

Stefan Talmon, *Kollektive Nichtanerkennung illegaler Staaten. Grundlagen und Folgen einer international koordinierten Sanktion, dargestellt am Beispiel der Türkischen Republik Nord-Zypern* [Collective Non-recognition of Illegal States. Legal Foundations and Consequences of an Internationally Co-ordinated Sanction With Particular Reference to the Turkish Republic of Northern Cyprus]. Mohr Siebeck, 2006. XXXIX, 1052 pp., Series: Jus Publicum 154, ISBN 3-16-147981-5, 149 EUR

1. The collective non-recognition of illegal States has been characterized as “an essential legal weapon in the fight against grave breaches of the basic rules of international law”.¹ It is the noble and challenging task of Stefan Talmon’s voluminous treatise to examine exhaustively the legal foundations and consequences of this “legal weapon”, and he fulfils this task in an impressive way. The book, which has been accepted by the Eberhard-Karls-Universität Tübingen as the author’s habilitation, shows Talmon’s meticulous working method and displays an amount of research that deserves deep respect. Methodologically, Talmon approaches the issue by way of an example, that is, by discussing a case study. He chooses the case of Turkish Republic of Northern Cyprus (TRNC)—which is collectively not recognized due to the international recognition of the government of the Republic of Cyprus as the government of all Cyprus—in order to illustrate the numerous legal problems related to collective non-recognition. This allows for a comparison of the different practices of non-recognition of the UK, the United States and Germany, which, in turn, paves way for a discussion of which consequences of non-recognition are prompted by international law and which by national law.

2. The main reason for the selection of TRNC is that, according to the author, it is the oldest collectively non-recognized State in the world, only recognized by Turkey. This also means that

TRNC provides for a large amount of State practice, and Talmon displays an astonishing precision and diligence when collecting and discussing this material which stems from close economic, social and cultural bonds with the former British colonial power, the strong engagement of the UN in the solution of the Cyprus conflict, and the association of the Republic of Cyprus with the European Union since 1972 and its membership since May 2004. Contrary to other non-recognized States, no economic or other sanctions have been imposed on the TRNC, which, pursuant to the author, means that any disadvantages stemming from its isolation must result from the practice of collective non-recognition (p. 3).

3. In the *Introduction* section, Talmon briefly sets out the content of the treatise that is divided in three parts. In the first part, those non-recognized States that are later repeatedly referred to for comparative purposes are presented in their historical context: Manchukuo, Rhodesia and the South African homeland States. The second part deals with the theoretic legal foundations of collective non-recognition and examines *inter alia* whether the non-recognition has declaratory, constitutive or negatory effects. Finally, the third part—which is at the same time the main part of this book—examines the effects of collective non-recognition in various areas of international relations using the case study of the TRNC: bi- and multi-lateral treaties and unilateral sovereign acts, the effect of collective non-recognition in judicial proceedings and the status of the TRNC before national and international Courts, the possibility of a membership of the TRNC in international organizations, the economic development of the TRNC, the effects of non-recognition on sea- and air-traffic and the postal services and the international responsibility of the TRNC for actions in Northern Cyprus.

4. The table of contents of the book readily shows that the above-mentioned issues are comprehensively discussed and examined. It must be said that this large amount of information does not negatively impact on the readability of the treatise.

1 Christian Tomuschat, *International Crimes by States: An Endangered Species?*, in: Karel Wellens (ed.), *International Law: Theory and Practice. Essays in Honour of Eric Suy* (1998), p. 259.

The detailed analysis of each issue is summarized in very clear and helpful conclusions at the end of each chapter. These conclusions allow the reader to understand easily the main arguments developed in the preceding chapter and allow the reader interested in a more detailed analysis of a particular problem to quickly find its way in the relevant chapter. It is not least thanks to these conclusions, together with detailed and referenced tables of cases, treaties and resolutions as well as a comprehensive persons and subject index that allow for user-friendly access to the book.

5. However, as already stated, this voluminous treatise provides for much more. The first chapter offers a historical overview of the Cyprus conflict from its roots in December 1963—that is almost 11 years before the Turkish intervention on the island—until the so-called Annan-Plan in 2002–2004² and the membership of the Republic of Cyprus in the European Union on 1 May 2004 (p. 31). Talmon explains the two Security Council resolutions that called upon all States not to recognize the TRNC which had declared its independence on 15 November 1983, and examines the positions and reactions of those States who do not recognize the TRNC (among them the UK, the United States, the Republic of Ireland and Germany) and the positions of international organizations such as the European Union, the Council of Europe and the Commonwealth (p. 63 *et seq.*). The author emphasizes that the reason for the non-recognition was not that the TRNC did not possess the requirements of statehood, but the fact that the TRNC has been founded in violation of international law (p. 78 *et seq.*).

6. The second chapter provides for an in-depth discussion of various precedents for international non-recognition, namely Manchukuo, Rhodesia and the South African homelands. Talmon shows that while the reasons for the collective non-recognition of these States differ from each other—mainly political, ethical or moral—the non-recognition is always a reaction to a violation of a fundamental rule of international law.

Furthermore, he demonstrates that the preconditions for statehood do not play an essential role for collective non-recognition: in fact, the existence of all criteria for statehood is a logical precondition for any non-recognition of a State (p. 210).

7. The third chapter deals with the legal nature of non-recognition. Talmon argues that while this question used to be discussed within the parameters of the constitutive and the declaratory theory, non-recognition does neither prevent nor confirm statehood that is established merely on the basis of a State's factual existence and irrespective of any violation of international law (p. 301). However, the non-recognition of such a State can have a *negatory* consequence in that it deprives the new State of the rights, competencies and privileges inherent in statehood. Such a non-recognized State is a mere “local *de facto* government” (p. 302). Talmon shows convincingly that the *negatory* approach has the advantage of explaining the international responsibility of the non-recognized State without taking recourse to the argument that while a serious violation of a *jus cogens* norm prevents a State from existing, it still allows the development of a “State” which is partially responsible for the violation of international law. Furthermore, if States decide to recognize a formerly non-recognized State, their recognition does not have to be given constitutive and retroactive effect: it is only the lifting of a sanction (p. 303).

8. In the fourth chapter, Talmon argues that collective non-recognition cannot be based on Chapter VI of the UN Charter. Instead, the Security Council can base its call for collective non-recognition on Articles 41, 39 and 24(1) UN Charter, and the General Assembly on Articles 11(2) and 10 UN Charter (p. 365). The chapter further discusses the duty not to recognize illegal States pursuant to treaty obligations and customary international law. Thus, States are obliged by a rule of customary international law not to recognize situations as legal or lawful, which have been created by a threat or use of force (pp. 366–367).

2 The Annan-Plan aimed at the establishment of a “United Cyprus Republic” which would have consisted of two equally constituent states (p. 29). While almost 65% of the Turkish Cypriots voted in favour of the Plan, about 76% of the Greek Cypriots rejected it (p. 31).

9. The fifth chapter discusses the consequences of collective non-recognition for the competence of the non-recognized State to enter into the treaty relations. Talmon discusses the difference between States such as the former German Democratic Republic and North Vietnam that were not recognized by several States and States such as the TRNC or the Homeland States that were not to be recognized pursuant to obligations under international law (pp. 372–373) in detail: while the former could become parties to multilateral treaties, the latter cannot; they can only conclude bilateral treaties with those States that do recognize them (p. 457).

10. In the sixth chapter, the legal standing of a non-recognized State before national and international Courts is discussed. The author examines the practice of British and the US Courts and European national Courts as well as that of international Courts such as the ICJ. He shows that before British and the US Courts, recognition of a State by the forum government is conclusive evidence of statehood (p. 543). In contrast to this practice, European Courts are generally not bound by their governments' declarations of recognition. However, they can consider them in the course of exercising their free evaluation of the evidence when deciding about the statehood of a territory. Unlike the ICJ, national Courts are not directly bound by calls of the Security Council for non-recognition of a State under Chapter VII (p. 543).

11. Chapter seven deals with the TRNC's possibility of becoming a member State and of being represented in international organizations. Talmon explains that TRNC cannot become a member of, for instance, the UN or the Council of Europe because of its non-recognition as a State (p. 548). However, it is possible that a legal entity like the TRNC can be represented in international organizations. While Talmon agrees that such a procedure formally complies with the obligation of collective non-recognition of the entity, he criticizes that any form of *de facto* membership substantially weakens the negative consequences of collective non-recognition (p. 595).

12. In chapter eight, the author provides an in-depth review of the impact of collective non-recognition on bilateral relations. The establishment of diplomatic relations with States facing collective non-recognition is incompatible with the latter principle; however, already existing diplomatic relations can be upheld. Talmon demonstrates that the inability to enter into diplomatic and treaty relations may cause, to name only one example, problems in the field of international cooperation in legal matters (p. 664). He also shows, however, that in the area of consular relations and unofficial representation, States have various possibilities to promote cooperation in the fields of, for instance, economy, trade and tourism (p. 663).

13. After a discussion of the impact of collective non-recognition on economic development, post and telecommunication, and sea and air-traffic in Chapters 9, 10 and 11, the author addresses, in the final chapter, the responsibility of the Republic of Cyprus, the TRNC and Turkey under international law for various acts taking place on the territory of the TRNC. In particular, he describes comprehensively how Turkey has been held responsible for acts of the TRNC by the European Commission for Human Rights and the European Court for Human Rights (p. 845 *et seq.*).

14. In sum, the enormous value of this impressive book does not only lie in the vast amount of information that has been meticulously collected but also and thoroughly examined. It is equally impressive that the author succeeds in explaining all relevant issues related to collective non-recognition in a very stringent and concise way. For these reasons, the book constitutes the *opus magnum* on collective non-recognition of illegal States, and every researcher and practitioner dealing with this subject all over the world will greatly profit from it.

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