Revista de Științe Politice. Revue des Sciences Politiques • No. 82 • 2024: 70 – 85

ORIGINAL PAPER

State entities and the challenges of their recognition in international law

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Abstract:
The institution of recognition in the international public law can be defined as the desire of a state to establish and maintain official Relations with another state, respectively with its government. The recognition of a state is the act by which a state admits that a political entity fulfills the conditions specific to a state (takes note of the emergence of this new subject of law) and express its will to consider it a member of the international community, recognition being a matter of pure intention, it is up to the existing state to recognize a new state or not.
States are the main subjects of international law. For an entity to be considered as a state, it must meet the criterion established in art. 1 of the 1933 Montevideo Convention on the Rights and Obligations of States, namely to have a permanent population, defined territory, government, as well as the ability to enter into relations with other States.
On the on the other hand, there are contemporary geopolitics entities that tends to be recognized as sovereign states under international law but do not enjoy full global diplomatic recognition. They are divided into two categories: entities that have complete or partial control over them claimed territories and is de facto self- governing, with the desire to obtain total independence; respectively entities that do not have control over the claimed territory, but have been recognized as having a de jure right over the respective territory at least one other generally recognized nation. These special situations will be addressed in the paper, with some concrete examples from the international current affairs.

Keywords : *International recognition, geopolitical entities, independent states.*

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1. The notion of subject of international relations

The notion of legal subject is common to any legal order, domestic or international . It designates the entities that have the capacity to participate in legal relations governed by the specific rules of a legal order and to be holders of rights and obligations within it (Raluca Miga-Beşteliu , 2003: 82).

In line with historically evolution, international relations, initially rudimentary and limited in scope , developed and diversified, the main role in this process fall into the States. For a very long time, international relations concerned only the relations between states, because they were the only actors of international life.

At the beginning of the first half of the 19th century, because of the influence of technical progress, the development of cooperation between states, interstates international organizations, both governmental and non- governmental, appeared on the international arena. With the disintegration of the colonial system, a new entity appears in international life, namely the nation (peoples) fighting for liberation.

Until now, international practice confirmed the quality of subject of law, outside of sovereign states, of nations fighting for liberation that participated in the conclusion of treaties of legitimate interest for them, as well as international organizations, that participated in the conclusion of international treaties within their limits of competence, and operated on the basis of a founding treaty. Likewise, the state entities, the Vatican and the Order of Malta, religious concludes treaties with different states on an equal level and maintain diplomatic relations, through embassies and legations. However , the issue of the individual's quality as a subject of international law, as well as of some international non- governmental associations and transnational companies, remains controversial.

In international law, the notion of subject of law represents essential particularities in comparison with domestic law. These particularities, which refer to the nature, basis, legal content and scope, determine the main differences between the concepts of the subject of international law and that of the subject of domestic law.

The fact that international relations take place with the direct participation of states as sovereign and independent entities with equal rights excluded the existence in this field of a "supra-state authority" or a "government " that would determine, regulate or assign the status of subject of international law. This quality belongs above all, to the state by virtue of its sovereignty. I can also belong to other entities (peoples fighting for liberation, international governmental and non-governmental organizations, transnational companies , etc.) to the extents and within the limits determined by the member states of the international community .

The quality of subject of international law defines the legal status of an entity as holder of international rights and obligations. However, this is not just a tendency, an abstract legal capacity and cannot be defined outside the reality of international law relations within which it is manifested and exercised. On the contrary, it exists for states or other entities through their direct participation as subjects of relations in which they exercise their rights and fulfill their assumed obligations since "international personality only means the capacity to be the bearer of rights and obligations in international law" (C. Andronovici, 2004: 112;).

However, the characteristics of international relations are determined by the legal situation of the participating subjects, by their position in relation to international law, so the state - main, primary and original, fundamental subject - possesses this

quality not based on international law or legal regulations, but by virtue of sovereignty on the basis of which it participates in the normative process, in the formation of international relations and in the determination of the legal situation of other entities on the international level. For these reasons, the subject of international law is both "the recipient of international legal norms" (M. Sorensen, 1960: 127) and "holder of rights and obligations" or "possessor of legal capacity" (H. Mosler, 1964: 237- 238).

The state is the sovereign entity with legal personality without the need for external recognition. Sovereignty is what gives the state international legal personality, the ability to act within the international community, by exercising rights and assuming obligations.

In the specialized legal literature, there are controversial opinions regarding the requirements that an entity must meet in order to be subject to international law. In a general concept, the subject of international law is the holder of international rights and obligations, participating in the relations regulated by the rules of international law.

The subjects of international relations are all entities participating in international life, with direct rights and obligations, so the list is much more comprehensive than the one that concerns the subjects of public international law and also concerns international commercial relations regulated by private international law as well as relations with a legal character less pronounced.

Another definition indicates three essential elements of the "subject quality of a legal system": the subject must have obligations, be able to claim the benefit of his rights and have the ability to enter into legal relations with other legal entities recognized by the particular system right. The state, however, has an essential attribute that gives it the quality of subject: sovereignty, its equivalent for nations is the right to self-determination and for international organizations the acceptance given by states.

Other authors define the subjects of international law as being the addressees of the rules of international law in order to directly impose obligations or assign rights to them (a definition that leads to the conclusion that the individual can be a subject of international law), but also that the subject of international law is directly dependent on international law, it has the capacity to be the holder of international rights, to be bound by international obligations and to have access to international procedures, therefore to fulfill a double requirement of being the holder of rights and obligations established and sanctioned directly by this law". Therefore, the majority of authors consider essential the ability to be the holder of rights and obligations according to international law, but also "international responsibility", which makes the subjects of international relations have the ability to act directly through appropriate procedures of international law, in order to enforce their rights in these relationships, therefore, they have the ability "to have direct access to international procedures to defend their rights (either before international courts or within international organizations)".

Today, the theory of the plurality of subjects of international law prevails, in contrast to the doctrine before the First World War, a period in which most authors considered the state to be the sole subject of international law, and the Soviet doctrine of the 50s-60s, by which they recognized themselves as subjects of international law only the states and peoples fighting for independence.

According to this theory, in international law, alongside states, there are other subjects of international law, but who are not in identical positions with states, these would be: international intergovernmental organizations, nations fighting for national

liberation, the Vatican, to which some authors recognized a partial and "atypical" legal personality.

However, this does not mean that all entities with international personality are identical. In its 1949 advisory opinion on "Reparation for Injuries Suffered in the Service of the United Nations", the ICJ points out: "Legal subjects in a legal system are not necessarily identical in the nature or extent of their rights; their nature depends on the needs of the community". The UN, for example, cannot be assimilated from this point of view with the states, although the international law status of the UN is currently indisputable.

Therefore, the quality of the primary subject of public international law is to be recognized by the people, the states, interstate organizations, the nations that fight for national liberation represented by the organs of national liberation, and the secondary subject can be given to transnational corporations, natural persons and legal entities, which participate in the international economic cooperation, interstate non-governmental organizations.

In the system of subjects of international law, the state constitutes a fundamental subject, having this quality by virtue of its situation as a sovereign political entity, which, by agreement of will, creates international law and determines the legal status of other participants in international relations. That is why the state is considered the primary subject, original in relation to other entities having personality under international law recognized by states and, at the same time, universal subject in the sense that it exercises its rights and assumes obligations in any field of interstate relations.

In the post-war period, the evolution of international relations provides an increasing the role of all states, nations and peoples in international life generated the need for a new concept that recognizes other entities, along with states, as recipients of the norms of international law and the ability to participate in reports regulated by these rules.

The continuous development of international law, the process of establishing a new economic and political order, the democracy in the international relations are inseparable from the improvement of norms and principles intended to govern interstate relations.

We must remember that legal relations between states are established only after the act of recognition has intervened in the sense of establishing diplomatic relations, with all their implications, the development of bilateral conventional relations, the diplomatic protection of citizens, the direct addressing of complaints in the event of provocation damages etc. As such, recognition is a means of facilitating the exercise of sovereign rights by the recognized states, their participation in international life.

In the system of subjects of international law, the state constitutes a fundamental subject, having this quality by virtue of its situation as a sovereign political entity, which, through the agreement of will, creates international law and determines the legal status of other participants in international relations. That is why the state is considered the primary subject, original in relation to other entities having personality under international law recognized by other states and, at the same time, universal subject in the sense that it exercises its rights and assumes obligations in any field of interstate relations.

Therefore, the primary, original subjects are the states. They are the main creators and recipient of the fundamental norms and principles of international law.

States are also defined as direct subjects with full capacity, having the predilection "to be a party in any international legal relationship".

Among the analyzed categories of subjects of international law, a new subject appears - the people, as the bearer of sovereign rights and obligations, exercising their rights and executing their sovereign obligations directly or through their representative bodies. National sovereignty presupposes precisely the recognition of a concrete human community as a nation with the right to dispose of its own fate, territory, wealth, to decide freely on the issue of the form of government and the state regime. The highest form of expression of national sovereignty is the nation's right to self-determination.

The people, states and nations fighting for national liberation, international interstate organizations participate directly or indirectly in the creation of international law norms, are owners and bearers of the rights and obligations arising from international treaties and agreements. All these subjects operate in the territories of specific states in order to execute the treaties and agreements to which they are a party, and through their actions they often have a decisive influence on the process of creating the norms of international law.

In the case of nations fighting for liberation, the quality of subject of international law does not depend on their recognition, but belongs equally to all nations, as a consequence of their right to self-determination, which represents the political and legal basis of their international personality. Based on the right to decide their own destiny, each nation is entitled to international rights and obligations and directly enjoys the protection of the norms of international law.

In the case of nations fighting for liberation, the quality of being a subject of international law has a limited and transitory character both in terms of its content and right of exercise. As a sphere of action, it manifests itself only in certain fields, and over time it is exercised until the acquisition of independence, the creation of the new state, which will benefit from full international legal personality, in the sense that it will be able to acquire rights and assume obligations in all areas of international life.

2. The state, from a unique subject to the main subject of international relations

The state is a historical, political and legal phenomenon, it is defined as a human collective, permanently installed on a certain territory and having a structure of organs of power that enjoy sovereignty. The main purpose of the state is to defend the general interest (the common good) through its own organizational system that carries out the political leadership of a society, holding for this purpose the monopoly of the creation and application of law.

Throughout history, states were formed as a result of wars and the conquest of territories through successional sharing, through marriages between monarchical families. Along with the formation and consolidation of the bourgeoisie, new states appeared as a result of the struggle for national independence. In this way, the unified national states of Italy, Germany or the independent states that were formed by the breakup of some empires (Ottoman empire, Habsburg empire) were born. Also, numerous states were formed by separating some territories from colonial Empire or by dismembering some federative states (USSR, Yugoslavia, Czechoslovakia).

The creation of an independent state must be based on the principle of equal rights of peoples and their right to self-determination. Violation of this right and non-compliance with the principle of non-interference in the internal affairs of states

represent illegal acts and can be challenged and sanctioned according to international law. The new states enjoy the quality of subject of international law from the moment of their appearance, the other states having to respect their sovereign rights. The consideration of the state, as a subject of international law, is expressed through the totality of rights and obligations that result from belonging to the international community and the voluntary obligation to respect them.

Unlike the other subjects of international law, only the states possess all the rights and obligations of an international nature. States are not only subjects of international law, but also creators of this law. The quality of international legal personality of the state is characterized by its intrinsic elements: by its sovereignty over its territory and the people who are on this territory.

The majority of authors consider that there are three fundamental elements of the existence of the state: two of a sociological order - the population and the territory - and the third - a legal element - the existence of a government, but the dual quality of the state, subject of domestic and international law, is given by the character sovereign of his power. Based on this power, the state has the right to govern society internally and to establish relations with other states, externally, under conditions of full equality.

Sovereignty. The meeting of the three elements: population, territory and government characterizes the state from a political and social point of view, but the doctrine shows that a legal element - sovereignty - should be taken as the criterion of the state's existence. Thus, sovereignty constitutes the defining element of the existence of the state that manifests itself with its appearance and representing: "the unique, full and indivisible supremacy of state power within the limits of territorial borders and its independence in relation to any other power".

States, based on their sovereignty, have the right to freely choose and promote their political, economic, social and cultural system, to organize their political, economic and social life in accordance with the will and interests of the people, without interference from outside, and to choose their own internal and external policy to pronounce in all areas with the power of the last word (P.M. Dupuy , 2000: 91) .

Mutual respect of sovereignty and independent national relations in the relations between the states, in the process of collaboration and cooperation between them, is the condition *sine qua non* of viable normal relations, of a climate of peace and understanding between nations .

Recognition of states. One of the most difficult concepts of international law to define is recognition . In international law, recognition means a unilateral act, by which a state confirms the existence of certain facts or acts, which may have consequences on the rights and his obligations or his political interests, and expressly declares or implicitly admits that these constitute elements on which his future legal relations will be based accordingly to the new entity or situation (I. Anghel, 1996: 58).

Recognition has also been defined as "the procedure by which a subject of international law, especially a state, which did not participate in the birth of a situation or in the drafting of an act, accepts that situation or act to be compulsory for the state; that is, he admits that their legal effects apply to him" (Nguen Quoch Dinh , Alain Pellet , Patrick Daillier, 1987: 490)

To be recognized as a state, a new entity must meet the characteristic features necessary for the existence of the state, but for this existence to be opposed to another state, the state in question must have this existence recognized.

Through this perspective we can define the recognition of a new state as a unilateral judicial-political act by which one or more states admit, explicitly or tacitly, that they consider a new legal entity as a state and that, consequently, they recognize its international legal personality, respectively, the ability to obtain rights and contract international obligations (Raluca Miga-Beşteliu, 2003:101). In customary international law there is no obligation to recognize a new state. For example, the Berlin Treaty of 1878 recognized the independence of Romania, Serbia, Bulgaria and Montenegro (under the condition of respecting the freedom of conscience and religion for the minorities in those countries); by the Treaty of Versailles from 1919, the recognition of Czechoslovakia and Poland was legislated; an example of collective recognition can be mentioned the recognition by the European Economic Community, on January 15, 1992, of Slovenia and Croatia.

Recognition has an optional character and derives from state sovereignty (Franck Fairness , 1995: 96). States have the right, but not the obligation, to recognize the new entity. As such, recognition is a discretionary act, as states can refuse recognition when they find that a territory has been obtained illegally. Even if recognition remains at the discretion of states, this act must not become an arbitrary matter. Both its recognition and its refusal must be produced in accordance with the principles of international law. The practice of not recognizing some states can be considered unfriendly, creating obstacles to the normalization of relations between states and favoring the factors that oppose the evolution in international society (Ion M. Anghel, 1998: 216) .

In the doctrine of public international law, there are two theories of recognition: constitutive and declarative. The first theory was formulated by the Minister of Foreign Affairs of Ecuador on March 15, 1907 and was stated under the name "Tobar Doctrine". Decisive importance is given to the act of recognition in the process of establishing the new state as a subject of international law. According to this theory, if there is an act of recognition - it validates the very existence of a new subject of international law, there is no such act - it is not the new subject either (Public International Law Dictionary , 1982:119).

The declarative theory confirms that, through the act of recognition , the new subject of international law is not created , this act is a declaration confirming the emergence of a subject of international law .

Recognition is therefore a declarative and not constitutive act, in the sense that, through this act, the existence of a new state is established, which exists as an effect of its creation, and not as a result of the act of recognition. Thus, the state becomes a subject of international law, it existences by itself, and the act of recognition does not bear the decisive mark on the quality of the subject of international law. The recognition does not give international personality to the newly recognized state, but it helps the development and promotion of international law relations by the state in question. The state, from the moment of its creation and independent of the act of recognition, benefits from the international rights and obligations, because is considered a subject of international law, being able to participate in signing treaties, in conferences and organizations international etc. (P. Reuter, 1983:178-179).

From the point of view of how it is done, recognition can take two forms, namely: *express recognition*- is done through a special act of the authorized institution of the state - declaration or formal notification - addressed to the new state, through which it is expressed in definitely the intention to recognize it, respectively *the tacit recognition* -is the one that can be deduced from the conclusive facts of a state, such as

the establishment of diplomatic relations (Livia Dumitrescu, 2008 : 21), the conclusion of a bilateral treaty, which regulates the general issue, without to state reservations regarding recognition, and is practiced by Latin American states (C. Andronovici 2004:131) .

From the point of view of the effects it produces, the recognition is: de *jure* and de *facto* . Both recognition *de jure,* as well as recognition *de facto,* have to be expressed by the official act of the state from which the recognition originates. The difference between these forms consists, in general, in the extent of the legal effects of the recognition .

In the case of recognition *de facto,* the relations between the recognizing state and the recognized one are limited, having an unstable and provisional character, in the sense that it operates in the fields agreed by the state that grants it (international economic cooperation).

Recognition *de facto* it is incomplete, constituting a preliminary phase for recognition *de jure.* Not being definitive, the recognition *de facto* can be revoked.

A state can grant this form of recognition, if it wishes, for certain reasons, to postpone full and definitive recognition. Some of the reasons that this might be an option are: doubts about the viability of the new state, or reluctance on the part of the new state to accept obligations based on international law or its refusal to solve prominent problems.

Recognition *de jure* of a state is complete and final. It is irrevocable, because its effects are extinguished only with the cessation of the recognized state's status as a subject of law (Raluca Miga-Beşteliu, 2003:107).

This form has the effect of the full recognition of the legal personality of the new state, of everything that results from the exercise of its sovereignty, as well as the establishment of relations international in various fields, especially diplomatic and consular relations, signing bilateral treaties, etc. (Ion M. Anghel, 1998:229-230).

In the matter of recognition, doctrine and practice stipulate that the participation of an unrecognized state in conferences international or its admission to an organization international recognition does not equate to the individual or collective recognition of the state in question by other states. Likewise, the fact that a state becomes a party to a general multilateral treaty does not constitute recognition by other states.

Legal relations between states are therefore established only after the act of recognition has intervened in the sense of establishing diplomatic relations , with all their implications , the development of bilateral conventional relations, the diplomatic protection of citizens , the direct addressing of complaints in the event of damages, etc. and recognition is a means of facilitating the exercise of sovereign rights by the recognized states, their participation in life international .

A particularly current issue has become the issue of the legal status of the self-proclaimed states that appeared especially in space post-Soviet (Abkhazia, Ossetia, Transnistria, Nagorno- Karabakh) and post-Yugoslav (Kosovo). Recent events demonstrate that practice and doctrine treat this issue differently - from the demand for recognition by the international community , to the absolute denial of the legality of these state formations .

Recent analises present the controversial temporary recognition and derecognition of the following states: Kosovo, Taiwan, and Western Sahara, considering that ”three cases provide an interesting sample of partially recognized entities emerging

from diverse political constellations underpinned by unilateral secession, incomplete decolonization, and competing claims to legitimate government" (Victor S. Mariottini de Oliveira, 2023 : 283).

The US and most EU members states recognized Kosovo as an independent state shortly after its declaration of independence, while Russia, India, China, Brazil, and some EU members dealing with secessionist claims in their own domestic constituencies refused to do so. The recognition seem to have peaked at 114, but the entity has since lost 15 recognitions, 3 of which were later reinstated as acts of re-recognition.

The Republic of China (Taiwan) was recognized by 66 states in 1963, but today, counts no more than 14 recognitions. The controversy surrounding derecognition in this case is rooted in the post-revolutionary reality of the 1950s that saw the rise of competing claims of political elites based in Taiwan and mainland China to the exercise of legitimate governmental powers over the same territorial unit—China as a whole. The derecognition wave affecting Taiwan began with it losing a seat at the United Nations in 1971 and was accelerated after the USA established diplomatic relations with mainland China (PRC) in the following year, to the detriment of Taiwan.

Since 1973, the POLISARIO front has fought for the national liberation of Western Sahara, a non-self-governing territory partially under Moroccan occupation, issuing its declaration of independence in 1976 under the name of Saharawi Arab Democratic Republic (SADR). In less than a decade of existence, the entity was able to garner the recognition of 84 UN members, a number which has dropped to less than 40 since the first derecognition by Equatorial Guinea in 1980. Historical rivals of Morocco such as Algeria, Iran, and South Africa engage in the opposite activities and espouse the Western Saharan claim, providing material support for its leadership and advocating for its recognition. Morocco contends that Western Sahara does not fulfil the requirements of statehood because the POLISARIO front is not truly independent, but rather a proxy for Algeria and its interests in the region. (Victor S. Mariottini de Oliveira, 2003: 283-289)

3. Nations fighting for national liberation

From a historical point of view, the emergence of the nations fighting for liberation as a specific legal category, subject to a legal regime that involves rights and obligations is relatively recent. It can be found in the period of the anti-colonial struggle. After the Second World War, national liberation movements were recognized as subjects of international law in relations with other subjects of international law (Charter of the United Nations, signed in San Francisco on June 26, 1945, art. 1, 55). Such recognition took place, in addition to the UN, and within the Organization African Unity, together with the affirmation of the political principle regarding the self-determination of peoples as one of the fundamental principles of international law.

The document that marked both the political process of decolonization and its reflection in the normative field was the Declaration of the UN General Assembly for the granting of independence to colonial countries and peoples, adopted by Resolution 1514/XV of 1960. Later, the Declaration of the General Assembly regarding the principles of international law regarding friendly relations and cooperation between states, adopted by Resolution 2625/XXV from 1970 (Adrian Năstase, Bogdan Aurescu, 2000:167), enshrines the "Principle of equal rights of peoples and their right to self-determination" as one of the seven principles of contemporary international law. If the other fundamental principles of international law refer to states as subjects of

international law, the right to self-determination is recognized to peoples. In connection with the recognition of this principle, a series of criteria were established in the UN documents to clarify the concept of "people", namely: to be an entity determined by its own characteristics, to be related to a territory, the definition of ”people” is not confused with ethnic, religious or linguistic minorities, as recognized by article 27 of the International Convention on Civil and Political Rights.

As holders of the right to determine their own destiny, nations fighting for liberation can achieve the recognition of this status when the struggle and the circumstances in which it is taking place allow to state that they are in a transitory situation, which represents a stage preceding the establishment of an independent state with full legal personality. As the nations fighting for liberation consolidated on a national level "and their involvement in international political life became stronger, they obtained numerous international recognitions" (N. Ecobescu , V. Duculescu , 1976:191) .

Usually, the status of a subject of international law is acquired from the moment when the nation fighting for liberation meets certain conditions, among which: the creation of its own organs (army or resistance organs), the exercise of public power functions, the control of a significant part of the territory the future state (Raluca Miga-Beşteliu , 1998: 355). As in the case of states, the quality of the subject of international law of nations fighting for liberation does not depend on their recognition, it belongs equally to all nations that meet these criteria, as a consequence of their right to self-determination, which represents the political and legal basis of their international personality. Based on the right to decide its own destiny independently, each nation is entitled to international rights and obligations and directly benefits the protection of international law regulations. Nations fighting for liberation are subject to the principle of non-intervention in internal affairs, respect for their territorial integrity, the right to self-defense, and the rules of international humanitarian law are applied to their armed forces.

The legal capacity of the nation fighting for liberation is manifested by the exercise of certain rights, such as:

- the right to participate as observers and have representatives in the reunions of the UN and other international organizations. The observer status gives the representatives of these entities the right to participate in the meeting sessions of the component institution of an organization, without the right to vote. Thus, since 1974, the Palestine Liberation Organization (PLO) participates, with observer status, in the proceedings of the UN General Assembly, and since 1976 it has been admitted to participate in the Security Council debates regarding the Palestinian issue. Also, by Resolution 3280/XXIX, the problem of the regular participation of the representatives was solved nations, as observers, at all UN works for national liberation movements recognized by the OAU. Admission to the UN works, alongside the member states, constitutes a recognition of the legitimacy of the nations' struggle for liberation;

- the right to participate as an associate member in those international organizations whose constitutive acts include provisions for the such a participation (for example, the case of the World Health Organization, the Universal Postal Union, the Organization United Nations for Education , Science and Culture);

- the right of diplomatic representation, active and passive, under the conditions established with the states or organizations international organizations that recognize this status. Recognition of a legation right nations fighting for liberation is an

important step in international community.

Liberation movements used to have representatives in certain capitals, as well as in some international organisations offices, their delegates enjoying a certain degree of immunity, although they were not recognized as diplomatic agents. Due to the representation of these entities in a growing number of states, it went from offices and offices to real diplomatic missions, and their delegates received, not only the name, but also the treatment given to ambassadors of sovereign states (Vienna Convention of 1961 regarding diplomatic relations);

- the right to benefit from the assistance of the UN, its specialized institutions and other members of the international community;

- the right to enjoy the protection of the laws and customs of war and the obligation to respect them. The members of a national liberation movement are treated as combatants, having the regime of prisoners of war, in case they fell into the hands of the colonial forces. Combatant units must be organized according to the model of regular armies, having a responsible person in their leadership;

- the right to conclude international treaties. If a national liberation movement ends up being established in a new state, most of the time an agreement is concluded with the state on whose account the respective state acquires independence. For example, the Anglo-Irish treaty, from 1921, which intervened following the armed struggle; The Evian Agreements, concluded between France and the National Liberation Front of 1962, which provided for popular consultation on the political destiny of Algeria; Portugal concluded treaties with the liberation movements from the former African colonies, by which the date for the declaration of independence was fixed , a government was formed for the transition period and the bases of cooperation were established .

In the case of multilateral treaties, it is stipulated that the acceptance of this text can be done through a declaration of the representative of the movement addressed to the depository state. We also find such a provision in the Convention of October 10, 1980 (art. 7, par. 4) regarding the prohibition and limiting the use of certain classic weapons.

The Conference on the Law of the Sea invited national liberation movements (OEP, South West African People Organization (SWAPO) as observers and recognized their right to sign the Final Act. In this case, Namibia's situation was regulated by a special provision, which ordered that it is entitled to sign through the UN Council for Namibia (the Convention on the Law of the Sea, adopted in 1982, in force since November 1994, UN General Assembly Resolution, docA /Conf. 62/122, United Nations , Treaty Series , 1983, art. 305;). At the Vienna Conference of 1986 for the codification of the law of treaties between states and international organizations or between international organizations, based on Resolution no 39/86 of the UN General Assembly, national liberation movements like OEP, SWAPO and others were also invited.

However, the recognition of national liberation movements is not common in the practice of states. This is declarative and involves the recognition of their governing powers by the states that choose to support them on their path to independence.

Regarding the recognition of belligerents and insurgents as subjects of international relations, the effects of the recognition must be analyzed from a double perspective: of the state on whose teritory it is manifested and of the third states, respectively, they will not be subject to the internal criminal regime of common law, but

will be considered prisoners of war, and third States shall treat them equally as the Government of that State. However, such forms of recognition were no longer used after 1945, with the exception of the joint declaration signed in 1981 by France and Mexico in which they recognized an alliance of Salvadoran liberation movements as the representative political force. (Carmen Moldovan, 2019: 276)

A delicate issue is the situation of Palestine, holy land for Arabs, Christians and Jews. Foreseeing the danger that the birth of a non-Arab state would entail on the Palestinian territory, several Arab states decided that only through unity they could put an end to the danger, which is also the reason for the emergence of the League of Arab States. However, since in 1947 UN resolution 181 provided for the division of Palestine into a Jewish and an Arab state and in 1948 the state of Israel recognized by both the USA and the USSR was born, the Arab League proposed in 1964 the creation of the Palestine Liberation Organization. (Anton Carpinschi , Diana Mărgărit, 2011:111)

4. Self-determination, secession and separatism

The norm of self- determination gained prominence international in Woodrow Wilson's Fourteen Points. Since then it has had a turbulent existence, from the decolonization that followed the world wars to the ethnic wars after the Cold War. The inclusion of the concept of "self-determination" in the UN Charter resulted in the evolution of this idea from principle to law, without ever fully defining the underlying concept. Self-determination in the 1960s was simply another term for decolonization. However, even at this stage "self-determination did not allow secession; the territorial integrity of the existing states and the majority of the colonial territories was assumed". The idea of self-determination in this period did not fit into the concept that all peoples had the right to self-determination, but that all colonies had the right to be independent. The rhetoric of self-determination has changed since the late 1970s to the present day, so that the Wilsonian discourse on the ethnic and cultural rights of minorities has become mixed with the territorial concerns of the decolonization era.

The right to self-determination is "the right of consistent national groups (peoples) to choose their form of political organization and their relationship with other groups" (Public International Law Dictionary, 1982: 36). Although self-determination was mentioned in art. 55 of the UN Charter, most of the authors from the last decade considered that international law in its current form does not elucidate all the implications of the right to self-determination. However, the Consultative Opinion on Western Sahara of the ICJ confirms the "validity of the principle of self-determination" in the context of international law (I. Brownlie, 2003 : 554).

The basic norm of self-determination is the right of a people of an existing state "to choose its own political system and to pursue its own economic, social and cultural development" (*Encyclopedia of Public International Law*, Vol. III, 1997: 364-367). The presumption is that the economic, social and cultural development will take place under the auspices of an existing state and will not require the declaration of a new state. This conception of internal self-determination makes self-determination closely related to the respect of minority rights.

Modern visions of self-determination also recognize the "federalist" option of granting some level of cultural or political autonomy as a means of satisfying the norm of self-determination, a solution applied exceptionally when a state brutally violates or does not show the desire or the power to defend human dignity and the basic human rights; but in such cases the assumption of a legal claim of self-determination seems to

be justified only if the people aware of its own identity and settled on a common territory is discriminated as such and if there are no effective remedies in national or international law to adjust situations .

Therefore, the norm of self-determination does not represent a general right to secession. Since self-determination is an internationally recognized principle, secession is an internal problem, one to be solved by the states themselves. These political issues being contentious in nature, the fair process and legal principles become all the more important, and in a generally accepted solution it was stated, for example, that the United States must be less concerned with the results of these struggles and more with the means used; international political stability is more likely to be maintained if emphasis is placed on the process and not on manipulating events to arrange a predetermined outcome. The United States will, however, state absolutely clearly that secession has not been universally recognized as international law. They may choose, based on other interests, to support the secessionist claims of a self-determination movement, but not because the group is exercising its right to secession, since such a right does not exist in international law. At the same time, an absolute rejection of secession in all cases would not be reasonable, because the United States should not be prepared to tolerate repression or genocide committed by another state in the name of territorial integrity. Secession can be a legitimate goal of some self-determination movements, especially as a reaction to serious and systematic violations of human rights, and when the entity is potentially politically and economically viable (P. Carley, *1996* :10).

The issues of self-determination and secession are usually in the field of domestic law. Classical international law holds that "although a rebellion will include the violation of the laws of the state concerned, there is no violation of international law merely by the fact that a rebel regime attempts to overthrow the government of the state or to secede from the state". If such secession attempts endanger the peace and security of the international system, the UN Security Council can declare them illegal, as in the case of Rhodesia or the attempted secession of the Katanga province of the Congo. Therefore, illegality refers to national illegality at the domestic level, or at the international level, to foreign intervention or threats to peace and international safety.

However, state practice has evolved, so that self-determination, correctly understood, does not allow the withdrawal of borders. During the war in Yugoslavia, the Conference of the European Community regarding the Arbitration Commission for Yugoslavia, established by the European Community, found that the exercise of self-determination "must not involve the modification of the borders existing at the time of independence (uti possidetis juris), if the concerned states do not agree otherwise". Uti possidetis juris was recognized as a general principle of international law, the Helsinki Final Act also provided for the inviolability of borders, although it provides for the modification of borders by peaceful means and based on agreements. Other treaties or declarations that include explicit or implicit statements of uti possidetis juris are: the Vienna Convention of 1961 on Diplomatic Relations , the Vienna Convention of 1969 on the Law of Treaties, the Vienna Convention of 1978 on the Succession of States to Treaties, Resolution 1514/XV of 1960 of the UN General Assembly on granting of independendence to colonial countries and peoples.

International Court of Justice also wrote in Burkina Faso that *uti possidetis* is not a special rule that belongs only to one specific system of international law. It is a

general principle, logically connected with the phenomenon of obtaining independence, wherever it takes place.

Recognized sources of international law establish that a people's right to self-determination is normally satisfied through internal self-determination - the benefits of people satisfied of its political, economic, social and cultural development within an existing state. The right to external self-determination (which in this case potentially takes the form of a claim to unilateral secession) appears only in the most extreme cases and in very carefully defined circumstances.

This result is in agreement with the Resolution on friendly relations and cooperation among states, a resolution specially adopted on the 25th anniversary of the founding of the UN to once again declare the basic principles of the organization. The resolution excludes secession as a means of forming a sovereign state when the existing state respects the equal rights and self-determination of peoples.

The problem is put into practice, in the opinion of some authors, in the case of the non-consensual secession of some states (for example, Kosovo and South Sudan), situations in which the allies of the state from which another political structure has de facto separated will tend to not to recognize the newly created state, while its opponents will probably be inclined to recognize it. This situation will give rise to a plurality of the status of that entity, which will exist as a state in relation to some and not exist in relation to others. (Lucian Bojin, 2018: 63)

Separatism is a tendency to separate from a whole. From a political point of view, it is expressed by claiming sovereignty and independence for a part of the territory. Contemporary separatism is based on the exaggerated application of the principle of self-determination, claiming that each ethnic community or nation must own a territory organized in the form of a state. First of all, the right to self-determination is available only to the peoples whose characteristics correspond to those of the nation (common territory, common historical tradition, ethnic identity, cultural homogeneity, conscience and the common will to be identified as a people) and which, as mentioned, is under foreign domination. Ethnic minorities within a state do not have this right, once there is already a national state of the respective ethnicity. The right to self-determination, which minorities have, only implies the recognition of ethnic specificity and the right to a certain degree of cultural and administrative autonomy within a state. On the other hand, in the contemporary world, the respect of the rights of ethnic minorities is guaranteed by international law, providing various mechanisms for their defense.

Thus, separatism, essentially representing an internal problem, does not manifest itself only in this manner, the separatist region creating contradictions (direct or indirect) between two or more states. Violation of international law, especially in the case of the use of military force or terrorist methods of combat, involves the international community in the process of settling conflicts that arose on the basis of separatism.

In conclusion, we mention that the set of states attributes defines the quality of the subject of international law of nations fighting for liberation. It is obvious that, in the case of nations fighting for liberation, the quality of being a subject of international law has a limited and transitory character, both in its content and in its field of practice. Its capacity is manifested only in certain fields, and over time it is exercised until the acquisition of independence, the creation of the new state, which will benefit from full

international legal personality, in the sense that it will be able to acquire rights and assume obligations in all areas of life international.

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Article Info

Received: April 14 2024
Accepted: May 28 2024

How to cite this article:
Călin, L. (2024). State entities and the challenges of their recognition in international law. *Revista de Ştiinţe Politice. Revue des Sciences Politiques,* no. 82, pp. 70 – 85.