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THE APPLICATION OF INTERNATIONAL HUMAN RIGHTS LAW IN DE FACTO STATES

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This paper aims to explore whether and, if so, on what basis international human rights law applies to de facto territorial entities such as ex-Soviet Union de facto states. The paper first defines de facto states, which is followed by a short presentation of their status under international law. The paper then argues that despite their unrecognised status under international law, de facto territorial entities have human rights obligations, and they are required to respect and protect human rights. The article concludes by stating that because the existence of the de facto states cannot be denied, the international community should grant them a legal personality. This measure would ensure the protection of human rights and the liability for human rights violations that occur in these territories.

KEY WORDS: ***human rights, de facto states, legal personality, protection, liability***

INTRODUCTION

"The existence of human rights does not depend on the will of a state. A state or states are not capable of creating human rights by law or by convention; they can only confirm their existence and give them protection" (South West Africa Case, 2nd phase, International Court of Justice Rapport 1966, Separate Opinion of Judge Kotaro Tanaka, 297). In making this statement, Judge Tanaka reaffirmed the central place of human rights in the national and international legal systems. Furthermore, human rights protection shall be ensured no matter whether the entity governing the territory and population is a state, a non-state armed group, an international territorial administration, or an unrecognised entity. In the field of human rights, *"there should be no legal vacuum in their protection"* and *"the concept of human rights and their protection is included in the general principles mentioned in [Article 38(1) (c) of the International Court of Justice (CIJ) Statute]"* (South West Africa case, 2nd phase, ICJ Rapport 1966, Separate Opinion of Judge Kotaro Tanaka, 297).

Under international human rights law, states are considered duty-bearers. They must respect, fulfil and protect human rights. In other words, in cases of human rights violations, the state can be held accountable. Nowadays, with the emergence of various non-state actors, states are no longer the only entities that may interfere with human rights. Moreover, the responsibility of specific categories of non-state actors under international human rights law can be engaged.

The paper focuses on de facto territorial entities which exist in a "no war, no peace" situation. It aims to examine transitional and post-conflict societies which are committed to establishing the rule of law and are not supported by the international community. In this paper, the term de facto state is used generically to refer to polities that exist within the boundaries of an internationally recognised state. A de facto state can be defined as a political entity *"where there is an organized political leadership, which has risen to power through some degree of indigenous capacity; receives popular support; and has achieved sufficient capacity to provide governmental services to a given population in a specific territorial area, over which effective control is maintained for a significant period of time. The de facto state views itself as capable of entering into relations with other states and it seeks full constitutional independence and widespread international recognition as a sovereign state"* (Pegg 1998, 26). Cullen and Wheatley argue that *"a de facto regime is organized in accordance with its own constitution and system of law; has the capacity to regulate social, economic and political life within a defined territory and to exclude executive action by other political authorities, including the sovereign state in which the self-proclaimed authority is formally located; but does not enjoy recognition by the international community as a state"* (Cullen / Wheatley 2013, 700). In this article, the de facto state is deemed to represent a territorial entity which has broken away from a parent state without the consent of the latter.

De facto states usually fulfil the traditional criteria of statehood as defined by article 1 of the Montevideo Convention on the rights and duties of states: 1) a permanent population; 2) a defined territory; 3) a government; and 4) capacity to enter into relations with other states. They have achieved de facto independence but are not recognised as states by the international community. These territorial entities do not have rights and obligations as such under international law, and their attempt to accede to international human rights treaties is unsuccessful. In this regard, it is of interest to determine whether these entities are bound by the provisions of international human rights law. Thus, the article analyses the issue of the application of international human rights law in de facto states, particularly the de facto territorial entities in the post-Soviet Union region. Currently, this region includes four unrecognised breakaway states which have proved their longevity over time. Shortly after

the communist collapse in 1989, Abkhazia and South Ossetia proclaimed their independence from Georgia, and Nagorno Karabakh separated from Azerbaijan. Transnistria seceded from Moldova and proclaimed its independence in 1990. An overview of the international status of such de facto states will be given (section II), followed by an analysis of the application of international human rights law in de facto states (section III) in order to understand the nature and the peculiarities of the application of international human rights law in such territories.

THE INTERNATIONAL LEGAL STATUS OF DE FACTO STATES

In general, self-proclaimed authority[1] is the result of actions such as separatism or secession in the attempt to establish an independent sovereign state and its recognition by the international community. De facto entities also can be seen as peoples that exercise the right to self-determination outside the context of decolonisation (Cullen / Wheatley 2013, 698). This issue is very controversial issue under international law because no *opinio juris* exists concerning the existence of such rights under the customary international law. Moreover, in the case of Abkhazia, the Independent International Fact-Finding Mission on the conflict in Georgia underlined the unlawfulness of Abkhazia's secession, stressing that *"the right to self-determination does not entail a right to secession"* (Independent International Fact-Finding Mission on the Conflict in Georgia 2009, 147).

International law does not recognise a right to secession, but it is *"equally established that it does not prohibit secession or, consequently, a proclamation of independence by a part of the population of a state"* (Written Opinion of France Concerning Kosovo ICJ Advisory Opinion, point 2.8, 38). As some scholars argue, the standard position of international law on this matter is one of neutrality. According to Cullen and Wheatley (2013, 698), *"where a political entity achieves de facto independence and fulfils the criteria of statehood, it is a State"*. However, the International Court of Justice (ICJ) emphasises that the creation of a political entity in violation of a *jus cogens* norm is void and without legal effect (ICJ Advisory Opinion on the Accordance with International Law of the Unilateral Declaration of Kosovo Independence 2010). In Canada's Supreme Court decision on the secession of Quebec, the Court stated, *"although there is no right, under the Constitution or at international law, to unilateral secession, the possibility of an unconstitutional declaration of secession leading to a de facto secession is not ruled out. The ultimate success of such secession would be dependent on recognition by the international community, which is likely to consider*

1 This expression can be found in ECHR jurisprudence in reference to de facto states. It was used for the first time in Ilaşcu and Others vs Moldova and Russia.

the legality and legitimacy of secession" (Reference re Secession of Quebec, Supreme Court of Canada 1998, case 25506, 2 SCR 217, 2nd question).

In case of genocide or massive, flagrant, and systematic violations of human rights some forms of *opinio juris* arise concerning the existence of the right to secession under external self-determination or so called remedial secession (Christakis 1999, 300-303). However, as Christakis argues, we cannot speak of a customary rule on the subject, considering the absence of a practice on the matter which seems to negate the existence of such right. Currently, this theory is not a part of positive law, whatever favours it enjoys from the part of legal doctrine.

Although the de facto state has internal sovereignty, its external sovereignty is conditional on its recognition as a state. Article 3 of the Montevideo Convention on Rights and Duties of States provides, *"the political existence of the state is independent of recognition by the other state"*. The recognition is mentioned in the Convention as an acceptance on behalf of the state which recognises the territorial entity. It is established in article 6, which provides, *"the recognition of a state merely signifies that the state which recognises it accepts the personality of the other with all the rights and duties determined by international law"*. According to Hillgruber (1998, 492) recognition *"is an act that confers a status [:] a (new) State is not born but chosen as a subject of international law"*. General recognition is defined as a method of accepting certain factual situations by giving them a legal meaning (Shaw 2010, 207) that has a constitutive or declarative nature. According to the constitutive theory, the existence of a state begins with its recognition by other states. The declarative theory asserts that recognition is a political act by which a state can exist without being recognised. Although the debate concerning the difference between these two theories in their recognition and the formation of a state has been ongoing in international law, no resolution has been achieved. Nevertheless, the position accepted by several scholars is that because the creation of a state and its recognition are two independent concepts, the real creation of a state is inconceivable without recognition by the international community. As Hillgruber (1998, 494) argues, the practice of collective non-recognition confirms the importance of recognition in the construction of a state as a legal person in international law. It is relevant to note the conclusion of Judge Pettiti, who in his dissident opinion in the case of Loizidou vs Turkey, affirmed that non-recognition was *"no obstacle to the attribution of national and international powers"* (Loizidou vs Turkey 1996, Dissenting Opinion of Judge Pettiti, § 56). Moreover, Shaw (Shaw 2010, 448) underlines the practical importance of the recognition, saying, *"if an entity, while meeting the conditions of international law as to statehood, went totally unrecognized, this would undoubtedly hamper the exercise of its rights and duties, especially in view of the absence of diplomatic relations"*.

An example is the case of de facto states in the ex-Soviet Union. For example, Armenia is Karabakh's only economic partner, and Russia is the only trading partner of South Ossetia, Abkhazia and Transnistria. Thus, they have economic and political relations mainly with the state that supports the separatist regime. In addition, these entities established and maintain economic and political interrelationships. The fact that their existence relies on the assistance of a third country calls into question their de facto independence.

It is therefore of interest to know whether the self-proclaimed authorities analysed in this paper qualify as state-like entities or not. In its report, the Independent International Fact-Finding Mission on the Conflict in Georgia underlined that Abkhazia was more advanced "*in the process of state-building"* and thus could be assumed to be a state-like entity. In contrast, South Ossetia represents only *"an entity short of statehood"* (Independent International Fact-Finding Mission on the Conflict in Georgia 2009, 147).

Some international legal scholars have indicated that law matters in the quest for statehood, either as an element of government or as a stand-alone category. For example, some scholars (Waters 2006, 419) have argued, *"[i]f an entity has its organs, such as law courts, legal system, and law of nationality, then one could say that there is a prima facie case of statehood"*. Others have gone further, suggesting that adherence to democracy and legality (and not just law as an instrument of control) is an emerging criterion of statehood or at least of recognition (Murphy 1999, 545).

By following this reasoning and examining the national legislation of the de facto states analysed in this paper, it is possible to conclude that there is no lack of legal provisions. As Waters points out, the small jurisdictions in the former Soviet Union were challenged in establishing coherent legislative regimes. These regimes are characterised by the fact that they transposed the legislative schemes of neighbouring metropolitan states into national systems, (Waters 2006, 410). In such cases, this legal transplantation can be explained by the *"lack of maturity of these de facto republics to create their own comprehensive or coherent national legal regime"* (Waters 2006, 410).

HUMAN RIGHTS OBLIGATIONS OF DE FACTO STATES
OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

Nowadays, the application of international human rights law is no longer limited to states; as practice shows, its applicability to de facto territorial entities can also be attested. From the perspective of international society, to ensure the protection of

the human rights of the population of de facto states, imposing international human rights obligations on de facto states seems a vital necessity. When the parent state cannot control the territory or exercise governmental functions, the obligations originally assumed by such states should be transferred to the entity that exercises effective control over the territory and can assure the protection of human rights. Regarding the opposability of general international human rights law to non-state entities, the International Commission of Inquiry, which investigated the alleged human rights violations in Libya, stated, *"it is increasingly accepted that where non-state groups exercise de facto control over territory, they must respect fundamental human rights of persons in that territory"* (Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya 2011, § 72).

Recently, the Senior Expert on Human Rights in Transnistria, after three missions in the region, wrote a report in which it was concluded that the Transnistrian de facto authority should be bound by *"customary international law obligating [them] to uphold the most fundamental human rights norms"* (Report on Human Rights in the Transnistrian Region of the Republic of Moldova 2013, 4). Thus, this conclusion supports the argument that even if a de facto territorial entity is not recognised as a state, it is bound by customary international human rights law. According to Heintze, the respect for human rights is needed as a matter of customary law. It is not necessary for non-state actors to make any kind of commitment to respect (Heintze 2004, 272); however, they need to adhere to such obligations. Because many unrecognised entities have not expressed their consent to be bound by international human rights treaties, the opposability of the customary norms to de facto territorial entities is of great importance. Even if an unrecognized entity expresses its consent to be bound by all existing international human rights treaties, according to Sinclair, *"customary law itself, operating alongside the codifying convention, has its role to play in filling the legal gaps which any exercise in codification and progressive development inevitably leaves"* (Sinclair 1984, 258).

Similarly, the general principles of international law apply in the case of de facto states. According to Judge Tanaka, because the general principles of international law have the character of natural law, they compensate for the gaps in the protection offered by real sources of law (South West Africa case 1966, ICJ Rep 6, 298f.). Bassiouni (1990, 769) identified human rights as one of the four fields where the general principles of international law play a particularly important role in response to the increased interdependence of the world and the need to adjudicate disputes involving human rights issues.

Peremptory norms are the rules categorised by treaties and state practice as absolute (Kadelbach 2006, 40), and they are characterised by their unconditional application. Thus, peremptory norms are opposable to de facto territorial entities. In the field of human rights, those stipulated in Article 4 (2) of the International Covenant on Civil and Political Rights [2], such as the right to life, prohibition of torture or cruel, inhuman or degrading treatment or punishment, prohibition of slavery and servitude, etc., have been referred to as examples of peremptory norms having a *non-derogable* nature.

Another question is whether de facto states can be considered subjects of human rights regimes that are established by an interstate agreement. Therefore, we must determine the relationship between de facto states and such instruments in order to consider the enforceability of human rights agreements to de facto regimes that are seen as a third party in relation to such agreements. The position of international law in this respect is not clear. The Vienna Convention on the Law of Treaties does not contain provisions to regulate situations led by separatist territories. However, the question is whether the *tabula rasa* or *acquired human rights* doctrine applies to de facto states concerning the provisions of human rights treaties. Apparently, there is no automatic succession to treaties, including those concerning human rights, in the case of a new state. Crawford notes that in case of separation, recent state practice shows that the successor state will accept the human rights obligations of their predecessors *"although this is arguably contingent on the successor state's consent rather than a rule of automatic succession"* (Crawford 2012, 440). Judge Weeramantry, in his Separate Opinion in the Application of the Convention on the Prevention and Punishment of the Crime of Genocide case before the ICJ, remarked that it would be a "strange situation" if a population which had enjoyed the protection of human rights would be deprived of it if the principle of automatic succession were not accepted in the case of human rights treaties by the new states. Such a position *"seems to be altogether untenable, especially at this stage in the development of human rights"* (ICJ Reports 1996, § 649).

According to Jenks (1952, 105), when a treaty confers rights on individuals, *"it's another reason to watch the treaty obligations as a continuous character"* and therefore must be applied to de facto states. The acquired human rights doctrine can be used as an argument to explain the automatic succession to the human rights treaties approach. According to this doctrine, the laws of state succession do not affect the

2 Article 4 (2) lists the rights that cannot be suspended even *"in time of public emergency which threatens the life of the nation"*. It refers to the rights protected under Articles 6, 7, 8 (1) (2), 11, 15, 16 and 18 of the ICCPR.

recognised human rights of the population of a territory once they were acquired. In this respect, Müllerson (1993, 493) argues that in the case of de facto states, succession to multilateral human rights instruments should be applied because the rights and freedoms of the population of a de facto state constitute *"acquired rights"* which *"the new state is not at liberty to remove"*.

This approach is shared by the Human Rights Committee, which established that the rights provided by ICCPR *"belong to the people living in the territory of the state party"* and *"such protection devolves with territory and continues to belong to them"* (Human Rights Committee, General Comment No 26 1997, § 4) even if the state's territory underwent significant changes.

Another concern is the capacity of de facto states to engage in the law-making process. Because de facto entities lack legal personality, they do not have treaty-making capacity. States are usually reluctant to grant them this capacity because it could lead to the improperly legitimised international status of de facto entities and the acknowledgement of their capacity to bear international obligations.

There is little evidence to suggest that unrecognised entities necessarily lack the capacity or willingness to provide human rights protection and would, therefore, support the downgrading of standards. On the contrary, it can be argued that unrecognised entities, especially those seeking the recognition or approval of the international community, might have strong incentives to align themselves with existing international human rights standards.

THE EX-SOVIET UNION DE FACTO STATES COMMITMENT TO INTERNATIONAL HUMAN RIGHTS LAW

To demonstrate their commitment to democracy and human rights, the de facto states of the ex-Soviet Union transposed several international human rights covenants into national legislation[3]. Thus, it can be stated that in general, their municipal laws contain some international human rights law provisions.

It is important to underline that in the case of de facto states in the ex-Soviet Union region, apart from the parent state from which the territorial entity seceded, the existence of a third country, that is, a patron state must be considered. The European

3 Transnistria transposed in ordinary laws: UDHR, ICCPR, ICESCR, CPPCG, ECHR (September 22, 1992) and CRC (May 23, 2002); South Ossetia: UDHR, ICCPR, ICESCR, CPPCG and ECHR (November 15, 2007); NKR: UDHR, ICCPR, ICESCR in 1994.

Court of Human Rights (ECHR) pointed out that it has in many cases *"effective and overall control"* over these territories[4]. Because both parent and protective states are members of the Council of Europe, the European Convention on Human Rights is applied in these territories. The Court's position is that the Convention aims to avoid a gap in the protection of Convention rights in circumstances that *"would normally be covered by the Convention"* (Banković and Others vs Belgium and Other 16 States 2001, § 78). According to the ECHR, when part of the territory of a state that is party to the Convention is under the effective control of another state, the territorial state is relieved of its international responsibility (Cyprus vs Turkey 2001, § 77-78). The situation is different when a de facto regime operates with the support of a third state. In this case, the territorial state (Assanidze vs Georgia 2004) maintains a positive obligation to take appropriate diplomatic steps to support the application of the European Convention of Human Rights[5]. The ICJ, in its opinion concerning Namibia, concluded that the basis of the liability of a state is the proven effective control over the territory and total dependence and not the sovereignty or legitimacy of the state. The ECHR has departed somewhat from the general rules laid down by the ICJ by stating that it is not necessary to have the proof of complete dependence and control. This approach is justified by the desire of the Court to avoid a regrettable gap in the system of protection of human rights in this territory. However, the judge of the Strasbourg Court still refused to clarify the question of whether the self-proclaimed territory is a new state; therefore, the lack of recognition by the territorial state and the international community is seen as a determinant of the status question.

Because Russia and Armenia control the separatist territorial entities[6] from ex-Soviet Union region, their state responsibility for any wrongs committed in these territories will be engaged. This reasoning was highlighted by the 2004 decision of the ECHR in Ilaşcu and Others vs Moldova and Russia. The applicants, in that case, argued that they had been wrongfully convicted by a court in the unrecognised Moldavian Republic of Transnistria. Because the secessionist territory was not a state party to the European Convention on Human Rights, the applicants sought to hold Moldova

4 Pisari vs the Republic of Moldova and Russia, 2015; Chiragov and Others vs. Armenia, 2015; Catan and Others vs the Republic of Moldova and Russia, 2012; Mozer vs the Republic of Moldova and Russia, 2016.

5 Loizidou vs Turkey 1996; Ivanțoc and Others vs Moldova and Russia 2011; Ilaşcu and Others vs Moldova and Russia, 2004.

6 Russian Federation has effective and overall control over Transnistria, Abkhazia and South Ossetia; Armenia is the patron state for Nagorno Karabakh.

and Russia responsible. The Court found that despite the fact that Moldova did not hold control over the territory, Moldova as a parent stat had not taken sufficient steps to redress the applicants' situation. Moreover, the Court found that the Transnistria Republic *"remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation, and in any event that it survives by virtue of the military, economic, financial and political support given to it by the Russian Federation"* (Ilaşcu and Others vs Moldova and Russia 2004, § 92). This "effective control' test was previously been used by the Court to hold Turkey responsible for human rights violations in the separatist state it sponsors, namely the Turkish Republic of Northern Cyprus.

Consequently, in accordance with the ECHR case law, with regard to the populations of de facto states, the issue of human rights protection must be addressed from the perspective of the state parties to the Convention and its effectiveness against de facto states. Thus, the Court reaffirmed the principle of subsidiary and the importance of the margin of appreciation, which are fundamental principles of the human rights protection legal regime. Finally, it is necessary to stress that the obligation to ensure the full enjoyment of human rights is also required of de facto states.

CONCLUSIONS

The phenomenon of the de facto state challenges international society from different perspectives. Regarding this challenge, according to Pegg (1998, 177-181), *"international society has traditionally chosen to respond to the existence of de facto states in three main ways: actively opposing them through the use of embargoes and sanctions; generally ignoring them; and coming to some sort of limited acceptance and acknowledgment of their presence"*. De facto states are usually treated as anomalies that cannot be explained by state-centred theories, and they are considered temporary arrangements. However, their high viability is evident in practice. In fact, the state in which the territory of the self-proclaimed entity is created does not have adequate measures to act in the territory ruled by the de facto entity. Therefore, it can be argued that because of the weakness of the state it can fail to ensure the full enjoyment of human rights for the people in de facto entity territories that are legally within state jurisdiction.

The de facto territorial entities analysed in this paper, even if they proclaim themselves as independent states, do not fulfil all the criteria of statehood as stated in the Montevideo Convention. The capacity to enter into relations with other states is absent. Although the de facto states in Eastern Europe are recognized among themselves, they are not recognized by international community and in some cases not

even recognised by their protective states (e.g. Transnistria has not been recognised by Russia).

This paper has examined the applicability of international human rights law to ex-Soviet Union de facto states in the context of both conventional and general international human rights law. Regarding human rights treaties, this paper has argued that the principle of the continuity of international human rights obligations should be applied in the case of de facto states. Furthermore, in the opinion of the international community, it is necessary to acknowledge the capacity of de facto states to participate in human rights treaties because the unrecognised entity is the best entitled to implement human rights obligations. In addition, the de facto states adopted several human rights treaties in their national legislation, which indicates their willingness to be bound by international human rights treaties provisions.

Concerning the application of general international human rights law in the de facto states analysed in this paper, even if there is no such practice in this regard, it does not mean that customary law, general principles and *jus cogens* are not applied.

De facto states the ex-Soviet Union region have shown little commitment to the application of international human rights law at the national level. An important aspect regarding de facto states in the ex-Soviet Union region is the existence of protectives states that maintain effective control over their territory. Because these third-party countries are members of the Council of Europe, cases against them can be brought before the ECHR. Therefore, the liability for human rights violations occurring in the territory of the de facto state can fall on both the parent state and the protective state. In general, the international community should reconsider its position regarding de facto states, by recognising them as having a limited legal personality.

Furthermore, with regard to the municipal regulations of de facto states, the degree to which the rule of law exists in these republics could be questioned. As previously shown, their adequate legislative basis can be attested in cases where the national legislation is the result of legal transplantation. It is not unusual for internationally recognised micro-states that cannot build up a comprehensive legislative regime to transplant their national legislation from that of a protective state.

REFERENCES

Accordance with International Law of the Unilateral Declaration of Kosovo 2010, ICJ Advisory Opinion, at: <http://www.icj-cij.org/en/case/141/advisory-opinions>, 13/10/2017.

Application of the Convention on the Prevention and Punishment of the Crime of Genocide 1996, ICJ Preliminary Objections, at: <http://www.icj-cij.org/en/case/91/preliminary-objections>, 13/10/2017.

Assanidze vs. Georgia 2004, ECHR GC.

Banković and Others v. Belgium and Other 16 Contracting States 2001, ECHR GC.

BASSIOUNI, M. Cherif 1990, A Functional Approach to General Principles of International Law, in: *Michigan Journal of International Law* 11, 768-818.

Catan and Others vs. the Republic of Moldova and Russia 2012, ECHR GC.

CHIRAGOV AND OTHERS VS. ARMENIA 2015, ECHR GC.

CHRISTAKIS, Théodore 1999, Le Droit á l'Autodétermination En Dehors des Situations de Décolonisation. Paris.

Convention for the Protection of Human Rights and Fundamental Freedoms 1950.

CRAWFORD, James 2012[8], Brownlie's Principles of Public International Law. Oxford.

CULLEN, Anthony/WHEATLEY, Steven 2013, The Human Rights of Individuals in De Facto Regimes under the European Convention on Human Rights, in: *Human Rights Law Review* 13:4, 691-728.

Cyprus vs Turkey 2001, ECHR.

DUURSMA, Jorri C. 1996, Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood. Cambridge.

GENERAL ASSEMBLY OF THE UNITED NATIONS, Resolution 2625, 1970.

General Comment No. 26: Continuity of Obligations 1997, Human Rights Committee, CCPR/C/21/Rev.1/Add.8/Rev.1.

HEINTZE, Hans-Joachim 2004, On the Relationship between Human Rights Law Protection and International Humanitarian Law, in: *International Review of the Red Cross* 856, 789-813.

HILLGRUBER, Christian 1998, The Admission of New States to the International Community, in: *European Journal of International Law* 9, 491-509.

INDEPENDENT INTERNATIONAL FACT-FINDING MISSION ON THE CONFLICT IN GEORGIA, Vol. II. 2009, at: <www.ceiig.ch/Report.html>, 30/09/2017.

International Covenant on Civil and Political Rights 1966.

JENKS, Wilfred C. 1952, State Succession in Respect of Law-Making Treaties, in: *British Yearbook of International Law* 9, 105.

KADELBACH, Stefan 2006, Jus Cogens Obligations Erga Omnes and other Rules – The Identification of Fundamental Norm, in: TOMUSCAT, Christian/THOUVENIN, Jean-Marc (eds), The Fundamental Rules of the International Legal Order: *Jus Cogens* and Obligations *Erga Omnes*. Leiden.

Loizidou vs. Turkey 1996, ECHR.

Montevideo Convention on Rights and Duties of States 1933.

Mozer vs. the Republic of Moldova and Russia 2016, ECHR GC.

MÜLLERSON, Rein 1993, The Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia, in: *International and Comparative Law Quarterly* 42, 473-493.

MURPHY, Sean D. 1999, Democratic Legitimacy and the Recognition of States and Governments, in: *The International and Comparative Law Quarterly* 48, 545-581.

OKEKE, Chris N. 1974, Controversial Subjects of Contemporary International Law: Examination of the New Entities of International Law and Their Treaty-making Capacity. Rotterdam.

PEGG, Scott 1998, International Society and the De Facto State. New York/NY.

Pisari vs. the Republic of Moldova and Russia 2015, ECHR.

Reference Re Secession of Quebec, Supreme Court of Canada 1998, at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>, 13/10/2017.

Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya 2011, UN Doc A/HRC/17/44.

Report on Human Rights in the Transnistrian Region of the Republic of Moldova 2013, at: <http://www.un.md/publicdocget/41/>, 20/09/2017.

Security Council, Resolution 276, 1970, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), ICJ Advisory Opinion.

SHAW, Malcolm N. 2010[6], International Law. Cambridge.

SINCLAIR, Ian 1984[2], The Vienna Convention on the Law of Treaties. Manchester.

South West Africa Case (Ethiopia vs. South Africa; Liberia vs South Africa) 1966, ICJ Report 6.

TALMON, Stefan 2009, The Responsibility of Outside Powers for Acts of Secessionist Entities, in: *International and Comparative Law Quarterly* 58, 493-512.

WATERS, Christopher 2006, Law in Places That Don't Exist, in: *Denver Journal of International Law and Policy* 34, 401.

Written Opinion of France concerning Kosovo ICJ Advisory Opinion 2009, at: <http://www.icj-cij.org/files/case-related/141/15608.pdf>, 12/10/2017.