

Lesson 5

MEMBERSHIP

International Institutional Law
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APPLICABLE RULES

All issues concerning membership are usually regulated in the constituent treaty

- Admission
- Termination of membership
- Suspension of membership or of rights deriving from membership
- Rights and duties of members

FULL MEMBERS

- States
- Territories which are not independent States
- International Organizations

FULL MEMBERS

- Founders of the Organization
 - Do not need to apply for admission
 - Participate in PrepComs

- Other Members

Admission of new members

Article 4 UN Charter

1. Membership in the United Nations is open to all other **peace-loving states** which **accept the obligations contained in the present Charter** and, in the judgment of the Organization, are able and willing to carry out these obligations.
2. The admission of any such state to membership in the United Nations will be effected by **a decision of the General Assembly** upon the recommendation of the Security Council.

ICJ, Advisory Opinion of 28.5.1948

“Is a member of the United Nations which is called upon, by virtue of Art. 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by para. 1 of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?”

ANSWER: NO

ICJ, Advisory Opinion of 3.3.1950

“Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend?”

ANSWER: NO

State succession and membership

Occurrences of state succession:

- 1) Decolonization
- 2) Unification of States (merger)
- 3) Absorption
- 4) Separation (secession)
- 5) Dismemberment

State succession and membership

ISSUE: Are rights, obligations and assets of the predecessor State transferred to the successor State?

- 1) Participation in treaties (1978 Vienna Convention on Succession of States in respect of Treaties)
- 2) Assets (1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts)
- 3) Membership in international organizations?

Do successors need to undergo the process of admission?

State succession and membership

1) Soviet Union

Old USSR members agreed that Russia would be the continuation of USSR. Russia continued to be a member of international organizations of which USSR was a member, all other republics applied for admission as new states.

Russia took up the USSR's vacant seat in the Security Council

State succession and membership

2) Czechoslovakia

Both Czech Republic and Slovakia
applied again for membership

State succession and membership

3) Social Federal Republic of Yugoslavia

- **Initial standing of Serbia:** Slovenia, Macedonia, Croatia and Bosnia-Herzegovina had all left the SFRY. Serbia (at that time still together with Montenegro) was the only part of the SFRY left.
- **UN General Assembly (1992):** Resolution 47/1, SFRY can no longer participate in the Assembly's work
- **UN Office of Legal Affairs (1992):** Yugoslav's missions at the UN can continue to function, Yugoslavia can still participate in the work of the organs other than the Assembly, the Secretariat will continue to fly the flag of the old Yugoslavia.
- **Serbia applied for membership (2002)**

State succession and membership

3) Social Federal Republic of Yugoslavia

- In the early 1990s, Bosnia started proceedings against Serbia
- In 1999, Serbia started proceedings against NATO's members who intervened in the war of Kosovo

In order for the ICJ to have jurisdiction, both the claimant and the respondent have to be members of the UN or parties to the Statute of the ICJ

State succession and membership

3) Social Federal Republic of Yugoslavia

–In 1996, in the framework of the case **Bosnia v. Serbia**, the Court found it had jurisdiction, basing itself on the assumption that Serbia continued SFRY's membership (Preliminary objections, judgment 1996)

–In 1999, the Court dismissed the applications brought by **Serbia against NATO's States**, arguing that Serbia was not a member of the UN in 1999 (preliminary objections, judgment 1999)

–Serbia tried to apply this finding to the case brought by Bosnia, but when deciding on the merits of the case **Bosnia v. Serbia**, the Court could only insist that its 1996 judgment was res judicata (merits, judgment 2007).

Representation

Which government is allowed to represent a State within an international organization?

Controversial cases:

- China (mainland China or Taiwan?) – in 1971, the credentials of the representative of Taiwan were dismissed by a majority decision of the Security Council
- South Africa – in the 1970s and 1980s credentials of SA were not accepted by the GA
- Lybia – UN seat taken by the Transitional National Council in 2011, and then by the Tobruk government

Other forms of participation in international organizations

1. Associate membership

Special form of membership with limited rights, usually reserved for colonies, or national liberation movements, or States that cannot become full members

(e.g. Canada and US, associate members of the European Payment Union)

Other forms of participation in international organizations

2. Partial membership

States are full members of certain organs, but are not full members of the organization as such

e.g. in 1954-1956, several European State which had not yet been admitted to the UN became members of the Economic Commission for Europe (regional commission of the UN)

Other forms of participation in international organizations

3. Affiliation

e.g. World Tourism Organization: affiliation is open to IOs, NGOs and other associations whose activities are related to tourism.

Affiliates are collectively represented in organs of the organization

Other forms of participation in international organizations

4. Observer status

Usually granted to entities that cannot become full members because they are not States.

E.g. within the UN

- Holy See
- PLO since 1970s
- International organizations (e.g. African Union, EU etc)

Within the UN, also certain non-member States which are members of organizations of the UN family (e.g. Switzerland before accession, Palestine today)

Termination of membership

1. Expulsion

e.g. Art. 6 UN Charter “A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly [2/3 majority] upon the recommendation of the Security Council [veto power]”

Termination of membership

2. Suspension (does not terminate membership)

e.g. Art. 5 UN Charter “A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.”

Termination of membership

e.g. Art. 19 UN Charter “A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.”

Termination of membership

e.g. USA loss of vote at UNESCO, as a result of legislative restrictions on payment of US dues to UNESCO that were triggered after UNESCO's members voted to grant the Palestinians membership as a state in 2011.

Termination of membership

3. Withdrawal

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

3) Withdrawal

General rule (art. 56 VCLT)

If the treaty contains no withdrawal provision, the treaty is not subject to withdrawal unless:

- (a) It is established that the parties intended to admit the possibility of denunciation or withdrawal; or
- (b) A right of denunciation or withdrawal may be implied by the nature of the treaty

Constituent treaties and VCLT

Peculiarities of treaties giving birth to an IO:

3) Withdrawal

Special rules under constituent treaties (e.g. art. 50 TEU)

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an **agreement with that State**, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be **concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.**

Termination of membership

Withdrawal from UN?

Curious case of Indonesia 1965-1966

Termination of membership

4. State ceases to exist

Not lightly to be presumed (e.g. Somalia)

5. IO ceases to exist