State Succession in Respect of Treaties and Notifications: A Bottleneck Approach

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State Succession in Respect of Treaties and Notifications:

A Bottleneck Approach

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نبذة مختصرة

في هذه الأيام، يتعلق موضوع خلافة الدول من منظار المعاهدات الدولية أساسا بتفكك الدول وانفصال أقاليم منها. وفقا لاتفاقية فيينا الموقعة عام 1978 لخلافة الدول في المعاهدات، تلزم معاهدات السلف تلقائيا الدولة الخلف (المادة 34 من الاتفاقية المذكورة). من الناحية العملية، لا تصبح الدول الخلف ملزمة رسميا إلا بعد إصدارها إشعارا بالخلافة. باستثناء تقديم الاخطار، لا تدرج جهة الإيداع الدول الخلف كطرف في أي التزام.

بناء على ما تقدم، تهدف هذه المقالة إلى تسليط الضوء على مركزية الإخطار في عملية الخلافة. ونظرا لأهمية الدور التي تلعبه الإخطارات، يصير من المفيد التدقيق والغوص في مفهوم الإخطارات والغاية منها. وبالتالي تتناول المقالة مواضيع متعددة وتطرح الأسئلة التالية بهدف بناء صورة أوضح وأدق عن العلاقة بين الإشعارات والدول الخلف فيما يتعلق بالمعاهدات: ما الإخطار؟ ما الاعتبارات النظرية المتعلقة بها؟ كيف تستخدم الدول الخلف الإخطارات؟ هل من دلالة لقانون المعاهدات فيما يخص إشعارات الخلافة؟ هل تحكم القوانين العرفية الإخطارات؟ كيف تنظر الدول الخلف وجهات الإيداع والدول الأطراف في المعاهدات إلى الإشعارات؟

في نهاية المقالة، سنكون قادرين على تحديد خصائص إخطارات الخلافة. ومن خلال ذلك، سنقدم أدوات تحليلية مفيدة لتقييم إخطارات الخلافة المقبلة، فضلا عن خلافة الدول فيما يتعلق بالمعاهدات عموما.

Abstract

Nowadays, State succession in respect of treaties is mainly concerned with separation and dismemberment of States. According to the 1978 Vienna Convention on the topic, the predecessor's treaties automatically bind the successor State (article 34 of the said Convention). In practice, successor States are not officially bound until they issue a notification of succession. Except upon submission of a notification, the depositary does not list the successor State as a party. The scope of this article is to highlight the central position of notifications in the succession process. Given the major role played by notifications, it is worth questioning notifications themselves. The article thus addresses many issues: what is a notification? What are the theoretical considerations pertaining to them? How do successor States use notifications? Is treaty law relevant to notifications of succession? Are notifications governed by customary law? How are notifications perceived by successor States, depositaries, and other States parties? Here are some of the questions we will tentatively try to answer. All these questions (and answers) will help to build a more accurate representation of notifications and of State succession in respect of treaties. In the end, we will be able to outline the characteristics features of notifications of succession. By doing so, analytical tools useful to appraise future notifications of succession, as well as succession of States in respect of treaties at large, will be provided.

1. A few words about the title and structure

The present article tackles State succession in respect of treaties from the perspective of notifications of succession. This article was also inspired by the work of B. Stern's thorough analysis of notifications[1]. The word "bottleneck" refers to the central position of notifications in the process of State succession. Standing at the crossroad of successor States, depositaries, and other States parties, notifications may provide a valuable insight into the issue of State succession in respect of treaties and guide us through this judicial maze.

This article begins with an assessment of notifications listed in the 1978 topical Convention on succession of States in respect of treaties. Given the limits of this Convention, the subsequent two sections (4 and 5) are separately devoted to the theory and practice of notifications, before combining them in section 6. In section 7, the 1969 Convention on the Law of Treaties is confronted with notifications of succession. Sections 8 and 9 illustrate different perspectives in order to give an exhaustive view of notifications. The conclusion highlights the main features of this article (section 10).

2. Introduction

State succession in respect of treaties is a technical, obscure, and complex field of international law. The 1978 *Vienna Convention on Succession of States in respect of Treaties*[2] (henceforth: "VCST") defines succession as "the replacement of one State by another in the responsibility for the international relations of territory" (article 2, §1, lit. b) VCST). The VCST's main purpose is to govern[3] the transmission of treaties between the predecessor and successor(s) State(s). In accordance with the *res inter alios acta* principle, the VCST only applies to the twenty-two contracting States[4]. Part three of the VCST (articles 16 to 30) deals with the now (almost)[5] outdated category of "newly independent states". Outside the decolonisation process, Part four of the VCST covers the unification and separation of States (articles 31 to 38). This article focuses on the separation of States, and more specifically on the notifications issued by successor States.

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[1] B. Stern, "La succession d'Etats", 262 RCADI (1996), 268-295.

[2] United Nations, *Treaty Series*, vol. 1946, p. 3 (available online: http://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf). The VCST opened for signature in August 1978 and only entered into force in 1996. As of 2017, it binds twenty-two States.

[3] At the time of its inception, the VCST was a mix of codification and progressive development. For an assessment of the VCST results, see: A. Zimmermann, "La Convention de Vienne sur la succession d'Etats en matière de traités: codification réussie ou échouée?", in: G. Distefano et al. (ed.), La Convention de Vienne de 1978 sur la succession d'Etats en matière de traités, Bruxelles, Bruylant (2016), 1547-1575. In a more radical tone: A. Sarvarian, "Codifying the Law of State Succession: A Futile Endeavour?", 27 EJIL (2016), 789-812.

[4] Article 7 VCST, which provides for an "anticipated application" of the Convention's provisions, allows to some extent to overcome this issue (A.P. Kaboré, "Article 7", in: G. Distefano et al. (ed.), La Convention de Vienne de 1978 sur la succession d'Etats en matière de traités, Bruxelles, Bruylant (2016), 227-259. Slovakia and the Czech Republic made such a declaration, see the webpage of the VCST on the UN Treaty Collections website: https://treaties.un.org/Pages/Treaties.aspx?id=23&subid=A&clang=_en.

[5] New Caledonia, as of now part of France, is expected to vote on its status by the end of 2018. For further details, one can consult the United Nations page dedicated to non-self-governing territories (http://www.un.org/en/decolonization/nonselfgovterritories.shtml) and General assembly resolution 1514 (14 December 1960).

State succession being an intricate topic, the notions of "separation" and "notification" require further clarification.

A "separation" can lead to different outcomes, depending on whether the predecessor State still exists after the succession. If the predecessor retains its identity after the succession[6], it is a "separation" (e.g. Sudan and South Sudan); if the predecessor disappears, it is a "dismemberment" (e.g. Czechoslovakia, Ex-Yugoslavia). This difference is important since the transmission of treaties involves only the successor State[7]. According to article 34 VCST, the succession is *automatic*: "any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed", leaving little room for discontinuance of the predecessor's obligations[8]. Nowadays[9], the rule of "automatic succession" is seen as part of customary law[10], or at least amounting to a strong presumption[11]. Thus, all treaties binding the predecessor State on the date of succession become binding for the successor.

Let us now briefly look at "notifications" before establishing the link with "automatic succession".

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[6] Concerning the issue of State identity and continuity, see M.C.R. Craven, "The Problem of State Succession and the Identity of States under International Law", 9 EJIL (1998), 142-162.

[7] The situation of the predecessor State is the same as before the succession: old treaties still apply to him (article 35 VCST). This rule is deemed as a codification: V. Mikulka, "Article 35", in: G. Distefano et al. (ed.), *op. cit. supra*, 1223-1224.

[8] Article 34, §2 provides for two safeguard clauses (found in many other provisions of the VCST, e.g. articles 15, 17, 18, 19, 36, 37, …) :

"Succession of States in cases of separation of parts of a State

1.When a part or parts of the territory of a State separate to form one or more States, whether or not the predecessor State continues to exist:

(a) any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed;

(b) any treaty in force at the date of the succession of States in respect only of that part of the territory of the predecessor State which has become a successor State continues in force in respect of that successor State alone.

2.Paragraph 1 does not apply if:

(a) *the States concerned otherwise agree*; or

(b) *it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible*" (italics added).

[9] The International Law Commission, basing itself on customary law, first arranged a different regime for "separation" (application of the clean slate principle) and "dismemberment" (automatic succession). Z. Mériboute, La codification de la succession d'Etats aux traités, Paris, Puf (1984), 157-159; V. Mikulka, "Article 34", in: G. Distefano, *op. cit. supra*, 1160-1161; P. Dumberry, D. Turp, "State Succession with Respect to Multilateral Treaties in the Context of Secession", 13 Baltic Yearbook of International Law (2013), 40. To some extent, this difference is still relevant: as of early 2017, South Sudan broke apart from Sudan and did not issue a general declaration on succession (this means that South Sudan applied the clean slate principle). See: P. Dumberry, D. Turp, "State Succession with Respect to Multilateral Treaties in the Context of Secession", 13 Baltic Yearbook of International Law (2013), 61.

[10] A. Zimmermann, "La Convention de Vienne sur la succession d'Etats en matière de traités: codification réussie ou échouée ?", in: G. Distefano, *op. cit. supra*, 1564-1565 ("the principle of continuity is beginning to prevail"); V Mikulka, "Article 34", in: G. Distefano, *op. cit. supra*, 1196-1197. Against the customary rule, and relating to the succession to humanitarian and human rights treaties: M. Belkahla, "La succession d'Etats en matière de traités multilatéraux relatifs aux droits de l'homme", in: G. Distefano, *op. cit. supra*, 1701-1702.

[11] According to P. Dumberry and D. Turp, a presumption of continuity *should* be applied to cases of secession ("State Succession with Respect to Multilateral Treaties in the Context of Secession", 13 Baltic Yearbook of International Law (2013), 62).

Restrictively defined, a "notification" is a declaration aiming to inform another State (or another subject of international law, such as an international organization) of a fact or an act[12]. Article 38 VCST provides for "notification", but it regards treaties not yet in force at the time of succession (article 36 VCST); hence confirming that article 34 VCST does not need the performance of an additional notification. An ubiquitous issue of notification is the form/substance conflation. Strictly speaking, a true notification relates both *to the form* of the declaration and *its content* (a declaration, usually in writing, issued in order to make another State aware of a fact, or action). Broadly speaking – and the confusion is easy and not uncommon – "notification" is used to refer only to the *form* of a unilateral declaration, regardless of its content, nor true nature.

In the utmost doctrinal tradition[13], notification is but one of the five unilateral juridical acts. The others are: recognition, waiver[14], protest and promise. Keeping in mind the possible confusion on the form/substance of notifications, it is important to mark that anything (for instance a recognition, or a promise) can be communicated through the medium of a *notification*[15].

How is the connection between State succession and notification made? In the context of State succession, notifications are being used by successor States to communicate their *will*, or sometimes their *sense of obligation*, to succeed to their predecessor's obligations. These notifications are addressed to various treaty depositaries, the most important of which being, by far, the UN Secretary-General. The content of these notifications is generally twofold: (1) the successor announces its will to be part to the treaties of the predecessor and (2) joins a list of treaties subject to succession[16]. Although the clear-cut rule of article 34 does not mention the need to submit a notification, the practice of separating States shows that some of them have submitted such notifications to the UN Secretary-General in its capacity of depositary[17].

For the sake of consistency of terminology, we have to distinguish between "general" and "specific" notifications of succession. "General notifications" are characterised by a statement of the successor State (date of succession, decision to subject treaties to succession, etc.) and of a list of treaties to succeed to. This general notification is addressed to the depositary. On the other hand, "specific notifications" operate on a treaty-by-treaty basis: there are as many notifications as there are treaties subjected to succession.

In the next pages we will analyse more closely notifications in the context of State succession.

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[12] E. Kassoti, The Juridical Nature of Unilateral Juridical Acts, Leiden, Brill (2015), 38; M. F. Dominick, "Notification", in: R. Bernhardt (ed.), Encyclopedia of Public International Law, Vol. 3, Elsevier (1997), 695: "Notification is a formal, unilateral act in international law, by a State informing other States or organizations of legally relevant facts".

[13] E. Kassoti, The Juridical Nature of Unilateral Juridical Acts, Leiden, Brill (2015), 34-42: "[T]he literature largely agrees that the main types of unilateral acts include recognition, protest, promise, waiver or renunciation and notification".

[14] Also known as "renunciation".

[15] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 199-200.

[16] B. Stern, "La succession d'Etats", 262 RCADI (1996), 283-284.

[17] B. Stern, "La succession d'Etats", 262 RCADI (1996), 283.

3. Notifications of succession in the ambit of the *Vienna Convention on the Succession of States in respect of treaties*

"Notification of succession" is defined in article 2, lit. g) VCST: "[it] means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty". Article 38, which is the direct homologous to article 22, does not use the words "notification of succession", but only provides for "notification". The ILC made this choice to highlight the difference[18] between the succession paradigm of part three[19] and four of the VCST. It can reasonably be argued that the definition of article 2, lit. g) VCST does not apply to part four of the Convention.

As mentioned in the introduction, the VCST does *not* provide for a notification in case of succession to treaties already in force at the date of separation of States (article 34). Hence, the notifications relating to treaties already in force fall outside the scope of the VCST. This means that their effects are not regulated by the VCST, but by general international law (customary law) or specific provisions of the treaty subjected to succession when it provides for it.

Upon closer scrutiny, a distinction is necessary. General notifications are twofold. 1) Public international law governs the "statement" part where the State makes public its intention regarding the compact of treaty of the predecessor State[20]. 2) The "annexed list" part where the State gives a list of treaties it wants to subject to succession is governed by each specific treaty[21] (but given that most of them do not provide for articles regarding succession, public international law is therefore applicable)[22]. For example, here are the relevant parts of the general notification issued by Montenegro and addressed to the UN Secretary-General:

> "[The Government of]…*the Republic of Montenegro decided to succeed to the treaties to which the State Union of Serbia and Montenegro was a party or signatory*.
>
> [The Government of]…the Republic of Montenegro *succeeds to the treaties listed in the attached Annex* and undertakes faithfully to perform and carry out the stipulations therein contained as from June 3rd 2006, which is the date the Republic of Montenegro assumed responsibility for its

[18] ILC, "Report of the commission to the General Assembly", 1974 YBILC vol. II(1), 267, §1. Initially, the commission wanted to use the word "notice", but since it had no adequate translation in French, it decided to use "notification" (ILC, "Summary record of the 1296th meeting", 1974 YBILC vol. I, 262, §44).
[19] Articles 17, 18, 20, 21, 22, 23, and 30 refer to "notification of succession".
[20] United Nations, Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), Doc. ST/LEG/7/Rev.1, 90-91, §303-307 ("The secretary general […] does not consider such a declaration as a valid instrument of succession to any of the treaties deposited with him", §303).
[21] United Nations, Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), Doc. ST/LEG/7/Rev.1, 88, §294-296; ICRC, Commentary on the First Geneva Convention (2016), article 60, §3217: "The subject of succession is covered neither by the final provisions of the Conventions nor by the 1969 Vienna Convention on the Law of Treaties". With regards to succession to constituent documents of international organization, a specific rule is provided for in article 4 of the VCST.
[22] United Nations, Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), Doc. ST/LEG/7/Rev.1, 89, §297-301: "In the absence of provisions which set specific conditions for succession or which otherwise restrict succession, the Secretary-General is guided by the participation clauses of the treaties". "Participation clauses" relate to accession, signature, and ratification of treaties.

international relations and the Parliament of Montenegro adopted the Declaration of Independence."[23]

The first paragraph announces the intention of Montenegro. It is a general statement notifying the choice ("decided to succeed") made at the national level (parliament of Montenegro).

The second paragraph is operational, the general intention previously stated produces effects *only* toward the treaties listed in the annex. Practically, it entrusts the depositary (here, the UN Secretary-General) to add Montenegro as a State party in respect of the treaties subjected to succession.

Article 22 of the VCST (labelled "notification of succession") codifies the practice that first originated in the context of decolonisation[24]. These notifications are commonly accepted, and, as the *Summary of practice of the Secretary-General as depositary of multilateral treaties* puts it, the two basic conditions are that the treaty was already in force at the date of succession, and that the notification comes from a *State*[25]. A vague declaration of succession is not sufficient; a specific list of treaties is required[26]. Notifications have been used in the case of separation of States, beyond the ambit of the 1978 Convention[27].

According to the automatic succession principle enshrined in article 34, one can legitimately wonder what the effect of a notification of succession is[28]. Is it only declaratory and used to confirm an automatic succession? Is it constitutive and a necessary step for the State to become a party to a treaty? G. Korontzis clearly points towards a constitutive effect[29]. B. Stern adopts a balanced and sophisticated opinion: the succession to the predecessor's treaties is mandatory; hence, the notification of succession assumes *only* a declaratory effect although necessary in order to create a contractual link with the other States parties[30]. This question can be left unanswered: with or without a constitutive effect, notifications are a huge help to legal certainty[31]. Notifications have the advantage of giving a list of treaties, the depositary can act

[23] Website of the United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information (https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_fr). Italics added.
[24] G. Korontzis, "Article 22", in: G. Distefano et al. (ed.), La Convention de Vienne de 1978 sur la succession d'Etats en matière de traités, Bruxelles, Bruylant (2016), 800, "nous pouvons dire que le mécanisme largement procédural de l'article 22 repose sur une solide pratique dépositaire qui existait bien avant l'élaboration de l'article".
[25] United Nations, Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), Doc. ST/LEG/7/Rev.1, 89, §299.
[26] G. Korontzis, "Article 22", in: G. Distefano et al. (ed.), La Convention de Vienne de 1978 sur la succession d'Etats en matière de traités, Bruxelles, Bruylant (2016), 802.
[27] A. Alì, "Article 38", in: G. Distefano et al. (ed.), La Convention de Vienne de 1978 sur la succession d'Etats en matière de traités, Bruxelles, Bruylant (2016), 1297.
[28] B. Stern, "La succession d'Etats", 262 RCADI (1996), 293.
[29] G. Korontzis, "Article 22", in: G. Distefano et al. (ed.), La Convention de Vienne de 1978 sur la succession d'Etats en matière de traités, Bruxelles, Bruylant (2016), 804, §19, and 805, §21. According to him, notifications of succession pertaining to part IV of the Convention (separation of States) follow the same rules as to article 22 in the part III dedicated to decolonisation.
[30] B. Stern, "La succession d'Etats", 262 RCADI (1996), 293-294 (see the "second option"). In other words: the successor State is under an obligation to subject treaties to succession, but it has to do it itself. The depositary cannot do it without notification, and other States do not benefit from a treaty until it has been subjected to succession.
[31] A. Alì, "Article 38", in: G. Distefano et al. (ed.), La Convention de Vienne de 1978 sur la succession d'Etats en matière de traités, Bruxelles, Bruylant (2016), 1297.

accordingly (as for now, depositaries do not change the status of treaties in the absence of a specific notification), and the other States parties are aware of the succession.

To sum up, the practice of notifications of succession is at variance with the clear texts of articles 34 and 38 VCST. Notwithstanding this contradiction, notifications are deemed necessary in order to establish a contractual link with other States parties[32]. Without a specific notification, the depositary does not register the successor State as a party. The practice of notifications of succession has developed outside of the VCST's framework.

4. The theoretical framework

The VCST does not address notifications of succession for treaties already in force (part four of the VCST). We will thus focus on the general theoretical framework that applies to notifications in order to grasp the category of "notifications of succession".

"Notification" is one of the five traditional unilateral acts (promise, protest, waiver, and recognition)[33]. We are indebted to Giorgio Cansacchi for the most thorough study on notifications[34]. Sadly, this work dates back to 1943, long before the wave of decolonisation, and there is no chapter expressly dealing with notifications in the context of States succession. The book offers nonetheless a great help since it lays out a rich and detailed theoretical apparatus and provides analytical tools useful for examining notifications of succession. We will introduce some of the classifications presented in the book before we take a quick glance at the more recent doctrine.

What is "inside" a notification? This may both seems a strange way to frame the question, and a pointless exercise. Nevertheless, G. Cansacchi teaches us that a declaration of intention[35] or a representation of facts[36], are the two main possible objects and contents of a notification[37]. A declaration of intention can be further distinguished whether it is or not *subject to reception*[38]. In a notification *subject to reception*, the intent to notify and the intent contained therein is the same: the State *wants* to notify and it is only by issuing a notification that its will is apt to produce an effect[39]. In short, the notification is a condition to the act performed (the State wants to perform an act, the existence of which is conditional on a notification). According to G. Cansacchi, accession to a treaty should be regarded as a notification subject to reception[40]. On the other hand, if the notified act exists independently from its notification,

[32] B. Stern, "La succession d'Etats", 262 RCADI (1996), 293-294; Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), 90-91, §306.
[33] E. Kassoti, The Juridical Nature of Unilateral Juridical Acts, Leiden, Brill (2015), 35 and 38.
[34] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 307p.
[35] On this category: G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 188-213.
[36] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 213-219.
[37] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 42. He also lists minor objects in a third, residual, category (encompassing notifications of a tribunal's decision, of a person, a thing or even the externalization of a "feeling", e.g. a formal apology).
[38] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 118-119.
[39] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 118-119.
[40] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 191.

the notification is not subject to reception[41]. In this context, a notification adds nothing to the "self-sustaining", already-existing[42], act. Unilateral juridical acts are instances of notifications not subject to reception[43]. Let us turn now to the other object, namely a "representation of fact". The notification contains and communicates a fact or a juridical situation, for instance the occupation of a territory not belonging to any other State[44]. The ultimate goal of such a notification is to bring one's own perception of a situation to the attention of another State.

Another set of opposites are the compulsory and discretionary notifications[45]. Notification is compulsory when a treaty or a customary norm imposes it, in that the notification is the way to fulfil an obligation[46]. The flagship obligation of the *1885 General Act of Berlin* offers an easy to understand example: without notification, the occupation was not deemed to be effective and other States could claim that the territory was under their control[47]. Put differently, a notification is compulsory when a specific treaty provision or customary norm creates and governs its effects. As suggested by their name, discretionary notifications are not governed by a specific norm, they belong to public international law and their effect is limited to the "general principle of notification"[48], meaning that their purpose is only to communicate a fact, or an act[49]. Notifications of succession are not compulsory on a treaty basis[50], but they may still be compulsory on a customary basis pertaining to State succession. Seemingly this may not be the case given that South Sudan and the successor States of the ex-U.S.S.R. did not issue a *general* notification of succession[51].

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[41] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 124.

[42] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 198: "Ne consegue che la notificazione non ha tanto per oggetto la volontà negoziale del dichiarante, quanto l'atto giuridico ormai perfetto nei suoi elementi".

[43] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), respectively 200 and 207-208.

[44] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 42; A.P. Sereni, Diritto internazionale. Relazioni internazionali, vol. III, Milan, Giuffrè (1962), 1357.

[45] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 40, in italian: "obbligatorie" (compulsory) and "facoltative" (discretionary).

[46] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 40-41.

[47] See article 34 of the 1885 *General Act of the Berlin Conference*:
"Any Power which henceforth takes possession of a tract of land on the coasts of the African continent outside of its present possessions, or which, being hitherto without such possessions, shall acquire them, as well as the Power which assumes a Protectorate there, shall accompany the respective act with a notification thereof, addressed to the other Signatory Powers of the present Act, in order to enable them, if need be, to make good any claims of their own." And G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 272-277 for a detailed analysis. Also: A.P. Sereni, Diritto internazionale. Relazioni internazionali, vol. III, Milan, Giuffrè (1962), 1356.

[48] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 40.

[49] Therefore, the notifying State cannot contradict itself, and the notified State cannot pretend not to be aware of the content of the notification (G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 38).

[50] Since the VCST only asks for notifications if the treaty was not yet in force (article 38 VCST read together with article 36).

[51] The following hypothesis cannot be excluded: 1) the customary norm requiring a notification crystallised with the breakup of Yugoslavia. 2) The customary norm *only* relates to notifications regarding each specific treaty. 3) It could also be argued that the conduct of South Sudan is wrongful and engages its responsibility as long as it does not issue a general notification (see, *infra*, note n°114 on the last hypothesis).

Declaratory, or constituent, notifications regard the requirement to issue a notification in order to produce juridical effects[52]. When, save for a notification, an act has no effect, we are facing a "constituent notification"[53]. If the content of the notification produces effects irrespective of the issue of a notification, it is declaratory[54]. Declaratory notifications are knowledge-oriented. Their purpose is to inform another State of an act, or an already existing fact . On the other hand, constituent notifications are an integral (and final) part of a larger process. Absent the notification, the process is incomplete and ineffective: G. Cansacchi gives the example of a notification of accession to a treaty[55]. In this respect it is interesting to notice that the International Red Cross Committee classifies notifications of succession as an accession[56].

More recent theories and classifications of notifications are briefly surveyed hereafter:

Dupuy follows a threefold distinction for unilateral acts: 1) the ones pertaining to the opposability of a juridical situation[57], 2) the ones by which States exercise a sovereign right[58], 3) the ones by which States create legal commitments[59]. Notifications fit better in the third category if we consider that they are constitutive.

According to Crawford: "[i]t seems that while a bare (unaccepted) declaration may be valid, it can produce its intended effects only if accepted (expressly or implicitly)"[60]. A distinction between the *validity* (non-subject to reception) and the *effects* of the unilateral act is thus drawn. The effects come into being only if other States rely on the declaration.

Pellet and Daillier distinguish between "autonomous" and "non-autonomous" unilateral acts. Acts are "autonomous" if their validity is not based on the provisions of a treaty or on a customary norm[61]. According to them, notifications satisfy this criterion. We believe that not all notifications fall within this category: a quick reference to the 1885 *General Act of the Berlin Conference* should be enough to evidence it[62]. In addition, unilateral acts can either

[52] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 42: respectively "non costitutive/declaratorie" and "costitutive" in Italian.
[53] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 42 ("Sono notificazioni costitutive le notificazioni aventi per oggetto dichiarazioni di volontà o rappresentazioni di fatti, relativamente alle quali il procedimento notificativo è necessario affinchè la manifestazione di volontà o il fatto, oggetti di notifica, producano i proprii effetti giuridici").
[54] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 43: "Sono, invece, notificazioni non costitutive (o declaratorie) le notificazioni di dichiarazioni di volontà o di rappresentazioni di fatti, relativemente alle qualli il procedimento notificativo non è necessario al fine di far nascere gli effeti giuridici che la manifestazione di volontà od il fatto producono".
[55] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 43.
[56] ICRC, Commentary on the First Geneva Convention, 2016, at article 60. Available online (https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions). The commentary is written by the ICRC, though Switzerland is the depositary of the Geneva Conventions.
[57] P.-M. Dupuy, Droit International Public, 9th ed., Paris, Dalloz (2008), 366, §344.
[58] P.-M. Dupuy, Droit International Public, 9th ed., Paris, Dalloz (2008), 367, §345.
[59] P.-M. Dupuy, Droit International Public, 9th ed., Paris, Dalloz (2008), 367-368, §346.
[60] J. Crawford, Brownlie's Principles of Public International Law, 8th ed., Oxford, Oxford University Press (2012), 417.
[61] N. Quoc Dinh, et al., Droit International Public, 5th ed., Paris, L.G.D.J. (1994), 354-355, §242.
[62] See article 34 of the 1885 *General Act of the Berlin Conference* and the footnote n°47 *supra.*

bind the State issuing a notification, or also bind third States[63]. Unilateral acts have the power to bind third States mainly when they are "non-autonomous"[64]: for instance a notification may bind other States parties if this is consistent with the provisions of the treaty.

Still on the question of "autonomous" acts, it is worth quoting Kassoti: "[The autonomous acts category] applies to unilateral acts that, although having legal effects on the international plane, are not elements of the treaty or custom-forming processes. Therefore, such acts will have to be evaluated within the sub-system of international law in which they occur"[65]. How do notifications of succession fit in this respect? They are *not* elements of the VCST, but they may be linked to the treaty subjected to succession[66]. General notifications of succession can also be part of the custom-forming process: they constitute practice, and evidence *opinio iuris* depending on the way they are formulated[67]. Based on this quote, the last option is to see notifications of succession as an autonomous act pertaining to the sub-system of State succession.

Finally, we turn to the handbook of Combacau and Sur: unilateral acts are of immediate or incidental effect[68]. This largely overlaps with the "autonomous"/"non-autonomous" divide seen before[69]. Although, a single quote from this handbook may enlighten notifications: "[The effects] sont indirects lorsque les actes unilatéraux contribuent à la formation de règles coutumières, *ou attestent leur existence*, voire sont utilisés comme éléments pour constituer des principes généraux de droit"[70]. Notifications of succession referring to "valid principles of international law", or to "customary international law" may be ascribed to the category of non-autonomous acts. Within the "autonomous" category, the authors further distinguish between unilateral acts that create rights or obligations for third States[71]. When they create obligation, the consent (even implied or tacit) of the third State is required. Depending on whether we view the automatic succession of article 34 VCST as customary or not, notifications only confirm the already existing legal obligations, or create new ones burdening the successor State (notifications as promise), and third States as well.

Now that the theoretical net is sketched, we will first present the practice of notifications, and then tentatively try to cast it on a notification of succession.

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[63] In French, the words "autonormateur" and "hétéronormateur" are respectively used, we did not find an adequate translation: N. Quoc Dinh, et al., Droit International Public, 5th ed., Paris, L.G.D.J. (1994), 357-359, §244-245.

[64] N. Quoc Dinh, et al., Droit International Public, 5th ed., Paris, L.G.D.J. (1994), 359, §245.

[65] E. Kassoti, The Juridical Nature of Unilateral Juridical Acts, Leiden, Brill (2015), 51.

[66] If notifications of succession to a specific treaty are akin to accession or ratifications, they are non-autonomous (Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), 90, §304; ICRC, Commentary on the First Geneva Convention (2016), article 60, see section 4 on "succession"). Accession and ratifications are examples of non-autonomous acts.

[67] Especially when words like "valid principles of international law", or "customary law" are used.

[68] J. Combacau, S. Sur, Droit International Public, 11th ed., Paris, L.G.D.J. (2014), 96.

[69] J. Combacau, S. Sur, Droit International Public, 11th ed., Paris, L.G.D.J. (2014), 97-99.

[70] J. Combacau, S. Sur, Droit International Public, 11th ed., Paris, L.G.D.J. (2014), 96. This quote can be roughly translated: "They are indirect [or "incidental"] when unilateral acts *contribute to the formation of customary rules, or attest their existence*, or are even used as elements to constitute general principles of law". Italics added.

[71] J. Combacau, S. Sur, Droit International Public, 11th ed., Paris, L.G.D.J. (2014), 99.

5. The practice

The dismemberment of the U.S.S.R. (1992), the breakup of Yugoslavia (1991-2), the end of Czechoslovakia (1993), and the two more recent cases of separation of Montenegro (2006), and South Sudan (2011) provide the bulk of practice. Notifications of succession are just the tip of the iceberg: they appear on the *international level* but they are sometimes the execution of a decision (often pertaining to the legislative branch) made at the national level[72]. Given that "from the standpoint of International Law […] municipal laws are merely facts which express the will and constitute the activities of States, in the same manner as do legal decisions or administrative measures"[73], we will not deal with the various acts relating to succession to treaties at the national level (constitutional provisions, declaration by parliament, policy statement, etc.). Nonetheless it must be specified that: 1) what is decided at the national level may become relevant, *but only to the extent that it falls under the scope of public international law*, and 2) national parliament debates and their outcomes[74] may indicate *opinio iuris* in relation to State succession in respect of treaties.

Broadly speaking, and for analysis purposes, the practice ranging from 1991 to 2011 can be split into three groups. In the first group, the successor States issue a general notification of succession. The second group puts together States which choose for or against issuing a general notification (the second group is thus of a "mixed nature"). In the third one, the successor States do not issue a general notification, neither a list of treaties; they notify their intention to participate through the medium of succession, on a treaty-by-treaty basis (specific notifications). In the first group, it is as if the general notification serves as a rope holding the bundle of treaties subjected to succession; in the third group there are as many notifications as the number of treaties subjected to succession.

Based on the United Nations website, here is a chart summing up the main features of notifications in the three groups:

First group: general notification and list of treaties	
Czechoslovakia (1993, dissolution of States)	
The Czech Republic and Slovakia are the successor States. 221 *multilateral* treaties	Both States choose to apply the VCST to their own succession even if it was not in

[72] See the national declarations (then echoed at the international level in the notifications sent to depositaries), made by the Federal Republic of Yugoslavia (Serbia and Montenegro) and by Croatia, B. Stern, "La succession d'Etats", 262 RCADI (1996), 246-248.

[73] *Certain German Interests in Polish Upper Silesia (Merits)*, Permanent Court of International Justice, award of May 25th 1926, Series A, n° 7, 19.

[74] By enacting a national law relating to State succession in respect of treaties, national parliaments act in two capacities: they are acting in their "usual" legislative role *and* they show what they consider international law (*opinio iuris*). In a similar fashion, it reminds of the expression "théorie du dédoublement fonctionnel" (plurality of functions' theory) coined by Georges Scelle ("Théorie et pratique de la fonction exécutive en droit international", 55 RCADI (1936-I), 99-100).

(and more than 500 bilateral treaties) were binding on the predecessor State[75].	force at the time[76].
Czech Republic	Succession to 286 treaties[77] (multilateral and bilateral).
Text of the notification:	"In conformity with the valid principles of international law and to the extent defined by it, the Czech Republic, as a successor State to the Czech and Slovak Federal Republic, considers itself bound, as of 1 January 1993, […] by multilateral international treaties"[78].
Slovakia	Succession to 265 treaties (multilateral and bilateral).
Text of the notification:	"In accordance with the relevant principles and rules of international law and to the extent defined by it, the Slovak Republic, as a successor State, born from the dissolution of the Czech and Slovak Federal Republics, considers itself bound, as of January 1, 1993, […] by multilateral treaties"[79].
Serbia and Montenegro (2006, separation of States: Serbia is the continuator).	
As the Constitution provided for, Montenegro had the right to break apart from Serbia[80]. 350 multilateral treaties were binding on the predecessor State.	The VCST was already in force at the date of succession. Montenegro became a party to 343 multilateral treaties.
Text of the notification:	"[The Government of] the Republic of

[75] The number of multilateral treaties binding at the date of succession is based on the search tools available on the website of the UN. For example, the following search boxes were selected for Czechoslovakia: "Treaty / Participant / Czechoslovakia" together with "Treaty / Treaty Type / Open Multilateral", see: http://tinyurl.com/UNsearchadvanced.

[76] They made a declaration following article 7, §2 of the VCST: "A successor State may, at the time of expressing its consent to be bound by the present Convention or at any time thereafter, make a declaration that it will apply the provisions of the Convention in respect of its own succession of States which has occurred before the entry into force of the Convention in relation to any other contracting State or State Party to the Convention which makes a declaration accepting the declaration, of the successor State". For example, the declaration of Slovakia reads as follow: "The Slovak Republic declares, under article 7, paragraphs 2 and 3 of [the said] Convention, that it will apply the provisions of the Convention in respect of its own succession which has occurred before the entry into force of the Convention in relation to any signatory State (paragraph 3), contracting State or State Party (paragraphs 2 and 3) which makes a declaration accepting the declaration of the successor State" (United Nations, Treaty Collection Website, "Depositary" Tab, Status of Treaties, Chapter XXIII, cover page of the VCST, http://tinyurl.com/VCST1978).

[77] We confine ourselves to the practice of the United Nations as a depositary. The notifications are those available on the website. The number of treaties succeeded to is based on the search tools of the UN website. For example, the following search boxes were selected for the Czech Republic: "Action / Type of Action / Succession" together with "Action / Participant / Czech Republic", see: http://tinyurl.com/UNsearchadvanced.

[78] United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information.

[79] United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information.

[80] Article 60 of the Constitutional Charter of Serbia and Montenegro of February 4th, 2003.

	Montenegro decided to succeed to the treaties to which the State Union of Serbia and Montenegro was a party […]. [The Government of] the Republic of Montenegro succeeds to the treaties listed in the attached Annex and undertakes faithfully to perform and carry out the stipulations therein contained"[81].
Second group: mixed nature (with or without general notifications)	
Ex-Yugoslavia (1991-2, dissolution of States)[82]	
After initial doubts on the status of Serbia and Montenegro (successor or continuator), all States were deemed successors, namely Serbia and Montenegro (called "Federal Republic of Yugoslavia" until 2003), Bosnia and Herzegovina, Slovenia, Macedonia, and Croatia. 224 multilateral treaties were binding on the predecessor State.	The VCST was not yet in force at that time and although no successor State availed itself to use the anticipated application mechanism of article 7, §2, VCST, the succession medium was widely used among the new States. Between the five successor States, the aggregated total of treaties entered into effect through succession amounts to 903.
Bosnia and Herzegovina[83].	No general notification, neither a list of treaties, but a bundle of specific notifications[84]. Bosnia succeeded to 180 treaties.
Former Yugoslav Republic of Macedonia	Succession to 155 treaties (by way of specific notifications in 1991).
General Notification	Yes, but only in 2007.
List of treaties	No (it is unclear whether the 2007 general notification contains a list of treaties or is merely referring to specific notifications issued in 1991).
Text of the notification[85]	"En application des principes et normes du droit international, la République de

[81] United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information.
[82] For a detailed analysis and text of notifications outside the UN, see: B. Stern, "La succession d'Etats", 262 RCADI (1996), 246-249.
[83] Bosnia addressed a general notification to the UNESCO, but not to the UN, see: B. Stern, "La succession d'Etats", 262 RCADI (1996), 248 (the text specifies that, in conformity with international law, Bosnia considers to be bound by international treaties).
[84] "The Government of Bosnia and Herzegovina deposited with the Secretary-General notifications of succession to the Socialist Federal Republic of Yugoslavia to various treaties […]" (Website of the United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information (https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_en).
[85] Only available in French on the website of the UN (https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_fr).

	Macédoine, […] se considère comme juridiquement liée depuis le 17 novembre 1991 […] par les traités multilatéraux auxquels la République socialiste fédérative de Yougoslavie était partie. […] La République de Macédoine reconnaît donc, en principe, la continuité des droits et obligations conventionnels découlant des traités internationaux conclus par la République socialiste fédérative de Yougoslavie avant le 17 novembre 1991, mais comme il est vraisemblable que certains traités sont devenus caducs ou obsolètes, chacun fera l'objet d'un examen juridique puis d'une notification."[86]
Serbia and Montenegro	Succession to 202 treaties
General notification:	Yes
List of treaties:	Yes
Text of the notification:	"[T]he Government of the Federal Republic of Yugoslavia, succeeds to the [treaties] and undertakes faithfully to perform and carry out the stipulations therein contained"[87].
Croatia	Succession to 184 treaties
General notification:	Yes
List of treaties:	Yes
Text of the notification:	"[T]he Republic of Croatia has decided, based on the Constitutional Decision on Sovereignty and Independence of the Republic of Croatia […] to be considered a party to the conventions that Socialist Federal Republic of Yugoslavia and its predecessor states […] were parties"[88].
Slovenia	Succession to 182 treaties
General notification:	Yes
List of treaties:	Yes
Text of the notification:	"The Parliament of the Republic of Slovenia determined that international treaties […] remained effective. […] This decision was taken in consideration of customary

[86] United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information (French version).
[87] United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information.
[88] United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information.

	international law. […] The Republic of Slovenia therefore in principle acknowledges the continuity of treaty rights and obligations under the international treaties […] but since it is likely that certain treaties may have lapsed by the date of independence of Slovenia or may be outdated, it seems essential that each treaty be subjected to legal examination"[89].
Third group: no general notifications	
U.S.S.R. (1991, separation of States: Russia is deemed as the continuator)	
Successor States: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan[90]. Around 233 multilateral treaties were binding on the predecessor State.	At least 81 successions among the many successor States, including specialized UN agencies or States as depositaries. On the other hand, it seems that Azerbaijan, Moldova, and Uzbekistan succeeded to one or no treaties at all. There is no consistency in the succession process: for the same convention[91], accession was sometimes chosen instead of notification of succession[92].
Sudan (2011, Sudan retains its identity)	
South Sudan separated from Sudan in 2011. 86 multilateral treaties were binding on the predecessor State.	So far there is only one convention to which South Sudan succeeded to[93], it chose accession for around 24 treaties which were eligible for succession[94].

[89] United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information.

[90] The Baltic States (Estonia, Latvia, and Lithuania) are not deemed successor States since they were illegally annexed, they recovered their independence in 1991. J. Crawford, The Creation of States in International Law, 2nd ed., Oxford, Oxford University Press, 2006, 393-395; B. Stern, "La succession d'Etats", 262 RCADI (1996), 244-246.

[91] For example: International Convention for the Suppression of Counterfeiting Currency; Convention providing a Uniform Law for Bills of Exchange and Promissory Notes; Convention on the Physical Protection of Nuclear Material,… where only Belarus chose to notify its succession, the other successor States preferred to accede, sometimes more than ten years after the date of succession.

[92] B. Stern has an interesting take on this point. What matters to the automatic succession rule is the end result (continuity in the predecessor's treaties), not the formal procedure used (accession or notification). B. Stern, "La succession d'Etats", 262 RCADI (1996) 255.

[93] Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, United Nations, *Treaty Series*, vol. 2056, 211.

[94] Two remarks are also in order: 1) seven of the treaties are ILO Conventions, and 2) the *United Nations Convention against Torture*, although relating to human rights, was accessed, rather than subjected to succession. The number of twenty-four is based on a search by participants on the UN website (https://treaties.un.org/, tab "Registration and Publication"). The search listed a total amount of twenty-eight

What emerges from this chart? Of the twenty successor States listed, seven of them issued a general notification to the UN, the others chose to make specific notifications. General notifications go with a conspicuous number of treaties subjected to succession. Also of interest is that the two most important cases, namely Ex-Yugoslavia and U.S.S.R., led to diametrically opposed outcomes. A lot of treaties were subjected to succession in the Yugoslavian case, and correlatively notifications were often used. Four out of five successor States issued notifications in the Yugoslavian case, which marks the starting point of the practice of general notifications outside the decolonisation era decolonisation.

Another point that should not be overlooked: the words used in general notifications. The interest is twofold: first, whether there is a difference between bilateral and multilateral treaties, and, second, the wording indicates what are the considerations underpinning the notification (*choice* to vest the predecessor's treaties or *fulfilment* of an obligation to subject them to succession). The array of notifications range from neutral (Serbia and Montenegro, Croatia, and Montenegro) to supportive (Slovenia, Macedonia, Slovakia, and the Czech Republic) towards automatic succession. The mirror notifications of the Czech Republic and Slovakia take a stance against the automaticity of succession to bilateral treaties since their perspective is that the "valid principles of international law" relate only to multilateral treaties. This position is strange on the count that both States consciously chose to apply the VCST to their own succession[95], so article 34 VCST (that makes no differences between multilateral and bilateral treaties)[96] should also apply.

From the depositary perspective, a clear statement is the trigger to register a successor State as a party. In other words, the treaty concerned by the notification must be distinctively identified[97]. The UN practice shows that it does not matter whether the successor State issued a bundle of specific notifications or a general notification with a list of treaties[98].

The last strand of "practice" revolves around the attitude of other States parties regarding a successor's notification. For instance, when Slovenia succeeded to the 1971 *Convention on psychotropic substances*, the UN as a depositary had to inform other States parties of

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treaties: three Constituent acts of international organizations (regulated by article 4 VCST), as well as the 2015 Paris Climate Agreement, are omitted.

[95] See the declaration following the provision of article 7, §2 of the VCST (United Nations, Treaty Collection Website, "Depositary" Tab, Status of Treaties, Chapter XXIII, cover page of the VCST, http://tinyurl.com/VCST1978).

[96] V. Mikulka, "Article 34", in: G. Distefano, *op. cit. supra*, 1179.

[97] B. Stern, "La succession d'Etats", 262 RCADI (1996), 283-284 (we draw the reader's attention to the fact that we depart from the definitions used by B. Stern concerning "specific" and "general" notifications. For B. Stern, a general notification is a declaration of the intent to succeed to the predecessor treaties without a list of annexed treaties. The Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), uses the same definition as B. Stern, see 90, §305).

[98] Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), 90, §304: "The deposit of an instrument of succession results in having the succeeding State become bound, in its own name, by the treaty to which the succession applies, with exactly the same rights and obligations as if that State had ratified or acceded to, or otherwise accepted, the treaty. Consequently, it has always been the position of the Secretary-General, in his capacity as depositary, to record a succeeding State as a party to a given treaty solely on the basis of a formal document similar to instruments of ratification, accession, etc.[…]."

Slovenia's succession[99]. This communication from the depositary offers an opportunity to the other States parties to express their potential objection to the succession. There is, so far, no outstanding case of such an opposition to succession[100]. However, this "negative practice" of other States parties is not worthless. Given the huge number of treaties subjected to succession from the nineties onward, the lack of reaction by other States parties at least evidences that they consider successor States entitled to succeed to their predecessor's treaties[101].

At the most, the absence of reaction may be interpreted as an acceptance of the principle of automatic succession enshrined in article 34 VCST[102].

The practice of third States sometimes shows a reluctance to let the successor State benefit from its predecessor's *bilateral* treaties. Some States claimed that the clean slate principle was therefore applicable in this context[103].

6. Theory and practice

This section aims to combine the theoretical framework (section 4) with the practice of notifications (section 5). The purpose is to apply the theoretical framework to notifications in order to answer a simple question: what is a notification of succession *worth*? Is it mandatory in order to become party to a treaty or is it merely informative in nature? Does the succession to a treaty happen even in the absence of a notification? We are aware that we might end up raising more issues than providing answers with the following analysis.

If deemed relevant, we will distinguish between *specific* and *general* notifications (see the difference *supra* at the end of the introduction).

We have to keep in mind that the classifications offered by Cansacchi in section 4 are independent from each other, they do not pile up[104]. This explains why the definitions sometimes overlap.

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[99] H. Tichy, P. Bittner, "Article 77", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 1319, §24; Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), 92, §311.

[100] V. Mikulka, "Article 34", in: G. Distefano, *op. cit. supra*, 1183. It is also difficult to document these objections. In all the works read, we found only one case of opposition to a succession, but the rationale behind it was that the treaty underwent a fundamental change of circumstances, the principle of succession itself was not contested (article 34, §2 VCST). It was also a bilateral treaty, less prone to succession, see: J. Klabbers, M. Koskenniemi, O. Ribbelink, A. Zimmermann (ed.), State Practice Regarding State Succession and Issues of Recognition, Brill, 1999, 454 and 468. The few number of oppositions to succession are due to the fact that the successor State reviews the predecessor treaties before submitting the list of treaties to the depositary. The potential objections are thus avoided from the outset: V. Mikulka, "Article 34", in: G. Distefano, *op. cit. supra*, 1183-1184. See also note n° 149.

[101] The successor "enjoys" the right: it is free to prefer adhesion (accession) to succession. Regarding the silence of other States parties, *opinio iuris* may well be evidenced by a "negative practice" (G.P. Buzzini, Le droit international général au travers et au-delà de la Coutume, IHEID, Geneva (2007), 198-201).

[102] B. Stern, "La succession d'Etats", 262 RCADI (1996), 254-255 and 293-295.

[103] B. Stern, "La succession d'Etats", 262 RCADI (1996), 264; G. Hafner, E. Kornfeind, "The Recent Austrian Practice of State Succession: Does the Clean Slate Rule Still Exist?", 1 Austrian Review of International and European Law (1996) 1-49.

Do notifications of succession contain a "declaration of intention", or a "representation of fact"? The first possibility has to be further analysed, depending on whether the State's will must be notified in order to produce an effect (respectively, notifications *subject* or *not-subject* to reception). Specific notifications are clearly subject to reception since they produce effects only when they are received by the depositary and the intent to notify may be confused with the object of the notification. In this perspective, notifications of succession are akin to a formal instrument of accession, or ratification[105].

If general notifications are re-conceptualized as "promises", they are not-subject to reception[106]. A promise is a kind of unilateral act that allows the State to commit itself to do certain things or refrain from them[107]. The general notifications of Serbia and Montenegro, Croatia, and Montenegro match this description. For instance, Montenegro "*decided* to succeed to the treaties" and "*undertakes* faithfully to perform and carry out the stipulations therein contained"[108]. Notification is the instrument used to communicate the States' will to succeed to the list of annexed treaties.

To some extent, general notifications where the successor State acknowledges "valid principles of international law" or takes "customary international law"[109] into consideration may be re-conceptualised as a "declaration of intention". In this context, the successor State declares and recognises that rules relating to succession in respect of treaties *exist*, and that these rules are binding.

Notifications containing "representation of fact" are independent of a declaration of intention. They are focused on informing other States of a situation that already happened. Interestingly, Cansacchi warns against confusion of "representation of fact" with notifications "not-subject to reception", but upheld the distinction[110]. General notifications from Croatia and Slovenia are within this framework since they refer and communicate the decision made at the national level ("The Parliament of the Republic of Slovenia determined […]" and "[T]he Republic of Croatia has decided, based on the Constitutional Decision on Sovereignty and Independence

[104] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 37: "Le notificazioni che si compiono fra i soggetti di diritto internazionale possono venire differenziate in base a differenti criteri".
[105] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 191 (by analogy with accession); Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), 90, §304; ICRC, Commentary on the First Geneva Convention (2016), article 60, see section 4 on "succession".
[106] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 200.
[107] The emblematic ICJ *Nuclear Tests* case offers an example (*Nuclear Tests Case (New Zealand v. France)*, Judgment, ICJ Reports 1974, 472, §44).
[108] Website of the United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information (https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_fr). Italics added.
[109] Website of the United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information (https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_fr). See the following notifications: Slovenia, Czech Republic, Slovakia.
[110] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 214.

of the Republic of Croatia […]")[111]. It is like the State availed itself of the right to succeed, and then communicated its decision at the international level.

We will now focus on the compulsory/discretionary divide. Notifications are compulsory, notably if a right cannot be created without it[112]. General notifications of succession are compulsory in two scenarios: first, if a treaty imposes them, and, second, if a customary norm imposes them. The VCST does not impose notifications for treaties already in force. On the other hand, the practice of the depositary (and especially the UN Secretary General) shows that successor States do not automatically become party to their predecessor treaties in the absence of a notification[113]. This does not yet mean that succession is mandatory, but only that specific or general notifications are a prerequisite for depositaries. Ultimately, this depends on the customary norm's interpretation: is succession an *option*, or an *obligation*, for the successor State? If succession is an obligation, South Sudan's absence of notification would constitute an international wrongful act[114].

Discretionary notifications are limited to the communication of a fact or an act, they are not regulated by a treaty or customary norms. As seen a few paragraphs before, the general notifications of Slovenia and Croatia can fit in this definition given that they mention decisions taken on the internal level[115].

The last "Cansacchian" set to confront with practice is the declaratory/constituent notifications. Constituent notifications finalize a larger process and allow the content of the notification to produce effects. Declaratory notifications inform another State of an act or fact that already exists. Specific notifications are clearly constituents; they are directed toward the depositary alone and allow the State's will to be implemented. It is more difficult to classify general notifications: the part relating to the decision taken internally or to the fact that the State is only observing international law is declaratory in nature. On the other hand, the list of treaties annexed to the general notification, or a phrase like "decide to succeed", have a constituent effect.

As a provisional conclusion, specific notifications tend to contradict the automatic succession principle. General notifications are more complex. Broadly speaking, the words used divide them between a declaration of intention to succeed (as a freely exercised right) and the

[111] Website of the United Nations, Multilateral Treaties Deposited with the Secretary-General, Historical Information (https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_fr). Other examples relating to the breakup of Ex-Yugoslavia are listed in: B. Stern, "La succession d'Etats", 262 RCADI (1996), 246-248.
[112] G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 41: "[Le notificazione sono obbligatorie] in quanto la mancata notifica impedirebbe la nascita di un diritto soggettivo o lo stabilimento di una situazione giuridica favorevole al notificante".
[113] Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), 90, §304.
[114] Article 14, §2 of the Draft Articles on *Responsibility of States for Internationally Wrongful Acts* (Extension in time of the breach of an international obligation). This begs even more questions: when is the obligation infringed? From the date of succession or after a reasonable period of time? Does a notification with retroactive effects cure the unlawful conduct? Who can invoke the wrongfulness (who is "wronged" by the absence of notification)? Only States parties to treaties eligible for succession? And, in an overall thinking – and since the automatic succession would be the rule in this context – why would notifications be mandatory in the first place?
[115] See *supra*, the paragraph devoted to notifications of "representation of fact" in this section.

acknowledgment of an international obligation (leaving little or no latitude). Respectively, these two attitudes can be re-conceptualised as *promises* and *notifications stricto sensu* (entirely oriented towards a mere communication of a situation).

Let us now turn to more recent classifications taught in handbooks and treatises.

Interpreted as a promise, a general notification is an unilateral act that creates legal commitments[116]. Notification-promise negates the customary nature of an automatic succession. Promises are self-sustaining (autonomous) acts, they are valid once they exist and do not need anything else to produce effects. The *addressee* of the promise is the UN Secretary-General, other States parties to treaties listed in the annex are the *beneficiaries*. What is the difference between a specific and a general notification? It seems that general notifications formulated as promises to succeed to a list of treaties do not set them apart from specific notifications issued for each treaty. The big difference is that with a general notification, only one notification is issued, while in the other case there are as many notifications as treaties.

Do notifications of succession need to be accepted to produce effects?[117] It chiefly regards the notification's addressees and beneficiaries. The addressee is the depositary, other States parties are the beneficiaries. Do other States "accept" the notification of succession? Upon reception of the notification, the depositary informs other States parties[118]. Public international law is non-formalistic[119]: acceptance need not to be in writing, or even express. Mere silence works as an acceptance in this context[120]. Silence from other States is a constant in the field of successions. There is no outstanding instance of opposition or objection to succession known to this day. At first sight, we may conclude that States always *accept* the notification. Yet, at a closer look, this silence may evidence the *opinio iuris*: States do not consider themselves entitled to oppose a notification of succession. Be that as it may, it is important to state that the acceptance here discussed would take place only in an *incidental* way. The acceptance here discussed occurs between the depositary and the other States parties (*incidental* acceptance). The acceptance does not take place between the successor State and the other States parties (*direct* acceptance).

Notifications require acceptance mainly when they create obligations binding third States[121] (in our case, the other States parties). Do notifications create such obligations? It is possible to stretch the interpretation so that notifications create obligations: once the succession to a treaty is accepted, other States parties have to apply the provisions of the treaty in their

[116] P.-M. Dupuy, Droit International Public, 9th ed., Paris, Dalloz (2008), 367-368, §346.
[117] J. Crawford, Brownlie's Principles of Public International Law, 8th ed., Oxford, Oxford University Press (2012), 417.
[118] Article 77, §1, lit. e), and lit. f) VCLT; H. Tichy, P. Bittner, "Article 77", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 1319, §24.
[119] F. Hoffmeister, "Article 11", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 153, §2.
[120] According to A. Cavaglieri ("Il decorso del tempo ed i suoi effetti sui rapporti giuridici internazionali", 5 Rivista di diritto internazionale (1926), 190-200), there is a strong presumption that silence amounts to consent when notifications are *mandatory* (as is the case in article 77 VCLT). See also: G. Cansacchi, La notificazione internazionale, Istituto per gli studi di politica internazionale (1943), 286-287, §53.
[121] J. Combacau, S. Sur, Droit International Public, 11th ed., Paris, L.G.D.J. (2014), 99.

relations with the successor State. By seeing notifications as burdening to other States, we impliedly evaluate automatic successions as non-customary. Otherwise, notifications would not need acceptance since they would only *echo* public international law.

The last divide that requires our attention is the "autonomous"/"non-autonomous" one[122]. We established that notifications of succession do not fall within the ambit of the VCST. This does not yet mean that they satisfy the "autonomy" criterion. Two tracks can be followed: 1) there is a customary norm pertaining to the field of State succession that governs (general) notifications[123]. 2) There is a customary norm pertaining to the law of treaties that govern notifications.

1) This customary rule originates from the cases of Ex-Yugoslavia and Czechoslovakia. From that point on, only Montenegro issued a general notification of succession, and before this moment, there is no record of such a practice for successor States outside the decolonisation process. Parallel to the breakup of Yugoslavia, the succession process of the U.S.S.R. did not prompt general notifications. South Sudan, on the other hand, would be at variance with this customary norm. What would the content of the norm be? Would it be mandatory in nature? Probably not, it would be dispositive in nature for successor States (since in the end the depositary only needs a *clear* notification, irrespective of general or specific). The obligation would primarily bear on the other States parties and bar them from contesting the succession, excepted if a safeguarding clause such as article 34, §2 VCST may apply. From a content perspective, general notifications articulate themselves around two axes: a statement enclosing the State's opinion on its succession to treaties (decision or obligation), and a list of treaties. Are seven cases of succession[124] enough to create and consolidate a customary norm? We have to keep in mind that State succession is not happening on a yearly basis. Montenegro would be a "turning point" and a confirmation of the rule, and South Sudan would constitute the first discrepancy. Up to now, only the notifications of four States[125] are in line with an obligation compelling successor States to issue a general notification. Others general notifications[126] are a *promise*, or communicate a *decision* to succeed to treaties.
2) Article 73 VCLT expressly safeguards State succession in respect of treaties[127]. This means that the 1969 VCLT is subsidiary to the 1978 VCST. This is theoretically quite nice, but of little use with regard to notifications since the VCST does not provide any rules for notifications for treaties already in force at the time of succession[128]. We are

[122] It overlaps with the "compulsory"/"discretionary" distinction drawn by G. Cansacchi. See, *supra* the relevant paragraph in *The theoretical framework* section.
[123] E. Kassoti, The Juridical Nature of Unilateral Juridical Acts, Leiden, Brill (2015), 51.
[124] Ex-Yugoslavia (Croatia, Serbia and Montenegro, Macedonia, and Slovenia), Czechoslovakia (Czech Republic and Slovakia), and Montenegro.
[125] Slovenia, Macedonia, Czech Republic, and Slovakia.
[126] Serbia and Montenegro, Croatia, and Montenegro.
[127] Article 73 VCLT: "The provisions of the present Convention shall not prejudge any question that may arise in regard to a treaty from a succession of States or from the international responsibility of a State or from the outbreak of hostilities between States."
[128] Article 2, §1, lit. g) VCST provides that: " 'notification of succession' means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be

thus pulled back to look into the VCLT, which also does not provide any rule. However, the VCLT does not cover all of treaty law; for instance it only applies to agreements recorded in writing[129]. Specific notifications may be akin to accession (article 15 VCLT) or ratification (article 14 VCLT). They are seen as a "formal instrument" by the UN Secretary-General[130] and are another means for States to commit themselves to a treaty. What are the characteristics of "succession" as a formal instrument? 1) It is only open to successor States for treaties already in force at the time of succession. 2) It is a *direct* means to become part to a treaty (it does not need another commitment, like signature needs ratification). 3) The successor State is retroactively bound since the date of succession[131]. Overall, "succession" could fit in the VCLT, it has emerged as a distinct way to become party to a treaty. The UN as a depositary distinguishes between ratification, accession and succession[132]. These distinctions did not come about by accident and make sense on the legal level. After the initial signature, a State is under no obligation to ratify (it may even announces its will *not* to ratify)[133]. Accession allows non signatory States to become part to a treaty and have no retroactive effect. Succession occurs on the date of independence. Ratification, accession, and succession are clearly distinct from each other.

7. Notifications of succession and the law of treaty

In accordance with the end of the previous section, "succession" would be governed by a customary norm akin to those governing accession or ratification (the "consent to be bound" category of instruments). It may be fruitful to briefly investigate what the theoretical underpinnings of ratification and accession are within the VCLT. Articles 11 (means of expression of consent to be bound), 14 (ratification), and 15 (accession) may be of interest in this regard.

Article 11 lists the means of expression to be bound. Along ratification and accession, it provides that "any other means if so agreed" can express such consent. At first sight, the "any other means" formula is apt to encompass succession. This perspective is very appealing, but also very likely mistaken. According to Hoffmeister, the scope of "any other means" is:

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considered as bound by the treaty". The definition applies to "notification of succession" within the ambit of the VCST, which is not our case here. For a commentary, see L. Gradoni, "Article 2", in: G. Distefano et al. (ed.), La Convention de Vienne de 1978 sur la succession d'Etats en matière de traités, Bruxelles, Bruylant (2016), 120-122.

[129] Article 2, §1, lit. a) VCLT. K. Schmalenbach, "Article 2", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 34, §18-20.

[130] Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), 90, §304; ICRC, Commentary on the First Geneva Convention (2016), article 60, see section 4 on "succession".

[131] Even if the notification takes place ten or more years after the date of succession, see for instance the International Convention for the Suppression of Counterfeiting Currency cover page on the UN website. Belarus notified its succession in 2001, with effect in 1991, and Kazakhstan choose accession in 2010.

[132] See for instance the United Nations Convention against Transnational Organized Crime cover page on the UN website.

[133] O. Dörr, "Article 18", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 230, §28-29. See the end notes n° 9, 10 and 12 of Russia, Sudan, and the United States of America pertaining to the Rome Statute of the International Criminal Court (http://tinyurl.com/romestatute).

> "[To allow] for modern ways of expressing consent, which do not fall within the traditional categories of signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession."[134]

Article 11 VCLT revolves around the *initial* consent to be bound, which consent is geared toward the entry into force of a treaty. The "any other means" formula offers flexibility to choose *how* the treaty will become binding. We can thus draw a distinction between creating a means to express consent *prior* to the inception of the treaty (article 11 VCLT), and *after*, as is a notification of succession. The "other means" examples listed in the commentary of article 11 do not cover expression of consent to be bound *after* the inception of the treaty[135].

Ratification (article 14 VCLT) is a *unilateral* act[136]. This corroborates the potential reconceptualisation of notifications as promises[137].

One of the major problems with accession (article 15 VCLT) is whether a treaty not providing accession clauses can be subsequently modified[138]. Since succession is hardly ever foreseen as a means to participate in a treaty, accession and succession can be compared in this respect. Article 15, lit. c) provides that: "The consent of a State to be bound by a treaty is expressed by accession when: […] *all the parties have subsequently agreed that such consent may be expressed by that State by means of accession* [italics added]". Two forms of subsequent agreements under the heading of article 15 qualify for a comparison with succession: 1) the subsequent allowance of accession can take place through an informal amendment (tacit agreement of the parties)[139], 2) the depositary can also notify the wish of a State to accede to the treaty. If the parties do not protest, the State can accede[140]. The device of succession is primarily used for universal treaties which contain a provision on accession. "Succession" can either be viewed as a specific type of "accession" *lato sensu*, or as falling outside the scope of the usual modes of expressing consent to be bound. We will follow the latter option in the next lines. Applying by analogy the two forms of subsequent agreements of article 15, lit. c), we can see "succession" as an informal amendment to the treaty. This tacit agreement of the parties allows the successor State to participate in the treaty. This can be prompted by the behaviour of the parties *inter se*, or by their silence following the depositary notification (see *supra* the two options just listed in regard to article 15, lit. c)).

What did the law of treaty teach us? "Succession" is a unilateral act. It is analogous – but distinct from – formal instruments (accession or ratification). The salient feature of succession

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[134] F. Hoffmeister, "Article 11", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 153-154, §3.
[135] F. Hoffmeister, "Article 11", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 157-161.
[136] F. Hoffmeister, "Article 14", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 185, §9.
[137] See *supra*, at the beginning of the "Theory and Practice" section.
[138] F. Hoffmeister, "Article 15", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 199, §6: "[A]rt 15, as adopted, does not contain a presumption that treaties with no accession clauses are open to the participation of all States."
[139] F. Hoffmeister, "Article 15", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 206, §26.
[140] F. Hoffmeister, "Article 15", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 206, §27.

compared to other means of expressing the consent to be bound is its temporal dimension. Succession only applies to treaties already in force at the date of independence, it does not qualify as a means to bring a treaty into force. Succession has a retroactive effect. Unlike accession, it is not governed by the VCLT, and hardly ever provided for in treaties (the only known example is found in the 1975 Cocoa Agreement[141]).

8. Notifications according to various perspectives

Up to now we focused on a theoretical approach (applying general classifications to notifications). We will now shortly contemplate notifications from the perspective of various fields and actors of international law. After that, we will contemplate notifications "from the inside", focusing on their intrinsic features.

A technical and ambiguous aspect of notifications in relation to customary law needs further explanations. In Pellet and Daillier's handbook, autonomous acts are the ones whose validity is not based on a customary norm (here, the purpose of such a customary norm would be to enumerate the requirements of a valid notification and its effect)[142]. Notifications are on two different levels in respect of customary law (this follows from the form/substance dichotomy). The *form* of notification is not regulated by customary law (yet?), but part of the *content* may well be based upon customary law. It is the case when a notification refers to "valid principles of international law" and thus acknowledges the automatic succession rule. Notifications of succession, although not governed by customary law, may indicate the *opinio iuris* of a State regarding automatic succession, and thus attest (or create) a customary norm.

The perspective of treaty law has been dealt with before. Essentially, notifications are to be seen as a formal instrument, akin to (but distinct from) accession.

From the actors' perspective, we can individualise the successor State, the depositary (irrespective of whether a State or an International organization discharges this duty), and other States parties[143].

A general notification is the most readily available means for a successor State to make its intention[144] publicly known. It has the advantage of allowing a single declaration listing all the treaties subject to succession. The addressee is the depositary, who has the obligation to then communicate the notification to other States parties. General notifications allow the successor State to condense various steps of the succession process taken at the internal level. At once, the successor State acts on the international level congruent to what has been decided

[141] Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties, New York (1999), 88, §294; Article 71, §4 of the 1975 Cocoa Agreement: "When a territory to which this Agreement has been extended under paragraph 1 subsequently attains independence, the Government of that territory may, within 90 days after the attainment of independence, declare by notification to the Secretary-General of the United Nations that it has assumed the rights and obligations of a Contracting Party to this Agreement. It shall, as from the date of such notification, be a Contracting Party to this Agreement […]" (United Nations, *Treaty Series*, vol. 1023, 286). The main concern of Article 71 is the Agreement's territorial application. St. Lucia and St. Vincent and the Grenadines succeeded to the Cocoa Agreement.

[142] N. Quoc Dinh, et al., Droit International Public, 5th ed., Paris, L.G.D.J. (1994), 354-355, §242.

[143] If the predecessor State is of any relevance in this constellation, it is as an "other States parties".

[144] His intention to succeed following its *decision*, or following his *duty to abide to international law*.

internally (decision of the legislative branch regarding treaties, the fate of reservations made by the predecessor State, the list of treaties subjected to succession, the date of succession, etc.). From this standpoint, a notification is an addition of peculiar things, an agglomerate of opinions and decisions taken by the successor State. It shows no unity, but is made at once. It is both technical (required step for the depositary) and political/juridical (a decision, or an assessment of what international law commands to do).

A notification (specific or general) is a required step for the depositary: absent such a declaration, it will not let the successor State participate to the treaties potentially subjected to succession. To the depositary, it absolutely does not matter whether the successor State is pro or against automatic succession, or if the successor State issues a general or a specific notification. Up to now, it is *only* upon notification that depositaries act[145]. Notifications are "constituent" for depositaries. We can speculate on the reaction of the successor State and other States parties if the depositary, without any notification, decided to list the successor State as a party. Probably it would not prompt reactions from the other States parties (in the case of a multilateral treaty). On the other hand, this action could raise protests from the successor State and put it against automatic succession[146].

Do notifications matter to other States parties? At first glance the answer is no, since they hardly ever protested such notifications. They are (again) akin to an accession to them, and they mainly fulfil a goal of *information*. It has been noted that other States parties are only an incidental addressee of notifications[147]. Successor States, apart in the case of succession to bilateral or plurilateral treaties, do not directly deal with other States parties. Their hypothetical protests will be directed towards the depositary[148].

9. A perspective "from the inside"

Assuming that it is possible to temporarily set aside the theoretical surrounding of notifications, what is the core characteristic and the *raison d'être* of general notifications of succession? and what can be learned thereof?

Notifications are a formalization of the process of succession. The common elements are the restatement of the decision taken at the internal level, the kind and list of treaties concerned (already in force, ratified but not yet in force, only signed), the fate of reservations, and the

[145] This is connected to the depositary's duty of article 77, §1, lit. d) VCLT: "The functions of a depositary […] comprise in particular: […] examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form" (italics added). Until now, the "due and proper form" of succession to a treaty is a notification that clearly identifies the treaty subjected to succession.

[146] Depositaries are not inclined to act on their own on such delicate topics. In the end, it would even damage the likeliness of a large participation into multilateral treaties since the successor State would be opposed to the succession (formal protest, or withdrawal from the treaty). Although the automatic listing of successor States as participant by the depositary would constitute a clear evidence of the automatic succession rule, it could also prompt a strong opposition to the rule.

[147] It is the depositary's duty to notify the other States parties (article 77, §1, lit. e) VCLT).

[148] Since there is no direct communication between the successor State and the other States parties, the depositary serves as a middleman. Hence, protests will be directed against the depositary, not towards the successor State. The adverse other State party will for instance put forward the fact that the successor is not "a State" or that the succession mechanism cannot apply.

date of succession. It is also a "positive" act: States only list the treaties they want to subject to succession. The other treaties are left aside because they fall within the scope of an exception to succession[149], are bilateral treaties (which generally prompt direct negotiations with the partner State), or are treaties which the State does not want to be part of. It may even be that the successor State records are incomplete and that a "lost" or "forgotten" treaty avoids succession[150].

The references to public international law are not very conclusive. They are sometimes totally lacking (Croatia), or very loose ("undertakes faithfully to perform and carry out [international treaties]"; Serbia and Montenegro, Montenegro). When they are more specific, they refer to "valid", or "relevant principles of international law" (Slovakia, Czech Republic, Macedonia). The most specific reference is in the Slovenian declaration, it contains the following extracts: "in consideration of customary international law" and "[Slovenia] in principle acknowledges the continuity of treaty rights and obligations". This clear stance in favour of international law and automatic succession is however balanced by the fact that Slovenia did not submit all predecessor treaties to succession, but chose to explicitly subject them to legal examination prior to issuing a notification of succession[151] (it is no "blind" succession). In the end, it does not matter to the depositary since it acts only if the treaty subjected to succession is distinctively identified. The reference (or absence thereof) to international law is not an essential requirement of notifications of succession. References of this nature are worth for assessing customary international law, but are of no use to the depositary.

Be that as it may, since the general notifications contain a list of treaties, the reference to customary law only applies to these treaties. To exaggerate, one State could well refer to customary law and subject fifty treaties to succession and another successor State from the same predecessor subject two hundred treaties to succession without any reference to public

[149] Along with the two safeguards clauses of article 34, §2 VCST, we have to list "desuetude" as a ground of non-succession. See the Macedonian and Slovenian declarations: "[s]ince it is likely that certain treaties may have lapsed by the date of independence of Slovenia or may be outdated, it seems essential that each treaty be subjected to legal examination" (https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_fr). Desuetude *stricto sensu* is the lapse of a treaty by the mere passage of time, this hypothesis is controverted and quite exceptional (see: A. Vamvoukos, Termination of Treaties in International Law, Oxford, Clarendon Press (1985), 300-302). Here, the words "lapsed" and "outdated" certainly encompass the *lex posterior derogat anteriori* principle enshrined in article 30 VCLT (application of successive treaties relating to the same subject matter). See also note n° 100.

[150] This is also why the UN Secretary-General is disposed to help the successor State by gathering a list of treaties binding on the predecessor State.

[151] "[s]ince it is likely that certain treaties may have lapsed by the date of independence of Slovenia or may be outdated, *it seems essential that each treaty be subjected to legal examination*.
The Government of the Republic of Slovenia has examined 55 multilateral treaties for which [the Secretary-General of the United Nations] …has assumed the depositary functions. … [T]he Republic of Slovenia considers to be bound by these treaties by virtue of succession to the SFR Yugoslavia in respect of the territory of the Republic of Slovenia…
Other treaties, for which the Secretary-General of the United Nations is the depositary and which had been ratified by the SFRY, *have not yet been examined by the competent authorities of the Republic of Slovenia. [The Government of the Republic of Slovenia will inform the Secretary-General] …on [its] …position concerning these treaties in due course*." Italics added (https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_en). Macedonia took a similar stance: "[c]omme il est vraisemblable que certains traités sont devenus caducs ou obsolètes, chacun fera l'objet d'un examen juridique puis d'une notification." (https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_fr). Slovakia and the Czech Republic also did something similar (unfortunately, the French and English versions of the notification differ).

international law whatsoever. For example, among the successor States of Ex-Yugoslavia, the numbers of treaties subjected to succession vary from 155 (Macedonia) to 202 (Serbia and Montenegro). Overall, in the Yugoslavian case there are no clear-cut differences between States referring to international law and those who do not[152], there are even no differences between the one State that issued specific notifications compared to those who issued general notifications[153]. However, in the U.S.S.R. and Sudan cases, the numbers of treaties subjected to succession are substantially lower than in cases where a general notification was issued[154]. In this framework, we can draw the conclusion that once a predecessor State has decided to succeed to treaties, it does not really matter whether it bases this decision on international law or not.

In the end, general notifications do not appear as a very formal or codified instrument. There is a great variety of length and content without any bearing on the succession to treaties. The list of treaties annexed to the general notification is central to the succession process. It determines the scope of the succession and avoids to the successor State the trouble to issue a notification for each treaty. It thus acts like an agglomerate of all specific notifications.

The second important factor after the list of treaties is the date of succession. The peculiarity of succession compared to accession or ratification is that it has a retroactive effect, hence the importance of specifying the date of succession.

The third element is the (sometimes specified) fate of the reservations, objections, and declarations made by the predecessor State. The 2011 work of the International Law Commission on reservations to treaties provides useful guidance if the successor State does not specify its intentions[155]. In a nutshell, the rule provides that the successor State is bound by its predecessor's reservations, it is only allowed to narrow the scope of application of the reservations[156]. Nevertheless, the depositaries' practice may not always follow this rule.

In this respect, we will briefly turn to the practice of Switzerland. Switzerland acts as a depositary for 79 international Conventions and had to deal with successor States more than once. The initial practice of Switzerland was to presume that the successor State succeeded without the reservations[157]. It then changed: "[Switzerland's practice] consiste, chaque fois que cela s'avère nécessaire, à inviter l'auteur de la déclaration de succession à préciser s'il

[152] Croatia did not refer to international law and succeeded to 184 treaties, Slovenia did refer to it and succeeded to 182 treaties.
[153] Bosnia and Herzegovina subjected 180 treaties to succession through specific notifications only.
[154] See the chart and numbers *supra* (section: "The Practice"). On the other hand, Montenegro, who did subject almost all of its predecessor's multilateral treaties to succession (around 340 treaties), did not refer to public international law at all.
[155] See Points 5 to 5.5 of the said work: ILC, Guide to Practice on Reservations to Treaties, Yearbook of the International Law Commission (2011), vol. II(2), 25-30.
[156] Point 5.1.2, §2: "A successor State which is a party to a treaty as the result of a uniting or separation of States may neither formulate a new reservation nor widen the scope of a reservation that is maintained." ILC, Guide to Practice on Reservations to Treaties, Yearbook of the International Law Commission (2011), vol. II(2), 26.
[157] "Pratique de la Suisse en tant qu'Etat dépositaire. Réserves aux traités dans le contexte de la succession d'Etats", 2007.17 Jurisprudence des Autorités Administratives de la Confédération, 330 (available online at: https://www.admin.ch/gov/fr/accueil/droit-federal/jurisprudence-autorites-administratives-confederation/2007.html).

reprend ou non à son compte les réserves et déclarations formulées par son prédécesseur"[158]. By only drawing the predecessor State's attention to the fate of reservations, Switzerland acts in accordance with its depositary's obligation of impartiality[159]. The most recent declaration (Montenegro, 2006) is quite short and is limited to the three elements aforementioned (list of treaties, date, and fate of reservations). Prior to the general notification, it is possible that as a depositary the UN Secretary General asks the successor State about (or draws his attention to) the fate of reservations[160].

Aside from the abovementioned three essential elements, States sometimes encompass treaties not yet in force, or treaties signed, but subject to ratification in their general notification[161] (articles 36 and 37[162] VCST).

In the UN framework, general notifications have another effect. Since they are communicated to all UN members, the international community at large is aware of the succession process. In contrast, specific notifications are only communicated to other States parties. General notifications are thus a good way for successor States to elaborate on their succession process (substance of the declaration of independence, decision of the parliament). Here, the notifications' informative purpose is used by successor States.

Overall, general notifications assume a role of centralising the succession process. The required key elements are not numerous, but they help the depositary to receive them all at once. The key elements are constituent in nature: treaties are not subjected to succession by the depositary if it does not receive the notification. Aside from these elements, States are free

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[158] "Pratique de la Suisse en tant qu'Etat dépositaire. Réserves aux traités dans le contexte de la succession d'Etats", 2007.17 Jurisprudence des Autorités Administratives de la Confédération, 330. It is further stated that if the successor State wants to make new reservations, Switzerland would suggest to access, rather than to succeed, to the treaty ("Pour la Suisse, il n'appartient pas au dépositaire de trancher la question de savoir si un Etat successeur peut être admis à formuler de nouvelles réserves au moment de la notification de sa déclaration de succession. Si la Suisse, dans l'exercice de son rôle de dépositaire, venait à être confrontée à une telle question, elle se mettrait en rapport avec l'Etat successeur pour le rendre attentif aux difficultés que ses nouvelles réserves seraient susceptibles de soulever et lui suggérerait d'envisager la possibilité d'emprunter la voie de l'adhésion pour devenir partie à un traité, auquel cas sa déclaration de succession pourrait être retirée ou simplement considérée comme nulle et non avenue." still on page 330). This opinion of the Swiss Federal department of foreign affairs dates back to 2007, prior to the ILC *Guide on reservations* (2011).

[159] This obligation is to be linked with articles 76, §2 and 77 VCLT: "Art 77 underlines the administrative nature of the depositary functions and clearly limits the discretionary powers of the depositary. Particularly in the context of its duty to examine signatures, instruments, notifications and communications, the depositary can only take preliminary decisions and has to leave the final decision to the States concerned." (H. Tichy, P. Bittner, "Article 77", in: O. Dörr, K. Schmalenbach (ed.), Vienna Convention on the Law of Treaties, Berlin, Springer (2012), 1310, §1). Absent a declaration of the successor, and depending on the stage of development of customary law, the depositary cannot take for granted that the predecessor reservations are binding on the successor State. Moreover, hindering the successor State to make new reservations may prove counterproductive if accession with the same reservations is possible.

[160] In a 2006 statement, Serbia, as the continuator State of Serbia and Montenegro (article 35 VCST), confirmed that the reservations were still binding. *Per se*, such a statement is absolutely useless since there was no doubt that Serbia was the successor State. So, it is probable that this statement has been prompted by a demand of the UN Secretary-General (see the statement, available on the UN website under the heading "Serbia": https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_en).

[161] The Czech Republic and Slovakia did so, see: https://treaties.un.org/Pages/HistoricalInfo.aspx?clang=_en.

[162] The VCST does not provide for a notification in the case of article 37, but in practice this is what happens. Article 38 (notifications) only relates to article 36 VCST.

to add details on their succession process or on their insight on customary law in the field of State succession.

10. Conclusion

Let us briefly summarize the key elements in this article. Notifications of succession in respect of treaties already in force are outside the scope of part four of the VCST. In spite of that, notifications of succession are widely used by successor States. Notifications are one of the five traditional unilateral juridical acts. The five cases presented in the "practice" section show that seven out of twenty successor States chose to address a general notification of succession to the UN as depositary. Notifications overwhelmingly encompassed multilateral treaties. The practice also shows the different wordings used by successor States when they referred to international law. The confrontation of theory with practice set out in section 6 reveals the difficulty to put notifications under a single heading: depending on the customary nature (or not) of notifications, opposed classifications could be relevant. In the Vienna Convention on the Law of Treaties, the provisions relating to "ratification", and especially to "accession", offer interesting insights on "succession". The last two sections investigating various points of view evidenced that notifications address several topics at the same time, they are in no way limited to a single purpose. On the contrary: one of the key aspects of notifications is their multidimensional nature.

Glancing back at these elements, we are aware that the present analysis of notifications looks more like a maze than an example of clarity[163]. Nevertheless, as a few elements stand out, it is possible to sketch some salient features of notifications.

First and foremost, we state that "notification of succession" is a category in itself. It has its owns conditions, features, effects, authors, addresses, and beneficiaries. When a State succeeds to a treaty, irrespective of the use of a specific or general notification, the depositary accepts the instrument. The effect of a notification of succession is reflected in the creation of a formal instrument, namely "succession". Succession is akin to, but different from, ratification and accession. Succession is defined as the means used by separating successor States to participate in their predecessor's treaties that were already in force at the time of succession of States. "Succession" has developed outside the framework of both the VCST and the VCLT, "succession" was created by the practice of the early nineties.

Second, notifications of succession resist a straightforward analysis. For each actor, they have their own meaning. They are used as a channel by the successor State, who can express its position on public international law (acceptance and limits of the automatic succession principle). The depositary is bound by the content of notifications, it cannot subject to succession treaties not included in a notification. To the other States parties general notifications are like a public declaration, they announce which State subjects which treaties to succession.

[163] It accurately reflects the author's uncertainties.

By gathering multiple viewpoints together, as we did (theory, practice, treaty law, customary law, perspective from the depositary, the successor State, other States parties) we can affirm that notifications are not one-dimensional, but multidimensional. This process also helped highlight the most characteristic features of succession. General notifications gather heterogeneous, unrelated elements. Accordingly, they can be read on different levels, and alternative readings are unavoidable.