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The Notion of the Recognition of Territorial Acquisition[1]

The Institution of Recognition in International Law

The institution of recognition plays a momentous role in the science and practice of international law. In the erstwhile doctrine of international law, recognition was even considered a source of that law: it was classified among the so-called direct sources of law. Ullmann defined it as "belonging to the material premises underlying creation of legal norms", and argued that it is coupled "with a psychological process while law is being created and accompanies or, alternatively, establishes the validity of legal norm (irrespective of the form in which a legal norm is extrinsically expressed as a manifestation of that process)."[2]

The above phrasing evinces a singular "ubiquity" of the element of recognition in international law. Lending recognition such broad significance compels one to discern it in all the forms that the norms of international law assume. Indeed, the element of recognition is found in all agreements, as well as in customary law.[3] This broad understanding of recognition is drawn upon in certain general definitions of recognition formulated by a number

1 Translated from: B. Wiewióra, *Uznanie nabytków terytorialnych w prawie międzynarodowym*, Poznań 1961, pp. 20–38 by Szymon Nowak and proofread by Stephen Dersley. The translation and proofreading were financed by the Ministry of Science and Higher Education under 848/2/P-DUN/2018.

2 E. Ullmann, *Völkerrecht*, Tübingen 1908, pp. 40–41.

3 Each international agreement comprehends recognition of particular rights and obligations of the parties, while customary law relies on the recognition of a given rule of conduct as applicable. The "general principles of law" referred to in Article 38 (d) of the Statute of the International Court of Justice also require recognition in order to provide grounds for the Court's adjudication.

of authors, including contemporary ones. For instance, in French science, Charpentier characterizes recognition as an obligation "whose immediate effect is the duty of the state which grants it to respect the situation which has been recognized."[4] Anzilotti asserts that "recognition is a declaration of will by virtue of which a given situation, a particular claim etc. is deemed lawful."[5] In his equally general delineation of the function of recognition, Verdross finds that "it precludes the recognizing states from questioning the legality of the recognized situation or claim."[6] In contemporary Polish science, Berezowski formulates the following view:

> Recognition is a statement made by the recognizing party affirming the existence of what is recognized. With recognition thus construed, its object may vary, although recognition occurs most often in connection with the question of legal-international subjectivity.[7]

In fact, most authors do discuss the institution of recognition in relation to legal-international subjectivity.[8] One may encounter the view that various instances of recognition of a state which is relevant from the standpoint of international law can be assigned to three categories of recognition: those of states, governments, and insurgents[9], i.e. such categories which involve the question of subjectivity.

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4 J. Charpentier, *La reconnaissance internationale et l'évolution du droit des gens*, Paris, 1956, p. 202.

5 D. Anzilotti, *Corso di diritto internazionale*, vol. I , Padua 1955, p. 294.

6 A. Verdross, *Völkerrecht*, Wien 1955, p. 133.

7 C. Berezowski, *Zagadnienia zwierzchnictwa terytorialnego*, Warszawa 1957, p. 13.

8 Besides the most widespread views, which distinguish recognition of a nation, government and insurgents (potentially also a combatant), may be said to include recognition of a nation as well. This is the case in the Soviet doctrine: W.N. Durdenevski, S.B. Krylov, *Podręcznik prawa międzynarodowego*, Warszawa 1950, p. 149 ff.; F.I. Kozhevnikov, *Mezhdunarodnoye pravo*, Moskwa 1957, p. 111 ff.; the framework of the institution of recognition presented in the latter study on p. 439 encompasses recognition of a state, government, nation, belligerency, and insurgency. Examples of the traditional approach to the issue of recognition in the context of subjectivity can be found in overwhelming majority of authors.

9 W. Bieberstein, *Zum Problem der völkerrechtlichen Anerkennung der beiden deutschen Regierungen*, Berlin 1959, p. 26.

Among the authors who affirm the presence of other instances of recognition, i.e. aside from those relating to subjectivity, some consider them jointly, in the conviction that these other types of recognition still overlap with the issues of subjectivity.[10] Only a few distinguish recognition of acts or situations which differ from the recognition of states, governments, insurgency or belligerency, perceiving them to be distinct in legal terms. One of the proponents of this approach in earlier English scholarship is Phillimore, who finds that recognition applies in three cases: 1) when a state effects a conquest of a new territory, to which it claims the right as an integral part of its own domain, 2) when a part of the state secedes and becomes independent, and 3) when a ruler of a state adopts a new title.[11] Disregarding the third case, as it is no longer relevant today, attention is due to the distinction between two essential and separate cases of recognition: in connection with territorial acquisitions or following the establishment of a new subject of international law.

In the two fundamental contemporary monographs on recognition by Lauterpacht and Chen[12], the authors discuss both the traditional categories of recognition of state, government, belligerency and insurgency, as well as the recognition of unlawful or legally doubtful acts, which are examined from the standpoint of so-called non-recognition, informed by the Stimson Doctrine. Oppenheim-Lauterpacht expresses similar views.[13] In addition to traditional categories of recognition associated with the issues of subjectivity, Starke distinguishes the recognition of territorial changes, treaties etc., also aligning those with the Stimson Doctrine.[14]

As for the most recent American scholarship, Gould states that although he is concerned with the recognition of states and governments,

10 W. Bieberstein, pp. 26–27, observes for instance that recognition of annexation is often expressed in that the government of the annexing state is deemed the competent government with regards to the annexed area.

11 R. Phillimore, *Commentaires upon International Law*, vol. II, London 1882, p. 21.

12 H. Lauterpacht, *Recognition in International Law*, Cambridge 1947; T.C. Chen, *The International Law of Recognition*, London 1951.

13 Oppenheim-Lauterpacht: International Law, London 1955, vol. I, p. 142 ff.

14 J.G. Starke, *An Introduction to International Law*, 3rd edition, London 1954, p. 133.

"it should not be forgotten that states recognize all sorts of other situations, including territorial changes", and concludes that generalizations in that respect are a difficult matter, since recognition is an acknowledgement of a fact, whose ramifications depend on the object recognized.[15] Examining various cases of recognition jointly, Kelsen also notes the distinct legal nature of recognition (or, alternatively, the non-recognition) of territorial acquisitions.

> Such recognition is an act quite different from the legal recognition of a community as a state or an individual or a body of individuals as the government of a state. [...]It is an act by which—according to this doctrine —one state creates law applicable in the relationship between two other states.[16]

Additionally, next to the "standard" objective scope of recognition in international law (states and governments), Sharp discerns a distinct scope which includes territorial acquisitions, agreements and situations. The characteristic trait of the latter scope is that it encompasses the effects of the actions of states and governments.[17]

Similarly, in the most recent West German scholarly literature recognition of territorial acquisitions is distinguished as a type of recognition in international law.[18]

As for contemporary Polish authors, Makowski[19] and Ehrlich[20] represent the traditional view, according to which the institution of recognition is exclusively linked to issues of subjectivity, whereas Berezowski sees recognition as possessing a broad scope. The latter finds that beyond

15 W.L. Gould, *An Introduction to International Law*, New York 1957, p. 213.
16 H. Kelsen, *Principles of International Law*, New York 1959, p. 293.
17 R.H. Sharp, *Duties of Non-Recognition in Practice*, "Geneva Special Studies" 1934, vol. 5, no. 4, p. 4.
18 W. Schaumann, *Anerkennung*, in *Wörterbuch des Völkerrechts*, ed. K. Strupp, H. J. Schlochauer, Berlin 1960, vol. I, p. 47 list recognition of territorial acquisitions among various other kinds of recognition.
19 J. Makowski, *Podręcznik prawa międzynarodowego*, Warszawa 1948, p. 61 ff.
20 L. Ehrlich, *Prawo międzynarodowe*, 4th edition, Warszawa 1958, p. 142 ff.

subjectivity "a right that a state or even a nation is entitled to can also be an object of recognition."[21] As examples of the recognition of such rights, Berezowski mentions the recognition of the right to self-defence in the Charter of the United Nations[22], the right to sovereignty of air space pursuant to the Chicago Convention on Aviation of 1944[23], and the right to self-determination which, in the opinion of the author, is held by the nation.[24] This is also where the author situates the recognition of the jurisdiction of a foreign court.[25] Finally, Skubiszewski maintains that recognition as such also comprises the recognition of entitlements and claims, which "ensues when those entitlements or claims lack legal grounds, or when those grounds are unclear or doubtful."[26]

The views of international legal science regarding the institution of recognition may thus be recapitulated as follows:

1) There is a substantial group of authors who associate the institution of recognition solely with subjectivity;

21 C. Berezowski, *Zagadnienia zwierzchnictwa…*, p. 21.

22 Ibidem, p. 22.

23 Ibidem, p. 23.

24 Ibidem, p. 26.

25 Ibidem, p. 23. It seems that Professor Berezowski does not present the issue with sufficient clarity. He employs the notion of "recognition" with a somewhat imprecise frame of reference. Doubts arise concerning the concept of recognition of rights held by a state (are so-called fundamental rights of state meant?) for which no recognition is required. At most, one can speak of their confirmation in pertinent legal acts. On the other hand, what the calls "recognition of jurisdiction of a foreign court" is nothing else than a waiver of jurisdiction immunity and a related act, resulting from the existence and recognition of a foreign state. The differences between the notions of recognition which has a legislative import and recognition of acts of foreign states follow from the systematization in K. Strupp, H. J. Schlochauer, *Wörterbuch des Völkerrechts*, vol. I, Berlin 1960, pp. 47–58, where recognition of states, governments, insurgents, combatant sides and territorial acquisitions is discussed separately from the recognition of acts of foreign authority and judgments of foreign courts. Referring to that act as "recognition" is a terminological licence which does not contribute to explaining the function of the institution of recognition in international law. It may be added that the instances enumerated by Berezowski do not exhaust the catalogue of issues in which the doctrine sees presence of the institution of recognition; for example, the author overlooked the question of territorial acquisitions. Doubts of a different kind arise when an attempt is made to reconcile declarative and constitutive theory. See B. Wiewióra, *Niemiecka Republika Demokratyczna jako podmiot prawa międzynarodowego*, Poznań 1961, p. 78, note 206.

26 M. Muszkat ed., *Zarys prawa międzynarodowego publicznego*, vol. II, Warszawa 1956, p. 21.

2) There is a group of scholars who, besides the traditional categories of recognition, distinguish the recognition of territorial acquisitions as a separate institution of international law; the majority approach it in the context of territorial acquisition which is illegal or whose lawfulness is doubtful;
3) Finally, there are authors who endorse a broad meaning of recognition, thus going beyond the domain of subjectivity and territorial acquisitions (Ullmann, Berezowski, Gould), while others attempt to formulate their definitions of recognition in international law in such a way that they encompass the broadest possible range of instances in which the element of recognition can be found (e.g. Verdross, Charpentier).

The Territory in International Law

In accordance with the premises of this work, one should now examine the legal nature of territorial supremacy. For a point of departure, the discussion will be confined to the issue of land territory, whereby it needs to be noted that conclusions in that respect pertain—*mutatis mutandis*—to that part of the maritime territory which is subject to the territorial supremacy of a state, as well as to overground space.[27]

The legal essence of state territory has been described in a variety of ways. Currently, the following theories which account for the legal nature of territorial supremacy are formulated in the Western world:

1) The objective theory (territory as an object of state ownership),
2) The spatial theory (territory as a space in which state sovereignty is exercised),
3) The competence theory (power over a territory represents the sum of local competences granted under international law).[28]

27 Excluding the peculiar issues of the so-called space law, which are being lively debated.

28 For a critical review of the theories see I. G. Barsegov, *Territoriia v mezhdunarodnom prave*, Moscow 1958, p. 19, ff. Cf. also F.I. Kozhevnikov, *Mezhdunarodnoye pravo*, pp. 174–176.

The objective theory, deriving from the patrimonial concept of the state (according to which the private-legal dominion absorbed the public-legal empire, i.e. the supremacy of the erstwhile slave state) restores the former notion of empire (construed as the supremacy of the nation), but in external relationships maintains the ownership-like nature of the state's territorial supremacy, manifesting in the exclusive right to use and dispose of its territory with respect to other states.[29]

The spatial theory in its diverse variants[30] rejects both the concept of dominion and empire, asserting that the territory is a component part of the state and therefore it cannot be an object of its governance. The territory constitutes a space within which state authority is exercised.

The competence theory, formulated under the influence of the normative Vienna School, defines the essence of the territorial supremacy of the state in an abstract fashion, as a sum of local competences exercised by state organs. As Barsegov aptly underlines[31], the concept makes it possible to separate the actual power held over a territory from the abstractly maintained "sovereignty", as there are no obstacles to transferring some or even all local competences to another state.

Some authors are of the opinion that those theories offer a number of correct conclusions, but they do not exhaust all territory-related issues.[32]

In Polish science, Makowski opts for the competence theory[33], whereas Ehrlich observes with respect to territory as follows:

> Territory is obviously no subject of international law. Territory is not an object of international law, either: an object of international law, i.e. the ob-

29 H. Lauterpacht, *Private Law Sources and Analogies of International Law*, London 1927, pp. 91–92.

30 Ibidem, p. 93, and literature cited in the note. Cf. definition of the legal essence of territory by W.A. Niezabitowski, quoted by I.G. Barsegov, *Territoriia*…, p. 23.

31 I.G. Barsegov, *Territoriia*…, p. 42.

32 F.A. Váli, *Servitudes of International Law. A study of Rights in Foreign Territory*, London 1958, p. 12, holds that states possess competence not only within their territory, but also have certain rights beyond it; the latter may be an object of international agreements regardless of exercising public functions on the state's own territory.

33 J. Makowski, *Podręcznik prawa.*.., p. 97.

> ject of norms whose body is constituted by international law are the relationships between the subjects of international law; for its part, territory is not a relationship between the subjects of international law, but relationships between the subjects of international law may also concern territory, that is, the subjects of international law may have reciprocal rights and obligations in respect of territory. Thus the mutual relationships of the subjects of international law in respect of territory—though not only those—are an object of norms of international law.[34]

Stating that mutual relationships of states concerning territory are an object of interest for international law, Ehrlich evades defining the legal essence of territory. He also believes that attempts at formulating such a definition have no practical usefulness.[35] He is against analogies derived from private law when discussing legal issues relating to territory.

In contrast, Váli argues that all three theories contain elements which may lead to practical consequences for a jurist, but none of those covers the entirety of legal relationships which characterize the mutual dependence of state and territory, and subsequently concludes that the state possesses competence not only within its territory, but also certain rights over the territory, i.e. such rights which may become the subject matter of international agreements, regardless of the actual exercise of public functions on a given area.[36]

Soviet doctrine defines the legal essence of territory thus: it is a portion of the earth's globe which, spanning land, water, and air, is subject to the authority of a state.[37] It represents a material expression of the supremacy, independence, and inviolability of the nation which inhabits it.[38] The territory constitutes the property of the people and, within its territory, each nation has the right to settle and organize themselves as they see fit,

34 L. Ehrlich, *Prawo międzynarodowe*, 4th edition, pp. 502–503.
35 Ibidem, p. 504.
36 F.A. Váli, *Servitudes of International Law…*, p. 12.
37 W.N. Durdenevski, S.B. Krylov, *Podręcznik prawa…*, p. 227.
38 F.I. Kozhevnikov, *Mezhdunarodnoye pravo*, p. 177.

choose the form of state authority and resolve the problem of the state affiliation of their territory. The supremacy of the state with respect to territory is one of public-legal nature. The state exercises its power in accordance with the will of the people—on their behalf and in their interest. In consequence, the state cannot dispose of the territory as of its own property, contrary to the interest of its inhabitants. The borders of the state should be determined pursuant to the will of nations.[39] For the sake of comparison, it may be worthwhile to quote how Soviet science views Soviet territory: "The Soviet territory marks the extent of the effect of Soviet authority in space and at the same time constitutes the object of socialist ownership and a sphere of socialist economy."[40] The latter description appears to incorporate elements of all three theories.[41]

The definitions of the legal nature of territory advanced by Soviet science demonstrate an essential trait which sets them apart from the definitions formulated in Western doctrines. They all underscore the authority of the nation, a vital political element which has a momentous practical significance especially for the disposal of territory, which must follow the will of the inhabitants. In line with its ideological premises, Soviet science underlines the inadmissibility of the state authorities disposing of territory without the consent of the inhabitants, which may impose a practical limitation on the exercise of territorial supremacy. Nevertheless, it seems that apart from ideological differences which Soviet science emphatically stresses, in the formal-legal sense and for

39 I.G. Barsegov, *Territoriia*…, pp. 55–56. The author also draws on L. Cavaré, *Le droit international positif*, vol. I, Paris 1951, p. 264, according to whom state is merely a depositary of a nation's right to territory—it cannot dispose of it nor yield it against the will of the residents. Territorial supremacy belongs to the nation, being only actualized by the organs of the state.

40 W.N. Durdenevski, S.B. Krylov, *Podręcznik prawa.*.., p. 231.

41 F.I. Kozhevnikov, *Twórcza rola ZSRR w słusznym rozwiązywaniu zagadnień terytorialnych*, "Państwo i Prawo" 1950, no. 12, p. 4, explains: "However, the Soviet theory of combining the aforesaid elements within the notion of territory has nothing in common in terms of substance with the bourgeois doctrine, as its point of departure is in a real foundation that represents a contradiction to the bourgeois society—in socialist ownership. Here, the complexity is only external, just as with other issues of the theory of state and law."

practical purposes there are no major differences between how state territory is conceived in the Western doctrine and Soviet science: the latter claims that territory is the property of the people (or, alternatively, socialist property).

With practical purposes in mind, it would also seem legitimate to conclude that in the relationships between states, territory always features as an object of legal transactions. This is not contradictory to Soviet science, if one takes into account that the sanction of the inhabitants it posits refers chiefly to internal relations, i.e. to the consonance of the declaration of will of state organs and the will of the nation.

Territorial supremacy, also often referred to as territorial sovereignty or territorial jurisdiction, is—according to the scientific consensus—a notion which stipulates that on its own territory the state exercises the highest power over persons and things found within the limits of its territory. Heffter defines the scope of territorial sovereignty (*Territorialrecht*) as a right to exclusive use of natural resources on the territory of a state and the sole ownership of that territory. Consequently, no state can exercise power within the borders of another state, diminish—directly or indirectly—the possessions of another state, no state can diminish territorial appurtenances of another state or use its own territory for an activity detrimental to the territory of another state.[42]

In the renowned arbitration ruling concerning the Palmas Island, territorial sovereignty is characterized as follows:

> It appears to follow that sovereignty in relation to a portion of the surface of the globe is the legal condition necessary for the inclusion of such portion in the territory of any particular State. Sovereignty in relation to territory is in the present award called "territorial sovereignty". Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the ex-

42 A.W. Heffter, *Das europäische Völkerrecht der Gegenwart*, 8th edition, Berlin 1888, pp. 70–71.

> clusion of any other State, the functions of a State. The development of the national organisation of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations. [...] Under this reservation [relating to composite State and collective sovereignty] it may be stated that territorial sovereignty belongs always to one, or in exceptional circumstances to several States, to the exclusion of all others.[43]

Oppenheim-Lauterpacht argues that the importance of state territory is in the fact that it is the space in which that state exercises its highest authority. International law recognizes the highest state power within its territory. If any person or thing happens to be found or staying on that territory, it is therefore subject to the highest authority of the state. No foreign authority possesses any power within the borders of a territory.[44]

Verdross defines territorial sovereignty as the right to dispose of a given area to the fullest extent, in accordance with international law.[45] The author distinguishes between territorial sovereignty and territorial supremacy, finding that a given state may possess sovereignty on a given area, while another state exercises supremacy over the former. As an example, Verdross adduces the right of the United States in the Panama Canal zone, whilst preserving the territorial sovereignty of the Republic of Panama.[46]

In French science, Rousseau suggests two aspects of territorial sovereignty: a positive and a negative one. The positive aspects manifests in the concentration of legal power granted to the state to enable it to discharge its state functions on a specific area, i.e. issue acts intended to pro-

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43 Island of Palmas Arbitration Case, *Annual Digest of Public International Law* (1927–1928), p. 104. The definition is adopted by M. Sibert, *Traité de droit international public. Le droit de la paix*, Paris 1951, p. 649.

44 Oppenheim-Lauterpacht, 8th edition, vol. I, p. 452.

45 Verdross, p. 190.

46 Ibidem, p. 192. This division will be discussed further on.

duce legal effects (legislative, administrative and judicial acts). The negative aspect is evinced in the exclusivity of state power, i.e. in the exclusion of the activity of other states (the exclusive use of coercion, the exercise of judicial powers, and the organization of public services).[47] Váli defines territorial sovereignty as "that portion of public rights of which the state makes regular use under international law within its own territory. This category should naturally also include disposal of territory."[48]

The same author finds that the right of the state over its territory and the right to deal with certain affairs relating to that territory is an "absolute" or "real" right. Once acquired, the right in question should be respected by all other states or international legal persons. Obviously this right can be limited, but unless it is limited, it imposes a negative obligation on any other state to refrain from violating it.[49] Váli espouses the view that international law should also adhere to the division between rights which are "absolute" or "real" (*iura in rem*) and "relative" or "personal" (*iura in personam*). According to the author, the characteristic which sets the two kinds of rights apart is that "absolute" rights result in effective legal title with respect to everyone, whereas relative rights only with respect to particular persons.[50]

Barsegov, a Soviet expert on territorial issues, also determines the rights of the state on its territory to be absolute (*ius contra omnes*), claiming that only the state possesses authority over the population and disposes of the territory itself.[51]

The definitions of sovereignty (supremacy) cited above differ in terms of approach but display shared features: 1) exclusivity of the state's exercise of public-legal power 2) the association of that power with a given area[52], 3) effectiveness of the rights of state *erga omnes*.

47 Ch. Rousseau, *Droit international public*, Paris 1953, p. 225.

48 F.A. Váli, *Servitudes of International Law…*, p. 14.

49 Ibidem, p. 29.

50 Ibidem, pp. 22–23.

51 I.G. Barsegov, *Territoriia*…, p. 10.

52 Here, we leave aside the question whether state power extends beyond its territory, e.g. the authority over its own citizens. The matter is of course beyond the scope of this work.

Without doubt, these features have practical significance when considering the recognition of territorial acquisitions in international law.

Territorial Acquisitions

The notion of territorial acquisitions makes one think of a situation in which a state increases the extent of its territorial supremacy. In contemporary international relationships, this increase may ensue at the expense of the territorial supremacy of another state or other states, or without such a loss. The first is the case when a state assumes control of an area which has thus far remained under the authority of another state or states, while the second—when a state has taken possession of an area over which no one holds any authority (e.g. an extension of the belt of territorial waters).[53]

Given the premises of this work, the scope of inquiry does not include territorial acquisitions following the extension of territorial supremacy over territorial waters (coastal sea) and in overground space. The remaining instances of territorial acquisitions can be divided—according to the traditional doctrine of international law—into original territorial acquisitions, whereby territorial supremacy is extended over areas which have not been previously subject to the territorial sovereignty of any state, and derivative acquisitions, whereby a state assumes sovereign authority over an area which has hitherto been under the sovereign power of another state.

In view of the already completed division of the world and the end of geographical discoveries, the original acquisition of territory has no greater significance in contemporary international law— setting aside the matter of space discoveries, which may have to be resolved in the future. One therefore needs to examine current instances of the derivative acquisition of territory, which still play a crucial role in contemporary international relationships.

One of the chief modes of the derivative acquisition of territory is territorial cession, which denotes surrendering—usually under an agreement—

53 It is likely that in the future this may apply to acquisitions in space.

a portion of territory by one state to the benefit of another. Another one is adjudication (*adjudicatio*), i.e. awarding a state a part of another state, or an area which is the object of dispute between two states, though it is less often seen employed in practice. The institution of adjudication requires a decision of an international tribunal or arbitrator. The conditions in which the acquisition of territory may take place by virtue of adjudication is a matter of contention in the doctrine of international law.[54]

There are two further modes of derivative acquisition of territory, which continue to be debated in the international legal doctrine, namely conquest, i.e. annexation of a given area by way of armed seizure (so-called debellation or subjugation)[55] and prescription (*prescriptio*).[56]

54 E.g. the Western German doctrine of international law, substantiating territorial claims with respect to Poland, maintains that the prerequisite of lawfulness of adjudication is authorization by a state directly involved. H. Kraus, *Das Selbstbestimmung der Völker*, contained in the collective volume entitled *Das östliche Deutschland. Ein Handbuch*, Wurzburg 1959, formulates such a thesis in connection with the reservation that great superpowers have never been entitled to dispose of the German territory without the consent of Germany itself.

55 Acquisition of territory through subjugation, i.e. conquest and formal annexation is deemed admissible in English doctrine: e.g. Oppenheim-Lauterpacht, 8th edition, vol. I, pp. 566–575; J.L. Brierly, *The Law of Nations*, 5th edition, Oxford 1955, p. 155; J.B. Starke, *An Introduction…*, p. 141. Also, the more recent American doctrine admits conquest as a form of acquisition of territory: Ch.Ch. Hyde, Internat*ional Law*, 2nd edition, vol. I, p. 391; H. Kelsen, *Principles…*, p. 214. Austrian doctrine assumes a similar position: Verdross, p. 212. The French doctrine espouses conditional admissibility of conquest; Ch. Rousseau, *Droit international* public, Paris, 1953, pp. 250–251 and Sibert, vol. I, p. 891 (with the reservation that it may apply to a part of a territory in the form of sanctions against the aggressor). A dissimilar view is advanced by J. Charpentier, *La Reconnaissance Internationale et l'Évolution du Droit des Gens*, Paris 1956, p. 147. In Polish science, only J. Makowski, *Podręcznik prawa…*, p. 103 supports admissibility of conquest (debellation), defining it as an original mode of territorial acquisition. L. Ehrlich, *Prawo międzynarodowe*, pp. 148, 541, rejects the admissibility of conquest in international law, constructing the institution of *iuris postliminii*. Albeit for different reasons, so does C. Berezowski, *Terytorium*, p. 16 and K. Kocot, who draws on the prohibition of conducting warfare and the right to self-determination. The current Soviet doctrine also rejects conquest as a means of acquiring territory. In the textbook by Durdenevski-Krylov, p. 233, debellation was still listed among derivative modes of territorial acquisition, but the textbook *Mezhdunarodnoye pravo*, p. 182, states that territorial change may take place only in accordance with the principle of self-determination. I.G. Barsegov, *Territoriia…*, p. 92, rejects debellation as admissible in international law.

56 Contemporary English doctrine admits prescription: Oppenheim-Lauterpacht, 8th edition, vol. I, p. 575; Brierly, 5th edition, p. 157. J.G. Starke, *An Introduction…*, pp. 142–143, remains undecided. In American doctrine, positive opinion is expressed by Hyde, 2nd edition, vol. I, p. 387. In French doctrine, prescription is affirmed by Sibert, vol. I, pp. 888–891, and

At this point one should examine how recognition bears on all those types of territorial acquisition—both the generally accepted and the debatable ones. This issue may prove to have momentous practical significance for the determination of the legal position of parties in a given territorial dispute.

The Separate Nature of the Recognition of Territorial Acqusitions

The arguments presented in the preceding sections enable one to identify the elements which are encompassed by the notion of the recognition of territorial acquisitions in international law.

The notion involves three institutions of international law: recognition, territorial sovereignty and its changes. The problem which needs to be solved is the question of whether a separate institution of the recognition of territorial acquisitions exists, and if so, to ascertain the function of that institution in contemporary international law.

Within the extent under consideration, the recognition of territorial acquisitions appears to have certain particular characteristics. In the first place, a confrontation with the institution of recognition demonstrates singular differences: there is a tendency in the majority of the doctrine to associate the institution of recognition with international legal subjectivity, hence the institution is approached as an issue of legal personality. However, it is only in few cases that the recognition of territorial acquisitions is correlated with legal personality, namely where acquisition of territory is connected with the creation or liquidation of an international legal entity.

At this point, attention should be drawn to another terminological problem which needs to be resolved, specifically the divergence of two notions: territorial changes and territorial acquisitions.

Rousseau, pp. 248–249. Also in the affirmative Verdross, p. 212. In Polish doctrine, J. Makowski, *Podręcznik prawa…*, p. 103, K. Kocot, *Zarys prawa międzynarodowego publicznego*, vol. I, pp. 229–230 remain uncommitted to either position, while L. Ehrlich, *Prawo międzynarodowe*, 4th edition, p. 541, is opposed. In Soviet science, Durdenevski-Krylov, p. 233, are undecided, whereas I.G. Barsegov, *Territoriia…*, pp. 107–112, takes a negative approach.

The notion of territorial changes is undoubtedly broader than the notion of territorial acquisitions. Each acquisition of territory is simultaneously a territorial change—in the legal sense. In contrast, not every territorial change is unconditionally linked to an acquisition of territory. The change of legal status of a particular area, e.g. its demilitarization, will not constitute territorial acquisition, even though in the legal sense this will clearly mean a territorial change. Then again, the creation of a new state following a struggle for national liberation (through secession) is indisputably a territorial change and involves the depletion of the territorial supremacy of the metropole state. The question of the acquisition of territory by a newly established state is a complex one, given that possession of a territory is in general a prerequisite for a new state to exist. Thus, a new state does acquire a territory, but the acquisition is implicitly entailed in the comprehensive fact of the creation of a new international legal entity, which requires that three conditions be met: it must have its population, possess a territory and exercise the highest power. Debellation may also take place, meaning conquest and annexation of the entire territory of a state, which naturally leads to the liquidation of the latter as a subject of international law. The extent of territorial supremacy is seen to increase or, alternatively, decrease in both cases, i.e. when a state is created or liquidated. Still, these matters are so closely related to subjectivity that the granting or refusal of recognition pertain primarily to the question of subjectivity. Changes in territorial supremacy which occur in such circumstances remain entirely within the broader scope of international legal subjectivity. Recognition may also take place in such instances of territorial acquisitions in which the extent of the territorial supremacy of the states involved does change, but their legal personality is unaffected.[57] In fact, the legal per-

57 This is an issue which also concerns the questions of identity and continuity of states. Cf. K. Marek, *Identity and Continuity of States in Public International Law*, Geneva 1954, pp. 22–24, who argues that loss of territory has no essential impact on the identity of a state but—drawing on Guggenheim, *Lehrbuch des Völkerrechts*, vol. I, Basel 1948, p. 406—makes an exception for total or very substantial loss of territory.

sonality of the states involved is not altered in any of the widely known derivative modes of territorial acquisition, except for debellation.

It must therefore be concluded that the institution of recognition may operate in international legal practice on three planes:

1) Solely in relation to subjectivity—as a recognition of a state, a government, an insurgency and belligerency (through analogy to personal law)[58],
2) Solely in relation to changes in territorial supremacy—as a recognition of territorial acquisitions which nevertheless preserve the personality of the states involved (in analogy to real law),
3) Jointly on both planes—as a territorial change resulting in the liquidation or creation of the legal personality of a state.

One should add that debellation is largely questioned in the contemporary doctrine of international law and is deemed an unlawful act in the practice of many countries. Still, the issue requires a more extensive analysis, precisely from the standpoint of the recognition of territorial acquisitions, in which the recognition or non-recognition of unlawful acts plays a momentous role.

It seems, however, that the above deliberations provide grounds for the assumption that the recognition of territorial acquisitions is associated with unique legal issues, which warrant considering it separately from the institution of recognition construed in the light of subjectivity.[59]

The very notion of recognition is the common denominator which correlates the recognition of territorial acquisitions with the recognition of states, governments, etc. If one isolates recognition from the various contexts in which it is encountered in practice, it turns out that it is a uni-

58 The scope of subjectivity will also encompass recognition of a number of the so-called subjective rights of state, such as the right of legation of a particular state or other rights to which an international legal entity is entitled.

59 Consequently, it is doubtful that recognition of territorial acquisitions should be considered—in view of how international law is structured—as part of or in connection with the institution of recognition of states, governments etc. as it is approached by e.g. H. Lauterpacht, *Recognition…* and T.C. Chen, *The International Law…*, as well as a fair number of textbook authors.

lateral legal act which produces legal effects when a state formulates its position with respect to a situation. Defined in this manner, the act of recognition can subsume all possible forms and types of recognition, including so-called tacit recognition, *de facto* recognition etc. The already mentioned general definitions of recognition, formulated by Anzilotti, Charpentier and Verdross[60], exclusively emphasized the legal effects for a state resulting from recognition construed as a positive act, but failed to take into account the legal effects of a negative act, i.e. non-recognition or absence of recognition.

The legal effects of the act of recognition will of course vary, depending on the situation to which such an act pertains. One should expect different effects in terms of subjectivity[61], and still different ones with respect to the recognition of territorial acquisitions.

The questions associated with the legal effects of the recognition of territorial acquisitions, the circumstances in which this institution happens to occur, as well as the forms it assumes, all constitute an object of research which necessitates both theoretical analysis and confrontation with practical application on the part of states. All these issues are contained within the function of recognition of territorial acquisitions in contemporary international law. A study of this function requires detailed analysis of the role which recognition plays in conjunction with the modes of acquisition of territory in contemporary practice and the doctrine of international law. This inevitably involves a thorough inquiry into the significance of recognition in cases of territorial cession, adjudication, conquest, and prescription.[62]

60 Presented at the beginning of this chapter.

61 We leave aside the traditional contention between declarative and constitutive theory regarding legal effects of recognition for international legal subjectivity. Concerning that issue see B. Wiewióra, *Niemiecka Republika Demokratyczna jako podmiot prawa międzynarodowego*, Poznań 1961, esp. Chapter III.

62 Given our premises, the modes of the so-called original territorial acquisition is not included in the scope of our inquiry.

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SUMMARY

The Notion of the Recognition of Territorial Acquisition

The paper is an English translation of *Uznanie nabytków terytorialnych w prawie międzynarodowym* by Bolesław Wiewióra, published originally in Polish in 1965. The text is published as a part of a jubilee edition of the "Adam Mickiewicz University Law Review. 100th Anniversary of the Department of Public International Law" devoted to the achievements of the representatives of the Poznań studies on international law.

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