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Successions of States: The French Approach*

*Evelyne Lagrange***

All territorial transfers do not necessarily lead to a State succeeding another State. When there is such a succession, it amounts to the substitution of one sovereignty for another within the boundaries of a territory. France's practice as 'transferor' state or as 'successor' state is somewhat unsettled.

I. FRANCE'S PRACTICE AS A 'SUCCESSOR' STATE

A. Succession following the transfer of part of a territory from an existing State

1. Modalities of the territorial transfer

Possible methods include incorporation of the transferred territory into the national territory by voluntary transfer (gratuitous or onerous) or forced transfer (usually by Treaties, for example, Versailles).

2. Legal regime of the succession

Under French law, rights acquired by individuals under the prior sovereign are to be recognized as vested. However, this principle cannot always prevail over the principle of sovereignty; vested rights must be exercised within the framework of the law now governing.

B. Succession following the complete annexation of the territory of an existing State

1. Requirements for identifying an actual transfer of a 'territory' as opposed to a res nullius

2. Legal aspects of the succession

a. Effects of the annexation on the conventional relations with third party States

French practice is to the effect that an annexation leading to the disappearance of a State puts an end to the treaties the former State had concluded.

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* This is an abstract from *Les successions d'Etats : pratiques françaises*. The authenticity of this article was ascertained only by the author.

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b. Effects on the assets and debts of the 'preceding' State

The French practice follows the principle *res transit cum onere suo*. France will take on the debts incurred by the predecessor State.

c. Effects on the rights previously acquired by individuals

The French practice appears to have been the opposite of the principle of continuity and recognition of acquired rights. France considered that the total disappearance of a State into the new State carries with it the nonexistence of the former State's rights and obligations. France's sovereignty prevails.

II. FRANCE'S PRACTICE AS A 'PREDECESSOR STATE'

A. Identification of the modalities of the colonial territories becoming independent

1. Use or misuse of the formal status of the territories destined to become independent

Example: the empire of Annam and Viet-Nam

2. Gradual acquisition of their independence by colonial territories.

Example: the 'Union française' (1946), the 'Communauté française' (1958) and then the 'Communauté conventionnelle' (1960).

3. The acceptance of 'independence' by France

France's position has been most ambiguous. By and large, in a few cases a treaty between France and its successor State amounts to an exercise of its sovereignty by the successor State; in most cases the independence of the former territories was acknowledged by the French Parliament and by a vote of the people of the territory.

B. The constant will to define beforehand by a convention the legal regime of the succession.

1. Effects of the succession of States on the conventions entered into with third party States

Agreements of transfer of sovereignty whereby the transferor State and the successor State provide for a selection of the treaties the

successor State will honor, are the creation of British diplomacy (in the 1930s). Yet, third party States are not bound by such agreements. France has manifested some disdain towards this practice.

2. Effects of the succession of States on the assets and debts of the French treasury

By and large, France has acknowledged the rightful and free transfer of its assets located in the new independent State.

As regards the debts incurred locally in the new State by France, these debts were to be assumed by the new successor State. Some debts remained the responsibility of France (ex: retirement pensions for the military)

3. Effects of the succession on the rights previously acquired by individuals

Although France wanted to enforce the principle of respect for and continuity of acquired rights, newly independent States objected. Thus the necessity of 'agreements' dealing, in part, with the rights of individuals (for example, Algeria and Mali).

