PRIVATE LAW EFFECTS OF THE NON-RECOGNITION OF STATES' EXISTENCE AND TERRITORIAL CHANGES[1]

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Abstract

The study presents an outline of the effects in private law (including private international law) of the non-recognition of a state or a change of territory. Specifically, it addresses the question of what measures can another state take, in the field of private law, in order to give effect to its policy of not recognizing a state or a territorial annexation, and, in parallel, what are the means available to private parties with links to the unrecognized state or territory. The study is structured in two parts, namely 1) the effects in private law of the non-recognition of a state; and 2) the effect in private law of the non-recognition of an annexation of territory. I will make specific references in particular to the situation in Transnistria and Crimea, as examples of the two issues being addressed. The study intends to be a guide of past and present state practice at the legislative and judicial level, as well as presenting the connections between instruments of public international law, such as Sanctions Resolutions of the UN Security Council, and normative instruments of private law, such as rules of civil procedure, which must adapt to the policy of non-recognition adopted by (or imposed on) states. The study also presents specific examples of situations or administrative practices which create practical problems, and result from the existence of a non-recognized entity or change of territory: issues like air traffic coordination, postal traffic, the change in the official currency of a territory, questions of citizenship etc., the aim being to present the reader with a full picture of the issues and intricacies resulting from irregularities existing at the level of the international community of states.

Keywords: *recognition, private law, conflict of laws, annexation, independence*[1].

1. Introduction

This study is proposed as a bridge between public and private international law. It covers two situations which appear in public international law, namely the proclamation of independence of a new state, and the annexation of territory, but which suffer from issues of legality on the international sphere, and thus are not recognized by the (vast majority of the) community of states. These situations, which involve a (purported) change in the sovereignty over a territory and a population, produce effects not only in public international law, but also in the conflict of laws situations, where a particular legal relation can be localized, with the help of conflictual rules of the forum, to the

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territory which is annexed, or which is claimed by the newly proclaimed independent entity. The issues raised by such an event are manifold, and this article does not attempt to cover them all. Its importance lies in lying the doctrinal principles which can serve as guidelines for solving conflicts of laws which may appear in such situations. The reader should find in this study a short summary of current national and foreign doctrine on the subject, as well as some jurisprudence regarding cases where issues of the effects of the existence of unrecognized entities have been raised. It bases itself on the state of the current doctrine, in particular Romanian private international law doctrine, as well as German and British studies at the crossroads between public and private international law. From the quoted jurisprudence and doctrine, I will attempt, at the end, to extract potential principles for solving situations of conflicts of law where unrecognized annexations of territory are involved, as a phenomenon which has recently reappeared on the global arena.

The events taking place to the immediate East of Romania, as well as around the Black Sea, culminating with the annexation of Crimea by the Russian Federation make clearly necessary the analysis of the private international law position which the Romanian courts could take. While unrecognized proclamations of independence are not unheard of in the international community, the forceful change of the borders of a sovereign state, which had received independence and territorial integrity guarantees, in exchange for renouncing nuclear weapons, is unprecedented in the history of international relations, and is an extremely grave affront to international equilibrium and security. Therefore, a look at the private international law effects of such a situation is warranted.

2. Content

Recognized as the principal subject of public international law, the state is also invested, by definition, with international legal capacity, and thus legal personality. Also, it is recognized as a legal subject in internal law systems, where, in particular through its diplomatic missions, which are amongst its organs, it concludes contracts, acquires chattel and landed property (inasmuch as the local legislation allows), is part in trials etc.[2]. Beginning with the older Romanian doctrine, it was asked whether the new state which entered the international community and which benefits of all the rules of public international law regarding its representative organs, diplomatic and consular agents, the laws of war etc., is entitled to exercise all its prerogatives on the territory of the state which granted the legal personality, and thus the right to have rights and obligations just as natural persons. The answer is in the affirmative, because the personality of a state cannot be the product of the juxtaposition of two personalities, it being unique. The legal personality of the state is only the personality of that state considered from the point of view of some of its manifestations[3].

Granting recognition to a state means accepting its presence in the international community and its enjoyment of all rights and obligations which pertain to its quality of a state. The act of recognizing a state or a government attracts for the state being

[2] Ignaz Seidl-Hovenveldern and Gerhard Hafner, *Liber Amicorum Professor Ignaz Seidl-Hohenveldern* (Amsterdam: Martinus Nijhoff, 1998), 86.

[3] George Plastara, *Manual de drept internaţional public cuprinzând şi o expunere a conflictelor de legi (Drept internaţional privat)* (Bucureşti: All Beck, 2004), 27.

recognized a number of effects, of which the most important are the following:

1 obtaining the entitlement to begin diplomatic relations with other states which recognize it and of concluding treaties with such states;

2 obtaining the right (which according to some states' laws it would not otherwise have), of beginning civil trials before the courts of the recognizing state;

3 the acquisition by the recognized state (with effects also over its property) of jurisdictional and enforcement immunity before the courts of the recognizing state, an immunity which, in some law systems such as the British one, it could not have enjoyed before recognition;

4 the acceptance of its executive and legislative acts in the courts of the recognizing state.

Besides these, in the states where legal precedent gives retroactive effect to recognition, such as the United Kingdom and the United States, the acts of the newly recognized state or government are considered legally valid from the moment when the recognized authority has been installed in power[4].

In civil issues, the states can agree so that, in limited circumstances, they allow for the reciprocal extension of the exercise of some of the state's competences beyond the limits of national territory. In civil legal relationships, with one or more extraneous elements, the private international law rules of each state usually apply. Because of the diversity of solutions which these rules give rise to, in the practice of international private law relations between state, relatively few principles or customary rules have been formed regarding the exercise of civil matter competences[5].

Correspondingly, not recognizing a state means denying it these attributes. In this sense, recognition has a constitutive character, because the act of recognition itself is the one which produces legal effects in the internal law system of the recognizing state. In comparative law, one must now analyze the positions of the United Kingdom and the United States in this regard.

British courts have taken for some time the position that an entity not recognized by the Foreign Office as a state shall be treated by the courts as not existing, and thus will not be able to invoke immunity of jurisdiction. Thus, in a case, the ships belonging to "The Provisional Government of Northern Russia", an unrecognized entity, were not granted immunity from creditors[6]. Correspondingly, an unrecognized entity may not act as a plaintiff in court. For example, in 1804, the Revolutionary Government of Berne could not stop the Bank of England from disbursing the funds of the former city administration[7]. The current main precedent regarding the effects of recognizing an entity in internal law is *Luther v Saigor*. This concerned the operations and production of a timber yard in Russia, owned by the plaintiffs, which had been nationalized in 1919 by the Soviet government. In 1920, the defendants had bought a quantity of timber from the USSR, and the right of ownership was invoked upon it in England by the plaintiffs. These argued that the Soviet decree of nationalization should be ignored because the United Kingdom had not recognized the Soviet government. The first court agreed, and the defendants appealed. In the meantime, the United Kingdom had recognized *de facto* the Soviet government and the Home Secretary had informed the Court of Appeal in writing

[4] Raluca Miga-Beşteliu, *Drept internaţional public* (Bucureşti: C. H. Beck, 2010), 37.
[5] Miga-Beşteliu, *Drept internaţional public*, 117.
[6] *The Annette; The Dora* [Admiralty], 1919.
[7] *The City of Berne v The Bank of England* [Chancery], 1804.

regarding this. The result was that the higher court was obliged to take judicial notice of the Soviet decree and give it effect as a law of a recognized state or government. The Court also showed that the fact that the Soviet government had been recognized *de facto* and not *de jure* did not change the solution. Another important point is that, because in the Home Secretary's certificate it was stated that the Provisional Government of Russia, recognized by the United Kingdom, had disbanded in December 1917, the Court considered that the Soviet government had started its existence at that date.

Inasmuch as laws, contracts concluded by unrecognized states or governments will not be recognized by British courts, because the unrecognized entity does not exist before national courts. Official recognition operates retroactively up to the time indicated by it, for example up to the *de facto* recognition, which precedes a *de jure* one. To this effect is the case *Haile Selassie*, where the *de jure* recognition of the Italian authorities as occupants of Ethiopia involved the obligation of British Courts to refuse the recognition of the Ethiopian State's legal personality, through its Emperor living in exile, with retroactive effect from the date of the *de facto* recognition of Italian occupation.

A more interesting problem appears when conflicting rights are claimed by entities exercising *de jure* and, respectively, *de facto* control over the same territory. The solution is that the actions of a *de facto* authority regarding people and goods located in its sphere of effective control will be recognized by the British courts, but when the goods of persons are in the United Kingdom, the *de jure* sovereign shall have precedence[8].

In the United States the situation is similar. Only a recognized state may act as plaintiff in American courts. However, American courts allow in limited cases the access to justice of an unrecognized state, on the basis of case by case analysis of the entity under discussion. For example, in the case *Transportes Aeros de Angola v. Ronair*, it was held that where the US State Department had clearly indicated that the plaintiff's (a company wholly owned by the unrecognized government of Angola) access to American courts was to the benefit of the foreign relations of the United States, the courts had to respect this declaration[9]. Absent such governmental declarations, American law is more flexible regarding unrecognized entities, on the basis of the "Cardozo doctrine", according to which "an unrecognized entity which has kept control over its own territory, may gain, for its own acts and decrees, a quasi-governmental validity, if otherwise our fundamental principles of justice, or our public order would be violated[10]".

One can thus observe that the non-recognition of a state does not involve *de plano* its nonexistence in the national law of other states, but only a presumption of the lack of civil capacity, as well as of the invalidity or nonexistence of its acts. This presumption can be overturned either through a declaration, even retroactive or *de facto*, of its recognition, or through a relaxation of the rule with the purpose of protecting private interests.

Citizenship is, ever since Mancini, at least in Continental Europe, the most important point of connection for personal status. By this one understands those legal relationships which concern the party or parties personally. Citizenship is generally understood as a legal community, which

[8] Malcolm N. Shaw, *International Law* (Cambridge: Cambridge University Press, 2008), 475.
[9] Shaw, *International Law*, 482.
[10] *Sokoloff v. National City Bank of New York* (208 App. Div. 627), 1924.

subjects a person to a state, and makes this state the owner of rights and obligations. Furthermore, citizenship involves the right of its holder to protection from his state. From the point of view of conflict of laws rules, this public law aspect of citizenship has a restricted importance. Such an example is art. 2600 alin. (2) of the Civil Code which protects the Romanian citizen spouse from the impossibility of terminating the marriage (if such is prescribed by the foreign law). Another example is art. 1069 alin. (2) of the Code of Civil Procedure, which foresees the compulsory jurisdiction of the Romanian courts, as a *forum necessitatis*, when the Romanian citizen plaintiff shows that he cannot begin the action abroad, or that it cannot be reasonably expected for the action to be filed abroad, even when the law does not otherwise grant jurisdiction to Romanian courts, thus protecting the citizen from a denial of access to justice.

In public international law, citizenship is a legal link, which is established on a social fact, on a link, an effective solidarity of existence, interests, feelings, as well as a reciprocity of rights and obligations. It can be said that it is the legal expression of the fact that the individual to whom it is offered is, in fact, more strongly related to the population of the granting state that to that of any other state[11]. By virtue of sovereignty, each state determines alone the criteria and means of acquiring and losing its own citizenship, as well as the rights and duties pertaining to its citizens. In international legal order, only the state as the primary subject of international law, has such a competence[12]. However, the conditions of opposing this citizenship against other states are regulated in principle, by international law. From the point of view of international law, the exercise of state competences over a person is relevant with regard to the conditions in which the legal status of citizens or foreigners is recognized and can be opposed to other states or international entities; and the compatibility of the exercise of these competences with international law rules[13].

Granting someone citizenship without asking that person first, not finding a way, as a state, to subject the granting of citizenship, the fundamental right, the one which conditions all the other rights in a state, to the will of the prospective holder, whom, at the same time, you thus deprive of the benefit of the citizenship to which he did not renounce and from which he had not been excluded, denies *ab initio* any proof that belonging to such a state is a citizenship, and creates the presumption that it is a subjugation, and thus transforms citizenship into the status of a subject[14]. International law refuses to recognize the effects of complimentary, fictitious citizenships, abusively granted by some states to individuals who are not effectively attached to them. At the same time, laws regarding the acquisition or loss of citizenship, founded on racial, religious or political criteria would be considered illicit from the point of view of human rights norms, and thus could not be opposed to other states[15]. Furthermore, the exercise of state competences over persons, although in principle discretionary, must take place in consideration of the following: the regime of a state's own citizens should not irreversibly

[11] The *Nottebohm* Case, ICJ Reports, 1955, 23.
[12] Beşteliu, *Drept internaţional public*, 119.
[13] Beşteliu, *Drept internaţional public,* 118.
[14] Barbu B. Berceanu, *Cetăţenia. Monografie juridică* (Bucureşti: All Beck, 1999), 23.
[15] Beşteliu, *Drept internaţional public*, 119.

violate fundamental human rights, and the regime of foreigners should not violate their interests or those of their state of origin. At the same time, every states tries to ensure as good a regime as possible to its citizens located, temporarily or permanently, on the territory of other states[16].

In our legal system, citizenship is not considered as pertaining to the field of private international law, this opinion being in the majority. The arguments brought to this end are as follows: the fact that citizenship constitutes a criterion for determining the applicable law, for example in the field of civil status and capacity of a natural person, does not constitute an argument for including the matter within private international law, because it would mean that all the criteria which serve to determine the applicable law should pertain to this branch of law. The link between citizenship and the legal status of the foreigner does not oppose nor does it deny their separate study, within different legal disciplines[17]. In recent literature the thesis was posited that we can observe a link of interdependency between conflict of laws, conflict of jurisdictions, the legal status of the foreigner and citizenship, because their solution is sometimes preceded by the determination of a person's citizenship[18]. In French doctrine, it is considered that the citizenship, defined as the ensemble of rules which determine the link between an individual and a state, presents sufficient links with private international law so as to be included in its normative sphere. Thus, civil status and capacity of a person being given by their citizenship, the inclusion of the study of citizenship in the field of private international law is justified, as also for the reason that in all cases the legal condition of the foreigner is determined by comparison with that of the national[19].

For private international law, the significance of citizenship is that of an indicator of the appurtenance of a person to a legal system. The fact that the private interests of a party, in respect of their personal status, point towards the existence of the competence of that system of law where the party feels most integrated, leads to a presumption in favor of the appurtenance of a person to a certain system of law. Citizenship is not, however, neither in Romanian law, nor in the Continental European one, the most important point of connection, and in this quality, it is neither unique in comparative law, nor lacking political and legal critiques. In comparative law, one can observe that almost all *common law* states do not see in citizenship, but in domicile, the predominant criterion of belonging to a certain legal system. Domicile is a legal figure composed of factually determinable elements, together with the *animus* of the party, which proves a voluntary and special link towards a state, one more stable than the presence or residence on that territory. It is therefore false to relate domicile (in its *common law* definition) to such mobile spatial connection points; it is closer to citizenship in that it involves a conscious identification with a certain state. Other states (especially in Scandinavia) choose sometimes as a connecting factor, even for the personal status, the place of concluding a certain legal act and thus allow individuals a flexible adaptation to the local law (even if chosen at short notice), which sometimes even allows for manipulations. Citizenship as a

[16] Beşteliu, *Drept internaţional public*, 118.
[17] Bianca Maria Carmen Predescu, *Drept internaţional privat. Partea generală* (Bucureşti: Wolters Kluwer, 2010), 128.
[18] Predescu, *Drept internaţional privat. Partea generală*, 128.
[19] Predescu, *Drept internaţional privat. Partea generală*, 128.

connecting factor is in retreat as of the second half of the 20th century. The intervention of other connecting factors, such as habitual residence, even in personal status issues, is ever more visible.

The link between citizenship and the solutions to conflicts of laws shows how complex the legal foundations of conflictual rules are. In as much as conflicts of laws solutions cannot be outside the complexities and particularities of material life, neither can the legal foundations and solutions of private international law be outside the complexities of legal norms, of law seen in its ensemble as the most efficient way of ordering social life of all times and for ever[20]. The institution of citizenship and the condition of a citizen express, however, in the first place, a link, which is principally a static one, of the individual with the State. Evidently, the link is with a particular state. There shall be as many citizenship and as many types of citizens as there are states. And, in respect of citizens of a particular state, the citizens of other states, and stateless persons, are called foreigners[21]. The Romanian State, as it recognizes a foreign state, it recognizes its citizens as such. On the basis of such states' documents, Romanian authorities issue documents for foreigners, valid on Romanian soil, in which that foreign citizenship is attested; similarly, Romanian authorities apply visas on foreign passports, and generally on international travel documents, as the protection of a state does not always involve its citizenship[22].

The proof of a person's citizenship in private international law always takes place from the point of view of the state whose citizenship is in question. The law of citizenship is of a public nature; no state may decide on the question of whether a person is another state's citizen[23]. In as much as the Romanian State grants citizenship to a person, the foreign citizenship granted until then to such a person are not taken into account. Conversely, a person not granted Romanian citizen is a foreigner, even when another state considers him a Romanian citizen[24]. Thus, in practice, one must prove the rules of citizenship of the state whose citizenship the party might have; in most cases, this is a documentary step without any problems, but sometimes it can offer an interesting image of citizenship rules of various states, or regarding the historical development of nation-states in Europe. Thus, for example, if in 1998 the succession is opened in Slovenia of a *de cujus* born in Slovenia in 1908. During his life, he has held Austrian, Hungarian, Yugoslav and Slovene citizenships, and, perhaps, through his willing enlistment in the German Army, he also became a German, keeping this quality by virtue of the first German law regarding citizenship issues of 22nd February 1955. If, during the probate process, it is discovered that *de cujus* is himself the heir of an uncle deceased in 1944 in Romania (which was not particularly rare before the fall of the Iron Curtain over Europe), whose citizenship is questionable because of unclear circumstances in the last days of the War, the inheritance certificate can easily become a history manual.

The stateless person is that who cannot be considered citizen of any state, according to its rules of citizenship. *De jure* statelessness appears when it can be proven that, according to the citizenship rules of the present systems of law, the person is not a citizen of any of the relevant states. Also, a

[20] Predescu, *Drept internaţional privat. Partea generală,* 130-131.
[21] Berceanu, *Cetăţenia. Monografie juridică*, 8.
[22] Berceanu, *Cetăţenia. Monografie juridică,* 226-227.
[23] Art. 3 of the 1997 European Convention on Citizenship.
[24] Berceanu, *Cetăţenia. Monografie juridică*, 226.

person holding a laissez-passer issued according to art. 28 of the UN Convention regarding the legal status of stateless persons of 28th September 1954, is a *de jure* stateless.

German law considers *de facto* stateless those persons whose statelessness cannot be clearly demonstrated, but who do not hold a citizenship which can be proven. This can be the result of the nonrecognition of their origin state by the Federal Republic, especially in case of UN nonrecognition. Thus, for example, the South African Republic had excluded of its state territory the so-called *homelands*, which had however not been recognized by the UN, which retrospectively did not affect South Africa as much as it affected their inhabitants who held an unrecognized citizenship, and thus were not treated as citizens by their recognized state of origin, South Africa. For similar reasons, in German law Palestinian refugees are also considered stateless, because, even though they might have held before the establishment of the state of Israel the citizenship of the British Mandate in Palestine, presently they are prevented by the Israeli occupation of the Palestinian Territories from placing themselves under the protection of a Palestinian state. Germany considers that the population of the Palestinian Territories themselves cannot yet benefit from a Palestinian citizenship, even after the admission of Palestine to the UN as an observer state, because of the "lack of effectivity" of Palestinian sovereignty. On the other hand, German law does not exclude conflictual application of Palestinian law, even absent recognition of a Palestinian citizenship, for persons who are habitually resident there[25]. One must observe, from the practitioner's perspective, that there is no one Palestinian law. The law being applied in the Palestinian Territories (Transjordan and Gaza) is different, being made up of rules kept from the time of the British Mandate, military public order rules imposed by Israel, Islamic law (especially in family matters), but also various rules kept from the time of the Egyptian (Gaza) and, respectively, Jordanian (Transjordan) administration.

A problem usually found in jurisprudence, the determination of applicable law in the case of an unrecognized state is specific to the modern and contemporary eras. In private international law of the 19th century, the solving of the conflict of laws in the case of the unrecognized state has been influenced by the considerations given to state recognition as being constitutive and not declarative. In French doctrine, Bartin established the theory whereby the solution to this type of conflict of laws is subject to the rules of public international law. The judge may not apply the law of a foreign state that the forum state had not recognized as a subject of international law, because that would contradict the public power of the forum state. In these circumstances, the court may not apply the law of the unrecognized state, because its national public law rules, as well as public international law principles impose this solution. Bartin's thesis has been dominant until the first half of the 20th century when, at the end of this period, a contrary thesis was argued, namely that even the laws of an unrecognized state may give rise to conflicts of law in the private sphere. This solution begins, above all, from the affirmation, in most legal systems, of the declarative nature of state and government recognition.

Supporting this theory, Henri Batiffol and Paul Lagarde show that the mission of the French judge and the French government are not situated on the same plane. The judge who applies foreign law must establish if his

[25] Thomas Rauscher, *Internationales Privatrecht* (Heidelberg: C. F. Muller, 2012), 62-63.

authority is contested on the territory of the foreign state. The reasons for which the government might not recognize a state are of a different nature, much more complex, and mostly of a political nature[26]. In the second half of the 20th century, an important part of the doctrine, including the Romanian scholars, affirms the possibility that the law of the unrecognized state might give rise to the conflict of laws. This solution was reached both on the basis of general principles of law, as well as particular principles of private international law. In as much as the law of the unrecognized state is not taken into consideration, the effect is the application of a previously existing law, on the basis of its exclusive recognition, which is inadmissible, both as a legal principle, as well as with regard to the effects felt by private persons. The lack of application of the law of an unrecognized state means that the objective law which governs the subjective rights which individuals can enjoy in that state is disregarded, and the purpose of the laws is thus violated, in that they do not attain their goal of protecting individuals, of serving to satisfy their material and spiritual needs[27].

The hypothesis taken into account is that where the conflictual rule of the forum points to the system of law of a state which is unrecognized by the forum state. The generally admitted solution in practice and in literature is that the laws of an unrecognized state may give rise to the conflict of laws. This solution is traditional in Romanian private international law. To support this solution, the following arguments may be brought forward:

- recognition of a foreign state has, in principle, a declarative and not constitutive nature. Thus, a state may recognize another state, but it cannot ignore its legal order. Recognition of a state has a majority political character, and does not apply in the field of conflict of laws, where the foreign state remains a legal subject[28]. The contrary would involve violating the sovereignty of the foreign state;
- if the law of the foreign state is not applied, then the formerly existing laws ought to apply, which would lead to unjust effects for the parties;
- as private law relations are involved, it would be unjust for persons' rights to be diminished or denied because these persons belong to an unrecognized state[29].

A second problem regards the solution of the conflict of laws in the case of a state succession when the successor state is not recognized. The question is asked which law should apply: the law of the state which does not exist anymore, or that of the unrecognized state? In my opinion, the solution is clearly the same as presented above. Thus, this conflict appears when the state, to whose system of law points the conflictual norm, "disappears" between the moment of the legal relation's birth and that of the trial. A just solution involves taking into consideration the context in which this change has taken place. It was thus proposed that, in case the state was disbanded through "force", the idea of the protection of legitimate interests of persons affected directly by the abusive change in sovereignty should prevail. This would mean applying the law of the disappeared state. If we are in the presence of a voluntary unification or split, the rules of the treaty of unification or division should be applied. I concur with this opinion, with the note that,

[26] Predescu, *Drept internaţional privat. Partea generală*, 235.
[27] Predescu, *Drept internaţional privat. Partea generală,* 236.
[28] Nicoleta Diaconu, *Drept internaţional privat* (Bucureşti: Lumina Lex, 2009), 125-126.
[29] Dragoş-Alexandru Sitaru, *Drept internaţional privat* (Bucureşti: C.H. Beck, 2013), 39-40.

in order to establish the character of the international change of legal personality, one must take into account the official position of the forum state regarding that particular situation[30]. Jurisprudence retains several situations where the non-recognition of a state was invoked, as a reason to deny the application of the currently existing law of the foreign state, and to continue to apply the old law, the one applicable before the change of political regime. Thus, after the establishment of the Soviet Union in 1917, French courts continued to apply tsarist law for more than a decade, such solutions being encountered even much later. In the Scherbatoff / Stroganoff case, solved by the Court of Cassation in Paris, in 1966, it was held that the non-recognition of the foreign government is an impediment for the French judge to apply the foreign law given by this government, before its recognition by the forum state[31].

A similar question is raised by the unrecognized annexation of territories. In such a case, the main difference is that both relevant states continue to exist, and demand the application of their laws to legal relationships which are localized in the territory being annexed. This issue is also connected to the state's presence in such a territory, for example with control over state resources, companies and institutions. In such cases, I believe that the "character" of the annexation takes precedence over considerations of private interests, because of a strong presumption that the unrecognized annexation does not reflect the real attachments of the persons living on the territory, but on the contrary, it is being imposed from above, as an illegitimate act. Furthermore, one must take into account the relevant UN Security Council or General Assembly Resolutions which express an opinion over the annexation, as well as potential rulings of international courts to the same effect. In as much as a UN Security Council calls for the denial of recognition of a factual situation, it would be unlawful for courts of a state, which are part of its official organs, to grant even indirect recognition by applying the law of the unlawful sovereign. This illegality in international law would preclude any national laws or considerations to the contrary. Where there is no such binding international determination, then I believe that courts should follow the official opinion of the government on the issue of the legality of annexation, so as to protect the interest of the state in not giving recognition to a situation which might affect its international relations. Where the state does not issue any official positions, previously discussed considerations apply, and the court should check whether the parties of the legal relation have indicated expressly the law they understand as being applicable, because in such a case it should be first and foremost for the parties to express their attachment to one or the other system of law in presence.

We can see that where unrecognized states or territorial annexations are concerned, the notion of sovereignty is brought to the fore, and therefore we can think of the principles expressed above as determining the notion of a law proclaimed by a sovereign power as the basis for the appearance of a conflict of laws[32]. I believe that in such a situation the criterion of effectiveness should also find its plenary application, as it exists in public international law. In as much as an entity effectively controls a territory and a population, with private law effects in the legal relations of its members, then its acts should be recognized at least private

[30] Dan Lupaşcu and Diana Ungureanu, *Drept internaţional privat* (Bucureşti: Universul Juridic, 2012), 64-65.
[31] Predescu, *Drept internaţional privat. Partea generală*, 235.
[32] Predescu, *Drept internaţional privat. Partea generală,* 233.

international law effects because otherwise, the obligation of non-involvement in other states' affairs would be violated, as well as the rights and interests of the persons concerned. Furthermore, private international law has the means, amongst which first and foremost is the notion of public order, to censure the application of the laws of an unrecognized entity which would not be compatible with its national principles.

3. Conclusions

The article has looked at the private international law effects of unrecognized proclamations of independence and annexations of territory. It has illustrated the state of national doctrine, as well as bringing forward approaches from other countries' doctrine and jurisprudence. It has established a number of principles, which could be applied by Romanian courts when confronted with these special types of conflict of laws. I hope this article will serve as a starting point for a bigger discussion in the doctrine and practitioners' forums regarding the means whereby the legal world (by which I understand courts, attorneys, but also the public administration) could react in an appropriate and unified manner to the unrecognized, and often violent, changes taking place in the international community nowadays. I also hope that, during my doctoral studies, I will be able to continue the research on these topics in other legal systems, so as to be able to present a general European view of the matter, in the spirit of unified European principles of law, especially when dealing with threats to the security and balance in the European Union's near abroad.

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