CHAPTER II

THEORIES OF STATE SUCCESSION

1. INTRODUCTION

The effects of change of sovereignty on the rights and obligations of predecessor and successor state has been explained by various jurists. The juridical explanations provided by various jurists in term of various theories are highly contradictory which has often resulted in the prevailing confusion of the state practices in the question of state succession.

In fact, most of the jurists are more interested in the practical aspect of state succession; their conclusions are based, more on subjective preconceptions, than an objective analysis of the precedents of past and current facts.\(^1\) Even state practice and court's opinions are not free from the charges of biasness. They asserted one theory in predecessor's capacity and applied other in successor's capacity; they argued for the existance of one 'rule' with reference to one state and denied the existance of same 'rule' with reference to other state. In these circumstances, the existance of different conflicting theories of state succession has virtually paved way for the political elements to have an overriding effects over judicious approach towards the problems of state succession. That is why none of the theories of
state succession is capable in itself to explain fully all the past state practices on the subject.

However, these theories are relevant, in not only explaining the effects of succession of states but also, because, these theories affect at the same time the solutions to be adopted by states concerned upon the change of sovereignty in relation to their rights and obligations.

2. PRINCIPAL THEORIES:

The principal theories of state succession can be classified in following categories.

A. Universal succession theory.
B. Popular continuity theory.
C. Organic substitution theory.
D. Self abnigation theory.
E. Clean slate theory.
F. Socialistic theory.
G. Option theory.
H. Burden with benefit theory.
I. Populace benefaction theory.

A. The Universal Succession Theory
(a) Introduction

The first and perhaps oldest theory of succession of state is that of universal succession theory. It was the Grotius, who for the first time propounded this theory by inducting Roman law analogy of succession on death of natural person. According to this theory upon change of sovereignty over a given territory, the new
soverign i.e. successor state succeeds all the rights and obligations of the predecessor state in relation to the territory affected by such change, without exceptions and modifications. It seems that old European jurists were highly influenced with this theory.

(b) Theory

This theory says that all the rights and obligations of predecessor state pass to successor state upon change of sovereignty.

(c) Justification

This theory, in fact, is based on the two premises; first that the state and its sovereign receive their power from God or nature, so that any change in government does not affect the omnipotent origins of the state, second, that the state in itself, is considered permanent and immortal and thus transmissible to the successor state. As a result of these premises, the theory of universal succession becomes a theory of universal continuity since the immortality of the state combined with the everlasting power of God creates a constantly recurring transfer of unchanging rights and obligations from agent to agent.

(d) Origin

The introduction of this theory into the field of international law had a remarkable strong influence upon the development of the rule of the international law with
reference to the change of sovereignty. Many European writers influenced with this theory, opined that the new sovereign succeeded to all the obligations as well as to the rights of the predecessor sovereign.  

This theory was in vogue in Europe up to the middle of the nineteenth century. However, Mokannen, has asserted that the acceptance of this theory by the European states was not because of its jurisprudential merit, but for its suitability in the prevailing circumstances of the contemporary Europe.

(e) State Practice

The observation of Mokannen, seems logically sound because the universal succession theory did not get full support from outside Europe. Even European states themselves did not apply this theory, when they started colonization in Asia and Africa. The United States of America, after seeking its independence from U.K., neither recognised this theory nor accepted in practice the existence of any such rule of continuity. U.S.A. did not recognise the application of this theory in relation to public property as well. It claimed that U.S.A. acquired the property in its fundamental rights of sovereignty. The state practice of the Latin American Republics after their independence from Spain, strongly indicate the refusal of the universal succession theory.
After the World War II, when a fresh wave of decolonization started, the newly independent states refused to accept and apply this theory in majority of the cases. Even if, in certain cases colonial powers succeeded in imposing pre-independence colonial debts on newly independent states, those were not under any accepted rule of international law but under various arrangements made by European colonial powers.

(f) Universality of Universal Succession Theory

The examples of universal succession in 20th century can be found in fusion cases only. For example, the fusion of Syria and Egypt, Somali land and Somalia and, Tanganyika and Zanzibar where the rights and obligations of predecessor states passed to their respective successor states.

Thus, it appears that universal succession theory was never fully materialized in the state practice except in fusion cases beyond the limits of European continent. The internal as well as external politics have militated against the acceptance by successor state of an absolute inheritance of obligations of predecessor state.

(g) Criticism

Beside the non-acceptance of this theory it has met with severe and extensive criticism from the various jurists on the following grounds.
i) This theory is based on the Roman law analogy of succession upon death of an individual. The rights and obligations of the individual under the municipal law can not be equated with those of the state under the international law since, the former is personal to a real being, the latter relates to the sovereign, autonomous and complicated political body. Sovereignty as juridical term signifies the homogenous and autonomous character of a community, which can not be transmitted to another community.

ii) As the world community became more sophisticated, new international legal and political theories came in light, the idea that a sovereign's power were God given became unacceptable, thereby reducing the one of premises of the universal succession theory to illogicity.

iii) Universal succession theory blurred the necessary distinction between a successor state and a state which has experienced a mere change in internal government.

iv) In the case of secession, fusion or dissolution complete succession of rights and obligations is not possible because there is no absolute juridical substitution.

v) The theory that the rights and obligations pass to the successor from the predecessor state in to-to,
without any change or modification is unrealistic because to commences from a prior analogy and seek to force state practice within the confines of a single rubrics.

The Universal succession theory not only failed to seek substantial response in the state practices of succession but, became a subject of severe criticism as well.

B. The popular continuity theory

(a) Introduction

During the period of 1882 to 85, a new version of universal succession theory, known as popular continuity theory, emerged following the German and Italian national unification. The propounders of this theory were Fiore and Fradier.  

(b) Theory

According to this theory, a state has two personalities of its own; one is social and the other is political. Territory and the populace who occupy such territory, are the basis of social personality of the state because the territory are inseparably connected with each other and forms a permanent social identity. Whenever state succession takes place only the political identity of a state is affected while the social personality remains intact.
(c) Justification

On the analogy of two different personalities of the state, this theory also make distinction between social and political commitments of the state, i.e. rights and obligations personal to the sovereign and rights and obligations of sovereign in relation to public or territory. This theory considers state succession to be a fiction or metaphor affecting only the political commitments of the state. The social personality of the state to which rights and obligations of patrimonial character which are attached to the society, continues even after the change of sovereignty which passes to successor state, while rights and obligations of the political character lapse with the extinction of the state. Thus, if an obligation is purely personal to the king and no nexus can be established between the state's social commitment and the obligation, then the obligation will lapse after the change of sovereignty.

(d) The theory and the private property

Although present theory too, seek to propagate the passing of all the rights and obligations of predecessor state to its successor, but, in narrower sense. It excludes the private property and obligations of the states from the purview of the effects of state succession. Again, this theory refutes the claim, that
the sovereign's power is God given. It seems that the propunder of this theory were highly influenced with, the distinction, between public and private domain of the state maintained under German, French and Italian municipal laws. Probably, in order to explain the distinction of this type the present theory has came into being.

e) Acceptability of the theory by European States only

However this theory too, was never accepted in state practices beyond the territory of the continent of Europe. Even within Europe, British system did not recognise the distinction between public and private domain of a state.

f) Criticism

Keith has criticised this theory on the ground that it rely on the operation of municipal law to govern the consequences of state succession. Prof. O'Connell has pointed out that the major defect of this theory is the conceptualization of states personality. According to him, personality, as juridical term signifies the homogenous and autonomous character of the community, which is not transmissible.

C) The organic substitution theory

a) Introduction

In 1887, Max Huber, provided a new explanation of continuity of rights and obligations of the state upon the
change of sovereignty, and named it as "organic substitution theory". Huber had derived his idea of organic substitution from the VonGeirke, whose paper was published in 1882, on the problem of disposition of rights and obligations of a social body after its dissolution, where he had stated that a state is not more than the ultimate moral organism. On this analogy Huber concluded that problem of state succession was not different from what it would be in the event of the disappearance of any other social grouping.

b) Theory and its justification

According to this theory, in the event of state succession the factual element of the people and the territory are integrated in a new organic bond, the change takes place only in the juridical element of the organization. As a result, state loses its identity but, the organic forces, which previously governed it remain unaffected. The successor state gets a new personality and absorbs all the surviving factual elements of predecessor state. Thus, the successor state substitutes itself in the place of extinguished personality of predecessor state, and thereby it takes over all the rights and obligations of the letter.

c) The theory of organic substitution vis-a-vis universal succession theory:

Virtually, present theory also propogate for continuity of rights and obligations of the state in the
events of the state succession, but on a slightly different ground than those of the universal succession or popular continuity theory. It simply offer a new explanation of the continuity of rights and obligations upon the change of the sovereignty i.e. substitution of successor state in the personality of its predecessor state.

d) Criticism

This theory, has never been accepted by states in its practical application. Various authors have expressed doubts over the genuineness and the binding quality of this theory. According to them, the continuity, provided in this theory, is not political in character; the absorption of rights and obligations are not considered as mandatory. This theory has also been criticized on the ground that, it misleads that the consequences of the succession of the state is dictated by that of the territory. It is the general principle of law, which directs that successor state to respect the rights and duties of its predecessor.

D. The self-abnigation theory

a) Introduction

The theory of self-abnigation, which was propounded by Jallinek in 1900, is still another, version of universal continuity.
b) Theory

According to Jallinek, the successor state, in the exercise of its own will or by virtue of the act of 'autolimitation' agrees to observe the rules of international law, and performs the obligations towards other states created under them. Thus, Jallinek posited a duty of self abnegation, a moral duty, on the successor state to absorb rights and obligation of predecessor state upon change of sovereignty; in the interest of stability in the world order it is about to join.²⁹

c) Justification

Although, this theory considers that the performance of international obligation 'is merely' moral duty of the successor state, but at the same time it gives the right to the other states, to insist upon the successor state to perform the existing obligation. If successor state refuses to accept, the other states may even withheld its recognition or make the recognition conditional upon the acceptance of predecessor's commitment towards them.³⁰

d) The self abnegation vis-a-vis universal succession theory

The self abnegation theory also perpetuates the doctrine of continuity. But, unlike others it proposes the continuity of rights and obligation of predecessor state through self coerson of moral obligation, without creating any confusion regarding the power source of the
state's personality.

d) Criticism

Like the continuity theories, this theory too, was not supported by state practice. It was criticised by various jurists too. According to O'Connell, Jellinek, while arguing for the need for stability in human relation and world order, insisted on reconciliation between morality and law, which logically are irreconciliable if one isolates the category of law in terms exclusively of the commands. 31

E. The clean slate theory

(a) Introduction

While, the continental writers, influenced by religious, social, political and economic homogeneity of European community, tended towards a general thesis of universal succession by involving the Roman law institution of 'here-ditas jeces' (succeSSION on death), the English writers conscious of British Government's reluctance to pay off the creditors of the bankrupt regimes in the new colonial world out of the British tax payers pocket, tended towards a negative view of the responsibilities of the predecessor state. 32

Clean slate theory was first propagated by the Puffendorf, 33 when he advocated in favour of the refusal of debts burden of ex-regimes of the new colonial territories, by metropolitan states in 18th and 19th
centuries. The main supporter of this theory were, Garies, Cavaglieri, Focherin, Strupp, Keith, Albertzorn and Schonbörn.\textsuperscript{34}

b) Theory

According to this theory, upon state succession, the predecessor state's personality and identity completely disappear. An entirely new sovereign personality appears in its place, but there is no legal connection or derivation of authority or personality between the predecessor and the successor state.\textsuperscript{35} The new sovereign is considered to be original and derive its authority from none other than itself.\textsuperscript{36}

c) Justification

A.B.Keith, who made an exhaustive examination of legal materials on effect of succession of states as laid down in treaties by text writers, and state practice, observed that the cession creates only a singular succession i.e. succession to rights only and not the liabilities. In any case in which the terms of question to be judged were that of succession to rights and not to obligations.\textsuperscript{37} He, further, stated:

Succession is really, merely a substitution without continuity. The rights obtained a new master and cease to be related to the obligations with which they were formerly allied, and there is no unity to enjoy a continuous existence.\textsuperscript{38}

The occurrence of state succession is an act of free will of the successor state and assumption of
obligation is not compulsory under international law. The new sovereign is absolutely free of any of its predecessor's obligations. Cicerels maintained that:

Conquest and annexation is merely an act of appropriation by force; the title of conqueror is founded on might, his title to the property of the former government upon the fact of the physical control and his expressed intention to maintain it.

In the opinion of B. Bot, the basis of clean state theory is the principle of privity of contract of contractual law. He says, "Just as a contract between two parties in common law cannot bind a third party. In same way, the prior obligation of predecessor state in relation to other creditor state can not bind the new party i.e. successor state." One of the argument, made by Rudolf Groupner, in favour of Clean Slate theory is that, state succession in an event where one state abandons its sphere of sovereignty over its whole territory or part of it in favour of other, a hiatus is thus created between the expulsion of the one sovereignty and its replacement by the other. The successor state exercises its jurisdiction over its predecessor's territory because it has acquired the possibility of asserting its own sovereignty in the manner dictated by its own will. The successor state applies its power non-derivative, in an original way, by its own will.

Thomas Baty argues that, there are serious modifications in the character of state as its dissolution
and replacement by totally new state, and in consequence
of that the persona which incurred the obligation, no
longer exists.

d) The acceptability of the clean state theory

The Clean Slate theory is not only supported by
large number of jurists but, it also seeks support from
the state practice from all over the world. When European
colonial powers were expanding their empire in Asia and
Africa, they consistently denied to own the debt
obligations incurred by previous rulers of such
territories. United States of America refused to accept
the Spanish debt obligations in Cuba and Philippine. It
had already applied similar approach when it annexed Texas
in 1848, and Alaska in 1867.

Even in 19th century's Europe, when universal
succession was almost an established state practice,
several examples may be cited where successor state denied
the passing of debt obligations to itself. For example, in
1869, Russia rejected any succession to part of the Turkish
Public Debt for territories it had conquered from the
Ottoman Empire. Under the Treaty of Frankfurt of 10
May, 1871, between France and Prussia where by
Alsace-Lorraine passed to Germany, no French debt
obligation passed to Germany. After World War I, when
the same territory returned to France, it acquired the
territory free and clear of all public debts of Germany.
In 1938 when Austria was annexed by the Germany, the latter refused to recognise any debt-obligations towards the old Austrian debts.\textsuperscript{48}

After the World War II, states like Austria, Albania, Czechoslovakia, and Poland claimed the non-continuity of the obligation of their annexing powers by invoking the doctrine of Postliminum.\textsuperscript{49} During the decolonization process, after World War II, the succession of state changed its geographical locus from Europe to Asia and Africa. The newly independent states reacted strongly against the imposition of predecessor's debt obligation upon them.\textsuperscript{50}

\textbf{(e) Criticism}

Despite its substantial acceptance under the state practice, it has been criticised by several jurists\textsuperscript{51} on following grounds:

1. The common good requires that minimum reliance must be placed upon durable principle of mutual intercourse. A legal vacuum or chaos may result from discontinuity in international legal relations due to the rejection of the obligations by successor states, the consequences of which will be detrimental not only to new state but also, to the international community as a whole.

2. The clean slate theory looks to the state practice alone and refuses to admit any general principle
of state succession, and this attitude divides the problems of state succession into arbitrary categories and seeks for a positive rule relating to each.

3. Good faith ought to govern international relations between states inter se. If the successor state were allowed to be free to recklessly repudiate all the liabilities of the predecessor state, such conduct would be certainly disapproved by the public opinion of all the civilized nations and would be considered as a violation of international law.

F. Socialist Theory

(a) Introductory background

After the Bolshevik revolution, the new communist Government of USSR asserted herself to be a 'new state'. But it never claimed the revolution to be a case of state succession. The real intension of using the term 'new state' was simply a creation of a 'state of new type' and not the emergence of new subject of international law. The fact was that, Bolshevik revolution was more disruptive in terms of consequences in social, economic, political and legal than normal case of change of government, but not sufficiently disruptive to destroy the international personality of old Russian state.
Similar type of cases were, Chinese and Cuban social revolution of 1949, and 1959, respectively. Independence from Germany and communist's take over of Yugoslavia in 1943, was considered as merely a case of change of government and not of state succession. These revolutions fell sort of expelling the legal personality of the state. Communist states consider it to be a case of 'novation', not of the succession.

(b) Origin

The philosophy of the revolution was of the 'new world order' and in keeping with this philosophy, Soviet Union regarded itself as a new state, having different political, social, economic and legal order from those of totalitarian Czarist regime and also from the rest of world community of states. To this situation the general rule of continuity of state's whereby one government of a state is laible for the acts of former government, demanded communist government of Russia to accept all the commitments of the imperialistic Czarist regime towards other imperialistic states, which was totally inconsistent with the Soviet's Communist ideology.

To meet this situation USSR espoused Keith theory of discontinuity and refused to accept the obligation of its predecessor government. It was the first case, where negative theory of state succession was applied in case of emergence of new type of state through social revolution.
Soviet Government claimed that older theories which required the assumption of the Russian Empire's obligations were merely excuses by which the western states could interfere with the Soviet Union's internal affairs by forcing the new nation to accept prior obligations, thereby continuing the effects of the west's imperialistic policies which had existed in Russia and most part of the world prior to the Bolshevik revolution. However, after 1924, USSR accepted certain obligations of its predecessor Government, but refused to all those, which were against its philosophy of communism.

(c) Theory and its justification

After II World War, Soviet jurists strengthened the socialist theory by emphasizing the importance of the right of self-determination in order to give the newly emerging subjects of international law maximum freedom in its legal relations, in the community of nations. They assert that the successor state, may refuse the obligation of predecessor state in its political and economic interest. It is worth mentioning that certain jurists like O'Connell, C.J. Lissitzyn and R.C. Pugh have contended that in second half of 20th century, socialist theory has changed its attitude and adopted the universal succession approach in case of state succession. But all of them have accepted that their only source of information was Kristen's thesis "Einige Problem der Staaleunach folge" (1962). In fact Kristen has used the
term "universal succession" in a sense different from that of universal succession theory propounded by Grotius. In socialist theory it implies a complete succession only with respect to those rights and obligations "which do not aim, to exploit people or state, to produce a new world war or to enslave or plunder other people or harm the socialist camp, which alone aims at the preservation and strengthening of world peace." 62

(c) Criticism

This theory has been criticized, as a theory that in its extreme form might, if applied, create anarchy in international trading relations, injurious to the common good, public order and stability. 63

G. Option theory

(a) Introduction

On 30th Nov. 1961, Mr. Julius Nyrere, who became the first President of independent Tanganyika, officially declared his government's policy regarding state succession in National Assembly of Tananyika:

The government is naturally anxious that the emergence of Tanganyika as an independent state should in general cause as little disruption as possible to the relations which previously existed between foreign states and Tanganyika. As the same time the government must be vigilant to ensure that where international law does not require it, Tanganyika shall not in the future be bound by pre-independence commitments which are no longer compatible with their new status and interest. 65

(b) Theory

This policy of Tanganyika became the basis of option theory, which considers that the newly independent
states are free to pick and choose and express their consent before they are considered to have assumed the predecessor's rights and obligations upon the occurrence of state succession.

(c) Justification

According to the propounder of this theory the right of option is an essential attribute of sovereignty. Any attempt by predecessor state to impose its obligations on the newly independent state, without its consent would put the successor state in an inferior position, which will be a violation of sovereign equality.

Makonnen, who is a principal supporter of this theory, has explained that this theory is based on European state practice. The past European events of state succession were generally covered by agreement between the parties concerned. It proves that customary international law supports the view that effect of state succession should be governed by specific and voluntary agreements of states concerned. Unless, successor state agrees, no obligation could be imposed upon it. In other words, successor state is free to pick, choose and express its consent in relation to passing of obligations of predecessor state to itself.

(d) Acceptability of the option theory

This theory got wide support from east African states—such as Uganda, Malawi, Tanzania, Somali land, Kenya and Burundi.
e) Criticism

Option theory has been regarded by O'Connell as a threat to international peace and stability. Jurists like Prof. Falk, consider this theory as a measure of retaliation by newly emerged states against their metropolitan states. Prof. Falk has observed:

The bitterness of the colonial experience causes the new states to be hostile towards any thing associated with that period. This is specially true of the rules about the succession of states to colonial obligation.

H. The burden attaching to the benefit theory

(a) Introduction

This theory presents, in fact, a compromise formula between the two extremes of succession to all obligations and no succession to obligations. The credit of propounding this theory goes to the American authors. American jurist H. Wilkinson, in 1934, developed a thesis, known as 'burden with benefits' making succession dependent upon the proof that the territory and more specifically the peoples in their democratic context, had benefited from the investment.

(b) Theory

'Burden with benefit theory' assumes that there is no legal obligation on the part of successor state to accept the financial obligations of its predecessor, nevertheless, successor state, having obtained the benefit of the loan borrowed, the very fact of taking over of
territory, should be responsible for the financial obligations of predecessor state in relation to that territory. This theory applies with particular force where the visible benefits of the loan are directly related with the territory,\textsuperscript{72} that has passed to it, for instance, if the proceeds of the loan had been devoted to the erection of permanent improvements on the territory.

(c) Exceptions

In relation to devolution of financial obligations of predecessor upon successor state, this theory has accepted certain concessions:

i) This theory rejects the financial obligation of predecessor state if it was incurred by it for the personal benefit of sovereign.

ii) No obligation accrues upon successor state in respect of debt contracted by predecessor state without the consent of the people.

iii) It also excludes 'odious debts' contracted by predecessor state for a purpose hostile to the successor state or for the benefit of some state other than the predecessor state.

iv) If the borrowed money is secured on the revenues of the predecessor state, the liability of successor state would be within the taxable capacity of the territory which has changed its sovereign.
iv) If the borrowed money is secured on the revenues of the predecessor state, the liability of successor state would be within the taxable capacity of the territory which has changed its sovereign.

(d) Justification

C.C. Hyde, the chief supporter of burden with benefit theory, maintains that:

It would be unjust to permit the transfer to gain the benefits accruing to the territory acquired from the use of borrowed funds unless the obligation to make repayment were undertaken.

(d) State practice

U.S. courts have adopted the above approach for deciding the controversies regarding the Spanish debts obligation in relation to Philippine, Cuba, Hawaii and Puerto Rico on American annexation of these territories.

Prof. Hyde, after an examination of peace treaties which followed the World War I, observed:

Those treaties notwithstanding the particular policies that were responsible for them... do not as a whole manifest opposition to the principle that the duty of new sovereign to bear a portion of the debt of the old should be dependent upon the benefits accruing to the territory transferred.

The same theory was applied by Tribunal Cilil of Ghent in 1963, when Tribunal declared that debts
contracted by Belgium in the exclusive interest of the Belgium Congo, should pass to the Congo after its independence. After the secession of Bangladesh from Pakistan in 1971, Pakistan claimed that Bangladesh was responsible for that portion of Pakistani debt obligation, which was devolved for the benefit of the territory of Bangladesh.\textsuperscript{77}

(f) Criticism

This theory also suffers from serious drawbacks as pointed out by jurists. Hackworth,\textsuperscript{78} says that the principle of devolution of obligation upon successor state as one of the principle of equity, not the principle of law, even though by that investment the people or territory were benefited. H.J. Cohn,\textsuperscript{78} is of the view that recognition of predecessor's obligation is merely a political decision of new sovereign. Prof. S.K. Agrawala,\textsuperscript{79} observed that, since proper assessment of the 'degree of benefit' is virtually impossible, the solution suggested by this theory, does not seem to give any practical assistance.

I. The populace benefaction theory

Another version of burden with benefit theory, known as "populace benefaction theory", has been proposed by an American scholar A.R. Cowger, in 1985.

(a) Theory

According to this theory, "any of the right which
benefit the transferred citizenry and any obligation which are the result of or the precursor to benefits acquired for the citizenry are succeeded by the successor state."\(^{80}\)

(b) Justification

The main focus of this theory is on the benefits to the population, residing in the territory to which succession of states relates, because the population is the integral element of the nation; it is the organic core to which the rights and obligations of a state are ultimately attached.\(^{81}\) Again, the basic principle of this theory is the presumption that: rights and obligations are correlative. In other words, "he who seeks right must accept the obligations". Thus, in the determination of which rights and obligations are to be succeeded turns on which of these rights and obligation are based on some benefit to the populace.

Cowger, argues that "there is a juridical symmetry of rights and obligation, and any disturbance in this symmetry may lead to the unjustified enrichment of one party at the cost of other."\(^{82}\)

It seems that the scope of this theory is comparatively larger than the burden with benefit theory. In latter theory the benefit should be visible and of the permanent nature, but in former even if that benefit was
temporary, the successor state should be liable to assume the correlative obligation incurred by the predecessor state.

(c) Criticism

The main lacuna of this theory is its inaplicability. It is the successor state, which will ultimately decide what rights and obligations were beneficial to its populace. Therefore, this theory gives full opportunity to successor state to form its own subjective opinion.

3. COMPARATIVE ANALYSIS OF THEORIES OF STATE SUCCESSION

From the above delineations of different succession theories, it seems that almost all the theories argue for the passing of all the rights to successor states. The only exception is popular continuity theory which says that private rights of predecessor state do not pass to successor state. Beside this, clean Slate theory argues that rights, in fact, do not "pass" but successor State "appropriates" all such rights in its sovereign capacity.

The four theories namely, universal succession theory, popular continuity theory, organic substitution theory and self abnigation theory, are almost unanimous with reference to passing of obligation, however, subject to little qualification with reference to popular continuity theory regarding the passing of private
obligations of sovereign. The clean slate theory seeks the
total negation of passing of obligation to the successor
state whereas the rest of four theories seeks to cost the
obligation subject to different kinds of qualification.
For example, the option theory seeks to pass the
obligations subject to pass the choice of the successor
state; the socialist theory seeks to pass the obligation
provided they are in the interest of the people of
successor state as well as in consonance with communist
ideology, the burden with benefit theory seeks to pass the
obligation to successor state in a situation where
obligation has resulted into certain permanent and visible
type of benefit whereas the populace benefaction theory
seeks to pass the obligation to successor state provided
they are coupled with corresponding benefits of any kind.

Examination of the state practice shows that none of
the theory was followed uniformly but varies from case to
case and from state to state. In fact the authors who
reflected one of the other approach tended to be dogmatic
in their enunciation of the rules of law. It seems that
majority of authors were more interested in their own
national interest than in honest analysis of state
practice and their juridical consequences. Some of them
has proposed a new thesis just to legalise their own
state's decision in relation to effect of state
succession.
4. CONCLUSION AND SUGGESTION

Jurist have propounded several theories of state succession to explain the legal effects of state succession and to seek the justification thereof on the rights and obligations of states concerned. But, these theories are highly inconsistent and individually flowed as well.

Some of the theories, such as, the universal succession theory, the popular continuity theory, the organic substitution theory and the self abnigation theory, impose an absolute duty on successor state to succeed all the rights and obligations of predecessor state. Whereas the clean slate theory completely denies the passing of obligation to successor state. On the other hand, the optional theory gives full freedom to successor state to pick and choose any or all the old obligations it wishes to own. The burden with benefit and populace benefaction theories argue for passing of an obligation to successor state, if latter state's territory or peoples were benefited from such obligations.

All these theories are the product of specific situations, time and places. The continuity theories are seems to be the product of culturally and religiously homogeneous European society. Whereas the clean slate and the optional theories appear to be the product of confrontation of interests of east and west. On the other hand, the burden with benefit and the populace benefaction
theories are seems to be the out come of unification of several independent states into U.S.A. However, the socialist theory appears to be the result of communist philosophy.

in fact, none of these theories were followed by state and courts uniformly. State practice and judicial decisions show that legal effect of state succession varies from case to case and from state to state. In presence of so many conflicting theories political considerations play an important role in shaping the effect of state succession.

The subject of state succession cover such a widely differing phases which depends upon diverse consideration and principles, that nothing but confusion can result from the common method of treating them all as an homogeneous mass to be forced within the confines of single rule.

General subject, it is submitted, should be classified under different legal interests involved, and effect of succession of states on each legal interest should be again classified in different origins of state succession and then law relating to each one of them should be analysed separately.
FOOT NOTES


3. According to Roman concept of succession the 'estate' with its rights and obligation was a legal personality possessed of immortality. Upon death of an owner, his estate was transmitted in its entirety to the successor. In other words, there was no succession but continuation. H. Wilkinson, THE AMERICAN DOCTRINE OF STATE SUCCESSION, (1933, Baltimore, John Hopkin Press), p. 3.


6. Halleck writes:

Complete conquest, by whatever mode it may be perfected, carries with it all the rights of former government or in other words the conqueror by the completion of his conquest, because as it were, becomes the heir and universal successor of the defunct or extinguished state. Halleck, INTERNATIONAL LAW, 4th Ed. Vol. II (1908, London, Kegan Paul Trabur and Co. Ltd.), p. 530.

W.E. Hall, has stated:

When a state ceases to exist by absorption in another state, the latter in the same way as the universal heir under Roman law took up the persona of deceased property". Hall, INTERNATIONAL LAW, 8th Ed. (1924, Oxford, The Clarandon Press), p. 99.
7. For the acceptance of Universal Succession Theory in Europe, Makonnen has given following reasons:

(1) Cultural and religious homogenity of European society.

(2) Very high level of business and commercial transaction among the neighboring European states.

(3) High degree of Interdependence over each other and,

(4) Highly powerful and influential community of money lenders, who were interested in uninterrupted servicing of debts, op. cit., pp. 150-152.


11. See Infra, Chapter V.

12. See infra, Chapter III.


18. ibid., p. 11; V. Makonnen, op. cit., p. 130; A.R Cowger, op. cit., p. 288.

19. K. Marek, op.c it., p. 11.

20. See Infra, Chapter IV.


22. A. B. Keith, ibid.


25. Von Geirke, in his paper concluded that "a social organism unlike a natural organism, rarely disappear on death, what normally happens is that its identityis lost with the destruction of the hard core of its life. But the organic forces, which previously governed it, remain unaffected. A succession in the place of the dissolved social personality is an immediate and primary consequence of the change. The property of the former composit person passes toits new owner as a single entity with all rights and obligation attaching to it.


29. Jellinek opined that:

When a new state is created, it recognises itself to be bound by international law in virtue of the needs of international law," cited by O'Connell. ibid.


31. There are certain cases which support the self abnegation theory, such as, Spain had warned its ex-Latin American colonies to accept the pre independence debts or face non-recognition. British recognition to the Maxico in 1861 was conditional for the acceptance of its debt. However, such cases are seldom in the history of State Succession and cannot be said as established principle of International Law.

32A. O'Connell, op. cit., p. 28.


34. ibid., Feilchenfeild, op. cit., p. 403.


36. Y. Makonnen, ibid.; A. B. Keith, op. cit., p. 5.

37. A. B. Keith, ibid., pp. 5-6.

38. ibid., p. 6.


41. Rudolf Groupner, op. cit., p. 15. Similar explanation of clean slate theory was provided by O'Connell, who says: "under this theory, upon State Succession, the territory as well as rights and obligations of predecessor state become instantly Vacantia bona and the successor state 'appropriates' all rights and territory in the manifestation of its own will," O'Connell, op. cit., p. 15.

42. T. Baty, op. cit., p. 122.

43. H. Wilkinson, op. cit., p. 84; Makonnen, op. cit., 152.


46. ibid.

47. Article 55 and 255 of the Treaty of Versailles. ibd.


50. See, Supra, pp.


56. Statement of representative of yugoslav in "Representation of member nations in the UN, 1950, UNYB, p. 33.


61. Cited by O'Connel, op.c it., p. 19.

62. Y. Makonnen, op.c it., p. 134.


64. D.P. O'Connell, op.c it., p. 27.

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67. Y. Makonnen, op. cit., p. 197.

68. R. Falk, "New States and International Law." Proc. of Am. Soc. of Int. Law (1966), p. 120.


70. It seems that there were two factors which influenced the American author to propose this theory: First was, American Government's reluctance to Salvage the credit of investors in Cuba and Phillipines, Second factor was that the guarantee of right to property provided under US constitution which had given a sacrosanity to the legal interests of people, in the vast territories of the Taxas and Maxico in 19th century and Hawaii in beginning of 20th century. Both these contradictory factors influenced the American authors to adopt a mid way.


72. ibid., p. 123.


76. Quoted by O'Connell, op. cit., pp. 96-98.


80. A.R. Cowger, op. cit., p. 301.

81. ibid., p. 302.

82. ibid., p. 300.