

RECOGNITION AND NON-RECOGNITION OF STATES: LEGAL, POLITICAL AND INTERNATIONAL CONSEQUENCES

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ABSTRACT

Recognition is one of the most difficult and even the most complex concepts to define in both international law and international relations. International recognition means the legal recognition of the existence of a new state that has emerged through self-determination. However, in the issue of recognition, fields such as politics, international law and domestic law are intertwined.

Although legal and political elements are considered together in the act of recognition, states mostly rely on their political preferences. Recognition also includes recognizing and accepting claims on a particular piece of land. Undoubtedly, this situation complicates the issue of recognition seriously. Because recognition does not end with recognizing only a state or government, it also covers the territory under the sovereignty of that state and government. Although the fact of not being recognized has the points where it can be considered as an important criterion at the international level, it does not constitute the basis of "obligation".

Keywords: State, Sovereignty, Recognition, Non-Recognition, International Law

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Declaration of interest:
The authors reported no conflict of interest related to this article.

INTRODUCTION

Recognition of a state and its inclusion in the family of free nations through recognition is one of the most complex issues of international law. Even if international law determines the criteria for recognition, the final decision on recognition is made by sovereign states. What makes recognition difficult is not the absence of general rules regarding recognition, but the fact that recognition has a political dimension in parallel with its legal dimension, and in some cases, the political dimension leaves the legal dimension in the background. When the issue of recognition of a state comes to the fore, it is questioned whether that state meets certain criteria that it is obliged to meet in order to be recognized, but these criteria are often not standard conditions. For example, the criteria put forward for country A may be different when considering country B.

Sometimes the same state can make quite paradoxical decisions on the issue of recognition. Because in the act of recognition, fields such as politics, international law and domestic law can easily be intertwined. The United Netherlands, which declared its independence in 1581, would only be recognized by Spain in 1648. Spain's recognition of the United Netherlands is considered the first example of recognition in history that occurred with the emergence of the modern state. The United Netherlands was recognized by Spain in the same year that the Peace Treaty of Westphalia was signed, which is considered the cornerstone of the emergence of the modern state. In the Middle Ages, joining the family of Christian states was only possible with the approval of the Papacy. In the 19th century, countries such as Britain, Austria, Russia, France and Prussia "accepted" older states such as Iran, China, the Ottoman Empire and Japan into the family of nations. The USA's declaration of

independence in 1776 brought Britain and France into conflict regarding the recognition of this new state. The USA had declared its independence from Great Britain, but Britain defended the thesis that a new state could not be established on any piece of land through war or revolution. Moreover, Britain was not satisfied with this, and put forward the condition that the state that was previously dominant over the lands in question should recognize the new state. Thus, Great Britain was stating that it was invalid for France or any other country to recognize the USA without recognizing the USA as a state. However, France thought differently from Britain on this point and considered it sufficient for a state to be self-sufficient for recognition. Thus, while France recognized the United States in 1778, Britain only recognized the United States in 1782.

1. RECOGNITION IN INTERNATIONAL LAW

Recognition, as a unilateral legal transaction, is a state's acceptance of the existence of a certain phenomenon that may affect its rights, obligations or political interests, and its willingness to continue its future legal relations within this framework. Different events that will affect interstate relations, such as the formation of a new state or government, territorial change, rebellion, bring up the problem of recognition.

Existing states reveal their approaches to changing conditions through the process of recognition. Narrow recognition is the acceptance of a new situation with legal consequences. In its broad sense, recognition refers to the acceptance of an existing fact or situation in terms of relations with other states. However, the recognition of states and governments is of particular importance both as an international law transaction and as a political transaction. Because of their important legal and political

consequences, these special aspects of recognition must be distinguished from the use of the term for mere recognition of an existing situation. Recognition is a process that affects the mutual rights and obligations of states and governments.

Generally, the recognition made by the executive body of the states creates a change in the status of the recognized unit in both domestic law and international law in terms of the recognizing state. Once recognition occurs, the new situation becomes assertable against the recognizing state. (PAZARCI: 140) Recognition has consequences for the recognized state, such as gaining the opportunity to file a lawsuit in the domestic legal order of the recognizing state and obtaining immunity for its representatives and property. (KUZU) :20)

The state is the basic unit in which international law regulates its status and relations. Many state definitions have been made until today. Undoubtedly, the most accepted of these definitions is the definition made according to the theory known as "three elements theory", the origin of which can be found in Georg Jellinek's *Allgemeine Staatslehre*, the first edition of which was published in 1900. (GÖZLER: 4)

In accordance with this definition, a state is an entity where a human community organized on a certain piece of country lives under a political authority and establishes sovereignty. More clearly, a state has three founding elements that enable it to become a state.

These elements that Jellinek also mentioned are; It is a community of people, a country, and a political authority. In addition, the Montevideo Convention, which was signed in 1933 and entered into force the following year, provides both the elements required by a state as a person

of international law and generally accepted articles on the recognition of states. As stated in Article 1 of the Convention, the mentioned founding elements are also emphasized here, but different points are also stated. According to Montevideo, the human community should coexist permanently, not temporarily – and not disperse afterwards; The boundaries of the territory must be specified and, in addition, the state in question must have sufficient capacity to establish relations with other states. (GÖZLER: 6)

1.1.THEORIES OF RECOGNITION

There are two views in the doctrine regarding the legal effects of recognition . between school divided species . According to the founding school, a state, but other states By being recognized by international law, it gains personality . According to the explanatory school, The existence of a state is a fact and international law gives personality to the existence of other states. It is acquired independently of one 's behavior . The second half of the 19th century and the 20th century when modern international law emerged. It is the founding theory that dominated the doctrine at the beginning of the century .

1.1.1. Constitutive Theory

According to the founding theory, the emergence of new states depends on the will of existing states. The philosophical origins of the constitutive theory date back to Hegel, the founder of positivism and the view of absolute sovereignty of states. According to Hegel, states establish legal relations with each other through the process of recognition within the framework of their free will. (LAUTERPACHT:38) In the 19th century positivist thought, the view of absolute and unconditional sovereignty of the state is dominant. According to this view, the rules to

be applied in the international society are determined by the states that are the subjects of international law. Consent is the basis of international rights (Nuredin, 2022) and obligations. The inclusion of a new member in the international community is only possible with the consent of existing members. Oppenheim explains recognition as follows: *“Since the basis of International Law is the common consent of civilized states, being a state does not by itself mean being a member of the family of nations. Member states are either original members who gradually developed International Law through customs and agreements, or they are recognized members by existing members when they emerged. A state acquires international personality only and exclusively by recognition.”* (OPPENHEIM:125) According to Jellinek, *“the legal relationship of two units that are not subjects of a superior legal order occurs only as a result of mutual recognition.”*

Jellinek, who accepts that a state is a part of the community of states regardless of recognition, sees recognition as necessary in order to obtain a full international personality with rights and obligations in the community of states. The same view is shared by Listz and Oppenheim. (OPPENHEIM:126-127)

Seeing Vereinbarung (combined will) in recognition, Triepel states that with recognition, the recognizing state and the recognized state bind themselves to comply with the current rules of the international community. According to Anzilotti, international law rules are created by agreement. Therefore, an international law person emerges by being a party to an agreement. In this case, recognition is mutual and constitutive because it creates rights and obligations that did not exist before.

According to Kelsen, recognition has two aspects, one political and the other legal. *The political aspect of recognition expresses the discretion of the recognizing state, and recognition that does not result in any legal consequences is explanatory in this sense.* As a legal transaction, recognition is a unilateral constitutive transaction. The legal existence of the recognized community emerges with legal recognition, and thus international law becomes applicable to the relations between two states. (KELSEN:605) Lauterpacht, on the other hand, put forward the view that organized political communities that meet the criteria for statehood have the right to be recognized by existing states, and existing states have the obligation to recognize these communities. Lauterpacht, who tried to take recognition from a political tool to a legal basis, underlined that recognition should not be a discretionary right that can be used freely, but should be realized with a legal decision made by the recognizing state as a result of examining the actual situation. Lauterpacht showed that the reason why this decision was made by the existing states was the absence of an impartial body that could fulfill this task. (KUZU:8)

1.1.2. Explanatory Theory

According to the explanatory theory supported by the majority of writers in modern international law, a state acquires state status by fulfilling the conditions for statehood. Recognition by other states is only a confirmation of this fact and does not give the recognized state international legal personality. Hall expressed the following view on recognition : *“Theoretically, as soon as an organized political community demonstrates that it is capable of becoming a state, it is included in the family of nations and should be treated in accordance with the law.”* (HALL:83) The intellectual origins of explanatory theory lie in the natural law view. According to the natural law view, international law is the legal

order of a community of states similar to nature. In such a legal order, the emergence of a state and its inclusion in the international community are independent of the will of other states.

For this reason, every community that meets the conditions for statehood automatically acquires international personality. (KUZU:10) According to the explanatory theory, a state becomes a member of the international community from the moment of its formation and before recognition. Recognition merely constitutes evidence of the existence of an independent state.

1.1.3. Evaluation of Recognition Theories

In the 19th century, the constitutive theory became more accepted in international practice under the influence of positivist international law doctrine. During this period, International Law, which consisted of the rules applied by European States among themselves, was only applied to new states if the members of this closed club recognized it. In the 20th century, explanatory theory, which was more compatible with the doctrine of natural law and the self-determination of peoples, gained importance in practice. According to this theory, the emergence of a state and its acquisition of international personality occurs not by recognition but by meeting the criteria for statehood. In other words, the state acquires an international personality by actually coming into existence. It means that it is immune from prohibitions, for example the prohibition of using force. 20th century practice does not support the constitutive theory in this respect. States that did not recognize a newly established state for political reasons, even though it fulfilled the conditions of being a state, did not claim that this state did not have legal rights and obligations.

1.2. RECOGNITION OF STATES

States are recognized in two ways. These are known as "de jure" and "de facto" recognition. (PAZARCI:140) De jure recognition involves not recognizing a state fully and with all its legal effects. De facto recognition, on the other hand, indicates a recognition that has no continuity, is temporary rather than permanent, and is limited rather than unlimited. Of course, it is impossible for anything to be unlimited. At this point, it is necessary to know that de jure recognition is not completely unlimited. According to US and British court decisions, *it is accepted that "once a state is recognized, this recognition is retroactive", whether it constitutes the subject of de jure or de facto recognition.* "As a result, the validity of the public acts of the relevant state is accepted not since the date of recognition, but since the date of actual establishment of that state (critical date)." (PAZARCI:3)

It is useful to proceed from a comparative perspective. We know the conditions for becoming a state. For this, a country, a community of people and a political authority are needed. In de facto recognition, the recognizing state's suspicions about these elements owned by the other state come into play. Let continuity be in doubt, stability and independence be in doubt; All of these are reasons that prevent a state from gaining full recognition. Since de jure recognition is final and irreversible, de facto recognition is already temporary, the state that maintains this recognition has the right to change its decision when necessary, taking into account the situations that may be in favor or against it. It can be changed, thus transitioning from de facto to de jure.(GÖZLER: 4) On the way to recognition, it is necessary to show the existence of a legal process. Recognition can be both explicit and implicit

in form. Covered roads are generally; Establishing diplomatic relations, having diplomatic representations, participating in the same international conferences while being a party to bilateral agreements, having two states as parties to multilateral agreements, or conducting trade may not be included in implicit recognition. (TÜRKEŞ:2) Recognition is a process that depends on the discretion of the recognizing state. However, international practice considers early recognition to be legally ineffective. A unit should be recognized only after it meets the conditions for statehood. Otherwise, it means interference in the internal affairs of the parent state. In order for recognition to have legal effect, the recognized community must have the qualities of a state determined by the rules of international law.

It is observed that if states have citizens in the country of states they do not recognize, they establish consular relations with these new states without recognizing them. (BAL:14)

The focus of international law theory under the influence of positivist doctrine has been recognition. As the positivist doctrine lost its influence and the view that statehood occurred independently of recognition gained importance, the basic concept that doctrine and practice dealt with began to be the state.

It is not enough for a community to meet the Montevideo criteria, which express the influence on the country required for it to be recognized as a state. It is also important how this event is achieved in order to recognize the community that claims to become a state. Violation of ***the mandatory (jus cogens) rules of*** international law by the community in question results in a ban on recognition. (KUZU:20)

Violation of three norms of general international law has led to a ban on recognition in UN and ICJ practice. According to Dugard, these three norms are jus cogens: the prohibition of territorial acquisition through attack and use of force, the right to self-determination, and the prohibition of racial discrimination.

Prohibition of territorial acquisition through attack and use of force. It is generally accepted that the act of aggression is against international law. The prohibition of aggression prohibits the use of force between states. A state is prohibited from annexing the territory of another state or assisting in the formation of a new state through the use of force. In this context, the international community did not recognize Southern Rhodesia, which was established against the will of the majority of the people. Similarly, the formation of bantustan states in South Africa was condemned by the UN for violation of the right to self-determination. (KUZU:20)

It appears to have been made by the Institute of International Law at the Brussels meeting held between 17-24 April 1936. In this meeting, the Institute of International Law expressed the recognition of states as follows. *“Recognition of a new state is the acceptance, by one or more states, of the existence of a human community within a certain territory, politically organized, independent of any other existing state, and capable of fulfilling obligations arising from international law, and making the new state a member of the international community.” It is a free act expressing their intention to count as such.* (ERDAL:157-159)

States must be established legally, or if new states are established by seceding from the territory of another state, other states must recognize the new state if the seceding state allows this new state.

Otherwise, the new entity that does not meet these conditions should not be recognized as a state. (GREWE:497– 498) 1936 Institute of International Law stated the following: *“If a politically organized human community in a certain region is independent of another state and is capable of fulfilling the obligations imposed on a state by international law, the other state or states that accept it as such The process is called recognition. This recognition is an expression of the recognizing states that this state they recognize is seen as a member of the international community.”* Since all these decisions, the concept of the state has been dragged into a very complex situation.(AZARKAN:1065)

On the other hand, according to the declaratory theory, recognition of a state is nothing more than an explanation of the actual situation that has emerged, and is not a necessary condition for the existence of the state in terms of international law. (FAMOUS:467–497) An important point that should be underlined here regarding recognition is that the newly recognized state can only obtain the right to have equal status with other sovereign states in the international system through recognition. Based on this justification, the newly established state will have the opportunity to acquire debts and rights by making international agreements with the states that recognize it. (ŞÖHRET:65)

In this way, the recognizing state may enable the citizens of the newly recognized state to benefit from public freedoms within the framework of the principle of equality and to gain the right to benefit from the immunities and privileges imposed by law. (CAŞIN: 422-423) Another legal feature of recognizing newborn states is that this process is a unilateral legal transaction. In other words, whether and when a state will recognize another state depends entirely on its discretion. Again, due to this feature, recognition is a relatively effective legal procedure.

Because, with the recognition process, only the recognizing state comes under a legal obligation, and other states are not bound by this process. (CAŞIN:20)

It would also be appropriate to address the following issue. The articles regulating the "Responsibility of States for Acts Contrary to International Law" adopted by the International Law Commission (IHL) confirm this practice. (2) of the document in question. The article provides that no State shall recognize that a serious breach of an obligation arising under a peremptory rule of general international law is compatible with international law. With this provision, the practice of non-recognition of states resulting from the violation of a jus cogens rule has been strengthened.

Accepting the resolution of disputes arising from the succession of states and regional issues by treaty and, where necessary, arbitration. This recognition process, which is essentially determined by the EU, depends on the acceptance of the rule of law, democracy and human rights norms adopted by the Conference on European Cooperation and Security by these European Union member states. It was done. Such an attitude did not cause any problems since the recognition process remained a discretionary process until a new legal order was established. (ATAY:158)

European International Law stated that new states and entities should be recognized after their legal existence has been fully proven. According to this law, states must be established legally, or if new states are established by seceding from the territory of another state, other states must recognize the new state if the seceding state allows this new state. Otherwise, the new entity that does not meet these conditions should not

be recognized as a state. (GREWE: 497–498) The International Court of Justice, in its Advisory Opinion on Kosovo, stated that in cases such as Southern Rhodesia, Republika Srpska and TRNC, the declaration of independence was not invalid per se, but that the prohibition of recognition was incompatible with the prohibition of the use of force in these cases or other rules of general international law, especially mandatory (It was determined that it was caused by a serious violation of the rules of the jus cogens nature. (KUZU:21) Meanwhile, the ability to establish relations with other states and the representation of a state in international organizations and other countries are important. (KÖSTEM:2

CONCLUSION

In essence, the state emerges when a community that defines itself as a people organizes itself around a political authority. The Peace Treaty of Westphalia, signed in 1648, is considered to be the date when the modern state emerged. The most important feature of the modern state lies in the implementation of the principle of sovereignty. The issue of recognition is a political issue as well as an international law issue. It can be said that one of the most important issues in which politics and law are intertwined is the recognition of new states and their inclusion in the family of free nations. It is understood that the political tendencies of states regarding recognition come before international legal regulations and obligations. It should be emphasized that recognition is a political decision.

The inconsistency and lack of consensus noted in many scientific studies on recognition are mainly due to states' recognition or non-recognition of a new political authority in line with their political interests

and foreign policy preferences. In other words, since there is no specific standard or custom among the existing states in the international system, the newly emerging political formation is rewarded with state status by some states, while it is seen as an illegal and illegal separatist movement by some states. As a result, while a new political unit is recognized by some existing states, it faces the problem of not being recognized by others, and these are referred to as black holes, which are seen as abnormal in today's world or on the world political map. These places are essentially places that do not exist in international relations, and they are seen as state-like entities that have no place in the international system formed by sovereign states.

However, although these formations have the essential elements that a normal state should have, they are not like a normal state. Because, although these units have de facto established an effective authority over a certain territory and population, they stand out as entities that have not received international recognition or are recognized by a few states at most. While these units often insist on the right to self-determination in order to legitimize their existence and ensure that they are accepted as a new state by the international community, on the other hand, they are faced with the principle of territorial integrity of states, which is one of the strong principles valid in international law. They stay.

Whether or not a new political authority is recognized as a state is determined, as in the past, today by the attitudes of the major actors (states) that make up the international system and the conjunctural situations of that period. In accordance with the principle of protecting the territorial integrity of existing states, major states that influence the international system generally show strong resistance to recognizing political units that aspire to become new states, formed in other states with which they have good diplomatic relations, as new states. In fact, in some

cases, new states that declare their independence often encounter the "bayonets" of the great powers, so to speak. However, they provide great support in recognizing political units that wish to become new states, formed within existing states with bad diplomatic relations. In fact, it seems that they tend to support such formations themselves from the very beginning. For this reason, these new political formations are easily recognized by the great powers as soon as they declare their independence. Thus, they not only send a diplomatic message to the existing state, but also put it in a difficult situation by giving it the image of a failed state that cannot even protect its own borders within the international system.

While every state stands and defends the situations that will be in its favor, it confronts the events that may have an adverse effect. In other words, the fact that Southern Cyprus, which strongly opposes the recognition of Kosovo, associates Kosovo with the Catalonia issue, just as Azerbaijan considers the Nagorno-Karabakh risk, with the idea that Kosovo can set an example for the TRNC, sheds light on this determination. At this point, whether we are talking about the right to self-determination, the founding elements or compliance with domestic law, each event produces results in its own way, manifesting itself to the states in front of them. Perhaps the point we need to think about here is how fair international law provides. Because law should exist the same for everyone, whether national or international.

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