THE LIMITS OF TRANSMITTING INTANGIBLE ELEMENTS OF THE BUSINESS THROUGH SUCCESSION

Prof. PhD..
Smaranda Angheni
Faculty of Law, „Titu Maiorescu" University

Abstract

The present study is a continuation in an in-depth manner of the researches we have undertaken on the successional transmission of property and business.

The transfer of business components (elements), due to their specificity, entails in certain cases ***restrictions*** *(prohibitions) and, in other cases,* ***legal*** *and sometimes* ***conventional limits****.*

The intangible elements of the business are, according to the expression of the legislator: the company, the emblem, the clients, the good custom, patents of inventions. In our opinion, the enumeration made by the legislator is not limiting, knowing that, in the business, traditionally, there may be other elements such as: authorizations, approvals necessary for the exploitation by the professional of the business, know-ho (savoire faire) etc, and in French law the right of bail (use) on the space where the business is exploited in its entirety.

Although in the case of the transfer by succession of a goodwill it can be accepted that together with it the clientele is also transferred (especially since it is evaluated), however, in practice, this cannot be transmitted „tale quale" from the owner of the business (de cuius) to the heirs who accept the continuation of the activity.

The business in its entirety as well as its intangible elements (assets) can be transmitted through succession with the limits analyzed, in particular, those related to the company, which can only be transmitted together with the entire goodwill, and those relating to the clientele regarding which the professional has no subjective right, but which has a value that can be transmitted through succession.

Kaywords *business, firm, clientele, transmission, succession, limits*

Introduction

The present study is a continuation, in an in-depth manner, of the research I undertook on the successional transmission of property and business[1].

As I stated[2], from a notional point of view, the „goodwill" (as a legal institution) is not confused with the „patrimony of affection", the legislator himself making this distinction. Thus, according to Article 3 (1) r) of Law no. 265/2022 on the trade register and for the amendment and completion of other normative acts affecting registration in the trade register[3] with application from November 26, 2022, the goodwill is „*the set of movable and immovable, tangible and intangible assets – brands, companies, emblems, invention patents,*

[1] A se vedea, S. Angheni, Transmiterea pe cale succesorală a patrimoniului de afectațiune și a business", Conferința Internațională de Drept, Studii Europene și Relații Internaționale, Facultatea de Drept, Universitatea Titu Maiorescu, mai 2022;

[2] A se vedea S. Angheni, Drept comercial. Tratat, Ed. C.H. Beck, 2022, p. 105 și urm.;

[3] M.Of. nr. 750 din 26 iulie 2022;

good custom –, used by an economic operator in order to carry out its activity and to attract and maintain clientele".

Regarding the patrimony of affection, in accordance with Article 31 (2) related to Article 31 (1) of the Civil Code, it is represented by „*fiduciary patrimonial assets constitute, according to the provisions of Title IV of Book III, those affected by the exercise of an authorized profession, as well as other assets determined according to the law*".

Comparing the two definitions, it is clear that the business cannot be confused with the affected patrimony, the difference being that, while the **business** is composed of a „set of assets" it therefore meets the conditions of a „*de facto* universality"[4] within the patrimony of an economic operator (according to the expression of the legislator) but who can also be an authorized professional other than an economic operator (trader), **patrimony of affection** it is composed of rights and obligations of „fiduciary patrimonial masses", so it is a „legal universality" specific to the legal concept of patrimony.

But, both business and patrimony of affection can be transmitted through succession (inheritance), whether this transmission is legal or testamentary.

As long as these concepts with the component goods can be transmitted through legal acts „*inter vivos*" (sale, donation etc.) we consider that they can also be transmitted through legal documents „*mortis casa*" (testament) and „a *fortiori*" can be transmitted through legal devolution.

However, the transfer of business components (elements), due to their specificity, entails in certain cases **restrictions** (prohibitions) and, in other cases, **legal** and sometimes **conventional limits**.

1. Specific elements of goodwill – intangible assets

As follows from the legal definition of goodwill, which refers to its elements[5], it follows that goodwill is composed of both **tangible and intangible assets.**

Regarding **tangible assets, the legislator „accepts"** that both movable and immovable assets **can exist** in goodwill. Regarding immovable assets, in the absence of a specification of the law, we consider that there can be both immovable assets by their nature, according to Article 537 of the Civil Code, immovable assets by the object to which they apply and immovables by destination (Article 538, 542 of the Civil Code).

Tangible movable assets can be: materials, machinery, equipment used by the professional in carrying out the declared and, under the law, authorized object of activity.

The holder of the business can have either a right of ownership or only a right of use over the movable assets.

If with regard to the right of ownership, its transmission through succession, as a rule, does not create problems; on the other hand, if the owner of the business only has the right of use over one or some goods (such as the user's right over some goods that he uses under a leasing contract), the transmission of this right to the heirs can only be done in the conditions of the special law.[6]

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[4] Pentru argumentele legale privind „teoria universalității de fapt" a business, a se vedea S. Angheni, Drept Comercial. Tratat, op. cit., p. 115;

[5] A se vedea, supra, p. 1

[6] A se vedea, O.G. nr. 51/1997 privind operațiunile de leasing și societățile de leasing, republicată (M.Of. nr. 9 din 12 ianuarie 2000);

Regarding the tangible elements (**tangible goods**) of the business, they can be transmitted by succession according to the regulations of the common law regarding their circulation.

Conversely, in the case of intangible elements (**intangible goods)** that are specific to business there may be certain legal and sometimes even conventional limits (prohibitions).

In order to identify the limits of the successional transfer of the business, we must, in advance, specify the following aspects, of principle, regarding the successional devolution.

First of all, in the case of the existence of a goodwill that has been exploited and that belonged to „*de cuius*" it is possible that, if there are several heirs, one or some of them may want to continue the activity, if it meets the conditions of the special legislation applicable to the respective category of professionals, and the other or the other heirs do not want to continue the activity or do not meet the conditions of the specific legislation to be able to carry out the respective activity: for example, „*de cuius*" was a doctor, the business he exploited cannot be passed on to the heirs who are not doctors.

In practice there may be different situations. Thus, it is possible that, in the case of the heir/heirs who fulfills the conditions of the legislation specific to the respective field, they will receive goodwill in kind (following the inheritance division), and, following its assessment, the other heirs receive in money the value of the inheritance share due to them from the deceased's estate.

Another situation that can exist is when the heirs accept the taking over of the business, through succession, but to put it into use (exploitation) and even ownership by another person who meets the conditions of the special legislation regarding the respective profession.

Both in the first situation and in the second, there is the question of the „limits" of the inheritance of the intangible elements (intangible goods) of the business.

The intangible elements of the business are, according to the expression of the legislator[7]: the company, the emblem, the clientele, the good custom, invention patents. In our opinion, the enumeration made by the legislator is not limiting, knowing that, in business, traditionally, there may be other elements such as: authorizations, approvals necessary for the exploitation by the professional of the business, *know-how* (*savoire faire*) etc, and in French law the right of *bail*[8] (use) on the space where business is exploited in its integrity.

Therefore, it is important to specify that business does not contain only the intangible assets mentioned by the legislator because, in the case of the inheritance of the business, it is possible that, for some of these components, there is no possibility of their transmission.

For example, *intuitu personae* contracts closely related to the person of the deceased will obviously cease with his death. It is the case of medical practices, concluded contracts cannot be automatically passed on to the heir(s).

For example, the notices or, as the case may be, the authorizations issued for the exercise of a certain activity and which were dependent on the person of the deceased cannot be transmitted through succession.

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[7] A se vedea, Article 3 (1) lit. r din Legea nr. 265/2022 supra, p. 1;

[8] A se vedea, M.de Juglart, B. Ippolito, Traité de droit commercial, Tome Premier, 4e édition, Ed. Montchrestien, Paris, 1988, p. 728 și urm.; Y. Guyon, Droit des affaires; Tom I, 6e édition, Ed. Economica, Paris, 1990, p. 648 și urm.

But, as a rule, all the intangible assets that are part of the business can be transferred both by „*inter vivos*" and „*mortis causa*" legal acts.

The legal problem arises in the situation when only some intangible assets are transferred through succession or „*inter vivos*" legal acts. In the law, in this case there are limitations qualified as even prohibitions.

2. Transfer of the company – legal conditions

In accordance with Article 48 (3) of Law no. 265/2022, the company can only be transferred together with the entire goodwill, which means that in no case can it be transferred separately, as a distinct element of business.

The explanation of the prohibition of the separate transmission of the company lies in the fact that it represents the identification attribute of the professional (*de cuius*) who organized and carried out his activity during his lifetime.

The same reasoning also exists in the case of the prohibition of bringing to the share capital of a company that constitutes the company owned by an associate, whether it is acquired through succession, or whether it exists in another individual or associative professional structure of the owner of the respective company.

If the company is passed on through succession, obviously, together with business, the notion of „successor" must be added to its content.

At the same time, it cannot be transmitted and exploited separately, the reputation (*goodwill*) or the surplus value of the company which is determined by the value, the reputation of the business, in its integrity.[9] From a conceptual point of view, reputation (*goodwill*) forms the substance of another concept, namely that of business[10] of which goodwill would be part.

The concept of „goodwill" is important, above all, from an accounting point of view and for determining the value of business, in the case of its transmission, including through succession.

The intangible elements of the goodwill are related either to the clientele, such as: loyalty, number, quality of the clientele, the perspective of its development; elements related to the quality of suppliers of delivered products or services provided; elements related to the salaried staff and the quality of relations between employees (employees/workers) and the management of the enterprise, elements related to the patrimony of the immovable, mobile enterprise, the reputation of product brands, intellectual property rights, in general.

All these elements, in their dynamics, influence the value of the goodwill determining the reputation or goodwill of the professional in particular, the trader.

Therefore, the company viewed separately as well as its reputation (goodwill) cannot be transferred separately but only together with the entire business.

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[9] A se vedea, L. Bercea, D.A. Cărămidariu, Reputaţia comercială. O discuţie despre compensarea prejudiciului reputaţional în contractele de afaceri, în R.R. D.P. nr. 3/2020, p. 29-60;

[10] N. Feleagă, L. Feleagă, Controverse privind politicile de evaluare, depreciere și contabilizare a fondului comercial, ASE București; E. Iordache, Recunoașterea fondului comercial negativ în situațiile financiare, Revista Idei, Sugestii, Experiențe, anul 2, nr. 4/2013; Itsuo Sakuma, Will the concept of goodwill go well with national accounting?, EURONA — Eurostat Review on National Accounts and Macroeconomic Indicators; RF Reilly, CPA, Goodwill Valuation Approaches, Methods, and Procedures, Financial Advisory Services Insights (www.willamette.com); pentru analiză amplă a reputației comerciantului, inclusiv a termenului „good will", a se vedea L. Bercea, D.A. Cărămidariu, Reputația comercială. O discuție despre compensarea prejudiciului reputațional în contractele de afaceri, în R.R.D.P. nr. 3/2020, p. 29-60;

3. Transmission of clientele

In Romanian legislation, there is no definition of clientele, this having meaning from an accounting point of view, expressed in the **form of a number.**

However, a legal interpretation of the term „clientele" can be formulated as being the totality of natural and/or legal persons who are in legal relations with a commercial professional.

In order to establish to what extent the clientele can be passed on through succession, some seemingly theoretical clarifications are required but, in reality, with multiple practical implications.

Thus, a first clarification refers to the place that the clientele occupies within the „business" concept. In other words, is the clientele a component part of the business or, on the contrary, is it attached to a business through all its tangible/intangible elements?

The problem arose in French doctrine[11], starting from the idea that, in fact, a merchant cannot claim to have a subjective right over the clientele. Each customer is free to address (supply) from any merchant. The clientele cannot be the „property" of the business holder, so it cannot be valued and assigned.

In another opinion[12], the clientele is a component part of the business to which it belongs, denoting the people who usually get supplies from a certain store, depending on all the business elements, an opinion which, moreover, is in accordance with the French Law of March 17, 1909.

Regarding the Romanian Law (Law no. 265/2022), we note that Article 3 (1) r) does not explicitly state that the clientele is an element of business, but from the expression of the legislator*"... used by an economic operator in order to carry out its activity and to attract and maintain clientele*", it can be concluded that this (clientele) is a component of the business and that can be evaluated at the time of its transmission, transmission is via succession.

But, **in order to be assessed and transmitted**, the clientele must be **personal** to the one who operates an enterprise and is not personal to the clientele of traders who have shops installed in the premises of a **collective** store, a situation in which what is assessed and transmitted is another element of business, respectively the good custom (*achallandage*).

At the same time, it is not an own clientele that is „passing" through the collective store or when there is a **material and legal dependence** of a trader on another trader, thus there is also a dependence of a trader's clientele on the existence of the other trader[13].

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[11] *R. Sabatier, J.M. Laloup*, Droit commercial, Actes de commerce, commerçants, fonds de commerce, ed. a 3-a, Paris, 1993, p. 281-284; *M. de Uglart, B. Ippolito*, Cours de Droit commercial, vol. I, ed. a 8-a, Actes de commerce et commerçants, Fonds de commerce et entreprises, Effets de commerce, Paris, 1984, p. 344-345

[12] *G. Ripert*, Traité elementaire de droit commercial, ed. a 13-a, L.G.D.J., Paris, 1989, nr. 522 definește goodwill ca fiind o proprietate incorporală care constă în dreptul asupra clientelei care este atașată fondului prin elemente care servesc la exploatarea lui, definiție care este explicată mai detaliat în *G. Ripert, R. Roblot*, Traité de droit commercial, vol. I, ed. a 15-a, L.G.D.J., Paris, 1993, p. 463. Comerciantul nu are dreptul exclusiv de a exploata o clientelă, pentru că nu are un monopol. Dar, în fapt, deține suficiente elemente pentru a considera că o anumită clientelă îi aparține și, eventual, să o dezvolte. Este suficient să mențină aceste elemente pentru a menține sau transmite clientela; *Idem*, *A. Jauffret*, Repertoire de droit commercial, Fonds de commerce, Lamy, 1977, p. 321.

[13] Pentru detalii privind dependența materială și juridică a clientelei, a se vedea, S. Angheni, op. cit., p. 125-126;

Although in the case of passing on a business through succession, it can be accepted that along with it, the clientele should also be passed on (especially since it is evaluated). However, in practice this cannot be transmitted „*tale quale*" from the business owner (*de cuius*) to the heirs who accept the continuation of the activity.

Punctually, it is the **case of medical practices** whose patients have concluded a healthcare contract with the person who owned and exploited the business.

In this case, the legal regime established by special regulations regarding the conditions of exploitation of the person as a doctor, the authorizations he holds, the „*intuitu personae*" nature of the contracts concluded with patients (clients) does not allow the transmission of the contracts through succession; not even in the situation where the heir or heirs who accept the continuation of the activity of the deceased and meet the conditions of the special legislation.

These heirs will conclude contracts in their own name with the patients who belonged to „*de cuius*". Using the argument of formal „*a fortiori*" logic these contracts will not be taken over by the employees (salaried employees) of the doctor who ceased his activity as a result of the death.

Even if doctors can organize and carry out their activity in the form of a legal institution „Authorized natural person" or as „Individual enterprise", from the point of view of the content of the activity, they cannot be considered „traders" and will obviously be subject to the special regulation of the medical profession.

A similar, but nuanced, problem could also arise in the case of limited liability companies established for the exercise of the lawyer profession, although, in that case, the client concludes a legal assistance contract with the law firm represented by X lawyer who, by the time the legal assistance contract is terminated, dies.

In this situation, we must distinguish according to the activity that the lawyer will carry out within the contract. If it is a consulting activity, we consider that this contract can be transmitted to the other lawyers within the law firm, on the other hand, if the activity consists of representation (conventional mandate) being an „*intuitur personae*" contract of mandate, it ceases with the death of the trustee, even if there may be some effects that will also occur on account of his heirs.

In general, „*intuitu persoane*" contracts and any legal acts concluded in consideration of the person and quality of the business owner and which are related to business, cease with his death.

In conclusion

The business in its entirety as well as its intangible elements (assets) can be transferred through succession with the limits analyzed, in particular, those related to the company, which can only be transferred together with the entire business, and those related to the clientele regarding to which the professional has no subjective right over, but which has a transmissible value through succession.

STATE SUCCESSION IN REGIONAL INTERNATIONAL ORGANIZATIONS

Gabriela A. Oanta*
Associate professor of public international law
Holder of the Jean Monnet Chair „European Union law of the sea"
Director of „Salvador de Madariaga" University Institute of European Studies
University of A Coruña (Spain)
ORCID ID: 0000-0002-1098-4758
gabriela.oanta@udc.es

Abstract

The succession of states to membership of a regional international organisation presents numerous challenges, even today, for both the States and the international organisation concerned. The international practice is enormously abundant, although the birth and disappearance of States is not a very frequent occurrence on the international scenario. There are continents where in recent years there have been more cases of dissolution, merger, or separation (negotiated or not agreed) of States (Africa or Europe). There are others where, for historical reasons, there have been practically no changes, except for the incorporation of new States that have emerged from the latest waves of decolonisation (America). Added to this is the proliferation of independence movements in practically every corner of our planet. Throughout this Chapter, we will look for the most salient points and commonalities in the practice of the international organisations created in Africa, Asia and Oceania, the Americas, and Europe.

Keywords: *States; international organizations; succession*

1. General considerations on the succession of States to membership of regional international organizations

International organizations are secondary international legal subjects that owe their existence to a prior legal act – normally a treaty – negotiated by States that voluntarily wish to create a new international entity with its own institutions and competences to achieve common interests. The birth, existence and disappearance of international organizations are very much conditioned by the will of the member States. This will is also very much present in the case of the succession of States in the status of member of an international organization.

The succession of States in membership of regional international organizations is an overly broad and heterogeneous phenomenon, which consists of more than three hundred international organizations with very different and varied membership, purposes and competences. These organizations introduce certain objective or subjective conditions for membership. In some cases, these conditions are very restrictive, requiring, for example, that the candidate State be previously recognized by the members of the international organization and that both the institutions of the organization and its member States give a favorable opinion, and, in some cases, the latter must do so unanimously. In other cases, the requirements are lighter and the admission process simpler. In many situations, this is due to the colonial past of its members or is the result of the complex constitutional and

administrative relationship of European countries – such as France, the Netherlands and the United Kingdom – with these territories, or even the fact that European countries still maintain a sphere of influence in these lands that are so far away from the European continent.

In any case, the diversity of the processes of cooperation and, to a large extent, of regional integration make it necessary to look at the specific legal order of each of the international organizations and examine „the rules of the organization"[1] to determine how they have resolved the succession of States in their membership, in order to learn about the practice of these regional international organizations with the aim of seeing if there are points in common and similar concerns. Furthermore, it should be noted that many regional international organizations have not faced the complex situation of succession in their membership, either because they were created after the emergence as States of those who are now members, or because the cases of succession refer to States that had not previously been members. This is undoubtedly an extremely broad field.

As is well known, membership of an international organization is a constituent element of the organization. Its original law determines the procedure to be followed to become a member, and the processes of succession of States to membership are obviously linked to this reality. Hence, when examining succession to membership of an international organization, one must start from the conditions for membership of that international organization.

Throughout this Chapter, we will focus on the case of those international organizations at the regional level that have faced situations arising from the succession of States, which have had implications for membership in an international organization, or that have particular characteristics arising from the conditions required by regional international organizations for admitting new members.

Given the considerable number of processes of institutionalization of regional cooperation in which States participate, throughout this Chapter we will focus only on those regional international organizations that we consider are the most representative from the perspective of the succession of States in the membership status. To this end, we will refer, firstly, to the African continent *(2)*; secondly, to the Asian continent and Oceania *(3)*; thirdly, to the American continent and the Caribbean *(4)*; and, fourthly, to the European continent *(5)*. Therefore, the problem of the succession of States in the membership of intercontinental international organizations will not be analyzed in this Chapter, otherwise we would exceed the limits set for this Chapter.

2. State succession to membership of regional international organizations in Africa

The African continent has been – and continues to be today – the scene of bloody wars, both inter-ethnic and inter-State,[2] which have led the United Nations (UN) to establish

[1] For a further development of the scope of the expression „rules of the organisation", see: Cortés Martín, J.M. (2008). Las Organizaciones Internacionales: Codificación y Desarrollo Progresivo de su Responsabilidad Internacional, Ed. Instituto Andaluz de Administración Pública, p. 159; Sobrino Heredia, J.M. (2010). El estatuto jurídico de las Organizaciones internacionales. In Diez de Velasco, M. (Sobrino Heredia, J.M. coord.) (2010). Las Organizaciones Internacionales, 16th ed., Tecnos, pp. 59-61.

[2] According to the report presented in 1998 by the UN Secretary-General to the Security Council, in the last three decades of the twentieth century alone there were some thirty armed conflicts on the African continent. In

numerous peacekeeping operations and even, in 1994, to create an international criminal court to prosecute flagrant violations of the rights of the population of an African State or of the nationals of that State in neighboring countries.[3] Subsequently, in 2000, this organization also signed an agreement with an African country badly affected by civil war for the creation of a hybrid international tribunal, made up of national and international judges with jurisdiction to try crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under the national law of that country that had been committed in the territory of the country in question.[4]

The African geographic space has also been a true laboratory for the development of ideas of regional and sub-regional cooperation and integration, which have ultimately sought to achieve African unity. Numerous international institutions have been created, transformed, or disappeared, especially since the 1960s, when more and more African States began to emerge as a result of the decolonization process initiated by the ÚN after the adoption of the so-called Magna Carta of Decolonization.[5]

Regional and sub-regional cooperation and integration processes in Africa have perhaps also been driven by the ethnic and religious complexity that exists in the vast majority of African States, where members of the same ethnic group often have different nationalities from neighboring countries.[6] Perhaps this has led to the desire of African States to work together and to pool the interests they share and which require joint responses, and also not to recognize, in principle, the right of secession of any African people without respecting the constitutional order of each country.

In the author's view, apart from the independence of the former African colonies that have achieved Statehood after the decolonization process of the entire African continent – only Ethiopia, Liberia, Egypt and South Africa never became colonized[7] – few State succession attempts have actually been successfully carried out in Africa so far. This is striking, as there have been numerous attempts at secession on the African map in recent decades.

For the purposes of this Chapter, the following processes that are the result of secession or separation of parts of a State's territory leading to the formation of one or several successor/continuing States, unification of States or the dissolution of States seem to us to be relevant: the dismemberment in 1960 of the Federation of Mali and the subsequent emergence as States of Mali and Senegal; the creation of Tanzania in 1964 following the union of Tanganyika and Zanzibar; the independence of Zambia, Zimbabwe and Malawi following the dissolution of the Federation of Rhodesia-Nyasaland which had existed as a subject of international law for a decade (1953-1963); the separation of Eritrea from Ethiopia in 1993; and the separation of South Sudan from Sudan in 2011. Therefore, the

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this regard, see: „The Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa. Report of the Secretary-General", A/52/871-S/1998/318, 13 April 1998.

[3] We are referring to the International Criminal Tribunal for Rwanda.

[4] This is the Special Court for Sierra Leone.

[5] General Assembly resolution 1514 (XV) of 14 December 1960.

[6] Ouguergouz, F. and Tehindrazanarivelo, D.L. (2006). The question of secession in Africa. In Kohen, M.G. (ed.). Secession. International Law Perspectives, Cambridge University Press, pp. 257 and 261.

[7] Egypt became formally independent, while South Africa was considered an autonomous domain of a colonial empire. In this sense, see: Maluwa, T. (2013). La transition de l'Organisation de l'unité africaine à l'Union Africaine. In Yusuf, A.A. and Ouguergouz, F. (dirs.). L'Union africaine. Cadre juridique et institutionnel. Manuel sur l'Organisation panafricaine, Ed. Pedone, p. 35.

independence achieved by Namibia after the end of UN administration in 1990,[8] and the Western Sahara issue will not receive special attention, although references will be made to them when appropriate.

The continental international organizations in Africa that are of most interest from the perspective of State succession to membership are: the AU (with its predecessor OAU), the African Economic Community (AEC), as well as the so-called „Regional Economic Communities" that were at the basis of the constitution of the future AEC in 1991.

3. State succession to membership of regional international organizations in Asia and Oceania

Asia and Oceania have been the scene of numerous succession scenarios, some of them peaceful, others less so, and contemporary international law has tried to find a legal framework for them. However, at present, there are still separatist tensions which, in the not too distant future, may enrich this practice: Tibet, Manchuria, Hong Kong and Taiwan in China, Kashmir in India, Aceh on the Indonesian island of Sumatra, Kurdistan – which would affect the current territories of Iran, Iraq and Turkey –, the Moros in the Philippines, the Tamils in Sri Lanka, New Caledonia or French Polynesia of France, Bougainville in Papua New Guinea, etc.

It is a vast geographical area, inhabited by more than three billion ethnically diverse people, in which countries with vast territorial extensions (China, Mongolia, Australia...) and some of the smallest countries and non-self-governing territories in the world (Nauru, Tokelau, Cook Islands...) coexist. Many of these countries and non-self-governing territories share a common colonial past, having been part of the Spanish, Portuguese, French, Dutch or British empires and, later, of the United States.[9] It is perhaps this colonial past that lies at the root of many of the succession scenarios in Asia and Oceania, which have resulted in the emergence of new States on the international scene and numerous implications for membership of international organizations, including those at the regional level.

There are several international organizations, bodies, and forums in which Asian and Oceanian countries participate and which are characterized by great socio-political diversity. But they also include those non-self-governing territories dependent on powers outside the region, in various fields such as foreign policy, defense and trade relations.[10] However, in the author's view, there are very few voluntary associations created by them through an

[8] For a study of the international trusteeship regime and non-self-governing territories within the United Nations, see: Virally, M. (1972). L'Organisation mondiale, Librairie Armand Colin, pp. 232-241. With regard to the particular case of Namibia within the United Nations before its independence, it is worth mentioning that on 27 October 1966 Namibia came under the mandate of this Organisation, by virtue of Article 77 of the Charter, ending, from a legal point of view, South African control over the territory of Namibia.

[9] For a presentation of the characteristics of some of these territories with a special status in contemporary international law, see: Sobrino Heredia, J.M. (2018). The European Union and the Principle of Self-Determination of Peoples: Territories with Special Status in the European Union and Pending Cases of Decolonization. Spanish Yearbook of International Law 22, pp. 313-345.

[10] Some of these territories have been included by the Special Committee on Decolonisation (created by the United Nations) in a List of Non-Self-Governing Territories (e.g. Guam, New Caledonia, French Polynesia, Tokelau), while others are overseas collectivities, territories or countries that are considered – for example by the EU – as Outermost Regions or Overseas Countries and Territories (e.g. Wallis and Fortuna, the French Southern and Antarctic Territories). For an interesting study of these issues, see: Sobrino Heredia, J.M. (2018). Derecho del mar y Territorios No Autónomos. In Oanta, G.A. (coord.). El Derecho del Mar y las Personas y Grupos Vulnerables, Bosch Editor, pp. 353-358.

international treaty laying the foundations for an international organization on a continental scale in these parts of the world, and which, moreover, present significant data for the problem of succession to membership of one of these organizations.

Considering, on the one hand, the time of their establishment, few international organizations are of real interest for the purposes of this Chapter, and, on the other hand, the timing of the succession scenarios that occurred in Asia and Oceania after the Second World War, lead us to pay special attention to: the secession of Bangladesh from Pakistan in 1971, the merger of Vietnam in 1976 and Yemen in 1990, the independence achieved by several former Soviet republics in 1991,[11] and the independence of several island States in the Pacific – Samoa in 1962, Nauru in 1968, Fiji and Tonga in 1970, Papua New Guinea in 1975, the Solomon Islands and Tuvalu in 1978, Kiribati in 1979, the Marshall Islands and Micronesia in 1986, Palau in 1994 and East Timor in 2002.

To this should be added the particular case of the Non-Self-Governing Territories, such as: Guam, the Northern Mariana Islands, the Lesser Mariana Islands and American Samoa which are dependent on the United States; Christmas Island, the Ashmore and Cartier Islands, the Cocos Islands, the Coral Sea Islands and Norfolk Island which are dependent on Australia; the aforementioned Cook Islands and Niue, and Tokelau which are dependent on New Zealand; the Pitcairn Islands which are dependent on the United Kingdom; and New Caledonia, French Polynesia and Wallis and Fortuna which are dependent on France. This complex and varied picture is completed by a number of oceanic territories that are part of non-oceanic States, such as: Hawaii, which is part of the United States; Easter Island, which belongs to Chile; and Moluccas, North Moluccas, Papua and West Papua, over which Indonesia has sovereignty.

Against this background, in the author's view, the Pacific Community and the Pacific Islands Forum are the regional international organizations of most interest for the purposes of this Chapter.

4. State succession in the membership of regional international organizations in the Americas

America is a continent where, in general terms, the States that have emerged have maintained the borders that existed before their decolonization and where there have been no situations of secession.[12] There have been several exceptions and there may be some new cases.

In the first case are certain Caribbean territories which, on gaining independence from the United Kingdom, have created federations or States, and then disintegrated. In this section, reference should also be made to the historic case of the Central American Republic, which was short-lived and soon dismembered into the current Central American Republics, which occurred before the existence of international organizations in the region. To this should be added the case of Panama, which declared its independence from

[11] For an interesting study on power-sharing among various countries in Asia and Oceania after the break-up of the former USSR and their participation in various regional organisations and collaboration mechanisms, see: Schellhorn, K.M. (1992). Asia After the End of the Cold War. Southeast Asian Affairs, pp. 58-70.

[12] For a general presentation of the process of decolonisation of the American colonies during the independence process, see: Armas Pfirter, F. and González Napolitano, S. (2006). Secession and international law: Latin American practice. In Kohen, M.G. (ed.). Secession. International Law Perspectives, Cambridge University Press, pp. 374-415.