

## RECOGNITION IN INTERNATIONAL LAW: THEORETICAL PERSPECTIVES AND APPLICATIONS

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### ABSTRACT

*Recognition of new states is a multifaceted process at the intersection of international law and politics. This paper explores the complex dynamics surrounding state recognition, examining the criteria outlined in the Montevideo Convention, the competing Constitutive and Declaratory theories, and the implications of recognition for international relations. Five keywords encapsulate the core themes of this analysis: statehood, recognition, criteria, political interests, and international relations. The Montevideo Convention's criteria for statehood, including a permanent population, defined territory, government, and capacity for international relations, provide a foundational framework for evaluating statehood. However, the actual recognition of a new state goes beyond these criteria and is fundamentally a political act driven by the interests and motivations of existing states. The debate between the Constitutive Theory, which asserts that recognition is necessary for statehood, and the Declaratory Theory, which suggests statehood exists independently of recognition, underscores the complexity of the recognition process. This theoretical divide reflects the subjective and nuanced nature of state recognition. Recognition, whether express or implied, carries significant diplomatic and legal consequences. It can be provisional (de facto) or final (de jure), with de facto recognition often serving as a preliminary step toward full recognition. Political considerations, economic interests, regional stability, and alliances all influence the decision-making process. This paper highlights that state recognition is a dynamic and vital aspect of international relations, where legal principles intersect with political realities, shaping the global landscape of sovereign entities.*

**Keywords:** State Recognition, Sovereignty, Montevideo Convention, International Entity, Diplomacy, Political Interest.

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## INTRODUCTION

Recognition is the act of acknowledging the existence of a political entity in the form of a state which implies its statehood. It is the formal recognition of the states as an entity on the international level and makes it imperative that the newly recognized state is subject to international laws and duties.

Article 1 of the MCRDS<sup>1</sup> stipulates the attributes that are essential for an entity to be recognized as a state. They include qualifications such as (a) permanent population, (b) a defined territory, (c) a Government, and (d) a capacity to enter into relations with other States.

The qualifications are to ensure the fundamental functioning of an entity as a state without any other state influence. They may or may not be present in the newly emerging states. Some may possess these attributes and are not recognized by some member countries, while some emerging entities may not possess some of these attributes but are recognized by member countries. This implies that recognition of a new state is a political act of the already existing state while keeping the latter state's interest on top priority. For instance, the United States of America did not recognize The Republic of China for many years due to political reasons, even though the latter was an existing state. India does not recognize Kosovo for political reasons, even though around 100 countries have recognized Kosovo as a state.

It can be inferred that the exercise of discretionary authority in acknowledging newly emerging states is primarily a political gesture, with minimal consideration for legal intricacies. Furthermore, recognition being withheld does not negate the existence of the state. This discretionary power happens to be in the hands of the executive and is devoid of any interference from the judiciary. This political act of recognition may or may not be legally justified by the executive. The judiciary has to abide by the decisions of the executive and follow up

In a nutshell, it is the free act by which one or more States acknowledge the existence on a definite territory of a human society politically organized, independent of any other existing State, and capable of observing the obligations of International Law and by which they manifest therefore their intention to consider it a member of the international community.<sup>2</sup>

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<sup>1</sup> Montevideo Convention on the Rights and Duties of State (MCRDS), 1933

<sup>2</sup> M. P. Tandon's Public International Law (Allahabad Law Agency 1999) 70

## RULING ON RECOGNIZING STATES

The world map keeps changing now and then. Some states are uniting with other states or states that are disintegrating from the previous states or perhaps acquiring independence from a colonial state. Sometimes a new state may be formed by resorting to unconstitutional means i.e. by revolting against the former state which becomes a problem when it comes to recognition by the other existing states as they have good relations with the former ousted state. Existing states can still recognize the newly emerging states on other grounds such as the protection of its national citizens, trade relations, and other crucial factors.

This can be seen from India's partial recognition of Kosovo about the ties that India has with Serbia. However, there are other substantial factors that India has thoughtfully foreseen before taking such a decision which includes the very fact that Kosovo's independence from Serbia is not endorsed by the UNSC. Furthermore, if India were to recognize Kosovo, it would be setting a precedent for other such separatist movements around the globe, which may undermine the principle of territorial integrity enshrined in the UN Charter. India also deals with a separatist movement within the nation in the northernmost part. Recognizing Kosovo may jeopardize India's stance on such separatist movements that exist within the country.

However, states may recognize the newly emerging states based on other factors which are in their interest. The International Law Commission, after realizing the importance of the topic, in its first session held in 1949 included 'Recognition of States and Government' as one of the topics in the provisional list of fourteen topics considered suitable for codification.<sup>3</sup> Later on, the topic was removed from the program of the Commission on the ground that the questions of recognition pertain to the province of politics rather than of law'. Thus, at present rules regarding recognition are not well settled. In the absence of any codified rules, the topic of recognition is governed by the State's practice and judicial decisions.<sup>4</sup>

## THEORIES OF RECOGNITION

**Constitutive theory** According to this theory, a State proclaims its statehood not when the above-mentioned qualities are fulfilled, rather it is proclaimed when other states recognize the newly emerging state.

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<sup>3</sup> Year book of International Commission (1949) 289

<sup>4</sup> H.O. Agarwal's International Law and Human Rights (Central Law Publications 2021) 100

Hegel was the founder of this theory. It implies that for a new entity to become an international person, it has to be recognized by other States. This emphasis on recognition by this theory is debatable.

According to this theory, it is the act of recognition alone which creates statehood and clothes a new Government with authority in the international sphere. It is the process by which a political community acquires personality in International Law by becoming a member of the family of nations. Only by recognition a state becomes a participant.<sup>5</sup> This theory emphasises more on the international recognition of a state to proclaim its statehood as an international personality.

### DEMERITS OF THIS THEORY

- This theory emphasizes more on the circumstance that a state becomes an international personality only after it is recognized by other States.

For instance, The People's Republic of China was established in the year 1912, however, the United States of America recognized the PRC<sup>6</sup> as a legitimate government and established diplomatic relations only on 1st January 1979. Similarly, Bangladesh declared its independence from Pakistan on 27 March 1971 but was recognized by Pakistan in the year 1974.

This non-recognition of the PRC and Bangladesh did not stop them from being a State. However, the Constitutive Theory's principle that a state only proclaims statehood in the international society when other states recognize new States fails practically. The acceptance of the constitutive theory would mean that a State exists for some States (which have granted recognition) and does not exist for others (which have not granted recognition). This situation shows that recognition is not conclusive proof of the existence of a State.<sup>7</sup>

- It is clear that recognition is a political act based on the interests of the existing States and hence by accepting this theory we give this discretionary power upon one state would decide the fate of the newly emerging States without any legal basis.
- Furthermore, Constitutive Theory has retrospective effects, which means that when an existing state recognizes a new state, it acknowledges all its previous acts. For instance,

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<sup>5</sup> M.P. Tandon's International Law (Allahabad Law Agency 1999) 70

<sup>6</sup> People's Republic of China

<sup>7</sup> H.O. Agarwal's International Law and Human Rights (Central Law Publications 2021) 100

when the United States recognized the PRC in 1979, it acknowledged all its acts from its establishment in 1912.

- Moreover, many questions remain unanswered about this theory. For instance, Can existence be relative only to those States which recognize it? Does non-recognition by a State entitle it to treat an entity as a non-State for international law, for example by intervening in its internal affairs or annexing its territory? Further, does non-recognition mean that an unrecognized State is not subject to the obligations imposed by international law and is therefore free to implement the policies of aggression?<sup>8</sup>

All these criticisms showcase that this theory is not practically fit and gives no such substantial applicability.

### **Declaratory Theory**

Statehood and other authority of a new government exists before and independently of recognition by other states. This theory states that a State proclaims its statehood as soon as it acquires all the attributes of a State. Recognition is merely confirming the status of a State. Hall, Wagner, Pitt Cobett, and Brierly are its exponents. In contrast to the constitutive theory of recognition, Declaratory Theory states that a new State acquires its capacity at the international law, not by the virtue of the consent of others, but by virtues of a particular factual situation.<sup>9</sup> It is merely a formal acknowledgment or admission of an already fact.

Article 3 of the Montevideo Convention of December 26, 1933, stated: "The political existence of the State is independent of recognition by the other states Even before recognition the State has the right to defend its integrity and independence, to provide for its conservation and prosperity and consequently so organize itself as it sees fit, to legislate upon its interests, administer its services, and to define its jurisdiction and competence of its courts. The exercise of these rights has no other limitation than the exercise of the rights of other States according to International Law."<sup>10</sup>

According to Hall a State enters into the family of nations as a right when it has required the essential attributes of statehood.<sup>11</sup> Brierly has stated, "A State may exist without being

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<sup>8</sup> V.K. Ahuja's Public International Law (LexisNexis 2016) 77

<sup>9</sup> V.K. Ahuja's Public International Law (LexisNexis 2016) 78

<sup>10</sup> Montevideo Convention of December 26, 1933

<sup>11</sup> H.O. Agarwal's International Law and Human Rights (Central Law Publications 2021) 101

recognized, and if it does exist, then, whether or not it has been formally recognized by other States, it has a right to be treated by them as a State."<sup>12</sup>

This theory is completely declarative and has some components of constitutive theory. For instance, how are the other States going to have international relations with this State if they do not recognize it?

## FORMS OF RECOGNITION

**Express Recognition:** As the name suggests, this form of recognition is made expressly, i.e. openly. Express recognition may be conferred by formal declaration. This means that recognition may be conferred *inter alia* by diplomatic note, note verbale, personal message from the head of State or Minister of Foreign Affairs, Parliamentary declaration, or treaty. The recognizing State, therefore, makes its intention clear that it is recognizing the new State or the government.<sup>13</sup>

India's recognition of Bangladesh is an example of express recognition. Similarly, South Sudan's independence on July 9, 2011, was immediately recognized by several States including the United States and the United Kingdom. Its parent country Sudan also recognized it immediately. The minister concerned may also, by press statement, expressly declare that an otherwise ambiguous Note or Note verbale constitutes formal recognition.<sup>14</sup>

**Implied Recognition:** This type of recognition is done when a State does not expressly recognize a State but indicates its intention to recognize the State implied recognition. Montevideo Convention of 1933 under Article 7<sup>15</sup> states that the tacit or implied recognition 'results from any act which implies the intention of recognizing the new State'. The intention may be indicated by the States unilaterally or collectively.

- **Unilateral Acts:** This is when a State enters a bilateral treaty with an unrecognized State, it can be inferred that the State has intentions to recognize the State. This can also be done by sending State representatives to attend ceremonial functions in an unrecognized State. Reception and despatch of consuls with an unrecognized State may also be inferred as an intention to recognize the other State.

<sup>12</sup> Brierly The Law of Nations, 139

<sup>13</sup> V.K. Ahuja's Public International Law (LexisNexis 2016) 79

<sup>14</sup> H.O. Agarwal's International Law and Human Rights (Central Law Publications 2021) 102

<sup>15</sup> Montevideo Convention of December 26, 1933



- **Collective Acts:** A new State may be collectively recognized by existing States. The presence of an unrecognized State in a multilateral convention or conference may be inferred to be an act of recognition by existing States unless it is expressly stated contrary. Sometimes States may expressly state before signing such multilateral treaties that signing of this convention does not amount to recognizing the unrecognized States.

## MODES OF RECOGNITION

**De facto Recognition:** This type of recognition is given by an existing State to a new State provisionally. It means that the recognizing is willing to recognize the new state but has concerns over the stability of the new state's ability to control the territory. The new state may have territorial control but it may be lacking some attributes required for a statehood that the recognizing state would want the new state to ensure first.

If the recognizing State later on decides to give de jure recognition, it will be given from the date it was recognized de facto retrospectively. Thus de facto recognition may be regarded as a preliminary step towards de jure recognition. This type of recognition may be seen in Great Britain's de jure recognition of the Soviet Union on February 1, 1924, after it had given de facto recognition on March 16, 1921.

**De jure Recognition:** De jure recognition is when a new State is completely recognized as a legitimate State with all the attributes required for statehood. De jure recognition is final. It may be given if a State is emerging through peaceful and democratic means. However, if the case is not so, and especially in the cases in which a State is emerging after revolting from its previous government, de facto recognition is given initially before completely recognizing the State.

## CONCLUSION

In conclusion, the act of recognizing a new state is a complex and multifaceted process that carries significant political, legal, and diplomatic implications. Recognition is a fundamental concept in international relations, and it involves assessing whether an entity meets certain criteria to be considered a sovereign state on the global stage. This recognition process is influenced by a combination of legal principles, political interests, and historical factors.

Article 1 of the MCRDS (Montevideo Convention on the Rights and Duties of States) outlines the core attributes that are typically associated with statehood: a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. While these criteria provide a framework for evaluating statehood, the actual recognition of a new state is not solely determined by these factors. Instead, it is a political act carried out by existing states, often driven by their interests and motivations.

Recognition, whether express or implied, carries significant consequences. Express recognition involves a formal declaration by a state, while implied recognition can occur through unilateral or collective acts that indicate an intention to recognize a new state. These acts may include entering into treaties, participating in diplomatic functions, or engaging in other forms of interaction with the new entity. Recognition can also be provisional (*de facto*) or final (*de jure*), with *de facto* recognition serving as a preliminary step toward full *de jure* recognition.

In conclusion, the recognition of new states is a complex interplay of political interests, legal principles, and historical factors. It is a dynamic process that reflects the evolving landscape of international relations. While certain criteria like those outlined in the Montevideo Convention provide a foundation for evaluating statehood, the ultimate decision to recognize a new state is a matter of political discretion for existing states. Recognition carries significant implications for international relations, making it a critical aspect of diplomacy and global politics.