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## International Status and Legal Capacity of Unrecognized “States” from the Standpoint of International Public Law

### I. Introduction

Sovereign states play a key role on the international arena as they possess the full legal capacity and therefore have the greatest range of rights and obligations under international law. The international status of a sovereign state is relatively clear – it is undisputed member of the international community, which creates norms of international law, ensures adherence to international law and determines the direction of the development and evolution of international relations. Obviously, states are not the only actors on the international arena, but their role is essential.

The international order is dynamic and constantly changing. In the 21<sup>st</sup> century the international community faced a new challenge, namely, the problem of unrecognized “states”<sup>1</sup>, i. e. geopolitical entities that have achieved *de facto* independence, but have not received the international recognition<sup>2</sup>. Although *de facto* regimes existed also earlier, their existence was rather temporary, so this problem has not raised much concern of the international community. In the beginning of a new century the number of unrecognized geopolitical entities has increased, and, moreover, certain changes in their creation and specifics can be observed. Their existence raises a lot of questions regarding their status, capacities, rights and obligations at the international level.

The consequences of non-recognition may reveal both in external and internal spheres. The main “external” problem is lack or restriction of legal capacity of an unrecognized entity and thus limited ability to act on the international arena. However, *de facto* entities suffer not only from the international “non-existence”, but they also struggle with many internal complications, both legal and practical. Firstly, they face difficulties concerning recognition and reinforcement of their national courts’ judgements, and they experience problems regarding acceptance of documents’ issued by their authorities (e. g. passports, documents relating to civil status, university diplomas etc.). Secondly, non-recognition often aggravates their already difficult economic and financial situation, because it blocks or significantly hinders the international co-operation, foreign investments and financial assistance. Thirdly, the capacity of *de facto* entity to protect its interests is significantly restricted. An unrecognized entity does not have *locus standi* before foreign courts, and therefore is deprived of the ability to pursue its claims arising from the economic or other co-operation and thus is unable to protect its rights in case of their violation. Finally, there are numerous problems of technical nature (e. g. the inability to receive an international telephone dialing code<sup>3</sup>).

Due to the multiplicity of problems mentioned above, the following paper discusses only selected issues of public international law.

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<sup>1</sup> Sometimes such entities are referred to as “*de facto* states” or “unrecognized states”. Due to author’s opinion that international recognition is required to obtain the status of a sovereign state, the terms “unrecognized entity”, “*de facto* entity” and “*de facto* regime” will be used to identify geopolitical entities that have achieved *de facto* independence, but never gained international recognition.

<sup>2</sup> For more definitions see *Nina Caspersen/Gareth Stansfield*, “Introduction. Unrecognized States in the International System”, in: *Nina Caspersen/Gareth Stansfield* (ed.), *Unrecognized States in the International System*, London/New York 2011, pp. 1–5.

<sup>3</sup> An international dialing code can be obtained only by a UN member state which joined the International Telecommunication Union.

## II. The relevance of state recognition in international law

The state creation process is a mixture of facts and law, in which the role of international recognition is crucial, as it determines the legal capacity and the international status of a new entity. The legal status of a newly created state plays a decisive role both for its internal situation and its capability to function at the international level.

There is no consensus among jurists on the relevance of the international recognition for the emergence of a new state. There are two prevailing doctrines on this issue: the constitutive and declaratory theories. Proponents of the constitutive theory claim that legal effects of state emergence appear only with the recognition of the factual situation, thus the state is born in the moment of its recognition. Before gaining the international recognition, a new territorial entity does not have any rights and obligations under international law<sup>4</sup>. Proponents of the declaratory theory argue that a new state begins its existence in the moment of its factual creation, and thus the recognition is merely the acknowledgment of facts<sup>5</sup>.

A relatively widespread view is the moderate constitutive view<sup>6</sup>. Such a position presents, inter alia, *Christian Hillgruber*, who states:

[...] as a result of recognition, the recognized entity acquires the legal status of a state under international law. In this sense, a (new) state is not born, but chosen as a subject of international law. Only when the new state has been recognised does it become a subject of international law<sup>7</sup>.

According to the prevailing contemporary approach to the significance of recognition, state creation is a historical process and thus cannot be evaluated from the standpoint of the legality. The creation of a new state is considered a fact, consequently recognition or non-recognition does not affect its existence.

Such an approach was expressed in several international treaties, e. g. relevant provisions can be found in the Montevideo Convention on the Rights and Duties of States<sup>8</sup>, signed in 1933, and in the Charter of the Organization of American States<sup>9</sup>, signed in Bogota in 1948. They both contain the same provision. Namely, art. 3 of the Montevideo Convention and art. 13 of the OAS Charter provide:

The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit [...].

<sup>4</sup> One of the most famous proponents of the constitutive theory was *Sir Hersch Lauterpacht*. See *Hersch Lauterpacht*, "Recognition of States in International Law", *The Yale Law Journal* (1944), vol. 53, no. 3. See also *Ti-Chiang Chen*, *The International Law of Recognition* (London 1951), pp. 13–17; *Antonio Cassese*, *International Law* (Oxford 2005), pp. 73–74; *Malcolm Shaw*, *International Law* (Cambridge University Press 2014), pp. 322–323.

<sup>5</sup> The proponent of the declaratory theory was, inter alia, *Hans Kelsen*. See *Hans Kelsen*, "Recognition in international law. Theoretical observations", 35(4) *American Journal of International Law* (Oct., 1941), p. 605. See also *James Crawford*, *Brownlie's Principles of Public International Law*, (Oxford 2012), pp. 146–147.

<sup>6</sup> According to the opinion of *L. Oppenheim*: "International law does not say that a State is not in existence as long as it is not recognized, but it takes no notice of it before its recognition". See *Lassa Oppenheim*, *International Law: A Treatise*, vol. I (New York 1905), p. 110.

<sup>7</sup> *Christian Hillgruber*, "The Admission of New States to the International Community", 9 *European Journal of International Law* (1998), p. 492.

<sup>8</sup> *Convention on the Rights and Duties of States*, League of Nations Treaty Series, vol. 165, pp. 20–43.

<sup>9</sup> *Charter of the Organization of American States*, United Nations Treaty Series, vol. 119, no. 1609, p. 3.

The doctrinal disputes on the merits of the international state recognition are still ongoing. It is worth noting, however, that they have no greater value (except for the international law theory), forasmuch as contemporary states' practice combines both declaratory and constitutive elements.

Regardless of the disputes, briefly presented above, the state practice shows clearly that international recognition is crucial for a newly formed geopolitical entity. While analyzing the specifics of the international community, consisting mainly of sovereign states, we observe an interesting phenomenon: once obtained statehood, the latter has become almost impossible to lose, no matter how weak and ineffective the state is. Since its statehood and ability to participate in international relations were recognized, the state is considered legitimate and maintains its statehood.

Conversely to the situation of recognized states, the statehood of *de facto* entities is widely contested, no matter how stable and effective they are. Such entities have actually won their independence, but failed to complete the final stage of state formation process, i. e. had been denied the international recognition. Therefore, we can conclude, that the recognition by existing states is *sine qua non* of the successful state-creating process.

### III. Consequences of non-recognition: outline of issues

The correlation between the international recognition and the legal status of a new state is reciprocal. On the one hand, the international recognition of a new entity depends mainly on how it is perceived by other subjects of international law, and thus it is determined by the status of a new entity. On the other hand, its legal status is dependent on the international recognition.

As it was already mentioned, the impact of non-recognition on the functioning of a newly created geopolitical entity can be examined in many dimensions. Hereinafter the consequences of non-recognition will be presented in three spheres: 1) the external status of residents of unrecognized entity, 2) its capacity to participate in international relations and to conclude international agreements, and finally, 3) its ability to acquire a membership in international organizations.

The issue of citizenship is a significant problem arising from the complicated international situation of unrecognized entities. Citizenship is the deepest bond between a state and its inhabitants, which begins with the creation of a state. The acquisition of citizenship of a new state does not depend on the submission of appropriate declarations by state individuals. It is granted automatically, usually with the possibility to maintain the previous citizenship, if the territory of a new entity was under jurisdiction of another state.

The analysis of non-recognition impact on the internal situation of residents of unrecognized entity is beyond the scope of this paper. Due to the subject matter, it is important to assess the consequences of non-recognition on the international arena from the perspective of individuals residing on the territory of *de facto* entity.

The main complications appear when a resident of a *de facto* entity crosses its border. Travelling to states which do not recognize the new entity can cause various obstacles and uncertainties for such person. Firstly, the freedom of movement may be significantly limited, since states may not recognize a passport issued by *de facto* entity as a valid travel document. Secondly, if the passport is considered invalid, a person cannot perform any action which requires a valid identity document (e. g. check in at a hotel). Finally, a resident of the unrecognized entity cannot enjoy a full protection of his interests outside the territory of the entity and is deprived of diplomatic and consular protection.

The next important issue to be pointed out in this paper is the capacity of an unrecognized entity to maintain international relations and to conclude international treaties.

These two factors determine significantly the functioning of de facto regime and have a direct influence on the process of its recognition.

As a subject of international law, every sovereign state possesses the capacity to conclude international treaties. The Montevideo Convention mentions the ability to maintain international relations as one of the obligatory statehood criteria<sup>10</sup>.

De facto entities are not isolated from the rest of the world, even if the international community carries on the ignoring policy towards them. De facto entities do not operate in a legal vacuum; therefore, despite non-recognition, they possess a certain degree of ability to maintain international relations. Furthermore, sometimes non-recognition is an incentive for a de facto entity to increase its efforts to enter into international relations and to intensify co-operation, forasmuch as it can be very helpful in gaining international recognition.

There is no simple answer to the question concerning the capacity of unrecognized entities to maintain international relations. The practice of states regarding relations with newly created entities remains unclear. Sometimes states are very cautious about entering into relations with newly created entity and do not establish relations with it quickly, even if they recognized it as a state. However, in some cases states maintain informal relations with entities they do not recognize officially.

Anyway, states' practice shows that there are no barriers for the unrecognized entity to enter international relations, if one or more sovereign states will decide to establish such relations with it.

The non-recognition significantly affects the capacity of a de facto entity to join international organizations. Most members of the international community stand on a position that possessing a full legal capacity is required to obtain membership, what in turn results in the lack of possibility for a de facto entity to become a member in any major international organization.

However, the situation of the partially recognized entity is quite different. Even if it needs broader recognition to become a member of several major international organizations, such as the United Nations, the European Union, the World Trade Organization, the Organization for Security and Co-operation in Europe or the Council of Europe, it may succeed in acquiring the membership of some regional international organizations. Therefore, we can conclude, that a partially recognized entity has a limited ability to acquire the membership in international organization.

It has to be pointed out, that the international status and capacities of unrecognized entities may vary because of different strategies of the international community. There are three major ways sovereign states can respond to the existence of unrecognized geopolitical entities. The first option is to oppose actively, to use sanctions and embargoes, second – to ignore the existence of the unrecognized entity and have no dealings with it, and third – to give some sort of limited acceptance and acknowledgement of its existence. Each of these strategies significantly affects the functioning of the unrecognized entity.

The differences of the abovementioned strategies in their impact on the status and legal capacity of a de facto state will be presented below by a brief analysis of three cases.

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<sup>10</sup> However, some jurists argue, that the capacity to enter into international relations is not a prerequisite, but a consequence of acquiring the international legal personality. While others consider the capacity to establish international relations as one of the sovereignty indications and subsequently the sovereignty they perceive as a premise of statehood. See: *Władysław Czapliński/Anna Wyrozumska*, *Prawo międzynarodowe. Zagadnienia Systemowe*, Warszawa 2004, p. 133; *Lech Antonowicz*, *Rzecz o państwach i prawie międzynarodowym*, Lublin 2012, p. 22.

Namely, the situation in Kosovo will be presented as an example of partial recognition, Transnistria as a case of ignoring strategy, and Crimea as a subject of active opposition and undermining policy.

#### IV. Kosovo's struggle – partial recognition and limited acceptance

On 17 February 2008 provisional institutions of Kosovo's self-government enacted the unilateral declaration of independence which caused a controversial worldwide debate. Up to the present day, disputes regarding Kosovo's statehood, the legality of secession and the admissibility of recognition as a new subject to international law are still pending<sup>11</sup>. On the initiative of Serbia, the legality of Kosovo's declaration of independence was the subject of the International Court of Justice advisory opinion of 22 June 2010<sup>12</sup>.

The process of Kosovo's recognition was initiated immediately after its declaration of independence. The international community has split into three camps: the first one includes states that unconditionally recognized Kosovo as a state, the second one states that preferred to postpone the decision on recognition and were waiting for the further development of the situation, and the last one includes states conducting the policy of non-recognition. The United States, France, Albania, Afghanistan, Turkey and the United Kingdom have recognized Kosovo shortly after independence was declared. However, many countries have refused to recognize Kosovo since they perceive its secession as a serious violation of international law. Besides Serbia, among such countries are Russia, China, Spain<sup>13</sup>, Greece, Bosnia and Herzegovina, Romania, Georgia, Israel and many others. Nevertheless, within a few weeks Kosovo was recognized by over 40 countries<sup>14</sup>.

The political process of Kosovo's recognition is still ongoing<sup>15</sup>. As for now, Kosovo's international status is a good example of limited acceptance strategy of the international community.

<sup>11</sup> For more see *Milena Ingelevič-Citak*, "Recognition of Kosovo in the Context of Accordance with International Law", in: *Miscellanea Iuris Gentium* nr XII-XIII-XIV 2009-2011, Krakow 2011, pp. 78–100.

<sup>12</sup> International Court of Justice, ICJ Advisory Opinion of 22 July 2010, <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=141&code=kos&p3=4>, 21.3.2016. The Court in its opinion ruled: "[...] the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework". See summary of the advisory opinion, <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=141&code=kos&p3=5>, 21.3.2016.

<sup>13</sup> Spain, which initially had a neutral position on this matter, later has changed its opinion. Spanish Prime Minister *Jose Luis Rodriguez Zapatero* during a press conference in September 2009 was asked why Spain still had not recognized Kosovo, since most EU countries had already done that. *Zapatero* expressed the view that the legality of the state-creating process is a condition sine qua non for recognition. In his opinion, the creation of Kosovo through a breach of international law justifies a strategy of non-recognition. Undoubtedly, Spain's policy complies with its internal interests. Recognition of Kosovo by Spanish authorities would be the incentive for the Basques and Catalans to fulfill their aspirations for independence. See United Nations, "Press Conference by Spain's Prime Minister Jose Luis Rodriguez Zapatero", 23.9.2009, [http://www.un.org/press/en/2009/090923\\_Spain.doc.htm](http://www.un.org/press/en/2009/090923_Spain.doc.htm), 21.3.2016.

<sup>14</sup> The process of Kosovo's recognition can be followed on the website <http://www.kosovo-thankyou.com/>, 21.3.2016.

<sup>15</sup> As of 14 March 2016, it has been recognized as independent state by 111 out of 193 UN member states, <http://www.kosovo-thankyou.com/>, 21.3.2016.

As it is presented above, Kosovo's unilateral declaration of independence resulted in limited international recognition of its statehood. This causes serious complications not only for the functionality of a new state and its capabilities, but also affects the situation of its citizens. Hereafter will be presented selected problems that Kosovo and its people have to face.

## 1. Citizenship of Kosovo

Citizenship is a central issue in the state-building process of Kosovo. Shortly after the declaration of independence, the Assembly of Kosovo adopted a whole set of basic statehood laws, including the Law on Citizenship<sup>16</sup>. The Law established a separate citizenship regime, which was constructed mainly on the territory and residency criteria<sup>17</sup>. Hence, under provisions of the Law, all Kosovo residents were granted a right to acquire the citizenship.

Five years later the Assembly of Kosovo adopted a new Law on Citizenship<sup>18</sup>. The new provisions were enacted in order to comply with the EU legislation on citizenship. The Law prescribes, inter alia, the criteria and procedures for the acquisition and loss of the citizenship of Republic of Kosovo and regulates other related issues<sup>19</sup>.

Kosovan passports comply with the standards set by the International Civil Aviation Organization (ICAO), except for the two-letter (alpha-2) or three-letter (alpha-3) country code ISO 3166-1, adopted for machine readable travel documents, thus Kosovo has no international recognized country code. In order to obtain the country code ISO 3166-1, the state has to be a UN member, a member of its specialized organization, agency or a state-party to the ICJ Statute. To mention, travel documents issued until 2008 by the United Nations Interim Administration in Kosovo (UNMIK) and remained valid until 2010, had the country code "UNK" ("United Nations Kosovo").

Due to the contested statehood of Kosovo and limited recognition of its sovereignty, authorities in Pristina are struggling with the problem of Kosovo's citizenship recognition, the acceptance and validity of travel documents and the ambiguous status of Kosovo citizens abroad. It is worth noticing that even the internal situation related to citizenship in Kosovo is greatly complicated. The majority of Kosovo Serbs consider them-

<sup>16</sup> Law No. 03/L-034 on Citizenship of Kosovo, enacted by the Assembly of Republic of Kosovo on 20 February 2008, Official Gazette of the Republic of Kosovo No. 26 of 2 June 2008. English text available on [http://www.assembly-kosova.org/.../2008\\_03-L034\\_en.pdf?cid=2,191,243](http://www.assembly-kosova.org/.../2008_03-L034_en.pdf?cid=2,191,243), 21.3.2016.

<sup>17</sup> *Rogers Brubaker* describes such citizenship policy as a "new state" model, differentiating it from a "restored state" model. See *Rogers Brubaker*, "Citizenship struggles in Soviet successor states", *International Migration Review* 26 (2) Special Issue: The New Europe and International Migration (1992), p. 277. It is worth noticing that states that emerged from the dissolution of the Socialist Federal Republic of Yugoslavia had an independent basis of citizenship, therefore carried out the restoration model. Whereas Kosovo hadn't got the status of the SFRY republic and there was no basis for the restoration of previous citizenship. For this reason, the model of Kosovo's citizenship is based on the principle of territory and residence.

<sup>18</sup> Law No. 04/L-215 on Citizenship of Kosovo, enacted by the Assembly of Republic of Kosovo on 31 July 2013, Official Gazette of the Republic of Kosovo No. 33 of 2 September 2013. English text available on [http://www.assembly-kosova.org/.../2008\\_03-L034\\_en.pdf?cid=2,191,1043](http://www.assembly-kosova.org/.../2008_03-L034_en.pdf?cid=2,191,1043), 21.3.2016.

<sup>19</sup> New provisions on acquisition and loss of citizenship could be characterized as a combination of *ius soli* and *ius sanguinis*. It is worth noticing that new law also includes the principle of the unconditional recognition and acceptance of multiple citizenship. For more see *Gëzim Krasniqi*, *Country Report on Citizenship Law: Kosovo*, European University Institute (Florence Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, January 2015), p. 15 ff, [http://cadmus.eui.eu/bitstream/handle/1814/34477/EUDO\\_CIT\\_2015\\_03-Kosovo.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/34477/EUDO_CIT_2015_03-Kosovo.pdf?sequence=1), 21.3.2016.

selves to be Serbian citizens<sup>20</sup>, while Albanians embraced Kosovo citizenship. Many ethnic Albanians, however, still keep their passports issued by the Serbian authorities for practical reasons. Dual citizenship is a widespread practice among the Kosovo population<sup>21</sup>.

Kosovo citizenship determines the legal status of its individuals, both internally and internationally. As it was already mentioned, the right to define the citizenry of the state is within the sole competence of its authorities and is carried out through domestic legislation. Kosovo resolved this issue by adopting the Law on Citizenship. The Law granted citizenship to all individuals who fulfill the territory and residency criteria. Meanwhile, Serbia does not recognize the legality of the unilateral declaration of independence issued by the Pristina authorities and therefore still considers individuals born on the territory of Kosovo Serbian citizens. Considering this situation, the important question arises: how these individuals are perceived abroad – as Kosovo or Serbian citizens? With regard to countries which have recognized Kosovo, the situation is clear – they accept passports issued by the Pristina authorities and hence recognize their holders as Kosovo citizens. If a person has kept the Serbian passport and thus has a dual citizenship, it is his or her choice which passport to use and under which state protection to be, while staying abroad.

More complex is, however, the situation regarding states that contest Kosovo statehood, as some of them accept Kosovo passports, while others do not. Inconsistent states' practice in regard to Kosovo citizenship makes drawing of unequivocal conclusions impossible, mainly because there are no official statements of governments withholding Kosovo recognition on accepting or rejecting the validity of Kosovo passports.

Another issue concerning the Kosovo citizenship are travel restrictions. The complexity of the problem lies not only in the fact that for most countries Kosovo citizens need to have a visa. More problems derive from the state limited international recognition, as passports issued by Kosovo authorities are not recognized as valid travel documents and, therefore, the possibility of crossing state borders is significantly restricted.

Though Western Balkan states have visa-free travel to EU countries (to Schengen Zone member states), Kosovo passport holders are still required to obtain a visa<sup>22</sup>. Particularly noteworthy is the fact that Serbia signed the EU association agreement and was granted visa liberalization in 2009<sup>23</sup>. Nonetheless, visa-free travel does not apply to Serbian citizens residing in Kosovo. Since Serbia still considers Kosovo residents Serbian citizens, such an exception can be seen as a clear case of discrimination<sup>24</sup>.

<sup>20</sup> In 2013, during the EU-brokered talks on the normalization of relations between Serbia and Kosovo, the Serbian minority requested the guaranties from the Serbian authorities that they would retain Serbian citizenship and would not have to use identity documents issued by the Kosovo authorities. See "Kosovo Serbs Seek Citizenship Guarantees", *Balkan Insight*, 27.5.2013, <http://www.balkaninsight.com/en/article/kosovo-serbs-request-additional-guarantees>, 21.3.2016.

<sup>21</sup> *Gëzim Krasniqi*, Country Report on Citizenship Law: Kosovo, European University Institute (Florence) Robert Schuman Centre for Advanced Studies, EUDO Citizenship Observatory, January 2015), pp. 4-5, [http://cadmus.eui.eu/bitstream/handle/1814/34477/EUDO\\_CIT\\_2015\\_03-Kosovo.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/34477/EUDO_CIT_2015_03-Kosovo.pdf?sequence=1), 21.3.2016.

<sup>22</sup> Visas are not required for travel to Albania, Turkey, Macedonia, Montenegro and the Maldives Islands. For more information see Republic of Kosovo, Ministry of Foreign Affairs, "Visas for Kosovo citizens", <http://www.mfa-ks.net/?page=2,70>, 21.3.2016.

<sup>23</sup> See European Commission, Enlargement: "EU-Serbia relations", [http://ec.europa.eu/enlargement/potential-candidate-countries/serbia/eu\\_serbia\\_relations\\_en.htm](http://ec.europa.eu/enlargement/potential-candidate-countries/serbia/eu_serbia_relations_en.htm), 21.3.2016.

<sup>24</sup> See *Gëzim Krasniqi*, "Kosovo: between a 'political club' and a 'divided house'", 29.03.2011, <http://www.citsee.eu/citsee-study/kosovo-between-%E2%80%99political-club%E2%80%99-and-%E2%80%99divided-house>, 21.3.2016.

As a rule, states pursuing a policy of non-recognition of a new state, do not accept passports issued by its authorities as valid travel documents entitling to cross state borders. The Kosovo case is even more complicated than it seems. Several states accept Kosovo passports, while they do not recognize its statehood (e. g. Bosnia and Herzegovina<sup>25</sup>, Slovakia<sup>26</sup>). Moreover, some countries allow Kosovo citizens to cross their borders only in certain situations, whereas under normal circumstances their entry is inadmissible. The Russian Federation does not recognize the independence of Kosovo and thus does not accept identity documents issued by the Pristina authorities. Kosovo citizens are allowed to cross the Russian border only for the participation in sport events held under the auspices of the International Olympic Committee and some other international sports organizations<sup>27</sup>.

The fact that Kosovo is not recognized by Serbia has also some other administrative complications than only not accepting Kosovo passports by the Serbian authorities. Consequences of this situation affect travelers from other countries, too. Namely, the Serbian authorities deny foreign nationals entry to its territory, if they have stamps of the Republic of Kosovo in their passports. If travelers have entered Kosovo from the territory of a third state through a Kosovo border post, Serbian authorities consider it illegal border crossing<sup>28</sup>. Such foreigners will be able to travel only within Kosovo, but will not be entitled to pass Kosovo-Serbia border later. Conversely, if they enter Kosovo through a Serbian border post, they will be able to travel freely to Kosovo and back. However, in case of travel back to Serbia all stamps or visas of Kosovo in foreigners' passports simply will be cancelled (over-stamped) by Serbian immigration officers.

Consequently, Kosovo remains one of the most isolated European countries. Its citizens face a problem of unclear international status of their citizenship, and thus they cannot fully exercise their civil, social and political rights, enjoy benefits of their citizenship abroad (e. g. the protection by diplomatic and consular missions) and their freedom of movement is significantly limited.

## 2. International relations and international treaties

Kosovo's international relations are very complicated. Despite the fact that Kosovo has been recognized by more than a half of the existing states, only few of them have set real relations with Kosovo, signed bilateral agreements and established diplomatic relations. States' policy towards Kosovo is ambiguous, because of its unresolved and difficult internal and external situation. Governments that recognized Kosovo are trying to remain in the European mainstream, and at the same time to maintain good relations with Serbia and other states contesting Kosovo statehood. Some of the states, despite the recognition, still have doubts about the pertinence of supporting of the political process with dubious legal basis and unknown consequences for the future stability of the region.

In almost eight years of independence only 21 embassies were opened in Pristina. Most countries preferred to accredit one of their diplomatic missions in the neighboring

<sup>25</sup> See Republic of Kosovo, Ministry of Foreign Affairs: "Issuance of BiH visa to Citizens of Kosovo", <http://www.mfa-ks.net/?page=2,4,1303>, 21.3.2016.

<sup>26</sup> See Republic of Kosovo, Ministry of Foreign Affairs: "Lajčák confirms to Minister Hoxhaj the Slovak recognition of Kosovo passports", <http://www.mfa-ks.net/?page=2,4,1336>, 21.3.2016.

<sup>27</sup> Both Kosovo and Russian Federation are full members of the International Olympic Committee and several international sports federations. Due to this membership, Russia concluded that it is obliged to allow Kosovo's athletes to take a part in sport events held on the territory of Russia.

<sup>28</sup> Kosovo crossing points are not recognized by Serbia as official and legal international border crossing points.

state. However, it is worth mentioning that some states – despite the refusal to recognize Kosovo – maintain certain relations with its government, i. e. have liaison offices in Kosovo (e. g. Greece, Romania, Slovakia, China). Several international organizations have representative offices in Pristina (e. g. EU, OSCE, Council of Europe)<sup>29</sup>.

In October 2015 Kosovo made another step towards the international integration – it acceded to an international treaty in the field of private international law<sup>30</sup>. Namely, it became a Contracting Party of the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents of 5 October 1961<sup>31</sup>. Nine Contracting States of the Convention, however, have raised objections to the accession of Kosovo. They have justified their actions by the non-recognition of Kosovo as an independent state, and thus by its incapability to be a contracting state. Consequently, the Convention would not be applicable in relations between them and Kosovo<sup>32</sup>. As can be seen, the lack of recognition not only affects the ability to conclude international treaties, but may also have an impact on limiting the scope of their application.

Kosovo has concluded several bilateral treaties, mostly regarding friendly relations and economic cooperation with neighboring countries (e. g. Free Trade Agreement with Albania, Macedonia, Croatia). However, many states still are delaying the establishment of closer relations with Kosovo, including the conclusion of international treaties with its authorities.

Speaking about Pristina liaison with Belgrade, it should be pointed out that Serbia's path to the EU membership is strongly conditioned by improving tense relations with Kosovo. Therefore, Serbia – being under pressure of the EU – made first steps towards a sustainable improvement of its relations with Kosovo.

The breakthrough in relations between Serbia and Kosovo was in 2012, when EU-facilitated negotiations were launched and series of high level meetings between Kosovo and Serbian authorities started. With EU support, on 19 April 2013 the text of the bilateral agreement was accepted. The document “First Agreement of Principles Governing the Normalisation of Relations”<sup>33</sup>, called Brussels Agreement, consists of 15 points and applies mainly to the governance of Serb-controlled northern region of Kosovo (e. g. provides the establishment of an association of Serbian-majority municipalities). It is worth noticing that the agreement was initialed, but not signed, and no government has published it. The reason for this could be a diverse interpretation of the meaning of this document. Kosovo's authorities have ratified it<sup>34</sup>, thus treated as an international treaty,

<sup>29</sup> See Republic of Kosovo, Ministry of Foreign Affairs: “Foreign Missions in Kosovo”, <http://www.mfa-ks.net/?page=2,50>, 21.3.2016.

<sup>30</sup> HCCH: “Non-Member States of the Organisation”, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=41>, 21.3.2016.

<sup>31</sup> Convention Abolishing the Requirement of Legalisation for Foreign Public Documents of 5 October 1961, United Nations Treaty Series vol. 527, no. 7625, p. 189.

<sup>32</sup> See Convention abolishing the requirement of legalisation for foreign public documents, “Objections to accession”, [https://verdragenbank.overheid.nl/en/Treaty/Details/009051\\_db.html#Kosovo](https://verdragenbank.overheid.nl/en/Treaty/Details/009051_db.html#Kosovo), 21.3.2016.

<sup>33</sup> Republic of Kosovo, Office of the Prime Minister: “First agreement of principles governing the normalization of relations”, [http://www.kryeministri-ks.net/repository/docs/FIRST\\_AGREEMENT\\_OF\\_PRINCIPLES\\_GOVERNING\\_THE\\_NORMALIZATION\\_OF\\_RELATIONS,\\_APRIL\\_19,\\_2013\\_BRUSSELS\\_en.pdf](http://www.kryeministri-ks.net/repository/docs/FIRST_AGREEMENT_OF_PRINCIPLES_GOVERNING_THE_NORMALIZATION_OF_RELATIONS,_APRIL_19,_2013_BRUSSELS_en.pdf), 21.3.2016.

<sup>34</sup> See Law No. 04/L-199 on “Ratification of the International Agreement on the Normalisation of the Relations between the Republic of Kosovo and the Republic of Serbia” (“Zakon o ratifikaciji Prvog međunarodnog sporazuma principa koji uređuju normalizaciju odnosa između Republike Kosovo i Republike Srbije”), adopted by the Assembly of the Republic of Kosovo on 27.06.2013, <http://www.kuvendikosoves.org/common/docs/ligjet/Zakon%20o%20ratifikaciji%20sporazuma%20normalizacija%20odnosa%20Kosova%20-%20Srbije.pdf>, 21.3.2016.

whereas the Serbian government has not ratified the agreement, although the procedure of ratification is obligatory for international agreements. Belgrade considers it rather “a political and technical dialogue with the provisional Kosovo’s institutions”<sup>35</sup>. A different perception of this step is also presented in judgments of constitutional courts of Serbia and Kosovo. The Constitutional Court of Serbia ruled that the agreement is just a political act, thus not binding<sup>36</sup>. Kosovo’s Constitutional Court considers the agreement an international legal act, although in November 2015 it initially suspended its implementation. However, finally, the agreement was endorsed<sup>37</sup>.

The implementation process of the achieved agreements is in progress. Meetings between Belgrade and Pristina authorities are held regularly to support the political dialogue on the application and fulfilment of the provisions in different areas.

Establishing good relations with other countries would undoubtedly increase and strengthen the position of Kosovo as a full member of the international community. Moreover, healthy interstate relations could bring other important benefits, such as foreign investments, financial support, commercial exchange etc., and thus improve the economic and financial situation of Kosovo. An essential factor in Kosovo’s international integration and the improvement of its international position is, however, sustainable development of good relations with Serbia. Even though a positive development of their bilateral relations can be seen, the situation of Kosovo on the international arena remains uncertain. Its capacity to maintain international relations is greatly restricted as other states are very cautious about entering into contractual relationship with the Pristina authorities.

### 3. The membership of Kosovo in international organizations

Despite limited international recognition, Kosovo has acquired a membership in several international organizations. Before 2008 all accession agreements on behalf of Kosovo were signed by UNMIK. In 2004 Kosovo became a member of the South-East Europe Transport Observatory (SEETO), later, in 2006 – a signatory of the Central European Free Trade Agreement (CEFTA). It should be noted that Kosovo in these organizations was represented by UNMIK (even after the declaration of independence). UNMIK – Kosovo’ representative – is still listed as CEFTA member, with a note that “this designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence”<sup>38</sup>.

<sup>35</sup> See “Decision on accepting the report on the current process of political and technical dialogue with the provisional institutions of self-government in Pristina, mediated by the EU, regarding the process of implementation of reached agreements” (“Odluka o prihvatanju Izveštaja o dosadašnjem procesu političkog i tehničkog dijaloga sa Privremenim institucijama samouprava u Prištini uz posredovanje EU, uključujući proces implementacije postignutih dogovora”), adopted by the National Assembly of Serbia, 26.4.2013, <http://www.slglasnik.info/sr/38-26-04-2013/8840-odluka-o-prihvatanju-izvetaja-od-dosadanjem-procesu-politkog-i-tehnkog-dijaloga-sa-privremenim-institucijama-samouprave-u-prištini-uz-posredovanje-evropske-unije-ukljuujui.html>, 21.3.2016.

<sup>36</sup> See „Ustavni sud: Briselski sporazum je politički akt”, 15.12.2014, <http://glassrbije.org/%C4%8Dlanak/ustavni-sud-briselski-sporazum-je-politi%C4%8Dki-akt>, 21.3.2016.

<sup>37</sup> See “Kosovo Court Approves Serbian Municipal Association”, Balkan Insight, 24.12.2016, <http://www.balkaninsight.com/en/article/kosovo-constitutional-court-approves-the-association-agreement-with-serbia-12-24-2015>, 21.3.2016.

<sup>38</sup> See “CEFTA member states”, <http://www.cefta.int/members/unmik>, 21.3.2016.

After the proclamation of independence Kosovo has succeeded in becoming a member of the International Monetary Fund<sup>39</sup> and the World Bank in 2009<sup>40</sup>. In July 2012 Kosovo joined the NATO program “Partnership for Peace”<sup>41</sup>. On 12 September 2014 it also acquired the membership of the Venice Commission of the Council of Europe with the reservation that it does not determine the position of the other Member States to the statehood of Kosovo<sup>42</sup>.

Kosovo is also a full member of the International Olympic Committee<sup>43</sup> and several international sport federations; however its membership applications were rejected, inter alia, by FIFA and UEFA.

As a consequence of Kosovo’s unresolved international status, the state faces difficulties in applying for membership of some international organizations, e. g. in 2015 Kosovo was rejected the membership in UNESCO<sup>44</sup>. The most unfavorable for Kosovo is the lack of recognition from such countries as Russia and China, who have the veto power in the UN Security Council, and thus have the ability to block decisions incompatible with their political interest. However, having regard to the fact that the UN membership can be acquired solely by a sovereign state, it is obvious that disputed statehood of a new state would definitely restrain a possibility to join the UN.

As soon as independence was proclaimed, Pristina authorities expressed their desire to join the European Union. However, it is required for EU member states to reach unanimity in order to establish contractual relations and grant the EU membership to a new state, and since five EU member states do not recognize Kosovo’s independence, its path to membership could be rocky. At the same time, the EU’s support and assistance are vital for Kosovo efforts to build a stable, democratic and functional state.

After the proclamation of independence, the responsibility for the stabilization of Kosovo was taken over by the EU. Under the EU Council Joint Action of 4 February 2008<sup>45</sup> the EULEX mission (European Union Rule of Law Mission) was deployed in Kosovo<sup>46</sup>. One of the main aims of the EULEX deployment is to support European integration, notwithstanding Kosovo relations with the EU are highly complicated and the process of integration is far behind other countries of the region.

<sup>39</sup> On 9 May 2009 Kosovo has been accepted as an independent state to join the International Monetary Fund. Serbia and Russia opposed Kosovo membership and voted against it. Nevertheless, 96 countries out of 138 have voted in favor of the adoption of a new member. At the time of the vote, Kosovo was recognized by 58 countries.

<sup>40</sup> See World Bank: “Member Countries”, <https://www.worldbank.org/en/about/leadership/members>, 21.3.2016.

<sup>41</sup> NATO Partnership for Peace program of cooperation between NATO members and third states, aspiring to become peace-loving countries and applying for membership in the organization. For more see “The Partnership for Peace programme”, [http://www.nato.int/cps/en/natolive/topics\\_50349.htm](http://www.nato.int/cps/en/natolive/topics_50349.htm), 21.3.2016.

<sup>42</sup> See Council of Europe, Venice Commission: “Kosovo”, <http://www.venice.coe.int/webforms/events/?country=243>, 21.3.2016.

<sup>43</sup> Kosovo athletes were not allowed to compete under the flag of Kosovo until 2014, when the Olympic Committee of Kosovo was recognized and affiliated with the International Olympic Committee.

<sup>44</sup> See “Kosovo’s UNESCO Membership Bid Fails”, *Balkan Insight*, 9.11.2015, <http://www.insight.com/en/article/kosovo-unesco-membership-vote-11-09-2015>, 21.3.2016.

<sup>45</sup> EU Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, Official Journal of the European Union, L 42/92, 16.2.2008, [http://www.eulex-kosovo.eu/eul/repository/docs/WEJointActionEULEX\\_EN.pdf](http://www.eulex-kosovo.eu/eul/repository/docs/WEJointActionEULEX_EN.pdf), 21.3.2016.

<sup>46</sup> Due to Serbia’s objection on EU mission taking over the administration on the territory of Kosovo, operated two missions - UNMIK and EULEX. Kosovo’s regions, where the majority of the population were Serbs, remained under the administration of UNMIK. The mandate of EULEX will expire on 14 June 2016.

Kosovo is a potential candidate for the future EU enlargement<sup>47</sup>. In 2012 the European Commission considered that full sovereignty is not required for signing a Stabilization and Association Agreement, thus there were no legal obstacles for Kosovo to sign such an agreement with the EU<sup>48</sup>. In July 2014 the Stabilization and Association Agreement between the EU and Kosovo was initialled in Brussels<sup>49</sup>. A year later, the Agreement was signed<sup>50</sup>. In November 2015 the EU Association Agreement was ratified by the Kosovo parliament<sup>51</sup>, and in January 2016 it was ratified by the European Parliament<sup>52</sup>. The ratification was considered a great political victory of Kosovo and huge progress towards its admission into the EU.

Despite certain progress in Kosovo's European integration, the development of its relations with the EU remains problematic. The European Union is still divided on the acceptance of the independence of Kosovo. As long as Serbia and five EU Member States continue to oppose Kosovo's independence, the prospect of Kosovo's EU membership will be vague.

Summing up the Kosovo case, its weak international position is the consequence of the limited recognition and unresolved international status. Although Kosovo succeeded in acquiring the membership of several international organizations, it needs a broader recognition to become a member of major international organizations, e. g. the United Nations, the European Union, the Organization for Security and Cooperation in Europe, the Council of Europe etc. Kosovo's chances for membership in the European Union and the United Nations are efficiently blocked by non-recognition by Spain, Greece, Cyprus, Romania, Slovakia, Russia and China, whereas joining the two organizations would definitely strengthen Kosovo's international status<sup>53</sup> and could help in solving many internal problems.

Limited recognition affects not only the international status of Kosovo and its capabilities on the international arena, but also the situation of its individuals. Non-recognition of Kosovo secession by its parent state causes many complications and tension in relations between Serbia and Kosovo. The Serb minority has not accepted the citizenship of Kosovo, thus the major part of Serbs perceive themselves only Serbian citizens, what causes many internal problems.

<sup>47</sup> For more about Kosovo and the EU relations, see European Neighborhood Policy and Enlargement Negotiations: "Kosovo", [http://ec.europa.eu/enlargement/countries/detailed-country-information/kosovo/index\\_en.htm](http://ec.europa.eu/enlargement/countries/detailed-country-information/kosovo/index_en.htm), 21.3.2016.

<sup>48</sup> See "Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo", presented by the European Commission on 10 October 2012, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/ks\\_feasibility\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ks_feasibility_2012_en.pdf), 21.3.2016.

<sup>49</sup> Stabilisation and association agreement between the EU and Kosovo, 10728/1/15 Rev. 1, <http://data.consilium.europa.eu/doc/document/ST-10728-2015-REV-1/en/pdf>, 21.3.2016.

<sup>50</sup> See European Council, Council of the European Union: "Stabilisation and Association Agreement" (SAA) between the European Union and Kosovo signed, 27.10.2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/10/27-kosovo-eu-stabilisation-association-agreement/>, 21.3.2016.

<sup>51</sup> See the Ministry of European Integration, Republic of Kosovo: "Stabilisation and Association Agreement", <http://www.mei-ks.net/en/stabilization-association-bprocess->, 21.3.2016.

<sup>52</sup> See European Parliament: "MEPs ratify EU-Kosovo Association Agreement" (21.01.2016), <http://www.europarl.europa.eu/news/en/news-room/20160114IPR09905/MEPs-ratify-EU-Kosovo-Association-Agreement>, 21.3.2016.

<sup>53</sup> Especially, when a vote for the UN membership of a new state could be considered an act of implied recognition itself.

The northern part of Kosovo (Serb enclaves) is not controlled by Pristina authorities. Furthermore, Kosovo's citizens as the only ones in the Western Balkan region cannot travel visa-free to EU countries. Kosovo's passport holders face various travel restrictions, what significantly limits their mobility and freedom of movement<sup>54</sup>.

## V. Transdnistria<sup>55</sup> – an ignored de facto independence

Transdnistria, or Pridnestrovian Moldavian Republic, is a small, but strategically important strip of land, lying within the boundaries of Moldova as its autonomic region. On 2 September 1990 Transdnistria proclaimed the independence aiming to establish a Soviet Socialist Republic separate from the Moldavian SSR, but still within the Soviet Union.

Russian authorities had the key role in the emergence of the rebellious entity. Since the early 1990s Transdnistria remains under their influence and is fully dependent on economic, financial and military support from Moscow. Moldova had lost de facto control over its autonomic region in 1992. In 2006 the independence referendum in Transdnistria was held with the official outcome over 97 % in favor of independence<sup>56</sup>. In 2014 after Crimea's annexation by Russia, Transdnistria applied to the Russian government for admission to the Russian Federation and received the assurance that their request will be examined.

Although Transdnistria is a de facto independent entity with effective government structures, it has failed to gain international recognition of any UN member state. It is recognized as a sovereign state solely by three de facto regimes – Abkhazia, South Ossetia and Nagorno-Karabakh. Therefore, the international status of Transdnistria is relatively clear, forasmuch as it is considered a legal part of the Republic of Moldova.

### 1. Citizenship of Transdnistrian residents

As Transdnistria is not recognized by any state, passports issued by its authorities are not accepted as valid travel documents. They can be used solely for the personal identification within the territory of Transdnistria. For this reason, the majority of Transdnistrian residents has dual or multiple citizenship (mostly Moldovan, Russian and Ukrainian).

Foreign nationals coming to Moldova can face travel restrictions similar to limitations in Serbia and Kosovo. Russian and Ukrainian peacekeeping military units are stationing on the border between Moldova and Transdnistria, and there all travelers are simply checked without any travel restrictions. Problems can be caused, however, by entering Transdnistria from Ukraine, as it is considered illegal border crossing. On the border between Transdnistria and Ukraine, there are no crossing points controlled by Moldovan authorities; therefore these points are not recognized as official and legal.

<sup>54</sup> Freedom of movement is one of the most important contemporary human freedoms, enshrined *inter alia* in the International Covenant on Civil and Political Rights, Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms and some other international treaties.

<sup>55</sup> There are several terms used to describe this autonomic region of Moldova, namely Transnistria, Transdnistria, Pridnestrovie, etc. In this paper the name "Transdnistria" will be used, as this term was presented by the ICJ in (case): *Ilaşcu and Others v. Moldova and Russia*. Application n. 48787/59, Judgement of 8 July 2004.

<sup>56</sup> See "Общие сведения", the official website of the Ministry of Foreign Affairs of Transdnistria, [http://mid.gospmr.org/ru/republic\\_main](http://mid.gospmr.org/ru/republic_main), 21.3.2016.

A person, after such entering the territory of autonomic region, will be able to travel freely only within Transdnistria. He or she may face certain impediments, because the possibility to leave Moldova through a border crossing point controlled by Moldovan authorities in such case can be limited.

Neither country recognizes Transdnistrian passports, as well as its citizenship. Transdnistrian residents are perceived Moldovan citizens, unless they have the citizenship of another sovereign state.

It is worth mentioning, that after Moldova has signed the EU Association Agreement in 2014, many of Transdnistria residents have applied for Moldovan citizenship, due to benefits brought by the right to visa-free travel.

## 2. Transdnistria in international relations and international organizations

Due to the general policy of non-recognition, no international relations were established with Transdnistria. However, Transdnistrian government maintains relations with other de facto entities. In 2006 Transdnistria, Abkhazia, South Ossetia and the Nagorno-Karabakh Republic established the Community for Democracy and Human Rights, also called the Commonwealth of Unrecognized States. The four-member community is perceived as an international non-governmental organization. In 2007 its members signed the joint Declaration on principles of peaceful and fair settlement of the conflicts. In 2009 Abkhazia, South Ossetia and Transdnistria have abolished the visa regimes for their residents.

It is worth mentioning, that the Russian Federation maintains a field consular office in Tiraspol, the Transdnistrian capital<sup>57</sup>. Although it is a field office of the Russian Embassy in Moldova, some consider its maintenance an implicit recognition of the status quo in Transdnistria.

## VI. Crimea – the international isolation and embargo strategy

The Crimean Peninsula has a great strategic and military value, because of Sevastopol, a warm water port, natural harbor, and important naval base. From early 2014 Crimea's political and legal status has been the subject of a territorial dispute between Ukraine and the Russian Federation.

In 2014, along with intensification of the political crisis in Ukraine, the Crimean authorities have enhanced their secession efforts. Meanwhile, Russian armed forces began undercover intervention and in a short time took control over the territory of peninsula<sup>58</sup>.

The Crimean independence referendum was held on 16 March 2014. According to official results, 96.77 % of voters have supported joining the Russian Federation<sup>59</sup>.

<sup>57</sup> For more, see the official website of Embassy of the Russian Federation in Moldova, <http://moldova.mid.ru/tiraspol>, 21.3.2016.

<sup>58</sup> Soldiers that took over the Crimean Peninsula were unidentified, without military insignia on their uniforms. However, the weapons and the military equipment they had, were identical with the equipment of the Russian army. Russian authorities claimed though, that these were "self-defense units", created spontaneously by Crimean people. See „Владимир Путин ответил на вопросы журналистов о ситуации на Украине“, 04.3.2014, <http://www.kremlin.ru/news/20366>, 21.3.2016. On 17 April 2014, President Putin, during an interview for leading Russian broadcasters, confirmed the presence of Russian military forces all over the territory of the peninsula. See „Прямая линия с Владимиром Путиным“, 17.4.2014, <http://www.kremlin.ru/news/20796>, 21.3.2016.

On 17 March 2014 the Supreme Council of Crimea has proclaimed independence, and Crimea was immediately recognized as a state by Russia. One day later, the agreement on accession of the Republic of Crimea to Russia was signed<sup>60</sup>.

Ukraine and the vast majority of the international community<sup>61</sup> consider Russia to have violated several general principles of international law, i. e. territorial integrity, sanctity of state borders, non-use of force, and non-intervention into other state internal affairs, as well as to have breached its obligations under the Budapest Memorandum<sup>62</sup> and other multilateral and bilateral treaties<sup>63</sup>. Ukraine has rejected the legal validity of the Crimean referendum and the declaration of independence and, as a consequence, has not recognized the annexation of the Peninsula by the Russian Federation. Ukrainian authorities consider Crimea and the city of the Sevastopol as a temporarily occupied territory.

The illegal character of Russian conduct in Crimea, constituting an act of aggression<sup>64</sup>, and the lack of a legal basis for the secession of Crimea from Ukraine, creates a situation obliging the international community to treat the Crimean Peninsula as an occupied territory, and to consider the Russian annexation of Crimea an illegal action. This brings an obligation for states to non-recognition of such situation.

International organizations, in particular the United Nations, the Organization for Security and Co-operation in Europe, the European Union and the Council of Europe, condemned the armed interference of Russia and demanded the Russian authorities to stop violating international law. The Council of the EU imposed personal sanctions: asset freeze and travel restrictions on over 140 Russian citizens, mainly politicians and businesspeople. Moreover, the EU applied economic sanctions, which limited the access to western capital markets for the largest Russian banks, and targeted exchange with Russia in several economic sectors<sup>65</sup>.

More than two years have passed since the annexation of Crimea by Russia. However, there is no significant improvement in the Crimean conflict. The EU continues its non-recognition policy, and sanctions are still in place. The international community refuses to recognize the legality of Crimea's secession and thus contests its statehood.

<sup>59</sup> See Supreme Council of Crimea: „На общекрымском референдуме 16 марта 2014 года за воссоединение Крыма с Россией на правах субъекта РФ проголосовали 96,77 % крымчан“, [http://www.crimea.gov.ru/news/17\\_03\\_2014\\_3](http://www.crimea.gov.ru/news/17_03_2014_3), 21.3.2016.

<sup>60</sup> Agreement between the Russian Federation and the Republic of Crimea on accession of the Republic of Crimea into the Russian Federation and forming new subjects within the Russian Federation of 18 March 2014, <http://www.kremlin.ru/events/president/news/20605>, 21.3.2016.

<sup>61</sup> Besides Russia, the Republic of Crimea has gained international recognition from North Korea, Syria, Afghanistan, Cuba, Venezuela and Nicaragua.

<sup>62</sup> Budapest Memorandum on Security Assurances, 5 December 1994, UN Doc. A/49/765.

<sup>63</sup> For example, Agreement between Ukraine and Russian Federation “On the on the Status and Conditions of the Black Sea Fleet of Russian Federation Presence on the Territory of Ukraine” of 28 May 1997, [http://zakon4.rada.gov.ua/laws/show/643\\_076](http://zakon4.rada.gov.ua/laws/show/643_076), 21.3.2016.

<sup>64</sup> According to the UN General Assembly Resolution No. 3314 of 1974, aggression is an act of using armed force by one state against other state's sovereignty, territorial integrity, and political independence. See UN General Assembly Resolution No. 3314, Definition of Aggression, 14 December 1974, UN Doc. A/Res/3314 (XXIX).

<sup>65</sup> See European Council/Council of the European Union: “EU restrictive measures in response to the crisis in Ukraine”, <http://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>, 21.3.2016.

## 1. Citizenship of Crimean residents

Due to the provisions of the Accession Agreement of 18 March 2014, Crimea and Sevastopol were granted the status of Russian federal subjects and all their residents acquired *ipso iure* the Russian citizenship.

According to art. 5 of the Agreement, Ukrainian citizens and stateless persons permanently residing in Crimea are entitled to obtain the Russian citizenship, unless within a month since of the entry into force of the Agreement they declare a desire to keep the Ukrainian citizenship. It is worth mentioning, that persons who wanted to keep the Ukrainian citizenship have struggled with numerous obstacles – beginning from a short term for the submission of an application, by very few offices authorized to accept applications, and ending with a lack of the clear application procedure<sup>66</sup>.

Furthermore, some additional efforts to discourage residents of Crimea to retain the citizenship of Ukraine were made. Namely, Russian authorities have adopted a requirement to obtain a permanent residency permit for Crimean residents who decided not to become Russian citizens. Moreover, there is a 2,000 rouble fee for acquiring a permanent residency permit, while Russian passports are issued for free<sup>67</sup>.

It is worth noticing, that Ukrainian policy regarding citizenship is based on non-recognition of multiple citizenship. Under Ukrainian law, the acquisition of foreign citizenship is a prerequisite to initiate a procedure of terminating Ukrainian citizenship. Nevertheless, the situation has changed since the Crimean crisis. The citizenship of Crimean residents is considered a special case; therefore they are permitted to have a dual citizenship, although amendments to Ukrainian law on this matter were not adopted<sup>68</sup>.

Due to non-recognition of Crimea's secession and annexation by Russia, most states do not recognize Russian passports issued by the Crimean *de facto* authorities. Residents of the peninsula received Russian passports, which specify Crimea as the territory of the Russian Federation. Therefore, many states have announced that they will reject a visa application from holders of such passports<sup>69</sup>. If a Russian citizen with a passport featuring "the Republic of Crimea/Russia" as his birthplace, will come to the diplomatic mission or authority office of such state, he would be asked to get a new passport with a correctly indicated birthplace.

As a consequence of the non-recognition policy, Crimean residents with Russian passports face various travel restrictions. However, it has to be emphasized, that solely documents are contested and not the citizenship itself, even despite the fact that its granting can be considered a forced procedure.

<sup>66</sup> According to the report of 15 May 2014, released by the Office of the UN High Commissioner for Human Rights, the deadline for submission of an application was 18 April 2014, while the procedure of application was adopted on 1 April 2014. In the period of 4–9 April on the Crimean peninsula were only 2 offices accepting declarations – in Sevastopol and Simferopol. Only until 10 April their number increased to 9. Crimea's habitants residing abroad were completely deprived of the possibility to submit applications. See Report on the human rights situation in Ukraine of 15 May 2014, Office of the United Nations High Commissioner for Human Rights, [http://www.un.org.ua/images/stories/Report\\_15\\_May\\_2014\\_en.pdf](http://www.un.org.ua/images/stories/Report_15_May_2014_en.pdf), 21.3.2016.

<sup>67</sup> *Oxana Shevel*, "The Aftermath of Annexation: Russia and Ukraine Adopt Conflicting Rules for Changing Citizenship of Crimean Residents (updated)", 16.4.2014, <http://eudo-citizenship.eu/news/citizenship-news/1113-the-aftermath-of-annexation-russia-and-ukraine-adopt-conflicting-rules-for-changing-citizenship-of-crimean-residents>, 21.3.2016.

<sup>68</sup> *Ibid.*

<sup>69</sup> See „Latvia rejects passports featuring Crimea as Russian territory”, *The Baltic Times*, 8.8.2015, [http://www.baltictimes.com/latvia\\_rejects\\_passports\\_featuring\\_crimea\\_as\\_russian\\_territory/](http://www.baltictimes.com/latvia_rejects_passports_featuring_crimea_as_russian_territory/), 21.3.2016.

It is worth mentioning, that Crimean residents with Ukrainian citizenship could obtain Schengen visas, although for residents of the peninsula they are issued only in embassies located in the mainland Ukraine.

## 2. Crimea – international relations, membership in international organizations

Crimea had never acquired the status of a sovereign and independent state. Although self-proclaimed Crimean authorities have announced the emergence of the independent Republic of Crimea, it could not be considered a state. From the perspective of international law, the proclamation of independence in a situation of a threat of an armed conflict is invalid, and as such cannot be considered a legal act bearing legal consequences.

Crimea had no legal basis to secede from Ukraine, forasmuch as the legal prerequisites to self-determination and secession were not fulfilled. Hence, from the perspective of international law, Crimea is still part of Ukraine. Consequently, it could not enter into any international relations or join an international organization, because of lack of legal capacity and ability to act on the international arena.

## VII. Conclusion

The problem of unrecognized entities, which had initially not been raising much interest of the international community, has become important. Kosovo's independence has resulted in *de facto* regimes' growing hopes for achievement of awaited recognition and sovereignty. The current situation clearly indicates that there is a great need for the international debate on the status and future of unrecognized entities.

The brief analysis of capacities and legal status of *de facto* entities, as well as their hard struggle with many restrictions and limitations clearly points out the significance of international recognition. Only by recognition can the new entity acquire the status of a sovereign state and thus get the full capacity to act as a member of the international community.

However, non-recognition or only partial recognition of emerged *de facto* entities does not prevent them from the long-term existence and functioning, even if it deprives them the rights and protection under international law. Despite that *de facto* entities remain illegitimate in the eyes of the international community, and it is generally expected that they will disappear sooner or later, some of them achieved high efficiency of their internal structures, which might be envied even by some sovereign states, military power, strong support of their inhabitants, and usually the support of an external patron. The combination of these factors secured some unrecognized entities quite impressive longevity.

In the three briefly presented case studies we can clearly see the diversity and inconsistency of states' practice regarding relations with *de facto* regimes. The reason for such situation are usually states' political interests. A perfect example is the position of the Russian Federation, which contests the legality of Kosovo secession, while supporting Crimea's claims for independence. As another example we can point to the case of Kosovo and the practice of states that raises lot of doubts – namely non-recognition of Kosovo's statehood, but acceptance of passports issued by its authorities.

*De facto* entities face an acute problem in trying to exist on the international arena among the states recognizing them and the ones that ignore or contest their statehood, what is extremely difficult because of uncertainty of their status and different range of their capabilities.

Concluding, emergence of de facto regimes definitely affects the international community. The policy of non-recognition does not solve the problem of dealing with unrecognized entities. Moreover, long-lasting disputes continue to exist between Kosovo and Serbia, between Crimea, Russia and Ukraine, and between Transnistria and Moldova. These conflicts are limiting or even blocking the regional co-operation and economic integration in several regions of Eastern Europe. Furthermore, they result in various legal complications and restrictions – not only for residents of de facto entities, but also for foreign nationals. Finally, they disrupt the regional stability and security, as even with the position of “outsiders” these unrecognized entities may influence further conflicts in their regions, and they also set up an unwanted example of political and legal behavior. Namely, they encourage other regions, entities, or ethnic groups to follow the paths of separatism and secessionism. Consequently, while de facto entities are seeking their place in a system of sovereign states, which does not accept them as its constituent members, they pose a standing challenge to the international order.