NICOLAE TITULESCU UNIVERSITY OF BUCHAREST
FACULTY OF LAW
DOCTORAL SCHOOL

DOCTORAL THESIS

THE INTERNATIONAL LAW EFFECTS OF UNRECOGNIZED ANNEXATIONS OF TERRITORY OR PROCLAMATIONS OF INDEPENDENCE

SUMMARY

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BUCHAREST
2015

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1 This paper has been financially supported within the project entitled ***"Horizon 2020 – Doctoral and Postdoctoral Studies: Promoting the National Interest through Excellence, Competitiveness and Responsibility in the Field of Romanian Fundamental and Applied Scientific Research"***, contract number POSDRU/159/1.5/S/140106. This project is co-financed by the European Social Fund through the Sectoral Operational Programme for Human Resources Development 2007-2013. **Investing in people!**

translation of extract

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1 Abkhazia

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The research topic

I have fulfilled this doctoral research departing from a legal institution which is both important and timely in public international law: *recognition*. Recognition is an institution specific to international legal and political relations which, although having deep historical roots, has not lost of its timeliness, especially due to the horizontal nature of international law whose subject are, collectively, the holders of legislative power.

If recognition is widely approached in literature, especially with respect to its criteria, its opposite, *non-recognition*, understood not as *absence of recognition* but most of all as a *refusal of recognition*, is studied relatively little, and only from the perspective of public international law. Furthermore, recognition is approached in particular regarding two of its objects: states and governments, the recognition of annexations of territory being much less discussed.

My thesis wishes to fill some gaps in research, approaching recognition and non-recognition both in public, as well as in private international law, and also from the perspective of its most relevant objects in contemporary international society: *states* and *annexations of territory*.

In order to approach such a topic, some preliminary doctrinal foundations are required, which take the reader to various fields of the law. Among them are the problem and conditions of states' existence, specific to public international law; the link between the state and its legal system, specific to the general theory of law; aspects regarding the location of the connecting factor of the conflict rule, specific to private international law; and the foundations of the international collective sanctions system of the UN Security Council and of the European Union, the last being specific to European Union law.

Furthermore, an historical approach is also necessary, given that the practical phenomenons which my study refers to are more present in some historical periods, usually the most troubled ones, and less present (or, in a political formulation, "frozen") in other periods, characterized by stability and international cooperation.

The main objects of the thesis are, in the order of their apparition on the international arena, through proclaiming their independence: 1. The Turkish Republic of Northern Cyprus (15 November 1983); 2. The Prednistrovie Moldavian Republic (2 September 1990); 3. Somaliland (18 May 1991); 4. Nagorno-Karabakh (2 September 1991); 5. South Ossetia (29 May 1992); 6. Abkhazia (23 July 1992 and 12 October 1999); 7 Kosovo (17 February 2008).

Other entities are less represented, for the following reasons: 1. The Republic of China (Taiwan) – because I consider that this is not an entity which has proclaimed its independence, but an issue of governments' recognition; 2. Palestine – because Romania has recognized the Palestine

Declaration of Independence of 15 November 1988, therefore it is not a state which is unrecognized by Romania; 3. The Sahrawi Arab Democratic Republic (Western Sahara) – because according to its official documents it is in a pre-independence state, the provisions of its constitutions referring to the future moment of attaining independence; 4. The Sovereign Military Order of Malta – because I share the well expressed opinion of professor Valentin Constantin that it is an original, non-statal subject of public international law which has survived the changes in international legal order, and has attributes granted and recognized by international law; furthermore, it is recognized as a sovereign entity by Romania; 5. governments in exile, such as that of Tibet, because their study regards the recognition of governments and not states. This does not mean an absence of references to them. Every time I have found useful, I have included jurisprudence regarding such entities, especially when they are considered as unrecognized states in the legal system where the judgment comes from.

Three are the main elements of novelty of this thesis. The first consists of an update to the doctrine and collected jurisprudence regarding recognition and non-recognition, up to May 2015, thus encompassing the latest self-proclaimed entities and the newest cases regarding existing entities. The second consists of the formulation of a theory of *cognition* (understood as taking judicial knowledge of something) and *recognition* (a legal and political act of will), concepts according to which the attitude of states towards unrecognized states can be classified in a consistent and legally logical manner. The third element of novelty is the completion of a short study, included in the Annex, containing the laws of existing unrecognized states, regarding their citizenship and private international law. Indeed, as in my thesis I argue that the law of the unrecognized state may be applied whenever the forum's conflict rule points to it, as well as when it is necessary to establish whether a person is a citizen of that unrecognized state, the knowledge of these laws appears as a necessity. This is why I have completed this complementary study, which can be a useful working instrument to practitioners which find themselves required to apply the law of the unrecognized state.

Necessity and timeliness of the research topic

Originally proposed as a synthesis of existing practice, and a deeper study of some aspects of public and private international law, the research gained in relevance and timeliness. Events in the immediate East of Romania, as well as around the Black Sea, culminating in the annexation of Crimea by the Russian Federation, and the proclamation, by rebels in Eastern Ukraine, of Popular

Republics, require the analysis of reaction options of Romania and the international community.

The unrecognized proclamation of Crimea's independence is not without precedent in the history of international relations. What is without precedent and is in itself an extremely serious violation of the international balance and security of 21st century Europe, is the forceful change of the borders of a sovereign state, which had received guarantees of independence and territorial integrity.

If the forceful change of borders is an act which can only be seen as an international aggression, proclaiming one's independence is not, in itself, an illegal act in international law. On the contrary, the proclamation of independence is the only way in which a new primary subject of international law can appear. The problem appears when such a proclamation takes place without the help or agreement of the state on whose territory the new entity appears, as well as when it takes places through violence. In such situations, the existing state will try, through all available means, on the one hand to regain effective control over the territory in question, and on the other hand to delegitimize the newly proclaimed entity.

My thesis follows this second means of action, namely states' reaction towards and entity's proclamation of independence, by means which defy international order and security, and respectively towards unrecognized annexations of territory. Given that the creation of "frozen conflicts" is a weapon used to maintain the influence of some states over others, we can expect the proliferation of entities which proclaim their independence, or some illegitimate changes of territory, and therefore we must know the full range of measures which Romania and international society may use to respond to such challenges.

For Romania, the issue of state succession regarding Crimea is relevant also from the perspective of the potential *de facto* maritime border with the Russian Federation at the Black Sea. Should we agree to Russian control over Crimea, Ukraine would be left with a very small access to the Black Sea. Thus, it would only hold a small portion of coast in the South-West, from the northern extreme of Crimea to the Danube Delta, as well as a small portion of the Sea of Azov, without access to the Kerch Strait. This would mean that Ukraine would not have access to the high seas except by passing through the Exclusive Economic Area of Romania, or that corresponding to Crimea. It is therefore important for Romania to prepare a consistent approach in a timely manner, based on the non-recognition of Russia's pretensions over Crimea and also on the application of the *uti possidetis* principle, in order to guarantee the security of the existing territorial regime in the Black Sea.

Research objectives

The first research objective is to identify practical reaction methods towards illegitimate territorial changes or towards the appearance of self-proclaimed independent entities. From the issue of air traffic control over the disputed territory, to that of the customs treatment of goods arriving from that territory, to the legal status of persons wishing to travel or make good their rights using documents issued by an unrecognized state, Romanian, through state organs, but also its inhabitants, need to take some practical decisions which should have both a legal basis as well as consistency.

A second objective is offering a comparative law perspective over the issue of unrecognized states and annexations of territory in private international law. Beginning from the systemic and compared analysis of different states' jurisprudence, I could draw conclusions regarding the main methods of finding, considering and legally approaching these situations by national courts, methods which correspond to the main legal systems of the contemporary world. As happens in all other areas of the law, there is intersection, harmonization and convergence between the approach of civil law courts and those of *common law*, which I have brought to the fore.

Finally, the third objective is establishing, on the basis of jurisprudence and doctrine, the solutions found in the practice of states. Indeed, practice must be based not only on a pragmatic approach, based on the national interest, but also on a solid scientific basis, which should offer consistence and predictability in future similar situations. Although in the matter of recognition and its effects there exists a large margin of appreciation of every state, the limits of this appreciation and its legal basis have their reason in rules of public and private international law, which must be drawn to attention.

Without hoping to claim that I have exhausted these objectives, I appreciate that the results of my research may be a useful contribution to public administration and private persons when establishing their responses to such challenges of contemporary international society.

Methodology used for the study and completion of the thesis

In studying and completing the doctoral thesis, I have opted for a wide vision, which should not be limited to theory, but should find valid information sources wherever these may be successfully used. Thus, besides the scientific research in the library I have followed the conversations taking place on-line between the main contemporary researchers, on platforms such as EJIL Talk or Opinio Juris. These have the advantage of presenting advised but also fast reactions

of the most well known authors and practitioners, sometimes exactly those persons which have a direct contact with the issue within international institutions. Of course, at a longer time distance, public and private international law journals, as well as annals, approach the same timely topics with more attention and a clearer vision of the issues.

Another information source are the press releases of national and international institutions. Quite often, these press releases are the only ones which present the official position and legal (or pseudo-legal) justification of actions on the ground. Press releases reproduce official documents which afterwards are abrogated or become invalid, but which are essential to following the evolution and justification of some international situations. As a practical example I can offer the series of press releases issued by the President of the Russian Federation around the time of Crimea's annexation, where the following were being reproduced: the act of recognition of the Republic of Crimea; the act of recognition of the "referendum" regarding unification with Russia; and the act of admission of the territory within the Russian Federation. Of these, all but the last have already disappeared from the on-line environment, as part of Russian information control strategy. By saving these documents, the researcher may have access to primary information sources.

Normative and executive legal documents are another important source of information, especially those which are issued in immediate connection with the proclamation of independence or annexation of a territory. If at the level of the UN Security Council its resolutions are relatively few and easily accessible, at the national and local level, authorities must solve complicated problems, appearing from the changes on the ground. The Russian law regarding the organization of Crimea is such an example, whereas the laws regarding judicial organization issued by Romania after losing the historical provinces in 1940 are national examples.

A great part of the arguments in this work are based on the national jurisprudence of various states, seen as an expression of state practice, as well as a potential model for Romanian jurisprudence, when it is confronted with similar situations. Where, as in the case of the chosen topic, there are no conventional rules, practice itself may become law, as the basis of international custom. Judicial or administrative decisions which clarify the effects of a recognition in public and private international law are, in comparative law, quite a few. A solution for their presentation could be the use of logical divisions which the concepts of one or the other of the doctrines regarding recognition put forward. Another solution could be presenting the evolution of jurisprudence in each state. The difficulty in this case is that a lot of the states, and here we include Romania, have a very sparse jurisprudence in this field, whereas the first method is not satisfactory because it would give *a priori* the claim to one or the other of the doctrinal theories, in a subject which should be read without prejudice.

This is why I have chosen to analyze topic by topic the main issues raised by non-recognition and the solutions given to them, without using any pre-established doctrinal category, and without pretending to present exhaustively the evolution of each national jurisprudence. One must also exclude the possibility of analyzing the countless individual judgments, regarding recognition issues, the reason for which only the most significant have been retained, which implies a certain arbitrary of choice.

In my research I have also had direct conversations with decision makers; with officers of the National Tax Administration Authority (National Customs Directorate); with workers of the Border Police; as well as with persons which, in various positions (international mediators, political consultants), have had the opportunity of visiting the main contemporary conflict areas, and of meeting directly the local leaders. The research mobility at the International Institute for the Unification of Private Law (UNIDROIT) gave me the possibility to exchange opinions with researchers from abroad, but also access to the practice of some of the institutions which fulfill the work of depositary of international treaties, through their officials which are responsible of exercising this function.

Structure of the thesis

The doctoral thesis is structured in an introduction, two major parts having each two chapters, and a chapter dedicated to general conclusions. In the **Introduction** I have presented (A) the general problems regarding the doctoral research and topic, such as (A.1) the description of the research topic, (A.2) its necessity and timeliness, (A.3) research objectives, (A.4) the methods used to study and complete the work, (A.5) the results and the methods of their dissemination, and (A.6) the structure of the thesis. These are followed (B) by an analysis of recognition and non-recognition, from the perspective of (B.1) the meaning and legal characteristics, (B.2) object, (B.3) form, (B.4) and the effects and functions of recognition and non-recognition. The Introduction is completed by an analysis of the (C) political character of recognition, and (D) the relation between recognition and effectiveness.

The First Part is dedicated to unrecognized states. **Chapter I** analyzes the unrecognized state in public international law. It begins with (A) a historical presentation of unrecognized states, completed with data, facts and international documents relevant to understanding the context of these entities' appearance, which is structured in a section (A.1) regarding states' appearance, and another (A.2) containing the historical moments relevant to the research. The presentation is followed by (B) a doctrinal analysis of the declaration of independence in public international law,

especially regarding the right to self-determination. The thesis goes on with the analysis (C) of the criteria of states' existence, which contains also the presentation of such jurisprudence as has made the direct application of these criteria regarding some entities proclaimed as states. Thus, there is a general section (C.1) which attests the generalization of the criteria of states' existence, as well as separate sections for (C.2) territory, (C.3) population, (C.4) internal independence and (C.5) external independence, the final being ensured by the section (C.6) regarding topical jurisprudence. After this, (D) the thesis concentrates on recognition, beginning with (D.1) its declarative effect and continuing with (D.2) the criteria of states' recognition, (D.3) premature recognition and (D.4) collective recognition and non-recognition (including as a form of fulfilling an international obligation). Once the existence and recognition of states' have been analyzed, the chapter continues with (E) the legal situation of unrecognized states, which contains (E.1) their personality and legal capacity, (E.2) their immunity, (E.3) their relations and diplomatic and consular agents and, finally (E.4) their participation in international treaties and organizations. Chapter I closes with (F) a survey of the approaches of the European Court of Human Rights regarding unrecognized states.

Chapter II analyzes the unrecognized state in private international law. It begins with (A) the link between the state and the system of law, in private international law. Thus are approached the issues of (A.1) the link between state, sovereignty and legal system, and (A.2) the potential solutions which give effect to the conflict rule without implying the affirmation of the sovereignty of the entity whose legal system is being applied. Further (B), I formulate my own theory, which is one of the results of the doctoral work, regarding *cognition* versus *recognition*. After (B.1) outlining the problem, and (B.2) some terminological notes, I propose the solution (B.3) of differentiating between *cognition* (seen as a judicial notice) of an unrecognized state, and its *recognition* (a political-legal act). In this section I present the types of legal relations where the application of *cognition*, and respectively *recognition*, showing that the first is specific to legal relations of private law, or preponderantly of private law, whereas the second is specific to legal relations of public law, or preponderantly of public law. The third section (C) is dedicated to the private international law effects of the existence of unrecognized states, namely (C.1) applying the law of the unrecognized state, (C.2) the citizenship and nationality of the unrecognized state, (C.3) the legal status of foreigners from unrecognized states, (C.4) conflicts of international competence regarding the unrecognized state, and, finally (C.5) the recognition of judgments and other public documents issued by the institutions of the unrecognized state. The chapter closes with a presentation regarding the (D) temporal effect of states' recognition.

The second part is dedicated to unrecognized annexations of territory. **Chapter III** analyzes these annexations in public international law. It begins with (A) a historical presentation

and continues with (B) the presentation of the effects of the principle of territorial integrity towards the recognition of territorial annexations, as well as its corollary, the interdiction of annexations of territory through the use or threat of force. Following this, I approach (C) the recognition and non-recognition of annexations of territory. In the fourth section (D) I approach issues regarding (D.1) the effect of annexation over the legal personality of the state, (D.2) its diplomatic relations, treaties and membership in international organizations and, respectively (D.3) over public goods and debts.

Chapter IV approaches unrecognized annexations in private international law. Thus, it deals with (A) the applicable law in respect of the annexed territory, (B) the citizenship of its inhabitants, (C) the extraterritorial effects of annexation, as well as (D) the judgments and other public documents issues on the annexed territory.

The Conclusions present the summary of the doctrine and practice presented in the thesis, while the **Annexes** serve as a documentation source for information which is less accessible to the modern researchers, as well as to present the bibliography of the research topic.

Conclusions resulting from the doctoral research

The doctoral thesis begins with the problem of recognition as the central point of the analysis of public and private international law effects of the existence of unrecognized states and annexations of territory. From its beginning I have proven the current utility, relevancy and the interconnections of the topic of *unrecognized states* with that of *unrecognized annexations*, both in geopolitical terms, as well as for Romania, in the context of its neighborhood. Legally speaking, the two subjects are linked through the institution of *recognition* and its opposite *non-recognition*.

In the **introduction** of the thesis, I have analyzed this institution from the perspective of its legal characteristics. Recognition is, in this view, an unilateral and discretionary act of will, having as author the state, act which is unconditional and unlimited in time, being irrevocable, both for legal, as for factual reasons. Recognition can become void when its material object disappears. The objects of recognition were exemplified, while arguing the choice of only two of them, which I consider the most relevant today: the state and the annexation of territory.

As opposed to recognition, non-recognition appears in two meanings: as a legal fact – the absence of recognition, and as a legal act – the express refusal of recognition. As the absence of recognition is a factual situation which can hide behind it countless political-diplomatic realities, it is not equivalent with a refusal of recognition and does not have the same legal effects. Therefore, speaking of non-recognition, I have meant it only as a legal act (refusal of recognition). It appears as an unilateral act of will, having as author the state, act which is unconditional and unlimited in

time, being however revocable, both for factual, as for legal reasons. As opposed to recognition, which is discretionary an irrevocable, the refusal of recognition is revocable, but not discretionary. Indeed, as has come out of states' practice and jurisprudence, there can be an obligation of non-recognition, instituted through resolutions of the UN Security Council, or through other norms of international law, of which the most important is the interdiction of territorial annexations through the use or threat of force.

I have analyzed the forms of recognition, classing them in explicit and implicit, *de jure* and *de facto*. I have found that the legal effects in public international law of these forms of recognition are identical, the only relevance of this distinction appearing in the political sphere as well as in the internal law of some states. Non-recognition as a legal fact appears as a simple abstention, while non-recognition as a legal act appears as an explicit act, its purpose being exactly that of clarifying the refusal of recognition as expressed by its author.

Analyzing the effects of recognition, I have found that they vary greatly, depending on the purposes followed by the author-states, but also depending on the existence, or not, of an international obligation of recognition. I would say that through recognition or non-recognition we can understand not only a declarative legal act, but also a bundle of variable effects, which can be classed easily if we understand them as *functions* of recognition, whose effective content may be determined from case to case by the author state. The functions of recognition are thus the *legal* function and the *political* function.

In public international law, recognition appears as a purely declarative act, when it refers to an object which *exists*, which is to say that it is *effective*. Effectiveness has become in the practice of states a true test of a state's or an annexation's existence. Once the state or the annexation is effective, they exist even absent recognition, and public international law grants them the corresponding effects (in the case of the state, the rights inherent to all states; in the case of annexations, the corresponding obligations of the administering power, but also the right of the legitimate sovereign to take the necessary measures to protect and recover its own territory).

Per a contrario, when there is no effectiveness, recognition plays a *constitutive* role. By this I understand that, through recognition, situations which *are not effective* may appear as existing in public international law, as fictions with legal value. Nothing impedes states to create such fictions, even lacking effectiveness, by giving them life in public international law through an explicit and collective recognition.

In internal law, recognition also plays a predominantly constitutive role. Indeed, the

multitude of subjects of each legal system is determined by its rules. A legal subject coming from a legal system does not automatically exist in another legal system, absent a general permissive rule, or a gracious grant of domestic legal personality. Recognition is, for the foreign state, exactly this act through which its public international law personality, which is objective, universal and *erga omnes*, is translated into a domestic legal personality in the legal system of the state granting recognition.

In domestic law, a constitutive effect belongs also to the recognition of situations lacking effectiveness. Inasmuch as the state can institute fictions with legal value, nothing stops it from giving, through recognition, legal personality to a non-existent state, and practice proves the existence of such cases.

Finally, recognition has a further effect, which I have called constitutive-decisive, an effect limited also to the domestic legal system of the state granting recognition. This effect appears when there are *conflicting effectivities.* Through "conflicting effectivities" I understand those situations when two entities with real, but not total, effectiveness, are in conflict in a territory. The best example is that of annexations of territory when the annexing state does not exercise all the attributes specific to sovereignty over the annexed territory, or not over the entire territory. Inasmuch as the legitimate sovereign maintains its effectiveness there, or if, through institutions, legislation, procedures and specific practical measures, it manages to ensure the required services to the population in the annexed territory, a third state, having before it a conflict of effectivities, will be able, through the non-recognition of the annexation (together with the continuous recognition of the original sovereignty) to give effect in its domestic law only to those laws and documents from, or regarding, the annexed territory, which are issued by the recognized sovereign.

The *political function* of recognition encompasses its possible political effects, which are manifested in international relations. Summarizing the doctrinal positions, I appreciate that we may speak of the extension, to the recognized state, of international courtesies specific to states. Also, recognition may open the way to international development aid, or to closer forms of cooperation which would be difficult absent recognition. Correspondingly, the refusal of recognition may represent the expression of national interests, a form of pressure over its addressee in order to fulfill some criteria (for example, democratizing its political system), or to change its behavior (for example, renouncing an annexed territory).

In the **First Part** I have analyzed the issue of unrecognized states. I have made a historical presentation of the major issues which regard unrecognized states, and have appeared in recent international practice. I have analyzed the declaration of independence as a political act, which can have legal effects only inasmuch as, after its proclamation, the issuing entity attains its effectiveness as a state. In this context, the declaration of independence is an initially neutral act in the eyes of public international law, having legal effect only retroactively (in particular as the temporal reference point regarding the appearance of the state which has become effective).

In order to exist, the state must cumulatively but sufficiently fulfill four criteria, namely 1. the existence of a defined territory; 2. the existence of a permanent population on that territory; 3. effective control over the territory and population (in the shape of an effective system of government, a criterion known as internal sovereignty); 4. the capacity to hold relations with other states on an equal footing (independence or external sovereignty). Practice has proven that these criteria, although principally objective, leave a large margin of appreciation to states, as authors and subjects of public international law, a margin of appreciation which has required the appearance of the institution of recognition. Also, it has been remarked that these criteria do not have absolute limits, states being in existence even when one or more of these criteria are fulfilled only partially, in a small measure, or intermittently.

The relation between the existence of these criteria, the appearance of states and recognition is one of dependence. Recognition has no object as long as the state does not exist. In such a situation it is *premature*, and a premature recognition is an act which violates the statehood rights of the existing sovereign, attracting the international responsibility of the author state. If however the state exists, then non-recognition cannot deny it its statehood. The existence of the state has the sole role of justifying recognition.

As the state exists even absent recognition, I have followed which are the effects of its non-recognition. The first aspect regards the states' capacity. In public international law, the state has legal personality from the moment of its appearance, which imposes itself *erga omnes*. In domestic law, however, the legal condition of the foreign state appears as a problem of domestic law. From the analysis of states' jurisprudence, I have deduced the following general conclusions:

1 The effectively existing state benefits of immunity. This corresponds to a right inherent to statehood, which is established in customary public international law.

2 The representatives of the unrecognized state do not benefit of immunity as long as they are not officially accredited to the forum state, which corresponds to the principles of the Vienna Convention on Diplomatic Relations, which also has a customary character. They benefit of

immunity when they are admitted as official representatives of a foreign sovereign, even through a simplified method.

3 Unrecognized states benefit of the right to dignity, through the criminal law protection of their symbols, as an expression of a right of statehood, also established in customary public international law.

Regarding the diplomatic and consular relations of the unrecognized state, I have drawn the following conclusions:

1 Non-recognition is incompatible with formal diplomatic relations, these being a *signum specificum* of recognition.

2 Non-recognition is compatible with consular, economic, cultural and other relations, be they organized through consulates, offices, bureaus, representations, with the exception of the case when this form of international cooperation is forbidden through UN Security Council resolutions.

3 Depending on the character of their activity, these offices, bureaus, representations may benefit of immunity, if they are accredited, even in a simplified form.

4 The disappearance of the material object of recognition does not affect the official status of documents previously issued by the consular representatives whose recognition was retracted. They lose, however, their future prerogatives, absent contrary agreements.

5 Recognition overtakes effectiveness, giving entities lacking effectiveness the possibility of being represented through diplomatic and consular agents, with full powers and privileges in the host state.

Regarding the participation in international treaties and organizations, I have reached the following conclusions:

1 Entering into international treaties is not legally incompatible with non-recognition, but symbolically non-recognition cannot withstand the conclusion of friendship or alliance treaties.

2 The participation of the unrecognized state in multilateral treaties is possible only according to the text of those treaties. Those open to "all states" are theoretically open to unrecognized states as well, bearing however in mind the procedure of their depositary.

3 The participation to a treaty along with an unrecognized state may take place, sometimes with the formulation of a reservation to this end. Depending on the purpose and object of the treaty, such a reservation may have legal effects.

4 The existence of an unrecognized state on the territory claimed by a state party to a treaty does not always prevent the exercise of the conventional rights of the state-party, nor does it free the other state-parties from the obligation to respect the exercise of these rights by the state-party.

5 The participation of unrecognized states in international organizations is possible if the

specific admission procedure is followed. Once they are admitted, they interact with the member states which have not recognized them on an equal footing.

6 The participation of unrecognized states in international NGOs is also possible, the text of their statutes being decisive regarding their admission.

7 Unrecognized states may establish their own international organizations, which may not be recognized, on the basis of the quantitative criterion of the constitutive effect of the recognition of international organizations, established by the International Court of Justice in the *Reparations* case.

In a separate section, I have analyzed the situation of unrecognized states before the European Commission and Court of Human Rights. I could draw the conclusion that unrecognized states have a different status in the subsystem of law created by the European Convention on Human Rights, from that in general public international law. The Court established through the Convention may not judge except from the perspective of the Convention as supreme law, public international law being taken into account only to fill the gaps. Therefore, in the eyes of the court, one may not invoke the existence of unrecognized states on the territory of the state-parties to the Convention, because one would violate the imperative of the absence of legal voids in the application sphere of the Convention. Therefore, from the court's perspective, the responsibility will belong to that state-party which exercises jurisdiction in the special own meaning of art. 2 of the Convention, which article is compatible, through its special extended meaning, with the effectiveness of an unrecognized state on the territory where the Convention's application is being questioned.

Passing on to the private law effects of the existence of an unrecognized state, I have begun with an analysis of the relationship between sovereignty and the legal system. I have concluded that every sovereign state has its own legal system, having a fundamental rule whose application derives from effectiveness itself. Effectiveness must be at the least internal, but also external, when the legal system of that particular territory is contained within that of another sovereign state. In other words, the relation sovereignty – legal system is reciprocal, sovereignty allowing for the functioning of an effective legal system, while the existence of an effective and own legal system is a proof of sovereignty.

I have then analyzed inter-zonal law, as a potential solution through which the law effective in a territory can be applied, without however affirming the existence of a different sovereignty from that of the state being recognized as sovereign over that territory. I have found however that inter-zonal law cannot be a solution for conflicts of laws with unrecognized states, except in fully

exceptional situations, such as that of divided states, or in the relation between the mother-state and a territory which has proclaimed its independence, which however is not recognized.

I have noticed an apparent inconsistency in the sense that, despite non-recognition, states and their institutions take notice of the existence of the unrecognized state. Thus, states are parties to international treaties and members of international organizations together with unrecognized states. They grant immunity to the unrecognized state. Some entertain consular relations with such states. Their courts apply the law of the unrecognized state. Some recognize the civil status documents issued by unrecognized states, and others even the judgments issued by their courts.

I have explained this inconsistency, which I consider only apparent, through the fact that, in reality, states understand the necessity of giving effect to the correlative obligations of a state's existence, even if it is unrecognized. Also, they cannot ignore a factual situation which consists of the fact that, on a certain territory, where a certain population lives, there is a form of social organization and there functions an administrative system. By virtue of the attributions with which this administration (of the unrecognized state) is invested with by its domestic law, it issues documents and contributes (in a constitutive, declarative or other way) to the birth, change or extinction of legal relationships between natural and legal persons. Furthermore, it itself enters, in the name of the unrecognized state or of its instrumentalities and subordinated organs, in legal relationships of all kinds, both with subjects of its domestic law, as well as with subjects of other domestic legal systems, and with subjects of public international law.

Using international jurisprudence and the practice of states, I have concluded that one must make a distinction between *cognition* and *recognition*, these being two legal institutions which concern, in our field, the effects of the existence of unrecognized states.

Through the *cognition of a state's existence* (in short, *cognition*), I understand "the reflection, in a state's actions, taken through its organs, of the existence of another state". The term of *cognition* is not used in this meaning in Romanian doctrine. The closest term would be that of *taking judicial notice*, but this is specific to procedural law. It is used, for example, when we mean to say that the court has judicial knowledge of its own law, or about a notorious fact, but not of foreign law, or a provable fact. The essence of the distinction between *cognition* of statehood and its *recognition* is that statehood exists independently and *ipso facto*, without needing the recognition of other states, whereas recognition is a discretionary act of will of its author, which declares that it accepts this existence. International jurisprudence justifies the use of the pair *cognition – recognition* through its presence in the relevant jurisprudence of all the researched states.

The utility of the distinction between *cognition* and *recognition* comes from the fact that all the actions (namely acts and material facts) of states, through their organs, regarding an unrecognized state, may thus be classed as being actions taken on the basis of *cognition*, or of the *non-recognition* of that particular state. Thus, one must not search anymore in the problem of non-recognition the solutions which it does not have, as a political-legal act, nor affirm that recognition and non-recognition lack in consistency. If we distinguish between acts of *cognition* and acts of *recognition*, we will see that there is an almost unanimous consistency of practice in the treatment of unrecognized states.

Any distinctions requires a criterion. I believe that this criterion is offered by the *character of the legal relationship being discussed*. Thus, I believe that *cognition* is applicable in all legal relationships of private law (including private international law), as well as in those legal relationships of domestic law when the issue of a state's existence appears as a preliminary question. Furthermore, *cognition* is applicable in public international law relationships where the rights inherent to statehood are being questioned.

Recognition and its opposite *non-recognition* are applicable in the legal relationships of public domestic law where the existence of the state is a principal question. Furthermore, they are applicable in public international law relationships when the exercise of international relations by the concerned unrecognized state, and not its inherent rights of statehood, are questioned.

This solution has a further significant advantage. *Cognition* and *recognition* have effect depending on the existence of the state. The positive effects of *cognition* may only appear, by definition, if the unrecognized state *exists in an objective manner*. The appreciation of its objective existence is done, on the basis of the criteria shown in Chapter I, by the *forum*. By *forum* I understand its most extended meaning, thus the person, authority or institution which is making the legal argument, or in case of dispute the court or arbitral tribunal. Thus the solution of distinguishing between *cognition* and *recognition* offers not just a limitation of the fields where one can grant effect to the existence of an unrecognized state, but also a filter which checks the state's existence itself.

Going on from the above conclusions, I have found that the quasi-unanimity of current jurisprudence is for the application of the law of the unrecognized state. Regarding the citizenship of the foreigner from the unrecognized state, states look at it in a dual manner, both as a public law,

and as a private law institution. As a public law institution, non-recognition of a state results in the non-recognition of its citizenship. However, in private international law, the connecting factor of *citizenship* may send to the law of the unrecognized state, as a form of its *cognition*. The legal status of the foreigner from the unrecognized state has public and private law elements. Depending on the above mentioned criterion, the state will acknowledge and will give effect to the existence of the unrecognized state, or will apply the effects of non-recognition. The variety of practical situations prevents me from detailing all the possible solutions, which are multiplied by the fact that, when the refusal of recognition is not based on an international obligation, the state has a margin of appreciation regarding the practical effects of non-recognition in its domestic public law. Finally, regarding conflicts of international competence, of foreign judgments and other public documents, I believe that the existence of the unrecognized state does not impede the recognition of its judgments and other public documents as proofs of the *legal relationship* which they attest. And the conflicts of competence which I have analyzed prove that the existence of the unrecognized state may sometimes have effects regarding international or personal competence of courts.

I have ended the first part of the thesis with the analysis of the temporal effects of states' recognition. Time has relevance, as always, also in the field of states' recognition. It appears particularly in three issues: 1. the moment of a state's birth; 2. the retroactive effects of recognition; and 3. the problem of prescription of the right of action of recognized states, taking into account the time lost during which they were not recognized, and thus could not act before the courts. From my analysis, the following principles can be drawn:

1 The formal date of a state's appearance may not be established except after the fact in most cases, to this end the declarations of independence or other similar acts being very useful.

2 The retroactive effect of recognition, although logically justified through its declarative character, is not universal and may be denied in the internal law of the author-state.

3 Correspondingly, the patrimonial rights of the unrecognized state may be affected according to the policy of the author-state.

The second part of the thesis is dedicated to unrecognized annexations of territory. Here I have limited the historical analysis to those situations of post-World War II annexations, or those annexations continued after 1945. The most recent of them is the annexation of Crimea, which I have presented extensively, with the time line of events, as well as the detailed presentation of the legal and executive documents issued by both parties (the Russian Federation and Ukraine) for the purpose of, and respectively against, the annexation of the peninsula.

In this context, I have made a short presentation of the principle of territorial integrity, as a justification for the analyzed problem, namely the obligation of collective non-recognition of illegal territorial annexations in public international law. I have found that this principle underlines in contemporary international law such an obligation of non-recognition. The first steps to this end have been taken since 1932, on the occasion of Manchuria's annexation by Japan, followed by the constitution of the state of Manchukuo. On this occasion, the League of Nations appointed a subcommittee of experts who drew up a Report regarding the attitude and relations which the member states of the League could have towards Manchukuo despite its non-recognition (the Report, due to the very hard access to it, is reproduced integrally in the Annex). From the analysis of state practice I have found that the structure of the issue, as well as the principles proposed by this Report have remained valid until today.

I have then analyzed the effects of unrecognized annexations in public international law. I have found that the interdiction of forceful annexations is complemented by the principle of the state's continuity, which expresses the negation of the annexation and its effects. The international society refuses to take note of the disappearance of the state. This principle of continuity is based on a legal fiction to the end that the state does not cease to exist, although it does not fulfill the conditions of its existence. The principle was applied both in the case of Kuwait, which was represented by its government in exile, as well a that of the Baltic states. In the field of states' annexations, legality overtakes effectiveness, being an effective impediment to the disappearance of the annexed state's international personality. After the end of the annexation, the continuous existence of the annexed state produces full effects in all fields of public and private law.

Regarding the diplomatic relations, the participation in international treaties and organizations, I have drawn the following conclusions:

1 Diplomatic relations which the annexed state are maintained as long as there is a government in exile, which can exercise a minimum of effectiveness against the annexation.

2 The non-recognition of annexation is compatible with the consular presence on the annexed territory.

3 The treaties entered into with the annexed state are maintained, in the case of the non-recognition of the annexation, and this even in the absence of a government in exile, because their unilateral application can take place even without reciprocity. The treaties entered into by the annexing state are void, with the exception of territorial treaties. The treaties entered into by the *de jure* authorities remain valid also after the end of the annexation.

4 The annexed state does not lose the place it has in various international organizations, as

long as it has a minimum of authorities in exile which can oppose a concurrent effectiveness to the annexing state.

Regarding public goods and debts, I have concluded that, even if the annexing state benefits from the use of public goods on the annexed territory, and equity would require it to be obliged to pay the debts associated with the territory, states' practice denies such a rule. Furthermore, in the case of an unrecognized annexation, there is little likelihood that, while denying the title of a state over the annexed territory, other states will be able to oblige it to pay the corresponding debts. They can, however, try and attract the responsibility of the annexing state on other grounds, such as for war damage or on the basis of its illicit acts, this being specified also by Ukraine regarding the responsibility for damages brought by Russia to the inhabitants of Crimea, by virtue of its occupation.

From the perspective of private international law, an unrecognized annexation has some effects, the most important being the application of the law being effective on the annexed territory. From the analyzed jurisprudence I could find the predominance of the annexation's *cognition*, thus the predominance of effectiveness before the effects of non-recognition. However, from the point of view of public law and of non-recognition after the end of annexation, states may use various diplomatic means to obtain the *restitutio in integrum* for those affected by the laws given by the annexing state. From states' doctrine and practice it appears that they do not recognize the citizenship granted after such an unrecognized annexation, giving priority to the previous citizenship, that of the legitimate sovereign, as long as it exists, even artificially, on the basis of recognition. If it does not exist even as a legal fiction, the non-recognition of the citizenship obtained through annexation leads to the statelessness of the concerned persons. Non-recognition will however be overtaken by the option of the person themselves, who, through various acts and documents, may freely accept the new citizenship. Regarding the public documents from the annexed territory, I believe that the correct solution is that which I have presented regarding the public documents of unrecognized states. Indeed, even if the sphere of application of *cognition* is more limited in the case of annexation, because of the principle of nonrecognition of forceful annexations, on the basis of the International Court of Justice decision in the *Namibia* case, but also of the fact that the annexing state exercises effectively the sovereignty over the territory, regulating people's lives, one can admit its public documents, at least as evidence. The situation is different when the *de jure* sovereign manages to offer the basic services to the inhabitants of the annexed territory, such as happens in Ukraine, regarding civil status documents. In this case, the non-recognition of annexation can have full effect, because the full effectiveness of the annexation is

lacking, and it is reasonable to ask the inhabitants to appeal to the *de jure* sovereign's authorities.

Cognition, recognition and non-recognition are facets of the same phenomenon: states and territorial annexations appear in practice, and third states (both as authors, arbitrators and subjects of public international law, as well as through the exercise of legislative, executive and judicial powers within their legal systems) must and wish to take position towards these realities. My work has tried to discern the logic and the legal justification of these positions, without which behind the law would hide arbitrariness and the primacy of power. I hope that the reader will find this wish fulfilled and that the doctrine and jurisprudence being presented will served as relevant examples.

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