

A Review of Classical International Law and the Recognition of States

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Keywords	Abstract
Recognition State Government International Law	<p>Among the issues answered in this study is whether the recognition and status of countries before and after separation can affect the legitimacy of independence and the right to self-determination of nations or not. In the course of this issue, the question of why, despite the lack of recognition of states and the illegitimacy of independence in light of the provisions of international law, some nations still emphasize the right to self-determination and secession is addressed. And they prefer it to territorial integrity.</p> <p>By using descriptive and analytical research methods, we have achieved the above objectives. The findings indicate that independent countries have equal sovereignty. Therefore, for a country to have the right to independent sovereignty and to enjoy such a right on the international stage, it must be recognized by the international community or, at least, by one country, the most important of which are its neighbors.</p> <p>It can perhaps be said that recognition is the first necessary step towards achieving legal identity. Recognition of countries is a political act that has only legal effects and consequences, and therefore the act of recognition itself is not an international legal act.</p> <p>No country has a duty to officially recognize another country or government unless the interests of the recognizing country require it, and no country has the right to be the object of recognition and demand it from others.</p> <p>If a country, despite having all the characteristics described in international relations or in the decisions of the International Court of Justice (territory - population - government and sovereignty), is not recognized as a state, it cannot be considered a subject of international law.</p>

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For example, a country of one billion people, such as the People's Republic of China, has not been recognized as a large number of states for many years. From a legal perspective, membership in the United Nations cannot create an obligation for others to recognize it.

Introduction

The international system is based on the supremacy and superiority of the sovereignty of states. Recognition is a practice and ceremony that has been traditionally used in international relations since the eighteenth century, and it is the formal recognition of a new state by other states. In other words, when a new state appears on the international scene, that is, its constituent elements are gathered, other states must formally recognize it and confirm its existence in order to establish relations with it.

The independence of a state is a basic condition for its recognition by other states; For example, the rebels' claim to establish a new state cannot be confirmed because it must be independent of both the original state and other states. For the same reason, the independence of Syria, Palestine, and Iraq from the Ottoman Empire did not lead to their recognition.

Because the aforementioned territories immediately came under the control of other states, namely France and England; For the recognition of a new state, its internal stability is also taken into account, and in this matter, the strength of the new state and the people's trust in it play a crucial role; the lack of recognition of Cuba by the United States was for this reason; the third important element for the recognition of states is the specific territory that is under the control of the new state. (Moqtadder, 33-40: 1996),

The Institute of International Law, at its historic Brussels meeting in 1936, decided to examine the issue of recognition and defined it as follows: Recognition is a practical act by which countries confirm and approve the existence of a new and independent political community capable of respecting international law in a specific territory and, as a result, declare their will to recognize it as a member of the international community They have.

In fact, the identification system itself is not a system. The context of the debate about whether recognition is a political or diplomatic issue rather than a legal issue, Roth replies that "there is essentially no obligation in international law for states to recognize various global institutions and organizations." Even if recognition were a political or diplomatic issue, the answer would still have significant legal implications. Yet, in this very important system, there is no accepted standard for deciding on identification, defining the basic concept of the act of identification, or even deciding whether identification should be granted at all.

Furthermore, the approach of non-identification will not be applied randomly or arbitrarily as a general tool when one state is dissatisfied with another. What is being proposed is not to eradicate the concept of a recognition mechanism altogether, nor to propose a general or arbitrary mechanism. As has been suggested in the literature, a non-recognition approach does not necessarily mean the disappearance or non-existence of international law obligations, whether effective control or legitimacy.

By any standard, the actions of a violent dictator using military force against peaceful dissent warrants recognition, while widespread public disapproval is demonstrated by widespread demonstrations. This type



of non-recognition is “a conscious and collective act of the international community and is equivalent to a system of criminal deprivation.

The approach of recognising, seeking to find ways to protect individuals at risk abroad by any peaceful means before resorting to military intervention, is an obligation for states. This can include influencing the end of an existing regime; and it is a legal and moral act. Because it involves non-physical intervention. The cognitive approach allows for legal and non-violent change of government and allows for the transfer of power to the people on the basis of an orderly alternative system. When people clearly demonstrate in some sections of society that they want reform of the state structure, a dictatorial regime does not provide any support at the domestic level.

With the collapse These pillars of the state’s right to uphold the equality of sovereignty and any basis for international legal sovereignty, whether through legitimacy or effective control. All of this is validated by the steadfast will of the people.

When a regime resorts to violence against such peaceful movements, this strongly demonstrates the illegitimacy of the regime, which requires reaffirmation and confirmation. At present, the rights The international community refrains from recognizing states that are established by force or illegal means, but it does not exclude states that maintain power through similar techniques.

This issue has the advantages of recognition for armed opposition groups that have gained popular support and a reasonable amount of success, but it does not have such advantages for nonviolent movements with the same support. With regard to approach and prioritization Non-violence, this illogical approach must stop.

While legal change does not necessarily change the reality of the state or the country's conditions, it is a clear sign that the international community will no longer tolerate the actions of the previous regime. In practical terms, access to state assets abroad is automatically transferred to the new state, which can take whatever steps it needs to make changes. From the perspective of The former regime knows that a wide range of international sanctions, including all necessary forces, can later be legally created in support of the state's legal rule. (Alice, 2002:98)

The non-recognition approach is still intrusive, but it has a principled basis in the concepts of popular sovereignty, legitimacy, and historical background. This approach effects legal regime change without violence and is less likely to be discussed in the legal context than humanitarian interventions against the wishes of the target state.

The defense of sovereignty and internal processes is insufficient, and it would be shortsighted to say that the increasing changes in international affairs do not affect the internal functioning of countries. If non-recognition can be implemented as a coercive measure, the financial and human costs will be minimized, and the ongoing deadlock between the existing regime and the people of that country and in the international arena will be resolved.

It is time for states to adopt a decolonizing approach to violent and rejected regimes that is part of the vocabulary of international law. Recognition and secession are closely related. Recognition means the acceptance of the sovereignty of states. However, early secessions were generally conceived as claims to



independence from colonies, empires, or federations. Until recently, international law did not accept existing borders as an absolute rule, it anticipated the separation of states and considered their non-approval as a natural consequence of decolonization and the restructuring of states in accordance with historical realities and ethnic needs (Evans, 2002:54). Recognition was the tool and criterion for assessing the credibility of member states of the United Nations. States have complete freedom to exercise their discretion to grant or deny recognition. The requirements for the creation of states are the existence of an effective state, independence, freedom from control by another state, and the ability of the claimant state to conduct foreign affairs with existing states. The issue is not whether the emergence of a new state violates the territorial integrity of the state or not.

The main prohibition of recognition is a fundamental principle. And in earlier treatises in English—Hersch Lutherpacht's *Recognition in International Law* (1947) and *Recognition in International Law* until Qianchen (1951)—a distinction has been made between the issue of recognition and separation.

The lack of consent of the former State is a key element that defines the precise concept of separation. At the same time, this factor explains why separation in international law is so controversial. On the one hand, the lack of agreement is a source of disagreement between the new and the “original” state. On the other hand, in order to gain the prior consent, the newly formed entity must find a legal justification for its creation elsewhere. Conversely, the parent state is likely to assert that this justification does not exist in international law and, in turn, the international legal order will resist attempts to implement a process of voluntary secession.

The principle of self-determination, when implemented, can lead to the creation of new states. There are two different types of rights to self-determination, internal and external, but they are two aspects of the same right. The application of the principle to colonial or foreign rule is no longer a matter of debate; the key point in the case of secession is whether the principle is relevant to existing states. Secession is not an immediate fact.

The process of secession is always a complex set of claims and decisions, negotiations or conflicts, which may or may not result in the creation of a new state. This process often takes place within a country, but it will cause international debate or at least concern among the countries concerned. International law provides a set of legal procedures for the creation of states through secession. This process involves three rules that the authorities of the secessionist movement must adhere to. There must be. (Bigdali, 2013:129)

- (1) Absence of any direct or indirect foreign military support.
- (2) Declaration of the consent of the majority of the local population through a referendum.
- (3) Respect for the principle of *possidetis uti*, that is, ownership of land and property.

The voluntary separation of nations has become a derogatory concept, and the role of recognition in the creation of new states has been greatly reduced. On the contrary, non-recognition is a means by which countries Collectively or unilaterally, they express their opposition by changing the region, and non-recognition becomes more important and is widely used.



International law is prohibited in places where the act of voluntary secession violates the basic principles and foundations of international law. Because by means of the use of force or interference by another state, forced secession threatens peace and security between be considered a state and the UN Security Council insists on the principle of territorial integrity, that state will not come into existence even if all the legal and constitutive elements of a state are effectively present.

In such cases, international law prevents the desired outcome of the separatist forces from being sought. Consequently, the entity formed in such a way is not capable of becoming a state. (Ibid.)

Concepts and Theoretical Foundations

The Concept of State Recognition

In the general definition, recognition is a formal act by the executive branch of a country to confirm the existence of another state. The recognition of countries has two meanings: political and legal. In the political sense, recognition means the desire of each recognizing country to establish relations with the new country. Therefore, as long as a state has not formally recognized another state, either explicitly or implicitly, it will not establish relations with it. It is important to note that the recognition of any state by another state takes place in various forms (unilateral document, individual or collective action, or explicit action such as the establishment of diplomatic relations or the conclusion of a bilateral treaty) (Hillgraber, 1988: 194). In the legal sense, recognition means that the recognizing state believes that the new state has met all the conditions for membership in the international community and It is subject to international rights and obligations.

Theoretical foundations of state recognition

There are two theories regarding whether the recognition of states and governments gives them international personality or whether it is due to the fact that these states and governments already existed and recognition is a condition for their approval:

1 Constitutive or formational theory

According to this theory, recognition is one of the necessary conditions for the formation of a state or government, and without it, a state or government cannot exist. The concept of international law came into being.

In the nineteenth century, when international law had a European dimension, other countries had to be admitted to the international community by European states, and revolutionary governments were also excluded from membership at the time of the Congress of Vienna (1815) unless they were recognized.

In recent times, if a state or government is established illegally and in violation of international law (such as in cases of aggression or racial discrimination), recognition can have a founding aspect.

2 Declarative Theory

According to this theory, the existence of a state or government depends on the reality of the matter and recognition is only the affirmation of a reality. In cases where the establishment of a state or government does not entail a violation of international law, recognition or lack thereof does not have much impact on



the issue. In such cases, recognition has a declaratory aspect. However, in cases where the conditions surrounding the formation of a state are not clear and its legality is in dispute, recognition plays an important role. (Such as the recognition of Israel by Western countries and others). (Jaafari, 2001:98)

The concept and legal nature of government recognition

When a new country is formed, the recognition of that country also includes the recognition of its government. Otherwise, that is, if countries have existed for a long time, but their form of government changes due to a revolution or coup or any other reason, the issue of identifying the new government becomes a matter of debate.

Therefore, according to the "principle of the permanence of states", which is one of the fundamental rules of international law, a change of government does not affect the stability of a state, because the recognition of a state has a more limited purpose than the recognition of a country. However, from a legal point of view, there is no difference between the recognition of a country and the recognition of a government, and the declaration theory applies to both types. (Zakrian, 2007:147). Requirements for the formation of a state according to the Montevideo Convention of 1933: A state as an international person must have the following conditions:

1. Population

Population does not mean that there is no migration in the territory. Even the International Court of Justice in the Western Sahara case (1975) considered the Chadian tribes, who move around and come without regard to territorial boundaries, to be connected to the territory of Western Sahara.

2. Defined territory

The territory of a state usually has definite borders. However, the existence of border disputes does not prevent this condition from being met. Such as the Kashmir issue between India and Pakistan, although some states have deliberately refrained from defining the precise borders of their territory for expansionist purposes (such as the Israeli regime).

3. Sovereignty

The government is responsible for representing a state at the international level and is responsible for the rights and Its duties are. The government is usually divided into three branches: legislative, judicial, and executive. The executive authorities must have effective control over the territory and the people. Sometimes, as a result of civil wars, the government loses control over the people or part of the territory (as in Lebanon).

However, this does not prevent the state from continuing to exist, unless the continuation of internal wars leads to disintegration and, as a result of recognition by the international community, a new state is formed (such as Bangladesh, which was established from the disintegration of Pakistan in 1971, or the Central Asian, Transcaucasian, and Baltic republics that came into existence after the dissolution of the Soviet Union). (Davarpanah, 2019: 140).

4. The ability to establish and maintain relations with other states



Sometimes this condition is referred to as independence. It means that a territory is not legally under the control of another state. For example, "Hong Kong is under the jurisdiction of the British Crown and is a colony of that country. Therefore, it cannot be an independent state under international law (the ownership of Hong Kong is to be transferred to the Chinese government according to the agreement concluded between Britain and China). Therefore, states that have legal independence have the legal ability to establish relations with other states.

A colony can be a territory under The principle of self-determination, claiming independence and fighting for it, and if successful, achieving independence (like India in 1947 and Algeria in 1961). The international community is generally in favor of the independence of dependent territories in the implementation of the principle of self-determination, but it is not in favor of the disintegration of existing states.

(The effects of such disintegration can be seen in Yugoslavia and the civil wars) Although the demarcation between the principle of self-determination and the The fate and separation of Talib is difficult to determine in light of events in Eastern Europe (Moqtadar, 2013:44)

5. Rule of Law

The way a state is formed may be done by resorting to illegal means, that is, it involves a violation of one of the principles of international law. Such as resorting to force and territorial occupation, racial discrimination, etc. It is obvious that a principle such as the right to self-determination justifies the struggle of the people of dependent territories to gain independence.

However, a state that has come into existence through the use of force and the occupation of the territory of neighboring countries (such as the Israeli regime) lacks the legality of its formation. Recognition is the acceptance of a state as a member of the international community and a necessary condition for the establishment of relations and the full exercise of the powers of a state. Since the international community lacks a collective mechanism for recognition, states undertake this task alone or in collaboration with others (Moqtadar, 2013: 48).

Types of State Recognition and Its Effects

Recognition is a matter of time and space, and as a result, due to the changes in time and space, the criteria and concepts of recognition have also changed. This issue becomes more obvious when we consider that recognition is no longer the exclusive preserve of states, but also of many non-governmental institutions, especially the European Union, the United Nations, and international organizations. Depending on that, they also express their opinions on the recognition or non-recognition of states and present specific criteria.

Because, on the other hand, the importance of recognition is not limited to its legal dimension and also has a political dimension, there are also differences of opinion within the various institutions of each country regarding the recognition of states. This difference of opinion can be observed particularly well between the judicial and political institutions of countries. The term declaratory means the formal declaration of the government of an existing state that intends to attribute certain customary legal consequences to a set of existing events, which in its opinion (and other states) justifies its conduct.



Usually, "recognition" has a more specialized meaning in international law, which refers to the affirmation of the existence of a new state or government within an existing foreign state, accompanied by an expression of the desire of the recognizing state to establish relations with the recognized entity or government. Recognition is also used to refer to conflicting communities or insurgencies, in the case of the recognition of ownership of territory, and ultimately to refer to the actions of governments.

The impact of state recognition is a legal issue, and states agree that recognition is more of a political exercise with legal consequences. This is convincingly demonstrated by the dependence of national courts on the executive's recognition policy. On the other hand, there are also specific and important legal implications that are sometimes accompanied by the moral burden resulting from this political action. (Dawr Panah, 2019:13), Basic Function Recognition must be the affirmation of something as a fact that has hitherto been uncertain.

That is, the statehood of some societies, when such recognition is given, expresses the willingness of the state-recognizer to accept the consequences of his action and enter into normal relations with the recognized state.

The task of recognizing new states, despite some skillful efforts to do so, cannot be conclusively proven. The recognition of a state or government when It is explicit or implicit when the recognizing state issues an official statement and implicit or hypothetical when the existing state enters into formal relations with the new state or government by sending a diplomatic representative to it; adopting its flag and giving it a military salute; corresponding formally with its head of state; concluding a treaty with it or in some other way in practice, recognizing its existence as a The state accepts.

However, in all these cases, there must be a clear indication of the intention to recognize the new state or government, otherwise it will be assumed that there was no implicit recognition. (Ezzati, 2014:23) Every state comes into existence when the society in question acquires the basic characteristics associated with the concept of a state: a defined territory, a practical and effective government, and independence from external control and etc. Since all these aspects of statehood involve verifiable facts, determining the date of the beginning of any new state is only a matter of fact and not a matter of law.

A new state, regardless of whether other states have recognized it, comes into existence when it meets the factual requirements of statehood. Of course, the reasons for deciding to recognize each new state vary from case to case, and Other factors have been used in the recognition of other states, such as domestic political repercussions, the possibility of a military alliance with the new state, humanitarian motives, etc. (Kochra, 2020:35). From the United States' perspective, international law does not require states to recognize other entities as states. This is a matter for each state to determine whether an entity is worthy of recognition as a state.

In reaching this diagnosis, the United States has traditionally looked to the creation of certain events. These events are effective control over a precisely defined territory and population; an organized government over that territory; and the capacity to take effective action to conduct foreign relations and fulfill international obligations. The United States has also considered whether the entity in question has attracted recognition from the international community of states (emphasis added).



It is generally accepted that the recognition of any new state or government has retroactive effects from the very beginning. This means that the recognizing state accepts as valid all official actions of the new state's government from its inception. The recognizing state has the right to determine a date for the official beginning of the life of the recognized state, and thereafter all actions taken by that state between the specified moment of birth and the date of recognition are considered valid; as if the recognition coincides with the time when the new state enters the scene of existence. (Kassa, 2016:312)

Logically, the recognition of any new state does not mean the recognition of its government itself; for no one can imagine the recognition of the whole without including its executive function – its government. Real problems in identifying governments arise when the form of government changes, whether due to a change in type, or through an illegal or other unconventional transfer of power from one group to another within the state in question.

In any case, even a complete change in the form of a State's constitution does not necessarily affect its "continuity of legal personality." In general, the recognition of any Government means that the recognizing Government confirms the new recognized Government's status and also its willingness to fulfill its obligations. The fact that the recognizing Government declares its willingness to enter into normal international relations, including the exchange of diplomatic agents, with the recognized Government, And that the recognizing state will then hold the recognized government responsible for its international obligations as well as for all official actions that affect them. (Gerhard von Kallen, 2013: 128).

Basically, "the fundamental and necessary need for public order is one of the strongest political arguments for the concept of the rules of the state." It is clear that, from a theoretical point of view, the effort to develop rules of law in public international law is shaped by the support of the legal dimensions of public order.

In the process of the evolution of the international legal order, the creation of rules of law is a major achievement in ensuring international peace and security and, at the same time, a major challenge to the positivist view of international law, which overemphasizes the will and role of the State.

Therefore, international law is developing more rapidly, taking into account the increasing scope of international obligations of an absolute nature. Taking into account past experiences regarding the damages caused and also the attitudes arising from the common morality and conscience of civilized humanity, the new legal order prevents damages and losses. A process that has played a fundamental role in the analysis and clarification of the fundamental interests of the international community and has been manifested through international agreements and has increased and burdened the responsibility of states that fail to comply with the aforementioned rules. A rule of international law with the characteristic of peremptory norms is similar to a peremptory norm of the domestic legal order. The grounds for the creation of peremptory norms are more or less subject to the same arrangement as is common in domestic law. Therefore, the rules of the order must have the necessary duration and stability.

Accordingly, when a global legal order is designed, it is necessary that "the overall structure of the international system must have the necessary stability. Because the ability to implement the rules of the order and to achieve the legal order that includes the aforementioned rules, is in the group of a kind of concentration and authority that must exist in the international community. (Ibid.)

Legal Implications of State Recognition



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The recognizing state believes that the newly recognized state has all the conditions for membership in the international community and adherence to international rights and obligations. From this perspective, recognition will have a series of legal effects for the new state, some of which are:

1. Recognition gives the new state a legal status, as a result of which it acquires international legal personality and is recognized as a recognized sovereign state and a member of the United Nations.
2. The relations of this state are subject to international legal norms related to war and peace.
3. The new state's right to property is formally recognized.
4. The new state is subject to the law of non-interference and its rights can only be violated within the framework of international law.
5. Recognition is granted retrospectively and includes the acts and laws of the country being recognized without foundation.
6. Recognition enables the laws, regulations and administrative practices of a country to be legally relied upon in the recognizing country.
7. Recognition enables the recognized country to bring legal proceedings in the recognizing country in its own name.
8. The recognized country, as a judicial authority, is exempt from the jurisdiction of the domestic courts of the recognizing country.
9. The recognized country has the right to claim and recover its property in the recognizing country.
10. Recognized states can claim immunity from the execution of judgments of courts recognizing the state. (Moqtadar, 1996:67).

The United Nations and the Policy of State Recognition

Membership in the United Nations has a positive effect on the legitimacy and legality of the state and helps stabilize a country. Therefore, separatist groups seek to gain the support of the United Nations. However, the United Nations has emphasized its aversion to secession.

For example, in East Timor, UN Secretary-General Kofi Annan stated that the United Nations officially recognizes the unity of the Indonesian territory and that we will not support any move that leads to its disintegration.

The recognition of the right to self-determination has been officially recognized by the United Nations, and even the demand for a referendum to declare the will of the people would be a sign of the incompetence and incompetence of the United Nations. (Castells, 2001:99)

Case Study: Examination of Kosovo's unilateral declaration of independence and the reaction of states to this issue The state of Kosovo issued its declaration of independence on February 17, 2008, despite strong opposition from Serbia, Russia, and China.



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According to Article 1 of the International Covenant on Civil and Political Rights, as well as the interpretation of the United Nations Human Rights Committee, colonized territories have the right to independence. But the states took conflicting approaches to the Kosovo issue.

Some States considered the prohibition of unilateral secession to be unenforceable in international law, except in colonial situations. Denmark, Maldives, France, Norway, Switzerland, and the Netherlands believed that respect for territorial integrity was an important principle in international law, but that the principle was not absolute and should not be considered in isolation from other fundamental principles of international law.

These countries stated that it was generally clear that there was a right to secession under international law, but it was equally clear that international law did not prohibit secession and that, consequently, a declaration of independence by a part of the population of a country was not illegal.

Some other countries, particularly developing countries, were opposed to unilateral secession in non-colonial situations. In addition to Serbia, whose opposition was obvious, countries such as Brazil, Argentina, Venezuela and Bolivia, China, Egypt, Libya, Iran, Cyprus, Spain, Azerbaijan, and Romania supported the theory of complete prohibition of unilateral secession and believed that the provisions of international law do not allow a part of a state's territory to secede and declare independence without any justification without the consent of the mother state.

In the opinion of these states, unilateral secession was contrary to the principles of sovereignty and territorial integrity of states. The principle of the right to self-determination does not mean the creation of the right to secession in non-colonial territories. The resolutions of various UN bodies do not recognize unilateral local secession. Regional documents such as the Final Declaration of the Helsinki Conference in 1975, which emphasizes the principle of territorial integrity of states, refer to the rights of states and also refer to According to the Human Rights Committee, all the above-mentioned States had reasons to reject the recognition of Kosovo.

However, a third group of States put forward the doctrine of secession as the solution. Proponents of this theory argue that, except in cases of decolonization, foreign occupation, and bilateral agreements, there is no right to secession or independence in the international legal system, and that people should exercise their right to political self-determination while respecting the principle of territorial integrity, and that consequently this right should be exercised within existing international boundaries.

However, in some special cases, such as genocide, the right to political self-determination may be translated into the right to external self-determination, and thus, outside of colonial cases, a right to secession may arise for a part of the people of a territory, which is known as the doctrine of secession. According to this group, the right to secession creates a kind of balance between the two principles of self-determination and territorial integrity. That is, as long as the government does not discriminate against an ethnic group and does not systematically and persistently violate their human rights, the ethnic group will not have the right to secede and exercise external self-determination.

Rather, like other members of the country, it will have the right to internal self-determination, that is, to have a democratic government. The Russian government supported this argument, but did not consider Kosovo to be an example of it. James Crawford, an international lawyer, explained to the court that



secession is a solution for a country that does not respect the principles of equal rights and self-determination.

Western countries and other states that agreed with Kosovo's independence believed that the commitment to respect and promote the right to self-determination in Kosovo had been violated and that there was no government that represented all the people. This government has blatantly obstructed the exercise of the right to self-determination of the people of Kosovo.

Considering the opinions of legal scholars and the advisory opinion of the International Court of Justice, and considering that 41 countries have currently officially recognized the independence of Kosovo, it must be said that it is not possible to give a definitive opinion on the opinions in favor of and against this independence.

Because there is a kind of fear and panic among many countries about a new innovation in international law that legitimizes secession and threatens the principle of territorial integrity of states. Just as most countries that have agreed to Kosovo's independence consider it a special case that should not be treated as a dream, The EU foreign ministers also considered Kosovo's declaration of independence to be an individual matter in their statement of February 18, 2008, the day after the declaration.

Even the Kosovo State Assembly did not explicitly mention the right to self-determination in its declaration of independence, declaring: "We, as democratically elected leaders of our people, declare that Kosovo is an independent and sovereign state."

This statement reflects the will of the people. The preamble to this statement also addresses the concerns of countries: Considering that Kosovo is a special case arising from the non-consensual disintegration of the Yugoslav state and cannot be considered a solution to other situations.

Thus, with the evolution of the concept of absolute sovereignty, the existence of sovereignty was gradually but continuously challenged, and as a result, the path for intervention in the internal affairs of states became more open. As currently, with the formation of international and inter-governmental regimes and institutions that systematically transfer parts of state power to inter-governmental and supranational institutions, the sovereignty of speech can no longer be said to be indivisible or non-transferable. In addition, in recent years, many new technologies have provided the possibility of bypassing the control of states. With the expansion of communications and various technologies, the territorial impenetrability of states has faced serious challenges and the importance of borders has gradually diminished.

The intertwining of all these changes and their deepening and expansion in a way that can be seen in the concept of globalization. Fundamental, foundational, one of the most fundamental assumptions. Therefore, as mentioned, the external dimension of the sovereignty of states is recognition. Its internal dimension is internal authority over the territory under government and its recognition by the public will.

Since the range of issues over which authority is claimed (the traditional dimensions of internal sovereignty) and what is considered legitimate from an external perspective are variable and different, then sovereignty is also a variable matter. International law was the law governing relations between civilized states, which had been based on consent within a community of Christian European states since the fifteenth century, but some non-European states, such as America, had been explicitly or implicitly accepted into this community.



This acceptance was, in fact, the same principle of recognition on the basis of which a state was recognized and the recognizing states were bound and committed to respecting international law and mutual rights and duties.

Accordingly, the binding element of international law stemmed from this recognition, and states became subjects of international law only when they were recognized. Of course, this does not mean that a state does not exist as long as it is not recognized, but rather that, through recognition, a state becomes subject to international law and becomes an international person.

Therefore, the basis on which any entity becomes a state is not an important issue of international law. Unrecognized entities have not agreed to be bound by international law, and the community of recognized states does not accept them and does not treat them as such. Emerging states are not international persons. How they acquired territory and what rights and obligations they have vis-à-vis others as a result of the events during which they were formally recognized have no bearing on international law.

These are matters of fact, not of law. In the general view of theories, the recognition of this formative period, and even the existence of states, were considered an accepted issue outside the realm of international law.

Recognition as a legal and political act taken by member states of the international community to admit a new member to the international community. The order of government, which initially had an internal and absolute aspect, was on the one hand limited internally with the emergence of liberal ideas and placed in the hands of the people, and on the other hand, with the conclusion of the Peace of Westphalia and the precise formation of borders, it acquired an external dimension.

Since then, the external dimension of sovereignty, which was recognition, has changed over time and along with the evolution and development of international relations and law, so that with the formation of international organizations, such as the League of Nations and the Organization of the Nations, the possibility of intervention in the affairs of states has emerged, and the exclusive role of states in the international community has emerged as the only factors authorized to recognize new states. It has been challenged by many intergovernmental institutions.

This challenge has reached such an extent that today, in addition to the individual recognition of states, collective recognition in the form of intergovernmental institutions has also taken its place in international law and relations, and even institutions such as the European Community have taken steps to determine the necessary criteria and standards for the recognition of states. In addition to the change that has occurred due to the number of power centers in the reference that identifies states, intellectual and theoretical developments that have their roots in the end of the Cold War have paved the way for changes in the criteria for identifying states. As the boundaries between domestic and foreign affairs have become increasingly blurred, the domestic and foreign spheres of state sovereignty have become increasingly intertwined, and the criteria for identification have increasingly shifted towards more abstract criteria such as human rights and democracy.

Case Study: Trilateral Statement by the Foreign Ministers of Iraq, Iran and Turkey on the Referendum in the Iraqi Kurdistan Region The Foreign Ministers of Iraq, Iran and Turkey, at their trilateral meeting on September 20 (September 29, 2017) in New York, discussed the draft referendum in the Iraqi Kurdistan Region and reached agreement on the following principles:



- Reaffirmation of the territorial integrity of Iraq and the political unity of that country.
- Welcoming the The recent liberation of Nineveh province, which is considered a major victory against ISIS.
- Recognizing the steadfastness, commitment, and determination of all Iraqis against ISIS.
- Stressing the importance of focusing on the parts of Iraq that have not yet been liberated from ISIS.
- The importance of striving to create stability and security for a post-Daesh Iraq.
- Expressing concern about the planned referendum in the Kurdistan Region, which is scheduled to be held on September 25 of this year, and that Such a move would put all of Iraq's achievements and efforts in the fight against ISIS at great risk.
- Expressing concern that holding a referendum in the Kurdistan Region would violate the Iraqi constitution and risk sparking new conflicts in the region that experience has shown will not be easily resolved.
- The ministers of the three countries express their clear opposition to holding this referendum. Request to the leadership Kurdistan Region to refrain from holding this referendum.
- Muslim emphasized that this referendum will not be in the interests of the Kurds and the Kurdistan Regional Government.
- Agreed on the need to take coordinated measures to oppose the referendum.
- Stressed the belief that constructive dialogue within the framework of the Iraqi Constitution is the only way to resolve the issues between Baghdad and Erbil.
- Stressed the importance of Iran and Turkey's support in resolving this Subject and the ability to control tensions.
- Expressing the need for concerted international efforts to convince the Kurdistan Regional Government to cancel this referendum.(<https://findit.state.gov/search=kurdistan>) .

Reiterating the request to the international community to continue pursuing this issue. The spokesperson for the Ministry of Foreign Affairs of the Republic of Iraq stated regarding the recent action of the Kirkuk Provincial Council of Iraq to participate in the referendum on the independence of the Kurdistan Region of Iraq:

The Kirkuk Provincial Council's resolution based on Participation in any referendum on the secession of the Kurdistan Region from Iraq, which has been rejected by the Iraqi central government, the United Nations, and many regional and supra-regional countries, is a dangerous and provocative step that will not only not help the recent talks in Baghdad to resolve the outstanding issues, but will also affect Iraq's national capabilities and power in consolidating that country's victories over terrorism. will decide. Qasemi stated: The Islamic Republic of Iran warns against this wrong decision, which is a clear violation of Iraq's national sovereignty and territorial integrity, and reiterates that all parties' adherence to the constitution and resolving conflicts in this country through dialogue and legal means is the best option for the Iraqi nation, and any action that creates new crises in the region and on the borders of Iraq's neighbors is unacceptable. Tolerance.



Qasemi, in response to the unilateral decision of the Kurdistan Region of Iraq, said that the position of the Islamic Republic of Iran is to support the territorial integrity and unity of Iraq. The Kurdistan Region is a part of the Republic of Iraq, and unilateral decisions that are out of balance and outside the national and legal framework, especially the Iraqi Constitution, especially in the complicated conditions of Iraq and the region and the continued instability in Iraq, will only create new problems in this country.

A unified, stable, and democratic Iraq will guarantee the interests of all the people of this country, of all its ethnicities and religions. But regarding our situation regarding the referendum debate in the Kurdistan Region, we must say that Iran wants the complete territorial integrity and national sovereignty of Iraq and a unified, democratic, and developed Iraq. It considers any kind of division of Iraq and separation and division between nations, tribes, and sects to be a grave mistake and a strategic error that will harm the Iraqi people and all tribes and sects, and will lead to further instability in Iraq and encourage and expand the There will be a wave of terrorism.

Therefore, Iran's unchanging position is to support the central government of Iraq, its territorial integrity, and a life of prosperity and peace for all Iraqi people and for all followers of different religions and ethnicities within the framework of a national and democratic government.(<http://www.mfa.gov.ir>.)

Conclusion

The term recognition means the formal declaration of the government of an existing state that intends to attribute certain customary legal consequences to a set of existing events, which in its opinion (and other states) justify its conduct. "Recognition" usually has a more specialized meaning in international law, which refers to the affirmation of the existence of a new state or government within an existing foreign state, accompanied by an expression of the desire of the recognizing state to establish relations with the recognized unit or government. Recognition is also used to refer to dissident communities or insurgents, to the recognition of ownership of territory, and ultimately to the conduct of governments.

Effect The recognition of states is a legal matter, and states agree that recognition is more of a political exercise with legal implications. Of course, the reasons for the decision to recognize any new state vary from case to case, and other factors have been used in the recognition of other states, such as domestic political repercussions, the possibility of a military alliance with the new state, humanitarian motives, and so on.

All peoples "have the right to self-determination and by virtue of this right they may freely determine their political status and freely pursue their economic, social and cultural development." The ambiguity of the definition (the rule of law) opens the way for the establishment of a new order in the international community and will give a human and moral dimension to the current international law, in which the political factor predominates.

Despite the lack of recognition States and the Illegality of Independence With regard to the provisions of international law, some nations emphasize the right to self-determination and secession and consider it preferable to territorial integrity. It can be said that they hold a referendum to approve the separation of a territory to create a new country. Referendums include the following three types. The first type of referendum is related to territories that are the subject of international law regarding decolonization.



East Timor (1999) and the upcoming referendum in New Caledonia (2018) may fall into this category. The second type of referendum involves those held to give legitimacy to a territory, where international law does not explicitly provide for this right. The legal and formal basis is established after agreement between the main players, which may include the separatist groups, the central states and the international community. be national, regional or global.

The referendum held during the presidency of Monte Negro on independence (2006), which led to the independence of South Sudan (2011) and the independence referendum in Scotland (2014) are the most important examples.

The third type of independence referendum involves those held unilaterally by separatist groups with local aspirations. One of the distinguishing features of such referendums is the lack of a legal basis. Legality or formal acceptance by all parties involved. Examples include the referendums in Quebec (1980) and (1995) in an attempt to leave Canada and the referendum held during the dissolution of Yugoslavia in the early 1990s.

While the first two types of referendum are legal (secondary), since they are held in accordance with existing legal provisions (such as a constitution, international treaty, or United Nations resolution), referendums of the second type are Third, it has been transformed into a strategic move in an attempt to secede.

Therefore, the independence referendum, which is considered a *de facto* unilateral referendum by the Kurdistan Regional Government (KRG), is not a legitimate referendum. Neither the Iraqi Constitution (Constitution) nor international law provides a valid legal basis for this referendum. Independence Referendum in the Kurdistan Region Iraq on September 25, 2017 is not fundamentally legal under the Iraqi Constitution and international law. This may be seen as a valid legal precedent in the planned path of the separation of the Kurdistan Regional Government.

Even if its results are not binding, they may not be recognized as a true interpretation of the will of the people of the region. Especially because of the hasty and unilateral nature of this A referendum, even in a region damaged by conflict, raises serious doubts about the fairness and integrity of the vote.

However, the Kurdistan Regional Government does not fall into this category. Therefore, we must examine the right to secession for regions outside the partition boundary. Historical evidence shows that such one-sided referendums have always been ineffective. Experience later Communists may be recalled.

During the process of the dissolution of Yugoslavia and the USSR, international recognition of independence was granted only to the constituent republics of the former USSR or the former Yugoslav states, and subsequent secessions of these recognized states were prohibited.

In fact, all independence referendums in these regions were either sponsored by the international community or by the central states. It was declared invalid. Iraq is not in the process of dissolution, as was the case with the USSR and Yugoslavia, despite all the turmoil we have faced. It has also been an independent and sovereign state and a member of the United Nations since 1946.



However, the country is under the supervision of the United Nations, particularly the Security Council. The United Nations Assistance Mission for Iraq (UNAMI), approved by the Security Council, has been actively operating in Iraq since 2003.

This mission includes: advising and supporting the Iraqi government in revising the constitution and implementing its provisions, as well as developing processes acceptable to the Iraqi government for resolving internal border disputes. The risks of secession are high, and the context is ripe for abuse by states supporting the Taliban and hegemonic rivalries between major powers. In short, from the point of view of international law, the creation of a state is always considered a legal fact and not a legal act, even when this fact is carried out on the basis of a legal act such as a treaty.

However, this fact is not legally self-sufficient; international law, by recognizing and understanding the reality or effectiveness of the state, makes it logical and rational. And through international law it acquires its own full legal significance and through recognition it reaches the stage of implementing its rights, which will necessarily have limited powers.

However, if international law does not recognize the right to voluntary secession outside the principle of the right to self-determination, it does not mean that this right is prohibited. Therefore, voluntary secession remains essentially a phenomenon that has not yet been regulated by international law.

The international community is opposed to the possible separation of the Kurdistan Region from the rest of Iraq and is skeptical about the referendum that would be held for this purpose. Such a referendum for this purpose would likely be invalid under international law.

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