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VALIDITY OF INTERNATIONAL TREATIES AS A GUARANTEE OF THE FULFILLMENT OF PRINCIPLES AND NORMS OF INTERNATIONAL LAW

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CONCEPTUAL MILESTONES OF THE RESEARCH

Actuality and importance of the topic proposed for research: As a legal operation (*negotium iuris*), a "treaty" is generally defined as an agreement concluded between two or more states, which determines their mutual rights and obligations and establishes norms of conduct that they undertake to respect. But a treaty can also be defined as an instrument (*instrumentum iuris*), in which an agreement of will between states is incorporated.

In order for an international treaty to be valid and therefore produce legal effects, it must meet the following conditions: subjects possessing international legal capacity (states and international organizations), lawful object, uncorrupted will, and the treaty itself is not in conflict with a *jus cogens* norm. In the same vein, nullity of the treaty can be absolute or relative.

International treaties are the foundation of international cooperation. International treaties progressively codify international law and maintain the international legal order – the opinion in question is a unanimous one in specialized legal doctrine. However, while analyzing the international practice of the conduct of states, it would seem that the authority of international treaties is of a theoretical nature, a scientific concept occasionally detached from the realities on the ground, an aspiration of the community of internationalist jurists interpreted, counterargued, reiterated or ignored depending on the promoted political interest. The quintessential question regarding the practical nature of a "guarantee" of international treaties (in the direct sense of the word) is of continuous relevance both for the community of diplomats, legal advisors and lawyers who present arguments at the highest legal-political forums (the UN General Assembly, the Council of Security, the International Court of Justice, etc.) in order to demonstrate the violation or non-violation of an international treaty and, as a consequence, of many other principles and norms of international law, as well as for the academic community that gives scientific opinions to these facts.

Therefore, in order to properly research the matter in question, a deep historical incursion into the works of the International Law Commission of codifying the first multilateral treaty of the United Nations - the Vienna Convention on the Law of Treaties (1969) was imperative. Returning to the initial reasoning and arguments of ILC members and other UN member states in the negotiation process of the text of the Vienna Convention constitutes an essential analysis benchmark in the evaluation of the coherence of the states in their subsequent conduct. In the same sense, it was of great importance to determine the role of good faith in researching the validity of international treaties and to analyze the provisions of the UN General Assembly resolution A/RES/53/101 on the principles and guidelines for international negotiations, which expressly establishes the principle of negotiation in good faith and the fact that the purpose and object of all negotiations must be fully compatible with the principles and norms of international law, including the provisions of the UN Charter. In the period after the conclusion of a bilateral or multilateral international treaty, good faith in the execution of the obligations of the parties is ensured, implicitly, by the principle *pacta sunt servanda*.

In addition, the minutes of the codification works or the comments on the draft articles later adopted as Conventions are benchmarks for the interpretation of international treaties – both for the states that initially participated in the negotiations of a treaty, and for those that subsequently acceded. However, despite all these reasonings, some countries commit violations of

international law and violations of international treaties to which they are party (valid, in force and having legal effects) – thus challenging their authority. The thesis elucidates and analyzes in this regard several current practical cases: non-execution by the Permanent Members of the UN Security Council of the decisions (orders and judgements) of the UN International Court of Justice; the Israeli-Palestinian conflict and the legal status of Jerusalem; the illegal annexation of the Crimean Peninsula; and the illegal stationing of foreign military troops on the territory of the Republic of Moldova.

Description of the situation in the field of research and identification of the research topic: The issue of analyzing and establishing whether a valid concluded treaty guarantees (in the direct sense of the word) the realization of the principles and norms of international law, has not been researched *per-se* in the national or international doctrine. This resulted from following the practice of the legal-diplomatic activity at the global level (UN) in cases and circumstances of violations of international law. The research topic was organically outlined when the cases of violation of the provisions of international treaties by the states-parties themselves were observed (for example, the case of violation of the Agreement on the creation of the Commonwealth of Independent States, dated August 12, 1991, the Declaration of Alma- Ata of 1991, and the Budapest Memorandum of 1994, by the Russian Federation through the illegal annexation of Crimea). In order to evaluate the charater of a guarantee of valid international treaties, the issue was approached from 3 lenses: I. In-depth research of the notions of "treaty", "conditions of validity", "general principles", "fundamental principles" and " *jus cogens* norms "; II. Analysis of all circumstances and conditions that may affect the validity of international treaties; III. Elucidation of the practice of violating the provisions of international treaties and legally qualifying such acts.

For each of these 3 research segments, various doctrinal sources were used, especially international (due to the specific character of this scientific work), as follows: I. In-depth research of the notions of "treaty", "conditions of validity", "general principles", "fundamental principles" and "*jus cogens* norms": Preda-Mătăsaru A. (Romania); Popescu D. and Năstase A. (Romania); Mazilu D. (Romania); Ion M. Anghel (Romania); Ploșteanu N. (Romania); Fawcett J. (United States of America); Daillier P., Forteau M., Pallet A (France); Basdevant J. (France); Widdows K. (New Zealand); Hollis Duncan B. (Great Britain); Viliger M. E (Netherlands); B. И. Kuznetsov, B. R. Тузмухамедов (Russian Federation); Mugerwa J.N. (Uganda); Frowein A. J. (Germany); Cohen M.G. (Argentina), etc.

II. Analysis of all the circumstances and conditions that can affect the validity of international treaties: Osmochescu N., Balan O., Suceveanu N., Sârcu D., Dorul O., Arhiliuc V. and Gamurari V. (Republic of Moldova); Martîniuc C. (Republic of Moldova); Delbez L. (France); Tunkin G.I. (The Russian Federation); Carillo-Salcedo J-A (Spain); Schröder M. (Germany); Dörr O., Schmalenbach K. (Netherlands); Jiménez de Arechaga E. (Uruguay); Klabbers J. (Finland); Koskenniemi M. (Finland); Aust A. (Great Britain); Elias T. O. (Nigeria); O'Connor John F. (United States of America); Orakhelashvili A. (Georgia); Bedjaoui M. (Algeria); Wyler É. (Switzerland), Christos L. Rozakis (Greece), Vismara G. (Italy), etc.

III. Elucidation of the practice of violating the provisions of international treaties and legally qualifying such acts: Ripert G. (France); Cassel D. (France), Nolte G. (Germany); Wehberg H. (Germany); Anzilotti D. (Italy); Haraszti G. (Hungary); Lukashuk I.I. (The Russian Federation);

Al-Qahtani M.M. (Qatar); Goodrich L. M. (United States of America); Heather L. Jones (Canada); Schulte C. (Spain); Shabtai R. (Israel); Rustel Silvestre J. Martha (Netherlands); Lagerwall A. (Belgium); Subtelny O. (Ukraine); Yekelchyk S. (Ukraine); Yue H. (China), Wydra D. (Austria), Juan Francisco Escudero Espinosa (Spain), etc.

The works of these scholars represent the theoretical basis of the thesis and the starting point in the in-depth research of the role of international treaties in contemporary legal-political conjunctures. This paper comes to fill a void in international law research, highlighting trends and aspects of the practice of the international community.

The purpose and objectives of the thesis: The purpose of the thesis lies in determining the theoretical-practical authority of international treaties, and evaluating the capacity of treaties to reconfirm and realize general and fundamental principles of international law, as well as *jus cogens* norms, in the context of the contemporary architecture of geopolitical relations between states. In this sense, in order to achieve the goal pursued, the following objectives were drawn: I. The scientific, normative and practical analysis of the notions of "international treaty", "validity", "general principles", "fundamental principles" and "*jus cogens* norms "; II. The in-depth study of the validity of international treaties through the lens of codification works of the Vienna Convention on the Law of Treaties (art. 46 – 52), the historical and contemporary practice of concluding unequal treaties, the evolution of the obligation to register international treaties, and the hierarchical organization of international treaties - art. 103 of the UN Charter; III. The study of contemporary international practice regarding the violation of international treaties.

The methodology of the scientific research: To achieve the proposed goal and the outlined objectives, a comprehensive scientific methodological basis was used: the logical method, the comparative method, of systemic-structural and functional analysis, technical-legal, the historical method, the study of documents, the demonstration of synergies between concepts and notions, identifying gaps, etc.

The research carried out is based on the study of doctrine, bilateral and multilateral international treaties, United Nations resolutions, national and foreign legislation, the practice of the Court of Arbitration, the Permanent Court of International Justice of the League of Nations and the International Court of Justice of the Nations, including the practice of some main UN bodies – the General Assembly and the Security Council. At the same time, the research is based on the in-depth analysis of the codification works of the most important conference in the field of international treaties - the United Nations Conference on the Law of Treaties in Vienna (1968 - 1969), which ended with the adoption of the Vienna Convention on the Law of Treaties - the first multilateral UN treaty and the first product of the International Law Commission.

When conducting the study, determining the hierarchy of international law norms, the place and role of international treaties, served as a landmark that set the tone for all subsequent analyses. The exact delimitation of general principles, fundamental principles and *jus cogens* norms contributed to the outline of organic legal synergies between international treaties and those, confirming the imperative of good faith compliance with the treaty obligations.

A particular emphasis was placed on the multi-aspect analysis of the validity of international treaties: research on the codification of the four vices of consent and the cases of their invocation (error, fraud, corruption of a state representative and coercion); evaluating the consequences of expressing consent to be bound by a treaty in violation of the provisions of national legislation, and the lack of authorization of a representative to express the state's consent to be bound by a treaty, on the immediate validity of the treaty itself; the practice of concluding unequal treaties and contemporary types of such treaties; the evolution of the implications of the obligation to register international treaties at the United Nations Secretariat on their validity; and the evaluation of the validity of international treaties through the lens of the Constitutional nature of the United Nations Charter - art. 103.

Last but not least, the research also reffers to some official press releases of the United Nations that exposed both the results of major diplomatic events that took place at the level of the Organization, in terms of international law disputes between states, as well as the positions expressed by states directly involved in conflicts or by third states in the light of the collective obligation to act and not to legitimize violations of international law (and of international treaties that refer to particular cases) through inaction, according to the fundamental concept of multilateralism *qui tacet consentit* (who is silent consents). Media sources that refer to major international events, other than the above-mentioned communiqués, were consulted in an infirm proportion so as not to disturb the scientific character of the work.

Scientific novelty and originality: The thesis has a deep character of scientific novelty, both for the national and the international community of practitioners and researchers in the field of public international law, and in particular in the field of treaty law and the peaceful settlement of disputes (through the mechanisms of the UN Charter, Chapter VI). It comprehensively examines the work of the Conference on the Codification of the Vienna Convention on the Law of Treaties, international case law (from the Permanent Court of International Justice, 1920, to the most recent cases of the International Court of Justice) as well as the practice of the highest fora of political-legal cooperation between states (the UN General Assembly and the UN Security Council), to evaluate objectively and to establish the existence of a guarantee character of international treaties, valid and in force, for the fulfillment of principles (general and fundamental) of international law and *jus cogens* norms. This doctoral research brings to light numerous violations of international treaties and the chain effects on the architecture of international law. Respectively, in the sense of strengthening the authority of international treaties, conclusions and recommendations were formulated in order to amend art. 94 of the UN Charter (which refers to the obligation of states to respect the decisions (orders and judgments) of the International Court of Justice, and their right to address the UN Security Council in order to enforce the execution of a decision of the International Court of Justice).

The theoretical significance of the thesis and its applicative value: resides in (I) updating the understanding regarding the definition of international treaties through the lens of the most recent practice of the UN International Court of Justice; (II) assessing the impact of form and content conditions on the validity of international treaties; (III) conceptualizing the hierarchy of international law norms and evaluating the existence or non-existence of the constitutional character of the UN Charter; (IV) the systematization of theoretical and practical approaches regarding the impact of vices of consent on the validity of international treaties; (V) tracing new

perspectives regarding the role of international treaties in the contemporary juridical-political conjuncture; (VI) conferring legal opinions on violations and reconfirming the fundamental theoretical understandings of international law. Thus, this scientific paper contributes to the unification of the understanding of the gaps in upholding the principle *pacta sunt servanda bona fide* in the sense of completing those through relevant amendments (relating to the limitation of the right of veto at the level of the UN Security Council), to legally framing the actions and inactions of certain states, and to improving the architecture of the United Nations Charter in order to strengthen its four fundamental pillars – international peace and security; human rights; the authority of legal norms; and development.

The main scientific results submitted for defense: Revision of the structural definition of international treaties in the light of the most recent jurisprudence of the International Court of Justice (Qatar v. Bahrain); Introduction of a clear doctrinal differentiation between the general principles of international law, the fundamental principles of international law, and the *jus cogens* norms; Elucidation of the history of the codification of vices of consent in the process of conclusion of international treaties (error, fraud, corruption of a representative of a State, coercion – of a representative of a State and of a State) and of the existence or non-existence of practical cases of their invocation; Determining the lack of vitiation of consent in the case of unequal treaties; Demonstrating the lack of the constitutional character of the UN Charter; Identifying the means of strengthening the authority of international treaties; Evaluating if international treaties possess a "guarantee" character in the current legal-political conjunctures at the global level.

Implementation of the scientific results: The obtained scientific results are to be applied in the process of in-depth training in the field of international law of students of law faculties in higher education institutions; in the work of the community of diplomats, legal advisers and government agents who elaborate arguments at the highest legal-political forums (the UN General Assembly, the Security Council, the International Court of Justice, etc.) in order to demonstrate the validity or nullity, violation or non-violation to an international treaty (and consequently of principles and norms of international law); as well as in the workings of the academic community that give scientific opinions on cases of violations of international law.

Approval of scientific results: The results obtained from the study and research carried out were presented and approved in several scientific forums, as follows: International Scientific Conference in Kyiv, Ukraine, February 23rd, 2017; International Scientific Conference in Kyiv, Ukraine, April 13th, 2017; The national scientific conference with international participation of the Moldova State University "Integration through research and innovation", Chisinau, November 9-10, 2017; The national scientific conference with international participation of the Moldova State University "Integration through research and innovation", Chisinau, November 8-9, 2018. At the same time, the results obtained in this doctoral thesis were published in numerous scientific journals/publications, including type B ones (among which the Journal of the National Institute of Justice, the Studia Universitatis Journal, etc.).

During the doctoral research, in correlation with the issue of this scientific work, the monograph entitled "The Impact of International Organizations on the Development of Contemporary International Law" was published, in co-authorship with the undersigned's scientific supervisor - Prof. Nicolae Osmochescu (Chisinau, 2019, 194 basic text pages). The monograph is reviewed

by Vitalie Gamurari (Doctor of Law, University Professor, Director of the Doctoral School of Legal Sciences of the International Free University of Moldova) and Carolina Ciugureanu-Mihăiluță (Doctor of Law, University Professorr, Academy of Economic Studies of Moldova).

In the same regard, in the sense of advancing the research and its results, the undersigned was elected in 2018 as a participant of the United Nations International Law Fellowship Programme, progressing the doctoral research on the the charater of a "guarantee" of international treaties at the International Law Academy and the Peace palace Library (between 25 June and 4 August 2018).

Publications on the topic of the thesis (only the number is indicated): 11 scientific scientific pblications.

The volume and structure of the thesis: introduction, three chapters, general conclusions and recommendations, bibliography of 396 titles, 4 annexes, 225 pages of basic text

Keywords: treaty, UN Charter, UN General Assembly, International Law Commission, UN Security Council, International Court of Justice, validity, general principles, fundamental principles, *jus cogens*, vices of consent, unequal treaties, treaty violations.

CONTENT OF THE THESIS

As it was previously highlighted, the content of the doctoral thesis was divided into 3 chapters: I. Theoretical, normative and jurisprudential reflections in researching the validity of international treaties; II. Multi-aspect analysis of the validity of international treaties; and III. The validity of international treaties as a gurantee of the fulfillment of principles and norms of international law? Critical views of international practice.

Thus, with reference to Chapter no. I **Theoretical, normative and jurisprudential reflections in researching the validity of international treaties**, one of the initial scientific concerns of the doctoral research consisted in defining the very notion of "international treaty" and proving the error of the explanatory rigidity illustrated in some doctrinal sources of public international law, as very often the international treaty is identified as a written agreement between subjects of international law (particularly states and international organizations), generating obligations between them, which follows the structural algorithm: the preamble, the numbered articles, the eschatocol (final clauses) and, where appropriate, the annexes. Thus, following a broad and in-depth analysis of the historical-evolutionary legal context, of the work of the International Law Commission during the codification of the Vienna Convention on International Treaties (from its first session in 1949 until the final drafting of the Draft Articles on The Law of Treaties of 1966) and the explanations provided by the ILC members regarding the proposed articles, as well as the provisions of some basic international treaties (such as the Vienna Convention on the Succession of States to Treaties (1978), the Vienna Convention on The Law of Treaties between States and International Organizations or between International Organizations (1986), etc.), and including the practice of the International Court of Justice (a particularly relevant case being the Qatar vs. Bahrain dispute, a conflict that referred to the sovereignty over the Hawar Islands, the sovereignty rights over the Dibal and Qit'at Jaradah breakwaters and the delimitation of their maritime zones, with reference to which the International Court of Justice, in its judgment of July 1st, 1994, decided that both the Minutes of inter-state consultations between Qatar and Bahrain on the subject of the dispute, as well as the exchange of identical letters addressed by the two states to the King of Saudi Arabia which mediated the dispute between Qatar and Bahrain - constitute an international agreement that creates rights and obligations for the parties), it was identified that the notion of "international treaty" has a much more complex character, menaing any voluntary agreement of the parties - subjects of international law, without pre-establishing a specific form of the document, regarding the generation of mutual legal obligations. Whether or not an international instrument is a treaty is established through the lens of the following criterias: its provisions, the circumstances in which the agreement was concluded and the intention of the parties to generate legal obligations (*animus contrahendi* or *opinio juris*).

Additionally, it is concluded at the beginning of this chapter that the well-known definition of the international treaty, enshrined in art. 2 par. 1 of the 1969 Convention, is not universal - as the International Law Commission itself explains in its Commentary on its 1966 Draft Articles on the Law of Treaties (later to become, in its entirety, the Vienna Convention on the Law of Treaties), as it appears from the attempts at additional codifications (the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, adopted on March 21, 1986 - which normatively establishes the possibility of concluding international treaties not only by states), and as reconfirms the jurisprudence of the

International Court of Justice. The algorithm "(i) international agreement (ii) concluded in writing (iii) between states and (iv) governed by international law, (v) whether recorded in an instrument or in two or more related instruments and (vi) whatever its particular name" is one generally agreed upon by the states, but brief, unable to fully reflect the entire spectrum of norms that govern the law of treaties – such as the case of unwritten international agreements. Therefore, the decision of some states (such as the Republic of Moldova) to limit their national normative definition of the notion of "treaty" to "written agreement" represents a limitation of the state from the possibility of participating in the proces of creation of the practices and norms of international law, and at the same time, it reveals an incomplete understanding, of these states, of the full context of treaty law, a fact that could in the future jeopardize their ability to engage in any other international legal relations other than those established in writing.

Consecutively, once the act whose validity constitutes the object of the present scientific research has been identified – the international treaty, it was important to study the two essential requirements in order for the latter to be able to produce legal effects: first of all, each of the fundamental elements of the treaty (subjects, the will and the object) must meet certain conditions for the concluded treaty to be valid, and secondly the treaty itself must not be in conflict with an imperative norm of general international law (*jus cogens*).

Consequently, the ability of states, international organizations, nations fighting for national liberation, the Holy See and the Vatican to conclude international treaties was analyzed, the importance of a consent which is not vitiated - as an essential part of the principle of sovereign equality of states was elucidated, and the conditionality with respect to the conduct of the parties (the object of the international treaty) as being lawful and achievable was explained. In the same regard, the term "norm *jus cogens*" was defined, and the functional differences between *jus cogens* and *erga omnes* obligations were presented (in the sense of an example of international criminal law: international crimes that rise to the level of *jus cogens* (for example, the prohibition of genocide, the prohibition of the crime of aggression, the prohibition of torture, etc.) generates/creates *erga omnes* obligations that are non-derogable, for example: the obligation to prosecute or extradite, the inapplicability of any immunities - including for heads of states, the inapplicability of the argument of exoneration from liability "obedience to the orders of superiors" (except for the mitigation of the sentence), the universal application of these obligations whether in time of peace or war, the non-derogation from them during the "state of emergency" declared on the territory of a state, and the existence of universal jurisdiction for the perpetrators of crimes of international criminal law).

The subchapter dedicated strictly to the study of the conditions for the validity of international treaties also brought to light important doctrinal research regarding the legal consequences of relative nullity (the consent of a state or a relatively invalid treaty produces legal effects and is legally binding if they are not declared null by a party to agreement that legally exercises its right to exempt itself from the obligations set forth in the respective agreement) and absolute nullity (the treaty or state consent is void in its entirety from the beginning and has no legal force) of international treaties. Although the Vienna Convention on the Law of Treaties does not explicitly involve the notions of relative and absolute nullity, the wording of the articles in Section 2 proves to us that the differentiation between the two forms of invalidity exists. Thus, the grounds

of relative nullity are illustrated in articles 46 – 50, and those of absolute nullity are enshrined in articles 51 – 53.

Finally, following the elucidation of the meaning of the notion of "treaty" and the study of its validity conditions, it was imperative to establish a hierarchy of international law norms in order to advance our research and study their impact on the validity of international treaties. In this sense, the notions of "principles general principles of international law", "fundamental principles of international law or the 10 principles of international law" and "jus cogens norms". Therefore, through scholarly writings, through the workings of the International Law Commission, through international jurisprudence and important international documents (such as the 1970 Declaration and the Helskinki Final Act), the notions of " general principles of international law", "fundamental principles of international law or the 10 principles of international law" and "*jus cogens* norms" were scientifically authenticated.

In explaining the term "*general principle of international law*", the Permanent Court of International Justice established in 1928 that it is a principle of international law that the breach of an undertaking entails the obligation of reparation in an appropriate form. The general principles are sources of international law, this fact is confirmed both by art. 38 of the Statute of the Permanent Court of International Justice (since 1920), as well as art. 38 of the International Court of Justice (since 1945). General principles of law are not always codified in writing at the international level. They can arise from the internal law of the states (derived from the great national law systems, such as continental, Anglo-Saxon, etc.), which is why they are recognized by a multitude of states called "civilized nations" - these are principles without which no legal system can function. An eloquent example is the principle *pacta sunt servanda* – as to say that commitments generating obligations do not obligate is nonsense, another example is the principle *pacta tertiis nec nocent nec prosunt* (the treaty binds only the parties to it) or *res judicata pro veritate habetur* ("the matter judged is considered to express the truth", an expression used to denote the presumption of truth of a definitive decision; this presumption can only be disproved by annulling the decision through an appeal), etc. The existence of general principles of international law is expressly indicated in writing, in an exhaustive list, and can be reconfirmed not only by their tacit nature at the international level (which is based on the historical development practice of states), but also by international jurisprudence.

The *Fundamental Principles of International Law or the 10 Principles of International Law* are considered to be a set of principles of an imperative nature. Due to the fact that the fundamental principles of public international law are intended to defend the most important values of international society, of humanity, they belong to the norms with *jus cogens* value, which are mandatory norms for the subjects of international law, norms from which no derogation can be made. The Fundamental Principles of International Law have the following characteristics: they have an imperative character (any other rules that are adopted to regulate the relations between the subjects of international law must not contradict the fundamental principles), they serve as basis for the for the entire system of international law, they have a general content (making them applicable to a wide spectrum of fields of international relations, for instancs the principle *pacta sunt servanda* does not apply soley to the law of treaties or agreements concluded either in writing or verbally, between subjects of international law which have the capacity to do so, but

also in cases of unilateral acts by which a subject of international law, for instance a state, assumes unilateral obligations), they have a universal vocation (norms-principles obtain a fundamental value only to the extent that they address all subjects of international law and all relations between them - even if they are established at the regional or bilateral level), they defend important values (for participants in international legal relations, for the international community and in general for humanity, and amongst these values one can highlight: international peace and security, cooperation between states, etc.), all fundamental principles have an equal legal value (among them hierarchies are not allowed and they are not mutually exclusive, for instance does not present legal validity the historical example of the illegal annexation, in 2014, by the Russian Federation of the Crimean Peninsula following the local referendum on the status of Crimea - in this case the Russian Federation invoked the principle of the right of peoples to self-determination, an argument which was not accepted by the international community as the actions of the Russian Federation towards Ukraine violate a multitude of fundamental principles, among which: *pacta sunt servanda* (a series of bilateral and multilateral treaties being violated), sovereign equality of states and the principle of non use of force), the fundamental principles have a dynamic character (the totality of the fundamental principles is in continuous evolution, both from the point of view of their content and the emergence of new principles, for instance the principle of respect for human rights was not expressly enshrined in the UN Charter from 1945 as the great powers of that time had internal issues in this area (in the USA, for example, racial segregation still existed, France and England were colonial powers, the Soviet gulag still existed), this being later enshrined in the Universal Declaration of Human Rights from 1948), the fundamental principles have a stable character (a fact that contributes to maintaining the balance of the existence of the international community) and the fundamental principles are interdependent (any principle is interpreted, understood and applied only in the context of the entire system of fundamental principles of public international law, in a explanatory example the International Court of Justice ruled in 1986, in the case of Nicaragua vs. the United States of America, on the close connection between the principle of non-recourse to force, that of non-interference in the internal affairs of the state and the principle of the sovereign equality of states).

The appearance of the fundamental principles of international law is diverse. Some existed a priori by customary means and were subsequently codified in treaties and other international acts: the UN Charter (1945), the Declaration on Principles of International Law concerning Friendly Relations and Cooperation between States in accordance with the Charter of the United Nations (1970), the Final Act of Helsinki (1975), Charter of Paris for a New Europe (1990).

It is important to underline the fact that although the 10 principles (the principle of the equality of peoples and their right to self-determination, the principle of international cooperation, the principle of the sovereign equality of states, the principle of *pacta sunt servanda*, the principle of peaceful settlement of international disputes, the principle of non-recurrence to the threat of force or the use of force, in other words the principle of non-aggression, the principle of non-interference in the internal affairs of the state, the principle of the inviolability of state borders, the principle of territorial integrity of states and the principle of respect for human rights and fundamental freedoms) are *jus norms cogens*, *jus cogens norms* are not limited to the fundamental principles - having a much broader character.

Jus cogens norms are ordinarily perceived as a mechanism for invalidating conventional norms contrary to them or even as a mechanism for granting hierarchical priority to norms of general international law that protect the interests or values of the international community as a whole. These "superior" norms have a plurality of legal effects: they nullify contrary legal norms, lead to the nullity or inapplicability of a domestic law, exclude the jurisdictional immunity of the state and on the other hand aggravate the regime of international responsibility for illegal international acts.

Currently, there is no exhaustive list of imperative norms, but according to the findings of the UN International Law Commission, the most frequently cited "candidates" for the qualifier *jus cogens* norm are: (a) the prohibition of the aggressive use of force, (b) the right to legitimate defence, (c) the prohibition of genocide, (d) the prohibition of torture, (e) the prohibition of crimes against humanity, (f) the prohibition of slavery and the slave trade, (g) the prohibition of piracy, (h) the prohibition of racial discrimination and apartheid (i) and the prohibition of hostilities directed at the civilian population (one of the basic rules of international humanitarian law). At the same time, the Inter-American Commission on Human Rights relied on natural law in arguing its position that the right to life has *jus cogens* status. It ruled that *jus cogens* derives from a higher order of norms established in ancient times and to which the laws of men or nations cannot contravene.

Jus cogens norms can be found in treaties (such as the UN Charter), customary international law (reflected also in international acts that do not hold binding legal force), as well as in general principles of law.

Additionally, at the level of Chapter I, an important translation error (which created conceptual confusion) of the Romanian text of the Vienna Convention on the Law of Treaties was detected, so that "A treaty is void if, at the time of its conclusion, it conflicts with a **peremptory norm** of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" (art. 53). The word "peremptory" was missing, thus creating confusion, at a practical and national-scientific level, between the notions "peremptory norm of international law" and "norm of general international law".

As a result of all that has been mentioned, a multi-faceted and extensive approach to the issue of the validity of international treaties is attested, so that in Chapter II a much more segmented approach to the issue is proposed: from the study of each vice of consent separately to the research of exceptions to the obligation the execution of the provisions of international treaties.

Chapter II, **Multi-Aspect Analysis of the Validity of International Treaties**, had a much more comprehensive and complex character. The study of the validity of international treaties occupied a central place, representing the quintessence of the doctoral research.

Therefore, for the purpose of in-depth approach of the noted subject, the debut of Chapter II referred to the importance of the principle of good faith in its dual perspective: at the stage of negotiating an international treaty and at the stage of executing the obligations contained in a valid international treaty. The importance of *bona fides* was highlighted both from the perspective of ancient and contemporary reasonings (the jurisprudence of the International Court of Justice and the opinions of its judges), thus demonstrating the consistency of the general opinion of the international community throughout history vis-à-vis the indispensability of the fundamental principle international law of good faith for building and maintaining the complex architecture of international relations. From the same reasoning, in 1999 the UN General Assembly adopted the resolution A/RES/53/101 in which it expressly stated the existence of the principle of negotiation in good faith, and the organic connection between it and the following principles: the principle of sovereign equality of states, the obligation states to refrain in their relations from the threat of use of force or from the use of force against the territorial integrity or political independence of another state, as well as the principle of cooperation between states regardless of their political, economic, social differences.

Of particular relevance to this research is the role of the principle of good faith at the stage of negotiating an international treaty. We can affirm the fact that good faith, in its quintessence, is what gives validity to the international treaty, otherwise, by involving vices of consent such as error, fraud and corruption of the representative of a state - the treaty is struck by relative nullity, and international treaties concluded by the coercion exercised on the representative of a state, or by the coercion exercised on a state by the threat or use of force are struck by absolute nullity. The reasoning in question is also supported by the jurisprudence of the International Court of Justice, as in the Gulf of Maine dispute (Canada v. United States of America), in its 1984 judgment, the ICJ established that the parties not only had the duty to negotiate, but also to do so in good faith, with the sincere intention of achieving positive results.

Further, in order to organically advance the initiated research, a distinct sub-point was given to the study of vices of consent and their effect on the validity of international treaties: error (art. 48 CVDT), fraud (art. 49 CVDT), corruption of a state representative (art. 50 CVDT) and coercion (art. 51 and 52 CVDT). Thus, a predetermined analytical route was followed: the presentation of the historical aspects of the existence of a certain vices of consent (including through the lens of the jurisprudence of the Permanent Court of International Justice), the analysis of the codification work, carried out by the International Law Commission, of the Draft Articles on The Law of Treaties (from 1966), which later became the Vienna Convention on the Law of Treaties (from 1969), as well as the reasoning of the Special Rapporteurs of the ILC, the identification of the representative jurisprudence of the International Court of Justice, the establishment of the legal nature of each individual vice of consent, as well as their legal effects, highlighting the distinctions between the vices of consent investigated. Thus, within subsection II of Chapter II there was an in-depth explanation not only of the current wording of articles 48-52 of the Vienna Convention on the Law of Treaties, but also of their practical applicability.

Error, within the meaning of Article 48, is an alleged fact or situation which is later found to have no existence. An error induced by fraud is regulated by art. 49 (of the Vienna Convention on the Law of Treaties) as *lex specialis*. In its comments on the 1966 Draft Articles on the Law

of Treaties, the International Law Commission explained that error and fraud should be contained in two separate articles because when fraud occurs it attacks the very root of the voluntary agreement in a somewhat different way than a simple error. It does not simply affect the consent of the other party with reference to the provisions of the treaty, but destroys the whole basis of mutual trust between the parties. Despite the fact that some scholars consider that the corruption of the representative of a state constitutes only fraudulent conduct, which is an integral part of fraud, it must be emphasized that the fundamental distinction between fraud and corruption consists in the fact that if in the case of corruption, the representative of a the state is aware and allows its consent to be influenced for the purpose of concluding the international treaty, in the case of fraud the state is not aware, at the time of concluding the treaty, that its consent was affected by the fraudulent conduct of another subject of international law, otherwise it would not have allowed the conclusion of the agreement in question. By recognizing corruption as an independent ground for invalidating consent to be bound by treaty, in addition to error (art. 48), fraud (art. 49) and coercion (art. 51 and 52), the International Law Commission and the Vienna Conference took a pioneering role in the international community's effort to prevent and eradicate the scourge of corruption. Furthermore, during the codification works, the ILC members emphasized the innovative character of the idea of introducing a new vice of consent (corruption of a representative of a state), and some states confirmed that the article in question bravely inaugurated a new institution of international law. In its capacity as a distinct vice of consent, the corruption of the representative of a state is characterized by the following elements: the corruption action takes place only in relation to the representative of the negotiating state, who acts in personal interest; the corruption action is carried out by another negotiating state; the bribe can have both pecuniary and non-pecuniary form, and imperatively has a major counter-value; the consent of the state whose treaty was concluded is not automatically invalidated because maintaining the treaty in force may serve its interests. With reference to the last vices of consent enshrined in the Vienna Convention on the Law of Treaties - the coercion exercised on the representative of a state (art. 51) and coercion of a state by the threat or use of force (art. 52) - it is imperative to be mentioned the following:

The definition of the *coercion exercised on the representative of a state*, in the sense of art. 51, implies "acts or threats". The phrase is one of maximum generality, lacking the accompaniment of additional adopted declarations (as is the case in art. 52). However, if we recall the explanations of the International Law Commission, enshrined in the Draft Articles on the Law of Treaties of 1966, the phrase was intended to include any form of coercion or threat against the representative, which would affect him as an individual, and therefore would include, for example, the threat of divulging private information meant to defame him and ruin his career, or the threat of harm to a member of his family. Therefore, given the fact that art. 51 does not impose any interpretative limits, there exists the possibility of exercising not only *vis compulsive* (psychic coercion), but also *vis absoluta* (physical coercion) on the representative of the state in order to determine him to conclude an international treaty on behalf of the state.

Despite the fact that the existence of the Vienna Convention of May 23, 1969 represents an important measure in the recognition of coercion as a vice of consent, the international community, although it managed to regulate the legal effect of absolute nullity of treaties concluded by coercion of both the state representative, as well as of the state, defined the notion

of "coercion exerted on the state" in a short manner, limiting it to "the threat or use of force, in violation of the principles of international law incorporated in the Charter of the United Nations". The "Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of International Treaties" does not have, by its nature, a binding legal character, nevertheless it is important as it constitutes part of the block of international acts related to the 1969 Convention, and it details the ways of exercising coercion. Thus, it is recommended to consider the respective Declaration as an explanatory document and as a possible broadening of the definition of the notion of "coercion of a state", as it is mentioned: "military coercion, political, economic and any other forms of coercion in concluding international treaties".

In the case of coercion on international organizations in order to force them to conclude international treaties, given the fact that no similar Declaration was annexed to the 1986 Vienna Convention, the definition of the term boils down to "the threat or use of force, in violation of the principles of international law incorporated in the Charter of the United Nations".

Inevitably, following the presentation of a comprehensive analysis of vices of consent, a particular scientific interest was directed towards articles 46 and 47 of the Vienna Convention on the Law of Treaties, namely what are the legal consequences on the international treaties which are concluded by exceeding the competence established in the domestic legislation of a state to conclude treaties, or if the state representative does not comply with the instructions for negotiation and conclusion of the treaty. Accordingly, it was concluded that the international treaty is invalidated only if the violation of the internal law of the state during the process of concluding the treaty is (I) obvious and (II) concerns a rule of domestic law of fundamental importance. It was also concluded that the phrase "special restrictions" in art. 47 refers to the instructions sent to the state representative by the competent authorities of his state in the process of negotiating international treaties, but also to the rules of international law.

The last three sub-chapters referred to the *validity of unequal treaties* (traditionally, historically "unequal treaties" were considered those treaties in which one party had to do more than the other, and in the modern era of the 20th and 21st centuries, some scholars began to broaden the scope of unequal treaties and use the term to argue the legality of contemporary trade, investment or other important international conventions; in the context of this scientific paper it should be mentioned that an example of contemporary unequal treaty is the Agreement between the Republic of Moldova and the Russian Federation regarding the legal status, manner and terms of withdrawal of the military troops of the Russian Federation, temporarily located on the territory of the Republic of Moldova, dated October 21st, 1994, but not yet entered into force, the provisions of which contain the following substantive inequalities: the Moldovan side ensures the supply of the military troops of the Russian Federation with electric energy, water and other types of social and communal services based on contracts establishing payments at the prices valid for businesses and organizations in the places of deployment of these formations; the material provision of the military formations of the Russian Federation, including weapons and military equipment, until their final withdrawal from the territory of the Republic of Moldova, will be carried out without payment of customs taxes; the Moldovan side makes available to the Russian side the necessary sums in national currency for the maintenance expenses of the military troops of the Russian Federation, etc.), *the impact of non-registration of an international*

treaty at the UN on its validity (the obligation to register international treaties with the United Nations Secretariat is enshrined in art. 102 of the UN Charter, as well as in art. 80 of the Vienna Convention of May 23, 1969 on the law of the treaties), and the case of *conflict between the obligations stipulated in the UN Charter and those in another international treaty on the validity of the latter agreement* (art. 103 of the UN Charter, and in particular the fact if the respective article invalidates the treaty in conflict with the provisions of the UN Charter or simply renders it unenforceable while maintaining its validity).

These being mentioned, the stated issues are important both from a scientific and a practical perspective, and as a result of the initiated complex studies of historical developments (from the League of Nations to the United Nations), of the minutes of the proceedings of the San Francisco Conference on International Organizations (1945), as well as of the numerous specialized doctrinal sources, the following conclusions were established: the qualification of a treaty as unequal with the purpose of invalidating it can no longer be invoked because such a category of treaties is not enshrined in the text the Vienna Convention on the Law of Treaties of 1969; taking into account the current wording of the UN Charter, the non-registration of an international treaty at the United Nations Secretariat does not invalidate it; and art. 103 does not nullify an obligation that is contradictory to the obligations stipulated in the UN Charter, but only represents a rule for the resolution of a conflict of obligations – rendering inapplicable the international treaty whose provisions are in contradiction with those of the UN Charter.

Thus, as a result of everything mentioned, the broad nature of the study in Chapter II, as well as the applied value of the doctoral research, are highlighted. The validity of international treaties is an indispensable premise for the development of relations between the main subjects of international law - states and international organizations, and viewed through the spectrum of conditions that, once violated, strike the international agreement with relative or absolute nullity - it also represents a guarantee of a peaceful coexistence within the international community.

Finally, with reference to Chapter III of the doctoral research, **the validity of international treaties as a gurantee of the fulfillment of principles and norms of international law? Critical views of international practice**, it was emphasized that *pacta sunt servanda* has always existed throughout the history of states, having a deeply customary character, which is why its codification has never raised objections - being a unanimously recognized and accepted principle. Thus, in the sense of defining *pacta sunt servanda*, none of the parties to a treaty is entitled to harm, through unilateral decisions or particular agreements, the purpose and raison d'etre of the respective treaty.

Pacta sunt servanda applies if the following conditions are met: (I) the treaty is in force; (II) the treaty is valid; (III) the provisions of the treaty apply to the particular case; (IV) additionally, the rule in question applies only between the parties to the treaty. Furthermore, it is essential to draw attention to the following characteristics of the *pacta sunt servanda* principle: given the fact that the international treaty binds the parties from a legal point of view, the principle in question maintains the legal link (vinculum iuris) between states; good faith is an integral part of the principle of compulsory character of treaties and concerns all aspects of states' behavior in international relations; it is imposed on treaties that are not affected by absolute nullity, and in

the case of relative nullity it applies to valid articles of a treaty; *pacta sunt servanta* requires states to establish their domestic legislation in accordance with the obligations contracted at the international level; it does not have an absolute value, being limited by two exceptions: the fundamental change of circumstances (*rebus sic stantibus*) and the exception of legitimate defense.

Enshrined in several basic treaties, such as: Preamble of the UN Charter and art. 2, par. 2 of the UN Charter, and art. 26 of the Vienna Convention on the Law of Treaties, the *pacta sunt servanda bona fide* is, however, sometimes violated through the practice of some states, reducing the effectiveness of the treaty system of guaranteeing the established legal order, respectively the principles and norms of international law - international treaties are concluded based on those and either contribute to the development of international law or reconfirm it.

Thus, it was highly relevant to emphasize in this sub-chapter the practice of the key actors of the international community: the Permanent Members of the UN Security Council, in the absence of an authority that would excel over them, reffering to the execution of ICJ decisions that aim to restore the international legal order and that are conflicting with the national interest of the respective P5.

According to the UN Charter, art. 94, each UN member state is obliged *a priori* to comply with the decisions of the International Court of Justice when it is a party to the dispute settled by the Court, a fact reconfirmed by Article 59 of the Statute of the International Court of Justice - "The decision of the Court has no binding force except between the parties and in respect of that particular case".

Additionally, it should be noted that in the case of states that are not party to the Statute of the International Court of Justice, ICJ judgments maintain their binding legal force in the context of the provisions of UN Security Council Resolution 9 (1946) which stipulate that the ICJ is open to the state that is not party to the Statute (and respectively is not a UN member state) if it complies with the following conditions: it has deposited with the Registrar of the Court a declaration regarding the acceptance of the jurisdiction of the Court (in accordance with the provisions of the UN Charter, the Statute and the Rules of the Court), it undertakes to comply with good faith with the decisions of the Court and to accept all the obligations of UN members according to art. 94 of the Charter.

Since 1945 (the year of the establishment of the International Court of Justice) and up to 2020, the ICJ has issued 137 judgments (since the judgment of 25 March 1948 on preliminary objections in the Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v. Albania) and until the decision of 8 November 2019 on the preliminary objections in the case of Application of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)). Out of the 137 judgments, 39 have as one of the parties to the dispute a Permanent Member of the UN Security Council (which constitutes approximately 30% of the total number of judgments) – in particular 15 have as a party the United States of America, 14 Great Britain, 8 France and 2 Russian Federation. Once a dispute is settled, the ICJ's

judgement remains to be applied by the political bodies of the states - an occasion for non-compliance and violation of the provisions of the UN Charter and the Statute of the ICJ.

Following the elucidation of the cases when both members of the Security Council and other UN member states did not comply with the decisions of the International Court of Justice (either in the form of orders establishing provisional measures, or in the form of judgements on the merits of the case), this research acquired more depth, and the question of whether international treaties trully guarantee the fulfillment of the principles (general and fundamental) and norms of international law, was amplified by the dilemma of whether the provisions of international treaties trully limit the political conduct of states or the political conduct of states limits the action international treaties?

In this sense, as a consequence of highlighting the existing practice at the international level, the following conclusions were drawn: (I) The political will of states often transcends the limits imposed by the norms and principles of international law, violating valid and effective international treaties; (II) An abuse of the right of veto by the Permanent Members of the UN Security Council is attested in cases where the UN Security Council is asked, pursuant to art. 94 par. 2 of the Charter, to act to enforce a judgment of the International Court of Justice against a Permanent Member. In the same sense, it is appreciated by the international community, at the level of the annual debates in the UN General Assembly, that the annual reports of the UN SC, presented to the GA, have the character of a compilation of the correspondence of the UN SC, without an analytical substrate and without elucidating the reasons why certain decisions or resolutions are or are not adopted. In these circumstances, there is a need to amend art. 94 of the UN Charter so that the Permanent Members are not empowered to exercise the right of veto (vote against) if they are targeted for the non-compliance of an ICJ judgment;

This chapter would have not been complete if two major issues out of the totality of those existing and debated within the international community would have not been analyzed: *the legal status of Jerusalem* and the *illegal annexation of Crimea* (with drawing parallels regarding the case of the illegitimate stationing of Russian military troops on the territory of the Republic Moldova).

With reference to the *legal status of Jerusalem*, Jerusalem is one of the oldest cities in the world and is considered holy to the three great Abrahamic religions - Judaism, Christianity and Islam. Both Israel and Palestine claim Jerusalem as their capital, as Israel maintains its primary governmental institutions there, and the State of Palestine ultimately considers it as its seat of power; however, neither claim is fully recognized internationally. Today, the status of Jerusalem remains one of the central issues in the Israeli-Palestinian conflict. Israel occupied East Jerusalem during the Six-Day War of 1967. One of Israel's fundamental laws, the Jerusalem Law of 1980, refers to Jerusalem as the country's indivisible capital. All branches of the Israeli Government are located in Jerusalem, including the Knesset (Parliament of Israel), the residences of the Prime Minister (Beit Aghion), the Presidency (Beit HaNassi), and the Supreme Court. The international community has described the annexation as illegal and treats East Jerusalem as Palestinian territory occupied by Israel. In the same sense, Israel's accession to the UN was conditional, as the states that accepted Israel as a member of the UN did not recognize

its sovereignty over Jerusalem. Is it imperative to underline that with the adoption of the UN Charter, in 1945, and the principles of public international law (*jus cogens norms*), war no longer represents a legal means of settling international disputes. Therefore, the consequences resulting from the 1967 war have neither legitimacy nor legal value and, therefore, are null and void, including the belonging of East Jerusalem to Israel or the adoption of the Jerusalem Law. Given the circumstances of the complexity of the israeli-palestinian conflict, it is important to comprehensively emphasize the position of the United Nations (the UN General Assembly, the UN Security Council and the International Court of Justice):

The UN General Assembly does not recognize Israel's proclamation of Jerusalem as the capital of Israel. A fact reflected, for example, in the General Assembly Resolution no. 63/30 of January 23, 2009 which stipulates the following: "any actions taken by Israel, the occupying power, to impose its laws, jurisdiction and administration over the holy city of Jerusalem are illegal and therefore null and void in any form, and calls on Israel to stop such illegal and unilateral measures".

The UN Security Council had issued multiple resolutions regarding the Palestinian issue, including Resolution 478 of 2 August 1980 which stated that the adoption of the Jerusalem Law of 1980, which declared a unified Jerusalem to be the "eternal and indivisible capital" of Israel, was a violation of international law. At the same time, the resolution in question advised the member states to withdraw their diplomatic representations from the city.

The Security Council, as well as the UN in general, have consistently affirmed the position that East Jerusalem is an occupied territory under the provisions of the Fourth Geneva Convention of 1949 (Convention on the Laws and Customs of War on Land). At the same time, by resolution 2334 of December 23, 2016, the Security Council condemned the construction of Israeli settlements throughout the territory occupied since 1967, including East Jerusalem. The UN Security Council emphasized that it will not recognize any modification of the conflict lines established before 1967 and drew attention to the fact that "the cessation of all Israeli demarcation activities is essential for identifying the solution for the two states". According to the provisions of the UN Charter, art. 25, Security Council resolutions have binding legal force.

With reference to the position of the International Court of Justice, through resolution ES-10/14, adopted on December 8, 2003 at the tenth special emergency session, the General Assembly decided to request the Court's advisory opinion on the following question: "What are the legal consequences arising from the construction of the wall by Israel, the occupying power, in the occupied Palestinian territory, including in and around East Jerusalem, as described in the Secretary-General's Report, taking into account the rules and principles of international law, including the Fourth Geneva Convention of 1949 and relevant Security Council and General Assembly resolutions?". In its advisory opinion from 2004, the International Court of Justice reiterated the principles of customary law, enshrined in art. 2, paragraph 4 of the UN Charter and in General Assembly resolution 2625 (XXV), which prohibits the threat or use of force and emphasizes the illegality of any acquisition of any territory by such means, the Court also cited the principle of self-determination of peoples (referring to to the Palestinian people) and described East Jerusalem in its advisory opinion as "occupied Palestinian territory".

Despite all the above-mentioned provisions, both of the UN Charter and the resolutions of the main UN bodies, on the 6th of December 2017, the US President (Trump) announced the decision of the United States to recognize Jerusalem as the capital of Israel and to and move the embassy from Tel Aviv to Jerusalem - As a consequence, the UN Security Council met in an emergency session. During the respective session, the majority of UNSC members confirmed that President Trump's statements will have no effect on the legal status of Jerusalem, established by the UNSC resolutions, over which no party currently has recognized sovereignty. With reference to the legal assessment of the issue of changing the location of diplomatic missions from Tel Aviv to Jerusalem with the purpose of promoting (by the USA and Israel) the recognition of Jerusalem, by the international community, as the capital of Israel, the following conclusions are to be underlined: The Vienna Convention of 1969 on the Law of Treaties expressly confirms, in art. 26, the principle *pacta sunt servanda* (binding effect of international treaties). In turn, the UN Charter (international treaty) provides that the resolutions of the UN Security Council have binding legal force (art. 25), and the SC Resolution no. 478 of August 20th 1980 establishes the ban on the relocation of embassies on the territory of Jerusalem. Therefore, any attempt to change the location of a diplomatic mission with the aim of placing it in the city in question is defined as illegal and in contradiction with one of the fundamental principles of public international law: *pacta sunt servanda bona fidae*.

In the same vein, relevant to the case is the underlining of the obligation of non-recognition in public international law: the general principle *ex iniuria ius non oritur* (in translation: unjust acts cannot create a law) against any violation of international law. Therefore, there is no legitimacy either to Israel's annexation of Jerusalem, nor to its declaration as the capital, and therefore to the relocation of embassies from Tel Aviv to Jerusalem (as the USA and later Guatemala did).

Regarding the study of the *mirror-cases: the illegal annexation of the Crimean Peninsula and the stationing of foreign military troops on the territory of the Republic of Moldova*, through the process of analytical research, too many similarities between the Crimean issue and the Transnistrian issue were identified: a Soviet reminiscence involving the same scenarios - deportations and the repopulation of the territories with ethnic Russians, the presence of so-called governmental institutions (which are pro-Russian), as well as the existence of an internal normative system, and the stationing of Russian military forces on the respective territories.

The actions of the Russian Federation of illegal annexation of the Crimean Peninsula, disguised under the argument of holding a referendum on the territory of Crimea (in 2014) in order to respect the principle of the right of peoples to self-determination, are in contradiction with a multitude of fundamental principles/ *jus cogens* norms of international law, including: the principle of non-interference in the internal affairs of a state (during the 2014 political crisis in Ukraine Crimea was a Ukrainian territory), the principle of inviolability of borders (the Russian Federation intervened in Ukraine without the consent of the Ukrainian Government), the prohibition of resorting to force (one month after the Russian Federation formally annexed Crimea, Putin stated that the involvement of the army was necessary to guarantee the smooth conduct of the referendum that led to the incorporation of Crimea into the Russian Federation), the principle of good faith compliance with treaty obligations according to international law (including the Agreement on at the creation of the Commonwealth of Independent States of

August 12ve 1991, the Alma-Ata Declaration of 1991, the Budapest Memorandum of 1994 and other bilateral and multilateral treaties), the principle of territorial integrity (enshrined in Article 2 (4) of the UN Charter, Principle I Paragraph I of the 1970 Declaration and Article IV of the 1975 Helsinki Final Act). The 1970 Declaration itself, explaining the principle of *the right of peoples to self-determination*, expressly stated that each state shall refrain from any action aimed at the total or partial disruption of the national unity or territorial integrity of another state. In the same sense, with reference to the legality of the unilateral secession, in relation to the possible inclusion of the residents of the Crimean peninsula in the category of "people" (a fact that arouses many doctrinal discussions as international law does not define the above-mentioned notion) in the context of invoking the *jus cogens* norm *the right of peoples to self-determination*, it is imperative to underline the fact that a multitude of international instruments that refer to the rights of indigenous peoples and minorities, such as the UN Declaration on the Rights of Indigenous Peoples or the Council of Europe's Framework Convention for the Protection of National Minorities, establish that non-state entities also must follow the principle of territorial integrity.

Regarding the actions of the Russian Federation on the territory of the Republic of Moldova, although not entered into force, the Agreement between the Republic of Moldova and the Russian Federation regarding the legal status, manner and terms of withdrawal of the military troops of the Russian Federation, temporarily located on the territory of the Republic of Moldova, from October 21st 1994, expressly provides, in art. 2, the obligation of the Russian Federation to withdraw its military troops during a period of 3 years from the day of entry into force of the Agreement, with the establishment of the stages and schedule of the withdrawal in a separate Protocol between the Defense Ministries of the Parties. More than that, the Agreement established, in art. 23, that it was to be submitted to the United Nations Organization for registration - judicious legal technique, as an international treaty cannot be invoked in a dispute at the ICJ if it is not registered at the UN (according to the statutory rules). The agreement between the Republic of Moldova and the Russian Federation of October 21, 1994 did not enter into force due to its non-ratification by the Russian Federation.

The Republic of Moldova presented to the UN General Assembly, on June 22nd 2018, the resolution entitled "The complete and unconditional withdrawal of foreign military troops from the territory of the Republic of Moldova". The resolution in question expresses concern for the continued stationing of the Operational Groups of the Russian Federation and its armaments on the territory of the Republic of Moldova, without the consent of the Republic of Moldova; calls on the Russian Federation to completely and without delay withdraw its Operational Groups and armaments from the territory of the Republic of Moldova; and decides to include on the agenda of the 75th session of the General Assembly an item entitled "The complete and unconditional withdrawal of foreign military troops from the territory of the Republic of Moldova". At the level of the highest political forum in the world - the UN General Assembly, the stationing of Russian troops on the territory of the Republic of Moldova was recognized as illegal and in violation of the principle of territorial integrity of the Republic of Moldova (principle enshrined in the Final Helsinki Act, signed in 1975 by 35 states including the former Soviet Union).

Due to the lack of subsequent internal political will on the part of the Republic of Moldova, the item in question, although included on the agenda of the 75th session of the General Assembly, did not form the basis of any debate or adoption of any resolutions. Thus, the subject of the territorial integrity of the Republic of Moldova was no longer debated at the UN. In such circumstances, we must recall the danger of the argument of the President of the Russian Federation regarding the military activity in Crimea in the "defense" of ethnic Russians: "Russian armed forces never entered Crimea - they were already there in accordance with a international agreement". Russian military troops are stationed on the territory of the Republic of Moldova based on a bilateral Agreement between the Republic of Moldova and the Russian Federation on the principles of peaceful settlement of the armed conflict in the Transnistrian region of the Republic of Moldova, from July 21st 1992, in force.

Therefore, through the lenses of the two above-mentioned examples, the practice of violating a variety of multilateral and bilateral treaties valid and in force, and of a multitude of principles and norms of international law, by states that exempt themselves unilaterally from their provisions, was confirmed.

However, it can be concluded that the system of international treaties constitutes a guarantee of the fulfillment of principles and norms of international law, as in order to settle disputes between states, international tribunals always apply the provisions of the treaties, and in the usual relations between the majority of the states of the world international agreements are respected. For this reason, the actions of certain countries (the USA and Israel - in the case of the issue of Jerusalem, the Russian Federation - in the case of the annexation of Crimea and the stationing of Russian troops on the territory of the Republic of Moldova) are blamed by the international community, being subjected to political pressure (at least in the form of resolutions of the UN General Assembly) in order to stop their illegal actions. As basic arguments invoked in the texts of the respective resolutions serve the customs of international law, the principles of international law and the norms of the treaties in force - the authority of which is, in fact, indisputable and supported by a firm *opinio juris*.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

Public International Law is unimaginable without international treaties. In the process of in-depth study of international law, the law of treaties is the only branch that is included both in the general part and in the special part of PIL, as treaties are, at the same time, the foundation and the product of international law - thus, continuously creating a legal order and legal relations between subjects of international law based on comprehensive rules, procedures and guidelines on how international treaties are drafted, amended, interpreted and operated. Therefore, the law of the treaties constitutes the norm that continuously develops norms. At the same time, the world legal order is maintained not only by treaties, but also by general principles, fundamental principles and *jus cogens* norms. International treaties are concluded in accordance with them – thus reconfirming them. However, the scientific issue of this doctoral thesis consisted in finding the answer to the question of whether a valid concluded treaty guarantees (in the direct sense of the word) the realization of the principles and norms of international law, given the practice of some states-parties to bilateral and multilateral treaties to violate the provisions of such agreements which reffer to the mutual obligation to respect, for instance, each other's sovereignty, territorial integrity, to not use force, etc. Additionally, scientific and practical evidence was formulated regarding the lack of an absolute guarantee character of an international treaty in the fulfillment of (general and fundamental) principles and *jus cogens* norms; the conduct of the states in this sense was determined, and the chain effects of the violation of a treaty on the architecture of international law were conceptualized.

What does a valid and effective treaty guarantee? The answer is as simple as it is complicated – everything and nothing, nothing and everything. Despite the idealistic and shared understanding of the internationalist legal community that international treaties create borders that organize the political will of states, not infrequently the political will of states transcends these borders. At the same time, current geo-political realities would have been dominated by a deep anarchic spirit if international treaties had not been concluded.

The attempt of solving the scientific problem led to: updating the outdated doctrinal understanding regarding the definition of an international treaty (remedied by the latest jurisprudential practice of the International Court of Justice); clarifying the difference between general principles, fundamental principles and *jus cogens* norms; elucidating (as a doctrinal premiere) the historical evolutions of the codification of vices of consent in the Vienna Convention on the Law of Treaties from 1969; analysing in a multi-aspect manner the validity of international treaties both from the perspective of contemporary unequal treaties (financing and loan treaties) and from that of conflicts arising in the hierarchy of international law norms (art. 103 of the UN Charter); and highlighting the violations of the *pacta sunt servanda bona fide principle* through specific examples of international practice. All this was done in order to create an updated and revised theoretical-practical basis regarding the legal role of international treaties, the limits of their effects, and the applicability of international treaties in contemporary geo-political realities.

As a result of the research carried out, the following general conclusions can be underlined:

1) The notion of "international treaty" reffers to any voluntary agreement of the parties - subjects of international law - without pre-establishing a certain form thereof, regarding the generation of

mutual obligations. The fact whether an international instrument is a treaty or not is determined not only by the existence of its classical structural elements (the preamble, the numbered articles, final clauses, signatures, annexes), but also by the following criteria: its provisions, the circumstances in which it was concluded and the intention of the parties to generate legal obligations (*animus contrahendi* or *opinio juris*). Thus, according to the latest jurisprudence of the International Court of Justice, even the minutes of a meeting or the exchange of interstate letters can constitute international treaties.

2) The notion "validity" suggests that the international instrument is applicable in the international community, that it is capable of producing legal effects and that it must be respected.

3) The general principles of law are a series of principles without which no legal system can function. They derive from the great systems of national law. The existence of the principles in question is not confined in an exhaustive list, and is reconfirmed by their tacit, jurisprudential or conventional nature at the international level. The fundamental principles of international law are rules of conduct, universally valid, legally binding, intended to defend the most important values of international society. These (10 in number) are codified in the UN Charter, the Declaration on the Principles of International Law on Friendly Relations and Cooperation between States and the Helsinki Final Act, and belong to the category *jus cogens* norms. All fundamental principles have equal legal value, they are not in conflict with each other and are interpreted in a common context. Although the 10 fundamental principles are *jus cogens* norms, *jus cogens* norms are not limited to fundamental principles only. *Jus cogens* norms occupy the supreme place in the hierarchy of international law norms, invalidating conventional norms contrary to them. There is no exhaustive list of these norms, but according to the findings of the International Law Commission, the international community recognizes as *jus cogens* norms: the prohibition of the use of force, the right to self-defense, the prohibition of genocide, the prohibition of torture, the prohibition of racial discrimination, etc. Due to a translation error, the Romanian version of the Vienna Convention on the Law of Treaties creates confusion between the notions of "peremptory norm of general international law" (j*us cogens*) and "norm of general international law".

4) The provisions of international treaties do not constitute rules of general international law, capable of forming the basis for *jus cogens* rules, they can only reflect rules of general international law that reach, through international recognition, the status of *jus cogens*. International treaties are concluded within the limits of general principles, fundamental principles and *jus cogens* norms, and often reinforce their authority by reiterating them in their content (in the preamble or in the articles).

5) According to art. 103 of the UN Charter, in the hierarchy of treaties, the Charter of the United Nations is the treaty with supreme value – its provisions prevailing over the provisions of all other international treaties in case of conflict. Thus, given the fact that the UN Charter normatively enshrines several fundamental principles of international law, which have the value of *jus cogens* norms (for example, the sovereign equality of states, the settlement of disputes by peaceful means, *pacta sunt servanda*, non-interference in the internal affairs of a state, etc.) and which are reiterated in other bilateral or multilateral treaties, the violation of the latter treaties results in the violation of the provisions of the UN Charter *ab initio*.

6) International practice, including international contentious practice, points to a systematic violation of international treaties, principles and norms of international law, in various contexts.

7) Despite the fact that at the highest political meetings and forums the imperative to respect the provisions of international treaties (bilateral and multilateral) by certain states that violate them through their illegal conduct is reiterated, the treaties in question continue to be violated; just as the binding judgments of the International Court of Justice are not complied with (according to art. 94 par. 1 of the UN Charter) in the circumstances where the state that lost the dispute is one of the 5 Permanent Members of the UN Security Council and exercises the right of veto when the ICJ decision is imposed on the state through the mechanism of art. 94 par. 2 of the Charter.

Thus, in the light of the above-mentioned conclusions and in the light of all the cases presented in Chapter III of the dosctoral disertation, an amendment to the UN Charter was proposed - which refers to the introduction of an additional paragraph to the current wording of art. 94, as follows: "The Permanent Members of the Security Council are not authorized to vote in the event of a referral, based on Article 94 (2) of the Charter, about their non-execution of a judgment of the International Court of Justice".

The issue of the reform of the UN Security Council, especially regarding the limits of the use of the right of veto, is central in the discussions regarding the need to conferrer absolute, indisputable and impartial authority to international law and, therefore, character of a gurantee to international treaties. Otherwise, as international practice shows us, international treaties, valid and in force, become marked by a deep political relativism, ensuring everything and nothing, nothing and everything.

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ADNOTARE

Șiman Augustina, "Validitatea tratatelor internaționale ca garant al realizării principiilor și normelor de drept internațional". Teză de doctorat în drept. Școala Doctorală de Științe Juridice a Universității de Stat din Moldova. Chișinău, 2022

Structura tezei: introducere, trei capitole, concluzii generale și recomandări, bibliografie din 396 de titluri, 4 anexe, 225 pagini text de bază.

Cuvinte-cheie: tratat, Carta ONU, Adunarea Generală a ONU, Comisia de Drept Internațional, Consiliul de Securitate al ONU, Curtea Internațională de Justiție, validitate, principii generale, principii fundamentale, jus cogens, vicii de consimțământ, tratate inegale, violare tratate.

Domeniul de studiu: lucrarea face parte din domeniul dreptului internațional public, partea generală și specială, cu un accent particular asupra dreptului tratatelor.

Scopul și obiectivele tezei: determinarea autorității teoretico-practice a tratatelor internaționale, și evaluarea capacității acestora de reconfirmare și de realizare a principiilor (generale și fundamentale) și a normelor jus cogens, în contextul arhitecturii contemporane a relațiilor geopolitice dintre state. În acest sens, pentru atingerea scopului urmărit, au fost trasate următoarele obiective: I. Analizarea științifică, normativă și practică a noțiunilor de "tratat internațional", "validitate", "principii generale", "principii fundamentale", și "norme jus cogens"; II. Studierea aprofundată a validității tratatelor internaționale prin prisma lucrărilor de codificare a Convenției de la Viena privind Dreptul Tratatelor, practicii istorice și contemporane a încheierii tratatelor inegale, evoluției obligației înregistrării tratatelor internaționale, și organizării ierarhice a tratatelor internaționale; III. Studierea practicii internaționale contemporane privind violarea tratatelor.

Noutatea și originalitatea științifică a tezei: constă în explorarea și evaluarea rolului de garant al tratatelor internaționale valide în realizarea principiilor și normelor de drept internațional, studiul având un caracter de pioneriat în spectrul lucrărilor naționale și internaționale în materia dreptului internațional public. Lucrarea evidențiază conflictul dintre voință politică și normă juridică, la nivel internațional, iar în sensul consolidării autorității normelor juridice și, implicit, a tratatelor internaționale, sunt formulate propuneri pertinente de amendament la Carta ONU.

Semnificația teoretică a tezei: constă în cercetarea aprofundată a codificării viciilor de consimțământ în încheierea tratatelor internaționale – fapt neexplorat anterior în doctrină, actualizarea înțelegerii definiției tratatelor internaționale prin cea mai recentă jurisprudență CIJ, prezentarea distincțiilor dintre principii generale, principii fundamentale și norme jus cogens, analiza interconexiunilor dintre tratate internaționale valide și realizarea normelor și principiilor de drept internațional.

Valoarea aplicativă a tezei: contrabalansarea violărilor contemporane de drept internațional prin argumente juridico-științifice empirice, și confirmarea autorității tratatelor internaționale în arhitectura realațiilor geopolitice conteporane – domenii de interes pentru diplomați și juriști specializați în drept internațional (care activează la nivelul statelor sau organizațiilor internaționale).

АННОТАЦИЯ

Шиман Августина, “Действительность международных договоров как гарант реализации принципов и норм международного права”. Диссертация на соискание научной степени доктора права. Докторальная школа юридических наук Государственного университета Молдовы. Кишинев, 2022 г.

Структура диссертации: введение, три главы, общие выводы и рекомендации, библиография из 396 наименований, 4 приложения, 225 страницы основного текста.

Ключевые слова: договор, Устав ООН, Генеральная Ассамблея ООН, Комиссия Международного Права, Совет Безопасности ООН, Международный Суд, действительность, неравноправные договоры, нарушения договоров.

Предмет исследования: работа относится с сфере общей и особенной части международного публичного праваю, уделяя особое внимание праву международных договоров.

Цель и задачи диссертации: определить теоретико-практический авторитет международных договоров и оценить их способность подтверждать и реализовывать международных принципов и норм в контексте современной архитектуры геополитических отношений. Для достижения цели, были поставлены следующие задачи: I. Научный, нормативный и практический анализ понятий “международный договор”, “действительность”, “общие принципы”, “основополагающие принципы” и “нормы jus cogens”; II. Углубленное изучение действительности международных договоров в свете кодификационных работ Венской Конвенции о Праве Международных Договоров, эволюции обязательство регистраций международных договоров и иерархической организация международных договоров - ст. 103 Устава ООН; III. Изучение современной международной практики по нарушениям договоров.

Новизна и научная оригинальность диссертации: состоит в исследовании роли гаранта действующих международных договоров в достижении принципов и норм международного права. В диссертации освещается конфликт между политической волей и правовой нормой на международном уровне, и в целях усиления авторитета правовых норм и, косвенно, международных договоров, вносятся соответствующие предложения по поправкам к Уставу ООН.

Теоретическая значение диссертации: состоит в глубоком исследовании согласия при заключении международных договоров, обновление понимание определения международных договоров с помощью новейшей юриспруденции Международного Суда, и так же в анализе взаимосвязей между действующими международными договорами и реализацией норм и принципов международного права.

Прикладная значение диссертации: противоветсво современных нарушений международного права эмпирическими юридически-научными аргументами, и подтверждение авторитета международных договоров в архитектуре современных геополитических реальностей.

ANNOTATION

Șiman Augustina, "The validity of international treaties as a guarantee of the fullfilment of principles and norms of international law". Doctoral thesis in law. Doctoral School of Legal Sciences of the State University of Moldova. Chisinau, 2022.

Thesis structure: introduction, three chapters, general conclusions and recommendations, bibliography of 396 titles, 4 annexes, 225 pages of basic text.

Key-words: treaty, UN Charter, UN General Assembly, International Law Commission, UN Security Council, International Court of Justice, validity, general principles, fundamental principles, jus cogens, vitiated consent, unequal treaties, treaty violations.

Field of study: this research refers to the field of public international law, general and special part, with a particular accent on the law of treaties.

The purpose and the objectives of the thesis: to determine the theoretical and practical authority of international treaties, and to evaluate their capacity to reconfirm and realize the principles (general and fundamental) and jus cogens norms, in the context of contemporary architecture of geopolitical relations between states. In this sense, in order to achieve the above-mentioned purpose, the following objectives were set: I. Scientific, normative and practical analysis of the notions of "international treaty", "validity", "general principles", "fundamental principles", and "jus cogens norms"; II. In-depth study of the validity of international treaties in the light of the codification works of the Vienna Convention on the Law of Treaties (arts. 46-52), the historical and contemporary practice of concluding unequal treaties, the evolution of the obligation to register international treaties, and the hierarchical organization of international treaties - art. 103 of the UN Charter; III. Analyizng the contemporary international practice on treaty violations.

The novelty and scientific originality of the thesis: it consists in exploring and evaluating if valid international treaties can guarantee the fullfilment of principles and norms of international law. The paper highlights the conflict between political will and legal norms, at the international level, and in order to strengthen the authority of legal norms and, implicitly, of international treaties, relevant proposals for amendments to the UN Charter are made.

The theoretical significance of the thesis: consists in the in-depth research of the codification of vices of consent in the conclusion of international treaties - a fact which was not previously explored in the doctrine; updating the understanding of the definition of international treaties in the light of the latest ICJ case law; analysis of the interconnections between valid international treaties and the fullfilment of the norms and principles of international law.

The applicative value of the thesis: counterbalancing contemporary violations of international law by empirical legal and scientific arguments, and confirming the authority of international treaties in the architecture of contemporary geopolitical realities – these representing areas of interest for diplomats and lawyers specializing in international law (working for governments or international organizations).

ȘIMAN AUGUSTINA

VALIDITY OF INTERNATIONAL TREATIES AS A GUARANTEE OF THE FULFILLMENT OF PRINCIPLES AND NORMS OF INTERNATIONAL LAW

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