lao People's Democratic Republic v Sanum Investments Ltd [2015] SGHC 15, Singapore Law Blog, at http://www.singaporelawblog.sg/blog/article/95.
[66] Koskenniemi, 'The Present State of Research', in Eisemann and Koskenniemi (n 32) 156.
[67] Tams (n 13) 341.
[68] O'Connell (n 6) 304; María Isabel Torres Cazorla, 'Rights of Private Persons on State Succession: An Approach to the Most Recent Cases' in Eisemann and Koskenniemi (n 32) 663.
[69] Tams (n 13) 336.

currently support automatic succession in this area, perhaps it should not be dismissed out of hand.[70] One final, special category of treaties which are the basis for an extremely practically important area of state succession are those treaties which are constitutive instruments of international organizations and which, as we will see, regulate membership.

2.3. Membership of International Organizations

In contemporary international law, international organizations are many and manifestly important. But how does state succession impact upon international organizations? Practice in this area, as well as the corresponding provision of the VCSST,[71] is relatively clear. Membership of international organizations is a 'personal status'[72] which is a matter to be determined by international organizations themselves. [73] Accordingly, other than situations in which an entity is recognised as being a continuator state, or where the constitutive instrument of an international organization explicitly provides so,[74] succession to membership of international organizations has generally not occurred, with states rather applying as new members in practice.[75]

Of course, as with most other areas of international law, states have at certain times shown themselves willing to be pragmatic on the issue of membership.[76] One particular case to mention is that of the World Bank and the International Monetary Fund (as well as the regional development banks[77]) who have accepted succession to membership given that the successor state fulfils the particular membership conditions of these organizations, including

[70] ibid.
[71] Article 4 VCSST, although the ICJ in Gabcikovo (n 44) did not accord this CIL status.
[72] Sarvarian (n 31) 804, Alan Boyle and James Crawford, Annex A Opinion: Referendum on the Independence of Scotland – International Law Aspects (Annex to Scotland Analysis: Devolution and the Implications of Scottish Independence; Presented to Parliament by the Secretary of State for Scotland by Command of Her Majesty, February 2013, www.official-documents.gov.uk) para. 19; Crawford (n 19) 443; Karl Zemanek, 'State Succession after Decolonization', (1965) 161 Recueil des Courts 182; In ILA Resolution (n 5) 43.
[73] Tams (n 13); Sarvarian (n 31).
[74] See Konrad Bühler, 'State Succession, Identity/Continuity and Membership in the United Nations' in Eisemenn and Koskenniemi (n 32) 26.
[75] Tams (n 13).
[76] Bühler (n 74); Henry G Schermer and Niels M Blokker, International Institutional Law (4th edn, Brill Nijhoff 2003) 82.
[77] such as the Asian Development Bank, the Inter-American Development Bank, or the European Bank for Reconstruction and Development,

having the capacity to honours its financial liabilities.[78] Overall, practice shows that flexibility defines state succession with regard to membership of international organizations.[79]

3. State Succession with regard to state property and debts

When an instance of state succession occurs obvious questions arise as to what happens to state property and debt. Does international law require that it be shared between the continuator and successor states? If so, how? What happens in the case of complete dissolution, how should the property of the pre-existing state be divided? Is the answer to any of these questions different depending on whether we are talking about moveable or immovable property? To what extent will a successor state be liable for the debts of the predecessor state? What happens to such debts in the case of complete dissolution? These are all obvious and practically important questions which one would imagine international law should have something to say about.

Following the ILC's efforts to codify the law of state succession with regard to treaties, the UNGA asked the ILC to turn its attention to state succession to state property, archives and debts. This work culminated in 1983 in the adoption of the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (VCSSP). However, much like the ILC's previous work on state succession in respect of treaties, the 1983 VCSSP did not immediately attract the signatures of states, and in fact with only seven contracting parties today, it has still not entered into force. As such, it is also necessary to make reference throughout to relevant practice in an attempt to discern relevant international law.

Article 9 of the VCSSP provides that the property rights of the predecessor state which cease to exist expire at the time succession occurs, and are replaced by the equal rights of the successor state. At the same time, the Convention protects the relevant property rights of third parties.[80] Under the Convention, in relation to all different types of state succession, immovable property is to be automatically transferred to the respective successor state or states.

[78] See Paul R Williams, 'State Succession and the International Financial Institutions: Political Criteria v. Protection of Outstanding Financial Obligations' (1994) 43 ICLQ 776, 807; ILA (n 5) 43.
[79] Bühler (n 74) 227; ILA (n 5) 46.
[80] Sarvarian (n 31) 803.

Most relevantly for our purposes, in cases of separation or dissolution, under the VCSSP the successor state is to acquire not only the immovable property located on its territory, but also the moveable property related to the activities of predecessor state in its territory, as well as an equitable share of the remaining moveable property.[81] State practice relating to movable property is, however, far from clear. The VCSSP approach was taken to a large extent in the case of Czechoslovakia, this was not the case with regard to Yugoslavia, in relation to which the EC Conference in its Opinion No 14 simply stated 'public property passes to the successor State on whose territory it is situated.'[82] Accordingly, this uneven state practice precludes the formation of customary international law in this area, and the fact that the VCSSP is has not yet attracted enough parties to enter into force, only reinforces the need for states to reach an agreed solution on an ad hoc basis.

But what about financial obligations? In the case of cession of territory or separation the Convention provides that the successor state must pay an equitable proportion of the debt of the predecessor state. When it comes to state debt and moveable financial assets located abroad, state practice has been greatly influenced by the failure of the Czech Republic and Slovakia to reach an agreement on these issues. As such, the different international financial institutions such as the IMF and the International Bank for Reconstruction and Development, and the agreement concluded between the Yugoslav successor states. From this practice it can be said that, in general, both local debts (debts contracted by sub-state entities within the territory of the seceding state), as well as other localised debts applicable to the seceding state, become the responsibility of the successor state.[83]

Practice was broadly similar in the context of the Republic of Sudan and the new state of South Sudan, who concluded an agreement on 'Certain Economic Matters' in 2012. In this agreement both entities agreed that the continuing state, the Republic of Sudan would retain all external debts, liabilities and external assets of the continuing state. In addition, the agreement applies the territorial principle, stating that 'the two states shall treat domestic assets and liabilities in accordance with the territorial principle, by which assets and liabilities have a domestic connection to the territory of Sudan shall be allocated along territorial lines and attributed to the respective state.' Accordingly, under this agreement, both domestic

[81] Article 17(1)(c) VCSSP.
[82] European Community Conference on Yugoslavia Arbitration Commission Opinions No 14 at 731.
[83] Zimmermann and Devaney (n 1).

assets (including moveable and immovable property) located on the territory of a state, and liabilities associated with the territory of that state, are to be attributed to it.

Interestingly, and this is an issue to which I will return below at XX, the Convention contains a general rule highlighting the priority of an agreement being reached between the predecessor and successor state as to the apportionment of state property. State practice, too, places significant emphasis on the importance of the conclusion of an agreement to regulate such issues. As one commentator has stated, 'the VCSSP has been infrequently applied with ad hoc political agreement being the default mode of dispute settlement in relation to state property, archives and debt.'[84] For instance, in accordance with the European Community Conference on Yugoslavia Arbitration Commission Opinions No 9 and 14, states must attempt to reach an equitable solution.[85] In practice, such settlements have been reached in most instances of succession in recent times, including the break-up of the Soviet Union, the former Yugoslavia, Czechoslovakia and most recently in the case of South Sudan. Whether a refocussing of efforts on strengthening the force of such a resolution may be the best option to reform the law of state succession more generally is an issue which bears further consideration. But first we turn to examine the effects that state succession has on the nationality of persons.

4. State Succession with Regard to Nationality of Persons

In contrast to state succession to treaties, property archives and debts, state succession with regard to the nationality of persons has not been the focus of specific codification attempts in the form of a treaty, with only certain issues being dealt with in other treaties dealing with nationality more generally.[86] That said, the drafting of the ILC's Draft Articles on Nationality of Natural Persons in relation to the Succession of States which it produced in 1999 did take place during the same period of decolonisation and 'desovietisation' as the ILC's previous state succession efforts.[87] However, perhaps due to the limited success that previous attempts to secure support for its multilateral treaties on discrete areas of state succession, the UN

[84] Sarvarian (n 31) 803.
[85] European Community Conference on Yugoslavia Arbitration Commission Opinions No 9 and 14.
[86] In addition, a regional treaty, the European Convention on Nationality of 1997, which is in force and currently has 21 state parties.
[87] Sarvarian (n 31) 804.

General Assembly at this time decided to merely 'take note of' these draft articles and there was no decision taken to convene states to deliberate the adoption of a treaty.[88]

The orthodox position in international law was that state succession led to a natural person losing the identity of the predecessor state and gaining the nationality of the successor state. However, an analysis of contemporary state practice demonstrates that this position is overly simple. In very general terms, practice demonstrates that while states are obligated to take into account the wishes of the individuals concerned, as well as important issues such as existing family links and the aim of avoiding statelessness, the exact content of these obligations is very hard to discern.

As such, there are a number of questions on which the law is currently unclear, such as whether, in the event of there being several successor states, which may be under a specific obligation to grant its nationality, and whether individuals have a legal right to choose their nationality in customary international law. In cases of separation where the predecessor state continues to exist, state practice would seem to confirm that successor states have accepted that before they can grant their nationality, individuals must possess a genuine link to the territory of the successor state.[89] In accordance with the ICJ's dictum in *Nottebohm,* the successor state would appear to be under a legal obligation not only to grant its nationality to those residing within its territory, but also to individuals with an appropriate legal connection to the territory that has become part of the successor state. In cases of dissolution**,** state practice demonstrates that the granting of nationality by the different successor states is based on a connection with the territory of those states, most often prior habitual residence.[90]

With regard to the particular obligation to avoid statelessness, which has been the focus of human rights scholarship in recent times, we should note that presently no human rights treaties address the issue of state succession nor the more particular issue of whether a successor state is obligated to confer its nationality. In fact, even the ILC's Draft Article on Nationality of Natural Persons in Relation to the Succession of States merely provides that

[88] YBILC (1999) 20, para. 45; Arnold Pronto and Michael Wood, *The International Law Commission 1999–2009* (2010), vol. 4, at 75–126.
[89] *Nottebohm Case (second phase), Judgment of April 6th, 1955*: *I.C.J. Reports 1955, p. 4.*
[90] In practice states have taken previous secondary citizenship as a starting point in determining their nationals, see Art 22 (b) (i) UN ILC 'Draft Articles on Nationality of Natural Persons in Relation to the Succession of States' of 1999.

relevant states should take 'all appropriate measures' to prevent persons becoming stateless as a result of state succession, but does not address specific issues such as, in the case of several successor states, which (if not all) such states are under an obligation to avoid statelessness.

Similarly, the UN Convention on the Reduction of Statelessness only addresses the issue of the deprivation of citizenship, and does not address the withholding of citizenship upon succession, which necessarily renders the convention inapplicable to successor states. In addition, Article 15 of the Universal Declaration on Human Rights only contains an obligation not to deprive a person arbitrarily of their citizenship, which does not cover the issue of whether successor states are under an obligation to grant nationality or not. As such, at the moment, it would appear that states are not under any customary obligation to avoid statelessness.

In short, in relation to issues of nationality, not only is there an absence of a multilateral treaty, the soft law which does exist does not appear have had any meaningful effect in clarifying the law in this area. Practice would seem to indicate that the only very general obligation is that for states is to avoid statelessness, although no modality for doing so is prescribed in law. In practice this obligation most likely amounts to an obligation for predecessor and successor states to negotiate in good faith on questions of nationality, ensuring not to discriminate against certain groups, with a general aim of avoiding statelessness. If the law of state succession in respect of treaties is the most well-developed area of the law of state succession, the nationality of persons is a strong contender for being the least well-developed. However, the present examination of 'what happens next?' in relation to secession would not be complete without a look at an issue on which the ILC is currently doing 'ground-breaking'[91] work since being placed on the International Law Commission's (ILC) programme of work in 2017, namely state succession to state responsibility.

5. State Succession with regard to State Responsibility

Here we are concerned with questions such as what happens, for instance, to the responsibility for internationally wrongful acts committed by a state which has been subject to some form of

[91] Sarvarian (n 31) 105; Institut de droit international (IDI), 7ème Commission, Session de Vancouver, Resolution, La succession d'Etats en matière de responabilité internationale (2001).

state succession. Does the responsibility simply disappear along with the predecessor state, or does it pass to the successor state? If so, under what circumstances?
The orthodox position in international law has been that claims and liabilities of predecessor states, owing to the link between the internationally wrongful act and the legal personality of the state responsible for it , do not pass to successor states.[92] This logically has meant that in cases of state succession where the predecessor state has ceased to exist, whether that be as a result of dissolution or merger to form two completely new states, a state which would otherwise have been able to invoke the international responsibility of a wrongdoing state would simply be unable to do so.[93]

To date, practice in this area has been relatively scarce. That said, there are examples of a state invoking the responsibility of successor states for the internationally wrongful acts of their predecessor states, such as the claims brought by Australia against the successor states of Former Yugoslavia,[94] and Lichtenstein's continuing attempts to invoke the responsibility of Czechia for wrongs committed against its citizens by the former Czechoslovakia.[95]

As I have already mentioned, this area of international law is one which has become the focus of the ILC. This was despite some quite significant reservations expressed by certain delegations owing to the highly controversial nature of the topic itself, which had been the reason that it had been left outside the scope of the ILC's work on adjacent state succession issues in the past.[96]

That said, perhaps influenced by the extensive work on this topic carried out by the Institut du Droit International, which produced a resolution on this issue in 2015, the ILC appointed a Special Rapporteur, Pavel Šturma, who has so far produced three reports. These reports reveal the influence of the IDI, following to a large extent the approach taken in its work.
This is not the place to engage in an extensive overview of the ILC's work in this area, but a number of select issues related to the progress of the ILC's efforts to date deserve to be highlighted. Interestingly, after significant criticism of the Special Rapporteur's first report, the second and third follow the approach of the IDI in favouring a general rule of non-

[92] Zimmermann and Devaney (n 1).
[93] ibid.
[94] ibid.
[95] ibid.
[96] ibid.

succession for matters of state responsibility, with certain other special rules, designed as exceptions, in which cases responsibility for an internationally wrongful act committed by a predecessor state may be invoked against a successor state.

The so-called general rule is set out in Draft Article 6 which provides that (1) the replacement of one state by another in the responsibility for the international relations of territory has no effect on the attribution of an internationally wrongful act committed before the date of succession, and (2) if the predecessor state continues to exist, the injured state or subject may, even after succession, invoke the responsibility of the predecessor state. This general rule is subject to a number of exceptions which apply in relation to special cases of state succession. In cases where the predecessor state no longer exists, the application of the general rule of non-succession would mean that no state would be responsible for the commission of prior internationally wrongful acts. These Draft Articles will be considered by states in the coming sessions of the ILC, before they decide whether or not to adopt them.[97] It is clear to see that the general rule of non-succession for matters of state responsibility, and the logical consequence of state succession potentially extinguishing international responsibility for certain wrongful acts is likely to be controversial among ILC members and state representatives alike, and there is already talk of disquiet around the process. The Special Rapporteur, faced with the unenviable task of spearheading the latest in a line of ILC state succession projects, at least has the benefit of previous efforts to study carefully in his attempt to avoid the same or similar pitfalls.

[97] The Special Rapporteur's third report will focus on the transfer of the rights and claims of an injured predecessor State to the successor State with the adoption of the Draft Articles planned for 2020 or 2021.

6. What Next for the Law of State Succession? A Conclusion of Sorts

For this final section, it may be helpful to return to our fictitious lawyer to once again ask the question we asked earlier; in light of what we have just seen, 'when an entity secedes and establishes itself as a new state, on day one of its existence what treaty obligations is it bound by, if any?' We may also ask our lawyer the same question about state property, debts, nationality of persons and state responsibility. Having just examined these issues in the preceding sections would the lawyer now be able to offer more than a furrowed brow or a shrug of the shoulders? Perhaps.

I would venture that the lawyer could say three things with relative confidence: (i) the work of the ILC to codify the law of state succession has largely failed to do so, (ii) state practice remains inconsistent and context-specific, and (iii) relatedly, and perhaps most importantly, states and secessionist entities appear to favour ad hoc solutions, often in the form of agreements, over faithful adherence to general legal rules.

Taking the first of these cross-cutting issues, it is clear that failure of the VCSST and the VCSSP to attract the signatures of states, in the case of the VCSSP to the extent that it has still not entered into force, tells us something about attempts to codify the law of state succession. Most likely, the majority of states simply do not see the law of state succession as being a pressing concern, and those that do see it as such do not wish to limit their legal autonomy in any potential future process.

Secondly, while there may be pockets of practice that appear relatively settled,[98] even in relation to the most well-developed area of the law of state succession, state practice is often so context-specific so as to preclude the formation of general rules. In the areas of state property, archives and debts, and nationality, sparse or uneven state practice, again subject to small pockets of settled practice, makes it difficult to discern the affirmation or otherwise of purported legal norms.

[98] Hafner and Novak (n 5) 396; Craven (n 37) 2.

Thirdly, states and secessionist entities appear to favour ad hoc solutions over faithful adherence to general legal rules.[99] This is evidenced by practice which is replete with negotiated agreements, also known as devolution agreements,[100] unilateral declarations, and so on.[101] The value of such agreements lies not in their binding legal effect, per se, but rather in their attempt to coordinate an orderly transition to statehood. Through such devolution agreements the relevant parties can, for instance, bring certainty to the transition by clarifying important issues such as the treaty obligations the secessionist entity intends to accede to, how state party will be divided, and other issues regarding nationality of persons any potential issues of state responsibility.

From this practice we can more generally discern a desire of both continuator states and secessionist entities to maintain stable legal obligations during the transition of an entity to statehood, despite its fraught and highly political character.[102] The fact that ad hoc solutions in the form of agreements are so often found is all well and good, and may call into question the need for more general rules of state succession. However, while such negotiated, ad hoc, or bespoke (terminology dependent on one's own view of the desirability of a general rule of succession) may preserve the ability of states to manage the process of state succession flexibly, in the absence of agreement between relevant parties, or in the interregnum period before treaty obligations are confirmed through negotiated agreement or unilateral declaration, we are faced with 'a rather large grey zone of uncertainty.'[103]

Taking all of this together, I would argue that the most fruitful option for international lawyers would be bolstering what is already a common practice, namely the negotiation of context-specific agreements for cases of secession. To that end, I would highlight the utility of the development of a customary duty to negotiate such an agreement in good faith. The advantages of privileging the development of such a norm are clear, given the preference of states and other entities to retain control over the process of state succession, and the lack of support for more general regimes such as the ILC's Vienna Conventions.

[99] Rasulov (n 20); Tams (n 13).
[100] Zimmermann and Devaney (n 1).
[101] ILA (n 5) 27, Art 8(1) VCSST.
[102] Tams (13); ILA (n 5) 27.
[103] Tams (n 13).

Furthermore, should it not be possible for agreement to be reached immediately, the relevant parties should be encouraged to conclude a *pactum de contrahendo.* This is an agreement between parties (who need not necessarily be states[104]) which creates a legally binding obligation to conclude a future agreement, in this context a devolution agreement.[105] While such a *pactum* would obligate the parties to negotiate in good faith,[106] and to eventually conclude a devolution agreement, crucially it would allow the parties the flexibility to shape the agreement to best suit their respective interests. And in addition, any failure to conclude such an agreement envisaged in the *pactum* in a timely manner would amount to a breach of an international obligation and incur the international responsibility of the relevant party.[107]

This is, of course, not a perfect solution. The exact content of such a duty, like the duty to negotiate in good faith in other contexts,[108] is by definition hard to lay out in the abstract. Furthermore, the extent to which a secessionist entity which has not yet achieved statehood could legally bind itself to an international agreement may raise certain issues (although generally the problem that international lawyers have with non-state actors binding themselves to international agreements is both unwarranted and thankfully dissipating over time[109]). Nevertheless, I would suggest that the significant practice which supports such a course of action would indicate that relevant entities are already minded to reach such an agreement in the vast majority of situations, and as such international lawyers could easily bolster a claim regarding the emergence of a customary norm to this effect by reference to this practice. International law should provide for certain minimal obligations such as the duty to avoid statelessness, while entities involved in future instances processes of state succession

[104] See for instance Agreement on a Timetable for the Negotiation of a Firm and Lasting Peace in Guatemala (29 March 1994) UN Doc A/48/928-S/1994/448, annex II.

[105] Hisashi Owada, 'Pactum de contrahendo, pactum de negotiando', MPEPIL, <https://opil.ouplaw.com/home/mpil> 3; Arnold McNair, The Law of Treaties (Clarendon Press Oxford 1986) 27–9. Examples include the Treaty on Conventional Armed Forces in Europe (done 19 November 1990) (1991) 30 ILM 6; Declaration of Principles on Interim Self-Government Arrangements (Israel-Palestine Liberation Organization) (done 13 September 1993, entered into force 13 October 1993) (1993) 32 ILM 1525.

[106] North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] ICJ Rep 3, 47; Railway Traffic between Lithuania and Poland (Railway Sector Landwarów- Kaisiadorys) (Judgments, Orders and Advisory Opinions) PCIJ Rep Series A/B No 42; UNGA Res 53/101 (8 December 1998) GAOR 53rd Session Supp 49 vol 1, 364; Lake Lanoux Arbitration (France v Spain) (Arbitral Tribunal, 16 November 1957) (1957) 24 ILR 101.

[107] Award in the Matter of an Arbitration between Kuwait and the American Independent Oil Co (Aminoil) (Arbitration Tribunal, 24 March 1982) (1982) 21 ILM 976; *North Sea Continental Shelf,* ibid, 47; Antonio Cassese, 'The Israel-PLO Agreement and Self-Determination' (1993) 4 EJIL 566.

[108] Markus Kotzur, 'Good Faith (Bona Fide)' MPEPIL, <https://opil.ouplaw.com/home/mpil>.

[109] For a masterful account of this issue see Lea Raible, 'How International Law Applies to Non-State Actors', [on file with the author].

should be encouraged to reach a negotiated agreement. Trusting that these parties know best when it comes to the division of state property and granting of nationality and so on, I believe would be a more fruitful endeavour for international lawyers, rather than what we have been doing much too often to date, namely post-hoc categorisation of diverse instances of state succession which rarely align with the general rules produced by the ILC.