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# Importance of Legal Criteria for State Recognition: How Legitimate is State Recognition in International Law?

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## Abstract

The article discusses some aspects of the recognition of states in international law. Taking into account current political situation in the world, the issue of state recognition at present is very important and topical. Recognition of new states is an act that can be performed by other states. Recognition of states is normally expressed by states addressing newly formed states and declaring the nature of their relationship with their government. Frequently the issue of state recognition is related to the mode of state origin. The article argues that during the collapse of colonial systems as the result of the demise of the Soviet Union, the institution of state recognition had certain specific, and such criteria are no longer applicable with respect to unitary states. It is shown that nowadays state recognition is still non-codified, and the practice of states is very diverse. Any act of foreign state recognition is justified unless it contradicts peremptory norms of international law. The Paper proposes the need for legal criteria for state recognition, because under current circumstances, the purpose of state recognition may not still be legitimate even when formal criteria of *jus cogens* norms are met. The introduction of such criteria would guarantee more credibility and sustainability in international relations.

*Keywords*: recognition of states, legal criteria, legitimacy.

## Introduction

Taking into account current geopolitical changes in the world, the issue of state recognition is very important and topical. At present, even the consensus of states on the recognition of new states may mean a kind of compromise on the non-fulfillment of international legal obligations not even mentioning the fact that in certain cases the emergence of new states are the result of territorial illegality [1].

The current non-consensual trend towards state recognition creates a kind of rift between the goal of legal regulation and their enforcement, as unilateral acts of recognition always carry certain political content [2]. While the classical criteria of statehood are still relevant for state recognition, the international legal scholarship makes an quite interesting claim by recognising the fact that political entity may become a state by collective state recognition outside of legal statehood criteria.

One can say that states are the main masters of their recognition. Accordingly, classical rules of state recognition ceases to apply when formal conditions of statehood are met. However, in practice there are cases when states merely make concrete political steps to deepen relationship with newly created entity and general law of state recognition leaves such acts to the discretion of these states (so-called political recognition) [3]. This raises the questions whether the recognition of new states is often based on a new political reality created by gross violations of international law; whether there are any real criteria for recognizing new states; how legitimate state recognition is and when recognition should be made.

## Modes of State Recognition and Need for Legal Criteria

Recognition of new states is an act that can be performed by other states. Despite the United Nations important contribution in maintaining international peace and security, this organisation has no legal power to recognise newly formed political entities [4]. Distinction should be made between d*e Facto* and d*e Jure* recognition. As noted by professor Walid Abdulrahim "*De facto* recognition involves a hesitant position by the recognising State, an attitude of wait and see, which is usually followed by *de jure* recognition when the recognising State accepts that the effective control exerted by the government in question is permanent and firmly established and there is no legal basis for withholding the *de jure* recognition" [5]. On the other hand**,** *de jure* recognition is generally conceived as final, complete recognition [6]. The question arises as to when the newly formed entity should be recognised. There is no consensus among international legal scholars on this issue, which is partly due to the fact that state recognition is related to the factual situation, namely to the origin of a particular state [7, 8].

From both historical and legal standpoint, the form of state recognition as the result of people's liberation wars is characterised by a certain specific [9]. During this period, the recognition of the part of the territory of state which was still fighting

for its independence was not considered a violation of international law. One can say that such an early recognition was not confined to the sphere of international law but was a purely diplomatic act of establishing and developing further relations between states. Accordingly, the recognition of the former colony by the metropolis was often considered as an objective criterion for the origin of new states. In other words, during this transitional period, the territorial change may be considered lawful under international law if such change was preceded by the consent from the state to the detriment of which territorial change was made.

On December 14, 1960, the United Nations General Assembly adopted a Declaration on the Granting of Independence to Colonial Countries and Peoples which spelled out the ardent will of states to end colonialism in all its forms and manifestations [10]. In our view, non-codification of recognition in international law is the main structural crack of the law of state recognition. Given the fact that the law of state recognition is not codified and the practice of states is very diverse, we should agree with Special Rapporteur of Unilateral Acts of States, Mr. Victor Rodriguez Cedeno who stated that there were "no criteria for establishing a limitative list of objects in relation to which an act of recognition can be formulated" [11]. The absence of legal criteria may be explained by the discretionary nature of the act of state recognition. For instance, international law scholar Bashkim Rrahmani states that recognition is a simply discretionary, political act. He argues that "recognition is simply an act of discretion of an individual state to recognise or to reject the new state. Thus, recognition is a simply political act comprised by a state's decision on recognising or not recognising other state, an act which is a simple, and this has not to do with the arbitrary act of a determined state" [12]. The discretionary nature of the act of state recognition is manifested in the absence of an obligation to grant it and applies to the criteria of recognition. With regard to the legal nature of state recognition as unilateral act of states, Victor Cedenos' point should be accepted, since he argues that "the unilateral act of interest here, as noted above, is a heteronormative act, that is to say, a manifestation of will by which one or more subjects of international law create norms that are applicable to third parties which can have rights conferred on them even though they did not participate in the elaboration of the act" [13].

The emergence of new subjects of international law as a result of the demise of federal states in the 1990s showed that the institution of recognition of states created as the result of the demise of federations has certain specific and it differs from possible situations related to unitary states. The specifics may well be explained by the fact that the subjects of both the Soviet Union and Yugoslavia, which were parts of USSR and Yugoslavia respectively, had a certain international personality, even a formal one. The 1977 constitution of the Soviet Union [14] and 1974 Constitution of Yugoslavia envisaged the right of member states to secede from the federation [15]. The existence of competent authorities in the federal republics, the clear delimitation of the borders and the status of these republics created favourable conditions for international recognition. Of course, these conditions do not apply to unitary states.

Arbitration Commission of the Peace Conference on Yugoslavia in its Opinion No 10 stressed the discretionary character of state recognition.

The Commission points out that

> "while recognition is not a prerequisite for lie foundation of a state and is purely declaratory in its impact, it is nonetheless a discretionary act as other states in a manner of their own choosing, subject only to compliance with die imperatives of general international law, and particularly more prohibiting die use of force in dealings with other states or guaranteeing the rights of ethnic, religious or linguistic minorities" [16].

This criterion has a double meaning. First of all, during the recognition it is inadmissible to make claims that contradict international law. Secondly, the purpose of the act must be lawful. It was applied by the UN Security Council when it passed resolutions calling for abstention from recognition of South Rhodesia, which violated the principles of equality and self-determination, Cyprus, which violated the principle of non-interference by the Republic of Turkey, and Iraq which violates the principle of prohibition of the use of threat [17, 18, 19].

### Conclusion

The Paper argues that in modern international law the only criterion which is mandatory for recognising states is the criterion of compliance with the peremptory norms of international law. Subject to this criterion, any act of recognition is justified in the legal sense of the word no matter when the notice of recognition is given while in case of its violation, the notice on recognition should be considered not premature, but illegal. The ultimate goal, put through the words of John F. Kennedy, "yet our basic goal remains the same: a peaceful world community of free and independent states – free to choose their own future and their own system, so long as it does not threaten the freedom of others" [20].

## Juridisko kritēriju nozīme valsts atzīšanā: cik leģitīma ir valsts atzīšana starptautiskajās tiesībās?

### Kopsavilkums

Rakstā apskatīti atsevišķi valstu atzīšanas aspekti starptautiskajās tiesībās. Ņemot vērā pašreizējo politisko situāciju pasaulē, šobrīd valsts atzīšanas jautājums ir ļoti svarīgs un aktuāls. Jaunu valstu atzīšana ir darbība, kuru var veikt citas valstis. Valstu atzīšana parasti notiek, kad valstis vēršas pie jaunizveidotajām valstīm un paziņo par attiecību būtību ar to valdību. Bieži jautājums par valsts atzīšanu ir saistīts ar valsts izcelsmes veidu. Rakstā tiek apgalvots, ka koloniālo sistēmu, Padomju Savienības sabrukuma laikā

valsts atzīšanas institūcijai bija zināma specifika, un šādus kritērijus vairs nepiemēro attiecībā uz unitārajām valstīm. Līdz ar to var apgalvot, ka mūsdienās valsts atzīšana joprojām nav kodificēta un valstu prakse ir ļoti dažāda. Jebkurš vienpusējs ārvalsts atzīšanas akts ir pamatots, ja vien tas nav pretrunā ar obligātajām starptautisko tiesību normām. Darbā izskan ierosinājums, ka ir nepieciešami juridiski kritēriji valsts atzīšanai, jo pašreizējos apstākļos valsts atzīšanas mērķis joprojām var nebūt likumīgs pat tad, ja ir izpildīti *jus cogens* normu formālie kritēriji. Šādu kritēriju ieviešana garantētu lielāku uzticamību un ilgtspēju starptautiskajās attiecībās.

*Atslēgvārdi:* valstu atzīšana, juridiskie kritēriji, leģitimitāte.

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