



The Succession of States

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When states divide or disintegrate it is normal that a whole network of issues have to be settled regarding what international commitments of the previous state the new one can or must take over. This is a question that will become acute if and when Scotland decides to leave the UK.

It is to be assumed that the United Kingdom would continue to exist legally without Scotland, so that nothing would change in its case. Scotland, on the other hand, as a brand new state for legal purposes (although actually a reborn one), would have to start with a clean sheet and build up its network of international relations from the start.

Following is a concise summary of the relevant international law.

The rules of international law concerning cases of state succession were codified within the framework of the United Nations in the 1978 **Vienna Convention on Succession of States in Respect of Treaties** and the 1978 **Vienna Convention on Succession of States in Respect of State Property, Archives and Debts**. Despite the modest number of 15 ratifications that are required, only the 1978 treaty has yet entered into force with around two dozen ratifications, mostly by developing countries. The United Kingdom has not acceded to them.

Neither of these two treaties applies to Scotland in any context. As far as Scotland is concerned, the succession of states remains governed by **customary international law**.

The question of state succession seemed to have become a purely theoretical matter after the end of the decolonisation process, but it has been reactivated by the events of recent years. The unification of Germany and Yemen raised specific legal questions, but the dissolution of the Soviet Union, Yugoslavia and Czechoslovakia brought the entire issue of state succession into the foreground once again.

As regards **bilateral treaties** under international law, i.e. treaties between two individual states, the so-called “clean slate” principle applies. According to this principle, a newly-emerging state is not as a rule automatically bound by treaties entered into by its territorial predecessor. The only exceptions are treaties applying to specific geographical areas (“localised treaties”), for example on border regulation, transit rights, trans-border river management, etc., which would automatically be taken over by the successor state(s) on the same territory. Any such issues arising out of Scotland’s independence would almost certainly need to be freshly negotiated, since few such agreements, if any, would exist in legal form.

In the case of **multilateral treaties** under international law it is customary that a new state presents a so-called “declaration of continuity” to the depository of the treaty, to which it thereby becomes a party. The depository of a global treaty (e.g. on disarmament) is usually the United Nations Organisation, at regional level the Council of Europe (CoE), the UN Economic Commission for Europe (UNECE) or the Organisation for Security and Cooperation in Europe (OSCE). The European Union (EU) does not function as a depository in this manner, since only EU-internal agreements are concluded under its auspices.

Such a right does not, however, apply to the so-called **plurilateral treaties** that are limited to certain states for geographical or functional reasons. In such cases, succession to a treaty is possible only with the consent of the other States Parties, and even then only if it would be consistent with the object and purpose of the treaty. This means that an independent Scotland would have to make a fresh application for membership of the Council of Europe, the European Union and similar organisations where membership is dependent on meeting certain conditions.

In order to avoid a legal vacuum after the emergence of a new state, it is customary, providing there is mutual agreement, to apply the provisions of existing treaties pragmatically to the successor state for a limited transitional period. This can last until such time as the treaties in question are formally adopted by the new States Parties, are materially replaced by fresh agreements, or the new state decides to make other arrangements. Such “pragmatic application” substantially reduces the practical differences between the “clean slate” principle and the principle of the continuity of treaty obligations. It is in any event always necessary to examine bilateral treaties entered into with a state that has disappeared in order to determine whether the contents shall be applicable to its successor(s).

What usually happens is that talks with successor states are followed by an exchange of diplomatic notes by which certain treaties concluded with the predecessor states can be put into force, with any necessary modifications, in relations with the new states. The “localised treaties” will be formally declared in force with the territorial successor states in such exchanges of notes. Insofar as such exchanges of notes cover treaties originally concluded with parliamentary approval, these will require to be brought before the legislature once again.