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Dissolution And Succession Of International Organisations: A Critical Analysis

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ABSTRACT
There are perhaps very few discourse analyses that interrogate the tenor of the autonomous existence of International Organisations like the question whether an international organisation can simply be dissolved or replaced by another one once its services are either viewed as being surplus to requirements or are outrightly no longer considered necessary. International organisations are complex entities. Little wonder then why their dissolution and succession and ancillary incidents and/or occurrences traceable thereto are not as easily discernible as they seem. This article examines 'Dissolution and Succession of International Organisations: A Critical Analysis.' This article reveals and alludes to the fact that there is a confluence and/or nexus between the notions of dissolution and succession because recorded instances are replete where the rumour of the death of an international organisation was nothing save a hyperbolic exaggeration owing to the soul of the allegedly deceased organisation popping up somewhere else. This article recommends decision making in the sphere of annulment of acts to allow successor organisations to superintend over especially as the question whether everything that forms part of the legal order of an international organisation becomes null and void in the event of dissolution.

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I. INTRODUCTION

International organisations whether directly or indirectly, subtly or brazenly, overtly or covertly are a part of our lives and existence and they continue to make headlines almost always.[3]Global problems require a coordinated and effective response and as such, it is international organisations which can facilitate such response.[4]The tenor of this research is 'Dissolution and Succession of International Organisations: A Critical Analysis.' This research shall at this juncture, attempt to interrogate what an international organisation is. However, it would not be unctuous to assert that it is notoriously difficult to adduce a clear-cut, one-size-fits-it all, generally acceptable and all-encompassing definition of the term 'international organisation' This definitional dilemma is exacerbated by the truism which is namely, that international law itself, in all its glamour and glitz, has quite unfortunately and regrettably been unable to provide a straight jacketed answer to this poser. However, the term international organisation is etymologically traceable to the treaties of the late 19th Century. Later on, the Statute of the Permanent Court of International Justice[5] used this notion to describe international entities such as the League of Nations or the International Labour Organisation.[6]

This research, however submits that explaining the origins of the term international organisation even though it may provide some useful guidance may not necessarily help any further *vis-à-vis* an attempt to clarify, let alone define the said concept. An attempt was made in 2003 by the United Nations International Law Commission (ILC), which after discussing the topic proposed the definition as shall be hereunder reproduced viz:

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[3] M Faix, *Law of International Organizations* (Palacky University Press, Olomouc 2012)
[4] *Ibid* 8
[5] Article 67 of the Statute of the Permanent Court of International Justice.
[6] Some eminent jurists of their time disliked this notion. For instance the then President of the Permanent Court of International Justice Anzilotti tagged it as "expression *malheureuse*" and his stance gained worldwide acceptance and recognition.

The term 'international organisation' refers to an international organisation established by a treaty or other instrument governed by international law and possessing its own legal personality. International organisations may include as members, in addition to states, other entities.[7]

According to Alvarez[8] at least certain aspects of the above definition is enmeshed in definitional inexactitude. Amerasinghe[9] reviewing the above mentioned definition took cognizance of the problematic issues occasioned by the International Law Commission's definition. Chinkin[10] further extrapolated and *ipso facto* established that an international organisation is:

i. Any organized entity created (mostly) between states,
ii. On the basis of an instrument governed by international law,
iii. Possessing a will distinct from that of its founding members
iv. In order to achieve through its organs purposes for which it was created.[11]

This research shall now shade some light on the above points viz:

i. Organized Entity Created (mostly) between States

International organisations were born in a state-centric international legal system and at the time the first international organisations started to appear, there was no other subjects of international law than states.[12] This is only one of the reasons international organisations are up to today created mostly by states.[13] However, as international law evolved, it is accepted that even other international organisations may become (even founding) members. This research however submits that not all entities created between states must be international organisations. This assertion lends poignancy to the fact that states may for instance establish legal persons under their domestic legal system.

ii. Created by Instrument Governed by International Law

International organisations are usually created on the basis of an international agreement concluded between two or more states in written form.[14] Such an agreement is governed by international law and is subject to the respective will of states or international organisations seeking the membership.[15]

iii. A Will Distinct from that of its Founding Members

International organisations need to have at least one organ, which is able to create its own will of the organisation, i.e. will attributable to the organisation only if the entity would only be an instrument used to express the consolidated will of its members, such an entity could be considered to be an international collegial organ acting on behalf of its members, but not an international organisation. Naturally, in practice, such distinction between organs and organisation is not easy but establishing whether an entity can generate its own will is decisive for its consideration as a separate legal subject. Being only the "speaking tube" of its members, it would not be justified to regard an entity as having separate legal personality under international law. Despite the fact that the above mentioned criteria seems to be more or less accepted, De Witte[16] instructively notes that it is virtually impossible to define "international organisation" in an abstract way. However, the learned writer adds that when we see one, we usually can identify it as such because it is the criteria specified above which helps us to conclude whether a certain entity can be considered as an international organisation.[17]According to De Wet[18] these criteria also helps to distinguish international from other types of international associations, such as non-governmental organisations (NGOs) or international public corporations such as "Air Afrique." For example, it is the "established on the basis of an international agreement" which distinguishes international organisations from non-governmental organisations.[19]Similarly, in contrast to intergovernmental organisations,

[7] Report of the International Law Commission, Fifty-fifth Session (5 May – 6 July and 7 July – 8 August 2003), GAOR 50th k Supp. 10, 38

[8]J Alvarez, *International Organizations as Law-Makers*(Cambridge University Press, Cambridge 2005)11

[9]C Amerasinghe, *Principles of the International Law of International Organizations* (Cambridge University Press, Cambridge 2005) 11

[10]C Chinkin, *Third Parties in International Law* (Clarendon Press, Oxford 2001)

[11]*Ibid* 26

[12]R Collins and N White, *International Organizations and the idea of Autonomy: Institutional Independence in International Legal Order* (Routledge, London 2011) 8

[13]*Ibid* 18

[14]*Ibid* 24

[15]*Ibid* 29

[16]B De Witte, 'Rules of Change in International Law: How Special is the European Community' (2004) NYIL 51-84.

[17]*Ibid* 97

[18]E deWet, 'The International Constitutional Order' (2006) 55 International and Comparative Law Quarterly 51-56

[19]*Ibid* 74-81

non-government organisations are established by private persons under national laws. Also, the requirement of "having its autonomous will" helps to distinguish between international organisations and other looser forms of international co-operation.[20]

II. CLASSIFICATION OF INTERNATIONAL ORGANISATIONS

Classification of international organisation is possible in many ways. This depends on the definition of terms as well as on the perspective adopted. The first classical distinction to be made is between international non-governmental and governmental organisations. Non-governmental organisations such as Amnesty International and Greenpeace, in contrast to "regular" international organisation do not necessarily have international legal personality, but are involved in international political activities and the functioning of international community.[21] Besides this, international organisation can be classified based on various criteria including organisations':

i. Functions (general, for example the United Nations (UN), European Union (EU), African Union (AU) and specialized organisation for example the World Meteorological Organisation.

ii. Purpose/Activities (Judicial (International Criminal Court (ICC)) Political (Organisation for Security and Corporation in Europe) technical (International Telecommunications Union) or

iii. Member (with restriction, example on geographic basis (European Union EU, Association of South East Asian Nations).[22]

III. LEGAL STATUS OF INTERNATIONAL ORGANISATIONS UNDER INTERNATIONAL LAW

One of the renowned international lawyers, Oppenheim[23] stated in 1912 that "since the law of nations is based on the common consent of individual states, states solely and exclusively are the subjects of international law. [24] Nowadays, the consensuality is still one of the fundamental principles of international law but Oppenheim's statement is no longer valid in its entirety.[25]States, nevertheless, remain the predominant actors of international law, however, the bourgeoning influence and meteoric rise of international organisations, individuals, national liberation movements, *de facto* regimes and other entities have acquired a certain degree of legal personality.[26] The existence of other subjects in international law except states has been recognized in the International Court of Justice's advisory opinion in the *Reparation Case*.[27] The said case is a notable reference point on the legal personality of international organisations. The Court held that (i) there can also be other subjects of international law than states and such subjects may come in various shapes and guises (ii) the subjects of any legal system not necessarily identical in their nature or in the extent of their rights and their nature depends on the needs of the community.

This research therefore submits that there is no doubt today that international organisations can have international legal personality (i.e. be subjects of international law). The 20th century is reminiscent of the period which marked the departure from the strict state-centric view, allowing toconsider international organisations not only as gatherings of states or their servitudes but as legal entities separate from the states which created them. Legal personality simply reflects the autonomy of the organisation and its ability to act on its own. As a consequence of being a separate legal entity, international organisations for example possess the capacity to sue a state (as seen in the *Reparation Case (supra)*) regardless of its membership in the organisation, for damage caused by a violation of obligations which that state has towards the organisation.

The international Court of Justice's advisory opinion in the *Reparation Case* provides useful guidance on conditions under which international organisations acquire legal personality. This research submits that organisations are subjects of international law where they:

i. Are a permanent association of states, pursuing objectives which are in accordance with international law.

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[20]This never the less may evolve in an international organization. For example such as it was the case with the Commission on Security and Cooperation in Europe CSCE evolving into the Organization for Security and Corporation in Europe OSCE

[21]G Frankenberg, 'The Return of the Contract: Problems and Pitfalls of European Constitutionalism' (2006) 3 European Law Journal 257-276.

[22]*Collins* and *White* (n10) 24

[23] L Oppenhiem, *International Law: A Treatise* (Cambridge University Press, Cambridge 1912) 114; L Oppenheim 'The Science of International Law: Its Task and Method' (1908) 2 American Journal of International Law 313-56

[24]*Ibid* 126

[25]*Amerasinghe* (n7) 78

[26]*Faix* (n1) 20

[27]Reparation for Injuries Suffered in the Service of the Nations (1949) ICJ Rep 174

ii. Are autonomous i.e. have distinct legal powers, objectives and purposes from member states and
iii. Have the capacity to exercise legal powers internationally, not only within a domestic system.

IV. A CRITICAL ANALYSIS OF DISSOLUTION AND SUCCESSION OF INTERNATIONAL ORGANISATIONS

This research submits that it would be impudent and imprudent to carry out an intellectual surgery on the concepts and tenets of dissolution and succession of international organisations without giving vent to creation of international organisations. This assertion tends poignancy to the logical deduction which is, namely, that international organisations could not have cascaded to the point and/or place of dissolution and succession if they were not first and foremost created. An insight into the notion of creation of international organisations therefore becomes opposite

4.1.1 Creation of International Organisations

The motivation of states for creation of international organisations is multifaceted.[28] The legal basis of each and every organisation however is an international agreement through which the organisation as an entity not only comes into existence but which also contains provision governing its operation. It sets forth the most important aspects of organisation's existence such as its goals, powers and structure.[29] Delbruck[30]opines that founding treaties of international organisation are of dual nature namely, contractual and constitutional.

Constituent treaty can be laid down in a single and separate founding document such as the Charter of the United Nations or the Washington Treaty establishing the NATO) or the constituent provision of an international organisation can be incorporated in a document with a more comprehensive scope such as the provisions included in the 1982 Convention on the Law of the Sea establishing the international seabed Authority.[31]

The conclusion of such treaties is governed by general international law i.e. contained in the 1969 Vienna Convention on the Law of Treaties are applicable. The nomenclature ascribed to such treaties (Charter, Convention or Pact) is of no legal impact. The will to accept rights and obligations resulting from the treaty is expressed by states through ratifications and the conditions for the entry into force are usually laid down in the treaty itself. This research submits that the entry into force of the constituent document suffices as an organisation's hour of birth.

4.1.2 Dissolution of International Organisations

States may create international organisations for a variety of reasons and the same applies to their dissolution. The life of an organisation may end because it has completed its tasks or another organisation has been created with the same and/or similar functions.[32]For example, the International Refugee Organisation (IRO) was dissolved in 1952 as member states especially eh United States who contributed approximately 60% of the costs of international Refugee Organisation considered its tasks as having been completed.[33]

The rationale behind the dissolution of the International Refugees Organisation was further buttressed by the fact that the decrease of European refugees was so significant that their administration did not require the existence of a separate organisation.[34] The International Refugees Organisation, however, had some of its activities continued by the United Nations High Commissioner for Refugees and the intergovernmental Committee for European Migration. Another example is the War Saw pact which became an outdated organisation and such was dissolved in 1991 after the collapses of the Soviet Union.[35] Regardless of the motivation, dissolution leads generally to cessation of activities and disappearance of the organisation as a legal entity under international law. Although this is the ultimate result the process of dissolution is more complex. Dissolving an international organisation happens rather occasionally and thereis particularly no common

[28]B Fassbender, 'The Meaning of International Constitutional Law' (2005) in R MacDonald and D Johnston, *Towards World Constitutionalism: Issues in the Legal Ordering of the World Community* (Martinus Nijhoff Publishers, Leider, 2005)
[29]*Ibid* 18
[30]J Delbruck, *New Trends in International Lawmaking- International Legislation in the Public Interest* (Drucker &Hnumblot, Berlin 1996
[31]*Fassenbender* (n26) 30
[32]D Ruiler Legal Institutions (Klumer Academic Publishers, Dordrecht 2001) 22
[33]*Ibid* 43-47
[34]D Riuler, 'Types of Institutions as Patterns of Regulated Behaviour' (2004) *Res Publica* 207-31
[35]*Ibid* 245

design.[36] The organisation usually has to decide on its liquidation procedure and regulate the modalities such as what happens with its staff, assets and liabilities. For instance, in a statement,[37] Western European Union's dissolution contained the following provisions:

The Western European Union has therefore accomplished its historical rite. In this light we the states parties to the Modified Brussels Treaty have collectively decided to terminate the Treaty, thereby effectively closing the organisation and in line with its article XII will notify the Treaty's depository in accordance with national procedures. The states parties task the WEU permanent council with organizing the cessation of WEU activities in accordance with timelines prescribed in the Modified Brussels Treaty preferably by the end of June, 2011.

Even if the resolution touches on the organisations legal existence members may decide to uphold legal personality in a limited way even after its dissolution. Article 38(5) of the 1997 Eurocontrol Revised Convention stipulates viz: "if the organisation is dissolved, its legal personality and capacity shall continue to exist for the purposes of winding up the organisation". much also depends on whether there will be a successor organisation or not. In most cases, there will be a new organisation taking up certain functions of the old one. Hoffmeister[38] notes that a complete termination of an organisation is unusual much as he holds that a transfer of all function is equally rare. Jayasuriya[39] on his part notes that international organisation may be dissolved basically under two scenarios viz: (1) where the constituting document contains provisions on an organisations dissolution (ii) where there is no specific regulation of this issue. The first option is rather rare, even though some examples can be provided. Article 97 of the ECSC Treaty**[40]** which limited the duration of the European Community's existence to 50 years is apt at the juncture. Instructively, in 2002, the treaty expired and as the members did not indicate any desire towards its renewal, however, the organisation's activities and resources were integrated in the European Community. Continuation of existence according to Petersmann[41]can be made dependent also on a minimum number of members, for example Article 25 of ESA Convention**[42]** stipulates that: "The Agency shall be dissolved if the number of member states becomes less than five". Sometimes the power to dissolve an organisation is vested in the hands of their highest body representing the member states. Most financial organisations such as the international Monetary Fund, the World Bank or the European Bank for Reconstruction and Development can be dissolved on the basis of their Board of Governors as stipulated under Article 27, Section (a) of the Articles of Agreement of International Monetary Fund. The said provision is to the effect that "the Fund may not be liquidated except by decision of the Board of Governors". If the rules of the organisation do not provide for dissolution, an organisation will be dissolved by a decision of its highest representative body in accordance with the general rules or international law on treaties. A case in point is when the League of Nations was dissolved by a decision taken by the General Assembly without the need for individual assent by each member nation. In practice, dissolution is often followed by the establishment of a new organisation, just as it was the case with the League of Nations on the one hand and the United Nations organisation on the other hand.

The constitutions of some international organisations contain express provision with regards to dissolution. Article VI(5) of the Articles of Agreement of the International Bank for Reconstruction and Development (The World Bank), for example provides for dissolution by a vote of the majority of Governors exercising a majority of total voting and detailed provisions are made for consequential matters. Payment of creditors and claims, for instance, will have precedence over asset distribution, while the distribution of assets will take place on a proportional basis to shareholding. Different organisations with such express provisions take different positions with regard to the type of majority required for dissolution. In the case of the European Bank for Reconstruction and Development, for example, a majority of two-thirds of the members and three-quarters

[36]C Jenks, 'Some Constitutional Problems of International Organization's (1945) 22 British Yearbook of International Law 11-72

[37]Statement of the Presidency of the Permanent Council of the Western European Union (WEU) on behalf of the High Contracting Parties to the Modified Brussels Treaty, a document – constituting the Legal basis for Western European Union's dissolution.

[38]F Hoffmeister, 'Outsider or Frontrunner? Recent Developments under International and European Law on the Status of the European Union in international Organizations and Treaty Bodies' (2007) 44 Common market Law Review 41-68.

[39] K Jayasuriya 'Globalization, Law and the Transformation of Sovereignty: The Emergence of Global Regulatory Governance' (1999) 2 Indiana Journal of Global Legal Studies 425-455

[40]Treaty Establishing the European Coal and Steel Community otherwise referred to as the Treaty of Paris'

[41]E Petersmann, 'Human Rights, Constitutionalism and the World Trade Organization: Challenges for World Trade Organization Jurisprudence and Civil Society (2006) 4 Leiden Journal of International Law 633-67

[42]The European Space Agency (ESA) was founded in 1975 when the European Space Research Organization (ESRO) merged with the European Launcher Development Organization (ELDO).

of the total voting power is required. A simple majority of member states coupled with a majority of votes is necessary in the case of the international Bank for Reconstruction and Development, where an organisation has been established for a limited period.[43] It is debatable whether unanimity is needed or whether the degree of determination of important questions would suffice.[44] The actual process of liquidating laid down by the organisation itself either in the constitutional documents or by special measures adopted on dissolution. According to Sarroshi[45]irrespective of the existential nature of the issue, complete dissolution of international organisations is a rare phenomenon. The learned writer further contends that this may very well be the reason for the academic community to have neglected this concept. This position is in sharp contrast to the vast attention paid to the notion of succession. This research aligns with the views of Amerasinghe[46] which is to the end that although a complete dissolution which connotes the bringing of the functions of an organisation to a complete end is rare, dissolution generally presupposes a cessation of the existence of an organisation which is essence is invariably the counterpart of the creation or establishment of an organisation. A textbook example in this sense as already noted in the course of this research is the International Refugee Organisation (IRO) which almost completed its task in the Mid 1950s but even there many functions returned after the establishment of the United Nations High Commissioner for Refugees and the Intergovernmental Committee for European Migration. Other examples include the termination of the Cold War Institutions, the Council for Mutual Economic Assistance (CMEA) as well as the Warsaw Pact in 1991.

V. SUCCESSION OF INTERNATIONAL ORGANISATION

Succession is usually defined as the transfer of functions from one organisation to another, often accompanied by the transfer of ancillary rights and obligations.[47] Although according to Nogovitsyna[48]strictly speaking, there can never be a 'succession'' of organisations; this research shall interrogate the discourse on succession of international organisations. Dissolution of an organisation in a political step necessarily mean that the organisation's tanks have been fully completed. As this is rarely the case, usually there is a new organisation replacing the old one even if not completely.[49] In most instances, functions of the old and even the ones yet to be fulfilled are transferred to the new organisation. For example, after the tasks and institutions of the Western European Union were transferred to the European Union, the member states decided to dissolve the West European Union in 2010. This research therefore submits that dissolution contains aspects of termination as well as succession.

Two main aspects have to be mentioned in the context of succession of organisations: Whether one organisation may succeed to another and what are the modalities of such process.[50] Unfortunately, international law does not contain any general treaty of customary rules in this regard. There are two consequences of this fact viz: (i) as there is no treaty or customary normatively regulating succession of international organisations, general principles of international law will be applied and (ii) legal rights and acts of international organisations expire in the moment ofdissolution, if there is no successor.[51] In case there is a successor, the assets and archives of the predecessor organisation will go to its successor.

Even if succession of international organisations is a rare situation, there is same practice in this regard which shows that the issue of succession is usually governed by explicit treaty based rules. For instance:

When this convention comes into force the reconstitution of the organisation for European Economic Co-operation shall take effect and its aims, organs, powers and name shall thereupon be as provided herein. The legal personality possessed by the Organisation of European Economic Co-operation shall continue in the organisation but decisions, recommendations and resolutions of the organisation for European Economic Co-operation shall require approval of the Council to be effective after the coming into force of this Convention.[52]

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[43]This applies particularly to commodity organizations for instance, the international Tin Agreement, 1981; The Natural Rubber Agreement, 1987 and the International Sugar Agreement, 1992

[44]Organizations may be dissolved where the same parties to the treaty establishing the organizations enter a new agreement or possibly by disuse or more controversially as a result of changed circumstances *rebus sic stantibus*

[45]D Sarroshi, *International Organizations and their Exercise of Sovereign Powers* (Oxford University Press, Oxford 2005)

[46]*Amerasinghe* (n7) 79

[47] P Myers, *Succession between International Organizational Organizations* (Kegan Paul Investment, New York 1993) 23

[48] Y Nogovitsyna 'An Alternative Look at State Succession' (2005) Polish Year Book of International Law 75-76

[49] *Ibid* 183

[50] P Sands and P Klein, *Bowett's Law of International Institutions* (Sweet and Maxwell London 2001) 100

[51]*Ibid* 15

[52]Article 15 of Organization for Economic Co-operation and Development

Another example is the succession of the League of Nations. Also, in this case no general succession took place but there was a special agreement between the League of Nations and the United Nations on transfer of functions, assets, liabilities and staff.[53] Moreover, the United Nations decided not to assume particular functions of the League of Nations such as the League of Nation's political functions and powers gained under international treaties and other instruments.[54] Usually, a distinction is made between 'convention' and 'automatic' succession. Whereas the former is based on an agreement between the predecessor and the successor, the latter: refers to an operation of the law when certain conditions are fulfilled.[55] Succession is relatively easy when the membership of the predecessor and the successor are the same. Examples include the succession of the Caribbean Commission 1946 by the Caribbean Organisation 1960 or the replacement of both the European Space Research Organisation (ESRO) and the European Organisation for the Development of Space Vehicle Launchers (ELDO) by the 1975 European Space Agency. In both cases constitutional provisions in the new constitutive instrument provided for their successor status. A similar situation occurred with the succession of the European Commission by the European Union. Whereas the legal basis is these cases could quite easily be discovered in the constitutions of the new organisations, other cases reveal the possibility of informal succession, that is: an explicit agreement being present in the constitutive documents.[56]

Whereas replacement of an international organisation may be relatively easy in the case of coinciding memberships between the old and the new organisation, the situation is different in the case of divergent memberships. Usually a new agreement is used to overcome the problem of different membership. Klabbers[57] queries the rationale behind a member of a succeeding organisation and not his/her counterpart in the predecessor organisation being obliged to take on part of debts or functions or every staff of the predecessor where the successor organisation does not have membership identical to the predecessor organisation which in turn will make anything other than agreement difficult to reconcile with the basic idea of consent. In such instances and under such circumstances, the old organisation is usually dissolved to allow for a fresh start by the successor organisation.[58] Myers[59] on his part, enumerates five situations where succession takes place viz (i) an organisation is replaced by another organisation which is created to fulfill the same general purposes and functions (replacement); (ii) a limited function organisation is absorbed by a broader based organisation and becomes one of its organ is (absorption); (iii) two or more organisations are combined to form a single new entity (merger); (iv) a subsidiary organ is separated from its parent institution and becomes a new organisation (separation) and (v) specific functions of an organisation are transferred to another organisation without otherwise affecting its existence (transfer of specific functions). Shaw[60] on his part states that succession between international organisations takes place when the functions and usually the rights and obligations are transferred from one organisation to another. The learned writer agrees with Myer as regards the way this may occur viz by way of straight forward replacement,[61] by absorption[62] by merger, by effective succession of part of an organisation or by simple transfer of certain functions from one organisation to another. This is achieved by agreement and is dependent upon the constitutional competence of the successor organisation to perform the functions thus transferred of the organisation. In certain circumstances, succession may proceed by way of implication in the absence of express provision. The precise consequences of such succession, however, will depend upon the agreement concerned between the parties in question.

VI. CONSEQUENCES OF DISSOLUTION AND SUCCESSION OF INTERNATIONAL ORGANISATION

One of the most buffeting *cum* difficult questions trailing the law of international organisations is with respect to the consequences of dissolution and succession. As international organisations tend to create and further develop their own legal order consisting of both primary and secondary rules, legal principles and in some instances case law, the concomitant question is namely, what happens with this legal order once the

[53]*Myers* (n45) 87
[54]H Schermers, 'Succession of States and International Organizations' (1975) NYIL 103-19
[55] A Mochi-Onory, 'The Nature of Succession Between International Organizations: Functions and Treaties'(1968) RHDI 33-40
[56]*Nogovitsyna* (n46) 88
[57]J Klabbers, 'Two Concepts of International Organization' (2005) International Organizations Law Review 277-93
[58]*Ibid* 103
[59]*Myers* (n45) 111
[60]M Shaw, *International Law* (6thedn Cambridge University Press, Cambridge 2008) 1330-1331
[61]Such as the replacement of the League of Nations by the United Nations
[62]For example the absorption of the International Bureau of Education by the United Nations Educational Scientific and Cultural Organizations (UNESCO)

organisation is no longer available? It is an uphill task to conceive of legal orders without a rule-maker. Does this imply that everything that forms part of the legal order of an international organisation becomes null and void upon the dissolution of the organisation? This poser is particularly intriguing and relevant in the light of the legal acts of international organisations. This research submits that the starting point appears to be that a decision is needed to either annul the acts or to allow for them to be taken over by a successor organisation. This invariably means that states for instance, that do not become a member of the successor organisation are no longer bound by these acts although there exists no reason to assume that they cannot continue their application, particularly when the rule has become part of their national legal system. In the case of a succession, the status of previously concluded conventions is usually being dealt with alongside the legal status of other instruments. Thus, this research submits that the constitution of the OECD for instance, not only allowed for some former OEEC acts to become OECD acts, but it also empowered the new organisation to takeover the function related to existing conventions. Quite instructively, as far as the dissolution of an international organisation is concerned, specific provisions related to the termination of permanent positions will have to be invoked. The general rule in practice is that the successor organisation has no obligation to take over the personnel of a dissolving orgnaisation. After all, there may be political (functional) reasons to start with a clean slate. Yet for reasons of continuity, organisations may decide to take over even the Secretary-General and/or most of the staff.

VII. SITUATIONS WHICH ENGENDER SUCCESSION OF INTERNATIONAL ORGANISATIONS

The situations which engender and/or where succession takes place are as mirrored hereunder:

7.1.1 Replacement

Replacement otherwise goes by the appellation "substitution." Here, an organisation is replaced by another organisation which is created to fulfil the same general purposes and functions. The instances presented under this heading have in common that from their inception the successor organisations were meant to carry on the function of the moribund entities which became extinct as soon as the devolution of their tasks had been completed. First considered is that form of substitution envisaged in the constituent texts of the organisation substituted for the moribund one or the terms of reference of the successor institution or where the *travaux preparatories* for its establishment leave no doubt that the new entity is to replace the outgoing organisation.

i. ICAO

This is probably a correct summary description of what happened in the case of the substitution of the International Civil Aviation Organisation (ICAO) for certain earlier international bodies. Article 80 of the ICAO Convention of December 7th 1944,[63] required member states to denounce the 1919 Convention relating to the Regulation of Aerial Navigation[64] and the 1928 Convention on Commercial Aviation.[65] The article specified that as between contracting parties to the ICAO Convention. The latter superseded the two previous treaties. The 1919 Convention had provided[66] for the establishment of an International Commission for Air Navigation (ICAN)[67]. ICAN decided to dissolve and go into liquidation before the ICAO convention came into effect on April 4, 1947, i.e. during the lifetime of the Provisional International Civil Aviation Organisation (PICAO), which prepared the work of the ICAO after the 1944 Chicago Conference.

ii. WHO

There was also the substitution of the World Health Organisation (WHO)[68] for the Office International d'Hygiene Publique (OHIP) established by the Agreement of December 9, 1907[69] and entrusted with the administration and supervision of existing sanitary conventions.[70]

iii. WMO

Still within the domain of substitution was the transition from the International Meteorological Organisation (IMC) to the World Meteorological Organisation (WMO). The distinctive feature characteristics of this case, however, is the absence of any extraneous normative element, that is, of any rule adopted by a body of one of the two organisation involved by way of intra-organisational law making such as a treaty abrogating an earlier international arrangement, in as much as the decision to transform the International Meteorological

[63] T. I. A. S. N. 1591; 2 PEASLEE, International Governmental Organizations 51(1956).
[64] 8 L.N.T S 23; 1 Hudson 359.
[65] 47 Stat. 1901 (1931); T.S. No. 840; 4 Hudson 2354
[66] Chapter VIII, Article 34.
[67] International Commission for Air Navigation (ICAN) started to operate on July 11, 1922, the date which the treaty came into force. 1 Hudson 360.
[68] Established by a Constitution of July 22, 1946, in force since April 7, 1948; 2 Peaslee
[69] 100 British and Foreign State Papers 466.
[70] Listed in 1946-47 Year Book of the United Nations 803-04.

Organisation into the World Meteorological Organisation was taken in 1939 and implemented by the International Meteorological Organisation's twelfth conference of Directors in 1947.

7.1.2 Merger

This occurs where two or more organisations are combined to form a single new entity (merger). The distinction between substitution and merger lies essentially in the timing of the decision by the success or body to take over the moribund institution, either to carry on its work, to assume its financial liabilities or both. While in the case of substitution the transition is part of the terms of reference of the successor from the latter's inception, as set out in its constituent charter or other international acts or unmistakably resulting from the *travaux preparatories*, the question of merger is decided at a later date. Thus, while in substitution, the structure and functioning of the new organisation is geared from the outset to replacing the outgoing entity, a merger involves subsequent adaptation. Merger may involve more on the part of the success or organisation than the usual take-over procedure found when the technique of substitution is used. The proper law of the successor, especially its constituent instrument, may require amendment to permit the modification of purposes, structure and functions which a specific merger calls for. The amendment process may necessitate the passing of severe procedural hurdles unless the law of an international institution admits of its carrying out in more simple forms.[71] In the instances to follow here, no such difficulties, however, had to be surmounted. The patterns observed in Post World War II substitution was followed in almost every detail.

i. IIA – FAO

By a resolution adopted at its first session in October 1945, the conference of the Food and Agricultural Organisation of the United Nations (FAO) recommended to its member states concerned the dissolution of the International Insitutte of Agriculture (IIA) by appropriate legal means. It further recommended that thereafter, the assets of IIA should be transferred to, and its functions under certain international conventions assumed by FAO.[72] In accordance with these terms, the Permanent Committee of the IIA, the executive body of that organisation, on March 30, 1946 suggested to the General Assembly of the IIA the enactment of a resolution of dissolution[73] which should also request governments parties to the Convention of June 7, 1905, on the creation of IIA,[74] to terminate that convention in accordance with a protocol.[75] Accordingly, in July, 1946, the protocol and the action taken by the Permanent Committee of IIA regarding the transition to FAO were approved by the General Assembly of IIA.

ii. IIIC-UNESCO

The takeover of the International Institute of Intellectual Co-operation (IIIC) by the United Nations Educational Scientific and Cultural Organisation (UNESCO) had been foreshadowed during the 1945 conference which drew up the UNESCO Constitution. However, the reference made to the IIC by Leon Blum on that occasion was so vague that it left open the nature of the relationship to be established between UNESCO and the Institute.[76] The merger was actually initiated by the twenty-first and last Assembly of the League of Nations which, on the proposal of its First Commission in April 1946, adopted a resolution transferring its property rights in the IIIC to the United Nations.[77] This transfer had been deemed necessary because, as a

[71] Schwelb, 31 Brit. 7B Int'l L. 49 (1954).

[72] Report of the First Session of the Food and Agriculture Organization Conference, Quebec, October 1945 at 55.

[73] Report of the Second Session of the Food and Agriculture Organization Conference, Copen hagen, September 1946, Annex 1 at 62.

[74] IPO British and Foreign State Papers 595 (1905).

[75] The text attached to the resolution read: "Protocol for the Dissolution of the IIA and the Transference of its Functions and Assets to the Food and Agriculture Organization of the United Nations, 30th March, 1946." Irish Treaty Series, No. 13 (1948).

[76] "Nor is it our intention to propose indirectly, however great the services it has rendered, the maintenance of the former institute of Intellectual Co-operation. That Institute, with the working instruments it has available, which is our opinion it would be unwise to ignore – is still at your disposal, but you will make exactly such use of it as you may think fit." Conference for the Establishment of UNESCO, preparatory Commission, 2nd plenary Meeting, London, June, 1945 at 28 (ECO/CONF./29); Also the statement of the delegate of France, the IICS host state is instructive viz: "As regards the organization and personnel of the International Institute of Intellectual Co-operation, such steps could be taken as might seem most suited to the purpose in view: The existing elements might be retained or those same elements might be called upon to dissolve and merge in UNESCO, like snow in a great river."

[77] League of Nations off. J., 21st Ass., Spec. Supp. No. 194 at 98 and 100 (A/33) (1946)

consequence of the dissolution of the League of Nations, the IIIC had lost its Board of Administration, which was composed of the members of the commission on Intellectual Co-operation of the League of Nations.[78]

7.1.3 Transfer

There is at least one instance where a conventional transfer of functions took place between two international bodies, both of which continue to exist, OHIP and UNRRA, by virtue of the International Sanitary Convention and the International Sanitary Convention for Aerial Navigation of December 1944.[79] It is true that the tasks entrusted to UNRAA under these treaties[80] were to revert to OHIP once the latter was no longer "unable… to carry out effectively sanitary conventions,"[81] but, that eventually apparently never materialised because the OHIP was taken over by WHO before the hypothetical date of the re-transfer arrived.

VIII. DISSOLUTION VERSUS SUCCESSION: ANY CONFLUENCE?

An intriguing question would be whether there is any confluence vis-à-vis dissolution and succession discourse analysis and/or demystification. This research submits that the answer to this power is the affirmative.

This is rightly so because aspects of dissolution and succession are often combined.[82] A few instance will be apt. the European Union offers some recent and even relatively current examples in this respect. Whereas the European Coal and Steel community (ECSC) on the basis of its own treaty had to be dissolved after 50 years of existence in 2002 and its functions were taken over by the European Community (EC), the 2007 Lisbon Treaty in turn made an end to the European Community (EC) and appointed the European Union (EU) as its successor.[83] Historical examples include the dissolution of the League of Nations in 1946 and the related establishment of the United Nations (UN) in 1945, the succession of the Organisation for European Cooperation and Development (OECD) in 1961 and the integration of the institutional and substantive structure of the General Agreement on Tariffs and Trade (GATT) into the newly established World Trade Organisation (WTO) in 1994.[84]

This research further submits that the rumour of the death of many international organisations is highly exaggerated as their soul simply pops up somewhere else.[85] This research submits that from a functional necessity perspective, it could probably be inferred that the functions of international organisations suffices as the 'soul' and in the case of dissolution or succession, it either transmigrates back to the states or to a new or already existing organisation. It could therefore be gleamed from the foregoing that quintessential function of the body is to keep the soul alive.

IX. CONSEQUENCES OF DISSOLUTION AND SUCCESSION

One of the most buffeting *cum* difficult question trailing the law of international organisation is with respect to the consequences of dissolution and succession. As international organisations tend to create and further develop their own legal order consisting of both primary and secondary rules, legal principles and in some instances case law, the concomitant question is namely, what happens with this legal order once the organisation is no longer available. It is an uphill task to conceive of legal orders without a rule-maker. Does this imply that everything that forms part of the legal order of an international organisation becomes null and void upon the dissolution of the organisation? This poser in particularly intriguing and relevant in the light of the legal acts of international organisations. This article submits that the starting point appears to be that a decision is needed to either annul the acts or to allow for them to be taken over by a successor organisation. This invariably means that states for instance, that do not become a member of the success or organisation are no longer bound by these acts although there exists no reason to assume that they cannot continue their application, particularly when the rule has become part of their national legal system. In the case of a succession, the status of previously concluded conventions is usually being dealt with alongside the legal status of other instruments. Thus, this article submits that the constitution of the OECD for instance, not only allowed for some former OEEC acts to become OECD acts, but it also empowered the new organisation to take over the functions related to existing conventions. Quite instructively also as far as the dissolution of an international organisation is concerned, specific provisions related to the termination of permanent positions will have to be invoked. The

[78] *Ibid* 252.
[79] 9 Hudson 236, 254
[80] As extended by protocols for their prolongation of April 23, 1946, 9 Hudson, 251, 272.
[81] Preambles of the 1944 Conventions, 9 Hudson 236, 254.
[82] *Klabbers* (n55) 120
[83] S Rynning, *NATO Renewed: The Power and Purpose of Transatlantic Co-operation* (Palgrave Macmillan, New York 2005) 87
[84] *Ibid* 136
[85] H Hahn, 'Continuity in the Law of International Organizations' (2000) OZOR 167-239

general rule in practice is that the successor organisation has no obligation to take over personnel of a dissolving organisation. After all, there may be political (functional) reasons to start with a clean state. Yet for reasons of continuity, organisations may decide to take over even the Secretary-General and/or most of the staff.[86]

X. CONCLUSION

The creation of an international organisation is not a phenomenon that can easily be undone. Indeed, most organisations that have been dissolved have found a new life in a successor. Their 'soul' lives on, albeit subject to a new institutional framework, new rules and possibly at the service of new masters. The fact that personnel and even institutions are frequently transferred to the successor organisation adds to the continuity of established practices. The role of international organisations in what is usually referred to as 'global governance; forms another reason for the emphasis on continuity. No longer are international organisations merely tools in the handsof their members states, their functions are often exercised in relation to global normative processes in which decisions of one organisation are often related to decisions taken somewhere else. Together with the permeability of the burden between national and international law, it is this interplay that may very well lead to less flexibility with regard to the dissolution of international organisations.

XI. RECOMMENDATIONS

i. The pattern of legal thought which should be observed whenever the continuous display of internationalized functions is at stake is that of the principle of effectiveness. The devotion to actual cases has the doctrinal advantage of showing the principles governing the application and interpretation of legal rules which in turn will promote the continuity of internationalized function. This is further buttressed by the fact that in the law of international organisations generally, international institutions are created to work and to carry out the functions entrusted to them and that when a higher norm does not provide anything to the contrary, then an international act has to be applied in such a way as to ensure a meaningful activity of the international body concerned.

ii. International organisations are complex entities, which similar to states have their own legal order. Therefore each international organisation should develop a legal order of its own. The reason an international organisation needs to have a legal order is obvious. This shall enable an international organisation to perform functions and achieve goals for which it was created.

iii. There should be improved dialogue between and amongst different international organisations which will in turn scuttle the chances or likelihood of dissolution.

iv. International organisations should seek to define solutions in order to remove impediment at various operational levels.

v. International organisations should identify issues affecting the cost and efficiency of nation state's involvement within the international world order.

vi. International organisations should assist in the implementation of measures geared towards galvanizing and sustaining international organisations as parent bodies and their subsidiaries.

vii. International organisations should promote the simplification of formalities, processes and procedures related to the inter-relationship amongst themselves.

viii. International organisations should uphold harmonization or alignment amongst member states or national border crossing formalities, processes and procedures with international conventions, standards and practices.

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[86] Examples include a considerable transfer of the staff from the International Meteorological Organization to the World meteorological Organization in 1950-51, from the OEEC to the OECD in 1961 and from the GATT Secretariat to the WTO in 1994. A transfer of personnel may include a transfer of (pension) funds and other obligations the organization has towards its personnel. The later may in particular be important to guarantee existing rights, as legal protection obviously may be difficult when there is not much left to invoke or address