

1. Record Nr.	UNINA9910850889803321
Autore	Reimold Nadja
Titolo	Continuity in Times of Change : Acquired Rights and State Succession
Pubbl/distr/stampa	Baden-Baden, : Nomos, 2024 ©2024
ISBN	9783748943396
Edizione	[1st ed.]
Descrizione fisica	1 online resource (632 pages)
Collana	Beiträge Zum Ausländischen öffentlichen Recht und Völkerrecht ; Band 328
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Nota di contenuto	Cover -- Chapter I: The Notion of Acquired Rights -- A) The Diffuse State of the Law on the Issue of Acquired Rights -- B) The Reasons for This Confusion -- C) What We Talk About When We Talk About Acquired Rights -- I) The Genesis of the Doctrine of Acquired Rights -- II) The Reception by the PCIJ -- 1) The German Settlers Case (1923) -- 2) The Mavrommatis Concessions Cases (1924-1925) -- 3) Cases Concerning Certain German Interests in Polish Upper Silesia (1925-1929) -- 4) The Lighthouses Case (1934) -- 5) Interim Conclusions -- III) The Academic Reception -- 1) Daniel Patrick O'Connell -- a) Legal Basis -- b) Possibility to Abrogate -- c) Nature of the Right -- d) The Public-Private Divide -- e) Holders of Acquired Rights -- 2) Pierre A. Lalive -- a) Legal Basis -- b) Possibility to Abrogate -- c) Nature of the Right -- d) The Public-Private Divide -- e) Conclusions -- 3) Mohammed Bedjaoui -- 4) Interim Conclusions -- IV) A "Classic" Definition of Acquired Rights -- 1) Pecuniary Rights -- 2) Domestic Rights -- a) The Public-Private Divide -- b) Property Rights -- c) Real Rights and Contractual Rights -- 3) Bearers of Acquired Right -- 4) In Cases of State Succession -- D) The Task Ahead -- Chapter II: State Succession -- A) The Need for a Definition -- B) Basic Requirements of State Succession -- I) State Succession as a Set of Factual Events, not a Legal Effect -- II) Replacement of One State by Another State - Continuity and Succession -- III) Change of Responsibility for the International Relations -- IV) Lawfulness of Succession -- C) Categories

of State Succession -- I) Dismemberment (or Dissolution) and Separation -- II) Incorporation and Merger (Uniting) -- III) Cessions -- IV) Decolonization -- V) Pacific Occupation -- D) Conclusions -- Chapter III: The Continued Relevance of the Doctrine of Acquired Rights -- A) Preliminary Remarks.

B) The Elevated Status of the Individual under International Law and Its Influence on the Doctrine of Acquired Rights -- I) Where We Come from - the Status of the Individual from around 1900-1970 -- 1) General Observations -- 2) The Relevance of Acquired Rights -- II) Where We Are - the Status of the Individual Today -- 1) Individuals as Subjects of International Law -- 2) The Enforcement of Individual Positions as Community Interests under International Law -- C) The Continuing Relevance of the Doctrine of Acquired Rights besides Human Rights and Investment Law -- I) Preliminary Remarks -- II) Human Rights and Acquired Rights -- 1) The Controversial Status of the Human Right of Property -- a) A Human Right of Property under International Instruments -- aa) Universal Instruments -- bb) Regional Instruments -- cc) Interim Conclusion -- b) A Human Right of Property and Investment Law -- c) A Human Right of Property and Domestic Instruments -- d) Interim Conclusions -- 2) (Non-)Succession to Human Rights Treaties -- a) Reliance on Rules Outside the Specific Treaty -- b) The Argument of "Objective Regime" -- c) Practice of Human Rights Organs -- d) State Practice -- e) The (Im-)Possibility of Termination of a Human Rights Treaty -- aa) Preliminary Remarks -- bb) Termination Pursuant to Art. 54 and 56 VCLT -- cc) Termination by Consensus -- dd) Third-Party Rights -- ee) Interim Conclusions -- f) The (Im-) Persistence of Treaty Rights after Withdrawal, Art. 70 para. 1 lit. b) VCLT -- aa) General Remarks -- bb) Executed and Executory Rights -- cc) Judicial Claims as Executed Rights -- dd) Interim Conclusions -- g) Interim Conclusions -- 3) The Argument of Self-Determination -- 4) The Implementation Gap -- a) International Treaties -- b) Customary Law -- c) Political Resistance to Human Rights -- d) Interim Conclusions.

III) Investor Rights and Acquired Rights -- 1) The Limited Scope of Protection of Investor Rights Outside Investment Treaties -- a) Customary Investment Law as Inter-State Law Protecting Commercial Interests of Foreigners -- b) The Vagueness of Protection of Individual Property Rights -- aa) State Practice -- bb) Investment Treaties -- c) Interim Conclusion -- 2) (Non-)Succession to Investment Treaties -- a) State Practice -- aa) Yemen -- bb) Soviet Union -- cc) Yugoslavia -- dd) Czechoslovakia -- ee) Ethiopia -- ff) Hong Kong, Macau, Walvis Bay -- gg) South Sudan -- hh) The ICSID Convention -- b) Interim Conclusions -- 3) Investor Rights in Case of Consensual Termination of a BIT -- a) The (Too) Traditional Doctrinal Approach -- aa) The Comparison to Human Rights Law -- bb) The Inconsistent Argumentation -- b) State Practice -- c) Jurisprudence -- 4) Interim Conclusions -- D) Conclusions - A Place for Acquired Rights -- Chapter IV: State Practice on Acquired Rights -- A) Preliminary Remarks -- B) Case Studies -- I) The Unification of Yemen (1990) -- 1) General Background -- 2) Continuity of the Legal Framework -- 3) Restitution of Nationalized Land Holdings -- 4) Interim Conclusions -- II) The Unification of Germany (1990) -- 1) General Background -- 2) International Treaties -- 3) Domestic Law -- a) The Continuity of the Legal Order in General -- b) Private Rights -- aa) Old-Age Pensions of Former GDR Citizens -- bb) Property Questions, Especially Land Rights -- i. Restitution -- ii. The Land Reform ("Bodenreform") before the BVerfG and the ECtHR -- 4) Interim Conclusions -- III) The Demise of the Soviet Union (1990s) -- 1) General Background -- 2) The Baltic

States -- a) International Treaties -- b) Domestic Law -- aa) Nationality Legislation and Pertaining Civil Status -- bb) Non-recognition of SU Nationalization Measures.

3) Russia and the (Other) Successor States of the SU -- a) International Treaties -- b) Domestic Law -- 4) Interim Conclusions -- IV) The Dismemberment of the Socialist Federative Republic of Yugoslavia (1990s) -- 1) General Background -- 2) Domestic Regulations of the SFRY Successor States -- a) General Preliminary Remarks -- b) Domestic Law of Slovenia -- aa) Continuity of the Legal Order in General -- bb) Private Rights -- i. The "Erased" -- ii. Property -- c) Domestic Law of Croatia -- aa) Continuity of the Legal Order in General -- bb) Private Rights -- d) Domestic Law of Macedonia -- e) Domestic Law of Bosnia-Herzegovina -- aa) Continuity of the Legal Order in General -- bb) Private Rights -- f) Domestic Law of the FR Yugoslavia -- 3) The 2001 Agreement on Succession Issues -- a) Private Property and Acquired Rights -- b) Pensions -- c) External Debts of the SFRY, Especially Foreign Currency Accounts -- d) Interim Conclusions -- 4) The Independence of Montenegro from the State Union of Serbia and Montenegro -- a) Serbia and Montenegro -- b) Montenegro -- aa) International Treaties -- bb) Domestic Law -- c) Serbia -- 5) The Independence of Kosovo -- a) The Legal Landscape Under UNMIK Administration -- aa) Continuity of the Legal Order in General -- bb) Private Rights -- b) The Legal Landscape After Independence -- 6) Interim Conclusions -- V) The Dissolution of Czechoslovakia (1992/1993) -- 1) General Background -- 2) The Continuity of the Legal Order in General -- 3) Private Rights -- 4) Interim Conclusions -- VI) The Independence of Eritrea from Ethiopia (1993) -- 1) General Background -- 2) The Continuity of the Legal Order in General -- 3) Private Rights -- a) Land Reform -- b) Other Issues before the Eritrea-Ethiopia Claims Commission -- aa) Citizenship and Property Rights -- bb) Pensions of Ethiopian Civil Servants -- 4) Interim Conclusions.

VII) The Transfer of Walvis Bay (1994) -- 1) General Background -- 2) Domestic Law in Walvis Bay -- a) The Legacy of the South African Legal Order -- b) Continuity of Private Rights -- 3) Interim Conclusions -- VIII) The Transfers of Hong Kong (1997) and Macau (1999) -- 1) Hong Kong -- a) General Background -- b) The Continuity of the Hong Kong Legal Order in General -- c) Individual Rights -- 2) Macau -- a) General Background -- b) The Continuity of the Macau Legal Order and Individual Rights -- 3) Interim Conclusions -- IX) The Independence of South Sudan (2011) -- 1) General Background -- 2) The Continuity of the Legal Order in General -- 3) Private Rights -- a) Property Rights in General -- b) Land Rights -- c) Ownership of Natural Resources -- d) The Status of Nationals -- e) Other Issues -- 4) Interim Conclusions -- X) The British Termination of its EU Membership (2020) -- 1) General Background -- 2) Persistence of Individual Rights Derived from EU Law -- a) Theoretical Approaches -- b) Individual Rights under the EU-UK Withdrawal Agreement -- aa) The General Conception of the Agreement -- bb) The Rights Protected -- cc) What is Lost? -- dd) The Actual Implementation -- 3) Interim Conclusions - Theory Tested Against the Facts -- C) Conclusions -- I) Practice with Regard to the Domestic Legal Order in General -- II) Practice with Respect to Acquired Rights of Individuals in Particular -- III) What Can Be Taken from Those Findings? -- Chapter V: The Doctrine of Acquired Rights in Cases of State Succession. Status, Content, Value, Limits and Potential -- A) Preliminary Remarks -- B) The Positive Legal Status of the Doctrine -- I) Acquired Rights as a Norm of Treaty Law -- II) Acquired Rights as a Norm of Customary International Law -- 1) General Prerequisites for the Formation of a Norm of Customary International Law.

2) The Binding Character of Pre-Existing Customary International Law for a New State.
