The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 12 Pages: 09-17
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

Journal Website: https://theamericanjournals.com/index.php/tajpslc

Research Article

CODIFICATION AND PROBLEMS OF SUCCESSION REGARDING NATIONALITY IN INTERNATIONAL LAW

Submission Date: December 01, 2022, Accepted Date: December 05, 2022,
Published Date: December 13, 2022 |
Crossref doi: https://doi.org/10.37547/tajpslc/Volume04Issue12-03

Khakimov Ravshan Tulkunovich
Candidate Of Legal Sciences, Chairman Of The Uzbek Association Of International Law, Uzbekistan

ABSTRACT

Author analyzes the problems of legal regulation of the citizenship of individuals in connection with the succession of states and the framework of the Conference on Security and Cooperation in Europe. European regional organizations are quite actively developing issues of citizenship in the succession of states, where significant progress has been made in this direction as well. It seems that the experience and results of the work on issues of nationality in connection with the succession of states can be claimed and applied as an example or a guide to action. And in legal sciences of the Republic of Uzbekistan it was the first attempt undertaken to explore the contemporary trends in theory and practices regarding the settlement of modern issues of the succession of states and its application in international law. The example of Uzbekistan was also analyzed.

KEYWORDS

International Law, international relations, codification, evolution, institution, legislation, non-governmental organizations, scientific institutions, UN International Law Commission, League of Nations, Vienna Conventions, state assets, archives, debts, agreements, predecessor state, successor state, interested state, international organization, membership, citizenship, succession, author, declaration on principles, agreement, conclusion, ratification.

INTRODUCTION

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 12 Pages: 09-17
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

The institution of succession in international law is one of the most controversial and controversial in legal doctrine. This problem is constantly in the sphere of scientific and political interests of many scientists, states, international organizations and so far has not had a generally accepted approach in international law.

How and in what way do problems of succession regarding nationality arise in international law?

The question is not easy, it requires a comprehensive analysis, and at the same time an individual approach to each situation. Thus, the problems of succession of states take place when new or ceasing to exist "old" subjects of international law, which are largely related to the territory, state borders, international treaties, state property, archives, debts, assets, issues of citizenship, membership in international organizations and others.

Raising the question of the codification of the institution of succession in relation to citizenship in international law indicates the relevance of the problem in modern international relations.

In connection with the foregoing, there is a need to consider some theoretical and historical aspects codification in international law.

The original meaning of the term "codification" (from the Latin words "codex" and "facio") was defined as the creation of a universal code with the aim of systematizing the norms of international law without any changes, i.e., for the publication of collections and was interpreted as incorporation, which is accounting and external processing of existing norms. At the same time, as E.N. Trikoz (Russia) "...the term "codification" appeared much later than the term" code "and was originally endowed with its own philosophical meaning". [1].

R. Cabriac (France) explains the evolution of the institution of codification in historical terms as a cyclical phenomenon that developed as a result of five major crises in the sources of law, invariably accompanied by the emergence of various kinds of "private codes" and attempts by state-power codification:

1) the crisis of the sources of ancient Roman law;
2) the crisis of sources that hit the systems of religious law;
3) the crisis of the customary law system of the late Middle Ages;
4) the crisis of the sources of royal legislation in the 17th - 18th centuries;
5) the modern crisis of sources, characterized by legislative inflation in states and "normative gigantism" at the international level. [2].

In historical terms, one can give examples of ancient, barbarian and Byzantine systematization of law: codification at the national level: "Justinian's Code" (529), "Code of the Tang Dynasties" (618-907), "Russkaya Pravda" (X - XI centuries), "Napoleon's Code" (1804), etc.

Subsequent attempts at codification in the history of international relations at the state level were made at: the Congress of Vienna in 1815 (Austria), conferences in Geneva (Switzerland, 1864), in St. Petersburg (Russia, 1868), in Brussels (Belgium, 1874) and Paris (France, 1884), which mainly concerned generalizations of customary and contractual practice.

THE MAIN FINDINGS AND RESULTS

With the development of international law, thought and work scientists were highly valued as a way to establish the presence or absence of international law, if necessary, their qualified interpretation. In scientific

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 12 Pages: 09-17
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

literature, this period is designated as "doctrinal", where the most notable authors are:

Gottfried Leibniz (Germany, 1646-1716) - founder and 1st President of the Berlin Academy of Sciences, author of the well-known work "The Code of Diplomacy and International Law" (1693).

Jeremiah Bentham (England, 1748-1832) - author of famous works: "Project for the Codification of International Law" (1808), "Outline of the Code of International Law" (1827), introduced the terms into legal circulation: "international law", "codification", etc.

Francis Lieber (1800-1872) - author of "Instructions for the Government of the Armies of the United States in the Field" No. 100, better known in scientific circles as: "The Lieber Code" (1863), had a huge impact on the development of international humanitarian law.

Johann Kaspar Bluntschli (Switzerland, 1808-1881) - the author of the famous work "Modern international law, set forth in the form of a code" (1868).

David Dudley Field (USA, 1805-1894) - author of the well-known work "Draft Foundations of an International Code" (1872).

Pascual Mancini (Italy, 1817-1888) - author of the famous work "On the recognition of our century for the reform and codification of international law" (1872).

Leon Levy (England, 1821-1888) - author of the famous work "International Law with Materials for a Code of International Law" (1887).

Dmitry I. Kachenovsky (1827-1872), in his report "On the current state of the science of international law" at a meeting of the London Law Society (1859), put forward the idea of the need to codify international law through the efforts of scientists from different countries, while proposing the creation of an international organizations for the development and codification of international law.

Pascual Fiore (Italy, 1837-1914), professor of international law from Naples, author of the well-known work "Codified international law and its legal support" (1889), etc.

Thus, the subjects of inofficial (doctrinal) codifications include: international non-governmental organizations (International Association of International ¬Law, etc.), scientific institutions (Institute of International Law, etc.) and scientists.

Currently, codification is a systematization and improvement of the principles and norms of international law, which are carried out by:

a) establishing the exact content and clear formulation of existing customary or treaty-legal norms and principles of international law between subjects;

b) changing or revising obsolete norms;

c) development of new principles and norms, taking into account scientific and technological progress and the urgent needs of international relations;

d) consolidation in a coordinated form of principles and norms in a single international legal act (convention, treaty, agreement).

When codifying at the official level, the subjects are international intergovernmental organizations and conference ¬and having a norm-setting function ¬in the person of its participants.

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 12 Pages: 09-17
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

An example is the 1-st Peace Conference held from May 6 (18) to June 17 (29), 1899 in The Hague (Netherlands) with the participation of 27 states.

The 2-nd Peace Conference was also held in The Hague (Netherlands) from June 2 (15) to October 5 (18), 1907. 44 states took part in the conference.

What did the I-II Hague Peace Conferences of 1899 and 1907 give to the world?

Despite the many contradictions that took place, primarily between the great powers, the adopted conventions were called "The Hague Law" and made it possible to establish certain rights and obligations for the belligerents in conducting military operations and limit the belligerents in the choice of means and methods of causing damage to the enemy.

According to V.Yu. Kalugina (Belarus) "...the results of the conferences have had and continue to have a significant impact on the formation of modern international law". [3].

The creation in 1919 of the League of Nations and the International Labor Organization, and subsequently other organizations, intensified questions progressive development and codification of international law.

Thus, the Assembly of the League of Nations on September 22 1924 adopted a special resolution that provided for the establishment of a permanent Committee of Experts for the progressive codification of international law, consisting of 17 experts. In 1927, the Council of the League of Nations adopted a special resolution calling for a diplomatic conference to codify the most important questions regarding: citizenship; territorial waters; the responsibility of states for damage inflicted on their territory to the person or property of aliens. Diplomatic conference on codification took place from March 13 to April 12, 1930 with the participation of representatives of 47 states.

The establishment of the United Nations also contributed, in accordance with Article 13 of the Charter, "a) to encourage the progressive development of international law and its codification". Given the relevance of the development of modern international law and its codification, on the basis of the specified article of the UN Charter, the UN General Assembly at the 1st session on December 11, 1946 established the Committee for the Progressive Development of International Law and its Codification.

On November 21, 1947, the UN General Assembly adopted a resolution (174) on the establishment of the UN International Law Commission and the adoption of its Regulations.[4]. The purpose of the UN International Law Commission is to promote "progressive development" and "...preparation of draft conventions on those issues that are not yet regulated by international law or for which the law is not yet sufficiently developed in the practice of states".

At the same time, the term "codification" is used in the sense of "...a more accurate formulation and systematization of the norms of international law in those areas in which there are already extensive state practices, precedents and doctrines".

In 1949, the UN International Law Commission at its 1st session, on the basis of a memorandum of the UN Secretariat, considered the "Review of International Law in Connection with the Work of the International Law Commission for Codification", which included 25 questions for possible further study. In conclusion, a list of fourteen points was determined, which was subject to codification, including those regarding

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 12 Pages: 09-17
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

issues of citizenship and statelessness, the legal status of foreigners and the right of asylum.

In the same 1949, the UNCLOS submitted final drafts or reports consisting of 10 points, which included issues of citizenship and statelessness.

Thus, at present, in international law, codification aims to:

- transformation of customary norms into international treaty norms;
- development of new international legal norms;
- revision and clarification of individual international legal norms with the introduction of appropriate changes;
- a consistent presentation of rules that exclude different interpretations;
- convergence of positions of various groups of states and legal systems.

As the results of the activities of the UN International Law Commission on the development of international legal documents and their codification, the following can be noted:

Convention on the Prevention and Punishment of the Crime of Genocide, 1948,

Convention Relating to the Status of Refugees 1951,

Basic principles for the protection of civilians in times of armed conflict 1970,

Statute of the International Tribunal for the Former Yugoslavia 1993,

Statute of the International Tribunal for Rwanda 1994,

Statute of the International Criminal Court 1998, etc.

Currently, the Vienna Conventions "On the Succession of States in respect of Treaties" of 1978 (entered into force on 06.11.1996) [5] and "On the Succession of States in respect of State Property, Public Archives and Public Debts" of 1983 (did not enter into force) [6], Convention "On the Nationality of Individuals in Connection with the Succession of States" of 2000 [7], as well as the draft Convention on "Succession of States in Relation to State Responsibility" [8] give identical definitions of "succession of States" "...as the replacement of one State by another in bearing responsibility for the international relations of or territory". Similarly, the term "succession of states" is used in its report by the UN International Law Commission. [9].

The complexity of the problems of succession, according to Gonzalez Campos "...consists in the fact that the practice of states, acting as a constitutive element in this area, is diverse and each time gives new examples that go beyond the previously established concept. The second reason lies in the concept itself.

The term "succession", used both in the context of the succession of states and governments, and the succession of international organizations, cannot contain the same meaning for all these types of succession, if only because of the difference in the legal nature of each of the listed entities. [10].

From the analysis of various views on the succession of states, we understand the consequences of changing individual rights and obligations from one or more subjects of law to another or other subjects of law in bearing obligations and responsibilities, based on certain legal facts associated with territorial changes in accordance with generally recognized international legal norms and principles.

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 12 Pages: 09-17
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

P.P. Kremnev (Russia), exploring the theoretical aspects of non-codified areas of ¬state succession, draws attention to the problems: membership in international organizations, citizenship of the population in relation to the territory and the problem of application of customary norms of international law. [11].

The problem of succession in relation to citizenship was developed at the end of the 19th century, then considered in Saint-Germain, Trianon [12] and the Lausanne Treaties of 1923 [13], Permanent Court of International Justice (Case on "Acquisition of Polish citizenship", "Decrees on citizenship issued in Tunisia and Morocco", etc.) [14], as well as in national legislations.

Czechoslovakia can be cited as an example of national legislation, where, after separation, citizenship was granted according to the place of permanent residence, on the basis of the right to choose citizenship - according to the place of residence or nationality. At the same time, agreements were concluded between the Czech Republic and Slovakia in order to harmonize the situation of their citizens living in a neighboring state, so that they have equal rights with the citizens of their country of residence in the field of health care, education, social and labor relations, etc. [15].

In turn The International Law Commission of the United Nations in 1993 began a study problems of nationality and included in the list of issues under consideration the topic: "Succession of States and its consequences for the nationality of natural persons and the nationality of legal persons"[16] and in 1999 prepared the "Draft articles on the nationality of natural persons in connection with the succession of States".

Separately, the issues of regulating the citizenship of individuals in connection with the succession of states are enshrined in the framework of European regional organizations. Here, the peculiarity of codification lies in the fact that issues relating to the nationality of individuals, in connection with the succession states took place in parallel with the development and adoption of acts, which are presented as a recommendatory or mandatory document.

The problems of legal regulation of the citizenship of individuals in connection with the succession of states are also constantly on the agenda within the framework of the Conference on Security and Cooperation in Europe (CSCE/OSCE). For example, this was mentioned in 1992 when the Helsinki Document "The Challenge of the Times of Change" was adopted, and in 1995 when the Ottawa Declaration of the OSCE Parliamentary Assembly was adopted. At the same time, these documents are decisions of a recommendatory nature, the adoption of which confirms the formation of customary norms regarding the mutual obligations of states in the field of citizenship. Within the framework of the OSCE, there is a special body - the High Commissioner on National Minorities, which oversees the decision of states on citizenship issues in connection with succession. At the same time, the regulation and development of various legal aspects of the citizenship of individuals in connection with the succession of states, within the framework of the Council of Europe, are carried out by:

The Committee of Experts on Citizenship of the Council of Europe is the only European collegiate body of the intergovernmental level specializing in citizenship issues, as well as the Committee of Ministers of the Council of Europe, within its powers, has the right to consider issues in this area.

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 12 Pages: 09-17
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

The Venice Commission for Democracy through Law, an advisory body of the Council of Europe, was established in 1990 and, due to the specifics of its status, is engaged in research and consideration of the theoretical and practical aspects of the succession of states in relation to citizenship. In 1996, the Venice Commission developed a number of advisory documents, including:

"Declaration on principles, rules and recommendations regarding the issue of citizenship of individuals and legal entities in the succession of states" dated 04.04.1996;

"Guidelines for the actions of states in the field of citizenship and succession" of 23.04.1996;

"Declaration on the consequences of the succession of States in relation to the nationality of natural persons" of 09/14/1996, adopted together with a report on the consequences of succession in relation to nationality.

These documents differ in their content, for example, in the Guide there is no definition of the succession of states, in the Report and in the Declaration the concept of succession of states is presented as "the change of one state by another in bearing responsibility for international relations in the territory". At the same time, all documents indicate that citizenship issues are the internal competence of states.

Thus, in the Guide there is a wording about "responsibility for questions of nationality lies with the states involved in the succession".

The Declaration logically and structurally regulates the issues of succession in matters of citizenship.

The "European Convention on Nationality", adopted in 1997, entered into force in accordance with Article 27 in 2000 and is a binding agreement. The specificity of the document lies in the fact that it is open for signing both for member states of the Council of Europe and states that are not members, but participated in its development, and after entry into force, at the proposal of the Committee of Ministers of the Council of Europe, any state can join.

"European Convention on Avoidance statelessness in connection with the succession of States" was opened for signature on May 19, 2006. The adoption of the 2006 Convention was due to the fact that the 1997 Convention contained general principles regarding statelessness (art. 4 para. b, art. 6 para. 4g, art. 7 para. 3, art. 8 para. 1) and the only special principle set out in Art. 18 (avoiding statelessness in situations of succession). At the same time, some provisions of the document are new and have not previously been contained in Council of Europe documents on statelessness and succession. For example, paragraph 7 of the Explanatory Report states that: "...States may also apply the provisions of this Convention by analogy to situations which they do not recognize, by virtue of this definition, as a succession of States".

CONCLUSION

Thus, from a brief overview, it can be stated that European regional organizations are quite actively developing issues of citizenship in the succession of states, where significant progress has been made in this direction as well. It seems that the experience and results of the work on issues of nationality in connection with the succession of states can be claimed and applied as an example or a guide to action. [17].

Regarding the application of customary norms of international law, in relation to the succession of states, it should be said that the subjects of international relations resolve modern problems,

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 12 Pages: 09-17
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

based, among other things, on customary legal norms, by mutual agreement.

In conclusion, one should note the particular complexity of the problem of state succession, in that, as practice shows, it is impossible to foresee all emerging situations and therefore each specific ¬case should be approached strictly individually.

REFERENCES

1. Trikoz E.N. "Codistics" (the doctrine of the technique of codification) in international law. - // Jurisprudence. - Moscow. - 2010, No.4. - S. 109-126.
2. Kabriyak R. Codification // transl. from French O.V. Golovko. - Moscow, 2007. - S. 106.
3. Kalugin V.Yu. Course of International Humanitarian Law. - Minsk, 2006. - S. 32.
4. Regulations on the International Law Commission of the United Nations of November 21, 1947.
5. Official Records of the United Nations Conferences on the Question of Succession of States in Respect of Treaties. Vienna, 4 April - 6 May 1977 and 31 July - 23 August 1978. T. II. UN. - New York: UN, 1981. - 229 p.
6. Official Records of the UN Conferences on the Succession of States in Respect of State Property, State Archives and State Debts, Vienna, 1 March - 8 April 1983 г. T. II. - New York: UN, 1996. - 166 p.
7. Res. UNGA 55/153 of December 12 2000. Application. Citizenship of individuals in connection with the succession of states.
8. ILC 69th session. UNGA A/CN.4/708. First report on State succession in relation to State responsibility. 2017. p. 26.
9. ILC Yearbook. 1974. Vol. II (part 1). - p. 210-211. Doc. A/9610/ Rev. I. Part II, sec. D, pp. 3 and 4 commentary on Art. 2.
10. Gonzales Campos. Algunos consideraciones sobre problemas en la sussecion de los estados. - Vol. XVII. - 1963. p. 554.
11. Kremnev P.P. The collapse of the USSR and the succession of states. Monograph. - Moscow: "Yurlitinform", 2012. - S. 147-169.
12. Report of the ILC on the work of the 51st ¬session (May 3-July 23 1999). UN GA . 54th session. Add. No. 10 (A/54/10). UN. - New York, 1999. - S. 80.
13. Boyars Yu.R. Issues of citizenship in international law. Monograph. - Moscow: "International Relations", 1986. - P. 107; Official Records of the UN Conferences on the Succession of States in Respect of State Property, State Archives and State Debts, Vienna, 1 March - 8 April 1983. T. II. - New York: UN, 1996. - S. 10-11.
14. Report of the ILC on the work of the 51st ¬session (May 3-July 23 1999 г). UN GA. 54th session. Add. No. 10 (A/54/10). UN. - New York, 1999. - S. 27, 62.
15. Law of the Czech Republic on the Acquisition and Loss of Citizenship of 12/29/1992, Law on Citizenship of the Slovak Republic of 19/01/1993
16. Official reports of the UN General Assembly. 48th ¬session. Add. No. 10 (A/48/10), para. 440.
17. Helsinki Document 1992: The Challenge of Change // Organization for Security and Cooperation in Europe [Electronic resource]. - Access mode: #"justify">. Ottawa Declaration of the OSCE Parliamentary Assembly // Organization on Security and Cooperation in Europe [Electronic resource]. - Mode of access: #"justify">. Principles on citizenship legislation concerning the parties to the peace agreements on Bosnia and Herzegovina // Council of Europe [Electronic resource]. - Mode of access: #"justify">. Venice Commission. General information // Venice Commission [Electronic resource]. - Access mode: #"justify">. Statute of the European Commission for Democracy through Law: Resolution Res (2003) on the adoption of the

The American Journal of Political Science Law and Criminology
(ISSN – 2693-0803)
VOLUME 04 ISSUE 12 Pages: 09-17
SJIF IMPACT FACTOR (2020: 5. 453) (2021: 5. 952) (2022: 6. 215)
OCLC – 1176274523 METADATA IF – 7.659
Publisher: The USA Journals

revised Statute of the European Commission for Democracy through Law 21.02.2002 // Venice Commission [Electronic resource]. - Access mode: #"justify">. Members of the Venice Commission // Venice Commission [Electronic resource]. - Mode of access: #"justify">. Declaration on the Principles, Rules and Recommendations concerning the question of the Nationality of Individuals and Legal Persons in State Succession // Venice Commission [Electronic resource]. - Mode of access: #"justify">. Guidelines for State Practice in the Field of Nationality and State Succession // Venice Commission [Electronic resource]. - Mode of access: #"justify">. Declaration on the Consequences of State Succession for the Nationality of Natural Persons / Venice Commission [Electronic resource]. - Mode of access: #"justify">. Shaerer R. The Council of Europe and the Reduction of State Succession. // Refugee Survey Quarterly. 2006 Vol. 25 #3. - pp. 33-39. European Convention on Nationality CETS No: 166. Table of Signatures and Ratifications // Conventions of Council of Europe [Electronic resource]. - Access mode: #"justify">. Council of Europe Convention on the avoidance of statelessness in relation to State succession // Conventions of Council of Europe [Electronic resource]. - Mode of access: http://conventions.coe.int/Treaty/EN/Treaties/Html/200.htm. - Date of access: 08/05/2008.