The legitimacy of acquisition of state territory

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Abstract

Nowadays academia offers new approaches to understanding of state borders, territorial disputes, armed conflicts and wars. While the principles of territorial integrity and inviolability of frontiers are central to the current system of international law, they are sometimes inoperative before the law of force. Moreover, the peaceful resolution of territorial disputes contributes to international security. The purpose of this article is to examine the problems of the legitimacy of acquisition of territory in the past and present, as well as to provide insight into some issues related to the state sovereignty over disputed areas in international territorial disputes. The historical, comparative, inductive methods were used while researching the problem of legitimacy of acquisition of state territory. The study may be implicated during taking decisions concerning investments in Crimea, Transnistria or Nagorny Karabakh.

Keywords: *International Court of Justice; arbitration; territorial disputes; effectivities; state sovereignty; occupation.*

JEL Classification: K33

1. Introduction

The principles of territorial integrity and inviolability of borders occupy a central place in the modern system of international law, being a democratic governing source of international law, norms of universal character. At the same time, in the interconnected system of international relations in the context of globalization, it is difficult to count on the isolation of conflicts even in bilateral relations, without greater or lesser involvement of third parties. Thus, the peaceful settlement of international disputes requires that the interests of all parties to international communication be fully taken into account and that specific situations be linked to broader international security imperatives.

In the current international process, the examination of territorial disputes between states is carried out in accordance with the provisions of Article 38 of the Statute of the ICJ, which contains the list of sources of international law that the Court applies, including their subsequent development, as well as the case law of other international judicial institutions. The establishment of international courts, the development of the international judicial process and the formation of modern international judicial institutions' case law are the result of the institutionalization of international relations and the introduction of the international control over the

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implementation by states of the international treaties and other international legal obligations[3].

In its judgment on the preliminary objections in the case of South West Africa of December 21, 1962, the International Court of Justice described the dispute between states as a conflict of legal views identified and formulated prior to the commencement of the proceedings and existing objectively[4]. The territorial dispute is characterized by three elements in its entirety: the subjects-states, the existence of the disputed boundary or territory and the clearly defined coincidence of the object and the matter of the dispute. Only states can be subjects of a territorial dispute.

2. Sovereignty of the state is the basis of legal title to the state territory

The legal nature of the state territory is that of sovereignty. Sovereignty, i.e., supremacy over its own territory and autonomy in international relations, is a matter for the state alone. The most important part of sovereignty is the supreme power of the state, which is exercised within the borders of its territory. The notion of territorial supremacy, as well as that of state sovereignty, is not absolute. Trends in the development of modern international law have demonstrated that a state is free to use its territorial supremacy to the extent that the rights and legitimate interests of other states are not affected[5].

The object of proof in an international territorial dispute is sovereignty of one of the parties over the disputed territory. The subject matter of the evidence is the totality of the circumstances to be established in order to prove sovereignty of one of the parties over the disputed territory. In most cases, the main subject matter of the evidence is the position of the boundary line, whether or not there is tacit recognition, the effective actions of the occupier or of one of the parties to the dispute, arguing that its *effectivites* are greater than those of the counterparty, etc.

As noted by the Indian jurist S. Shurma, in determining the effectiveness of the exercise of sovereignty, international courts are much more interested in evidence that directly relates to the possession of disputed territory than they are in evidence of abstract rights acquired in ancient times[6]. When considering the ownership of a disputed area, it is often difficult to resolve the contentious issue on the formal legal basis of the acquisition of sovereignty alone, as it may have its origins in past centuries, when there were no agreements on the establishment of a boundary in the modern sense and the means of acquiring the territory were very diverse. Of all these methods, two subsequently emerged: effective occupation and acquisition prescription, which are based on the same principle of the effective

[3] Тимченко Л.Д., Кононенко В.П. *Міжнародне право*: підручник. К.: Знання, 2012. С. 43. (Timchenko L.D., Kononenko V.P., *International law*: a textbook. K : Knowledge, 2012. p. 43).

[4] Official website of the UN Court available online at http://legal.un.org/icjsummaries/documents /russian/st_leg_serf1.pdf (accessed on July 18, 2019).

[5] Timchenko L.D., Kononenko V.P., *op. cit.*, p. 365.

[6] Shurma S., *India`s Boundary and Territorial Disputes*, Vikas Publications, Delhi, 1971, p. 179.

exercise of state sovereignty, which is often the basis for the dispute resolution. In this case, the question is which of the disputing parties has exercised sovereignty over a certain territory more effectively and within what spatial limits. Since the origins of territorial disputes often go back in time, it is necessary to establish the facts of the exercise of territorial sovereignty in accordance with the rules of the relevant period of time.

3. Effective occupation as a means of acquiring territory

As a result of the settlement of disputes over Palmas Island, East Greenland, Clipperton Island, Minquiers and Ecrehos Islands, the main criteria for proving effective occupation have emerged in international jurisprudence: 1) the peaceful nature of the occupation; 2) the practical implementation of sovereign actions; 3) the implementation of sovereign actions to a degree consistent with territorial supremacy; 4) the continuity of such actions[7]. The peaceful nature only means that an effective occupation should not be the usurpation of the rights of another state, otherwise it can only be the acquisition of territory on the basis of a long history of possession.

The requirement for the practical implementation of sovereign actions means that effective occupation should not be limited to a mere declaration of sovereignty over a certain territory, but that the state should actually exercise its jurisdiction: to enact laws, to fulfill obligations in respect of that territory arising from international agreements, etc. The degree of practical exercise of state power is made dependent on the population and accessibility of the occupied territory. In unpopulated and hard-to-reach places of practical exercise of jurisdiction, it may not be required at all, and it is not necessarily considered that the exercise of the state's authority be manifested in every point of the occupied territory.

The exercise of state functions over an occupied territory must be permanent, since the cessation of such activities without renewal for a relatively long period of time may be interpreted as a renunciation of the territory in question and the intention to exercise sovereignty over it further. However, the requirement for the continued exercise of state functions does not mean that they must be exercised regularly. The intervals between the various acts of sovereignty may vary. Much depends on specific circumstances and cases. Thus, the principle of effectiveness in the occupation of a territory is very relative. The basic requirement is that the state should not be limited to formal acts, but act as territorial sovereign in the circumstances of the case. Moreover, these actions must be active, confirming the effective exercise of state sovereignty over a certain territory, the legality and validity of claims to that territory. It follows, in particular, from the decision of the International Court of Justice in the case "Romania *v.* Ukraine" of February 3, 2009, in which it was noted that Ukraine itself, even despite the fact

[7] Клименко Б.М. *Мирное решение международных споров*. М.: Международные отношения, 1982. С. 159-161. (Klimenko B.M., *Peaceful resolution of international disputes*, International relations, Moscow, 1982, pp. 159-161).

that it believes that Serpent Island falls under paragraph 2 of Art. 121 of the UN Convention on the Law of the Sea, did not expand the relevant territory beyond the borders of the mainland coast due to the presence of Serpent Island in the delimitation zone.

In the border dispute between Burkina Faso and the Republic of Mali, the parties have argued "colonial *effectivites*"; this implies the conduct of administrative authorities in a particular area during the colonial period. The role of such an *effectivites* is complex, and the Chamber has had to make a careful assessment of the legitimacy of the actions of the authorities in each particular case, since the traditional criteria of statehood based on "efficacy" means that specific actions must have legal consequences[8]. In practice, effective occupation is invoked when claiming sovereignty on the basis of the statute of limitations on possession, or at least implied. Conversely, in claiming *effectivites*, a party to a dispute has in mind the statute of limitations on effective possession, which is a prerequisite for the creation of international custom.

This category (*effectivites*) is considered by the UN Court of Justice as a principle and is understood to be the actions of a state indicating its exercise of power in that territory (judgment in the case concerning the territorial and maritime dispute Nicaragua *v.* Colombia of November 19, 2012)[9].

In the case concerning sovereignty over the islands of Pulau-Ligitan and Pulau-Sipadan (Indonesia *v.* Malaysia), heard by the International Court of Justice on December 17, 2002, Indonesia referred to the patrolling of the area by the Dutch Royal Navy vessels, the actions of the Indonesian Navy, and the activities of fishermen. Thus, with regard to Law No. 4 on Indonesian Territorial Waters, adopted on February 18, 1960, which defined the basic lines of the archipelago, Indonesia recognized that at the time it did not include the islands of Ligitan or Sipadan as points for the purpose of drawing the basic line and defining its archipelagic waters and territorial sea, but this could not be interpreted as an indication that Indonesia did not consider these islands to belong to its territory.

In support of its *effectivites*, Malaysia referred to the regulation of turtle fishing and turtle egg collection, which has been the main economic activity on the island of Sipadan for many years, and the establishment of a bird sanctuary on the island in 1933. It was also due to the fact that in the early 1960s, the colonial authorities of British North Borneo built lighthouses on the islands of Ligitan and Sipadan, which continue to be served by the relevant Malaysian authorities.

In order to consider this issue, the UN Court turned to the case law of the Permanent Court of International Justice, which in its decision on the legal status of East Greenland (Denmark *v.* Norway) in 1932 indicated that a claim to sovereignty based on a particular law or title, such as a contract of assignment rather than simply the exercise of power, involves two elements, each of which must be

[8] Okeowo D., *Statehood, Effectiveness and the Kosovo Declaration of Independence*. «Faculty of Law. Queen's University», Canada, 2008, p. 1.

[9] Official website of the UN Court available online at http://legal.un.org/icjsummaries/documents/russian/st_leg_serf1_add5.pdf (accessed on July 18, 2019).

demonstrated: the intention and willingness to act as sovereign and any actual exercise or manifestation of such power. A further circumstance that must be taken into account by any court that has to rule on a claim to sovereignty over a particular territory is the extent to which any other power claims such sovereignty[10].

The UN Court stated that for very small islands that are uninhabited or temporarily inhabited – such as Ligitan and Sipadan, which have little economic significance (at least until recently) – the *effectivites* are generally insignificant.

It was further noted that the Court could not take into account actions taken after the date of the dispute between the parties, unless such actions were a normal continuation of previous actions and were undertaken with a view to improve the legal situation of the party invoking them. Thus, the Court first analysed the *effectivites* before 1969, when the parties made competing claims concerning Ligitan and Sipadan Islands.

The Court noted that it could only consider such acts as an appropriate manifestation of power, leaving no doubt as to their particular treatment of the disputed islands. Thus, rules or administrative acts of a general nature could only be recognized as *effectivites* in respect of the Ligitan and Sipadan Islands if their provisions or their effect clearly indicated that they were relevant to those islands.

With regard to a continuous presence of the Dutch and Indonesian navies in the waters around Ligitan and Sipadan, as cited by Indonesia, it can not, in the opinion of the Court, be deduced either from the report of the commanding officer of the Dutch destroyer "Lynx", which patrolled the area in 1921, or from any other document presented by Indonesia in connection with Dutch or Indonesian naval surveillance and patrol activities that the naval authorities considered Ligitan and Sipadan and the surrounding waters to be under the sovereignty of the Netherlands or Indonesia. Finally, the Court noted that activities of individuals such as Indonesian fishermen could not be recognized as *effectivites* unless they were carried out on the basis of official regulations or under the authority of public powers. The Court concluded that the activities referred to by Indonesia did not constitute acts *a titre de souverain* reflecting intent and willingness to act in that capacity.

With regard to the *effectivites* referred to by Malaysia, the Court noted that, under the 1930 Convention the United States ceded any claim it might have made against Ligitan and Sipadan Islands, and that no other State claimed sovereignty over those islands or objected to their continued administration by the State of North Borneo at that time. Also, the activities that took place prior to the conclusion of the Convention could not be attributed to the acts *a titre de souverain*, since the United Kingdom did not claim sovereignty on behalf of the State of North Borneo over the islands outside the 3 nautical league zone at the time. However, since it took the position that the British company of North Borneo had the right to administer the islands (received from Alfred Dent and Baron von

[10] Case concerning the Legal Status of the South-Eastern Territory of Greenland *(Norway v. Denmark*) available online at http://www.worldcourts.com/pcij/eng/decisions/1932.08.03 _greenland.htm (accessed on July 18, 2019).

Overbeck, which in turn came from the Sultan of Sulu), a position which after 1907 was officially recognized by the United States, these administrative actions cannot be ignored either.

In the view of the Court, the actions referred to by Malaysia, both in its own name and as a successor state to the United Kingdom, are limited in number but varied in nature and include legislative, administrative and quasi-judicial measures. They cover a considerable period of time and represent a system that demonstrates the intention to exercise public functions over the two islands as part of the governance of a wider range of islands. Furthermore, the fact that neither Indonesia nor its predecessor, the Netherlands, had ever expressed disagreement or protest during the course of those activities could not be ignored. In this regard, the Court noted that in 1962 and 1963 the Indonesian authorities had not even reminded the authorities of the colony of North Borneo or Malaysia, after independence, that at that time lighthouses had been installed in what they considered to be Indonesian territory. Even if they considered that the lighthouses were intended only to provide safe navigation in an area of particular importance for navigation in waters outside North Borneo, such behaviour was unusual. In the light of the circumstances of the case, and in particular the evidence submitted by the parties, the Court concluded that Malaysia had title to the islands of Ligitan and Sipadan on the basis of the *effectivites* mentioned above[11].

The fact that new land has been discovered may not play a significant role in the acquisition of legal title. Although it was accepted that the discovery of land was sufficient to be considered as belonging to the opening state. M. Huber stated that the fact of the visual discovery was only sufficient in the 16th century, in the dawn of the occupation. Even the fictitious occupation subsequently required not only the fact of discovery, but also the installation on the discovered land of a corresponding emblem (which is no longer a visual discovery) and the declaration of possession[12].

4. Tacit recognition

In the practice of judicial settlement of territorial disputes, states often invoke the absence of protests by another state as a proof of their rights to a certain territory. The lack of protest has been argued by the United Kingdom in the dispute with the United States over the islands in the Gulf of Passamaquoddy, by Colombia in the border dispute with Venezuela, by Denmark in its dispute with Norway over East Greenland, and by Norway in its dispute with the United Kingdom over fishing. In many cases, courts and arbitrations attach significant importance to the factor of tacit recognition.

The duration of silence, which creates a tacit recognition, may vary. Apparently, much depends on the degree of activity of the state exploring the

[11] Official website of the UN Court available online at http://legal.un.org/icjsummaries /documents/russian/st_leg_serf1_add5.pdf (accessed on July 18, 2019).

[12] Klimenko B.M., *op. cit.*, pp. 162-163.

disputed territory. The higher this activity, the less time is needed to turn silence into recognition and, conversely, a shallow and rare activity of one state only with the full connivance of another state for a very long time can lead to the application of the concept of tacit recognition. In many cases silence over the territorial activities of a foreign state creates a presumption of tacit recognition and the longer it lasts, the more this presumption becomes a real recognition.

Since tacit recognition implies the consent of the state whose rights are affected to the order of things that has arisen, the natural condition for such consent is the knowledge of the state in question. This is the idea expressed by D. McGibon and S. Shurma. At the same time, they both refer to similar positions of the parties in the arbitration settlement of territorial disputes, in particular, to the statements of the United States of America in the disputes over the islands' ownership in the Gulf of Passamaquoddy and the Island of Palmas, as well as to the position of Great Britain in the dispute over Alaska[13].

The need for the territorial sovereign's knowledge of the violation of his right implies two elements. On the one hand, the actions of the claimant must have a certain degree of publicity, but on the other hand, it is assumed that the state itself is aware of the situation with its rights and violations.

In order to be considered as definitely known, the actions of the state must be either sufficiently visible actions or legal, reflected in official publications, such as publications of legislative or administrative acts, cartographic publications, etc. In both cases, these should be the actions of the state and its authorities, and not the actions of individuals.

The state's reference to ignorance of a manifest violation of its rights, which has led to tacit recognition, is not a sufficient argument and is not taken into account by international courts and tribunals. The positions of the United States of America and the United Kingdom in the Alaska dispute are very typical in this respect. The United Kingdom, while confirming the need to know the territorial sovereign's state of rights, argued that it had no knowledge of the actions of the United States and that its silence was apologetic because of the undeveloped and inaccessible nature of the terrain on which the dispute arose. The US claimed that its acts in respect of the disputed territory had been carried out in public and that all governments were aware of the documents published in this respect, some of which had been discussed in Congress, and the British ambassador to Washington could not have been unaware of this. The US also noted that for more than 60 years Russia, and then the US, owned and operated the territory without any objection or protest, while Britain had never exercised or attempted to exercise sovereign authority there. As we know, the dispute was resolved in favor of the US[14].

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[13] Shurma S., *op. cit*., 1971, p. 23.

[14] Кононенко В.П. *Разрешение территориальных споров Международным Судом ООН: теория и практика*: монография. Киев; Одесса: Фенікс, 2017.С. 289-290. (Kononenko V. P., *Resolution of territorial disputes by the International Court of Justice of the United Nations: theory and practice*: monograph. Kiev; Odessa: Fenix, 2017, pp. 289-290).

As D. McGibbon writes, international courts in disputes involving long-standing claims unequivocally affirm the importance of tacit recognition, although it in itself rarely constituted the sole basis for the resolution of a territorial conflict[15]. Closely related to tacit recognition is the concept of estoppel, according to which a state must be consistent and cannot deny the fact already recognized.

When resolving territorial disputes there is a need to give a legal assessment of the facts that took place in the distant past. From the most ancient sources of the dispute, which are taken into account, to the moment of dispute resolution in essence often pass centuries. This raises the question: in the light of which law should the facts of the past be evaluated?

It is impossible to demand that states, for example, in the 15th century, act on the basis of the international law of the 21st century. Consequently, the relations of states in general and territorial issues in particular, in the 15th century should be considered in the light of the relevant law. Accordingly, the legitimacy of the acquisition of territory in the 15th century should be assessed by the law of this century.

In the context of the need to assess the past, mention should be made of the provision of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 1970, which prohibits the alteration of the ownership of a territory by the threat or use of force, but at the same time stipulates that this should not be interpreted as invalidating agreements concluded prior to the adoption of the Charter of the United Nations. Consequently, the law of the day should be taken into account when assessing the change in ownership of a territory, for example, in the Middle Ages. But this does not mean, of course, that the territorial changes of the past must remain the same. Moreover, in the case of the land and maritime boundary between Cameroon and Nigeria (*Cameroon v. Nigeria*) judgment of October 10, 2002, the UN Court of Justice concluded that any Nigerian *effectivites* should be regarded with respect to their legal effects as *contra legem.* It necessarily follows that Nigeria's claim based on the theory of historical consolidation of title and on the acquiescence of Cameroon must be assessed by reference to this initial determination of the Court. During the oral pleadings Cameroon's assertion that Nigerian *effectivites* were *contra legem* was dismissed by Nigeria as "completely question-begging and circular". The Court notes, however, that now that it has made its findings that the frontier in Lake Chad was delimited long before the work of the LCBC (Lake Chad Basin Commission) began, it necessarily follows that any Nigerian *effectivites* are indeed to be evaluated for their legal consequences as acts *contra legem*[16].

The theory of historical retention of title is highly contentious and cannot replace the means of acquisition established in international law, which take into

[15] MacGibbon I. C., *The Scope of Acquiescence in International Law*, «British Year Book of International Law», 1954, Vol. 31, p. 154.

[16] Official website of the UN Court available online at https://www.icj-cij.org/files/summaries/summaries-1997-2002-ru.pdf (accessed on July 18, 2019).

account many important factual and legal aspects. This conclusion should be understood in such a way that the seizure of territory, even if legally contrary to international law in force at the time of the examination of the case, had to meet the requirements for such actions to be taken in the appropriate time period.

On May 23, 2008, the International Court of Justice handed down its judgment in the case concerning sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (*Malaysia v. Singapore*). The Court noted that any transfer of sovereignty could be effected by agreement between the two states concerned. Such an arrangement may take the form of a treaty or may be implicit and result from the conduct of the parties. In this matter, international law does not prescribe any particular form, but emphasizes the intentions of the parties. Sovereignty over a territory may, in some circumstances, result from the failure of the possessor state to respond to manifestations of territorial sovereignty on the part of another state. Failure to respond may mean acquiescence. The Court considered that Singapore's actions, such as the investigation of shipwrecks within the territorial waters of the island and permits granted or not granted by Singapore to Malay officials to explore the waters around the island, should be regarded as *a titre de souverain* conduct[17]. The Court justifies its conclusion by the conduct of Singapore and its predecessors *a titre de souverain* in combination with the conduct of Malaysia and its predecessors, including their lack of response to the conduct of Singapore and its predecessors.

5. Acquisitive prescription is the second legitimate way of acquiring territory

Like the original occupation, the acquisition of territory on the basis of a long history of possession also has as a prerequisite – the prolonged and effective occupation of the territory. But this type of acquisition differs from the original occupation because it relates to a territory that was still a part of the state territory of the other state, or if there was a dispute between the two states over the ownership of the territory by one of them.

Such occupations do not justify the immediate acquisition of territory, since effective domination can only give rise to rights to the extent and only to the extent that international law links these legal consequences to it. The possession of a foreign or disputed territory without a treaty is legal and with the legal consequences only when there is an inviolable, uninterrupted and undisputed exercise of domination, as noted in the U.S. - Mexican arbitral award in the El Chamizal Case of June 15, 1911[18].

For this reason, the British declaration on the annexation of the Boer Republic and the Italian declaration on the annexation of Tripolitania and

[17] *Idem.*

[18] Фердросс А. *Международное право.* М.: Издательство иностранная литература, 1959, С. 258 (Ferdross A., *International Law*, Publishing house foreign literature, Moscow, 1959, p. 258).

Abyssinia, published by the annexing states before the end of hostilities, were also invalid under international law. The same principle was established by the judgment of the International Military Tribunal in Nuremberg on October 1, 1946. In particular, it was argued before the Tribunal that Austria's annexation was justified by the strong desire for an alliance between Austria and Germany, which had been expressed in many quarters. It was also argued that those peoples had many similarities that made such an alliance desirable and as a result, the goal had been achieved without bloodshed. The Tribunal concluded that these allegations, even if correct, were in fact irrelevant because the facts clearly proved that the methods used to achieve this goal were aggressive. The decisive factor was Germany's military might, which was ready to take effect if it met any resistance. Moreover, none of these considerations, as it is evident from the Gossbach report about the meeting on November 5, 1937, were the motive for Hitler's actions. On the contrary, this document highlights the military advantage that Germany gains from Austria's annexation[19]. Thus, after the occupation of Austria by the German army on March 12 and the annexation of Austria on March 13, Alfred Jodl made the following note in his diary: "After the annexation of Austria, Hitler states that there is no need to rush in resolving the Czech issue, as Austria must first be digested. However, preparations for the Green Plan (i.e., the plan against Czechoslovakia) must be vigorously pursued; they must be prepared anew to take into account the changed strategic positions resulting from Austria's annexation"[20]. Thus, any attempt to seize the territory of another state is not recognized as legitimate[21].

6. The legality of annexation

After the events of 2014 in the south and east of Ukraine, the issues of annexation and occupation, as well as state continuity, have become particularly important. The fact that the territory of one state once belonged to another state (before the adoption of the UN Charter) can in no way serve as a basis for claims for its return at the present time. This would be contrary to such fundamental principles as territorial integrity and inviolability of state borders, which provide, among other things, that changes in the territories of states and their borders can only take place in accordance with international law (conclusion of an international treaty, uniting and separation of states, etc.). Otherwise, the political map of the

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[19] *Нюрнбергский процесс. Сборник материалов.* В 2-х т. Т. 2: Приговор международного военного трибунала. М.: Юридическая литература, 1954. С. 966. (*Nuremberg trials. Collection of materials*. In 2 vols. T. 2: *Sentence of an international military tribuna*l, Legal literature, Moscow, 1954, p. 966).

[20] *Idem*, C. 967.

[21] Філяніна Л.А. *Сучасні реалії міжнародно-правових засобів вирішення міжнародних територіальних спорів.* «Науковий вісник Дніпропетровського державного університету внутрішніх справ». 2015. № 3. С. 92 (Filanina L. A., *Modern realities of international legal means of resolving international territorial disputes*, „Scientific Bulletin of Dnipropetrovsk State University of Internal Affairs", 2015, no. 3, p. 92).

world would be constantly changing and extremely unstable. On this basis Russia, as the successor to the Russian Empire, could, for example, require the inclusion in its territory of Poland and Finland, which in the past were part of the Empire. Such a requirement cannot, of course, be recognized as legitimate in the light of the norms and principles of the contemporary international law[22].

It is well known that in 1919 the Charter of the League of Nations prohibited the forcible seizure of the territory of another state and its annexation[23]. What unfortunately had not resulted in the final establishment of the principle of territorial integrity of states, as the adoption of the Charter of the League of Nations took place in the period of recognition of territorial changes in Europe and was often accompanied by a lack of mutual agreement among the actors[24].

N.V. Zakharova argues that the aggressor state does not have any rights as a successor state, its actions aimed at appropriation of the rights to the occupied territory and any rights of the state to which the territory belongs are null and void in respect of the aggressor state[25].

In the judgment of October 10, 2002 on the land and maritime boundary between Cameroon and Nigeria (*Cameroon v. Nigeria*), the Court of Justice of the United Nations, referring to the judgment on the boundary dispute (*Burkina Faso v. Republic of Mali*), noted: "Where the act does not correspond to the law, where the territory which is the subject of the dispute is effectively administered by a State other than the one possessing the legal title, preference should be given to the holder of the title. In the event that the effectivity does not coexist with any legal title, it must invariably be taken into consideration"[26].

In the last century, the principle of self-determination of peoples played the most significant role as the legal basis for territorial changes. The implementation of this principle has led to major territorial changes, as a result of which many new states in Europe, Asia, Africa and Latin America have emerged on the political map of the world. M.E. Cherkes draws attention to the fact that the initial development has gradually been replaced by a derivative acquisition, when the

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[22] Кононенко В.П. *Вирішення територіальних спорів Міжнародним Судом ООН: теорія і практика:* монографія. Київ-Одеса: «Фенікс», 2018. С. 156-157 (Kononenko V.P., *Territorial Dispute Resolution by the International Court of Justice: Theory and Practice*, Monograph, Phoenix, Kyiv-Odessa, 2018, pp. 156-157).

[23] The Covenant of the League of Nations (Including Amendments adopted to December, 1924). Yale Law School. Available online at http://avalon.law.yale.edu/20th_century/leagcov.asp (accessed on July 18, 2019).

[24] Задорожній О.В. *Порушення агресивною війною Російської Федерації проти України основних принципів міжнародного права:* монографія. К.: "Видавництво «К. І. С.»", 2015. С. 129. (Zadorozhny O.V., *Violation of the aggressive war of the Russian Federation against Ukraine basic principles of international law*: a monograph. K.: Publishing House K.I.P., 2015, p. 129).

[25] Захарова Н.В. *Правопреемство государств*. М.: Международные отношения, 1973. С. 9-10 (Zakharova N.V., *Succession of States*, International Relations, Moscow, 1973, pp. 9-10).

[26] Official website of the UN Court available online at https://www.icj-cij.org/files/summaries/summaries-1997-2002-ru.pdf (accessed on July 18, 2019).

territory of one state is transferred to another on a contractual or non-contractual basis[27].

7. Conclusion

In the contemporary international law, the only legitimate way to acquire territory is to recognize treaty. We do not consider the possible emergence of *terra nullius* as a result of geological processes. Peaceful settlement of territorial disputes contributes to international security.

The retention of territory acquired in any way in the past against the will of its population would be contrary to the modern principle of self-determination of peoples. The legitimacy of such actions should be assessed in the context of the law of the day.

The fact that the detention of the territory took place against the will of its population is evidenced by armed resistance to such detention, the establishment of a government in exile (if the entire territory of the state is occupied), official protests, etc. Other options include the implementation of appropriate diplomatic counteraction on the part of the state authorities remaining in the unoccupied territory, the initiation of judicial and arbitration procedures. Certainly, all these actions should correspond to the realities of a particular historical period, and the level of development of relevant international law. Here of importance will be historical documents, chronicles, perhaps even the cultural heritage of the people, confirming that the armed struggle that took place in the distant past was characterized by the fact that it was (1) popular (and not attempts of individual contenders to seize power over a certain territory or just small rebellions caused by dissatisfaction with the power), (2) due to the rejection of the illegal retention of a certain territory by the occupier, and was not, for example, economic in nature. Political and diplomatic activities do not necessarily have to achieve the necessary effect, but they must be aimed at achieving it without reasonable doubt. If the disputed territory is not actually administered by the state with title, the International Court of Justice has called for a preference for the owner of the disputed territory.

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